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March 17, 2014  
Middletown, PA 17057

The March 17, 2014 meeting of the Middletown Borough Council was called to order at 7:00 p.m. by Council President Christopher R. McNamara.

Following the Pledge of Allegiance, the following Council members answered roll call: John Brubaker, Anne Marino Einhorn, Tom Handley, Benjamin Kapenstein, Robert Louer, Victoria Malone, Christopher R. McNamara, Scott Sites, and Sue Sullivan.

Also present were Mayor James H. Curry III and Borough Secretary Amy Friday.

#### **PUBLIC COMMENT**

##### **Mike Bowman - 100 Wilson Street**

Mr. Bowman commented on the communication and contact between our District Representative John Payne and Mayor Curry. Mr. Bowman announced again those Council members in which he feels should abstain from voting and the conflict of interest it poses.

##### **Jack Still - 37 W. Emaus Street**

Mr. Still presented the March 12, 2014 Edition of the Press and Journal and Community Courier, noting all the advertisements, which he can't understand that.

##### **Diana McGlone - 805 Adelia Street**

Ms. McGlone thanked Councilors Einhorn and Kapenstein for attending the Focus Group on Friday, March 14, 2014, which was hosted by Dewberry along with Commonwealth Economics. She asked that her third ward Councilors Brubaker, Malone, and Sullivan look into figures we spent on Dewberry from 2012 – to current.

Ms. McGlone questioned where the 2012 Audit is.

Ms. McGlone said she had submitted several "right to know" requests in regards to a complaint made by Mr. Bowman in March of 2013 and has not received the police complaint from the Communications Director.

##### **Jenny Miller - 227 West Water Street**

Ms. Miller asked Council to consider donating one of the Christmas trees standing in the square to the Historical Society.

Mr. Shane Mrakovich, owner of Street Stores Wholesale Hardware made a proposal presentation to Council for the purchase or lease of the former Borough maintenance building. His business is looking to expand and the purpose is to relocate his hardware wholesale business and possibly get into retail business. Mr. Mrakovich mentioned this particular building and property is good for him logistically, since it is close to the highways.

Council President McNamara mentioned the former Council transferred that property to the ICDA and the Authority has been told the property is in part of the plan for the train station and PENNDOT is going to procure the property. Council President McNamara suggests Mr. Mrakovich contact Sue Layton, Secretary to the ICDA, and request to be on the agenda for the next Authority meeting.

#### **President's Report**

Council President McNamara reported there has been some confusion from the March 3, 2014 Council meeting in regards to the motion for the water and sewer rate study increase. He stated the motion should have been for advertisement not adoption.

**Councilor Louer made a motion to advertise the water and sewer rate study proposal.  
Councilor Malone seconded.**

Mark Spatz reported the Borough hired HRG in the fall of 2013 to conduct a cost of service study. He presented a more simplified explanation of the study discussing residential monthly usage, monthly rate increase from 2013 to 2014 and the Boroughs obligation to the bond holders and trustee as referred to in the Trust Indenture. Mr. Spatz recommends Council to consult with their solicitor regarding meeting the obligations of the Trust Indenture. Mr. Spatz said it is imperative that Council do take some form of action to move this issue forward as certifications

to the trustee, M & T Bank, which holds the bonding and oversight are overdue. At this time, Mr. Spatz and Council members discussed the proposed rate structure (multi-tier steps), financials, certifications, the effects on businesses, late payments, previous deficit of the water and sewer fund in Middletown, and the Trust Indenture. Council President McNamara stated a copy of the Trust Indenture can be given from the Authority.

**The motion passed by a 7-2 vote, with Councilors Kapenstein and Einhorn dissenting.**

Council President McNamara mentioned the fire department's \$250,000 grant. He stressed the need for an approval for the Solicitor to draft the necessary resolution, and upon the drafting; the resolution be filed along with the application. He stated the rest of the bullets will be addressed with Mr. Seachrist and the Borough Manager.

**Councilor Kapenstein made a motion for the Solicitor to draw up the paper for the \$250,000 grant to approve and authorize the resolution. The motion was seconded by Councilor Brubaker and approved by a unanimous 9-0 vote.**

President McNamara presented the Committee assignments to Council and discussed the way in which these committees are designed to work and operate as a committee system. He stated there will be three council members on the committees which will be subcommittees of the Council body. Each of those committees; once identified will elect a Chairman, Vice Chairman and Secretary. President McNamara discussed the responsibilities and format of the agenda items and how the committees will work. President McNamara told Council to work with the Borough Secretary for the recorder and meeting schedule dates to be advertised. He stated we are looking at the May meeting for this process to officially kick in.

President McNamara talked about the downtown project and the creation of the Commercial Industrial Authority and the shift of that project from financing and management to the Industrial Commercial Development Authority (ICDA). He stated the appointment of Ms. Dana Ward and Ms. Robin Pellegrini as business representatives as liaisons to the ICDA. He stated since the ICDA has taken on the project, the Council has no involvement other than the wants and needs that flow from the ICDA back to the Council. Everything going on with the downtown from a business standpoint is the result of Ms. Pellegrini, Ms. Ward, ICDA and the help of their professionals, Dewberry and HRG. He stated that Mr. Matt Tunnel of the ICDA will be providing monthly updates and any questions can be forwarded to the ICDA.

In reference to the Downtown project, President McNamara announced and discussed the authorization by the County Commissioners for the \$1.5M low interest loan for the downtown project through the liquid fuels program. He stated as a result of that meeting, the County Commissioners thanked this body for our work and efforts and are 100% behind what is going on.

President McNamara reported on the completion of bids for the underground infrastructure. The solicitor is currently reviewing the bids once the legal review is completed, the final bid will be awarded. Confirmation will come from Mr. Tunnell on the start date of the project.

President McNamara clarified the motion in regards to the RFP from the previous council meeting of March 3<sup>rd</sup>. He said we did not authorize the solicitor to advertise or develop an RFP; the motion was to draft to explore. President McNamara stated we will ask for approval to advertise the RFP for the lease of the water and sewer system at the April 7, 2014 meeting. He mentioned a meeting of the water sewer exploration lease of system committee took place and Councilor Kapenstein will make comment on that.

President McNamara reported on the disruptive behavior at Council meetings will not be tolerated. On the advice from legal counsel and going forward, this would be the warning, if there is disruptive behavior that is deemed to be disruptive by Council President, those individuals will be asked to leave the meeting.

Councilor Kapenstein gave a report on the water sewer exploration lease of system committee meeting. He reported that he, Chairman Patton and Council President McNamara met with representatives from McNees, Wallace & Nurick and Susquehanna Group Advisers to discuss the RFP for the lease of the water sewer systems. Discussions were based on the details and timeline of events for the process. Councilor Kapenstein stated at our next scheduled Council meeting on April 7<sup>th</sup>, representatives from the firms developing the RFP will be here to present the document to Council as well as the Authority members.

Councilor Kapenstein felt it was very productive and feels confident that we have the right professionals onboard to continue with the exploration. He states it is important to remember that the only way the deal gets done is if it creates enough value that it will significantly benefit the citizens of Middletown.

After concerns from Council members regarding the length of time of the RFP acceptance, Councilor Kapenstein presented an explanation of the bid process and the amount of time the RFP will be on the street. Councilor Louer raised some additional concerns with the response time and the costs associated (attorney fees) with the RFP. Councilor Kapenstein explained how the costs and attorney fees would be handled if we decided to not go with the RFP or if the deal did or did not go through. He also stated that Susquehanna Group Advisors cost structure is different. He said they would only get paid if the deal goes through. McNeese, Wallace and Nurick bills hourly and Councilor Kapenstein does not have an estimate to report, but can get that if Council requests. Council President McNamara stated that Susquehanna Group Advisors would provide a contingency agreement or arrangement.

Councilor Handley asked if the grant money; when the sewer plant was rebuilt is taken into account for the lease. Councilor Kapenstein responded it was discussed at the meeting. President McNamara described the grant money Councilor Handley referred to. Councilor Louer asked does this need to be included in the offers being made. Councilor Kapenstein responded the solicitors are looking into having it closed out before the deal is complete and will be able to present at the next meeting. Councilor Louer asked for the amount of the grant money. Councilors Brubaker and Handley responded \$2.3M.

Councilor Brubaker asked about the money we received from Lower Swatara and Royalton. Council President McNamara said we would have to take that back to counsel and Councilor Kapenstein said he will ask.

Councilor Brubaker asked if it would be better to conduct an RFI. Councilor Kapenstein stated we were advised by the Attorney, the RFP would be the way to start. He also mentioned there is an RFQ and all kinds of requests that can be done. Councilor Kapenstein stated the solicitor is including everything into the RFP, due to less cost and time and we will be able to qualify the bidders. Councilor Kapenstein stated we did not discuss an RFI at the meeting and asked Councilor Brubaker what the benefits would be. Councilor Brubaker stated we would not have to go through the lawyers; we are just requesting information and would keep the cost down. Councilor Kapenstein stated he would look into it.

Councilor Louer raised concerns with the RFP regarding Council's obligation to reimburse bidders, if Council doesn't accept any offers that were made. Councilor Kapenstein responded the draft contract states that we are not liable for anything if we do not accept any deals.

Council President and council discussed the RFI and RFP process and fees associated with each. Council President McNamara gave a brief explanation of the development, issuance, negotiation process and the concessionary agreement of the RFP.

Councilor Kapenstein stated we were advised that the RFP could be done by year end and President McNamara responded that would be the amount of months of legal fees.

Councilor Kapenstein mentioned the RFP has already been drafted and it would be a conflict with our Solicitor to have them look into an RFI. If you want the RFI to be explored, President McNamara recommended standing down from the RFP and get clarity on the RFI before the April 7<sup>th</sup> meeting. Councilman Louer states if it is going to save less money, we should go that route.

Council held discussions on the money already spent on the RFP and recommendations to explore an RFI. Council President McNamara reminded Council of Councilor Louer's concerns with the legal fees. Councilor Malone raised the concern of the rate increases during the RFP process and the "catching up" that will need to be done. Councilor Louer recommends Council explore the RFI. Council President McNamara reiterated the concern with the solicitor coming on April 7<sup>th</sup> seeking approval to go out on the street with the RFP because Council did not authorize the RFP, what we authorized was a drafting of it. Council President McNamara recommends to Council if you have questions or concerns with the RFP, throw the RFI in there and do it now to explore whatever can be done and then if that comes back and we get what we want, it's a onetime expense. Councilor Handley asked if the draft proposal of the RFP be provided to Council members before April 7<sup>th</sup>. Councilor Kapenstein responded, yes. Councilor Handley asked to see the RFP so that Council can see the language and what they are asking for. Council President McNamara responded what you will see is who is interested and the process

layout. He stressed you will not see a dollar figure. Councilor Kapenstein said they did mention they would have a general idea of what the bid is going to be after the RFP comes back. If that is the case, Councilor Handley said we are going to pay for the work they have already done and if Council gets to see at least a draft of it and everyone thinks that it is useless, we can stop it before the April 7<sup>th</sup> meeting and then move onto the other direction. Councilor Kapenstein stated we could just vote it down at the April 7<sup>th</sup> meeting.

Additional discussions on concerns from Council were held in regards to the RFP and RFI processes and legal ramifications. Ken Klinepeter, Superintendent of Public Works, commented on his interpretation of the RFP process. He is concerned about getting something more or less out of the RFP process than what initially thought and recommends the RFI would be worthwhile looking into. Councilman Handley stated no one knows if the RFI is going to provide any real information that we can work with. Superintendent Klinepeter responded suppose it does and what does it hurt by waiting.

Councilor Sites questioned follow up to a request a year and a half on information for a sewer system that was not received. Council President McNamara stated we did not ask for information on the sewer system. He mentioned Councilor Brubaker read a statement, "when does an asset become a liability." After reading that, Councilor Brubaker thought we should explore the sale and lease of the system. Council President McNamara said the authority was granted to him and there was no motion to go forward with it, however; it is whatever you all want to do, we will carry the message to the Attorney's.

**Councilor Kapenstein made a motion that Council explore the RFI process and that the Solicitor be notified to seise and desist with the development of the RFP until further notice.** The motion was seconded by Councilor Louer and approved by a unanimous 9-0 vote.

Council President McNamara wants to get clarification from the solicitor before approaching staff.

Chief Ken Whitebread, Middletown Volunteer Fire Department, spoke on a concern with the project regarding the hydrant rentals. He would like to know if there are going to be any provisions included in the RFI that state the fire department is not going to be responsible for paying these rentals. He stated the Fire Department budget is tight now and paying a hydrant fee is not going to work for us. He asks that you take that into consideration. Councilor Kapenstein stated he would bring that up.

#### **Manager Report**

Absent - None

#### **Secretary Report**

Secretary Friday gave a report on the total number of letters of interest for the boards and commissions to date. Mayor Curry asked for a deadline. Council President McNamara stated in talking with the Borough Manager we are giving the process 30 days. He said once we have notified the interested applicants of their duties and responsibilities, Council will come back to vote.

#### **Mayor Report**

Mayor Curry addressed citizen Mike Bowman's comments, stating he has corresponded and by telephone responded to Representative Payne, Commissioner Hartwick, as well as the Chancellor of Penn State University Harrisburg. He said he has also attended state committee meeting speaking with gubernatorial candidates and Lt. Governor candidates. Mayor Curry mentioned there have been some scheduling conflicts between Commissioner Hartwick and the Chancellor and those meetings were cancelled. He understands how important those relationships are and he is pursuing them. He also stated that he could not attend the solicitor meeting due to a change in the schedule.

Mayor Curry gave a report on the February 2014 call statistics for the Police Department, highlighting Administrative calls.

Mayor Curry is working on a fundraiser for the High School and hopes to report on that at the April meeting. It will be a community event and everyone in the community will be invited.

Mayor Curry reported that he has met several times with the Chief of Police. One of the items he has committed to while being in office is to ensure that our perception of the Police Department changes here in the next couple years. One of the many complaints that he has heard from the residents is that they do not feel the Chief or the officers are accessible. The

Mayor and Chief have developed a plan to print out 2,000 cards with the Borough Police symbol on the front and all of the contact numbers for all officers, non-emergency and emergency numbers, and the main number for police station. He said he and the Chief will be handing them out personally at many locations throughout the Borough. He stressed is a great way to get people back in touch with the department.

Mayor Curry reported they are going to schedule a meet and greet between all of the police officers, police chief, and himself. Mayor Curry stated this is not going to be, despite what the reputation is at this point, an argument session. He said when they advertise for the meeting, they will do that 30 days in advance and he will ask the public to submit any questions or concerns to him personally in writing by email or however they choose. At the meeting, Mayor Curry will have the questions or concerns addressed to that particular individual or department. Mayor Curry would like these meetings to be able to foster their relationship between the community and the officers. The Mayor will plan on issuing an award for officer of the year. The award will be based on the professionalism and achievements that the officer makes during the year.

Finally, the Mayor reported in the next few months you will start seeing the officers on foot patrols around town.

Councilor Kapenstein asked for an update on Borough emails for Council. Mayor Curry asked for a Borough number be established for him. Council President McNamara said he will check in with the Borough Manager on the IT upgrade.

Councilor Sites asked if we have received correspondence from the Attorney representing Mr. Nardo or has our solicitor reviewed any. Council President McNamara responded there were back and forth email exchanges. He said the issue can now be brought to the attention of the Planning Committee between now and the April 7<sup>th</sup> Council meeting. Councilor Sites asked if a copy of that is handy. President McNamara said he does not have it.

Attorney Scott addressed Council President McNamara and stated he was in communication with Jon Andrews. Council President McNamara responded there is a discipline that I am trying to get ourselves and he stated this is a committee meeting and the workshop meeting is where these issues need to be discussed. Council President McNamara stressed, we had the discussion, we granted the authorization and it is up to the planning committee to bring this motion to the Council for action at the meeting on April 7<sup>th</sup>.

**Councilor Handley made a motion to adjourn.** It was seconded by Councilor Kapenstein and approved by unanimous consent. At 8:20 p.m., the meeting was adjourned.

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Amy J. Friday  
Borough Secretary