

**Michael D'Amore, Ph.D., President**  
**Peter Schweyer, Vice President**  
W. Michael Donovan  
Jeanette Eichenwald  
Julio A. Guridy  
Ray O'Connell  
Mike Schlossberg

**Allentown City Council**  
**435 Hamilton Street**



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**COUNCIL MEETING MINUTES**  
**September 7, 2011**  
**COUNCIL CHAMBERS**

**COUNCIL MEETING - 7:30 PM**

**1. Invocation: Julio Guridy**

**2. Pledge to the Flag**

**3. Roll Call:** D'Amore, Donovan, Eichenwald, Guridy, O'Connell, Schlossberg, Schweyer  
Dale Wiles represented the Solicitor's Office.

**4. Courtesy of the Floor**

Mr. Hershman stated that his first issue is the audit. When will it be done? He stated that he keeps reading about money that ACIDA is borrowing, will that hurt the city's borrowing capacity.

Mr. D'Amore stated to Mr. Hershman when he refers to the ACIDA borrowing are you referring to the ACIDA borrowing for the property acquisition of the arena. At this time it has not been anything to the city to back that debt.

Mr. Hershman stated that state law says that you have to have sufficient revenue to pay the debt. You can not borrow more than sufficient revenue to pay the debt.

Mr. D'Amore stated that he believes that the enabling law for the NIZ has with in it the guaranteed NIZ revenue and that is what backs the loan.

Mr. Hershman asked what is happening with Allentown and the arena and ACIDA. He asked if Council thought of inviting ACIDA to a Council meeting and providing the full input of what is happening.

Mr. D'Amore stated that is a good suggestion that they should take into serious consideration.

Ms. Eichenwald stated that she agrees what Mr. Hershman suggested and they do it as soon as possible. It will be an opportunity to open public forums to discuss some issues.

Mr. D'Amore asked Ms. Eichenwald should they put something official or should they put out the invitation for Mr. Alfano who is the Chair of ACIDA and Mr. Unger, Executive Director.

Mr. Donovan stated that he would include the Community and Economic Development Director. He stated that they all have been requesting information more and more and things obviously in the last month more and more with the legal procedure and the eminent domain first. He stated that now the preliminary finance has been arranged. The Mayor now is putting more information out to the public based on the articles. He stated that they should talk about the project in public.

Mr. D'Amore asked was it any objection to contacting Mr. Alfano, Mr. Unger and Ms. Hailstone and requesting that they give a some dates in the very near future and they set a meeting.

Mr. Eichenwald stated that the Council should put forth the dates rather than wait and get the dates from these officials.

Mr. O'Connell stated that he would like Mayor Pawlowski should also attend the meeting.

Mr. D'Amore stated that they will invite Mayor Pawlowski as well.

Mr. Guridy stated that they should do it prior to November so they do not run into the budget meeting.

Mr. D'Amore stated that he suggest either late September or October.

Mr. Donovan suggested since it is Community and Economic Development and financial issues with the city would offer September 28<sup>th</sup> as the date it is usually the date for the Budget and Finance Committee meeting.

Mr. D'Amore stated that they could definitely use that date and thanked Mr. Donovan for releasing it, should they need it.

Mr. Strathearn stated that he believes that is Rosh Hashanah. He stated that is the date they were going to have the Parking Authority meeting and it was moved because of the Jewish Holiday.

Ms. Eichenwald stated that it is and it is the last Wednesday of September.

Mr. Donovan apologized and stated that they could do it either Monday night or Thursday night.

Ms. Eichenwald stated that Monday night would be fine. Thursday night would be the same problem.

Mr. D'Amore stated that Mr. Guridy pointed out that night of Council meetings they are usually free. He stated that they may want to go in that direction and what Ms. Eichenwald suggested is that they come up with some dates. He stated that they should throw a few dates out. They should do it in the next month.

Mr. Eichenwald stated that it should be that person or a delegated representative other than the case of the Mayor.

Mr. D'Amore asked Mr. Hanlon did he have that down.

Mr. Laudenslager stated that on August 6<sup>th</sup> the Allentown Fire Police dedicated their new mobile and operations center and several of you seen the trailers and agree that is a nice asset that they have in the city. He stated that thanks to the donations from AB Alarm for providing some equipment and the donation they received from UGI and donation, labor and materials from Stellar Construction. They have this asset and have not cost the city or taxpayers anything. It was donated and suggested they stop by Mack South and take a look at it. It is equipped with command up front and for rehab if they are out for long periods of time. This is for fire police, for police, for firemen or any fist responders to make use of.

Mr. Guridy stated that he had asked Mr. Laudenslager to come and speak about it because he is the person in charge of this area and he had a lot to do with it and dedicated individuals that help him out. He stated especially during the gas explosion. They were there helping our first responders. He stated that he went

over there and it was well equipped and it could go anywhere in an emergency. There were people from the fire police in other areas. They communicate with each other. He thanked them and the donations.

Mr. Schweyer thanked the fire police for their work during Hurricane Irene. He stated that they kept people from lakes in the middle of the roads and wanted to publicly commend them.

Mr. Mike Schware, 118 S 16<sup>th</sup> Street stated that the rains that they have been having lately is not the ordinary, but it still occurs and as he drove through the Parkway and what he believes is the LCA lines and the Manholes by the Little Lehigh Creek still spew something coming out of them in the Parkway. He stated that the Lehigh Parkway is the jewel of the Allentown Parkway System. The manhole that he noticed was a half a mile upstream from the water. They are probably drawing from the stream.

Mr. D'Amore asked Mr. Young to speak to that.

Mr. Young stated that it was some SSO (Sanitary Sewer Overflow) in LCA lines and South Whitehall Township Lines and those entities were contacted and city is working on getting the repairs done for the manhole covers. He stated that they are in the process of working with a consultant that will do a complete hydraulic of the entire sanitary sewer system. It is a lot of work. They were able to supply information from the GIS and run the model through. He stated that they asked about the flow and he stated that they will have some good flow background.

Mr. Donovan stated that he was walking up the Lehigh Valley Parkway in the summer time with no rain and when he walked by manhole covers ten or fifteen feet from the water, the smell was awful.

Mr. Young stated that it was the way in which LCA was operating some of their pumps. They have corrected that.

Mr. Schweyer stated to Mr. Schware that the day of Irene he went through the Parkway and he walked around with several members of the fire department and Mr. McMann who works for LCA was there at the same time. He met with LCA on the following Monday and had some conversations with them as well. He stated that any future conversations about merging with LCA must be taking very seriously because they are not as worried our waterlines as they are in the ones in South Whitehall, Lower Macungie and Upper Macungie. He stated that LCA should be a better community partner with us instead of using us as a flow through so that they can drain their stuff in the Lehigh River.

Mr. Dave McGuire, 223 N 19<sup>th</sup> Street, stated that he was going to address the matter, but since Mr. Schweyer brought the other matter up. He stated for the ten years he lived in Bethlehem there has been numerous environmental groups and there has been a continuous of twenty years dealing with LCA's studied indifference to this problem. He stated that they are as downstream as they can get. They have a catcher's glove. Other governments have studied the differences and calculated the technique to achieve various goals. He stated that he has been asked on various occasions as a member of the EAC to go to Lower Macungie and testify against numerous things that are going on. He stated that in the City Allentown, they have a source water protection plan that was not given to the Environmental Advisory Council. It is an environmental matter. Once again they are left with no bag. There is a lot of smelly stuff coming through. He stated that tonight is the first time he heard about merging LCA with Allentown. He stated that he is the chair of the Environmental Advisory Council. He stated that some weeks ago the Council brought forward to be considered an amendment to the Ordinance dealing with the EAC stating that there was to be an annual report in the March in the year following. He stated using that logic, the first report through this amendment ordinance will be next March because they were late this year preparing the annual report he offers the following that the report is in the final stages and if they wish the EAC could bring it forward in the spirit of last year's meeting and bring it forward to the next council meeting if they wish.

Mr. D'Amore stated that at the next Council meeting they have a Public Hearing at 7:00 PM. He asked if they had any committee meetings.

Mr. Guridy stated that they do not have anything scheduled, but there might be something coming up.

Mr. O'Connell stated at this time there are no agenda items for September 21<sup>st</sup> for Parks and Recreation. He stated to Mr. McGuire if he could do the Report September 21<sup>st</sup> at the Parks and Recreation Committee meeting.

Mr. D'Amore stated that there is a regular meeting and seems with the Environmental Advisory Council would be an appropriate part of Parks and Recreation and Mr. O'Connell could chair the meeting.

Mr. McGuire stated that they have no objection to talking to anybody at any time. The ordinance does not say report to committee it says report to council.

Mr. D'Amore stated that is correct and they have asked the committee representative from council to chair the meeting and invite all members of council to attend and in this case there are council appointees to the EAC, but there are no members of council that sits on the EAC and absent from that and Mr. O'Connell's willingness to take it on, they will not consider it a parks and recreation event they would invite all members of council to the meeting.

Mr. McGuire asked if it would fill the obligation under the ordinance.

Mr. D'Amore stated yes it would. That is how all the meetings have been conducted so far.

Mr. Donovan stated that in all the meetings that they had every council member made an effort to attend.

Mr. McGuire asked if it would be September 21<sup>st</sup>.

Mr. D'Amore thanked Mr. McGuire for taking the initiative.

Mr. McGuire stated that they take the ordinance very seriously and they look for transparency.

Mr. Bennington stated that there are no discussions about merging with LCA.

Mr. Schweyer stated that there was conversation in the public atmosphere not necessarily in city hall.

Mr. D'Amore stated that he has been in meetings in which the Mayor has said no way on that question. It is fair to say that there has been not from any elected members of Allentown Government. There have been suggestions from elsewhere. They have been fairly united.

## **5. Approval of Minutes: August 17, 2011**

The minutes approved by Common Consent.

## **6. Old Business**

## **7. Communications**

Public Hearing, September 21<sup>st</sup> at 7:00 PM on the Economic Development Liquor License of the Lehigh Valley Grand Prix.

## **8. REPORTS FROM COMMITTEES:**

Budget and Finance: Chairperson Donovan

The Committee met on August 24<sup>th</sup> and forwarded some items on tonight's agenda. As of July the EIT were low. They talked about the EIT justification. He discussed the audit. He stated that there are two reasons why the audit is late is the Allentown Redevelopment Authority is a considered a component unit and their audit must be incorporated in ours. The draft is in front of the ARA. There has been a list of items that has not been asked for in the past. The minutes to that meeting were distributed. The next meeting is scheduled for September 28<sup>th</sup> at 6:30 PM.

Ms. Eichenwald stated that she understands the situation with the ARA because they thought they were going to be disbanded. She thinks the city needs to do this.

Mr. Strathearn stated that they can not expedite it any faster. The stuff they came back with the city has been tremendously responsive of. They are asking for detailed information on historical records. There was a hideous. They had the delay because of the ARA which through everyone off schedule. This is a totally different approach from before.

Ms. Eichenwald stated that they should expedite it and June 30<sup>th</sup> is most set in stone and she hopes that they could resolve this problem.

Mr. Strathearn stated that he had contact with the Government Financial Officers Association which is the entity that gives the CAFR Report and he notified that rating agencies on why they had the delay.

Mr. Schlossberg asked if they not had a clean audit.

Mr. Strathearn stated no. He stated that they need it.

Ms. Eichenwald stated that no one is saying that. Audits are very important. They help them with a process that is normally lacking. Audits are there for a purpose.

Mr. Strathearn stated that he asked for a draft without the ARA potential and was told absolutely not. It has to be done.

Mr. Guridy stated that part of the problem is that the reason why it is taking so long is that the new auditor requested information that the previous auditors have not requested in the past. He stated that he does not remember why they changed auditors.

Mr. D'Amore stated that they were required.

Mr. Strathearn stated that it is a multi- year and the initial contract can be for three to five years and it allows for several annual extensions and they have exhausted all of the extension and they had to go and send out an RFP for a new auditor.

Mr. Guridy stated that because of the Charter they extended every extension in the Charter.

Mr. Strathearn stated yes and stated to Mr. Donovan that he remembers that they did that in the beginning of the year.

Mr. Donovan stated that he was on the phone every week with the auditors and the list is shrinking. It is a combination of factors and they did not have it at their fingertips. He stated that he had conversations with the staff and they are professional and want to get it done as fast as possible.

Mr. Strathearn stated that he cannot say enough about them as highly professionals. The first year they have to do the cleansing.

Mr. Guridy asked how long this audit has been doing this audit. When did they start?

Mr. Strathearn stated April or May. It was a later start, but this is the first year with us.

Mr. Donovan stated that he has the first email and explained that there are questions about the proper accrual of annual earned income taxes which will be an adjustment from a cash basis to an accrual basis and the city had not been following normal governmental accounting standards for accruing that. They need historical information for estimates similar to estimating requirements for estimating allowances for bad debts which requires historical information. The second is a risk liability loss to record for December 31, 2010 that was be the estimate of accrual. In the last few weeks, the list was longer and the final one was the ARA audit.

Mr. Strathearn stated that is the third piece. He stated that if there is any sense of urgency that council can put on the situation with the ARA that would be great.

Mr. D'Amore thanked everyone and stated that Mr. Strathearn is correct they did have a conversation about this and his advocacy was that the primary governmental unit.

Mr. Strathearn stated that yes we are the primary governmental unit.

Mr. D'Amore stated that they are beyond sixty days and there needs to be an accounting of this and when they do the CAFR it is the responsibility of those who is on the budget and finance committee to ask those questions when the auditors come and make them justify.

Mr. Strathearn stated that this goes back what happened historically. There is a certain format and procedure to declare a component unit and a component unit in the primary government unit and Mr. Donovan was part of the discussion if AEDC had been. There are metrics that they have to look at to determine if it is a component unit.

Public Safety: Chairperson Guridy

The Committee has not met since the last Council meeting; the next meeting is has to be scheduled since they have an item on the agenda.

Community and Economic Development: Chairperson Schweyer

The Committee met this evening and forwarded three items on tonight's agenda; the next meeting has not yet been scheduled.

Mr. D'Amore stated that it was a Press Release sent to them in the last forty-eight hours in regards to a loan program and PPL is the primary funder of and it involved AEDC and Mr. Schweyer and Mr. Donovan have been working with the administration on various components.

Mr. Schweyer stated that he spoke to Mr. Todd Collins about it and they were concerned about the application process and ranking system and he feels confident that they got there and satisfied what they talked about and if Mr. D'Amore would like when he schedules his next CEDC meeting he could bring the appropriate folks in and explain it publicly.

Mr. Donovan confirmed that Mr. Collins sent him for his review which he did take a look at and nothing is out of order.

Mr. D'Amore stated that Council made the determination for both Mr. Schweyer and Mr. Donovan to act on their behalf.

Mr. Schweyer stated that there is no reason not to and when they have the next CEDC meeting they will ask Mr. Collins to come and brief any members of Council.

Parks and Recreation: Chairperson Ray O'Connell

The Committee has not met since the last Council meeting; the next regularly scheduled meeting is on September 21<sup>st</sup> and that is to discuss the EAC Annual Report. He suggested the meeting at 6:00 PM.

Public Works: Chairperson Schlossberg

The Committee has not met since the last meeting; a future meeting has not yet been scheduled.

Human Resources, Administration and Appointments: Chairperson Eichenwald

The Committee has not met since the last meeting.

Rules, Chambers, Intergovernmental Relations and Strategy: Chairperson D'Amore

The Committee met this evening and discussed a Resolution which is pending in the committee regarding the budget process and discussed the filling of vacancies.

## **OTHER COMMITTEE REPORTS**

Urban Observatory – Councilperson Schlossberg – The UO meeting met on August 25<sup>th</sup> - reconvening around some practices suggested by the University Network at the PLCM and a neighborhood survey and local volunteer needs.

Housing Authority – Councilperson Guridy – the Housing Authority met two weeks ago. Today they had a dedication of a mural at Cumberland Gardens Neighborhood Center. They refurbished the building and the first phase of the Cumberland Garden project.

## **CONTROLLER'S REPORT**

Mr. Hoffman stated that the actuarial report from the three pension funds. They hired a new actuarial named Chieron and they have been an active participant on the board. The actuarial has been an active participant and he serves as the secretary of the board. They come out with new perceptive and new tools. He stated that Council set a deadline of September 30<sup>th</sup> each year to forward these actuarial reports for O&E, Fire and Police and indeed O&E and Police will be done by September 30<sup>th</sup>. At the last meeting they discussed some changes in actuarial assumptions for example they discussed using new mortality tables. A new estimate on how long you will live in retirement because people are living longer. It effectively increases your pension liability. He stated that when they got to Fire, Chieron has a discussion that they really felt that some of the assumptions that have been used for Fire pension were not the best and should be made more conservative. The assumptions were not matching up with what actually was happening. What would happen is that if they use the current assumption, they would underestimate the current liability. If they use assumptions that would more accurately match what is going on right now that would make the liability much larger. If by tomorrow they reach an agreement or by the end of the year which would change those parts of the contract that cover retirements will again change it.

Mr. Guridy asked if Chieron can give some indication where they stand with the fire department. Can we have as council where we are especially with overtime predictions? He stated that they are expecting a large exodus with the firemen over the year. Can we have as council some indication where we are especially with overtime prediction?

Mr. Hoffman stated that at the next meeting Chieron gave preliminary actuarial results from all three funds and they have that information and would make available. He stated that they expect all three to change. It gives you a relative measure of all three pension fund.

Mr. Guridy stated that if they were to do an actuarial report prior to will allow the people to be grandfathered in he is assuming.

Mr. Hoffman stated that is correct, but the big hit is how many will retire now and how many will retire next year. Using the old assumptions, he thinks he can get numbers.

Mr. Guridy stated that as budget season approaches, they have to make some decision on pensions.

Mr. Strathearn stated that the one thing he learned with Chieron is that the most frustrating thing about them, but is the shining star of how they are professional and what they do. Everything they do is peer reviewed. Nothing leaves without two of them signing off on it. They are one of the best in the country and know the situation. It would be a waste of their time, our money and resources to have them do something until after they get the situation settled with the fire department.

Mr. Guridy asked for a preliminary indication.

Mr. Strathearn stated that they gave us a report with the unfunded liability and they gave us that report at the last meeting. That is different from doing an actuarial report.

Mr. Guridy stated that many of us that went through the police retirement had a burden and unfortunately there were wrong numbers given to the person doing the actuarial report and because of the wrong numbers, they made some decisions that if they would have had the right numbers would not be in the situation they are tonight.

Mr. Strathearn stated that he lived with it everyday and the retirements that they are looking at right now is based on the existing contracts and until that changes they will have to have a potential of significant retirements. He stated to Mr. Guridy when he ask where do we stand are you asking for an actuarial report.

Mr. Guridy stated that will be his preference, but should wait until the contract agreement is reached.

Mr. Hoffman stated that he will check with Chieron and will provide a high level report, but it is not detailed as a normal actuarial report and it is preliminary.

Mr. D'Amore stated that they have the report and Mr. Hanlon can provide it to whoever wishes to see it. He asked Mr. Hoffman to help them decipher it.

## **9. APPOINTMENTS: None**

## **10. ORDINANCES FOR FINAL PASSAGE:**

Mr. Schweyer asked to make a motion to suspend the rules to introduce and move R-48 forward.

Mr. Guridy seconded the motion.

### **R48 Anjin Asian Diner and Grill, Inc. Approval.DOC**

Approving the Intermunicipal Transfer of Charlie Brown's Steakhouse License TR-712 to Anjin Asian Diner and Grill, Inc. at 2952 Lehigh Street, Allentown, PA 18103

Mr. Donovan stated that he would like to endorse the approval of it. The applicant did a great job presenting her case.

Mr. Schweyer stated to Mr. Hanlon on the notes that they were given for the Public Hearing, Ms. Lam was spelled in two different ways. The first half was Lam and the second was Lim. Please make sure to correct that for the record. He stated that he echoes Mr. Donovan's sentiment and make sure all the neighbors and all his neighbors were aware of it. He wished them luck in this endeavor.

### **Resolution passed, 7 – 0**

#### **Bill 43 Risk Management Funding**

#### **Recommended Favorably, 3-0.**

Amending the Administrative Code, Article 130, Financial Procedures, by requiring the Administration to file a monthly report on the transfer of funds into the Risk Management Fund.

Mr. Donovan stated that this was through the tenacity of Mr. Schlossberg and they finally came up with a good solution in terms of developing a reporting system similar to the financial reporting system and recommended favorably 3 -0.

Mr. Schlossberg stated that the genesis of this came from a shared concern based on the 0 – 7 vote on the last budget vote about what they perceive to be the dramatic decline of the balance of the Risk Management Fund. He, Mr. Donovan, Mr. D'Amore, and Mr. Hoffman developed a system with a baseline ceiling and the administration stated that it will create very significant problems for them and they made perfectly valid and reasonable points. The consensus they came to is that the Risk Management Fund will be funding at a significantly higher level than last year. They will increase the percentage that is contributed to the fund for the upcoming year.

Mr. Strathearn stated that they are going to monitor monthly and make sure that it the money they have at the beginning of the year, stays there. He stated that they get part of the report telling them where the Risk Management Fund stands.

Mr. Schlossberg stated that this will result in a more adequate Risk Management Fund. He thanked his colleagues and the administration for their cooperation.

Mr. Strathearn stated that a lot of credit goes to Ms. Bowman. He stated that Ms. Bowman oversees that area working with Mr. Tim Duncan and working with Mr. Donovan.

Ms. Eichenwald stated that she is pleased by this and asked how it would be communicated by City Council and the community at large.

Mr. Schlossberg stated with us it will be the emails that they receive with the monthly financials.

Mr. Strathearn stated that it is part of the monthly report. He stated that they put it together on the 15<sup>th</sup> of every month.

### **Ordinance passed, 7 – 0**

#### **Bill 45 Aggregate Board Membership**

Amending Article 147, Aggregated Pension Trust Fund, to provide for the Board Membership as required by Act 44.

Mr. Donovan stated that in the past there were three pension boards for each bargaining unit plus an overall advisory group. The state came out with Act 44 to change the requirements in two areas of it. One was to consolidate in a single board and focus on fiduciary matters, not matters that are outside the fiduciary matters. And two, put better control mechanisms for the pension fund. This bill is to provide for board membership. The mayor has chosen not to be on the board and the configuration has been worked on with various members and thanked Mr. Hoffman for all his work. He stated that it will be the Director of Finance, the Controller, a

Councilperson, a resident chosen by council, a resident chosen by the mayor, a resident chosen by the mayor and approved by council. It was recommended favorably by the committee 3 – 0

**Ordinance passed, 7 – 0**

**Bill 58 TNDO ZONING CHANGE**

Amending the Zoning Code, Article 1301-1331, of the Codified Ordinances of the City of Allentown to clarify various provisions within the Traditional Neighborhood Development Overlay District (TNDO).

Mr. Schweyer stated that Bill 58 and Bill 59 go hand and hand so we should talk about them at the same time. This was not on tonight's agenda. It was a previous committee hearing and both were recommended favorable 3 – 0. This was specifically with regards to the Zoning change to have the Traditional Neighborhood Overlay District to keep it in line with a traditional neighborhood. It does not change the usage, only the setback. It should not have any major adverse on the property owners. With the infrastructure they are doing on 19<sup>th</sup> Street they want it to fit the mold of what they are looking for in that section of the city.

**Ordinance passed, 7 – 0**

**Bill 59 TNDO ZONING MAP CHANGE**

Amends the Zoning Map by placing an area as depicted in Exhibit A - bounded generally by Sumner Avenue, West, Utica, North Cable, Page, Tilghman, North St. George and North Bird Streets but as depicted specifically in Exhibit A, in the Traditional Neighborhood Development Overlay District.

**Ordinance Passed, 7 – 0**

Mr. Schweyer asked Mr. Hefele if he would be at the event on 19<sup>th</sup> Street. He stated that he will be there at 6:00 PM. He stated that he would like to talk about it because it would impact that neighborhood as well.

Mr. Hefele stated that it is 7:00 PM.

Mr. D'Amore stated that it is the unveiling of the streetscape for 19<sup>th</sup> Street.

**Bill 62 WS PENN STATE GRANT.doc**

Amending the 2011 General Fund Budget to provide for a supplemental appropriation of Nine Thousand Five Hundred (\$9,500) Dollars to provide for a Penn State University Grant for the Weed and Seed Youth Coordinator.

Mr. Schweyer stated that it was recommended favorably by a vote of 3 – 0. It is \$9,500 and they have done the exact same grant over the course of the last couple of years. It pays for some programs and staff salaries for Weed and Seed. He stated that Ms. Alexander was here for the conversation a month ago.

**Ordinance Passed, 7 – 0**

**Bill 63 ENTERPRIZE ZONE GRANT.doc**

Amending the 2011 General Fund Budget to provide for a supplemental appropriation of Fifty Thousand Dollars (\$50,000) in Enterprise Zone funding from the Pennsylvania Department of Community and Economic Development for implementation of the City Enterprise Zone program.

Mr. Schweyer stated that it was recommended favorably by a vote of 3 – 0. This was a pass-through funding from the Commonwealth of Pennsylvania for the new enterprise zone which is operated by AEDC. He stated that Mr. Unger was here and serves on the zoning hearing board and they had a meeting earlier today.

Mr. D'Amore stated that it is a continuation of funding.

Mr. Schweyer said of a current program.

Ordinance passed, 7 – 0

**Bill 64 NEUWEILER GRANT.doc**

Amending the 2011 General Fund Budget to provide for a supplemental appropriation of Fifty Thousand (\$50,000) Dollars composed of funds received from the Pennsylvania Historical and Museum Commission (PHMC) and the Lehigh Valley Economic Development Corporation (LVEDC) via a sub-grant from the United States Environmental Protection Agency to study the reuse and market potentials, and historic architectural treatment of the former Neuweiler Brewery.

Mr. Schweyer stated that it is pass-through money from the Pennsylvania Historical and Museum Commission and LVEDC and LVEDC was the applicant for the grant and we were the sub applicant for it. This is a planning grant of what they can do and the feasibility will be for the Neuweiler Brewery. It was recommended favorably by a vote of 3 – 0.

Ordinance passed, 7 – 0

**11. ORDINANCES FOR INTRODUCTION:**

**Bill 66 Police Officer Hires**

**Referred to Public Safety**

Authorizes the hiring of certain Act 120 certified individuals to expedite getting additional police presence in the City.

**12. CONSENT AGENDA: None**

**13. RESOLUTIONS ON SECOND READING: None**

**14. RESOLUTIONS ON FIRST READING:**

**R49 911 Remembrance.doc**

City of Allentown Joining the National Moment of Remembrance of the 10<sup>th</sup> Anniversary of September 11<sup>th</sup>

**Resolution passed, 7 – 0**

**15. NEW BUSINESS:**

Mr. Donovan thanked Mr. Guridy and stated that on the Pension Trust Fund 147.04 Trustee Officer refers to the Mayor. Should that be crossed out? We need to bring an Ordinance forward that crosses that out.

**PETITION FOR DISCUSSION/CONSIDERATION**

**Petition for Discussion/Consideration:**

We received a Petition from Robert Toth for a Resolution requesting the Solicitor to allow any resident or taxpayer the right to receive and review a legal opinion issued by the City Solicitor's Office to the Mayor and City Council on the EIT tax.

## **Robert Toth's Petition**

### **Resolution submitted**

The Charter has provisions for introducing legislation (requiring 2000 signatures), provisions to call for a special meeting (200 signatures) and provisions for a 35 signature petition to place an item of the agenda for discussion/consideration.

Mr. D'Amore stated that they can bring that forward for reconsideration at the next meeting. He asked Mr. Hanlon to bring that out to put a note to bring that forward for reconsideration for next meeting.

Mr. Hanlon asked if they could treat it as a typo.

Mr. Wiles stated that if that is what they did in the past unless they need to be more formal with it

Mr. Guridy stated that they have done that in the past.

Mr. Hoffman questioned the language.

Mr. D'Amore stated that they will bring it forward at the next meeting. He stated that they received a petition from Mr. Robert Toth which is a resolution requesting that solicitor allows any resident or taxpayer right to receive or review a legal opinion issued by the city solicitor's office to the mayor and city council on the EIT tax and the petition was submitted and in order, but the thirty-five signatures where to put an item on the agenda. They have the item on the agenda for discussion and gave Mr. Toth an opportunity to speak to this and went to council first asking if there are any comments before they hear from Mr. Toth.

Mr. Donovan stated that he understands a citizen bringing forth this and for months Mr. Hershman and members of council talked about correctly identifying and understanding a justification of the EIT and made reference to the solicitor's opinion. He does not disagree, but do wish it was from a citizen not running for office. It looks like you are trying to bring something forward, but if he had forty citizens it might have been good to have someone that is not a candidate. He does believe it has to be discussed.

Mr. Toth stated that he disagrees with Mr. Donovan. He stated that he pays taxes just like everybody else and he realizes that his name is on the ballot for this November, but it does not mean that he gives up his right to do what any other citizen in this city suppose to do. He stated that for months he has been asked from citizens why did my Earned Income Tax go up when the Charter that we passed in 1996 states that it will not go up. He stated that is why he put it on the agenda. The citizens clearly stated that 1996 they wanted the final say if the Earned Income Tax would go up. He stated that some legal opinion states that they do not have to follow the Home Rule Charter. He stated that if they did not have to follow the Home Rule Charter then what is the problem with the citizens that are paying 35 percent of Earned Income Tax what is the problem of them looking at it. What is so magical in there that it has to be hidden from the citizens that you took an oath to represent?

Mr. Donovan stated to Mr. Toth that he has every right as a citizen and he is speaking personally as someone who has been through one round of politics. He stated that it decorum. He stated that he wished Mr. Toth would have asked a citizen that is not running for candidacy to bring it. He stated that he will say as he stated repeatedly Act 205 which was a very specific edict from the state to the city that was the justification that was presented and he believes it was the primary justification. He stated that he found out in June how the Act 205 justification work and he discovered that based on Act 205 alone, the city was raising more funds. He stated that when he inquired that he was reminded that they were shown this last fall, reminding that it had been a legal opinion referring to case law. This is the first time he has run into a situation where there is a solicitor's opinion that people are asking to see. He stated that he does not disagree because he is a citizen. It is his

understanding that for precedence or for reason attorney/client privilege there has been a recommendation not to disclose the legal opinion. That is the debatable item.

Ms. Eichenwald stated that she agrees with Mr. Toth and that it will serve the citizens well to see this legal opinion. The issue is always a problem when there is litigation. If there were litigation, it is then inappropriate to share a solicitor's opinion. Since there is no litigation at this moment, she agrees with him in this request.

Mr. Toth stated that one the attorney/client privilege that you spoke about. If we want to get down to the basis, correct me if I am wrong, but is the solicitor's salary paid with taxpayer money. Essentially, the solicitor represents the citizens of the city.

Mr. D'Amore stated that as we all do. There is a represented democracy and the representatives are selected by election and from election from election the individuals that are elected to serve are elected to serve and have a responsibility to the citizens that have elected them. The city council, those that are here are elected to make these decisions and that is what they are empowered to do. If they do not represent the citizens properly, when we are up for re-election should we choose to run for re-election the citizens should not vote for us. The solicitor is the legal representative of the body of the city council. The solicitor's client is the city council, not the public.

Mr. Donovan stated that a citizen can sue the city.

Mr. Toth stated that if you follow the law when you raised the Earned Income Tax, why would you worry about being sued. Why would anybody in their right mind sue you if you followed the law to the t?

Mr. D'Amore stated that is an absurd argument. People every day in courtrooms around this country are sued even if they are not in the wrong. To say if you did not do anything, why you are worried about getting sued, if that was true then no one will ever lose a lawsuit. He stated that he is opposed to releasing any solicitor's opinion and he stated that he voted against raising the EIT. He stated he resents Mr. Toth implying there is some kind of cover-up.

Mr. Donovan stated from the night it was discussed he clearly said that he did not understand the Act 205 legislation and needed the calculations. It took awhile. When he finally understood the calculations, he understood the act and there was a maximum that they could actually raise with a new EIT. Solicitor stated I forgotten about the case law. There were two justifications, Act 205 and case law.

Mr. Toth stated a former member of council signed that petition to have it released.

Mr. D'Amore stated that is his right.

Mr. Guridy stated that he is appalled of why they should release this opinion when you know there have been people that sued us here and many people have sued us for many other things. We get into litigation and spend tons of money. He stated that money that belongs to the taxpayers because of citizens. He stated that he is surprised Mr. Toth said that. He stated that if Mr. Toth were to win, he would be doing the same thing.

Mr. Schlossberg stated that this conversation is a little bit short-sided in a variety respects. He stated that they are currently not in litigation on it. He stated to Mr. Toth if his proposal was passed and anyone had access to solicitor's opinions they could see opinions for any number of cases regardless of this. The last thing in the world that he would want to do is to give people the opportunity and the ammunition to sue us. He stated that he would never want to compromise the advice that our solicitor's give us. He would not want the solicitor's to write an opinion and withhold information on fear that the information getting to parties that may have an

interest in suing us. He stated that he understands what Mr. Toth is trying to do, but the conversation is short-sided. It is our job to go beyond just this particular circumstance.

Mr. Toth stated that members of the council need to make it clear to citizens because they do not understand.

Mr. Schlossberg stated that is valid, but it is not this. We are talking about two different things now. If you want to make an argument stating that people do not understand the justification for the EIT hike which he can also state that he voted against that is a totally valid argument, but that is completely separate from proposing to release confidential information.

Mr. D'Amore stated that Mr. Toth is going in this in the proper way. You are engaging in an electoral process in which you have a difference of opinion and you are going out and meeting the citizens/voters and you are stating your opinion and if you are convincing to enough people, then you are going to be sitting here next year and that is the perfect way for you to address the issue.

Mr. Donovan stated that he admires Mr. Toth's energy and he obviously cares very much, but what he has found interesting about this with Mr. Hershman and he has been asking about this for months and yet they had not had an article about it. Until the solicitor called him at 8:00 in the morning, he was convinced that the only justification was Act 205. He stated that he was told he was wrong because he slimly remember in November being shown the first opinion. There is another opinion and that took him totally by surprise. There has not been an adequate discussion about the strategic justification of why the city needed to raise the EIT when Act 205 covered part of that increase. Now, you come up as a candidate and he has been saying it for months the same thing. He stated that he stated that he has given case law with a variety of cases being cited and Act 205. That was the justification given by the administration. The dispute has to be a public debate.

Ms. Eichenwald stated that they need to stick to the topic. We are not discussing tonight the validity of the EIT tax. We need to stick to the discussion on whether or not they will vote yes or no to at least to the solicitor's opinion based on the request and not argue about the EIT.

Mr. Eric Weiss stated the fact that they are not releasing it does caste a shadow over it. The citizens do not understand it. He asked them to reach out to the people and make your opinion known. You do not have to release a legal opinion, but you can release reasoning behind it. He stated that the people do not understand.

Mr. Guridy stated that is a good point. Perhaps they can request the solicitors to write down the reasons why.

Mr. D'Amore stated that the solicitors have done that.

Mr. Wiles stated that they did issue an opinion and quite frankly the right to attorney/client privilege is a very serious privilege not taken lightly.

Mr. Guridy stated that not deciding to release this. He suggested that the solicitors to write or make public the reason why they can not release it.

Mr. Wiles stated that it is a matter of attorney/client privilege. We represent you and you asked the solicitor's office for an opinion and we issued an opinion and one of the opinions was issued to the mayor because of attorney/client privilege with the mayor also. That is why it should not be released.

Mr. D'Amore pointed out as Ms. Eichenwald stated that they do not want to lose the subject. Council has not decided to take action or not. He stated that if they decide to take action to whether say yes or no yet. He stated that they should not justify saying no, when they have not said no yet.

Mr. Donovan agreed with Mr. Weiss' recommendation that they have not done a good job communicating. He stated that he tried here and they did not necessarily spread the word. There are two reasons; there is a state statute that always trumps municipalities and two, the case law.

Mr. Hershman stated that if this opinion reads that you have two opinions of council can vote on it or you can put the question to the voters on the Charter. Do you approve increasing the wage tax under Act 205?

Mr. D'Amore stated to Mr. Hershman that he has been on City Council long enough to know that he can take actions to the public. The answer to that question without a legal opinion is yes. That is true with any ordinance.

Mr. Donovan stated to Mr. Hershman if this particular option did not come together then they would have had an emergency election because there was such a big hole. Either they raise real estate taxes significantly or EIT. The questions came down to that they were given both state and case law and he wanted to balance it. They had to raise the money.

Mr. Hershman stated that if Mr. D'Amore remembers when the pressure came down on LST they put it to the voters.

Mr. D'Amore stated yes. That is true with any ordinance that this council passes.

Mr. Mike Schware, 118 S 16<sup>th</sup> Street stated that he is increasingly troubled by what he sees as a city government that is operating in secret. He stated that he hears tonight the audit report that is two months late. The city Charter which is our law, says June 30<sup>th</sup>. That is not an option or a target date. That is when we deserve to have it. He stated that there may not be anything hidden in those numbers, but the numbers to be meaningful has to be timely. He stated that they already in budget season and he hopes that the budget is being prepared. He looks at the Arena project and not an ounce of public input is going into the wisdom of taking out of a city block. He stated that what will happen is an informational meeting. He stated that they have the legal opinion for the EIT increase that remains a secret. He stated as Ms. Eichenwald pointed out, there is no litigation. There is no threat. This whole issue of the solicitor's opinion is here tonight because of a very simple question that a taxpayer and former councilman and a third councilman have been asking. What are the calculations of the monies you have been taking? How is it calculated and how it is being allocated? He stated that by what he can tell it is not being answered. He thinks it is a problem. Not releasing the opinion increases the chances of litigation. He stated that they are doing a disservice to themselves and Mr. Hershman is not getting the answer to his question because something is not right. If there are litigations and laws are knowingly violated there is no immunity for that.

Mr. Donovan stated to Mr. Schware that they are both professionals within accounting. He stated that Mr. Schware has a state license and he has a professional designation. He stated that two of the items or three of the items that were raised he has been intimately involved. He stated that he is a teacher and maybe he is a lousy teacher, but for six months he has discussed the legal issue here and tried to say that he did not understand it, but immediately when he understood it, he went public. The audit he has been on all the summer and he has talked to the professionals and he does not like it, but he gets upset professional when you say that you have been working on this and get on phone calls. He stated that on the arena issue there are people that are fairly knowledgeable about the situation and the fluidity of the planning and he has also talked about it in public in here and have been accurate on what he talked about. He stated that being very carefully legally of what he could talk about and what he believes were proper confidentiality request from private investors. He stated that he was vocal about the mayor not giving information and he has been very vocal in meeting and AEDC and supported by others saying to the Mayor that he needed a better communication plan.

Mr. Schwere stated that he appreciates that, but at the same time when he looks out across this room there are twenty people out of 115,000. That is not exactly getting the message out. Talking about the arena would have been very useful.

Mr. Donovan stated that is tough under economic development and dealing with private investors.

Mr. D'Amore asked were there any other comments from the public or council. Is it anyone who proposes taking action on this? He stated that he has a matter under new business that is a cause of concern for him. There was an article in the Morning Call today which interesting enough discussed a proposed property acquisition by ACIDA for an option to acquire property which they discussed when they discussed the NIZ and the KOZ and the Lehigh Valley Structural Steel. He stated that his concern is that this matter was not brought to any member of city council and in seemingly the mayor just committed money which is going to be allocated to the city for this project without any consultation to any member of council. That is outrageous. He stated to Mr. Bennington that he does not like putting him on the spot on something that he did not do, but perhaps the mayor would like to explain himself.

Mr. Bennington stated that he has no response.

Mr. Donovan stated that as a member of AEDC he was taken by surprise because AEDC takes under contract things from ACIDA not necessarily this. He stated that when he saw it he found it interesting. Even from a real estate point of view. It was done without our involvement.

Mr. D'Amore stated that more than likely he will not be here when the vote comes to City Council, but if he were he would vote no on that money solely because of the lack of interest in disclosing vital information to City Council.

Mr. Schlossberg said to Mr. Bennington that he may not have an answer right now, but in the near future they expect one.

Mr. Schweyer asked Mr. Bennington to follow up on two issues for him. Both are traffic related and both require a traffic study. He asked for a traffic study on the 1400 Block of Walnut right before the intersection of 15<sup>th</sup> on the westbound side of Walnut and Emmaus and South Church Street for the purpose of putting a turning lane in. Since school started he wants to make sure they get scheduled.

Mr. Bennington stated that they already are aware of it.

Mr. Donovan stated to Mr. Strathearn that he forgot at the meeting when he gave his report that they talked about that there are various options if the city collects sufficient EIT to go into the pension funds. What would be the best ways to allocate and asked in the next month they get a recommendation from Mr. Hoffman's office to see what the best way to allocate is. There are several different strategies they can follow.

Mr. Strathearn stated that a lot of that plays out from the actuary of the three funds. The smallest is well funded. It is not going to be cut and dry.

Mr. Donovan stated that once they have sufficient information it will be useful to publicly announce how that is allocated.

## **16. GOOD AND WELFARE**

Ms. Eichenwald stated that it became obvious in the discussion tonight and she never gone through a process where a petition was presented submitted. Is there any recourse for those who have presented the petition to have this acted upon?

Mr. D'Amore stated that like a Resolution, two members of Council needs to sponsor. In this case, it would be a member of council from this meeting makes a proposal, or motion and it would be seconded.

Ms. Eichenwald stated that she would like to do that and thinks that the petition makers are entitled.

Mr. D'Amore stated that he wants to for the purpose of making everything clear here. Mr. Toth's petition did have language here and he presumes she wants to mirror that language.

Ms. Eichenwald stated yes, she wants a yes or no vote for this petition.

Mr. D'Amore read the language stating Resolved the City Council of the City of Allentown requesting that the City Solicitor allow any resident or taxpayer to the City of Allentown the right to receive and review the opinion issued by the Allentown Solicitor's office concerning the legality of Ordinance #14839, passed on December 1<sup>st</sup>, 2010, amending the Earned Income Tax from 1% to 1.35% on salaries, wages, commissions and other compensation earned on and after January 1<sup>st</sup>, 2011 by individual residents and non residents of the City of Allentown. He asked Ms. Eichenwald is that the Resolution.

Ms. Eichenwald stated yes. Is that the language Mr. Toth?

Mr. Toth stated yes.

Mr. D'Amore asked was it a second.

Mr. Schlossberg asked will they vote on it tonight.

Mr. D'Amore stated that if it is a second that is the next question.

Mr. Schlossberg seconded and requested that they vote on it tonight.

Mr. D'Amore stated that Mr. Schlossberg is proposing that they vote on it tonight, is there a second to that.

Mr. O'Connell seconded.

Mr. D'Amore asked was it an objection to voting on it tonight. There is no objection to voting on it tonight. He stated that they have to vote on the question of introducing the resolution. The first vote is Ms. Eichenwald is proposing the resolution. He asked Mr. Wiles if he is correct that they have to introduce the resolution by vote then vote on the resolution by vote.

Mr. Wiles stated that he believes that is correct.

Mr. D'Amore stated that the first vote is do they should introduce the resolution and bring it forward for a final vote. He stated that on the introduction.

Mr. Hanlon stated to suspend the rules and introduce the resolution that Mr. D'Amore read.

Suspended the Rules and to introduce the resolution that Mr. D'Amore read passed, 4 – 3.

Mr. D'Amore stated that this will be formally designated R-50 and will begin with conversation with council on R-50.

Mr. Schlossberg stated that he stands by what he said earlier, if they are going to vote on it, fine.

Mr. D'Amore stated that there was a discussion regarding the question of if it is under litigation and it is not under litigation. There is more than one person on this petition that once the solicitor's opinion that has already signed onto a lawsuit against the city. If anyone thinks that there will not be a litigation coming from the release of the solicitor's opinion, you are kidding yourself.

Mr. Guridy stated that doesn't means the person or citizen will sue the city regardless.

Mr. D'Amore stated that it does not mean that and that's why he stated to draw your own conclusions. He asked were there any comments from the public.

Mr. Frank ? 933 S 10<sup>th</sup> urged the City Council to vote no on this to protect the city and citizens from other legal actions.

Mr. Schweyer asked if the first vote was to introduce it and to vote on it today.

Mr. D'Amore stated that by introducing it they suspended the rules.

Mr. Schweyer asked if it were a vote on the resolution.

Mr. D'Amore stated that it is a vote on the resolution to release or not to release.

Mr. Hanlon read: Now, Therefore, Be it Resolved that the City Council of the City of Allentown finds it fit and necessary to allow the citizens of Allentown to receive and review the legal opinion that the Solicitor's office produced to the City Council of the City of Allentown to justify the legality of the City Council increasing the Earned Income tax without an amendment to Allentown's Home Rule Charter. The City Council of the City of Allentown hereby requests that the Solicitor's office produced to the City Council of the City of Allentown to justify the legality of the City Council increasing the Earned Income Tax without an amendment to Allentown's Home Rule Charter.

Mr. D'Amore stated that he read from the petition and Mr. Hanlon read from the Resolution. He asked Mr. Toth to come up so that he could get very clearly to his intensions so that however they vote, they are voting on something specific. He stated that what he read was an introduction to Mr. Toth's resolution, but he has further resolution that has a few whereas, where there be resolved and two points in the resolution that are resolved. Is that correct? That is in full the resolution you provided to city council. He asked Ms. Eichenwald was her intent to have them vote on a full resolution.

Ms. Eichenwald stated that she wants the Council to vote on the full resolution in which there are 35 signatures presented.

Mr. D'Amore asked Mr. Schlossberg was that his intent of the second.

Mr. Wiles cautioned against this and the thirty-five persons on the petition allow persons to have it placed on agenda and considered. It does not require a vote on the petition or the resolution at all.

Mr. D'Amore stated that is correct and that is why none was taken until Ms. Eichenwald made her motion. He asked Mr. Wiles do they need to read this entire resolution into the record in order for it to be an order. Mr. Wiles stated to make sure that it is crystal clear of what is being voted on to be in proper order.

Mr. Donovan stated that he is going to cite the resolution that has been seconded and moved to be introduced. It was introduced by the citizens of Allentown on August 17<sup>th</sup>, 2011 of thirty-five signatures. Whereas, the Government Study Commission was established as a result of Ordinance 13229 and the approval of the citizens of Allentown on May 10<sup>th</sup>, 1994 by a vote of 3,418 to 2,422 and Whereas, the City of Allentown Home Rule Charter was approved by the Allentown voters on April 23, 1996 by a vote of 3,293 to 2,225 and took effect on January 6<sup>th</sup>, 1997 and Whereas, The City of Allentown Home Rule Charter Section 807 states that City Council of the City of Allentown shall not raise rates of the Earned Income Tax above their respective 1996 levels and Whereas, The City Council of the City of Allentown increased the Earned Income Tax from 1% to 1.35% without the voters of the City of Allentown approving a referendum to amend the Home Rule Charter to allow the City Council such authority; Whereas, The Solicitor's office of the City of Allentown produced an opinion that stated that the Pennsylvania Act 44 of 2009 (which amended Pennsylvania Act 205 of 1984) gave the City Council of the City of Allentown the legal authority to increase the Earned Income Tax without amending Allentown's Home Rule Charter.

Mr. D'Amore asked Ms. Eichenwald was that her intention to move that Resolution. That will be designated as R-50. He asked where there any comments from the Council or the public.

Resolution failed, 6- 1 (Eichenwald)

Mr. Bennington stated during hurricane Irene the employees acted in an exemplary manner. He thanked all employees.

Mr. D'Amore stated that Mr. Bennington is correct and they had an opportunity to speak with Mr. Messinger, Mr. Scheirer and Mr. Young ahead of time in the preparedness level of the city was amazingly high and the reason why he thinks the city made it through relatively well because our preparedness level was high.

Mr. Bennington stated that they had all the different departments be aware ahead of time and after the hurricane they review things that they can do better.

Ms. Eichenwald asked to make it official their note of appreciation in some form. It was a yeoman's job.

Mr. D'Amore asked if Council can send a Proclamation.

Mr. Bennington asked for them not to forget the Fire/Police

**17. ADJOURNED 9:39 PM**

*Council meetings are held on the first and third Wednesday of each month beginning at 7:30 pm in Council Chambers. For copies of the agenda or meeting announcements, please visit our website at [www.allentownpa.gov](http://www.allentownpa.gov), or contact the Clerk at [hanlon@allentowncity.org](mailto:hanlon@allentowncity.org) to receive an email notice of the meetings.*