

September 29, 2014  
Middletown, PA 17057

At 7:00 p.m., a special joint meeting of the Middletown Borough Council and Borough Authority was called to order by Council President Christopher R. McNamara, with Council members John Brubaker, Anne Marino Einhorn, Tom Handley, Ben Kapenstein, Robert Louer, Christopher R. McNamara, Victoria Malone, Scott Sites, and Sue Sullivan were present. Borough Authority members Robert Louer, Jr., Christopher R. McNamara, John Patten, David Rhen and A.B. Shafaye were present.

Also present were Mayor James H. Curry III, Borough Solicitor Adam Santucci and Borough Authority Solicitor Timothy Horstmann of McNeese Wallace & Nurick, Borough Manager Tim Konek, Borough Secretary Amy Friday and Borough Authority Secretary Sue Layton.

Borough Council President McNamara provided a brief overview of the meeting's agenda. He stated there will be joint Executive Session followed by a Borough Council session, presentations by the Solicitor and Councilor Kapenstein, public comment and then Council will move through the agenda. Council President McNamara stated after moving through the agenda he will call for adjournment and the Borough Authority will convene into its meeting.

At 7:05 p.m., the meeting moved to Executive Session.

At 7:35 p.m., the meeting reconvened from Executive Session and Council President McNamara reported items of potential litigation were discussed and no decision was rendered.

Borough Solicitor Adam Santucci provided an overview of the proposed water and sewer lease transaction.

Mr. Santucci reported, back in year 2013, the Borough was facing a \$3.3M deficit in its general fund and at that time Borough Council elected to explore and was accepted to participate in the Department of Community and Economic Development's Early Intervention Plan (EIP). He said this allowed the Borough to receive financial assistance and financial consulting services.

Mr. Santucci reported Mr. Mark Morgan of Susquehanna Group Advisors was the EIP coordinator of the financial consultants and he prepared an EIP document proposal which consisted of fifty-five recommendations to Borough Council that would allow them to close the general fund deficit. He stated the EIP plan was adopted by Council and several recommendations contained in the plan have been implemented.

Mr. Santucci said members of the Finance committee have been tasked for further implementing some of those other fifty-five recommendations in the EIP and taking action. He reported one of the recommendations in the EIP was to explore the potential sale or lease of the water and sewer assets, which was presented and discussed in detail at the September 2013 Council meeting.

Mr. Santucci reported in early 2014, Councilor Kapenstein suggested Council explore a long term lease of the water and sewer system and the idea of a potential sale was taken off the table. He reported at the April 21, 2014 Borough Council approved the issuance of a request for proposals (RFP) exploring the value of a potential lease and the general principals of the RFP were discussed at that meeting and Mr. Santucci reviewed them at this meeting.

Mr. Santucci reported after the April 21, 2014 meeting, the RFP and frequently asked question documents were placed on the Borough's website. He said during the April 21, 2014 meeting, we outlined for the public and members of the Council what the process would be for the RFP.

Mr. Santucci reported the RFP was released in May 2014 and on or about June 2014 we informed the public and members of the Council there were three potential bidders who expressed an interest in the leasing of the water and sewer system. He stated since that time we have been in an evaluation process. Mr. Santucci stated the deadline for bidders was September 18, 2014 and two of the three bidders had dropped out of the process. He reported the reason the bidders dropped out was that there were too many restrictions and controls in the process that they did not think they would make any money. Mr. Santucci stated we will not compromise those general principals he laid out for you earlier.

Mr. Santucci reported on September 19, 2014, United Water made an initial bid which was reviewed by an evaluation committee. He said in their bid, United Water stated we are interested in bidding and the bid was acceptable in terms of the transaction documents and discussions with United Water continued during that time and up until receiving their final bid

on Saturday evening, September 27, 2014. Mr. Santucci said the concession agreement and operating standard documents have been posted on the Borough website for several weeks.

Councilor Kapenstein provided a presentation on the financial review of the water-sewer lease.

Councilor Kapenstein reported the reasons for exploring the lease is due to budget difficulties and a structural deficit of \$1.7M dollars, due to unfunded pension and OPEB liability of \$10.8 M, a declining tax base, inability to transfer from water/sewer to general fund and \$2.6M outstanding debt. He stated our expenses are exceeding our revenues, which will occur every year until something is done.

Councilor Kapenstein talked about how we got to this point. He stated there were a combination of factors such as the end of the low cost electric contract, population decline and great recession. Councilor Kapenstein stated we need to look ahead and fix it and not dwell on the past.

Councilor Kapenstein discussed budget options to balance the budget, such as cut services (employees), sale or lease of water/waste water system, sale or lease of electric distribution system or a substantial tax or electric rate increase. He stressed to cut services was taken off the table.

Councilor Kapenstein discussed the 2014 projected tax revenue of \$2,366,000.00 and the tax revenue needed to cover the budget hole, assuming ok with transfers from the electric fund, would be a 37% tax increase.

Councilor Kapenstein reported choosing to look into a public/private partnership, which gives the ability to receive much needed money now to eliminate tax increases and safe guard utility rate payers now and in the future. He reported on the water/wastewater concession lease basics, stating it would be a 50 year deal. Councilor Kapenstein reported receiving three qualified bids in which due diligence negotiations were conducted and ended up receiving one financial bid from United Water. He said the evaluation committee evaluated the bid and should it be decided to accept the proposal tonight, closing should be within 90 days and we are hoping to close by the end of the year and the new operator will take over January 1, 2015.

Councilor Kapenstein reported the deal is a 50 year deal, a long term partnership and the Borough retains ownership of the system after 50 years. He said the rate payers will see no difference in their service and there are detailed operating standards the concessionaire will have to follow and adhere to. Councilor Kapenstein reported there will be a Borough employee administering the contract.

Councilor Kapenstein mentioned; as stated from the beginning, all employees are protected and will be guaranteed employment and there should be no change other than having a new manager January 1, 2015.

Councilor Kapenstein reported there will be an upfront payment to pay off all the debt of the Borough, unfunded pension, OPEB liabilities, transaction costs and uncompleted working consisting of two projects; Route 230 and Spring Street. He stated the annual payment the bidders require to pay covers the cost associated with administering the contract as well as some other expenses coming back to the general fund. Councilor Kapenstein stated there are safe guards for rate payers and annual rate caps in the contract. He stated the capital expenditures are the responsibility of the concessionaire and there is a capital expenditures plan in place to improve the system over the 50 years. Councilor Kapenstein reported there is a major capital expenditure project which is eligible for the capital cost recovery charge, which gives the concession to recoup project costs above a certain minimum with Borough approval.

Councilor Kapenstein reported the potential partner is United Water and their corporate headquarters is located in Harrington Park, New Jersey. He stated they provide water and wastewater services to over 500 million people across the United States and have 145 years of experience. Councilor Kapenstein reported; in 2012, they entered into a similar deal with Bayonne, New Jersey and in that deal they have already made significant capital improvements. He mentioned United Water having customer service available 24/7, an office located in nearby Hummelstown and a good working relationship with the Pennsylvania DEP. Councilor Kapenstein stated our contract requires United Water have an office in Middletown.

Councilor Kapenstein stated if this deal does not get done, we will have to raise taxes or electric rates. He stated if the deal goes through it is going to make up a lot of the structural deficit and we would not have to raise taxes in the foreseeable future and we can focus on other areas and services the Borough provides. Councilor Kapenstein presented and discussed charts of the unfunded pension and other post-employment benefits (OPEB), total debt of the Borough and

the 2014 projected budget deficit showing current figures versus after the lease deal figures. He stated after the deal our budget deficit will be around \$12,000.

Councilor Kapenstein mentioned, as previously stated, the Borough has received one financial bid for the concession lease of its water and wastewater systems and we are pleased to announce the proposal from United Water consists of an upfront concession of \$43M dollars and annual payments sufficient to meet the cost of administering the contract. He stated all the targets the committee was tasked with meeting at the beginning of the process and the proceeds from the upfront payment, the Borough will be able to fully pay for an important infrastructure project on Route 230 that was brought to our attention late in the process. Councilor Kapenstein said as we understand there is a short timeframe for it to be completed before the road is repaved by PENNDOT. He stated in securing the funding for the upfront payment, it will give us the ability to make that happen.

Councilor Kapenstein announced the evaluation committee met today and hereby formally recommend to the Borough and Borough Authority accept United Waters proposal set forth tonight as we feel it provides all the necessary monetary and non-monetary objectives that were desired by Council at the beginning of this process.

In closing, Councilor Kapenstein thanked all the members of the public who have reached out to him for information regarding the project; he enjoyed having productive discussions with everyone. He stated he has done the necessary due diligence in having to make a decision that he feels is right and hopes everyone who voting has taken the time to explore both sides and has reached a decision they feel in their heart will most benefit the citizens of Middletown.

Attorney Adam Santucci thanked Councilor Kapenstein for his presentation and stated the presentation is on the Borough website along with all the RFP documents, concession agreement and operating standards. He stated if Council and the Authority approve engaging in the transaction tonight, the parties will have 90 days to close the deal which will then be effective January 1, 2015. Attorney Santucci thanked the members of the lease team.

#### **Public Comment**

##### **Dawn Knoll, 123 State Street**

Ms. Knoll commented on the number of years United Water has been in business and changed hands, stating 50 years is a long time and United could be bought at some point during those 50 years and is there a clause in the lease stating we will need to pay the money back. Attorney Santucci stated United Water has been in business for 145 years and there is not a clause stating we would owe that money back. He stated if they wanted to attempt to assign the operating standards and concession agreement, we would have to approve that and these are our controls over the process. Attorney Santucci reported we will have one employee to monitor their compliance with those standards.

Ms. Knoll commented, if hypothetically United Water went a way, we would assume all the debt. Attorney Santucci stated we will not assume any debt and it will all have been paid off. He mentioned that debt is not related to the system and the \$11M dollars is OPEB and pension money.

##### **Diana McGlone, 803 Adelia Street**

Ms. McGlone commented this town is being scared by the "the town is broke", "we have a structural deficit," we have unfunded pension debt", "we will need to increase taxes and electric rates" mantra of council and now the quick fix buzz word is lease. She commented it is no wonder all of this scary, as leasing our water and sewer system makes me horrified, as the proposed lease permits higher rates and added fees, keeps the current rate that just saw some individuals sewer rates increase over 70% for the next 5 years, plus possible tax increases while it would eliminate critical safeguards for the public. Ms. McGlone commented leasing will be nothing but disastrous for our town.

Ms. McGlone commented our current water and sewer system is an asset and generates over \$4 million in revenue and annually produces a profit of over \$1 million. She stated currently our electric generates about \$2million in operating income annually at the current rate of 10 cents kWh and an increase of 2 cents kWh would yield an additional \$2million in income. Ms. McGlone commented both systems need to be managed and leveraged properly in order to maximize profits, as currently this is not being done.

Ms. McGlone commented tonight you all will approve a contract that will bind generations of Middletowners and future Councils to United Water over which we, the town, will have very little control. She mentioned there are other options that will avoid the lease horror and provide time for crafting better solutions to the pension and debt problem and put this town on a path of prosperity.

Ms. McGlone stated in her research, the rates will rise more than the consumer price index in 2019, service fees can and most likely will be added prior to 2019 and the lease owner will be charging citizens for a major upgrade above any planned expenses. She commented all the development that is to occur within the next 5 years, a new revenue and money, will all be going to the lease owner to keep.

Ms. McGlone commented we are embarking on a multi-million dollar economic development renaissance that will soon be generating millions in new revenue and in five years the idea of leasing our utility will be unthinkable.

Ms. McGlone commented on the recent published September issue of the Central Penn Business Journal, stating there was a six page spread appropriately titled, "The re-birth of Middletown", which outlined the downtown efforts, university growth and transportation improvements that have generated an 'economic prosperity' buzz for our community. Ms. McGlone cited 5 key highlights and they are as follows:

1. Economic prosperity due to the rise of PSU – Harrisburg, including the exploding international population, and the new proposed Amtrak station.
2. Our pursuit of grants, in which a \$1.2 million low interest infrastructure loan was received from Dauphin County and the application of \$4 million state grants through the Redevelopment Assistance Capital Program and the Department of Transportation's multimodal program.
3. Our larger scale development of the Emaus street connection, which carries a lot of promise for other larger-scale development.
4. The intermodal of our major and closest transportation modes, the Harrisburg International Airport and the Middletown Amtrak Station. Both have big plans for the coming years, the train station is already an approved federal and state \$32 million renovation and the airport just launched their 20 year growth plans.
5. Development project along Vine Street with Rutters and Loves Truck Stop and Route 230 corridor with Sheetz and other planned businesses.

Ms. McGlone commented the way I see it, you have three total choices tonight and they are.

1. Say "no" to United Water now and go back to brainstorming ideas that will foster real solutions for our town.
2. Let the voters decide. Put the lease question on the May 2015 ballot.
3. Vote yes, and doom the town and its future and be blamed and reviled by the public and future councils for generations... as we all know the outcome of breaking the Electric contract.

In closing Ms. McGlone stated she suggested three options for you tonight to consider. If you choose any of the first two, you would be considered town heroes but if you choose the last option to lease, you will face the judgment of history and the voters.

**Rachelle Reid, 448 Grant Street**

Ms. Reid commented the sale of utilities is reflected in the Early Intervention Plan provided by Susquehanna Financial Group. She asked Mr. Morgan of Susquehanna Financial Group how much they will get from the transaction. Mr. Morgan stated they will receive nothing if the deal does not go through and 1% of the \$3M transaction if the deal goes through.

Ms. Reid commented on the Solicitor's payment from the transaction. Attorney Santucci stated he estimates their fees may be \$400,000 - \$600,000 and they will not know until the transaction closes.

Ms. Reid commented on Borough Authority Chairman Patton's feelings regarding the RFI and RFP. Chairman Patton stated the RFI is not a committal document and an RFP is an action document and our letter to Council stated we should explore leasing or selling the Authority. He mentioned Council chose to go the lease route which satisfied the interrogation by the Authority to Council.

Ms. Reid commented on the vote for an RFI by the Authority Chairman and three members of the Authority. Chairman Patton stated the Authority and the three members talked about the

need to explore selling or leasing, at which time the Authority and Chairman Patton offered to send a letter to Council asking them to do that.

Ms. Reid commented on the Authority meeting where Mr. Louer made a motion regarding the RFI. Chairman Patton stated the result was the letter he generated to Council. Ms. Reid commented on Council President McNamara's initial vote against the RFP.

Ms. Reid commented on conversations being had with United Water before this process was started. She also commented on a negative profile of United in the Food and Water watch and yearly rate inflation and the possibility of our rates increasing 2.5% above inflation. Attorney Santucci stated there will be no rate increase for the first four years and council kept their commitment to the rate payers.

Ms. Reid commented this is going to affect all of us and her voice doesn't mean anything after 2015. She encouraged the Borough Council President to listen to the people. Council President McNamara asked Ms. Reid if she knows who owns the water and sewer facility. Council President McNamara stated the Borough Authority owns the water and sewer facility and it is leased back to the Borough.

Attorney Santucci stressed a decision will have to be made prior to January 1, 2015 when the budget is due. He stated that a decision will be to raise taxes, make a significant increase in the electric rates or proceed with this transaction because on January 1, 2015 you will have a budget deficit and one of these very difficult decisions needs to be made. Attorney Santucci stated this is a decision that can't be delayed until 2019, as you suggested. He stated the budget deficit will continue to be there and the \$11M in unfunded pension and OPEB liability will continue to be there. Attorney Santucci stated in the past you saw those electric rates spiking whenever there was a need to deal with the deficit and this was a way to even out the costs and revenue adjustments. He stated, in our opinion, something needs to be done.

Mr. Morgan explained the unfunded pension and OPEB liability and stated this transaction fully pays off that liability for the current workforce and should satisfy full payment of both liabilities

**Crystal McGuire, 27 Hillside**

Ms. McGuire commented on the inflation rate and asked if the inflation rate should jump ten percent from now until 2019 are our rates going up ten percent plus 2.5%. Mr. Morgan responded no it is tied to each year's consumer price index plus 2.5%, so inflation for the next four years does not matter and inflation is an irrelevant piece.

**Steve Drabick, 333 Oakhill Drive**

Mr. Drabick commented on the Borough purchasing privately owned buildings and taking them off the tax rolls. He also commented a penalty clause be included in the long term lease. Mr. Drabick cited past experience with MetEd.

**Resident, not identified**

Resident commented on the deficit after the deal is made. He asked what has been put in place from keeping us from falling into this same position four or five years down the road. Attorney Santucci stated the Finance Committee is charged with reviewing the additional recommendations in the Early Intervention Program and is continuing to implement those recommendations. He stated fiscal responsibility is not going to go away and steps are needed to be taken so that we don't fall back into that position.

**Councilor Kapenstein made a motion to adopt Ordinance 1308 Of 2014 an ordinance authorizing the execution by the Borough of Middletown of a limited joinder to the municipal water and wastewater utility system concession and lease agreement between the Middletown Borough Authority and Concessionaire.**

Councilor Brubaker cited the water system operating standards until the end of the 50 year lease and inquired on the responsibility of the storm service. Attorney Santucci commented on the obligations that United will be responsible for replacing so many feet of pipe every year to ensure adequate maintenance of the system. He stated the storm water management issues are not part of this transaction and the Borough will retain responsibility for storm water management issues primarily that is dealt through zoning and codes enforcement at this time, but will be an issue of the next several years as it becomes a more regulated area that the Borough is going to deal with since legislation is changing on that. Councilor Brubaker asked if some of the money we get from the concessionaire on a yearly basis will be put back for this type of work and down the road when we get this system back to take care of projects. Attorney Santucci stated we hope there will be money leftover at the end of the 50 year transaction, but it will be up to you and future council's decision. He stated the annual payment is sufficient to cover our needs and administrative costs moving forward.

Councilor Handley commented on the storm water system and asked if there is any language in the agreement covering cross over problems between storm water and the sanitary system. Council President McNamara stated the storm water is a separate issue as stated by the Solicitor. Attorney Santucci stated United Water is taking over the system as is and if there are I and I problems, I am sure they are aware of it through their due diligence.

Councilor Handley stated it is a very difficult decision and he has never been in favor of the Borough selling off, in this case leasing, an asset that they own. He said he believes in local control and it is the best way to go and he understands the economics of it. In his mind, Councilor Handley stated it is the same thing as a sale and he does not see it as a solution.

Mayor Curry thanked everyone for coming to the meeting. He stressed this has been the most difficult decision he has been faced with since being elected into office. Mayor Curry stated this choice tonight is truly choosing the lesser of two evils and there are pluses and minuses to both sides.

Mayor Curry acknowledged Councilor Kapenstein for the amount of time and effort he put into this stating because the mark of a smart politician is to consider all options that are available to the benefit of his or her constituents and that is exactly what Councilor Kapenstein has done. At this time, the Mayor, Borough Council, Borough Authority and all attending gave Councilor Kapenstein a round of applause for his efforts.

Mayor Curry stated he cares about every one of the residents of this town and knows your council members do as well. He said the reason being is your future is my future in this situation and whatever decision is made tonight is going to affect me the same way it is going to affect you. Mayor Curry stated he spent numerous hours discussing this with Councilor Kapenstein and listening to all of you by phone, email and Facebook. He mentioned an on-line poll was established and we have not taken this lightly. As a result of all of those communications, Mayor Curry reported nobody likes the idea, but the information that he received is the residents of this town do not want or can't handle a tax increase or a change in their electric rates. He stressed this is a working class town and all of us live pay check to pay check and the average household income is roughly \$42,000. Mayor Curry stated with those figures being accurate, he does not think the shoulders of the average citizen are broad enough to handle that type of burden.

Mayor Curry stated the structural deficit is not going away and the choices are simple. He said the money has to come from somewhere and he believes that Middletown has a bright future so the choices are to increase the taxes and electric rate or lease the system. Mayor Curry stated he is not a huge fan of leasing the system, but he thinks choice one is too burdensome on the average person. He said he is sure if the lease is chosen tonight it is going to disappoint some of you and make you angry. Mayor Curry stated if the lease is passed tonight, he is not going to veto it and this is a situation where an elected official has to make tough decisions sometimes and this is one of them. He stated he does not want to see people moving out of town or the future of Middletown fail. Mayor Curry mentioned if we would forego the lease and have to raise taxes and electric rates the potential, with the revitalization of downtown, to bring in new businesses is not going to happen.

While he agrees the solution is not a perfect one, Mayor Curry stated it is the best one at this time. For the greater good of the community, he reported these are his statements for tonight and for those that are disappointed, he apologizes.

In closing, Mayor Curry reported he had to make an informed, intelligent decision and this is it.

The motion was seconded by Councilor Sites and approved by a 7 – 2 vote, with Councilors Einhorn and Handley dissenting.

**Councilor Brubaker made a motion to adjourn the special meeting.** The motion was seconded by Councilor Handley and approved by unanimous consent. At 8:45 p.m., the Borough Council meeting was adjourned and the Borough Authority meeting was called to order.