

Union Township Board of Supervisors
Regular Board Meeting
June 27, 2016

The Board of Supervisors Meeting was called to order by Chairperson Larry Spahr at @ p.m. The meeting was held at the Union Township Municipal Building, 3904 Finleyville-Elrama Road, Finleyville, PA. The pledge of allegiance was recited.

Board Members in Attendance by roll call were Larry Spahr, Charles Trax, Paul Chasko, Heather Daerr, and Deborah Sargent

Also in attendance, Mr. Gary Sweat–Solicitor, Mr. James Harshman–Township Engineer, Judy Taylor–Treasurer, Debra Nigon–Secretary, and Peter Grieb–Code Enforcement Officer. Harold Ivery–Building Code Official did not attend due as he was out of town.

A representative from Cypher & Cypher delivered the 2015 audit presentation and reported that the Township is in good shape financially. In regard to revenue, \$395,000 was received over what was anticipated in the budget. The auditor said it is best to plan conservatively as has been done, which is desired. With the exception of public safety, which was \$30,000 over projections, every other budget category came in under the budgeted amount, which is also preferred. The General Fund balance was reported to be sufficiently funded. The need to continue to keep a healthy General Fund Balance was also reviewed by the auditor so that the Township has in its account the funds necessary to meet the expenses which come due before the taxes from the first quarter are deposited. A healthy fund balance also allows the Township to have funds on hand for emergencies and unforeseen expenses, without the Township having to obtain a tax anticipation loan and pay interest. In regard to internal controls, the Cypher and Cypher representative said internal controls were sufficient for a small township; however, should the Township experience any growth, they advised strengthening existing internal controls through continued division of duties to the extent that it does not burden the Township. They advised that the Township continue to plan and spend conservatively.

The pledge was recited following the presentation.

Public Comment

Mr. Spahr announced that per the Open Meeting Act, as Chairman he allows comment on agenda and non-agenda items. He requested audience members to first stand and wait to be recognized to voice their comment. Mr. Spahr also advised audience members to maintain a level of decorum.

Ms. Evans-Boren, 22 Parkvue Avenue, announced that she was taping both audio and video of the meeting. Mr. Spahr stated that recording is allowed under the law, but the Township asks that recording of Township meetings be announced.

JoEllen Meek, 124 Viareggio Way, Tuscan Estates, questioned if the developer's bond was renewed and for what amount. She was informed it was renewed at \$138,000, the same amount as the last bond, which expires in one year. Mr. Harshman explained that bonds of

this nature generally progressively decrease as the project continues. He needs to locate information which would inform him as to what the bond was expected to cover at this stage of development. Mr. Grieb reported that Mr. Danielson has been working on the pool, but has not applied for anything new. Mr. Grieb also reported that the prior engineer did not believe the bond would need to be modified for the eight additional lots the builder has voiced an interest in developing. Mr. Grieb requested permission to schedule a round table meeting, as had been done in the past, with the solicitor and engineer, since a new solicitor and engineer have been appointed. The NPDES plan, development agreement, and bond were the three things that had to be in place per the conditions placed on approval by the Planning Commission, as well as proof of sufficient capacity. In terms of capacity, Mr. Grieb reported knowledge of the developer's communication with Rick Kovach.

Mr. Harshman requested digital Legacy documents from Municipal Consulting Services prior to the round table meeting. Mr. Grieb and Ms. Taylor will work to get him a copy by Thursday. Mr. Harshman also requested a schedule of bond reductions. If they cannot be located, the developer will need to supply them.

A resident inquired as to the required height of the fence around the pool at the development. She was informed that the height needed to be 48 inches.

Mr. Gary Sweat advised the Board that it is not sufficient to only have Planning Commission Minutes as it relates to approval. He advised that a notification letter be sent out by the Zoning Officer to the developer as there are time limits associated with the decision. Mr. Grieb will send out this notification letter. Also, Mr. Sweat advised that, if the Planning Commission grants approval with conditions, then it must go to the Board of Supervisors who would decide if the conditions of the ordinance have been met, unless the applicant subsequently decides to table the application.

The solicitor requested from the Township, the Tuscan Estates Developers Agreements.

Ms. Lori Kenavey, 6088 Brownsville Road Extension, inquired of the new solicitor as to his costs as she believed the Board did not provide complete information regarding fees.

Mr. Sweat explained that he charges a \$200 month retainer which guarantees that he or an attorney in his office will be at scheduled meetings. It does not cover the time that the solicitor spends at a meeting which is based on his/her hourly rate. The Senior Attorney charges at \$135/hour, Senior Associate at \$125/hour, Junior Associate at \$100/hour, and a Paralegal at \$75/hour. He also said that he makes sure that a lower rate attorney will do the work not requiring higher level expertise. There are charges for copies. He explained to the Board that his invoice will be categorized. He reassured Ms. Kenavey that representation of the Township will include Planning Commission meetings which he believes is wise as these projects may end up before the Board. Ms. Kenavey made note that the charges were different than what had been explained at the last meeting.

Mr. Spahr read from an article in the newspaper and noted that there were errors in the article regarding the solicitor fees which he attributed to what was known and communicated at the

last meeting. Referring to the article, Mr. Spahr made the following corrections: Mr. Makel did not charge for phone calls. Mr. Sweat's retainer does not include meetings.

Ms. Lori Kenavey, 6088 Brownsville Road, commented that, per her calculations using the solicitors' rates, the work done by Mr. Makel in ten hours would have to be done in six hours by the new solicitor. Mr. Spahr estimated that the same amount of work would roughly be \$20,000 additional based on the rates.

Ms. Sargent asked the solicitor if he had ever followed Dennis Makel before and whether his fees had been more or less. Per Mr. Sweat, fees have normally been less.

Ms. Speer, 5106 Chevy Chase Street, commented that Ms. Kenavey's calculation was not entirely correct in that the new solicitor will direct some of the work to a paralegal or a junior attorney who have lower rates.

Frank LaTorre, 7 Boyka Drive, requested a breakdown of costs and complained about a prior expense of Mr. Makel which he said was \$7500 over two weeks time.

Rick Lawson, 561 McClelland Road, commented that, though \$135/per hour is a large expense, the advice the solicitor just gave the Board in regard to sending a notification letter to the Tuscany Estates developer, could end up saving money. Mr. Spahr noted that the zoning officers generally send out the notification letters.

Kevin Daerr, 6187 Route 88, commented that the issue of notification to the developer could have cost the Township money, which the solicitor may have headed off due to his advice; thereby, saving the Township money.

Peter Grieb gave the report for Municipal Consulting Services. A hearing notice was received regarding the Stonechurch trailer park. It will be before the magistrate in July.

Mr. Spahr reported that Mr. Makel sent to him a couple emails which Mr. Makel would not be responding to due to the appointment of a new solicitor. One of the emails was from a resident in regard to a pipeline near his property. He is requesting that the integrity of the pipeline be tested. In relationship to this request, Mr. Spahr commented on a recent NBC story about a 300 mile line and a recent pipeline explosion. On this subject, there have been concerns relating to taps to natural gas pipelines which were given to farmers or individual property owners at one time.

Ms. Darla Savko, 68 Aber Road, who resides near the planned EQT McIntosh compressor station, commented that one of those pipelines referenced by Mr. Spahr is in her backyard.

Departmental Reports

Another email Mr. Makel gave to Mr. Spahr was from Ron Cooper who is requesting the EDU numbers by July 1. Mr. Spahr provided that email to Jamie Harshman who reported the count ended up being 23 and 2, as in the past. Mr. Harshman added that he provided a thorough explanation to Mr. Cooper of the complications in providing the count such as multiple buildings on one lot, rental units, boundary lines, and vacant lots. He should now have everything that he needs to finish the intermunicipal agreement.

In regard to the item on Overlook Street area sewerage, Mr. Chasko suggested that Ms. Taylor introduce Gary Sweat to the manager at South Park to ensure his inclusion in the matter.

Jamie Harshman delivered the engineering report. He provided to the Board one hard copy each of three sewer routing concept drawings: one for Overlook Area, one for Mingo Circle, and one for a potential Finleyville-Elrama Road Sanitary Sewer Extension Project. He requested authorization to move forward on Act 537 Planning. In regard to the Mingo Circle issues, Emily Shade of the DEP gave the Township 90 days in her letter dated May 5, to respond. The sewage planning for Mingo Circle could simply be for on-lot management programs or for sewage as depicted in the drawing provided. It was suggested that it may be best to have a Workshop on sewer projects. Mr. Chasko also commented that he has information he would like to provide to the engineer.

Motion to schedule and advertise a Workshop on Sewer Projects on July 11, 2016 at 6:00 p.m., as presented by the Secretary, subject to being true and correct.

Motion by Heather Daerr, Second by Paul Chasko

Roll call vote: Spahr-yes, Trax-yes, Chasko-yes, Sargent-yes, Daerr-yes. Motion carried.

In terms of Jason and Jack Street Culvert Projects, Mr. Harshman proposed to replace the existing construction with an aluminum arch culvert which he said could be done for \$20,000 less than a concrete structure and would double the opening. The proposed aluminum arch culvert has a life of 50 years. Mr. Trax requested and received confirmation from the engineer that it would have the same weight ratio as a concrete structure. The engineer's estimate for replacement was: \$111,000 Jason Street culvert and \$123,000 for the Jack Street culvert, for a total of \$234,000. The Township received a \$150,000 Local Share grant, which was less than requested. In its grant application, the Township committed matching funds to bring the total to \$255,000 for the culvert replacement project. Mr. Harshman said that, when he puts the project out for bid, he would like to include a Ridge Road culvert repair as an alternate, just in case that culvert repair could be done as well with the funds available. He reported that Kerry Fox of the Local Share confirmed to him that the addition of the culvert would be acceptable since it would be in the same watershed. Mr. Harshman reported that the next task would be to submit permit applications unless the Board wanted to steer in another direction.

In regard to the list of documents needed from KLH, Mr. Harshman is waiting for KLH invoices that he wishes to use to construct the list. Ms. Taylor has agreed to pull and provide those documents to him.

In terms of the WCCD Garvin Road Culvert grant application, Mr. Harshman felt confident that the Township would be funded; however, he did not have the scope with him to discuss it further. He referred the Board to his written report for information on any other engineering work.

The solicitor did not have a report this time. He did mention, however, that he had communications from Judy Taylor on right-to-know requests which were recently submitted to her as right-to-know officer for the Township. He asked for and received confirmation that his presence was not required at the workshop scheduled for July 11 on sewerage issues. Mr. Harshman said that he would like to include him for discussions on funding issues which would be down the road.

Jason Jaki delivered the Recreation Board report. The survey of Pleasant Stream park is scheduled for this week and should be done by this Wednesday.

Motion to approve the General Fund Bills as presented by the Treasurer, subject to being true and correct.

Motion by Paul Chasko, Second by Charles Trax

Roll call vote: Spahr-yes, Trax-yes, Chasko-yes, Sargent-yes, Daerr-yes. Motion carried.

Motion to approve Payroll #11 dated June 3, 2016, in the sum of \$13,917.77 as presented by the Treasurer, subject to being true and correct.

Motion by Heather Daerr, Second by Charles Trax

Roll call vote: Spahr-yes, Trax-yes, Chasko-yes, Sargent-yes, Daerr-yes. Motion carried.

Motion to approve Payroll #12 dated June 17, 2016, in the sum of \$10,186.34, as presented by the Treasurer, subject to being true and correct.

Motion by Deborah Sargent, Second by Charles Trax

Roll call vote: Spahr-yes, Trax-yes, Chasko-yes, Sargent-yes, Daerr-yes. Motion carried.

A request to rename Brownsville Park in honor of area veterans was discussed.

Lori Kenavey commented that there are people that have a hard time finding the park and having Brownsville in the name at least gets them on the right street. Ms. Kenavey also commented about the terms of the grant for Brownsville Park requiring that a sign be placed informing visitors that the park was built using grant money. The sign that had been erected was hit by a tractor trailer and the sign was never replaced. The road crew will follow up on the sign.

Motion to rename Brownsville Park to Union Township Community and Veterans Memorial Park.

Motion by Deborah Sargent, Second by Paul Chasko

Roll call vote: Spahr-yes, Trax-yes, Chasko-yes, Sargent-yes, Daerr-yes. Motion carried.

Motion carried.

Mr. Harshman addressed the agenda item on Walsh Construction. Walsh Construction is a contractor hired by PennDot for work to be done on Route 88. The contractor has requested reconsideration of their request to use Patterson Road as a detour. Mr. Harshman said the contractor is willing to provide some upgrades to the road if the Township agrees to the request. Mr. Harshman asked for the Board's direction. He has supplied a Heavy Hauling Agreement to the contractor. It was noted that the solicitor should review the agreement which Harshman CE Group generally uses which also needs compared against the one typically used by the Township. Mr. Spahr commented that there is a trestle on the road which may present an issue.

Motion to authorize Mr. Harshman to pursue an agreement with PennDot for the use of Patterson Road as described by the engineer.

Motion by Heather Daerr, Second by Charles Trax

Roll call vote: Spahr-yes, Trax-yes, Chasko-yes, Sargent-yes, Daerr-yes. Motion carried.

The application of Mobilitie (PMI) for a right-of-way was discussed. The Board would like to see a map showing the location. Mr. Harshman said he saw the application and believes it should go to Zoning for a conditional use first.

In terms of the agenda item on the Indemnification Agreement supplied by Finleyville Airport, the agreement needs to be sent to Mr. Sweat for evaluation.

Ms. Daerr addressed the agenda item on Mr. Opfermann's issues with the Township. She explained that Mr. Opfermann reached out to her with regard to his problems with Mr. Vibostak and the Township. Mr. Opfermann, 3 Airport Road, who attended the meeting, commented about ordinance compliance issues. He mentioned complaints from Mr. Vibostak that led to citations relating to his chickens and for not having his construction equipment enclosed. He feels that he has been targeted for selective zoning or harassment as there are other neighbors with chickens and he has observed construction equipment in the back yard of other residents which are not enclosed. He also said that, in November 2004, he met with Marc Todd who was the Code Enforcement Officer at the time who he consulted in regard to the intended use of a property that he was considering for purchase and was told he would be in compliance. He told the Board that the property was a mess before he purchased it and that he subsequently built a building which was occupied by Ingersoll Rand. He has since driven around and compiled a list of what he believes are 190 ordinance violations which are not being enforced.

Mr. Grieb, Code Enforcement Officer, explained that the residents have been next to one another for six years but recently started filing complaints. They recently received multiple complaints from Mr. Vibostak about violations on property owned by Mr. Opferman. They also received recent complaints from Mr. Opferman about the property owned by Mr. Vibostak. However, there are also at least two other individuals who were sent notices about violations.

Mary Vibostak, 19 Lake Drive, confirmed that other neighbors have been sent violation notices. She informed the Board that neighbors have mentioned the notices to them, assuming that she and her husband filed the complaints against them. Also, Ms. Vibostak said the reason they

complained about Mr. Opferman's chickens was because they are near her well water which is a health concern.

Mr. Opferman also reported that he was considering building a fence and a wall to bring the property into compliance and it was discovered that Mr. Vibostak's shed is in the front yard and is on his property. Per the solicitor, a variance does not allow a neighbor to have shed on his property. The shed has been there for 23 years.

Mr. Grieb advised Mr. Opferman to start his building so that it becomes a contractor's business instead of a contractor's yard. In terms of chickens, Mr. Grieb has been sending out violation letters. Mr. Grieb and Ms. Daerr suggested that, due to a movement with chickens, perhaps the Board would want to consider a chicken ordinance. The Township already has an ordinance dealing with farm animals.

In regard to a drainage project on McChain Road, Mr. Harshman suggested Mr. Sweat look at an easement agreement. Mr. Harshman provided a drainage swale drawing to Mr. Sweat.

The staff requested direction as to whether any changes would be occurring with the new legal representation in terms of how and when they supply documents or questions to the solicitor for legal review. It was determined that the staff will continue to provide email pertaining to legal matters to the solicitor, per their discretion. If the solicitor feels that this is a problem in any way, he will let us know. It was Mr. Spahr's opinion that any Board member should feel free to pick up the phone and contact the solicitor. Mr. Sweat suggested that the Board direct work to him through the office on any matters they find of importance.

An extra Beach House police duty was on the agenda due to a request from the owner. The Beach House will be regularly scheduling an event on Thursdays for which they would like a police presence. Currently, the owner pays half the cost of having a police officer there on Fridays.

Motion to increase coverage by SWRPD at the Beach House on Thursday nights with the Beach House to pay half the cost.

Motion by Paul Chasko, Second by Charles Trax

Roll call vote: Spahr-yes, Trax-yes, Chasko-yes, Sargent-yes, Daerr-yes. Motion carried. .

Motion carried.

Mr. Mellor reported work on the bank by Allegheny Valley Railroad is causing erosion of the bank. Railroad Street is being undercut. He believes placement of rip rap would prevent the destabilization of the road. The railroad has agreed to do nothing but provide flaggers. In the meantime, dirt is washing away on the hillside. The engineer and road superintendent will provide an estimate of cost. The solicitor made reference to the law in terms of the railroad which makes it difficult to gain cooperation.

Mr. Lawson commented upon what he heard, due to issues he had to resolve at his own property, will be an increase in the speed limit of about 10 mph by trains travelling through the Township. The state has communicated to Mr. Lawson that they pay for the lights and

crossings while the railroad maintains the bed. He suggested that the Board have the solicitor pursue having the speed limit kept at its current speed.

Mr. Spahr announced that the next agenda item had to deal with a right-to-know request which was received by the WTAE Investigative Division, a local television station, which requested copies of emails originating from certain Supervisors which would include those on personally owned devices and computers. Mr. Spahr said the right-to-know officer was requested to obtain quotes for a professional forensic review of the personally owned computers and devices in relationship to providing the records. The quotes came in around \$6000. Some IT firms said they would be able to access any deleted emails and others said they could not.

Ms. Taylor said that she was advised that the Township get archiving capacity going forward. Other advice was that each Supervisor should have their own Township email account.

Gary Sweat was asked to comment about the request and informed the Board that Commonwealth Court has ruled that Township Supervisors who communicate with each other on a personal computer on Township business have created a public record. He cautioned the Board relative to communicating by email. Also, he advised the Board that, if any costs are incurred to reproduce the record, the requestor must pay the cost. If the party requesting the records is informed that it will be a certain amount to have an expert perform the search, he/she could reduce the request. If the Township provides the information itself, the costs would be less. Mr. Spahr's concern is that, if each affected Supervisor provides the records or the Township provides the records, there will be questions as to whether the Township or each Supervisor fully complied.

It was determined that Ms. Taylor will communicate that the Board's policy is that the Township would not undertake providing the records in electronic form themselves but that a professional IT services company would have to be engaged and the requestor would be responsible for that cost.

Ms. Daerr announced that she wants no more communication on email and requested everything by hard copy. Ms. Daerr also provided two envelopes – one to the right-to-know officer and one to the solicitor. She explained that she printed all emails that were the subject of the request and was handing them over in hard copy form.

Larry Spahr mentioned that he chooses not to communicate by email in light of the problems with public records and the right-to-know law.

Gary Sweat suggested that it be posted on the website who is making the right-to-know request and what it cost the Township.

There was speculation regarding the origin of the request by audience members as well as the video taken by Ms. Evans-Boren as well as mention of subsequent right-to-know requests which have been received for telephone records from the office. It was noted that the right-to-know request came in on June 13th at 2:00 p.m. in the afternoon before the Regular Board meeting which took place on that day. The requirement is that the Township has thirty days to supply the records.

The Board will revisit the issue of equipment and procedures to protect themselves in this regard in the future.

In terms of the agenda item regarding parliamentary procedure or Robert's Rules, Mr. Spahr said that use of Robert's Rules was approved by the Board in the past and has been used on piggy back motions and in other instances. However, he noted that the rules are very detailed and technical.

The Board reviewed the Minutes. Paul Chasko noted that the Minutes referenced that the agreement with Monongahela is a three year agreement which he said is incorrect and needs to be modified to one year in the June 13, 2016 Minutes. The secretary had a question in regard to a three-part process mentioned in a Motion on June 13 which will be copied from the May 23 Minutes taken by Ms. Taylor. Mr. Spahr had a revision to phrasing in the May 23, 2016 Minutes.

Mr. Spahr noted that the Township received notification of the impact fee funds to be received by the Township. The Township will receive \$30,000 less in impact fee monies than last year.

Ms. Bernadette Speer commented on a reduction in dumping fees when she was secretary which went from \$120,000 in dumping fees in 1994 down to \$45,000 per year. During that time during which she served as secretary/treasurer, the Township struggled to make payroll and had to wait to buy supplies and other items until the money from tax collection was collected and deposited. Her comment was that the Township should not have relied on the dumping fees since this was not a dependable funding source and could go away, which it did. Since the disbanding of the police force, she said that \$645,000 could be put back into the Township to build up the reserve. Also, more is collected in EIT now which was \$380,000 when she served as secretary/treasurer. Ms. Taylor informed those present that EIT is at \$500,000 currently. Ms. Speer also provided other numbers from her tenure in 2003 as follows: part-time secretary/treasurer - \$20,000 per year, Zoning - \$10,000 per year, solicitor fees - \$12,000 to \$15,000 per year, never over \$20,000. In response to a question on PURTA, her comment was that, since PURTA was divided by many municipalities, the Township did not benefit much from PURTA.

In terms of increasing the tax revenues, Ms. Daerr asked Mr. Sweat's opinion on the best way to do that. Mr. Sweat felt that commercial development was the best way to bring in additional tax dollars since commercial development doesn't require that schools be improved to accommodate a growing population. In terms of oil and gas development, the solicitor suggested to the Board that trailer fees have been assessed by other Townships to increase revenue. He also pointed to savings Townships experience when the developers pave at their expense roads they've used in heavy hauling.

Motion to approve the Minutes of May 23, May 24 and June 13, 2016 with revisions as noted. Motion by Deborah Sargent, Second by Paul Chasko
Roll call vote: Spahr-yes, Trax-yes, Chasko-yes, Sargent-yes, Daerr-yes. Motion carried. .
Motion carried.

For Board Approval: July 27, 2016

Motion to adjourn at 10:40 p.m.

Motion by Charles Trax, Second by Heather Daerr

Roll call vote: Spahr-yes, Trax-yes, Chasko-yes, Sargent-yes, Daerr-yes. Motion carried. .

Motion carried.


Debra A. Nigon, Secretary