

MEETING MINUTES

FOLCROFT BOROUGH COUNCIL MEETING

JULY 21, 2020

PRESIDENT – Joseph Papaleo: Called the Council Meeting to order at 7:00 PM

Mayor Frey took a moment to think of the people suffering due to COVID 19.

Roll Call (Council President Papaleo, Councilman Kyle Willis, Councilwoman Leigh Daly, Councilman Nick Waters, Councilwoman Malinda Isaac, Councilman Jason McGuigan, Councilman Robert Ruskowski, Mayor Bob Frey, Solicitor Alex Baumler, Secretary/Manager Andrew Hayman all present.

Council President Papaleo announced that an executive session was held last Thursday (****)

Audience Participation

Andrew Hayman read the following comment into the record:

“Jessica Brown, 812 Bennington Rd in Folcroft:

Hello. My name is Jessica B, resident on Bennington Rd. I wanted to inquire about obtaining a Watch Children Sign and/or Children at Play sign as the street has a high volume of traffic and many children play close to the corner.

I have attached a few pictures for a visual. Thank you for your time and consideration.”

Council President Papaleo said that about 25 years ago a kid was killed on Bennington Rd by a car and that this behavior isn't uncommon. He asked Chief Bair his thoughts on a watch children sign. Chief Bair said he would not be against one, anywhere. He said he had done a speed study on that street and 1-3% were above the limit. He said the fatality was probably a result of cars parked on both sides of the street but that there is no harm in putting a sign up. Council President Papaleo asked Engineer Lisa Catania how to proceed. Lisa said that this could be ordered through our maintenance department. She said this could be ordered via costars. She said if there are other signs that need to be ordered they should be ordered all at once. She said we should look at other signs that might also need to be replaced, beforehand. Councilwoman Daly said it might be a good idea to order several of these signs as kids are currently out of school. She said that there are lots of cars parked on the wrong side and that probably a couple could be placed in the village. Chief Bair said to check with the Highway Department to see if we still have any signs at the pump house. Councilman McGuigan said we also have plastic “kids” at Borough Hall. Council President directed Andrew Hayman to investigate this.

Motion to Approve the Minutes for the June 9th Committee and June 16th Council Meetings was made by Councilman Willis and seconded by Councilwoman Isaac. The motion passed, unanimously.

Engineer's Report

Lisa Catania said that there are quite a few things for updates:

She said she received a final invoice from AF Damon – the bond was sent to Andrew Hayman, today. She said the final bill was over \$2,000. The bill must be paid and we need a cancelled check into PennDOT by September. Joe Possenti said he had already paid in full - \$27,000 – and he had spoken with Lisa's staff. Lisa said that as a result of this action we would be receiving County Aid. Joe said that this was all under liquid fuels. Lisa Catania said that, as a result, we would lost County aid funding. Joe Possenti said he would transfer \$8,100 so that the funds weren't lost.

Lisa Catania said that action seal-coat had already done the crosswalk and hoped everyone was happy with it. She said she had received a bill in the amount of \$750,000. She said bids for the road program were confusing, but she said that the village should not be done for now because PECO has not yet completed work on gas lines (so we pave only one lane.) She said she received notification that the Dollar General had been approved for a rain garden, which hopefully would begin sometime within 30 days and that restoration could be done in September. She said this is the one known as "Brahm".

She said that there was work being done to

Lisa said that she met with engineers from DELCORA and they are required by AQUA and the DEP to put together a plan. She said she had several concerns about it and that she believed there was a lot of information that she thought was missing. She said this plan must go before our planning commission and that a recommendation from the commission must be presented, presumably sometime in September. She said DEP is requiring each municipality within the DELCORA system for this plan. She said we would need to look at the plan and make comments as we are able to do. She hoped that templates for this would be available in September. She said there is also a second plan, not part of the agreement, which would take the eastern portion of Delaware County, all the storage of which goes to Southwestern Philadelphia, and she said that some of the flow also flow to Southwestern Philadelphia. She said these flows are, under the long term control plan, must return to Delaware County to the western treatment plant in Chester. She said that the 537 plan talks about alternatives. She said that with storms we get 4-5 times the flow. She said they must either look at an alternative of storing. She said there were a myriad of alternatives, though they did not go through all of them.

Council President asked if we have to approve a final for the roads program. Lisa said it is out for bids and will return on the 31st of July.

Public Finance & Administration - Mr. Papaleo

- Motion to accept the proposal from e-Collect for BPT collection and auditing services was made by Councilman Willis and seconded by Councilwoman Daly.

Councilman McGuigan asked if this would take over collection of BPT from MRRS. He wanted to point out that 1. Whenever anyone promises this there are many promises made and 2. Taxes are also collected by MRRS in other communities, as well. He said that using MRRS made it expedient.

Council voted 6:1 (McGuigan against) the motion passes.

- Motion to approve the Treasurer's Report for the month of June, 2020 was made by Councilman Willis and seconded by Councilwoman Isaac. The motion passed unanimously.
- Motion to approve the Bill List for the month of June, 2020 was made by Councilman Willis and seconded by Councilwoman Daly. The motion passed unanimously.

Public Works Committee - *Mr. Willis*

- Discuss a motion to engage with H&H for temporary bulk trash pickup. Councilman Willis said that it was his expectation that we could not bring trash in house, at least for another year. He said that we could put trash out to bid if needed. We do have a proposal for H&H to do bulk trash collection, which was emailed to members previously. He asked if any members have any questions about the proposal. Councilman McGuigan asked if this was about \$36,000/year. Councilman Willis confirmed this amount. Council President said that we are currently significantly ahead of budget (approximately \$40,000 or \$50,000 ahead. Further, he said that we are about to engage with an energy company for savings of \$47,000 which could be allocated for this program. Joe Possenti said that we are currently ahead of schedule but that we will start feeling a lag of lack of collections because fewer people are working. Andrew Hayman explained that this was a month by month basis. He said that he did not recommend doing this for no more than a single month. Councilman McGuigan asked what the cost of this dumpster should be factored into the total expenses and savings. Council deliberated whether or not we already had the dumpster. Solicitor Alex Baumler said that the remainder of the year of \$16,000 would trip PA laws. We would need three written or telathonic locations. Solicitor Alex Baumler said we must get two written quotations on bulk trash. Council President Papaleo said we have a special meeting and that this issue should be resolved in the special meeting that is already scheduled.
- Ratify the budget expenditure change for our Borough website was made by Councilman Willis and seconded by Councilwoman Isaac. Councilman McGuigan made a point of order, saying he did not have an issue with votes by phone for COVID related issues but he does not like doing votes by phone for inconsequential votes – calling it irresponsible. Council President Papaleo said there was no point that this was baited as an emergency vote and the act, passed by the legislature, allowed Council to take any emergency vote by phone. Alex Baumler said that we passed an emergency declaration in March, stating that we are authorized to take actions without necessary formalities that would interfere during that time. He said all actions were covered. Addressing Jason's point, he would not recommend dealing with it via phone, but that phone votes are legal. Councilman Willis explained that there are issues with the way the system works and that it would save us time and potentially money by setting up the website early. He clarified that these are technical aspects related to the way Squarespace does things. He said that hindsight being 20/20, he would not necessarily have, but that it made things significantly earlier. Council President Papaleo questioned whether all the work and effort put into the site would have been lost, to which Councilman Willis confirmed. Council President Papaleo said that he took Councilman McGuigan's idea seriously and that he would like us to remember this going forward, unless time or money could be saved, unless they pertain to the new building and community center.

Councilman McGuigan said he didn't want to just focus on this issue and that Police related matters, such as Crimewatch.

Councilman Willis withdrew the motion to ratify the vote by phone and made a motion for a budget expenditure change to pay the yearly fee early. Councilwoman Daly seconded. The motion passed, unanimously.

- Motion to authorize the Borough to engage in a contract with constellation energy was made by Councilman Willis. Councilman Willis said they remained the lowest bidder. He said we actually saved money from the previous bid. The motion was seconded by Councilman Waters. Council President Papaleo asked what the total savings are. Councilman Willis said the change was in the 1/1000th of a cent, and should save between \$45,000 and \$47,000/year. The motion passed unanimously.

Public Safety Committee - *Mr. Ruskowski*

- Motion to hire part time officer Andrew Wheatley was made by Councilman Ruskowski. The motion was seconded by Councilman Willis. Council President Papaleo said that Adam Wheatley is his name, asking if Alex Baumler knew if this could be amended. Solicitor Alex Baumler said it must be restated.

Councilman Ruskowski motioned to hire part time officer Adam Wheatley was seconded by Councilman Willis.

Chief Bair said that Mr. Wheatley is from school lane. The motion passed unanimously. Councilmembers asked Chief Bair to congratulate Mr. Wheatley on his hiring.

- Motion to ratify a phone vote allowing our officers to engage with "Crime Watch" was made by Councilman Willis. The motion passed unanimously.
- Motion to approve the Police Chief's Report for the month of June, 2020 was made by Councilman Ruskowski. The motion was seconded by Councilman Willis and passed unanimously.
- Motion to approve the Fire Marshall's Report for the month of June, 2020 was made by Councilman Ruskowski and seconded by Councilman Willis. The motion passed unanimously.
- Motion to approve the Fire Chief's Report for the month of June, 2020 was made by Councilman Ruskowski and seconded by Councilman Willis. The motion passed unanimously.

Public Health and Literacy - *Ms. Isaac*

- Councilwoman Isaac had no new business to report.

Council President Papaleo asked about a program put out by the Library. Councilwoman Isaac said they may be giving out hot dogs. Council President Papaleo wanted to congratulate the Library Committee on doing a good job, but asked that we get a heads up about upcoming events, especially in case we can help. Councilwoman Isaac said she was planning to reach out on Friday.

Municipal Planning and Zoning – *Mr. Waters*

- Councilman Waters had no new business to discuss.

Public Parks and Recreation – *Ms. Daly*

- Motion to appropriate \$742.00 for an outdoor movie behind Borough Hall was made by Councilwoman Daly. Councilwoman Isaac asked if we need a license to play a film, as there is some history with these problems here. Solicitor Alex Baumler said that while he was not sure, it would be illegal to show a movie without a license. Councilman McGuigan that a bootleg copy of a film in theaters was what was shown. Councilwoman Daly said previously we would require a license, if the movie is being shown for free. Council discussed the associated costs with projecting a film. Council President Papaleo asked if this was something we could be prosecuted for. Solicitor Alex Baumler said he would inquire.

The motion was seconded by Councilman Waters. The motion passed unanimously.

Municipal Legislation – *Mr. McGuigan*

- Motion to pass an ordinance decriminalizing Marijuana in Folcroft Borough was made by Councilman McGuigan. The motion was seconded by Councilman Willis.

Councilman McGuigan said he believes this is a sign of the times and that Marijuana is similar to alcohol and that it has been used to attach criminal records to those who otherwise would not have them. He said we were just catching up with more progressive laws in our country. Council President Papaleo agreed, also clarifying that while this does not outlaw marijuana, this would only add fines. This would raise revenue while simultaneously keeping people out of the criminal justice system for things that are stupid and unnecessary.

The motion passed unanimously.

Folcroft is now the first municipality, to Council President Papaleo's knowledge to decriminalize Marijuana in Delaware County.

- Motion to pass an ordinance allowing the Police to ticket and eventually tow vehicles with expired registrations, inspections and insurance on public streets was made by Councilman McGuigan. The motion was seconded by Councilman Waters. The motion passed unanimously.

A repeal of the disorderly houses ordinance (chapter 2, sec 8) as it is expressly unconstitutional because it denies residents access to services. Solicitor Alex Baumler needs a motion to advertise an ordinance which will be repealed at the August Meeting. Councilman McGuigan made the motion, seconded by Councilwoman Daly. The motion passed unanimously.

Councilman McGuigan asked if there is anything that can be substituted that would be constitutional. Alex Baumler said that first this must be struck and that he would do research to see how other municipalities (for example, Norristown) addressed these issues.

New Construction Committee – Mr. McGuigan

- Councilman McGuigan said that as of last we spoke, we were ready for shovels in the ground. He said that he has calmed down, however we must pass a resolution and/or ordinance for DCED approval of the loan. He said he now knows this is a motion that we cannot make until we get the terms of the loan. He has asked our consultants to identify any issues and, right now, he believes we can break ground in September instead of the previously expected July. He said that while we had a favorable bid come back, construction costs are going up so there should not be a substantial increase. He said the Borough engineer is in the final process of approval. Council President Papaleo said this must be the very highest priority for all members and Borough employees as he is afraid that rising costs could interfere with this project and that every effort must be taken to complete this project. Councilman McGuigan said that so far as he can tell we are up to date with all items needed. Alex Baumler said he had all the information needed to pass the ordinances, which he also drafted. He is waiting on a formal loan proposal from the bank officer. He said once this is done, we can hold a special meeting to approve the ordinance and then submit to DCED, probably some time next week. At this point, DCED has 20 days to act on our ordinance with either comments or corrections. We are about 35-40 days out from final approval, which puts us at the first week in September. Councilman McGuigan but that we are very dependent on every vendor employed.

Police Chief's Report

Chief Bair said that Adam Wheatley thanks Council for being accepted into the Police Department. He said that Colin Wright, who has been employed for about a year, has been accepted tentatively by Ridley Township. He said that as you can see with the report, tickets, reports, drug work and anti crime is back out getting jobs done. Officer Chambers had an incident in Darby Township that was not breathing and he did a great job getting this infant to the hospital at Fitzgerald Mercy in less than two minutes, but that we are waiting on a commendation for a job well done.

As per last month's discussion, we are not getting any further calls about people blowing through stop signs, but that warninngs are being given. He said that officer McTigh has finished training and is doing a great job. Councilman McGuigan said that while he will not get into specifics, he witnessed fantastic work on the part of the Folcroft Police last week and had a very investigatory mind. He said he appreciates the Folcroft police but declined to discuss further.

Solicitor's Report

He said most work is already sprinkled in with the agenda. He received notice from the Delaware County courts that most summary appeals and civil actions have been pushed to September and October, which is another delay. Court offices are closed entirely. He said he was contacted by the attorney from the Safestor development and that they are waiting on the issued decisions from the zoning hearing board, which was abnormal as there were no variances issued. Once these are in hand, they are prepared to move on this project within a month's time. He said he has not heard anything from the attorney from Formcraft and that their agreements are not in place. He asked Lisa Catania for a contact from them. Lisa Catania said she may have the zoning decision for Safestor. She believed she received it as she

needed to verify a few decisions from the board, but that a variance was given for parking. She said she received the cost estimate for Formcraft, which she said she had received before as well. She needed to verify that this was something that may have been sent over mistakenly.

Finance Director's Report

Joe Possenti said that he would like to mention that the budget process begins at the end of August and that courts are closed until August 31st. He said we must start this process earlier and requested meetings with the finance committee to discuss this with the finance committee. Council President Papaleo consented to this. He said we should a report in august or September with Keystone about tax collection and that we will receive an outline with the EIT, with solid numbers expected. Council President Papaleo said that members of Council should think about their "wish list" which he expected to be scant. Councilwoman Isaac asked if the library should send over a wish list. Council President Papaleo agreed to this. Councilman McGuigan said each department head is given a capital improvement list for any expenditures that they think will happen in 2021 that are above the normal business. Councilman McGuigan said that sometimes this form never gets turned in and then in January they ask for carpets. Councilwoman Isaac said she would keep tabs on the library director. Joe Possenti said he would send Andrew the form needed to send out. Council President said a nice set of tables for the area between the clocktower and the library would be in order.

Borough Manager's Report

Andrew gave report enter later

Motion

Old Business

Chief Bair asked if the Marijuana ordinance and the inspection ordinance – when would they begin to be enforced. Alex Baumler said both ordinances are drafted to take effect within 5 days. He said that with courts being closed we could enforce the marijuana ordinance because it would not go through district justices. He said towing and other things would go through courts and there is no mechanism to actually do this if there is an appeal of a fine. Chief Bair asked to let Andrew know when these can be enforced. Alex said these must go to the Mayor for signature. The Mayor then has the ability to sign and his authorization will be required.

New Business

Mayor Frey said he would like to speak. He said everyone knows what happened last Thursday night. He said he is still upset but that Council voted. He wanted Council to know what had happened on Friday morning. He said he was up all night on Thursday night regarding what would transpire on Friday morning, believing there would be a continuation of what transpired on Thursday night. He said he intended to call the Chief but the Chief was there. He intended to walk in but the Solicitor said it was not

a meeting. He said he walked in but the Vice President came running across the room and stood spread eagle, smiling and told him what transpired. Mayor Frey said the Vice President's hands were raised above his head and he said he felt threatened. He said the Chief saw what happened and that this was a disgrace. He said he does not care if the council does not respect him. Councilman McGuigan responded by saying that he was going to start with a negative and get around to a positive. He said he was uncomfortable with Council-Mayor-Employee relations which involve the police department. He said everyone puts the police in an impossible situation during disputes but that the last few issues he has seen involve the Police and it makes him uncomfortable. Council President Papaleo said this is noted and that all employees are employees of the Borough.

Council President Papaleo explained that he did not believe his utilization of the Police Department in this matter was inappropriate, but he understood Councilman McGuigan's position. Mayor Frey interjected angrily implying his distaste. Council President Papaleo asked Borough Manager Andrew Hayman to read a resolution censoring Mayor Robert Frey, transcribed as follows:

"A RESOLUTION OF THE FOLCROFT BOROUGH COUNCIL CENSURING MAYOR ROBERT FREY.

WHEREAS, the Borough of Folcroft, Delaware County, Pennsylvania (the "Borough"), is a body corporate and politic duly organized and existing as a political subdivision of the Commonwealth of Pennsylvania; and WHEREAS, pursuant to the Pennsylvania Borough Code, the governing body of the Borough consists of publicly elected council members and a mayor; and WHEREAS, pursuant to the Borough Code, 8 Pa. C.S. § 1006, the Borough Council of Folcroft is authorized to take any legal action on the part of Council to protect the health, safety, morals and general welfare of its inhabitants; and WHEREAS, pursuant to the Pennsylvania Sunshine Act, 65 Pa. C.S. § 708, the Borough Council and the Mayor met in an Executive Session on July 16, 2020 to discuss personnel and employment matters which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law; and WHEREAS, Robert Frey, the duly elected Folcroft Borough Mayor, did cause to communicate the content of the confidential information discussed by the Borough Council during the July 16, 2020 Executive Session to the subject Borough employees while the Executive Session was occurring; and WHEREAS, the actions of Mayor Robert Frey during the July 16, 2020 Borough Council Executive Session intentionally obfuscated the ability of the Borough Council to uphold its legal duty of confidentiality and directly contradicted his sworn Oath of Office to exact a faithful performance of the duties of the officers of the Borough by law or ordinance. NOW, THEREFORE, BE IT RESOLVED that the Folcroft Borough Council condemns and rejects the actions of Mayor Robert Frey and issues this public censure thereof. DULY PRESENTED AND ADOPTED by the Borough Council of Folcroft Borough, Delaware County, Pennsylvania, this 20th day of July 20, 2020."

Councilman McGuigan asked Andrew Hayman to qualify that the Borough was censoring the Mayor for notifying his son. Andrew Hayman clarified that this was because he let employees know confidential information out of an executive session. Mayor Frey admitted on the record that he let his son Bryan Frey know confidential employment information and that Bryan had informed Wes Penny directly afterwards. Solicitor Alex Baumler explained that this information in an executive session was

bound in confidentiality and related to an employment contract with a Union and that this should not have been made clear to an employee.

Councilman McGuigan posed a general question to Council, discussed the Mayor's background and said that the Mayor probably doesn't know what a censure is. He said that Councilmembers should put themselves in the Mayor's shoes and that the Frey family has lost a lot from this decision that Council made. He asked that Council take this into consideration when making this vote.

Council President Papaleo asked Andrew Hayman to recap the incident. Andrew said that at 8:04pm Council voted to make a confidential decision. At 8:05am via text message, he asked Dan Falcone to tell Bryan Frey and Wes Penny to meet with him at Borough Hall at 8:30am the next morning. At 8:11am Dan Falcone called Andrew Hayman and said that Wes Penny had asked if he had been fired. Andrew replied that he could not answer that question but that he would provide clarity in the morning. Dan then stated that Wes Penny had directly told him that the Mayor had informed him (Wes) that he had been fired. At this point, Andrew Hayman said he clarified with the solicitor so they were all on the same page. He said that at this point, Councilman Willis asked how an employee had been made aware not seven minutes after the determination to terminate had been made. At this point, I informed Council that I was aware that Wes Penny stated that he had been told he was fired by the Mayor. Councilman McGuigan asked if, as Dan Falcone is the shop steward, he could be given this information and was he privy. Council President Papaleo said it was not Andrew Hayman's duty to inform the shop steward. Mayor Frey reiterated that he did not inform the shop steward, that he had directly informed his son (Bryan Frey.) Andrew Hayman clarified that he did not refuse this information, that he would have sought advice from Council and the Solicitor had he asked. Council President Papaleo asked if Borough Manager Andrew Hayman had yet been given instructions on how to inform the highway employees. Council President Papaleo said he would like to do a point of order on whether or not Andrew Hayman should have take the action after an open vote of Council, but he chose not to. Councilman McGuigan said that he believed Council was ready to move on and asked how passing this censure would help do that. Council President Papaleo said that when you "boil it down" all parties involved are not bad people. Councilwoman Isaac said that she understood the Mayor's position. Council President Papaleo suggested tabling the motion but solicited for feedback from other members. Councilman Ruskowski asked to move on.

Councilwoman Daly said she wanted it noted that when we are in executive session nobody else should be in the meeting and that it was troubling that Bryan Frey was in the room or in earshot and that this betrays confidentiality. She said that she was in a secure location when she had her meeting and that she was very uncomfortable. Mayor Frey said he told her that he walked downstairs and away from the phone and downstairs in his home (Mayor Frey said he was in his office) and said "they fired you." He said he told Council that last week and Council President Papaleo had forgiven him. The Mayor then said that he felt physically intimidated and asked if this was ok. Councilwoman Daly said that she read the police report and that the police report does not corroborate this – she said she believed he may have felt this way. Mayor Frey asked how Councilwoman Daly would react if she had a 30 year old man standing before her with his arms hanging above his head. Council President Papaleo said that he understood the situation and that he has a qualified brother in law but that he would not hire him

because it would be inappropriate to hire him because of this bond and affection. Councilman McGuigan attempted to interject but Council President Papaleo struck down the comment. Council President Papaleo said that while he had sympathy for the Mayor, hiring family was inappropriate and he would not have it. Councilman McGuigan attempted to make a motion to table the measure, but Alex Baumler noted that this would require Council to act on the measure at a later date. Council President Papaleo solicited for a motion for the measure but none was found to censure the Mayor publicly. Council President Papaleo said that Council reserves that right at a later date.

Councilman McGuigan noted that he had more business that he would like to discuss.

Councilman McGuigan asked to make a motion to compel Congress and the Senate to extend unemployment through the heroes act. The motion was seconded by Councilwoman Isaac. The motion passed unanimously.

Lisa Catania said that she has received word that we have been awarded a \$239,000 grant for sanitary sewer rehabilitation in the area of Grant Ave and Delview Drive. This was part of the 2020 block grant.

A motion to adjourn was made and passed unanimously.