

Council Work Session
May 7, 2008
Council Chambers

The regular monthly Work Session of Newtown Borough Council was called to order at 5:00 P.M. on Wednesday, May 7, 2008, by President of Council Mark Craig.

Present: Councillors Craig, Jaslow, O'Malley, Sellers, Walker and Woldorf; Solicitor Donald E. Williams and Engineer, Karyn Witkowski of Gilmore & Associates, Inc.

Fire Association Fee Waiver Discussion

Mr. Craig explained that Council had previously approved the waiver of administrative fees for the Fire Association project, but that there was some confusion about a cap on those fees. Mr. Sellers commented that Council wanted to accommodate the Association's request that night but they did not have all the information required at that time. That has since been resolved and the number is \$6800. Mr. Sellers suggested that a contribution by Council to the Fire Association, rather than waiving fees, might be a better approach and would not set a precedent. Ms. Woldorf agreed that she would like to help defray the Fire Association's costs, but an exact amount needed to be determined. Mr. Sellers asked Frank Fabian, representing the Fire Association, to suggest a figure and Mr. Fabian recommended one-half of the \$6800 fee, or \$3400.

- ❖ A motion was duly made by Councillor Sellers, seconded by Councillor Jaslow, and carried unanimously to approve a contribution of \$3400 to the Fire Association.

Friends Boarding Home – Approval of Temporary Banner

Mr. Craig presented a request to Council from the Friends Boarding Home to place a temporary banner on their property to advertise a fundraiser for Friends Home and Village.

- ❖ A motion was duly made by Councillor Jaslow, seconded by Councillor Walker, and carried unanimously to approve the placing of a temporary banner in front of the Friends Boarding Home from May 7-June 8, 2008, to advertise a Fund Raiser for Friends Home & Village on June 7, 2008.

Procedure for Appointment of Mayor

Mr. Craig asked Solicitor Williams to explain the process for appointment of a Mayor. Mr. Williams noted that Mayor Hains had resigned on May 1, 2008, and Council is required to fill the vacancy with a registered voter of the Borough within 30 days. Council may advertise the position and if they choose to interview, the interviews must take place at a public meeting. If Council is unable to fill the position within 30 days, the process then reverts to the Vacancy Board who meets with Council and has an additional 15 days to make a decision.

Mr. Sellers asked about formal acceptance of Mayor Hains resignation. Solicitor Williams explained that Council is not required to accept the resignation but has that option.

- ❖ A motion was duly made by Councillor Sellers, seconded by Councillor Jaslow, and carried unanimously, to accept the resignation of Mayor Glenn Hains effective May 1, 2008.

Mr. O'Malley supported the advertising of the position and formally interviewing candidates.

- ❖ A motion was duly made by Councillor Jaslow, seconded by Councillor O'Malley, and carried unanimously, to advertise for the position of Mayor in The Advance and The Courier Times.

Mr. Craig informed Council that the May 22, 2008, Council meeting be changed from a discussion of Old Skunky to interviews for the position of Mayor. The Old Skunky discussion will be deferred until the June 26, 2008, Council meeting. Council decided to set a deadline of May 20, 2008, for acceptance of letters and resumes for the position of Mayor. Mr. Craig noted that the swearing in ceremony for the new Mayor will need to be held by June 1, 2008. A special meeting could be scheduled for the swearing in ceremony.

Mr. Sellers asked the Solicitor with the resignation of the Mayor accepted what happens now under the Code and then immediately referred to Section 1030 of the Borough Code for the Solicitor to review. The Solicitor noted that the President of Council shall discharge the duties of the Mayor while the Vice-President takes the position of acting president. Mr. Sellers then noted that Mr. Craig is now Mayor and Ms. Woldorf is now acting president of Council. Mr. Walker asked the Solicitor whether the Acting Mayor has the ability to vote on May 22, 2008, for the appointment of Mayor. Mr. Sellers then asked the Solicitor to read Section 1030 aloud and Mr. Walker stated that Council needed clarification on the issue. Mr. Sellers stated that Council remains constituted as a Council of 5. The remainder of the meeting was chaired by Ms. Woldorf as the Presiding Officer of Council.

Discussion of Borough Newsletter

Mr. Craig noted that there had been previous discussion about publishing a Borough newsletter. Numerous companies provide publishing services, which include obtaining advertising. Mr. O'Malley felt it would be a great way to keep residents informed of ongoing projects and events. Mr. Craig suggested that Mr. Jaslow investigate the possibility of pursuing publication of a newsletter and he agreed to investigate options and report back.

Engineer's Report – Karyn Witkowski

Ms. Witkowski reported on the revised Toll Brothers lighting plan, which appears to meet Council's request for distributing the lighting with less intensity. Toll Brothers is asking to install 4 light fixtures on a trial basis along Lincoln Avenue and Ms. Witkowski would recommend approval of the request.

- ❖ A motion was duly made by Councillor Walker, seconded by Councillor O'Malley, and carried unanimously, to approve Toll Brothers installation of proposed lighting along Lincoln Avenue on a test basis.

Ms. Witkowski reported that the Neshaminy/Little Neshaminy Creek Watershed Stormwater Management Plan is being reviewed by DEP and once DEP accepts the plan the Borough will have 6 months to adopt it and/or make modifications.

The Jefferson Street paving project is currently being designed. New PennDot accessibility and ADA requirements have been received and because the project is funded through Liquid Fuels, the design will need to be more detailed to meet the new requirements. Ms. Witkowski expects that this will affect the project budget. Mr. Walker noted that the water company will also be replacing water lines on Jefferson Street.

Toll Brothers and Phillips Court have requested pre-paving punch lists. Phillips Court would like to pave, even though construction has not been completed, as residents would like the paving work finished. Mr. Walker reported that the Borough has been asked to review the one-way signs for Phillips Court, as neighbors have voiced concern about the traffic flow. Chief Wojciechowski has made recommendations regarding the signage. Mr. Walker asked the Solicitor if signage could be addressed even though the streets have not been dedicated. The Solicitor advised that permission would need to be granted by the developer.

Solicitor – Donald E. Williams

The Solicitor clarified that there were no outstanding engineering issues for the Saslow Sub-Division at 111 E. Washington Avenue related to approval of the Certificate of Completion. Mr. Jaslow noted that although a question remained about a HARB issue, it did not affect the final approval for escrow release.

Mr. Williams was asked to discuss meeting rules of order and Roberts Rules of Order specifically. Several options are available and include adoption of Roberts Rules or simply using Roberts Rules as a resource when a specific issue arises. Mr. Sellers noted that the recent training seminar attended by Ms. Woldorf and himself, discussed meeting rules of order, but Mr. Sellers noted that following Roberts Rules could become cumbersome. Ms. Woldorf questioned whether any method had ever been adopted by previous Councils and the Solicitor suggested that the matter be researched before making any decision. Ms. Woldorf offered to research old minutes to determine if Council had ever adopted any rules of order. Ms. Woldorf asked the Solicitor what is required to be included in the minutes. The Solicitor noted that although the Sunshine Law requires that motions, seconds, votes and public comments must be included, some municipalities actually have court reporters record everything. The hybrid, which is our practice, is to summarize what is said and include the items required by the Sunshine Law.

In response to a request for an opinion at the last Council meeting, Mr. Williams researched and advised Council that it has the right to replace the Vacancy Board Chair, since that individual sits at the pleasure of Council. His written opinion is based upon case law from 1950 where it was addressed by the Supreme Court of Pennsylvania. Mr. Williams stated that there are some exceptions, but those exceptions are based on positions with staggered terms. Mr. Sellers disagrees with the Solicitor's opinion because he feels that no court case with the Borough's exact situation has been litigated and he wanted it stated for the minutes that there could be disagreement with Mr. Williams' position. Mr. Sellers asked that the written opinion be made public.

Resident Patti Lovi, 151 N. State Street, asked Mr. Sellers if he was offering an expert opinion as an attorney or if he was speaking as a Councillor. Resident Jeanne Haeckel, 123 Penn Street, voiced the same concern, since Mr. Sellers serves as a Solicitor for another municipality and speaks in legalise. Mr. Sellers responded that although we have a competent Solicitor, he feels that "...it would be the largest mistake in the world for any member of Council who feels differently about a subject and has professional experience to not speak up to register that difference of view."

- ❖ A motion was duly made by Councillor Sellers, seconded by Councillor Jaslow, and carried unanimously, to authorize release of the Solicitor's written opinion on the Vacancy Board position.

Resident Jeanne Haeckel asked for clarification on the issue of Councillor Jaslow being permitted to phone into the January reorganization meeting. Mr. Sellers responded that this is a murky area of the law and he feels the potential for abuse is great. It was Mr. Jaslow's understanding that the Vacancy Board appointment would be deferred until the 4th Thursday of January meeting. Mr. Jaslow's agreement to not call into the meeting was with the understanding that Mark would be supported as President, Julia as Vice-President, the HARB applications be approved and all other issues to be determined at the 4th Thursday meeting. Mr. Jaslow stated that unfortunately that is not what happened. Ms. Haeckel asked if there was a posting for or interviewing of other Vacancy Board candidates and it was clarified that that had not occurred. Mr. Craig stated that all 3 three sitting Councillors and the 3 newly elected Councillors sat together in Council Chambers prior to the reorganization meeting and discussed delaying the appointment of Vacancy Board Chair until they could all discuss a mutually acceptable candidate. Mr. Craig then stated that Mr. Sellers phoned him at 5:30 P.M. the day of the reorganization meeting to announce he had a candidate for Vacancy Board. Mr. Craig reminded him of the agreement to delay the appointment. Mary Jane Leonard voiced concern that Mr. Jaslow not find her competent for the job. Mr. Jaslow stated that although she might well be competent, he knew nothing about her and that was his objection to not being permitted to participate in the process.

Mr. Sellers suggested thinking about the issue between now and next Tuesday's Council Meeting and having further discussion at that time. Mr. Craig noted that there might be other candidates for the Vacancy Chair position who have not yet been discussed.

Old Business

Mr. Craig reminded Council that committee reports should be provided in written format, unless the Secretary is notified to add a committee report to the agenda by Friday prior to a meeting, in which case a verbal report will be given and recorded in the minutes. Written committee reports will be provided for the public, but will not be part of the approved minutes unless they are also verbally reported on during the meeting.

Mr. O'Malley advised that the Newtown Telecommunications Advisory meetings will be held at the Newtown Township Firehouse during renovations to the Newtown Borough Firehouse.

Mr. Craig reminded Council that the Newtown Area Jointure meetings are held the 1st Thursday of every month at 7 P.M. at the Wrightstown Township Municipal Building.

New Business

The 5th Grade Newtown Walking Tour is scheduled June 4, 2008. Generally the Mayor greets the classes in Council Chambers. The Mayor also introduces the Memorial Day speaker.

Public to be Heard

Resident Paul Salvatore commented that he has always appreciated the way the Borough did things. Everyone got a fair shake, which was reflected by the fact that even though Republicans were running Council the

committee appointments reflected more Democrats being appointed. It was obvious that appointments were not made by political party and he would hope that the process would continue going forward, particularly in looking for a Mayor. Mr. Salvatore then asked Mr. O'Malley when the televised meetings would begin. Mr. O'Malley indicated that it could be as soon as July.

Council went into Executive Session for discussion of pending litigation.

The meeting was adjourned at 7:15 P.M.

Respectfully submitted,

Marcia M. Scull
Borough Secretary

IN ATTENDANCE

Diana Bowen	Bucks County Herald
Paul Salvatore	148 N. Elm Avenue
Dave & Mary Callahan	113 Court Street
Joe & Patti Lovi	151 N. State Street
Jeanne Haeckel	123 Penn Street
Mary Alice Hagan	203 E. Washington Ave.
Warren Woldorf	440 E. Washington Ave.
Mary Jane & John Leonard	446 E. Centre Ave.
Michael Jones	422 Edgeboro Dr.
Charles Swartz	323 E. Washington Ave.
Rosemary Wuenschel	26 N. Lincoln Ave.
Eric Johnson	247 S. State Street
Peter Ciferri	The Advance

Addendum:

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Donald E. Williams
Bradford J. Lare

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Memorandum

Council of Borough of Newtown
Williams & Lare LLP, Solicitors
April 30, 2008
Vacancy Board

Borough Council has requested a written opinion on whether the Vacancy Board Chairman can be replaced during his or her term. This issue arose when Borough Council recently replaced the incumbent vacancy board chairman¹ with a new vacancy board chairman.

Action by the vacancy board is required only if Borough Council is unable fill a vacancy in the office of the mayor, member of council, auditor, controller, assessor or tax collector within thirty days of the date of vacancy.

The Borough Code provides, in pertinent part, as follows:

" ...Such board shall consist of the borough council exclusive of the mayor, and one registered elector of the borough who shall be appointed by the borough council at the council's first meeting each calendar year or as soon as thereafter practical and who shall act as the chairman of the vacancy board... " 53 P.S. Section 45901

The Borough Code is silent on removal or replacement of the vacancy board chairman.

Pennsylvania Courts have addressed removal of officers. In *Naef v. Allentown*, 424 Pa. 597, 227 A. 2d. 888 (1967), the Pennsylvania Supreme Court summarized and analyzed the law as follows:

" ...Article VI, Section 4 of the Constitution of Pennsylvania provides in part: "Appointed officers, other than judges of the courts of record and the Superintendent of Public Instruction, may be removed at the pleasure of the power by which they shall have been appointed."

In a multitude of decisions, this Court has ruled that, under the above constitutional provision, appointed public officers are removable from the office at the pleasure of the appointive power even though the appointments are made for a statutorily fixed term ...

However, in *Watson v. Pennsylvania Turnpike Commission*, 386 Pa. 117, 125 A. 2d. 354 (1956), this Court held that Article VI, Section 4 of the Pennsylvania Constitution, *supra*, must be read in conjunction

with Article XII, Section 1 thereof, which provides in part as follows, "all officer, whose selection is not provided for in this Constitution, shall be elected or appointed as may be directed by law.....," and ruled that where the legislature creates a public office, it may impose such terms and limitations with reference to tenure or removal of an incumbent as it sees fit. In *Watson*, supra, the Court concluded that where public officers are appointed to legislatively created commission or board, for a statutorily fixed term with staggered expiration dates, the presence of the staggered term provision indicates a legislative intent that the holders of the office are not to be removed at the pleasure of the appointor. ..."

More recently, the Commonwealth Court summarized the law as follows in *Venesky v. Ridge*, 789 A. 2d (Pa. Commw. 2002):

... In the absence of statutory language governing removal of an appointed officer, the constitutional provision providing for removal at the pleasure of the appointive power prevails. *Watson v. Pennsylvania Turnpike Commission*, 386 Pa. 117, 125 A.2d 354 (1956). Where the legislature creates a public office, it may impose terms and limitations as to the office's tenure and the removal of the an incumbent. *Commonwealth ex reI. Sortino v. Singley*, 481 Pa. 367, 392 A.2d 1337 (1978) (quoting *Watson*). In cases where the language is not clear, the Pennsylvania Supreme Court has determined that statutory language setting fixed terms of office with staggered expiration dates demonstrates the legislature's intent that the officer not be subject to removal by the appointing authority. *Id.* A fixed term alone does not bar removal; rather it is the staggered terms that preclude appointing power from removing an appointed official at will. *Id.*; *Naef v. City of Allentown*, 424 Pa. 597, 227 A.2d 888 (1967); *Schluraffv. Rzymek*, 417 Pa. 144,208 A.2d 239 (1965); *County of Allegheny v. Jones*, 99 Pa. Commw. 647, 513 A.2d 1137 (Pa. Cmwlt. 1986).

As the vacancy board chairman serves for a fixed one (1) year term, is not part of a staggered term commission or Board and the Borough Code is silent on the removal of the vacancy board chairman, it our opinion that the vacancy board chairman serves at the pleasure of the Borough Council and may be removed at the pleasure of Borough Council. Accordingly, the action of Borough Council in replacing the incumbent vacancy board chairman with a new vacancy board chairman is permitted by Pennsylvania law.

(1 Minutes from the Reorganization Meeting held on January 7, 2008 establish that the filling of the position of the vacancy board chairman was presided over by the Mayor and that a nomination process was used. This process is not in conformance with the Pennsylvania Borough Code.)