

OFFICIAL MINUTES FEBRUARY 4, 2019

The Regular Meeting of February 4, 2019, of Council for the Borough of Kennett Square was called to order at 7:00 p.m. in the Monroe Nute Room of the Kennett Fire Company No. 1, 301 Dalmatian Street, Kennett Square, Pennsylvania with President LaToya M. Myers in the Chair.

ROLL CALL

Present: *President LaToya M. Myers*
Vice President Ethan L. Cramer
Councilmember Wayne Braffman
Councilmember J. Douglas Doerfler
Councilmember James Mallon
Councilmember Brenda Mercomes
Councilmember Peter L. Waterkotte

Borough Manager Joseph C. Scalise
Borough Solicitor Michael G. Crotty

Absent: *Mayor Matthew W. Fetick*

ADOPTION of AGENDA

It was moved by Councilmember Braffman to approve the agenda presented; seconded by Councilmember Doerfler. Motion carried unanimously.

EXECUTIVE SESSION

President Myers announced that Council held an Executive Session at 6:30 p.m. on Monday, February 4, 2019. The session was held in the Monroe Nute Room of the Kennett Fire Co. No 1, 301 Dalmatian Street, Kennett Square, PA 19348. The purpose of this session was to discuss personnel matters pertaining to the Collective Bargaining Agreement of the Kennett Square Police Association.

PUBLIC COMMENTS

John Thomas, 406 South Broad Street, commented he is against spot zoning stating that it does not fit this town. Mr. Thomas also expressed his concern of developments planned in the area and how the traffic will negatively impact the Borough.

Jenifer MacFarland, 303 Hessian Drive, agreed with John Thomas' comments. She would like a copy of the blank grant application regarding the joint streetscape planning as well as the PowerPoint presentation that Nate Echeverria had planned to present at the Joint Economic Development meeting last week.

Charla Watson, 523 Magnolia Street, commented she would like Mr. Echeverria's PowerPoint presentation made available to the public. She is opposed to the numerous amount of Borough subcommittees and meetings. In conclusion, Ms. Watson stated she is against the proposed resolution on tonight's agenda.

Natalie Thomas, 630 Magnolia Court, thanked Council for listening to and hearing the Borough citizens. She also thanked the long-term residents who have made this such a wonderful and diverse community to live in.

Peter Thomas, 630 Magnolia Court, asked Council to accept the dedication of Magnolia Court. He believes there are a lot of practical solutions to this matter and Council agreed this development would be good for this area of town when they approved the plans back in 2010. Mr. Thomas asked Council to look at the bigger picture and not draw a line on Washington Street between the Borough and Magnolia Place.

PUBLIC HEARING
PROPOSED ORDINANCE AMENDING CHAPTER 23, ZONING,
"PERSONAL SERVICE" BUSINESSES in the C-1 and C-2 DISTRICTS

A public hearing was held to discuss the proposed ordinance amending Chapter 23, Zoning as it relates to "Personal Service" businesses as a use by right in the C-1 and C-2 Districts.

President Myers opened the public meeting at 7:15 p.m.

The public hearing was transcribed by Cara Fitzgerald, Court Reporter. A transcript of this public hearing is available through the Chester County Court Reporters Office for a period of seven (7) years.

President Myers closed the public meeting at 7:18 p.m.

ORDINANCE NO. 946
AMENDING CHAPTER 23, ZONING,
"PERSONAL SERVICE" BUSINESSES in the C-1 and C-2 DISTRICTS

President Myers presented the ordinance amending Chapter 23, Zoning as it relates to "Personal Service" businesses as a use by right in the C-1 and C-2 Districts.

It was moved by Vice President Cramer to approve the ordinance as presented; seconded by Councilmember Waterkotte.

Borough Council's discussion was transcribed by Cara Fitzgerald, Court Reporter. The transcript is available through the Chester County Court Reporters Office for a period of seven (7) years.

Motion carried unanimously.

The ordinance was assigned No. 946.

CONSENT ITEMS

President Myers announced that the following Consent Items are deemed approved if there are no objections:

- Minutes of January 7, 2019.
- Minutes of January 22, 2019.
- Bills that were paid since the last Council meeting.

There were no objections.

REPORTS

PRESIDENT'S REPORT

There was no President's report.

MANAGER'S REPORT

Borough Manager Joseph Scalise advised he submitted a written report which was included in the Council packet.

FINANCE COMMITTEE

Councilmember Braffman, Chair of the Finance Committee, reported the following activity from their meeting on February 4th.

- The bills were reviewed.
- Some of the buyers reneged on the auction items so those items will go out for rebid. The Committee recommends the monies from the new auction go towards the purchase of a new police vehicle.
- There is a drop in demand of parking permits and the Committee is looking into ways to recoup those monies.
- Discussed the two (2) major capital projects – the Wastewater Treatment Plant Upgrade and Parking Garage Expansion. This will involve approximately a \$1.5 million loan for the upgrade and a \$1 million short-term construction loan for the garage.

- The Committee is also brainstorming ways to generate income such as installing another street banner and advertising in the Borough's newsletter.

MUNICIPAL RELATIONS COMMITTEE

Councilmember Doerfler, Chair of the Municipal Relations Committee, reported they are brainstorming priorities for 2019 and ways to keep the public informed.

BOARDS and COMMISSIONS

PLANNING COMMISSION

It was moved by Councilmember Cramer to approve the appointment of Andrew Froning to the Planning Commission; seconded by Councilmember Doerfler.

Borough Secretary Karen Scherer advised this appointment will fill a vacancy which will expire on January 1, 2022 after which Council may consider Mr. Froning's re-appointment to the regular four (4) year term.

Motion carried unanimously.

ESTABLISHING RULES of COUNCIL GOVERNING PUBLIC COMMENT at MEETINGS of BOROUGH COUNCIL

It was moved by Councilmember Braffman to pass the resolution establishing rules of council governing public comment at meetings of Borough Council; seconded by Councilmember Waterkotte.

Councilmember Braffman gave background on the improvements to the public comment process over the past several years and stated that this resolution is another expansion to public comment. He highlighted the following items in the resolution:

- 1) *Time will be reserved for public comment:*
 - c) *At the conclusion of Council's discussion on agenda items designated as action items: Public comment shall be permitted at the conclusion of Council's discussion on agenda items designated as action items after a motion has been made and seconded. Such comments shall be restricted to the motion under consideration.*
- 2) *The following individuals will have standing to offer comments:*
 - a) *Any resident or taxpayer of the Borough of Kennett Square.*
 - b) *Any person owning real estate in the Borough of Kennett Square or their representative.*
 - c) *Any authorized representative of an organization or entity whose primary place of business is in the Borough of Kennett Square.*

- 4) *Public comment periods shall be administered by Council President under the following rules:*
- c) Individual comments will be addressed to the President and be completed in no more than two (2) minutes. Speakers may ask questions of Council, and Council members or the Borough Manager may respond, within the speaker's two (2) minute time allotment.*
 - h) At the conclusion of each comment period, any member of Council may request that a speaker be afforded an additional two (2) minutes of interactive comment time.*

Councilmember Waterkotte expressed his support of Council's opportunity to request the speaker be afforded an additional two (2) minutes.

Councilmember Mercomes says it makes more sense for the speaker to have three (3) minutes to initially speak.

Vice President Cramer commented he is in deep disagreement with these rules of Council and he will not support the resolution. He quoted the First Amendment and expressed his concern of the unjustifiable abridgements contained in the resolution and the instructions to be given by the Council President. In addition, Vice President Cramer stated it will be problematic if one person is cut off when another person is allotted additional time.

A discussion ensued among Council regarding the initial time limit.

It was moved by Councilmember Mercomes to amend the motion by changing the initial two (2) minute limit for public comment in section 4.c of the resolution to three (3) minutes; seconded by Councilmember Braffman. The amendment to the motion carried unanimously.

Councilmember Doerfler stated he agrees with everything everyone has said; there are pros and cons to the resolution and maybe Council can come up with wording that might not be too restrictive. We need to allow people to speak but we also need to allow people the opportunity to feel comfortable speaking; he believes establishing guidelines like this will encourage people to speak.

President Myers stated she thinks we are extremely under thinking this because when government shuts people down, it is the person who is speaking who gets silenced. She commented these rules of Council are essentially silencing a black woman whose family has lived in our community for seven (7) generations and silencing the person who advocated for her as a young black woman to sit in this seat. These rules will also silence people who historically did not have voices in our community and elsewhere. President Myers added that the intent matters and for us to sit here and pretend like the intent doesn't matter in our small town is offensive. To her, Council is using policy while they are in power to continue institutional racism and she will not support this.

Councilmember Braffman stated Council has had a three (3) minute rule which is more than a reasonable amount of time for people to state their objections or support. He then began timing three (3) minutes from 7:58 p.m. to 8:01 p.m. He doesn't think it is an abridgement of rights or shutting people down; it is a fair standard at a business meeting which this is.

Councilmembers Waterkotte and Mallon expressed their support of the time limits.

PUBLIC COMMENTS

John Thomas commented he feels Council is using this resolution to silence him and Charla Watson and was told by Council that other people don't speak because of him and Charla. He said they will not take the blame for this; he uses his constitutional right to speak at meetings and will continue to do so.

Ken Edwards, 412 Meredith Street, congratulated President Myers for standing up and making her point well known to everyone in public. He stated everyone in this country has a right to free speech and he spent 20 years in the United States Air Force defending that right. Our right to free speech is paramount no matter how long.

Andy Froning, 308 Marshall Street, expressed opposition to the rules especially with regards to the time limits. Placing a time constraint on public comments puts fetters on free speech which is the cornerstone of our democracy. In democracy, you have to put up with a lot of guff and he does not support the time limits in this resolution.

Tony D'Ottavio, 516 East South Street, commented that he agrees with Mr. Froning and does not support the time limits.

Jenifer MacFarland commented she is happy to see the debate and she thinks this is one thing that we have been lacking at Borough Council meetings. She supports Vice President Cramer stating we need to have these types of discussions on every item that comes before Council. She agrees with most of the changes in the resolution except for the limitations on free speech. Ms. MacFarland thanked Council for adding the ability to ask questions and get answers. She suggested trying out the new rules on a temporary basis to see how they work but she hopes the item does not pass.

Sally Braffman, 472 East South Street, is happy and finds it invaluable that the public will have opportunity to ask questions during the meeting. This is a part of the continual process to improve public comment. If the public feels restricted after a trial period, then Council can go back to the drawing board.

Charla Watson commented she has never stopped anyone from coming to these meetings. She takes exception to allowing people who are not taxpayers to speak at the meetings. Ms. Watson does not have a problem with the time limitation however she would like public comment to be added back to the end of the agenda.

Penny D'Ottavio, 516 East South Street, commented it is important for the public to have open dialogue with their representatives and expanding this with questions and answers during the meetings is a wonderful idea. What affects the public the most is what happens in our own back yard and putting these rules in writing makes her feel like this is big government which does not belong in our small town.

The amended motion carried with a vote of 5 to 2 with Vice President Cramer and President Myers voting no.

TRANSFER of the CHAIR

President Myers turned the gavel over to Vice President Cramer to preside over the meeting.

AMENDMENT to the AGENDA

It was moved by President Myers to amend the agenda by adding Council's acceptance of her resignation as Borough Council President; seconded by Vice President Cramer.

Several members of Council expressed their opposition to the motion and stated they don't want President Myers to step down and added that she is doing an excellent job.

President Myers commented she respects the will of Council and this resolution has passed. In good conscious, she cannot fulfill the role as outlined in this resolution and that is why she is stepping down. President Myers believes wholeheartedly this resolution is a violation of our constitutional right of free speech.

Borough Solicitor Crotty advised this resolution falls within the parameters of what the Borough can set to run the meetings and does comply with the First Amendment.

PUBLIC COMMENTS

John Thomas expressed his support and respect for President Myers and her right to resign.

Andy Froning commented that he understands President Myers' decision because he made a similar decision several years ago when he thought the trust between Council and his organization was breached. He believes that to be the case now and applauds President Meyers for sticking to her principles.

Jenifer MacFarland reminded Borough Council this is Kennett Square and not New York City. We're neighbors and know each other and we want to keep that going.

Ken Edwards commented he does not agree with President Myers' resignation but respects her decision.

Tony D'Ottavio asked if President Myers can override a rule that was just made.

The Borough Solicitor replied per the resolution, the President determines if a speaker is violating the rules of conduct or time limit.

Charla Watson commented that President Myers should not resign; her fight is just starting. The way she blasted out tonight is the way she should have blasted out all along.

Motion to amend the agenda carried unanimously.

ACCEPTANCE of LATOYA M. MYERS' RESIGNATION as BOROUGH COUNCIL PRESIDENT and ELECTION of COUNCIL PRESIDENT DEFERRED

President Myers stated that this is not just a matter about public comment; it's about Council using policy and power to silence people. Institutional racism has been done over and over again in history and she can't be part of the problem. She believes this resolution is adding to the problem. President Myers stated she believes in democracy and that is why she is stepping.

It was moved by President Myers to accept her resignation as Borough Council President; seconded by Vice President Cramer.

It was moved by Councilmember Mallon to amend the motion by postponing Council's consideration of the resignation until the next meeting; seconded by Councilmember Waterkotte.

Councilmembers Mallon, Waterkotte and Mercomes expressed their support and respect for Ms. Myers to continue as Council President.

Councilmember Braffman asked President Myers how she feels about this amendment deferring Council's consideration of her resignation for two (2) weeks.

President Myers replied she has thought this through; it's about her principles and she is not going to change her mind in two (2) weeks. As President, she was elected to follow the rules as enacted by Council however she cannot/will not and is refusing to follow the resolution Council passed this evening. The intent may have not been to silence people however the end results does have an impact on silencing them and that matters to her.

The amendment to the motion did not carry with a vote of 0 to 7.

It was moved by Councilmember Braffman to amend the motion to accept President Myers' resignation to include the following: "and for Council to hold the election for president at the next Council meeting"; seconded by Councilmember Mallon.

A discussion ensued among Council.

The amendment to the motion passed with a vote of 5 to 2 with President Myers and Vice President Cramer voting no.

PUBLIC COMMENTS

John Thomas commented it bothers him that no one on Council has decided to look into the reasons for President Myers' resignation. He would like Council to rescind the resolution and work on it.

Charla Watson commented that all of these amendments didn't have to happen if Council would just accept President Myers' resignation. The public's opposition to the resolution is not about the time restraints but the impact it will have on the minorities.

Ken Edwards commented that if Council follows the rules of other towns and the federal government, then Vice President Cramer should automatically become President after Ms. Myers' resignation.

Vice President Cramer clarified the process for filling the vacancy for president per Borough Code.

Tony D'Ottavio questioned if a member of Council would consider rescinding the vote that start all of this.

Natalie Thomas commented that she is observing deep sadness from the whole entire Council. It would be her choice for Council to back step to what caused this in the first place and discuss it.

Luis Tovar, Chair of Advisory Commission on Latino Affairs, echoed the accolades paid to President Myers and stated this is a learning opportunity for all of us. We are trying to be efficient and fall back on procedure instead of placing ourselves in other people's shoes and listen to the experiences and value they bring to better decision making and planning. He suggested that Council take a step back and reconsider the resolution at another time.

Jenifer MacFarland thinks it is critical for this board to get together with the community to decide who we want to be and together strategically plan our goal.

The motion as amended carried with a vote of 6 to 1 with Councilmember Mercomes voting no.

Vice President Cramer announced he will continue to chair this session but for the record, he has not and will not enforce the resolution as it has been passed.

RECESS – 9:31 PM to 9:42 PM

Vice President Cramer called for a recess at 9:31p.m. The meeting reconvened at 9:42 p.m.

RECONSIDER of RESOLUTION ESTABLISHING RULES of COUNCIL GOVERNING PUBLIC COMMENT at MEETINGS of BOROUGH COUNCIL

It was moved by Councilmember Mercomes for Council to reconsider the Resolution No. 2019-06, "Establishing Rules of Council Governing Public Comments at Meetings of Borough Council" that was passed by Council earlier this evening; seconded by Councilmember Waterkotte.

A discussion ensued among Council on the pros and cons of rescinding the resolution.

Councilmember Waterkotte said this is not about quitting a position; it's about something bigger and why someone felt the need to resign. He's ashamed that he is put in a position to have someone resign and not pay attention to the root that caused it.

Councilmember Mallon claimed emotions are high and suggested Council wait and come back to talk about this in two (2) weeks.

Councilmember Braffman commented the position represented by Councilmember Myers is hypothetically and we can run the meetings with rules we just adopted. He opposes rescinding the resolution and suggested giving it a couple of meetings to see if it's working or prejudicial.

Councilmember Myers commented that this document will allow government to stay within the law to disenfranchise people who will be negatively impacted and that this is not hypothetical; it is something she experienced and that is why she is passionate about it. She noted that it's not about the time limit; it's about discrimination.

Councilmember Mercomes commented about the need to understand the history of racism in this country and she suggested Council have a courageous conversation about race before we go forward with this resolution.

Councilmember Waterkotte commented that it was not anyone's intent to spark issues and passion about racism with this resolution, it was about a better way to possibly conduct meetings.

Councilmember Doerfler commented that he is very sensitive to the fact that he has not walked in the shoes that have been talked about tonight. He does not want to rescind it tonight but that isn't saying he doesn't want to rescind it.

Vice President Cramer said that we have established a firm law and a real tool that at some point it could prevent someone from speaking.

PUBLIC COMMENTS

John Thomas commented that the problem is bigger than rescinding the resolution. He doesn't have a problem with the resolution but has a problem with the reasons why it was done.

Charla Watson commented the resolution will have an impact and prevent people from speaking up for themselves, especially the minorities. Council has never acted like or indicated that the citizens of Kennett are represented universally. She encouraged Council to attend sensitively training.

Doug Hayes, 611 Magnolia Court, commented that he feels his opinion doesn't matter and doesn't feel welcomed in this town. He stated that he does not understand, nor heard of, the Sunshine Law but the issue of racism is real. Mr. Hayes stated that he didn't have a clue until he spent significant time talking with an Afro-American colleague and he questioned if Council had processed this topic before today's meeting.

Councilmember Braffman noted there are a lot of things in the resolution that people are strongly in favor of and suggested we defer the implementation until the first meeting in April.

The motion to reconsider the resolution carried unanimously.

RESOLUTION NO. 2019-06, EFFECTIVE APRIL 1, 2019 ESTABLISHING RULES of COUNCIL GOVERNING PUBLIC COMMENT at MEETINGS of BOROUGH COUNCIL

It was moved by Councilmember Braffman to amend the amended motion for the approval of the resolution, "Establishing Rules of Council Governing Public Comments at Meetings of Borough Council" with the initial three (3) minutes to speak by deferring implementation of the resolution until the Council meeting on April 1, 2019; seconded by Councilmember Mallon.

A discussion ensued among Council.

PUBLIC COMMENTS

John Thomas suggested members of Council should individually discuss this resolution with Councilmember Myers.

Luis Tovar commented that this matter has taken a lot of time and there is other business to be conducted. He suggested the resolution be rescinded.

Tony D'Ottavio recommended the resolution be rescinded.

The amendment to the motion passed with a vote of 5 to 2 with Vice President Cramer and Councilmember Myers voting no.

The motion as amended carried with a vote of 4 to 3 with Vice President Cramer and Councilmembers Myers and Mercomes voting no.

BIRCH STREET STREETScape PLAN

Nate Echeverria, Economic Development Director, presented the plans and scope of services from Alta for the Birch Street Streetscape work. This would help implement a portion of the TASA (Transportation Alternative Set Aside) Grant.

Vice President Cramer advised that Mr. Echeverria went before the Municipal Relations Committee and the Public Safety and Infrastructure Committee.

It was moved by Councilmember Mallon to authorize the Economic Development Director and the staff to move forward with the Birch Street Streetscape Plan. Seconded by Councilmember Doerfler.

Vice President Cramer commented that Birch Street should remain a thoroughfare.

The Borough Manager responded by saying there are no plans for Birch Street not to be thoroughfare.

PUBLIC COMMENTS

John Thomas commented that Birch Street needs to remain a through street.

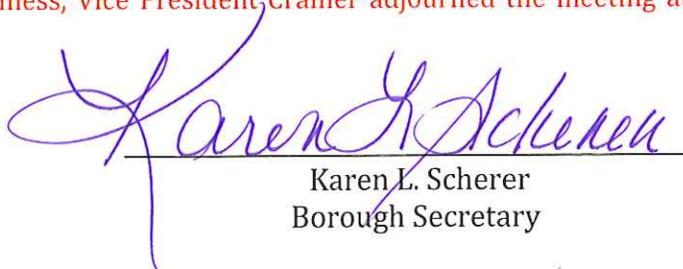
Motion carried unanimously.

COUNCIL, MANAGER and MAYOR COMMENTS and ANNOUNCEMENTS

There was no comments or announcements.

ADJOURNMENT

There being no further business, Vice President Cramer adjourned the meeting at 10:37 p.m.



Karen L. Scherer
Borough Secretary