

Westmont Borough Council Meeting - January 10, 1995

**MINUTES
WESTMONT BOROUGH MUNICIPAL BUILDING**

President Yewcic called the Westmont Borough Council monthly meeting of January 10, 1995 to order at 7:00 P.M. All present recited the Pledge of Allegiance.

COUNCILLORS PRESENT: President Richard G. Yewcic, Vice-President Elaine Heider, Raymond G. Peterson, Frank Bononno, Lovell B. Symons, Joseph A. Carpenter, and Dr. James L. Greco.

OTHER BOROUGH REPRESENTATIVES: Mayor Robert J. Callahan, DDS., Solicitor Thomas M. Kalinyak, Public Works Director Robert A. Batey, Police Chief Andrew T. Havas, Jr., Borough Engineer Peter Chiodo, and Borough Secretary Gail Y. Heeter.

VISITORS (signatures on roster): Ralph Saylor, Westmont Fire Chief, Sue Policicchio, 434 Bucknell Avenue, Jane Oleksak, 422 Bucknell Avenue, Beverly Ruff Dziki, 121 Dartmouth Avenue, Bob Horowitz, 410 Slater Street, Bessie Kerr, 85 Colgate Avenue, Marge Albert, 97 Colgate Avenue, Howard T. Sherman, 215 Wyoming Street, Jonathan Abraham, 504 Tioga Street, and Jason Schuch, 520 Bucknell Avenue.

Councillor Bononno made a motion, seconded by Councillor Greco, to approve the minutes of the Westmont Borough Council meeting of December 13, 1994. Motion unanimously passed.

Councillor Bononno made a motion for a reorganization meeting of council. President Yewcic stated that he was out of order according to Robert's Rules of Orders. Discussion followed and Council agreed to delay any reorganization until "New Business" at the end of the meeting.

Councillor Carpenter made a motion to recess the meeting to regain his composure. Councillor Greco seconded the motion. ROLL CALL VOTE: Councillor Bononno, "no, Councillor Carpenter, "yes", Councillor Greco, "yes", Councillor Heider, "no", Councillor Peterson, "no", Councillor Symons, "yes", and President Yewcic "yes. Motion carried 4-3.

President Yewcic recessed the meeting for five minutes and resumed the meeting at 7:07 P.M.

I

WBC - 1/10/95 Minutes page 2

PUBLIC PARTICIPATION

Howard Sherman, 215 Wyoming Street, addressed council regarding the status of the unfinished property of Mr. Hadix at 1034 Bucknell Avenue. Mr. Sherman was advised this subject will be discussed during the zoning report.

WESTMONT BOROUGH PLANNING COMMISSION

Councillor Greco made a motion, seconded by Councillor Carpenter, to approve the Denny Bozic minor subdivision plan for property on Slater Street. Motion unanimously passed.

FIRE COMPANY/AMBULANCE COMMITTEE

Mayor Callahan reported that the new ladder truck arrived and is in service. Fire Chief Saylor reported there was extensive training by the factory representative on the fire truck. Mr. Saylor said the By-Laws are being revised due to a conflict between the fire and ambulance personnel for worker's compensation. Mr. Saylor said he or a representative will try to attend the council meetings in the future. Mr. Saylor noted they are going to try and work out a schedule with Laurel Management regarding flow tests out of the fire hydrants.

Councillor Carpenter noted that everyone was provided with copies of the Hilltop Ambulance Association minutes. They are looking into a fund drive and the purchase of a new ambulance.

GREATER JOHNSTOWN WATER AUTHORITY

Councillor Bononno - no report.

ZONING

Zoning Officer Walker - absent.

Mr. Walker's report stated there were four permits issued during the month of December - total cost of construction \$172,505.00. A permit was issued to Mr. & Mrs. Thomas Swain for a single family dwelling at 2310 Sunshine Avenue in the amount of \$111,205.00.

Solicitor Kalinyak reported that the District Magistrate did not rule in favor of the Borough on the Hadix, 1034 Bucknell Avenue property as the zoning ordinance was ambiguous. Mr. Kalinyak said following that ruling, he filed a non traffic citation under the nuisance ordinance and he expects the hearing will be next week.

Chief Havas stated he served a letter of notice on Mr. Hadix and he did state that he wants to complete the home. There was no response following that notice except most of the tarps are down but there are open doorways and open cellar ways. Chief Havas said two citations were filed - 1) maintaining a nuisance and 2) section addressing unfinished structures.

Solicitor Kalinyak recommended not spending borough monies to secure the property now, but to wait and get the penalties and fines established by the Magistrate. If it then continues to lag, council does have options under the ordinance to move forward. Solicitor Kalinyak stated that the property owner has the liability of the property now, not the borough.

Councillor Symons made a motion, to direct the Public Works Director to inspect the property and to get an estimate on what it would cost to secure the property and remove the plastic and come back to council with a recommendation.

Councillor Carpenter amended the motion to give him a dollar amount to spend immediately and add it onto the fines for the property owner.

Solicitor Kalinyak said council can't prejudge this man, in other words, council isn't the judge, jury and prosecutor and should move with caution. Solicitor Kalinyak said once the borough boards up the property they do become liable.

Councillor Carpenter withdrew his amendment and seconded the motion on the Solicitor's opinion.

Councillor Greco amended the original motion that the Public Works Director not go onto the property but assess it from the borough right-of-way. Councillor Carpenter seconded the amendment. Motion carried with Councillor Heider voting "no",

ROLL CALL ON ORIGINAL MOTION: Councillor Bononno "Yes", Councillor Carpenter "Yes", Councillor Greco, "Yes", Councillor Heider, "no", Councillor Peterson, "yes" Councillor Symons, "yes", and President Yewcic, "Yes". Motion carried 6-1.

Solicitor Kalinyak noted that the Public Works Director could go onto the property if he has permission from the owner.

WEST HILLS REGIONAL POLICE

Chief Havas reported that besides the fines they hope to get a building permit and schedule in place so the property will be completed and not just sit there boarded up.

WESTMONT HILLTOP RECREATION COMMISSION

Councillor Peterson stated the commission will meet on January 25, 1995.

COMMITTEES

CABLEVISION -

Councillor Symons reported that the Greater Johnstown Cable Coalition, comprised of nineteen municipalities and the Cambria-Somerset Council of Governments, has undertaken the task of negotiating the cable franchise and have held numerous meetings. Miller, Holbrook & Associates of Washington, D. C. have been hired as consultants and Sam Catanese office has volunteered typing services. A final franchise draft is ready and in the hands of the consultants for review, and five public hearings have been scheduled during January. Councillor Symons said the committee thanks the council for their financial support. Councillor Symons did not recommend renewal of the Pennsylvania League of Cities and the Cable Technical Assistance Program, although the membership in it last year and information received was very useful in the initial stages of negotiations.

FINANCE COMMITTEE -

Chairwoman Heider made a motion, seconded by Councillor Greco, to approve the list of expenditures in the total amount of \$124,383.68. Motion unanimously passed.

Chairwoman Heider reported that the list of expenditures includes a payment to Donald Gardill in the amount of \$807.21 for reimbursement of double payment of borough real estate taxes in 1994.

Councillor Symons made a motion, seconded by Councillor Carpenter, to place a separate line item on the financial reports for overtime salaries. Motion carried with Councillor Peterson voting "no".

PUBLIC WORKS COMMITTEE -

Chairwoman Heider reported that a letter was received from Denver E. Wharton, stating a dangerous condition exists at the intersection of Club Drive and Emmett Drive where vision is obstructed by a large pine tree. Chairwoman Heider said the public works committee discussed the situation as the tree is on borough property.,

Councillor Carpenter made a motion, seconded by Councillor Heider, to send a letter to the property owner requesting that they remove the lower limbs of the tree up at least five feet, or the Borough will do the necessary trimming. Motion unanimously passed.

Chairwoman Heider reported that Mr. Alan P. Vargo, an employee in the public works department for almost twenty-five years, has resigned as he is moving out of the area. Chairwoman Heider said the public works committee is recommending that a part time employee for seven years who already has his CDL license be hired full- time.

Chairwoman Heider made a motion, seconded by Councillor Peterson, to hire Mr. Donald Blasko, as a full-time employee in the public works department at the starting rate of \$7.63 per hour. Motion unanimously passed.

Chairwoman Heider reported a letter was received from Pennsylvania Electric Company confirming that a new 400 amp meter cabinet was installed in the municipal building at 1000 Luzerne Street.

Councillor Carpenter made a motion, seconded by Councillor Heider, to direct the Public Works Director to make a comparison of local rental rates with~that offered by the Twelfth Congressional Regional Equipment Center. Motion unanimously passed.

SOLICITOR'S REPORT

Solicitor Kalinyak noted that Ronald Grados will be notified of any entitlements under the borough contract and also, he is in the process of filing for disability under the state and borough contract.

Solicitor Kalinyak reported that he has re-written the Agreement between the Borough and the McAneny's regarding a fence they erected over the borough's storm sewer.

Councillor Carpenter asked Mr. Kalinyak for a clarification on the adverse possession filed by a resident. Solicitor Kalinyak said the resident has made a claim for adverse possession of a "paper street" that the Borough had never accepted and it has been there for well over twenty-one years. The resident is putting it on record that he is claiming an ownership interest in it.

UNFINISHED BUSINESS

NEW BUSINESS - APPOINTMENTS

President Yewcic acknowledged receipt of a letter from Mr. Kim Kunkle as his resignation, effective December 31, 1994, as he has been unable to attend meetings due to other commitments.

Councillor Peterson made a motion, seconded by Councillor Bononno, to appoint Susan Holmes to replace Mr. Kim Kunkle on the Zoning Hearing Board-which term expires January 1, 1996. Motion unanimously passed.

|

Councillor Peterson made a motion, seconded by Councillor Heider, to re- appoint Dr. George Pueblitz to a five year term, expiring January 1, 2000, and as Health Officer/Secretary on the Board of Health. Motion unanimously passed.

President Yewcic noted that Mr. Joseph McAneny's term expires on the Zoning Hearing Board January 1, 1996 and Mr. McAneny has decided he no longer wishes to serve on the Board.(2/14/95minutes corrected 1/1/96 date to 1/1/95)

Councillor Bononno made a motion, seconded by Councillor Heider, to appoint Mr. James Kukura, to a five year term, on the Zoning Hearing Board expiring January 1, 2000. Motion unanimously passed.

Councillor Bononno made a motion, seconded by Councillor Heider, to appoint Mr. Francis Sutton, to fill the unexpired term of Mr. James Kukura, as an Alternate on the Zoning Hearing Board, which term expires October 11, 1997. Motion unanimously passed.

Councillor Heider made a motion, seconded by Councillor Bononno, to re-appoint the same council members and Mayor on the West Hills Regional Police Commission, as follows:

Elaine Heider	Two year term	Expiring 1/1/97
Dr. Robert J. Callahan	Two year term	Expiring 1/1/97
Richard Yewcic	One year term	Expiring 1/1/96
Dr. James Greco	One year term	Expiring 1/1/96
Lovell Symons	One year term	Expiring 1/1/96
Raymond Peterson (alt)	One year term	Expiring
1/1/96		

Motion unanimously passed.

Councillor Peterson made a motion, seconded by Councillor Heider, to appoint Mr. Thomas Simmons to the Vacancy Board, term expiring January 1, 1996. Councillor Symons made a motion to retain Mrs. Sue Policicchio on the Vacancy Board, term expiring January 1, 1996. Councillor Carpenter seconded the nomination for Ms. Policicchio.

ROLL CALL VOTE: Councillor Bononno "Mr. Simmons", Councillor Carpenter, "Mrs. Policicchio", Councillor Greco, "Mr. Simmons", Councillor Heider, "Mr. Simmons", Councillor Peterson, "Mr. Simmons", Councillor Symons, "Mrs. Policicchio", and President Yewcic, "Mrs. Policicchio". Motion carried 4-3 in favor of Mr. Simmons.

Councillor Bononno made a motion, seconded by Councillor Peterson, to appoint Mrs. Heider as Chairperson of Council for the year 1995.

Councillor Carpenter questioned who has talked to whom about this situation as he is concerned about the consequences. A very lengthy debate ensued about who talked to whom, whether it violated the Sunshine Act, and whether the motion was in order.

Solicitor Kalinyak had the following observations:

Section 1001 of the Code states that reorganization is mandatory on even-numbered years, and it also says that officers appointed by council members serve at the pleasure of council and they at any time can be removed from office without cause.

The motion is in order.

He does not have any facts or knowledge to render a decision on whether there is any violation of the Sunshine Act. If a quorum of council meet or gather together to conduct borough business without it being advertised then that is a violation of the sunshine law.....but phone calls to individuals is not a violation.

I

WBC - 1/10/95 Minutes page 7

Councillor Heider made a motion, seconded, by Councillor Greco, to nominate Mr. Yewcic as Chairman for 1995.

Councillor Heider moved the nominations be closed. Councillor Peterson seconded the nomination.

Councillor Carpenter made a motion to table the motion until it is determined whether the Sunshine Law has been broken and to hire an attorney to find out. Councillor Symons seconded the motion.

ROLL CALL VOTE ON MOTION TO TABLE: Councillor Bononno, "pass", Councillor Carpenter "yes", Councillor Greco, "no", Councillor Heider, "no", Councillor Peterson, "no", Councillor Symons, "yes", President Yewcic, "Yes", and Councillor Bononno, "no". Motion to table failed 4-3.

Solicitor Kalinyak advised council that nominees cannot vote for themselves. Solicitor Kalinyak further stated that if someone thinks there is a violation of the sunshine law they should contact the district attorney's office and have him do an investigation of the whole council. Solicitor Kalinyak referred to the June issue of the PSAB magazine, Q&A Section, and case law Raynovich V. Romanus, 229 A.2d 301 (Pa. 1973).

ROLL CALL VOTE ON NOMINATIONS FOR CHAIRPERSON FOR 1995: Councillor Bononno, "Mrs. Heider", Councillor Carpenter, "pass", Councillor Greco, "Mrs. Heider", -Councillor Heider, "Mr. Yewcic", Councillor Peterson, "Mrs. Heider", Councillor Symons, "Mr. Yewcic President Yewcic, "pass", Councillor Carpenter, "Mr. Yewcic", and President Yewcic, "contrary to the Solicitor's opinion I vote for myself". Vote: Mr. Yewcic - 4, Mrs. Heider - 3.

Councillor Carpenter made a motion, seconded by Councillor Symons, that on the Solicitor's opinion council have the District Attorney investigate the possible violation of the Sunshine Law. Motion unanimously passed.

Councillor Greco made a motion, seconded by Councillor Carpenter, to file a petition, for declaratory judgment to get an interpretation of whether someone can vote for himself. Motion carried with Councillor Heider voting "no".

Councillor Heider objected to spending valuable tax dollars on this. Councillor Symons asked to be advised if there is an actual hearing.

Councillor Peterson asked for an explanation on the declaratory judgment. Solicitor Kalinyak said the Judge will determine whether a prospective nominee can vote for himself for an office on council. If the Judge says "yes", then the motion is intact, if the Judge says "no", then the motion is resurrected and the Mayor will

break the tie,-and until that occurs there is a status quo system.

Councillor Greco made a motion, seconded by Councillor Bononno, to adjourn,the meeting. Motion unanimously passed. Meeting adjourned at 8:55 P.M.

Respectfully submitted,

Gail Y. Heeter, Borough Secretary