

**MINUTES
REGULAR MEETING
MUNICIPAL COUNCIL – BOROUGH OF RED BANK
AUGUST 28, 2013
6:30 P.M.**

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT: Council President Murphy and Council Members Lewis, Zipprich, Horgan and Lee.

ALSO PRESENT: Administrator Sickels, Municipal Clerk Borghi, Attorney Byrnes and Engineer Ballard.

ABSENT: Mayor Menna, Councilman DuPont, Chief Financial Officer Lapp and Attorney O’Hern.

SUNSHINE STATEMENT

Council President Murphy 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.

SUSPEND REGULAR ORDER OF BUSINESS

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

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

Monmouth County Open Space Grant Public Hearing

Engineer Ballard said this was the Public Hearing for a Monmouth County Open Space Grant Application that the Borough would be submitting. She said Marine Park was the site for the project in the application. Ms. Ballard noted that Monmouth County had indicated that they would be giving special priority to properties that had been damaged by Hurricane Sandy and said Marine Park was damaged by the storm. She said the County would not duplicate payment for costs that were covered by FEMA. She said the restroom building had been damaged and FEMA was only giving a small amount of money clean and rewire the building. However, she continued, the restroom building was not ADA compliant and still sat in the flood zone. She said the application was for a project that would demolish the existing restroom building and construct a new restroom building in the area of where the shuffleboard courts were. She said it would be restrooms only, no concessions. She said they were also looking to replace the sidewalk to make it ADA compliant. She said they were also planning on replacing the lighting. She said several fixtures were damaged by Sandy but they were planning on replacing all of the lighting with LED lighting which would offer significant saving in energy usage. She said they also wanted to add some trash receptacles, benches and picnic tables.

Council President Murphy asked if the restrooms were currently operating.

Ms. Ballard said they were not.

Council President Murphy asked if the tennis courts were operational.

Ms. Ballard said she did not believe they were.

Council President Murphy asked if that was due to the storm or if it was a prior problem.

Ms. Ballard said it was due to the storm. She also added that the Monmouth County Open Space Program award would be a fifty/fifty matching grant up to a maximum award of \$250,000. She estimated the project would cost \$375,000 of which the Borough would be responsible for half.

Council President Murphy opened the public hearing and asked if anyone would like to speak.

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

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

13-205 Council President Murphy read, “Monmouth County Board of Chosen Freeholders Open Space Trust Fund Enabling Resolution Marine Park Restroom Relocation and Various Sandy Related Improvements.”

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

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

RESUME REGULAR ORDER OF BUSINESS

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

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

WORKSHOP

APPROVAL OF MINUTES – August 14, 2013

Councilwoman Lewis asked that a typographical error in the portion of the minutes covering her committee report be corrected. Councilwoman Horgan offered a motion to approve the minutes as amended, seconded by Councilman Zipprich.

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

MAYORAL APPOINTMENTS

None.

REPORTS OF MAYOR AND COUNCIL MEMBERS

Councilman Zipprich congratulated the members of the Vision Committee for a successful kickoff to the Count Basie 365series and commended their efforts to make it a reality. He reported that the Historic Preservation Committee would be meeting later in the evening to review the Historic District Ordinance. He also noted that he and Councilwoman Horgan had been discussing a Second Annual Two River Pride Event. He said it was in the planning process with the Monmouth Consortium for LGBT Youth, Make it Better for Youth, PFLAG and the Red Bank Human Relations Advisory Committee. He said there was a tentative date of October 11 which was National Coming Out Day. He said he would provide updates once the venue was confirmed. He also reported that the Public Works Committee had met the previous week covered issues pertaining to the Borough's aging infrastructure, the road program and money that would be available in the coming year that would enable them to make enhancements around town including to the bicycle and pedestrian plan. He said he wanted to thank Engineer Ballard for her due diligence and research on the grant monies that were available.

Councilwoman Lewis reported that she had received a thank you from Del Dal Pra for the Borough allowing him to use the Recreation van to transport Red Bank kids to the high school. She said the school had seen a direct impact in an increase of Red Bank kids participating in athletics at Red Bank Regional. She reported that Summer Camp had ended and enrollment had been up by forty percent. She said it was the best year since Red Bank had been having summer camp. She said the Vision Committee had had the kickoff of the Count Basie 365 series and it had been successful. She said the next event would be September 6. She reported that she had attended two successful events and she wanted to thank Special Events for approving the Three on Three Tournament and the Lunch Break Softball Event. She said both were community focused and they highlighted Count Basie Park. She also reported that she had gotten on a bus to Washington, DC on Saturday to commemorate the March on Washington fifty years ago.

Councilwoman Horgan reported that the Lunch Break Softball Game and Picnic had been great and noted that the Mayor had thrown out the first pitch. She also reported that the Red Bank Boys and Girls Club had had a fund raiser the previous Wednesday and noted that they needed funding for programs and urged everyone to donate.

Councilwoman Lee said on behalf of Mayor Menna she wanted to report that the second Dog Days of Summer event had occurred the night before and said it was a very successful event. She thanked RiverCenter for all of their work and the advertising. She also reported that the Library had extensive programming and encouraged everyone to participate. She noted that the hours had been cut back for the summer but would be returning to normal hours shortly.

COMMUNICATIONS AND PETITIONS

None.

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

Council President Murphy opened the public comment portion of the meeting and asked if anyone would like to speak.

No one else appearing, Councilwoman Lee offered a motion to close the public comment portion of the meeting, seconded by Councilwoman Horgan

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

ORDINANCES – First Reading

2013-20 Council President Murphy read “An Ordinance Amending and Supplementing Chapter VI, “Alcoholic Beverage Control,” Section 6-4 “Regulations of Licenses” of the Revised General Ordinances of the Borough of Red Bank.”

Councilwoman Lee offered a motion to adopt the ordinance on first reading, seconded by Councilwoman Horgan.

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

Public hearing and final adoption to be held September 11, 2013.

ORDINANCES – Public Hearing & Final Adoption

2013-19 Council President Murphy read, “An Ordinance Authorizing a Special Emergency Appropriation Pursuant to N.J.S.A. 40A:4-53(h) for the Payment of Contractually Required Severance Liabilities of the Borough of Red Bank, County of Monmouth, New Jersey.”

Council President Murphy opened the public hearing and asked if anyone would like to speak.

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

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

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

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

RESOLUTIONS

By Consent Agenda:

- 13-199 A Resolution Requesting Authorization to Cancel Grant Reserve and Receivable Balances.
- 13-200 A Resolution Authorizing Acceptance of Performance Guarantees and Inspection Escrow Regarding Camargo Real Estate, LLC, 183-185 Shrewsbury Avenue, Block 69, Lot 12.
- 13-201 A Resolution Authorizing Refunds Due to Overpayment of Taxes or Utility for Various Reasons.
- 13-202 A Resolution Authorizing Refunds Due to Overpayment of Taxes Due to Judgments of the Tax Court of New Jersey.
- 13-203 A Resolution Authorizing the Issuance and Sale of up to \$362,000 of Special Emergency Notes of the Borough of Red Bank; Making Certain Covenants to Maintain the Exemption of the Interest on Said Notes from Federal Income Taxation; and Authorizing Such Further Actions and Making Such Determinations as may be Necessary or Appropriate to Effectuate the Issuance and Sale of the Notes.

- 13-204 A Resolution Memorializing the Findings and Determinations of the Governing Body of the Borough of Red Bank on Appeals from the Rent Leveling Board Regarding Grandville Towers.
- 13-206 A Resolution Authorizing Renewal of Plenary Retail Distribution Licenses 2013-2014.
- 13-207 A Resolution Authorizing Contracts with Certain Approved State Contract Vendors for Contracting Units Pursuant to N.J.S.A. 40A:11-12a. (Public Works Vehicles)
- 13-208 A Resolution Authorizing the Mayor and the Borough Clerk to Execute an Interlocal Services Agreement Between the Board of Education and the Borough of Red Bank to Provide Snow Plowing, Snow Removal, Street Sweeping and Sweeping and Vehicle Maintenance Services.
- 13-209 A Resolution Authorizing Acceptance of Performance Guarantees Regarding the Jacobs Resident Located at 170 Branch Avenue, Red Bank, NJ Block 111, Lot 34, Application #P9925, Preliminary and Final Minor Subdivision.
- 13-210 A Resolution Rejecting Bids for Routine Well and Booster Pump Inspection and Maintenance and Emergency Service Repair Services Contract for Water Treatment Plants, Wells and Pumping Equipment.

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

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

PROCLAMATIONS

Councilwoman Horgan read a proclamation proclaiming September 2013 as Childhood Cancer Awareness Month in the Borough of Red Bank.

Councilwoman Lewis read a proclamation proclaiming August 28, 2013 as March on Washington Day in the Borough of Red Bank.

Council President Murphy read a proclamation proclaiming August 30, 2013 as a day of celebration for the retirement of Police Lieutenant Joshua Berbrick.

Councilwoman Horgan said she had forgotten to mention during her report that the previous Monday and been the 93rd Anniversary of the adoption of the 19th Amendment giving women the right to vote.

Councilman Zipprich said he wanted to add that the previous day had been Lyndon Johnson's birthday and noted that he was the president that signed the Civil Rights Act into law.

Councilwoman Lee commended Lieutenant Berbrick and said she also wanted to note how important the Voting Rights Act was and noted the many groups had been targeted throughout the years. She pointed out the diversity of the current Council and said each member, at one point in time, would not have been allowed to vote for one reason or another and they needed to ensure that it was not rolled back.

Council President Murphy thanked her for her comments.

PAYMENT OF VOUCHERS

13-211 Council President Murphy read "A Resolution for Payment of Bills Amounting to \$897,508.27."

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

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

OLD BUSINESS

NEW BUSINESS

Councilman Zipprich wished those who would be celebrating Rosh Hashanah to have a happy new year.

The Council again discussed the Dog Days of Summer event that had been held the previous evening.

AUDIENCE

Cindy Burnham—71 Wallace Street—said she wanted to comment on the fact that the Borough was borrowing \$362,000 for severance liabilities. She criticized the practice of borrowing money to pay for operating expenses. She said she felt the Council had been delinquent in not planning for the expense. She noted they had previously borrowed for a similar expense in 2009. She suggested they should plan for when they expect people to retire. She asked if the Borough had a plan or if they were just going to continue to borrow and bond.

Administrator Sickels explained that the CFO was on vacation but he said, as he understood the process, the Borough didn't always know when someone was going to retire. He said they do estimate and the liability numbers change as people use sick time so there isn't a finite number until they actually file for their retirement and get their certification from Trenton. He said of the five people that had retired in the past year, three were not anticipated.

Ms. Burnham asked if they had known that Chief Fitzgerald was going to retire.

Mr. Sickels said that was not part of this bond.

Ms. Burnham acknowledged that he was part of the 2009 payout.

Mr. Sickels noted that eight or nine people had been included in that payout. He also noted that with the budget cap, if the Borough was to handle that liability within the operating budget, they would have to raise taxes. He said the Division of Local Government Services allows the Borough to extend the liability over several years to reduce the amount of money they would have to take out of the operating budget. He said, as debt service comes off, they are able to group together retirements and pay for them over a five year period and can do so without raising taxes. He said the CFO had discussed it with the Borough Auditor and they had felt that this was the best course of action and would be the least costly to the Borough.

Ms. Burnham acknowledged that she was not a financial expert but she felt that was not the correct thing to do. She suggested they should sit down and negotiate with non-Union employees. She cited individual examples of employees that she thought would be due for retirement soon.

Council President Murphy noted that every employee was going to retire eventually and they had no way of knowing whether or not they will have used their sick time. He also noted that the Borough had limited the payout to \$15,000 back in 1994.

Ms. Burnham suggested the Borough start a dedicated account to be used for this purchase that could also earn interest.

Councilman Zipprich noted that they had no way of knowing when someone was going to retire. He noted that some people decide to retire early.

Ms. Burnham again suggested the Borough start a fund now to prepare.

Mr. Sickels said he believed the CFO had begun to do that but the amount needed exceeded that so the Auditor suggested this was the way to do it. He noted that the Council relies on their experts.

Councilwoman Lee noted that going forward there was a cap of \$15,000 on these payouts so they would be able to better plan.

Councilman Zipprich pointed out that these were contractual obligations and they could not renegotiate a contract at its conclusion. He also noted that Governor Christie had stated that he was not proposing taking away accumulated sick time that had already been accumulated and had a cash value to it.

She asked if that was against the law.

Councilman Zipprich said it would be unconstitutional.

Ms. Burnham suggested they use the \$210,000 the Borough had received from the public sale of the boat ramp several years ago to fund this expense rather than bond for it.

Sean DiSomma—28 Morford Place—criticized the Council for passing a proclamation against Childhood Cancer stating that it was not serious business. He also criticized them for politicizing a proclamation regarding one of the most integral moments in US history by including a paragraph on voter ID laws. He said one had nothing to do with the other. He said the third order of business was to bond out for \$362,000. He asked the members of the Council if they knew the current liability for accrued sick time. He stated that anyone who read the budget should know that it was on sheet 3C and that it was \$2.4 million. He also stated that he had a copy of a document listing every Borough employee including their hire date. He suggested they should look at those hired before 1994, look at their ages and use it as a predictor for their retirement to plan ahead for the expense.

Mr. DiSomma also asked about a recent decision on a bulkhead replacement and asked how much was spent on professional fees for something that they had voted against.

Attorney Byrnes said this was the public comment portion of the meeting and he was welcome to make a comment but it was not an interrogation or a deposition of Council members.

Mr. DiSomma said it was a simple policy question and repeated the question.

Administrator Sickels noted that it was not voted down but was tabled.

Council President Murphy asked Mr. DiSomma to make a comment and noted that no one on the Council was going to answer his questions if they were unable to give an exact number. He said they had no way of knowing if the information Mr. DiSomma was providing was right or wrong. He added that he wasn't necessarily saying his information was wrong, but noted that the Council needed to know what they were talking about. He asked him to have respect for the Council.

Mr. DiSomma said he did have respect for the Council but asked that the Council also respect him and the citizens of the town. He asked Council President Murphy to look the budget document up on line and pass it around so everyone could verify his number. He accused the Council of not understanding the budget they had passed and questioned if they could be trusted to make financial policy decisions.

Councilwoman Horgan accused Mr. DiSomma of grandstanding.

Mr. DiSomma accused her of knowing nothing about a budget she had passed.

Councilwoman Horgan said she had been familiar with the budget but did not recall a specific figure because she had not reviewed it recently.

Attorney Byrnes told Mr. DiSomma that the information he was seeking was publicly available and that he could walk into Borough Hall at any time the CFO was available and get any of the information he was seeking. He said to come to a public meeting and ask people about specific line items was obviously not intended to truly gain that information. He invited Mr. DiSomma to make a public comment but said it was not a question and answer. He added that he thought it was obvious he already had the information and said he was welcome to comment on it.

Mr. DiSomma said the bottom line was that the Council didn't even know the numbers it was dealing with. He said they were passing bond ordinances and the Borough's debt number was enormous. He said they passed the bond ordinances almost every single time but did not know the numbers behind it. He said there was a big policy issue that everyone in the state was concerned with. He referred to the \$362,000 in the bond ordinance and asked how many people would have to pay property tax for that on average. He accused the Council members of not thinking about those issues and said they had passed the bond with no discussion on policy on the issue going forward.

Mr. DiSomma told Councilwoman Lee that he understood she stood with public employees and agreed to honor the past agreement. He accused the Council of taking zero initiative to change the policy. He asked what steps were taken in the last contract negotiation to try to get rid of or ease the payouts such as offering six months off, etc.

Attorney Byrnes noted that the content and substantive issues that come up in contract negotiations were not something that the Council would necessarily speak to but the ultimate result of the contract would be publicly available if he was interested.

Mr. DiSomma acknowledged that he had seen it.

Attorney Bynes said if Mr. DiSomma had questions about collective bargaining, he would strongly encourage the Council to have their Labor Counsel present for that type of discussion.

Administrator Sickels said there was a simple answer to the question which was that the Council has passed an ordinance regarding the policy back in 1994 that limited payouts to \$15,000. He noted that the Borough of Red Bank had done it long before it was popular anywhere else including the State. He said the payouts being discussed tonight were for people that were hired prior to that. He added that it had been found unconstitutional to take away that benefit. He said the Borough of Red Bank was in full compliance with the ordinances and statutes that were on the books today.

Mr. DiSomma said he was asking if anything had been done in the past 19 years to try to change or negotiate the policy regarding the larger payouts. He also criticized the Council for taking a salary and said the position should be volunteer.

Councilman Zipprich asked Mr. DiSomma if he negotiated contracts in his line of work or if he was contractually obligated to people he consulted with.

Mr. DiSomma said he did negotiate contracts.

Councilman Zipprich asked if, at the conclusion of the contract, he expected to get paid.

Mr. DiSomma said they were paid upon the signing of the contract and at the conclusion of the contract they renegotiate for the next time.

Councilman Zipprich asked if, at the end of the contract there was an amount due, he expected to get paid.

Mr. DiSomma said he did.

Councilman Zipprich said so did the Borough employees.

Mr. DiSomma said he wasn't saying they should make good on past issues but that they should try to ease the monetary hit to the town by offering time off. He suggested they had no understanding of how to negotiate contracts.

Council President Murphy said he was out of line. He then thanked him for his comments.

EXECUTIVE SESSION

None.

ADJOURNMENT

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

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

Respectfully submitted,

Pamela Borghi