

**MINUTES
REGULAR MEETING
MUNICIPAL COUNCIL – BOROUGH OF RED BANK
APRIL 12, 2010
6:30 P.M.**

Mayor Menna excused himself to perform a wedding ceremony.

PLEDGE OF ALLEGIANCE

ROLL CALL

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

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

ABSENT: Assistant Attorney Hall and Auditor Kaplan.

SUNSHINE STATEMENT

Council President Murphy requested the minutes reflect that, in compliance with Public Law 1975, Chapter 231 (Open Public Meetings Act), notice of this meeting has been provided by notifying the Asbury Park Press, the Courier, 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 3, 2010.

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 declared approved.

10-89 Council President Murphy read, "A RESOLUTION HONORING STEPHEN FROST."

Council President Murphy and Councilwoman Horgan presented the resolution to Mr. Frost and congratulated him on his achievement. Mr. Frost thanked the Council for honoring him.

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

ROLL CALL:

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

NAYS: None

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

Budget Presentation by Red Bank Borough Board of Education

Ben Forrest, 16 Locust Avenue, addressed the Council telling them that he served as the Chairman of the Finance Committee of the Board of Education. He introduced Superintendent Laura Morana and Business Administrator Anne E. Darrow. He also noted that Board President Peter Noble was in the audience. Superintendent Morana reviewed the budget preparation and noted that it had been an eight month process. She said, in the last few weeks, State decisions had presented a challenge to come up with a budget that was responsive to the needs of the community as well as the needs of the children. She reviewed the goals of the Board which included the continuance of a challenging and supportive yet welcoming learning environment, exploring sources of funding to be responsive to the community and establishing a cohesive school community while promoting the schools. She and Ms. Darrow gave a detailed PowerPoint presentation on the budget and the work that has gone in the district for the last four years. Some of the financial specifics included the fact that they lost \$701,000 in surplus, which she

called devastating, a significant transfer payment to the Charter School and a four percent increase expected in enrollment. She outlined the many areas that will see cuts and stressed that they tried to find areas that would not compromise the quality of instruction. Ms. Darrow compared last year's budget to this year's in regard to where the money was coming from. She specifically noted that this year, 79 percent of the operating budget will come from the tax levy which last year was 62 percent. She added that this year, 17 percent of the budget will come from State Aid, while last year it was 27 percent. She said this was a major shift that directly related to the fact that they don't have the \$700,000 from the surplus that was cut to put toward tax relief and from the cut to State Aid. She outlined other areas that impacted the 2010 budget. Dr. Morana said the goal was to preserve the programs and noted that the districts instructional programs had received a lot of attention from both within New Jersey and also outside of the State.25:39

Mayor Menna returned to the meeting at 6:45 p.m.

Mayor Menna thanked commended Dr. Morana and the Board. He said he appreciated the time that the Board had put in on the budget and said the Council was supportive of their efforts. He said the achievements of the Red Bank Schools had been miraculous and that the children of those schools were our best ambassadors. He noted that the district served as a model for study teams from Harvard University as well as the District of Columbia school system. He noted that the Red Bank District faces the same challenges as an Abbott District without the Abbott District funding.

Mr. Forrest asked if the Council had any questions And said it was a challenging time to be on the Board.

Budget Presentation by the Special Improvement District

Nancy Adams and Robin Fitzmaurice appeared on behalf of RiverCenter. They noted that the budget had been submitted to the Council along with some additional information that had been requested. Ms. Adams asked if the Council had any questions. Mayor Menna said he believed there had been a number of meetings that he said were fruitful and productive.

Councilwoman Horgan asked if the budget was inclusive of all parts of the Special Improvement District both east and west side.

Ms. Adams said that it was and noted that the budget remained flat from last year by shifting within the budget.

Mayor Menna said he felt that a lot of the questions from the Westside Stakeholders had been addressed who were looking for an action plan for onsite improvements in the expanded district. He said he also believed that, this year, the holiday outreach in that area would be more intense than it had been in previous years in the expanded district. He encouraged them to continue the dialogue that he knew they had started with the members of the expanded district.

Councilman Murphy said there had been a very informative meeting the week before between members from both sides of the district to work as one district. He also noted that, in regard to questions of whether the budget could be reduced, the money that funds the RiverCenter district comes from a tax that is assessed on property owners in the district and any budget cuts would not come to the Borough but would only affect those in the RiverCenter district. Ms. Adams noted that the RiverCenter Board and the property owners had already approved the budget. Councilman Murphy encouraged more property owners from the expanded area of the district to get involved.

Mayor Menna said while the RiverCenter district had challenges like all areas do, there had been an effort to travel to other municipalities to explain the benefits of a Special Improvement Districts that raise their own money to help themselves. He also noted that the statewide conference would be held in Red Bank which is said was a reaffirmation of how well the Borough is doing.

Councilman Zipprich called attention to the fact that the budget included a line for the Visitor's Center and asked if that was new to the budget or had it been there. Ms. Adams noted that when the district expanded that office was added to the RiverCenter budget.

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

NAYS: None

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

10-88 Mayor Menna read, "A RESOLUTION APPROVING THE 2010 BUDGET OF THE SPECIAL IMPROVEMENT DISTRICT OF THE BOROUGH OF RED BANK."

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

ROLL CALL:

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

NAYS: None

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

RESUME REGULAR ORDER OF BUSINESS

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

ROLL CALL:

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

NAYS: None

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

WORKSHOP

Park Benches

Engineer Ballard said the during the current improvement project underway at Marine Park, it was determined that the existing benches were in terrible shape. After evaluating the situation, she continued, the Parks and Recreation Committee had chosen a new bench for Marine Park and identified 18 locations along the waterfront for placement. She said the opportunity to donate a bench will be opened to the public at a cost of approximately \$1,500 which would include the purchase, delivery and installation along with a plaque to be installed on the bench. She said anyone interested should contact the Borough Administrator's Office. She noted that there were a limited number of benches available so it would be first come, first served.

Councilwoman Lee asked if there was a period of time that the plaque would remain in place. Engineer Ballard said she assumed it would be for as long as the bench was there and noted that the previous benches had been in place for 25 years. Administrator Sickels noted that when benches were donated at Riverside Gardens Park, it was for a period of ten years adding that that anniversary was coming up. Councilwoman Lee noted that those benches could soon be rededicated.

Census Participation

Councilwoman Horgan said everyone should have received their Census form by now and she hoped that everyone had filled it out and sent it in because millions of dollars were at stake. She reviewed some of the ways that the Borough of Red Bank had helped to promote awareness as well as efforts by the Census Bureau and the Borough Schools.

Councilman DuPont asked if there was a deadline. Councilwoman Horgan said she wasn't sure if there was a deadline but if responses weren't received soon, Census workers would be going door to door to follow up.

Councilwoman Horgan also reported that the Red Bank Borough Education Foundation would be holding a fund raiser at the Atrium on May 21 called the Swimming River Discoveries Art Gala. She said Swimming River Discoveries was an outdoor learning center planned for the Primary School grounds to take advantage of the recreation opportunities that are there. She added that it would be an art fundraiser with only 100 tickets sold at \$100 each and each ticket holder would be able to select one item of original art.

APPROVAL OF MINUTES – March 22, 2010

Councilman DuPont offered a motion to approve the minutes, seconded by Councilwoman Lewis.

ROLL CALL:

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

NAYS: None

There being six ayes and no nays, the minutes were declared approved.

MAYORAL APPOINTMENTS

Mayor Menna appointed Councilwoman Horgan as Council Liaison to the Fair Trade Committee for a 1-year term expiring 12/31/10.

REPORTS OF MAYOR AND COUNCIL MEMBERS

Councilman DuPont reported that the budget would be introduced on April 26 and that the budget hearing was scheduled for the 28th.

Councilman Zipprich said the Shade Tree Committee would be celebrating Earth Day and Arbor Day by holding a tree planting ceremony at the Red Bank Charter School. He also noted that the Monmouth County Regional Health Commission would be holding a free H1N1 vaccination clinic on Saturday, April 17, at the Red Bank VNA from 10 am and noon. He reported that there were only three Spring rabies clinics remaining: April 19, from 7 to 8 pm at the Monmouth Beach Firehouse; May 1, from 10 am to 11 am at the Keansburg Public Works Garage and May 8 from 10 to 11 am at the Shrewsbury Township Community Center. He noted that the clinics were free to all Monmouth County residents and the information was available through the Borough website. He also reported that the Code Enforcement Office had delivered the 2010 list through April for properties cited for overcrowding.

Councilwoman Lewis had no report.

Councilwoman Horgan had no additional report.

Councilwoman Lee reported that the Department of Public Works had recently placed the Chestnut Street water filters on line and asked Engineer Ballard to give more details. Engineer Ballard reported that the Borough was a recipient of Federal funding for the renovation of both of the town's water plants, the first of which was now on line. She said the project looks great and was moving forward.

Councilman Murphy said he regretted to report the passing of a long time member of the Ladies Auxiliary of the Red Bank Volunteer Fire Department, Lucille Stratz. He noted that she passed away over the weekend and had over 30 years of service with the Borough through the First Aid and the Ladies Auxiliary. He added that she and her husband were very active in the community.

Mayor Menna said he had an item he wanted to bring up for the Council's consideration. He noted that litigation surrounding a "Do Not Knock" list had been settled and there was general approval by the Courts on the issue. He said from the perspective of public safety and people's reasonable enjoyment of their homes, he would like the Council to consider an ordinance to preclude door to door solicitation on residences that were on a "Do Not Knock" list which would be the same as a "Do Not Call" list. Institutions that would be excluded, he continued, would be religious institutions that have a place of worship in the Borough of Red Bank, philanthropic institutions within the Borough and politicians. He added that anyone trying to peddle wares or solicit would have to apply for a license and, as part of that process, they would be given a copy of the "Do Not Knock" list which would preclude them from knocking on the doors of those people. He said violators would be subject to a stiff fine.

Members of the Council asked about the need for such an ordinance. Mayor Menna said it was really a public safety issue particularly for the elderly.

COMMUNICATIONS AND PETITIONS

Mayor Menna read requests from Monmouth Rugby Football Club, Inc. and Monmouth Medical Center Foundation for raffle licenses.

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

ROLL CALL:

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

NAYS: None

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

Mayor Menna read a request from St. James Elementary School for use of Riverside Gardens Park and lavatories for a family picnic on Thursday, May 27, 2010 with a rain date of Thursday, June 3, 2010 from 11:00 a.m. until 1:00 p.m., pending approval of the Special Events Committee.

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

ROLL CALL:

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

NAYS: None

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

Mayor Menna read a request from Shrewsbury Avenue AME Zion Church close Drs. James Parker Boulevard from Shrewsbury Avenue to Bridge Avenue to hold a Community Day of Outreach on Saturday, June 5, 2010 from 12:00 p.m. to 5:00 p.m., pending approval of the Special Events Committee.

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

ROLL CALL:

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

NAYS: None

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

Mayor Menna read a request from Peter Giblin for membership to Independent Engine Company and Donald Lynch for membership to Navesink Hook and Ladder of Red Bank Volunteer Fire Department.

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

ROLL CALL:

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

NAYS: None

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

Mayor Menna read a request from RiverCenter to hold free concerts at Riverside Gardens Park on Wednesday, June 2, June 9, June 16, June 23 and June 30, 2010 from 12:00 p.m. to 2:00 p.m., pending approval of the Special Events Committee.

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

ROLL CALL:

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

NAYS: None

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

Mayor Menna read a request from RiverCenter to hold the Downtown New Jersey Annual Conference at the Two River Theater on Tuesday, September 28, 2010 from 1:00 p.m. to 10:00 p.m., pending approval of the Special Events Committee.

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

ROLL CALL:

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

NAYS: None

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

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

No one appeared.

ORDINANCES – First Reading

None.

ORDINANCES – Public Hearing & Final Adoption

2010-11 Mayor Menna read “AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING THE CHAPTER XXV, PLANNING AND DEVELOPMENT REGULATIONS, SECTION 25-10.15, “REGULATIONS CONTROLLING PROFESSIONAL OFFICE (P.O.) ZONE DISTRICT” AND SUBSECTION 25-9.12, “COMMERCIAL RECREATION FACILITIES.”

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

Steve Fitzpatrick—92 Hudson Avenue—said this ordinance had been introduced a couple of meetings back, and if he was correct, it was at the behest of the Community YMCA. Mayor Menna said that was correct. Mr. Fitzpatrick said the matter was then referred to the Planning Board for an opinion on the matter. Mayor Menna said it was sent for an opinion as to the consistency with the Master Plan and noted that the Board had sent a letter stating that the Board did not feel it was consistent with their understanding of the Master Plan. Mayor Menna noted that the information was already on the record. Mr. Fitzpatrick asked if that letter could be read into the record at this meeting. Mayor Menna said everyone had read it and it stated that they thought it was inconsistent. Mr. Fitzpatrick asked if anyone had a copy of the letter and would they share the contents. None of the Council members had a copy of the letter with them. The Mayor again noted that, in the letter, the Planning Board said “no.” Mr. Fitzpatrick repeated his question asking if anyone had a copy for the benefit of the members of the public that were in attendance asking that it be read into the record or made available. Mayor Menna noted that it had been available since last month to anyone who wanted it and was still available, again noting that the board had said, “no.”

Mr. Fitzpatrick asked if the Planning Board meeting had taken place the previous Monday. Mayor Menna said that was not the meeting in question and added that the letter from the Planning Board had been sent prior to the last Council meeting. He said the meeting from the previous Monday saw the Board declining to take further action. Mr. Fitzpatrick said that meant the matter had not been memorialized by the Planning Board. Mayor Menna said they said they weren’t going to memorialize it. Mr. Fitzpatrick asked for confirmation that a letter was forwarded. Mayor Menna said it was. Mr. Fitzpatrick said he would rephrase his question and asked if, as a result of the Planning Board meeting of April 5, the past Monday, was a letter forwarded by the Board Attorney to this Mayor and Council. Mayor Menna said he hadn’t seen one. Therefore, Mr. Fitzpatrick continued, prior to the ordinance possibly being adopted tonight, no one on council had a copy of that letter. Mr. Sickels noted that the letter has been sent prior to Monday’s meeting from the Planning Board to the members of Council stating that they did not believe that it was consistent with the Master Plan. The question that came up at the last Planning Board meeting, Mr. Sickels continued, was whether or not there was a resolution needed and the Planning Board Attorney said there wasn’t.

Attorney Pringle recused himself during the discussion. Mr. Fitzpatrick asked Mr. Pringle if he was stepping down because he had a conflict of interest. Mr. Pringle said he was stepping down because of an appearance of a conflict of interest, noting that, since the last time the matter had been discussed, the Community YMCA had named his wife as an upcoming award recipient and he wanted to avoid an appearance of impropriety. Mr. Fitzpatrick asked Mr. Pringle to offer an opinion before he stepped away regarding any questions that may be posed to governing body members relative to conflicts of interest asking Attorney Pringle to confirm that since he was stepping away, there would be no other Attorney to render an opinion on those matters. Mr. Pringle said they would cross that bridge when they came to it and added that each individual would be responsible for making a decision as to whether or not they had a

conflict of interest and whether or not they needed legal advice to make that decision. Mr. Fitzpatrick attempted to ask Attorney Pringle another question and Attorney Pringle stated that he was recused.

Councilman DuPont also recused himself. Mr. Fitzpatrick said he wanted to state for the record that Councilman DuPont had recused himself because of prior litigation involving the YMCA in addition to the fact that he was a member of the YMCA. Both Mayor Menna and Councilman DuPont corrected Mr. Fitzpatrick noting the Councilman DuPont had recused himself because he was a member of the YMCA. Councilman DuPont further stated that it had nothing to do with litigation with the YMCA but was a 25 year member of the organization.

Mr. Fitzpatrick said he felt it was obvious that Municipal Land Use would govern the proceedings moving forward and it would require a vote by the majority of the full authorized membership. Mayor Menna confirmed that if it went to a vote, it would require four out of five votes. Mr. Fitzpatrick asked, if the ordinance was adopted and was a complete reversal of what the Planning Board had put forth in their letter, would a reasons resolution also be prepared. Mayor Menna said one could certainly be memorialized. Mr. Fitzpatrick asked if, at the moment, one had been prepared. Mayor Menna said one had not because they didn't know if it would even go for a vote and they couldn't prepare a resolution when they didn't know what the outcome would be. Mr. Fitzpatrick asked if, in accordance with Municipal Law, one would have to be prepared. Mayor Menna said there would have to be some memorialization, record or document.

Mr. Fitzpatrick said he wanted to ask the five members of Council in front of him if anyone else was a member of the Community YMCA. He then asked each member individually if they were members and each responded that they were not. He also asked each member if they owned property within 200 feet of the facility. Each member said they did not. Mr. Fitzpatrick asked the Council if any of them were employed by the YMCA or contracted as a vendor. They said they were not.

Andrea Plaza—Co-Interim Director of the Community YMCA—said she oversaw the operations at 166 Maple Avenue and said she wanted to thank the town for the review of their expansion project which she said was unfortunately denied by the Zoning Board and thanked them for their consideration at this meeting. She said she thought it was important to go back to the reason that they were seeking an expansion which she felt was lost in the dialogue over the last several months. She said it was all about increasing their capacity to better serve the needs of Red Bank and the greater Red Bank area. She added that they wanted the ability to do more good in the community, to be able to support children, families, adults and seniors in their pursuit of a healthier lifestyle.

Councilman Murphy interrupted to state that he remembered that he did own a house on Waverly Place. Mayor Menna said it was not within 200 feet. Councilman Murphy said he just wanted to clarify for the record.

Ms. Plaza continued by noting that the nation and community were in the midst of a health crisis and offered some statistics regarding the issue. She said the YMCA wanted to be able to building their capacity to serve the children and families so they can enjoy a healthily lifestyle. She noted that the organization had been an integral part of the community for over 137 years and were committed to continuing to serve families and to help meet the evolving needs of the community. She noted that they had invited members to participate in the process and many had attended meetings to voice their opinions. She said they also invited members of the organization who couldn't attend to show support and endorse the zoning change through a petition which she presented to the Council.

Sean Byrnes—noted that he was a former Red Bank resident and had a business in town. He said he was attending to show his support the Community YMCA and said he felt that during the process he did not think the message regarding what the YMCA does has been completely heard. He said he respected the members of Council and the members of the Zoning Board, noting that the Board did what they felt was the right thing but that he disagreed with it. He said he hoped it didn't become an issue of one body in town supporting another body in town, but felt everyone should make a decision based on what they felt was right. He said he felt the right was decision was to let the expansion go forward and gave an overview of what he felt the YMCA was about noting that he joined the Board of Directors 12 years ago. He also outlined his history with the Borough and said he believed in the town. He said a lot had been done for the children in town and continues to be done noting that the YMCA was an integral part of that and had been since 1874. He noted they had been in the current location for 40 years. He said he felt after listening to the Zoning Board application that there wasn't an appreciation for just how much they do. He recognized the fact that the facility does serve people from beyond Red Bank, but they also served people of the Red Bank community as well. He said their mission went well beyond most of the other applicants the Borough would have. He itemized many of the programs the YMCA offers, including employment, and the number of residents who benefited from each them. He also noted that free memberships were given to Police Officers and Fire Department members and noted the benefits that were served. He noted that they had also made past contributions including stepping in to help a project formerly housed in the Borough's former Police Station and spending a lot of money to fix up the

building. He noted that they also fixed up a building they owned on Dr. Parker Blvd. and helped with the Count Basie Learning Center which, he added, they ran at a loss. He said, in regard to the application and the proposed expansion, it wasn't about something that would just be nice to have or a way to make more money, noting that the money received didn't go to shareholders or into people's pockets but back into programs. He said the facility now has to compete with private gyms in the area that didn't exist 10 years ago and the YMCA provided services to the community that those other facilities didn't. He said if they cannot expand, the ability to do what they need to do at their existing location comes into jeopardy. He admitted that it might have been better to pursue the zoning amendment before they went to the Zoning Board and said they would continue to work to do a better job in the community. He added that he felt they should be partnering with the town, not arguing over renovations. He said he was aware of budget constraints that the town was under and reminded the Council that the YMCA provided recreation and other services. He said he knew the architectural concerns were real and heartfelt but it was his opinion that the other things he had been talking about took greater precedence.

Steven Hecht—135 Branch Avenue—said he couldn't imagine that there was a reasonable compassionate person who didn't understand the value of the YMCA. However, he continued, he felt the issue with the ordinance was not the goodness or worth of the YMCA but rather concerns that had been raised with respect to traffic, impingement on the services of other institutions and impingement on other individuals. He expressed his disappointment that the two issues had been married together in a way that makes it sound like if one opposes the ordinance, they oppose the YMCA. He said he didn't think that was true and hoped the Council didn't feel that way.

Councilman Murphy asked to clarify that tonight's vote was on zoning rather than the YMCA expansion or traffic issues.

Mayor Menna said that was absolutely the case and noted that if the ordinance went forward, matter would have to go back to one of the boards.

Sarah Breslow—Secretary for Congregation Beth Shalom, 186 Maple—stated that the sole reason to vote in favor of overturning the current ordinance would be to get around the decision of the Zoning Board. She added that she understood the impulse to give the YMCA extra consideration because it is a major player in Red Bank and had thousands of members and served a healthy purpose. She said she did not think that that was sufficient reason to overturn a long held law that went beyond one particular situation. Being a non-conforming use had not hurt the YMCA over the years but had merely required the YMCA to be considerate of its neighbors. She said she would like to think that the YMCA would voluntarily be considerate of its neighbors, but if that were the case she asked why would it need to overturn the law that currently protects its neighbors instead of going back to the Zoning Board to come up with a plan that the Zoning Board would approve. She said it was already a compromise to allow the YMCA to operate as a non-conforming use. She added that the YMCA's neighbors endure several problems including noise and traffic because of that. She said they count on the governing body to regulate those problems and protect their interests. She said if they overturn the law, they will eliminate important protections. She said the matter was about something larger than overturning an ordinance to accommodate the YMCA. She said the framework was in place to protect everyone and it would be a miscarriage of justice to have the governing body's vote swayed because of the weight the YMCA carries in the community.

Krishna Tyler—69 Leighton Avenue—said she had spoken to a lot of people about the issue and the response was in favor. She noted that she had immigrated to this country 16 years ago and enjoyed the fact that in this country majority counts. She asked the Council to consider the facts and to keep that in mind.

Joe Besanko—208 Maple Avenue—questioned the fact that the zoning change had been brought up so closely to the time of the Zoning Board's denial and felt that that was why there was an issue. He said the YMCA had been operating as a non-conforming conditional use for many years and the town had never seen fit to change the status. He also noted that, in 2008, the borough had reviewed the Master plan and had not seen fit to change the zoning then. The YMCA did not come forward with a definitive plan until late April 2009 which gave the Borough plenty of time to make a zoning change before hearing the YMCA's application. He noted that a few years back a zoning change was made to Maple Avenue because at the time the Borough felt there was a need to increase recreational space for Red Bank. He added that the change was not at the request of an interested third party.

Mayor Menna asked him how he knew that it was not at the request of an interested third party. Mr. Besanko said because he had read the report. Mayor Menna asked if he had read the minutes. He said he had not and asked if the Mayor knew if it was done at the request of a third party. Mayor Menna said he did not know but thought Mr. Besanko was making a leap of faith.

Mr. Besanko continued stating that a change was made to allow a recreational facility permitted use on Maple Avenue but only between Wikoff Place and Dr. Parker Blvd., formerly Bergen Place. He said there was no thought or mention to extend this change north of the area to include the YMCA. He added

that if one looked at the two locations, they would see why. Even though the two areas are located under a mile apart, he continued, the difference in the areas they occupy could not be more different. The YMCA sits in the midst of residential homes and small businesses, he noted, and the area south of Dr. Parker Blvd. has a much more commercial look to it, there are no private residences along the street and there is much better traffic flow. He said the premise of the YMCA's request that there is no difference between the YMCA and the Atlantic was absolutely not true and outlines the reasons for his thought including the smaller overall area and membership of the Atlantic Club. He also outlined some of the dangers he felt were currently posed by the YMCA facility and those that would come with the proposed changes. He noted that the Zoning Board had denied the YMCA application to expand after a year of testimony and added that he had sat through the meetings and felt the Board had acted in a professional and patient manner. He noted that the matter had been presented to the Council at their February 8th meeting by Mr. McGann and Ms. Plaza and while it was not on the agenda, the regular order of business was suspended and the YMCA was allowed to make the request for a zoning change. He said the Council had also allowed public comment on the matter from people who were in favor but added that no one was present to comment against it because no one knew about it because it hadn't been on the agenda. He said the request came from the YMCA within days of their denial by the Zoning Board. He said he understood the Mayor had a wide area of discretion when it came to allowing such things, but he felt the timing of the request and the matter in which it was entertained did not appear to be above suspicion. He also stated that after the ordinance was drafted it was sent to the Planning Board where it was firmly denied. He said he understood there were legitimate things the Council could do, but he did not feel this was one of them. He said he felt the YMCA was receiving preference treatment that individuals would never receive and added that he felt the ordinance was tailor-made for the YMCA. He also said he felt if the ordinance was passed, it would invalidate the Zoning Board's hard work on the matter. He said he was aware the application would have to go back before the Board but felt the outcome would have already been determined. He said he felt it was a text book example of spot zoning. He suggested the YMCA should go through the proper channels and present an amended plan without changing the zoning. He added that keeping the YMCA a non-conforming conditional use would give those in close proximity a sense of well being knowing that changes that could have a detrimental on there quality of life would be looked at closely. He noted that the YMCA had had a larger membership in the past that they were able to accommodate in the existing facility. He also noted the budgetary constraints of town is facing and questioned a decision that would expand a non-profit and put further strain on the town's resources. He also said he understood the benefits the YMCA offered to the community but felt it was more than big enough to serve the needs of Red Bank at this time.

William Myer—12 Monmouth Street—said he too was in favor of the YMCA and discussed his history with the facility. He said he felt it was big enough and suggested they refurbish the existing facility but felt that expanding a non-conforming and tax exempt use would be inappropriate and would be to the detriment of the tax payers and infrastructure. He questioned the legality of the procedure which he compared to spot zoning and said he felt it was unfair to the taxpayers. He also said he did not feel the decisions of the Zoning Board and Planning Board should be reversed by an act of the Council and felt an approval would be met with litigation. Regarding any potential conflict Councilman Murphy may have, he continued, whether because his family may be members or he may qualify for a free membership due to his relationships with the Police or Fire departments, Mr. Myer requested that he not vote. He also noted that Mr. Byrnes had referenced issues with 51 Monmouth Street and started to go into his thoughts on that dispute and questioned it had been mentioned. Mayor Menna said they would be disregarding that so it wasn't an issue. Mr. Myer again stated there was not opposition to the YMCA as an organization, but he felt it should stay in its existing state and not receive special treatment.

Sam Bernard—17 John Street—noted his 10-year relationship with the YMCA and the fact that his children now go there. He said there was a need for increased availability of programs and asked if question before the Council had anything to do with the Zoning Board's decision.

Mayor Menna said it had nothing to do with the Board's actions noting that they made a decision and that decision would stand upon the adoption of a resolution on the matter. He outlined the applicant's options including filing a lawsuit in Superior Court and the results of those actions. He said if the Council decided to take action and amend the Borough's land use law to make it a conditional use, the YMCA would still be legally obligated to return with a new application with full plans and testimony before the Planning Board as if the early application had never taken place.

Mr. Bernard also asked to clarify that it was not an issue of the Council against the Boards. Mayor Menna confirmed that it was not.

Roberta Kaufmann—Congregation Beth Shalom—said she wanted to comment on the Planning Board's statement that the proposed ordinance eliminates the requirement that a commercial recreational facility should be at least 200 feet from a church, synagogue or school which is why they found it inconsistent with the Master Plan. She said she brought it up because the YMCA submitted a set of drawings that the synagogue did not see until a year after they were submitted and at that time found that a road and a parking lot plan that would infringe upon the synagogue. She said they sat down with the YMCA and,

with a few minor exceptions, resolved some of the issues. She said the synagogue still strongly objects to the removal of the 200 foot protection. She referenced the original 1965 resolution that granted the YMCA a variance that allowed them to build the existing facility and noted the condition that traffic should not be allowed to exit onto Maple Avenue.

Maura Gallagher—17 East Bergen Place—pointed out that everyone who had spoken was very passionate and believed in their position. She asked the Council to take a step back from the politics and emotion and make the best decision for the town.

Councilman Zipprich offered a motion to close the public hearing, seconded by Councilwoman Horgan.

ROLL CALL:

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

NAYS: None

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

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

ROLL CALL:

AYES: Murphy

NAYS: Lewis, Zipprich, Horgan, Lee

ABSTAIN: DuPont

There being one aye, four nays and one abstention, the ordinance was declared defeated on final reading.

Mayor Menna stated that he felt the matter could be very costly for the Borough and he couldn't guarantee the outcome.

2010-13 Mayor Menna read “AN ORDINANCE AMENDING CHAPTER VIII, “PARKING LOTS AND HANDICAPPED PARKING SPACES,” SUBSECTION 8-2.8, “RESTRICTED PARKING” OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF RED BANK.”

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

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

ROLL CALL:

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

NAYS: None

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

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

ROLL CALL:

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

NAYS: None

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

2010-14 Mayor Menna read “AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY VACATING CERTAIN PORTIONS OF THE BOROUGH’S RIGHTS IN THE EASTERN TERMINUS OF RIVER STREET AND THE EASTERN TERMINUS OF CEDAR STREET FOR THE CEDAR CROSSING AFFORDABLE HOUSING PROJECT.”

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

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

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

ABSTAIN: DuPont

There being five ayes, no nays and one abstention, the public hearing was declared closed.

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

ROLL CALL:

AYES: Lewis, Zipprich, Horgan, Lee, Murphy

NAYS: None

ABSTAIN: DuPont

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

2010-15 Mayor Menna read “AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER XXV, PLANNING AND DEVELOPMENT REGULATIONS, SECTION 25-2.3, “DEFINITIONS”; SECTION 25-8.21, “OFF STREET PARKING”; SECTION 25-10.14, “REGULATIONS CONTROLLING BUSINESS/RESIDENTIAL-1 DISTRICT”; SECTION 25-10.19, “REGULATIONS CONTROLLING BUSINESS/RESIDENTIAL-2 DISTRICT.”

Mayor Menna noted that this would be a liberalization of the procedure to make it easier for people to get Planning and Zoning approvals without having to go before the Boards.

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

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

ROLL CALL:

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

NAYS: None

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

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

ROLL CALL:

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

NAYS: None

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

RESOLUTIONS

10-79 Mayor Menna read “A RESOLUTION AUTHORIZING ACCEPTANCE OF PERFORMANCE GUARANTEES AND INSPECTION ESCROW REGARDING 120 MAPLE AVENUE, L.L.C., 120 MAPLE AVENUE, BLOCK 75.02, LOT 146.”

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

ROLL CALL:

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

NAYS: None

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

10-80 Mayor Menna read “A RESOLUTION RELEASING MAINTENANCE GUARANTEES POSTED BY PINSLEY FAMILY L.P., 8 EAST FRONT STREET, BLOCK 28, LOT 2 AND BLOCK 10, LOT 1.”

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

ROLL CALL:

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

NAYS: None

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

10-81 Mayor Menna read “A RESOLUTION EXPRESSING OPPOSITION TO SENATE BILL NO. S458 REGARDING HOLDING OF BINDING STATEWIDE REFERENDUM BY COUNTY ON WHETHER RESPONSIBILITY FOR CERTAIN MUNICIPAL FUNCTIONS SHOULD BE ASSUMED BY COUNTY GOVERNMENT.”

Mayor Menna explained that there were bills pending that would merge certain municipal functions and there were lobbying groups that suggested there would have to be binding referendums on those issues. He said this resolution would support adopting the regulation without the binding referendum.

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

ROLL CALL:

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

NAYS: None

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

10-82 Mayor Menna read “A RESOLUTION AUTHORIZING THE FILING OF A RECYCLING TONNAGE GRANT.”

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

ROLL CALL:

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

NAYS: None

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

10-83 Mayor Menna read “A RESOLUTION AUTHORIZING APPROVAL OF SIDEWALK CAFÉ FOR RIVERS EDGE CAFÉ.”

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

ROLL CALL:

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

NAYS: None

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

10-84 Mayor Menna read “A RESOLUTION AUTHORIZING APPROVAL OF SIDEWALK CAFÉ FOR WALT STREET PUB.”

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

ROLL CALL:

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

NAYS: None

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

10-85 Mayor Menna read “A RESOLUTION PROPOSING THE IMMEDIATE RESTORATION IN FULL OF ALL ENERGY TAX RECEIPT FUNDING.”

Mayor Menna said the energy tax was statutorily mandated to be collected by the State and they are collecting it. He added that the State was not giving the money to the municipalities but was keeping it. Councilman DuPont said the matter was very important because the Borough was losing a lot of money due to the fact that the State was not passing it on. CFO Mason said the amount the Borough was losing was \$517,000.

Councilman Zipprich asked if the State was originally supposed to distribute the funds back to the municipalities. CFO Mason said that was correct. Councilman Zipprich noted that the Governor had also said that any municipality that increased its property tax to make up for the losses would have that amount deducted.

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

ROLL CALL:

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

NAYS: None

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

10-86 Mayor Menna read “A RESOLUTION ACCEPTING A BUSINESS STIMULUS FUND (BSF) GRANT FROM THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE DEVELOPMENT AND IMPLEMENTATION OF A COMMUNITY FORESTRY MANAGEMENT PLAN.”

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

ROLL CALL:

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

NAYS: None

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

10-87 Mayor Menna read “A RESOLUTION ACCEPTING A GRANT FROM THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE HIRING OF A QUALIFIED EXPERT TO ASSIST THE BOROUGH IN THE DEVELOPMENT OF COMMUNITY FORESTRY MANAGEMENT PLAN.”

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

ROLL CALL:

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

NAYS: None

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

PROCLAMATIONS

Mayor Menna read a proclamation honoring Virginia S. Bauer as a Woman of Distinction.

Mayor Menna read a proclamation proclaiming April 30, 2010 as Arbor Day 2010 in the Borough of Red Bank.

PAYMENT OF VOUCHERS

10-90 Mayor Menna read “A RESOLUTION FOR PAYMENT OF BILLS AMOUNTING TO \$3,064,251.41.”

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

ROLL CALL:

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

NAYS: None

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

OLD BUSINESS

NEW BUSINESS

Councilman Zipprich said he wanted to thank the Borough Staff, Department Heads, Mr. Sickels, Mr. Watson and the Police Chief for all of their cooperation in working with the Finance Committee as they moved through difficult economic times and try to come up with solutions. He added that he was grateful or their diligence and creative thinking.

AUDIENCE

David Prown—44 Hillside Place—asked if there was an update on the search for a Parks and Recreation Director. Councilwoman Lewis said they were narrowing it down and they should be coming to a decision very shortly. Mr. Prown asked if the budget situation would impact on that decision. Mayor Menna said any position would be very carefully scrutinized to see that, even though there is a range, the Borough lives within its means. He added that when they hire a new employee to replace a former employee, it doesn't mean the new person will come in at the same salary level. Mr. Prown if they were down to a specific number of candidates. Mr. Sickels said the Committee was getting ready to make a recommendation to the Council and that it was the middle of the process and they really couldn't say anything more. Mr. Prown asked what the procedure was once the candidate was identified which Mr. Sickels outlined. Mr. Prown asked if Mr. Hird would continue. Mr. Sickels said he was but he was stretching himself.

Mr. Prown congratulated Councilwoman Lewis on being honored by Red Bank Regional High School as an Outstanding Alumni.

Boris Kofman—28 Riverside Avenue—said he wanted to add to Councilwoman Horgan's announcement about the fundraiser that people can go to the website, www.rbbf.com, and register there.

EXECUTIVE SESSION

10-91 The Attorney read a resolution to adjourn to executive session to discuss personnel and contract negotiations.

Councilman DuPont offered a motion to adjourn to executive session to discuss personnel and contract negotiations, seconded by Councilwoman Lewis. Minutes to be made public in 180 days.

ROLL CALL:

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

NAYS: None

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

Council Members Lewis and Zipprich excused themselves during executive session.

Councilman DuPont offered a motion to adjourn from executive session, seconded by Councilman Murphy.

ROLL CALL:

AYES: DuPont, Horgan, Lee, Murphy

NAYS: None

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

ADJOURNMENT

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

ROLL CALL:

AYES: DuPont, Horgan, Lee, Murphy

NAYS: None

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

Respectfully submitted,

Pamela Borghi