



Dickinson Township
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BOARD OF SUPERVISORS REGULAR MEETING February 15, 2016

PRESENT: J.R. BARRETT, TOM IMHOLTE, DENNIS STRAUB - SUPERVISORS; Larry Barrick, Manager/Zoning & Codes Enforcement Officer/Open Records Officer; Marge Metzger, Secretary/Treasurer; Solicitor Susan Smith; Engineer Jason Reichard.

ABSENT:

VISITORS: Judy Brough, Ellen Colyer, Phil Thompson, Paul Cunningham, Greg Bretzman, Ivan Bretzman .

CALL TO ORDER & PLEDGE OF ALLEGIANCE

Chairman Barrett called the meeting to order at 6:00 PM. Those present recited the Pledge of Allegiance.

OPENING ANNOUNCEMENTS - *More information is available on the township website.*

- Park and Recreation will host a free Family Skate Night on February 18, 2016 from 6:30 – 8:30 PM at the Midway Skating Rink on Route 34. Flyers for the event are in the Township Building.
- Parks & Recreation is seeking a volunteer to join their Board. If interested, please email Township Manager.
- An Executive Session was held Monday, January 18, 2016 from 7:44 PM to 9:14 PM to discuss the Breslin RTK Appeal, Breslin Litigation II, and Cunningham RTK Appeal.

APPROVAL OF AGENDA

Vice Chairman Imholte **motioned** to approve the agenda. Supervisor Straub seconded the motion and it passed unanimously.

APPROVAL OF MINUTES

1. **January 18, 2016 Regular Meeting Minutes**

Chairman Barrett pointed out on page 2, under Plan Review, the two motions need a second and whether the motion passed. Vice Chairman Imholte pointed out on page 5, under Supervisors' reports, the 3rd paragraph should include the statement that the engineer is working with the county engineer, HRG, to get the coding corrected so the bridge can be taken off the structural deficient list.

Supervisor Straub **motioned** to approve the January 18, 2016 Regular meeting minutes, as amended. Chairman Barrett seconded the motion and it passed unanimously.

CONSENT AGENDA

Supervisor Straub **motioned** to approve the consent agenda. Vice Chairman Imholte seconded the motion and it passed unanimously with the following items approved:

1. Pay Bills
2. Ratification of Bill payments for February 1, 2016

Vice Chairman Imholte **motioned** to approve the consent agenda to authorize the Cumberland County Bureau of Elections to use the Township Building on Tuesday, April 26, 2016 and Tuesday, November 8, 2016 with the polls to be open from 7:00 AM to 8:00 PM. Supervisor Straub seconded the motion and it passed unanimously.

CHAIRMAN'S REPORT None

PUBLIC HEARINGS None

PLAN REVIEW/CONDITIONAL USE HEARINGS None

GENERAL PUBLIC INPUT (non-agenda items)

Paul Cunningham said he has submitted a number of Right-To-Know requests over the past several years asking if the Township's solicitor or the law firm representing the Township has issued a litigation hold memorandum to the employees of the Township to preserve documents. He always received back that the information was non-existent. He has asked in a number of ways, verbal, written, or whispered. He referred to a similar court case with a substantial settlement amount and pointed out the lesson of preserving data. Mr. Cunningham also mentioned the Breslin Right-To-Know appeal and the lack of advising the court that Ms. Smith or Ms. Portillo were defendants in the Breslin litigation, which is an act of omission and contempt of court. There is an obligation to notify the Office of Open Records and the insurance carrier.

EMERGENCY SERVICES REPORT

Greg Bretzman provided a fire report for January 2016. There were 10 calls through the 911 Center. All stations were manned during the snow storm, which was declared a state of emergency, and numerous non-emergency calls were handled through the stations.

NEW BUSINESS

1. ***Ratification of the Decision to enter into a Settlement Agreement and execution of the Settlement Agreement for the Breslin Right To Know Law Motion (relative to RTK Appeal).***

Judy Brough questioned if the ratification of the settlement is being done, why there wasn't a ratification of the appeal when it was questioned in September 2015. She further stated that this was the first time she has ever seen the Board of Supervisors ratify a vote. Is this to make up for the Sunshine Law? She referred to the Sunshine law concerning official actions being taken at a public meeting. Residents should not find out through the newspaper, especially when money is being spent. She appreciates getting a copy of the list of the bills being paid.

Chairman Barrett stated ratifications have been done before, such as at the reorganization meeting when the vote to put Larry Barrick in the Manager position was ratified. The appeal was part of the process that we were going through and that is why it was handled in executive session because it was potential litigation. Now a decision has been made and money has been spent and settlement reached. It was an economic decision. He wants to move forward. He asked for patience for the Board to get there. He understands the point made by Ms. Brough.

Phil Thompson mentioned a Right-To-Know appeal around December 2011 when the Supervisors took action at a public meeting and voted to challenge the Office of Open Records. That is the way it should be done. The strategy does not have to be discussed in open session. Chairman Barrett said there are times when an executive session is held just for an update or a discussion, but not always for a decision. He gets the point and wants to move forward.

Phil Thompson questioned whose idea was it to appeal to the open records and what was the purpose. Why were the records denied and what was so sensitive? Someone needs to be accountable and there needs to be an investigation. He suggested the settlement of \$5,000 should be prorated between the Solicitor, Jonathan Reisinger, J.R. Barrett, and Bob Wrightstone. Mr. Thompson further stated that he feels the Appeal was intended to intimidate him and Chuck Breslin. Chairman Barrett said the first Right-To-Know request was for the emails regarding the video with Jonathan Reisinger. The second Right-To-Know request was for a search of RTK #1,

which some people called an investigation. It was merely an RTK about the first RTK. The appeal was a search of a search from a processing standpoint. The information was true and correct.

Supervisor Straub **motioned** to ratify the decision to enter into a settlement agreement and execution of the settlement agreement for the Breslin Right-To-Know Law Motion (relative to RTK Appeal). Vice Chairman Imholte seconded the motion and it passed unanimously.

2. Modification of the Right-To-Know Policy and publication of the Right-To-Know log.

Chairman Barrett **motioned** to approve the list of items that do not require a Right-To-Know request as outlined in Larry Barrick's memo dated February 12, 2016. Requests for the records must be submitted at least two business days prior to the review of the record. The appropriate billing will apply. Requests for subdivision and land development plans must allow at least five business days if copies are needed. Supervisor Straub seconded the motion and it passed unanimously.

Solicitor Smith pointed out that some records, such as subdivision plans, may have a copyright which would not allow for copying. A visual inspection could be provided. Records received under this policy would not allow for an appeal process. This policy change will be added to the website.

Chairman Barrett **motioned** to approve the publishing of the Right-To-Know log on the website. Staff will post the 2016 log and any logs moving forward. It should be available on a monthly basis for the second Supervisors meeting of each month. Vice Chairman Imholte seconded the motion and it passed unanimously.

Chairman Barrett **motioned** to amend the list of items that do not require a Right-To-Know request to include the Right-To-Know log. Supervisor Straub seconded the motion and it passed unanimously. Solicitor Smith said this policy and list should be attached to the Right-To-Know policy.

3. Authorization to Advertise Bids for the 2016 Road Projects

Engineer Reichard said Torway Road has been eliminated. The total estimate is more than what was budgeted. Manager Barrick stated that there has been additional money received from the real estate transfer tax. With this road project list, we are making a significant amount of progress.

Engineer Reichard mentioned the issue of completing the guide rail with the fence and gate at the Livingston property on North Dickinson Road. The property owner will be contacted. Vice Chairman Imholte requested to see the core sampling report for North Dickinson Road, as well as information on the milling process to be used on that road.

Vice Chairman Imholte **motioned** to move forward with the 2016 road improvement program, as outlined by Engineer Reichard dated February 10, 2016, to include all items. The alternates will be included in the overall project. Supervisor Straub seconded the motion and it passed unanimously.

4. Authorization of payment for the W. Yellow Breeches Culvert replacement

Vice Chairman Imholte **motioned** to authorize Change Order #1, a savings in the amount of \$1,300, which is an adjustment for the guide rail. Chairman Barrett seconded the motion and it passed unanimously.

Supervisor Straub **motioned** to authorize payment in the amount of \$38,267.50 for the W. Yellow Breeches culvert replacement. This accounts for the change order. \$2,082.50 is being retained to complete the project. Chairman Barrett seconded the motion and it passed unanimously.

5. Act 537 Plan Phase I Update approval and Act 537 Plan Phase II update discussion on how we proceed

Manager Barrick stated Act 537 Phase I plan has been approved and no action is needed. It was approved with the condition that Phase II must be updated and submitted within 3 years. He worked with South Middleton Township and Carlisle Borough to negotiate for future needs. A 50% reimbursement of expenses can be submitted to DEP for approval.

The Board must open discussions on how to proceed with Phase II planning. Options include putting out an RFP or continuing with Glace Associates. Chairman Barrett would like to see this project as a budgeted item and suggested going out for RFP's. The Board agreed.

Solicitor Smith said Phase I is the sewer plan for the improved area. Phase II is where there is no public sewer. If there is no change to the plan, it could be a very simple plan. But in three years there is opportunity for change.

OLD BUSINESS

1. **Zoning/Saldo Draft Ordinances.**

Chairman Barrett said a lot of work was done by the committees. At the same time, a lot of knowledge has been lost from the groups. We did come up with broader zones. The map was not completed. He suggested holding a work session to complete the map, which has been holding up other things. The other item to consider is going back to Roth or give it to someone else who knows what to do and what we want, which is a simple, broad ordinance to allow people to do what they want because we are rural. A lot of restrictions must be removed. Supervisor Straub suggested not moving too quickly, as was done in the past. The Board agreed to use April 4 as a work session on the zoning map. The records will be checked to see what may or may not be available to use as a starting point.

2. **Regional Municipal Authority**

The Board agreed to remove this item from the agenda.

3. **Master Storm water Feasibility Study – Mountain View Road Drainage.**

Engineer Reichard will review his file on this matter. The annual maintenance costs must be considered. It is good practice to get the drainage issues off the road. There are proposed improvements for the township property, and issues have also been raised by Dean Otto. The Board of Supervisors will review the plan and discuss at a later date.

MANAGER'S REPORT

Manager Barrick commended the road crew for working as a team like never before during the winter storm. The Roadmaster is doing wonderful things. Chairman Barrett said considering the amount of snow, and to make the road passable as fast as they did was pretty good. Manager Barrick said he filed with PEMA for reimbursement of money to help pay costs incurred during the storm. The county has a threshold, as well as the state, and then we may be eligible for reimbursement.

ZONING OFFICER'S REPORT

No report.

TREASURER'S REPORT

Treasurer Metzger's report was submitted without any additions.

ROADMASTER'S REPORT

Roadmaster Yost's report was submitted without any additions.

ENGINEER'S REPORT

Engineer Reichard's report was submitted without any additions.

SOLICITOR'S REPORT

Solicitor Smith submitted her report. She cautioned the Board when working on the zoning map and deciding on uses in a particular zone, be careful not to create non-conforming uses.

Solicitor Smith said the Right-To-Know law receives thousands of appeals each year. It is a new law that is evolving all the time. There are Commonwealth and Supreme Court decisions coming which will affect the law, and the Manager should be kept abreast of the law.

Solicitor Smith addressed the Breslin Right-To-Know appeal and whether the Office of Open Records considered the affidavit to be conclusory. It is a struggle to know what constitutes a legal valid affidavit. She read a section of the Open Records law. The determination was that the final statement by Laura Portillo was conclusory and the exception was applicable. The Office of Open Records Officer did not speak to anything else.

Solicitor Smith stated the township is being defended in the federal litigation by the insurance company's law firm. She has no direct control over that process, which has been since the beginning of 2009. She is not the township's litigation counsel, only the liaison. The township has never received advice from her relating to the Breslin litigation because she is not the litigation counsel. The request for records, providing responses, supplemental material and final determinations are all public.

SUPERVISORS' REPORTS

Supervisor Straub questioned how the search is going for a Zoning Officer. Manager Barrick said an individual had been selected and accepted, but since then has taken another position elsewhere for significantly more money. The position will be re-advertised.

Supervisor Straub mentioned there is mud on Alexander Road from the construction. Manager Barrick said there have been no complaints since last year.

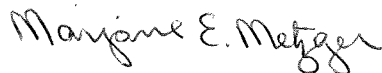
Vice Chairman Imholte questioned the difference in a public meeting and a workshop. He suggested holding a town hall session on the nights that Supervisors' regular meetings are canceled as a way to provide opportunity for residents to stop by and share their thoughts and concerns on various issues with at least one Supervisor. Solicitor Smith said a workshop is for openly discussing and receiving information but no deliberations or decisions can be made. Chairman Barrett felt residents can make a phone call or email or even send a letter to share their input or questions. Not having a meeting saves the township money. There needs to be a purpose behind a meeting.

Vice Chairman Imholte asked if the letter has been updated yet for the septic pumping requirements and the option of doing a sampling. Manager Barrick said that will be done in the near future and sent to the properties that are due this year.

ADJOURNMENT

Supervisor Straub **motioned** to adjourn the meeting at 8:56 PM. Chairman Barrett seconded the motion and it passed unanimously.

Respectfully submitted,



Marjorie E. Metzger
Secretary/Treasurer

