

**Borough of Ben Avon**  
**7101 Church Avenue, Ben Avon, Pennsylvania, 15202**  
**Regular Meeting of Council**  
**January 18, 2011**  
**Minutes**

**Council Members Present**

Judy Konitsney, Lloyd Corder, Richard White, Brian Tokar, Sue Weiss

**Council Members Absent**

Rob Galbraith

**Others Present**

Chuck Means, Solicitor

Dale Regrut, Public Works Foreman

Carmella Hallstein, Borough Secretary

Gary Buckman, Chief; Ben Avon Volunteer Fire Department

Norbert Micklos, Chief; Ohio Township Police Department

**Call to Order**

Council President Lloyd Corder called the meeting to order at 7:00 p.m.

**Council Vacancy**

Dr. Corder stated that there was an open council seat due the resignation of Dan Herchenroether. He stated that the borough received letters of interest from four residents but two of them later withdrew their names. Dr. Corder introduced Michael Bett and Earl Bohn, stating that both residents were interested in filling the council seat.

Earl Bohn of 7315 Perrysville Avenue stated that he has been a resident of Ben Avon of twenty years. He stated that his background is in the news business and corporate communications. Mr. Bohn stated that he has developed a great respect for the work the volunteers on council do and would be happy to serve on council.

Michael Bett of 221 Ridge Avenue sated that he has been a resident of Ben Avon for sixteen years. He stated that he currently works at Carnegie Mellon University where he is the managing director of the Pittsburgh Science of Learning Center. Mr. Bett stated that council has been vastly improved and is doing great work. He stated that he would like to join council and help to continue the good things council is doing.

Mrs. Konitsney asked if both candidates had submitted their resumes by the January 4 deadline. Dr. Corder stated that Mr. Bett submitted his resume by January 4 and Mr. Bohn submitted his resume on January 17.

Motion: Mrs. Weiss; Second: Mr. White; Motion carried by unanimous voice vote to appoint Michael Bett to the Ben Avon Borough Council to replace Dan Herchenroether.

Mr. White thanked Mr. Bohn for applying for the council position.

### **Oath of Office**

Magisterial District Judge Tara Smith administered the oath of office to Council Member Michael Bett. Mr. Bett signed the oath to be filed of record. Judge Smith congratulated Mr. Bett and took her leave of the meeting.

### **Public Participation**

James Karn of 6905 Merton Road addressed council about property code violations for property he owns at 518 Dickson Avenue. He stated that his uncle William Karn lived at the Dickson Avenue property for 20 years. Mr. Karn stated that during that time, his uncle was trying to make repairs to the property but apparently was not going fast enough to satisfy the borough and the borough pressed charges against him. Mr. Karn stated that he later learned that he was the actual owner of the house, adding that the property code violation issue had been going on for years before he was ever notified. He stated that he tried to fix the house and do as much as he could but the issue had gotten out of hand before he was ever involved. Mr. Karn stated that the issue kept going from court system to court system and that his uncle was handling it and trying to keep him informed. Mr. Karn stated that he was assessed a \$3,600.00 penalty for property code violations that he had little or nothing to do with at the time. Mr. Karn stated that he has put a lot of time, money and resources into fixing the house. He stated that there are no further issues with the house and asked council for a motion to drop the fines that were assessed against him. Mr. Karn stated that he did not want to fight this issue anymore but would be forced to file a federal court case if the fines were not dropped. Mrs. Konitsney stated that this issue has been ongoing for years and has cost the borough a lot of money. Dr. Corder asked Mr. Karn if he was aware of the fact that his uncle had filed three different lawsuits against the borough. Mrs. Weiss stated that this issue triggered some insurance money on behalf of the borough, which is a big problem. She stated that at one point the borough provided a dumpster and assisted in the cleanup of the property, adding that the borough did what it could to help. Mr. Means stated that all of the points that Mr. Karn raised were already brought up before Judge Gallo at the Court of Common Pleas and at the Commonwealth Court and they ruled in favor of the borough on every point. Mr. Means stated that everything the borough did was done procedurally and in its substance was validated by the courts. Mr. Means advised council to pay no concern to the threat of a federal lawsuit. He stated that there is no valid federal lawsuit that can be brought against the borough based on what has been done. Mr. Means stated that if a lawsuit were filed, appropriate motions would be filed to recover all defense costs including the insurance company defense costs from the plaintiff.

Members of the Avonworth Municipal Authority, Don Osterwise and Laurie Berie addressed council. Dr. Corder stated that Mr. Osterwise is the treasurer for the park and that Ms. Berie serves on the executive committee. Mr. Osterwise presented the 2011 Avonworth Community Park budget and a letter that outlined recent changes at the park. He stated that there have been personnel changes over the past year, adding that the park now has two full-time event coordinators instead of one full-time coordinator and one part-time administrative employee. Mr. Osterwise and Ms. Berie reviewed and explained several items in the budget and answered questions from council.

Mr. Tokar stated that the date for the Avonworth Eagles 5K Run / Walk had been changed from April 16, 2011 to April 9, 2011.

**Approval of Minutes**

Motion: Mr. White; Second: Mrs. Konitsney; Motion carried by unanimous voice vote to approve the minutes of the December 14, 2010 council meeting.

**Engineer's Report - report given Ed McGee**

Mrs. Weiss; Second: Mr. Bett; Motion carried by unanimous voice vote to authorize the Quaker Valley Council of Governments to pay Tri-State Contracting \$34,360.00 for the Year 36 CDBG ADA Restroom Project.

**Financial Report - report given by Judy Konitsney, Chair**

Motion: Mrs. Konitsney; Second: Mr. Tokar; Motion carried by unanimous voice vote to approve the accrued December 2010 accounts payable reports as presented.

Motion: Mrs. Konitsney; Second: Mr. Tokar; Motion carried by unanimous voice vote to approve the January 2011 accounts payable reports as presented.

**Intergovernmental Cooperation Report - report given by Lloyd Corder, Chair**

**Administration Report**

No Report

**Public Works / Building and Property Report**

No Report

**Public Safety Report**

No Report

**Property Maintenance and Code Enforcement Report**

No Report

**Public Affairs Report**

No Report

**Mayor's Report – report submitted by Bob Jones, Mayor and distributed by Dr. Corder**

**Police Chief's Report - report given by Norbert Micklos, Chief; Ohio Township Police Department**

**Solicitor's Report - report given by Chuck Means, Solicitor**

Motion: Mr. White; Second: Mr. Bett; Motion carried by unanimous voice vote to authorize participation in the Bureau of Aviation Zoning Ordinance Amendment Project.

**Fire Chief's Report - report given by Gary Buckman, Fire Chief**

**New Business**

**Resolution 2011-01**

Motion: Mr. White; Second: Mrs. Weiss; Motion carried by unanimous voice vote to adopt Resolution 2011-01, which certifies that the municipality is willing to participate in the Energy Conservation Measure (ECM) Retrofit Phase as part of Allegheny County's Energy Program for Municipalities financed by a block grant through the U.S. Department of Energy and to

authorizes Robert Galbraith as the official to take any actions which are necessary or appropriate to facilitate the ACEPM-Retrofit Phase.

### **Old Business**

#### **Ordinance Codification**

Motion: Mrs. Weiss; Second: Mr. Tokar; Motion carried by unanimous voice vote to authorize Keystate Publishers to delete the current dangerous structure ordinance, Ordinance 473 dated June 8, 1954 from the codification and replace it with the language concerning dangerous structures in the 2009 International Property Maintenance Code as was previously adopted by council.

Motion: Mrs. Weiss; Second: Mr. Tokar; Motion carried by unanimous voice vote to authorize Keystate Publishers to delete the current disorderly conduct ordinance, Ordinance 346 dated August 4, 1922 from the codification and rely on the Pennsylvania Crimes Code for enforcement of this behavior.

Motion: Mrs. Weiss; Second: Mr. Tokar; Motion carried by unanimous voice vote to authorize Keystate Publishers to delete the current discharge of firearms ordinances, Ordinance 299 dated November 11, 1913 and Ordinance 127 dated December 4, 1900 from the codification and replace it with the language as provided in Exhibit A.

Mrs. Weiss made a motion to delete Ordinance 395 dated September 8, 1931 concerning regulation and sale of fireworks in Ben Avon and to replace it with the language as provided in Exhibit B. A discussion followed. Mrs. Konitsney stated that the issue needed further review and suggested deferring action until the February meeting. Mrs. Weiss withdrew the motion.

#### **Executive Session**

Motion: Mr. White; Second: Mrs. Weiss; Motion carried by unanimous voice vote to adjourn to Executive Session at 8:32 p.m. to discuss potential litigation.

Motion: Mr. White; Second: Mrs. Konitsney; Motion carried by unanimous voice vote to adjourn from Executive Session and reconvene to Regular Session at 9:00 p.m.

#### **Adjournment**

Motion: Mr. White; Second: Mrs. Konitsney; Motion carried by unanimous voice vote to adjourn the meeting at 9:00 p.m.

Respectfully submitted,  
*Carmella Hallstein*  
Borough Secretary

Chapter 6, Part 2 – Discharge of Firearms

**§ 1. Definitions**

As used in this chapter, the following terms shall have the meanings indicated:

**BOW AND ARROW** – All bows and arrows capable of causing personal injury or property damage.

**FIREARM** – An instrument used in the propulsion of shot, shell, bullet or any other object by the action of gun powder exploded, explosive powder or the expansion of gas therein.

**§2. Prohibited Activities**

The use or discharge of any bow and arrow or firearm within the Borough is prohibited.

**§3. Exemptions**

The provisions of this chapter shall not apply to the following uses or activities involving firearms and/or bows and arrows where otherwise legal:

- A. Authorized law enforcement officers acting in their line of duty or in training.
- B. Discharging of firearms, or use of bow and arrow, in the defense of persons or property.
- C. Discharging of firearms or bow and arrow by members of a duly organized gun, rifle or archery club, or their bona fide guests, or of military organizations, upon the ranges of such clubs or organizations under the control and supervision of the duly constituted officers of such clubs or organizations, or by the patrons of commercial ranges.
- D. A private target practice or archery range constructed entirely within the confines of an individual residential property and on which the projectile expended shall be confined to said individual property.
- E. Firearm or archery instruction operated by an established civic, church or school program.
- F. Farmers protecting their property from predators.
- G. Uses or activities, regulated by and conducted in accordance with the Pennsylvania Game and Wildlife Code, 34 Pa. C.S.A. §101 *et seq.*

#### **§4 Violations and Penalties**

Any person or persons, corporation, partnership or other entity whatsoever violating any of the provisions of this chapter shall, upon conviction, be sentenced to pay a fine of not to exceed \$1,000, plus costs of prosecution and/or imprisonment for a term not exceeding thirty (30) days.

## Chapter 6, Part 2 - Fireworks

### § 1. General Provisions.

1. *Scope.* The manufacture of fireworks is prohibited within the Borough. The display or discharge of consumer or display fireworks shall comply with the requirements of the Fireworks Law, 35 P.S. § 1271 *et seq.*, and the provisions of the International Fire Code, 2003 edition, as amended, supplemented or replaced, implemented by the Uniform Construction Code [Chapter 5, Part 1].
2. *Permit Required.* A permit shall be obtained from the Borough for the display or discharge of consumer and display fireworks in compliance with the provisions of the Fireworks Law, 35 P.S. § 1271 *et seq.*, and the International Fire Code, 2003 edition, as amended, supplemented or replaced, implemented by the Uniform Construction Code [Chapter 5, Part 1].
3. *Permit Applications.* Application for permits shall be made in writing at least 15 days in advance of the date of display. Application for said permit shall be made pursuant to the procedure provided in the International Fire Prevention Code, 2003 edition, as amended, supplemented or replaced. The possession, use and distribution of fireworks for such display shall be lawful under the terms and conditions approved with the permit and for that purpose only. A permit granted hereunder shall not be transferable, nor shall any such permit be extended beyond the dates set out therein.
4. *Definitions.*
  - Consumer fireworks:*
    - (1) Any combustible or explosive composition or any substance or combination of substances intended to produce visible and/or audible effects by combustion and which is suitable for use by the public that complies with the construction, performance, composition and labeling requirements promulgated by the Consumer Products Safety Commission in 16 CFR (relating to commercial practices) or any successor regulation and which complies with the provisions for "consumer fireworks" as defined in the American Pyrotechnics Association (APA) Standard 87-1, or any successor standard.
    - (2) The term does not include services as "ground and hand-held sparkling devices," "novelties" and "toy caps" in APA Standard 87-1, the sale, possession and use of which shall be permitted at all times throughout this Borough.
  - Display Fireworks*—as provided in 27 CFR § 555.11 (relating to meaning of terms).

### § 2. Display and Discharge.

1. *General.* It shall be a violation of this Part for any person to conduct a public or private display of consumer fireworks and display fireworks within the Borough except in accordance with a permit issued upon application as provided in § 7-201.3 of this Part. Every such display shall be handled by a competent operator and shall be of such a

character and so located, discharged or fired as, in the opinion of the chief of the fire department or other officer of the Borough charged with the enforcement of the International Fire Code, or such other officer of the Borough as may be designated from time to time, in writing, after proper inspection, to not be hazardous to property or endanger any person or persons. After such privilege shall have been granted, possession and use of consumer fireworks and display fireworks for such display shall be lawful for that purpose only. No permit shall be transferable.

2. *Bond for Display.* The permittee shall furnish a bond in an amount deemed adequate by the Borough Council but not less than \$500, conditioned for the payment of all damages which may be caused either to a person or persons or to property by reason of the permitted display, and arising from any acts of the permittee, the permittee's agents, employees or subcontractors.
3. *Seizure of Fireworks.* The Pennsylvania State Police, any sheriff or police officer shall take, remove or cause to be removed at the expense of the owner, all stocks of consumer fireworks or display fireworks or combustibles offered or exposed for sale, stored, or held in violation of this Part or the Fireworks Law, 35 P.S. § 1271 *et seq.* The owner shall also be responsible for the storage and, if deemed necessary, the destruction of these fireworks.

### § 3. Penalties.

Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for in the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part constitutes or each Section of this Part which shall be found to have been violated shall constitute a separate offense.