

**Meeting Minutes of Middletown Borough Council
March 21, 2017**

The March 21, 2017, regular meeting of the Middletown Borough Council was called to order at 7:04 p.m. in Council Chambers at 60 W. Emaus Street, Middletown, Pennsylvania by Council Vice President Damon Suglia.

After the Pledge of Allegiance, the following Council members answered roll call: Dawn Knull, Diana McGlone, Damon Suglia, Robert Reid, Ian Reddinger, and Anne Einhorn with Benjamin Kapenstein arriving at 7:26 p.m. Also present were Mayor James H. Curry III, Director of Finance and Administration Bruce Hamer, Public Works Director Greg Wilsbach, Solicitor Adam Santucci, and Borough Secretary Grace Miller.

Public Comment:

Rodney Cook (46 Wharton Ave) – Rodney and Linda Cook were in attendance to express their frustration and disappointment as to how they were treated during the flood buyouts in 2011. Mr. Cook stated that he had two parcels of land and only one parcel was appraised by Dennis Stover. Mr. Cook indicated he contacted Council about this issue and Council informed him it would be corrected. Mr. Cook indicated Mr. Couregan and the Borough Manager had a police officer stand outside while papers were signed and he wrote a note to PEMA on the back of those papers and PEMA recently had the Borough contact him. Mr. Cook stated the Borough recently sent him a \$1,000 check for the second parcel of land, which he returned. Mr. Cook noted this parcel was assessed by Dauphin County at \$2,600 in 1985 and increased in value to \$7,000. in 2002. Mr. Cook indicated he had requested the Borough pay \$5,000 for the parcel (\$2.09/square foot), but the Borough refused. Mr. Cook stated he attempted to get a HUD-1 form from the solicitor because he never saw it, received a copy of it and it was never signed by him or his wife.

Mike Bowman (109 W Emaus St) – Mr. Bowman commented on the Agenda item ratifying the SCEMS agreement stating the Borough pays the same amount as Royalton and Highspire while giving SCEMS a place to stay for free at the water plant, free electric and free fuel asking if the Borough still pays the same as the other municipalities. Mr. Bruce Hamer indicated a letter was sent in years past agreeing to renew services and by default the agreement had been renewed. The proposed Council action would be to ratify the latest agreement. It was noted that perhaps Council could consider some of the issues that Mr. Bowman mentioned in future agreements.

Rachelle Reid (448 Grant St) – Ms. Reid asked what ICMA Retirement Corp is for. Mr. Hamer indicated employees hired after January of 2016 have a Defined Contribution Plan and Council needs to establish a service provider for the plan. Mr. Hamer noted that actions items 12 and 13 on the agenda are for the pension plans for new hires. Ms. Reid requested balances for the following funds: Fire Sinking Fund, General Fund, Electric Fund, Electric Trust Fund, Concession Agreement Fund, and Police Sinking Fund asking what amount the Borough receives for the Liquid Fuels Fund. Ms. Reid asked when the Concession Agreement funds will be received. Mr. Hamer noted it would normally be received in April and in October. President Kapenstein entered the meeting at this point. Mr. Hamer indicated the Borough received monies for the Liquid

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Fuels in March in the amount of \$223,897 with an annual obligation out of this fund of \$153,875 to the Dauphin County Infrastructure Bank for another 7 years at a half percent interest. Ms. Reid indicated if fines had been raised previously, there would not be a shortfall in the police fund. Ms. Reid asked why the revenue for refuse is \$225,000 more than the contract questioning why residents don't get containers provided by the refuse company. President Kapenstein indicated someone will check into it and get back with her.

Ms. Reid noted that McNees made over \$2 million from the Borough with \$600,000 made from the leasing agreement asking why the solicitor is so costly when other attorneys give good advice for less money. President Kapenstein noted that those funds were paid over a couple of years which contained big projects which has caused the increased costs. Ms. Reid questioned how many employees have sued the Borough and where the Borough gets the funds to pay off lawsuit settlements. President Kapenstein indicated it depends on the lawsuit as sometimes the insurance pays it and other times it comes out of the General Fund.

Mike Bowman (109 W Emaus St) – Mr. Bowman asked about Resolution 2017-6 questioning the disposition of ammunition. President Kapenstein indicated this resolution provides for the trade in of ammunition for other ammunition as the ammunition being traded in is not able to be used with the current weapons owned by the Borough.

Report on March 13, 2017 Executive Session – President Ben Kapenstein reported an Executive Session was held on March 13, 2017 to discuss potential litigation and no action was taken.

Approve Meeting Minutes – Councilor McGlone requested minutes be amended to replace killing with hurting on page 3 of the February 21st minutes. **MOTION** by Diana McGlone, second by Anne Einhorn to approve Council meeting minutes with the above amendment for February 21, 2017 and approve the March 7, 2017 minutes meeting as submitted. Motion carried 7 to 0.

Approve Special Meeting Minutes – President Kapenstein noted these minutes are for the snow emergency meeting that was held. **MOTION** by Dawn Knull, second by Anne Einhorn to approve Council meeting minutes for the special meeting held March 14, 2017. Motion carried 7 to 0.

Approval of Bills – Mr. Bruce Hamer provided Council with information on 6 bills which were added to the Accounts Payable list. Mr. Hamer noted that two of these payments were for taxes on properties owned by the Borough and application will need to be made to make these properties tax exempt. Mr. Hamer indicated one of the payments will be made from Fund 28 (Fire Department) for partial payment of workers compensation insurance. Councilor Knull asked about the bill for meal reimbursement. Mr. Hamer indicated this was for a police officer training for hotel and meals. Councilor McGlone questioned the invoice for bike training in Derry Township with Chief Mouchette indicating they are looking to implement a community biking program noting 4 officers went to training and bicycles are being donated. **MOTION** by Dawn Knull,

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second by Anne Einhorn to approve payment of bills as shown on the Accounts Payable List dated March 21, 2017, for the period March 8, 2017, through March 21, 2017. Motion carried 7 to 0.

Adopt Ordinance 1337 – Mr. Hamer indicated the Ordinance has been advertised and Solicitor Adam Santucci noted that the Ordinance reflects minor adjustments to promotional and Act 120 procedures made to the Civil Service Commission Rules and Regulations. **MOTION** by Dawn Knull, second by Robert Reid to adopt Ordinance 1337 to amend the Civil Service Commission Rules and Regulations as presented. Motion carried 7 to 0.

Reports: Manager Report – Mr. Hamer noted that the Borough Manager, although not in attendance, had provided a report and President Kapenstein suggested if anyone had questions to contact the Borough Manager directly.

Finance Report – Mr. Hamer stated the audit for 2016 is nearing completion with the auditors to file with DCED by April 1st. Mr. Hamer indicated auditors will present their findings to Council in either April or May.

Public Works Report – Councilor Reddinger asked Public Works Director about the repair service at Tattered Flag. Mr. Greg Wilsbach noted that the contractor had originally put in a faulty electrical service and Borough staff replaced it. President Kapenstein expressed his appreciation for the good job done by Public Works in snow removal.

SCEMS Report – Council was provided with both the January and February 2017 reports from South Central EMS showing call volume and costs.

Sidewalks – McNair Property – Councilor Reddinger indicated ICDA owns the McNair property and although sidewalks do need repaired, the ICDA is selling the property as is and approved at their meeting to hire a realtor to list the property for sale. **MOTION** by Dawn Knull, second by Anne Einhorn to ratify the ICDA's motion and approve the hiring of a commercial realtor to list the property for sale. Motion carried 7 to 0. Councilor McGlone requested a copy of the appraisal with Councilor Reddinger stating the ICDA is not disclosing appraisal information at this time.

Appointments to Police Pension Board – Mr. Hamer indicated Resolution 2017-4, which established the Investment Advisory Committee, provides that Council and Police representatives selected to serve on this Committee may also serve on the Police Pension Board which is required to meet annually. Mr. Hamer noted that Council members need to be appointed to the Police Pension Board as well as a neutral member to be agreed upon mutually between Council and the Police members appointed to the Pension Board. **MOTION** by Anne Einhorn, second by Dawn Knull to appoint Dawn Knull and Robert Reid to serve on the Police Pension Board. Motion carried 7 to 0.

Authorize Advertisement of Ordinance concerning Non-Uniform Pension Plan - Mr. Hamer advised Council pension documents from 2012 were located which did not get

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formal Council approval. Mr. Hamer noted he has been working with Randy Rhoades, an attorney from the Pittsburgh area who specializes in municipal pension issues and has worked with the Borough over the past several years on such matters, who recommended that the 2012 Non-Uniform Pension document should be formally ratified for approval by Council by passing an ordinance. Mr. Hamer indicated the proposed ordinance formally adopts the 2012 Non-Uniform Pension Plan, terminates the relationship with Standard Insurance Company, which was established by Ordinance No. 1211, incorporates the previously approved defined contribution plan into the non-uniform pension, and provides additional required provisions including those related to Internal Revenue Code requirements for governmental plans. Councilor McGlone asked why an ordinance needs to be done and questioned whether a resolution could be done instead. Mr. Hamer noted that since an ordinance is already in place, an ordinance will be required to amend and restate that ordinance. **MOTION** by Dawn Knull, second by Ian Reddinger to authorize advertisement of the proposed Ordinance to formally adopt the 2012 Non-Uniform Pension Plan. Motion carried 6 to 0 with President Kapenstein abstaining.

Update OPEB Plan and Trust Documents – Mr. Hamer indicated he had been unable to find signed documents for the OPEB plan. He noted the OPEB fund sets aside funds for healthcare costs for retirees. Mr. Rhoades recommended the adoption of an Ordinance amending and restating the Borough of Middletown employees other Post-Employment Benefit (OPEB) retiree benefits plan and amending and restating the declaration of trust of the Borough of Middletown OPEB integral part trust. Mr. Hamer requested approval for advertisement of the amended ordinance. **MOTION** by Anne Einhorn, second by Ian Reddinger. Council Knull asked if a copy of the original documents could be viewed to compare with the amended documents. Mr. Hamer noted the amendment was to change the Manager from being the trustee to making Council the trustee. Council McGlone asked why this would require an ordinance. Mr. Hamer indicated that as an ordinance is already in place, any amendment related to that ordinance would need to be an ordinance. President Kapenstein recommended advertising the ordinance while Mr. Rhoades be contacted to see if future documents could be done by resolution. Councilor McGlone questioned as to whether the plan years are being changed as it says the plan year ends 2009. Solicitor Santucci noted that establishes the first plan and plan years thereafter ends on December 31. President Kapenstein recommended tabling this until there is further clarity as to whether best practice is to amend or restate an ordinance or whether this could be done by resolution and requested the motion be withdrawn. Motion withdrawn and item tabled until the next meeting.

Mr. Hamer recommended tabling the transfer from the OPEB Trust Fund, adoption of a resolution to establish a money purchase retirement plan and approve administrative agreements with ICMA Retirement Corporation. Items tabled.

Authorize Closing of Accounts (Wells Fargo) and Transfer Funds (PSDLAF) – Mr. Hamer indicated there is one remaining account with Wells Fargo after the transfer of OPEB Funds to U.S. Bank with the account containing Electric Trust funds in the amount of \$477.07. Mr. Hamer noted there will be a \$155 annual fee on this account as

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the total value of the accounts with Wells Fargo has dropped below \$250,000. and recommended closing the account and transferring the funds to the PSDLAF account number 30046409, which is also an Electric Trust fund. **MOTION** by Robert Reid, second by Dawn Knull to authorize closing Wells Fargo Electric Trust fund and transferring those funds to PDSLAF Account Number 30046409. Motion carried 7 to 0.

Bids for Purchase of Vehicle Fuel – Mr. Hamer recommended soliciting bids for the purchase of vehicle fuel be undertaken indicating this should be done on an annual basis as the amount of fuel being purchased exceeds the limit for competitive bidding of goods and services. Mr. Hamer noted the Borough does not have its own fueling station, so an important requirement in the bid specifications is having fueling stations within a convenient distance. Mr. Hamer noted an alternative would be to purchase vehicle fuel under a cooperative purchasing if one exists and assuming fueling stations are conveniently located in any such cooperative purchasing program. Mr. Wilsbach noted fuel is currently purchased through Pacific Pride at either Loves or Sheetz. **MOTION** by Dawn Knull, second by Anne Einhorn to authorize staff to advertise approved specs noting that bidders must be within a certain mileage of the Borough and have 24/7 service and authorized staff to proceed with soliciting bids for the purchase of vehicle fuel. Motion carried 7 to 0.

2017 Budget Adjustments/Capital Funding Analysis – Mr. Hamer indicated a report was provided to Council showing various funds that might be available for capital projects. Mr. Hamer noted the report HRG is preparing for a 5-year Capital Improvement Program is not part of this report. Mr. Hamer indicated the Streetscape Project is nearly complete with monies due to the contractor and Bank loan payments which will reduce the amount of monies shown on the report. President Kapenstein recommended Council review the report and contact Mr. Hamer with any questions. Councilor Reid asked about paving for Ann Street. Mr. Hamer noted the Liquid Fuels Fund could potentially pay a portion of that cost, keeping in mind the bank loan and payments due to the contractor for the streetscape project will be paid out of this fund as well. Councilor McGlone asked where the loan payment from Tattered Flag is shown on the report. Mr. Hamer stated the Tattered Flag monies are included in the General Fund as they are part of the operating budget. Councilor McGlone asked if the Electric Fund is included in the Fund Balance Reserve. Mr. Hamer noted that the Fund Balance Policy requires 30% of annual operating revenues be put in reserve for emergencies only, not for normal operating expenses and if funds are used, Council would need to make a plan to replace the funds. President Kapenstein expressed his appreciation of the work Mr. Hamer has done in the Capital funding analysis.

Approval – Woody Waste Grinder Repair – Mr. Wilsbach requested approval from Council for expenditures in the amount of \$11,000. for emergency repairs done to the Woody Waste Grinder indicating that the teeth and cutter head are beyond repair. Councilor McGlone asked if the Borough was selling mulch. Mr. Wilsbach indicated this is a free service to residents of the Borough. Councilor Knull recommended looking at imposing a fee for woody waste. President Kapenstein asked if costs were being tracked with Mr. Wilsbach noting he has started pulling those costs together. Mr.

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Hamer asked if the parts being purchased were proprietary to which Mr. Wilsbach indicated they were. **MOTION** by Ian Reddinger, second by Damon Suglia to approve expenditures in the amount of \$11,000. for emergency repairs to the Woody Waste Grinder. Motion carried 7 to 0.

Discussion/Approval – HRG Proposal for Borough Parking Lot and Parking Gateway – Dan Kaldas of HRG indicated the proposal submitted utilizes the maximum space of the parking lot adding additional spaces and a pedestrian connection to Union Street. Mr. Wilsbach indicated HRG has submitted a proposal showing engineering costs of \$30,900 with does not reflect the cost of the actual work of the project. Mr. Wilsbach indicated this was the area a private individual had submitted a proposal for as well. Councilor McGlone recommended the proposal be given to the Planning Commission to review.

Approval – Purchase of Sealcoating Machine – Mr. Wilsbach requested approval to purchase a sealcoating machine through the Costars 035-019 program in the amount of \$33,428.82 in order to seal cracks and lengthen the life of the street. Mr. Hamer indicated the list before Council of proposed capital projects is not a formal adopted budget and Council would need to designate the source of funds for this purchase. **MOTION** by Ian Reddinger, second by Robert Reid to authorize the purchase of a sealcoating machine through the Costars 035-019 program in the amount of \$33,428.82 with payment to come from the Capital Projects Fund. Motion carried 7 to 0.

Mowing – Councilor Bob Reid asked if the mowing contract had been completed. Mr. Wilsbach stated the bid specs are complete and will be published in the Patriot News. Mr. Hamer noted these are sealed competitive bids with the bid specifications having alternative date options due to not knowing what prices may be so if the budget doesn't allow for the cost of the entire season that Public Works can complete the mowing. Mr. Hamer noted the sealed bids are to be received and read aloud April 17, 2017 and presented to Council for approval at the meeting on April 18, 2017.

Ratification of Agreement – South Central Emergency Management Services – Mr. Hamer indicated staff spoke with Jason Campbell of South Central EMS regarding the agreement between them and the Borough with the EMS agreement included in the packet Council. Ms. Miller noted this agreement was automatically renewed for a 3 year term from 2015 until December 2018. The agreement for 2019 will be sent in September of 2018. **MOTION** by Dawn Knull, second by Robert Reid to ratify the agreement between the Borough of Middletown and South Central Emergency Management Services through December 31, 2018. Motion carried 7 to 0.

Lower Swatara MOU – Mr. Hamer indicated representatives of Lower Swatara contacted the Borough Manager regarding a Memorandum of Understanding for labor and equipment that would directly affect Public Works. Mr. Wilsbach noted that Council was provided with the memo of understanding that Lower Swatara is proposing and indicated he has reservations regarding the terms listed in the agreement. President Kapenstein tabled this item until the Borough Manager returns.

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Bond Reduction – Autozone – Ms. Miller noted a request had been received from Autozone to release their Construction Bond # 16066449 in the amount of \$210,996.80 for the property located at 422 E. Main Street, and HRG conducted an inspection and has approved the reduction of \$183,688.00 from the current amount of \$210,996.80 leaving a remaining balance of \$27,278.80 until verification of the completion of the work outlined in HRG's inspection is completed. Dan Kaldas from HRG was in attendance and indicated they are waiting on As-Built plans before releasing the remainder with the establishment of maintenance being set at that time. **MOTION** by Dawn Knull, second by Ian Reddinger to reduce the Autozone Construction Bond #16066449 of \$210,006.80 in the amount of \$183,688.00 leaving a reserve balance of \$27,278.80 until as-builts are received. Motion carried 7 to 0.

Discussion – Purchase/Sale of Bluebird Fire Engine – President Kapenstein stated he was approached by a member of the Fire Department about purchasing the Blue Bird Fire Truck for his individual use. After some discussion, Council agreed to continue to house the Blue Bird if the Fire Department would be interested in taking ownership. Councilor Knull stated she would contact the Fire Department to see what their interest would be.

Approval of Resolution No. 2017-5 Disposition of Ammunition – President Kapenstein noted that the resolution allows for the disposition/exchange of ammunition that currently cannot be used for ammunition that can be used with current weaponry. **MOTION** by Anne Einhorn, second by Robert Reid to adopt Resolution No. 2017-5 regarding the disposition of ammunition. Motion carried 7 to 0.

Polling Place Change – Mr. Hamer stated Jerry Feaser of the Bureau of Elections dropped off information regarding the Bureau of Elections looking to change the polling place for the 1st Ward/2nd Precinct from the MCSO to St. Peter's Evangelical Lutheran Church on North Spring Street due to accessibility and parking issues. If Council has any objections, the Bureau would need to know about them by tomorrow morning. Council indicated they had no problem with the transfer of polling place.

New Business

Councilor Knull noted that flyers were sent out regarding signing up for Nixle and the count for residents who have signed up is now at 1,548. Councilor Reid indicated he had been approached by some residents who understood that they didn't need to sign up for Nixle as they had originally signed up for Code Red. Councilor Knull indicated residents must re-register. Council requested the Borough Secretary post information on Facebook.

Councilor Reid reminded Council that tomorrow there will be a tabletop drill and on April 15 there will be another drill for Three Mile Island noting that as Council members they have a responsibility to serve in times of emergency and they should report to the EMA office.

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President Kapenstein noted that he had reached out to the school and there is a 10th grader who would be interested in attending the Council meetings. He is still waiting to hear from Penn State.

President Kapenstein stated he will be stepping down as President of Council due to family and work responsibilities, thanked Council for their trust in him over the past year and he looks forward to continue working with them as a member. Mayor James Curry thanked President Kapenstein for getting Council through the tough transition in 2016.

Mayor Curry requested the Ordinance regarding the Human Relations Commission be amended to remove the wards and that the three initial residents appointed by the Mayor can then appoint others. **MOTION** by Dawn Knull, second by Damon Suglia to advertise the Ordinance amending the Human Relations Commission to reflect the three initial appointments be made at large. Motion carried 7 to 0.

Mayor Curry indicated that he will be moving forward with flags with the Chancellor as no one from Council has set forth objections.

Mayor Curry stated Mayoral Madness is scheduled for Friday night at 8:30 p.m. following the pageant at the school remarking on the generosity of those giving to the benefit this year.

Public Comment

Jeff Cross (258 E Emaus St) – Mr. Cross indicated the M&H Railroad has started vacuuming plastic pellets out of railroad cars a couple of months ago and the noise is creating problems in his household as they cannot sleep and cannot sit outside of their home. Mr. Cross noted that this vacuuming noise which is at 90 decibels occurs 3 to 4 days per week for 2 hours at a time with the time varying sometimes at 4:30 a.m. but mostly occurring from 6:30 a.m. to 8:30 a.m. President Kapenstein asked Codes to check with M&H and look into codes to see what, if anything, can be done.

David Black (134 N Union St) – Mr. Black referenced the story in the Press and Journal regarding the Borough's legal expenses in 2016 citing that \$349,749 was paid to McNeese Wallace and Nurick that was hired in 2012. Mr. Black commented that in 2016 the Borough had to hire Eckert Seamans law firm for crematory issues due to McNeese stating they had a conflict of interest noting that the wife of Travis Finkenbinder, owner of the funeral home, was a partner at McNeese until September 2015. Mr. Black asked Solicitor Santucci if Mrs. Finkenbinder was a partner and when she left employment with McNeese. Solicitor Santucci stated he was not sure when Mrs. Finkenbinder left employment at McNeese. Mr. Baker asked Solicitor Santucci whether Mrs. Finkenbinder worked at McNeese in 2015 and if McNeese provided legal services to Mr. Finkenbinder at the time he purchased the funeral home in 2015 and when he applied for a zoning permit. Solicitor Santucci stated he did not know when Mrs. Finkenbinder left employment and the firm had nothing to do with the zoning permit. Mr. Black asked Solicitor Santucci if Mrs. Finkenbinder or another member of the firm advise McNeese about the crematory's application for a zoning permit to the Borough. Solicitor Santucci stated he did not have discussions with Mrs. Finkenbinder about her husband's

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business indicating due to the number of employees at the firm, he has no way of knowing the answer to that question. Mr. Black asked what steps Mr. Santucci and/or the firm take when Mr. Finkenbinder applied for a permit to avoid a conflict of interest. Mr. Santucci again stated the firm had nothing to do with the zoning permit.

Jack Still (37 W Emaus St) – Mr. Still asked if any of the loan documents referenced an Ordinance. Mr. Hamer noted they were not loan documents and President Kapenstein indicated they would review the documents.

Rachelle Reid (448 Grant St) – Ms. Reid asked how much money was received by the Borough at the dissolution of the Borough Authority. President Kapenstein indicated it was in excess of \$2 million. Mr. Hamer noted when the Borough Authority was closed the money continues to be in M&T Bank and ownership changed to the Borough and is now considered part of the Water and Sewer Fund. Ms. Reid asked if the monies received were going to be reserved to offset rate increases. President Kapenstein stated that has not been discussed and water and sewer expenses such as well permitting for SRBC and water line extensions will be coming out of that fund. Ms. Reid asked if SRBC will be penalizing the Borough for water usage. President Kapenstein indicated that will not be known until the permitting process is complete. Ms. Reid asked if water rates would be increasing this year. President Kapenstein indicated water rates would not be increasing this year.

President Kapenstein stated Council will recess to Executive Session to discuss labor, real estate and potential litigation. Council recessed at 9:37 p.m. and reconvened at 10:45.

MOTION by Dawn Knull, second by Ian Reddinger to transfer the disputed parcel on Few Avenue to Rodney and Linda Cook. Motion carried 7 to 0.

MOTION by Anne Einhorn, second by Damon Suglia to reject the proposed 5-year Capital Plan proposed by the concessionaire and send the required notice to the concessionaire. Motion carried 7 to 0.

MOTION by Ian Reddinger, second by Dawn Knull to adjourn the meeting. Motion carried unanimously and the meeting was adjourned at 10:46 p.m.



Grace Miller
Borough Secretary