

EAST FALLOWFIELD TOWNSHIP  
BOARD OF SUPERVISORS MEETING  
August 13, 2013  
Approved special workshop minutes  
6:30 PM

Call to order, silent meditation, and pledge of allegiance.

IN ATTENDANCE: Chris Makely, Chairman; Mark Toth, Vice Chairman; Chris Amentas, Member; Ed Porter, Member; Joe Pomorski, Member; Denise Miller, Township Secretary; Rosemary Moore, Township Treasurer; Bob McClintock, Township Solicitor.

Scrap items picked up by road department – Mr. Porter stated that he has concerns with the man hours and amount of days the Public Works Department is picking up scrap items. Mr. Gathercole replied that they only pick scrap items up on “Bulk” day, once a month, with a list provided by the office. Mr. Gathercole also stated that the trash contract states that the township will pick up scrap items. Buddy Rhoades stated that he did a survey on surrounding townships and they do not pick up scrap items.

Township community service – Mr. Porter is concerned that someone is doing community service for the township that was previously terminated by the township, and also being paid by the township. Mr. Gathercole stated that this person did 240 hours of community service and was not paid by the township. Mr. Gathercole also stated that community service workers are covered through the court. The Board of Supervisors (“Board”) directed Mr. McClintock to confirm this information. Mr. Makely directed Mr. Gathercole to stop community service until the paperwork comes in.

Mr. Porter suggested that Mr. Gathercole use a steel wire mesh to stop the rocks from rolling onto West Chester and South Caln Road.

Michael Grab of Nikolaus & Hohenadel, LLP – Mr. Makely made a motion to change the annual telecommunications tower fee from \$600.00 to \$150.00. Mr. Toth seconded. Jim Sisk asked if there will be any refunds for payments made. Mr. Grab replied that he understands that the motion is for the future cost, not the past. Mr. Porter suggested an annual fee of \$50.00. Mr. Grab suggested, if the fee is \$100.00, amending the motion conditioned upon his confirmation, to the Solicitor, that his client will not contest the \$600.00 already paid. Mr. Makely withdrew his motion. Mr. Pomorski made a motion to change the annual telecommunications tower fee from \$600.00 to \$100.00, on the condition that Mr. Grab confirms with the township solicitor that his client will not contest the \$600.00 previously paid. Mr. Porter seconded. Vote: Unanimous.

Mark Toth working in the township office – Mr. Makely made a motion to approve Vice Chairman Mark Toth working in the township office, as a part time administrative assistant for 137 hours at \$12.00 per hour totaling \$1,644.00, retroactively from the time period of October 2012 until May 2013. Mr. Amentas seconded. Mr. McClintock recommended adding “at the rate set by the Board of Auditors” after “at \$12.00 per hour.” Mr. Makely added this to his motion. Mr. Amentas seconded. Mr. Amentas asked Mr. McClintock what the remedy is if this motion fails. Mr. McClintock replied that the township would not have a strong case in asking Mr. Toth to pay the money back to the township. Mr. McClintock also replied that this could come up in the audit and the township could possibly be open to some kind of litigation. Buddy Rhoades stated that a motion was passed before Mr. Makely and former Supervisor Bob Sparr worked in the township office. Mr. Rhoades also stated that Mr. Toth was never approved to work in the township office. Mr. Amentas stated that if Mr. Toth worked in the office, he should be compensated, but his concern is that he doesn’t know where a Supervisor’s duties begins and ends, and to what extent it should be considered to lead into the duties that Mr. Toth performed. Mr. Sisk asked for the Solicitor’s opinion if Mr. Toth was working as a supervisor or an employee of the township. Mr. McClintock replied that he agrees that it’s not really defined in the Second Class Township Code. Wes Maughan stated that the office has been short staffed, so Mr. Toth stepped up to help out. Mr. Maughan also stated that a mistake was made and it’s time to fix it and move forward, no harm no foul. Mr. Makely stated that Mr. Toth was not hiding, or collecting a check without working. Mr. Amentas stated that he disagrees with Mr. Makely and Mr. Maughan because the harm and foul were that the public did not get to understand that the “Board” is taking this into consideration, and time to comment on the matter. Mr. Makely called for a vote. Mr. Makely and Mr. Amentas voted yea. Mr. Pomorski and Mr. Porter voted nae. Mr. Toth abstained. Vote failed. Mr. Makely directed Mrs. Miller to add this issue to the September 24 “Board” agenda. Mr. Makely also stated that he would like to get PSATS official decision on whether this was a violation of the law.

Mr. Porter stated that no employees were appointed at the reorganizational meeting. Mr. McClintock stated that the township has an ordinance for a township manager who would have the authority to hire employees. Mr. McClintock also stated that when there has not been a township manager, the “Board” has always done the hiring. Mr. Toth asked if there were

supervisors who worked for the township that were not approved. Mr. Amentas stated that Gary Barach was temporarily appointed, at a public meeting, as township treasurer. Mrs. Moore stated that Mr. Barach was not paid for this. Wes Maughan asked the Board how many hours are they going to allocate to a \$12.00 position. Mr. Porter replied that he is not going to spend his time going after Mr. Toth for reimbursement of the money to the township, but what this does do is it set the stage going forward, for the township, for anyone thinking about doing this and going through the proper stages. Buddy Rhoades commented on advertisement for township jobs. Mr. Amentas asked Mrs. Moore what initiated Mr. Toth working in the township office. Mrs. Moore directed Mr. Amentas's question to Mr. Toth. Mr. Toth replied that he worked on the 2012 audit. Mrs. Moore stated that Barbara Henry resigned, then there was a temporary ("temp") employee that left for a full time job, and then there were two more "temps" who did not work out. Mr. Amentas asked Mrs. Moore if Mr. Toth filled the time gap between the last "temp." Mrs. Moore replied "yes." Mrs. Moore also stated that Mr. Toth was definitely needed. Mr. Porter asked Mrs. Moore if she needs more people in the office now. Mrs. Moore replied that they are past the audit, the end of the year crunch, and the trash contract. Right now it's ok, but it's difficult when one person is in the office by themselves.

April 30, 2013 Treasurer's report – Mr. Makely asked Mrs. Moore if all the treasurer report's, approved after April have been approved with Mr. Toth salary on it. Mrs. Moore replied "yes." Mr. Amentas made a motion to approve the treasurer's report as presented. Mr. Makely seconded. Mr. Amentas and Mr. Makely voted yea. Mr. Porter and Mr. Pomorski voted nae. Mr. Toth abstained. Mr. Porter stated that he doesn't know why Mr. Toth would have to abstain from this vote. Mr. Amentas commented "aren't we just nearly voting on the accuracy of the state of fact of the report that Mr. Toth received a certain amount of income." Mr. McClintock replied that these reports have a line item and there could be a potential ethic commission violation. Mr. Porter asked Mr. McClintock the maximum violation. Mr. McClintock replied that he has seen \$1,000.00, but usually it is done on a case by cases basis. Vote failed. Mrs. Miller asked the Board if they want the report on the next agenda. The "Board" did not direct Mrs. Miller to add the treasurer's report to the next agenda.

Denise and Donald Mosley Zoning Variance – Mr. Makely made a motion to authorize a representative from the Law Firm Lamb McErlane to represent East Fallowfield Township at Denise and Donald Mosley's Zoning Hearing, regarding a variance for a Day Care at 212 John Stevens Drive located in the Brinton Station Development. Mr. Toth seconded. Mr. Amentas and Mr. Porter asked why a motion has to be made for Lamb McErlane to represent the township when they already do. Mrs. Miller replied that the solicitor does not go to a meeting without Board approval. Mr. McClintock stated that he knows of nothing that states a solicitor has to be at a zoning hearing, but commented that someone could make the argument that the authority for them to attend was not granted. Mr. Porter stated that Lamb McErlane would have to know the "Boards" position in order for them to represent the township. Buddy Rhoades asked if John Carnes was the zoning solicitor. Mr. McClintock replied that Mr. Carnes represents the zoning hearing board, not the township. Mr. Amentas stated that the application is asking for relief of Section 2207 for a special exception. Mr. Porter suggested enacting a township procedure where the township solicitor would attend all zoning hearings. Mr. Makely called for a vote. Vote: Unanimous.

Sandra Baxter Zoning Variance – Mr. Makely made a motion to authorize a representative from the Law Firm of Lamb McErlane to represent East Fallowfield Township at Sandra Baxter's Zoning Hearing, regarding a variance for a Day Care at 103 Bellevue Drive located in the Providence Hill Development. Mr. Toth seconded. Vote: Unanimous.

Health Insurance update – Mr. Porter stated that he and Mr. Toth and Mrs. Moore met with Robin Richardson, representing Benecon, where Ms. Richardson presented how their co-op works, and how the township has to fund a certain limit and fund another level where all the co-ops come in together. Mr. Porter explained that if the township goes into a deficit in their claim fund, or if there is a problem in the municipality that the medical has exceeded what they initially paid or what their rate was, they don't absorb the damage from that; the co-ops together operate to cover that. If it's an extreme case, the insurance company Everest, which is in a stop loss position, would cover anything that the co-op could never cover. Mr. Porter also stated that there is a potential to get a refund from the surplus, and their insurance is comparable to the township's current plan.

Mr. Porter stated that the police contract states "any changes to be made will be made available to the police officers for review by the employees at least one month in advance." Mr. McClintock stated that the police may claim that they did not have enough notice prior to that meeting. The "Board" directed Mrs. Miller to add "township insurance" to the next agenda for a vote, and for Mrs. Moore to give the police union notice that the Board is making a change to a comparable insurance plan.

Mr. Makely informed the residents that the eight Comprehensive Plan meetings are scheduled for the 6:30 PM Planning Commission workshops, the first being at their August 19, 2013 workshop.

Mr. Makely asked Mr. Toth for an update on the Act 537 meeting that he attended. Mr. Toth replied that the Department of Environmental Services will not accept the township's tattered plan that was previously submitted. Mr. Toth also said the cost to start from the beginning will be \$35,000.00 to \$50,000.00.

Proposed ("Hope Community") Development – Mr. Makely stated that he was contacted by several residents stating that the Township is not being fair, and decisions were made by previous "Board's" in relation to the Township Solicitor working with

attorneys in order to fashion the Chester County Training Center at which point someone said that there were years of negotiations, and actually there were only two meetings that took place. Mr. Makely also stated that it was brought to his attention that the current and previous Board made special considerations regarding zoning, and the Township Attorney worked with their attorney so that Mr. Richard Vermeil did not have to relocate his driveway.

Mr. Makely asked Mr. Jim Sisk to give an update on the one million gallon water tower that was to be erected on the Strasburg Hunt Development property. Mr. Sisk stated that Mr. Jim Gable, Pennsylvania American Water Company, "PAWC" agreed to put the water tower on his property. Mr. Amentas asked Mr. Sisk why he is not following a specific process. Mr. Sisk replied that the Chester County Planning Commission ("CCPC") asked him to present his plan to them because it is a unique situation, and he has put in everything that the Landscapes 2 project has asked for. Mr. Sisk replied that he is not asking for anything that two other entities have asked for. Mr. Amentas asked Mr. Sisk is it his contention that the Board deviated from that protocol in the past. Mr. Sisk replied "yes." Mr. Porter stated "not necessarily this "Board." Mr. Sisk stated that the County, Township, School District, and "Hope Community" will be beneficiaries of this development. Mr. Porter asked Mr. Sisk if this is a nonprofit idea, why isn't he tailoring it to the current zoning. Mr. Sisk replied that they are working on a strict time frame, such as if the zoning is not passed, and years pass, they miss the opportunity to make this affordable housing and the tax credits for the geothermal are expired.

Mr. Amentas asked for the proper process in applying for a zoning change. Mr. McClintock replied that the zoning change application goes in front of the Township Planning Commission for review and recommendation, which then goes before the "Board" for their recommendation and consideration.

Mr. Pomorski asked if this issue was added to the agenda. Mr. Makely replied that he put the "Hope Community" on the agenda per Mr. Sisk's request. Mr. Makely also stated that Mr. Sisk is asking the "Board" to approve the township attorney to assist his attorney, at his expense, to produce documentation to submit. Mr. Amentas asked "what documentation." Mr. Makely replied "for a zoning change." Mr. Amentas stated that it hasn't gone to the Township Planning Commission yet. Mr. Makely stated that it has been in front of the Township Planning Commission for their recommendation. Mrs. Miller stated that the Township Planning Commission does not want to make a recommendation until they receive a recommendation from the "CCPC". Buddy Rhoades stated that the Chairman should abstain, regarding the proposed "Hope Community", because he rents from Mr. Sisk. Mr. Amentas asked why the township would pay the township attorney to draft documents for a zoning change that the "Board" has not yet voted on. Mr. Sisk replied that he is paying for the township attorney fees such as a one hour call to Mr. Porter. Mr. Porter replied that he has never talked to Mr. Pompo, for any amount of time, on this issue, and asked that this particular bill be challenged. Mr. Pomorski stated that if the township was going to allow Mr. Sisk to pay the township solicitor fees, shouldn't it be approved by the "Board." Mrs. Miller replied that Mr. Sisk has signed a developer's agreement, with a \$500.00 escrow.

Mr. McClintock asked Mr. Sisk to give a brief review of the process that he has followed so far. Mr. Sisk replied that he presented a sketch plan to the Township Planning Commission, they sent him back to the Board, and the Board sent him back to the Township Planning Commission where he gave a presentation to them and Mr. Ray Ott, Landscape Architect, and the "CCPC." The "CCPC" requested Mr. Sisk make a presentation to them directly. Mr. McClintock stated that the Township Planning Commission cannot give a recommendation on a proposed zoning amendment because they do not have one. Mr. Sisk agreed and stated that is what they are trying to bring to the "Board." Mr. McClintock asked Mr. Sisk if he is asking that the Township Solicitor be approved to work with their Solicitor to draft the appropriate document at his cost. Mr. Makely stated that this is what exactly what was done with the Chester County Training Center.

Mr. Makely proceeded to make a motion when Mr. Pomorski asked him to abstain from matters regarding the proposed "Hope Community." Mr. Porter agreed. Mr. Makely replied by stating that isn't it a conflict on everything before the "Board" since all the members are residents. Mr. Amentas stated that for the Township Solicitor to work for Mr. Sisk to formulate a plan that might help him navigate and complete the process successfully also seems like a conflict of interest. Mr. McClintock replied that the township solicitor's office would be without any knowledge of what the "Board" is doing.

Mr. Sisk stated that the relationship he has with Mr. Makely is business, and the land Mr. Makely lives on has nothing to do with the proposed "Hope Community." Mr. Porter replied that they have a financial relationship.

Mr. Makely stated that EastCo. purchased the old "Prangs Junkyard" to put in a new junkyard. Mr. Makely also stated that they were given a temporary stop order. Mr. Makely asked Mrs. Miller to have Rob McLarnon, Code Official, attend the next "Board" meeting. Mr. Toth asked Mrs. Miller the status. Mrs. Miller replied that EastCo. was instructed that he needs to go to Conditional Use. Mrs. Miller also stated that there is no junkyard license with the township.

Mr. Makely made a motion to adjourn the special workshop meeting at 9:09 PM. Mr. Toth seconded. Vote: Unanimous.

Respectfully Submitted,

Denise Miller, Township Secretary