

MOUNT JOY BOROUGH COUNCIL

December 5, 2016 Minutes

The Mount Joy Borough Council held its regular meeting on December 5, 2016, at the Mount Joy Borough Office.

President Glessner called the meeting to order at 7:02 pm. Glessner announced that Council met in executive session on November 7, 2016, to discuss personnel and legal issues. He also said that Council met on November 22, 2016, to discuss personnel issues.

Roll Call- Present were Councilors Deering, Ginder, Murray, Millar, Reese, Smeltz, Youngerman and President Glessner. Seidel arrived at 7:10 pm. Mayor Tim Bradley was absent.

Also present were Borough Manager, Samuel Sulkosky; Public Works Director, Dennis Nissley; Police Chief, Maurice Williams; Zoning and Codes Officer, Stacie Gibbs; and Administrative Assistant, Andrea Zell.

Glessner gave the invocation, and the Pledge of Allegiance followed.

On a **MOTION** by Reese, and a second by Murray, approval was given to accept the agenda for the December 5, 2016, Borough Council meeting. *Motion carries unanimously.*

Public Input Period

Ned Sterling, 13 W. Main Street, asked if the public could assume that there will not be a tax increase in 2017. Glessner said the proposed budget is balanced so most likely there will not be a tax increase. He said there will be a meeting on December 19, 2016, to adopt the proposed budget. Sterling inquired about the appeals fee increase in resolution #31-16. Sterling also asked for an explanation of the local agency law that was referenced in the resolution. Sulkosky explained that when the Borough passed the disruptive conduct ordinance, it was decided that the fee would be set by resolution. He said this resolution also includes fees that are being repealed such as the tax certification fee. Sulkosky said, if an individual appeals to Council and then decides to appeal that decision to the Court of Common Pleas; the Court may request the written transcript. He said if there is not a written transcript they will refer back to Council to attain one. The fee is to cover the stenographer who will take a written record of the appeals hearing. The fee is in place to recoup our costs and not intended for the Borough to make a profit. Sterling asked why the fee for a copy of the budget is \$20.00 and he also asked if the budget would be on the website. Gibbs said yes, the budget will be on the Borough's website. She said there are some individuals who request a hard copy of previous budgets. Gibbs said that fee was already established and has not been revisited since 2009. Sterling asked why there was a page in the Police report that had a large area blacked out. Williams said it is simply a separator between current year numbers and the previous year numbers.

Bruce Haigh, 504 Rose Petal Lane, said he sent an email to the Borough Manager, Borough Council President and his three Borough Council representatives, regarding the same question Ned Sterling asked. Haigh said Council is requiring an appeals fee of \$200.00 according to the Borough resolution. In addition, Council is mandating that the records be recorded by a stenographer. The State Law in section 553 states that if you want to have a stenographic record, the person requesting it shall pay for it. He said Council is imposing three fees, the administrative costs of \$200.00, the appearance fee of the stenographer and the fee for the transcript. Haigh said he cannot envision the case where the Borough would want to appeal their own decision to the Commonwealth Court. Haigh said he does not believe the resolution is in accordance to the State Law because the State Law says whoever requests the appearance of the stenographer shall pay that fee. Haigh said he would ask that Council change the resolution to say either party has the right to request a stenographer to appear and that party shall pay for the service. He asked why Council would impose fees on a person who is trying to appeal if that person does not even have a thought that they might appeal Council's decision to Commonwealth Court. People will not appeal if they know they will have to pay a fee of \$600.00-\$700.00.

Sulkosky said the Borough Solicitor disagrees with Haigh's assessment. Glessner said if Council's decision is appealed and there is no record of what took place, a second meeting may be required. Gibbs said if the appellant does not agree with Council's decision they can appeal the decision to the higher court. The judge will ask for the transcript. The Borough's solicitor said if there is no record they will require a conference before the court to supplement the record and almost always results in the municipality holding another meeting with a court reporter. Gibbs said the law says the municipality may impose fees for an appeal which covers the court reporter. She said the Borough will also have to provide a written decision. Gibbs said the last time a court reporter's service was used at a Zoning Hearing Board meeting, the cost was \$125.00-\$150.00 per hour. The Solicitor recommended that the Borough require the fee to cover the court reporter and staff's time. Gibbs said if there is not a court reporter there will not be a record of what takes place. Gibbs said to clarify; the cost for the appeal fee is \$200.00 for stormwater management ordinance and \$200.00 for the property maintenance code. Gibbs said we do not know what the outcome of Council's decision will be and if it is not favorable the appellant can appeal that decision. Gibbs clarified that Council will not appeal their own decision, that is not what we are talking about. The appellant has the right to appeal Council's decision. Gibbs said the entire fee is \$200.00 and that includes the stenographer and administrative costs. Haigh said in September 2015 the Arbor Rose Community Association wanted to appeal a stormwater enforcement violation and the fee was \$600.00. Gibbs said yes, we did not have an appeals fee at that time. The cost is being reduced from \$600.00 to \$200.00. Gibbs stated that Council could amend the resolution to remove a sentence so that it is better understood and to clarify that there is only one fee of \$200.00 for the entire appeal fee.

Youngerman said the appeals court can hear the appeal de novo. That means that they can rehear the facts brand new and they do not have to have the record. Reese said you used the word can and that does not mean will. Glessner said this discussion will continue when item 10 B is before Council.

Haigh asked if there was any action taken during executive session at the November 7, 2016 meeting. Glessner said if action was taken it would be in the minutes.

Wendy Sweigart, 28 S. Market Street, asked if there was an update regarding a meeting scheduled for PennDot and residents affected by the new train station. Sulkosky said until the agreement is finalized then they will not bid the project or have a meeting. Sulkosky said not to expect an answer until the beginning of the year. Sweigart asked why workers are coming on to her property if

there is not an agreement yet. Sulkosky said they are doing preliminary work. Sweigart asked who the contractor is for the job. Sulkosky said the project has not been bid and once the agreement is signed there will be a notice to proceed. Sweigart asked when the parking issue will be address. Reese said once we see the plans then it will be addressed. He said the project will be a three year process. Sweigart asked what will be done during the project as the parking lot will be under construction. She said she lives very close to the train station and parking is already an issue. She explained that she has difficulty with deliveries because of double parking. Reese said the Public Safety Committee will address parking issues as they arise during the project. Sulkosky said he is aware of the importance for the residents to have a meeting and he is working on it. Gibbs clarified the bid was already awarded. Nissley said the bid was award but the notice to proceed will happen after the agreement is finalized. Reese said the bid was awarded to Wagman Construction.

Report of the Mayor

Mayor Bradley provided a written monthly report for November.

Sulkosky reported that Mayor Bradley is currently serving on an international delegation to Japan with the American Council of Young Political Leaders. In the Mayoral Recognition section of the report, Bradley congratulated the Donegal High School Field Hockey Team for their amazing accomplishment this year having won the Section, District, and State Championships. Their hard work and gutsy play has made their community proud. There will be a formal presentation of a Mayoral Citation to them in front of the student body at the Donegal High School on December 23, 2016.

Report of the Chief of Police

Maurice Williams, Police Chief, provided and reviewed a written monthly report for October 15, 2016, through November 14, 2016. The report showed 66 traffic arrests and 22 criminal arrests for the month. There were 71 UCR reportable incidents and 429 CAD incidents for the month, with a total of 5025 incidents year to date. Monies collected by the Police Department for the month for tickets, permits, reports, and services totaled \$2,415.18.

Williams announced that the November fundraisers Fill the Cruiser for Toys For Tots and the Food Bank, as well as the Beard for Books, which benefited the Library were successful.

Youngerman asked for the explanation on the high increase in traffic arrests for maximum speed. Youngerman said the number for the month exceeds the total number from last year at this time. Williams said based on the information attained from the radar speed signs, we have started doing targeted enforcement at various locations in the Borough.

Report of Fire Department Mount Joy (FDMJ)

Philip Colvin, Fire Chief, FDMJ, provided and reviewed a written monthly report for October.

Reese asked about the number of cancelled calls. Colvin explained that those are mutual aid calls that we were dispatched to but not needed so we are recalled.

Youngerman said he appreciated the FDMJ parade through town to welcome back the Donegal Girl's Field Hockey team after their State Championship win.

Report of Main Street Mount Joy (MSMJ)

Kim Brewer, MSMJ Manager, provided and reviewed a written monthly report for November.

Brewer said in the past she worked very well with Gibbs and she stays informed on MSMJ projects. She said it will be helpful to have the Borough Manger involved as well. Brewer said she and Sulkosky will be meeting regularly. Brewer explained that MSMJ not only runs events but they are heavily involved in economic development. She said MSMJ handles confidential projects which makes it difficult to report to Council. MSMJ's design committee is required to sign a confidentiality agreement because the information deals with potential new businesses' finances. Brewer said she realizes public reporting is important but there are projects that need to remain confidential. She said if Councilors would reach out to her individually she would be able to update them on MSMJ's project load. Brewer asked that the Councilors not contact the individuals directly and request that Council would refrain from contacting the Pennsylvania Downtown Center (PDC) and Department of Community and Economic Development (DCED). Brewer said the Borough liaison should be the contact. She added that it is important that Council and MSMJ work well together. Brewer thanked the Police Department and the Public Works Department for their help with Winterfest.

Ginder said she would like to wait until item 14. on the agenda to ask her questions.

Deering asked if private information could be retracted from the reports. Brewer said she would like clear direction on the format as to how Council would like reports. Brewer stressed the importance of MSMJ being the contact to potential business owners because they handle the economic development. She said this will eliminate confusion.

Report of the Milanof-Schock Library (MSL)

Barbara Basile, Executive Director of Milanof-Schock Library, reviewed a written report for October.

Basile said due to limited hours from the renovations the numbers are lower in the report. She thanked the Police Department for their efforts in the Beards for Books fundraiser. Basile said the Friends Group did a terrific job with the bake sale and craft sale on Election Day. Basile said the MSL is receiving a display from New York on the reading and writing of Anne Frank. This is an incredible opportunity to bring literature based programing to the community from a highly developed professional group of people. Basile invited Council to attend the preview night on February 2, 2016.

Seidel asked if free internet access is provided at the Library. Basile said yes and in the renovations they added an area to charge personal devices.

Report of Codes and Zoning Officer

Stacie Gibbs, Codes and Zoning Officer, provided and reviewed a written monthly report for November.

Reese asked why Gibbs had four rental inspections on the report. Gibbs explained that if Commonwealth Code Inspection Service is inundated with inspections she will perform inspections to help out.

Report of Stormwater Officer

Dave Salley, Stormwater Enforcement Officer, provided a written monthly report for November.

Nissley said he and Salley met with Arro Consulting in preparation for the MS4 permit for 2018. Nissley reported that Salley is taking his Building Code Official (BCO) classes this week.

Deering inquired about the light signalization update. Nissley said he and Salley met with Steve Gault to verify that the equipment that we have is the latest technology.

Report of the Borough Authority Manager

John Leaman, Authority Manager, provided a written monthly report for November.

Report of the Borough Manager

Sam Sulkosky, Borough Manager, provided and reviewed a written monthly report for November.

Approval of the Minutes of the Previous Meeting

On a MOTION by Seidel, and second by Millar, approval was given for minutes of the regular Borough Council meeting held on November 7, 2016.

Murray requested two changes. Under the Report of Codes and Zoning Officer he wanted the conversation regarding Main Street Mount Joy to be moved under the Report of Main Street Mount Joy. The second change under Report of the Public Safety Committee he wanted the words "approval was given for" removed from the motion. *Motion carries unanimously. Smeltz abstained.*

Administration and Finance Committee

On a MOTION by Youngerman, and a second by Murray, approval was given for Resolution #30-16, the 2017 municipal meeting calendar.

Sulkosky said there is a change in dates between the Zoning Hearing Board and the Administration and Finance Committee due to a conflict with the Lancaster County Borough's Association (LCBA) meetings. Glessner said Sulkosky has been active with the LCBA and requested that the dates be changed. Sulkosky thanked the Administration and Finance Committee for changing the meeting dates to accommodate him. *Motion carries unanimously.*

On a MOTION by Youngerman, and a second by Murray, a request was made to approve Resolution #31-16, a Resolution of Borough Council reestablishing and amending fees to be charged in connection with the administration of the Stormwater Management Ordinance, the Mount Joy Borough Property Maintenance Code for the filing of applications, permits, licenses, copying and other administrative fees.

Gibbs said that some language needs to be retracted to state that the stenographer's fee is to be included in the \$200.00 fee. Gibbs apologized for the confusion and said that the intent all along was to only have a \$200.00 fee. Youngerman said he appreciated the reassessment of the wording. Youngerman asked for the breakdown of the \$200.00 and what it covered. Gibbs said it covers the stenographer's appearance, which an hour of their time is estimated at \$125.00-\$150.000, and also administrative fees. Youngerman asked for an explanation of administrative fees. Gibbs said a written decision must be provided as well as reports and documentation. Millar asked if the person who appeals is required to have a stenographer present at the hearing. Gibbs said staff consulted with our Solicitor and the recommendation is to require that a stenographer be present. Gibbs said that is what we are proposing. Sulkosky said if there is going to be a hearing it should be done right the first time to avoid a second hearing. Sulkosky said he strongly advises that we have this fee. Millar asked if it is the choice of the appellant to require a stenographer. Sulkosky said there is no way to know if the appellant is going to appeal the decision to the Commonwealth Court. Gibbs said the Solicitor recommended that there be a court reporter because there is a right to appeal to the Lancaster County Court of Appeals. She said if there is a complete record available then the appeal is decided on that record. Council has to make the decision. Gibbs said either Council takes the risk and hopes that the judge hears the appeal de novo, or charges the fee upfront for a stenographer to keep the record. Smeltz said we are reducing the fee from what it was previously. The fee we are charging is to record official proceedings. Smeltz thanked the public for their participation in the conversation. He agreed that after reading the resolution in its entirety, it states there are two fees. He said there are ways to eliminate the wording to craft it to read one \$200.00 fee. Smeltz said if there is a sense that we should have the fee, then we should table it until our next special meeting so that the wording can be corrected and we can vote. Gibbs agreed and reminded Council that there are other fees that are being repealed as well as changed, and need to be effective by January 1, 2017. Reese said if we are going to pay the solicitor to give us recommendations then he believes that Council should follow those recommendations. Seidel asked if any fees were changed from last year. Gibbs said yes. Youngerman wanted to clarify according to section 553, title 2 in the PA Code, municipalities are not required to have a stenographic record but may require one to be done. Youngerman said he advises that the stenographic record be kept. He said he believes the right to the record belongs to the appellant. Seidel said that removing the language would put the Borough in a position where if the cost exceeded \$200.00 we could be reimbursed. Youngerman said the fees need to be separated out for the appellant and so that Council could further debate as to which fees we would include or not. Gibbs said that the stenographer fee could vary depending on the duration of the meeting. Murray said the wording needs to be changed.

Smeltz made a motion to table the original motion until December 19, 2016 Special Borough Council Meeting. Youngerman asked for Smeltz to withdraw his motion and make a motion to postpone to a time rather than to lay it on the table. Smeltz withdrew the motion. Reese asked how many appeals have been heard. Gibbs said two in the past nine years. Gibbs said that staff is here to provide Council with what they feel is in the Borough's best interest. Sulkosky said this fee is not in place for the Borough to make money but to recoup our cost. Youngerman said we do not have a cost for a stenographer unless we require a stenographer. It is the right of the appellant. Youngerman wanted to clarify that there are no costs to the Borough. Ginder suggested the Borough bills the appellant once the hearing is complete. Gibbs said the solicitor advised against this because it would be unlikely that we would collect the money once the appellant lost the hearing. Murray said we need a fixed fee like we have for every other fee.

On a **MOTION** by Youngerman and a second by Murray, approval was given to postpone Resolution #31-16 until December 19, 2016, recommending that the Code Officer present a revision to the resolution which he will propose as an amendment. *Motion carries 7 to 2. Seidel and Deering voting no.*

On a **MOTION** by Youngerman, and a second by Murray, approval was given for Resolution #33-16, a Resolution of Borough Council appointing and/or reappointing members of various boards, commissions and positions within the Borough Organization. *Motion carries unanimously.*

Discussion of 2017 Budget on Public Works Director's request dated November 11, 2016 concerning transfer of unexpended funds in line item 01.438.600 to Capital Fund. Council agreed to leave the money in the General Fund.

Report of the Public Safety Committee

On a **MOTION** by Reese, and a second by Deering, approval was given to for Resolution #32-16, approving a petition requesting exemption from the Pennsylvania Liquor Control Board regulations regarding amplified music being heard off licensed property. This replaces Resolution #29-16 passed on November 7, 2016. *Motion carries unanimously.*

Report of the Public Works Committee

Dennis Nissley, Public Works Director, provided and reviewed the written monthly report for November. Nissley reported that leaf collection will be finishing up on December 9, 2016.

Seidel asked if citizens on the non-dedicated streets will receive leaf pick up. Nissley said no.

Public Input Period

Bruce Haigh, 504 Rose Petal Lane, thanked Chief Williams for placing the speed indicator sign on School Lane. Haigh suggested that in regards to the fees, the Borough should charge an administrative fee and give an option for the stenographer to be available. He believes the party who requests the stenographer should pay for it which is consistent with 553. If the appellant requests it then he shall place a deposit. Haigh said if the appellant chooses not to have a stenographic record then he shall pay all of the cost for the second hearing. That gives the option for the stenographer but does not force him to have one present.

Wendy Sweigart, 28 S. Market Street, shared that she previously worked for the unemployment tax office and she heard appeals all day long. The State required a stenographer and paid for the service and did not require the appellant to pay. Sweigart said a number of cases were appealed and the decisions were made exclusively from the transcript of the stenographer. She said another instance she experienced was when she appeared before a District Justice in Akron and it was not recorded by a stenographer. That decision was appealed to Lancaster County Court and there they heard the case de novo.

Ned Sterling, 13 W. Main Street, asked who is responsible to collect the trash on Main Street. Gibbs said the Borough trash hauler, Lebanon Farms Disposal, collects the trash. Sterling said the lids are not being placed back on the cans once they are emptied. Gibbs said we received a complaint recently regarding this issue and it has been relayed to our hauler. Sterling asked Gibbs for the address of the property on Square Street that is scheduled to be demolished. Gibbs said the property is on Clay Alley across from H&R Transload.

Any other matter proper to come before Council

Ginder said she has concerns regarding the MSMJ resolution that Council is required to sign. Ginder said she printed the Keystone Community Program and on page 9 it says that in order to obtain the Keystone Grant the Borough must sign a 5 year commitment with a strategic plan. Council would need to commit \$45,000.00 for 5 years in order to get this grant. Ginder asked if MSMJ can get everything they promised without the Keystone Grant and the endorsement of the Borough. Brewer said the Keystone Community Program is aware of this. She explained that the resolution is not binding. Brewer said she spoke with Sulkosky regarding this matter. She said the only thing that DCED wants to know is that it is the intent of the Borough to look at an economic development guideline in the next 5 years of their budget. Ginder said she would like to clarify this information with the DCED. Sulkosky said he discussed this and the resolution will be revised to give the Borough an out.

On a **MOTION** by Seidel and a second by Deering, approval was given to replace President Glessner as the Council Liaison to Main Street Mount Joy and appoint Jake Smeltz to the position.

Glessner said he had been discussing this option with Smeltz and the MSMJ Board has agreed to the change. Smeltz said he would accept the position. *Motion carries unanimously.*

Deering asked why the second public input period is before any other matter proper to come before Council. Youngerman said the public has the right to comment on items that were not on the agenda. Glessner said there is a requirement of only one public input period but Council decided to add a second opportunity for the public. Deering said if an item comes up after the public input period the public is not afforded the opportunity to comment on that matter.

Authorization to Pay Bills

On a MOTION by Youngerman, and a second by Murray, the Council approved paying the bills as presented.

GENERAL FUND	\$	141,029.70
REFUSE/RECYCLING	\$	41,385.00
CAPITAL IMPROVEMENTS FUND	\$	-
HIGHWAY AID FUND	\$	15,035.20
TAX ACCOUNT	\$	3,408.21
ESCROW FUND	\$	201.80
JOY LAND ACCOUNT	\$	-
GRAND TOTAL EXPENDITURES	\$	201,059.91

Motion carries unanimously.

Seidel proposed that the expenditures be paid.

Meetings and dates of importance

See the green calendar for the month of December 2016.

Adjournment

On a MOTION by Seidel, and a second by Reese, approval was given to adjourn the meeting at 9:13 PM. *Motion carries unanimously.*

Respectfully Submitted,



Samuel Sulkosky
Borough Manager/Secretary

