

Economy Borough Council  
Regular Meeting Minutes  
October 25, 2016

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**MEETING** was called to order at 7:00 p.m. with Mr. R.J. Burns presiding and the following members of Council and officials of the Borough present: Mr. R.J. Burns, Mr. Gary Bucuren, Mr. Tom Fetkovich, Mr. Larry Googins, Mr. Frank Morrone, Mrs. Audrey Mutschler, Mrs. Pat Skonieczny, Borough Manager Randy Kunkle, Borough Secretary Margie Nelko, and representing the Borough Solicitor Mr. Joshua Kail, Esq.

**ABSENT:** Mayor David Poling (Excused)

**PLEDGE OF ALLEGIANCE**

**NON-UNIFORMED PENSION and POLICE PENSION REVIEWS:** Mr. William Vescio, of Vescio Asset Management LLC., presented Council with an update and a market commentary of Non-Uniformed Pension Fund and the Police Pension Fund for the First Nine Months of 2016.

**RECOGNITION OF VISITORS:** Mr. Burns welcomed everyone to the meeting and requested the discussion(s) regarding Borough business be kept to 3 – 5 minutes in length. The Borough Solicitor stated that there will be a second Hear the Public Session regarding the prayer and requested any comments relating to this subject be held until that time.

The following visitors were present:

JoAnn Borato of 2001 Conway Wallrose Road, Freedom  
Ray McClellan of 196 Shaffer Road, Sewickley

**HEAR THE PUBLIC:**

Mike Lucia (not signed in) was present to express concerns regarding the road work being done on Lovi Road and to inquire if there are any state regulations regarding the length of time traffic can be stopped for road work. Mr. Burns stated that he was not aware of any state laws and that the work process for this job is to dig, set the pipe and then release traffic.

Elizabeth Burns (not signed in) was present to request an update regarding the Dunlap Hill Traffic Signal and how this light will affect Ridge Road Extension traffic. The Ridge Road Extension area will remain as is for now and that the end result of the traffic light would be sometime in the spring of 2017.

Jake Thomas (not signed in) was present to inquire how the Dunlap Hill Traffic Signal will pertain to emergency vehicles. Mr. Thomas explained that in Cranberry Township the emergency vehicles are able to trip the traffic signals to permit the vehicles the right of way through the intersection(s) and that he feels this intersection should be the same. The Borough Manager was asked to review this matter with Shoup Engineering.

**PRAYER DURING COUNCIL MEETINGS** – This portion of the minutes is verbatim, excluding the public portion, as per the motion made at the November 29, 2016, Regular Meeting of Council.

Borough Solicitor - In between the last meeting and this meeting it was alleged that there was a Sunshine Act violation against the Borough for discussing the matter of taking an item off the agenda. We are not going to litigate the merits of that allegation but in order to ensure the alleged allegation we would like to bring the matter open to the public. And there was never a question of trying to hide anything it was just

the matter of whether or not it was appropriate official action and things of that nature. Because it was called into question, we figured the best way to go about this was just to have an open discussion on it. The matter is regarding prayer during Council meetings. And there was a question regarding it so at this point, if the matter is up for discussion, we should assume it is still being considered on the agenda and if there is a motion to take it off the agenda and a second, then we can discuss it and make a vote after discussion and after public input, so you need a motion on it.

Mr. Burns –Who would like to make a motion to remove the prayer from the agenda?

Mr. Googins - And then discuss it, is there more to it or just remove it?

Borough Solicitor - No, a motion to do that, then a second and then we open it (as it should be) for public for discussion. Unless you want to do a public discussion first and then take a motion after that, whichever works for you guys, it is totally up to your discretion. I just want for us to use an abundance of caution in this issue to have a public discussion about it.

Mr. Fetkovich - It would probably be better to open it up to public discussion first.

Borough Solicitor - said ok, it is your prerogative.

*(The Public Portion)*

Mike Lucia (not signed in) was present to express his concerns and opinion that the prayer should be before the meeting starts not after the gavel (not be in a public meeting).

JoAnn Borato was present and read a prepared document expressing her concerns and opinion regarding the prayer. Mrs. Borato explained that saying one type of sectarian prayer from one book is not including the people you as Council represent. Mrs. Borato requested the body for a motion to remove the sectarian prayer from the public section of the meeting in favor of a moment of silence and reflection or a non-sectarian invocation.

Jake Thomas (not signed in) was present to express his concerns and opinion that a public meeting is not the place for prayer and to state that he agrees with Mrs. Borato.

Elizabeth Burns (not signed in) was present to express her concerns and opinion that there should be separation of church and state, but a moment of silence is ok. Mrs. Burns thanked Mrs. Borato for her eloquent speech.

Mr. Burns - Council, well do we want to continue say the, do we want to continue to say-leave it on the agenda?

Borough Solicitor - What we would look for now is if there is going to be an action item tonight, the action would be to remove that from the agenda and the reason why a motion might be called for (I am not going to say whether it is or not just because I don't want to get into the middle of something) is because it was in fact motioned for initially. So in order to rectify that completely, we should look for a motion to remove that from the agenda (going forward) cause of how the motion was stated.

Mrs. Mutschler - How was the motion exactly stated?

Borough Solicitor – The motion will state to remove the prayer from (he was interrupted).

Mrs. Mutschler – No, no how was the motion stated to put it on, what was that motion?

Borough Solicitor – I got it, don't you worry. The motion stated from the May of 2014 meeting was "Mrs. Skonieczny presented Council with a request that the meeting now includes a prayer followed by the Pledge of Allegiance at the beginning of each meeting. There was some discussion regarding the type of prayer that is permitted, it was determined that a non-secular prayer is permitted. After some review and discussion, the motion of Mrs. Skonieczny, seconded by Mr. Bucuren to approve a prayer with the Pledge of Allegiance at the beginning of each meeting was unanimously carried."

Mrs. JoAnn Borato – It is actually a violation of the motion it is supposed to be a non-secular prayer.

Borough Solicitor – Yea a non-secular, what you're thinking is a non-sectarian. Non-secular is a sectarian prayer it is not a secular (JoAnn Borato – Ok), which is what the Supreme Court held in Town of Greece vs. what is the guy's name, I can't recall it at this time and there is a certain parameters around it. And I am not getting into that now. (JoAnn Borato – Ok). We will get into that if needed. I don't want to waste anyone's time on it is a coercion and all (inaudible) stuff in we don't need to. But that was the motion of 2 ½ years ago or so.

Mr. Googins – I hate to plead my ignorance, but is the difference between secular and sectarian?

Borough Solicitor – Sectarian is a particular type, it is the exact opposite actually, where secular is a kind of, you would say a secular prayer is almost an oxymoron but it's a non-sectarian. A sectarian is a particular set, particular religion whether you are talking Catholic or Protestant like you were discussing here earlier when you were talking Islam vs. Jew vs. Christian. That is also a sectarian prayers, praying (more particular) where secular is more vague. I think it is ah.

Mr. Googins – What we said was non-secular?

Borough Solicitor – Non-secular, which is what that Supreme Court case which came out, did stand for. But it said that if it's done in the right way, it's permissible. And my only point here is from a legal standing. I am telling you what is permissible and what is not. I am not touching the policy. That is for you guys to determine. I am just saying, giving you the parameters in what is legal from that opinion from 2014, that's all. And I think if reading this now and also reading the opinion, it seems as though this was a direct result of the opinion and as I recall that was the case because that the opinion stands for the proposition that you are permitted, not have to, permitted to have a sectarian prayer as long as it fits certain parameters. The policy decision is up to this court and what they were discussing is policy, in the matter of policy it should not be what you can do, what you should do.

Mrs. JoAnn Borato – Well even if you would take into consideration of a moment of silence so people in their heads can say what fits them best.

Borough Solicitor – And that is also something else that can and absolutely are permitted to do that.

Mrs. JoAnn Borato – Ah, I thought you said you can't.

Borough Solicitor – No, no, no absolutely.

Mr. Googins – if at all we can't tell what the intent of the motion was and again if I can be slowest link here, do you think the motion intended on saying non-sectarian and we just used the wrong word, I am looking for.

Borough Solicitor – The problem with that is that both words work, both words make sense in the context. (Mr. Googins – right). Non-secular.

Mr. Fetkovich – You can't construe the intent.

Borough Solicitor – No, I mean, as I am reading this by language, linguistically if I am reading it, is basically permitting the use of secular, non-secular, sectarian (allowing sectarian).

Mr. Morrone – Then we should just take it off and do a moment of silence and that leaves all the doubt out right?

Borough Solicitor – if that is, if that is the motion, that is up to you guys, my point is you don't need to look to me because I am just telling you what the parameters are. The actual policy position is up to you guys.

Mr. Morrone – I make that motion to take it off and just have a moment of silence, that way it will please everybody.

Mr. Burns – The motion made, any questions on the motion?

Borough Solicitor – You need a second.

Mr. Burns – Anyone want to second the motion, I will second the motion.

Borough Solicitor – Is there discussion on the motion. Technically you open it up for discussion (inaudible).

Mr. Googins – Is the motion to remove?

Borough solicitor – The motion as I see it.

Mr. Googins – And to add.

Borough Solicitor – Yes, the motion as I see it is to remove the word prayer from the agenda and add to the agenda a moment of silence before the Pledge of Allegiance after the Call to Order, as to clarify the motion, as I, if I am correct in saying that.

Mr. Morrone – Oh yea, I think that would be more proper.

Borough Solicitor – Ok.

Mr. Morrone – That is how I feel.

Mr. Burns – We have a second on the motion, all in favor.

**After some review and discussion the motion of Mr. Morrone, seconded by Mr. Burns to remove the word prayer from the agenda and add a moment of silence to the agenda before the Pledge of Allegiance and after Call to Order.**

Mrs. Mutschler – Roll Call.

Borough Solicitor – You want a roll call vote or discussion?

Several People at once – Roll call would be appropriate.

Borough Solicitor – Ok

Mr. Bucuren – Is that a yes to remove the prayer and no not to remove the prayer?

Borough Solicitor – Yes to remove the prayer and add the moment of silence, no is to keep it as it was stated in the 2000, May of 2014 minutes.

Mr. Googins – Can I add something, we are still in discussion.

Borough Solicitor – (inaudible) we are still in discussion, sure.

Mr. Googins – I don't think anybody has any problem with the invocation type statement from what I am hearing, can we add and/or invocation, would that make it.

Someone – Make it more complicated.

Mr. Morrone – Like I said, if we have a moment of silence then we, it leaves it simple.

Mr. Googins – It is just.

Mr. Morrone – It doesn't belong in a place of business but I mean (inaudible).

Mr. Googins – Just like Mr. Thomas said unfortunately when you retire you get more jobs than you ever had. As I have also, Mr. Thomas, fortunately in and unfortunately I have attended and (inaudible) charity and multiple meetings and with reference, of course, everybody knows about social (inaudible) we always do an invocation at the beginning in addition to the Pledge so I would not have any problem with that. But, in fact, I would actually like to hear that, an invocation a non, help me now.

Borough Solicitor – Non-sectarian.

Mr. Googins – Non-sectarian, (multiple people talking at once), I learned new words tonight and the definition of those words. But I would ah add and/or if Mr. Morrone would be willing to add that amendment as a moment of silence and/or an invocation.

Mr. Morrone – (inaudible).

Mr. Googins – Well, I don't know that's why I am asking.

Mr. Morrone – (inaudible) a moment of silence and that's it.

Mr. Googins – yea, we can do that, I am ok with it.

Mr. Morrone – We can all say our own thing, whatever.

Mr. Googins – It is just a question, never mind, just a question.

Mr. Burns – The motion is concluded, now what is the motion.

Mr. Morrone – To take (several people talking at once) and add the moment of silence, that's it.

Mr. Burns – Mrs. Nelko.

Mr. Morrone – Yes or no, we have to do a roll call.

*(Roll Call taken at this time.)*

**A roll call vote was taken of the members of Council present. The motion passed after receiving four (4) affirmative votes of the seven (7) participating members of Council. Mr. Bucuren, Mrs. Mutschler and Mrs. Skonieczny all voted against the motion.** During the roll call vote the following statements were made:

Mr. Fetkovich stated, the bitter irony through all of this is that I said a lot of prayers thinking about this very serious subject. I am a church goer. I am a Roman Catholic in faith. I went through schooling in a Roman Catholic school, my daughter goes to Duquesne University. There is nothing more powerful than prayer. In my belief the Lord's Prayer is the one I say. But I do feel uncomfortable imposing my religion on anybody else, just like I do not want anybody imposing their religion on me. I take this very seriously but my relationship is with God. If somebody wants to get together and say a prayer before the meeting, that is a group of people who are like minded, I will join that meeting. I will say my prayer before the meeting and I will say it on my way home. I believe in the separation of church and state, I just don't think this is the most appropriate place to do it, in that fashion. So I believe a nondenominational (if this is the proper term) or a moment of silence because in a moment of silence everybody can do what they want with their God and how they believe. So this decision to take this off the table was taken seriously and I hope people can understand my stance I believe in, but I do not think it should be done the way it is done here.

Mr. Googins stated that he agreed with everything Mr. Fetkovich just said here. With sixteen years of Catholic schooling and having been a Catholic my whole life, I do not have a problem with the Lord's Prayer.

**MINUTES** of the Regular Meeting held on September 27, 2016, were presented to Council. **After some review, the motion of Mrs. Mutschler, seconded by Mr. Googins to approve the Regular Meeting Minutes of September 27 2016, was unanimously carried with the exception of Mrs. Skonieczny who abstained due to she was not present at the meeting.**

**MINUTES** of the Regular Meeting held on October 11, 2016, were presented to Council. Mrs. Skonieczny expressed concerns regarding the stated determination sentence under the topic of Northern Lights Shopping Center. Mrs. Skonieczny requested the Borough Manager review the audio again because it was her understanding that the Code Enforcement Officer (CEO) would present a report of code violations/citations that were issued, not will look for violations and discuss them with Mr. Kail and Mr. Kail to send a letter. Mrs. Skonieczny discussed public safety concerns, one being a large piece of metal hanging near Med-fast and why wasn't there a citation(s) issued. The Borough Solicitor stated that there is a reason for this that can be discussed but not during the main meeting, it is not appropriate. There was discussion regarding the interpretation and understanding at the meeting that the CEO would make a list of problems and potential violations, then meet with the Borough Solicitor and Borough Manager to determine the next step to take. There was discussion regarding if there was a correction to the minutes and that there was a request for a review of the audio to determine what action the CEO was to do. Mr. Googins made a motion to approve the October 11<sup>th</sup> minutes unless there is an error to them as they are written. Mrs. Skonieczny stated that the minutes should show the result of the discussion. Mr. Googins stated that minutes are supposed to be documentation of the action taken by Council not a transcript of every word in the sentences. Mrs. Skonieczny stated that the motion could be to pass the minutes with a revision after checking the audio for what the CEO was supposed to do. There was some discussion regarding Robert's Rules for motions. **After some discussion, the motion of Mr. Googins, seconded by Mr. Morrone to approve the October 11, 2016 minutes as written was made, with Mrs. Skonieczny opposing.** A roll call vote was requested. The Borough Secretary attempted to conduct the roll call vote twice after the request was made. Mr. Morrone reviewed his comments at the last meeting about contacting the owner of Northern Lights Shopping Center to inquire what the plans are regarding what is going and what is coming in and if there isn't anything planned then start fining them. The Borough Solicitor stated that there is a particular reason this discussion is moot which involves the fee schedule needing updated. Mr. Fetkovich stated that if there is an inaccuracy in the minutes then you have to go back to review it and it would only delay the approval. Mrs. Mutschler stated that if she understands correctly that the statement in the minutes needs to continue to include Mrs. Skonieczny's statement that the CEO was to comeback

with a report. There was some discussion regarding safety issues being brought to the Borough's attention and whether or not the Borough could be held liable, which was determined that it would not. **At this time the roll call vote was taken of the members of Council present. The motion failed having only received two (2) affirmative votes of the seven (7) participating members of Council. Mr. Googins and Mr. Morrone voted for the motion and Mr. Burns abstained due to he was not present at the prior meeting.** The Borough Solicitor inquired if there are any other motions. Mrs. Skonieczny motioned to accept the minutes when they are corrected after the audio is checked. **After some discussion the motion of Mrs. Mutschler, seconded by Mr. Bucuren to postpone the October 11, 2016, minutes until the next regular scheduled meeting of Council was unanimously carried.**

**FINANCE COMMITTEE:** Mr. Bucuren, Chairperson of the Finance Committee, presented Council with an update regarding the following items:

1. Budget Report for the month of September 2016, was presented to Council. After some review and the discussion below, this report was ordered received and filed.
2. Treasurer's Report for the month of September 2016, was presented to Council. After some review, this report was ordered received and filed.

**ORDINANCE COMMITTEE:** No Report.

**PARKS and RECREATION COMMITTEE:** No Report.

**PROPERTY and BUILDING COMMITTEE:** No Report.

**PUBLIC SAFETY COMMITTEE:** No Report.

**PUBLIC WORKS (PW) COMMITTEE:** No Report.

**MAYOR'S REPORT:** No Report.

**SOLICITOR'S REPORT:** The Borough Solicitor presented Council with information and updates regarding the following issues:

1. Skonieczny Law Suit – This will be reviewed and discussed in executive session.
2. Police Contract Negotiations – An update will be presented to Council in executive session.
3. 2016 - 2017 Pennsylvania Intergovernmental Risk Management Association (PIRMA) Agreement Renewal – The Borough Solicitor reviewed the background of the liability insurance quotes received. The quotes received are substantially lower than PIRMA. The other main difference is PIRMA does not offer a grace period, meaning if the Borough decides to leave PIRMA any litigation matters will not be covered. There is a risk associated with this which can be discussed in executive session with a possible vote only as it relates to a current law suit. The other quotes received offer a grace period of anywhere from two to five (2-5) years, meaning if something happened in say 2014 then the Borough would be covered through 2019 in the instance the issue would arise again.

**OLD BUSINESS:**

1. Vehicle Damage – The Borough Manager inquired if Council had any thoughts on the damaged 2010 Ford Crown Victoria or if it should be placed on the next agenda for action. Chief O'Brien feels that the vehicle is not worth fixing. The insurance company has been requesting an update regarding this

matter. Some options available is to have the insurance company determine the vehicles worth for payment or to sell the vehicle through 422 Sales (auto auction). After some discussion, it was the consensus of Council to place this matter on the next regular scheduled meetings agenda.

2. Northern Lights Shopping Center – Mrs. Skonieczny inquired what the Code Enforcement Officer findings were. The Borough Solicitor reviewed the International Property Maintenance Code that was adopted by the Borough. The Borough Solicitor explained that the Fee Schedule Resolution has not been updated to include the chapter and a citation is not going to do much if we can't attach a fee to it. Mr. Fetkovich asked if once the fee issue is settled then the Borough could move forward. The Borough Solicitor stated yes. Mrs. Skonieczny asked how it works with the citations already given. The Borough Solicitor stated some citations can be done, some cannot and that residential matters are different than commercial. There was some discussion regarding the Fee Schedule Resolution being ready for the next meeting of Council. The Borough Manager stated that he would forward the resolution to Council, Planning Commission and the Planning Commission Consultant for review.

### **NEW BUSINESS:**

Mrs. Mutschler stated since we were putting out a vote regarding a prayer issue and opened it up to the public, so what you are saying is, now every time we have on the table a big controversy as per the

Sunshine Law, we should put it out to the public for discussion before we vote on it. The Borough Solicitor stated no, there is a legal reason this was opened up for public discussion and it pertains to a potential litigation matter. The Borough Solicitor explained that the Sunshine Act has provisions for executive session, closed meetings and the act of curing a potential violation of the Sunshine Act.

Mrs. Skonieczny inquired if any one Council Member can instruct the Borough Manager to remove a standard written part of the agenda off of the agenda. There was discussion regarding whether this was a question regarding who sets the agenda. Mrs. Skonieczny stated no not who sets the agenda but what are the limitations of our power as an elected official, can any one of us instruct say the Pledge of Allegiance to be removed. The Borough Solicitor explained that the Pledge of Allegiance is different due to there is a resolution regarding the structure of the agenda which would require an amendment to the resolution which specifically outlines what the agenda is. The Borough Code (state law) states that the President presides over the meeting and also gives authority to individual Borough's to create an ordinance to outline details and specifically states that the Borough Manager has the obligation duty to present an agenda to Council. If you combine the two, it would make sense that the Borough Manager, in conjunction with the President, should be the one presenting the agenda on a week to week basis. The Borough Solicitor recommended that if a particular issue was done by a motion then Council should rescind the issue by a motion.

Mrs. Mutschler stated that her above question was in general, say Council wanted to purchase a big ticket item, before the decision is made and a vote taken, would Council need to get the input of the residents. There was some discussion regarding the term "public discussion" having different meanings and contexts. By public session, the law means and refers to things that are discussed in a public setting, which is what the Council meeting is and "hear the public" has its own rights. The Borough Solicitor answered Mrs. Mutschler's question by saying no, it has to be stated at a public session, but it is not mandated to hear the public on large issues. The reason the prayer was open to public discussion is because it is a controversial issue and Council wanted to make sure the public had input on the matter, as well as, to try and cure an alleged violation.

### **OTHER BUSINESS:**

Mrs. Mutschler expressed concerns regarding an item not on the agenda being passed without three (3) members of Council not attending the meeting. The item in question is the hiring of a full-time police officer. There was discussion regarding this not being a wrongful act due to there was a quorum. Mrs. Mutschler stated that she thought it would have been common courtesy since it was a big item and that it

did not need to be acted on with that many missing members. Mrs. Skonieczny inquired that if an item is not on the agenda and is acted on that night is this proper. The Borough Solicitor stated that it is legally allowed. This is being debated right now on the floor of the representatives regarding the agendas being mandated twenty-four hours (24 hrs.) before a meeting, but it has not passed yet.

Mrs. Mutschler inquired if the 2017 Budget would be ready for the next meeting. The Borough Manager stated that he is trying to set a meeting date with the Finance Committee to review the budget.

**EXECUTIVE SESSION:** Mr. Burns requested Council go into Executive Session regarding police contractual matters and litigation matters at 8:11 p.m., as per the motion of Mr. Morrone, seconded by Mr. Googins.

On the motion of Mr. Googins, seconded by Mr. Bucuren to reconvene at 9:14 p.m. was unanimously carried.

2016 - 2017 Pennsylvania Intergovernmental Risk Management Association (PIRMA) Agreement Renewal – After some review, the motion of Mrs. Mutschler, seconded by Mr. Googins to renew the contract with PIRMA for property and liability insurances was unanimously carried.

There being no further business, the motion of Mr. Morrone, seconded by Mr. Googins to adjourn the meeting at 9:16 p.m. was unanimously carried.

Margie L. Nelko  
Borough Secretary

Randy Kunkle  
Borough Manager

Motion(s) made and/or Council consensus decision(s):

1. Approve removal of the word prayer from the agenda & add a moment of silence, included a roll call vote.
2. Approve the Minutes of September 27, 2016.
3. Failed motion to approve the Minutes of October 11, 2016, included a roll call vote.
4. Approval to postpone the Minutes of October 11, 2016.
5. Approval to renew the PIRMA Agreement.