

August 3, 2015
Middletown, PA 17057

The August 3, 2015 meeting of the Middletown Borough Council was called to order at 7 p.m. by Council President Christopher R. McNamara.

Council President McNamara announced the Council meeting will recess so that the ICDA can conduct their meeting and hear the proposal presentation by the Tattered Flag. He stated after their adjournment the Borough Council meeting will reconvene.

Following the invocation by Pastor Jerry Cowan of Valley Baptist Church and the Pledge of Allegiance, the following Council members answered roll call: Michael Bowman, John Brubaker, Anne Einhorn, Benjamin Kapenstein, Robert Louer, Vicky Malone, Scott Sites, and Christopher R. McNamara. Councilor Sue Sullivan was absent.

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

Council President asked for a motion to amend this evening's agenda to include an executive session requested by Mayor Curry for personnel and potential litigation.

Councilor Kapenstein made a motion to amend the agenda for an executive session. The motion was seconded by Councilor Bowman and approved by a unanimous aye vote.

At 7:06 p.m. the Borough Council meeting recessed for the ICDA meeting.

At 9:22 p.m. the Borough Council meeting reconvened from the ICDA meeting.

PUBLIC COMMENT

Dawn Knoll, 123 State Street

Ms. Knoll commented on the proposal from Tattered Flag stating before hearing their proposal she was against it, but now she feels they will do good. She said her one and only problem that she has is that we have three businesses which have been here a long time and you are not doing anything for them. Ms. Knoll stated if you are going to work with the new businesses coming into the area then you need to work with the old businesses.

Earl Bright, 513 Catherine Street

Mr. Bright addressed his concern to the Administration and Personnel committee. He would like to know if there is anything in the Middletown Borough Personnel Policy that allows a Borough Employee to call a private citizen to complain about what the private citizen posted on social media and if there is not he suggests that it be addressed.

At this time, Mr. Jeff Berneberg of Mcilvreid, DiDiano and Mox, LLC made a brief presentation on the AutoZone subdivision and land development plan. Mr. Berneberg stated that AutoZone is proposing a 7200 square foot building within the Midtown Shopping Center. He mentioned working closely with the Borough Planning Committee and Engineers to get the engineering and land development plan requirements in place for the project.

Mr. Jeff Miller, Borough Codes Officer, commented that Mr. Berneberg is here to seek conditional approval for the AutoZone subdivision and land development plan from Council. He stated he has talked to both the Borough Engineer and Solicitor and there are a couple minor items that can be resolved and both stated the plan is ready for conditional approval based on satisfactory resolution.

Council President McNamara commented this has been through the Planning Committee and two weeks ago the Planning Committee gave their update on the plan at the Council COW meeting.

Councilor Bowman made a motion to give conditional approval to AutoZone as long as they meet the conditions of the Borough Engineer and Solicitor. The motion was seconded by Councilor Kapenstein and approved by a unanimous 8 – 0 vote.

Councilor Sites made a motion to approve the July 20, 2015 Council meeting minutes. The motion was seconded by Councilor Brubaker and approved by a unanimous 8-0 vote.

At 9:29 p.m. council recessed into an executive session, to discuss matters relating to personnel, real estate and potential litigation.

At 10:06 p.m. council reconvened from executive session and Council President McNamara reported several items were discussed and he called upon Councilor Louer.

Councilor Louer made a motion to approve Resolution 627 – 2015:

RESOLUTION NO 627 FOR THE YEAR 2015

A RESOLUTION OF THE BOROUGH OF MIDDLETOWN, DAUPHIN COUNTY, ENDORSING AND SUPPORTING EFFORTS OF THE MIDDLETOWN BOROUGH INDUSTRIAL AND COMMERCIAL DEVELOPMENT AUTHORITY TO REVITALIZE THE BOROUGH'S DOWNTOWN BUSINESS DISTRICT

Councilor Kapenstein stated for the record he does not understand the resolution and thinks it is too much of a blanket statement. He said it does not mention the Tattered Flag anywhere and he expected to come out and vote on the Tattered Flag proposal. After hearing the Tattered Flag presentation, Councilor Kapenstein stated he is all for everything and now we have changed course and he does not know what we are voting on. He stated he can't vote for this and this is not him voting no for the Tattered Flag that it is him voting no to the resolution, which is a blanket statement that states we appreciate what the ICDA does.

Councilor Einhorn stated the Tattered Flag is great and she very much wants them to come to town, but agrees with Councilor Kapenstein and she is not comfortable with giving the ICDA complete control without information coming to Council giving us an opportunity to review what we are going to be funding, particularly if it deals with taxpayer money.

Councilor Bowman stated, by this resolution, we are agreeing to support the ICDA and their effort to revitalize the downtown and part of their efforts is selling the property to Tattered Flag.

Councilor Kapenstein asked does this put a stipulation that we don't have to approve any further expenditures of the concession lease.

Council President McNamara responded to Councilor Kapenstein that is a separate issue and if we want to open that up we can, but right now we are entertaining the resolution.

The motion was seconded by Councilor Bowman and approved by a 5-2 vote, with Councilors Einhorn and Kapenstein dissenting and Council President McNamara abstaining.

Councilor Brubaker made a motion to concur with disciplinary action recommended by Mayor Curry and Chief Bey.

Council President McNamara stated the motion is that there was a disciplinary problem in the police department and the Mayor has brought forth a recommendation for the Council to act on that recommendation.

The motion was seconded by Councilor Louer and approved by unanimous 8 – 0 vote.

Councilor Louer made a motion to rescind the action taken at our last meeting to direct any request to spend money obtained as a result of the concession agreement to be approved by a majority vote of council except for any project expenditure required by the concession agreement.

Councilor Kapenstein stated this is the motion he is opposed to. He said if the Borough Authority would have resolved, but now it can't resolve because of permit issues, that money would have gone to the Middletown Borough, not the ICDA. Councilor Kapenstein stated he does not agree with the motion and he feels it should be handled by the elected officials of the Borough and that is why the stipulation we put on it was a good one. He said we passed that motion and he does not understand why we rescind it now.

Council President McNamara stated the purpose of rescinding it is because the money is now in dispute and that is the purpose for the next item of business to follow of the hiring of special counsel to determine how it will shake out.

Mayor Curry concurred with Councilor Kapenstein. Whatever the situation is with the money, he mentioned the ICDA is a body of appointed people not elected officials and the reason for the previous vote was to put a belt and suspenders on spending of the money. Mayor Curry stated

we are the elected officials and he does not believe the ICDA should be making \$3.8M worth of decisions without Council approving those decisions and he disagrees with rescinding it as well.

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

Councilor Bowman made a motion to direct Council President to hire legal counsel in preparation for the transfers of money to take place.

Council President McNamara stated we have been informed by our solicitors if the money is to be disputed that they will no longer represent us. He mentioned the purpose of the motion is so that he can go out and entertain special counsel so that we can get to the crux of what Councilor Kapenstein is questioning.

In regards to the Tattered Flag and the ICDA, Council President McNamara stated they are full steam ahead and support the project 100% and we do not have to worry about that, but this will all be resolved by the Attorneys.

Council President McNamara reported the Authority was to dissolve on April 1, 2015 as a result of the water/sewer lease to United Water with an upfront payment of approximately \$43M. Of that \$43M, he stated there was roughly \$760,000 leftover which was part of the \$43M and the other \$3.1M that is in question is because of the legislature and things that happened in Harrisburg City. In 2012, Council President McNamara said they passed a law that stated you could no longer use water/sewer proceeds to transfer to the General Fund and that they were restricted in use only for infrastructure projects.

In Middletown in years past, Council President McNamara stated they were transferring approximately \$1.6M from the water/sewer fund to offset the structural deficit in the General Fund and now that transfer can no longer occur and those monies (if you go back and look in the books you were provided in December 2013) you will see in the budget documents was there in the water/sewer fund.

In preparation for the Authority to dissolve on April 1, 2015, Council President McNamara stated the Water and Sewer Authority met and chose to transfer the money to the ICDA so that projects could continue and the purpose for establishing the ICDA was to get the downtown revitalized. He reported sometime in June 2015 we were informed that the Authority was not going away because the Susquehanna River Basin Commission decided we could not transfer the ownership of our wells to United Water. Council President McNamara stated now we have a question regarding that \$3.1M and whose is it and where does it go. He stated of that \$43M, the \$3.1M is not a part of that \$43M upfront payment and nobody was hiding money or playing games and now it is up to the lawyers and courts to decided who owns that \$3.1M and that is the purpose to hire an attorney.

The motion was seconded by Councilor Kapenstein and approved by a 7 – 1 vote, with Councilor Louer dissenting.

Councilor Bowman made a motion to give Lester Lanman permission to look into upgrading Librandi's Plating electrical service from a 750 AMP to a 1500 AMP.

Council President McNamara reported Librandi's Plating in Middletown has requested an upgrade to their electrical service. He stated one in which is upgrading the transformers and the Borough is responsible because we own the distribution system.

The motion was seconded by Councilor Brubaker and approved by a unanimous 8 – 0 vote.

Councilor Einhorn reported on receiving a request from a member of the community to have an event called All Hallows Eve which would involve the Business community and not cost the Borough any money and council will support it.

Councilor Einhorn made a motion to support All Hallows Eve event as an opportunity for businesses and residents to come together to decorate the square and the downtown.

Council President McNamara recommended getting Tattered Flag involved.

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

Mayor Curry stated Tattered Flag gave a very good presentation and thanked them for coming and working with us throughout the process. He stated as elected officials we are tasked with the role of playing devil's advocate and it is our responsibility and role to question everything and to make sure the best deal is reached on behalf of you, the Borough and most importantly our residents.

One of the representatives of Tattered Flag thanked everyone and most importantly the community. He stated they understand everyone's questions and concerns and that is your responsibility.

Mayor Curry mentioned two years ago the Borough had Labor Day fireworks and last year we did not. He reported that they were unable to raise all the funds for fireworks this year, but through Mayoral Madness they raised approximately \$4700 and there is another event scheduled for this month at the Vineyards and a portion of that money will be donated to benefit fireworks.

Mayor Curry asked this body to consider fronting the remainder of the money for fireworks so that we can bring that event back for the people. He said we do not have a whole lot of time before Labor Day comes and asked if someone can confirm the middle tier fireworks quoted last year was roughly being \$17,000. Mayor Curry asked that someone make that motion to get that done.

Discussion took place briefly with Mr. Mark Morgan on where the money for the fireworks would come from and the contingency fund.

Council President McNamara stated we should find what was established in the motion (language/parameters) from two years ago and revisit and address this issue at the August 17, 2015 meeting.

Councilor Brubaker made a motion to adjourn. It was seconded by Councilor Sites and approved by unanimous consent. At 10:26 p.m., the meeting was adjourned.

Borough Secretary