

# FERGUSON TOWNSHIP BOARD OF SUPERVISORS

Regular Meeting  
Monday, August 16, 2010  
7:00 pm

## I. ATTENDANCE

The Board of Supervisors held its second regular meeting of the month on Monday, August 16, 2010 at the Ferguson Township Municipal Building. In attendance were:

<b>Board:</b>	Richard Killian, Chairman	<b>Staff:</b>	Mark Kunkle, Township Manager
	Robert Heinsohn		Trisha Lang, Director of Planning and Zoning
	Steve Miller		Eric Endresen, Director of Finance
	Bill Keough		
	George Pytel		

Others in attendance included: Marsha Buchanan, Recording Secretary; Walt Schneider, Director of Centre Region Code Administration; Tony Fruchtl, Penn Terra Engineering; and Mark Haefner, Keller Engineering.

## II. CALL TO ORDER

Mr. Killian, Chairman, called the August 16, 2010 meeting to order at 7:00 pm. He noted that there would be an Executive Session after the regular meeting to discuss a legal issue.

## III. PUBLIC HEARINGS – RESOLUTIONS

### 1. A PUBLIC HEARING ON A RESOLUTION ADOPTING THE CAPITAL IMPROVEMENT PROGRAM BUDGET FOR THE YEARS 2011-2015

Mr. Kunkle provided a presentation on the CIP Budget, beginning with key assumptions in preparing the budget. He gave an overview of various costs for years 2011-2015, as well as a summary of revenues and expenditures. The largest expenditures will be in Public Works. He shared significant projects for each year within this time frame.

Mr. Killian said this is a 5-year plan used for long-range planning. Even though the capital side of the budget becomes a deficit sometime before 2015, the overall funding does not.

Mr. Pytel made a motion to adopt Resolution 2010-21, approving the 2011-2015 Capital Improvement Program Budget for the Township. Mr. Heinsohn seconded the motion. With Mr. Heinsohn, Mr. Keough, Mr. Killian, Mr. Miller, and Mr. Pytel all voting yes, the motion passed unanimously.

### 2. A PUBLIC HEARING ON A RESOLUTION AMENDING THE TOWNSHIP'S FEE RESOLUTION BY ESTABLISHING NEW AND REVISED CODE ADMINISTRATION FEES FOR PERMIT EXPIRATION AND PERMIT RENEWALS

The PA fiscal code was amended by Senate Bill 1042, now known as Act 46 of 2010, on July 6, 2010. Among the provisions of Act 46 are provisions that grant the automatic extension of certain permits and other approvals issued or approved by state and local governments related to land development and building. The extension of permits is intended to provide relief to builders and developers, who in the current recession have often invested significant time and money to gain permits and approvals but have been unable to proceed due to tight financial markets and soft real estate markets. As the economy recovers and the credit crisis eases, borrowing opportunities may arise. The automatic extension will permit developers to move forward with previously approved projects without undue delay. Mr. Kunkle provided highlights related to this legislation as it pertains to local governments.

Mr. Miler made a motion to adopt Resolution 2010-22, amending the Township's Fee Resolution by establishing new and revised Code Administration fees for permit expiration and permit renewal. Mr. Pytel seconded the motion. With Mr. Heinsohn, Mr. Keough, Mr. Killian, Mr. Miller, and Mr. Pytel all voting yes, the motion passed unanimously.

**3. A PUBLIC HEARING ON A RESOLUTION AUTHORIZING THE CHAIRMAN AND SECRETARY TO EXECUTE A TRAFFIC SIGNAL MAINTENANCE AGREEMENT FOR SIGNALS AT THE INTERSECTIONS OF BLUE COURSE DRIVE/OLD GATESBURG ROAD AND SCIENCE PARK ROAD/OLD GATESBURG ROAD**

Mr. Kunkle said with the Old Gatesburg Road Extension Project a new signal will be going in at Blue Course Drive and Old Gatesburg Road. They will be doing a revision of the signal at Science Park Road and Old Gatesburg Road. As part of the permitting process through PADOT, each of the Township's traffic signals has a maintenance agreement that the Township must execute. These are standard documents the Township receives for every traffic signal. He described the agreement.

Mr. Keough made a motion to adopt Resolution 2010-23, authorizing the Chairman and Secretary to execute the traffic signal maintenance agreement for signals at the intersections of Blue Course Drive/Old Gatesburg Road and Science Park Road/Old Gatesburg Road. Mr. Pytel seconded the motion. With Mr. Heinsohn, Mr. Keough, Mr. Killian, Mr. Miller, and Mr. Pytel all voting yes, the motion passed unanimously.

**IV. COMMUNICATIONS TO THE BOARD**

Mr. Heinsohn said neighbors contacted him regarding flooding problems on roads near him in the Fairbrook development. Mr. Keough has more information on this issue.

Mr. Keough said a resident in the Westfield Subdivision called him: 1) the Ad Hoc Homeowners Association for that area communicates to its members via email, but the email address list is not up to date. Some residents do not receive notification of those meetings; 2) when a resident contacted Mr. McDonald from the Township regarding tree trimming work not being done properly, he took appropriate action. The resident commended the Township for that. Mr. Keough also traveled to two sites with Dave Modricker this week. He visited the Westfield site, the stormwater detention basin where they have been having sinkhole issues. He also visited Fairbrook, where the Township is currently doing some work to mitigate some flooding and drainage problems. Recently the area experienced a 30-year storm situation involving a project that is not yet complete, so there were some runoff issues in that area. Mr. Modricker anticipates that work to be complete within the next two or three weeks.

**V. ACTION ITEMS**

**1. LANDINGS PHASE II EMERGENCY ACCESS PLAN**

Ms. Lang said this is a revision to an area of the Landings Master Plan (Phase II). When this area was approved as a final plan, the number of lots along this roadway exceeded the cap that had been established (138 dwelling units). She provided an overview of the plan. This is a temporary situation. Certain development cannot occur until Park Center Boulevard is complete, and other development cannot occur until Bristol Avenue is complete. This provides temporary access for emergency vehicles. Ms. Lang said the emergency road follows an alignment for what will be the future right of way of Quail Run Road and across Steve White's property, then connects to the stub end of Blair Street. An access

easement was provided by Mr. White for Johnson Farm Associates to install this access. Mr. Pytel asked which homes can be occupied before Bristol Avenue is completed. Ms. Lang said certain lots fell under the cap of 138 dwelling units. There were about 15 lots that went beyond that. They are allowed to be constructed, but no certificate of occupancy will be issued until the completion of Bristol Avenue. The Township will enforce that.

Mr. Heinsohn inquired about the status of the completion of Bristol Avenue. Mr. Fruchtl clarified that in the Terms and Conditions the agreement is that those homes can be occupied once surety is posted for Bristol Avenue. But by the end of next year nothing else can occur until Bristol Avenue is completed.

Ms. Lang noted that this temporary emergency access is an alternative for the completion of Park Center Boulevard. Mr. Fruchtl said this emergency access will be gravel. It is already installed and the gates are in. It has been inspected by the Township Engineer.

Mr. Miller made a motion to approve the Landings Phase II Emergency Access Plan, subject to the completion of the outstanding conditions as set forth in the Director of Planning and Zoning memorandum dated August 11, 2010. Mr. Heinsohn seconded the motion. The motion passed unanimously.

## **2. FOXPOINTE PRD FINAL LOT CONSOLIDATION PLAN**

Ms. Lang said several months ago the Township voided an LDP for the Gables project, part of which involved the extension of Foxpointe Drive. To accommodate a subdivision of the property, they recorded a subdivision plan that created multiple lots that were related to the phases of the project. The Township asked them to undo that subdivision plan and to consolidate the property back into a single piece. There are several remaining comments, but most are minor plan corrections that need to be made.

Mr. Heinsohn made a motion to approve the Foxpointe PRD Final Lot Consolidation Plan, subject to the completion of the outstanding conditions as set forth in the Director of Planning and Zoning memorandum dated August 11, 2010. Mr. Keough seconded the motion. The motion passed unanimously.

## **3. REQUESTED MODIFICATION PARKVIEW SUBDIVISION**

Ms. Lang said in 2008 the Township approved a subdivision and a lot consolidation. At the time there was a condition of approval requiring the construction of a sidewalk along the frontage of the property outside the right of way of Circleville Road. He posted surety to accomplish that and later requested that the Zoning Hearing Board provide relief from the requirement to install that sidewalk. The Zoning Hearing Board granted that relief. However, the subdivision and LDP ordinance also has a requirement for the installation of a sidewalk. In order to revise the plan of record to show that the sidewalk will be installed at a future date rather than at the present time, they are required to ask for a modification from the ordinance. Mr. Killian clarified that this is the second step of an administrative process following the Zoning Hearing Board's decision. Ms. Lang said the Zoning Hearing Board provided the option for the Board to determine when in the future that sidewalk will need to be installed. Eventually the sidewalk will be built, at such a time as the Township deems it necessary.

Mr. Heinsohn made a motion to grant the modification for the Parkview Subdivision to relieve the developer from construction of a sidewalk, subject to conditions set forth in the July 21, 2009 variance granted for relief from construction of the sidewalk. Mr. Miller seconded the motion. The motion passed unanimously.

#### **4. REQUESTED MODIFICATION SCIENTIFIC SYSTEMS, INC.**

The applicant has filed an LDP for an addition to the facility and has received a variance from the buffer yard planting requirements. The applicant's consultant is requesting a modification of a portion of the stormwater regulations related to infiltration.

Ms. Lang said this is an LDP currently under review. The proposal is for a 5,000 square foot expansion to the existing building that fronts on Science Park Road. During the improvements to the road, the Township used the basin, which is in the back of this property, and will use it again during the extension of Old Gatesburg Road. They asked the developer during the plan review process to evaluate the soils within the basin to see if they could accommodate infiltration. There is virtually no infiltration capacity in the basin.

Mr. Killian said the project will have adequate stormwater management. Mark Haefner, Keller Engineering, said it will attenuate storms properly. Mr. Pytel asked if they are using the same basin or the parking lot. Mr. Haefner said they are using the same basin. Mr. Pytel asked what makes this basin capable of handling water runoff. Mr. Haefner said the basin size has been increased enough to accommodate the additional runoff. Ms. Lang assured the Board that Mr. Modricker recommended approval of this.

Mr. Miller made a motion to grant the requested modification of Scientific Systems, Inc. for a portion of the stormwater regulations related to infiltration in accordance with the Director of Planning and Zoning memorandum dated August 11, 2010. Mr. Heinsohn seconded the motion. With Mr. Pytel voting no, and all other Board members voting yes, the motion passed.

#### **5. 2011 COG PROGRAM PLAN**

At the Board of Supervisors meeting on August 2<sup>nd</sup>, the Board reviewed the 2011 COG Program Plan. The Board continued discussion of this matter through August 16<sup>th</sup> in order to provide a further opportunity for the Board's review of the plan.

Mr. Keough commented on Pages 8 and 9 as follows:

- It appears by statement #3 that the General Forum will get a draft policy for dealing with fund balances. Mr. Kunkle agreed. Mr. Keough asked if Mr. Killian or Mr. Kunkle have been involved in the design of this document. Mr. Killian said he provided his opinion at meetings leading up to this, and once he sees what the Finance Director proposes, he can provide more specific direction.

Mr. Killian will forward these comments to the Finance Committee upon future discussion.

- Regarding Item #6, Mr. Killian said as a result of the fund balance issue it became apparent that the Codes fund balance was unique for commercial building since developers pay their fees forward in a multi-year project so that some of the fund balance is actually paying for services two years into the future. It is more a "pre-pay for service" than a fund balance. Mr. Kunkle said that Codes Administration does not report an encumbered fund balance. They have an obligated and unobligated portion of their fund balance.
- Mr. Keough asked if Penn State University fee in lieu addresses the issue of campus residents who utilize the library service. Mr. Kunkle said no; the fee in lieu agreement sets up the formula and the mechanism for distribution of the fee in lieu they receive from Penn State. Those are

funds that are not restricted when they come to each municipality. The way the University collects money for the fee in lieu, however, might be attached in some way to students who live on campus. Mr. Keough understands some of the history in terms of the Township's library allocation, etc. He would like to see a way of getting the Township off of the difference that exists between their library share formula and that of other municipalities. Ferguson Township chose to use the formula counting those students. Mr. Pytel explained the purpose for the Board choosing to use the formula they do. Mr. Miller said there are not a lot of creative options for the Board in this case. Students live in the Borough or in College Township. They could either have everyone agree to one way or another, or spend more money.

Mr. Killian said the question is how the allocation cost should be calculated. The Library is very much user-based. They know where the users live. Ferguson Township believes in that concept. Mr. Kunkle suggested asking the Finance Committee where Ferguson Township's one-time contribution was accounted for since it is not showing up under "Other Government Grants." It should be noted that Ferguson Township did make a one time "gift" in 2010 to the library to help close its budget gap.. Mr. Keough suggested re-wording this section and taking another look at the way it is presented, as well as looking at the procedure to account for those dollars.

## **6. WHITEHALL ROAD PARK MASTER PLAN**

The Board reviewed this plan at their meeting on August 2<sup>nd</sup> and continued discussion to the August 16<sup>th</sup> meeting. Comments of the Park Master Plan are due to the COG Executive Director by August 19<sup>th</sup>.

*The Board had no further comments.*

## **7. SELECTION OF EARNED INCOME TAX COLLECTION COST ALLOCATION**

On August 19, 2010 the Centre County Tax Collection Committee (TCC), established under Act 32, will be voting to determine the method of cost allocation for the collection of earned income taxes beginning January 1, 2012. The TCC is organized under Act 32, which requires municipalities and school districts in counties to begin collecting earned income on a countywide basis no later than January 1, 2012.

The TCC has determined that a Tax Collection Agreement will be prepared between State College Borough and the TCC to formalize the tax collection services to be offered by the Borough. Since this matter has a significant financial impact on the Township, Mr. Kunkle presented it to the Board for direction on which method should be chosen by the Township.

Mr. Kunkle said Act 32 requires that municipalities in each county combine their earned income tax (EIT) collection process under one tax officer. This must be completed by January 1, 2012. The cost of the operations of the tax collection district are paid for through a weighted vote formula, which is calculated by the amount of EIT collected in each municipality and their population in relation to the total EIT collected and the population in the county. Ferguson Township has about 9% of the total vote in the county and the school districts in the county, but collects about 13-14% of the total EIT in the county by virtue of the fact that they are a Home Rule municipality and have a higher EIT rate, but a much lower real estate tax rate than most municipalities.

The way the tax officer is compensated is a determination of the TCC. For some time now, he and other voting delegates have expressed concern about the process for determining who the tax officer would be and what the compensation of that tax officer would be. There has not been a competitive process to

make that selection. He believes an RFP should have been issued for tax collection services to provide a benchmark. In 2012 the estimated cost of collection for the selected tax officer will be about \$1,050,000. When consolidating the number of collectors into one, there should be a significant cost reduction in that collection service. Also, individual municipalities' costs should be slightly lower. That will not be the case for Ferguson Township and for the four school districts in the county if the method of compensation to the tax officer is based on EIT collected by the tax officer. So Ferguson Township will pay 14% of the \$1,050,000 fee.

Mr. Kunkle provided several options: 1) level the playing field by recalculating the EIT collected at a half percent (not acceptable to TCC); 2) determine the cost allocation to the tax officer by number of returns processed (not acceptable to TCC); 3) utilize the weighted vote – since they only have 9% of the vote, they should not have to pay for 14% of the cost. He prepared this proposal, which will be voted on August 19<sup>th</sup> by the county TCC. This would reduce the cost of the Township significantly. Each of the school districts will also benefit by using the weighted vote.

Mr. Keough asked if Act 32 accounts for any appeal process. Mr. Kunkle said he is not aware that it does, but if so the appeal would probably have to be to court.

Mr. Pytel suggested writing a letter to the PA state legislators to find out what options the Township has. Mr. Kunkle said they are in a minority of all political subdivisions in the state. The Act did not account for the Home Rule option.

Mr. Heinsohn asked where the \$1,050,000 figure came from. Mr. Kunkle said that is based on the 2008-2009 DCED report of EIT collected in Centre County, multiplied by 2.4%. That is the cost of collection that the selected collector has determined it will be. It has not been a competitive process. The tax officer selected will do a good job, but the process has not yielded the least cost to the municipalities in the county or the school districts. This is at minimum a 3-year contract. It will be at least that long before it can be reviewed and other proposals can be made.

Mr. Killian described ways in which this process is flawed. Mr. Kunkle agreed that a communication from the Board to the state legislators will be instructive to them for some amendment to the Act.

Mr. Kunkle said they need to balance good service, good collection rates, etc with adequate compensation for the tax officer.

Mr. Miller made a motion to direct the Township Manager and the Township's voting representative to the Centre County Tax Collection Committee to cast Ferguson's vote for the Weighted Vote method to allocate the earned income tax collection costs. Mr. Heinsohn seconded the motion. The motion passed unanimously.

In addition, a letter will be drafted to state legislators recommending changes to current legislation.

## **8. AWARD OF CONTRACT 2010-C13 TREE PLANTING**

Mr. Pytel made a motion to award Contract 2010-C13 to the lowest responsible bidder as indicated in the memorandum dated August 11, 2010 from the Public Works Director. Mr. Heinsohn seconded the motion. The motion passed unanimously.

## **9. JULY 2010 VOUCHER REPORT**

Mr. Pytel made a motion to approve the July 2010 Voucher Report. Mr. Heinsohn seconded the motion. The motion passed unanimously.

## **10. CONSENT AGENDA**

- a. July 2010 Treasurer's Report
- b. Surety Release
  1. Thistlewood Lot 27
  2. C2S, L.P. – Crocker West Office Building
- c. Payment Authorization for Asphalt Paving Systems, Inc. in the amount of \$335,044.02
- d. Payment Authorization for Alpha Space Control Co., Inc. in the amount of \$37,767.67
- e. The Township has received notification of general MPDES permit being filed by Giant Food Stores for their fuel island project.

No motion was made, but all Board members were in favor of approving the Consent Agenda.

## **VI. REPORTS**

### **a. Manager**

- The Gatesburg Bicentennial Committee has provided the Township with a certificate of recognition for its contributions during their bicentennial celebration last summer.
- The Township, as a member of the PA League of Cities and Municipalities, has been participating in the Uniform Services Employment and Re-employment Rights Act in recognition of the fact that the Township supports its service men and women. He shared a certificate with the Board.

### **b. Public Works Director**

**Whitehall Road Widening:** The design consultant, Trans Associates, is addressing final storm water design issues. Another utility meeting is necessary to finalize utility pole locations and then preliminary right of way drawings can be prepared. Mr. Modricker anticipates these activities to be completed by November, at which time he will schedule a public open house. He requested a new project schedule from the design consultant and will share this upon receipt.

**Old Gatesburg Road Extension:** Right of way acquisition for the project should be complete on August 13<sup>th</sup> and a right of way clearance letter drafted to PADOT the week of August 16<sup>th</sup>. The project is on schedule for a bid letting by PADOT in September.

**Traffic Calming Policy:** This item has been referred to the Planning Commission for comment, then Engineering will incorporate comments, verify street classifications, and present a revised draft policy to the Board.

### **c. Director of Planning and Zoning**

**MERCEDES-BENZ OF STATE COLLEGE FINAL LAND DEVELOPMENT PLAN:** A lengthy discussion was held with regard to the status of this development proposal that involves the construction of a dealership on the property at the corner of Whitehall Road and Leisure Lane. Legal counsel for the applicant demanded that the project be presented to the Commission despite the failure of the

applicant's consultant to sufficiently address the deficiencies of the project. After accepting last minute submission of information on the project with regard to stormwater management and other minor plan corrections, staff was informed at the meeting that this information did not constitute a "formal" submission and therefore the required time extension would not be provided by the consultant. These concerns, as well as the applicant's unwillingness to design the project in accordance with the imminent plans for the widening of Whitehall Road, led the Commission to table action on the project until such time as these issues are satisfactorily addressed. The current timeframe for action on the plan does not expire until September 14, 2010.

**TRAFFIC CALMING DRAFT POLICY:** Staff provided Commission members with some information on Traffic Calming from the PADOT handbook, including background information, as well as a presentation of the design of several different types of traffic calming measures, their cost, where they should be installed, and advantages and disadvantages of each. Commission members discussed where in the Township such measures might be necessary and whether liquid fuels funds would cover the added costs. Now that most of the Commission is familiar with the purpose and intent of traffic calming and what such measures entail, they can move on to consider the DRAFT policy that was presented to the Board and provide a recommendation that is based on the resources they now have.

**d. Chief of Police**

Part 1 crimes were up in July due to burglaries. For Part 2 crimes, criminal mischief was up for July, as were DUI's. Regarding other calls for service, the Police Department was busy with community relations incidents in July. Citations were down a little from last year, as were parking tickets.

Chief Conrad highlighted the following from the patrol notes: They are now seeing more: 1) copper wire thefts; 2) internet fraud; and 3) gang tagging.

They got the preliminary draft back from their staffing study. There are a couple of things they want to address initially.

**VII. MINUTES**

Mr. Pytel made a motion to approve the August 2, 2010 BOS Regular Meeting minutes. Mr. Miller seconded the motion. The motion passed unanimously.

**VIII. ADJOURNMENT**

With no further business to come before the Board of Supervisors, Mr. Killian adjourned the August 16, 2010 Regular Meeting at 9:00 pm.

RESPECTFULLY SUBMITTED,

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Mark Kunkle, Township Manager  
For the Board of Supervisors

Date approved by the Board: 09/07/2010