



TOWNSHIP OF DERRY

Board of Supervisors Meeting Minutes

Tuesday, December 19, 2023

EXECUTIVE SESSION 6:00 PM

CALL TO ORDER

Chairman Abruzzo called the December 19, 2023 Regular Meeting of the Township of Derry Board of Supervisors to order at 7:00 p.m. in the meeting room of the Township of Derry Municipal Complex, 600 Clearwater Road, Hershey, PA. He advised that all public meetings are recorded for providing accurate notes. An Executive Session was held before the meeting. A roll call was performed after the Pledge of Allegiance.

ROLL CALL

SUPERVISORS PRESENT:

E. Christopher Abruzzo
Natalie L. Nutt
Carter E. Wyckoff
Michael P. Corado
Richard D. Zmuda

ALSO PRESENT:

Christopher S. Christman, Township Manager
Patrick Armstrong, Township Solicitor
Garth Warner, Chief of Police Department
Chuck Emerick, Director of Community Development
Tom Clark, Director of Public Works
Alison Jacobine, Director of Hershey Public Library
Zachary Jackson, Director of Parks & Recreation
Becky Sweigart, Public Outreach Coordinator
Eric Stump, HRG Engineer
Rodney Sonderman, Hershey Volunteer Fire Company

Public in Attendance:

Ken Gall, Rodney Sonderman, David Tshudy, Esch McGimble, Rick Ozamek, Susan Fotos, Keith McMinn, Karla Farrell, Joel Harding, Rich Gamble

VISITOR/PUBLIC COMMENTS

Ms. Susan Fotos, 3 Spring Lane, asked questions about pedestrian safety. She stated there were articles about traffic fatalities in the news recently. She asked if there is an opportunity or a committee that could address the traffic to slow it down and work on pedestrian safety. She said she has some unique ideas on how to help improve safety. Chairman Abruzzo stated they work on it every day. Sometimes they react to issues that are brought to them by the residents. In the past two years, he stated pedestrian safety has been a focus, and we have tried to employ the best devices available for safe traffic flow. Mr. Emerick is the best person to contact. He spoke of the Transportation Committee and adding officers to help with traffic safety and enforcement.

CONSENT CALENDAR

Adoption of the Board of Supervisors Meeting Minutes for the November 14, 2023 6:45 PM

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Public Hearing.

Adoption of the Board of Supervisors Meeting Minutes for the November 14, 2023 7:00 PM Regular Meeting.

Adoption of the Board of Supervisors Meeting Minutes for the November 21, 2023 5:30 PM Budget Hearing.

Adoption of the Board of Supervisors Meeting Minutes for the November 28, 2023 7:00 PM Regular Meeting.

Release of the financial security provided for the Stormwater Management Plan for 1089 Derry Woods Drive, S-2021-009.

Approval of December 5, 2023 Accounts Payable of \$574,986.93.

Approval of December 19, 2023 Accounts Payable of \$382,732.57 and Payroll of \$352,141.91.

Secretary Wyckoff made a motion to approve all items on the Consent Calendar. Supervisor Corado seconded the motion. **Motion carried 5-0.**

NEW BUSINESS

Review and Update on Chocolatetown Park Renovations - Veterans Memorial:

Mr. Emerick showed the Board images of the Memorial Park with the five separate plaques. Through the working group, another plan emerged using a different way to show the plaques. He described the order of the plaques, how they would be displayed, the elevations of the wall, and described the stars and how they would be displayed. He asked for input from the Board prior to moving forward with the change.

Chairman Abruzzo asked if all the groups (MHS and Veteran Groups) had seen the change and approved. Mr. Emerick stated they have and are in agreement. HRG and the construction company have seen the changes and are also good with them.

Consideration of an Agreement with Penn State Health for the provision of EMS Services for the Township of Derry:

Mr. Christman stated the Township has had a long contractual relationship with Penn State Health for the provision of EMS Services for the Township. The current EMS contract is set to expire on December 31, 2023. Penn State Health has proposed a 10-year agreement, beginning January 01, 2024 running through December 31, 2034. The agreement also has an automatic renewal provision that will set each additional term of the agreement for 5-years at the termination of the initial term. Either party can terminate this agreement with 90-days written notice. The fee for EMS services is fixed at \$130,000 per year for the entirety of the agreement. No escalator clauses are included.

Vice Chairwoman Nutt made a motion authorizing the Township Manager to execute the agreement with Penn State Health for the provision of EMS Services within the boundaries of Derry Township for an initial term of ten years beginning on January 01, 2024 and running through December 31, 2034 with automatic renewals following the initial term of 5-years each at a cost not to exceed \$130,000 per year for each year the agreement is in-place.

Supervisor Zmuda seconded the motion. **Motion carried 5-0.**

Resolution No. 2023-29 - Adoption of the FY2024 Budget:

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Mr. Christman stated the 2024 budget hearing was in November and the budget has been advertised and been available for public review. He stated tonight is the last look at the budget and is in a position to be adopted. He stated real estate taxes would be the same as last year while maintaining the same Township services. The general fund balance at the end of 2024 is projected to be \$12,783,409. He spoke of the 3% raises, healthcare costs, additional personnel being added, and other expenses. He spoke about the revenues with the majority coming from the 511 taxes. He described the total revenues, expenses, personnel costs, and other budgeted items.

He stated for the Community Center Fund FY2024, total revenues and expenses are anticipated at \$2,359,468. The total General Fund Transfer to assist operations is budgeted at \$803,468, which is 19% less than the prior year. He went over the Street Light, Library, Solid Waste Fund, Debt Service Fund, Capital Reserve Fund, Community Center, Road Equipment Fund, Liquid Fuels Fund, and the General Operating Reserve Funds. He thanked Staff for all their hard work on the budget. Discussion ensued.

Supervisor Corado made a motion to adopt Resolution No. 2023-29 - Adopting the FY2024 Budget as presented. Supervisor Zmuda seconded the motion. **Motion carried 5-0.**

Consideration of Resolution No. 2023-30 - Tax Levy Resolution for FY2024:

Mr. Christman stated with the adoption of the annual operating budget, Resolution No. 2023-30 sets the millage rate for the Township of Derry for FY2024. As stated in the budget, this is the fourth consecutive year that the real estate tax rate remains at 2.5381 mills.

Supervisor Zmuda made a motion to adopt Resolution No. 2023-30 - Tax Levy Resolution for FY2024. Supervisor Corado seconded the motion. **Motion carried 5-0.**

Resolution No. 2023-26 - Assessment of the Streetlight Maintenance for various Township streets:

Vice Chairwoman Nutt made a motion that the assessment of the cost and expense of the maintenance of streetlights for various streets within the Township of Derry for the year 2024 is hereby approved. Secretary Wyckoff seconded the motion. **Motion carried. 5-0.**

Resolution No. 2023 - 27 - Establishing a Fee Schedule of Planning, Zoning, Building and Other Fees for Calendar Year 2024:

Supervisor Corado made a motion to adopt Resolution No. 2023 - 27 - Establishing a Fee Schedule of Planning, Zoning, Building and Other Fees for Calendar Year 2024. Supervisor Zmuda seconded the motion. **Motion carried 5-0.**

Stipulation and Joint Motion for Agreed Upon Order in the tax assessment appeal of HH Crown, LP and the associated Tax Refund Agreement:

Solicitor Armstrong discussed the Stipulation and Joint Motion for Agreed Upon Order in the tax assessment appeal of HH Crown, LP. It proposes a settlement in the tax assessment appeal for the property identified as Dauphin County Parcel No. 24-052-451. Dauphin County and the School District have approved the settlement. He stated there was an overpayment of taxes which results in the Township owing a refund \$6,169.15.

Vice Chairwoman Nutt made a motion to approve and authorize the Township Solicitor to execute the attached Stipulation and Joint Motion for Agreed Upon Order in the tax assessment appeal of HH Crown, LP for the property located at 200 High Pointe Drive, TMP No. 24-052-451, and further

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authorize the Township Solicitor to execute the associated Tax Refund Agreement. Supervisor Corado seconded the motion. **Motion carried 5-0.**

Replacement of pipe extracted through a chase pipe located at Public Works fuel pump station:

Mr. Clark spoke about the Pennsylvania Department of Environmental Protection (DEP) requirement that whenever fifty (50) percent or more of an existing piping that routinely contains and conveys product from a tank is replaced, the entire piping system shall be replaced in accordance with the requirements for new piping systems. An inspection performed in October 2022, by DEP found the leak detection for the piping and overflow prevention was noncompliant. Two (2) proposals were submitted for upgrades and repairs to the Public Works fuel pump station in accordance with DEP laws, regulations, and guidelines by Keystone Petroleum Equipment, LTD and Hafer Petroleum Equipment, LTD. The low bidder came in at \$126,636 by Keystone Petroleum Equipment, LTD.

Supervisor Zmuda made a motion to approve the proposal of Keystone Petroleum Equipment, LTD for pipe replacement located at the Public Works fuel pump station. Supervisor Corado seconded the motion. **Motion carried 5-0.**

Resolution No. 2023-25-sale and transfer of municipally owned motor vehicle:

Chief Warner stated they decommissioned three patrol vehicles in 2023 due to age, depreciation and reduced functionality as public safety vehicles. On October 10, 2023, the Board approved the transfer of ownership of a 2013 Ford Police Interceptor sedan to Derry Township Community Cats. The organization, however, deferred transfer of this vehicle in lieu of an available sport utility vehicle in the future. On November 7th, this vehicle was subsequently listed for sale for 10 days using the Municibid website, and the highest bidder among 31 bids was Amir Haidi of Old Bridge, NJ for a total price of \$4,000. Haidi then declined purchase of the vehicle after learning of the requirement for the Township's Board to approve the bid award during public meeting thus delaying his desire for immediate acquisition of the vehicle. On November 29th, the vehicle was again listed for sale for 12 days using the Municibid website, and the highest bidder among 35 bids was Stephen Fravel of Jersey Shore, PA for \$4,505.

Supervisor Corado made a motion to adopt Resolution No. 2023-25 awarding the sale of a 2013 Ford Police Interceptor sedan to Stephen Fravel of Jersey Shore, PA for \$4,505. Supervisor Zmuda seconded the motion. **Motion carried 5-0.**

Authorize the advertisement of sale of Township owned property (Police vehicle and equipment):

Chief Warner spoke of a decommissioned sport utility vehicle containing a cargo area storage box as well as a rear seat prisoner partition, which are not configurable to existing fleet vehicles. He recommended that the items be advertised for sale via online public auction because they no longer serve a useful purpose to the police department fleet: 2014 Ford Police Interceptor sedan, A 'Truck Vault' vehicle, cargo area storage compartment, and a 'Pro-Gard' prisoner seating and partition system.

Chairman Abruzzo made a motion to approve the advertisement for sale of a 2014 Ford Police Interceptor sedan, a Pro-Guard brand vehicle prisoner partition and Truck Vault vehicle storage system by way of online public auction. Vice Chairwoman Nutt seconded the motion. **Motion carried 5-0.**

Fifth time extension request-Plan for 1106 Cocoa Avenue for Nagillum Properties, LLC, Plat 1333:

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Mr. Emerick stated this time extension request is for the property located on the western side of Cocoa Avenue and contains a gross lot area of 16,000 square feet. Currently, there is a mixed-use commercial building on site which will be demolished to build a new medical practitioners office, specifically for a dentist office. The Board initially approved Plat 1333 on January 2021, conditional upon several items being addressed by the applicant. The most recent extension request approved was on June 13, 2023, subject to the outstanding conditions of approval being addressed no later than January 4, 2024. The applicant, by way of their engineer, has requested a fifth extension of time, until July 4, 2024, to address the outstanding conditions. This extension request proposes no changes to the details of the previously approved plan or to the waivers that were granted; however, the Board added a condition of approval when the plan was last extended that read “This fourth extension is approved with the understanding that if the Applicant is not able to meet the conditions of the extended approval by the stated deadline, the Board of Supervisors reserves the right to reopen the land development plan and re-assess any issues that might have changed since the time of first approval.”

He has reviewed the plans to determine if any modifications to our ordinances would affect the proposal. The recent modifications to the Stormwater Management Ordinance may have required standardized details and some minor modifications but would not have changed design. There have not been any adopted modifications to the Zoning Ordinance that would affect the development of the property; however, the amendment currently going through the approval process would change the side yard and rear yard setbacks from 5 feet to 10 feet, which would have a major impact on the proposed building and site layout.

Mr. Emerick stated three of the 13 conditions were addressed. Mr. Chris Koons, Site Designer, spoke about the three conditions they met. They provided the DEP and access utilities letters were provided to the Township. He spoke of the three outstanding items they need, including the Developer's Agreement, Title agreement. They have reached out to PennDOT HOP and will be submitting the last required item to receive the permit. He noted the changes they have experienced since 2020 with this plan and personnel changes. Chairman Abruzzo asked when they would start breaking ground on this project. Mr. Koons stated it would be spring based on communications with the owner. Supervisor Zmuda stated he has a low expectation that the outstanding items will be completed by June 2024. Mr. Koons stated from their engineering point of view they do not see a reason to need an extension.

Vice Chairwoman Nutt made a motion to approve the Preliminary/Final Land Development Plan for 1106 Cocoa Avenue for Nagillum Properties, LLC, Plat 1333, extending it to July 4, 2024, subject to compliance with items 1 through 10 under the *Department Head Recommendation* section of this agenda item. Secretary Wyckoff seconded the motion. **Motion carried 4-1 (opposed: Supervisor Zmuda).**

Final Land Development and Stormwater Management Site Plan for Hershey Square Proposed Outparcel Development, Plat 1353:

Mr. Emerick stated the applicant has asked that this item be tabled as they would like to get completely through the PennDOT process first. They have provided an extension of time to act on the plan until March 2024.

Supervisor Zmuda made a motion to TABLE action on this plan. Supervisor Corado seconded the motion. **Motion carried 5-0.**

Authorizing a text amendment to the Zoning Ordinance related to physical therapy uses in the Township:

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Mr. Emerick stated as the Zoning Ordinance is presently written, physical therapy uses fall under Outpatient Medical Treatment Facilities. This category of uses is defined as *“A business establishment that provides medical services in a specific area of medicine, and contains advanced equipment and highly trained, specialized staff. These facilities may include surgery, imaging, medical laboratory, physical therapy, cancer and chemotherapy, narcotic and substance abuse, cardiology, gastrointestinal and similar type treatment centers. A general care practitioner may be located on site; however, a healthcare practitioners office shall not be a principal use of the facility. Overnight (hospital) accommodations shall not be permitted.”* Outpatient Medical Treatment Facilities are limited to three zoning districts, which are General Commercial, Planned Campus West in the O7 Overlay, and Medical Campus Central. LHM Physical Therapy Institute, LLC, and Middletown Wood Road Partners, LP, are requesting a text amendment that would remove the term “physical therapy” from the definition of Outpatient Medical Treatment Facility and are proposing a separate definition for “Physical, Occupational or Speech-Language Therapy Facility.” They are also proposing modifications to the Zoning Ordinance to allow the Physical, Occupational or Speech-Language Therapy Facility use in the General Commercial, Planned Campus West, Medical Campus Central, and Commercial Recreation zoning districts. They have proposed adding the use to Table 35, Parking Ratios, and requiring three parking spaces for each professional who typically sees patients, plus one parking space for each professional or employee who typically does not see patients. Lastly, a new definition would be added to define “massage therapy” so that it is understood that massage therapy is not physical therapy. The proposed modifications have been reviewed at a staff level and seem to be appropriate modifications to the Zoning Ordinance.

The request and proposed ordinance amendment were included with this agenda item. If the Board chooses to move forward with this proposed amendment as presently written, you would direct staff to provide copies to the Township and County Planning Commissions for review and comment. It is anticipated that the ordinance could be advertised for a public hearing by the Board of Supervisors on February 27, 2024, at 6:00 PM, and considered for adoption immediately thereafter at the Board’s regular meeting that evening.

Supervisor Zmuda asked if it benefits the Township. Mr. Emerick stated he cannot see a downside to the Township. He stated he sees Physical Therapy as a softer type of medical use that could fit into a neighborhood setting. He does not know if it benefits the Township. Vice Chairwoman Nutt asked if this is the first step toward a development. Mr. Emerick stated this use is anticipated in Stoverdale Commons in an existing structure, currently it is not approved in that zoning area. This change would allow that type of use. She asked what other areas could physical therapy, stand alone, be allowed. Mr. Emerick went over the districts where it would be allowed. Chairman Abruzzo asked what they are doing now. Mr. Emerick stated they are not doing therapy now because they signed a lease but cannot occupy it for this use. Chairman Abruzzo believes the proposed request would add traffic. He does not have a problem with the text amendment, but is concerned about traffic impacts. Solicitor Armstrong asked if he had something that shows where it is permitted and not allowed now with outpatient versus physical therapy. He showed the Board a map of where it would be allowed with this amendment. Supervisor Wyckoff asked if the County would weigh in on these amendments. Mr. Emerick stated they are currently reviewing them. Mr. Esh McGimble, McNees & Wallace, stated they are not asking for approval of the text amendment tonight but asking the Township to pass it along the process. He stated they talked to Staff, and wanted to pull it out of the outpatient language, because it is like sports rehab and fitness. They work with one patient, another one is coming, plus the physical therapist. They suggested the parking based on that model. They plan on having 4 physical therapists and one administration staff member for a total of 13 parking spots. Mr. Emerick

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stated that development has shared parking and noted that physical therapy has a higher demand for ADA parking than most uses. They will need 20% of their spaces to be ADA.

Vice Chairwoman Nutt stated there is another outparcel that needs to be developed at this location. Mr. Emerick stated that parcel is part of the shared parking model and is based on the usage. He showed the Board the parcel on the map. Solicitor Armstrong stated they are looking for the Board's input and stated he has not seen it. If the Board is okay with it moving forward, he asked the Board to add a condition that he will review it. If the Board is not okay with it, it should be noted tonight. Attorney McGimble stated they can narrow the zoning districts. He spoke of the benefits and traffic because it will be open during the week and believes it will be more like a gym. Solicitor Armstrong stated if it is sent to the County, it will need to be sent back with any changes he may suggest. Discussion ensued.

Secretary Wyckoff made a motion authorizing the proposed Zoning Ordinance amendment related to Physical, Occupational or Speech-Language Therapy Facilities to be forwarded to the Dauphin County and Township Planning Commissions for review and comment conditioned upon review and comments of the Township Solicitor.

Supervisor Zmuda seconded the motion. **carried 4-1 (opposed: Chairman Abruzzo).**

Consideration of a temporary waiver of Section 4.u of the Development Agreement for the Final Lot Consolidation and Land Development Plan for Hershey West End – Streets and Infrastructure Phase, Plat 1330:

Mr. Emerick stated recently it has come to their attention that the Hershey West End project site has been receiving fill from the PennDOT SR 322 and Chambers Hill Road Intersection Improvements project site. PennDOT does not allow excavation at the SR 0322 and Chambers Hill Road project from 6:00 AM to 9:00 PM because the activity requires a SR 0322 lane closure, creating a local traffic bottleneck. Therefore, the excavation and delivery must be between 9:00 PM and 6:00 AM. The West End Condo Association and Hershey Trust Company are requesting a temporary waiver of Section 4.u of the Development Agreement to allow the fill to be placed on Unit F. Section 25.d allows the Development Agreement to be modified by written agreement between the parties. Because this is a temporary modification or waiver of conditions, Solicitor Armstrong is comfortable addressing this by letter rather than an amendment to the Agreement. Solicitor Armstrong stated they are looking for this for a window of time, so he believes a letter would work. Mr. Emerick stated the window of time would be December 20 to February 14, 2024. Ms. Karla Farrell stated they would be delivering Sunday through Thursday. It should be five weeks, but we are asking for eight weeks because there could be bad weather. Vice Chairman Nutt asked about the Homeowner's Association. Mr. Gall said they have been in contact with them. Discussion ensued.

Vice Chairwoman Nutt made a motion that the Development Agreement for Plat 1330 be amended in accordance with the recommendations of Solicitor Armstrong. Supervisor Corado seconded the motion. **Motion carried 5-0.**

Resolution No. 2023-28 accepting West End Avenue as a public road; reducing the balance of the performance security and entering the 18-month maintenance period for West End Avenue, subject to posting the maintenance security and repair security; entering into the maintenance agreement; and providing title insurance for the property being dedicated:

Solicitor Armstrong stated the Township is ready to accept dedication of West End Avenue Road. He noted the project is still going on, but the road is ready. This acceptance resolution of West End

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Avenue, is subject to certain conditions of the Maintenance Agreement, Title Insurance and security for the road. He asked if the Board is ready to accept. Supervisor Wyckoff asked who is responsible for the road with PennDOT dump trucks using the roads for the next three months. Mr. Ken Gall stated the maintenance agreements address that issue. Solicitor Armstrong stated the maintenance agreement would need to be amended to address any damage done to the roads. Mr. Gall has no problem with amending it. Supervisor Wyckoff asked if the road would be closed during construction. Mr. Gall said it would not. Vice Chairwoman Nutt asked when the road would be open. Solicitor Armstrong spoke about the outstanding items which would be needed prior to the dedication. Discussion ensued.

Vice Chairwoman Nutt made a motion to adopt Resolution No. 2023-28, accepting the public roadway improvements of West End Avenue, as depicted on a Deed of Dedication in a manner and form acceptable to the Township, and authorizes a partial release of \$1,013,457.00 from the performance security provided for Plat 1330 as Travelers Casualty and Surety Company of America Bond No. 107507763, subject to and conditional on the developer providing the maintenance security, the executed maintenance agreement and repair security, and the requisite title insurance. Supervisor Zmuda seconded the motion. **Motion carried 5-0.**

Financial security for the Stormwater Management Plan for 606 Cocoa Avenue, S-2023-019:

Supervisor Corado made a motion accepting cash financial security in the amount of \$37,281 and enter into the Agreement to Provide Financial Security between Natale and Mariella Amato and the Township for the Stormwater Management Plan for 606 Cocoa Avenue, S-2023-019. Vice Chairwoman Nutt seconded the motion. **Motion carried 5-0.**

SUPERVISOR BOARD/COMMITTEE REPORTS

Supervisor Zmuda toured Mary's Fitness today. Supervisor Corado attended the DTMA meeting last night and provided updates on their construction projects including Oakmont project completion, Forest Ave improvements, and the Spring Creek project delay. They approved a 5% sewer rate increase in 2024 and stormwater will increase to \$9.00. The Board wished everyone Happy Holidays and New Year.

DEPARTMENTAL REPORTS

Police Department

Chief Warner stated the two new officers will graduate in two days and will begin field training.

Hershey Volunteer Fire Department

Assistant Chief Rodney Sonderman stated they have been riding with Santa Claus and went to the Children's Hospital.

Library

Mrs. Jacobine stated the days the Library will be closed for the Holidays.

Parks & Recreation

Mr. Jackson spoke about the holiday hours for the Recreation Center.

Community Development

Mr. Emerick stated Mary's Fitness has put in for a conditional use hearing for the hours and maximum people in the facility. January 23 at 6:00 p.m., knowing there is a 6:30 p.m. hearing with two liquor license transfers at the 7 p.m. meeting. The Board approved the public hearing. He stated February

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13, will be the public hearing for zoning amendments, the setback and miscellaneous changes to the ordinance. February 27th - conditional use application for 6:30 p.m. for a short term rental. He stated they could also schedule the amendment change for physical therapy.

VISITOR/PUBLIC COMMENTS

There were no public comments offered.

ADJOURNMENT

Supervisor Zmuda made a motion to adjourn the meeting at 9:25 p.m. Supervisor Corado seconded the motion. **Motion carried. 5-0.**

SUBMITTED BY:

Carter E. Wyckoff, Township Secretary