



TOWNSHIP OF UPPER UWCHLAN
BOARD OF SUPERVISORS MEETING and
CONDITIONAL USE HEARING
August 18, 2014
Approved

Attending:

Board of Supervisors

Catherine A. Tomlinson, Chair
Kevin C. Kerr, Vice-Chair
Guy A Donatelli, Member

Township Administration

Cary B. Vargo, Township Manager
Gwen A. Jonik, Township Secretary
John DeMarco, Police Chief
Jill Bukata, Township Treasurer
Al Gaspari, Codes Administrator
Dave Leh, P.E. Township Engineer
John E. Good, Esq., Township Solicitor

Mrs. Tomlinson called the meeting to order at 7:00 p.m., led the salute to the flag and offered moment of silence.

Approval of Minutes

Mr. Kerr moved, seconded by Mr. Donatelli, to approve as presented the minutes of the July 8, 2014 Board of Supervisors Workshop and the July 21, 2014 Board of Supervisors Meeting. The Motion carried unanimously.

Approval of Payments

Mr. Kerr moved, seconded by Mr. Donatelli, to approve all payments to vendors as presented. Mr. Donatelli abstained from Check #44899 to Eagle Equipment Corporation as it is a conflict with his Firm, and from #10112 as it is a client of his Firm. The Motion carried unanimously.

Treasurer's Report

Jill Bukata reported that the Township finances remain strong and all departments are operating within budget. Mr. Kerr moved, seconded by Mr. Donatelli, to accept the Treasurer's Report as presented. The Motion carried unanimously.

Supervisor's Report

Cary Vargo, on the Board's behalf, announced that the Township was the recipient of the Government Finance Officers Association (GFOA) Distinguished Budget Presentation Award for our 2014 budget document. Mr. Vargo explained that the Supervisors had tasked Staff with presenting a comprehensive and transparent document, and congratulated Jill Bukata and all of the Department Heads for the phenomenal job drafting and formalizing the 2014 budget. The Supervisors presented the formal framed Award to Jill Bukata.

Mrs. Tomlinson announced the following calendar: September 1, 2014 Office closed – Labor Day; September 3, 2014 Yard Waste Collection; September 9, 2014 4:00 p.m. Board of Supervisors Workshop; September 15, 2014 7:00 p.m. Board of Supervisors Meeting; September 17, 2014 Yard Waste Collection.

Administration Reports

Township Engineer's Report

Dave Leh reported that the PaDEP and the County Conservation District have approved the

permits for construction of trails and a parking area at Upland Farm. The Township awaits the Army Corps of Engineers' review and hopes to begin installing the trail this Fall. Mr. Leh reported that the Cutler Group is making progress on dedication punchlist items in Waynebrook.

Building and Codes Department

Al Gaspari reported that 98 building permits were issued in July, 77 of which were re-roofing permits relating to damage from the May hail storm. The majority of permits were for homes in Windsor Ridge, Eagle Hunt, Reserve at Eagle and Byers Station. There are roofing contractors from as far away as Florida, Texas, and Ohio. The projects do require a permit, 1 interim inspection and a final inspection. Mr. Gaspari also reported that Sunoco is repairing their pipelines along Park Road and Moore Road. The Zoning Hearing Board met to discuss a variance request for a canine daycare in the Eagle Industrial Park - Senn Drive. The variance was granted.

Police Chief's Report

Chief DeMarco reported there were 1,264 complaints in July; including 21 criminal arrests. School opens August 25 so expect additional traffic. There has been an increase in thefts, mainly from unlocked cars; lock your car doors and hide any valuables.

Public Works Department Report

Mike Heckman is attending the American Public Works Association convention this week.

ADMINISTRATION

Township Borrowing Approval. Cary Vargo summarized the Township and Authority's proposed borrowing to expand public sewer service through Phase II of the Route 100 Wastewater Treatment Facility (WWTF). Phase II will expand the treatment capacity from 300,000 gallons per day (GPD) to 600,000 GPD, and allow for connection to public sewer of 121 homes in Eagle Manor, Windsor Place and Heather Hill.

Mike Wolfe of Boenning & Scattergood, Tim O'Neill, Esq. and Helen Mountain, Esq., of Lamb McErlane PC have assisted the Township in preparing documents for financing \$6 million through General Obligation Bonds for the Municipal Authority to install the collection and conveyance infrastructure to those aforementioned homes and purchase the treatment/disposal capacity in the WWTF. Mike Wolfe advised that the Township's credit rating, assigned by Moody's Investors Service is "Aa2", a very good rating for the first time the Township is borrowing in this manner. The funds will be used only for public sewer projects. The debt will be serviced through public sewer user fees, not Township taxes. Tim O'Neill, Esq., Bond Counsel, advised that the Township has to adopt an Ordinance authorizing the incurrence of non-electoral debt, enacting all the financial details, which have to follow Internal Revenue Code and Securities laws, and will be reviewed and approved by the State Department of Community and Economic Development. The proposed Ordinance was duly advertised in the *Daily Local News*.

Responding to a citizen's question, Cary Vargo advised that once the construction has begun to expand the WWTF, the residents of those 3 neighborhoods will be notified of all the project details -- the WWTF construction schedule, the sewer main construction schedule, which will be simultaneous, and the cost to the residents. Once the expanded WWTF is complete, those 3 neighborhoods will have public sewer service at the same time, not one before the other.

Mr. Kerr moved, seconded by Mrs. Tomlinson, to adopt Ordinance #2014-04, authorizing the incurrence of non-electoral debt in the amount of \$6,000,000 through the issuance of a series of General Obligation Bonds to acquire treatment capacity at the existing Route 100 Wastewater Treatment Facility, construct a sanitary collection system, pumping station and force main, and pay the costs of issuance of the Bonds. The Motion carried with 2 in favor (Tomlinson, Kerr) and 1 abstention (Donatelli - the Bond Counsel are Attorneys of his Firm.) A 5-minute recess was taken in order to sign Ordinance #2014-04 and related documents.

Settlement Agreement Approval. Cary Vargo provided history regarding this Settlement Agreement. In order to obtain the necessary properties for the Developers and PennDOT to construct Graphite Mine Road, several property condemnations occurred (2007, 2008). Shortly before the Statute of Limitations expired, a tenant of Eagle Truck Center Inc., Eagle Equipment Corporation, disputed the 'displaced persons' section of the Declaration of Taking, and filed a \$210,000 claim. Following legal review by Unruh, Turner, Burke, and Frees, and discussion with the Board and Counsel, it is recommended that the Township approve the \$210,000 Settlement Agreement with Eagle Equipment Corporation. Mr. Kerr moved, seconded by Mr. Donatelli, to approve the Settlement Agreement with Eagle Equipment Corporation, in the amount of \$210,000.00. The Motion carried with 2 in favor (Tomlinson, Kerr) and 1 abstention (Donatelli – his Firm, Lamb McErlane, was previously involved in the process).

Open Burning Ordinance. Cary Vargo explained that the Township has been non-compliant with State laws and Clean Air laws in regard to prohibiting open burning. The proposed Ordinance prohibits the burning of recyclable and compostable materials. It doesn't ban fires for the purposes of cooking, ceremonial in nature, camp fires, etc. The proposed Ordinance was duly advertised in the *Daily Local News*. Mr. Kerr moved, seconded by Mr. Donatelli, to adopt Ordinance #2014-05, prohibiting the burning of trash/refuse, recyclable materials, and compostable materials. Mr. Donatelli explained that the Township's non-compliance would cause monetary penalties. A comment was made that the proposed Ordinance doesn't specify how far away from a structure one may have a permitted fire. The Motion to adopt Ordinance #2014-05 carried unanimously.

Columbia Gas Eastside Expansion Project. Cary Vargo summarized the Columbia Gas Eastside Expansion Project's (Horizontal Directional Drilling "HDD") effect on 4 township-owned properties – Fellowship Fields, Upland Farm, Hickory Park and the Lakeridge wastewater treatment facility. Mr. Vargo has been in discussions over the past 2 years with representatives of Columbia Gas (land agent: Percheron) regarding the use, impact, and reimbursement for damages to those properties. A Letter of Intent between the Township and Columbia Gas was signed this past February. The Board is requested to adopt a Resolution which would authorize the Township Manager to execute documents on the Township's behalf with Columbia Gas regarding access in road rights-of-way, access easements, roadway grants, etc. Mr. Donatelli moved, seconded by Mr. Kerr, to adopt Resolution #08-18-14-08 providing said authorization. The Motion carried unanimously.

Residents of Krauser Road commented that Columbia doesn't maintain their pipeline rights-of-way. Occasionally they clear cut over the lines and they it becomes all overgrown, quite an eyesore. They hope the Township can encourage or require better maintenance activity from Columbia going forward. Steve McNaughton asked what the Township was receiving for damages. Mr. Vargo advised it will be \$532,000 -- \$232,000 will be deposited in the Act 209 Traffic Impact Fund for improvements to Darrell Drive and the balance will be deposited in the General Fund to remediate the property that is damaged and needs to be repaired or replaced once the Project is complete.

2014 Pavement Marking Contract. Mrs. Tomlinson read Mike Heckman's recommendation to award the 2014 Pavement Marking Contract to Alpha Space Control. The bid is higher than the budget, requiring an adjustment to the list of roadways for which the Contractor will be responsible – the long lines and more complicated markings. The Public Works Department will take care of the rest, as has been done in past years, to stay within the budget. Mr. Donatelli moved, seconded by Mr. Kerr, to award the 2014 Pavement Marking Contract at the individual, per item amounts, as listed on the bid. The Motion carried unanimously.

Pension Plan Minimum Municipal Obligation. Cary Vargo explained that each year the Township must approve the next year's Pension Plan Funding. For 2015, the minimal municipal obligation (Act 44 figures) for the uniformed employee (Police) pension is \$174,599 and non-uniformed

employee pension is \$67,696. The Township also receives a market value for each pension plan. For 2015, the market value for the uniformed employee pension plan is \$211,921 and non-uniformed employee pension plan is \$75,522.

Mr. Donatelli moved, seconded by Mr. Kerr, to budget for the market value figures. The Motion carried unanimously.

Route 100 and Little Conestoga Road Trail Projects. Cary Vargo advised that the Township was awarded \$560,000 through the Delaware Valley Regional Planning Commission's (DVRPC) TAP Grant (Transportation Alternatives Program) for the first phase of trail improvements along Route 100 and Little Conestoga Road. The Route 100 segment is on the west side, from Upland Farm to Park Road, connecting with Waynebrook's existing trail, and the Little Conestoga Road segment is on the north side, from Darrell Drive to Park Road. These projects may take up to 2.5 years to complete. McMahon Associates' scope of work to design and engineer these projects totals \$236,805 and will be spread over 3 budget years. Construction is fully funded through the Grant. Mr. Donatelli moved, seconded by Mr. Kerr, to approve/accept McMahon's design and engineering proposal at \$236,805.00. The Motion carried unanimously.

Open Session

No comments were offered.

Conditional Use Hearing – Applicant: American Towers, LLC c/o Lemanowicz, LLP

John Good, Esq., opened the Conditional Use Hearing (8:17 PM). Applicant American Towers proposes the installation and operation of a 150' tall monopole communications tower on a portion of land at 780 Dorlan Mill Road, owned by Shryock Brothers (TMP 32-006-0049), located in the Limited Industrial (LI) Zoning District, which is allowable through Conditional Use Approval by the Board of Supervisors. Nancy Sage, Court Reporter, recorded the proceedings.

Mr. Good entered the following Board of Supervisors exhibits into the Record:

- B-1 Conditional Use Application, Plans and accompanying documents
- B-2 Proof of Publication
- B-3 Proof of Posting of the Property
- B-4 August 15, 2014 Memo from Gwen Jonik to the Board of Supervisors
- B-5 Planning Commission's August 14, 2014 Meeting Minutes
- B-6 Planning Commission's June 12, 2014 Meeting Minutes
- B-7 Gilmore & Associates/Consultants Review Letter dated July 3, 2014
- B-8 Zoning Hearing Board Decision Letter dated July 17, 2014
- B-9 U.S. Department of the Interior Letter dated February 7, 2014

Richard Lemanowicz, Esq., representing the Applicant, American Towers LLC, advised the Applicant is leasing a portion of the 5.9 acre property to construct a 150' tall monopole cell tower, fencing, and equipment shed. They are aware they'll need to seek a second variance from the Township Zoning Hearing Board regarding construction on steep slopes at or greater than 25%.

Mr. Lemanowicz entered the following exhibits into the Record:

- A-1 Conditional Use Application dated May 12, 2014
- A-2 Amended Memo In Support of the Application

Christine Kimmel, Esq., representing the County of Chester, requested Party of Interest status and wanted to enter into the Record an exhibit. Mr. Lemanowicz advised it could be considered exhibit A-3: Chester County's letter to Craig Kalemjian, Esq., dated July 16, 2014

John Shelton requested Party of Interest status.

Mr. Lemanowicz's called Gary Lucas, P.E., of NB&C as his first witness. Mr. Lucas referenced Sheet Z-1 and C-1 from the Application submission during his testimony. At the conclusion of Mr. Lucas' testimony, Mrs. Tomlinson inquired of the access drive width and called attention to the fact that it looks like the drive access will bisect a magnificent maple tree. Mr. Kerr inquired of emergency back-up generator testing procedures and collocation availability. Mr. Donatelli inquired of additional impervious surface.

A summary of the comments from those in attendance follows:
the dwelling is on the National Registry of Historic Places and could be damaged by this project; how close will the tower would be to the Struble Trail; there are significant noise issues from this property already as it echoes through the valley. Will the generator testing comply with decibel limitations; what is the sight line of the tower from the neighbors' properties; suggests use of a generator that is almost noiseless at the property line – exhaust system called whisper quiet exhaust system; comply with light ordinance; what constitutes an emergency, for use of the back-up generator; would the antennae array be included in the fall zone calculation; how close to the trail will the new retaining wall be; what is the pole made of; where is the nearest cell tower; what access would fire company have; how safe is the level of radiation to the trail users; what additional equipment is needed if other carriers collocate; aren't there better locations than this one to place a tower; if adding height for collocation, would another conditional use hearing be necessary; paint the tower to best disguise it.

Mr. Lemanowicz and Mr. Good discussed whether to proceed with the next witness tonight or schedule another Hearing. Mr. Lemanowicz believes they have to seek a variance regarding steep slopes from the Zoning Board so this Hearing is continued to another date. The next Hearing date will be advertised in the *Daily Local News* and on the Township website.

Open Session

Brent Waitneight asked what further testimony will entail? Mr. Lemanowicz answered that a radio frequency engineer and a land planner will provide testimony at the next Hearing.

Adjournment

There being no further business to be brought before the Board, Mrs. Tomlinson adjourned the meeting at 9:25 p.m.

Respectfully submitted,

Gwen A. Jonik
Township Secretary