

Borough of Ben Avon Heights

Tuesday, April 12, 2011 Council Meeting Minutes

The regular meeting of council was held at Shannopin Country Club at 7:30 P.M.

Present:

Council Members: Berardi, Cuteri, Davis, Dickson, Isherwood, Kolenda

Mayor: Dismukes

Solicitor: Vogel, Tucker/ Arensberg Attorneys

Fire Chief: Buckman

Ohio Twp. Police Chief: Micklos

NorthWest EMS Division Chief of Operations: Justin Webster

Borough Engineers: Firek (of Lennon, Smith, Souleret Engineering, Inc.)

Secretary/Treasurer: Raves

Avonworth Municipal Authority: Ed Gould

Solicitor of the Avonworth Municipal Authority: Charles Means and Mandy Scott

Residents who spoke: Gary Hunt, Chris Pacione, Mary Kay Anderson, Bryan Glass, William Penrod, Joan Mosey, Anna Rice, Bob Frisch, Jennifer Flanagan, Jennifer Knuth, Betsy Radcliffe, Jan Frisch, Marty Knuth, Jim Georgalas & Gary Short

The meeting was called to order at 7:30 PM by President Davis

March 2011 Minutes

- A motion was made to approve the March 2011 Minutes. They were approved as distributed.

March 2011 Treasurer's Reports

- A motion was made to approve the March 2011 Treasurer's Reports which was approved as distributed.

ACCORD Park – Ed Gould, Chairman of the Avonworth Municipal Authority -

Is asking council to approve or disapprove the potential gas lease before the Avonworth Municipal Authority from Energy U.S. This is a non-surface drilling lease but would create revenue in rental to the Authority.

The Authority is comprised of five communities each who will have the chance to consider this offer.

Ed outlined the terms of a lease that had been signed between The Authority and Energy U.S...(Who acquires gas rights with the intent to sell these rights to other companies for drilling.) This lease was presented during a meeting that took place March 29th with the understanding that this deal would expire if not executed by March 31, 2011. After the Authority's Solicitor reviewed the lease and determined that there was in fact a 30 day exit clause, the Executive Committee agreed to pursue the matter. This is the first of the five community meetings that will review this offer. If four of the five communities accept this contract it will be executed.

Discussion of the lease....

This lease is for Non Surface Drilling only, (All drill heads would have to be located outside the park by approximately 1 mile and horizontally drilled.), and could yield a minimum of \$2,500.00 per acre in an upfront payment. NO DRILLING WILL TAKE PLACE ON PARK PROPERTY the way the contract now reads. A 1 1/2 page addendum was added to the original contract protecting the park from things like surface drilling and the review of the thirty day time period to rescind the agreement. It is the opinion of the Solicitor that this is a good offer. The terms include: a onetime upfront payment and extra bonus if the land group exceeds a certain amount, (Mayor Dismukes offered that approximately 640 privately owned acres outside the park may have already signed up.) that bonus will be calculated by a stipulated formula. An annual payment of 15% royalties from the wellhead with no deductions would be paid to the Authority. (Up from 12.5% other offers have provided). An estimated revenue stream per year is \$300,000.00 as well as the onetime initial payment that would be made by 12/31/11.

This is a five year initial term and if production continues the contract can be automatically renewed.

A review of the Park's current revenue:

The park operates on just a little less than \$600,000.00 annual budget. \$106,000.00 of that comes from the five communities who make up the authority. A good majority of the park's revenue stream comes from the Mayernik Center rentals. Part of the park's income comes from RAD money.

Timing of this lease agreement:

This subject has been under consideration for several years. The meeting that Mr. Gould attended has set these events into motion. It seemed that this deal, joining with other local private land owners and Energy U.S., would give the Authority a better offer than they have seen in the past. Mr. Gould took the information he gained back to the Authority's Executive committee who decided to review it with Mr. Means and Mandy Scott, an expert in oil and gas leasing work. The March 31 deadline pressed them to sign the agreement only; however, with the knowledge that there was the thirty day "Out Clause" thus gaining time for review and

affording each of the communities their say in this decision. Tonight's meeting is where our community has a chance to voice their opinions which is what the process of the Jointure Agreement has set in place.

Questions from Council

Is it your understanding that this agreement can take place with the private owners just outside the park and without the Authority?

Yes. And this would give them a chance to locate the drilling equipment just off park property. We would lose a little leverage without the outside acreage provided in this agreement.

Was the lease presented to the park reviewed by someone who specializes in oil and gas?

Yes, Mandy Scott who does that type of work reviewed it with Mr. Means and is in attendance this evening. Changes were made to eliminate surface drilling and after the addendum they felt that the lease is now something for consideration.

Is the value of this agreement fair?

The offer is at or above what the solicitors have seen from other companies. Especially with the differed bonus which is unique to this project. The royalty at 15% for deep well drilling is above the 12.5 offered initially. This offer is from the well head with no deductions and regardless to what their costs are.

What is the length of the Lease?

Initial term is 5 years. If the well produces it can be extended indefinitely till production ceases. Or the company can pay another bonus to extend for another 5 years to attempt to get production.

What are the Liabilities?

A general indemnification clause has been added stating that their operations must indemnify the authority for all damages. There are additional water source protections and other general DEP laws and regulations what will protect the water.

What is the anticipated payment to the Authority?

The \$2500.00 per acre is a onetime guaranteed payment with the potential of a larger payment based on the larger joined acreage sale.

What if the well does not produce?

The Authority would receive only the onetime payment of approximately \$300,000.00.

Severance tax, does it come off the 15% royalty

The 15% is for deep well which is not subject to deductions. Shallow wells are subject to all kinds of deductions...not the deep drilling we are considering.

Do we lose leverage if we do not join this deal? What happens to the gas?

There are two ways to look at that issue. Some think we increase our leverage by approving this lease since they are drilling nearby already. Another way to look at this is that if not approved they can come just short of the park property and potentially suck out the gas from under the park.

What will the money be used for? Will the municipalities or the Authority receive the money?

The money goes to the Authority. The Authority would need to consider what to do with the revenue and discuss that with the communities if and when time comes.

Financial Needs of the Authority

RAD money is the only consistent grant money the Authority currently receives. Years ago we received approximately \$30,000.00 annually; however, each year we have received less.

Concerts in the park are funded by the RAD money. The Commonwealth's budget is being cut and grants will be fewer. After finishing the addition to Mayernik Center we were told not to ask for any more money... "You got your fair share". We are uncertain how long the time will last.

Public Comments

1. **Gary Hunt – Wilson Drive**

Technology – firm supporter of this. Natural Gas is abundant, and Marcellus Shale development is cleaner and safer than other technologies. Only a remote possibility of contaminating ground water exists. The science shows that the ground water is not affected by this type of drilling.

Not in favor of this lease. Gives broker a free ride for 6 months. 5 Years without drilling guarantee, too long. Storing on property is not a good idea. Look for other opportunities.

2. **Chris Pacione 22 New Brighton Road**

Not in favor of the lease. What is the potential for the Authority? "Range Resources thought it was about \$25,000 per year." The numbers will change according to the success of the well.

3. Mary Kay Anderson – Canterbury

Would like to see the park remain as a park and is not in favor of this proposal. Are there other ways to fund the park? She is planning to become involved in the neighborhood if this goes through.

4. Bryan Glass – Penhurst

Technology of what they are planning. They will drill under the park to fracture the rock. Has a risk assessment been done? There should be? Has Mr. Vogel assessed the risk to the borough due to this lease? Mr. Vogel stated that he has done an overview of the lease. One question is if enacted, the taxation is one concern. Mr. Glass stated that environmental liability may hold land owner liable to clean up drilling fluids. Mr. Vogel, would the Borough be liable for that? It could be possible was Mr. Vogel's response. The Authority and possibly the Borough will be responsible for the cost of the cleanup due to the Comprehensive Environmental Reclamation Compensation Liabilities Act. Look at that possibility more thoroughly.

5. Bill Penrod – Banbury Lane

If they are drilling next to the park and suck our gas out, go for it. In favor of the drilling if the lease can be resolved.

6. Joan Mosey – Canterbury

Decision making process involved with this lease is faulty – Something this significant should have been given more time to discuss and collaborate. Please vote NO and let us research options.

7. Anna Rice – Devon Lane

The solicitor, for the Authority, did not know who owned the mineral rights to the park at the meeting April 7, 2011. Without that we will lose a significant portion of the fees. That needs to be clarified.

8. Bob Frisch – Devon Lane

Work for a Real Estate Development company and has reviewed several leases in Allegheny County. Does not have a problem with the drilling but he is not in favor of the lease, it must be researched.

The drilling will take place approximately 2 miles underground so the water should be safe plus with the indemnity clause to protect it. Parameters need to be inserted. Must drill in 12 months... or must pay a certain amount of money. If it's not producing they must still pay. Can we turn it down and go back later? (We do not believe that this offer will be available after the stipulated time frame.)

Norm now is \$2,600.00 - \$3,000.00 per acre. 15% on gross is great..

9. Jennifer Flanagan – Banbury

Unhappy with the process with which the lease was presented. This has caused a loss of confidence in the Authority. Are there other options?

The mission of the Authority is to provide a safe and fun place for the public and to bring communities together. This lease is a misalignment of the Mission Statement.

The Authority stated that the park is not in a financial crisis. How did this become a decision to relieve financial crisis?

Had an attorney look over the lease and stated that in her opinion “this is not a good lease.”

NOTE: the ACORD board does currently have open seats in other communities... however Ben Avon Heights does currently have all its seats filled. Ben Avon Heights Council positions are open this fall.

10. Jennifer Knuth – Banbury

Agrees with the need to follow the mission statement but knows that the Authority needs the money. Was on the ACORD board in the past and knows firsthand the financial issues they are up against. The swimming pool is an enormous financial drain on the park.. It takes a good deal of money to run the park and they can use the financial help from this source. Agree with drilling but maybe not this lease because the park can use the money.

11. Betsy Radcliff – Wilson

Is in favor of drilling but opposed to this lease. If it's not urgent please look at the lease before approving.

12. Jan Frisch – Devon Lane

If 4 of 5 vote in favor...Can the lease be renegotiated? (Possibly Yes. We were told that the terms need to be settled by April 1, 2011. We may be able to negotiate some items but there is no guaranteed.)

13. Marty Knuth – Banbury

Pennsylvania registered Professional Geologist and has worked for the last 20 years. The fact is that Hydraulic Fracturing is safe. Have 20 pages of letters that state no cases of water contamination from hydraulic fracturing written on State letterhead. Another study that shows that contamination will not affect the surface due to the depth of this process.

Impilements and poorly cemented casings are of cause for concern. Is there a provision in the lease to provide Money for wet gas products? No? Should there be?

14. Jim Georgalas – Banbury Lane

Family is involved in Marcellus Shale drilling. Geologist shows where the tubes are to be placed for the horizontal drilling where the pockets of gas are. “Unlike a milkshake, the gas cannot be sucked out from under the park from outside the park limits”.

Currently 12 ½ % for surface mining is the minimum. If we have surface mining, we should get the gas rights, that energy could be used to heat the pool and building. Not in favor of the terms of the lease.

15. Gary Short – Penhurst

One day to review contract is unacceptable.

There are environmental issues and the indemnification clauses are not going to cover everything in the event of an issue. The lease needs to be reviewed by oil and gas expert. An attorney with the proper expertise needs to stand behind the lease when it is signed.

The lease itself can and should be negotiated. Bring in as many people as possible. Reject this lease.

A motion was made to:

“Authorize Avonworth Municipal Authority to enter into a lease of oil and gas rights at ACORD Park with Energy U.S. LLC.”

The motion was second.

No further discussion was needed.

The motion was unanimously denied. Motion failed

Police Report: - Chief Micklos

-Nothing much new happened this month. There was one theft but not much else new took place.

The police are looking into the situation of a girl who was approached last week, Monday April 4, 2011. No new information has surfaced.

Discussion regarding the Negligent Property Enforcement took place. This ordinance was mostly passed due to yard work and was not continued in the fall due to the weather.

We will send an E-Blast to all residents reminding them of the issues, mainly mowing the grass, cleaning up their yards and trimming bushes impeding site lines and sidewalks. Then we can consider further action if the homeowner does not comply.

Chief Micklos added that, "There is a State statute that allows the Authority to remove bushes that are out of compliance and a detriment and not removed by the homeowner."

Amending the ordinance can be considered to include additional items... broken windows etc. Safety and aesthetics can be considered in the future.

Fire Report: - Fire Chief Buckman

All was quiet in the Borough last month. A few trees were reported down but nothing else.

Yoga in the Park: -Denise Raves

Ms. Frew could not make the meeting and has asked to be placed on next month's agenda.

Community Presbyterian Church of Ben Avon: - Mark Davis

The Church has requested permission to hold sunrise service in the park again this Easter. There is no objection to this request.

Adopt-A-Highway – Earth Day April 30, 2011 - Mark Davis

Chief Micklos stated that Cindy Phelps requested a car be available during the event. And that will not be a problem unless there is a call elsewhere.

This will combine the usual highway clean up as well as E recycling.

Chief Micklos added:

April 20th the police will have a drug return event at Giant Eagle to safely dispose of narcotics.

E.M.S. Report - Justin Webster

It was a slow first quarter. There were three calls and response time was approximately 5.5 minutes. There were 2 emergencies and 1 nonemergency.

A written report was submitted.

Hauling Permits – Denise Raves

New residents should be informed when closing on a house about the ordinance. We will include this information with the Dye Test information from the Borough office from now on to the closing agents.

An E Blast will be sent to residents to remind them of this ordinance.

CITF Grant – Denise Raves

We received a rejection letter in regard to our request for a grant toward Wilson Lane resurfacing. As long as the scope of the project has not changed, we can reapply simply by sending a letter of request to be considered for round two of this grant. The letter and a letter of support from Kilbuck Township are ready to be mailed. Those letters will go in tomorrow's mail.

Engineers' Report - Kevin Firek

Discussion of four projects Lennon, Smith, Souleret Engineering, Inc. has been working on is as follows:

1. 2011 Roads cost estimates.

A 300 foot section of Banbury Lane is estimated at \$62,449.00. This work includes replacing the base, a bituminous wedge curb, adjustment of valve boxes and manhole covers. An add alternate to include the sub-base work would add approximately \$22,050.00. Recommend bidding both ways.

Briarcliff Road, where the dip is... the hillside next to that is a 1 to 1 slope.

The engineers suggest providing a retaining wall to stop the settlement include in the bid as a "design/ build" line item to avoid design costs upfront. Using an earth wall, the cost is estimated at approximately \$75,000.00 - \$100,000.00.

Alternates were included for sub-base replacement for Briarcliff as well.

No sidewalks are included it would fit if you wanted it once the retaining wall was installed.

Sidewalk would be approximately 1200 sq. ft. at approx... \$10.00 per sq. ft. = \$12,000.00 additional cost to the project and we may want to consider a rail at approximately 60 linear feet of this stretch.

The Storm Sewer in this area has collapsed and inlets have been included in the estimate. At Banbury, changing the pipe at the crossing is included, but not on Briarcliff. Repair inlet at Mihalko's, we do not want to change the style of the inlets due to their ability to take in large volumes of water. Another style will not take in as much water.

Typically the engineers will do a survey and update the estimates. Then add alternates according to what they see in the field.

Bid with alternates to add sidewalk.

It's always recommended to check sanitary sewers, make sure they were recently televised and check all manholes, before paving so repairs could be made before the road work was to take place.

Mihalko's brought an issue to council: Where the Borough removed the sidewalk, last fall, along their property in Banbury Lane, the Mihalko's have gravel rolling down the hill causing a wall in their driveway to collapse. The area is unsightly and unsafe due to the reinforcement bar sticking up out of the ground. They are requesting that the gravel and rebar be removed so they can mulch the area. Mark Davis will contact Avalon to address the removal of the gravel and rebar.

The question is... should we put sidewalks back in when the streets are repaved. Sidewalks are the owner's responsibility. No decision has been made and each street will be considered individually. We will need to make the decision and it should consider replacing bicycle grates on sewer inlets.

At the Mihalko's we need to permanently fix the curb where we have removed the sidewalk. Put in a new curb at the least.

Briarcliff Road

It looks as if the movement on this road is continuing. The slope below is too steep. The possibility that heavy trucks are causing this to advance more quickly is quite possible.

In general, Council has decided to replace the sidewalks, throughout the Borough, while repaving the roads so there is a consistency between the road, curb and sidewalk. There may be a ban regarding parking on sidewalks.

We have \$50,000.00 for roads in this year's budget if we do not get the grant money requested. Council was asked by the residents two years ago to do the best they can without raising taxes. That has been the guiding force behind their decisions and making sure that we are in compliance with the consent decree at the same time.

Result of discussion

A. Banbury Lane work

We will proceed with bidding the Banbury Road project

Base bid should include, repair of the road, a new curb and drainage on both sides of the road.

The second alternate is to provide a whole new road with all new curb.

The third alternate will provide an add alternate for a new sidewalk.

The fourth alternate will include an add alternate for a new sidewalk and curb all as one.

We will bid this and open bids at the June meeting.

B. Briarcliff Road

Briarcliff would be a 6 – 7 month process we need to have utilities moved and then put back when the project is completed. We need to notify the utility companies as soon as we can about this work so they can get the work in their budgets as well. It will be a 2012 or 2013 project.

2. Clovelly road storm sewer correction work.

Bids were opened and reviewed by Lennon, Smith, Souleret Engineering, Inc.. \$4,750.00 was the lowest bid from Andy Soli Construction Inc... The Scope of work includes tying-in the existing storm sewer pipe into new inlet at top of road on Clovelly. Cap and seal pipe which discharges behind curb and perform restoration of the area and clean-up all existing stone debris on roadway.

Motion made to select Soli construction to perform work indicated in the above paragraph for \$4,750.00 and second to award this work to Soli Construction. The motion was approved all are in favor of having this work done.

Note: The storm sewer outlet at the bottom of Clovelly does not show erosion yet; however, it is the belief of Mr. Firek that this will occur. His Recommendation is that in the next few years this minimal work should be added to another contract. WE will need to add material to deter movement. We need to verify who owns the property. It is believed that the property is owned by the borough.

3. MS4 NPDES Permit.

The engineers will prepare and submit this permit renewal form.

The borough will get the automatic extension for permit renewal. Once the letter is received we need to get it to the engineers as quickly as possible. Everyone is getting an automatic 6 month extension.

4. The CCTV work that was completed.

A motion was made to approve the change order that will be submitted by Tri State for the sum of \$364.20. The motion was approved unanimously.

A Motion was made to approve the final payment to Tri State in the amount of \$2,306.40 which will include the change order approved above. (The original contract sum was \$1,942.20.) When this payment is made, it will close out this contract.

Motion was passed unanimously.

Emergency Management. – Mayor Dismukes

This item was tabled from last month.

We will hold the check for payment to Ben Avon till Mayor Dismukes talks to the parties involved. Council is in favor of paying this bill once Mayor Dismukes has had his discussion. Details will be presented at a later date.

Municipal Lien Letter Fee:

A motion was made and seconded to charge a \$35.00 fee for these letters. The motion was approved.

At 9:40 P. M. council withdrew to Executive session.

At 10:30 P. M. council was back in session

A motion was made to conclude the meeting. A second and all approved the motion to adjourn.

Respectfully submitted,
Denise Raves, Secretary/ Treasurer