

**MINUTES  
REGULAR MEETING  
MUNICIPAL COUNCIL – BOROUGH OF RED BANK  
AUGUST 24, 2011  
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, Attorney O’Hern and Engineer Ballard.

ABSENT: Council Members Lewis and DuPont.

**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 March 1, 2011.

**SUSPEND REGULAR ORDER OF BUSINESS**

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

**Presentation by Monmouth Boat Club**

Crissy Van Siclen, Commodore, said she was privilege to be on hand to present the Borough of Red Bank with a check for \$5,000 from the members of the Board of Governors and the members of Monmouth Boat Club.

Mayor Menna thanked Ms. Van Siclen and praised the club for the donation. He noted Red Bank had the largest number of tax exempt properties, in terms of percentage, of any town in the County and was happy to have them. He said the Monmouth Boat Club, along with a handful of other organizations in town, extend themselves a little bit more than many of the other such properties. He added that the fact that the organization contributes when they were not legally obligated to sent a message to the Council and helps all of the residents of Red Bank.

**Public Hearing for the Monmouth County Open Space Trust Funds: Waterfront Access and Development of Bellhaven Park**

Engineer Ballard explained that the application being considered would be for improvements to Bellehaven Park. She said the property was located at the waterfront along Locust Avenue and the proposed project would provide waterfront access along the Swimming River. She said it was currently an underutilized site in close proximity to the Red Bank Primary School. If the project was completed, she continued, the property would be the only park located on the west side of the Borough.

Ms. Ballard offered photos of the existing conditions at the property showing that there was low visibility and, due to the overgrown, she noted that it was not a place for children. She noted that the property was completely overgrown with invasive phragmites and the waterfront was currently not accessible because they were so thick and dense.

She said the proposed concept for the park was to create a natural shoreline and get rid of the invasive species. She said they would keep it as a pocket park for the neighbors rather than a destination point. She said it would have a walkway down to the water after the removal of the phragmites and she said she had spoken with the Littoral Society and they had said they were willing to work with the Borough on planting the shoreline with native plants. She said the goal was to make the shore visible and accessible. She added that it would also include a small tot lot, swing set and splash pad area for seasonal use. She

said it would also include passive enjoyment of the waterfront with the inclusion of benches. She noted that the splash pad area was not very large and was included just to allow children to get wet in the hot summertime.

She noted that the matter being considered was just a grant application and a concept. She said they would have to apply for and be granted funds from Monmouth County. She said the maximum grant for the project was \$250,000 and they would be targeting that amount while trying to keep the costs within the requirements to get the maximum grant.

Mayor Menna asked if anyone on the Council had any questions for Engineer Ballard. Councilman Zipprich asked if the proposal met all of the County requirements. Ms. Ballard confirmed that it did. Councilman Zipprich asked if it would serve a need in the proposed location. Ms. Ballard said she had spoken with the Borough's Parks and Recreation Director and she had said there was a need in that neighborhood for waterfront access for the children. Ms. Ballard noted that Councilwoman Lee had brought up the fact that there was a need for a place where children could cool themselves at a previous Council meeting. As an alternative to opening fire hydrants, Ms. Ballard said, this plan would certainly be able to provide some relief from the heat.

Administrator Sickels asked Engineer Ballard to confirm that the plan had come as a recommendation from the Parks and Recreation Committee and the Department's Director after discussion about possible grant applications and locations and where the Borough could improve opportunities for children in Red Bank. She confirmed that was the case. Mr. Sickels noted that one thing that was identified was the need for a tot lot in the proposed area. He also pointed out that the property was underutilized due to its growth and that the water was inaccessible. He said the proposed application would combine the two goals of keeping it natural and accessible while adding features that would attract younger children in the neighborhood.

Ms. Ballard agreed that the idea was to combine both of those elements—the natural shoreline with active recreation activities for children. In general, she continued, she said she thought the tot lot would be geared toward children from ages 8 to 12. Mr. Sickels noted that it would be more useful to a broader audience.

Mayor Menna noted that all of the discussion was very hypothetical since, should the Borough's application be approved, Ms. Ballard would have to come back and make a presentation to the community as to what possibly could be incorporated into the plan. He added that it would depend on funding availability and contribution requirements.

Ms. Ballard said that was the case and noted that Monmouth County typically announces their grant awards at the last Freeholder meeting of the year in December.

Mr. Sickels asked when the deadline for the application was. Administrator Sickels said he thought it was before the next Council meeting. Engineer Ballard did have the exact date but said she knew if was soon and that was why she was rushing. She said she knew Councilwoman Lewis was the liaison to the Parks and Recreation Committee and she would have preferred to have her at the meeting but, given the time constraints, they had to have the presentation in her absence.

Councilwoman Lee thanked Ms. Ballard for moving on the issue so the Borough can get their application in. She said she realized the presentation was just expanding some options the Borough may have, but she looked forward to comments from the audience.

Councilman Murphy said he wanted to note for the record that the Police Department had had a tough time patrolling the area. He said there was a lot of activity at the location at night and noted that it was very overgrown. He added that there was a gazebo on the property and the police parked in the area to watch what was going on at the location. He said it was dangerous to walk through at night.

Councilman Murphy said way back when the park had first been granted, Chief Fitzgerald had written a statement where he said he felt visibility of the park at night would be problem. Councilman Murphy outlined some of the problems at the site.

Mayor Menna confirmed that the initial concept was for a nature preserve and that was what it had been developed as. He noted that times have changed and that was what had generated the proposal.

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

Leigh Kremer—95 Locust Avenue—said he lived directly across from the entrance to the park. He said he was concerned about visibility adding that from his location he could see what went on there and he described it as mostly “suspicious behavior.” He said he was also frustrated because he lived across the street from the water and couldn’t see it due to overgrowth and dead trees.

Mayor Menna asked him if he thought the proposal was something the Borough should move forward with. Mr. Kramer said he was in favor of it but had concerns about a boat access that he had read about.

He said there was not a lot of parking in the area and he was concerned about people bringing trailers.

Mayor Menna said it was a very broad overview of a proposal and, if the Borough was approved for funding, the technical details would be reviewed at a public hearing later.

Engineer Ballard said there had been a discussion about a possible launch site for kayak type boats and the reason stated by Mr. Kramer were the exact reason they decided not to include it in the project. She added that they were not looking to include off street parking and the goal was to make it a neighborhood park.

Mr. Kremer said he was in support of cleaning up the park. He said he was also concerned about a pathway that went along side his property that was used by kids going to the Primary School. He noted that it was not paved and had drainage issues and said if the Borough planned on encouraging its use, they should look into those issues.

Mayor Menna thanked him for his comments.

Kathleen Gascienica—110 Locust Avenue—said she lived adjacent to the park and went there on a daily basis and had also written to the Council about activities that went on there. She commended the Mayor and Council for applying for the grant because the area was in bad need of improvements. She said her only concern was that they do it in consideration of several things including existing plans that discuss how the park should be used; specifically, the Master Plan that speaks of increased water access, the Waterfront Access Plan and, most importantly, the Bellhaven Nature Preserve plan that was partially implemented. She reviewed specifics about what part of the plan had been implemented and funding that was received.

In regard to water access, she continued, things that needed to be considered included the removal of the phragmites and offered extensive information on the plant and its removal. She also discussed the issues of putting a surface on top of a marsh land and why the site would not be an appropriate boat launch area. She stressed the need for an active maintenance plan for the area. She said another consideration would be the necessary permits and noted that nine years ago there had been approval by the Department of Environmental Protection, but she believed the permits had expired. She said the Littoral Society had suggested partnering with the US Fish and Wildlife Department because they were the ultimate regulators of the area and were also practitioners in remediation work. She said they would also coordinate with other agencies that would have to be involved. She reviewed issues with eco-foraging. She said the summary of the Littoral Society's opinion was that there were multiple levels of regulation that the Borough would have to go through with permits required unless there were still permits that were active. She also said it would be very costly, probably more than the grant depending on the scope, and a lengthy process.

She said she would like to see the old plan fully implemented including an improved Riverwalk that would be passable at high tide. She said she thought many of the problems with the park could be resolved if the vegetation was removed. She offered her suggestions for both removal and replanting. She stressed the need for maintenance and routine patrol. She spoke of an old dock and former ferry landing that had once been at the site. She questioned the ability to put a playground with a surface at the site because it was marshy and sloped.

Mary Lou Burden—108 Locust Avenue—said she thought anything that could be done to improve the area would be tremendous and said she was concerned about the safety for children and the noise for residents in the area. She also noted that there had been issues with a gazebo on the property that was in disrepair and that she would like to see it removed.

Engineer Ballard explained that the Borough owned portion of the property was only a small corner piece and there was a large amount of property that belonged to the adjacent town homes which, she said, included the gazebo.

Ms. Burden said she did not believe it was on their property.

Ms. Ballard said, according to the project plan, it was.

Administrator Sickels noted that it was a requirement of the site plan when their project had been built. Ms. Ballard concurred. Mr. Sickels said he believed the builder was also required to maintain it. Ms. Ballard said it was on their property and part of their Association.

Mayor Menna explained that the Association had ownership of the property and, if it was in fact on Association property and the Association wished to discontinue use of the gazebo, the Association should issue a resolution. If it was a site plan issue, he continued, they may have to make a request to the Borough's Planning Board to amend the site plan to remove it and he said he couldn't see anyone standing in their way on the issue if that was what they wanted to do.

Mr. Sickels reiterated that if it was a condition of the property's site plan, the Board would have to make

an application to the Planning Board to amend the site plan in order to remove it.

Celestine Stone—56 Leighton Avenue—said she welcome the opportunity for the park and didn't see an issue with the marsh area since she recalled the Primary School had been built on a marsh. She asked if local contractors would be used for the project adding that she would like to see community members employed.

Engineer Ballard explained that, under the Public Contract Law, the project would have to be advertised publicly and had to be open to all.

Maggie Ferguson—106 Locust Avenue—said her only concern that had not already been addressed was in regard to safety and traffic issues in their housing development.

Engineer Ballard said that was considered and was one of the reasons they chose to keep it a small, pocket park without off street parking for use by those in the neighborhood.

Rose Sestito—190 River Street—said she had heard people speak of vegetation and the nature walk at the park but that they had forgot to include the children. She noted that she was a parent that lived on the west side of town and said there were no adequate parks for the children in the area. She noted the children cannot walk to Count Basie Park because they would have to cross Shrewsbury Avenue. She plead with the Council to consider the children with this application so they could have a park that was safe and had walkable access. She stressed the need for safety and suggested they could lock the park at night similar to the way Count Basie Park is locked at night. She noted that the neighborhood around Eastside Park raised concerns about issues with that site and it was now a beautiful park.

Tom Williams—85 Locust Avenue—said he had been involved in the initial plan for the property. He said he believed that plan never got a chance to be fully implemented. He agreed there was a need for an area for children but added that he didn't think it was an appropriate area, especially for a splash zone. He urged the Council to reconsider the need for a nature area and stressed the educational benefits. He asked the Council to locate this particular plan at some other site. He also mentioned the riparian grant that would enable river access.

Laura Bagwell—19 Leroy Place—identified herself at the Chair of the Red Bank Environmental Commission and said she was appearing on behalf of that organization. She said, at the group's last meeting of August 9, a resolution was passed that stated that Environmental Commission recommended that the Borough maintain the Bellehaven property as a nature area with the addition of river access and implement a maintenance plan to control invasive species. She said she thought it was very important that the west side have access to a park. She agreed that crossing Shrewsbury Avenue was a major concern but said she wanted to draw attention to the bikable/walkable plan that was recently adopted. She also asked if there were any trees that were going to be removed and, if so, how many.

Mayor Menna noted that there was no plan to remove anything at this point. Engineer Ballard agreed and added that she knew it was an eco-foraging area and she was sensitive to the fact that trees were necessary for that type of environment. She said they really didn't intend to take down trees and would like to plant other trees when the phragmites are removed. She did note that if a tree was dead it would come down and if limbs were dead it would be pruned.

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

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

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

11-179 Mayor Menna read “AN ENABLING RESOLUTION TO THE MONMOUTH COUNTY BOARD OF CHOSEN FREEHOLDERS OPEN SPACE TRUST FUND FOR WATERFRONT ACCESS AND DEVELOPMENT OF BELLHAVEN PARK.”

Mayor Menna again noted that the resolution would only authorize the applying for a grant and he was hopeful the Borough would get a favorable result. He said, at that time, there would be another meeting to discuss specifics of the plan.

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

ROLL CALL:

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

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

Mayor Menna noted that a second resolution was listed under Suspended Order of Business to consider the renewal of the liquor license for the establishment known as Fixx for a term of July 1, 2011 through June 31, 2011. He asked the Attorney present for the establishment to identify himself.

Robert C. Williams came forward and said he was appearing as the attorney for Chubbys Waterside Café currently trading as Fixx.

Attorney O'Hern reviewed the details of the fact that the license had not been renewed by the Governing Body and said the business owner had had to get an ad interim permit. He said Police Chief McCarthy had met with the owner to see if they could come to an agreement on certain conditions. He said they were unable to come to agreement so the Governing Body was moving forward, pursuant to Statute, to impose conditions. Should the resolution be approved, he continued, it would go to the Director of the ABC for approval. He said Chief McCarthy would be presenting information on the proposed special conditions and noted that, as part of the renewal process, the Police Department conducts an investigation of each licensed establishment.

Attorney Williams asked if the Council had been given any information for review before coming the Council meeting which would impact their consideration of the resolution. Councilmembers reviewed documents they had received. Mr. Williams acknowledged that he had received the same documents. He also asked if they had received any police reports or internal correspondence. Mayor Menna said they had not and asked if Mr. Williams would prefer that they review those documents. Mr. Williams said he just wanted to make sure he had everything that they had. Attorney O'Hern said he had seen the request that Mr. Williams had sent to the Municipal Clerk and he had provided everything that was before the Governing Body.

Chief McCarthy thanked the Mayor and Council for the opportunity to speak. He reviewed the process that required the Police Department to conduct an investigation prior to the renewal of liquor licenses. He said in the past the investigation had been more informal. He said he imposed a more formal process this year where they reviewed call for service data as well as an inspection of each premise. He reviewed the inspection process which he said was done within the ABC guidelines and said, in general, most of the inspections went very well including the one for Fixx. He said the issue with the establishment arose upon review of their calls for service data. He reviewed how the data was compiled and noted that Fixx had the most issues in almost every category. He said he also discussed the issues with the Watch Commander that were on duty during the evening hours and they described problems particularly at closing time which he said would take away from the Department's ability to respond to other bars as well as other places throughout town. He said he also relied on calls from citizens throughout the year most of which revolved around issues at closing time including noise complaints about patrons leaving the bar and music coming from inside the bar. He said he had discussed the matter with Captain McDonough who handles most of the liquor investigations and he had recommended they impose special conditions. Chief McCarthy explained that special conditions were a tool that the agency has to help keep liquor license establishments on the right path. He compared it to an employee action plan and noted that if the conditions were not met, there would be more corrective action.

He said the Council was aware that when problems had arisen in the past and they had tried to take action, the question arose as to why special conditions had never been taken. He stressed that there were not trying to taken that kind of a path with Fixx, but were looking to correct the problems.

In reviewing the problems, he continued, he said there were four issues: noise, disorderly patrons, increasing communication and miscellaneous issues. He said he had known Mr. Gilson for a couple of years and had always found him to be responsive and felt they had had a good relationship in the past and hoped to continue it going forward. He said he had met with Mr. Gilson to explain his concerns and asked him to bring back a security plan. In the beginning of July, Chief McCarthy continued, Mr. Gilson presented the plan and they went over it together. He said many of the special conditions had come from Mr. Gilson's plan. He added that during the conversation he had asked Mr. Gilson for a time line because he felt that was the area that needed to be addressed based on calls for service that occur during the 1 am hour. He reviewed Mr. Gilson's time line during that time. He said he based the special conditions on information from Mr. Gilson as well as other resources. He said the recommendation from Capt. McDonough was to close the bar at 1:30 am which was what the ABC called a staggered closing. He said that would enable the police to handle the closing there at 1:30 am and be available at 2 am for the closing of the other establishments. He said he was proposing they shut the music off at 1:15 am and said he thought this would have the effect of having the crowd leave a little early and having a gradual closing. He said he thought it would help make the officers available for other calls for service throughout town. He said he gave Mr. Gilson the proposed conditions and asked if he would consent. Chief McCarthy said

Mr. Gilson reviewed it and, as was his right, he did not agree and that was why the matter was now before the Council.

Mayor Menna asked Chief McCarthy if he was recommending that the twelve conditions attached to resolution 11-180 should be adopted as a condition for renewal of the license. Chief McCarthy confirmed that he was.

Attorney Williams asked Chief McCarthy if the report he had relied on for the figures was prepared by someone other than himself. Chief McCarthy confirmed that it was. Mr. Williams reviewed the details of the report prepared by Capt. McDonough and asked if the report had been prepared on June 14, 2011. Chief McCarthy said it had been. Mr. Williams asked Chief McCarthy what date was typed on the bottom of the page. Chief McCarthy said it said 8-14. Mr. Williams suggested Chief McCarthy did not have the report when he had made his recommendations. Chief McCarthy said he did have the report and that he had received it in June. He said the "8" typed in the date was a typographical error.

Attorney O'Hern said it was his recommendation to the Council that they not conduct an evidentiary hearing at this meeting. He said Mr. Williams was welcome to ask the Chief a couple of questions. He asked Mr. Williams if he had any issues he wanted to bring before the Governing Body and noted they were going to vote on the resolution at this meeting. He said Mr. Williams was welcome to address questions to the Council but he did not want to subject the Chief of Police to a cross examination. He reiterated that this meeting was not an evidentiary type of hearing.

Mr. Williams cited Title 33 and his need to review the Police Chief's report and what his recommendations were based on. He again noted that the Chief's recommendations were made July 21<sup>st</sup> but the report was dated August 14<sup>th</sup>. He questioned how that happened. Mayor Menna said he thought the Chief had answered that. Mr. Williams reviewed that the Chief had said he had made the recommendation based in part on some of the suggestions provided by Mr. Gilson. Chief McCarthy said that was correct. Mr. Williams asked Chief McCarthy if he was aware the Mr. Gilson had agreed to everything except one condition. Chief McCarthy said that was correct and noted that the issue was over 15 minutes. Mr. Williams said they would not be present if they did not think that that issue was a very important part of their business in order to survive in the present economy. He asked Chief McCarthy if he was not willing to amend that condition knowing that the conditions had been in place since June and there hadn't been any problems. Chief McCarthy said he would have to review the calls for service data and added that he didn't know that the conditions were in place since June. He added that the purpose of the resolution was to formalize those conditions. Mr. Williams asked Chief McCarthy that if Mr. Gilson told him he had implemented the conditions long before the meeting. Chief McCarthy would have no reason to doubt him. Chief McCarthy agreed.

Mayor Menna said it seemed that there were in agreement with the bulk of the conditions and asked Mr. Williams to clarify why they were opposed to condition number one which called for no music after 1:15 am. Mr. Williams explained that the industry had changed over the last 25 years and they had broken down when people come to their establishment. He asked the Council to keep in mind that the club did not open until 9 pm and said their investigation had shown that on their busiest nights, which were Friday, Saturday and Sunday, there were an average of only about 25 people in the establishment between 9 and 11 pm. Between 11 pm and 12 midnight, he continued, they would get about another 75. He said between 12 and 1:30 am was when they got the bulk of their business and noted that, on a busy night, that meant about 200 people. He said it wasn't that people would leave at 1:15 when the music stopped, he said they wouldn't come because they could go somewhere else. He noted that after meeting with the Chief and their staff, they now have people standing outside of the establishment telling people leaving at 1:30 that they have to go while also directing people from other bars that migrate to the parking lot.

Mr. Williams also noted that, in prior years, Mr. Gilson had been instructed to keep his employees inside of his building and now had been instructed to keep their security outside to instruct patrons to leave. He said they had even made tapes over the past few weekends and found that it was working. He asked the Council to renew the license with the special conditions including turning the music down at 1:30 while reserving the right to bring it back in 90 days if they feel it was not working. He said that would save everyone a lot of money because if the 1:15 was in the conditions, he would have to appeal and that would mean legal fees for Mr. Gilson and for the citizens of Red Bank.

Mayor Menna asked Mr. Williams if he was saying that his client was amenable to all of the other conditions. He said they also didn't see the need for the extended security on Thursday, but said if they had to do it they would. He said everything else was fine and noted the Mr. Gilson and Chief had worked together to come up with the conditions. He added that, to the average person, 15 minutes didn't mean anything, but in this business it was very important.

Mayor Menna confirmed that they were consenting to the Council being able to review it, notwithstanding the fact that the license would hypothetically have been renewed, within 90 days. Mr. Williams said they were. Mayor Menna clarified that it would be without prejudice and it would not be before the ABC. He reviewed that they were asking the Council to approve it subject to that change but if there was a problem within 90 days, the Council would have the right to review it. Mr. Williams acknowledged that he would be waiving his right to appeal and asking the Borough to retain jurisdiction.

He said he did not see the ABC having a problem with that. Mayor Menna agreed that he did not think the ABC would have a problem with that as long as Mr. Williams consented to the Borough retaining jurisdiction.

Councilwoman Horgan asked if Mr. Williams was saying that, in 90 days, if the Council still felt there was a problem, they would agree to stop the music at 1:15 am. Mr. Williams said no, the Council would be asked to tell them what the problem was and, if they could not work it out, he would then have the right to appeal. He said what the 90 days would do was give the Council a chance to see if what he was telling them in regard to the additional security was working.

Mayor Menna explained why retaining jurisdiction would make it easier for the Borough to review and they would not have to go to the ABC and file an order to show cause.

Mayor Menna asked Attorney O'Hern if, since this involved a possible administrative hearing, this would be an exception to the open public meetings act so they could call for a caucus. Attorney O'Hern agreed that it would.

Mayor Menna clarified for the Council that he was suggesting they caucus in Executive Session for a few minutes because it involved possible litigation.

Attorney O'Hern asked if the Council members had any questions before they adjourned to Executive Session.

Councilman Murphy asked if the conditions were within the guidelines of what the ABC proposes. Chief McCarthy said the ABC would not tell them what guidelines to impose because they review them in the end. He said he could say that they came from similar guidelines that had been imposed in other jurisdictions. Councilman Murphy clarified that closing time was usually 2 am and they could impose an earlier one but they were asking him to shut down the music at 1:15.. Chief McCarthy confirmed that they could impose an earlier closing time which was referred to as a staggered closing but they were not asking for that.

Mayor Menna asked if there were any other questions. Councilwoman Horgan asked how many members of security staff were there at this time. He said, on the nights in question, they had six. He noted that they previously had four and were adding two at the suggestion of the Chief. Councilwoman Lee noted that the Chief had asked for six on Thursday, Friday, Saturday and Sunday, but Mr. Gilson would rather not have six on Thursday. Mr. Williams said there were not enough people there to warrant it. Mr. Gilson explained the ratio used to determine the security needed. Mayor Menna noted that, if there was a special event at the site, they would have to impose higher security.

Councilman Murphy said the requirement of security had been in place as long as he had been commissioner and said he didn't think that was the issue. He said he should have been doing this all along. Mr. Williams said he thought the difference now was that now they had security staff outside whereas before they were requested not to. He said he thought that would alleviate some of the problems.

Councilman Zipprich asked what time the music was currently shut down. Mr. Williams said they shut it down at 1:30 am and then clarified that they currently shut it down at 1:40 to 1:45 but that they had agreed to 1:30. Chief McCarthy said that was not correct. He said when he had asked for a time line he was told they shut the music off at 1:30. Mr. Gilson said that is what he said he would agree to.

Councilwoman Lee asked about the condition to have security outside of the premises and if that was unusual County-wide. Chief said it was not and said the function was just to have extra eyes and ears outside. He said they were not expected to engage people but to call the police if there was a problem. Mr. Williams said they ask people to leave and tell them to be respectful of the neighbors. He said they explain that if they don't leave if causes problems for Fixx. He also noted that if they don't leave, they don't get let in again.

Councilwoman Horgan asked if the front door was the only egress. Mr. Williams confirmed that that was the only way people got out.

Councilman Zipprich asked the Chief to confirm that the twelve conditions were based on conversations with Mr. Gilson. Chief McCarthy confirmed that was the case and said that he and Mr. Gilson had had a long relationship. He said he contact Mr. Gilson when he became Chief and told him if there was any problem to call him and Mr. Gilson had said likewise. He said he sat down with him and went over Mr. Gilson's procedures. He said they talked about ways to abate problems and the resolution at hand was the result. He said the majority of the items, with the exception of number one, they had come up with together. He said the resolution would make it more formal and ensure the condition were in place. Mr. Zipprich asked Chief McCarthy if he thought the conditions would be acceptable to the ABC. Chief McCarthy said that was difficult for him to say, but added that he would not propose something that he didn't believe in.

## EXECUTIVE SESSION

11-193      The Attorney read a resolution to adjourn to executive session to discuss potential litigation.

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

### ROLL CALL:

AYES:      Zipprich, Horgan, Lee, Murphy

NAYS:      None

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

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

### ROLL CALL:

AYES:      Zipprich, Horgan, Lee, Murphy

NAYS:      None

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

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

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

ABSENT: Council Members Lewis and DuPont.

11-180      Mayor Menna read “A RESOLUTION AUTHORIZING RENEWAL OF PLENARY RETAIL CONSUMPTION LICENSE FOR FIXX FOR THE PERIOD OF JULY 1, 2011 TO JUNE 30, 2012.”

Mayor Menna noted that the Council had caucused and conferred on this limited issue and based on the discussion with the Chief and Mr. Williams that had been on the record, the Council had agreed that the resolution would be acceptable with conditions one through twelve remaining. He said condition number one would be amended as follows: condition number one attached to the license would stipulate that no live or audio music after 1:30 am. In addition, he continued, there would be attached condition 13 which would be that the licensee waives any and all rights or abilities to appeal the conditions and/or the issuance of the within resolution to the Bureau of Alcoholic Beverage Control. He said condition 14 would be that the Mayor and Council retain jurisdiction for a period of 90 days from the date of the within resolution to monitor and conduct a review of the operations of the licensee.

Councilman Murphy offered a motion to approve the resolution as amended, seconded by Councilwoman Lee.

### ROLL CALL:

AYES:      Zipprich, Horgan, Lee, Murphy

NAYS:      None

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

Mayor Menna thanked Mr. Williams for his presentation. He also thanked Chief McCarthy for his contribution and for his ability to work with the licensee. He said the Police Department had done a Herculean job to protect all interests.

Mr. Williams thanked the Council for listening to them very carefully and considering the amendment. He also thanked the Chief for his input and Mr. O'Hern for providing the information in a timely fashion.

## **RESUME REGULAR ORDER OF BUSINESS**

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

## **WORKSHOP**

No workshop items.

## **APPROVAL OF MINUTES – July 27, 2011**

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

### **ROLL CALL:**

AYES: Zipprich, Lee, Murphy

NAYS: None

ABSTAIN: Horgan

There being three ayes, no nays and one abstention, the minutes were declared approved.

## **APPROVAL OF MINUTES – August 10, 2011**

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 minutes were declared approved.

## **MAYORAL APPOINTMENTS**

## **REPORTS OF MAYOR AND COUNCIL MEMBERS**

Councilman Murphy has no report.

Councilwoman Lee reported that the Red Bank Public Library had a writing workshop with Gilda Rogers which would be starting on September 14. She said the Library had also started a group called River Clippers which was a coupon collecting organization. She also reviewed other programs scheduled at the Library including Job Search for Moms on September 14.

Councilwoman Horgan reported that the Environmental Commission had met the night before and voted unanimously for the Borough to apply for a US Housing and Urban Development Community Challenge Planning Grant and Sustainability Element to the Master Plan. She said the Borough Engineer would be spearheading that. In regard to the recent earthquake, she said she hoped everyone had signed up for the emergency alerts. She reviewed the process to sign up through the Borough's website. She said she had received a text message, email and voice message an hour after the event which she said she thought was pretty good.

Councilman Zipprich said he wanted to thank the Police Department and the Emergency Management Team for the alert during the earthquake adding that it was reassuring to get the message that everything was secure in Red Bank and that there was no damage. He said he wanted to remind everyone that the water main construction would begin on Shrewsbury Avenue between Monmouth Street and Riverside Avenue on or about September 30. He said the detours would be posted and the work should last approximately two months.

He said he also wanted to mention that Reverend Porter, president of the Red Bank Housing Corporation noted that Cedar Crossing had six three bedroom units available for sale. He said the application date had

been extended and said those interested could call 732-758-0400 or visit the website [www.rbahcorp.com](http://www.rbahcorp.com). He said he would also like to thank Dale Weems and her committee for executing a great family day reunion on the 13<sup>th</sup> and said it was great to meet so many Red Bankers on Dr. Parker Blvd. He also thanked the EMS and Red Bank Police Department members who were there to help keep things safe.

He said with the impending hurricane approaching the following weekend, he reminded everyone to please make sure there is no brush or garden clippings at the curb. He asked that they be removed by Friday evening to allow for ample rain runoff. He said DPW was making the request to make sure the catch basins remained clear to prevent flooding.

On behalf of Councilwoman Lewis who was away on business, he said he wanted to congratulate the Count the Children Movement on another successful I Build, U Build, We Build and their continued efforts on behalf of the school children.

## **COMMUNICATIONS AND PETITIONS**

### **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.

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

#### **ROLL CALL:**

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

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

### **ORDINANCES – First Reading**

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

2011-15 Mayor Menna read “AN ORDINANCE OF THE BOROUGH OF RED BANK, MONMOUTH COUNTY AMENDING CHAPTER XX, “WATER AND SEWER”, SECTION 20-8, “SEWER CONNECTION FEES” AND SECTION 20-9 “WATER CONNECTION FEES.”

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: Zipprich, Horgan, Lee, Murphy

NAYS: None

There being four ayes and no nays, the public hearing was declared closed.

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

#### **ROLL CALL:**

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

There being four ayes and no nays, the ordinance was declared adopted on final reading.

## RESOLUTIONS

### By Consent Agenda:

- 11-181 A Resolution Accepting Maintenance Guarantee and Releasing Performance Bond  
Posted by Stavola Leasing LLC, 39 Maple Avenue, Block 31, 36.01.
- 11-182 A Resolution of Approval to Submit a Grant Application and Execute a Grant Agreement  
with the New Jersey Department of Transportation for the Dr. James Parker Boulevard  
Improvements Project.
- 11-183 A Resolution of Approval to Submit a Grant Application and Execute a Grant Agreement  
with the New Jersey Department of Transportation for the Red Bank Train Station-Bridge  
Avenue Improvements Project.
- 11-184 A Resolution Authorizing Tax Refund to Totally Disabled Veteran.
- 11-186 A Resolution Accepting Bid from and Awarding Contract to Progressive Pipeline  
Management, LLC for the Bodman Place Pump Station Trunk Line Casing – Contract 2.
- 11-187 A Resolution Authorizing Sale of Personal Property.
- 11-190 A Resolution Releasing Performance Bond and Authorizing Retention of 10% of Cash  
Portion of Performance Guarantee as a Two-Year Maintenance Guarantee Regarding  
Acelero Learning Center, 144 Dr. James A. Parker Boulevard, Block 77, Lots 23 and 24.
- 11-191 A Resolution Authorizing Acceptance of Performance Guarantees Regarding Lincoln  
Square @ Red Bank, LLC, Block 75.01, Lots 76.01, 90, 90.01, 91, 92 and 93, Bridge  
Avenue/Cedar Avenue/Drs. James Parker Boulevard.

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

### ROLL CALL:

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

There being four ayes and no nays, the resolutions were declared approved.

11-185 Mayor Menna read “A RESOLUTION APPOINTING MARY FAITH CHMIEL AS  
DIRECTOR OF THE RED BANK PUBLIC LIBRARY.”

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

### ROLL CALL:

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

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

11-188 Mayor Menna read “A RESOLUTION AUTHORIZING APPLICATION FOR US  
HOUSING AND URBAN DEVELOPMENT DEPARTMENT COMMUNITY  
CHALLENGE PLANNING GRANT PROGRAM.”

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

### ROLL CALL:

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

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

11-189 Mayor Menna read “A RESOLUTION AUTHORIZING PREPARATION OF BID  
SPECIFICATIONS AND RECEIPT OF BIDS RELATED TO THE PROCUREMENT  
OF MULTI SPACE PARKING PAY STATIONS.”

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

**ROLL CALL:**

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

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

11-192 Mayor Menna read “A RESOLUTION ACCEPTING A DONATED OEM VEHICLE FROM THE CITY OF LONG BRANCH.”

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

**ROLL CALL:**

AYES: Zipprich, DuPont, Horgan, Lee, Murphy

NAYS: None

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

**PROCLAMATIONS**

**PAYMENT OF VOUCHERS**

11-194 Mayor Menna read “A RESOLUTION FOR PAYMENT OF BILLS AMOUNTING TO \$1,209,777.62.”

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

**ROLL CALL:**

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

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

**OLD BUSINESS**

**NEW BUSINESS**

**AUDIENCE**

Carla Gary Gibson—no address—said she was the step daughter of Larry Yarborough Sr. and said her stepfather and family would like to thank the township for the escort to and from the final resting place of her brother, Larry Yarborough Jr. She said there were questions that she and her family would like answers to. She said nothing had been told to them in regard to someone being charged in the murder investigation. She also asked about the status of the other victim and if he had identified anyone else as being involved in the crime. She asked if anyone had found out what really happened the night her brother was murdered. She asked who the lead investigator was and asked who they could contact at the Prosecutor’s Office. She also asked if the incident was gang related. She asked how the town was monitoring over crowding situations, what were the stipulations if overcrowding was found and had any homeowners been fined for overcrowding.

Mayor Menna offered sincere condolences on behalf of the Council and said the questions she had raised regarding the unfortunate incident that took the life of her relative were not improper and were pertinent. However, he noted the matter had been, by law, referred to and were under the jurisdiction of the Monmouth County Prosecutor’s Office and told her they could contact Monmouth County Prosecutor Peter Warshaw and said he was very familiar with the case. He added that, since they had undertaken the investigation, it would not be proper for Borough representatives to comment on what they had developed or about the substance of the investigation.

With respect to her last few questions regarding overcrowding, he continued, a check of the records showed there was no overcrowding at the residence where the incident occurred. He said there was an ordinance in place and they had been very successful in enforcing that ordinance, however, he noted that rely of the good graces of individuals to act as eyes and ears. He said if there were any incidents where people allegedly saw overcrowding, their report would be confidential and would be investigated. He said there had been a lot of fines and penalties paid due to overcrowding and a print out of those particular fines could be obtained from the Court Administrator. He again noted that the particular property where the incident occurred, as far as they could tell, had no overcrowding complaints and no fines or violations

had been paid. He said he hoped he answered her questions and reiterated that he was unfortunately unable to answer her other questions.

Laura Bagwell—19 Leroy Place—offered her condolences to the family. She said she was appearing to let the Council know that the Clearwater Festival, which was an environmental festival, had occurred over the weekend. She noted that the Red Bank Environmental Commission had been involved in an environmental partnership made up of about 14 towns around the County that meet once a month to discuss regional issues regarding the environment. She said Congressman Pallone had given them an award to be shared amongst all of the towns and she just wanted to let them know that Red Bank was a part of it.

Mayor Menna thanked her for her good work.

Gary Carpenter—Middletown—said he had an office building on the corner of Bridge Avenue and Brower Place. He said he wanted to bring a safety issue on Brower Place to the Council's attention. He said there was a tree that had been leaning on some wires. He said he called Code Enforcement a few years ago to report it and they forwarded him to the Department of Public Works. He said Public Works referred him to the Shade Tree Committee and the Borough Arborist. He said the Arborist had looked at it and agreed that it was leaning on the wires but had said one would be surprised at the elasticity of the wires. He said the tree had fallen further and the wire was now bulging. He said he was concerned because people park right under it. He offered pictures to the Council.

Mayor Menna said they would review the pictures and have someone go look at it.

Councilman Zipprich asked for the address.

Mr. Carpenter said it was on the corner where Arch Cleaners was located at the corner of Brower Place and Bridge Avenue.

Linda Clark—River Street—said she wanted say, on behalf of the Count the Children's Movement and a lot of other organizations that took part in the March to Heal, she deeply appreciated the Council's sincere effort to bring the community together. She said she also wanted to make sure that everyone got a copy of the flyer and letter in regard to the next event they were having on September 24<sup>th</sup>. She said there was still tension in the neighborhood and she didn't want them to take the "business as usual" approach. She talked about the grief that many were still feeling over the loss of a loved one and didn't see Red Bank as an east side or west side. She said the next event would be an opportunity to address concerns about safety and quality of life in the Borough. She asked anyone with questions to contact her.

Kathleen Gasienica—110 Locust Avenue—asked about a draft letter sent about three weeks prior regarding a draft proposal for a living shoreline to replace the deteriorating bulk head. She asked when the could expect to get a response.

Mr. Sickels said he needed to meet with the remediation specialist who was supposed to supply a scope of work and proposal before the letter. He noted the letter was a draft that was supposed to go after the proposals had been submitted. He said he was still waiting for the draft of the scope of work.

Ms. Gasienica said that was not her understanding from the meeting. She thought they needed to clean up the wording on the deed regarding the maintenance of the bulkhead.

Mr. Sickels said he had said once he had received the scope of work then they would determine if the Council, who was a party to the deed, wanted to pursue amending the deed with the Eisner Trust. He said he had already spoken with Mr. Eisner to let him know if was coming but what he had received was not what he thought the Borough was going to get. He said he still needed to meet with him.

Ms. Gasienica said she would also follow up because that was not her understanding. She said the good news was that the Stevens Institute was able to complete the preliminary design and it was awaiting approval by the professors overseeing the project.

Sandra Davis—Neptune—identified herself as the 1<sup>st</sup> Vice President of the NAACP and said she had worked in the school system for about 34 years. She said in the last few years, there had been a lot of incidents of crime. She said when she first came to Red Bank, it was the coolest town around and said she would like to know if there had been any increase in surveillance in the town or was it being discussed.

Mayor Menna said security matters were always being reviewed, discussed and upgraded. He assured her that the Police Department, with the Chief and Commissioner Murphy, had been working diligently. Unfortunately, he continued, some incidents cannot be prevented despite 100 percent vigilance because of the factors involved. He said they do their best to control what they can. He said she had seen an example at this meeting where they spent considerable time trying to avoid a problem. He said the Police Department was overtaxed and that Red Bank was not a sleepy town. He said they could probably do more but they were doing the best they could with limited resources. He stressed the Red Bank is a safe

place to live. He said government was unable to wipe every tear from every eye, but they could do was manageable and that they tried to do the best they could.

Ms. Davis said she appreciated the Mayor and Council walking in support and said she had the seen the Mayor in Church. She said she wanted him to know it was appreciated. She offered to do whatever she could do to help.

Mayor Menna said he appreciated her comments.

Councilman Murphy noted that the Westside Community Group meets once a month and it offered good feedback. He said they do try to reach out to the community.

#### **EXECUTIVE SESSION**

#### **ADJOURNMENT**

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

ROLL CALL:

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

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

Respectfully submitted,

Pamela Borghi

I hereby certify the above to be a true copy.

*Pamela Borghi*

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Pamela Borghi, Municipal Clerk