

**Clifton Heights Borough Council
Meeting Minutes
March 19, 2019**

Present:

Ronald Berry, Council President
Edward Martin, Council Vice President
Mark Campbell, Councilman
Mike Humphreys, Councilman
Leona Papale, Councilwoman
Karen Peterson, Councilwoman
Harris Resnick, Councilman
Fred Rich, Councilman

Others Present:

Joseph Lombardo, Mayor
Francis Catania, Solicitor
J.P. Kelly, Engineer
Cynthia Leitzell, Treasurer
John Perfetti, Interim Borough Manager
Timothy Rockenbach, Chief of Police

Pledge of Allegiance

Prayer led by Mayor Joseph Lombardo

Public Comment:

Meeting Minutes:

A motion was made by Councilman Martin to accept the February 2019 meeting minutes as presented; seconded by Councilman Campbell; and carried unanimously by a vote of 8-0.

Mayor's Report:

Mayor Lombardo announced that he received a letter from the Clifton Heights Boys Club that the Boys Club & Clifton Heights PAL's annual carnival would be held as tradition from Monday, May 20th to Saturday, May 25th, hours of operation for Monday through Thursday would be 6-10pm and Friday & Saturday 6 to 11pm. The Boys Club thanked the Borough for their continued support of the children and organizations in the community, signed by their President, Steve Goetz.

Mayor Lombardo announced that he has a proposed resolution that he would like to read to get Council's feedback on the resolution. Mayor Lombardo read the Resolution:

Whereas in November 2015, the Borough of Clifton Heights' elected representative on the Upper Darby School District Board of School Directors did not win his re-election as result of his being targeted for defeat by then sitting School Board members.

Whereas since December of 2015, all of the members of the School Board have been members of Upper Darby Township, leaving the residents and taxpayers of the Borough of Clifton Heights and Millbourne Borough, without a voice on the School Board and without access to the information previously shared with them with the Borough's School Board member; information that only School Board members and school administrators know about Upper Darby School District – finances, taxes, academic achievement, student performance, student & staff safety, and the long term plans of the School District.

Whereas Borough residents and taxpayers and the Borough government have each recently tried to address this lack of timely access to information by attending public School Board meetings and making Right to Know requests of the School District.

Whereas in response, the School District has choreographed its public meetings to prevent or frustrate meaningful input from the residents and taxpayers of the Borough, posted misleading and diversionary information about its plans in the Borough on the School District website. The School District has stonewalled the Borough and residents requests for public information, even denying the Borough's request for the number of School District students who reside in the Borough, claiming, "I am happy to grant your request. I have no records that are responsive."

Whereas the Borough Council believes that the best way to guarantee the free flow of information from the School District to the Borough residents and taxpayers is for the Borough to have its own representative sitting in the room when and where the School Board makes its decisions.

Now therefore, the Borough Council resolves as follows: The Borough Council finds in its best interest for the residents and taxpayers of the Borough that the Borough have a permanent, dedicated seat on the School Board. The Borough Council asks the School Board to immediately take the necessary legal steps to establish a permanent School Board seat dedicated to a resident and taxpayer of the Borough. The Borough Council directs that if the School Board fails to act to commence the process to give the Borough a permanent seat within 45 days of this Resolution, the Borough Council hereby authorizes the appropriate Borough officials, officers, solicitor and employees to take and all actions necessary or required to carry out the intent of this Resolution, including commencing litigation to establish a permanent seat for a Clifton Heights resident and taxpayer on the School Board at its earliest possible time.

A motion was made by Councilman Martin to adopt the Resolution as read by Mayor Lombardo; seconded by Councilman Humphreys; and carried unanimously by a vote of 8-0.

President Berry asked if they needed to vote on any other items to move towards a referendum.

Solicitor Catania said that the first order of business would be getting the Resolution signed and prepared for transmittal to the School District, which could be done for tomorrow. He said that they can work on the referendum portion independently.

Mayor Lombardo had nothing else to report.

Police Report:

A motion was made by Councilwoman Papale to accept the Police Report as presented; seconded by Councilman Campbell; and carried unanimously by a vote of 8-0.

Fire Report:

A motion was made by Councilman Humphreys to accept the Fire Report as presented; seconded by Councilman Rich; and carried unanimously by a vote of 8-0.

Treasurer's Report/Bill List:

A motion was made by Councilwoman Papale to accept the treasurer's report and pay the bills; seconded by Councilman Humphreys; and carried unanimously by a roll call vote of 8-0. (Resnick - yes, Rich- yes, Humphreys - yes, Martin - yes, Peterson - yes, Papale - yes, Campbell - yes, Berry - yes.)

Manager's Report:

Borough Manager Perfetti announced that after review, they have a copy of the Collective Bargaining Agreement between Local 835 International Union of Operating Engineers & the Borough of Clifton Heights, which is the contract for the 2 employees of the Highway Department, James Salmon and James Fitzgerald. He said that they negotiated a 5 year contract, with a start date of January 1, 2019 through December 31, 2023.

A motion was made by Councilman Campbell to ratify and accept the contract between the Borough and Local 835 for the Highway Department; seconded by Councilwoman Peterson; and carried unanimously by a roll call vote of 8-0. (Resnick - yes, Rich- yes, Humphreys - yes, Martin - yes, Peterson - yes, Papale - yes, Campbell - yes, Berry - yes.)

Mr. Perfetti announced that the Zoning Hearing Board held 2 hearings on March 4th. He said that one hearing dealt with the property at 500 E. Broadway Ave. The applicant was Sheldon Stein, a developer from New York. The Zoning Hearing Board at that time voted in favor with a 3-0 vote to change the zoning from industrial to residential and that was approved. The 2nd hearing was held for 100 S. Penn St., which was a daycare center requesting a change in the zoning. That change was denied by a 3-0 vote.

Mr. Perfetti announced that North Pointe, the property formerly known as the Clifton Heights Yarn Mill, will have demolition of the building starting in the next 2-3 weeks. Permits have been issued. He said that they will discuss the final land development agreement during the Engineer's report.

Mr. Perfetti said that Council was discussing the possibility of hiring summer help, and they could continue that discussion and act on it as a later date as necessary.

Mr. Perfetti announced that they have a 2001 police vehicle in their possession, and they are looking for Borough's direction on what to do with the vehicle, sell it, junk it or give it to the Clifton Heights Fire Company for practice, whatever Council would prefer. He said that the value of the vehicle is between \$500-\$1,000, without guarantees.

A motion was made Councilman Humphreys to donate the police vehicle to the Fire Company; seconded by Councilwoman Peterson; and carried unanimously by a vote of 8-0.

Mr. Perfetti announced that one of the Code Enforcement employees had been ailing somewhat and in the hospital for over a week. He just asked everyone to keep Lou in your prayers as he recovers.

Mr. Perfetti announced that on March 9th & March 10th PENNDOT filled pot holes on Baltimore Pike from Shadeland Ave. to Oak Ave. He thanked the Dept. of Transportation for their services.

Mr. Perfetti reminded all Council members that their state ethics committee filings would be due on or before May 1st if they were not already turned into the Borough.

Mr. Perfetti asked the Engineer to discuss the tap-in fees during his report. He thinks that they need to develop a local ordinance to comply with the Darby Creek Joint Authority as they go through this new phase of development within the Borough. He said that they should also update their zoning code with all of the redevelopment that is going on.

Mr. Perfetti announced that the Tax Collector would like to provide a brief update to the Council if they would allow it.

Tax Collector Report:

Jane Tumolo reported that she has been very busy and a lot of payments have come in early. She said that Republic Bank is allowing walkup payments, and they have received a lot in that fashion. She said that they have received numerous payments every single day, and she will work on getting a report of the percentages of payments received. She also said that she wanted to take a minute to make a personal thank you to the Mayor for taking on Mike Missanelli and standing up for the Borough in that fashion.

Mr. Perfetti asked that the solicitor go over 2 additional resolutions that should be discussed. One resolution for a reassessment on Glenwood Ave. and the 2nd the land development agreement.

Mr. Perfetti said that there has been a request of a councilmember to donate \$100 to the Boy Scouts.

A motion was made by Councilwoman Papale to donate \$100 to the local Boy Scouts troop; seconded by Councilman Campbell; and carried unanimously by a vote of 8-0.

Mr. Perfetti reported that the Historical Society has met on 3 occasions since the Borough's last meeting, and they are working in positive direction and looking to develop an arrangement for 3 W.

Baltimore Ave., the old Price Building at the intersection of Baltimore Pike & Springfield Rd., also referred to as the Toll Building. He said that perhaps they could discuss that moving forward.

Mr. Perfetti concluded his report.

Code Enforcement Report:

A motion was made by Councilman Martin to accept the Code Enforcement report as presented; seconded by Councilman Humphreys; and carried unanimously by a vote of 8-0.

Engineer's Report:

J.P. Kelly presented the Engineer's report.

Mr. Kelly announced that the bid opening for the 2018 CDBG funds, which was allocated for road work and road restoration, was held today. Included in his report are the bid tabulations as received. He recommends the contract be awarded to Innovative Construction of Folcroft for the base bid of \$116,492, which is \$1,492 more than the award, but they will make a request with OHCD to make up the difference of the award, and he doesn't think they would have a problem in doing that.

A motion was made by Councilman Humphreys to award the CDBG contract to Innovation Construction of Folcroft for a base bid of \$116,492; seconded by Councilman Campbell; and carried unanimously by a roll call vote of 8-0. (Resnick - yes, Rich- yes, Humphreys - yes, Martin - yes, Peterson - yes, Papale - yes, Campbell - yes, Berry - yes.)

Mr. Kelly announced that they would begin to prepare the scope for the 2019 Road Program with the assistance of Borough Council. He said that they typically submit for around \$70,000 worth of work, and they can just let him know through the manager if there is an area that they would like him to review.

Mr. Kelly announced that the Borough was successful in obtaining a significant number of LED street lighting fixtures and last year, Council authorized the engineer to complete a contract for installation and solicit bids. The contracts were completed and advertised and the bid opening is scheduled for April 11th at 10am.

Mr. Kelly noted that the sanitary tap-in fee and zoning amendments that have been brought up in recent discussions and review of property improvement applications has made them aware that the Borough has not established or adopted a tap-in fee for the sanitary sewers. It is the engineer's recommendation that Council authorizes his office to conduct a study and ultimately develop a draft ordinance for consideration to officially adopt a tap-in fee. It is a typical fee established in other municipalities. When a new applicant is looking to add a new pipe into an established sanitary sewer, they would pay a fee associated with tapping into that new line. The fee would go toward the maintenance and operation costs of the sanitary sewer. The study needs to be completed to substantiate the fee to be assessed.

A motion was made by Councilman Martin to authorize the Engineer, Solicitor and Borough Manager to move forward in developing the necessary amendments to the fees, particularly the tap-in fee as outlined; seconded by Councilwoman Peterson; and carried unanimously by a vote of 8-0.

Mr. Kelly added that they had additionally noted several discrepancies in the zoning ordinance and with Council's authorization; he would work with the Borough solicitor and manager to make recommendations to address these discrepancies and ultimately provide amendments for Council's consideration.

Solicitor Catania explained that these things would go hand in hand with the development going on, and some of the development is in the areas of the Aldan & Lansdowne borders, and the uses that are coming in and making application are different than uses of the properties that are next to them, so they would need to look at setbacks and things of the like. They would do a Borough wide analysis to move forward with that.

A motion was made by Councilman Martin to authorize the Borough Engineer, Borough Solicitor and Borough Manager to work together to complete a Borough wide analysis of the zoning ordinance and recommend any necessary changes to the ordinance as deemed necessary; seconded by Councilman Campbell; and carried unanimously by a vote of 8-0.

Mr. Kelly said that pursuant to Council's direction from the previous month's meeting, they are nearly complete and will be filing documents for a recycling reimbursement grant. A requirement of the grant is to seek public comment, and accordingly they have advertised to solicit public comment at this meeting. He asked Council President Berry to open the floor to public comment for any comment regarding submission of grant documents for reimbursement of recycling funds.

President Berry opened the floor to any members of the public who may be interested in speaking about the recycling grant application that is being prepared on behalf of the Borough. He noted that it cost the Borough around \$22,000 for the Borough.

There was no comment from the public.

Mr. Kelly said that in reference to North Pointe storage, they had completed their review and submitted to the applicant and the Borough Solicitor their spreadsheet of public improvement cost estimates to be included with the Developer's agreements. He said that the plan was approved through Council on November 20, 2018. That was a contingent approval, and the contingency was to finish the comments and the engineer's review letter and then develop the developer's agreements and financial security agreements. He said that part of the process is happening now.

Solicitor Catania explained that they have developed those agreements and forwarded them to the applicant, and the applicant is reviewing those documents. He said that they are just awaiting their approval of those documents and the posting of the escrow. He said that the motion would be to give final approval to the North Pointe project contingent upon their compliance with any unfulfilled conditions, which at this point is just the completion of the land development agreement and posting of the escrow for the public improvement items.

Mr. Kelly added that there are also still some 3rd party permits that have to be issued that are out of their purview, a conservation district permit and a PDS permit and a PENNDOT permit.

A motion was made by Councilman Martin to provide final approval to North Pointe storage contingent upon their compliance with any unfulfilled conditions, including any permits, agreements or escrow payments; seconded by Councilman Resnick; and carried by a vote of 7-1. Councilman Rich voted no.

Borough Manager Perfetti asked if he could have the Borough Engineer discuss the unit block of West Madison Ave. with the Council members. Work has been completed in the last 30-45 days with negative findings.

Mr. Kelly explained that there is a large storm water line underneath the sidewalk of the unit block of West Madison Ave., a corrugated metal pipe which was 36" in diameter when installed well over 50 years ago, although he cannot provide an exact date. He continued that it has started to rot and several months ago a contractor was in and spent more time than they expected cleaning that pipe. With that, the pipe is going to continue to deteriorate and is eventually going to slowly fail as it has been doing. He said that he does not yet have a recommendation, but he is going to work through some scenarios and get them some estimates of Engineer's estimation of probable cost, but it could be anywhere from segmental fix to portions of slip-lining or complete excavation of the pipe from Cherry to Springfield. He said that they are in the midst of working through that now. He said that when they cleaned the pipe, it was not 100% clean, but he told them that they needed to stop because they don't want to throw money into cleaning a pipe that is failing. They are not getting anywhere in restoring the pipe.

Councilman Martin asked if the corrugated pipe caused the silt to build up.

Mr. Kelly said absolutely. When pipe like that is installed it is to slow the velocity of the water down, but when the velocity of the water slows down, the sediment drops, when the sediment drops it holds the moisture and eventually it rots, so that is exactly what happens. Mr. Kelly explained that they have been through this before and it is now getting worse.

Borough Manager Perfetti told Council that the cost to date for the Borough is in excess of \$22,000, so if this goes south it will be very costly and the Borough Manager and Borough Engineer will be going out and looking for grants and any other assistance they may be able to line up. He said that it is a real problem.

Mr. Kelly concluded his report.

Solicitor's Report:

Frank Catania presented the Solicitor's report.

Solicitor Catania said that he had two action items.

The first item is a tax assessment resolution. It is for a piece of property that has an address in 00 block of Glenwood Ave. The property was assessed at \$197,000 but exempt. The owners converted

it from exempt to taxable, but in that conversion they were successful in convincing the School District that the fair market value of the property is only \$110,000, so the School District has already voted to allow the reduction in assessment from \$197,860 to the proposed assessment of \$63,910, so since the property wasn't taxed before, the net positive would be \$990 of taxes to the Borough each year. So even though it is a reduction in assessment, it is an increase in taxes collected and he would request the Borough's authorization to sign the stipulation.

A motion was made by Councilman Martin to adopt the resolution to accept the tax assessment appeal for the 0 block of Glenwood Ave., owned by Block Painter LLC, in the amount of \$63,910; seconded by Councilwoman Papale; and carried unanimously by a roll vote of 8-0. (Resnick - yes, Rich- yes, Humphreys - yes, Martin - yes, Peterson - yes, Papale - yes, Campbell - yes, Berry - yes.)

Solicitor Catania said that the next item is the result of a conversation that he had with the Borough Engineer and Borough Manager earlier in the week. He said that it is for recognition of law that already exists but that not many people have been paying attention to, and with the increasing amount of commercial development in town, they thought it best to ask Council to consider this resolution. He said that for background purposes he would explain that Pennsylvania last had a constitutional convention in 1968, which is more recently than most. One of the things that happened as a result of that convention is that there was an environmental rights amendment proposed to the voters and on May 18, 1971, PA voters adopted the following amendment to the Constitution by a vote of 4-1: "The people have a right to clean air, pure water and the preservation of natural, scenic, historic and aesthetic values of the environment. Pennsylvania's public resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all people." He said that the amendment from 1971 was not treated very much in Court cases until about 2013. There was a case decided by the Supreme Court that really led to revolutionary Supreme Court decision in a 2017 case. The 2017 case was called the Pennsylvania Environmental Defense Foundation case and in that case the Supreme Court confirmed that the Environmental Rights Amendment was good law in Pennsylvania and it gave individual rights of litigation to people that wanted to protect the environment and their right to clean air, pure water and the preservation of natural, scenic, historic and aesthetic values of the environment. So it recognized a private cause of action in an individual suing the government to make sure that those things are protected in the environment. The Supreme Court case of 2017 also recognized a far more important part of that amendment, and that said that when a government, State or Local, like the Borough Council, looks at the environment, it functions as a trustee for the people. You have the same role as the trustee of a financial trust. Your obligation is look out for the interest of the beneficiaries. You have a responsibility to look over what you're managing and that would include park land and open space. That also means that you would have a responsibility to administer your zoning ordinance and your land development and subdivision ordinance with an eye towards protecting the environment. It made that very clear. Coincidentally 9 months before the Supreme Court made that crystal clear, Judge Green of Delaware County had applied that amendment to a case here in Concord Township. Residents were trying to protect a large tract of land from development, and Judge Green found that the Concord Township Board of Supervisors was required to evaluate that proposed development in accordance with that Pennsylvania Constitutional provision. He thanked J.P. Kelly for reminding him of that occurrence. He thanked Judge Green for recognizing that was the true state of the law, with the Supreme Court agreeing with him 9 months later. He asked what that meant for the

Borough. He explained that their job is to protect the environment and to prohibit the degradation, diminution and depletion of public natural resources and act to affirmatively via legislation to protect the environment. He said that means that they are going to look at their zoning ordinances to make sure that they more aggressively protect their open spaces. They are going to make sure that setback rules allow different uses to co-exist with each other in a more peaceful and organized manner. He said that they will be talking about this more in the upcoming months, but he thinks that it would help to make it clear to the public how this Borough Council views its responsibilities. He noted that Councilwoman Peterson wanted to read a prepared resolution with specific wording to consider for adoption.

Councilwoman Peterson read the resolution:

Now therefore, it is resolved by the Borough Council as follows, the development or redevelopment, including construction, work or renovation of any parcel or structure in the Borough of one (1) acre or greater as a project will require an environment impact statement (EIS) to be provided at the time of submission of any application or permit to the relevant Borough officials, Borough Council, Borough Committees or Boards, which EIS must include relevant information to enable the respective Borough application permit reviewers to evaluate the projects impact on the environment pursuant to the Borough reviewers obligation under the ERA. Borough Council hereby authorizes the appropriate Borough officials, officers, solicitor and employees to take any and all actions necessary or required to carry out the intent of this Resolution, including but not limited to the adoption of rules, regulations, additional resolutions or ordinances to implement the intent of this Resolution.

A motion was made by Councilman Martin to adopt the resolution as read by Councilwoman Peterson to require environmental impact statements for all development or redevelopment within the Borough on any parcels greater than one acre; seconded by Councilwoman Papale; and carried unanimously by a vote of 8-0.

(Audience applause.)

Solicitor Catania explained further that the one acre piece is similar to what is found in the requirements of soil and conservation district of Delaware County. It is an attempt to balance the rights of property owners and developers with this Council and the Code Enforcement officer and Environmental Zoning Hearing Board's obligations under the Environmental Rights Amendment. They will have a lot more to say about it in the coming months and this is the state of the law, whether they chose to recognize it tonight or not.

Solicitor Catania concluded his report.

Old Business:

No old business.

New Business:

Mayor Lombardo noted that any members of the audience who might have questions in reference to the School Board could speak to him after the meeting, and he would provide any answers that he could, although he may not have answers to all of their questions.

President Berry said that he is also available for anyone who might have any questions as he was a member of the School Board for a year and a half.

Ward Reports:

Councilwoman Papale had nothing to report.

Councilman Resnick had nothing to report.

President Berry had nothing to report.

Councilman Humphreys had nothing to report.

Councilman Rich said that he is happy with the residents' cooperation on putting their trash out as required throughout the 3rd ward.

Councilman Martin had nothing to report.

Councilwoman Peterson said that it had been brought to her attention that the meeting minutes were not updated on the website for 2019.

Councilman Resnick said that they were about 2 months behind and he was working on having them uploaded.

Councilwoman Papale said that she really thinks that they need to do something different with the website.

Councilman Resnick said that it could probably use some updating, but it would probably cost them a significant amount of money to start from scratch on the website.

Mayor Lombardo asked if they could entertain getting prices for updating the website.

Councilman Resnick said that they could check that.

Councilwoman Papale said that she is aware that people use the website for forms and information.

Councilwoman Peterson said that she agrees that the website needs to be updated completely, not just with the current meeting minutes, but completely. She said that residents depend on the website in these technological times and the site isn't currently very user friendly.

Councilman Campbell thanked John Gould for his diligent work. He said that he has brought in significant proceeds as well as much needed improvements throughout the Borough. He asked for an update on the construction of the Gulf station at the corner of Baltimore Pike and Church Street.

Mr. Gould updated them that during excavation they found some tanks that they were not aware of and dealing with some contaminated soil, which has now been taken care of. He said that now that the weather has broken, we should see continuous improvements there. They are converting the existing garage into a convenience store and pizza counter and hoping to be complete by June.

Closing Public Comment:

Dave DiPhillipo, 19 N. Springfield Rd., said that they are all really upset by the field project that is being proposed. He said that he is trying to work to give residents a voice and they are going to gather and protest on the field site on Sunday, April 7th at 3pm with April 14th as the rain date. He said that he doesn't anticipate them disrupting too much, but if they know of anyone who wants to come out and get involved, they can be sent his way. He hopes they have the Borough Council's blessing. They plan to stand on the sidewalks with as many people as possible. He said that they created a Facebook group as well.

Council thanked Dave for his time.

Dave said that he asked anyone who was planning to attend to wear their best orange and black so that they could make an orange and black line straight up the front of the field. They invited current residents, past residents, anyone who was interested in conserving the space to attend.

Sherry Rich, 82 Chester Ave., thanked their wonderful Mayor for being so vigilant for all of the robocalls and keeping the residents up to date with all of the meetings and everything going on.

Jackie Haarsma, 69 N. Penn St., asked if there was anything that the residents could do to help the Borough in this situation. She said that if they needed petitions signed or doors knocked on, there were residents ready to assist.

Mayor Lombardo said that they would keep everyone in the loop as they move through the process.

Adjournment:

A motion was made by Councilman Martin to adjourn; seconded by Councilwoman Papale; and carried unanimously by a vote of 8-0.

Respectfully Submitted,

Kimberly A. Duffy
Clifton Heights Borough Secretary