

MINUTES OF THE CORNWALL BOROUGH COUNCIL MEETING
HELD ON MONDAY, SEPTEMBER 11, 2023, AT 6:30 P.M.
AT CORNWALL BOROUGH HALL

Council President Bruce Harris called the meeting to order at 6:30 p.m.

PLEDGE OF ALLEGIANCE

PRESENT

Council President Bruce Harris, Council Vice President Bruce Conrad, Council Pro Tem Ron Ricard, John Karinch, Thomas Burton, Beth Yocum and Mayor Mark Thomas

ABSENT

Al Brandt

ALSO PRESENT

Borough Manager Cody Rhoads, Public Works Director Tom Smith, Solicitor Josele Cleary and Borough Engineer Chad Smith

PUBLIC

Meeting attendance sheet is attached hereto.

PUBLIC COMMENT

Jo Roussey implored council to install an audio-visual system that would allow the borough to Zoom their various meetings.

APPROVAL OF MINUTES

John Karinch made the motion, seconded by Bruce Conrad, to approve the minutes of the August 14, 2023 council meeting. Motion passed.

REPORTS

Mr. Harris read the budget report for July. John Karinch made the motion, seconded by Bruce Conrad, to approve the reports. Motion passed.

Ron Ricard asked about the EIT being a little ahead at this point of the year but was told that was within range of what to expect.

Officer Conklin answered questions about the police report and said there would likely not be a formal report on National Night Out.

OLD BUSINESS

CONSIDER AUTHORIZING MMOs FOR 2024

Mr. Harris said that the finance committee had a meeting with the administrators of the plan to get clarification on the difference between the Minimum Municipal Obligation (MMO) and the MMO based upon market value of assets.

The MMO for the police pension plan is \$81,011 and the MMO based upon market value of the assets is \$129,971. For the non-uniform plan, the MMO is \$75,548 and the MMO based upon market value of the assets is \$111,589.

The finance committee recommended the payments made to the pension plans be the midpoint of the MMO and the MMO based upon market value of the assets.

John Karinch made the motion, seconded by Bruce Conrad, to approve a payment of \$105,000 to the police pension plan. Motion passed.

John Karinch made the motion, seconded by Ron Ricard, to approve a payment of \$94,000 to the non-uniform pension plan. Motion passed.

TICE LANE BRIDGE UPDATE

Chad Smith said they are looking to do an aluminum structural plate bridge, similar to the one that was done on Rexmont Road near the Iron Furnace. This type would be 30-40% cheaper than a cast in place concrete structure. With the aluminum structure, the gas line currently attached to the bridge would not be able to be reattached. The solution would be to widen the bridge by three feet and bury the gas line. UGI will be contacted to possibly provide funds to do so. Mr. Smith said that there is currently no timeline as they are continuing to work with Contech on the project.

Mr. Ricard asked if aluminum would last as long as a concrete bridge. Mr. Smith said he thinks it is comparable, but he will get a definitive answer next month. Mr. Smith said they can get the load rating to whatever they need it to be.

Ray Fratini asked if a corrugated underside of the bridge would create any issues with stopping debris as opposed to a smooth underside for a concrete bridge. Mr. Smith said he would investigate that further.

CORNWALL PROPERTIES

Mr. Rhoads said that he and Josh Weaber, the borough's alternate zoning officer, recently visited the cement plant operation. Mr. Weaber issued a report that was provided to the council. There were no significant findings. Cornwall Properties must follow the hours of operation, which are 6 a.m. to 10 p.m. on Monday through Friday and 6 a.m. to 12 p.m. on Saturdays.

Jeremy Zimmerman said that on the day of inspection, the concrete trucks were running before 6 a.m. He also had concerns about there being no water truck on the property to contain the dust and dirt being deposited onto Boyd Street from trucks leaving the facility. He questioned what the next step would be if these issues persist.

Ms. Cleary reviewed the enforcement procedure under the Municipalities Planning Code. If the Council wishes to formally send an enforcement, the zoning officer needs to be the one to do so.

Ms. Cleary reviewed parts of the decision from 2003 that permits the operation of the concrete plant.

Mr. Karinch asked if Mr. Zimmerman had time-stamped pictures or video of the violations. Mr. Zimmerman said he did, and he could bring those in. Ms. Cleary said if the violation was appealed, the Zoning Hearing Board would serve as the judge. They would decide if the witnesses or pictures are credible.

There was discussion about the noise testing that needed to be done. The 2003 decision calls for monthly testing for the first two years and quarterly thereafter. Since there was quarrying activity done prior to 2023, that would constitute the first two years and therefore the testing must only be done quarterly now.

A resident asked how early the plant was operating. Mr. Zimmerman said a half-hour to an hour before 6 a.m. but there were past reports of trucks operating at 1 a.m.

Mr. Zimmerman asked about the waste rock on site not being used but instead everything needed is being hauled in. Ms. Cleary said that Pennsylvania under the MPC is a very land-owner oriented state. 603.1 in the MPC states that if there is any ambiguity in a zoning ordinance, it should be interpreted in favor of the landowner and against any restriction on development.

Mr. Karinch asked Mr. Byler if there was a water truck on site and if they were treating dust. Mr. Byler said they do not have a water truck on site, but they have a dust collector on the concrete plant that prevents the disbursement of dust.

Mr. Harris read a motion from the planning commission that recommended the ad hoc committee meet with Cornwall Properties to discuss the rezoning request in more detail.

Mike Swank and Jonathan Byler, Cornwall Properties, and James Strong, McNees Wallace & Nurick, said they submitted a petition to amend the zoning ordinance back in April. Ms. Cleary and their attorney have gone back and forth on the petition. Cornwall Properties attended last week's planning commission meeting to see where the borough was at in their consideration.

Mr. Ricard felt that he didn't have enough information on the proposal. Mr. Swank felt that the petition submitted in April provided a good amount of information. Their concern was that they did not want to waste time working with the ad hoc committee if ultimately Council was not interested in considering a change.

A resident asked if there were any conceptual drawings. Mr. Byler said there have been drawings submitted. There was some discussion about the depth of detail on the drawings that have been viewed by the public.

Mr. Burton said that Cornwall Properties was supposed to meet with the ad hoc committee and never did so. Mr. Harris said that decision wasn't up to Cornwall Properties and the borough chose not to have any further meetings.

Ms. Yocum said that the community has been vocal about not wanting a warehouse at various meetings and Cornwall Properties even submitted a withdrawal for their previous rezoning request.

Ray Fratini felt that there is not enough information right now to decide one way or the other.

Ms. Cleary said it is important to understand from a legal standpoint that what the text of the ordinance says is the most important thing. One developer could come up with a plan with detailed pictures about what they plan to build but could turn around and sell the land to a developer who just has to follow the zoning ordinance. Ms. Cleary said when you are looking to amend an ordinance and you are under no legal obligation to do so, if you are not feeling good you should say no to doing so. Once a zoning ordinance allows a use, a developer is only required to comply with the specific and objective requirements in the zoning ordinance, subdivision and land development ordinance and stormwater ordinance. If the language is all general, another developer could come in and take advantage of that. The larger the ask is from a developer for rezoning, the more specificity there should be in the language of the ordinance. Ms. Cleary said it also needs to be decided how the specific use will be allowed. Developers want everything to be by right. A special exception would go before the Zoning Hearing Board. A conditional use would go before the council. Ms. Cleary said her general recommendation is that it is better to have a special exception as opposed to conditional use, because few citizens understand that once a conditional use application is filed, the council are judges and not legislators, meaning they could not talk to constituents about it.

Ms. Cleary said that there are several policy issues here. First, does the council want to amend the ordinance at all? If there is a majority of council that is against it, then the developer can move on. If there is a majority of the council that wants to consider amending the ordinance, then how much information do you need from Cornwall Properties to move forward. Does the council want the same amount of information that H+K provided and write the ordinance around that? Or do you want to give the developer the flexibility they want? Ms. Cleary said the ordinance that they submitted has a lot of flexibility in it.

Mr. Karinch asked how H+K was held to the 51 conditions. Ms. Cleary said that what H+K did to encourage borough council that it would follow through and the ordinance should be enacted was that when the ordinance was in a form acceptable to everyone, H+K unilaterally recorded a binding document, giving council an assurance that there would be follow through.

Mr. Karinch clarified that the borough could not ask Cornwall Properties to make certain changes or concessions, but they could come forward with changes based on feedback from any meetings or hearings. Ms. Cleary said that is correct, that is Pennsylvania law. Other states allow it, but Pennsylvania does not. The borough strongly set forth what they felt was reasonable in the H+K matter, but H+K voluntarily recorded the document.

Mr. Conrad asked if the same process that was used in the H+K process could be used today. Ms. Cleary said that if Cornwall Properties was willing to do that, the same process could be used.

Mr. Byler said that the question they are trying to get answered is if the council would consider a

potential text amendment. If the council is, then they are willing to follow that process. If not, that is understandable, and they will go in another direction.

Rob Anspach said that there is a conceptual plan out there to view and that, from his experience in construction, that is all you are going to see until the next phase of the process. He said Cornwall Properties is simply looking for direction from the council as to whether they should meet with the ad hoc committee again, which he is part of.

Stan Alekna referenced the October 19, 2022 letter in which Cornwall Properties withdrew their request for consideration for rezoning. He said there were salient points raised in the letter and asked, like he did at the planning commission meeting, what has changed.

Mr. Byler said that after they withdrew the text amendment, they presented a by right plan at the next planning commission meeting. The feedback they received from that meeting was that the rezoning might be the most desired option. They then visited the proposed sites with members of the ad hoc committee and received similar feedback.

Mr. Alekna felt the public sentiment had not changed and that the council took an oath to protect and defend the safety and welfare of borough residents. Mr. Harris said that there are 4,600 residents and that the oath is to all of them, not just a particular group of residents.

Mr. Swank said Cornwall Properties felt that this was a better solution for the borough and that is why it was presented.

Mr. Strong said he did not disagree with anything Ms. Cleary advised tonight. He said that tonight was a very preliminary first step in seeing if there was a majority of the council who were willing to entertain a text amendment. They weren't asking anyone to commit, only if there was validity in moving forward with the process. The next step would then be to continue working on the draft ordinance. The draft would be reviewed by the ad hoc committee, the planning commission, and the county. Then that ordinance would come before borough council for a public hearing and only after that would council be voting on approving that. If that is approved and a use is permitted by special exception, there would then be an application and it would go before the Zoning Hearing Board for a public hearing, residents would have input and there would be standards for the use that the applicant would have to demonstrate that they would abide by. That would be the zoning piece. If that is approved, then the subdivision and land development plan would be submitted. That plan would have the stormwater management details, utility infrastructure, roads, access and all of those issues would be part of that process, which would include the planning commission, county planning and borough council. Mr. Strong knows that more information needs to be provided but reiterated that this is the very beginning of the process.

Cathy Jackson asked what benefits the council sees to the residents to allow this to proceed. Mr. Harris said he wasn't going to answer tonight what benefits he does or doesn't see tonight. He just stated that his responsibility is to all the residents, and he has talked to some that are not opposed to this type of plan.

Jeff Bamberger did not see any difference between the owner of the Ironmaster Road tract asking for a rezoning last year and this request, except for the scale.

Mr. Conrad asked Mr. Strong if he moved to consider a zoning change, is his understanding that he could still eventually say no down the road? Mr. Strong said that he is correct. Mr. Strong said it's possible that there is a no tonight, that turns into a yes after they go through the process. Mr. Conrad said he just wanted to be clear that he could agree to consider it tonight, but ultimately decide against it.

Ms. Cleary said that the council should not vote to consider a rezoning request. The applicant wants a consensus that there is a majority of the council who want the process to move forward. She did not think a formal motion was needed.

When asked if they were in favor of considering the rezoning request, Bruce Conrad was a yes, Ron Ricard was a yes, Beth Yocum was a no, Bruce Harris was a yes, John Karinch was a yes and Thomas Burton was a no.

Mr. Harris said the next step would be to set up an ad hoc committee meeting. Ms. Cleary said at some point there should be a public presentation. If members of council are going to be there with a quorum, then it should be advertised as a joint public meeting with the ad hoc committee. Ms. Cleary said that under the MPC, there can't be a legal public hearing until there is a completed text amendment. The council can hold as many meetings as they want to gather information.

Karen Groh suggested that any ad hoc meeting has an agenda that indicates what the group is going to accomplish at the meeting. She felt having a purpose would eliminate the arguing back and forth.

Mr. Anspach asked that guidelines be established for the ad hoc committee meetings.

Nelson Zimmerman asked if the citizens on the ad hoc committee could meet just to get to know each other. Ms. Cleary said she errs on the side of caution when it comes to meetings that would have a quorum.

NEW BUSINESS

CONSIDER AUTHORIZING LETTER OF INTENT FOR DCED STUDY – FIRE COMPANY REGIONALIZATION

Mr. Harris said that there was a meeting with the fire company a few weeks ago along with representatives from North Cornwall and West Cornwall about regionalizing the fire departments. It was decided the best way to move forward would be for the municipalities to request the Department of Community and Economic Development (DCED) to conduct a study.

John Karinch made the motion, seconded by Bruce Conrad, to authorize a letter of intent for a regionalization study to be completed by DCED. Motion passed.

CONSIDER AUTHORIZING GOOSETOWN STORMWATER IMPROVEMENTS CONTRACT

Mr. Harris said that since he abstained from the vote to authorize the contract last month, the vice president of council will sign the contract authorizing the work to be completed.

COMMENTS FOR THE GOOD OF THE ORDER

Mr. Thomas reminded everyone that September 17th is Constitution Day.

Mr. Conrad said that Coffee with Council is Wednesday at 10:30 a.m.

Mr. Burton said a small group of council traveled to Harrisburg to visit with a company that designs and installs equipment for Zoom capability. While he was disappointed they didn't get to see a working setup, he assured Ms. Roussey they were looking into the possibility.

ADJOURNMENT

With no further business to conduct, John Karinch made the motion, seconded by Bruce Conrad, to adjourn the meeting at 8:31 p.m. Motion passed.

Cody Rhoads
Secretary