

January 20, 2015
Middletown, PA 17057

The January 20, 2015 meeting of the Middletown Borough Council was called to order at 7:00 p.m. by Council President Christopher R. McNamara.

Following the invocation by Reverend Lyle's student Robert Shonfelt and pledge of allegiance, the following Council members answered roll call: John Brubaker, Anne Marino Einhorn, Benjamin Kapenstein, Robert Louer, Christopher R. McNamara, Scott Sites and Sue Sullivan. Council member Victoria Malone was absent due to illness.

Also present were Mayor James H. Curry III, Borough Manager Tim Konek and Borough Secretary Amy Friday.

Councilor Louer made a motion for approval of the minutes. The motion was seconded by Councilor Sullivan and passed by a unanimous 7-0 vote. Councilor Malone was absent from voting.

Public Comment – Action Items on Agenda

Charlotte Bixler, 512 Swar Avenue

Ms. Bixler commented on the young boy's public comment at last week's Administration and Personnel Committee meeting.

Ms. Bixler commented on the two individuals being considered for the First Ward vacant council seat. She expressed her displeasure with Mr. Bowman and requested Council President McNamara abstains from voting on Mr. Bowman's appointment.

Courtney Harnett, 115 Nissley Street

Ms. Harnett commented on the unsigned PENNDOT agreement, stating the Borough Manager should have signed this agreement for the safety of her children, herself and the school bus drivers.

Ms. Harnett stated she does not want Mr. Mike Bowman representing herself, her children or anyone in the First Ward and directed her comment to Council President McNamara that it is a conflict of interest to have Mr. Bowman on this Council.

Ms. Harnett commented on the public disrespect for the Mayor.

Vera Williams, 107 Ann Street

Ms. Williams commented on the properties behind her house and stated if you do not know who owns these properties, she suggests you check. She presented Mayor Curry with a picture and also mentioned that if anyone is not registered to vote, she has voter registration forms.

Kim Haney, 320 S. Lawrence Street

Ms. Haney commented on the appointment of the first ward vacant seat. She stated we need to appoint someone who is looking towards our future. Ms. Haney stated Middletown is one of the oldest cities around and we should be focusing on bringing new people/business into town. She said we need to have a council that represents us and brings in what we want.

Jocelyne Hauserman, on behalf of Penn State

Ms. Hauserman stated even though Middletown is not the best college town right now, she realizes council has put forth some effort to change that, with the Business Association trying to bring in new business. She said it is a really great opportunity for Penn State students to get involved and bring the businesses that they would like to see come to Middletown.

Ms. Hauserman commented their goal is to promote a synergistic environment between the Penn State students, Borough and entire town. She asked that whoever is appointed to the vacant council seat to keep that in mind.

Dawn Knull, 123 State Street

Ms. Knull commented on the vacant council seat. She stated the residents of the first ward have spoken, on the resident's Facebook page and in the polls. Ms. Knull commented Mr. Bowman has never made it on council without being appointed. She stated council needs to do what is right for the first ward.

David Hawkins, 448 Swar Avenue

Mr. Hawkins recommends council vote for Mr. Thom Strohm to fill the vacant council seat, that is who he voted for in the election and would appreciate the vote for Mr. Strohm.

Kay Wealand, 131 Keystone Avenue

Ms. Wealand reminded council to take seriously why you were elected to your council positions. She stated she realizes there are times you have to make tough decisions, but like those who spoke before her, she does not want Mike Bowman representing her. Ms. Wealand said if Tom Strohm is the other candidate, please consider appointing him.

Ms. Wealand commented on her disappointment with the Borough Manager and Director of Communications.

Sean Vaccarino, 202 S. Lawrence Street

Mr. Vaccarino commented on having a council that the public can trust and confide in. He stated tonight you are going to prove if you are about your agendas or the people of this town.

Kim Haney, 320 S. Lawrence Street

Ms. Haney asked how the public gets their concerns, not listed on the agenda, addressed/communicated to and answered by council. Council President McNamara recommends issues be addressed with your ward's council and then with the Borough Manager and if the issues need to be brought to the full council, the issue will be presented first to the subcommittee for submission to the full council.

Kevin Kearney, PSU Student

Mr. Kearney commented he is from Scranton, PA, which is dominated by the University of Scranton. He stated Middletown is a nice town and he would like to get more involved with the community and feels it is important to be involved in local government. Mr. Kearney stated he plans on attending more council meetings.

Diana McGlone, 805 Adelia Street

Ms. McGlone stated she does not support Mr. Bowman be given a seat on Council. She said he is a well-known property owner of several blighted properties and does not support Penn State students. Ms. McGlone stated Mr. Bowman targets private citizens for his own personal vendettas.

Florence Abdullah, 24 Cottonwood Building & Pastor of Grace and Mercy Church Ministries

Ms. Abdullah commented on Mr. Bowman's interest of putting a strip club in the first ward. She said if that is the case and the vision for the first ward, she would not like an individual having that vision representing the first ward.

Ms. Abdullah asked if the Borough employs a human resource person. Council President McNamara responded no and as part of the Early Intervention Program that is the next phase.

Ms. Abdullah commented on a recent request by the Mayor to alert the community of a weather situation via the Director of Communications and in which the Director of Communications did not carry out the procedure in making that happen. She stated she is concerned about the nitpicking of authority of the Mayor and asked if there is a written policy explaining the Mayor's authority.

Cathy Winters, 154 West Water Street

Ms. Winters commented on the first ward council replacement. She stated she has been to several council meetings where Mr. Bowman spoke and she believes Mr. Bowman has a great passion for this town, but she doesn't believe that he is very objective. Ms. Winters stated she doesn't believe extremes ever work in any situation and do not belong in government. She mentioned she has never met Mr. Strohm, but attended the interviews at last week's meeting and was very impressed with his good deal of knowledge and ability to be objective.

Audrey Ramroop, 215 Ann Street

Ms. Ramroop stated she seconds that.

Councilor Sites asked for the floor and stated it is quite obvious the citizens of this community are embarrassed by the leadership of the Council President. He stated when we were elected to council we took an oath to uphold the democratic principles this country was found on. Councilor Sites stated since 2012 when Council President took office, those democratic principles went in the toilet and this council is not ruled by us the nine council members, but by you (referring to Council President), "the dictator."

Councilor Sites stated this town will not move forward until this town functions as a democracy in a democratic manner where respect is given to the citizens we represent and to the other elected officials.

Councilor Einhorn asked for the floor and thanked everyone for coming to the meeting tonight and making your voices heard. She said we owe it to you to listen to you and she intends to do that. Councilor Einhorn hopes the rest of council will do the same.

Councilor Sullivan made a motion to offer Resolution 618 as a result of the Administration and Personnel Committee meeting and recommend the Council adopt Resolution 618 appointing Mr. Mike Bowman, 100 Wilson Street, to fill the vacancy created by Mr. Tom Handley.

Councilor Sites stated this is council giving you all the middle finger.

Councilor Kapenstein thanked everybody for coming to the meeting and appreciates all the comments. He stated we need this and more people to get involved. He said we have not heard one person who wants Mike Bowman on Council. Councilor Kapenstein stated the public has spoken and as far as he is concerned, he will be voting the other way strictly based on the public comments.

Councilor Einhorn commented it is very clear that the public does not want Mr. Bowman. She stated, as he is being appointed it should be for the people and should be the person that the people want. Councilor Einhorn stressed it is pretty clear they do not want Mr. Bowman.

Mayor Curry commented the two people up for appointment tonight, stating he does not harbor any ill will towards Mr. Bowman. He said it is good to see Penn State students reaching out here in town. Mayor Curry said that we (all nine council and myself) have said from the beginning how important it is to establish that Penn State relationship. He stated Mr. Strohm is part of Penn State and is best suited for this position in terms of where we are going forward.

Mayor Curry mentioned it was only a few short months ago that Mr. Bowman resigned from the Zoning Hearing Board. He said as the article in the Press and Journal indicates, Mr. Bowman washes his hands of the town. Mayor Curry said he does not understand how you go from washing your hands of the town to wanting to run it in such a short time. He said we need to follow through with what the people request.

Councilor Einhorn asked Council President if he plans on abstaining from the vote. Per the advice from the Borough's legal counsel, Solicitor Adam Santucci, Council President McNamara does not need to abstain from voting.

The motion was seconded by Councilor Louer and approved by 4 – 3 vote, with Councilors Sites, Kapenstein and Einhorn dissenting. Councilor Malone was absent from voting.

At 7:46 p.m., Council President adjourned the meeting for a brief period of time.

At 7:56 p.m., the Council meeting reconvened.

Following the brief adjournment, Mayor James H. Curry III administered the oath of office to the newly appointed Borough Councilman, Mr. Mike Bowman.

Council President McNamara congratulated Mr. Bowman on his appointment to Council.

Councilor Louer made a motion to adopt Resolution 616 honoring Dr. Martin Luther King and recognizing the Holiday in his honor. The motion was seconded by Councilor Sullivan and approved by a unanimous 8 – 0 vote. Councilor Malone was absent from voting.

Councilor Brubaker made a motion to adopt Resolution 617 honoring Middletown High School Girls Basketball 1,000 point scorer Ja'Lynn Burton-Jones. The motion was seconded by Councilor Louer and approved by a unanimous 8 – 0 vote. Councilor Malone was absent from voting.

Councilor Sites made a motion stating Chief Bey brought to the attention of the Public Safety Committee his concerns over some of the policies and after being reviewed by the Solicitor, I move we adopt Resolution 615 implementing Chief Bey's recommendations. The motion was seconded by Councilor Brubaker and approved by a unanimous 8 – 0 vote. Councilor Malone was absent from voting.

Councilor Brubaker made a motion that A.T.O. Excavating, Inc. be awarded the contract in the amount of \$9,800 as previously acknowledged as the low bidder at the December 1, 2014 Council meeting and that the Borough Manager and appropriate staff be authorized to

implement and execute the terms and conditions of that contract as it pertains to the demolition of the dwelling located at 725 Maple Road. The motion was seconded by Councilor Sites and approved by a unanimous 8 – 0 vote. Councilor Malone was absent from voting.

Councilor Kapenstein made a motion to adopt Resolution 614 authorizing and directing the 336 Lawrence Street property be conveyed to Tri-County HDC, Ltd. The motion was seconded by Councilor Sites and approved by a unanimous 8 – 0 vote. Councilor Malone was absent from voting.

Councilor Sites made a motion to approve of the Harborton Place Easement Agreement.

The solicitor reported we have previously approved a settlement agreement with Harborton Place to resolve two outstanding lawsuits dating back to 2005. He stated as part of the agreement we were to receive an easement to enter into Harborton Place to maintain the electrical system that is Borough property. The solicitor said we were going to have a drawing identifying the Borough's rights with that easement and after discussing it with the Borough's electrical engineer, it turns out the drawing was going to take significant time and expense. He reported the only change to the agreement was to eliminate the need for the drawing and use terminology to explain the easement and it is the only thing that Council is being asked to approve this evening.

The motion was seconded by Councilor Sites and approved by a unanimous 8 – 0 vote. Councilor Malone was absent from voting.

Councilor Einhorn made a motion to authorize the appointment of Jeffery Miller as the Zoning Officer for the Borough of Middletown, there is no compensation it is a collateral duty as Mr. Miller serves as the Code Enforcement Officer for the Borough of Middletown. The motion was seconded by Councilor Sullivan and approved by a unanimous 8 – 0 vote. Councilor Malone was absent from voting.

Old Business

Councilor Brubaker inquired on a motion made at the November 17, 2014 meeting directing the Mayor to implement recommendations in the report the Borough received from an investigation that resulted in the dismissal of a Borough police officer and asked where this stands.

Mayor Curry stated he would like to remind Councilor Brubaker that he does not have any authority to direct him to do anything regarding the police department. He also stated, second of all it is in the works and he has been working with the Chief and it will be completed and that is all you really need to know.

Councilor Brubaker asked Mayor Curry did you not ask us to approve the investigating by Lt. Colonel (Retired) John Rick Brown. Mayor Curry responded I believe I went over that report with you in executive session with regard to our decision on that particular officer. Councilor Brubaker asked Mayor Curry how long is this going to take to get this resolved and when will we found out. Mayor Curry responded I think it is 90% resolved and you will find out when I tell you.

Councilor Bowman asked for an update on the PENNDOT issue. Council President McNamara stated he believes that message was disseminated at the Administration and Personnel committee meeting and Councilor Einhorn is on the record suggesting that the Borough Manager did not refuse to sign the agreement. He mentioned the Administration and Personnel committee will make a report to the Committee as a whole, under new business.

Mayor Curry asked for the floor and inquired on the status of his phone number on the Borough website. Council President McNamara stated everyone should have received an email from Mr. Courogen this past week suggesting that he would give a report at this meeting on where he is at with the website as part of the IT upgrade.

Mayor Curry asked for the status of the Grosh property. Council President McNamara stated the Borough Secretary has the deed and agreement which will be signed this evening. The solicitor reported on the holdup of the Grosh property transfer from the Borough to the Historical Society was between the two law firms representing the interest on some changes that were suggested

by the Historical Society were not consistent with the Resolution that was passed and the documents will be signed today and executed.

New Business

Councilor Sites made a motion requesting Mr. Christopher McNamara resign as Council President. The motion was seconded by Councilor Kapenstein and failed by a 3 – 5 vote. Councilors Sites, Kapenstein and Einhorn voted in favor of the motion. Councilor Malone was absent from voting.

Councilor Sullivan made a motion at the recommendation of the administration and personnel committee that the Borough Manager execute the Pilot Program with PENNDOT for winter maintenance of the Street Routes 230, 441 and Vine Street pending solicitor review.

Mayor Curry stated just so the public is clear, this is not the lump sum agreement, this is the pilot program by which the Borough is reimbursed for its expenses incurred for the maintenance of those roads from PENNDOT.

Borough Manager, Tim Konek, reported the PENNDOT agreement is for an entire season (October through April) and PENNDOT allocates a certain amount of money based on your lane miles. He stated through this season, PENNDOT had no equitable way to allocate the prorated share of what we were to receive when we started back into it. Mr. Konek reported PENNDOT stated we could take advantage of their pilot program, which they have been using in a couple other municipalities elsewhere outside of Dauphin County, as a method of being reimbursed for our efforts on State roads. He reported he will be meeting with the manager of Dauphin County PENNDOT and some of their contracting officials on Thursday to go over how we are going to keep track of our expenses and how to submit those expenses for reimbursement.

Mr. Konek reported, just like we have been doing all season, we are taking care of the Borough roads and are backing up PENNDOT if they can't catch their roads and will continue to do that until all the paperwork is signed and executed.

Councilor Kapenstein inquired on the time frame of the agreement. Mr. Konek responded the original agreement was a five year renewable yearly agreement.

The motion was seconded by Councilor Bowman and approved by a unanimous 8 – 0 vote. Councilor Malone was absent from voting.

Councilor Louer reported receiving a letter from Borough resident, Mr. Mike Vieli regarding a complaint against the Press and Journal. Mr. Vieli states in his letter (read by Councilor Louer), when the Press and Journal receives a delivery they put out no parking signs (temporary signs set out on red cones, in a plastic envelope, dated with marker and identified as Middletown Borough Police signs) and after the delivery is made Mr. Vieli comes home to find no parking and his sidewalk cracked up from the tractor trailer truck. He also states in his letter the trucks are too big to make the delivery in a safe way and the cost to repair his sidewalk was around \$6,000.

Councilor Sites mentioned Mr. Sukle (owner of the Press and Journal) and Chief Bey have been in discussion with the property owner and are trying to come to a resolution. Mayor Curry concurred.

Councilor Louer made a motion to have this letter and the temporary no parking policy for the Borough reviewed by the solicitor and then brought back to the Public Safety Committee.

Councilor Sites stated he would like to see this continue on during the review by the Solicitor so that Mr. Sukle (Press and Journal) and any other businesses affected by this can continue with their shipment of supplies so they can operate their business.

The motion was seconded by Councilor Bowman and approved by a unanimous 8 – 0 vote. Councilor Malone was absent from vote.

Based on the January 12, 2015 Administration and Personnel Committee and January 20, 2015 Council meetings, Councilor Sullivan made a motion to have the Solicitor draft a code of conduct ordinance for use at all Borough related meetings and boards.

Councilor Sites stated isn't that one of our God-given rights as United States citizens to speak our mind and he doesn't see what anyone did wrong.

Councilor Louer stated it is not to disrupt meetings.

Councilor Kapenstein stated he is with Councilor Sites. He thought this was a good meeting, where we finally got to hear from people. Councilor Kapenstein stated yes, once in a while somebody said something out of order, but it is no big deal and no one got out of hand. He said there is no reason to silence people.

Councilor Einhorn stressed she thinks it is important for people to speak, be heard and recognized and as elected officials we have to expect things said to us and disagreements with us and we need to listen and tolerate that.

Council President McNamara stated he does not believe the intent of Councilwoman Sullivan's motion was to silence the public.

Mayor Curry stated he totally disagrees with this motion because to him it seems like it is trying to slap an iron plate over the mouths of the citizens. He stated let them say what they want and if you can't stand the heat get out of the kitchen.

The motion was seconded by Councilor Louer and approved by a 5 – 3 vote with Councilors Kapenstein, Einhorn and Sites dissenting. Councilor Malone was absent from vote.

Councilor Brubaker asked that at the next meeting council discuss the parking situation on Brown Street that Mrs. Kuppy brought to the Public Safety Committee.

Councilor President McNamara stated the Borough Manager forwarded this concern onto Jon Andrews, Borough engineer, to review and what he came back with is that the park and ride lot is owned by the Borough and it is not an Amtrak lot. He said it is described in the Borough ordinance as a commuter park and ride lot and during the afterhours there is no parking.

Councilor President McNamara said the final legal interpretation, when completed, will come before the planning and punted to Public Safety.

Councilor Brubaker made a motion to accept the proposal from Transparency Matters, LLC. to conduct a diagnostic assessment/audit of the Middletown Police departments operations to include the following: Patrol, Crime, Evidence, Scheduling and overtime usage. The project team will consist of the following Lt. Colonel (Retired) Jon D. Kurtz and Major (Retired) Charles D. Skurkis of the Pennsylvania State Police. Lt. Colonel Rick Brown will serve as the project director at a rate of \$95.00 an hour with a report due in 90 days. The motion was seconded by Councilor Louer and approved by a 7 – 1 vote, with Councilor Kapenstein dissenting. Councilor Malone was absent from vote.

Council President McNamara stated this parallels with the policies and procedures of your Public Safety Committee meeting where the Chief has asked for this.

Councilor Brubaker reported no reports for the Borough have been submitted to the State Police for the uniform crime reporting system that the FBI uses for crime statistics last year up until November 2014. Chief Bey stated reports have been submitted for the November and December 2014.

Councilor Brubaker submitted the dates for the 2015 Public Works Committee meetings to the Borough Secretary and stated that he and Councilors Sites and Louer will work on the 2015 Public Safety Committee meeting dates.

Council President McNamara recommended having an advertisement of all sub committees once the committees are announced. He said staff can advertise the meetings.

Councilor Kapenstein made a motion to authorize the Borough Secretary to advertise all the 2015 subcommittees of the council meeting dates after talking to each Committee chairperson. The motion was seconded by Councilor Einhorn and approved by a unanimous 8 – 0 vote. Councilor Malone was absent from vote.

Borough Manager Tim Konek reported on the responses of RFP for the Human Resource Consultant. He stated we are in a position to recommend and adopt a winner, pending solicitor review. Mr. Konek stated he would like for that to happen.

Council President McNamara asked if the Administration and Personnel Committee reviewed the HR Consultant RFP responses. It would be his recommendation to have the Administration and Personnel Committee look at it then forward it to the solicitor to come back with a recommendation to the Council as a whole.

Mr. Konek reported receiving bids from three companies. He recommends the proposal from Nancy J. Hess, a local HR Consultant from Hummelstown and listed on the DCED list of professionals website, be considered as the most responsive to our request.

Council President McNamara stated this is the third round of the Early Intervention Program and through the efforts of Representative John Payne, we were able to get this funded at a 90 – 10 % ratio where the state is providing 90% of the funding for a Human Resource professional to come

in and develop policies and procedures as well as an employee handbook. President McNamara thanks the State and Representative Payne.

Mr. Konek reported Mr. Dave Kitner of Roberto's pursuit of a liquor license. He stated Mr. Kitner has decided to go in a different direction. Mr. Konek said Mr. Kitner is going to purchase a liquor license and will need to go through another Public Hearing/Resolution process since it is a different type of license than what he had previously applied. He recommends Council hold a hearing before the February 2, 2015 Council meeting.

Councilor Kapenstein made a motion to advertise a hearing prior to the start of the February 2, 2015 Council meeting to hear the liquor license request of Roberto's Pizza. The motion was seconded by Councilor Sites and approved by a unanimous 8 – 0 vote. Councilor Malone was absent from voting.

Mr. Konek stated at the end of 2014 we need to have a ratification of expenditures for the purpose of our fiscal year.

Councilor Bowman made a motion to ratify expenditures for 2014 at the direction of the Borough Solicitor. The motion was seconded by Councilor Louer and approved by a 5 – 3 vote, with Councilors Sites, Kapenstein and Einhorn dissenting. Councilor Malone was absent from voting.

Borough Solicitor, Adam Santucci, explained in the past this was done on a monthly basis and this council has done it on a year basis. He stated all the expenditures are outlined in the actual 2014 budget that Mr. Morgan put together and you would have seen.

The Borough Secretary reported having the deed for the 29 E. Main Street Property, known as the Grosh Building, which needs to be signed over and has already been approved.

Councilor Sites made a motion to amend the agenda to include an executive session for two legal matters. The motion was seconded by Councilor Kapenstein and approved by unanimous 8 – 0 vote. Councilor Malone was absent from voting.

At 8:56 p.m., Council adjourned into Executive Session to discuss legal matters

At 9:27 p.m., Council reconvened from Executive Session and Councilor Sites reported legal matters were discussed and no action was taken.

Councilor Louer made a motion to adjourn. The motion was seconded by Councilor Sullivan and approved by unanimous consent. At 9:28 p.m., the meeting was adjourned.

Amy J. Friday
Borough Secretary