



MINUTES OF THE MAYOR & COUNCIL REGULAR MEETING OF AUGUST 17, 2005

The Regular Meeting of the Mayor and Council of the Borough of Atlantic Highlands was held on August 17, 2005 in the public meeting room of Borough Hall, 100 First Avenue, Atlantic Highlands, NJ.

Mayor Donoghue called the meeting to order at 7:30 PM. After a silent prayer and the Pledge of Allegiance, the following roll call was taken: Council members Archibald, Fligor, Ladiana, Nolan, and Spatola. Temporary Administrator Jahn, Borough Attorney Miller, Borough Engineer Elliott, and Municipal Clerk Harris were also present. Council member Noonan was absent.

Mr. Harris stated that notice of this meeting has been transmitted to the Asbury Park Press and the Courier, continuously posted in the Borough Hall on a bulletin board reserved for such announcements, and filed with the Municipal Clerk of Atlantic Highlands, on 1/5/2005. He read the "Open Public Meetings Act" compliance statement and stated that formal action would be taken.

Mayor Donoghue commented on the four Dutchman who made it across in sixty days and has set a new record.

PUBLIC COMMENT SESSION

Mark Strassburg-67 First Ave- spoke on ABC cards and several of his supposedly being expired. He reported that none of his employees had expired cards. He was informed that they were changing to five-year expiration. He has had employees that have been with him for a long time and their ABC cards are not expired. After researching the Ordinance he questioned how could the Police Dept implement an expiration date when the Ordinance does not call for one. He feels it is illegal that they are being issued cards that are not according to Ordinance.

Chief Vasto commented that he spoke to Mr. Strassburg and informed him that this would be brought to Council's attention and it would be up to the Council to pass the Ordinance. He was told that it would not take effect until Mayor and Council addressed it.

Mr. Strassburg stated the point is not that they are going to five years, but he is already issuing cards with five-year expirations and he does not have the authority to do that.

Mayor Donoghue commented that we have established even through the Chief that the proposed new cards are not in effect and not the law of the town.

Mr. Strassburg feels this is a blatant overstep in authority, when an agency of the town is making the law.

Joseph Hawley-25 Ocean Blvd- Commented on the upcoming resignation of the code enforcement officer and suggested the Borough hire Scott Melski to replace the code officer Mr. Blaze who has submitted his resignation. We need someone in the town that can perform in that position and Mr. Melski is that kind of a person.

Mickey Rast-48 Eighth Ave- commented that the Chamber of Commerce will be having their meeting tomorrow and asked if a member of the Council would be attending and is able to give a

brief overview of what is going on in town that would affect the businesses. She also commented on the garbage and the need to set up an Ordinance and make sure the businesses comply or issue them a summons.

Kate Wigginton-Ave D- agrees with Mrs. Rast and would like it extended to the entire Borough. We have a very liberal bulk pick-up and she does not know why the entire Borough cannot be enforced.

Gloria Brown-104 Ocean Blvd- Commented that the parking of boats on the property below her house and the debris down there is horrible. She also commented on the quality of employees that work in the Borough and how she appreciates them, and they have been most helpful.

William Phillips-Memorial Pkwy- asked who pays to have the trash picked up in town. Mrs. Rast explained the businesses pay for the dumpster but the Borough carts it away.

Thomas King-51 Ocean Blvd-wanted to know if the Ocean Club is paying rent yet, and if an RFP go out for that property and asked if it was stated in the RFP that they would not have to pay rent while renovating. He asked if the appointment to the Harbor Security was to replace someone who was leaving.

Council member Nolan spoke on the elevated gas prices and the need to do an Emergency Appropriation to cover the fuel costs for the remainder of the year in the Harbor. He explained that State allows them to budget the same amount that they brought in last year and that is not going to last. They are trying to see how best to go about this with the least amount of damage to the budget. Emergency Appropriations are picked up in the next year's budget. Our CFO will explain the process.

Dawn Babcock-CFO- explained the procedures for an Emergency Appropriation and the need for approximately \$400,000.00. If the full amount is not utilized, you can cancel the balance at years end. In next years budget, since you have sold the same gas you have just bought, you will have increased revenues, which will offset what will have to be raised for the emergency.

Council member Archibald asked if that equals a six-cent increase in taxes.

The CFO explained that if you are anticipating one million, you will sell 1.2-1.4 million and that additional revenue is there to offset that appropriation.

Council members Nolan and Ladiana clarified that the emergency appropriation is not in the Municipal budget it is in the Harbor budget and will have no effect on the Municipal taxes.

Kevin Kennedy Esq. was present to speak on a jurisdictional issue with a property owner he represents whom has property physically located in Atlantic Highlands and Highlands. The owner desires to demolish the existing dwelling and construct a new dwelling, which will overwhelmingly be in Atlantic Highlands. He proposes that since the new dwelling will be mostly in Atlantic Highlands the Atlantic Highlands Planning Board should have jurisdiction over the matter. Highlands has indicated that they think it makes sense to cede jurisdiction in

this matter to Atlantic Highlands and will prepare the appropriate resolution as required by statute. He asks if Atlantic Highlands will adopt a similar resolution.

Richard Stockton was present to answer various questions regarding the percentage of property in both municipalities.

Council member Archibald felt it would be prudent to wait for Highlands to send us a copy of their resolution and just approve it at the next meeting.

RESOLUTION 150-2005, AUTHORIZING BID FOR WATER MAIN REPLACEMENT

This resolution was offered and moved for adoption by Council member Nolan and seconded by Council member Fligor.

This resolution was adopted by the following vote.

AYES: Council members Archibald, Fligor, Ladiana, Nolan, and Spatola

NAYS:

RESOLUTION 151-2005, AUTHORIZING BID FOR ADA RAMPS & W. WASHINGTON AVE SIDEWALKS

This resolution was offered and moved for adoption by Council member Nolan and seconded by Council member Spatola.

This resolution was adopted by the following vote.

AYES: Council members Archibald, Fligor, Ladiana, Nolan, and Spatola

NAYS:

RESOLUTION 152-2005, AUTHORIZING BID FOR WATERMETER REPLACEMENT

This resolution was offered and moved for adoption by Council member Ladiana and seconded by Council member Fligor.

Council member Fligor asked that the Administrator specify the date for the bid opening. Clerk Harris explained that the resolution and the advertisement needed to have specific dates. They agreed to amend to September 12.

This resolution was adopted by the following vote.

AYES: Council members Archibald, Fligor, Ladiana, Nolan, and Spatola

NAYS:

RESOLUTION 153-2005, ADOPTING "YOU DRINK AND DRIVE, YOU LOSE" PROGRAM

This resolution was offered and moved for adoption by Council member Spatola and seconded by Council member Archibald.

Chief Vasto explained that it was a grant that we received and will be use to enforce DWI

This resolution was adopted by the following vote.

AYES: Council members Archibald, Fligor, Ladiana, Nolan, and Spatola

NAYS:

RESOLUTION 154-2005, CHAPTER 159-DWI ENFORCEMENT

This resolution was offered and moved for adoption by Council member Nolan and seconded by Council member Spatola.

This resolution was adopted by the following vote.

AYES: Council members Archibald, Fligor, Ladiana, Nolan, and Spatola

NAYS:

RESOLUTION 155-2005, AUTHORIZING AID APPLICATION-STORMWATER REGULATION PROGRAM

This resolution was offered and moved for adoption by Council member Ladiana and seconded by Council member Nolan.

Council member Ladiana explained that this finalizes the paperwork for a grant received earlier in the year.

This resolution was adopted by the following vote.

AYES: Council members Archibald, Fligor, Ladiana, Nolan, and Spatola

NAYS:

RESOLUTION 156-2005, APPOINTMENT TO HARBOR SECURITY AND SALARY INCREASE

This resolution was offered and moved for adoption by Council member Nolan and seconded by Council member Fligor.

Council member Fligor explained how Debbie DiGiorgio has done a wonderful job in the Water Sewer Dept and it is a much-deserved reward.

This resolution was adopted by the following vote.

AYES: Council members Archibald, Fligor, Ladiana, Nolan, and Spatola

NAYS:

Mayor Donoghue stated that Resolution 157-2005 would be deferred until after the Executive Session.

Council member Archibald commented at the last meeting he asked if we had any litigation about COAH coming up and the Mayor replied no. Mrs. Miller handed him a letter dated July 14 from Hovnanian regarding a lawsuit. At the last Council meeting, Mrs. Miller was not here and Mr. Arnette did not know about it. Prior to that, she attended a meeting and did not bring this to our attention. The letter she just handed to us is only carbon copied to the Mayor and this is a significant issue.

Attorney Miller stated that the Borough is not being sued and it is not a builder's remedy suit.

Mr. Archibald feels that the Council should have been made aware of this and at the very least; the Mayor should have had the courtesy to call the members and tell them that we have gotten something.

Mrs. Miller stated that when she came back from vacation she put a memo in his box and cannot be responsible for when he picks up his mail.

Mr. Archibald has pointed out that a letter has gone out stating the Borough's position on this and none of us was consulted.

Mayor Donoghue stated that this is a serious business and it seems like a no brainer that the town must defend itself from these contentions by Hovnanian if we are to prevent high-density housing on the McConnell tract.

RESOLUTION 158-2005, CHAPTER 159- CLEAN SHORES PROGRAM

This resolution was offered and moved for adoption by Council member Fligor and seconded by Council member Nolan.

This resolution was adopted by the following vote.

AYES: Council members Archibald, Fligor, Ladiana, Nolan, and Spatola

NAYS:

RESOLUTION 159-2005, PAYMENT OF BILLS

This resolution was offered and moved for adoption by Council member Archibald and seconded by Council member Fligor.

Council member Archibald requested that all of the bills be paid except the attorney's bill for June and July, and the bill for Jersey professional Management in regards to the administrator search. He questioned at what point we authorized Jersey Professional Management to conduct our Administrator search because we never agreed to that.

Council member Ladiana explained that we had advertised on our own and got three takers. At that point, the Personnel Committee decided to do a professional search. Dwayne advised her that if we got three quotes it would fall under a professional services contract. The only people that got back to us were Jersey Professional Management and it was done by voucher.

Council member Archibald stated that we have never, as a group approved of hiring a search firm for the administrators position, so right now we have spent \$1200.00 looking for an administrator and we are no closer than we were before.

Council member Nolan commented that we agreed to use them to get us some resumes and some ideas as to were to go because we did not have anyone offering resumes and they did that work.

Clerk Harris explained that technically it is not a professional service because that profession is not regulated by the State or by law therefore making it a regular contract. Therefore, all you need to do is get three quotes and enter into the contract. A resolution was not required because three quotes were obtained and it fell below the bid threshold.

Council member Ladiana commented that the Personnel Committee has been handling this. They did a search and got resumes from about four or five candidates. At that point, we were looking for a CFO/Administrator candidate but they were coming in very high. We had one candidate that the three of us agreed on, that we brought back to the Council that you chose not to interview. Everybody else on Council interviewed him and said he wanted too much money.

Currently they are down to five candidates. The final interviews are on Monday and a decision will be made.

Council member Archibald commented that we sent out a questionnaire to 27 people with 12 questions, which he does not feel we should pay for because his understanding was that the personnel committee was going to be sending out the question.

Council member Spatola commented that the personnel committee might have understood who was sending out the questionnaires, but it was unclear to her and the rest of the Council.

Mayor Donoghue commented that we hired a firm to assist in this process. This is their procedure for doing things. If you want to analyze that, we are obliged to pay them, not necessarily follow all of their advice, but to belittle a company that has worked pretty well is a little disingenuous.

Council member Archibald stated that it was not disingenuous; everybody knows that at this point there is one candidate we can hire and get it over with.

Council member Nolan pointed out that at the time we did not, and those other candidates did not emerge until a month or more after we had started this process.

Administrator Jahn explained that the surveys that went out is a part of the normal search process for the firm. The questions were developed with the personnel committee. The people who receive those questions are city managers from all across the country that have applied for this position. The firm's objective is to get the best possible candidate that you can for the money you want to pay.

Attorney Miller commented that if they are complaining about July 7th she did the work.

Mayor Donoghue commented that he still could not understand how we can fail to pay the company that is doing work on our behest, whatever the element of it. He also recalls that every member of the council received and read the very lengthy and thorough submission to council members Archibald and Spatola, which was compared to the former attorneys' billing and Mr. Archibald's spreadsheet. He understood that at least the majority of this council has found that the billing is correct and her interpretation of the retainer agreement is in order, and was the same as Mr. Reilly interpreted it.

Mr. Archibald contested the point that the interpretation was the same as Mr. Reilly. He stated that Mrs. Miller is interpreting it the way she wanted to. She is not interpreting it the way that he and Mrs. Spatola think it should be interpreted.

Mayor Donoghue pointed out that as a result to his raising the subject, the Borough has received two credits on the 2004 bills, about \$710.00, which appeared in the July billing invoice. He also noted that since we have had a new administrator on hand, Mrs. Miller has not been as deeply involved in the day-to-day activities of the town, and the bills have been subsiding. It would be very inappropriate and unfair to pay our attorney for work done in good faith for the Borough of Atlantic Highlands.

Mr. Archibald pointed out that at this point through July; we are at 83% of the budget for the Borough Attorney. Are we going to have an emergency appropriation, and what steps are you going to take to hold this down.

Mrs. Miller commented that the billing went out early in July and the July bill was here early in August and the agreement was that we would communicate on this. She thinks it is a good idea that we work together and feels it would be wonderful if we could have communication.

Council member Fligor commented that she says she wants an open relationship and this open and that open and we get bills for stuff the he was unaware we had ever approved. He has no problem with doing what needs to be done, but he would at least like to know what has been sent.

Attorney Miller commented that she does nothing unless it is authorized. She doesn't copy all of them on every single piece of correspondence that comes out of her office.

Council member Archibald suggested that the attorney not bill us for the memo to go into executive session. She can just take us into executive session and tell us what we need to do.

Attorney Miller questioned why he did not call her before tonight. The June bill has been here since the beginning of July.

This resolution was adopted by the following vote.

AYES: Council members Archibald, Fligor, Ladiana, and Spatola

NAYS: Council member Nolan

Council member Ladiana mad a motion to pay the bills of Mrs. Miller and Jersey Professional Management. Council member Nolan seconded this motion.

Council members Spatola asked if the vouchers could be included with their packets in the future.

Clerk Harris explained the bill list is generated and goes in the packets late on Friday. The members have no opportunity to review them until Monday morning. Unless they are willing to come into Borough Hall and review the bills before they actually get to this point in the process, there is really no solution.

Clerk Harris asked if the members would be satisfied if when Mrs. Miller's bill comes into Borough Hall it is forwarded to them for their immediate review. They agreed it would be.

This motion failed by the following vote.

AYES: Council members Ladiana and Nolan

NAYS: Council member Fligor, Archibald, and Spatola

CONSENT AGENDA

- 1) Approval of Minutes: July 27, 2005 Regular Meeting

The above item was moved by Council member Nolan, seconded by Council member Spatola, and adopted by the following vote.

AYES: Archibald, Fligor, Ladiana, Nolan, and Spatola

NAYS:

ABSTAIN:

REPORTS - COUNCIL MEMBER, COMMITTEE, PROFESSIONAL

Mayor Donoghue made a statement regarding his position on any high-density housing along our waterfront. He wanted to make it clear that he is absolutely opposed to any high-density development along our water front. It is his belief, that under no circumstances, should any developer be allowed to build more homes than the R-1 zone allows. Anything more would add to area traffic and safety concerns, increased school enrollment, an increase in taxpayer service costs and an increased burden on the water and sewer system. It would be wise for the Borough to look into the possibility of acquiring the land for public use, taking advantage of Green Acres and other available funding. The McConnell property is one of our last water front properties and its preservation would be a marvelous legacy to the people of our community.

Council member Ladiana reported that the Environmental Commission is hosting “Waterfront for Everyone” on September 25th. There will be kayaking, canoeing, walking along the beach etc. She mentioned that Joe Reynolds is Chairman of the Bay Shore Regional Watershed Council and on November 10th, they will be holding their meeting in Atlantic Highlands at the Senior Center. There will be a discussion on regional dredging issues. She and the Engineer will be getting together with the DEP and the DOT regarding the Bike Trail. She mentioned that the 2004 Audit report has been completed. There was a couple of housekeeping issues but no irregularities of major consequence to report.

Council member Archibald reported the Atlantic Highlands Sailing Education Program, Race Day is this Saturday at 3:00 down in the Harbor. They could use volunteers to crew and volunteers to cook and clean up. He mentioned recreation meeting for August was cancelled. He mentioned we lost in wiffle ball.

Council member Fligor reported that the US Dept of Agriculture offers grants and loans for water and wastewater disposal for sanitary systems. Administrator Jahn reported that Atlantic Highlands median income exceeds the threshold for the grant requirements rendering us ineligible. He reported that NJNG would be paving the Borough Yard this spring. He mentioned that we are in receipt of the completed deed of easement for the access into the Borough yard. He mentioned that the Borough is not taking advantage of the \$75,000 Grant from the Sewerage Authority that can be utilized to do work on our sewer system. He mentioned that the smoke testing revealed 15 residents that had gutters and drains emptying into the sewer system. Three have corrected the situation, but the letter to the remainder has been prepared and is ready to be sent out.

Council member Spatola reported that the Second Annual Mark Spatola Memorial Blood Drive was a big success, collecting 43 pints of blood. She thanked all that donated their time, and bought food and donated blood. She mentioned that the Genevieve Hawley Scholarship Foundation would be holding their annual luncheon on Sunday at 2:30 at Henry Hudson Regional School at which time the multi-purpose room will be dedicated in her honor.

Mayor Donoghue mentioned Kevin Zengel; a boy scout of troop 22 is working on his Eagle project and has presented a proposal to clean up the Henry Hudson Springs, in cooperation with the troop, the Historical Society and the Borough.

Council member Nolan acknowledges the passing of Maggie O’Kane after a long fought with cancer. He mentioned that during his research regarding the McConnell property and it’s clean up. He found out from the DEP that there is no immediate danger there but has been called in and realized they have not been paying attention to this property. They found no evidence of fuel leaking into the Bay and after checking the nine monitoring wells on the property determined there is no immediate emergency on the property. McConnell had an underground storage tank that they had removed. They have neglected to submit the report within 120 days after the work was done. The DEP is now following up on this and will be issuing violations if the proper reporting is not completed.

Administrator Jahn commented on his disappointment of Jersey Professional Managements invoice being pulled from the list. These services had been discounted because he is serving as the Temporary Administrator. He will take this back to the company president with uncertainty as to how he will react.

Engineer Elliott has a draft copy of the HVAC study and would like to set up a meeting with Mr. Archibald, Mr. Jahn, the Mayor and anyone else who would like to review it. She reported that the road project is currently being designed. She needs to send a proposal to Council for authorization. The handicapped ramps and the sidewalks will be advertised next Wednesday with the bid opening on September 7th to be awarded at the meeting on the 14th. She commented that the county might have some objection with opening the street to connect to the water main since they have a five-year moratorium on street openings after a project has been completed.

PUBLIC COMMENT SESSION

Ed Cetron- Auditorium Dr- asked the engineer how many slope area permits she has received so far this year, and out of them how many of them have been processed.

Mary Wall-79 Ocean Blvd-commented that at the last meeting Council member Ladiana said she was elected to make decisions. She would like to remind her she was elected to represent the people, as were Mr. Archibald, Mr. Fligor, Mrs. Spatola, and Mr. Nolan. When she hears our

attorney say things like she is only going to cc the Mayor and charge the rest of the people, and never gives reports at public meetings and she does not feel as if she is being represented. She would like to have the public steps weed whacked and wanted to know how long they would be in executive session.

Mark Strassburg would like to get an answer from Mrs. Miller regarding the legality of the ABC license having a five-year commitment on them when there is no Ordinance to do this.

William Phillips-Memorial Pkwy- commented that two weeks ago he and his wife went down to the Ocean Club and sit on the veranda. The Harbor was immaculately clean, there were two employees going around picking up paper, the head boats were doing a tremendous job, and he appreciates. He commented that regarding the new administrator; one of the criteria is that they have a lot of experience in getting grants. There are many things available and hopefully we can get somebody that can do it. He also asked when the Library Board met and if it was an open meeting.

Joseph Hawley-Ocean Blvd- asked if the situation with the administrator is going to be resolved soon. There is one person in town who is outstanding, and why don't they make a decision, hire this candidate, and appoint him to the position.

Council member Archibald asked about the Goodies tables and chairs, if has been resolved or not.

Council member Fligor commented that the gas company has released the testing results for the Giuliani property and requested a copy.

Joseph Hawley-Ocean Blvd-asked if it was true that Hovnanian was paying the taxes on that property.

RESOLUTION TO ENTER EXECUTIVE SESSION

WHEREAS, the Open Public Meetings Act provides that the Mayor and Council may go into Executive Session to discuss matters that may be confidential or listed in N.J.S.A. 10:4-12; and,

WHEREAS, it is recommended by the Borough Attorney and Administrator that the Mayor and Council go into Executive Session at this time to discuss matters set forth below which are permissible for discussion in Executive Session;

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the Borough of Atlantic Highlands to go into Executive Session to discuss the following items. Minutes will be kept and once the matter above no longer requires confidentiality the minutes will be made public.

- 1) Pending Litigation RE: COAH
- 2) Lease Negotiations re- Fireman's Field
- 3) Settlement of Litigation RE: Crosta

Mr. Harris read this resolution in full. It was offered and moved for adoption by Council member Nolan at 9:45 PM, seconded by Council member Spatola and adopted by the following vote.

AYES: Council members Archibald, Fligor, Ladiana, Nolan and Spatola

NAYS:

RECONVENE - At 11:00 PM, the meeting was resumed.

RESOLUTION 157-2005, APPOINTING JEFFREY R. SURRENIAN, ESQ. AS SPECIAL COUNCIL

This resolution was offered and moved for adoption by Council member Nolan and seconded by Council member Spatola.

Council member Archibald asked if the resolution has to have the amount of funds with it or not. Clerk Harris explained that before the Governing Body enters into a contract there needs to be a certification of funds by the CFO.

This resolution was adopted by the following vote.

AYES: Council members Archibald, Fligor, Ladiana, Nolan, and Spatola

NAYS:

ADJOURN - There being no further business before the Mayor & Council, Council member Spatola moved to adjourn the meeting at 11:10 PM, the motion was seconded by Council member Nolan and unanimously approved.

The Governing Body approved these minutes at their meeting on September 14, 2005

Dwayne M. Harris
Municipal Clerk