

FERGUSON TOWNSHIP BOARD OF SUPERVISORS

Regular Meeting
Monday, August 6, 2012
7:00 pm

I. ATTENDANCE

The Board of Supervisors held its first regular meeting of the month on Monday, August 6th, 2012 at the Ferguson Township Municipal Building. In attendance were:

Board: Richard Mascolo	Staff: Mark Kunkle, Township Manager
William Keough	Trish Lang, Director of Planning & Zoning
Elliott Killian	Dave Modricker, Director of Public Works

Others in attendance included: Barbara Donnini, Recording Secretary; Jackie Varner; John Varner; Gary Schell; Richard Killian; Eric Endresen; John Rodyku; Herb McKinsty; Ray Holsing; Nicole West; Sally Heffentreyer; Lynn Sedehamer; Cathy DeSanto; Travis Powell; Nina Hammer; Fred Hammer; Kathryn Detwiler; Wayne Detwiler; Christina Schell.

II. CALL TO ORDER

Vice Chairman Mr. Mascolo called the August 6, 2012 regular Meeting to order at 7:00 pm.

III. PUBLIC HEARINGS – ORDINANCES

AN ORDINANCE OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, PENNSYLVANIA AMENDING THE CODE OF ORDINANCES, APPENDIX C, FRANCHISES AND SERVICES BY APPROVING A CABLE FRANCHISE AGREEMENT WITH WINDSTREAM D&E SYSTEMS, INC.

Mr. Kunkle explained that both Ferguson and College Township have been working with Windstream to enter into a cable franchise agreement. A major component of agreement includes a \$26,000 franchise grant paid in 10 equal installments to Ferguson Township. The grant will be forwarded to CNET as a capital contribution and this will be done by each municipality. The Township will also receive a second sum of money from Windstream in lieu of internet service, as this is already obtained through Comcast. Mr. Kunkle said that the same cable system design specifications are required for Windstream as they are for Comcast and that there will be 2 educational and governmental channels, with possibility of 3rd channel. Return lines will be installed at Windstream's expense for these channels, and Windstream will pay for the listings in the TV guide.

Keough made a motion to adopt the ordinance and thus approve the ten year franchise agreement with Windstream. Mr. Killian seconded the motion.

Roll Call Vote: Mr. Keough – YES; Mr. Killian– YES; Mr. Mascolo- YES. It passed unanimously adopting Ordinance #970

IV. PUBLIC HEARINGS - RESOLUTIONS

1. A RESOLUTION OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, PENNSYLVANIA AUTHORIZING THE CHAIRMAN AND SECRETARY TO EXECUTE A LICENSE AGREEMENT BETWEEN THE TOWNSHIP OF FERGUSON AND SUNESYS, LLC SETTING FORTH THE TERMS AND CONDITIONS FOR OCCUPANCY AND MAINTENANCE OF RIGHT-OF-WAY

Mr. Kunkle said that this is the second opportunity the Township has had to enter into a license agreement with a provider placing optical fiber in the Township's right-of-way. The Township in many instances is required to maintain the right-of-way which provides for streets and sidewalk areas in the

municipality. Optical fiber line was constructed along Science Park Road and into Sandy Drive, and the company Sunesys will be paying the Township \$4,570.20 per year for 10 years in order to occupy the right-of-way with optical fiber line.

Mr. Keough made a motion to adopt the resolution and execute a license agreement between Ferguson Township and Sunesys, LLC setting forth the terms and conditions for occupancy and maintenance of the right-of-way. Mr. Killian seconded the motion.

Roll Call Vote: Mr. Keough – YES; Mr. Killian – YES; Mr. Mascolo – YES. It passed unanimously adopting Resolution #2012-18

2. A RESOLUTION OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, PENNSYLVANIA ADOPTING GUIDELINES FOR THE TOWNSHIP OF FERGUSON POLICE OFFICERS WHEN MAKING AUTHORIZED WARRANTLESS ARRESTS

Mr. Kunkle explained that the Township police force is currently seeking accreditation, a rigorous process that not many police departments in the Commonwealth have achieved. The Borough and Patton Township currently have accreditation status. Ferguson does not have a resolution authorizing warrantless arrests as required by state law in order to meet this accreditation standard.

Mr. Kunkle said that this mostly applies to Title 18 crimes and offenses such as those related to disorderly conduct, public drunkenness, obstructing highways and public passages, and purchase, consumption, possession or transport of liquor or malt beverages.

Mr. Keough made a motion to adopt the resolution adopting guidelines for Ferguson Police Officers when making authorized warrantless arrests. Mr. Killian seconded the motion.

Roll Call Vote: Mr. Killian– YES; Mr. Keough– YES; Mr. Mascolo– YES. It passed unanimously adopting Resolution #2012-19

V. COMMUNICATIONS TO THE BOARD

Mr. Keough said various citizens have called about various issues a number of which were resolved by staff. Mr. Mascolo and Mr. Killian had none.

VI. ACTION ITEMS

1. North Hills Place Park

Dr. Schell explained that the Overlook Heights Park Partners are an incorporated legal entity, and that the neighbors thank the Ferguson Supervisors for their efforts so far. Dr. Schell said that staff has outlined four points regarding the park. Dr. Schell said he believes that item four, the forth option, is the least likely to happen. He said regarding the first option, that the School Board will approve a sale to Fozard with a concurrent lease of the parcel under certain terms to the adjacent property owners for maintenance, is unlikely because Mr. Fozard has stated he wants to expand his business on park property. Dr. Schell said Mr. Fozard wants to use the park for a driveway and parking lot, and does not plan to preserve the park or uphold the deed restriction.

Dr. Schell said that based on the majority of the School Board's actions so far, they are aware of Mr. Fozard's intent and plan to sell land regardless. Dr. Schell said that the park promise began 50 years ago, and that no one has the right to compromise the park, it is a public trust. Dr. Schell said that the Overlook Heights Park Partners believe the best resolution for all concerned is item two, that the

School Board reject all bids and enter directly into a lease agreement with the adjacent property owners. He said that this way the School Board would retain legal title and have the Park Partnership maintain the land without cost to taxpayers, however inconsistent this may be with the district's desire to rid itself of the unwanted property.

Dr. Schell said that regarding item three, where the School Board turns the property over to the Township and the Park Partnership maintains the land, is also an option they are happy with. He said a public trust cannot be preserved unless it is owned by a public entity. He said that this is a good way for the Township to fulfill their commitment to preserve parks, buffer areas and open space. Dr. Schell said the Park Partnership will maintain and protect the park without taxpayer expense.

Mr. Kunkle said that Mr. Fozard sent him an e-mail, but could not attend the meeting. Mr. Fozard said that he is an adjacent property owner too, and that no matter which option is selected a private entity will have control of the land whether through lease or ownership. Mr. Kunkle said that Mr. Fozard urges the Township to consider all legal and liability related issues, and believes this move is for the interest of a small group and not the Township at large. Mr. Fozard wishes the Township would not take sides in the matter.

Mr. Mascolo asked if the site was every appropriate for further development. Mr. Kunkle said that he informed Mr. Fozard that it would be very difficult to add parking, and there would be other things involved such as consolidation of lots.

Mr. Killian made a motion to request the State College Area School District Board reject all bids and convey the property to the Township, and the Township concurrently enter into a property lease under certain terms with the adjacent Overlook Heights property owners for maintenance. Mr. Keough seconded the motion.

Mr. Keough reminded everyone that the School Board is in charge at this time; Ferguson is only conveying their thoughts on how to dispose of this or handle this property. It is the School Board who owns the property and who will take action on what options to ultimately put in place. Mr. Mascolo said it is the best interest of the Township and residents to assist with this issue, despite initially not wanting to be involved.

The motion passed unanimously.

2. Update on Musser Gap Trail

This item was postponed.

3. Harvest Field/Calvary Baptist Church – Regional Growth Boundary/Sewer Service Area

Mr. Kunkle said that on July 11 the COG Public Services/Environmental Committee met and prepared the following recommendation for DRI for the Calvary Baptist Harvest Fields location:

- 1) The acreage be reduced from 28 acres to 15 acres as proposed by the property owners.
- 2) The 15 acres identified for inclusion in the Regional Growth Boundary (RGB) shall be subdivided from the main parcel as proposed by the property owner.
- 3) Either a deed restriction or development agreement be entered into by the property owner and Harris Township that provides some form of restriction of the uses on the 15 acre property. The effect of this agreement is to limit allowable development on the property to the proposed use.

4) The approved deed restriction or development agreement will not allow housing to be constructed on the 15 acre property.

5) 15 acres will be removed from the RGB and sewer service area.

These recommendations are subject to review by a COG solicitor and the Harris Township solicitor.

The COG solicitor does not recommend that COG proceed with the deed restrictions or development agreement. He also believes that the removal of property already in the RGB is not a defensible action to be taken by COG. Finally, additionally restricting uses on the site could be considered taking under eminent domain. He did however say that Harris Township could restrict the number of acres being brought into the RGB and could limit the number of equivalent dwelling units available for use on the property.

Mr. Killian said that at committee meeting, the church solicitor made it clear that a deed restriction is not something the church would agree with.

Mr. Keough said he would consider expanding the RGB for this request. Mr. Mascolo was very against expanding. Mr. Killian said he is concerned about being able to service everyone in the RGB in the future, and that the DRI process is not completed in a responsible way. He said as of now he is not in favor of expanding the RGB.

Ms. Varner said she is concerned that if the Church is forced to put in an on-lot sewer system, it will ruin the quality of the high-quality stream nearby. Mr. Mascolo said theoretically if the system is engineered properly the stream should not be affected. Ms. Varner said she is still concerned, and would prefer that the region allow Calvary to be on the sewer system. She said that once the stream is damaged it's too late, and that it's worth the safety of the environment to let one more entity hook onto the sewer.

Mr. Varner said that he served on the Ferguson Planning Commission previously, and said that he was always under the impression that the idea behind the growth boundary is to keep the most intensive development within the boundary, not restrict any development outside of the boundary completely. He said that this project is not like a sprawling development way outside of the boundary. It is a church that has property in the area and wants to use that property for church purposes. He said it is not a large subdivision and they are very close to the boundary – this won't cause sprawl. Mr. Varner reminded the Board that this is a Church that has a community-minded position, and does projects like City Serve every year to benefit the whole community.

Mr. Varner said that allowing this church would not be going against the concept of the growth boundary the way it was established. He said when it was established, people did not know everything that would be coming in ten years, they were making the best estimate. Mr. Varner said this Church is just outside the line, and he is surprised Ferguson is so strongly against it. He repeated once more that approval would not destroy the concept of the RGB. Mr. Varner reminded the Board that a Regional Park was just approved outside of the growth boundary. Mr. Mascolo said that was for the benefit of the region, and Mr. Varner repeated that the Church does countless projects for the benefit of the entire region, not just their members.

Mr. Keough said he voted independently with Board in favor of allowing growth to proceed, however there are conditions that need to be addressed with regard to the property. He said that the community service the Church has performed is not questioned, this is just a conceptual issue that impacts the region.

4. 2nd Quarter 2012 Financial Report

Mr. Endresen provided a PowerPoint. The main highlights of his presentation included:

1. A one million dollar transfer from the general fund to the capital reserve fund to prepare for future expenditures.
2. Transfer taxes are higher in 2012, with \$128,000 so far. This shows that activity in the Township is growing and more active.
3. There was a 4.6 million dollar balance at the end of June in the general fund, which is a healthy number.
4. The Township is still in the black, but he expects a dip later in the year.

Mr. Killian asked if the increase in the transfer tax was due to more property being sold. Mr. Endresen said that usually this is due to one large property causing a spike. Mr. Killian asked if 2.4% for a collection rate is relatively high or low. Mr. Endresen said he believes it is average.

5. Discussion 2013 COG Program Plan

Mr. Kunkle reviewed a memorandum prepared by staff providing comments to the Board on the 2013 COG Program Plan. Board members responded to several of the staff comments.

Mr. Keough asked if COG is, in general, looking for ways to save money. He asked if alternate choices are considered, and noted that Ferguson complains about rising costs but isn't sure what rules are in place for finding the cheapest options. Mr. Mascolo said dropping out of various programs is the only way to reduce costs. Mr. Keough said he believes there may be other ways, and said a consultant may be the way to go.

Mr. Keough asked by how much being part of COG saves taxpayers money. Mr. Mascolo said there is no measure, and that the Finance Committee is supposed to review this but no one has the expertise.

Mr. Mascolo said that regarding the medical reserve funding on page 6, an \$82,000 refund was received, and the Personnel Committee decided to offset some of the increase for medical insurance and provide support to a wellness program with this money. He thinks everyone should have been consulted for this decision and a fund balance policy should be in place.

Mr. Mascolo said the new park maintenance building is expected to cost \$1,910,000. Mr. Mascolo said he assumed a mortgage will have to be taken since it was decided not to be added to the pool bond. Mr. Keough said he thinks this is expensive for a maintenance building.

Mr. Mascolo said he agrees with hiring a consulting firm to identify potential community fundraising for phase 2 development of the regional parks.

Mr. Mascolo said that on page 9, Mr. Steff indicates that the cost of living increase would probably be 3.3%, and agency directors recommended they do not include a merit component above that for this year because of uncertainty in revenues. He said that the Finance Committee and himself feel there should always be a merit component. Mr. Mascolo said the CPI is 3% and at least 1% of it go toward merit.

Mr. Mascolo asked who pays fees for the flexible spending account. He said the initial setup cost is \$200,000-\$600,000, and the estimated annual ongoing fee is \$3-6 per month per employee. Mr. Kunkle said that COG administration pays those, and the offsetting factor is that COG would not pay

7.65% FICA on the amount of money contributed. Mr. Kunkle also clarified that the setup fee is a one-time cost and not per employee.

On page 11, Mr. Mascolo questioned the desire to hire another fire inspector for \$95,000, including a car, yet increasing the permit fee. Mr. Kunkle said that rental units increased by nearly 3,000 units through 2013, so they need another.

Mr. Mascolo wanted more information about the library parking system, whether the Borough is collecting a percentage, and what the arrangements are. Mr. Killian said that meters are free in State College after 6pm so he is not sure how profitable this will be.

Regarding code administration on page 98, Mr. Keough said he questions how much permit revenue is costing the Township in return. Mr. Killian said this will be discussed at the next Public Services meeting.

Mr. Mascolo asked about the sewage management program inspections, where it says in 2014 all will receive an inspection. He asked what will happen to those who have had their tanks pumped in the last 3 years. Mr. Kunkle said that every in-ground septic system tank is required to be pumped every 3 years unless the Township receives a waiver from the sewage enforcement office saying a certain tank can wait until the next pumping. A waiver may be requested only one time. Mr. Mascolo said that on page 20, the 2012 budget for Ferguson is listed as \$33,795. He said this is incorrect, thinks there is a typo, and that it should read \$333,795.

Mr. Mascolo said he does not recommend the purchase of large format scanners for CRPA in page 136. He said unless they will be utilized full time, they should not be purchased. He also wants to know more details about how much they cost. Mr. Keough asked if there are other options for them, and Ms. Lang said although Ferguson Township does not have these capabilities, they send needs out to Jaru for services. Mr. Mascolo asked if Jaru will do this service CRPA needs and Mr. Kunkle said yes.

Mr. Keough said he is concerned about the number of false alarms for fires, and thinks the number is not going down as anticipated. He suggested perhaps being more aggressive with prosecution, such as a fine after 3 false alarms per year.

Mr. Keough said that regarding the development of a business plan for Regional Parks on page 44, he is not convinced that the business plan should be limited to the regional parks. He said that there is a fairly significant amount of income potential with regard to the entire COG park system.

6. Discussion for Options for Text Amendment in R4 Zoning Districts

Ms. Lang said that a developer is interested in the property for sale on Whitehall Road. This is in the R4 zoning district. All throughout the Township, there is a no-more-than-3-unrelated persons in one dwelling unit rule. This developer, however, is proposing a housing style that has different options, one of which has four bedrooms. Ms. Lang said that instead of forcing the developer to change the style of the proposed development, it may be in the Township's interest to allow this in some way. This is because the units would be more aesthetically appealing, and could have potential for a different future use. If the developer is forced to change to meet the three unrelated rule, the building would most likely be more box-like, and would not be able to be used for anything other than student housing.

Ms. Lang said that the Planning Commission's suggestion for a solution is to go with a Planned Residential Development (PRD) for the development instead of changing the zoning or ordinances.

Mr. Mascolo asked if a commercial portion is required for a PRD and Ms. Lang said no. Mr. Killian asked if PRDs are limited to certain zones and Mr. Kunkle said they can be applied to all residential districts and the IRD.

Mr. Killian, Mr. Mascolo, and Mr. Keough were all in favor of the PRD approach to resolving this issue.

7. Variance Application – The Pennsylvania State University

Mr. Kunkle explained that this is regarding a bridge on Penn State property. This bridge structure, over Slab Cabin Run, is 10 ft. wide and 50 ft. long. It is in the flood plain and in an area that would increase the flood elevation on the upstream and downstream side of the bridge in excess of 1 ft. elevation. Mr. Kunkle said that Penn State is requesting a variance to allow for the flood plain elevation in a storm to go to approximately 1.5 ft. above the flood plain elevation, and they are indicating that the increase in elevation would be confined within Penn State's property entirely, both on upstream and downstream side of the bridge. Mr. Kunkle's recommendation is for the Board to remain neutral. Mr. Kunkle said that this has not been reviewed by the Township engineer yet.

Mr. Mascolo, Mr. Killian, and Mr. Keough were in general agreement.

8. Discussion on Meeting Procedures

A meeting was scheduled for August 20th at 6pm to discuss increasing Board of Supervisors meeting efficiency.

9. Trick or Treat Night

Mr. Kunkle said that this is proposed for Wednesday, October 31st from 6-8pm for all Centre Region Municipalities except Halfmoon Township. Mr. Keough made a motion to establish Trick or Treat night. Mr. Killian seconded the motion. It passed unanimously.

10. Consent Agenda

Mr. Killian made a motion to approve the Consent Agenda items. Mr. Keough seconded the motion. It passed unanimously.

VII. REPORTS

1. Manager

Mr. Kunkle said that the fall newsletter for this year is scheduled for mailing August 31st.

Mr. Kunkle said in the Ramblewood neighborhood there were a number of complaints about recreational fires, and the type of material being burned. Mr. Kunkle said he sent a draft letter to the Ramblewood Property owners to make them aware of the issue and can reduce the problems.

Mr. Kunkle said that there does not appear to be uniformity between Ferguson, Harris, and Patton Townships regarding rural fire suppression regulations. He said a model was put together but the regulations actually adopted have been tweaked so every municipality is different. Mr. Kunkle said that Steve Behr is putting together data and an approach that might be somewhat different from the current direction. He said that Halfmoon desires a supplemental fire suppression water supply at every subdivided lot, whereas Patton and Ferguson are interested in looking at strategically locating these types of water supply cisterns at different locations in municipality based on an analysis.

Mr. Kunkle said that the number of mosquitoes that tested positive for West Nile Virus is particularly high and everyone in the area is urged to get rid of standing water. Mr. Keough requested this be put in the newsletter.

2. Public Works Director

Mr. Kunkle said coming up there is brush collection and most projects are on schedule and in budget.

3. Planning & Zoning Director

Ms. Lang said the Planning Commission met on July 23 and the two topics discussed were the R4 zoning issue and the places of assembly ordinance. Ms. Lang said that there will be a draft ready for them regarding places of Assembly by their next meeting, and then this will come to the Board for review.

VIII. APPROVAL OF THE MINUTES

1. July 2, 2012 BOS Meeting Minutes

Mr. Killian made a motion to approve the July 2, 2012 Minutes. Mr. Mascolo seconded the motion. It passed 2-1.

2. July 16, 2012 BOS Meeting Minutes

Mr. Killian made a motion to approve the July 16, 2012 Minutes. Mr. Mascolo seconded the motion. It passed 2-1.

IX. ADJOURNMENT

Mr. Killian made a motion to adjourn. Mr. Keough seconded the motion. It passed unanimously.

With no further business to come before the Board of Supervisors, Mr. Mascolo adjourned the meeting at 10:35 pm.

RESPECTFULLY SUBMITTED,

Mark Kunkle, Township Manager
For the Board of Supervisors

Date approved by the Board: 09/04/2012