

MINUTES
SPECIAL MEETING
MUNICIPAL COUNCIL – BOROUGH OF RED BANK
March 18, 2022
4:00 P.M.

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 on the website.

Mayor Menna stated that the meeting was a limited meeting for purposes of retiring to executive session to discuss litigation.

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT: Mayor Menna and Council Members Mirandi, Sturdivant, Triggiano, Ballard and Zipprich.

ALSO PRESENT: Interim Administrator McConnell, Deputy Clerk Thomas, and Attorney Cannon.

ABSENT: Councilwoman Horgan.

*Meeting held via video/telephone conference due to Governor’s Executive Order.

Mr. Cannon stated that Councilwoman Horgan is recusing herself from this meeting, and the reason for her absence is because she is a party to the underlying litigation. He asked if anyone would need an executive session to further discuss the resolution.

It was determined that the consensus of the Council was to go forward with voting on the resolutions.

Mayor Menna asked which resolution was up first for voting purposes.

Deputy Clerk Thomas read the title of Resolution No. 22-77. "A Resolution to Authorize a Professional Services Contract with Daniel J. O’Hern, Jr., Esq., Individually, and Byrnes, O’Hern & Heugle as Defense Counsel for the Borough of Red Bank in the Matter of Horgan, et al. v. Borough of Red Bank, et al. – MON-L-542-22."

Mayor Menna asked for a motion on the resolution. Councilman Ballard offered a motion to approve the resolution, seconded by Councilwoman Triggiano.

Mayor Menna stated that the only discussion item he had was, in the interest of full disclosure, if Mr. Cannon has a conflict why doesn't Mr. O'Hern have a conflict because he is currently representing the Borough in active litigation in the tax court, he represents Councilwoman Mirandi, Councilwoman Sturdivant, Councilman Zipprich, and everyone else on this Council, so isn't he in a conflict situation?

Mr. Cannon stated that Mr. O'Hern is appointed as the conflict attorney for the Borough. He stated that there were two different conflicts here, and he doesn't believe Mr. O'Hern, nor himself could represent Councilwoman Mirandi directly adverse to other council members against each other. He stated that his position is different than Mr. O'Hern's in that his position is not a position of confidence or policy. He stated that Mr. O'Hern has reviewed the RPCs and it's basically whether the representation of one party adversely affects the representation of another party and in Mr. O'Hern's position as tax bill attorney he would resolve that he doesn't have a conflict. He stated that Mr. O'Hern is only representing the Borough and there is a separate attorney representing Councilwoman Mirandi. He stated that that is his opinion and that it is up to each attorney to evaluate their conflicts and act accordingly, and Mr. O'Hern has acted accordingly, and he believes he can accept the engagement.

Mayor Menna stated that he has no objection to that and that he merely raised it to avoid an appealable issue in the future if a court decides that it is.

Mr. Cannon stated that ultimately applies if one of the other parties moves to disqualify them in the litigation if they do see fit, but that'll be the court's problem.

Mayor Menna stated that if the Council were comfortable with it, they could move on.

Councilman Ballard stated that he just wanted to reiterate that the Byrnes & O'Hern firm were on the list of potential attorneys provided by Mr. Cannon, and that they assumed that there was no conflict, and all of those listed attorneys were eligible to represent the Borough and that's how they made their decision.

Mr. Cannon stated, for the sake of transparency, that he generated the list based upon who's already appointed as the Borough's Conflict Council and Councilwoman Mirandi as an individual, and then I called to joint insurance fund for a list of people they might think would be disinterested in Red Bank as they have a much wider reach that he does to generate that list together and he got it from the general counsel of the JIF.

Mayor Menna stated that there was a motion and a second and there had been discussion, and it was time to vote.

ROLL CALL:

AYES: Sturdivant, Triggiano, Ballard

NAYS: None

ABSTENTION: Mirandi, Zipprich

There being three ayes, no nays and two abstentions, the motion was declared approved.

Mayor Menna stated that next they had the appointment of Scott Salmon for Councilwoman Miranda. He asked if there was a motion. Councilman Ballard offered a motion to approve the appointment, seconded by Councilwoman Sturdivant.

Mayor Menna asked if there was any discussion and there was none.

ROLL CALL:

AYES: Sturdivant, Triggiano, Ballard

NAYS: None

ABSTENTION: Mirandi, Zipprich

Mayor Menna asked If there any other discussion on any other motions that came up since the agenda was published. There was no other discussion.

PUBLIC COMMENT

Mayor Menna asked if any members of the public would like to speak.

Sue Viscomi, 25 Cedar Street asked if public comment had to be done before the votes that just happened.

Mr. Cannon stated that the legal answer was no and that some portion of the meeting must be reserved for public comment any time they meet in public as a group and that the Open Public Meetings Act requires that.

Ms. Viscomi stated that her second question was, because the budget isn't done, do they have to bond for this money that they are going to be spending on these lawsuits or where is this money actually coming from.

Mayor Menna stated that there is always part of the legal budget which accommodates matter such as this that can be transferred within the legal budget. He asked if anyone else would like to speak, no one appearing he asked for a motion to adjourn the meeting.

ADJOURNMENT

Councilwoman Triggiano offered a motion to adjourn the meeting, seconded by Councilwoman Sturdivant.

ROLL CALL:

AYES: Mirandi, Sturdivant, Triggiano, Ballard and Zipprich.

NAYS: None

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

Respectfully submitted,

Bonnie K. Thomas, Deputy Municipal Clerk