



MINUTES OF THE MAYOR & COUNCIL REGULAR MEETING OF SEPTEMBER 28, 2005

The Regular Meeting of the Mayor and Council of the Borough of Atlantic Highlands was held on September 28, 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 administered the Oath of office to Adam Hubeny, the Borough's Business Administrator. His family joined him. The Governing Body took a few moments to welcome him as he took his place on the dais.

PUBLIC COMMENT SESSION

William Phillips-Memorial Pkwy-Welcomed the new Administrator. He commented that he attended the Mayor's gathering the prior evening, and felt it was very impressive, especially the amount of information that went both ways. He felt maybe another one could be had down the road.

ORDINANCE 20-2005, AMENDING CHAPTER III OF THE REVISED GENERAL ORDINANCES

This Ordinance was read by title.

Council member Archibald questioned whether the Bayshore Trail and the Harbor would be considered a park. The trail was taken into account and only the actual park, located in the Harbor was considered.

It was moved for Introduction and First Reading by Council member Archibald, seconded by Council member Fligor and was approved by the following vote.

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

NAYS:

It shall be published in an official newspaper and a public hearing shall be held on October 12, 2005.

**ORDINANCE 15-2005, AMENDING CHAPTER XXII OF THE REVISED
GENERAL ORDINANCES**

This Ordinance was called up for Second Reading and Final Adoption and read by title. A Motion to open the Public Hearing was moved by Council member Archibald, seconded by Council member Fligor and unanimously approved.

PUBLIC HEARING

William Phillips-Memorial Pkwy-asked if this was solely on First Ave. Mayor Donoghue explained that this was for all businesses in Atlantic Highlands.

Council member Fligor explained that it was inclusive of residents as well.

Council member Nolan commented that we need to be more proactive about going after people who do leave it out at different times. There are fines attached to this and those fines have to be put down for people to pay attention.

A Motion to close the Public Hearing was moved by Council member Nolan, seconded by Council member Ladiana and unanimously approved.

FINAL ADOPTION was moved by Council member Fligor, seconded by Council member Ladiana and approved by the following vote.

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

NAYS: Council member

Mayor Donoghue requested to defer consideration of Ordinance 16-2005 until a full Council was present. Council member Archibald asked to make some changes on that Ordinance before we have a second reading and vote on it at the next Council meeting. The Mayor stated that it was up for consideration tonight. We can make some changes as long as they are not substantial, but for the moment he would like to go on to Ordinance 19. A Motion to open the Public Hearing was moved by Council member Archibald, seconded by Council member Fligor. Mayor Donoghue would like to have it when everyone is here to hear his or her comments. Clerk Harris clarified that there was a proper motion and second on the floor and a vote was required. The Mayor called for a roll call vote and it was carried by the following vote.

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

NAYS:

ORDINANCE 16-2005, APPROPRIATING THE SUM OF \$52,000 FOR VARIOUS CAPITAL IMPROVEMENTS

This Ordinance was called up for Second Reading and Final Adoption and read by title.

PUBLIC HEARING

Allan Dean-Second Ave- what an appropriation of \$52,000 is and what the capital improvements are.

Mayor Donoghue outlined all of the improvements included in the Ordinance.

Council member Nolan explained that this Ordinance was needed to move the money from another Ordinance to utilize for these purposes.

Council member Archibald commented that he has no problem with the idea of the Ordinance, but feels the Harbor should be resurfacing the tennis courts and the Borough should not be paying for that.

Council member Nolan explained that the installation of the fencing around Many Mind Creek is on the Borough. The resurfacing of the basketball courts is on East Ave and the engineering on the tennis courts, and the idea that it's the Harbor's is confusing because the Harbor doesn't own anything. The Borough owns the Harbor. The Harbor commission is an administrative body that oversees the daily operations of the harbor, but they don't own anything. This amount of money is not for resurfacing, it is for the engineering.

Council member Fligor commented that the Harbor has an expense account for upkeep of the Harbor. As far as he is concerned the Harbor does not tell us what they are going to give us, we make that decision at one of our meetings, and this money here we could use for work on Borough Hall instead of engineering tennis courts.

Council member Ladiana explained that \$15,000 is divided between the engineering for the tennis courts, the basketball courts and the fence; you are talking about \$5,000 dollars you are arguing over.

Mayor Donoghue commented that he doesn't have any objection to redoing the tennis courts and explained that the funds are already provided for in a capital funds account and would cause no further burden on the taxpayer.

Jane Frotton-Harbor Commission- commented that the Harbor does have its own engineer and questioned if Mr. Mainberger would be receiving the funds for the engineering. She commented that the Harbor, over the years have done a lot of work. You cant do everything every year and every five years they have resurfaced the tennis courts. She commented that there is a Harbor engineer and the he should be the one dealing with the tennis courts.

Joseph Hawley-questioned the \$7,000 for the Salt Shed and suggested that we ask Henry Hudson could construct the Salt Shed and take that \$7,000 could be taken out. He also

feels that this money also could be better utilized by providing the Police with a new four-wheeled drive vehicle they requested in a prior Ordinance.

Mike Rybeck-North Ave- asked if the main issue was redoing the courts for the students of Henry Hudson to use, which also includes students from Highlands, then maybe the school system and Highlands should be approached to contribute.

Jackie Jones-22 Keystone Dr. expressed her concern about this and asked about the completion of a repaving project and asked why the Harbor did not include this in with that paving project.

Mayor Donoghue clarified that it is a different type of material that is used and could not be done in that project.

Allan Dean- Second Ave- believes that since the Harbor is a self-liquidating utility that user fees, rents and etc, not by the taxpayer, fund it. He feels that the Harbor funding this is a relief to the taxpayer.

Council member Spatola commented that since the Harbor has an engineer, can we tell the Harbor that we would like to have the engineering done this year.

Council member Ladiana explained that if this Ordinance is passed, as is, the funds could be released from the Ordinance and if it is not utilized for the engineering then it would go into Borough surplus.

Allan Dean- asked if the Ordinance could be reintroduced this evening less the portion of the Harbor tennis courts.

Council member Ladiana questioned if everyone realizes we are arguing over \$3,000 that has already affected the taxpayer. This Ordinance is just to release the monies from this fund.

A Motion to close the Public Hearing was moved by Council member Nolan, seconded by Council member Ladiana and unanimously approved.

FINAL ADOPTION was moved by Council member Fligor, seconded by Council member Ladiana and failed by the following vote.

AYES: Council members Ladiana and Nolan

NAYS: Council member Archibald, Fligor and Spatola

ORDINANCE 19-2005, AMENDING CHAPTER II OF THE REVISED GENERAL ORDINANCES

This Ordinance was called up for Second Reading and Final Adoption and read by title. A Motion to open the Public Hearing was moved by Council member Archibald, seconded by Council member Nolan and unanimously approved.

PUBLIC HEARING

Allan Dean-Second Ave-asked for an explanation of the Ordinance.

Attorney Miller explained that three areas were changed to comply with State Statues.

A Motion to close the Public Hearing was moved by Council member Fligor, seconded by Council member Spatola and unanimously approved.

FINAL ADOPTION was moved by Council member Archibald, seconded by Council member Ladiana and approved by the following vote.

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

NAYS: Council member

RESOLUTION 130-2005, APPROVING LEASE AGREEMENT WITH ATLANTIC PIER CO.

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

Council member Archibald commented that he was not too wild about this. He does not feel the tenant should be responsible for plowing the parking lot and he feels we are paying the same amount as last year for seven days use, for two days use and thinks it is disproportionate.

There was discussion between the Council and an unidentified member of the audience on whether or not it being used as a parking lot was a legal permitted use.

William Phillips-Memorial Pkwy commented that he thought that if they did not charge that it was ok for them to continue using it as a parking lot.

Attorney Miller explained that she, Mike Steib, discussed this and the Zoning Officer and all concurred that it was a permitted use and she thought this was a closed issue.

This resolution failed by the following vote.

AYES: Council members Ladiana and Nolan

NAYS: Council members Archibald, Fligor and Spatola

Mayor Donoghue commented for the record that there is no lease with the Hesse Organization for the property and he certainly hopes that their civic mindedness will allow us to continue to use it while we revisit this issue.

**RESOLUTION 174-2005, ACCEPTING JURISDICTION FOR PLANNING
MATTER RE: SCHMIDTZ/HOLTZ**

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

Attorney Miller explained the Resolution.

This resolution was adopted by the following vote.

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

NAYS:

RESOLUTION 175-2005, PAYMENT OF BILLS

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

Clerk Harris mentioned the inclusion of an additional item for Allied Oil in the amount of \$142,808.00.

This resolution was adopted by the following vote.

AYES: Council members Fligor, Ladiana, Nolan and Spatola

NAYS: Council member Archibald

RESOLUTION 176-2005, ADJUSTMENTS TO WATER AND SEWER BILLS

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

Council member Archibald asked Mr. Jahn to give background information on the properties, the causes and amounts.

William Phillips asked about an issue last year, and asked if we were clear with everyone of First Ave, being paid in full.

This resolution was adopted by the following vote.

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

NAYS:

**RESOLUTION 177-2005, AUTHORIZING CONTRACT FOR WATER MAIN
IMPROVEMENTS**

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

Council member Fligor commented that D& D has done a lot of work in the Borough. They are a very reliable company and excellent in their field.

This resolution was adopted by the following vote.

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

NAYS:

APPROVAL OF MINUTES SEPTEMBER 14, 2005 REGULAR MEETING

This motion was made by Council member Nolan and seconded by Council member Ladiana.

This motion carried by the following vote.

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

NAYS:

REPORTS - COUNCIL MEMBER, COMMITTEE, PROFESSIONAL

Council member Nolan reported that he and Council member Fligor was out cleaning the beach with Clean Ocean Action on the Waterfront for everyone day. There were a lot of people in attendance. He did encourage residents to clean up after their animals on the beach, because that was a good portion of what was picked up. He reported that the DOT was printing their Harbor report and we should have our copy next week.

Council member Fligor reported that NJNG would be having an open public meeting on October 5 at 7:00pm at the Fireman's Field House, Ave C and W. Washington Ave. He also asked about the water meter project and we are facing in regards to the 60-day time limit.

Mr. Jahn commented that he has put together a memo, for the members of the Governing Body, regarding this issue.

Council member Spatola reported that the Holiday Lights Committee met with the company and has a proposed, three-year lease, which includes installation, storage and maintenance. They are switching to a silver bell and also will be decorating Borough Hall with a five-piece Yule-tide caroler set that will light up at night and a 4' wreath that will hang on Borough Hall. The total will be \$5,970.00. She also remarked that the committee and the Chamber would be decorating First Ave with cornstalks.

Council member Archibald had no report.

Council member Ladiana reported that Jackie Royce nominated the Borough for the Myron Labate Public Stewardship Award, based on community education and stewardship accomplishments over a ten-year period, which she highlighted the work for the Many Mind Creek Greenway and Trail. She is working on the Monmouth County open Space application. Letters are being typed up on the bike trail. The engineer is working on the final documentation for DOT grants money and they have requested letters of support. She hoped the Personnel and Finance committee could meet with Mr. Hubeny to get him up to speed. She reported that all three budgets in the Borough are on target at 67% expended.

Fred Jahn reported that this would be his last Council meeting. He will be working with the new administrator over the next weeks, getting him up to speed. He thanked the governing Body for having him and his firm here in Atlantic Highlands.

Engineer Elliott reported that the tiles in the library have been replaced and Mr. Jahn is working on finding a contractor to wrap the pipes that are dripping condensation and cause the molding of the tiles.

Attorney Miller reported that she received the draft report on the Third Round Fair Share Housing Plan.

Council member Spatola questioned attorney Miller about an e-mail stating that the attorney bills are confidential. Attorney Miller stated that the front page is not confidential, but the back up pages with supporting information is confidential.

Council member Spatola asked if the public could see her billing. She commented that they could see the front of the bill.

Council member Archibald asked what it was in her bill that she did not want the public to know about.

Attorney Miller explained that it is not she; it is their [the Governing Body] privilege to release information. If they, as a body, make the determination to release something, they are violating it if they are releasing information that should not be released to the public.

Council member Fligor asked if she could break out her bill and keep confidential information separate.

Council member Archibald commented that this is a very new policy. This is all taxpayers' money and anything that is coming into the Borough, how it is being spent, he believes the taxpayer has a right to know.

Attorney Miller agreed with him, and commented that if they decide, as a group, that they want to release all of this confidential, privileged information, it is their privilege.

Council member Nolan commented that Executive Session is privileged.

Council member Archibald responded that the advice she gives is privileged, the charge for that advice is not.

Mayor Donoghue commented that there are things that the law provides us to keep confidential, for a period of time. To put out in public, each item the attorney is doing is letting that information goes out and is why the detail should not be made public.

Council member Ladiana commented on her remembrance in 2003, during a Giuliani acquisition and remembers that Mayor Harmon and Bernard Reilly telling them that it was executive session and was not allowed to be discussed. And asked if he gave copies of the bills to anyone outside of this Governing Body.

He replied he had and doesn't think there is anything wrong with it, and this is the first time it has ever come up with the bill being privileged and confidential. He also consulted with another attorney who does not agree with this opinion.

Mayor Donoghue commented that it does not mean that the advice given by our attorney is invalid.

Attorney Miller reiterated that the bills are not secret, and she is advising her clients that they have a privilege, and if they choose, as a whole, to waive that privilege then they can do that.

Council member Archibald questioned the Attorney asked about the case of the missing COAH files.

Attorney Miller explained she replaced the file and COAH has it.

Mr. Archibald asked her if we had any correspondence from K. Hovnanian and if she knew who Mr. McConnell's lawyer was.

She replied no to each.

Council member Archibald asked Mr. Nolan about the letter sent to the boat owners, by Mr. Bate, stating they were not allowed to charter a boat or work on some else boat or you would loose your lease.

Mrs. Frotton explained that you need to have a vendor's permit, proper insurance and be registered with the Harbor, to work on a boat in the Harbor.

Council member Archibald asked if the Borough has responded to Miss Jones regarding her request to purchase property from the Borough, and a similar letter regarding the car wash property.

Mayor Donoghue explained that they would be discussed in executive session, but not tonight.

The resolution to approve the lease for the Christmas decorations was postponed until a proper certification of funds by the CFO was obtained.

PUBLIC COMMENT SESSION

Mary Wall-79 Ocean Blvd- commented that she understand there is very little information that can be legally withheld from the public and asked the attorney to tell what those things are.

Jackie Jones-22 Keystone Dr-asked the chairman of the Buildings and Grounds Committee about fines from PEOSHA and if those fines are a direct result from the lack of attention to the mold situation in Borough Hall, and has there been any action to remediate the mold in Borough Hall other than replacing the tiles and rewrapping the pipes. She asked if he was taking any action to pursue the replacement of the HVAC system. She asked if someone was directing the Administrator or Engineer to go to bid to replace the HVAC system so Borough Hall does not end up in the same situation, and if there is someone who is it and when will this take place.

Council Member Noonan arrived and took his place on the dais @ 9:40pm.

Engineer Elliott, at the request of Council member Fligor, outlined all of the steps her company and their sister company, Morris Johnson, have taken to remedy this situation, since July of this year.

Joseph Hawley-25 Ocean Blvd- asked if the Borough has a current disaster plan and an evacuation plan in case there is a hurricane or disaster here in town. He also commented that in all of his years of involvement in the Borough, he has always been able to go and get a copy of the attorney bills.

Laura Saunders-Highland Place- asked what could be done to hold a permit issued by the Building Dept for the removal of a tree that is partially on her property, that her neighbor wants removed but she does not.

William Phillips-Memorial Pkwy- asked about the status of checking the Emergency Services building for mold and HVAC deficiencies. He asked about the status of the Borough's finances and how each department is doing and he questioned who bought the Arjay's building or Dr. Bixby's building.

Mike Rybeck-North Ave- asked about the status of the removal of the down spouts from the sewer system at Borough Hall, and what is the status of the residents who have been found to be in violation of the same.

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Allan Dean-Second Ave- asked if Ordinance 16-2005 that failed earlier, could be reintroduce this evening so some of these items could be addressed more expeditiously. He also asked how it is a new policy, that the public can no longer receive an itemized bill.

Mary Wall-79 Ocean Blvd-reminded council member Ladiana that she got elected by challenging the lawyer's bills.

ADJOURN - There being no further business before the Mayor & Council, Council member Nolan moved to adjourn the meeting at 10:40 PM, the motion was seconded by Council member Noonan and unanimously approved.

The Governing Body approved these minutes at their meeting on October 12, 2005.

Dwayne M. Harris

Dwayne M. Harris, RMC
Municipal Clerk