

Minutes  
Council Meeting  
February 12, 2008

- I. A regular scheduled meeting of the Borough Council was called to order at 7:08 p.m. by President Edward M. Mitchell. The meeting was held in the Upland Municipal Building.
  - A. Present were: President Edward M. Mitchell and Vice President Christine Peterson. Present were Council members Mrs. Sandy Miazza, Mrs. Georgianna Hicks, Mr. Lee Hunter and Mr. Dennis Walls. Mr. Charles Catania, Sr. P.E., Mr. Robert O'Connor, Esquire and Mrs. Shirley Purcival, Borough Manager/Treasurer/Secretary were present. Mayor Michael Ciach was not present.
  - B. Approximately twenty residents attended the meeting.
- II. The Pledge of Allegiance to the American Flag was lead by President Edward M. Mitchell. The Pledge was followed by a moment of silence.
- III. President Mitchell asked for a motion to accept the minutes of the CDBG Meeting of December 11, 2007, Council Meeting of December 11, 2007, Reorganization Meeting of January 7, 2008 and Council Meeting of January 8, 2008, Items A-1 through A-4.

Mrs. Peterson made a motion to accept the minutes of the CDBG Meeting of December 11, 2007, Council Meeting of December 11, 2007, Reorganization Meeting of January 7, 2008 and Council Meeting of January 8, 2008, Items A-1 through A-4. Mrs. Hicks seconded the motion. Council unanimously voted aye on the motion.

IV. Treasurer/Manager's Report - Mrs. Shirley Purcival

Mrs. Peterson made a motion to accept the Treasurer/Manager's Report, #6, Items A-1 through A-10. Mr. Hunter seconded the motion. Council unanimously voted aye on the motion.

V. Auburn Village - Mr. Dennis Walls

Mr. Walls stated that the Auburn Village Committee has conducted twelve inspections and they are in the process now of working with some new criteria for the residents concerning leasing, lease addendums and new applications.

VI. Public Safety - Mr. Leland Hunter

Mr. Hunter stated that the committee met with several candidates for part-time police. We have quite a few other interviews to do at a future date. I met with the Police Department and the training officer, Captain Love. We had some discussions to straighten out and the new police car, that will be arriving any day.

VII. Building and Grounds - Mrs. Sandra Miazza

Mrs. Miazza stated that the swings were put back up and the benches are in place in the parks and I have some figures on a port-o-potty which we will get together on next month and take a vote. Letters were sent out to all of the organizations on the purchase. The Community Affairs Committee will meet February 20, 2008.

President Mitchell asks Mrs. Miazza how has the response been?

Mrs. Miazza responds: So far, pretty good.

VIII. Ordinances and Resolutions - Mrs. Georgianna Hicks

Mrs. Hicks offers a motion to accept Resolutions No. 4, 5, 6, 7, 8 and 10 of 2008. The motion was seconded by Mrs. Peterson. Council unanimously voted aye on the motion during a roll call vote.

Mrs. Hicks made a motion to advertise proposed Ordinances 1 through 5. Mrs. Peterson seconded the motion.

Council unanimously voted aye on the motion.

IX. Streets and Equipment Report - Mrs. Christine Peterson

Mrs. Peterson stated that we have implemented a new procedure for the vehicle maintenance and that the oils will be that every three months, or three thousand miles, the vehicles will be serviced. Oil change, all fluids checked and such, and also our highway employees now need a mandatory CDL, so everyone will be required to have that. The trash truck had to go in for repair because it had a gasket leaking and numerous hydraulic hose. That has now been repaired.

President Mitchell asked when this was completed?

Mrs. Peterson responded: on February 15, 2008.

#### X. Use and Occupancy Report

Mr. Mitchell reported that a total of \$415.00 was deposited for the Use and Occupancy Inspections.

#### XI. Mayor's Report

President Mitchell asks about the Christmas announcement.

Mrs. Hicks stated the Holiday Event Committee met and went around the community and looked at decorations at Christmas time and we came to a conclusion on who would be the winners this year. Unfortunately, Mayor Ciach has the certificates with him and he is currently on I-95 because of the bad weather conditions, so I won't be able to offer anyone a certificate or a prize this evening, but the announcement is that the Peterson Family on Fourth Street has won first place. Congratulations. Mr. Bolli on Willow Way has won second place. The Sawicki Family on Main Street has won third place and the Long Family on Birch Lane has won honorable mention.

Mayor Ciach will be in contact with these families to drop off their certificate and their prizes as well.

#### XII. Solicitor's Report - Mr. Robert E. O'Connor, Esquire

Mr. O'Connor stated that we met this past month with representatives of Verizon regarding bringing competition to the Borough in the form of fios television service which would compete with digital cable service from Comcast.

President Mitchell asks Mr. O'Connor if he has any numbers on the pricing and some of the promotional items that they are willing to give.

Mr. O'Connor responds that the folks at Verizon are willing to come into the Borough and hopefully the competition would be a good thing. Speaking from personal experience, my experience with Comcast and their customer service and it has been frustrating because when it's the only company you can get your tv from unless you go with Direct TV. Mrs. Purcival was trying to get information to them regarding current agreements, so the process is moving forward. Like I said, the goal isn't anything nefarious by the borough, but simply to bring competition and hopefully offer the folks in the community, if nothing else, more options, which will hopefully serve to keep the prices down as best as possible.

President Mitchell asks Mr. O'Connor for an update on Visionary.

Mr. O'Connor wants to mention two things on the litigation. First of all, I want to let the members of the public know there was a zoning hearing which was scheduled for this Monday night, last night. Obviously that didn't take place. Unfortunately, the borough didn't learn until two or three p.m. that wasn't going to take place on Thursday, so the borough did their best to put notices in the paper to try and notify everyone and we apologize if we inconvenience anyone.

The other thing that I can tell you about that is that last night's meeting was rescheduled for March 10<sup>th</sup> at 6:30 p.m. but with that said, what I'd like to do, because we had an executive session prior to tonight's meeting which related to litigation matters pertaining to the Visionary litigation. With that said, I guess what I should probably do is, and I can't make a motion, but I can recommend the Borough Council make a motion and take a vote here on this issue to decide whether or not the Borough Council wishes to continue to attempt to stay the litigation for the purpose of engaging in future settlement negotiations with the applicant at this time and should be done in executive session because it is still relating to a litigation matter and if the current council is so inclined to do that I would encourage you to do that as soon as possible because I think we should get that done before the next scheduled zoning hearing.

The other thing, is if you wait until the next public hearing which is March 11<sup>th</sup>. I would ask the someone on the board make a motion to authorize the Borough Council to recommend to the attorneys as to whether or not you want to meet with Visionary with the purpose of exploring the potential of a negotiated resolution.

Mrs. Miazza asks Mr. O'Conner that's not what we just talked about. We talked about having a meeting, but not to resolve anything.

Mr. O'Conner responds: The vote would simply be to agree that the Borough Council would be willing to hold an executive session meeting with the applicant for the purpose of discussing negotiations, possibly aimed toward resolving the litigation.

Mrs. Miazza responds we shouldn't put the word "act" into that. We only agreed to meet. That's it nothing else.

Mrs. Hicks also responds we can sit down and have a conversation, but that's as far as we are willing to do. I thought there was going to be a paper put together between this and that.

President Mitchell responds that it has been suggested that we put a motion on the floor to agree to meet Visionary and that's it. Is that everybody's understanding?

Mr. O'Conner responds that I guess it would be an informational type meeting. I think part of the issue that the folks up here have is, one thing that I will mention that we discussed earlier, is the fact that half the council members, this is their second meeting, so I think they are trying to get up to speed. A lot of them sat in the audience and sat as members of the public and heard and saw what was going on at the public zoning hearings, but I think a lot of them, if I could speak for you, would feel more comfortable being brought more up to speed as to what is on the table so you can make decisions as to how you want to go with the litigation.

Mr. McClintock (from the audience) asks the Solicitor if it is legal to have a meeting? I have a right to public comment on this issue.

President Mitchell responds that Mr. McClintock was part of that process so he definitely had some input into it. Unfortunately, Dick, we don't know what went on prior to us getting it. We only know what everybody else sitting in the audience had seen.

Mr. McClintock (from the audience) But you're going to have a meeting with the people that are suing the borough. I'm being sued and you're going to meet with these people and do what?

President Mitchell responds to Mr. McClintock that no decision has been made. We are going to listen to their side of it. It's that simple. How did this thing get off track? We don't know. How did they come in the back door to demand a permit? We don't know. We want to hear how this all happened. It's that simple.

Mr. McClintock (from the audience) repeats that he is being sued and Borough Council is going to meet with Visionary when there is a lawsuit filed. I think that you better protect me on that before you meet with these people. You're putting people like me in the middle.

President Mitchell responds: We're already spending a ton of money. We're already at \$12,000.00. We have the right to meet. We just want to find out what went wrong.

Mr. McClintock responds: What went wrong?

President Mitchell responds :I'm not too sure of who's right and who's wrong in this issue. If there were permit violations. What do we call it, how do we call it.

Mr. McClintock responds: You're going to ask them and get their take on it instead of our Solicitor.

President Mitchell responds: Dick it's quite obvious that the planner that was here did not represent the borough very well. It certainly doesn't help having a whole set of documents missing from the first hearing.

Mr. McClintock responds: Meeting with the company while there is a lawsuit in progress is not going to give you the answers. I'm worried about that.

President Mitchell responds: We're very much concerned to. As you well put it at the December meeting in the minutes, we're going to inherit that. Well, we'd like to know what we're inheriting and we want to see what it is that we can get and I'm not too sure that the \$12,000.00 we've already spent was the best bang for our dollar.

Mr. McClintock responds: So far we've had legal representation at these zoning hearings. We have the zoning plan process. I can't understand why in God's world why anybody would want to meet with this company. What can they give you, in other words, their side of the story?

They're going to do that in the zoning hearing. Why does Borough Council want to meet with these people in any forum. It just boggles my mind, Ed.

President Mitchell responds: I understand Dick, and it boggles a lot of peoples minds as to how and why this is.

Mr. McClintock responds: You're getting off the point. It got to where it's at because when they first came in, it was they who refused to go through the process like anyone else and that's what started it and right away they filed a lawsuit. Now in a lawsuit, I was always told, don't talk to the people that are suing you. Now you're saying that Borough Council is going to meet with the very people that are suing us and talk to them about their side of the story.

President Mitchell responds: Dick how far off can I get when I have my lawyer sitting right next to me? All Council is going to do is sit there and listen to their side of the story.

Mr. McClintock responds: Well, I'm certainly going to call the attorney that represents the borough and get her take on it because I don't think this is right. I don't think the borough should be meeting with them.

President Mitchell responds: We've already met with her and what her recommendation is to sit down and do that. We definitely need to sit down.

Mr. McClintock responds: Well, I want her to tell me that because I don't know why anybody's meeting with them.

President Mitchell responds: That is your right because you're named in the lawsuit.

Mrs. Hicks asks council should people named in this lawsuit be going to this meeting? I mean, maybe we didn't make that clear. Maybe we didn't bring that question to her, because it doesn't make sense.

President Mitchell responds: Well everybody's names are on there and that might be a good thing.

Mrs. Hicks responds: Well I think if everyone's names are on there, they have a right to be there.

Mr. McClintock addresses the Borough Solicitor, Mr. Robert O'Connor. Would it be a fact that no matter what any council member said at that meeting that anything could be used against him for the lawsuit or even a settlement?

Mr. O'Connor responds to Mr. McClintock: "Well typically, Mr. McClintock when you engage in settlement discussions, and the reason we are going to call it settlement discussion and the reason we are going to do that is because when you engage in settlement discussions anything that is discussed in settlement discussions is not able to be used against you later down the road in the event those discussions, whatever you want to call them, go awry and don't work, so basically what that means is —

Mr. McClintock interrupted Mr. O'Connor by saying "You as a Solicitor believe or are comfortable with these people and the track record that they have? How they have taken everything out of context from the very word go? From the telephone conversations with Shirley Purcival?"

Mr. O'Connor stated that is another issue down the road, but there are things that we are going to or we could gain as well from these discussions that we could equally use against them, but we are not supposed to. Hopefully both sides will negotiate in good faith or have discussions in good faith. Whether that is possible or whether that is doable, Mr. O'Connor did not know.

Mr. McClintock stated that the President is showing concern about finances, which we know is going to be astronomical before this is done and now you're telling me if they violate this ruling, or whatever it is called, then we can end up in legal turmoil again. These people have a background or track record of taking everything out of context. Mr. McClintock stated that he was surprised that Mr. O'Connor would okay a meeting for these people to sit at and they are being sued by the very people that they will be talking to and if they may say something that is really is out of line, as far as the lawsuit is concerned and after it is said, you can't take it back.

Mr. O'Connor said that there are two things that can be done. Number 1 that anything that's said can't be used. Number 2, I think this meeting will be more for informational purposes as opposed to negotiation purposes, but nevertheless, I think if we could determine in those negotiations that we prevent anything from being used and if the Borough Council wants to authorize it, we can hire a court reporter to come so there would be a record of what is said, so in the event something is later attempted to be used against us, it's on the record and there is proof.

President Mitchell asks Mr. McClintock if he wants to come to the meeting.

Mr. McClintock responds, "No, not with the people that are suing me, no way".

Mrs. Hicks responds she will contact the Borough lawyer handling the lawsuit, if the three council members that are already being sued should be a part of that conversation. I'm just feeling a little bit more uneasy than I was earlier.

President Mitchell asks Mrs. Hicks if she knows what happened prior.

Mrs. Hicks responds: No, but I think that we should be able to get that information from our end. Whether it's legal counsel, or the people who are running the hearings. Somebody on our end has to have the same information that the other people have. Our lawyer, or our team that we put together to run those hearings. They have to have the same information, so we could be asking them instead of asking the other team, and maybe that's where we should start.

President Mitchell asks Mrs. Hicks, "Are you not in favor with meeting with Sue again.

Mrs. Hicks responds that she would rather speak with Sue first before we meet with this other counsel.

President Mitchell responds, okay.

Mrs. Hicks responds that can we ask to get that information from our counsel. Can we get it from the people who are running the zoning hearings? Maybe they can fill us in before we start going to the opposing team.

President Mitchell responds, "Does everyone else feel the same?" Okay then we'll hold off on that. President Mitchell then asks Dick if he would like to sit with Linda and Lisa, with Sue.

Mr. McClintock responds, "Of course".

President Mitchell asks council if they agree with that. Is night better? We'll set that up. We don't need a motion for that?

### XIII. Engineer's Report - Mr. Charles J. Catania, Sr. P.E.

Mr. Catania stated that over the past month he has done an inspection on Auburn Village middle aged housing. Outside repair work is necessary to bring it up to one hundred percent. We've also looked at the possibility of plans of replacement. We've given that all that information to the borough. It was just recently. I'm sure not everyone has had a chance to look at it. We've also looked at the possibility of the Seniors Building. Again, this has all been within the last couple of weeks, so he is certain they haven't had a chance to look at that. You've asked us to look at the possible extension of Eleventh Street where it exists on Mulberry and continues out through Hill Street for emergency vehicles. We've done that. Merely a quick look at it. It looks like a couple of hundred feet of roadway. It would probably run you about \$25,000.00, plus whatever legally is necessary. Mr. Catania stated that's about all he had to report.

President Mitchell addresses the audience - We have asked Mr. Catania to look at the Auburn Village outside structure. What we found is kind of disheartening when you look at the amount of money it would take to make repairs that you can't really see with the naked eye. Dennis's committee is looking at it and next month hopefully we'll have a recommendation as to what direction we're going to go.

## XV. New Business - President Mitchell

President Mitchell stated that A-1, the cancellation of the 2<sup>nd</sup> meeting of the month has been done.

Mr. Hunter offered a motion, which was seconded by Mrs. Miazza that Item A-2 Police Clerk Appointment and Item A-3 Recording Secretary appointment be approved.

Council unanimously voted aye on the motion during a roll call vote. Mrs. Peterson abstained on the vote for Item A-2.

## XVI. Floor Open to the Public

Frank Kamp - No address given - On the Auburn Village houses, are they safe?

President Mitchell responds yes.

President Mitchell stated that there are a number of things that we have looked at. One being with the potential earned income tax for the long range plan that we could use some of the money coming out of that depending on the extent and the amount we could use from the bond issue, if we had to. The earned income tax calls for an excess of one million dollars that you would realize from an earned income tax. A lot of the repair money could come out of that. Since 1953 when the borough bought the Upland Terrace, Inc., they bought the houses for \$90.00 and ever since then they have enjoyed a tremendous amount of revenue that was put back into the general fund to offset the raising of taxes. Understanding that, over the years we haven't kept up with the repairs like we should have on some of the key issues. Now past councils have done a good job at putting new roofs on, but on the infrastructure, we haven't done a whole lot, and I'm sure if you go back in the last fifty-five or sixty years, we just didn't have the money to do that on a large scale. We've been applying band aides on some of the issues and in most part, they are in good shape. We have tenants who take care of them.

President Mitchell responds to a question from the audience that last year we paid \$5800.00 in school taxes. Auburn Village is probably a half a million dollars a year in rent and \$320,000.00 of that gets deposited into the general fund that offsets the cost of running the borough. The earned income tax should be on the ballot under Act 1. We are coming in with an EIT tax under Act 511 which is an entirely different animal. Keep in mind in Act 1 it's very clear the school district has a right to do that, and we share the percentages of any money that is collected. One of the battles, as you know with Chester Upland School District, what they are trying to do is to get Chester Township and the City of Chester to pay back some money they think they are entitled to. Under Act 511, Upland does not have to share with Chester Upland School District. Upland Borough is already contributing a million and a half dollars in real estate tax from all of the home owners in the community that support the Chester Upland School District tax base.

President Mitchell responds to another question from the audience about the criteria for applications to Auburn Village. It's my understanding that the applicants are on the list and if there is an opening, the next name on the list is contacted. That is my understanding.

Mrs. Purcival, Borough Manager states that copies of the Earned Income Tax, Ordinance No. 5 of 2008 will be available in the borough office on Friday, February 15, 2008.

President Mitchell comments that we should keep an eye on the Earned Income Tax also for Chester Upland on the April ballot. There is a question and it's pretty safe to say anytime to give a choice to vote, you have a vote. Secondly, Upland Borough Earned Income Tax will be ready for April 1<sup>st</sup>, for the first posting.

Someone in the audience asks the effective date.

Mrs. Purcival states April 15<sup>th</sup>.

President Mitchell - On January 17, 2008 we received a resignation from Mr. Richard McClintock. We are due to accept with regrets.

Mr. Hunter offered a motion, which was seconded by Mrs. Hicks. Council unanimously voted aye to accept Mr. McClintock's resignation with regrets.

President Mitchell asks for a motion for consideration to fill the vacancy caused by Mr. McClintock.

Mr. Hunter nominated Moira Crawford.

Mrs. Hicks nominated Richard Ladd.

President Mitchell asks if there are any other names for consideration.

No additional nominations are offered.

President Mitchell announces nominations are closed.

Mr. Hunter offered a motion to accept Moira Crawford to fill the vacancy, which was seconded by Mrs. Peterson.

Mrs. Purcival called the roll: Mrs. Hicks, Nay. Mr. Walls, Aye. Mrs. Miazza, Nay. Mr. Hunter, Aye. Mrs. Peterson, Aye. Mr. Mitchell, Aye.

The motion is carried.

President Mitchell announced that Ms. Moira Crawford will fill the seat vacated by Mr. Richard McClintock. Best Wishes.

Borough Manager, Mrs. Purcival administers the Oath of Office to Moira Crawford.

There being no other business before the Council, President Mitchell requested a motion to adjourn.

Mrs. Peterson offered a motion, which is seconded by Mr. Hunter to adjourn the meeting at 8:20 p.m. Council unanimously voted to adjourn the meeting.

Respectfully submitted,

Shirley Purcival  
Borough Manager/Secretary/Treasurer

Virginia M. Sentyz  
Recording Secretary