

**HARVEYS LAKE BOROUGH
LUZERNE COUNTY
REGULAR COUNCIL MEETING
October 21, 2008**

The Regular Meeting of the Harveys Lake Borough Council was held on Tuesday, October 21, 2008 at 7:30 P.M. at the Harveys Lake General Municipal Building, Route 415, Sunset, Harveys Lake, PA.

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

President Lucarino announced the meeting tonight was being tape-recorded and if anyone in the audience had a recorder to please advise Council at this point. There was no response from the audience.

Roll call:

Richard Boice	Mayor	Present
Lawrence Lucarino	President	Present
Diane Dwyer	Vice President	Present
Edward Kelly	Council Member	Present
Clarence Hogan	Council Member	Present
Charles Musial	Council Member	Present
Carole Samson	Council Member	Present
Betty Jane West	Council Member	Present
Charles McCormick	Attorney	Present
Susan R. Sutton	Borough Secretary	Present

****Indicates motions made.**

President Lucarino stated that we would be having a hearing for Mr. Hunter.

Solicitor Charles McCormick asked Mr. Hunter to come forward to present his case to council.

Mr. Hunter stated that in 2007, Harveys Lake Borough required residents with septic tanks to have them pumped out. Mr. Turner inspected his tank and told him that since he had a metal tank, he suggested that he upgrade it with a concrete tank. Mr. Hunter stated that he told him he didn't have the money at the time, but that Mr. Turner was really nice and asked him when he thought he could do it. Mr. Hunter told him he thought he could do it in the spring time. And it was a little later than spring but he did do it. He didn't realize that the Borough switched to a different SEO. Mr. Turner never mentioned that it needed to be a duel tank or anything, just a concrete tank. McCarrolls put the tank in, and Mr. Hunter asked if there were any regulations. McCarrolls asked him if it was new

construction or a repair. Mr. Hunter told them a repair, taking an old one out and putting a new one in and McCarrolls said they told him his tank was fine.

Mr. McCormick asked who told him that, the contractor who put the tank in for him? He said, they just set it for him. Mr. McCormick asked if it was the SEO and he said no, it was McCarrolls. Mr. Hunter said it is a DEP approved tank.

Mr. Hunter stated that Mr. Belles wanted a dual compartment tank which is DEP regulations, but Mr. Hunter said he called DEP at the 1- 800 number and they told him that if he is just replacing the one that is there, it is fine. He talked to Ron Summers, he is in charge in this area, and he is the one that told him to take it to council. He said there shouldn't be anything wrong with it. So he talked to DrainTech who works for the Borough sometimes, Kurt Williams, and he said there shouldn't be anything wrong with it as long as it wasn't a new construction, and Mr. Belles is considering it new, but if you read the information on the permit from the Borough, it tells you what is considered new and what is repair.

Mr. McCormick asked if there was a copy of the permit. He said yes and brought it forward. He also asked if he had a copy of the contract that he had with the construction person. Mr. Hunter stated all he had was a bill of sale, but not with him, he only had a copy of the specs for the tank that was installed.

Mr. McCormick entered into testimony that Mr. Hunter handed him:

- a receipt dated 8/22/08 for \$350 signed by Mrs. Sutton, the Borough Secretary, for a septic permit from the Borough Of Harveys Lake
- And an application for a sewage disposal system permit which is a DEP form or it appears to be, where Mr. Hunter is the applicant, and the fee paid was \$350, with nothing else marked off, and Mr. Hunter's signature, dated 8/20/08. On the back is some definitions of "new" and "repair".

Mr. McCormick asked who handed him the permit. Mr. Hunter stated that Mrs. Sutton, the Borough Secretary did.

Mr. McCormick stated the definitions on the back of the permit are only so that you know how to mark the front of the permit. The definition of new is for a new sewer system, which according to Mr. Hunters testimony, his was only a replacement of a system in need of repair. Mr. Hunter stated that there was nothing wrong with the one he had, just that Mr. Turner wanted him to upgrade it to a concrete tank. So Mr. Hunter just agreed with him. Mr. Hunter didn't think there was going to be any problem. Mr. Turner didn't act like it was going to be any big deal.

Mr. Hunter submitted a letter written by Mr. Belles, because Mr. Hunter asked him to check with DEP, and Mr. Hunter said that DEP doesn't have anything to do with it unless it is contaminating the water, they won't come or do anything about it. So Mr. Hunter doesn't feel the DEP regulations apply to him, because they won't even come out and

look at it. He was told by DEP that household sewage systems are exempt and they don't have anything to do with them at all.

Mr. McCormick asked why Mr. Turner was at his residence inspecting his tank in the first place. Mr. Hunter said because it was the initial inspection after the Borough passed the Act 537, and Mr. Turner saw that it was a metal tank, only 800 gallons and this one Mr. Hunter replaced it with was 1000 gallons. The old one was actually smaller than the one he replaced it with. Mr. Turner said it would be better all around.

So Mr. Belles sent me this letter (dated 9/7/08), and I asked him to call DEP because they don't have any jurisdiction and won't check it out or anything unless he is polluting the water, they won't come or anything. So Mr. Hunter said the "DEP regulations are not, they are just not" because Mr. Hunter isn't polluting the water.

So Mr. McCormick said that his previous testimony re: what DEP said is not relevant because they are saying that they don't have jurisdiction. Mr. Hunter said yes, that is why Mr. Summers said he wouldn't come out because he isn't polluting the water system.

Mr. Summers told me to take it to the Borough because there isn't anything wrong with what I installed.

Mr. McCormick said that it was nice of Mr. Summers to say that, but it doesn't matter since they don't have any jurisdiction.

Mr. Hunter said that that is the problem, because Mr. Belles said that it is not DEP approved, but they don't have any jurisdiction here.

Mr. McCormick said that if you read the letter the SEO says that it is not approved under the regulations for on lot sewer systems, not DEP. Mr. Hunter said that the Borough advertised in the paper that it didn't meet DEP regulations. Mr. McCormick said whatever, that it is regulations under the State.

Mr. McCormick stated that the issue is that Mr. Hunter doesn't feel that he should be required to have a double tank, that the SEO feels is necessary under the section that Mr. Belles gave you, because your feeling is that that is only required for new construction, not repair. Mr. Hunter said yes. You are replacing an existing individual tank. Mr. Hunter said yes. Mr. McCormick asked if that correctly presented his case. Mr. Hunter said yes.

Mr. Hunter said he made this agreement with George Turner, Mr. Belles wasn't involved at all, and he told him he wouldn't have done it if he knew there was a new guy, but when Mr. Hunter talked to George Turner, it was me and him, and that is what Mr. Turner said he could do.

Mr. McCormick called on Mr. Belles for testimony.

Mr. Belles received a complaint that a tank was being installed with out a permit. Mr. Belles investigated the complaint and found that a septic tank had been installed, a single compartment 1000 gallon tank.

Mr. Belles provided a packet of information passed out to council:

1. Letter dated 12/7/07 from George Turner
2. Letter dated 9/7/08 from John Belles
3. Letter dated 9/28/08 from John Belles
4. PA code sec 72.22
5. PA code sec 73.31 (4)
6. PA code sec 73.21
7. PA code sec 73.13 Minimum horizontal isolation distances
8. PA code 73.31 standards for septic systems
9. PA code 73.31 (e) inspection port

Mr. Belles stated that:

- (1) is a letter from Mr. Turner stating that he has a septic tank in poor condition that will need replacing soon. It also states that a repair permit will be required from Harveys Lake Borough.
- (2) and (3) are the letters going back and forth, that explained that tank is not the correct tank since it is a single rather than a dual compartment tank, and that it was installed with out a permit also with (2) Mr. Belles enclosed all of the regulations (4) – (9) that were necessary to bring it up to code, as per DEP Act 537 title 25 chapter 72.22, page 4 indicates in the DEP rulebook.

Mr. Belles stated that DEP does have oversight over us. The reason DEP will not get involved is that the SEO is responsible to administer the ACT. They won't get involved unless the Borough doesn't administer the ACT.

Number (4) states right on the top 72.22 (a) "No person may install, award a contract for construction. or construct an individual or community on lot sewage system, or install, construct, occupy or use a building to be served by that system without first obtaining .a. permit from the local agency"

So this is where we get our permits from.

Number (5) sec (4) states "Septic tank installations shall consist of tanks with multiple compartments or multiple tanks" and that includes new construction or if the tank fails, you have to bring it up to code for that date.

Number (6) states requirements on cleanouts and bends

Number (7) states isolation distances.

Number (8) states that “septic tanks may be connected in series to attain required capacity.”

Number (9) states regulations re: inspection ports.

The last time Mr. Belles was out, the inspection port had been installed.

So the last issue is the tank regarding the need for a dual compartment.

Mr. McCormick asked if Mr. Belles position is that sec 72.2 (a) stating that “No person may install, award a contract for construction, or construct an individual or community on lot sewage system, or install, construct, occupy or use a building to be served by that system without first obtaining a permit from the local agency” includes Mr. Hunters tank repair.

Mr. Belles said yes.

Mr. McCormick asked if there were any more questions. There was no response.

Mr. McCormick stated that it appears that the question is whether as Mr. Belles states, the regulations require a multiple tank system under 72.22 (a), or whether Mr. Hunter’s position is that a replacement of a septic tank,(he asked Mr. Hunter Did you do anything else to the system? Mr. Hunter said no.) does not require multiple tanks because it is a repair, not new construction. Mr. McCormick asked if this was a fair rendering of the question.

Mr. Belles asked if Mr. McCormick was saying that replacement was different from repair. Mr. McCormick stated that he was just clarifying the issue at hand that council was being asked to decide. Mr. Hunter takes the position that what he did was replace an existing tank. Mr. Belles’ position under the permit issue is that replacing a tank would qualify for an install or construction of an individual on lot sewage system. Mr. Belles said that a tank would qualify as a component of an on lot sewage system. So that whenever a tank is replaced, it has to be brought up to current standards.

Attorney McCormick said there would be a 5 minute recess while Attorney McCormick gives an opinion to Borough Council on the matter before them.

Council returned from recess in 10 minutes.

Attorney stated that Borough Council had requested his legal interpretation of PA code 25 sec. 72.22 is the issue at question. I gave Council my interpretation of this issue and they are ready to vote.

The motion will be to approve or not approve Mr. Hunter’s request to Council that he not be required to replace the concrete sewer tank that he replaced his old sewer tank with a multiple compartment septic tank. So a motion is in order.

****Councilwoman West made a motion to allow Mr. Hunter's request that he not be required to replace the concrete sewer tank that he replaced his old sewer tank with a multiple compartment septic tank, seconded by Councilwoman Samson. Roll Call Vote: Councilman Kelly, yes under the provisions that were mentioned in the recess, Councilman Hogan, yes if he has the sewer pumped out regularly, if he complies the ordinance, Councilwoman West, yes, Councilman Musial, yes, Councilwoman Samson, yes, Councilwoman Dwyer, yes with the understanding that he complies with the code, Councilman Lucarino, yes. The motion carried unanimously.**

Attorney McCormick stated that Council wanted him to explain two things. First, the permit issuance sec 72.22 (a) cutting out the words that don't apply reads "no person may install or construct an on lot sewage system without first obtaining a permit", and the various subsections which require a certain type of tank. The word system is different. It requires a more broad word than just replacing a tank. An on lot sewage system includes drain field, absorption field, baffles and the tank and some more things that he is certainly not an expert at, but it certainly includes more than a tank. So that is why they took that position with that section. So they did not feel that it applied to this sort of circumstance.

With that being said, Mr. Hunter was told he would have saved himself a parcel full of grief if he had done what he were supposed to do, which is come in and get a permit. And if you had come in to get a permit, someone would have seen this and said to you here is what you need to do. That is the purpose of a permit so that he understand what the requirements are. So it would have saved him an awful lot of hassle here.

Also, Mr. McCormick said he wanted Mr. Hunter to understand that this does not mean that his system will work for any length of time. Other parts of that system may go. And if that happens then he is going to be in this section. So if his baffles don't work, then you will have to come in and comply with all of these requirements. Anything fails with this system now; he will be under these requirements. Do you understand Mr. Hunter? He answered yes.

This concluded the hearing for Mr. Hunter.

****Councilman Kelly made the motion to waive the reading of the minutes and accept the Minutes of the September 16, 2008 Public Works Session, seconded by Councilwoman Dwyer. The motion carried unanimously.**

****Councilwoman Samson made the motion to waive the reading of the minutes and accept the Minutes of the September 16, 2008 Regular Council Meeting, seconded by Councilwoman Dwyer. The motion carried unanimously.**

INCOMING CORRESPONDENCE

Penn Dot notified the Borough that next years estimated Liquid Fuels Allocation for 2009 is \$62,576.71

The **Susquehanna River Basin Commission** notified the Borough that Chsapeake Appalachia, LLC has filed an application for approval for consumptive use from the Susquehanna River Basin, including Luzerne County for a project of up to 20 million gallons of water a day for natural gas well development.

The **Luzerne Conservation District** announced that they will be accepting applications for the next round of Dirt and Gravel Roads Pollution Prevention Projects until November 3, 2008.

OPPORTUNITY FOR CITIZENS TO BE HEARD

President Lucarino asked if there was anyone in the audience wishing to address council.

Resident Judith Brokenshire asked why fireworks are being held at Warden Place on the last day of summer. No one consulted with Warden Place Beach Association who has traditionally held an outdoor party on that evening. The beach is forced to be closed now due to the fireworks. Ms. Brokenshire asked if there was an alternated date or location they could be fired from.

President Lucarino stated that it could be looked into.

REPORTS FROM APPOINTED OFFICIALS AND SPECIAL COMMITTEES

The Borough Secretary reported that during the month of June \$10,996.62 was received from Berkheimer.

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

REPORTS FROM APPOINTED OFFICIALS AND SPECIAL COMMITTEES

Finance: Councilman Kelly gave the financial report including: there is \$423,591.76 in available cash, \$230,067.66 in restricted cash, for a total of \$653,659.42 in total cash.

Police: Councilwoman read the report from September. The Police worked a total of 800 hours with total miles driven of 5,136. The 153 police calls included 1 parking tickets, 15 traffic citations, 1 non-traffic citations, 2 arrests and 3 written warnings.

Roads: Councilman Musial gave his report including that road finished tarring cracks on Old Lake Road and there will be new lines painted on it. There was pipe work and work on the catch basins. The police department was painted, leaves were removed from the gutters and Trolley Hill was prepped for paving. A new sign was ordered for Marina Drive and will be installed when it arrives. Recycling is now open, 24/7 at the road department. There was regular maintenance done on the vehicles.

Community Activities: Councilman Hogan reported that there were no activities to report at this time.

Zoning Hearing Board Report: Councilwoman Samson reported that Harveys Lake Zoning Board held their regular meeting on October 6, 2008. There were three variance requests that evening.

The first request was that of Ms. Diane Dwyer who was asking for a variance to place an unattached accessory structure on her property line on First Street. The structure was to be placed at the end of her home in the rear yard. The neighbors had no objection to the carport being placed on the property line. The Board granted the request.

The second hearing was for Mr. and Mrs. Sebastian Caron at Pole 59. The Carons want to build a deck that will require a 14 foot variance. Neighbors objected to the request as they felt the Carons would at a later date enclose the deck and make the deck into another room. The Board said they wanted to see the property before making a decision. They will meet with the contractor, Michael Dombrowski, prior to next months meeting. The hearing was continued to next month, November 12 at 7 PM.

The final hearing was that of Mr. and Mrs. Jeff Jones. The Jones bought the property at Pole 306. They wanted to tear down the existing home and build a new structure. They did not meet the setback requirements for an S-1 zone. The neighbors, Mr. and Mrs. Tony Kleynowski objected to the request saying it violated the height and side yard setback requirements. Mr. and Mrs. Jones said they would revise their plans and the hearing will be carried over to November 12 at 7 PM.

EAC: There was no meeting for the month of October due to a lack of quorum. However, Councilwoman Dwyer wanted to let the residents know that at each meeting of each board, there will be copies of all of the minutes available. This will allow residents to stay informed of all happenings even if they are unable to attend all of the meetings of the different boards.

Sewer Authority Liaison: Councilwoman Samson reported that the sewer authority paid bills totaling \$23,555.30. Atty. O'Connor reported that the Sikora matter is now finalized. Manager Rick Boice reported that daily maintenance continues on all 14 stations. 276 inspections have been completed by Charlie Musial. Drainage problem out front now fixed.

Fran Kopko presented the Board with a 2008 Fishing Derby plaque on behalf of the American Legion. Fran Kopko asked about infiltration in Sunset Area. Mr. Boice stated we are still monitoring the area and know that it is coming in from manhole lids and casings. We are averaging 300,000 gallons which is not much different than 1979.

There was an executive session following the meeting that night.

Homecoming Committee: Councilwoman Samson stated that there is no more committee. There will be a copy of the account on the back table if anyone is interested in reading it.

****Councilman Kelly made the motion to accept the reports from Special Committees, Elected Officials and Appointed Officials, seconded by Councilman Musial. The motion carried unanimously.**

NEW BUSINESS

**** Councilwoman Dwyer made a motion to increase the pay for the zoning officer from \$10.00 per hour to \$11.00 per hour effective September 17, 2008, seconded by Councilwoman West. The motion carried unanimously.**

OLD BUSINESS

President Lucarino asked if anyone had any old business they wished to discuss.

Councilwoman West and Councilman Kelly discussed the lack of resident support with the Homecoming Weekend and said that council will be considering other options for future events.

****Councilwoman Dwyer made a motion to accept the Deed of Dedication between Sharon Lee Weinberg, Attorney-in-Fact for Marilyn Saidman, Widow; and Helene Kaplan n/k/a Helene Kaufer and her Husband, Irving Kaufer, Grantors, to The Borough of Harveys Lake, dated October 10, 2008 and recorded October 14, 2008 in the Office of the Recorder of Deeds in and for Luzerne County in Record Book 3008, Page 227877, et seq., seconded by Councilwoman West. The motion carried unanimously.**

****Councilman Musial made a motion to pay the bills and Payroll in the amount of \$83,917.66, seconded by Councilwoman Dwyer. The motion carried unanimously.**

****Councilwoman Dwyer made a motion to make a \$500 donation from the community to the Back Mt. Library Association, seconded by Councilman Kelly. The motion carried unanimously.**

Councilman Lucarino asked if anyone had anything else to add to the meeting.

Councilman Hogan stated that last month at the Homecoming Committee report, it was stated that there was no help received from past committees. He disagreed with that statement. He felt that he had given them information. He felt that the costs were more than necessary, and could have been avoided.

Councilwoman West stated that they did not receive any help that actually helped. That names that were given, did not return calls.

There was heated discussion back and forth relating to this issue. The bandshell, the dj,

trophies and where the dance was held etc. was discussed.

****Councilwoman Dwyer made a motion to adjourn, seconded by Councilman Musial. The motion carried unanimously.**

The meeting adjourned at 8:35 P.M.

Respectfully submitted by

Susan R. Sutton, Borough Secretary