

BETHLEHEM CITY COUNCIL MEETING
10 East Church Street - Town Hall
Bethlehem, Pennsylvania
Tuesday, June 19, 2018 - 7:00 PM

INVOCATION

Reverend Suzanne M. Trump, St. John's Windish Evangelical Lutheran Church, offered the invocation which was followed by the pledge to the flag.

PLEDGE TO THE FLAG

1. ROLL CALL

President Waldron called the meeting to order. Present were Michael G. Colón, Shawn M. Martell, Olga Negrón, J. William Reynolds, Paige Van Wirt, and Adam R. Waldron, 6. Bryan G. Callahan was absent, 1.

PUBLIC HEARING

President Waldron stated prior to the consideration of the regular Agenda items; City Council will conduct a Public Hearing to consider an Ordinance to amend Article 1501 entitled Fire Safety and Code Enforcement Inspection Fees. The proposed Ordinance is to adopt the 2009 International Fire Code published by the International Code Council subject to the modifications implemented hereinafter and/or by subsequent Ordinances of the City of Bethlehem.

Deputy Fire Chief Craig Baer explained in his correspondence requesting changes to the International Fire Code most of the changes that are occurring are being done just to streamline our internal operations and more clearly define roles and responsibilities when dealing with the Uniform Construction Code that is adopted by the State and the International Fire Code as it is adopted by the City. By law any modifications to the construction code above what the State already requires mandates that those changes be filed with the State and a Public Hearing be held. After the Public Hearing and approval the State then approves those changes and this is nothing abnormal, any municipality that wants to make changes to the Uniform Construction Code has to go through the same process. Deputy Fire Chief Baer stated he will make a few comments on some of the things he feels are worth bringing to the forefront in these changes and some points that he thinks may have some questions on or need some clarification. Article 1501.03 Inspection, Section 3 (a), removes a list of permit requirements for facilities and operations that are regulated by other State laws or through City Ordinance that other departments already enforce. We are trying to clean up that section. It is not that we are getting rid of any regulation or code enforcement, we are not removing anything from the code, and it is just that the permitting process is changing; we are not requiring them to get a code specifically through the Fire Department for these certain permit processes. They already apply for permits through the State or other sections of the City. Deputy Fire Chief Baer added that one addition for Section 3 (i) is a regulation of solar panels with regards to firefighter's safety during emergency operations. This is a statewide and national issue for firefighter safety. The code changes have not kept up with solar panels, they are showing up all over the place. The 2012 edition of the code does address it but unfortunately here in Pennsylvania we are not up to 2012 yet, we are still stuck in 2009 so he would like to bring us up to that current code when it deals with firefighter safety

and solar panels. He mentioned with Section 3 (k) this speaks about the Appeals Board that just says that any appeals to this will go through the current appeals board process that the City already has in place. Section 3 (l) 109 establishes penalties outside of what the Fire Code states and these penalties for violations will bring us in order with the Optional Third Class City Charter that Pennsylvania follows. Section 3 (o) removes recreational fires from the open burning definition. That is just changing the definition of what open burning is. Section 3 (q) specifically prohibits recreational fires. Deputy Fire Chief Baer noted this is an issue we have been having with enforcement for years. As long as he can remember every new Fire Marshall that comes in has to issue his own interpretation on the code and going back 30 years open burning has not been allowed in the City. In conjunction with that, Section 3 (t) requires an underwriter's laboratory listing for portable fuel devices, outdoor propane stoves and things like that so they can be operated more safely. An underwriter's laboratory listing looks at things like how it is safety tested, has an anti-tip switch if the device tips over it would automatically shut off, if it overheats it will shut off or if there is a gas leak it will shut off. There is also another enforcement issue they run into and in Section 3 (x) this makes it illegal for an owner that has a fire alarm to reset the alarm panel before the Fire Department can get there. One of the issues that we run into is someone burning toast in their house and they think it was the toast and if they reset the alarm before we get there we have no way of confirming of what the actual cause of that was and what smoke detector went off. Once you hit the reset button on that alarm, that basically clears the history and we have no idea of being able to confirm or diagnose any other issue that might be going on in the house. Deputy Fire Chief Baer mentioned with Section 3 (cc) this sets the code reference for solar panel systems. This is adopting that newer 2012 edition specifically of that section of the International Fire Code. In Section 3 (dd), there is a wording change that will allow us in the near future to sign a contract possibly for a records retention data base. We needed to make the wording change in the Fire Code to allow us to do that. He noted that Section 3 (hh) requires approval for heating and cooking in tents. This is currently addressed through City Ordinance through the vendor permit process. We would like to bring specifically that cooking and heating and open flame in tents under the Fire Code because it is not really addressed in the older version of the Fire Code although it is in the newer versions but not in the addendum that we are under. Deputy Chief Fire Baer mentioned that Section 3 (kk) allows to make changes to address the new Pennsylvania law for fireworks. He has worked with the Law Bureau and they feel that this wording change will help us address any issue that could come up as far as firework sales, storage and handling in Bethlehem. Section 3 (mm), (nn) and (oo) addresses aboveground storage tanks and where they are allowed to be used and stored in the City. He talked with Zoning about this and this is just bringing the Fire Code and the Zoning Ordinance to mesh to both say the same things. He noted that Section 3 (ss), which is Appendix K, adopts regulations for all mobile or temporary cooking operations. The National Fire Protection Association recognizes the need again in the newer code section but not in the 2009 that we are using. This will allow us to enforce that newer section of the code for temporary cooking operations.

Mr. Reynolds asked for an explanation about the solar panel issue. As far as he can tell previously it was because of the technology associated with solar panels and maybe this does not cover that. The previous technology of solar panels created a fire hazard.

Deputy Fire Chief Baer explained that this really addressed firefighter safety, locations of shut off switches to be able to eliminate power coming from the solar panels. One of our big things is roof operations when there is a fire, cutting a hole in a roof to allow the smoke to go out. This gives us clearances at the ridge line to be able to still get on the roof and cut those holes with the solar

panels so they are not covering the entire roof surface with solar panels. It is basically giving us enough room to do our job.

Mr. Reynolds asked Deputy Baer to explain what the change is that is occurring at it relates to the roof. He understands the safety, but from the practical purpose of the installation of solar panels, it is probably finding that line of safety between allowing people an energy efficient way to create energy for their house; not creating this problem. He has heard from people that they are not able to put solar panels on their roof because of the amount of space that is needed per the Code.

Deputy Fire Chief Baer noted that right now the way the City operates is that specifically you must have a three (3) foot perimeter around the roof. That is a very rigid stance and does not apply in all circumstances. This basically takes it on an individual basis and says can we fill this one whole side with solar panels and you can have access to the other side, and yes it would be approved. It would basically let us take each case on a case by case basis and make a decision.

Mr. Reynolds asked if this is calling for a three (3) foot perimeter around the whole roof.

Deputy Fire Chief Baer stated just on the top and one side but it is very lenient. It gives you a lot of wiggle room to address each one and make an opinion of whether that needs to be followed or not. He can think of many circumstances where he would not require the three (3) feet on one side if they had access to another whole side of the roof. He remarked, why would he want to then limit the people to the number of solar panels they could put on their roof. The current Ordinance has no leniency to it at all.

Mr. Reynolds inquired whether someone goes out to take a look at this, if someone makes an application.

Deputy Fire Chief Baer stated yes, they would submit a sketch for review and we would go out and look at it and say yes it is approved or no, could we modify it this way to get us what we need.

Public Comment

President Waldron stated with no public comment the Ordinance will be placed on the July 3 agenda for First Reading.

President Waldron adjourned the Public Hearing at 7:14 pm.

2. APPROVAL OF MINUTES

The Minutes from June 5, 2018 were approved.

3. PUBLIC COMMENT (on any subject not being voted on this evening – 5 minutes time limit)

Airbnb

Dan Reiss, 2032 Siegfried Street, mentioned he did not get information soon enough on these Airbnb's and he did not even know what an Airbnb was until about a month ago but he has one directly behind his home. He has not seen the Ordinance and has not found it on the City's website. He would like to look at this because he has a lot of questions. Mr. Reiss stated the address of this Airbnb is 2103 Livingston Street. Right now they are renting on a two night minimum. So we have had four different people in there in eight days. His concern is how they are being vetted, what is the enforcement. He does understand they have to have inspections, a license and there are some other requirements. He read an article that stated there should be a 30 day minimum, but he does not know if that is true. Zoning indicated it is a seven day minimum. The concern is how this is being enforced and how are you going to know who to license and where they are. There are 22 zoning districts in the City and he does not even know what zoning district they are in. Mr. Reiss assumes he is in the medium density or single family but there are some requirements that the Airbnb's are not permitted in some of the single family zones. They are permitted under special exemption in the medium and high density and that is through the Zoning Officer. The question is that we do not even know if this person is registered and how you will enforce this Ordinance. Mr. Reiss stated the concern is that they have a special needs daughter that resides with them; they have a daycare center on the corner of Glenmere and Stefko. They have another rental two doors down from them at 2010 Siegfried Street and we are not sure if that is an Airbnb. These seem to be cropping up all over and he is concerned on how they are being managed. Mr. Reiss mentioned they do not have a lot of information but what they do know is that the owners do not live at the property and this is a problem. The vetting is a problem for us, we do not know who these people are and they come and go in a couple of days. We are in a residential area and he does not know how we even allowed this to happen. They are concerned and our neighbors are as well. Mr. Reiss would like to find out where he could get a copy of that Ordinance and he will probably then have more questions.

President Waldron explained that Ordinance is currently posted online and if you search under Short-Term Lodging Facilities you should be able to find that Ordinance. Basically with what you are saying, if that is accurate, they would be in violation of that Ordinance as it is written. He would encourage Mr. Reiss to reach out to the Zoning Officer for the City. They are working on some special properties that have been brought to people's attention but it is based honestly off of a complaint driven process. So you will have to let someone in the City know so they can look into this.

Mr. Reiss noted that is a problem because what does that do to the value of the property and if we want to put our home on the market what does that do if nobody really knows where they are or who they are until they actually purchase the residence.

President Waldron stressed for the Ordinance to be enforced the City has to know about it and they do not know about it unless they get some information from the neighbors in the neighborhoods. So he encourages Mr. Reiss to reach out to the Zoning Officer.

Mr. Reiss explained on June 12 he was at the Zoning Office and she did not have a copy of the Ordinance but gave him some brief information and he gave her the address as well. It seems like a haphazard way of having a complaint process to handle a situation that seems to be booming.

President Waldron stated he does not disagree.

Bruce Haines, 63 West Church Street, expressed that he wanted to comment on what Mr. Reiss was speaking about with Airbnb. In the Historic District specifically we have been working on this issue for a year and a half. He is trying to work with the City to protect residential neighborhoods and he will say that it took a while but this Council and the City did a great job of putting through an Ordinance. When you read it, it should, if properly enforced, protect you and your residential community against whole house rentals where people are not there, or apartment rentals in a house that is a two family house. Mr. Haines explained the Ordinance that was passed by this body in December and went in to force in January is a very good Ordinance that addresses the needs of the community. In addition what it does in a residential community is it permits the old fashioned home sharing where you greet the person at the front door and they stay in your house and maybe your son is off to college and they use that room. But you are putting yourself a risk first. What the Ordinance does not permit is something where someone can just go into an apartment with their own key and never have any interaction with someone who maybe living in the house or live in the house next door. It also does permit apartment Airbnb in the commercial district downtown so that is the only place that apartment rentals for non-owner occupied building rentals can take place. So it does permit Airbnb to do the traditional home sharing anywhere in the City but it also allows them to do the apartment or whole house rental even though they are not in the premises in our commercial district. Mr. Haines would say that we are Airbnb friendly but also Airbnb responsible to our cherished residential communities in the Ordinance that was passed and the Zoning Ordinance. So when you read that Ordinance you will find it is great. The problem is it has been five months since that Ordinance was passed and we had identified a year ago six whole house or apartment rentals occurring in the Historic District, and every one of them is still operating even though the Ordinance went into effect. So enforcement is a serious, serious issue and in his opinion the City is really not up to the task to enforce this or does not show the kind of willpower that he thinks we will need to fight the Airbnb which bring in attorneys from all over the Country any City that tries to fight them from doing what you guys did. Mr. Haines thinks we need to get prepared for a long hard battle to enforce what you did. He noted that what Council did was right and other Cities are doing exactly what you are doing to protect the residential communities. We may have gone in the step to be sure that we permit Airbnb in our City so that we are not exclusionary in our zoning and permitting it in downtown. What is happening is all of the downtown apartments above the Main Street businesses are turning into investment properties with Airbnb people. The people who live in the apartments now downtown on a yearly basis are being kicked out as owners buy those buildings. So what is happening is that you are losing your downtown residents and that is a serious issue. Mr. Haines stated we run that same risk here in this City; we do not have that happening yet. What we do have happening is a continuation of whole house or apartment rentals that are against the Ordinance that was passed and five months later all six of those in the Historic District are continuing to book rooms out through December at Christmas time in Bethlehem because enforcement has not taken place. This has been slow getting off the ground and he is not sure the City has the resources even if identified as we have a year ago. He thinks we need to figure out how to provide more resources to the City to really enforce this Ordinance. We also need the legal horsepower to fight the Airbnb lawyers from San Francisco that will swoop in our City.

Airbnb/Rezoning

Bill Scheirer, 1890 Eaton Avenue, mentioned with Airbnb he has witnessed suitcases going into the house right on the corner of Church and New Street and he has heard there is a magistrates hearing tomorrow on an Airbnb case and perhaps someone can let everyone know where and when that will be. His prepared remark is on the rezoning scheduled for the next meeting and instead of considering the rezoning of the parcel behind 143 West Broad from Institutional to CL at the next meeting it would be better City planning to delay the vote until you know exactly what you will be considering after the discussion and deliberation by the Historic Architectural Review Board, the Planning Commission and the Zoning Hearing Board. To do otherwise will send an implicit message that the Council looks favorably on the Parks/Benner proposal or something like it which could conceivably still happen. Mr. Scheirer informed this will preempt the combined wisdom and acumen of the three bodies. That is because if the rezoning is relatively permanent it should be the last step in any development proposal.

South Side/Housing Conditions

Stephen Antalics, 737 Ridge Street mentioned that he hopes that Council is sensitive to the systematic destruction of the historic ambiance of the south side. There are two areas which are critical as to this destruction. He reported at the end of World War II the Country went through a tremendous redevelopment and this happened in Bethlehem. Two areas in Bethlehem wanted to expand. Number one was Bethlehem Steel because of the demand of steel and number two was Lehigh University because of the enrollment of students who were veterans under the GI bill. So the best place to expand for the University would be at Packer Avenue. Unfortunately at the time the European immigrants who lived in that area either died and their offspring, rather than living in the stigma of being a south sider, moved from Fifth and Sixth Street to Fifth and Sixth Avenue. As they moved out these properties were being purchased by non-resident landlords. These non-resident landlords were not maintaining the properties. So as a property deteriorated from a lack of inspection and lack of maintenance by the non-resident landlords and the residents living there renting were not required to maintain them. Mr. Antalics explained that the properties eventually were condemned on Webster, Vine, Packer and Adams Streets and also the Northampton Heights which then allowed Bethlehem Steel to put in their essential oxygen furnaces. Unfortunately, the people who were renting took the rap for not maintaining, which was not their responsibility. A second area on the south side that suffered and remains so is that guidelines claim that for a community to be vibrant and healthy you should have a ratio of 70% single families to 30% student housing. Swathmore, Wayne, PA and other areas restrict housing to students to two to three residents where they could make money, but Bethlehem called a family 5 unrelated students. So then the owner of the property could put in 5 students and that then changed it to 80% being student housing and 20% is single family. So what you see are two systematic ways to cater to private interest versus the welfare of the community. Mr. Antalics noted since the incorporation of the two boroughs as a Third Class City that started the deterioration of the south side. If issues come up in the future where there is a question between historic preservation or catering to the needs of a developer he thinks that Council has enough ammunition to see what is in the best interest of the community.

Health and Safety Issues

Artie Curatola, 813 Laufer Street, explained that he has two issues, a health issue and a safety issue. On his property at 813 Laufer Street he has tried to get the City for years to work with him on both of these matters with no success. He remarked someone five doors down from his house places a variety of items in their toilet that should not be flushed, the system backs up and he gets the back up in his basement. It costs \$1,000 to \$3,000 or more for a plumber and a cleaning crew. He found out from a plumber that there is a common trap, which is under his house, and serves for all of the connecting houses in the row. The City tells him if he wants them to pay to have their own separate traps that he has to pay big money for an attorney to take them to court, it is not the City's problem, and that they will not step in and take care of this dilemma. He reflected the solution is simple, and that is if the City would make a law that if someone wants to share a trap then they have to share the expenses of maintenance. Mr. Curatola has received no help from the City on this matter. This happened three years ago, and he is waiting for this to happen again. He had six inches of water and sewage in his basement that he had to clean up. Mr. Curatola stated he could use some help with this problem. The other matter is a safety issue. Mr. Curatola informed his house is next to the Laufer Street lot that the Parking Authority owns and the walkway that goes in between belongs to both of us. They have a parking strip, a concrete cinder block from his gate to their property where they sell parking spaces for \$40 a month or more. Many times he witnesses people tripping over this cinder block even in the daylight. You do not expect an obstacle to be in the middle of a walkway. He has been after them for years to remove this thing. Mr. Curatola noted one day someone will get hurt and will sue. They will probably sue him, not the Parking Authority or the City because they know the City and Parking Authority will dance around the problem. The word is out that the people at the Parking Authority owe Mr. Curatola a lot of money that he will never see for damages that they were responsible for that they helped cause on his property. He has been trying to reach Mayor Donchez because Mr. Kevin Livingston of the Parking Authority is not doing anything; he says it is not their problem.

4. PUBLIC COMMENT (on ordinances and resolutions to be voted on by Council this evening - 5 Minute Time Limit)

Skyline West Project

Tim Brooks, 74 West Broad Street, Suite 240, explained he is the manager of the Downtown Bethlehem Association within the Greater Lehigh Valley Chamber of Commerce. He is at this meeting in that capacity on behalf of the Board of Directors of the DBA in further support of the Skyline West project. The Board of Directors feels that it is a critical project to ensure the continued success of our downtown.

Paul Peucker, 405 Second Avenue, Bethlehem, which is another example of a west Bethlehem home that was in need of a lot of repair just like the structure at 143 West Broad Street. There are people out there that are willing to take on such a project and invest in the neighborhood. Demolition is not the only option. His concern with the proposed project is the appearance of Skyline West from the Colonial Industrial Quarter from below along the Monocacy Creek. He has seen the drawings showing an apartment complex five stories towering over the Industrial Quarter, that were presented to the public on June 4. The proposed project will forever change the appearance of the Industrial Quarter and have a major negative impact on the

economy of our City. Mr. Peucker informed the Industrial Quarter is a magnificent City park well maintained over many decades by the City of Bethlehem and the Historic Bethlehem Partnership. The Industrial Quarter is particularly beautiful as it is situated against the backdrop of an undisturbed hillside to the west. When you are down in the Industrial Quarter you see the houses and businesses along Main Street to the east just as it would have been during the 18th Century. To the west you see the trees rising up along the hillside evoking the illusion we see Bethlehem as it was during its founding years. Burnside Plantation has a similar secluded appearance, even though the farm is located in the midst of the crowded Lehigh Valley you can hardly see any other structure nearby and you can imagine yourself in the midst of the Pennsylvania woods. This solitude is a major feature of our historic sites. Do not believe the undisturbed look of our historic sites is coincidental. Over the years generations of Bethlehem residents, City administrators and employees, staff and volunteers of Historic Bethlehem have worked hard to preserve these historic sites and to protect not only this historic structures themselves but also the open space around them. Mr. Peucker pointed out that he was told that the City of Bethlehem originally intentionally preserved the land south of 143 West Broad Street for the particular purpose of preventing from happening something similar to what has been proposed today, the construction of a huge 5 story apartment building on the west bank of the Monocacy. In 2009 the City of Dresden, Germany lost its status of a Unesco World Heritage Site after the City built a large bridge across the Elbe River changing the silhouette of the historic town. Skyline West with its proposed height of 5 stories will loom over the Industrial Quarter forever diminishing its stunning appearance. Mr. Peucker noted today the absence of any visible construction on that side of the Monocacy is a major contributing factor to the historic value of the site. Our historic sites are among our greatest assets and we have to preserve them. Many people come to Bethlehem because of our historic sites. We do not want to reduce the value of these assets and we cannot allow anything that will be detrimental to these sites. That will have a negative impact on our City's economy in the long run. Mr. Peucker stressed that we need to preserve the stunning appearance of the Colonial Industrial Quarter.

Evelyn Beckman, 310 West Broad Street added that she is the owner of Ambre Studios and the building is owned by Leh Preservation Limited. She is a neighbor of the proposed project of 143 West Broad Street and she is here to be a voice to remind Council that she is appreciative that the City of Bethlehem is respected for its history and its preservation. Ms. Beckman stated we have a wonderful safeguard system of having different historic districts and we have great systems in place with the Historic Architectural Review Board that does reviews of those proposals to help you make decisions. She would like Council to honor the Historic Architectural Review Board's request to deny the demolition of the building at 143 West Broad Street. This is a neighbor property to hers and she appreciates the history and look of it. When she looked up the Skyline West proposal she was shocked at it being such a modern high rise apartment building. If the City of Bethlehem wants to have that kind of property that is wonderful, but there are other locations where that would be more appropriate. Ms. Beckman hopes that we will have the foresight to respect our systems in place and value people who know about preservation and architectural respect and that you will honor and not demolish this historic treasure.

Christine Trux, 214 West Broad Street, commented that her remarks are the same as we just heard. She is opposed to this project and its current look. She would like to see the building at 143 West Broad Street preserved and she would like to see Council uphold the Historic Board's ruling.

Marsha Fritz, 818 West Market Street, stated she is a member of the Historic Architectural Review Board and she voted to deny the Certificate of Appropriateness to destroy the building at 143 West Broad Street. Destroying a contributing building in the historic district should be a last resort only done for the most compelling of reasons. Ms. Fritz noted when this historic district was delineated 143 West Broad Street was described as a colonial revival building that looks like something that was built 250 years ago. That description of this building was a mistake but not one that diminishes the buildings importance. The applicants argued that because it is not currently correctly identified it is not significant. However, it is. Ms. Fritz explained this building is an example of an eclectic building from the turn of the last century. It is the kind of building where nobody important has lived but one that makes up the context of historic landscape, the glue that holds things together. Architects and Architectural Historic Inns call these buildings background buildings. She expressed, without buildings like this one, the historic district would be an empty place. The applicant claims that this historic building has no context and again they are wrong. Within the historic district the Pennsylvania Historic and Museum Commission has not changed its designation. The applicant complains that this building no longer has utility but as Mr. Peucker testified, it does. Ms. Fritz noted an error was made when it was said that this building is not governed by the Secretary of the Interior Standards. Those ten standards are the basis of all historic preservation activity in this Country. To say that they do not apply is simply an error; it is an error that has been repeated by Mr. Parks. Ms. Fritz hopes that we will hear from our staff who will give you more information about why it is that we turned this Certificate of Appropriateness down, the building's importance, its place in the context of the City, its place in the landscape of the community. You have received a report from Mr. Donovan and she must add that there is an error in it. The vote tally that you received is incorrect and in fact it was 5 in favor of denying the Certificate of Appropriateness, 3 against denial and one abstention. As she has said this application is problematic, troublesome and difficult. Ms. Fritz strongly urges Council to think carefully and to realize the importance of historic preservation and to join the Historic Architectural Review Board in denying this Certificate of Appropriateness and allowing this building to be saved. She commented that in the memo that was written by Mr. Parks and reported in The Morning Call he suggested that because some members of the Historic Architectural Review Board do not live in the historic district that they are somehow two classes of membership. This is not true. Members are selected based on qualifications not on residency, and that is to emphasize in part the importance of historic districts to the community as a whole not just the people who just happen to live nearby. In fact many of the people who voted to deny this application live or work far closer to this building than many others in the historic district. Ms. Fritz stated she wanted to recommend to Council a book to read. It is called The New Localism: How Cities Can Thrive in the Age of Populism and it is written by Bruce Katz and Jeremy Nowak. It is important because it makes a point that Cities have many more options to create wealth than simply allowing developers to build whatever they wish. One of the things they emphasize strongly is what we are talking about tonight, historic buildings.

Marijuana Decriminalization Ordinance

Eric Miller, 903 East Paoli Street, Allentown, reported he will be reading a statement from his colleague Jeff Reidy, who is the Executive Director of Lehigh Valley NORML speaking on the issue of marijuana possession. "As I draft this note I am filled with emotion. As a citizen of Bethlehem I could not be prouder of our progressive thinking City Council as you set our City on a historic course by decriminalizing marijuana. I believe your actions will influence minds and force the hands of our representatives in Harrisburg. As the Executive Director of Lehigh Valley

NORML I cannot help but feel a sense of accomplishment as local decriminalization has been a goal for some time now. I have watched this body of Council stand in unanimous support on this matter. Your publicly expressed rationale for supportive decriminalization was a breath of fresh air to this activist. Myself, my organization and supportive members of Allentown City Council stand with you in opposition to DA Martin's public stance on these local Ordinances. We believe that local decriminalization is a first step, an easy step to begin to eliminate the injustice of our outdated laws. I look forward to working with Council, Chief DiLuzio and Mayor Donchez as this City implements this new Ordinance. Together we can craft an Ordinance that can eventually be enforced City wide as intended. Yes, I even believe that DA Martin will eventually support and enforce this new Ordinance. Tonight I am proud of the efforts of Council persons Negrón and Colón and a support of Council as you push forward with what you believe is the right next step locally to begin reform and the senseless harm of arrest for small amounts of marijuana and begin to normalize rather than continuing to stigmatize. I applaud your support and your efforts tonight as Bethlehem joins a growing number of Cities statewide taking the bold move, making changes locally and hopefully influencing that change statewide. As the leader of Lehigh Valley NORML I would be remiss if I did not thank the hundreds of citizens who have expressed their support over the past few months, attended City Council Meetings or spoke out at those meetings. Together we have caused real change in our community, Thank you." Mr. Miller added that although many people use cannabis leisurely or socially a great number of people use it for medicinal purposes. Some of the most common being sleep disorders, anxiety and depression, none of which are currently accepted as qualifying conditions in Pennsylvania's program. Mr. Miller would love to see and expect these conditions to be added as research will show how diverse cannabis healing properties are. Until then you are giving a little more sense of comfort and safety to these thousands of people in the City of Bethlehem. There are also many with a qualifying condition who cannot take the very pricey legal path that can easily reach a thousand dollar price tag in the first two to three months and that is all out of pocket. Mr. Miller stated this Ordinance is much more than protecting people from lighting up on every street corner which is still illegal and not permitted in this Ordinance. It is about protecting people, making the choice to consume cannabis, a very safe compound. We are sending a message to Harrisburg, to Washington, D. C.; this is what the people want.

Skyline West Project

Beth Starbuck, 420 Rockhill Circle, informed she owns a building and a business at 315 West Fourth Street. She has been on the Historic Architectural Review Board since 1998 and has been on the Conservation Commission since its inception in 2000. She has a Bachelors and Masters of Art in Art and Design and has worked in the building trade since 1980. Ms. Starbuck explained the purpose of the Board is to preserve and protect historic assets that the State has designated in our contributing districts. We are guided by the Secretary of Interior Standards the first of which is "A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment." She is not against the development of this parcel; it should be done in a way that is sensitive to its surroundings. However, she is against the demolition of this building. It is a two and a half story, three bay detached brick dwelling with a gable roof, large half-timber front garmer and side gable, corner turret with a castellated parapet, a wrap-around porch with unique square posts with ionic capitals. The building dates from mid to late 19th Century and has evolved stylistically over its history to reflect changing tastes in domestic architecture. The federal style home was modified with Queen Anne and Tudor style details and retains historic

significance. It continues to be a contributing resource to the central Bethlehem National Historic District. Ms. Starbuck explained the property that the house is located on has approximately 185 feet of frontage along West Broad Street. The house is about 32 feet wide. Although the property slopes to the east approximately half of the property is on level with the street leaving about 40 to 50 feet on the side of the house for a potential wider driveway which would allow people to drive past the existing house to the proposed development. There is already a driveway there that accesses the garage. In summary the factors to consider are that this is a building that is a contributing resource in a Historic District. The building is historically significant and demonstrates the evolving styles of domestic architecture of the late 19th and early 20th Centuries. The building is structurally sound and was inhabited until the property was purchased in December, 2017. Ms. Starbuck informed the proposed development could occur without demolishing this house. The house could be adaptively reused for the development or it could be rented. The street presence of the new multi-family development that is proposed could have a beautiful sign next to the entrance drive of this house; there is nothing that would keep that from happening. Ms. Starbuck stated in her opinion there is no justification for demolishing this historic structure.

Ziona Brotleit, 412 Second Avenue, explained here she again has to argue, to fight, and to defend for some of the best parts of our lovely City. She listened to Antonio Fiol-Silva, the Architect for the project and among the manipulative arguments that he used to build his case for demolishing 143 West Broad building, he said the building lacks an identifiable architectural style and it is not homogenous in style. She has to say that neither she nor most of the people who walk and drive by that house have Mr. Fiola-Silva's architectural credentials. To her eyes and probably to many the building is really a delight to behold. When she takes her frequent walks on Broad Street it serves to remind her why she likes living there. Ms. Brotleit suspects it will have a similar impact on people coming to our town. She does not expect that Antonio's homogenous glaring version of residents will affect her similarly. She continued do we not want to preserve and enhance the walkability of our City and of driving and attracting tourists and new residents; do we not want to enhance and develop the historic and architectural beauty of our City. Ms. Brotleit stressed to please not forget that and please consider that in your voting and allow this building to remain and to be incorporated into any new development. She has an idea that was given to her by a millennial. The millennial suggest to her, to keep the building and why not make it a bed and breakfast. You can use GoFundMe to get the money.

Bill Scheirer, 1890 Eaton Avenue, thanked Council for listening to the remarks about the proposed apartment building because Mr. Parks said if the house is not demolished his proposal is dead. The communication from the Historic Architectural Review Board is technically correct when it says that the application "to demolish existing buildings (house and garage) and construct an apartment building at 143 W. Broad St." was denied. But only because the demolition of the house was denied, leaving open the possibility that some kind of development, maybe even a smaller apartment building could take place. There was discussion about the apartment building when the application was taken up but the Chairman quite properly suggested that the first order of business should be only on whether the house should be demolished. A motion was made and seconded and passed on that narrower issue and that issue only. Mr. Scheirer stated you should not vote to override the Historic Architectural Review Board if you want development there and would accept something less than the present Parks/Benner proposal. It is true that Mr. Parks stated that if the house survived his proposal is dead but if the house survives he and Mr. Benner might conceivably come up with something else. He posed the

question, have you ever heard a developer come in and say I would like to build this but we could do something a little different? He added, no, it is either this or nothing and that is the way they always come in. He will mention again 13 West Morton where the young developer said he needs seven stories to make a profit and the Historic Conservation Commission said no. The next month he came back and said he needs six stories to make a profit and the Historic Conservation Commission said no. He came back and said he needs five stories and the Historic Conservation Commission said no. Again he came back and said he needs four stories and the Historic Conservation Commission said okay. There was a typo as you heard in the transmission from the Historic Architectural Review Board; the vote was actually 5-3 as was printed in The Morning Call. Mr. Scheirer continued to say that Mr. Parks described the house as isolated and eclectic in style as if that were a disadvantage and that there were six other houses in the historic district that are also eclectic. Mr. Scheirer explained being eclectic is also historical and should not be condemned. There was one other historical aspect that has not been mentioned. The isolation of the house serves as a historical marker of what once was. Mr. Scheirer urges Council to save the house. A vote to override will send a chilling message about historic preservation in a City that prides itself on historic preservation. On the specific proposal, it is way too large and the whiteness of the eastern façade makes it dominate the Monocacy valley even more. A darker color would be better. The blandness of the Broad Street and western facades are astonishing. He has been known to say that the project presents its high-end and back-end to west Bethlehem. There is a serious traffic problem. Mr. Scheirer noted that Mr. Parks has said that they do not need a parking variance because of the bus service and the bicycling possibilities; they only need one and a half spaces per unit. At least he is not saying anymore that these high-end folks will park their cars in the Walnut Street or North Street Garage. Mr. Scheirer does not see them riding a lot of busses either. There is also the run-off problem from a project this size. A gentleman from the Conestoga apartments said on the average every three years, they have to evacuate the Conestoga apartments because of run-off that comes from the north.

Marijuana Decriminalization Ordinance

Trevor Rouse, 627 East Broad Street, noted he is no expert on marijuana, but he has been doing a bit of research so he could understand it more. He has a few problems with the decriminalization that we should keep in mind so when we do decriminalize it and maybe it becomes more acceptable that we do not just let it off the leash. There are two major chemicals within marijuana that he has been researching called CBD and THC. He noted that THC is the “bad” chemical, you could say. It has been linked to psychosis and those sorts of things regardless of risk factors. As marijuana over the years has become more potent we want to make sure that marijuana does not have as much THC. What he is worried about is that we will just legalize it and realize that the ratio might be a bit off and that might some people might get addicted to it. He noted that CBD is the other chemical and this is the one that has been tested and the one that is the “good” chemical. He explained that CBD has been tested as a treatment for psychosis and anxiety. Mr. Rouse hopes that as we decriminalize it we can make sure that as scientists do more testing that the ratio of CBD to THC is at safe levels, and that if someone is in possession of it their needs to be a way to figure out if that person has marijuana that is safe and will be used for recreational purposes and will not be dangerous to the users.

5. OLD BUSINESS

A. Members of Council

- B. Tabled Items
- C. Unfinished Business

6. COMMUNICATIONS

A. *Council President – Rezoning Ordinance – Skyline West*

The Acting Clerk read a memorandum dated June 13, 2018 from Council President Adam Waldron advising that pending the outcome of Council's action regarding the Certificate of Appropriateness, the Ordinance to rezone the parcels of the Skyline West development could be placed on the Tuesday, July 3, 2018 City Council Meeting agenda for First Reading.

B. *Director of Public Works – Recommendation of Award – Traffic Planning and Design, Inc.*

The Acting Clerk read a memorandum dated June 7, 2018 from Michael Alkhal, Director of Public Works recommending a contract with Traffic Planning and Design for the design of traffic signal upgrades at Broad and Linden Streets and at Elizabeth Avenue and Linden Street. The Completion of the contract is October 31, 2019. The fee for the contract is \$36,000.

President Waldron stated Resolution 10 C is on the agenda.

C. *Director of Water and Sewer Resources – Recommendation of Award – Spotts, Stevens, and McCoy*

The Acting Clerk read a memorandum dated June 11, 2018 from Edward Boscola, Director of Water and Sewer Resources recommending a contract with Spotts, Stevens and McCoy for the fine bar screen and detritor upgrades at the Wastewater Treatment Plant. The estimated completion date is February 28, 2020. The fee for the contract is \$142,000.

President Waldron stated Resolution 10 D is on the agenda.

D. *City Solicitor – Use Permit Agreement – ArtsQuest – Yuengling Summer Concert Series*

The Acting Clerk read a memorandum dated June 14, 2018 from William P. Leeson, Esq. to which is attached a Use Permit Agreement for public property with ArtsQuest for the Yuengling Summer Concert Series 2018. The duration of the agreement is August 17, September 5, 18, 22, and 28, 2018. The location is First Street from Polk Street to the eastern terminus, Founders Way from Second Street to First Street.

President Waldron stated the Resolution can be placed on the July 3 agenda.

E. *City Solicitor – Use Permit Agreement – Greater Lehigh Valley Chamber of Commerce by and through tis Downtown Bethlehem Association – 2019 Bethlehem Vegfest*

The Acting Clerk read a memorandum dated June 14, 2018 from William P. Leeson, Esq. to which is attached a Use Permit Agreement for public property with the Greater Lehigh Valley Chamber of Commerce by and through its Downtown Bethlehem Association for the 2018

Bethlehem Vegfest. The duration of the agreement is July 14, and the location is Danny Rice Field.

President Waldron stated the Resolution can be placed on the July 3 agenda.

F. *City Solicitor – Sublease Agreement – Sierra Club Pennsylvania Chapter*

The Acting Clerk read a memorandum dated June 14, 2018 from William P. Leeson, Esq. to which is attached a proposed Resolution and Associated Sublease Agreement with the Sierra Club Pennsylvania Chapter for office space on the first floor of Illick's Mill.

President Waldron stated he will refer this to the Parks and Recreation Committee.

7. REPORTS

A. *President of Council*

B. *Mayor*

C. *Joint Public Safety Committee and Community Development Committee Meeting*

Chairman Colón stated the joint Public Safety Committee/Community Development Committee met on Tuesday, June 12, 2018 at 6:00 pm in Town Hall. The members received a presentation on the impact of Opioid in Bethlehem and an update on the 9-1-1 transition and both topics were for information only.

8. ORDINANCES FOR FINAL PASSAGE

A. *Bill No. 16 – 2018 – Establishing New Article 744 – Marijuana Possession*

The Acting Clerk read Bill No. 16 – 2018 – Establishing New Article 744 – Marijuana Possession, on Final Reading.

Mr. Reynolds thanked the Members of City Council who have worked on this bill. It certainly has not been a straightforward thing but at the same time we have talked about this a lot. This sends a message about what we stand for and the way we feel about this issue. Obviously we are just one part of this conversation. It remains to be seen about how the enforcement will occur because of the stance taken by District Attorney James Martin in Lehigh County. Mr. Reynolds stands ready to vote affirmatively behind the idea that this is the right thing to do. He explained if the State is unwilling to act and if the Lehigh County District Attorney says that it is not what we should be doing, that does not mean that we should not stand up and say it is the right thing to do. He wants to thank everyone on City Council who has worked on this, everyone who has supported this, everyone that has come out and sent emails and has contacted us and talked about decriminalization as an issue of social justice. Mr. Reynolds noted we are just one voice in this larger conversation that will probably take place over the next couple of years. This is a moment where we should be proud about what we are doing.

President Waldron thinks that tonight we will be voting to get on the correct side of history when it comes to the way we think about marijuana in the City of Bethlehem. He also hopes to continue dialogue with our Police Chief Mark DiLuzio as we have pushed him into an

unenviable position between having to figure out how to balance the two different Counties and what the approach will be. We are respectful and sensitive to that and we look forward to having a dialogue with maybe how some of that Ordinance might need to be changed or be tweaked in order to make it more applicable and easier for the Police to help enforce.

Police Chief DiLuzio informed as many know Bethlehem is a City within two Counties, Lehigh and Northampton County. Thus Bethlehem Police deal with two County court systems and two different District Attorney Officers operating under State law and operational directives of their respected County. Passing of a City Ordinance concerning the decriminalization of a small amount of marijuana creates a unique challenge for Bethlehem Police. The District Attorney by State statute is the top law enforcement official in each County. Police Chief's regularly and historically seeks their advice on new laws, Ordinance and enforcement. Recently the City of Allentown in Lehigh County passed a similar decriminalization Ordinance. The Ordinance was signed by Allentown Mayor Ray O'Connell. Lehigh County District Attorney James Martin directed the Allentown Police Department not to enforce the Ordinance in Allentown, Lehigh County. DA Martin directed Allentown Police Department to only enforce State law. The Allentown Police Chief issued a statement indicating that Allentown Police Officers would only enforce State law. Police Chief DiLuzio continued to say that concerning the section of Bethlehem in Lehigh County and per communications from the Lehigh County District Attorney, Bethlehem Police Officers are being directed to follow the same procedure as the Allentown Police Department and enforce State law concerning small amounts of marijuana. There are a few issues and concerns and some of this tweaking we might have to do down the line. One of his issues of concern just as a Police Officer is equal enforcement and liability. All Police Officers take an oath to enforce all laws equally and fairly to all persons within their respective jurisdictions. The Fourteen Amendment of the U. S. Constitution limits the actions of States and local officials; it provides for equal protection under the law to all citizens and addresses due process which prevents citizens from being illegally deprived of life, liberty or property. It basically controls what local government can do within their area of responsibility. Police Chief DiLuzio added that it ensures that the actions they take apply equally and fairly to all citizens within that area. With the passage of this Ordinance, enforcement by Bethlehem Police must be one of equal under the law within the City. Presently this cannot occur with this Ordinance. Enforcement cannot be different because of a boundary line within the same jurisdiction or municipality. The requirement of equal protection guaranteed by the Fourteenth Amendment and possible civil litigation is a major concern to him. Police Chief DiLuzio mentioned that with Title 75 concerns and liability, under the current State law on marijuana there is a driver's license suspension along with the State penalty. This license suspension, which is six months, applies to all who are convicted or plead guilty to possession of a small amount of marijuana. If an individual receives a non-traffic citation under our new City Ordinance and is convicted or pleads guilty do we notify PennDot and does the license suspension apply. For instance, an individual pays a citation for possession of marijuana under the Ordinance and continues to drive, he or she gets involved in a serious accident and someone gets injured or killed. If the individual faced charges under the State law, his or her license would have been taken by the court at the time of the guilty plea. Is the City liable in any way for injuries? We have a college and a university in our City, along with satellite campuses of DeSales University and Northampton County Community College. The universities and colleges receive federal funds for tuition research, and under federal law, marijuana is still considered a Schedule I drug. He knows there is an article the paper that President Trump is trying to change that, but presently it is still a Schedule I drug. For a University to accept federal funds or aid of any type, and in

speaking with these Universities he is being told that they have to enforce State law, they cannot use this City Ordinance on their campuses. Also Moravian Campus Police have the same problem that we do because part of Moravian is in Lehigh County and part is in Northampton County. The majority of our marijuana arrests in the City are a result of people having marijuana on them when they are arrested for other crimes. Police Chief DiLuzio explained he does not have Officers going out arresting people just for smoking weed on their porches. The number you see in our UCR (Uniform Crime Reporting System) is from somebody having marijuana on them like a DUI arrest. You will see our coding to code that crime is an 1800; not a 2100, so it goes under a marijuana arrest. In those types of cases, the DUI and other cases, they still have to be charged with the State violation, not the Ordinance summary on the criminal complaint. Also presently in the City we have other City Ordinances for disorderly conduct, public drunkenness, graffiti. We do not enforce them, we enforce the State law because we have been directed over the years that the State law supersedes the City Ordinance. The citations we issue all fall under the State laws for those violations, not the City Ordinances. Police Chief DiLuzio noted that there are several conflicting issues associated with this Ordinance. He understands the need for medical marijuana and the need for research. He also understands the push for decriminalization and even legalization for recreational use. His opinion whether he is pro or con in this issue, does not matter; there is a fair amount of detailed information on both sides of the issues. He has worked with Council on many issues, both privately and professionally and he understands what Council is trying to do with the passing of this decriminalization Ordinance. He also hopes and believes that Council should also consider with this Ordinance, a Resolution from Council to Harrisburg calling for decriminalization of marijuana at the State level. If Harrisburg would decriminalize small amounts of marijuana at the State level, the above issues and concerns would all be answered and we could move on. As Chief of Police he has an obligation to let you know when he has a concern about things and its enforcements. The only thing that matters here is that he makes the best decision possible concerning enforcement or non-enforcement of this new Ordinance and his decision will be based upon Federal, State and local laws and the interest of public safety and the community. This is why he has documented several of these concerns and is voicing them to Council. Again, his opinion does not matter, Council are the people who make the laws and he just tries to enforce them. Police Chief DiLuzio explained the enforcement procedure for Bethlehem Police will be as follows: In Lehigh County, as Chief of Police he must follow the directions of Lehigh County District Attorney James Martin in the Lehigh County section of Bethlehem. Any individual arrested with a small amount of marijuana and/or marijuana related paraphernalia will be charged under the PA State statute. Individuals will not be charged utilizing the City Ordinance. In Northampton County as Chief of Police, if and when the City Decriminalization Ordinance is signed by Mayor Donchez, and based upon conversations with the Mayor, City Solicitor and others Bethlehem Police Officers will be permitted to utilize the new Decriminalization Ordinance when an individual is arrested with a small amount of marijuana and/or marijuana paraphernalia. Bethlehem Officers will also be permitted to still use the State statute for violations as they do now. Bethlehem Officers will also be permitted to utilize both of them on a criminal complaint. If an officer charges an individual both a State charge and City Ordinance a judge will decide which one is appropriate at the preliminary hearing. The discretion to utilize the State law or the City Ordinance or both he is placing upon the charging Officer and the charging Officer's choice will be based upon all facts, evidence and totality of the circumstances before him. Police Chief DiLuzio stated a memo from his office will be drafted, including a copy of Council's new Ordinance educating and directing Bethlehem Officers on its use in Northampton County part of Bethlehem and its non-use in the Lehigh County part of Bethlehem. Hopefully in the future legislators in Harrisburg will address

this topic at State level and review our present State laws to make them universal and standard across all the Counties in Pennsylvania.

President Waldron thanked Police Chief DiLuzio and added that he appreciates his transparency and clarity and perspective in what he plans to do. Personally he is disappointed but he does understand that perspective. He can appreciate that Police Chief DiLuzio is using his judgement in Northampton County to enforce this Ordinance, which should pass this evening but hopes that he would have taken a stand against the District Attorney in Lehigh County. He realizes that he feels there is no choice, but we had hoped that we could maybe force you to have a choice. Ultimately that is your decision. President Waldron stated ultimately with the overwhelming support of this Council and the general population in the City, as well as the Council in Allentown and those residents. He does not know how much longer DA Martin will have in office if he continues with this thought process. There is due change and a new perspective is warranted and he hopes we could have a more progressive view on marijuana in the Lehigh Valley and Lehigh County more in line with what we have in Northampton County. President Waldron still plans on supporting this Ordinance tonight. He would like to continue that conversation with Police Chief DiLuzio to see how we could make it more progressive to both sides of the Monocacy Creek.

Police Chief DiLuzio informed he has no problem working with Council on this Ordinance. He will let Council know as the Officers use it with their discretion in Northampton County or if they do not use it. Either way he will get back to Council with something.

Mr. Reynolds stated the Mayor is not at this meeting tonight, but he queried if we pass this will Mayor Donchez sign the Ordinance.

Business Administrator Eric Evans noted that the Mayor wanted us to brief him on everything that came up tonight with this debate. It is not to be signed tonight by the Mayor and not in the next few days. Upon return from his vacation he will be fully briefed on what happened tonight. We are here to see what the response may be to the concerns from the Police Chief. The Administration, as the enforcement branch of government is put in a real difficult and complex situation and the Police Chief did a nice job explaining that. Mr. Evans stated we had a discussion this morning at the Mayor's cabinet meeting and he was fully engaged at that time, but wanted to wait to hear what was said tonight and what the vote is until his turn which is to sign this. This is something that was brought up by Council, debated by Council, and will be voted by Council. This is not an Administrative initiative, so at the end of the day his opportunity will be at the back end after the vote.

Mr. Reynolds asked if Mayor Donchez has made a decision or not.

Mr. Evans stated he does not need to deliver that answer this evening, and he does not want to deliver that answer for him. The best representative of where the Administration stands are the issues of the Police Chief.

Mr. Reynolds mentioned that Chief DiLuzio's opinion as carried out is one that only occurs if the Mayor signs the Ordinance. So if the Mayor decides not to sign the Ordinance it would not be in effect so this is a logical question to ask as far as what happens next if we do vote for this. That is because if we take the Police Chief and his outlined procedure at face value, the

only way that happens is if the Mayor signs the Ordinance. If the Mayor does not sign the Ordinance Mr. Reynolds thinks that would affect what happens next, and that would be we override the veto. It is a complex situation, but it certainly has not snuck up on anybody. We have been talking about this for months. If the answer is we do not know, that is the best we can do now.

Mr. Evans mentioned in the atmosphere of true transparency he has very valid concerns from what his duties are from the Executive Branch of the government, but also being realistic that the First Reading of the Ordinance was 7-0. So even if it were to be vetoed, it would be overwritten anyway. At the end of this morning's cabinet meeting Mayor Donchez indicated that he would be likely to sign it based on what he heard after the First Reading. He still has the opportunity based on what has happened tonight to make a decision. Mr. Evans added that at the cabinet meeting today, he did say he would be likely to sign it if it passes 6-0, noting Councilman Callahan being absent. That is why the Police Chief pursued the idea of laying out what the concerns are for the Administrative branch.

Mr. Reynolds queried if Mayor Donchez is aware of the procedure that Police Chief DiLuzio outlined.

Police Chief DiLuzio stated yes, from this morning's meeting.

Mr. Reynolds noted regarding the procedure for Northampton County, he believes that Officers will have the opportunity to either enforce the localized decriminalization Ordinance or the current State law.

Police Chief DiLuzio stated yes, and as President Waldron had stated, it will be a tool in their toolbox. They will have the discretion as indicated, based on the facts, the evidence, and the totality of the situation to use your Ordinance or to use the State law or to use both.

Mr. Reynolds asked if that procedure that was outlined, has District Attorney John Morganelli weighed in on that. He believes that Mr. Morganelli is on the record as saying whatever the City of Bethlehem has decided, either in favor of this decriminalization or against it, he was okay with this.

Police Chief DiLuzio informed that is correct.

Mr. Reynolds asked if DA Morganelli is aware of the procedure that was discussed.

Police Chief DiLuzio noted that DA Morganelli considers this to be a local issue and that we settle it here, he is not getting involved in it.

Mr. Reynolds asked if Police Chief DiLuzio is confident in moving forward if we vote for this and the Mayor signs it, that procedure that was outlined will be okay as far as Mr. Morganelli is concerned.

Police Chief DiLuzio stated yes. That is why he wanted to get it out tonight because the media has been phoning him asking about enforcement.

Mr. Reynolds understands that he is the Police Chief and not a District Attorney. You have to work with the DA Office every day on all sorts of investigations and this is not an easy situation to be caught being pulled in all directions. It is you and you're Officers who have to work with our District Attorney's on a daily basis. Mr. Reynolds wondered if Police Chief DiLuzio could apotheosize about how could there be two very divergent beliefs between two District Attorney's.

Police Chief DiLuzio explained it is like any other case law; you have one lawyer who will argue one part of it and one lawyer who will argue another one. It is just a difference of legal opinion. That is the whole justice system and then someone else would have to decide if it goes up to a higher court. In this case you have one that has an opinion that State law cannot supersede and another that feels this is a local issue and is stepping back from it. So being in both Counties, he has to follow both and respect their opinion and advice.

Mr. Reynolds does understand and appreciates Police Chief DiLuzio being engaged in this process from the beginning. He believes that almost 80% of Bethlehem is in Northampton County. The procedure that Police Chief DiLuzio came up with, while imperfect, considering both the will of Council and the tough position he is in, is one that he understands.

Police Chief DiLuzio stated he wanted to do something fair and equal for what was put into the Ordinance.

Voting AYE: Mr. Colón, Mr. Martell, Ms. Negrón, Mr. Reynolds, Dr. Van Wirt, and Mr. Waldron, 6. Bill No. 16 – 2018 now known as Ordinance 2018-15 was passed on Final Reading.

9. NEW ORDINANCES

A. *Bill No. 17 – 2018 – Street Vacation – Portion of Pyatt Street*

The Acting Clerk read Bill No. 17 – 2018 – Street Vacation – Portion of Pyatt Street, sponsored by Ms. Negrón and Mr. Colón and titled:

AN ORDINANCE AUTHORIZING THE VACATION,
DISCONTINUANCE AND STRIKING FROM THE CITY'S
GENERAL PLAN OF STREETS OF A PORTION OF
PYATT STREET IN THE 14TH WARD OF THE
CITY OF BETHLEHEM, COUNTY
OF NORTHAMPTON, PENNSYLVANIA.

Voting AYE: Mr. Colón, Mr. Martell, Ms. Negrón, Mr. Reynolds, Dr. Van Wirt, and Mr. Waldron, 6. Bill No. 17 – 2018 was passed on First Reading.

10. RESOLUTIONS

A. *Authorizing Records Destruction – Fire Department*

Dr. Van Wirt and Mr. Colón sponsored Resolution No. 2018-118 that authorized the disposition of the public records in the Fire Department as stated in the attached Exhibit A.

Voting AYE: Mr. Colón, Mr. Martell, Ms. Negrón, Mr. Reynolds, Dr. Van Wirt, and Mr. Waldron, 6. The Resolution passed.

B. Declaring Special Condition – Parking Fines – Musikfest 2018

Dr. Van Wirt and Mr. Colón sponsored Resolution No. 2018-119 that declared a Special Condition under Article 531 of the Codified Ordinances for increased parking fines during Musikfest 2018 for the period from 12:00 Noon, Friday, August 3, 2018 through 11:59 PM on Sunday, August 12, 2018, with the areas to be affected on the North Side and South Side shown on attached Exhibit A.

Voting AYE: Mr. Colón, Mr. Martell, Ms. Negrón, Mr. Reynolds, Dr. Van Wirt, and Mr. Waldron, 6. The Resolution passed.

C. Authorizing Contract – Traffic Planning and Design, Inc.

Ms. Negrón and Dr. Van Wirt sponsored Resolution No. 2018-120 that authorized to execute an agreement with Traffic Planning and Design for the design of traffic signal upgrades at Broad and Linden Streets and at Elizabeth Avenue and Linden Street.

Voting AYE: Mr. Colón, Mr. Martell, Ms. Negrón, Mr. Reynolds, Dr. Van Wirt, and Mr. Waldron, 6. The Resolution passed.

D. Authorizing Contract – Spotts, Stevens, and McCoy

Ms. Negrón and Dr. Van Wirt sponsored Resolution No. 2018-121 that authorized to execute an agreement with Spotts, Stevens and McCoy for the fine bar screen and detritor upgrades.

Voting AYE: Mr. Colón, Mr. Martell, Ms. Negrón, Mr. Reynolds, Dr. Van Wirt, and Mr. Waldron, 6. The Resolution passed.

Motion – Considering Resolutions 10 E through 10 H as a group

Mr. Martell and Mr. Colón moved to consider Resolutions 10 E through 10 H as a group.

Voting AYE: Mr. Colón, Mr. Martell, Ms. Negrón, Mr. Reynolds, Dr. Van Wirt, and Mr. Waldron, 6. The Motion passed.

E. Certificate of Appropriateness – 30 East Market Street

Ms. Negrón and Dr. Van Wirt sponsored Resolution No. 2018-122 that granted a Certificate of Appropriateness to install storm windows to match trim and trim to be painted the same as the existing at 30 East Market Street.

F. Certificate of Appropriateness – 229 East Wall Street

Ms. Negrón and Dr. Van Wirt sponsored Resolution No. 2018-123 that granted a Certificate of Appropriateness to construct roofing over existing deck at 229 East Wall Street.

G. *Certificate of Appropriateness – 241 East Market Street*

Ms. Negrón and Dr. Van Wirt sponsored Resolution No. 2018-124 that granted a Certificate of Appropriateness to install a 5' cedar fence with clear coat on the east and west side of the house at 241 East Market Street.

H. *Certificate of Appropriateness – 81 West Broad Street*

Ms. Negrón and Dr. Van Wirt sponsored Resolution No. 2018-125 that granted a Certificate of Appropriateness to install a shed design entrance with paint colors which complement their logo colors at 81 West Broad Street.

Voting AYE on Resolutions 10 E through 10 H: Mr. Colón, Mr. Martell, Ms. Negrón, Mr. Reynolds, Dr. Van Wirt, and Mr. Waldron, 6. The Resolutions passed.

I. *Certificate of Appropriateness – 143 West Broad Street (Denial)*

Mr. Colón and Mr. Reynolds sponsored Resolution 10 I denying a Certificate of Appropriateness to demolish existing buildings (house and garage) and construct an apartment building at 143 West Broad Street based on the contributing status of the existing building as described in the PA Historical & Museum Commission's Historic Resource form, prepared by Spillman Farmer Architects dated 4-7-86.

President Waldron explained that tonight we are considering the recommendation of Historic Architectural Review Board to deny the demolition of the buildings, the house and the garage at 143 West Broad Street. A vote of AYE would be in favor of the recommendation from Historic Architectural Review Board. A vote of NAY would be to counteract that recommendation, essentially proceeding the project forward.

Mr. Reynolds stated he has a question for Darlene Heller, Director of Planning and Zoning about the process associated with this. He knows we are just looking at the Certificate of Appropriateness but we had a discussion before about what are the steps of the process here because he knows a lot of the conversation and debate has been about some issues that are obviously important to the project that City Council agrees with.

President Waldron noted that he did reach out to Ms. Heller and she did draft a memo with a rundown chronologically of how we are proceeding forward which he thinks she will reference now as Mr. Reynolds asked.

Ms. Heller stressed there are other aspects to the project other than the Historic Architectural Review Board review for demolition. We have also had a public hearing for the change to the zoning map and that will come back to you probably next month for a First and Second Reading. The project has to also go back to the Historic Architectural Review Board for approval of the infill development or the new construction that would replace that. That would again come back to Council for final approval since the Historic Architectural Review Board is a recommending body. It is expected that the project would also go before the Zoning Hearing Board for impact to slopes, parking relief and for lack of a commercial use on Broad Street since the CL zoning district requires that in the commercial district. There may be other things because

this is a conceptual plan right now. Those are the things that have been on the table that we know of from the conceptual plan. Ms. Heller continued to say that it also goes before the Planning Commission for land development review and that would be the final step.

Mr. Reynolds queried what types of things are discussed at the land development review at that place in the process.

Ms. Heller explained that traffic was mentioned and public utilities and storm water runoff. There are specific requirements for storm water runoff review. We would look at streetscape and landscaping. There are a variety of things that come up under land development review.

Mr. Reynolds asked if there is a general estimate of how long this process would be. He does not believe we are only talking about a month for this project.

Ms. Heller replied no, a lot depends on the pace that applicant moves the project forward. We have time limits where we have to review a project in a certain amount of time. So if there is a submission to the Zoning Hearing Board she believes they have to have it on the agenda within 45 days. The land development review does take some time. There are some internal reviews that take place that includes almost every department in City Hall. There are a couple of reviews that occur before that would be placed on a public meeting agenda. It is hard to tell, but several months at least.

Mr. Reynolds then had a question for Council Solicitor Spirk. Back when we approved the Redevelopment Authority's sale of the piece of land left over from Route 378 he believes there was language in there that the sale goes through when the project receives all of the necessary approvals.

Solicitor Spirk informed the provisions in the Agreement of Sale that make the sale contingent upon the project being built as presented, and if it is not, the property could actually revert back to the Redevelopment Authority. The developer would actually lose title to the property. Through that Agreement of Sale with the Redevelopment Authority, they essentially control the process to ensure that what gets developed is what was proposed.

President Waldron noted that is just referring to the land behind the current home property, because there was another point of contention too that he talked to Mr. Parks about and he agreed to, and that was tying the potential demolition of the house at 143 West Broad Street to actual building of the project; not to demolish the building and have it sit there as a vacant lot with a chain link fence around it, but actually develop something. So our concern was as Council, if we do move forward, and there is support to move the project forward is not to issue a Certificate of Appropriateness to demolish the building, unless something is promised in return. In talking with Ms. Heller earlier today typically what happens is a building permit is issued tied to the Certificate of Appropriateness. He then asked Ms. Heller to elaborate on that.

Ms. Heller explained they have not dealt with demolition with the Historic Architectural Review Board on the north side before but it has come up with the Historic Conservation Commission on the south side. What they had chosen to do is to tie demolition to not just approval of the new construction but also to the building permit. She noted as you said that

would be so the community would not see a vacant lot for any length of time and that construction would start at the same time that demolition occurs.

President Waldron stated that is understood and obviously that is our goal. Mr. Parks said that was his plan as well.

Mr. Reynolds asked what the mechanism is as to how that occurs. He queried do we do anything with the Certificate of Appropriateness, or is it that the City does not give out the building permit or the demolition permit?

Ms. Heller thinks the language would be in the Certificate of Appropriateness so that it is issued contingent upon all the other public approvals and the approval of the building permits.

Mr. Reynolds asked if something needs to be added to the Certificate of Appropriateness.

Solicitor Spirk explained that is complicated because the first vote by tradition and custom and out of respect for the recommended agency, the City Clerk has always prepared the Resolution consistent with their recommendation. So that is why what is before you now is the denial. So if Council would vote no on the denial, it seems to him because both under State law and under City Ordinance, if Council approves the application they shall issue a Certificate of Appropriateness. So if you would vote no on the denial it would seem to him that the Council President would look for a motion and a second to grant a Certificate of Appropriateness for the demolition. At that time the language of that motion, he thinks, would include approving it contingent upon obtaining all approvals and drawing all building permits.

Mr. Reynolds pointed out if Council votes to deny the Certificate of Appropriateness as presented to us, a second motion is then necessary to grant a Certificate of Appropriateness.

Solicitor Spirk explained that is his reading based on State law and Ordinance. If Council approves the application they shall issue a Certificate of Appropriateness, so he thinks that would need to be done second. At that time the language would incorporate what Ms. Heller just stated. That is because Council does have the power and so does the Board, to grant any application in whole or in part. If you are granting a Certificate of Appropriateness in part contingent upon those other approvals and building permits being issues, he would think that is the way it should proceed.

President Waldron expressed now that we have the housekeeping out of the way, more to the matter of fact is the demolition of the building at 143 West Broad and what Council's perspective is on its historic contribution to the neighborhood, as well as the historic district of the City. He had the opportunity to walk through the site yesterday and inside the home with Mr. Parks to take a closer look at it. He cannot say that he was wowed by the house. The condition is fine. It is a fine home, but he does not see a whole lot of historic value to it. There is aluminum capping on the soffits fascia to cover up what was probably some rotting wood, which is not historic. The property itself is not really one that he could see a lot of people wanting to live at either as a single family home because there is no yard, it is just paint and macadam. The front is a street and anyone with a young family would not feel comfortable having their kids there. He does not see a general historic value to the home and what it adds to the historic nature of what our City is. President Waldron explained his perspective is just because something is old that

does not make it historic. There are a lot of things in our City that are old and historic, but the two are not mutually exclusive. That is his perspective, but he would like to hear what other Members of Council think about this home.

Mr. Colón stressed that this is a sensitive issue. He expressed, as some of you know from the neighborhood, he lives about three houses down from this property. He lives in the 200 block of West Broad Street and has spent his high school years on Sixth Avenue; his family lived across from the church. This past weekend he biked downtown to Tunes at Twilight, the West Side Farmers Market, and was able to see the property at 143 West Broad Street and speak with many people in the neighborhood. He also spoke with people involved with Historic Bethlehem Museum and Sites for perspectives. He tried to weigh in those who supported the application opinions along with what he read regarding the denial of the application. Unfortunately because of work commitments he was not able to attend neither the MANA meeting that we were invited to nor the Historic Architectural Review Board Meeting where this was discussed. Mr. Colón noted after talking to everybody, and weighing in everyone's considerations for similar reasons and some other reasons, he came to the same conclusion as President Waldron that he will be voting against the Historic Architectural Review Board's recommendation on the denial of the application tonight.

Ms. Negrón informed she came here tonight feeling the same way and she has to add that she received many emails and spoke with some. Again, we are just voting tonight on the demolition of the property. In her eyes, just the time that Route 378 was cut and the road was put in, isolating that property, that just took it off the Historic Site. However, she has to add that she thanks the Members of the Historic Architectural Review Board that are at the meeting, you made me change my mind tonight. She appreciated the information about the house and the importance of the house. She continued to say that she served on the Planning Commission for a while and has always thought about the recommendations of such Boards, you are the experts. We have destroyed many properties in the past as our professors have shown us when we talk about the history and if we are really keeping our history. Ms. Negrón expressed that she was convinced tonight that she is in agreement with the Historic Architectural Review Board's decision; she is okay with the approval.

Dr. Van Wirt stated she wanted to say thank you to all of the citizens who came and spoke and to the people who wrote and made their opinions known. Your involvement and your vitality are very important. She hopes whatever the outcome is it will not dissuade you from continuing to give your energy to the decisions and your wisdom to the decisions that this Council makes. When she was considering how to think tonight she certainly took into consideration your opinion very seriously. She also takes into consideration her feeling that a City is a lot like a shark in that it has to move forward or else it is going to die. Ms. Van Wirt does not feel that everything is in concrete. She thinks that certain decisions are going to be made that help this City move forward, and when she thinks about the value of this house within its context when it was cut off from its neighborhood, it lost its context to her. She understands how you feel about this but she feels that its future is one of blight and decay and she does not feel it is warranted to preserve this house for the architectural features, for the historic features, for its relationship to the neighborhood. Dr. Van Wirt explained that she will be voting to deny the denial in a sense. This decision also means that she expects the developer, if this project moves forward, to hew very carefully to the recommendations of the Historic Architectural Review

Board's going forward, and that it puts more emphasis on the future recommendations that they may bring to this project.

President Waldron clarified that a vote of NAY would be to not follow the recommendation of the Historic Architectural Review Board. If it is the intention of Council to move the project forward, that would be our line of voting this evening. If we wanted to have the second vote in order to pass the Resolution and potentially tie it to the building permits as discussed with Ms. Heller, we would need a second motion to add an addendum to that as well.

Voting AYE: Ms. Negrón, 1. Voting NAY: Mr. Colón, Mr. Martell, Mr. Reynolds, Dr. Van Wirt, and Mr. Waldron, 5. The Resolution failed 1-5.

President Waldron opened it up to Council to see if there is support to make a motion and a second to pass a Certificate of Appropriateness to grant the proposal as it was stated and if there is support to add verbiage to tie this Certificate of Appropriateness to building permits.

Mr. Reynolds made the motion that a Certificate of Appropriateness be granted to demolish existing buildings (house and garage) and construct an apartment building at 143 West Broad Street. Mr. Colón seconded the motion.

President Waldron then opened this up for discussion.

Solicitor Spirk explained if that was your intent he would say your motion would be what you said, "contingent on the developer obtaining all necessary approvals and building permits for the project that is proposed."

Mr. Reynolds then asked Ms. Heller if that language as Solicitor Spirk just stated is germane and would cover the situation we had discussed earlier.

Ms. Heller replied yes.

Mr. Reynolds then asked City Solicitor William Leeson for an opinion on that language that has just been shared.

Solicitor Leeson informed he thinks it is reasonable and appropriate contemplating if events of the whole project go through and if it does not, the Certificate is essentially null and void. That is how he interpreted it. If that is what represents Council's intent then he thinks they are in good shape.

President Waldron then asked if there is a second on the amended motion.

Mr. Colón seconded the motion.

President Waldron asked if there is discussion on the motion.

Mr. Reynolds and Mr. Colón sponsored Resolution No. 2018-126 that granted a Certificate of Appropriateness to demolish existing buildings (house and garage) and construct an

apartment building at 143 West Broad Street, contingent on the Developer obtaining all necessary approvals and building permits for the project as proposed.

Voting AYE: Mr. Colón, Mr. Martell, Ms. Negrón, Mr. Reynolds, Dr. Van Wirt, and Mr. Waldron, 6. The Resolution passed.

11. NEW BUSINESS

Finance Committee Meeting

Finance Committee Member Colón announced the Finance Committee will have a meeting in Town Hall on Monday, July 9, 2018 at 5:30 pm in Town Hall to discuss budget adjustments and transfers.

Chairman Negrón announced that the Parks and Recreation Committee will have a meeting Tuesday, July 17, 2018 at 6:00 pm in Town Hall. The subject will be the Sierra Club Sublease Agreement for Illicks' Mill.

12. ADJOURNMENT

The meeting was adjourned at 9:06 p.m.

ATTEST:

Acting City Clerk