

**Red Lion Borough Council
Special Meeting Minutes
Monday, January 15, 2018**

Members

Tina Frutiger
Cindy Barley
Chris Minnich
Stephanie Weaver
Denny Klinedinst
Nevin Horne
Tony Musso

Others

Dianne Price, Borough Manager
Jeff Shue, Engineer
Mike Craley, Solicitor
Mayor Walt Hughes
Stacy Myers, Recording Sec'y

Visitors

Brad Smith
Kim Moyer
Lisa Zelger
Jane Alwood
Melanie Thompson
Nick Rhoads

Scott Kopp
Ron Rush
Robert Frutiger
Bill Henry
Sandra Graham

Jeff Beard
Mike Zelger
Gary LaTulippe
Kathy Horne
Scott Thompson

1. The meeting was called to order @ 6:30p.m. All present participated in the pledge to the flag.
2. **VISITORS AND PUBLIC COMMENT**—The following addressed Council regarding tonight's business:
 - Scott Thompson, from ArthurLee, LLC asked Council members, Borough Manager Dianne Price, Engineer Jeff Shue and Solicitor Mike Craley whose idea it was to knowingly commit trespassing and dump approx. 500,000# of dirt against his building at 21 West Broadway (old Zarfos Furniture building) and use his building as a retaining wall. He stated that the Borough is using eminent domain as a way to get around their guilty trespassing charges. When asked before why the Borough was using eminent domain, Mr. Thompson claims their answer was, "because we can". Mr. Thompson said nothing was ever mentioned to him about the Borough's plans before they started piling the dirt against his building.
 - Mike Zelger, 451 Highland Road, is a 4th generation Red Lion resident and a long-time business owner, Recreation Director & current Tax Collector. He had a few questions for Council on this matter:
 - Did the Borough just start bringing in dirt & dumping it against Mr. Thompson's building? *Councilman Musso said no.*
 - Was there an Engineer's plan? *Mr. Musso said absolutely.*
 - Was there a work permit? *Mr. Musso answered yes.*
 - Has the Borough admitted guilt to trespassing? *Mr. Craley stated the Borough was not found guilty of trespassing in the criminal sense; this is civil trespassing. Judge Menges said the Borough was committing a civil trespass, and ArthurLee, LLC can claim damages for the trespass, which is a separate issue. The legal counsel for the insurance company (representing the Borough in this case) suggested the Borough consider eminent domain & the determination of damages through eminent domain as a remedy rather than continuing the case ongoing with Judge Menges for determination of damages. That is what this Ordinance will do. If there are damages to the building, caused by the Borough, those are a separate issue & will be addressed. Mr. Craley went on to say the Eminent Domain Ordinance was passed at the December 27th, 2017 Meeting but was vetoed by then-Mayor Steven Kopp. At Council's Reorganization Meeting on January 2nd, 2018, Mr. Craley advised Council*

they had two options. They had to wait 10 days after the Mayor's veto, but they could override the Mayor's veto at either their regular meeting of January 8th or since there is a new Council and new Mayor, a new Ordinance could be created. At their Reorganization Meeting, Council decided to go with a new Ordinance.

- Mr. Thompson disputed Councilman Musso's answers, saying there was never any discussion about nor were they ever asked before the dirt was piled against their building. They weren't notified via telephone, letter, etc. before they brought the dirt onsite. He also disputed that there was ever any permitting or Engineer's plans. He submitted a Right-to-Know Request at the end of 2015-beginning of 2016 & he wasn't shown any permit or paperwork besides the demolition of the Moley building. There was no other construction plan; the Engineer's drawing came after the dirt was brought onsite with "Not for Construction" printed on it. Mr. Thompson also stated the March 2016 Meeting Minutes show that Mr. Craley advised Mr. Shue to not proceed any further with the parking lot construction until he (Shue) provided a detailed drawing & any problems that existed were worked out. Mr. Thompson claims that never happened either; the construction didn't stop.
- Councilman Klinedinst stated the dirt was pushed up against the building before he was told there was a structural engineer involved. That was done after the fact. He does not feel Council was properly informed of what was going on & he blames Mrs. Price & Jeff Shue.
- Councilman Horne said he's never seen the paperwork that the Borough claims to have. He does not agree with the eminent domain, nor the reason behind why Council is doing it. He feels it may be a way for the Borough to enforce their beliefs on Red Lion residents and nothing will be solved in Mr. Thompson's case. The Borough will still be liable for any damages to his building. Mr. Horne said he asked Jeff Shue before the parking lot was created whether a retaining wall should be built and was told no, it was not necessary.
- Ron Rush, 817 West Broadway, a 20-year resident of Red Lion, questioned the cost of this whole issue & what it's costing taxpayers. He's concerned that Borough business is not carried out with integrity, but it also worries him that the use of eminent domain may be used against other residents. Mr. Musso answered that the Moley building was bought for approx. \$40,000, then with the demolition & paving the parking lot, cost was approx. \$300,000, taxpayer dollars. Cost for demolition ran higher (over \$100,000) than expected due to asbestos that had to be disposed of properly. The kiosk that was installed at the parking lot doesn't generate a lot of income for the Borough, but Mr. Musso stated it's convenient for business owners and their patrons.
- Gary LaTulippe of 330 West Broadway wondered if any other business owner or visitor was present tonight to speak on behalf of the Borough or who can validate the parking lot being a good idea? No visitor spoke about this.
- Kathy Horne of 137 East Broadway asked the following questions of Council:
 - Knowing this would be the residents' concerns tonight, why weren't copies of the plans & permits brought to the meeting to be accessible? This was mentioned several times in the media (news) about the plans/permitting but no one seems to have seen it. *Anyone from the public or media can complete a Right-to-Know Request to see the paperwork pertaining to the parking lot. Mr. Musso knew of no one from the media that has asked for it.*
 - She is in favor of the parking lot for the town, but she believes the residents should've been made aware of the cost of the project, including the asbestos removal and it should've been done through the proper channels, with proper permitting, etc.
 - Did the insurance company who suggested eminent domain pay anything in the trespassing case? *Mrs. Price said they paid the legal fees. Mr. Craley clarified that the eminent domain is simply to have the legal right to have soil load surcharges against the building. The Borough is not condemning the entire Zarfos building. Jeff*

Shue said there are loads against the wall and non-destructive testing had been done. Mr. Thompson stated destructive testing was never done; it hasn't been determined what the wall is made of. Jeff Shue definitively said the wall will be okay.

- Mr. Craley explained that typically a right-of-way is thought of as a finite line across the ground. But in this case, the court stated because the dirt is right against the building, it constitutes a trespass. He read “the Borough is exercising the power of eminent domain for a right-of-way & easement to transmit soil load surcharges including, but not limited to subsurface fill, of the parking lot and improvements onto lands of ArthurLee, LLC.” If there are damages on the Zarfos building, the Borough is liable. The Borough will make an offer, based on recommendations & a determination from a “Board of View” to find the difference in value of the building before the soil loads were against it versus now. It’s not actual “damages” as in destruction. Mr. Craley stated he has a letter from Mr. Thompson’s attorney saying “he (Thompson) won’t settle for anything less than the Borough buying the Zarfos building”.
 - Sandra Graham, from ArthurLee, LLC and living at 765 Arbor Drive, stated the Zarfos building was not designed for this kind of load to be against it. If our neighbor would do the same type of thing to our property, no one would like it. Mr. Musso stated if there are damages to her building, the Borough is liable. She responded, “quite frankly, I don’t care”. She believes this is a blatant misuse of eminent domain & any Council in agreement with it, should be ashamed.
 - Mike Zelger asked if the Borough piles snow against the wall, for instance, and years down the road, the wall (of the Zarfos building) collapses, is the Borough responsible forever for that? *Jeff Shue stated that before demolition of the Moley building began, he talked with Scott Thompson (inside the Zarfos building) and discussed with him about drainage so as not to create drainage problems for Scott or the building. After demolition, a grading plan was put together, which the Borough was responsible to implement. In answer to Mr. Zelger’s question, the lot was done in a way to divert rainwater away from the building & a guardrail system was put into place so that no car load would go against the wall. Testing & engineering was done & the findings were testified in court; Jeff stated this is a static load against the wall, not a dynamic load. He feels certain the loading that wall sees now, will be the same load for years to come. In his professional opinion, a retaining wall is not needed, because they’ve shown that the wall that exists can handle the load that is there now. What is there now, is the best solution for all parties involved.*
 - Mr. Thompson asked again “whose idea it was to pile the dirt against the building?” Mr. Musso said the vote for the parking lot was unanimous; however, Mr. Thompson asked his question again. He also stated, the retaining walls at each end of the parking lot have already pushed 1 ½” and he’s certain the wall of the building will as well, over time.
 - Bill Henry asked what the cost would be, should the Borough need to “fix” the problem or remove the portion of the parking lot against the building? *Jeff Shue estimates that cost around \$130,000.*
 - After all discussion, Mr. Craley read Ordinance 2018-1-1, which the basic portion states “the Ordinance authorizes 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 the lands of ArthurLee, LLC on property located on West Broadway.”
 - Mrs. Frutiger made a motion to approve Ordinance 2018-1-1; Mr. Minnich seconded. Motion carried, with Mr. Klinedinst, Ms. Weaver & Mr. Horne opposing.
3. **OTHER BUSINESS**—
- Mr. Klinedinst asked about the banners around town, several of which are shredded from the wind & weather. Mrs. Price has one of them that was damaged; replacements will be

ordered. If replacements are needed within a year of installing, the Borough will pay for them.

- Ron Rush of 817 West Broadway mentioned the trees in his sidewalk are now pushing up the sidewalk around them. Is he responsible for this? He did not live there when the trees were planted? Council will review this issue & get back to Mr. Rush.
 - MuniBid—list of items being sold; Mr. Klinedinst still wants to see the list, however small the items.
 - Personnel issue—employee hired to replace Dave McCoy as Parking Meter Enforcement. Mr. Klinedinst said, as a member of the Administration Committee, he feels they should've been notified about this hire. A replacement for Mr. McCoy had been agreed upon at a previous Council meeting and the Borough Manager does have the authority to hire & fire employees. Mr. Klinedinst wanted notification.
4. **Adjournment**—With no further business before Council, Mrs. Barley made a motion to adjourn the meeting @ 7:30p.m. All were in favor; motion carried.

Respectfully submitted by:

Stacy Myers, Recording Secretary