

North Middleton Township Board of Supervisors June 5, 2008

The meeting of the North Middleton Township Board of Supervisors was held at the Township Municipal Building, 2051 Spring Road, Carlisle PA on June 5, 2008. Chairman Richard A. Bucher called the meeting to order at 6:00 p.m. Board members present were Supervisor Robert H. Shearer, Supervisor Dennis E. Hurley, Supervisor Harry Kelso, Supervisor Robert Reisinger, Solicitor Mark Allshouse, Police Chief Jeffrey Rudolph, and Recording Secretary Lori A. Coleman. Manager Deborah Ealer was not in attendance.
Visitors: see attachment #1.

The Pledge of Allegiance to the American Flag opened the meeting.

Public Comment /Hearing of Visitors

Robin Shotto, captain of the NMT Special Fire Police, discussed a letter from The Law Offices of David R. Yoder, NMFD Solicitor concerning some of the activities the fire police were doing. She also submitted a list of activities the special fire police cover of which 75% were for the Township. See attachment #2. As per Mr. Yoder's memo, Ms. Shotto noted the fire police need approval from the BOS to complete any of the activities. Ms. Shotto was under the impression the agreement was grandfathered. She added many times the fire police are called out to provide traffic control for Schlusser's Paving and North Middleton Authority. Solicitor Allshouse referenced House Bill 1011 which essentially stated the fire police need to have a request or permission from the governing body. He noted the BOS can: (1) approve the special fire police to participate in all the activities listed, (2) pass an ordinance which gives the Township Manager the authority to give permission to the special fire police to participate in activities on an event basis, or (3) have the special fire police come in and present each activity to the board. Solicitor Allshouse noted these activities are different from emergency activities. Supervisor Kelso questioned how the traffic control issue was scheduled with Schlusser's. Ms. Shotto thought Schlusser's retrieved her number from Fire Chief Brickner. Supervisor Bucher verified the coverage was for activities within the Township. Ms. Shotto agreed. Supervisor Shearer felt the ideal action was to have an ordinance permitting Ms. Ealer to permit the use of the special fire police. Supervisor Reisinger supported his recommendation. Supervisor Bucher felt the board should approve the listing provided. Ms. Shotto noted she could provide a list every year to be voted upon in January. Supervisor Bucher said it could be voted upon during the Reorganization meeting. Supervisor Bucher suggested approving the list provided and work on an ordinance giving Ms. Ealer the authority to approve other activities of the special fire police. Solicitor Allshouse noted the ordinance would allow activities, not approved by the BOS at the reorganization meeting (pop up items), to be approved by Ms. Ealer upon receipt of a request for approval from the fire police. The manager would thus make the decision and inform the board of the activity. Solicitor Allshouse added the board could approve the list provided by Ms. Shotto, attach it to the meeting minutes, and the ordinance draft could be added to a workshop meeting for further discussion. In turn, Supervisor Reisinger moved to approve the special fire police request to conduct the following activities as presented in the attachment, and Supervisor Shearer seconded the motion. The motion carried. The board directed Solicitor Allshouse to begin working on a draft ordinance.

Supervisor Kelso mentioned a paving company completing some work last week at the crest of the hill on Rt. 944 without any traffic control. He asked if this is something the special fire police would cover. Chief Rudolph noted the police department should be notified and they would require the contractor to have traffic control.

William Fry

Mr. Fry of 3421 Waggoner's Gap Road referenced a letter he sent to the Township Manager on March 25, 2008. Mr. Fry noted the location of his home which was at the intersection of Rt. 944 and Rt. 74. His home is a 200 year old home with no central air conditioning. He has lived in North Middleton for over 25 years and this was the first time he has addressed the board with a complaint. Mr. Fry explained his wife has serious asthma and sees a specialist on numerous occasions. Mr. Fry was before the board to discuss the use of outdoor boilers / wood burners. He noted his windows are not open in the winter time and he understands residents are going to use alternative ways to heat their homes and etc. with the current price of gas. He stated he has a serious problem in the summer months from May until September. He mentioned the nuisance of not being able to enjoy the outdoors when a neighboring outdoor boiler is smoldering for hours and sending the smoke/odor throughout his home. He cannot continue to tolerate his wife needing inhalers because of the smoldering. He referenced her most recent usage at 10:00 p.m. last night.

Mr. Fry noted coming to the Township on March 18th or 20th to speak to the codes officer who was unavailable. He asked to speak with Ms. Ealer but she was also unavailable. He then spoke with the office personnel which provided him with a copy of the outside burning code for his review. Since the issue has been going on for three years, Mr. Fry noted he had a copy of the following information: (1) on July 12, Cornwall Township voted to not permit the use of outdoor boilers, (2) South Lebanon Township on August 7 limited the use of their outdoor boilers, (3) on December 30, Middlesex Township adopted their ordinance and amended it in March 2008 and (4) Newburg Township on January 23, 2008 adopted their burning code for outdoor burners. Mr. Fry mentioned contacting East Pennsboro Township which is presently adopting an ordinance that will require at least 2 acres or so to use an outdoor boiler. Mr. Fry noted no stipulations existed on what can be burnt in the boilers. Garbage, wood pellets, etc can be burnt in these boilers. He stressed he cannot tolerate having his quality of life affected. He stressed he wanted to discuss the issue with township personnel but was never contacted. He waited until May to contact the Township Manager who indicated the issue was being reviewed by a committee. He finally ended up contacting Supervisor Hurley who directed him to present his issue to the board.

Supervisor Bucher apologized to Mr. Fry for not being contacted by someone in the Township in a timely manner. Supervisor Bucher asked how far the boiler in question is from his residence. He estimated 150-200 yards from his home. He noted he has not talked to the other neighbors, but has approached the owner of the boiler on three occasions requesting he not run the boiler during the summer months. He is burning it to heat his water and heat his swimming pool. Supervisor Hurley stated he was familiar with the particular burner and noted it was located at the base of the mountain. He noted the smoke is directed right across the valley. Supervisor Bucher asked if Supervisor Hurley received any of the smoke. Supervisor Hurley confirmed he did. Supervisor Shearer added staff currently has a copy of Middlesex's ordinance. Supervisor Shearer asked Mr. Fegley if this issue fell under the nuisance ordinance. Mr. Fegley stated no but

could possibly be incorporated into the ordinance. Supervisor Shearer noted Middlesex's requirement is 3.25 acres minimum along setbacks. They also indicate what can and cannot be burnt with specified dates for burning. Supervisor Hurley commented he felt one of the biggest issues is that these boilers sit at ground level so the smoke is emitted at ground level.

Supervisor Shearer recommended Solicitor Allshouse look at the current ordinances with assistance from the codes department to see what can be done to help Mr. Fry. Also, the information should be added to the burning ordinance. Mr. Fry asked if the board could do a temporary ban on burners for the months of June, July and August. Solicitor Allshouse noted it could not be done without an ordinance. Mr. Fry asked even if it affected the health of individuals. Solicitor Allshouse explained the state law states that it has to show that a majority of the population is affected as opposed to an individual. The board would need statistical analysis and expert testimony to show a majority of the population is being affected. The state has created the Clean Air Act which gives a resident a private cause for action against a neighbor or entity. Mr. Fry verified nothing existed in the ordinance for outdoor boilers. Solicitor Allshouse verified his question. Mr. Fry thought the committee was reviewing the issue in March and April. Supervisor Bucher understood Mr. Fry's frustrations, and assured him that it will be acted upon. He also added it would not be done as quickly as he would like. Solicitor Allshouse recommended the board invite Mr. Fry back for the June 26th workshop so he can hear the discussion concerning the solid waste burning ordinance draft. He added Mr. Fry could give public comment at the first meeting in July.

Rick Hoover

Mr. Hoover of 1190 Newville Road noted reviewing the nuisance ordinance which he commented was vague and short. He did point out that obnoxious odors are not permitted to be omitted. He felt the burning of garbage was an obnoxious odor in which the township could use as an avenue to work on. Solicitor Allshouse stated the obnoxious odors would have to be defined.

Also, Mr. Hoover stated unofficial sources have told him that the Norfolk Southern Railroad is being extended across Allen Road to the new warehouse being built in Carlisle. Supervisor Shearer and Supervisor Bucher stated they were unaware of the extension. Mr. Hoover noted he was told by a resident of the Cooper trailer park facility.

Kathy Morelock

Ms. Morelock of 208 E. Hillcrest Drive was seeking permission to close the block of E. Hillcrest from Ridgeview to Rasp Drive on June 13, 2008 for a block party. Ms. Morelock had a petition from all the neighbors. Secondly, Ms. Morelock thanked the board for permitting dogs in the parks. Thirdly, she mentioned the new playground in Village Park was super but she had a concern with the retention ponds and possibility of mosquitoes breeding. Supervisor Shearer moved to permit the closing of the block of E. Hillcrest from Ridgeview to Rasp Drive on June 13, 2008 from 5:00p.m. to 11:00p.m. for a block party.

Ken Smith

Mr. Smith of 29 Ridge Avenue was before the board to seek permission to close a portion of Ridge Avenue and Oak Lane on June 21 from 1:00p.m.-8:00p.m for a block party. Supervisor Bucher asked for a document. Solicitor Allshouse directed Mr. Smith to attach the list of residents to a request letter, and bring it to the Police Chief for questions and review. Supervisor Bucher moved to approve the block party in the vicinity of Ridge Avenue and Oak Lane on June 21 from 1:00p.m.-8:00p.m contingent upon proper document as outlined by Solicitor Allshouse.

Consent Agenda

- a. **Meeting Minutes: Conditional Use Hearings: 03/11/08, 04/02/08, 04/16/08, 04/24/08
Joint Meeting, 04/24/08 Workshop Meeting, 05/01/08 Action meeting**
- b. **Tax Collector Reports: 2007: 03/14/08, 2008: #8, #9, #10, #11**
- c. **Payment of Bills: 05/16/08, 06/01/08**
- d. **Repository Sale**
- e. **GMC Truck purchase**
- f. **Stryker Brigade Subdivision/LD #06-02 Expires 08/04/08**
- g. **Meadowbrook Farms VII Final Subdivision #08-02 Expires 08/04/08**
- h. **Mt. Views Estates Revisions Preliminary Plan**

Supervisor Bucher asked Supervisor Kelso if the Mt. View Estates plan was reviewed at the Planning Commission. Solicitor Allshouse noted the board was just approving the preliminary plan. Supervisor Bucher noted the Stryker Brigade subdivision/land development should be removed. Thus, Supervisor Bucher moved to approve the consent agenda minus the Stryker Brigade subdivision/land development, and Supervisor Shearer seconded the motion. The motion carried.

Stryker Brigade Subdivision/LD #06-02 Expires 08/04/08

Township Engineer Greg Lebo stated they reviewed comments that were forwarded to them from Lobar from DEP regarding the NPDES approval. DEP offered some comments that should be addressed in which Lobar had no issues. One comment was concerning a wet basin in which the Township had decided upon an infiltration system due to the neighbors downhill. DEP noted they would like to see a wet basin or pond. The concern of mosquitoes was brought up during the discussions since standing water would occur. Mr. Lebo stated the Township would have to indicate to DEP whether or not they support the wet basin. Supervisor Bucher asked for Mr. Lebo's recommendation. Mr. Lebo stated either choice was ample, but pointed out the concern of standing water especially during storm events. Brian Fincher of Lobar stated he could design a basin. He mentioned the potential of trash, fencing and standing water. Mr. Fincher pointed out DEP was asking the township to explore the feasibility of a detention basin and that it was currently not binding. Supervisor Shearer stated he would not like to have a fence, and he was concerned about standing water. He felt it was not in the best interest of the neighborhood. Supervisor Kelso inquired if the Letort Authority reviewed and offered any comments. Mr. Fincher noted they wanted to make sure the water from the parking areas ran through an inlet. Mr. Fincher noted an infiltration system would keep the water cooler. Supervisor Bucher wanted assurance the residents would not be filtrated with any more water. Mr. Fincher noted the basin would require a liner but there is always the possibility of a breakdown of which maintenance would be involved. Supervisor Shearer noted the basin would be built next to an existing development and not a new development. Supervisor Kelso felt the engineer should argue that

the basin in not supported by the Township. Mr. Fincher was seeking from the board: (1) a letter on Township letterhead indicating the board's opinion on the use of the wet basin, and (2) stormwater consistency letter from the Township indicating the plans are consistent with the stormwater management. Greg Lebo noted he would draft the letters for Ms. Ealer. Thus, Supervisor Reisinger moved to approve the Stryker Brigade subdivision land development plan #06-02. Supervisor Bucher seconded the motion, and the motion carried.

Public Hearing:

Proposed Zoning Map Amendment Ordinance 2007-05- Concerned Citizens

See attachment.

Public Hearing:

Proposed Zoning Map Amendment Rt. 11 Ordinance 2008-03

See attachment.

Business of Township Officials

Township Manager

May Report

Solicitor Allshouse presented Ms. Ealer's May report.

Financial Report

Solicitor Allshouse presented the financial report.

Commons at Parker Springs Bond Reduction

Solicitor Allshouse noted the Commons at Parker Springs requested a bond reduction. Lee Koch and Bill Green inspected the work in which their total recommendation for bond release was \$203,328.85. Supervisor Shearer questioned a memorandum from Bill Green concerning the base payment. **See attachment #3.** Solicitor Allshouse referenced Mr. Green's memo dated May 21, 2008 Item 4.e in which Mr. Green is only recommending 50% be released for the binder pavement. Supervisor Shearer wanted assurance sufficient funds were in place. Mr. Lebo noted Bill Green was pretty thorough, and must have felt the 50% still in escrow would complete the job. Supervisor Shearer noted the motion should be contingent upon notification from Bill Green and the engineering firm to assure that sufficient funds were available to make sure the item is completed correctly. Solicitor Allshouse noted if the funds are subtracted from the motion, the amount would be \$191,121.85. Supervisor Shearer move to release \$191,121.85 from the bond of the Commons at Parker Springs, and the additional amount of \$12,207.00 would be released upon verification by Bill Green and the Engineering firm that sufficient funds were available in escrow to complete the project mentioned in Mr. Green's memo.

Lehman's Crossing Bond Reduction

Solicitor Allshouse noted Lehman's Crossing requested a bond reduction. Lee Koch inspected the work and recommended a bond reduction of \$20,727.75. Supervisor Reisinger moved to release \$20,727.75 from the bond of Lehman's Crossing, and Supervisor Shearer seconded the motion. The motion carried.

Solicitor's Report: Mark Allshouse**May Report**

Solicitor Allshouse presented his May report to the board. Supervisor Bucher questioned the Chesapeake Bay initiative. Solicitor Allshouse explained a complaint was filed. Objections were filed to the complaint. The plaintiffs were in the process of responding to the preliminary objections, and argument will occur on the complaints or they may simply amend their complaint to address the concerns. In addition, the Chesapeake Bay Tributary Strategy has filed to become a party on the side of DEP. Since they would become a party defendant, they would be able to have a say in the outcome. Overall, the attorneys are filing all the paperwork to get it prepared for court.

21 Moongale Drive

Solicitor Allshouse noted a hearing was continued by the magistrate. He mentioned the Township was to receive a copy of the plans for the performance of work to abate the nuisances inside and outside the property. He noted receipt of correspondence from the attorney representing the owner of Moongale along with the updated letters from Tuckey Restoration Services. Upon completion of the work, Solicitor Allshouse noted the codes department will have to inspect and verify that the work inside and outside is code compliant.

Fireworks Permit

Solicitor Allshouse reviewed a request from the Borough of Carlisle for a fireworks permit. He noted reviewing the request that complies with Ordinance 2007-03. The location of the display, name of the operator and owners, and copy of the performance bond was provided. The request is for the 4th of July exhibition. He added a \$20 permit fee was required in which the Board of Supervisors may waive. If the permit is granted, Solicitor Allshouse noted he would generate a letter for the codes department to sign expressing to them that there is a permit that would be used as the form for any future fireworks used in the Township. Supervisor Bucher moved to grant the permit and waive the \$20 fee for the Borough of Carlisle to perform the fireworks exhibition on or around July 4th, 2008. Supervisor Shearer seconded the motion, and the motion carried.

Police Chief**May Report**

Chief Rudolph discussed the following items:

- The termination of the tobacco compliance program which had provided over \$11,000 in revenue over 4 years.
- After some research and phone calls, he was able to retrieve a traffic speed indicator from PennDOT that can only be used on the state highways. The department will be able to use / rotate the indicator on various roads throughout the township for about a month.
- Reviewed his memo concerning the part-time officer position. Chief Rudolph recommended the hiring of Jeffrey Clark to fill the part-time opening. Thus, Supervisor Bucher moved to approve the request by Chief Rudolph to hire Jeffrey Clark to fill the part-time officer position. Supervisor Reisinger seconded the motion, and the motion carried.
- Supervisor Shearer mentioned the peddlers Ordinance 146. He noted it was written and the fees were set in 1982. He recommended the review of the ordinance at the next workshop meeting. He noted two units were given permits to set up food units for a time period of one year for only

\$100/year. He added it was not definitive on peddler or transient vendor. Chief Rudolph mentioned completing some research on other municipalities. He noted the fees varied, some required renewal of a permit every 30 days, and some required a 30 day waiting period. Supervisor Bucher felt Chief Rudolph should sit on in the review.

New Business

No issues presented.

Old Business

ZHB Application-Longs Gap Road

Mr. Fegley noted the property is located on Longs Gap Road which was granted a special exception to have a horse riding school and stable on the property. The owner agreed to conditions of which two of the conditions have not been met. The owner then filed a variance for the two conditions through the ZHB (Section 204-102D and Section 204-102E). The variance would be from putting up a fence from within 10ft of the property lines surrounding the riding areas, and to have the riding areas no closer than 100ft to the property. Supervisor Bucher verified the conditions were not met. Mr. Fegley agreed. Supervisor Shearer noted ZHB granted the special exception in 2001 with conditions, but nothing was done for a period of 3 years. He noted the applicant came before the board in 2004 to request a special variance for the riding school and one of the criteria was to have a 4ft high fence. At that time, the owner was notified via certified letter advising them that they had 30 days to correct the issue. A follow-up was not completed. Supervisor Shearer stressed the owner did not fulfill their legal agreement. His recommendation was to instruct the codes officer that is going to be at the ZHB meeting that the Township does not support the variance since they did not fulfill their original requirement. The board agreed with Supervisor Shearer. Thus, Supervisor Shearer moved to direct the codes officer attending the hearing to indicate to the ZHB that the BOS does not support the applicant's position for a variance and the applicant should be required to honor the original decision made in 2001. Supervisor Bucher seconded the motion and the motion carried.

Earned Income Tax Collector for 2009

Supervisor Reisinger noted discussion at the meeting in which it was recommended that the Township not renew the CAPTAX contract. Notification was required by July 1. He indicated he did not feel comfortable appointing a new tax collector tonight, since he would like to make sure he fully understands the changes first. Thus, Supervisor Reisinger moved to notify CAPTAX that NMT would not be renewing their contract for 2009. Supervisor Shearer seconded the motion, and the motion carried.

Special Fire Police Ordinance and Agreement

Supervisor Bucher noted NMT was one of the two municipalities that have not signed the agreement. Solicitor Allshouse reviewed page 6, section 7 of the agreement with the board. He noted the board's concern was that the county can call out the special fire police and the municipality foots the bill. Solicitor Allshouse reviewed page 5, section 6 which indicates the county has full authority to call out the special fire police essentially for emergencies. Supervisor Shearer noted the special fire police could be called out to respond and assist neighboring municipalities with emergencies of which he supported. His biggest concern was the financial end of the contract that the township would foot the bill. He felt it was another unfunded

mandate. Supervisor Reisinger supported signing the agreement since it was the morally correct thing to do. In his experience, Chief Rudolph noted he could only recall a few times that all the special fire police were called out such as Hurricane Agnes, TMI, and Camp Hill riots. Supervisor Bucher felt the need to have a mutual agreement. Supervisor Reisinger felt to be a part of the community, the special fire police need to be able to provide support. Supervisor Kelso supported the agreement. Supervisor Shearer stressed his concern with the county having control. Supervisor Kelso stated he did not want to be one of the only two municipalities in the county that don't sign the agreement since an emergency may occur in the Township. Thus, Supervisor Bucher moved to not sign the special fire police ordinance and agreement. Supervisor Shearer seconded the motion.

Solicitor Allshouse completed a roll call vote:

- Supervisor Hurley.....yea
- Supervisor Kelso.....nay
- Supervisor Reisinger.....nay
- Supervisor Shearer.....yea
- Supervisor Bucher.....yea

The motion carried with a 3-2 vote to not approve the intergovernmental agreement.

Mr. Leister

Supervisor Shearer mentioned an invoicing issue with Mr. Leister's subdivision. Mr. Leister requested the BOS to direct the engineer to proceed forward with review of the legal description. The engineer indicated they would not proceed forward with the legal description review until they receive direction from the BOS. Thus, Supervisor Shearer moved to direct the engineer to proceed forward with the legal review of Mr. Leister's subdivision and they will pay their bill toward it. Supervisor Reisinger seconded the motion, and the motion carried.

Executive Session

Supervisor Shearer requested an executive session to discuss a possible litigation issue and two personnel matters.

Adjournment

Supervisor Reisinger moved to adjourn the June 6, 2008 Board of Supervisors meeting at 7:50 p.m. and Supervisor Kelso seconded the motion. The motion carried.

Respectfully submitted,

Deborah Ealer
Township Secretary

Lori A. Coleman
Recording Secretary