

**Borough of Highlands  
Mayor & Council  
Special Meeting  
August 8, 2012**

Mayor Nolan called the meeting to order at 7:30 p.m.

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

**ROLL CALL:**

**Present: Mr. Redmond, Mr. Francy, Mayor Nolan**

**Absent: Mr. O'Neil, Ms. Kane**

**Also Present: Carolyn Cummins, Borough Clerk**

**Timothy Hill, Borough Administrator**

**Dale Leubner, Borough Engineer**

**Rob Keady, Borough Engineer**

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Mrs. Cummins read through the following statement: As per requirement of P.L. 1975, Chapter 231. Notice is hereby given that this is a Special Meeting of the Mayor & Council of the Borough of Highlands 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.

**Hearing on Revoking Mercantile License for RA Multimedia Corp. d/b/a Captains Cove Marina:**

Salvatore Alfieri, Esquire, explained that the hearing procedure to revoke mercantile license will be given by the Borough then cross examination will be given by the business owner's attorney. The public will be able to question after.

Mr. Alferie swore in Borough Administrator Mr. Timothy Hill of 33 3<sup>rd</sup> Avenue, Atlantic Highlands, NJ.

Mr. Alferie asked Mr. Hill to give a summary of the facts.

Mr. Hill explained the Borough's action with Mr. Rosiak since the hurricane. Mr. Rosiak has been given ample opportunity to comply any and all provisions that have been put forth for the Marina project repair. He never stated that he would not do these repairs. As of Wednesday, August 8<sup>th</sup>, 2012 there have been no direct efforts to repair the impacted areas of the bulkhead.

Mr. Alferie marked in to evidence R-12-90 – Resolution Authorizing Execution of Agreements. This was marked as P-1.

Mr. Hill explained the conditional mercantile license.

Mr. Alferie marked in to evidence R-12-137 Resolution Agreement. This was marked as P-2. He explained that the 45 day period has expired.

The Mercantile License was marked in to evidence as P-3.

Mr. Alferie asked if there were any questions for the administrator.

Mr. Rosiak stated that he thought the meeting started at 8:00 p.m.

Notice of Hearing was marked as P-4.

Mr. Alferie swore in Robert Keady, Jr., Special Engineer, T&M 11 Tindall Road, Middletown, NJ and he is also the Borough Engineer.

Mr. Keady stated that he has been involved in the project for twelve months. He visited the site today at 6:40 p.m. The current conditions are the same. Regarding equipment; there is an excavator on site, a bobcat, a container, a machine with wire to a bucket with pilings on it, a

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mark out is to be performed. It did not look like any work had commenced. He further explained areas of disrepair. He explained the road repairs and can not be performed until the bulkhead is fully restored.

Mr. Rosiak questioned Mr. Hill about his visit to the office on Friday to formalize the road closing and to pay for the permit.

Mr. Hill stated that he applied for a road opening permit. We would close the road predicated on when we were notified of when the work was to begin. Generally, it is a 48 hour notice.

Mr. Rosiak questioned Mr. Keady. He asked if he walked down to Recreation Place.

Mr. Keady said he did not walk down to end of Recreation Place. He did not see work on deadmen. He saw excavator, bobcat, a container, and a piece of equipment floating with a bucket on it. He stood adjacent to the Marina lot. It did not appear that work had commenced. He said the bulkhead has not been replaced. No work had commenced on the bulkhead.

Mr. Rosiak spoke about preparatory work being done, and equipment on site.

Mr. Keady stated there is equipment on site but did not visually see some of the items he is referring to

Mr. Alferie stated that direct testimony has ended. Mr. Rosiak can now testify.

Mr. Alferie swore in Mr. Fred Rosiak of 9 Marina Place and the owner of Captains Cove Marina.

Mr. Rosiak spoke of the agreement that was signed on the 13<sup>th</sup> or 14<sup>th</sup> of June. Since then, he has had a series of personal problems. He called contractors to get prices. He said the contractors told him this is their busiest time of year. He decided to do the work himself. The excavator, the lease, materials took longer than he thought. He further explained the delays. He stated that Mr. O'Neil was appointed to be his coordinator. He made several attempts to speak with him. He has not responded. We are ready to go. Work has commenced. Maybe not enough that people would like to see. He believes he fulfilled his agreement.

Mr. Alferie spoke of the preparatory work. He asked if there is reason why this wasn't done before signing the agreement.

Mr. Rosiak stated that the agreement work was to commence in 45 days.

Mr. Edward McKenna, Esquire, representing Mr. Rosiak arrived at 8:12 p.m.

Mr. McKenna spoke with Mr. Padula about personal circumstances concerning Mr. Rosiak. There was no lack of communication on either side. He further explained about the communications and spoke of the equipment and access to the deadmen.

Mr. Rosiak explained his attempts to speak with Mr. O'Neil as coordinator of this project. He spoke with him once. Mrs. Cummins can verify this.

Mr. McKenna spoke about the equipment delivery and malfunction. The delivery was late. He has responded to all of Mr. Padula's calls. They have done everything they could in keeping the lines of communications open. The work will commence no later than this week. He further explained the agreement, changes and revisions.

Discussion continued with Mr. McKenna and the Governing Body.

Mr. McKenna stated that everything is ready to go. All agreements have been finalized. He feels comfortable to representing to the council that things are underway.

Mayor Nolan asked about date of completion.

Mr. Alferie would like a time line.

Mr. Rosiak stated that two large crews gave them a date of 60 days once they started. He is anticipating 90 days.

Mr. Alferie asked to give the council an idea of what will take place in the next 30 days.

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Mr. Rosiak stated that we would pull a 1<sup>st</sup> section of the bulkhead. We will start by the drain area and pull out approximately 50' of the bulkhead. He further explained.

Mr. McKenna stated that he would like to reserve because of lateness in mix up of start time.

Mr. Rosiak stated that a neighbor, Mr. Bentham, has been circulating information.

Mr. Francy stated that their 90 days puts road repair in the winter. The road repair won't be done until the spring.

Mr. Rosiak said we will get this done as quickly as possible.

Mayor Nolan opened the public portion.

Public Portion:

Jacqueline Garrison of 5 Barberie Avenue, Highlands, NJ was sworn in.

Mrs. Garrison asked what will happen if we have a storm during the 90 days. She is worried about the water coming up further.

James Garrison – passed.

Pat Phillips of 56B 4<sup>th</sup> Street, Highlands, NJ was sworn in.

Mrs. Philips said we need to get this done. Do not vote to stop the work.

John Bentham of 39 Washington Avenue, Highlands was sworn in.

Mr. Bentham stated that if we get a storm, we will lose Washington Avenue, sewer system and gas system. He further explained.

Dale Leubner, T&M Associates, Representative of Borough Engineer's Office, 11 Tindall Road, Middletown, NJ.

Mr. Leubner explained the right of way line is along the back of the existing curb and roadway. That property is Mr. Rosiak's.

Mr. Bentham feels that signs should be posted stating private property and no trespassing. If 50' of the bulkhead is pulled and we get a storm, we will lose everything. We need to expedite the repairs.

Nancy of 22 Huddy Avenue – no comment

Brian Cobb of 11 Recreation Place was sworn in.

Mr. Cobb asked about revoking Mr. Rosiak's mercantile license, should that go forward? Would Mr. Rosiak be allowed to continue work?

Mr. Alferie stated it would only stop him from doing business not from doing the repairs.

Mr. Cobb questioned the enforcement of revoking the license.

Mr. Alferie stated we will have Code Enforcement issue tickets and go to Municipal Court or Superior Court to get an order to close down the business, removing boats.

Mr. Cobb asked if it is possible to go for eminent domain to take over the marina.

Mr. Alferie responded that it is always an option if state statute allows it.

Sharon Bentham of 39 Washington Avenue, Highlands, NJ was sworn in.

Mrs. Bentham explained that she enjoys walking down Washington Avenue. She does not want tax dollars to pay to fix the road.

John F. Bentham of 39 Washington Avenue, Highlands, NJ was sworn in.

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John F. Bentham stated that he has been to one council meeting to discuss the marina issue. He expressed his concerns and frustrations with Mr. Rosiak.

Michelle O'Reilly of 20 Barberie Avenue, Highlands, NJ was sworn in.

Mrs. O'Reilly spoke of her concerns and frustrations with the bulkhead collapse. She described a recent incident with her dog and Mr. Rosiak.

Mr. McKenna interrupted the meeting, stating that there are too many comments that have nothing to do with this hearing.

Mayor Nolan stated to limit comments to marina.

Michelle O'Reilly stated that the marina is a safety hazard. She further explained the conditions of the marina.

Zach Fitch of 10 Barberie Avenue, Highlands, NJ was sworn in.

Mr. Fitch agrees that time has been wasted. He spoke of loss of landscaping because of this situation. He never had a problem with Mr. Rosiak. His biggest concern is of the 50' gap when the wall is removed. What will go in its place temporarily to prevent flooding?

John Macalear of 52 Barberie Avenue, Highlands, NJ was sworn in.

Mr. Macalear questioned what would be gained if we revoke his license. If he is losing income, it may impact his ability to do the work. We should keep that in mind.

Frank McGlocklin of 24 Barberie Avenue, Highlands, NJ was sworn in.

Mr. McGlocklin stated that he has water in his yard every high tide. He further expressed his concerns. It's been 11 ½ months later and no repairs yet. He wants council to take action to make repairs.

Frank Thomas of 49 Huddy Avenue, Highlands, NJ was sworn in.

Mr. Thomas stated that tensions are at a breaking point. We need to get repairs started but stop attacking Mr. Rosiak. He is the one who has to repair this. Mr. O'Neil is out of town a lot because of his work. Maybe we should appoint someone else.

Edward McKenna gave his closing statements. He has sympathy and understanding for the frustration of the people who have spoken about the conditions. The answer is, is that we need to get this fixed. If there is a revocation of the license, there will be litigation. There is no benefit to the Borough to pull his license. Mr. Rosiak is not intentionally dragging his feet but has a lot of personal issues.

Mayor Nolan stated that it seems when it's a last case scenario; that is when things get started. He further explained. We need something to guarantee an end game.

Discussion continued between Council and Mr. McKenna.

Mr. Francy feels we lack a date.

Mayor Nolan asked Mr. Keady how long it would take.

Mr. Keady stated that if we go thru the bid process, award and contracts are in place, it would take 90 to 120 days. If there are emergency conditions, we can shorten the process.

Mr. McKenna stated that everyone wants it repaired.

Mr. Alferie closed the public portion and testimony. We can now go in to Executive Session.

Mayor Nolan offered the following Resolution and moved its adoption:

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R-12-171  
RESOLUTION  
EXECUTIVE SESSION**

**BE IT RESOLVED** that the following portion of this meeting dealing with the following generally described matters shall not be open to the public:

**1.Litigation:**

**2.Contract:**

**3.Real Estate:**

**4. Personnel Matters:**

**5. Attorney-Client Privilege:**

**6. Deliberation: Captains Cove Marina Mercantile License**

**BE IT FURTHER RESOLVED** that it is anticipated that the matters to be considered in private may be disclosed to the public at a later date when the need for privacy no longer exists; and

**BE IT FURTHER RESOLVED** that no portion of this meeting shall be electronically recorded unless otherwise stated; and

**BE IT FURTHER RESOLVED** that the private consideration is deemed required and is permitted because of the following noted exceptions set forth in the Act:

1. Rendered confidential by Federal law or that if disclosed would impair receipt of Federal funds.
2. Rendered confidential by State Statute or Court Rule.
3. Would constitute an unwarranted invasion of individual privacy.
4. Deals with collective bargaining, including negotiation positions.
5. Deals with purchase, lease or acquisition of real property with public funds.
6. Related to setting of bank rates or the investment of public funds and disclosure could adversely affect the public interest.
7. Related to tactics and techniques utilized in protecting the safety and property of the public disclosure may adversely affect the public interest.
8. Related to investigation of violations or possible violations of the law.

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9. Related to pending or anticipated litigation or contract negotiations in which the public body is or may be a party.
10. **Falls within the attorney-client privilege and confidentiality is required.**
11. Deals with personnel matters of public employees and employee has not requested that the matter be made public.
12. **Quasi-judicial deliberation after public hearing that may result in imposition of a civil penalty or suspension or loss of a license or permit.**

**BE IT FURTHER RESOLVED** that action may be taken after the executive session.

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

**ROLL CALL:**

**AYES:** Mr. Redmond, Mr. Francy, Mayor Nolan

**NAYES:** None

**ABSENT:** Mr. O'Neil, Ms. Kane

**ABSTAIN:** None

The Governing Body then entered into Executive Session.

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Mayor Nolan called the Special Meeting back to order at 9:55 p.m.

**ROLL CALL:**

**Present:** Mr. Redmond, Mr. Francy, Mayor Nolan

**Absent:** Mr. O'Neil, Ms. Kane

**Resolution Concerning Mercantile License for Captains Cove Marina – Possible:**

Mr. Alferie stated that this is not a discussion that the public can participate in. The Council needs to have a dialogue with Mr. McKenna's client as to time lines. We are considering to carry the action regarding the license to the September 19<sup>th</sup> Council Meeting with the right to have a special meeting at any time between now and then if the time lines are not met. If there is a deviation of the plan, council will take action prior to September 19<sup>th</sup>.

Mr. Rosiak stated that they plan on starting at the eastern end section by Recreation Place and work back toward Cheerful Place. This area includes slips 27-34 where it collapsed. The removal of the bulkhead section will commence by August 23<sup>rd</sup>. Driving replacement piling will be completed by September 6<sup>th</sup>. He is uncomfortable with giving time lines.

Mr. McKenna asked why don't we come up with things to be completed by September 15<sup>th</sup>, such as; removal of the bulkhead and replacement pilings.

Mr. Rosiak feels he can not commit to 30 days to complete and then the contractor says he can't do it in that time frame.

Mr. McKenna said before September 19<sup>th</sup>, they will submit a progress report.

Mr. Francy stated that September 19<sup>th</sup> is 41 days, wants sheets driven by then.

Mr. Rosiak said driving the sheets takes more time.

Discussion continued.

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Mr. Francy said we have 150' of sheathing on the bulkhead that will be completed by 45 days. The balance of the job will be finished in an additional 45 days.

Mr. Rosiak said his goal is to do that.

Mr. Alferie summarized the agreement. This will be carried to the September 19<sup>th</sup> meeting but we can have a special meeting prior to take formal action.

Mr. Alferie read Resolution R-12-172 into the record.

Mayor Nolan offered the following Resolution and moved on its adoption:

**R-12-172**

**RESOLUTION RELATING TO CAPTAIN'S COVE MARINA MERCANTILE  
LICENSE**

**Whereas**, on August 8, 2012 the Mayor and Council conducted a public hearing to consider the revocation of Mercantile License No. 129 issued to RA Multimedia Corp. d/b/a Captain's Cove Marina ("Licensee"); and

**Whereas**, at the public hearing the Licensee testified as to the current status of repairs of the damaged bulkhead and projected a timeline for completion of all work associated therewith; and

**Whereas**, the Mayor and Council considered the testimony of the Borough Officials and Professionals, the Licensee and members of the public.

**Now, therefore, be it resolved** by the Mayor and Council of the Borough of Highlands, that the public hearing on the revocation shall be carried to September 19, 2012 without further notice to the Licensee and public subject to the following conditions:

1. Licensee shall commence the repair work by August 13, 2012.
2. Licensee shall remove the bulkhead between slips 27 and 34 by no later than August 23, 2012.
3. Licensee shall drive replacement piles in the area of the removed bulkhead by September 6, 2012.
4. Licensee shall have the sheathing down for one-half of the bulkhead length (approximately 150 feet) by no later than September 19, 2012.
5. Licensee shall complete the bulkhead repair project pursuant to the approved plans by no later than October 31, 2012.
6. The Borough may call a special meeting at any time prior to the carried meeting date of September 19, 2012 to consider the license revocation if Licensee fails to abide by the repair schedule set forth above.
7. The Borough reserves the right to repair the road adjacent to Captain's Cove, at any time, if it is determined that an emergency exists that impacts the health, safety or welfare of the Borough residents.

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

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**ROLL CALL:**

**AYES: Mr. Redmond, Mr. Francy, Mayor Nolan**

**NAYES: None**

**ABSENT: Mr. O'Neil, Ms. Kane**

**ABSTAIN: None**

There were no further questions.

Mayor Nolan offered a motion to adjourn, seconded by Mr. Redmond and all were in favor.

The Meeting adjourned at 10:12 P.M.

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Debby Dailey, Deputy Clerk