

## MINUTES FOR SPECIAL MEETING OF NESQUEHONING BOROUGH COUNCIL

Thursday September 18, 2008 at 6:00p.m., Borough Office  
114 W. Catawissa Street, Nesquehoning, PA 18240

**ROLL CALL:** COUNCILMEN DiMICELI, HAWK, JACOBS, SNISCAK JR., STROMELO;  
COUNCILWOMAN WALCK; PRESIDENT DeMARCO; MAYOR WALCK;  
SOLICITOR YURCHAK; ENGINEER TIRPAK; ZONING OFFICER  
KENNEDY; & HOUSING AND CODE ENFORCEMENT OFFICER BLISARD

President DeMarco called the meeting to order at 6:00 p.m.

Solicitor Yurchak arrived late.

Carl Faust, BCO, was also in attendance.

**PURPOSE:** Meeting for General Purposes

Councilman DiMiceli stated about the aerial going for the annual maintenance. He stated how it was in the budget for 2008.

➤ Street Light Presentation

Tim Moran, the corporate liaison from Municipal Energy Managers, thanked Council for the opportunity to be there and allowing them to look at their street lights. He introduced Daryl Peck, who was with Concord Public Finance and Bob Kearns, who was with Municipal Energy Managers.

Mr. Moran – They wanted to educate Council as to what they do and how it came to be that they were there that evening. Municipal Energy Managers was a full service consulting firm. Discussing the Borough's numbers and projects, they were consultants not sales people. There was a big difference; they were not selling anything. What they were doing was educating Council on the process they have created to guarantee financial savings pertaining to the street lights in the addition of upgrading the system for the entire municipality. The utility that they were currently on was an all encompassing rate (SHS). The SHS rate includes things like operations and maintenance, transmission, distribution and a couple of different codes that all make up the bill. The bill that they received on a monthly basis was extremely high. Over the course of the last four years, PPL has had rate increases as recent as January 2008 of 17.7% – and the years prior to that, there was a 9%, a 5% and a 4%. Those rates have compounded off of one another. The one thing he wanted to touch on those rates was that they were not on energy; they were on distribution of energy. That was a big thing to understand as they get into it. That was how the energy was coming there from the utility. Those rates are all part of what was now happening with the deregulation. With deregulation, the caps come off in October of 2009. The bear minimum of 35% was what they were looking at as PPL customers for the next rate increase based upon the current rate. If they have a 35% increase on \$71,000 - \$72,000, which was what the Borough currently pays for just the street lights, it was a lot of money. So what they propose to do is take the Borough's street lights and buy them back from the utility.

Mr. Moran – How to buy them back from the utility and why the Borough would buy them back from the utility was what they would discuss next. The current SHS rate was one rate and then there was a rate for energy only. In order to get to energy only, the Borough has to buy back their street lights from the utility or the Borough has to replace and upgrade the entire system, which would come up to a dollar amount too high for them to discuss.

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Mr. Moran – Private ownership, moving their brackets within the secondary high voltage line, allows the municipality to no longer require a high voltage lineman. Currently, the Borough needs a high voltage lineman for anything pertaining to the street lights. So, bringing the Borough down to the energy only rate reduces their bill approximately 70%. When they just pay the utility for energy, municipal energy managers upgrades the entire system; group revamping 25% every year so that every four years the Borough would have a brand new system. Any old materials, which could no longer be used, would be replaced. The bulb, the balance, the photo cell, the head, the armature would be completely upgraded so the Borough's system would be a bonded, fused system. If Jane Doe would hit the pole, it would be one light out opposed to a string of lights out. In the meantime, the Borough would be paying an energy only rate for the energy supplying the lights. On top of all those things, it was a guarantee performance contract.

Mr. Moran – Guarantee performance contract means that they guarantee the Borough, over the course of a 20 year contract, will save "X" amount of dollars. They will discuss those dollars that evening. That guarantee mandates them to meet certain criteria. They do not have one client, who they currently represent, and they represent every large municipality in Northeastern PA as well as many other small municipalities, such as Nesquehoning. There was not one client that they represent who does not save what they say they will save; they save more. They were not talking small dollars; they were talking thousands upon thousands or hundreds of thousands of dollars. Avoided cost was something that some people do not deal with or see very often. As part of the contract and as part of what they do, the Borough would be avoiding 70% or 2/3 of future rate increases. So the 35% rate increase that they talk about, the Borough would avoid 70% of that rate increase, because the energy only rate that they will get them down to was \$19,000. The Borough currently pays \$70,000. The difference between the two was cost avoidance and savings. Now, \$19,000 being the energy and they would add their operations and maintenance on top of it, which was a fixed flat rate, never changes throughout the 20 years of the contract and add the debt service on top of it. The Borough has the debt service, what it cost to buy back the street lights from the utility; the operation of maintenance, which was what municipal energy managers does, revamping 25% every year, upgrade the system, guarantee the contract, guarantee the savings; and the energy, which gets paid to the utility; as opposed to the one check that they have right now to PPL for \$70,000. These three do not equal that one; therefore, they have a difference and they have savings. Cost avoidance was simply a 35% rate increase on \$70,000 or 35% rate increase on \$19,000, which was a huge difference. That was cost avoidance. That was avoiding 75% of future rate increases.

Mr. Moran – When they talk about cost avoidance, they have to mention and understand and people get concerned about hearing that it was a 20 year contract and they never change the operation of maintenance; how do they make money. They make money by simply being how they came about that night. Tamaqua, they just closed. A Council Member heard about their system, was referred to and now they were in a municipality right next door. In addition, they upgrade the Borough's system where years 15-20 outside of a service call, an emergency or a knock down, the Borough's system was upgraded to the point where they were not going to see them as much as they would see them in the first several years. They also make money by saying "hey, can you guys talk to so-an-so"? They have guaranteed the Borough's money. They have provided the borough with better service. Can the Borough talk to someone in Jim Thorpe? That was how they made their money just to avoid the full concept of being some sort of scam.

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Mr. Moran – They currently represent every large municipality and they do provide a list of references for everybody and anybody to check upon; how they do things; why they do things. Allentown, Scranton, Wilkes-Barre, Hazleton, Bethlehem, Bethlehem Township; the geographic area was part of the reason they were there. If they have service trucks in the area, why was it that they would not provide the same opportunity to the municipality next door? Nobody ever focuses on the little guy. Everything was going to the bigger cities for their crime. They could not turn on the radio or the television without hearing about energy.

Mr. Moran – (analogy) If he would own a Sunoco and Councilman DiMiceli owns a Sunoco across the street. He pulls into Nesquehoning and gets gas at \$3.60 there and it was \$1.00 across the street. He sees people checking tires, windshields, full service pumping the gas. They would have to wonder how they were able to do it across the street. The Borough was paying \$70,000 and PPL has not revamped the lights because they do not have a service department. It takes 4-5 weeks for them to come and change the light that was out because they do not have a service department. That was what they do that was what they specialize in and that was what they focus on. Getting the Borough the quality of service that they deserve at a rate that was 70% less and it was guaranteed. Sounds too good to be true? If it was too good to be true, more than likely it probably was. That was not the case and for the reason because they were not selling them anything. They were providing the Borough and giving the Borough the recommendation guarantee because of their expertise in that field.

Mr. Moran – He was going to touch on the numbers quickly. The Borough was currently \$70,478. They passed out business cards and paperwork for the Council members to look at. Councilman Jacobs asked if the Borough was buying the light. Mr. Moran stated how the Borough was buying the armature and the head. Councilman Jacobs asked if responsibility for the pole was still PPL. Mr. Moran stated “yes”. Councilman Jacobs asked if the pole gets knocked down, they will still need them. He stated how all they were paying PPL for was the power. Mr. Moran stated how they would be paying for the energy and how the Borough would still be a customer and a client. Councilman DiMiceli stated about Mr. Moran explaining what happens when a pole gets taken down from an accident.

Bob Kearns – The Borough was in a territory monopoly and the way utilities work for a territory monopoly was if there was energy that touches it, it was the same. They were responsible to make safe the area. If a pole would get knocked down; if there was a fire in the building; if there was an accident on the corner, the utility was still the same. 9-1-1 does not change, the emergency services response was part of the territory monopoly requirement. They will come out and make safe the area. If they would have to cut service off there for a house that was on fire two doors down, that was what they would do. If they have to drop a circuit for lights that were down or re-feed a configuration, they will do it. If it abandons the street light on the other side, which was something that they would get an electronic report that would say about an accident on such-and-such, which was the call they have contracts with Hinkle & McCoy, PPL and large contractors. Their response time would be the same as what was required by the PUC. They do not do anything different. Councilman DiMiceli asked if a pole gets taken down, the billing for the pole and who would be responsible for it?

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Mr. Kearns – They have different groups (hit and run and insurance claims). In an insurance claim, they process everything. On a hit and run, they replace everything that was required and then they hold the balance. They will do it so the Borough was not looking for the work. They will hold that balance against cost savings that the Borough had incurred. There was a restricted account that they will set up to do that, so the Borough will have the funds and will be able to do it. It was a performance contract, which means if he was upside down at any given time in the contract, which means if somebody comes through and takes six poles out; they would do whatever was necessary to restore the system and then hold that balance until the Borough would have enough cost savings to process it theoretically into the 21<sup>st</sup> year when the debt service was paid off. So, it will not create a burden on the Borough. Councilman DiMiceli stated how there would be no out of pocket money. Mr. Kearns – When the Borough receives the check, they process the insurance payment. They would contact the Borough with a claim number, process the insurance and when the insurance check comes in, it will come to the Borough. They will bill the Borough after the funds have been received by the Borough from the insurance company. Mr. Moran stated how Daryl Peck was going to touch base on the numbers that were listed on the paper which were presented to the Council members.

Daryl Peck from Concord Public Finance – They service general financial buys to municipalities. This would be a more specialized project but one of the important components was for the Borough to acquire the system. The Borough does not have the cash in the bank to do it the way that it was structured. The Borough would purchase it through financing and repay it over 20 years. It was all structured in with the savings that Mr. Moran referred to. One of the components was the debt service payment. If the Borough would think about what they had, they have a long term, never ending lease with PPL. In that PPL bill, there was an energy charge and a capital charge, which gets paid over and over. The Borough will pay for the system 3-4 times, whereas, once they acquire it and pay the debt off in 20 years, the Borough will not have any more capital charges. The third component would be the operations and maintenance. Another key thing to keep in mind was about rate increases. Those rate increases apply to the entire PPL bill, which right now was around \$70,000. By breaking up the \$70,000 into the three components (energy charge, operations and maintenance charge, debt service charge), the Borough has frozen 2/3 of that \$70,000 and every time the rate increase comes through, it will only apply to the energy charge and therein lies the savings. The numbers that they have run assume that there was a rate increase of 3% every year. Those were the most important notes that he wanted to take out of Mr. Moran's presentation and touch on the real economics of what it would do for the Borough. In the end, the Borough would have a fully renovated system that would be serviced better. They were the bullet points on page one. On page two, they could look at the numbers. The way it was set up, was the left side of the line as the current projected PPL charges or the exiting lease agreement and on the right side would be the proposed MEM "Ownership" program structure.

Daryl Peck – In 2008, the total bill would be \$70,000; 2009 would be a half year because it would take about six months for MEM to do the work to bring the Borough to having ownership. 2010 would be the first full year. Based on some projected rate increases, the Borough will probably be paying around \$72,000 to PPL. They were going to break that out. The energy only charge for the energy to run the street lights would be just shy of the \$20,000. The operation and maintenance will be about \$13,000 based on the contract. The debt service to finance to acquire the system and upgrade it was about \$430,000. So the annual debt service over 20 years would be approximately \$34,000. The sum of those three was only \$67,000. The annual savings in 2010 would be \$5,000.

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Daryl Peck – The cumulative savings on the right hand side, over 20 years, based on just the 3% assumption of rate increases, when the debt would be paid off, the Borough would have saved \$430,000. After 20 years, the debt service goes away. The annual savings will then increase by \$34,000.

Mr. Moran – The one thing to realize in what Mr. Peck pointed out was that the 3% was extremely conservative. So let us say that 3% was what the figures were based upon 35% was what PPL was going to have their increase starting in January. The difference, the 32% would be additional savings for the Borough. It would be above and beyond what was listed. As he had mentioned before, there was not one client who does not save more than what they guarantee. Their guarantee was \$430,000 but the difference between their conservative numbers and the actual rate increases was the Borough's money.

Councilman Jacobs asked about when they have to attach the Christmas lights. Mr. Kearns stated how the Borough could actually save more because there were other municipalities who use their sensors off of the street lights rather than leasing the sensors that they had there. President DeMarco stated how the Borough purchased them outright.

Mr. Kearns – When they do it, they will get a pole attachment agreement, kind of like the same thing the Borough had now. They would come on electronically and it would be much easier to manage. He wanted to take a second to clarify something on how they keep calling it an energy only rate. That means, if the Borough owned the fixtures and they were only supplying the energy (the commodity). The point to clarify was, a commodity was a commodity. If in 2010 that was when the deregulation comes off, if they would say, the kilowatt hours that they burn, no matter who owns the light, and they go out in the open market and say how they were both going to pay \$1.00 extra for the commodity, when they talk about a commodity those dollars were equal. But every rate petition they have had on street lighting including the rate increases they currently have in, were for the other charge Mr. Moran had been talking about. Those will grow and that was the assumption of 3%. The gas in a car was considered a commodity. The energy that a light bulb burns in kilowatt hours was considered the energy. The Borough will not save 70% of the commodity; the Borough will save 70% of the rate differential between the two rates.

Councilman Jacobs asked if they would come out with a new kind of bulb in three years, would it save them energy costs. Mr. Kearns – They could do an energy project at that point because it will be the Borough's light. With the deregulations, they could go green and in PA because of the rates of off peak/off hours non-metered rates were so low it would make it economically not feasible to put LED fixtures in or a lower commodity grade in. Throughout the whole system, one big problem was that there were tons of mercury vapor lights still out there because energy was only a half cent per kilowatt hour. So if energy goes up, then they would have different types of considerations there.

Councilman DiMiceli asked what would happen if a development would go in with street lights, who would pay for them and if the Borough would decide to add a street light on a certain street, who would pay for that.

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Mr. Kearns – He asked if the Borough had increased more than 30 lights from what they have. If it would be more than 30, then they would get a maintenance charge increase. If the Borough says how they want a light down there because of crime, they will put it in and the contract would not change. If a developer would come in, they would support the Borough with an electrical engineering review and the illumination standards review and hand the considerations to the Borough Engineer. When they deed back the development to the municipality, free and clear (title, lease, and encumbrance); it was the developer of a new development's responsibility to put them in, in compliance to the Borough's standards, BOCA standards and the standards that the Borough currently has. They have dealt with several townships that have been growing quite rapidly.

Mr. Moran – The Council has to remember that throughout the process, they were the agent, the consulting firm who assists the Borough with their electrical and energy needs as well as a full blown consulting service to do energy lights, license broker purchase of the commodity somewhere else. That was what they were there for. It does not just tie the Borough into the street lights they have. They were there to save the Borough money.

President DeMarco asked if line 8 was the savings they would have starting with the year 2008.

Mr. Peck – Line 8 was the annual savings based upon the assumption of 3%. Column 6, when the Borough would first sign a contract with MEM, they were going to go out and physically touch and upgrade every light. They do not want the Borough paying debt service, interest on the loan, when the Borough has not yet taken ownership. They will do all the work and then hand the Borough the upgraded system. During the first 6-8 months, MEM will pay the debt service.

Mr. Kearns – When they go over the cap; if the Borough sets the cap and says okay they decide to do it that day, they will use the base year as 2009. So in 2009, the Borough will set up their budget and say the budget will be \$70,660. Then the Borough would sit down and re-allocate their budget. That was the amount for maintenance, the amount for debt service and the amount for the new PPL bill. If the Borough would go over in any of those categories, the reason it was a performance contract was that they pay on they do not get paid. So they would not get maintenance dollars because 30 days into the job, the Borough still gets the high PPL bill plus they would have the interest charge come in. So here was what they were going to do on a quarterly basis. MEM will cut the Borough a check to be placed back into the General Fund to reimburse the Borough for interest because they went over the cap. Then if they finish the job early, the Borough will not have the principal payment due. So there will be money in the account to reimburse them for the interest that they had expensed. If they were late in delivering, then they have to wait a very long time to get the interest payment back from savings. The Borough was basically setting the cap the whole way out. It was a safety net that most municipalities demanded. They wanted a safety net for maintenance; that was why it was fixed cost. How do they know that they could make their full debt service for the next 20 years; that was where the performance contract came in.

Mr. Peck – Column 8 was the annual savings and column 9 was the cumulative savings. On page 3, to acquire the system from PPL and to do all the legal and leg work, the estimated cost was about \$430,000. That was the amount the borough would finance. That was a guaranteed price to purchase the system and to . . .

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Mr. Kearns – That was the last safety net, if all of a sudden it would cost \$500,000, there was not anybody who was going to come back and add more money to the contract. Most municipalities, they set up allocations that were conservative so at the end of the day, there was excess money, which was the Borough's money.

Councilman DiMiceli asked who set the price at \$431,000. Mr. Kearns – There were a couple of things involved. There were physical moves on the pole. The secondary feed systems and the clearance the Borough needed between communications and other attachments on the pole had to meet safety codes and OSHA standards. The utility under the current requirements follow the PUC and only when they touch the pole do they have to bring it up to standards. If they went to the municipality to buy it back, they would not have safety and code compliances. So they have taken an evaluation of the physical system and have removed anything that someone else would own. The rest of it was what the utility supplies to the cost of service studies when they apply for a rate increase. PPL has asked for 4-5 rate increases over the last five years. They have been able to track data in the data center, which helped to come up with what the costs of the facilities were. The facilities were not a guaranteed rate of return. They would categorize them as one rate class and then mix in what the guarantee rate of return was. The cost of the system has a lot less to do with the physical asset then it does with what their cash remittance was and the adjustments. When was the last time they did group revamping and other considerations? There were forensic accountants who go over the data and come up with the sale price, which was considered conservative. It was set so the Borough does not get burned, not so they low-ball. They will have more savings on that.

Mr. Moran – Roughly, 50% of the \$431,000 was utility. Construction, closing fees, turnkey performance, meaning that once Council signs the contract, they do not . . . Everything was closing, legal, bank, would be paid out of the \$431,000. During construction, they allocate \$30,000 to clear up the code violations (construction) and it only cost \$20,000. That \$10,000 comes back to the Borough. But as a caution, to make sure they meet the guarantee, which was how that number was established.

Councilman Jacobs stated how they have no responsibility as far as the contractor or PPL. Mr. Moran stated how they would take care of everything from the legal work to the construction. He handed a copy of a draft agreement to President DeMarco. He stated how once they review it; they could go through those steps. Councilman DiMiceli asked what happens if ten years down the road they go out of business. Mr. Kearns stated there was cost savings account, which the Borough's account was restricted for a lifetime and the power of the check, the Borough has the check writing control. Right now if a street light goes out, the Borough still has to pay the bill. If they do not service the Borough, the Borough does not pay them. The Borough has a 30-day out at any given time. They have 5 year intervals where there would be a no penalty price. The Borough has a runoff, an unspoken cap payment, which they would still collect money that they had advanced on the Borough's behalf.

Mr. Moran – That was in addition to the Borough having a system that was now fused, bonded, no longer in a high voltage required area where that the Borough could hire any third party electrical contractor who would be able to come in and work on that light. The cost might be equal to or less than what they were charging for operation and maintenance.

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Mr. Kearns – The reality was that once they made improvements to the system, they were no longer required to get the most expensive person. They could hire a bucket man to change the light bulbs. Councilwoman Walck asked how many years had they been providing those services.

Mr. Kearns – They have been providing services for eight years and the reason it was only eight years was because they never really unbundled the rate before that. Municipal Energy Managers was started as an engineering and consulting company for large municipal clients. Mr. Moran stated that they have been incorporated since 1997.

Councilman Jacobs asked about the other PPL bills for the Borough, especially the sewer plant.

Mr. Moran – If and when the Borough decides to move forward with the project, during that process, they would have their consultants and engineers take a look at the Borough's physical plant, do the same physical study that was done for the street lights and assess if there was a project or if there was something that could be done to save the Borough additional money. Councilman Jacobs stated that with the pumping stations and the sewer plant, the amount was probably greater than what they were paying for the street lights. Mr. Moran stated how they would have to physically look at and walk around the pumping stations to see what was there. He stated that they would do that as a service to the Borough.

Mr. Moran asked if the Borough had a traffic light in town. Councilman Jacobs stated "one". Mr. Moran asked if they took a copy of that bill. Secretary-Treasurer Ahner stated "yes". Mr. Moran stated how they would convert the traffic light to LED. Councilman Jacobs stated that it was LED. Councilman DiMiceli stated how that was only because a tractor trailer hit it.

Ron Tirpak asked about transmission cost being added to the amount and about pole rental from PPL. Mr. Kearns – It was an all encompassing rate, it was all in there. The pole rental or fees that the Borough pays now for Christmas lighting, they were not considered for municipal use. There were set fees for pole attachments. The poles in PA were not regulated by the PUC. The tariffs that they had applied to the non-authorized attachments were FCC requirements. FCC has specific designations with street lights which qualify as a non-rental item. They were in the Borough's municipal space, so they were using their municipal space against the right-a-way for the pole to be located. Jurisdiction wise, the Borough has the position to put street lights on the poles. Ron Tirpak asked how that was FCC and even with the deregulation, PPL cannot come back and say how they were going to start charging for pole rental. Mr. Kearns – They dream of lots of stuff. Each rate case that has started since their company has been involved, every assertion that they have made with a rate case, they have found on behalf of them. Mr. Moran – They have never lost in front of the PUC. There were formal and informal complaints that were able to be made to the PUC. As the Borough's agent, their job would be to make sure how that would not happen. Ron Tirpak stated how they were not friends of PPL. Mr. Kearns – It was not them against PPL. PPL has two rates available and the Borough was doing everything that they could to get to the lower rate. The company that they would be hiring has the experience of actually getting them to that rate. There was no employee with PPL that was going to lose his job, no matter how many street lights they become successful in. Mr. Moran stated how they service 41,000 lights in the Lehigh Valley alone. Mr. Kearns stated that the utilities were not structured to do some of the services that they used to do. Mr. Moran stated how the Borough pays for them on their bill. Ron Tirpak stated how that did not mean how they were willing to reduce their net profit.

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Mr. Kearns – Utilities were territory monopolies, so they were guaranteed a set rate of return against any capital that they have invested in. It does not affect their rate of return for the utility. It affects cash flow. What they consider even officially was position neutral. The Borough was still a client of PPL, they did not lose them as a customer and the Borough was taking advantage of the lower rate, which was exactly what the PUC requires them to do.

Councilman DiMiceli stated how they have streets where poles may have to be moved if the street would need reconstruction. Mr. Kearns – Work delineations and right-of-ways was something that they specialize in. It was how they ask the question and what they ask that will result in whether the utility comes out and moves it or whether they go out and say that they painted white hash marks and then tell the utility company about going out to measure it. They will get out there ink pen and ask where they want it. If the Borough does not touch the pen, they do not have to pay for it. The minute the Borough puts it on that paper; it was considered a construction service and they were entitled to a full recovery. Every municipality that they have had, who had any type of construction projects, has been very successful in renegotiating or asking the questions. Mr. Moran - The Borough does not pay anything, let them handle it. Mr. Kearns - The things that they say when they want them to move it demands whether or not the PUC actually tells them what was recoverable and not recoverable. All that matters to the utility shareholders was which pocket it comes out of or which pocket it goes in to. They were still getting paid for whatever it was that they move. They may just not get paid by the Borough.

Councilman DiMiceli stated how Mr. Moran told him before the meeting that they secured the loan for Tamaqua through Jim Thorpe National Bank. Mr. Moran stated how Concord specializes in municipal financing and they were very talented. He stated how the Borough was going to get the best rate.

Mr. Peck - They solicit proposals based on their terms, which were terms in the best interest of the Borough. Councilman DiMiceli asked what percentage rate the proposal was based on. Mr. Peck stated “4.75%”. Councilman DiMiceli asked how much of a window did they think the Borough had. Mr. Peck stated that he would certainly think that they could do better. He stated that banks were getting tougher and tougher to lend and he would not have put it on paper if he did not think that he could get it for them. He stated that if it was lower, it would be more money saved.

Mr. Moran – They cannot control the rates and they will not know what the rates will be six months down the line. They might not be able to secure those types of numbers. It was not a scare tactic for the Borough to make a decision. It was budget time and the budgeting time of the year was a great time to make a decision to save money. Next year, when they budget, they could budget \$65,000 instead of \$70,000. Secretary-Treasurer Ahner asked if they were tax free loans. Mr. Peck stated “yes”. President DeMarco stated about giving the rough draft copy of the contract to Solicitor Yurchak for his review. Mr. Tirpak asked who there oldest customer was. Mr. Kearns – West Hazleton went into distress and the state recommended that they get into the program. Scranton was also a distressed city. Mr. Moran stated that it was in the year 2000 when the unbundling of the rates came about. Mr. Kearns – If the Borough would decide to go with it, the next step would be to authorize Concord to secure a quote. It was a guarantee contract based on knowing what the dollar value was. They would reset some of the guarantee numbers so they could maximize the amount of the guarantee.

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### ➤ Preliminary Editorial Report - Codification of Ordinances

Kenneth Rotz from Keystate Publishers introduced himself to Council and stated how Keystate Publishers was in the process of re-codifying the Ordinances for the Borough of Nesquehoning.

Mr. Rotz – Once upon a time, the Borough of Nesquehoning had started adopting ordinances. Those ordinances were placed in chronological order in ordinance books. When they got so many ordinance books, it became inconvenient to start reading at the beginning through to the end to know what the exact status of the law was on any given topic. That was when the process of codification came appropriate. All codification does was to take those ordinances out of chronological order and arrange them according to topic. The Council knows that some ordinances have replaced older ordinances. In the chapters and in the text of the code, only the current ordinances will appear because that was the only thing that was currently effective. The Council was aware how some of the newer ordinances had amended older ordinances. The amended language will appear directly in the text of the code. So when they pick up the code, they were assured that they were reading the current language. That was the whole purpose of the process of the codification. The Borough did do a codification in the past and that codification fell out of being current. Under PA law, at the same time that they take those ordinances, arrange them according to topic, make sure all of the old ones were out of the way and all the amended language was properly inserted, it was an appropriate time to review the ordinances for consistency to existing state and federal laws.

Mr. Rotz – Keystate Publishers' process was exactly the same as what their high school English teacher might have urged them to do in any written project. First thing they did was to come in to do the research. They did that; they had spent a day there going through the ordinance books and made copies when needed. They took them back to the office and came up with the next step in the process, which was an outline. The outline was described as a preliminary editorial report. From there, they go through the same process as the English teacher urged, which was once they were satisfied with the outline; they will do a rough draft. They will then get back together and review the rough draft to make sure that everything was satisfactory. Once it was, they will produce a final draft, which will then be introduced before Council for adoption. The adoption process under the current Borough code was relatively simple. Then they will prepare and print the final published code in hard copy and electronic format.

Mr. Rotz – As they go through the ordinances, it was an appropriate time to review for conformity to existing state and federal laws and to make any other amendments that Council might think were appropriate. In going through the ordinances, they came up with three general kinds of amendments that they thought were appropriate to incorporate into the codification process, some of which were started in the prior codification.

1. The first general kind of amendment was wherever they encountered a fee that was set by an ordinance. They were proposing that the ordinances be amended to provide that the fee be established by a Resolution. As part of the process, they will gather all of the fees together in a master fee resolution so all of their fees were in the same place, which will be reviewable by the Budget Committee.

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2. The second general kind of amendment, the Commonwealth was constantly fiddling with the amount that can be imposed as a fine or as a penalty for violation of a Borough ordinance. They were proposing that as the codification was adopted that the fines be increased to the maximum permissible under state law. That was not to say that the magisterial district judge would impose the maximum at such time that he imposes the sentence, because they have the same sentencing discretion as any sworn judge, which they were allowed to impose sentence within their discretion within the grammar established by the legislation. They will provide for the maximum, whatever the magisterial district judge imposes was up to him.
3. The third general kind of amendment they were proposing to make was to amend terminology to current practice. At one time, it was the Department of Environmental Resources, now it was the Department of Environmental Protection; DCA was now DCED; etc. They will take care of the state side. Once they receive the rough draft, they were asking Council to let them know if the appropriate official was still “the Building Inspector” or if it changed to “Code Enforcement Officer”; if the Zoning Officer still had many hats that he must wear; etc.

Those were the three general kinds of amendments that they were suggesting and any ordinance which would be applicable. The preliminary editorial report that they had before them was an outline of a proposed chapter scheme based upon the Borough Code and other statutes applicable to the Borough including but not limited to the Municipalities Planning Code, Local Tax Enabling Act, etc.

Mr. Rotz proceeded to go through and review the preliminary report:

### Chapter 1 – Administration and Government

#### Part 1 – Boiler plates suggested for every code

Councilman DiMiceli stated how some of their ordinances they had written where they were specific with some designations and they tend to use the term “any other authorized person”. He asked if that would be appropriate language. Mr. Rotz stated how that would be a question that they would go into detail once they had a rough draft in front of them. He stated that it as appropriate in making designation to include “other appropriate authorized individuals”, which would be their suggestion at the rough draft stage.

#### Part 2 – Departments, Boards and Commissions

##### 2A – Planning Department or Commission?

President DeMarco stated “Planning Commission”. Mr. Rotz – As part of the codification process, they will suggest language for the Solicitor to review and approve. That would designate the existing Planning Commission as the Borough’s planning agency under the Municipality’s Planning Code.

##### 2B – Recreation Commission or Committee?

(Committee was just a committee and commission has certain statutory authority under the Borough Code.)

President DeMarco stated how they have their own bank account. Mr. Rotz stated that if they have their own bank account, they were a commission.

#### Part 3 – Elected and Appointed Officials

##### 3A – Independent Auditor

##### 3B – Secretary-Treasurer

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## Part 4 – Request for Public Record

Mr. Rotz – The existing resolution was fine under the existing law. In June, there was a new open records law in PA. They were in the process of establishing forms. They will keep tabs on what was happening with the new open records law and they will make sure that at whatever time the code gets adopted, that what was in the code was correct. President DeMarco asked about the Borough’s responsibility to appoint somebody to be in charge of the open records. Mr. Rotz stated “yes” and that as of January 1, 2009. He stated that at such time as the final regulation was handed down, they would make sure that the Borough’s code reflected what was required. Councilman DiMiceli stated how they had already designated the Secretary-Treasurer. Mr. Rotz stated how that was under the old law. He stated that they will have to designate the Secretary-Treasurer again and she will have to use the state form and comply with the new guidelines.

## Chapter 2 – Animals

### Part 1 – Animal Control

#### 1A – “in pari materia” – of the same law

Mr. Rotz – The Borough has an ordinance for dogs running at large and the state also has a law that prohibits dogs running at large (not in conflict). He presumes that the Borough was enforcing the ordinance cognizant of the state law and enforces them so they were both used to reaching the same end.

### Part 2 – Regulating the keeping of certain animals

## Chapter 3 – (Reserved)

Mr. Rotz stated how reserved chapters were used to allow expansion of the code without having to redo the whole thing.

## Chapter 4 – Buildings

### Part 1 – Numbering of Buildings

## Chapter 5 – Code Enforcement

### Part 1 – Uniform Construction Code

Mr. Rotz asked Carl Faust if there were any ordinances which were adopted prior to July 1, 1999 that equal or exceed the standards of the UCC that the Borough contends that the prior ordinances were not superseded by the UCC. Carl Faust stated that he wanted to see exactly what they adopted because, if the Borough had things adopted prior to that, they wanted to keep forward; he would like to keep them forward. Councilman DiMiceli stated about the NFPA Life Safety Code; how there were a couple of reasons why the fire companies wanted to keep that one. Councilman DiMiceli stated about another ordinance for outdoor wood furnaces.

### Part 2 – Contractor Licensing

## Chapter 6 – Conduct

### Part 1 – Discharge of Firearms or Similar Devices

Mr. Rotz – The ordinance recognizes the exception established at state law, which was that the state says that their hunting regulations pre-empt any local ordinances. So that if there was a place in the Borough where it would be lawful to hunt, he would be permitted to discharge a firearm in such a place while he was engaged in hunting and otherwise lawfully licensed. Conforming to the regulations of the Game Commission concerning hunting.

### Part 2 – Night time Curfew for Minors

### Part 3 – Drug Paraphernalia

#### “in pari material” – The Controlled Substance, Drug, Device and Cosmetic Act

### Part 4 – Sex Offender Residency Restrictions (Megan’s Law II)

## Chapter 7 – Fire Prevention and Fire Protection

### Part 1 – Fire Companies Recognized

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1A - (1) Mr. Rotz – It was appropriate to designate the fire companies to respond in the Borough.

(2) It was under state law to designate the appropriate Fire Fighters Relief Association.

(3) It was necessary to designate certain activities that firefighters were allowed to engage in for coverage purposes under the Borough's Workman's Compensation Policy.

They should rely on their Solicitor's advice as to whether the repeal of Ordinance 2000-3 was sufficient to reinstate the prior ordinances or if he thinks that it would be appropriate to re-enact the prior Ordinances to make sure that they were currently in effect.

Part 2 – Carbon Monoxide Measurement within Residential Buildings

Part 3 – Fire Loss Insurance Proceeds Escrow

Part 4 – Fireworks Displays

Part 5 – Open Burning

“in pari material” – International Fire Code, which was part of the Uniform Construction Code.

Chapter 8 – Floodplains

Mr. Rotz – There were certain amendments being recommended by DCED to bring standard and practice under the floodplain ordinance which was specifically preserved under the UCC and in conformance with the International Building Code and the International Residential Code and they were recommending, with the Solicitor's approval, that those amendments be effective with the adoption of the Code process. They all understand that they will have to be sent to DCED for approval. The Solicitor will see to it that that will happen before the code was adopted.

Chapter 9 – (Reserved)

Chapter 10 – Health and Safety

Part 1 – Abandoned Vehicles

Part 2 – Grass and Weeds

Part 3 – Reimbursement for Emergency Costs and Services

Mr. Rotz – One note, the insurance lobbyist slipped through in the 2007 Legislator Act 69-2007, which states that they cannot bill for police services for a response to a motor vehicle accident.

Chapter 11 – Housing

Part 1 – Housing and Structure Code

Part 2 – Moving Permits

Part 3 – Rental Property Registration

Chapter 12 – (Reserved)

Chapter 13 – Licenses, Permits and General Business Regulations

Part 1 – Alarm Systems

Part 2 – Transient Retail Merchants

Chapter 14 – (Reserved)

Chapter 15 – Motor Vehicle and Traffic

Mr. Rotz – They propose that the Borough adopt PennDOT's Model Motor Vehicle and Traffic Ordinance because back in 1975-1976 PennDOT adopted a new vehicle code to put an end to all of the old speed trap and in the new vehicle code they say that municipalities can only regulate traffic. PennDOT then published a Model Motor Vehicle and Traffic Ordinance which meshes with the Vehicle Code. Their goal was to take existing traffic regulations in the Borough and consolidate them into the model published by PennDOT.

Chapter 16 (Reserved)

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Chapter 17 (Reserved)

Chapter 18 – Sewer and Sewer Disposal

Chapter 19 – (Reserved)

Chapter 20 – Solid Waste

Chapter 21 – Streets and Sidewalks

Part 1 – Curbs and Curbing

Part 2 – Road Encroachments

Councilman Stromelo asked Ron Tirpak about putting something in about what they expect sidewalks to be (concrete). Carl Faust stated about allowing someone to encroach onto a sidewalk (handicap ramp). The Council Members, Zoning Officer, Engineer and BCO then went into a discussion regarding sidewalks.

Part 3 – Removal of Snow, Ice and Other Debris

Chapter 22 – Subdivision and Land Development

Chapter 23 – (Reserved)

Chapter 24 – Taxation; Special

Part 1 – Local Service Tax

Part 2 – Realty Transfer Tax

Part 3 – Per Capita Tax

Part 4 – Earned Income Tax

Part 5 – Keystone Opportunity Zone

Chapter 25 – (Reserved)

Chapter 26 – Water

Part 1 – Mandatory Connection to the Water System

Part 2 – Water Conservation

Part 3 – Water Emergencies

Chapter 27 – Zoning

Gene Kennedy stated about revamping the Zoning Ordinances from front to back. Secretary-Treasurer Ahner asked about the zoning ordinances coinciding with the Borough code. Mr. Rotz stated that he would be happy to get together with Mr. Kennedy to work their way through it. President DeMarco stated how the Zoning Ordinance was outdated. President DeMarco also asked about the Commercial Zoning. He stated about “Design Guidelines for Industrial Development” from 2001.

Mr. Rotz – Something different about that code compared to their prior code; the prior code separated ordinances into code material and non-code material. Some ordinances were a one-time or of historical nature. They keep track of those in the appendix to the code (bond issues or loans). All of the ordinances will be accounted for in the last part of the code, before the index, which will not be there until the code was adopted. In a table to disposition, which will go back to the original ordinance books, list all the ordinances in chronological order and indicate the disposition of those ordinances in the code. There will always be a direct cross reference between the code and ordinance.

Mr. Rotz stated how he will be in touch with the Solicitor on certain questions he had. He stated how his office will be working on the preliminary draft. He stated how he will also be communicating with the Code Enforcement Officer and the Zoning office.

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Councilman DiMiceli asked about adopting ordinances and getting them in the new code book. Mr. Rotz stated that they should continue to forward the ordinances to him as they were adopted and they will bold them into the process. He stated that when they get to the final stage, they will communicate as to what ordinances will appear in the final codification.

### ➤ Street Program

President DeMarco stated how they had asked Mr. Tirpak to be at the meeting in order to discuss the reconstruction/resurfacing of the streets in Nesquehoning. He asked Councilman Hawk if he had mentioned to the Water Authority about what cost they might incur. Councilman Hawk stated how the Authority always had the stance that if a street was going to be improved and there was work to do on a water line, they were going to do it. He stated how he did not want to cut a new street open. He stated how the Authority would be very cooperative. President DeMarco stated how they were going to need a list of the streets that need major work. He stated about having to float a bond. Mr. Tirpak stated how the interest rate on the bond would probably be around 4.75%. He asked how committed they were and what were they willing to spend. Mr. Tirpak stated how they had a complete listing for all the streets and that price was probably 50% too low with the increase in asphalt prices. He stated about some calculations he just did and the Borough would be looking at an annual payment of \$646,000. Mr. Tirpak asked what they were willing to spend after he received a bunch of no's. He stated about picking their projects based on that. Mr. Tirpak talked about using half of their Liquid Fuels money every year (\$32,000). He stated how they could borrow around \$430,000.

The Council Members and the Engineer discussed which streets they could do for \$430,000. They also discussed how much they could borrow and where the funds would come from to pay it back. The Council Members and the Engineer discussed some of the streets where lines were going to be replaced by the Water Authority. They also discussed the streets being paved with the CDBG funds. Some of the streets mentioned were: Cedar Street, Angelini Avenue, Park Avenue, Mill Street and School Street. They talked about only replacing lines on streets that would need a total reconstruction. They also mentioned about resurfacing some street in hopes to get several more years out of them.

President DeMarco stated how the Budget Committee would sit down to see what kind of figures they could come up with.

The Council members briefly talked about the bridge and Fourth Hollow Road as an access for the property (Subdivision) which was discussed at the Planning Commission meeting the night before.

Councilman DiMiceli stated how they had a problem with Stoffa's property on Coal Street. Solicitor Yurchak stated how he had talked to Michael Greek about having an attorney appointed as an administrator of the estate. He stated how Attorney Greek liked the idea and was going to take care of it. Councilman DiMiceli stated how there was a problem with the cats. He stated about getting the Borough crew down to clean it up and cut the grass. The Council and Solicitor discussed placing a lien and other matters concerning the property. Councilman Stromelo stated how he could have the Borough crew go down the next day.

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Councilman DiMiceli stated how he was looking at the codification and there were changes that had to be made to the Firearms Ordinance. He stated how there was no exception for someone protecting their life, no exception for the rifle or pistol range, no exception for destroying an animal and there was no exception for the Police in the performance of their duties.

Councilman DiMiceli asked Solicitor Yurchak about the ordinance for outdoor furnaces. Solicitor Yurchak handed out some copies of Outdoor Furnace Ordinances. Councilman DiMiceli stated how he had checked into them. He stated how there was a person in Hudsondale who has one and it fills the whole valley with smoke when he lights it. He stated that it did not matter what he burned. Solicitor Yurchak stated how the ordinance will restrict them. Councilman DiMiceli asked how they stop a business from putting one of those in and burning pallets in order to get rid of it. Solicitor Yurchak stated that as long as they would meet the requirements of the ordinance, they could do it. Carl Faust stated that if it was commercial, Labor & Industry would have to do the inspection. He stated that they were a hot topic right now.

Carl Faust stated that he wanted to inform the Council members how the Nesquehoning School Apartments was deemed an unsafe building. He stated how they have given them an extension until June 21, 2008. Mr. Faust stated how he had received some plans but they had not filled out the permit application. He stated that if they do not drop the permit application off, they were going to get a certified letter telling them that they had two weeks or everybody will have to get out of the building. He stated how when that came to Council, they were going to do it by the numbers and that they were going to back him the whole way. Mr. Faust stated how he wanted to give them a heads up and also wanted to give them an update on the property at 1 W. Garibaldi. He stated that he had received the plans and they have the fire sprinkler person lined up. He stated that he understands that he has to do it. Councilman DiMiceli stated that he would not give the School Apartments more than seven days. President DeMarco stated how they will let Carl Faust handle it his way.

### **ADJOURNMENT**

Councilman Jacobs moved and Councilman DiMiceli seconded to adjourn the meeting. All voted yes. Meeting adjourned at 8:55 p.m.

*RoniSue Ahner*

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RoniSue Ahner  
Secretary-Treasurer