

MIDDLETOWN TOWNSHIP
DELAWARE COUNTY, PENNSYLVANIA
FEBRUARY 27, 2023

Minutes of the Regular Meeting of Township Council held on February 27, 2023 at 7:00 p.m. in the Township Building located at 27 N. Pennell Road.

Present: David Bialek, PharmD, R.Ph, Bibianna Dussling, Jackie Donnelly, Mark Kirchgasser, Kathleen O'Connell-Bell, Walter "Bok" Read, Susan Powell, Mark Damico, Esq., Eric Janetka, John McMullan, Vince Visoskas

1. OPENING: PLEDGE OF ALLEGIANCE TO THE FLAG

Mr. Kirchgasser called the meeting to order and led in the recitation of the Pledge of Allegiance to the Flag.

2. APPROVAL OF MINUTES - N/A

3. PUBLIC COMMENTS - NONE

4. REPORTS

A. CHAIRMAN - NONE

B. COMMITTEE - NONE

C. MANAGER

1) Update - meeting with Chester Heights Borough, Aston Township, and SEPTA.

Mr. McMullan stated he met with SEPTA, Aston Township, and Chester Heights Borough representatives on Friday, February 24, 2023. He stated the representatives met on-site at the Lenni Rail Yard and SEPTA representatives gave an on-site overview in terms of what is required by the FRA in getting trains in-service as they start to deploy passenger service at approximately 4:45 am. He stated they reviewed the requirements of the push and pull trains as well as the requirements of the passenger trains. There is approximately a crew of five maintenance staff, and they are required to drain the air brakes and refill the brakes. SEPTA Staff complete one locomotive at a time starting at approximately 11 pm and concludes at approximately 4:30 am seven days a week. The tasks include draining and refilling the air brakes, testing the lighting both exterior and interior, testing the horns and the HVAC systems while the trains are running idle during the testing process. After the locomotive is signed off and before it gets back in service, it idles until it is put back into service. Each train requires a certain amount of time to complete depending on the issues with the trains. There are approximately 5-6 locomotives overnight. He stated the locomotives start arriving at approximately 6:30 pm with the last one arriving at approximately 12 am.

Each locomotive goes through this rigorous testing before being put back into service. Mr. McMullan stated there is also cleaning of the trains performed during this time. There is a custodial staff each night in addition to the five crew maintenance members. He stated he was on-site for approximately two hours and a variety of questions were asked of the SEPTA staff. One question was can the trains stop at 7 pm and be stored at the Media yard and the SEPTA answer was "no" as there are

approximately 35 locomotives stored overnight at the Media yard. He stated SEPTA will continue to look at this but do not find this to be a potential option.

Mr. Kirchgasser clarified there are 35 trains in Media and 5-6 trains in Lenni. Ms. O'Connell-Bell asked if the 35 trains in Media go through the same testing, and Mr. McMullan answered yes. Ms. Donnelly asked if Media gets complaints, and Mr. McMullan stated he asked this of SEPTA, and they said no and they have not received any complaints from Media in quite some time. Mr. McMullan stated they asked the SEPTA staff about minimizing noise related to the testing and they said they are working on this with staff and have sent out across the board memos and have posted memos inside the workshop at Lenni to please minimize noise at all costs. Instead of blaring the horns at each testing to minimize to a tapping of the horn. Mr. McMullan stated a question raised was if the horns could be muffled overnight and the answer was "no," they cannot muffle the horns or attach any type of muffling device. The horns have snow guards, but they do not muffle the noise. SEPTA said after hearing from residents from all locations they have asked staff to minimize noise wherever possible.

Mr. McMullan stated the municipalities will meet again. He has a name of an engineer who has experience with working with a community in establishing a quiet zone. He has reached out and hopefully will hear back by Friday as he is currently out of the office. He will then set up a meeting with the engineer and representatives from Aston and Chester Heights to discuss the process that is involved in establishing a quiet zone. He stated the quiet zone at the grade crossing at Lenni Road and the rail yard are two separate issues. They have discussed reaching out to a sound engineer to review the site and give suggestions, but this will be discussed at another meeting. He stated this may result in going back to the elected bodies and asking for approvals for the expense of having professional studies done.

Mr. Kirchgasser asked the name of the municipality that was successful in establishing a quiet zone, and Mr. McMullan stated it was Lower Makefield Township. Ms. Dussling asked if the sound engineer will be looking into barriers of some type, and Mr. McMullan answered "yes." Ms. Dussling asked if there were significant differences between the Lenni and Media yard, and Mr. McMullan stated he does not know exactly where the Media yard is located and SEPTA informed him they do not receive any complaints from Media as the work has been happening for a number of year. Mr. Kirchgasser explained the Media yard is located at the top of Media Station Road and Orange Street and extends all the way back to the bridge and goes behind the old Sampson block area and West Jefferson Street. Ms. O'Connell-Bell stated it is at a lower grade. She asked if the train operated hourly through the night at the Lenni Road grade crossing or is there some type of modification of the schedule. Mr. McMullan explained the trains operate Monday through Friday; the first train leaves at approximately 4:43am from Middletown into the city and the last train arrives at approximately 12 midnight. Ms. O'Connell-Bell stated the transportation part ends at midnight and any noise between 12 and 4 is generated by the yard.

Ms. O'Connell-Bell asked if there was any discussion regarding changing the schedule

of the passenger trains, and Mr. McMullan stated this question was raised but SEPTA stated this is not something they would consider because it is a new station with a large investment and second, they do not want to set any precedent in the rail network. Ms. Dussling asked what precedent they are referring to, and Mr. McMullan stated they are concerned about discontinuing rail service and not fulfilling a certain destination on a scheduled train route. This is such a new train station, and they don't want to get away from abandoning those trains running to the scheduled times and they also do not want to take trains off line at different times of the day that would not permit the trains to get to their final destination.

Mr. Kirchgasser recapped there are two issues to work on; one is the overnight train at the crossing and the other is the maintenance at the rail yard. He asked if there is one issue they can make more progress on, and Mr. McMullan stated there seems to be more consideration on SEPTA's end in establishing a quiet zone. The requirements they are held to with the overnight testing per the FRA seems to be more of a challenge. Mr. Kirchgasser asked for a list of the representatives from the other municipalities. Ms. Dussling asked if there are concerns about the lighting at the rail yard, and Mr. McMullan stated he has not received any complaints about the lighting. Mr. Kirchgasser asked for the timing of the next meeting, and Mr. McMullan stated he has not scheduled the next meeting because he has not heard back from the engineer that was recommended. Ms. O'Connell-Bell asked if the horn and other noise related to testing be held to a certain point, so they are not being done between 1 am and 4 am. or, are they required to do the testing sequentially. Mr. McMullan stated he does not have an answer, but it appears they need to do the testing sequentially. Ms. O'Connell-Bell stated this may be something to bring up to SEPTA at a future meeting. Ms. Dussling asked if Chester Heights and Aston are on the same page as Middletown, and Mr. McMullan stated everyone on staff is interested in next steps, but nothing was shared as to statements from elected officials. He stated he is still gathering information that will in turn be presented to the elected officials.

Mr. Frank Annunziato, 1680 Era Drive, Aston Township, stated he has done more research in the past month. He stated he is pro train; however, he is also pro sleep. The train horn has been a drain on the community and there are now over 200 signers on the petition he created. He stated SEPTA has been an obnoxious new neighbor who moved in seven months ago. The neighbor rages twenty-four hours a day seven days a week and they like to show off their 100 decibel horns all hours of the night. He asked if Council is familiar with the Middletown Township noise ordinance, and Mr. Kirchgasser replied yes. Mr. Annunziato handed out to Council documentations. The noise ordinance states, "noises or sounds by means of the human voice or by any other means or methods which are physically annoying to the comfort of any person, or which are so harsh or prolonged or unnatural in their use, time and place as to occasion physical discomfort or which are injurious to the lives, health, peace and comfort of inhabitants of said Township". Mr. Annunziato asked why the Township is not enforcing the noise ordinance. Mr. Kirchgasser stated that except where required by law which is the case with the requirements of the FRA.

Mr. Annunziato asked if there is any agreement between Middletown Township and

SEPTA to not enforce the noise ordinance, and Mr. Kirchgasser stated he is not aware of any agreement. Mr. Annunziato asked how does one petition the Township to enforce the noise ordinance. Mr. Kirchgasser asked Mr. Damico how the SEPTA easement impacts the Township's ability to enforce a noise violation, and Mr. Damico stated this would be like any private property who someone on their property can violate the noise ordinance. Mr. Damico stated making noise on their property is not relevant but what is relevant is the noise ordinance and how it goes up against federal regulations that require the noise to be made. Mr. Annunziato asked the name of the Code Enforcement Officer, and Mr. Kirchgasser gave him the information.

Mr. Annunziato stated he went through the FRA code and cannot find the laws that permit SEPTA to do what they are doing. He stated that each locomotive should be inspected once during each calendar day but does not say what time of day. He stated the train horn rule is in effect when they go through a crossing, but it does not state they can go through the crossing whenever they want without consulting with Middletown Township or any other governing body. He stated SEPTA should want to be on good standing with the Township. He stated what is common with all FRA codes is that if the code is not explicitly put in, they do not have the right to do the action. He stated SEPTA does not have the right to blow their horns and they are being a bully and bad neighbor. He stated the Constitution of the Commonwealth of Pennsylvania specifically states under vehicle liability they are not protected by sovereign immunity. Mr. Annunziato asked Council today to enact something tomorrow to enforce the nuisance law for the safety of the community.

Mr. Kirchgasser stated Mr. Annunziato made some excellent points and asked him to make an appointment with township staff from Aston and Chester Heights collectively to see if these points are pursuable avenues as a group as it would be more effective. Mr. Annunziato stated he would be willing to sit down and discuss any issues as needed. He added that there is little information regarding quiet zones but that Lower Makefield received over \$350,000 in a state grant which is very encouraging. Mr. Annunziato stated if the Township enforces their ordinances, SEPTA will have an invested interest in talking with the Township. Ms. Dussling asked if SEPTA brought forth any information as to why they need to test the locomotives during overnight hours, and Mr. McMullan stated they explained it is because of the train operating schedule they do the testing overnight. Ms. O'Connell-Bell asked how long of a process per train it is to perform the inspections and is it something that could be done even with service operating during the day. She added this could be an additional ask for SEPTA in subsequent meetings. Mr. McMullan stated SEPTA's maintenance staff said it takes approximately one hour for each train inspection. Mr. Annunziato stated the first train to be serviced comes to the yard at 6:30 pm and the last train comes in at 12:45 am, so why are they holding inspections. Mr. McMullan added he does not know if SEPTA is allowed to do the inspections while trains are in service. Mr. McMullan stated he had the opportunity to test the horn himself, and it requires a certain amount of pressure to engage the horn.

Mr. Steve Randazzo, 20 Rolling Heights Lane, Chester Heights, asked why the testing cannot be done earlier and why do the trains have to operate past 8 pm if there are

no passengers. If service was stopped at 8 pm all the work could be completed before midnight. He asked if there are 35 trains parked in Media and 5-6 trains parked in Lenni rail yard, where were the 5-6 trains before. Mr. Kirchgasser stated a good question is if they could spread out the maintenance of the trains further up the route at other locations. Mr. Randazzo asked if SEPTA has calculated how much money they are making or losing from Wawa Station as he does not see anyone riding the trains. He speculated they are not making much money because people do not want to go to Philadelphia and are not completely back to work because of Covid. Mr. Kirchgasser stated they will be willing to ask this question to SEPTA. Ms. Dussling asked if lighting is an issue, and Mr. Annunziatto stated lighting is an issue and he stated some neighbors stated their backyard looks like a high school football field and goes all night long.

Ms. Rosemary Polomano, 1 Miller Way, Aston, stated she does research and one of the areas she researches is sleep deprivation. She stated this is a major health problem and she is compiling literature to document the health effects of lack of sleep. She stated at the last Chester Heights meeting she was devastated to learn the solution could take a year to a year and a half. She stated white noise does not help and a lot of people do not want to use white noise because they have children. Ms. Polomano stated everyone wants to be alert in their homes. She stated she is collecting stories from a number of children who have been affected by the noise. She said the number of children is currently 10 but growing. She stated a public health hazard should be a priority to SEPTA. She stated she is looking into summaries of studies of railroad noise and when these studies are compiled, they will be submitted to the Township. Ms. O'Connell-Bell asked if lighting would have been a part of the Township's review of SEPTA's plans, and Mr. McMullan stated yes the plans were reviewed by the Township's lighting consultant. Mr. Kirchgasser asked if this could be measured and Mr. Janetka stated McCormick Taylor did a final lighting inspection recently at the Wawa station and the rail yard and did not find any non-conformities. Mr. McMullan stated next steps are setting up a meeting with the engineer that was referred to the Township by Aston Township's engineer, Joe Viscuso, for information on the quiet zone. Mr. Kirchgasser asked Mr. Damico to look at enforceability of the Township codes.

D. ENGINEER - NONE

5. PUBLIC HEARING: N/A

6. OLD BUSINESS: N/A

7. NEW BUSINESS

A. Consideration for Approval: Resolution 2023-05, Approval of the 2023 Delaware County Hazard Mitigation Plan.

Mr. McMullan stated before Council for their consideration is Resolution 2023-05 which is a request from Delaware County for municipalities to approve support for the hazard

mitigation plan and also allows the Township in the event of a disaster the Township may be eligible for emergency funding. This resolution supports both the hazard mitigation plan as well as giving the Township the opportunity to participate and seek funds in the event of a disaster.

Ms. Donnelly made a motion to approve Resolution 2023-05. Mr. Read seconded the motion. The motion carried with a vote of 7-0.

B. Consideration for Approval of a tax appeal settlement, conditioned by the approval of Council for the fair market value of 350 Arbor Circle, Folio 27-00-00016-51.

Mr. McMullan stated before Council are tax appeal settlements which are the result of the County wide reassessment completed by Tyler Technologies. From time-to-time assessments are challenged. He stated he will defer to Mr. Damico for items B, C, and D. Mr. Damico stated each item is a tax appeal settlement that has been approved by the school district and the stipulation has been signed by Mr. Tom Kelly, school district solicitor. Each item is the result of the County wide reassessment following the pattern where the board assessed the property at a value higher than was desired by the taxpayer who in turn appealed. He stated there was some reduction but not enough which was then appealed to the Common Pleas Court. In each case Mr. Coyle, on behalf of the taxpayers, assessed the property and made recommendations which resulted in negotiations. Mr. Damico stated there is an increase in market value for the years 2021, 2022 and 2023. Mr. Bialek asked for the key driver in the \$300,000 reduction, and Mr. Damico stated the assessment for 2023 reflects the fact the common level ratio is now 72.8% and the market values have gone up. Mr. McMullan stated the 72.8% is set by STEB, the state tax equalization board.

Mr. Read made a motion to approve. Ms. O'Connell-Bell seconded the motion. The motion carried with a vote of 7-0.

C. Consideration for Approval of a tax appeal settlement, conditioned by the approval of Council for the fair market value of 108 K-1 Juniper Court, Folio 27-00-01052-94.

Ms. Donnelly made a motion to approve. Ms. Dussling seconded the motion. The motion carried with a vote of 7-0.

D. Consideration for Approval of a tax appeal settlement, conditioned by the approval of Council for the fair market value of 29 Country Village Way, Folio 27-00-00281-30.

Mr. Bialek made a motion to approve. Ms. Donnelly seconded the motion. The motion carried with a vote of 7-0.

Mr. Bialek asked if the Township is not in line with the finding of the school board, what would next steps be. Mr. Damico answered there would not be a settlement. If the parties cannot agree on a settlement the case would be heard by a judge of the Commons Pleas Court. He stated if the matter could not be settled, there would be a trial. The judge would hear evidence with witnesses and the judge would make a determination. Mr. Damico stated in most cases the tax appeal does get settled. Mr. Bialek asked if there is a deadline for filing appeals and how many are in pending status. Mr. McMullan stated

there is a deadline but does not know at this point how many are still pending. Mr. Kirchgasser asked if the Township anticipates a final impact of net proceeds to the Township. Mr. Visoskas stated the residential impact is negligible and could be approximately \$25,000 in regard to the mall with the greatest impact to the school district.

Mr. Kirchgasser stated out of a tax dollar, 85 cents is to the school district, 10 cents to the County, and 5 cents to the Township.

E. Consideration for Approval: the uplift of the 2023 F-550 Dump Chassis from COSTARS certified vendor Lancaster Truck Bodies in the amount of \$45,051.

Mr. McMullan stated before Council for consideration to approve work to be completed on a 2023 F-550 Dump Chassis which outfits a truck previously purchased. The equipment includes hydraulics, lift gate and plow equipment. The work will be done by Lancaster Truck Bodies which the Township has used in the past and is a COSTARS approved vendor in the amount of \$45,051.

Mr. Bialek made a motion to approve. Ms. Donnelly seconded the motion. The motion carried with a vote of 7-0.

F. Approval of February 27, 2023 Bill List.

Mr. Kirchgasser read the Bill List aloud.

| | | GENERAL FUND | |
|---|------------------------------|---------------------|------------|
| Aqua Pennsylvania, Inc. | Jan. Hydrant Bills | \$ | 9,510.71 |
| Equipment Trade Service Co. | Pressure Washer & Hose Reel | \$ | 5,117.86 |
| Keystone Municipal Services, Inc. | Bldg. Inspections 1/3-2/3/23 | \$ | 17,925.00 |
| MECO Constructors, Inc. | Sunnybrea Basin Project | \$ | 41,823.22 |
| Middletown Fire Company No. 1 | Volunteer Incentive Program | \$ | 12,500.00 |
| Pa Municipal Health. Ins. Cooperative | March Health Insurance | \$ | 37,374.04 |
| Petrikin Wellman Damico Brown and Petrosa | Professional Services | \$ | 6,915.00 |
| | Retainer, Feb. 2023 | \$ | 1,000.00 |
| | | \$ | 7,915.00 |
| Rocky Run Fire Company | Volunteer Incentive Program | \$ | 7,500.00 |
| The Country Press, Inc. | 2023 R/E Tax Bills | \$ | 5,168.17 |
| United Inspection Agency, Inc. | Electrical Insp. Jan. 2023 | \$ | 6,901.00 |
| | General Fund Total | \$ | 151,735.00 |

RECREATION

| | | | |
|----------------------------|-----------------------------|----|-----------------|
| PLGIT Credit Card - To G/F | Office Supplies | \$ | 52.00 |
| | Jr. Summer Rec Supplies | \$ | 562.11 |
| | Tickets/Bus/Tour/Prog. Fees | \$ | 8,879.50 |
| | Reimburse | \$ | 14.69 |
| | | \$ | <u>9,508.30</u> |

CAPITAL RESERVE

| | | | |
|-------------------------|---------------------------|----|------------------|
| Rothwell Doc. Solutions | 2-Lanier IM C4500 Copiers | \$ | <u>19,785.00</u> |
|-------------------------|---------------------------|----|------------------|

Ms. Dussling made a motion to approve the bill list. Ms. Donnelly seconded the motion. The motion carried with a vote of 7-0.

Mr. Kirchgasser adjourned the meeting at 8:00 pm.

Respectfully Submitted,



Sharon Browne