

**HARVEYS LAKE BOROUGH
LUZERNE COUNTY
REGULAR COUNCIL MEETING
March 15, 2011**

The Regular Meeting of the Harveys Lake Borough Council was held on Tuesday, March 15, 2011 at 8:07 P.M. at the Harveys Lake General Municipal Building, Route 415, Sunset, Harveys Lake, PA.

Council President Kopko called the meeting to order and asked everyone to join him in the Pledge of Allegiance.

President Kopko announced the meeting tonight was being tape-recorded and if anyone in the audience had a recorder to please advise Council at this point. Matt Hughes from the Times Leader indicated that he had a tape recorder.

Roll call:

Clarence Hogan	Mayor	Present
Francis Kopko	President	Present
Larry Radel	Vice President	Present
Boyd Barber	Council Member	Present
Richard Williams III	Council Member	Present
Ryan Doughton	Council Member	Present
Diane Dwyer	Council Member	Present
Carole Samson	Council Member	Present
Charles McCormick	Attorney	Present
Susan R. Sutton	Borough Secretary	Present

****Indicates motions made.**

President Kopko stated that an Executive Session was held prior to this council meeting to discuss personnel issues.

****Councilmember Barber made the motion to waive the reading and accept the Minutes of the January 18, 2011 Public Worksession, January 18, 2011 Regular Council meeting, seconded by Councilmember Radel. The motion carried unanimously.**

(The minutes that should have been approved were for February 15, 2011, not January. The February minutes will be on next months agenda for approval.)

Council President Kopko asked council if there was any input or questions from the hearing that was just held on the CELDF ordinance.

Councilmember Doughton asked Solicitor McCormick if he would give his input on the CELDF ordinance that Council had just had a hearing for prior to this meeting.

DRAFT

Solicitor McCormick stated that he had reviewed the proposed ordinance and had some concerns that had been raised in the prior meeting and in prior meetings over the last three or four months.

The most problematic issue for him, as a Solicitor, is the overall enforceability and legality of the ordinance itself. He has strong questions in the breadth it is taking, if it would be upheld and whether a court would enforce it. Those concerns he still maintains. He has not read or heard anything in court cases that would change his opinion about that.

His second concern is the cost of litigation and attorney fees and the time it would cost to defend. Council should take this into consideration. There is also a piece of financial responsibility that has not been taken into consideration. It is the possibility for some type of large judgment should the Borough lose in court. There isn't any offer of indemnification on behalf of the active group, nor would he expect that because it is an unclear situation. But for the purposes of the Borough Finances, not only would there be legal costs involved, but may in fact be a judgment and other significant financial responsibility that would go along with the case should the Borough lose a case. Again, those are hypothetical, he doesn't know if anyone would be filing an action against the Borough should they try to enforce it, but those are issues that Council has to review.

Before he went on to his next few items, he wanted to point out something. He believes there was an attempt to at least pigeon hole his views of this issue, to only protect the people of the "municipal corporation". It is always easy to use the word corporation especially with this type of an issue, because corporations are the motivating factor in a large degree to people's concern. And to use Municipal Corporation is technically correct; he believe it is more geared to have people misunderstand the circumstances of the Solicitor. Although he does represent the Borough as an entity, he also has in his 35 years of representing over 12 communities in Luzerne County. As a lifelong resident of Luzerne County, he takes his position as a Solicitor to represent all of the people, and the general concerns of the people in the Borough when he reviews a legal issue. So at least to infer, as a Solicitor, that he is the guardian of some type of Municipal Corporation, and that is the only issue he would look to, is inaccurate.

There is a potential issue when he reads the ordinance as to whether there would be state or federal financing enforcement, either taken away from this municipality or cause significant difficulty in further litigation possibilities with the state and federal government. He referred them to a section of the ordinance, in which the people's right to a self government appears to require council to

"if any other level of Government attempts to preempt, alter or overturn the ordinance, then Borough Council needs to have public meetings to explore the adoption of other methods that span local control. And those considerations my include actions to separate the Municipality from other levels".

There has been a lot of discussion with this ordinance that gives a restriction and the banning of gas extraction. It is, but it is much more. And the language is exceedingly broad. He is not sure everyone understands that. There are certainly pieces in here that the overall issue is to ban this type of operation in the community but it includes significant, and in his judgment, legally questionable rights.

Statement of Law, section 3 Rights of Natural communities.

“Natural communities and ecosystems, including, but not limited to wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights...”

these are inanimate entities, there is no legal position that can be upheld to say that any inanimate entity has an inalienable fundamental right. The people have inalienable rights.

This also allows the residents of the Borough to possess individual legal standing to enforce those rights on behalf of the natural communities and ecosystems. And since we are talking about significant absolutes, and we are talking about that, and they are significant should something happen to the aquifers in this community, let's go to the absolute to what that means. That will allow, any resident in the Borough to file primary jurisdiction in a court of common pleas in this community, if they felt any other resident or any other entity was causing a disruption to this very broad aquifer, ecosystem. Taking this to it's absurd level, you could have a resident, tie up another resident in court for a planned development that they may be having on their property or a driveway, or a parking issue, because of runoff of the water into the lake. He's not saying people would do that, he is highlighting as a lawyer, the very fundamental problems he has with an ordinance this broad.

Those possibilities of litigation attempt to allow residents to have primary jurisdiction against anyone in this community if they disagree with some type of development on the property, because it would interfere with the fundamental rights which is a large concern to him legally. He's not quite sure that people looked at that, in the general community, he thinks it is an important issue. The way that the ordinance is drawn, in his opinion, is overly broad. It is legally questionable, and it will most probably cause significant difficulty to the residents down the road for issues that are completely outside of the question of the gas.

His general feeling is that the present zoning ordinance is, although imperfect, it can be tightened a bit more, and the Borough will have a better chance in litigation if they do that. But the Borough will have to maintain those zoning ordinances, and taken to its logical extreme, they will have problems with anyone doing anything with their property, because it is extremely easy to show that any type of significant development will interfere in some manner with the aquifer or the ecosystem at the lake because it is so fragile. We have all seen it. That is why Mr. Varaly pointed out the Environmental Impact Statement because it is such a fragile ecosystem here.

Those are his legal concerns. They are also his concerns for the people in the Borough for the financial concerns that may occur. For all of the residents.

****Councilmember Dwyer made a motion to adopt the CELDF ordinance seconded by Councilmember Samson. Roll Call Vote:**

Radel	No
Barber	abstained due to leases owned in Wyoming County
Williams	I do not support gas drilling but I can not and will not violate State Law to stop it. No.
Doughton	No
Samson	No
Dwyer	I have read and examined both the zoning and the CELDF, there are both positive and negative limitations. I feel it would be opening up ourselves to a lawsuit, so I have to vote No.
Kopko	No

The vote was unanimous and the ordinance did not pass.

OPPORTUNITY FOR CITIZENS TO BE HEARD

The floor was opened for Citizens to be heard.

Several Residents, including, Mike Kotulski, Tiffany Kuhar, John Sentis, John Rothchild, Lynn Miller, and a few residents who did not clearly give their names had grave concerns about a new neighbor on Baird St. that is a convicted Sex Offender. They wanted to know how this happened, and what could Council do to fix it.

Councilmember's Radel, Dwyer, Williams all spoke letting the residents know that they were aware and were looking in to updating the Zoning Ordinance to restrict where sex offenders are able to live. Unfortunately, this will not help with the current resident, but with future issues. They also stressed the importance of educating their children and grandchildren.

Officer Charles Musial spoke stating that the Parole officer is willing to come to the Borough and speak to any one with concerns. Officer Musial will set up a meeting with anyone interested. He also stated that they have increased police patrols in the area.

Jason Miller expressed concern with the Harveys Lake Fire and Ambulance company using inmates to help build docks. He felt the neighbors should have been notified.

Mike Dziak asked if there was any plan to take action on updating the zoning to help guard against gas drilling.

Rae Dziak stated that she was disappointed that council didn't pass the CELDF

ordinance. That she can't comprehend why council keeps going back to zoning to protect the lake. That avenue is just a pipe dream. Council should have had the courage to take a stand.

Councilmember Williams stated that he is already being sued because he "violated state law" and he won't do it again. His morals will not allow him to break laws.

Rae Dziak said that he shouldn't be on the panel then.

Don Mark asked where the Legislators are. Can't we invite them again?

Michael Daley pointed out that the Environmental Advisory Committee has been doing baseline water testing and that if anything happens to the lake, at least we can prove what we have now.

The floor was closed.

INCOMING CORRESPONDENCE

The 911 addressing release date is April 1st.

REPORTS FROM APPOINTED OFFICIALS AND SPECIAL COMMITTEES

The Tax Collector's report was available on the back table.

The Borough Secretary reported that during the month of May the Borough received \$20,695.83 from Berkheimer and collected \$85,277.24 in garbage payments.

REPORTS FROM APPOINTED OFFICIALS AND SPECIAL COMMITTEES

Finance: Councilmember Samson gave the financial report including: Total available cash is \$308,860; total restricted cash is \$63,436 total cash of \$372,997.

Police: Mayor Clarence Hogan gave a verbal report including the department received \$158.66 in fees and fines. Police responded to a total of 86 calls. He also stated that the Police Department is looking into the DARE program.

Roads: Councilmember Williams gave a report including the service on the vehicles and dealing with drainage issues. He asked residents that are having issues with drainage and water to contact the Borough Secretary so that they can be addressed. He also reported that a meeting had been held with the Police, Road Dept. and school officials and the EMA coordinator to review the policies and make sure they were still operable. He also reported that he had checked with the company that we purchase road salt from to verify that no fracking waste was being used in the salt we purchase.

****Councilmember Radel made the motion to accept the reports from Special Committees, Elected Officials and Appointed Officials, seconded by Councilmember**

Barber. The motion carried unanimously.

NEW BUSINESS

****Councilmember Doughton made a motion approve the request of Joanne Gensel, Race Director, on behalf of the Wilkes-Barre Triathlon, for use of Borough roads within our Jurisdiction and for coordination with police, firemen and ambulance personnel where appropriate and necessary for the 2011 Wilkes-Barre Triathlon to be held on Sunday, August 14, 2011, seconded by Councilmember Williams. The motion carried unanimously.**

****Councilmember Dwyer made a motion appoint Susan Vosik Pekala to EAC with her term to expire on December 31, 2012, seconded by Councilmember Samson. The motion carried unanimously.**

****Councilmember Dwyer made a motion appoint Megan Sgarlatt to EAC with her term to expire on December 31, 2013, seconded by Councilmember Samson. The motion carried unanimously.**

****Councilmember Radel made a motion to enact the Harveys Lake Stormwater Management Ordinance #1- 2011, seconded by Councilmember Dwyer. The motion carried unanimously.**

OLD BUSINESS

President Kopko asked if anyone on Council had any old business they wished to discuss.

****Councilmember Barber made a motion to pay the Bills and Payroll in the amount of \$90,454.26, seconded by Councilmember Williams. The motion carried unanimously**

President Kopko asked if anyone on Council had any upcoming Community Events to announce.

On May 12, there will be Community Night hosted by the GFWC, Harveys Lake Chapter. They will be honoring the top ten students at Lake Lehman High School at the Lake Noxen Elementary School at 7:00pm.

On Saturday, March 19, 2011 there will be a St. Patrick's Day dinner dance with the Sons of the American Legion to benefit their annual Fishing Derby.

****Councilmember Dwyer made a motion to adjourn, seconded by Councilmember Williams. The motion carried unanimously.**

The meeting adjourned at 9:10 pm

Respectfully submitted by Susan R. Sutton, Borough Secretary