

**EAST GOSHEN TOWNSHIP
BOARD OF SUPERVISORS MEETING
1580 Paoli Pike
August 18, 2009 – 7:00pm
Final Approved Minutes**

Present: Chairman Marty Shane, Vice-Chairman Carmen Battavio, Joe McDonough, Don McConathy and Thom Clapper. Also present were Township Manager Rick Smith, Assistant Township Manager Joe Gill, Kathryn Yahraes (Historical Commission), Jim McRee (Deer Committee), Phyllis Marron (Park & Rec), and Elaine Blair (Hershey's Mill Rep). Township Solicitor Kristin Camp was present for the public hearing.

WORKSHOP

Review of Minutes

The draft minutes of August 11 and August 14 were reviewed and corrected.

Bills

The Treasurer's Report and Expenditure Register Report were reviewed.

Agenda Review

The agenda for the formal meeting was reviewed.

Hershey's Mill Dam

Marty said the only issue on the table for the Board tonight is whether to have Rick execute the agreement with NRCS or not; however, the public will no doubt wish to comment on other aspects of the dam issue as well.

Marty said that both Andy Dinniman and Barbara McIlvaine Smith would be sending representatives to the meeting this evening.

Regarding Neil DeRiemer's offer to purchase the dam from the Township, the Supervisors agreed to discuss this matter later, probably as an Executive Session with the Township Solicitor.

The Board then reviewed the spreadsheet Rick prepared showing the cost estimates for the various dam options.

The Board agreed that Rick should get a proposal from Gannett Fleming for a 90-ft spillway with articulated concrete block face.

T-Mobile Variance Request for Utility Pole

The Board reviewed a draft motion prepared by Don for this application. Marty said he had come to the conclusion that granting this variance would violate the letter and spirit of the Township ordinance.

Traditions Independent Living Facility in West Goshen

Marty gave a brief summary of the meeting in West Goshen on August 12 regarding this project.

FORMAL MEETING

Call to Order & Pledge of Allegiance

Chairman Marty Shane called the meeting to order at 8:04pm and led everyone in the Pledge of Allegiance to the Flag.

Moment of Silence

Carmen called for a moment of silence to honor the men and women serving their country in the armed forces and their families.

Recording of Meeting

Resident Neil DeRiemer said he would be recording the meeting.

Approval of Minutes

Don moved to approve the minutes of August 11 and August 14 as corrected in Workshop. Carmen seconded the motion. There was no discussion or public comment. The Board voted unanimously to approve the motion.

Chairman’s Report

Marty announced that the minimum municipal obligation for 2010 is as follows:

Non-Uniformed Defined-Benefit Pension Plan	\$120,497.00
Fire Defined-Benefit Pension Plan	\$41,367.00
Police Commission – Office Staff	\$9,981.00

Treasurer’s Report & Expenditure Register Report

None.

PUBLIC HEARING

Ordinance Amendment Prohibiting Overnight Parking of Commercial Vehicles

The Board conducted a public hearing to consider approval of an ordinance prohibiting the overnight parking of commercial vehicles on public streets.

Carmen moved to approve the ordinance amending Chapter 225 of the Township Code. Thom seconded the motion. The Board voted unanimously to approve the motion.

A court reporter was present and will provide a complete transcript of the proceedings.

FORMAL MEETING (Resumed)

Police Report

Police Chief John Dumond reported there were 621 calls for service from East Goshen in July.

He announced that WEGO is collecting donations for military dogs serving with our troops. They are doing this as a memorial to retired K-9 Rikko, who passed away in June. They are collecting retractable leashes and toys (both must be for large dogs), doggie treats, and blankets. All items must be new. Donations can be made at the police station or at the East Goshen, Westtown, or Thornbury Township offices. Donations will be accepted through the end of October.

Resident Linda Gordon asked if cash donations would be accepted. The Chief said they are not accepting cash, only the items requested. Carmen said he would be happy to take cash donations on behalf of WEGO and provide receipts for residents wishing to do so.

Hershey's Mill Dam

Marty requested that the large audience be respectful and courteous to others during the meeting and while making their comments. He said that due to the large turnout it might be necessary to place a time limit on individual comments.

Marty said the question on the table for the Board tonight is whether or not to execute an agreement for a conservation easement with the NRCS (Natural Resources Conservation Service) which would give the Township access to federal stimulus money to breach the dam. He noted that the Board would not be making a decision tonight on what to do with the dam.

Marty then thanked a number of people for working so hard on this issue:

Reed Bailey (resident)

Henry Sciortino (resident)

Rick Smith (Township Manager)

Rep. Barbara McIlvaine Smith & her staff

Senator Andy Dinniman & his staff

He also thanked the Department of Environmental Protection (DEP) for their assistance.

Marty introduced Chris Sappey, Chief of Staff for Barbara McIlvaine Smith. Ms. Sappey said that Barbara appreciates this opportunity to serve the residents of East Goshen by acting as a conduit between the Township and the State. Marty then introduced Pat Laubenstein, also from Barbara McIlvaine Smith's office.

Don Vymazal of Andy Dinniman's office then read a statement from Senator Dinniman. A copy is appended to these minutes.

Marty introduced the Supervisors and Township staff members to the audience. He told the audience the Board would respond to comments at the end of the comment period, and not respond to each individual comments as it was made.

Marty provided the background information on the dam issue. In 2007 the Township received notification from DEP that the dam was not in compliance with their regulations. In order to bring the dam into compliance the Township would either have to restore it in some fashion or breach it. The DEP has instructed the Township to get a permit for the dam work by the end of

the year. Marty said the need to get the permit is the driver for action on this conservation easement agreement this evening.

Marty then told the audience about the changing economic situation in the Township. Whereas the Township used to receive around \$800K per year in real estate transfer taxes, this year the Township will only receive approximately \$200K in transfer taxes. In addition, local employers will be cutting or moving 750-1,000 jobs out of the Township. With each job that is lost, the Township loses \$52 per year for the Emergency Services Tax. In addition, Earned Income Tax revenue will obviously be affected, and this is the largest source of revenue for the Township. Real estate tax revenue will also be taking a hit due to all the reappraisals taking place. Nevertheless, the Board does not want to enact a real estate tax increase in 2010.

Rick Smith then showed several slides of the dam –

- 1) As it exists today.
- 2) With the addition of a 200-ft secondary concrete spillway. With this option the dam, pond, and waterfall remain intact but the trees and shrubs are eliminated. The estimated cost for this option is \$457K.
- 3) With the addition of a 200-ft secondary spillway made of articulated concrete block that will be covered with grass. With this option the dam, pond, and waterfall remain intact but the trees and shrubs are eliminated. The estimated cost for this option is \$351K.
- 4) After a breach, with the area returned to its natural state. The trees and shrubs can remain, but the pond and waterfall will be eliminated. The cost for this option will be covered by a federal grant.
- 5) With a “dam behind the dam.” A second dam will be created to bring the dam into compliance. The appearance of the existing waterfall will remain the same. The cost for this option is \$1.6M.
- 6) With a lowered spillway and berm. By lowering the spillway and berm by 6 feet, DEP would be able to reclassify the dam to the Township’s favor. The Township would be able to keep a semblance of the dam and waterfall. The pond’s water level would be reduced, creating new wetlands. The major con to this approach would be the amount of wetlands restoration work that would be required. The estimated cost for this option is \$265K for the dam work and another \$150K-\$200K for wetlands restoration.

Marty said that Neil DeRiemer, a resident, has proposed another option using a 90-ft spillway. The Township is currently reviewing this option.

Marty stated that there is no relationship between the culverts under Greenhill Road and what the DEP wants done with the dam. The culverts are not an issue.

Public Comment: Neil DeRiemer, 1034 Hershey Mill Road – Asked if NRCS would pay for the option with the lowered waterfall. Marty said no. Marty noted that the Township has received a permit to lower the pond level by 6 feet, and plans to do so this week to get an idea of how large a wetland area would be created.

Public Comment: Joe D’Antonio, 1564 Millrace Lane – He thanked the Board for working with the residents on this issue. He said the residents have given the Board a petition with 425

signatures from individuals who want the dam saved. He then showed a PowerPoint presentation outlining the concerns and wishes of the residents. A copy is appended to these minutes. Mr. D'Antonio said no price can be put on the beauty of the dam, and he urged the Board to vote "No" on accepting the NRCS grant money in order to have more time to evaluate options for the dam.

Public Comment: Neil DeRiemer, 1034 Hershey Mill Road – Stated that Yerkes knows nothing about dams, and Gannett Fleming is guilty of "over-engineering." None of the engineering work the Township has had done in regard to the dam is any good. The Township has been getting faulty data. Mr. DeRiemer said he has independently asked for the opinion of another firm experienced with dams and they have estimated it would cost only \$150K to put in a dam behind the dam. The firm he contacted is Earth Engineering, Inc., who did the dam at Malvern Prep. Marty told Mr. DeRiemer that DEP requires the second dam to be 600 feet.

Mr. DeRiemer then stated that he has offered to purchase the dam and take on the liability issue at no cost to the Township. The Township is welcome to put it out to bid as required by law. He then stated "I beg you not to sign with the NRCS." Mr. DeRiemer said he would even take charge of a fundraising effort to raise the money over a 5-year period.

Public Comment: Bernadette McLoughlin, 1209 Burning Bush Lane – Said the Township's engineering information is wrong. She asked for additional time for the residents to explore the various options and do fundraising. She said that Mr. DeRiemer's proposal would be the most cost-effective option. She stated that if the Township accepts the NRCS grant money, there will be no waterfall, no dam, and no pond by October 2010. Furthermore the federal government would have permanent easement rights to the property. She begged the Board not to accept the NRCS funding because doing so would allow the NRCS to "bully" the Township into an inappropriate deadline. She told the Board the residents do not want lip service; they want the Board to do what's right for the Township.

Public Comment: Grant McLoughlin, 1209 Burning Bush Lane – Reminded the Supervisors that they have gone on the record saying they don't want to breach the dam. If that's truly the case, the Supervisors should demonstrate the courage to vote against the NRCS grant.

Public Comment: Spencer Virta, 1520 Greenhill Road – Expressed concern about the effect a dam breach or a change in the dam's appearance would have on his property value.

Public Comment: Stephen Gothard, 1007 Mill Stream Drive – Said if anything is done to change the dam, it means the residents have failed and so has the Board. He said he does not understand why there is grant money available to breach the dam but no money available to save it.

Public Comment: Maureen Neuhaus, 1224 Foxglove Lane – Noted that the dam is featured in the *Images of America - East Goshen Township* book the Historical Commission is currently selling, as well as being on the front page of the East Goshen website. She expressed concern about a serious mosquito problem if the dam is breached and wetlands are created. She said more residents should have been notified about this issue, not just those within 1,000 feet of the

dam. She said that the folks who deeded the dam over to the Township would have wanted it preserved and protected.

Public Comment: Henry Sciortino, 1547 Tanglewood Drive – Said the timeline to vote on this issue is arbitrary; there is no need to rush. According to the CFA, there are small blocks of money available. The Township should seriously consider Mr. DeRiemer’s offer to buy the dam. He requested that the Supervisors delay a vote on this issue, or if they feel a compelling need to vote, that they vote “No” to the grant.

Public Comment: Maureen Falcone, 1642 Yardley Drive – Asked if anyone has considered installing baffles at the dam to slow the flow of water to Greenhill Road if there is a dam failure.

Public Comment: Bob Schaeffer, 5 Hershey Mill Drive – Asked if the Township owns the property, does that mean the Township is liable if there is a flood. Don said yes. Mr. Schaeffer said he does not like the option of reducing the height of the waterfall.

Public Comment: Bill Reiley, 743 Inverness Drive – Had a question about the timeline for the project. Marty said that once a permit is obtained from the DEP, the Township can take up to five years to do the actual dam restoration work. Don noted that the Township is required to have engineered plans in place at the time of application for the permit, which means the Township has to make a definite decision on an option by the end of the year. Joe McDonough noted that the trees on the dam breast must come down no matter what is decided.

Public Comment: Neil DeRiemer, 1034 Hershey Mill Road – Said he is prepared to sue both the NRCS and the DEP if his property value goes down. He has been told his property value will decrease by \$150-\$175K. He said he is not going away, so the Township can either pay him now or pay him later.

Public Comment: Cynthia Marriott, 1554 Tanglewood Drive – Asked if obtaining National Historic Register status for the dam would allow the Township to stall for time with DEP. Marty told her that getting National Historic Register status would not forestall the need to repair the dam.

Public Comment: Joe D’Antonio, 1564 Millrace Lane – Said if the Board votes “No” on the grant tonight, then the residents can begin fundraising efforts in earnest. Marty said if the Board turns down this money, then the Township is on the hook for this project. He said it is human nature for folks to lose motivation to do something if they know another entity (in this case the Township) will be ultimately responsible for picking up the tab.

Public Comment: Henry Sciortino, 1547 Tanglewood Drive – Indicated that he took umbrage to Marty’s comments and found them very insulting to the residents.

Public Comment: Ann D’Antonio, 1564 Millrace Lane – Said the residents want to be part of the solution. She asked the Board to allow residents the chance to help select the option chosen for the dam. She requested the Board vote “No” on the NRCS grant to allow time to come up with a solution.

Marty then responded to the issues and questions raised by the residents:

On why there is no grant money available for restoring the dam – no grant money is available because the government agencies prefer breaching as being the best option from an environmental standpoint.

On why only residents within 1,000 ft of the dam were notified – 1,000 feet is a considerable distance and the Township feels it acted completely appropriately in this regard. Other townships do not notify residents within such a large area. In addition, East Goshen notifies neighboring townships of projects within East Goshen that may affect their residents, so that those Townships can notify their people if they chose to. Marty added that the Township has implemented a “Constant Contact” feature on the website so that any resident interested in various issues can sign up for notifications. Also, sending letters out is quite expensive these days and it would cost a fortune to notify every resident of every issue via letter. Marty then stated that the Hershey’s Mill Master Association was notified of this issue, to rebut a claim that the Township did not let Hershey’s Mill know.

Regarding the suggestion to put in baffles – Marty said the DEP indicated they do not want the Township to consider baffles.

Marty said he apologized to the residents who took his comments the wrong way and were offended. He stated that this dam project is yet another unfunded mandate from the government, and he does not enjoy being in such a difficult situation.

Carmen said he would vote to authorize up to \$100K of Township funds toward dam restoration and said he is willing to go to bat with the residents to save the dam. He said he believes the residents will work to raise the rest of the money. Carmen said he came into the meeting willing to vote for the Township to sign the NRCS agreement but after hearing the residents this evening he is willing to forego the grant money because he believes the residents will come through with funding.

Thom said he too wants to save the dam. He lived right near the dam in the 1960s and has many fond memories of time spent there. However, the Board has to be responsible to all the Township residents, not just those present this evening, and the Township simply cannot spend money it does not have. Thom said it would be irresponsible of the Board not to accept the grant money. He said he does, however, want to explore options for the dam before September 1.

Don thanked the residents for coming out and providing input. He noted the NRCS has provided little information on the ongoing costs for wetland work, maintenance, etc. once the dam is breached and therefore he cannot support accepting the grant. He noted the Township must still apply for a permit by the end of the year, and will need fully engineered drawings, so the Township must move quickly.

Joe said he has always tried to do what’s best for all 17,000 residents in the Township. He said he believes the residents are committed to this cause, to raising the money, and to seeing this project through to the end. Joe said he planned to vote “No” on the grant.

Marty said he hoped the residents would leave the meeting this evening knowing the Board listens to its residents, and he hoped the residents show the same enthusiasm going forward as they demonstrated this evening. Marty said this is a difficult issue for him and he could argue either side. Marty said the Board members are elected and held accountable for their actions by the people. He said he is really torn on this issue, although since 3 Supervisors out of 5 indicated their plan to turn down the stimulus money his vote won't make a difference at this point. Marty said he thinks it best to authorize Rick Smith to execute the agreement to keep the Township's options alive. However, he is going to choose to accept the offer made by the residents to raise funds to restore the dam, bearing in mind there is not much time, which is quite troublesome to him. Marty said the Township must make a decision on an option in the next few months, and that is the issue that troubles him more than anything. Marty said he would choose to come down on the side of the residents, noting that the residents' task is to find sources of funding, be it public or private. He thanked all the residents for coming out this evening and providing input.

Carmen then thanked Marty for providing leadership on this difficult issue.

Don moved to authorize the Township Manager to send a letter to the NRCS advising them of the Board's decision not to proceed with the project. Joe seconded the motion.

Public Comment: Linda Gordon, 240 Line Road – Said she is concerned the Township has still not made a decision on the “fix” for this problem. She wondered how the residents, who cannot agree on a solution, can work together to raise such a significant amount of money. Ms. Gordon said she does not want the Board to turn down free money, and she is afraid that by doing so the rest of the residents will end up paying for the fix in the end.

Public Comment: Bill Egan, 1422 Mill Creek Drive – Said he agreed with Linda Gordon. He stated it will be a serious dereliction of fiscal responsibility for the Board not to keep its options open by signing the NRCS agreement.

Public Comment: Neil DeRiemer, 1034 Hershey Mill Road – Said there is no disagreement among the residents on what the fix should be. The residents want to preserve the dam as it exists today.

Public Comment: Howard Jones, 1048 Kennett Way – Said he hopes the residents do as they have promised and come up with the funding.

There was no further public comment or discussion among the Board. The Board voted 4:1 to approve the motion and not accept the NRCS grant money. (Thom was opposed.)

T-Mobile Variance Request for Utility Pole

T-Mobile was represented by Don Petrosa, Esq. Mr. Petrosa summarized his client's application for the Board. The Board then reviewed renderings provided by the applicant. Thom asked if T-Mobile could paint the pole green, and Mr. Petrosa said he did not know why not. Carmen said that after looking at T-Mobile's coverage map, he believed they would be back before the Board in the future to request more poles. Bryan Grebis, an RF engineer for T-Mobile, stated that they have no plans for additional poles in East Goshen at this time. Marty said if T-Mobile

is able to get a variance from the Zoning Hearing Board it would essentially render the Township's ordinance meaningless. Marty said T-Mobile's argument is that they have a hardship because PECO won't let them use one of their poles. Rick asked about putting an extension on the existing 24-ft pole. John Baptista of CMX Engineering said T-Mobile cannot do that because a 24-pole has a foundation which is only designed to support the 24 feet. Marty suggested that T-Mobile look for another site, perhaps somewhere along Paoli Pike.

Don moved to recommend the Zoning Hearing Board oppose the zoning variance application for T-Mobile who is seeking relief from the zoning ordinance to erect a wireless communications facility on a new 40-foot utility pole which would replace an existing 24-foot PECO guy pole within the right of way along N. Chester Road just north of the Boot Road and N. Chester Road intersection and directly behind the New Kent Apartment community. The Zoning Ordinance permits the use of existing utility poles in place since April 7, 1998 to be used for wireless communications facilities and allows extensions of up to 25 feet to a pole to meet this need. The ordinance does not allow for replacement of existing utility poles and granting of this variance will, in fact, amount to a change in the Township zoning ordinance. This replacement has not been permitted in the past and should not be allowed going forward.

Additionally, the applicant has not provided sufficient evidence to support a hardship and the Board believes the relief sought will alter the essential character of the neighborhood, i.e., present a detraction to the viewscape as one travels, especially north on N. Chester Road past the proposed facility. The Board of Supervisors authorizes the Township Solicitor to represent the Board at the Zoning Hearing Board meeting where this application will be discussed. Carmen seconded the motion. There was no further discussion or and no public comment. The Board voted unanimously to approve the motion.

Traditions Independent Living Facility in West Goshen

Marty announced that West Goshen will open a hearing on this issue at their meeting tomorrow, August 19. The hearing will be opened and continued until September 15. Representatives from Traditions are planning to come and speak at an East Goshen Planning Commission meeting and a Board of Supervisors meeting in the near future.

Public Comment: Keith Dickerson, 1212 Culbertson Circle – Said residents handed out flyers to alert folks of this issue. This issue was discussed at the West Goshen Planning Commission meeting last evening, but there were no representatives from Traditions there, and the Township could not speak on the applicant's behalf. Marty encouraged Mr. Dickerson to keep attending the meetings in West Goshen and to get his comments about the project on the record.

Public Comment: Mike Gallagher (West Goshen resident) – Said the issue of widening Boot Road was brought up at the meeting last evening. Marty said the East Goshen Board is not in favor of widening the road.

Marty asked if the Culbertson Circle residents have selected an attorney to represent them, and the residents told him yes. Marty suggested they look into whether or not they have a "right" to sunshine since the Traditions project would not doubt block some sunshine from their properties.

The residents thanked the Board for their time.

Correspondence & Reports of Interest

Marty acknowledged receipt of the following:

- Fire Marshal and Goshen Fire Company reports for July 2009 as well as the 2009 EMS Year-To-Date statistics.
- Letter from Site Engineering Concepts, LLC informing the Township that Matthew and Christine Mullen of 1645 East Strasburg Road will be applying for an individual NPDES permit.
- Letter from Verizon regarding a rate increase for their FIOS TV Premier service.

Meetings and Dates of Importance

Marty noted the upcoming meetings as listed in the agenda.

Public Comment

None.

Adjournment

There being no further business, the meeting adjourned at 11:20pm.

WORKSHOP (Resumed)

Damage to Forrest Lane Bridge

The Board authorized the Township Solicitor to pursue action against an individual who lost control of his vehicle on the Forrest Lane Bridge on June 10 and caused \$18,608 worth of damage, so that the Township can attempt to recover the expenses incurred in repairing the bridge.

Visiting Nurses

Don will send Joe Gill an email outlining the information the Board wants him to get from the Visiting Nurses.

No Swimming Signs

Rick said the signs have come in and will be posted at the Hershey's Mill dam tomorrow.

Metered Billing Update

Don said the team is waiting for the rest of the data from Aqua. They should have it by early September. The analysis should be done by the end of September. A letter will go out to the residents soon after the election.

Township Newsletter

The consensus of the Board was to continue publishing the Township newsletter four times per year.

Adjournment

The workshop was adjourned at 11:27pm.

Respectfully submitted,

Anne Meddings
Recording Secretary

Attachments:

Statement from Senator Andy Dinniman
PowerPoint Presentation by resident Joe D'Antonio