

# OFFICIAL MINUTES

The Regular Meeting of May 18, 2009 of Kennett Square Borough Council was called to order at 6:30 p.m. in the Red Clay Room of the Kennett Fire Company No. 1, 423 Dalmatian Street, Kennett Square, Pennsylvania with President David B. Miller in the Chair. Roll Call followed the Pledge of Allegiance. Present were:

*President D. Miller*  
*Council Member R. Pesce*  
*Council Member E. Avello, Jr.*  
*Council Member W. Carozzo*  
*Council Member J. Cocks*  
*Council Member J. Darman*  
*Council Member J. Thomas*  
*Mayor L. Spencer, Jr.*  
*Manager B. Kucera*  
*Borough Solicitor Marc Jonas*

## EXECUTIVE SESSION

President Miller announced that Council will hold an Executive Session immediately following tonight's meeting. The purpose of this meeting is to discuss personnel matters.

## PRESIDENTIAL COMMENTS

President Miller thanked the committees involved with the Main Street Festival and Kennett Run held this past weekend in the Borough. He advised that in spite of the weather, the event was well attended and brought many visitors to the Borough. He also thanked the Police, the Public Works Department and the YMCA for their assistance with these events.

## PUBLIC COMMENTS

There were no public comments from the floor.

## AMENDMENT to AGENDA

The Manager advised that the agenda has been amended with the addition of the consideration for the advertisement of a public hearing reaffirming the Real Estate Transfer Tax.

**PUBLIC HEARING  
PROPOSED AMENDMENTS to the ZONING DISTRICT**

President Miller introduced Mr. Marc Jonas, the Borough's Solicitor.

The Solicitor advised that this public hearing is for the proposed amendment to the zoning map changing the zoning classification of tax parcel 3-3-153.1 from the R-3 Medium Density Residential Zoning District to the C-2 Secondary Commercial Zoning District.

The Solicitor opened the public hearing for the amendment to the zoning classification at 6:39 pm.

The hearing was conducted with a stenographer and a transcript of this public hearing is available from the Chester County Court Reporters' office for a period of seven years.

The Solicitor closed the public hearing at 7:14 pm.

**PUBLIC HEARING  
PROPOSED AMENDMENTS to the CHAPTER 23, ZONING  
STEEP SLOPES**

The Solicitor advised that this public hearing is for the proposed amendment to the Borough Code, Chapter 23, Section 23-48, Steep Slopes by repealing Sections 23-48(e)(2)(A); and 23-48(e)(2)(A)(i); and 23-48(e)(2)(A)(ii) in their entirety and replacing these sections as follows:

*Section 23-48(e)(2) Lot Areas.*

*(A) If a proposed use would include any areas with pre-existing slopes between fifteen percent and twenty-five percent, the following requirements shall apply to each lot:*

*(i) A maximum disturbance of thirty percent of slopes of fifteen to twenty percent, and*

*(ii) A maximum disturbance of fifteen percent of slopes of twenty to twenty-five percent.*

The Solicitor opened public hearing for the amendments to the Steep Slopes at 7:14 pm.

The hearing was conducted with a stenographer and a transcript of this public hearing is available from the Chester County Court Reporters' office for a period of seven years.

The Solicitor closed the Public Hearing at 7:16 pm.

**PUBLIC HEARING  
PROPOSED AMENDMENTS to CHAPTER 23,  
TBO TALL BUILDING OVERLAY, DESIGN REQUIREMENTS**

The Solicitor advised that this public hearing is for the proposed amendment to the Borough Code, Chapter 23, Zoning, Section 23-23 TBO Tall Building Overlay Conditional Use District, by adding Section 23-23(i)(3) as follows:

*Section 23-23(i) Design Requirements*

*(3) Steep Slopes. Notwithstanding Chapter 23, Section 48(g), the provisions of Chapter 23-48 (“Steep Slopes”) shall not apply to steep slopes which are man-made, on properties located within the TBO – Tall Building Overlay Conditional Use District.*

The Solicitor opened public hearing for the amendments to the TBO Tall Building Overlay Conditional Use District at 7:16 pm.

The hearing was conducted with a stenographer and a transcript of this public hearing is available from the Chester County Court Reporters' office for a period of seven years.

The Solicitor closed the public hearing at 8:05 pm

**ORDINANCE NO. 876  
AMENDING CHAPTER 23, ZONING DISTRICT  
RECLASSIFICATION OF TAX PARCEL 3-3-153.1**

President Miller presented the ordinance amending the zoning map by changing the zoning classification of tax parcel 3-3-153.1 from the R-3 Medium Density Residential Zoning District to the C-2 Secondary Commercial Zoning District for approval.

It was moved by Council Member Darman and seconded by Council Member Cocks to approve ordinance as presented.

Council Member Thomas stated that he is not concerned of what the YMCA has done for the Borough. He is concerned as to what the site will look like.

Council Member Cocks agrees that all of Council may be concerned for the site and she trusts the YMCA to do the right thing. She expressed her concern of the parking.

Council Member Darman stated that he needs to make it clear that he is happy the YMCA is here. In the terms of zoning, he has faith that the YMCA will do the right thing when planning the development.

President Miller echoed Council Members Darman's and Cocks' sentiments stating that the YMCA is beneficial to the community and we must be sensitive to its needs. The YMCA has demonstrated repeatedly that they are a good citizen. He stated that it is important that the YMCA stays in this community and they are in desperate need to expand their facility. He trusts their judgment in whatever structure they design.

The Mayor advised that he frequents the YMCA daily between 5:30 – 6:00 a.m. and at that time of day, the facility is packed. We can move forward with faith that they will be pressured by their umbrella organization to construct the appropriate facility.

Council Member Carozzo stated that the YMCA needs to expand although he has concerns for the height of the building.

Council Member Pesce agrees with and supports the YMCA's proposed plans.

Council Member Avello stated that the YMCA has a first class operation and its current facility will be a reflection of how nice their next structure will look.

Council Member Thomas stated he does not care so much as to the height of the building that will be constructed; he cares about what it will look like.

**Motion carried unanimously.**

The Ordinance was assigned No. 876.

## **ORDINANCE NO. 877 AMENDMENTS to CHAPTER 23, ZONING STEEP SLOPES**

President Miller presented the ordinance amending the Borough Code, Chapter 23, Section 23-48, Steep Slopes by repealing Sections 23-48(e)(2)(A); and 23-48(e)(2)(A)(i); and 23-48(e)(2)(A)(ii) in their entirety and replacing these sections as follows:

*Section 23-48(e)(2) Lot Areas.*

*(B) If a proposed use would include any areas with pre-existing slopes between fifteen percent and twenty-five percent, the following requirements shall apply to each lot:*

*(i) A maximum disturbance of thirty percent of slopes of fifteen to twenty percent, and*

*(ii) A maximum disturbance of fifteen percent of slopes of twenty to*

*twenty-five percent.*

It was moved by Council Member Darman and seconded by Council Member Cocks to approve the Ordinance as presented. Motion carried unanimously.

The Ordinance was assigned No. 877.

### **AMENDMENTS to the ZONING ORDINANCE, TALL BUILDING ORDINANCE (TBO), STEEP SLOPES**

President Miller presented the ordinance amending the Borough Code, Chapter 23, Zoning, Section 23-23 TBO Tall Building Overlay Conditional Use District, by adding Section 23-23(i)(3) as follows:

#### *Section 23-23(i) Design Requirements*

*(3) Steep Slopes. Notwithstanding Chapter 23, Section 48(g), the provisions of Chapter 23-48 ("Steep Slopes") shall not apply to steep slopes which are man-made, on properties located within the TBO – Tall Building Overlay Conditional Use District.*

It was moved by Council Member Pesce and seconded by Council Member Carozzo to approve the ordinance as presented.

It was moved by Council Member Darman and seconded by Council Member Thomas to table this item.

A discussion ensued.

Motion carried unanimously to table this item.

### **CONSENT ITEMS**

#### **MINUTES of MAY 4, 2009**

President Miller presented the May 4, 2009 minutes for approval.

It was moved by Council Member Cocks and seconded by Council Member Thomas to approve the minutes as presented. Motion carried unanimously.

#### **BILLS**

President Miller presented the bills to be paid May 18, 2009 and the bills that were paid since the last meeting for approval.

It was moved by Council Member Cocks and seconded by Council Member Thomas to approve the bills as presented. Motion carried unanimously.

## FINANCIAL REPORT, FIRST QUARTER 2009

The Manager presented an overview of the Borough's budget for the first quarter of 2009. The General Fund Balance and the top five (5) revenues consist of the following:

<u>General Fund Balance</u>	<u>Budget</u>	<u>YTD Actual</u>	<u>Percent</u>
Revenue	4,034,200	490,372	12.2%
Expenditures	4,034,200	649,654	16.1%
<b>Increase/Decrease</b>	-	<b>(159,282)</b>	-
<u>Top Five Revenues</u>	<u>Budget</u>	<u>YTD Actual</u>	<u>% Received</u>
Real Estate Tax	844,800	90,822	10.8%
EIT – Current Year	800,000	2,610	.3%
EIT – Prior Years	424,000	119,831	28.26%
State Aid Pension	118,200	0	0%
Local Services Tax	84,000	6,038	7.2%
<b>Total</b>	<b>2,271,000</b>	<b>219,301</b>	<b>9.7%</b>

Council Member Pesce questioned the EIT for prior years.

The Manager advised that because Berkheimer collects our taxes and it may take some lag time for Berkheimer to transfer the EIT to the Borough.

President Miller thanked the Manager for the report and asked that this report be placed on our website.

The Manager agreed to place the report on the website.

## EXTENSION of SECURITY AGREEMENT

### LEEVEER/O'NEILL SUBDIVISION and LAND DEVELOPMENT (SDLD)

President Miller presented the letter, received on May 7, 2009, from Mr. David Leever and Mr. Thomas O'Neill requesting another 90 day extension on the Financial Security Agreement regarding their SDLD planned for South Walnut Street.

It was moved by Council Member Thomas and seconded by Council Member Darman to grant the extension as presented. Motion carried unanimously.

## ADVERTISE PUBLIC HEARING

### REAFFIRM REAL ESTATE TRANSFER TAX

President Miller presented the advertisement for a public hearing for an ordinance reaffirming the Real Estate Transfer Tax

The Manager advised that this is to reaffirm the Realty Transfer Tax of one-half percent (½%) in the Borough and for the collection of delinquent realty transfer taxes. He stated that the County had contacted the Borough Solicitor advising him that the Borough was the only municipality in the County that has not yet submitted an ordinance to the County and the PA Department of Revenue. The public hearing will be held on June 15, 2009.

**It was moved by Council Member Darman and seconded by Council Member Cocks to approve the advertisement as presented. Motion carried unanimously.**

## **OLD BUSINESS**

There was no old business

## **NEW BUSINESS**

There was no new business

## **PUBLIC COMMENTS**

Ms. Charla Watson, 523 Magnolia Street, stated that she does not appreciate the controversial treatment she receives and stated that she will not tolerate this any longer. Ms. Watson added that she can hire an attorney and stated for the last time that she will no longer tolerate this treatment.

President thanked Ms. Watson for her comments.

Ms. Linda Ely, 800 South Mill Road, expressed her concern of the lack of parking space available on her street. She stated that her son is a volunteer firefighter and needs to be able to park his vehicle for easy access to respond to emergency calls. Ms. Ely added that she is also concerned of overcrowding.

President thanked Ms. Ely for her comments.

Mr. Ed Thomas, 825 Taylor Street, stated that it came to his attention that a warehouse is planned for a property on East Baltimore Pike. He added that this, along with the other warehouse, will bring hundreds and hundreds of trucks into the Borough.

President Miller thanked Mr. Thomas for his comments.

Ms. Leslie Whiteside stated that she fully recognizes that if the YMCA builds an addition that they will require additional parking and that she would like to know how many additional parking spaces would be needed. She stated that she does not understand why the Borough paid non-Borough employees to man the dumpsters during the Spring Clean-up. Ms. Whiteside noted that she and her husband have volunteered in the past and stated that no one was asked to volunteer this year.

President Miller thanked Ms. Whiteside for her comments.

## **ADJOURNMENT**

**It was moved by Council Member Thomas and seconded by Council Member Darman to adjourn the meeting at 8:56 pm. Motion carried unanimously.**

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Brant Kucera  
Borough Manager