

**VILLAGE OF LOCH ARBOUR
MINUTES - REGULAR MEETING
AUGUST 3, 2016**

THE REGULAR MEETING OF THE BOARD OF COMMISSIONERS OF THE VILLAGE OF LOCH ARBOUR, MONMOUTH COUNTY, NEW JERSEY, WAS HELD IN THE VILLAGE OF LOCH ARBOUR MUNICIPAL BUILDING, 550 MAIN STREET, LOCH ARBOUR, NEW JERSEY ON AUGUST 3, 2016, CALLED TO ORDER AT 6:30 P.M. BY MAYOR PAUL V. FERNICOLA.

Following the salute to the Flag the Clerk called roll, present were Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola.

Also present were William H. Healey, Esq., Village Attorney, Marilyn Simons, Village Clerk.

The Clerk read the Open Public Meetings Announcement: The notice requirements of C.231, P.L. 1975, have been satisfied by transmitting the notice of this Regular Meeting to the Village's two official newspapers on January 14, 2016 posting the notice on the office bulletin board on the same date and filing a copy of the notice in the Clerk's office.

UPON MOTION of Mayor Fernicola, seconded by Commissioner Cheswick, carried the item under Reports/Discussion - Letter B., be heard at this time.

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola

Nays: None

Absent: None

B. Eagle Scout Project - Jonah Bass of Troop #76 presented his Eagle Scout Project to the Village of Loch Arbour. Jonah explained all of the fund raising he did for this project. Jonah presented first aid equipment for the Loch Arbour Beach, which includes first aid supplies for lifeguards and an AED, Automated External Defibrillator. He presented a large portable first aid kit, which included the AED, and 2 smaller first aid kits for the 2 lifeguard stands.

Mayor Fernicola thanked Jonah for all of his hard work and dedication to this Project. The Village is very appreciative of this very important addition to the Village Beach Club.

PAYMENT OF BILLS

UPON MOTION of Commissioner Cheswick, seconded by Commissioner D' Angelo, carried, that the payment of bills totaling \$230,670.29 for the month of August, 2016 be and the same is hereby approved as presented.

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola

Nays: None

Absent: None

UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo, carried, that the payment to the Township of Ocean Board of Education in the amount of \$196,999.69 for the month of August, 2016 be and the same is hereby approved

Recorded Vote:

Ayes: Commissioner D' Angelo, Mayor Fernicola

Nays: Commissioner Cheswick

Absent: None

REPORTS/CORRESPONDENCE

UPON MOTION of Commissioner Cheswick, seconded by Commissioner D' Angelo, carried, the following reports and correspondence for the period ending July 31, 2016 on file in the Village Clerk's office, be and the same are hereby ordered received and filed:

- Expenditure Report
- Revenue Received Report
- Tax Collections Report
- Deal Police Department, Monthly Incident Report

- Monmouth Regional Health Commission No. 1, agenda and various reports/correspondence;
- Letter from the State of New Jersey dated July 6, 2016 with a copy of the Governor's Executive Order and a Shutdown Order for all work that is funded by the Transportation Trust Fund;

- Letter dated July 14, 2016 from the Monmouth County Engineer, Joseph Ettore, regarding Bridge O-11 on Main Street which is a Transportation Trust Fund Project, and has been shut down by the Governor's Executive Order.

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D'Angelo, Mayor Fericola

Nays: None

Absent: None

OLD BUSINESS -

Ordinance No. 2016-422 -

The Mayor read the Ordinance by Title and advised of its publication in its entirety in *The Coaster* on July 21, 2016.

**VILLAGE OF LOCH ARBOUR
ORDINANCE 2016-422**

AN ORDINANCE OF THE VILLAGE OF LOCH ARBOUR, COUNTY OF MONMOUTH, STATE OF NEW JERSEY ADOPTING CERTAIN REGULATIONS OF DRONE TECHNOLOGY AND UNMANNED AIRCRAFT FOR THE VILLAGE OF LOCH ARBOUR

WHEREAS, the Village of Loch Arbour (hereinafter, the "Village") deems it appropriate, necessary, and proper for the good government, order, the protection of persons and property, and for the preservation of the public health, welfare, and safety of the Village and its inhabitants, to adopt certain regulations pertaining to the use of Drone Technology and unmanned aircraft in the Village; and

WHEREAS, Drone Technology includes "drones," which are unmanned aircraft that can fly under the control of a remote pilot or by a global positioning system (GPS) guided autopilot mode, can fly at altitudes below the navigable airspace (*i.e.*, generally 400 feet), and/or are equipped with surveillance technologies (*e.g.*, high definition cameras, night vision cameras, and infrared-see-through scopes,); and

WHEREAS, as a result of its declining cost, Drone Technology and unmanned aircraft have become increasingly available to private citizens for personal, recreational, and other potential uses; and

WHEREAS, drones and unmanned aircraft can be used to fly above areas where people may congregate, above residences, in the backyard of residences, to hover outside residences, and to fly above roads and through traffic in a manner that is inherently dangerous to the public health, welfare, and safety; and

WHEREAS, it is evident that the rapid development, implementation, and use of Drone Technology and unmanned aircraft throughout the United States, as set forth herein, poses a serious threat to the health, safety, and welfare of the Village's inhabitants, seasonal population, and visitors in general, as well as the economic activity and public safety of the Village and the region; and

WHEREAS, the federal government and the State of New Jersey have thus far failed to adopt specific and comprehensive legal restrictions on the use of Drone Technology, the federal government has thus far only issued general guidelines regarding legal restrictions on the use of the type of unmanned aircraft designated as "model aircraft," and, therefore, at this time, there are no meaningful regulations protecting the public, health, and welfare from Drone Technology and unmanned aircraft particular to and specific to the needs of the Village; and

BE IT ORDAINED by the Board of Commissioners of the Village of Loch Arbour, Monmouth County, State of New Jersey, as follows:

Section 1. Definitions.

"Aircraft" means any apparatus invented, used, or designed to navigate or fly in the air.

"Firearm" has the meaning ascribed to the term in N.J.S.A. 2C:39-1.

"Operate" means to pilot, steer, direct, fly or manage an unmanned aircraft through the air whether from within the aircraft or remotely. The term operate includes managing or initiating a computer system that pilots, steers, directs, flies or manages an unmanned aircraft.

"Sensing Device" means a device capable of acquiring images, audio and other data from its surroundings. Sensing devices include, but are not limited to, cameras, microphones, thermal detectors, chemical detectors, radiation gauges, and wireless receivers in any frequency (including cellular, WiFi, or other data frequencies).

"Small Unmanned Aircraft" means an unmanned aircraft that weighs less than or equal to 0.55 pounds, excluding toy aircraft.

“Toy Aircraft” means (a) a glider or hand-tossed unmanned aircraft that is not designed for and is incapable of sustained flight; and (b) an unmanned aircraft that is capable of sustained flight and is controlled by means of a physical attachment such as a string or wire.

“Unmanned Aircraft” means an aircraft that is operated without the possibility of direct human intervention from within or on the Aircraft.

“Weapon” means an instrument, article or substance that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury.

Section 2. Regulations.

- A. No person shall Operate an Unmanned Aircraft in a manner that is prohibited by a federal law or regulation that governs aeronautics, including the Federal Aviation Administration regulations.
- B. No person shall Operate an Unmanned Aircraft in a manner that interferes with a law enforcement, firefighter or emergency services operation.
- C. No person shall Operate an Unmanned Aircraft within 50 feet of a public right-of-way.
- D. No person shall Operate an Unmanned Aircraft in a careless or reckless manner that poses an apparent or actual threat of harm, or actual harm to persons or property.
- E. No person shall Operate an Unmanned Aircraft in a manner that harasses, annoys, or assaults persons or vehicle operators, and/or threatens their safety or welfare.
- F. No person shall Operate an Unmanned Aircraft over any private real property located within the Village in which the resident and/or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, a private residence or office, and its surrounding yard, parking lot and landscaping).
- G. No person shall use a sensing device on an Unmanned Aircraft to record or transmit any images, audio or other data of any person or private real property located within the Village under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, inside a private residence or office, and inside an enclosed yard).
- H. No person shall Operate an Unmanned Aircraft that is equipped with a Firearm or other Weapon.
- I. No person shall Operate an Unmanned Aircraft outside the visual line of sight of the operator.
- J. No person shall Operate an Unmanned Aircraft while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug or any combination thereof, as those terms are defined in N.J.S.A. 39:4-50.
- K. No person shall Operate an Unmanned Aircraft whenever weather conditions would impair the operator's ability to do so safely.
- L. No person shall Operate an Unmanned Aircraft between the hours of 8:00 p.m. and 8:00 a.m.

Section 3. Insurance Requirement.

- A. It shall be unlawful for any person to Operate an Unmanned Aircraft in Village airspace unless such person maintains a liability insurance policy that insures the owner and/or operator of the Unmanned Aircraft and provides, at minimum, the following limits:
 - 1. \$100,000 for personal injury or death of one person;
 - 2. \$300,000 for personal injury or death to more than one person in one accident, with a maximum of \$100,000 for each person; and
 - 3. \$50,000 for property damage.
- B. Each policy of liability of insurance required under this section shall (1) be issued by an insurer authorized to do business in the State of New Jersey; and (2) name the Village as an additional insured.

- C. This section shall not apply to Small Unmanned Aircraft.

Section 4. Exceptions.

- A. Any person authorized to Operate an Unmanned Aircraft pursuant to a certificate of waiver, certificate of authorization or airworthiness certification under Section 44704 of Title 49, United States Code shall be authorized to Operate an Unmanned Aircraft in Village airspace in accordance with the terms of such certificate of waiver, certificate of authorization or airworthiness certification.
- B. This Chapter shall not prohibit the Constitutional use of Unmanned Aircraft by any law enforcement agency or emergency services organization of or servicing the Village, the County of Monmouth, the State of New Jersey, or the United States Government for lawful purposes and in a lawful manner.
- C. This Chapter shall not prohibit any federal, state, county or municipal agency from the use of Unmanned Aircraft for any lawful and authorized purpose pursuant to any applicable regulation.
- D. This Chapter shall not apply to Toy Aircraft.

Section 5. Violations and penalties.

A violation of this Chapter shall be punishable by a fine of between \$100.00 and \$500.00 for a first offense, and for a second or subsequent offense a fine of between \$500.00 and \$1,000.00.

Section 6. Repealer.

All ordinances, or parts of ordinances, inconsistent with this Chapter are hereby repealed to the extent of such inconsistency.

Section 7. Severability.

If any word, phrase, clause, section, or provisions of this Chapter shall be found by any Court of competent jurisdiction to be unenforceable, illegal, or unconstitutional, such word, phrase, clause, section, or provision shall be severable from the balance of the ordinance and the remainder of the ordinance shall remain in full force and effect.

Section 8. Effective date.

This Ordinance shall take effect after final adoption and publication as required by law.

UPON MOTION of Commissioner Cheswick, seconded by Commissioner D' Angelo, carried, that the meeting be opened to the public for comments on Ordinance 2016-422 only.

Margaret Maloney, Interlaken, explained three different occasions a Drone has hovered over her head and followed her in a span of the last three weeks. Ms. Maloney is in favor of adopting this Ordinance.

Paul Williams, Euclid Avenue, is in favor of adopting this Ordinance.

Charles Mizrahi, Edgemont Drive, explained he believes this is a privacy issue, and is in favor of adopting this Ordinance.

Mayor Fernicola explained he saw a drone being operated on the Village Beach. He stated the clarity of the screen is very good.

Dark Maisto, Elberon Avenue, stated Drones are a problem in the Village, especially on the weekends.

Erin Dolan, Edgemont Drive, asked to have the Ordinance summarized for the public.

There being no further comments, and UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo, carried that the public hearing be closed.

The Mayor and Commissioner had a conversation regarding the Ordinance. Commissioner Cheswick is against adopting this Ordinance, he stated it is a poor use of police resources.

There were two minor changes to the Ordinance.

The Second WHEREAS clause was modified to read:

"WHEREAS, Drone Technology includes, "drones," which are unmanned aircraft that can fly under the control of a remote pilot or by a global positioning system (GPS) guided autopilot mode, can fly at altitudes below the navigable airspace (i.e., generally 400 feet), **and/or** are equipped with surveillance technologies (e.g., high definition cameras, night vision cameras, and infrared-see-through scopes.); and"

Section 2. Regulations. Letter E. was modified to read:

"No person shall Operate an Unmanned Aircraft in a manner that harasses, annoys, or assaults **persons** or vehicle operators, and/or threatens their safety or welfare."

UPON MOTION of Commissioner Cheswick, seconded by Mayor Fernicola, carried, that the meeting be opened to the public for comments on Ordinance 2016-422 only.

Margaret Maloney, Interlaken, stated when a drone follows a private citizen, it is a problem.

Paul Williams, Euclid Avenue, urged the Mayor and Commissioners to adopt this Ordinance.

There being no further comments, and UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo, carried that the public hearing be closed.

UPON MOTION of Commissioner D' Angelo, seconded by Mayor Fernicola, carried that the modified Ordinance be adopted on final reading, directing the Clerk to post and publish as required by law.

Recorded Vote:

Ayes: Commissioner D' Angelo, Mayor Fernicola

Nays: Commissioner Cheswick

Absent: None

NEW BUSINESS

A. Resolution 2016-17: UPON MOTION of Mayor Fernicola, seconded by Commissioner Cheswick, carried, that the following resolution be adopted:

WHEREAS, the Village of Loch Arbour is a member of the Donmouth Municipal Joint Insurance Fund; and,

WHEREAS, said membership terminates as of December 31, 2016 unless earlier renewed by agreement between the Village and the Fund; and,

WHEREAS, the Village of Loch Arbour desires to renew the said membership.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Village of Loch Arbour as follows:

1. The Village of Loch Arbour agrees to renew its membership in the Donmouth Municipal Joint Insurance Fund and to be subject to the Bylaws, Rules and Regulations, coverages and operating procedures thereof as presently existing or as modified from time to time by lawful act of the Fund.
2. The Mayor and Village Clerk shall be and are hereby authorized to execute the agreement annexed hereto and made a part hereof to renew membership and to deliver same to the Donmouth Municipal Joint Insurance Fund evidencing the Village's intention to renew its membership.

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola

Nays: None

Absent: None

B. Resolution 2016-18: UPON MOTION of Commissioner Cheswick, seconded by Commissioner D' Angelo, carried that the following resolution be adopted:

WHEREAS at the Organization meeting of the Village of Loch Arbour held on January 6, 2016, Meghan Bennett Clark of Dilworth Paxson LLP was appointed as Bond Counsel; and

WHEREAS, on September 1, 2016, Meghan Bennett Clark, Esq. will become affiliated with the firm of GluckWalrath LLP; and

WHEREAS, the governing body desires to amend the appointment of Bond Counsel and to enter into an agreement to reflect the affiliation of Meghan Bennett Clark with GluckWalrath LLP.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Board of Commissioners of the Village of Loch Arbour, County of Donmouth, State of New Jersey, as follows:

1. Effective September 1, 2016, Meghan Bennett Clark of the law firm GluckWalrath LLP is hereby retained for the provision of bond counsel services for the balance of the one-year term

ending December 31, 2016, pursuant to an agreement that shall include the same terms, fees and conditions of the agreement previously authorized.

2. The Mayor is hereby authorized to execute and the Village Clerk to attest to, respectively, the execution of said agreement with Meghan Bennett Clark of the law firm of GluckWalrath.

3. This resolution shall take effect September 1, 2016.

4. That a certified copy of this resolution shall be forwarded by the Village Clerk to the Chief Financial Officer and to Meghan Bennett Clark.

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola

Nays: None Absent: None

C. Resolution 2016-19: UPON MOTION of Commissioner D' Angelo, seconded by Mayor Fernicola, carried that the following resolution be adopted:

WHEREAS, Kevin Bransley has requested permission to hold the Annual Volleyball Tournament at the Village Beach Club on Saturday, August 13, 2016, and,

WHEREAS, participation in the tournament is limited to Village Beach patrons only and no outside advertising of the event is permitted.

NOW, THEREFORE, BE IT RESOLVED by the Commissioners of the Village of Loch Arbour that permission is hereby granted to hold the Annual Volleyball Tournament on Saturday, August 13, 2016, subject to the following conditions:

1. Participation in the event is limited to Village Beach patrons;
2. Each participant (or the parent or guardian of a participant under the age of 18) shall execute a "Hold Harmless" Agreement prior to participating in the event;
3. No outside advertising of the event is permitted;
4. Coordinate with Beach Manager of the location of the second net.

BE IT FURTHER RESOLVED that a certified copy of this resolution shall be supplied to:

- Kevin Bransley
- Beach Manager, John Bosmans
- Chief Ronen Neuman, Borough of Deal Police Department
-

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola

Nays: None Absent: None

D. Resolution 2016-20: UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo, carried that the following resolution be adopted:

WHEREAS, the Mandatory Source Separation and Recycling Act, P.L. 1967, c. 102, established a recycling fund from which tonnage grant may be made to municipalities in order to encourage local source separation and recycling programs; and,

WHEREAS, it is the intent and spirit of the Mandatory Source Separation and Recycling Act to use the tonnage grants to develop new municipal recycling programs and to continue and to expand existing programs; and,

WHEREAS, the New Jersey Department of Environmental Protection has promulgated recycling regulations to implement the Mandatory Source Separation and Recycling Act; and,

WHEREAS, the recycling regulations impose on municipalities certain requirements as a condition for applying for tonnage grants, including but not limited to, making and keeping accurate, verifiable records of materials collected and claimed by the municipality; and,

WHEREAS, a resolution authorizing this municipality to apply for such tonnage grants will memorialize the commitment of this municipality to recycling and to indicate the assent of the Board of Commissioners to the efforts undertaken by the municipality and the requirements contained in the Recycling Act and recycling regulations; and,

WHEREAS, such a resolution should designate the individual authorized to ensure the application is properly completed and timely filed.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Village of Loch Arbour that the Village of Loch Arbour hereby endorses the submission of the recycling tonnage grant application to the New Jersey Department of Environmental Protection.

BE IT FURTHER RESOLVED that the monies received from the recycling tonnage grant be deposited in a dedicated recycling trust fund used solely for the purposes of recycling.

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola

Nays: None

Absent: None

REPORTS/DISCUSSION

A. **School Tax Issue** - Mayor Fernicola stated no further updates to the School Tax Issue. The Village is still waiting for a response from the State of New Jersey, Commissioner of the Department of Education. Mayor Fernicola indicated the decision is due by August 15, 2016.

B. Resolution - UPON MOTION of Mayor Fernicola, seconded by Commissioner Cheswick, carried that the following resolution be adopted:

WHEREAS, Gara Weldon and Dike Pimco has requested to hold a private 1 year old birthday party at the Village Beach Club on September 11, 2016:

WHEREAS, the Village Beach Club closes on Labor Day Weekend, which is Monday, September 5, 2016 and the facility is cleaned and all utilities are shut off for the season:

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Village of Loch Harbour that this request for a private 1 year old birthday party be denied.

BE IT FURTHER RESOLVED, the Village Clerk's office be directed to so advise Gara Weldon and Dike Pimco.

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola

Nays: None

Absent: None

PUBLIC HEARING

UPON MOTION of Mayor Fernicola, seconded by Commissioner Cheswick, carried, that the meeting be opened to the public for comments.

Charles Mizrahi, Edgemont Drive, stated he owns property at 207 Edgemont Drive. The house at 205 Edgemont is a danger. It is dilapidated and is a hazard. He urged the Village to do something about this property.

Dr. Sarkessian, Edgemont Drive, stated the home at 205 Edgemont Drive is a fire hazard and has been vacant for many years. Dr. Sarkessian urged the Village to do something about this property.

Dr. Healey, Village Attorney, stated he would look into the matter.

Paul Williams, Euclid Avenue, asked if the Mayor and Commissioners would consider an Ordinance stopping people from walking down the middle of the streets in Loch Harbour.

Charles Mizrahi, Edgemont Drive, asked if a traffic light could be installed at the corner of Norwood Avenue and Edgemont Drive, due to the difficulty of trying to get onto Norwood Avenue from Edgemont Drive. Mayor Fernicola stated this is a State road.

Erin Dolan, Edgemont Drive, asked about the status of the Main Street Bridge Project. Mayor Fernicola stated the project is funded by the Transportation Trust Fund and there is a Shutdown Order in effect at this time.

UPON MOTION, of Mayor Fernicola, seconded by Commissioner D'Angelo, carried, that the meeting be closed to the public for comments.

UPON MOTION of Commissioner Cheswick, seconded by Mayor Fernicola, carried, that the following **Resolution** be and the same is hereby adopted:

WHEREAS, Section 8 of the Open Public Meetings Act, N.J.S.A. 10:4-12 et seq., permits the exclusion of the public from a meeting in certain circumstances; and,

WHEREAS, this public body is of the opinion that such circumstances presently exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Village of Loch Harbour, Monmouth County, New Jersey, as follows:

1. The public shall be excluded from discussion of and actions upon the hereinafter-specified subject matter.
2. The general nature of the subject matter to be discussed is as follows: To discuss anticipated or threatened litigation regarding consolidation and/or school funding and taxation issues and attorney-client privileged advice. Discussion with New Tax Assessor, Erick Aguiar, regarding impact of possible Re-Assessment Program Options and Schedules. The Mayor and Commissioner reserve the right to take action, upon the return from Executive Session.
3. It is anticipated at this time that the above stated subject matter will be made public within 120 days.
4. This resolution shall be effective immediately.

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola
Nays: None Absent: None

UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo, carried that the following resolution be adopted.

WHEREAS, the Mayor and Commissioners of the Village of Loch Arbour appointed Realty Data Systems on February 12, 2014 to perform Professional Services of real property data collection and verification services:

WHEREAS, in consultation with the Village Tax Assessor, Erick Aguiar, there is a need to complete the remainder of the evaluations of the properties by the end of September, 2016 for a more accurate revaluation to be completed: and

WHEREAS, funds are available in the 2016 Budget of the Village of Loch Arbour to support these services,

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Village of Loch Arbour the Village will take the advice of the Village Tax Assessor, Erick Aguiar, and have Realty Data Systems complete the real property data collection and verification of all of the remaining Village of Loch Arbour properties by the end of September, 2016.

Recorded Vote:

Ayes: Commissioner Cheswick, Commissioner D' Angelo, Mayor Fernicola
Nays: None Absent: None

There being no further business, and UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo, carried that the meeting be finally adjourned at 8:45 p.m.

Darilyn Simons, RDC
Village of Loch Arbour