



## MINUTES OF THE MAYOR & COUNCIL REGULAR MEETING OF SEPTEMBER 14, 2005

The Regular Meeting of the Mayor and Council of the Borough of Atlantic Highlands was held on September 14, 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, Noonan, and Spatola. , Borough Attorney Miller, Borough Engineer Elliott, and Municipal Clerk Harris were also present. Temporary Administrator Jahn 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.

The Mayor read a Mayor Proclamation naming September 23, 2005 as Dr. Martha H. Wallauer Day in the Borough of Atlantic Highlands.

### **PUBLIC COMMENT SESSION**

Joseph Hawley-25 Ocean Blvd- commented that he was happy to see that the Borough is finally going to appoint a new administrator. He feels he is a fine person and will be the Administrator for many years to come.

William Phillips- Memorial Pkwy- commented that members of the Fire Dept and First Aid are frustrated and aggravated, based on rumors circulating, and their volunteerism is not being appreciated. He mentioned rumors of the Emergency Services building being moved around and Borough Hall being relocated.

*Councilman Noonan explained the need for an interrogation room by the Police Dept and explained the search for a location to fulfill this need. He further commented that there was a gap in communication between the Borough and the Fire Dept.*

Walter Curry- Asbury Ave- commented that these issues would not have occurred if they had communicated the reason for being there. Common courtesy would have been to inform the Chief, President and Captain of both organizations first and we wouldn't be having this conversation.

Mark Strassburg-67 First Ave- regarding the proposed Ordinance modifying the ABC cards, he questioned what made it legal to make the change prior to having the Ordinance. He commented that there is an ordinance in place that does not establish an expiration date. He wants it on record whether the Chiefs actions were proper or not. He wants it on record so he can send these minutes to the State. He feels the Borough is saying what the Chief did was fine and dandy because they are not doing anything to say that it was wrong, and there is not any Ordinance in place to say that it was OK. He wanted to know what the Governing Body was going to do make something that was wrong, right.

*Attorney Miller commented that the Ordinance was silent on a termination date on the ABC card. She further commented that the Chief has the right to make an administrative decision. There is an Ordinance that will be considered tonight regarding the ABC cards, and it was not an illegal action what the Chief did.*

Mike Rybeck-North Ave-questioned if any action to remediate the problems identified after the smoke testing have been taken.

Robert Dougherty, DPW Director, explained what has been done and commented that they are working with the State to rectify the problem on Highway 36.

William Eaton- Bay Ave- asked if he had correctly heard that the down spouts on Borough Hall were emptying into the sewer system.

William Phillips-Memorial Pkwy- commented that Council members Archibald and Spatola had denied payment for the services of the company that was doing the search for the Administrator. He questioned if the rumor was correct that he [the Acting Administrator] is the Executive Vice President and partial owner of the company.

*Council member Archibald responded that he could not comment on any ownership interests but he can guarantee he is the Senior Vice President.*

He further questioned when he was hired; did every member know that he was Senior Vice President? He then asked how the Mayor could serve two houses?

*Mayor Donoghue clarified the issue regarding non- payment being related to the search for the Administrator and not for his performance as Temporary Administrator.*

*Council member Ladiana gave a history of the Administrator search process.*

Robert Dougherty-16 Simpson Ave – feels the individual being appointed tonight is a great choice, with all do respect, we need to move on, this individual is going to move us on. The Borough has made the right choice. The last year was a very trying year for the Borough. We need to move on. Mr. Jahn has done a good job for the Borough but he is gone and we need to move on.

Mayor Donoghue remarked that it is with great pleasure that he appoints Adam Hubeny as our new Borough Administrator. He is confident Adam is the right person for the job and will provide the day-to-day leadership necessary for our town to achieve its many goals. This is unquestionably his most important appointment to date and is likely to be so for years to come. The Administrator is the most significant professional working for the Borough. He is the face of the Borough and is charged with seeing the tasks that the Administration wants completed and those that the taxpayers expect are accomplished in a speedy and professional manner. He believes Adam will establish himself in this position warranting his enthusiastic retention for some time.

**RESOLUTION 162-2005, APPOINTMENT OF BUSINESS ADMINISTRATOR**

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

Council member Archibald commented that he had worked with Adam over a period of nine years and gave Adam his enthusiastic support.

Council Member Nolan commented on the excitement when Adam expressed his interest in the position. He commented that he has the best possible credentials; he is an evenhanded person and has the best interest of the Borough at heart.

Council member Fligor commented that Adam is a born leader and if any one does not know him they should get to know him. He has a lot of respect for him and hopes he remains for twenty years.

Council member Ladiana commented that although she did not know him as well as other members of the Council, but what came across to her was his confidence and honesty, those are two qualities we needed in an Administrator.

Council member Noonan commented he knew Adam was sincere and a serious candidate when he came to his home, during a family barbeque, and placed his resume in his hand.

Council member Spatola commented that she knows the type of person he is and knows his work ethic and is behind him 100%.

This resolution was adopted by the following vote.

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

NAYS:

Adam Hubeny expressed his gratitude to the Governing Body and expressed that this was an opportunity that was right for him at this point in his life and career. He appreciates the opportunity and he will do what is right and what is best for this Municipality.

**RESOLUTION 163-2005, APPOINTING A NEW CODE ENFORCEMENT OFFICER**

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

Council member Archibald questioned the number of license se will be required to get. The Mayor explained that there are no licenses required by the Code Enforcement Officer, but she will be willing to take advantage of available training. It was the feeling that her familiarity with the Borough's Code is what made her a good candidate.

This resolution was adopted by the following vote.

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

NAYS:

**RESOLUTION 164-2005, AFFIRMING REVIEW OF 2004 AUDIT COMMENTS**

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

This resolution was adopted by the following vote.

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

NAYS:

**RESOLUTION 165-2005, ACCEPTANCE OF GRANT OF EASEMENT BY NJNG**

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

Council member Fligor gave a brief explanation of the purpose behind this resolution.

This resolution was adopted by the following vote.

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

NAYS:

**RESOLUTION 166-2005, AUTHORIZING BID ADVERTISEMENT FOR HARBOR FORKLIFT**

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

This resolution was adopted by the following vote.

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

NAYS:

**RESOLUTION 167-2005, CALLING FOR CAP EXCEPTION FOR FUEL COSTS**

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

Mayor Donoghue and Council member Nolan gave an explanation of the purpose for this resolution.

This resolution was adopted by the following vote.

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

NAYS:

**RESOLUTION 168-2005, AMENDING 2005 HARBOR UTILITY BUDGET**

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

Council member Spatola asked if the finance committee cut this area during the budgeting process. Council member Ladiana explained that the Chief Financial Officer explained this all at the last meeting. The budget request was 1.4 million. According to State Statute you cannot anticipate additional revenue more than you realized, which was \$1,283,000.00 so they made it 1.2 million. There was no justification for an increased amount, the Harbor reviewed the budget and that is what was done.

Council member Fligor asked what happens if we appropriate this money now and the price drops. Council member Ladiana explained that if we do not utilize the whole appropriation the extra amount could be cancelled.

This resolution was adopted by the following vote.

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

NAYS:

**RESOLUTION 169-2005, REFUNDING OF TAX OVERPAYMENT**

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

This resolution was adopted by the following vote.

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

NAYS:

**RESOLUTION 170-2005, REFUNDING OF TAXES FOR DISABLED VETERAN**

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

This resolution was adopted by the following vote.

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

NAYS:

**RESOLUTION 171-2005, ENGAGING TWO APPRAISERS FOR BLOCK 119 LOT 1**

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

Council member Spatola asked if the money was coming out of the Harbor funds. Myor Donoghue explained that it was coming from the Open Space fund.

This resolution was adopted by the following vote.

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

NAYS:

**RESOLUTION 172-2005, PAYMENT OF BILLS**

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

Council member Fligor questioned the two flagpoles on the list.

This resolution was adopted by the following vote.

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

NAYS:

**RESOLUTION 173-2005, AWARDING CONTRACT FOR ADA HANDICAP RAMP IMPROVEMENTS**

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

Council member Archibald questioned when we had used JADS before and how many ramps we were putting in.

Council member Nolan asked why they were painted red.

This resolution was adopted by the following vote.

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

NAYS:

**ORDINANCE 15-2005, AMENDING CHAPTER XXII OF THE REVISED GENERAL ORDINANCES SUBSECTION 22-2.4 & 22-2.5 "SOLID WATSE MANAGEMET'**

This Ordinance was read by title. After discussion by the Governing Body, it was moved for Introduction and First Reading by Council member Ladiana, seconded by Council member Noonan and was approved by the following vote. It shall be published in an official newspaper and a public hearing shall be held on September 28, 2005.

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

NAYS:

**ORDINANCE 16-2005, APPROPRIATING \$52,000 FROM CAPITAL ACCOUNT FOR VARIOUS IMPROVEMNETS**

This Ordinance was read by title. After discussion by the Governing Body, it was moved for Introduction and First Reading by Council member Nolan, seconded by Council member Ladiana and was approved by the following vote. It shall be published in an official newspaper and a public hearing shall be held on September 28, 2005.

AYES: Council members Ladiana, Noonan, Nolan and Mayor Donoghue

NAYS: Council members Archibald, Fligor and Spatola

**ORDINANCE 17-2005, AMENDING ARTICLE VII OF THE DEVELOPEMNT REGULATIONS**

This Ordinance was read by title. After discussion by the Governing Body, it was moved for Introduction and First Reading by Council member Nolan, seconded by Council member Noonan and was approved by the following vote. It shall be published in an official newspaper and a public hearing shall be held on October 12, 2005.

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

NAYS: Council member Fligor

The Planning Board will be having a Special Meeting on September 22, to have discussion pertaining to this Ordinance.

**ORDINANCE 18-2005, AMENDING CHAPTER IV OF THE REVISED GENERAL ORDINANCES**

This Ordinance was read by title. It failed to receive a motion for introduction.

There was comprehensive discussion between the Chief of Police and the Governing Body regarding the elements of the Ordinance, the need and purpose of this Ordinance.

The Mayor again asked for a motion to introduce this Ordinance. Again it failed to receive a motion.

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

This Ordinance was read by title. After discussion by the Governing Body, it was moved for Introduction and First Reading by Council member Fligor, seconded by Council member Noonan and was approved by the following vote. It shall be published in an official newspaper and a public hearing shall be held on September 28, 2005.

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

NAYS:

**CONSENT AGENDA**

- 1) Approval of Minutes: August 17, 2005 Regular Meeting
- 2) Approval of Minutes: August 23, 2005 Regular Meeting
- 3) Approval of Raffle Licenses 3334-05 Hi-mar Striper Club on 10/23/05, at Shore Casino, Municipal Harbor, Atlantic Highlands, NJ
- 4) Approval of Raffle Licenses 3335-05 Interfaith Hospitality on 10/20/05, at Shore Casino, Municipal Harbor, Atlantic Highlands, NJ
- 5) Approval of Raffle Licenses 3336-05 & 3337-05 St Agnes PTA on 04/15/06, at the St. Agnes School

The above items were moved as one motion by Council member Nolan, seconded by Council member Ladiana and adopted by the following vote.

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

NAYS:

ABSTAIN: Council member Noonan

The Executive Session minutes for August 17, 2005 were approved by a yes vote by a majority of Council members as indicated by the signatures on those minutes.

Mayor Donoghue announced the appointment of 11 volunteer residents to two new important, but unrelated, bi-partisan committees, a Mount Laurel Committee and a Ferry Terminal Committee. The Mount Laurel Committee is being formed at the recommendation of Jeffrey Surenian, the hired special counsel on the Hovnanian Corp.'s challenge to the Borough certification under the State COAH regulations and by our planner Burgis Associates. The formation of this committee will demonstrate to COAH this Borough's commitment to affordable housing. This committee will work with Mr. Surenian and other experts to make sure that this Borough fully meets its obligations under COAH rules. Appointed to this committee are: Council President Carl Nolan, Council member Lou Fligor, Planning Board Vice-Chairman Robert Sutton, Planning Board members Allan Dean and Benson Chiles. The Ferry Terminal Committee is being formed to produce a design and location for a Ferry terminal being advocated primarily

for homeland security purposes. The terminal will be largely funded by the State Dept. of Transportation. This committee will be working largely with Michael Reilly of the DOT and other State officials as well as needed local experts like and architect or engineer The members of this committee are: Council member Ladiana, Council member Stephen Noonan, former Mayor and Harbor Commission Chairperson Helen Marchetti, Harbor Commission member Jacob Hoffman Environmental Commission Chairman Paul Boyd and Borough resident Edward Kelly of 35 E. Garfield Ave who is an attorney and a commuter.

## **REPORTS - COUNCIL MEMBER, COMMITTEE, PROFESSIONAL**

Council member Archibald reported that recreation is working on the calendar for next year and Ballroom Dancing will be October 6<sup>th</sup>, 13<sup>th</sup>, 20<sup>th</sup>, 27<sup>th</sup> and November 3<sup>rd</sup>.

Council member Spatola reported that the AH Fireworks Committee will be launching its "Buy A Rocket" campaign this month, putting it in the newsletter and sending out fliers. The Holiday Lights Committee is having Christmas Spectacular bring several lighting fixtures the committee has chosen to look at.

Council member Noonan further commented on the search for an interrogation room. He commented that the rumors are unfortunate and we will work harder to get these agencies communicating together. He explained that the current plan is to utilize the records storage room for that purpose. He reported the State of NJ Dept. of Health and Welfare gave the Police three defibrillator units. [He demonstrated the unit]. The cost about \$3,500.00 per unit. He commented that the new County Prosecutor came to visit the Police Department and he was quite pleased with the work environment. He reported on a meeting with Ms. Elliott and a mold specialist, who took samples from inside and outside of the building. Most of the samples from inside the building were reasonable.

Council member Nolan had no report.

Council member Fligor shared some pictures on the work at Firemen's Field done by NJNG. They should be complete by October. NJNG has dredged down to the historical level of the creek. Planting is currently underway along the creek. NJNG will be planting extra trees in the Borough yard. On October 5<sup>th</sup> they will hold another public meeting at the Field house, at 7:30pm. The August sewer flows for Atlantic Highlands are down to 45.1% but it has been an extremely dry season, and we are still above our historical flows. He commented on the receipt of the Water meter replacements. They are both high. Council is going to have to sit down and talk about what we are going to do. We have to have these meters. We are not getting good meter reads. We need to bite the bullet, but we are not going to pay \$550,000.00. He thanked the individual who sent him information on the NJ Environmental Infrastructure Trust Fund.

Council member Ladiana reported that she and Kathy Elliott had walked the Bayshore Trail with the DOT. From that came discussions that the State definitely wants this trail built. Birdsall supplied the DOT with an alternative analysis and the DEP said that it was doable with the permit they have. We now have a from the DOT an agreement to get \$400,00.00 and they can increase that by 10% plus they have agreed to give us \$200,00 for the Wagner Creek mitigation. They got the DOT and the DEP in agreement that we could build an 8-foot trail. The Monmouth County Open Space application is due November 4<sup>th</sup>. Her thought is that we should apply to them for \$250,000 for acquisitions, which are a high priority on their list. The New CFO will be sending out a letter to establish meetings with the department heads sometime in November. We were awarded a grant from the I Boat NJ Program for the Harbor.

Engineer Elliott questioned the amount of the contract awarded to JADS and pointed out the incorrect figure in the resolution. She commented that they would be taking bids for the Water Main project next Friday. She also sent an e-mail regarding First Ave Streetscape and if we wanted to do the electrical [lights] down to Highway 36.

Council member Nolan made a motion to amend the resolution 173-2005 to reflect the correct contract award of \$104,695.00. Council member Noonan seconded the motion, and it was passed by unanimous consent.

## **OTHER BUSINESS**

There was discussion on the proposed Ordinance that would prohibit sex offenders from living within 1000 feet from schools and parks.

Council member Fligor questioned whether this would follow the current drug-free school zone that we currently have.

Council member Spatola commented that it should remain 1000' from parks because that is where you have children playing unsupervised, while at the schools you at least have teachers and parents, someone to keep an eye on them.

Council member Nolan commented if this is what everyone else is doing, then it makes sense for us to do it as well. He asked if you choose a 1000' from a park do you then map out the homes affected. He further commented that real estate brokers should have this list of homes and if the sell a home the realtor would have to provide them with this information.

Chief Vasto explained that the map is done and it is not the realtors' responsibility, it is the individual.

Attorney Miller commented that on real estate contracts contain a Megan's Law statement advising the purchaser to check with the municipality to see if there are any sex offenders registered.

Council member Noonan questioned the three tiers of offenders and if everyone was covered under the one blanket.

Chief explained this would cover everyone.

Council member Ladiana requested that this be discussed again at the next meeting and the Members agreed.

## **PUBLIC COMMENT SESSION**

Mary Wall-79 Ocean Blvd- commented to Council member Ladiana that she was unaware that Wagner Creek was in Atlantic Highlands, and asked if we were doing one side of the creek and not the other.

William Phillips-Memorial Pkwy-asked Council member Noonan about the mold reading on the interior and exterior of Borough Hall. He asked if the Borough was being fined for anything related to mildew, fungus or anything. He also mentioned concerns in the Fire House regarding potential mold around the vents

Ed Cetron- Auditorium Dr- commented that they had a good meeting a few weeks ago and the engineer has stepped up to the plate, following the law. Three pieces are still languishing; 1> The Council's requirement that they need to fix the resolution appointing the people on the shade tree commission, regarding tree inspections, changing it to the engineer. 2> There are legal issues with the development Ordinance relating to very obscure language that we need to understand to protect ourselves against people saying it is being improperly enforced. 3> Providing a very simple way of getting information to the Police Department so they are aware of what the individual, cutting trees, should have in their hand.

Chief Vasto- wanted to know if we are going back to the old way, regarding Ordinance #18. Basically there will be life time cards issued, but there will be no photos, if they pass the fingerprinting by the State. He also feels he is leaving without understanding what the Council's objection is to this.

Mary Wall- asked if the ABC was self-regulating?

Chief Vasto- commented that the Police received a \$3,600 grant for Night Vision Equipment. The grant includes a two-day training seminar and the costs of transportation and lodging are included in the grant amount.

Joseph Hawley-Ocean Blvd-asked where the \$52,000 in Ordinance 16 is coming from. He feels the original Ordinance that was passed for the skate board park and the new basketball courts should be looked into and those projects completed. The children worked hard on that, and there is a need for it.

Kathleen Wigginton- commented that she was at the Shade Tree meeting, and it was her understanding that Mr. Young was going to bring to you our recommendations, which were he and Mr. Howe, would back down and Ms. Elliott agreed to accept it. The second point of the meeting was that the Ordinance has been challenged its been upheld, leave it as it is. They had no discussion at all about the Police getting a print out incase they had to investigate an incident.

**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 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) Lease Negotiations-Hesse Property
- 2) Pending Litigation-Hovnanian and COAH
- 3)

Mr. Harris read this resolution in full. It was offered and moved for adoption by Council member Nolan at 10:35 PM, seconded by Council member Fligor and adopted by the following vote.

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

NAYS:

**RECONVENE** - At 11:05 PM the meeting was resumed.

**ADJOURN** - There being no further business before the Mayor & Council, Council member Fligor moved to adjourn the meeting at 11:15 PM, the motion was seconded by Council member Spatola and unanimously approved.

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

Dwayne M. Harris

September 14, 2005

Municipal Clerk