



Borough of Ben Avon Heights

Tuesday, October 12, 2021 - Council Meeting Minutes

A quorum is in attendance

Present:

Council Members: Brown, Cuteri, Dawley, Mihalko, Neunder (phone), Radcliffe, Stiller

Mayor: Dismukes

Solicitor: Katie DeBeers

OTPD: Chief Hanny

Fire: Chief Berie

Secretary: DiNuzzo

Residents: Paul Blake, Ed Gould, Jennifer Gould, Joe Rittay, Larry Skerlong, Megan Thompson, Dave Prezgay, Kim Gourley

Mr. Cuteri began the meeting at 7:00 PM.

1. **Approval of August meeting minutes: A motion was made by Mr. Brown to approve the August meeting minutes. Mr. Radcliffe seconds the motion. Mr. Stiller abstains as he was not at the meeting. Motion passed.**
2. **Approval of Augusts financials: A motion was made by Mr. Brown to adopt August's financial report. Mrs. Radcliffe seconds the motion.** Mr. Brown had a few questions on the reports, one was a deposit which was from Jordan Tax for the sewage collection. Another question was on earned income tax, Mr. Brown believes it was off, Mr. Stiller confirms. Mr. Cuteri asked if Ms. DiNuzzo could look into this. Mr. Brown asked if we were going to transfer money to the reserves at the end of the year as the report shows us off. Mr. Cuteri reminded Mr. Brown we transfer the money when we need it. **Motion passed unanimously.**
3. **Police Report:** Chief Hanny reported for the month of September they had a total of 95 calls, most of them routine patrols. Fire alarm, normal residents alarm, sick racoon call and one careless driver call. This past weekend there was a resident who called to report a driver driving through Shannopin putting greens and an officer was nearby and pulled over for a DUI. Mr. Cuteri mentioned that there had been an issue with speeding at the Wilson and Penhurst intersection of the Borough, and would like to make sure police are aware of this issue. Chief Hanny stated he would make sure patrols were aware of this issue. Mr. Cuteri also added that a resident requested some children at play signs be added in the Borough and wondered if the Chief had any advice. Chief stated it all depended on where they were going to be installed, if it's at a major intersection or a state or county road, that would have to be approved by them. If it's on the Boroughs roads, he believes it's safe to install them. Mrs. Neunder asked if we still had to discuss the sidewalk demolition at the Oxford bus stop. Mr. Heyl stated that it's Liberoni's responsibility to contact the school district and bus company and he reviewed this with Liberoni. Chief did state he would like to know the outcome as the school district would know where it's safe to pick up kids and where it's not. He also stated he can have an officer present the first few days.
4. **Fire Report:** Chief Berie reported for the month of September there was one call at Shannopin for a fire in the breezeway. Chief added that there will be no Christmas Trees sales as he was unable to find a wholesaler for this year.
5. **Engineers Report:** LSSE reported that the county released the phase II consent order, LSSE reviewed this as we're well under the gold line. This month the Borough needs to consider adopting and accepting the consent order by signing it and sending it back to the health department as they would like this returned by

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the 31st. once this is signed, the Borough has 6 months to review all the finds they have and decide if we want anything to be changed. LSSE believes because we are well below the gold line, at most, the Borough may need to adopt one more ordinance but that should be it. The CCTV cleaning and work was completed. There were very little defects in the system reviewed. There's one section of pipe where two sections of the man hole need to be raised and two small spot repairs. Mr. Cuteri asked what the timeline for repair on this is. Mr. Heyl responded that it needs to be fixed in the next 7 years.

LSSE stated that after numerous phone calls and emails, and physically letters that they finally received communication back from the contractor on a schedule. They were waiting on a delivery of the cast hoods that need to be cut into the concrete for each house storm lateral. Those must be installed before they can pave. The concrete guy will be back to cut those, demolish the sidewalk on Oxford and then mil and pave. Mr. Cuteri asked about the landscape work. LSSE responded that the restoration work, all happens once the paving is done. LSSE advises the Borough hold money from them over the winter as they will have to come back in the spring and finish the landscaping. Mr. Cuteri asked if all items were to be completed on the punch list this year other than planting, Mr. Heyl confirmed. Mr. Brown raised concerns on the fact that our previous meeting LSSE reported that they received a schedule, but clearly this did not happen as we are again waiting for a schedule. Mr. Heyl responded that they did receive a schedule on September 14th which they stated they would start work October 5th. They did not show up and that's when LSSE started calling, emailing and sending letters to see why the work was not being completed. Liberoni finally responded today that they have been waiting on the hoods. Mr. Brown questioned why is there such a communication breakdown on this particular issue, because I know the residents have a problem, I know that we have a problem too; we've been talking about it every single month, right? And it just seems like is this contractor incapable of doing the job? And I ask that in all sincerity because it seems like a complete disaster. Mr. Heyl responded the primary issue is materials. They could not get the hoods. Why they didn't inform us? That I can't answer. We asked multiple times, we made multiple phone calls, emails, multiple letters. That's all we can do is ask. Notify the contractor, hey – this needs to be done, why isn't this done? Get it done. Mr. Dawley asked did we know that they were missing a hood or is that assumed, I just don't understand, that's the first time I've heard the hood part. Mr. Heyl responded that today was the first day we heard about it. The contractor did not notify us that they were waiting on those. Mr. Dawley asked how can we get better communication moving forward?

Mr. Heyl responded that he did not have an answer for you. This is just about every paving contractor out there right now is behind. Every municipality is on all of them to get work done. This specific contractor is working 7 municipalities that we engineer for and they're not done on any of them. All the other paving companies are in the same boat. We have paving contracts that should have been done months ago and they're still not done. With speaking with some of them, covid has been an issue. They are running with a crew of 2 because there are a lot of people that never came back to work this year. Mr. Dawley responded and that's all fine, just let us know. Mr. Heyl agreed. He stated that's what was getting frustrating, because they were not responded to any forms of communication. I personally left numerous voicemails and emails on top of two other workers. Mr. Dawley stated so at this point we don't really have a schedule then. Mr. Heyl responded, they told us they would have a schedule in tomorrow.

Mr. Stiller asked if this had an adverse effect with the pavers because it's a separate contact. Mr. Heyl responded Liberoni does the paving. Mr. Dismukes asked if they were doing the paving in Ben Avon. Mr. Heyl responded no. Mr. Dawley stated I have one more question about the schedule. So, the paving may take a while. Mr. Heyl responded the paving is going to be quick. Mr. Dawley responded I mean to line up the paver. Is it possible if they could backfill the trenches so it's not these big ditches on the backside of the curbs? Mr. Heyl responded they were supposed to be doing that, that's one of the things that we dinged them on is that, because why isn't this done. Mr. Dawley asked, have they done that? Mr. Heyl responded no they haven't. Mr. Dawley asked, well when can they do that? Mr. Heyl responded we don't have an answer as to why they haven't done that yet. Mr. Heyl responded, I know what they want to do, they have a process of what they want to do. This is how they do it all the time. You do all your paving, and then you backfill. Mr. Cuteri added, keep in mind, he's been calling, they're not responding – that's been the issue. Mr. Dawley responded; well, I get that. Mr. Cuteri continued, so they don't know why they're not doing it, because they won't call us back or they won't take phone calls. Hopefully we'll get some progress here. Mr. Dawley continued, if it's going to take a while, so everybody wants to get paved by the winter. So, there's going to be a backup on asphalt, just

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guessing. What's your bet? So, if we wait to asphalt before we backfill the trenches, on the backside of the curbs, that's, it would be nice to see a little activity. Mr. Heyl responded; I agree. Mr. Dawley continued, show

us some love by doing that. Mr. Heyl responded; I agree one hundred percent. Mr. Cuteri added, he can't control them. You understand, he can't control them. The contractors not responding. Mr. Dawley replied, we'll they're responding now. Mr. Cuteri responded, well yeah. And we're trying to get things done. Mr. Dawley continued and they're going to give us their version of a schedule. My question is, why can't we prioritize some things that are safety hazards?

Mr. Heyl responded that the contractor is responsible for means and methods and we cannot tell them how to do their job. Mr. Cuteri announced that he was opening up the floor for the public who may have questions on the road work. If you would like to speak, please raise your hand, state your name and address, and proceed with your question or comment.

Paul Blake 17 Stratford Road asked if a letter was going to be sent out to the residents on October 10 or October 11 which was yesterday? Is that what I understood during this conversation? Mr. Cuteri responded, no there has been no letter sent out to the residents, we've received letters from our engineering consultant that have been sent to the contractor, if we get the schedule, we will communicate that information to the residents as soon as we get a schedule. We'll do an email blast. Mr. Blake continued, okay so apparently one of the hold ups are the cutouts for these iron hoods for the drains to go into the streets? Mr. Cuteri responded its' the iron hoods that were delayed.. Mr. Blake continued and that's the materials that were delinquent? Mr. Cuteri responded, that's what they're telling us. Mr. Blake continued, and you're going to receive a contractor's schedule, tomorrow the 13th? Mr. Heyl responded, that's what they told us today. Mr. Blake responded, thank you.

Ed Gould at 13 Stratford Road stated we all know the frustration as it didn't go according to plan, but I think, I have a couple questions; number 1, are there regular project meetings? Mr. Heyl responded, not on a daily project, no. Mr. Gould responded, well this is more than a daily project. Mr. Heyl responded; this is a paving project. Mr. Gould responded, curbs? Mr. Heyl replied this is a paving project. Mr. Gould stated interesting. Okay so, how do you get minutes? Mr. Heyl questioned, minutes? Mr. Gould replied, yeah. Mr. Heyl replied, for what? Mr. Gould stated well the council just said their having trouble keeping up with things by not being informed. So how are they being informed? I mean typically it's minutes from meetings or minutes from phone calls. Mr. Heyl responded that's not typical for a paving program, typically a paving project is a 2-week project. This council has been updated on what has been getting done. Contractor hasn't been there, so we haven't had anyone there, and we haven't been able to get any answers from them on what they wanted, or why they weren't working. So, until we got that answer, there was nothing to report. Mr. Gould responded; can we agree that this is not a typical project? Mr. Heyl replied, no this is a typical project, it's an atypical way of completing it. Mr. Gould responded, okay so I know that they have a preferred order on the way they want to do things, you have at least 4 probably 5 residents that have exposed roots from plantings that the first frost you're going to lose them. And then there's going to be additional costs to have to replace those.

They're completely in violation of their contract. So, why not go to Walt's landscaping or somebody we have a relationship with and have them do landscaping while we're waiting for these hoods? It goes with Joe's comment about seeing progress, Larry's letter about safety hazards, we can get rid of all those safety hazards by doing that. Mr. Cuteri responded if you do that you remove the liability from the contractor to make sure it's done right. So, then we have to take on that liability and we pay the contractor to do that. I understand the frustration, we're like the backstop, if it doesn't work, that's why we're going to be holding money from them. If they don't repair like over the hill a few years ago, we had a landscaper come in and do the work. But we can't just arbitrarily do that, and not violate the wording in the contract. Mr. Gould then asked, is it possible then for an individual resident, have that work done and get it approved ahead of time and that way the resident will take responsibility and liability for the work done on their curb. Mr. Cuteri responded that's a legal question, counselor? Ms. DeBeers responded I guess I struggle to understand why you would want to take on that liability when the Borough has already entered into a contract for. Mr. Gould

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interrupted explain to me what the liability would be if I have a gully in the front of my yard right now, okay? Just put some rock, 10 inches down, and all I want to do is put dirt in it so then it's a safe area, where is the liability? Ms. DeBeers responded you risk that now the contractor doesn't feel they have to complete that part of the job on your property. Mr. Gould responded, that's okay with me. Because I will have completed it to my own satisfaction and I guarantee you it will be of satisfaction of the council. Ms. DeBeers responded I think that's a choice you have to make as a homeowner. The Borough can't control you. Mr. Gould responded so there's going to be an expense, will the Borough reimburse for the cost of the dirt? Mr. Cuteri responded, that's another issue.

Mr. Gould responded that's what I'm asking. Mr. Cuteri responded well no, you asked if you were allowed to do it and we said yes, we didn't say we would pay for it, we already have a contract to have it done. So, I can't answer that right now. That's something we would have to decide as a council to make that, and I'm not saying we wouldn't do it, I'm just saying I can't answer that. Mr. Gould replied, well here's the challenge, right? We're at October 12th. When's the first predicted frost? Probably before the next meeting. Mr. Cuteri responded, probably. Mr. Gould continued, and you know so, I think a decision like that would need to be made tonight. Mr. Cuteri replied, do you have an estimated cost for that work? For us to approve the number? We can't just say go spend whatever you want, we have a shared responsibility to the tax payers. Mr. Heyl added since this was a bid contract, any work that's done that's associated with this project has to be a bid project. So, at a minimum you would have to request 3 bids from 3 contractors to do the work. Mr. Brown responded; he's just doing it himself. Mr. Heyl responded it doesn't matter, it's what the law reads. Mr. Brown responded that's if we do the work, not if he does the work. Mr. Heyl responded, if he does the work and he pays for it – I did the same thing to my yard. Mr. Cuteri added he's saying there are rules you have to follow. Because it's public funds. It would depend on the amount, because of the certain amount other things kick in, so, but if everyone's doing it, you can't split up the work in the contract like that either. His individual yard might not go beyond the threshold of 10 grand, but if it did then you need, a public bid? Mr. Heyl responded 10 grand is basically a phone quote, 10 grand to 21 is 3 letter quotes anything over 21 is a full public bid.

Mr. Cuteri responded, but we can't allow every home owner to do that and then just say they're under a certain amount, right? Mr. Heyl responded right. Mr. Cuteri: so this is the dilemma we deal with. Mr. Gould responded okay so we can't do that, because of whatever. Now my hedge dies, who's responsible for replacing that if that happens. Mr. Cuteri responded if they die because they've left it open for so long, they will pay for it. We'll have to hold them responsible for it like we did the last time. We withheld money and we paid someone else if they didn't do it right. Mr. Gould responded; do we have some paving across the way to we have examples where this occurred with this contractor where they didn't do it right. Mr. Cuteri responded I don't know if it was this contractor, Liberoni has done a lot of our work. Mr. Heyl responded the last one they did they fixed sidewalks. Mr. Gould responded I'm talking about landscaping. Mr. Heyl replied and landscaping along Biddeford.

Mr. Dawley added well to that point, council why don't we put them on notice, and that might help them change their schedule around. They're going to be on notice that when this stuff dies, and they have to replant it up and down the streets, I'd like to get a letter to them from council, put them on notice under the contract, that there's a claim and then they have to respond. Mr. Cuteri replied I don't think we want to take the action and say we have a claim. It's covered in the contract. Mr. Heyl responded, it's covered in the contract. Mr. Dawley interrupted on a typical construction contract you need to put them on notice when there's a potential claim. That way they have a right to respond. Mr. Cuteri replied what is your potential claim? Mr. Dawley responded ah, the damages for landscaping. Because they're delayed. Mr. Cuteri asked, is the landscaped damaged? Mr. Dawley responded, there's going to be damage. Mr. Cuteri replied, there's going to be but it hasn't happened yet. Mr. Dawley responded; I want to send them notice. Mr. Cuteri responded, you can't send them notice, what I'm trying to say is, let me finish – Mr. Dawley interrupted I want counsel to respond, I don't want your opinion. Because that's your opinion. I want a legal say. Mr. Cuteri replied, counselor can you give him a legal opinion? Mr. Dawley continued and I want someone to look at the contract, and tell me that. Ms. DeBeers responded, okay I personally haven't reviewed this contract, I'm going to take a look and see if there's a provision calling for this type of notice, we can obviously send them a letter reiterating this provision that says that under the terms next year you're required to come back

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and complete this landscaping. From the Liberoni's perspective, they'll most likely say okay, we understand, so what? We'll do it next year. I feel like that's the response we're going to get. I don't think that's going to be satisfactory to.

Mr. Dawley attempts to interrupt, Mr. Cuteri continues excuse me, I'm talking, the letters you sent to the contractor, did you identify all these punch list items that need to be corrected? Giving the formal identification of things that have to be fixed? Mr. Heyl responded we also gave them a second notification that they've exceeded the time of the contract and they need to get us a schedule and get the work done. Mr. Cuteri responded, okay, I wanted you to hear that so you understood that there have been notices sent to the contractor. Mr. Dawley responded, okay well let's do one more. Mr. Cuteri replied, what would you like it to say? Mr. Dawley responded well I want the contract reviewed and I want to make sure they're responsible for the claims that are going to be forthcoming. Mr. Cuteri responded; no, we're not going to enter litigation over this. That's silly. We've given them notice, they have to cure, under their contract they have to cure and if they don't cure then we can take the next step. It is not appropriate to take that step now. Well, alright the attorneys will decide what we need to do legally, okay? Mr. Dawley interrupted I want to attempt to put some leverage on them so they switch their order and fill the trenches. That's what we're trying to do. Mr. Cuteri responded okay so you want to dictate means and methods? Is that what you're saying? Mr. Dawley replied no, I want to give them – Mr. Cuteri interrupted you just said that. Mr. Dawley continued; I'm giving them opportunities. Mr. Cuteri replied, you just said that. That you want to dictate, that you want to put pressure on them to do it in a different sequence. Mr. Brown stated yes. Mr. Dawley responded yes, I want to strongly suggest, yes. Mr. Cuteri continued are you qualified to make that? Alright, what do you think counsel? Ms. DeBeers responded I think we should answer some more questions here. Mr. Cuteri responded, okay who's next?

Jennifer Gould at 13 Stratford Road stated I just have one, as they were talking about the backfill, there is a big ditch around most of our yards with Halloween coming, little children running around the yards. If something would happen to one of those children, coming into our yard, because this has not been filled, who is responsible for broken ankles or whatever, like, injuries. Mr. Mihalko asked if there was any caution tape of fences up. Residents responded nothing. Ms. DeBeers added I hate to speculate who this potential parent is going to sue whether that would be the homeowner, if they would join Liberoni or the Borough into some potential litigation, again, I'm here to represent the Borough I don't want to give you legal advice as a potential homeowner. Ms. Gould responded I don't want legal advice I want to know like am I responsible for that? If it's my property? That's what I want to know. Legally. Mr. Cuteri responded, that's legal advice. Ms. DeBeers replied you're asking me for legal advice as a homeowner, I'm sorry. Mr. Gould added what's the Boroughs prospective on their liability on that? Since it's the Borough project. Mr. Cuteri asked John what does the contract have to say about construction safety? Mr. Heyl responded, they're responsible, the contractor is responsible for site safety. Mr. Cuteri then asked and we've notified him of some of these things in the past, he's done some corrective measures, but he's not been responsive in the last month, so. Mr. Radcliffe asked can we have Liberoni put up caution tape along Biddeford and Stratford, in the areas that are concerned? Mr. Heyl responded if they're going to spend time doing that, they may as well spend time filling back soil. Mr. Mihalko added I would force them to do that. Mr. Radcliffe added, they could literally put that stuff up in half an hour.

Mr. Cuteri responded I think if we send a letter saying they have an unsafe site, that's what you should do and then that puts them on notice. That's the thing to do, to say you have an unsafe site. Mr. Heyl responded yep. Mr. Cuteri continued if you could get that memo tomorrow, before you even get the schedule would be a good thing.

Ms. Gould stated that she had another question; leaf pick up, what do we do? Mr. Cuteri responded, well it's not until the 18th we're hoping it's going to be done before then. But yeah, right now it's scheduled for the 18th, is that right? Mr. Radcliffe responded yeah, it's next Monday. I would just put your leaves out on the curb like you normally do. Ms. Gould responded, well it's all rock though. Mr. Cuteri added that's going to be hard for them to pick up. Mr. Radcliffe responded actually it's not going to be hard, if you rake the leaves out to the curb and it becomes an issue, just get them out there and Mr. Cuteri interrupted well John the issue is there's a ditch before the street, Mr. Radcliffe continues obviously they can't take rock but if you've accumulated some leaves and you want to dump them in the street, I think that would work. Mr. Brown

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added they would have to be in the middle of the street. Ms. Gould added there's lots of loose rock. Mr. Stiller asked can you take it to the edge of your yard? Ms. Gould added no, because there's a big ditch. Mr. Radcliffe continued if you have a lot of leaves that you need to move this coming Monday, Walt's traditionally has asked that the leaves not be put in the street; if they're loose leaves, and they're left behind your new curbing I don't think that will be an issue.

Mr. Cuteri responded yeah it will be because he uses rakes to rake it into the leaf blower, they can't currently rake from the yard because of the curb and the ditch. So, they're not really going to be able to do leaf pick up and the residents aren't going to really be able to get the leaves into the street unless they lift and throw them into the street and then they're in the street. We're going to have to do something different. Either delay leaf pick-up or something else. I think for those two streets anyways, they're not going to be able to do them. Mr. Mihalko asked can't we just delay the leaf pick up and add it to the end of the year? Mr. Radcliffe responded, no. I think what we need to do is, if there's an issue, delay their leaf pick up on Biddeford and Stratford. You know what I'll do, I'll walk Biddeford and Stratford with Walt and get his recommendation and if he sees this as a no go, we'll come up with some other solution and if we can come to some sort of middle ground maybe we can get this taken care of. The fortunate thing is, traditionally the first leaf pick up is minimal at best for most people. So, it may not be an issue this week or the coming week. Mr. Cuteri replied well I think the big thing is, is that he has the snorkel, but if he can move it outside and get it on the yard, then they might just be able to have it on the yard and rake it in. Mr. Radcliffe continued, I'll reach out to Walt and we'll look at your properties and, Ms. Gould added you'll get back to us? Mr. Radcliffe responded, yeah.

Ms. Gould stated we still don't know if something happens to a child whose responsibility that's going to be? From my two questions. Mr. Radcliffe replied yeah, I've taken care of the leaves, Mr. Cuteri added I think we were clear who's responsible for the construction site safety and we're sending them a notice. Ms. Gould responded, okay. Mr. Cuteri added you heard that right? Ms. Gould responded, okay. Mr. Radcliffe asked now just as a question, on your streets, do you have large amounts of leaves that will be going to the street if things were normal? Mr. Rattay stated that he has red oaks that come August, so yeah. But I've seen Walt before, what they normally do is, they have rakes and I'll see occasions where what they'll do is, you can put your leaves where the gravel is by the new curbs, but they'll take the rakes and they'll only move it to the middle of the road instead of going down both sides, and they'll rake it to the middle and that what they can suck it up without sucking up the stones. Mr. Radcliffe responded, okay. Mr. Rittay continued I've seen them do that on other occasions when there were other issues. Mr. Radcliffe responded okay, well, we'll get Walt's thoughts by Thursday the latest and we'll get back in touch with you guys and we'll try and figure something out.

Joe Rittay at 9 Biddeford my other two questions, he had mentioned, jogged my memory about the exceeding the contract, was there a penalty put into the contract? Like if you exceed by 3 weeks, it's 10 percent, 20 percent for 2 months, do you put anything in like that? Mr. Heyl responded, there is a penalty clause in the contract. Mr. Rittay asked, and what is that? Mr. Heyl responded, it's 500 dollars a day. Mr. Rittay responded, wow, so they were supposed to be done in June. Mr. Heyl responded, July. Mr. Rittay asked, are you going to enforce that? Mr. Cuteri responded that will be a decision made by council under legal advice. Mr. Heyl added because there will be a lot of legal aspects to that. Mr. Rittay responded it's pretty black and white in a contract. Mr. Cuteri added it depends on what causes the delay, there are a lot of reasons things happen so we'd have to review to see if we're in the right before we start such an action. Mr. Rattay continued the other thing is, I can see where this is going, normally I wouldn't be concerned but I was kind of hoping as he mentioned to have them backfill the dirt first because, from my particular driveway they had to take a larger section and so they took like an extra 5 feet and it's filled with gravel. Based on the past performance I wouldn't put it past them to put the gravel behind the curbs instead of dirt and then put the dirt maybe an inch on top of the gravel I just want to make sure that the gravel isn't used as the backfill so that the grass won't grow, and the roots won't grow as a quick way to get rid of the gravel that's already there. Mr. Mihalko added there's actually evidence of that where they backfilled with gravel behind those curbs.

Mr. Radcliffe added, actually they haven't backfilled, that was just the outfall from the construction of the curb. So, their condition on Devon is no different than the conditions on Stratford or Biddeford. Mr.

Gould stated it's significantly different from the top of the curb to where the gravel presently is, is approximately that much; Devon, the difference is about that much. Mr. Radcliffe responded, right, they didn't excavate as deeply as they did over on your street. Mr. Gould then asked if they put dirt on that amount, Joe's point is, there won't be enough dirt. Mr. Cuteri added yes, you need 6 to 8 inches. Do we have a minimum total thickness in the? Mr. Heyl replied 4 to 6 inches. Mr. Cuteri continued, so they have to do that under their maintenance bond, if not they have to come back and do it. Because we do have a maintenance bond. We do have a maintenance bond in this one, right? Because we do have one in the last one. Okay. Mr. Dawley stated just to follow up on that data point, if that's the case on Devon, what to stop them from just throwing dirt 2 inches, how to we manage the contractor? Mr. Heyl responded that's part of the contract, if it's less than 2 inches, they don't get paid. Mr. Dawley responded, wait, say that again? Mr. Heyl responded if it's less than what's specified, they don't get paid. It's not hard to confirm. Mr. Stiller added are you saying how to do police that? Is that kind of while the work is being done? Isn't LSSE on site? Mr. Heyl responded; we have someone on site.

Mr. Radcliffe asked for these divots behind these curbs that are 18 inches deep, are they going to put 18 inches of top soil? Mr. Heyl responded, no. there has to be some stones behind these curbs. Mr. Radcliffe replied okay so they're going to put stone in up to – Mr. Heyl added up to about 6 inches give or take. Mr. Radcliffe continued, okay so.

Larry Skerlong 1 Stratford stated did I understand that you are going to contact them about putting up some type of safety barrier? Mr. Heyl replied we're going to put them on notice tomorrow. Mr. Skerlong added right now there's only one house that has that, and all the rest have stone. Mr. Heyl added we're going to inform them it's a safety issue, and with Halloween coming, they either need to put barricades up along everything or it needs to be backfilled. It's one or the other. Mr. Brown asked just a point of clarification, did the residents ask to put that barrier up or did the contractor put that barrier up. That yellow or orange. Mr. Skerlong responded they put them up in front of the Cuneo's old house and they just never took them down. Mr. Brown responded okay, so they put them everywhere else, okay. Mr. Skerlong added and there are places, like in my yard I have 200 and 40 feet of curb. With a ditch that's like this deep. Which doesn't give much access to the yard or anything without going into the ditch.

Mr. Cuteri asked are there any other questions or comments from the public? Mr. Skerlong stated I guess the only other thing is could somebody let us know? What the schedule is, just send out an email or something. Mr. Cuteri responded yeah if we get this schedule tomorrow, we will let everyone know. As soon as we know what they're telling us, we'll tell you guys. I'm sorry you wanted to speak? Ms. Thompson from 15 Penhurst stated that she didn't have anything about the paving project so if anyone still wants to talk about the paving project feel free. Mr. Brown responded; we haven't started normal public comment yet. Mr. Cuteri added this is still part of the engineering report, we allowed public comments because it was such a big issue. Is there any other? Yes, Paul. Mr. Blake stated in the contract, was there a change order provision? Ms. DeBeers responded; I haven't seen the contract. John? Mr. Heyl replied yes. Ms. DeBeers continued I'm just filling in for tonight, I'm sorry. Mr. Heyl continued, there is a change order provision in the contract. It depends, whatever items, if the Borough decides to add something, a change order gets prepared. If there's something that happened, an unknown circumstance comes into effect, there's a process of a change order to get prepared. Mr. Blake then asked, what individual here on council, Paul Blake, 17 Stratford, how you doing tonight Al? Great selection of curbs I might add. Anyway, my question is, who here on council will sign off on this at the end of the day? That everything's done. Mr. Cuteri replied no council doesn't sign off on this, the engineer does and recommends final payment when they're due. Mr. Blake responded, okay, thank you. Mr. Cuteri: any other questions on the road? Okay we're going to close discussion on the road and continue on with the rest of the meeting.

- 6. Public Comment:** Megan Thompson at 15 Penhurst stated I just want to address that I was the resident that sent that email and also called the police on the car that flew through the stop sign at Penhurst and Wilson and that's not the first. I actually saw a white car fly through the stop sign tonight on my way here, I was unable to get the license plate. But the speeding on Wilson coming off of Newgate is getting really bad and there are, alone at that bus stop, which means that's only accounting for kids k-6, there are 16 children and those children all have siblings, so you're talking about 20 plus kids under the age of 6th grade that are using those streets with no sidewalks, and the speeding, I understand that the posted speed limit sign is 15 or 25

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but, you cannot safely go around those curbs at 25; and the Pennsylvania code provides that, according to section 3361, that if you cannot safely navigate that Boroughs do not have to stick to a 25 mile per hour speed limit. So, I would ask council to consider, one lowering the speed limit on Wilson from Perrysville to Newgate to 15. And to two consider other speed mitigation. Pennsylvania actually puts out a great report called the Pennsylvania traffic calming report. It has a lot of suggestions in it. I'm just concerned that some child or adult that's running or walking is going to get hit by a car. And I'm not waiting for that to happen. So, I'm putting it on record, that this is my concern. This is the second time I've been to council, I've been to council a few years back, to make this concern noted as well. So, I just want to ask council to consider lowering the speed limit, and outing up signage, speed mitigation, and I just don't think that having Ohio Township monitor it, is a consistent enough speed reduction measure on Wilson.

Mr. Cuteri responded on the speed limit I don't think we're legally allowed to lower it to 15. Ms. Thompson responded you actually are Mr. Cuteri interrupted, I'm asking my solicitor, I'm sorry. Ms. DeBeers responded Hi, is the section you have in the Borough code? Ms. Thompson responded um no, this is the Pennsylvania section on speed limit. Ms. DeBeers responded; can I take a look? Ms. Thompson responded, sure, absolutely. So, 3362 provides that 25 in a residential and then 3361 provides, is says, um accept when a special hazard exists are required to lower speed limit for compliance with section 3361. And so, you are actually allowed to that same point, the road to Shannopin is 15, so somehow, they got to a place where we could make the road to Shannopin 15. I'm not sure why we can't get to a place where we can make Wilson a 15. Mr. Cuteri asked, is it 15 going to Shannopin? Ms. DiNuzzo added it is. I thought Chief Hanny stated we couldn't lower it to 15 if we wanted to issue speeding citations. Mr. Cuteri added unless you're in a school zone. Chief was here earlier, we brought it up again with him about the Wilson issue. But there are traffic studies we've done on Wilson before. We'll certainly, one year we did the center striping and that seemed to slow people down because it was much narrower. We can do signage; we can put signage up. Was it primarily people speeding? Coming out of Newgate going down Wilson? Ms. Thompson responded I mean it's Wilson and they just fly up the stop sign through Penhurst. I mean I can't tell you how many times that there's been like kids on the road and I'm screaming at my kids all the way down the road saying stop at the stop sign, stop at the stop sign, you cannot trust the people coming down Wilson to stop at the stop sign.

And I understand and I've done some research on speed humps, and you can't have speed humps within so many feet of a stop sign. But what about a raised walkway at the stop sign? Where it would make people stop at that stop sign. You could have a raised sidewalk or rumble strips; we need to do something about it because it's going to be on the Boroughs hands if a child gets hit. Mr. Radcliffe responded, now Megan on of the things we're actually discussing right now based on your concerns and Dave's concerns, Ms. Thompson interrupted I'm sorry but a child at play sign is not going to make it stop. Mr. Radcliffe responded no no no, I'm just saying, I didn't refer to that. Okay, one of the things that we're in the process of doing and we're drafting a letter right now. The property at 3 Penhurst, has a hedge that blocks visibility from Wilson to Penhurst. It makes it very difficult for people on Penhurst to see what's coming down Wilson and vice versa. So, one of the things we are going to do is recommend that that hedge be removed so greater visibility is created. Ms. Thompson responded, I appreciate that, but it's not visibility, they should be stopping at that stop sign, right? Mr. Radcliffe responded, I agree but Ms. Thompson interrupted and everybody that's coming to that stop sign lives on Newgate, and knows that there's a stop sign there. Mr. Radcliffe responded no; I agree. Ms. Thompson continued, so like something else has to be done.

Mr. Cuteri replied well we will do other things but we can't control what people do as drivers, right? You understand that? Somebodies going to run a stop sign, are we going to stand out there with a gun to stop them? Ms. Thompson responded and I'm asking you to implement Mr. Cuteri responded we will. We will. We're saying we're going to do that; you've brought this to our attention, and we will do that. We'll take some measures to get more reinforcement there, to do some traffic calming, we'll do it. Ms. Thompson responded I'm not willing to take any of those kids lives and, if that's what it comes down to. Mr. Cuteri responded nobody is. Ms. Thompson then asked I guess my question is why can't we, I understand that you couldn't give a ticket out for somebody speeding but you cannot navigate the curb at 25 miles per hour. Mr. Cuteri responded we're explaining the advice that we've gotten from police, it's not that that's the reason. I mean if we can make it 15 and then we can't enforce speed laws then how do we disincentive people from running stop signs? That's a concern. I agree with you, there's other things we can do to try and navigate this

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or get these people to slow down. Part of it is getting them ticketed, getting them cited but, there are physical things we could do to help slow down but, you know as well as I do, if someone's going to run a stop sign, they're going to run it. Unless you put a toll gate in or something, I mean right? You act like it's our fault that they're running the stop sign and that's not appropriate.

Mr. Dawley added let's not get argumentative. I think we should evaluate some options, Megan's given us some options, rumble strips, raised sidewalks. Ms. Thompson added I don't come up here empty handed, I'm not asking you to like, I'm coming with proposed solutions. Mr. Cuteri responded and I'm saying we will do some of those, I agree with you 100 percent. But I don't like being told that well, if someone gets hurt it's our fault. Because that's not correct. That's not realistic, it's the drivers fault. Mr. Stiller asked, can we ask Chief Hanny next meeting we have, you know besides the normal measures of them trying to beef up patrols and things like that but if there are suggestions he can give. Mr. Cuteri replied well, we should reach out to him now and get those going. I don't think we should wait until the next meeting. Mr. Stiller continued what he would recommend, or what would the police recommend for other measures to try and reduce the speed in that specific area. Ms. Thompson responded, I appreciate that. Thank you. Um, just another example coming around the curb, Mrs. Neunder added can we specifically ask chief Hanny in that memo about doing the striping or more crosswalks? Mr. Stiller responded; we didn't ask specifically but we'll ask him for recommendations other than beefing up patrols. Mr. Cuteri added, yeah what physical things we can do to help slow people down. Ms. Thompson continued; can I just give one example? 25 coming off of Perrysville, if you take that by 1 Wilson, if you take that at 25 miles per hour, it's pretty fast. And a fed ex truck jumped the curb while kids were waiting for the bus stop, and the response from the fed ex truck was well I was going 25. It's just not safe, per the code, you can lower the speed limit if it's not safe to drive or navigate those obstacles at that speed.

Dave Prezgay at 1 Penhurst stated that I've witnessed it. So, two times, a car coming down you know John and I have spoken, they had to be going 50 miles per hour. I was probably 30 feet away from that stop sign with both my kids in white, one time was broad daylight, one time was about 10:30 at night. I mean I heard the acceleration of the car coming. That's how I knew it was coming, and my son is on a bike, 8 years old and the car came so fast, through the stop sign. Blew the stop sign at Perrysville and 3 stop signs in a row. I could call the police but, you can't never see a license plate because they're going to fast, so, we never get the full license plate. And again, if you know, a kid gets hit right? It's not just my son that maybe gets hit, it's the suspected you know, 18-year-old girl who I think it was who just graduated high school who is now you know, going to get herself into some trouble. And it's just, you know it's beyond, we need something done, alright. And I mean, you know, I don't know if my suggestion is the light up stop sign or you know it has to be more than a police presence. Because they'll come, and they're great when you talk to them but, they can't sit there all the time, you just can't. Mr. Cuteri responded, I know, I'm not disagreeing with you. Mr. Prezgay continued, I witnessed, I've never called the police in my entire life except for those two times, you know the, I couldn't even sleep at night from what I witnessed, that a car could go that fast in that area, it blew through. So, like, even if we did lower the speed limit, I'm guessing they can still get a ticket for going through the stop sign, right?

Mr. Cuteri responded my concern is if you can't ticket them for speeding then you lose one of your disincentives. Mr. Prezgay then asked, is there a number? Like how many tickets have ever been given on our street? I'm guessing not a lot. Mr. Cuteri responded it's usually at the sections at the top of the hill. Not the back areas. Mr. Prezgay continued our streets in general I can't imagine there are many tickets given out because it's not being witnessed so, I mean is there a camera thing? I don't know. But between a camera, a stop light, there is a hump there, I'm guessing that would do the job, um. Ms. Thompson added or we could reduce it to 15 and I understand you can't give out tickets but you can put that like you're going, Speed limit is, you're going. Mr. Cuteri: we've done that too. Ms. Thompson continued and when that light is showing like 30 and you're like ugh the speed limit is 15, I understand that that's not like a legal measure but, I'm not concerned about giving these people speeding tickets. I'm concerned about my kids not getting hurt. Mr. Cuteri responded I'm concerned about stopping them from speeding, that's what we want to do right? We want to stop these offenders. I agree the speed sign thing is good, we did that actually on Canterbury a few years ago to slow people down, we put up a sign that reads their speed and gives you the big digits. So that's one thing we could start doing too and the other thing that's helpful for, if you see, if someone is around you

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and you see them speeding and you see the number you know exactly how fast they were going. That's helpful too. But again, we have to work it from both ends. Things we're going to do are going to help, they're not going to solve the problem is all I'm trying to say. People need to report them, and you've done that, and that's important. We'll do everything we can to make it better.

Mr. Stiller asked when we did Canterbury did, they put lines down? Mr. Cuteri responded I think we did that too; we did a center line as a slowing measure. Because you feel like the lanes are narrower. And we did that on Wilson. Mr. Stiller responded wasn't there also data, a data box, recording data to see how fast everyone was going and things like that. Just to put some numbers behind it. Mr. Mihalko spoke up, can I ask a question. There's a lot of talk here in reference to you know, areas we're kind of concerned with. Obviously if it's a bus stop and it's the park, there's a crosswalk to the park, and we have all that traffic from people walking from all different directions to the park, why can't that stretch from Penhurst to Perrysville to where the park is where the stop sign is. Make those 15 miles per hour, why can't we do that? They're certainly not going to be able to tag them there anyway. Mr. Brown added in my opinion if you lower it to 15, they're going to ignore it anyway. They're going 50. What's that going to do? Ms. Thompson replied I mean if you lower it to 15 and you put up a sign that has the digital box, because I mean if you put up a sign with the digital box at 25, you can't go around that curve at Wilson at 25 without hitting the curb. So, you're not going to register, like oh I'm going fast.

Mr. Brown responded let's ask the Chief but, quite honestly, the only way you're going to stop someone is to hurt the car, okay. And that's a speed bump, or something like that, that's going to do damage to the car and they're going to do. Mr. Prezgay added something raised, right? Mr. Brown continued so let's ask the Chief, let's figure. Mr. Stiller added there's a lot involved in putting speed humps in. there's a lot that goes into it. Mr. Brown added and I would hate to like stop that street because then they're going to go someplace else and they're going to speed someplace else, right? We've got to figure it out the right way. Okay, anymore public comment?

Kim Gourley at 8 Lynton Lane came to council to state that she would like to start a compost recycling program in the Borough. I have found a vendor that would do a weekly curbside pickup of compostable materials. It would be on a sign-up basis by community members. We would need a minimum of 10 households within the Borough to sign up with interest to do the program. We have pricing, there are service options, kind of pick and choose what fits your family and your lifestyle if you will. And we have a website and whatnot to go and register. My question is if we could consider publicizing this on the Borough website and the FaceBook page and sharing the flyer that I created at home to inform people of the information, share the details they can go on and look it up for themselves, decide if they want to participate and go from there. Mr. Mihalko asked you said there's a cost to this? Ms. Gourley responded yeah for the, if you sign up, I signed up, 22 dollars every 4 weeks. They pick up every Thursday is the locked in day at your curb or you can sign up for an annual program 264 dollars for a year and you have a choice of buying a 5-gallon sized bucket with compostable liners that come with it for 15 dollars. But they will also accept if you want to use your own bucket. You can take your own bucket to the curb as long as you sign up for the service. Mr. Mihalko asked so it has to be the specific size of the 5-gallon bucket, right? Mr. Gourley replied they do offer a program that's a 2 bucket pick up it cost slightly more, again it kind of depends on how people get used to composting for a lot of folks it's something new, there is information on what is compostable and they will also give you feedback as you go along the way, there's items on there that you're putting in there that shouldn't be put in there you'll get some feedback along the way. Mr. Mihalko asked is there a website that we could go to? Ms. Gourley responded, there is I have a handout I can give you. I'll hand them out and pass them down. Mr. Cuteri responded I mean I don't think this is anything we, I think it's fine. Ms. Gourley continued waste wranglers' partners with act recycle to do the composting with the materials they collect. Mr. Stiller asked is your request to have council help promote this to residents? Is that? Ms. Gourley responded I guess am I allowed to use, have it put on the website and use the FaceBook page as well as am I allowed to go to the bus stop and share with neighbors and friends?

Mr. Cuteri: there's nothing wrong with that, that's fine, I don't think you need our approval, I appreciate you coming to us, it's an interesting program, that's a service people would buy into anyways, so, I think it's a good idea. I mean we could, what could we do? Mr. Brown responded send an email blast. Mr.

Cuteri continued we could send an email with the info, put it on the website and go from there. Ms. Gourley replied I will connect with you Jessica. Mr. Cuteri responded, alright thank you.

Ms. Thompson also asked where do we stand on zoning? Mr. Cuteri responded, it's my fault I have not been able to get on it. I've asked HRG for a draft of all the comments and then we're going to go through it and I personally have not had time to do it. I've reached out to her a couple of times and I'm going to try and call her tomorrow. I haven't heard back from her. Mr. Thompson then asked is it also public on how much we've paid HRG to do that? Because I thought that they've done a pretty poor job on the first draft of that. Mr. Cuteri responded I wouldn't characterize it like that, we edited a lot of the first draft of that, so perhaps we did a pretty poor job. Mr. Stiller added I think that's why we see a lot of holes too though, in different things is because of the editing that was going on, so it doesn't come together as much. Ms. Thompson responded when you're paying professional services no matter how much you're editing it, they should be going back and checking definitions and checking cross references in sections and making sure things like that work. I mean, just being in a professional service industry and I felt that it was a poor presentation of a professional service. Mr. Cuteri responded, okay well I appreciate that comment.

- 7. Annual Budget meeting:** The 2022 budget meeting is set for October 21, 2021 from 7-8pm at Shannopin country club. Mr. Dawley asked if this was the working meeting for the budget. Mr. Cuteri reminded council this is the working meeting where we set numbers at a public meeting. These will be voted on and adopted at the next council meeting.
- 8. Consent Decree: A motion was made by Mr. Stiller the approve the resolution to approve authorization for council to execute the Consent Decree. Mr. Brown seconds the motion.** Mr. Stiller just wanted to note that after attending some wet weather meetings, we one of 10 Boroughs that are in a blue category as we are well below the line. Mr. Cuteri added for the public attending that the government has put in place rules and regulations in which the Borough as been following while many municipalities have not, which has cost the Borough a lot of money. With this we're actually in a great potion as we're well below what they call the gold line. **Motion passed unanimously.**
- 9. Vote on Shannopin Developers agreement: A motion was made to adopt the developer's agreement my Mr. Radcliffe. Mr. Brown seconds the motion. Motion passed unanimously.**
- 10. Children at play signage request:** Mr. Hickman requested the Borough put up some children at play signs over by Oxford and Biddeford and throughout the Borough where need be. Mr. Radcliffe did inform council that two signs were put up this year over by Newgate. Mr. Cuteri requested that streets could possibly reach out to Mr. Hickman to see where these signs could go up. Mr. Stiller added that there are 2 no parking signs that need to be put up on New Brighton. Mr. Cuteri reminded council they cannot go up on state roads without State approval. Mrs. Neunder asked if there are concerns about slowing down traffic on non-state roads, do we have the right to put in stop signs at the intersections?
- 11. Greenspaces:** Mr. Radcliffe updated council items in greenspaces. Leaf pick-up starts next Monday and will run through December 6th. The fencing that was to replace along New Brighton is in. There is a major blind spot at Penhurst and Wilson there's a huge hedge that's blocking peoples view, Mr. Radcliffe would like that hedge completely removed. Mr. Dismukes reminded Mr. Radcliffe there is an ordinance both the resident and council need to follow. There was a washout over on Cambridge this summer after all the heavy rains. To fix this area, it will be 950 dollars. This is to prevent the road from slipping. **A motion was made to approve the 950 dollars to fix the slip down near Cambridge by Mr. Radcliffe. Mr. Dawley seconds the motion. Motion passed unanimously.**
- 12. Planning Commission Hearing:** Mr. Cuteri informed council that we're going to schedule another meeting soon, he needs to reach out to HRG and discuss the next steps.
- 13. Halloween:** Brough agreed trick or treating will be on Halloween night, October 31st, 2021 from 6-8pm. A make-up day will be November 1st from 6-8pm if there is a weather emergency.
- 14. Executive session:** started at 8:50 pm

Meeting resumed at 8:56 pm

Meeting ended at 8:57 pm

The next scheduled meeting is November 9th, 2021 at 7:00 pm at Avalon Volunteer Fire Department

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Jessica DiNuzzo, Secretary