

August 22, 2017

MILLERSVILLE BOROUGH COUNCIL MEETING MINUTES

The MILLERSVILLE BOROUGH COUNCIL MEETING was held on Tuesday, August 22, 2017 in the Millersville Borough Public Meeting Room located at 100 Municipal Drive, Millersville, Pennsylvania.

The meeting was called to order at 7:00 p.m. by Council Vice President, David T. Aichele, followed by the pledge to the flag and a moment of silence was observed.

COUNCIL MEMBERS

Michael C. Kirkham (absent)
Philip A. Lastowski
Lynn M. Miller
David T. Aichele

Richard M. Moriarty, Mayor
Linda J. Deal
Scott A. Bailey
Daniel P. Ostrowski

OTHERS PRESENT

Josele Cleary, Morgan, Hallgren, Crosswell & Kane, PC; Borough Solicitor
Edward J. Arnold, Millersville Borough Manager
John D. Rochat, Millersville Borough Chief of Police
Jessie L. Ebersole, Millersville Borough Finance Officer
Andrew M. Boxleitner, Millersville Borough Street Department Superintendent
Lieutenant Jeffrey Margevich
Steven A. DiGuseppe, Millersville University
Alexandra Jean-Paul, Millersville University Student Advisor
Ryan C. Nicklas, Penn Manor High School Student Advisor
Elaine J. Jones, LNP
Mark Kozar, Flaherty & O'Hara Attorneys at Law, Sheetz
Michael Weidinger, 146 Victoria Road, Millersville
Sam Bigler, 17 Wabank Road, Millersville
Linda Bellile, 437 Penn View Drive, Millersville
Dianne Bates, 827 Tanglegate Place, Millersville
James A. Kirk, 436 Herr Avenue, Millersville
Ed Hersh, 72 Blue Rock Road, Millersville
Richard & Bernice Ochs, 509 Fairway Drive, Lancaster
Diana DeLucca, 206 Creek Drive, Millersville, Fair Districts PA
Micah France, 329 Valley Rd, Millersville
Kathy & Emily Huber, 340 Valley Rd, Millersville
Alberto Flores, 341 Valley Rd, Bert's Bottle Shop
Nathan & Jennifer Avery, 97 East Charlotte, Penn Manor Beverage
W. Jeff Wood, 427 Herr Avenue, Penn Manor Beverage
Keith Rutt, 140 Lakewood Drive, Pequea, Wheatland Distributors

PUBLIC HEARING FOR LIQUOR LICENSE TRANSFER TO THE BOROUGH

Vice President Aichele opened the public hearing for a restaurant liquor license transfer to the Borough and invited the Borough's Solicitor, Josele Cleary to explain the process. Ms. Cleary read from the Pennsylvania Liquor Code section 461(a) and 461(b.3). She stated the Borough has

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received a request for a liquor license transfer into the Borough from Sheetz Inc. and that the hearing has been advertised as required. She stated the procedure, under the direction of the Vice President of Council, will begin with the legal representation of Sheetz, Mr. Mark Kozar, by giving a presentation for the liquor license transfer request and then the Borough staff, the Borough Manager and the Chief of Police will provide comments and then members of the audience will have the opportunity to make comments. Council will then consider all comments and adopt a resolution to either allow or deny the liquor transfer at tonight's meeting.

Mr. Mark Kozar introduced himself from Flaherty & O'Hara Attorneys at Law and legal representative of Sheetz Inc. He requested Council's approval by resolution for the intermunicipal transfer of a liquor license according to Section 461(b.3) of the Liquor Code to the Sheetz located at 1790 Millersville Road. Mr. Kozar proceeded to provide background information on Sheetz including the facts that they were founded in 1952 and have grown to over 600 stores in 6 states and over 240 of those stores currently sell beer, including 30 in the state of Pennsylvania. He also noted that there are 24 liquor licenses pending with the PLCB (Pennsylvania Liquor Control Board). He mentioned the Sheetz store in Millersville qualifies for a liquor license by having seating for 30, sells food and has over 400 square feet. The proposed plan has all the beer being sold from a walk-in cooler and they would sell over 150 types of beers. The sale of beer would be Monday through Saturday from 7:00 a.m. to 1:45 a.m. and on Sunday from 9:00 a.m. to 1:45 a.m. Wine could be purchased at the same start times but would end earlier at 11:00 p.m. every day. He stated takeout beer would be limited to 192 fluid ounces (2 six-packs) and wine would be limited to 3000 ml (4 bottles). He explained that the on premise consumption would be limited to the restaurant seating area and would be limited to 2 beers per person (no wine consumption) and would require a food purchase. He also noted that there will be no outside consumption permitted on the property. Mr. Kozar went into details on Sheetz responsible sales program, including employees training, certification, 100% carding policy, and their security program. He ended his presentation with the comment that this is not going to be a place where people come to hang out and drink. It will be a well-lit, safe and secure place where customers may come and purchase prepared food, a six pack or 2 of beer to take home. He closed his presentation by stating Sheetz is a responsible owner and making a substantial investment in Millersville.

Vice President Aichele proceeded to open the hearing for Borough Council to ask questions and for Borough staff to provide comments. Mrs. Miller asked "Why Millersville?" Mr. Kozar replied eventually every store in the state will sell alcohol. The Millersville's store already has the requirements necessary, i.e. the seating capacity, square footage, sells food, etc. He went on to mentioned that Sheetz has a store directly across from Penn State which has been selling alcohol for three years now and that that store has had no incidents primarily due to their 100% carding policy and a lot of security cameras. Mayor Moriarty asked how they monitor two-beer consumption and if buying a candy bar qualifies as a food item. Mr. Kozar replied that there is typically very limited on premise consumption, it is mostly take-out and that the employees are trained to visually monitor and record on a log sheet. He also replied that a candy bar purchase does qualify as a food item. Mr. Ostrowski asked where the liquor license is coming from. Mr. Kozar answered, from Bainbridge. Chief Rochat asked to clarify that the license being requested is for alcohol consumption inside and outside and that Sheetz will only allow consumption inside the store. Mr. Kozar stated that the licensee may designate the area for alcohol consumption and that Sheetz does not license any outside areas at their stores. Mrs. Deal commented that this Sheetz store already has a higher number of police calls-for-service than any of the other alcohol licensed locations in the Borough. Mr. Kozar replied that he doesn't believe that the calls for service will increase due to the selling of alcohol. Per Council's request, Chief

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Rochat provided statistics on the number of calls handled at the Sheetz location on Millersville Road. The statistics are: from July 2014 to July 2015 there were 81, from July 2015 to July 2016 there were 99 and from July 2016 to July 2017 there were 70. He also provided a comparison of how many liquor law incidents were handled by ratio of population with that of Lancaster County. Using the 2015 Pennsylvania Uniform Crime Report, (noting that the 2016 figures have not been published yet) the Borough had 138 incidents or 1 incident per 62.04 citizens and that the entire County had 3071 incidents or 1 incident per 174.68 citizens. He was asked to provide the number of alcohol related arrests, including underage drinking, driving under the influence, open alcohol, and public drunkenness. Those statistics are: 2016 the total number of arrests was 414, 189 were alcohol related arrests (45.7%). Mrs. Deal stated her point again, that this Sheetz store is already getting more calls for police service even without the sale of alcohol. Mr. Kozar stated his opposition; Sheetz will have very little alcohol consumption on-site and 90% of their sales are food items. Mr. Lastowski asked the Borough's Solicitor if the Borough can put stipulations on the approval of the transfer. Ms. Cleary stated the Liquor Code does not allow stipulations to be placed on the licenses. She noted that the Planning and Betterment Committee had requested that Sheetz relocated the cash register and limit the hours of selling alcohol. Mr. Bailey made point that the request made by the Planning and Betterment Committee members was not a motion action of Council. It was stated that Sheetz would not consider either of the requests.

Vice President Aichele then opened the hearing for public comments.

Mr. Nathan Avery, owner of Penn Manor Beverage commented that the number of liquor licenses already permitted in the Borough is over the 1 in 3000 residents limit. He also voiced his concern for the establishment selling alcohol in an area that is largely populated with children of all ages. He stated this Sheetz store is already a hangout for students and young athletics and believes it would be detrimental to their environment. He went on to state that current law allows a municipality to deny an intermunicipal liquor license transfer with no recourse for appeal. Ms. Cleary clarified that the Commonwealth Court has recently decided a case that allows the applicant the right to appeal. However this decision on the right to appeal is now in the hands of the Pennsylvania Supreme Court and that they have not decided yet to grant the right of appeal. She further stated that the Commonwealth Court has not stated what standards, if any, Council was to consider in approving or denying the request and that section 461(b.3) does not contain any standards. The only thing mentioned in Commonwealth Courts decision on the right of appeal is that unfettered discretion would permit a municipality to deny an intermunicipal liquor license transfer for any reason, even an unlawful one. For example there would be no right to review a municipality's decision if the municipality routinely denies such licenses to women based on the sex or applicants on their bases of their race, national origin, religion or other protected classifications. Mr. Avery continued to point out that for every license 'big business' is allowed, takes away from a small business owner being allow to open a restaurant and serve alcohol. Mr. Kozar commented that the change made by Act 39 of 2016 legislation's intent is to provide for the operation of a retail system that promotes competition and convenience.

Ms. Linda Bellile of 437 Penn View Drive commented by questioning, "Isn't there enough alcohol available to people of age? Do we have to make more alcohol available? Does it make sense to add more alcohol to our college community?"

Mr. Keith Rutt from Wheatland Distributors began to talk and was interrupted by Mr. Kozar by questioning his residency. Ms. Cleary instructed Mr. Kozar to not disrupt the comments of the public and corrected his position on allowing interested individuals to provide comment and recommendations even though they are not a resident of the Borough. Mr. Kozar respectfully disagreed with Ms. Cleary's interpretation of the code. Ms. Cleary went on to say

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that it is the decision of the Council Chair to recognize and accept comment from the public. Vice President Aichele asked Mr. Rutt to continue with his brief comment. Mr. Rutt asked Council to review the guidelines pertaining to the number of feet allowance to the adjacent school and if two liquor licenses is allowed on the same property.

Ms. Dianne Bates of 827 Tanglegate Place commented on her concern that Comet Field is so close and that it is common knowledge that this Sheetz is a number one place for Penn Manor High School students to visit and hang out. She asked Council to consider in their decision to supporting small business in order to keep our small town atmosphere and also recognize that there are already multiple places available to purchase alcohol.

Mr. Micah France of 329 Valley Road commented that his concern is that this Sheetz is nested in a residential neighborhood. He knows at some point Pennsylvania will become like every other state that has beer sold in every corner grocery store. His concern is this transition happening first at the Sheetz located in this neighborhood. He would prefer the first Sheetz be in a less sensitive location. At some point later when it becomes less ambiguous he would be much more comfortable having a liquor license here.

Mr. Alberto Flores owner of Bert's Bottle Shop and local resident voiced his concern on the ending hour of sales. He closes his alcohol sales at 11 p.m. and recognizes that bad things mostly happen after midnight. He further stated that once Council approves this, you will not be able to tell them to close the sales down earlier; they will keep it open to the end.

There being no further public comment, Vice President Aichele closed the public hearing at 7:59 p.m. and announced that Council would enter into an Executive Session to consult with legal counsel. The Borough Manager was not invited to the Executive Session.

At 8:21 p.m. Council Vice President Aichele called the meeting back to order.

PLANNING AND BETTERMENT COMMITTEE REPORT

Mrs. Miller, seconded by Mrs. Deal made a motion to approve the resolution denying the request of Sheetz, Inc. for an intermunicipal transfer of a liquor license. With no further discussions the motion passed by a roll call vote, with Mr. Bailey and Mr. Ostrowski opposed.

RESOLUTION BOOK
RESOLUTION NO. 2017-10

PUBLIC HEARING FOR MS4 – POLLUTANT REDUCTION PLAN

Vice President Aichele opened the public hearing to receive comments on the proposed Pollutant Reduction Plan (PRP) addressing sediment and pollution reductions to both the Chesapeake Bay watershed and local impaired streams. The PRP proposes several Best Management Practices (BMPs) to achieve the required reductions in sediment generated from the Borough's small regulated municipal separate storm sewer system (MS4). The PRP is a requirement for coverage under the Pennsylvania 2018-2013 MS4 General NPDES Permit. He introduced Mr. Boxleitner, Borough's Street Superintendent to review the information presented and answer any questions. Mr. Boxleitner explained that this is a five year permit and a plan to reduce the existing sediment, total Phosphorus and total Nitrogen. The plan is the restoration of two streams. The University Drive Stream Restoration project is located along the south side of University Drive just behind the off-campus housing for Millersville University and is intended to restore a section of the stream bank that has severe erosion. The second plan is the Freedom

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Memorial Park Stream Restoration project located along the municipal border with Manor Township and will include stabilizing the bank and widening some areas of the stream.

Mr. Boxleitner mentioned the estimated costs of both projects to be approximately \$300,000.

Mr. Arnold added the timeline for beginning these projects may be as early as 2019 and will have future inspections and maintenance considerations. He also mentioned that the public comment period ends August 30th and welcomes any further comments directly to Mr. Boxleitner or himself.

Vice President Aichele then opened the hearing up for public comments. Mr. Bailey asked what happens if we don't do it. Mr. Arnold replied that the Borough could be fined and as an example mentioned Manor Township's recent MS4 penalty was approximately \$140,000. Mr. Bailey commented that he is an ecological, conscientious individual but doesn't like spending \$300,000 on something that he doesn't think will have a material impact on the sediments flowing into the Chesapeake Bay.

There being no further public comment, Vice President Aichele closed the public hearing at 8:34 p.m.

STREET COMMITTEE REPORT

Mr. Bailey made a motion to adopt the Millersville Borough Pollutant Reduction Plan as presented and to include any further public comments received by the Borough before the period ends on August 30th. Mrs. Miller seconded the motion. With no further discussions the motion passed by a unanimous voice vote.

CITIZEN'S REQUESTS OR CONCERNS

Ms. Diana DeLucca, of 206 Creek Drive and representing Fair Districts PA asked for Council's consideration to support a resolution for a more equitable and transparent redistricting process for Pennsylvania. She provided data from the past and current districts, as well as referencing details of Senate Bill 22 and House Bill 722 which are legislative efforts to amend the constitution to assign the decennial task of both legislative and congressional redistricting to an independent citizens redistricting commission. This commission would be made up of four republicans, four democrats, and three members from other political parties or independents. Mayor Moriarty stated the Mayors' Association also adopted a resolution in favor of an open and transparent process similar to that which they are proposing. He stated this is not a republican or democratic issue; it is a bi-partisan issue and a very valid consideration for Council. Mrs. Miller asked if Planning and Betterment committee would be the best avenue to move this resolution forward. Vice President Aichele replied that it would.

Ms. Kathy Huber, 340 Valley Road voiced her concern for the ADA curbs that were just installed on her street. She stated the workmanship was poor and doesn't understand how it has passed inspection. Her concern is the timeframe of the one year warranty and how that will affect the homeowners after that period of time. She asked if it will be the homeowner's responsibility to repair or replace the curb and sidewalk when from day one it was not installed properly. Mr. Arnold replied that there were initial issues that Mr. Boxleitner and the Borough's Engineer had addressed with the Contractor. The Contractor did take corrective action and noted that the final inspection was performed before the roadway material was applied. Mr. Arnold, in speaking

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with Mr. Boxleitner, mentioned there may have been some 'notching' of the curb as a result of the street asphalt roller and that they will do a follow up. Mr. Arnold suggested if Ms. Huber believes there is degradation with her curbs or sidewalks, that she documents these areas with photos. Mr. Arnold stated that the Borough will not force her to undergo expenditures to repair the curbs if it was a condition that existed from the installation, even if it is past the one year. Mr. Bailey asked if it would be a fair action of the Borough to re-inspect and ensure that there has not been a warranty violation and follow up with the Contractor to do the right type of repairs. Mrs. Deal noted that if it was the paver that did the damage to the curb, then the paving Contractor should be responsible for the fix.

MINUTES

A motion to approve the minutes for the July 25, 2017 Council Meeting was made by Mr. Bailey and seconded by Mr. Lastowski. With no discussions the motion passed by a unanimous voice vote.

REPORTS OF COMMITTEES OR BOARDS

Mr. Lastowski reported on the Blue Rock Regional Fire Commission meeting that was held on August 3rd at the Millersville Station. He reported that a Millersville senior citizen has passed away, Mr. Robert Palmer Jr at age 96 and that his Will specified an annuity, in which he had setup in the amount of 4% of his annual worth, is to be distributed as a monetary gift to a total of ten charities. The Blue Rock Fire Company is one of the charities. Mr. Lastowski stated this amount might be \$3000-\$4000 per year for the life of the annuity and is a generous donation.

MAYOR'S REPORT

The Mayor announced that he attended the PA Mayor's Conference and gave a few highlights on some of the speakers, one session being his own on economic development initiatives.

Mayor Moriarty mentioned Officer Hammer's observation during a routine patrol on Blue Ridge Drive where he found smoke coming from the back of a house. He was able to get the residents outside before any harm. He also mentioned Officer Tatara's assistance in a vehicle fire on Blue Rock Road and Officer Rudisill assistance when he noticed smoke from an apartment on Frederick Street. The smoke was caused by an intoxicated individual placing a pizza in the oven and then passing out.

Mayor Moriarty mentioned the recent concern the media had reported on Ford SUV police vehicles having carbon monoxide fumes entering into the cab area. Chief stated our vehicles have been checked and show no issues.

MILLERSVILLE UNIVERSITY REPORT

Mr. DiGuissepe reported that orientation and move-in for Freshmen is this Thursday, August 24th and a new students celebration will be held on Friday, August 25 in SMC, followed

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by a candle lighting ceremony at the lake. He continued to report that Fall classes will begin on Monday, August 28th and announced that the American Dream Scholarship Ride will be held on Saturday, September 16th. Cyclists and walkers will be in and around the Borough, noting that no Borough roads will be closed. Riders can do 5, 10, 20, 30 or 60 mile routes, while walkers can do 1, 2, or 6.5 mile routes. Last year they had approximately 150 participants. He reported that Homecoming Weekend will be October 13th and 14th and that Parent/Family Weekend will be October 27th and 28th. Mr. DiGuiseppe mentioned playwright Barry Kornhauser, Assistant Director of Campus and Community Engagement will receive a 2017 Governor's Awards for the Arts, entitled the Artist of the Year award. He also mentioned that meteorology students, along with Dr. Richard Clark, Chair of Earth Sciences Department, participated in a special Solar Eclipse chaser expedition yesterday. They took over MU's social media accounts for the day, posting photos and noting their observations of the event where the moon completely covered the sun. Mr. DiGuiseppe went on to announce that football season tickets are now on sale and their home opener will be Saturday, September 16th against California University.

Mr. DiGuiseppe announced the Millersville Business Expo will be September 8th at John Herr's Market from 10 a.m. to 3 p.m.

PENN MANOR HIGH SCHOOL REPORT

Mr. Ryan Nicklas reported that Penn Manor hired thirty professional staff members; twenty are new teachers for the 2017-2018 school year district wide. He also reported that all Fall sport teams have begun practices. Those high school sports include football, field hockey, girls and boys cross country, girls volleyball, girls and boys soccer, coed golf, girls tennis and cheerleading. He mentioned that the Penn Manor School District celebrated its longstanding partnership with Millersville University during Opening Day activities to mark the start of the 2017-2018 school year. Nearly 375 professional employees took part in the daylong event, which included twenty local industry presentations. At the end of the day they all viewed the solar eclipse. Lastly he announced the first day of school will be this Thursday, August 24th.

FINANCE COMMITTEE REPORT

None

WASTE WATER COMMITTEE REPORT

Mrs. Miller made a motion out of committee to advertise the Storm Sewer Extension Project located at the Waste Water Treatment Plan. This project is for erosion control on the north stream bank. With no discussions the motion passed by a unanimous voice vote.

STREET COMMITTEE REPORT-continued

Mr. Bailey made a motion to approve the use of public streets for the annual Manor View Drive Block Party on Sunday, September 10th starting at 5 p.m. Mrs. Deal seconded the motion. With no discussions the motion passed by a unanimous voice vote.

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Mr. Boxleitner reported on the annual MS4 (Municipal Separate Storm Sewer Systems). He noted they have inspected 25% of the outfalls and 100% of the priority outfalls for illicit discharge; this includes public and private outfalls and noted that there were none. He went on to note it is a requirement to have a public and employee education program. Pamphlets and literature are distributed to staff and is available in the lobby for the public. This information is also posted on the Borough's website. He went on to report that the Borough's employees completed a Storm Water Management training presentation by the Borough's engineering firm, RAV in January. Mr. Boxleitner noted they had public volunteers' participation on some stream cleanup, one through Millersville University and one through Student Lodging. As far as citizen's complaints, he had no complaints but did have one person call on Maple Avenue with concern of some stone washout after a heavy rain. He investigated and determined that all of our systems are clean. Mayor Moriarty asked if grass clippings create a problem if they go down the drain. Mr. Boxleitner replied that it does; anything that is not stormwater shouldn't be going into the system.

SAFETY COMMITTEE REPORT

Mr. Bailey made a motion to approve the revised Police Department's Use of Force Policy. Mr. Ostrowski seconded the motion. Chief Roach explained the changes were mostly for administration and investigation procedures when an officer is involved in a shooting. With no discussions the motion passed by a unanimous voice vote.

PERSONNEL COMMITTEE REPORT

Mr. Ostrowski made a motion to accept the resignation of Historic Commission member, Tyler M. Keck effective September 3rd. Mr. Bailey seconded the motion. Mr. Ostrowski stated he is going back to school in Ohio. With no discussions the motion passed by a unanimous voice vote.

Mr. Ostrowski made a motion out of committee to approve the renewal of the annual employment contract with John D. Roach to continue employment with the Borough as Police Chief, contingent on the Chief receiving a satisfactory review by the Mayor. Mr. Ostrowski noted the review has been completed since the committee meeting and that the Chief did meet or exceed all expectations. With no discussions the motion passed by a unanimous voice vote.

Mr. Ostrowski made a motion out of committee to approve amending the AFSCME contract, the new job description and commensurate a 2% pay increase for the AFSCME bookkeeper position, contingent on agreement with the non-uniformed union and effective no earlier than January 1, 2018. He noted that this Bookkeeper job description was last updated in 1999 and that the position itself, the technology, and the scope of the duties have changed a lot over the years. Mr. Ostrowski noted that the discussion with the Union will be specific to this position and will not be used as an opportunity to open the contract for additional changes. Mr. Bailey asked what prompted this revision. Mr. Arnold explained that it was brought to him after Council had passed the agreement with the City of Lancaster on service terminations. He mentioned that that is a major addition to the job duties and that the job description has been missing the duties of tax collection. He continued to state that from a practical standpoint this position is the tax collector of the Borough and has been so for a number of years. Mr. Arnold mentioned that AFSCME at the same time will be asked to consider the proposed contract changes due to the Street Department Superintendent's request to hire a Maintenance I worker instead of a Laborer. With no discussions the motion passed by a unanimous voice vote.

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Mr. Ostrowski made a motion out of committee to approve the retirement resignation of Mr. Edward J. Arnold, Borough Manager effective in early January, 2018 and to approve the advertising of the vacancy. Mr. Arnold has recommended a course of action to search for a new Borough Manager and a timeline for Council's action. He also has agreed to stay on for some overlap to orient and train the new Manager. Mr. Ostrowski expressed his gratitude for his service to the Borough for all the years and congratulated him. With no further discussions the motion passed by a unanimous voice vote.

PRESIDENT'S REPORT

None

BOROUGH MANAGER REPORT

Mr. Arnold mentioned the West Frederick Street Phase 4 project is complete, stating PennDOT has signed off, our Engineer has signed off, the Contractor signed off and the Redevelopment funding has come in. He commented that the North/South Duke Street Corridor project is still waiting to hear from PennDOT on the disposition of their grant awards and that Maple Avenue is in process and that the multiple streets overlay are wrapping up.

Mr. Arnold mentioned the LCBA is meeting on September 27th at Gordinier Hall and invited Council to notify the office if they are interested in attending. Mayor Moriarty asked if he would be giving up the Presidency on the LCBA. Mr. Arnold replied that he would.

Mr. Bailey voiced a concern for the section of roadway on West Frederick Street that has not been replaced during the West Frederick Street infrastructure improvement project phases. Mr. Boxleitner recognized that this section will be part of the North/South Duke Street Corridor project and that any smoothing of that surface would need authorization from the State.

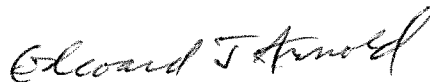
EXECUTIVE SESSION

None

ADJOURNMENT

There being no further business to discuss, Mr. Ostrowski made a motion to adjourn the meeting at 9:45 p.m., seconded by Mrs. Deal.

Respectfully submitted,



Edward J. Arnold
Borough Secretary

EJA/jle