

**MINUTES
REGULAR MEETING
MUNICIPAL COUNCIL – BOROUGH OF RED BANK
JULY 10, 2013
6:30 P.M.**

PLEDGE OF ALLEGIANCE

ROLL CALL

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

ALSO PRESENT: Administrator Sickels, Municipal Clerk Borghi, Attorney O'Hern and Engineer Ballard.

ABSENT: Councilwoman Lewis and Chief Financial Officer Lapp.

Councilwoman Lewis arrived at 6:35 p.m.

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, 2013.

WORKSHOP

No workshop items.

APPROVAL OF MINUTES – June 26, 2013

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

ROLL CALL:

AYES: Zipprich, DuPont, Horgan, Lee, Murphy

NAYS: None

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

MAYORAL APPOINTMENTS

Mayor Menna made the following appointments:

To Environmental Commission:

Michael-Paul Raspanti to full member for unexpired 3-yr term to 12-31-14

Frank Corrado to Alternate #1 for unexpired 2-year term to 12-31-14

Councilwoman Horgan offered a motion to approve the appointments, seconded by Councilwoman Lee.

ROLL CALL:

AYES: Zipprich, DuPont, Horgan, Lee, Murphy

NAYS: None

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

To Zoning Board of Adjustment:

Edward Poplawski to Alternate #1 for unexpired 2-year term to 12-31-13

Chris Ferrigine to Alternate #3 for unexpired 2-year term to 12-31-14

Anne Torrey Alternate #4 for unexpired 2-year term to 12-31-13

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

ROLL CALL:

AYES: Zipprich, DuPont, Horgan, Lee, Murphy

NAYS: None

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

To Library Board:

Denelle Johnson to Mayor's Alternate for an unexpired 1-year term to 12-31-13

Councilwoman Lee offered a motion to approve the appointment, seconded by Councilman DuPont.

ROLL CALL:

AYES: Zipprich, DuPont, Horgan, Lee, Murphy

NAYS: None

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

REPORTS OF MAYOR AND COUNCIL MEMBERS

Councilman Murphy reported that the Navesink Hook and Ladder Fire Company would be having a celebration for Robert Laveratt and Donald Wright to acknowledge their 50 years of service with the volunteer Fire Department. He said the event would be at their Firehouse on Sunday, July 21 at 3 pm. He also reported that Liberty Hose Company would be hosting a car show in the White Street Parking Lot on the following Sunday beginning at 11 am.

Councilwoman Lewis arrived at 6:35 p.m.

Councilwoman Lee said the Code Enforcement Committee had met to address some issues that had been brought to their attention. She reported that, from January through June 2013, there had been 292 property maintenance issues addressed, 672 summonses addressed with fines received on approximately fifty percent, 221 Certificates of Occupancy issued. She said summonses for overcrowding were issued and resulted in over \$12,000 in fines and added that one was still pending. She thanked the Code Enforcement Officers for their work and diligence noting that they were shorthanded.

Mayor Menna thanked Councilwoman Lee for being with him to follow up on the Riverside Avenue improvement efforts.

Councilwoman Horgan reported that the Rent Leveling Board had met on June 27 to continue the Grandville Towers application. She said the Board had gone through all of the items to determine what was maintenance and what was capital improvement. She said the work would be done in three phases and the Board would monitor each of those phases. She also reported that the Environmental Commission had met the previous evening and discussed various topics including green building ordinances, the Sustainable Jersey program which they were trying to resuscitate, liquefied natural gas and opposing the building of industrial port facilities to export domestic natural gas to foreign countries. She said they had had a long discussion regarding the Living Shoreline and noted there was a bond ordinance on this meeting agenda. She said she thought the Living Shoreline had positive aspects including the cost savings. She noted that a group had come forward and offered to put one in place at their expense. She said she wished the Borough had looked into that more. She also noted that it had been discovered since Super Storm Sandy that a Living Shoreline would absorb energy from waves and currents which a bulkhead would not. She also noted that the bulkhead at the library was covered by a deed for the library which carried restrictions that require careful consideration by the Borough's elected officials. She asked the Borough Attorney to review those restrictions.

Attorney O'Hern explained that, when the Living Shoreline issue had come up, he had been asked to review the deed for the Library property which had been donated by the Eisner family. He said he conducted the review and offered the opinion that there were several provisions in the deed that he believed would be violated if the bulkhead were to be replaced by a Living Shoreline. He noted that he was not offering an opinion on the pros and cons of a Living Shoreline versus a bulkhead, but was offering a legal opinion. Paragraph Two of the deed, he continued, specifically stated "no part of premises shall be used as a public park or public meeting place." He said he was concerned that if they created a Living Shoreline, it would be a place that people would want to access which would potentially create a public meeting place. He said it was clear that the Eisner family wanted the property to be used only for library purposes and that they did not want the Borough to convert it into a public space or public park. Secondly, he continued, Paragraph Four of the deed said "the Borough shall at all times maintain the building and grounds in good condition always keeping with the purpose for which they are to be used." He noted that Paragraph included language that stated the Borough was to keep the bulkhead in good repair. He said the fact that the deed specifically mentions the bulkhead and the Borough's obligations to keep it in good repair suggested to him that the intent was that the Borough had that obligation. He said he felt it would violate the deed if the Borough removed the bulkhead. He said he understood there were those who felt that Living Shorelines were not contemplated at the time the deed was created but he said he felt the document was, in effect, a contract between the Borough of Red Bank and the Eisner family and that the words should be taken at their literal meaning. He said the library was a valuable asset and noted that if it was determined that there was a violation of the deed, the property could be sold and proceeds would go to the Harvard Endowment.

Councilwoman Horgan said she agreed and did not want to see more litigation against the Borough. However, she continued, she did want to support the environmentalists in Red Bank who want to create a sustainable community for both residents and visitors. She said she would have liked to pursue the issue a little more and said she would be voting against the bond issue for the bulkhead.

Councilwoman Lewis reported that Parks and Recreation Summer Camp would start on July 15. She also reported that the Vision Committee had met the previous Monday and said the responses they had gotten back had asked for more details on the Sponsorship levels and they would be defining those and getting them out. She said the deadline for the sponsorships was the 26th and they would do an assessment based on the funds they were able to raise. She said more information would be available after that date.

Councilman Zipprich reported that the Public Works Committee would be meeting the following week. He also reported that several members of the Historic Preservation Commission had attended a meeting the previous week at Pilgrim Baptist Church. He said the Commission Members had been working closely with the team that had been assembled to try to preserve the Vaccarelli Homestead also known as the T. Thomas Fortune House. He said support had been springing up throughout the community and said anyone who wanted to join the effort could reach out to him. He also reported that he and the Mayor had attended an event to support Lunch Break at the end of June and said it was a great evening for a great cause. He said the organization was still in need of canned goods for their pantry. He noted that on July 1 he had been proud to represent the Borough of Red Bank at the inauguration of the new Mayor and Council in Asbury Park. He said the Red Bank Borough Education Foundation was looking for members and was preparing to offer Primary School teachers mini-grants to help support the Science, Technology, Engineering, Art and Mathematics curriculum. He gave contact information for anyone interested in joining. He said he had attended the Vision Committee meeting to talk about summer programs and had also attended the Environmental Commission meeting with Councilwoman Horgan.

Councilman DuPont asked Councilwoman Horgan if the Environmental Commission had discussed the composting proposal he had brought up at the last meeting.

She said they had not had time to discuss it.

Councilman DuPont noted that the Borough had received ninety percent reimbursement regarding Hurricane Sandy and said he had asked the Chief Financial Officer if the Borough's tax rate would drop as a result. He said she would be looking into it. He said the Borough had budgeted for seventy five percent and received ninety so he hoped it would reduce the tax rate.

Mayor Menna said he thought there would be a slight reduction and, if there was, they would have to do a budget amendment.

Councilman DuPont said it would be good news. He also noted that he had read a recent article about rent increases affecting seniors. He noted that New Jersey was one of only four states that had Rent Control laws. He said one of the legislators was currently putting for a bill to make sure that seniors in senior complexes have protection under Rent Control. He asked for a resolution to support that bill. He reviewed the situation facing seniors and veterans.

Mayor Menna he would be happy to consider it. He said he also wanted to remind everyone that Red Bank had the second oldest Rent Leveling Ordinance in the State behind only Fort Lee. He said it had been a continuous ordinance and noted that Red Bank had always supported Rent Leveling and would continue to do so. He said they would happy to put the ordinance on the next agenda but noted that Red Bank already had many provision in place that other towns did not.

Councilman DuPont said there were apparently some exceptions to the Rent Leveling Ordinance and the bill would extend it to make sure that seniors who might be vulnerable were protected.

Councilman Murphy asked if the Rent Leveling ordinance extended beyond just seniors.

Mayor Menna said Red Bank's ordinance was applicable to everyone in properties with three or more units. He said he wasn't sure if the legislation Councilman DuPont was referring to would include single unit dwellings occupied by seniors.

Councilman DuPont said the way he read it was that it would extend to certain senior citizen complexes weren't covered. He suggested the Borough Attorney could review Red Bank's ordinance and make sure it covered seniors.

Councilwoman Horgan said that it did and spoke of a specific case that had protected seniors and allowed them to stay in their units for thirty years.

Mayor Menna agreed and noted another case where seniors had been allowed to stay in a facility in excess of thirty years.

Councilman DuPont suggested that there must be some loophole that wasn't covered since there was pending legislation. He also reported that the Monmouth County Board of Taxation had announced a new tax appeal deadline. He said they were implementing a pilot program that would empower the local tax assessor to reassess. He said, under the program, twenty percent of the town would be inspected in an effort to eliminate the need for a revaluation every five to seven years. He said it was a very important program and, as part of it, they were changing the tax appeal deadline from April 1 from January 15 for the prior year's assessment..

Councilman Zipprich asked if they had shortened the window.

Councilman DuPont said they had not shorted the window and explained the reasoning behind it including the fact that the deadline was after many towns had passed their budgets which resulted in overpayments to the County. Regarding the Mayor's Wellness Campaign, he reported that the new bike racks had been installed and a press release had gone out to announce the new equipment. He also noted that the recipe of the month had also been posted to the Mayor's Wellness section of the website. He said the Fitness in the Park program, being run in conjunction with the Parks and Recreation Department, had been extremely popular. He said the Committee was applying for designation as a "Healthy Town." He said there would be a fall Community Group Workout which was tentatively scheduled for September 28, 2013.

Councilwoman Lee said she wanted to announce that the Borough was offering free smoke alarms and carbon monoxide alarms for single family homeowners. She said applications could be made through the Fire Marshal's Office. She also said she felt the County had been preoccupied with other issues and said she felt that not enough attention had been paid to the Voter Rights Act. She said she would like to Borough to take a stand and support fighting the rollback.

Councilman Zipprich thanked her for bring the matter up and agreed it was an important issue.

SUSPEND REGULAR ORDER OF BUSINESS

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

ROLL CALL:

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

NAYS: None

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

Presentation of Proclamation to Hamilton Jewelers

Mayor Menna presented a proclamation to Hamilton Jewelers marking 2013 as a year of celebration for their 10th anniversary of business in Red Bank and for their 100th anniversary as a company.

RESUME REGULAR ORDER OF BUSINESS

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

ROLL CALL:

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

NAYS: None

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

COMMUNICATIONS AND PETITIONS

Mayor Menna read a request from RiverCenter to hang a banner on Shrewsbury Avenue from July 15, 2013 to July 28, 2013 to advertise the annual sidewalk sale.

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

ROLL CALL:

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

NAYS: None

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

Request from RiverCenter for free parking on Friday, July 26, 2013 and Saturday, July 27, 2013 during the annual sidewalk sale.

Councilman Murphy offered a motion to approve the request, seconded by Councilman Zipprich.

ROLL CALL:

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

NAYS: None

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

Mayor Menna read the following requests which have been approved by Special Events:

- Request from Jay & Silent Bob's Secret Stash for filming at their store located at 35 Broad Street from July 8, 2013 to September 20, 2013.
- Request from Jersey Fusion to host a 3-on-3 Basketball Tournament at Count Basie Field on August 17, 2013 from 9 a.m. to 3 p.m.
- Request from Lunch Break to hold their Annual Picnic/Softball Event at Count Basie Field on August 18, 2013 from 12:30 p.m. to 6 p.m.
- Request from Count Basie Theatre to hold their event entitled "Appetite: A Gastronomic Experience" on their property located at 99 Monmouth Street on September 7 & 8, 2013 from 10:00 a.m. to 5:00 p.m.
- Request from Two River Theater to hold their annual gala on their property located at 21 Bridge Avenue on October 19, 2013.

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

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Lee, Murphy

NAYS: None

ABSTAIN: Zipprich

There being five ayes, no nays and one abstention, the motion was declared approved.

Mayor Menna read a request from Dog Days of Summer Committee to hold Dog Days of Summer events on July 30, August 27, September 24 and October 29 and to close Monmouth Street from Drummond Place to Broad Street from 5pm to 9 pm on each date, approved by Special Events Committee.

Councilman DuPont offered a motion to approve the request, seconded by Councilwoman Lee.

ROLL CALL:

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

NAYS: None

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

Mayor Menna read a request from Kevin Tormey to transfer membership to the Navesink Hook and Ladder Company of the Red Bank Volunteer Fire Department.

Councilwoman Lewis offered a motion to approve the request, seconded by Councilman Zipprich.

ROLL CALL:

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

NAYS: None

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

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

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

Steven Hecht-135 Branch Avenue-said he had a question about the Bond Ordinance for the bulkhead. He said he knew that the Eisner Foundation continued its involvement with the library and asked if they had been approached about modifying the deed.

Attorney O'Hern said not that he was aware of and added that he had had not contact with either the family or the foundation.

Administrator Sickels said it was his understanding from a prior Borough Attorney that they conveyors of the deed were no longer living and that the beneficiary of the deed was Harvard University. He said there was a question of whether the current Eisner family members had the authority to make the change.

Mr. Hecht also asked about Resolutions 13-171 and 13-172 and asked which properties were affected.

Attorney O'Hern reviewed the details of the resolutions and itemized the affected properties. He noted that some of them dealt with multiple tax years.

Mr. Hecht also asked about 13-173 and said he wanted to know what percent on the dollar the Borough usually received through a tax sale.

Mayor Menna said it would depend on the going rate and when the sale was made. He said CFO Lapp would be the one to address the question and noted she was not in attendance. He said it was generally substantially higher than the legal interest rate.

Councilman DuPont pointed out that other municipalities had bought Red Bank's certificates in previous years which he said demonstrated Red Bank's fiscal responsibility.

John Grandits-70 Elm Place and President of Red Bank Library Board—said the Eisner family had donated the property in 1936 and were no longer involved with decisions regarding the library. He said the Board supported the family's continued involvement with the library and said they had been very kind and given gifts to the library but it now belonged to the Borough. In regard to the bulkhead, he continued, the Library Board would support whatever the town decided. He said, individually, the members supported a living shoreline particularly in regard to safety. He spoke of the current condition of the existing bulkhead and the potential for accidents. He also noted that the Board would like to open the back area for a garden or sitting area and it would be safer with a living shoreline. He said the individuals on the Board were requesting that the Council delay their decision for a month. He said he had given the Board members the opinion of the Trustees' lawyer and said he felt they could get around the restriction.

Brian Donahue-118 Bank Street-said Coastal Geologists and the Department of Environmental Protection were really encouraging living shorelines for resilience against future storms. He noted the expense of a bulkhead versus a living shoreline. He noted that many areas along the river are inaccessible or dumping grounds and said many of the Borough's children do not have access to this asset. He said he would like them to see it in its natural state. He urged the Council to consider the living shoreline for future generations.

Councilman Zipprich thanked him for his comments.

Joe McGrath-229 Seabreeze Ave, Middletown and Red Bank Elks-asked if the work would affect work being done on the bulkhead at the Elks Lodge.

Mayor Menna said it would not affect them adding that the work was being done behind the library and on the adjacent property.

Michael Vittiello—Attorney for Corinthian Cove—noted he had been to a previous Council meeting and said the residents of Corinthian Cove had been monitoring the situation closely. He said he understood that the Council had already made a decision and were now discussing a funding mechanism. He said they also understood that the deed restricted the use of the property and would not permit the conversion to a living shoreline. He said, in regard to the earlier comments about an heir being able to modify the deed, he said he did not believe future generations could change the terms. Aside from the deed restriction, he continued, he said he felt property owners have obligation to adjacent property owners for lateral support of their land. He said for those reasons, as well as those in the deed, they strongly support the Borough's reconstruction of the bulkhead.

Boris Kofman-28 Riverside-said he was appearing on behalf of the Environmental Commission. He thanked Councilwoman Horgan and Councilman Zipprich for attending their meeting. He said there were very valid environmental reasons for having a living shoreline. He read from a DEP report in favor of living shorelines. He said, as a resident, he felt it was a rare opportunity to do something that will impact generations to come. He said he felt the legal issues could be worked out.

Tom Labetti-45 Elm Place-said the living shoreline would give the opportunity for the Borough to borrow less instead of installing the more expensive bulkhead. He said it would also help market the town as being on the right side of an environmental issue.

Mayor Menna asked if anyone else would like to speak.

No one appearing, Councilman DuPont offered a motion to close the public comment portion of the meeting, seconded by Councilman Zipprich.

ROLL CALL:

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

NAYS: None

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

ORDINANCES – First Reading

ORDINANCES – Public Hearing & Final Adoption

2013-10 Mayor Menna read, "Ordinance Authorizing the Leasing of Certain Capital Equipment by the Borough of Red Bank, New Jersey from the Monmouth County Improvement Authority and the Execution of a Lease and Agreement Relating Thereto."

Mayor Menna opened the public hearing and asked if anyone would like to speak.

No one appearing, Councilman Murphy offered a motion to close the public hearing, seconded by Councilman DuPont.

ROLL CALL:

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

NAYS: None

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

Councilman Murphy offered a motion to adopt the ordinance on final reading, seconded by Councilman DuPont.

ROLL CALL:

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

NAYS: None

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

2013-11 Mayor Menna read, "Ordinance Authorizing the Leasing of Certain Capital Equipment by the Borough of Red Bank, New Jersey from the Monmouth County Improvement Authority and the Execution of a Lease and Agreement Relating Thereto."

Mayor Menna opened the public hearing and asked if anyone would like to speak.

No one appearing, Councilman DuPont offered a motion to close the public hearing, seconded by Councilman Zipprich.

ROLL CALL:

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

NAYS: None

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

Councilman DuPont offered a motion to adopt the ordinance on final reading, seconded by Councilwoman Lewis.

ROLL CALL:

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

NAYS: None

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

2013-12 Mayor Menna read, "Ordinance Authorizing the Guaranty by the Borough of Red Bank, New Jersey for Payment of Principal and Interest on the Capital Equipment Lease Revenue Bonds, Series 2013 (Red Bank Project) of the Monmouth County Improvement Authority."

Mayor Menna opened the public hearing and asked if anyone would like to speak.

No one appearing, Councilman Murphy offered a motion to close the public hearing, seconded by Councilman Zipprich.

ROLL CALL:

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

NAYS: None

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

Councilman DuPont offered a motion to adopt the ordinance on final reading, seconded by Councilwoman Lee.

ROLL CALL:

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

NAYS: None

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

2013-13 Mayor Menna read, "Bond Ordinance Authorizing Bulkhead Replacement in and for the Borough of Red Bank, County of Monmouth, New Jersey; Appropriating the Sum of \$596,000 therefor; Authorizing the Issuance of General Obligation Bonds or Bond Anticipation Notes of the Borough of Red Bank, County of Monmouth, New Jersey in the Aggregate Principal Amount of up to \$566,200; Making Certain Determinations and Covenants; and Authorizing Certain Related Actions in Connection with the Foregoing."

Mayor Menna opened the public hearing and asked if anyone would like to speak.

Tom Labetti-45 Elm Place-said he wanted to speak to Section 8 of the ordinance and he appreciated the fact that the town had considered the ability to receive grant or federal money to pay back the bond. He said he knew there was a lot of funding/grants available, such as FEMA funding, and asked if they had applied for government help.

Mayor Menna said the Borough had received substantial grants including for projects at Marine Park and Count Basie Park. He said they had looked into funding over the last couple of years and reminded Mr. Labetti that the project dovetailed with project for library improvements that was done years ago. He said because the cost for library improvements and ADA issues ran over the anticipated amounts the work was never incorporated as part of the project. He said they applied for additional funding but were not successful in including the bulkhead as part of it.

Administrator Sickels noted that prior to Hurricane Sandy, the Borough was able to get Shore Protection funding to do work at Marine Park. He said they had asked about the library property and the North Prospect property but were told it was not eligible for that funding. After Sandy, he continued, the Borough had FEMA representatives visit the site and they said it looked like the damage was there prior to the storm.

Boris Kofman—28 Riverside Avenue—said the Environmental Commission had asked a lot of questions to the American Littoral Society regarding the issue such as cost of maintenance, effect on property and erosion to adjacent properties. He said they had received a response via email and they had said that they did not believe the loss of the library bulkhead would have any effect on the adjacent bulkhead.

Mayor Menna asked Mr. Kofman to identify the document he was reading from.

Mr. Kofman said it was an email received from William Shadel who was the American Littoral Society Habitat Restoration Program Director. He said he would forward the email to the Council Liaison for the Environmental Commission.

Michael Vittiello—Attorney for Corinthian Cove—said Corinthian Cove had retained a professional engineering staff that had looked at the property and he said they did not feel that the loss of the bulkhead would have no impact but that it would have an adverse impact. He said he did not have the Engineer with him but offered to bring him in as an expert witness. He said he wanted to note that the prior comments were based on general information regarding bulkheads but said they had specific information about their particular property. He said they strongly support the installation of a bulkhead and feel it is required.

Frank Corrado-53 Rector Place—said he was concerned about the financial side of the project. He said he was in favor of the option that was significantly less expensive. He called for common sense regarding a legal deed that was written in 1937. He noted that the bulkheads in his neighborhood were being destroyed. He cited one home that had a bulkhead that had deteriorated to the point that it was a living shoreline. He said, during Hurricane Sandy, his property with a bulkhead received damage while the property with the living shoreline did not.

No one else appearing, Councilman Zipprich offered a motion to close the public hearing, seconded by Councilman DuPont.

ROLL CALL:

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

NAYS: None

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

Mayor Menna asked the Council for comments.

Councilwoman Lee said she wanted to support the entire Council and noted that the issue had been under discussion for many years. She said she understood the need for access to the river but said the Borough had legal obligations. She added that she believed in a living shoreline but believed it was her job to minimize litigation which she believed would be coming from neighbors of the property. She again stressed her belief in access to the river but said, based on the legal document, she did not feel she could put the Borough at the risk of litigation.

Councilwoman Lewis said she thought new information had been received that put a different slant on the issue. She said the issue had been discussed and the Council had received legal and engineering opinions to make an informed decision based on the information they had. She said she agreed that the Borough had an obligation and noted that Councilmembers were also taxpayers and felt the results of financial decisions. She said she would like to choose a cheaper option but felt she couldn't take the risk that it could inflict further harm. She said she was conflicted but, based on the expert opinions, she would err on the side of caution to ensure they were able to keep the property.

Councilman Zipprich noted that there had been significant public outcry for and against the project. He said he also favored green solutions and noted the DEP had come out in favor of living shorelines. He said he thought Red Bank should take the initiative to introduce more environmentally friendly methods of re-engineering the town. He noted that both he and Councilwoman Horgan had had conversations with members of the Environmental Commission and members of the Community. He said he agreed with Councilwoman Lewis and Councilwoman Lee and said it was a difficult decision that could put the library at risk. He said he thought it was a good solution when it was presented but the Council realized that it couldn't be done legally because of the way the library deed was written back in 1937. He said it was difficult to be a member of a Governing Body when there was such a decision had to be made. He said he was elected to represent the people of Red Bank and he had to be their voice in Borough Hall. He said he had been asked strongly by several members of the Community to support an environmental position which he respected. He said, at times they don't always agree, but if the people speak loud enough, the Council has to be their voice. He said the people of the Community needed to understand the delicate balance that came with governing and said he felt the need to be the voice for those he had spoken to. He said he agreed with Councilwoman Lee that they needed to pay attention to legal fees because there were always people that were going to sue the Borough but said he would have to take a gamble and side with the environmentalists.

Councilwoman Lewis asked if the decision had to be made tonight.

Councilwoman Lee noted that the decision to make the repair had already been made. This ordinance would provide for the vehicle to pay for it. She said she knew where her heart was and said her vote would not be with her heart but said there were other shorelines without these deed restrictions and she urged everyone to rescue the rest of the Borough's water access points.

Mayor Menna reiterated that the reason the issue was on the agenda was to effectuate a decision that had already been made. He said, once that decision was made, they had to adopt a funding mechanism after the introduction of the budget. He said he just wanted to remind the Council that this was just the implementation of a prior decision. He said the Council could do whatever it wanted regarding this bond ordinance but reminded everyone that it must be adopted by a super majority which would be four of the six members of the Governing Body per State law.

Councilwoman Horgan thanked everyone on the Council for their comments and said she had grappled with the issue very seriously and thought they all had.

Councilman DuPont said he thought Mr. Donahue had made some good points and noted that the issue had been going on for two years. He said he had discussed the issue with residents and said he was not concerned about litigation. He said he felt that had to do what was best for the whole town. He noted that they really hadn't had a response from the Library Board until this evening adding that he was a strong advocate for the library. He said he had two concerns. First, he said, was the risk of taking a vote that would risk the library which he said he would not do. Secondly, he said, was the fact that they had not gotten an opinion from Harvard, the sole benefactor should the property be sold. He said the President of the Library Board had made a request that should

be considered which was to carry the matter for 30 days. He said he wasn't saying he was in favor of the living shoreline but was in favor of environmental issues. He suggested they carry the matter for 30 days to allow Harvard a chance to respond to an inquiry from the Mayor and Administrator. He said he would make that motion.

Mayor Menna asked if he was suggesting that they table the ordinance as presently written.

Councilman Murphy asked if the project would be jeopardized if it was delayed for 30 days.

Mayor Menna said it would not. He also asked Councilman DuPont if he would like his motion to call for amending the ordinance to approve a bond ordinance in a lesser amount to do the Prospect Avenue bulkhead replacement and repair.

Engineer Ballard noted that the ordinance provided for repairs to two bulkheads, one on West Front Street at the Library which was approximately 140 feet in length and one at North Prospect which was 30 feet in length. Based on linear footage, she continued, the North Prospect bulkhead represented approximately 20 percent of the project.

Mayor Menna estimated that it would be about \$120,000 for the North Prospect bulkhead repair.

Councilman DuPont said he would be willing to amend his motion to amend the ordinance to divide the bond so they could move forward with the bulkhead on North Prospect and other capital projects associated with the bond with the exception of replacing the bulkhead at the Library.

Administrator Sickels noted that the projects had been put together for economic reasons. He said, if they bifurcate the projects and then decide to move forward with the Library bulkhead, they would incur additional expenses including advertising, engineering fees, equipment rental, etc. He also noted that they did not have the benefit at this meeting of all of the discussions they had had last year when the Council made the decision to go forward with the bulkhead.

Councilman DuPont admitted that he had been in favor of the bulkhead but said that didn't mean that that decision that was made a year to a year and a half ago could not be changed for the betterment of the residents. In addition, he continued, there had been no communication with Harvard regarding where the stood on the issue.

Councilman Murphy said he appreciated the hard work that the attorney had done to define the Borough's options regarding the deed. He said he found it hard to believe that Harvard would take the Library if the bulkhead wasn't replaced. He said he also said he found it hard to believe that the Corinthian Cove bulkhead relied on the structure of the one at the Library. He said he was not concerned about a lawsuit because most of the time the Borough was successful. He agreed there was a need to reach out to Harvard but found it hard to believe they would not support the living shoreline. He said he would agree with a 30 day delay.

Councilwoman Lewis said she agreed. She said there was new information and, even though they had spent a lot of time on the issue, they should be open to finding out more.

Councilman DuPont offered a motion to table the ordinance on final reading, seconded by Councilwoman Lee.

Councilwoman Lee asked Attorney O'Hern to explain the procedure should the Borough be found in violation of the deed.

Attorney O'Hern said the property would revert to a bank that would sell the property and forward the proceeds to Harvard University. From a legal standpoint, he continued, he was not sure if Harvard would have the sole discretion of stopping such a sale. He said there could be other people that may try to enforce the deed restrictions.

A discussion followed regarding various opinions on Harvard's possible interest in the property.

Councilman DuPont asked Mayor Menna to write a letter to the Harvard endowment.

Mayor Menna asked if anyone would like to be heard on the motion to table. No one appeared.

ROLL CALL:

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

NAYS: None

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

Councilwoman Lewis asked for clarification on how the matter would proceed.

Mayor Menna said he would reach out to Harvard and report back to the Council in written form. He said the matter would then come back to the Council for further discussion.

Councilwoman Lewis said she felt at that time the Council would be able to make an educated decision that was in the best interest of Red Bank.

Councilwoman Horgan said she thought this was a great solution and thanked everyone who came forward to speak on the issue. She also thanked her fellow Council members for their input.

2013-14 Mayor Menna read, "Bond Ordinance Authorizing Various Water and Sewer Utility Improvements for the Borough of Red Bank, County of Monmouth, New Jersey; Appropriating the Sum of

\$205,440 therefor; Authorizing the Issuance of General Obligation Bonds or Bond Anticipation Notes of the Borough of Red Bank, County of Monmouth, New Jersey in the Aggregate Principal Amount of up to \$205,440; Making Certain Determinations and Covenants; and Authorizing Certain Related Actions in Connection with the Foregoing.”

Mayor Menna opened the public hearing and asked if anyone would like to speak.

No one appearing, Councilman DuPont offered a motion to close the public hearing, seconded by Councilman Murphy.

ROLL CALL:

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

NAYS: None

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

Councilman Zipprich offered a motion to adopt the ordinance on final reading, seconded by Councilman Murphy.

ROLL CALL:

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

NAYS: None

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

2013-15 Mayor Menna read, “Bond Ordinance Authorizing the Acquisition of Various Capital Equipment and the Completion of Various Capital Improvements in and for the Borough of Red Bank, County of Monmouth, New Jersey; Appropriating the Sum of \$1,669,900 therefor; Authorizing the Issuance of General Obligation Bonds or Bond Anticipation Notes of the Borough of Red Bank, County of Monmouth, New Jersey in the Aggregate Principal Amount of up to \$1,586,405; Making Certain Determinations and Covenants; and Authorizing Certain Related Actions in Connection with the Foregoing.”

Mayor Menna opened the public hearing and asked if anyone would like to speak.

Tom Labetti-45 Elm Place-said he estimated that approximately \$600,000 of borrowing was going to be put toward the Borough’s parks. He said, as someone who uses the parks, he wanted to thank the Council for considering it.

Mayor Menna thanked him and noted that certain blog sites has been critical of the Council in the past year for improvements made to properties such as Count Basie Park and the athletic field. He said he had tried to respond to those by noting that no money had been put into that park in fifty or sixty years. He said the Council utilized the best resources possible and, while the total cost was \$2.5 million, they had worked closely with various partners to be able to secure approximately \$1.9 million in grants making the actual cost approximately \$600,000. He added that the lease payments received from Red Bank Catholic for use of the field would cover those bonding costs.

Councilman DuPont also noted that there would be new hoops and resurfacing for the basketball courts.

No one else appearing, Councilman DuPont offered a motion to close the public hearing, seconded by Councilman Zipprich.

ROLL CALL:

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

NAYS: None

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

Councilman DuPont offered a motion to adopt the ordinance on final reading, seconded by Councilman Zipprich.

ROLL CALL:

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

NAYS: None

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

RESOLUTIONS

Voted on by Consent Agenda:

13-167 A Resolution Authorizing Change Order No. 4 Related to the Contract with Precise Construction, Inc. for the Count Basie Phase 3 Improvements Project.

13-168 A Resolution Authorizing Change Order No. 1 Related to the Contract with Sakoutis Builders & Land Developers, LLC for Count Basie Phase 3 Improvement Project.

- 13-169 A Resolution Expressing its Intention to Reimburse Itself for Certain Expenditures Relating to Various Capital Improvements Out of the Proceeds of Bonds and/or Bond Anticipation Notes to be Hereafter Issued by the Borough.
- 13-170 A Resolution Approving the Form and Authorizing the Execution and Delivery of a Letter of Representation and a Continuing Disclosure Agreement in Connection with the Issuance and Delivery of the Monmouth County Improvement Authority's Capital Equipment Pooled Lease Revenue Bonds, Series 2013 and Authorizing an Authorized Municipal Representative to do all Other Things Deemed Necessary or Advisable in Connection with the Issuance, Sale and Delivery of Such Bonds.
- 13-171 A Resolution Authorizing Refunds Due to Overpayment of Taxes or Utility for Various Reasons.
- 13-172 A Resolution Authorizing Refunds Due to Overpayment of Taxes Due to Judgments of the Tax Court of New Jersey.
- 13-173 A Resolution Authorizing Jones Act Assignment Sale of Municipal Tax Title Liens.

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

ROLL CALL:

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

NAYS: None

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

PROCLAMATIONS

PAYMENT OF VOUCHERS

- 13-174 Mayor Menna read "A RESOLUTION FOR PAYMENT OF BILLS AMOUNTING TO \$2,712,554.56."

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

ROLL CALL:

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

NAYS: None

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

OLD BUSINESS

None.

NEW BUSINESS

None.

AUDIENCE

Steven Hecht—135 Branch Avenue—asked the Mayor to address the issue of parking in the Municipal Lot by patrons of the Count Basie Theater.

Mayor Menna acknowledged that it was a constant problem when patrons of the theater filled the municipal lot on a night when there were meetings in the building. He said parking restrictions must be enforced and said they had made their position clear to theater's CEO. Mayor Menna said he thought it would be in the best interest of the taxpayers of Red Bank for the Council to consider a proposal that would provide for the use of the employee permit spaces by theater patrons on Friday, Saturday and Sunday under a license agreement with the theater and leaving the front spaces open for municipal use. He said this would provide income for the Borough and a premium service for patrons of the theater. He noted the theater would be asked to provide insurance.

Mr. Hecht asked, if such a plan was proposed, would it be discussed at a Council meeting.

Mayor Menna said it would have to be.

Joanne St. Amand—28 Sutton Place, Cranford—said she was appearing to ask for help from the Borough in the form of a resolution to keep residential developmental centers open. She gave history on the issue.

Mayor Menna asked for information on the issue and said he felt it sounded like something the Council would be willing to support.

Ms. Amand noted the long wait for these types of services which would be compounded by the closing of the centers.

Cecelia Davis—39 Marion Street—said she was speaking on the issue of the Community Garden fence that was next to hedges. She said nothing had been done to date and she was concerned because she was in the process of refinancing and did not want photos taken in the current state. She explained that she had been unable to cut her hedges because the fence was in the way. She offered photos of the property. She said when Administrator Sickels and Public Works Director Watson came to look at the property, she had received a call from a secretary

at 5:30 in the evening. She said she was also informed that there were going to be additional people involved in the meeting. She expressed her concern about these issues. She described how she wanted the fence to be changed and reviewed the history of the property. She felt the meeting was a waste of time. She said she did not see why the issue had not been resolved. She said she was upset and displeased by the episode. She asked the Council to make a decision at this meeting.

Mayor Menna suggested the Borough Attorney look at the documents and get in touch with Ms. Davis directly. He said if Ms. Davis was not happy with the resolution, she would have the right to come back to the Council to discuss it further. He said individual Councilmembers would have a hard time responding without his input.

Councilman DuPont asked Mr. Sickels to respond.

Administrator Sickels explained he had been directed by the Council to meet with Ms. Davis to try to resolve the matter. He said a letter had been received from the Community Garden Committee and he wanted to meet with them first but they could only meet in the afternoon. He said he and Mr. Watson had met with representatives of the Garden Committee who had explained that they had offered to do maintenance on the hedges and lawn so that Ms. Davis wouldn't have to.

Councilman Murphy asked if he was referring to the items on the Borough's side of the property.

Mr. Sickels said he was. He also noted that the survey shows that portion of the fence and hedges were on the Borough's side of the property.

Ms. Davis said he was looking at an old survey.

Councilman Murphy said Attorney O'Hern could figure out any issue with the survey.

Mr. Sickels noted again that the Garden members had offered to do the maintenance so Ms. Davis wouldn't have to. He also said they had finished installing the fence that would keep vermin out. He said they wanted to run the fence up to but not touching Ms. Davis' fence but she was opposed to that because she would not be able to trim her hedges. He said they had offered to trim the hedges for her but she declined. He said they offered to buy her long handled clippers so she could do it, but she said she did not want that. He asked the Committee members if they would be willing to meet with her to work out an arrangement and they said they would. He said they called to see if she was home and if she would be willing to meet and she had said yes. He said when she asked who was coming, he told her they would bring two members of the Committee and she said she did not want to meet with them so only he and Gary went over. He said when they asked her what she wanted, she said she wanted a path so she could cut her hedges on the Borough side. Unfortunately, he continued, the Garden Committee had already laid out their plots and, if they gave her the path, it would limit access to the planting beds on that side. He said when they told her this, she terminated the meeting and went back in her house. He summarized by saying he believed Ms. Davis wanted the fence moved far enough off of her fence/hedges so that she could maintain her property on the Borough property.

A discussion followed regarding how much space would be needed. Ms. Davis said she was requesting two feet. She noted that it had not been an issue in the past.

Councilman Murphy said the property was not being used before and now it was. He said she was essentially asking for an easement of approximately two feet.

Mayor Menna agreed that Ms. Davis was requesting an easement and said the attorney would review the documents and get back to her.

Councilman Murphy commended the members of the Garden Committee for making the offer to maintain Ms. Davis' hedges.

Ms. Davis again stated she did not want their help.

It was determined that the Attorney would review the matter and present options to the Council.

EXECUTIVE SESSION

ADJOURNMENT

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

ROLL CALL:

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

NAYS: None

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

Respectfully submitted,

Pamela Borghi