

**EAST GOSHEN TOWNSHIP  
BOARD OF SUPERVISORS MEETING  
1580 PAOLI PIKE  
TUESDAY, APRIL 9, 2019  
FINAL APPROVED MINUTES**

**Present:** Chairwoman Janet Emanuel; Vice-Chairman Marty Shane; Members Carmen Battavio, David Shuey and Mike Lynch; Township Manager Rick Smith; Assistant Township Manager and Finance Director Jon Altshul; Township Solicitors Kristin Camp and Kim Venzie; Planning Commission members Brad Giresi, Dan Daley and Ernie Harkness; Erich Meyer (Conservancy Board).

**Call to Order & Pledge of Allegiance**

Janet called the meeting to order at 7:00 p.m. and asked Chase, a local Boy Scout, to lead the pledge of allegiance.

**Moment of Silence**

Carmen called for a moment of silence to honor our troops.

**Recording**

Janet announced that due to a change in YouTube's livestreaming policies, the meeting would not be livestreamed, but would be uploaded tomorrow onto the Township's YouTube page.

**Chairman's Report**

Janet reported that the Board met in Executive Session prior to tonight's meeting to discuss a personnel matter. She stated that the Vacancy Board will meet on April 23, 2019, to consider the appointment of a Tax Collector. Finally, she noted that Jim McRee had resigned from the Planning Commission and that an announcement about the vacancy would be on the website shortly.

**Public Comment**

Mary Ann Kusner, 1026 Kennett Way, read a prepared statement regarding her safety concerns about the Sunoco pipelines. In particular, she expressed concern about Sunoco's use of single walled pipes and the potential for corrosion as a result of the pipes being left out above ground for the past two years. She stated that Sunoco should be required to use double walled pipes. Ms. Kusner also asked whether the Township could regulate vibrations, to which David said that the matter had been explored, but that it is very difficult to reliably measure vibrations. She also asked about the hours that Sunoco can drill, to which Rick responded that the Township's ordinance allows construction work between 7am and 10pm daily.

Bernie Greenberg, 894 Jefferson Way, asked whether Sunoco plans to drill 24 hours a day. Marty explained that the supervisor of the entire Mariner East project had told him that Sunoco does not plan to ask East Goshen for permission to drill 24 hours a day, but if that did happen, the Township would hold a public meeting on

the matter. Marty added that the risk of not allowing 24-hour drilling is that bore holes could collapse overnight, which would prolong the amount of time that Sunoco needs to drill in East Goshen.

**Consider Recommendation on 2019 Sewer Rates**

Jon recommended that the Township amend its sewer rates for the final three quarters of 2019 and the first quarter of 2020 to \$33.74 fixed and \$8.42 per thousand gallons variable. At this rate, the average sewer bill for a single family home would be \$146.01 per quarter, down from \$148.37 currently. He noted that residential water use fell over the past 12 months, but that commercial use has increased. He also noted that as part of this amendment, he was recommending that the fee schedule reflect the increase in East Whiteland's variable rate to \$6.20 per thousand gallons, as the Township recharges Malvern Institute for sewer bills received from East Whiteland.

Carmen made a motion to adopt Resolution 2019-34A, the revised fee schedule, to amend the Township sewer rates to \$33.74 per quarter fixed and \$8.42 per thousand gallons variable and to amend the variable rate for East Whiteland Township to \$6.20 per thousand gallons. Mike seconded.

Mike asked for clarification about the difference between fixed and variable costs. Carmen asked whether the cost of repainting the sequence batch reactor tanks was reflected in the cost. Jon explained that this cost was not reflected in these rates, as this project would not start for another couple of years and, further, that the estimated cost was much lower than originally expected.

The motion passed 5-0.

**Presentation and discussion with the Township Solicitor on Wireless Communications Facilities in public rights of way, the impact of the recent Commonwealth Court ruling and the regulations recently issued by the FCC**

Kristin and Kim provided an overview of their memo on wireless communication facilities in light of recent laws, FCC rulings and court cases. Kim explained that the Township's existing ordinance should be amended to comply with FCC's recent Small Cell Wireless Order establishing shorter windows for the time frame within which local governments must review small cell wireless facilities. She also noted that under a recent Commonwealth Court decision, which is currently under appeal, distributed antenna system (DAS) operators who hold a valid certificate of public convenience cannot be required to follow the approval process outlined in a municipal ordinance. However, she explained that most operators will still willingly go through the process and encouraged the Township to continue to dialogue constructively with operators.

Mike asked whether DAS technology is getting smaller, to which Kim explained that the technology is getting smaller, but that more facilities are being proposed and built. He looked at some of the pictures and noted that the DAS facilities blended well with existing streetscapes, and asked why the Township should care about this

issue. Kim noted that in some historic sections of municipalities the systems can occasionally stick out. He also asked why the DAS facility installed on Wilson Drive was on a wood pole and not a dark metal pole like the other systems in the Township. Mark explained that Wilson Drive already has wooden utility poles, so the new pole does not stick out along the existing streetscape; but that the pole along Goshen Corporate Parkway, where the existing utilities are buried underground, is dark metal, which matches the street lights.

Janet asked about removal costs if a DAS facility is no longer used. Kim stated that the Township current ordinance requires that the operator incur those costs.

David asked if an operator besides Crown Castle might seek approval for new DAS facilities. Kim noted that neither AT&T nor Verizon use Crown Castle, and therefore it was likely that other operators would approach the Township. However, Kristin noted that she is hopeful that the Township's positive experience with Crown Castle could serve as a model for how to work with other operators. David also asked about the health impacts from 5G infrastructure, which rely on high frequency microwaves. Rick noted that existing law prevents municipalities from using health concerns as a reason to deny applications.

Kristin asked the Planning Commission to review the Township's existing wireless ordinance in light of recent federal and state laws, rules and court decisions. Brad asked about design standards for poles in the Township's proposed Traditional Neighborhood District overlay.

### **Discussion of Liquor Control Board preemption of zoning regulations for liquor sales**

Kristin explained that virtually all aspects of alcohol sales in Pennsylvania are governed by the PA Liquor Code, and that the only clear authority municipalities have to regulate alcohol sales is by restricting restaurants in different zoning districts, but that zoning ordinances must be "liquor neutral". That is, generally speaking municipalities cannot restrict whether restaurants have liquor licenses.

Mike noted that municipalities are limited to one liquor license per 3,000 residents, which works out to six licenses in East Goshen, and asked what would happen if there were to be a PLCB application for a seventh license. Kristin explained that once the threshold is met, any subsequent license would be subject to an inter-municipal transfer hearing, which is similar to a conditional use hearing. However, in order to deny a liquor license in that scenario, the burden of proof is on the municipality to show that an additional liquor license would have a substantially negative impact on the health, safety and welfare of the community. The Township would need to commission studies using empirical evidence to demonstrate that this potential impact is real. She noted that West Chester Borough once denied an application on these grounds, but that the applicant appealed the decision and was eventually granted the license, albeit with conditions, such as no drink specials, extra bouncers and security cameras. However, under a more recent Commonwealth Court decision, the LCB does not enforce those conditions.

Kristin also noted that restaurants can obtain “economic development” liquor licenses if they have exhausted all of their options for obtaining a liquor license, can show that their food-to-alcohol sales will be above a certain ratio and that the license will promote economic development. She also noted that liquor licenses for breweries and brew pubs fall into a different category than restaurants, and that these licenses treat the brewery as a manufacturing site and allow breweries to sell their beer at two satellite off-site locations. Kristin noted that West Chester Borough’s zoning ordinance distinguishes between brew pubs and restaurants.

David referred to a National Highway Transportation Safety Administration white paper on the regulation of alcohol sales and asked Kristin if any of the options laid out in the report were options that East Goshen could consider. Kristin observed that all of the NHTSA’s recommendation were either already codified in the Township’s zoning ordinance or under the purview of the PLCB.

Mark noted that Giant has an application pending with the PLCB for retail sales and asked for Kristin’s advice about whether the Township could request information about its planned sales as part of its permit application for store modifications. Kristin stated that this is public information and that Giant would probably provide it, if asked. Kristin also noted that the Township can become a party to any PLCB application and can present evidence on the record either for or against an application.

Ernie asked whether East Goshen’s recent referendum on liquor sales increased the quota of available licenses in Chester County, to which Kristin responded that it did not. He also asked for clarification about whether licenses could be transferred across county lines, to which Kristin responded that they could not

Brad asked what would happen to a license if a restaurant or bar was either sold or went out of business. Kristin responded that the license is an asset of the business that can be sold as the owner sees fit.

### **Treasurer’s Report**

Carmen made a motion to approve the Treasurer’s Report of April 4, 2019. David seconded. The motion passed 4-0.

### **Adjournment**

Mike made a motion to adjourn at 8:30. Carmen seconded. The motion passed 5-0.

Respectfully submitted,  
*Jon Altshul*  
*Recording Secretary*

Attached: April 4, 2019 Treasurer’s Report

TREASURER'S REPORT		March 29 - April 4, 2019	
<b>RECEIPTS AND BILLS</b>			
<b>GENERAL FUND</b>			
Real Estate Tax	\$122,184.92	Accounts Payable	\$445,838.73
Earned Income Tax	\$11,100.00	<u>Electronic Pmts:</u>	
Local Service Tax	\$0.00	Credit Card	\$0.00
Transfer Tax	\$0.00	Postage	\$1,000.00
<i>General Fund Interest Earned</i>	\$8,318.39	Debt Service	\$0.00
Total Other Revenue	\$568,941.63	Payroll	\$59,713.01
<b>Total General Fund Receipts:</b>	<b>\$710,544.94</b>	<b>Total Expenditures:</b>	<b>\$506,551.74</b>
<b>STATE LIQUID FUELS FUND</b>			
Receipts	\$0.00	Accounts Payable	\$0.00
<i>Interest Earned</i>	\$151.55		
<b>Total State Liquid Fuels Receipts:</b>	<b>\$151.55</b>	<b>Total Expenditures:</b>	<b>\$0.00</b>
<b>CAPITAL RESERVE FUND</b>			
Receipts	\$731.24	Accounts Payable	\$0.00
<i>Interest Earned</i>	\$5,176.18	Credit Card	\$0.00
<b>Total Capital Reserve Fund Receipts:</b>	<b>\$5,907.42</b>	<b>Total Expenditures:</b>	<b>\$0.00</b>
<b>TRANSPORTATION FUND</b>			
Receipts	\$0.00	Accounts Payable	\$0.00
<i>Interest Earned</i>	\$905.82		
<b>Total Transportation Fund Receipts:</b>	<b>\$905.82</b>	<b>Total Expenditures:</b>	<b>\$0.00</b>
<b>SEWER OPERATING FUND</b>			
Receipts	\$11,263.92	Accounts Payable	\$991.87
<i>Interest Earned</i>	\$1,566.57	Credit Card	\$0.00
		<i>Debt Service</i>	\$0.00
<b>Total Sewer Operating Fund Receipts:</b>	<b>\$12,830.49</b>	<b>Total Expenditures:</b>	<b>\$991.87</b>
<b>REFUSE FUND</b>			
Receipts	\$3,985.78	Accounts Payable	\$0.00
<i>Interest Earned</i>	\$973.51		
<b>Total Refuse Fund Receipts:</b>	<b>\$4,959.29</b>	<b>Total Expenditures:</b>	<b>\$0.00</b>
<b>BOND FUND</b>			
Receipts	\$0.00	Accounts Payable	\$0.00
<i>Interest Earned</i>	\$12,589.84		
<b>Total Bond Fund Receipts:</b>	<b>\$12,589.84</b>	<b>Total Expenditures:</b>	<b>\$0.00</b>
<b>SEWER CAPITAL RESERVE FUND</b>			
Receipts	\$0.00	Accounts Payable	\$0.00
<i>Interest Earned</i>	\$1,446.80		
<b>Total Sewer Capital Reserve Fund Receipts:</b>	<b>\$1,446.80</b>	<b>Total Expenditures:</b>	<b>\$0.00</b>
<b>OPERATING RESERVE FUND</b>			
Receipts	\$0.00	Accounts Payable	
<i>Interest Earned</i>	\$1,390.33		
<b>Total Operating Reserve Fund Receipts:</b>	<b>\$1,390.33</b>	<b>Total Expenditures:</b>	<b>\$0.00</b>