

1. Finance Committee Report:

United National Insurance Company has been the Borough's Public Officials Liability insurance carrier covering the claims against the Borough by Chabad Lubavitch Inc. and Rabbi Eisenbach. The policy limit is \$1 million which covers both costs of defending the claim and any damages which might be awarded. This means that cost of defending the claim "erodes" the amount of coverage left to pay any damages which might be awarded by a court or jury after trial.

Also, the policy covers only claims for damages. It does not include any duty to defend against a case not claiming damages.

Since the inception of this lawsuit in 2009, United National Company has paid over \$500,000 in legal and professional fees defending the Borough and its' Historic District Commission.

Prior to July 20<sup>th</sup>, the Plaintiffs were claiming damages against the Borough. These claims alleged damages such as the loss of pledges in the amount \$2,500,000; the loss of revenue in the amount of \$693,000; the increased cost of construction; as well as several other claims. Altogether, the Plaintiffs were asking a jury to award them in excess of \$5,000,000, plus attorney's fees.

Our trial attorneys moved the court to not allow any of the claims for damages on the grounds they were speculative and unsupported by any credible evidence.

On July 20<sup>th</sup>, the court granted the Borough's motion and ruled against the Plaintiffs on every item of damages. Because there were no longer any claims for damages, there was no right for a jury trial and the court ordered that the trial would be a bench trial, a trial to the judge.

Also, because the case no longer included a claim for damages, United National sent the Borough a letter stating that it would only cover the costs of suit through July 20<sup>th</sup>. The Borough hired counsel specialized in insurance coverage and the attorney, after reviewing case law and our policy, sent a letter to the insurance company stating the Borough was still exposed to pay the Plaintiff's attorney's fees if they succeeded and such costs are a type of damages that should be covered. The insurance company replied, saying that it disagreed.

At this point, the Borough must pay all of its own attorneys' fees and costs of this suit incurred after July 21st. Last month we paid \$5,576.55 in attorney fees not covered by our insurance carrier. This month's proposal for approval of payment of bills includes \$28,146.99 of legal and professional fees relating to this suit. This equates to \$33,724.54 in payments in these two months alone. This leaves over \$5,000 in legal fees outstanding that we still need to pay with more to come. In order to pay these fees in full it is necessary to call a Special Borough Voters Meeting to amend the Budget.

In addition, if the Plaintiffs win the lawsuit, the Borough could be exposed to the court ordering the Borough to pay a portion of Plaintiff's attorney's fees which could amount to a sum exceeding \$100,000.

And, if the Borough wins the lawsuit (again) the Plaintiffs could appeal (again). If the Plaintiffs appeal the judge's ruling on damages, it is highly likely that the insurance company will pay the costs of appeal, otherwise, the Borough will also have to pay these costs. An appeal is likely to cost \$75,000 to \$100,000.

Accordingly, until the Judge renders her decision it is difficult to determine what should be a total appropriation to cover all of the future costs associated with this lawsuit.

At this time, it is the recommendation of this committee that the Board of Warden and Burgesses call a Special Borough Voters Meeting to be scheduled for Tuesday, October 3, 2017 at 5:45 p.m.

So moved by Mr. Patterson, seconded by Ms. Bauer and unanimously carried.

It is also hereby suggested that the Board of Warden and Burgesses, acting as the Borough's Board of Finance, recommend to the Voters to amend the Budget as follows:

- 1) To increase the expenditures line item of "Legal, Code & Consulting" by \$60,000;  
i.e. from \$30,000 to \$90,000.
- 2) To increase the income line item of "General Funds - Transfer In" by \$60,000;  
i.e. from \$88,552 to \$148,552.

So moved by Mr. LaMere, seconded by Mr. Gay and unanimously carried.

(Note: no tax increase is anticipated at this time.)