

**MINUTES
REGULAR MEETING
MUNICIPAL COUNCIL – BOROUGH OF RED BANK
JULY 25, 2012
6:30 P.M.**

PLEDGE OF ALLEGIANCE

ROLL CALL

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

ALSO PRESENT: Administrator Sickels, Municipal Clerk Borghi, Chief Financial Officer Lapp, Attorney O'Hern, Engineer Ballard and Planning Kramer.

ABSENT: Council Members Lewis, Zipprich and Lee.

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 12, 2012.

WORKSHOP

No workshop items.

APPROVAL OF MINUTES – July 11, 2012

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

ROLL CALL:

AYES: DuPont, Horgan, Murphy

NAYS: None

There being three ayes and no nays, the minutes was declared approved.

MAYORAL APPOINTMENTS

REPORTS OF MAYOR AND COUNCIL MEMBERS

Councilman Murphy had no report.

Councilwoman Horgan reported that the Environmental Commission had met the previous evening and agreed to sign on to a Frack Waste Ban letter to the Governor asking him to sign legislation to prohibit the treatment, discharge, disposal or storage of waste water, waste water solid, sludge, drill cuttings or other by products to natural gas exploration or production using hydraulic fracturing. She said the waste from fracking posed a significant threat to public health, the environment and an immediate threat to New Jersey's waterways.

Councilman DuPont said the Finance Committee had been meeting regularly to find ways to improve the Borough's finances. He said the Borough's bond rating was still excellent and he said he was hoping, as a result of some of the cost cutting measures, the ratings may improve. He noted the Borough debt had decreased by more than 30 percent.

He also reported that the Mayor's Wellness Committee had met the previous night and said they would be holding a health fair in the immediate future for residents and employees. He said the Borough's insurance company had indicated they would provide assistance for an employee health fair. He said another objective, besides getting employees healthy, was to reduce insurance expenses. He said they had been informed that, once they meet the criteria of a health fair for Borough employees, the Borough will receive a reduction and/or credits from the insurance company. He commended the committee members and singled out Riverview Medical Center representative Tim Hogan for showing the committee a way to reduce insurance expenses and to keep employees and residents healthy. He also thanked Pastor Porter from Pilgrim Baptist Church, the Linda from the YMCA, Jenny Rossano, Chairman Rick Ivone and all the members of the committee noting it was a lot of fun and filled with positive energy. He said the mission statement said it all—Today, Tomorrow, Together. He also thanked Mayor Menna for the opportunity to get the residents and employees healthy.

Mayor Menna said he was doing a great job.

COMMUNICATIONS AND PETITIONS

There were no Communications or Petitions

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

Mayor Menna opened the public comment portion of the meeting and asked if anyone would like to speak. He noted that comments would be on resolutions only since all of the ordinances would be having public hearings.

No one appearing, Councilman DuPont offered a motion to close the public comment portion, seconded by Councilman Murphy.

ROLL CALL:

AYES: DuPont, Horgan, Murphy

NAYS: None

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

Mayor Menna noted that James Markey, Vice President of Community Affairs for JCP&L was in the audience. He asked Mr. Markey to come forward to address the Council.

Mr. Markey said his job was to help solve problems in the Community whenever issues arose outside of the normal scope. He said he was always available to the Mayor and Council to help. He noted that New Jersey had been hit with three State of Emergency situations last year and said they had been working very hard to become better communicators to their customers. He said they would be releasing information to the Mayor and Administrator for distribution to others as they moved forward. He offered to answer any questions from the Council.

Mayor Menna thanked him for the response he had given the Borough over the past year. He said Mr. Markey's personal intervention had been very good to Red Bank and RiverCenter and they appreciated the help.

Councilman DuPont asked if JCP&L had any grant money for solar panels for the Community. Mr. Markey said those programs were currently being run through the State Board of Public Utilities Commission and any grants available would be through them. Councilman DuPont asked if JCP&L provided any assistance to the 53 towns in Monmouth County. Mr. Markey said they did not.

Councilman DuPont also noted that the Borough's utility expenses added up to approximately ten percent of the budget. He asked if JCP&L would be interested in upgrading to more efficient street lights in the Borough. Mr. Markey said he would look into the matter. He said they were currently initiating a pilot program for LED lights. He said they had not wanted to get into them at first because of the higher expense but he said the costs were coming down so they were looking into it. Councilman DuPont asked for more information and said Red Bank would like to be in queue for the program. He noted that Red Bank had a great Public Works Department that could assist in putting the lights up. Mr. Markey said he would check into it.

Mayor Menna thanked him for attending.

ORDINANCES – First Reading

None.

ORDINANCES – Public Hearing and Final Adoption

Mayor Menna noted that the three ordinances on the agenda, while individual ordinances, should be considered together. Mayor Menna read the following ordinances:

- 2012-15 AN ORDINANCE AMENDING THE BOROUGH OF RED BANK'S ZONING MAP TO RE-CLASSIFY THE RESIDENTIAL PROPERTIES LOCATED ON RECTOR PLACE FROM THE WD WATERFRONT DEVELOPMENT DISTRICT TO THE R-B2 RESIDENTIAL ZONE DISTRICT.
- 2012-16 AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING THE CHAPTER XXV, PLANNING AND DEVELOPMENT REGULATIONS SECTION 25-10.7, "REGULATIONS CONTROLLING R-B2 RESIDENTIAL ZONE DISTRICT."
- 2012-17 AN ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING THE CHAPTER XXV, PLANNING AND DEVELOPMENT REGULATIONS SECTION 25-10.16, "USE REGULATIONS CONTROLLING THE WATERFRONT DEVELOPMENT DISTRICT", SECTION A. "PERMITTED USES" AND SECTION E. "AREA, YARD AND STRUCTURE REQUIREMENTS", SUB-PARAGRAPH 6. "MAXIMUM STRUCTURE HEIGHT."

Mayor Menna noted that the ordinances had been referred to the Planning Board for affirmative approval and asked that the record reflect that the Planning Board did respond affirmatively in a letter addressed to the Council dated July 17, 2012 stated that all three ordinances were found to be in conformance with the Master Plan and said the Board had recommended positive adoption. He said the Council had also reviewed the package provided by Borough Planner Richard Kramer who, he noted, was in attendance. He asked Mr. Kramer to review the three ordinances before the Council and offer his interpretation.

Mr. Kramer offered some history explaining that the matter went back to an ordinance from 2009 which addressed the recommendations for the use of the west side of Rector Place which was currently in the WD zone and was the subject of the zone plan amendment on the agenda. He said at that time the Planning Board completed a reexamination and recommended that there be a change to the segment of the WD zone which presently runs from Riverview Hospital to Oakland Street along the waterfront. He said, at that time, the Board looked at the specific segment of the WD zone from the intersection of Rector

Place/Route 35 to Rector Place/West Front Street and recommended that a zone change be enacted to limit the uses that could happen on that stretch of the WD zone. He said the WD zone was a mixed use zone that permitted a great variety of uses, both residential and non-residential. He said, at that time, the Planning Board looked at the overall goals of the Master Plan which emphasized the conservation of residential neighborhoods. He said there were historic structures on that block and the Board recommended that that section of the WD zone be restricted to single family use. At that time, he continued, the Governing Body responded by enacting Ordinance 2009-35 which enacted those residential limitations.

Mr. Kramer said, subsequent to that enactment, there had been issues related to interpretation and questions because, at the time of the enactment of the ordinance, there was no zoning map drawn to accompany the ordinance and it was simply described as the west side of Rector Place from Route 35 to West Front Street would be limited to residential use. He said that led to questions of interpretation in 2011 as to how that restriction should be applied and whether it was meant to apply to all of the properties including one that fronted on Rector Place but primarily fronted on Route 35 which had never been used for any residential purposes. Mr. Kramer said it was their opinion that it was never the intent to include that one particular corner lot which primarily fronted on Route 35 and had incidental frontage on Rector Place to be subject to the residential use restriction.

Subsequent to that, he continued, there were further issues that arose with respect to the interpretation of the WD district height limitations and how they were to be interpreted and applied within the zone. He said in the WD zone, the Borough had a unique standard that pegged the building height to the mean sea level and it varied within the district based upon specific conditions and the height limitation ranged from 50 feet above mean sea level to 75 feet above mean sea level and 140 feet above mean sea level. He said the Board of Adjustment had tried to interpret the ordinance and apply it to specific conditions and recommended that there be clarification so that what was currently before the Governing Body was clarification as to the boundary limitations of the WD district particularly as it related to the west side of Rector Place from Route 35 down to West Front Street. It does that, he continued, by placing that section of Rector Place with properties that have frontage on Rector Place and have no frontage on Route 35 in a residential zone designation known as RB2 which permits single family and two family houses which was consistent with the Master Plan goal of conserving residential areas and neighborhoods. He noted that that was what primarily existed now along that stretch of the road. Secondly, he continued, it specified the standard for structure height and how it should be measured in the WD zone and specified that it should be measured as 75 feet above sea level. He said that created a standard that was clearer and easier to interpret and apply. He noted that there was a great variation of height among buildings in the zone presently and, in his opinion, the 75 foot limitation would allow for buildings up to seven stories which would be consistent with the predominant tall buildings within the area. He said he recognized that there were some buildings that were higher than the seven stories but said there were also buildings that were significantly less than seven stories. He said 75 feet was chosen because the Master Plan recommended a height that was compatible with existing buildings in the zone and adjacent areas. He added that it was his opinion that 75 feet was appropriate and that was the height limitation that the ordinance on the agenda would set for the WD zone district.

Mayor Menna asked Mr. Kramer if he felt that the recommendations he had made, as well as the ordinances before the Council, were consistent with the intent and purpose of the Master Plan. He said he did and added that he thought they could look back to when the Planning Board was first looking at how the area along Rector Place should be treated and noted that they had recommended for residential treatment of that section of the riverfront which was more consistent with the goals of the Master Plan. He said they had done that in 2009 and when they reviewed the ordinance, they had reiterated that. He again said he believed it was consistent with the goals of the Master Plan and that it was designed to effectuate its recommendations.

Mayor Menna asked the record to reflect that Councilwoman Lewis arrived at 6:55 pm after being stuck in traffic.

Attorney O'Hern asked Mr. Kramer about problems in the existing ordinance regarding multiple potential allowable heights up to a maximum of 140 feet in the WD zone. Mr. Kramer confirmed that was the case and noted there were three allowable heights of 50 feet, 75 feet and 140 feet which were pegged to certain other conditions that would have to be in place in order to get to those heights which was the issue that was raised by the Board of Adjustment. Attorney O'Hern asked Mr. Kramer to confirm that 75 feet would be seven to eight stories. Mr. Kramer said he thought that it would fit seven stories and that it would certainly fit the five to six story buildings that were fairly commonplace in the zone now. Attorney O'Hern asked approximately how many stories would fit in the 140 foot height. Mr. Kramer estimated it to be about twelve stories.

Councilman DuPont said, if he understood correctly, they were not only clarifying the issue but were also reducing the allowable height in the zone.

Mayor Menna said that was correct and that they were reducing the overall height allowed in the zone because of the ambiguity reflected in the current ordinance. He noted they were also clarifying it at the request of the Zoning Board.

Councilman DuPont asked if they were also reducing the size of the building.

Mayor Menna said presumably they would be if they were reducing the height.

Mayor Menna opened the public hearing for all three ordinances and asked if anyone would like to speak. Ron Gasiorowski—54 Broad Street—said he was intimately familiar with this project.

Councilman DuPont asked Mr. Gasiorowski who he was representing.

Mr. Gasiorowski said he represented Stephen Mitchell.

Councilman DuPont said he also represented another entity and asked what entity that was.

Mr. Gasiorowski said he wanted to clarify his statement and noted that when he has appeared before “the Board” the question arose as to who he was representing and a second question arose as to who was funding the project. He said the objector was Stephen Mitchell who was a resident of Red Bank. He said they had stated on the record that it was being funded by another entity who was paying Mr. Mitchell’s legal fees. He said he was never identified as being an objector, one reason being that he was not a resident.

Councilman DuPont asked who the entity was that was funding the objection.

Mr. Gasiorowski said he believed it was called Tinton Falls Lodging.

Councilman DuPont asked if that was another hotel in the immediate area.

Mr. Gasiorowski said that it was.

Councilman DuPont asked which hotel it was.

Mr. Gasiorowski said it was a hotel located in Tinton Falls and said he did not know the exact name of it but said he would be happy to provide it.

Councilman DuPont said he was trying to clarify who Mr. Gasiorowski represented because he did not sit on the Planning board and had not had a chance to attend or listen to tapes from the meetings. He added that the only accounts he had had were from newspapers. He said he was trying to clarify the name of the hotel that was funding the objection. He said he was only aware of two hotels in Tinton Falls.

Mr. Gasiorowski again said he did not know the name of the hotel but would be happy to provide it.

Councilman DuPont again said he wanted to clarify who Mr. Gasiorowski was representing and who was funding the litigation. He added that it had taken some time for him to provide the information and he thought it was important to hear it from Mr. Gasiorowski rather than from the press.

Mr. Gasiorowski said he would help as much as he could and stated that the objector was Stephen Mitchell and said he had identified the corporate entity.

Mayor Menna summarized that he understood the objector was Stephen Mitchell and the interested party was the hotel entity that Mr. Gasiorowski was being paid by.

Mr. Gasiorowski noted that when they had gone before the Zoning Board, Board Attorney Kennedy had raised the point that the name of the entity that was funding the objection should be disclosed so it could be determined if there was a conflict. He said he had agreed and provided the information.

Mr. Gasiorowski continued with his statement and said the matter before the Council was unique in that when the matter was voted upon whether affirmatively or negatively, the Council will be able to determine exactly what would occur as a result of the vote. He said the Mayor had stated that the result would be a reduction in the permitted height in the zone but said he believed, in reality, that was incorrect and that the effect of the ordinance would be to increase the permitted height of the building located on this property.

He said when they had appeared before the Planning Board, there was some confusion in regard to the ordinance in that the official Planning Board review letter by the town’s Engineer was incorrect. He said the letter stated that if the property in question were located between Riverside Drive and the river, there would be a height limitation of 50 feet above mean sea level midway between the properties and, inadvertently, the other three roadways being Rector Place, West Front Street and one other were omitted. He said that was corrected and, the way the ordinance presently read, with respect to this property which was a road that ran parallel to the river and was specifically spelled out, one would measure the height midway between the property line at the river and the property line at Rector Place and, at that midpoint, the maximum permitted height would be 50 feet.

He said he believed the history of the matter followed what Mr. Kramer spelled out but thought he had omitted a couple of things that were important. He said the developer of the property known as Red Bank Capital initially had gone before the Zoning Board of Adjustment for an interpretation and the question was whether or not the residential restriction on properties facing on Rector Place included all of those properties which had frontage on Rector Place or only those existing residential structures. He said he believed the resolution passed by the Zoning Board of Adjustment had said they believed the intent of the Governing Body was to only include those properties which presently contained existing residential structures and not the location of the property known as Lot 1, Block 1, which he said currently contained an abandoned gas station. Historically, he continued, the lot and block, as it presently stands, was once made up of two lots and there was at one time on one of the lots that faced Rector Place, a residential structure which had been demolished before the lot was merged into the overall lot now known as Lot 1, Block 1. He said the applicant had sought a bifurcated application and the Zoning Board of Adjustment made a determination that the residential restriction did not apply to the lot. He said that had been

challenged in a Prerogative Writ filed by himself which was still pending. He said he believed at the time the matter had gone before the Governing Body and the Governing Body then passed an ordinance which basically affirmed what the Zoning Board of Adjustment had found and said it was not the intent to include the lot he was discussing with the residential restriction and that a commercial use could be constructed on the lot. He said the ordinance was also being challenged in a Prerogative Writ suit. He said those two ordinances were basically placed on hold pending what happened at this Council meeting.

Attorney O'Hern noted that Mr. Gasiorowski had said the ordinances would be placed on hold and asked if he had meant the law suits would be placed on hold. Mr. Gasiorowski confirmed that he had misspoken and that it was not the ordinances that would be placed on hold but the lawsuits.

At that point in time, Mr. Gasiorowski continued, the applicant came before the Planning Board to seek their approval and he said he had raised issues with regard to what the permitted height would be. He said, ultimately, the town's Engineer, being conscientious, had re-read the ordinance and stated that it would in fact apply to the property as far as how to determine what the maximum permitted height would be. He said he had filed a request for an interpretation before the Zoning Board of Adjustment and, after about four or five hearings, the Planning Board had said that the Zoning Board was the Board that had jurisdiction to decide the question. At that time, he said, the Planning Board application was basically placed on hold which it was referred to the Zoning Board of Adjustment. He said there were then approximately four hearings before the Zoning Board of Adjustment and he had been the mover in the matter and he had presented testimony from his planner Gordon Gemma and possibly another individual who had prepared a sketch that showed how the ordinance would impact the subject property.

He said he also disagreed with Mr. Kramer when he had said that the Zoning Board of Adjustment had asked for clarification. He said they had made a decision that the subject property, pursuant to the ordinance which was in existence at the time, would be governed by that ordinance and the applicant would have to come to the Zoning Board of Adjustment for site plan approval. He said he thought that if they needed a variance for height, it would be a D1 or a use variance and when they did that, both the site plan and the use variance would have to be before the Zoning Board of Adjustment. He said he would then fast forward to the present and noted that the Governing Body now had before it three ordinances which, if passed, would allow the proposed construction of the hotel as it was placed before the Planning Board. In reality, he continued, they were not talking about that particular piece of property having a permitted height of 140 feet but of 50 feet. He said if the ordinances were passed, that height restriction would rise from 50 feet to 75 feet. He said he had brought with him several of the exhibits from the Planning & Zoning Office which had been marked before both the Planning Board and Zoning Board of Adjustment. He said he thought they would be helpful to the Council.

Mr. Gasiorowski said he had been doing this for a long time and recognized the fact that the members of the Governing Body had both the ability and the responsibility of passing ordinances which were applied by both the Zoning Board and the Planning Board. He noted that the Council had the ability to determine that they thought the height of the building should be 75 feet and noted he hoped to convince them otherwise. He said he thought they should see before them the impact or effect of what could and would happen on the property if they passed the ordinances.

Attorney O'Hern said he appreciated Mr. Gasiorowski's comments and said he wanted to make a couple of points of clarification before he proceeded. He noted that Mr. Gasiorowski had indicated that the matter had ended up in front of the Governing Body because of the interpretation issue and, as Mr. Gasiorowski has noted there were four hearings before the Planning Board or Zoning Board just trying to figure out what that height ordinance meant. He said, even though they had interpreted it the way Mr. Gasiorowski had said they interpreted it, there had been a tremendous struggle, it had been very confusing and he thought there had been a lot of internal struggle about how to interpret it. In the aftermath of that, he continued, they sent a letter to the Governing Body asking them to clarify the ordinance. He said he wanted it noted for the record that the Governing Body had received a formal letter from the Zoning Board asking the Governing Body to take a look at the matter.

Mr. Gasiorowski thanked Attorney O'Hern for the comment and said he had not seen the letter.

Mayor Menna said it had been forwarded by Zoning Board Attorney Kennedy in conjunction with the Board passing the resolution and stating that they found it confusing and asked the Governing Body to clarify it.

Mr. Gasiorowski said he thought the Board was within their rights to do that and said he was not faulting Mr. Kennedy for doing anything improperly. He again noted he had not seen the letter. He said he was attending this meeting to explain to the Council why he thought the passing of this ordinance would be a mistake.

Councilman DuPont said he wanted to express concern about the pictures that Mr. Gasiorowski had said he was planning on showing and said he didn't see how they would be relevant noting that there was no application before the Council. He added that there was no current application filed. He said whatever Mr. Gasiorowski planned on showing would not be relevant to their consideration. He said the Council's consideration should be based on his arguments and on Mr. Kramer's expert opinion. He welcomed Mr. Gasiorowski to differ on point of view but said, in respect to pictures, he again said he felt they would not be relevant.

Mayor Menna suggested Mr. Gasiorowski could present testimony from his planner rather than going through all of the exhibits that had been presented before the Planning and Zoning boards.

Mr. Gasiorowski said there were a total of five exhibits.

Councilman DuPont again challenged the relevance of the exhibits and noted that Borough Planner Kramer had not referred to any pictures or buildings but had referred to the Master Plan and a clarification of the definition of the height. He said Mr. Gasiorowski was differing with respect to the height opinion and compliance with the Master Plan and said he knew that he had brought a competent expert witness with a great reputation and suggested he let that person make the presentation.

Attorney O'Hern said the focus of the ordinances was to affect the entire WD district and was not focusing on just one property. He added that the problems with the property that had arisen with the interpretations had led to where the Council was now but said Council DuPont was making that point that the ordinances were not focusing on that property but were to be applied to the entire zone.

Mr. Gasiorowski disagreed stating that he believed the ordinance was focused on one property.

Attorney O'Hern noted that that was Mr. Gasiorowski's opinion.

Mr. Gasiorowski said the plan submitted by Red Bank Capital was still a pending application.

Mayor Menna asked Mr. Gasiorowski to clarify why he thought it was a pending application.

Mr. Gasiorowski said that Red Bank Capital had not withdrawn the application.

Mayor Menna said the Planning Board had administratively dismissed the application over a month and a half ago and said there was no pending application.

Mr. Gasiorowski said he had not seen that.

Mayor Menna said if he reviewed the file, he would find a resolution adopted by the Planning Board that administratively dismissed it.

Mr. Gasiorowski said he would assume for the sake argument that the Council would not let him refer to the exhibits he had brought but he wanted to identify them for the record. He said the Council did not have to admit or consider them but he wanted them on the record in case he appealed.

Councilman DuPont again noted that he did not think they were relevant.

Mayor Menna said he also did not think they were relevant but said he would turn the matter over to Attorney O'Hern.

Councilman DuPont said he strongly objected to the consideration of the pictures.

Attorney O'Hern said he agreed with the Mayor and said the Governing Body would like to hear rebuttal testimony to what Mr. Kramer had testified to because that was what the Governing Body was relying upon. He said Mr. Gasiorowski was focusing on one piece of property but that was not what was before the Governing Body. He said he would rather they didn't spend time looking at pictures of a particular property and suggested they should focus on comments from his planner.

Mr. Gasiorowski said he did not want to introduce them, he wanted to mark them for identification in case he took an appeal to the Superior Court they would be identified.

Councilman DuPont said they would not need to be marked or exhibited. He noted that the matter was with the Superior Court now and the items were part of the Planning Board application.

Mayor Menna said they would stipulate that the exhibits from the Planning Board were what he was making reference to.

Councilman DuPont said he didn't think they should stipulate to anything and said the pictures he was presenting had no relevancy whatsoever to the matter they were considering at this meeting. He expressed concern that if they stipulated to the exhibits, Mr. Gasiorowski would try to use it to his advantage with the press and to the advantage of his client which was identified as a Tinton Falls business competitor of the original applicant. He clarified that Mr. Gasiorowski was identifying his client as Mr. Mitchell but said all of the funding was going through a hotel that was a business objector. He said there were quality experts in attendance and he would love to hear from them.

Mr. Gasiorowski asked if he would cross examine Mr. Kramer.

Mayor Menna said that he could.

Attorney O'Hern said that would be more helpful to the Governing Body.

Mr. Gasiorowski again said he wanted to mark the exhibits for identification.

Attorney O'Hern said the cross examination of Mr. Kramer should be limited to his testimony and noted that his report had not focused on that specific piece of property.

Councilman DuPont said Mr. Kramer had not testified to or looked at any of the pictures.

Mr. Gasiorowski asked if he could use the photographs to cross examine Mr. Kramer.

Both Councilman DuPont and Mayor Menna noted that Mr. Kramer had not testified to any of the pictures.

Mr. Gasiorowski said the Council was denying him a basic right.

Councilman DuPont disagreed that it was a basic right but said that it was evidence that had not been presented nor testified to by Mr. Kramer. He suggested Mr. Gasiorowski ask Mr. Kramer if he had used any of the photographs for his report.

Attorney O'Hern said the problem was that Mr. Gasiorowski was treating the matter as if it was an application before one of the Boards for a specific piece of property. He said these were global zoning changes that were being made to the Waterfront Development District as a result of problems with the interpretations of some of the ordinances in connection with that property. He said he didn't want to waste the Governing Body's time by spending a lot of time on what was really tantamount to a Planning Board/Zoning Board type of application. He said the focus needed to be on the planning issues and the considerations and recommendations made by Mr. Kramer.

Mr. Gasiorowski noted that this was a public hearing.

Mayor Menna noted that substantial due process was being afforded to Mr. Gasiorowski to cross examine Mr. Kramer and to present whatever testimony he wanted.

Mr. Gasiorowski told Mr. Kramer that he had read his report of June 21, 2012 and had listened to his testimony. He asked Mr. Kramer to confirm that he had been present when Mr. Gasiorowski had spoken earlier in the meeting.

Mr. Kramer said that he was.

Mr. Gasiorowski said when he had spoken he had supplemented some of Mr. Kramer's comments with regard to the chronology and asked if he agreed or disagreed his supplementation of the record.

Attorney O'Hern said he objected to the question and asked Mr. Kramer if he understood the question noting that a lot of things had been said.

Mr. Gasiorowski said he was referring to the chronology that Mr. Kramer had put forth and his own supplementation of that chronology.

Mr. Kramer asked which particular item he had supplemented in regard to the chronology.

Mr. Gasiorowski said, for example, after the Zoning Board of Adjustment had made its initial determination that Lot 1, Block 1 was not restricted to the residential use, he said he had filed a prerogative writ challenging that and asked Mr. Kramer to confirm that.

Attorney O'Hern said that he was aware the Mr. Gasiorowski had filed a prerogative writ but didn't see what relevance it had. He said, in an effort to move things along, he asked him to focus on Mr. Kramer's report. He said Mr. Kramer would not be privy to the procedural history of the events before the Board and before the courts.

Mr. Gasiorowski asked Mr. Kramer if, prior to his report of June 21, 2012, he had had occasion to review the review letters prepared by his colleague and presented to both the Planning Board as well as the Zoning Board of Adjustment as applicable to the WD zone on Rector Place and, more specifically, Lot 1, Block 1.

Mr. Kramer said he had not reviewed those letters.

He asked Mr. Kramer if, prior to preparing his report, had he reviewed the ordinance in question.

Mr. Kramer asked if he meant prior to the June 21 letter.

Mr. Gasiorowski confirmed that that was what he was asking.

Mr. Kramer said he had reviewed the ordinance that was in place in regard to the WD zone.

Mr. Gasiorowski said that particular ordinance had referred to the implementation of a height restriction for properties located between roadways running parallel to the Navesink River and asked Mr. Kramer if that was correct.

Mr. Kramer confirmed that it had a section that set a standard that was in relation to the roads parallel to the river.

Mr. Gasiorowski asked Mr. Kramer if he recalled the names of the roadways.

Mr. Kramer said they appeared in ordinance 2012-17 because there was a strikethrough showing that particular section as being deleted.

Mr. Gasiorowski said he believed the roadways were Riverside Place, West Front Street, Rector Place and perhaps one other roadway.

Mr. Kramer said it was Shrewsbury Avenue, Rector Place, Riverside Avenue and Front Street.

Mr. Gasiorowski asked Mr. Kramer if he had had occasion to read the resolution passed by the Zoning Board of Adjustment with regard to the application that was before it filed by Red Bank Capital.

Mr. Kramer said he did not.

Mr. Gasiorowski asked Mr. Kramer if he had not read the resolution was his reliance solely on the letter from Mr. Kennedy calling for clarification.

Mr. Kramer said he had not read the letter and added that he had had discussions with Mr. Kennedy prior to preparing his report.

Mr. Gasiorowski summarized the Mr. Kramer had not read the resolution passed by the Zoning Board and he had not read letter sent by Mr. Kennedy calling for a clarification but had said he had had some discussions with Mr. Kennedy.

Attorney O'Hern noted that the letter was sent by Mr. Kennedy to the Governing Body and the Governing Body, relying on their professionals, asked Mr. Kramer for an opinion. He noted that he did not have the letter in front of him but thought it basically said the ordinance, as currently drafted, was extremely difficult to interpret and they were asking the Governing Body to clarify it.

Mr. Gasiorowski said he understood that the Council had asked the Borough Planner for a report in regard to it and he was asking whether or not Mr. Kramer and read the letter and he said he had not.

Mayor Menna clarified that Mr. Kramer had said he had had discussions with Mr. Kennedy.

Mr. Gasiorowski asked Mr. Kramer if he had prepared the revised ordinances that were known as 2012-15, 2012-16 and 2012-17.

Mr. Kramer said he had not prepared them but said he had consulted with the Board Engineer in their preparation.

Mr. Gasiorowski asked if Mr. Kramer knew who had actually prepared the ordinances.

Mr. Kramer said he did not know who had actually finally drafted the ordinances.

Mr. Gasiorowski asked Mr. Kramer if he would agree, in regard to the section of Rector Place that is crossed by Riverside Place and going in a southerly direction, that all of the structures on the west side of the street were residential in nature except for Lot 1, Block 1.

Mr. Kramer asked for clarification that he was referring to Rector Place from Highway 35 to Front Street and agreed that the properties were residential.

He asked Mr. Kramer what he thought the maximum height of the residential structures was.

Mr. Kramer said he thought they were two to two and a half stories which would place their height at about 35 feet. He also noted that that particular area was the subject of an ordinance at this meeting that would rezone it to a residential designation that would not be subject to WD standards that were proposed as part of the height amendment that was before the Governing Body.

Mr. Gasiorowski asked if it was safe to say that, even if one of the properties was to be demolished and reconstructed, that they would not exceed a height of two and a half stories and/or 35 feet.

Mr. Kramer said he would have to check the specifics of the ordinance in order to answer.

With regard to the property he was concerned with which was Lot 1, Block 1, Mr. Gasiorowski continued, he asked if Mr. Kramer had made a determination regarding what the maximum permitted elevation would be.

Mr. Kramer said he had not.

Mr. Gasiorowski said Mr. Kramer could not really opine on whether or not the property, if built out, would be compatible in height with the residential structures located on the same side of the street.

He said the standard that the Master Plan recommended for the WD district was compatibility with the adjacent areas of downtown and the mixed use neighborhoods. He said to determine what compatibility meant, he looked at those areas of the WD district that had development and also adjacent areas of downtown and he said there was a variation of height within that area. He said, in the letter he sent to the Borough on June 21, he had opined that there was a variation but that the number of buildings that were more than five or six stories appeared to be few.

Mr. Gasiorowski asked if Mr. Kramer would agree that Lot 1, Block 1 was not located in the downtown area of Red Bank.

Mr. Kramer said Lot 1, Block 1 was in the WD district and the recommendation of the Master Plan was that consideration be given to compatibility to adjacent areas of downtown and mixed use neighborhoods. He cited various buildings in adjacent areas that were three, five and seven stories high.

Mayor Menna asked Mr. Gasiorowski to define and clarify what he meant by "downtown" adding that he wasn't sure if he meant the Monmouth Street corridor, the core business district, the Shrewsbury Avenue business district or the train station district, which were all downtowns.

Mr. Gasiorowski said Mr. Kramer was reading from the Master Plan and was opining that the subject property was in a downtown area and he was asking Mr. Kramer if he believed that Lot 1, Block 1 could be categorized as being in a downtown area.

Mr. Kramer said he had stated that it was in the WD district and said Mr. Gasiorowski was correct in saying that he was looking at the Master Plan and that the standard that the Master Plan recommends for the WD district was for compatibility with adjacent areas of downtown and mixed use.

Mr. Gasiorowski asked Mr. Kramer what was located immediately north of the subject property.

Mr. Kramer asked which subject property he was referring to.

Mr. Gasiorowski said he was referring to Lot 1, Block 1.

Attorney O'Hern said he wanted to clarify for the record that, while Mr. Gasiorowski kept referring to a specific lot as the "subject property," the ordinances being discussed did not focus on any particular property.

Mr. Gasiorowski asked Mr. Kramer if the three ordinances that were either prepared or supervised by him would be applicable to Lot 1, Block 1.

Mr. Kramer said the WD zone designation of Lot 1, Block 1 would not be changed by the ordinances before the Council. He said the change would be to the height limitation of the WD district and Lot 1, Block 1 would stay within the WD district.

Mr. Gasiorowski asked what the maximum height permitted would be under the existing ordinance for Lot 1, Block 1.

Mr. Kramer said he did not know the answer to that.

Mr. Gasiorowski asked if the Zoning Board of Adjustment had said in their interpretation that it would be 50 feet.

Attorney O'Hern said that interpretation would speak for itself. He also said he wanted to point out for the record that there had been a request from the applicant for an interpretation of the interpretation.

Mr. Gasiorowski asked if there was another pending application before the Zoning Board.

Attorney O'Hern said he believed it had been withdrawn.

Mayor Menna confirmed that there was no application pending. He said the matter was before the Council at the request of the Zoning Board of Adjustment to shed some light on a rather confusing ordinance.

Mr. Gasiorowski said the matter was before the Council because of a request made by the Zoning Board of Adjustment and, in response to that request, Mr. Kramer had prepared a new ordinance.

Attorney O'Hern clarified that he had prepared a report making recommendations to the Governing Body for proposed changes to WD zone to clarify ambiguities with the existing ordinance.

Mr. Gasiorowski asked Mr. Kramer if he had ever read the existing ordinance and attempt to apply it to Lot 1, Block 1 to determine what the permitted height would be.

Attorney O'Hern said they wanted to give him as much leeway as possible but the questions Mr. Gasiorowski was asking were not what Mr. Kramer was retained for. He again expressed concern that Mr. Gasiorowski was focusing on one property and said Mr. Kramer was not retained to give the Governing Body an opinion or recommendation on that property. He said his focus was on the entire WD zone and asked Mr. Gasiorowski to structure his questions in that way. He said if Mr. Gasiorowski was going to continue to focus on one property, they would have to end the questioning.

Councilman DuPont suggested Mr. Gasiorowski should let the expert witness he had brought to the meeting testify to his opinion.

Mr. Gasiorowski said he felt the Council should let him present his case.

Councilman DuPont said this wasn't a case.

Mayor Menna asked Mr. Gasiorowski to continue.

Mr. Gasiorowski asked that the record to reflect that he felt Councilman DuPont had been argumentative.

Mayor Menna said he did not agree and said he felt the Councilman DuPont had asked questions.

Councilman DuPont said he was there to protect the neighborhoods and businesses of Red Bank and said Mr. Gasiorowski was there to represent a business objector to prevent the growth of Red Bank.

Attorney O'Hern said he wanted to recommend that Mr. Gasiorowski proceed by focusing on the substance of Mr. Kramer's report. He said Mr. Kramer was not retained to comment on a specific property and he was not prepared to offer an opinion on that. He also noted that the Governing Body was not acting on that property. He said that would be a matter for the Planning Board or Zoning Board.

Mr. Gasiorowski said that Mr. Kramer had indicated earlier that he was either the author or had supervised the preparation of the three zoning ordinances.

Mr. Kramer said he had provided input into the preparation of the ordinances and said the input was the letter he had submitted to the Borough.

Mr. Gasiorowski asked who had actually prepared the documents.

Mr. Kramer said he did not know who had actually prepared the written draft of the ordinances that were introduced. He said the input that he had provided was to the Borough and the Borough Engineer.

Mr. Gasiorowski asked Mr. Kramer if, as the Planner, when he provided the input had he given consideration to each and every parcel of land that would be subject to the constraints or regulations provided by this ordinance.

Mr. Kramer asked Mr. Gasiorowski what he meant by consideration to each and every parcel. He said he had given consideration to the zoned district which is typically what it done as part of the planning exercise.

Mr. Gasiorowski asked if him if he had given any consideration at all to what impact the new ordinance would have upon the permitted elevation on Lot 1, Block 1.

Mayor Menna noted that Mr. Gasiorowski was once again asking specifically about Lot 1, Block 1 and asked Mr. Gasiorowski to move on to the next question.

Attorney O'Hern again told Mr. Gasiorowski that that could not be the focus of Mr. Kramer's testimony. He again told Mr. Gasiorowski that if he was going to focus on that one particular property, they were going to end the questioning because that was not the matter before the Governing Body. He added that it was not relevant and said the Governing Body would welcome testimony that spoke to the overall ordinances.

Mr. Gasiorowski questioned that since the parcel was governed by the new ordinance.

Attorney O'Hern noted that there were a lot of parcels governed by the new ordinance.

Mr. Gasiorowski said he was only interested in one of them.

Councilman DuPont said the Council members were concerned with everything rather than just the parcel that he was representing.

Mr. Gasiorowski asked Councilman DuPont if he had no interest in the matter.

Councilman DuPont said he did not and added that his interest was in protecting the neighborhoods of Red Bank as well as the business district of Red Bank. He also noted that they had a planner that they paid a lot of money to that had indicated that the ordinance not only reduced height, but also density and size. He also noted the planner had said that it was consistent with the Master Plan and protected neighborhoods. He criticized Mr. Gasiorowski's complaints of the ordinance as only representing the interests of a business objector that had a business that may be affected in Tinton Falls. He again suggested that Mr. Gasiorowski present the testimony of the planner that he had brought to the meeting.

Mr. Gasiorowski said he felt the ordinance would affect the residential home owners immediately south of the zone.

Mayor Menna noted that the hearing had been going on for about an hour and asked Mr. Gasiorowski to proceed with relevant questions.

Mr. Gasiorowski said it would be determined at a later date what was or was not relevant.

Mayor Menna noted that everything was on the record and said he knew Mr. Gasiorowski had already filed two lawsuits. He said Mr. Gasiorowski's objections had been duly noted and again asked him to continue.

Mr. Gasiorowski said he had no more questions of Mr. Kramer, in light of the manner he was being restricted in examining him.

Attorney O'Hern said he disagreed that Mr. Gasiorowski was being restricted and said, as the Mayor had noted, he had been given a lot of leeway and a lot of time. He said once again the focus was not about one property and if he continued to focus on one property, the questioning would end.

Mr. Gasiorowski said he wanted to make one more comment for the record and then he would move on. He said every time a parcel of land was located in a district that was being rezoned, where the regulations were being impacted, then that particular parcel of land was the subject matter of the zoning ordinance. He said he agreed that the ordinance may, in fact, affect other property owners and other parcels of land. He said it those people did not object, that was fine and he was not attending to argue their case. He said he was arguing in regard to how the ordinance applied to a specific piece of property.

Mr. Gasiorowski said he would like to all Gordon Gemma to give testimony.

Mayor Menna noted the Mr. Gemma had previously been certified as a professional Planner and said he was well renowned in the State. He said a member of the Governing Body has said he was one of the premiere experts in New Jersey. He said the Council would accept his qualifications as a Planner.

Mr. Gemma thanked the Mayor.

Mr. Gasiorowski asked Mr. Gemma to confirm that he had been retained to give testimony concerning this hearing.

Mr. Gemma said that he was.

He asked Mr. Gemma to confirm that he was also the expert retained to give testimony before both the Planning Board and the Zoning Board of Adjustment.

Mr. Gemma said that he was.

Mr. Gasiorowski asked Mr. Gemma if he had listened to the comments of the various members of the Board opining that the earlier ordinance was confusing and that the purpose of the new ordinance was to unconfused that.

Mr. Gemma confirmed that he had.

Mr. Gasiorowski asked if Mr. Gemma had read the earlier ordinance.

He said that he had.

Mr. Gasiorowski asked Mr. Gemma if he had had any difficulty in applying it the property known as Lot 1, Block 1.

Mr. Gemma said he had applied it as he thought it should be.

Mr. Gasiorowski asked what his determination had been.

Mr. Gemma said his determination was consistent with that of the Zoning Board that it applied.

Mr. Gasiorowski asked Mr. Gemma what, in his opinion, would be the permitted height elevation pursuant to that ordinance.

Mr. Gemma said it would be 50 feet.

Mr. Gasiorowski asked, as a result of the ordinance, if it was in fact passed, as applied to Lot 1, Block 1, if the 50 foot height restriction would be lowered or increased.

Mr. Gemma said it would be increased to 75 feet.

Mr. Gasiorowski asked Mr. Gemma if he recalled what the proposed height of the proposed hotel was under the earlier misinterpretation that 75 feet would be permitted.

Mr. Gemma said he thought the proposed height in the application was 81 or 84 feet and said he did not recall which it was.

Mr. Gasiorowski asked Mr. Gemma if he agreed with Mr. Kramer's assessment as set forth on the first page of his letter dated June 21 as to the recommendation of the 1995 Master Plan that height limits for the WD zone should be compatible with adjacent areas of downtown and mixed use neighborhoods.

Mr. Gemma said he agreed with that.

Mr. Gasiorowski asked if he also agreed with Mr. Kramer's opinion as set forth on page two of that report that the planning intent of the Borough as demonstrated in the reexamination report as to Rector Place was to conserve the residential character of the area rather than altering it with a mixed use as emphasized by the Land Use Plan of the WD district.

Mr. Gemma said he once again agreed with Mr. Kramer.

Mr. Gasiorowski asked Mr. Gemma if he had been present before the Zoning Board when it made its determination.

Mr. Gemma said that he was.

Attorney O'Hern noted that there were several interpretations and asked Mr. Gasiorowski to clarify for the record which interpretation he was referring to.

Mr. Gasiorowski said Mr. Gemma had not testified at the first hearing so he would state for the record that the Zoning Board of Adjustment hearing he was referring to was the most recent interpretation as it had been referred to the Zoning Board by the Planning Board. He said he believed the decision was from some time in 2012.

Mayor Menna said he interpreted the question as regarding when Mr. Gasiorowski had requested an interpretation.

Mr. Gasiorowski asked Mr. Gemma, given the intent of the Master Plan as identified by Mr. Kramer, if it was his opinion regarding Ordinance 2012-15 wherein certain properties would be moved into the R-B2 zone, that it was consistent with the intent of that Master Plan.

Mr. Gemma said 2012-15 was consistent.

Mr. Gasiorowski said he was posing the same question regarding 2012-16.

Mr. Gemma said he believed that was also consistent with the intent and purpose of the Borough's Master Plan.

Mr. Gasiorowski said, in regard to Ordinance 2012-17, that Mr. Kramer had proposed that the minimum height that would be permitted throughout the zone as applied to those properties located on the west side of Rector Place would be 75 feet.

Mr. Gemma said he believe that would not be the minimum but the maximum.

Mayor Menna confirmed it would be the maximum height.

Mr. Gasiorowski said he would like to digress for one second and said one thing that was always confusing before both the Planning Board and the Zoning Board of Adjustment was the fact that the height referred to did not refer to the height from the existing topography or grade of the property but rather it referred to some other datum which he thought was taking a measurement from the mean high water line of the Navesink River. He asked Mr. Gemma to confirm that.

Mr. Gemma said that was correct.

Mr. Gasiorowski said it was very confusing.

Councilman DuPont noted that the ordinances before the Council would clarify that.

Mayor Menna agreed saying that was what the Council was trying to do.

Mr. Gemma said he understood that the height would still be measured from the datum of the mean high water line.

Engineer Ballard confirmed that that was accurate. She said the only properties that would be affected by a change would be those in the RB2 zone.

Mr. Gasiorowski asked Mr. Gemma to confirm that the residential properties would be measured from the existing grade level.

Mr. Gemma said he believed that was correct.

Mr. Gasiorowski asked about the property known as Lot 1, Block 1.

Mr. Gemma said it was in the WD Zone and that the way it would be measured had not changed.

Mr. Gasiorowski asked Engineer Ballard if that was the case.

Ms. Ballard said the sea level datum would stay the same.

Mr. Gasiorowski asked her to confirm that, under the new ordinance, the property would be measured in the same way as it had been previously.

Ms. Ballard said that was not the case because there had been three different heights in the previous ordinance. She added that it just happened that the same datum was being used to define zero but that all of the heights were now uniform.

Mr. Gasiorowski asked her to confirm that the starting point for the measurement would remain the same. She said the datum of mean sea level in the WD was the previous measurement and it was the measurement now.

Councilman DuPont said he thought it would seem that the ordinances even clarified Mr. Gasiorowski's interpretation.

Mr. Gasiorowski said he did not agree with that and added that he had understood it clear as a bell when they were going through the process.

Mr. Gasiorowski asked Mr. Gemma, given the intent of the Master Plan as identified by Mr. Kramer, in his opinion, if proposed ordinance 2012-17, wherein the height limitations throughout the entire WD district was limited to 75 feet, was consistent with that intent of that Master Plan.

Mr. Gemma said this was where he would have to respectfully disagree with the Mr. Kramer because the ordinance, as originally adopted, said in certain areas it could be lower, such as 50 feet, other areas it could be 75 feet and other areas could be 140 feet. He said he thought that was more consistent with the Master Plan because the Master Plan pretty much said the intent is to limit height in certain areas and allow it to increase in others. He noted that Rector Place had property heights that were relatively smaller and there was the issue of preserving the residential nature. He pointed out that the properties across the streets including the ice cream parlor and gas station were also fairly small. He said further along Front Street it got a little higher which he thought was consistent with the intent. He said one would have to look at the different neighborhoods and what the Borough was trying to achieve in the original ordinance. He said it might call for language to make it clearer. He also noted that he thought the uniform height allowance of 75 feet overall lead to one other issue that hadn't been addressed which was that they would now be making some uses non-conforming structures. He said he believed that anyone who wished to expand a non-conforming structure would have to go for a C variance. In this instance, he continued, if a structure went more than ten percent above the height it might require a D type variance for any type of expansion. He said they may have actually impacted adversely some of the taller buildings in the WD zone by trying to create uniformity and something easy to interpret. He said he thought the Council should consider that before they made any adoption because that may have a bigger impediment on moving things forward. He asked them to look at what the Master Plan was trying to achieve by having buildings at varying heights.

Mr. Gasiorowski asked Mr. Gemma to focus on the property he represented which was known as Lot 1, Block 1 and asked him to confirm that the maximum permitted height would go from 50 feet to 75 feet.

Mr. Gemma said, under the proposed ordinance, that property would have the allowance increased up to 75 feet and he said the concern he had for that was that the setbacks had not been changed. He said that would mean there could be a 75 foot building ten feet away from a single family house as permitted in the zone.

Mr. Gasiorowski asked Mr. Gemma to confirm that the 75 foot height could be increased without the necessity of the applicant going before the Zoning Board for a use variance.

Mr. Gemma said that was correct noting that under the ordinance and under the Municipal Land Use Law one could add another 7.4 feet and would still be within a C variance.

Mr. Gasiorowski asked Mr. Gemma to confirm that, under the proposed ordinance, there could be a building constructed up to 82 feet in height that would not require a use variance.

Mr. Gemma confirmed that that was the case.

Mr. Gasiorowski asked Mr. Gemma if he thought that that was consistent with what the Master Plan had set forth years ago in discussing how the WD zone was going to be treated.

Mr. Gemma said he did not. He said if one looked at what the Master Plan had said about putting height in context and what had been said in 2009 about preserving the residential character Rector Place, he did not think that would be consistent.

Mr. Gasiorowski said he had no further questions for Mr. Gemma, but was requesting for the record that he be allowed to mark exhibits for identification only so at a later date, if the matter should go to court, they would know what those exhibits were that he had attempted to present.

Attorney O'Hern said he did not see a need to mark the exhibits. He said he thought the Governing Body had heard enough on the Planning issues. He noted that the focus was not on a particular property and, as Mayor Menna had alluded to, Mr. Gasiorowski already had two lawsuits pending and they anticipated a third as a result of whatever action they may take on the ordinances before them. He said the items will be part of the record in that case because they were already part of the record.

Mayor Menna said he thought Mr. Gemma's testimony was very educational and enlightening and he felt his analysis was appreciated by the Council.

Mr. Gasiorowski said, if he would not be allowed to mark the exhibits, he would like to submit that the exhibits he had wanted to introduce were 1) an aerial photograph of the area, 2) a copy of the site plan showing the lot coverage, 3) the front elevation of a building situated on the lot that was 81 feet in height and 4) the rear elevation of the same.

Councilman DuPont expressed concerns about stipulating to the items.

Mayor Menna said they would not be stipulating to them and said Mr. Gasiorowski was just referencing what he was referring to. He agreed that the items were already part of the record in the prerogative writ lawsuits.

Patricia Borelli—75 Rector Place—said she lived one home away from Lot 1, Block 1 and noted that the homes on the water that were part of the ordinance were odd numbered addresses. She said the property at Lot 1, Block 1 that the gentleman had been referring to was actually a Riverside Avenue property and had absolutely nothing to do with Rector Place except for a small driveway that leads onto Rector Place. She said she would like to see the Rector Place homes protected from commercial development of the water side. She said, according to the Zoning Map, the property reads as 80 Rector Place. She said it was not and should not have ever been a part of Rector Place in the first place. She said she believed Red Bank deserved a decent, affordable hotel but expressed concern about an 75 to 85 foot high building being built that would obstruct their view and possibly affect the future sale of their property.

Larry Cohen—Managing Partner of Red Bank Capital—asked if he could speak without Counsel.

Mayor Menna noted that it was a public meeting and that Mr. Cohen had an attorney and was speaking without his attorney.

Mr. Cohen said he was the owner of Lot 1, Block 1 and asked if he could ask questions of the speakers. Mayor Menna said he could not but he was free to give any information he wished. Mr. Cohen said the only information he wished to give was that he thought having a uniform height throughout a uniform zone would lead to clarity. He noted that their application had been withdrawn so there was no pending application before the Planning Board.

Mayor Menna asked if there was anyone else who would like to speak.

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

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Murphy

NAYS: None

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

Mayor Menna noted that the Council had considered the comments of Mr. Gasiorowski, Mr. Gemma, Mr. Kramer, Ms. Borelli and Mr. Cohen. He noted no other members of the public testified. He said the Council had received the report from Borough Planner Kramer and had had the proposed ordinance revisions to review. Mayor Menna called for any discussion among the Council members.

Councilman DuPont said he felt there had been a lot of discussion and said that the work done by the Engineering firm had clarified the issues. He said he knew it was a confusing issue but he felt the benefits outweighed the detriments. He said, according to the testimony of Mr. Gemma and Mr. Kramer ordinances 2012-15 and 2012-16 were consistent with the Master Plan. In regard to 2012-17, he continued, Mr. Gemma had said that it may have an impact while Mr. Kramer didn't seem to have any opinion on the matter. Councilman DuPont said when he had initially gone through the arguments, it looked like, based on Mr. Kramer's testimony and Mr. Gemma's, that they were consistent with preserving the neighborhood which he said he felt was very important. He said it also cleared up the height definition which he said was also apparently consistent with the Master Plan. Based on the testimony, he continued, it would reduce the height, the density and the size contrary to the arguments that Mr. Gasiorowski presented. He said he thought the ordinances would do much for the nearby neighbors and would also promote the Borough's downtown business district. He said he was also of the opinion that the Borough needed another hotel that was more affordable.

Councilman DuPont offered a motion to adopt Ordinance No. 2012-15 on final reading, seconded by Councilman Murphy.

Mayor Menna noted that there had been a lot of discussion on the matter and also noted that he was the only current member of the Council that was also a member when the various changes were made. He said the intent was to protect the residential character of those lots on Rector Place which he said he believed they had accomplished. He noted that when they had started the process, many of the Rector Place properties were filled with single room occupancies and boarding houses, many of which were illegally converted. He said they had cleared a lot of that with a very aggressive code enforcement office and then they changed the Zoning Ordinance and said perhaps these ordinances were part of the continuing evolution of Rector Place. He said he thought both ordinances 2012-15 and 2012-16, as Mr. Gemma, Mr. Kramer and Councilman DuPont had said, were consistent with the intent and purpose of the Master Plan. He said 2012-17, in his opinion, was in conformity with the Master Plan because it would bring Red Bank into another age where, looking at the Waterfront Development Plan and development patterns, the Borough should have a uniformity of streetscape in that district. He said he thought this would accomplish that. He said the Zoning Board and the Zoning Board Counsel had made it rather clear that while the Zoning Board will accept any application statutorily before it for an interpretation, the various interpretations and reviews have caused some confusion and difficulty for the Board as indicated by very learned Planners having different spins on the issue and two pending lawsuits with possibly a third to follow. He said he thought they were doing the right thing and were moving ahead.

Mayor Menna called for a vote on Ordinance 2012-15.

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Murphy

NAYS: None

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

Councilman Murphy offered a motion to adopt Ordinance No. 2012-16 on final reading, seconded by Councilwoman Lewis.

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Murphy

NAYS: None

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

Councilman DuPont offered a motion to adopt Ordinance No. 2012-17 on final reading, seconded by Councilman Murphy.

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Murphy

NAYS: None

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

RESOLUTIONS

By Consent Agenda:

- 12-144 A RESOLUTION OPPOSING THE PROPOSED "COMMUTER TAX" ON NEW JERSEY RESIDENTS WHO WORK IN NEW YORK CITY.
- 12-145 A RESOLUTION AUTHORIZING THE RED BANK RIVERCENTER TO PROVIDE VALET PARKING SERVICES ON BROAD STREET ON A TRIAL BASIS.
- 12-146 A RESOLUTION RELEASING PERFORMANCE GUARANTEE REGARDING RIVERSIDE HOLDINGS, LLC, 41-45 RIVERSIDE AVENUE, BLOCK 6, LOT 7.02.
- 12-147 A RESOLUTION AUTHORIZING RENEWAL OF PLENARY RETAIL CONSUMPTION LICENSES 2012-2013 (THE MELTING POT).
- 12-148 A RESOLUTION AUTHORIZING LEASE AGREEMENTS WITH FIRE AND FIRST AID COMPANIES FOR STORAGE OF VEHICLES AND EQUIPMENT.
- 12-149 A RESOLUTION AUTHORIZING THE MAYOR AND THE CLERK TO SIGN A GRANT AGREEMENT WITH THE BASEBALL TOMORROW FUND FOR THE PURPOSE OF RENOVATING A YOUTH BASEBALL FIELD IN COUNT BASIE PARK.
- 12-150 A RESOLUTION AUTHORIZING THE TAX COLLECTOR TO CANCEL CERTAIN PROPERTY TAX CREDITS.
- 12-151 A RESOLUTION AUTHORIZING TAX REFUNDS DUE TO OVERPAYMENT OF TAXES.
- 12-152 A RESOLUTION AUTHORIZING TAX REFUND DUE TO EXEMPT STATUS.

- 12-153 A RESOLUTION FOR ADOPTING AN UPDATED PLAN DOCUMENT FOR AN EXISTING EMERGENCY SERVICES VOLUNTEER LENGTH OF SERVICE AWARD PLAN.
- 12-154 A RESOLUTION REGARDING THE BOROUGH OF RED BANK REPORT OF AUDIT FOR THE YEAR ENDED DECEMBER 31, 2011 AND CORRECTIVE ACTION PLAN REQUIRED BY FEDERAL OMB CIRCULAR REFERENCE A-133.
- 12-155 A RESOLUTION AWARDED CONTRACT FOR COUNT BASIE PARK PHASE 3 IMPROVEMENTS.
- 12-157 A RESOLUTION AMENDING RESOLUTION NO. 12-130 AUTHORIZING PLACE-TO-PLACE (EXPANSION OF PREMISE) TRANSFER OF PLENARY RETAIL CONSUMPTION (THEATRE EXCEPTION) LICENSE NO. 1340-37-045-002 (COUNT BASIE THEATRE).

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

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Murphy

NAYS: None

There being four ayes and no nays, the resolutions were declared approved.

- 12-156 A RESOLUTION AUTHORIZING ACCEPTANCE OF PERFORMANCE GUARANTEES AND ESCROW PAYMENTS REGARDING MW RED BANK, LLC (WEST SIDE LOFTS), BLOCK 37, LOT 6.01.

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

ROLL CALL:

AYES: Lewis, Horgan, Murphy

NAYS: None

ABSTAIN: DuPont

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

PAYMENT OF VOUCHERS

- 12-158 Mayor Menna read "A RESOLUTION FOR PAYMENT OF BILLS AMOUNTING TO \$2,112,180.13."

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

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Murphy

NAYS: None

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

PROCLAMATIONS

OLD BUSINESS

NEW BUSINESS

AUDIENCE

Mayor Menna asked if there was anyone who would like to speak.

Cindy Burnham—146 Harrison Avenue—said she was appearing to touch base regarding the Maple Cove Parking Lot.

Mayor Menna said he had read her comments and had reviewed a video clip. He said the Borough of Red Bank was in continuing discussions with representatives of the Department of Environmental Protection regarding the issue of Maple Cove. He said the Borough had asked for a review with any interested parties and noted that, although Ms. Burnham had been given a letter with some sort of advisory opinion, he had to indicate that the advisory opinion, regrettably, was issued without input from the Borough. He said the Borough had sought a meeting with the DEP and was anxiously looking for that meeting to talk about all of the issues and review the matter before a final decision was issued by the DEP. He said they would let her know when a meeting with the DEP would be held.

Ms. Burnham said she understood that the Borough had hired an Environmental Consultant from T&M.

Mayor Menna said that was not correct.

Ms. Burnham said she had heard the person was hired by the Borough to argue the Borough's side against the DEP.

Mayor Menna said he thought the Borough's side could best be articulated by three people who were currently in the Borough's employ which were the Borough Administrator who had long standing knowledge of the matter, the Borough Attorney who was familiar with the legal issues and the Borough Engineer. He said he did not know why the Borough would need to hire anyone else and said he had not signed a voucher for anyone to be hired.

Administrator Sickels offered to clarify and said, to his knowledge, the Borough had not hired any special outside Environmental Engineers. He also said that the only discussions he had had in regard to the property, with the knowledge of the Council, was with the Borough Engineer. He said if she had relied on a staff member to advise her, then he was sure that was appropriate. He said to his knowledge the Borough had not hired anyone from outside. He also noted that there was a report in the Asbury Park Press that the parking pay station at Maple Cove had permit restricted spaces and said he had tested to verify earlier in the day that that was not the case. He said they had also verified with the manufacturer that that pay station was never programmed for that.

Ms. Burnham disagreed saying that it was and she had done it on Thursday.

Mr. Sickels again said he had tested it that day and verified with the manufacturer that it was never programmed for permit spaces. He said the sign at the location was a generic sign made for all of the Borough's parking lots and he had since instructed Mr. Watson to remove that section of the sign that said there were permit spaces there because it was not authorized by the Council. He said they had also spoken with a driver that was parked in one of the spaces that was referenced and he had said he had been using it for a few weeks and had never had a problem.

Ms. Burnham said she appreciated what Mr. Sickels had said but said she was there every day and had made it a point to test that pay station for the three spaces which she said Hovnanian uses for visitors parking. She also asked Mr. Sickels when he had first received a letter from the DEP that stated Maple Cove could only be used parking for park users.

Mr. Sickels said they had received correspondence last August after which he immediately talked to the DEP and consulted with the Borough Engineer. He said they explained to the DEP representative that the parking lot had been used as part of the parking inventory as long as the Borough had owned it and it had never been restricted. He also noted that the Borough had not taken any formal action to establish that as a restricted only lot and whatever information they had to the contrary was in error. He said he thought it had been settled until recent correspondence, the most recent of which he said he received on the previous Thursday, advising that they had issues. He said he had been in consultation with the Borough Engineer and they were putting together their information and seeking a meeting with the DEP.

Ms. Burnham said she understood that the consultant was the one that was putting the information together.

Mr. Sickels said that was incorrect.

Ms. Burnham asked him if he was saying that no environmental consultant had been hired.

Councilman Murphy asked Ms. Burnham where she had heard that.

She said she would not disclose that.

Mr. Sickels again said the Borough had not hired a consultant and had only consulted with the Borough Engineer.

Ms. Burnham said the DEP was withholding funds for the turf project at Count Basie Field.

Councilman Murphy disagreed with that.

Mr. Sickels clarified that the DEP had advised that they want the Borough to put a sign up to restrict the parking and they had said that they may withhold the funds. He said the Borough had challenged that because they didn't understand why because the DEP was failing to recognize the fact that it had been a part of the Borough's parking inventory for well over 20 years.

Mayor Menna said he had a problem with the fact that a bureaucrat or an administrator of a low level division of DEP had made a unilateral decision on a private citizen's complaint without sitting down and discussing it with the Borough and listening to both sides. He also noted that they had said they *may* withhold funding.

Ms. Burnham said the bottom line was that once the Borough put a piece of property on the Green Acres Open Space List, they could not use it for public parking and that it could only be used by park users. She said Council members had forged forward knowing that park users were only supposed to be able to use the parking lot.

Mr. Sickels said when the Borough had repaired the lot that had done it to maintain it as a public parking lot. He noted that it had been part of the parking inventory for over 20 years. At that time, he continued, they had had no direction from the DEP contrary to that. He said, as far as he was concerned, that was what they were preparing for in their meeting with the DEP. He said they would be discussing the issue and presenting them with the Borough's records.

Mayor Menna noted that bureaucrats did make errors, including municipal bureaucrats.

Councilman Murphy asked if the funding for the work done at the parking lot was from the DEP or Green Acres. Mr. Sickels said it was not.

Mayor Menna said it was done as a joint project.

Councilman DuPont asked if the Borough had gotten a copy of the letter that Ms. Burnham had been referring to.

Ms. Burnham said she would rather not share it but said the DEP had sent an email to the Borough Engineer and an Environmental Consultant, both from T&M, telling them that Green Acres payments to the Borough will be held until Maple Cove parking issues were resolved.

Mr. Sickels pointed out that it was a T&M staff member that Ms. Burnham was referring to as the Environmental Consultant.

Ms. Burnham asked Engineer Ballard to shed some light on the issue.

Mayor Menna said Ms. Ballard could not shed light on a document she did not have. He said the problem was the DEP was communicating with Ms. Burnham and not with the Borough. He said he felt if they were going to send letters to her, they should copy the Borough so they could answer them.

Ms. Burnham said everything they sent to her they also sent to the Borough.

Mr. Sickels disagreed.

Councilman DuPont asked Ms. Burnham for the date on the letter she was referring to.

She said the first letter was August 18, 2011.

Councilman DuPont said he was asking about the more recent letter. Mr. Sickels said it was the one that references the consultant.

She said that was dated July 20, 2012 and said she thought the Borough had received one dated July 19, 2012.

Mr. Sickels said he did not have a July 20, 2012 email from the DEP.

Councilman DuPont asked if they could get a copy of the letter by the end of the evening.

Ms. Burnham said she would not feel comfortable doing that. She said Mr. Sickels should have it.

Mr. Sickels said he wanted to state for the record, again, that he did not have a July 20th letter from the DEP.

Ms. Burnham asked if he had a July 19th email.

He said that he did.

She suggested that it contained the same information because they had told her they could not tell her what was going on until they knew he had read it. In essence, she continued, they told her they were going to withhold the funding for the turf field until the Maple Cove parking issues are resolved. She said she didn't know why they were insisting that the public use the ten spaces because in reality the public did not use those ten spaces. She said the rowers use them and Hovnanian uses them.

Mr. Sickels asked what they would do with the ten spaces in the winter when the river was frozen and there are no kayakers.

Councilman DuPont said the real question was if the person who sent Ms. Burnham the July 20th correspondence was the same person that sent Mr. Sickels the email she had been referring to from July 19th.

Ms. Burnham said they were all dealing with the same two people that were involved.

Councilman DuPont asked if the letter that none of them had seen was prepared by the same person that had sent the email to Mr. Sickels requesting additional documentation.

She said that it was.

Mr. Sickels said one of the problems he had was the fact that the DEP was writing to her and not copying the Borough. He added that, in fact, he had not gotten the July 19th email and noted it had been sent to the Engineer.

Ms. Burnham said she did not know what it said and added that she just knew that it was sent on July 19.

Mayor Menna said intelligent State agencies should discuss with other municipal agencies and the grievant at the same table rather than dealing individually and coming up with different explanations.

Ms. Burnham said the basic explanation was the fact that once one put a property on Green Acres only park users would be allowed to use the parking lot. She said she also understood that the Environmental Protection Consultant was going to try to persuade the DEP that the property had been mistakenly listed on Green Acres Open Space.

Mayor Menna said Ms. Burnham knew more about the situation than the Borough officials did.

Councilman Murphy asked Mr. Sickels if the parking lot was park of Green Acres.

Mr. Sickels said there were two parcels at the location with lot 1 and lot 1.01. He said lot 1 had always been a parking lot and they had aerial photographs of it being a parking lot. He said they had issued

permits and it was part of the Borough's parking inventory years ago. He said that continued up until the time that Hovnanian used it for construction as part of a developer's agreement.

Councilman DuPont said the only information he had was from the paper and from Ms. Burnham's testimony, but it appeared to him that they were going to hold up a park that was used by the 12,000 residents of Red Bank over five parking spots. He said it appeared the only way to clarify it would be to do an OPRA request to the DEP to get a copy of a letter that was sent to Ms. Burnham because she wouldn't give the Borough a copy of it.

Mayor Menna said he wanted to clarify Councilman DuPont's statement. He said it was not 12,000 users but more like 30,000 or 40,000 who were kids, their parents and our seniors being held up because of five kayakers.

Ms. Burnham said she didn't think it was that. She said she thought it was that they were tired of Red Bank ramrodding things down their throat. She said the Borough just went ahead and paved the lot, knocked out ten spaces and made it blacktop when it should have been stone.

Councilman Murphy said that was not true.

Ms. Burnham said it had been ridiculously done.

Councilman DuPont suggested the Borough ask the DEP for a copy of the letter.

Mayor Menna said the normal, reasonable and fair way to deal with the issue was not to have a State Agency deal with it piecemeal but to bring the protagonists into one room and exchange information. He said that way everyone is talking from the same set of documents and they could come up with a fair and legal decision.

Ms. Burnham noted it had been going on for over a year.

Mayor Menna said he wasn't upset with Ms. Burnham asking for a clarifying opinion, he was more upset at a State Agency not dealing with the same information to come up with a resolution.

Suzanne Viscomi—23 Arthur Place—noted that the resolution regarding voucher payments had been placed on the table but she had not seen it on the website. She said had thought all documents would be posted on the website.

Borough Clerk Borghi said they had never posted them on the website because they were usually the final resolutions on an agenda and weren't numbered or created until the last minute.

Mayor Menna clarified that Ms. Viscomi was asking about how to get a copy of the run list that constitutes the voucher

Ms. Viscomi noted that with limited paper copies available, she might not have gotten a copy if she hadn't gotten there early. She asked if it would be posted to the website in the near future.

Borough Clerk Borghi said it was up to the Council if they should be posted.

Mayor Menna said it was public information and it could be posted.

John Kalfus—Waverly Place—said he was attending to represent his firm, DLB Associates, and wanted to present a proposal to the Council. He said they were trying to work on a solar energy proposal for the town. He said he had had discussion with Councilman DuPont about a year ago and, unfortunately, could not move the ball forward. He said he now had the opportunity to do that and wanted to find out if that was something the Council and town would be interested in. He said, if so, he would like to build a proposal that they could informally present to the Council for implementation.

Mayor Menna said he wasn't sure what the proposal was, but told Mr. Kalfus if he wanted to send a summary, they would be happy to discuss it and get back to him.

Mr. Kalfus said that was what he was looking for.

Mayor Menna said obviously if it was for a service or procurement, they would have to go out for public bid or do an RFP. He invited Mr. Kalfus to send a summary and they would exchange it with everyone.

No one else appearing, Councilman DuPont offered a motion to close the audience portion of the meeting, seconded by Councilman Murphy.

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Murphy

NAYS: None

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

EXECUTIVE SESSION

12-159 The Attorney read a resolution to adjourn to executive session to discuss litigation and personnel.

Councilman DuPont offered a motion to adjourn to executive session to discuss litigation and personnel, seconded by Councilman Murphy. Minutes to be made public in 180 days.

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Murphy

NAYS: None

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

Councilman DuPont offered a motion to close executive session and adjourn the meeting, seconded by Councilman Murphy.

ROLL CALL:

AYES: Lewis, DuPont, Horgan, Murphy

NAYS: None

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

Respectfully submitted,

Pamela Borghi