

**WORCESTER TOWNSHIP BOARD OF SUPERVISORS  
WORCESTER TOWNSHIP COMMUNITY HALL  
FAIRVIEW VILLAGE, WORCESTER, PA  
MONDAY, April 6, 2009 8:00 am**

CALL TO ORDER: by Mr. Arthur Bustard at 8:00 A.M.

**PLEDGE OF ALLEGIANCE**

**ATTENDANCE**

PRESENT:

JOHN R. HARRIS           [X]  
ARTHUR C. BUSTARD     [X]  
STEPHEN C. QUIGLEY   [X]

**INFORMATIONAL ITEMS**

Chairman Mr. Arthur Bustard reported he had no informational items and asked if anyone else did. Mr. Harris reported the Montgomery County Board of Commissioners had approved the open space funding for the acquisition of the Heyser Tract located behind the Community Hall.

**EXECUTIVE SESSION REPORT**

Township Solicitor, Mr. James Garrity informed the public that since the last meeting the Board had not met in executive session.

**PUBLIC COMMENTS: REGARDING AGENDA ITEMS**

In Summary:

Mr. Gordon Todd, (address removed for privacy), Chairman of the Worcester Township Planning Commission, commented on item #4.c. the sidewalk issue for Mikelen and clarified the planning commission's position regarding waiver and the applicant contributing to a sidewalk fund should sidewalks be needed in the future.

Mrs. Winnie Hayes, (address removed for privacy) commented on item 5.b. sign ordinance amendments status, supporting a conservative sign ordinance. Ms. Hayes commented on item #2.a. Mollick Vs. Worcester regarding taking action on the suit and encouraged the Township to think long and hard before backing away from the law suit, she does not think it is the right thing to do.

Mr. Jim Phillips, (address removed for privacy) commented if the Board was going to take action on any agenda items and noted his prior comments on an opportunity to share comments during discussion of an agenda item.

Mr. Bustard commented he was unsure if action would be taken on any items.

Next Mr. Phillips commented on the Heyser Tract and noted his attendance at the County Commissioner's meeting and commented on when the Township discussed a 50 foot easement to access the property.

Mr. Harris commented the easement was a condition the County imposed on the approval process for funding.

Mr. Phillips commented on when the Supervisors voted to accept the condition.

Mr. Harris commented his recollection in March of 2008 the Supervisors granted the authority of one board member to sign documents on behalf of the township.

Mr. Phillips commented on future access by the County and future commercial use of the tract.

Mr. Harris commented there are no formal plans for commercial use and the township did intend to acquire the additional two acres for the benefit of future Supervisors should they need to access the 5 acres of open space.

Mr. Phillips commented on item #3.d. new fire truck discussion.

Mr. Bustard commented the fire company had requested funding toward a new ladder truck.

Mr. Phillips commented on the age of the current truck, Fire Chief Dave Cornish commented the existing truck was 20 years old.

Mr. Phillips commented on item #5.b. sign ordinance discussion, and the intended discussion.

Mr. Bustard commented Mr. Quigley had requested the item.

Mr. Phillips commented on Black Lab flyers that have been posted around the township and neighboring community and commented on the township enforcing the ordinance regulations and commented on granting relief for such signage or amending the sign ordinance provisions.

Mr. Phillips commented on how much the township has spent on Mollick Vs. Worcester.

Mr. Bustard commented he could not recall the exact figure at least \$35,000.00.

Mr. Phillips commented on Mollick Vs. Worcester on the protection of assets, a proposed settlement, integrity, and counter suit.

Mr. Harris and Mr. Bustard commented the law suits could be withdrawn by the plaintiff at any time.

Mr. Garrity raised concerns regarding the discussion of litigation in the public meeting.

Mr. Phillips commented on the Right-to-Know law and the appeals filed by Mr. Mollick and the States determination on Mr. Mollick's Right-to Know appeal.

Mr. Quigley commented he was elected to serve the residents of the township and he attended an executive session two weeks prior which raised some questions and he asked the Board to consider obtaining his own legal counsel. Mr. Quigley commented he was not involved in the sunshine law suit and the counter law suit. Mr. Quigley commented he was in office for 3 months when he believed the township was wrong when the Board did vote on a non-agenda item without benefit of public comment and noted that meeting was closed and then reopened to allow public comment which may have also been wrong and expressed the need to have separate legal counsel. Mr. Quigley stated he strongly believed the Township needed to settle the law suit and spend the taxpayer's money wisely.

Mr. Phillips commented Mr. Bustard should resign if the Township loses the law suit because it would question his integrity.

Mr. Jim Mollick, (address removed for privacy) commented his understanding there had been an agreement but comments were shared with Mr. Landis connecting the Right To Know appeal with the suit.

Mr. Mollick distributed to the Board and read out loud an email obtained through the Right To Know law regarding establishing a videotaping policy. Mr. Mollick commented on questions he asked Mr. Garrity in the suit regarding when in a public meeting authorization to a counter claim was given.

Mr. Quigley commented he had the same question.

Mr. Garrity commented there was no vote taken the decision was made by the solicitor on how to handle the law suit.

Mr. Harris and Mr. Bustard commented concurring with the response the solicitor provided.

Mr. Mollick commented on when litigation does need Board approval.

Mr. Garrity commented that starting litigation, appealing and ending litigation in his opinion need Board action, other legal matters are the solicitor's responsibility.

Mr. Mollick commented on legal expenditures by the solicitor and commented when executive sessions were held regarding the suit.

Mr. Mollick commented if the Board had heard of a web site Worcester Pa Politics and commented on how information of the suits was placed on the web site.

Mr. Bustard commented he has heard of the web site.

Mr. Garrity commented on the email distributed by Mr. Mollick and commented no emails had been released by the township.

Mr. Cornell commented some emails had been released with the approval of the solicitor's office.

Mr. Quigley commented regarding solicitor's bills for the past two years and bills for discussion between the solicitor's office and the other members of the Board not involving him in the suit and commented the public deserves a fair shake.

Mr. Bustard commented he agreed with Mr. Quigley in part and commented Mr. Quigley had been invited to discuss the matters.

Mr. Harris commented the plaintiff could withdraw their suit at anytime.

Mr. Garrity commented the suit could be withdrawn at any time.

Mr. Phillips commented on the law suit and commented on who would drop the suit first and does the solicitor have a blank check.

Mr. Mollick commented on withdrawing the counter claim and the need for Board action.

Mr. Garrity commented his reiterated position as solicitor when litigation matters need Board action.

Being no additional public comment the meeting resumed at 8:34 am

#### **1. Approval of the February 2, 2009:**

Mr. Bustard called for dispensing with the reading of the minutes and by way of motioned by Mr. Quigley, second by Mr. Harris vote all in favor of the February 2, 2009 minutes be approved as presented.

## **2. Solicitor's Report:**

### **a. Mollick Vs. Worcester discussion:**

Mr. Bustard questioned if Mr. Quigley wished to proceed with discussion based on the lengthy public comment. Mr. Quigley presented and read aloud a letter from Mr. Chase Kneeland former Township Supervisor. [Editor Note: The letter is attached to the minutes] Following discussion by Mr. Harris and Mr. Quigley on the merits of settling the law suits and the history leading up to the law suits, Mr. Bustard then asked to move onto the Manager's Report with no action taken.

## **3. Manager's Report**

### **a. Cellular Towers**

1. DYKA Tower location: Mr. Dennis White requested the township consider placing a 150 foot high tower on the site to the west side of the existing vacant home with a 50x60 foot fenced compound enclosing the equipment with screening as desired by the township, and stated the type of pole was the choice of the township. Following discussion by way of motion by Mr. Quigley, second by Mr. Harris vote all in favor to approve the property and location of the tower on the DYKA property.
  2. 1721 Valley Forge Road Tower abandonment: Mr. Cornell explained the owner of the 120 foot cellular tower, Tower Assets has informed the township they plan to abandon the tower and have offered the tower to the township for \$1.00 if the township desires to own the tower. Mr. Cornell noted should the township choose to keep the tower future removal cost would be borne by the township. Following discussion by way of motion by Mr. Quigley, second by Mr. Harris vote all in favor to have the cellular tower removed by the company.
  3. NIKE Park Tower status report: Mr. Cornell provided an update on the concept of locating a cellular tower on the township owned NIKE Park. It was reported the township office in conjunction with Congressman Gerlach's office was seeking approval to place a tower on the site which was acquired from the Department of Defense in the 1970's. It was first determined the deed prohibited such a use however amending the deed was being explored. It was reported the Department of Defense had determined the matter should handled by the U.S. Department of the Interior National Park Service and that Congressman's Gerlach's office was assisting in the process.
  4. Request for microwave dishes on tower at 1721 Valley Forge Road: Mr. Cornell noted there was an email from Mr. Bagley conveying a request to place microwave dishes on the tower, following discussion by way of motion by Mr. Quigley, second by Mr. Harris vote all in favor the request was approved.
- b. Pioneer House Window discussion: Mr. Stockey Allen introduced Mr. Wesley Sessa from 18<sup>th</sup> Century Restorations. Mr. Sessa provided a photo presentation of the township owned pioneer house located along Hollow Road near the Hawks Nest development and explained the existing condition of the structure and provided handouts for the Board.
- c. Farming Sun Power {solar panels} Paul Heck Property Discussion: Mr. Paul Heck and Attorney Mr. Ed Mullin provided a description of the concept of solar farming on Mr. Heck's property located on Bethel Road. The concept would collect solar energy, excess

energy is sold to the PECO electrical grid and the property owner would propose to sell electric energy to the township at a reduced rate for the variously township owned facilities. It was agreed Mr. Garitty's office and Mr. Mullin would need to explore the concept related to zoning.

- d. New Fire Truck discussion: Mr. Bustard explained that he and Mr. Cornell had met with the Worcester Volunteer Fire Department representatives regarding their future equipment needs. Currently the Department is requesting funding for a new ladder truck to replace a 20 year old truck. Fire Chief Dave Cornish explained the Department had located a truck at a reduced cost of \$720,000 rather than the \$950,000 truck originally contemplated. Chief Cornish discussed the need for replacement and responded to questions from the Board. Following discussion it was agreed to table any action and discuss the matter at the next regular meeting.
- e. EMA Towamencin Township discussion: Mr. Cornell and Mr. Bustard reported on a meeting they had attended in Towamencin Township regarding joint municipal emergency management planning. The focus of the meeting was to begin discussion on formulating a collective effort to minimize confusion and duplication of EMA planning.

#### **4. Engineer's Report**

- a. Allan Myers waiver of Land Development request: Attorney Ed Mullin on behalf of Allan A. Myers Inc. requested the township grant a waiver from submittal of a formal land development plan for a proposed 2,600 square foot addition. Mr. Mullin stated the organization would comply with the ordinance requirements under the direction of the township engineer but requested the waiver of the formal planning process in light of the size of the property and the remoteness of the proposed addition from the public. Following discussion by way of motion by Mr. Quigley, second by Mr. Harris, vote all in favor subject to the conditions put forth by Mr. Mullin.
- b. Mr. Wizard Car Wash Land Development waiver request: Mr. Nolan explained previously the Board granted a waiver for the car tunnel, this request is for a 16X17 foot enclosure. Mr. Nolan recommended the Board consider requesting an as built to insure compliance with the impervious surface requirements. Representatives from the car wash stated they would be pre-treating and recycling 75% of the wastewater with the new facilities. Following discussion by way of motion by Mr. Quigley, second by Mr. Harris, vote all in favor the waiver was granted subject to the satisfaction of the township engineer.
- c. Mikelen Sidewalk waiver discussion: Mr. Nolan reminded the Board the matter had been discussed at the last meeting but representatives of the owner had requested the opportunity to revisit the matter. Since no one was present at the meeting for the applicant, it was agreed to table discussion until a future meeting.

#### **5. Other Business**

- a. County Commissioners Meeting Report: Mr. Quigley reported recently he had been attending the County Commissioner meetings to stay informed, and it was reported

the Township's open space project had been approved but noted his understanding that funding for such projects may be reduced in the future due to the difficult financial times. Mr. Harris concurred with Mr. Quigley however noted his understanding that because of the open space funding formula projects and the bond issues for open space funding, already submitted projects such as the next portion of the trial project would receive funding unless the County was in dire financial straits.

- b. Sign Ordinance amendments status discussion: Mr. Quigley noted previously the Board had discussed possible revisions to the sign ordinance and questioned the status. Mr. Quigley commented on a recent news article regarding neighbors suing one another in a neighboring municipality over signage and suggested the township make sure the ordinances are in order. Mr. Harris commented it is difficult to keep everyone happy.

## **PUBLIC COMMENTS**

In Summary:

Mr. Craig Eberbach commented on the Board of Supervisors choice to defend litigation when they have been sued.

Mr. Quigley commented he agreed with Mr. Eberbach and commented he has asked for his own legal counsel. Mr. Quigley commented regarding the 2 minute rule, voting on matters without public comment, closing and reopening public meetings, voting on a non-agenda item without public comment.

Mr. Eberbach commented the Board has no choice but to defend a law suit.

Mr. Quigley commented on the law suit Mollick Vs. Worcester, discussions with the Board of Supervisors in executive session, discussion he had with Mr. Mollick, a proposed settlement and his support for settling the law suit.

Mr. Bustard commented he would reevaluate his position on the lawsuit.

Mr. Gordon Todd, (address removed for privacy) commented on who was subject to sunshine law.

Mr. Garrity commented elected offices in the state of Pennsylvania are subject the sunshine law.

Mr. Todd commented on discussing items in public and the difficulties with it.

Mr. Quigley commented on the County Commissioners meeting, disputes between the commissioners and honesty in government and his election to serve all the residents.

Mr. Bustard commented both he and Mr. Harris are also elected to serve all the residents.

Mr. Todd commented on the increasing lack of civility in government.

Mr. David Brooks, (address removed for privacy) commented the sunshine law is available on line, and on the legal distinction between discussion and deliberation,

Mr. Quigley commented on public discussion and decision making.

Mr. Harris commented on what constitutes discussion and deliberation, and commented on discussion over the past five years.

Mr. Quigley commented on discussions and deliberation by prior Boards and supervisors.

Mr. Quigley commented his request to obtaining legal counsel on the next agenda.

Mr. Phillips commented on what would happen had the township not defended the lawsuit.

Mr. Bustard commented the Board would have paid a fine.

Mr. Garrity commented a judgment would have been entered against the township on multiple counts as listed in the complaints.

Mr. Phillips commented on why the township did not attempt to resolve the complaints early on with Mr. Mollick and commented on a three member board vs. 5 member board.

Ms. Susan Caughlan commented on executive sessions and attorney client privilege and discussions outside of the executive session.

Mr. Bruce Pancio commented regarding acting of the proposed lawsuit drafted by the township solicitor and the waiver of executive privilege.

Mr. Garrity commented on waiving of the attorney client privilege by a supervisor cannot waiver it for the entire board. Mr. Garrity commented on voting to settle the law suit by only two named members.

Mr. Mollick commented on discussion versus discussion by quorum, supervisors meeting in private, the Right-to-Know law and the Open Records Decision and the request for emails between Board members.

**8. ADJOURNMENT**

There being no further business to come before the Board of Supervisors, the public meeting of the Worcester Township Board of Supervisors was adjourned by way of motion at 10:40 A.M

Respectfully submitted,

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John V Cornell, Recording Secretary

Approved: \_\_\_\_\_