

**EAST FALLOWFIELD TOWNSHIP**  
BOARD OF SUPERVISORS MEETING  
May 27, 2014 Approved minutes  
6:30 PM

**Members Present**

Joe Pomorski, Chairman  
Steve Herzog, Vice Chairman  
Ed Porter, Member

**Township Staff Present**

Lisa Valaitis, Township Secretary  
Rosemary Moore, Township Treasurer

**Township Solicitor**

Bob McClintock

1. CALL TO ORDER, SILENT MEDITATION AND PLEDGE OF ALLEGIANCE.

Chairman Joe Pomorski called the meeting to order at 6:30 pm. Steve Herzog seconded.

2. Discussion

A. EXECUTIVE SESSIONS: The public was informed that there were Executive Sessions held on April 22<sup>nd</sup>, May 13<sup>th</sup> and May 19<sup>th</sup> regarding personnel issues.

B. APPROVAL OF MINUTES

MOTION: Joe Pomorski made a motion to approve the April 22, 2014 Board of Supervisors minutes as presented with amendments. Steve Herzog seconded.

VOTE PASSED with changes: 3-0

C. PARK & RECREATION COMMITTEE

Hat's off to Hero's / Park Day -

DISCUSSION: There was a discussion about organizing "Hat's Off to Hero's" either on Independence Day or Labor Day. Michael McClintock stated that the members of Park & Recreation would love to see Hat's Off to Hero's happen but the team doesn't have the time to commit to properly planning this event. The majority of the work involved occurs during daytime hours which conflicts with committee members' day jobs. The committee members are able to volunteer the day of the event but don't have the necessary time leading up to the event. Michael McClintock stated that they could probably put this event together if they had more volunteers. The Park & Recreation team is short two committee members.

Ed Porter asked if they'd be interested in putting together a flow chart to organize Park Day which is usually in October. He suggested the Township office could probably provide a list of contacts and participants from last year. Michael McClintock said he thinks that Friends of the Park primarily organized Park Day. Friends of the Park no longer has membership.

ACTION: Steve Herzog suggested that we post on the Township website that we need volunteers to help Park & Recreation. Tag Gathercole will contact Dave Turner to ask if he can organize "Hat's Off to Hero's" and help with Park Day.

D. PUBLIC WORKS

1) The April 2014 Road Department Monthly Report was submitted for Board and resident review.

2) Approval of Earth Engineering Incorporated's Geotechnical Investigation proposal for Mortonville Road washout for \$8,865.00:

DISCUSSION: Steve Herzog questioned if there is enough solid ground for a truck on Mortonville Road which was stated as a requirement in the Earth Engineering proposal. Tag Gathercole responded that he believes there is enough solid ground for a truck to perform the required testing. Steve Herzog also asked about the status of the detour signs. Tag Gathercole stated renting the detour signs will cost \$28.50 per day for two months. After two months it is \$20 per day. To buy the signs it would cost \$6,263. Tag Gathercole will put out signs that we currently have in the garage.

MOTION: Joe Pomorski made a motion to approve Earth Engineering Incorporated's Geotechnical Investigation proposal for Mortonville Road washout for \$8,865.00. Ed Porter seconded.

VOTE: 3-0

3) Approval of Weeds, Inc. Industrial Weed Control:

Program 1 - \$1,800 vegetation control around guard rails

Program 2 - \$2,195 controls brush and broadleaf weeds on all township road shoulders

Tag Gathercole stated this is something we have been doing every year for the past six years. The price is the same as last year. He said we could skip the shoulder treatment and just do the guard rails if we need to save money.

MOTION: Joe Pomorski made a motion to approve the payment of Weeds, Inc. Industrial Weed Control Program 1 for \$1,800 and Program 2 for \$2,195. Steve Herzog seconded.

Jim Burns, a citizen, brought up a concern about trees obscuring the view of a street sign on Strasburg Road. Buddy Rhoades had a question about the guard rail treatment.

VOTE: 3-0

E. CITIZENS BY REQUEST

1) Charlie Carter – Charlie Carter brought up the following items related to Manchester Farms:

- a. Ed Porter was going to drive through the neighborhood to view the road conditions.

Ed Porter did go through the development and view the road conditions. He saw the results of oil pans getting hit. He agrees the road conditions are poor.

- b. There was an agreement that the Board would attempt to discuss the situation with Dewey prior to taking legal action.

DISCUSSION: Joe Pomorski gave an update on reaching out to Dan Dougherty with Dewey. He reported that Mr. Dougherty felt it was unproductive for Dewey to attend a public Board meeting and would prefer that our attorneys meet. Joe Pomorski has been attempting to reach Mr. Dougherty but has been playing telephone tag. In a voice message, Mr. Dougherty indicated he'd like to sit down with the Board to discuss the situation. This would have to be done in a public meeting due to the Sunshine Act. Another suggestion Joe Pomorski made is to have one or two Board members meet with Dan Dougherty along with legal counsel and the Township engineer to resolve the issues. Joe Pomorski stated that he'd prefer to meet with Dewey at a Board meeting because the Manchester Farms residents can attend as well.

- c. Mr. Carter would like to view the agreement that the Township has with Dewey. Bob McClintock stated that Charlie Carter should submit a Right To Know Request to the Township office. The documents are public record.

- d. Emergency road repairs – Charlie Carter asked if the Township could fill in a few holes and bill Dewey for the work since they aren't maintaining the roads.

DISCUSSION: Dewey owns the roads and if the Township repairs the roads, then all the Township residents are paying for this. Bob McClintock said that the agreement states that Dewey is responsible

for road repairs. The Township can't fix the roads without an agreement to allow for a recoup of the expense. Mr. Carter asked if the Township could site Dewey in violation of their agreement with the Township. The Board would prefer to continue trying to negotiate with Dewey to resolve the conflict without taking legal action. The Board feels that this would be a quicker and less costly way to resolve the situation.

e. The empty lot is completely overgrown. Pictures submitted to Board.

2) Jim Rowland – Jim Rowland reported that he had a lengthy conversation with Dan Dougherty. Mr. Dougherty would prefer to have their legal counsel Ronald Agulnick meet with Bob McClintock and try to come to a resolution. Mr. Dougherty also requested Chris Della Penna, Jim Rowland and a few Board members attend the meeting.

Jim Rowland stated that Dewey is going to cut the lawn on the empty lot this week. There is also a possibility that the remaining empty lot may be sold to another builder to develop.

Ed Porter stated that meeting with Dewey in a public meeting is preferred because in addition to the condition of the roads in Manchester Farms, there is also an issue with the improvements to the S. Caln and West Chester Road intersection which is also part of the contract between Dewey and the Township.

ACTION: The Board will invite Dan Dougherty to the June 10, 2014 workshop meeting.

F. SOLICITOR REPORT – Nothing to report.

G. LEGAL ISSUES

1) VALIC interest calculations –

In 2009, some of the Township employees had withholdings that were supposed to go into their retirement plan but those checks were not submitted timely. The question is how to compensate these employees for the loss they've incurred due to this money not being put into their retirement plans. Since this was not a VALIC error, they had no legal obligation to help calculate the employees' loss. Bob McClintock's proposal is to calculate the lost interest by using a flat interest rate multiplied by how much was supposed to be deposited into their retirement plan.

MOTION: Joe Pomorski made a motion to authorize the Solicitor to draft a release form that employees will be able to sign off on which will give them 10% to rectify this. The total amount is \$1,223.62. Once they sign off on it, the Township will pay a pro-rated amount to each employee. Steve Herzog seconded.

Ed Porter asked why this is not an issue for the Police Department. Rosemary Moore responded by saying the Police Department was not participating in VALIC. Buddy Rhoades voiced some questions about what departments are impacted.

VOTE: 3-0

2) Recommended cell tower ordinance amendments –

DISCUSSION: Bob McClintock discussed a potential amendment to address mini cell towers. Mini cell towers are 4- 6 feet tall and used to cover gaps between full sized cell towers. In other townships, mini cell towers are cropping up in township right of ways because there are no restrictive ordinances. He questioned whether the Board wishes to allow mini cell towers in the Residential A. District, Office Industrial District and Multi-Use District? Or just Residential A. District and Office Industrial District? This decision would be based on whether the Board feels the telecommunications industry has enough coverage in the township with cell towers being allowed in the Residential A. District and Office Industrial District. Allowing cell towers in two districts is more than enough to offset a zoning challenge. Ed Porter asked if this is just in regard to telecommunications with cell signals or does this involve PECO smart meters too? Bob McClintock said PECO smart meters are not involved. PECO has a right to circumvent local ordinances under the Public Utilities Commission.

Mini cell towers are primarily used in townships that are restrictive with cell tower ordinances. East Fallowfield Township ordinances are relatively friendly for cell tower expansion.

Bob McClintock recommended dropping the multi-use district and allowing for cell phone towers in the RA and office-industrial districts.

**ACTION:** Bob McClintock will draft the amendment allowing cell towers in the Residential A. and Office-Industrial districts. The next steps will be to submit the draft to the Planning Commission and County Commission.

### 3) Outstanding Manchester Farms issues –

Bob McClintock asked the Board if they are going to set up a meeting with Dewey or would they prefer he set up a meeting with their counsel.

**ACTION:** The Board would like to first invite Dewey to attend the June 10, 2014 workshop meeting. If they aren't willing to come, then Joe Pomorski said that he would try to establish a meeting with Dan Dougherty. Ed Porter stated that if the escrow is released, then the Township would have acted again in good faith and Dewey would most likely be willing to attend a workshop.

### 4) Dewey – Manchester Farms escrow release request –

**DISCUSSION:** There was a request for an escrow release in 2012 for \$31,000 which was approved by Chris Della Penna. This would leave \$293,018.40 in the Phase 2 escrow. Bob McClintock stated that when this request first came before the Board, it was denied which instigated the problem between the Township and Dewey. Dewey is now resubmitting this escrow release request. Steve Herzog asked why the original request was denied. Several Board members stated that Dewey had not done all the required work. Bob McClintock stated to the Board that if they release the funds, and Dewey does not complete the required work, then the Township will have that much less money in the escrow to cover the cost of work completion. Ed Porter asked Tag Gathercole if he could estimate the cost of the remaining work in Manchester Farms. Tag Gathercole responded around \$450,000 to \$500,000. Ed Porter stated that meant we are already under funded in the escrow. Bob McClintock did state that the agreement provides for the Township to go after Dewey for work the Township does. Having Dewey in attendance at the meeting would have helped to get this process resolved. Charlie Carter, a Township resident, voiced a concern about whether or not there is enough money in escrow to pay for the remaining work. Ed Porter asked Bob McClintock if the Township is in violation of the MPC by not releasing the escrow request. Bob McClintock answered that the Township is potentially in violation of the MPC. Dewey can file a mandamus action and go to court to force the township to release the money. This is costly and difficult to prove. Ed Porter said that he doesn't believe Dewey will do anything until the Township releases their escrow request. The escrow release has been the biggest issue with Dewey. If we release the escrow, then the Township will have acted in good faith and would not be in violation of the MPC. Jim Rowland said that he thinks Dewey would come to a meeting if the Township releases the escrow funds. He feels they want to resolve this issue. Charlie Carter objected to giving any money to Dewey without them attending a Board meeting.

**ACTION:** Determine the balance of the Phase 1 Escrow Account. Request that someone from Dewey attend the Workshop meeting on June 10, 2014. Bob McClintock will review the agreement to determine Dewey's responsibility in regard to the intersection of S. Caln Road and West Chester Road.

## H. PLANNING COMMISSION

1) Dennis Crook spoke about Scott Farms and Bawa Muhaiyaddeen development projects. He said he received plans with sewage modules for these projects. Both developments are over five years old. One had a court ruling involved. Mr. Crook needs clarification on the open space ordinance and whether or not the original ordinance has been repealed. Bob McClintock said that Dennis could view both the old and new ordinances in the Codified Code and compare the differences. Dennis Crook needs clarification on what to do next. Do they need to put in new submissions?

Bob McClintock gave a background on each of the developments:

Bawa Muhaiyaddeen – There was a conditional use hearing and they requested a zoning variance. The Township appealed the Zoning Hearing Board decision and a settlement was reached. The settlement granted a variance limited to on site systems. This prompted them to come back with a new plan. They needed conditional use approval and land use approval. To Bob McClintock's knowledge, they have not done that. Due to the Permit Extension Act, the Bawa project has until July 2016 for any prior approvals that were granted.

Scott Farms – There was an issue with a single lot that was an old farm property (on historical list) that was sold outside of the development. The tax parcel number that was assigned to the entire property, then got assigned to the single lot that was sold. The plans were then submitted under this tax parcel which caused a lot of confusion. The sewer line was going to be run through this property which creates a problem.

ACTION: Bob McClintock is going to look into these two developments further and talk to Jamie MacCombie's office. If needed, Mr. McClintock will reach out to these developers. He will report back to the Board and Planning Commission.

#### N. NEW BUSINESS

##### 1) Rouse/Chamberlin Ltd./Ridgecrest Development–

Ted Moser stated that he has Ridgecrest under agreement with Rouse/Chamberlin and Jonathon Penders. Mr. Penders gave a presentation to the Board about the proposed Ridgecrest development. The property is the 119 acre tract of land on the corner of West Chester Road and S. Caln Road which is just east of the Manchester Farms Development. The lot count is 70 single family homes plus preservation of two existing homes for a total of 72 lots. Proposed for public sewer, public water and natural gas. Lot size is about 15,000 square feet. They are proposing homes a little bit larger than the Providence Hill neighborhood. The smallest house would be under 1,900 square feet and the largest 3,350. They will be developing in two phases. Phase 1 will be located on the south side with 27 lots. Water and sewer connections will be part of Phase 1. The water will be connected across the street and sewer will run down S. Caln Road and connect to an existing sewer system.

Jonathon Penders said that they are under contract and they hope to get started this summer with site development. They would like to discuss the following inherited planning issues with the Board:

- a) They are seeking clarification on the timing of the improvement of the intersection of S. Caln Road and West Chester Road. This would affect Phase 1 of the project. There is drainage from their property that is supposed to tie into the eventual storm drainage system that is supposed to eventually be installed in this intersection.
- b) Alternative layout to the development. This involves a walking trail as well as a recreation area which includes an exercise area and tot lot. They would also like to move the location of the exercise area and tot lot to a more centralized location within the development. The current plan shows the tot lot and a down in a lower ravine area. They would like to remove the Harkins connective plan because they don't want a trail to nowhere. There is currently nothing to connect the trail to on either end.
- c) The open space option ordinance does require that the applicant provide architectural plans of the homes. Architectural plans are part of the package being submitted to the Board tonight.
- d) Open Space Enforcement will be done with a strong HOA Board along with an individual concrete monument which is required by ordinance.

Joe Pomorski responded by saying that the Board has to work with Dewey on the question about the intersection of S. Caln Road and West Chester Roads. Dennis Crook mentioned the Greenway Belt which goes along the East and West Brandywine hooking trails together. This could be something they could look at in the future.

Jonathon Penders stated that they are hoping to have final approvals at the July meeting so they can settle and get the first Phase paved before winter. Sewer would be done in the fall. S. Caln Road would have only have to be shut down in one direction to complete the sewer work.

ACTION: Rouse/Chamberlin Ltd will attend the Board of Supervisor workshop on June 10, 2014.

Buddy Rhoades asked a question about having public participation at the workshop meeting.

#### I. CCATO – Act 167 Deadline –

Bob McClintock gave a synopsis of the Act 167 deadline. The deadline to adopt Act 167 was January 2014. DEP has given a six month extension until July 1, 2014 to adopt the act. It is not clear what the DEP will do about those townships that have not adopted Act 167. It has been suggested that the DEP will not take any formal action if a township is in the process of adopting the act after July 1, 2014.

Ed Porter asked if Act 167 could impact Rouse/Chamberlin's development. Bob McClintock responded that it could impact them depending on the timing of the Board adopting Act 167. There are three developments that could be affected by the approval of Act 167 including Ridgecrest, Scott Farm and Bawa. Ed Porter also questioned how the Township would enforce the act if adopted and how DEP would enforce this. Citizens doing simple home projects such as building a new deck would not be effected by this act.

ACTION: The Board will discuss this again at the June 10, 2014 Board of Supervisors workshop meeting. Bob McClintock will attend this meeting.

#### J. TREASURER'S REPORT

- 1) April 30, 2014 Treasurer's report – Rosemary Moore presented the Board with the April 30, 2014 Treasurer's report.

Joe Pomorski asked a question about the budget. Rosemary Moore answered to the Board's satisfaction.

MOTION: Joe Pomorski made a motion to approve the May 31, 2014 Treasurer's report as presented. Steve Herzog seconded.

Ed Porter questioned why the Planning Commission was over budget. Rosemary Moore said she thought it was the post cards for the Comprehensive Plan meeting.

VOTE: 3-0

- 2) April 2014 payment authorizations

Rosemary Moore reported that a payment check was voided today for the DEP for a dam registration fee. Municipalities are exempt from paying dam fees on a municipality owned dam. Steve Herzog asked if we could get it in writing. Rosemary Moore answered that she could.

MOTION: Joe Pomorski made a motion to approve the May 2014 payment authorizations as presented. Steve Herzog seconded.

Ed Porter questioned a vehicle repair payment. Tag Gathercole reported that repair was for the salt spreader. Steve Herzog questioned the capital projects check. Rosemary Moore answered to the Board's satisfaction.

VOTE: 3-0

- 3) Pennsylvania Municipal Retirement System Pension Plan (PMRS) – Rosemary Moore asked for confirmation on if new non-uniform employees have a 90 day probationary period before being eligible for enrollment in PMRS. The Board responded yes, there is a 90 day probationary period for new employees.
- 4) PennDOT completed evaluation of costs of winter services and the Township will be receiving a payment of \$20,204.05. The money is due to severe weather.

K. POLICE REPORT

April 2014 Police report submitted for Board and resident review.

L. HISTORICAL COMMISSION

19 Rokeby Road report submitted for Board review.

M. PLANNING COMMISSION

Dennis Crook gave an update on the Planning Commission. They have a draft for the Comprehensive Plan and are still progressing forward with it. They are trying to get consistency among the three main books. They are also making progress on the flow chart. There will be a large copy so it can be hung up in the Township office. The flow chart will help everyone see the steps involved in processes. The Board commended Dennis Crook for his job on the Planning Commission.

N. UNFINISHED BUSINESS

No unfinished business presented.

O. NEW BUSINESS

Approval of Peddler's Permit application for ice cream truck - The Board thought the main issue with this would be with developments that have strict solicitation rules. The consensus was that no one will get annoyed about an ice cream truck. The Board gave the go ahead on granting this permit.

P. PUBLIC PARTICIPATION

1) Tag Gathercole – Mr. Kilgore has been put on the Central Chester County Recycling Authority Committee. We received our \$140,000 grant which will allow the Township to get a leaf truck and vacuuming. The Composting Site was open this past weekend. The Composting site will be open again in two weeks and East Fallowfield will be responsible for manning it. Ed Porter asked about the dumpster behind the Township building. Tag Gathercole stated that we use the dumpster allow residents to dispose of bulk items. There is a fee schedule for bulk items. The Township is not charged for use of the dumpster.

The field by Mrs. Beck's property needs to be mowed, Cliff Stoltzfus has offered to cut the field for no charge. Ed Porter suggested we find out who owns the property and get written permission for the Township to cut the grass. Rosemary Moore will find out who owns the property.

2) Jim Burns - Jim Burns asked a question about the Composting Site. He questioned whether it is the procedure to keep the Composting Site open for extended hours after a severe storm. Tag Gathercole stated that they had left the Composting Site open for a period of time. Mr. Gathercole said they had to close the site now because it is full. The Composting Site will go back to being open on Saturdays according to the Central Chester County Recycling Authority schedule.

3) Dennis Crook – Dennis Crook reported that his neighbor has been leaving trash on his property. Mr. Crook asked if there are any zoning laws for this situation.

4) Buddy Rhoades – Buddy Rhoades said that he would like all the supervisors to know what is going on in regard to Dewey and to be involved with working with Dewey. He also stated that he hopes Dewey will come to the workshop meeting. He made a suggestion about looking at old minutes to get information about past legal issues and developments.

### 3. ADJOURNMENT

MOTION: Joe Pomorski made a motion to adjourn the Board of Supervisors meeting at 9:54 pm. Steve Herzog seconded.

Respectfully Submitted,

Lisa Valaitis,  
Township Secretary