

MIDDLETOWN TOWNSHIP
DELAWARE COUNTY, PENNSYLVANIA
April 27, 2015

Minutes of the Regular Meeting of Township Council Held on, April 27, 2015 at 7:00 P.M., in the Township Administration Building located at 27 North Pennell Road

Present: M. Amoroso, S. Galloway, M. Kirchgasser, C. Quinn

B. Clark, J. Damico, Esquire, E. Janetka

1. OPENING

Chairman Mr. Kirchgasser called the meeting of the Council to order at 6:59 P.M., and led recitation of the Pledge of Allegiance to the Flag.

2. SPECIAL PRESENTATION

Mr. Kirchgasser announced that the County has declared May 7, 2015 as Children's Mental Health Awareness Day. Mr. Quinn motioned to approve the Township recognizing May 7, 2015 as Children's Mental Health Awareness Day as well. Mr. Galloway seconded this motion and Council approved the Proclamation unanimously with a vote of 4-0.

3. COMMENTS FROM THE PUBLIC

Debbie Timblin, resident and Township employee, reminded the public that Community Day would be taking place on Saturday, May 2nd at the Penn State Brandywine Campus. She highlighted a few differences for this upcoming event compared to year's past. First, due to excellent sponsorship, she announced that Community Day would be free to all residents and employees of businesses in the Township and non-residents would have a small fee of \$3 per person. She noted that wrist bands would be required for entrance, but that the wrist band got the participant a hot dog, bag of chips and Wawa beverage at no charge. In addition, the wrist band would have a raffle ticket on it that the participant should log on to Community Day's website to see if he or she won a prize. Ms. Timblin also discussed some of the new attractions taking place at Community Day. This included a NASCAR-style remote control race track, petting zoo, photo booth, and donut eating contest sponsored by Jes-Made Bakery. Lastly, Ms. Timblin announced that the *Town Talk* would have a map of Community Day included with this week's edition.

Ms. Timblin thanked Council and the public for their support and the opportunity to work on this event. Mr. Kirchgasser expressed that Ms. Timblin and the staff of the Township have done an outstanding job on this event in the past and that he was looking forward to Community Day on Saturday.

4. REPORTS

A. CHAIRPERSON

Mr. Kirchgasser commented that the new fire truck, Engine 46, was on display for the public to view this evening in the Municipal Building's parking lot. He expressed that Rocky Run Fire Company and Council are proud of the new truck being added to the Township's fleet.

B. MANAGER

Mr. Clark announced that due to funding cutbacks, the County was no longer providing an electronic recycling program anymore; however, several municipalities have come together to sponsor one in its place. He reported that the electronic recycling and shredding event would take place on Saturday, May 30, 2015 at the Granite Run Mall from 9 AM to 1 PM. He stated that old televisions and computer monitors would have a \$20 charge; however, anything else with a plug would be taken at no cost. The shredding option was also available to residents at no cost.

Mr. Clark explained that the Township was working with Edgmont and Upper Providence to sponsor this event, and encouraged residents to take advantage of it.

5. PUBLIC HEARING

- A. Application by the Commonwealth of PA for Conditional Use Approval to construct a communication tower for use by the Pennsylvania State Police on property located within the right-of-way of U.S. Rt. 1 near Baltimore Pike pursuant to Sec. 275-123(c) (14) of the Code of Ordinances allowing for communication towers as a conditional use within the B-General Business Zoning District
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Mr. Galloway motioned to open the hearing. Mr. Quinn seconded this motion and Council approved unanimously with a vote of 4-0.

David Onorato, legal representation for the State Police, explained that this conditional use application was requested in order to replace an existing tower at Rt. 1 near Baltimore Pike due to the current tower being "borderline obsolete."

Mr. Kirchgasser asked Mr. Onorato to confirm that this application was presented to the Planning Commission and received minimal feedback. Mr. Onorato confirmed this and added that the County Planning Commission also approved the plan, as did the Zoning Hearing Board, which provided relief from setbacks and several other zoning-related issues.

Mr. Kirchgasser noted that he had a copy of the February 27, 2015 summary regarding this application and expressed that if Mr. Onorato was able to summarize this document, the Township should have enough information for the hearing.

Mr. Onorato reported the request was to replace the current tower with a new one that would be 270 feet tall (250 feet tower with 20 foot antenna). There would also be a shelter on site to house the equipment necessary to run the tower, which would be 20 feet by 30 feet at its base. Mr. Onorato explained that there would be no additional landscaping for security reasons, but the applicant did receive approval for an 8 foot fence. He went on to state that PADOT approved the site's accessibility for trucks to access it and that approval was also received for storm water management. Mr. Onorato reported the applicant would comply with Township codes and other codes related to communication towers, as well as with FAA and FCC codes by having the necessary lighting at the top and other parts of the tower in order for flying air craft to see it at night.

Mr. Onorato explained the location chosen is necessary as per a study conducted by the State Police, which determined a weakness in communication coverage in this area. The study determined that the requested location was the only viable location for this new tower. He then handed out packets to the Township and submitted Exhibits A1 through A18. Mr. Damico noted that the application would be submitted as Township Exhibit 1 and the full set of plans as Township Exhibit 2. Mr. Onorato went on to explain that Exhibit A11 was the final decision and Decision Order from the Zoning Hearing Board. He then presented Exhibit A19 and stated it was the Zoning Hearing Board transcript with testimony. Mr. Onorato then introduced Robert Heath, engineer for the applicant, and John Nally, Chief Site Development and Maintenance representative for the State Police. He stated they were available to testify at this hearing, if necessary.

Mr. Onorato reported that notices were mailed to residents in the area of the proposed tower and that he was providing this proof to the Township as Exhibit A20. He stated A20 consisted of 3 different categories: returned certified receipt cards, addresses that did not return the certified receipt cards but did have the notice sent via regular mail, and addresses that had unclaimed certified mail. Mr. Damico then submitted Township Exhibit 3, and described it as proof of publication of the notice of hearing. Mr. Damico asked if Mr. Onorato wished to move for submission of Exhibits A1 through A20 and Mr. Onorato answered in the affirmative. Mr. Onorato ended by stating he believed the applicant satisfied all requirements related to health, safety, wellness, and other compliance requirements.

Mr. Kirchgasser asked if local emergency services would have access to the site and Mr. Onorato answered in the affirmative.

There were no comments or questions from the audience.

Mr. Galloway motioned to close the hearing. Mr. Quinn seconded this motion and Council approved unanimously with a vote of 4-0.

Mr. Kirchgasser announced Council would move to item 6A and 6B before continuing with the order of the agenda.

6. NEW BUSINESS

A. Review of Conditional Use Application 15-1: Commonwealth of PA—Media Bypass between the on and off ramps to Baltimore Pike

Mr. Clark reported that the hearing has concluded for the conditional use application and that the applicant satisfied all other necessary requirements for the conditional use application.

Mr. Galloway motioned to approve the conditional use application. Mr. Quinn seconded this motion and Council approved Resolution 2015-44 unanimously with a vote of 4-0.

B. Review of Final Land Development Plan: Commonwealth of PA—Media Bypass between the on and off ramps to Baltimore Pike

Mr. Clark explained approval of the final land development plan was needed in order for the State Police to move forward with replacing the existing communication tower with a new one. He noted that if approval was granted, it would be subject to a number of conditions and the testimony provided during the public hearing.

Mr. Galloway motioned to approve the Final Land Development Plan subject to the conditions Mr. Clark noted and Mr. Quinn seconded the motion.

Mr. Damico asked if a condition was established in the Final Land Development Plan that granted the Township Fire Company use of the communication tower. Mr. Onorato confirmed this was a condition.

Mr. Onorato then asked Council if the construction escrow could be waived. Mr. Damico asked if the applicant was posting the improvement security deposit for the storm water management. Mr. Onorato answered in the affirmative and went on to state that the applicant wished to waive the escrow in order to avoid "red tape." Mr. Damico informed Council that it had the right to waive the escrow. Mr. Galloway asked if there was precedence for doing so. Mr. Clark stated there was not, but that the closest past example would be when Penn State posted escrow with an application

(review escrow) and then did not post an additional escrow since the Township just held the review escrow instead. Mr. Onorato asked if a similar arrangement could be considered for the applicant since the Township still held about \$5,000 as a review escrow.

Mr. Galloway amended his original motion to reflect applying the review escrow to the plan and not requiring additional escrow to be held. Mr. Quinn seconded the motion and Council approved Resolution 2015-45 unanimously with a vote of 4-0.

5. PUBLIC HEARINGS

- B. Proposed amendment of the Zoning Ordinance to add a definition for "Pad Lot" and to add a new Article XXIII.A entitled Mall Conversion Overlay (MCO) District which shall govern the demalling or other conversion of a mall developed in accordance with provisions of the B-2 Major Shopping Center District
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Mr. Quinn motioned to open the hearing. Mr. Galloway seconded this motion and Council approved unanimously with a vote of 4-0.

Joe Riper, legal representation for BET Investments (BET), explained that Granite Run Mall is currently zoned as B-2 Major Shopping Center District. He stated that BET plans to rejuvenate the location as an exterior accessed retail/recreational/multi-family/restaurant use. In order to accomplish this, an amendment is needed to the zoning ordinance. Mr. Riper proposed to amend the ordinance to create a Mall Conversion Overlay (MCO) District. Two major components of this amendment would be that there would be a 75 acre minimum for the parcel within the B-2 district and that it allows for a lifestyle component within the district.

Mr. Riper reported the proposed amendment was introduced in February during a Council meeting and that there has been no proposed changes since then. He stated that the proposed amendment has received approval from the County Planning Commission and Township Planning Commission on April 14, 2015.

Mr. Damico introduced Township Exhibits 1 through 6, and described them as the proposed Ordinance (1), Township Planning Commission draft Minutes for April 14, 2015 meeting (2), County Planning Commission Review of Application (3), proof of public hearing notice (4), notice letter sent out to the required neighboring residents of the B-2 zoning district (5), and the public hearing posting notice and map as of April 17th (6).

Mr. Riper introduced Exhibit A1, which was the reduced copy of the Preliminary Land Development Approval. He also noted that Michael Markman, co-owner of BET, and Keith Lieberman, project engineer, were also present to testify, if necessary.

Mr. Kirchgasser clarified for the public that this hearing was for an amendment to the zoning previously introduced and was not for final approval of the project. He explained that preliminary zoning approval was needed first. Mr. Riper confirmed this and requested that this hearing not be closed this evening and be continued to the June 22nd Council meeting with the idea of submitting the development plan at that point. He emphasized he had no expectation of an action on Council's part at present.

Mr. Lieberman was sworn in by the Court recorder. He showed the plans for the property and noted they would be submitted for land development the following week. Mr. Lieberman explained the plan was to demolish the interior portion of the mall and replace it with outdoor, walkable space that would include retail, dining, and parking. He stated the front area that is currently parking would be converted to retail and dining. Mr. Lieberman reported that Kohl's, Sears, Sears Auto, Acme, and Boscov's would remain at their current locations, but JC Penney would be demolished and replaced with a movie theatre on top and junior-size anchor stores on bottom. He went on to report that the current AMC Theatres building would be demolished and Apartment Building 2 would be constructed in its place. The other apartment complex would be next to Acme, at the former Chi-Chi's site. Mr. Lieberman explained that the overlay ordinance was necessary for a lifestyle community and that the current B-2 ordinance was established when the mall was the "retail center of its time." The proposed concept is more modern.

Mr. Kirchgasser asked Mr. Lieberman to explain what the pad site change was. Mr. Lieberman stated the definition is more of a legal term and deferred to Mr. Riper, who reported that creating this definition would allow for the fee simple sale of a building on the property. He emphasized that when and if that happened it would be as a declaration of covenant easement with adequate parking and other details established. Mr. Riper stated this was not needed at present but the applicant wished to build it into the ordinance for future need in case it becomes necessary. He also explained that in order for such a sale to take place, a number of steps would be required, including approval by the Township.

Mr. Galloway asked if carnivals would continue to take place on the property once the project is completed. Mr. Markman answered in the negative. Mr. Galloway expressed he was happy to hear that.

Mr. Riper asked if there were any questions. Council had no questions.

Sarah Claypoole, 206 N. Middletown Road, asked what was being planned for Building K on the plan. Mr. Markman was sworn in by the court recorder and then answered that it was likely to be Franklin Mint Federal Credit Union and Pappones Pizza. He noted that the pad site sale was not being built into the plan with that location in mind and that he has no intention to sell that site. Ms. Amoroso stated she thought it was supposed to be a bank. Mr. Markman said it was likely to be Franklin Mint Federal Credit Union but that it was possible Pappones may be going there also. Steve Jendrus, 30 Oriole Avenue, commented that the architect did not point out that

building on the plan when he reviewed it. Mr. Markman explained that the store design at this location was not finalized yet. At this point, BET is only proposing those companies at that location.

Mr. Damico asked if Mr. Riper wished to move the plan into the exhibits, and Mr. Riper answered in the affirmative, stating it should be listed as A1. Mr. Damico then moved the Township exhibits for the hearing. Mr. Clark went over what each exhibit was once more (see paragraph 4 of this agenda item for the list). Mr. Galloway motioned to continue the hearing to the June 22, 2015 meeting. Ms. Amoroso seconded this motion and Council approved unanimously.

6. NEW BUSINESS

- C. Consideration for Adoption: An Ordinance amending the Middletown Township Code of Ordinances of the Township of Middletown, Delaware County, Pennsylvania, Chapter 275, Zoning, Article II, Entitled Terminology, Section 275-8 by adding a definition for Pad Lot and by adding Article XXIII.A entitled Mall Conversion Overlay (MCO) District which shall govern the demalling or other conversion of a mall developed in accordance with Article XXIII, Chapters 275-135 through 275-140
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Mr. Quinn motioned to continue Agenda Item 6C to the June 22, 2015 meeting. Ms. Amoroso seconded the motion and Council approved it unanimously.

- D. Review of Final Land Development Plan: Granite Farms Estates—Building E addition: 1343 W. Baltimore Pike
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Joe Hanna, engineering representative for Acts Retirement Community's Granite Farms Estates, explained that the Building "E" expansion and renovation has received a recommendation for approval from both the County Planning Commission and Township Planning Commission. He reported that the applicant is also prepared to comply with the Township engineer's comments. Mr. Hanna asked if there were any questions. No questions were received.

Mr. Galloway motioned to approve the Final Land Development Plan. Mr. Quinn seconded this motion and Council approved Resolution 2015-46 unanimously with a vote of 4-0.

- E. Consideration for Adoption—An Ordinance of Middletown Township, Delaware County, Pennsylvania, amending an existing easement held by Sunoco Pipeline, L.P., a Texas Limited Partnership, in order to permit the construction of an aboveground valve control station and associated improvements and landscaping, on Township

property located along Darlington Road and being identified as Folio No. 27-00-00388-02.

Mr. Kirchgasser noted that Tim Sullivan was serving as Township Solicitor for this matter due to a conflict of interest with the applicant and Mr. Damico's office.

Joe Riper, legal representation for Sunoco, explained that the existing pipeline runs through the Darlington Tract and crosses Baltimore Pike where SEPTA is proposing to build its new station. As a result, the existing valve control station at that location needs to be relocated and the Darlington Tract Easement location is the most logical location.

Mr. Riper explained that Tom Comitta's office was consulted due to the Township's concerns about the site's visibility. Mr. Comitta's office has developed a landscaping plan for Sunoco, which will include a wood fence enclosure. The applicant has agreed to comply with Mr. Comitta's recommendations. He also noted that Mr. Sullivan felt that the ordinance process was needed for this project since there were significant changes to the existing Easement Agreement. Mr. Riper also noted that Mr. Clark and Mr. Sullivan made additional comments in addition to Sunoco offering \$20,000 compensation for the easement amendment, and the applicant has agreed to comply with all comments and pay the fee. He requested Council adopt the ordinance.

Mr. Galloway thanked Mr. Sullivan for his work on the Township's behalf with this amendment and then motioned for adoption of the Ordinance. Ms. Amoroso seconded this motion and Council approved Ordinance 757 unanimously with a vote of 4-0.

Mr. Clark noted that contributions similar to this in the past have been deposited to the park facilities and open space fund and asked if that was Council's intention with this fee. Mr. Kirchgasser confirmed this was the intention.

F. Adoption of Proposal: Playground Equipment Installation—Sleighton Park

Mr. Clark explained that the Township previously approved the purchase of the playground equipment for Sleighton Park and that it was currently in the process of being installed. The playground would entertain two different age groups and is located east of the main soccer field. Mr. Clark reported the cost of installation needed to be approved. Buzz Burger, Inc., located in Glen Mills, has been contracted to do the installation at \$16,534. In addition, there is additional site work that needed to be done to get the area ready, which would bring the total cost to \$18,499. Mr.

Clark explained that once this is completed, the Public Works department would install the border and the triple shredded mulch.

Mr. Galloway motioned to approve the quote from Buzz Burger, Inc. Mr. Quinn seconded this motion and Council approved it unanimously with a vote of 4-0.

Mr. Clark reported the playground should be done within the next few weeks.

G. Approval of Bill List

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

Mr. Carlson moved that payments under the April 27, 2015 Bill List be authorized for payment by the Finance Department:

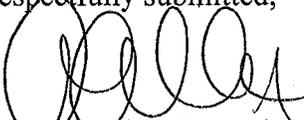
GENERAL FUND		
A.J. Blosenski, Inc.	March Recycling and Yard Waste	\$17,656.00
Aqua Pennsylvania, Inc.	March Hydrant Rental	\$11,432.25
Sewer Authority	Refund Niermann Health Overpayment	\$7,426.74
	Total General Fund	\$36,514.99

Ms. Amoroso seconded this motion and Council approved Resolution 2015-47 unanimously with a vote of 4-0.

6. ADJOURNMENT

Mr. Kirchgasser adjourned the meeting at 7:56 PM.

Respectfully submitted,


Amanda Allen, Recorder

