

**MINUTES
REGULAR MEETING
MUNICIPAL COUNCIL – BOROUGH OF RED BANK
NOVEMBER 25, 2013
6:30 P.M.**

PLEDGE OF ALLEGIANCE

ROLL CALL

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

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

ABSENT: Council Members Lewis and DuPont.

Councilwoman Lewis arrived at 6:47 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 October 23, 2013.

WORKSHOP

APPROVAL OF MINUTES – November 6, 2013

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

ROLL CALL:

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

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

MAYORAL APPOINTMENTS

None.

REPORTS OF MAYOR AND COUNCIL MEMBERS

Councilman Murphy reported that the Fire Chief Election for Thomas Welsh would be held on Tuesday, December 3. He said a reception would follow at Westside Hose Company.

Councilwoman Lee said she wanted to note that Mayor Menna had written an article that had appeared in the New Jersey League of Municipalities magazine recently regarding the fact the Red Bank had held New Jersey's first electronic tax sale.

Mayor Menna gave credit to the Finance Committee as well as the Chief Financial Officer and her staff for their efforts to make the sale happen.

Councilwoman Lee also reported that she had spent time with Mayor Menna at a reception at St. Patrick's Cathedral where he had honored over the weekend. She said she really enjoyed the event and commended him on his accomplishments.

Councilwoman Horgan reported that the Red Bank Boys and Girls Club would be holding a fundraiser at Five Below in West Long Branch from November 30th to December 7th with ten percent of each dollar going back to the organization.

Councilman Zipprich reported that he had attended the New Jersey League of Municipalities Convention the previous week and reviewed the classes he had attended. He also reported that he would be participating in the "People Speak" event at the Red Bank Public Library the following month. He reviewed the event to be held on December 12 from 6 to 8:30 pm and said all were invited. In regard to the Department of Public Works, he reported that leaf collection was currently underway in the Borough until December 27 and said Christmas Tree collection would begin the first week of January running for four weeks through the end of the month. He said the Historic Preservation Commission was working on improving their inventory of historic structures with a westerly focus. He noted that members had walked the west side of the Borough the previous weekend to review and document historic neighborhoods and growth patterns. He said Commission members would be meeting with the RiverCenter Director to discuss proposed ordinance changes in the downtown historic district. He also reported that, at their last meeting, the Planning Board had adopted a Model Sustainable Land Use pledge and noted that it was something that Councilwoman Horgan had been pursuing.

Mayor Menna noted that, earlier in the day, he and Councilman Zipprich had attended the opening of Carlo's Bakery, also known as the Cake Boss. He said there had been approximately 600 people in

attendance. He said he enjoyed their enthusiasm and welcomed the business owner and his staff. He said it was a welcome addition to the Borough and said it was a wonderful recognition.

COMMUNICATIONS AND PETITIONS

Mayor Menna read a request from Red Bank Flavour to host their “Holiday Flavour” event benefitting the Park Family Health Center and the Red Bank PBA Local 39’s McCarthy’s Children Fund on Thursday, December 5, 2013 from 6:30-9:30 p.m. at the Molly Pitcher Inn, approved by the Special Events Committee.

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

ROLL CALL:

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

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

Mayor Menna read a request from The Dublin House, 30 Monmouth Street, to place a tent in the front patio area from November 27-November 30, 2013.

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

ROLL CALL:

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

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

Mayor Menna read a request from Chris Pepitone for membership to the Union Hose Company of the Red Bank Volunteer Fire Department.

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

ROLL CALL:

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

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

Mayor Menna read a request from the Eastern Monmouth Area Chamber of Commerce to reserve May 30-June 1, 2014 for use of Marine Park for Riverfest 2014, pending approval of final plan by the Special Events Committee. He also noted that it would be subject to the facilities user fee that had been in place in the past and would be memorialized for all events in 2014.

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

ROLL CALL:

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

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

Mayor Menna read a request from RiverCenter to reserve June 27-June 29, 2014 for use of Marine Park for Sippin’ on the River, pending approval of final plan by the Special Events Committee. He noted the previously mentioned facility fee would also apply.

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

ROLL CALL:

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

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

Councilwoman Lewis arrived at 6:47 p.m.

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.

Suzanne Viscomi—19 Morford Place—questioned the animal licensing increase in the proposed ordinance on the agenda and asked about the price difference between dog and cat licensing fees.

Mayor Menna noted that the fees had not been increased in quite some time and asked Borough Clerk Borghi to offer more information.

Ms. Borghi noted that the dog and cat licenses were actually the same price, however, a portion of the dog license fee had to be forwarded to the State while the Borough kept the entire fee for cat licenses.

The Council discussed the opinions that retired Councilmembers had had on licensing policies.

Mayor Menna asked if anyone else would like to speak.

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

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

ORDINANCES – First Reading

2013-26 Mayor Menna read, “An Ordinance of the Borough of Red Bank, County of Monmouth, New Jersey Amending and Supplementing Chapter V, “Animal Control,” Section 5-1.6, “License Required, Fees [Dogs],” and Section 5-3.3, “Licensing Requirements [Cats].”

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

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

Public hearing and final adoption to be held December 18, 2013.

2013-27 Mayor Menna read, “An Ordinance Amending Chapter II, “Administration,” Subsection 2-65, “payment of Claims by Borough” and Subsection 2-76, “Conflicts of Interest” of the Revised General Ordinances of the Borough of Red Bank.”

Mayor Menna explained that proposed ordinance would bring the Red Bank Pay-to-Play contribution ordinance in line and equivalent to the ordinance that had been adopted by the Monmouth County Board of Chosen Freeholders and by the State of New Jersey. He noted that the impetus for the original Red Bank ordinance came from then-Councilwoman Jennifer Beck who had gone on to the State Senate where she was guided by State Senate regulations. He also noted that then-Councilman John Curley had been a strong proponent of the Pay-to-Play ordinance and said he had gone on to become Freeholder Director. He said that body had subsequently changed their Pay-to-Play policy and Red Bank was changing the ordinance to be in conformity with those other statutes.

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

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

Public hearing and final adoption to be held December 18, 2013.

RESOLUTIONS

By Consent Agenda:

- 13-253 A Resolution Authorizing the Acquisition of Property Located at 1 Berry Street, Block 76, Lot 1.01, in Lieu of the Enforcement of Tax Lien.
- 13-254 A Resolution Releasing Performance Guarantee Regarding Eastern Termite and Pest Control, 18 Newman Springs Road, Block 88, Lot 14.
- 13-255 A Resolution Releasing Performance Guarantee and Accepting Maintenance Guarantee Regarding Denise DiBona, 146 Maple Avenue, Block 75.02, Lot 142.
- 13-256 A Resolution Authorizing Appointment of Special Counsel for Real Property Tax Appeals.
- 13-257 A Resolution Authorizing Transfer of 2013 Current Fund.
- 13-258 A Resolution Approving the Hiring of Claudia Ferreira as Finance/Tax Assessor Clerk.
- 13-259 A Resolution Approving the Appointment of Marvin J. Carman as Plumbing Subcode Official.
- 13-260 A Resolution Approving the Hiring of Robert Kelly as Part Time Plumbing Inspector
- 13-261 A Resolution Awarding Contract to Visiting Nurse Association to Provide Public Health Services.
- 13-262 A Resolution Authorizing Change Order No. 1 and Final Related to the Contract for Count Basie Park Phase 3 Improvements.
- 13-263 A Resolution Authorizing Acceptance of Performance Guarantee and Inspection Fee Regarding KJD Realty, LLC, 141-143 Broad Street, Block 59, Lot 2.

Councilwoman Horgan asked about resolution 13-256 asking why the Borough was still retaining Special Counsel.

Mayor Menna explained that Attorney Thomas Hall had been handling some ongoing tax appeal cases for quite some time. He noted that Mr. Hall had recently changed firms and said the Borough had to formally designate him as the Attorney of record.

Councilman Zipprich asked if Mr. Hall was working on cases that he had already been working on.

Mayor Menna confirmed that they were existing cases and that the resolution was necessary because Mr. Hall had changed firms. He also reviewed the expense that would be involved by going with another attorney.

Attorney O'Hern also noted that the number of cases Mr. Hall had been handling were diminishing but said they often took a long time to work through. He confirmed there would be no additional work assigned to Mr. Hall.

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

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

PROCLAMATIONS

Mayor Menna read a proclamation proclaiming January 11, 2014 as Human Trafficking Awareness Day in the Borough of Red Bank.

PAYMENT OF VOUCHERS

13-264 Mayor Menna read "A Resolution for Payment of Bills Amounting to \$2,236,063.73."

Councilman Murphy 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.

Mayor Menna noted that Councilwoman Lewis had been detained by traffic and asked if she would like to offer a report at this time.

Councilwoman Lewis reported that there would be a tree lighting on Saturday, December 7 at 4 pm in the Westside Pocket Park. She said the event would feature carolers and snacks and was a joint effort between the Westside Community Group and the Borough's Parks and Recreation Department. She also reported that it was time for the fifth annual Holiday Home Decorating contest with judging to be held December 20th with awards to be presented at the first Council meeting in January. She also reported that registration for Winter Basketball was underway and could be done on the Parks and Recreation website. She also noted that Winter Soccer was starting with both clinics and instructional programs.

He said, on a personal note and on behalf of Councilman DuPont, he wanted to thank CFO Colleen Lapp for her service and her extraordinary dedication during her time at the Borough. He commended her on her relationship with her co-workers, her courtesy to the Council and, most importantly, assisting the residents. He noted that she had been proffered a career opportunity and said the Borough was sad to see her go.

Councilman Murphy thanked her for her service and noted the great working relationship she had had with the Police Chief and other department heads.

Councilman Zipprich said she had a good command of the Department and would be sorely missed.

Councilwoman Lewis recalled Ms. Lapp's interview and said she was appreciative of all she had done and wished her well.

Councilwomen Horgan and Lewis also thanked her and wished her well.

Ms. Lapp said she had enjoyed her time in Red Bank and said she would miss everyone. She noted that it was not an easy decision but said she was looking forward to her new challenge.

OLD BUSINESS

NEW BUSINESS

Councilman Zipprich wished everyone a Happy Thanksgiving.

AUDIENCE

Peter Muller—56 Princeton St., Red Bank—said he wanted to make the Council aware of some taxi issues. He noted that one taxi owner had just sold several licenses to another taxi owner which he

understood would not be transferrable under the ordinance. He reviewed other taxi issues in the Borough and how some owners were operating.

Mayor Menna noted that he had received a request for a rate increase but had called for a full review of the ordinance. He said he would like any ordinance update to include vehicle maintenance requirements, non-smoking clauses and a requirement for rate structures to be visibly posted in both Spanish and English.

Mr. Muller again spoke about the fact that he understood licenses were not transferrable.

Councilman Murphy said he did not feel the Mayor's comments were unreasonable.

Councilwoman Lee said Red Bank was always on the forefront and suggested they should set the standard for better, cleaner cabs and make the cab companies hold to it.

James Hertler—151 Harding Road and owner of Lucky Break Billiards, 14 West Front Street—said he was present to speak on a BYOB issue. He noted that he opened his business in 2012 and said the building had been vacant for four years. He said they had been operating as a BYOB establishment for a year and a half and said the Police Department had recent come in and made customers pour out their drinks. He said he had been unable to determine what the issue was. He said he wanted to know what he could do to qualify as a BYOB establishment. He said when he received his Zoning Board resolution of approval it had specifically stated that it would be a Bring Your Own establishment. He said he understood the issue was food service but he had been unable to determine what kind of food service. He said there was an approval for food service in their resolution but he said they were not a restaurant nor did they intend to be. He asked what had changed since they opened their doors. He said he has been told that the resolution by the Zoning Board is not legal.

Mayor Menna clarified that the Zoning Board had not approved the establishment as a BYOB or any other type of alcohol licensing because legally they would not have the authority to do that. He said he had read the minutes from the Zoning Board and had read the resolution and it had said if the business was permitted by any other administrative agency for such licensing, the Board would have no objection to it. He said he believed the testimony before the Board had been that they would essentially be running a billiard operation and serving small snacks but said they had never indicated it would be a traditional type of restaurant would allow for BYOB under the State Alcoholic Beverage Control Division.

Mr. Hertler said they had also cleared it with the Police Department.

Mayor Menna said Mr. Hertler's attorney had agreed with his interpretation and had said he may have to go back to the Board for clarification.

Councilman Murphy said he did not believe it was authorized by the Police Department because that is how the issue had come about. He agreed with Mayor Menna that the Zoning Board would have no authority to approve BYOB establishments. He noted other recreation uses in town that could start letting customers bring in alcohol. He said the Council was working on clarifying the Borough ordinance on the issue but said one of the criteria would be food service or possibly a private party.

Mr. Hertler acknowledged that New Jersey had very complicated liquor laws and noted the difficulty and expense associated with getting a liquor license particularly in Red Bank.

Councilman Murphy explained how their decision could affect other businesses in town.

Mayor Menna said he wanted to clarify that whatever had transpired at Mr. Hertler's business had not been generated by Red Bank but had been generated by agents or representatives of the State ABC. Secondly, he continued, Councilman Murphy had noted that if the Borough was going to do changes or a review of the Borough ordinances, they would have to be neutral and uniformly applicable to all business establishments. He said it would essentially be a change to the land use law of the Borough. He said they would have to go for review and analysis by the Planner and would have to be approved by the Planning Board and, therefore, would have to be addressed after the new calendar year.

Mr. Hertler said the law that he had been told he is in violation of had a vague definition of restaurant.

Mayor Menna said they would have to use a reasonable parameter and common sense.

Mr. Hertler said his main concern was that he could not operate his business as it stood. He noted that whatever laws were in place now were in place when he went before the Zoning Board. He noted that the resolution had been reviewed and signed off on by several Borough departments. He said they had opened the business in good faith based on what they said they were going to do. He said if he needed to sell snacks he could do that but he has been told that what was in his resolution did not comply with the Borough's definition of a restaurant. He again spoke of the vague definition of restaurant and noted the positive things his business has provided to the community.

Attorney O'Hern said he was mixing apples and oranges. He said the Zoning Board had authority of Zoning issues but had no authority of BYOB. He noted that if there was no specific local ordinance on the matter, it fell to the State law. He said that was the statute that the Police Department was enforcing. He agreed that it was somewhat vague as to what constituted Food Service.

Mr. Hertler felt that the definition of any public space that serves food or liquor refreshment was clear.

Mayor Menna asked if, under that definition, someone could bring alcohol into a store like 7-Eleven.

Mr. Hertler said, if they had food consumed on premise, then it would be allowed under state law.

Mayor Menna said the question was whether or not they wanted that.

Mr. Hertler noted that his business had been open for a year and a half.

Mayor Menna said the business was a billiard parlor and questioned the need for alcohol in the establishment.

Mr. Hertler said he had had six private parties cancel when they were told there could be no alcohol.

Mayor Menna said private parties were a different story as long as the business was closed to the public at the time of the party.

Mr. Hertler stressed the need for an alcohol component for his business to be successful. He said he had been unable to get an answer from the Borough in regard to what he can do. He said he had been told by an ABC attorney that BYOB was not regulated by the State but by the Borough.

Attorney O'Hern said the Police were obligated to enforce the statute. He agreed that the State did not regulate local BYOB laws. He agreed with the Mayor that not all laws were drafted succinctly but they had to consider the spirit and intent of the law. He said he did not believe that the spirit and intent was that one could open a business and serve a bag of popcorn or potato chips then open as a BYOB.

Mr. Hertler again questioned why the Zoning Board attorney had not considered that intent of the law.

Attorney O'Hern said he could not address that.

Mayor Menna noted that the Zoning Board attorney had rendered an opinion.

Mr. Hertler acknowledged that the Board attorney had said that the Zoning Board did not have the authority to permit a BYOB.

Mayor Menna noted that that was what the Borough attorney had also said.

There was continued discussion of how the Zoning Board resolution had been worded and it was determined that they had stated, if the applicant had obtained the necessary approvals, the Board had no objection.

Administrator Sickels said he had met with Mr. Hertler and reviewed his documents. He noted that the resolution had incorporated Mr. Hertler's testimony and exhibits he had provided. He noted that it had clearly stated his intent. He added that the resolution of approval stated that the Board had no objection as long as he complied with all other applicable state and local laws.

The Council again discussed the private party option as long as the business was closed to the public.

Mr. Hertler said they had been clear that they had intended to have people walk in off the street and have alcohol.

Mayor Menna said that was what the Police Department had an issue with.

Councilman Murphy clarified that the Police Department had been instructed to enforce the law. He said they did not know where the complaint came from.

Councilman Zipprich asked if a private party could be limited to a private room in the facility.

Mr. Hertler again stated he could not operate his business without alcohol.

Mayor Menna reviewed the history of previous billiard halls in town. He suggested that the legislature could do a clarification of the ABC regulations that would permit wine and beer to be served at billiard parlors. He asked Mr. Hertler if he had explored that possibility through the Borough's State Senate representative.

Councilman Murphy noted that number of businesses that could be affected by allowing customers to bring in alcohol. He again noted that the Police Department had been instructed by the State to investigate. He said town would have to develop regulations and guidelines.

Administrator Sickels asked if that Council could consider drafting something to address this specific type of operation.

Mayor Menna said they could not specify billiards because it would open the door to other recreational/entertainment uses. He said the question was if they were going to permit alcohol for entertainment uses.

Councilman Murphy asked if the Borough Attorney to investigate the matter and suggest guidelines.

Councilwoman Lee expressed concern about the fact that there were no age restrictions at some of the entertainment facilities.

A discussion followed about practices at restaurants.

Councilwoman Lewis agreed that the Council needed more information.

Tamera Lane—Channel 9 News—said she had questions about the old landfill and garbage in the Navesink River.

Mayor Menna said her questions were extraordinarily complicated and technical and it would be better for her to have an interview with the Borough Engineer.

Ms. Lane said she had called and left messages.

The Council was unable to determine where she had left the messages but suggested she contact the Borough Administrator's Office so that arrangements would be made for a meeting.

Administrator Sickels also noted that her questions were actually referring to two different properties that were far apart from each other.

Mayor Menna said they would be happy to give her all of the technical information but said he felt the Engineer would need access to her files to provide some of the information.

James Scavone—RiverCenter—said he just wanted to remind everyone of the Holiday Town Lighting on Friday with the concert starting at 7pm on Broad Street.

Councilman Zipprich asked if Santa would be arriving by train.

Mr. Scavone noted that Santa Express would be running this year and noted that NJTransit had not been running last year due to Hurricane Sandy.

EXECUTIVE SESSION

None.

ADJOURNMENT

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

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