



## MINUTES OF THE MAYOR & COUNCIL REGULAR MEETING OF OCTOBER 12, 2005

The Regular Meeting of the Mayor and Council of the Borough of Atlantic Highlands was held on October 12, 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. Administrator Hubeny, Borough Attorney Miller, Borough Engineer Elliott, and Municipal Clerk Harris were also present.

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.

### **PUBLIC COMMENT SESSION**

Allan Dean-Second Ave- commented on the lease agreement the Borough intends to enter into with the Hesse Co. It is his contention that the principle use as a parking lot is not permitted in that zone, according to our own development regulations. He wanted to remind the Council that there is a difference between a Municipal use of a property and a private use. Under this lease it will be a private deal between Atlantic Pier and Sea Streak, and the Borough will not be able to put it's foot down and say that it is not a permitted use, because they are giving their nod to it. Parking would be a permitted secondary permitted use, but it is not a principle use for that zone. There are also environmental issues like gasoline and oil filtering into the soil and hence into the bay. The Borough should look at ways of not parking on those fringe areas next to the water. He asks the council to consider the types uses here, and further more the lease provides us with a lot less for the same amount of money.

Ed Cetron-Auditorium Dr- commented that his main concern with the lease agreement with the Hesse property is that for along time it has been an idle property, so in lieu of taxes was fine. Now they are going to develop it and use it for commercial use and they are still getting a free ride. It seem as if he has all of the marbles on this one and we have none. What he sees us having now and what we have after we enter this lease, he questions what the benefit to the taxpayers is.

Bill Eaton-84 Bay Ave- asked Mr. Noonan if he is in compliance with the requirements of the Pay to Play Ordinances. He asked Mr. Archibald if he was in compliance, and when he will file the required documents that would bring him into compliance.

Joseph Hawley-25 Ocean Blvd- commented that there is nothing in the State to enforce local Pay to Play Ordinances that are adopted by the local governing body, so therefore those ordinances have been declared null and void. He commented that the only thing that you have to comply with is the local election law governed by the ELEC Commission in Trenton. There is nothing in the State that says that local communities have to abide by local Pay to Play Ordinances.

Allan Dean- Second Ave-asked if the proposed rates for the Harbor would increase \$5.00 per foot for boats berthed and moored at the Harbor, and furthermore provide a price hike freeze for residents in 2006. He questioned exactly how many residents utilize the harbor facilities. He pointed out, they are providing a discount to some residents instead of tax relief for all residents, and he does not think that is fair. It would be more fair, as a resident, to have his property taxes reduced by the revenue generated from the Harbor, then to simply give his next door neighbor, who owns a boat, a break. He asked that they drop that portion of the Ordinance that provides for a freeze to the residents.

Thomas King-51 Ocean Blvd- commented that any of his neighbors that pay the same taxes that he does; he has no problem with them getting a break at all. They pay the taxes you and I both do and if they have a boat and are a resident in town, and they pay towards the operation of the Harbor he thinks they are entitled to a break.

Kate Wigginton-Ave D-asked the Mayor why we would want to do that [giving a freeze to the residents]. And asked what the dollar calculation would come to.

Donna King- 51 Ocean Blvd- asked if the Atlantic Pier lease would be considered on an annual basis. She also asked if the rates of other harbor towns were taken into consideration when structuring our rates and if the increase would continue each year until we are compatible with other communities. She also disagrees with her husband and feels that residents should pay the same rates, but should get preferential treatment in regards to getting slips first, before outsiders do.

Thomas King-51 Ocean Blvd- asked who was going to use the property when we are not, and questioned how Hesse could get Sea Streak to pay for parking and we could not. He also asked why didn't we charge Sea Streak.

**RESOLUTION 178-2005, CHAPTER 159- MANY MIND CREEK STEWARDSHIP PROGRAM**

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

This resolution was adopted by the following vote.

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

NAYS:

**RESOLUTION 179-2005, PAYMENT OF BILLS**

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

Council member Archibald commented that he does not think it right that the Attorney's bill is higher than Mr. Surenian. There are three items the Borough got charged 51/2 hours to do research on. One of the items was to research COAH regulations regarding Developer Fee Ordinance. We could have asked Mr. Surenian, who is writing these things to send it to us. Further more he should be the one doing the research, not Mrs. Miller.

Mrs. Miller explained that Mr. Surenian was hired to address the opposition to Atlantic Highlands' substantive e certification by K. Hovnanian and the other work she is doing as the Borough Attorney.

This resolution was adopted by the following vote.

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

NAYS: Council members Archibald, Fligor and Spatola

**RESOLUTION 180-2005, AMENDING THE 2005 WATER/SEWER CAPITAL BUDGET**

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

This resolution was adopted by the following vote.

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

NAYS:

**RESOLUTION 181-2005, APPROVING LEASE AGREEMENT-ATLANTIC PIER CO.**

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

Council member Spatola asked if the Hesse family owns Atlantic Pier Co.

Council member Nolan clarified that is owned by the brothers Mr. Hesse and his brother, making it a dual ownership.

She further asked if a member of the Hesse family had a fundraiser for a political party, would the members of that party be compromised by this vote?

Attorney Miller replied that she did not believe so, and asked if the person who had the fundraiser an owner of this company.

There was no definitive answer to the question.

Council member Fligor asked Mr. Noonan if he were going to document the in-kind contribution form Laura Hesse and if so, how much was it.

Council member Noonan asked him to explain the in-kind contribution.

Mr. Fligor explained the get together at Mrs. Chamberlains house, and explained that the Pay to Play Ordinance it lists the owners, family, immediate family, daughters, sons, mothers, fathers, brothers, sisters, we list all of these in our Pay to Play Ordinances and must question this because you are voting on a lease.

Mr. Noonan responded that if it necessary to report an in-kind contribution, it will and probably already has been done.

Council member Archibald asked that would allow him to vote on the lease, if Mrs. Hesse-Chamberlain an officer of the corporation.

Mr. Noonan felt that is a question that needs to be answered by the attorney.

Attorney Miller stated she would look into it.

Council member Fligor moved to table this resolution and Council member Spatola seconded it.

The Motion failed by the following roll call vote:

AYES: Council members Fligor and Spatola

NAYS: Council members Archibald, Ladiana, Nolan and Noonan

This resolution was adopted by the following vote.

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

NAYS: Council members Archibald, Fligor, and Spatola

#### **RESOLUTION 183-2005, AUTHORIZING CONTRACT-CHRISTMAS SPECTACULAR**

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

This resolution was adopted by the following vote.

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

NAYS:

ABSTAIN: Council member Ladiana

**RESOLUTION 184-2005, APPROVING 2006/2007 HARBOR RATES**

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

Council member Fligor would like to separate the resident boat owners getting a discount. There are a lot of residents and everyone should be benefiting from it not just the boat owners.

Council member Archibald questioned if the freezing of the rates, if you live in town, applied to Head Boats and launches.

The freeze does not apply to commercial boats, just to pleasure boats, but the freeze will apply to the launches.

This resolution was adopted by the following vote.

AYES: Council members Ladiana, Nolan and Noonan

NAYS:

ABSTAIN: Council members Archibald, Fligor and Spatola

**ORDINANCE 21-2005, BOND ORDINANCE - WATER/SEWER METER REPLACEMENT**

This Ordinance was read by title. It was moved for Introduction and First Reading by Council member Fligor, seconded by Council member Ladiana and was approved by the following vote.

Council member Fligor explained that we are currently using an antiquated method for reading meters that has a lot of problems. This will allow us to install a radio transmitter on the meters and replace some meters and allows the meter reader to drive down the street and read all of the meters on that street. This will reduce the amount of time it takes to accomplish the meter reading and reduce the amount of mistakes. This will provide lower and more accurate utility bills. This will pay for itself over a short period of time by giving us actual meter reads.

Council member Ladiana agreed with Mr. Fligor and thanked Mr. Jahn for all of his work in helping to move this forward. There was also \$300,000 sitting in a capital improvement fund that we will take \$150,000 of that to help pay for this.

Council member Nolan commented that it would become equitable for all residents in the Borough; some who don't even have meters, some with broken meters.

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

NAYS:

It shall be published in an official newspaper and a public hearing shall be held on October 26, 2005.

**ORDINANCE 20-2005, AMENDING CHAPTER III 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 Nolan, seconded by Council member Archibald and unanimously approved.

**PUBLIC HEARING**

Allan Dean-Second Ave- asked for a description of what portion of the Borough this would not include.

The Mayor explained that there would be relatively few places for a registered sex offender to legally live in the town. The largest block being in the area of Seventh Ave and the Highway. This was not intended to completely eliminate this, but it is aimed at keeping registered sex offenders as far away from the parks and schools as possible.

Bill Kuzman-Ave D- asked if the Ordinance makes any distinction between the different tiers.

The Mayor explained that it did not.

Mr. Kuzman directed the Council to Mulligan vs. Panter Valley and the appellate division decision addressing this in a gated community, where the appellate division raised some concern about inclusion of all three tiers.

Allan Dean questioned how many registered offenders are in town.

The Mayor told him three.

Thomas King- Ocean Blvd- does not have the same fear of a nineteen year old being caught sleeping with a fifteen year old, as he does with a pedophile.

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

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

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

NAYS:

**ORDINANCE 17-2005, AMENDING THE DEVELOPMENT REGULATIONS - ARTICLE SEVEN**

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 Noonan, seconded by Council member Archibald and unanimously approved.

**PUBLIC HEARING**

Allan Dean-Planning Board member-asked if the recommendations of Michael Steib, Planning Board Attorney, would be incorporated into the Ordinance prior to final adoption.

Mayor Donoghue stated that he would think that Mr. Steib's suggestions, those of the Planning Board Planner, and those offered by Councilman Fligor that it might be wise to adjourn this hearing until the next meeting, so that the views of those people could be considered for inclusion or changes in the Ordinance.

Ed Cetron- Auditorium Drive- also feels that we should add some of the Planning Boards attorney's comments. The base Ordinance started off well and he added value to it and he would like to see them incorporated before adoption.

Council member Nolan recalled that there were a lot of thing that were just verbiage and tightening things up.

Attorney Miller explained that those things have been done.

Council member Fligor asked Attorney Miller if this had to be done.

Attorney Miller explained that this Ordinance would protect the Borough by allowing them to set the parameters on what they want, approvals and things of that nature. Without it a tower could be erected on private property and we would have no input at all.

A Motion to Adjourn the Public Hearing, until October 26th 2005, was made by Council member Nolan, seconded by Council member Archibald and approved by the following roll call vote:

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

NAYS:

**APPROVAL OF MINUTES SEPTEMBER 28, 2005 REGULAR MEETING**

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

This motion carried by the following vote.

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

NAYS:

ABSTAIN: Council member Noonan

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

Mayor Donoghue announced that we received a letter of commitment from the State Green Acres program allocating substantial funding to preserve the Giuliani and McConnell property on our waterfront for public use. William Kastning, Project Director for Green Acres said, "State Harbor Estuary Project Funds (HEP), State Green Acres Assistance Program funds and the participation of the New York/New Jersey Port Authority should provide the necessary funds to acquire this land". He further commented that HEP has determined that these sites have qualified for funding due to their location, environmental sensitivity and their need for habitat preservation. Needless to say, if the acquisition of these properties proceeds, Atlantic Highlands will be free from the threat of high-density condominium housing on our waterfront.

Council member Ladiana reported the new CFO has prepared budget request that she has submitted to all departments, and would like to meet with the finance committee to see how to attack this. The Bayshore Regional Watershed Council is hosting a dredge meeting on November 10<sup>th</sup> at the Senior Citizen Building. The DEP Commissioner and Clean Ocean Action will be in attendance. She thanked Mr. Jahn for providing them with an Organization Chart that they will need to talk about. The Ferry Terminal Committee will have their first meeting on October 17, 2005 with representatives from DOT. She also met with Birdsall Engineering and at the next meeting we will be having a public hearing on the Monmouth County Municipal Opens Space Grant Program application that she is submitting. The county has given strong indications that they will support this application.

Council member Fligor reported that the gutters on Borough Hall have been removed from the sewer system. Letters have gone out to the homes that currently have drain in the system and they need to have them removed by November 12. The Water Department will be conducting their semi-annual hydrant flushing at the end of October. He suggested residents run their water before washing clothes and drinking it. NJNG had their Open House and about 16 residents attended. He and Adam need to meet, prior to the next meeting, with NJNG to discuss some issues with the public works yard.

Council member Nolan reported that the NJ DOT Traffic Study report was complete and is available at Borough Hall.

Council member Archibald reported that the Recreation committee would be meeting tomorrow to finalize plans for the Halloween Parade.



Council member Spatola reported that the Halloween Parade will be held on October 29 and recommended there be "NO PARKING" on both sides of First Ave from Center Avenue to Highland Avenue. She encouraged participation in the "Buy A Rocket" campaign. She commended the Firemen on a successful Car Show and commented on their Third Place showing at the Sea Bright Field Day. She expressed concern from the Firemen and asked if the engineer will be inspecting the Fire House for mold.

Council member Noonan reported that the Blue Mass, offered by Rev. Bob Tynski, honoring all of the officers, first responders, EMT, First Aiders and Police, would be held at St. Agnes on October 23, 2005 at 7:00pm. The Council meeting has also been moved to 8:00pm.

Administrator Hubeny reported he had met with the entire staff at Borough Hall on October 7<sup>th</sup> and things went well. He reported there was a vacancy in the Sanitation Department and he had interviewed with several applicants and a decision will be made by the next meeting. The trees in front of Borough Hall will be trimmed back. They are growing out into the parking lot, retaining moisture and hitting the building. We have gone through the Shade Tree Commission and have discussed that. The EMO and Police participated in the Top Off Three, The Top Official Exercise back in April. Things went well, but there are issues that need to be dealt with on a County and State level.

Engineer Elliott had no official report. In response to a question from Council member Ladiana, she mentioned that she had submitted our letter and information to the State Historical Preservation Office as part of the process to release the grant funds for the bike trail. We should hold a public comment meeting within the next month. She further mentioned the Pre-Construction meeting for the water main replacement will be held next week and the West Washington Sidewalk replacement and handicap ramp project will begin by October 24<sup>th</sup>.

Council member Fligor mentioned the Historical Society's Lantern Tour is on the 28<sup>th</sup> and 29<sup>th</sup> starting at 7:00pm and volunteers are needed.

#### **PUBLIC COMMENT SESSION**

Robert Dougherty- 16 Simpson Ave- thanked the Council people for their support. He has been around for awhile, and you guys fight a lot, but when it comes to the big stuff you guys are all on the same page at the right time.

Thomas King-51 Ocean Blvd-asked if the new meters would have a low voltage power source and if the readers would affect new technology called "Radio Frequency ID" products within the home.

William Phillips-Memorial Pkwy- asked about the Ordinance regarding snow removal and if anything has become of that. He also asked what was the status of the proposed drug testing policy of current and new Borough employees.

Allan Dean-Second Ave-asked about the status of getting a new library is. He also asked about the "new secret billing policy" of the attorney, and he expressed his disappointment with the selection of the Borough attorney.

**ADJOURN** - There being no further business before the Mayor & Council, Council member Nolan moved to adjourn the meeting at 9:20 PM, the motion was seconded by Council member Noonan and unanimously approved.

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The Governing Body approved these minutes at their meeting on October 26, 2005.

*Dwayne M. Harris*

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