

April 7, 2014  
Middletown, PA 17057

The April 7, 2014 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 Cortez Jackson, Jr., and 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, Attorney James Welch, McNeese, Wallace & Nurick and Borough Secretary Amy Friday.

Council President McNamara stated Council is going to recess to Executive Session to discuss matters relating to personnel.

**Councilor Einhorn made a motion to move the period of public comment prior to the Executive Session. The motion was seconded by Councilor Handley and approved by an 8 – 1 vote with Councilor Brubaker dissenting.**

#### **PUBLIC COMMENT**

##### Jack Still, 37 W. Emaus Street

Mr. Still submitted a Right to Know request for information pertaining to insurance documents provided to the Borough for the GMEDC mortgage agreement. He stated there are very specific conditions for insurance.

##### Dawn Knull, 123 State Street

Ms. Knull presented Council with a petition to have the position of Communications Director abolished. The petition consists of 187 signatures from concerned citizens. Ms. Knull stated we could utilize our Mayor and Borough Manager for this position. Ms. Knull stressed the need for a full time code enforcement officer.

Ms. Knull stated she attended the Borough Authority meeting on April 3, 2014 to voice questions and concerns in regards to the upcoming detour on her street as it pertains to the children's safety. Ms. Knull reported an exchange of words between Mr. Louer Jr. and herself and asked Council (since he is an appointed member to the Authority) to get his resignation immediately.

##### Ed Barb, (Sportsmen Limited)

Mr. Barb gave an update on the current work performed at the Middletown Reservoir to make it presentable for trout season.

Mr. Barb invited everyone to their kid's trout derby on Saturday, April 26, 2014 and asked that Council consider helping them with a donation from the Borough to help take care of the kids.

Mr. Barb asked for an update from Council on the reservoir property.

Council President McNamara responded it is time that Council put the property on their radar. He said this should be put in the Community Development committee's hands to discuss.

**Councilor Sites made a motion to allocate \$500 to Sportsmen Unlimited for the trout derby. The motion was seconded by Councilor Sullivan and approved by unanimous 9 – 0 vote.**

Mr. Barb thanked the council and mentioned he will get a receipt back for audit purposes.

##### Barbara Seibert, 532 N. Spring Street

Ms. Seibert mentioned she and her husband signed the petition to do away with the Communications Director position. She stressed the Borough needs a full-time code enforcement officer and by not having one is danger and tragedy waiting to happen.

##### Robin Pellegrini, 51 East Main Street

On behalf of the downtown business people, Ms. Pellegrini thanked the council or whoever put together the focus meetings held several weeks ago. She stated meetings were very positive and fairly well attended. Ms. Pellegrini shared a Facebook address Ms. Dana Ward put together

to get information out in announcing meetings, etc. The address is Middletown PA Downtown Business Association.

Mike Bowman, 100 Wilson Street

Mr. Bowman reiterated what he stated at previous meetings, certain Council members should abstain from voting on certain actions, due to a conflict of interest.

Charles Dunn, 7 South Union Street

Mr. Dunn, owner of Dunn's Antiques and Collectables, presented Council with a copy of a code complaint of the upstairs 3<sup>rd</sup> floor roof of the Elk's building leaking into his building from the second floor. He stressed it is no longer water damage now, he has a mold issue. A friend of Mr. Dunn's who works for an environmental company came to take a look and told him the mold is definitely an issue. Mr. Dunn stated he met with the GMEDC to review a few things. He also said back on January 11, 2014 he had a lot of damage inside his store. He is not looking for anything monetarily right now, he just wants the problem fixed, whether it be the GMEDC or whoever down the line takes care of the building. He also mentioned his concern with the timeframe with moving, if need be.

Jack Raudenbush, 29 South Union Street

Mr. Raudenbush, Chairman of the GMEDC mentioned they have been aware of the problems that Mr. Dunn is experiencing for several months. He stated the problem is a roof leak and the leak back in January which has affected Mr. Dunn was addressed by Wilson roofing. Mr. Raudenbush said since that time, another leak has occurred and Wilson's came back in again to do the repairs and he understand Mr. Dunn does not have any leaks today. Mr. Raudenbush reported the GMEDC is continuing to monitor the space for any leaks that might occur.

Mr. Raudenbush talked about the netting that was installed on the theatre ceiling, due to falling plaster pieces. He would like the netting to remain in place until the ceiling is repaired and reported there are no issues in the Theatre to date.

Mr. Raudenbush mentioned this is the first time hearing about the mold issue Mr. Dunn spoke of and stressed the importance to address it. He said he understands the Middletown ICDA was intending to have the building completely inspected and HRG has presented a proposal to do that complete inspection, which would take two weeks to perform. Mr. Raudenbush stated the Authority was to authorize the inspection at their meeting, but the meeting never happened and HRG was not authorized to proceed. He said these very issues would be part of the inspection and they would give the GMEDC an opportunity to address them. Mr. Raudenbush reported the Authority is preparing documents that the Authority would ultimately take ownership of the building, in which the GMEDC would want to work out an agreement for it to happen. He mentioned he was not sure what the timing would be if the notice of violation drags out to long and how it would affect the Authority and their intentions. In closing, Mr. Raudenbush stressed the GMEDC's desire is to have the building inspected as quickly as it can and address whatever issues may come up.

Cortez Jackson, 202

Mr. Jackson asked council to look into some government funding (grants) for summer employment as a way to provide the kids with summer jobs and keep them out of trouble.

Diana McGlone, 805 Adelia Street

Ms. McGlone asked for some clarification on the Borough's sewer inspection program as she referred to the minutes from January 7, 2013 council meeting. Ms. McGlone stated, she and her father are looking to purchase a property here in the Borough and was contacted by her Realtor, who was contacted by the Realtor for the property who contacted the Borough, and was told they needed a sewer inspection program completed. Ms. McGlone said she received authorization from the bank to be present at the inspection. She said the Borough Manager, Mr. Konek showed up at the property (which had no electric) and was trying to conduct the inspection with the light on his cell phone. When finished with the inspection, Mr. Konek said he would get back to Ms. McGlone's attorney with the findings and he also said to her attorney that she as the buyer has 30 days to remedy the findings from the inspection. Ms. McGlone referenced the Borough website where it states, the sewer inspection program has been suspended while Borough Council decides on a revised program. At this time, Ms. McGlone asked Council for the status on the sewer inspection program. In closing, Ms. McGlone wants the minutes to reflect she is not the owner of the said property and is under no legal obligation to respond to any correspondence through her Realtor my Mr. Konek.

Ms. McGlone asked Council what the status is of the information she requested at a previous meeting on the financial figures spent on the services of Dewberry.

Councilor Brubaker responded he does not have the figures and suggest she submit a Right to Know request for the information. Ms. McGlone stated, she has made several Right to Know requests and has been provided with documentation from Mr. Corrigan stating she owes \$84.25 for copying charges of the Right to Know requests, that she has never received. Ms. McGlone will provide council with the information, if need be.

Ms. McGlone asked if Council is going respond on the sewer inspection program at this time. Councilor Einhorn responded I do not have that information, but can try and find it out for you.

Mayor Curry asked Ms. Knull how long she spent on the petition. Ms. Knull responded only nine hours.

Jack Still, 37 W. Emaus Street

Mr. Still stated, at Borough meetings, he has been told to shut up, sit down, called a liar and laughed at. He feels these individuals should not be allowed to come to Council meetings. He also talked about and made a suggestion for the upcoming detour and street construction.

Council President McNamara commented on the detour stating the plan that has been submitted to PENNDOT has not been approved. He gave an explanation of the series of guidelines in which PENNDOT publishes. He also stated the detour is the same detour that was used in 2007 when they replaced the bridge in Royalton. He stressed there isn't any one member of Council who does not have the safety of the residents and children of the community in mind. Council President McNamara said when the permit is officially issued as was stated to Ms. Knull by Chairman Patton, there will be a preconference with the contractor and all those wants and needs will be reinforced and the ultimate goal is the safety and welfare of the residents.

Jason Kreider, 826 Detrick Avenue

Mr. Kreider, a recently returned resident of Middletown, commented on the adversity of people's opinions he has witnessed. Mr. Kreider reported on the Kids Kastle program and how it was started 20 years ago. He talked about his recent experience taking his younger sister to the park. He mentioned his surprise and excitement of all the kids at the park that day, given the recent flood issues. He asked is there anything he could do as a citizen to help with these community events or create/coordinate a community event (cleanup) to bring the unity back.

Mr. Kreider said he is looking to transplant his business downtown after the revitalization project. He stated there are a lot of people here that are willing to get involved and there has been a lack of transparency in communication. In closing, he stated he has no comment on the current position that holds that role, but did say it is not there.

Councilor Einhorn made comment as an elected or appointed official, we should be held to a higher standard of conduct. For that reason, she stated no member of the public should be called a name or have anything humiliating be done to them.

David Craig, 27 E. Emaus Street

Mr. Craig, owner of PC & Pro Audio, reported he was personally told by his landlord he no longer had a lease and would no longer be under a lease. He said his landlord told him this was a result primarily due to the rumors being batted around town. Mr. Craig stated he was recently notified by his landlord of a new lease and was sent the new lease. Mr. Craig stated he or his landlord are clear on what is happening downtown and no one has communicated anything to him as a business owner. Mr. Craig made some suggestions to a property located on Main Street. In closing, Mr. Craig said he saw the design plan for the downtown and made comment to see more trees and also be included in the process.

Council President McNamara advised Mr. Craig to contact Robin Pellegrini and Dana Ward in regards to the involvement with the downtown.

Greg Jones, 322 N. Catherine Street & Dana Ward

Mr. Jones reported on partnering up with AI, owner of the Bunky's building. He stated something will happen with the Bunky's building and we can all leave AI alone.

Ms. Ward addressed Councilor Sites to see if there is anything his institution can do to help with the financing to get this building up and running. Councilor Sites mentioned he will reach out to Greg and Dana.

Councilor Handley discussed the issue of elected or appointed representatives being disrespectful or condensing to the citizens. Councilor Handley feels the comments made to Ms. Knull at a public meeting are completely out of order and we should honor her request.

Council President McNamara suggests since the Authority has its own legal counsel, chairman, and board of officers, that matter stands with that Authority. Council President McNamara stated Ms. Knull can file a complaint with that Authority to handle it.

Councilor Handley responded the Authority definitely does, however; this council appoints them and we should be able to ask for the resignation.

Mayor Curry echoed Councilors Handley and Einhorn's concerns. He disagrees with that type of conduct and agrees with Councilors Handley and Einhorn's recommendations.

Council President McNamara stated to Ms. Knull to address the issue with Chairman Patten of the Authority and if you want to file a complaint, their legal counsel will deal with it.

Councilor Handley stressed this council can request a resignation from the Board.

Greg Jones, 322 N. Catherine Street

Mr. Jones stated, for the benefit of the new council, the old council did lower your electric rates and they did not raise your taxes. He stressed to everyone if we would take half the negativity in this room and focus more on the positive, Middletown would be a lot better place to live in. In closing, Mr. Jones stressed that anything good for Middletown is always put under negative pressure.

Councilor Einhorn stated we all need to show respect for each other, but public officials are held to a higher standard.

**Councilor Sites made a motion to request the Solicitor to investigate the conduct of Rob Louer, Jr. and Dawn Knull at the Middletown Borough Authority meeting on April 3, 2014 and report back to the Council at the May 5, 2014 meeting.** The motion was seconded by Councilor Handley and approved by an 8 – 1 vote with Councilor Louer dissenting.

At 7:55 p.m. Council recessed for an executive session to discuss matters relating to personnel.

Council reconvened at 9: 55 p.m. with Council President McNamara announcing matters related to personnel had been discussed. He mentioned that sadly we lost an employee whom he feels is irreplaceable and thanked him for his service.

Councilor Sites read the resignation letter from Chief Steven R. Wheeler, stated his last day of employment to be Friday, April 11, 2014.

**Councilor Sites made a motion to accept the resignation of Police Chief Wheeler.** The motion was seconded by Councilor Brubaker and approved by unanimous vote.

Council President McNamara voted yes with regrets and thanked him for his service.

**Councilor Louer made a motion to authorize staff to develop an advertisement for the position of Chief pending the solicitor's approval.** The motion was seconded by Councilor Malone and approved by unanimous vote.

Council President McNamara commented, in the interest of public safety, as of Friday we no longer have a Chief of Police but this does not mean the citizens or residents of Middletown will suffer. Council President McNamara stated until a successor is appointed, operationally; Mayor Curry is in charge of the police department. He continued, the Mayor will serve until such time he notifies the Council of changes to that in his selection for an interim Chief of Police. If you have issues, feel free to reach out to your council folks, but until the Mayor provide us with a name, someone is in charge of the police department and that is Mayor Curry.

Council President McNamara reported this will be our third Chief of Police in over two years. He stressed the strides that have been made over the past year and a half with Chief Wheeler has been tremendous. He hopes we can entertain the caliber that we had with Chief Wheeler.

Mayor Curry stated, in personal conversations he had with Chief Wheeler, he is not leaving due to any issues working here, he is leaving to take on a better job financially for him and his family. Mayor Curry reported on the council's previous approval of hiring four part-time police officers.

He said those applications keep coming in and he will make no decision on those four part-time officers until we solidify a replacement for Chief Wheeler.

Attorney James Welch gave a brief update on the Wilsbach Subdivision preliminary/final land development. He stated no new construction is proposed as part of the plan and it was reviewed by the planning committee at their March 19, 2014 meeting. He mentioned they reviewed the recommendations from the Borough Engineer as well as county planning.

**Councilor Handley made a motion to approve the waiver of the Wilsbach Subdivision preliminary plan approval then approving the Wilsbach Subdivision plan itself.** The planning committee recommended this plan be conditionally approved based on the general conditions that are imposed on all plan approvals as well as specific conditions that are noted in the Borough Engineers reports. The motion was seconded by Council Sites and approved by an 8 – 1 vote with Councilor Kapenstein dissenting.

Tim Mellott of Mellott Engineering presented the plan he prepared on behalf of the Middletown Cemetery Association, a nonprofit corporation. Mr. Mellott stated the project is to construct a new 2304 square foot maintenance/office building to be served by public sewer and water. He mentioned their access will be off their existing private driveway.

Due to a question from Councilor Brubaker, Mr. Mellott discussed the storm water management facility.

**Councilor Handley made a motion to approve the waiver of the Middletown Cemetery Association preliminary plan approval then approving the Middletown Cemetery Association plan itself.** The planning committee recommended this plan be conditionally approved based on the general conditions that are imposed on all plan approvals as well as specific conditions that are noted in the Borough Engineers reports. The motion was seconded by Council Sites and approved by unanimous vote.

Councilor Kapenstein asked to have the information prior to meeting. He finds it difficult to vote on items when just presented with the information.

Council President McNamara reported all of the information that is here went through the Planning Committee.

Councilor Handley directed the minutes be sent out to everyone. Councilor Handley asked Borough Secretary, Amy Friday if she sent him the minutes. Borough Secretary, Amy Friday responded no, the minutes were completed and sent out by Lori Smith. Councilor Handley stated that is correct, he told Lori to make sure every Council member gets a copy.

Councilor Louer reported all plans were approved by the Borough Engineers, Solicitor and the County at the Planning Committee meeting. Councilor Handley said to take a look at the minutes and if you don't have a copy he will get one to you.

Councilor Handley gave a brief explanation of the Spring Street Properties process stating the process was the same as the process for the Wilsbach Subdivision and Middletown Cemetery Association.

Tim Przybylowski of Century Engineering, engineer for Spring Street properties and Lift Development, Inc. presented an overview of the Spring Street properties project. He mentioned the property is 13.8 acres and 9.1. acres are in the Borough. He reported the plan is to construct student housing on this tract. Mr. Przybylowski reviewed the number of buildings, dwellings, and beds. He also talked about parking, storm water, utilities, safety and security. Mr. Przybylowski stated the scheduled occupancy is slated for the fall semester 2015 and the project should hopefully start by the June time frame.

Councilor Brubaker questioned the underground infiltration. He asked what if we get a storm that drops eleven inches of rain. In responding, Mr. Przybylowski said the design they have in place is equipped to handle the worst of storms and referred to it as the 100 year plan.

Discussion amongst council took place in regards to past and potential electric issues in regards to this project and Mill Street.

**Councilor Handley made a motion to approve the waiver of the Spring Street Properties preliminary plan approval then approving the Spring Street Properties plan itself.** The planning committee recommended this plan be conditionally approved based on the general conditions

that are imposed on all plan approvals as well as specific conditions that are noted in the Borough Engineers reports. The motion was seconded by Councilor Malone and approved by unanimous vote.

Councilor Sites mentioned the ordinance drafted by Attorney Tom Scott, representing Mr. Nardo. Councilor Sites stated he believes everyone has a copy of the drafted ordinance and would like to bring this forth again.

**Councilor Sites made a motion to make Nissely Street two-ways with the additional requests that were made at that time at this time.** The motion was seconded by Councilor Handley. The motion was approved by a 7 – 2 vote with Councilors Brubaker and Malone dissenting.

Council Louer inquired on the parking. He also mentioned the reason this was put off the first time was due to the information on the five unconditional items not received by Council. Council Louer stressed we should not vote on this without that information

At this time, discussions, explanations and arguments amongst Mr. Nardo, Attorney Welch and Council took place regarding the information surrounding the proposed Nissely Street ordinance. Councilor Sites and Louer, along with Mr. Nardo discussed the parking and barrier issues.

Councilor President McNamara stated there is a motion and a second on the floor to advertise and not take action on it.

Councilor Sites made comment to a recent view point that was written in the Press and Journal on Wednesday, April 2, 2014. He said there was an alleged quote by him which states, *“Councilor Scott Sites told us for the record, the Borough Solicitor advised Council that the Sunshine Act did not require committee meetings to be advertised”*. Councilor Sites stated, the conversation was never had and he wants to make the record clear that he understands the solicitor’s stance and the meetings have to be advertised. He said for the record, this was not stated by him.

Council President McNamara explained this is another example of the local newspaper attempting to suggest this council is conducting secret meetings and now they have another council member they suggest has been participating in them.

Council President McNamara explained the Committee meeting process. He stated we were advised by legal counsel to advertise those meetings.

Mayor Curry gave a report on the call log of the police department for the month of March 2014. Mayor Curry addressed Mr. Bowman stating he will be meeting with Representative Payne on April 15<sup>th</sup>. Mayor Curry talked about the concerns of the Historical Society Museum. One of the concerns he talked about has been the accounting of all the historical artifacts. Mayor Curry discussed issues surrounding the Gosh Building and asked council what their intention is with the Building.

Council President McNamara responded, it is not the Historical Society but the Historical Restoration Commission to come before the body of council and ask for a budget on a yearly basis and make a report to the council on a yearly basis on the nature and number of artifacts, then this council will act from that. At this time, Council President McNamara explained both the Historical Society and Historical Restoration Commission, to clarify any misunderstandings.

Councilor Sites requested an email list of all the names of individuals interested in the Boards and Commissions. Council President McNamara said the names will be provided at the committee meeting and explained what he is trying to establish and the structure put in place with committees of the council.

Councilor Sites inquired about the discussion of the \$200.00. He questioned what this is all about and who wants to bring it up. Mayor Curry reported a citizen raised a concern at the last meeting regarding \$200.00 for former Mayor Reid’s retirement party. He said he worked diligently to try and get the \$200.00 settled, and said he reported on the status of it. Mayor Curry asked if the issue can be put to rest or not. He stated council was the one who voted to give the \$200.00, and he said if you are comfortable with the way it went down and are happy with that then I don’t have to field anymore phone calls about it.

At this time, discussions were held by the Mayor and various council members regarding the \$200.00 issue that was raised by a citizen at the last council meeting. Mayor Curry stated, the

invoice for the party does not correspond with how the money was spent and discussions were held on the transactions surrounding the issue.

Mr. Mark Morgan, Borough's financial advisor, stated we issued a disbursement and the funds did not get used for what council approved the intent for. He stressed council has two actions to consider, either ask for the \$200.00 to be returned to the Borough or ratify their actions that were taken with the \$200.00 and approve it.

Council President McNamara gave a brief summary of the events that unfolded. He raised a concern from a phone call he had with Mayor Curry regarding how Diana McGlone got her hands on the \$200.00. He stated, the invoice presented to council from Mr. Konek and staff was to Brenda Klocko for \$200.00, not Diana McGlone.

Mayor Curry reported on the discussions he had with Borough Manager, Tim Konek, in regards to the \$200.00 check and invoice for former Mayor Reid's congratulatory party. He also mentioned he had received correspondence from Diana McGlone which indicated money was spent on the party and there was a remainder.

Councilor Sites said let this be a lesson learned, stating we will spend more than \$200.00 on the solicitor's and police services by reviewing it. Council President McNamara responded to Councilor Sites statement asking do you think we should take that approach with everything that is presented to us. He stressed we need to get serious and come together and unite and we need to get the committees up and running.

Mayor Curry asked what the council would like him to say to the citizens.

Councilor Handley asked why the issue isn't resolved, since the invoice for \$200.00 was presented and paid. Council President McNamara responded it is not resolved because at the following council meeting, Rachelle Reid stood up before council and went through a dissertation regarding the issue. He mentioned he received a phone call from the Mayor the following day. Council President McNamara said the Mayor phoned him for direction based on a text message he had received from Diana McGlone in regards to the remainder of the money.

Councilor Handley asked Mr. Morgan if the receipt satisfies the finance department. In response, Mr. Morgan stated no because the concern now and what we have knowledge of is the service was never provided and the \$200.00 check has been cashed and used for something else. Mayor Curry added some of the money went to a third party.

Mr. Morgan stated the \$200.00 should come back to us and at that point you can make another motion to give it right back to them for some other purpose. He also stated the purpose for which we gave the check, in his professional opinion; people have been convicted of fraud for a lot less.

Mr. Morgan stated when the person for whom the check was addressed to, cashes that check and did not perform the service, is the definition of fraud. In closing, Mr. Morgan stressed the council has an obligation to do something. Mayor Curry stated Diana McGlone told him she has receipts for the amount she expended and the remainder was provided to Kuppy's.

**Councilor Brubaker made a motion to ask for the \$200.00 back from the Event Place for Mayor Reid's going away party.** The motion was seconded by Councilor Louer and approved by a 6 – 2 vote with Councilors Kapenstein and Einhorn dissenting.

Before you make another motion, Mr. Morgan said someone is out of money and that is what we want to rectify with the previous motion. He stated, until the proper receipts are provided, the money has to go to the individual who paid the bill for the proper receipts.

**Councilor Handley made a motion to adjourn.** It was seconded by Councilor Malone and approved by unanimous consent. At 11:00 p.m., the meeting was adjourned.