

**BOROUGH OF AVONDALE  
SPECIAL COUNCIL MEETING  
OCTOBER 19, 2004**

**COUNCIL MEMBERS PRESENT:** Jay Pusey, Bob Cleveland, Russ Kilmer, Jerry Poe, Fred Bryan, Rose Ann Swift    Absent: Ann Bush

**GUESTS PRESENT:** Dottie Howell, Jim Marlowe, Lori Walmer, Harold Brown, Howard Thompson, Linda Poe, Frankie Poe, Charles Wilkinson, Joe Riper, Bill Romanelli, Faith Shore, Lenee Bryan, Davis Howell, Steve Allaband, Bob Perotti, Michael Kerr, Karen Busby, Carla Lucas, Jill Nawrocki, Sherman Toppin

The purpose of this special meeting is to continue discussing and possibly adopt proposed Resolution #04-10-01 from a special meeting on October 7, 2004.

President Pusey called the meeting to order at 6:30 P.M.

President Pusey asked if the Board has any discussion. Fred Bryan said we would like to hear what Jerry (Poe) has to say.

Sherman Toppin, Attorney for Jerry Poe said he has a statement that he has prepared on behalf of Mr. Poe to read into the record and submit to the Chairman of Council.

Mr. Toppin read the following statement:

“Dear Borough Council:

As you know, I represent Mr. Jerry F. Poe in the above referenced matter. At the Borough Council Meeting of October 7, 2004, I requested, on behalf of my client, the opportunity to supplement the record with a statement that would help the Borough Council better understand Mr. Poe’s actions with regard to the purchase of property from the Estate of Lena Horton (hereinafter the “Horton Property”). Specifically, I discerned at the last meeting that there was clear misunderstanding among the Borough Council regarding the timing and motive for Mr. Poe’s purchase of the property, which may have precipitated this Resolution of Censure. In the paragraphs below, I will briefly state Mr. Poe’s position and the corrective measures that he will endeavor to restore the status quo and, more importantly, the public’s trust in the Borough Council.

SALE OF THE HORTON PROPERTY

At the last Borough Council meeting, I spoke at length regarding Mr. Poe's actions and his mindset towards the purchase of the Horton Property. I will not repeat those comments, however, I hereby incorporate those comments by reference in this statement.

In retrospect, Mr. Poe recognizes that purchasing the Horton Property at the time in which he did was not the best course of action. Mr. Poe may not have exercised his best judgment in purchasing the property. In fact, Mr. Poe regrets that he purchased the property, and sincerely apologizes for all of the hurt that his actions may have caused.

The controversy surrounding Mr. Poe's purchase of the property has been extremely difficult for Mr. Poe and his family. As a result, Mr. Poe has remained withdrawn and non-communicative about the Horton Property. Unfortunately, Mr. Poe's silence may have been misunderstood and/or misinterpreted by members of Borough Council. Notwithstanding his silence, Mr. Poe is troubled and deeply sorrowful that his actions have affected so many.

Mr. Poe emphatically submits that his actions were not intended to thwart or hinder the progress of sewer project in Avondale, and his actions were not intended to thwart or hinder the progress of Mr. Wilkinson's real estate development in Avondale.

#### CORRECTIVE MEASURES

In order to restore the status quo, the public trust, and the tranquility of the Borough Council, Mr. Poe will endeavor the following:

- A. Mr. Poe will convey the Horton Property to Mr. Charles Wilkinson for a purchase price equal to Mr. Poe's actual out-of-pocket costs for the property. Mr. Poe will not profit from his transaction. Furthermore, there will be no "side deals" associated with his transaction between Mr. Poe and Mr. Wilkinson for additional or deferred value. Mr. Poe will not experience any pecuniary benefit from the purchase of sale of the Horton property.
- B. Mr. Poe will recuse himself from all future voting decisions related to Mr. Wilkinson's real estate development in Avondale.
- C. Mr. Poe will deliver a public apology in open Borough Council Session.

#### CONCLUSION

We remind Borough Council that Mr. Poe's actions in this situation represent an isolated, singular decision, rather than a pattern of poor judgment. During the years that Mr. Poe has served on Borough Council his contribution has been significant and his service to the community has been noteworthy. Mr. Poe has been adequately disciplined in that this matter has affected his name and reputation in the Avondale Community. To further penalize him with

public censure is an excessive measure of discipline given the circumstances. As such, we respectfully request the Borough Council forebear voting upon the proposed Resolution to Censure Mr. Poe.”

Jerry Poe made the following statement:

“I would like to say that it was never my intent to deter, take anything away from Mr. Wilkinson trying to help the community and the upgrading of the sewer plant and I am sorry for my actions being misunderstood as being so. I am also sorry for the impact of my purchasing of the Horton Property to the community and the affect it has on Council. I am extremely sorry for that. If anyone knows me personally, I would not do anything to try to hinder the sewer process; I have been working on that for sometime. I have lived in Avondale since 1978 and this is my home. I would do nothing to bring any negative publicity to Avondale, so for that I am sorry. For the impact it has had on Borough Council, I apologize greatly for that. I hope you sincerely accept my sincere apologies.”

Mr. Toppin said there is an agreement of sale signed by Mr. Poe and his wife for the Horton property. Joe Riper, Attorney for Charles Wilkinson said the agreement has been discussed and Mr. Poe and Mrs. Poe are willing to convey the property to Mr. Wilkinson for the actual out-of-pocket costs. Mr. Wilkinson is willing to sign that agreement but wanted to first make sure the Borough Council did not have an objection to the agreement. Mr. Wilkinson wanted to make sure and reiterate and be clear to everyone that there are no other understandings of any nature and more importantly this project has a lot of issues to be addressed and Mr. Wilkinson would like to more forward with the project if Borough Council can see fit to do so. Mr. Riper asked Council if there is any objection to the agreement. President Pusey said there were no objections from Council. Mr. Wilkinson signed the agreement.

Bob Cleveland said at the last meeting we had on October 7, 2004, Mr. Toppin made reference to the fact that Mr. Poe’s intent was to gain site control. If his intent was to gain site control and then transfer the property to the developer, why did he apply for a hearing with the Chester County Board of Assessment Appeals if he only planned to convey it to Mr. Wilkinson. Mr. Toppin said he is not aware of the facts and could not answer the question. Mr. Cleveland said on September 7<sup>th</sup>, 12 days after he purchased the property, Mr. & Mrs. Poe asked for a hearing with the Chester County Board of Assessment appeals to have the property value lowered, which it was lowered by half the assessed amount on October 13, 2004. Mr. Toppin said he had not discussed this with Mr. Poe so he could not give an answer. Mr. Cleveland asked Mr. Poe if he can tell us why he applied for the re-assessment of the property. Mr. Poe said his attorney is speaking for him. Rose Ann Swift said she knows that Mr. Poe was interested in property but she assumed that when the property went to Sheriff Sale; Mr. Wilkinson and Mr. Poe would both be there to bid on the property.

Fred Bryan said we know the property was up for Sheriff's Sale, we know somebody was interested in the property, why didn't he wait for the Sheriff's Sale to happen. Bob Cleveland asked Mr. Toppin why did Mr. Poe feel the necessity to maintain site control, what was the urgency to do that. Mr. Toppin said he does not want to look at the actions, to wonder or to explore all the possible subjective reasons. The one subjective reason is that there is ill will or any wrong doing in the pursuit of the property. Mr. Cleveland said so what you want to dwell on now is that now the property has been transferred, everything is okay now. Mr. Toppin said we hope that Council sees through this presentation and the actions that Mr. Poe has taken is that his heart was pure from the start. Mr. Cleveland said his question is why did he have the urgency to acquire the property and why didn't he come to Council and tell us he found the executor of the estate and we should get this property before it goes to Sheriff's Sale. Mr. Toppin said Mr. Poe has apologized not using his best judgment and in the statement to Borough Council he said it was poor judgment and it was not a good idea. Mr. Toppin asked what more can Mr. Poe do then say, I should not of done that.

President Pusey asked if there were any public comments.

#### HOWARD THOMPSON

Howard Thompson said he would like to ask Jerry Poe if he had any thought that this was a conflict of interest before he purchased the property. Jerry was chairman of the water and sewer committee and he sit on the Borough Council and he knew there was a lien against the property. If it wasn't a conflict of interest it is an appearance of a conflict of interest and before he purchased the property what was Mr. Poe's thought on it being a conflict of interest. Mr. Toppin said if Mr. Poe believed if it was a conflict of interest, he would not of purchased the property.

Russ Kilmer said he has two comments: Number 1, Mr. Kilmer said he finds it difficult to understand that when all of us on Council heard that Jerry purchased the property, we all thought it was a conflict of interest. How could Mr. Poe not know this? Number two, the refusal to indicate why he had the tax assessment lowered and give us that information so we can make an informed decision. Why would you buy a piece of property that you are going to turn over to somebody and why would you have it reassessed? Mr. Kilmer said his personal opinion is for Mr. Toppin to take a few minutes and consult with his client and come back with an answer so we can have an answer to that question, so we can make a reasonable vote. Mr. Toppin said he is asking Council to accept what the answer is which is that it was poor decision making. Mr. Kilmer said was it poor decision making to have the property reassessed. Mr. Toppin said this is all prior to this going to Council and what is this about, Council does not believe Jerry that he is telling the truth when you say it was bad decision making, Council is still not grasping that it was just bad decision making. I can understand one misjudgment, buying the

property then you misjudge yourself and go and have it reassessed. Mr. Toppin said when the first action takes place, it is continuing the same action at the point when Mr. Poe became aware and then it stopped. Mr. Toppin said that Mrs. Poe had several properties reassessed at the same time so maybe this will help Council to understand. Jay Pusey asked what the reassessment date. Bob Cleveland said the hearing was requested on September 7, 2004 and the reassessment was lowered on October 13, 2004 from \$59,840 to \$29,920. Jay Pusey said his thoughts are that it would have been a financial benefit to Jerry in the long run.

Harold Brown asked Jim Marlowe how long the property has been up for Sheriff's Sale. Mr. Marlowe said it was never really up for Sheriff's Sale until the judge the order permitting service of the notice of sheriff's sale by publication from the Chester County Assessment Office in July. Mr. Brown said before Mr. Wilkinson came in and met with Borough Council about helping us to upgrade the sewer why didn't Jerry try to get the property before and not right after Mr. Wilkinson came to the Borough to help us. Mr. Marlowe said because there was defective service by the Tax Claim Bureau, they always had to pull it off the sale because when it came time for the sale, they have to make sure the property owner has been notified. Notification has to be a personal service by a Sheriff and sometimes by Certified Mail – Return Receipt Requested, but the owner has been deceased for a considerable period of time so it was only when our office requested the Tax Assessment Office to go to a judge and request that there be service on the Estate of Lena Horton and her heir, executors and assigns, that it was actually scheduled for the September 27, 2004 Sheriff's Sale. The tax assessment office has to file a motion with the Court requesting that the service be made by publication in a newspaper and the Chester County Bar Association Journal and we got that in July. So once the judge signed the order and once it advertised in the newspaper and proof of that was given to the Judge, the Judge signed the order and the sale was permitted to take place as part of due process. Mr. Brown said he feels Mr. Poe jumped into buying the property only when Mr. Wilkinson was interested in the property and it backfired.

Mayor Howell said she has known Jerry for a lot of years since he has been on Council and her suggestion is that we have been through this and he has made amends or whatever he can do, my point is future. Can he effectively serve as Borough Council person on anything if he has to recuse himself on anything including streets. If Wilkinson does the development, there is going to be all kinds of different votes which will be subject to Jerry not being able to vote. It will sincerely cripple what is left of Council, we already have another Council person that does not come to meetings so we are left with six members. I think it is going to put a real hardship and Council needs to take that into consideration. Mayor Howell said she is not worried about the past, she is worried about the future.

Bob Cleveland made a motion to adopt Resolution #04-10-01, 2<sup>nd</sup> by Fred Bryan, Russ Kilmer-aye, Rose Ann Swift-aye, Jay Pusey aye, motion carried.

Russ Kilmer made a motion to adjourn the meeting at 7:10 p.m., 2<sup>nd</sup> by Fred Bryan, motion carried.

Respectfully submitted,

Becky Brownback  
Borough Secretary