

1 MINUTES OF MIFFLINBURG BOROUGH COUNCIL

2 December 4, 2017

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4	PRESENT	ABSENT
5 Beverly L. Hackenberg, Council President	X	
6 Tod M. Steese, Vice President	X	
7 Paul E. Bottiger, Council Member		X
8 Kathleen Ann Downs, Council Member	X	
9 Richard J. Fry, Council Member	X	
10 Duane L. Zimmerman, Council Member	X	
11 David M. Cooney, Mayor	X	
12 Ryan M. Tira, Solicitor	X	
13 Frederick C. Dyroff III, Chief of Police		X
14 Margaret A. Metzger, Borough Manager	X	
15 Robert M. Rowe, Borough Project Manager	X	
16 Misty L. Ross, Assistant Secretary	X	

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18 The special meeting of Mifflinburg Borough Council was called to order at 6:30 PM.

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20 Visitors present at this meeting were Erin Threet and Gerald Fulkroad, SR.

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22 Mrs. Hackenberg reminded Borough Council that they took action at the Tuesday, November 21, 2017  
23 regular Borough Council meeting to approve Payment Application No. 2 from Fairchild Brothers, Inc.  
24 for the Woodland Estates Water Main Replacement Project in the amount of \$15,962.05, contingent  
25 upon receipt of satisfactory payroll certifications. Mrs. Hackenberg reported that Borough Council  
26 action is requested to rescind Payment Application No. 2 and approve the modified Payment Application  
27 No. 2 dated Wednesday, November 29, 2017 in the amount of \$23,531.05.

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29 Motion by: Tod M. Steese  
30 Second by: Kathleen A. Downs

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32 **MOTION: To rescind Payment Application No. 2 from Fairchild Brothers, Inc. for the Woodland**  
33 **Estates Water Main Replacement Project in the amount of \$15,962.05 and approve the modified**  
34 **Payment Application No. 2 dated Wednesday, November 29, 2017 in the amount of \$23,531.05.**

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36 Mrs. Metzger clarified that the only change with Payment Application No. 2 in the amount; Fairchild  
37 Brothers, Inc. didn't have the right amount of work completed on their progress estimate. Mrs. Erin  
38 Threet, HRG, Inc., explained that Fairchild Brothers, Inc. forgot to include Change Order No. 1 in the  
39 amount of \$7,569.00 which was executed by all parties on Friday, September 15, 2017 into the payment  
40 application.

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42 Yes – Ms. Downs, Mr. Fry, Mr. Steese, Mr. Zimmerman, Mrs. Hackenberg

43  
44 No – None

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47 Mr. Tira requested an informational~~executive~~ session ~~to further discuss the bids for Contract 17-04:~~  
48 ~~2017 Wastewater Treatment Plant Improvements Project~~ at which time Mrs. Erin Threet, HRG, Inc.,  
49 will provide Borough Council with a review of the reference checks that she completed on the ~~three-two~~  
50 ~~(32)~~ lowest bidders relating to qualifications and references for Contract 17-04: 2017 Wastewater  
51 Treatment Plant Improvements Project.

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54 Mrs. Hackenberg called an executive-informational session ~~to further discuss the bids~~ for Contract 2017-  
55 04: 2017 Wastewater Treatment Plant Improvements Project. An ~~executive-information~~ session was  
56 held from 6:32 PM to 7:15 PM.

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67 Mr. Tira announced that Mr. Gerald Fulkroad, Sr., of Jay Fulkroad & Sons, Inc. (JFS), is present at  
68 tonight's meeting with regard to Contract 17-04: 2017 Wastewater Treatment Plant Improvements  
69 Project. Mr. Tira informed Mr. Fulkroad that based on the review of the reference checks completed by  
70 Mrs. Threet, Borough Council has some questions regarding the email questionnaire [response](#) that JFS  
71 submitted.

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77 Mr. Tira reported that on the email questionnaire it asked if the bidder or any agents or employees of the  
78 bidder has been charged or convicted of a violation of any Federal or State law regulating environmental  
79 law. Mr. Tira inquired if Mr. Fulkroad is aware of any environmental project in which JFS has been  
80 charge or convicted of a violation of any Federal or State law regulating environmental law. Mr.  
81 Fulkroad stated that he is aware of one (1) project in which JFS paid a fine for a violation of a water  
82 obstruction & encroachment permit. Mr. Fulkroad elaborated that JFS completed a \$5 million Water  
83 Treatment Plant Project for Newport PA. There was a front stream which had a lot across the stream  
84 and then there was a railroad that was elevated pretty high. The engineer, without explaining any of that  
85 in the drawing, directed JFS to drill a line out into the center of the river in order to intake water. The  
86 drawings showed going around to the other side of the river which was old Route 22 and building a road  
87 or a dike out to the center of the river and therefore installing an intake concrete structure. The engineer  
88 for the project contacted Aaron Enterprises and they indicated that JFS could drill 1000 feet; however  
89 they forgot one (1) major item, when you go on railroad property you must grout the pipe on both sides  
90 that the flows are on. There was no way for JFS to access the river next to the stream to get to the  
91 boring. So on a Saturday afternoon he personally went through the tunnel, down along the river and  
92 built a temporary road so to speak in order to get to that boring. JFS bored to the other side of the  
93 railroad and grouted the pipe per railroad specs and everyone was happy. Subsequently, the Department  
94 of Environmental Protection (DEP) indicated that JFS didn't have a permit for both sides of the river,  
95 they only had a permit for one (1) side of the river, and fined JFS \$50,000.00. [Mr. Fulkroad stated that](#)  
96 [the Newport Water Authority paid \\$25,000.00 of that fine because they realized that what JFS did, was](#)  
97 [the only way to complete the work. JFS couldn't grout the pipe or complete the work from the far side](#)  
98 [of the river. Mr. Tira pointed out that on the email questionnaire submitted by either Mr. Mance or Ms.](#)  
99 [Ashley Colbert on behalf of JFS, they answered "no" to this question. Mr. Fulkroad explained that he](#)  
100 [doesn't think Mr. Mance or Ms. Colbert were employed by JFS at that time and that they are unaware of](#)  
101 [it; neither Mr. Mance nor Ms. Colbert asked him. Mr. Fulkroad expressed that he really wasn't](#)  
102 [considering anything pertaining to environmental law during this job since there was no other way to](#)  
103 [complete the work. It wasn't something JFS did because they were trying to violate some kind of](#)  
104 [regulation or type of law; JFS was just trying to complete the job which they did.](#)

105  
106 Mr. Tira inquired if there has ever been any issues with subcontractors being paid when JFS is the  
107 general contractor. Mr. Fulkroad reported that the only time there is any issues with subcontractors  
108 being paid is when there is something wrong, the subcontractor didn't deliver something, or work isn't  
109 completed. There are no subcontractors that JFS hasn't paid; if the subcontractor completed the work  
110 according to the subcontract, they were paid.

111  
112 Mr. Tira inquired if JFS has ever been sued by a subcontractor in order to obtain any payments. Mr.  
113 Fulkroad stated that there are none that he's ~~un~~aware of at the moment. Mr. Fulkroad reported that there  
114 was an issue with the Northumberland Sewer Authority, which you're (Mr. Tira) the solicitor for the  
115 Authority, for fraudulence. JFS's bonding company requested validation from the Authority to prove  
116 they were owed this money and they never responded.

117  
118 Mr. Tira inquired if there have ever been any issues with other subcontractors being paid in the past.  
119 Mr. Fulkroad replied that there has never been a lawsuit filed by a subcontractor against JFS that he  
120 could recall. Mr. Tira then inquired about Keystone Pump & Power. Mr. Fulkroad stated that JFS paid  
121 Keystone Pump & Power and there was never a lawsuit filed.

122  
123 Mr. Tira reported that on the email questionnaire it asked about failure to complete the work in the time  
124 frame specified in the contract. The answer provided was "yes, but time extensions were issued for rain  
125 days or extra days to do additional work". Mr. Tira inquired if this was an accurate statement. Mr.  
126 Fulkroad stated that he would say the statement is somewhat accurate; there have been several jobs in  
127 which JFS didn't complete the work in the time frame specified in the contract; most of the jobs, if not  
128 all of them, time extensions were granted due to unforeseen problems, additional work or change order  
129 items. There was always a reason for why the work wasn't completed on time, it wasn't because JFS  
130 couldn't complete the work. Mr. Tira informed Mr. Fulkroad that he kind of [gave](#) a qualified answer  
131 since he used the word "somewhat" accurate. Mr. Tira rephrased the question and inquired if there were  
132 any projects that time extensions were not granted, that the work was not completed by the deadline.

133 Mr. Fulkroad reported that there were a few projects that time extensions were not granted that the work  
134 was not completed by the deadline.

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143 Mr. Tira inquired which projects were not granted time extensions that the work not completed by the  
144 deadline. Mr. Fulkroad stated that he doesn't recall all of the projects, but there were two (2) or three  
145 (3) projects that weren't completed by the deadline and as a result JFS had to pay liquidated damages.  
146 Mr. Tira pointed out that the document that JFS submitted doesn't disclose any of this information and  
147 this is a concern to Borough Council because these questions were asked in order to complete a  
148 reference check. Mr. Tira informed Mr. Fulkroad that if he wasn't present at tonight's meeting,  
149 Borough Council wouldn't have any of this information. Mr. Fulkroad apologized and stated that this  
150 job is an elementary job; there is nothing to it. The Borough is supplying the materials, all JFS is doing  
151 is removing the old filters and installing the new filters that the Borough is providing, and modifying the  
152 manifold in order to install the new filters. It's about as simple as it gets.

153

154 Mr. Tira inquired if JFS has ever completed projects similar to this project. Mr. Fulkroad reported that  
155 JFS has completed projects similar this project; Millerstown Municipal Authority and the Newport  
156 Borough Water Authority are two (2) of the projects that had filters. The filters for the Newport  
157 Borough Water Authority were a little different than the filters for Millerstown Municipal Authority.  
158 Mr. Tira requested clarification on what type of filters were in each of these facilities for Borough  
159 Council benefit since this matter is a technical. Mr. Fulkroad stated that doesn't know the names of the  
160 filters. With Millerstown Municipal Authority, JFS built a new Treatment Plant and relocated the filters  
161 from the old plant to the new plant. Mr. Tira inquired if Mr. Fulkroad recalled what type of sewer  
162 treatment plant Millerstown Municipal Authority was. Mr. Fulkroad indicated that he didn't recall what  
163 type of sewer treatment plant Millerstown Municipal Authority was. Mr. Tira explained that while he's  
164 not an engineer, he knows there are many different kinds of sewage treatment plants which vary greatly  
165 and that's the reason why he's asking this question. Mr. Fulkroad reiterated that without looking at the  
166 contract, he doesn't recall the name of the filters or what type of sewer treatment plant because he's not  
167 on-site on a normal basis. Mr. Tira inquired if the Millerstown Municipal Authority and the Mifflinburg  
168 Wastewater Treatment Plant are the same type of sewer treatment plant. Mr. Fulkroad expressed that he  
169 believes these plants are similar, but not exactly the same; however he is honestly unsure.

170

171 Mrs. Threet ~~stated that it was her understanding that announced that~~ the Millerstown Municipal  
172 Authority has a sequencing batch reactor (SBR) system which is what the Mifflinburg Wastewater  
173 Treatment Plant previously had. The Mifflinburg Wastewater Treatment Plant now has a membrane  
174 bioreactor (MBR) treatment plant. Mrs. Threet detailed the differences: Sequencing batch reactors  
175 (SBR) or sequential batch reactors are a type of activated sludge process for the treatment of wastewater.  
176 SBR reactors treat wastewater ~~such as sewage or output from anaerobic digesters or~~  
177 ~~mechanical~~ providing biological treatment facilities in batches. Oxygen is bubbled through the mixture  
178 of wastewater and activated sludge to reduce the organic matter, ~~(measured as biochemical oxygen~~  
179 ~~demand (BOD) and chemical oxygen demand (COD).~~ As part of the process, the wastewater is allowed  
180 to settle and t~~The treated clarified~~ effluent may be taken off the top of the tank prior to  
181 discharge to surface waters or possibly for use on land. Membrane bioreactors (MBR) ~~is~~ are the  
182 combination of a membrane process like microfiltration or ultrafiltration with a biological wastewater  
183 treatment process, ~~the activated sludge process.~~ The membranes take the place of the  
184 settling/clarification step. It is ~~now~~ not currently widely used for municipal and industrial wastewater  
185 treatment.

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187 Mr. Tira asked Mr. Fulkroad is he was aware that JFS provided two (2) separate lists to the Borough  
188 relating to ongoing and past contracts. Mr. Fulkroad stated that he believes Ms. Ashley Colbert  
189 completed the first request as normal and then HRG, Inc. spoke with Mark Mance and requested  
190 additional information. Mr. Tira clarified with Mrs. Erin Threet that the list provided via email that  
191 states JFS status of contracts on hand was the updated list provided by Mr. Mance. Mr. Tira asked Mrs.  
192 Threet if the list provided by Mr. Mance included the Borough of Northumberland Project. Mrs. Threet  
193 reported that the list provided by Mr. Mance did not included the Borough of Northumberland Project.  
194 Mr. Tira inquired if Mr. Fulkroad has any idea of why JFS did not reference the Borough of  
195 Northumberland Project, since he mentioned it earlier at tonight's meeting. Mr. Fulkroad stated that JFS  
196 did not reference the Borough of Northumberland Project because of Mr. Tira and Mr. Tira being the  
197 solicitor for Northumberland Borough and because of all of the issues that JFS had with that plant. JFS  
198 felt that it would probably be better not to list this project. Mr. Fulkroad clarified that the  
199 Northumberland Treatment Plant did not have filters and that it wasn't the same type of Treatment Plant

200 as the Mifflinburg Treatment Plant at all. The Northumberland Treatment Plant is a brand new plant  
201 which was a \$9 million or \$10 million Project; the Mifflinburg Wastewater Treatment Plant Project is a  
202 \$50,000.00 project. JFS didn't see any correlation or relationship that the Northumberland Project  
203 would apply to the Mifflinburg project as far as the references.

204  
205 Mr. Tira made clear just for the record, that he has not disclosed any of the details concerning the  
206 Borough of Northumberland Project with Borough Council. Mrs. Threet came across the information  
207 when she was conducting the investigation and both Mrs. Threet and the Borough wondered why the  
208 Project was not included in the references.

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213 Mr. Tira clarified that from Mr. Fulkroad's standpoint, the Northumberland Project was irrelevant even  
214 though it was a sewer project like the Mifflinburg Sewer Project, but the road jobs that JFS listed are  
215 more relevant. Mr. Fulkroad stated that Mr. Mance was only giving references of work that JFS did, it  
216 wasn't relative whether it was a road job or not.

217  
218 Mrs. Threet reported that ~~she doesn't have any other questions and clarified that w~~when she made that  
219 initial phone call to Mr. Fulkroad's office regarding the experience list she wasspecifically asked for  
220 plant/process work references and mentioned the Borough of Northumberland as an example that was  
221 not provided on the initial list. At that time, it was reported that the wrong list was provided and that the  
222 revised list would include plant references.

223  
224 Mr. Fulkroad informed Borough Council that he did some research as well and he has more experience  
225 than either of the other two (2) bidders; neither one of the bidders have ever changed out filters, but he  
226 has. Mr. Fulkroad added that he is present at tonight's meeting to represent his company and stated that  
227 he knows he can do this job; he bid the project low because he wanted the job and he has the workers  
228 available to complete the job. Mr. Fulkroad guaranteed Borough Council that they will be more than  
229 satisfied when JFS is done with the project.

230  
231 Mr. Tira advised Borough Council that in accordance with the Borough Code the contract shall be  
232 awarded ~~within a reasonable time by written notice~~ to the lowest responsible bidder whose bid meets the  
233 requirements and criteria set forth in the invitation to bid. The Borough has the right, in its discretion, to  
234 reject any or all bids or parts thereof. Proposals may be rejected if they show any omission, alterations of  
235 form, additions or deductions not called for, conditional or uninvited alternate bids, or irregularities of  
236 any kind, but the Borough reserves the right to waive defects or irregularities on proposals. The  
237 Borough in its sole discretion may reject as not being the bid of the lowest responsible bidder, the bid of  
238 any bidder who has failed to meet the requirements of this Chapter. JFS was the low dollar bidder, so  
239 it's really up to Borough Council as to whether they qualify him as a responsible bidder at this time or if  
240 there is more information needed.

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242 Mr. Zimmerman inquired if the money that the Borough would be paying JFS, was basically for the cost  
243 of labor to change the filters and complete the project. Mrs. Threet reported that essentially between 80-  
244 90% of the costs would be for labor; although there are some materials required as part of the contract.

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246 Mr. Tira inquired if the Mifflinburg Wastewater Treatment Plant Project is time sensitive. Mrs. Threet  
247 stated that the Mifflinburg Wastewater Treatment Plant Project is absolutely time sensitive. The  
248 contract was bid with a set completion date of February 16, 2018 with very strict timelines for shut  
249 down provisions. Mrs. Threet expressed that the timeline and coordination is-are the most important  
250 things with this project. Mr. Fulkroad clarified that he has no problems completing this project on time.

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252 Motion by: Kathleen A. Downs  
253 Second by: Tod M. Steese

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255 **MOTION: To declare Jay Fulkroad & Sons, Inc. as a non-responsive-responsible bidder due to**  
256 **the reference checks, the issues with the discrepancy integrity, and the responses provided by Mr.**  
257 **Fulkroad at tonight's meeting.**

258  
259 Yes – Mr. Fry, Mr. Steese, Ms. Downs, Mrs. Hackenberg

260  
261 No – Mr. Zimmerman

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264 Mr. Tira informed Borough Council that the next step would be to discuss the next bidder in line, JP  
265 Environmental, LLC. Mrs. Threet has also performed reference checks for JP Environmental, LLC

266 relating to qualifications and references. Mrs. Threet reported that she performed reference checks for  
267 JP Environmental, LLC and expressed that she is comfortable with ~~them~~[the results of these checks](#).

268  
269 Mr. Tira pointed out that the reference checks for Jay Fulkroad & Sons, Inc. and JP Environmental, LLC  
270 were of similar nature. The reference check for Jay Fulkroad & Sons, Inc. was fifteen (15) pages and  
271 the reference check for JP Environmental, LLC was twenty-one (21) pages. Mr. Tira inquired if  
272 Borough Council had any questions for Mrs. Threet regarding the reference check for JP Environmental,  
273 LLC.

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282 Motion by: Tod M. Steese

283 Second by: Richard J. Fry

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285 **MOTION: To accept the bid from JP Environmental, LLC for Contract 2017-04: 2017**  
286 **Wastewater Improvements Project in the amount of \$77,000.00, contingent upon the provision of**  
287 **the proper bonding and [insurance](#) documentation required by the bid.**

288

289 Yes – Mr. Steese, Ms. Downs, Mr. Fry, Mrs. Hackenberg

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291 No – Mr. Zimmerman

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293

294 Mr. Fulkroad stated that Borough Council would hear from his Attorney, that he would be filing an  
295 injunction. Mr. Tira noted for the record that upon leaving the tonight’s meeting, Mr. Fulkroad  
296 threatened litigation claims, so all further discussion on this matter should be held in executive session.

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299 Mrs. Hackenberg called an executive session to discuss potential litigation. An executive session was  
300 held from 7:42 PM to 7:46 PM.

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303 Mr. Tira reminded Borough Council that they received a copy of a letter that was provided to the  
304 Borough concerning House Bill 271 Expansion of Gambling Opportunities Under the Pennsylvania  
305 Race Horse Development & Gaming Act included in the information at the Tuesday, November 21,  
306 2017 regular Borough Council meeting. Mr. Tira explained that on October 30, 2017, Governor Wolf  
307 signed into law House Bill 271 which amends the Pennsylvania Race Horse Development and Gaming  
308 Act (“Act”), 4 Pa.C.S. §§1101 et seq., and authorizes a number of gambling expansion opportunities  
309 throughout the Commonwealth. One (1) such opportunity is found in the creation of up to ten (10)  
310 Category 4 slot machine licenses which would likely, but not necessarily, be owned and operated by  
311 existing Pennsylvania licensed casino operators which already have other gaming properties in the  
312 Commonwealth. Under the expansion language, each Category 4 casino, or commonly referred to as  
313 “Mini Casinos”, could operate between 300 and 750 slot machines and eventually up to 40 table games.  
314 No Category 4 location could be located within 25 linear miles of an existing Category 1, 2 or 3 casino  
315 facility. Section 1305.1 (A.1) of the Act is entitled “Municipal Option” and provides municipalities the  
316 option to prohibit, or opt-out of, the siting of a Category 4 facility within that municipality.<sup>1</sup> As  
317 referenced, Title 4, Section 1103 defines a “Municipality” as “a city, borough, incorporated town or  
318 township.” If a municipality wishes to exercise this option and prohibit a Category 4 casino from being  
319 placed in the municipality, the governing body of the municipality must deliver a resolution exercising  
320 this power to the Board no later than December 31, 2017. Borough Council direction is requested on  
321 this matter.

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323 Motion by: Duane L. Zimmerman

324 Second by: Kathleen A. Downs

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326 **MOTION: To adopt Resolution No. 2017-10; Prohibiting the siting of a Category 4 casino within**  
327 **the Borough of Mifflinburg.**

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329 Approved via unanimous voice vote.

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332 Motion by: Tod M. Steese

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334 MOTION: **To adjourn the Mifflinburg Borough Council meeting.**  
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336 Approved via unanimous voice vote.  
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339 Meeting adjourned at 7:48 PM.  
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341 Respectfully Submitted,  
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344 Misty L. Ross  
345 Assistant Borough Secretary