

**Mayor and Council
Agenda
Community Center,
22 Snug Harbor Avenue, Highlands
Wednesday, March 15, 2017
8:00 p.m.**

As per requirement of Public Law 1975, Chapter 231, notice is hereby given that this is a Regular Meeting of the Borough of Highlands Mayor and Council and all requirements have been met. Notice has been transmitted to the Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board. Formal Action will be taken.

Call to Order
Meeting Statement
Roll Call
Executive Session Resolution

EXECUTIVE SESSION: 7:00PM

Contract Negotiations: Potential acquisition of Property: Block 37, Lots 12.01 and 13 for New Borough Hall
Attorney-Client Privilege: Recreation Department – Policies and Procedures

REGULAR MEETING: 8:00PM

Call to Order
Pledge of Allegiance
Roll Call

Approval of Minutes: March 1, 2017 – Regular Meeting

Public Comments on Consent Agenda/Resolutions

Consent Agenda/Resolutions

R-17-068 - Authorizing the Application for the 2017 Summer Food Program
R-17-069 - Renewal of Liquor License for the 2015-2016 & 2016-2017 Terms
R-17-070 - Resolution Supporting the 2017 Distracted Driving Crackdown, April 1 - 21, 2017
R-17-071 - Appointing Alternate Borough Prosecutor
R-17-072 - Authorizing Refund of Tax Overpayment
R-17-073 - Authorizing Disposal of Surplus Property of Highlands Borough
R-17-074 - Authorizing Purchase of Modular Office Space
R-17-075 - Accepting Resignation of Member of the Shade Tree Commission and Substandard Housing Committee
R-17-076 - Payment of Bills
R-17-078 - Approving the HBP 2017 Objectives and 2016 Accomplishments

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Ordinances: Introduction/Public Hearing/Possible Adoption

O-17-07 - Amending Chapter VII, "Traffic," Code Related to Areas of No Parking

O-17-08 - To Exceed the Municipal Budget Appropriation Limits and to Establish a Cap Bank

Resolution R-17-077 – Approving 2017 Municipal Budget

Other Business:

Appeal of denial of Mercantile License for Captains Cove Marina

Public Comments:

Adjourn:

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REGULAR MEETING: 8:00PM

Call to Order
Pledge of Allegiance
Roll Call

ROLL CALL:

Present: Ms. Broullon, Ms. D'Arrigo, Mrs. Wells, Mayor O'Neil
Absent: Mr. Card
Also Present: Brian Geoghegan, Borough Administrator
Dwayne Harris, Acting Borough Clerk
Brian Chabarek, Borough Attorney
Patrick DeBlasio, CFO
Dale Leubner, Zoning Officer

Approval of Minutes: March 1, 2017 – Regular Meeting

A motion to approve these meeting minutes was offered by Council Member Broullon and seconded by Council Member Wells.

This motion was passed by the following vote:

ROLL CALL:

AYE: Ms. Broullon, Ms. D'Arrigo, Mrs. Wells, Mayor O'Neil (4)
NAY: None (0)
ABSENT: Mr. Card (1)
ABSTAIN: None (0)

These meeting minutes have been properly approved.

Public Comments on Consent Agenda/Resolutions

Mayor O'Neil opened the floor to comments from the public on the consent agenda. None were forthcoming.

Mayor O'Neil closed the public portion on the consent agenda.

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Consent Agenda/Resolutions

- R-17-068** - Authorizing the Application for the 2017 Summer Food Program
- R-17-069** - Renewal of Liquor License for the 2015-2016 & 2016-2017 Terms
- R-17-070** - Resolution Supporting the 2017 Distracted Driving Crackdown, April 1 - 21, 2017
- R-17-071** - Appointing Alternate Borough Prosecutor
- R-17-072** - Authorizing Refund of Tax Overpayment
- R-17-073** - Authorizing Disposal of Surplus Property of Highlands Borough
- R-17-074** - Authorizing Purchase of Modular Office Space
- R-17-075** - Accepting Resignation of Member of the Shade Tree Commission and Substandard Housing Committee
- R-17-076** - Payment of Bills
- R-17-078** - Approving the HBP 2017 Objectives and 2016 Accomplishments

A motion to approve the consent agenda was offered by Council Member Broullon and was duly seconded by Council Member D'Arrigo.

This motion was passed by the following vote:

ROLL CALL:

- AYE:** Ms. Broullon, Ms. D'Arrigo, Mrs. Wells, Mayor O'Neil (4)
- NAY:** None (0)
- ABSENT:** Mr. Card (1)
- ABSTAIN:** None (0)

The consent agenda has been properly approved.

Ordinances: Introduction:

- O-17-07** - Amending Chapter VII, "Traffic," Code Related to Areas of No Parking

Mayor O'Neil asked the police captain to explain why this ordinance was necessary. The police captain gave a brief explanation.

A motion to introduce O-17-07 was offered by Mayor O'Neil and was duly seconded by Council Member Wells.

This motion was passed by the following vote:

ROLL CALL:

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AYE: Ms. Broullon, Ms. D'Arrigo, Mrs. Wells, Mayor O'Neil (4)
NAY: None (0)
ABSENT: Mr. Card (1)
ABSTAIN: None (0)

Ordinance 17-07 has been properly introduced and will have a public hearing/possible adoption on April 5, 2017.

O-17-08 - To Exceed the Municipal Budget Appropriation Limits and to Establish a Cap Bank

A motion to introduce O-17-08 was offered by Mayor O'Neil and was duly seconded by Council Member Broullon.

This motion was passed by the following vote:

ROLL CALL:

AYE: Ms. Broullon, Ms. D'Arrigo, Mrs. Wells, Mayor O'Neil (4)
NAY: None (0)
ABSENT: Mr. Card (1)
ABSTAIN: None (0)

Ordinance 17-08 has been properly introduced and will have a public hearing/possible adoption on April 5, 2017.

Resolution R-17-077 – Approving 2017 Municipal Budget

A motion to introduce R-17-077 was offered by Mayor O'Neil and was duly seconded by Council Member Broullon.

This motion was passed by the following vote:

ROLL CALL:

AYE: Ms. Broullon, Ms. D'Arrigo, Mrs. Wells, Mayor O'Neil (4)
NAY: None (0)
ABSENT: Mr. Card (1)
ABSTAIN: None (0)

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Resolution 17-077 has been properly introduced and will have a public hearing/possible adoption on April 19, 2017.

Other Business:

Appeal of Denial of Mercantile License for Captain's Cove Marina

Brian Chabarek, borough attorney, presented evidence of the legal basis of the denial and the letter of appeal sent to the borough from Mr. Fred Rosiak, owner of Captain's Cove Marina. Mr. Rosiak was then sworn in before council to give his testimony.

MR. ROSIAK: I'm here to ask the council to reconsider the decision on the mercantile license for a real simple reason: that this is the period where marinas rent out, uh, you know, rent out slips, now and the next couple of months and if I'm not in a position to be able to do that, there will be no income, no anything going on for this year. As a result of a meeting that was held with the administrator and Mr. Chabarek, they raised issues about conditions of the bulkhead that we have since gone and looked at and have a proposal that we can fix. We can take care of those things and make sure that they are more than safe and satisfactory. Specifically, there is a section on the north side of the marina and the rain where the water all congregates and that section has kicked out of the (?) and we are prepared to replace that section (?). Then, on the south side of the marina there are several sections where the tie rods (?).

MR. CHABAREK: Sir, can you speak louder for the record? Can you speak louder?

ROSIAK: I'll try to, sure. We excavated area that are to make sure that that is the cause and we (?) are prepared to dig behind the bulkhead (?) all the material and put new tie rods in and weld the to existing ends of the tie rods (?). And then, by the building, there is a section that needs sheathing done and we are prepared to do that. Toward that end, I have secured a construction loan with the bank but again that is contingent on me having a mercantile license because, honestly, they don't want to loan me any additional money if they don't see any cashflow coming in.

I am certainly willing to ask that you put conditions on the mercantile license so that is I do not perform and make those repairs, then you can pull the mercantile license. Uh, but, you know, for a timing point of view, uh, I need to be able to accept people that want to be able to keep their boats in the marina (?) or tell them they have to go someplace else.

Uh, I think that, uh, I guess the other issue is , uh, since the meeting that I had with the , uh, administrator and the attorney, I have been contacted by the Army Corp of Engineers who

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asked me if I would consider certain modifications to the plan that they are developing, uh, because to put a bulkhead around the whole thing, I guess, is pretty expensive and specifically they asked if I would consider putting boats on only one side of the marina. Uh, it would make it cheaper for them to execute the plan. Uh, they also told me when they said that I thought this plan was dead cause that was the discussion we had in our meeting, they informed me that, um, we are the only town on the Bayshore that has had significant damage from Hurricane Sandy that hasn't done something to go ahead and make some kind of, um, changes as far as the Army Corp of Engineers recommendation. So, I guess they were, uh,... encouraging that something would be considered by the town to try to get further damage in which case that would mean one way or the other, basically, solving the whole issue of Captain's Cove Marina.

I have been trying to sell the marina but the conversation ends pretty quickly when I have to divulge to them that town is now withholding mercantile license based on, ya know, I think...I realize this is a problem area and a problem for the town and for me and it would be great to get (?) resolved.

I guess I don't know what else to say except I ask for your considerations. Thank you.

Mayor O'Neil stated that he thinks we should hear what Mr. Mercado has to say.

Mr. Chabarek wanted to ask some more questions of Mr. Rosiak before Mr. Mercado made his statement.

MR. CHABAREK: Do you recall entering into an agreement, several agreements with the town over the course of the last several years? Fair to say?

MR. ROSIAK: There was an agreement? Yes.

MR. CHABAREK: Or multiple agreements, correct? 2012...

MR. ROSIAK: I am only aware of one agreement that was memorialized on paper.

MR. CHABAREK: You are not aware of other ones that were done in 2012 and 2013?

MR. ROSIAK: You want to show me what those were?

MR. CHABAREK: How about on or about January 7, 2014 you were aware of one that was memorialized, correct?

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MR. ROSIAK: Offhand, I don't remember.

MR. CHABAREK: I'm going to mark it as BH4 and I'm gonna ask that you take a look at it, okay?

MR. ROSIAK: Sure. (Pause.) This is the one that I do remember? Yes.

MR. CHABAREK: So that you've had an opportunity to review it and you're familiar with that formal agreement that has been marked as BH4?

MR. ROSIAK: Yes I have.

MR. CHABAREK: Okay. Direct your attention to paragraph ten which indicates that, notwithstanding this agreement, CC (which I presume means Captain's Cove) shall maintain the premises in a safe condition to the extent required by law. Do you see that?

MR. ROSIAK: Yes I do.

MR. CHABAREK: Okay. Now you have various summonses pending in the municipal court as we speak, correct?

MR. ROSIAK: Yes I do.

MR. CHABAREK: And do you have a hearing date currently on April 4, 2017?

MR. ROSIAK: I believe that is correct.

MR. CHABAREK: And one of the summonses is for non-compliance with the written agreement you have concerning the maintenance of the premises in a safe condition to the extent required by law. Correct?

MR. ROSIAK: I'm not sure of that. The major reason for the summonses were issues of picking up garbage, (unintelligible.)

MR. CHABAREK: I am going to show you what I am marking as Exhibit BH5 which is a summons dated April 30, 2014 which is for non-compliance with the written court agreement 1714, paragraph 10. I will show you a copy. (Pause.) Looking at BH5, does that refresh your recollection that one of the summonses pending is not in compliance with that written court agreement, paragraph 10 concerning maintaining the premises in a save condition?

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MR. ROSIAK: It does say that.

MR. CHABAREK: Okay. And that is pending in the municipal court. Fair to say?

MR. ROSIAK: I assume so.

MR. CHABAREK: And by way of your appeal dated March 6, 2017, you indicate that both actions be taken to make repairs to sections of the bulkhead (?). You represented that to the borough in your appeal, correct?

MR. ROSIAK: Yes I did.

MR. CHABAREK: So, you're acknowledging that there are certain issues with the bulkhead that do in fact require repair, correct? You're not disputing that?

MR. ROSIAK: Can I respond or do I just say "yes" or "no".

MR. CHABAREK: Respond to the question. Am I correct in...

MR. ROSIAK: There are issues with the bulkhead that need some correction.

MR. CHABAREK: And you are acknowledging that there are issues with the bulkhead that are affecting public safety in and around that area?

MR. ROSIAK: I do not. I do not believe that I am endangering public safety.

MR. CHABAREK: But you are acknowledging that the bulkhead is in disrepair?

MR. ROSIAK: There are issues with the bulkhead that need to be repaired. They're on private property as far as saying there are issues with public safety, I think you are stretching things.

MR. CHABAREK: You've indicated that you've retained a consultant for bulkhead, for the repair:

MR. ROSIAK: We have an engineer that is studying the bulkhead.

MR. CHABAREK: And you've represented to the governing body that you do intend to repair the bulkhead, correct?

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MR. ROSIAK: That's correct.

MR. CHABAREK: What are the time frames?

MR. ROSIAK: We will start as soon as we can; probably the early of April and be through, hopefully, the end of May. We would have to work around tides and we believe in 60 days we could accomplish that.

MR. CHABAREK: Do you have any other witnesses here with or are you by yourself?

MR. ROSIAK: No, I really didn't realize I was going to be on trial.

MR. CHABAREK: This is your application.

MR. ROSIAK: I'm appealing but I didn't realize I was going to be on trial.

MR. CHABAREK: Just understand that this is a record of your application.

MR. ROSIAK: I understand.

MR. CHABAREK: Okay. Does the governing body have any questions for Mr. Rosiak before we bring up the borough officials?

Mayor O'Neil: No.

Mr. Chabarek then swore in Mr. Mercado.

MR. CHABAREK: Mr. Mercado, how long have you served as code enforcement officer for the borough?

MR. MERCADO: Since May 14, 2010.

MR. CHABAREK: And are you familiar with the property at issue concerning this mercantile license for Captain's Cove Marina?

MR. MERCADO: Yes, I am.

MR. CHABAREK: And have you had occasion to observe the condition of that property?

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MR. MERCADO: Yes, I have.

MR. CHABAREK: And can you describe to the governing body what your recent observations were?

MR. MERCADO: I was at the property today. There is still some debris on the residential property. It has always been, I guess, one of our arguments that this is part of an agreement that it is zoned as residential but he keeps his equipment there for the operation of the marina. He still has some pilings, some planks. He did recently move some of the garbage there although there is still some that exists. And today, I did an inspection of the bulkhead on both sides of Washington Avenue and also on Rogers Street. There several areas where there is washout on the bulkhead and we can show these pictures. I see where Mr. Rosiak is talking about he has some issues on the north side and where he has a lot of issues with those tie-ins to the bulkhead. Some of the top of the pilings are completely rotted out; there is no support there. And where he did replace some pilings it was rotted on the top. One of the last things that the pictures in this packet shows how that bulkhead kind of bows out in certain areas because of the washout. Especially on the northern end where Marine Place ties into the bulkhead.

MR. CHABAREK: Mr. Mercado, you indicated that you took photographs today?

MR. MERCADO: Yes.

MR. CHABAREK: I'm going to mark this BH6, this stack of photographs. Mr. Rosiak, you can come pick up a copy. If you could just come forward and advise us as to which photographs depict the condition of the bulkhead, we will pass it along. Just identify the page number so Mr. Rosiak can see.

MR. MERCADO: So page number two is going to show the Washington Avenue side of the bulkhead, looking towards the water. Page three is going to show certain areas along Washington Avenue behind the washout. Same thing on number four. Um, I think because of the quality of the picture, of course, you can't see a lot of the sinkholes that are alongside of the bulkhead. Page five, the same thing along Washington Avenue; there is a lot of washout, um, it looks like some of the asphalt has been washed away as well. He has some electrical wires and concrete that's exposed. In six, we are looking at the café building, and there is a lot of washout along the sides that are leading up to the bulkhead of the boroughs. Same thing on the next page, all the washout on Washington Avenue. We can see the top of some of the pilings where the pilings itself is rotted out. Same thing on the next page which is just a duplicate. The page after that, we're going back to that residential property. It is gonna show

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some of the debris still there. The pieces of styrofoam floats and the wood stack still there. The boats have left, a lot of the boats have left. There is still one onsite. Um some equipment; he's got a bobcat there that's used for the marina. Some cinderblocks to block up boating. The next page is showing the washout underneath the cafe. You've got a piece of green plywood that's for quite a while. There's a pretty big sinkhole there. The page after shows the same thing. You've got some piling with some electrical wiring wrapped around it.

MR. ROSIAK: That's actually my tv cable. I have to repair that every year. It breaks every year.

MR. MERCADO: So the next page after, I am on the north side of the marina and looking at some washout from the end of Bedle Street. It looks like you are losing most of Roger Street there because of the washout on the bulkhead. Then on the corner of Marine, I think there is a pretty big sinkhole. That is on the corner of Marine and of Rogers Street. On the following page, we are going back to the yard where he's had some planks of wood since the storm. It's supposed to be used to repair some decking. It hasn't moved. It's been there ever since. I think most recently he's done some weed whacking. He's taken some of the debris away. This page is going to show the bulkhead on the northern side, where it kind of butts out and this is the biggest section, probably, that has no pilings, after these last two new ones that have probably been done recently, almost up to where that sinkhole is at the end of Marine Place. Once again, more on Rogers Street side, more washout showing decaying of some of the pilings (?). And the last two pictures, once again, along Rogers Street and more sinkholes where the runoff coming off the end of some streets. Actually, one of those streets, we are actually losing a portion of our street. Rogers Street is being washed out underneath the bulkhead.

MR. CHABAREK: Mr. Mercado, in conjunction with the photographs that you took today, which we will mark as BH6, you mentioned at length the condition of the bulkhead, is that having any effect on any adjoining area in the vicinity?

MR. MERCADO: Yes. All along Washington Avenue and Rogers Street.

MR. CHABAREK: And is it having an impact on or adversely affecting the public area?

MR. MERCADO: Eventually, yes, on both sides of that bulkhead. We gonna lose quite a few blocks on both sides.

MR. CHABAREK: And you have a number of summonses pending in municipal court with the marina, Captain's Cove Marina, correct? Captain's Cove Marina? And some of them deal with debris, some of them deal with overgrown weeds, for instance. Is that correct? And you have also had occasion to take photographs on separate occasions of the marina, correct?

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MR. MERCADO: Yes.

MR. CHABAREK: I will show you what was marked as BH7. Here is a photograph dated October 18, 2016. What was marked as BH7.

(Indistinct conversation)

MR. CHABAREK: That's BH7, correct?

MR. MERCADO: Yes.

MR. CHABAREK: Did you take the photographs that are marked BH7?

MR. MERCADO: Yes, I did.

MR. CHABAREK: Do you know when you took it?

MR. MERCADO: They are date stamped October 18, 2016.

MR. CHABAREK: Okay. Are there any photos in particular that you would like to point out to the governing body concerning the photographs and what they depict?

MR. MERCADO: A lot of the photographs are still the same, um. On the first page is the old cafe building. On the bottom right, I know it's in black and white but that green piece of plywood is still in the same place. You have some sinkholes on both sides of the steps going up to the café building. Page two is gonna show the weeds and some of the debris that was left on the property. Some of that is gone. I don't know how much exactly. The third page shows the bulkhead that borders the residential lot where the shed is; it shows the deterioration of the decking on the bulkhead itself. That piling is sitting there and it is still there now. The page after shows one of the boats that was on the property then. That's gone. (?). Some of the cut pilings have been removed. Once again, some of the weeds have been cut down. The page after shows Washington Avenue looking towards the water towards the café building: overgrown weeds; still the same planks on top of the bulkhead. Not a very clear picture. The page after is an unregistered truck that has been on and off the property. I believe it is Mr. Rosiak's truck.

MR. ROSIAK: You've got to be kidding me.

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MR. MERCADO: The page after shows the inspection sticker of the truck. There is a trailer and a dumpster that has been there. Some of the planks of wood that are still on the property. Same thing on the next page. Still the same pile of wood is on the property. The very last page is just a far-shot of the same picture showing the debris and some of the outdoor storage issues out there.

MR. CHABAREK: Is it your testimony that the pictures in the packet BH7 were taken on or about October 18, 2016 and show the condition of the property at that time?

MR. MERCADO: Yes.

MR. CHABAREK: Could you bring it forward to show the council, if you could? (Pause.) Do you know how many summonses are now pending or approximately?

MR. MERCADO: I believe so; about 18.

MR. CHABAREK: Approximately? Approximately 17; in that range?

MR. MERCADO: More about 18.

MR. CHABAREK: I don't have any more questions for Mr. Mercado. Mr. Rosiak, you can ask Mr. Mercado questions.

MR. ROSIAK: I have a lot of questions. Let me start at the back and work forward. This set of black pictures that you're submitting, that was... in October, you said?

MR. MERCADO: Yes. The date stamp is in the upper left-hand corner.

MR. ROSIAK: Do you remember us meeting in the Atlantic courtroom antechamber in December (?) court appearance?

MR. MERCADO: Yes.

MR. ROSIAK: Do you remember the discussion we had where you said that we had, by way, that we had taken care of most of these issues that we are prepared to dismiss all of those summonses and go forward to work towards doing things that were important?

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MR. MERCADO: There are probably, I'd say, twelve to thirteen summonses that we would dismiss because, according to this agreement, um, a lot of things just don't apply anymore. Um, the garbage and debris were part of the last things you took care of.

MR. ROSIAK: (Interrupts, unintelligible)

MR. CHABAREK: Let him finish. Let him finish first.

MR. MERCADO: The cars and somethings you did take care of recently. Um, but the one thing you haven't taken care of since this agreement was written is Paragraph 10 and that is keeping the area in a safe condition.

MR. ROSIAK: Just some minor stuff you're accusing me of keeping an unregistered vehicle on the property. Can you make out what this truck says on the side that it's a diesel truck; it's not subject to inspection. If it's a registered vehicle, you would know that it's unregistered. (Unintelligible.) The condition of the area around the café has not changed. It's an area that I had tried to repair and was denied because it was of non-important use and that we have, as part of my discussion tonight, said that it was an area we would increase the bulkhead and take that section and put the bulkhead in under here. It was the issue of unsafe, this issue number 10, Mr. Chabarek, that you seem to be particularly interested, was an area that, uh, Mr. Mercado and I had agreed was taken of and we were going to proceed forth for the year.

MR. CHABAREK: That's your position.

MR. ROSIAK: It definitely is my position. Do you agree, Mr. Mercado?

MR. MERCADO: There was a summons issued for unsafe structure which we are talking about, you call the café. When I first issued that summons it was, it had a red sticker on it as an unsafe structure. Since then, Paul Vitale did an inspection and you were allowed to put a bathroom in there and that would take of that summons for unsafe structure. That's what we spoke about in the meeting.

MR. ROSIAK: I'm not sure why you're producing these pictures from here versus the newer pictures when you look at just about any of them you can see, aside from the bulkhead issues, which we agree needs repair, that those things have been taken care of.

MR. CHABAREK: When you say "these pictures" just for the record state "from BH6." Correct? The color photographs?

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MR. ROSIAK: I'm talking about the black and white photos versus the color photos.

MR. CHABAREK: BH7 are the black and white photos; BH6 are the color photographs.

MR. ROSIAK: If you say so.

(Pause.)

MR. ROSIAK: In regards to this, you answered...I'm sorry. What was your question to Mr. Mercado regarding this endangered the public health or something?

MR. CHABAREK: You can ask him any question you want.

MR. ROSIAK: No, no. I'm asking you what question you asked him.

MR. CHABAREK: You can ask him any question you want.

MR. ROSIAK: Are you aware that this section of the bulkhead on the property belongs to Captain's Cove and is not public property?

MR. MERCADO: Yes.

MR. ROSIAK: Are you saying that there's area of the public property that are somehow damaged or endangered or...

MR. MERCADO: No.

MR. ROSIAK: We are in agreement that the Rogers area that you say should be replaced because the town's drains come in there that they need to be replaced? I'm finished.

MR. CHABAREK: Mr. Mercado, in respect to the unsafe structure that's separate and apart from the summons for non-compliance in that written court agreement, correct?

MR. MERCADO: Yes.

MR. CHABAREK: Unless anyone has questions for Mr. Mercado, we can move on.

Council Member D'Arrigo asked what is the next step.

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MR. CHABAREK: Dale Leubner is going to briefly testify, too. Then I will explain.

Mr. Chabarek swore in Mr. Dale Leubner.

MR. CHABAREK: You serve as the borough zoning officer, correct?

MR. LEUBNER: Correct.

MR. CHABAREK: You are also a T&M Associates that serves as the borough (?), correct?

MR. LEUBNER: Correct.

MR. CHABAREK: Are you familiar with the property at issue at Captain's Cove Marina?

MR. LEUBNER: Yes.

MR. CHABAREK: What have been your observations as far as the condition of the property is concerned?

MR. LEUBNER: Over the years, the, uh, bulkhead's been a major issue. And when I refer to the bulkhead, both main sides along Washington and along Rogers are in various areas of failure that have been noted. The part that Mr. Rosiak had fixed prior to Sandy, a large portion of it remains in disrepair.

MR. CHABAREK: And the large portions that remain in disrepair, are they having any affect, in your opinion, on the public health, safety and welfare in that vicinity?

MR. LEUBNER: I would say on Washington, yes. Let me explain why. The dead men that hold the bulkhead in place with the tie tacks are actually outside, are inside the roadway. So they go beyond his property. Mr. Rosiak, by his own admission tonight, said he realized that some of these tie tacks have corroded away. We noticed that when the first area that was on the marina blew out. By doing so, and knowing that those tie tacks are corroded and gone, that bulkhead is more susceptible to further failure and the sinkholes you are seeing on his property behind the curb, uh, most likely be washing out underneath, It hasn't reveal itself yet, and could be washing out onto the public roadway.

MR. CHABAREK: Any other impact you could describe to the governing body with respect to the bulkhead and its effect on the surrounding area?

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MR. LEUBNER: I do agree with Mr. Rosiak that the visual impacts are on his property. The borough's right-of-way goes to the back of the curb and anything behind the curb between the curb and the bulkhead is on Mr. Rosiak's property. So, I do agree with that but I also will say that the roadway itself, there is some compromise in there.

MR. CHABAREK: On the borough's roadway, correct?

MR. LEUBNER: Correct.

MR. CHABAREK: Any other impact that you can explain to the borough in regards to the health, safety and welfare of the adjoining area?

MR. LEUBNER: I would say that that was the main focus. I mean, obviously, if the bulkhead gets loose, the roadway will be compromised, as we saw with the first section.

MR. CHABAREK: Mr. Rosiak, you can ask Mr. Leubner any question you want.

MR. ROSIAK: Um, Mr. Leuber, Leubner... excuse me. I'm a little cotton-mouthed, sir. Um, Dale. You mind if I call you Dale?

MR. LEUBNER: Please do. I've been called a lot of things.

MR. ROSIAK: The photos that Mr. Mercado submitted, can you see any areas here where the roadway is currently damaged in some fashion from the bulkhead? And I do agree with you that, eventually, that if that continues (?) will go back to my property and (?). Do any of these pictures show any damage in as far as erosion, the erosion is against the bulkhead and not against the curb?

MR. LEUBNER: Uh, there's an area here where the erosion is going out to the curb.

MR. ROSIAK: Which picture?

MR. LEUBNER: I'm on BH2.

MR. ROSIAK: Could you show me (?)

MR. LEUBNER: Right here you can see in this picture here. You see it (?). ...but by looking at the picture you can see that it is starting to come this way, away from the back of the curb.

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MR. ROSIAK: This is still the marina's property.

MR. LEUBNER: Oh, it is. Absolutely. I agree.

MR. ROSIAK: I asked you what you said about the town property. I think it's important that

MR. LEUBNER: What I did say is that there is no visual impact that we can see but there are impacts to the sub-surface because those tie tacks will let loose.

MR. ROSIAK: Okay. Thank you.

MR. CHABAREK: Do you have anything else for Mr. Leubner?

MR. ROSIAK: I don't think so.

MR. CHABAREK: Mr. Rosiak, you indicated that you anticipate that work on the bulkhead could be completed in approximately 60 days?

MR. ROSIAK: That's correct.

MR. CHABAREK: Just so the governing body has all the information available, um, would you be willing to post a bond in connection with that work, if that were the case?

MR. ROSIAK: If necessary, of course.

MR. CHABAREK: Okay. Does the governing body, anyone, have any additional questions?

MR. LEUBNER: Mr. Chabarek, I have one more thing. Just a side note. This is in regard to the café. Um, I just want to correct Mr. Rosiak. I want to correct him on one thing. When you came in to see me about the café, you had actually asked to put a second floor on that building, which I said you couldn't do because that was an expansion of a non-conforming use. You didn't come to me to repair it. That wouldn't be my area. That would be more of a Paul Vitale issue. But you could absolutely repair it under your zoning because the building is not deemed destroyed. Our ordinance says that if the building is destroyed, you cannot repair and you lose it. But if it's not deemed destroyed, you can certainly repair it but you just couldn't put that second floor addition on that you came for.

MR. ROSIAK: I came to you with a plan that did have a second floor and you told me I couldn't do that.

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MR. LEUBNER: Yep.

MR. ROSIAK: And I don't have the letter with me but I'm pretty sure your letter said because you said it was over 50 percent... Actually, you used the word 100 percent destroyed, based on value, that I would need a variance to repair.

MR. LEUBNER: Uh, I'd have to go back and look but I think I would disagree with you considering that you came to me for the bathroom first and I have no issued with you reinstating the bathroom for your (?). So, we can certainly look at that further but I have no issue with you repairing it.

MR. ROSIAK: In any case, that's the section that we want to replace, so...

MR. CHABAREK: Do you have anything else to present to the council?

MR. ROSIAK: Is this my summation? (Laughter.) I guess what I'm asking is, it's gonna quite a bit of money to do the repairs that are necessary. I used up all my IRAs so I don't have any money more to put into this. I got a line that I can get to do repairs with. But, needless to say, I can't get that money if I don't get my mercantile. And I can't begin the work until you give me a mercantile, which you so seem to (?). I just urging you to do it, I guess.

MR. CHABAREK: In accordance with Borough Code Chapter 4.9 (b) the council shall render a decision no later than thirty days after the date of making the appeal. The next council meeting is April 5. The council can make a decision either today or they can table this and continue the public hearing and make a decision at the next meeting. There are several decisions available to the governing body where they could uphold the denial. They could overturn the denial and grant license. They could also grant license with certain conditions, as you indicated but it is up to the governing body now, okay?

Council Member D'Arrigo asked if she could ask any questions.

MS. D'ARRIGO: I have some simple questions and probably very simple answers but, um, if I want to get onto the bulkhead, I have to go from the town street across the compromised areas to get on the bulkhead that may not be stable enough for me to stand on? Is that correct?

MR. ROSIAK: I don't think anyone has made that assertion.

MS. D'ARRIGO: Okay but some of the bulkhead is in bits and pieces, correct? From the pictures it looks like

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MR. ROSIAK: Which bulkhead is missing pieces? The tie rods have (?) so the bulkhead in those sections are leaning forward as a result of the erosion

MS. D'ARRIGO: Sir, if I'm standing on the bulkhead that's leaning forward, I'm leaning into the water?

MR. ROSIAK: Not really but

COUNCIL MEMBERER BROULLON: You mean the walkway on top of the section?

MS. D'ARRIGO: As someone who wants to get on to the bulkhead to get into the marina, I have to go from out public street, in some sections, across a section that is compromised, on your property, correct?

MR. ROSIAK: On to the section that I'm going to repair, correct.

MS. D'ARRIGO: On to a bulkhead that maybe leaning because I'm assuming that you want to do all

MR. ROSIAK: I understand your question. It's not leaning this way. It's bowed out as you can see in the picture. It's still vertical but pushed out. We need to pull it back from that entirely.

MS. D'ARRIGO: So, can I ask a legal question here?

MR. CHABAREK: You can.

MS. D'ARRIGO: If I step from our public street onto a compromised private street and I get hurt, or a private area that's a hole that has not been repaired, does the town become liable because we allowed access from our public street on to the private street that has not been repaired and has not been repaired for a couple of years?

MR. CHABAREK: You're asking about a situation that we would take under advisement.

MR. ROSIAK: I think the question you're asking is if I had a hole in my yard that was dangerous and someone walked from the public street and fell in the hole would the town be liable to them? It's a similar situation.

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MS. D'ARRIGO: Not really because I'm not renting a slip from your backyard. I'm renting a slip from a marina that the town has given you a mercantile license on. But I'm saying from the town's point of view, that the access way is okay for me to step on to your marina to get onto something that I'm giving you a license to conduct business on. So, somewhere along the line, I'm wondering where the liability lies if I get hurt. Does it lie with the town because they allowed a mercantile license to you in a compromising position if the town has allowed you to operate this business.

MR. ROSIAK: That's why we are proposing that when we repair those areas...

MS. D'ARRIGO: But you want the license before you repair those areas. Correct?

MR. ROSIAK: Yes I do.

MS. D'ARRIGO: So that gives anybody access to rent a slip from you.

MR. ROSIAK: We certainly have an agreement that those areas that need repairing wouldn't be rented out. I mean, I rent a lot of slips and there are plenty of areas that would not, in any way need to be entered onto. If that is a concern, we can certainly (?).

MS. D'ARRIGO: I would like an answer on the legal aspect on the liability for the town.

Mayor O'Neil asked if anyone from the table had any questions.

Council Member Broullon said that she did.

MS. BROULLON: We have had agreements, three agreement, Mr. Chabarek.

MR. CHABAREK: At least.

MS. BROULLON: At least three agreements in the past ranging from 2012 onwards where the borough and yourself made these agreements that these repairs would be made and it has never happened. So, we've got four years where the bulkhead has not been repaired although we have three agreements in those four years. What's going to make this time different?

MR. ROSIAK: That's a fair question, Carolyn, but we could not have three or four agreements. We only had one. Mr. Chabarek, if you want, produce the other agreements that we had. We only had one written agreement and it was this one that was created in the courtroom and it was this one. Do you have the others that you said you have?

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MR. CHABAREK: I gave up the others.

MS. BROULLON: But still, regardless if it was ten agreements or one agreement, if you didn't honor that agreement why should we trust you honor a new agreement?

MR. ROSIAK: The question was about multiple agreements.

MS. BROULLON: Exactly.

MR. ROSIAK: And there was nothing in here specifically towards the repair of the bulkhead which has since really gotten more (?). As a result of all of the storms (?). That was not part of this agreement, the bulkhead.

MS. BROULLON: Thank you.

MS. D'ARRIGO: I am again confused. Summonses were issued in 2014, yet the bulkhead was compromised after Irene, correct? Am I incorrect on that statement?

MR. ROSIAK: Your incorrect. There was damaged done to the bulkhead by Irene that we made repairs to. We actually ended up tearing everything up.

MS. D'ARRIGO: And then again after Sandy?

MR. ROSIAK: Uh, not really after Sandy. It held up well. What you are looking at in the pictures that Dave showed you here are really issues that have happened over this past season. I had actually, I was hoping Mr. Card was here. I approached him in November about us being able to do the tie tacks. We are aware of it and want to take action on it. I understand your impression but it is not that we agreed to do something for four years and haven't (?).

MR. CHABAREK: Okay.

MR. ROSIAK: You have those other agreements?

MR. CHABAREK: Yes, Mr. Rosiak. I am going to mark them. BH8 is an agreement between the borough of Highlands and RA Multimedia Corp. d/b/a Captain's Cove Marina concerning issues of the 2012 mercantile license which is signed which is signed by Mayor Nolan and yourself on June 12, 2012. You can come up and get a copy. (Pause) Is that your signature on the back of the document on BH8?

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MR. ROSIAK: Yes it is.

MR. CHABAREK: Do you recall that agreement now? Does that refresh your memory?

MR. ROSIAK: Now that you show it to me, yes.

MR. CHABAREK: Also, BH9 is a memorandum agreement between the borough of Highlands and RA Multimedia Corp. d/b/a Captain's Cove Marina which signed by Mayor Nolan and yourself on June 12 and June 13, 2012 which I'll mark as BH9. You can come up and get a copy, Mr. Rosiak.

MS. BROULLON: What was the date of the second agreement?

COUNCIL MEMBER WELLS: I think the first date was...

MR. CHABAREK: June 12th and June 13th, 2012. Is that your recollection about looking at BH9, the other agreement you signed? Is that your signature on the documents?

MR. ROSIAK: Yes, it is. (Pause). I would like to go through these agreements, Mr. Chabarek...

MR. CHABAREK: Let me finish.

MR. ROSIAK: ...because you are giving the impression that there are three agreements that we haven't done anything about and both of these agreements were satisfied.

MR. CHABAREK: That's your position, correct?

MR. ROSIAK: Well, let's go through the (?)

MR. CHABAREK: You're indicating that they are satisfied. That's your position, correct?

MR. ROSIAK: Okay.

MR. CHABAREK: Does council have any other questions on these specific agreements?

MR. ROSIAK: The agreements that Mr. Chabarek mentioned were agreements that were entered into between the marina and the town over giving access to repair the bulkhead from damage and the drainage issue that really caused much of the damage. We gave access to the

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town to enter our property to fix the drains. They gave us access to dead man under the street and to repair those sections of the bulkhead which we did. There was 380 feet of bulkhead that was comprised of these two agreements. And all of these points were satisfied.

MR. CHABAREK: That's a separate part of the bulkhead than we've discussed today, correct?

MR. ROSIAK: That's totally correct.

MR. CHABAREK: Okay.

MR. ROSIAK: These two agreements were not agreements that we knew nothing about. I've satisfied both of them.

MR. CHABAREK: I just want make clear that the bulkhead that we're talking about today that you're representing to the governing body that you're getting to repair is a separate section, correct?

MR. ROSIAK: That is a separate section from these agreements that were repaired.

MR. CHABAREK: Okay.

MR. ROSIAK: What happens over time is that things obviously tear up.

MR. CHABAREK: Okay. Anything else from the governing body.

MRS. WELLS: I would just like to say that I think it is a shame it gets to this point. Quite frankly. (Applause) It should have to get to this point. And I feel like me sitting here it's pitting me against a business owner that's not doing what he should for the people that are renting slips there and the town people that work so hard as clambers so that they can keep paying their mortgages to stay in town and do the right thing. So it's a very, very hard decision that you're kind of putting on us here because I've got some years up and you've been in front of us almost every one of them. So it's not a new thing. It's not a help thing, it's just this one time. This has been going on for numerous years. So, we have to figure out, as a governing body what we're gonna do to keep our people working, keep you in business, and make sure some of these things are done because, you know, I get it. You need the money. You need the mercantile to get the equity to, you know, fix the business. But I don't know what the right answer is. You know, I think we need to discuss it amongst ourselves. Mr. Francy can attest that he's been sitting up here for a lot of the same discussions for a lot of years. So...

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MR. ROSIAK: I'm sorry to ask you to do this, too. I know, you know, Mr. Geoghegan exercised his best judgement and said "You can't have it." Um, these sections of bulkhead are not the same sections that were damaged after Irene, that we repaired after that. It's an old facility. We've held off doing anything, frankly, in the hopes and anticipations that the Army Corp was gonna do something, do something lasting. The damage that now exists that you want repaired is really something that happened after the fall. Those areas I wouldn't have rented out slips to people if it were there. You couldn't get to them. And this is an ongoing maintenance thing. There's 1800' of bulkhead, so sections go.

MS. D'ARRIGO: How many slips are involve here?

MR. ROSIAK: A totally, uh, of ninety slips, I think.

MS. D'ARRIGO: So, after this agreement where you agreed to, um, repair the damaged slips, how many damaged slips were there in 2012 after

MR. ROSIAK: About forty, I think.

MS. D'ARRIGO: So, you only rented half the marina?

MR. ROSIAK: Less than half.

MS. D'ARRIGO: Less than half since 2012?

MR. ROSIAK: Yes. But in 2012 we actually repaired those areas that those forty slips we agreed we wouldn't use. So, we really had the right to rent all the slips but we rented about thirty boats (?). Mostly (?)

MAYOR O'NEIL: Does anybody else?

MR. CHABAREK: Does anyone have anything else?

MAYOR O'NEIL: (?) to get this job taken care of. We've got to get assurances both from you and the town that it's gonna get done. That's all there is to it.

MR. CHABAREK: Is there a motion to continue this hearing to the April 5th meeting? Or an alternative solution?

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MAYOR O'NEIL: I basically thing that we should sit down and come up with something and just deal with that.

MR. CHABAREK: So then there would be a motion to continue the public hearing April 5th (?). Is that correct?

MAYOR O'NEIL: I guess so. Yeah.

MRS. WELLS: I just don't know how it works. Do we kind of talk among ourselves one-on-one and work with you to...

MR. CHABAREK: We'll continue with the dialog when we come back on April 5th. That's the motion and second that you are going to take roll call on.

MS. D'ARRIGO: Are the boats going to be allowed to stay there? The boats that are there right now?

MAYOR O'NEIL: There are a couple of boats there now.

MS. D'ARRIGO: I want to be really clear on the liability issue here.

MR. ROSIAK: There are boats that have been there from last year. I am not renting any slips for this season. The season starts at the end of April.

MS. D'ARRIGO: I want to be really, really clear. I want our borough attorney to make it clear to me that the town is not liable in any way, shape or form, if anyone steps from the road on one of those pieces of property. If those areas have to be tied off or fenced off so that people cannot access through that way, it has to be done because the town currently is in a libelous, or litigious, or whatever you want to call it, position right now, because anywhere along one of those streets, you can walk onto one of your bulkhead and if I get hurt coming from the street, correct me if I am wrong, the town is going to be held liable. So, until the borough attorney gives clear guidance on that, I'm real uncomfortable with this.

MAYOR O'NEIL: To me it seems like we're responsible for the street and he's responsible for his own property. In real theory, you don't have a right to climb on his bulkhead unless you're a paying customer.

MS. D'ARRIGO: So, no one else can do that then?

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MAYOR O'NEIL: Behind the curb line is private property.

MR. ROSIAK: People trespass on it all the time and have their dogs crap there but it's private property.

MS. D'ARRIGO: Brian, can we get some kind of...

MR. CHABAREK: I told you that I would address for next week.

MR. ROSIAK: You can require an indemnification from us on a liability policy.

MAYOR O'NEIL: We will move it to the next meeting but we will have some communication beforehand.

Mayor O'Neil opened the floor to public portion.

Public Comments:

Patricia Phillips of Fourth Street commented on the process of continuing mercantile license for Captain's Cove. Ms. Phillips, as a clammer, voiced her concerns about how this impacts the income of many in the community.

Brian (?) Of 6 Barberie wanted to thank mayor and council for their time. He reminded council of the hard times that Mr. Rosiak has gone through over the years. He suggested that the council make Mr. Rosiak post a surety bond or performance bond. He suggested that the council give Mr. Rosiak a mercantile license with conditions.

Chris Francy of 36 Fifth Street asked for an update on the Valley Street Project.

Arnie Fuog of 50 Valley Street commented on Mr. Rosiak's situation. He stated that he hopes to see the mercantile license issued because he would hate to see the state of the marina after three or four years' neglect.

Lennie (?) of (?) was in favor of giving the mercantile license to Mr. Rosiak and questioned the issue of public safety since there is danger everywhere.

Patricia Phillips of 56 Fourth Street commented on the drains and that it is only a matter of time before a collapse. She also commented on the lack of space on Valley Street.

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Arnie Fuog of 50 Valley Street asked about parking variances.

Mary Saltzman of Snug Harbor expressed concern about sinkholes. She questioned decisions and the criteria by which they are made. She pointed out that it was a shame that the pump station would only work once the marina has been fixed.

Fred Rosiak commented on the flooding on the streets around the marina. He blames the drains under the marina for the flooding. He asked Dale Leubner if he agreed. Mr. Leubner did not agree.

Mary Saltzman of Snug Harbor expressed her confusion about various and sundry ACE projects. She asked about the pump station and if closing the creek was a part of the ACE project.

Mayor O'Neil adjourned the meeting.

Adjourn:

2017 Objectives & 2016 Accomplishments
Highlands Business Partnership - Business Improvement District
Borough of Highlands, Monmouth County

MARKETING/EVENTS & COMMUNICATION

2017 Objectives

- Promote & Expand Event Calendar - Destination Highlands
- Seek and apply for marketing, façade and other available grants.
- Expand fundraising activities.
- 2017 - 2018 Visitor guide.
- Expand Fall marketing campaign to extend the season.
- Expand our Social Media and online marketing presence.
- Expand sponsorship opportunities with local corporations.
- Attend annual regional events to promote Highlands.
- Marketing/advertising at ferry/terminal.

2016 Accomplishments

- HBP obtained five (5) direct sponsors and five (5) Barter Agreements for 2016.
- Served on Monmouth County Tourism Council representing Council.
- Created and Implemented 2016 Event Calendar; Beef and Brew, Chili Cook Off, Guinness Run, Seaport Craft Show, Taste of Highlands, Clam Fest, Oktoberfest (cancelled) Antique & Classic Car Show, Twin Lights Bike Tour, Zombie Parade and Zombie Pub Crawl for Breast Cancer, Holiday Lights Contest and Tree Lighting.
- Expanded event calendar to include Antique & Classic Car Show.
- Expanded social media and online advertising for events.
- Assisted local groups and non-profits with fundraising activities, events, Police Explorers Learning For Life Program, HHRS Tri-District Educational Foundation, HES PTO, Sandy Hook Local PBA, HFD, Highlands Lions Club and HBAC.
- Expanded the Farmers Market to provide for more goods and services.
- Secured and implemented a contract with Outfront for annual billboards.
- HBP staff met with new business owners and provided welcome folders/packages.
- Participated with the Paint the Town Pink program, bringing awareness to the importance of annual mammograms.
- HBP coordinated Ribbon Cutting ceremonies for new businesses with local officials. New members were highlighted on FB, website with photos and a Press Release.
- Press releases were created for each event and distributed to Media list by the HBP
- Continued to maintain Barter relationships.
- New Print Collateral materials were produced on a timely schedule and distributed.
- Worked with local newspapers to support events and local businesses in Highlands.
- Website upgrade to a mobile friendly interactive site to continue promote Highlands events, grand openings, agendas, reports, minutes and photos.
- Database upgrade for HBP members and Highlands organizations to enter events, special, retail promotions and a link to their website and social media pages.

VISUAL IMPROVEMENT COMMITTEE

2017 Objectives

- Bay Avenue Holiday & Street Banners
- Streetscape Phase III – paint program
- Implement additional Murals/Art throughout the community
- Create a sidewalk café ordinance to present to Council

2016 Accomplishments

- Sponsored and implemented a community wide Earth Day Program with various local organizations including PBA, Explorers, Community of Hope, Recreation Committee, Garden Club, Arts Council and volunteers.
- Hufnagel Tree Barter to remove dead trees various district locations.
- Sprinkler Master Barter maintained and repaired sprinkler system in Veterans Park.
- Purchased and maintained existing signs for Highlands Welcome Areas.
- Updated and maintained Way Finding System
- Maintained the Holiday Decorating Program in parks and public areas.
- Expanded the Holiday decorations to include lights, greens and bows on the new decorative street lights.
- Fall plantings at Highway Welcome Sign
- Miller Hill Mural completed.

ECONOMIC DEVELOPMENT

2017 Objectives

- Seek loan/grant programs for existing and new business façade improvements.
- Encourage a fast track process with Borough Officials to attract investment.
- Implement placement of a business directory kiosk for visitors

2016 Accomplishments

- Participated with town officials for noise ordinance amendment. Coordinated and attended training State experts.
- Streetscape coordination with stakeholders and town officials. Ground breaking ceremony was held in Cornwall Square.
- Implemented multi year, multi tier barter agreement with Tri-Bar Services for Drainage and Boardwalk projects at Veterans Park.
- Purchased and provided all materials for new boardwalk at Veterans Park.
- Purchased and installed deck railings for new boardwalk with local contractor.
- Worked with DPW foreman to replace chain link fence to create open space on the waterfront with and purchased and installed deck railings to match the boardwalk with local contractor.

APPROVAL OF MINUTES:

Motion: Approve Minutes of March 15, 2017, **moved** by Councilmember Broullon; **Seconded** by Councilmember Wells.

Vote: Motion carried by roll call vote (summary: Yes = 4; No = 0).

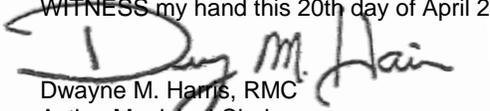
Yes: Councilmembers Broullon, D'Arrigo, Wells and Mayor O'Neil

No: None

Abstain: Councilmember Card

I, Dwayne M. Harris, Acting Municipal Clerk of the Borough of 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 April 19, 2017.

WITNESS my hand this 20th day of April 2017.



Dwayne M. Harris, RMC
Acting Municipal Clerk