

Mayor Nolan offered the following ordinance pass third and final reading and authorized its publication according to law:

**O-12-14**  
**Borough of Highlands**  
**County of Monmouth**

**An Ordinance granting an Access Easement to RA Multimedia Corp. d/b/a Captain's Cove Marina to maintain the underlying support for its bulkhead along Washington Ave. and accepting a Drainage Easement from RA Multimedia Corp. d/b/a Captain's Cove Marina**

Whereas, the Borough and Multimedia (hereinafter referred to as "the Marina") are the owners of adjacent property along Washington Avenue, comprised of, in part a length of roadway and a bulkhead; and

Whereas, during Hurricane Irene in August 2011, the Marina's bulkhead and Washington Avenue suffered damage; and

Whereas, since that time, the Borough and the Marina have alleged that each other are responsible for the damage; and

Whereas, the Borough has alleged, in part, that the Marina failed to maintain its bulkhead and the Marina has alleged that a Borough drain into the Marina is responsible, in part for the damage; and

Whereas, the Marina has filed a Tort Claim Notice with the Borough concerning the damage to its bulkhead; and

Whereas, each party had denied responsibility for the damage but the parties have nonetheless engaged in negotiations to amicably resolve these outstanding issues; and

Whereas, as part of these negotiations, the parties expressed a desire to exchange the mutual easements discussed herein; and

Whereas, N.J.S.A. 40A:12-16 provides that a municipality may, by ordinances, exchange any rights or interests in land therein owned by the municipality for other lands or rights or interests therein desired for public use.

Now, therefore, be it ORDAINED by the Borough of Highlands as follows:

(1) The Borough hereby grants an access easement to the Marina in the form attached hereto and incorporated herein by reference which shall include, *inter alia*, the following conditions: (a) the Marina shall provide the Borough with at least seventy-two (72) hours written notice, except in cases of emergency, and (b) obtain any necessary permits or other approvals which may be required by law, prior to accessing the property which is the subject of the access easement;

(2) The Borough hereby accepts a drainage easement from the Marina in the form attached hereto and incorporated herein by reference; and

(3) SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance, which shall otherwise remain in full force and effect.

(4) REPEALER. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

(5) EFFECTIVE DATE. This Ordinance shall take effect after final passage as provided by law.

Seconded by Ms. Kane and adopted on the following roll call vote:

**ROLL CALL:**

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

**NAYES:** None

**ABSENT:** Mr. O'Neil

**ABSTAIN:** None

**DATE:** June 6, 2012

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**Carolyn Cummins, Borough Clerk**