

February 17, 2015  
Middletown, PA 17057

The February 17, 2015 meeting of the Middletown Borough Council was called to order at 7:00 p.m. by Council President Christopher McNamara.

Following the pledge of allegiance, the following Council members answered roll call: Mike Bowman, John Brubaker, Anne Marino Einhorn, Benjamin Kapenstein, Robert Louer, Victoria Malone, Christopher McNamara, Scott Sites and Sue Sullivan.

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

**Councilor Brubaker made a motion to accept and appoint Mike Krupilis as Fire Chief, Chris Coble as Deputy Chief and Ken Whitebread, Jr. as Assistant Fire Chief for the Borough of Middletown Volunteer Fire Department.** The motion was seconded by Councilor Bowman and approved by unanimous 9 – 0 vote.

At this time, a swearing-in Ceremony was conducted by Mayor James H. Curry III for the newly elected Middletown Volunteer Fire Department Fire Chief, Mike Krupilis and Deputy Chief, Chris Coble. Ken Whitebread, Jr. Assistant Fire Chief was sworn in later in the meeting by Mayor James H. Curry III.

#### **PUBLIC COMMENT**

##### **Kay Wealand, 131 Keystone Avenue**

Ms. Wealand read a letter written by Rep. John Payne and requested it be put in as part of the minutes. A copy of the letter is attached as exhibit A.

Ms. Wealand commented on the PENNDOT agreement, questioning whose responsibility it is to make sure the agreement is carried out, and she also recommends Council vote for Chris McNamara to resign as council president.

##### **Russell Bechtel, 363 Aspen Street**

Mr. Bechtel's message was addressed to council and the people. He feels the town is divided.

##### **Karen Hawkins, 448 Swar Avenue**

Ms. Hawkins requested that executive sessions be held either at the beginning or end of the meetings.

##### **Richard Gross, 444 N. Union Street**

Mr. Gross suggested putting meetings on the internet.

##### **Diana McGlone, 805 Adelia Street**

Ms. McGlone feels the Borough newsletter was used to target her.

##### **Sean Vaccarino, 202 S. Lawrence Street**

Mr. Vaccarino feels that a lot of the tension is within the council itself.

##### **AB Shafaye, 101 W. Main Street**

Mr. Shafaye would like to reduce friction within the town and has offered to set up informal get-togethers within the town.

##### **James Dunkleberger, 217 W. Water Street**

Mr. Dunkleberger would like to focus on what is going on in the town now and not what has already happened in the past.

##### **Michael Swartz, 122 N. Catherine Street**

Mr. Swartz feels that Mike Bowman should not have been appointed to council and commented on an interaction he had with Mike Bowman in the past.

##### **Amy Windish, 117 Ann Street**

Ms. Windish is in favor of improvements going on in the town.

##### **Greg Wilsbach, 719 Spruce Street**

Mr. Wilsbach stated that he is disappointed in the amount of time it took to have subdivision plans signed by council.

**Lisa Sloat, 234 N. Union Street**

Ms. Sloat believes that people can disagree.

**Jaime Rishar**

Ms. Rishar does not feel like the town should be rehabbed and that it should remain a Historic small town.

At this time, a swearing-in Ceremony was conducted by Mayor James H. Curry III for the newly elected Middletown Volunteer Fire Department Assistant Fire Chief, Ken Whitebread, Jr.

At 7:50 p.m., Council recessed into Executive Session.

At 8:25 p.m., Council reconvened from Executive Session. Council President McNamara stated matters relating to labor relations and potential litigation were discussed and no decisions were rendered.

**STAFF REPORTS****Manager's report**

Mr. Konek reported receiving correspondence from the Middletown Industrial and Commercial Development Authority informing the Borough of the expired terms of Board members Laura McNeil and Tim Clouser. He stated pursuant to the ICDA's bylaws, the ICDA board has requested that the Borough Council appoint two board members.

**Councilor Louer made a motion to appoint Tom Mehaffie from Lower Swatara Township to fill one of the positions.**

Discussions were held regarding the requirements and process of filling those expired terms on the ICDA. Council requests the Borough Manager reach out to the two individuals to see if they want to continue to serve. Mayor Curry stated it is prudent to follow the course of action as done in the past.

The motion was seconded by Councilor Bowman and failed by a 5 – 4 vote with Councilors Brubaker, Louer, Bowman and McNamara in favor.

Mr. Konek reminded Council back in November they approved the Borough's electrical engineer to move forward with a design of a replacement substation on a site at Woodland Hills. He stated Public Works has reviewed the preliminary design and are going forward with our engineer. In the meantime, Mr. Konek reported David Stubbs of URI Group has come to Council in December and he had reported he had gained control of the Woodland Hills property. He reported David Stubbs has delivered to the Borough a proposed development agreement that would help accomplish the Borough's needs in terms of the Public Works facilities which includes the relocated and consolidated substation out of the floodplain and to handle the entire load of the Borough. Mr. Konek reported the development agreement that was proposed sets the URI Middletown Public Private Venture as the group that Council will be engaged with to help accomplish those construction goals. He stated it is important to note the development agreement is not a financial document and does not encumber the Borough in any financial transaction or terms, but it does give the URI Group the ability to go out and start to market for that and bring back to us for further review and approval. Mr. Konek stated he would like to put that out there for Council's consideration.

Mr. Konek reported on the eligibility of the phase three grant funding through the Early Intervention Program and part of that is for a Human Resource Consultant to come in and review personnel policies, procedures and job descriptions. He stated a request for proposals was put out and two responses were received, so they put out another request for proposals and received a larger response. Mr. Konek stated the Administration and Personnel committee has reviewed the proposals and the recommendation is for M.J. Hess & Associates, a local consulting firm to be given an opportunity to come in and be our HR Consultant. He asked for the authority to execute the contract with M.J. Hess & Associates and get this phase three underway.

The Administration and Personnel Committee directed the Borough Manager to forward the proposal from M.J. Hess & Associates to all of Council so that it can be reviewed.

As a result of a positive grant application to the Tri County Planning Commission, Mr. Konek reported we have a grant to perform a zoning overlay district development. He stated this grant will pay for a professional to come in and provide guidance to the downtown redevelopment with all the changes and improvements. Mr. Konek stated it will take our existing zoning ordinance and tweak it so that it will allow more flexibility for redevelopment to come in and enhance our downtown. He said it will be a comprehensive program and there will be

stakeholder meetings and it has to go through the entire public hearing process, as part of the request for proposals. Mr. Konek reported just like any major changes to the zoning law there needs to be a public hearing and there will be lots of opportunities to talk about what goes into the content. He stated the evaluation committee consisting of Jonathan Hicks, Dan Anderton and himself interviewed the three respondents and after consideration, and with the assistance of the solicitor's office, the committee has recommended KSK consulting. Mr. Konek stated this needs to be executed by March 1, 2015.

At this time, Jonathan Hicks provided the scope and funding information for the grant.

**Councilor Bowman made a motion to execute the agreement with KSK Consulting.** The motion was seconded by Councilor Kapenstein and approved by a unanimous 9 – 0 vote.

Mr. Konek reported on a meeting with PENNDOT where they provided the Borough with their pilot program for direct expense reimbursement, where we will get reimbursed for the actual costs for our work on the PENNDOT roads. After review of the document by both entities' attorneys, Mr. Konek stated the one issue the document requires is a formal resolution authorizing the Borough of Middletown directing the Borough Manager to sign the winter maintenance agreement with PENNDOT.

Mr. Konek reiterated his opposition to the agreement stating his opposition was and always will be about the safety of our workers and community. He said at no time was this ever about the money, it was strictly about the safety and ability of our workforce to meet their responsibilities in a safe manner. Mr. Konek said we are not going to operate in an unsafe manner, especially with how United Water working in our Borough takes safety so seriously. Mr. Konek stated he does not recommend the Borough getting into this agreement as he believes having PENNDOT plow their roads and Middletown plow their roads has been the most effective and safe way to handle winter maintenance this season. In closing, he stated it has been about safety and not about the money.

At this time discussions took place regarding the agreement, responsibilities and insurance rules.

**Councilor Sites made a motion to adopt Resolution 623 authorizing the Borough Manager to sign the winter maintenance agreement with PENNDOT.**

Council President McNamara asked how are they calculating the reimbursement and Mr. Konek reported once we submit invoices, PENNDOT's Comptroller's office will review it and tell us if they will accept or not.

The motion was seconded by Councilor Bowman and approved by a 5 – 4 vote with Councilors Sullivan, Brubaker, Louer and McNamara dissenting.

#### **Secretary's Report**

Ms. Friday reported the Borough is requesting reimbursement for the Dauphin County Gaming Grant for the Streetscape project. She stated the Borough must make the first draw on the Dauphin County Gaming Grant by March 1, 2015 or the Borough will lose the funding. Ms. Friday reviewed the procedures and what is required and stated pursuant to the grant contract, the Council must approve every request for reimbursement from the County.

Jonathan Hicks provided additional information on grant pertaining to the engineering fees and the draw-down of the grant money.

**Councilor Bowman made a motion for Council to authorize the grant draw-down.** The motion was seconded by Councilor Sites and approved by a unanimous 9 – 0 vote.

Ms. Friday reported providing the Administration and Personnel Committee with draft copies of the minutes from the July 21, August 18, September 2, November 17, 2014 and the February 2, 2015 public hearing and Council meetings. She asked they review and make recommendation this evening to have them placed on the March 2, 2015 Council meeting agenda for approval.

#### **COMMITTEE REPORTS**

##### **Administration and Personnel**

Councilor Sullivan reported the meeting scheduled for Wednesday, February 18, 2015 has been canceled.

Councilor Sullivan directed the Borough Secretary to place the July 21, August 18, September 2, November 17, 2014 and the February 2, 2015 public hearing and Council meeting minutes on the March 2, 2015 Council meeting agenda for approval.

Due to her concern on the opposition received at the last council meeting pertaining to the proposed Code of Conduct Ordinance that was first brought to Council's attention in June 2014 and never acted upon, Councilor Sullivan stated the purpose of the Ordinance was not to stifle freedom of speech, stop citizens from making public comment or Council members from exercising their duty to responsibly debate measures brought before the body. She stated the Code of Conduct Ordinance seeks to ensure that such discussion and debate will be done in a respectful, civil manner and seek to ensure the public in attendance will behave in a similar manner and is nothing more than to ensure order during our meetings so that all regardless of their viewpoint will feel comfortable at the meetings.

**Councilor Sullivan made a motion to adopt Resolution 622, a resolution establishing a procedure for the conduct of public meetings at the Borough of Middletown.**

Councilor Kapenstein commented on his concerns with the timing of the Resolution.

Councilor Brubaker referred to meeting minutes from 2011 where it states public comment is limited to five minutes per comment and it is not a question and answer period and where a public meeting policy was introduced by then Borough Manager.

The motion was seconded by Councilor Louer and approved by a 5 – 4 vote, with Councilors Kapenstein, Sites, Einhorn and Malone dissenting.

Mayor Curry commented after the vote how funny it gets brought up and it is not going to be a tie. He said you should all be ashamed of yourselves. Mayor Curry commented directly to Councilor Sullivan that she herself at the last meeting said it was beautiful the way everyone acted and how this council acted. He stated we didn't need a code of conduct then and you should be ashamed of yourself.

Councilor Brubaker commented it appears they needed a code of conduct back in 2011.

Mayor Curry commented we don't need it now.

Councilor Brubaker stated it is no different now than it was back then.

Mayor Curry stated it is different now because you are giving all the power to one person now because of the election.

Councilor Brubaker disagreed with Mayor Curry's statement.

Mayor Curry commented you watch how the meetings will be conducted after tonight.

**Community Development**

Councilor Einhorn reported the committee has not held their first meeting and there is nothing to report.

**Finance**

Councilor Kapenstein reported the committee has not held their first meeting and there is nothing to report.

**Labor Relations**

Councilor Brubaker is disappointed to report the teamsters failed to ratify the contract settlement. He stated we will arrange to negotiate as we have in good faith.

Councilor Brubaker reported the last meeting of the police association was canceled and there are no negotiations meeting planned for the future.

**Planning**

Councilor Louer reported the first Planning Committee meeting for 2015 is scheduled for Wednesday, February 18, 2015 at 6:00 p.m.

**Public Safety**

Councilor Brubaker reported the Chief of Police has selected five people for part-time police officers and we are awaiting background checks before we can release the names.

Councilor Brubaker reported he would like to have the following action items listed on the March 2, 2015 meeting agenda authorizing to move forward with the lease for police vehicles,

dispatch radio to be installed at the police station, impact travel credit card for officer training, mission statement for the purchase of banners, abolish Shade Tree Commission, advertisement of a public safety hearing, parking problem on Brown Street by Kuppys Diner and the disabled parking space policy revision as proposed by Code Enforcement Officer Mr. Jeffrey Miller.

Councilor Brubaker reported on a Borough residents request for exemption to the Borough Code that prohibits dumpsters being parked in snow emergency routes, from February 20 – 23, 2015, for the purpose of moving.

**Councilor Brubaker made a motion to honor the Borough residents request for exemption to the Borough Code, from February 20 – 23, 2015.**

Mr. Jeffrey Miller elaborated on the Borough Code, resident's request and weather related issues during the requested time period.

The motion was seconded by Councilor Louer and approved by a unanimous 9 – 0 vote.

Councilor Brubaker reported there is not a left-turn arrow for vehicles traveling West to East on Main Street at the Square and as a result of a traffic study done in the past and it was not recommended.

**Councilor Brubaker made a motion for a traffic study to be conducted at the traffic light at Main and Union Streets.** The motion was seconded by Councilor Sites and approved by a unanimous 9 – 0 vote.

Councilor Brubaker reported on a meeting being held at the Airport on February 19, 2015 regarding signage for bird feeding because they are getting sucked up into the jet engines and all municipalities are being asked to comply. He stated this would need to be accomplished by an Ordinance since it will need to be enforceable.

Mr. Jeffrey Miller presented a brief overview of the proposed revised disabled parking space policy and nuisance vehicle ordinance.

Councilor Bowman reported on the Income Survey and the Community Development Block Grant money that was discussed at the recent Public Safety Committee meeting. He asked the Income Survey be placed on and discussed at the March 2, 2015 Council meeting, in hopes of applying for the Community Development Block Grant to be used to replace curbs and sidewalks throughout the entire Borough of Middletown.

#### **Public Works**

Councilor Brubaker provided Council with the proposal from Integrated Engineers Solutions, Inc. for the new substation in the Woodland Hills area. He reported the estimated total price is \$6,404,160.00 which excludes land purchase, right of way acquisitions, Borough labor or Met-Ed's design of the upgrade costs and circuit reconfiguration.

Councilor Brubaker reported the current Mill Street substation is located in the flood zone and was flooded out in 1972 and 2011. He stated Spruce Street is not able to cover loads in peak demand season. Councilor Brubaker reported the Public Works department has been evicted from the waste water treatment plant and will soon be moved from the current highway shed in the near future by PENNDOT. He stated we will need a consolidated location for equipment storage, maintenance supplies as well as an operational base.

**Councilor Brubaker made a motion the Borough enter into a development agreement with URI-Middletown PPV. This agreement will allow URI to start the development process to provide substation relocation, electric utility infrastructure improvements, consolidate of the Public Works facilities and relocation of the salt shed. This agreement in no way obligates the Borough to any financial obligation or financial transaction, but it memorializes our intent to move forward with these projects.**

Councilor Brubaker stated he would like to have the approximate costs for the purchase of the property and building information back to Borough Council by May 1, 2015.

Discussions took place on the supporting documentation and agreement. Councilor Kapenstein recommended having these documents before we vote. Council President McNamara stated the Borough Manager has the documents. Borough Manager, Tim Konek, reported receiving the document a couple hours prior to the meeting.

Councilor Kapenstein stated he is not against the proposal, but he would like to have read it first before voting.

The motion was seconded by Councilor Bowman and approved by a 6 – 3 vote, with Councilors Einhorn, Kapenstein and Sites dissenting.

**Councilor Louer made a motion to approve the advertisement of the Ordinance to repeal the Shade Tree Commission.**

The motion was seconded by Councilor Bowman and approved by a 6 – 3 vote, with Councilors Kapenstein, Einhorn and Sites dissenting.

**Councilor Louer made a motion for staff to prepare an RFP for tree trimming for the entire Borough, especially the electric transmission lines.** The motion was seconded by Councilor Bowman and approved by an 8 – 1 vote, with Councilor Kapenstein dissenting.

**Olmsted Recreation Board**

Councilor Louer had nothing to report.

**MAYORS REPORT**

Mayor Curry responded to Mr. Bechtel's comment earlier, stating you are confusing division with democracy and he would love for nothing more than for Middletown to be a utopia of peace, but his job as Mayor of this town, for which he fully understands his responsibilities; is to speak up on behalf of the residents and he assured he will continue to do that.

Mayor Curry asked for his repeated request for his telephone number to be listed on the website and for Ben Kapenstein's email to be corrected. He noted the website has been updated recently for other means such as briefing on meeting minutes, etc.

Mayor Curry reported on a recent invitation into the home of Annie Williams to celebrate the 100 years of her life. He reported presenting her with a proclamation recognizing and acknowledging February 16, 2015 as Annie Williams Day in the Borough.

Mayor Curry announced an event he is working on with the Middletown High School varsity basketball programs. He read a proclamation declaring March 27, 2015 as Mayoral Madness in the Borough of Middletown. Mayor Curry will challenge the Middletown Varsity Basketball players to a charity game at the Middletown Area High School gym at 8:15 p.m. on March 27, 2015. He stated this will be an annual event and all the proceeds from the game will be donated back to Middletown in some way.

**Councilor Sites made a motion to ask to remove Chris McNamara as Borough Council president.**

Councilor Sites commented that Councilor Louer conducted a more professional meeting at the last Council meeting. He stated after tonight, if this motion fails, he will cease to calling for Chris McNamara's resignation as Council President so that we can continue to move on.

Councilor Louer commented it is a mistake for him to call for this motion.

The motion was seconded by Councilor Kapenstein and failed by a 5 – 3 vote, with Councilors Sites, Kapenstein and Einhorn voting in favor. Council President McNamara abstained from voting.

**Councilor Louer made a motion to adjourn.** The motion was seconded by Councilor Bowman and all in favor, at 9:57 p.m. the meeting was adjourned.

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Amy J. Friday  
Borough Secretary