

A regular meeting of the Borough Council was held November 5, 2008, 7:30 p.m.

The following members and officers were present: President L. James Roberts, Vice President Donald Rosenberger, Councilmembers Michael Johnson, Michelle Scarborough, Edward Scholl, Daniel Williams, and David Zaiser, Solicitor Charles Fonzone, Manager Scott C. McElree and Asst. Borough Secretary Phyllis R. Ewing.

RESOLVED, That, the Minutes of October 1 and 27, 2008, be approved as written. Motion of Councilman Rosenberger, seconded by Councilman Zaiser. A roll call vote was taken and the motion was unanimously carried.

RESOLVED, That, the following check registers be approved for payment:

October 16	—	\$ 95,495.68
October 24	—	\$ 30,627.52
October 29	—	\$ 6,957.30
October 30	—	\$890,223.88

Motion of Councilman Rosenberger, seconded by Councilwoman Scarborough.

Councilman Roberts stated that he will abstain from voting on the approval of the check registers because it includes the purchase of items from the Friendly Book Store and that he has signed a letter in this regard.

A roll call vote was taken and the motion carried with the following Councilmembers voting in favor: Johnson, Rosenberger, Scarborough, Scholl, Williams and Zaiser; and the following Councilmember abstaining: Roberts.

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

Visitors:

Erik Brannaka, 1121 Park Avenue, concerning flooding problems at his property. Mr. Brannaka was told that he could address Council under the Public Works Committee portion of the agenda.

Stephen Biddle, 130 S. Main Street, on behalf of the Quakertown Planning Commission, regarding the use of a consultant. Mr. Biddle was told that he could address Council under the Planning & Zoning Committee portion of the agenda.

Nancy Roberts, 529 Juniper Street, indicated that she is present to answer any questions regarding the item on the agenda concerning the Quakertown Historical Society.

John Edge indicated that he wished to speak regarding the tennis courts. Mr. Edge was told that he could address Council under the Parks & Recreation Committee portion of the agenda.

### **HEALTH, SAFETY & WELFARE COMMITTEE**

District Justice C. Robert Roth administered the Oath of Office to new Police Officer Kristopher D. Baccari.

Manager/Chief McElree gave a brief personal history of Officer Baccari and pinned the shield on the new officer.

Manager/Chief McElree gave a brief personal history of K-9 Kito.

RESOLVED, That, the following Resolution 35-08, recognizing K-9 Kito as an official member of the Quakertown Police Department, be adopted:

#### **RESOLUTION 135-08**

WHEREAS, the Borough of Quakertown Police Department has created a K-9 unit,

NOW, THEREFORE, BE IT RESOLVED, That, the Council of the Borough of Quakertown recognizes K-9 Kito as an official member of the Quakertown Police Department, and will be added to the roster of police officers and designated as K-9 Kito.

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

Officer Lockwood and his K-9 unit Kito were present at the meeting and demonstrated the detection of narcotics that were previously planted in the room.

RESOLVED, That, the following Resolution 132-08, regarding a request for a curb cut, be adopted:

#### **RESOLUTION 132-08**

WHEREAS, Edward Warris is the owner of record of 39 N. Penrose Street, Quakertown, Tax Map Parcel #35-009-203; and

WHEREAS, Edward Warris made application for a curb cut for a handicap access to his property at 39 N. Penrose Street.

NOW, THEREFORE, BE IT RESOLVED, That, the Council of the Borough of Quakertown grants the application for a curb cut at 39 N. Penrose Street provided it is paid for by Mr. Warris.

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

Councilman Johnson announced the results of the Fire Department elections, as follows:

Department Chief–Douglas C. Wilhelm

Fire Police Captain–Ryan Williams

Deputy Chief–Brian Guenst

Fire Police Lieutenant–Ron Biello

#### **PLANNING & ZONING COMMITTEE**

Councilman Scholl indicated that proposed Ordinance 1148 was advertised for tonight's meeting.

RESOLVED, That, reading of Ordinance 1148, regarding truss construction, be waived. Motion of Councilman Scholl, seconded by Councilman Rosenberger. A roll call vote was taken and the motion was unanimously carried.

RESOLVED, That, Ordinance 1148, an Ordinance regarding Truss Construction, be passed finally. Motion of Councilman Scholl, seconded by Councilman Rosenberger. A roll call vote was taken and the motion was unanimously carried.

RESOLVED, That, the following Resolution 134-08 approving the amended settlement agreement with Adams Advertising, be adopted:

#### **RESOLUTION 134-08**

WHEREAS, a new amended settlement agreement with Adams Advertising has been prepared.

NOW, THEREFORE, BE IT RESOLVED, That, the Council of the Borough of Quakertown authorizes the proper Borough officials to sign the new amended settlement agreement with Adams Advertising, as attached.

Motion of Councilman Scholl, seconded by Councilman Rosenberger. A roll call vote was taken and the motion carried by majority vote with the following Councilmembers voting in favor: Johnson, Rosenberger, Scarborough, Scholl, Williams and Roberts; and the following Councilmember voting against: Zaiser.

Chairman Scholl told Mr. Biddle that he could speak at this time.

Mr. Biddle stated that the Quakertown Planning Commission has reviewed the matter concerning a change or revision to the Ordinance regulating signs throughout the Borough. Mr. Biddle told Council that the Planning Commission feels this is a comprehensive matter beyond their expertise and requests that Council consider the approval of an expenditure to hire a consultant. Mr. Biddle estimates that the cost will be \$2,000 to \$3,000. Following a short discussion, Mr. Biddle was told that the matter will be discussed further at the next Work Session and requested that he attend.

### **REVENUE & FINANCE COMMITTEE**

resolved, That, the following Resolution 130-08, regarding the new Right-to-Know law and appointment of a Right-to-Know Officer, be adopted:

#### **RESOLUTION 130-08**

WHEREAS, Governor Edward G. Rendell signed Act 3 of 2008, the new Right-To-Know law, on February 14, 2008 fundamentally changing the way people access public records of their government and changing the way government processes these requests; and

WHEREAS, the new law created the Office of Open Records to help implement and enforce Act 3 of 2008; and

WHEREAS, there is a need to appoint a Right-to-Know Officer, whose duties shall include the following four tasks:

1. Receive requests submitted to the agency.
2. Direct requests to other appropriate persons within the agency or to appropriate persons in another agency.
3. Track the agency's progress in responding to requests.
4. Issue interim and final responses under this act.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Borough of Quakertown, that Borough Manager Scott C. McElree be appointed as the Right-To-Know Officer for the Borough of Quakertown.

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

Councilman Rosenberger indicated the next item on the agenda is a discussion regarding the Quakertown Historical Society. Councilman Rosenberger stated that the Borough Manager was asked to prepare a report regarding the Historical Society's sublet of the barn building and that report is on Council's desk this evening. Borough Manager McElree read a portion of the Memorandum, entitled 'Conclusion and Recommendations'. A discussion ensued, including the subjects of political activities and parking allowed at the Barn property. Glen Bosworth, former President of the Quakertown Historical Society, explained that when the theater was opening in town, there was not enough parking, and then-Borough Manager Woglom told them that the Historical Society would not mind their using the barn lot for parking. It was pointed out that the Historical Society is run by volunteers and funding is an issue. Manager McElree stated that an insurance certificate should have been obtained from those using the facility naming the Historical Society and the Borough as an additional insured. Following further discussion, it was felt that a new lease agreement should be prepared by the Borough Manager and Solicitor, and that Manager McElree's memorandum be included as part of the minutes.

RESOLVED, That, the following Resolution 136-08, regarding the Quakertown Historical Society lease, be adopted:

#### RESOLUTION #136-08

RESOLVED, That, the Borough Manager and Solicitor review the current lease with the Quakertown Historical Society in order to add or change any points needing further clarification and to provide for information to be disseminated to Borough Council relative to the Borough and its property; and

BE IT FURTHER RESOLVED, by the Council of the Borough of Quakertown, That, this shall serve as notice to the Quakertown Historical Society that any such changes shall become effective ninety (90) days from November 5, 2008; and

BE IT FURTHER RESOLVED, That, the Quakertown Historical Society is hereby instructed to immediately procure any necessary certificates of insurance and hold-harmless agreements that may be relevant to any existing sub-letting lease the Quakertown Historical Society may hold; and

BE IT FURTHER RESOLVED, That, the Borough Manager's 'Investigative Report' become part of the minutes of November 5, 2008, with certain redactions. Motion of Councilman Rosenberger, seconded by Councilman Zaiser. A roll call vote was taken and the motion was unanimously carried.

M E M O R A N D U M

November 5, 2008

TO: Council  
FROM: Scott C. McElree, Borough Manager/Chief of Police  
RE: HISTORICAL SOCIETY–INVESTIGATIVE REPORT

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Origin & Details:

Members of Council had received information that the Historical Society had sublet the barn building, tax parcel 35-4-94-1, to the Obama campaign for purposes to conduct campaigning business. The information had also included that the use of the building by the Obama campaign was supported by an unidentified person who supplied a \$500.00 (five hundred dollars) donation to the Historical Society. On Monday, October 27, 2008 at the Council work session meeting, Council members discussed this information and directed me to investigate matter and report back to Council at the regular Council meeting scheduled on November 5, 2008.

Mr. Richard Woldow, columnist for the Free Press, published an article pertaining to this subject matter on Wednesday, October 29, 2008, copy attached. The information included in the article was noted and used during the investigation.

Action Taken:

1. Lease Review

Reviewed the August 7, 1991 lease agreement between the Quakertown Historical Society and the Borough of Quakertown, (copy attached). The sections of most relevance to this subject matter include language contained within paragraphs 1 and 3 under the second section titled Terms of Agreement.

- a. Paragraph 1 establishes an agreement between the Quakertown Historical Society and the Borough of Quakertown, permitting the Historical Society to use all of the described properties within the lease for any legitimate, legal purpose as defined by the laws and ordinances of the Borough, and any other state and federal regulations.
- b. Paragraph 3, establishes an agreement between the Quakertown Historical Society and The Borough of Quakertown with respect to subletting a property or building predicated on the Quakertown Zoning Ordinance.

2. Solicitor Review

I contacted Solicitor Charles Fonzone and discussed the lease agreement, as well as the information received pertaining to the property use by the Democratic 145<sup>th</sup> District since 2004 or 2005, and the use by the Obama campaign. Mr. Fonzone offered a memorandum of his review, which has been attached for your review.

1. Conference with Ken Fretz, Zoning Officer

I conferred with Mr. Fretz regarding the permitted, accessory, and special exception use of the barn property. Mr. Fretz advised that the property was zoned Neighborhood Commercial (NC), and the current use for the Historical Society is a special exception use of Membership Club. Mr. Fretz further added that the use I described by the Obama campaign, making phone calls and conducting campaign business, would be considered an office use. Office use would be a permitted use by right, however Chapter 27, §310, 2 requires that an application be filed with the Zoning office for a review by the Zoning Officer to satisfy all applicable parts of the code. I have attached the applicable supporting documentation regarding the zoning requirements.

2. Interviews

a. Nancy Roberts–President, Quakertown Historical Society–215-536-6579

I spoke to Nancy Roberts on Friday, October 31, 2008 at 10:30 a.m. in my office. Nancy was accompanied by Bruce Savitz, Vice-President of the Historical Society. The interview focused on the information received regarding the Obama campaign using the building for campaigning purposes, and process regarding the subletting agreement with the Obama campaign and the Historical Society.

Ms. Roberts stated that the use by the Democratic Party began in 2004 or 2005, when the Democratic, 145<sup>th</sup> District approached the Historical Society to use the barn building for their monthly meetings. Ms. Roberts advised that the Democratic 145<sup>th</sup> District would hold a 50/50 raffle and pay for the rental with 50% of the 50/50 raffle. This, on average, would yield approximately \$50.00 per meeting.

Ms. Roberts advised that she had contacted Mr. David Woglom, Borough Manager, who approved the use of the property by the Democratic 145<sup>th</sup> District. Ms. Roberts stated that that Historical Society had been experiencing increasing costs, and had been looking for means to increase their revenues to help support their expenses. She stated that when she spoke to Mr. Woglom about the rental of the barn building to the Democratic 145<sup>th</sup> District, he encouraged her to engage in the rental to assist with their fund raising efforts to build revenues.

I questioned Ms. Roberts regarding the most recent rental to the Obama campaign, and the particulars surrounding the arrangements. She stated that she was approached by representatives of the Obama campaign, who inquired into using the

parking lot to assemble for a door-to-door campaign program. Ms. Roberts described the participants of the door-to-door program as not being from the Quakertown area, one or more from New Jersey, and that they required a central location to park their cars and disperse from that central location. Ms. Roberts advised that while discussing the arrangements to use the parking lot, the Obama campaign people further inquired into using one of the rooms in the barn building. Ms. Roberts stated that the Obama campaign representative advised that they had an unidentified donor prepared to make a \$500.00 contribution to the Historical Society for the use of the parking lot and a room in the barn for conducting Obama campaign activities. Ms. Roberts described the campaign activities as phone based operations, where volunteers from the Obama campaign would use their cell phones while occupying the barn, and make calls to perform polling activities. I have enclosed a copy of one of the polling pages used by the Obama campaign. As you will note, it is a roster of potential voters with a three columns indicating the disposition of the call. It is my understanding that the numbered scale is a measurement to indicate the likelihood of voting for Senator Obama or Congressman Murphy.

Ms. Roberts advised that the Obama campaign used the barn building three times per week, from 5:30 p.m. to 8:00 p.m. from the first or second week in October until the present. In addition, Ms. Roberts stated that she assumed that she had permission from the Borough based on her previous conversations with Mr. Woglom regarding the Democratic 145<sup>th</sup> District.

b. Mr. David Woglom—Former Borough Manager—215-538-1083

I interviewed Mr. Woglom by phone on Monday, November 3, 2008. I explained the purpose of my call with regard to the Historical Society. Mr. Woglom did not recall a conversation with Ms. Roberts in 2004 or 2005 specifically pertaining to the rental of the barn building to the Democratic 145<sup>th</sup> District. Mr. Woglom stated that he may have been approached by Ms. Roberts regarding the rental of the barn building to the Democratic 145<sup>th</sup> District, and may or may not have provided permission to the Historical Society to sublet the barn to the Democratic 145<sup>th</sup> District. He qualified his answer by stating that if he was approached by Ms. Roberts, he more than likely would have reviewed the lease agreement, and made a decision based on the lease. However, he further stated that he may have not needed to give permission based on the lease, and advised Ms. Roberts that approval was not required, resulting in the Historical Society subletting the barn to the Democratic 145<sup>th</sup> District.

Mr. Woglom stated that without having the opportunity to refresh his memory by reviewing the lease, he could not comment on the contents of the lease; however it was his best recollection that the lease agreement did not specifically prohibit political activities at the barn property.



c. Nancy Ackerman–Treasurer, Historical Society–215-536-4353

I contacted Ms. Ackerman by phone on November 5, 2008 and inquired into the receipt of the \$500.00 donation on behalf of the Democratic 145<sup>th</sup> District use of the barn building. Ms. Ackerman advised that she received a check drawn on the Harris Private Bank dated October 6, 2008 for the amount of \$500.00. Ms. Ackerman advised that she deposited the check into the Historical Societies account on October 15, 2008. I have attached copies of the transactions received from Ms. Ackerman.

## 5. Conclusion and Recommendations

The four basic steps of any investigation is to (1) gather information, including rumor, innuendo, statements, physical evident, etc. and organize such information into a usable format. The next step, (2) is to take all of the gathered information and retain only the information that is considered weighted or substantiated information. Information that can be supported as factual or trustworthy. Then, (3) the factual information, or the facts, are compared to a standard. The standard can be a statute, a policy, or nothing more than a believe, depending on the basis of the investigation. Lastly, (4) the result of comparing the facts to the standard will result in a violation or a reason for a sanction. Once that is determined, a recommendation, and or action for the violation is determined and instituted.

Based on the factual information provided, and the comparison to the standard, the lease agreement, I present you my recommendations based on what I believe can be considered violations.

1. The lease agreement, Terms of Agreement, paragraph 3, provides the Historical Society the ability to sublet the property and building provided it meets the requirements of our Zoning Code. Chapter 27, §310, 2 (attached) specifically provide for a process through the Zoning Officer. The Historical Society failed to comply with the regulations and improperly subletted the building from October, 2008 to the present.
2. The lease agreement, Terms of Agreement, paragraph 4, provides for any user who shall use the building shall provide their own insurance, identifying the Borough and the Society as additional insured, as well as providing a hold harmless agreement. There is no indication that this exists for the Obama campaign activity. I would suggest that the source of funding, in this case the source of the \$500.00 match the entity providing the additional insurance and the hold harmless agreement.
3. The lease agreement, Terms and Agreement, paragraph 7 provides for a committee comprised of Council, Borough Manager, and Society members, and the purpose of

the committee to keep Council apprised of activities and needs of the Society. It is my understanding that this has not been created and needs to be addressed.

The lease agreement between the Quakertown Historical Society and the Borough of Quakertown needs to be re-written and updated to assure strict adherence to practical applications of generating revenues. I would encourage Council to consider a practical solution to this identified problem by re-engaging a relationship with the Historical Society under the terms and conditions of a new lease agreement.

Under the current lease agreement dated August 7, 1991, the Borough has the right to unilaterally amend the agreement upon ninety days notice. I recommend that Council make it known that their intentions to enter into a more comprehensive contemporaneous lease agreement will commence, and place the Historical Society on notice. Upon direction, I will work with Solicitor Fonzone and the Historical Society to create a new lease for Council's consideration.

In addition, I believe it is important to publically express, and enter into the record, the Historical Society's decision to sublet the property to the Obama campaign, or any other use that requires application and review by our Zoning Officer, a technical violation of the terms of our lease agreement. Although I do not recommend any sanctions, placing the Council's findings on the record may delineate the responsibility of Council with regard to this matter; with regard to other regulatory agencies this matter may draw interest. ( IRS with regard to the Society's 501,c,3 status).

If you have any questions or require any additional information, please do not hesitate to contact me.

#### PUBLIC UTILITIES COMMITTEE

RESOLVED, That, the following Resolution 133-08, regarding the Borough's response to Richland Township's Act 537 Plan, be adopted:

#### RESOLUTION 133-08

WHEREAS, Carroll Engineering Corporation had prepared an Act 537 Sewage Facilities Plan, dated March 2008, for Richland Township; and

WHEREAS, the Borough of Quakertown was requested to provide the Borough's comment with regard to Richland Township's Act 537 Plan; and

WHEREAS, the Borough of Quakertown requested S C Engineers, Inc. to prepare a

response to Richland Township's Act 537 Plan on behalf of the Borough.

NOW, THEREFORE, BE IT RESOLVED, That, the Council of the Borough of Quakertown accepts and approves the response as prepared by S C Engineers, Inc., dated October 14, 2008, as the Borough's response to Richland Township's Act 537 Plan.

tion of Councilwoman Scarborough, seconded by Councilman Scholl. A roll call vote was taken and the motion was unanimously carried.

### **PUBLIC WORKS COMMITTEE**

Councilman Zaiser indicated that there aren't any items for action under the Public Works Committee and told Mr. Brannaka that he could speak at this time.

Mr. Brannaka presented pictures to Council and indicated that this is not the type of curb box he was expecting. Manager McElree explained why that type of curb box was used and told Mr. Brannaka that, as he was told before, there is no definite cure for this problem. Councilman Zaiser stated that Council made a concerted effort to solve this problem and we will monitor the situation.

### **PARKS & RECREATION COMMITTEE**

Councilman Williams indicated that there aren't any items for action under the Parks & Recreation Committee and told Mr. Edge that he could speak at this time.

Mr. Edge asked that the nets and coin meters for the tennis courts remain for the winter. Manager McElree indicated that he will take care of these items.

President Roberts declared the meeting adjourned at 9:30 p.m.

### **BOROUGH OF QUAKERTOWN**

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L. James Roberts, Jr.  
President of Council

est:

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llis R. Ewing  
t. Borough Secretary

