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March 3, 2014  
Middletown, PA 17057

The March 3, 2014 meeting of the Middletown Borough Council was called to order at 7:00 p.m. by Council President Christopher R. McNamara.

Following the Pledge of Allegiance, the following Council members answered roll call: John Brubaker, Anne Marino Einhorn, Tom Handley, Benjamin Kapenstein, Robert Louer, Victoria Malone, Christopher R. McNamara, Scott Sites, and Sue Sullivan.

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

**Council President McNamara called for a motion to approve the minutes of December 30, 2013, January 6, 2014, February 13, 2014, and February 18, 2014. Councilor Sites made a motion to approve the minutes.** The motion was seconded by Councilor Louer and approved by a unanimous 9-0 vote.

At this time, Council President McNamara asked for a motion to amend the evening's agenda so that he may recognize someone who has served the Borough and has since announced retirement.

**Councilor Handley made a motion to amend the agenda to include remarks from Mrs. Nancy Schenck.** The motion was seconded by Councilor Einhorn and approved by a unanimous 9-0 vote.

On behalf of the American Red Cross, Mrs. Nancy Schenck thanked Council and the Borough of Middletown for the services the Red Cross received over all the years. She stated, without your help this little chapter would not have been. She mentioned the Harrisburg Chapter will be in contact with the Borough to make arrangements to use the Borough for their Thursday morning meetings. Mrs. Schneck expressed her gratitude towards Borough Manager, Tim Konek. Mrs. Schneck explained her reason to retire was to move to Pittsburgh where she can spend her time with her family.

**Councilor Brubaker made a motion to approve Ordinance 1303 of 2014 Amending Water and Sewer Rates.** The motion was seconded by Councilor Louer.

A discussion was held amongst Council and the Mayor regarding their concerns on the water and sewer rate study. Councilor Kapenstein reported he would like to present a proposal on the rates and findings he conducted on the Water and Sewer Rate study. Council, Borough Staff and the Mayor discussed the rate change and staff preparedness. Borough Manager, Tim Konek reported on the recent visit by the Encode Consultant to conduct an on-site business process review. He stated 75% of the process is in place and there are certain processes that can't be completed too early. As soon as we have a target date, we will complete the remainder of the process.

Chairman Patton from the Authority made a few remarks regarding the Water and Sewer Rate Study, stating he knows it is difficult. He said the study indicates this year you are revenue in neutral. Chairman Patton explained the process for the operating expenses and general operating budget and how rates determine that in subsequent years.

The motion to approve Ordinance 1303 of 2014 Amending Water and Sewer Rates was approved by a 6 – 3 vote with Councilors Kapenstein, Einhorn, and McNamara dissenting.

Mayor Curry commented on hearing Mr. Kapenstein's presentation before making a vote. He stressed the importance to hear all options.

At this time, the Mayor stated he was vetoing the motion to approve Ordinance 1303 of 2014 Amending Water and Sewer Rates.

**Councilor Sites made a motion to approve Resolution 591 Recognition of Eagle Scout Brendan Olivera.** The motion was seconded by Councilor Malone and approved by a unanimous 9-0 vote. Council President McNamara stated Brendan will be awarded at a dinner on March 15, 2014.

**Councilor Sullivan made a motion to approve Resolution 592 recognizing March as DeMolay Month.** The motion was seconded by Councilor Sites and approved by a unanimous 9-0 vote.

Councilor Handley gave an explanation of the DeMolay Youth Organization. Council President McNamara stated a resident of Middletown, not identified, participates in the Elizabethtown Chapter.

#### **PUBLIC COMMENT**

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

Ms. McGlone commented on why the public is being denied speaking prior to votes taking place on agenda items.

Ms. McGlone commented on meter rates which were just approved, making reference to Ordinance 256-12, amended December 8, 2009.

Ms. McGlone commented on the meeting format and stated her recommendations of the motion voting process.

##### **Jack Still, 37 West Emaus Street**

Mr. Still commented on an editorial in the Press & Journal regarding the public being informed on public funds and accountability.

Mr. Still mentioned, back in 2010, Londonderry Township almost lay off 50% of their public works department.

Mr. Still commented on an email list called public regarding meeting and cancellation notices. Mr. Still made reference to a handout regarding public comment where it states former Council President McGlone stopped it.

##### **Mike Bowman, 100 Wilson Street**

Mr. Bowman clarified his comment at a recent council meeting was not to pound on one person regarding their voting. Mr. Bowman reiterated his comments regarding the one million dollar grant they could have received but failed to apply for because they spent so much time defending Pete Papas on his illegal appointment to the Authority.

Mr. Bowman commented on Councilor Kapenstein's water and sewer proposal. He commented it sounds like Councilor Kapenstein wants to sell the sewer and water department.

Mr. Bowman commented on accusations from the GMEDC. His comments centered on the handling of a \$500,000 grant given to the Borough of Middletown.

Mr. Bowman commented on the process in which the public was able to speak before votes were taken at meetings, stating this had all changed under former Council President Diana McGlone. He said a copy of those minutes could be provided at the next meeting.

**Rachelle Reid, 448 Grant Street**

Ms. Reid commented on the capital improvement plan in place for redoing the sewer. Information surrounding the plan was discussed and presented by Council President McNamara, Public Works Superintendent, Ken Klinepeter and Chairman Patton from the Authority. Ms. Reid commented on the funds for the plan and the revitalization project downtown.

Ms. Reid commented on the Director of Communications position in the Borough. Ms. Reid commented it is the Borough Managers responsibility to communicate to the public, with the exception of Police related issues.

Ms. Reid made remarks to a recent vote by Council to pay the Event Place \$200.00 to cater a party for her Uncle (former Mayor Reid). She directed Mayor Curry and Council President to look into the matter.

Ms. Reid commented the podium is not to be used as a way to shout out against people.

**Mike Dalton, 237 North Pine Street**

Mr. Dalton asked for an update on the property that was to be purchased and given to the Historical Society. Council President McNamara responded giving to a complaint against the body, by a local newspaper publisher. He stated the body is in transition as we form our committees in the ways in which we conduct business. President McNamara said once the committees are established, we will address your wants and needs.

**Cortez Jackson, Jr., 202 S. Lawrence Street**

Mr. Jackson commented on the snow removal by the Borough and the current ice issues that exist.

Mr. Jackson commented on customers having difficulty paying their electric bills on time and hopes the Borough would consider leniency for the people.

Mr. Jackson asked for additional information on the DeMolay Organization. He recommends information as such be shared amongst the community.

**Jack Still, 37 West Emaus Street**

Mr. Still made a comment recommending Council pass the ordinance for the water and sewer.

At 8:00 p.m. Council recessed for an executive session to discuss matters related to labor relations.

Council reconvened at 8:43 with Council President McNamara announcing several items were discussed in terms of labor relations and personnel.

**Councilor Brubaker made a motion to settle the grievances between Mr. Gary Rux and Mr. Wade Bloom.** The motion was seconded by Councilor Sites and approved by a unanimous 9-0 vote.

**Councilor Handley made a motion that the position of Communications Director be eliminated.** The motion was seconded by Councilor Einhorn.

Councilor Handley stated no other Borough of this size has a position like this and we need to listen to the citizens from time to time and abide by their wishes.

The motion fails with a 5 – 4 vote, with Councilors Brubaker, Louer, Malone, Sullivan, and McNamara voting against and Councilors Einhorn, Handley, Kapenstein, and Sites voting for.

Before Councilor Kapenstein 's proposal on the water and sewer system, Council President McNamara informed Council that Mr. Kapenstein has taken a considerable amount of time showing an interest in his proposal. He stated, you will all need to pay attention and gain an understanding of what he is about to present, it is worth discussing.

Councilor Kapenstein presented his proposal on the water and sewer system. He stressed this is not expert advice; it is what is needed and we need to look at all options. He gave examples of what is being utilized in neighboring areas and recommends testing the market to find out what the embedded value is of our water and waste water assets. He mentioned recent developments throughout Pennsylvania indicate the considerable value now exists. He said we need to take steps to determine if interests exist for a long term lease of these assets. Although he is not in favor of a sale, he mentioned guidance provided by our Attorney suggest that only makes sense to have this option on the table. He said this process will consist of the design and development of an RFP to be issued for qualified industry experience bidders to help assist with the true market value of the Borough resources. He said we reserve the right to reject all bids and pursue other options. Councilor Kapenstein highlighted his four major terms and conditions for the proposal. He discussed a recent successful deal that shows similarity to his proposal in the City of Allentown. In closing, Councilor Kapenstein said it is the Borough Council's fiduciary responsibility to our citizens we explore this opportunity.

After a discussion amongst Council and the Mayor was held regarding Councilor Kapenstein 's proposal and the motion to approve ordinance 1303, **Councilor Kapenstein made a motion to authorize our Attorneys and Susquehanna Group Advisors to initiate the process of developing an RFP for a long term lease of the Boroughs water and sewer facilities.** The motion was seconded by Councilor Sites.

Discussion was held amongst Council and the Mayor regarding concerns of the preceding motion. Discussions centered on the formulation of a committee to oversee contacting the professionals regarding the proposal. Recommendations made state the Committee consist of Councilor Kapenstein, Council President McNamara, and Chairman Patton of the Authority. Chairman Patton gave his remarks stating he doesn't feel he should enter into this until the motion is settled.

The motion fails with a unanimous 9 – 0 vote.

**Councilor Kapenstein made a motion to authorize our Attorney's and Susquehanna Group Advisors to initiate the process of developing an RFP for a long term lease of the Boroughs**

**water and sewer facilities and as well as form a committee to explore this option.** The motion was seconded by Councilor Einhorn and approved by unanimous 9 – 0 vote.

Chairman Patton advised and cautioned Council to make sure you fully understand what you are doing when you lease the authority, consider all variables when you talk about the lease and make sure you understand all parameters in the process. Chairman Patton cited some issues in the Allentown case. He mentioned details surrounding the Authority's \$1.2M Penn Vest loan.

Council President McNamara reported the committee will consist of Councilor Kapenstein, Chairman Patton and himself. He mentioned we will look for an update at the March Committee meeting and find a time that is convenient for the committee to get together.

Councilor Sites reported Mr. Nardo and his Attorney approached us at the February 18, 2014 Council meeting regarding changes they would like to make at Nissley and Wood Streets and gave details on that change. He asked for Mr. Nardo and his Attorney to comment on why the importance to proceed with the change in the future.

Council President McNamara commented once the Committees are set we would address their needs.

On behalf of the Nardo family, Attorney Tom Scott reported the approved plan calls for these changes which were presented at the February 18, 2014 Council meeting. He described, in detail, the mechanism needed to make those changes. He feels there doesn't need to be any Committee action, since the zoning was changed to approve the plan and the Planning Commission and Council approved the plan.

Council President McNamara stated the recommendation from the solicitor was for it to be first referred to the Planning Committee. He said the Planning Committee would recommend Council to draft the ordinance.

Attorney Scott discussed the critical timing, financing and the current tenants at the Center.

**Councilor Sites made a motion to have our solicitor draft an ordinance to make Nissely Street two way from the intersection of Main and Nissley to Nissley and Wood or Water Street.** The motion was seconded by Councilor Handley.

Councilor Brubaker made reference to the May 10, 2011 meeting minutes, where a motion took place and seconded, to conditionally approve the plans for the Westporte Phase II project conditions based upon the Borough Engineers comments of the preliminary Final Plan review that took place on May 10, 2011, as well as the completion of the outstanding comments in the engineering report for the storm water comments and the new storm water comments and the miscellaneous comments and it is the Borough's intention to transfer the area known as the "slope" of land at the Ann Street Bridge and RT. 230. It is the intention of the Borough to transfer the land over to the developer.

At this time, discussions regarding the conditions and approval were held amongst Councilor Brubaker, Attorney Scott, and Mr. Nardo. Mr. Nardo stated conditions do not get approved and are based on the comment sheet. Mr. Nardo said all of those comments were addressed and revisions made to the plan were resubmitted to the Borough.

Councilor Handley mentioned Nissley Street was two way at one time and stressed this is a simple change and supports the business here in town.

Councilor Louer also mentioned that we have a parking condition on both sides and an issue with a resident's trailer. He suggests the ordinance should reflect that.

At this time, Councilor members looked at Mr. Nardo's plan and discussed their concerns and how it would affect the residents.

The motion fails with a unanimous 9 – vote.

**Councilor Sites made a motion to have our solicitors draft an ordinance to make Nissely Street two way from the intersection of Main and Nissley to Nissley and Water/Wood Streets and to eliminate parking on the west side of Nissley Street and the west side of Wood Street and also maintain a no left turn off Nissley Street onto Main Street going North.** The motion was seconded by Councilor Handley.

Councilor Malone raised a concern for residential parking, while other Council members voice concerns for further information. Councilor Sites commented on the motion is to have our solicitors draft the ordinance. He said we are not passing the change. He said we are just helping Mr. Nardo to where he needs to be in a timely fashion.

The motion fails with a 7 – 2 vote, with Councilors Sullivan, Louer, Einhorn, Brubaker, Kapenstein, Malone, and McNamara voting against and Councilors Handley and Sites voting for.

**Councilor Sites made a motion to have the attorneys representing the Nardo family draft an ordinance to make Nissely Street two ways from Nissley and Main to Nissley and Wood/Water Streets and eliminate parking on the west side of Nissley Street and Wood Street and would like to keep the left turn off Nissley Street going North prohibited.** The motion was seconded by Councilor Kapenstein.

Attorney Scott said he will draft the ordinance and submit to Borough Manager and John Andrews, Attorney from McNees, Wallace and Nurick who handles planning and zoning.

The motion approved by a unanimous 9-0 vote.

Mayor Curry discussed the Commissions and Boards in the Borough, in regards to his appointment on the Historical Restoration commission. Because of his duties as Mayor, he officially relinquished his seat on the Historical Restoration commission and recommends Ms. Jenny Miller to fill his seat. Mayor Curry stated Ms. Miller has expressed an interest in being part of the Historical Restoration commission and feels she would be an excellent fit. At this time, the Mayor discussed terms for individuals serving on the committees and recommendations for the two vacancies on the Historical Restoration commission.

Mayor Curry distributed the 2014 Public Notice/Legal Advertisement rate sheets that he received from the Press and Journal. He told Mr. Sukle he would distribute to Council at the meeting. He mentioned to Council that you can compare these with the Patriot news to determine the best course of action.

Mayor Curry gave an update on the Police department activity for January 2014, reporting the total number, averages, and details of calls. He plans to give a report on the Police department once a month. Mayor Curry announced Patrolman Andrew Crone completed a "Field Training

Officer” program, Patrolman Gary Rux completed training as a school resource officer for the community, Sergeant James Bennett completed the Police Executive Development Program and Chief Wheeler has been appointed as the law enforcement representative to the Dauphin County Drug & Alcohol Advisory Board.

Council President McNamara presented the Boards and Commissions sheet. He asks that we reserve any actions until Borough Manager Konek has had the opportunity to make contact and relay the message regarding the complaint that has been lodged. Mr. Konek said he plans within the next week or two to meet and discuss with the Boards and Commissions. Discussion amongst Council President McNamara and Mayor Curry took place regarding action, timing, and the two individuals recommended for the vacancies. Council President McNamara stated it is a Council issue and the Council can do as they wish.

Councilor Sites made a recommendation to advertise for volunteers for committees. Council President McNamara stated we need to relay the message onto the individuals who are currently serving on the Boards and Commissions.

Mayor Curry mentioned his request for Council to make a motion to appoint those two individuals. He personally endorses the two individuals he recommends.

**Councilor Sites made a motion to direct the Borough Manager to solicit for individuals to sit on the Boards and Commissions that have vacancies by the end of March to report at the April Council meeting.** The motion was seconded by Councilor Kapenstein.

Councilor Sites stated this will be a fair way to open it up to anyone reading the publications; who do not come to meetings and have an interest in the town.

The motion approved by a unanimous 9-0 vote.

Councilor Handley asked for Council’s permission to ask the two individuals the Mayor recommends, if they would like Council to move on it tonight or wait. On behalf of Ms. Miller, Ms. Reid said we would appreciate that we move on this tonight. She said we can’t move forward on things that have to be done until the committee is set.

**Councilor Handley made a motion that Mrs. Miller and Ms. Reid be appointed to the Historical Restoration committee to fill the two positions of Mrs. Baldwin and James Curry.** The motion was seconded by Councilor Einhorn.

Councilor Louer asked if these are going to be handled by individual names or by block. Councilor Handley stated both of them together that is how the motion was made.

Councilor Brubaker commented we have to make sure the individuals who are appointed to the Boards and Commissions are well versed on the Chapter that pertains to them, i.e. Chapter 30 for Historical and Restoration commission members.

Councilor Sites disagrees with the process. He prefers we advertise as part of the process.

The motion fails with a 6 – 3 vote, with Councilors Brubaker, Louer, Malone, Sites, Sullivan, and McNamara against and Councilors Einhorn, Handley, and Kapenstein for.

Several Council members expressed their hopes Mrs. Miller and Ms. Reid will respond to the advertisements. Council President McNamara stated we do have a letter of interest from Mrs. Miller.

Councilor Einhorn recommended for the next meeting, we make a motion to change the times of executive meetings. She suggests having the executive meetings prior to the regular meeting or end of the meeting before adjournment. Discussions were held amongst Council regarding executive session and advice received from the solicitor.

**Councilor Einhorn made a motion to change the time to following the meeting but before adjournment so that people will be able to hear whatever it is they come to hear through the meeting part of the meeting and then can choose to stay after the executive session.** The motion was seconded by Councilor Handley.

Council held discussions regarding their concerns and options relating to executive sessions.

The motion fails with a 5 – 4 vote, with Councilors Brubaker, Louer, Malone, Sullivan, and McNamara against and Councilors Einhorn, Handley, Kapenstein, and Sites for.

Councilor Sites read the Sunshine Act of Pennsylvania pertaining to Executive sessions. At this time, Council and the Mayor held discussions regarding executive sessions and recommendations from the solicitor.

Councilor Handley asked Council to take into consideration the citizens when holding executive sessions.

Council President McNamara and Council discussed events and details surrounding two letters addressed to and received by the Middletown Volunteer Fire Department regarding a grant application administered by the Keystone Communities Program and DCED. He highlighted the importance of receiving critical information as soon as possible, because of deadlines. He directed Council to look at Chapter 23 in our code of ordinances, rules that govern the Fire Department. Council President McNamara recommends a better line of communication with the fire department. Council President McNamara and Council directed the Borough Manager to meet with the fire personnel and Beverly Hutzel of DCED.

Council President McNamara gave a brief report on the last ICDA meeting and discussed the recent application for the \$2M capital budget for downtown Middletown.

Council President McNamara talked about the invitation from the Harrisburg Regional Chamber & CREDC to attend their meet and greet elected officials in mid-April. He talked about training courses being administered by the Pennsylvania State Association of Boroughs and the seminar by the DCNR for parks and recreation. He recommended Council look into those.

In closing, Council President McNamara stated the intention when we come together again is to layout the committees. He said the Borough Manager will have met with the Boards and Commissions and the advertisement would have gone out.

**Councilor Sites made a motion to adjourn.** It was seconded by Councilor Louer and approved by unanimous consent. At 10:30 p.m., the meeting was adjourned.