

**MINUTES  
REGULAR MEETING  
MUNICIPAL COUNCIL – BOROUGH OF RED BANK  
JANUARY 10, 2011  
6:30 P.M.**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

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

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

ABSENT: Auditor Kaplan.

**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 4, 2011.

**SUSPEND REGULAR ORDER OF BUSINESS**

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

ROLL CALL:

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

NAYS: None

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

**December Storm Update**

Administrator Sickels gave a Power Point presentation regarding the December 26, 2010 snow storm and the problems it presented. Issues he discussed included the amount of snow that fell, the fact that it was a holiday weekend which contributed to a staff shortage, problems with plows getting stuck, the unavailability of front end loaders to move the snow, stuck personal vehicles and pedestrians impeding plowing efforts. He also highlighted the costs incurred for items including manpower and equipment rental. He also discussed the need to prioritize emergency routes. He noted there were power lines down and issues with rail service. He said the Police Department was inundated with phone calls, mostly regarding plowing questions. He said overnight parking also contributed to the difficulties.

He said suggestions to improve services in the future included better notification/signage and making sure detour routes were clear. He said Borough representatives had given updates to the media hourly and were looking into a reverse 911 system. He said they were also reviewing the agreements the Borough had with tow companies including possibly adding a requirement that a vehicle must be available in a snow emergency. He said they would also be looking into renting special equipment for the snow season.

He also discussed that fact that Municipal Lots weren't plowed as quickly as some would have liked and noted that the lots were used to park cars that would have otherwise been on the street and said it was also a manpower issue. He said the Borough was looking into contract with multiple contractors and possibly purchasing an additional loader.

He also elaborated on the staffing issues and how they might resolve those issues. He added that residents and businesses were encouraged to use the Borough's website and its alerting system as a means to get updated information. He said the Borough also needed to mobilize the Public Information Officer through the Emergency Management Plan and have staff to field phone calls to take the burden off of the dispatchers.

He said the most important thing the Borough needed to do was ban overnight parking in the winter months, suggesting a timeline of December 1 through April 15, and offer overnight parking in the municipal lots at no cost. He said this would facilitate plowing from curb to curb.

He also offered a breakdown of costs associated with the storm and said the Borough had applied for Federal Disaster Assistance to help cover the costs.

Mayor Menna thanked Mr. Sickels for the overview of a number of aspects of the storm. He said, on behalf of all of the members of the Council, he wanted to commend the efforts of the Public Works employees, the volunteer members of the Fire Department and First Aid Squad, the Police Department and the Emergency Management Coordinator. He said he had wanted the public and the members of the Council to have an understanding of the broad picture of the issues faced by the municipality.

He asked if any members of the public had any questions regarding issues from the storm.

Bill Meyer—12 Monmouth Street—asked how the reverse 911 system would work. Mayor Menna said it was not presently in place, but he understood that the Borough would receive list of all of the numbers in the Borough of Red Bank and a pre-taped message from the Police Department or Emergency Management would be sent out to those numbers. He also noted that the Borough's website currently offers an option to sign up for emergency notifications that can be sent by email, text or voice. He said they realize that not everyone was comfortable with a computer which was why they were looking into the reverse 911 and that they hoped to have it available soon.

Councilwoman Horgan told Mr. Meyer that if he had signed up for voice alerts through the Borough's website, he would have received a voice message from the Police Department regarding the upcoming snow emergency.

Mr. Meyer said that, while it was unusual to have a large storm in December, a lot of notice was given and he was surprised that more communities weren't mobilized to take care of the problems. He said he believed there was a need for more public education to help plan for such a storm. He said he agreed with the idea of no parking on the street but said he didn't believe it would be a total solution to the problem. He said he had seen someone clear a lot with a Bobcat and suggested the Borough encourage owners of private lots to buy similar equipment.

Councilman Zipprich said he wanted to respond to Mr. Meyer's statements about the storm and noted that the original forecast on December 25 called for two to four inches was subsequently upgraded with a projection of 12 to 18 inches. He said the Police Chief had sent out a message noting the expected foot to foot and a half of snow. He said the storm ended up stalling over Monmouth and Ocean counties and Red Bank received 31 inches.

Mr. Meyer chronicled the path of the storm.

Bill Brooks—77 Tower Hill Avenue—said he wanted to commend Public Works Director Watson and the Public Works Staff for a job well done. He wished Councilman and Finance Committee Chair Dupont good luck with the budget.

Councilman DuPont said the Committee was recommending, since the Mayor and the State had declared a State of Emergency, that the Borough can recoup funds through the Federal Disaster Recovery Program.

Mr. Brooks said he knew there was the possibility to recoup some but not all of it. Mayor said the Borough was going to try and wanted to compliment Emergency Management Coordinator Welsh for his efforts in getting the data and paperwork for the funding request.

Mr. Brooks said part of the problem was that some of the people plowing had never seen a storm like the one that just occurred and didn't know how to plow in that situation. He offered tips on plowing techniques and equipment. He agreed that it was important to get the cars off the streets and plowing to the edge of the street.

Mayor Menna thanked him and said he appreciated his suggestions.

Ben Forrest—16 Locust Avenue—said it wasn't a great time to be in municipal government during such a storm. He said he was impressed with the efforts on his street and said the Borough kept at least one lane open throughout the storm for emergency services. He said another problem during the storm was the issue of pedestrians trying to get around unshoveled sidewalks. He cited absentee landlords as part of the problem. He said another challenge is that some houses don't have adequate off street parking and spoke of the problems that caused. He said he thought, under the circumstances, the Borough did well.

Fred Boynton—Shrewsbury Avenue—talked about his days with Public Works and how they used to train the employees in the summer so they would be prepared to plow when the time came. He said a lot of the newer employees didn't know how to plow in a heavy snow and said they needed training. He commended the efforts of Public Works and said they did a good job.

Mayor Menna said he appreciated his comments as a veteran.

Gary Watson—75 Chestnut Street—said we wanted to thank all of the residents that stood behind the Borough Employees and supported them. He also noted that he was in constant contact with the Mayor and members of Council during the storm. He said he was very proud of the Public Works Department and noted that some of the employees gave up their vacation to work during the storm. He said the Mayor and Council were very supportive and thanked them.

## **51 Monmouth Street Settlement Public Hearing**

Councilman DuPont recused himself from the meeting.

Attorney Byrnes stepped down and Special Counsel Bonello stepped in.

Mayor Menna noted that a letter had been received from Stephen Fitzpatrick and asked Mr. Bonello to address it.

Mr. Bonello reviewed the background on situation regarding the property known as 51 Monmouth Street. He said the hearing at this meeting would be regarding approving the settlement of the litigation between the YMCA and the Borough of Red Bank. As part of that settlement, he continued, a public hearing was required regarding the release of any proposed restrictions that the Borough had sought against the YMCA including a reverter and a restrictive covenant on the proposed uses of the property. He said in 2000, the property that formerly housed the Police Department and Municipal Court was found to be in excess and it was also determined that the cost to repair would have been an unreasonable expense. He said the Borough had been approached by the non-profit entity KidsBridge and they planned to use the building for education of youth. Under the applicable statute NJSA 40A:12-21, he continued, the Borough could release the property to such an organization for no consideration provided there was a restriction of record for the proposed uses and to guarantee the proposed uses would continue in the future. He said the law also had a provision that would allow the Council to waive and release the conditions if they felt it was appropriate. He said the situation became difficult for all parties involved because of the requirement that the building be rehabilitated with historic materials. He noted the KidsBridge undertook those renovations and it was a drawn out affair where they expended far more money than they anticipated. He said the Municipality assisted them by doing some work to expose parts of the building for structural review.

Over the past years, he continued, including the time when the YMCA absorbed KidsBridge, there is a claim by the YMCA that they expended approximately \$3 million on the rehabilitation of the building. He said it was later determined by the YMCA that the building was no longer part of their plan and it was not longer necessary to carry on the object of the original purchase. Because the deed to the original purchaser did not include the statutory requirement of a reverter and a restriction of use, he explained, the YMCA took the position that they would be able to sell the building to any commercial enterprise and thus recoup some of their investment in the building. He said when that became known to the Mayor and Council, they retained Mr. Bonello to investigate and handle any litigation to ensure that the building would not be used for a commercial enterprise. Based on that, he continued, litigation was instituted and the Borough took that position that, as a matter of law, the restrictions and reverter would be implied in the deed despite the fact that it did not make reference to it. He said at one point there was a mortgage on the property with the funds being used for the rehabilitation process and when the YMCA took over they found it would be in their interest to pay that mortgage which was in excess of \$1 million and absorb the costs that had been spent to restore the building.

He said there was also a contract between the Borough and KidsBridge whereby the Borough would retain use of the portion of the building that houses a Firehouse, retain access to maintain the war memorial that is in front of the building and retain use of the parking area. He said prior transactions didn't crisply memorialize these agreements and during the litigation a lot of time was spent on depositions and investigations before going before the Court to see if the matter could be resolved. At that time, he said, it was determined that it would be in the best interest of the Borough to settle the case to stop the litigation, the prospects of appeal and the large amount of fees that were being incurred as well as securing a private, not for profit user that was currently using the building under a lease with the YMCA which was Red Bank Catholic. He added that they had been leasing the property for five or six years and they indicated that they would be willing to buy and maintain it in its present condition and agree to never let to be used for commercial purposes in the future. Based on that and the possibilities the Borough faced in the litigation, he said there was a strong effort to have the property declared free and clear of the restrictions based upon the prior absence of the specific restrictions as required by Statute. In addition, he noted, there was the argument that the Borough had allowed the YMCA and its predecessor to expend over \$2 million in renovations to enhance the value and usability of the building for the project purpose that it was originally deeded over to the predecessor.

He said it was clear to him that there was the prospect of the Borough losing or having to reimburse the YMCA for the money that had been expended in the rehabilitation of the building and neither of those

possibilities were positive for the Borough. He said, with the building being rehabilitated and with the architectural design and historic structure being preserved, the Borough had basically accomplished what it sought to do in 1999 and 2000 when the surplus property was transferred over to the predecessor of the YMCA. He said, prior to that transfer, there was an examination of the building to determine whether it could have been rehabilitated within a reasonable amount of money and it was found that it would be difficult to do for the possible uses by the Borough. He said the decision was made after public hearings to deed the property pursuant to law to the YMCA's predecessor. The proposed settlement, he continued, which has been proved in court by Judge Cavanaugh would provide for the dismissal of the litigation and counterclaim, a lease of the portion of the building currently used by the Fire Department for 99 years at one dollar per year, the maintenance and the architectural and historic design so that it cannot be changed without the approval of the Borough and the payment of the Borough for \$125,000 to the YMCA to reimburse them for the reasonable value of the cost of renovations as it impacted the Fire Department portion of the building. He noted that the YMCA had maintained that the cost to rehabilitate the Fire Department portion was in excess of \$600,000 and they sought that amount as reimbursement for reasonable costs. He said, as part of the negotiations, it was reduced to \$125,000 payable over five years with no interest. He said it was determined by the court and all parties that the settlement was reasonable and would maintain the original purpose of the relinquishment of the property by the Borough.

Mr. Bonello noted that there was some concern regarding whether or not the public notice given for the meeting was adequate. He said there was a mistake made in the reference to the Statute by referring to 51.5 rather than 51.2 but said the basic criteria in both Statutes were identical and the substance of the notice clearly showed what was proposed as it related to NSJA 40:60-51.2. He said the notice gave adequate notice to the purpose of the meeting and what was being discussed. He said there was no reverter or restrictions currently in the deed of record and no restraints on the current owner of the property to prevent them from using it for any purpose they want. Under this settlement, he continued, would enable the property to be used in a non-profit manner and have a record of a restriction against the alienation of it or use of the property for any of the restraints, restrictive commercial business, trade or manufacturing and it would have to be used for educational, recreation or cultural purposes. He said it was his understanding that once Red Bank Catholic takes over the property, it would be made available to the town for any cultural activities when they were not using it. He said the basic solution the Borough had proposed was one of reason and obviates an enormous amount of litigation and diversion of time and allows the original purpose of the relinquishment of the property to be satisfied. He said he wanted to add that it was his opinion, as a matter of law, that if the Borough sought to get title back to the property, which they could do by right of rescission, the Borough would be required to return the other party to the position they were in before the transaction which could include reimbursing for the enhancement of the value of the property and the expenditure of \$3 million. He noted that it was the Borough's position that that was not a reasonable amount but may have been due to lack of attention or of a clarified schedule but added that the cost of \$2 to \$2.5 million was to be expected considering the need to restore the building under historic guidelines. Based on that, he said it became obvious that it would be beneficial to the Borough to have the property remain in private hands with the appropriate protection that it would not be commercialized and that was what the proposed settlement would achieve. He said the compromise from \$600,000 to \$125,000 was clearly in the best interest of the Borough as it represents a significant savings over the claim that the costs were related to the firehouse portion of the property which the Borough was contractually obligated to reimburse.

Mayor Menna thanked Special Counsel Bonello and asked if any members of the Council had any questions. There were none.

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

Bill Meyer—12 Monmouth Street—asked if Attorney Byrnes was in the room. Mayor Menna said he was, but he was not participating. Mr. Meyer asked if Mr. Byrnes was on the Board of Trustees for the YMCA. Mr. Byrnes said he was. Mr. Meyer said he formally objected to Attorney Byrnes and Councilman DuPont being in the room for the vote. Special Counsel Bonello said he would ask them to leave. Mayor Menna noted the Councilman DuPont had been outside the Council Chamber and had just walked in at the time of Mr. Meyer's comment. Both Attorney Byrnes and Councilman DuPont left the Council Chambers.

Mr. Meyer asked Mr. Bonello how many people were deposed and who they were. Mr. Bonello said Administrator Sickels was deposed and he was the only deposition. Mr. Meyer asked why no one else was deposed. Mr. Bonello said because he didn't feel it was appropriate at that time and they were in the middle of the case when they went into settlement negotiations. He said part of the reason for the settlement negotiations was to terminate the litigation which, if it had gone forward, would have required an enormous amount of effort including depositions.

Mr. Meyer asked if the reverter clause had been clearly in the deed, would the YMCA have any claim for money. Mr. Bonello said, with the reverter clause, if the YMCA had wanted to keep the building they wouldn't have had a claim for money. Also, he noted that they could have sold the property to someone that was approved by the Borough. They would not have had to keep ownership of the property forever

but were restricted as to whom they could sell it to. He added that if they had been able to sell the property to a similar non-profit use, they would have been able to retain the money made in the sale. Mr. Meyer asked what the basis was for the YMCA being able to sell or have the property. Mr. Bonello said it was by the deed from the Borough from the year 2000. Mr. Meyer asked if that gave the YMCA the right. Mr. Bonello said it was their predecessor which was absorbed by the YMCA. Mr. Meyer asked what right they had to absorb the predecessor and, in essence, absorb the Borough's building in doing so. Mr. Bonello said it was a merger where the original KidsBridge operations were retained. Mr. Meyer asked if any Municipal Ordinance or any paperwork in the deed provided for anyone other than the Children's Cultural Center of Red Bank, Inc. to have the property for a dollar. Mr. Bonello said it did not. Mr. Meyer asked again how the YMCA would get the right to have the building. Mr. Bonello said they absorbed KidsBridge corporately, absorbed its operations and continued to use the property in the same manner. Mr. Meyer asked Mr. Bonello if he had gotten interrogatories or depositions from anyone at the YMCA to find out what the merger agreement was comprised of. Mr. Bonello said he did not. Mr. Meyer asked Mr. Bonello if he knew what the contract was between the Children's Cultural Center and the YMCA. Mr. Bonello said the Borough had knowledge that the contract did not require the transfer of any funds and was really an absorption of debt and the relinquishment and paying off of a mortgage. Mr. Meyer asked how he knew that. Mr. Bonello said it was a matter of record. Mr. Meyer asked if the mortgage had not been placed on the property by the YMCA. Mr. Bonello said he was not sure. Mr. Meyer said he had the mortgage documents and they showed that the YMCA took a mortgage out with Amboy Savings. He said he couldn't understand how a piece of property owned by the Borough since 1909 that was never paid for went to a charitable non-profit corporation and somehow the Borough lost the building entirely and not getting proper consideration for it. Mr. Bonello said he didn't think it was accurate to say that the Borough got no consideration. He said the consideration was the rehabilitation of an historic building and its use for an educational, non-profit purpose. He added that, in its investigation prior to 1999, the Borough had found that that was something that would be unreasonable to expend funds for. He said this would be consideration because they salvaged a building that otherwise would have been bulldozed down. Mr. Meyer asked Mr. Bonello if he would agree that it was analogous that, if Mr. Meyer were to lease to a tenant that put in improvements in a commercial building, would they have rights to whatever money they put in while a tenant. Mr. Bonello said it was not analogous at all because the tenants would have put it in with knowledge that the lease was going to terminate and unless the lease provides for a payoff of the investment when the lease terminates, there would be no recovery.

Mr. Meyer said he agreed that if the reverter clause had been properly place in the deed, they wouldn't have the problem they have now. Mr. Bonello said that was correct to a certain extent because the absence of those clauses in the deed led the YMCA to believe they could transfer to a commercial enterprise. Mr. Meyer asked if the deed was still in the name of the Children's Cultural Center, Inc. Mr. Bonello said he was not 100 percent certain of that. Mr. Meyer said he had search and, as far as his records showed, it had never been deeded to the YMCA and, under law, he didn't think it could be. He said he would refer Mr. Bonello to the State Constitution, Article 8, Section 3 which he said stated no donation of land or appropriation of money shall be made by the State or any County or Municipal corporation to or for the use of any society, association or corporation. He said this meant one cannot give away Borough property as per the State Constitution. He said there is no exception to that other than the Statute which was originally part of Ordinance number 1999-29. He asked Mr. Bonello if he had reviewed that ordinance. Mr. Bonello said he had. Mr. Meyer asked if he had determined why that ordinance was not listed as a restriction in the deed. Mr. Bonello said he had. Mr. Meyer asked Mr. Bonello what he had found out. Mr. Bonello said he found that there was an assumption at the time that the restrictions and restraints were in the deed as a matter of law. Mr. Meyer asked if an attorney or someone with a legal background look at the circumstances and determine that there was no consideration and that a reverter clause had to be in there. Mr. Bonello said it was a recommendation and opinion given 20 years prior. Mr. Meyer asked Mr. Bonello if he would agree that it would have been more proper and prudent to include all of the ordinances as restrictions on the deed in respect to this building. Mr. Bonello said it would have been prudent to put that in there. Mr. Meyer said he thought the lack was negligent. Mr. Bonello said it had to be viewed in the context of the time when there was a problem with the enormous amount of costs required to rehabilitate the building and the Borough was attempting to accommodate and help the rehabilitation process. He said he agreed that it should have been put in and it was a reasonable interpretation legally to say it was in there as a matter of law but it would have been more prudent to make it of record. Mr. Meyer said he felt most attorneys would have made absolutely sure that it was in there. He asked if the Borough had considered bringing an action against the attorney that prepared the deed and the most appropriate Ordinance 1999-29 and ask him why he didn't include the reverter clause or make reference to the ordinance that had the reverter clause. Mr. Bonello said they did not feel it would be appropriate to bring an action and they felt it would undermine their action against the YMCA. Mr. Meyer noted that the attorney that had prepared the ordinance had also prepared the deed. He said the ordinance was very detailed including the reverter clause and very significant restrictions that call for the building to automatically revert to the Borough if there was any violation and asked Mr. Bonello if he was aware of that. Mr. Bonello said he was. Mr. Meyer asked if he was aware that some of those restrictions were violated and, in his opinion, the building reverted back to the Borough a lot time ago and asked if that was ever plead. Mr. Bonello said the Borough did not want the building back because the Borough would have had to pay for the improvements to the property. He added that the thrust of the litigation was to maintain the use of the building as it was originally

anticipated or a reasonable facsimile thereof which was a non-commercial, non-profit manner. Mr. Meyer asked Mr. Bonello if he agreed that the referenced section of the New Jersey State Constitution said one cannot give away Borough property for free. Mr. Bonello said it could be given away because the Statute that permits it had been found to be constitutional and the deed was given pursuant to that Statute. Mr. Meyer asked if Mr. Bonello could cite a case that determined it was constitutional. Mr. Bonello said he had plenty of them but could not cite them off the top of his head. Mr. Meyer said he had looked at the annotations and he did not see one that dealt with it. He said he would agree that the Statute was restricted by the State Constitution and would be strictly interpreted by a Court to maintain the restrictions and the reverter clause because if they didn't have it they would be violation. Mr. Bonello told Mr. Meyer he had to understand that the Statute had been amended about five or six times and has never been declared to be unreasonable or unconstitutional. Mr. Meyer said he would like to see the cases. Mr. Bonello referred Mr. Meyer to his own law library.

Mr. Meyer confirmed that Mr. Bonello had reviewed the minutes from the meetings were the transaction was ordained and asked if he found anything curious about the minutes in connection with 1999-29. Mr. Bonello said he did not. Mr. Meyer asked if Mr. Bonello had noted that Edward McKenna was Mayor at the time the ordinances were adopted. Mr. Bonello said he thought he was but he wasn't sure. Mr. Meyer said he would represent that he was and that he signed the ordinances. He asked if Mr. Bonello also knew that Mayor McKenna was a principal in the Children's Cultural Center of Red Bank, Inc. which was the non-profit corporation that received the property for one dollar with the reverter clause and the restrictions. Mr. Bonello said he did not and he also believed, as a result of whatever relationship Mayor McKenna had, he didn't participate in any of the proceedings and Councilman DuPont, who was a partner, also did not participate. Mr. Meyer asked if Mr. Bonello had seen anything in the minutes regarding Mayor McKenna's participation. Mr. Bonello said Mr. Meyer was cross examining him based on documents he didn't have in front of him adding that there were a significant amount of documents. He said he didn't know if there was a specific reference regarding whether Mayor McKenna recused himself or not. Mr. Meyer asked Mr. Bonello if he would agree that Mayor McKenna could not be a party to any of the hearings and he would have to recuse himself. Mr. Bonello said he did not know what Mayor McKenna's particular conflict was but whatever it was it led him to recuse himself from consideration and any members of his firm also recused themselves. Mr. Meyer said he had a State of New Jersey Corporate Business Information report that indicated the Mayor McKenna was a Vice President of the Corporation and also a Trustee. Mayor Menna asked what the date was on the report. Mr. Meyer said the original incorporation filed in April of 1998. Mr. Bonello said that was probably the reason he recused himself. Administrator Sickels asked if Mr. McKenna was listed on the original corporation papers. Mr. Meyer said he was. Attached to the original certificate, Mr. Meyer continued, was a plan of merger that he would refer to later.

Mr. Meyer said he wanted to read from the minutes of the Special Meeting from July 13, 1999 which included Ordinance 1999-29, which was the ordinance that complied with the Statute that was restricted by the State Constitution and was properly referenced by Attorney O'Connor as 40A:12-21. He read the ordinance and comments by Councilmembers asking about special consideration for Borough children and Mayor McKenna's answer. Mr. Meyer said Mayor McKenna was obviously presiding over the reading of the ordinance where action was taken to give the building to the Children's Cultural Center for one dollar. He said that would make the action void ab initio, inappropriate and unlawful in his opinion. He said he felt most attorneys would be appalled to see someone preside over a meeting that gave his corporation a building for a dollar. Mr. Meyer noted that, at the July 27, 1999 meeting, Mayor McKenna again read the ordinance authorizing the sale and, also noted, that it did not indicate in the minutes that Mayor McKenna announced to the public that he had an interest in the corporation. He again read from the minutes including Mayor McKenna presiding over Council discussion of issues regarding the contract and said he felt it was inappropriate. He said he also wanted to remind everyone that he had objected to the litigation issues being discussed in Executive Session. Mr. Bonello asked Mr. Meyer when he had become aware of the litigation. Mr. Meyer estimated it was within the last six months. He repeated that he had advised the Council within the last six months that he felt it was inappropriate for the matter to be discussed in Executive Session. He said the building had restrictions and reverters and now the public is being told they not only won't get the building back but they have to pay so the YMCA can sell the building to Red Bank Catholic. He also noted that he had not been told how much the YMCA was selling it for. Mr. Bonello asked Mr. Meyer if he had asked for the information. Mr. Meyer said he had at the last meeting and asked if Mr. Bonello could tell him. Mr. Bonello said he thought it was around \$1.2 million.

Mr. Meyer again referenced ordinance 1999-29 saying it referred to KidsBridge which he assumed was another name for the Children's Cultural Center at Red Bank, Inc. He noted that the ordinance required them to submit an annual report in December of each year detailing the use of the premises during that year and listing all of the activities and the costs associated with them to retain their tax exempt status as per State Statute. Mr. Meyer asked if any such reports were available for review. Mr. Bonello said he didn't know. Mr. Meyer asked if they had been found in discovery. Mr. Bonello said he did find in discovery an enormous amount of almost continuous communication through the years.

Mr. Meyer said the language in 40A:12-21 provided restrictions including the fact that the property could

not be used for any political, partisan, sectarian, denominational or religious purpose. The fact that Red Bank Catholic and the YMCA, he continued, had been in control of the property for most of the time period concerned him. He said in his opinion, it would trigger the reverter clause and considering the fact that there were no annual reports that he could find, he felt the property reverted back to the Borough when the YMCA or Red Bank Catholic became the beneficiaries of the property. He said he would also argue that the involvement of Mayor McKenna superseded that issue and created a problem for the YMCA and the property never should have left the Borough under those circumstances. He said the Mayor and Council, when acting in regard to the Borough's real property, were acting in a fiduciary capacity. He then defined the term and the duties under that term. He again questioned the lack of restrictions and said procedure that was followed. He said it was his opinion that the problem continued because the tax payers had lost out and should the Borough need a building down the road, they would have to purchase one.

He questioned the merger plan, saying that he had seen paperwork that indicated there was a more extensive merger plan. He cited a document that stated the deed to the Children's Cultural Center at Red Bank Inc. was dated July 18, 2000 was recorded on April 2, 2002 in the Monmouth County Clerk's Office and referenced ordinances 1999-38 and 1999-42 but did not reference 1999-29 which provided for the sale to Children's Cultural Center for one dollar and followed the requirements of NJSA 40A:12-21. He also noted that the Children's Cultural Center had been organized as a non-profit corporation with Mr. McKenna listed as a trustee and vice president. Based on an 2002 filing, he continued, Children's Cultural Center merged with the YMCA and the plan of merger noted Children's Cultural Center as the seller and the YMCA as the buyer and indicated a more complex merger agreement covering the transaction in greater detail would be executed by the officers of the corporation. He said the plan further indicated that the surviving corporation, which was YMCA, Inc., would be fully vested in sellers rights, etc. and indicated that, upon filing, seller shall cease to exist. He said it was his opinion that, given the constitutional provision and the statute, the property reverted back to the Borough upon the merger. He said had viewed mortgage papers from when the YMCA secured a mortgage and cited other filings implying that the Children's Cultural Center of Red Bank, Inc. had lost their non-profit status. He said he wasn't sure if it was true and noted that he had asked about the matter at Council meetings. He said that usually happens when administrative expenses are too high. Mayor Menna said it could also mean a corporation didn't file their annual report. Mr. Meyer said another thing he found curious in the mortgage papers was the payment of a \$10,000 tax lien.

Councilman Zipprich asked Mr. Meyer is hearsay was admissible in a court of law. Mr. Meyer said sometimes it was. Mayor Menna said at an administrative hearing, rules were generally waived.

Mr. Meyer said there was a certificate of release for a federal tax lien for the period ending 12-31-2001 that was included in the tax documents.

In regard to the YMCA's allegations that they were entitled to money, Mr. Meyer continued, if they had absorbed the corporation and gotten benefit of the assets including \$800,000 to \$900,000 in donations, did they include this information to offset the money they had spent. He also questioned the Borough responsibility to pay for any work done if the professionals had not done their job properly. He again questioned Mayor McKenna's role in the transactions and the fact that, in his opinion, the State Constitution said they couldn't do it. He said he felt the YMCA did not have title to the property and, if they had never been deposed, how did the Borough know whether or not they were aware of that the whole time. He again said he didn't think the public should lose the building or that the transaction was lawful. He cited cases he thought were relevant. The Mayor said they would concede that the Governing Body served as fiduciary for the public. Mr. Meyer said there was also relevance regarding a Mayor who had done something analogous to what happened in Red Bank and it was found to be a conflict of interest. Mayor Menna asked if it was regarding private property or public property. Mr. Meyer said he believed it was a public property. He again said the transaction was a violation of the State Constitution and could not stand. He also again opposed the transfer to the YMCA who stood to make money on it. He asked how much grant money had gone into the project. Mr. Bonello said he did not know. Mayor Menna said he did not recall because it was many year ago, but he said there were federal funds that were given to the Children's Cultural Center.

Mr. Meyer summarize by saying his opinion was that it was in violation of the State Statute 40A:12-21 and it had reverted and the original ordinance was no good because Mayor McKenna presided over it. He asked that, before anyone on the Council voted on the proposed resolution, they each fully divulge their relationship with Mayor McKenna.

Cindy Burnham—Harrison Avenue, Fair Haven—said she had listened to minutes from the hearing from December of 2010 and she had heard Judge Cavanaugh say he had graduated for Red Bank Catholic and asked Mr. Bonello if he saw that as a conflict of interest. Mr. Bonello said the judge did not see it as a conflict and it was something that happened 30 or 40 years ago. Ms. Burnham asked Mr. Bonello if he thought the judge's children might have gone to that school. Mr. Bonello said he didn't know. She asked if he thought the judge gave donations to Red Bank Catholic. He again said he didn't know but said the judge would know and added that Judge Cavanaugh was very strict with his conflicts and said he felt the

judge's absence of declaring a conflict meant that there wasn't one.

Steve Fitzpatrick—no address given—said the first point of order was regarding the letter he had sent to the Mayor and Council on January 5 and noted that Judge Cavanaugh also had a copy of the letter. Mr. Fitzpatrick noted that earlier, in response to the question of whether the meeting had been properly noticed, Special Counsel Bonello had said that the language in the cited Statute of 40:60-51.5 was identical to the language in 40:60-51.2. Mr. Bonello said the substance was the same. Mr. Fitzpatrick said they were two different Statutes and noted that the one referred to in the public notice effectively spoke to all transactions of municipal property prior to September 16, 1953. Mr. Bonello said that was correct. Therefore, Mr. Fitzpatrick continued, the correct Statute that would control the resolution being considered would have been 40:60-51.2 and asked if Mr. Bonello agreed. Mr. Bonello said they could have just cited Title 40 adding that the notice did not require the specification of the Statute just the substance of the notice to describe the action taking place. Mr. Fitzpatrick noted that the notice was published eight days prior on a Sunday and then again the day before the meeting and there was no mention as to whether any of the public documents would be available for inspection. He said he was able to obtain a copy of the settlement agreement but didn't see anything provided at the meeting. Mr. Bonello asked Mr. Fitzpatrick if he had looked at the transcript from Judge Cavanaugh's hearing. Mr. Fitzpatrick said he had a copy. Mr. Bonello noted that the terms and condition were outlined there. Mr. Fitzpatrick said they were not complete because additional language had been added.

Mr. Fitzpatrick said he just wanted to make sure that, if the Council was going to take action that included the power to waive restrictions, that it was being done under the correct Statute. He asked if Mr. Bonello would agree that 40:60-51.2 was the correct Statute to release the restriction. Mr. Bonello agreed. He verified that his copy of the settlement agreement was the same as those received by Council and he asked who would sign the agreement on behalf of the Borough. Mr. Bonello said the Mayor would sign and the Clerk would attest. Mr. Fitzpatrick asked if the accompanying resolution would also require a signature. Mayor Menna said the Clerk would attest as to the veracity of a certified copy. Mr. Fitzpatrick asked if it would also require the signature of the Mayor or a Council member. Mayor Menna said it did not. Mr. Fitzpatrick said he noticed that a lot of resolutions do. Mayor Menna said resolutions are normally executed by the Clerk with a certification statement that it was adopted at a particular meeting. Mr. Fitzpatrick referred to the portion of the settlement agreement that called for a payment by the Borough of \$125,000 over a five year period and asked who would sign the vouchers for those payments. Mr. Bonello said it would go through the standard procedure of any other disbursement. Mayor Menna said there were three signatures required on every payment which was the Chief Financial Officer, the Finance Chairman or delegate and the Department Head. Mr. Fitzpatrick verified that Councilman DuPont was Chair of the Finance Committee and Mayor Menna said the signer could be the Chair or a delegate.

Mr. Fitzpatrick asked if anyone of the Governing Body of a parishioner of St. James Church. Mr. Murphy said he was. Mr. Fitzpatrick asked if anyone had children that attended St. James Grammar School or Red Bank Catholic. All Council members said they did not. Mr. Fitzpatrick noted that Mr. Meyer had earlier mentioned the fact the Red Bank Catholic had entered into a lease with the YMCA for the use of the building. He referenced a fund raising letter from Red Bank Catholic regarding the expansion of their campus that included language noting they had secured exclusive daytime use of the YMCA Cultural Center for their arts programs. He asked when the lease between the YMCA and Red Bank Catholic began. Mr. Bonello said it was five or six years ago. Mr. Fitzpatrick said that fit the time frame of when the Children's Cultural Center was having difficulties and the YMCA was looking for other ways to use the building. He asked if Red Bank Catholic or St. James Church has first right of refusal under the lease. Mr. Bonello said he wasn't sure but knew they had options for renewal and was inclined to think that they did have right of refusal but couldn't say for sure. Mr. Fitzpatrick verified that Mr. Bonello had earlier stated that the contract price between Red Bank Catholic/St. James Church and the YMCA was for \$1.2 million. Mayor Menna clarified that Mr. Bonello said he thought that was the price. Mr. Fitzpatrick was he had copies of the legal bills showing that Mr. Bonello had had a conversation with Mayor Menna regarding the pending contract and asked Mayor Menna if he recalled the contract selling price. Mayor Menna said he never said he saw a contract. There was a conversation, he continued, and there may have been a contract but he had not seen it. Mr. Fitzpatrick asked if anyone on the Council or anyone in Administration had seen the contract between Red Bank Catholic and the YMCA. They said they had not.

In regard to the settlement agreement, Mr. Fitzpatrick asked about the restrictions regarding the use of the property and noted that the language appeared to mimic that in the State Statute. Mr. Bonello said that was what inspired that language. Mr. Fitzpatrick read from the Statute the section that pertained to transfer of property for nominal consideration and that fact religious organizations were excluded and asked why that reference was not included in the settlement agreement. Mr. Bonello said there was no reason and the purpose was to make sure the building was used for the proper general purposes. He confirmed that St. James Church was a religious organization belonging to the Diocese of Trenton. He also said by not inserting proper language in the agreement, it would appear the property retains no public use as intended under the Statute. Mr. Bonello said there would be public use as they have said they would make it available when it was not being used by the school. He asked the members of the Governing Body if they saw a reference to the public use in the agreement. Mr. Bonello said it would be

in there. Mr. Fitzpatrick noted that it was not currently in the agreement that the resolution authorized. Mr. Bonello said the final draft would reference it as it had been in communication but had not been incorporated. Mr. Fitzpatrick asked why it had not been included. Mr. Bonello said it was not quite an oversight but was part of continuous mythology of negotiations. Mr. Fitzpatrick asked if the Council should not make sure that everything was in the agreement before they voted on it.

Administrator Sickels said the action being taken by the Council was the introduction of an ordinance to allow them to adopt a settlement. Mayor Menna said that was not correct that they were passing a resolution authorizing a settlement, not an ordinance. He added that if the Council were so inclined, they could pass a resolution authorizing settlement of pending litigation and further authorizing an additional hearing and resolution on a settlement agreement. Mr. Fitzpatrick said the resolution states that the deed would contain a restriction against the alteration of the historic exterior without prior approval of the Borough and asked why there was nothing regarding that in the settlement agreement. Mayor Menna said the structure was on both the Federal and State lists of historic preservation so they would not be able to effectuate any change in the exterior structure. Mr. Fitzpatrick again questioned the passing of a resolution with the language when it wasn't in the agreement. Mr. Bonello said the resolution would be the dominant document and would require that deed contain that language. Mr. Fitzpatrick asked why the resolution would be the dominant document. Mr. Bonello explained that the settlement agreement would end the litigation and was a broad based document while the resolution authorizing the settlement specifically requires certain things that will be included in the deed.

Mr. Fitzpatrick said the settlement agreement also references entering into a lease agreement for the use of the firehouse and veteran's memorial monument. Currently, he noted, the firehouse is occupied by the Relief Engine Company and asked if they were a separate corporation under the laws of the State of New Jersey. Administrator Sickels said they were not adding that they were a company of the Borough of Red Bank Fire Department. Mayor Menna clarified that the members were incorporated as a Social Association but the actual Fire Company was part of the Red Bank Fire Department. Mr. Fitzpatrick asked how the Fire Company would be protected under any breach of the lease agreement. Mr. Bonello said the Borough would have a lease for the premises. Mr. Fitzpatrick asked if the Borough currently had a lease with the Fire Company regarding the use of the property. Mr. Sickels said the Borough had owned the building up until the point that it was transferred to the Children's Cultural Center and at that point they took a 99 year lease. He said the Relief Fire Company never owned the building, adding that it was built by the Borough and owned by the Borough and also noted that the fire truck is owned by the Borough. He said the Borough's rights were protected. Mr. Fitzpatrick said he was curious about the incorporated status of the Fire Company and whether they had to be a part of the agreement or not. Mr. Sickels said, under the agreement, if the Relief Engine Company were to fold tomorrow, the Borough could put another fire truck in there.

Mayor Menna said out of courtesy to the Council members, he asked Mr. Fitzpatrick if he would mind if they took a five minute break and called for a motion.

Councilman Ziprich offered a motion to take a break, seconded by Councilwoman Lewis.

**ROLL CALL:**

**AYES:** Lewis, Ziprich, Horgan, Lee, Murphy

**NAYS:** None

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

Upon resuming, Mayor Menna asked that roll be called.

**PRESENT:** Mayor Menna and Council Members Lewis, Ziprich, Horgan, Lee and Murphy.

**ALSO PRESENT:** Administrator Sickels, Municipal Clerk Borghi, Special Counsel Bonello, Engineer Ballard and Chief Financial Officer Mason.

Mayor Menna noted that Mr. Fitzpatrick still had the floor.

Mr. Fitzpatrick said, regarding the settlement agreement, the entering into of a lease for 99 years and the property that was going to be conveyed with restrictions, it would allow the property to go to what clearly was a religious organization and for a religious use, that being St. James Catholic Church. Mayor Menna said he had no objection to Mr. Fitzpatrick saying the organization was clearly religious as the title owner would be either Red Bank Catholic, St. James Church or the Diocese of Trenton, but he said the term "religious use" had not been established and was a different thing. Mr. Fitzpatrick said he didn't know how else to characterize it as it was St. James Church. Mayor Menna noted that Federal entitlements money can go to schools that were religious in nature as long as they were not used for a religious purpose. Mr. Fitzpatrick said there was a tremendous amount of law that had been carved out on matter.

Mayor Menna said he was saying that, if this was approved, the title owner would probably be one of those three religious institutions but the use wouldn't necessarily be religious in nature such as religious instruction or religious services. He said he wasn't sure if there had been any discussion on the matter. Mr. Fitzpatrick suggested that there should be further discussion about how the building was going to be used. With that being said, he continued, the building would be in the hands of a sectarian religious organization and asked what would prevent St. James Church from placing a cross on top of the firehouse. Mayor Menna said the Borough had a lease on the firehouse so they couldn't do anything to it. Mr. Fitzpatrick asked for clarification on the lease. Mr. Bonello said it would formalize the agreement from ten years ago. Mr. Fitzpatrick noted that the property, identified as block 46, lot 1, was comprised of the old town hall, the firehouse and the area housing the parking lot and memorial and asked what would stop the church from putting up a nativity scene around the veteran's memorial. Mr. Bonello said the Borough retains the right to maintain the veteran's memorial and it could not be interfered with. Mr. Fitzpatrick argued that the memorial referred to the memorial itself but it sits upon property that would be owned by the church. Mr. Bonello said the restriction said they could not use it for anything other than as an educational facility. Mr. Fitzpatrick asked if the church would be able to place a cross on the front of the building rather than the firehouse. Mr. Bonello said probably. Mr. Fitzpatrick asked about the 99 year lease and asked if the Borough was entangling itself with a religious use. Mr. Bonello said they were not. Councilwoman Lee noted that the historic restrictions would not allow a cross to be put on the building. Mr. Bonello said she was correct. Mr. Fitzpatrick said that was not in the agreement. Mr. Bonello said it was in the resolution. Councilman Zipprich said it would also be covered by the National Historic Guidelines since it was on the National Historic Register. Mr. Fitzpatrick said he wanted to be sure and was concerned about cohabitating a public and religious use on the same property and whether it would withstand a legal challenge. Mr. Bonello explained that the settlement agreement specifically stated who the purchaser would be and it had been put before the court with that disclosure. The court found, he continued, based upon the Statutes that the Borough would have the authority to do take the action. He asked Mr. Fitzpatrick to keep in the mind that the current statute that governs property that had been previously given or donated with restrictions allows the Council to remove all restrictions if they so choose which was why they were having the hearing concerning the release of the reverter. He said the court took notice of that fact and specifically referred to it and called for the hearing. Mr. Fitzpatrick noted that judge had said that would be done pursuant to 60-51.2 which had been referred to earlier and asked Mr. Bonello if he concurred that that was the controlling statute even though it had been noticed improperly. Mr. Bonello again noted that the substance of the two sections of the statute were identical.

In summation, Mr. Fitzpatrick said, once the agree that the controlling statute was 40A:12-21 and they look specifically at the language in paragraph K which clearly states the building could have been sold for a dollar to a non-profit organization provided that there wasn't a political, partisan, sectarian, denominational or religious organization or association which includes among its principle purposes the provision of educational, recreational, medical or social services to the general public. He noted that the paragraph even spoke to the issue of the reverter and said the Council was about to embark upon the release of those restrictions. He said it was not just about settling a litigation but was also about giving approval to allow the restrictions to be foregone and to allow the sale to go through. By agreeing to the settlement agreement, he continued, the Council was selling the property again. He said it was his opinion and that of several other residents that they were giving away the property which was not appropriate and would be subject to judicial scrutiny. He asked Mr. Bonello how much time would have to pass before the resolution would take effect. Once passed, Mr. Bonello answered, the settlement agreement would be effectuated and the matter would be resolved. Mr. Fitzpatrick asked if there was a statutory relief for people who were not happy with the government's action. Mayor Menna and Mr. Bonello both answer that that would be 45 days from the passage of the resolution. Mr. Fitzpatrick said it was important for everyone to understand that they were not just conveying a piece of property but were also putting money out which added to money that had already been put out on the property. He said the Borough had not received adequate compensation for the building and noted that he had heard that the building was going to be torn down but on the 1999 tax rolls he said the property was assessed at \$700,000. Administrator Sickels noted that it was tax exempt. Mr. Fitzpatrick said it still had an assessed value which was \$700,000. Mr. Sickels asked if Mr. Fitzpatrick if he was aware of an appraisal done around that time that said the only valuable part of the property was the land which was worth \$199,000. Mr. Fitzpatrick said it still had a value to it which was his point. Mayor Menna said it was a hypothetical value.

Councilman Zipprich asked that the record reflect that it was 9:15 pm and asked Mr. Fitzpatrick to summarize his comments as the Council still had an entire agenda to get through.

Mr. Fitzpatrick said he understood Mr. Zipprich's concerns but he had sat patiently while others had spoken and while a presentation was made.

Mr. Bonello told Mr. Fitzpatrick that he had stated he was making a summation and asked him to finish.

Therefore, Mr. Fitzpatrick continued, 40:12-21 was the controlling statute for two reasons. He said the first was the fact that it referenced that if they were going to waive restrictions, it had to be done pursuant to 51.2 of Title 40. He said the point was that there was a document signed by Mayor McKenna in 1999

which was the ordinance that conveyed the property. He said Mr. Bonello had stated that, when the second ordinance was drafted, the restrictions would have been implied as a matter of law and said Mr. Bonello had argued that in the pleadings before the court. He asked Mayor Menna about when he had signed the contract of sale in 2000 based on the 1999 ordinance and asked if he had been fully knowledgeable that he was signing a document that implied that the restrictions were in place. Mayor Menna said he had signed a document at the direction of the Council as the Council President and under the authority and direction of the Borough Attorney. Mr. Fitzpatrick asked if, when he was signing the document, the restrictions were in place and noted Mayor Menna was an experienced Municipal Attorney. He said he could only speak to what the Borough Attorney had advised him which was that there were some restrictions in place. Finally, Mr. Fitzpatrick said, when one looks at the matter from the State Constitution, it was clear that the action the Borough was about to take would probably result in future litigation. He said he wouldn't get into the US Constitution and the issues regarding the First Amendment. He said he hoped they would proceed with good counsel.

Bill Meyer—12 Monmouth Street—said he wanted to read a short paragraph from Ordinance 1999-29. He noted that he had stressed the importance of all of the ordinances being listed and said he was appalled that anyone involved in the process that read the deed should have known that 1999-29 should have been listed. He read “D. Termination of Sale...if said lands or buildings are not rehabilitated or not used in accordance with said conditions and limitations,” which included the prohibition against use by a religious organization, “the sale and/or transfer shall automatically terminate and the Borough shall have all remedies available or as may be permitted by law and the Borough may reenter, possess and enjoy the property.” He said that was something that could still be done and that was the way the litigation should have gone. He said, in his opinion, the Council was violating their fiduciary duty if they didn't do what they needed to do to get the building back. Regarding the building's worth, he noted that in 1999, the Borough could have sat on the building and maybe put a roof on it because it was a wonderful thing to own a piece of property and not pay property taxes on it. He said they could have waited for the market to go up or for a time when they were going to use it. He said the precondition of the ordinance was that there be a determination that the property was not needed. He said the Borough obviously needed it because it was retaining a 99 year lease. He urged the Council not to enter into the settlement.

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

**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 they had heard all aspects of the issue and asked if anyone had any further questions for the Attorney. There were no further questions.

11-12      Mayor Menna read “A RESOLUTION AUTHORIZING SETTLEMENT IN THE PENDING LITIGATION ENCAPTIONED RED BANK YMCA VS. BOROUGH OF RED BANK, DOCKET NO. MON-C-170-09.”

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

**ROLL CALL:**

AYES: Zipprich, Horgan, Lee, Murphy

NAYS: None

ABSTAIN: Lewis

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

**RESUME REGULAR ORDER OF BUSINESS**

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

**ROLL CALL:**

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

AYES: None

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

Special Counsel Bonello stepped down and Attorney Byrnes stepped back in. Councilman DuPont did not return to the meeting.

## WORKSHOP

**APPROVAL OF MINUTES** – December 8, 2010  
December 22, 2010

Mayor Menna tabled the minutes to the meeting of January 24, 2011.

## MAYORAL APPOINTMENTS

### REPORTS OF MAYOR AND COUNCIL MEMBERS

Mayor Menna tabled the reports to the meeting of January 24, 2011.

## COMMUNICATIONS AND PETITIONS

Mayor Menna read requests from Monmouth Medical Center Foundation, Red Bank Catholic High School PTA, Monmouth Legal Secretaries Association and Tinton Falls Foundation for Excellence in Education for raffle licenses.

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

### ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

Mayor Menna read a request from St. Nicholas Russian Orthodox Church for procession from their church on Pearl Street to the Navesink River at the end of Maple Avenue on January 19, 2011 at 12 p.m. to bless the waters for Russian Orthodox Epiphany.

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

### ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

Mayor Menna read requests from Anthony Calabrese and Daniel Lopez for membership to Westside Hose Company and Rob Mumford to Liberty 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: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

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

### **ORDINANCES – First Reading**

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

## RESOLUTIONS

### By Consent Agenda:

- 11-13 A RESOLUTION DESIGNATING THE BOROUGH TREASURER AS THE CERTIFYING AGENT IN CONNECTION WITH THE PUBLIC RETIREMENT SYSTEM.
- 11-14 A RESOLUTION AUTHORIZING THE BOROUGH TREASURER TO OPEN AN ACCOUNT IN TD BANK N.A. AND TO SIGN ALL PAYROLL CHECKS.
- 11-15 A RESOLUTION AUTHORIZING CREATION OF CHANGE FUNDS.
- 11-16 A RESOLUTION DESIGNATING DEPOSITORYES FOR THE BOROUGH OF RED BANK.
- 11-17 A RESOLUTION FIXING THE RATE OF INTEREST TO BE CHARGED ON DELINQUENT TAXES OF ASSESSMENTS.
- 11-18 A RESOLUTION AUTHORIZING THE BOROUGH TREASURER TO OPEN AN ACCOUNT FOR MAKING PAYMENTS IN CONNECTION WITH THE REDEMPTION OF TAX TITLE LIENS.
- 11-19 A RESOLUTION APPOINTING FRANK MASON AS FUND COMMISSIONER AND VALERIE FERBER AS ALTERNATE FUND COMMISSIONER TO CENTRAL JERSEY HEALTH INSURANCE FUND.
- 11-20 A RESOLUTION APPOINTING FRANK MASON AS FUND COMMISSIONER AND GARY WATSON AS ALTERNATE FUND COMMISSIONER TO MONMOUTH COUNTY JOINT INSURANCE FUND.
- 11-21 A RESOLUTION APPROVING CASH MANAGEMENT PLAN.

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 resolutions were declared approved.

- 11-22 Mayor Menna read "A RESOLUTION AUTHORIZING AGREEMENT WITH INTERFAITH NEIGHBORS, INC. FOR 2011 NUTRITION PROGRAM FOR RED BANK SENIOR CENTER."

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

### ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

- 11-23 Mayor Menna read "A RESOLUTION AUTHORIZING AN AGREEMENT WITH DR. MICHAEL KAHN OF EMPLOYEE CONSULTING ASSOCIATES."

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

### ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

11-24 Mayor Menna read “A RESOLUTION COMMENDING GOVERNOR CHRISTIE FOR SIGNING THE ANTI-BULLYING BILL OF RIGHTS.”

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

**ROLL CALL:**

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

11-25 Mayor Menna read “A RESOLUTION APPROVAL OF WINTER SIDEWALK CAFES.”

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

**ROLL CALL:**

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

11-26 Mayor Menna read “A RESOLUTION APPOINTING ASHLESHA DESHPANDE AS DEPUTY TAX COLLECTOR.”

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

Councilwoman Lee asked if this was a full or part time position. Councilman Zipprich said it was full time.

**ROLL CALL:**

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

**PROCLAMATIONS**

**PAYMENT OF VOUCHERS**

11-27 Mayor Menna read “A RESOLUTION FOR PAYMENT OF BILLS AMOUNTING TO \$3,078,598.75.”

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

**ROLL CALL:**

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

**OLD BUSINESS**

**NEW BUSINESS**

Councilman Zipprich said he wanted to remind the public to log in to the Borough’s website at [www.redbanknj.org](http://www.redbanknj.org) and sign up for the citizen alerts and stressed the importance in regard to the expected snowstorm. Councilwoman Horgan asked the media to help publicize it. Councilwoman Lee said getting the cars off the street was the most urgent message. Councilman Zipprich noted that a press release had been put out and that notices could be received by text and messages could go to home phones.

## **AUDIENCE**

Fred Boynton—Shrewsbury Avenue—said he wanted to speak about a parking issue on several streets during snow storms especially in regard to those who had cars extending out of the driveway and blocking sidewalks. He asked why tickets were not being issued. He noted that he and his brother park their trucks on the end of Central Avenue by the junkyard to stay out of the way but they get complaints and his brother got a ticket. He questioned why people who block the sidewalk don't get a ticket because it was also illegal parking.

Mayor Menna said he was correct.

Mr. Boynton again urged the Borough to issue tickets. Councilman Murphy said he would follow up with the Chief.

Mr. Boynton said during sporting events cars were usually parked in the same area where he parks and he expected to see them ticketed also.

## **EXECUTIVE SESSION**

### **ADJOURNMENT**

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

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

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

Respectfully submitted,

Pamela Borghi