

**MINUTES  
JULY 26, 2011**

The Meeting of the Board of Commissioners was held at the Allenhurst Beach Club on the above date with Mayor McLaughlin presiding and Commissioner McLoughlin answering the roll call. Also in attendance were the Borough Attorney and Borough Clerk. Comm. Bolan was absent.

The meeting was called to order at 7:30 P.M. with a salute to the flag.

Mayor McLaughlin announced that the notice requirements of R.S. 10:4-18 had been satisfied by delivering the required notice to the Coaster, posting the notice on the board in Borough Hall and filing a copy of said notice with the Borough Clerk.

**ORDINANCE #2011-13 ADOPTED**

Offered By: Mayor McLaughlin

Seconded By: Comm. McLoughlin

**ORDINANCE #2011-13**

**AN ORDINANCE TO AMEND AN ORDINANCE ENTITLED, "AN ORDINANCE OF THE BOROUGH OF ALLENHURST REGULATING AND LIMITING THE USES OF LAND AND THE USES AND LOCATIONS OF BUILDINGS AND STRUCTURES, REGULATING AND RESTRICTING THE HEIGHT AND BULK OF BUILDING AND STRUCTURES AND DETERMINING THE AREA OF YARDS, RESTRICTING THE DENSITY OF POPULATION; DIVIDING THE BOROUGH OF ALLENHURST INTO DISTRICTS FOR SUCH PURPOSES; ADOPTING A MAP OF SAID BOROUGH SHOWING BOUNDARIES AND CLASSIFICATIONS OF SUCH DISTRICTS AND ESTABLISHING PROCEDURES REGARDING THE SUBDIVISION OF LANDS AND THE APPLICATIONS FOR SITE PLAN APPROVAL AND PRESCRIBING THE PENALTIES FOR THE VIOLATION OF ITS PROVISIONS", ADOPTED JUNE 26, 1979**

There was no response to Mayor McLaughlin's request for public comments.

VOTE: Comm. McLoughlin-AYE; Mayor McLaughlin-AYE

**RESOLUTION #1**

**A RESOLUTION TO RATIFY AND APPROVE MINUTES**

Offered By: Comm. McLoughlin

Seconded By: Mayor McLaughlin

**BE IT RESOLVED**, That the minutes of the regular meeting of July 12, 2011, and the special meeting held July 19, 2011, be ratified and approved.

VOTE: Comm. McLoughlin-AYE; Mayor McLaughlin-AYE

**RESOLUTION #2**

**A RESOLUTION TO DISPENSE WITH READING OF MINUTES**

Offered By: Comm. McLoughlin

Seconded By: Mayor McLaughlin

**BE IT RESOLVED**, That the Clerk dispense with the reading of the minutes of the regular meeting of July 12, 2011 and the special meeting held July 19, 2011.

VOTE: Comm. McLoughlin-AYE; Mayor McLaughlin-AYE

**RESOLUTION #3**

**A RESOLUTION TO EXTEND GRACE PERIOD FOR THIRD QUARTER TAXES**

Offered By: Comm. McLoughlin

Seconded By: Mayor McLaughlin

**WHEREAS**, The State of New Jersey has just recently adopted the state budget and supplied state aid amounts to the Borough of Allenhurst which will delay the mailing of the 2011 tax bills until late July or early August;

**NOW, THEREFORE, BE IT RESOLVED**, An interest free period is authorized pursuant to RS 54:4-67, (PL 1994 Chapter 72) to be the twenty-fifth calendar day after the date that the tax bills for the third installment are mailed. If payment for the third installment 2011 tax quarter is received after the twenty-fifth calendar day beyond the mailing date of the final 2011 tax bills, interest at the rate of eight (8%) percent per annum will be charged on the first \$1,500.00 of the delinquency and eighteen (18) percent per annum on any amount in excess of \$1,500.00 from August 1, 2011 to the date of payment; and,

VOTE: Comm. McLoughlin-AYE; Mayor McLaughlin-AYE

**RESOLUTION #4**

**A RESOLUTION TO CONFIRM MEMBERSHIP IN  
ALLENHURST FIRE DEPARTMENT**

Offered By: Mayor McLaughlin

Seconded By: Comm. McLoughlin

**WHEREAS**, The Membership Committee of Allenhurst Fire Co. #1 has received an application for membership from Joseph R. Rommel; and,

**WHEREAS**, The Membership Committee has advised the Board of Commissioners that the applicant is acceptable for membership;

**NOW, THEREFORE, BE IT RESOLVED**, That Joseph R. Rommel is approved for membership in Allenhurst Fire Co. #1, pending a criminal history check; and,

**BE IT FURTHER RESOLVED**, That the Borough Clerk be and is hereby authorized to execute the necessary paperwork on behalf of the aforementioned applicant.

VOTE: Comm. McLoughlin-AYE; Mayor McLaughlin-AYE

**RESOLUTION #5**

**RESOLUTION TO CONFIRM PURCHASES**

Offered By: Comm. McLoughlin

Seconded By: Mayor McLaughlin

**WHEREAS**, Purchases were made for amounts over \$1,000.00 and it is the policy of the Borough that the Board of Commissioners approve or confirm said purchases; and;

**WHEREAS**, Funds for these purposes are provided for in various accounts within the current budget, and the CFO has so certified; and,

**NOW, THEREFORE, BE IT RESOLVED**, That the following contracts are hereby confirmed:

Burke Construction – Move cabanas & repair cabana - \$5,885.00

R. N. Demaio – Purchase of clear garbage bags - \$2,485.50

Pilot Electric – repair of pool pumps - \$1,766.00

VOTE: Comm. McLoughlin-AYE; Mayor McLaughlin-AYE

**RESOLUTION #6**

**A RESOLUTION TO APPROVE STIPEND FOR MAINTENANCE OF PUMPS AT ABC**

Offered By: Comm. McLoughlin

Seconded By: Mayor McLaughlin

**WHEREAS**, There have been several problems with the sump pumps and pool pumps at the Allenhurst Beach Club; and,

**WHEREAS**, The Public Works Supervisor has recommended that a stipend be approved for Marc Heitm Mueller, a laborer in the public Works Department, to check the pumps before his regular shift and to maintain all the pumps in proper working order, to winterize said pumps at the conclusion of the Beach Club season and to guarantee that the pumps are ready for the upcoming summer season;

**THEREFORE, BE IT RESOLVED**, That Marc Heitm Mueller be given a stipend of \$1,500.00 for the 2011 Beach Club season for the maintenance of all pumps at the Allenhurst Beach Club.

VOTE: Comm. McLoughlin-AYE; Mayor McLaughlin-AYE

**RESOLUTION #7**

**A RESOLUTION TO APPROVE BILLS AND PAYROLL (07/16/11 - 07/31/11)**

Offered By: Comm. McLoughlin

Seconded By: Mayor McLaughlin

**BE IT RESOLVED**, That bills and payrolls totaling \$164,496.68 be approved for payment; and,

**BE IT FURTHER RESOLVED**, That the July 26<sup>th</sup> consolidated bill list be attached hereto and made a part thereof.

VOTE: Comm. McLoughlin-AYE; Mayor McLaughlin-AYE

**RESOLUTION #8**

**A RESOLUTION TO CONSIDER MORATORIUM WAIVER REQUESTS**

Mrs. Luthin spoke about 535 Main Street, saying that structural repairs have been made. The permits are 99% complete. Their architect is on vacation. It was decided that they do not have to put in a handicapped ramp as they are not open to the public. She stated they are asking for a waiver through the next two-week period.

Dennis Donato spoke regarding the bank building. Phone and computer lines are waiting to be installed and the handicapped ramp is on backorder and will take 6 hours to install when they get it. There are a few ceiling tiles in the canopy that need replacement. He asked for an extension through the next two-week period.

Offered By: Comm. McLoughlin

Seconded By: Mayor McLaughlin

**WHEREAS**, The Borough has received requests for the waiver of the provisions of the construction moratorium; and,

**WHEREAS**, The Board of Commissioners has reviewed the waiver requests; and,

**WHEREAS**, Under the provisions of granting approval for a waiver for the period ending 5 PM on August 9, 2011, the following provisions shall be adhered to:

1. No construction activities prior to 8:00 AM or after 5:00 PM daily.
2. No construction activities on weekends.
3. No dumpsters on property or heavy equipment permitted. No construction debris on outside of property. No pods permitted.

**NOW, THEREFORE, BE IT RESOLVED**, That the following requests for waiver of the provisions of the construction moratorium are hereby considered:

1. Catherine & John Luthin – 535 Main Street  
Install approximately 12 new or replacement windows, construct new wood frame stoop and handicap ramp, re-convert partially enclosed covered porch, plus minor interior renovations such as new handicap accessible bathroom, new office, new outlets and new lighting.
2. Main 301, LLC – 301 Main Street  
Completion of interior fit out of 1<sup>st</sup> floor bank and law office. 2<sup>nd</sup> floor offices are connected to common fire sprinkler, electric and water.

VOTE: Comm. McLoughlin-AYE; Mayor McLaughlin-AYE

#### **RESOLUTION #9**

##### **A RESOLUTION TO APPROVE CONTRACTUAL CAUCUS**

Offered By: Comm. McLoughlin

Seconded By: Mayor McLaughlin

**WHEREAS**, State law permits the exclusion of public in certain circumstances; and,  
**WHEREAS**, The Board of Commissioners of the Borough of Allenhurst finds that such circumstances currently exist; and,

**WHEREAS**, The Board of Commissioners will make public, minutes of the closed session when confidentiality no longer exists;

**NOW, THEREFORE, BE IT RESOLVED**, By the Board of Commissioners that they are hereby authorized to enter into closed session to discuss contractual matters which are exempt from the public meeting under the Sunshine Law.

VOTE: Comm. McLoughlin-AYE; Mayor McLaughlin-AYE

#### **PUBLIC HEARING**

Mayor McLaughlin stated that Tackanassee has three lifeguard stations that date back to 1876 that they are willing to relocate. They have beautiful architecture. They are willing to transport it to Allenhurst. We can use it as a community center, historical society building, etc. They have been discussing where best to put one and for what use. He stated they have been thinking about organizing a Historical Society.

Mayor McLaughlin continued, stating he received a call from the Director of the Division of Local Government who wanted to meet with them. He stated that before the Borough takes any action, they want to speak with the State representatives and see what they have to say. They will be going into executive session to accomplish this.

Pat McGinnis, Allenhurst, stated she thought people were coming to speak to the residents.

Mayor McLaughlin stated they want to get some answers first. They have two ordinances they can introduce, or they may not introduce anything.

Ms. McGinnis stated there are issues other than the Board of Education. Comm. McLoughlin stated if they do introduce an ordinance tonight, it still needs to have a public hearing and a vote for adoption at another meeting.

Robert Fernicola stated he was concerned about going into executive session. His concern was about tainting the whole process. How can it be for contractual reasons when there is no contract being discussed?

David Laughlin, Borough Attorney, stated in his opinion, they have a right to conduct negotiations. They cannot and will not take any action until they come back. The discussions will be made a part of the record.

Mr. Fernicola stated he disagreed with Mr. Laughlin's opinion.

Mr. Laughlin responded that the State wants to ask some questions. They do not want to be interrupted by the public.

Nancy Senet, Allenhurst, stated she was at the meeting last week. There were a lot of intense feelings on both sides. There are some others who don't feel as intense, who would like to help their neighbor.

Anthony Mauro, Allenhurst, asked what the difference was between the ordinances.

Al Walker stated he wants to understand the process. He asked if they would come back into open meeting after the executive session. He asked if the State representatives would be here to answer their questions.

Mayor McLaughlin answered yes.

At this point, the Board adjourned to caucus.

After reconvening, Mayor McLaughlin stated that the State answered some of their questions and there are some questions to which they will need to get answers. There was a question on Deal becoming a choice school and since they can no longer accept tuition from the parents, who would be paying for those children that attend. They went through some other concerns as well. The problem, however, is time. Allenhurst and Loch Arbour are willing to make this work. They talked about special costs for Loch Arbour and special taxing districts.

Tom Neff, Director of the Division of Local Government Services, stated he did not come here to say, "Do this" or "Don't do that." He just wanted to try to address some concerns. There could be a savings for both towns. He gave assurances that the State will do everything they can to make this work. One of the concerns was what would happen if there was a legal challenge from Ocean Township. Allenhurst does not want to foot that bill. The State has broad powers in designing an implementation plan. They desire to answer these questions prior to the governing body voting to introduce an ordinance.

Mr. Neff continued, stating the implementation plan could be formed so that if students continue to go to Ocean Township, the Loch Arbour section could be taxed for that. The same is true of debt. They can create a special taxing district. They have broad flexibility to address situations like that. However, the time is so short that they will not be able to get all the answers in time. They will continue to work with both towns. They don't want anybody to be left in the dark. The Division has the power to set the time frame for the merger. It could be set until all lawsuits have been addressed. He did not think any action would be taken tonight.

Joseph Tomaino, Allenhurst, asked if the Department of Community Affairs would guarantee a plan. Mr. Neff stated that before the Commissioner's vote, they can set forth what the implementation plan will be. The Statute requires the Division of Local Government Services to set forth a plan after the vote. There is nothing to prevent them from giving assurances earlier. It is not required, but they certainly could do that.

Mr. Tomaino asked if there was anything to prohibit the Department from changing things after the vote.

Mr. Neff stated that this Administration is pretty straight-forward. He would communicate in writing of their intent.

David Hesbe, Chief of Staff of the Department of Education, spoke about anything coming before the judiciary and the standard for arbitrary and capricious. He stated the judge would defer to his agency. Once consolidated, children will attend Asbury Park schools. He wanted to assure that all questions would be dealt with seriously.

Gregory Havlusch, West Allenhurst, spoke about transparency in the process. He claimed, there was a lack of transparency, and there will continue to be a lack of transparency if they continue to keep this a closed discussion.

Mayor McLaughlin refuted his claim, stating there has been full transparency. There are minutes even of closed session meetings.

Mayor McLaughlin continued, stating it has become apparent that because there are questions that still need to be answered and because of the short time frame, things cannot possibly be accomplished by August 13<sup>th</sup>, which is the deadline. All parties are in agreement that they will let this time period expire. Loch Arbour will come back and start the process over again. This will start the clock, but it will probably not take 120 days to come to a conclusion. It is their understanding that implementation is up to both parties and would be decided on beforehand. They will customize it so that both towns are happy.

Comm. McLoughlin stated one of his concerns was on Loch Arbour's part if there is litigation. They have questions, also. How does litigation affect implementation? They want to make this as clear as possible so that everyone understands what they are voting on completely.

Gerry Ann Varley, Allenhurst, stated the subcommittee recommended not to merge. Mayor McLaughlin stated that the subcommittee recommended not going forward because there were so many unanswered questions. Based on what is in front of them now, they are not taking action. He is not opposed if Loch Arbour is interested in re-starting the clock.

Mrs. Varley stated she thought she was speaking for a lot of people. Allenhurst is unique. A lot of people do not want to merge. She resented this being pushed on them.

Mayor McLaughlin stated he felt they have a duty to explore this. They would be at fault if they did not. The ultimate decision would be with the voters.

Less Tinkler questioned when a vote may take place and Comm. McLoughlin stated it would be at the May election.

There was a short discussion on whether the two towns had to vote at the same time or whether it could be at two different elections. Mr. Laughlin stated the statute does not address it.

Sallie Carrigan stated that people in politics say one thing and even put it in writing, but later they change their minds. What if there is a new administration? There are very little assurances. There is very little trust. She is concerned with her taxes. Why can't Loch Arbour straighten out their problems with Ocean Township themselves? Then they can talk about consolidation.

Comm. McLoughlin stated that was one of the things they posed to the state. They have no answer yet. He is not opposed to looking at this, but they do need answers.

Mayor McLaughlin agreed that things change and that is one of the things they brought up. They made it clear that they need something to protect them.

An Allenhurst resident stated that even after the merger, there is still a statute regarding non-operating school districts.

Comm. McLoughlin stated that was another concern of theirs. Maybe the State can help. There are no answers yet.

Pat McGinnis asked if it was possible that Loch Arbour could become a non-operating school district. Mayor McLaughlin stated he was not comfortable speaking for Loch Arbour. It is a question for them.

In response to a question from Ms. McGinnis, Mayor McLaughlin explained that if the process starts anew, and they get some answers, they will be able to better inform the public. It could also be that if they are not satisfied with the answers, they will not introduce an ordinance.

Mrs. Senet stated this is such a complicated situation with so many factors and issues. She asked if there was a way to get the information out to the public.

Lori Osborn, Borough Administrator, stated that they will keep the public informed through newsletters, e-mails and public meetings. The Board is determined to get out as much information as possible so that residents can make an informed decision.

Less Tinker stated there are undertones that people are concerned with unrelated issues. He asked if the Commissioners are aware of these other issues.

Comm. McLoughlin stated he wanted the answers to the larger issues first. He compared it to building a house, stating he would like to settle the roof before he worries about the furniture.

Bernie Costello, Allenhurst, asked Mr. Neff if he could explain what his experience with this was and Mr. Neff responded that the last time two towns merged, it was 20 years ago. That was a town of 6 which merged with a town of 160. Ironically, the staff member who worked on that is still working in his office. They have all those documents. However, the issues were different and there is really no comparison. He repeated that they have the ability to draft an implementation plan that is unique to both towns.

Robert Fernicola questioned Loch Arbour re-starting the clock. He asked if there was any prohibition or a certain period of time that has to elapse before re-introducing the ordinance. He asked if Loch Arbour could vote in a special election. He did not think so, based on the statute. Can the towns vote at different times?

Mr. Neff stated the question is the statute refers to the next regular election. He will get an opinion from the Attorney General.

Mr. Laughlin stated he can find no language referencing re-starting the clock.

Mr. Herbes stated that there are some questions they cannot answer on the fly.

Mr. Fernicola stated his primary concern is a lawsuit regarding the school issue. He asked if they can get an opinion from the Attorney General on that.

Mr. Herbes stated that as questions are posed to them, they will consult with the Attorney General's office. It is part of the process.

Mayor McLaughlin asked if there were any further questions or comments, and Gregory Havlusch stated that the reason for holding the meeting at the Beach Club was to discuss beach club issues. He questioned a page in the ABC Employee Handbook, which referred to violations of conduct. One of the items for discipline would be conduct unbecoming a public employee. He asked what conduct this could refer to.

Mr. Laughlin stated it could be any number of reasons.

Mayor McLaughlin asked what this was concerning and Mr. Havlusch asked, "What about fornicating on the premises?"

Comm. McLoughlin stated that is only hearsay. He stated Mr. Havlusch has a lot to say about the Club. He would be happy to refund his money if he did not feel this was the beach club for him. Any personnel issues go to the Administrator, who speaks with the Borough Attorney.

Mayor McLaughlin spoke about a letter written by Mr. Havlusch, in which statements were made about Borough officials, which were untrue. He stated that elected officials witnessed something. He asked, "What did anyone witness?"

There were further arguments between Mr. Havlusch and the Board of Commissioners, in which Mayor McLaughlin stated that if Mr. Havlusch is unhappy, he would be more than happy to refund his membership. He did not think they would be able to make him happy.

Christine McIver, Allenhurst, stated she remembers a time when Mr. Havlush was supposed to be working and he was partying across the street from her house. He was driving while drunk. He is talking and talking and she witnessed the same things coming from him.

There being no further comments, public hearing was closed and as there was no further business, Comm. McLoughlin moved, seconded by Mayor McLaughlin, that the meeting be adjourned. Motion carried.

Lori L. Osborn, RMC  
Clerk-Administrator