

October 5, 2015
Middletown, PA 17057

The October 5, 2015 meeting of the Middletown Borough Council was called to order at 7 p.m. by Council President Christopher R. McNamara.

Following the invocation by Councilor Rob Louer, a moment of silence for the victims of the Oregon College shooting, the thirty-three sailors who lost their lives in the ship disaster during Hurricane Joaquin and the Pledge of Allegiance, the following Council members answered roll call: Mike Bowman, John Brubaker, Anne Einhorn, Benjamin Kapenstein, Robert Louer, Scott Sites, and Christopher R. McNamara. Councilors Vicky Malone and Sue Sullivan were absent.

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

PUBLIC COMMENT

David Scully, 11 Mill Street

Mr. Scully commented on Councilor Scott Sites and the great job he has done on Borough Council. He honored Councilor Sites by presenting him with a flag that was flown over the State Capitol on October 4, 2015. Mr. Scully read a statement from the Governor of the State of Pennsylvania as follows:

"In honor of Councilor Scott Sites, I am honored to present you with our Country's beloved flag which was flown over our Capitol in Harrisburg on the fourth day of October 2015 for eight years of excellent professional service while serving on Middletown's Council Borough".

Debbie Fuller, 327 S. Catherine Street

Ms. Fuller commented this is her third time to come before the Council about the tree in front of her residence. She stated it has been two weeks and she has still not heard anything and she needs to have something done and a definitive answer for when the tree will be taken down.

Council President McNamara stated the contractors are in town and working their way through the State roads (Main, Vine and Union Streets), then they will be branching out into the Wards. Mr. Konek advised that her tree is on the list and we are going to cut the tree down.

Judith Vastine, 20 Woodland Avenue

Ms. Vastine commented on Frey Woods and a request to post no trespassing or motorcycles prohibited signs up in the field of Frey Woods where they are accessing along the Vine Street side.

Kay Wealand, 131 Keystone Avenue

Ms. Wealand commented on Ms. Fullers comments regarding the tree in front of her residence. She stated if that tree was on Mr. Konek's or a Council member's property it would be taken care of. Ms. Wealand stated that tree is an accident waiting to happen and is an atrocity that Ms. Fuller and her family had to wait six months.

Jack Still, 37 W. Emaus Street

Mr. Still commented on an article in the local newspaper where the ICDA and Friends of the Elks Theatre presented a proposal to operate the Elks Theatre. He mentioned quotes in the article from Councilor Kapenstein and Mayor Curry of this being a great idea.

Mr. Still commented and talked about the GMEDC and provided the Borough Secretary with three informational items and a cover letter pertaining to the GMEDC Mortgage Indenture, document submitted to the PA DCED outlining the GMEDC vision that he mentions the GMEDC failed to accomplish most of the items referenced in the document and a news article published in the Patriot Newspaper in 2012 regarding \$500,000 of taxpayers funds of State money that passed through the Borough to GMEDC.

Mr. Still asked that the information items and cover letter be entered into the October 5, 2015 minutes in their entirety. The documents are attached as Exhibit A.

Diana McGlone, 805 Adelia Street

Ms. McGlone commented that she serves as a liaison to the Pennsylvania Wounded Warriors and extended a personal invitation to Council President McNamara to attend their Gala on October 24th. She stated over the past few years we have raised over approximately \$5,000.00 that has been donated to the organization.

Council President McNamara responded thank you and if his schedule permits. He stated that Helen Sajer is the President of the Pennsylvania Chapter of the Wounded Warriors and announced that he was the late Major General Sajer's Aide for about four years.

Greg Wilsbach, 719 Spruce Street

Mr. Wilsbach commented on the purchase of transformers for the upgrade at Librandi's. He mentioned at some of the recent Council meetings some of the Councilors expressed that Librandi's is petitioning the PUC to get out of Middletown as far as purchasing electric from us and stated that the Borough has an ordinance that prohibits that. Mr. Wilsbach asked if Mr. Librandi is looking to get out of the Borough, he would like to know if there is some kind of agreement with them that the Borough will purchase the transformers as long as he remains a customer.

Mr. Wilsbach commented that you want to give a developer \$11 million dollars on a substation that is not needed out in that area which will be detrimental to this community and waste probably \$9 million dollars.

Mr. Wilsbach commented that he still has not yet seen a budget meeting that has happened, stating it is way past budget time. He said he knows the last two years this Council was directed through the Early Intervention Plan that you were to raise taxes and electric rates and you have done neither in those two years.

Mr. Wilsbach alleges that Council has done nothing but suck the money out of the electric fund which was around \$11 million dollars when some of Council took office a couple years ago and now he has to wonder how depleted that fund is and would like to know what Council's plan is. He stated there are people that are sitting on this Council that should be involved with your budgeting process and know what your intentions are.

Mr. Wilsbach commented that he knows there were issues brought up at one of the Administration and Personnel committee meetings and he would like to know does Council have the minutes from the past three months. He said if you do he will have to do a Right to Know request.

Councilor Brubaker made a motion to authorize the purchase of transformers for the upgrade at Librandi's.

Councilor Kapenstein asked for a summary of why we have to do this.

Councilor Brubaker stated their doubling their size and Lester Lanman understands that this has been going on for a year and we asked for permission for Lester Lanman to get quotes.

The motion was seconded by Councilor Bowman and approved by a unanimous 7-0 vote.

Councilor Bowman made a motion to authorize the Borough Manager to sign the letter of intent to participate in Phase II of the Dauphin County Regional Community Rating System (CRS) Initiative. The motion was seconded by Councilor Louer and approved by a unanimous 7-0 vote.

Councilor Louer made a motion to authorize advertisement of the revised zoning ordinance to include the redevelopment overlay districts, 2013 comments from Dauphin County Planning Commission and other corrections and clarifications. The motion was seconded by Councilor Bowman and approved by a unanimous 7-0 vote.

Councilor Einhorn made a motion to approve Resolution 631:

RESOLUTION NO 631 FOR THE YEAR 2015

A RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF MIDDLETOWN, DAUPHIN COUNTY, PENNSYLVANIA, IN SUPPORT OF THE ANNUAL MIDDLETOWN AREA HIGH SCHOOL HOMECOMING PARADE IN THE BOROUGH ON SATURDAY, OCTOBER 24, 2015 AND TO ALSO APPROVE THE USE OF HOFFER PARK AS THE STAGING AREA.

Council President McNamara asked the Mayor if he has been notified as far as the roads and the Mayor responded yes.

The motion was seconded by Councilor Brubaker and approved by a unanimous 7-0 vote.

At 7:36 p.m., council recessed into an executive session for litigation.

At 8:18 p.m., council reconvened from executive session and Council President McNamara reported several items were discussed in regards to litigation and personnel. He stated no decisions were rendered relating to personnel and called upon Councilman Sites to report on the matter of litigation.

Councilor Sites made a motion to authorize the Borough Council President to sign the necessary documents to proceed with a filing of a complaint regarding the prior investments of the electric rate stabilization trust fund.

Council President McNamara stated attorneys have determined that potentially the trust fund has invested outside the scope of the Borough Code and we are authorizing the filing of the complaint.

The motion was seconded by Councilor Bowman and was approved by a 6 – 0 vote with Councilor Kapenstein abstaining, in accordance with the State Ethics Act.

Councilor Sites reported on a situation brought to his attention about Spring Street and the parking situation out at Nittany Place. He stated residents have approached him and said parking has become a bit troublesome from Nittany Place down to High Street, as well as the drive by Nittany Place. Councilor Sites stated that he has reached out to the solicitor and they recommend the Public Safety Committee look into it.

Council President McNamara stated the proposed ordinance regarding this matter has been emailed out to the Public Safety Committee and will be discussed and reviewed at their next meeting.

Mayor Curry asked what we are doing in regards with the PENNDOT contract, since winter is approaching.

Councilor Brubaker stated he will be bringing that up under new business.

Borough Manager Tim Konek reported the Borough needs to signal its cooperation with the County for its application for the National Disaster Resilience Competition Grant. He stated the County has identified two major projects in the Borough that their seeking resiliency for and they are the substation relocation as well as the low impact development in Woodland Hills and then additionally the second project would be recreational upgrades and flood protection down at the lower end around Susquehanna Street fields.

Council President McNamara stated representatives from the planning commission as well as the County's Department of Commercial and Economic Development were at the last Council meeting and what Mr. Konek is seeking is for me to sign a letter of intent.

Councilor Bowman made a motion to direct the Borough Council President to sign a letter of intent to participate in the Community Development Block Grant National Disaster Resilience Competition (CDBG-NDRC). The motion was seconded by Councilor Louer and approved by a unanimous 7-0 vote.

NEW BUSINESS

Councilor Brubaker reported that the question came up at the public works committee meeting on September 8, 2015 as to who owns the train station. He said Lester Lanman was in communication with Amtrak and all of sudden they just stopped.

Solicitor Adam Santucci stated Amtrak owns the train station.

Councilor Brubaker asked how we can ticket for parking.

Borough Solicitor Adam Santucci stated there is an agreement with the Borough and Amtrak.

Councilor Sites asked why it is in question and Councilor Brubaker responded plowing the snow.

Councilor Brubaker stated there is nowhere to place the snow and all they can do down there is go around in circles. He asked about cutting the grass on the bank of the hill that is a mess.

Borough Solicitor Adam Santucci stated as he understands there is a contract between Amtrak and the Borough where Amtrak owns it and the Borough maintains it in exchange for the parking revenues. He said subsequent to entering into this contract the Borough elected not to collect any parking revenues from there, so they have the expense and no revenues. Mr. Santucci reported that he was not here when the decision was made to not collect the parking revenues or charge for parking, but that is his understanding of the history of the train station.

Council President McNamara reported there is an ordinance on the books, so we would have to change the ordinance.

A brief discussion took place if the train station would be moved. Solicitor Adam Santucci stated he would imagine that you would have to renegotiate your contract with Amtrak since it is specific to that location.

Council President McNamara stated then we would have to deal with the ordinance.

Councilor Sites asked if he can request that Borough Manager Tim Konek send someone down to take care of the weeds and grass on the bank.

Council President McNamara asked Sergeant Hiester if he has any knowledge from an enforcement standpoint.

Sergeant Hiester said they can only enforce the ordinance dealing with where to park. He said you have to park in a designated space and you can't park along the circle.

Council President McNamara asked if it was properly signed. Sergeant Hiester responded, no it is not properly signed.

Councilor Brubaker reported that resident Brian O'Hare would like to install a sign on a bench at the boat landing in memory of his father who use to frequent that area. He asked if we could allow him to do that.

Borough Manager Tim Konek reported that we put him in touch with the PA Fish and Boat Commission. Borough Secretary Amy Friday reported contacting the PA Fish and Boat Commission. She stated they have received similar requests in the past and recommend that Mr. O'Hare contact the PA Fish and Boat Commission through a proposal/letter stating what his wishes are for the bench then the proposal/letter will have to be review through their people. Borough Secretary Amy Friday stated that Mr. O'Hare has been notified of this information.

Councilor Brubaker reported the PUC has addressed the railroad going through town. He said they are going to require more signs at Race Street, a crossing gate at Brown and Union Street and more signs on Brown Street.

Borough Manager Tim Konek reported the crossing gate was talked about but was not mandated, but it is a possibility. He stated all along the route there will be more advanced warning signs that have to be put up. Mr. Konek stated a different type of sign has to be put up on Mill Street.

Councilor Brubaker asked is that going to be our responsibility or the railroads.

Borough Manager Tim Konek reported the way it was explained was anyone who owns the road that is crossed by a railroad is the road owner's responsibility to provide the advanced warning signs for the railroad and it is the railroads responsibility to put in the cross bucks and signage at the crossing.

Councilor Brubaker reported that he and Councilor Bowman attended a meeting at Representative Payne's office last week for an update on the work to be done on Route 230 for paving and the bridge. He stated the bridge needs emergency repairs now and bids are expected in October of this year. Councilor Brubaker reported the final date for completion for the street is August 4, 2016 and there is preliminary work being done right now with trees. He stated the government has changed its specs with curb cuts and most of ours are out of spec and need to be redone. Councilor Brubaker said that will be done as early as next year, prior to the paving of the street.

Councilor Sites asked what they said about the current condition of the street. Councilor Brubaker responded they said they are bad and we know that they are bad.

Council President McNamara asked if everyone received the handouts from the Borough Secretary last week. He stated that is the official word on the projects from PENNDOT.

Councilor Sites asked what are we going to do about the contractor who did the horrible job on the street.

Borough Manager Tim Konek stated the contract is not closed out yet. Council President McNamara said this is subject to further dialogue between the Authority and the contractor.

Councilor Brubaker reported Ann Street is a State mandated truck route, according to PENNDOT. He said there is no other way to get through town without using Ann Street. Councilor Brubaker asked who owns Ann Street and the PENNDOT representative in attendance at the meeting at Representative Payne's office stated he thinks the State does and he was to get back to us to let us know who owns Ann Street.

Councilor Sites said he asked a state official and they told him that we were responsible for it. Councilor Brubaker said the PENNDOT representative blurted out the State and then tried to back pedal, but he is going to get us an answer.

Councilor Sites stated somebody needs to address the pot holes up past the school house on the top of the hill.

Councilor Brubaker reported that United Water is to be renewing the water lines from Union to Grant Street.

Councilor Brubaker reported that we are in desperate need of a street sweeper. He said Superintendent of Public Works Lester Lanman has gone out and researched a new street sweeper. Councilor Brubaker reported street sweeper that has been looked at will have the capabilities of cleaning out storm drains and lifting the grading up and will cost \$275,000a with a six month lead time.

Councilor Brubaker made a motion to direct the Water and Sewer Authority to purchase the Elgin Whirlwind Street Sweeper with the use of the Water and Sewer Authority funding.

Councilor Bowman stated it will also be used to clean the storm drains and it will lift the grading up, according to Councilor Brubaker.

Councilor Sites asked about the time frame of the lead time.

Councilor Brubaker responded it will take six months to get from the time of order and we would like to have it for spring 2016.

Councilor Sites asked if we have considered reaching out to neighboring municipalities in regards to a cooperative agreement for street sweeping. He said I am sure we could draw up a legal document to share the equipment. Councilor Sites stated the current way we use this equipment is done very poorly and if we are going to spend that amount of money we should use it to its full effect and we should enforce the ordinance with parking.

Council President McNamara stated what he is proposing will keep us in line with MS4.

Mayor Curry stated it might be worthwhile researching a cooperative agreement before we drop a quarter of million dollars.

Councilor Bowman inquired on a grant to use for the purchase of the street sweeper.

Councilor Kapenstein stated the Authority is their own board and we can't direct them to use their funds for this purchase. He said they will have to make a decision and vote on it.

Council President McNamara stated they are a Borough Authority and you identify the projects and they seek the funding, that is how it should have worked.

Councilor Brubaker reported that Superintendent of Public works, Lester Lanman has a five year plan that he does not have finalized yet for replacement of vehicles and as soon as it is finalized he will present it to us. He stated you can't get a grant for this but you can for the trucks.

Councilor Kapenstein asked whose money or fund is it and where is it coming from. Mayor Curry echoed Councilor Kapenstein's same concerns.

Council President McNamara stated the memo addresses that and your present Solicitors have advised you that spending of the funds are called into question and each body has been served with a legal opinion so long as it is spent in accordance with the Municipal Authority's Act.

Councilor Kapenstein asked if we have a separate legal opinion and if so with whom.

Councilor Sites asked the Borough Solicitor if he has ever been involved in a deal where municipalities share equipment. Mr. Santucci responded it can be a good deal if you share equipment and the Borough of Middletown has shared equipment with other municipalities before. He said it may be difficult to get everybody on board, but it can certainly work with cooperation.

Mayor Curry asked will we hear about the Attorneys that you have on your list and the Borough Solicitor advised that we should have that discussion in an executive session.

The motion was seconded by Councilor Louer and approved by a 4 – 3 vote with Councilors Sites, Kapenstein and Einhorn dissenting.

Councilor Sites recommended that we ask the Borough Manager to reach out to the other municipalities for any interest in a cooperative agreement.

Council President McNamara responded absolutely and it would offset the costs.

Councilor Brubaker made a motion to give the Non-Union Borough Management Staff a 2.5% pay increase retroactive to January 1, 2015.

Councilor Brubaker reported that \$90,000.00 was set aside for employee raises and this 2.5% will be roughly \$8,755.38. He said the annual pay for Management employees totals \$350,219.00 and does not include the Chief of Police, since he has his own employment agreement.

Council President McNamara stated the line item is \$99,000 in the 2015 budget in which council has approved and the 2.5% is consistent with what we have offered in our union labor agreement.

The motion was seconded by Councilor Bowman and approved by a 4 -3 vote with Councilors Einhorn, Sites and Kapenstein dissenting.

Councilor Brubaker reported that the Public Works Committee recommends for this year that the State take care of the snow plowing, especially with the conditions of Main Street.

Councilor Brubaker made a motion to direct the Borough Manager to tell PENNDOT to plow the snow on State roads in the Borough, pending Solicitor review.

The motion was seconded by Councilor Louer and approved by a 4 – 3 vote with Councilors Kapenstein, Einhorn and Sites dissenting.

Councilor Sites shared a letter with Council addressed to a former councilman and resident of town and asked that everyone take a look as it is regarding the current status of Route 230.

Councilor Sites asked Council President McNamara if the Middletown ICDA had any discussions at their meetings in regard to parking situations downtown in the next five months with the streetscape improvement project about to begin. Council President McNamara responded, no not to his knowledge. Councilor Sites said it would be in the best interest of the Council and ICDA to start pursuing options. Council President McNamara recommends that we direct the Borough Secretary to forward correspondence from Council asking Mr. Matt Tunnell to look into it. Councilor Sites reported the areas for parking that he would suggest would be the McNair House currently owned by the ICDA and the two properties at 37 W. Emaus and 43 W. Emaus.

Councilor Sites made a motion to direct the Borough Manager to request that the ICDA investigate the parking situation on the downtown to include the McNair property as well as the two properties located at 37 W. Emaus Street and 43 W. Emaus Street and any other parking solutions that may be found.

Councilor Bowman asked who owns those two properties on Emaus. The motion was seconded by Councilor Kapenstein and approved by 6 – 1 vote, with Councilor Einhorn dissenting.

Mayor Curry asked if we are now providing financial reports to the Chairman of the Finance Committee.

Council President McNamara stated if the Finance Committee comes forward as was discussed last summer to change the way in which we have been operating and makes a recommendation to the Council.

Mayor Curry stated that Councilor Brubaker made a request for financial information through Mr. Konek and received his information, however; Councilor Kapenstein has made several requests for financial information through Mr. Konek and has received nothing. He stated Councilor Kapenstein has submitted a “Right to Know” request and still has not received the information. Mayor Curry asked when he is going to get his information.

Councilor Louer made a motion to adjourn. It was seconded by Councilor Bowman and approved by unanimous consent. At 8:56 p.m., the meeting was adjourned.

Borough Secretary