

The workshop meeting of the Borough Council of the Borough of Sinking Spring was called to order on Wednesday, March 25, 2009 at 7:06 p.m., at the Sinking Spring Borough Hall, by President Stewart Wenrich. After the Pledge to the Flag, Regina Shade called the roll reflecting the following Council Members present:

Stewart Wenrich
Bruce Light
Lawrence Schmidt
James Zerr (absent)
George Butkus (absent)
Barbara Kutz
Elizabeth Sloan

Other officials present were: Mayor Clarence Noecker; Charles Fitzpatrick, Borough Solicitor; Peter Eisenbrown, Ludgate Engineering; Matthew Zerr, Liberty Fire Company; Police Chief James Oxenreider, and Regina Shade who recorded the minutes of the proceedings.

VISITORS:

Mr. Jim Pachuillo was first to address Council. He was there on behalf of the Planning Commission. He had a question for Mr. Fitzpatrick. He inquired if you must be a resident of the Borough or could you own land or be a business owner and still serve on the Commission. Our Planning Commission is to be a seven (7) member board however currently and for quite some time we have only had six (6) members. Mr. Fitzpatrick stated he needed to check the Municipal Planning Code. He did check into it and found that only residents of the Borough can serve on that Commission.

The third step in the redevelopment process was achieved the prior evening. A Redevelopment Area Plan was created. They are now moving on to the fourth step which is the proposal for the redevelopment in conformity with the redevelopment plan. This goes back to the Redevelopment Authority and then comes back to the local Planning Commission for approval and then moves on from there. We are making progress.

They are working with Ludgate Engineering by Council's request to update the Zoning Ordinances. He presented an outline of some of the Ordinances last evening. They talked about hashing out some of the uses in what is considered a "Downtown District" and for the rest of the Borough. They want them to be more conformed to today's businesses and what we would like to see and have in the Borough. We also talked about a Joint Zoning Ordinance with other municipalities. We can then be able to cover all of the bases.

They received a sketch plan of the development of the Boscov's site. The plan was submitted by JDH Capital out of North Carolina. Mrs. Shade handed out a few copies of the plan. It is very inviting. PENNDOT wants to see a light at that intersection and the Planning Commission is going to make the recommendation that a light is placed there. Mr. William Seyler from JDH Capital is here this evening if anyone has any questions.

Mr. John Printz of Keller Avenue was next to address Council. His first concern was

VISITORS (cont'd):

in regards to the sewer rate increase and just how we were able to run out of capacity. With Mr. Butkus being out, Mr. David Schlott of ARRO Consulting addressed the question. He stated that the work that is going to be done is an upgrade and a minor expansion. The minor expansion is basically optimizing the oxidation ditches which are already there and adding a clarifier. The other part of the project which is the majority is an upgrade to the head works, doing away with the grinder system, putting in an influent screen device and adding reed beds. It is not really a capacity issue. He went on to explain about the hydraulic and organic overload that was discovered a few years ago in the Chapter 94 Report. This solution will maximize the capacity of the ditches without adding another oxidation ditch. They are acting real well. Mr. Printz again asked the question are we out of capacity or are we still maintaining what we have. Mr. Schlott stated we are not out of capacity. This is more of a planning tool at this point. The reason he questioned this was because there is a lot of building going on in the area, and the developers are bringing more people into the Borough. He feels there is one (1) fee that they must pay however they are bringing more people into the area and therefore he feels the developer should pay the extra amount if we are getting close to capacity or going over. The developer comes in and reaps the profits however the residents are paying more than double per month. He thinks it is ridiculous that the residents must pay more. Mr. Fitzpatrick stated that was not quite accurate. He explained what happens when a home is built or a new connection to the sewer line is created a tapping fee is paid. In fact any new connection is paying a tapping fee which will cover what is calculated to the cost of selling capacity to that specific connection. Mr. Printz felt it was unbelievable that we had a 114% sewer increase. Mr. Schlott stated that we have not had a sewer rate increase in a long time. Mr. Schlott stated we have invested a lot of money into the Borough's collection system. He explained what areas have been corrected.

Mr. Printz stated when he was on Council he had to jump through hoops to get cell phones for the Borough Hall. Now everyone on Council has cell phones. He had to fight to get five (5) cell phones at the lowest price. We stated we could reduce quite a lot of waste in this Borough if these phones were turned back to the police department, the street department, and one (1) for the office. He does not see the need for every Councilperson to have a cell phone especially if they are being abused. He hopes no one is calling for their horoscopes, the weather or the Game Show Network for bingo numbers. He questioned if anyone has any idea what is going on with the cell phones. Mr. Wenrich stated they are being scrutinized and as the belt tightening comes this is one thing that will be looked at. Perhaps by April or April's workshop we will have an answer. Mr. Printz stated again that the police department, the street department, and one (1) or two (2) in the office the others are just a waste of money.

EXECUTIVE SESSION:

An executive session was held at 7:20 p.m. for the discussion of real estate.

RECONVENE:

Council reconvened at 7:42 p.m. Mr. Schmidt stated in order to align and straighten the Blanbrid, Queen, and Penn Avenue intersection to comply with the Official Map, I make a motion to authorize the Solicitor to engage the services of an appraiser to appraise 3502 Penn Avenue and

RECONVENE (cont'd):

to further authorize the Solicitor to begin negotiations with the owner to purchase 3502 Penn Avenue in the Borough; seconded by Mrs. Kutz. Mr. Wenrich asked for a roll call vote. AYES – 5, NAYS – 0; motion carried. This is not a condemnation.

BUSINESS:

Mr. Wenrich stated as was mentioned earlier by Mr. Pachulo the proposed developers of the Boscov's property have retained the services of an attorney from the same firm our Solicitor is associated with. This would definitely create a conflict of interest so we need to appoint a conflict counsel. They will handle anything that might happen in regards to this developer and only this developer. Mr. Fitzpatrick will continue to handle everything else going on in our Borough. Mr. Schmidt made a motion appoint J. Kitridge Fegley as our conflict counsel; seconded by Mr. Light. AYES – 5, NAYS – 0; motion carried. Mr. Schmidt questioned if we will receive something in regards to his fees to which Mr. Fitzpatrick stated he will get that information for us. Mr. Fitzpatrick said he is an excellent real estate attorney.

Mr. Wenrich stated with the current expenses and the future project that is coming up he wanted to appoint a finance committee to brainstorm on some ideas of saving or getting us money. On that committee he placed Mrs. Kutz, Chairperson, Mr. Schmidt, Mr. Zerr, Mrs. Shade, Mr. Hart, Chief Oxenreider, and the Mayor. The reason he chose those three (3) Council people is because this could be their swansong. He wants some very clear views on these things.

The next issue was the task force. Mr. Fitzpatrick stated he had the final versions of the bylaws and the intermunicipal agreement. We had intended to discuss these tonight however with two (2) members of Council being absent he wasn't sure but perhaps we could defer this to the regular meeting next Thursday. It really does not make too much difference if we do wait as we would not have time to advertise for adoption at that time. We need seven (7) days. Mr. Wenrich stated we could defer this till then. Ms. Sloan wanted to place it on the floor that evening as she did speak with Mr. Butkus at length. He is in support of it. Ms. Sloan questioned if this was the final version of the bylaws to which Mr. Fitzpatrick stated it was. He does not see any further changes. Ms. Sloan asked Mr. Wenrich if she could make a motion so we could move forward and have it for the final meeting. Mr. Fitzpatrick stated even if you authorize him that night we can't get it advertised for the first Thursday in April. She understood that but time is of the essence. If it does pass we are at least moving forward. Ms. Sloan made a motion to advertise the Ordinance to adopt the intermunicipal agreement along with the Berks Task Force Bylaws; seconded by Mr. Light. The Mayor stated we would not have enough time to advertise for that to which Mr. Fitzpatrick stated that was true. A brief discussion ensued. AYES – 5, NAYS – 0; motion carried. Mr. Wenrich stated in the new structured bylaws, he knew there was a question of the financing; are we still going to carry the debt on our credit line. Mr. Fitzpatrick said we will have to recognize it as debt of the Borough for purposes of our debt limit however a clause was added that they would indemnify us and hold us harmless and they would assume all of the debt however they would not go to the bank and refinance that debt. That means we are still involved. Ms. Sloan stated the reason they did not want to refinance was because the rates we got back them were better than the rates we would get today.

BUSINESS (cont'd):

The next item was fire police for our Memorial Day Parade. Chief Oxenreider stated in order to get the fire police a request was made in writing to the head of the fire police, Mr. Donald Schlegel. The Mayor had to sign it which he did and it also must come up at a public meeting. Mrs. Kutz made the motion to have the fire police at the Memorial Day Parade; seconded by Ms. Sloan. AYES – 5, NAYS – 0; motion carried.

Bulk clean up will be Wednesday, April 15th.

The Easter Egg Hunt will be Saturday April 4th at 10:00 a.m. at the fire company. It will be rain or shine.

Mr. Wenrich congratulated the Mayor on turning 93 years old on March 23, 2009. Everyone clapped in his honor.

COMMITTEES:

Mr. Schmidt had two (2) items. Officer Travis Fritz has completed his first six (6) months with the police department and is entitled to a raise. Mr. Schmidt made a motion to raise Officer Fritz to the rate of Third Class at a rate of \$22.42; seconded by Ms. Sloan. AYES – 5, NAYS – 0; motion carried.

The next issue was a letter that Mr. Wenrich and Mr. Schmidt received from the Police Department. Mr. Wenrich read the letter in regards to the twelve (12) hour shifts. The Association would like to sit down with Council or their designees and discuss this so they can begin working the twelve (12) hour shift. The Chief as well as the Mayor were also copied on the letter. Mr. Wenrich stated the letter was dated March 11th. He decided not to do anything with this till all of Council had a chance to discuss it. There are pros and cons to doing this. The pros are that it would cut down on overtime so it would be a money saver. This should be discussed at the finance meeting when we have it as well. There is some opposition to this. Mr. Schmidt turned it over to the Mayor as the Police Department is actually under the Mayor. The Mayor wanted a clearance on the Borough Code. The Mayor asked Mr. Fitzpatrick if he, as Mayor, sets the hours that the police shall work. However it came into this contract that the Association and Council set the hours. Mr. Fitzpatrick stated he would have to talk with Mr. Keller on exactly what has happened. Ms. Sloan stated as being part of that she does not recall that being in there at all. Mrs. Shade along with Chief Oxenreider retrieved the contract and some other information for Mr. Fitzpatrick to review. Mr. Light stated it was brought up but never ended. This was not part of the four (4) negotiated points Ms. Sloan said. Mr. Fitzpatrick stated he did not draft the contract or was part of the negotiations at all. Mr. Schmidt questioned are we legally bound to this agreement or not. Mr. Schmidt stated he did read the contract and it is in the contract. After Ms. Sloan became aware of this, she stated she called Mrs. Shade and Mrs. Shade stated that the contract was already signed. Ms. Sloan stated again it was not part of the four (4) reviewable items and she did not know how it got it there. Mr. Schmidt stated he was surprised when he got the letter. He and the Mayor reviewed the contract together and it is in there. It is a signed contract at this point. Mr. Schmidt questioned Mr. Fitzpatrick if this is a signed document by both parties, isn't it binding at this point.

COMMITTEES (cont'd):

Ms. Sloan stated if it wasn't negotiated. Mr. Fitzpatrick stated if it is a signed contract you may be bound by that. Typically, a signed contract is binding on the parties who executed it. Mr. Fitzpatrick stated it says the Mayor has full charge of the chief of police as well as the police force. He shall direct the time, place, and the manner in which the Chief and the police force shall perform their duties except Council shall fix the total weekly hours of employment as it applies to the policemen. Mr. Fitzpatrick stated he could see how that could be interoperated that Council can establish the hours. The Mayor stated the weekly hours. Ms. Sloan questioned if there was a delay between when this was ratified and when it was actually signed. Mrs. Shade stated, it did take awhile to get it back. Ms. Sloan said it is when it came back that the Mayor noted that part. Mrs. Shade stated Chief Oxenreider was getting his information as well. Ms. Sloan questioned what article this was. Mr. Fitzpatrick stated it was Article II, Section 5, on page 4. Mr. John Printz questioned the Mayor if he is opposed to the twelve (12) hour shift. Mr. Printz stated it works well in other municipalities. He asked the Mayor if he was opposed to them working those types of shifts, and why. The Mayor stated he was. He continued that after eight (8) or ten (10) hours of working on a police force you are not up to snuff anymore. At the convention he spoke to various Mayors across the State and some of the Mayors stated it was more expensive to them. Some were working ten (10) hours shifts and are now going back to eight (8). They felt the officer was not up to par after eight (8) hours. Mr. Printz requested giving this a shot and seeing what happens. Mr. Fitzpatrick stated it does not obligate Council to go to twelve (12) hours. They both need to agree. Mr. Printz stated we should give this at least a try. Mr. Wenrich wanted to defer this till our Counsel and their Counsel agree. Ms. Sloan stated she will talk with Mr. Keller. Mr. Fitzpatrick stated Mrs. Shade has spoken to Mr. Keller on this matter and requested Mrs. Shade to state Mr. Keller's response. Mrs. Shade said ultimately since this document was signed by both parties and it states in the document that Council shall establish the hours, we must go with what the document says. Mrs. Shade stated according to the PSAB that the contract supersedes anything in the Borough Code. A written contract supersedes the Borough Code as Chief Oxenreider found out as well. The Mayor again questioned how this got in there. Ms. Sloan stated she will check with Mr. Keller. Mr. Fitzpatrick said he will check. Mrs. Shade had a question, what happens since this was signed by both parties, what happens if Mr. Keller says he doesn't know about that part. She continued it is still there and signed by both parties. Mr. Fitzpatrick stated it does appear this is a binding contract. It is binding to both signing parties. Ms. Sloan stated she does have a lot of alliterations of this and she will print them out. Mr. Schmidt stated that might be academic since they signed the one with that in it. Ms. Kutz questioned exactly what it says. Mr. Fitzpatrick stated "The Association and the Borough will have the right to change the work schedule at anytime during this agreement to a continuous and permanent twelve (12) hour per day work schedule if both parties are in agreement to such work shift." Ms. Sloan stated so that means both Council and the force will have to agree to go to a twelve (12) hour workday. We would have to vote on it. Mr. Fitzpatrick stated that work hours are negotiable and apparently it was negotiated or else it would not have ended up in this contract. Ms. Sloan stated to her recollection they wanted it but the Mayor didn't so as a matter of compromise they stated so if both parties agree we will go forward with it. She will have to check her notes. Mr. Fitzpatrick stated that is what it states in this contract.

COMMITTEES (cont'd):

Ms. Sloan stated that once the Ordinance is approved for the task force there will be no more meetings. We will have the right to appoint two (2) people to the interim governing body of thirteen (13). The fire company will appoint one (1) member and the Borough Council will appoint one (1) political appointee to the interim governing body.

Mr. Light stated they are having a chain saw and concrete safety event and he would like to have our street crew attend. Mr. Light made a motion to have them attend this free seminar; seconded by Mr. Schmidt. AYES – 5, NAYS – 0; motion carried. The other item was the amplifier for the sound system. The cost is \$445.01. Mr. Light made a motion to buy the amplifier; seconded by Mr. Schmidt. AYES – 5, NAYS – 0; motion carried. Mr. Light stated Mr. Hart had asked you a while back about buying the fire hydrants from PA American Water Company. Mr. Fitzpatrick stated there was a bill of sale created a while back by them. He thought he forwarded to Mr. Hart. Mrs. Shade stated he said he did not have it. Mr. Fitzpatrick has it. We can do it at the next meeting.

Mr. Schlott stated the advertisement for the sewer plant minor upgrade/expansion was placed in the paper. The second time was this past Sunday. There will be a mandatory pre-bid meeting next Tuesday here at the Borough Hall. The bid opening is April 16th at 2:00. There has been a lot of action on this. So far seventeen (17) sets have been sold. The other item is the Chapter 94 Report. The Report is completed and the President must sign them. He explained what was in the report. They do not feel they are in an organic overload however there is a projected overload; this is the same as last year. Mr. Wenrich questioned if we heard anything on the grants. Mr. Schlott stated not at this point. He did hear from someone at PENNVEST and they have a few questions. Nothing has been heard pro or con. The H20 is mid April and PENNVEST meets May 18th.

Ms. Brenda Messina inquired if there is any stimulus money available to help offset the cost of the sewer plant. Mr. Schlott stated the H20 money is actually part of the 800 million dollar referendum that was put on over the summer. In addition, part of the PENNVEST this round, is some federal stimulus money as well. There was also some referendum money from there too. So, the best answer is yes, there is some stimulus money in these grants.

Mr. Schmidt questioned if we heard anything about the closing out of the Authority's accounts. Mr. Fitzpatrick stated they should be closing them out. Mr. Schmidt stated he thought in his memo that if they don't close out those accounts the money will ultimately go to the State. Mr. Fitzpatrick stated not right away; it would be about seven (7) years. Mr. Fitzpatrick said there was a direction put forth that the Authority turnover all their assets and they have signed the documents agreeing to turning over those documents so he is not sure why this is not being done. Mr. Schmidt questioned what we must do to get this done. We are paying and still paying some of their bills. Mr. Fitzpatrick feels the Chairman of the Sewer Committee should look into this. The amount still in those accounts total about \$4,500.00. Ms. White was going to call Mr. Butkus again and see if we can close out those accounts. Mr. Schmidt stated perhaps this is another matter we can discuss at the finance meeting.

The fire engine is back in service and the cost was in the area of \$17,000.00. The other

COMMITTEES (cont'd):

truck will be out of service for a tune up beginning shortly after the meeting.

PUBLIC COMMENT:

There was no public comment.

ADJOURNMENT:

Mr. Schmidt made a motion to adjourn at 8:30 p.m.

Respectfully submitted,

Regina M. Shade
Borough Secretary/Treasurer