

Ms. Kane offered the following Ordinance pass third and final reading and moved on its adoption and authorized its publication according to law:

O-11-9

**AN ORDINANCE REPLACING ORDINANCE O-10-4 AND O-10-24
AN ORDINANCE RE-ENACTING CHAPTER 17 OF THE REVISED GENERAL
ORDINANCES OF THE BOROUGH OF HIGHLANDS THAT ESTABLISHED A
BUSINESS IMPROVEMENT DISTRICT WITHIN THE BOROUGH OF HIGHLANDS**

**Chapter XVII
Business Improvement District**

WHEREAS, the Mayor and Council regard the business community as a vital economic and social force in the Borough of Highlands; and

WHEREAS, residents and business people of the Borough have urged the adoption of an ordinance re-creating a Business Improvement District, as well as the designation of a non-profit corporation to manage the anticipated services and program of the Business Improvement District; and

WHEREAS, it is contemplated by the Mayor and Council, working in conjunction with the business community that in the future further action will be taken to meet the needs and desires of the greater business community which action may result in an amendment to this Ordinance.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Highlands, pursuant to N.J.S.A. 40:56-65 et seq., as follows:

17-1 Definitions.

- a. "Business Improvement District" (sometimes also referred to as "District" or "Special Improvement District") means an area within the Borough of Highlands, designated by this Ordinance, 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.
- b. "District Management Corporation" means "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 Ordinance 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 ordinance, will benefit from being designated as a Business Improvement District.
- b. 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, **provided, however, that no assessment shall be collected from Shore Landings, L.L.C. unless the decision of the Superior court, Law Division in Shore Landings v. Borough of Highlands is modified or reversed by appeal or agreement.**

All the 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.

- 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 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 ordinance and to exercise the powers given to it by this ordinance.
- e. That it is in the best interests of the municipality and the public to create a Business Improvement District and to designate a district management corporation.

- f. 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 imposed by the Borough of Highlands for the purposes of promoting the economic and general welfare of the District.
- b. All business properties within the Business Improvement District, including all private, non-residential assessed properties, are deemed included in the assessing provisions of this ordinance and are expressly subject to potential assessment made for Business Improvement District purposes
- c. All properties within the Business Improvement District that are tax-exempt or are used exclusively for residential purposes, are deemed excluded from the assessing provisions of this ordinance and are expressly exempt from any assessment made for Business Improvement District purposes.

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 ordinance, 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 Ordinance.

This appeal is only as to whether or not a property should be included within the District under the standards set forth in Section 3 of this Ordinance. 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 Ordinance, 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 Ordinance and N.J.S.A. 40:56-65, et seq.
- 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 ordinance, 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

The non-profit corporation, Highlands Business Partnership, Inc., is hereby designated as the district management corporation for the District. This management corporation shall conduct its business in accordance with the Open Public Meetings Law, and all of its operations shall be subject to the Open Public Records Act (OPRA). This corporation shall have no power of condemnation or eminent domain.

To comply with the provisions of OPRA, the corporation shall maintain its records at the Highlands Borough Hall and 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 Ordinance and the District, including, but not limited to:

- a. Adopt 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 Open Public Meeting Law; shall conduct regular meetings no less than quarterly and that the Board of Directors shall consist of twenty-one (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 commercial property within the District. All of these appointments shall serve at the pleasure of the appointing authority.

Additionally the Board of Directors shall consist of 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
4. Not Named

The members appointed by these bodies shall serve at the pleasure of the appointing body. The remaining fourteen (14) members of the Board of Directors shall consist of owners or occupants of commercial property located within the District. The Mayor and Council will designate the BID Steering Committee members to 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, utilize technical assistance of the League of Women Voters. The BID Committee shall not expend or commit any district management corporation funds without a simple majority vote of BID Committee members. The bylaws shall provide for an election to create 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. Said elections will be for a term of three years, except, however, at the first election five members shall be elected for one (1) year; four members shall be elected for two (2) years and five members shall be elected for three (3) years. Any vacancies with regard to these elected members shall be filled by a majority vote of the Board members for the balance of the term.

- a. Employ such persons as may be required, and fix and pay their compensation from funds available to the corporation.
- b. Apply for, accept, administer and comply with the requirements respecting an appropriation of funds or a gift, grant or donation of property or money.
- c. 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.
- d. Administer and manage its own funds and accounts and pay its own obligations.
 - e. Borrow money from private lenders for periods not to exceed 180 days and from governmental entities for that or longer periods.
 - f. 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.
 - g. 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.
 - h. Accept, purchase, rehabilitate, sell, lease or management property in the District.
 - i. Enforce the conditions of any loan, grant sale or lease made by the corporation.
 - j. Provide security, sanitation and other services to the District, supplemental to those provided normally by the municipality.
 - k. 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 facilities, recreational and rest areas and facilities, pursuant to pertinent regulations of the Borough of Highlands.
 - l. Publicize the District and the businesses included within the District boundaries.
 - m. Recruit new businesses to fill vacancies in, and to balance the business mix of, the District.
 - n. Organize special events in the District.
 - o. Provide special parking arrangements for the District.
 - p. 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 has been approved by the Mayor and Council. Hereafter, beginning December 1, 1999, 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.
 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 roll, 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.
- 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 maintain 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, if 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 30 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 designed 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 Ordinance or the application thereof to any person or circumstance is held invalid, such holding shall not affect other provisions of the Ordinance and to this end the provisions of this Ordinance are severable.

17-3 Effective Date

This Ordinance shall take effect immediately after passage and publication as

required by law. This Ordinance shall expire in three (3) years unless re-enacted by the Mayor and Council of the Borough of Highlands prior to December 31, 2014. Upon the third anniversary of the Business Improvement District, the ordinance will expire unless the Board of Directors recommends the continuation of the BID with the approval of the Mayor and Council.

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SCHEDULE A

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Seconded by Mayor Nolan and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Connelly, Ms. Kane, Mayor Nolan

NAYES: Mr. Francy

ABSENT: Mr. O'Neil

ABSTAIN: None

DATE: April 20, 2011

Carolyn Cummins, Borough Clerk

Introduction: March 16, 2011

Publication: March 25, 2011, Two River Times

PH/Adoption: April 20, 2011

Publication:

I hereby certify this to be a true copy of Ordinance O-11-9 adopted by the Governing Body of the Borough of Highlands on April 20, 2011.

BOROUGH CLERK/DEPUTY CLERK

