

Council Work Session
November 2, 2011
Council Chambers

The regular monthly Work Session of Newtown Borough Council was called to order at 7:00 P.M. on Wednesday, November 2, 2011, by President of Council Julia Woldorf.

Present were Councillors Burke, O'Malley, Sellers, Walker, Warren and Woldorf; Mayor O'Brien; Solicitor Paul Cohen; and Engineer Maryellen Saylor of Pickering, Corts & Summerson.

Amendments to the Agenda

Ms. Woldorf added discussion of the Bucks County Planning Commission (BCPC) Comprehensive Plan and discussion of a letter of support for a grant request by the BCPC under New Business. Mr. Sellers asked to add the status of the ACME site to the agenda under Old Business.

Public to be Heard

Michael Feit, a resident of Newtown Station and a member of the board of the Home Owner's Association, asked Council for help and guidance on two issues. He said the board had been frustrated about detention basin issues and, although they requested a plan from Toll of the required plantings, the Association never received that information. Ms. Woldorf suggested scheduling a meeting with the engineer and representatives of the Association. Mr. Feit said the other issue was the Maintenance Bond and the board members recommended that Council not release it, noting that some trees and shrubs require replacing and there is an issue of ponding at a handicapped access ramp on Penn Street. Ms. Woldorf said the Maintenance Bond discussion would take place during the Engineer's Report.

Frank Brassell reminded Council of the December 4, 2011, Holiday Parade and said that the Committee was looking for participation in and sponsorship for the event by any interested parties.

Newtown Ambulance Squad Annual Report – Joseph Swerk

Mr. Swerk provided an overview of the Newtown Ambulance Squad operation and addressed some of the challenges they face. Despite their \$2.5 million operating budget, he noted that the Borough's contribution is only \$10,000 as compared to their \$800,000 for police and \$50-60,000 for fire service. Mr. Swerk said the Squad handled 10,000 transports in 2010 and although there are some volunteer squad members, there are 65 employees, which corresponds to a \$2,000,000 payroll. With the cost of workers' compensation insurance, fuel bills, and staffing of a single ambulance with an EMT/ paramedic 24 hours a day, the expenses are well over \$300,000 a year. The cost of the vehicle, equipment, supplies, employee benefits, and administrative overhead is additional. Sustaining adequate revenue is a challenge and as a 501C (3) charitable organization, the squad writes off services equivalent to 5% of their operating budget to retain their tax-exempt status. Insurance companies require the squad to be network providers for non-emergency

services, and as such, they must accept payment according to the terms of their contract. In addition, Medicare reimbursement rates are 6% below the cost of providing the service in an urban area.

Mr. Sellers commented on the transport numbers presented by Mr. Swerk and found the sheer volume amazing. With regard to reimbursement from the insurance companies, Mr. Swerk responded to Mr. Sellers that the Squad's rate increase meant nothing to the insurance companies, but it did boost the 911 reimbursement.

Ambulance Squad Treasurer Don Smith said one of the toughest jobs is collection of outstanding bills, with insurance companies stretching out payments 90-120 days. He also said that the Squad had wanted Upper Makefield to put in a sub-station at the Firehouse on Taylorsville Road, which would cut down on the 19-minute response time to that area, but Upper Makefield has been unwilling to do that.

Newtown Library Company – Phil Hagan

Phil Hagan, representing The Newtown Library Company, said that the Library holds two big fundraisers a year, the *Book Lover's Party* and the 5K Walk/Run. There is an annual audit and an outside firm handles the Library's tax returns. Two large endowments generate a substantial amount of investment income and membership dues and fines are the other two areas of revenue. Although the library received a \$25,000 grant to relocate and make the bathroom handicapped accessible, that amount would not be enough for the total project. Mr. Hagan noted that the budget is approximately \$12,000 short. Resident Diane LeBas said that she felt the overdue fines were too low and Mr. Hagan agreed that something should be done.

Engineer's Report – Maryellen Saylor, Pickering, Corts & Summerson

Newtown Station Maintenance Bond

Ms. Saylor reported that inspections were completed and a punch list prepared for landscaping and site work at Newtown Station. She said that Toll Brothers completed the work, with the exception of the bollards, and Toll agreed to replace them in a manner acceptable to Council and Emergency Services. Ms. Saylor, therefore, recommended release of the Maintenance Bond. Ms. Woldorf asked Mr. Feit about the items to which he had previously referred and he repeated his concerns about landscaping and the ponding at Madison and Penn Street. Ms. Woldorf pointed out that some brick edging had fallen away from the brick sidewalk on Penn Street. In addition, Mr. Feit said there was an area at a fire hydrant on Centre Avenue that experiences constant ponding. Ms. Saylor agreed to send a field representative out to inspect the issues in question.

Frost Lane Maintenance Bond

The Newtown Township Engineer contacted Ms. Saylor to see if the Borough wished to address any issues regarding the Frost Lane project before releasing the Maintenance Bond. Ms. Saylor said that the Township would fix the handicapped ramp and would take care of the topsoil behind the curb line at Pickering Manor. Since the Township administered the contract, Ms. Saylor felt they would be responsible for releasing the Maintenance Bond.

Phillips Court

No installation of railings has occurred, nor have lights been replaced at Phillips Court. Solicitor Cohen spoke to the attorney for Frank Tyrol and to the property manager for Phillips Court. Mr. Cohen confirmed that the lights were ordered and should be arriving soon, with light installation to follow.

Neshaminy Creek Watershed

Ms. Saylor reported that the County would be applying for grant funds for the new NPDES permit that goes into effect March 13, 2012. Ms. Woldorf said that more comprehensive reporting and calculations will be required and the grant would assist in reimbursing the municipalities for these expenses. The County is looking for letters of support from municipalities for this grant. Council will discuss authorization to send a letter of support for the application at the next Council meeting.

Sidewalk Inspection

Sidewalk inspection for Quadrant I is well underway, as this quadrant has not been inspected since approximately 2006. In response to Mr. Walker's question regarding expected engineering costs for the sidewalk project, Ms. Saylor said she would supply the information before Friday.

Jeanne Haeckel questioned what she felt were inconsistencies in enforcement of the Sidewalk Ordinance. She noted that there had been two separate inspections of her sidewalk, which resulted in letters and the Haeckel's completed the required work. Now a third inspection is in process. Ms. Haeckel also questioned doing inspections now, rather than waiting until the spring, and she asked if there was money in the 2011 budget for the inspection work. She said that it did not seem that there were specific objectives with respect to sidewalks and it appeared to her that there were many questions regarding budget, philosophy, inconsistencies, and enforcement. Ms. Haeckel felt that the Borough should only be contacting those property owners who had not completed the required sidewalk work, rather than continuing additional inspections. It was Mr. Burke and Mr. Walker's recollection that only those individuals who had ignored the requests to address the Quadrant I problems would be dealt with at this time. Ms. Saylor's understanding was that since so much time had elapsed since the original inspections, the entire quadrant should be re-inspected, using the letters as a guideline. Council told Ms. Saylor to wait before continuing the inspections until the minutes of the sidewalk discussion could be reviewed.

Drainage at Frost Lane

Ms. Saylor explained that there is an area of scour approximately 40 feet downstream from the storm sewer outfall. She contacted the Conservation District to request a meeting with a specialist to determine what the Borough is allowed to do within the stream bank. Ms. Saylor also contacted the Department of Environmental Protection for their input.

Paul Salvatore raised the question of drainage for the S. Elm Avenue street project. He said that the Borough's Comprehensive Plan suggests drainage and curbing during street projects to address stormwater concerns and he asked if S. Elm needs drainage. Ms. Saylor agreed with the need for drainage, but said it would double the project cost.

Frank Brassell asked if adding the drainage would result in more longevity for the street paving and alleviate the potholes that result from ponding. Ms. Saylor agreed that it generally does extend the longevity, but she noted that there is no immediate area into which to connect storm drains.

Budget and Finance – Gerard O’Malley

Mr. Walker said that the Budget Committee made all the changes discussed at the Work Session. Mr. Warren asked whether they reached a conclusion on the parking fines and how it corresponded to the police budget. Mr. Walker reported that after talking to the Police Chief, the parking fines were not increased and the part-time police officer hours remained the same. Mr. O’Malley asked about the breakout of the \$60,500 [for part-time officers], its utilization and could the Chief do with less. Mayor O’Brien said that as of this date the figure is \$40,600, which includes special events and two months of special parking enforcement. Mr. O’Malley asked whether the power shift or *Boots on the Ground* program is still necessary and effective, or could the Borough pull back from it. Mr. Walker asked if there was some middle ground on reducing the power shift without eliminating it and re-allocating to enforcement of the parking and suggested that it might be time to re-evaluate and adjust. Continuing with discussion of the police budget, the Mayor reported that there is a probability that the County will float a bond to assist with the cost of the new police radios and the bond would be repayable over seven years. The Borough budget currently has \$20,000 set aside for the police radios. There was discussion about the \$15,000 allocation for a new police car, as the Borough replaces cars every four years. In order to save the \$15,000, the Chief said the department could wait another year for a car. Mr. Walker was not in favor of that as he said there might be additional repair costs for the older car and the trade-in value would be less if the Borough keeps it an additional year. Mr. Sellers concurred.

Although acknowledging that the Borough needs a new website, Mr. Burke recommended holding off and saving the \$6500 that would be necessary for 2011-2012 website expenses. Mr. O’Malley felt that the website is a luxury and agreed with Mr. Walker’s comment about finding grant money. Ms. Woldorf does not find the current website helpful, but Mr. Burke felt that the current website serves a function and could be used for one more year.

In response to Mr. Warren’s question about the budget for the Conditional Use Hearing, the Solicitor responded that it is difficult to give an estimate, as it depends on how long the process takes. Mr. Cohen did not believe that it would be anywhere near the \$10,000 that was originally budgeted.

In response to Mr. Walker’s question about whether to raise the \$80,000 snow removal budget for 2012, Mr. Sellers said he was comfortable with that figure. Based on predictions, Mr. Sellers said that the heavy snow should be between now and the end of the year, with less precipitation in 2012.

Mr. Sellers noted that Keystone’s [Keystone Municipal Services] rates are going up 4%.

Ms. Haeckel asked if the budget would require an increase in taxes. Ms. Woldorf said Council had not discussed the issue yet, but the presentation of the draft budget would take place at the Wednesday Council Meeting. When Mr. Craig questioned why Council was not discussing a tax increase if there is a deficit, Ms. Woldorf responded that Council was still playing with the numbers and did not know what the final budget would be.

Ms. Woldorf asked that the Gilmore bill for \$816 be removed from the professional services invoice approvals. She objected to Gilmore’s bill because Council had not authorized their deposition in an insurance matter. Mr.

Walker asked whether the Borough could pass the bill onto the Borough's insurance carrier. Mr. Cohen said he would speak to counsel for the insurance company.

- ❖ A motion was duly made by Councillor O'Malley, seconded by Councillor Walker, and carried unanimously, to approve the professional services invoices, with the exception of the Gilmore bill, for the month of September, as per Pat's [Ms. Ours] e-mail of October 28, 2011.

Website Proposal – Julia Woldorf

Ms. Woldorf reminded Council of the Website Committee's work, which included putting out a Request for Proposal. The Committee received nine proposals, with four companies interviewed and made the recommendation to contract with Delaware.Net, a firm with a division solely dedicated to municipal websites.

- ❖ A motion was duly made by Councillor Warren, seconded by Councillor Sellers, and carried with Councillors Woldorf, Warren, and Sellers voting aye, Councillors Burke, O'Malley, and Walker voting nay, and Mayor O'Brien breaking the tie by voting aye, to accept the proposal of Delaware.Net, subject to the Solicitor negotiating terms of the contract.

Stocking Works II Conditional Use Hearing

Ms. Woldorf said that December 7, 2011, is the date for the Conditional Use Hearing for Stocking Works II. Council asked the Borough Planning Commission to review Plan A for comments and Council members were to provide questions to the Commission prior to that review. Mr. Walker voiced concern that the developer had not defined the uses for the structures and questioned how parking calculations could be made without that information. He felt that the Planning Commission was a valuable asset in preparing Council for the Conditional Use Hearing.

In response to Mr. Burke's question about the submission of the Conditional Use Application prior to approval of the multi-family dwelling parking regulations ordinance, the Solicitor said that the new ordinance would apply when the Land Development Application for the project is submitted.

Mr. Burke also noted that the drawings do not show the type of retail usage and yet the square footage of the usage drives the parking requirements. He asked if the developer would be providing that information at the Conditional Use Hearing and suggested that the Planning Commission breakdown what the requirements should be, based on the type of retail. Mr. Cohen said the developer should be prepared to address those questions at the hearing, but Mr. Woldorf said that type of information is not required at a Conditional Use Hearing. Mr. Woldorf did say that the developer is required to convince Council that the provided parking will accommodate the uses on the site.

Mr. Woldorf said the review would take place at the December 5, 2011, Planning Commission meeting, since he felt that the Commission needed to familiarize themselves with the Traditional Neighborhood Development Ordinance. Mr. Walker questioned the need for the Commission to familiarize themselves with something they just wrote and losing two weeks of time before the review by doing that. Mr. Woldorf said he was very familiar with the ordinance, but was referring to the other members. Mr. Walker still felt that the review show take place at the November Planning Commission meeting.

Mark Craig asked about Allan Smith's newspaper interview where Mr. Smith said that he planned to discuss both Plans A and B at the Conditional Use Hearing. Mr. Craig did not understand why Mr. Smith would think he could discuss Plan B when there had been no submittal of that application. Mr. Salvatore commented that in today's newspaper, which quoted Ms. Woldorf, it said that Council was still considering Plan B. Ms. Woldorf clarified that only discussion on Plan A would take place at the hearing and she did not wish to discuss an article that she had not seen.

Mr. Cohen explained that if Mr. Smith presented a proposal outside of the scope of the Conditional Use Hearing in which the Borough transferred land to him for incorporation into the plan, and that ultimately resulted in Mr. Smith becoming an equitable interest holder in that land, he could then, at that point, have standing for that property and would then be able to proceed with Plan B.

Mr. Burke asked if a traffic study was required for the project. Mr. Cohen explained that one of the standards for Conditional Use approval is that the project would not have a negative impact on traffic, but that does not mean that a traffic study is required.

Mr. Salvatore asked if Planning Commission members could recommend asking about the hours of operation, as he assumed that the Conditional Use approval dictates the conditions under which a business can operate and Mr. Cohen said yes.

Human Relations Commission

Ms. Woldorf circulated a draft of potential questions, based on the ordinance, for applicants to serve on the Human Relations Commission. Although similar to other committee questionnaires, it does ask if the applicant lives or works in Newtown Borough. Since the ordinance does not permit Commission members to hold an office in a political party, that question was also included.

Mr. Burke asked why the question of occupation is necessary and Ms. Woldorf said Council could remove that question. Mr. Sellers, however, felt that it provided additional information, as perhaps Council would not wish to have all professionals on the Commission. Mr. Warren suggested that since one of the questions is whether the applicant lives or works in the Borough, the question of where they work full time should also be included.

With regard to the question of holding office in a political party, Mr. Walker asked if that included a position as a committee person, and Ms. Woldorf explained that they would not be eligible based on our ordinance.

Mr. Warren thought the broad questions were good, as this commission ideally should include individuals with a diversity of interests and backgrounds.

In response to Paul Salvatore's question of why someone could not serve on the Commission if they hold office in a political party, Ms. Woldorf responded because that was the way the ordinance was written, as taken from other ordinances that were vetted. Mr. Salvatore found it ironic that, in his opinion, the recently passed Anti-Discrimination Ordinance discriminates against anyone holding office in a political party, and he questioned whether that is a violation of an individual's Constitutional Rights.

Approval of Minutes

Council discussed approval of the September 13, 2011, minutes. The Secretary questioned one of the revisions, as she had asked for the specific re-wording since the actual transcription was unclear. Mr. Warren said to include it as typed from the transcribed tape.

- ❖ A motion was duly made by Councillor Warren, seconded by Councillor Sellers, and carried with Councillor Walker voting nay, to approve the September 13, 2011, Council minutes with the revisions as supplied and circulated to Council.

Solicitor's Report – Paul Cohen

Mr. Cohen reported that Council held an Executive Session prior to the meeting for discussion of personnel and litigation matters.

Method for Handling Minutes

Mr. Cohen's advice to Council was that they handle minutes as they previously had, with the Secretary preparing the minutes, circulating the draft to Council members, with individual Council members communicating their comments on the minutes to the Secretary, but not sharing those comments with the other Council members. The Secretary would then review the tape and notes from the meeting, determine whether the suggested changes were appropriate, and communicate that to the individual Council member making the comments. The Secretary would circulate a revision, if necessary, prior to the meeting and at the public meeting Council would take official action to adopt the minutes. This method would allow for comments and revisions, but it would still allow Council to review the comments at the public meeting and if they did not feel the minutes accurately reflected the occurrences at the meeting, discussion could take place before the vote.

Old Business

Mr. Sellers said that The Promenade project received Preliminary/Final approval in December of 2009. The developer is now requesting a list of variances for the previously approved project. Among the many requests is one for a use variance for 11,500 sq. ft. of first floor retail space, which is not currently allowed. The maximum building height is two-stories or 30', but the developer is requesting a 3-story building and the minimum front yard requirement is 20' and they are requesting a reduction to 6.5'. In addition to those requests, the required parking requirement is 152 spaces and they are requesting a reduction to 116 spaces. There are many additional variance requests that are also of concern and although the applicant is required to show hardship or unique physical circumstances of the property, Mr. Sellers felt that the hardships were self-imposed. He asked Council to consider sending legal representation to the Zoning Hearing Board meeting and to obtain standing, if Council so chooses. Mr. Sellers will provide a copy of the requested variances to the Secretary for distribution to Council prior to a decision at the next Council meeting.

Mr. Walker asked the Solicitor what information he had received regarding potential hazardous waste on the SEPTA lot and about a new agreement for use of the lot. Mr. Cohen said he had not spoken with a SEPTA representative since the original phone call, but he would make contact.

Mr. O'Malley checked with Council Rock School District and they could record the Conditional Use Hearing at the Chancellor Center for rebroadcast , if Council makes that decision.

Mr. O'Malley asked for time on the Council agenda to outline a recommendation from the Long Term Parking Committee for short-term parking spaces throughout the Borough.

Mr. Walker asked the status of valet parking and Frank Brassell said that the Newtown Corporation is still waiting for the valet company to provide the required insurance information. Mr. Salvatore added that the 10 Centre Parking lot might not be needed for the valet parking, which would require the Solicitor to look at and modify the original agreement.

New Business

The third stakeholder-public meeting for the Newtown Integrated Transportation Study is scheduled on November 16, 2011, at 7 PM at the Chancellor Center. The Traffic Committee received a draft report and Mr. O'Malley will provide Council with that report.

Ms. Woldorf announced that the Bucks County Planning Commission's Comprehensive Plan is available on CD at the Borough office for review and public comment.

Public to be Heard

Mark Craig asked the Solicitor to clarify an issue, as Mr. Craig thought all property owners within 300 feet of a Conditional Use application property must be notified by Certified Mail. Mr. Cohen's understanding is that the Borough puts the burden on the applicant for the notification and Mr. Craig wanted assurance that the process would be followed.

Paul Salvatore referred to a letter that he received from the Borough regarding removal of political signs. It was his understanding that the property owner should have received the letter, not the candidate. Mr. Salvatore said that Lower Makefield and Newtown Township no longer enforce their sign ordinance for political signs, as they felt that it is unconstitutional and an infringement of individual rights. He referred to the recent passage of a Borough ordinance guaranteeing the rights of individuals, but he now feels that the Borough is violating those rights. At the direction of Council Mr. Cohen said, he would be happy to look into it and Ms. Woldorf said Council would think about it.

There was a motion to adjourn at 10:50 P.M.

Respectfully submitted,

Marcia M. Scull
Borough Secretary

IN ATTENDANCE

Jeff Werner
Warren Woldorf
Paul Salvatore
Larry Auerweck
Bob King
Gema Duarte
Mark Craig
Diane LeBas
Jeanne Haeckel
Don Smith
Joe Swerk
Mike Nice
Michael Feit
Frank Brassell
Jeff Stocklos

The Advance

Bucks County Courier Times

Treasurer of Newtown Ambulance
President of Newtown Ambulance
Toll Brothers
Newtown Station

Chief of Newtown Ambulance