

A regular meeting of the Borough Council was held November 1, 2006, 7:30 p.m.

The following members and officers were present: President Dennis A. Hallman, Vice President L. James Roberts, Councilmembers Donald Rosenberger, Elfriede Werner, Daniel Williams, David Wilsey, David Zaiser, Solicitor Charles Fonzone, Manager David L. Woglom and Asst. Borough Secretary Phyllis R. Ewing.

RESOLVED, That, the Minutes of October 4 and 23, 2006, be approved as written. Motion of Councilwoman Werner, seconded by Councilman Roberts. A roll call vote was taken and the motion was unanimously carried.

RESOLVED, That, the financial reports be approved and vouchers drawn in payment of the bills listed thereon be ratified. Motion of Councilman Roberts, seconded by Councilman Rosenberger. A roll call vote was taken and the motion was unanimously carried.

CHECKS #

54038 - 54237

\$ 2,680,129.10

RESOLVED, That, the Treasurer's Report for October 2006 be received and spread on the minutes. Motion of Councilman Roberts, seconded by Councilman Williams. A roll call vote was taken and the motion was unanimously carried.

Treasurer's Report
October 31, 2006

Fund	Savings/Checking	PLGIT	CD	Total
Electric Fund	\$ 225,514.62	\$ 4,995.11	\$ 785,000.00	\$1,015,509.73
Water	946,143.80	4,613.12	250,000.00	1,200,756.92
Sewer	1,126,493.79	4,082.04	250,000.00	1,380,575.83
General	32,519.33	2,088.40		34,607.73
Payroll	200.00			200.00
Payroll Withholding	15,033.97			15,033.97
Debt Service Reserve		1,628.38		1,628.38
Fire Equipment		25,308.17		25,308.17
Recreation Fund	22,950.24			22,950.24
PA Motor License	154,692.05	587.17		155,279.22
Sinking Fund	870,008.08	3,698.89		873,706.97
1999-01 Equipment Replacement	293,625.75			293,625.75
Totals	\$3,687,181.63	\$47,001.28	\$1,285,000.00	\$5,019,182.91

RESOLVED, That, the Police Department, Zoning Administrator and Building Inspector reports be received and filed. Motion of Councilman Wilsey, seconded by Councilwoman Werner. A roll call vote was taken and the motion was unanimously carried.

President Hallman announced that Council received a letter of resignation from the Borough Manager David Woglom resigning his employment no later than April 30, 2007, provided certain conditions are met. President Hallman adjourned the meeting to hold an executive session in that regard.

At 7:50 p.m., President Hallman called the meeting back in session.

Councilman Roberts read the following statement: The Borough Council members have reviewed a proposed agreement and general release in which Borough Manager David Woglom agrees to resign his position as Borough Manager in exchange for certain consideration provided that Mr. Woglom executes an agreement and release in substantially similar form as that reviewed tonight by Borough Council, the following motion is being made:

RESOLVED, That, President Dennis Hallman be authorized to execute the agreement following the revocation period indicated in the agreement. Motion of Councilman Roberts, seconded by Councilman Rosenberger. A roll call vote was taken and the motion carried with the following Councilmembers voting in favor: Roberts, Rosenberger, Werner, Williams, Wilsey and Zaiser; and the following Councilmember voting against: Hallman (indicating that he has an issue with one of the requirements).

President Hallman read the following report on the status of the negotiations with the non-uniform employees:

To: Quakertown Borough Council

From: Joel S. Barras, Esq.

Date: October 23, 2006

Re: Status of Contract Negotiations with Non-Uniform Employees

The following constitutes the fourth in the series of reports presented to Borough Council and the residents and taxpayers of Quakertown Borough regarding the status of negotiations with the International Association of Operating Engineers, Local 542-C, which represents certain non-uniform Borough employees. Since the last report was delivered, the Union filed a second unfair practices charge with the Pennsylvania Labor Relations Board and representatives from the Borough and the Union conducted one negotiation session for an initial collective bargaining agreement.

Union Filed Unfair Labor Practice Charges

On September 29, 2006, the Union filed a second charge of unfair labor practices against the Borough with the Pennsylvania Labor Relations Board. Unlike the first charge, which the PLRB refused to consider, this time the Union competently alleged the applicable statute and styled their Specification of Charges in a manner that will result in the issuance of a complaint. As there has been some confusion over whether the Union withdrew its first charge prior to its dismissal and to ensure that the Council and the public are kept accurately apprised of the situation, a copy of the August 23, 2006 letter from the PLRB to the Union declining to issue a complaint has been attached to this report as "Attachment 1."

The Union's September 29 charge alleges that the Borough "failed to bargain with the Union over its decision to subcontract out bargaining unit work." Specifically, the Union has challenged the Borough's decision to utilize an outside vendor to remove several trees. During the parties' October 5 bargaining session, the Borough's representatives informed the Union of its opinion that the charges are legally deficient. Furthermore, the Borough informed the Union of its opinion that it had committed a major strategic flaw in filing charges over such a minor project.

There are at least three primary reasons why, if litigated, the Borough will successfully defend the Union's allegations. First, the work the Borough allegedly outsourced is not "bargaining unit work," as that term is defined by the relevant law. Since the Borough has hired outside contractors to perform this type of work prior to the Union's organizing campaign, the Borough is legally permitted to continue to outsource this work despite the Union's success in organizing the employees. Second, as Borough Council is aware, on April 5, 2006, prior to the Union notifying the Borough that it was attempting to organize the Borough employees, the Borough passed a resolution directing the Borough Manager "to take all necessary steps to outsource all possible operations in the Public Works Department to be effective immediately." By passing this Resolution prior to its knowledge of the Union's organizing campaign, the Borough is legally permitted to effectuate the Resolution even after the Union became certified as the employees' exclusive bargaining representative. Third, the four-month statute of limitations in which to file an unfair labor practice charge challenging this outsourcing Resolution expired in August 2006. Therefore, the Union waived its right to file any charges with the PLRB challenging the Borough's outsourcing Resolution. It should be noted that either the Union or the employees could have filed such charges prior to the election in which the employees voted to unionize. Consequently, the Borough is confident that it will prevail on the latest charge filed by the Union.

Perhaps more significant, the Union's representatives were informed that the filing of these charges could prove to be a major strategic flaw by the Union. By filing charges over a relatively minor project (the removal of three trees), even if the PLRB finds that the Borough committed an unfair practice, the Borough will not be ordered to pay any financial damages as a result of this alleged violation. Therefore, this litigation will serve as a test case for the Borough, with no threat of economic damages should it lose. However, after the Borough successfully

defends against the charge, as it believes it will, then the Borough can conduct all future outsourcing completely free from the risk of future litigation.

October 5, 2006 Bargaining Session

Representatives from the Borough and the Union conducted their fifth negotiation session on October 5, 2006. For the first time during the parties' negotiations, Jill Leeds Rivera, a mediator appointed by the Pennsylvania Bureau of Mediation participated in the bargaining session. Regretfully, the parties were once again unable to achieve any progress towards negotiating an initial labor agreement. In fact, as explained below, the parties spent little time negotiating substantive issues.

Immediately after the Borough's representatives sat down at the bargaining table, Union attorney Lou Agre handed them a typewritten statement indicating that the Union refused to speak at the bargaining table, and instead would communicate only through writing. A copy of the statement is attached to this status report as "Attachment 2." The Union's rationale for this action was its fear that its comments would be misrepresented in these negotiation status reports. Curiously, however, the Union later rejected outright the Borough's offer to tape record the negotiating sessions.

Upon reading the statement, the Borough's labor counsel informed the mediator that the Borough's representatives were leaving, and that they would return when the Union was willing to actually talk. The mediator requested to speak privately with the Union, privately with the Borough, and then jointly with the attorneys for the Borough and the Union. After well over an hour, the Union eventually agreed to speak aloud at the bargaining table. However, when the parties returned to the table, Lou Agre stated that the Union would agree to speak, but would "back everything we say in writing," and then handed the Borough's representatives a type written note reiterating that statement. A copy of that note is attached to this status report as "Attachment 3." While the Borough representatives informed the mediator that the Borough refused to waste everyone's time by waiting for the Union to type or write its statements, at the behest of the mediator, the Borough representatives agreed to proceed to bargain for the time being by oral communication.

Lou Agre then informed the Borough that his understanding of the parties' agreement regarding information requests was only applicable to the Union's initial request and not for subsequent requests. The Borough disagreed with Mr. Agre's view and noted that the agreement itself encompasses all Union information requests. A copy of Mr. Agre's statement and a copy of the agreement are attached as "Attachment 4." The Union then provided the Borough with yet more information requests, which the Borough agreed to review and respond appropriately.

Finally, the parties began discussing substantive issues. Specifically, the Union presented a proposal to the Borough regarding subcontracting. Generally, the Union proposed that the Borough only be permitted to outsource work if it cannot be performed by Union members or if the cost to perform such work with Borough employees is prohibitively higher. The Borough

offered to accept this proposal with two changes; 1) the provision does not apply to the April 5 outsourcing Resolution, and 2) no employees in the sewer, water or electric department would be laid off as a result of this outsourcing. The Union rejected these changes and offered to amend its previous proposal by permitting the Borough to subcontract work if the cost to perform the work with Borough employees is “substantially higher,” rather than “prohibitively higher.”

The Borough rejected the Union’s latest offer, because it effectively rendered the outsourcing Resolution void. The Union’s attorney then stated that the Borough could not legally outsource any work without first bargaining with the Union, despite the passage of the April 5 Resolution. However, Mr. Agre refused to provide any legal basis for this assertion. Further, after the Borough informed Mr. Agre of his view that the Union committed a strategic flaw in filing the unfair labor practice charge, Mr. Agre abruptly ended the bargaining session well before the agreed upon end time.

PLANNING & ZONING COMMITTEE

Councilman Wilsey stated that the next item is a public hearing on a proposed zoning amendment concerning removal of the off-street parking requirements in the Town Center District. Councilman Wilsey pointed out that this zoning amendment was submitted to the Bucks County Planning Commission for their review and received their approval without exception. Councilman Wilsey asked if anyone present wishes to speak in this regard? There being no response, Councilman Wilsey closed the public hearing portion of the meeting.

Councilman Wilsey read Ordinance 1125 amending the Zoning Ordinance concerning the off-street parking requirement in the Town Center District in full.

RESOLVED, That, Ordinance 1125, an amendment to the Code of Ordinances of the Borough of Quakertown, Chapter 27, Section 201, Table 6.1, changing the off-street parking requirement in the Town Center District for retail store, general merchandise store, restaurant and tavern, be passed finally. Motion of Councilman Wilsey, seconded by Councilwoman Werner.

Under discussion, Councilman Rosenberger asked what the rule is regarding a travel agency, do they need a certain number of spots? Manager Woglom pointed out that a travel agency does not fall into the categories listed and would, therefore, have to meet the current regulations.

A roll call vote was taken and the motion was unanimously carried.

REVENUE & FINANCE COMMITTEE

RESOLVED, That, Council grant the request of Quakertown Alive! to initially provide \$3,000 and up to \$18,000, if needed, to assist in the design costs of the streetscape improvements project. Further be it resolved, That, the advanced sum may be considered a loan should

adequate grant money be obtained. Motion of Councilman Roberts, seconded by Councilman Rosenberger. A roll call vote was taken and the motion was unanimously carried.

RESOLVED, That, Council appoint Hutchinson, Gillahan and Freeh to perform the 2006 annual audits of the Borough at a total cost of \$15,610. Motion of Councilman Roberts, seconded by Councilman Williams.

Councilman Zaiser asked how long this accounting firm has been doing the Borough audits? Manager Woglom indicated that it is four or five years. Councilman Zaiser indicated that it does not require bidding because it falls under professional services; however, most municipalities use a different auditor every five years. Council indicated that Councilman Zaiser should remind Council for next year's audit.

A roll call vote was taken and the motion was unanimously carried.

President Hallman announced that the initial budget meeting for 2007 will be held Monday night, November 6th at 6:30 p.m. in Council Chambers and will be open to the public.

HEALTH, SAFETY & WELFARE COMMITTEE

Councilwoman Werner indicated that there aren't any items for consideration under the Health, Safety & Welfare Committee. Councilwoman Werner reported that she attended the election of Fire Company officers in October, which resulted in Douglas Wilhelm elected Chief; Brian Guerst elected Deputy Chief; Pete Graziano elected Fire Police Captain and Celeste Graziano was elected Lieutenant.

Councilwoman Werner stated that a letter has been received from Chief McElree expressing his appreciation in being able to attend the International Association of Chief's of Police meeting in Boston, Massachusetts.

PUBLIC UTILITIES COMMITTEE

RESOLVED, That, the following Resolution 46-06 concerning an amendment to the Borough's wholesale power agreement be adopted:

BOROUGH OF QUAKERTOWN, PENNSYLVANIA RESOLUTION # 46-06

TO AUTHORIZE THE EXECUTION OF A LONG-TERM POWER PURCHASE SCHEDULE WITH AMP-OHIO

AUTHORIZING the Borough Council President and the Borough Manager to execute a Long Term Power Purchase Schedule with American Municipal Power - Ohio,

Inc., (“AMP-Ohio”) in order to purchase from AMP-Ohio power and associated energy available to AMP-Ohio for the term January 1, 2008 through December 31, 2012.

WHEREAS, the Borough of Quakertown, Pennsylvania (the “Municipality”), owns and operates an electric utility system for the sale of electric power and associated energy for the benefit of its citizens and taxpayers; and

WHEREAS, in order to satisfy the electric power and energy requirements of its electric utility system, the Municipality has heretofore purchased economical and reliable power and energy from AMP-Ohio, of which the Municipality is a member, or has heretofore purchased power arranged by AMP-Ohio; and

WHEREAS, the Municipality, acting individually and, along with other municipalities which own and operate electric utility systems, jointly through AMP-Ohio, endeavors to arrange for reliable, reasonably priced supplies of electric power and energy for ultimate delivery to its customers; and

WHEREAS, Municipality has executed a Master Services Agreement with AMP-Ohio which sets forth the general terms and conditions for the provision of power supply and other services by AMP-Ohio to the Municipality; and

WHEREAS, AMP-Ohio has purchased from a reputable third party power supplier a multi-megawatt block of power and associated energy for an extended term ending December 31, 2012 (herein “Long Term Power Purchase”); and

WHEREAS, the Municipality desires to enter into a power schedule to the Master Service Agreement in order to purchase energy from the Long Term Power Purchase; and

WHEREAS, AMP-Ohio has prepared and heretofore delivered to this Municipality the form of a Long Term Power Purchase Schedule in order for Municipality to purchase power from the Long Term Power Purchase; and

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE BOROUGH OF QUAKERTOWN, PENNSYLVANIA.

SECTION 1. That the Long Term Power Purchase Schedule between this Municipality and AMP-Ohio, substantially in the form attached hereto as Exhibit 1 is approved, subject to and with any and all changes provided herein and therein.

SECTION 2. That the Borough Council President and the Borough Manager are hereby authorized to execute the Long Term Power Purchase Schedule on behalf of the Municipality.

SECTION 3. That is it found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

SECTION 4. If any section, subsection, paragraph, clause or provision or any part thereof of this ordinance shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this ordinance shall be unaffected by such adjudication and all the remaining provisions of this ordinance shall remain in full force and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.

SECTION 5. That this ordinance shall take effect immediately upon its passage.

Motion of Councilman Rosenberger, seconded by Councilman Roberts.

Under discussion, President Hallman asked what the other municipalities are doing in this regard? Manager Woglom indicated that he just heard generally of their intent to accept this schedule.

A roll call vote was taken and the motion was unanimously carried.

RESOLVED, That, the following Resolution 47-06 concerning the replacement of the water system telemetry panel be adopted:

RESOLUTION NO. 47-06
ACCEPTING BID AND AWARING CONTRACT TO
BARRY J. HOFFMAN COMPANY, INC.

RESOLVED, by the Council of the Borough of Quakertown, That, the bid of Barry J. Hoffman Company, Inc. of Allentown, Pennsylvania, in the amount of \$232,300.00 for the replacement of the water system telemetry panel as per bid opened October 31, 2006, is hereby accepted. The contract is awarded to Barry J. Hoffman Company, Inc. The Borough Manager is hereby authorized to execute the said contract on behalf of the Borough of Quakertown.

Motion of Councilman Rosenberger, seconded by Councilman Roberts.

Manager Woglom explained the purpose of the telemetry panel to Council.

A roll call vote was taken and the motion was unanimously carried.

RESOLVED, That, the following Resolution 48-06 concerning the land application of sewer sludge be adopted:

RESOLUTION NO. 48-06
ACCEPTING BID AND AWARDING CONTRACT TO
JESSE BARO, INC.

RESOLVED, by the Council of the Borough of Quakertown, That, the bid of Jesse Baro, Inc. of Douglassville, Pennsylvania, in the following amounts for the land application of sewer sludge as per bid opened October 31, 2006, is hereby accepted:

Year 1 — \$22.00/ton
Year 2 — \$22.66/ton
Year 3 — \$23.33/ton
Year 4 — \$24.03/ton

The contract is awarded to Jesse Baro, Inc. The Borough Manager is hereby authorized to execute the said contract on behalf of the Borough of Quakertown.

Motion of Councilman Rosenberger, seconded by Councilman Zaiser. A roll call vote was taken and the motion was unanimously carried.

PUBLIC WORKS COMMITTEE

Councilman Zaiser stated that there aren't any items for consideration under the Public Works Committee.

PARKS & RECREATION COMMITTEE

Councilman Williams stated that there aren't any items for consideration under the Parks & Recreation Committee. Councilman Williams read a letter received from the Lions Club regarding their support to the concept of park land being added to the area where the Michener Library is located. President Hallman indicated that their letter together with the information from the public hearing will be included in the consideration for that parcel.

Solicitor Fonzone reported on the status of Council's request that he represent them in Court regarding their support for the redistricting plan of the Quakertown Community School District. He indicated that when the original plan of the School District was presented at Court, the Richland Township Solicitor, the Milford Township Solicitor, himself, and an individual in opposition to the electors' petition were present. The judge set November 9 as the date for the hearing and petitions. The Solicitor told Council that he will have to file what is known as a Petition to Intervene. However there are now two cases – one is the School District's petition and the other is the electors' petition for all at-large. Solicitor Fonzone indicated that he wants to make it clear to Council that by speaking in favor of the one, he is speaking against the other. He

told Council that there will be four interveners and that he will file an answer to the School District's petition and an answer to the electors' petition and also a Petition to Intervene. Solicitor Fonzone asked whether Council has any specific direction on how he should proceed. Council did not give any specific direction to the Solicitor and he indicated that he'll follow the course that he laid out.

President Hallman announced that Council will be holding an executive session immediately following tonight's meeting in order to hold a strategy session, with the labor attorney, related to negotiations of the collective bargaining agreement.

President Hallman declared the meeting adjourned at 8:35 p.m.

BOROUGH OF QUAKERTOWN

Dennis A. Hallman
President of Council

Attest:

Phyllis R. Ewing
Asst. Borough Secretary