

MEETING AT MUNICIPAL BUILDING, 9508 SECOND AVENUE
PRELIMINARY AGENDA FOR COUNCILMEMBERS

WORK SESSION

TUESDAY **February 7, 2017** **3:00 p.m.**

South Jersey Gas – presentation – Scope of proposed main renewal project set to take place mid-February to June.

Planning Board and Zoning Board Consolidation – Solicitor copy of North Wildwood Ordinance

Public Works – Discussion on Water Tower Renovations

Utility

A & F

Suzanne Stanford

From: Hurtt, Lauren <lhurt@sjindustries.com>
Sent: Tuesday, January 31, 2017 1:54 PM
To: Suzanne Stanford
Cc: Jill Gougher; Marc DeBlasio
Subject: South Jersey Gas - Borough Work Session 2/7

Hi Sue,

Thanks for taking my call earlier. As I mentioned, South Jersey Gas would like to attend the Borough Work Session next Tuesday, 2/7 at 3 p.m. With me will be our construction supervisor, Pedro Colon, and possibly our GM of construction, Wes Becker. We'll present to Council the scope of our proposed main renewal project set to take place from mid-February to June. If you need any additional information from me at this time, please let me know. If you could please confirm we are on the agenda I would appreciate it.

Kind regards,
Lauren

Lauren Hurtt
Supervisor, Community Relations

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CITY OF NORTH WILDWOOD
COUNTY OF CAPE MAY, NEW JERSEY

ORDINANCE NO. _____

**AN ORDINANCE ABOLISHING THE ZONING BOARD OF ADJUSTMENT AND
TRANSFERRING ALL OF ITS POWERS AND FUNCTIONS TO THE PLANNING
BOARD AS AUTHORIZED BY N.J.S.A. 40:55D-25C**

BE IT ORDAINED, by the Council of the City of North Wildwood in the County of Cape May, State of New Jersey, as follows:

Section One. The Zoning Board of Adjustment, heretofore established by ordinance, as authorized by N.J.S.A. 40:55D-69, is abolished and all of its powers and functions are transferred to the Planning Board and all ordinances, or portions of ordinances, that have been codified in the Code of the City of North Wildwood at §276-54, §276-55, §276-56 and §276-62 are repealed.

Section Two. The portions of Ordinance 1177, as amended, which have been codified in §276-7 of the Code of the City of North Wildwood is amended to the extent that the definition of the term “Board” shall be as follows:

BOARD – The Planning Board of the City of North Wildwood.

Section Three. The portions of Ordinance 1177, as amended, which have been codified in §276-57, §276-58, §276-59, §276-60 and §276-61 are amended and supplemented to the extent that those provisions of the Code of the City of North Wildwood shall read as follows:

§ 276-57 Establishment of Planning Board.
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A. In accordance with the provisions of N.J.S.A. 40:55D-23, N.J.S.A. 40:55D-25c and as otherwise authorized by the Municipal Land Use Law, N.J.S.A. 40:55D-1, *et. seq.*, the Planning Board heretofore created is continued consisting of nine regular and two alternate members of the following four classes:

- (1) Class I: the Mayor.
- (2) Class II: one of the officials of the City other than a member of the governing body, to be appointed by the Mayor.

- (3) Class III: one member of the governing body to be appointed by it.
- (4) Class IV Regular Members: six other citizens of the municipality to be appointed by the Mayor. The members of Class IV shall hold no other municipal office, position or employment, except that if there be an Environmental Commission, the member of the Environmental Commission who is also a member of the Planning Board, as required by N.J.S.A. 40:56A-1, shall be the Class IV Planning Board Member.
- (5) Class IV Alternate Members: two other citizens of the municipality to be appointed by the Mayor. Alternate members shall meet the qualifications of Class IV regular members and shall be designated by the Mayor at the time of their appointment as "Alternate No. 1" and "Alternate No. 2."

B. The term of the member composing Class I shall correspond with his official tenure. The terms of the member composing Class II and Class III shall be for one year or terminate at the completion of his or her respective terms of office, whichever occurs first. The term of a Class IV member who is also a member of the Environmental Commission shall be for three years or terminate at the completion of his or her term as a member of the Environmental Commission, whichever comes first.

C. All present Class IV members of the Planning Board shall continue in office until the completion of the terms for which they were appointed.

D. The terms of Class IV regular members first appointed pursuant to this chapter shall be so determined that to the greatest practicable extent the expiration of such term shall be evenly distributed over the first four years after their appointment, provided that the initial term shall not exceed four years. Thereafter, the term of each Class IV regular member shall be four years. All terms shall run from January 1 of the year in which the appointment is made.

E. The terms of the Class IV alternate members shall be two years, except that the terms of the alternate members shall be such that the term of not more than one alternate member shall expire any one year; provided, however, that in no instance shall the terms of the alternate members first appointed exceed two years. All terms shall run from January 1 of the year in which the appointment is made.

F. Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member of any class. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

G. If a vacancy of any class shall occur otherwise than by expiration of term, it shall be filled by appointment as above provided for the unexpired term. Any member other than a Class I member may be removed by the governing body for cause but only after public hearing, if requested, and other requested procedural due process protection.

H. Yearly, the Planning Board shall organize by selecting from among its Class IV regular members a Chairman and a Vice Chairman. The Board shall also select a Secretary who may or may not be a member of the Board or an employee of the City.

I. The governing body, after giving due consideration to budget requests that may be submitted by the Planning Board, shall make provisions in its budget and appropriate funds for the expenses of the Planning Board.

J. The office of Planning Board Attorney is hereby created. The Planning Board may appoint to such office and fix compensation or rate of compensation of an attorney at law of New Jersey other than the City Attorney.

K. The Planning Board may also employ or contract for and fix the compensation of such experts and other staff and services as it may deem necessary. The Board, however, shall not authorize expenditures which exceed, exclusive of gifts or grants, the amount appropriated by the governing body for its use.

L. The Planning Board, at least once a year, shall review its decisions on applications and appeals for variances and prepare and adopt by resolution a report of its findings on zoning ordinance provisions which were the subject of variance requests and its recommendations for zoning ordinance amendment or revision, if any. The Board of Adjustment shall send copies of the report, and resolution to the governing body and Planning Board.

§ 276-58 Powers and jurisdiction of Planning Board.
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The Planning Board shall have the powers listed below in addition to other powers established by law:

A. Make, adopt and, from time to time, amend a Master Plan for the physical development of the City, including any areas outside its boundaries which, in the Board's judgement, bear essential relationship to the planning of the City.

B. Administer the subdivision and site plan review provisions of the Land Development Ordinance in accordance with the applicable provisions of said ordinance.

C. Hear and decide applications for conditional uses in accordance with the applicable provisions of this chapter.

D. Participate in the preparation and review of programs or plans required by state or federal law or regulation.

E. Assemble data on a continuing basis as part of a continuous planning process.

F. Annually, at the request of the City Council, prepare a program of municipal capital improvements projects projected over a term of six years and recommend same to the City Council.

G. Consider and report to the City Council within 35 days after referral as to any proposed development regulation submitted to it and also pass upon other matters specifically referred to the Planning Board by the City Council.

H. Error or refusal. Hear and decide appeals where it is alleged by the applicant that there is an error in any order, requirement, decision or refusal made by a City official based on or made in the enforcement of the zoning provisions of this chapter.

I. Exceptions or interpretations. Hear and decide requests for interpretation of the Zoning Map or the zoning provisions of this chapter or for decisions upon other special questions upon which the Board is authorized to pass by any zoning provisions of this chapter or by any duly adopted Official Map.

J. General bulk variances.

- (1) Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation of this chapter would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship;
- (2) Where, in an application or appeal relating to a specific piece of property the purposes of this chapter would be advanced by a deviation from the zoning requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from such zoning requirements; provided, however, that no variance from those departures enumerated in § 276-55D hereinbelow (N.J.S.A. 40:55D-70d) shall be granted under this subsection; and provided further, that the proposed development does not require approval by the Planning Board of a subdivision, site plan or conditional use in conjunction with which the Planning Board has power to review a request for a variance pursuant to § 276-58I of this chapter (N.J.S.A. 40:55D-60a).

K. Use variance, variances from conditional use standards, and major specific bulk variances. In particular cases and for special reasons, grant a variance to allow departure from the zoning provisions of this chapter to permit a use or principal structure in a district restricted against such use or principal structure; an expansion of a nonconforming use; deviation from a

particular specification or standard set forth in this chapter as pertaining solely to a conditional use; an increase in the permitted floor area ratio as defined in Article II of this chapter and in N.J.S.A. 40:55D-4; an increase in the permitted density as defined in Article IV or VI of this chapter, as the case may be, and in N.J.S.A. 40:55D-4, except as applied to the required lot area for a lot or lots for detached one- or two-dwelling unit buildings, which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision, in which event applications would be made pursuant to § 276-55C hereinabove; or a height of a principal structure which exceeds by 10 feet or 10% the maximum height permitted in the zoning district for a principal structure. A variance under this subsection shall be granted only by affirmative vote of at least five members of the Board. The Class I and the Class III members of the Board shall not participate in the consideration of applications for development which involve relief pursuant to the paragraph or pursuant to N.J.S.A. 50:55D-70d.

L. General provisions.

- (1) No variance or other relief may be granted under the terms of this section unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and the zoning provisions of this chapter.
- (2) An application for development may be referred to any appropriate person or agency, other than the Planning Board, for its report, provided that such reference shall not extend the period of time within which the Board shall act.
- (3) The Planning Board, in granting any variance which by law it is authorized to grant, may impose such conditions, in addition to those required in this chapter, as are necessary to assure that the general purposes and intent of this chapter are met.
- (4) Unless otherwise specified by the Board, a variance granted by the Board shall expire and become null and void two years from the granting by the Board unless within said two-year period the applicant obtains a construction permit or otherwise avails himself of said approval. The Planning Board, upon application and within said two-year period, may extend said period for one year, but not to exceed three such extensions.

M. Other powers. The Planning Board shall have such other powers as prescribed by law, including, but not limited to, the following:

- (1) Direct issuance of a construction permit pursuant to N.J.S.A. 40:55D-34 for the construction of a building or structure within the bed of a mapped street or public drainageway, flood control basin or public area as shown on a duly adopted Official Map of the municipality whenever one or more parcels of land within said bed cannot yield a reasonable return to the owner unless a construction permit is granted. The Board may grant such relief only by affirmative vote of a majority of the full authorized membership of the Board, ensuring that such relief will tend to

cause a minimum change of the Official Map and will not significantly add to the cost of opening any proposed street. The Board shall impose reasonable requirements as a condition of granting the construction permit so as to promote the health, morals, safety and general welfare of the public.

- (2) Direct issuance of a construction permit pursuant to N.J.S.A. 40:55D-36 for the construction of a building or structure on a lot not abutting a street which is shown on a duly adopted Official Map of the municipality or which is an existing state, county or municipal street or highway; or a street shown upon a plat approved by the Municipal Planning Board; or a street on a plat duly filed in the office of the County Recording Officer. The Board may grant such relief only when the enforcement of the statute requirement that a building lot abut a street would entail practical difficulty or unnecessary hardship, or where the circumstances of the case do not require the building or structure to abut a street. The Board shall impose requirements or conditions that will provide adequate access for fire-fighting equipment, ambulances and other necessary emergency vehicles for the protection of the health and safety and that will protect any future street layout on the Official Map or on the general circulation plan element of the Municipal Master Plan.

N. Perform such other advisory duties as are assigned to it by ordinance or resolution of the

City Council for the aid and assistance of the City Council or other agencies and officers.

O. Whenever relief is requested pursuant to this section, notice of the hearing on the application for development shall include reference to the request for a variance or direction for issuance of a permit, as the case may be.

P. The developer may elect to submit a separate application requesting approval of the variance or direction of the issuance of a permit and a subsequent application for any required approval for a subdivision, site plan, or conditional use. The separate approval of the variance or direction of the issuance of a permit shall be conditioned upon grant of all required subsequent approvals by the Planning Board. No such subsequent approval shall be granted unless the approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and the zoning provisions of this chapter.

§ 276-59 Appeals and applications to the Planning Board.

A. Appeals to the Planning Board may be taken by any interested party affected by any decision of a municipal official of the municipality based on or made in the enforcement of the zoning provisions of this chapter or a duly adopted Official Map. Such appeal shall be taken within 20 days by filing a notice of appeal with the official from whom the appeal is taken, with three copies of the notice given to the Secretary of the Planning Board. The notice shall specify the grounds for the appeal. The official from whom the appeal is taken shall immediately

transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

B. The Planning Board may reverse or affirm, wholly or in part, or may modify the action, order, requirement, decision, interpretation or determination appealed from and to that end have all powers of the municipal official from whom the appeal is taken.

C. An appeal to the Planning Board shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made unless the municipal official from whose action the appeal is taken certifies to the Planning Board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by an order of the Superior Court upon notice to the municipal official from whom the appeal is taken and due cause shown.

D. A developer may file an application for development with the Planning Board for action under any of its powers without prior application to a municipal official.

E. The Planning Board shall act upon any appeal or any application for development within 120 days either from the date the appeal is taken from the decision of the municipal official or from the date the application is certified as a complete application, as the case may be, or within such further time as may be consented to by the applicant, except that when an applicant elects to submit separate consecutive applications for use variance approval and site plan, subdivision or conditional use approval, the one-hundred-twenty-day time period for action shall apply to the application for approval of the use variance, and the time period for granting or denying any subsequent approval shall be as otherwise provided in this chapter.

F. Failure of the Planning Board to render a decision within such one-hundred-twenty-day period or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant.

§ 276-60 General Provisions applicable to the Planning Board.
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A. Conflicts of interest. No regular or alternate member of the Planning Board shall act on any matter in which he has, either directly or indirectly, any personal or financial interest. Whenever any such member shall disqualify himself from acting on a particular matter, he shall not continue to sit with the Board on the hearing of such matter nor participate in any discussion or decision relating thereto.

B. Meetings.

- (1) Meetings of the Planning Board shall be scheduled no less than once a month, and any meeting so scheduled shall be held as scheduled unless cancelled for lack of applications for development to process.
- (2) Special meetings may be provided for at the call of the Chairman or on the request of any two Board members, which meetings shall be held on notice to its members and the public in accordance with all applicable legal requirements.
- (3) No action shall be taken at any meeting without a quorum being present, said quorum to be the majority of the full authorized membership of the Board.
- (4) All actions shall be taken by majority vote of the members of the Board present at the meeting except as otherwise required by a provision of N.J.S.A. 40:55D-1 et seq. A member of the Board who was absent for one or more of the meetings at which a hearing was held shall be eligible to vote on a matter upon which the hearing was conducted, notwithstanding his absence from one or more of the meetings; provided, however, that such Board member has available to him the transcript or recording of all of the hearing from which he was absent and certifies in writing to the Board that he has read such transcript or listened to such recording.
- (5) All regular meetings and all special meetings shall be open to the public, except as provided in the Open Public Meeting Law, c. 231, Laws of New Jersey, 1975. Notice of all such meetings shall be given in accordance with the requirements of the Open Public Meeting Law, c. 231, Laws of New Jersey, 1975.

C. Public hearings.

- (1) The Planning Board, as the case may be, shall hold a hearing on each application for development. Each Board shall make rules governing such hearings.
- (2) Any maps and documents for which approval is sought at a hearing shall be on file and available for public inspection at least 10 days before the date of the hearing during normal business hours in the office of the administrative officer. The applicant may produce any documents, records or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents.
- (3) The officer presiding at the hearings, or such person as he may designate, shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties, and the provisions of the County and Municipal Investigations Law, P.L. 1953, c. 38 (C.2A:67A-1 et seq.) shall apply.
- (4) The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer, or such other person as he may designate, and the right of cross-examination shall be permitted to all

interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and reasonable limitations as to time and number of witnesses.

- (5) Technical rules of evidence shall not be applicable to the hearing, but the Board may exclude irrelevant, immaterial or unduly repetitious evidence.

D. Public notice of a hearing.

- (1) Public notice of a hearing shall be given for all applications for development, including but not limited to requests for relief under N.J.S.A. 40:55D-60 and 40:55D-76 and interpretations under N.J.S.A. 40:55D-70b.
- (2) The Secretary of the Planning Board, as the case may be, shall notify the applicant at least two weeks prior to the public hearing at which the application will be discussed. Notice of a hearing requiring public notice shall be given by the applicant at least 10 days prior to the date of the hearing in the following manner:
 - (a) By publication in an official newspaper of the City, if there is one, or in a newspaper of general circulation in the City in the absence of an official newspaper. An affidavit of proof of the giving of the required notice shall be filed by the applicant with the municipal agency at, or prior to, the hearing.
 - (b) By notification by personal service or certified mail to the following. An affidavit of proof of the giving of the required notice shall be filed by the applicant with the municipal agency at, or prior to, the hearing. It is not required that a return receipt is obtained; notice is deemed complete upon mailing (N.J.S.A. 40:55D-14).

[1] To all owners of real property as shown on the current tax duplicate located in the state and within 200 feet in all directions of the property which is the subject of the hearing, provided that this requirement shall be deemed satisfied by notice to the condominium association, in the case of any unit owner whose unit has a unit above or below it, or horizontal property regime, in the case of any co-owner whose apartment has an apartment above or below it.

[a] Notice to a partnership owner may be made by service upon any partner.

[b] Notice to a corporate owner may be made by service upon its president, a vice president, secretary or other person

authorized by appointment or by law to accept service on behalf of the corporation.

- [c] Notice to a condominium association, horizontal property regime, community trust or homeowners' association, because of its ownership of common elements or areas located within 200 feet of the property which is the subject of the hearing, may be made in the same manner as to a corporation without further notice to unit owners, co-owners, or homeowners on account of such common elements or areas.
 - [2] To the Clerk of any adjoining municipality or municipalities when the property involved is located within 200 feet of said adjoining municipality or municipalities.
 - [3] To the Cape May County Planning Board and Cape May Board of Chosen Freeholders when the application for development involves property adjacent to an existing county road or proposed road as shown on the County Official Map or County Master Plan, adjoining other county land or situated within 200 feet of a municipality boundary.
 - [4] To the Commissioner of Transportation of the State of New Jersey when the property abuts a state highway.
 - [5] To the State Planning Commission when the hearing involves an application for the development of property which exceeds 150 acres or 500 dwelling units, in which case the notice shall include a copy of any maps or documents required to be filed with the City.
- (3) Upon the written request of an applicant, the City Tax Collector shall, within seven days, make and certify a list from current tax duplicates of names and addresses of owners within the City to whom the applicant is required to give notice. The applicant shall be charged \$0.25 per name or \$10, whichever is greater, for said list and shall be entitled to rely upon the information contained in such list, and failure to give notice to any lot owner not on the list shall not invalidate any hearing or proceeding. Additionally, the applicant shall be responsible for giving proper notice to all property owners pursuant to Subsection D(2)(b) above who do not reside within the City.
- (4) The notice shall state the date, time and place of the hearing and the nature of the matters to be discussed and an identification of the property proposed for

development by street address, if any, and by reference to lot and block numbers as shown on the current tax duplicate in the City Tax Collector's office and the location and times at which any maps or documents for which approval is sought are available for inspection.

E. Records.

- (1) Minutes of every regular or special meeting shall be kept and shall include the names and addresses of the persons appearing and addressing the Planning Board, and of any persons appearing by attorney, the action taken by the Planning, the findings, if any, made by it and the reasons therefor. The minutes shall thereafter be made available, after approval by the Board, for public inspection during the normal business hours at the office of the administrative officer. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceedings concerning the subject matter of such minutes. Such interested party shall be charged a reasonable fee for the reproduction of the minutes, as indicated in § 276-67 of this chapter.
- (2) A verbatim recording shall be made of every hearing. The recording of the proceedings shall be made either by stenographer, mechanical or electrical means. The municipality shall furnish a transcript or duplicate recording in lieu thereof on request to any interested party at his expense, provided that the charge for a transcript shall not exceed the maximum amount permitted in N.J.S.A. 2A:11-15¹, and as indicated in § 276-67 of this chapter. Each transcript shall be certified in writing by the transcriber to be accurate.

F. Decisions.

- (1) Each decision on any application for development shall be reduced to writing by the Board and shall include findings of facts and conclusions based thereon.
- (2) The Board shall provide the findings and conclusions through:
 - (a) A resolution adopted at a meeting held within the time period provided in this chapter for action by the Board on the application for development; or
 - (b) A memorializing resolution adopted at a meeting held no later than 45 days after the date of the meeting at which the Board voted to grant or deny approval. Only the members of the Board who voted for the action taken may vote on the memorializing resolution, and the vote of a majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution. An action pursuant to N.J.S.A. 40:55D-9 (resulting from the failure of a motion to approve an application) shall be memorialized by

resolution as provided above, with those members voting against the motion for approval being the members eligible to vote on the memorializing resolution.

- (3) The vote on any memorializing resolution shall be deemed to be a memorialization of the action of the Board and not to be an action of the Board; however, the date of the adoption of the resolution shall constitute the date of the decision for purposes of the mailings, filings and publications required in § **276-61** of this chapter.
- (4) If the Board fails to adopt a resolution or memorializing resolution as hereinabove specified, any interested party may apply to the Superior Court in a summary manner for an order compelling the Board to reduce its findings and conclusions to writing within a stated time and the cost of the application, including attorneys fees, shall be assessed against the municipality.

§ 276-61 Appeal of decisions.

Any interested party has the right to obtain a review of any Planning Board decision by any court of competent jurisdiction according to law.

Section Four. If any portion of this Ordinance is determined to be invalid by a court of competent jurisdiction, that determination shall have no effect upon the remainder of this Ordinance, which shall remain valid and operable.

Section Five. All Ordinances or parts of Ordinances inconsistent with this Ordinance, to the extent of such inconsistencies only, be and the same hereby are repealed.

Section Six. This Ordinance shall take effect immediately upon final passage and publication as provided by law.

Patrick Rosenello, Council President

W. Scott Jett, City Clerk