

The regular meeting of the Board of Commissioners of the Borough of Harvey Cedars, NJ was called to order by Mayor Oldham at 11:00am. Commissioners Gerkens and Garofalo were present.

The Mayor asked all to rise for the Pledge of Allegiance.

Pursuant to the applicable portions of the New Jersey Open Public Meetings Act, adequate notice of this meeting has been given. The schedule of this meeting of the Board of Commissioners of the Borough of Harvey Cedars is listed in the notice of meetings posted on the bulletin board located in the Borough Hall and the Borough's website and was published in the Beach Haven Times on December 10, 2015 and the Asbury Park Press on December 15, 2015. Time change was published in the Beach Haven Times, posted on the website and Borough Hall. In addition, Taxpayers' Association members were notified.

Motion to approve the minutes of the previous meeting, July 1, 2016, was made by Commissioner Gerkens, seconded by Commissioner Garofalo.

The Mayor read the following ordinance by title and number and asked for a motion to introduce.

ORDINANCE #2016-09 FIRST READING

AN ORDINANCE OF THE BOROUGH OF HARVEY CEDARS, COUNTY OF OCEAN, STATE OF NEW JERSEY, AUTHORIZING A REFERENDUM BALLOT QUESTION REGARDING THE ESTABLISHMENT OF AN OPEN SPACE CONSERVATION TRUST FUND PURSUANT TO NJSA 40:12-15.7

A copy of the full ordinance as introduced is attached hereto and made a part hereof.

Motion to adopt: Commissioner Garofalo

Second: Commissioner Gerkens

Vote: Ayes – Oldham, Gerkens, Garofalo

The Mayor read the following ordinance by title and number and asked for a motion to introduce.

ORDINANCE #2016-10 FIRST READING

AN ORDINANCE OF THE BOROUGH OF HARVEY CEDARS REGULATING THE STATUTORY AUTHORITY OF VERIZON NEW JERSEY INC., ITS SUCCESSORS AND ASSIGNS TO USE THE VARIOUS PUBLIC STREETS, ROADS, AVENUES, HIGHWAYS AND OTHER PUBLIC WAYS IN THE BOROUGH OF HARVEY CEDARS, OCEAN COUNTY, NEW JERSEY, FOR ITS LOCAL AND THROUGH LINES AND OTHER COMMUNICATIONS FACILITIES AND PRESCRIBING THE CONDITIONS THEREOF

A copy of the full ordinance as introduced is attached hereto and made a part hereof.

Motion to adopt: Commissioner Garofalo

Second: Commissioner Gerkens

Vote: Ayes – Oldham, Garofalo, Gerkens

The Mayor read the following resolutions by title only and asked for motions to adopt after reading each title. Copies of the full resolutions are attached hereto and made a part hereof:

RESOLUTION #2016-071:

CHAPTER 159 ITEM OF REVENUE INSERTION IN THE SUM OF \$1,000.00 – TOURISM

Motion to adopt: Commissioner Gerkens

Second: Commissioner Garofalo

RESOLUTION #2016-072: Bills

Motion to adopt: Commissioner Gerkens

Second: Commissioner Garofalo

Public Property Usage requests:

1. SUP Yoga & Ecotours – Sunset Park

After a discussion of public property usage for activities that are already offered by businesses in Harvey Cedars (brick & mortar rule), a motion was made by Commissioner Gerkens, seconded by Commissioner Garofalo, to deny the request to use Sunset Park Bayfront for SUP yoga to Katie Ribsam of Yoga Bohemia. Additional information was requested for the ecotours.

2. Lacrosse Training – Sunset Park

A motion was made by Commissioner Garofalo, seconded by Commissioner Gerken to approve the request to use Sunset Park for private lacrosse training to C.J. Alyanakian from 4:30pm to 7:30pm on dates to be determined, contingent on the ability to provide liability insurance.

PRIVILEGE OF THE FLOOR –

Walter Naisby, East 82nd Street, inquired about the open space tax, if it is a flat rate or a percentage. Commissioner Gerken stated that it is a flat 1 cent per \$100 of assessment, if it is approved by the voters.

Mr. Naisby commented that the contractors who paved 82nd Street did a stellar job, but Atlantic City Electric and Verizon took no responsibility.

Barbara Lehman, Taxpayers Association representative, (arrived after the open space ordinance introduction) asked about the ordinance. Commissioner Gerken informed her that the ordinance was approved at first reading and she will be setting up a meeting tomorrow or Friday with the Association to answer their questions.

Motion to adjourn: Commissioner Garofalo

Second: Commissioner Gerken

Meeting adjourned at 11:12am.

ORDINANCE NO. 2016-09

**AN ORDINANCE OF THE BOROUGH OF HARVEY CEDARS, COUNTY OF OCEAN,
STATE OF NEW JERSEY, AUTHORIZING A REFERENDUM BALLOT QUESTION
REGARDING THE ESTABLISHMENT OF AN
OPEN SPACE CONSERVATION TRUST FUND
PURSUANT TO NJSA 40:12-15.7**

WHEREAS the Borough of Harvey Cedars possesses several areas of open space and natural preservation areas within the Borough for the benefit of the public at large; and

WHEREAS the Borough seeks to obtain the approval of the voters for expanding its natural open space program and the funding mechanisms for the same; and

WHEREAS NJSA 40:12-15.7(a)(1)(a) provides that the governing body of any municipality may submit to the voters of the municipality in a general election a proposition authorizing imposition of an annual levy for an amount or at a rate deemed appropriate for any or all of the purpose of the acquisition of lands for recreation and conservation purposes; and

WHEREAS NJSA 19:37-1 provides that the governing body of any municipality may ascertain the sentiment of the legal voters of the municipality upon any question or policy pertaining to the government or internal affairs thereof by the submission of such question to a vote of the electors in the municipality at any election to be held therein, by adopting at any regular meeting an ordinance or resolution requesting the Clerk of the County to print upon the official ballots to be used at the next ensuing general election a certain proposition to be formulated and expressed in the ordinance or resolution in concise form; provided that such request shall be filed with the County Clerk not later than 81 days previous to the election (August 19, 2016).

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Borough of Harvey Cedars, County of Ocean, State of New Jersey, as follows:

SECTION 1. The Board of Commissioners of the Borough of Harvey Cedars does hereby request that the following referendum question be placed on the November 2016 general election ballot:

OPEN SPACE CONSERVATION TRUST FUND REFERENDUM

Shall the Board of Commissioners of the Borough of Harvey Cedars adopt an ordinance establishing an “Open Space Conservation Trust Fund,” which shall have the following provisions:

- A. The Open Space Conservation Trust Fund shall be funded through the collection of local property taxes in the amount of an additional one (1) cent per hundred dollars of assessed value on the annual local property tax levy.
- B. The aforementioned fund shall be designated solely for the purchase of property rights within the Borough of Harvey Cedars from willing sellers, including but not by way of limitation, fee simple acquisitions, easements, development rights, or any other lesser interest in real estate which will further the goal of property acquisitions of lands and property rights for recreation and/or conservation purposes, including all costs and expenses associated therewith.
- C. Any property rights acquired through the Open Space Recreation & Conservation Trust Fund shall not be sold or conveyed by the Borough unless or until authorized by subsequent Public Referendum of the voters of the Borough of Harvey Cedars.

EXPLANATORY STATEMENT

The proposed Open Space Conservation Trust Fund will be used to acquire property from willing sellers to preserve open space on developed or undeveloped areas in the Borough of Harvey Cedars. The purchase and maintenance of property will be funded by a separate additional one (1) cent assessment per hundred dollars of assessed value on the annual local property tax beginning in 2017. The funds raised by the tax will be used to acquire and maintain land for recreational or conservation purposes only. An Open Space Advisory Committee shall be established to study and determine open space properties and to make recommendations for acquisitions. The Committee shall include citizens that need not be full-time residents. Donations to the Trust Fund will also be accepted. Changes to the tax can only be done by referendum.

_____ YES _____ NO

SECTION 2. The Mayor and Commissioners do hereby further request that the Ocean County Clerk print the aforementioned question and explanatory statement on the official ballot for the Borough of Harvey Cedars for the General Election to be held on November 8, 2016.

SECTION 3. A certified copy of this ordinance shall be forwarded to the Ocean County Clerk.

SECTION 4. This ordinance shall take effect immediately upon its enactment after second reading and publication as required by law.

PASSED ON: August 5, 2016

ORDINANCE NO. 2016-10

AN ORDINANCE OF THE BOROUGH OF HARVEY CEDARS REGULATING THE STATUTORY AUTHORITY OF VERIZON NEW JERSEY INC., ITS SUCCESSORS AND ASSIGNS TO USE THE VARIOUS PUBLIC STREETS, ROADS, AVENUES, HIGHWAYS AND OTHER PUBLIC WAYS IN THE BOROUGH OF HARVEY CEDARS, OCEAN COUNTY, NEW JERSEY, FOR ITS LOCAL AND THROUGH LINES AND OTHER COMMUNICATIONS FACILITIES AND PRESCRIBING THE CONDITIONS THEREOF

BE IT ORDAINED by the Borough of Harvey Cedars, Ocean County, New Jersey that:

SECTION 1: Pursuant to the provisions of N.J.S.A. 48:17-10, N.J.S.A. 48:17-11, and N.J.S.A. 48:17-12, permission and consent is hereby granted to Verizon New Jersey Inc., (the "Company"), its successors and assigns, to install, operate, inspect, maintain, repair, replace and remove its communications facilities and other transmission or process equipment, including underground facilities, such as conduits, manholes, cables, wires, and all other facilities appurtenant thereto, and above-ground facilities, such as cables, wires, antennas, poles, posts, supports, guys, pedestals, cable termination and distribution cabinets and all other facilities appurtenant thereto, in, through, upon, along, over, under, and across all of the various public streets and ways, which include the roads, avenues, right-of-way, sidewalks, highways, bridges, waterways, and other public places, and parts thereof, throughout their entire length, and to effect the necessary street openings and lateral connections to curb poles, property lines and other facilities in the Borough of Harvey Cedars (the "Borough") for said Company's local and through lines and other communications facilities in connection with the transaction of its business. In the event that any public street or way where the Company has facilities is vacated by the Borough, the Borough agrees to reserve unto said Company the rights granted the Company by the present Ordinance.

SECTION 2: All poles, posts, pedestals, cabinets, or other facilities shall be located and placed back of the curb lines where shown on the official map(s) of the Borough the poles and posts, however, shall be located within eighteen (18) inches of the face of such curb line or as may otherwise be mutually agreed by both parties or required by law, or at the points or places now occupied by the poles, posts, pedestals, cabinets, or other facilities of the Company, its successors and assigns, and where there are no curb lines, at other convenient points or places in, upon, along, adjacent, or across the public streets and ways as may be mutually agreed upon between the parties.

SECTION 3: The Company may bury its local and through communications facilities such as cables, conduit, manholes and associated equipment, fixtures, process equipment and appurtenances within the right-of-way of the various public streets and ways and at such locations as shall be mutually agreed upon by the parties for said Company's local and through lines and communications facilities. Underground conduits and associated facilities, as aforementioned, shall be placed at least eighteen (18) inches below the surface of said public streets and ways and with the exception of lateral branches to curb poles and property lines and other facilities, the same shall generally not be constructed more than ten (10) feet from the curb line, unless obstructions make it necessary to deviate from such course or unless the parties mutually agree to another location. Manholes shall be located at such points along the line of underground conduits as may

be necessary or convenient for placing, maintaining, and operating the facilities, as aforementioned, which the Company may from time to time use in connection with its underground conduit system and shall be so constructed as to conform to the cross-sectional and longitudinal grade of the surface so as not to interfere with the safety or convenience of persons or vehicles.

SECTION 4: Before proceeding with any new construction or relocation work in an area covered by this Ordinance, the Company shall give prior notice in writing thereof to the Borough, through its designated representative, of its intention to perform such work. The Company shall obtain such street opening or excavation permits as may be lawfully required by any applicable ordinances regulating such openings or excavations. Any such area affected by the Company in constructing its facilities shall be restored to as good condition as it was before the commencement of work thereon. No public streets or ways shall be encumbered for a period longer than shall be reasonable to execute the work.

SECTION 5: The Company agrees to indemnify and save harmless the Borough from and against all claims and liabilities resulting from any injury or damage to the person or property of any person, firm or corporation caused by or arising out of road conditions resulting from any negligent or faulty excavations, installation or maintenance connected with the work or equipment of said Company, and not attributable to the fault or negligence of the Borough, except that if such injury or damage shall be caused by the joint or concurring negligence or fault of the Company and the Borough, the same shall be borne by them to the extent of their respective fault or negligence.

SECTION 6: Whenever a curb line shall be established on streets where one does not now exist or where an established curb line shall be relocated in order to widen an existing street in conjunction with road construction being performed by the Borough the Company shall change the location of its above-ground facilities covered by this Ordinance in accordance with applicable law, so that the same shall be back of, and adjacent to, the new curb line so long as the Borough has acted in accordance with applicable law and with reasonable care in establishing the new curb line and providing notice thereof.

SECTION 7: Any company or corporation having legal authority to place its facilities in the public streets and ways of the Borough may jointly use the Company's poles, posts, pedestals or other structures for all lawful purposes, provided the Company consents to such use, on terms and conditions acceptable to the Company and not inconsistent with the provisions of the present Ordinance.

SECTION 8: The Company shall provide space, to the extent available, on its poles so long as said poles are occupied by the Company and space, to the extent available, in its main conduits existing on the date of passage of this Ordinance, but not exceeding one (1) duct of standard size, for the sole benefit of the Borough during the pendency of this Ordinance. Such space shall be

provided for the exclusive use of the Borough which use shall be limited to accommodating the wires or electrical conductors required for one-way signal control in connection with municipal police patrol, fire alarm signal control and traffic signal control systems only; but for no other uses or purposes, either alone or in conjunction therewith; nor for circuits for the supply of electrical energy for traffic or other signals; nor for wires, conductors, cable or the equivalent which provide a means of transmitting any signal to a private, commercial or residential location, and which is normally provided by a nongovernmental supplier; provided, further, that no such use or attachment by the Borough shall interfere with the plant or facilities of or the use thereof by the Company. All costs or expenses incurred by the Company in connection therewith shall be paid by the Borough. It shall be the obligation of the Borough to attach its wires to the poles or place its electric conductors in the conduits or manholes of the Company, provided that before proceeding with said work, either by itself or by a person, firm or corporation engaged to perform such work, the Borough shall give the Company thirty (30) days prior notice in writing. All such work shall be performed under the supervision of said Company. The Borough agrees to indemnify and save harmless the Company from and against all claims and liabilities resulting from any injury or damage to the person or property of any person, firm or corporation caused by or arising out of the Borough's installation maintenance, operation or removal of wires or facilities or the Borough's use or enjoyment of the Company's plant or facilities as provided under this section, except that if such injury or damage shall be caused by joint or concurring negligence of the Company and Borough, the same shall be borne by them to the extent of their respective fault or negligence.

SECTION 9: If any or all of the said streets or ways are later taken over by the County of Ocean or the State of New Jersey, such County or State shall have such rights and privileges and be subject to the same terms, conditions and limitations of use as apply herein to the Borough, provided, however, that satisfactory prior arrangements as may be necessary are made with the Borough and the Company for the full protection of the respective interest of each.

SECTION 10: The term "Borough" as used in this Ordinance shall be held to apply to and include any form of municipality or government into which the Borough or any part thereof may at any time hereafter be changed, annexed, or merged.

SECTION 11: The permission and consent hereby granted shall apply to and cover all communications facilities of the Company existing at any time, and related structures, process equipment, and appurtenances heretofore or hereafter erected, constructed, reconstructed, removed, located, relocated, replaced, maintained, repaired, or operated by the Company, its predecessors, successors, or assigns within the Borough. This Ordinance shall cancel and supersede all prior consent ordinances between the Borough and the Company regarding the subject matter hereof.

SECTION 12: This Ordinance shall continue in full force and effect for a period of fifty (50) years from the date it becomes effective subject to the right of the Company to seek such changes herein as may be deemed necessary from time to time prior to the expiration of said period, said changes to be approved by the Borough. The Company shall maintain its property within the Borough and shall comply with applicable law for the provision of safe, adequate and proper service at just and reasonable rates at and after the term of this Ordinance, the Company shall safeguard the public interest in continuous and uninterrupted service within the Borough.

SECTION 13: In the event that any provision herein shall for any reason be illegal or unenforceable under applicable law, such illegality or unenforceability shall not affect any other provisions of this Ordinance, and this Ordinance shall be construed as if such illegal or unenforceable provision(s) had never been contained herein.

SECTION 14: The Company shall pay the expenses incurred for advertising required in connection with the passage of this Ordinance, after the date of its first reading, within thirty (30) days after the Company has received a bill for said advertising from the publisher. Following final passage of this Ordinance, the Borough Clerk shall provide the Company with written notice thereof by certified mail. As provided by applicable law, this Ordinance, and any subsequent amendments, shall not become effective until acceptance thereof by the Company and approval thereof by the Board of Public Utilities.

EFFECTIVE DATE: August 25, 2016

RESOLUTION #2016-071

**CHAPTER 159 ITEM OF REVENUE INSERTION IN THE SUM OF \$1,000.00 –
TOURISM**

WHEREAS NJSA 40A:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the budget of any county or municipality when such item shall have been made available by law and the amount thereof was not determined at the time of the adoption of the budget; and

WHEREAS the Director may also approve the insertion of an item of appropriation for an equal amount.

NOW, THEREFORE, BE IT RESOLVED that the Commission of the Borough of Harvey Cedars, in the County of Ocean, New Jersey, hereby requests the Director of the Division of Local Government Services to approve the insertion of an item of revenue in the budget of the year 2016 in the sum of \$1,000.00, which is now available from the County of Ocean, entitled “Ocean County Tourism Grant”.

BE IT FURTHER RESOLVED that the above is a result of State funds obtained through Ocean County Planning Board as a matching grant in the amount of \$1,000.00.

BE IT FURTHER RESOLVED that a matching sum of \$1,000.00 is to be provided for in the 2016 Municipal budget from the line item entitled “Special Activity – Other Expenses”.

BE IT FURTHER RESOLVED that the sum of \$1,000.00 is hereby appropriated under the caption: 8. General Appropriations (A) Operations excluded from “CAPS” Public and Private Programs offset by Revenues: Ocean County Tourism Grant.

PASSED ON: July 19, 2016