



MINUTES OF THE MAYOR & COUNCIL SPECIAL MEETING OF AUGUST 23, 2005

A Special Meeting of the Mayor and Council of the Borough of Atlantic Highlands was held on August 23, 2005 in the public meeting room of Borough Hall, 100 First Avenue, Atlantic Highlands, NJ.

Mayor Donoghue called the meeting to order at 7:30pm. 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, and Municipal Clerk Harris were also present. .

Clerk Harris stated that notice of this meeting has been transmitted to the Asbury Park Press. It has been continuously posted in the Borough Hall on a bulletin board reserved for such announcements and filed with the Municipal Clerk of Atlantic Highlands, on August 19, 2005. He read the "Open Public Meetings Act" compliance statement and stated that formal action will not be taken.

RESOLUTION TO ENTER EXECUTIVE SESSION

WHEREAS, the Open Public Meetings Act P.L. 1975, Chapter 231 permits the exclusion of the public from a meeting in certain circumstances; and,

WHEREAS, this public body is of the opinion that such circumstances presently exist; and,

WHEREAS, the Governing Body wishes to discuss:

1. Item- Disposition of Pending Litigation-Atlantic Highlands
2. Item- Personnel Matter- Hiring of New Administrator
3. Item- Potential Acquisition of property

Minutes will be kept and once the matter involving the confidentiality of the above no longer requires that confidentiality, then the minutes will be made public.

This resolution was offered and moved for adoption by Councilmember Nolan at 7:33 PM, seconded by Councilmember Noonan and approved by unanimous consent.

RECONVENE - At 8:45 PM the meeting was resumed.

RESOLUTION 160-2005, RATIFYING THE DISPOSITION OF PENDING LITIGATION

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

Councilman Nolan explained that this was discussed at the Harbor Commission and was approved by the Harbor Commission as a course of action, as explained to us by Special Council, Mr. Leahey. There is no gain here for the Borough to continue and there is a possible exposure since there is a countersuit against us. The main witness is no longer available; there are difficulties with the proof of occupancy and Mr. Crosta has a lot of judgments ahead of us. If we raffled off his lease, we would still get nothing. He has agreed to give back six months off of the last option on his lease. That is about all we can get and we should not go any further and get ourselves any deeper than we are.

This resolution was adopted by the following vote.

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

NAYS: Council members Archibald, Fligor and Spatola

Council member Ladiana commented that in January of this year Council members Archibald, Fligor and Spatola recommended that we put the firm of Dowd and Reilly sitting in this seat up here. We have just spent an hour discussing a case that has been litigated since early 2000. The same firm that these three people said was qualified to sit at this desk and represent us and make decisions stated that if we sue we are potentially putting the Borough at risk of losing an unknown amount of money, and then you vote against that same firms recommendation. She feels that is hypocrisy.

Council member Fligor commented that gentleman owes this town \$157,000 of taxpayers dollars and we are just supposed to forget about it. If he wants to vote NO because he thinks we owe something to the taxpayer other than getting back six months on his lease, and you have a problem with that; too bad.

Council member Nolan commented that the Harbor commission allowed the restaurant to operate for 15 months without a CO.

Council member Noonan stated that he understands everyone is passionate about this issue, but whenever there is exposure to the town, there is exposure to the taxpayers and we have to be responsible. If we did go forth, after the attorney advised us not to because there was exposure to this Borough, the worst thing that could have happened is that we lost to the hands of a jury and have to cut this gentleman a check. As Mr. Nolan said, we are cutting our loses and ending this nightmare and lets be done.

RESOLUTION 161-2005, PAYMENT OF BILLS

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

Council member Archibald commented that this is not any type of item that should be on a Special meeting. He feels they have been trying to give a wake-up call to this administration to the aspiring costs of Mrs. Miller's bills. She has already past the aforementioned form of Dowd and Reilly for the 2003-2004 billing, and he would like to know what steps they are taking so we do not have to do an emergency appropriation at the end of the year. He also believes that we are account that is being churned, and he urges this Council and this Mayor to interpret the retainer agreement to the benefit of the taxpayer and not the benefit of her firm.

Mayor Donoghue feels that churning is an inappropriate word, and for the most part this Council has pretty clearly stated in the past that they accept the explanation of the billing practices of the Attorney, by paying the bills, which have been steadily going down since an administrator has been in place. The issue is that if this is work that has been done on behalf of the Borough. He has communicated with the attorney our desires to keep expenses down, but he is not going to do it, that we should sacrifice the proper legal council that this town needs.

Council member Fligor commented that we were billed for things that we had no attorney report on, on July 7th, 13th 14th on July 15th at the Council meeting we did not get a report on any of those bills. She was representing Council and Council was unaware that she was representing us at that time.

Council member Archibald commented that instead of paying her bill we should be giving a vote of no confidence. For Mrs. Miller to sit here for two weeks in a row and not tell us there is a COAH lawsuit coming, and then to bill us for it, is among the worst thing possible.

This resolution was adopted by the following vote.

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

NAYS:

ADJOURN - There being no further business before the Mayor & Council, Councilmember Nolan moved to adjourn the meeting at 8:50 PM; the motion was seconded by Councilmember Fligor, and unanimously approved.

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

Dwayne M. Harris
Municipal Clerk