

BOROUGH OF RED BANK

COUNTY OF MONMOUTH

RESOLUTION NO. 14-207

**A RESOLUTION AUTHORIZING THE REPAIR AND REPLACEMENT OF THE EXISTING
BULKHEAD AT THE RED BANK RED BANK PUBLIC LIBRARY**

Councilwoman Horgan offered the following resolution and moved its adoption:

WHEREAS, the bulkhead located at the Red Bank Public Library has severely deteriorated, is unsafe and needs to be replaced; and

WHEREAS, the Library Board has made numerous requests for the repair of the bulkhead; and

WHEREAS a debate has arisen as to whether the library bulkhead can be replaced by a living shoreline; and

WHEREAS, the Library Property was deeded to the Borough of Red Bank by the Eisner Family in 1937 (the "Library Deed"); and

WHEREAS, the Library Deed expressly imposes upon the Borough the obligation to maintain the buildings and grounds in good condition, including keeping "the bulkhead in good repair." and

WHEREAS, the Library Deed also provides that no "part of said premises shall be used as a public park or public meeting place"; and

WHEREAS, the Library Deed further provides that if at any time the Borough refuses or neglects to maintain the Library Property as required by the Library Deed, or if any of the terms and condition of the Library Deed are otherwise violated, the Property shall be deeded to the appropriate financial institution for sale within one year, with the proceeds of the to be given to Harvard University to create an endowment fund; and

WHEREAS, the Council of the Borough of Red Bank has passed a bond ordinance to provide the capital funding for the replacement of the Library Bulkhead and the bulkhead located at North Prospect Avenue; and

WHEREAS there are costs savings to the Borough if the work on the Library Bulkhead and North Prospect Bulkhead are performed by a single contractor under one public works contract for both bulkheads; and

WHEREAS, by letter dated February 22, 2012 to the Borough, the Corinthian Cove Condominium Association ("Corinthian Cove"), whose property directly abuts the Library property, voiced formal opposition to and concerns with the concept of a living shore line, in particular how the removal of the library bulkhead might result in erosion to its property, and/or consequential damage to its buildings, fencing, landscape and bulkhead; and

WHEREAS, Corinthian Cove has retained legal counsel to represent it in connection with the Borough's actions/decisions regarding the Library Bulkhead;

WHEREAS, the Borough is insured through the Municipal Excess Liability Joint Insurance Fund (the "JIF"); and

WHEREAS, the Borough's JIF representative has advised the Borough that it is extremely unlikely that there would be any insurance coverage provided by the JIF if a lawsuit was brought by Corinthian Cove or any other interested party, given that any decision to

remove the bulkhead is in potential violation of the Library Deed and replacing it with a living shoreline could be interpreted as an intentional act that would not be covered; the JIF has further advised that even if there was a covered claim, the Borough would still be liable for substantial deductible and co-insurance costs in connection with any such lawsuit or claim. Based on these potential financial risks to the Borough, the JIF has recommended to the Borough that it not expose itself to such uncovered claims; and

WHEREAS, there are many other uncertainties and risks to the Borough associated with a living shoreline, including, but not limited to,

- The effect of the living shoreline on the Borough’s River Walk plan and associated easements;
- The effect of the living shoreline on adjoining properties, including erosion and the effect that erosion could have on the adjoining bulkheads;
- Whether the installation of a living shoreline located between two bulkheads will act as a collection point for river flotsam.
- A Living Shoreline requires on-going maintenance. and,

WHEREAS the Borough Engineer has recommended the existing bulkhead be replaced with one of current design that will incorporate environmentally friendly features that require little if any maintenance and that will provide the base structure that will accommodate/incorporate elements of the River Walk along the Borough’s property.

WHEREAS, in light of the foregoing financial and other risks and uncertainties associated with a living shoreline, the Borough believes that it is not in its best interests and the interests of its residents to replace the Library Bulkhead with a living shoreline; and

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the Borough of Red Bank that the Borough Administrator and the Borough Engineer are hereby authorized to take all necessary steps to commence the process of replacing the existing Library Bulkhead with a new bulkhead that will incorporate environmentally friendly features, including preparing the necessary bid specifications and advertising for bids for the replacement of the Library Bulkhead and North Prospect Avenue Bulkhead.

Seconded by Councilman DuPont and adopted on roll call by the following vote:

| | Yes | No | Abstain | Absent |
|----------------------|-------|-------|---------|--------|
| Councilman Murphy | (x) | () | () | () |
| Councilwoman Burnham | () | (x) | () | () |
| Councilwoman Horgan | (x) | () | () | () |
| Councilwoman Lewis | (x) | () | () | () |
| Councilman Zipprich | (x) | () | () | () |
| Councilman DuPont | (x) | () | () | () |

Dated: July 23, 2014