

**NEW HOPE BOROUGH COUNCIL
182 WEST BRIDGE STREET
REGULAR MEETING
SEPTEMBER 9, 2009
MINUTES**

PRESENT: Sharyn Keiser, Claire Shaw, Ed Duffy, Geri Delevich, Rey Velasco, Mayor Larry Keller, Borough Manager John Burke, and Solicitor T. J. Walsh.

ABSENT: Richard Hirschfield and Randall Flager.

MAYOR'S REPORT

Mayor Keller announced that the Police Department is conducting a seven-day traffic study on Bridge Street to see how many cars are traveling on bridge and their speeds.

Mayor Keller announced that the Police Department received a letter from a woman who received a D.U.I. citation recently from our Police Department. She thanked the officer who arrested her for being very considerate, kind and professional.

PRESIDENT'S REPORT

Sharyn Keiser announced that there was no Executive Session before tonight's meeting.

Sharyn Keiser stated that there are no new change orders at this time for the New Street Community Center Project.

Sharyn Keiser thanked Tom Carroll for all his hard work on the new Community Center.

Sharyn Keiser announced that there is a residential survey on parking in the downtown area available in connection with the parking study. There is a link available on the Borough web site to access the survey. Surveys are available on-line for both businesses and residents through September 18th.

Sharyn Keiser asked Susan Pierson to give a brief presentation on the New Hope Farmers' Market.

Susan Pierson stated that more vendors would be joining the Farmers' Market and mentioned that the farmers' Market has a large selection of fresh produce, jams, coffee and many other items.

CONSENT AGENDA

Sharyn Keiser asked for a motion to approve the consent agenda, as follows.

- A. Consideration of approving payment of accounts payable for September 9, 2009, in the amount of \$286,984.53; of payroll for August 12, 2009, in the amount of \$56,595.93; and of payroll for August 26, 2009, in the amount of \$56,181.91.
- B. Consideration of appointing Michael Shier as a member of the Shade Tree Commission, with a term expiring December 31, 2013, and Kevin Ellenburg as an alternate, with a term expiring December 31, 2012.
- C. Consideration of approving a license agreement with the Commonwealth of Pennsylvania for right-of-way over certain lands in the Delaware Canal State Park for the Canal Walk Project.
- D. Consideration of approving issuance of a Certificate of Appropriateness, as recommended by HARB, for:
 - (1) 43 West Ferry Street, by Matt Hayden, for replacement of roof;
 - (2) 101 Old York Road, by Dene & Sheila Taylor, for replacement of roof; and
 - (3) 28 West Bridge Street, by Glen Stephan, for exterior hardware.

Rey Velasco moved to approve the consent agenda, and Ed Duffy seconded.

Sharyn Keiser asked for comment by Council and the public.

The motion was approved by a unanimous vote.

RECREATION BOARD AND REVITALIZATION COMMITTEE REPORTS

Claire Shaw announced that Catherine Gauthier of the Bucks County Planning Commission attended a recent Park and Recreation Board meeting for a discussion of the Borough's Open Space Plan. The County will reimburse New Hope up to \$10,000 to prepare a new plan to protect open space and natural resources.

Claire Shaw reminded the audience of the Annual Golf Classic at the Jericho National Golf Club, scheduled for September 21st.

Claire Shaw announced Saturday, October 17, 2009, for a special event called *New Hope Back To Its Roots Day*. The day begins with a walking tour at 9:00 am by the New Hope Historical Society.

Claire Shaw announced that there would be story telling at Lenape Park by Blue Jay at noon on October 3rd.

Sharyn Keiser announced that work is proceeding for approval of the Canal Walk Project by PennDOT, with a total of over \$500,000 dollars in grants.

MANAGER'S AND SOLICITOR'S REPORTS

John Burke asked for consideration of Ordinance No. 2009-05, establishing a Rate Stabilization and Improvement Fund in connection with the recent bond issue for the New Street project. **Mr. Burke** announced that he has a proof of publication demonstrating that a legal notice was published in The Intelligencer on August 26, 2009. This ordinance will allow funds to be budgeted each year by Council consistent with debt service requirements for repayment of the bonds. The debt service requirements will vary from year-to-year because of the variable rate of interest for the bonds. The variable rate has averaged about 2% over the last 10 to 15 years. It will be up to Council based on recommendations made by the Borough Treasurer to budget a certain amount each year to guarantee that there will be sufficient funds in this fund to pay the debt service on this bond issue. Any excess funds in this fund may be used for defeasing the bonds in the future or for other capital improvement projects.

Sharyn Keiser asked for a motion.

Claire Shaw moved to approve Ordinance No. 2009-5R, and Ed Duffy seconded.

Sharyn Keiser asked for comment by Council and the public.

The motion was approved by a unanimous vote.

T. J. Walsh asked for consideration of Resolution No. 2009-12R, establishing the responsibilities of the Zoning Officer at Zoning Hearing Board meetings. This will allow Bob Larason to act as the Borough representative where Council does not take a position on the application or does not elect to send the Borough Solicitor. In the event that the Zoning Officer has raised issues ahead of time, including before the application is reviewed by Council, his position and concerns could be addressed by the Zoning Hearing Board allowing the Zoning Officer

to open a record for such issues on a standing basis, so Council would not have to vote at every meeting to determine the role of the Zoning Officer in individual cases.

Geri Delevich moved to approve Resolution No.2009-12R, establishing the responsibilities of the Zoning Officer, and Claire Shaw seconded.

Sharyn Keiser asked for comment by Council and the public.

The motion was approved by a unanimous vote.

A resident, who did not identify herself, asked for clarification.

T. J. Walsh answered that this gives the Zoning Officer the authorization to ask the Zoning Hearing Board and the applicant questions in the absence or presence of the Solicitor at Zoning Board hearings.

John Burke presented the estimated financial requirements and the Minimum Municipal Obligations (MMO) for the New Hope Borough pension plans in 2010. Act 205 requires each year that the Chief Administrative Officer of the Pension Plans read into the record what the actuary of the pension plan deems as the minimum financial obligations for those plans in the following year. The actuary is Thomas J. Anderson and Associates Inc. of Kennett Square, PA, for the Police Pension Plan. They have estimated the Minimum Municipal Obligation at \$128,434 dollars for the police plan. For the Non-Uniform Pension Plan, they have estimated the Minimum Municipal Obligation at \$14,518.

Sharyn Keiser announced a discussion of proposed amendments to the Noise Ordinance.

Sharyn Keiser stated that T. J. Walsh would speak about the Noise Ordinance first, then Chief Cummings, and lastly, the Mayor. At that time there will be public discussion.

T. J. Walsh stated that it is important to know that nothing will be voted on tonight. The draft ordinance adds a severability clause. This is necessary if a judge finds a section of the ordinance unconstitutional, he or she can just strike that particular section and not the whole ordinance. The next change is excessive noise and noise disturbance.

Noise disturbance is basically defined as some level of noise that is going to endanger the safety or disturb a reasonable person of normal sensitivities. This term of art has actually been upheld by the courts and is considered an objective standard and will pass a constitutional test. The next section that is changing is basically a prohibition that if you create a noise disturbance, you are subject to possibly being cited. We also have a section that says that specific acts or specific events that create noise in and of themselves are separately defined to violate the noise ordinance. One of specific acts or events refers to a current standard, which is basically amplified music or amplified sound from a T.V. or radio that can be heard more than 30 feet from the source of the sound. There is also a section about vehicles that does not change the decibel level from the current ordinance, which is 86 or above. That is what federal law suggests. A vehicle cannot be rebuilt or altered to have decibel levels higher than 86. The last item to change is the enforcement of violations and the penalty section. In addition, the ordinance clarifies that individuals can pursue private action for a nuisance or a disturbance because they have private rights.

Chief Cummings stated that he recommends some additional changes to the Noise Ordinance, as follows.

Section 08: Subsection C(5) of Section 192-3 of the Code, Noise Disturbance Prohibited; Prohibited Acts, is as amended in full to read as follows:

(5) Motor Vehicles and Motorcycles.

(a) No person shall operate or cause to be operated a public or private motor vehicle or motorcycle, or any equipment attached to such a vehicle, on a private right-of-way or public right-of-way at any time in such a manner that the sound level emitted by the motor vehicle or motorcycle, or any equipment attached to such a vehicle, exceeds the decibel level of 86.

(b) With respect to motorcycles, all motorcycles shall be equipped with a muffler or other sound-dissipative device in good working order at all times. No motorcycle with an exhaust system that has been altered or modified in any way to enable the exhaust system to amplify or increase the sound level in excess of the maximum decibel level set forth subsection (a) above shall be operated on any public right-of-way or private right-of-way in New Hope Borough.

(c) Standing motor vehicles. No person shall operate or permit the operation of any motor vehicle, motorcycle or any auxiliary equipment attached to such a vehicle, for a period longer than 15 minutes in any hour while the vehicle is

stationary, for reasons other than traffic congestion, anywhere within 150 feet of any residence in such a manner as to cause a noise disturbance across a residential property line (boundary). Motor vehicles performing emergency work are exempt from this requirement.

(d) Unnecessary horn blowing. No person shall at any time sound the horn or other warning device of any motorcycle or motor vehicle except when absolutely necessary as a warning while actually operating or driving such vehicle.

(e) No person shall cause or allow the tires of a motorcycle or motor vehicle, which the person is operating, to squeal except when necessary in order to avoid a collision with another person, vehicle or other property.

(f) No person, while occupying any private right-of-way or public right-of-way in New Hope Borough, shall operate any sound-creating device in any motor vehicle or motorcycle in such a manner that the public's attention is drawn to the source of the sound. The prohibition of this subsection shall include but not be limited to a rapid throttle advance and/or revving of a motor vehicle's internal combustion engine resulting in an increase of sound from the engine.

Mayor Keller stated that the Chief's recommendations would be very important additions to the Noise Ordinance and stated that the 86-decibel level standard is simply a carry over from the current ordinance.

Sharyn Keiser stated that the proposed ordinance amendment serves to clarify the current ordinance and allows people to better understand their rights.

Sharyn Keiser asked for a motion for the proposed amendment to be advertised for a public hearing, with the Chief's amendments included.

Claire Shaw moved to approve the motion, and Ed Duffy seconded.

Sharyn Keiser asked for comment by Council and the public.

Elaine McNealy, 45 North Main Street, a landlord and resident commented that she is against the amendments as proposed tonight. This is a tourist town and the motorcycles should be welcome and their spending in New Hope is needed badly. Many businesses are suffering financially at this time, and overregulation will drive customers away from town.

Bill Levinson, 230 North Main Street, commented that he and his wife moved in 6 years ago. Subsection B has been changed to "unlawful for

any person or firm or business to make or continue to cause suffering or permit to be made on any property any noise disturbance” which is defined above that as any sound which, “disturbs a reasonable person of normal sensibilities.” As an attorney and representing a lot of people here this evening, he feels that it is a very large change. This is the Greenwich Village of Bucks County, and music is a very important part of New Hope. There should be an SPL test (Sound Pressure Level) in the ordinance and it is not. People in the town should be able to live with the noise and feels that if a person is not happy with the noise they should move. Living downtown is a personal choice.

Bill Kiefer, S. Main Street, stated that he is not opposed to guitarists and flutists or the music from The Mansion Inn; however, amplified bands do cause disturbances.

Paul Beckwith, 48 West Mechanic Street, commented that he moved to New Hope because of the noise and does not agree with the Noise Ordinance. He feels that he should be allowed to have his windows open and play music. **Mr. Beckwith** also experienced being at The Logan Inn and witnessed the music being shut off before 10:00 pm and felt that was wrong. The changes are too invasive and smack of censorship.

Brian Montgomery, 88 South Main Street, a resident and a storeowner stated that Council is trying to drive people out of town and is responding to complaining, whining residents.

Sharyn Keiser stated that this is for comment only and public input will be considered very carefully. **Ms. Keiser** also stated that the community is composed of both residents and businesses.

Sharyn Keiser added that this is not discriminatory and that music is allowed as well as permits for bands.

Bob Gerenser, 22 South Main Street, stated that he feels the amendments make the ordinance very subjective and puts the police at odds with the merchants. He does not want to define conduct. Under the current Noise Ordinance, there has been arbitrary enforcement and there should be an objective standard with specific language. He has had difficulty obtaining a music permit. **Mr. Gerenser** also objected to the proposed increase in fines and suggested that the Zoning Officer should enforce the ordinance.

Steve Stahl, 181 West Bridge, stated that he has had experienced with noise from a restaurant on South Main Street and has taken the owner to court and nothing is upheld in court because it is too subjective. If you live on South Main Street, then you would have to expect to hear noise because it is a commercial area.

Chris Williams, 96 South Main Street, representing John & Peters, stated that this proposed ordinance may not be against music now, but down the road with new Council members and a new Chief, how will it be interpreted and enforced?

Frank De Luca, New Hope Police Department, stated that this ordinance needed amending. He sees people revving their engines at traffic signals, and these proposals will help him enforce the law.

Alan Rosenberg, 150 South Main Street, stated that he feels like he is responsible for bringing the music to South Main Street. The musicians really tried to comply and tried really hard to keep the noise down, but it is difficult with the noise of the people and the vehicles so, of course, the music level increased and they were shut down permanently in June. The music lasted until 9:00 pm the summer before, and this year until 7:00 pm. The public really enjoyed it.

Nick Gilius, The Logan Inn, stated that the LCB does not have a problem with music. He spoke to the LCB directly, and all they require is a music permit, and only local ordinances can shut the music down. This ordinance can be used to put liquor licenses in jeopardy.

Steven Coppens, 12, 14, 16, 18 & 20 West Bridge Street, stated that he does not agree with the Chief's recommendation about waiting 15 minutes before the police can address a stationary vehicle noise issue, and it is too long a wait. The first minute disturbs him.

Tom Rice, Jonathan Rice Collection, stated that he does not have a problem with the noise, but does have a problem with revving the engines. **Mr. Rice** asked about the 30 ft. requirement in the ordinance and how it is enforceable? Lastly, the current ordinance can shut down a music group with just one complaint, and that is very unreasonable and needs to be changed.

Louis Licitra, Chamber of Commerce, stated that the Chamber has enjoyed the relationship that they have established with the Borough,

and hopes that there is not going to be a line drawn between residents and businesses again. Music should not be taken away. There are separate districts in town, and music should be allowed as long as the residential district is not being invaded, and residents that border the businesses should work with the businesses. Businesses should respect the residents, and all should work together.

John Danaher stated that he was one of those musicians as a kid that played on the steps of Marsha Browns. He has never had a problem in getting a permit and does not know what is happening now. He just feels that people are getting nervous about the proposed ordinance language. He is concerned because the “reasonable” standard is subjective and open ended.

Mayor Keller stated that all music events in town are treated equally by the Police Department and that no one receives special treatment.

Rey Velasco stated that he believes the revving of vehicles should be controlled and this part of the ordinance should be clarified.

Geri Delevich stated that she would hate to see the music in New Hope go. It is very much a part of New Hope. Also, the 30 ft. standard is a concern, and if one neighbor complains about a music event and that event is shut down, it doesn’t make sense. The increase in the fine is not fair.

Ed Duffy thanked everyone for showing up to the meeting and suggested that the audience should select a composite of people who will become spokespersons and meet with Council to get this resolved fairly. There are different needs for residents and different needs for businesses, so getting together is necessary to find out the answers for both sides.

Claire Shaw thanked the audience for their attendance tonight and agreed that the music should not stop.

Sharyn Keiser stated that she does not want to change what brought her to New Hope in the first place. The ordinance is a work in progress, and the issues must be worked out. Ms. Keiser thanked the audience for their participation.

Jeff Izes, 90 Main Street, stated that music is New Hope, and the music should not be shut down.

Rey Velasco stated that 90% of the motorcycles are fine. It is the remaining 10% percent that is a problem

Sal Savioni, 1 South Main Street, stated that he loves downtown and music is life and he cannot exist without it. The noise of the trucks should be addressed.

T. J. Walsh stated that this is not the first draft of the ordinance and the reasonable person standard is used only because it is legally defensible from a first amendment point of view, but he would prefer a more objective view.

Sharyn Keiser thanked the audience for coming out and asked for a motion to withdraw or table the Noise Ordinance amendment.

Claire Shaw moved to withdraw the motion, and Ed Duffy seconded.

Sharyn Keiser asked for comment by Council and the public.

The motion was approved unanimously.

LAND USE AND HISTORIC PRESERVATION REPORT

Ed Duffy stated that the next item on the agenda is a review of Zoning Hearing Board Appeal No. 336, submitted by Steve & Genevieve Gross, for 11 A West Bridge Street. **Steve Darlington** was present to represent the applicant.

Council members decided to take no action on this application.

Ed Duffy announced the next item on the agenda as a discussion of a proposed resolution approving a revision to the New Hope Borough Official Sewage Facilities Plan for the Gyimesi Tract, T.M.P. No. 27-08-007-001, and a grinder pump Management and Maintenance Agreement.

Tom Applebach from DelVal Soil and Environmental Consultants stated the Gyimesi's are attempting to sell their property and they have an on lot sewage system, which has malfunctioned. They would like to connect their sewage system to the neighbor's system, which is a

private line from the neighbor's house down to Windy Bush Road, connecting to the BCWSA system at Route 32. The neighbors would share the lateral down to Route 32. DEP requires that they go through sewage facility planning before they will allow this arrangement. They are still waiting to hear from the Borough Planning Commission, the Bucks Planning Commission and the Bucks County Department of Health. DEP is also requiring an operations agreement that would be signed by both the property owners and the Borough.

T. J. Walsh stated that he does not understand why the Borough has to sign the agreement. This is a matter for the Bucks County Water and Sewer Authority. The Borough is not in the sewer business. **Mr. Walsh** asked why the BCWSA does not want to sign it. The Authority has to enforce the maintenance of the shared line, and is the natural body to do it.

Tom Applebach stated he did not know why they do not want to sign it.

John Burke asked if they have exhausted all possibilities of constructing a new on lot system, including innovative and alternative systems such as a spray irrigation system.

Tom Applebach answered that no they have not exhausted all possibilities. It is a small lot and the choice they made is the most effective and expedient method of disposal for the sewage.

David Mulchinoch stated he owns the property next to the Gyimesi's and he offered that his neighbor hook up to his private line. The owners of the adjacent property just want to satisfy the buyers. **Mr. Mulchinoch** asked that Council consider this request. This is a \$60,000 project.

Sharyn Keiser stated that the Borough does not want any responsibility for private sewer lines.

Mr. Mulchinoch answered that it is his responsibility. Both the other property owner and himself would share the maintenance. The Borough is just authorized to pick what engineer is to be used, and the Borough has the right, but does not have to perform the maintenance.

T. J. Walsh stated that the language in the agreement has not worked in his experience with DEP.

Mr. Mulchinock stated that DEP denied the original request and said the project must be treated like a new development.

Mr. Mulchinock stated he was supposed to have public water connected to his house 2 years ago and nothing happened. Now Bucks County Water and Sewer says it would cost him \$90,000 if he wants it.

T. J. Walsh stated that he doesn't believe they will get much of a response from DEP or BCWSA, but it is important to get it on record asking why DEP is requiring this agreement.

COMMUNITY AFFAIRS REPORT

Rey Velasco stated that the Visitors' Center report is not available because Larry Weikel is on vacation.

Rey Velasco reminded the audience about the Arts and Crafts weekend on September 26 and 27.

Rey Velasco reminded the audience about the importance of flu shots.

Geri Delevich announced that Second Saturday is approaching and Naked in New Hope is exhibiting.

Geri Delevich announced F.A.C.T. Bingo at the Eagle Fire Company on Tuesday the 15th of September.

Geri Delevich announced on September 19th Christine Martuchi is singing at the Triumph to kick off her career.

Rey Velasco asked for consideration on behalf of the Chamber of Commerce to have a High Heel Race, 6-8 pm, on Halloween night and to close West Mechanic Street from Main Street up to New Street between those hours.

Claire Shaw moved to approve the request, and Rey Velasco seconded.

Sharyn Keiser asked for comment by Council and the public.

The motion was approved unanimously.

Rey Velasco asked for consideration to allow the Phillips Mill Art Show to hang a banner on the Starbucks building in September 2009.

Geri Delevich moved to approve the request, and Rey Velasco seconded.

Sharyn Keiser asked for comment by Council and the public.

The motion was approved unanimously.

Rey Velasco asked for consideration of approving the annual Monroe Crossing event.

Bob Gerenser announced that Elaine McNealy was receiving the Saint Barbara award.

Bob Gerenser asked Council for approval to do his annual Monroe Crossing on Saturday, December 12, 2009. His group will form up at the Odette's parking lot. He would like to have traffic stopped on the east side lane of South Main Street as they go up and hit where New Street comes into South Main Street, and both lanes of traffic closed until Ferry Street. As Mechanic Street opens up behind them and New Street opens up, traffic can flow. Once hitting Ferry Street, the parade will end at the Ferry Landing Park. At Ferry Landing Park, they will take out the center section of railing and get the cannon and troops down to the river for the crossing.

Bob Gerenser stated that he might be able to get the replica of the Liberty Bell back in New Hope for the Monroe Crossing event.

Rey Velasco moved to approve this request, and Geri Delevich seconded.

Sharyn Keiser asked for comment by Council and the public.

The motion was approved unanimously.

Geri Delevich asked the Borough to write a letter of thanks to Chuck McIlhinney to thank him for his work on the New Hope crushed stone quarry issue.

John Burke announced that he would like to recommend Mary Lou Huchet for a re-appointment to the Board of Directors of the Free Library of New Hope and Solebury. Her term will expire on September 13th of this year, and she would like to be reappointed for another 3-year term.

Rey Velasco moved to approve the appointment, and Geri Delevich seconded.

Sharyn Keiser asked for comment by Council and the public.

The motion was approved unanimously.

Claire Shaw stated that she would like to see a flag depository box at the new building.

Keith McMillen, President of the Eagle Fire Company, would like everyone to reflect on the deaths resulting from the September 11, 2001 attack.

Keith McMillen announced the Dash for the Axe 5K Run on October 3rd. Keith also invited all to stop by for an open house and see the airboat on October 8th.

Louis Licitra announced the F.A.C.T. Aids Walk on September 27, 2009 at 9:00 am at the high school.

ADJOURNMENT