

Council Meeting  
January 13, 2009  
Chancellor Center

The regular semi-monthly meeting of Newtown Borough Council was called to order at 6:30 P.M. on Tuesday, January 13, 2009, 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, O'Malley, Sellers, Walker and Woldorf; Mayor Dennis F. O'Brien; Solicitor Bradford Lare and Engineer John Genovesi of Gilmore & Associates, Inc.

### **Mayor's Report – Dennis F. O'Brien**

- **Recognition of Frank B. Fabian**

Mayor O'Brien read a Proclamation for Frank B. Fabian, a native Newtownian, recognizing his 22 years of service to the Newtown, Bucks County Joint Municipal Authority, with 20 years as president of the Authority. Mr. O'Brien noted that Mr. Fabian also served his community as an active member of the Newtown Fire Association, Newtown Borough Council and the Newtown Reliance Company. The family business, William Fabian & Sons, is celebrating its 100<sup>th</sup> anniversary this year. President Craig thanked Frank for his years of service. Mr. Fabian commented that he wanted to leave on a high note, that the Sewer Authority is in excellent shape and he leaves it in good hands. He noted that there are no politics involved with the Sewer Authority. When the members walk through the door, politics stays outside. Mr. Fabian noted proudly that there had never been a "no" vote because the group had always been able to reach consensus. Mr. Fabian thinks the "proof is in the pudding" and the authority probably has the lowest rates in Bucks County, possibly in the five county area. He said that it had been a pleasure serving on the Sewer Authority.

Authority member Eric Johnson concurred with all that had been said today and stated that the board will certainly miss him.

- **The Police Report for December 2008**

Mayor O'Brien reported on DUI patrols and coverage for the Holiday and Chanukah parades.

Mr. Sellers continued to voice his concerns about pedestrian crosswalk violations. He feels the crosswalks are no safer and suggested having special coverage, similar to the Buckle-up patrols, at the crosswalks. Mr. Sellers is also worried about parking violations in front of Starbucks and would like to see active enforcement of parking regulations at that location. He also questioned whether the area could be more prominently marked.

### **Special Events Reminder**

- Welcome Day – May 3, 2009, 11 A.M.-5 P.M.

## **President's Report**

Mr. Craig reminded Council and the public of the Joint Meeting of the Newtown Corporation, the Newtown Borough Council and the Newtown Township Supervisors to be held at 7 P.M., January 27, 2009, at the Chancellor Center.

Mr. Craig raised the issue of having bi-monthly committee reports, rather than the current monthly oral or written reports. In order to streamline the meetings, Mr. Craig felt that making this change might be a consideration and he will await input from Council.

## **Correspondence**

An invitation was received by Mr. Craig for the Eagle Scout Court of Honor for Matthew Tentilucci on January 24, 2009. Mr. Craig spoke of Matthew's Eagle Scout project, which was a paver patio and sitting wall at Linton Memorial Park. Mr. Jaslow said that traditionally Council has presented a proclamation declaring the day of an Eagle Scouts Court of Honor as "the scouts" day in Newtown.

- ❖ A motion was duly made by Councillor Jaslow, seconded by Councillor Sellers, and carried unanimously, to declare January 24, 2009, as Matthew Tentilucci Day in Newtown.

## **Public to be Heard**

Paul Salvatore, as Chair of First Night Newtown, thanked the community, both businesses and residents, for its support of the First Night events. Mr. Salvatore announced that First Night will be held again next year with plans for several venues in the Borough.

On a personal note, Mr. Salvatore thanked Council for not raising his taxes this year.

## **Certificates of Appropriateness**

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

### **COA 2008-078H Applicant Tiffany Costello, 16 S. State Street, New Age Astrology**

The applicant was seeking a Certificate of Appropriateness for front and rear directory signs and a door sign.

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

Engineer Genovesi reported that he and the Solicitor met with Frank Tyrol to discuss the Phillips Court development. A detailed inspection of the development was conducted to ascertain the outstanding improvements related to the request for an escrow release. Mr. Tyrol indicated that he intends to begin making improvements in the spring, which include paving the road and installing the lighting. PECO must approve the conduit layout for the streetlights and work will begin after that approval. Several repairs to the previously installed curbing and storm water system must be completed. Based on that information, Mr. Genovesi asked that the escrow release be tabled tonight. Mr. Craig asked Solicitor Lare if tabling the release could create a problem with a deemed approval. Mr. Lare suggested having a waiver in the file, if the applicant would agree to that. No motion to table was required, as the motion remained tabled from the December meeting. Mr. O'Malley asked if signage for Phillips Court had been discussed and Mr. Genovesi noted that signage is one of the issues to be addressed.

### **General Projects Update**

Mr. Genovesi prepared a letter to Toll Brothers regarding the Newtown Station streetlights, detailing the discussions and agreements after numerous on-site visits with members of Council and the Homeowners Association president. Four of the originally approved lights will not be installed and in answer to Mr. Craig's question, Mr. Genovesi confirmed that the change still meets the Borough's lighting standards.

Ms. Woldorf asked the status of the Old Skunky Study Scope revision and Mr. Genovesi is working on a compromise idea, which will be presented at the February work session.

### **Presentation of Minutes**

- ❖ A motion was duly made by Councillor Woldorf, seconded by Councillor Sellers, and carried unanimously, to approve the Work Session Minutes for the December 3, 2008, meeting, with the following addition under the Engineer's Report: Mr. Sellers noted the history of problems with Skunky began with the approval of Washington Village in the late 1960s. At that time, the Borough engineer had warned of storm water problems downstream if Washington Village was constructed. He noted that prior councils had ordered comprehensive planning to correct the problems, but had not completed the project for reasons of cost. Mr. Sellers also noted no one, two or even three property owners can correct the problems along the length of Skunky and that Borough Council needed to show leadership to get it done.
- ❖ A motion was duly made by Councillor Woldorf, seconded by Councillor Sellers, and carried with Councillor O'Malley abstaining, to approve the Council Minutes for the December 9, 2008, meeting with the following addition under the Toll Brothers lighting discussion: Mr. LeGreca confirmed that the 50 watt bulb was preferred by the Homeowners Association and under Budget & Finance regarding the Ambulance contribution, change the increase amount to \$5000.

## **COMMITTEE REPORTS**

### **Budget & Finance – Robert Walker**

#### **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 December 2008, totaling \$295,831.60.

Ms. Woldorf asked how much had been spent thus far on the Douris litigation and Mr. Walker said the figure will be provided.

### **Environmental Advisory Council – Liaison Julia Woldorf**

Ms. Woldorf reported that Henry D'Silva is heading the Cool Cities committee looking for ways to reduce the Borough's carbon footprint. Bob King is assembling a committee to look at the Open Space Plan revision.

### **Joint Historic Commission – Liaison Julia Woldorf**

The Commission recommended approval of the demolition request for a small ranch house at 102 Frost Lane. The house will be replaced with a 2-story Colonial on the same footprint as the original house. The owner's had originally intended to use the old house and add a second floor, but realized that this would not be possible due to the structural condition of the original house. The Commission determined that the house had no historical significance, but they were concerned about building 2-story homes next to remaining ranch homes and cape cods.

### **Long Term Parking – Gerard O'Malley**

Mr. O'Malley reported on a plan submitted by Jim Steen to gain some additional parking spots. The suggestion was to add parking on both sides of Penn Street, near the corner of Penn and State Streets, which add approximately 5 parking spots. In addition, Mr. Steen wanted to return one of the parking spots that was removed in front of The Giving Tree. The parking spaces had been removed to improve the sight triangle for people existing West Penn Street and making a right hand turn onto State Street. The third component was to add signage designating additional parking behind Ten Centre. The Committee discussed the corner of Penn and State, as it is rather narrow, and they had concerns about parking on both sides of the street at that location. The Committee decided to ask the police chief for his input. Mr. Jaslow commented that the Penn Street and Mercer Street intersections with State Street are used to make U-turns in order for vehicles to park for Starbucks access. Mr. Jaslow finds this very dangerous for traffic turning into those intersections and suggested the Committee look at that issue and perhaps recommend signage. Mr. Craig reported that the Newtown Township Supervisors are in the process of coordinating their Traffic Committee with the Borough Traffic Committee to address related issues.

Mr. O'Malley reported that the Regional Traffic Planning Task Force voted to "go dormant" for 2009. The Task Force could be reactivated by any municipality.

There was a brief discussion about continuing the Ad Hoc Committee in 2009 and they concurred that the Committee was still needed. Mr. O'Malley noted that the Ad Hoc Traffic Committee will also continue for 2009.

### **Newtown Corporation – Michael T. Sellers**

Mr. Sellers announced that four new members were recently appointed by Newtown Township to the Newtown Corporation Board. Mr. Sellers reported that at the recent Board meeting a motion was made for the Newtown Corporation to no longer accept funding or appointments from Newtown Borough Council. After considerable discussion, the motion was tabled. Mr. Sellers feels that the Joint Meeting on January 27, 2009, is all the more important for Council to attend and participate in a discussion related to the future involvement and relationship of the Borough, the Township and the Newtown Corporation.

### **Newtown Creek Coalition– Michael Sellers**

- ❖ A motion was duly made by Councillor Sellers, seconded by Councillor Woldorf, and carried unanimously, to accept the Newtown Greenway Department of Conservation and National Resources grant in the amount of \$12,100, and to authorize President of Council to sign the contract, conditioned on acceptance of the contract after review by the Solicitor.

After a meeting with representatives of the Heritage Conservancy who shepherded the grant, it was decided that the grant needed more explanation in terms of process. There is also a relationship between the Borough's grant and other grants, including the Borough's Open Space grant, and Mr. Sellers suggested Jeff Marshall and colleagues attend the Work Session or next Council Meeting to discuss that process.

A visioning meeting will be held late in March in Newtown Borough with an opportunity for Councillors, Supervisors, property owners and anyone else interested, to talk about the future and projects for Newtown Creek.

### **Personnel Committee – Julia Woldorf**

- ❖ A motion was duly made by Councillor Woldorf, seconded by Councillor Sellers, and carried unanimously, to reappoint James McAuliffe, 545 E. Centre Avenue, to a 3 year term on the *Historic Architectural Review Board*, through December 31, 2011.
- ❖ A motion was duly made by Councillor Woldorf, seconded by Councillor Jaslow, and carried unanimously, to reappoint Lorraine Pentz, 98 Penn Street, to the *Joint Historic Commission*, for a 4 year term through December 31, 2012.
- ❖ A motion was duly made by Councillor Woldorf, seconded by Councillor Sellers, and carried unanimously, to reappoint William Heinemann, 35 N. Chancellor Street, to the *Planning Commission* for a 4 year term through December 31, 2012.
- ❖ A motion was duly made by Councillor Woldorf, seconded by Councillor O'Malley, and carried unanimously, to reappoint Paul Salvatore, 148 N. Elm Avenue, and carried unanimously, to the *Planning Commission* for a 4 year term through December 31, 2012.
- ❖ A motion was duly made by Councillor Woldorf, seconded by Councillor O'Malley, and carried unanimously, to reappoint Robert Mirales, 513 E. Centre Avenue, to the *Recreation Board* for a 5 year term through December 31, 2013.
- ❖ A motion was duly made by Councillor Woldorf, seconded by Councillor Jaslow, and carried unanimously, to reappoint Thomas Dillione, 409 Edgeboro Drive, to the *Zoning Hearing Board* for a 3 year term through December 31, 2011.
- ❖ A motion was duly made by Councillor Woldorf, seconded by Councillor Walker, and carried unanimously, to reappoint Kimberly O'Neill, 127 Liberty Street, to the *Zoning Hearing Board* for a 3 year term through December 31, 2011.

- ❖ A motion was duly made by Councillor Woldorf, seconded by Councillor O'Malley, and carried unanimously, to appoint Renee Noel, 194 N. Chancellor Street, to the *Historic Architectural Review Board* for a 3 year term through December 31, 2011.
- ❖ A motion was duly made by Councillor Woldorf, seconded by Councillor Walker, and carried unanimously, to appoint John Burke, 301 S. Norwood Avenue, to the *Environmental Advisory Council* for a 3 year term through December 31, 2011.

Ms. Woldorf noted that there are two alternates to the Zoning Hearing Board, Harry Tomlinson and William Palkovics, and that both are willing to serve for an additional year. Ms. Woldorf recommends that Council look at a more formal process for reappointments for 2010, since there are no term limits for alternates. She also referenced the discussion at the Work Session regarding an appointment to the Long Term Parking Committee. Mr. O'Malley thanked Mr. Auerweck for his years of service and reported that he and Ms. Woldorf had discussed whether an appointment should be made or the Committee reduced in size. Mr. O'Malley and Ms. Woldorf concluded that they would not actively seek to fill the position, but upon learning that there was a resident interested in serving, Mr. O'Malley said that he had no problem with adding an additional member to the Committee.

Ms. Woldorf reported that three individuals have expressed interest in serving on the Youth Aid Panel and she will confirm that the Youth Aid Panel would accept three new members. Ms. Woldorf also announced that there are two openings on the Newtown Corporation Board of Directors. Three letters of interest have been received thus far and she invites anyone interested in the position to attend the Joint meeting on January 27, 2009, so that they can understand some of the Newtown Corporation issues.

There is an opening on the Environmental Advisory Council, one position on the Historic Architectural Review Board, the Youth Aid Panel and the two openings on the Newtown Corporation Board of Directors.

### **Planning Commission – Michael Sellers**

Mr. Sellers reported that the Planning Commission continues to review the draft of the Comprehensive Plan. Mr. Walker asked if incremental sections of the Plan were available for Council to review before the final document is published. Mr. Sellers responded that the Comprehensive Plan will only be available once the Planning Commission has completed their work. Mr. Woldorf reiterated what Mr. Sellers said and noted that public meetings will be held.

### **Police Committee – Robert Walker**

Mr. Walker reported that the Police Committee will begin work on the police contracts. Mr. Walker has discussed with Chief Wojciechowski the possibility of having crosswalk signs rather than pedestrian sentinels at intersections. The pedestrian sentinels have been hit by trucks and must be removed when snowplowing is required. The handicapped parking sign for Centre Avenue has been ordered and will be installed shortly.

Mr. Sellers commented that the pedestrian sentinels have not worked out well and he still feels that it is a matter of enforcement of the police department.

### **Recreation Board – Julia Woldorf**

Arbor Day is scheduled for April 22, 2009, and Movies in the Park will continue next summer. The Recreation Board is concerned about the lack of recreational facilities for middle school age children. The Board is interested in looking at the SEPTA Train Station Lot, possibly for a basketball court. The Board would like Council to consider acquiring access to the Open Space behind CVS for passive recreation use and/or a community garden. The members are interested in soliciting monetary, material and manpower donations to build a new shed for Linton Memorial Park. Mr. Jaslow reminded Ms. Woldorf that Council has approached SEPTA on numerous occasions about use of the SEPTA lot, but their position has also been firm and steadfast in only accepting passive use of that particular lot. Even with that there were specific requirements that the Borough must guarantee to meet their criteria. Mr. Craig suggested pursuing it again, as things might have changed.

### **Shade Tree Commission – Gerard O'Malley**

Mr. O'Malley reported that the Shade Tree Commission recommended a \$500 fee-in-lieu of trees, but suggested that the fee be reviewed annually and adjusted as needed. Mr. Craig asked whether consideration was given to the size of the tree, as in some cases the \$500 fee might be low. Mr. Jaslow voiced the same concern. Secretary Scull suggested using the caliper of the tree as a basis for setting the fee. Mr. Craig suggested a minimum of \$500, based on a specific caliper or smaller, with those of a larger caliper to be reviewed. Mr. O'Malley offered to have the Shade Tree Commission discuss the issue. Mr. O'Malley made a motion regarding a minimum fee that was withdrawn, pending further discussion by the Shade Tree Commission.

### **Zoning Report – Rand Jaslow**

Mr. Jaslow reported that a *Building and Zoning Activities Log* for the 2008 Year was provided by Zoning Officer, Jo-Anne Brown.

The Zoning Hearing Application for 235 Court Street has been received, but no hearing date has been set at this time.

### **Solicitor's Report – Bradford Lare**

- ❖ A motion was duly made by Councillor Walker, seconded by Councillor Jaslow, and carried unanimously, to authorize the Solicitor to advertise an Ordinance amending Article I, Chapter 118 of the Code of the Borough of Newtown in the "Deed and Other Instruments Registry Chapter."

### **Old Business**

Ms. Woldorf raised the issue of the Open Space Plan Revision proposal which was received from the Heritage Conservancy. Council has not yet acted on the proposal, but she suggests looking at the Open Space Plan revision proposal at the same time that the Newtown Creek Greenway Grant is discussed, perhaps at the February Work Session. There had been two proposals and Ms. Woldorf suggested having the EAC attend the meeting and weigh-in on which proposal they preferred. Mr. Sellers reported that a proposed project meeting for the DCNR grant is scheduled and he concurs with Ms. Woldorf about bringing the projects together.

### **New Business**

Mayor O'Brien reported that on April 26, 2009, a program will be presented at the Friends Meeting House about the artist Edward Hicks.

### **Public to be Heard**

Resident Mary Jane Leonard wanted clarification from Council as to the final decision on the Vacancy Chair position. Ms. Leonard noted that she was appointed in January, removed in April and Eric Johnson was then appointed. Following that appointment there was much discussion about the issue and in light of the changes that have come about regarding appointments, Ms. Leonard wondered if Council would consider or reconsider where they stand on the Vacancy Chair issue.

Resident Paul Salvatore, 148 N. Elm Avenue, reported that funds raised at First Night will be used to help families in need in our community. This is the first year that this has been done and First Night hopes to give \$4000-5000, if not more, back to families in our community. Mr. Salvatore also thanked Council for not raising taxes for the 13<sup>th</sup> year in a row, which says a great deal about past Councils and he is glad to see that this Council has followed in their footsteps. Mr. Salvatore asked whether the Joint Meeting on January 27, 2009, could be taped and rebroadcast and what the cost would be. Mr. Sellers felt that all parties should have a say in that decision.

Mr. Craig reminded the public that there will be discussion on the proposed ACME plans at the Newtown Township Supervisors meeting on Wednesday evening.

Mr. O'Malley asked that Ms. Leonard's question be answered and how that would be accomplished. Mr. Craig said there will be discussion at the work session, but the appointment normally takes place at the Reorganization Meeting. Mr. Sellers felt that the way it was originally left was with a division on Council as to who was the Vacancy Chair. He is not sure that the issue can be resolved, short of there being a need to use the Vacancy Chair, in which case he could almost guarantee that issue would be resolved and probably not by this Council.

Council recessed prior to the continuation of the Conditional Use Hearing.

### **Conditional Use Hearing for T-Mobile**

Special Counsel David Truelove opened the continued T-Mobile Conditional Use Hearing and noted that Mr. O'Malley, who was unable to attend the hearing on December 9, 2009, was present tonight and had reviewed the transcripts of the last meeting. Mr. Truelove indicated that Mr. Wuerstle had prepared a memorandum regarding legal issues raised by Councillor Sellers. Mr. Craig asked for clarification on the legal issue and he deferred to Mr. Wuerstle at this point. Mr. Wuerstle indicated that there are provisions within the Zoning Ordinance and the Historic District Overlay Ordinance which may be conflicting with regard to whether this is a permitted conditional use at this particular property. Mr. Sellers commented that he was aware of a provision under Section 904 that requires this Board to deliberate on a conditional use application to consider whether the application is compliant with all municipal ordinances. The question arose as to whether or not that determination can be made by this Board at this time because the applicant has not yet gone to the Zoning Hearing Board for clarification on the use issue, and interpretation of the ordinance. The question becomes which should be heard first, the Conditional Use Hearing or the Zoning Hearing Board Hearing. After lengthy discussion Council decided to continue with the hearing tonight, but with the understanding that between now and the next regular Council meeting, there will be a determination as to whether this matter should be suspended pending zoning hearing board determination or whether to proceed with the next hearing date.

T-Mobile then distributed additional packets to Council which included information regarding future witnesses and background. T-Mobile's historical expert, Amy Skinner, was then questioned regarding the historic aspects of the site. Ms. Skinner referred to several exhibits, including a letter of determination from the Pennsylvania Historic Museum Commission, which indicated that they felt there would be no effect on the Historic District from either the smokestack or the equipment shed. In response to questions from Ms. Woldorf, Ms. Skinner did state that their determination was based on the submitted report, not from an actual on-site visit. Land Planner, Peter Tolischus, was then recalled for testimony. Additional photographs of the site were provided, as previously requested by Council, in order to better visualize the impact of the smokestack from various locations around the Stocking Works property. Project Engineer Ed Deegan discussed the specifics of the proposed antennas and the equipment shed. Materials to be used and the location of the cables were discussed. The Borough's engineer, John Genovesi, prepared a review letter questioning the structural stability of the 100 year old existing smokestack. Mr. Deegan agreed his original evaluation of the smokestack had been based on a different material, Portland cement mortar, and he agreed that further evaluation was warranted because the material was actually lime mortar. Mr. Sellers raised the issue of Section 401 (B) and the prohibition of communication towers, antenna and facilities, but Mr. Wuerstle referenced the V-2 Zoning Direct which permits the use. The conflict of the two has not been resolved. The exact testimony from tonight's hearing was recorded by a Court Reporter and available in a written transcript.

Respectfully submitted,

Marcia M. Scull  
Borough Secretary

#### IN ATTENDANCE

Warren Woldorf	440 Washington Avenue
Jim McAuliffe	545 E. Centre Avenue
Peter Ciferri	The Advance
Patti Lovi	151 N. State Street
Mary & David Callahan	113 Court Street
Chris Ortwein	Newtown Corporation
Diana Bowen	The Herald
Danny Adler	The Courier Times
Frank B. Fabian & Dot	
Paul Gouza	536 Centre Avenue
Tina Leck	210 Durham Road
Allen Fidler	
Eric Johnson	242 S. State Street
Bill Palkovics	106 S. Chancellor St.
Mary Alice & Phil Hagan	
Paul Salvatore	148 N. Elm Avenue
Carolyn Gabbe	
Rosemary Tottoroto	114 Liberty Street
Warren Gormley	Newtown Sewer Authority

