

## FERGUSON TOWNSHIP BOARD OF SUPERVISORS

Regular Meeting  
Monday, October 4, 2010  
7:00 pm

### I. ATTENDANCE

The Board of Supervisors held its first regular meeting of the month on Monday, October 4, 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		David Modricker, Director of Public Works
	Steve Miller		Jennie Kitchener, Tax Administrator
	Bill Keough		
	George Pytel		

Others in attendance included: Marsha Buchanan, Recording Secretary; Cecil Irvin; John Campbell; Lisa Campbell; Richard Shore, Rita's Ice; Ed Alberta; and John Deibler.

### II. CALL TO ORDER

Mr. Killian, Chairman, called the October 4, 2010 meeting to order at 7:00 pm. He said the next discussion regarding the proposed TSS District Ordinance will be part of the next regular meeting agenda on October 18<sup>th</sup>.

### III. CITIZEN'S INPUT

**Lisa Campbell** spoke regarding the West Whitehall Road Widening Project. She said her family owns several farms on W. Whitehall Road. The land mentioned is all in the ag security area of Ferguson Township. The proposed plan takes over 30 feet from one farm and at least an acre and a half from another. Both projects could be handled differently, thus resulting in less farmland lost. There appears to be a utility pole problem, which is a small problem compared to the loss of their farm ground. The drainage reservoir creates a wet area that never had drainage problems to begin with. She asked if the Township is serious about preserving agricultural areas in the Township. The stormwater detention basin is also taking water to an area behind the Corl Acres development, which is a hazard to children playing there. Their farms date back prior to 1865, and they hope to continue farming.

Mr. Keough said he looked at this area recently, and there was no non-farmable ponding of water in that area.

**Cecil Irvin** said he has never seen water in the area beyond Corl Acres. The normal drainage goes down below Harner Farms and into Breezewood Drive south. It seems to him that the more practical action would be to take the water back into the woods.

Mr. Modricker said currently water flows through the Campbell property from upstream (from across the field). From W. College Avenue currently the water goes into inlets that are on Whitehall Road near Breezewood Drive, and those pipes coming out of the inlet do not go to any defined discharge area. Mr. Irvin said it seems that the water will be running a long way to reach its proposed destination. Mr. Modricker said as originally conceived the project did not have detention basins, but that is required with the permitting required by the state. In the Spring Creek Watershed area, they need detention. This was the area chosen out of multiple alternatives.

**John Campbell** said his family owns a farm on W. Whitehall Road, and Plainfield Drive. He believes the Township will cause a problem for him as a farmer. He is also opposed to the changes to the curve straightening as it is laid out near Fairbrook. He suggested a straighter alternative. It seems like it has not been looked into because there would be a lot of utilities to move. The entire widening project is affecting a lot of farms in this area. The Township is proposing to take 18 feet away from them. He questions whether the Township really needs 18 feet to drain the side of the road. He believes to get the utilities all on one side of the road that the Township will build a false sense of width on the road. He suggested that the Township reconsider some of these things.

Mr. Irvin asked if they will have to move the power poles. Mr. Modricker said some of the poles will predominantly be on the north. Most of the poles will be relocated. Verizon would be co-located on Allegheny poles. They will try to get all communications on the same pole. Mr. Irvin asked if that would take any right of way. Mr. Modricker said typically the impact on the north side is less than on the south side. In terms of the road realignment they are keeping the design width to a minimum, but some right of way will be necessary. The same is true for the drainage. The proposed location for the stormwater basin would be taken out of active farmland. If it were built, it would not be able to be farmed anyhow. Mr. Modricker said in this case there is some cut and some fill. The Township is trying to do infiltration where possible..

Mr. Heinsohn strongly encouraged citizens to attend the October 5<sup>th</sup> Open House in order to find out more specifically about proposed changes for Whitehall Road. Mr. Modricker said one thing driving stormwater controls is the requirement for an NPDES Permit, which is required due to the size of the drainage area. Mr. Heinsohn said the road needs to be widened in order to maintain safety for bikers, walkers, and farm equipment.

Mr. Killian said the application for the stormwater control plan is a DEP process.

Mr. Keough said the pole situation in the ag portion of the project involves guy wires. In their last discussion with Allegheny Power they accomplished removing four of the five guy wires, which are intrusions into farmers' fields. Ferguson Township and the utilities in the Township agreed to utilize a technique called dead-ending to further allow for straight shots and potentially eliminate the need for these intrusions into farm fields. Also, with regard to the detention basin, the opportunity to look at some redesign was put before the Board, and the Board decided against that. Mr. Killian said they were following the recommendations of their consultants and experts. Mr. Keough said they chose by vote not to expend any additional money.

Mr. Pytel said the design engineer explained to the Board that this detention pond is needed because of the type of soil in this area and the inability to obtain sufficient water infiltration. If the roadway width is increased there will be more runoff.

#### **IV. PUBLIC HEARINGS – RESOLUTIONS**

- 1. A PUBLIC HEARING ON A RESOLUTION ADOPTING THE 2010 CENTRE COUNTY HAZARD MITIGATION PLAN AS THE OFFICIAL HAZARD MITIGATION PLAN FOR THE TOWNSHIP**

During September 2009, the County Emergency Management Office contracted with a consulting firm to prepare an update to the County's Hazard Mitigation Plan. This plan is required by FEMA to keep the county and each municipality eligible for disaster funding in the case of a federally declared disaster.

Mr. Heinsohn made a motion to adopt Resolution 2010-26, approving the 2010 Centre County Hazard Mitigation Plan. Mr. Pytel seconded the motion. With Mr. Heinsohn, Mr. Keough, Mr. Killian, Mr. Miller, and Mr. Pytel all voting yes, the motion passed.

## **V. COMMUNICATIONS TO THE BOARD**

Mr. Keough said during the recent rain event he traveled to three locations in the western end of the Township to look at runoff issues. It appears that everything is operating fine on Fairbrook Drive. He spoke with one resident who was greatly appreciative of the culvert near his driveway. He visited the detention basin in the Westfield Subdivision. The water was all going down in a stream to the sinkhole. There was no standing water in the basin. He also visited the Lisa Campbell property on W. Whitehall Road. There was no standing water there either.

## **VI. ACTION ITEMS**

### **1. NORTH HILLS PLACE FIRST AMENDMENT TO MAINTENANCE AGREEMENT**

Over the past two years, Richard Shore has been working to obtain an amendment to the maintenance agreement that was entered into in 1995 with Weis Markets, New Plan Realty Trust, and the Township, relative to that portion of North Hills Place, which is private and provides access to the Weis and Northland Shopping Centers. Mr. Shore has had an interest in developing a Rita's Ice retail outlet at the corner of North Hills Place and North Atherton Street. His access must be off the lower classified street, which is North Hills Place, and therefore he has needed the approval of Weis Markets and the owners of Northland Shopping Center, Edens & Avant, to construct the access to his Rita's Ice location. The first amendment to the maintenance agreement has been reviewed by Weis and Edens and Avant, and language has been inserted into the agreement, which restricts the development of the lot where Mr. Shore plans to develop the Rita's Ice. This language has been found acceptable by the Township Solicitor, Lewis Steinberg. Even with these restrictions, the zoning on the lot, which is Office Commercial, does not permit most, if any, of the restricted uses found in Paragraph 5 of the amendment.

Mr. Pytel made a motion to approve the North Hills Place first amendment to the maintenance agreement, subject to receiving written confirmation of acceptance of the revised language from Weis Markets. Mr. Heinsohn seconded the motion. With Mr. Killian voting no, and all other Board members voting yes, the motion passed.

### **2. DRAFT REVISED LANGUAGE FOR FEE IN LIEU OF PARKLAND REGULATIONS**

As a follow-up to the September 7<sup>th</sup> Board meeting, the Board directed staff to prepare revised language to be incorporated into a subdivision and land development ordinance amendment, regarding fee in lieu of parkland.

Mr. Kunkle said the amendment essentially indicates that, where a subdivision of RA zoned property for residential development occurs, then fee in lieu of parkland would apply. It would not apply, however, to the one or more dwelling units that could be established on the 50-acre farm use lot. This clarifies the issue of when parkland fee in lieu would be payable by a subdivided lot in the RA zoning district. It also clarifies that, in mixed use development and structures, where there is a combination of residential and non-residential units, the fee in lieu would be applicable to the residential units only, as a condition of final plan approval. Mr. Killian summarized.  
There was discussion by the Board.

Mr. Keough said in an RA zone a farmer is allowed to have additional dwelling units for family and employees on the farm with no restrictions. However, the banking industry typically requires that it be on a subdivided lot. The language does not clarify that this lot would not be subject to the fee in lieu. Mr. Kunkle said it *would* be subject to fee in lieu. Mr. Keough said the only way a farm lot would not be subject to parkland fee in lieu is if it were built on the farm and not subdivided off for that particular residential unit. Mr. Miller said even after a residential lot is subdivided off, one can still build three houses on the remaining parcel, but those are not subject to the fee. Mr. Keough said if a lot must be subdivided, then it would be subject to the fee in lieu. Mr. Miller said it is not a question of who owns it; it is a question of whether it is a residential lot or a farm lot. Mr. Kunkle said zoning cannot control the relationship of the lot being subdivided.

Mr. Keough inquired about the RR zone. If a resident has 35 acres of RR land and they sell 10 acres to someone in a subdivision process to build a house, the buyer is clearly subject to the fee in lieu. But he asked if the fee in lieu would apply to the other 25 acres that is retained by the seller. Mr. Kunkle said the original owner of the first 25 acres would not pay anything, but the new lot owner would pay the fee in lieu. He said if there is not already a house on those 25 acres, it is really not a residential lot. Every subdivision plan dictates what the use of the lot would be. If it were residential, then a fee in lieu would be charged.

Mr. Pytel made a motion to direct staff to prepare an ordinance for public hearing using the revised language for fee in lieu of parkland regulations for RA zoned land and mixed use zoned land. Mr. Heinsohn seconded the motion. With Mr. Keough voting no, and all other Board members voting yes, the motion passed.

### **3. DRAFT 2011 EARNED INCOME AND NET PROFITS TAX RULES AND REGULATIONS**

Mr. Kunkle said annually the municipalities and the school district in the Centre Region review the Earned Income and Net Profits Tax Rules and Regulations to see if there have been any changes in state law or case law that would warrant clarifying or changing the Rules and Regulations under which they file their income tax returns. In 2011 there was deemed to be no change needed from the rules existing in 2010, so the 2010 rules and regulations would be readopted as the 2011 rules and regulations, but each governing body considers these.

Mr. Keough asked the following questions:

- On Page 13 there is a continuation of a list of exclusions from tax. There is no reference to athletic scholarships. Jennie Kitchener, Ferguson Township's Tax Administrator, said her understanding goes back to research done by Penn State University (PSU). Athletics were not brought up at the time, and she is not sure if they were to be included. Mr. Kunkle added that they have to go back to the definition of "compensation." Mr. Keough is not advocating that they include athletic scholarships; he just found it to be an omission.

- Page 17 lists categories of people and their tax status. He asked if there is a difference between a residential rate and non-residential rate for taxing. Ms. Kitchener said the residential rate is higher, with a difference of 1.35%. Mr. Keough asked why the academic student is at the non-resident tax rate. Ms. Kitchener said it depends on what grounds the PSU student is claiming non-residential status. Mr. Pytel inquired about voting eligibility.
- Last year or the year before the Township changed its position with regard to residents who are obligated to pay quarterly (Page 25), moving the threshold to \$5,000. When it was done, they were concerned about self-employed people who were making a sizable amount of money. Mr. Miller said the concern was based on the fact that some employers were withholding less tax than they owed to the Township. Mr. Keough asked if they have a sizable number of taxpayers in the Township who are making a low amount of money and are required to be paying quarterly. Ms. Kitchener said any estimated individual is required to pay quarterly. If someone who should have been filing quarterly has not been, the Township would send them a letter and provide them with the quarterly payments for the coming year. Mr. Kunkle said employers are required under the new law beginning January 2012 (first quarter) to file under Act 32. Employers will have to withhold at the employees' place of residence. Mr. Keough asked what they are doing with retirees regarding the fact that in any given year they may have \$6,000-7,000 worth of income they declare for IRS purposes but do not have it withheld. He asked if they are forced into quarterly payments. Ms. Kitchener said, once identified, they request that payments be made. In most cases, retirees are still required to file a return, but the Township has been very lenient.

Mr. Killian said this will be back before the Board on October 18<sup>th</sup>.

#### **4. 2011 CENTRE COUNTY LIQUID FUELS GRANT APPLICATION**

Annually, the Centre County Board of Commissioners accepts applications for projects eligible under the County's Liquid Fuels Grant Program. These are funds the county receives from PADOT and allocates to municipalities based on project submissions. The allocations typically rotate throughout the county to various municipalities. Grant applications are due by November 15<sup>th</sup>.

Mr. Pytel made a motion to authorize the submission of a County Liquid Fuels Grant Application for 2011 for the West Whitehall Road Widening Project between West College Avenue and Tadpole Road. Mr. Heinsohn seconded the motion. The motion passed unanimously.

#### **5. REFUND OF REAL ESTATE TAX FOR TAX PARCEL 24-006-053 – J. ROY CAMPBELL**

Tax parcel number 24-006-053 owned by J. Roy Campbell was double assessed by the County Assessment Office for the years 2004-2009. Total Township tax to be refunded is \$112.62.

Mr. Heinsohn made a motion to authorize a refund of real estate taxes on tax parcel number 24-006-053 to J. Roy Campbell in the amount of \$112.62. Mr. Pytel seconded the motion. The motion passed unanimously.

#### **6. REQUEST FOR FIRST NIGHT CONTRIBUTION**

Mr. Killian said last year the Board provided a contribution of \$500.

Mr. Keough made a motion to forward a contribution in the amount of \$500 for First Night. Mr. Heinsohn seconded the motion. The motion passed unanimously.

## 7. CONSENT AGENDA

- a . NPDS Permit Application for SR3018 Whitehall Road Widening Project
- b. Payment Authorizations:
  - 1. Alpha Space Control in the amount of \$3,425.93
  - 2. HRI, Inc. in the amount of \$93,092.31

Mr. Pytel made a motion to approve the Consent Agenda. Mr. Heinsohn seconded the motion. The motion passed unanimously.

## VII. REPORTS

### a. Manager

Ferguson Township has donated to Halfmoon Township a Brush Bandit 250 brush chipper. This equipment was acquired through a DEP Municipal Recycling Grant program at a cost of \$18,500. The Board of Supervisors previously approved this transfer and the Township has received authorization from DEP to transfer ownership of the equipment.

The proposed budget is scheduled to be distributed to the Board on November 1, 2010. It is scheduled for adoption on December 6<sup>th</sup> with final adoption on December 13<sup>th</sup>. The Board decided to meet on November 11<sup>th</sup> and November 16<sup>th</sup>, both at 8:00 am, for Budget Worksessions.

### b. Public Works Director

**Whitehall Road Widening:** A public open house for this project is scheduled for October 5, 2010. Staff met with Messrs. Kocher, Irvin, and Mr. and Mrs. Campbell the week of September 20<sup>th</sup> and reviewed the project. Staff received correspondence from two residents regarding the project, responded to the inquiries, and provided copies of the letters to Board members.

**Old Gatesburg Road Extension:** Bids will be opened on September 20, 2010. Mr. Modricker provided specific information on bids.

**Blue Course Drive/SR26 West College Avenue Traffic Signal Study:** Trans Associates completed an engineering and safety study of this intersection. Based on the study, Trans was to provide a proposal to prepare a revised traffic signal permit and a construction estimate to install a 5 section signal head, which will involve moving a mast and arm. This work will be performed in-house in the future.

Mr. Heinsohn believes traffic calming is very important. Also, he suggested that Mr. Modricker be forthcoming at the October 5<sup>th</sup> open house regarding the Whitehall Road Widening Project.

Mr. Kunkle said, with regard to traffic calming, the intent of the Board was not a debate over whether or not they need it, but how the policy should be developed. There was some level of commitment to the residents in Park Hills who have concerns about cut through traffic. One way to address that is through a traffic calming policy that would have the purpose of slowing traffic down. If it is the Board's intention to proceed with traffic calming, he asked if there is a need for the Board and Planning Commission to meet jointly on this matter in order to get everyone on the same page.

Mr. Miller suggested instead that the Board's intent may just need to be clarified for the Commission. A policy is needed because they are receiving requests. Mr. Kunkle said he and Mr. Modricker should perhaps attend the next Commission meeting to clarify this.

Mr. Kunkle said the October 5<sup>th</sup> Whitehall Road Open House is not a debate about whether the project will be completed; it is an informational and educational session. Suggestions may be taken as to some oversights the Township may have had regarding the road design.

Mr. Keough expressed frustration that in the design process he does not feel the Township did appropriate research early on to direct design staff. He believes there are acceptable design standards that can be used in order not to address the detention basin, but the Township did not place as high of a priority on that in the initial directions to the professional designers. He would have preferred that some of those discussions took place before they got so far into paying the design professionals that they got locked into defending a particular direction.

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

**SKETCH PLAN FOR TROSTLE SUBDIVISION AND ASSOCIATED REQUEST FOR A MODIFICATION OF THE REQUIREMENT FOR EVERY LOT TO HAVE FRONTAGE ON A PUBLIC STREET:** The Commission reviewed a request for a modification to the subdivision requirements to provide public street frontage for all lots. The applicant wishes to subdivide a 2-acre residential lot from an existing 264-acre wooded parcel that is landlocked but is currently provided with a right of way over the adjacent parcels to Dry Hollow Road. The applicant has been advised to seek the necessary approvals from both the Board of Supervisors and the Zoning Hearing Board prior to preparing a subdivision plan for the proposed lot. The Commission's recommendation will be brought forward to the Board for action at their next meeting on October 18<sup>th</sup>.

**REVIEW OF DRAFT TRAFFIC CALMING POLICY:** Information has been presented on numerous prior occasions to familiarize Commission members with the concept of traffic calming. For this meeting, they received a copy of the DRAFT document prepared by the Director of Public Works, as well as chapters from the PADOT Traffic Calming Handbook and excerpts from the State College Borough Traffic Calming Guidebook. Staff included a recommendation that the Commission focus on adoption of a "policy" at this time, rather than getting caught up in discussion about "process" or the elements of a traffic calming "program." After review of the information, most members agreed that traffic calming was not needed in the Township and that, while they understand the Board's current willingness to consider adoption of a policy, they would prefer to have more information on how successful such efforts have been elsewhere before making any recommendation. The Commission voted unanimously to consider the idea further at some point in the future.

#### **d. COG Committee Reports**

1. *Transportation & Land Use* – Mr. Pytel said they met earlier on October 4<sup>th</sup>. The Centre Regional Planning Agency hired a consultant to help determine how to improve the Centre Region for growth and industry. He received a draft of some of the proposed items. They received a presentation on various propositions. One section included workforce housing. They combined this with affordable and low income housing, but Mr. Pytel does not agree with this. They are looking at a one-stop shop where one person would have all information for all municipalities for permitting purposes. He does not agree with that either.
2. *MPO* – Mr. Pytel said Marion Township wants to join the MPO. They are using the COG formula to set fees for the MPO, which means that Ferguson Township pays more than

anyone else. He does not agree with this. Mr. Keough asked if the COG formula has been the only method used for financing the MPO. Mr. Pytel said the MPO just started using the COG formula when they decided to go county-wide. He summarized each municipality's contributions.

## **VIII. MINUTES**

### **a. September 20, 2010 BOS Regular Meeting**

Mr. Heinsohn made a motion to approve the September 20, 2010 regular meeting minutes. Mr. Pytel seconded the motion. The motion passed unanimously.

### **b. August 12, 2010 BOS Worksession**

Mr. Pytel made a motion to approve the August 12, 2010 worksession minutes. Mr. Heinsohn seconded the motion. The motion passed unanimously.

### **c. July 22, 2010 BOS Worksession**

Mr. Heinsohn made a motion to approve the July 22, 2010 worksession minutes. Mr. Pytel seconded the motion. The motion passed unanimously.

### **d. June 20, 2010 BOS Worksession**

Mr. Heinsohn made a motion to approve the June 20, 2010 worksession minutes. Mr. Pytel seconded the motion. The motion passed unanimously.

## **IX. ADJOURNMENT**

With no further business to come before the Board of Supervisors, Mr. Killian adjourned the October 4, 2010 Regular Meeting at 9:01 pm.

RESPECTFULLY SUBMITTED,

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Mark Kunkle, Township Manager  
For the Board of Supervisors

Date approved by the Board: 10/18/2010