

The workshop meeting of the Borough Council of the Borough of Sinking Spring was called to order on Tuesday, December 29, 2009 at 7:00 p.m., at the Sinking Spring Borough Hall by President Stewart Wenrich. After the Pledge to the Flag, Debra Bohn called the roll reflecting the following Council Members present:

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

Other officials present were: Mayor Clarence Noecker, Michael Hart, Public Works Director; David Schlott, ARRO Consulting; Robert Ludgate, Sr., Borough Engineer; Charles Fitzpatrick and Keith Mooney, Borough Solicitors; and Debra Bohn who recorded the minutes of the proceeding.

Mr. Wenrich asked for a moment of silence for our service people as well as the members of police and fire departments.

VISITORS:

Mrs. Denise Stine spoke on behalf of Mr. Bruce Light who was in the hospital. She thanked everyone on his behalf for working with him over the past years.

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The first item was the Ordinance for the establishment of the ambulance tax. Mr. Fitzpatrick stated the Ordinance has been advertised. The levy is to supply support for ambulance rescue and other support for serving the Borough. The Ordinance has been circulated and he feels everyone has had the chance to review and make comments if needed. Mr. Schmidt made a motion to adopt the Ordinance; seconded by Mr. Butkus. AYES – 3, NAYS – 1 (Mr. Zerr); motion carried.

The next item was for establishing the rates for the real estate tax, fire tax, and the ambulance tax. This has been advertised and circulated. It is establishing the millage for general purposes at 4.19 mils, fire tax at .85 mils, and ambulance at .25 mils. Mr. Schmidt made the motion to adopt the Ordinance. There was no second. Mr. Schmidt asked what happens if this doesn't get passed. Mr. Fitzpatrick said at some point we must provide funding for municipal services. It would have to be re-advertised for adoption at a later date. Mr. Butkus questioned if the old rates would remain in effect. Mr. Fitzpatrick stated they are only for one (1) calendar year. Mr. Schmidt asked if we pass this tonight the new Council has a right to open this up. Mr. Fitzpatrick said they can within thirty (30) days. Mr. Schmidt stated so this is not binding. The new Council could reopen it then. Mr. Schmidt made the motion to adopt the Ordinance accepting the new rates. There again was no second. Mr. Fitzpatrick stated Mr. Mooney feels if there is a proposal for a new lower rate that evening, he feels we would not have to re-advertise the Ordinance. There was silence. Mr. Schmidt requested that the President move on as it appears no headway was going to

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be made. Mr. Wenrich asked Mr. Schmidt if he withdrew his motion to which Mr. Schmidt said he did.

The next item was paying the bills for 2009. Mr. Butkus stated he was not sure if Council wanted to do this item separately however we have the application for payment for work that is done at the sewer plant. Mr. Schlott showed something to Mr. Butkus and Mr. Butkus said he stands corrected. Mr. Butkus made a motion to pay the bills; seconded by Mr. Zerr. AYES – 4, NAYS – 0; motion carried.

Next item was the Resolution waiving the police contribution to the 2010 police pension plan. Mr. Butkus made the motion; seconded by Mr. Zerr. AYES – 4, NAYS – 0; motion carried.

Mr. Butkus stated he and Mr. Schlott had an item that urgently needed attention. The one (1) flow meter from Lower Heidelberg, as part of their duties, Miller has the meters tested and calibrated. This past week apparently while being tested it was found that it is not working correctly. The parts that are used to fix it are no longer available; it is time to replace it. From their reading of the agreement, and Mr. Schlott spoke to Mr. Fitzpatrick before the meeting, it is their responsibility to replace it. However instead of waiting six (6), seven (7), ten (10) weeks or however long it could take they are recommending that we replace it and bill them as that is 100% on them. This is part of their agreement. Mr. Butkus stated they have a quote there from Malden who does the servicing for a cost of \$3,542.00. Part of it has to be paid at the time of the order, part of it has to be paid after the first month and the last third is after the second month. Mr. Wenrich questioned where we stand on them paying us. Mr. Fitzpatrick said they paid \$76,000 representing the first two quarters and they now owe the third quarter. Also, they are still reviewing the agreement which has been in their hands since August. We have asked their Solicitor to respond to that and he has failed to do so. That is how it stands now. We have gotten significant cooperation from South Heidelberg Township. We do have an agreement with South Heidelberg Township. Mr. Butkus recommended to Council that we do this as we need accurate numbers. Mr. Schlott would not like to see this meter out of service for a long period of time. When the meter is out of service the readings would be based on estimates. Mr. Butkus made a motion to have Mr. Juzyk get in touch with Malden and get this installation done as soon as possible so we can have accurate data; seconded by Mr. Zerr. Mr. Fitzpatrick stated this is for our benefit also and really is a separate stand alone issue. AYES – 2, NAYS – 2 (Mr. Schmidt and Mr. Zerr). The Mayor voted for repairing the meter. Mr. Butkus will also make Lower Heidelberg aware of this. The motion passed.

Mr. Wenrich asked Mr. Fitzpatrick if Mrs. Shade and spoken to him earlier in the day about contacting Mr. Light for voting on the budgets. Mr. Fitzpatrick said we can contact him and he believes he was waiting to participate on the vote by telephone. Mr. Wenrich asked if Council had a problem. Mr. Schmidt stated he had no problem with that. Mr. Zerr said there are four (4) Council people there; he did not see the point of that, but he told Mr. Wenrich to do as he wants, he is the President. Mr. Wenrich then asked Mr. Butkus. Mr. Butkus said his only concern was do we have a bias as we are only calling only one (1) of the three (3) Councilpeople not there. Mr. Fitzpatrick said that he heard contact was tried to be made to the other Councilpeople and they

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could not be reached. Mrs. Bohn said that was her understanding. Mr. Fitzpatrick stated that Mrs. Kutz said she was unavailable. Mr. Wenrich said she is working. Mr. Butkus agrees with Mr. Zerr. He stated for the past (4) four years we have gone with the policy if you are here you vote. That way they are here for the entire discussion so if the public had questions for them, they were here. Mr. Schmidt said okay.

There are three (3) budgets. The General, the Sewer, and the Fire Budgets need passing. Mr. Wenrich started with the General budget. Mr. Schmidt asked if we pass the budget how do we fund it? Mr. Wenrich stated that would probably be up to the new Council. This would be decided the next Monday. Mr. Fitzpatrick stated the only way to fund it would be to pass a tax ordinance. Someone is going to have to do it at some point. Mr. Schmidt said why we are worrying about the budget if we can't fund it. Mr. Wenrich asked if we could approve it on Monday. Mr. Fitzpatrick said no; it was advertised for adoption that evening. If Council does not adopt it a new budget will need to be composed by the new Council. Mr. Schmidt questioned if we pass this budget, is this budget binding onto the new Council. Mr. Fitzpatrick stated they can open it. Mr. Butkus said if they didn't want to go with the new tax increase or changes in taxes they would have to do that. There was no motion.

The next budget was the sewer fund. Mr. Butkus made a motion to adopt the Sewer Fund Budget as was proposed; there is no projected increase in sewer rates for next year. He continued that as far as we can see there is no need for increase unless something unforeseen happens; seconded by Mr. Zerr. AYES – 2, NAYS – 2 (Mr. Schmidt and Mr. Wenrich). The Mayor voted to accept the Sewer Budget. The Sewer Budget passed.

Mr. Mooney stated with regard to the taxes and the budgets, he is not sure, but by not passing any millage rate and by not passing a General Fund Budget, if something were to happen with the new Council and neither of them got passed in time, you could be opening yourselves up personally to being surcharged. He believes the way the Borough Code is written this Council has an obligation prior to the end of the year to pass a millage and to pass a budget. He thinks they are "shalls" and not "maybes". Mr. Fitzpatrick said by passing it we remove any doubt and by adopting the budget and tax rate we remove any doubt in that regard. Any change that would be proposed could be done by the new Council after the first of the year. Mr. Fitzpatrick stated that it might be the appropriate thing to do. They should adopt the proposed figures as they were put forth by the budget committee and if there isn't an adoption he doesn't want to see anyone exposed to potential liability especially when it can be redone after the first of the year. Mr. Wenrich stated his hands are tied. Mr. Schmidt stated that Mr. Zerr and Mr. Butkus are carrying the votes. Mr. Fitzpatrick stated that Mr. Schmidt withdrew his motion. Mr. Schmidt said what is the use to make the motion they won't pass it? Mayor Noecker stated since Mr. Fitzpatrick and Mr. Mooney made that explanation perhaps things would change. Mr. Schmidt stated do you think so. They did look up in the Borough Code and it is a "shall". Mr. Zerr made a motion to set the millage rate at 3.49 for real estate, drop the ambulance tax, and keep the fire tax as is. Mr. Butkus said that would reflect a half mil increase for the General Fund as opposed to a full mil which was proposed in the draft Ordinance. Mr. Zerr said if the new Council wants to change it then so be it. Mr. Butkus made the second. AYES – 4, NAYS – 0; motion carried. Mr. Fitzpatrick stated he does not believe that a budget could be passed because the budget is calling for a budgeted ambulance tax. Mr. Butkus

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stated we would have to amend the budget to include that. Mr. Schmidt feels we shouldn't do that without a full quorum. Mr. Schmidt said you are the one who keeps talking we should have everyone here. Mr. Butkus said we do have a quorum. Mr. Schmidt said yes, but we don't have everyone to here to talk about it. Mr. Schmidt stated you are the one that keeps bringing it up; everyone should be here. Mr. Butkus agrees everyone should be there but. Mr. Schmidt said we shouldn't do anything. Let's leave it the way it is and let the new Council open it if they so choose. Mr. Schmidt stated Mr. Zerr is against it because of the ambulance tax to which Mr. Zerr said exactly. Mr. Schmidt said you aren't against the General Budget you are against the ambulance tax. Again, Mr. Zerr stated exactly. Mr. Schmidt said he has no problem with that and he can certainly do that but let's do this right. We are sitting here splitting hairs over whether we are going to second this or not. We know the new Council will open this budget. Mr. Butkus said do we? Mr. Schmidt said I can't believe they wouldn't; he would if he were them. He would want to open it and place numbers into place that he could work with. Mr. Schmidt said do what you will. Mr. Butkus said since we haven't done anything with the fire tax do we want to pass that fire budget. Mr. Butkus made a motion to pass the fire budget as it was advertised and proposed and as the tax was called for; seconded by Mr. Zerr. AYES – 4, NAYS – 0; motion carried. Mr. Fitzpatrick said again there are some legal issues if Council does not adopt a budget. Mr. Butkus questioned if we could enact a budget with less income then the budget calls for. Mr. Wenrich stated the budget can be amended at any time. Mr. Butkus said if we bought everything that we have budgeted for we would have spent more than the income we budgeted for. Mr. Butkus said this means that you are budgeting a deficit that does not mean you are necessarily going to incur the deficit. Mr. Fitzpatrick said correct. Mr. Fitzpatrick said you really need to pass a budget. Mr. Schmidt stated "sue me, I am leaving." Mr. Fitzpatrick stated we now don't have a quorum. Mr. Butkus said based on that he was going to recommend that we pass the budgets as proposed even though the new Council could change both or either or at least the General Fund. Mr. Fitzpatrick said it now is the hands of the new Council. Mr. Wenrich suggested we call Mr. Bruce Light now. He would like to really come out of this meeting with a budget. He gave Mr. Butkus his word, when the new Council comes in "we will open the budget." Mr. Butkus questioned Mr. Fitzpatrick if legally have that option. Mr. Fitzpatrick said we can. Mr. Mooney said as long as he can hear and be heard he is considered present. Mrs. Bohn called Mr. Light. Mr. Butkus and Mr. Zerr don't like doing this, but Mr. Zerr stated we don't have much of a choice. Mr. Light answered the phone. Mr. Fitzpatrick told Mr. Light that they have gotten to the point of reviewing the budget. His presence by telephone is necessary to constitute a quorum. We need to vote on the budget. The General Budget has been advertised and it called for an enacting a real estate tax increase in the amount of 4.19 mils, a fire tax of .85 mils, and an ambulance tax of .25 mils. There has been discussion about amending the millage. Mr. Light thought the mil increase was one (1) mil. Mr. Fitzpatrick said there was a change and the proposed amount was for 5/10 of a mil. Mr. Butkus said technically we need a vote on the budget. A discussion ensued. We are looking for the passage of a budget that would call for spending greater than funds that would be available as a result of enacting a tax ordinance. Mr. Fitzpatrick stated we would have a shortfall in the budget. There was a question if this was the tax rate he voted on prior to which Mr. Mooney said no; this was a lower tax rate. Mr. Wenrich said this has nothing to do with the tax rate; this is only the approval of the General Fund budget. Mr. Light made a motion to approve the General Fund budget as it stands now. There was no second. Mr. Wenrich stated we are at a standstill; he can't get a second on that motion. He thanked Mr. Light for his time and hope he feels better. Mr. Fitzpatrick stated we don't have a quorum to take

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any further action.

ADJOURNMENT:

Mr. Wenrich adjourned the meeting at 7:44 p.m.

Respectfully submitted,

Regina M. Shade
Borough Secretary/Treasurer