

MINUTES

LEGISLATIVE MEETING – JULY 15, 2015

The July 15, 2015 Legislative Meeting of the Lower Swatara Township Board of Commissioners was called to order at 7:00 P.M. by President Thomas L. Mehaffie III. Following the pledge of allegiance and moment of silence, roll call was taken with the following officials in attendance:

- Thomas L. Mehaffie III, President
- Jon G. Wilt, Vice President (via telephone)
- Laddie J. Springer, Secretary
- Michael J. Davies , Assistant Secretary
- Dominic D. DiFrancesco, Commissioner
- Samuel D. Monticello, Manager
- Robert S. Greene, Planning and Zoning Coordinator
- Peter R. Henninger, Solicitor
- Erin G. Letavic, HRG, Engineer
- Richard Brandt, Police Chief
- Jean R. Arroyo, Recording Secretary

Residents and visitors in attendance: (PLEASE SEE ATTACHED SIGN-IN SHEET)

Solicitor Henninger stated for the record that Vice President Wilt is participating by telephone this evening. He had phoned Vice President Wilt just prior to the opening of the meeting, and had confirmed the required password with him, as pursuant to Township resolution.

RECOGNITION OF FORMER PATROLMAN STEPHEN SASSANI:

President Mehaffie asked Stephen Sassani, former Township patrolman, to come to the front to receive two citations: one from Lower Swatara Township and one from Patty Kim of the House of Representatives. President Mehaffie read aloud the citation from the Township, and Chief Brandt read aloud the citation from Representative Kim, who could not be in attendance this evening. The citations honored Mr. Sassani for his accomplishments, outstanding service, and dedication to the community during his tenure as patrolman from June 30, 1990 to July 1, 2015. Chief Brandt also presented Mr. Sassani with a retirement badge and identification as a small token of the Department's appreciation for his service. Chief Brandt stated that Steve Sassani has been an excellent employee and a good friend. He explained that they both started

here around the same time, and worked many shifts together. Chief Brandt noted that he always felt good when he saw they would be working together, because he felt safe working with Steve. He thanked him and wished him good luck. President Mehaffie also congratulated Mr. Sassani. He remarked that as a resident, he is very appreciative of the service that Steve has provided this community. He also wished him well on his much-deserved retirement.

PRESENTATION ON WIRELESS FACILITIES ACT
AND RIGHT OF WAY MANAGEMENT SERVICES:

Dan Cohen, Cohen Law Group, explained that his law firm, which is located in Pittsburgh, specializes solely in representing municipalities in cable telecom and wireless matters. He is here tonight to discuss two proposals that are before the Board. The first is a Wireless Facilities Management proposal. There have been some dramatic changes in the wireless area, and these changes are coming to the Capital region. In the old days, the process was for the companies to obtain an application for a cell tower from the Township. The Township would then review it, and it would go through the conditional use process. Because of a spike in the demand for wireless broadband, the wireless carriers and contractors are now putting antennae and mini cell towers in the public rights of way. DAS – Distributed Antenna System – is the technical term for this. Aside from this new change, companies that put them in have gone to the PUC and obtained certificates of public convenience and necessity. They will then come to the Township and say they want to place DAS in the right of way, and have an unfettered right to do so. Attorney Cohen explained that he has teamed up with the Tri-County Regional Planning Commission and the Capital Region COG to look at municipal ordinances in this region to see if they address these recent changes. It would also be good to have a regional approach to how these facilities are regulated. Attorney Cohen stated that the Township had asked him to look at its ordinance. He explained that Lower Swatara Township's ordinance is pretty good and is substantive. However, it does not address the changes that he just mentioned: facilities in the public right of way and recent changes in the law. It also lacks a revenue provision. Therefore, he has submitted a proposal to amend the ordinance to be able to address those changes. Approximately fifteen municipalities in this area have engaged his services for this purpose, and he noted that he would love to have Lower Swatara Township as part of this.

Mr. Cohen explained that the other proposal before the Board is for a right of way ordinance. This would be a baseline ordinance that addresses all telecom facilities. He stated that he would recommend that the Township amend the zoning ordinance to address the wireless facilities changes that he just referenced, and have a baseline right of way ordinance to address those as well. Both would generate revenue for the Township. The right of way ordinance would be a good predecessor to what he hopes to come back with, which is an ordinance that would assess fees on all utilities using the public rights of way. Attorney Cohen explained that he represents the City of Lancaster. He put together a program for them by which they are charging utilities for the right of way management costs that the city occurs as a result of those facilities. For instance, every time the gas company does a street cut, even if it restores the street perfectly, the life of the street is shortened. This has been shown in numerous studies. As expected, the gas company and electric company sued the City of Lancaster. The case is now in Commonwealth Court. If the City wins that case, then the ordinance Attorney Cohen just described to the Board would be able to be expanded to include all utilities, not just telecoms.

In response to a question from President Mehaffie, Mr. Cohen stated he would recommend the Township proceed with putting in place a right of way ordinance for all telecommunication companies. In response to a question from Commissioner Davies, Attorney Cohen explained that the DAS can be placed on existing utility poles or on a 25' – 45' high fiberglass pole. By having a wireless ordinance in place that addresses these new facilities, the Township would have more control over this process – where they go, what they will look like, and what fees will be charged. Commissioner Davies also inquired if the proposed change to encompass all utilities would include pipeline utilities. He expressed concern about too much infrastructure per square foot in the right of ways and what right the Township has to control that. Commissioner Davies stated that he feels that this is public safety concern. Attorney Cohen explained that if the City of Lancaster prevails in its case, it could be.

Solicitor Henninger stated the Board has copies of both proposals. The proposal for the right of way ordinance has a flat rate of \$4,500. Attorney Cohen added that the wireless facilities proposal is an hourly rate not to exceed \$3,500.

President Mehaffie questioned the intent of the franchise fees from Comcast and Verizon. Attorney Cohen explained that cable operators are treated differently when they offer cable service. The municipality can charge a specific franchise fee to cable operators, up to 5% of the

cable operator's gross revenues. The purpose of the charge is for their use of the public right of way. The only difference is that there is a federal statutory formula for that for cable operators, literally a rental fee. The cable operator can then pass it through on the customers' bills. In response to a question from President Mehaffie, Attorney Cohen explained that he recommends municipalities do a franchise fees audit every five years or so. The audits performed in the past years have found underpayment 73% of the time. This is not because cable operators are intentionally not paying what is due, but rather because of errors. For example, cable systems are not built along municipal boundaries, and therefore it is common for homes to be credited to a neighboring municipality. President Mehaffie stated that he would like to look into a proposal to have a franchise fee audit performed. Commissioner Springer asked what the course of action would be after an audit is completed. Attorney Cohen explained that if underpayments are found, it would involve collections from the operator. The majority of the time, the cable operator will agree to pay the municipality for what is owed, usually five years back. In rare instances where there is a disagreement, a compromise would be negotiated.

President Mehaffie noted that Township residents have complained that they cannot get FIOS to their neighborhoods, and are not getting answers when they contact Verizon about this. Attorney Cohen stated that the Verizon contract renewal is coming up soon, and a compliance review could be performed. The Township's agreement with Verizon states that it has to build out the entire Township for FIOS within a specified time period. He stated that he does not have the agreement in front of him, but his guess is that the time period has expired. There is also a section in the agreement stating that Verizon has to produce maps to indicate whether it built out the entire Township or not. If it has not, there are enforcement mechanisms in the agreement which include monetary fines.

The Board thanked Attorney Cohen for his informative presentation this evening.

PUBLIC COMMENTS: None

APPROVAL OF MINUTES:

A motion was made by Commissioner Davies, seconded by Commissioner Springer, to approve the Minutes of the June 17, 2015 Workshop Meeting. The motion was unanimously approved.

A motion was made by Vice President Wilt, seconded by Commissioner Davies, to approve the Minutes of the July 1, 2015 Workshop Meeting. The motion was unanimously approved.

APPROVAL OF BILLS:

A motion was made by Commissioner Springer, seconded by Commissioner Davies, to approve the payment of bills as presented on Warrant No. 2015-06. The motion was unanimously approved.

APPROVAL OF TREASURER'S REPORT:

A motion was made by Commissioner Davies, seconded by Commissioner Springer, to approve the Treasurer's Report for June 2015. The motion was unanimously approved.

ENGINEER'S REPORT:

Erin Letavic, HRG, Township Engineer, reported that she has been working with Mr. Monticello and Mr. Wagner on a ten-year Capital Improvements Plan. The intent is to address storm sewer, drainage issues, and pavement condition improvements. While it is a ten-year plan, costs will likely only be associated within a five-year window. This will be reviewed with the Board in August. Mr. Monticello noted that what has been put together is very impressive.

SOLICITOR'S REPORT:

Solicitor Henninger reported that he will be requesting that the Board convene into executive session immediately after conclusion of tonight's meeting in order to discuss two real estate matters. One is to discuss the Sunoco Pipeline Mariner 2 issue, and the second pertains to the possible acquisition of new recreation land. He also inquired if the Board would like to act on the two proposals presented by Attorney Cohen this evening. President Mehaffie suggested

the Board review the materials and take action at the August workshop meeting. The Board concurred.

MANAGER'S REPORT:

Mr. Monticello reported that tonight's agenda includes action on a Winter Traffic Services Agreement with Penn DOT. This is a five-year agreement. The one expiring shortly is a three-year agreement. Another change is the cost. There is a \$311 difference from the previous three-year agreement. President Mehaffie asked if this \$311 is an increase or decrease. Mr. Monticello stated that it is a decrease. Other than that, the agreement is consistent with the current agreement.

Mr. Monticello added that he would also like to discuss a personnel related item at tonight's executive session.

President Mehaffie noted that the July 23 Planning Commission Meeting has been canceled. He also reminded everyone that the rescheduled Family Movie Night will be held July 25 at the Shope Gardens Park. The Municipal Authority meets July 27, and August 5 is the next Board of Commissioner's workshop.

Mr. Greene added that the Comp Plan Review Committee will have its kick-off meeting on July 23. President Mehaffie noted that he will not be able to attend, but perhaps another Commissioner can do so. In response to a question from President Mehaffie, Mr. Greene confirmed that this meeting is open to the public.

COMMITTEE REPORTS:

Police Committee -- Vice President Wilt -- no report

Public Safety – Commissioner Springer -- no report

Budget and Finance – Commissioner Davies – stated that he would like to start work on the budget at the end of next month.

Community and Economic Development --- Commissioner DiFrancesco – stated that he had nothing to report. President Mehaffie asked the date for the opening of the new Sheetz. Mr. Greene responded that it is scheduled to open next week.

Public Works – President Mehaffie – reported that the Department has been busy with mowing. The Public Works Department, Commissioner Springer, and President Mehaffie recently assisted the Olmsted Regional Recreation Board with some repair work at the Middletown community pool. In lieu of a contribution this year, the four entities agreed to take care of the pool. President Mehaffie noted that it looks great, and thanked the Public Works Department for the nice job.

UNFINISHED BUSINESS:

The Board tabled the Final Land Development Plan of Residential Retirement Community, Phase 1, located along Fulling Mill Road at the intersection of Nissley Drive, prepared by Navarro & Wright, Inc. and submitted by Fulling Road LLC. The plan was recommended for approval by the Planning Commission on November 15, 2007 with stipulations. The plan was due to expire on February 20, 2008. 90-day time extensions were granted by the Board on February 20, 2008, May 21, 2008, August 20, 2008, November 19, 2008, February 18, 2009, May 20, 2009, August 19, 2009, November 18, 2009, February 17, 2010, May 19, 2010, August 18, 2010, November 17, 2010, February 16, 2011, May 18, 2011, August 17, 2011, October 19, 2011, January 18, 2012, April 18, 2012, July 18, 2012, October 17, 2012, January 16, 2013, April 17, 2013, July 17, 2013, October 16, 2013, December 18, 2013, March 19, 2014 and June 18, 2014, October 1, 2014, and December 17, 2014, and March 18, 2015, and July 1, 2015. The plan is due to expire on October 6, 2015.

The Board tabled the Final Land Development Plan for Middletown Home Access Driveway/Parking Revisions, prepared by Schlouch, Inc. and submitted by the Middletown Home. The initial Plan submitted was due to expire on May 29, 2013. 90-day time extensions were granted by the Board of Commissioners on May 15, 2013, August 21, 2013, November 20, 2013, February 19, 2014, May 21, 201, October 15, 2015, January 21, 2015 and May 18, 2015. The plan is due to expire on August 19, 2015. President Mehaffie added that Vice President Wilt had noted that Mr. Navarro had been asked to attend Board meetings when he requests additional time extensions on his plan. Vice President Wilt had suggested the same request be made for this plan, since it has been on the agenda for some time now.

The Board tabled the Susquehanna Area Regional Airport Authority (SARAA) sewage planning module for the North 29 Area (land where Sheetz and other commercial properties are

planned to be built) requesting that the sewage be sent to SARAA's treatment plant instead of Middletown Borough Authority as would be required according to their location within the sewage area. Lower Swatara Township Authority's agreement with the Middletown Borough Authority reads that sewage in the designated area shall be exclusively treated at Middletown Borough's treatment plan. The Planning Commission approved the planning module, conditioned upon SARAA getting Middletown Borough to agree that the exclusivity can be waived in this instance or upon proof that the exclusivity portion of the agreement does not apply to SARAA because of established Authority statuses. The burden of proof is on SARAA at this point. The planning module was due to expire on January 23, 2014. The Board of Commissioners granted a 90-day time extension on January 15, 2014, April 16, 2014 and July 2, 2014. The Board granted a 120-day time extension on October 1, 2014. The Board granted a 93-day time extension on January 21, 2015 to May 20, 2015 and a 91-day time extension on May 20, 2015 until August 19, 2015. Solicitor Henninger confirmed that it is very unlikely this plan will be ready for action by the deadline of August 19. President Mehaffie suggested that SARAA be contacted about the need for a time extension request on this.

NEW BUSINESS

President Mehaffie reported that the first item under New Business is approval of a five-year Winter Traffic Services Agreement with Penn DOT. Solicitor Henninger reported that he and Mr. Wagner had reviewed the language, and it is exactly the same as it was in the last agreement. President Mehaffie referenced Mr. Monticello's comment about a reduction in payment, and asked if Penn DOT have given a reason for the decreased amount. He noted that amounts usually increase due to rising costs. Mr. Monticello stated that Penn DOT had not given an explanation, but he could pursue this question. Commissioner Davies asked if the Township is sure this amount will cover its costs. Mr. Monticello stated that Mr. Wagner had indicated that it will not be a problem as long as the Board is okay with it as well. A motion was made by Commissioner DiFrancesco, seconded by Commissioner Davies, to approve a five-year Winter Traffic Services Agreement with Penn DOT. A roll call vote was taken with the following ballot tabulation: Commissioner DiFrancesco – aye, Commissioner Springer – aye, Commissioner Davies – aye, Vice President Wilt – aye, President Mehaffie – aye. The motion was approved by a 5 – 0 margin.

A motion was made by Commissioner Davies, seconded by Vice President Wilt, to approve Resolution No. 2015-R-2. This resolution authorizes and directs the President of the Board of Commissioners to sign the Winter Traffic Services Agreement with Penn DOT. The motion was unanimously approved.

A motion was made by Vice President Wilt, seconded by Commissioner Springer, to approve a \$250 donation to the Middletown Fire Department for assisting the Township for many years with its ladder and reach lift. The motion was unanimously approved.

ADJOURN AND CONVENE INTO EXECUTIVE SESSION:

With no further business to discuss, a motion was made by Commissioner DiFrancesco, seconded by Commissioner Davies, to adjourn the meeting and convene into executive session. The motion was unanimously approved, and the meeting adjourned at 7:53 P.M.

ATTEST:


Jean R. Arroyo, Recording Secretary

