

**MINUTES
SPECIAL MEETING
MUNICIPAL COUNCIL – BOROUGH OF RED BANK
DECEMBER 29, 2005
7:30 P.M.**

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT: Mayor McKenna and Council Members Beck, Menna, Murphy and Curley.

ALSO PRESENT: Administrator Sickels, Borough Clerk Vivona, Chief Financial Officer Whalen, Engineer Kosenski and Attorney Pringle.

ABSENT: Mayor McKenna and Council Members Lee and Bifani.

SUNSHINE STATEMENT

Mayor McKenna 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 December 12, 2005.

SUSPEND REGULAR ORDER OF BUSINESS

Mr. Menna offered a motion to suspend the regular order of business, seconded by Mr. Murphy.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

05-235 Mayor McKenna read “A RESOLUTION HONORING THE MEMORY OF TIMOTHY JOSEPH McMAHON, JR.”

Ms. Beck offered a motion to approve the resolution, seconded by Mr. Menna.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

The Members of the Governing commented on what a wealth of information and wonderful individual Mr. McMahon was and Mayor McKenna presented the resolution to his cousin, Mary Ann Anfuso.

RESUME REGULAR ORDER OF BUSINESS

Mr. Curley offered a motion to suspend the regular order of business, seconded by Ms. Beck.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

WORKSHOP

Power Outages on Manor Drive

Councilman Curley said that he has received a letter from Kenneth MacRitchie regarding the continued power outages on Manor Drive. He said that he has contacted Jeanne Fox at the Board of Public Utilities and they said they would look into this matter.

Parking on Maple Avenue

Councilman Curley said that he was contacted by David Buckley from Little Silver about a problem with the traffic flow on Maple Avenue in the vicinity of Monmouth and Front Streets and said there is a continued problem with a vehicle being parked on Front of Buena Sera for long periods of time. He said that he does not think enforcement of the parking ordinances is being done in this area and that he thought we had authorized a loading zone in this area.

Councilman Murphy said he would speak to Chief Fitzgerald about this situation.

MAYORAL APPOINTMENTS

REPORTS OF MAYOR AND COUNCIL MEMBERS

COMMUNICATIONS AND PETITIONS

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

Mayor McKenna asked if anyone would like to speak.

Good Evening. My name is Andrew B. Robins – 12 Half Mile Road, Middletown - said I am a shareholder with Giordano Halleran & Ciesla. We serve as general counsel for the New Jersey Shore Builders Association and I am here to note the Association's objections and concerns regarding some aspects of proposed Ordinance 2005-57. The New Jersey Shore Builders Association is comprised of hundred of builders, contractors and associated workers involved in providing shelter and housing for Monmouth and Ocean County residents. We have some significant concerns regarding the legality and practicality of some of the aspects of the proposed Ordinance.

Overall, however, I must stress that the Association is not opposed to reasonable, appropriate contribution disclosure requirements. The New Jersey Shore Builders Association welcomes efforts to ensure a level playing field for all parties involved in the development process. We are not opposed to the concept of the proposed Ordinance. However, the portion addressing disclosure by applicants for land use approvals is unconstitutional. Those aspects of the proposed Ordinance are also unnecessary and impractical.

Among the legal infirmities of the proposed Ordinance is the fact that the Ordinance is seeking to regulate a form of free speech (campaign contributions) in a manner that is not content neutral and thus unconstitutional. It has been recognized by the United States Supreme Court that the ability to make contributions to candidates for office is a vital portion of our First Amendment Right of Free Speech. While certain limitations and regulations must be "content neutral." Specifically, regulation cannot single out contributions from those on one side of an issue. The proposed Ordinance only regulates disclosures by parties seeking approvals of certain applications or certain land use changes. The Ordinance does not require any such disclosure of parties who are seeking to oppose any such application or land use changes. Thus, by its very nature, the Ordinance is limited to disclosure requirements imposed only upon those in favor and specifically imposes no requirements on those opposed to such applications or changes. The proposed Ordinance is therefore not "content neutral" and violates the constitutional right of Free Speech.

We are concerned about the scope and extent of the disclosures imposed on applicants for land use approvals and ordinance revisions. Those provisions are unnecessary. The stated goal of informing the public of campaign contributions to parties in decision-making roles is fully achieved by the disclosure requirements imposed on candidates, board members and elected officials. Disclosure by candidates of their campaign contributors is already mandated under other provisions of your Ordinance. The requirement that additional disclosures be imposed as part of the development process is unnecessary to meet the stated purpose of the Ordinance. The obligations imposed under Subsections 7 through 9 are ample to meet the stated goal of providing information to the public.

We also object to Sections 10 through the first Section 13. (There are two Section 13's). The sections applicable to development applications are unnecessarily burdensome and cumbersome and of questionable legality.

In contrast to the core requirements of disclosing direct contributions to specific elected officials, the Ordinance requires disclosure of indirect contributions and contributions by parties other than the applicant. These additional disclosures are unworkable and impractical. A mechanism already exists by which someone with a significant conflict of interest must disclose and/or abstain from voting from such applications.

As drafted, the proposed Ordinance would unrealistically require that an applicant track even the most minor of contributions to any political organization located anywhere to determine whether those monies were indirectly contributed to a candidate for office in Red Bank. For example, the Ordinance appears to cover a minor contribution made to a political action committee located even in another state to determine if monies from that political action committee directly or through other campaigns or political action committees eventually are contributed to a candidate for elected office in Red Bank.

Similarly, the proposed Ordinance would require that an applicant for development be able to discern whether any contribution was made by a minor shareholder, owning as little as 10%, made a donation that eventually made its way to a candidate for office in Red Bank.

To add further to the complex and burdensome nature of the proposed ordinance, the applicant would be required to be aware of contributions made by minor shareholders (as small as 5%) of any professional involved in the development process. Thus, for example, an applicant would need to know whether a 5% owner in an accounting firm involved in filing tax returns on behalf of an applicant made a contribution to a candidate for office in Red Bank or to some political action committee and a portion of that contribution eventually make its way to a campaign for a candidate for office in Red Bank. To impose such requirements on applicants is both unrealistic and unnecessarily burdensome.

The applicant is also burdened with having to make such disclosures on behalf of the owners of the property for which the application is made. Often, the applicant is a contract purchaser and does not have the ability to mandate that the prospective seller provide detailed disclosures of all political contributions made anywhere in the country. The provisions of the proposed Ordinance relating to indirect contributions and disclosures on behalf of professionals should clearly be removed as impractical, unnecessarily burdensome and of questionable legality.

Finally, Section 12 includes an improper attempt to include the requirements for disclosure as a checklist item. Such requirement is not clearly authorized under the Municipal Land Use Law. The last section of the proposed ordinance expressly concedes that the disclosures are not relevant to the substantive review of a land use application. The MLUL allows for checklist items that are relevant to the substantive merits of the application. Hence, it is clearly inappropriate to include campaign disclosures as a checklist item for land use applications. The MLUL does not provide for any such disclosure requirement and as such the requirement should not be included as part of a checklist.

In sum, the New Jersey Shore Builders Association recognizes the importance of disclosures and does not oppose the general concept of disclosure. However, some of the aspects of the proposed Ordinance which I just outlined are not needed to effectuate that goal. Those sections are not content neutral and therefore unconstitutional. The proposed Ordinance is unduly burdensome, cumbersome and impractical, especially relating to indirect contributions and contributions by professionals. Further, there should be no requirement that such disclosure be a checklist item for completeness of land use applications. We therefore urge that the Ordinance be modified to delete Section 10 through the first Section 13. We would also ask that the Ordinance be streamlined and clarified to delete references to indirect contributions and contributions by professionals involved in land use applications.

The New Jersey Shore Builders Association stands ready to work with the Borough to develop a modified ordinance that meets the stated goal without the flaws I have just outlined. Passage without such modifications severely restricts the Association's options.

Steve Fitzpatrick – 32 Chestnut Street – asked if the ordinance applies to the professionals working on behalf of the developer.

Mr. Pringle said that it does not.

Mr. Fitzpatrick said that the ordinance in the Borough of Spring Lakes includes the professionals and the Borough's ordinance should also include them.

Mayor McKenna said that he was contacted by two other law firms that plan on suing the Borough and that we have to set up a meeting with the New Jersey Shore Builders Association to discuss the ordinance to avoid any potential lawsuits that would incur unnecessary legal expenses.

Councilman Menna said that there is going to be new legislation from the state regulating contributions and disclosure but the Municipal Land Use Laws have to be changed and suggested that Assemblywoman-Elect Beck look into this matter.

The Members of the Governing Body discussed the fact that the Municipal Land Use Law prohibits municipalities was imposing certain conditions on applications heard by Planning and Zoning Boards and until the State changes this law they do not want to incur unnecessary legal expenses.

Mr. Pringle said that he has concerns that certain sections of this ordinance would violate the First Amendment and the Municipal Land Use Law and that the ordinance could subject the Borough of Red Bank to litigation by developers.

Councilwoman Beck said that this ordinance has been discussed for over six months and asked how come the New Jersey Builders' Association has never voiced their concern before. She said that the ordinance basically follows the ELEC reporting requirements and thinks it should be adopted so the citizens of Red Bank will have a comfort level regarding development and campaign contributions.

The Members of the Governing Body discussed the campaign contributions that were received from developers to the Democratic and Republican parties.

Mayor McKenna said that he does not have any problems with financial disclosure but with portions of the ordinance violating the Municipal Land Use Law. He said that he applauds the goals of the ordinance that are not in violation of the Municipal Land Use Law but thinks the ordinance should be amended and taken out of the ordinance to avoid potential lawsuits and said that even our Borough Attorney has advised us that there could be potential problems.

Mr. Pringle said that we are taking a risk of not complying with the Municipal Land Use Law because a developer would the advantage of getting their applications approved without a hearing if the Courts thought we violated the Municipal Land Use Law.

The Members of the Governing Body discussed the fact that certain conditions can not be imposed as part of the checklist of items that must be completed before an application is heard by one of the boards and that the State Legislators must amend the law.

Mayor McKenna said that we should not adopt an ordinance that conflicts with the Municipal Land Use Law and cannot impose requirements that are not consistent with the Municipal Land Use Law. Mayor McKenna read the last sentences from the New Jersey Builders' Association statement "The New Jersey Shore Builders Association stands ready to work with the Borough to develop a modified ordinance that meets the stated goal without the flaws I have just outlined. Passage without such modifications severely restricts the Association's options".

Councilwoman Beck and Councilman Curley voiced their concerns about the New Jersey Builders' Association not voicing their concerns before this meeting.

Mr. Pringle said that he would like to talk to the Counsel for the New Jersey Builders' Association to hear their concerns and avoid litigation; He said that in that the ordinance was advertised for public hearing on December 15, 2005.

Councilman Menna said Councilwoman Beck and the Committee worked very hard on this ordinance and suggested taking out sections of the ordinance that could cause problems with the Municipal Land Use Law.

Mr. Pringle said that we should review the ordinance and that he would keep Councilwoman Beck informed of the changes since this is her last Council Meeting.

ORDINANCES – First Reading

ORDINANCES – Public Hearing & Final Adoption

2005-52 Mayor McKenna read "AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER VII, "TRAFFIC," SECTION 7-3.6, "PARKING TIME LIMITED ON CERTAIN STREETS," SCHEDULE IV, "TIME LIMITED PARKING" AND SECTION 7-3.9, "PERMIT PARKING IN DESIGNATED AREAS," SCHEDULE XIX, "RESIDENTIAL PARKING DISTRICT NUMBER TWO."

Mayor McKenna opened the public hearing and asked if anyone would like to speak, no one appearing he closed the public hearing.

Mr. Menna offered a motion to close the public hearing, seconded by Mr. Murphy.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

Ms. Beck offered a motion to adopt the ordinance on final reading, seconded by Mr. Menna.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

2005-53 Mayor McKenna 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 10.12, "REGULATIONS CONTROLLING CENTRAL COMMERCIAL-2 DISTRICT."

Mayor McKenna opened the public hearing and asked if anyone would like to speak, no one appearing he closed the public hearing.

Mr. Menna offered a motion to close the public hearing, seconded by Mr. Murphy.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

Mr. Menna offered a motion to adopt the ordinance on final reading, seconded by Ms. Beck.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

2005-54 Mayor McKenna read "AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER VII, "TRAFFIC," SECTION 7-3.3, "PARKING PROHIBITED AT ALL TIMES ON CERTAIN STREETS," SCHEDULE I, "NO PARKING."

Mayor McKenna opened the public hearing and asked if anyone would like to speak, no one appearing he closed the public hearing.

Mr. Menna offered a motion to close the public hearing, seconded by Ms. Beck.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

Mr. Menna offered a motion to adopt the ordinance on final reading, seconded by Ms. Beck.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

2005-55 Mayor McKenna read "AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER XIX, "STREETS, SIDEWALKS AND SANITATION," SECTION 11, "MANDATORY RECYCLING."

Mayor McKenna opened the public hearing and asked if anyone would like to speak, no one appearing he closed the public hearing.

Mr. Menna offered a motion to close the public hearing, seconded by Ms. Beck.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

Ms. Beck offered a motion to adopt the ordinance on final reading, seconded by Mr. Murphy.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

2005-56 Mayor McKenna read "AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AUTHORIZING THE CONVEYANCE OF AN EASEMENT TO JCP&L TO ENTER UPON CERTAIN BOROUGH-OWNED PROPERTY TO INSTALL AN ELETRICAL TRANSFORMER."

Mayor McKenna opened the public hearing and asked if anyone would like to speak, no one appearing he closed the public hearing.

Mr. Menna offered a motion to close the public hearing, seconded by Mr. Murphy.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

Mr. Menna offered a motion to adopt the ordinance on final reading, seconded by Ms. Beck.

ROLL CALL:

AYES: Beck, Menna, Murphy

NAYS: Curley

There being three ayes and one nay, the ordinance was declared adopted on final reading.

2005-57 Mayor McKenna read "AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER II, "ADMINISTRATION," OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, STATE OF NEW JERSEY, TO LIMIT CONTRIBUTIONS BY VENDORS AND TO REQUIRE CONTRIBUTION DISCLOSURE STATEMENTS AND CONFLIT DISCLOSURE STATEMENTS IN APPLICATIONS FOR MAJOR ZONING VARIANCES, WAIVERS AND EXCEPTIONS."

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

Mayor McKenna asked if anyone else would like to speak, no one appearing he closed the public hearing.

Ms. Beck offered a motion to close the public hearing, seconded by Mr. Curley.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

Ms. Beck offered a motion to adopt the ordinance as is on final reading, seconded by Mr. Curley.

ROLL CALL:

AYES: Beck, Murphy, Curley

NAYS: Menna

There being three ayes and one nay, the ordinance was declared adopted on final reading.

RESOLUTIONS

05-234 Mayor McKenna read “A RESOLUTION OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, AUTHORIZING RELEASE OF PERFORMANCE GUARANTEES AND ACCEPTANCE OF A MAINTENANCE GUARANTEE REGARDING SPRING STREET ASSOCIATES, L.L.C., 297 SPRING STREET – TIFFANY APARTMENTS, BLOCK 110, LOT 6.”

Mr. Menna offered a motion to approve the resolution, seconded by Ms. Beck.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

05-236 Mayor McKenna read “A RESOLUTION AUTHORIZING TRANSFER OF FUNDS.”

Mr. Menna offered a motion to approve the resolution, seconded by Mr. Curley.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

05-237 Mayor McKenna read “A RESOLUTION AUTHORIZING A FINANCIAL AGREEMENT WITH HABCORE, INC.”

Ms. Beck offered a motion to approve the resolution, seconded by Mr. Murphy.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

PROCLAMATIONS

PAYMENT OF VOUCHERS

05-238 Mayor McKenna read “A RESOLUTION FOR PAYMENT OF BILLS AMOUNTING TO \$414,119.78.”

Mr. Curley offered a motion to approve the resolution, seconded by Mr. Murphy.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

OLD BUSINESS

NEW BUSINESS

AUDIENCE

Steve Fitzpatrick – 32 Chestnut Street – said that he is going to miss Councilwoman Beck.

Vivian Cole – 149 Catherine Street – congratulated Jennifer Beck on her election to the Assembly.

Judy Hathaway – 44 Ambassador Drive – thanked Councilwoman Beck for all she did for the Borough and congratulated her on her election to the Assembly.

Councilman Menna thanked her for Herculean efforts for the Borough of Red Bank over the years and congratulation on her election and said we need tax reform in Trenton.

Councilman Curley said that Councilwoman Beck is someone that he admires and that he knows that she will be bring change to State government.

Councilman Murphy said that it was a pleasure to work with Councilwoman Beck and he wishes her luck.

Mayor McKenna said that he always liked her personally and commended her for always speaking her mind and said that she will do a great job in the Assembly.

Councilwoman Beck said that it was pleasure to serve with everyone on the Council and said that she knows everyone always has the best interest of the Borough at heart.

EXECUTIVE SESSION

ADJOURNMENT

Mr. Menna offered a motion, seconded by Ms. Beck to adjourn the meeting.

ROLL CALL:

AYES: Beck, Menna, Murphy, Curley

NAYS: None

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

Respectfully submitted,

Carol A. Vivona