

FERGUSON TOWNSHIP BOARD OF SUPERVISORS

Regular Meeting
Tuesday, September 3, 2013
7:00pm

I. ATTENDANCE

The Board of Supervisors held its first regular meeting of the month on Tuesday, September 3, 2013 at the Ferguson Township Municipal Building. In attendance were:

Board:	George Pytel, Chairman	Staff:	Mark Kunkle, Township Manager
	Richard Mascolo, Vice Chair		David Pribulka, Assistant Manager
	William Keough		Erika Green, Planning & Zoning Director
	Elliott Killian		

Others in attendance included: Heather Bird, Recording Secretary; Paul Cox, Brad and Wendy Wagner, Jon Andrews, Louwana Oliva, Bill Hechinger, Pam Steckler, Johan Zwart

II. CALL TO ORDER

Mr. Pytel called the Tuesday, September 3, 2013, regular meeting to order at 7:00pm.

III. COMMUNICATIONS TO THE BOARD

Mr. Keough stated that he has had a couple of calls about roadwork that have been completed in the Township and he will be speaking with Mr. Modricker about this.

IV. ACTION ITEMS

1. DISCUSSION ON POTENTIAL OAK WILT PROGRAM

Mr. Kunkle stated that at the last meeting, August 19th, the Board received a short briefing about Oak Wilt, a tree fungus infecting Oak Trees, and at that time the Board wanted to receive more information about a program that Patton Township had implemented back in 2004/2005. Mr. Kunkle talked with Doug Erikson, Patton Township Manager, about that program. Their program began when there was an outbreak in the Park Forest portion of the Township. They engaged Bartlett Tree Experts that surveyed Park Forest looking at 117 properties, 3 of which were in Ferguson Township. Of the 117 properties surveyed 9 trees showed up as infected. Patton Township began the program with \$75,000 for removal and treatment of the infected trees. This is not a reimbursement program, the Township covered full cost. Currently we have one resident who has an oak tree that has tested positive for Oak Wilt. At this time we have received no response from the property owner about the arborists recommended treatment.

Mr. Kunkle suggested that if the Board were to implement a program that they should begin with a survey of a defined area in Park Hills / Park Forest to determine if the one positive tree has spread to any additional trees in the area. Once the survey was completed the Board could then determine if implementing a program would be worth the costs associated with such a program.

Mr. Kunkle also spoke with the State College Borough on the program they have. The State College Borough does not enter private property to treat unless it is first discovered on a tree within the municipality right of way. They would then treat neighboring trees that could have been infected from municipal trees.

Mr. Mascolo is not in support of a program similar to Patton Township but he would be in support of a program like the Boroughs approach.

Mr. Keough stated that the region currently has several varieties of trees under siege so what would make the Oak Wilt more of a priority than the diseases associated with the Elm, Ash and Hemlock trees, which at this time have far more extensive damage and there are no programs to assist with those types of trees. The Township does look at its owned trees in those types of classifications and takes the necessary steps with removal and/or treatment of those trees. This appears to be a regional issue and maybe this discussion needs to be taken up with COG to look at this issue in its totality. This may help each municipality to have this handled at a regional level. The state of Texas has an infection of Oak Wilt approximately the size of Maine and if it appears to be as a region this significant than we could look into an arborist organizations or funding sources that may assist us as region. He understands that the disease is transmitted by beetle or insect transmission. The alternative to cutting tree down is ALAMO treatment, but this treatment does not cure the tree but it does slow the process. The more healthy the tree at infestation the faster it dies.

Mr. Pytel disagreed with both Mr. Mascolo and Mr. Keough. He believes that it must be fought now to avoid it becoming as widespread as it did in Texas. We don't have a way to save many other tree diseases but with Oak we can and we should protect.

Mr. Killian would support a program to help slow down the spread of the disease.

Mr. Keough does not support a program at this time but does not believe that the subject should be dropped. It is worthy of a municipal COG level discussion, because it is a regional wide problem. He has reservations using taxpayer money to take care of trees on private property.

Mr. Mascolo said that one to two trees per year is a homeowner problem, not an investment of taxpayer money.

No consensus, Mr. Killian and Mr. Pytel supported and Mr. Mascolo and Mr. Keough opposed.

2. DISCUSSION OF STREET LIGHT ASSESSMENT POLICY AND PROCEDURE

Mr. Pribulka referred to his memo dated August 22nd which outlines the Township's current policy for assessing for operation and maintenance of approximately 100 street lights. The Township currently uses an assessment based on the lineal footage that a property shares with the street that a street light is located on. Starting in 2012 the Township is using GIS program to locate these properties, which has reduced staff time and created a few challenges such as exemption properties still showing up as an assessable property and those properties that fall within the range but do not have lineal footage. These challenges resulted in 126 exonerations for about \$3000 in 2013. To avoid having to exonerate bills in the future the Board is asked to provide comments on the following alternatives (1) use the current assessment methodology, (2) directly from the general fund, (3) by uniform annual assessment upon each property benefited (street light districts), (4) assessment on each property benefited based upon county tax assessments, and (5) any combination of these. Who benefits from a street light? Should these be based on perceived benefit? Should they be uniform or should they be based on a variable? Is there any value in employing a combination of these methods?

Mr. Killian stated a flat fee based on the location of the street light to a property would be a good method and that the street lights benefit the Township as a whole.

Mr. Pytel said for a \$14,000 total cost that we should choose option 2, directly from the general fund.

Mr. Mascolo and Mr. Keough agree with Mr. Pytel. Mr. Mascolo compared this to a type of nuisance tax.

Mr. Pytel does prefer to have lights.

Mr. Kunkle commented that if you want to abandon the street light assessment and to roll the costs into the general fund he suggested that the board make a policy on how to add a street light so the cost doesn't continue to grow uncontrolled.

Mr. Keough said that street lights are not beneficial to drivers but to walkers. People other than the people with front footage do benefit from others street lights. Does agree we need a policy

Mr. Pytel referred to Mr. Mascolo's neighborhoods having individual lights. Mr. Kunkle stated that this is through the covenants of a Homeowners' Association.

Mr. Kunkle stated that currently a street light is added through petition.

Mr. Mascolo stated that he would like to have a recommendation from staff.

3. DISCUSSION OF STATE COLLEGE BOROUGH REQUEST TO WITHDRAW FROM CENTRE REGION CODE ADMINISTRATION

Mr. Kunkle stated this has been on the Borough agenda for upwards of a year. Over the last several months they have narrowed their discussions to 3 options. Option A - Borough would withdraw fully from the CRCA Program. All New Construction, Rental Housing and Fire Code services are managed and performed by Borough Staff. The Borough would contract most new construction services to a third party. Option B - Borough would withdraw from CRCA only for Rental Housing and Fire. The Borough would remain in CRCA for New Construction. Option E - The Borough would withdraw from the CRCA Rental Housing Program and issue all permits for rental housing. Rental housing inspections would be performed by the Centre Region Code Agency under contract with the Borough. New Construction and Fire Codes would remain with CRCA.

Options B & E would require unanimous approval by the participating municipalities. Borough Council has requested the General Forum consider options B & E at their September 23rd meeting and request a decision be rendered by the municipalities by September 30th.

A significant amount of analysis has been completed by both COG and the Borough. A financial analysis on all three options has a positive financial outcome for the Borough. For COG the impact is different. If the Borough exercises Option A the withdrawal would occur on January 1, 2015 provided Borough Council adopted an ordinance of withdrawal before January 1, 2014. COG staff has indicated that based on the average value of building permits in the Borough over the last 5 years Centre Region Code Administration revenues could be reduce by \$308,640. Existing structure revenue, which is the rental housing and fire permits, would be expected to decline by \$305,900. This would allow for lower personnel and operating expenses in some areas and should that occur this would result in a budget deficit of \$192,000 which would probably result in an increase in COG rental housing fees.

As indicated in the memo to the Board, there may be additional impacts. An example would be there may not be a transfer to the COG Capital fund from the Code Administration for capital building expenses. About \$2600 a year. Rental housing permits could increase from \$30 to \$50-\$55. Mr. Kunkle stated a few more questions.

Is the Borough entitled to any of the Code Administration fund balance? Is Council expecting to request or receive any of the code fund balances?

What are the legacy costs that the Borough will still be obligated to pay? These may include unemployment compensation, pension costs, vehicle purchases, computer purchases, computer software etc. Does Council acknowledge its obligation for legacy costs and what is the scope, amount and methodology that will be used to calculate these costs?

Which entity, the COG or the Borough, will be responsible for a construction project that was permitted by COG but would not be complete until after the date of the Borough's withdrawal? By way of example, if the COG issues the building permit for Fraser Center and conducts the inspections during 2014, will the COG remain responsible for project until a certificate of occupancy is issued or will the Borough become responsible for inspection responsibilities as of January 1, 2015. And, if so, what if any of the building permit fee should be returned to the Borough?

Mr. Kunkle stated that the Board does not need to make a decision tonight.

Mr. Killian asked with Option B & E – Could Borough withdrawal completely from codes and re-join, requiring no change to the Articles of Agreement? Mr. Kunkle stated the question is will the General Forum permit non-member entities to contract for services. At this time there is not answer for this. Other entities outside of the Centre Region may be interested in contracting for code services.

Mr. Pytel stated that a change in the Articles of the Agreement could be the beginning of the end for COG.

Mr. Mascolo agreed with Mr. Pytel but has no real objection to Options B or E but it sets the precedence to pick and choose with other COG programs. Stated the only real option is Option A, fully in or fully out.

Mr. Keough compared this discussion to Ferguson withdrawing from the library in its totality and we continue to contribute. He respects that the Borough wants to withdrawal in order to make the best economic decision for them. The partial withdrawal is the problem.

All Board members present are in agreement that they do not support changing of the Articles of Agreement to allow for a partial withdrawal from the Centre Region Code Administration. Members did indicate that they would support allowing code to contract its services to non-participating and non-COG municipalities.

4. MUNICIPAL LIENS REPORT

Mr. Kunkle gave a report on the 6 properties and approximately \$8000 in outstanding municipal liens. The information on this list is good through Friday, August 30th. The township will have an additional lien against Mr. Powers in the coming weeks. This is important for the Board to see that the township does recuperate these funds. This required no action and was for Board information only.

5. VARIANCES / APPEAL

- a. **RALPH AND MARION WHELAND VARIANCE APPLICATION, 3477 TADPOLE ROAD**

Mr. Kunkle said that Board members will recall that at the last meeting there was a conditional approval of the Wheland subdivision. One of the conditions for approval was to obtain a variance from defining the actual location of the flood plain. There is a Zone A flood plain on the property, it does affect parcels on either side of the railroad bed. This variance should apply to this subdivision plan only.

Mr. Killian made a motion to remain neutral but communicate to the Zoning Hearing Board that the variance, if granted, is subject to the condition that the variance is for this subdivision only and would not apply to future land development plans or building permits for structures located on either of the tracts created by this subdivision.. Mr. Mascolo seconded the motion. The motion passed by a vote of 3-0-1. Mr. Mascolo, Mr. Killian and Mr. Pytel in favor, Mr. Keough abstains.

b. **BRAD WAGNER, 119 ELM ROAD, PA FURNACE**

Mr. Kunkle said this variance request relates to the location of the flood plain on the property. The request is for a variance to locate the elevation of flood plain on this property. The flood plain on this property is a Zone A, which is located by soil types and not necessarily by engineering study. Where structures are built within 100ft of the flood plain, a letter of map revision would be required. The deck has been started without a permit and upon learning about the flood plain issue the applicant is requesting a variance from having to complete the flood plain analysis.

Mr. Mascolo made a motion to remain neutral. Mr. Killian seconded the motion. The motion passed unanimously.

c. **CENTRE AREA TRANSPORTATION AUTHORITY, WHITEHALL ROAD, TAX PARCEL #24-004-093F**

Mr. Kunkle said the variance is for multiple variances (9) for a property located along Whitehall Rd. Centre Area Transportation Authority is undergoing a land development project to expand and remodel their facility which is expected to take between 24 – 30 months. While undergoing this project they are looking for a second location not too far away for bus maintenance and fueling activities. The proposed second location site is owned by the State College Borough Water Authority and currently being used as the staging area by HRI for the Whitehall Road project. Of the nine variances being requested most deal with site amenities that would be included in a land development plan if the site were being developed under different circumstances, one variance is a use variance because the site is in a RA zoned area, this would not be a permitted use so they are seeking a temporary variance of this for the 30 months of their project. The next variance is to not to be required to install a buffer yard on the west, south and east side of the property and a temporary variances to permit the parking lot to be constructed without curbing and landscaping, permit gravel parking lot without striping, permit the proposed use without construction of a sidewalk, permit reduction of the minimum curb return radius at the eastern access drive, variance to permit construction of the temporary dispatch center without precise identification of the flood plain, temporary variance to permit delineation of the repair and overlay and allow them not to have to do a land development plan.

Staff supports all variances except for the request for relief of a land development plan. The reason for that is that by not having to do a land development plan it would alleviate them from having to do stormwater, E and S controls and the opportunity to comment on the highway occupancy permit from PENNDOT as examples.

Mr. Mascolo made a motion to remain neutral on Chapter 27, Sections 301, 807.15, 807.16, 809.A (5), 810.2, 808.C, 801, 213.2.D and to oppose Chapter 27, Section 1003.E. Mr. Killian Seconded the motion. The motion passed unanimously.

Mr. John Andrews, attorney for CATA, stated that prior to the Zoning Hearing Board they will be withdrawing the variance request for relief of a land development plan.

d. **CENTRE AREA TRANSPORTATION AUTHORITY, 2081 WHITEHALL ROAD**

Mr. Kunkle stated that the variance request is for their current location. The project of expanding and renovating the existing facilities has a component of roof top parking. This was not an anticipated item when the original township regulations were written for buffering in this zoning district. The variance would request not to have to put plantings on the roof top of their parking facilities.

Mr. Killian made a motion to remain neutral. Mr. Keough seconded the motion. The motion passed unanimously.

e. **MICHAEL SULLIVAN, 871 TEABERRY LANE**

Mr. Kunkle stated this is currently a vacant parcel in the Teaberry Ridge PRD. The property has a mapped flood plain. The master plan for Teaberry Phase 1 was approved in July 1993 that contained a note that stated that the master plan met the requirements for site plans for lots affected by the flood plain. Since then FEMA has remapped the floodplain on this property. It is a Zone A floodplain which does not have elevations for the limits. When the flood plain changed it is the Township Solicitors opinion that Note 15 on the PRD Master Plan was no longer applicable to this remaining lot. Adjacent lots did not do a land development plan because they were built before the flood plain location changed. Applicant has filed for a letter of map revision and has requested a letter of map amendment from FEMA that indicates that the proposed structure site is not affected by the flood plain. They are awaiting this decision from FEMA. The 1993 master plan included base floor elevations that were set to be two feet above the defined flood plain, this was in 1993 so we don't know for sure if the base elevations are correct or not.

Mr. Killian made a motion to remain neutral and that the Zoning Hearing Board wait for the decision from FEMA. Mr. Mascolo seconded the motion. The motion passed unanimously.

6. TRICK OR TREAT NIGHT

Mr. Keough made a motion to designate Thursday, October 31, 2013 between 6:00 pm – 8:00pm as Trick or Treat Night in Ferguson Township. Mr. Killian seconded the motion. The motion passed unanimously.

7. CONSENT AGENDA

Ms. Pam Steckler presented her concerns with the Natural Gas Boilers. She referred to this being a direct violation of the Community Bill of Rights. She requested to have the Pennsylvania DEP hold a hearing on the construction of the boilers in the middle of downtown State College and that all scientific inquiry of pollutants, including full life cycle of shale gas and including radioactive component studies be a part of this discussion.

Mr. Bill Hechinger stated that the Township should question Penn State's air quality plan until some issues are addressed. He stated that shale gas has radiation in it. The immediate effect on Ferguson

Township is during long rains heavy radon gas from the boilers may come straight down College Avenue towards Ferguson Township. Mr. Hechinger would also like to have a public hearing called.

Mr. Johan Zwart requested the Pennsylvania DEP to hold a hearing mainly for more people to get involved with this decision. It would help people to understand that this is safe or not safe to have.

Mr. Killian made a motion to APPROVE the consent agenda payment authorization for New Enterprise Stone & Lime \$302,106.25. Mr. Keough seconded the motion. The motion passed unanimously.

Mr. Killian made a motion to APPROVE the Penn State DEP Plan Approval Application for 2 Natural Gas Boilers with a comment to DEP requesting a public forum. Mr. Keough seconded the motion. The motion passed with a vote of 3-1. Mr. Killian, Mr. Keough, Mr. Mascolo in favor and Mr. Pytel opposed.

V. REPORTS

1. Manager

Mr. Kunkle reported three items on his report. Reminder of Chamber of Business and Industry of Centre County is coordinating an Economic Summit Wednesday, September 18th at the Match Factory in Bellefonte. The finance department staff is making significant progress on the implementation of the new Springbrook accounting software, with a go live date of October 1st. Last the Centre County Association of Township Officials fall dinner meeting will take place on September 30, 2013.

2. Public Works Director

Mr. Kunkle reported that Mr. Modricker is still out for evening meetings. Mr. Modricker's report is attached and Mr. Kunkle will answer any questions.

Mr. Keough wants to know if the Gatesburg Road from Science Park toward Nixon is completed. Mr. Kunkle stated that the shoulder backup was completed and line painting was completed. To the best of his knowledge it is complete.

3. Planning & Zoning

Ms. Green stated that the Planning Commission meeting last week was cancelled due to a lack of agenda items. The permit activity report for both July and August was included with her report. She made changes to include the address, type, declared value, and in some cases type of use or occupation. The Board preferred the new layout of the report.

VI. MINUTES

1. AUGUST 5, 2013 Board of Supervisors MEETING MINUTES

Mr. Mascolo made a motion to approve the Board of Supervisors meeting minutes from August 5, 2013. Mr. Killian seconded. The motion passed unanimously.

VII. ADJOURNMENT

Mr. Mascolo made a motion to adjourn. Mr. Killian seconded the motion. The motion passed unanimously.

With no further business to come before the Board of Supervisors, Mr. Pytel adjourned the regular meeting at 8:46pm.

RESPECTFULLY SUBMITTED,

Mark Kunkle, Township Manager
For the Board of Supervisors

Date approved by the Board: 10/07/2013