

**MINUTES  
REGULAR MEETING  
MUNICIPAL COUNCIL – BOROUGH OF RED BANK  
DECEMBER 5, 2012  
6:30 P.M.**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

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

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

ABSENT: Councilwoman Lewis, Councilman Zipprich and Attorney O'Hern.

**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 12, 2012.

**SUSPEND REGULAR ORDER OF BUSINESS**

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

**ROLL CALL:**

AYES: DuPont, Horgan, Lee, Murphy

NAYS: None

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

**Presentation by Navesink Garden Club – Random Sightings of Beauty**

The Officers of the Navesink Garden Club presented their Random Sightings of Beauty awards to recognize the efforts of property owners to beautify the local area through horticulture and noted the goal of the award was to encourage residents and business owners to beautify their properties not only for themselves but also for others in the community. The 2012 winners were Marian and Mel Mattson, 10 Decker Drive, Leonardo; The Go Green Team of the PTO, Atlantic Highlands Elementary School, Atlantic Highlands; Joan and Sal Severini, 83 Maple Avenue, Eatontown, Bob and Arleen Luini, 40 Handy Boy Court, Red Bank; Joan Binn, 740 Port Monmouth Road, Port Monmouth; Theresa and Michael Boulos, 25 Branch Avenue, Red Bank.

Mayor Menna expressed the appreciation of the Governing Body for all that the Club had done to identify the horticultural gems of the greater Red Bank area and for the public service they provide by taking care of the planters in the downtown area.

**RESUME REGULAR ORDER OF BUSINESS**

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

**ROLL CALL:**

AYES: DuPont, Horgan, Lee, Murphy

NAYS: None

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

**WORKSHOP**

No Workshop items.

**APPROVAL OF MINUTES – November 20, 2012**

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

**ROLL CALL:**

AYES: DuPont, 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**

Councilman DuPont had no report.

Councilwoman Horgan reported that the Red Bank Borough Education Foundation had held a 50/50 Raffle to support the Swimming River Discoveries project and raised \$3,456 which was split between the foundation and the winner. She said some of the money will go toward restoring the media center at the Primary School which was damaged during the hurricane. She added that it will be renovated for STEM (Science, Technology, Engineering and Mathematics) which she said was a curriculum that was being advocated because the United States was behind in high-tech jobs. She said she wanted to thank Kathy Panepinto, Susan Berke and Boris Kofman for their work on the event.

Councilwoman Lee had no report.

Councilman Murphy reported that the Red Bank Volunteer Fire Department had elected a new Chief the previous night and noted that Joe Lauterwasser would be sworn in as Second Deputy Chief in January.

Mayor Menna noted that Mr. Lauterwasser would join incoming 2013 Fire Chief Thomas Doremus and First Deputy Chief Thomas Welsh.

Councilman DuPont asked, in regard to the recent tragedy at Red Bank Regional, if the services had been announced for the student that had passed away. Administrator Sickels said he had heard that the services would be held at Tower Hill Church on the following Saturday, but he was unsure of the time. Mayor Menna said he had sent his condolences to the Community of Red Bank Regional and to the family on behalf of the Mayor and Council.

### **COMMUNICATIONS AND PETITIONS**

Mayor Menna read a request from Garrett Sickels for membership to Navesink Hook & Ladder Company of the Red Bank Volunteer Fire Department.

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

ROLL CALL:

AYES: DuPont, Horgan, Lee, Murphy

NAYS: None

There being four 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 announced that Ordinance 2012-21 would be carried to the meeting of December 19, 2012 meeting due to notification issues and Ordinance 2012-22 would also be carried to the meeting of December 19, 2012 at the request of the Planning Board. He said they would be happy to consider comments of the Ordinances at this meeting.

Councilwoman Lewis arrived at 6:50 p.m.

Anthony Pellegrino—stated he was a property owner at 131 Tower Hill Drive and 15 Monmouth Street as well as a Councilman in Shrewsbury Borough. He said he was appearing to raise an objection to Ordinance 2012-21. He said a representative of the Shrewsbury Borough Planning Board had attending the Red Bank Planning Board meeting of December 3, 2012 to raise similar points. He said that Red Bank was amending the ordinance to make adult businesses a permitted use in a zone that was directly across the street from Shrewsbury Borough's residential zone.

Mayor Menna explained that Red Bank was not creating an adult business zone. He said the zone had been there for 15 years. He said what they were doing was meeting the requirements of the law that required them to identify the specific uses included in an adult business zone. He added that no one from Shrewsbury Borough's Council had expressed any concern about it in the last 15 years. He also noted that, in the 15 years that it had been there, there had been no applications for those uses.

Mr. Pellegrino said he understood that the goal of the ordinance was to make sure that those types of businesses didn't pop up anywhere else in the Borough which he said he appreciated. He said the problem that he had with it was that everything he had read from the State Statute on down said that those types of businesses cannot be within 1000 feet of any residential zone.

There was a discussion of whether it was 200 feet or 1000 feet. Mayor Menna noted that, either way, there were no residences within 1000 feet. Mr. Pellegrino noted that it was stated that the area could not be within a certain distance from any area zoned for residential use.

Mayor Menna again noted that the area had been there for 15 years and they were not re-zoning but identifying uses.

Mr. Pellegrino said Shrewsbury had a residential zone right across the street.

Mayor Menna asked if the Shrewsbury Zone had been residential 15 years ago.

Mr. Pellegrino said he would have to check.

Mayor Menna again stated Red Bank was not creating the zone because it had already been there.

Mr. Pellegrino said he would do more research and come back on the 19<sup>th</sup>.

Mayor Menna noted that Red Bank had had to create to zone 15 years ago because the Courts had said they could not ban it altogether. He noted that Shrewsbury Borough had created a similar zone on Shrewsbury Avenue.

Mr. Pellegrino noted that the Shrewsbury ordinance specifically stated that those businesses could not be opened within 1000 feet of a residential zone.

Mayor Menna said that when the Red Bank Council created the zone 15 years ago, Shrewsbury Borough was given notice and said he thought they had realized that it had to be done for the protection of everyone.

Councilman DuPont clarified that Red Bank was not creating the zone but defining what could be in it.

Mr. Pellegrino said he understood that was what the Council was saying but said he had had a different interpretation.

Councilman DuPont said he was glad Mr. Pellegrino had come and noted he had also received a call from the Shrewsbury Borough Administrator. He said it was important to note that Red Bank was not creating, enhancing or enlarging the zone but that it had been in existence for quite some time.

Mayor Menna said, anyone who was inclined to do so, could have opened what was commonly referred to as adult entertainment in that zone but noted they had not seen one in 15 years.

Mr. Pellegrino said they hoped not to.

Mayor Menna said the point was that, if they had denied someone who wanted to open such a business based on technical issues such as parking, set back, etc., they would have been able to go to Superior Court and the ordinance was subject to being struck due to vagueness. He said the goal was to identify what would fit within the zone and also to make sure it was not be void for vagueness if applicant appealed a denial.

Councilman Murphy asked Mr. Pellegrino to clarify where Shrewsbury Borough had zoned for residential use. Mr. Pellegrino said the entire Shrewsbury side of the street had been zoned as a dual first floor business and second floor residential. Councilman Murphy noted that that area had housed a bowling alley and car dealerships. Mr. Pellegrino said they were actively trying to get someone in there to develop the area and the Red Bank ordinance was a big concern. Councilman Murphy asked if they had anyone currently interested. Mr. Pellegrino said not at this time.

Steven Hecht—135 Branch Avenue—asked if one municipality was required to locate certain businesses according to its zoning or according to the zoning of an adjoining municipality.

Mayor Menna said it would be in accordance with the local Master Plan of the municipality. He also noted that State Law required notification regarding zoning ordinances or changes that were within 200 feet of an adjacent municipality. He said the pros and cons of adjudication rest with the host municipality but they would respect the opinions of the adjacent municipality. He also said if Red Bank was creating the zone it would be a different story from the fact that it was already there and again noted the problem of possible challenges to the existing ordinance if it was deemed to vague.

#### **ORDINANCES – First Reading**

2012-24 Mayor Menna read, “ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AUTHORIZATION OF SANDWICH BOARD SIGNS.”

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

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Lee, Murphy

NAYS: None

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

Public hearing and final adoption scheduled to be held December 19, 2012.

#### **ORDINANCES – Public Hearing and Final Adoption**

2012-20 Mayor Menna read, “ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 490 PLANNING AND DEVELOPMENT REGULATIONS, ARTICLE II, DEFINITIONS AND ARTICLE X, ZONING, TO ESTABLISH THE MINIMUM SETBACK REQUIRED FROM SIDE AND REAR LOT LINES FOR THE LOCATION OF STANDBY GENERATORS IN SPECIFIED ZONE DISTRICTS.”

Councilman DuPont offered a motion to open the public hearing, seconded by Councilwoman Lee.

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Lee, Murphy

NAYS: None

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

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 Councilwoman Lee.

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Lee, Murphy

NAYS: None

There being five 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, DuPont, Horgan, Lee, Murphy

NAYS: None

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

2012-21 Mayor Menna read, “ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER 490 PLANNING AND DEVELOPMENT REGULATIONS, ARTICLE II, DEFINITIONS AND ARTICLE X, ZONING, TO DEFINE ADULT ORIENTED BUSINESS AS A CATEGORY OF LAND USE AND TO PERMIT ADULT ORIENTED BUSINESS AS A USE OF THE HB HIGHWAY BUSINESS ZONE DISTRICT.”

Councilman DuPont offered a motion to open the public hearing, seconded by Councilwoman Lewis.

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Lee, Murphy

NAYS: None

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

Mayor Menna opened the Public Hearing and asked if anyone would like to speak.

No one appearing, Councilman DuPont offered a motion to carry the ordinance to the meeting of December 19, 2012 without further notice, seconded by Councilwoman Lee.

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Lee, Murphy

NAYS: None

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

2012-22 Mayor Menna read, “ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER 490 PLANNING AND DEVELOPMENT REGULATIONS, ARTICLE II, DEFINITIONS TO REVISE THE DEFINITION OF A PROFESSIONAL OFFICE.”

Councilman DuPont offered a motion to open the public hearing, seconded by Councilwoman Lewis.

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Lee, Murphy

NAYS: None

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

Mayor Menna opened the Public Hearing and asked if anyone would like to speak.

Steven Hecht—135 Branch Avenue—said the Department of Community Affairs had a listing on their website of health related licensees and other professional occupational licensees. He added that if they were to list them in the Ordinance it would be two to three pages long. A discussion followed regarding the institutions that were being included and excluded.

No one else appearing, Councilman DuPont offered a motion to carry the ordinance at the request of the Planning Board to the meeting of December 19, 2012 without further notice, seconded by Councilwoman Lee.

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Lee, Murphy

NAYS: None

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

2012-23 Mayor Menna read, “ORDINANCE CODIFYING THE PLANNING AND DEVELOPMENT REGULATIONS OF THE MAYOR AND COUNCIL OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, STATE OF NEW JERSEY, BY ADOPTING CHAPTER 490, PLANNING AND DEVELOPMENT REGULATIONS, OF THE CODE OF THE BOROUGH OF RED BANK.”

Councilman DuPont offered a motion to open the public hearing, seconded by Councilwoman Lewis.

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Lee, Murphy

NAYS: None

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

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 Councilwoman Lee.

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Lee, Murphy

NAYS: None

There being five 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, DuPont, Horgan, Lee, Murphy

NAYS: None

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

## **RESOLUTIONS**

By Consent Agenda:

- 12-226 A RESOLUTION AUTHORIZING A SPECIAL EMERGENCY APPROPRIATION PURSUANT TO N.J.S.A. 40A:4-54 FOR THE REPAIR, REHABILITATION, RECONSTRUCTION AND/OR REPLACEMENT OF PUBLIC PROPERTY DAMAGED BY HURRICANE SANDY.
- 12-227 A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF SPECIAL EMERGENCY NOTES OF THE BOROUGH OF RED BANK IN THE AGGREGATE PRINCIPAL AMOUNT OF UP TO \$454,000.00; MAKING CERTAIN COVENANTS TO EFFECT AND MAINTAIN THE EXEMPTION OF 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.
- 12-228 A RESOLUTION AUTHORIZING THE ASSIGNMENT OF CERTAIN TAX SALE CERTIFICATES NOW HELD BY THE BOROUGH OF RED BANK.
- 12-229 A RESOLUTION AUTHORIZING REFUNDS OF UNUSED TAX SALE DEPOSITS.
- 12-230 A RESOLUTION AUTHORIZING REFUNDS DUE TO OVERPAYMENT OF TAXES DUE TO A JUDGMENT OF THE TAX COURT OF NEW JERSEY.
- 12-231 A RESOLUTION AUTHORIZING REFUNDS DUE TO OVERPAYMENT OF TAXES OR UTILITY FOR VARIOUS REASONS.
- 12-232 A RESOLUTION SUPPORTING LEGISLATION INCREASING PENALTIES FOR UTILITIES THAT FAIL TO PROVIDE ADEQUATE RESPONSE TO STORM EVENTS.

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

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Lee, Murphy

NAYS: None

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

Mayor Menna asked Councilwoman Lewis if she wanted to offer a report.

Councilwoman Lewis reported that the Holiday Home Decorating Contest was under way and the First, Second and Third Place winners would be announced at the December 19 meeting. She said residents should sign up by

emailing Recreation. She also noted that the Westside Tree Lighting would be held on Saturday, December 8.

**PAYMENT OF VOUCHERS**

12-233 Mayor Menna read, “A RESOLUTION FOR PAYMENT OF BILLS AMOUNTING TO \$2,934,211.86.”

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

**ROLL CALL:**

AYES: Lewis, DuPont, Horgan, Lee, Murphy

NAYS: None

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

**PROCLAMATIONS**

None.

**OLD BUSINESS**

None.

**NEW BUSINESS**

None.

**AUDIENCE**

No one appeared.

**EXECUTIVE SESSION**

**None.**

**ADJOURNMENT**

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

**ROLL CALL:**

AYES: Lewis, DuPont, Horgan, Lee, Murphy

NAYS: None

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

Respectfully submitted,

Pamela Borghi