

Borough of Ben Avon
7101 Church Avenue, Ben Avon, Pennsylvania, 15202
Minutes – Regular Council Meeting – January 15, 2008

Council Members Present

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

Council Members Absent

Lloyd Corder

Others Present

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

Call to Order

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

Public Participation

Planning Commission member Scott Keener of 7140 Belle Riviere Court stated that all of the enabling ordinances are in place for the new nine member joint planning commission for Bellevue, Avalon and Ben Avon. He stated that each community would also appoint an alternate member to the commission. Mr. Keener stated that Bellevue and Avalon had already appointed their members to the joint commission. He stated that the last thing that needs to happen in order to dissolve the three existing planning commissions and make the joint planning commission an official body, is for Ben Avon to make its appointments. Mr. Keener stated that he contacted the other four members of the current Ben Avon planning commission and asked if they would be willing to serve on the joint commission. He stated that all but one member, Mr. Schaffner, agreed to continue on the new joint planning commission if appointed by council. He stated that because of work obligations Mr. Schaffner felt it would be better if he stepped aside, which would leave himself, Mr. Busse, Mr. Mrozenski and Mr. Gallagher. Mr. Keener stated that both Mr. Busse and Mr. Gallagher volunteered to act as Ben Avon's alternate member. He stated that in his opinion either way would work well. Mr. Keener stated that Mr. Gallagher has more of an unpredictable work schedule, but has a better understanding of the joint proceedings because Mr. Busse has not been actively participating in these proceedings. He stated that the plan is to have the first official meeting of the Tri-Borough Joint Planning Commission on Monday, February 11 at 7:00 p.m. at the Avalon Borough Hall. Mr. Opiery, Jr. stated that in addition to serving on the planning commission, Mr. Schaffner had also served on council. He expressed his thanks to Mr. Schaffner for his many years of service to the borough.

Mr. Keener stated that the Tri-Borough Zoning Steering Committee met with Environmental Planning and Design (EPD) on Monday, January 14 to get an update on the joint zoning ordinance. He stated that they reviewed and discussed the changes that have been made to date, noting that this is still a work in progress and that EPD did not provide a revised draft of the ordinance at this time. He stated that EPD gave the committee information for their review, input and comments. Mr. Keener stated that many of the definitions in the ordinance had been refined. He presented and reviewed a revised list of definitions. Mr. Colenbrander stated that when the original draft was presented a few months ago the dimensional standards for Ben Avon

were out of line, noting that the new zoning ordinance is very different from Ben Avon's current ordinance. He stated that there were also issues with the zoning map and asked if these issues had been addressed. Mr. Keener stated that the strategy is to find zoning districts that more or less conform to what is already built as opposed to what was previously zoned because they do not want to create nonconformities. He stated that he would follow up on Mr. Colenbrander's concerns. Mr. Pipery, Jr. stated that Ben Avon received a letter from Tom Michalow, the Avalon representative, requesting that \$5,000 be submitted in advance for costs related to the zoning ordinance. Mr. Pipery, Jr. stated that in the past, Ben Avon has been very conservative about paying costs in advance and has refused these requests because of the risk involved. He stated that they are also requesting \$2,000 for updated GIS information from the county to integrate into the zoning map. Mr. Pipery, Jr. stated that Ben Avon would need something to substantiate these payments. Mr. Perego stated that GIS is a multi-layer visual map where you can layer streets, zoning ordinances and building permits and look at all of the items together. He stated that the plan is to buy this information from the county, which would save some time for EPD. Mr. Keener stated that the county now has available a data sharing program for updated GIS information that we could readily use to fix a lot of things on the zoning map. He stated that this would be a sharing agreement that Avalon Borough would sign with the county to get the GIS information, in turn, we would share any modifications that we make with the county. Mr. Keener stated that this means we can improve the quality of the base map without having to pay to someone to field check all of the information. Mr. Colenbrander stated that as part of EPD's price proposal, one of the deliverables is an accurate zoning map. He stated that he did not care how EPD accomplished this and if they wanted to pay the \$2,000 out of their money that was fine, but did not think that we should pay EPD to do a zoning map that is inaccurate and then have to pay an additional \$2,000 to correct it. Mr. Perego stated that the agreement with EPD is not a fixed price contract. He stated that it is hourly based and that they bill by the hour for the work performed. Mr. Perego stated that if we can obtain a more accurate base map from the county it ultimately should save us money because we would not have to pay EPD by the hour to do the same work. Mr. Colenbrander stated that we needed further clarification from Tom Michalow regarding the request for additional funds. Mr. Pipery, Jr. stated that he needed some clarification regarding the Tri-Borough Zoning checking account because he did not know what made up the checking account balance of \$12,123.41, noting that the balance could include some grant funds. He stated that in the past, Avalon had paid for all expenses incurred and then billed Ben Avon and Bellevue for their share of the expenses. Mr. Keener stated that there have been five sources of funding for the project, the three municipalities, a state grant and a private grant. He stated that the strategy from the onset was to go through the grant money before tapping into the local money. Mr. Keener stated that disbursements from the state grant were not as smooth as promised, which caused a lot of problems with the cash flow. He stated that Avalon Borough was able to smooth out some of the problems by using funds from their budget. Mr. Keener stated that the Local Government Academy, which is the other funding source, had not submitted any funds yet and essentially owed \$21,000. Mr. Pipery, Jr. stated that more information was needed to bridge some of the gaps regarding the money for this project, funding and the checking account balance. He stated that a general time line for the project was also needed. Mr. Pipery, Jr. suggested scheduling a special meeting to discuss the project. He stated that Mr. Schwartz from EPD should be asked to attend the meeting to answer council's questions.

Motion: Mr. Herchenroether; Second: Mrs. Konitsney; Motion carried by unanimous voice vote to schedule a special meeting on Thursday, February 7, 2008 at 7:00 p.m. at the Ben Avon

Borough municipal building for the purpose of discussing the proposed Tri-Borough Joint Zoning Ordinance.

Mr. Keener stated that at the most aggressive schedule, a draft of the zoning ordinance would be available to present at a public meeting in March. He stated that after that meeting, all three councils would have to authorize sending the ordinance to the county for a forty-five day period for opinion and review, after which each of the three municipalities would have to hold a public hearing.

Mrs. Weiss asked that five items be made available to council before the February 7 meeting. She requested an accounting of the grants and monies spent to date, a copy of the EPD contract, a copy of the draft of the zoning ordinance, a copy of the draft of the zoning map and a time line for the project. Mr. Perego stated that he would contact Mr. Schwartz and ask him to provide the requested information. Mr. Pipery, Jr. stated that the financial information should be obtained from Mr. Michalow, the treasurer of the Tri-Borough Zoning Steering Committee. Mr. Keener stated that he would ask Mr. Schwartz to be available for the meeting on February 7 and suggested asking Carolyn Yagle to attend if Mr. Schwartz has an unavoidable conflict.

Motion: Mr. Herchenroether; Second: Mr. Smith; Motion carried by unanimous voice vote to appoint Scott Keener, Tom Mrozinski and Shawn Gallagher to the Tri-Borough Joint Planning Commission as Ben Avon's representatives and appoint John Busse as an alternate member.

Approval of Minutes

Motion: Mr. Smith; Second: Mr. Herchenroether; Motion carried by unanimous voice vote to approve the minutes of the December 11, 2007 council meeting and the January 7, 2008 reorganization meeting.

Engineer's Report

No Report

Financial Reports

Mr. Pipery, Jr. stated that Mrs. Konitsney had volunteered her services to serve as the finance chair. He stated that she had served as finance chair for eight years during her previous tenure on council. Mr. Pipery, Jr. appointed Mrs. Konitsney to chair the finance committee.

Mr. Pipery, Jr. presented the January 2008 accounts payable reports. He stated that the December financials are deferred every year until the February meeting so that December expenses and revenues that are not received until January can be accrued to the previous year.

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

Administration Report

No Report

Public Safety Report

Mr. Pipery, Jr. stated that Mr. Smith would continue to chair the public safety committee.

Public Works Report

Mr. Opipery, Jr. stated the Mr. Colenbrander would continue to chair the public works committee.

Mr. Colenbrander distributed a report from Chronicle Consulting regarding the borough garage project. He stated that Dale Regrut and Chris Cieslak did a final walk-through with Swede Construction and that there are a few items that need to be addressed. Mr. Colenbrander stated that these items are in the process of being taken care of with the exception of the restoration of the paving that was cut to install the building. He stated that the paving would be completed in mid to late March when the asphalt plants reopen. Mrs. Cieslak stated that the building inspector did a walk-through earlier in the day and issued the occupancy permit. She stated that Swede has billed the borough for 80% of the project to date and that she instructed them to bill out the remainder, except for the cost of the asphalt. Mrs. Cieslak stated that this would reduce the retention down to 5%, which will leave a balance due of about \$25,000 that the borough will hold until the paving work is completed. She stated that the cost of the paving is minimal and that \$25,000 would be more than enough to cover that cost, which will be helpful if any defects are discovered later. Mr. Smith suggested installing cameras around the garage and recommended that the borough solicit bids to see if this would be feasible.

Resident and Community Relations Report

No Report

Mayor's Report

No Report

Police Chief's Report

No Report

Solicitor's Report

No Report

Fire Chief's Report

Chief Buckman presented the Fire Company's activity report for December 2007 and the 2007 run report.

New Business

Avonworth Municipal Authority

Mr. Opipery, Jr. stated that Ann Elder resigned her position as a Ben Avon representative on the Avonworth Municipal Authority Advisory Council. He stated that council would need to appoint someone to fill the vacancy for the remainder of Ms. Elder's term, which was to expire January 30, 2009. Mr. Opipery, Jr. stated that anyone interested in the position should send a letter to the borough office to the attention of Dr. Corder

Quaker Valley Council of Governments (QVCOG)

Mr. Opipery, Jr. stated that Mr. Herchenroether volunteered to serve as Ben Avon's QVCOG representative and that Mr. Smith would serve as the borough's alternate representative.

Solicitor Services

Mr. Smith stated that he wanted to make a motion that council solicit and accept proposals for the position of solicitor for Ben Avon. He stated that he was dissatisfied with the current service and the cost of that service. Mr. Smith stated that Mr. Perego does not return his telephone calls, gives council members documents at the last minute and charges \$175 per hour, which is not the going rate. He stated that he checked with five other municipalities in the area and the rate for their solicitors ranges from \$75 to \$115 per hour. Mr. Smith stated that Mr. Perego could submit a proposal if he wanted to. Mr. Perego stated that he had represented the borough faithfully for 24 years. He stated that rate is not the only thing to consider. Mr. Perego stated that he could show council bills from municipal solicitors who charge four hours for a letter at \$70 per hour, which is \$280. He stated that he does not charge the borough like that and had done a lot of free and volunteer work for the community. Mr. Perego stated that one of Mr. Smith's criticisms was correct. He stated that last year when the borough was negotiating with Ohio Township for police services, he did do the contract late. Mr. Perego stated that he did give the contract to council members on the night of the council meeting and Mr. Smith correctly said that that was not appropriate. Mr. Perego stated that it is disrespectful to a client to expect them to read an eight-page contract and sign it, but noted that it was basically the same contract that had been worked on for weeks and that everyone already had a chance to look at it. Mr. Perego stated that Mr. Smith however was correct; the final signature copy was delivered to council the night of the council meeting. He stated that he has tried to make sure that does not ever happen again.

Mr. Herchenroether stated that like anything else in the borough, all contracts and relationships should be reviewed annually and thought that the contract for solicitor should be put out for bid. Mr. Colenbrander stated that council should request proposals for the position of solicitor to see if there is a better value out there, noting that Mr. Perego might convince council that he is the best value. Mrs. Konitsney stated that if you solicit proposals you have to be very specific about the information you are looking for to ensure that everyone submits a proposal based on the same thing. Mr. Opipery, Jr. stated that this was his 19th year on council. He stated that understood Mr. Smith's perspective, but noted that for every example that Mr. Smith could come up with, he could come up with one where Mr. Perego came through for the borough. Mr. Opipery, Jr. stated that Mr. Perego does have trouble returning telephone calls within 24 hours, but added that this is not a showstopper for him as president of council. Mr. Opipery, Jr. stated that in 1993 the borough invested funds and lost them. He stated that Mr. Perego was on the telephone the next day and because of his diligence and active participation, the borough got almost all of its money back. Mr. Opipery, Jr. stated that challenging status quo is always a good thing, but has seen Mr. Perego go over and above, seen all of the good things he has done for the borough and seen the things he has done at no charge. Mr. Opipery, Jr. stated that council must be cognizant of Mr. Perego's knowledge base and understanding of the community. He stated that Mr. Perego brings continuity and there is value in that.

Motion: Mr. Smith; Second: Mr. Herchenroether; Motion carried by roll call vote: four-aye; two-nay to solicit and accept proposals for the position of borough solicitor.

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

Old Business

Bookmobile

Mr. Pipery, Jr. stated that Ben Avon decided to maintain bookmobile service in 2008 at a cost of \$8,820. He stated that based on statistics provided by the Allegheny County Library Association it is clear that many Ben Avon Heights, Emsworth and Kilbuck residents use this service. Mr. Pipery, Jr. stated that Ben Avon sent letters to these municipalities asking for assistance to fund the service. He stated that Ben Avon requested that each municipality consider contributing an amount equal to their community's percentage of use. He stated that Ben Avon Heights contributed \$948 and Emsworth contributed \$1,544 based on these percentages. Mr. Pipery, Jr. stated that Ben Avon would fund the remaining cost of the service. He stated that this is another example of how our communities work well together.

Quiet Zone Request for the Emsworth Dam Crossing

Mr. Pipery, Jr. stated that the borough sent letters to the U.S. Army Corps of Engineers and Norfolk Southern Railroad about complaints received from residents about the amount and duration of train horns that are blown as the trains approach the private road crossing at the Emsworth Locks and Dam. He stated that Mike Clark, a resident of the borough has offered to help coordinate a meeting between the interested parties. Mr. Pipery, Jr. stated that Mr. Herchenroether volunteered to act as Ben Avon's representative and that he would represent council at any meetings that might be held. Mr. Pipery, Jr. suggested that Mr. Herchenroether invite a member of the Emsworth Borough Council to participate in this matter. Mr. Pipery, Jr. stated that he wanted to make it clear that even though the borough brought up this issue because of the complaints received, the decision as to whether or not the trains should blow warning horns as they approach the crossing has to be made by Norfolk Southern. He stated that Ben Avon does not have, nor should it have the ability to tell the railroad not to blow warning horns. Mr. Pipery, Jr. stated that the railroad knows when it is safe and when it is not and Norfolk Southern has to take responsibility for the decision.

Adjournment

Motion: Mr. Herchenroether; Second: Mrs. Weiss; Motion carried by unanimous voice vote to adjourn the meeting at 8:50 p.m.

Respectfully submitted,

Carmella Hallstein

Borough Secretary