



BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH

RESOLUTION 17-103

RESOLUTION REGARDING THE ISSUANCE OF A CONDITIONAL MERCANTILE LICENSE FOR THE YEAR 2017 FOR CAPTAIN'S COVE MARINA

WHEREAS, Captain's Cove Marina submitted a Mercantile License Application for the year 2017 wherein the applicant identified the type of business as a marina with a description consisting of boat storage; and

WHEREAS, by way of correspondence dated February 21, 2017, the Borough Administrator denied the aforesaid application; and

WHEREAS, in accordance with the aforesaid denial of the Mercantile License Application, the applicant was advised that based on the condition of the property at issue that the applicant had failed to comply with Borough Code, Chapter 4-9.5(c); and

WHEREAS, in accordance with Borough Code, Chapter 4-9.4(b), the applicant submitted correspondence dated March 6, 2017, wherein an appeal of the notice of disapproval was submitted to the Borough Council; and

WHEREAS, in accordance with the said appeal, a hearing was conducted before the governing body on March 15, 2017 wherein testimony was taken and exhibits were marked; and

WHEREAS, subsequent to the aforesaid hearing, Captain's Cove Marina submitted a proposed schedule for the repair of the bulkhead at issue; and

WHEREAS, in accordance with Resolution R-17-87, on April 6, 2017, the governing body of the Borough of Highlands issued a temporary conditional Mercantile License for a period of thirty (30) days in order to allow the applicant and the Borough to memorialize the form of an Agreement regarding among other things, the repair of the bulkhead and the posting of a performance bond; and

WHEREAS, after due consideration of the applicant's appeal of the denial of a Mercantile License Application for the year 2017 as well as the proposed schedule for the repair of the bulkhead at issue, the governing body has determined that it is in the best interests of the Borough to issue a Conditional Mercantile License subject to certain conditions and the execution of an Agreement by the Applicant; and

WHEREAS, the said Agreement shall require that the applicant immediately commence repairs on the bulkhead at issue and provide weekly updates as to the ongoing repairs to the Borough Administrator; and

WHEREAS, the said Agreement shall also require that Captain's Cove Marina post a Performance Bond with the Borough for the aforesaid repairs, which will not be released until such time as the repairs have been completed in a satisfactory manner to the Borough; and

WHEREAS, the said Agreement shall also require that Captain's Cove Marina post an escrow with the Borough in order to allow for a review of the detailed plans setting forth the repairs to the bulkhead at issue as well as for the conducting of inspections by the Borough Engineer; and

WHEREAS, the said Agreement shall also permit the Borough to deem an area of the bulkhead at issue in need of emergent repair, due to its affecting the public health, safety and welfare of the residents of the Borough which will require that Captain's Cove Marina mobilize any and all necessary equipment and commence repairs within a defined period of time of receiving such notification; and

WHEREAS, the said Agreement shall also require that should it become necessary for Captain's Cove Marina to access the deadmen, which support the aforesaid bulkhead located within the Borough's roadway, that Captain's Cove Marina shall comply with any and all legal requirements, including but not limited to, Borough Code, Chapter 8.2 concerning Excavations in the Public Streets, which includes the securing of a permit, payment of the necessary fees, the posting of any and all necessary bond(s), the furnishing of proof of insurance, and complying with all rules and regulations contained therein, including but not limited to, rules and regulations concerning the restoration of the surface; and

WHEREAS, the said Agreement shall also require that Captain's Cove Marina defend, indemnify and hold the Borough harmless from any and all claims which may arise out of the Borough's issuance of the said Mercantile License or arising out of the use of the Marina during the period of time in which the Mercantile License is effective; and

WHEREAS, the said Agreement shall also set forth that the aforesaid Conditional Mercantile License is subject to revocation, in accordance with N.J.S.A. 40:52-2 et. seq., should Captain's Cove fail to comply with the terms of the Agreement being entered into or fail to comply with the schedule of repairs being represented to the Borough.

NOW, THEREFORE, BE IT RESOLVED, by the Governing Body of the Borough of Highlands, that a Conditional Mercantile License for the Year 2017 is hereby approved for the Captains' Cove Marina, subject to the applicant executing an Agreement containing the aforesaid terms and requirements, with the express understanding that the said Conditional Mercantile License is subject to revocation in accordance with N.J.S.A. 40:52-2 et seq. should Captain's Cove Marina fail to comply with the requirements contained in the said Agreement and/or fail to comply with the schedule of repairs being represented to the Borough.

BE IT FURTHER RESOLVED, that the Mayor be and is hereby authorized to execute an Agreement with Captain's Cove Marina setting forth the above noted requirements.

BE IT FURTHER RESOLVED, that a Certified Copy of this Resolution shall be filed in the Municipal Clerk's Office and a copy transmitted to the Applicant, the Code Enforcement Officer for the Borough of Highlands as well as and any other necessary parties.

Motion: Approve Resolution, **moved** by Mayor O'Neil; **Seconded** by Councilmember Wells

Vote: Motion carried by roll call vote (summary: Yes = 5; No = 0).

Yes: Councilmembers Broullon, Card, D'Arrigo, Wells and Mayor O'Neil

No: None

Abstain: None

I, Dwayne M. Harris, Acting Municipal Clerk of the Borough of Highlands, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Governing Body, at its Meeting, held May 03, 2017. WITNESS my hand this 12th day of May 2017.



Dwayne M. Harris, RMC
Acting Municipal Clerk