

Council Meeting
December 9, 2008
Chancellor Center

The regular semi-monthly meeting of Newtown Borough Council was called to order at 6:30 P.M. on Tuesday, December 9, 2008, by President Mark Craig. Mr. Craig asked those in attendance to join him in a moment of silence followed by the Pledge of Allegiance.

Present: Councillors Craig, Jaslow, Sellers, Walker and Woldorf; Mayor Dennis F. O'Brien; Solicitor Donald E. Williams and Engineer John Genovesi of Gilmore & Associates, Inc. Councillor O'Malley was excused.

Mayor's Report – Dennis F. O'Brien

Mayor O'Brien thanked Bill Smith, Patty Lovi and Dave Callahan for coordinating the Holiday Parade and decorating the town.

James and Karen Price, Borough residents who became U.S. citizens this summer, were to have received a proclamation at the 1st Fourth event. Because of inclement weather, the proclamation was not presented and although the Prices were unable to attend the meeting this evening, Mayor O'Brien read the proclamation.

- **The Police Report for November 2008**

Mayor O'Brien noted that 267 violations were issued and officers conducted a DUI patrol funded by a grant from the state of Pennsylvania.

- **Special Events Reminder**

- Hanukkah Parade – December 21, 2008,
- First Night – December 31, 2008

President's Report

Discussion was held at the Council Work Session about executing a Smart Transportation grant application. President Craig thanked Mr. O'Malley for drafting the application and a motion is required to submit that grant. Ms. Woldorf noted that the funds are for planning activities to look at pedestrian, bicycle and vehicle circulation patterns in Newtown Borough and to coordinate those paths with Newtown Township, while encouraging more people to walk or bike instead of using their cars.

- ❖ A motion was duly made by Councillor Sellers, seconded by Councillor Woldorf, and carried unanimously, to authorize the President of Council to submit a grant for Smart Transportation planning dollars in the amount of \$30,000.

Public to be Heard

Ed Murphy, representing Tom Fischer of Preservation Partners, addressed Council about Mr. Fischer's proposed project. Mr. Murphy was disappointed that Council had chosen at the November Council Meeting to oppose Mr. Fischer's Zoning Hearing Board application. He was surprised at Council's decision because the plan had not yet been vetted by HARB. Their recommendations have been addressed and the resulting changes have altered the original Zoning Hearing Board application. Mr. Murphy would like an opportunity to present the revised plan to Council, which might result in Council changing their decision to oppose the application.

Chris Ortwein of the Newtown Corporation voiced concern that Council just approved a grant that would encourage more bike usage and yet the request for bike racks has not been addressed.

Toll Brothers – Newtown Station, Amended Final Plan Approval, Phases I & II, Mill Building Patios and Storage Units, for TP#28-005-087

Mr. Murphy explained that the original plan was to include freestanding garages, which have now been eliminated. The plan now includes patios at the rear of each unit and storage buildings on either end to house trash receptacles. The other outstanding issue is the longstanding matter of the lights. Mr. Sellers asked the Engineer about the December 3, 2008, letter and if there are any outstanding issues, to which Mr. Genovesi responded that a punch list has been provided to Toll Brothers. Mr. Genovesi confirmed that all issues related to the revised plan have been addressed. Mr. Sellers wanted to know the preference of the Newtown Station residents and Mr. LeGreca confirmed that the 50 watt bulb was preferred by the Homeowners Association and that none of the streetlights would be shielded, but lights would be shielded in some interior locations as requested by the residents.

- ❖ A motion was duly made by Councillor Jaslow, seconded by Councillor Walker, and carried unanimously, to conditionally approve the Amended Final Plan Approval for Newtown Station, as revised with the conditions listed in the Solicitor's letter, which is attached to these minutes.

Certificates of Appropriateness

- ❖ A motion was duly made by Councillor Jaslow, seconded by Councillor Sellers, and carried unanimously, to follow the recommendation of the Historic Architectural Review Board and direct President of Council to sign the following Certificates of Appropriateness, thereby approving the historical appropriateness of the application, with final approval by the Code Enforcement Officer.

COA 2008-073-H Resident Richard Hoisington, 12 Barclay Court

The applicant was seeking a Certificate of Appropriateness for the addition of a rear third floor dormer.

COA 2008-074-H Applicant Donna Lere, 10 St. State Street, Donna Lere Photography

The applicant was seeking a Certificate of Appropriateness for the installation of signs in front and rear of building and on two directory signs.

COA 2008-075-H Applicant Barry Wind, 14 S. State Street, Cameo Wind Creative Management

The applicant was seeking a Certificate of Appropriateness for the installation of a hanging sign at the entranceway and lettering on the door.

COA 2008-076-H Applicant Charles F. Swartz, III, 323 E. Washington Avenue, Swart-Givnish Funeral Home

The applicant was seeking a Certificate of Appropriateness for the replacement of an awning at the entrance to the building, noting that they will choose lighter softer colors than existing to blend with the building.

COA 2008-077-H Resident Martha Farsje, 113 Greene Street

The applicant was seeking a Certificate of Appropriateness for the construction of a single story addition to the existing ranch house.

Certificate of Appropriateness with additional discussion:

COA 2008-062-H Applicant Preservation Partners/Thomas Fischer, 103,105 &107 N. State Street, Reeder Court Apartment House

The applicant was seeking a Certificate of Appropriateness for repairs and renovations to the building, including roofing, windows, doors, and with the following changes:

1. The garage dormers on the Greene Street elevation will be changed to a single shed dormer with twin casements.
2. Cornices and rakeboards including the cornice over the bay window on the north elevation shown with dentils will be simplified to match the cornice detail on the Greene Street elevation, with the exception of the small gable.
3. The cornice detail on all returns will match returns on the original section of the house, wood with small metal capping/flashing on returns.
4. The two east elevation single dormers on the garage section will be changed to twin casements instead of single casements.
5. The height of the connection piece on the Greene Street elevation will be lowered as much as possible, hopefully by a foot, and the window removed from the connector.
6. The applicant will return with drawings and/or samples of the proposed roofing, to be approved at a later date.
7. All gutters will be half round aluminum or copper; downspouts will be plain round aluminum or copper.
8. Muntins on windows will be 7/8".
9. The texture of the new stucco will match existing. The applicant will return with samples of the stucco.

10. Shutters will be operable with appropriate hardware to match existing with traditional raised panel shutters on the first level and traditional louvered shutters on the second level; applicant will return with detail.

Ms. Woldorf felt it was inappropriate to vote on this application before it went the Zoning Hearing Board and met the zoning requirements. Ms. Woldorf felt that the application should be tabled. Mr. Jaslow noted that the Certificate of Appropriateness has nothing to do with zoning requirements and its only consideration is whether it is architecturally acceptable, which HARB has deemed that it is. If the plans require change after the Zoning Hearing Board decision, then the COA would no longer be valid. Mr. Jaslow feels that Council is obligated to give the applicant an answer and he sees no reason to delay the vote. Mr. Sellers understands Ms. Woldorf's concern. The applicant's attorney, Ed Murphy, explained that changes were made to the COA application to address issues related to the Zoning Hearing Board application, which is why that application is being revised. Mr. Sellers referred to an advertisement for the homes at this location and Mr. Murphy explained that as long as no agreements of sale were signed and that it was advertised as a "proposed" project, he advised Mr. Fischer that there was no prohibition for placing the ad. Mr. Fischer placed the ad to generate interest, not only in the project but also in his existing business.

- ❖ A motion was duly made by Councillor Woldorf, seconded by Councillors Sellers, to table the application, which failed with Councillors Woldorf and Sellers voting to approve and Councillors Craig, Jaslow and Walker voting to deny.
- ❖ A motion was duly made by Councillor Jaslow, seconded by Councillor Walker, and carried with Councillors Craig, Jaslow and Walker voting to approve and Councillors Woldorf and Sellers voting to deny, to follow the recommendation of the Historic Architectural Review Board and direct President of Council to sign the Certificate of Appropriateness, thereby approving the historical appropriateness of the application, with final approval by the Code Enforcement Officer.

Engineers Report – John Genovesi, Gilmore & Associates, Inc.

Mr. Genovesi looked to Council for a motion to approve an escrow release for Phillips Court in the amount of \$2,577. The improvements have been inspected and the engineer is recommending the release. Mr. Sellers referenced discussion of the Phillips Court project at the last work session and noted that the Solicitor was looking into problems and delays with the completion of this development. Mr. Sellers commented that while these releases may be appropriate there are many other outstanding issues and he feels that the escrow release should be tabled until the developer provides a timeline for completion. Mr. Williams advised that the Borough should act on the release and risks exposure if they do not, although the Solicitor has not reviewed their specific agreement.

- ❖ A motion was duly made by Councillor Sellers, seconded by Councillor Jaslow, and carried with Councillor Jaslow voting nay, to table the escrow release for Phillips Court.

General Projects Update

Engineer Genovesi is requesting payment to Harris Blacktop for the paving of Jefferson Street.

- ❖ A motion was duly made by Councillor Walker, seconded by Councillor Jaslow, and carried unanimously, to authorize payment of \$83,507.32 to Harris Blacktopping for the Jefferson Street project.
- ❖ A motion was duly made by Councillor Walker, seconded by Councillor Jaslow, and carried unanimously, to approve a change order for Jefferson Street to modify the handicapped ramps in the amount of \$12,743.84.

Mr. Genovesi reported that the “ponding” problem has been corrected at Liberty and Greene Streets and interim emergency patches were made on North Congress Street.

Presentation of Minutes

- ❖ A motion was duly made by Councillor Sellers, seconded by Councillor Walker and carried unanimously, to approve the Work Session Minutes for the November 5, 2008, meeting as presented.
- ❖ A motion was duly made by Councillor Woldorf, seconded by Councillor Sellers, and carried unanimously, to approve the Council Minutes for the November 11, 2008, meeting as presented.
- ❖ A motion was duly made by Councillor Sellers, seconded by Councillor Woldorf, and carried unanimously, to approve the Special Meeting Minutes for the October 23, 2008, meeting as presented.

COMMITTEE REPORTS

Budget & Finance – Gerard O’Malley

Consolidated Report

- ❖ A motion was duly made by Councillor Walker, seconded by Councillor O’Malley, and carried unanimously, to accept, subject to audit, the consolidated expenditure report for the month of November 2008, totaling \$126,316.10.

❖ Year 2009 Budget

A motion was duly made by Councillor Walker, seconded by Councillor Jaslow, and carried unanimously, to approve the Year 2009 Proposed Budget in the amount of \$2,911,423.

Ms. Woldorf asked the amount of the donation to the Ambulance Squad and Mr. Walker reported that the amount for 2009 is \$8000 with an additional \$3000 for 2008. This is an increase from last year’s budget of \$5000.

❖ Year 2009 Tax Rate Ordinance

A motion was duly made by Councillor Walker, seconded by Councillor Woldorf, and carried unanimously, to approve Ordinance #690 setting the Tax Rate for Year 2009 as follows: General Fund 3.5 Mills; Lighting Fund 1.0 Mills; Fire Tax Fund .875 Mills; Street Improvement Fund .625 Mills.

❖ **Year 2009 Tax Ordinance Fixing Salaries**

A motion was duly made by Councillor Walker, seconded by Councillor Jaslow, and carried unanimously, to approve Ordinance #691, fixing Salaries and other compensation for elected tax collector, auditor and Council appointees for Year 2009.

Environmental Advisory Council – Liaison Julia Woldorf

Ms. Woldorf reported that Henry D’Silva is chairing the Cool Cities committee to investigate the Borough’s options to meet our obligations under the Cool Cities agreement [US Mayors Climate Protection Agreement]. The Open Space Plan Revision is moving forward under the supervision of EAC Co-Chair Bob King.

Newtown Corporation – Michael T. Sellers

Mr. Sellers reported that a joint meeting of the Newtown Township Supervisors and Newtown Borough Council with the Newtown Corporation will be held on January 27 or 29, 2009. Council would prefer the date of the 29th, if possible.

Newtown Creek Coalition– Michael Sellers

Mr. Sellers reported that a DCNR Planning Grant in the amount of \$12,100 had been awarded. The grant will assist in establishing a watershed conservation plan and will help coordinate and update the Newtown Township and Newtown Borough Open Space plans. The Newtown Creek Coalition is also planning to hold a second visioning session, most likely in March.

Personnel Committee – Julia Woldorf

Ms. Woldorf is contacting those individuals whose terms are due to expire to see if they wish to be reappointed. Warren Gormley of the Sewer Authority noted that Frank Fabian did not wish to be reappointed and he recommended the following replacement:

- ❖ A motion was duly made by Councillor Woldorf, seconded by Councillor Sellers, and carried unanimously, to appoint David Callahan, 113 Court Street, to a 5 year term on the *Newtown Bucks County Joint Municipal Authority* through December 31, 2013.

Mr. Walker agreed with the recommendation but asked why the process created by Ms. Woldorf for appointments was not followed in this case. Ms. Woldorf felt that this was a different circumstance.

Planning Commission

Planning Commission Chairman Woldorf reported on the informal presentation for a land development plan for the Stockburger dealership property. It was a productive discussion and the applicant’s planner agreed to address the comments of the Planning Commission. The Commission continued their review of the Comprehensive Plan Draft and plans to present it after the first of the year.

Police Committee – Robert Walker

Mr. Walker reported the Officer David Lee was sworn in as a part-time police officer and he will be introduced to Council at a future meeting.

Streets, Lights & Properties – Robert Walker

Mr. Walker reported that a request has been made for a handicapped parking space at 97 E. Centre Avenue. The Engineer will determine what must be done to comply with the handicapped accessibility standards.

A resident on North Congress Street contacted Mr. Walker regarding whether the Borough had a leaf ordinance requiring property owners to rake their leaves. Mr. Walker asked to have the Solicitor look at the existing ordinance to address this specific concern.

Zoning Report – Rand Jaslow

Mr. Jaslow reported that a *Building and Zoning Activities Log* for the month of November was provided by the Zoning Officer, Jo-Anne Brown.

Solicitor’s Report – Donald E. Williams

Right to Know Resolution

Ms. Woldorf asked clarification on the issue of response to a written request being considered a denial, if not answered within five days. Solicitor Williams noted that Ms. Woldorf’s understanding of the issue is correct.

- ❖ A motion was duly made by Councillor Jaslow, seconded by Councillor Woldorf, and carried unanimously, to approve Right to Know Resolution 12-09-08.

Holiday Observance

- ❖ A motion was duly made by Councillor Walker, seconded by Councillor Sellers, and carried unanimously, to amend the Non-Uniform Personnel Policy to include two additional holidays, Veterans Day and Martin Luther King’s Birthday, starting in 2009.

Police Records Retention

Mr. Walker explained that the Police Committee set a goal for Chief Wojciechowski to establish a “Records Retention Policy” for the Police Department. The policy has been completed and reviewed.

Public to be Heard

There was no one who wished to be heard at this time.

It was noted that Solicitor Williams would be leaving the meeting at this time, as he has a conflict of interest with the Conditional Use Hearing for T-Mobile.

Conditional Use Hearing for T-Mobile

Special Counsel David Truelove opened the T-Mobile Conditional Use Hearing and explained that the hearing would be conducted similar to a Zoning Hearing Board hearing for a Special Exception. Mr. Jack Wuerstle,

representing the applicant T-Mobile Northeast LLC, was introduced. Any individuals wishing to have party status were requested to sign-in, but it is not a requirement if one only wishes to speak or ask a question. Mr. Truelove suggested ending the hearing at 10 P.M. tonight and continuing the hearing at another scheduled time. Mr. Sellers and Ms. Woldorf voiced concern about hearing testimony tonight and coming back at a later date to ask questions. It was suggested that Council be permitted to ask questions as the hearing progresses. Notice of the hearing was then publically read into the minutes.

Testimony was given by two individuals representing T-Mobile. Mr. Jack Wuerstle, attorney for T-Mobile, explained that the application before Council regards a “stealth” application, meaning that the antennas would be hidden from view by placement within an extended smokestack. Mr. Michael Mooney, T-Mobile’s site acquisition representative, testified to the reasons for selecting the Stocking Works site for the placement of the antennas. Mr. Peter Tolischus, a land planner for T-Mobile, testified that he reviewed the site plan, the Borough Zoning Ordinance and visited the Stocking Works site. When asked by Mr. Sellers whether he had examined the ordinance related to the Historic District proximity, Mr. Tolischus replied that he had not. Discussion ensued with Council members voicing concern that the Historic District issue had not be addressed. Council asked questions during the process and T-Mobile agreed to have their historical consultant testify in February with regard to the fact that the Stocking Works property, the proposed location for the antenna, is in the Newtown Borough Historic District. Residents Bruce DiMicco and Chris Hager also asked questions during the testimony. A court reporter recorded all testimony throughout the hearing. The Conditional Use Hearing was continued until 8 P.M. on January 13, 2009, at which time additional testimony will be taken and questions asked.

Motion to adjourn at 10:05 P.M.

Respectfully submitted,

Marcia M. Scull
Borough Secretary

IN ATTENDANCE

Warren Woldorf	440 Washington Avenue
Jim McAuliffe	545 E. Centre Avenue
Peter Ciferri	The Advance
Marty Ginty	149 N. State Street
Patti Lovi	151 N. State Street
Ed Murphy	301 N. Sycamore Street
Greg LeGreca	Toll Brothers
Mary & David Callahan	113 Court Street
Chris Ortwein	Newtown Corporation
Diana Bowen	The Herald
Danny Adler	The Courier Times
Tom Fischer	103 N. State Street