

FERGUSON TOWNSHIP BOARD OF SUPERVISORS

Regular Meeting
Monday, June 16, 2014
7:00 pm

I. ATTENDANCE

The Board of Supervisors held its first regular meeting of the month on Monday, June 16, 2014 at the Ferguson Township Municipal Building. In attendance were:

Board: Richard Mascolo, Chairman
Drew Clemson, Vice Chairman
Steve Miller
Janet Whitaker

Staff: Mark Kunkle, Township Manager
David Pribulka, Assistant Manager
David Modricker, Director of Public Works
Diane Conrad, Chief of Police

Others in attendance included: Heather Bird, Recording Secretary; Eric Vorwald and Ron Woodhead, Centre Region Planning Agency; Kim Intorre, Nancy Cook, Florence Pruss, Kim Moore, Roxie Nestlerode, Carol Spangler, Dawn N., Jan Hoffman, Thomas Corman, Dan Sieminski, Jackie Coates, D. McBride, Township Residents for Toll Brothers Presentation

II. CALL TO ORDER

Mr. Mascolo called the Monday, June 16, 2014, regular meeting to order at 7:00pm.

III. PUBLIC HEARINGS – ORDINANCES

1. **A PUBLIC HEARING ON AN ORDINANCE OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, PENNSYLVANIA, AMENDING THE CODE OF ORDINANCES APPENDIX D, GOVERNMENTAL AND INTERGOVERNMENTAL AFFAIRS BY ADOPTING A NEW JOINT ARTICLES OF AGREEMENT OF THE CENTRE REGION CODE ADMINISTRATION AGENCY AND REPEALING AND SUPERSEDING THE JOINT MUNICIPAL AGREEMENT OF ENFORCEMENT OF UNIFORM CODES DATE MAY 1, 1968; THE JOINT ARTICLES OF AGREEMENT REGIONAL ENFORCEMENT OF UNIFORM CODES, DATED APRIL 16, 1973; AND JOINT ARTICLES OF AGREEMENT OF THE CENTRE REGION CODE ADMINISTRATION AGENCY, DATED SEPTEMBER 27, 2004.**

Mr. Kunkle stated the Joint Articles of Agreement were referred to the participating municipalities on May 27th by the COG General Forum and requested that each municipality adopt the revised Joint Articles of Agreement by July 1st. Both Section 5 and 6 of the Joint Articles of Agreement have been modified to allow for non-participating municipalities or other contracting entities to contract for services from the Code Administration Agency. This is to allow for code services to be contracted to Bellefonte Borough.

Ms. Whitaker made a motion to ADOPT Ordinance #988 amending the Code Administration Joint Articles of Agreement. Mr. Miller seconded the motion.

ROLL-CALL VOTE: Mr. Clemson: YES; Mr. Mascolo: YES; Mr. Miller: YES; Ms. Whitaker: YES

2. **A PUBLIC HEARING ON AN ORDINANCE OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, PENNSYLVANIA AMENDING THE CODE OF ORDINANCES CHAPTER 21, STREETS AND SIDEWALKS, PART 2, SIDEWALKS BY REPEALING AND REPLACING PART 2 SIDEWALKS IN ITS ENTIRETY.**

Mr. Kunkle stated the current ordinance was not specific enough in regards to an obstruction of the sidewalk. A District Judge dismissed a case where the Township filed a citation against a resident for an obstruction of the sidewalk due to the vagueness of the ordinance. The revised ordinance clearly describes an obstruction as anything that impedes the sidewalk for its full width.

Mr. Clemson made a motion to ADOPT Ordinance #989 amending Chapter 21, Streets and Sidewalks, Part 2 Sidewalks by repealing and replacing Part 2 Sidewalks in its entirety. Mr. Miller seconded the motion.

ROLL-CALL VOTE: Mr. Clemson: YES; Mr. Mascolo: YES; Mr. Miller: YES; Ms. Whitaker: YES

IV. PUBLIC HEARINGS – RESOLUTIONS

- 1. A PUBLIC HEARING ON A RESOLUTION OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, PENNSYLVANIA AUTHORIZING THE TOWNSHIP TO EXECUTE AN AGGREGATION AGREEMENT BETWEEN FLEET ENERGY AND FERGUSON TOWNSHIP (TOWNSHIP) FOR THE PURPOSES OF FILING A GRANT APPLICATION WITH THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR AN ALTERNATIVE FUELS INCENTIVE GRANT TO CONVERT VEHICLES TO BI-FUEL USING BOTH COMPRESSED NATURAL GAS AND GASOLINE.**

Mr. Kunkle stated previously the Township has entered into aggregation agreements with Centre County. The County has decided not to coordinate an application with DEP for an Alternative Fuels Incentive Grant due to the fact that it was unable to assimilate partners that would be willing to convert a minimum of five vehicles to compressed natural gas. Fleet Energy has assimilated agencies that are interested in making a conversion of a vehicle to compressed natural gas and is coordinating the grant application. The Township has one vehicle which would be converted to a bi-fuel vehicle operating in the Police Department. This would bring the Township's total compressed natural gas fleet to four.

Ms. Whitaker made a motion to ADOPT Resolution #2014-20 authorizing the Township to execute an aggregation agreement between Fleet Energy and the Township. Mr. Clemson seconded the motion.

ROLL-CALL VOTE: Mr. Clemson: YES; Mr. Mascolo: YES; Mr. Miller: YES; Ms. Whitaker: YES

- 2. A PUBLIC HEARING ON A RESOLUTION OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, COMMONWEALTH OF PENNSYLVANIA, SUPPORTING SENATE BILL 1340 AND HOUSE BILL 1272 ENABLING ALL MUNICIPAL POLICE TO USE THE SAME MOTOR VEHICLE SPEED-TIMING EQUIPMENT AS THE PENNSYLVANIA STATE POLICE.**

Mr. Kunkle stated the coalition to eliminate the prohibition against municipal police using radar was formed in 2013 among the major law enforcement and municipal associations affected by this legislative prohibition. Pennsylvania is the only state that does not allow local police departments to use radar, which is the most effective method for enforcing speed limits. The focus of the coalition is to change one sentence to Section 3368(c)(2) of the Motor Vehicle Code. That sentence currently reads "electronic devices such as radio microwave devices (commonly referred to as electronic speed meters or radar) may be used only by members of the Pennsylvania State Police". The coalition is pursuing the following change to that sentence; "electronic devices such as radio microwave devices (commonly referred to as electronic speed meters or radar) may be used any police officer".

Mr. Clemson made a motion to ADOPT Resolution #2014-21 indicating support for Senate Bill 1340 and House Bill 1272. Mr. Miller seconded the motion.

ROLL-CALL VOTE: Mr. Clemson: YES; Mr. Mascolo: YES; Mr. Miller: YES; Ms. Whitaker: YES

V. ACTION ITEMS

1. TOLL BROTHERS CAMPUS LIVING PRD PLAN UPDATE – CHARLES ELLIOTT AND RICHARD KEYSER

Mr. Kunkle stated that originally the Toll Brothers Campus Living PRD Master Plan was scheduled for a public hearing on this date. This hearing was originally scheduled for April and then postponed until June 16th. On Friday, June 6th, the Township received a letter from Attorney Ron Lucas, representing Toll Brothers Inc., requesting that the hearing be either cancelled or tabled to a date certain, for example October 6, 2014, due to the fact that Toll Brothers intends to make changes to the tentative master plan for the PRD in part due to the interest of a potential investor and/or partner in the project. The public hearing on the tentative PRD Master Plan has been advertised and all adjacent property owners have been notified of the public hearing on June 16th. Efforts have been made to notify all interested parties of this cancellation of the public hearing. Representatives of Toll Brothers are in attendance to provide an update on the plan status and time line for submission of a revised tentative PRD Master plan for the site. Other details, such as changes to the proposed tentative master plan as well as building layout type may not be available for display at this meeting. As an update to the plan status, no action by the Board of Supervisors is required.

Mr. Richard Keyser, Toll Brothers, stated that Toll Brothers have been approached by no less than five national student housing corporations asking to join forces in building of the project. The partnership would be a 50/50 partnership. Currently Toll Brothers is negotiating a joint partnership with one of the companies. All five of the companies indicated that a cottage home style project may be a better fit for the location, given the distance from campus and location to park. Upon completion of the joint venture agreement, Toll Brothers will work with PennTerra to re-create the plan for the site with the cottage style community. The new planned project will result in lower density, lower bed count, smaller buildings, maximum height of two stories, smaller stormwater management issues and reduce impervious coverage. The new plan will not need any variances for setbacks. Toll Brothers will keep the agreement made with Tussey View Estates to provide a fence.

Ms. Barb Pennypacker, Tussey View Estates resident questioned how many students will be living in each cottage? Mr. Keyser responded that the proposed cottages range in size from two to five bedrooms, but the majority will be four bedrooms.

Mr. Clemson stated that he is inspired by the smaller footprint but is dismayed by the project delays. What is the time frame? Mr. Keyser replied that the plan is to have the new application will take approximately four to six weeks and should be submitted to the Township by the end of July/beginning of August. This would provide for a preview presentation in September and a public hearing in October. Toll Brothers anticipates construction to begin in spring of 2015.

Ms. Whitaker questioned the total number of units as compared to the first plan. Mr. Keyser stated the first plan included approximately 1500 beds and the new plan submission would be approximately 1100 beds.

Mr. Miller verified that the new plan would still include all of the amenities as mentioned with the original plan. Mr. Keyser stated that these will be included but they will be located in a separate club house.

Mr. Miller questioned with regard to the regional park construction does Toll Brothers anticipate a problem with the road being done as previously scheduled? Mr. Keyser stated he does not see an issue with the road schedule.

Mr. Mascolo asked if the road to the regional park is still a priority and do they feel that there is a chance the project will not proceed? At this time Mr. Keyser does not see any reason for the project to not continue forward.

Mr. Kunkle stated with fewer beds and less density, the roadway from the original submission will be modified for the new housing type. Does Toll Brothers see an opportunity to advance the traffic impact study before the full completion of the plan? Mr. Keyser stated he believes this would be done with the modifications for the new housing type.

Ms. Roxie Nestlerode, Tussey View Estates resident asked with the changes in the plan will the project still be done in phases or all at one time? Mr. Keyser responded that the new partner will act as the general contractor and it will be built in one phase with the anticipated completion by the August 2016 school year.

2. DISCUSSION OF AMENDED FIRE LANE ORDINANCE REGULATIONS

Mr. Kunkle stated that at the Board meeting on June 2nd the Board discussed amendments to the fire lane ordinance and posed several questions which staff needed to research. Board members expressed concern with regard to the signage and if that could include stopping and standing. The signage is set forth in the fire code and does not include that language. The ordinance does include direction to enforcement personnel with regard to stopping and standing. Board members requested that motorists be able to stop in the fire lane while actively loading or unloading the vehicle. The operator of the vehicle must be with the vehicle. A second amendment to the draft ordinance is in regards to fines. The parking ticket fine will be reduced to \$25 from \$50 and the minimum fines should the ticket remain unpaid would be \$50 but not more than \$200. With regard to the authority for enforcement of the ordinance, the Board has the authority to designate who the code official would be. The current version of the ordinance provides for the Fire Director, Fire Chief or Police Officer and if the Board would like to expand this to include the Ordinance Enforcement Officer.

Mr. Clemson stated that the legality of the Fire Director and Fire Chief issuing the ticket. Once an unpaid ticket went to a citation their authority could be questioned. Mr. Clemson would like the Ordinance Enforcement Officer should be allowed to be issue these tickets and or citations. Chief Conrad agreed to contact the District Judge to determine if the Ordinance Enforcement Officer was authorized to enforce the provisions of this ordinance the court would view the Ordinance Enforcement Officer as empowered.

Chief Conrad stated that while standing in the fire lane is okay while loading or unloading a vehicle the ordinance should be clear that if a fire or other emergency vehicle arrives the fire lane must be cleared immediately.

3. PRESENTATION OF WIRELESS COMMUNICATIONS FACILITIES ORDINANCE – DAVID PRIBULKA

Mr. Pribulka stated that the Township does currently have a Communications Facilities and Towers Ordinance that was last modified in 2002. Mr. Pribulka is looking for the Board's opinion on how to modify the existing ordinance to address new regulations that exist. Over the last 15 years there has been a wireless data explosion, global mobile data traffic increased by 83% in 2013 alone. Standard or traditional tower based wireless communication facilities are situated

away from the general population, approximately 200 feet tall and these are not going to be sufficient to support the data explosion. A mini cell tower looks like an addition to a light pole, is located in the public right-of-way, located within residential areas, 25-45 feet tall and these are not just for cell phones but could also be used to provide internet access to a community. These mini cell towers are generally owned by neutral host providers and leased to companies like Verizon for usage. Another example of a communications facility would be data collection units like those used by West Penn Power which communicate with smart meters. Considerations for amendments to the Wireless Communications Facilities Ordinance include:

- Section 332 Federal Communications Act which preserve the local zoning authority
- subdivision of land development plans – these plans are not required in order to install a tower and the regulations do not apply
- right-of-way regulations would define what can and cannot be done with these towers in a public right-of-way
- providing a reasonable approval period - a municipality has a certain window frame to act on these requests which would be 90 to 150 days depending on the situation.

The following are recommendations for ordinance amendment:

- remove SALDO (subdivision and land development ordinance) references and the requirement for a land development plan
- specify regulations for tower and non-tower based wireless communications both inside and outside the public right-of-way

Mr. Miller stated he read about some areas that are installing these towers or facilities within the steeple or cross of churches.

Ms. Whitaker stated that with the advances in technology she is concerned about all these smart towers and facilities and how they may affect individuals' privacy.

Mr. Clemson confirmed a company would have to request permission to install these devices. Mr. Pribulka confirmed that a company would need approval and they would be treated similar to a zoning or road occupation permit. Some municipalities charge fees for these facilities to be located in the right-of-way.

Mr. Kunkle stated that with these facilities neighborhoods that currently have underground utilities would now have some sort of tower in the right-of-way to support these facilities.

4. PA DOT DISTRICT 2 REQUEST FOR DETOUR

Mr. Kunkle stated that the Township received a request from Kevin Kline, District 2 Executive requesting the Township to consider permitting a short term detour utilizing Martin Street as part of the North Atherton Street improvements. This phase of the work will begin between Colonnade Way and Aaron Drive and is anticipated to be completed using night time work hours. The proposed detour would utilize West Aaron Drive to access Martin Street from its intersection with Vairo Boulevard to west Aaron Drive. Township staff has met with District staff on May 14th and is recommending the night work along with the proposed detour be implemented.

Mr. Clemson made a motion to APPROVE the request of PA DOT District 2 for nighttime work operations and the designation of a detour utilizing Martin Street between its intersection with North Atherton Street at Vairo Boulevard to its intersection with West Aaron Drive provided that PADOT provide advance notice of the detour through the media and signage and advise the Township of the start date and duration of the detour. Mr. Miller seconded.

The motion passed unanimously.

5. CONTRACT 2014-E2 PURCHASE USED BUCKET TRUCK

Mr. Kunkle stated that Director of Public Works describing the bids received for Contract 2014-E2. The memorandum describes the firms submitting bids and the results of each bid. The Director of Public Works has recommended that Contract 2014-E2 Purchase of Used Bucket Truck be awarded to Altec Nueco, LLC in the amount of \$39,900.

Mr. Clemson made a motion to AWARD Contract 2014-E2 Purchase of Used Bucket Truck to Altec Nueco, LLC in the amount of \$39,900. Ms. Whitaker seconded the motion.

The motion passed unanimously.

6. MOUNT NITTANY CONSERVANCY MARATHON SPECIAL EVENTS PERMIT

Mr. Kunkle stated the application for a Special Events Permit is for the Mount Nittany Conservancy Marathon. The event will involve a number of road crossings and utilization of the Township bikeway system. The conditions that have been recommend include the placement of officers at the intersections where the runners will cross. Following all the recommendations by Sergeant Glenn staff recommends approval of the Special Events Permit.

Mr. Clemson made a motion to APPROVE the mount Nittany Conservancy Marathon Special Events Permit for an event to be held on Sunday, August 31, 2014 from 8am to 12pm subject to the conditions outlined in the June 9, 2014 memorandum from Sergeant Robert Glenn to the Township Manager. Mr. Miller seconded the motion.

The motion passed unanimously.

7. APPROVAL OF MAY 2014 VOUCHER REPORT

Mr. Clemson made a motion to APPROVE the May 2014 voucher list. Mr. Miller seconded the motion.

The motion passed unanimously.

8. CONSENT AGENDA

Mr. Clemson made a motion to APPROVE the consent agenda which included a surety reduction for the Landings, Phase 1A in the amount of \$28,775 and two time extensions, for Stonebridge V PRD Senior Living and Tressler Subdivision. Mr. Miller seconded the motion.

The motion passed unanimously.

VI. REPORTS

1. Manager

Mr. Kunkle reminded Board members of the July 9th Centre County Economic Summit to be held at the Match Factory in Bellefonte. Board members will receive an invitation to this event. Administrative staff has met with representatives of Rock Springs Water Company and customers that had volunteered to serve on four sub-committees dealing with Customer Service; Finance; Capital Improvements and Corporate Structure. Each sub-committee reported on their progress and outstanding questions to the company representatives. These reports acted as suggestions to the company on a range of issues from improvements for communications with customers on system failures to financing opportunities for capital improvements. The township has acted as a facilitator to bring the company and its customers

together to resolve issues of water service. A letter along with cost estimates for the properties that may be affected by the installation of a street light at the corner of Martin Street and Park Crest Lane was sent May 14. To date the township has received one letter in response and has held one meeting with a property owner. Staff should be able to report on this matter at the Board meeting on July 2. The Township has heard from two of the four properties affected.

2. Chief of Police

Ms. Conrad stated for May more part one crimes 16 as compared to 15 last year which included more thefts than last year, part two had more criminal mischiefs and is up from last year, other calls for service were slightly less than last year, traffic citations and stops were up and parking tickets and criminal arrests were down. The vandalism in Pine Hall Cemetery was the biggest case for the month. Office Clouse completed bike school just in time for the nice weather. Sergeant Glenn completed police executive development training and Chief Conrad attended the candlelight vigil in support of those with mental illness.

3. COG Committee Reports

a. Executive

Mr. Mascolo stated Mr. Clemson will be attending the Executive Committee meeting for him.

b. Finance

Mr. Mascolo stated he attended the meeting on June 12th. The committee met the new Finance Assistant from COG, got an update from the actuaries on the COG pension plan. For the near future management of the pension plan will remain with the Borough at a cost of \$12,000 per year. The committee reviewed the payroll services proposal and it was sent to the General Forum to begin using Keystone Financial for 2015. Budget amendments for Code were also discussed as well as the Centre Regional Planning Agency budget changes.

c. Human Resources

Ms. Whitaker stated they met on June 4th. The committee looked at the wage survey completed which compared 34 organizations and offered recommendations for salary schedules. No action was taken at this time by the committee. The committee had an initial discussion on the Affordable Health Care Act Cadillac tax, which will begin in 2018 and also performed a final review of the anti-harassment policy which was then recommended for adoption by the General Forum.

d. Parks Capital

Mr. Mascolo stated the joint committee meeting reviewed the Hess Field driveway study and made a decision to proceed in program plan with the driveway revisions. The committee received an update on the Whitehall Road Regional Park. Harris Township has been inquiring as to when the completion of Hess Field will occur; currently Hess Field is about two years behind schedule. Every year delay results in cost increases, the committee decided to proceed with construction on the Whitehall Road Regional Park even though Toll Brothers has not fully committed to a land development plan. The Parks and Recreation Department will contact the State College Borough Water Authority to request an easement for access to the parkland to start construction.

e. Public Safety

Mr. Clemson stated the committee met Wednesday, June 11th at noon. Rich Frank joined the group from College Township. The Bellefonte Borough code services contract is moving along. The Bellefonte Borough will be given some voting rights on Public Safety Committee when they join for code services. As for Code personnel, a couple positions will require budget

amendments and include an additional housing inspector position. There should be no change in municipal contributions. The committee will also be requesting a budget amendment for building capital.

f. Public Services and Environmental

Mr. Miller stated the committee discussed the storm drain improvements on Atherton Street. This project is anticipated to be a 6 or 7 year project with an approximated total of \$20 million and will cover the full length of Atherton Street. Another discussion item was the refuse and recycle program which is currently out for bid because the current contract is up in July.

VII. MINUTES

Ms. Whitaker made a motion to APPROVE the May 27, 2014 Board of Supervisors Worksession Minutes. Mr. Miller seconded the motion.

The motion passed unanimously.

Ms. Whitaker made a motion to APPROVE the June 2, 2014 Regular Meeting Minutes. Mr. Clemson seconded the motion.

The motion passed unanimously.

VII. ADJOURNMENT

Mr. Miller made a motion to ADJOURN the meeting. Mr. Clemson seconded the motion. The motion passed unanimously.

With no further business to come before the Board of Supervisors, Mr. Mascolo adjourned the regular meeting at 8:25 pm.

Respectfully submitted,

Mark Kunkle, Township Manager
For the Board of Supervisors

Date approved by the Board: 07/07/2014