

**Borough of Ben Avon**  
**7101 Church Avenue, Ben Avon, Pennsylvania 15202**  
**Regular Meeting of Council – September 17, 2013**  
**Minutes**

**Call to Order**

Council President Lloyd Corder called the meeting to order at 7:05 p.m.

**Pledge of Allegiance**

**Council Members Present**

Rob Galbraith, Michael Bett, Earl Bohn, Lloyd Corder, Richard White, Sue Weiss

**Council Members Absent**

Brian Tokar

**Others Present**

Bob Jones, Mayor

Chuck Means, Solicitor

Ed McGee, Engineer

Dale Regrut, Public Works Foreman

Carmella Hallstein, Secretary

Mike Dufresne, Emergency Management Coordinator

Jim Rupert, Chief; Ben Avon Volunteer Fire Department

Norbert Micklos, Chief; Ohio Township Police Department

**Public Participation**

Anne Smith of 247 Dalzell Avenue asked about the history of the strategic plan for stop sign placement on Church Avenue, specifically the history behind the decision to omit a stop sign at the intersection of Church and Dalzell Avenues. She stated that many children cross at that intersection to catch the school bus. Dr. Corder stated that the State makes the borough go through a specific process before installing a stop sign, adding that there are specific requirements and guidelines that must be met. Ms. Smith stated that she wanted to make sure there was no compelling reason for omitting a stop sign at Church and Dalzell. Chief Micklos stated every intersection is a crosswalk and by law, if someone is in the crosswalk vehicles are supposed to stop even if there is not any signage. Chief Micklos asked Ms. Smith why she did not wait until the school bus came and turned on its red lights before crossing the children. Ms. Smith stated that the problem is not just in the mornings with the children, adding that the coffee shop is there, the bookmobile is there on Saturday mornings and that a lot of elderly people cross the street at that intersection. Chief Micklos stated that he would up the enforcement at that intersection. Mr. Galbraith stated that there are stop signs on Church Avenue at Hilands and at Breeding and suggested walking to either corner to cross the street. Mr. Regrut stated that there is more traffic than normal on Church Avenue because of the construction on Route 65.

Ted Popovich of 6606 Virginia Avenue stated that he wanted to update council about the Allegheny County Executive negotiating with Range Resources to frack in county parks. Mr. Popovich stated that Allegheny County Council Member Danko has introduced an Ordinance that would put a three-year hold on drilling and exploration for natural gas on county park land.

Mr. Popovich asked council members to send letters individually or consider the idea of putting together a resolution from council in support of the moratorium on drilling and exploration.

**Approval of Minutes**

Motion: Mr. White; Second: Mrs. Weiss; Motion carried by unanimous voice vote to approve the minutes of the August 20, 2013 council meeting.

**Engineer's Report – Report given by Ed McGee**

**Financial Report - Report given by Richard White**

Motion: Mr. White; Second: Mr. Galbraith; Motion carried by unanimous voice vote to approve the August 2013 financial reports as presented.

Motion: Mr. White; Second: Mr. Bohn; Motion carried by unanimous voice vote to approve the September 2013 accounts payable reports as presented, authorizing payments of \$29,607.56 from the general account.

**Intergovernmental Cooperation Report – Report given by Lloyd Corder, Chair**

**Administration Report – Report given by Richard White, Chair**

Mr. White stated that council held an executive session prior to the beginning of the regular meeting to consult with special counsel about the pension plans.

Motion: Mr. White; Second: Mrs. Weiss; Motion carried by unanimous voice vote to direct special counsel to prepare pension documents as discussed in executive session.

The borough's Halloween parade will be on Saturday, October 26 at noon. The parade will begin at the corner of Church and Dickson Avenues and end at the fire station. Hot dogs and beverages will be served at the conclusion of the parade and each participant will receive a treat bag. Trick or Treat will be on Thursday, October 31 from 6 p.m. until 8 p.m.

**Public Works / Building and Property Report – No Report**

**Public Safety / Strategic Projects Report – Report given by Michael Bett, Chair**

**Fire / Public Affairs Report – Report given by Earl Bohn, Chair**

Mr. Bohn requested an Executive Session to discuss contract negotiations.

**Property Maintenance and Code Enforcement Report – No Report**

**Mayor's Report – Report given by Bob Jones, Mayor**

See Exhibit A and Exhibit B.

Motion: Mr. Bohn; Second: Mr. White; Motion carried by voice vote to direct the solicitor to prepare a draft ordinance for a quiet zone as presented by Mayor Jones, pending the solicitor's review of previous correspondence and the new FRA rules. Mrs. Weiss opposed the motion.

**Emergency Management Report – No Report**

**Police Chief's Report – Report given by Norbert Micklos, Chief; Ohio Twp. Police Department**

**Fire Chief's Report – No Report**

**Tri-Borough Joint Planning Commission Report – Report given by Scott Keener**

**Solicitor's Report – No Report**

**New Business**

None

**Old Business**

**Shade Tree Ordinance**

Mrs. Weiss stated that she received suggested changes to the proposed shade tree ordinance from Rob Galbraith and Michael Bett. She stated that she incorporated most of their suggestions into a revised draft. Mrs. Weiss reviewed the changes. She stated that the real spirit of the proposed ordinance is to create some sort of citizen group to advise council, help the borough manage the trees and plantings it already has and help to better prepare for the future. Mr. Bohn, Mr. Bett, Mr. White and Mr. Galbraith expressed concerns about some of the language in the ordinance and asked Mrs. Weiss for clarification. A discussion followed. Mr. White questioned the need for Section G "Permit Required for Certain Acts" if the borough is not going to tell people what they can or cannot do with trees planted on private property. Mrs. Weiss stated that Section G was particularly geared towards utility companies that carve out trees along the streets leaving damaged trees that become weakened over time. Mrs. Weiss stated that utility companies would need permits under Ben Avon's proposed shade tree ordinance. Mr. Means stated that utility companies are under the jurisdiction of the PUC and are not subject to the details of municipal ordinances. He stated that utility companies have to maintain the power lines and are under the jurisdiction of the PUC, so there is an area of conflict between the borough's authority to make rules and the PUC's authority. Mr. Means stated that if a utility company feels that they need to cut a tree limb in the course of maintaining power, they are going to cut it no matter what the ordinance says. Mr. Means stated that to make Section G more clear it should say, "Residents who trim or remove a shade tree that is rooted outside of the boundaries of the borough public right away are exempt from obtaining a permit". Mayor Jones stated that a utility company does not need a permit to cut any tree or any portion of any tree in any borough in Pennsylvania. Mr. Bohn stated that the existing ordinance says that the borough has the right to take action when a tree threatens or does something inside a right of way. He stated that the current law says that you may not allow your trees or plants to cause threats to property or cause personal injury. Mr. Bohn stated that the proposed ordinance puts the borough's judgment in place of the homeowner's judgment, adding that the ordinance gives the borough exclusive control and custody of all shade trees. Mrs. Weiss stated that the intent of the ordinance is to manage those things that block the right of way, tree limbs, but not necessarily whole trees, shrubs and plants so that people can walk down the sidewalks, see around corners in their cars and drive down streets. Mr. Bohn stated that if that is the intent the borough does not need exclusive control and custody of any portion of any tree. Mr. Bohn stated that the most ominous part is that by taking exclusive control and custody of any part of someone else's property and relying on a volunteer to advise the shade tree commission to advise council to act, any act of omission or commission by the volunteer forester exposes the borough to claims and lawsuits. Mr. Bett stated that he did not feel a property owner should be required to get a permit to trim or remove a shade tree even if it is in the right of way. Mr. White stated that he agreed with Mr. Bett, adding that residents should not need a permit to cut or trim any kind of tree that is anywhere on their property. Mrs. Weiss stated that she thought what was really at odds in all of this is two different views of local government. Mayor Jones stated that you are taking a very simple situation and turning it into a

legal quagmire, adding that we were doing all of this to get some free trees. He stated that Mr. Zimmerman told him that TreeVitalize has stipulated that in order to be eligible to get free trees the borough simply needs an ordinance and a shade tree commission. Mayor Jones stated that Ben Avon already has an ordinance, Ben Avon Council can serve as a shade tree commission and council has the authority to appoint anyone to be a member on any committee. Mayor Jones stated that if we have an arborist in the community who wishes to perform community service, he could be appointed to the tree commission and act as an advisor. Mayor Jones stated that he had a very resolute fear that the complicated language in the proposed ordinance would place the borough in a compromising legal position. Mayor Jones stated that after taking all of these factors into consideration it was his duty to inform council that as mayor he would not sign any such document into law.

Motion: Mrs. Weiss; Second: Mr. Bett; Motion tied by roll call vote: three-aye; three-nay to advertise the Shade Tree Ordinance as proposed.

Rob Galbraith-nay; Michael Bett- aye; Earl Bohn-nay; Lloyd Corder-aye; Richard White-nay; Sue Weiss-aye

Pursuant to the Pennsylvania Borough Code Mayor Jones stepped in to break the tie. Mayor Jones voted nay, Motion failed.

#### **Emergency Management Coordinator Resignation**

Mike Dufresne stated that he had regretfully submitted his resignation as the Emergency Management Coordinator. He stated that he has so many responsibilities with the Red Cross that he is not able to continue in both positions. Mr. Dufresne thanked the Mayor and the members of the Emergency Management Team for their support and assistance. He stated that he was looking forward to working with Sam Diana during the transition.

#### **Executive Session**

Motion: Mr. White; Second: Mr. Bohn; Motion carried by unanimous voice vote to recess to Executive Session at 8:55 p.m. to discuss contract negotiations.

Motion: Mrs. Weiss; Second: Mr. Bett; Motion carried by voice vote to adjourn from Executive Session and reconvene Regular Session at 9:10 p.m. Mr. Bohn opposed the motion.

#### **Adjournment**

Motion: Mrs. Weiss; Second: Mr. Galbraith; Motion carried by unanimous voice vote to adjourn the meeting at 9:10 p.m.

Respectfully submitted,

*Carmella Hallstein*

Borough Secretary

# Mayor's Report

## Ben Avon Council Meeting

### 09-17-2013

PJ apologized that she could not make the meeting this evening. She would like to thank all of the members of council for their past personal contributions to our annual Deck the Borough Hall Night. She would like to again request the cooperation of council for the upcoming celebration. She is once more requesting personal donations from each of our council members. This year she is looking for cash donations or items that you may want to donate for a basket of sheer that she will be auctioning off at the fall Festival; Steelers tickets; sports paraphernalia; bottles of bubbly; cash; or anything that you think would be in addition for the raffle. The costs estimated this year for the carriage rides; cookies for the kids; decorations; and entertainment in general are expected to be a little over \$800. Anything that you can offer would be greatly appreciated. She can be contacted by cell at 412-400-4346 or through the mayor.

It is my unhappy duty to officially report the resignation of Mike Dufresne as our Emergency Management Coordinator. I have prepared an official commendation thanking Mike and recognizing the outstanding job that he has performed while serving Ben Avon as its Emergency Management Coordinator. {Read commendation.} I would request that the members of Council sign their names to this commendation letter before I present it to Mike. I will pass out three copies; one to be laminated; the second as a presentation in case he wants to frame it; and a third in case you bugger up your signature.

On the brighter side; I would like to announce at this time that I have appointed a new Emergency Management Coordinator; --- Sam Diana. --- Sam was a previous Emergency Management Coordinator here in Ben Avon and has graciously accepted to take that position again. --- For the official minutes; his name is Salvatore A. Diana; residing at 221 Forest Ave. Ben Avon, PA 15202; Sam's phone numbers and e-mail address will be included in our next updated borough directory. Sam has asked two of our finest from the Ben Avon Volunteer Fire Company to be his backup assistant emergency management coordinators; Kevin Joa, and Robert Nuttall. I highly approve of these two gentlemen to assist Sam. Councilman Earl Bohn will remain the Deputy Emergency Management Coordinator and our liaison to the volunteer fire company. I will make a request to the Governor of Pennsylvania for Sam's formal appointment. Mike Dufresne has graciously agreed to help transition Sam back into this position. It is my pleasure to introduce you to our new Emergency Management Coordinator Sam Diana.

I was contacted via e-mail by Councilman Bett and a resident from Brighton Road regarding the horn noise pollution being generated at the Emsworth lock and dam crossing. As most of you know I have been working on a solution to this problem for the last four years. I have

accumulated a massive amount of research data regarding the issue. I asked to be put on an e-mail list from the Federal Railroad Administration notifying me if there are any changes to the federal railroad rules. There is now an opportunity to make this noise pollution mitigation happen. The only thing that we need is a quiet zone ordinance and the cooperation of Emsworth Borough Council. As Councilman Bohn has reported; he has made contact with the appropriate authorities at the Emsworth Borough Council and they said they will cooperate. I have been researching other cities to find some successful ordinances and in doing so I have noticed that some of these towns and boroughs have paid engineers up to \$20,000 to do studies just to determine if their railroad crossing horn noise could be alleviated. Places like Montclair N.J. spent \$1.2 million dollars to institute a Quiet Zone. I believe if this Council agrees to expend the insignificant amount of funds required to produce a Quiet Zone Ordinance we will be successful in achieving something that previous councils have not been able to accomplish since diesel locomotives were introduced in the 1930s; -- 80 some years ago; and it won't cost us a fraction of what some of these other cities have paid. It will reduce the amount of noise pollution being created within our community and obviously increase all of our property values. By passing the Jake Brake ordinance we have established the precedent that we are striving to mitigate noise pollution in our community. With the SSM's that are already in place; it may take some time; but I believe our efforts will be successful.

I don't know whether everyone received this or not but I was notified by Alcosan that they are sponsoring an open house Saturday, September 21, 2013 from nine o'clock to four o'clock. Featuring guided tours of the Alcosan treatment plant; their laboratory; microbiology department; they will have watershed life presentations; hands-on environmental activities; exhibits; games for the kids; food and fun for all ages. I'm not too sure that I would want put anything in my mouth that was prepared at the Alcosan facility; however it would be your adventure. At any rate I have additional information for anyone who wants to attend; -- see me after the meeting.

Regarding this tree issue. So far as I can tell; -- you folks are taking a very simple situation and turning it into an extremely complicated legal quagmire for only one reason; --- to get some free trees. I spoke with Ephraim after our last Council meeting; he told me that technically Tree Vitalize has stipulated that in order to be eligible to get free trees we simply need a tree ordinance and we need to have a Tree Commission. We already have a tree ordinance; and I might add that it has been extremely successful for 104 years. I am informed that our own Ben Avon Council can serve as a "Tree Commission." I don't see why we can't form a tree commission headed by one of our Council members. As far as I know we have the authority to appoint anyone to be a member on any counsel committee; and they do not need to be members of this elected Council. Therefore if we have an arborist in our community; who wishes to perform community service; they can be appointed to our Tree Commission and act as its

professional liaison. To my knowledge; there is no limit to the number of people who are nonmembers of this Council that we can appoint to any committee. So we can have as many volunteers from the community as we want or need. I have not heard of anyone in the history of Ben Avon being killed by a tree ever; I have lived in this borough for around 40 years; so far as I am aware; in that time no one has even been injured by a tree.

1. I have a very resolute fear that the complicated language in this rewritten ordinance will place the borough in a compromising legal position. We are opening ourselves up to be drawn into lawsuits that our taxpayers cannot afford.
2. We are about to place a burden on our borough employees that they do not have time for. It could open up the possible necessity and expense of hiring more borough personnel.
3. I also have a concern that this ordinance as it is rewritten severely encroaches on the civil rights of the residents of this borough. We cannot take "exclusive custody and control" of a portion of a living thing without incorporating the entire living thing. And that living thing is the property of the resident; no portion of it can ever be construed as ours for any reason whatsoever. Any such action violates the Fourth Amendment\* to the Constitution regarding seizures. When we state we are taking exclusive custody and control of a part of a living thing that belongs to a resident we are in effect "seizing it"; taking it away from the citizen. We may set regulations for a resident of this borough when any of the possessions of that resident threaten the safety of the public; which we have stipulated in our current ordinance; it is also in the Pennsylvania borough code. Nevertheless taking exclusive custody and control is out of the question.
4. We have an ordinance that works; and it has worked for 104 years. It was just amended and reapproved January 17, 2012. The only thing that is necessary here to get these free trees is to appoint a tree commission and that can be accomplished by naming ourselves as that entity.

After taking all of these factors into consideration it is my duty to inform you that as mayor I will not sign any such document into law.

(\* ) The Fourth Amendment: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Respectively submitted,  
Robert B. Jones  
Mayor  
Borough of Ben Avon





7101 Church Avenue  
Ben Avon Pa. 15202

Telephone: 412-766-7704  
Facsimile: 412-766-7311

*Robert B. Jones*

*Mayor*

*Borough of Ben Avon*

*Commendation from the Borough of Ben Avon*

Whereas: Michael P. Dufresne Jr. has served the Borough of Ben Avon as Emergency Management Coordinator since December of 2010 through September of 2013;

And whereas: He has expended extraordinary amounts of his personal time and effort to mitigate the threats and risks to this community;

And whereas: He has gone above and beyond the call to personally rewrite our Emergency Management Plan; a plan that has truly set the benchmark for community emergency operations procedures in Pennsylvania;

And whereas: He supplied all of the aforementioned with little or no cost to the borough of Ben Avon;

In witness thereof we the officials and residents of the borough of Ben Avon are deeply grateful and appreciative of Michael P. Dufresne Jr.'s professionalism and dedication to our community and present this letter of commendation to him. We offer our sincerest gratitude for a job well done to an individual who exemplifies the highest standards of this profession.

Thank you Mike and Godspeed wherever life takes you next.

Mayor - Robert Jones

*R B Jones*

Deputy - Emergency Management Coordinator and Councilman Earl Bohm

*Earl Bohm*

Council President - Lloyd Corder

*Lloyd Corder*

Council Vice President - Sue Weiss

Councilman - Michael Bett

*Michael Bett*

Councilman - Rob Galbraith

*Rob Galbraith*

Councilman - Brian Tokar

*Brian Tokar*

Councilman - RJ White

*RJ White*

Chief of Police - Beaver Micklos

*Beaver Micklos*

Fire Chief - James Rupert

*James Rupert*

Attest: Borough Secretary - Carmella Hallstein

*Carmella Hallstein*