

**Red Lion Borough Council  
Special Meeting Minutes  
Wednesday, December 27, 2017**

**Members**

Cindy Barley  
Tina Frutiger  
Chris Minnich  
Tony Musso  
Nevin Horne  
Dennis Klinedinst

**Others**

Dianne Price, Borough Manager  
Mike Craley, Solicitor  
Stacy Myers, Recording Sec'y

**Visitors**

Robert Frutiger  
Walter Hughes  
Stefanie Weaver  
Jane Alwood  
Scott Thompson  
Eric Immel

Sandra Graham  
Evans Fishel  
Gary LaTulippe  
Kim Moyer  
Jeff Beard  
Joel Ogle

Keith Kahwajy  
Mike Zelger  
Felix Milner  
Meredith Yakelis  
Bill Henry  
Nick Rhoads

1. The meeting was called to order @ 7:00p.m. by Councilman Musso. All present participated in the pledge to the flag.
2. **VISITORS AND PUBLIC COMMENTS**—no one to address Council at this time.
3. **ORDINANCES**—Mr. Craley presented Ordinance 2017-12-9, which is before Council for vote tonight. To give a background, tonight's Ordinance involves 21 West Broadway, known as the Zarfos Furniture building and 33 West Broadway, where the old Moley building used to stand. Over the years, the Moley building, which housed a business & several apartments, fell into disrepair. Approximately two years ago, Red Lion Borough purchased the building, tore it down & created a municipal parking lot. When the parking lot was under construction, litigation commenced by ArthurLee, LLC (owners of the Zarfos building) claiming the Borough trespassed onto their property. Mr. Craley stated the Moley building was against the brick side of the Zarfos building until the Moley building was torn down. Mr. Craley is not involved with that litigation case, but given information by the insurance company attorney representing the Borough, the court (Judge Christopher Menges) made a determination that the placement of the parking lot against the Zarfos building constituted a legal trespass. Because of this, a determination is being made of any damages done to the Zarfos building because the parking lot is right against it. Because of this case and because there are, in fact, damages, the Borough decided before the litigation goes further and the court determines the parking lot has to be torn out, Council authorized Mr. Craley to create an Ordinance claiming eminent domain which allows the Borough to continue to have the municipal parking lot at 33 West Broadway against the brick Zarfos building. Mr. Craley stated it's a right-of-way, not an actual "taking of land in fee or ownership". The Borough is creating a right-of-way and easement to allow the soil loads from the parking lot to be against the side of the Zarfos building. Mr. Craley stated the first step, that Borough Council authorized him to do at their last meeting, was to create the Ordinance. The way things are on West Broadway is the way things will stay. The Borough is not interfering with anything that takes place at the Zarfos building. This action is strictly to allow the parking lot and any weight from it to be against the building at 21 West Broadway. There is an exhibit attached to the Ordinance showing the property lines & the Borough is not taking any land/property from the 21 West Broadway lot/building. Any legal damages that are determined to be a result of the creation of the parking lot, the difference in value of the building **before** & the value **after** will be paid by the Borough to ArthurLee, LLC.

Mr. Klinedinst stated that Mr. Craley did not have full Council consent to move forward with the Ordinance. He did not approve it. Mr. Craley agreed, that the vote was 5-2 authorizing him to draw up the Ordinance, with Mr. Klinedinst & Mr. Horne opposing.

Mr. Klinedinst asked Mr. Craley to read Ordinance 2017-12-9 to the public so there is no misunderstanding of what is before Council for action. Mr. Craley read the Ordinance, which references three sections of the Borough Code authorizing “the Borough to exercise the power of eminent domain for lands necessary to establish & maintain a parking lot. If enacted, the Borough Council deem it in the best interests of the citizens of Red Lion Borough to acquire by the power of eminent domain, a right-of-way and easement to transmit soil load surcharges of a parking lot onto lands of ArthurLee, LLC, shown on the Exhibit.” Mr. Craley said the Ordinance is very clear and the language was given to him by the Borough Engineer. It basically means that the two properties can stay up against each other.

Mr. Horne stated he was very upset that the Borough Engineer was not present tonight. He questioned Mr. Shue from the beginning about whether or not a retaining wall should be erected between the two buildings. Mr. Shue did not believe a retaining wall was necessary. Mr. Horne believes all of this could have been avoided and tonight’s meeting & this Ordinance would not have been necessary. He was also very upset that the Council President & Mayor were not present tonight either. He was upset that he received an email from Mrs. Price that “we” were going to have a meeting tonight to discuss eminent domain. He, nor Mr. Klinedinst, were not in agreement.

Mr. Craley stated he received an email that Council needed to discuss eminent domain; he was authorized at the last Council meeting (by a 5-2 vote) to start the process & an Ordinance is the first step of that process. It was decided not to wait until the Reorganization Meeting to discuss, that is the reason for tonight’s special meeting.

Mrs. Barley stated if Mr. Klinedinst & Mr. Horne were in opposition of tonight’s meeting, they could have responded to Mrs. Price’s email and voiced their opinion. But no one replied to the email saying they weren’t in agreement of tonight’s meeting.

4. **Visitors to speak about tonight’s pending action on Ordinance 2017-12-9:**

- Scott Thompson and his wife, Sandra Graham, of ArthurLee, LLC, stated that the Borough commenced creating the parking lot without a plan, construction specifications or a building permit. Mr. Thompson figured out approx. 500,000lbs of fill dirt were brought in & pushed up against his building at 21 West Broadway. During this process, he asked them several times to stop, that they were trespassing, but the process did not stop. A meeting was called between ArthurLee and their attorney, Borough Council reps and their attorney, Borough Engineer & Borough Manager and Mr. Thompson asked them to stop because they were trespassing. The parking lot creation still did not stop. The Zarfos building is 112 years old and it was used as a retaining wall because the Borough did not want to build one. There was never anything pushed up against the Zarfos building before the 500,000lbs of dirt that was brought in. Mr. Thompson said Mr. Craley was incorrect when he stated the old Moley building was against the Zarfos building. Mr. Thompson said those two buildings never touched each other, being 1-1 ½’ apart. ArthurLee, LLC sued the Borough for trespassing and the Borough pled guilty to the charge. The surcharge and soil loads upon the plaintiff’s (ArthurLee) building did not exist prior. The court granted ArthurLee’s motion on the pleadings and a hearing for relief is scheduled for January 17<sup>th</sup>, 2018. That is when the court will tell the Borough to remove their dirt/parking lot from the Zarfos building and “un-trespass” themselves. Mr. Thompson said that is the reason for tonight’s meeting and to pass this Ordinance, for the Borough to avoid going to the January 17<sup>th</sup> meeting when they will be told to “un-trespass” themselves. He believes this is an egregious misuse of eminent domain. All the dirt and the soil load against his building is still there and it’s still exerting force on the building.

- Gary LaTulippe stated he researched eminent domain and how it's used is contained in the 14<sup>th</sup> Amendment of the Constitution of the United States. As the law is written there, the law favors the Borough, but he asked what about the emotional aspect of the law? What about the Council members' recent election platform of uniting Red Lion? He doesn't believe anyone is being united through the Borough's actions of enforcing eminent domain. He believes they are bullying Red Lion citizens and they will have to face the consequences, whether good or bad, by their actions tonight. He is embarrassed by the actions of Red Lion Borough Council. Mr. LaTulippe requested three things from Council:
  - Make the right decision on the Ordinance before them tonight.
  - Create a provision that Mrs. Price must live in the Borough or not renew her contract. He feels she needs to live in the Borough as Borough Manager.
  - He believes Council received bad advice from Solicitor Craley and hopes they take this into consideration.
- Mr. Musso called for the vote on Ordinance 2017-12-9—authorizing the acquisition, by the exercise of the Borough's rights under eminent domain, of rights of way and easements for the land necessary to transmit parking lot soil load surcharges onto lands of ArthurLee, LLC on property located on West Broadway. Mrs. Frutiger made a motion to approve Ordinance 2017-12-9; Mr. Minnich seconded. Mr. Horne stated again that this is wrong, and Borough Council does not need to impose this Ordinance. Motion carried, 4-2, with Mr. Klinedinst and Mr. Horne opposing.
- **Any other business to come before Council**—Mr. Klinedinst made a motion that the Borough not give Leo Fire Company any more money until financial statements have been received from them. The Borough has statutory requirements to cover the Fire Company with Worker's Compensation insurance and they were given their relief money in September. Any additional funds can be withheld; however, Mrs. Price said there is no pending distribution at this time. No funds are scheduled to be distributed for approx. three months, so within this time period the Fire Company can turn over their financial statements (or audited records) to the Borough. Mr. Horne seconded. Motion carried, with Mr. Musso opposing.
- **Adjournment**—Mrs. Barley made a motion to adjourn the meeting @ 7:30p.m. Motion carried, meeting adjourned.

Respectfully submitted by:

Stacy Myers, Recording Secretary