

MIDDLETOWN TOWNSHIP
DELAWARE COUNTY, PENNSYLVANIA

April 8, 2013

Minutes of Regular Meeting of Township Council Held on Monday, April 8, 2013 at 7:00 PM in the Township Building, 27 N. Pennell Road

Present: M. Amoroso, L. Bradshaw, R. Carlson, S. Galloway, C. Quinn, N. Shropshire
B. Clark, J. Damico

1. Chairperson Ms. Bradshaw opened the meeting with the Pledge of Allegiance to the Flag.

Ms. Bradshaw announced that Council met in Executive Session prior to tonight's meeting to discuss some legal issues.

2. Special Presentation

Ms. Bradshaw congratulated Justin Perry, a member of BSA Troop 404, on attaining the rank of Eagle Scout. She invited Justin to come forward, and asked him to describe his Eagle Scout project. Justin explained that he reconstructed a foot bridge on the Rocky Run Trail over the Rocky Run. The foot bridge had collapsed and most of the planks for the walkway across the stream had washed away. He and several of his fellow scouts spent three weekends moving the extremely heavy telephone poles that formed the base of the foot bridge approximately 20 ft. to higher ground. Once the telephone poles were in place new planks were nailed to the telephone poles to complete the new foot bridge.

Justin stated that he began working on the project last April and work on the foot bridge was finished in November. He displayed a poster he prepared with photographs showing progress at various stages of the project.

Justin introduced Troop Leader Thomas Rosenberger, Assistant Troop Leader Paul Schmeltzer, who is his uncle, and members of the troop including Blake Blazinski, Joseph Loeper, Brian Taylor, Sam Messer, Patrick Laurence and Christopher Antenucci.

Ms. Bradshaw presented a Certificate of Appreciation to Justin and expressed appreciation to him for reconstructing the foot bridge for use by hikers on the Rocky Run Trail.

She also presented Middletown T-shirts donated by the Park and Recreation Department for distribution to members of the troop.

Mr. Shropshire congratulated Justin on attaining the rank of Eagle Scout and commented that people do not realize the accomplishments of young men in BSA troops who work up through the ranks to become Eagle Scouts.

3. Approval of Minutes – March 11, 2013 Regular Meeting
March 25, 2013 Regular Meeting

Mr. Carlson moved for approval of the Minutes of the March 11, 2013 Regular Meeting. Mrs. Amoroso seconded the motion, and the Minutes were approved as submitted by vote of 5-0; Mr. Shropshire abstained from voting because he was not present at the meeting.

Mr. Galloway moved for approval of the Minutes of the March 25, 2013 Regular Meeting. Mrs. Amoroso seconded the motion, and the Minutes were approved as submitted by unanimous vote 6-0.

4. Comments from the Public

Kathy Skolsky, 55 Cherrywood Lane, explained that she filed a Right to Know request 3-4 weeks ago relating to stormwater drainage on her street, although not directly on her property. She left copies of information for Mr. Clark's review, and when she did not receive a response, she renewed her request approximately two weeks ago.

Mr. Clark explained that he has been searching the files for the documents Ms. Skolsky requested, but has not found a stormwater management plan for Cherrywood Lane. He noted that the Township retains copies of approved subdivision plans but some of the older developments may not include a stormwater management plan. He suggested he will write a formal response to Ms. Skolsky on her Right to Know request indicating he is still searching for the documents she requested.

5. Reports

A. Finance and Administration: Mr. Carlson stated that John Molloy with PFM Asset Management reported on the status of the Employee Pension Plan for the fourth quarter 2012. The Committee also discussed renewal of the cable TV franchise agreement (Agenda Item 7G). Members of the Township Sewer Authority Board reviewed a proposed ordinance regarding inspection of building laterals.

B. Manager: Mr. Clark announced that Saturday, April 27th, has been designated as National Drug Take Back Day – No questions asked. This is an opportunity to clean out the medicine cabinet to dispose of out-of-date or unused drugs in a safe and proper manner rather than flushing them into the sewer system. Drugs may be dropped off at the State Police Barracks in Middletown between 10 AM and 2 PM. A State Trooper will be on duty to make certain no one attempts to remove drugs from the disposal bins. Drop-off sites are also

available at 9 or 10 other locations in Delaware County. For security purposes, it is recommended that name and address labels should be removed from medicine bottles.

Mr. Clark noted that also on April 27th, the Pennsylvania Resources Council will sponsor collection of old or unusable electronic devices such as computers, cell phones, TVs, iPods, etc. He explained that effective January 2013 landfills and solid waste disposal facilities in Pennsylvania are no longer permitted to accept electronic devices. Electronic items can be deposited in a PRC truck that will be parked in the Township building parking lot from 9 AM to 3 PM. No hazardous waste materials will be accepted.

5. Public Hearing

A. Proposed Amendment of Zoning Ordinance to Rezone 2.546 Acres of Ground Located at 386-390 Dutton Mill Road from R-1 Residence District to R-2 Residence District

Ms. Bradshaw opened the Public Hearing on the proposed amendment of the Zoning Ordinance to rezone 2.546 acres of ground located at 386-390 Dutton Mill Road from R-1 Residence District to R-2 Residence District.

Timothy Sullivan, Esquire, representing John DiPasquale, owner of the property, explained that the irregularly shaped 4.5 acre property abuts the homes on Mary Ann Drive and shares the property line with the Delaware County Field and Stream Association to the rear, and wraps around the Langan and Skinner properties on the Dutton Mill Road frontage. He noted that a 2-lot subdivision plan was approved for development of the property in 2006-2007 but the plan was never recorded. The applicant now proposes to develop three residential building lots on a 2.546 acre portion of the property and has requested that the parcel be rezoned from R-1 to R-2 to create three lots.

Mr. Sullivan explained that Lot 1 will be located on Dutton Mill Road and Lots 2 and 3 will be interior lots. He pointed out that properties surrounding the DiPasquale land are variously zoned. The properties on Dutton Mill Road at Rt. 352 are zoned R-2, the Harrison Road and Preston Road properties are R-4, the Mary Ann Drive properties were constructed in the early to mid-1970s and are zoned R-2, the Sweeney property is R-5, the Methodist Church is R-1, and the Skinner and Langan properties are R-1. The applicant believes that the proposed rezoning of the 2.546 acre parcel will result in a better subdivision and will offer benefits for the Township.

Mr. Sullivan pointed out that the Langan driveway accesses Dutton Mill Road at a dangerous "S" curve. The common driveway that will serve the new lots will be approximately 25 ft. farther away from the "S" curve. It was suggested that access to the Langan property be tied in to the common driveway and that the existing separate Langan driveway be abandoned. This would eliminate the driveway at the "S" curve and would improve sight distance on Dutton Mill Road. Mr. Langan agreed to make the change provided Mr. DiPasquale paid for eliminating the existing Langan driveway and provide a 15 ft. parking area similar to the parking space at the end of the existing driveway.

Mr. Sullivan pointed out that the new lots will be served by public water and the public sanitary sewer system. A fire hydrant is proposed to be installed at the intersection of Dutton Mill Road and the common driveway, and will supplement existing hydrants on Mary Ann Drive, on Chester Creek Road at Gooney Beach and at Dutton Mill and Lincoln Roads in Brookhaven. He noted that the Dutton Mill interceptor crosses the rear of the DiPasquale property and the applicant will grant an easement to the Sewer Authority for access to the interceptor.

Mr. Sullivan stated that the Land Planning Committee was receptive to rezoning the 2.546 acre parcel and the Planning Commission supported the change in zoning. The staff review comments have been or will be addressed. He noted that Mr. Rothe is still reviewing the most recent plan revision and the applicant will make any additional revisions necessary.

Mr. Shropshire pointed out that there have been numerous accidents at the "S" curve on Dutton Mill Road, and incidents where vehicles traveling too fast missed the curve and hit the porch of the house. He suggested that the new house on Lot 1 should be moved back as far as possible from Dutton Mill Road. Gus Houtmann, project engineer, explained that the house on Lot 1 will be moved away from Dutton Mill Road to the extent possible without encroaching into the steep slope area.

Mr. Damico noted for the record that notice of the Public Hearing was published in the Delaware County Daily Times on November 1 and November 8, 2012 and was continued by date certain on several occasions until tonight's meeting. Proof of publication is offered for the record as Township Exhibit T-1. The Public Notice posted on November 16, 2012 notifying the public of the timing of the Public Hearing is offered as Exhibit T-2. Proof that this matter was considered at the public meeting of the Township Planning Commission on November 13, 2012 is marked Exhibit T-3, and the report of the Delaware County Planning Department dated November 15, 2012 recommending adoption of the ordinance amendment is marked Exhibit T-4.

Robert Diorio, Esquire, representing the Delaware County Field and Stream Association and William George, an attorney and long time member of the Association, entered appearances in opposition to the request to rezone 2.546 acres of the DiPasquale property.

Mr. Diorio stated that Mr. Sullivan is a skilled attorney and expert in these matters, as evidenced by his presentation. He explained that it is the Gun Club's position that the proposed rezoning of the DiPasquale property would benefit the applicant but would not be in the best interest of the Township or the Gun Club. He noted that the Zoning Map is dated 2006 and depicts the zoning that has been in place since that time.

Mr. Clark stated that that the Zoning Ordinance was adopted in 1986 and the zoning map reflects the zoning established when the ordinance was adopted.

Mr. Diorio pointed out that the applicant received approval for a 2-lot subdivision several years ago and now wants to squeeze in another lot. Three lots will create additional traffic on heavily traveled Dutton Mill Road. Development will be pushed closer to the Gun Club property and will increase concerns about the possibility of children wandering on to the

Gun Club property when members are shooting at clay trap targets. The applicant's property was not envisioned for three residential lots. One portion of the applicant's property will remain zoned R-1 and the three new lots will be zoned R-2 if the rezoning is approved.

Mr. Galloway asked Mr. Diorio to trace the boundary line between the applicant's property and the Gun Club property on the plan on display. Mr. Diorio pointed out that the buffer on the Gun Club property extends for 150 ft. along the property line to Chester Creek Road.

Mr. Galloway asked Mr. Diorio to describe a clay trap and point out where the clay trap is located on the Gun Club property. Mr. Diorio explained that clay discs are shot out of a manually operated machine and Gun Club members try to shoot as many discs as they can within a certain amount of time. The clay trap is located close to the area where new lots will be, and Lot 3 will be closest to the Gun Club.

Mrs. Amoroso noted that the Langan property is approximately one-half acre, and is a pre-existing non-conforming lot zoned R-1, and the Skinner property is less than a half acre. The new Lot 3 will include the appendage down to Chester Creek Road. Mr. Sullivan explained that Lot 3 will contain 2.124 total acres or 1.547 net acres. Lot 1 will contain 1.65 total acres, or 0.786 net acres and Lot 2 will contain 0.566 net acres.

Mr. Sullivan pointed out that property owners have a right to develop their properties. The Gun Club members do not want any houses abutting their property, and do not want to deal with potential complaints about the noise created by shooting targets. Mr. Diorio agreed that property owners should be permitted to pursue legal use of their land. It was anticipated that there would be two dwellings on the DiPasquale property and Gun Club members are not in favor of a third lot. The new homeowners will be exposed to noise issues and possible safety factors. It is important that prospective buyers be made aware of the risk factor before purchasing one of the lots. Mrs. Amoroso pointed out that buyers would face the same problems whether two or three lots are developed.

Mr. Galloway questioned how frequently Gun Club members visit the Gun Club for target shooting, and assumed there would be more activity on weekends. Mr. Diorio replied that the Gun Club is open to members 7 days a week during daylight hours. Mr. Galloway asked about the projectile from the guns. Mr. Diorio stated that projectile is shot gun shells or pellets.

Ms. Skolsky inquired whether sanitary sewer service will be provided for the new lots. Mr. Sullivan replied that public sanitary sewer service and public water will be provided for the new lots. Ms. Skolsky stated there are problems with the sewer system, which is one reason for the moratorium. She added that she cannot understand how the Township can consider approving this plan with no possibility that the moratorium on sewer connections will be lifted any time soon.

Mr. Sullivan stated that he has been a member of the Sewer Authority for 16 years and has served as Chairman of the Board for a number of years. The moratorium has nothing to do with Middletown's sewage collection system but relates to sewage treatment at the Southwest

Delaware County Municipal Authority treatment plant. Middletown and Southwest recently entered into a global agreement, and the moratorium will be lifted as soon as DEP approves the agreement. The Southwest treatment plan will cease operations by November 2014. The Middletown Sewer Authority entered into a contract with the Delaware County Regional Water Quality Control (DELCORA) and the Township's sewage will be conveyed to the DELCORA plant in Chester for treatment. DELCORA has ample capacity and is looking for more customers.

Paul Schmeltzer, 620 North Middletown Road, inquired what safety precautions are provided by the Gun Club to insure that residents or small children do not wander on to the Gun Club property into the shooting range. He asked if there is any buffer between the clay trap and the DiPasquale property. Mr. Diorio replied that a natural growth buffer extends along the Gun Club property line to Chester Creek Road. He added he is not certain how far from the clay trap the new dwellings on the DiPasquale property will be.

Bill George stated that the shooting range is in a low place and shot and pellets do not go beyond the field. Someone on the applicant's property would not be in danger of being hit by pellets unless they walked on to the Gun Club property near the clay trap. Ms. Bradshaw inquired whether there is any danger of projectiles reaching as far as Mary Ann Drive. Mr. George replied that projectiles would not travel that distance, and noted that there has never been an accident at the Gun Club.

Mr. Sullivan pointed out that the strip of land behind the Langan and Skinner properties was offered to the Gun Club but they were not interested in acquiring it. That land will become part of the buffer between the DiPasquale and Gun Club properties.

John Messer, 325 Lenni Road, asked if the lots could be reconfigured to conform to R-1 zoning requirements. Mr. Houtmann explained that they considered several alternatives, but because of environmentally sensitive areas associated with the property, including a riparian buffer and the steep slope area on the north side of Lot 3, the only way to create three lots was to request a zoning change to R-2.

There were no further comments from members of Council or the audience, and Mr. Galloway moved to close the Public Hearing. Mrs. Amoroso seconded the motion, and the motion was approved by unanimous vote 6-0.

7. New Business

- A. Consideration for Adoption – An Ordinance Amending Chapter 275, Zoning, Article III, Districts, Section 275-11, Zoning Maps, the Purpose of This Amendment Being to Rezone 2.546 Acres of Land Located on the North Side of Dutton Mill Road from R-1 Residence District to R-2 Residence District

Mr. Galloway stated he would like to talk with Mr. Damico about some potential legal issues relating to amendment of the Zoning Map to rezone 2.546 acres of the DiPasquale

property at 386-390 Dutton Mill Road from R-1 Residence District to R-2 Residence District. Mr. Damico noted that adoption of the ordinance can be continued to a date certain.

Mr. Galloway moved to table consideration of adoption of the ordinance amendment to rezone 2.546 acres of land located on the north side of Dutton Mill Road from R-1 Residence District to R-2 Residence District to the Council meeting of April 22, 2013. Mr. Carlson seconded the motion, and the motion was approved by unanimous vote 6-0.

B. Review of Final 3 Lot Subdivision –
DiPasquale – 386-390 Dutton Mill Road

Ms. Bradshaw stated that review of the Final 3-Lot Subdivision of the DiPasquale property at 386-390 Dutton Mill Road will be continued to the April 22, 2013 Council meeting following consideration of adoption of an ordinance to rezone a 2.546 portion of the property from R-1 Residence District to R-2 Residence District.

C. Review of Zoning Hearing Board Application
2013-5 Tyler Arboretum – 515 Painter Road

Mr. Clark explained that Tyler Arboretum proposes to construct a 24 ft. x 40 ft. pole barn building adjacent to the existing maintenance building on the Arboretum property adjoining Ridley Creek State Park. The pole barn will be utilized for storage of various pieces of equipment including hay wagons, tractors and miscellaneous small equipment that cannot be stored in the maintenance building. The ordinance requires that service buildings must be located no closer than 200 ft. from any adjacent property line. An application was submitted to the Zoning Hearing Board for a variance to permit the pole barn to encroach 110 ft. into the 200 ft. setback from the Ridley Creek State Park property line and 301 ft. from the Painter Road property line. The pole barn will not be visible from Painter Road because of existing plantings and the distance from the road. Additional trees and shrubbery will be planted to screen the State Park walking trail.

Council members agreed that the Zoning Hearing Board can handle this application.

2013-6 Umland – 3 Lafayette Circle

Mr. Clark stated that Elena Umland submitted an application to the Zoning Hearing Board for a variance to construct an addition to her residence at 3 Lafayette Circle for a handicap suite. The addition will be located on the main/kitchen level of the dwelling and will encroach 5 ft. into the side yard setback.

Council members agreed that the Zoning Hearing Board can handle this application.

D. Notice of NPDES Permit Renewal Application –
Glen Mills Quarry – 533 W. Forge Rd.

Mr. Clark stated that Hanson Aggregates Pennsylvania LLC notified the Township that an application was submitted to DEP for renewal of the Glen Mills Quarry National Pollution Discharge Elimination System (NPDES) Permit No. PA0594130. Notice of the renewal application was published once a week for four consecutive weeks in the Daily Local News (West Chester, PA) on March 21, March 28, April 4 and April 11. The Township requested that the Public Notice be re-advertised in the Delaware County Daily Times once per week for four consecutive weeks beginning March 21st. A copy of the renewal application will be available for review at the Township building until May 13th.

E. Application for County Liquid Fuels Funds –
Road Resurfacing

Mr. Clark explained that every year the Township applies to the County for an allocation of the Liquid Fuels Tax Funds distributed to the County by the state to be used toward road resurfacing. Historically the Township has requested \$30,000 and generally receives \$20,385 in accordance with the County's distribution formula.

Mr. Shropshire moved that Middletown Township Council make application to the County for an allocation of County Liquid Fuels Tax Funds in the amount of \$30,000 for resurfacing approximately 2.7 miles of various roads throughout the Township. Mrs. Amoroso seconded the motion, and Resolution 2013-46 was approved by unanimous vote 6-0.

F. Use of Liquid Fuels Funds for Road Resurfacing

Mr. Clark stated that the Township receives Liquid Fuels Tax Funds from the State to be used for maintenance and improvement of Township roads. The Township must designate its intention to utilize Liquid Fuels Tax Funds for the road resurfacing program by adoption of a Resolution indicating the Township's intention to treat approximately 5.0 miles of streets with overlay of bituminous material at an approximate cost of \$600,000.

Mr. Shropshire moved that Middletown Township desires to utilize approximately \$339,230 of its 2013 Liquid Fuels allocation along with an allocation from the County Liquid Fuels Tax funds toward the overall cost of the 2013 Resurfacing Program. Mr. Quinn seconded the motion, and Resolution 2013-47 was approved by unanimous vote 6-0.

G. Cable Franchise Renewal Negotiation

Mr. Clark noted that the Township's ten year contract with Comcast for cable TV services will be expiring in the spring. At the time of the last renewal of the franchise agreement a number of municipalities joined together and utilized the services of the Cohen Law Group (CLG), a law firm specializing in cable TV and communications law, to negotiate a group contract. The COG group has requested a proposal from CLG to handle negotiations for renewal of the franchise agreement. Comcast would like to extend the term of the contract to 15 years;

however, with the constant changes in technology a contract of that length does not appear to be advisable.

Mr. Clark explained that the proposal received from CLG covers negotiations for the cable franchise agreement and a franchise fee audit to determine whether Comcast has an accurate record of all the homes in the municipality having cable service and that all of the franchise fees due to municipalities in the Consortium have been paid. CLG's fee schedule for the Consortium offers a discount based on the number of municipalities that participate. The initial flat fee is based on population. Middletown is in the population range of 10,000-20,000 and the flat fee is \$10,900. If 4 municipalities participate, the discount would be 18%, reducing Middletown's fee to \$8,938; if 8 or more municipalities participate, the discount would be 40% or a fee of \$6,540.

Mr. Quinn inquired whether any cable companies other than Comcast and Verizon have approached the Township with regard to providing cable service. Mr. Shropshire stated he recalled the lengthy process a number of years ago when Comcast's predecessor was originally chosen over another operator as the cable provider, and he would not want to go through that process again.

Mr. Clark stated that if Council is in favor of proceeding with the joint negotiation process and the franchise fee audit work proposed by CLG, Council should authorize submittal of an engagement letter in accordance with the sample letter provided by CLG.

Mr. Shropshire moved to authorize submittal of a letter of intent to engage the services of the Cohen Law Group to assist in the cable franchise renewal negotiations with Comcast. Mrs. Amoroso seconded the motion, and the motion was approved by unanimous vote 6-0.

H. Approval of Bill List

Ms. Bradshaw read aloud the bills submitted for Council's consideration for approval for payment.

Mr. Carlson moved that payments under the April 8, 2013 Bill List be authorized for payment by the Finance Department:

General Fund

Keystone Health Plan East	March Health Insurance Highway Share Sewer Authority & Library Share Recreation Share	\$21,742.69
Middle Atlantic Inspections Inc.	Building & Code Inspections	8,857.50
Barbacane Thornton & Company	2012 Audit (including Pension Plan)	27,400.00
McCusker & Osborne	January & February Recycling	34,859.68

Recreational Enterprise Fund

PA Recreation & Park Society	Jan-March Ski Tickets	5,929.00
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Mrs. Amoroso seconded the motion, and Resolution 2013-48 was approved by unanimous vote 6-0.

8. Adjournment

The meeting was adjourned at 8:30 PM.

Respectfully submitted,

Carolyn Doerfler

Carolyn Doerfler, Recorder