

Borough of Ben Avon
7101 Church Avenue, Ben Avon, Pennsylvania, 15202
Minutes – Regular Council Meeting – May 20, 2008

Council Members Present

Todd Smith, Dan Herchenroether, Judy Konitsney, Ken Opiery, Lloyd Corder, Mark Colenbrander, Sue Weiss

Council Members Absent

None

Others Present

Ken Opiery, Sr., Mayor
Chuck Perego, Borough Solicitor
Carmella Hallstein, Borough Secretary

Call to Order

Council President Ken Opiery called the meeting to order at 7:00 p.m.

Public Participation

Karl Kunkle of 7321 Perrysville Avenue addressed council about the proposal to replace the solicitor. Mr. Kunkle stated that he has had a professional association with Mr. Perego for five years, first on the Suburban General Hospital Board and secondly on his tenure on council. He stated that he did not think it was in the best interest of Ben Avon to replace the solicitor. Mr. Kunkle stated that Mr. Perego has provided a strong well-reasoned advocacy in matters such as Kilbuck Township police services, the ACORD Park agreement, zoning and the curb cut matter. Mr. Kunkle stated that as the former finance chair, he reviewed the bills and thought that Mr. Perego's fees were reasonable. Mr. Kunkle stated that he has experience with professional fees both from the standpoint of providing professional services and purchasing professional services for his firm. He stated that there are two sides to purchasing professional services, one is the rate and the other is the hours charged. Mr. Kunkle stated that while he was on council he never found Mr. Perego's services to be unreasonably priced. He stated that Mr. Perego's historical and institutional knowledge of the borough is absolutely priceless and impossible to replace. Mr. Kunkle stated that he knows for a fact that Ben Avon is more than just a client to Mr. Perego and that Mr. Perego deeply cares about Ben Avon. Mr. Kunkle stated that he thought it would be a mistake to replace Mr. Perego and would not in the best interest of the borough. He asked that council take this decision very seriously.

Scott Keener of 7140 Belle Riviere Court addressed council about the proposal to replace the borough solicitor. He stated that he was confused and dismayed about how the process unfolded. He stated that it was troubling to him that this matter would even be considered without more discussion as to why council was unhappy with its current representation. Mr. Keener stated that at a previous meeting he heard that the issue had something to do with fees and returning telephone calls, which he thought were minor things that could be remedied. He stated that he did not hear anything about the value of Mr. Perego's advice, dedication to the borough or his competence in representing the borough. Mr. Keener stated that he did not think replacing the solicitor was the most responsible reaction to the concerns that he had heard. Mr. Keener stated that he has personally been involved in the zoning project for quite some time and that Mr.

Perego has been instrumental in this process. He stated that the zoning project is close to completion and was concerned about changing the solicitor at this late date. Mr. Smith asked Mr. Keener what he would do if he had an employee that did not return telephone calls. He stated that the hourly rate charged by solicitors in neighboring communities is less than the rate charged by Mr. Perego. Mr. Smith stated that Mr. Keener was looking at the good side, but should also look at the bad side. Mr. Keener stated that he was not saying that Mr. Smith did not have a legitimate gripe, but was just discouraged at how we got from there to where we are now. Mr. Kunkle stated that if this is a rate issue, one solution would have been to discuss the matter with Mr. Perego. Mr. Kunkle stated that solicitor fees are the hourly rate times the number of hours billed. He stated that even if the hourly rate is low, if the hours are more Ben Avon will end up paying more in solicitor fees, adding that a new solicitor will have to get up to speed on everything because they will not have the institutional and historical knowledge that Mr. Perego has. Mr. Kunkle asked council to try to work out this issue for the benefit of the borough.

Mr. Perego stated that he appreciated the support from Mr. Keener and Mr. Kunkle, but added that it was his understanding that this is a done deal. He stated that Mike Marmo charges \$85 per hour and last year he billed Emsworth \$18,900. He stated that he does not charge Ben Avon \$175 per hour. Mr. Perego stated that it is a blended rate, adding that the rate with the \$500 retainer is about \$100 per hour if he spends five hours on borough business. Mr. Perego stated that the blended rate comes out on average to about \$120 per hour, noting that last year he billed Ben Avon \$19,000, which is within \$100 of what Mr. Marmo billed Emsworth. He stated that Mr. Marmo bills Emsworth for items such as mileage for driving to town to file documents for the borough. Mr. Perego stated that he never billed Ben Avon for mileage, adding that you have to look at the total picture.

Approval of Minutes

Motion: Mr. Herchenroether; Second: Mrs. Weiss; Motion carried by unanimous voice vote to approve the minutes of the April 15, 2008 council meeting and the April 17, 2008 special council meeting.

Engineer's Report

No Report

Financial Reports

Mrs. Konitsney presented revised copies of the February and March 2008 revenue and expense reports. She stated that this was the first transition year with the new accounting system and that there had been some issues with the year to date and budget amounts on the reports. Mrs. Konitsney stated that the reporting problems have been resolved.

Motion: Mrs. Konitsney; Second: Mr. Herchenroether; Motion carried by unanimous voice vote to approve the revised February and March 2008 revenue and expense reports as presented.

Mrs. Konitsney presented the April 2008 revenue and expense report and the May 2008 accounts payable reports.

Motion: Mrs. Konitsney; Second: Mrs. Weiss; Motion carried by unanimous voice vote to approve the April 2008 revenue and expense report as presented.

Motion: Mrs. Konitsney; Second: Mrs. Weiss; Motion carried by unanimous voice vote to approve the May 2008 accounts payable reports as presented.

Public Safety Report

Mr. Smith stated that the County Housing Authority owns the property at 221 Alder Drive. He stated that he contacted them about the complaints the borough has received about the basketball hoop in front of the house. Mr. Smith stated that he was told to forward any complaints to their office because the tenants are required to sign a strict lease, adding that basketball hoops are only permitted in the back of the house not in the front. Mr. Smith stated that he forwarded pictures of the property and copies of the complaints to the County Housing Authority.

Mr. Smith stated that the borough has received complaints about the row houses on Park Avenue. He stated that the row houses, which consist of twenty-one units, are vacant and that there are open windows and doors in the buildings. Mr. Smith stated that there has been some discussion about having the public works department board up the units. Mr. Pipery, Jr. stated that Jeff Garbinski owns the property. Mayor Pipery stated that the property owner should be cited and that he did not think borough employees should do something that is the responsibility of the property owner. Mr. Pipery, Jr. stated that the units have been vacant with the idea that they would be refurbished and sold. He stated that something happened and the property owner did not move forward, adding that the property is in quite a bit of disrepair. Mr. Pipery, Jr. stated that he shares Mr. Smith's concern that the property could be a draw to bad things going on there, but was leery about sending the borough crew there because it is somewhat of a hazard. Mr. Smith stated that the code enforcement officer had already cited the property owner once and planned to cite them again. Mrs. Weiss asked Mr. Perego how the condemnation process works. Mr. Perego stated that the building inspector could condemn the property through the building code process and take it to the magistrate or you could go to Common Pleas Court, because at this point the property is probably a nuisance. Mrs. Weiss asked if council had the power to send the borough crew to board up somebody else's property. Mr. Perego stated that in an emergency council does have that power. Mrs. Weiss stated that she would prefer to exercise the building inspection process and not have the borough crew board up the units. Chief Micklos stated that the police would like to see the units boarded up because they have to clear each unit, which is difficult and uncomfortable, when they receive calls about possible people going into the units. Mr. Regrut stated that he had been at the property and had seen a number of cats coming out of the units, adding that he felt this was a public safety issue. Mr. Pipery, Jr. stated that the borough could not board up the units if there is a mess inside because it could attract rodents. He stated that he would contact the Allegheny County Health Department to see if they could provide any assistance.

Public Works Report

Mr. Colenbrander stated that Ben Avon and Avalon, through the Quaker Valley COG, had been approved for an Allegheny County Community Development Block Grant for the Spruce Run Road Reconstruction project. He stated that the Quaker Valley COG has requested that the borough sign and return the agreement by May 28, 2008. Mr. Colenbrander stated that Avalon has reviewed the plans from the engineer but Ben Avon has not received a copy for review. Mr. Colenbrander stated that he, Mr. McGee and Mr. Pipery, Jr. all agree that Ben Avon cannot take the cost that Avalon has come up with and split it by the percentage of the road that is in Ben Avon and the percentage of the road that is in Avalon. He stated that you could do this for the pavement but not for items such as inlets.

Motion: Mr. Colenbrander; Second: Mr. Herchenroether; Motion carried by unanimous voice vote to approve the agreement between the Quaker Valley Council of Governments and Ben Avon Borough for an Allegheny County Community Development Block Grant for the Spruce Run Road Reconstruction Project, contingent on review and approval of the specifications, plans and cost breakdown by Mr. McGee, Mr. Colenbrander and Mr. Opiery, Jr.

Mr. Colenbrander stated that the contractor for the window replacement project at the volunteer fire department / community center building has stated that there has been a cost increase in materials. He stated that Mr. McGee would try to negotiate with the contractor because the additional cost still keeps their bid lower than the next lowest bidder.

Resident and Community Relations Report

Dr. Corder presented a "to-do" suggestion list for Avon Park. He stated that on Sunday June 8, at 10 a.m., Senator Pippy would be at the park to present a check. Dr. Corder stated that the park cleanup is also scheduled on June 8, adding that a group from the Presbyterian Church will be working in the park from 9 a.m. until noon as part of a day of service.

Joint Zoning Ordinance

Mr. Opiery, Jr. stated that Avalon has requested \$5,000 up front to cover expenses for the joint zoning ordinance. He stated that in the past, Avalon paid the bills and then billed Ben Avon for its share of the costs. Mr. Opiery, Jr. stated that Avalon feels it would be easier to fund an account and pay the bills from that account. Mr. Opiery, Jr. stated that Avalon has assured him and Mrs. Konitsney that Ben Avon will receive copies of all of the invoices to substantiate payments made from the account and will receive a refund if all of the \$5,000 is not spent.

Motion: Mrs. Weiss; Second: Mrs. Konitsney; Motion carried by voice vote to approve the expenditure of \$5,000 payable to Avalon Borough for Ben Avon's portion of the joint zoning ordinance costs.

Mr. Smith opposed the motion.

Mayor's Report

Mayor Opiery stated that the annual Avonworth Memorial Day Parade would take place on Monday, May 26 at 10 a.m. He stated that the line-up would begin at 9:30 a.m. in Emsworth at Center and Pennsylvania Avenues.

Police Chief's Report

Mr. Opiery, Jr. stated that apparently, the County Housing Authority has strict guidelines about basketball hoops in front of a house, therefore, per the county; the basketball hoop at 221 Alder Drive must be behind the house. Chief Micklos stated that he would inform his patrol officers.

Solicitor's Report

No Report

Fire Chief's Report

Chief Buckman presented the Fire Company's activity report for April 2008.

New Business

ACORD Park

Mr. Perego stated that as part of the reorganization of ACORD that took place over the last two or three years following the pay off the bonds and the expiration of the leases, it was agreed by the five municipalities that we would join the Avonworth Municipal Authority. He stated that initially in 1966, the Authority was created by Ohio Township only and in a sense, we are debtors of the Authority not actually members of it. Mr. Perego stated that Resolution 2008-02 expresses Ben Avon's intention to join the Avonworth Municipal Authority.

Resolution 2008-02 and Application to Join Avonworth Municipal Authority

Motion: Dr. Corder; Second: Mrs. Weiss; Motion carried by unanimous voice vote to adopt Resolution 2008-02, which signifies the desire of the Borough to join as a member of the Avonworth Municipal Authority and authorizes Borough Officers to take action to give effect to this desire.

Motion: Mrs. Weiss; Second: Dr. Corder; Motion carried by unanimous voice vote to approve the Application to Join Avonworth Municipal Authority.

First Option Year for Rock Salt Contract

Motion: Dr. Corder; Second: Mrs. Konitsney; Motion carried by unanimous voice vote to exercise the borough's option to extend its contract with Cargill, Inc. for the purchase of rock salt for an additional one-year term commencing August 1, 2008 and ending July 31, 2009.

Old Business

Solicitorship

Mrs. Weiss stated that she would like to make a motion to adjust the order of the meeting. She stated that she would like to go into Executive Session to discuss the lawsuits and then reconvene to Regular Session to discuss the Solicitorship. Mrs. Konitsney asked why Mrs. Weiss felt that the order of the meeting should be changed. Mrs. Weiss stated that she would rather talk to Mr. Perego and get into the discussion about his position after council had dealt with the lawsuits.

Motion: Mrs. Weiss; Second: Mr. Herchenroether; Motion failed by roll call vote: three-aye; four-nay to adjust the order of the meeting.

Todd Smith-aye; Dan Herchenroether-nay; Judy Konitsney- nay; Ken Opipery, Jr.-nay; Lloyd Corder-aye; Mark Colenbrander-nay; Sue Weiss-aye

Motion: Mrs. Konitsney; Second: Mr. Herchenroether; Motion failed by roll call vote: three-aye; four-nay to retain Charles Perego as the borough solicitor.

Todd Smith-nay; Dan Herchenroether-aye; Judy Konitsney- aye; Ken Opipery, Jr.-aye; Lloyd Corder-nay; Mark Colenbrander-nay; Sue Weiss-nay

Motion: Mr. Smith; Second: Mrs. Weiss; Motion carried by roll call vote: five-aye; two-nay to hire Charles Means as the solicitor for the Borough of Ben Avon on the terms set forth in his proposal submitted to the borough, effective at the adjournment of this meeting.

Todd Smith-aye; Dan Herchenroether-aye; Judy Konitsney- nay; Ken Opipery, Jr.-nay; Lloyd Corder-aye; Mark Colenbrander-aye; Sue Weiss-aye

Mrs. Weiss stated that she wanted to make sure that the audience knew that she did not come to her decision lightly. She stated that Mr. Perego is a fine person, a nice guy, has been in the borough for years and lived here prior to that. Mrs. Weiss stated that when this subject came up, council talked about reviewing the solicitor's position like you would anybody's position in any kind of organization that was trying to do the best it could for whatever its mission was. She stated that over twenty-some people were interested in being the solicitor of Ben Avon. Mrs. Weiss stated that council reviewed all of the applications and interviewed nine candidates, including Mr. Perego. Mrs. Weiss stated that she did not take her oath of office lightly and that she listened to the nine people, including Mr. Perego. She stated that she thought Mr. Means would make a good solicitor. Mrs. Weiss stated that as an attorney herself, what she appreciates about Mr. Means and his firm, is that there is more than one attorney there and it is her opinion that Mr. Means has the support of many and a broader base of expertise. Mrs. Weiss stated that Mr. Means is a very impressive person and at the end of the nine interviews, she felt very strongly and clearly that Mr. Means stood even above Mr. Perego. She stated that Mr. Means's fees are in line with Mr. Perego's and did not anticipate that the borough would see a huge savings. Mrs. Weiss stated that Mr. Means has a good knowledge of the community, adding that he is the solicitor for ACORD and has an associate in his firm that actually lives in Ben Avon. Mr. Opipery, Jr. stated that from his prospective, Mr. Perego has not done anything wrong and on the contrary; he has done a lot of good. He stated that Mr. Perego's dedication in rough times has been outstanding. Mr. Opipery, Jr. stated that in terms of ability, dedication and performance, he saw no reason for this action. He stated that he though it was a bad time to make this change because the borough is in the midst of two lawsuits and in the final phase of a big zoning change, which Mr. Perego has been intimately involved with since day one. Mr. Opipery, Jr. stated that Mr. Means is not only the solicitor for ACORD but for Kilbuck Township as well, so he could see a potential for a conflict of interest. Mrs. Weiss stated that the lawsuits are going to be handled by counsel for our insurance company, so Mr. Perego or Mr. Means would not be lead counsel. She stated that in regards to the joint zoning ordinance, the borough has capable citizens who are addressing this issue. Mr. Kunkle stated that in regards to the issue of conflict of interest, he too is a lawyer and if a lawyer has a conflict, he has to decide whom he is going to represent. Mr. Kunkle stated that the lawyer must disclose the conflict and council can decide whether or not they want to get other counsel. He stated that this would put the borough and the solicitor in a difficult position. Mrs. Weiss stated that council talked to Mr. Means about this issue and he said that it is the attorney's responsibility to communicate to the client if there is a conflict of interest and that the client would have the right to get other counsel. Mrs. Weiss stated that she did not anticipate any conflicts of the nature that would be extraordinarily terrible for Ben Avon. She stated that she did not have a problem with this issue at all. Mr. Kunkle stated that he thought it would be to the detriment of the borough when the solicitor has to decide whom he is representing and Ben Avon has to go out and seek independent counsel at a cost to the borough. Mr. Perego stated that if a lawyer has a conflict, he or she has to withdraw from both clients, adding that you do not get to choose which of the two clients you want to represent. Mr. Herchenroether stated that coming into this process he felt that it should be a disqualification to have any solicitor from a neighboring municipality, but Mr. Means satisfied his concerns when he described how he would approach any potential conflict of interest. Mr. Opipery, Jr. stated that the potential for a conflict of interest could put the borough in a sticky situation. Mr. Opipery, Jr. stated that he disagreed with Mrs. Weiss

regarding the issue of bad timing. He stated that generally speaking, anytime you change paddlers in midstream there is going to be some kind of blip.

Mr. Pipery, Jr. stated that some kind of transition would have to take place. Mrs. Weiss stated that it would make sense for Mr. Means and Mr. Perego to have a meeting about the issues and it would also make sense to her that Mr. Pipery, Jr. be in attendance at this meeting since he is in charge of administration. She stated that both gentlemen should be paid for their time. Mrs. Weiss stated that since Mr. Pipery, Jr. is the administrator of the borough council he should take the leadership role. Mr. Pipery, Jr. stated that he would be happy to facilitate the transition but wanted to make sure that everyone understood that there would be the incurrence of fees. He stated that he would let Mr. Means manage the transition, noting that Mr. Means needs to tell council how much of Mr. Perego's time he will need to complete the transition.

Executive Session

Motion: Dr. Corder; Second: Mr. Herchenroether; Motion carried by unanimous voice vote to adjourn to Executive Session at 8:25 p.m. to discuss the Karn lawsuit and the Wilcox / Staple lawsuit.

Motion: Mr. Herchenroether; Second: Mrs. Weiss; Motion carried by unanimous voice vote to adjourn from Executive Session and reconvene to Regular Session at 8:35 p.m.

Adjournment

Motion: Dr. Corder; Second: Mr. Herchenroether; Motion carried by unanimous voice vote to adjourn the meeting at 8:35 p.m.

Respectfully submitted,

Carmella Hallstein
Borough Secretary