



## **MAYOR AND COUNCIL MEETING MAY 01, 2008**

This Special meeting was called pursuant to the provisions of the Open Public Meetings Law. Notice of this meeting was published in the Asbury Park Press on April 30 and the Courier on May 01, 2008. In addition copies of this notice was posted on the bulletin board in Borough Hall and filed in the Office of the Municipal Clerk on the aforementioned date. Notices on the bulletin board have remained continually posted. Formal action will be taken.

Pledge of allegiance

Roll call

1) Item – Resolution 085-2008

Adjourn



## MINUTES OF THE MAYOR & COUNCIL SPECIAL MEETING OF MAY 01, 2008

A Special Meeting of the Mayor and Council of the Borough of Atlantic Highlands was held on May 01, 2008 in the public meeting room of Borough Hall, 100 First Avenue, Atlantic Highlands, NJ.

Mayor Rast called the meeting to order at 7:00pm. After a silent prayer and the Pledge of Allegiance, the following roll call was taken: Council members Archibald, Dellosa, Doyle, Fligor, Hoffmann and Sutton were present. Administrator Hubeny, Borough Attorney Reilly, and Municipal Clerk Harris were also present.

Clerk 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 April 30, 2008. He read the "Open Public Meetings Act" compliance statement and stated that formal action would be taken.

Agenda Item: RESOLUTION 085-2008 APPROVING THE EXTENSION OF TWO CONCESSION LEASES ON BOROUGH PROPERTY KNOWN AS BLOCK, 7 LOTS 7 AND 8, IN THE MUNICIPAL HARBOR.

Harbor Attorney Steve Corodemus gave a brief history to the governing body on the property previously occupied by Zio's and the further issuance of an RFP to get this property rented by the 2008 summer season. The Harbor Commission retained a restaurant consultant, Tim Delaney, who did an inspection of the premises and activity in the Harbor and made recommendations to the Harbor Commission. NJ State Statute exempts the Harbor from the public bidding laws, however it does require any activity over a threshold, be authorized by the governing body, and that is why we are here tonight. He further outlined the details of the RFP as set forth by the Harbor Commission. Proposals were opened on Friday, April 18, 2008 at 4:00pm. At a special meeting of the Harbor Commission, the different proposals were entertained and a recommendation of award was made.

Michael Convery, an attorney representing Michael Rosa, the owner of the Harborside grill on First Ave. He gave a historic review of how Mr. Rosa submitted a proposal on this property in the past and the history of the tenants since. He stated that Mr. Rosa received the RFP and reviewed it. He perceived some items as absolute requirements and because of this he did not submit a bid. He feels he never had the opportunity to submit a proposal, because he did not think the requirements, particularly the \$50,000 deposit, were negotiable. He stated that his client objects to the vote tonight. He requested that the award of the contract be delayed and that this RFP be set aside and a new RFP be issued. He asked to review the bids to see if there was a deviation from the RFP.

Robert Bohn of Lescher Associates- commented that he feels the best effort was not made to solicit the highest number of offers for this property, because none of the realtors in town were approached. His associate was told the town did not want to pay a commission to a realtor. He had a gentleman in his office that was interested in that space but could not get access. Mr.

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Hubeny responded to his office after an inquiry was made, but they had no idea that this property was being marketed.

James Barry of Bobo's 33 – commented that his biggest issue is that Mike Rosa has an incredible business and he is doing something right. He questioned why they were not notified that the opportunity was available. He feels it is a small town and the people who reside in town are the ones who are making it successful. He had no idea, until the day before, that they had even gone out to bid. 24 hours, for him, was not enough time to put in a business proposal. He asks that the Borough take more time to see if the bid could possibly go higher.

Sark Krikorian of The Blue Bay Inn – commented that perhaps the decimation of information was not good, and asked if the square footage rents are between \$18-\$24.00, why would the town accept anything less?

Michael Convery – Wanted to clarify his client's position so the governing body would not be confused with what others had spoken on. The advertising is not the issue; it is not whether or not he got the RFP. His issue is the RFP states that a \$50,000 payment is absolutely required, and other requirements in the RFP that appear to be absolute, which in retrospect are negotiable, and if you deviated from something that was listed as a requirement, it forces the Harbor Commission to go back and reword the RFP.

Henry Moyer of Off the Hook - commented that they agreed to all of the terms of the proposal, including the \$50,000.00. He asked if the terms could be worked, due to some damage to the building. They intend to pay the \$50,000 whether it is in repairs to the building or any other.

Attorney Reilly commented that when it comes to the legal question, the Harbor Commission operates under a special statute that does not require any public bid process at all. For that matter they could have negotiated this as a private person. They do have a responsibility to get the best price for the public. He believes that the process was reasonable enough to solicit interest. The ultimate thing is, do you think there is a fair price being generated that is reasonable under all of the circumstances, and if you did things differently you might get a better price, maybe you would, and maybe you wouldn't. You have a business decision to make. You want to open by the summer and based on what is available, are this commercially reasonable amount that is being proposed and recommended by the Harbor Commission. If you make the decision that it is, you can approve it.

Mike Rosa of the Harborside Grill – thinks the town is missing the fact that it is not just square footage, it is waterfront property, and you're talking about getting full equipment, and a liquor license. He does not know why things went as they did, but as business people if the best you can get is 13.00 a square foot, with this commodity, you are not marketing to the right people.

Michael Convery – asked that the governing body take into account what everyone said and allow two weeks to solicit new bids. If you allowed two weeks and if you do not have to follow the bidding process, why don't you allow two weeks and see if you can get a higher number.

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James Barry – commented that he and group of restaurateurs would pay \$5,000 per month for that space and pay the \$50,000 key money. He just wanted to put that out and make everyone aware.

Mayor Rast asked for a motion to approve:

**RESOLUTION 085-2008**  
**APPROVING THE EXTENSION OF TWO CONCESSION LEASES ON BOROUGH**  
**PROPERTY KNOWN AS BLOCK, 7 LOTS 7 AND 8, IN THE MUNICIPAL HARBOR**

This Resolution was offered and moved by Council member Hoffmann seconded by Council member Doyle and adopted on May 01, 2008 as follows:


AYES: Council members Archibald, Dellosso, Doyle, Fligor, Hoffmann and Sutton

NAYS:

ABSTAIN:

**ADJOURN** - There being no further business before the Mayor & Council, Council member Fligor moved to adjourn the meeting at 8:49PM, the motion was seconded by Council member Doyle, unanimously approved.

These Minutes were approved by the Governing Body on July 23, 2008

  
Dwayne M. Harris, RMC, CMR  
Municipal Clerk



## RESOLUTION 085-2008

### APPROVING THE EXTENSION OF TWO CONCESSION LEASES ON BOROUGH PROPERTY KNOWN AS BLOCK, 7 LOTS 7 AND 8, IN THE MUNICIPAL HARBOR

WHEREAS, the Atlantic Highlands Harbor Commission, hereinafter the Commission, oversees the operations of the Municipal Harbor in the Borough of Atlantic Highlands, Monmouth County, New Jersey, and

WHEREAS, the Commission has two vacant spaces currently known as Zio's Café and Zio's on the Water and further known as Block 7, Lots 7 and 8, that are closest to Frank's pier that it manages for the Borough; and

WHEREAS, the Commission has sought tenants for the vacancies by way of a request for proposal (SEE ATTACHED) for a concession agreement/lease for a period of five years with a five year option, returnable on April 18, 2008; and

WHEREAS, at a special meeting of the Commission held on April 24, 2008 with proper public notice, the Commission has recommended to the Mayor and Council of the Borough of Atlantic Highlands to approve its recommendation to offer a concession agreement/lease to a new legal entity to be created by Frances and Harold Smith (the principal owners and current operators of the Sissy's Place restaurants) for the ground floor space; and

WHEREAS, at the same aforementioned special meeting of the Commission, the Commission has also recommended to the Mayor and Council of the Borough of Atlantic Highlands to approve its recommendation to offer a concession agreement/lease to a new legal entity to be created by Henry Moyer and Nick DiBari (the principal owners and current operators of Off the Hook Restaurant and Bar) for the second floor space; and

WHEREAS, the Mayor and Council of the Borough of Atlantic Highlands have also reviewed the submitted proposals of all four parties responding to the request for proposals; and

WHEREAS, the Borough Administrator Adam Hubeny has reported to us that no party objected to the process for tenant selection nor was there any objection submitted by any respondent to the request for proposal; and

WHEREAS, N.J.S.A.40:68-24 exempts the Commission from the requirements of New Jersey law for public bidding but does require the municipal governing body to approve of its actions by resolution

NOW THEREFORE be it resolved that the Mayor and Council of the Borough of Atlantic Highlands concurs with the Harbor Commission's decision and that it does hereby approve the recommendations of the Commission to extend to the two aforementioned parties concession agreements/leases.

And it shall be further resolved that Jane Frotton, Chairwoman of the Commission is hereby authorized to negotiate the terms and conditions of the agreements between the Commission and the parties consonant with the request for proposal and responses from the respective parties; and

It shall be further resolved that Jane Frotton, Chairwoman of the Commission and Carol Cassesse, secretary for the Commission shall be and are hereby duly authorized to execute any agreements including but not limited to concession agreements, leases or other documents necessary to effectuate the decision of the Commission and Mayor and Council of the Borough of Atlantic Highlands.

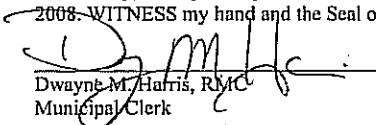
This Resolution was offered and moved by Council member Hoffmann seconded by Council member Doyle and adopted on May 01, 2008 as follows:

AYES: Council members Archibald, Delloso, Doyle, Fligor, Hoffmann and Sutton

NAYS:

ABSTAIN:

I, Dwayne M. Harris, Municipal Clerk of the Borough of Atlantic Highlands, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Governing Body at its meeting held May 01, 2008. WITNESS my hand and the Seal of the Borough of Atlantic Highlands this 15th day of May 2008.

  
Dwayne M. Harris, RMC  
Municipal Clerk

