

**Council Meeting
Nutter Fort
February 11, 2014**

The regular meeting of Nutter Fort Council was held, Tuesday, February 11, 2014 in council chambers, with the following members present: William Benincosa, Stephen Korn, Donald Webster, Karen Phillips, Bruce Kidd, and Recorder Sam Maxson. Absent was Mayor Nathan Rohrbough, who was working. Also present were Maintenance Supervisor Jim Wolfe, Police Chief Ron Godwin, Fire Chief Jeremy Haddix, and Treasurer Julia Foley. Guests were: Charlotte Link, Jim Link, Bertis McCarty, Linda Blake, Pam McCarty, Jeff Heitger, John Hutton, Leanna Spornak, and Janet Conrad.

The meeting was called to order at 7:30PM by Recorder Maxson with Councilor Benincosa asking prayer followed by the pledge of allegiance.

Maxson asked council to continue remembering in prayer, the fire department and the Garrett family following the tragic death in the line of duty of Michael Garrett last Saturday. He also commended the fire department and Davis Funeral Home for the professionalism over the last week.

Discussion concerning possibly moving the Newhouse Park on Michigan Ave to the vacant hazard mitigation property formerly known as the Larry Robey property. William Benincosa has been talking with the county commissioners and was told there may be funding available to purchase new equipment if the move is allowed. The mayor and office will seek funding and also research the agreement, for the original funding when Newhouse Park was built to assure we can do this.

Treasurer Foley explained the letter (attached) about the Dennison property at 610 Illinois Ave. She explained that basically, we do not do anything except renew the abstract judgment every 10 years. Bruce Kidd questioned if we should have been billed by the attorney since everything involved is in Doddridge County.

- The PEIA Insurance change from PEIA PPB Plan A to PEIA PPB Plan B and coverage change for new employees (see attached) was approved on the first reading, by unanimous vote following a motion by Stephen Korn and a second by Donald Webster.

Considerable discussion was held concerning business operations on 4th St in Bagwell addition (see attached e-mail from attorney, Johnnie Brown). A business license was granted for Identifax Research Services which was located on Bagwell Ave in May 2011. The business was moved in the summer of 2013 to 4th Street. Both locations are in areas zoned R-1A which prohibits businesses.

Attorney Brown recommends "that we not do anything to this licensee holder, (Identifax Research Services) given legal principles of detrimental reliance and constitutional law of taking". He further stated "that a potential mistake does not stop us from enforcing an otherwise properly passed and valid ordinance"

Old Business Treasurer Foley told council she will try to schedule the exit interview with the state auditors next week.

Bruce Kidd reported he has received a complaint of a truck parked at 104 ½ Burton Ave extension in what may be a fire lane. Fire Chief Haddix will investigate.

New Business Recorder Maxson read a letter (attached) from the City of Bridgeport, offering condolences on the death of Firefighter Michael Garrett.

Bruce Kidd voiced concern about how business licenses are issued and suggested a committee of 3 members of council review them and take some of the burden off the office staff.

Kidd also asked that we research a way to change the length of our elected terms to 4 years with terms "staggered" to assure continuity in city government. This matter will be put on the next agenda for further discussion.

A letter of resignation (attached) for Lynn Newhouse from the beatification committee. Committee member Janet Conrad suggested Jamie Pyles as a replacement and further stated that she feels another member of that committee will be resigning soon. It was decided that any decision on replacements be made after the 2nd resignation is received. Janet Conrad will contact Jamie Pyles and ask her willingness to serve.

Police Chief's Report None

Maintenance Supervisor's Report None


Fire Chief's Report Chief Haddix thanked everyone for their overwhelming support following the line of duty death of Michael Garrett. He said everyone pulled together and also was grateful for West Virginia Secretary of State Natalie Tennant for attending the funeral.

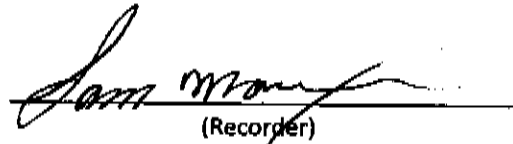
Treasurer's Report Treasurer Foley told council we have received over \$1100 in unpaid fines obtained thru the tax recovery program.

- Bruce Kidd motioned approval of the building permits (Attached) and, after a second by Karen Phillips, they were approved by unanimous vote.
- The accounts payables (attached) were approved by unanimous vote following a motion by Donald Webster and a second by Bruce Kidd.
- The minutes of the January 28, 2014 meeting, were approved by unanimous vote following a motion by Stephen Korn and a second by Karen Phillips.

Bruce Kidd asked Chief Haddix if plans are finalized for their trips to California to receive the National Honor of Heroism Award, April 23. He, along with Taylor Keith and Ryan Roberts were selected to receive this prestigious award. Haddix said the hotel accommodations have been made, but they have not made their flight reservations. Kidd stated he felt the cost should be covered by the county or council.

The meeting was adjourned at 8:29PM after a motion by Bruce Kidd and a second by Karen Phillips.


(Mayor)


(Recorder)



Smith, McMunn & Glover, PLLC
Attorneys at Law

C. Thomas Smith
D. Andrew McMunn
David C. Glover

516 West Main Street
Clarksburg, WV 26301

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Facsimile: (304) 326-4000
Writer's Email: damcmunn@aol.com

January 16, 2014

Town of Nutter Fort
Mayor Rohrbough and Council Members
1415 Buckhannon Pike
Nutter Fort, WV 26301

Dear Mayor Rohrbough and Town Council Members:

I am enclosing herewith letters I received from the State Auditor's office in connection with its intention to issue a Deed to John E. Ruppert for the Dennison property. You may recall that there was a dilapidated structure on the Dennison property which was torn down after proper notice to the owners of the property. You may further recall that we took Default Judgment against most of the Defendants in that case, other than the Bell heirs. The judgment that we took against those Defendants constitutes a lien upon this property and any other real property that those individuals may own in Harrison County. The agreement that was reached with the Bell heirs was that a lien against them would only be enforced against this property. Lastly you may recall that we chose not to foreclose on the property because its value was far less than the superior liens against the Bell heirs in favor of other creditors. If there is any money to recover in the future for the demolition of the dilapidated structure, I would guess that it would come from liens against the Defendants from whom we took a Default Judgment. If the auditor's office issues a Deed to Mr. Ruppert, all liens on this property will be extinguished and you will no longer be able to collect against this property. For the aforementioned reasons, I am not concerned. If you care to discuss this further, please feel free to contact me.

Very truly yours,


D. Andrew McMunn

DAM/skw

Enclosures

AN ORDINANCE TO AMEND, ADD AND RE-ENACT SECTION 20 OF CHAPTER ONE, ARTICLE 151 OF THE CODIFIED ORDINANCES OF THE TOWN OF NUTTER FORT.

WHEREAS, it is the desire of the Town of Nutter Fort to become further financially responsible in all respects which apply to its employees and its operations and in this particular instance, regarding health insurance benefits; and

WHEREAS, the adoption of said ordinance will enable the Town of Nutter Fort to adhere to policies similar to surrounding cities and towns with regard to health care responsibilities.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE COUNCIL OF THE TOWN OF NUTTER FORT, HARRISON COUNTY, WEST VIRGINIA, TO ADOPT THE FOLLOWING CHANGES TO ORDINANCE 151.20 REGARDING HEALTH INSURANCE FOR THE EMPLOYEES OF THE TOWN OF NUTTER FORT:

WHEREAS, all full time employees optimizing health insurance coverage will be provided the option to choose any health care plan offered by the West Virginia Public Employees Insurance Agency (PEIA); however effective July 1, 2014, the Town of Nutter Fort will only provide coverage benefits for **PEIA PPB Plan B**. Employees may choose a more expensive plan, but will be responsible for the increased premium cost. Should the employee choose a more expensive plan, a payroll deduction for the monthly difference will be divided and withheld from the employee's first and second paycheck of each month.

WHEREAS, effective the 1st day of January, 2014, any new employee from this date forth who utilizes health care benefits will be responsible for thirty percent (30%) of the premium cost of **PEIA PPB Plan B Employee Only** during the first twelve (12) months of insurance coverage. That employee has the option to choose additional coverage for their child, spouse or family. Should the employee that is hired after the 1st day of January 2014 choose a more expensive plan or child or family coverage, the employee will be responsible for **both** thirty percent (30%) of the PEIA PPB Plan B premium along with the increased cost for the upgraded and/or expanded plan. Note: Any employee hired prior to the passage of this ordinance and already enrolled in a plan different from PEIA BBP Plan B plan will be responsible for thirty percent (30%) of the existing plan coverage until July 1, 2014.

WHEREAS, for all employees hired after the 1st day of January 2014, once one year of continuous full time employment is met, the Town of Nutter Fort will provide one hundred percent (100%) coverage for the **employee only** health insurance coverage cost for PEIA PPB Plan B. Should the employee choose a more expensive plan, and/or expanded plan coverage for the employee's child, spouse or family, the employee will be responsible for thirty percent (30%) of the increased coverage cost during the employee's tenure with the Town of Nutter Fort. A payroll deduction for the monthly difference will be shared between and withheld from the employee's first and second paychecks of each month.

WHEREAS, these modifications have been reviewed and it has been determined these changes will reduce the cost paid for health insurance to PEIA by the Town of Nutter Fort. By implementing these policy changes, **effective July 1, 2014**, all premium amounts paid by the Town of Nutter Fort for employees to PEIA will be for **PEIA PPB Plan B**.

It is hereby passed by the Town Council of the Town of Nutter Fort on the first reading on this the ____ day of February, 2014.

Passed on the second and final reading on this the ____ day of February, 2014.

Mayor – Nathan Rohrbough

Recorder – Sam Maxson

From: Johnnie E. Brown <jeb@pffw.com>
Sent: Monday, February 03, 2014 10:59 AM
To: Julia Foley
Subject: RE: TON-05171304 Town of Nutter Fort - General Counseling: TON-05171304 Town of Nutter Fort - Business located in a residential section

Julia:

Good morning. Just wanted to follow up our telephone call and provide you with my opinions.

1. As for the prior license, given the passage of time, I would not do anything to this licensee holder ("Identifax Research Services") given legal principles of detrimental reliance and constitutional law of taking. I do recommend that our Code Enforcement Official look into situations which might allow us to rescind the license such as change of ownership or change in type of business. We also may wish to think about having a conversation with the owner and advise her that a mistake was made and if our ordinances do allow us to reconsider if there is a change in significant circumstance, such as ownership, size or subject business.
2. The fact that a potential mistake was made previously does not stop us from enforcing an otherwise properly passed and valid ordinance. Consequently, we can deny her request, but I would tell her that she can appeal the decision in a manner prescribed by our ordinances to the Zoning Appeal Board or Municipal Planning Commission, whoever hears such appeals.
3. If Ms. Garrett requests copies of the prior license application and correspondence, I do not know of any legal reason to withhold the information from her. However, I would recommend redacting all person information on the application as date of birth, social, tax I.d. number etc. If there is a question about anything on this issue, please call.

Hope this helps, please call with any other additional questions.



Johnnie E. Brown, Esq.
Member
JamesMark Building
901 Quarter Street
Charleston, WV 25301
phone: (304) 344-0100
fax: (304) 342-1545
www.pffw.com

From: Julia Foley [mailto:jfoley@townofnutterfort.com]
Sent: Thursday, January 30, 2014 12:40 PM
To: Johnnie E. Brown
Subject: TON-05171304 Town of Nutter Fort - General Counseling: TON-05171304 Town of Nutter Fort - Business located in a residential section

Johnnie,

Recently, a resident of Nutter Fort (Mrs. Garrett) inquired about building a garage on their property and using the garage as a business. I informed her that she would not be permitted to operate a business from that location since she was in a residential zoned (R1A) section of town. She then informed me that there was in fact a business operating next door to her. After further investigation, the previous office manager/treasurer (Tammy Gwinn) had issued a license to a business by the name of Identifax during May 2011. This business is located in the same residential section that Mrs. Garrett is wanting to build the garage and use it for a business.

I referred the matter to our code enforcement officer (Adam Barberio). Below is email correspondences relating to this issue. Mrs. Garrett has been informed of the same but is not satisfied with our answer. At Tuesday's council meeting, it was councils wishes to direct these state of affairs, to your attention.

In addition, Mrs. Garrett is requesting copies of the license application and correspondence from May 2011 when Identifax was issued their license. I told her that I did not believe that was public information but I would check with you.

Your guidance would be very much appreciated.

Julia

-----Original Message-----

From: Julia Foley <jfoley@townofnutterfort.com>
To: ntr1600 <ntr1600@aol.com>
Cc: 'Scmpsm' <scmpsm@aol.com>; bruce.w.kidd <bruce.w.kidd@amof.com>; bj1putt <bj1putt@ma.rr.com>; kphillips910 <kphillips910@gmail.com>; stephen <stephen@ma.rr.com>
Sent: Thu, Jan 16, 2014 3:18 pm
Subject: FW: Bagwell Addition

Nathan,

As we talked earlier, Mrs. Garrett from 511 4th Avenue inquired about constructing a garage on the adjoining lot to their residence. The intent was to use the garage as a business after her husband retires.

When she was in the office, I reviewed the zoning for her location and did not recognize anything that would allow a business operation in that particular area. She then proceeded to inform me that her neighbors who reside at 510 4th Avenue do in fact have an office that they operate from their home. After further research, a business operating by the name of Identifax Research Services was issued a license from the town May 2011. I informed Mrs. Garrett that I would refer the matter to code enforcement for his opinion and to assure that I was not interpreting the ordinance incorrectly.

Following is his response. I will send Mrs. Garrett a written answer notifying her of her options.

Julia

From: abarberio [mailto:abarberio@townofnutterfort.com]
Sent: Thursday, January 16, 2014 2:12 PM
To: jfoley@townofnutterfort.com
Subject: Bagwell Addition

Julia,

Per our conversation yesterday I have looked through the Nutter Fort Ordinances regarding the construction of a garage for the purpose of business located in an R1 A, please see the following;

1309.03 (b) Permitted Accessory Uses.
(2) Other customary accessory uses and buildings, provided such uses are incidental to the principal use and do not

Based on the codes stated above a garage erected within this zone is not permitted to be used as a business. Also, the garage could not be constructed on a separate parcel without having a main or principal structure on that parcel. However, if the garage would have living space then it would be considered a main or principal structure. The other option would be to combine adjoining lots so the existing house would serve as the primary structure and the garage could be constructed as a standalone structure. With all that said the garage structure still wouldn't be permitted to be used as business as per the zone.

Within our discussion there was mention of space within this zone currently being used as residential and "office" space. You had mentioned that all paperwork was completed and filed in May 2011 for this particular structure. I don't have an answer as to why this was request was approved due to that was prior to my employment with the Town. If I may go a step further I also believe there was a different office manager at the time and you were merely an employee of the office. I don't feel that we would be responsible to answer why the business was allowed to operate because we, in fact, do not have those answers. If the wishes of the Town administration and/or Council are to have the business either cease operation or seek a re-zoning please let me know. The proper paperwork from your office as well as mine can be compiled and sent to the owners.

Respectfully,

Adam Barberio

Code Official
Town of Nutter Fort
Nutter Fort, WV 26301
304 622-7713 ph

1-10-2014

To:

Honorable Mayor Town of Nutter Fort, Mayor Nathan Rohrbough

From:

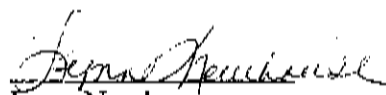
Lynn Newhouse

Dear Mayor,

I am on the Beautification Board.

I would like my position on the B Board to be replaced with someone who has the time to be involved. Quite frankly, with work, My husband, Robin and my dad, Ronald Kirby, who is in Heartland, I just do not have the time for this board.

Please except my resignation.



Lynn Newhouse



P.O. BOX 1310 • 515 WEST MAIN ST. • BRIDGEPORT, WEST VIRGINIA 26330-6310
Phone: (304) 842-8226 • Fax: (304) 842-8201 • www.bridgeportwv.com
Mario D. Blount, Mayor

February 3, 2014

Honorable Nathan Rohrbough
Mayor- Town of Nutter Fort
1415 Buckhannon Pike
Nutter Fort, West Virginia 26330

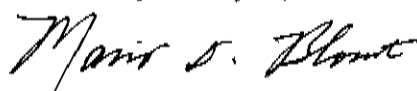
Dear Mayor Rohrbough:

I would like to extend my condolences on behalf of the Bridgeport City Council, the residents of Bridgeport, and the Administration and Staff of the City of Bridgeport.

We mourn the loss of Firefighter Michael Garrett and are grateful for the dedication, pride, and service of those who continue to preserve life and property in all of our communities. Distance is no barrier to the emotions that this tragedy has generated.

Please accept our deepest sympathies at this sorrowful time, and pass on our sentiments to Chief Haddix, and the entire Nutter Fort Volunteer Fire Department, as well as the family of our fallen hero. We pray for them and ask our Lord to give them strength, comfort, and peace in the months ahead.

With Deepest Respect,



Mario D. Blount
Mayor

General Revenue Account

Purchase Journal

For the Period From Jan 25, 2014 to Feb 7, 2014

Filter Criteria includes: 1) Includes Drop Shipments. Report order is by Date. Report is printed in Detail Format.

Date	Name	Line Description	Debit Amount	Credit Amount
1/25/14	Quality Machine Co., Inc.	Plow parts for 2009 Dodge (harness kit & straight blade hand controller) Quality Machine Co., Inc.	442.09	442.09
1/25/14	Frontier	55% of monthly telephone service for all departments. Frontier	119.05	119.05
1/25/14	Flanagan Brothers	Steam cleaned carpets & chair at Fire Dept Flanagan Brothers	249.00	249.00
1/25/14	Foodlion of Nutter Fort	Shop cleaning supplies Foodlion of Nutter Fort	13.36	13.36
1/25/14	Wex Bank	Monthly fuel expense for Fire Dept for January 2014 Wex Bank	124.85	124.85
1/25/14	State Electric Supply Co.	Cord Reel for Fire Dept State Electric Supply Co.	240.00	240.00
1/25/14	Marsh's Lumber & Home C	Spark plugs for equipment (chainsaws, etc) Marsh's Lumber & Home Center	14.94	14.94
1/25/14	Nuzum Plumbing	Fire Dept boiler repairs Nuzum Plumbing	150.00	150.00
1/25/14	Chenoweth Ford	Fire Unit 74 (Brush Truck) repairs - trailer brake control & uplifter switches Chenoweth Ford	384.12	384.12
1/25/14	Frontier	Waste Account's 15% of monthly telephone service for all departments. Frontier	32.46	32.46
1/25/14	Wex Bank	Monthly fuel expense for Garbage truck for January 2014 Wex Bank	911.57	911.57
1/27/14	Nutter Fort Payroll Account	Bi-weekly waste wages Nutter Fort Payroll Account	3,704.82	3,704.82
1/27/14	Nutter Fort Payroll Account	Treasurer Office bi-weekly wages Police Department bi-weekly wages	1,559.31 8,066.90	
		Street Department bi-weekly wages	3,405.65	
		Recycle Department bi-weekly wages	380.28	
		Treasurer insurance opt out	250.00	
		Police insurance opt out	125.00	
		Code enforcement wages	370.46	
		Fire Department bi-weekly wages	1,100.96	
		Fire Dept insurance opt out	125.00	
		Snow Removal bi-weekly wages	1,694.64	
		Nutter Fort Payroll Account		17,078.20
1/27/14	A&H Equipment Company	2013 Salt Spreader A&H Equipment Company	8,206.00	8,206.00
1/27/14	Nutter Fort Payroll	Treasurer's Office bi-weekly FICA/Medicare Tax	136.83	
		Police Dept. bi-weekly FICA/Medicare Tax	619.51	
		Fire Dept. bi-weekly FICA/Medicare Tax	92.71	
		Street Dept. bi-weekly FICA/Medicare Tax	257.54	
		Recycle Dept. bi-weekly FICA/Medicare Tax	28.77	
		Code Enforcement bi-weekly FICA/Medicare Tax	28.02	
		Snow Removal bi-weekly FICA/Medicare Tax	128.16	
		Nutter Fort Payroll		1,291.54
1/27/14	Nutter Fort Payroll Account	Treasurer's office expense for monthly dental insurance	61.86	
		Police Department's expense for monthly dental insurance	94.09	
		Street Department's expense for monthly dental insurance	94.09	
		Fire Department's expense for monthly dental insurance	94.08	
		Nutter Fort Payroll Account		344.12
1/27/14	Nutter Fort Payroll Account	Waste account's share of employees monthly dental insurance Nutter Fort Payroll Account	344.11	344.11
1/27/14	Nutter Fort Payroll	Waste account's bi-weekly FICA/Medicare Tax Nutter Fort Payroll	280.17	280.17
1/28/14	Sandy's Hardware	Florescent light bulbs, utility knife blades, (2) utility knives, & light panel Sandy's Hardware	71.91	71.91
1/29/14	General Products & Supply	Sidewalk melt for aggregate sidewalks General Products & Supply	79.25	79.25
1/29/14	Quill Corporation	Cleaning supplies, office supplies Quill Corporation	228.03	228.03
1/29/14	TAC 1 Systems	(12) radio batteries TAC 1 Systems	579.57	579.57
1/31/14	Jim's Service Center	Replace fuel filter and clean exterior filter & check dash lights on dump truck Jim's Service Center	169.99	169.99
1/31/14	Petty Cash Account	Postage fees for notification of address changes (5@.55) Frame for proclamation Yearly calendars purchased at Target Petty Cash Account	2.75 2.12 9.54	14.41
1/31/14	J.F. Allen Company	24.17 tons de-icing salt at \$90.50/ton J.F. Allen Company	2,187.39	2,187.39
1/31/14	Weatherservice/Indoor Co	Garage heater repairs Weatherservice/Indoor Comfort, Inc.	66.00	66.00

2/2/14	Skasiks Quality Cleaners	Alterations & cleaning of uniforms for the Police Dept. for Jan 2014 Skasiks Quality Cleaners	70.95	70.95
2/3/14	Advance Auto Parts	Wiper blades Advance Auto Parts	39.98	39.98
2/4/14	MonPower	Monthly charge for street lighting MonPower	1,428.45	1,428.45
2/4/14	MCM Business Systems	Monthly copier maintenance fee MCM Business Systems	60.10	60.10
2/4/14	Design-N-Stitch	Toboggan for Brian Squires Design-N-Stitch	10.50	10.50
2/5/14	MonPower	Ohio Avenue Playground Lighting MonPower	12.19	12.19
2/5/14	Sandy's Hardware	(2) cans of expansion foam Sandy's Hardware	11.98	11.98
2/5/14	MonPower	55% of monthly electric service for all departments MonPower	525.78	525.78
2/5/14	Stratton Hats	(2) Felt Police Uniform Hats Stratton Hats	341.07	341.07
2/5/14	MonPower	Waste account - 15% of monthly charge for electric service for all departments. MonPower	143.39	143.39
2/6/14	Appalachian Tire Products,	Tires for old garbage truck Appalachian Tire Products, Inc	851.74	851.74
2/6/14	MonPower	LED traffic lights - Rt. 20 traffic light/Rt. 20 & Pa. Ave caution light/Buckhannon Pike MonPower	25.90 19.36 11.21	56.47
			<u>40,879.55</u>	<u>40,879.55</u>

