

## MINUTES

### DECEMBER 4, 2013 WORKSHOP MEETING

#### LOWER SWATARA TOWNSHIP BOARD OF COMMISSIONERS

The December 4, 2013 Workshop Meeting of the Lower Swatara Township Board of Commissioners was called to order at 7:00 P.M. by Vice President William L. Leonard, Jr. Vice President Leonard called for the pledge of allegiance followed by a moment of silence.

Roll call was then taken with the following officials in attendance:

- William L. Leonard, Jr., Vice President
- Thomas L. Mehaffie III, Commissioner
- Michael J. Davies, Secretary
- Jon G. Wilt, Commissioner
- Dominic D. DiFrancesco II, Commissioner
- Peter R. Henninger, Solicitor
- Brenda W. Stouffer, Planning and Zoning Director
- Richard D. Brandt, Police Chief
- Steven W. Anderson, Public Works Director
- Jean R. Arroyo, Recording Secretary

Residents and visitors in attendance:

PLEASE SEE ATTACHED SIGN-IN SHEET

Vice President Leonard welcomed the visitors to the meeting and opened the floor for public comment.

#### PUBLIC COMMENTS:

Matt Genesio, Campus Heights, noted that at its last meeting, the Board had conditionally approved the Final Consolidation and Land Development Plan for Campus Heights Village II. His bank had requested a letter from the Township spelling out the motion passed by the Board. That motion contained the stipulations for the conditional approval, one of which was a Developer's Agreement. After looking at the Developer's Agreement, the bank indicated that it did not like some of the wording relative to the timing of the roadway vacation and how that pertained to it advancing funds for the overall project. The bank's attorney has drafted a letter to the Township explaining the concerns and how it would like to see them resolved. The bank is

specifically concerned with the timing of the vacation of the portion of Dauphin Street and Lawrence Street. The current Developer's Agreement states that this vacation will occur when the new Lawrence Street is 100% complete and offered back to the Township. Realistically, this will probably be in June or July. The bank had indicated that if the Township does not vacate until this happens, it will not advance any of the construction money to build the building since KGH does not technically own the land that the road is on until it is vacated. Therefore, the bank had requested immediate vacation of the roadway. Mr. Genesio had informed the bank that he did not feel this would be possible. The bank then came back and asked if the Township would accept the condition of the new Lawrence Street being in a mud-free and passable condition in order for this vacation to occur. It was suggested that Campus Heights offer additional financial security which would increase the letter of credit from 110% to 125% of the engineer's estimate. There would also be the stipulation that the developer would not ask that this letter of credit be drawn down at all until the road is dedicated. Mr. Genesio added that 80% of the project should be done in February, with the binder and curb done by May 1. The developer will attempt to get this project 100% complete as soon as possible and will agree to do this by July 31. Mr. Genesio stated that since PennDOT is not involved in this phase, they do not anticipate the number of issues that they experienced in the first phase. He added that he does not feel the requested revision to the Agreement poses any additional risk to the Township. He inquired if the Board would be willing to allow revision to the Developer's Agreement to include this timing. He stated that he believes Attorney Lucas has sent Solicitor Henninger the revised agreement.

Solicitor Henninger stated that when he reviewed the draft Agreement, it did not encompass the July 31 deadline. Inclusion of this drop dead date for the wearing course would make him feel more comfortable. Also, the financial security was still reflected at 110%. He added that he would also like to see some type of provision that would allow the Township to call that note if the developer does not meet the May 1 deadline on the binder or the July 31 deadline on the wearing course. Also, additional language should be included stating that the developer will be responsible for Township's attorney fees and engineering fees if the Township has to go the route of completing the road on its own.

Attorney Ron Lucas, representing the developer, explained that the revised draft of the Developer's Agreement was sent out last evening. It does state that the developer waives the right to seek periodic reductions of the letter of credit until all work is complete. He added that the 110% does need to be changed to 125%. After speaking to Solicitor Henninger later, it was also agreed that July 31 would be added as the deadline for the wearing surface. The developer is willing to include the provisions that if these May 1 and July 31 deadlines are not met, the Township has the right to draw down the entire letter of credit to complete the roadway, and the developer would also be responsible for attorney and engineering fees. Attorney Lucas stated that they would be willing to revise the agreement to reflect all these changes.

Solicitor Henninger summarized that there are really three steps to the process: (1) the road vacations would not occur until the new Lawrence Street is in a mud-free, passable condition as acknowledged by the staff and Township Engineer, (2) the binder would be complete by May 1, and (3) the wearing course would be complete by July 31.

Mr. Genesio explained that this request tonight is solely for the purpose of securing financing. Attorney Lucas agreed, and added that they will be settling on eight lots, but will not own the right of way until the street is vacated. That is why they initially wanted the Township to vacate upfront so they could file a consolidated deed for the whole thing. Solicitor Henninger felt this would not be acceptable, so this other option was offered. Once Lawrence Street gets to a mud-free, passable condition, the vacation can be finalized and they can file a consolidated deed combining the eight lots and the vacated right of way into one legal description. They can then put a mortgage on that legal description, and then advance the money for the construction of the project. Attorney Lucas explained that there are a lot of moving targets hitting them at once. In response to a question from Vice President Leonard, Attorney Lucas explained that the bank does not want to loan the developer the money to acquire the properties unless it can see that they can also acquire the right of way and get a mortgage within a reasonable amount of time. Solicitor Henninger agreed that what the bank is requesting is not unexpected.

In response to a question from Commissioner Davies, Solicitor Henninger suggested that if the Board is so inclined, the action tonight would be to approve a revised Developer's Agreement taking into account the changes that were submitted to him last night in addition to language relative to the July 31 binding course deadline, changing of the letter of credit from

110% to 125%, and adding language that if the May 1 and July 31 deadlines are not met, the Township can call the letter of credit and proceed to finish the road at no expense to the Township. As far as vacating the road immediately, Solicitor Henninger stated that he would never recommend the Board approve a circumstance where there is only one way out of a development. Vice President Leonard questioned what consideration the local residents would be given if they require a second way out of the development during the interim, which could be over two months. He asked if the public would be able to travel this mud-free road. Mr. Genesio explained they would probably use construction fencing gates to control this as an “emergency access only” during this period. While they do not plan to condone vehicular traffic through there, these gates could be swung open should emergency access be necessary.

Vice President Leonard summarized that the proposal tonight is to modify the Developer’s Agreement to include increasing the financial security from 110% to 125%, changing when vacation of the road can occur to be in-line with the bank’s request, and inserting two dates – May 1 and July 31 – as deadlines for binder and wearing course respectively, with the stipulations that if these targets are not met, the Township can call the letter of credit including cost for professional services to get the road completed. Attorney Lucas added that the revised draft already includes waiving the right to seek partial release of the letter of credit; the full letter of credit will remain. Solicitor Henninger stated that with this language, he would be comfortable with the Agreement. Vice President Leonard stated it sounds like the next step is to get these revisions made to the Developer’s Agreement and get it back to the Board as soon as possible, since the Board has not officially accepted it yet. Attorney Lucas asked if the Board would be willing to make a motion this evening to approve the Developer’s Agreement with inclusion of these changes/additions. That way, the developer can get a letter to the bank stating that the Board has approved this, which will expedite them closing on these properties next week. Solicitor Henninger stated that he would be okay with this. The reality is that the developer cannot put a shovel in the ground anyway until all outstanding conditions are met and the financial security is posted.

A motion was made by Commissioner Mehaffie, seconded by Commissioner Wilt, to approve the aforesaid modifications to the Developer’s Agreement. In response to a question from Commissioner DiFrancesco, Attorney Lucas explained that if the Township approves this motion, the bank will be contacted and provided the revised agreement along with a letter from

the Township that the Board has approved it. Solicitor Henninger assured the Board that the letter to the bank will not be released until he is comfortable with its contents and the Board has seen it. The motion was unanimously approved.

#### DEPARTMENT REPORTS:

Police Department – Chief Brandt – referenced the monthly report, and noted that November was an average month call-wise. Thefts are up, mainly due to car break-ins. A lot of these occurred at both student housing projects as well as the Penn State campus. There is a suspect, but attempts are still being made to educate the students on the importance of keeping their vehicles locked. As discussed last month, the school signage for Lumber Street has been ordered. The new officers have been very busy with speed and truck detail on North Union Street; about fifty citations were written. Chief Brandt reported on a rape case in the Township that is making national headlines. It happened at the Best Western in August during the Keystone Games but was not reported until October 27. The sixteen-year old victim notified the coach almost immediately, but the coach attempted to cover-up the crime. Once reported to law officials, Township detectives did an excellent job in quickly identifying and finding the suspect. On November 27, arrest warrants were issued for both the suspect and the coach. The suspect is already in jail due to a parole violation, and the coach surrendered today and was released on bail.

Public Works Department – Mr. Anderson – reported that leaf collection began on October 28, and ends November 6. One truck will be available next week to collect any stray piles. Despite being extremely short-staffed, the employees did an excellent job with staying on schedule. The Department is cleaning drains as it goes. From a maintenance standpoint, the John Deere Tractor has a brake/hydraulic issue. The master cylinder was rebuilt, but the problem is back. The Tiger mower has been repaired and is back in operation. The Freightliner DEF pump was replaced under warranty and is back in service. The storm sewer GIS recording is in progress with approximately 400 inlets recorded. Five vehicles are prepared for snow removal and cinderling. Building maintenance and cleaning is in progress. The Department will be taking the leaf boxes off the trucks on December 10, and will be preparing them for the snow season. Road sweeping will begin on December 10, weather permitting. The Board and residents were reminded that the dumpster will be available on December 7, from 8:00 A.M. to noon.

Mr. Anderson called the Board's attention to a report that he had prepared, which highlights the accomplishments of the Public Works Department from August 2010 through December 2013:

Road Projects:

- Implemented a 5-year road repair plan
- 2011 – Spring Garden Dr/Turnpike Industrial Dr and Rosedale Ave
- 2012 – Faye Rd, Ray Rd, Shirley Dr, Speyer Rd, James St, Sara St, and Shirley Circle
  - In conjunction with United Water Co. Service Line Replacement
- 2013 – Nissley Dr, O'Hara La, Melanie La, and Scarlett La
- Major Road Patching
  - Wyoming Ave, Longview Dr, and Strites Rd
- Implemented a Crack Sealing program
  - Sealed old Reliance
  - Increased life of roads

2011 Flood Recovery:

- Culvert Repairs
- Road Repairs
- Property demolition and reclamation
- Hazardous waste mitigation

Parks:

- Implemented Parks maintenance program
  - Reduced mowing time by 40% and eliminated 2 part time employees
  - Reduced maintenance on equipment using a trailer to move equipment
  - Switched from granular to liquid fertilizers and liquid weed control increasing coverage from soccer fields only to all parks and facilities
  - Switched from 100% contracted tree removal service to 90% in house tree removal
  - Restarted use of Woody Waste Facility
  - Trained 2 personnel to KAFMO standards for Turf management
  - Purchased new Ball field groomer to improve playing field surfaces, reduce Diamond-Tex usage, and improve safety
  - Installed Rosedale park playground

Signs:

- Implemented SIMS (sign information management system) program
- Upgraded approximately 180 township signs to new standards
- Adjusted approximately 100 signs to Penn Dot height standards
- Installed 190 new fire hydrant markers

Crossed trained personnel on majority of heavy equipment  
Built a workshop in old Public Works building for sign maintenance and inlet frame construction  
Passed all Safety inspections

Equipment:

- Created a 5-year Equipment Replacement Plan
  - Mowing trailer
  - Pressure washer
  - 2013 Freightliner
  - 2013 Utility Truck (Municipal Authority)
  - Engine Scanner (Reduces travel and down time of Police Vehicles)
  - Small equipment (2 weed whackers, 2 blowers, hedge trimmer, portable refueling tank)

The department has had many accomplishments, and hopes to continue its success and improving its services. Mr. Anderson explained that when he was hired, it was agreed that he would train a replacement for his departure in five to seven years. Five years is approaching, and of the two department employees that expressed interest in the job, only one remains. One suggestion was to create a Foreman's position. Mr. Anderson noted that he is seeking the Boards input to help in this transition.

Mr. Anderson referenced a draft of a PennDOT Agility Agreement, which basically allows sharing of services between PennDOT and Lower Swatara Township. He stated that the Township would like to obtain salt brine from PennDOT, and in turn the Township would provide something like right-of-way mowing. Solicitor Henninger has reviewed the agreement, which requires signature of two Commissioners. Once signed and submitted to PennDOT, they would actually work out the agreement regarding the specific services. Solicitor Henninger asked if Mr. Anderson was asking for formal approval of this tonight. Mr. Anderson agreed that he was. Solicitor Henninger added that the Board would need to approve a resolution authorizing execution of an Agility Agreement and designating the appropriate official(s) to execute the agreement. He stated that this agreement does provide the potential for a lot of shared services. Commissioner Davies stated that prior to taking action on items, it would be nice to actually see these on paper. He expressed concern that the Board is being asked to approve a lot of things lately which it has not seen or reviewed prior to the meetings. He explained that he is just not comfortable with this practice. Commissioner DiFrancesco agreed that the Board should not conduct business on an

unseen basis, and asked if this is urgent or can perhaps be included on the legislative agenda in two weeks. He did state, however, that if this is urgent, he would feel comfortable with approval tonight since it is a standard municipal/PennDOT process. Commissioner Mehaffie noted that it is not even so much an agreement as it is an “agreement to get an agreement”. He stated that he had been involved with the review, and apologized for not getting it to the Board sooner. Mr. Anderson responded that while this item is not urgent, action tonight will allow things to start moving and not delay the process which could provide assistance in the treatment of the roads. After further discussion, the Board agreed that Commissioner Mehaffie and Commissioner DiFrancesco would be the designated officials to execute the Agreement. A motion was made by Commissioner Wilt, seconded by Commissioner DiFrancesco, to approve an Agility Agreement with PennDOT and also approve a resolution (Resolution No. 2013-R-17) designating Commissioner DiFrancesco and Commissioner Mehaffie as officials to execute the Agreement. The motion was unanimously approved.

Mr. Anderson informed the Board that he will be on vacation from December 25 through approximately January 6. Many of the department employees are also on vacation, but will be available for snow emergencies. Department employee Carl Fricchione will most likely be in charge during that time. Commissioner DiFrancesco thanked Mr. Anderson for spending some time with him and providing a tour of the Township and recent work projects accomplished. He also expressed concern with the possibility of Township signs that are not technically enforceable, and asked Mr. Anderson and Chief Brandt if they could provide him with a list of the locations of such signage. He stated that the bottom line is that you do not use traffic control devices that are not authorized to control traffic. He added that he would be very surprised if the sign at Nissley Drive and O’Hara Lane is a legitimate sign. Commissioner DiFrancesco also reported that there are some intersections which do not have any stop signs. Chief Brandt explained that stop signs are basically enforceable if they are listed in the Township ordinances. He added that one of the officers is trained in signage issues, and can look into these questions.

Planning and Zoning Report – Ms. Stouffer – referenced the Codes, Planning, & Zoning Report for the month. The November 21 meeting of the Planning Commission was cancelled since all plans on the agenda were asked to be tabled. The Zoning Hearing Board met on November 13 to hear a request from Phoenix Contact for additional signage. The request was granted. Ms.

Stouffer referenced an addendum to the agenda regarding payment for well drilling work. The drilling for the test well was done on November 14, and the result was less than what they wanted (a yield of 60 gallons per minute versus 96 gallons per minute). It is being recommended that the Township get back in touch with HRG to discuss other options. The request tonight, however, is to simply pay the invoice for the work that was already done. A motion was made by Commissioner Mehaffie, seconded by Commissioner DiFrancesco, to approve the payment of Invoice 1-31-2025, dated 11/18/2013, in the amount of \$6,928, to Myers Brothers Drilling Contractors, for work associated with the Greenfield Park Well & Irrigation Project. The motion was unanimously approved. In response to a question from Commissioner Davies, Ms. Stouffer explained that the next step may be to have an additional analysis of the site to determine a second location that might provide the yield needed. This will probably require a second test well. Erin Letavic, HRG, agreed that a meeting needs to be held with staff to further discuss this situation, and determine if there is equipment that can be operated at that rate. She explained that a low yield rate is not particularly bad either. The Township does not want a significant increase to the gallons per minute, which would result in being a consumptive user, which is regulated.

MANAGER'S REPORT: No report

SOLICITOR'S REPORT:

Solicitor Henninger requested the Board convene into executive session immediately upon conclusion of this evening's meeting in order to discuss a pending threatened litigation matter.

FINAL COMMENTS:

Vice President Leonard thanked Ms. Stouffer for her service and wished her best of luck in the future. He also reminded the public that Breakfast with Santa will be held this Saturday at the fire department.

ADJOURN AND CONVENE INTO EXECUTIVE SESSION:

With no further business to discuss, a motion was made by Commissioner Davies, seconded by Commissioner Wilt, to adjourn the meeting and convene into executive session. The motion was unanimously approved, and the meeting adjourned at 8:15 P.M.

ATTEST:

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Jean R. Arroyo, Recording Secretary