

MUNICIPALITY OF BETHEL PARK
REGULAR COUNCIL MEETING
September 13, 2010

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MUNICIPALITY OF BETHEL PARK

**MINUTES
OF
REGULAR COUNCIL MEETING**

Date: September 13, 2010

Time: 7:30 P.M.

Location: Municipal Building

1. Roll Call

Present: Council Members Dixon, Gibbons, Hannan, Harrison, Moury, O'Brien and Pape

Absent: Council Member Allen

Also Present: Mayor Morton; William Spagnol, Manager; Robert McTiernan, Solicitor; Robert Cygrymus, Director of Community Services; Lieutenant David Deremer; Gerard Duke, Municipal Planner; Mark Romito, Finance Director; Mike Smith, Environmental Engineer; Jean Statler, Municipal Engineer

2. Pledge of Allegiance

3. Chair Announcement

An Executive Session of Council was conducted on September 13, 2010 to discuss police personnel issues.

Reports of Officials

4. Librarian's Report

None

5. Police Chief's Report

Lieutenant David Deremer said that the Bethel Park Police Department in conjunction with the Drug Enforcement Administration would be collecting unneeded legal prescription drugs on Saturday September 25th from 10:00 A.M. to 2:00 P.M. at the Community Center. No questions will be asked. These items will be disposed of in a proper manner.

The Citizens' Police Academy and Law Enforcement Apprenticeship Program will begin on Wednesday January 20, 2011. Applications are available on line at bethelpark.net and at the police office in the Municipal Building.

Discounted tickets are available for the Sunday September 26th Pittsburgh Pirate baseball game through the Bethel Park Police Pals. Order forms are on the website and in the most recent issue of the Bethel Park Chronicles.

There have been recent vehicle entries resulting in theft of personal items throughout Bethel Park. He reminded residents to lock their vehicles.

6. Fire Chief's Report

Bethel Park Volunteer Fire Department Assistant Fire Chief Dave Gerber gave the Fire Chief's Report for the month of August.

Assistant Chief Gerber reminded residents to have their fireplaces checked before lighting them for the first time this year.

He thanked those that attended their annual open house at the Brightwood Station on Sunday September 12th. He also thanked those vendors that participated in the event as well as Chief Mackey, the police department and Robert Cygrymus.

The second fundraiser mailing went out in August. Donations in any amount are appreciated.

Bingo is held every Saturday beginning at 6:45 P.M. at the Brightwood Road Station.

Mr. Moury said that he would like to have everyone participate in the fundraiser. Preliminary discussion has begun with the fire department regarding their financial needs for this year and in the future if donations go down and expenses go up. We need to have a fire department. We would rather have people donate on their own and contribute what they want versus having to implement a tax to cover their operating expenses. He encouraged those who haven't already donated to please do so.

7. Mayor's Report

Mayor Morton announced the ninety-plus birthdays for September. He said the annual luncheon would be on October 1st.

The Mayor said we had a great Community Day Once again. In spite of the construction things went very well. He said he received many favorable comments about the new site.

He invited Jane McKnight of the Bethel Park Lions Club to the floor and presented her with a proclamation regarding the Bethel Park Lions Club "White Cane Day".

Ms. McKnight thanked the Mayor for this recognition on behalf of the Lions Club of Bethel Park.

8. Approval of Minutes

Regular Council Meeting Minutes of August 9, 2010.

Motion by Mr. Hannan and seconded by Mr. Dixon to approve the Regular Council Meeting Minutes of August 9, 2010. Motion Carried 7 – 0. Council Member Allen absent.

9. Special Meeting of August 30, 2010

Motion by Mr. Hannan and seconded by Mrs. Gibbons to approve the minutes of the Special Meeting of August 30, 2010 – Acceptance of Resignation of Councilman Paul Martin. Motion Carried 6 – 1. Council Member Allen absent. Council Member Harrison dissenting.

Mr. Harrison said he would be voting no and would like to inform the people of his concerns. It has to do with a word that is kicked around quite a bit now in the country, transparency of government. That is something he has worried about for a long time. Ever since he has been on this Council which has been thirty-seven years there has been a monthly public meeting on the second Monday of the month. So people are well oriented to that fact. On August 26th he received a call from Manager, Bill Spagnol, to inform him that Mr. Moury, the President of Council, had scheduled an Emergency Meeting for the 30th. His question was what is the emergency? We got a resignation letter and we have to make an appointment to the seat within forty-five days. In all of his experience based on what he has learned from the lawyers the time starts when the governing body accepts the resignation. The resignation time is not dictated by the person that is resigning. He told Mr. Spagnol that he would not attend the Emergency Meeting. A couple of hours later Mr. Spagnol called him and told him that he had talked to the Solicitor and now they would be having a Special Meeting. He said he would not attend that either as he thought it was unnecessary. Shortly after that he called Solicitor McTiernan who returned his call on Sunday. Mr. Harrison told the Solicitor that he's always understood that a resignation becomes effective when the governing body enacts on it. He left that conversation thinking that the Solicitor agreed with that. Then the Solicitor sent out an e-mail letter, he guesses on Monday, as it was not time-stamped, indicating maybe so, maybe not. His concern is that we could have accepted that resignation tonight, advertised for ten days, had the interviews two weeks from now which is their normal Committee Meeting and enacted on it next month. Now, we're going to act on it next month at the meeting as that is the plan, but we were informed tonight that we are going to exceed the forty-five days by one day. He feels that enacting tonight would have given us adequate time and that is what we should have done.

Mr. Moury said that he didn't want to get into Mr. Harrison's political view. The irony of this thing is that if he wouldn't have called a Special Meeting Mr.

Harrison would have been out there tonight wailing at him because he didn't call a Special Meeting. He made the decision based on, quite frankly, the residents of Ward 7. It was nearly three weeks until the next meeting. We had the Labor Day Holiday, and he thought it was prudent to get out there and advertise to give the people a few weeks to decide if they wanted to apply or not. He thought it was the best thing to do. As he said earlier, Don would have been haranguing him for not calling a Special Meeting. It all depends on the politics that Don wants to play on. The interesting thing is that he acknowledged calling the Solicitor. We have a policy that nobody on this board, including him, is to call the Solicitor without approval of the Manager or of Council. If everybody took it upon themselves to call anytime they felt necessary, you can imagine, with no disrespect to the Solicitor, what our Solicitor's bill would be. Don often claims to be the author of the Home Rule Charter and that is what regulates what we do, but yet he had to call the Solicitor to get his interpretation of when the forty-five days started. To him, it is very clear that it starts when the letter is turned in. It's official when Council accepts it. That's what we did. That's what the Solicitor said in his letter. It really is unfortunate that Don has to continue to badger people about what he believes and not really what the truth is. It is important that the residents of Ward 7 have the opportunity to send their names in and give the people adequate time to find out about the candidates. For everybody's information we are accepting resumes until September 16th. Our plan is to interview on the 27th and then we will be appointing at the October Council Meeting. To talk about falling outside the window of forty-five days, this is partially true. The forty-fifth day is on a Sunday and we were advised by the Solicitor that because it was a Sunday he saw no legal issue with actually having the vote at the Regular Council Meeting. That is the truth behind it. It is a shame that Mr. Harrison continues to play politics with the residents of this community.

Mr. O'Brien said that this whole situation is unfortunate. Mr. Martin is a colleague of us here and sometimes things happen to people. For whatever reasons they happen. The meeting that Mr. Moury called was transparent. It was a Special Meeting that was advertised and it was here. He applauded him for calling that and giving the citizens of Ward 7 time to look it over. Putting your name up for Council is a very serious decision. He thought Mr. Moury did the right thing by giving the citizens of Ward 7 the most time possible to make the decision so it is as transparent and open as possible for the successor of Mr. Martin. He is not comfortable talking about this now as he does not like to expand somebody's bad fortune. He is going to say a prayer for Mr. Martin. He hopes his life goes on and he has better fortune. He enjoyed serving with him.

Mr. Pape says that it amazes him that after all of these years he and Mr. Harrison have been on this Council this man never had one good word to say about anybody, always negative. Before we came out to this floor everything was nice because he wanted something and we went along with it without argument. If he were to come to the meeting like he should have, he would have known why we did it. We wanted to get it over and done with. He just doesn't understand. He just chastises people. Sometimes he wonders if Mr. Harrison likes himself.

Mr. Dixon said it was a very sad affair that led to the resignation of Councilman Martin. It was something we wanted to put behind us as quickly as we could. To reiterate what Councilman O'Brien just said he would say a prayer for the man and hope that his life gets straightened out. God bless him in his future. The meeting that was held was properly advertised. It was a legal public meeting. There was absolutely no reason to raise it as an issue. The only improper thing that he sees in this whole thing was Mr. Harrison calling our Solicitor on his own without authorization of anybody and spending the Municipal tax money for the time. The Solicitor will charge us for that time, and rightfully so. He's entitled to charge for his time. That is the only improper thing he's seen throughout this whole affair. If anybody needs chastised he would point the finger at Mr. Harrison.

Mr. Harrison said that he would volunteer to pay Mr. McTiernan any costs associated with his call to him. The fact is we pay him a retainer and this mundane type thing is covered. He requested that the Solicitor bill him for any additional charge. He went on to say that it is interesting that the comments he made simply addressed procedural type things of this Council and now these guys up here are saying they are embarrassed and want to get this thing done. They are the ones talking about the man. He didn't say anything accept about the procedure used.

Mr. O'Brien said we all read the newspaper articles.

10. Bills and Payrolls

Motion by Mr. Hannan and seconded by Mrs. Gibbons to approve the Bills and Payrolls for the Municipality per Bill List #091310 in the amount of \$3,377,692.74. Motion Carried 7 - 0. Council Member Allen absent.

11. Residents' Comments (non-agenda items only)

Richard Chongaway, 5027 Belmont Avenue, said he found Mr. Harrison's comments of interest. Everyone has personal problems. Drinking can be a big problem. Mothers against drunk driving say a prayer everyday. Say a prayer for the Excouncilman, he does. He also says a prayer for the people he didn't hit on the highway. Fortunately there were no fatalities or injuries. The newspapers recently had a number of articles: a police officer hit and run while drunk, a Pitt football player, drunk, hit and run. This thing about driving and drinking is no laughing matter. He hopes that regarding the interview that Council is going to conduct for the candidate for Ward 7 you are going to ask without a doubt if he's been stopped for a DUI or uses alcohol.

Mr. Moury said that the interviews will be held in the Caucus Room starting at 6:00 P.M. on the night of the 27th and will be open to the public.

Mr. Chongaway asked if there will be a list of the questions to be asked for the public.

Mr. Moury said it would be an informal interview process and Council will ask the questions.

Mr. Chongaway asked what the qualifications for a Council Person are.

Mr. Moury said resident of the ward for one year, US Citizen, registered to vote and a minimum of eighteen years of age and have no felony record.

GENERAL POLICY AND FINANCE

12. Citizens' Comments – General Policy and Finance Items

None

13. General Policy and Finance Items

Resolution – Opposition to Forced Mergers and Consolidation of Local Governments in Pennsylvania

Motion by Mr. Hannan and seconded by Mr. O'Brien to adopt the resolution in opposition to forced mergers and consolidations of local governments in Pennsylvania. Motion Carried 7-0. Council Member Allen absent.

Mr. Harrison asked if there was anyone who could address this. He said it is something he's been fighting since he's been involved in local politics.

Mr. Moury asked Mr. Hannan to speak as he brought this to Council's attention.

Mr. Hannan said the state legislature and their members in their ultimate wisdom do various things that are political and not political. Recently there were two pieces of legislation introduced. One is the requirement that all municipalities cease to exist and the county would be the basic form of government. The issue deals with having Harrisburg mandate what local governments in Pennsylvania can do. This information was brought to the County Boroughs Association and the Association of Township and Commissioners and Supervisors. The reason is to let Harrisburg know that we like things somewhat the way they are. Having local government is a good thing for us.

14. Resolution – Implementation of a Procurement Card Program

Motion by Mr. Hannan and seconded by Mrs. Gibbons to adopt the resolution authorizing the implementation of a Procurement Card program through EasyProcure, LLC. and PNC Bank. Motion Carried 7-0. Council Member Allen absent.

Mr. Moury said that Council received the Preliminary Bethel Park Municipal Budget. It is on display in the library. Once again there is good news and bad news. The good news is we're not proposing a tax increase for 2011. The bad

news is we're spending down some of our reserve money to get there. Staff has done a very good job of preparing the Budget. He believes close to a half a million dollars was cut from the Preliminary Budget before it came to Council because the directive was that there would be a balanced Budget without raising taxes. The first Budget Review Meeting would be on the 27th and they will continue to have meetings as long as Council wishes. We need to pass this by thirty days prior to the end of the year. We look to have a public hearing and adopt it prior to the end of November. Check it out. If you have any questions call your member of Council. Please feel free to come to the public hearing and ask questions. It's not a done deal. It's a good Budget but he is sure we can try to make it a little better.

Mr. Harrison said he put his sign with the School Superintendent's phone number back up because he spoke to the idea of putting a mail box type thing for people to deposit taxes beside ours out in the parking lot. He asked for a verbatim of the minutes and Mr. Moury started out by saying: I do have to comment, he's talking about commenting on what Mr. Harrison had to say. That happens all of the time. He passes the gavel to have to say something no matter what Mr. Harrison talks about. At least he didn't suggest that Mr. Harrison lied this time, which he quite often does. In the minutes it says by Mr. Moury: I was told by a board member, he's talking about a school board member, that based on the usage they opted not to incur the expense of putting up a box. Mr. Harrison thinks that is an important statement as he says I was told by a board member, that's important because he then criticized Mr. Harrison for giving out the phone number of the Superintendent which he did by hanging out the sign there. Mr. Harrison claims that he is misinformed, ill-informed or not informed at all because Mr. Harrison stated that he called the school district twice. Since he didn't get a reply he called the Assistant Manager, Judy Miller, asked her to call. She called and didn't get a reply. On the Monday of the meeting he called Mr. Romito, the Finance Officer, and asked if he had contact with somebody there. He called and received no answer. At this point Mr. Harrison's thinking was that a courtesy call from the school district stating their decision rather than telling Mr. Moury. He wanted to make the point that if he wants to discuss items he will continue to do it and if he feels the need to pass the gavel and make derogatory remarks suggesting that as he said you listen every month to political speeches that he gives, meaning Don Harrison. Mr. Harrison said he doesn't consider it very political when he proposes an idea that isn't going to fly. It seems to him that in the real world that would be a political downer, not a political upper. In any case he wanted to make the point that no matter what the subject is he bothers to comment on it and when he goes out it is not unusual for people that have seen these meetings to approach him and comment on the fact that Council and in particular Mr. Moury seem to trash him all the time. He will just keep doing his job.

Mr. Moury said the irony of this whole mess is that Don can come up and say what he wants. What he feels he needs to do is correct the record when misinformation is given out by Mr. Harrison. Many months he talks about issues and things that don't affect how this board operates. There is a procedure we go through. Everybody can come to this meeting and say whatever they want. There's been a courtesy in the past. He brought the item up on the floor that is

normally an issue that we would discuss at our committee meetings. He chooses not to do that. He chooses to come out and misrepresent what people say. Quite frankly his comment to Mr. Harrison was that it's not a very professional way to get things done. The reality is do you want to get something done or do you want to talk about it? If he wanted to criticize Mr. Harrison when he approached the school board member which he allegedly said the board didn't make a decision he would have said you need to do that. You got a request from the Municipality and you as a board director you need to do that. If someone came up to him and stated that Council didn't make a decision on something they would say to him you need to do it. Yes or no, he agrees, they need to get back to us. The reality of it is to come out and talk and give this political speech as he always does, and they are political. Make no mistake Don's already approaching people to run for Council against the incumbent members of Council next year. Make no mistake he does it all the time. Mr. Harrison wants to say he chastises and says derogatory things but he states the truth. Mr. Harrison may not like it but he states his opinion and is entitled to do it as a member of this board. There is a professional way to get things done and there is a political way just to talk about getting things done. He'll put his record on Council up against Mr. Harrison's about getting things accomplished.

Mr. Harrison said he wanted to point out that Mr. Moury said he was trying to get people to run. He doesn't know where he got that information but Mr. Moury forgot to mention that he went door to door with the candidate in the Fifth Ward, the last time he ran. The other thing is that he criticized him for giving out the phone number of the Superintendent. Within three days of that meeting we got the Chronicles and calendar and in both cases the Superintendent's number is right on top of the list. To give out the number of an employee of the school district and the number is well publicized in the information that gets sent to every citizen, he does not see a problem.

Mr. O'Brien asked Mr. Harrison if he was unopposed the last time he ran for office.

Mr. Moury said for nearly two years Mr. Harrison talked about a seven-hundred foot, five-thousand dollar emergency access road at the exit of Industrial Park. He talks about it but he never told us how he came up with the seven hundred foot, five thousand dollar road.

PLANNING AND ZONING ITEMS

15. Citizens' Comments – Planning and Zoning Items

None

16. Planning and Zoning Items

Ordinance – Providing for Oil and Gas Drilling Operations as a Conditional Use in all Zoning Districts in the Municipality

Motion by Mr. Dixon and seconded by Mr. Hannan to approve the ordinance providing for oil and gas drilling operations as a Conditional Use in all zoning districts in the Municipality. Motion Carried 6-1. Council Member Allen absent. Council Member Dixon dissenting.

Mr. Dixon said he expressed in the past his serious reservations about allowing this in all zoning districts in the Municipality. He doesn't like the notion of allowing this in residential districts. We have discussed this as a board many times and he would like to have Mr. McTiernan discuss this a little bit.

Solicitor McTiernan said as Council is aware this of course is an issue that is much litigated and we have some guidance from the courts but it continues to be litigated in the courts. The ordinance that was prepared based on guidance from the Planning Commission and Planner contains protections that we feel and he feels as a Solicitor are legal. For example, any operation of this type is a Conditional Use and would have to be approved by Council. It contains certain kinds of requirements such as appropriate notice to neighbors in the immediate vicinity of an operation; requirements on notice to protect the roads from damage from heavy equipment; safety requirements such as fencing; limitations on the noise that can be produced and time limits on operations. Because we are a municipality and this is primarily regulated by the State the municipalities are somewhat restrained on what they can do. These are protections that everybody involved in this process thought were ones that would withstand challenge and would be helpful to the public. One of the things we were concerned about is that we wanted to make sure the ordinance and these protections were likely to withstand a challenge. We were concerned and his advice was that the more you restrict the actual ability to do the drilling or do the gas and oil production within the community in certain areas that might make the ordinance more subject to challenge. There are, just as a necessity, limitations on drilling in smaller areas such as residential areas and that his feeling and the Planner's feeling is that it is very unlikely that there would be drilling in those areas anyway and it would be a mistake to try to restrict the areas because it would make the ordinance more subject to challenge. That is the thinking that went in to it. In summary by allowing it everywhere it is very unlikely that it would occur in those areas but it also removes the potential basis for a challenge.

Mr. Dixon said he appreciates that but just as a point of clarification he is not against the drilling for Marcellus Shale in any way, shape or form. Staff has done a great job researching this and putting this ordinance together, Mr. Duke in particular in conjunction with our Solicitor, Mr. McTiernan. He knows they put a document together that is in the best interest of the community based on their expert opinions and he doesn't disagree with that. The notion or the feeling is if we don't allow it in certain parts of the community then somebody could come in here and challenge that part of the ordinance and if they were successful in the

challenge it would essentially neutralize the entire ordinance and people could come in here and drill wherever they wanted to if he under stands that correctly.

Mr. McTiernan said it was their concern that it would make the whole ordinance subject to challenge.

Mr. Dixon said he understands that and appreciates the protections it offers the community but he just cannot get his arms around the notion of allowing drilling in a residential area. It just bothers him to the extent that he can't let go of it. He knows that once the big drilling rig is done a smaller kind of pump is on the property. He just can't seem to get his arms around this notion of allowing this in a residential district. Based on that he will be voting against this. He would welcome any other comments if anybody has them.

Mr. Moury said that he shares in his concern but we need to do something. Is this perfect? Probably not. Are we going to adjust it? Absolutely. He thinks we need to put our line in the sand. While he agrees that we do not want it in residential areas he thinks we need to position ourselves or at least set ourselves up that if we are challenged legally what is the strongest base to have? If we restrict it to certain classifications and we lose that challenge they can come in and do what they want. If we do it on the back end and we have litigation based on the restrictions we put on a judge would be more receptive to listening to what our concerns are. He agrees that while he doesn't want it in his backyard we need to do something. The Planning Commission spent two months, we had public hearings and input and stressed over what we wanted to do. We see what is going on around the county. This isn't probably unlike ordinances that other people are adopting. He thinks it is the right thing to do for now. If things change or the laws change we will need to look at it again and we will. He asked the Solicitor if we have the right to tax these for coming in to our town. Can we impose a tax?

Solicitor McTiernan said he didn't do any research or prepare for that question but he feels pretty confident that you do not have that power under those statutes that allow taxing by a municipality. The power of Bethel Park to tax is restricted by the Pennsylvania Legislature. They keep control of what you can and cannot tax. They are very sensitive about what they allow municipalities to tax. Unless they give the express power legally to impose any kind of tax you do not have that power.

Mr. Harrison said almost every day there is a story in the newspaper about activity in the Marcellus Shale thing. The state is seriously considering and he suspects will pass what they call a severance tax which presumably is a tax on the people that drill to cover the expenses for maintaining the roads if they damage them or this type thing. There probably will be a tax as most of the states around us have such a tax.

Mr. O'Brien said sometimes we don't show our greatest light here but he would like to complement Council on their very heated, very intense, very informative debate on this issue. Paul makes great points. Many of us feel that way. He respects Paul's decision. This is one of those votes you have to weigh how you

feel on protection for the people. When we passed the nude dancing ordinance that was a heated debate also. By excluding different districts you sometimes leave the door open for a challenge. When that ordinance is thrown out those individuals can do whatever they want when they want where they want. He is very proud of this Council for their participation in this very heated issue that is going to have implications on our community as well as across the state.

Mayor Morton said he thinks it's important that you just can't have some oil company come into your backyard. It has to be a ten-acre area before it can even be considered. Because of this Bethel Park will probably not be affected at all.

Mr. Duke said in this ordinance there is no size provision. The requirement is based on the DEP requirements. It is state regulation. We cannot supersede anything that the state says, particularly for getting all of the materials in the water systems. They will need a minimum of six acres but typically they want ten because of all of the buffer requirements and that leads to our size restrictions in terms of the lot size in residential districts and such. There was a lot of debate with Mr. Dixon leading the discussion with the Planning Commission about this residentially zoned district. The primary discussion point was probably where you allow these things and how do you allow it and whenever you come down to it we really felt that the Planning Commission and Staff when working with the Solicitor's office have to be very careful that you don't set it up that we can't go anywhere. That's an exclusionary situation. Then if we make it so hard that you can't do it, then we're in trouble and everything gets thrown out. We did debate that very vigorously on a number of different levels.

Mr. Dixon said there are some protections built into this ordinance as well. The Conditional Use requirement means that Council has to approve anything that is proposed. He went on to commend the Planning Commission for the amount of work they have done on this. There was a lot of discussion and debate on this.

HEALTH, SAFETY AND WELFARE ITEMS

17. Health Safety and Welfare Items

None

PUBLIC WORKS AND MAINTENANCE ITEMS

18. Public Works and Maintenance Items

None

Mr. O'Brien read the 2010 Fall Leaf Collection schedule and collection information.

He said the Veterans Memorial Committee has been working on collecting all the names of our fallen heroes here in Bethel Park, but has run into some stumbling blocks. The big concerns are the Korean War and the Viet Nam War.

Representative Matt Smith has agreed to lend his staff to us to try to find those individuals and with these efforts we hope to have some of them by Memorial Day. They cannot be forgotten.

Mr. Harrison said people well know that he has been involved with the boy scouts for almost as long as he has been on Council. There is a scout in the audience working on his Eagle Scout Award. He went on to say that he was born with a hearing impairment in both ears and is on his fourth set of hearing aids none of which have been satisfactory. For instance, he has difficulty hearing people at the other end of the table. Recently he heard of a company called Envoy Medical which developed a hearing implant that after five years of testing received FDA approval. He is considering going for that procedure. He said he gets a lot of telephone calls and has particular problems hearing ladies' voices. The implant is done surgically and is a temporary inconvenience for permanent improvement. If he gets the implant it is not activated until the healing of the surgery of the implant which in his case would be anywhere from four to six weeks. He would therefore go through a period where he would be more hearing impaired than he is now. He asks for tolerance in communicating with him during this time if he goes through with the implant.

19. Adjournment

Motion and second to adjourn at 8:30 P.M.



Manager