

May 11, 2009

POTTSTOWN BOROUGH COUNCIL

The regular meeting of the Pottstown Borough Council was called to order on Monday, May 11, 2009 at 7:00 p.m. in the Council Meeting Room, Pottstown Borough Hall, 100 East High Street, Pottstown, Pennsylvania, with President Garner in the Chair.

INVOCATION

The invocation was provided by Pastor Tom Francis, Light House Ministries.

PLEDGE OF ALLEGIANCE

ROLL CALL

Councilors present were Michael Wenzel, Stephen Toroney, Greg Berry, Jody Rhoads and David Garner. Also present were Mayor Sharon Thomas, Solicitor Charles Garner, Assistant Borough Manager Jason Bobst and Borough Secretary Virginia Takach. Manager Lopez and Councilors Gibson and Allen were absent.

APPROVAL OF MINUTES

Motion by Councilor Wenzel, seconded by Councilor Toroney, to approve the April 13, 2009 Council Meeting minutes as presented. Motion carried: 5 ayes.

PUBLIC HEARING – EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT

Solicitor Garner explained the requirement for a public comment period as part of the application of the Edward Byrne Memorial Justice Assistance Grant (JAG). He added that a resolution was adopted at the April meeting authorizing the potential use of the money.

Chief Flanders commented that the grant money would be used for police vehicles with no matching money required.

There were no public comments received and Solicitor Garner closed the public hearing at 7:05 p.m.

COMMENTS FROM CITIZENS PRESENT

- a. Eden Richard, (no address provided) – complained about the permit and license process required in the Codes Department. He stated he was refused a license due to not providing a driver's license. Mr. Richard also noted that if this is required by law, the law should include the legislative intent and the enabling law. He also objected to having a Codes Officer inspect his work without proof of insurance.
- b. Newstell Marable, President NAACP, 880 Cross Street – reiterated his concern regarding the policies of the Olivet Boys and Girls Club operating the Ricketts Community

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Center. Mr. Marable also provided several letters to the Borough Secretary for distribution to Council.

c. Bonnie Heath, 850 Feist Avenue – advised that this is National Police Appreciation Week and distributed tie-on ribbons in honor of all Police Officers.

MAYOR'S REPORT

Mayor Thomas commented that while revitalizing the town, attention should be paid to the culture and the mind set that is in operation. Too long the emphasis has been on “rights” to the neglect of responsibility. Now everyone feels entitled to do things their way. The Mayor also commented on the destruction of property and facilities and the cost associated with repair or loss at the Spray Park.

Mayor Thomas also reported that she attended a Human Relations session in Reading. She noted that the City of Reading has a seven-member Commission for a population of 80,000, while the Borough has a nine-member Commission for 22,000 people and also stated that Council has not yet made any changes to the Borough's Human Relations Commission.

BOROUGH MANAGER'S REPORT

Mr. Bobst reported that Borough Staff participated in the Community Focus Group with the Pottstown School District's planning phase for the proposed North Field Planning Project. The School District is seeking DCNR funds for the refurbishment of fields at the High School, to include walking trails, tennis courts upgrades and drainage system for the softball fields. Mr. Bobst also reported that the Auditors are on site for the 2008 audit and will be scheduled for a presentation before Council within the next several months. He also advised that Staff will appear before the Montgomery County Revitalization Board on May 26th to present the Borough's 2009 projects. Mr. Bobst also advised that May 15th is Police Officers Memorial Day and flags will fly at half-staff and the Memorial Day parade is scheduled for May 25th.

COMMITTEE REPORTS

- a. Library – There was no report.
- b. Human Relations – Mayor Thomas advised that the next meeting is May 12th in Borough Hall. She added that the Commission is actively working on implementing by-laws.
- c. PDIDA – Councilor Berry reported that the Sunday Produce Market is open each Sunday. He also advised that Bill Haley, Main Street Manager, has been appointed to two new Boards, Creating a Positive Pottstown Buzz and Encouraging Redevelopment of Blighted Properties. Mr. Berry also reported that there is discussion of a July Sidewalk Sale and advised that the Board is seeking the possibility of obtaining stimulus money and is also working on the PDIDA restructuring plan. He added that negotiations are underway for the proposed Pottstown Celtic Festival scheduled for October 17 and 18, 2009. The Highlands games will not take place this year.

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d. Cable – President Garner advised that the April meeting minutes were provided in the packets for review along with the April financial report from PCTV.

e. COG – President Garner noted that the next meeting is scheduled for May 12th at Upper Pottsgrove Township to include a presentation by John Reber regarding the Park system.

f. EAC – Councilor Toroney confirmed that the yard waste pick up is scheduled for the first recycling day of the month.

g. Regional Planning – Councilor Toroney reported that Carmen Italia, President, Montgomery County Industrial Development Corporation provided a presentation regarding the Commercial and Industrial Zoning and Land Use Assessment Report. He added that there would be a meeting at the Community College on May 12th regarding the potential Comprehensive Plan amendment associated with Upper and West Pottsgrove developments that could eventually impact the Borough.

h. Blighted Property Review – Solicitor Garner advised that the approved March minutes were distributed. The committee continues to identify properties that may qualify to be blighted.

i. Pottstown Borough Authority – President Garner noted that a written report was provided by Secretary Read for the Pottstown Borough Authority. Mr. Read welcomed comments regarding the report or its content.

UNFINISHED BUSINESS

None.

NEW BUSINESS

a. Conditional Use – 451 North Charlotte Street – Motion by Councilor Wenzel, seconded by Councilor Berry to approve the Conditional Use application of Richard and Sherry Sweeney, d/b/a Desserts First Café, to operate a restaurant/café at the property located at 451 North Charlotte Street, Pottstown, PA, with conditions as stated in the order dated May 11, 2009.

Solicitor Garner reviewed the conditions of the order to include the applicants providing the results of a traffic and parking study to the Codes Office to show that parking is sufficient in that area.

Councilor Toroney advised that he would abstain from voting since he was not present for the Conditional Use hearing on May 6th.

Motion carried: 4 ayes, 1 abstention.

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b. Construction Plan Review Fees – Motion by Councilor Toroney, seconded by Councilor Wenzel to adopt a Resolution amending the Comprehensive Borough Fee Schedule to provide for permit and application fees for non-residential and multi-family residential construction plan reviews.

RESOLUTION NO. 2009 – 16

A FEE RESOLUTION AMENDING THE COMPREHENSIVE BOROUGH FEE SCHEDULE TO PROVIDE FOR PERMIT AND APPLICATION FEES FOR NON-RESIDENTIAL AND MULTI-FAMILY RESIDENTIAL CONSTRUCTION PLAN REVIEWS.

WHEREAS, the Burgess and Town council of the Borough of Pottstown adopted a Comprehensive Fee Resolution on July 10, 2005; and

WHEREAS, the Borough periodically reviews the Fee Resolution to determine if additions or amendments to the Fee Resolution are necessary and appropriate; and

WHEREAS, the Burgess and Town Council of the Borough of Pottstown wishes to engage a third part engineering firm to undertake review of non-residential and multi-family residential construction plans in order to comply with the Pennsylvania Uniform Construction Code; and

WHEREAS, the Borough desires to amend its fee schedule to establish a fee to provide for such service.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the Burgess and Town Council of the Borough of Pottstown, Montgomery County, Pennsylvania, as follows:

SECTION 1. The following fee is hereby created to be charged by the Pottstown Borough Code Enforcement Office associated with the review of non-residential and multi-family residential plans:

<u>REVIEW</u> Based upon computable Square Footage)	<u>Fee</u>
Non-Residential and Multi-Family Residential* *The Borough, in its reasonable discretion, shall have the right to request an escrow from Applicant in the event there is a resubmission of an original plan to allow for follow-up review in the event the plan is incomplete or substantially fails to comply with the requirements of the UCC.	\$0.37 (\$250.00 Minimum)

Section 2. All future modifications of these fees and other fees established by the Comprehensive Borough Fee Resolution shall be made by Resolution duly adopted by the Burgess and Town Council the Borough of Pottstown.

Section 3. This Resolution shall become effective immediately upon enactment.

ENACTED AND RESOLVED this 11th day of May 2009.

Motion carried: 5 ayes.

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c. Lease Purchase Agreement – Motion by Councilor Berry, seconded by Councilor Wenzel to enact a Resolution authorizing the incurrence of lease obligations in an amount not to exceed \$2 million dollars to be evidenced by a Lease Purchase Agreement with Municipal Services Group or its assignee.

RESOLUTION NO. 2009 – 17

A RESOLUTION OF THE BURGESS AND TOWN COUNCIL OF THE BOROUGH OF POTTSTOWN AUTHORIZING THE INCURRING OF LEASE OBLIGATIONS IN AN AMOUNT NOT TO EXCEED TWO MILLION DOLLARS (\$2,000,000.00) TO BE EVIDENCED BY A LEASE PURCHASE AGREEMENT WITH MUNICIPAL SERVICES GROUP, INC., OR ITS ASSIGNEE, OR A FINANCING ENTITY (“LESSOR”) TO WHICH THE BOROUGH OF POTTSTOWN WILL PAY TO LESSOR THE RENTAL PAYMENTS FOR THE PURPOSES OF PROVIDING CERTAIN EQUIPMENT FOR THE BOROUGH OF POTTSTOWN; AUTHORIZING EXECUTION AND DELIVERY OF SUCH LEASE PURCHASE AGREEMENT; SETTING FORTH THE AMOUNTS OF THE RENTAL PAYMENTS TO BE MADE THEREUNDER AND COVENANTING TO PAY SUCH AMOUNTS FROM CURRENT REVENUES, SUBJECT TO ANNUAL APPROPRIATION; AUTHORIZING AND DIRECTING THE TAKING OF NECESSARY OR APPROPRIATE ACTIONS INCLUDING EXECUTION AND DELIVERY OF REQUISITE DOCUMENTS IN CONNECTION WITH THE LEASE PURCHASE AGREEMENT; AND TAKING RELATED ACTIONS.

WHEREAS, the Council of the Borough of Pottstown (“this Borough”) has determined that it is in the best interest of this Borough to finance certain equipment (“Equipment”) as more particularly described in Exhibit A annexed hereto and made a part thereof.

WHEREAS, the Council of this Borough desires by this resolution to authorize the execution and delivery on behalf of this Borough of a Lease Purchase Agreement, and to authorize the taking of necessary or appropriate actions to perform the Lease Purchase Agreement;

NOW, THEREFORE BE IT ENACTED AND RESOLVED by the Council of this Borough, as follows:

Section 1. Approval of the Council of this Borough hereby authorizes and approves the financing of the equipment pursuant to the Lease Purchase Agreement. The Council of the Borough determines to incur lease obligations debt in an aggregate principal amount not to exceed two million dollars (\$2,000,000.00) by the execution and delivery of a Lease Purchase Agreement. The Council of this Borough hereby finds and determines that the realistic estimated useful life of the Equipment is not longer than ten (10) years.

Section 2. Form of Lease Purchase Agreement. The Lease Purchase Agreement will be in the form and substance satisfactory to the Council of this Borough, with the advice of counsel, and shall provide this Borough’s repayment obligations thereunder.

Section 3. Execution and Delivery of Lease Purchase Agreement. The proper officers of this Borough are hereby authorized and directed to execute, attest, seal and deliver the Lease Purchase Agreement in the form provided in Section 2 hereof. Such execution,

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attestation and delivery of the Lease Purchase Agreement shall constitute conclusive evidence of such approval.

Section 4. Amounts Payable Under Lease Rental Debt Documents. The amounts required to be paid under the Lease Purchase Agreement, from the current revenues of this Borough, are set forth in the payment schedule to the Lease Purchase Agreement in the form provided in Section 2 hereof.

Section 5. Rental Payments from Current Revenues of Borough of Pottstown. This Borough covenants to pay Lessor the rental payments as set forth in the payment schedule to the Lease Purchase Agreement in the form provided in Section 2 hereof from current revenues subject to annual appropriation.

Section 6. Qualified Tax-Exempt Obligations. The Council of this Borough hereby certifies that it has not issued or effected the issuance of, and reasonably anticipates that it shall not issue or effect the issuance of, more than thirty million dollars (\$30,000,000) of tax-exempt obligations during the 2009 calendar year, and hereby designates the lease of the Equipment to which the Lease Purchase Agreement pertains as a "qualified tax-exempt obligation," as defined by Section 265 (b)(3) of the Internal Revenue Code of 1986, as amended.

Section 7. Further Action. The proper officers of this are hereby severally authorized and empowered on behalf of this Borough to execute any and all papers and documents and to do or cause to be done any and all acts and things necessary or appropriated for the implementation of the Resolution and to effectuate the authorization, execution, delivery and performance of the Lease Purchase Agreement.

Section 8. Reimbursement Intent. The Council of this Borough declares its official intent to be reimbursed from the proceeds of the Lease Purchase Agreement approved herein for prior expenditures in the event Lessee elects to disburse moneys from its own reserves for acquiring the Equipment. Such declaration of official intent to be reimbursed is issued pursuant to Section 1.103-18 of the Federal Income Tax Regulations.

Section 9. Maintenance of Legal Status. This Borough covenants that it will perform all acts within its power which are or may be necessary to insure the maintenance of its legal status as being a duly organized and existing entity under the laws of Pennsylvania, which status is the basis for the interest portion of the rental payments coming due under the Lease Purchase Agreement to at all times remain exempt from federal income taxation under the laws and regulations of the United States of America as presently enacted and construed or as hereafter amended.

Section 10. Headings and Preambles. The preambles and headings of this Resolution are inserted for ease of reference only and shall not constitute a part of the Resolution.

Section 11. Inconsistent Resolutions Repealed. All resolutions to the extent inconsistent herewith shall be and the same hereby are rescinded, canceled and annulled.

EXHIBIT A – EQUIPMENT DESCRIPTION

The financed Equipment includes such projects and equipment for the development and maintenance of Pottstown Community Television, Pottstown Parks and Recreation, and the Pottstown General Fund, including but not limited to the following:

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1. Pottstown Community Television Capital Equipment
2. General Fund Security Upgrade
3. Ten (10) Mobile Data Computers/Terminals
4. One (1) 2008 Ford Crown Victoria
5. One (1) 2008 Ford Expedition
6. One (1) 2008 Ford Explorer
7. Administrative Investigation Management Software
8. Phone System
9. One (1) 2008 Chevrolet Cobalt
10. One (1) New Dump Truck with Plow and Spreader
11. Parks and Recreation Project with Concession Stand

Mr. Bobst commented that these were capital items considered as part of the 2009 budget. He noted that a local bank, M & T, has agreed to provide the funds to the Borough and packaged as one debt service payment and as five, seven and ten year life expectancies for the projects. Mr. Bobst advised that payments begin in 2010. Mr. Bobst also confirmed that PCTV 's equipment would be leased.

Motion carried: 5 ayes.

d. State Operating Financial Assistance – Motion by Councilor Wenzel, seconded by Councilor Berry to adopt a Resolution certifying the local match for State Operating Financial Assistance for the Pottstown Area Rapid Transit System for fiscal year 2009-2010.

RESOLUTION NO. 2009 – 18

RESOLUTION CERTIFYING THE LOCAL MATCH FOR STATE OPERATING FINANCIAL ASSISTANCE

The Borough of Pottstown resolves and certifies that the operating financial assistance of \$938,506.00 provided pursuant to 74 Pa.C.S. §1513 is needed in Fiscal Year 2009-2010 or in a subsequent fiscal year to help pay for projected operating expenses, including asset maintenance costs; and that these funds will be used for this purpose only, because these funds are ineligible to be used for asset or capital improvements projects; and that any funds not used this Fiscal Year will be retained and used only for operating assistance in a subsequent fiscal year(s).

Further, the Borough of Pottstown resolves and certifies that local, or private, cash matching funds of no less than \$ 57,879.00 will be provided in Fiscal Year 2009-2010 by Montgomery County and Chester County to match the requested Section 1513 funds.

I Raymond W. Lopez, Borough Manager, of the Borough of Pottstown do hereby certify that the foregoing is a true and correct copy of the Resolution adopted at a regular meeting of the Pottstown Borough Council held the 11th day of May 2009.

Motion carried: 5 ayes.

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e. Manatawny Gateway – Motion by Councilor Berry, seconded by Councilor Wenzel to adopt a Resolution accepting the conditions of the Montgomery County Open Space Board for the Manatawny Gateway project at Memorial Park.

RESOLUTION NO. 2009 – 19

A RESOLUTION OF THE BURGESS AND TOWN COUNCIL OF THE BOROUGH OF POTTSTOWN ACCEPTING THE CONDITIONS OF THE MONTGOMERY COUNTY GRANT TO POTTSTOWN BOROUGH FOR IMPROVEMENTS TO MEMORIAL PARK.

WHEREAS, the Borough of Pottstown has applied for a Green Infrastructure Grant in the amount of Two hundred and thirteen thousand, four hundred and twelve dollars (\$213,412) for improvements to the Manatawny Gateway; and

WHEREAS, the Montgomery County Open Space Board has reviewed the Grant Application and has found it to be in conformance with the requirements of the Green Fields/Green Towns Program; and

WHEREAS, by Resolution No. 09-C. 125 dated February 24, 2009, (a copy of which is attached hereto and incorporated herein marked as Exhibit “A”) the Montgomery County Commissioners have approved a Green Infrastructure Grant to the Borough of Pottstown in the amount of Two hundred and thirteen thousand, four hundred and twelve dollars (\$213,412) subject to certain conditions.

NOW, THEREFORE, BE IT AND IT IS HEREBY ENACTED AND RESOLVED by the Pottstown Borough Council of the Borough of Pottstown as follows:

1. The Borough of Pottstown hereby accepts and agrees to be bound by the conditions set forth in the Resolution of the Montgomery County Commissioners dated February 24, 2009, as set forth in Exhibit “A”.

2. The Borough further agrees to comply with all requirements of the Montgomery County Green Fields/Green Towns Program as they may pertain to this grant.

ENACTED AND RESOLVED this 11th day of May A.D., 2009.

Motion carried: 5 ayes.

f. Fire Services Assessment – Motion by Councilor Toroney, seconded by Councilor Wenzel to accept a proposal from the ESECG (Emergency Services Education & Consulting Group) for a Fire Services Assessment for the Borough of Pottstown at no cost to the Borough.

Councilor Berry questioned the funding of the ESECG.

Chief Lengel advised that he personally posted the \$9,750 in escrow to guarantee the funding for the study.

Solicitor Garner commented that Council’s main concern is the performance of the study itself as a fair, impartial and qualified study and advised that there seemed to be no illegality of the Chief posting the escrow.

Councilor Berry commented in opposition of the appearance of the Chief hiring the agency to assess his department.

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President Garner suggested that the two studies be performed with the assurance of no cost to the Borough and with conditions attached to the contribution of the Fire Chief.

Solicitor Garner agreed that there should be documentation in place as part of the agreement that there is no cost to the Borough.

Councilor Toroney amended his motion to accept the proposals for the Fire Services Assessment from both the ESECG and the Department of Community and Economic Development and with the creation of an Agreement to guarantee there would be no cost to the Borough. Councilor Wenzel seconded the motion.

Mayor Thomas questioned the meaning of no cost and suggested that there is a cost of doing business.

President Garner requested a roll call vote.

Berry	no	Toroney	yes
Gibson	yes	Wenzel	yes
Rhoads	yes	Garner	yes

Motion carried: 4 ayes, 1 nay.

g. MCCC Shuttle Service – Motion by Councilor Wenzel, seconded by Councilor Toroney to ratify letter of April 17, 2009 to Representative Jim Gerlach, regarding the Borough's support for a shuttle service between the Montgomery County Community College Central and West Campuses. Motion carried: 5 ayes.

h. Soap Box Derby – Motion by Councilor Wenzel, seconded by Councilor Rhoads to grant request of the Tri-County Rally Association to conduct its annual Soap Box Derby Challenge Race on June 27, 2009 (rain date June 28) resulting in the closing of Wilson Street from 6:00 a.m. to 6:00 p.m., subject to approval of the Police and Fire Departments. Motion carried: 4 ayes, 1 abstention. President Garner abstained due to his affiliation with the Tri-County Association.

i. Soap Box Derby – Motion by Councilor Wenzel, seconded by Councilor Rhoads to grant request of the Tri-County Rally Association to conduct its annual Soap Box Derby Rally on August 22 & 23, 2009, resulting in the closing of Wilson Street from 6:00 a.m. to 6:00 pm., subject to approval of the Police and Fire Departments: Motion carried: 4 ayes, 1 abstention. President Garner abstained.

j. Maple Street – Motion by Councilor Rhoads, seconded by Councilor Wenzel to accept the recommendation of the Pottstown Police Department to take no action regarding traffic flow changes in the area of 1200 block of Maple Street. Motion carried: 5 ayes.

k. Plum Street Development Plan – Motion by Councilor Toroney, seconded by Councilor Wenzel to deny the Final Plan approval of the Plum Street Land Development Plan of Frank McLaughlin for the reasons set forth in the Bursich Associates' letter of September 23, 2008.

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Solicitor Garner explained that no letter of extension has been received to date. This action will eliminate any deemed approval of the plan. The Developers would still have the option of filing a new final plan since preliminary plan approval was previously granted.

Motion carried: 5 ayes.

l. PMMC Parking Lot – Motion by Councilor Toroney, seconded by Councilor Wenzel to grant preliminary/final approval of the Pottstown Memorial Medical Center Parking Lot Land Development subject to satisfying the following conditions within 90 days:

- a) Compliance with Bursich letter of April 20, 2009
- b) Payment in full of all Borough review fees

John Kirby, CEO, Pottstown Memorial Medical Center, was present and in agreement with the conditions as stated.

Motion carried: 5 ayes.

m. PMMC Parking Lot – Motion by Councilor Berry, seconded by Councilor Toroney to grant the following waiver request from the Subdivision and Land Development Ordinance for the PMMC Parking Lot Land Development Plan:

- a) Section A525 – requirement to install curbing and gutter
- b) Section A527 – requirement to install sidewalks along southern portion of Armand Hammer Boulevard

Motion carried: 5 ayes.

n. Solar Energy Ordinance – Motion by Councilor Toroney, seconded by Councilor Wenzel to authorize the Solicitor to advertise the Solar Energy Ordinance and establish a public hearing date.

Motion carried: 5 ayes.

o. HARB - Motion by Councilor Wenzel, seconded by Councilor Toroney to approve Certificates of Appropriateness for the following properties as recommended by HARB:

- a) 33/35 High Street
- b) 155 King Street
- c) 221 East High Street
- d) North East Corner of East High & Charlotte Street
- e) 74 East High Street
- f) 1006 East High Street
- g) 170 North Charlotte Street

Motion carried: 5 ayes.

p. HARB – Motion by Councilor Toroney, seconded by Councilor Wenzel to ratify action of the Building Permit Officer approving a Certificate of Appropriateness for the property located at 315 High Street. Motion carried: 5 ayes.

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q. 74 High Street – Motion by Councilor Wenzel, seconded by Councilor Toroney to authorize a letter of support to Paul Desch, 74 High Street, High Street Diner, recommending approval for placement of a planter, reducing the width of the sidewalk in front of 74 High Street subject to any other approval of other entities.

President Garner advised that the right of way for this request would need to be granted by PennDOT rather than the Borough.

Mr. Bobst reminded that according to Section 211 of the Sidewalk Ordinance, York Street is the dividing line for regulations regarding width restrictions on High Street.

Motion carried: 5 ayes.

REPORT OF BILLS

Motion by Councilor Berry, seconded by Councilor Toroney to pay the outstanding bills in the amount of \$2,479,555.81. Motion carried: 5 ayes.

ADJOURNMENT

The meeting adjourned at 8:15 p.m. on motion by Councilor Berry.

Submitted by,

Jason M. Bobst
Assistant Borough Manager