

MARCH 21, 2011 COUNCIL MEETING MINUTES

The March 21, 2011 Council Meeting was called to order at 7:36 P.M. in Council Chambers at the Municipal Building. Mayor Anthony DeLuca Presiding.

APPROVAL OF AGENDA ITEMS

Mayor Anthony DeLuca called meeting to order. Mayor announced the Agenda will stand as presented. Will you please stand for the Pledge of Allegiance.

PLEDGE OF ALLEGIANCE

Council and the audience stood for the Pledge of Allegiance.

ROLL CALL

Present: Mayor DeLuca

Mrs. Kuhn

Dr. Kincaid

Mr. Underwood

Also present were: Municipal Manager Rayan, Finance Director Schrecengost, Solicitor Brimmeier, Controller Futules, Planning Director Davidson and Manager's Secretary Sorce.

CITIZEN'S TO ADDRESS COUNCIL

Mayor DeLuca – first we have up is Mr. Joseph D'Andrea. – No Response.

APPROVAL OF MINUTES

Mr. Underwood made a motion to approve Minutes of March 7, 2011.

Dr. Kincaid seconded the motion.

There being no further discussion the motion was approved by a 4-0 vote.

EXPENDITURES

APPROVAL OF WARRANTS

Dr. Kincaid made a motion to approve the Master Expenditures Summary dated March 21, 2011 – Journal Vouchers – 0 - \$0.00 – C.D. Requisitions – 3 - \$998.50 – EECBG Requisitions – 0 - \$0.00 – Checks Numbering 17238 – 17351 - \$694,135.01 – making a grand total of \$695,133.51.

Mr. Underwood seconded the motion.

Mrs. Kuhn – Page 9, Check #17269 - this is just for FYI Moe, I noticed that it was for Morton Salt and I was just wondering how our budget is with the salt from the winter, because I know a lot of people think that the winter is over but our salt budget also has to go for February and March. Moe replied – so far we are about 75% expended out of the whole budget, so we still have a few dollars to finish the year with. Mrs. Kuhn – O.K. thanks Moe.

Mayor Deluca – for Duquesne Light, I got a letter for being on one of their programs. Starting in the Year 2012 they are starting to put in these smart meters and I guess they are going to start charging different rates for peak hours and off-peak hours. Do we know how that is going to be contacted to us? How is that going to affect our budget when they start doing this program? Moe Rayan – well we haven't been contacted as far as that, but we can check on that Mayor. – Mayor – yes because for next year's budget we are going to have to take that into account if they are going to be billing us for different hours. Moe Rayan – we will follow up.

Mrs. Kuhn abstained from check #17268 to Don Kuhn Auto Body and yes on all others.

There being no further discussion the motion was approved by a 4-0 vote.

Mayor DeLuca – Do I have a motion to remove from the table **Resolution No. 2011-005?**

Mr. Underwood made a motion to remove **Resolution No. 2011-005** from the Table.

Dr. Kincaid seconded the motion.

Mr. Underwood made a motion to approve **Resolution No. 2011-005** recommending Conditional Use Approval to Peter J. McQuillin for the construction of a Cemetery to be located in the vicinity of Kansas and Colorado Streets as described in his application.

Dr. Kincaid seconded the motion.

Bonnie Brimmeier – At the last meeting there were a number of questions raised, and I did the research to find out exactly what the State Law is regarding these types of cemeteries and I found that there would not be an obligation on behalf of the Municipality but in fact the State requires what they call a permanent lot care fund be established for new cemeteries or burial grounds and it would be \$25,000.00 plus 15% of the gross funds each year that has to be set aside for the long term maintenance of the cemetery. The State Law, and I have copies here if anybody wants to see, it is very specific in that it talks about how it has to be maintained. Now this is a conditional use request so we have 45 days from the last hearing to render a decision which would be April 21, 2011 from your last meeting unless we get an extension from the applicant to go further. Council is also able since it is a conditional use if you would want to consider approval to put whatever conditions Council would deem appropriate on the cemetery. Does anybody have any questions regarding that? - Mrs. Kuhn – Bonnie just to make it clear – then what you are stating is the law that we presented at the last meeting where it says and I know that was an old law, I think it was 1923 - Bonnie – yes that is right – Mrs. Kuhn – it is not just this cemetery, it would be all cemeteries – that law stated that if that business would go bankrupt or go out of business for any reason that it would be the obligation of the Municipality or Borough that the cemetery is in, that they would be responsible for maintaining, so what you said from your research then that is not what is on the books today. That if they would have this cemetery and they would go out of business that the State is requiring this \$25,000 and it says 15% of lot sales, but if they are out of business they are not going to have lot sales, Bonnie – that is right – Mrs. Kuhn – so the \$25,000 they are basing that on is going to be enough to maintain it for the lifetime of the cemetery, is that correct? Bonnie – well the anticipation would be if they are selling lots then you would have the 15% and if they are not selling lots then there really wouldn't be anything to maintain. Mrs. Kuhn – so o.k. it would be \$25,000 base and then 15% would be on any lot from the very beginning. So if they would sell 10 lots it would be 15% of that, 100 lots, etc. so that percentage of lots is based on from first lot sold. Bonnie – yes – and just to be clear the summary that you had of the law was just that a summary. It wasn't a clear statement. The 1923 law that was being summarized that you were referring to is still on the books but this was not a totally accurate summary. What it says is and I will summarize, if any burial ground would be neglected such as to become a nuisance even though it may be occasionally used for burial purposes, the Court of Common Pleas may direct that the burial ground be placed in the care of the Council of the Borough, or the Township Commissioners or Townships Supervisors under the direction or supervision of the court. Then the next section goes on and says that it was not to exceed \$30.00 per cemetery per year to maintain. So even if someone would go to court and say that you need to maintain this under the statute what you would be required to spend would be \$30.00 a year. Mrs. Kuhn – that was not shown in the summary that we had two weeks ago. So then they are stating that the worse scerio if the Municipality was held responsible for taking over the cemetery, at the most, we would have to spend of taxpayer's money would be \$30.00 a year. Bonnie – that is correct. – Mrs. Kuhn – alright thank you.

Dr. Kincaid – mine is just FYI questions. I think presenting body might want to answer, I don't know. First one is a general question – what research has there been done to point out that there is a need for another cemetery in Penn Hills? I am familiar with cemeteries and I am

in them quite frequently and we have quite a few, I know this is a green one, but we have quite a few with a lot of property that is unused so I would like to know if there is any research that can be presented to help strengthen their case here? I have some other concerns; I don't know if you want me to say them all or if they want to answer them individually.

Mr. Pete McQuillan – CEO of Land Conservation Cemeteries – 1713 Hummel Street, Pittsburgh, PA 15212 – because there are not any other strictly green cemeteries in the Pittsburgh Area, we have pretty much gone on the fact, at the moment, I have had more than 50 people contact me to say that once the cemetery is open they would be interested in purchasing a plot and this would be with no advertising or anything else they just found this through the internet. We also have looked at all the other green cemeteries in the United States and looked at their sales and typical would be Green Spring Cemetery in New York which has sold in their first three years 300 cemetery lots; but they are out in the middle of rural Upstate New York. We really believe from our market research we will probably sell at least 100 lots a year maybe 200 or 300 lots a year, so I think there is a considerable demand because this fills a niche for people who are interested in environment friendly burial.

Dr. Kincaid – o.k. I really appreciate that answer because my research shows that you will need to bury at least about 100 bodies a year in order to break even. But you are talking in my research about \$9,000 roughly a year to upkeep the cemetery and you pointed out in New York, but my reference is Penn Hills, but I do appreciate you saying that you had some contacts before and so I guess you have answered it adequately enough – Most cemeteries of this venture from my research fail such as the one in Oakmont ten years ago. I am familiar with, but my research shows it takes from 5 to 10 years to even make a profit on any new cemetery. Do you have a profit plan that you feel real comfortable that this will be a profit making venture so that it won't go belly-up in the future? Pete McQuillan – well on our side is the fact that we are not borrowing any money other than what we are getting from our investors. We have no bank loans and we anticipate making a profit our first year and every year. I have talked to all the other cemeteries, green cemeteries in the United States and most of them are making money, not making a lot, but Green Springs has now hired four people so they are making enough money to pay the salaries of four people full-time and they are out in the middle of nowhere.

There is a growing demand for it. One of the things we are seeing, our cemetery consultant just came back from the cemetery trade show and people who have previously committed to purchase cremation once they realize the green burial option is available are switching their preference to green burial. It seems to be where most of the market is coming from.

Dr. Kincaid – o.k. just one or two other concerns – I know you have a legal person, I hope you do anyway, my research shows that there is a Pennsylvania Code 200 to 233 that applies for if the venture doesn't go, who does the reuse purposes and who does that fall on in terms for financial responsibility if that property is reused for something else? Those bodies have to be exhumed and who buries that expense and I have not talked to our solicitor about that you may have some information to help us with that. This is something that I would like to have some information on before I would be comfortable to go forward.

Mr. Pete McQuillan's Attorney – (Did not give name) – First of all Bonnie Brimmeier did properly address and I am in total agreement with her research in terms of what the current State Act is. In terms of the care fund and that is kind to what we call the Cat Fund for over medical expenses in layman terms. In terms of that type of reuse, the only time that you would ever see something like that and I don't think it really relates to the Conditional Use proceeding we are in, is if there was some type of condemnation then on that there is a whole procedure

under the law for that which would involve court orders that have to get some type of release or approval from the actual deceased family. So it is a very complicated procedure and frankly is frowned upon in the legal community as you might imagine Reverend. But I think that the questions, as in terms of the business plan, I think are interesting and we are happy to address them, but I think in the conditional use perspective and what I have seen from the Planning Department we really are here for the conditional use. We appreciate and will cooperate with the questions because they are important but I think the frame work is this conditional use. Do we meet the conditions, and as Bonnie Brimmeier said you can attach reasonable conditions in additional like are you going to follow the State Code in terms of burials or anything like that. I just wanted to add that. Sara Kuhn – to follow up on that – conditional use is what you are here for, but you also have to realize that the questions that we are asking pertain to State Law, so what your cemetery would have to abide by is what the State Laws are. So we weren't just addressing the conditional use we were addressing the State Law because of the fact regardless of what the conditional use is you would have to go and abide by what the State Law was. So that is why Council was addressing the questions to the State Law because of the fact we cannot just go on conditional use when there is State Law, we were asking for confirmation on exactly what the State Law required. So that was the reason we were asking the questions on the State Law because the State Law does pertain to the cemetery. Attorney – that is correct, just like when you have a gas station they are regulated as well, the same as with mining or cell towers or anything else that you deal with as a Municipality is going to be regulated by the State and Federal Governments. Sara Kuhn – right, but I just wanted to make sure and clarify that Mayor and Council were not just addressing the conditional uses, we also were addressing what the State Law was stating because we had received two weeks ago the 1923 State Law when we had that we had to address that besides the conditional use. The other question I have is when you were saying Mr. McQuillan that this is the only cemetery that is offering the green cemetery, it is my understanding that the present cemeteries within the Municipality, if they choose to, they could present the green cemetery type of burial to the public is that correct? Mr. McQuillan – The difference is that we are exclusively offering green burial, we are not offering anything else and we will use a portion of the income to do forest restoration which no other cemetery is doing. I think this appeals to a lot of people interested in restoration of woodlands. Mrs. Kuhn – to clarify when we are talking about the \$25,000 plus the 15% for every lot, where exactly Bonnie is that money placed and who is in charge of that money, this would be throughout the lifetime of the cemetery? So when they are putting this \$25,000 plus 15% for each lot where does that money go and who is in charge of those funds to make sure where the money actually is? Bonnie Brimmeier - They are required to designate a trustee and the trustee is bound by the trustee laws, The Fiduciaries Investment Act of 1949 under the State so it would be the same as any other trust account that is established for whatever purpose and the trustee would have to file reports on an annual basis and account for how the monies are spent and how the monies came into the trust and etc. Sara Kuhn – and I am assuming being that it is under that 1949 Law Act, that in fact then they would have to be bonded or what have you so that money would be available in years to come? – Bonnie – yes, that would be advisable to have any trustee bonded. Sara Kuhn – when you researched other green cemeteries throughout the United States, have they had any problems to your knowledge with having the burial two feet and no vault and degradable coffins, has there been any problems at all in any of the cemeteries that you researched? Mr. McQuillan – No. I must say though that 2 feet is a Pennsylvania Law. There are other states that have different laws, but in general no issues at all. Mrs. Kuhn – because 2 feet, if you don't have a vault and the coffin is going to be degradable, that just seems to be a concern that I would have on those stipulations. I don't know if that could be conditional use or not?

Mayor DeLuca – Let me ask you a question. For someone to get buried in a green cemetery, what is the total cost? Mr. McQuillan – we haven't decided our prices yet, but the average funeral cost in the United States for cemetery burial is somewhere between \$7,500 and \$9,500 on average and that does not include the cost of the cemetery lot. Cemetery lots if you go on-line and start shopping around the Pittsburgh Area sell anywhere between \$1,000 to \$10,000 and a lot of that is misleading because some cemeteries have a funeral home on site so they sell their cemetery lots at a low price hoping to get the funeral later so it is hard to compare those numbers, but generally speaking I would say somewhere between \$1,000 & \$4,000 might be a cemetery lot cost around Pittsburgh. Mayor DeLuca – Howard, this property is all taxable? Howard Davidson – yes. – Mayor DeLuca – so once it gets a conditional use for a cemetery does that become non-taxable? Howard – still taxable. Mayor – but they can go non-profit and then make it non-taxable? Mr. McQuillan – We are for Profit Corporation under the Laws of Pennsylvania and cannot switch to non-profit. Mayor – Is that true Bonnie? Bonnie – This group can't switch now. Could it be sold to a non-profit? Conceivably yes, but right now this group as it exists can't suddenly become a non-profit group. Mr. McQuillan – the other thing that I mentioned at the Planning Commission there is an Allegheny Clean & Green which means they are paying around half I think something like 20% of the Real Estate Taxes. We have decided not to seek that Clean & Green and we will pay full tax rates on that and in addition we will have to pay 5 years in back taxes. There is going to be a nice tax increment coming to Penn Hills from that right of way, at the time of the closing. Mayor DeLuca – I am looking down the line, say it turns out that it is not that profitable, say you sold maybe 10-50 lots and you decide to sell it to a non-profit and then we will be taking it off the books. So that is something I have to consider too. Howard can we use this as housing if someone else buys it? Howard – you can build houses on that property for sure. Mrs. Kuhn – following that line Mayor Penn Hills got burnt one time before by selling a piece of property which was the Seneca Place and the next day after it was turned over to a non-profit. So it is something to take into consideration. Mayor – Does anyone else have questions? Thank you Peter.

Mayor DeLuca – I mean one of the things I am thinking about is the future and what we could do with this piece of property here and what could happen. One of the things, the coffin only has to be 31 inches above the ground, I don't know. Peter McQuillan – I would like to offer something on this selling to a non-profit. I think we would be happy if you wanted to add a condition to the conditional use that said we would not be able to sell it to a non-profit company. Mrs. Kuhn – legally we would be permitted to do that? Bonnie – Yes you can do that particularly if they are willing to agree to it. Attorney – I believe it is State Law for 2 feet of ground covering, it is not something we – Mayor DeLuca – I understand but other cemeteries they have vaults and stuff, I am trying to think of other cemeteries around Pittsburgh and normally they have a fence and they are fenced in. You are talking about the first green cemetery, that is by one of our parks, there is wildlife in there, and I just have a problem with that. I don't feel comfortable. Attorney – the problem I have grabbing with this is in reading your Ordinance and what is required for a cemetery, it doesn't tell me that I need to go 6 feet down or how far. Mayor DeLuca – we couldn't put that in an Ordinance anyway because State Law governs what is written. If you would take it to court and stuff and say we really don't want to go 6 feet down we would end up losing because State Law takes precedence over whatever we pass. Attorney – I don't want to get into a legal argument over that. But I understand what you are saying and thank you.

Pete McQuillan – A point of clarity on that, we are not digging a grave 2 feet deep. The State Law requires 2 feet of cover which means if the coffin is 2 feet deep you need to dig 4 feet, you are going to add another 6 inches to that, we are going to go 4-1/2 feet deep so that is quite a lot of covering. And in addition to that, we are going to pile the soil up a little bit on the top until it settles. This has not been a problem anywhere. I know we have in our minds, we see it in movies and so forth that it is 6 feet under, but it is not actually done and what we are talking about is done. I know there are some smaller cemeteries in Pittsburgh that are doing vault less burials and they are not doing any more than they are suppose to.

Mayor DeLuca – Mrs. Sorce roll call.

Dr. Kincaid – Abstain from the motion

Mrs. Kuhn – I don't know Mayor if all of the, before I vote, I apologize maybe I should have asked this before the vote came, but Bonnie being that it is conditional use is there any way that we can impose other conditions that if the State is only saying that you can just have 2-1/2 foot of covering, is there some way we can make that be more than the 2-1/2 foot? Bonnie – yes you put whatever reasonable conditions that you would see fit on an approval. Mrs. Kuhn – well being that we already asked for a vote, is it alright if I interject it at this point or is that not going to be appropriate? Bonnie – what I would ask if you want to start talking about conditions is that we stop the vote, remove the motion, remove the second and then put your conditions on and then vote with your conditions on.

Mr. Underwood made motion to remove that particular motion at this time.

Dr. Kincaid agreed.

Mrs. Kuhn – O.K. Mayor I would like to put a conditional use on that they cannot being that they have volunteered to make the statement that they would not sell to a non-profit that would be one of the conditions absolutely. Mayor DeLuca – also I know we talked about 31 inches from the top of the Coffin. Mrs. Kuhn – I think the reason for the concern is I realize maybe they don't go six feet, but in general burials in cemeteries the depth that they go they also have a vault and our concern that this is in a rural area right next to our parks where there is a great deal of wildlife and with not having a vault, you are not embalming and the coffins are going to be made of wood that is going to basically degrade in a period of time. I think we have a concern that we don't want to have a problem which would be horrendous if an animal would come in and get a scent or what have you, so I think that is what we are looking for and I do realize that when you say 30 inches that is 2-1/2 foot of ground cover and that you are going to go down to whatever the coffin is, so you are probably talking this point in time 4 foot that you would be going down. So I guess what we would be covering is just the ground cover. I don't know what the number would be but I would like it to be a little more than 30 inches, maybe 36 inches. Mayor DeLuca – what about 40 inches? Mr. McQuillan – now we are getting to where it is pretty expensive to dig the grave. Let me just tell you something. I have done research. This issue comes up about animals getting into graves. Our cemetery consultant who is not here this week has spent 30 some years working in cemeteries and he says in all those years vault less burials are pretty common, he has never had a single case of an animal getting into a grave. Although it happens in the movies, is where we get the idea in the real world it just doesn't happen. As far as the animal scent, the research that I found if you get six inches of soil cover you are down to where most animals can't smell anything. Now you will, it is possible, to get a ground hog that goes down a foot or two but wild animals that are going to get into the graves are just about unheard of, it just doesn't happen. Mrs. Kuhn – I don't know what happens and I

am not basing mine on what happens in the movies because I never saw a movie where an animal got down in the grave so that is not what I am basing it on. But the other situation is you will see on newscasts unfortunately when people damage cemeteries too. If this was publicized and it was 30 foot of cover, I don't want there to be an incident. Mr. McQuillan – I don't either. Mrs. Kuhn – It is not based on anything that is in the movies, it is based on common sense of my own and I don't want there to be a problem and I don't want there to be a problem down the road and it took place because of the fact that the people that are on Council at this point and time had the opportunity to put a conditional use on to make sure there wasn't a problem. That is my main concern. I am just being concerned that I don't want a problem to happen and like I said, maybe they didn't have vaults but they also didn't have degradable coffins either. I mean in this situation you are. So in a period of time there is no vault, no coffin it is only going to be the remains of the body and so I would be more comfortable is there was going to be more ground covering. Mr. McQuillan – what is the number you would be comfortable with? Mrs. Kuhn - I do want everyone to realize that we are talking about the top coverage that you are going to dig deeper to go down and I don't know what the cost is but if you are digging a grave site, if you dig 4 foot or you are digging 5 foot when you have the machinery, I don't think that would be clause factor that would be a detriment to your business that way. I would feel more comfortable with the minimum of 36 inch ground covering. Mayor DeLuca – 36 inches – from top of coffin. Mr. Underwood – the cost of a backhoe for a couple more feet can't be that much more unless you want to change the fixed price of your burial sites but it only takes that operator a short period of time to backhoe that extra couple inches or feet. No problem whatsoever. Mr. McQuillan – If that is what you want, I guess we can do that. Mayor DeLuca – Howard is that 30 feet around the gas well? Howard – I think it is 25 feet. You can build a home 25 feet from a well. You have a condition not to sell to a non-profit and 36 inches of cover. Mayor – Is that it.

Mayor DeLuca – Made motion with those conditions.

Mr. Underwood made a motion to approve **Resolution No. 2011-005** with added conditions.

Mr. Kincaid made second motion.

Mr. Jerry Chippanelli – 921 Cimarron Drive – I am here as a tax payer. The question is is Penn Hills going to be responsible for another debt of a failed business under the Municipality Act of 1923? They said they were not going to sell to a non-profit organization which you put in your Ordinance and the third thing there is a gas well in the middle of the cemetery I believe. Is there an access road for the fire trucks in case there is a fire? Mayor DeLuca – Yes there is an access road. Howard Davidson – there is an access road on the property now to the well and the owner's are aware of that access road. They have a right a way to their property. Mr. Chippanelli – and if there is an explosion? Howard – they need to get there to deal with that. Mr. Chippanelli – because there are no signs, no lights and no fence, and I am a taxpayer in Penn Hills like most of the people on Council are and are we going to be held responsible under the Act if the business fails? Bonnie – Jerry if I may. Right before you came in I addressed that with Council and that act that is not the correct name of it but the act that you are referring to has an addition to it that even if the Municipality would have to bear any responsibility for maintaining it which would basically be cutting grass which would be similar to what we are required for other vacant lots in the township it would be a maximum of \$30.00 per year per cemetery. There is a newer act in 1972 that establishes the fund that the cemetery has to establish with a trustee, seed money of \$25,000 and then 15% of other gross funds raised

after that and that is required to be maintained for the maintenance of the cemetery. Mrs. Kuhn – you weren't in Jerry when we spoke about that at length and even if they would go out of business and the Municipality would be responsible, under the laws of Pennsylvania the maximum they would have to pay would be \$30.00 for a year. That was very important and we discussed that at length. Jerry – O.K. I am sorry I missed that. Also, they have in their rules and regulations that the cemetery expresses the right at any time without any prior notice to any owners to adopt new rules and regulations or amend, modify or rebuild any section, paragraph of their rules and regulations. Were Mayor and Council aware of that? Mrs. Kuhn – I don't think we have the right to tell a business what their rules and regulations are. Mayor DeLuca – They can change their rules and regulations, but they are still governed by the State what they have to do plus we are opposing these two conditions so they can't change that in their rules and regulations. Jerry – that's good, thank you Mayor.

Mary Ruthall – 130 Idlewood Road – I am a resident of Penn Hills, I just have a question about who bares the responsibility to pay taxes, I see a lot of empty buildings around here that corporations have just up and left and gone out of business. Who bares the responsibility for paying taxes for that and what about the coal companies that have done mining underneath our land and we have the danger of mine subsidence, who bares the responsibility to take care of that kind of thing. Mrs. Kuhn – that would be those companies, in this case under the State Law which we were questioning, is in the cemetery, it would be the Municipality. But the coal mines and the properties that is the owners, and if they don't then they get liened. That is why we were so concerned on this is because of the fact businesses whether they go out of business or not they are still responsible. But the law that was presented to us two weeks ago stated that if the cemetery, not this cemetery, any cemetery went out of business then the taxpayers would be responsible. So that is why it was very important to get it clarified so that we aren't going to have a business come in and if it would go bad then the taxpayer would have to pay it. These other places it is the responsibility of those business. Just because they go out of business if they still own the property they are still responsible for paying it. Penn Hills taxpayers do not have to pay it.

Mayor DeLuca – if another business goes under, someone can go in and fix it up and with the cemetery if it goes under, there is not much we can do, who is going to buy the property because then you have to go through the process of removing the graves, so basically, if we do this tonight it is dead property. Mrs. Kuhn – pardon the pun.

Dr. Kincaid – Abstain from the Motion

Mrs. Kuhn – yes

Mr. Underwood – hesitating because if other cemeteries can go green why do we have to create another one if they are capable of doing it. They are already under the laws. I am going to say no.

Mayor DeLuca – Yes

There being no further business the motion fails with 2-1-1 vote.

Howard Davidson – Does Council want to reschedule this for your next meeting when you have a fifth Council Member here? Do you want to ask Bonnie for legal advice in the matter?

Mayor DeLuca – Can we bring it back when we have a full Council?

Bonnie Brimmeier – Yes, if you would like to do that you can. It is up to Council.

Howard – You have a situation that you have not made a decision on the application. The applicant is entitled to a decision on his application within a certain time frame; all those complications come into play with a 2-2 vote. I told the Planning Commission many of times that their tie vote does not matter, a tie vote is very good information for Mayor and Council because it is a recommendation. But by the time it gets in front of you 2-2 vote for you is in a sense no action. Am I correct Bonnie? Bonnie – yes, I think that I would recommend that we wait until we have the fifth vote to make sure that you get a decision one way or the other. Mrs. Kuhn – Now Bonnie do we have to ask the applicant to waive the time or are we still good? Bonnie – you are still good until your first meeting in April, and if for some reason we don't have five then we can consider asking them for an extension. Mrs. Kuhn – Not to muddy the water here, but I won't be in town at the next meeting. I can do it by phone, will that be alright? Lawyer – that is alright with us. Bonnie – if for some reason we don't have five that evening will you consent to an extension to the next meeting? Lawyer – we would like to have it in two weeks. Bonnie – right now we are planning to put in on for the April 4, 2011 meeting which is two weeks. Mrs. Kuhn – Oh I am sorry is it April 4, 2011, I will be back on the 3rd I apologize. Bonnie – I was just trying to error on the side of caution that in case you wouldn't be here for us to ask you if we do not have five do we have your permission to extend it to the following meeting which would be April 18, 2011? Lawyer – yes you do but we like as I said to have it on the 4th if possible. Thank you.

Dr. Kincaid made a motion to take **Resolution No. 2011-006** off the table.

Mr. Underwood seconded the motion.

Mr. Underwood made a motion to approve **Resolution No. 2011-006** authorizing the execution of a contract between The Municipality of Penn Hills and Hoffman's Boarding Kennels for Animal Control Services for a two-year period in the amount of \$30,000 per year.

Dr. Kincaid seconded the motion.

Mrs. Kuhn – I know that at the last meeting I had several questions on this and I do want to thank the Manager that he did send all of us a memo on all of the questions that we had and I guess my concern was that an animal could be disposed of within 48 hours was a little upsetting to me but it did say that Hoffman generally holds the animal longer than that time and that they do make an attempt to have them adopted through the Westmoreland County Humane Society so that was a fairly important concern of mine. And the other was in the Contract Moe; it didn't say how many hours they worked every day. It said that they came every day but it didn't specify so my concern was they could be here for ½ hour, hour what have you, so I do see that you have here they provide six hours of daily service on average. Is there any way to put that into the actual contract so that we can show that that would be to provide six hours of daily service on average? Moe Rayan – yes it could be added to the contract. Mrs. Kuhn – being that they do that as they specified, I think that it should be put into the contract that they are going to do that on an average six hours. And then it did say that they do check with the police

secretaries and that they do drop off the reports because that was my other concern who does get the reports that they are filling out and that any emergency call out must be approved by the shift commander. Now is that terminology just general, or is that actual and would it be necessary to be put into the contract? Moe – no not really, it is not necessary because when a police officer calls in or when we get the call on an emergency situation all the police officers have to go and obtain permission from the shift commander to make the call out. Mrs. Kuhn – o.k. and the only other question I had and you did explain as far as them giving a resident a trap for any type of animal that they needed to have taken away and that the trap is free and then if they have to remove it it is \$20.00. Moe Rayan – yes, that is correct. Mrs. Kuhn – the only thing then is I would like to have it put into the Ordinance if we can that they are providing six hours of daily service on average, if we could just incorporate that into the Ordinance. Mayor DeLuca – Gary Underwood you made the motion, are you alright with that, Mr. Underwood, yes I am, Dr. Kincaid, Yes. Mrs. Kuhn – and again Moe thank you very much for all your answers, it did answer all my concerns. Moe Rayan – your welcome.

There being no further discussion the motion was approved by a 4-0 vote.

Dr. Kincaid made a motion to approve **Resolution No. 2011-021** awarding a Contract to Traffic Control Equipment & Supply Company, Inc. for Traffic Signal Maintenance and Repair Services for a Three Year Period Commencing April 2011 through March 2014 for a Total Cost of \$29,700.00.

Mr. Underwood seconded the motion.

Don Sanker - 780 Long Road – Just a curiosity question, how many lights in Penn Hills required this, or do they take care of all the Traffic Lights. – Mayor DeLuca – yes all the Traffic Lights.

Dr. Kincaid – Mayor I just want to clarify relevant to the increments each year that this is a binding contract and cost increase, etc. supply etc. this will not come back to us for revision, this is binding, is that correct? Moe Rayan – yes the specified cost is for maintenance and any additional call outs relative to repairs or removing items back to their shop for repairs, etc, will be an additional cost. It is a specified cost per hour, for labor and materials. Dr. Kincaid – thank you. Mr. Underwood – What is the track record, or do we keep track of how often we get call outs? Could we be paying more because of that cost or less because they don't get called out that often?

Moe Rayan – the call outs are made through the Police Department as well. As far as how many per year we can get that information, it is available. I don't have it off hand. Mr. Underwood – I am sorry I didn't ask that question before we had the meeting but it just came to light for me right now. Mayor DeLuca – you see them every once in a while, there is a log inside the switch booth and they mark it when they come in and inspect it and then they send a report to the Chief. Moe Rayan – that information is available Mr. Underwood if you would like to see it.

Mrs. Kuhn – there is such a difference in the cost here Moe, unless I am reading these bid sheets wrong, but it appears to me that the Traffic Control who is recommended here their total is \$29,700.00 and then the other ones are \$84,999 and \$52,668 is that correct? Moe Rayan – that is correct over the three year period. Mrs. Kuhn – I mean that is a huge difference in the cost, are you comfortable that this Traffic Control is going to do everything it has to do being that they are so low compared to the others, don't get me wrong, I am happy we are

getting a low bid but when you see bids so dramatically different you feel are they sufficient for our needs? Moe Rayan – based on the information that we have from Chief Burton they responded to all of our needs and their cost pretty much in line to what they have here and we have had these folks for I believe the past 6 – 10 years providing services for us. Mrs. Kuhn – well then that is good. Mayor DeLuca – If you look at the maintenance repairs, it could be they know what it takes because they have been working on it for ten years. Mrs. Kuhn – o.k. because the maintenance is like \$825 compared to \$28,000 and compared to \$29,000. So that is just a flag that was thrown up to me. But I mean if you and the Chief feel that this is more than adequate, congratulations because this is a good savings to the taxpayers. Moe Rayan – yes, they have done work for us in the past like I said and they were always in line with their cost.

Mr. Underwood – I can't wait until we go LED and go green so to speak. That will all help with the maintenance too because longevity of an LED versus the lights that we have now just doesn't get it. I hope we get the grant from the State for more extensions because correct me Howard didn't we get an extension for lighting and we used it. Howard Davidson – we are out to bids right now for Traffic Lights and a Boiler. We have already received bids on replacing typical light fixtures, if I give you a little preview, we might be looking at a situation where we can afford two of the three; and it might be on Council's table what two of the three do you want. Just look forward to that. We will hope for the best and hope we can afford all three. We are taking bids on all three, boiler, lighting fixtures in multiple buildings, Senior Citizen Center, this building, McKinley, Volt Treatment Plant and we are taking bids on all traffic lights, not street lights, traffic lights. Moe Rayan – If I could add something to this, LED lights we started implementing the installation of those anytime that we needed to change a light bulb and the traffic signals have been changed to LED's. So that process has begun. Mr. Underwood – I believe Leechburg and Saltsburg Road they are LED's I believe, but you can correct me if I am wrong. Moe Rayan – I believe so as well.

There being no further discuss the motion was approved by a 4-0 vote.

Mr. Underwood made a motion to approve **Resolution No. 2011-022** awarding a Contract to Robinson Pipe Cleaning Company for the Cleaning and Closed Circuit Televising (CCTV) and inspection of Sanitary Sewer Lines.

Dr. Kincaid seconded the motion.

Don Sanker – What is the amount of the Contract? Mayor DeLuca - \$268,700.00. Moe Rayan – it is in the back-up.

There being no further discussion the motion was approved by a 4-0 vote.

Mrs. Kuhn made a motion to adopt **Resolution No. 2011-023** authorizing, approving and joining other member communities of the Turtle Creek Valley Council of Governments in securing the services of Cohen Law Group to negotiate a Cable Franchise Agreement with Comcast.

Mr. Underwood seconded the motion.

There being no further discussion the motion was approved by a 4-0 vote.

DISCUSSION SESSION

Howard Davidson - in regard to the fighting blight issues, Mayor as you know, we have been talking back and forth with e-mails and tell the rest of Council that the Mayor has told me he is interested in going with the smaller group and I contacted the Library and I cancelled any plans at least temporarily for the main room up there. Given this room was absolutely no trouble. I had an e-mail to you Mayor asking you if you wanted to start at 3:30. Mayor DeLuca – yes, let's start at 3:30 that is fine – Howard Davidson – you, Sara, the Magistrate, Northwood Realty, Ed Zullo from the CVC, Bob Hunter, Moe and myself. I will just proceed along those lines. Mayor DeLuca – just start – some of the things – Allentown or Altoona, some of the property owners were not keeping up with their property, they would put it on their web site with their names and addresses and people can write them letters. Howard Davidson – there is a whole range of things, we could put a session together just on littering and have Chris Miller come in and talk about how she organizes the litter clean-up programs or we could have a session just with Bob Hunter on how he sites people with building code violations. The idea was to have a round table discussion to get some ideas from these people and what they thought we ought to do and just talk about what some of the other towns are doing. We have ideas like the Wall of Shame; we have the new Legislation House Bill 2188. Mayor DeLuca – yes I was looking at that; I like that idea - Howard Davidson – we discussed this at the last CDC Economic Development Meeting. Not that they are ready to jump on it, it is new to them and they are reading about it right now and taking a look at it. Also, if we could back up a little bit, Sara and I have met with the school district a while back and got some ideas off of them. Sara I just got that list about 2 days ago. They are not that fast, but I can give you a chance to look at that list and see one of the notions there might be that we get together with the school district. I am open for your suggestions. I will set up the meeting then we can report to full Council on what we talked about. Mrs. Kuhn – The comment from the Allentown Mayor offers a way to fight blight, I like the idea that city inspectors can also issue tickets similar to parking tickets to both landlords and residents who violate. Howard Davidson – we just started that. Mrs. Kuhn – I think that is a start in the right direction. Mayor DeLuca – We have to tighten up, I know we get the list from landlords once a year but within that year you can have two or three tenants going through there and we don't know about it. So I think we need to hold the landlords a little more accountable and if we cross check our lists like start data bases from when the lease starts from this date to this date and get a list every six months and if we find the names different then maybe fine them for not informing us. Howard Davidson – the second item I have was Marcellus Shale, it is in the news. It is controversial; I wanted to tell Council that other communities and I gave you examples of Cranberry and Plum Borough we do have the ability to regulate Marcellus Shale as to where in Penn Hills we want it to be based on a recent case in Oakmont. We have now in Penn Hills an Ordinance that basically treats Gas Wells as a public utility and a conditional use in any zoning district in Penn Hills. As you know, we have had the small wells all over, we are stuck like a pin cushion, we have 30 or 40 of them and they are usually minor issues and somewhat disturbing to the adjacent owners when they are first put in but after they are put in they are usually small minor issues, but the Marcellus Shale it is a big ticket item. I am interested in writing an Ordinance if Council is interested. Anticipating that you would be interested I put in on the Planning Commission Agenda just to talk about this month.

We would follow that up in April with Planning Commission Hearings maybe going into May and sometime in June I would have an Ordinance in front of you. Are you interested, is the question? Mayor DeLuca – yes, definitely. Howard Davison – the notion would be to most likely force them into heavy industrial districts in Penn Hills and limit where they can go. Try to pick areas where they have enough land to operate without disturbing homes. My understanding and Bonnie correct me if I am wrong, under the Municipalities Planning Code you don't have the authority to ban Marcellus Shale from Penn Hills. It won't be the intention of the Ordinance. You will most likely be faced with people who want you to do that but it is my understanding that we can't, so I will be putting an Ordinance together and the Planning Commission Recommendations will be on along the lines about what can we do not how can we ban it. Just give you a preview. Is that o.k. to move forward along those lines? Mayor DeLuca – Yes. Mr. Underwood – Howard can we also look at Allegheny County Council is looking at that because there has been some talk with their Board of Directors? Howard – I will take a look at that. There are model Ordinances floating all over the place right now. We have Plum, Cranberry and a few others, we have a model Ordinance that I just printed out yesterday. I will take a look at all of them. I am interested in it myself, significant fees for startup fees to get them started because if they do come, and by the way we have no interest whatsoever right now in a Marcellus Shale site in Penn Hills, so if you are a property owner hoping that they are coming, hoping that you are going to get revenue or something or if you don't want them to come I am only suggesting this so we will be prepared in case it does happen. No one has approached me, Huntley and Huntley has gone on record as saying they have no interest right now to site in Penn Hills. Just to give you an example. Mayor DeLuca – that is what they have over in Frazier Township right above the Mills. Howard Davidson – I am not sure. Mayor DeLuca – I think it is. I think they shut it down because they had about a 30 foot flame above the stack. Howard Davidson – well there have been incidents of flames in the other wells as well not just Marcellus. I mean I can't answer your question. I don't know. So I will proceed along those lines and then if you run across an Ordinance or Regulation that we should have in this Ordinance let me know about it. Mayor DeLuca – O.K. thanks Howard.

PUBLIC DISCUSSION

Good Evening, Mickey O'Connor, 1095 Maple Avenue, I don't know if it is because of the cars that went into the creek the ice or the water that was running into the guy's driveway or what but I am thanking you right now for stopping the water on Poketa Road. Is that a joint project between you and the State? Mayor DeLuca – No, the State won't touch that. Moe & I were talking about that and I just couldn't believe all that water was coming across so hopefully our plan is once we get the Hulton Road Project done if it comes under what we estimate we can use that money to offset our cost for that. Mickey O'Connor – that was such a disgrace. You know that has been going on for five years – five years. That has been a problem. I don't know what spurred anybody to do it but I am glad you did but it was a shame it went on that long. Moe Rayan – well actually it was before the incident, we have had a lot of complaints from the residents, the Mayor and Council received a lot of complaints, Representative DeLuca's office received a lot of complaints, we met with the residents on site, we brought the State in, representatives, engineers, DEP folks and everybody is washing their hands away from it. As you know, Poketa is a State Road in that area and working within the right away of Penn Dot. We have to get their permission. It was a long drawn problem but we are addressing it right now. So, hopefully we will be able to finish all the way through Rockcliff as well. Mickey O'Connor – if nothing else, we are saving sewer money – all that water was filling up in that guy's house was going down the sanitary and you were paying the extra. Mayor DeLuca – Mickey I just can't believe the State with all that water flowing over there that they didn't want to

touch it. Mickey – I am waiting to see what they are going to do where their wall fell in.
Moe Rayan – Yes, they are going to address that. They are claiming it is not affecting their highway so therefore they are not going to mess with it again. Everybody is looking the other way but we took the initiative to correct it.

Mayor DeLuca – we are now going into an Executive Session.

ADJOURNMENT

Mayor DeLuca entertained motion to adjourn.

Dr. Kincaid made a motion to adjourn.

Mr. Underwood seconded the motion.

Meeting adjourned at 8:51 P.M.

EXECUTIVE SESSION

Personnel

MAUREEN M. SORCE

MANAGER'S SECRETARY

DATE