

**EAST GOSHEN TOWNSHIP  
BOARD OF SUPERVISORS MEETING  
1580 PAOLI PIKE  
March 20, 2007 – 6:30pm**

**Present:** Chairman Don McConathy, Vice-Chairman Thom Clapper, Marty Shane, Carmen Battavio and Joe McDonough. Also present were Township Manager Rick Smith, Phyllis Marron (Park & Rec), Jane Fava (Conservancy Board), Elaine Blair (Hershey's Mill Rep), and Kathryn Yahraes (Historical Commission).

**EXECUTIVE SESSION**

The Supervisors met in Executive Session from 6:30pm to 7:50pm to discuss a labor contract issue.

**WORKSHOP**

**Agenda Review**

The agenda for the evening was reviewed.

**1384 Boot Road Subdivision and Land Development Plan**

Marty said this application should have gone to the Conservancy Board before the Planning Commission. Joe said the Board will need a copy of the Chester County Planning Commission review letter.

**FORMAL MEETING**

**Call to Order & Pledge of Allegiance**

Don McConathy called the meeting to order at 8:05pm and led everyone in the Pledge of Allegiance to the flag.

**Recording of Meeting**

Don asked if anyone would be recording the meeting. There was no response.

**Approval of Minutes**

Don said approval of the minutes would be deferred until April 2, as the Supervisors did not have time to review them in workshop before the meeting.

**PUBLIC HEARING**

**Cingular Wireless, 1360 West Chester Pike – Conditional Use Hearing**

No one was present for the applicant. Don reopened this hearing to consider a conditional use application for Cingular and announced that the applicant has requested another continuation. The hearing will be continued until April 10, 2007. A court reporter was present and will provide a complete transcript of the proceedings.

## FORMAL MEETING (Resumed)

### Chairman's Report

Don announced the Board met in Executive Session on March 13 to discuss a pending legal matter, and earlier this evening to discuss a labor contract issue.

### Flag Presentation by Employee Steve Walker

Township employee Steve Walker presented the Supervisors with a framed U.S. flag in appreciation of the support he received from the Township while he was activated in Afghanistan.

### Treasurer's Report

The Treasurer's report for March 6, 2007:

	RECEIPTS	EXPENDITURES
GENERAL FUND		
Real Estate Tax	\$ 290,079.21	
Earned Income Tax	\$ 181,099.81	
EMS TAX	\$ 1,000.00	Accounts Payable \$ 70,301.37
Transfer Tax	\$ 20,892.32	Debt Service \$ 0.00
Codes, Park & Rec, Etc.	\$ 30,977.01	Payroll \$ 80,000.00
<b>Total Receipts</b>	<b>\$ 524,048.35</b>	<b>Total Expenditures \$ 150,301.37</b>
Zoning Hearing Fund	\$ 0.00	\$ 0.00
State Fund	\$ 0.00	\$ 0.00
Capital Reserve	\$ 0.00	\$ 0.00
Transportation Fund	\$ 0.00	\$ 0.00
Sewer Operating	\$ 8,089.88	\$ 29,722.34
Refuse	\$ 6,645.52	\$ 514.71
Capital Projects	\$ 0.00	\$ 0.00

Marty made a motion to accept the Treasurer's Report but not the bills or receipts until the Board has had time to review them. Joe seconded the motion. There was no discussion or public comment. The motion passed unanimously.

### Police Report

Sgt. Rick Gorman reported that 635 police calls were taken from East Goshen for February 2007. Don said to Carmen that Thornbury appears to be significantly above their PPU allocation for the year. Carmen said numbers reflect the higher level of crime in Thornbury, most of it emanating from Route 202 out of Wilmington.

### YMCA Tree Remediation Offer

The YMCA was represented by Bob Adams, Esq., Chuck Olivo, and Gary Green.

Don informed the audience that on the YMCA site on Airport Road, 16 trees were cut down in error (a total diameter of 266 inches), and 8 trees that were supposed to be cut were left standing.

Mr. Adams said the YMCA has presented an offer of remediation, and the ball is now in the Township's court. Carmen said he remembered during the Township's site walk with the YMCA it was stressed that the YMCA would take great care and would properly supervise the project. Mr. Adams said he thinks the error occurred due to miscommunication regarding tree markings on the site. He said the mistake was not intentional, and the YMCA deeply regrets that it occurred. He said the YMCA was just as surprised as the Township when they learned of the error. Carmen said the Supervisors were pleased the YMCA contacted the Township immediately once they found out about the error.

Don asked why the 8 trees marked for cutting can now stay, when they had to be cut down before. Mr. Olivo said the YMCA tried to redesign the project to make accommodation for those trees. Don asked if they were perimeter trees and Mr. Olivo said yes. Don asked where the 16 trees had been located. Mr. Olivo said they were perimeter trees – 8 in the front and 8 in the back.

Thom asked the YMCA representatives if they thought a fine would ensure more supervision of the project in future. Mr. Adams said he didn't think a fine would make them more vigilant than they are now.

Joe asked what is being done to protect the remaining trees onsite. Mr. Olivo said a cut line fence has been installed around the remaining trees. Carmen asked if it is placed around the drip line, and Mr. Olivo said yes. Thom asked if Mr. Olivo was referring to plastic orange fencing and Mr. Olivo said yes. Thom said that kind of fencing does not prevent damage to trees or the drip line; it just serves as notification for heavy equipment to keep away. Thom asked how far the fence is located from the trees. Mr. Olivo said it varies from tree to tree. Thom said perhaps greater supervision onsite is necessary.

Don informed the YMCA that in light of the error, they have to be extremely vigilant to keep the wetlands protected and the construction equipment away from there. Don then read aloud the following paragraph from the YMCA's March 13, 2007 letter to the Township:

*To remedy the situation, the YMCA proposes to leave the eight trees that should have been cleared and plant 42 new trees of 3.5" caliper (144 inches) throughout the Township to compensate for the total diameter of trees that were inadvertently cleared. The YMCA is already planting 237 replacement trees. We hereby offer to plant an additional 42 new trees or make a donation of \$12,600 (the equivalent of planting 42 trees @ \$300 per tree) to be used by the Township as it wishes.*

Carmen said he would personally prefer the replacement trees instead of a monetary donation, because of the environmental benefit of having additional trees in the Township.

Don asked Mr. Olivo if some of the 140 replacement trees for the project, that were originally to be planted in other locations in the Township, now have to be used on the YMCA parcel as a result of the mistake. Mr. Olivo said yes.

Joe read aloud a comment the Township received in writing from concerned resident Geoffrey Bland:

*I also strongly recommend digging up and replanting the saplings or young trees on the site. Up to twenty of these small trees can be found on site. Using them to replant the site is an easy way to get trees.*

Mr. Olivo said the small trees Mr. Bland refers to could all be in the wetland area, and the YMCA is not going to intrude on the wetlands.

Joe asked if all the tree removal equipment is gone from the site. Mr. Olivo said the stumps still have to be removed. Joe asked if all remaining trees onsite are protected. Mr. Olivo said yes.

Thom said 84 plus 16 trees would be more equitable rather than take 16 trees from the 140. Mr. Olivo said the 84 includes the 16. Don explained that Thom would like the 16 to be added to the 84. Marty said the Board must determine if the number of replacement trees is going to be the focus, or the total caliper of the replacement trees. He said that according to the ordinance the total caliper is the important thing. Mr. Adams said if adding 16 trees to the 84 would be helpful, to make a nice round number of 100, the YMCA is willing to do that. Don asked if there will be any guarantee on the trees. Rick Smith said they are already guaranteed for 18 months.

Don asked the YMCA the status of the revised landscaping plan. Mr. Olivo said they would be ready to prepare that in another year. Gary Green said they plan to open the facility in August 2008. Marty said he believes it incumbent on the YMCA to come in with a revised landscape plan for the Supervisors to review, and not for the Supervisors to decide for the YMCA what the plan will look like. Don agreed and suggested the YMCA submit their proposed revised landscaping plan in early 2008.

Marty said the Township needs to decide on a schedule for planting the replacement trees, and to decide whether they should all be planted at once, or spread out over a period of time. Don said that decision should be referred back to the Conservancy Board. Marty noted the replanting schedule would also depend on the YMCA's cash flow situation. Mr. Adams said the money is not an issue to the YMCA, but the availability of trees and season they are planted is more important. Don asked Rick Smith to refer this matter to the Conservancy Board for their recommendation.

Marty moved to accept the YMCA's proposal to leave the eight trees that should have been cleared and to plant 100 new trees (84 + 16) of 3.5" caliper throughout the Township to compensate for the total diameter of trees that were inadvertently cleared. Thom seconded the motion. Carmen wanted the motion amended to state the trees would be subject to an 18-month maintenance agreement. Marty and Thom accepted the amendment.

*Public Comment: John Poth, 549 Willow Way, West Goshen – Asked for clarification on the caliper of the replacement trees and the length of the maintenance agreement. He then thanked the YMCA for “doing the right thing.”*

There was no further discussion or public comment. The Board voted and the motion carried unanimously.

### **Dulgarian/G&D Developers Extension Request for Conditional Use Approval**

The applicant was represented by Alyson Mamourian, Esq.

Marty moved that the Board extend the Conditional Use approval period for G&D Developers until August 8, 2007 with the stipulation that the outstanding engineering recharges and District Court filing fees are paid in addition to the posting of the required escrow prior to the Board signing the plans. If another extension is required beyond August, the Board may wish to make it of longer duration. Carmen seconded the motion. Ms. Mamourian indicated the stipulation was acceptable. There was no discussion or public comment. The motion passed unanimously.

### **1384 Boot Road Subdivision and Land Development Plan**

Applicant Russell Stump was present. He was represented by Ms. Heather Gill of Chester Valley Engineers.

Don recommended the applicant go back before the Planning Commission to resolve the Conservancy Board’s concerns before coming back before the Supervisors. Don advised the applicant that the Township will require a letter granting a 30-day extension; the Board would have to deny the application pending the extension letter.

Ms. Gill said she objected having to go back to the Planning Commission because if it was possible to save the one oak tree, they would have done it. The trees on the plan were given a great deal of consideration. She said they would have gone before the Conservancy Board a long time ago if they had known it was necessary. She added that the plans have been in to the Township since October 2006, although Joe pointed out that it took Chester Valley Engineers from October to February to prepare the landscape plan, so the Township was not holding up the plan.

Marty said the Board was in a dilemma because they did not have a recommendation letter from the Conservancy Board and don’t know what their issues are. Don was present at the March 14 Conservancy Board meeting and said they had an issue with a large oak tree and a large chestnut tree. Ms. Gill again said that if the trees could have been saved, they would have done so.

Jane Fava of the Conservancy Board explained that due to the inclement weather on March 10, they had been unable to do a site walk of the property.

Joe said he did not think it necessary to send the applicant back before the Planning Commission. Marty recommended the Conservancy Board send the Board their

recommendation after conducting the rescheduled site walk. Joe advised Ms. Gill it would be prudent for her to be present during the walk. Rick Smith will send a letter to the Conservancy Board advising them to have their written recommendation to the Supervisors before the April 3 meeting.

Joe asked Mr. Stump if he had anything to add. Mr. Stump said that the neighbors have been consulted from the beginning.

### **Comcast Variance Application for Fence at 1354 Boot Road**

The applicant was represented by Lou Colagreco, Esq. Comcast employees Mike McMenamin and Frank Primavera were also present.

Mr. Colagreco said Comcast is seeking variance relief to construct a fence on the downside of the berm, as they are concerned about activity on the berm by kids. Joe asked why the fence cannot be put on Comcast's side of the berm. Mr. Colagreco said they would need a variance either way. Marty said Comcast wants to secure the property to prevent liability in case a child has an accident on the berm. Marty asked Mr. Colagreco what hardship would support the variance. Mr. Colagreco said the hardship is the unique physical characteristic of the property, plus a flaw in the ordinance that prohibits commercial property owners from fencing the entire perimeter of their property, unlike residential property owners. Marty said that Comcast should have known the ordinance when purchasing the property.

Joe pointed out that Comcast is only seeking to fence a small portion of their property, and anyone could simply walk around the fence. Mr. Colagreco said the other sides of the property are sufficiently secured – one side fronts Boot Road, one side is wetlands, and a camera can monitor the other portion.

Joe asked if the berm was gone, would Comcast still want a fence. Mr. Colagreco said in that case it would be a less critical issue. Don asked Mr. Colagreco what type of fence material they are proposing. Mr. Colagreco said if it comes down to Comcast pursuing this through legal channels, they would probably opt for a chain-link fence; however, if the issue can get resolved at the Township level, they would probably opt for another type of fencing. Carmen asked if additional landscaping could be used instead of a fence. Mr. Colagreco said he already suggested that possibility to Comcast. Mr. Primavera, who serves as Director of Security, said landscaping is not a viable and accepted means of securing a property. Carmen asked why not, if the issue is mostly one of liability. Mr. Colagreco said that having plantings too dense could lead to other liability issues.

Marty asked how many times the police have been called to the site. Mr. Colagreco said he didn't know they had ever been called. Thom asked what kind of nuisances can Comcast document. Mr. Colagreco said they've had issues with ATVs on the berm, debris, and beer bottles.

Marty asked what other alternatives they have considered besides a fence. Mr. Colagreco said they have considered vegetation, cameras, lighting, and posting signs, all of which

have been ruled out. Joe asked if any cars have been damaged in the parking lot. Mr. McMenamain said there has been minor paint damage on cars from skateboarders, and that they have had to remove plywood used for skateboarding ramps. Also, a window of the building had been shot out. Carmen again asked why they have not called the police. Mr. McMenamain said he is a former police officer, and he does not think that would be good use of police time. Carmen told him it is in Comcast's interest to call the police, and that's what they're there for.

*Public Comment: Bill Egan, 1422 Mill Creek Drive* – Showed pictures of the berm from the adjoining property owners' vantage. He presented a petition to the Supervisors signed by 31 of the 34 households in his neighborhood, and read the numerous reasons the neighbors are opposed to the fence.

Carmen asked if any of the neighbors present had seen kids on the berm. Mike Burger of 1421 Mill Creek Drive said there was some ATV activity during the summer, but it has stopped.

Mr. Egan said he believes vandalism occurs as a result of Comcast's placement of a walking path on top of the berm, which incidentally is in conflict with their approved plan.

*Public Comment: Laurie de Linde, 1106 Amalfi Drive* – Said if vandalism is taking place she believes the perpetrators are coming from the other side, not from the residential side.

*Public Comment: George Fentress, 1418 Mill Creek Drive* – Said he thinks Comcast could think of more creative ways to secure the property using cameras.

*Public Comment: Abbas Rahbari, 1613 Manley Road* – Said Comcast could put a camera along the berm area, and commented that police are good about responding to these types of complaints.

Thom asked Mr. Egan how he thinks Comcast can avoid liability and also please the neighbors. Mr. Egan said he would suggest heavily landscaping the berm. Mr. Colagro said too many plantings can solve one problem but create others. He added that a fence would also protect the property owners from vandals. Joe asked if all the adjoining neighbors put up fences, would it alleviate Comcast's need for one. Carmen asked the neighbors if Comcast paid them to put up a fence, would it be something they would consider. Sean Hughes of 1101 Amalfi Drive said he does not think fencing is the answer. Laurie de Linde of 1106 Amalfi Drive agreed that a fence will not do anything, as the culprits are coming from the other side of the property.

Joe said an effort should be made by both parties to come to a compromise, and from what he's heard that has not been attempted. Mr. Colagreco said if Carmen's suggestion is acceptable to the neighbors, Comcast would be willing to sit down with them to discuss it. Bill Egan said if Comcast could grant the Zoning Hearing Board an extension, the three adjoining neighbors would be willing to talk to Comcast, if Comcast presents them

with a formal proposal. Mr. Colagreco said Comcast is amendable to Mr. Egan's suggestion. He then gave a verbal 30-day Zoning Hearing Board extension, and said it would be followed by a formal extension in writing tomorrow.

Public Comment: Susan Mangigian, 1105 Jaclyn Drive – Asked why Comcast could not place their fence on top of the berm. Don suggested letting Comcast and the adjoining neighbors work out the issue now that they've agreed to meet and discuss it.

Carmen requested that going forward, Comcast notify the police of any improper activity on the site.

### **Correspondence & Reports of Interest**

Don acknowledged receipt of the following:

- Letter from Senator Dinniman announcing East Goshen has been approved to receive a grant of \$37,892 under the Recycling Performance Grant Program of Act 101 of 1988.
- Goshen Fire Company Report and Fire Marshal's Report for February 2007.

### **Meetings & Dates of Importance**

Don noted the list of upcoming meetings as listed in the agenda.

### **Public Hour – Hearing of Residents – Receipt of Petitions**

*Public Comment: Abbas Rahbari, 1613 Manley Road* – Asked if the Township has a data retention policy for emails and faxes. Don asked Mr. Rahbari to put his question in writing, and said it would be referred to the Township Solicitor. Mr. Rahbari said he would like the opportunity to discuss this with Mr. Sommer in a future public meeting, and not limit the exchange to letters between the parties.

Mr. Rahbari then asked if the Township's outgoing mail is picked up daily. Rick Smith said the mail is generally picked up once at mid-day, and usually if there is additional mail at the end of the day, it is taken to the Post Office. Marty said there may be exceptions.

Mr. Rahbari asked if the Township has a policy on retrieving data from old Township computers before they are disposed. Don said he would refer this matter to the Township solicitor.

### **Adjournment**

There being no further business, the formal meeting adjourned at 10:24pm.

### **WORKSHOP (Resumed)**

#### **Bills**

Current invoices were reviewed.

#### **Upcoming Meetings**

Don said he will be absent from the April 3 meeting. He said the March 27 meeting may be cancelled if no important agenda items come up.

**Adjournment**

There being no further business, the workshop adjourned at 10:40pm.

Respectfully submitted,

Anne Meddings  
Recording Secretary