

VILLAGE OF LOCH ARBOUR

MINUTES –REGULAR MEETING

AUGUST 2, 2023

THE REGULAR MEETING OF THE BOARD OF COMMISSIONERS OF THE VILLAGE OF LOCH ARBOUR, MONMOUTH COUNTY, NEW JERSEY, WAS HELD AT THE VILLAGE OF LOCH ARBOUR MUNICIPAL BUILDING, 550 MAIN STREET, LOCH ARBOUR, NEW JERSEY

Salute to the Flag. Present were Commissioner Cheswick, Commissioner D’ Angelo, Mayor Fernicola. Also present was William Healey, Esq., Village Attorney and Marilyn Simons, Village Clerk.

The Village 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 10, 2023 and July 10, 2023 posting the notice on the office bulletin board of the same date and filing a copy of this notice in the Clerk’s office.

ALLENHURST FIRE DEPARTMENT – Truck committee members – Assistant Chief Kyle Ebberts, Frank Manfredi presented the New 81-77 Fire Rescue Engine which is now in service. A break was taken to go outside to view the new Engine.

BILLS

UPON MOTION of Commissioner Cheswick, seconded by Commissioner D’ Angelo, carried, that the payment of bills totaling \$252,959.80 for the month of August, 2023 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 Cheswick, carried, that the payment to the Loch Arbour Board of Education in the amount of \$25,000.00 for the month of August, 2023 be and the same is hereby approved as presented.

Recorded Vote:

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

Nays: None

Absent: None

MINUTES

UPON MOTION of Commissioner Cheswick, seconded by Commissioner D’ Angelo, carried, that the minutes of the following meeting are hereby approved:

- Minutes of the Regular Meeting and Executive Session held on June 12, 2023

Recorded Vote:

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

Nays: None

Absent: None

REPORTS

UPON MOTION of Mayor Fernicola, seconded by Commissioner D’ Angelo, carried, that the following Reports for the period ending July 31, 2023 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/Delinquent Taxes Report for 2023
- Borough of Deal Police Dept. Monthly Incident Report

Recorded Vote:

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

Nays: None

Absent: None

CORRESPONDENCE

UPON MOTION of Mayor Fernicola, seconded by Commissioner D’ Angelo, carried, that the following Correspondence, on file in the Village Clerk’s office, be and the same is hereby ordered received and filed:

- Monmouth Regional Health Commissioner No. 1, agenda and various reports/correspondence;

Recorded Vote:

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

Nays: None

Absent: None

OLD BUSINESS –

The Mayor read said Ordinance by Title, advising of its publication in *The Coaster* on June 22, 2023. This Ordinance was TABLED at the July 5, 2023 Commissioners Meeting.

**VILLAGE OF LOCH ARBOUR
ORDINANCE NO. 2023-489**

An Ordinance Entitled “An Ordinance Establishing a “Protection of Trees” in the Village of Loch Arbour, County of Monmouth”

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

ESTABLISHING AN ENFORCEMENT OFFICER

ARTICLE 1

Section 1. Purpose. The purpose of this Ordinance is to enhance the Village’s aesthetic environment and quality of life; aid in the stability of the soil by the prevention of erosion and sedimentation; reduce storm water runoff and the resulting costs of same; help the air quality in the Village with the production of oxygen and the removal of carbon dioxide; provide a buffer and screen against noise; provide shade; aid in the control of drainage; provide a haven for wildlife; protect and increase property values and conserve and enhance the Village’s unique qualities.

Section 2. Definitions.

Village property shall mean any and all land designed by the Village Tax Map as land owned solely and exclusively by the Village of Loch Arbour, including but not limited to Village parks and Village property or rights-of-way located between the sidewalks and curbs.

Circumference at breast height shall mean the circumference of the main stem of a tree measured at a point on the stem four and one-half (4 ½) feet above ground.

Tree shall mean any woody perennial plant having a single stem diameter minimum of two (2) inches measured at a point six (6) inches above the ground.

Section 3. Prohibited Acts. No person shall do or cause to be done any of the following acts on Village-owned property, right-of-way, street, road, highway, park or parkway without the recommendation and approval of ENFORCING OFFICER.

- a. Cut, trim break, remove, climb with spikes, disturb the roots or otherwise intentionally injure, misuse or spray with harmful chemicals any tree two (2) inches or more in diameter measured six (6) inches above the ground or remove any device installed to support or protect such trees.
- b. Plant any tree.
- c. Fasten any rope, wire, electrical equipment, sign or other device to a tree or install any guard about such a tree.
- d. Pile, heap or store any building materials, soil, debris or other matter or make mortar or cement within a distance of three (3) feet of a tree.
- e. Cause any oil, gas or other injurious chemical to come in contact with the trunk or roots of any tree.

Section 4. Exemptions. Reasonable pruning of trees by utility companies necessary to provide for line clearance for utility wires shall be exempt from the provisions of this chapter.

Section 5. Rights of other Authorities and Contractors. No statute giving an individual or State or Municipal Board, body or official, power or authority to lay any sidewalk along, or to open, construct curb or pave any street or do any like act shall be held or construed or permit or authorize any interference with or injury to a highway shade tree with the consent of the ENFORCING OFFICER; provided that, in all cases the ENFORCING OFFICER, shall reasonably cooperate with such individual board, body or official for the general public good.

ARTICLE II

Section 1. Tree Preservation and Removal. The purpose of this Ordinance is to prevent indiscriminate, uncontrolled, and excessive destruction, Removal, and Clear Cutting of trees upon lots and tracts of land within the Village of Loch Arbour in order to maintain the aesthetic character of the Village of Loch Arbour, prevent erosion, and control actions that will substantially change drainage patterns, and restrict actions that will cause a hazard to persons or property.

Section 2. Definitions

Clear Cutting – the removal of all standing trees on a site or portion of a site.

Emergency – any unforeseen circumstance or occurrence, the existence of which constitutes a clear and immediate danger or hazard to person or property.

Heritage Tree – shall mean any tree with a circumference of 19 inches or more.

Public Right-of-Way – any street or road shown upon a map or plan filed in the Monmouth County Clerk's office or on the Official Map of the Village of Loch Arbour.

Removal – the actual removal of trees, or direct or indirect actions resulting in the effective removal of trees through damage or poison, or similar actions directly or indirectly resulting in the death of trees subject to the provisions of this Ordinance. Moving a tree to a different location on the same property does not constitute removal. Removal shall not include pruning for maintenance purposes.

Site – any lot, tract, parcel or parcels of land within the Village.

Tree Removal Permit – a certificate issued by the Village to remove trees as defined in this section.

Undisturbed Area – an area in which trees, shrubs, and understory will not be disturbed by filling, cutting or by any other means.

Section 3. Tree Removal Prohibited. No person shall remove, or cause to be removed, any Heritage Tree upon any lands within the Village of Loch Arbour except as follows:

1. Trees that are to be removed as the direct result of a Development Application that has been approved by the Village of Loch Arbour Planning Board.
2. Any trees cut or removed in accordance with a “management plan” developed by the New Jersey Department of Environmental protection, Bureau of Forestry, filed with the Clerk of the Village of Loch Arbour.
3. Trees directed to be removed by municipal, county, state or federal authority.
4. Trees that are to be removed as a result of the issuance of a Tree Removal Permit.

No person shall remove any tree growing or over a Public Right of Way or public land with the express written consent of the municipal authority.

Section 4. Tree Removal Permit – A Tree Removal Permit shall be required for the Removal of any Heritage Tree, as follows:

1. Heritage Trees that are dead severely damaged, or in an advanced state of decline by natural causes or accident other point that the natural habit of the Heritage Tree cannot be restored as determined by a NJ Licensed Tree Expert or competent Public Authority; Heritage Trees that are severely diseased and require Removal as certified by a NJ Licensed Tree Expert or competent Public Authority; or Heritage Trees that pose an imminent public safety hazard as determined by a NJ Licensed Tree Expert or competent Public Authority.
2. Heritage Trees required to be removed subject to a construction permit as issued by the construction official for construction of new residences, additions to residences, or the construction of swimming pools or other accessory buildings or structures that are not the subject of Planning Board application approvals. Such trees shall clearly be shown on the construction plans and identified by size and the Removal of same shall, in the opinion of the construction official or his designee, clearly be necessary for the construction of the subject building or structure.
3. Heritage Trees may only be removed for compelling reasons based on the totality of the circumstances. The ENFORCING OFFICER or his/her designee shall use best efforts to reach a determination that fairly takes into account the objectives of this ordinance and the concerns of the applicant. In evaluating a Tree Removal Permit application. The ENFORCING OFFICER or his/her designee may consider, without limitation, the following factors.
 1. The health of the tree;
 2. Impact of tree Removal on ecological systems;
 3. Impact of tree Removal on wildlife;
 4. Topography of the area and drainage impact;
 5. Impact of tree Removal on noise; light or air quality;

6. Density of tree area;
7. Overall effect of tree Removal on the physical and aesthetic value of the property;
8. Whether the continued presence of the tree or trees is likely to cause danger to a person or property.

Section 5. Tree Removal Permit Requirements: Application Form: An application form can be obtained from the Village Clerk and shall include the following information:

1. Name and address (street and lot and block) of the owner of the premises and status of legal entity (individual, partnership, corporation).
2. Description of the premises where Removal is to take place, including lot and block numbers, and street address as assigned if different than the address of the owner;
3. Purpose of Heritage Tree Removal;
4. In addition to the application form, a survey or diagram showing the approximate location and size of Heritage Trees exist on the lot and identifying those trees to be removed.
5. If a Heritage Tree is removed under the requirements of Section 4, a mitigation plan must be submitted which will provide for the replacement of all removed heritage trees by planting a tree of 3" to 3 ½" caliper with a similar mature height or a fee to the Village of Loch Arbour in the amount of \$500.00 per tree removed.
6. For any Heritage Trees to be removed under the requirements of Section 4, a replacement plan must be submitted showing the planting of trees for any Heritage Tree Removal. The replacement trees must be a minimum caliper of 3" to 3 ½" with a similar mature height or a fee to the Village of Loch Arbour in the amount of \$500.00 per tree removed.
6. These plans must be submitted and approved by the ENFORCING OFFICER or his/her designee prior to the issuance of any permits.

Section 6. Fees – Upon the filing of an application with the ENFORCING OFFICER for a Tree Removal Permit under the terms of this section, the applicant shall pay an application fee of \$25.00. An application may include more than one Heritage Tree within a single application fee.

Section 7. Permit Approval

1. Time limits for action.
 - a. The ENFORCING OFFICER or his/her designee shall act on an application for Tree Removal permit within thirty (30) days of the receipt of a complete application. Failure to act within thirty (30) days shall be deemed to be an approval of the application and thereafter, a Tree Removal Permit shall be issued.
2. Duration of Permits
 - a. If granted for a lot or parcel of land for which no building permit is required 3 months from the date of issuance.
 - b. If granted for a lot or parcel of land for which a building permit is required but for which no variances, subdivision, or site plan approval is required or has been approved by the Planning Board until expiration of building permit granted with such Tree Removal permit.

Section 8. Completion. The holder of a Tree Removal Permit shall notify the ENFORCING OFFICER when the tree Removal has been completed and when replacement trees, as required, have been planted.

Section 9. Appeals. Whenever any application for a Tree Removal Permit shall be denied by the ENFORCING OFFICER or his/her designee, the applicant may appeal the denial to the Village Clerk by a filing a written notice of appeal with the Village Clerk within ten days after receiving notice of denial. Upon receipt of the notice of appeal, the Village Clerk shall appoint a hearing panel consisting of three members: the Village Engineer or his/her designee, and any other two designees of the Village Clerk. This panel shall proceed to hear the appeal upon notice to the applicant within thirty (30) days of the filing of such notice of appeal. This panel shall have the discretion, after interviewing the applicant and the

ENFORCING OFFICER or his/her designee, to reverse, affirm, or modify the aforesaid decision.

Section 10. Protection of Existing Trees. In connection with any construction, subsequent to tree clearing but prior to the start of other construction, snow fencing or other protective barrier acceptable to the Construction Official and Village Engineer, shall be placed around trees that are not to be removed. The protective barriers shall be placed at the dripline or canopy line of any tree and shall remain in place until all construction activity is terminated. No equipment, chemicals, soil deposits, or construction materials shall be placed within any area so protected by barriers. Any landscaping activities subsequent to the Removal of the barriers. Any landscaping activities subsequent to the Removal of the barriers shall be accomplished with light machinery or hand labor.

Section 11. Emergency Action. In the event of an Emergency, any person otherwise subject to this section, having responsibility, jurisdiction and/or authority to cure, remedy or mitigate dangerous, hazardous, inconvenient, unhealthy or obnoxious conditions resulting from the Emergency, may, without first applying for and obtaining a permit under this section, take any lawful action which is otherwise a regulated activity. However, such person or the agent or designee of such person, shall apply for a Tree Removal Permit not later than the end of the second succeeding business day after any regulated activity takes place and may not proceed with non-Emergency work including restoration, until a permit is obtained.

Section 12. Penalties. When regulated trees are removed without a Tree Removal Permit, the affected areas shall be replanted as required by the Enforcing Officer or his/her designee. Any person guilty of violating any of the provisions of this section shall be subject to a fine not exceeding \$1,250.00 per removed tree. Each Heritage Tree removed or destroyed in violation of this section shall be considered a separate violation.

Section 13. This Ordinance shall take effect immediately upon passage and publication as required by law.

UPON MOTION of Mayor Fernicola, second by Commissioner Cheswick, carried that the meeting be opened for comments on Ordinance 2023-489 only.

Jack Hedaya, submitted a petition signed by 169 Loch Arbour Residents representing over 50 tax payer lots. Mr. Hedaya read the petition, opposing the Tree Ordinance. The Petition was then submitted to the Clerk to be filed.

Cathy Cunniff, Euclid Avenue, is in favor of adopting the Ordinance. She was not aware of the Petition circulating around the Village. She opposes the statement from Mr. Hedaya, that it represents the "majority" of the residents in the Village.

Margot Fernicola, Euclid Avenue, stated she was not made aware of Petition being circulated to the residents.

Jason Elo, Edgemont Drive, questioned the Ordinance. Mr. Elo discussed with the Mayor.

Marcella Crisci, Euclid Avenue, stated she was not made aware of Petition being signed by the residents.

Robert Salame, Norwood Avenue, spoke about a fruit tree in his backyard, he stated a fruit tree cannot be taken down on his property, due to his religious beliefs. If the tree needs to come down, due to it being diseased, he is opposed to the additional expense and time to get permission from the Village.

Francis Wass, stated a 150 year old tree and a new planting is not the same, with regards to what the tree does for the environment.

Jack Hedaya, Euclid Avenue, stated he has 26-27 trees on his property, and believes this Ordinance affects him the most and questioned the monitoring of the Ordinance.

Cathy Cunniff, Euclid Avenue, requested a clarification of the circumference of a tree referenced in the Ordinance. Mayor Fernicola read from Ordinance.

There being no further comments, UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo, carried the meeting be closed to the public

Commissioner Cheswick, stated he is opposed to this Ordinance, but he suggested changing the circumference to the Tree in the Ordinance to 12 inch or higher to apply for a tree permit.

UPON MOTION of Mayor Fernicola, seconded by Commissioner D' Angelo, carried Ordinance 2023-489 be adopted on final reading directing the Clerk to post and published as required by law.

Recorded Vote:

Ayes: Commissioner D' Angelo, Mayor Fernicola

Nays: Commissioner Cheswick

Absent: None

Resolution 2023-74: UPON MOTION of Mayor Fernicola, seconded by Commissioner Cheswick, carried, that the following resolution be adopted:

WHEREAS, the Annual Report of Audit for the year 2022 has been filed by a Registered Municipal Accountant with the Municipal Clerk as per the requirements of N.J.S.A. 40A: 5-6, and a copy has been received by each member of the governing body; and,

WHEREAS, the Local Finance Board has promulgated a regulation requiring that the governing body of each municipality shall, by resolution, certify to the Local Finance Board of the State of New Jersey that all members of the governing body have reviewed, as a minimum, the sections of the annual audit report entitled:

WHEREAS, the members of the governing body have personally reviewed as a minimum the Annual Report of Audit, and specifically the sections of the Annual Audit entitled:

WHEREAS, all members of the governing body have received and have familiarized themselves with, at least, the minimum requirements of the Local Finance Board of the State of New Jersey, as stated aforesaid and have subscribed to the affidavit, as provided by the Local Finance Board; and,

R.S. 52:27BB-52: "A local officer or member of a local governing body who, after a date fixed for compliance, fails or refuses to obey an order of the director (Director of Local Government Services), under the provisions of this article, shall be guilty of a misdemeanor and, upon conviction, may be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one year, or both, and in addition, shall forfeit his office."

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Village of Loch Arbour that the following persons are appointed for employment at the Village Beach Club, Loch Arbour, commencing August 1, 2023 for the summer season of 2023:

NAME	TITLE	SALARY PER HOUR
Sarah Hazelrigg	Gateperson	12.93
Benjamin Drucker	Gateperson	12.93
Gavvn vnch	Gateperson/Lifeuard	12.93

BE IT FURTHER RESOLVED that the weekly scheduled hours for each employee may be changed at the Beach Manager's discretion based upon the staffing needs of the Village Beach Club.

BE IT FURTHER RESOLVED that a certified copy of this Resolution shall be supplied to the Chief Financial Officer for his action.

Recorded Vote:

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

Nays: None

Absent: None

**PROCLAMATION
VILLAGE OF LOCH ARBOUR IS
DECLARING AUGUST 31, 2023 INTERNATIONAL OVERDOSE AWARENESS DAY**

WHEREAS, each year we lose thousands of people from drug overdose globally. Some survive but suffer a permanent injury, with devastating impact to their families and friends; and

WHEREAS, the Village of Loch Arbour is not immune. You may have seen it; it has happened to people around you. Tomorrow, it could happen to someone you love. This is not an invisible issue; and

WHEREAS, International Overdose Awareness Day provides an opportunity for us to reflect on practical ways to prevent overdose in our community. Overdose is preventable. Knowing the real facts about drugs and what to do when you see someone experiencing an overdose DOES save lives. International Overdose Awareness Day events that aim to educate our communities about drugs can really help.

NOW, THEREFORE, I, Paul V. Fernicola, Mayor of the Village of Loch Arbour, by the powers vested in me, do hereby proclaim August 31, 2023, as

INTERNATIONAL OVERDOSE AWARENESS DAY

in the Village of Loch Arbour and by doing so, making our citizens aware of this devastating situation.

Recorded Vote:

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

Nays: None

Absent: None

UPDATES/DISCUSSION

A. Next Commissioners Meeting is scheduled for September 6, 2023 at 6:30 pm to be held at the Village Municipal Building.

PUBLIC HEARING

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

Francis Wass, Edgemont Drive, discussed that all different trees have different diameters. He stated picking a diameter of a tree is not a precise way of regulating the Tree Ordinance.

Robert Salame, Norwood Ave, is disappointed the Tree Ordinance passed without further discussion.

Erin Dolan, Edgemont Drive, recommended putting a bike lane on Edgemont Drive.

Melanie Nowlin, Edgemont Drive, asked if any more consideration has been given to purchase a speed sign to be placed on Edgemont Drive. The Deal Police are conducting a speed study on Edgemont Drive. The results will be in shortly.

Jack Hedaya, Euclid Avenue, discussed planting trees in the Village. The Clerk and Engineer are attempting to locate a Grant from the State of New Jersey to help alleviate the cost to the Village to plant trees in the Village's Right of Way areas.

Marcella Crisci, Euclid Avenue, stated there is a speeding problem on Euclid Avenue. She also discussed the problem of residents not abiding by the Moratorium Ordinance and performing work on their homes during the summer. She stated the Deal Police are not quick to respond, or do not respond at all.

Cathy Cunniff, Euclid Avenue, discussed tree ordinance and the huge benefits of having trees, and how it reduces flooding. She also discussed purchasing a speed sign. Also discussed were the fines incurred for work that was being done without a permit at the snack bar. She confirmed the snack bar vendor will be paying the fines. Ms. Cunniff was happy to see a more kid friendly menu. Her grandchildren thought the food was mediocre though.

Robert Salame, Norwood Avenue, stated this past weekend his father was questioned 4 times if he had a beach badge. This is unnecessary. He spoke to the Mayor regarding the Special from the Deal Police Department assigned to the beach. Mayor Fernicola stated in Deal, the Special's walk on the beach to check beach badges. The Special is doing this in Loch Arbour. Mayor Fernicola stated there has been an issue about the patrons telling the staff members that they do not need a badge to

Marilyn Simons, RMC
Village Clerk

