

MIDDLETOWN TOWNSHIP
DELAWARE COUNTY, PENNSYLVANIA

APRIL 11, 2016

Minutes of the Regular Meeting of Township Council held on April 11, 2016 at 7:00 P.M. in the Township Administration Building located at 27 North Pennell Road.

Present: R. Carlson, S. Galloway, D. Helm, M. Kirchgasser, S. Powell, C. Quinn, N. Shropshire
B. Clark, E. Janetka, Engineer, and J. Damico, Esquire

1. OPENING

Chairman, Mr. Kirchgasser, called the meeting of the Council to order at 7:00 P.M. and led recitation of the Pledge of Allegiance to the Flag.

2. COMMENTS FROM THE PUBLIC

Mr. Kirchgasser asked for comments on non-agenda items.

Mr. Bartholomew of 16 E. Glen Circle commented on cars parking on the corner of Old Middletown Road and the corner of Pine Tree Drive which are not in the line of sight. He explained that he turned onto Pine Tree Drive and almost hit the car. He also brought up the issue of old trees on West Glen Circle that are falling down as a result of the recent storms. The Township will follow-up on these issues.

3. REPORTS

A. CHAIRMAN

None.

B. FINANCE & ADMINISTRATION

Mr. Carlson reported on the review of the 2016 Pension Plan. The pension continues to be 99.6% fully funded.

C. MANAGER

Mr. Clark reported on a service project by Boy Scout Troop 404. The troop rebuilt the walking bridge across a small stream at Darlington Trail by the Roostertail Farm.

4. PUBLIC HEARING

A. Request for Conditional Use approval of an application by James McCullough and/or JT Venture LLC to change one non-conforming use to another equally or more restrictive non-conforming use at 312 Lenni Road (former Lenni Heights/Rocky Run Fire Company) for use as an HVAC subcontractor headquarters and office facility and to subdivide and create two residential lots in accordance with R-4 Residence District Zoning standards. (Continued from March 28, 2016 Public Meeting)

Mr. Quinn made a motion to open the public hearing. Mr. Carlson seconded the motion. Motion carried.

Mr. Vincent Mancini, Attorney representing the applicant, introduced Ms. Nicole Kline, of McMahon Transportation Engineers & Planners, who was sworn in. Mr. Mancini questioned Ms. Kline regarding her expertise in Traffic Management. (Exhibit P) Ms. Kline's resume was entered into record. Mr. Mancini qualified Ms. Kline as a traffic engineer with an expertise in traffic design analysis.

Mr. Galloway asked Mr. Messer as party to the hearing if he had any questions in regard to Ms. Kline's qualifications. Mr. Messer stated that he would like to see a copy of Ms. Kline's resume.

Mr. Kirchgasser asked if the other parties, Mr. Lomas and Mrs. Feathers, would like to see the resume of Ms. Kline.

Mr. Kirchgasser asked if they were satisfied with the level of expertise of Ms. Kline.

Mr. Mancini asked Ms. Kline if she was familiar with the property, and if she was also familiar with the proposed change of use of the property. Ms. Kline answered in the affirmative. Mr. Mancini questioned Ms. Kline regarding the nature and quality of traffic with Mr. McCullough's proposed use of the property. He asked if Ms. Kline was familiar with the fire company activities. Ms. Kline stated that she spoke with Herb Jackson from the fire company and discussed with him the operations of the fire company and the fire hall. She stated that this information is shown in her report. Mr. Mancini stated that assuming that the existing building was demolished, was an ITE (Institute of Transportation Engineers) study performed based on the construction of six single family dwellings. Mr. Mancini asked Ms. Kline go through her report and highlight critical features. Ms. Kline stated that she spoke with Mr. McCullough regarding his business. Based on his information and the trip generation data, on a Monday there will be 5 administration staff coming to the business in the morning and five staff leaving in the afternoon. She also stated that also on Monday eighteen technicians would come in at staggered times for their jobs for the week and not return until the following Monday. Tuesday through Friday the only people on site will be the administrative staff. There would be no additional traffic on weekends. She stated that customers do not come to the site. She also stated that there might be one truck delivery a month. She stated that the proposed use as an HVAC business will generate approximately 41 total trips (inbound and outbound) during the Monday morning peak hour, or approximately one new vehicle every minute and a half. During the weekday morning peak hour on Tuesday through Friday, and during the weekday afternoon peak hour Monday through Friday, the HVAC business will generate approximately 5 total trips (inbound and outbound), or approximately one new vehicle every twelve minutes. Ms. Kline stated that she used the Institute of Transportation Engineers data for the proposed six single family homes. The ITE provides weekday daily information, so in a twenty four hour period six homes

would generate 57 trips on a weekday daily period. During the weekday morning peak hour, 5 trips and during a weekday afternoon peak hour, 6 trips. She stated that the traffic generated is very similar to the HVAC business. The single family homes would generate more traffic on a daily basis in a twenty-four hour period than compared to the business traffic. Ms. Kline stated that she spoke with Herb Jackson about the former and current operations at the fire station. Mr. Jackson indicated that the station was used as a banquet facility and hosted weddings, showers and birthday parties. He also stated that they hosted Poker tournaments, fairs, and Christmas tree sales. Ms. Kline stated that the fire calls numbered approximately 600-650 emergency calls per year or about 50-55 calls per month and 6 to 10 firemen would respond to each call. Ms. Kline indicated that the facility is still used for indoor and outdoor training as there is more room than at their present facility.

Mr. Mancini asked Ms. Kline if, in her expert opinion, would Mr. McCullough's proposed use be equally, less or more objectionable in external effects than the fire company use in regard to traffic generation and congestion. Ms. Kline stated the proposed use would be much less objectionable in terms of traffic than the former fire house operations. Mr. Mancini stated in using the term objectionable, would sound and sirens come in to play as well. Ms. Kline stated that noise is definitely a factor. Mr. Mancini stated that he had no further questions for Ms. Kline.

Mr. Galloway asked if the numbers for weekday peak hour assumes that the administrative staff arriving to work and never leaving the facility until they leave at night. Ms. Kline stated that the study is based on the weekday morning and weekday afternoon peak hours. She stated that certainly employees may leave for lunch or appointments during the day.

Mr. Kirchgasser asked if there were any further questions from Council for Ms. Kline. Mr. Kirchgasser indicated to Mr. Messer that they would follow the order of Mr. Messer, Mrs. Feathers and Mr. Lomas.

Mr. Messer questioned Ms. Kline as to whether she has been to the firehouse. Ms. Kline answered in the affirmative. Mr. Messer asked what traffic study was done on Lenni Road and what is the speed limit on Lenni Road. Ms. Kline stated that they did not do a study on Lenni Road. She stated that the speed limit on Lenni Road is 25 miles per hour. Mr. Messer asked how fast cars traveled on Lenni Road. Ms. Kline stated that she could not say based on the fact that she did not do a study but she could estimate that cars travel upwards of thirty plus miles per hour, but without doing a study she did not want to speculate. Mr. Messer asked if Ms. Kline thought it would be important to do a study on Lenni Road. Mr. Mancini objected to his statement stating would the use be more or less objectionable based on the use. Mr. Kirchgasser stated that as far as traffic studies go there is a requirement that they are conducted in accordance to posted speed limits because of the speculation that occurs about speeding in a particular area, it is something very difficult to quantify. Mr. Messer asked if based on the report is there a very significant increase in peak hour traffic. Ms. Kline stated that she disagreed. In terms of the hour, the administrative staff will be coming to the site at staggered times during that

week day morning peak hour. Boiled down, it is a vehicle about every minute and a half. Mr. Messer stated that this vehicle every minute and a half is added to the current traffic. Ms. Kline answered that this is correct. Mr. Messer asked if she had any idea how many vehicles traveled down Lenni Road. Ms. Kline answered that she did not know. Mr. Messer asked if Ms. Kline knew of the six to ten firefighters responding to an emergency, how many respond to the station as opposed to traveling directly to the scene of the emergency. Ms. Kline stated that she did not know the answer to this question.

Mrs. Feathers asked at the morning peak time is Ms. Kline aware that there is a school bus stop for children and was this information used in the study. Ms. Kline stated that the focus of her report was a comparison of the uses and the trips with the end result being it is very similar or less traffic than the six family homes or the previous firehouse. Mrs. Feathers stated that with the six homes there are responsible adults and that she has no idea as to the employees coming and going from the business. Her main concern is the children waiting at the bus stop. Ms. Kline stated that the employees are adult responsible licensed drivers who have to adhere to the laws of the road just like anyone else. Mrs. Feathers asked if it was taken into account that there would be more people on the road, walking their dogs or waiting for a bus at that time of the morning. Ms. Kline stated that it would be a very minor increase in the traffic. Mrs. Feathers asked what the peak hours are. Ms. Kline answered that the peak time is between 7am and 9am and in the afternoon the hours are between 4pm and 6pm.

Mr. Lomas asked if her report stating the number of emergency calls responded to were between 600 and 650 and was this report substantiated by the Township. Ms. Kline stated the information was based on her conversation with Mr. Jackson.

Mr. Kirchgasser asked if there were any questions from the public. There were no other questions. Mr. Kirchgasser asked Mr. Mancini if there were any further witnesses. Mr. Mancini answered no, and wanted to admit the exhibits P and Q (McMahon Traffic Report). Mr. Damico ruled that the Exhibits be admitted. Mr. Kirchgasser asked if Mr. Messer had any witnesses. Mr. Messer stated that he has no witnesses but would like to make a statement presentation. Mr. Kirchgasser said he could do this at the conclusion of witnesses. Mr. Kirchgasser asked Mrs. Feathers and Mr. Lomas if they had any witnesses. There were no further witnesses. Mr. Messer came to the podium to give a presentation. Mr. Messer stated at a previous meeting Council recommended that he have off-line conversations with Mr. McCullough referencing conditions and concerns. One of the challenges Mr. Messer has is in reference to the R-4 zoning and he could not find anything in R-4 regarding businesses. Mr. Messer wanted to read an e-mail between himself and Mr. McCullough. Mr. Galloway stated that as decision-makers they should not be party to a conversation that may be negotiations or attempted negotiations to resolve the matter by way of settlement or agreement. A member of the audience demanded to know who was speaking and his credentials. Mr. Messer introduced himself and stated that he lives at 325 Lenni Road and that his property abuts the fire company property and he has lived here for almost 20 years. He stated that he entered as a party to the matter. Mr. Kirchgasser asked what is the intent of the letter that Mr. Messer is about to read. Mr. Messer characterized the letter as a friendly discussion of possible solutions. Mr. Mancini objected, stating the letter was not a friendly discussion but that it basically stated that his client did not comply to the area setback requirements.

Mr. Kirchgasser asked Mr. Messer if he had evidence to introduce and if he would like to make a statement regarding the evidence and other facts presented would be allowed.

Mr. Damico stated that the letter should be marked and entered as evidence. Mr. Shropshire stated that members of Council received the letter. Mr. Messer distributed a copy of Zoning Ordinance provisions which was marked as Messer Exhibit 1. He stated that in the R-4 residential district there are permitted uses such as single family detached dwellings; single family semidetached dwellings, park or recreational use, open space for recreation use, woodlands, wildlife refuges or other conservation uses and

communication towers. The accessory uses permitted are parking spaces, garages, private swimming pools or other private recreational facility, and signs which must comply with general provisions. Mr. Messer read the Conditional Uses allowed in the R-4 District. He stated that the firehouse is a government building. The employees of the firehouse were covered by the Township. He stated that nowhere is a business or office permitted in the R-4 district. He stated that the conditional use that is being sought is not a permitted use in the R-4 district. He stated the firehouse is permitted as well as a church. To allow any sort of business in the building is a violation of the zoning laws in Middletown Township. The only place that a business is allowed is in District O. He suggested that Mr. McCullough look to operate his business in the O District. Mr. Messer stated that Mr. McCullough look at the O District and to consider adopting all of the pertinent parts of the O regulations. The most pertinent part being the minimum area being two acres. Maximum impervious surface of 40%. The parking is a major issue. In an O District area, no parking should abut a street or highway unless separated by a raised curb. Ingress and egress is an issue. Right now there are two entrances which do not comply with O District or R-4 District.

Parking does not meet code. Mr. Messer stated that the firehouse is being turned from a grandfathered compliant use into a business which is not a compliant use in R-4. Mr. Messer stated that there are a number of issues that Council needs to look at seriously to not make something that is totally non-compliant but something that will meet the general requirements of the areas. Mr. Messer noted that there is a lot of impervious surface and that the purchaser would like to subdivide an area that would be way above impervious surface limits. Mr. Messer stated that the parking area would have everyone have to back out onto a traffic lane. Mr. Messer stated that a number of tractor trailers would be entering the site. He stated that he does not know if a tractor trailer could turn around in the space. The only way a tractor trailer could exit would be if there was an additional entrance or exit, which is not allowed by code. The standards and criteria for approval for conditional uses in addition to the one standard that they have been told is if this is worse than the fire company. Mr. Messer stated that all standards should be considered so that it will promote the harmonious and orderly development of the zoning district. Will it detract from or cause harm to neighboring properties? Will it be compatible with the uses permitted in surrounding area? Mr. Messer stated that the answer to all of these questions are no. Will it provide safe access to roads? Will there be landscaping buffers along Lenni Road? Mr. Messer stated that this is not a good use for this property. Mr. Messer recommended to Township Council that this application be denied.

Mr. Kirchgasser asked if Mr. Mancini had any questions. Mr. Mancini stated that he is here for a nonconforming use on a Conditional Use Application. It is basically a change from one nonconforming use to another nonconforming use. Governmental use is defined as building, facilities or activities used or conducted for governmental as opposed to a proprietary use. Mr. Mancini suggested to Council that a community facility is what a fire station is; that it is not a governmental use. He stated that this is not a use permitted in the R-4 District. Mr. Mancini asked Mr. Messer his expertise. Mr. Messer stated that he is a chemical engineer and that he worked with project managers, but he would not consider himself an expert or sign or seal a document that is civil, structural or traffic related. Mr. Mancini asked if Mr. Messer made any calculations regarding impervious coverage, line of sight or of this nature. Mr. Messer stated that he has. He stated that it is very easy to take an area of a site plan that with basic math and basic geometry can do as well as any civil or structural engineer. He stated that he is qualified to compare one area to another area. Mr. Mancini asked if Mr. Messer stated at one time that he is concerned with protecting the neighbors and at one time stated that he didn't hear the fire company. Mr. Messer stated that this is correct. Mr. Mancini showed Mr. Messer an aerial photo of the location. Mr. Damico stated that the photograph be entered as Exhibit R. Mr. Mancini asked if Mr. Messer's property was correct. Mr. Mancini asked the setback from the firehouse. Mr. Messer stated his property was setback from the firehouse approximately 150 feet. Mr. Messer stated that he is also located about 40 to 50 feet above the firehouse. He stated that he hears every noise coming from the road. Mr. Mancini questioned his statement that he never hears 650 calls that came from the firehouse. Mr. Messer stated that almost every call from the firehouse were silent. Mr. Mancini asked if his basic thrust is that the application could not comply with the O District. Mr. Messer stated that his basic thrust was that the applicant try to comply with the O District. Mr. Messer stated that he had not received any reply from either Mr. McCullough or Mr. Mancini regarding any attempt to comply with the O District. Mr. Mancini asked Mr. Messer if the fire company had an office in the building. Mr. Messer had no knowledge whether or not there was an office. Mr. Mancini stated he had no further questions.

Mr. Kirchgasser asked if there were any questions from the audience. Mr. Charles Williams, 248 Lenni Road, stated that he never heard of a silent fire house. He stated that they use their sirens when they leave the station and when they return you can hear the jake brake. He stated that he is more concerned with speeders. Mr. Galloway stated that this is the time to ask the witness Mr. Messer a question. Mr. Williams asked Mr. Messer if he is a licensed commercial driver. Mr. Messer stated that he is not. There were no other questions for Mr. Messer. Mr. Kirchgasser asked if Mrs. Feathers had any statement. Mrs. Feathers stated that her main concern is if one business comes in what is to stop another. Mr. Lomas stated that his original reason to attend the meeting was to object to the loss of open space.

Mr. Kirchgasser asked Mr. Mancini for his closing statement. Mr. Mancini stated that the sole issue before Council is the changing of one conditional use to another. He stated it is not a house going to a tattoo parlor. It is a former fire station with all of the attendant

activities that follow that fire station being converted to something else. He stated that it is not a house but a structure that has unique designs to accommodate large apparatus below and above a banquet facility, offices and bunk areas. This is a substantial structure that cannot be converted to something in the R-4. This is a conditional use provision of Section 275.206, stating that a community facility can include fire protection facilities.

This facility would be a community facility which is not a permitted use in R-4. Having established that, he submits that this is a nonconforming use. There are nonconforming conditions attaching to the nonconforming use such as the head in parking off of Elm Avenue. The striping of parking spaces have been submitted. According to Section 275.206 can the structure be amenable to an R-4 conversion? In order to get the conditional use it must be proved that it is no more objectionable than the existing nonconforming use. Mr. Mancini stated that this is a low trip generating use which is much lower than the fire company use with the emergency calls, banquet use, training and all the activities of the fire company. Mr. Mancini stated that no matter the use it will impact the traffic. Noise, smoke, dust, fumes, vapor, gasses, heat, odors, glare or vibration is not a part of this application. There will be no fabrication on site. There will be ample storage in truck bays. There will be very little traffic. Mr. McCullough has no intention of preventing the public from using the parking spaces. There are no outside activities proposed. The sewage will be much less. No increased detrimental effect on the surrounding neighborhood. Mr. McCullough will spend money to renovate and clean up the facility to have an aesthetic facade that is much more in keeping with the residences on Elm Avenue. Mr. Mancini claims his client will clean up the area and will provide plantings and landscaping. As far as the subdivision of the property, this was done as a good faith attempt to show that there will be no expansion of the use over green usage of the property. Mr. Mancini stated that the general standards of Section 275.236 deal with new construction or new designs. Mr. Mancini stated that he strongly recommends to Council that this is a viable useful facility with minimal traffic impact and will dramatically improve the aesthetics of this property. Mr. Mancini stated that this is a win-win situation.

Mr. Galloway stated that Mr. Messer, Mrs. Feathers and Mr. Lomas may make closing arguments. Mrs. Feathers asked that once you go down this road, what happens next? Mr. Kirchgasser stated that this is a conditional use application with conditions assigned to the application and any subsequent use will be required to have conditions. Mr. Messer thanked members of Council. He stated that it is a precedence putting a business into an area that really should be considered a residential area. Mr. Messer stated that Mr. Mancini has hammered home that this application is less objectionable than the fire company. Mr. Messer stated that the fire company was a good neighbor. He noted he felt safe having a fire company around the corner. He stated that the property wasn't the best kept, but they spent their money on fire equipment. He stated that the building may not be a government building. He stated that the Township supported the fire company, paid their insurance and it was a part of the government. He stated that the building has served its useful life; so either find a use that is suitable in the R-4 District or tell the fire company to find someone who will comply with the R-4 District. He stated the concern with tractor trailers at the site. He also expressed concern with expanding the site and the applicant hiring more employees. He stated this application does not make any sense, and he feels it is not a good use of the property. Mr. Messer highly recommends that this application be denied.

Mr. Clark asked for record purposes that the e-mail letter of March 23, 2016 referred to earlier be entered as Exhibit Messer 2.

Mr. Shropshire made a motion to close the hearing. Mr. Galloway seconded the motion. The motion carried with a vote of 7-0. Mr. Kirchgasser stated by law they have 45 days to render a decision.

5. NEW BUSINESS

A. Review of Conditional Use Application 16-1 - James McCullough and/or JT Venture LLC - 312 Lenni Road (Rocky Run Fire Company).

Mr. Shropshire made a motion to continue the Conditional Use application to the April 25th meeting. The motion was seconded. The motion carried with a vote of 7-0.

B. Review of Zoning Hearing Board Application 16-3 James McCullough and/or JT Venture LLC - 312 Lenni Road (Rocky Run Fire Company).

Mr. Clark stated the first item is the one submitted by Mr. McCullough for a Zoning Hearing Board variance which had been continued from the last Zoning Hearing Board Meeting until April 27th. Mr. Galloway made a motion to continue this item until the April 27th meeting. The motion was seconded by Mr. Shropshire. The motion carried with a vote of 7 - 0.

Review of Zoning Hearing Board Application 16-4 Torres - 260 Chestnut Avenue.

Mr. Clark stated the applicant is on a corner property of Chestnut Avenue and Highland Avenue. The applicant wants to install an 8 x 12 shed at the rear of the house. Because the property is a corner property it has two front yards and two side yards. It would be required to have a 10 foot minimum side yard, with a 30 foot aggregate side yard. The applicants are applying to have 15 feet from one side and 4 feet from the other side. Mr. Shropshire stated that the application should go before the Zoning Hearing Board for a decision without Township participation.

C. Extension of Disposal Agreement - Delaware County Solid Waste Management Plan.

Mr. Clark stated that 25 years ago all the municipalities in the County executed an agreement whereby the County becomes responsible for disposal of trash collected throughout the County as processed through the County facility in Chester. The 25 year time period is expiring. The County is asking for all municipalities to re-up for another 25 years of having solid waste trash handled by Delaware County. This would require an amendment to the current Ordinance. The County's model Ordinance was updated and reviewed by Meredith and Joe and put into form to be considered for introduction by Township Council. A motion was made by Mr. Shropshire to introduce the Ordinance. Mr. Carlson seconded the motion. The motion carried by a vote of 7-0.

D. Agricultural Lease Agreement - Field A - Smedley Tract

Mr. Clark stated that Field A is closest to Rt. 352. He explained that this is the 10 acre field. Although the Township is now looking to develop that portion of the tract for

active recreation fields, the final grading work is not likely to be underway before the end of 2016. It appears the farmer could farm this land without delaying the Township

project. Mr. Clark stated that this generates about \$350.00 for the Township. Mr. Quinn stated that there is one issue regarding the Promenade at the Mall. They would be interested in looking at the plans to possibly provide assistance with the grading. Township Engineer, Mr. Janetka, stated that there are other areas to move earth or materials from the mall site temporarily such as side B. Mr. Shropshire made a motion to approve the farm lease resolution. Mr. Galloway seconded the motion. Resolution 2016-45 was approved unanimously by a vote of 7-0.

E. Approval of Bill List

Mr. Kirchgasser read aloud the bill list for Council's consideration for approval.

Mr. Carlson moved that payments under the April 11, 2016 Bill List be authorized for payment by the Finance Department:

GENERAL FUND

Independence Blue Cross	April Health Insurance	\$10,121.93
	Highway Share	10,714.11
	Cobra Share	904.40
	Recreation Share	<u>3,998.76</u>
		\$25,739.20
Kelly & Close Engineers	Professional Services	\$5,678.52
	1/16/16 – 2/12/16	<u> </u>
	Total General Fund	<u>\$31,417.72</u>

RECREATIONAL ENTERPRISE FUND

PNC Credit Card - to G/F	Easter Egg Hunt	\$258.80
	Stamps	196.00
	Transportation	1,905.00
	Trips	<u>18,918.31</u>
		\$21,278.11
Touriffic Travel	Nashville and	\$17,483.00
	Williamsburg, VA	<u> </u>
		<u>\$38,761.11</u>

Mr. Shropshire seconded the motion and Resolution 2016-46 was approved with a unanimous vote of 7-0.

6. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:35 P.M

Respectfully Submitted,



Sharon Browne, Recorder