

Mercersburg Borough Council

Borough Hall, Mercersburg, PA

March 28, 2011

7:00 p.m.

Minutes

Attending: President Elizabeth McClintick, Josh Meyers, Betty Stenger, Tom Suddeth, Jack Bickley, Mayor Zeger, Borough Manager Tammy Oberholzer, Assistant Borough Manager Dawn Scheller, Solicitor Sam Wiser

Absent: Dusty Stoner, Chris Frisby, Chief John Zechman, Engineer

Guests: None

Press: None

President McClintick called the meeting to order at 7:00 p.m.

President McClintick asked Tom Suddeth to lead the Pledge of Allegiance.

MOTION: to enter into Executive Session with possible action to be taken at 7:03 p.m. was made by Josh Meyers, second by Jack Bickley, all ayes, motion carried.

Mayor Zeger entered during Executive Session at 7:31 p.m.

Regular Session resumed at 7:32 p.m.

Jack Bickley asked Sam Wiser to speak about the history and comment on the Findlay Park situation.

Sam Wiser stated that there is a development that is partially situated in the Borough of Mercersburg and Peters Township known as Findlay Park. The Development is served by a privately owned Pumping Station and Conveyance Lines that were installed by the developer under an agreement with the Sewer Authority. The Developer was to properly operate and maintain those lines and pumping station until they were dedicated to the Sewer Authority. Those lines and the pumping station were never dedicated. The agreement with the Sewer Authority stated that the Sewer Authority would not take ownership of the pumping station until 50 homes were connected. Sam Wiser stated that 50 homes have not been connected.

The Developer has on three occasions allowed electric power to be cut off to the Pumping Station, this results in a back up of sewage into the collection system. On the three occasions, the sewage has backed up to the extent that it overflowed from the nearest manhole to the pumping station. This resulted in pollution of raw sewage on the ground.

The Borough has tried to alleviate the environmental harm and the safety concerns by running the generator once per day trying to allow sewage to flow through the Pumping Station. Sam Wiser continued stating that there is still a substantial concern of Environmental Harm and Harms of Human Safety. He stated that if the generator was to fail, sewage would back up into those homes and those homes would need to be evacuated. Those homes would be determined to be uninhabitable due to the raw sewage in them and is a substantial safety and health concern.

The Borough has tried to work with the developer in resolving this; however, the developer has been extremely unresponsive and has disowned the matter. Sam stated that the Developer holds a permit from DEP to operate the Pumping Station. To this point DEP has not taken any enforcement action against the Developer. Sam Wiser stated that it would be very helpful if DEP would become involved and institute some enforcement action for the environmental harm that has occurred. Sam continued stating that DEP could require the Developer to meet the requirements under the permit to operate the Pumping Station.

Sam Wiser stated that the Borough is left with no choice but to pursue a Nuisance Action against the Developer due to the significant health and environmental concerns to the Borough Residents who are connected to the Pumping Station system.

Peters Township also has residents near and within that area and they could also be effected in the same way. Sam Wiser stated that Borough Council would ask that Peters Township join the Borough in all necessary actions to have the Developer comply with his legal requirements in maintaining sewer service to the residents in that development.

Sam Wiser stated that with the summary provided asked if there was any action that Council wish to take regarding this matter.

MOTION: to authorize Sam Wiser permission to file a Nuisance Action against the Developer under the Clean Streams Law for sewage pollution matters and ask Peters Township to join in that action was made by Josh Meyers, second by Betty Stenger, President McClintick asked for comments or discussion: Jack Bickley suggested to inform the Residents and notify the Public Representatives that this has occurred by copying them on this action. Sam Wiser stated that the Borough Office could

provide written notice to the residents that the Developer has stopped maintaining the Pumping Station and has not provided electric power to the Pumping Station. Sam stated that notification of a risk could be included informing the residents that sewage could back up into the homes if the generator would fail for any reason or if electric power is not restored within a near time frame. Should this occur then the residents would need to evacuate their homes because the homes would be uninhabitable at that point. **The vote was taken, all ayes, motion carried.**

MOTION: to authorize the Borough Manager to contact DEP and Peters Township requesting their assistance in resolving this matter via letter was made Tom Suddeth, second by Josh Meyers. President McClintick asked for comments or discussion. Jack Bickley suggested that this letter be made public and sent to the Newspapers. Sam Wiser suggested that the letter not be sent to the newspapers; however, the letter could be obtained by request and would be an open record. Sam Wiser asked that Tammy Oberholzer forward the letter to his attention and he would forward the letter to DEP and the appropriate parties. The vote was taken all ayes, motion carried.

MOTION: to authorize the Borough Manager to contact Peters Township SEO and ask that he pursue the appropriate charges against the Developer was made by Betty Stenger, second by Josh Meyers, all ayes, motion carried.

MOTION: to authorize the Borough's UCC Code Official and authorize the Borough Manager to request that Peters Township's Code Official pursue the appropriate charges was made by Josh Meyers, second by Tom Suddeth, all ayes, motion carried.

MOTION: to enter into Executive Session at 7:42 p.m. for Personnel Issues with possible action to be taken was made by Josh Meyers, second by Betty Stenger, all ayes, motion carried.

Regular Session resumed at 7:53 p.m.

MOTION: to authorize the Borough Manager to develop an Engineer RFP along with a list of possible Engineer's who might want to respond to the RFP for next Borough Council Meeting was made by Josh Meyers, second by Betty Stenger, all ayes, motion carried.

MOTION: to authorize the Borough Manager to hire and SEO for an interim period was made by Josh Meyers, second by Tom Suddeth, all ayes, motion carried.

MOTION: to authorize the Borough Manager to purchase a table of ten for the Tuscarora Chamber of Commerce Annual Meeting and Business Person of the Year Dinner (\$320.00), where the seats would first be offered to the Employees then the Council Members and then Employee Spouses as done in past years was made by Josh Meyers, second by Betty Stenger, all ayes, motion carried.

President McClintick reviewed that the next Borough Council Meeting is scheduled to be held on April 11, 2011. Tammy Oberholzer stated that she received zero submissions for HARB so the next meeting would most likely be on April 26, 2011 for the training.

Tammy Oberholzer stated that she had one last item. Tammy reviewed that a purchase was previously discussed (in 2007) for two County Wide Radios, however nothing was completed. She stated that she contacted Anna Swailes regarding the radios. Anna informed Tammy that grant funds of \$ 3,828.03 would be available to the Borough and the Borough would only be required to contribute \$1,380.05 for the radios. One radio would be provided to the Department of Public Works Supervisor and the other be kept in the Borough Office. Tammy suggested that funds in either the Capitol Improvement Fund or the Joint Equipment Fund could be used for this purchase. The radios would be apart of the County Wide Radio System and provide the Borough the ability to utilize this system.

Mayor stated that the Police Department is very pleased with the new radios however, the department has the old radios and is not sure what can be done with those. Josh Meyers stated that the Licenses for those radios were requested to be turned in and therefore the Borough would not be authorized to do anything with those radios per House Resolution 607.

MOTION: to approve the purchase of two County Wide Radios from the Borough Capitol Improvement Funds was made by Josh Meyers, second by Jack Bickley, all ayes, motion carried.

MOTION: to adjourn at 8:05 p.m. was made by Josh Meyers, second by Betty Stenger, all ayes, motion carried.

These minutes transcribed by Borough Secretary Dawn L. Scheller from her notes and a recorded tape of the meeting.

Respectfully submitted by Borough Secretary, Dawn L. Scheller