

Council Work Session  
January 4, 2017  
Council Chambers

The regular monthly Work Session of Newtown Borough Council was called to order at 5:30 P.M. on Wednesday, January 4, 2017, by President of Council Robert Walker.

Present were Councilors Walker, Gusty, Grunde-McLaughlin, King, and McDermott; Mayor Swartz; Solicitor Bolla and Engineer Canales.

### **Moment of Silence**

### **Amendments to the Agenda**

Mayor Swartz announced that Matthew Weintraub, District Attorney, and Diane Roseti will be presenting on the use of Narcan.

### **Public to Be Heard**

Julia Woldorf, resident, demonstrated long strips of crack sealing that peeled off of Penn St. between Chancellor St. and Norwood Ave. She also reported that there is a lot of thick crack sealing on Norwood Ave. between Washington Ave. and Penn St., much of which is not flush with the roadway. Engineer Canales took the samples presented and will report this issue to the contractor next week. Councilor Gusty noted that crack sealing is not designed to be flush with the street.

### **Historic Architectural Review Board - Robert King**

Councilor King reported on the Certificate of Appropriateness for 246 S. State Street, noting that HARB denied a COA for proposed changes. The applicant, Concetta Stefani, is requesting that Council appeal HARB's decision. Mr. King referenced the letter written by Jim McAuliffe, HARB Chairman, to the applicant, which explained their reasoning for the denial and provided their recommendations to use in kind materials on the original portion of the house.

President Walker reported that Mike Italia, Newtown Borough Zoning and Code Enforcement Officer, was present. Mr. Walker noted that he had copies of three police reports written in the past two months. They outlined complaints of youth activities at that property due to the fact that it is not secured. Mr. Walker requested that Mr. Italia make a recommendation to Council about normal business practices and what must be done to secure the building.

Mr. Italia reported that the building should have been properly secured after the fire occurred; this includes securing all doors and windows. Mr. Italia stated that his largest concern is the roof which should have been covered with a tarp over sheathing rather

than just a tarp. He was concerned that weather elements are entering the home, as well as wildlife. He recommended to Council that the property be secured immediately.

Mr. Italia pointed out to Ms. Stefani that she is liable for anyone getting hurt on the property.

Mr. Eric Johnson, next-door neighbor, commented that he caught four teenagers on the 246 S. State Street property opening a window. Due to a break-in on the nearby Stockburger property and damage that occurred, Mr. Johnson and his wife feel unsafe on their property and purchased locks to secure their barn. He is discouraged that this property burned three years ago and is anxious to see it get fixed. Mr. Johnson believes that this situation has decreased his property value and expressed frustration over blue shreds of tarp scattered on his and neighboring properties.

Ms. Stefani stated that she has owned this property for one and a half years, and noted that the manner in which it was secured after the fire was not questioned until after she purchased it from the prior owner. She countered Mr. Johnson's claims about the blue shreds of tarp. She does not believe that high school students are trespassing on her property and invited the Police Department to notify her if they see otherwise. She stated that she has insurance in case of any potential break-ins. In response to Mr. Johnson's remark that three others witnessed the students trespassing, Solicitor Bolla reminded everyone that this wasn't a hearing.

President Walker restated that the Borough has concerns and wants the building to be secured. Ms. Stefani stated that her concern is her recommendation to use hardi-board and windows that haven't been approved by HARB. Mr. Walker reminded Ms. Stefani that negotiating building materials is not part of this meeting.

In response to President Walker's question, Councilor King stated that a demolition certificate has been approved for the back part of the house. Mr. Italia stated that a UCC Permit needs to be submitted for the demolition work.

Mr. Richard Walker, Architect, shared information with Council, and reported that HARB is recommending that all materials used on the house be replaced in kind. He stated that the wood became obsolete 40-50 years ago, including windows, trim, and overhangs. Due to fire damage, all the wood siding on the south side elevation needs to be replaced. On the north elevation, two new windows will be installed, and there is an existing brick feature that doesn't belong and will be removed. He noted that 75% of the siding will be replaced, and questioned HARB's recommendation to utilize in kind materials. All the trim, including cornices and overhangs, has been fire damaged and needs replacement. He doesn't believe that requiring wood is appropriate. Fourteen of the sixteen double-hung windows also need to be replaced, and argued against replacing them with obsolete windows. He plans to reuse the shutters on the existing home.

Ms. Stefani noted that she researched past HARB meeting minutes and claims there are inconsistencies in the approvals from HARB and Borough Council, citing an approved material decision at 114 S. State Street. She reported that the owner requested to replace aluminum siding with vinyl siding. HARB turned them down, and it was later approved by Borough Council. In the minutes, the new owner stated that the building had vinyl siding over hardi-board, and requested to remove the vinyl to expose the hardi-board, which was false. Ms. Stefani stated that the hardi-board on that building also has the wood grain. She is questioning why her application to use hardi-board had been rejected when others have had their applications approved. Councilor King stated that HARB makes recommendations to Borough Council, and in the case of this property, HARB turned down the request to use vinyl siding, noting there was aluminum siding beneath the siding. Borough Council did not consider this building historic since it had been previously modified and its front was not part of the original structure. They therefore overrode HARB's decision and approved vinyl over aluminum siding. The developer then proposed to remove and replace the front and side parts of the building. HARB requested wood siding on the original section on the front of the building as an in kind material and approved hardi-board on the part of the building that did not have wood siding underneath.

To Ms. Stefani's remark about a lack of consistency with decisions, she and Councilor King agreed that HARB remains consistent with their recommendations. Solicitor Bolla interjected, stating that HARB's role is to recommend. In some cases, the Applicant comes before Council and justifies a need for an alternative decision by Council, which sometimes is granted. Mr. Bolla stated that Ms. Stefani's purpose at this meeting is to state why she feels Borough Council should make an exception in her case. Ms. Stefani stated that she would be installing hardi-board on 90% of the home which would require less maintenance. Mr. Richard Walker added that the proposed windows would be more efficient, and described additional material changes he believed to be superior to the existing.

To Councilor Grunde-McLaughlin's question, Mr. Walker stated that the wood siding is on the north side. Ms. Grunde-McLaughlin acknowledged that hardi-board is approved for additions to historic homes, and asked if the applicant's request is due to there being an unusually large amount of materials needing to be replaced due to fire damage. Mr. Walker responded yes to Councilor Grunde-McLaughlin's question, and that the applicant views this as rebuilding the home rather replacing a few of its elements.

Ms. Stefani stated that the three new homes constructed of hardi-board on N. State Street blend well with the one historic home which has wood siding. Ms. Stefani stated accurately that hardi-board is allowed on new construction and additions, but not on existing historic homes. To President Walker's question, Mr. Richard Walker responded that in kind siding is readily available. Mr. Richard Walker, however, reported that the quality of the second growth wood available today is not the same as wood from 50 plus years ago and does not hold up as well. It was confirmed that HARB recommended that all materials on the home be replaced in kind. President Walker

asked if there are energy efficient wood windows on the market today, to which Mr. Richard Walker replied yes. Councilor King reminded everyone that this property is an historic home within the historic district.

Councilor King acknowledged that older sections of historic homes in the Borough are treated differently than the newer sections. He stated that the historic district is not historic because of the way it looks, but because of what the buildings are made of. To President Walker's question about whether the applicant was aware of the historical nature of the building when it was purchased, Ms. Stefani stated "not to this extent", but that she was aware that rules existed. She noted the demolition of 189 N. Chancellor Street, to which Councilor King responded that the issue went before the Joint Historic Commission and, because it was built in 1940, it was not deemed historic.

Councilor Gusty asked if the homes built in Newtown Station were built with wood; Councilor King believed they were. Regarding the home on 109 S. Chancellor Street, hardi-plank was approved for use on the newer portion of the home.

- ❖ A motion was duly made by Councilor King, and failed due to lack of a second, to follow the Historic and Architectural Review Board recommendation of replacement in kind for existing materials on the original structure.

Councilor Grunde-McLaughlin stated that she is considering Mr. Richard Walker's remarks regarding the wood from second growth trees, as well as the importance of maintaining the quality of existing homes. Councilor King noted that 200-year old windows would not be in place in historic homes today without proper maintenance.

Councilor Gusty reported that this is more than a repair, considering that a large percentage of the structure needs to be replaced. He acknowledged that second growth wood siding isn't of the same quality as older wood but, to Councilor King's point, it can last for a long time if properly maintained. Mr. Richard Walker disagreed and stated that second and third growth wood would not last for a long duration, and he could point out Borough homes where this is the case.

Mr. Eric Johnson questioned whether he would be allowed to replace his old windows with energy efficient windows if the applicant's requests are allowed. Solicitor Bolla stated that this question is not before Council at this time.

Ms. Stefani offered to hire an engineer to go through the property and offer a professional opinion. Councilor King noted that it was evaluated once already following the fire, which was three years ago.

To President Walker's question, Councilor McDermott replied that this issue could be reviewed again at the Council Meeting next week. Ms. Stefani also offered to present information on the quality of the products available on the market today. Solicitor Bolla replied in favor, and asked that she provide the information to Mike Italia, Zoning

Officer. President Walker requested that Ms. Stefani work with Mr. Italia to properly secure the building which includes sixteen missing windows, all doors, and the roof. President Walker requested that Mr. Italia report any progress to Councilor McDermott to report at next week's meeting.

Mr. Richard Walker expressed his appreciation for historic preservation, but questions the recommended use of materials that will not last over time.

President Walker stated the top priority at this time is to secure the building and avoid the issuing of any further police reports due to its remaining vacant. Ms. Stefani stated that she is allowing neighbors to use her parking lot, and those could be the people that neighbors had seen on the property. President Walker stated that teens had been seen on her back porch which fit the description of those who've been caught vandalizing Allan Smith's body shop. Councilor Grunde-McLaughlin suggested that Ms. Stefani could give the police her cell number to report issues back to her, similarly to what they do when people are on extended vacation. President Walker reported that it is the homeowners' and not the police department's responsibility to protect an abandoned building.

### **Mayor's Report – Charles F. Swartz, III**

The Mayor introduced Mr. Matthew Weintraub, Bucks County District Attorney, and Diane Roseti, who attended the meeting to inform Council about Narcan. Mr. Weintraub proposed that Narcan medication be approved for use by the Newtown Borough Police Department to save the lives of opiate users, to which Chief Wojciechowski strongly, but amicably, disagrees. Mr. Weintraub described Narcan as an antidote to someone who is dying due to a heroin or narcotic overdose. Narcan can reverse potentially fatal overdoses from people ages 17-82. In Newtown Borough, there were 4 non-fatal overdoses in 2015, 4 non-fatal overdoses in 2016, and one fatality in 2016. Mr. Weintraub was unaware if the one fatality did or did not receive Narcan. In the past couple of years since the Narcan initiative began, 191 people in Bucks County have been saved by police with Narcan. One concern is that there are repeat abusers who are saved multiple times, but Mr. Weintraub stated that the Police and EMT have a creed to protect and serve all people without judgement. Mr. Weintraub explained that overprescribed painkillers have led to a pandemic. He stated that he once felt the same as the Borough Police Chief that the issue is one of making bad choices. Mr. Weintraub now believes that people's lives deserve to be saved every time, and asked Council to consider this request. He demonstrated how to use Narcan and offered 15 minute training and samples.

To Solicitor Bolla's question, Mr. Weintraub reported that the only municipalities in Bucks County that do not use Narcan are Newtown, Yardley, and Ivyland Boroughs. Bucks County has the third most police saves in Pennsylvania, although the number of incidents here are less than in neighboring counties.

To Councilor King's question, Mr. Weintraub stated that Narcan cannot be abused and if there is no opiate in a person's body to counteract, it has the same effect as injecting water.

Mr. Weintraub denied the claims that people are overdosing more because they know they can be saved by Narcan. He stated that most only want to get high and don't care if they live or die. He also refuted the claims that people awaken from Narcan feeling angry and hostile; he stated that in the 191 utilization questionnaires from Northhampton, police did not indicate that users woke up angry. He suggested that police would be better qualified to administer Narcan than EMS personnel.

Councilor Gusty asked where this issue stands both nationally and in large cities. Mr. Weintraub stated that Philadelphia has a larger problem, describing it as a scourge that began in the '90s with the proliferation of opiate prescriptions. When those prescriptions run out, many people turned to heroin. Mr. Weintraub stated that Narcan has been universally accepted by police forces throughout Pennsylvania.

President Walker asked about liability for the police officers administering Narcan. Mr. Weintraub stated that ACT 139 guarantees police immunity to civil liability and prosecution. President Walker asked for verification that EMT volunteers are not authorized to use Narcan, but that Paramedics are. Mr. Weintraub was unsure what restrictions are in Newtown Borough, but knows that citizens can use Narcan on one another. Ms. Roseti stated that citizens are also protected from civil liability under ACT 139.

Mr. Weintraub requested that Borough Council discuss this issue with Chief Wojciechowski for consideration. President Walker will have Solicitor Bolla review the police contract; he doesn't believe that Borough Council can issue a mandate to the Police Department to administer Narcan. President Walker stated that the Police Chief has safety and liability concerns, which Mr. Weintraub agreed are valid considerations.

Mayor Swartz reported that he received a Proclamation request to recognize the week of January 22-28 as National School Choice Week. It will be presented at next week's meeting.

### **President's Report – Robert Walker**

President Walker asked Mr. Allan Smith if he had anything to report on the Steeple View project. Mr. Smith noted that the Planning Commission may be reviewing the request to amend the zoning ordinance, allowing for a Senior Living Facility. They would like to present at a public meeting. Mr. Walker stated that this will be considered later in the meeting, and Mr. Smith agreed to stay for the discussion.

President Walker reported that a formal resignation was submitted from Councilor Warren, effective as of December 31, 2016. State Representative Warren was sworn into

his new office in Harrisburg yesterday. President Walker stated that Council will meet at Borough Hall on January 26, 2017 at 5:30 P.M. to interview applicants; Council has 30 days from the acceptance date of Mr. Warren's resignation to fill the vacancy. Solicitor Bolla stated that Council has 45 days to accept former Councilor Warren's resignation. Councilor Grunde-McLaughlin suggested accepting the resignation at next week's Council Meeting.

President Walker reported that Pickering Manor is going before the Newtown Zoning Hearing Board tomorrow evening; they are seeking a variance for proposed construction. He invited anyone interested to attend the meeting.

### **Engineer's Report – Mario Canales**

Engineer Canales reported that the FEMA Flood Plain Ordinance Amendment has been advertised, is under review, and up for consideration at next week's meeting. Mr. Canales is updating FEMA in response to their email request regarding the status of the Borough's adoption of this ordinance amendment.

President Walker noted that FEMA sent a letter, commending Newtown Borough for its efforts in implementing flood plain measures.

Mr. Canales reported that the road work on N. Lincoln Ave. is being advertised and is out for bid; contractors have begun to submitting bids.

The annual MS4 presentation will take place at the March Council Meeting.

### **Budget & Finance – Robert Walker & Chris Gusty**

- ❖ A motion was duly made by Councilor Gusty, seconded by Councilor McDermott, and carried unanimously, to approve the Professional Services Invoices for November 2016.

President Walker stated the desire to add another member to the Budget & Finance Committee due to Mr. Warren's departure from Council.

- ❖ A motion was duly made by Councilor Gusty, seconded by Councilor King, and carried unanimously, to assign Kevin McDermott to the Budget & Finance Committee for the signing of checks.

### **Personnel – Kevin McDermott**

Councilor McDermott reported on open committee positions which include one for the Environmental Advisory Council, four for the Recreation Board, one Alternate for the Zoning Hearing Board, and members for Ad Hoc Parking and Traffic Committee. He encouraged the public to consider volunteering. President Walker stated that a concern

was raised by the Recreation Board over the 5-year term, indicating that it might be too lengthy of a commitment. Councilor Grunde-McLaughlin stated that she would address this issue at the Recreation Board meeting next week.

### **Planning Commission – Kevin McDermott**

Councilor McDermott reported that Council needs to decide whether to consider amending the Zoning Ordinance to allow for a personal care facility as a permitted use in a Traditional Neighborhood Development (TND). Mr. McDermott has considered some factors since the last meeting, making him more agreeable to the amendment; he likes its location in the southwest corner of the property, away from the retail business district. He also differentiated it from a nursing home, noting that residents and their guests may be walking into town and supporting the State Street businesses. He noted that there is at least one other similar facility in Newtown Borough that blends nicely in the community.

Councilor McDermott spoke with Mark Craig, Planning Commission Chair, and was told that they are waiting to hear from Council on this matter. Per President Walker's request, Solicitor Bolla stated the process which includes Council deciding to send this amendment proposal to the Planning Commission. The Planning Commission would meet, analyze the request, make a recommendation to Borough Council, and then Council would make a decision at a public hearing. The Bucks County Planning Commission would need to review as well. Alternatively, Borough Council could deny the ordinance amendment at this time, if they choose not to pursue it further. Solicitor Bolla stated, in response to President Walker's question, that this is a change in the Conditional Use. Mr. Bolla noted that the proposed use is not a permitted use, which is the reason for the ordinance amendment request. If the applicant is successful in getting the Planning Commission and Borough Council to agree on the amendment, then the applicant would not need to apply for another Conditional Use.

To Councilor Grunde-McLaughlin's question, Solicitor Bolla stated that, if this matter is sent to the Planning Commission, they can approve and recommend any stipulations and special exceptions they desire. Councilor Grunde-McLaughlin noted that points to consider from previous meetings included building heights, activity level of residents, tax revenues, and traffic.

Mr. Smith noted that assisted living is allowed on that property under current zoning, but not under the TND. Solicitor Bolla agreed, stating further that in certain districts, assisted living facilities are allowed by special exception of the TND ordinance. Mr. Bolla will verify for this property. The Conditional Use decision refers to the permitted uses in the TND.

President Walker stated that, if Borough Council moves forward with remanding this to the Planning Commission, they could review it at their meeting next week. Solicitor Bolla noted that there is no time deadline on this matter, noting that the Bucks County



Planning Commission will turn in a decision within 30 days. Due to advertising requirements, this would not be voted upon until March. Solicitor Bolla stated that a Zoning Ordinance Amendment requires two successive weeks of public notice; it must be between 7 days of the hearing and 30 days before the hearing.

Councilor Grunde-McLaughlin questioned if any Council members had received further input from the community regarding building heights, which they had not. Councilor King suggested that these concerns may arise at the public hearing. In the interest of fairness, Councilor McDermott and Councilor King stated that this should go to the Planning Commission and the public should weigh in. Councilor Grunde-McLaughlin prefers the Preliminary Plan which preceded the proposal for the senior living facility, but agreed to allow for public input.

- ❖ A motion was duly made by Councilor McDermott, seconded by Councilor King, and carried unanimously, to remand the review of the Steeple View Zoning Ordinance Amendment to the Planning Commission, allowing for a personal care facility as a permitted use under the Traditional Neighborhood Development.

President Walker asked if anyone in the public wanted to be heard prior to Council's vote. Ms. Lynette Killen, CEO of Chandler Hall, stated that she has been involved in healthcare and long-term care for close to 40 years. She reported that, in Pennsylvania, personal care facilities do allow for all residents to receive ambulatory support; all of whom could be in wheelchairs, have Alzheimers or Dementia. She also noted that traffic is 24 hours per day, 7 days a week. Staff comes and goes in shifts, and external agencies offering home care and hospice also visit on a regular basis. Most residents typically don't drive, yet there are several delivery trucks transporting food, medical supplies and equipment on a regular basis. There is also the ongoing noise of ambulances to consider. She expressed her intention to simply inform Borough Council of all that is entailed with this decision, to ensure that they would make a well informed decision.

Mr. Tyler Hoff, Director of Newtown Friends and Village, shared that he was not in favor of the senior living facility on this property, but encouraged that Council allow for a public hearing.

Solicitor Bolla suggested that both Ms. Killen and Mr. Hoff attend the Planning Commission meeting when they discuss this issue.

Regarding the application for land development by the Lubavitch Bucks County Mikvah Association, Councilor McDermott noted that the discussion originally scheduled for this month's Planning Commission meeting will now be held in February at the Applicant's request. Solicitor Bolla noted that the extension is now through the end of February. Engineer Canales stated that modified plans are going to be submitted, which would push this extension further out. Zoning Officer Italia confirmed that he has not received modified plans yet. Solicitor Bolla will follow up on this matter and advise Council next week.

## **Streets, Lights & Properties – Robert Walker & Chris Gusty**

Updating on the LED Lighting Project, Councilor Gusty reported that a meeting should be scheduled in the next few weeks to finalize the equipment list. Financing has not been finalized; construction should be underway by June. President Walker noted that this is a year behind the original schedule.

## **Solicitor's Report – Bill Bolla**

Solicitor Bolla reported that Barry Isett and Associates is well informed on the International Property Maintenance Code. He stated that, due to local amendments to the International Code, the Planning Commission will need to review it. When the Planning Commission makes their recommendation and Council is ready to enact the Ordinance, Solicitor Bolla will phrase and advertise the Ordinance.

## **Old Business**

President Walker noted that the Borough was reimbursed in December by the Delta School for the creek bed clean up. He was very pleased with the quality of the work completed and believes it will prevent future problems resulting from Old Skunky.

**New Business** - none

## **Public to be Heard**

Mr. Eric Johnson thanked Council for its efforts to adopt a property maintenance code to prevent the situation which has resulted next door to him. He was upset about being accused of lying, regarding the people trespassing on his neighbor's property as well as the blue shreds of tarp littered on neighboring properties. He also stated that the brick feature on the side of the burned home at 246 South State was a working fireplace built by his father. As a contractor for 50 years, Mr. Johnson disagreed with Architect Richard Walker's claims about using in kind products for the repair of that home.

The meeting was adjourned at 7:00 P.M.

Respectfully submitted,  
Judy S. Musto  
Borough Secretary

## **ATTENDEES**

Julia & Warren Woldorf  
Ted Schmidt  
Allan Smith

Jeff Werner  
Mike Italia  
Diane Rosati  
Matt Weintraub  
Concetta Stefani  
Richard Walker  
Eric Johnson  
Lynette Killen  
Tyler Hoff  
Ingrid Sofield