

**Borough of Highlands
Mayor and Council
Special Meeting
January 27, 2010**

Mayor Little called the meeting to order at 7:41 P.M.

Mayor Little asked all to stand for the Pledge of Allegiance.

Mrs. Cummins read the following statement: As per requirement of P.L. 1975, Chapter 231. Notice is hereby given that this is a Regular Meeting of the Mayor and Council of the Borough of Highlands and all requirements have been met. Notice has been transmitted to the Two River Times and the Asbury Park Press. Notice has been posted on the public bulletin Board.

ROLL CALL:

Present: Mr. Nolan, Mr. O'Neil, Mr. Francy, Ms. Kane, Mayor Little

Absent: None

Also Present: Carolyn Cummins, Borough Clerk
Bruce Hilling, Borough Administrator
Scott Arnette, Esq., Borough Attorney

Resolutions:

R-10-36

Mr. O'Neil offered the following resolution and moved its adoption:

**R-10-36
RESOLUTION APPOINTING MEMBER OF THE ATLANTIC HIGHLANDS-
HIGHLANDS REGIONAL SEWERAGE AUTHORITY**

WHEREAS, there will be a one position available on the Atlantic Highlands-Highlands Regional Sewerage Authority effective February 2, 2010;

BE IT RESOLVED that the following appointments be and hereby are made:

John Urbanski for the 5 year term to expire 02/01/2015

Seconded by Mr. Francy and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Nolan, Mr. O'Neil, Mr. Francy, Ms. Kane

NAYES: Mayor Little

ABSENT: None

ABSTAIN: None

Ordinances – Introduction & Setting of a P.H. Date

Ordinance O-10-4

Mrs. Cummins read the title of Ordinance O-10-4 for introduction and setting of a public hearing date for February 17, 2010.

Mr. Arnette explained that this is essentially the ordinance that had been in place last year and was rescinded in the last year. It is the same ordinance with some minor modifications. One of the modifications deals with the assessment, there is an assessment cap, which he further explained. The mechanism by which the board of directors of the designated management corporation is selected is slightly different which he further explained. He spoke about a five member BID Steering Committee. This ordinance does not name a designated management corporation. There will need to be a designated corporation but that can be done by a subsequent ordinance.

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Mr. Francy asked that Mayor Little speak about her material that she distributed to the Council on this matter. He believes this ordinance has met all of the criteria that we set out to do with one exception which is an opt out clause which apparently can't happen. He further spoke about this ordinance having a fixed cap assessment. The bottom line is that we want this to be self sufficient. He further spoke about this ordinance and how he is comfortable with this ordinance.

Mayor Little explained that she does not like the ordinance. She explained that she disagrees with Mr. Arnette's assessment that we can cap the assessment with regard to operations. She thinks that there is a definite process for the establishment of a budget. There is a difficulty that she is having with a Steering Committee, she didn't see a provision for a Steering Committee. She then spoke about the handbook that she provided to the Council on Business Improvement Districts. She continues to express her objections to this ordinance.

Mayor Little requested that the following email be inserted into the minutes:

Carolyn,
Please email to Council, atty and cfo. Thank you.
ACL

1. Because the DMC "shall" have the power to administer and manage its own funds {NJSA 40:56-83b(5)}, and the budget shall be submitted to the GB by the SID {NJSA40:56-84a} I don't think the GB can cap the budget based assessment. The GB can amend the budget as long as the GB provides a public hearing on the amendment. {NJSA 40:56-84g} The public hearing is for the benefit of the persons being taxed by the assessment, not the general public.

2. GB can assess SID for costs of development, construction, acquisition relating to improvements for SID. {NJSA 40:56-72} GB can assess SID for costs of operating, maintain and annually improving SID according to adopted plan. {NJSA 40:56-90} in the SID. {NJSA 40:56-86} These assessments are outside the budget process, and therefore GB can CAP assessment and share the costs.

3. SID "shall" have power to make capital improvements {NJSA 40:56-83b(6)-(9)}, provide security, sanitation to those provided by municipality {NJSA40:5683b(11)} and make improvements to SID property to increase safety or attractiveness of district to businesses {NJSA 40:56-83b(12)}. SID "shall" have power to publicize district, recruit new businesses, conduct special events, special parking arrangements, and provide temporary decorative lighting. {NJSA40:56-83b(13)-(17)}

Note: By limiting the SID budget we are limiting the ability of the SID to make improvements like a street scape, a pedestrian mall, a parking garage, a water taxi (see the Atlantic Group Report), underground utilities or Wi-Fi. These capital improvements would not be part of the municipal budget if they were paid for by a SID assessment. They would be paid for by only the properties included in the SID. This could give the residents a break on improvements within the SID.

4. Creating a new SID, i.e. beginning again might require a new Vision Statement, Mission Statement, input and approval from the Planning Board. We might also need to develop and adopt a new plan. Rescinding the December 2 ordinance and amending the plan we adopted for the SID seems more appropriate. Via the adoption of the Atlantic Group Report as the SID plan, we told the SID to run events, create a water taxi, attract more beds and breakfasts, and promote the district. If we are changing our focus, we must tell the SID what our amended plan is and make the appropriate assessments by ordinance. With that information from the GB the SID can adjust its budget accordingly for submission to the GB as required under the statute.

Anna C. Little

Mr. Arnette then responded to each of Mayor Little's comments.

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Discussions continued between the Borough Attorney and Governing Body with regard to the ordinance and a Steering Committee and the establishment of a new management corporation.

Mayor Little stated that she feels uncomfortable because she has a different legal opinion than that of the Borough Attorney with regard to this matter.

Mr. O'Neil stated that he would like Section 7-c of the ordinance to be amended to reflect seven Steering Committee Members verses five members.

Mr. Francy offered the following Ordinance pass first reading and moved on its introduction and setting of a public hearing date for February 17, 2010 at 8:00 p .m.

**O-10-4
AN ORDINANCE CREATING A
BUSINESS IMPROVEMENT DISTRICT
WITHIN THE BOROUGH OF HIGHLANDS**

WHEREAS, the Governing Body of the Borough of Highlands has found that an area within the municipality, as described by lot and block numbers and/or by street addresses in the attached Exhibit A, would benefit from being designated as a Business Improvement District; and

WHEREAS, the Governing Body of the Borough of Highlands finds that the establishment of a Business Improvement District and a later designation of a District Management Corporation would provide administrative and other services to benefit the businesses, employees, residents and consumers in the Business Improvement District; and

WHEREAS, the Governing Body of the Borough of Highlands finds that it is in the best interests of the municipality and the public to create a Business Improvement District and to designate, hereafter, a District Management Corporation which shall include at least one member of the Governing Body of the Borough of Highlands; and

WHEREAS, the Governing Body of the Borough of Highlands finds that a special assessment, which shall not exceed \$5.00, and which shall be imposed and collected by the municipality with the regular property tax payment or payment in lieu of taxes or otherwise, with all or a portion of these payments transferred to the District Management Corporation which will hereinafter be designated, will effectuate the purposes of this Ordinance; and

WHEREAS, the Governing Body of the Borough of Highlands finds that the designation of a Special Improvement District and the assistance of a hereinafter Designated Management Corporation may help the municipality in promoting economic growth and employment within the business district; and

WHEREAS, the Governing Body of the Borough of Highlands find that a self financing Business Improvement District and a designated District Management Corporation will enhance the Borough's local business climate through self help programs by and for the businesses; and

WHEREAS, the Governing Body of the Borough of Highlands recognize that the enabling legislation enacted by the State Legislature gives the Borough the broadest possible discretion in establishing, by local Ordinance, a program that is most consistent with its local needs, goals and objectives.

NOW THEREFORE BE IT ORDAINED by the Mayor and Council of the Borough of Highlands as follows:

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17-1 DEFINITIONS.

As used in this chapter:

Business Improvement District (sometimes also referred to as “District” or “Special Improvement District”) shall mean an area within the Borough of Highlands, designated by this chapter, as an area in which a special assessment on property within the District shall be imposed for the purposes of promoting the economic and general welfare of the District.

District Management Corporation shall mean “Business Improvement District of Highlands, New Jersey, Inc.” (also referred to as “management corporation”), an entity incorporated pursuant to Title 15A of the New Jersey Statutes, and designated by municipal ordinance to receive funds collected by a special assessment within the Business Improvement District, as authorized by this chapter and any amendatory supplementary ordinances.

17-2 FINDINGS.

The Mayor and Council find and declare:

a. That the area within the Borough of Highlands, as described by lot and block number, and by street addresses as set forth in Schedule A of this chapter, will benefit from being designated as a Business Improvement District.*

b. That it is in the best interests of the municipality and the public to create a Business Improvement District and hereafter to designate a district management corporation.

c. That a district management corporation would provide administrative and other services to benefit the businesses, employees, residents and consumers in the Business Improvement District. These services shall be over and above the services already provided to the District by the Borough.

d. That a special assessment, which shall be capped at \$5.00 per property owner, shall be imposed and collected by the borough with the regular property tax payment or payment in lieu of taxes or otherwise, and that all of these payments shall be transferred to the district management corporation to effectuate the purposes of this chapter and to exercise the powers given to it by this chapter.

e. That the business community should be encouraged to provide self-help and self-financing programs to meet local business needs, goals and objectives.

17-3 CREATION OF DISTRICT.

a. There is hereby created and designated within the Borough of Highlands a Business Improvement District to be known as the Highlands Business Improvement District consisting of the properties designated and listed on Schedule “A” by tax lot and block number and street addresses. The Business Improvement District shall be subject to special assessments on all affected property within the District, which assessment shall be capped at \$5.00 per property, and shall be imposed by the Borough of Highlands for the purposes of promoting the economic and general welfare of the District.*

The rental apartments containing five or more units on the attached Schedule A* as Class 4c are hereby included within the Special Improvement District as established by this Ordinance.

All properties included on Schedule A* as Class 4 income producing properties hereto are hereby deemed to be included within the Special Improvement District as established by this Ordinance and Class I vacant properties supporting a commercial ferry use are hereby deemed to be included within the Special Improvement District established by this Ordinance.

* **Editor’s Note:** Schedule A can be found on file in the Office of the Borough Clerk.

* **Editor’s Note:** Schedule A may be found on file in the Office of the Borough Clerk.

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17-4 APPEAL OF PROPERTY OWNER FROM INCLUSION IN THE DISTRICT.

Any owner of property included within the Business Improvement District and subject to the assessing provisions of this chapter may appeal to the Tax Assessor of the Borough of Highlands, requesting to be excluded from the District and from any assessment provisions of this chapter. This appeal is only as to whether or not a property should be included within the District under the standards set forth in Section 17-3. It is not an appeal with regard to any taxes. Appeals with regard to taxes should be taken in the usual manner to the Monmouth County Board of Taxation or to the Tax Court. This appeal seeking exclusion from the District and any assessment provisions of this chapter, shall be in writing and specifically detail the factual basis for the appeal. The Assessor shall investigate the matter and conduct an informal hearing or conference within thirty (30) days of receipt of the appeal. Within ten (10) days after the conclusion of the informal hearing or conference, the Assessor shall file a report and recommendation with the governing body. The governing body shall review the matter and act within thirty (30) days upon receipt of the report and recommendation from the Assessor.

17-5 ASSESSMENTS.

a. *Operation and Maintenance of District.* Annual operation and maintenance costs relating to services peculiar to the District, as distinguished from services normally provided by the borough, will provide benefits primarily to the properties included within the District rather than to the borough as an entirety. These annual costs shall be assessed and taxed to the benefited properties pursuant to the provisions of this chapter and N.J.S.A. 40:56-65, et seq., but shall not exceed \$5.00 per property. The other funds necessary for the operation and maintenance of the district shall be secured from other sources than the assessment.

b. *Development, Construction, or Acquisition Costs.* All costs of development, construction and acquisition relating to improvements to the District shall be financed and assessed to properties especially benefited thereby. The Borough may, by separate ordinance, or by amendment to this chapter provide that improvements and facilities hereinafter acquired or developed shall be operated and maintained and the costs assessed to the benefited properties.

17-6 THE DESIGNATED DISTRICT MANAGEMENT CORPORATION.

A non-profit corporation shall hereinafter be designated as the district management corporation for the District, which corporation shall have its principle place of business and office at Borough Hall at 171 Bay Avenue, Highlands, NJ. This management corporation shall conduct its business in accordance with the law. This corporation shall have no power of condemnation or eminent domain. It shall regularly file copies of the minutes of its meetings with the Borough Clerk so the minutes shall be conveniently available to the public for inspection.

17-7 POWERS OF THE DESIGNATED DISTRICT MANAGEMENT CORPORATION.

The district management corporation, in addition to acting as an advisory board to the mayor and council, shall have all powers and responsibilities necessary and requisite to effectuate the purposes of this chapter and the District, including, but not limited to:

a. Adopting bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties; the bylaws and other corporate documents shall provide that the corporation shall conduct its business in accordance with the law and shall hold regular meetings no less than quarterly.

b. Appointing a Board of Directors which shall consist of 21 members. As to the membership of the Board of Directors it shall include (1) a member of the governing body selected by the governing body; (2) a member of the Borough Planning Board selected by the governing body; (3) one resident of the borough who shall not be an owner or occupant of

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commercial property within the District, selected by the Governing Body. All of these appointments shall serve at the pleasure of the appointing authority.

The Board of Directors shall also include one non-voting member appointed from bodies such as: (1) Northern Monmouth Area Chamber of Commerce; (2) Gateway National Park; (3) Twin Lights Historic State Park; and (4) New Jersey Department of Transportation. The members appointed by these bodies shall serve at the pleasure of the appointing body.

The remaining 14 members of the Board of Directors shall consist of owners or occupants of commercial property located within the District. The bylaws shall provide for an election to the Board of Directors by owners and/or occupants of commercial property included within the District, which election shall be held on or before the third month anniversary from the date of the adoption of the Ordinance designating the District Management Corporation. Said elections will be for a term of three years, except, however, at the first election five members shall be elected for one year; four members shall be elected for two years and five members shall be elected for three years. Any vacancies with regard to these elected members shall be filled by a majority vote of the remaining Board members for the balance of the term. The Board shall provide annual reports on its membership.

c. The Mayor and Council will designate a 7 person BID Steering Committee from the Board of Directors who shall carry on the duties of the non-profit corporation, to include securing corporate and non-profit status and creation of bylaws, form a nominating and election committee and utilize technical assistance of the League of Women Voters. The BID Steering Committee shall not expend or commit any district management corporation funds without a majority vote of the full Board of the BID Committee members. The BID Committee shall elect from its membership a director, who shall be the Chief Officer of the Committee and of the Designated Management Corporation.

d. The Designated Management Corporation shall also:

1. Employ such persons as may be required, and fix and pay their compensation from funds available to the corporation.
2. Apply for, accept, administer and comply with the requirements respecting an appropriation of funds or a gift, grant or donation of property or money.
3. Make and execute agreements which may be necessary or convenient to the exercise of the powers and functions of the corporation, including contracts with any person, firm, corporation, governmental agency or other entity.
4. Administer and manage its own funds and accounts and pay its own obligations.
5. Borrow money from private lenders for periods not to exceed 180 days and from governmental entities for that or longer periods.
6. Fund the improvement for the exterior appearance of properties in the District through grants or loans. Standards for eligibility and standards for terms of such grants and loans shall be established by the Board of Directors.
7. Fund the rehabilitation of properties in the District through grants or loans. Standards for eligibility and standards for terms of such grants and loans shall be established by the Board of Directors.
8. Accept, purchase, rehabilitate, sell, lease or management property in the District.
9. Enforce the conditions of any loan, grant sale or lease made by the corporation.
10. Provide security, sanitation and other services to the District, supplemental to those provided normally by the municipality.
11. Undertake improvements designated to increase the safety or attractiveness of the District to businesses, which may wish to locate there or to visitors to the District including, but not limited to, litter cleanup and control, landscaping, parking areas and

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facilities, recreational and rest areas and facilities, pursuant to pertinent regulations of the Borough of Highlands.

12. Publicize the District and the businesses included within the District boundaries.
13. Recruit new businesses to fill vacancies in, and to balance the business mix of, the District.
14. Organize special events in the District.
15. Provide special parking arrangements for the District.
16. Provide temporary decorative lighting in the District.

17-8 ANNUAL BUDGET, HEARING AND ASSESSMENTS.

a. The fiscal year of the District and of the management corporation shall be the calendar year. The first budget shall be submitted by the District Management Corporation within 45 days after its designation by Ordinance. Then, beginning December 1, 2010, the district management corporation shall submit no later than December 1 of each year a detailed annual budget for the following year for approval by the mayor and council. The budget shall be processed and adopted by the borough on or before April 1st of each year in accordance with the procedures set forth in N.J.S.A. 40:56-84.

b. The budget shall be submitted with a report, which explains how the budget contributes to goals and objectives for the Business Improvement District together with the following:

1. The amount of such costs to be charged against the general funds of the municipality, if any.
2. The amount of costs to be charged and assessed against properties benefited in the District in proportion to benefits which shall be the aggregate of costs of annual improvements to be made in the District during the year with the assessment against each property not to exceed \$5. per property.
3. The amount of costs, if any, to be specially assessed against properties in the District.

c. Each year, when the mayor and council shall have acted on the estimated costs and/or on the budget, the municipal assessor shall prepare an assessment roll setting forth separately the amounts to be specially assessed against the benefited and assessable properties in the District. Descriptions of such properties, and the names of the ten current owners of such properties, so far as names are available, shall be included in each annual assessment roll. The assessment rolls, when so prepared, shall be filed in the office of the municipal clerk and be there available for inspection. The mayor and council shall annually meet to consider objections to the amounts of such special assessments at least 10 days after a notice of hearing has been published once in the official newspaper and mailed to the named owners of all tracts, parcels and lots of property proposed to be assessed. The notice shall set forth the purpose of such meeting, but may refer to the assessment roll for further particulars. When the governing body shall have approved the amounts of the special assessments set forth therein, or as may be changed by it, the municipal clerk shall forthwith certify a copy of the assessment roll, with such changes, if any to the Monmouth County Tax Board.

d. For the purpose of this section, "annual improvements" shall mean and include any reconstruction, replacement or repair of trees and plantings and other facilities of the Business Improvement District and the furnishing of any other local improvement which benefits properties within the District. For the purpose of this act, "costs" shall, with respect to annual improvements to and operation and maintenance of the Business Improvement District, mean costs of annual improvements; and all other costs, including planning costs, incurred or to be incurred in connection with annual improvements to and operation and maintenance of the District.

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e. Moneys appropriated and collected on account of annual improvement costs, and costs of operating and maintaining a Business Improvement District, shall be credited to a special account. The mayor and council may incur the annual costs of improving, operating and maintaining a Business Improvement District, during any fiscal year, though not specifically provided for by line item or other category in an approved estimate for such fiscal year, it in its discretion it shall be deemed necessary to provide for such annual improvements or operation or maintenance prior to the succeeding fiscal year and so long as the total amount of the account as approved for that year is not exceeded by that expenditure. Any balances to the credit of the account and remaining unexpended at the end of the fiscal year shall be conserved and applied towards the financial requirements of the succeeding year.

f. The mayor and council shall pay over funds to the management corporation quarterly on the first day of March, June, September and December of each year.

17-9 ANNUAL AUDIT OF DISTRICT MANAGEMENT CORPORATION.

The district management corporation shall cause an annual audit of its books, accounts and financial transactions to be made and filed with the mayor and council and for that purpose the corporation shall employ a certified public accountant of New Jersey. The annual audit shall be completed and filed with the governing body within four months after the close of the fiscal year of the corporations, and a certified duplicate copy of the audit shall be filed with the Director of the Division of Local Government Services in the Department of Community Affairs within five days of filing of the audit with the mayor and council.

17-10 ANNUAL REPORT TO MUNICIPALITY.

The district management corporation shall, within thirty days after the close of each fiscal year, make an annual report of its activities for the preceding fiscal year to the mayor and clerk of the borough.

17-11 MUNICIPAL POWERS RETAINED.

Notwithstanding the creation of a Business Improvement District, the Borough of Highlands expressly retains all its powers and authority over the area designated as within the Business Improvement District. No improvements or modifications shall be made to any public property without the prior formal approval of the borough governing body.

17-12 SEVERABILITY.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such holding shall not affect other provisions of this chapter and to this end the provisions of this chapter are severable.

17-13 EFFECTIVE DATE.

This chapter shall take effect immediately after passage and publication as required by law. This chapter shall expire at the end of 2010 unless re-enacted by the mayor and council of the Borough of Highlands prior to December 31, 2010. Upon the first anniversary of the Business Improvement District, this chapter will expire unless the Board of Directors recommends the continuation of the BID with the approval of the mayor and council.

Seconded by Mr. Nolan and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Nolan, Mr. O'Neil, Mr. Francy, Ms. Kane
NAYES: Mayor Little
ABSENT: None

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ABSTAIN: None

**ATTACH EXHIBIT A
LISTING HERE**

HIGHLANDSNJ.COM

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Discussion RE: Resolution R-10-25 Council Memo

Mrs. Cummins explained that the Council adopted Resolution R-10-25 at the last meeting which was a Resolution in opposition of the bridge signs. This Resolution has been transmitted to the surrounding towns and legislators.

Mr. Francy – at this point I have asked Ms. Cummins to draft a memo for the Mayor to sign to put a little more emphasis on organizing an approach to various councils.

Mayor Little will sign a letter for the Clerk to send to NJDOT and all that are listed to be copied on the draft letter.

Public Portion:

Donna O'Callaghan of 29 South Bay Avenue stated that she is glad that a letter is being sent out with Resolution R-10-25. She asked all to look at a petition that is going around and perhaps sign it.

There were no further questions or comments.

Mayor Little closed public portion.

Mr. Nolan offered a motion to adjourn the meeting, seconded by Mr. Kane and all were in favor.

The Meeting adjourned at 8:13 p.m.

CAROLYN CUMMINS, BOROUGH CLERK