

**MINUTES
REGULAR MEETING
MUNICIPAL COUNCIL – BOROUGH OF RED BANK
JULY 23, 2014
6:30 P.M.**

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT: Mayor Menna and Council Members Murphy, Burnham, Horgan, Lewis, Zipprich and DuPont.

ALSO PRESENT: Administrator Sickels, Municipal Clerk Borghi, Chief Financial Officer Poulos, Attorney O’Hern and Engineer Ballard.

SUNSHINE STATEMENT

Mayor Menna requested the minutes reflect that, in compliance with Public Law 1975, Chapter 231 (Open Public Meetings Act), notice of this meeting has been provided by notifying the Asbury Park Press, the Two River Times and the Star Ledger and by placing a notice on the bulletin board and filing same with the Borough Clerk on January 1, 2014.

SUSPEND REGULAR ORDER OF BUSINESS

Councilman Murphy offered a motion to suspend the regular order of business, seconded by Councilman DuPont.

ROLL CALL:

AYES: Murphy, Burnham, Horgan, Lewis, Zipprich, DuPont

NAYS: None

There being six ayes and no nays, the motion was declared approved.

2nd Annual Student Ambassador for the Environmental Award Elijah Nishiura

Councilwoman Horgan reported that Mr. Nishiura would be coming late to the meeting.

Mayor Menna said they would hold his presentation until he arrived.

Teachers of the Year Resolution Presentations

Councilwoman Horgan read the following resolutions:

- 14-210 A Resolution Commending Kathleen Boylan on Being Named Teacher of the Year for the Red Bank Charter School.
- 14-211 A Resolution Commending Julius Clark on Being Named Teacher of the Year for the Red Bank Middle School.
- 14-212 A Resolution Commending Krishna Kanuga on Being Named Teacher of the Year for the Red Bank Regional High School.

Mayor Menna presented each teacher with their resolution and commended them on their efforts.

Councilwoman Horgan offered a motion to approve the resolutions, seconded by Councilman Zipprich.

ROLL CALL:

AYES: Murphy, Burnham, Horgan, Lewis, Zipprich, DuPont

NAYS: None

There being six ayes and no nays, the motion was declared approved.

RESUME REGULAR ORDER OF BUSINESS

Councilman DuPont offered a motion to resume the regular order of business, seconded by Councilman Zipprich.

ROLL CALL:

AYES: Murphy, Burnham, Horgan, Lewis, Zipprich, DuPont

NAYS: None

There being six ayes and no nays, the motion was declared approved.

WORKSHOP

Government Energy Aggregation Program (GEA)

Councilman DuPont explained the program that provides consultants to dig out the Borough’s electrical needs. He said he would like to have the Borough Administrator distribute a packet of information. He explained that it could result in cost saving for the Borough and its businesses and residents.

Mayor Menna agreed that Administrator Sickels should distribute a packet of information to the Council.

Councilman Zipprich said he had proposed the idea previously and said he thought it was a terrific idea.

Councilman DuPont said he had also asked the Administrator to look into wind energy particularly with respect to Count Basie Field. He said information would be coming to the Council so they could determine if they wanted to go out to bid.

Mayor said he was aware of the program and noted changes in design styles and agreed that the Borough should look into it.

APPROVAL OF MINUTES – June 11, 2014

Councilman DuPont offered a motion to approve the minutes, seconded by Councilwoman Horgan.

ROLL CALL:

AYES: Murphy, Burnham, Horgan, Lewis, Zipprich, DuPont

NAYS: None

There being six ayes and no nays, the motion was declared approved.

MAYORAL APPOINTMENTS

REPORTS OF MAYOR AND COUNCIL MEMBERS

Councilman Murphy said a dumpster had been placed at 106 Monmouth Street and that they were in the process of cleaning it out. He said the Department of Public Works would be taking it down in the coming weeks. He asked for a report on the date.

Councilman Zipprich referred the question to the Engineer.

Engineer Ballard said it would be the next week.

Councilman Murphy asked for confirmation that the property would be used for parking.

Mayor Menna said it had been discussed but the Council would decide.

Councilman Murphy said he had seen a preliminary plan that showing parking.

Mayor Menna said it was a rough drawing.

Councilman Murphy asked if the Parking Committee would be reviewing the plan.

Mayor Menna said the intent was to refer it to the Parking Committee.

Councilman Zipprich said he had previously mentioned that the Shade Tree Committee had concerns about trees on the site. He said he had passed them on to the Engineer.

Mayor Menna said the Engineer would look at their concerns and incorporate recommendations. He asked about the date of the demolition.

Councilman Zipprich said it depended on when it was cleaned out.

Councilwoman Burnham said she was excited it was coming down and said it was a disgrace. She also reported that the Code Committee had met to discuss problems regarding sign issues and said 15 out of 37 had complied. She said the ordinance needed to be reviewed and said there was work to be done. She said she had a letter from Sharon Lee dated 2013 also noting a problem with the increasing number of cases of non-compliant signage. She called for putting politics aside and said they should work together to simplify the ordinance while keeping the charm and character of the town. She said she also wanted to report on a fabulous program that hadn't gotten much PR. She noted that she had brought up the issue of the basketball court at Montgomery Terrace and had been able to get private donations to fund backboards, nets and rims for the site and had gotten them installed with volunteer labor. She said they had partnered with the YMCA who would be offering a program at the Montgomery Terrace location for five dollars. She said, for the five dollar fee, participants would get a t-shirt, ball and instruction. She also noted that David Prown had a program to distribute used sports equipment. She reported that the Community Garden was bursting with vegetables, flowers and fruits. She said there was a share chair at the garden that offered items free for the taking.

Engineer Ballard said, since they were looking at the sign ordinance, she wanted to report on a pending application for an art gallery that would require a variance for art on the building. She said the ordinance currently lumped art and signage together and suggested it be reviewed in an effort to promote more art around town.

Councilman Zipprich thanked Engineer Ballard for mentioning it.

Councilman Horgan noted that, at the last Council meeting, the Council had passed a resolution on the Regional Greenhouse Gas Initiative that had been requested by the Environmental Commission. She reviewed the initiative that called for the reduction of pollution from power plants. She said the Association of New Jersey Environmental Commissions contacted the Red Bank Commission to thank the town for passing the resolution and said Red Bank was the first municipality in the State to do so. She said Senator Booker's office had also called the Borough Clerk to thank the municipality and said he was in support. She also reported that the Library Board had met on July 17 and said there was a new Board member which was Father Alberto Tomaio. She said the Library would be participating in the sidewalk sale to sell tote bags and note cards and would have a pop-up museum. She said the Book Sale and Preview would be September 12 and 13. The Library Foundation had received \$5,000 from the International Flavor Festival because they had delivered volunteers to assist at their event. She said the

History Room was receiving many donations and said the Two River Times would be doing a story on the oral history project.

Councilwoman Lewis reported that the Parks and Recreation Committee had met on the 16th and had discussed the Bellhaven Park design. She said they were continuing to work on the plan with the Environmental Commission. She said she wanted to congratulate the Jersey Shore Thunder 12-U Baseball Team for travelling to Cooperstown and playing respectable ball. She thanked the Parks and Recreation Department for bringing baseball back to Red Bank. She also reported that the Vision Committee had secured dates and were working on artists and would make an announcement soon.

Councilman Zipprich reported that it was the 60th Anniversary of the Sidewalk Sale which would be held the coming weekend. He said the Red Bank Public Schools Strings program would be participating which had been started nearly a decade ago after an anonymous donor had provided more than 100 stringed instruments. He reviewed the program and said it was in jeopardy. He said the Red Bank Borough Education Foundation was working to cover costs of upkeep and would have a table set up with information. He said the Historic Preservation Commission had met the previous Saturday and had walked the Washington Street Historic District. He reported that he had met with the Department of Public Works COMSTAT team to review departmental concerns. He said he wanted to remind everyone that Yvonne MacDonald had recently lost a sister and Dawn Shields had lost her father. He said he, Councilwoman Burnham and the Mayor had walked through the Red Bank Train Station with Senator Beck and Assemblywoman Cassagrande. He said they reported that it was 75 percent complete and expected the work to be done by November. He said the Lunch Break sock campaign was doing well and were also looking for winter clothing. He said he had met with the YMCA regarding the Youth Council and said they were being extremely supportive of the program.

Councilman DuPont thanked the Holiday family for a great car show. He said he wanted to follow up on the bike report and said the Borough would be implementing the recommendations from the Urban Report. He reviewed the streets that would soon have shared lanes and noted that there would be fully designated bike lanes on Bridge Avenue as part of the next Road Program. He also thanked Mayor Menna, Councilman Zipprich, Councilwoman Lewis and Engineer Ballard for the presentation on the Sunset Avenue property. He said it appeared that there was hope that there would be a park there in the next five to ten years.

Mayor Menna said it was more than hope. He said it would take time and said it was a challenging site but said he felt the Council had taken all of the right steps, had the right professionals and most importantly, was using the State's money.

COMMUNICATIONS AND PETITIONS

PUBLIC COMMENT ON RESOLUTIONS ON THE AGENDA AND ORDINANCES ON THE AGENDA ON FIRST READING

Councilman Murphy asked that resolution 14-199 be held.

Mayor Menna said he had spoken with the Chief of Police and believed that Councilman Murphy's concerns had been addressed. He said there was a revised resolution.

Councilman Murphy asked if he had been given the revised resolution.

Mayor Menna said he had.

Councilman Murphy questioned details of the resolution including the imposed closing time and the name on the license.

Municipal Clerk Borghi explained that the liquor license was held under "Chubbys Waterside Café" but the business operated as "Vibe."

Councilman Murphy asked for details on the ownership of the license.

Clerk Borghi said she did not have the available with her.

Mayor Menna noted that the resolution would only address the renewal of the license regardless of the ownership.

Attorney O'Hern noted that the closing time was agreed to in prior conditions that were imposed.

Councilman DuPont asked if the Chief had seen the revised resolution.

Attorney O'Hern said he didn't know if the Chief had seen it but said they had spoken with him.

Mayor Menna said they had asked him if the prior conditions attached to the license should be reapplied. He said the Chief had confirmed that all of the previous conditions should be placed on the resolution.

Mayor Menna said they could table it if that was what Councilman Murphy wanted but he wanted to let him know that the discussion had been held with the Chief.

Councilman Murphy said he would like it held to the next meeting

Councilman DuPont said he would send the motion.

Clerk Borghi explained that the license must be renewed by July 31 in order for the owner to continue to operate.

Mayor Menna explained that if they tabled the resolution, the Council would probably have to hold a Special Meeting for the purpose of renewing the license.

Councilman Murphy asked that the resolution be amended the change the time that they would be required to end music from 1:30 am to 1 am.

Attorney O'Hern said they could do that but he did not believe it had been discussed with the licensee.

Councilman DuPont suggested the Chief be given a copy to review while the meeting continued and he could confirm.

Mayor Menna said he understood Councilman Murphy's concern regarding the music because there were residential units nearby.

Councilman Murphy said that was just one of many issues at the business. He said, if the Mayor had discussed it with the Chief, he was fine with it.

Mayor Menna suggested they reach out to the Chief for his input while they continued with the meeting and, depending on his comments, either act on the resolution later in the meeting or entertain a motion to table.

Councilman Murphy asked for details on what would happen if the resolution was not acted on at this meeting.

Mayor Menna explained that the business was operating on an Ad Interim permit meaning the ABC was permitting him to operate until the last day of July unless the license is renewed. He said the Council would have to hold a special meeting or he would not be able to operate after that date.

Councilman Murphy said he recalled that all of the licenses had been renewed in one resolution and asked why this one was separate.

Clerk Borghi explained that the owner was unable to get tax clearance for renewal by the July 1 deadline so he had to apply to the state for a 30 day extension while he resolved the matter.

Mayor Menna said they would hold off on action while they tried to reach the Chief.

Mayor Menna opened the public comment portion of the meeting and asked if anyone would like to speak.

No one appeared.

ORDINANCES – First Reading

ORDINANCES – Public Hearing and Final Adoption

RESOLUTIONS

By Consent Agenda:

- 14-197 A Resolution Authorizing Tax Credit Due to Judgments of the Tax Court of New Jersey.
- 14-198 A Resolution to Approve the Hiring of Parks and Recreation Summer Staff.
- 14-200 A Resolution Honoring Sara Halloran as the Highest Ranking Red Bank Senior.
- 14-201 A Resolution Authorizing the Extension of the Grace Period on Taxes.
- 14-202 A Resolution Requesting Special Item of Revenue – Cops in Shops.
- 14-203 A Resolution Requesting Special Item of Revenue – NJ Drunk Driving Enforcement Fund.
- 14-204 A Resolution Requesting Special Item of Revenue – Click It or Ticket.
- 14-205 A Resolution Authorizing Refund Due to Overpayment of Construction Permit Fees.
- 14-206 A Resolution Authorizing Contracts with Certain Approved State Contract Vendors for Contracting Units Pursuant to N.J.S.A. 40A:11-12a (Code Enforcement Office).
- 14-209 A Resolution Authorizing Acceptance of Performance Guarantee and Inspection Escrow Regarding 199 Broad, LLC, 199 Broad Street, Block 105, Lot 16.

Councilwoman Horgan offered a motion to approve the resolutions, seconded by Councilman Zipprich.

ROLL CALL:

AYES: Murphy, Burnham, Horgan, Lewis, Zipprich, DuPont

NAYS: None

There being six ayes and no nays, the motion was declared approved.

14-199 Mayor Menna read, "A Resolution Authorizing Renewal of Plenary Retail Consumption License for Chubby's Waterside Café, Inc. t/a Vibe for the Period of July 1, 2014 to June 30, 2015."

Councilman DuPont offered a motion to table the resolution, seconded by Councilman Zipprich.

ROLL CALL:

AYES: Murphy, Burnham, Horgan, Lewis, Zipprich, DuPont

NAYS: None

There being six ayes and no nays, the motion was declared approved.

14-207 Mayor Menna read, "A Resolution Authorizing the Repair and Replacement of the Existing Bulkhead at the Red Bank Public Library."

Attorney O'Hern said reviewed the history of the issue. He had examined the deed and said it was his opinion that the deed required the Borough to maintain or replace the bulkhead but had no authorization to remove it. He said it was his job to protect the interest of the Borough. He said it was a very valuable property and any provision of the deed that was violated could trigger its sale. He said he felt the safest course was to replace the bulkhead. He also noted that the Borough had received objections from the neighboring property owners at Corinthian Cove. He said they had also obtained an opinion from the Borough's insurance carrier and they had said the removal of the bulkhead would be considered intentional and the Borough would have no insurance coverage for any claims of damages.

Mayor Menna asked Attorney O'Hern to confirm that, should a lawsuit be filed by an adjoining property owner citing damage due to the Borough's actions or inactions, any consequential damages would not be covered based on the opinion of the Borough's insurance carrier.

Mr. O'Hern said that was correct because it would be considered an intentional act.

Mayor Menna discussed the possibility of a personal injury claim, whether by a library user or trespasser, and noted that the Borough would not have coverage.

Attorney O'Hern said it would depend but stressed the danger of the potential of the Borough having no coverage. He also noted that the deed stated the property could not be used for a public park or public gathering space and said he felt the living shoreline or lack of a bulkhead would invite people onto the property and could create a liability that did not currently exist.

Councilman Zipprich said Attorney O'Hern had mentioned the inability to seek an advisory opinion and asked for an explanation.

Mr. O'Hern said it had been suggested that the town should pay its Borough Attorney to go to court to ask a judge to interpret a deed. He said he felt the judge would say the town was asking for an advisory opinion when there was no case or controversy before the judge. He said if the Borough moved forward with removing the bulkhead and someone filed a suit, then there would be a case or controversy and then the judge could make a determination. He again stated it was his job to protect the Borough and said it was his opinion that the removal of the bulkhead could expose the Borough to liability and/or loss of the property.

Councilman Zipprich thanked him for his explanation.

Councilman DuPont expressed concern about the potential liability issue noted that the Borough had recently received a torte claim notice regarding an incident at Maple Cove.

Mayor Menna confirmed that was correct.

Councilman DuPont asked what the amount of the claim was.

Mayor Menna said it was a \$10 million claim.

Councilman DuPont said the exposure on a claim like that could severely impact the Borough's finances.

Councilwoman Burnham said she was aware of the torte claim.

Attorney O'Hern cautioned her on speaking on the merits or facts of the potential lawsuit.

Councilwoman Burnham asked if she could say when the accident happened.

Attorney O'Hern said she should not.

Councilwoman Burnham said she thought it was hype. She said she was aware of the details and thought it was ridiculous. She said it was her personal opinion.

Both Attorney O'Hern and Mayor Menna urged her to refrain from comment.

Councilwoman Burnham said the bulkhead had been neglected for 20 to 30 years. She said Harvard had done nothing. She asked Mayor Menna if he had sent a letter to Harvard.

Mayor Menna said he had sent a lengthy letter that he had run by the Borough Attorney. He said she was welcome to a copy of it and said he had not tried to sway them but had offered facts.

Councilwoman Burnham said she would like a copy of it and would like to follow up on it. She referenced old deed that restricted owners from selling to certain races.

Mayor Menna said those unfortunate restrictions were racist and had been struck down by the courts because they were unconstitutional.

Councilwoman Horgan noted that many experts had been unable to attend and spoke of the benefits of living shorelines. She read from the resolution and offered arguments against some of its points. She said she had asked Councilwoman Horgan at a previous meeting about the status of her contacting the America Littoral Society and said she had reported that she and Mr. Sickels had been working on a letter. She said she thought things were moving forward and that there would be a public hearing. She called to table the resolution. She said she knew they were moving forward because there was already a crane at the library.

Mayor Menna said he was unaware of a crane in the area.

Councilman Zipprich said he knew there had been a crane in the area for work on the Route 10 bridge.

Attorney O’Hern noted that the project hadn’t even been put out to bid yet.

She again asked that they table the resolution and hold a public hearing. She said there would be a significant cost savings by implementing the living shoreline and said the Borough could be an environmental leader.

Mayor Menna said she raised some good points and asked the Engineer to opine of the comments that a living shoreline could be done for almost no money.

Engineer Ballard said a living shoreline project on the Barnegat Bay in Ocean County was being done at a cost of \$8 million. She said it was being done with the Steven Institute and the Littoral Society. She said maintenance of the project was going to be handled by Ocean County.

Councilman DuPont said initially he did not have a problem with the living shoreline but said he was concerned about the possibility of no insurance coverage. He said agreed with the concept but, being fully vested in the budget process of the Borough, he could not put the Borough at risk.

Councilwoman Burnham said it didn’t sound right and she thought it was a scare tactic.

Councilman DuPont reminded her that a torte claim notice had been filed in regard to the Maple Cove property and said the living shoreline could result in a severe exposure for the Borough. He said he did not think it would be fiscally responsible.

A discussion continued on the issue of bulkhead versus living shoreline and the scope of the project.

Councilwoman Burnham again suggested the matter be tabled for further discussion.

Councilwoman Horgan noted that the resolution had been revised to call for the use of environmentally friendly materials.

Mayor Menna asked if anyone would like to speak on the resolution.

Stephen Mitchell—no address given—said he felt the Council wanted to have it both ways and were trying to scare the public regarding the lack of insurance coverage. He noted the other areas in town that were natural and insured. He suggested the Borough ask the insurance representative if the living shoreline would be covered.

Attorney O’Hern said they asked for that opinion and the opinion given was that the removal of the bulkhead in contravention of the requirements of the deed would be considered an intentional act and that it was highly likely that there would be no coverage.

Mr. Mitchell said he thought they were trying to scare people by saying that a living shoreline would be more dangerous than a bulkhead. He said he believed a bulkhead would be more dangerous. He compared Council members logic with antiquated ideas.

Councilman Zipprich noted that Elijah Nishiura was now present.

Mayor Menna suggested the Council take a break from the discussion on the resolution and make the presentation to Mr. Nishiura.

Councilwoman Horgan explained that the presentation to Mr. Nishiura had been delayed for two years and said he was being recognized by the Environmental Commission as a Student Ambassador for his efforts to initiate a school-wide recycling program when he was in seventh grade.

Members of the Environmental Commission joined Councilwoman Horgan and Mayor Menna in making the presentation.

Stephen Mitchell continued his comments and said he questioned the Council’s comment that people could not congregate on the property because of a deed restriction but then said they were going to include a boardwalk. He questioned the logic that the walkway would be in an easement that wasn’t on the property. He said if that was the case then the bulkhead wouldn’t be on the property either and the question would be moot.

Attorney O’Hern said he believed Riverwalk would allow people to walk by but would not allow people to access the library property. He said the language was clear that they did not want public gatherings or a park but they make an exception for the Riverwalk so people could walk past.

Councilwoman Burnham asked why the Riverwalk could be built over a natural area.

Mr. Mitchell asked if there would be signs along the walkway that would say “No stopping or standing.”

Administrator Sickels said it was no different that the easements the Borough had with the Bluffs, Corinthian Cove, the Molly Pitcher or the Oyster Point. He said once they had easements for all of the properties, the idea was for the Borough to go forward with the Riverwalk plan. He also noted that Mr. Mitchell had stated a number of things the Borough could be sued for and said he wanted to point out that the Borough had been sued many times and the matters were covered by the insurance. He said in regard to the library property, the deed specified that the Borough was responsible and the insurance company said the Borough would have made a conscious decision to go against that and, therefore, would not be covered.

Mr. Mitchell said the Borough was not trying hard enough to change the deed.

Frank Corrado—53 Oakland Street—read a letter drafted by the Environmental Commission calling for the Borough to not move forward with the bulkhead project but instead make a formal assessment on the feasibility of a living shoreline. He said the letter was unanimously approved by the Environmental Commission. He said he wanted to speak on a personal note and asked if any permits would be required for the bulkhead replacement.

Mayor Menna said he understood there would be a permitting process.

Mr. Corrado asked if it would require DEP approval.

Engineer Ballard said DEP approval would be required for either a living shoreline or a bulkhead.

Mr. Corrado said from what he heard it seemed like Attorney O’Hern had a lot of power. He said the Council was relying on his opinion and noted that there were other distinguished attorneys that had provided alternative opinions.

Mayor Menna said five lawyers would offer five different opinions. He said ultimately the Borough would put its trust, faith and respect on the person they had appointed. He said Mr. O’Hern had given an uncritical, unbiased opinion based on the facts.

Attorney O’Hern said it was his job to protect the Borough’s interests. He said, when it comes to tax payer money, he has to err on the side of caution. He said he understood Mr. Mitchell’s comments that times change, but said the documents were not subject to alteration and compared it to a will.

Mr. Corrado asked if the intent of the deed was considered. He said he assumed the bulkhead clause was included because they wanted to maintain the library property.

Attorney O’Hern said he thought the intent was to impose upon the Borough to maintain and keep the library grounds in good repair. He again noted the liability issues that could be associated with a living shoreline and said he believed it would violate the intent of the deed.

Councilman DuPont said he believed that when the deed had been created there had been a living shoreline and that a conscientious decision was made to include a bulkhead.

Mr. Corrado said a living shoreline would not encourage people to congregate. He described the vegetation that would grow and said it would not be hospitable and would probably be less likely to encourage congregation than a bulkhead.

Mayor Menna asked Mr. Corrado if it was true that it would take multiple years to get a living shoreline in place. He said if they went with the living shoreline, it would have to be a place that would be out of access for a couple of years.

Mr. Corrado said, for the full growth to take place, that would be the case. He also asked, if the Borough went forward with the living shoreline, would Harvard come and take the property or would someone file suit.

Attorney O’Hern said someone would have to make a claim. He said it could be Harvard or Corinthian Cove. He said the claim that the deed had been violated could trigger the sale of the property. He said he felt it was too valuable of a property to put at risk.

Mr. Corrado said he felt the reference to Barnegat Bay project was a scare tactic and was not relevant to the Red Bank project. He said he respected the Mayor and Council and said they had promoted environmental issues. He said the matter was an issue that was in their hands and asked them to stand up and fight for it.

Stephen Hecht—135 Branch Avenue—said he was speaking as a private citizen and not as a member of the Board of Trustees of the Library. He said he had read the Mayor’s letter to Harvard and noted that the Mayor had referred to Harvard as a third party. He asked if the Eisner Trust had named successors and suggested they should be solicited rather than the university to determine if the living shoreline would trigger a default on the deed. He said he understood that the Borough was held hostage by the threat of a lawsuit by the neighbors and also by the insurance fund. He said he understood those issues but again suggested they solicit the Eisner Trust successors on the matter.

Mayor Menna said he made good points and he appreciated the comments. He said his initial reaction was that the Eisner Trust had been liquidated several years ago and gone out of existence. He said the remaining funds had been transferred to a fund for Red Bank including the library. He said while there were successors and heirs to those that had created the trust, the actual fund had not been a functioning entity for approximately twelve years. He said a distribution had been made to the Borough and to the Library for public projects.

Mr. Hecht asked how it would jeopardize the deed if there were no party to exercise a challenge.

Attorney O’Hern said they did not know what party could potentially bring a claim including Corinthian Cove which could lead to a judge determining that the Borough had violated the deed. He noted that the deed stated that if the Borough violated any provision it would automatically trigger the transfer of the property to a financial institution to be sold.

Mr. Hecht asked if they had standing to institute a claim against the deed.

Mr. O'Hern said they could make the argument in a lawsuit that the Borough was aware of the obligation to maintain the bulkhead and had taken it down. He said a court could make the determination that taking it down was an intentional act. He said it was his job to advise the Council to protect the Borough from possible lawsuits and loss of the property.

Mr. Hecht again suggested they should investigate to see if there was a successor and said it would add transparency to the process.

Attorney O'Hern asked if Mr. Hecht was referring to the deed document when he referenced a successor.

Mr. Hecht said he was.

Mr. O'Hern said there was no successor.

Mr. Hecht asked who would enforce the admonitions that were set forth in the document.

Mr. O'Hern said it would be enforced by the Court if someone brought a claim. He said comments had been made doubting Harvard's desire to take the property but noted that a violation could trigger an automatic transfer of the property to the bank. He also noted that the discussions were public record and if someone should be hurt on the property, there was a record that the Borough had made a decision to take down a bulkhead which could put the Borough at risk.

Laura Dardi—63 Oakland Street—read a letter dated July 23rd from Kathleen Gasienica who had been unable to attend which criticized the Council for adding “an item of great public concern” to the agenda with less than a week’s notice. She said the Council had forged ahead with expensive projects that were detrimental to the environment and fiscally irresponsible. She specifically criticized the decision to replace the bulkhead rather than installing a living shoreline and itemized other decisions she had taken issue with. Ms. Dardi said she also wanted to speak on her own behalf as an Environmental Commission member. She said she was also speaking on behalf of her neighbor Jen Barrons and called for the Council to table the resolution to research the environmental elements.

Laura Bagwell—19 Leroy Place—thanked the Mayor and Council for their time and for offering a thorough discussion of the issue. She said Kathleen Gasienica had asked her to read a letter from Tim Dillingham of the American Littoral Society in support of a living shoreline. She also noted that she was not an attorney or an engineer but had done research on living shorelines to see if they were detrimental in any way. She said everything she had read found that bulkheads caused erosion. She said bulkheads were outdated technology and living shorelines were now encouraged by the NJDEP. She said the insurance issue needed to be clarified. She noted that the NJDEP was requesting communities, in the wake of Hurricane Sandy, to become more resilient and implement living shorelines. She questioned how there could be an insurance exposure under those circumstances. She called for a study to determine how it would impact Corinthian Cove. She also suggested incorporating a bulkhead into the living shoreline.

Attorney O'Hern said she made a good point regarding the insurance but noted the difference with this situation was the deed that was in place. He said it made this situation a little different and again noted that the removal of the bulkhead could be determined to be an intentional act and also a violation of the deed.

Mayor Menna agreed that it was a unique situation.

Councilwoman Burnham said she would like to reach out to Harvard because she said she could not see them saying “no” to the project. She asked that they postpone so she could investigate and report back.

Ms. Bagwell also asked that it be tabled. She said she understood that residents of Corinthian Cove may have had an issue if the project would be detrimental to their property but, if it was proven not to be detrimental, she thought they would have no standing.

Councilman DuPont said the problem was that neither Harvard nor anyone else was going to place insurance on the area based on the opinion the Borough had received. He said the Borough would be operating the living shoreline without any insurance and if someone should hypothetically fall, the Borough would have to pay for any potential lawsuit out of its coffers, bond for the expense or sell a Borough asset to pay for the judgment.

Ms. Bagwell said that was the issue that she would like to see clarified and again questioned how there could be no insurance if the project was recommended by the State.

Councilman DuPont said it was the response received from the Joint Insurance Fund. He said the DEP had no jurisdiction over the Joint Insurance Fund.

Mr. Sickels said he understood the restriction on the deed is perpetual and went with the property and could not be re-negotiated by Harvard, the surviving Eisners or the Borough. He said people at Corinthian Cove could be in favor of the living shoreline but when they sold their units, the new owners may take issue with it if damages were sustained.

Ms. Bagwell questioned the spirit of the deed and noted the different interpretations of the word “maintained.”

Boris Kofman—28 Riverside Avenue—asked Attorney O'Hern to explain what a declarative judgment was.

Mr. O'Hern said a “declaratory judgment” was when one would go into court and ask the court to make a determination about a particular issue. He said typically there would have to be a case, controversy or

dispute of some sort. He said he did not think he could, in good conscience, go into court to seek a declaratory judgment that the installation of a living shoreline would not violate the deed when he had already advocated that it would. He said someone else could go into court to do that but they would have to have standing. He again stated that he felt the court would determine that they were seeking an advisory opinion.

Mr. Kofman asked if it was correct that there was no reason that they shouldn't try it.

Mayor Menna said there was a reason noting that the Borough Attorney had stated he could do it but it wouldn't yield any result other than a cost to the taxpayers.

Mr. Kofman asked why he said it wouldn't result in anything.

Mr. O'Hern said he could ask the judge to reform the document but said he felt that would be very difficult to get a judge to do that. He said he could also ask for a ruling regarding what the deed meant but felt the judge would throw him out on the grounds that he was the Borough Attorney and it was his job to advise his client because there was no dispute before the court. He said he would not recommend it and felt it would be a waste of the taxpayers' money. He said if another party might feel they had standing to do that.

Mr. Kofman said the worst thing that could happen was the Borough would spend some money to find out that they had to maintain the bulkhead and the best case scenario would be that a living shoreline would be determined to be a valid alternative and they would save tens of thousands of dollars on the bulkhead replacement.

Attorney O'Hern said the court was not going to decide on the merits of whether or not a bulkhead was a better option than a living shoreline. He said it would be a very expensive lawsuit involving expert witnesses. He said the question was whether or not the installation of a living shoreline would violate the deed and said his opinion was that a court would not give a Borough Attorney an advisory opinion on that. He said the court could also be concerned about other interested parties and listed entities he might be required to notice which would expand the issue and make it more expensive for the Borough. He again noted that he had very little confidence that they would get a determination from a judge.

Mr. Kofman said he saw two choices. He said one was the conservative option of replacing the bulkhead and the other was the progressive choice which he called the 20th century choice. He said he realized progressive choices involved some risk but said it would result in generations of people that would have a much better environment and would result in savings to the taxpayers.

Elizabeth McDermott—36 Elsworth Court—said she felt the library was very lucky to have the deed because it established a library in a great place. She reviewed the history of the library before it had a permanent place. She spoke about the benefits of the deed and warned against picking apart the deed and said she felt it could lead to the loss of the deed.

Laura Dardi—63 Oakland Street—said she was speaking on behalf of herself and her son and said they wanted to protect the library. She said she wanted them to pick the best choice for future generations.

Carl Alderson—Middletown—said he worked for the National Oceanic and Atmospheric Administration. He said he had spoken here on this issue a couple of years ago. He reviewed his credentials and spoke in favor of living shorelines. He called for a feasibility study on the issue. He offered several recommendations on the project.

Councilwoman Burnham asked if Mr. Alderson would be willing to come back and give a presentation on the matter. She noted that he had recommended alternate type of bulkhead other than the standard metal.

Councilwoman Lewis and Administrator Sickels both noted that that provision had been included in the resolution. Mr. Sickels asked Mr. Alderson for his card and said he would have the Engineer get in touch with him.

Councilman Zipprich thanked Mr. Alderson for the work he does for NOAA and for bring the information forward. He agreed that there were alternatives to a metal bulkhead and noted that it could incorporate a living shoreline with a bulkhead. He noted that many Council members were in favor of a living shoreline.

Stephen Mitchell—104D Prospect Avenue—said he wanted to follow up on the question that Mr. Kofman had asked about seeking a determination. He agreed that it would be an expensive and complicated endeavor. He said he wanted to ask about something Mr. O'Hern had said about reforming a document.

Mayor Menna asked how they could reform a document by alleging there was a mistake when there was no one alive that could testify that it was a mistake.

Mr. Mitchell said it wasn't necessary a mistake but things had changed since it was created and it needed to be reformed.

Attorney O'Hern said he could make an application to reform it but did not think it would be successful. He said a Court would look at the language of the document and agreed with Mayor Menna that there was no one around anymore that could say what the intent was. He said the language was that the Borough had to repair and maintain the bulkhead and said he thought that was how the court would interpret it. He said he felt if the Borough asked the Court to interpret the document, they would be told that they would

not consider the matter unless there was an actual case or controversy. He said another entity such as an environmental group could pursue the matter then that would be case or controversy before the Court.

Michael Vitiello—said he was an attorney representing Corinthian Cove. He said he had appeared before and appreciated the Council’s time. He said his clients felt it was important that he appear each time the issue was discussed to make sure the facts and legal implications were clearly understood. He said the benefits of a living shoreline over a bulkhead were generally irrelevant when it comes to the deed restriction. He noted that the deed expressly required, and said the intent was clear, that the bulkhead be maintained. He pointed out it said “the” bulkhead not “a” bulk head which he said clearly required the Borough to do two things: 1) not to removed and bulkhead and 2) to actively maintain it. He said the argument could be made now that the obligations were in default because it wasn’t being maintained. He said the deed stated that the property would be taken from the Borough if any condition was violated. He said the language was clear and added that the deed did not say the Borough could remove or change a condition. He said there was no cure built into the document. He said he felt the condition would be violated even if the bulkhead was rebuilt after it had been removed. He again stated that the merits of a living shoreline were irrelevant. In addition, he continued, regardless of deed restrictions, his clients felt that if the Borough removed the bulkhead it would be changed from an abrupt change in grade which matched the abrupt change in grade on his clients’ property to a gradual change in grade and there would no longer be lateral support for the adjoining property. He warned living shoreline advocates of the danger of the loss of the library. He said the record would show that the risks were apparent and urged the Council to act now without further adjournment. He said the record was also clear the that maintenance was needed.

Elijah Nishiura—42 McLaren Street—spoke of the importance of the library and asked the Council to adhere to the deed to protect it.

Frank Corrado—53 Oakland Street—said it was clear that Attorney O’Hern and Mr. Vitiello were in agreement on the deed. He asked for a definition of what was meant by the requirement to “maintain.” He asked if it would be acceptable if the Borough incorporated the bulkhead and a living shoreline together.

Attorney O’Hern noted the requirement was to maintain the bulkhead in its existing state which they could not do because it had deteriorated. He said the only option was to replace it with something that was better and used newer materials. He said, if that could be done in an environmentally sensitive way while incorporating a living shoreline, he thought it would be fine. He said that was just his legal opinion and said the merits and costs were a different issue. He stressed that there would have to be some type of bulkhead there.

Mr. Corrado said if the concern was that if the Borough put in the living shoreline, someone could take away the property because the Borough did not adhere to the deed, could the Borough countersue to argue that it had been done with good intent.

Mr. O’Hern said if someone made the argument that the deed had been violated, the Borough would not file a claim but would defend the suit. He again stressed that it was his opinion that there had to be some type of bulkhead.

Mr. Corrado said he did not want to risk the library but, as a taxpayer, he would like the Council to take the chance and fight any potential lawsuit.

Councilwoman Burnham again asked for the Council to table the matter to get more information.

Jennifer Barrons—61 Oakland Street—spoke in support of integrating a living shoreline into any bulkhead.

Laura Dardi—said she would like to see research on a living shoreline and said it could also be included at the Bellhaven Property.

Councilman DuPont offered a motion to close the public comment on the resolution, seconded by Councilman Murphy.

ROLL CALL:

AYES: Murphy, Burnham, Horgan, Lewis, Zipprich, DuPont

NAYS: None

There being six ayes and no nays, the motion was declared approved.

Mayor Menna said the Council had been considering the matter for two years and had had previous request from previous Library Boards to act affirmatively and decisively on the matter. He noted that the resolution would authorize the replacement of the bulkhead and called for incorporating environmentally sensitive features.

Councilwoman Burnham made a motion to table the resolution. The motion failed for lack of a second.

Mayor Menna noted that a resolution had been prepared and asked if anyone had any amendments they wanted to incorporate.

Councilman Zipprich said a number of Council members had agonized over the issue. He said they had a tremendous amount of respect for members of the environmental commission and said he wanted them to understand that the Council members had heard their concerns. He said he was glad that Mr. Alderson

had educated them that a living shoreline could be incorporated into a bulkhead. He said he thought it was an important element of the resolution that stated they would incorporate environmentally friendly design work.

Councilwoman Burnham asked if the bulkhead would incorporate both the library property and the Borough-owned property at 94 West Front Street.

Administrator Sickels said he would leave that to the Borough Engineer to make a recommendation to the Council as part of the design phase. He said the idea was the bulkhead would serve as a transition from the bulkhead at Corinthian Cove to the property at the foot of Maple Avenue. He said that would be discussed the design engineering.

Mayor Menna said he wanted to stress that there had been a previous resolution posted to the Borough's website that had been prepared for Council consideration but said that it had been amended earlier in the afternoon at Councilman Zipprich's urging to include the language regarding the use of environmentally friendly materials. He thanked Councilman Zipprich for his effort.

Councilman Zipprich said he also wanted to thank Councilwoman Horgan who he said he worked many hours with the Environmental Commission on the matter. He also thanked Councilwoman Lewis, Councilman DuPont and Councilwoman Burnham for their input. He acknowledged that it was a delicate situation and a difficult decision to make.

Councilwoman Burnham again asked if the project would include 94 West Front Street.

Mayor Menna said the question had been asked and answered already. He said it was noted that that would be part of the engineering specification and design. He said it would be reviewed by the Council.

Mr. Sickels said the property of 94 West Front Street was purchased to be part of the library property. He noted that the resolution stated that they would be putting a bulkhead at the library. He again said that the transition would be determined during the design phase.

Councilwoman Horgan agreed that it was an agonizing decision.

Councilwoman Horgan offered a motion to approve the resolution, seconded by Councilman DuPont.

ROLL CALL:

AYES: Murphy, Horgan, Lewis, Zipprich, DuPont

NAYS: Burnham

There being five ayes and one nay, the motion was declared approved.

Councilwoman Lewis said she wanted to go on the record that it should include as many environmentally friendly elements as possible including the possibility of a living shoreline.

Councilman Zipprich said he also wanted to say that it should include as much of an environmentally friendly element as possible.

14-199 Mayor Menna read, "A Resolution Authorizing Renewal of Plenary Retail Consumption License for Chubby's Waterside Café, Inc. t/a Vibe for the Period of July 1, 2014 to June 30, 2015."

Mayor Menna asked Councilman Murphy if he had clarified his questions with the Police Chief.

Councilman Murphy said he had and offered a motion to approve the resolution as is, seconded by Councilman DuPont.

ROLL CALL:

AYES: Murphy, Burnham, Horgan, Lewis, Zipprich, DuPont

NAYS: None

There being six ayes and no nays, the motion was declared approved.

14-208 Mayor Menna read, "A Resolution Authorizing the Borough of Red Bank's Purchasing Agent to Enter into a Contract with MONOC for Emergency Medical Services."

Councilman DuPont offered a motion to approve the resolution, seconded by Councilman Zipprich.

ROLL CALL:

AYES: Murphy, Burnham, Horgan, Lewis, Zipprich, DuPont

NAYS: None

There being six ayes and no nays, the motion was declared approved.

PROCLAMATIONS

PAYMENT OF VOUCHERS

14-213 Mayor Menna read "A RESOLUTION FOR PAYMENT OF BILLS AMOUNTING TO \$5,160,959.03"

Councilman DuPont offered a motion to approve the resolution, seconded Councilman Murphy.

ROLL CALL:

AYES: Murphy, Burnham, Horgan, Lewis, Zipprich, DuPont

NAYS: None

There being six ayes and no nays, the motion was declared approved.

OLD BUSINESS

NEW BUSINESS

AUDIENCE

Mayor Menna opened the audience portion of the meeting and asked if anyone would like to speak.

Michael Humphries—447 River Road, Fair Haven—said he was appearing on behalf of the Navesink Maritime Heritage Association. He said the organization had had a ship in the area in early June and said he wanted to present a Certificate of Appreciation to the Mayor and Administrator Sickels on behalf of the Association.

Mayor Menna thanked him for the presentation.

Councilman Zipprich thanked Mr. Humphries and the Navesink Maritime Heritage Association for putting the event together and bringing the ship to town.

Mayor Menna asked if anyone else would like to speak.

No one appearing, Councilman DuPont offered a motion to close the audience portion of the meeting, seconded by Councilman Murphy.

ROLL CALL:

AYES: Murphy, Burnham, Horgan, Lewis, Zipprich, DuPont

NAYS: None

There being six ayes and no nays, the motion was declared approved.

EXECUTIVE SESSION

14-214 The Attorney read a resolution to adjourn to executive session to discuss personnel.

Councilman Murphy offered a motion to adjourn to executive session to discuss personnel, seconded by Councilman DuPont. Minutes to be made public in 180 days.

ROLL CALL:

AYES: Murphy, Burnham, Horgan, Lewis, Zipprich, DuPont

NAYS: None

There being six ayes and no nays, the motion was declared approved.

Councilman Murphy offered a motion to close executive session, seconded by Councilman Zipprich.

ROLL CALL:

AYES: Murphy, Burnham, Horgan, Lewis, Zipprich, DuPont

NAYS: None

There being six ayes and no nays, the motion was declared approved.

ADJOURNMENT

Councilman Murphy offered a motion, seconded by Councilman Zipprich to adjourn the meeting.

ROLL CALL:

AYES: Murphy, Burnham, Horgan, Lewis, Zipprich, DuPont

NAYS: None

There being six ayes and no nays, the motion was declared approved.

Respectfully submitted,

Pamela Borghi