

MIDDLETOWN TOWNSHIP
DELAWARE COUNTY, PENNSYLVANIA

December 9, 2013

Minutes of the Regular Meeting of Township Council Held on Monday, December 9, 2013 at
7:00 PM in the Township Building, 27 N. Pennell Road

Present: M. Amoroso, L. Bradshaw, R. Carlson, S. Galloway, N. Shropshire
B. Clark, J. Damico, Esq., A. Rothe

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

Ms. Bradshaw announced that Council met in Executive Session prior to tonight's meeting to discuss some personnel and procedural matters.

2. Comments from the Public

There were no comments from the audience.

3. Reports

A. Finance and Administration: Mr. Carlson stated that Committee and Council members continued review of the Draft 2014 Budget.

B. Land Planning: Ms. Bradshaw reported that the Parks and Recreation Committee discussed future plans and directions.

4. Public Hearings

Ms. Bradshaw announced that the agenda items that do not relate to the Pond's Edge development will be considered before re-opening the Pond's Edge Public Hearings on the Conditional Use and ordinance amendment continued from the November 25th Council meeting.

Mrs. Amoroso moved to amend the agenda to consider Items 6D through 6K before proceeding with the Public Hearings on the Conditional Use application and ordinance amendment relating to the Pond's Edge development project continued from the November 25th Council meeting (Agenda Items 4A, 4B, 5A, 6A, 6B, 6C). Mr. Carlson seconded the motion, and the motion was approved by unanimous vote 5-0.

6. New Business

- D. Consideration for Adoption – An Ordinance Amending the Code of Ordinances of the Township of Middletown, Delaware County, Pennsylvania, Chapter 180, Article II, Section 180-10, to Increase the Annual Sewer Rent or Charges from \$300.00 to \$350.00 for the Calendar Year 2014 and Each Year Thereafter Until Amended, For Each House, Apartment, Condominium, Trailer or Dwelling Unit. The Quarterly Base Rate for Commercial and Industrial Users Will be Increased From \$87.50 to \$100.00 in the Calendar Year 2014 and Each Year Thereafter Until Amended, Plus an Increase in the Charge for Each 1000 Gallons (or Portion Thereof) Consumed Over 24,000 Gallons Per Quarter, from \$3.65 to \$4.17 for the Calendar Year 2014 and Each Year Thereafter Until Amended
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Mr. Clark stated that at the request of the Township Sewer Authority, Council introduced an ordinance at the November 25, 2013 meeting to increase the annual sewer rate for calendar year 2014 for residential customers from \$300 to \$350. The quarterly base rate for commercial and industrial customers will be increased for calendar year 2014 from \$87.50 to \$100.00 plus an increase in the charge for each 1,000 gallons consumed over 24,000 gallons per quarter from \$3.56 to \$4.17.

Mr. Clark noted that Mr. Sullivan, Chairman of the Township Sewer Authority, made a presentation at the last meeting explaining that the rate increase is necessary because of the transition to DELCORA for sewage treatment that will take place the latter part of 2014 in accordance with the treatment agreement. The Authority preferred to increase the sewer rate in increments to a plateau of approximately \$450 rather than billing customers for a large lump sum up front.

Mr. Clark stated that Robert Scholz, Sewer Authority Vice Chairman, and John Ibach, Manager of the Sewer Authority, are present this evening to answer any questions Council or members of the audience may have. The ordinance has been advertised and can be considered for adoption tonight.

Mr. Galloway moved for adoption of an ordinance amending the Code of Ordinances of the Township of Middletown, Chapter 180, Article II, Section 180-10, to increase the annual sewer rent or charges from \$300.00 to \$350.00 for calendar year 2014 and each year thereafter until amended, for each house, apartment, condominium, trailer or dwelling unit. The quarterly base rate for commercial and industrial users will be increased from \$87.50 to \$100.00 in calendar year 2014 and each year thereafter until amended, plus an increase in the charge for each 1000 gallons (or portion thereof) consumed over 24,000 gallons per quarter, from \$3.65 to \$4.17 for the calendar year 2014 and each year thereafter until amended. Mr. Carlson seconded the motion, and Ordinance No. 742 was adopted by unanimous vote 5-0.

Ms. Bradshaw asked Mr. Sullivan to convey Council's appreciation to the Sewer Authority for the time and effort the Authority expends to make certain that the Township's sewer system is well operated and maintained.

E. Adoption of Post-Issuance Compliance Policy –
Tax Exempt Obligations

Mr. Clark stated that the Sewer Authority proposes to finance construction of Phases 1 and 2 of the project to install an interceptor along Chester Creek to convey sewage to the DELCORA treatment plant through a Bond Issue in 2014. During discussions with the Sewer Authority's financial consultant, the bond advisor noted that the bond market has changed since the Township's last bond issue several years ago. Bond buyers are looking for an additional level of assurance from bond issuers that activities will be monitored to ensure the ongoing tax-exempt status of the bonds.

Mr. Clark went on to say that the Township has issued tax-exempt bonds over the years for property acquisitions and various projects, and has agreed to guarantee repayment of bonds issued by the Sewer Authority. IRS is looking more closely at tax-exempt bond issues to ensure that practices and procedures are followed in compliance with the tax-exempt laws.

Mr. Clark pointed out that the Township has not adopted a Post-Issuance Compliance Policy for obligations in the past. To support the upcoming bond issue the Township's bond counsel prepared a Post-Issuance Compliance Policy to assure that the funds acquired through the bond issue will be used for the purpose for which the bonds were issued.

Mr. Carlson moved that the attached Post-Issuance Compliance Policy for obligations issued or to be issued by Middletown Township be adopted. Mrs. Amoroso seconded the motion, and Resolution 2013-98 was approved by unanimous vote 5-0.

F. Project Overview – PADOT Replacement of Glen Riddle Road Bridge

Steven Felin, PADOT Highway Design Manager for the Glen Riddle Road bridge replacement project, stated that PADOT contracted with Mackin Engineering Company for the preliminary and final design work for the bridge replacement project. He introduced Jeffrey Raykos, branch manager/chief engineer of the Mackin Harrisburg office, who will present an brief overview of the project and will display some preliminary plans of the bridge replacement and roadway improvements. They would like to have input from Council and members of the audience on the bridge replacement project.

Mr. Raykos explained that the existing bridge over Chrome Run is structurally deficient and will be replaced with a new bridge that meets current standards. The existing bridge is 28 ft. wide and has two 11 ft. lanes with 3 ft. shoulders. The new bridge will maintain the same alignment horizontally and vertically and the shoulders will be widened to approximately 4 ft. The roadway approach work will be limited to 100 ft. on either side of the bridge.

Mr. Raykos pointed out that flooding has always been a problem in the area where the bridge is located, which may be reduced but not completely eliminated as a result of construction of the bridge replacement. It will be necessary to relocate underground water and sewer lines currently located in the project area, and adjustments will have to be made in utility lines.

Mr. Raykos noted that temporary and permanent rights-of-way must be obtained from properties adjacent to the bridge, and it is estimated that phase of the project could take up to a year to complete. Depending on available transportation funding, construction is proposed to begin in 2017.

Mr. Raykos stated that traffic will be detoured during construction of the Glen Riddle Road bridge and will utilize state-owned roads, including Rt. 452/North Pennell Road, Rt. 352 and Rt. 1. He noted that the County plans to begin construction in 2014 to replace the Mt. Alverno Road Bridge over Chester Creek, and Glen Riddle Road has been approved as the detour route during construction. PADOT will defer construction of the Glen Riddle Road bridge until the County project has been completed and the detour has been removed.

Margaret Brittingham, 161 Glen Riddle Road, expressed concern that the Glen Riddle Road bridge replacement project will impact her property. Mr. Raykos assured her that her property will not be affected by the project.

Mr. Rothe stated there has been considerable stream bank erosion in the vicinity of the Glen Riddle Road bridge, and asked how far upstream PADOT will be providing stream bank stabilization. Mr. Raykos replied that anything within the area of disturbance will be repaired and everything will be done to protect the creek and the embankments from further erosion.

Mr. Galloway asked why this project is being undertaken. Mr. Raykos stated that the existing bridge is structurally deficient and functionally obsolete, but it is safe for traffic.

Mr. Raykos distributed a pamphlet describing the bridge replacement project, and noted that contact information is listed on the last page if Council or residents have questions or comments.

Ms. Bradshaw thanked Mr. Felin and Mr. Raykos for attending the meeting to describe the Glen Riddle Road bridge replacement project.

G. Review of Zoning Hearing Board Application
2013-15 Stroffolino – 602 Meadowvale Lane

Mr. Clark stated that Mr. and Mrs. Philip Stroffolino filed an application with the Zoning Hearing Board for a dimensional variance to permit construction of a structure containing a garage and dining room that will encroach to within 16 ft. of the side property line of their property located at 602 Meadowvale Lane. He explained that the property contains an existing house and carport, which are non-conforming. The carport will be removed and the front portion of the new structure will contain a garage, and a dining room will be located to the

rear. The proposed location of the new structure is the only area on the property where it can be constructed.

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

H. Tree-Vitalize Program Grant Application –
Chester Creek at Darlington Tract

Mr. Clark noted that the Township has been working in cooperation with the Chester Ridley Crum Watersheds Association on a multi-year clean-up project to remove invasive plants, including bamboo and Japanese knotwood, along the banks of Chester Creek on the Darlington Tract. A half-mile area of buffer and meadow along the Darlington trail around the parking pullout at the Darlington Road trailhead has been cleared of invasive plants. New trees and shrubbery will be planted where invasive plants were removed.

Mr. Clark stated it was suggested that that the Township submit an application for a TreeVitalize grant to cover the replacement trees and shrubbery. The grant request totals \$4,538 for the planting project, of which \$1,755 represents the cost to purchase 60 trees and 17 shrubs. The remaining funds will be used to purchase rolls of wire fence, posts and staples to protect the trees after planting. The Township will provide a 42% match based on the estimated value of volunteer labor to plant and maintain the trees and shrubbery. The grant will not cover the cost of weed matting at approximately \$90 and grass seed at approximately \$100.

Mr. Clark explained that the Township must provide funds up front for materials since the grant is considered a reimbursement. A payment must also be made to CRC for their assistance. Council is asked to approve submittal of the grant application. The application will be forwarded to Brian Vadino at the Delaware County Conservation District for his review and he will send it to PHS for final consideration. After the planting is completed receipts and reimbursement forms will be submitted to the Delaware County Conservation District, and the Township will then receive the full amount of the grant award. He pointed out that there will be very little out-of-pocket expense for the Township.

Mr. Shropshire moved for approval to submit the grant application for restoration of the riparian buffer and meadow area along the Chester Creek at the Darlington trailhead. Mr. Galloway seconded the motion, which was approved by unanimous vote 5-0.

I. Waiver of Building Permit Fee – Middletown Fire Company –
425 S. New Middletown Road

Mr. Clark explained that the Middletown Fire Company requested that Council waive the \$110 building permit fee for construction of a handicap ramp to one door of the fire company building at 425 South Middletown Road. He noted that in the past Council has waived permit fees for the Township fire companies and the Middletown Library for construction projects.

Mr. Galloway moved that the building permit fee in the amount of \$110 be waived for construction of a handicap ramp at the Middletown Fire Company. Mr. Carlson seconded the motion, which was approved by vote of 4-0; Mr. Shropshire abstained from voting because of a conflict of interest.

J. Authorize Release – Sale of Used Fire Truck

Mr. Damico explained that in August 2013 Middletown sold the used 1991 Simon-Duplex Grumman fire truck to the City of St. Ignace, Michigan in accordance with their bid of \$50,000. The purchaser took possession of the fire truck and began the 3,900 mile drive back to Michigan; however, a short distance into the trip the fire truck developed serious engine trouble and became inoperable. Ultimately it was necessary to load the fire truck on to a flat-bed truck to complete the trip to St. Ignace. Estimates for repair of the engine or replacement with a used engine totaled approximately \$30,000

Mr. Damico pointed out that the fire truck was purchased “as is”, and Middletown’s only warrant to the City of St. Ignace was that the Township held title to the fire truck. There were no other warranties. The City of St. Ignace had the fire truck inspected before purchasing it and their engineer stated he did not find any indication of serious mechanical problems.

Mr. Damico went on to say that in order to avoid any type of litigation relating to sale of the fire truck, the Township offered to pay the sum of \$10,000 to the City of St. Ignace, and the offer was accepted. He prepared a Release in full and final settlement of any possible claim by the City of St. Ignace with regard to the sale of the fire truck, and the Release has been signed on behalf of the City of St. Ignace.

Mr. Shropshire commented that Middletown’s offer of \$10,000 was the right thing to do. He noted that St. Ignace is a very small community located on the water in the upper peninsula of Michigan.

Mr. Shropshire moved that the attached Release be hereby authorized for acceptance by Middletown Township upon formal approval by the City of St. Ignace, Michigan. Mr. Carlson seconded the motion, and Resolution 2013-99 was approved by unanimous vote 5-0.

K. Approval of Bill List

Mr. Bradshaw read aloud the bills presented for consideration for approval for payment.

Mr. Carlson moved that payments under the December 9, 2013 Bill List be authorized for payment by the Finance Department:

General Fund

Aqua Pennsylvania, Inc.	November Hydrant Rent	\$11,280.75
Independence Blue Cross	December Health Insurance	23,303.44
	Highway Share	
	Sewer, Cobra, & Library Share	
	Recreation Share	
Middle Atlantic Inspections, Inc.	September & October Inspections	5,700.00

Recreation Enterprise Fund

Celebrity Limo	Various Trips	9,763.00
TD Band	Various Trips	8,420.43

Mrs. Amoroso seconded the motion, and Resolution 2013-100 was approved by unanimous vote 5-0.

4. Public Hearings

- A. Proposed Amendment of Zoning Ordinance to Permit a Campus Mixed Use Development as a Conditional Use Within the R-4 District and Provide Area and Bulk Regulations and Design Standards for Such Development
- B. Conditional Use Application of Pond's Edge, LP for Approval to Construct a Campus Mixed Use Development on Property Located at 1278-1328 W. Baltimore Pike Consisting of 221 Single Family Attached Dwelling Units and Two Retail Buildings Containing a Total Floor Area of 32,500 sq. ft. Within the R-4 Residence District Pursuant to a Proposed Amendment of Chapter 275, Section 275-35.C(8) of the Zoning Ordinance

Ms. Bradshaw stated that at the November 25th meeting, Kevin Gale, an Overlook Circle resident and party in interest, stated that Mr. Comitta testified for the applicant at the September 9th meeting, which was clearly a conflict of interest. Mr. Comitta strongly objected to Mr. Gale's statement and indicated that in the 34 years he has served as consultant for the Township he has never testified for any applicant.

Mr. Damico explained that Council requested that he review the record of the September 9th meeting, including the minutes of the meeting, Notes of Testimony and other information. Following his review he issued a written report dated November 27, 2013, which he would like to have marked as an official Opinion letter and entered in the record as Exhibit T-18. He stated that based on his review the record is clear that Mr. Comitta was not called by Mr. Ripper as a witness and did not testify on behalf of the applicant. There was no conflict of interest.

Mr. Damico went on to say that Mr. Clark prepared a list of exhibits on behalf of the Township, identified as Exhibits T-1 to T-17, which will be entered into the record.

Mr. Damico stated that the Overlook parties in interest will have an opportunity to present testimony tonight. At the conclusion of the meeting Council will close the record for testimony and exhibits, and the hearing will be continued to December 23rd at 5:30 PM for deliberation and decision on the open matters relating to the Pond's Edge development.

Ms. Bradshaw opened the floor for presentations by the Overlook Circle parties in interest. She requested that they not include in their presentations testimony that has already been presented by their fellow residents.

John Gallagher, 16 Overlook Circle, was sworn, and thanked Council for considering their concerns as residents of Overlook Circle and Middletown Township. He stated he is married, has two children, and has been a Township resident for 13 years. He added that he is the original owner of his property. In his opinion the Pond's Edge plan is too concentrated in certain areas. Fifty percent of the townhouse units will be concentrated on 20% of the land. The proximity of the townhouse units to the Overlook Circle properties will negatively affect the value of his home and will put the welfare of his family and his ability to maintain a stable home at risk. The townhouse development will require a number of variances and will place burdens on the Township by increasing traffic and the demand on the sewer system.

Mr. Gallagher pointed out that at least four different plans have been proposed for development of the property at 1278-1318 West Baltimore Pike currently designated for construction of the Pond's Edge project. However, the applicants never proceeded with construction. He stated that approval of the Pond's Edge plan will set a precedent. He urged Council stand firm in its commitment to uphold the standards in the best interest of all residents.

There were no questions for Mr. Gallagher.

Mr. Riper requested that the following items be entered in the record: Kevin Gale's letter dated August 28, 2013 transmitting a copy of a section of Point Ardashes Plan (Exhibits A-39), Summary of the Final Preliminary Plan Engineering Comments (Exhibits A-41), Composite Public Improvement Enhancement Plan (Exhibit A-40).

Mr. Riper noted that it was suggested at the last meeting that he, Mr. Rothe, Mr. Clark and Mr. Comitta meet to discuss the public improvement enhancements, and specifically the items that would qualify for credit toward the recreation fee-in-lieu to be paid by the applicant. On behalf of the applicant he prepared a list of items for which credit was requested (Exhibit A-38). He stated that Mr. Damico asked Mr. Houtmann to prepare a summary in narrative form of engineering issues that are still to be addressed.

Mr. Rothe explained that the group met last Wednesday, and among other things it was suggested that it might be helpful to have a comprehensive list not just of active recreation facilities but also those items that make up the remainder of the enhancements. He noted that there was a long discussion about the items that were obviously classified as active recreation, such as a playground, swing sets, fitness center designated as Group A, those that would be considered "other enhancements" as Group B, and those that are not considered high energy activities, such as open space and gathering places as Group C.

Mr. Galloway stated he understands that the cost assigned to Group A is slightly less than \$350,000, Group B is \$420,000 and Group C is just over \$900,000. He suggested it might be helpful for Council to see an updated site plan showing green areas and trees to be preserved, and illustrating more clearly buffering along the eastern border and street trees. The plan should show all of the enhancements, and particularly the open space in the interior. He noted that there seems to be ample provision for active recreation. The pedestrian trail will be paved, although in some areas it will be stoned, specifically the walkway around the pond.

Mr. Comitta questioned what will be on the agenda when Council reconvenes on December 23 if the record is closed tonight. Mr. Damico explained that any party may request that the Public Hearing be reopened. Assuming the record for testimony and exhibits is closed tonight, at the December 23rd meeting Council should be ready to deliberate the decisions on four major issues – the Conditional Use application, the text amendment of the ordinance to permit a Campus Mixed Use Development as a Conditional Use in the R-4 District, the Preliminary Subdivision Plan, and amendment of the Land Conservation Easement.

Mr. Comitta went on to say that in his testimony at the last meeting he referred to his review letter dated November 25th (Exhibit A-37), and suggested that perhaps the proposed continuous bright lighting in the residential section should be dimmed somewhat.

Mr. Comitta pointed out that Mr. Faber indicated that the unit cost of the gazebo in Group B was approximately \$89,000 and the total cost was approximately \$94,000, and there is a similar difference in the unit and total cost of the pergola. Mr. Faber explained that the total cost figure is correct for both enhancements. Mr. Comitta requested that Mr. Faber review the list of costs and forward corrected copies to him and Mr. Rothe as soon as possible.

Mrs. Amoroso questioned whether it is premature to consider these numbers as final since corrections may be made in the cost figures. Mr. Comitta stated that Council should have the correct information when they are ready to make decisions regarding items that will qualify for credit toward the fee-in-lieu payment.

Mr. Rothe explained that according to his calculations the total fee-in-lieu payment from the applicant will be \$611,000. Mr. Riper stated he would like to include Mr. Faber's corrected list of costs in the record as Exhibit A-42 when it is received.

Mr. Comitta stated that in anticipation that the discussion might become complex he went back through the review comments to identify what the group at last Wednesday's meeting agreed on as viable credits toward the fee-in-lieu. Everyone at the meeting agreed on Group A and Group C, but some questions remain regarding Group B. It will be up to Council to decide whether the gazebo and pergola will qualify as credits.

Mr. Faber pointed out that he included the cost of paving walkways in public areas, architectural paving, benches, knee walls, but not the cost of trees or perimeter sidewalks.

Mrs. Amoroso asked Mr. Faber why he suggested a pergola. Mr. Faber displayed the plan of the pond area with the enhancements, including the gazebo and pergola. He stated he

considers the gazebo to be part of the recreational network for this project, and is suggesting the pergola as a special enhancement to make the pond area more attractive.

Mr. Damico pointed out that Mr. Faber previously referred to a clubhouse, pool, community room, etc. as possible additional enhancements although they were not shown on the plan. Mr. Riper explained that those amenities were suggested as possible future additions and are not included in the items proposed to be credited toward the fee-in-lieu.

Mr. Damico went on to say that Council should not have to be concerned now with issues that may not be decided until the Final Plan stage. He will be working with Council on proposed conditions for approval of the Conditional Use application and the Preliminary Plan.

Mr. Riper stated he would like to bring this discussion to a close by pointing out that there are different philosophies about what may or may not qualify for credit toward the fee-in-lieu payment. Consideration should also be given to whether the enhancements will benefit the only the Pond's Edge community or the Township as a whole.

Mr. Riper pointed out that Mr. Houtmann and Mr. Rothe agreed that the Summary of Final Preliminary Engineering Comments to be Addressed (Exhibit A-41) will be addressed in the Preliminary Plan. Mr. Rothe noted that Mr. Faber's and Mr. Houtmann's comments do not match up.

Mr. Riper thanked Council members for their patience, and stated that concluded the presentation on behalf of the applicant. Mr. Faber will submit the corrected cost estimates for enhancements proposed for credit toward the fee-in-lieu to Mr. Rothe and Mr. Comitta by the end of the week.

Mr. Galloway moved to close the evidentiary aspects of the hearing and to continue this matter to the December 23, 2013 Council meeting at 5:30 PM. Mrs. Amoroso seconded the motion, and the motion was approved by unanimous vote 5-0.

Kathleen Smith, 58 South Pennell Road, stated that at the last meeting it was mentioned that some of the items for which the applicant was requesting credit toward the fee-in-lieu may be contrary to Township standards or may actually be a cost of doing business, and would not be eligible for credit.

Mr. Shropshire stated that Council has been more than accommodating to the applicant. There are four major issues to be addressed, and when they meet on December 23rd Council members should be prepared to vote for what they believe will be in the best interest of the Township.

7. Adjournment

The meeting was adjourned at 8:45 PM.

Respectfully submitted,

Carolyn Doerfler
Carolyn Doerfler, Recorder