

**Approved Minutes
Open Session
Of the Mayor and Council of the Borough of Princeton
November 29, 2011
Special Meeting
Open Session 7:30 P.M.**

Present: Council President Kevin Wilkes, Councilwoman Jo Butler,
Councilwoman Jenny Crumiller, Councilman Roger Martindell,
Councilwoman Barbara Trelstad,

Absent: Councilman David Goldfarb, Mayor Mildred Trotman

Staff Present: Borough Administrator Robert W. Bruschi, Deputy Borough Clerk
Delores A. Williams

Council President Wilkes called the meeting to order at 7:40 P.M. and read the open public meetings statement as follows:

“This meeting is called to order pursuant to the provisions of the Open Public Meetings Law. This meeting of November 29, 2011, was included in a list of meetings sent to and advertised in the Princeton Packet and Trenton Times, posted on the bulletin board in the Borough of Princeton municipal building and has remained continuously posted as the required notices under the statute. In addition a copy of this notice is and has been available to the public and is on file in the Office of the Borough Clerk. Proper notice having been given, the Borough Clerk is directed to include this statement in the minutes of this meeting.”

Council President Wilkes asked all present to rise for **Agenda Item C, Salute to the Flag.**

Council President Wilkes announced New Jersey League of Municipalities certification of Borough and sister community Princeton Township as sustainable communities.

Council President Wilkes read **Agenda Item F, Public Presentation,** and asked if anyone present wished to address Council with an issue not on the agenda.

Robert Brattman, 259 Nassau Street, requested the open meeting concerning SB zone on East Nassau Street—unanimously scheduled by Council members for October—on the Borough agenda for December 6 and Planning Board’s agenda for December 13 for a Council vote on December 27. Mr. Brattman said the will of a few people is usurping the will of elected officials.

Council President Wilkes replied that Planning Board Director Lee O. Solow, a Borough and Township employee, has been trying to schedule a meeting with concerned property owners. In particular, Council President Wilkes reported that the December 6 agenda is full. Council President Wilkes feared that Mr. Brattman’s plan could not be met; he advised Mr. Brattman’s group to begin again in 2012.

Borough Administrator Robert W. Bruschi advised that staff had drafted the desired NB ordinance. He reminded that Council has been in session very late every week; there simply was insufficient time to cover all topics.

Council President Wilkes read **Agenda Item E, Discussion (1) — Rail Transit Zone — Borough Administrator Robert Bruschi.**

Councilwoman Crumiller introduced Timothy Korzen, Lambertville, who identified himself as a land use expert, with familiarity with Borough/Township differences as to handling of the Dinky station. Mr. Korzen's first advice was to keep looking at the transit zone—not spot zoning, in his opinion, because it has a public purpose.

Mr. Korzen listed options for Borough if the Dinky area needs free development: (1) Council can define the area, (2) Council can define the plan, (3) Council can be the redeveloper, (4) Council can work in partnership. Council can create a transit zone, overlay existing zone, or amend zoning ordinance. A possibility is to acquire the air rights, enabling Princeton University (PU) to build as it likes while leaving the tracks and access as is.

Mr. Korzen said that implementation of a transit zone must be consistent with Borough's Master Plan—that is, promote mass transit, promote commuting, promote connection to downtown.

Mr. Korzen pointed out that Planning's idea must be approved by both towns as is. An amendment must be harmonious with the plan ratified by Township (consistent with Master Plan).

Councilwoman Trelstad asked how to protect the right of way extending into Township. Mr. Korzen replied that must be resolved after consolidation.

Councilman Martindell was troubled by inverse condemnation of Lot 4, if Borough says Lot 4 can only be used for transit. He thought Lot 39 was better protected. Mr. Korzen jumped to the conclusion that Lot 4 can be omitted from a planning decision, but inverse condemnation only occurs when ancillary uses are *excluded*—exclusion presently not planned.

Mr. Korzen warned against eminent domain action by Borough.

Councilman Martindell thought Borough's zoning power was appropriately applied to Lot 39, not to Lot 4.

Councilwoman Crumiller emphasized that a transit zone will not prevent Princeton University from building their arts complex; all the buildings as now planned can be built with the track running through campus.

Mr. Korzen stressed that train lines and stations enhance property values.

Councilwoman Trelstad affirmed that Council's goal is to preserve the right of way, not the track itself.

Councilwoman Crumiller pointed out that Council has not interviewed any transportation specialist who says moving the station is good public policy, good planning, or good transportation policy. Councilwoman Butler repeated that not even New Jersey Transit thinks it is a good idea.

Councilwoman Crumiller moved to amend E5 to incorporate a zoning provision.

Mr. Bruschi noted that any amendment to E5 will stop action in 2011.

Councilwoman Butler wanted to see the traffic report before deciding.

Council President Wilkes asked Mr. Korzen about the rail spur in his town of Lambertville. Mr. Korzen answered that the zone is central business district with grandfathered uses (to 1970s). Lambertville Station is a restaurant with hotel and approval for expansion to include riverfront promenade (parking below ground), and larger hotel facilities with meeting rooms and limited retail.

Councilwoman Crumiller reiterated that Princeton University knew the zoning limitations when it bought the property.

Councilman Martindell was ready to support proposed transit zone with respect to Lot 39. He did not support delaying E5 zone.

Councilwoman Butler repeated Mr. Solow's advice to achieve a transit zone through amendment. She said decisions should not be made under threat of year end.

Councilwoman Trelstad moved Ordinance 2011-28 for Lot 39 only.

Councilwoman Butler and Councilwoman Crumiller hoped to wait to amend E5, which Councilman Martindell stated he would not back.

Councilwoman Butler worried that there would be two conflicting ordinances covering the same property; to avoid that, an amendment is required.

Council President Wilkes opened the public discussion and asked if anyone wished to address Council on this issue. Council President Wilkes asked members of the audience to direct questions to Council or the chair, and to limit comment to one question.

Bruce Afron, attorney representing a group suing to retain the Dinky's present locale, said that the deed of sale with the state requires Princeton University to retain of 170 feet of platform. The only move authorized by the contract is to transfer services from the north building to the south (already at 170 feet from the end of the platform). Mr. Afron did not think Princeton

University could prevail in court—delaying the arts project for years. Mr. Afron stated that case law shows that, as long as beneficial use is left to landowner, zoning ordinance retains its force.

Vivian Chen, journalist for ALLPRINCETON.COM, asked how consolidation affects the ordinance. Council President Wilkes noted that consolidation is a year away and Council is looking to resolve the issue promptly. Council members concurred. Councilwoman Crumiller mentioned a five-year window to coordinate ordinances.

Bob Durkee, Princeton University Vice President, contradicted Mr. Afron's comments with opinions from Princeton University advisers, as well as, Township advisors and New Jersey attorney general. He warned of potential legal liability if Borough pursues the zoning presently under consideration. He pointed out that zoning cannot compel a use; it can prohibit a use.

Jim Hartford, Township, applauded Council's efforts to preserve Dinky in the face of expanding global population.

Richard Goldman, Drinker Biddle & Reath, counsel for Princeton University, stated that Township's MOU will stand despite Borough action. He said zoning is permissive not mandatory. He addressed particular points debated by members of Council, including redevelopment, inverse condemnation, and so forth.

Anne Neumann, Borough, was encouraged by remarks from Mr. Korzen and Mr. Afron. She reiterated and commended comments from earlier speakers.

Virginia Kerr, Township, agreed with Ms. Neumann and Mr. Afron and took issue with Mr. Durkee's history of the 1984 contract. She repeated Mr. Afron's arguments on platform length and mentioned that there was no Lot 7 garage in 1984.

Ms. Kerr emphasized that this is not a case where Princeton University has an "absolute private property right," as it bought land with an active train running on it.

Peter Marks, Princeton Borough and one of the plaintiffs in Mr. Afron's action against Princeton University, acknowledged that he does not represent the majority of Princetonians. He was certain that town is not *losing* anything from any Dinky decision—a rail link to Nassau Street (at tens of millions of dollars) is a "pipedream."

Kip Cherry, 24 Dempsey Avenue, stressed that once the right of way is gone, it is **gone**. If the right of way is not preserved, there are no options for the future. Ms. Cherry saw no reason for PU not to proceed with its arts development.

Kristin Appleget of Princeton University corrected a misstatement: There is a 1996 amendment to the 1984 contract relating to relocation of the terminus. (Mr. Durkee clarified that Princeton University has a continuing right to move the station again. Mr. Afron said the 1996 amendment contains no such provision).

Chip Crider, Bank Street, countered that the public has never had any right of way on the tracks. Mr. Crider repeated the issue: “What are you trying to achieve?” He thought the transportation discussion was premature; he advised against action that might preclude futuristic transit options.

Seeing no one further, Council President Wilkes closed the public portion and returned to Council.

Councilwoman Crumiller read from Paragraph 15A of the 1996 addendum providing that “Seller shall vacate the northern building and relocate its station-related facilities to the existing southern facility. . . .”

Mr. Afron countered with Paragraph 15D (unchanged from 1984): “Buyer has the right to move the existing terminus of the rail line southward coincident with the location of the minimum reservation of platform space.”

Repeating the need for an amended ordinance, Councilwoman Butler moved to adopt the ordinance including both zones. Councilwoman Crumiller seconded. Councilman Martindell moved to delete Lot 4. Councilwoman Crumiller, as seconder, did not agree to the modification. Council President Wilkes called the question and proclaimed the ordinance failed three to two.

Councilwoman Crumiller moved to introduce Ordinance 2011-28 for Lot 39 only. Mr. Bruschi provided a draft ordinance amending Section 4 to place Block 45.01, Lot 39 in the RT zone district. Councilwoman Butler seconded and Council approved unanimously five to zero.

Council President Wilkes read **Agenda Item E, Discussion (2) — Special Improvement District (SID)** — *Borough Administrator Robert Bruschi*.

Mr. Bruschi reminded of previous conversations about establishing SIDs in Borough neighborhoods (not including Nassau Street) with a view to business promotion. Today’s proposed SID would cover the transit area to Nassau. Mr. Bruschi described the full concept of a SID.

Council President Wilkes read Paragraph B of §17A-412 and noted a change from nine board members to seven. Council President Wilkes proposed an additional power (#20) under Paragraph F to cover planning and implementation studies relating to land use, zoning, transportation, parking, and economic development.

Council President Wilkes read by title **Ordinance 2011-27 AN ORDINANCE AMENDING AND SUPPLEMENTING THE CODE OF THE BOROUGH OF PRINCETON TO AUTHORIZE THE CREATION OF A SPECIAL IMPROVEMENT DISTRICT IN THE BOROUGH OF PRINCETON.**

Council President Wilkes moved to introduce Ordinance 2011-27; Councilman Martindell seconded.

Councilwoman Crumiller asked how much income might be expected and how donation amounts are determined. Mr. Bruschi answered that the board presents a budget for review and approval by Council annually. Mr. Bruschi stated that \$90,000 estimated for Year 1 was a modest goal.

Council President Wilkes noted that a primary purpose for a SID is to provide services not presently existing. Mr. Bruschi explained that SID is outside the framework of the Borough's normal budget and is therefore able to expand on Borough services.

Councilwoman Butler asked the status of PILOT talks with Princeton University. Mr. Bruschi said dialogue is ongoing; no commitment has been reached for 2012.

Councilman Martindell stated that Borough's relationship with Princeton University has improved during the past year—with still a long way to go. He thought this SID will facilitate further improvement.

Council President Wilkes observed that Princeton University's contribution to SID gives them a "seat at the table," which does not go along with PILOT payment.

Councilwoman Trelstad saw language in Ordinance 2011-27 beneficial to McCarter Theater and promotion of its programs.

Council President Wilkes and Mr. Bruschi agreed that McCarter's recommended contribution to SID was not significant.

Council President Wilkes opened the public discussion and asked if anyone wished to address Council on this issue.

Ms. Neumann, was encouraged by creation of this SID. She pointed out that Council has the ability to draw SID's boundaries arbitrarily; for example, McCarter could be omitted if desirable.

Mr. Durkee thought actual creation of SID should depend on a glimpse into the future of transportation in the area. He stated that affected property owners have not identified a need or expressed any interest in a SID. Another change during development of the MOU (as well as deletion of SID) was to add a second study recognizing traffic issues in the University Place corridor.

Linda Fahmie, ROI Renovations, thought all property owners should be granted the level of communication accorded to Princeton University.

Mr. Crider asked the definition for "exempt." He pointed out that Council could appoint a representative from, say, Wawa, thereby eliminating Princeton University completely from the board.

Alan Hedgedus, Borough resident and Nassau Club officer, speculated on his board's reaction to membership in SID. He was unclear as to benefits for Nassau Club. He suggested more

November 29, 2011

substantive information before considering SID for the transit zone. Mr. Hedgedus opined that East Nassau Street was a better SID model than the University.

Seeing no one further, Council President Wilkes closed the public discussion and returned to Council.

Councilman Martindell replied to speakers: (1) SID is a partnership that grants Princeton University a say in expenditures (unlike the PILOT); (2) small start in a homogenous neighborhood easier to implement; (3) resident owner is “exempt”; (4) SID will protect the right of way to Nassau.

Councilwoman Butler stated that some members of Council, knowing that she and Councilwoman Crumiller were opposed to the creation of a downtown SID, had pursued it outside the confines of Council chamber—“behind our backs, if you will.” Councilwoman Trelstad strongly objected to Councilwoman Butler’s statement.

Council President Wilkes moved to amend Ordinance 2011-27 as noted earlier: “Council President Wilkes read Paragraph B of §17A-412 and noted a change from nine board members to seven. Council President Wilkes proposed an additional power (#20) under Paragraph F to cover planning and implementation studies relating to land use, zoning, transportation, parking, and economic development.”

Council President Wilkes called for a vote. Council members Wilkes, Martindell, and Trelstad voted in the affirmative. Council members Butler and Crumiller voted nay. Council President Wilkes proclaimed the ordinance introduced with a public hearing to be held December 20, 2011.

Council cancelled its regularly scheduled meeting of December 27, with plans to meet December 20 instead.

Councilwoman Trelstad moved to adjourn; Councilman Martindell seconded. There being no further business, Council President Wilkes adjourned the special meeting at 11:10 P.M.

Respectfully submitted,

Delores A. Williams
Deputy Borough Clerk