

## **BOROUGH OF AKRON COUNCIL MEETING – April 1, 2021**

***Council Members present*** – Nathan Imhoff, President; Randall Justice; Kleon Zimmerman and Michael Morris.

***Others present*** – Mayor John McBeth; Susan Davidson, Borough Manager/Secretary, and Sean Molchany, Assistant Borough Manager.

***Visitors*** – Chadwick (via Zoom), Jason Hess, Attorney for Morgan, Hallgren, Crosswell & Kane, P.C., Edward Browne, Attorney for Nikolaus & Hohenadel, LLP

Meeting opened at 6:30 p.m. with the Pledge of Allegiance.

***Council Roll Call:*** Thomas J. Murray, Sr. – No  
Kleon Zimmerman – Yes  
Paul Swangren, Jr. – No  
Randall Justice – Yes  
Michael Morris – Yes  
Justin Gehman – No  
Nathan Imhoff – Yes  
Mayor John McBeth – Yes

### ***Presentation/Interviews for Borough Solicitor***

Jason Hess, Attorney for Morgan, Hallgren, Crosswell & Kane, P.C., appreciated being a candidate for the Akron Borough Solicitor position.

Mr. Hess stated he grew up in Lancaster County, but started his legal career in the city of Harrisburg as a Judicial Law Clerk for a Judge, where he worked for two years. He then worked as Assistant City Solicitor in the city of Harrisburg Solicitor's Office, then became the Head Solicitor in 2011. At the time, Harrisburg was dealing with a severe financial crisis. The Council was trying to declare bankruptcy, but the Mayor was opposing that. Their council meetings would end up in a lot of shouting. As a result, Mr. Hess had to deal with constant crisis mode. Mr. Hess now has been in Lancaster County for seven years, and he learned that the issues that the Townships and Boroughs face are a lot different than those in the city. From Mr. Hess's experience, municipal governments value consistency, and he believes that his firm has really demonstrated that in Lancaster County.

Mr. Hess provided the Council with a list of the municipal clients they serve in Lancaster County. In terms of municipal law, Morgan, Hallgren, Crosswell & Kane, P.C. is the pillar of this County and of this community. His firm will bring a wealth of knowledge and experience with respect to most any issue that the Borough is facing, such as new mandates for Stormwater Management, changing trends in land-use, Right-to-Know law, zoning issues, etc. Morgan, Hallgren, Crosswell & Kane, P.C. is a member of the Pennsylvania State Association of Boroughs.

The Council thanked Jason Hess for the presentation.

Nathan Imhoff asked if their firm has a Paralegal and if there are Paralegal charges. Mr. Hess stated they currently do not have a Paralegal and they do not charge for their staff time.

Nathan Imhoff also asked if Mr. Hess will be the Borough's personal Solicitor. Mr. Hess responded that the firm will be hired as a personal Solicitor; however, Mr. Hess will be the main contact and will be dealing with the Borough the most.

Randall Justice asked what happens in the event of negotiations taking place between West Earl Township and Akron Borough, when both municipalities are represented by Morgan, Hallgren, Crosswell & Kane, P.C. Mr. Hess said that in the event of a conflict, he would recommend that both West Earl Township and Akron Borough get outside council for just those purposes.

Randall Justice also asked if Mr. Hess will ask to see their Council meeting agenda a week before the meeting to do issue spotting with the Council, or if he will ask the Council to raise and identify what questions they have for him. Mr. Hess thinks that a good Solicitor is going to know and be aware of the agenda, and will not let anything slip by.

Randall Justice's final question was whether Mr. Hess envisions the residents of the Borough as his client, or whether he envisions the governing body as his client, and what his perception is on who to serve. Mr. Hess said it is the full governing body, not an individual Council member. He also recognizes that decisions affect the residents of a municipality, and you have to be cognizant of their rights and what advice you give to the governing body.

Mayor McBeth asked if Mr. Hess has a minimal charge for meetings, and if he charges for mileage. Mr. Hess said that however many tenths of an hour is between leaving and getting to the meeting, and then getting back, is what he charges. He also charges mileage.

Mayor McBeth also asked which Boroughs Mr. Hess personally represents. Mr. Hess said he has never been the main contact for a Borough. He collectively represents Boroughs with his colleagues; however, he has done a significant amount of work for Strasburg, Elizabethtown, Quarryville and Mount Joy Boroughs, as well as Palmyra Borough in Lebanon County.

Mayor McBeth asked whether Mr. Hess's firm does labor matters. Mr. Hess said he does have some labor experience.

Mayor McBeth's final question was what the process is if a citizen calls Mr. Hess on the phone. Mr. Hess said they would always call the municipality to let them know that someone is calling the firm directly, and that they cannot provide legal advice to citizens, especially without the municipality's consent, because there is always a possibility of a conflict.

Sean Molchany, Assistant Borough Manager, asked how Mr. Hess deals with a phone call from a local attorney representing a client. Mr. Hess said they always answer calls from attorneys and, at least, find out what the issue is; however, they never disclose anything without going to the Borough to find out what is happening.

Sue Davidson, Borough Manager, asked what the turnaround time is on anything that the Borough would contact the firm about. Mr. Hess said he always, at least, responds to let the Borough know he received the message/email, and will give a timeframe.

Nathan Imhoff asked whether Mr. Hess will not do work for himself unless the Council asks him to do work. Mr. Hess said that if there is a question, he will call the Borough Manager to bring it to her attention and see if the Council wants him to work on that.

Nathan Imhoff recommended that if Mr. Hess gets selected as Solicitor, he will need to attend a few Council meetings to see the dynamic and to see how things are going in the Borough.

Edward Browne, Attorney for Nikolaus & Hohenadel, LLP, thanked the Council for allowing him to present tonight.

Mr. Browne gave a little background on his firm saying that at Nikolaus & Hohenadel, LLP they pride themselves on working as a team.

Mr. Browne stated they offer a wide variety of civil services (there are very few areas that they do not cover). They offer a full range of services to their clients that range from municipalities, authorities, businesses and individuals, and all aspects of civil needs. From the municipal perspective, they do a wide variety of municipal work.

Mr. Browne's background is one of general litigation and municipal work.

One of the things that they also pride themselves on is responsiveness. Whenever someone, whether it is a Council member, the engineer, or the Borough Manager, wants to get ahold of his team, they always encourage them to do so, and they will respond as promptly as possible. All their municipal clients have access to their cellphones, as well as email 24/7.

What they propose for the Borough is that, at least initially, Mr. Browne would be the primary point of contact as long as that suits the Council, to make sure that there is at least one person who is always responsive to every need that the Borough has.

Mr. Browne gave a little more personal background saying that he lives in Lititz Borough with his family. He currently serves as one of the School Board Directors for the Warwick School Board, and he also serves on the Lititz Sewer Authority. Both personally and professionally, Mr. Browne has a background in terms of how Boroughs generally operate. He has seen a lot of the issues that Boroughs currently face, and it is something that he personally and professionally dedicates his time to, and that is why he is more than happy to be here tonight.

Nathan Imhoff asked if Akron Borough would be Mr. Browne's first Borough that he will be Solicitor for. Mr. Browne said "yes." Akron Borough would be the first Borough solicitorship for him.

Nathan Imhoff stated Mr. Browne has in his proposal that he charges \$150 per hour for his time and \$75 per hour for a Paralegal. Mr. Imhoff asked whether Mr. Browne gives the work to the Paralegal as much as possible. Mr. Browne said "absolutely." Their goal is to maximize the value of their legal services to their clients. If there are matters that can be passed down to the Paralegal, and have the Paralegal do the exact same work at a lower rate to save the municipality's money, they do it as often as they possibly can.

Nathan Imhoff stated the Council would want Mr. Browne to be present at their first several Council meetings until they get to know each other, and asked whether Mr. Browne feels like he needs to be present at their Council meetings, or if he feels like he can have good communication outside the meetings. Mr. Browne recommended that they keep an open dialog as to what is on the agenda each time, to see if there is anything in particular that the Council needs a Solicitor for, but other than that, he does not want to sit in a room where he is not providing value. If there are meetings on a regular basis where there are certain things that have come up every single time before and in the exact same manner, they do not need their Solicitor at the meeting.

Michael Morris's question to Mr. Browne was whether he envisions the residents of the Borough as his client, or whether he envisions the governing body as his client. Mr. Browne's response was that he hopes those interests never diverge. He thinks that there should not be a difference between the interests of the Council and the interests of the citizens of the Borough. The role of the Solicitor is defined by the Borough Code. Practically, the Solicitor gives advice to the

Council on what the Council should and should not do, and in his experience, those interests never diverge from the interests of the Borough citizens.

Mayor McBeth asked Mr. Browne how he will handle a call if a citizen calls him. Mr. Browne stated it depends on if he knows they are calling, or not. In situations where a citizen calls the Borough first, he would address it with the Council as to what he should do or what he should not do with that particular citizen. On occasions when a citizen calls the Solicitor directly, he would take the call and try to be as direct as possible, but generally he would encourage them to file a Right-to-Know request.

Mayor McBeth asked whether Mr. Browne screens agendas or the minutes of a meeting to see if there is anything that is questionable. Mr. Browne said he reviews agendas to keep abreast of everything that is going on in the municipalities that he represents so that he is fully aware of issues and to spot issues. He is not actively looking for misdeeds and issues. He just tries to stay as informed as possible, and when he sees issues that he knows are present, he raises them.

Mayor McBeth also asked if Nikolaus & Hohenadel, LLP does labor work and how Mr. Browne feels about that. Mr. Browne said they have an attorney who does a lot of employment work. Mr. Browne views employment different from labor. Labor can get very specialized, that comes up a lot in police and union negotiations. Mr. Browne finds that area of law to be a little difficult to the point that he needs to rely upon labor council for other municipalities.

Nathan Imhoff asked whether Mr. Browne will not do work for himself unless the Council asks him to do work. Mr. Browne stated if he sees an issue, he will address it with the Council, but he does not create work for himself, and he does not want to surprise his clients with a bill that will be subject to public scrutiny.

Kleon Zimmerman asked Mr. Browne how much experience he has representing Boroughs and dealing with Boroughs. Mr. Browne said his firm historically dealt with Boroughs; however, he personally did not lead the solicitorship for any Boroughs. Mr. Browne has been a member of the Pennsylvania State Association of Boroughs for the past 10 years; he has done a lot of work in Boroughs; represented Zoning Hearing Boards in Boroughs, and has an interest in Boroughs.

Sue Davidson, Borough Manager, asked what the turnaround time is on something – if they have an issue that the Borough would contact the firm about. Mr. Browne's answer was "as quickly as possible." It also depends on the issue. Certain issues that need research may take a little longer. And if it is an answer that they can answer quickly, they will get it to the Council as quickly as possible.

Mr. Browne asked the Council what are some of the issues that the Borough is facing right now. Sue Davidson stated the biggest projects that they are working on right now are the Handi-Vangelism project that is still pending, as well as the Stormwater Plan with Akron Mennonite Church.

Mr. Browne also asked if Akron Borough is receiving a lot of Right-to-Know requests. They are seeing that other municipalities are getting bombarded with Right-to-Know requests during the shutdown. Sue Davidson said she did not receive any Right-to-Know requests in a while; however, they have been getting them during the shutdown, also their police department was getting a lot of Right-to-Know requests during the unrest.

Mr. Browne thanked the Council for their time and for the opportunity to present.

Nathan Imhoff thanked Mr. Browne for his time and for his presentation.

Sean Molchany recommended that the Council would adjourn the meeting and then go into Executive Session to discuss personnel, then announce that first thing at the next Council meeting so that it is on the record.

Randall Justice added that the reason Sean Molchany is recommending to go into Executive Session is that while they need to discuss this matter as a whole Council, this is the group that heard the interviews. They can probably have a recommendation this evening that will move things along at the next Council meeting for their other members.

***New Business/Old Business***

Sue Davidson reported that she put an ad in the newspaper, on the Borough's webpage and on the Borough's Facebook page regarding a School Crossing Guard job opportunity.

Randall Justice made a motion to adjourn the meeting. Kleon Zimmerman seconded the motion. Motion carried.

Meeting adjourned at 8:08 p.m.

Respectfully submitted,

Lydia Kovalchuk  
Minute Taker

LK