

MINUTES
June 20, 2023
Hybrid Workshop of the Board of Supervisors (Zoom meeting ID was advertised in advance in the Pike County Dispatch) 560 Route 6 & 209 6:30 p.m.

There is no need for a meeting on July 3rd, as there are already scheduled hearings on July 17th and July 25th. The consensus was that the July 3rd meeting was unnecessary.

It is now too late to conduct spongy moth spraying since Memorial Day has already passed. Rachel was asked to check if the County would handle it, as she received complaints from Foster Hill. It is unclear who paid for the spraying along Twin Lakes Rd.

Mr. John Fuller had expressed his desire to discuss Econo-Pak, and Rachel informed him that he could attend the workshop on July 17th at 6:30 p.m. There will also be a hearing on that day, but it will be during the regular meeting. If this arrangement works for Mr. Fuller, it will allow time to email him back and remind him of the tasks that need to be addressed before the meeting.

Rachel has requested the Solicitor provide some education on zoning concepts, specifically how municipal ordinances interact with state law when there is significant public participation. The survey results indicate that people lack a basic understanding of zoning concepts, and Rachel believes that short video clips that could be developed by organizations like PSATS and DCED could be shared on the website to educate the public. Ted from DCED's Local Government Services Office had previously presented on this topic jointly with the Township at the Borough, and those presentations have been helpful.

Mr. Fuller has inspected all three bridges and expressed satisfaction with their condition. The bridge in Moon Valley is in excellent shape, while the two on Schocopee Road are still in good condition considering their age and may need some TLC to extend replacement to around ten years. He will submit a written report detailing a plan, strategies, timeframes, priorities, and cost estimates.

The Township will continue using Zoom for its meetings, as some people prefer attending remotely.

If the Planning Commission decides to reschedule their July 25th meeting, a new date can be advertised in advance. This preapproval can be granted today, as the July 3rd meeting will be canceled, and the next Supervisors' meeting will take place on July 17.

Regarding personnel matters, Logan, the summer youth worker who is now 18, no longer requires child supervision as he did last year when he was 17. Mark, who is also over 18, may be able to supervise other youth. Mary Beth will call Shahana tomorrow to schedule an appointment for her to meet a young lady who will be working with her in the office. Shahana will also have to attend job training on the 28th.

Black Walnut will attend the next Planning Commission meeting and provide relevant documents. They possess a substantial amount of material dating back to 1999. They aim to remove any structures that do not comply with current zoning regulations and do not wish to continue the dumpster business. Mr. DiLorenzo stated that according to Section # 608.3, they are not required to file a conditional use application as they are reducing rather than adding.

Mr. DiLorenzo indicated that the Planning Commission has been told that DEPG will refrain from involvement in zoning modification matters and will focus solely on commercial purposes, without including apartments, at this time.

Further discussion is needed regarding the short-term rental ordinance. There will be a 24-hour phone line for complaints, necessitating the need to answer calls even during the middle of the night.

MINUTES

June 20, 2023 Hybrid Meeting of the Board of Supervisors (Zoom meeting ID was advertised in advance in the Pike County Dispatch)

560 Route 6 & 209

7:00 p.m.

A scheduled meeting of Milford Township Supervisors was called to order at 7:00 P.M. by Chairperson Rachel Hendricks. Also present were Supervisors Gary M. Williams (Vice Chairman) and Robert Di Lorenzo, Solicitor Anthony Magnotta, and Secretary/Treasurer Shahana Shamim.

Gary made a motion to approve the minutes of the June 5th meeting, Rachel seconded, and it passed unanimously.

Treasurer's Report:

Shahana reported that since the last meeting she had received \$3,629.96 from the Tax Collector, \$5,620.30 from R.E Transfer Tax, \$150 from a lot improvement application, \$670 from sewage, and \$100 from Zoning, and \$32.50 from a Right-to-Know request. She also reported the financial account balances as \$ 304,280.02, \$109,181.89, \$13,152.41, \$5,985.74, \$16,006.41, and \$129,296.26 in the accounts of Wayne Bank (Investment), Wayne bank (General), Wayne Bank (Payroll), NBT Bank, PLGIT (General), and PLGIT (Liquid Fuels) respectively.

Roadmaster:

Mr. Williams, the Roadmaster, said that a young fellow will be working for the Road Department through the Pike County Job Training. It's the same young gentleman who had worked last year. Gary continued that today, he was notified that a youth from the job training program will hopefully start working with Shahana next week in the office. The road crew mowed some of the roadsides, but the mower broke down last week. The arm on the blade broke. It was taken to the shop, and it's fixed now. Some patching up on the dirt portion of Schocopee Rd was done. The three bridges that the Township owns have been inspected. He is waiting for the engineer to get back, but from what he heard tonight, they have no problems with them, so

we're in pretty good shape there. We have some curbs that we need to replace, probably next week sometime, as they were hit by the snowplows this year. Harvey, the Road foreman, has been approved to attend the dirt and gravel certification program in July, which will make the Township eligible for funds through the Dirt & Gravel Road Program. Costs for attendance will be reimbursed by the Conservation District.

Public participation #1:

Rachel asked the Solicitor to give some educational information on basic zoning concepts, and how municipal ordinances interact with state laws and federal laws. The Solicitor explained that Zoning naturally regulates the use of land and structures, as well as the extent and character of development. Zoning originated as a reaction to nuisances that were harming neighborhoods, so it was a response to public nuisances. However, over the years, its scope has expanded, and the courts no longer view it negatively but rather in a positive light. They see zoning as a means to plan and control development and land use within municipal boundaries.

Municipalities in Pennsylvania can only exercise the powers granted by the state. The particular topic Rachel wanted him to discuss was state mandates and preemptions that affect local zoning. We have residential zones where the primary and principal permitted use is residential. We also have developmental districts where commercial uses and structures are primary, as well as a low growth district for relatively less dense uses.

When examining zoning throughout Pennsylvania's history, we have come a long way. The first ordinances from the early 1980s were restrictive, permitting only certain uses and prohibiting everything else. The concept of zoning and its interpretation by the courts now requires including as many uses as conceivable in the comprehensive plan and zoning ordinance, although not every use will be included. Most zoning ordinances have a savings clause, which means if a use is not explicitly permitted or prohibited, it must be determined whether it can be permitted. This is typically done through the Planning Commission's recommendations to the supervisors or, in some cases, a special exception that goes to the zoning hearing board.

Regarding the question of whether zoning can preempt or preclude state regulations, such as the Clean Streams Law or the Sewage Facilities Act, the answer is no. State Acts take precedence over any local zoning. In fact, certain Acts explicitly state that municipalities can enact their own regulations, but those regulations will be ignored. Examples include the Agricultural Communities and Environmental Act (ACRE), the Airport Zoning Act, and the Oil and Gas Act. The Gaming Act, initially preempting local zoning ordinances for casinos in Pennsylvania, has since been changed by the Supreme Court in a recent case. However, for the first 25 or 30 gambling applications, compliance with local zoning was not required.

The main goal is to establish uses, zones, and determine whether they will be designated as principal permitted uses, conditional uses, special exceptions, or require zoning variances. The differences are as follows: a principal permitted use requires an application to be filed with the zoning officer, who can then issue a permit without further review; a conditional use must be reviewed by the Planning Commission and approved by the Board of Supervisors; special

exceptions in zoning ordinances must be reviewed by the Planning Commission and then go to the zoning hearing board, bypassing the supervisors; and variances are considered by the zoning hearing board. Planning and implementing a zoning ordinance involves a lot of work, which is why most townships hire planners for this task. In Pike County, especially, there has been significant support through the Scenic Rural Character Preservation Act, which has provided funds for comprehensive plan revisions and zoning ordinances.

The Solicitor added that that's just a little bit of background information. Rachel mentioned that some issues arose, and people had questions about whether our ordinances can supersede state law. The answer to that is no, they cannot. Rachel confirmed with him so that folks understand, there's not a single ordinance that has been written or can be written at the Township that would allow a property to not abide by, for example, the Clean Streams Law or the Sewage Facilities Act.

Rachel said that the Solicitor had sent a letter to the Supervisors regarding how the Board of Supervisors (BOS) should conduct themselves regarding the pending application, and she asked him to make a statement about it. The Solicitor said that the Supervisors had received a couple of letters and had been asked whether they had a position regarding the warehouse application, but they shouldn't express that position. The BOS acts as a tribunal when they are dealing with the conditional use, and when acting as a tribunal, they should find the facts and apply the law. The only facts that should be considered are those that are presented during a hearing. Governing bodies are usually legislative bodies that pass ordinances, and someone else enforces them. However, in cases where they are reviewing a conditional use application, they serve as a court and therefore must not have a pre-existing bias or predisposition toward the application until they have heard all the evidence for the case. As an example, he added that there was a recent case where the Township Solicitor took it upon himself to cross-examine the applicant's witnesses. Then the Township engineer and the zoning officer testified against the application, and as a result, the Pennsylvania Supreme Court overturned. So, if you feel like you're being avoided when asking questions, it's not because they are avoiding you. It's just that they can't answer the types of questions you're asking because the evidence needs to be presented during the hearing.

Rachel confirmed with the Solicitor that there is an internal screening process in place that shields the Supervisors from certain correspondence regarding the pending application. This process ensures that any materials deemed inappropriate are not sent to them, and only approved, appropriate correspondence reaches the Supervisors. The Solicitor further explained that, to address Rachel's concerns, the board has instructed the secretary to send any questions or comments regarding the warehouse to him. He reviews the inquiries and then decides whether Shahana should respond or not. Today, questions were received, including why the Board of Supervisors hasn't made their position on the warehouse application public and what the Supervisors' thoughts are on certain aspects of the application. It's important to note that the board cannot provide answers at this time, but it does not mean they will ignore the public.

In reply to Mr. Weber's inquiry, the Solicitor said that if a conditional use is approved, then it has to comply with all other Township ordinances pertaining to nonresidential development, and that would mean it would need a land development approval. In order to obtain a land development approval, it would have to secure and provide the Highway

Occupancy Permit from PennDOT. An NPDES permit will have to be obtained because it is going to involve more than one acre of disturbance, and a letter of adequacy from the Pike County Conservation District will also be needed. Approvals from other federal agencies regarding fire safety, appropriate stormwater management from the County Conservation District, and the uniform construction code from the Department of Labor and Industry will be needed.

Rachel added that, for example, at the end of the conditional use hearing for the Econo-Pak warehouse across the street, a list of 41 conditions was issued, and the applicant has to meet all those conditions before they can proceed. A copy of that letter, which includes things like the highway occupancy permit, the list of all the legal requirements, local agency approvals such as the fire department, and the developers' agreement, could be acquired with a right-to-know request. This can be used as an example of what typically happens at the end of a conditional use hearing when the application is approved, subject to conditions. The Solicitor added that the conditional use is the first hurdle for an applicant, and then they have to go through the process and get the zoning approval. Afterward, they have to obtain outside agency approvals, which are usually state agencies, county agency approval from the Conservation District, and building approval from the building code official. In this case, it will be a commercial approval. If the conditional use application is approved by the Board of Supervisors, it will contain the list of conditions. If the BOS denies the conditional use application, then it is required to state the reasons why the application is denied, with specific references to the Zoning Ordinance and Land Development Ordinance.

Mr. Weber asked if the BOS could deny the rescheduling request for the hearing, which was scheduled for June 22. Rachel replied that the Solicitor had said that the board cannot demonstrate bias. If an applicant indicates that his attorney and engineer are unable to be present on the hearing date, requested an extension, and the Board says no, she asked Mr. Weber whether he would, were he the applicant, consider that to be a demonstration of bias.

Secretary's Report:

Shahana presented various correspondences received, including from Econo-Pak, Woodland Design Associates, Greenwood Hills POA, Mike Mrozinski, and PennDOT. Rachel said that the correspondence from the County stated that it is looking for us to provide details on areas of our municipality that lack acceptable Internet connectivity. They need to know the location, the number of homes and connections, and the probable number of hookups, by the end of the month so that they can incorporate the information into a grant application by July 10. She asked folks to send that information to the office, and she asked Shahana to send the information to Mike Mrozinski ASAP.

Old Business:

- a. **National Land Developers' Conditional Use Hearing of June 22 canceled –Reschedule:** The applicant had requested this cancellation, and the attorneys have been going back and forth to determine availability. The host location is Best Western, and the date that worked for everyone was the 25th of July. Unfortunately, this date coincides with the Planning Commission meeting. The venue at Best Western is available on that date as well. Rachel made a motion to approve the

rescheduling of the hearing for July 25th at 6:00 PM at the Best Western. She added that the cost of readvertisement will be assessed to the applicant. Gary seconded the motion. There was discussion with the public.

Mr. DiBiasi said that the public is not as readily available to participate in the summer. He added that he had received a letter from the Delaware Riverkeeper Network supporting the idea that the next hearing should wait until September because that's when the public is around. The people are on vacations, and that's not fair to the taxpayers and the voters. Rachel confirmed with the Solicitor that under the Municipalities Planning Code, there are time frames that the Township has to abide by unless the applicant provides relief. The Solicitor added that the applicant has provided relief until July 31st. The applicant is supposed to have sufficient hearings within the first hundred days to present their case, and obviously, we're beyond that, but only with their consent. Rachel asked the Solicitor if there is any relief to municipalities for providing seasonal delays under the Municipalities Planning Code, and the Solicitor said 'no.' Rachel added that she had made efforts in the past to ensure that hearings were not held in close proximity to holidays. Public participation is really minimal at those times, so if the applicant was trying to have the hearing at the July 3rd meeting, then that schedule would clearly have received push back. The Planning Codes won't allow taking a seasonal break for three months and telling the applicant that we cannot have more of their hearings just because people are on vacation. It was difficult to coordinate all four attorneys' schedules. Many community members may have jobs, for example, teachers and other school employees, who actually have more time available to participate in the summer months. Mr. DiBiasi said that the applicant was breaking the 100-day rule and asked why the parties could not break from it as well. Rachel replied that the applicant is the only one who can give us relief, consent to do so, under the law.

Econo-Pak – Update: Three things are still outstanding. Econo-Pak has indicated that they would like to attend a workshop, and they were informed that the appropriate time would be the July 17 workshop at 6:30 P.M. Rachel and the Solicitor will follow up with Mr. Fuller in the interim regarding the missing items of the Developers' Agreement. They have narrowed it down to two or three additional conditions that have not been met yet. One of the conditions is just a mapping issue, while the other conditions include their evacuation plan, the language of the Zoning Hearing Board approval, and a letter from the fire department indicating approval of the plan. The Secretary was asked to add this item to the agenda for the July 17 workshop.

new business

- a. **Meeting room use request for June 24, 2023 (second choice July 8) at 10:30 A.M. – Greenwood Hills POA:** Rachel made a motion to approve the request for the use of the meeting room on June 24th at 10:30 A.M. Gary seconded the motion, and it passed unanimously.
- b. **Cancellation of the July 3rd meeting:** This Monday is between the July 4th holiday and the weekend when the vast majority of people are going to continue celebrating the holiday through the four-day weekend. Rachel made a motion to cancel the July 3rd meeting. Gary seconded the motion, and it passed unanimously.

Mr. Stroyan said that the hearing date has been set for July 25, and he respectfully asked the Supervisors to cancel the Planning Commission meeting for that night. Rachel stated that the Planning Board might have other matters to attend to and suggested canceling the Planning Commission meeting for that date. She also proposed advertising an alternate date, which would be determined by the planning board members, at their discretion. Gary seconded the motion, and it passed unanimously. Rachel further explained that the vote was necessary due to the cost involved in advertising for a rescheduled meeting. Mr. Stroyan added that if any application is submitted before the next workshop, the Planning Board will advertise the rescheduled date.

Other public participation:

Mr. Weber said that one of the parties was somebody from the Milford Fire Department, so they were supposed to be present at the hearing, but they were not because they were given the wrong date. Gary said that the hearing schedule was advertised, and Mr. Magnotta added that the same notification was sent to Mr. DiBiasi and all the other parties. In reply to Mr. Weber's inquiry, the Solicitor said that the Fire Department is a party for the hearing, and Rachel added that parties have the ability to present witnesses and evidence, and to cross-examine witnesses. In reply to Rachel's inquiry, the Solicitor said that any party who wants the transcript can obtain it from the court reporter, and they have to pay for it.

There was no other business to discuss. At 7:51 P.M., Gary made a motion to pay the bills and adjourn. Rachel seconded, and it passed unanimously.

Respectfully submitted,

Shahana Shamim

Secretary/Treasurer