

MINUTES

CITY OF BEVERLY

OCTOBER 15, 2007

CALL TO ORDER.

Verification of Notice- OPEN PUBLIC MEETINGS ACT. (N.J.S.A. 10:4-6) In compliance with the Open Public Meetings Act, this is to announce that adequate notice of this meeting was provided in the following manner. On October 11, 2007 advance written notice of this meeting was posted on the public bulletin board in the City Hall; was mailed to the THE BURLINGTON COUNTY TIMES AND TO THE CAMDEN COURIER POST; was filed with the City Clerk and was mailed to all persons who requested and paid for such notice. The proceedings of this meeting are being electronically recorded and the tape will be on file in the office of the City Clerk.

FLAG SALUTE.

ROLL CALL. Present: Mr. Crespo, Mr. Newsome, Mr. Germer, Mr. Robertson, Mr. Esaia, Dr. Cook, Mayor Wetherill, Mrs. Sheipe, Administrator/Clerk, Mr. Baxter, Solicitor.

Absent: Mr. Bancroft and Mr. Arter.

WORK SESSION.

- A. Discussion on Sign Ordinance. Mr. Newsome made a motion to hold the sign ordinance 20-17, Mr. Robertson second the motion. Council President requested if there was any discussion. Mr. Germer discussed that the original ordinance was introduced in February of 2001 and introduced by Mr. Gehm and second by Mr. Bancroft with a vote of 5-0, the second reading on the ordinance was rescheduled three times and finally introduced on November, 2001 by Mr. Bancroft who is still a member of this council and second by Mr. Ptaszenski. The ordinance was approved by Mrs. Richards also. Mr. Germer discussed that the portion about charging the \$5. He believes is in federal courts decisions and that they are not enforcing that. Mr. Germer discussed that he does not believe that it is illegal to limit the number or size of signs, otherwise you would have buildboards all up and down the streets. Also to not enforce the one sign per lot opens a can of worms and would allow thousands of signs. Mr. Germer discussed that he thinks it is a bad idea to not enforce the size and number and that perhaps the city should look at one sign per candidate or per slate of candidates, it certainly limits the one sign now and perhaps that is too restrictive. Mr. Germer discussed that the council should not ignore the law, it was an ordinance passed by the city council and that council has a responsibility to uphold the law. Mr. Germer discussed that just because you do not like the law, you should not say do not enforce it. Mr. Crespo inquired if Mr. Germer would like to amend the \$5.00 fee that is included in the ordinance. Mr. Germer replied that it does not need to be amend, it is unconstitutional to charge a fee. Mr. Crespo inquired as when it was declared unconstitutional? Mr. Robertson discussed that Mr.**

Germer just stated that you cannot pick and choose to enforce something and that you either follow the ordinance or you don't. Mr. Germer explained that this is a zoning ordinance, and that it has a separate cause that states that any portion of this ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provisions, and the remainder of this ordinance shall be deemed valid and effective. The only thing that has been declared unconstitutional is the \$5.00 fee. Dr. Cook requested a point of order, that since Mrs. Richards has arrived and Mr. Germer has used her name, maybe she could speak during the public session and that she wanted to make sure that she was not overlooked, because sometimes people are overlooked. Mr. Heifet from the audience replied that here it goes and that it must be cause they are amateurs. Council President Arter reminder the public that they will have an opportunity to speak under the public session. Council President Arter discussed that she always waits at the end of the public session to see if anyone else wishes to be heard and that she takes issue with Dr. Cook's remarks. Dr. Cook discussed that she withdraws her remark, and that she just wanted to make sure that since Mrs. Richards was spoken about, she had the opportunity to redirect. Council President Arter explained that the only discussion about Mrs. Richards was that she was on council on the first reading of the zoning ordinance. Council President Arter explained that the only thing that she would like to add to this discussion is that the enforcement of the \$5.00 fee has already been suspended and the enforcement of the ordinance. Council President Arter discussed that she would like to add that at the council meeting of October 9 the instruction of council was to allow the city solicitor to have a conversation with the zoning officer about the ordinance before any steps were taken and the public was told that they would have an answer within 3 days of what the enforcement of that ordinance would be. That ordinance was enforced by the deputy zoning officer before the conversation took place. The city administrator made a decision to begin enforcing that ordinance without the instruction of council having taken place, so the council should not be in this position today, if the instruction of council had been followed. If council people had an issue with that instruction, they had an opportunity to speak at that time, but no one spoke up on that point. That was the course that should have been taken. Mr. Newsome inquired if Council President Arter was saying that it was all the administrators fault? Council President Arter replied that she is saying that the administrator made a decision to enforce the ordinance without going by what council had decided and it was very clear that the solicitor and the zoning officer was to have a conversation before any action was taken. Council President Arter explained that she was reachable that day, no one reached her and no one had a conversation with the solicitor before steps were taken. There is a chain of command and protocol that was not followed in this situation and that she want to make sure that everyone understands that because protocol was not followed that is why everyone is here today paying for an advertisement and for the solicitor to be here. If protocol was followed we would not be here. Council President Arter inquired of the Mr. Baxter as to when he became aware of the \$5.00 fee. Mr. Baxter explained that he became aware of the fee,

Wednesday morning. Mr. Crespo discussed that the fee was brought up at the council meeting of October 9. Dr. Cook also discussed that the fee was discussed at the previous meeting. Mr. Newsome discussed that the solicitor directed the administrator to say that you cannot pick and choice sections of the ordinance. Council President Arter explained that the solicitor did not know about the fee. Mr. Newsome discussed that he would like to hear the administrator point of view. Council President Arter discussed that the instruction of council was for the solicitor to have a conversation with the zoning officer before any decision was made. Dr. Cook explained that it was brought up about the fee in the meeting in the open public session. Council President Arter discussed that the solicitor did not have the opportunity to speak with the zoning officer that was the decision of council before it was enforced. Mr. Robertson discussed that Mr. Baxter could have spoken with Mrs. Sheipe and that he was not here at the October 9th meeting. Council President Arter explained to Mr. Robertson that the solicitor was not aware of the fee. Mr. Robertson discussed that he did not think that most of council was aware of the fee. Dr. Cook explained that the fee was discussed and would the Council President like to see the video. Mr. Baxter explained that he was part of the discussion and the issue came up that there was a \$5.00 fee and that he did not have the ordinance on the fees with him and that he did not have the opportunity to review it. Mr. Baxter explained that the conversation than turned towards having a conversation with the zoning officer. Mr. Baxter explained that when he returned from court on Wednesday, there was an email that the process had already started. Council President Arter explained that since there was so much discrepancy on the issue, her instruction was to have the solicitor and the zoning officer to have a conversation before anything took place and that did not happen and you cannot argue that. Dr. Cook discussed that she is arguing any point that the fee was not discussed as it was. Council President Arter explained that it was not shown in the ordinance and the solicitor did not have time to read it. Council President Arter discussed that the whole point of having the solicitor talk to the zoning officer so that he had time to review the law, which never happened. Dr. Cook explained that at the meeting of October 9, she was to speak to Mr. McGonigle. Dr. Cook requested to allow the administrator to speak. Mrs. Sheipe requested to correct something, that she did have a conversation with the zoning officer, and that after a council meeting when employees inquired as to what happen at the council meeting, I informed them if there was discussion about their department and if any action needed to be taken. On Wednesday morning at about 8:15am, I had a conversation with Mr. McGonigle and informed him that the ordinance about the signs had been brought out in the public and there was a question about whether the ordinance was being in enforced. Mr. McGonigle had discussed that the deputy zoning officer could enforce the ordinance. Mrs. Sheipe explained that as the administrator, she cannot order the zoning officer or construction official to enforce or change an ordinance, they are governed under DCA. I received the form for the sign from the construction secretary and instruct Mr. Thompson to go out and advise the residents of the ordinance. There was no order to enforce the ordinance, it was an advisor action only until

the 72 hours was up and the solicitor review the ordinance. There was no enforcement of the fee and no one was order to remove any signs. If someone else told someone that they had to pay, they were in error. Mr. Germer discussed that when he came into city hall on Tuesday morning that he was told by Mrs. Sheipe that they were enforcing the ordinance and to go pay his \$5.00. Mrs. Sheipe explained that when Mr. Germer came into her office there was Mr. Newsome, Mr. Crespo, Ms. Desjardins, Mrs. Thompson and a reporter present and that Mr. Germer had inquired about where to pay the \$5.00 and that it was told to him that if he wanted to pay the fee he could pay it down the hall at the construction office. Mr. Germer discussed that he did not recall the matter happening that way. Mr. Crespo pointed out that the conversation must have been on Wednesday morning, since the council meeting was on Tuesday night. Council President Arter discussed that the point that she was making was that the instruction of council was not to take action until the solicitor and the zoning officer had a conversation, an action was taken before the conversation took place. Mr. Newsome inquired from the administrator about her conversation with the solicitor between the regular council meeting and the executive session. Mrs. Sheipe explained that Mr. Baxter and she were reviewing the ordinance and discussing Mr. McGonigle not enforcing the ordinance. Mr. Baxter had commented that the deputy zoning officer, Mr. Thompson could enforce the ordinance, if Mr. McGonigle did not enforce the ordinance. Council President Arter discussed that once again the council made the direction for the solicitor and the zoning officer to have a conversation. Mr. Newsome discussed that the Council President made that direction, not council. Council President Arter discussed that no one disagreed with her decision. Dr. Cook discussed that a vote needed to be taken on the issue on October 9. Dr. Cook discussed that Mrs. Sheipe explained that every morning after a council meeting, she reviews with the employees the actions discussed at the council meeting. Council President Arter replied that she did not hear Mrs. Sheipe say that the zoning officer and the solicitor should have a conversation. Dr. Cook inquired if the Council President can just call up the administrator and say drop this part of an ordinance and keep the rest and also is it ethical. Mr. Robertson discussed that when he heard that the Council President had told the administrator not to enforce the ordinance he became involved with the issue. Mr. Robertson discussed that they are a government body. Council President Arter discussed that the whole issue is that the ordinance was not clear and that council knew on October 9 about the ordinance and that there was no decision by council to enforce or not enforce the ordinance. Council President Arter discussed that unfortunately that was not allowed to happen. Mr. Robertson discussed that his problem is that the Council President made a decision without council. Council President Arter explained that it was unconstitutional to have people coming in to pay \$5.00 and I told Mrs. Sheipe to not collect the fees. Council President Arter discussed that if they wanted to come and fill out the permit, to allow them to do so. Mr. Robertson discussed that the council is now trying to do it correctly by having this meeting and to undo something that was done years ago. Mr. Robertson discussed that it should be full council and not one person doing the

ordering. Council President Arter discussed that the group can do it today or next week. Mr. Robertson explained that if the council allows the President to give individual orders it sets a precedent for the future. Mr. Germer discussed that Mr. Robertson was not present at the October 9th meeting and that the instruction was to have Mr. Baxter with the zoning officer and a decision would be made within 72 hours. Mr. Robertson and Dr. Cook discussed that is not the issue. Dr. Cook explained that the issue is what the Council President did on her own. Mr. Robertson discussed that the Council President was not getting his point and that there was a comedy of errors. Mr. Robertson discussed that his point was that the Council President was trying to do the right thing, but did it the wrong way. Mr. Newsome requested that the gavel be used because there are threats being made in the back of the public. Council President Arter requested that everyone behave like adults. Council President Arter explained that her intention was to protect the city from liability with the collection of the fees due to the freedom of speech issue. Dr. Cook discussed that the issue was brought up by people running for council. Council President Arter explained that the public did not know about the fee and was asking for clarification on the ordinance. Council President Arter inquired if there was any further discussion? Mr. Esaia inquired if the motion to strike the sign ordinance was to remove or hold the entire ordinance or part of the ordinance. Mr. Baxter explained that the motion was to put the ordinance on hold for further review. Mr. Esaia inquired if for the time that the ordinance is on holding flashing or animated signs can be used. Mr. Esaia discussed that the \$5.00 is unconstitutional, but that he has a problem with getting rid of the rest of the ordinance. Mr. Newsome explained that he is in favor of the time limit and the size of the signs in the ordinance, but other than that he discussed that he stated clearly last week that it is a restriction of freedom of speech. Council President Arter inquired as to where Mr. Newsome state the comment about freedom of speech in the meeting? Mr. Newsome explained that last Wednesday to the reporter and to half a dozen people in city hall that he felt that it was a restriction on freedom of speech. Mr. Newsome amend the motion to just hold the political sign section of the ordinance. Mr. Robertson discussed that he thinks that the whole ordinance should be held. Mr. Robertson discussed that the temporary sign section restricts apartment tenants from their freedom of expression. Mr. Germer discussed that he agrees, if there are two or three apartments in the property who gets to put out the sign, it restricts the resident's rights. Mr. Germer discussed that the whole ordinance cannot be thrown out. Mr. Newsome discussed that if you really wanted to solve the issue, the issue should have been brought up months ago and not waited until last week. Council President replied that council should let the public know that they need to ask questions in a more timely matter. Mr. Robertson discussed that it sounds like sophomore hi-jinx, trying to play games with one other. Mr. Heifet from the audience discussed that people are making idiotic statements to reporters. Mayor Wetherill inquired from Mrs. Richards as to what the reason was for the ordinance. Mrs. Richards explained that Mr. Remsa from the county and Mr. Guest, the city solicitor at the time, wrote the ordinance as a package deal for the zoning. Mayor Wetherill discussed that this ordinance may not fit

the city. Mrs. Richards explained that the council never meant to limit the signs and that the fees were never mention. Mayor Wetherill discussed that she understands that the council was trying to do a good thing for the city. Mrs. Richards explained that it was done during the time of redevelopment and that signs were being placed on telephone poles and city property. Council President Arter discussed that she had talked with Mr. Remsa of the County Economic Office and that Mr. Remsa had informed her that the county had suggested to the city at that time to review the ordinance and tailor it to the city's needs and also to review the fee ordinance, which did not happen. Mr. Robertson discussed that he is was really upset when he heard that the Council President had made a decision on her own. Mr. Robertson discussed that the Council President just needed to be careful of making decisions on her own and that she cannot make a decision for council. Mr. Robertson discussed that if the President is going to make decision for council, than you do not need council members. Council President Arter discussed that the only direction given was for the solicitor and the zoning officer to have a conversation. After a conversation with Mrs. Sheipe and after people were calling her about the \$5.00 fee without feedback from the solicitor. Council President Arter explained that she informed Mrs. Sheipe that it was not wise to continue collecting a fee on a freedom of speech issue; it is opening the city up to civil rights ligation. Council President Arter explained that she had a conversation with the solicitor who confirmed that the city was opening itself up to civil rights issues. Council President Arter explained that she spoke with Mrs. Sheipe to stop collecting the \$5.00 fees. Mr. Robertson discussed that this is problem that he is having. Council President Arter discussed that the issue should not have been on the street, since that was not the direction that council had discussed. Mr. Germer discussed that the if the Council President receives advise from the solicitor and if she does not pass it on, she is dammed if she does and dammed if she doesn't. Mr. Robertson explained that council has soon as it is able, should schedule a special meeting. Council President Arter explained that before she could do that, Dr. Cook and Mr. Newsome had already requested a meeting. Dr. Cook discussed that she was also asked if the matter could be held until the meeting of the 23rd. Dr. Cook discussed that she and Mr. Newsome felt that the issue needed immediately attention as the full council. Dr. Cook discussed that she did not express her opinions at the council meeting of the 23rd, because she did not have the ordinance to review and that she understands that some members of the council had the ordinance in front of them, because they knew that the matter was going to be brought up. Mr. Robertson inquired if he gets his \$5.00 back. Mr. Germer explained that he had asked the same question and was given a voucher to fill out to have his money returned. Mrs. Sheipe explained that the last motion was to hold the sign ordinance and it was second, Mr. Newsome made another motion to hold the political section of the sign ordinance only, but it was not second. Mr. Germer inquired if the motion was to hold just the fee and keep the size and time limit. Mr. Newsome explained that his motion was to hold the political signs section, except that he was in favor of the size and time limit. Dr. Cook inquired if the motion was to hold the entire section and not make changes

at this time? Mr. Germer inquired as to what the point is? Dr. Cook explained that the meeting was called to hold the ordinance only for further review, not to make changes. Dr. Cook inquired if legally, just the fee can be held and only sections of the ordinance can be held or does the entire ordinance need to be held. Mr. Baxter explained that the fee is held due to the constitutional rights of the residents, but to say that you are not going to enforce sections of the political signs is not legal, you can not pick and choice sections to enforcement. Mr. Baxter discussed that council could say that the fee will not be enforced since it is unconstitutional and the balance of the ordinance be held for clarification. Council President Arter inquired if that meant the whole ordinance. Mr. Baxter explained that Mr. Esaia had made a good point that you do not want to hold the entire ordinances, just the one section. Mr. Germer discussed that the section also holds the one part about the one size per lot and that he feels that it is also a violation of freedom of speech. Mr. Baxter discussed that the location of the signs and the number maybe a safety issue if it blocks the site of traffic. Mr. Germer discussed that law and ordinance would have to review the entire ordinance and also council would have to recommend the ordinance to the planning board for review since it is a zoning ordinance. Mr. Newsome discussed that he agrees with the solicitor about the location of the signs and that it needs to be reviewed. Council President Arter inquired if Mr. Newsome want to put the entire section of the signs ordinance or hold just the political section. Mr. Baxter discussed that it would be legal to just hold the temporary sign section and keep the rest of the ordinance in effect. Mr. Germer discussed that the ordinance for the temporary sign amendments could be completed for first reading for the next meeting. Mr. Newsome made an amend motion to just hold the temporary sign section of the ordinance for further review, Mr. Germer second the motion. Mr. Baxter explained the motion would hold Section 20-17, sub part B7 of the sign ordinance. At the call of the roll, the vote was:

AYES: Mr. Crespo, Mr. Newsome, Mr. Germer, Mr. Robertson, Mr. Esaia, Mr. Arter, Dr. Cook and Council President Arter.

NAYES: None.

MATTERS TO BE PRESENTED BY THE PUBLIC.

Mr. Thibault-Wheatley Avenue discussed that for the record last year the number of signs put out was a matter of contention because on the challenger's side there were alot. Mr. Thibault discussed that they were told the ordinance would be enforced this year. I do not think that it was unfair for any citizens or candidate to ask if the ordinance would be enforced. The fact that the 72 hours was discussed at council about the ordinance was violated Wednesday morning. Mr. Thibault explained that he felt that Council President Arter showed good leadership in stopping the bull shit, and that there were residents in the city who felt that they were violating the law. Stopping the chaos was the right thing to do. Mr. Robertson discussed that he takes exception to that, to break the law to stop the law. Mr. Thibault discussed that it never should of gotten out of control, there was a 72 hours period of solicitor before a decision was render. Council President Arter discussed that the 72 hours was not allowed to happen and that the action to say stop collecting the \$5.00 fee was to get us back to where we started. Mr. Thibault the whole thing went out of control

because of the 72 hours issue. The hysteria is caused by the fact that Burlington County Times is here and why. Somebody jumped the gun and is it because it is political season and they are looking for free space in the paper. Mr. Thibault discussed that everyone needs to calm down and that council did the right thing by holding the sign ordinance. Do not pin it on the people who ask the question, it was a fair question if the ordinance would be enforced. Mr. Newsome discussed that he would like to comment on the issue that Mr. Thibault addressed about the quote in the paper by Council President Arter that it was agreed upon last year by council to not enforce the ordinance. Council President Arter explained that what she did discuss with the reporter was not reported accurately. The Republican Party Chairperson was informed last year that the ordinance would be enforced this year and that is why the Republican Party Chairperson asks the question the question in public. Council President Arter discussed that she told the reporter that the Council President last year, Mr. Bancroft told the Republican Chairperson last year that it would be enforced this year and that she was misquoted and her words were misrepresented. Mr. Newsome discussed that the truth is that council never discussed this last year and that there are no minutes on the subject. Mr. Thibault explained that he understands that it was not discussed at a council meeting. Mr. Newsome explained that he is upset that it was misrepresented in the public and that the public needs to be aware of that. Mr. Pirlyis-Cooper Street, Republican Chairperson discussed that Mr. Bancroft told him a few times and also at District 1 that it would be enforced as one sign per lot and said nothing about the fee. Mr. Pirlyis discussed that before the election it was decided that we were not going to litter Beverly and do one per yard, then it was decided that we weren't going to do one per yard and everyone was going to fill their properties with signs. Mr. Pirlyis explained that he was just asking for a clarification on the ordinance. Dr. Cook discussed that it was unfortunate that Mr. Bancroft was not at the meeting to answer the questions, but she as the Democratic Chairperson had no knowledge of Mr. Bancroft making this decision. Mr. Pirlyis discussed that it was said to a few people and that these signs were taken down last year and put behind city hall. Mr. Crespo explained that the public works department took them down because they were on city properties. Mr. Pirlyis inquired as to how Mr. Crespo knew of this. Mr. Crespo explained because he was the one who placed them on city properties. Mr. Heifetz discussed that they were put up illegally than.

Ms. Rogers-discussed that she had missed the last meeting and that she was upset that restricts her right to free speech. This is a small town with big city problems and that council needs to get it together, enough of the bad language. She will only vote for someone who is willing to work with everyone else as a bi-partisan way and work together. Ms. Rogers discussed that this was a manufactured mess on both sides that backfired. The city had received a lot of good publicity with the 150th celebration and now there is bad publicity. Mr. Heifetz discussed who called the reporters? Ms. Rogers requested to let her finish her comments. Ms. Rogers discussed that if you really wanted to question the sign ordinance and the freedom of speech with the \$5.00 it should have been discussed weeks early. Ms. Rogers discussed that she does not see that anyone is right in this issue. All everyone did was to make the town look bad and that they need to end this and concentrate on the important issues. Council President Arter discussed that she does not feel that it is over yet, because she believes that there is an attorney here to serve her with an Ethics Violation notice. Dr. Cook discussed that it must be a guilty conscience, and that there is no

one here to serve anyone. Mr. Thibault announced that he was being charge by a council member. Mr. Germer discussed that the public should be aware that the person taping the last few meetings is actually a candidate for council.

Mr. Bent -130 Warren Street that his wife and baby moved here last year and that he is concerned about the things he hears. Mr. Bent is concerned about a special meeting being called for a sign issue and that he was under the impression that special meetings were for emergencies. A 9am Monday morning meeting is not convenient for most of the residents. Council should apply the same energy to property taxes, cleaning up the properties and other good intentions. Council should not get bogged down on minor issues.

Ms. Marshall-Cooper Street inquired about the number for the fee schedule that is being discussed. Mr. Baxter explained the sign ordinance is number 20-17 and the fee is addressed under 21-7. Ms. Marshall discussed that she would like to correct the record that the fee schedule did appear in front of council on May 22,2001, second reading to 2001-6 to amend section 21-7 fees, Mrs. Richards introduced the ordinance at that time. Mrs. Richards discussed that it was a packet that came for redevelopment and that she did not read it completely.

Council President Arter discussed that there is a court session waiting for the room and is the public comfortable holding their questions until the 23rd. All members of the public agreed to hold their questions.

ADJOURNMENT. Mr. Germer made a motion to adjourn, Mr. Esaia second the motion. All members present in favor.