

EAST PENNSBORO TOWNSHIP
BOARD OF COMMISSIONERS
SEPTEMBER 18, 2019

Regular Meeting

8:00 p.m.

A Regular Meeting of the East Pennsboro Township Board of Commissioners was held on Wednesday, September 18, 2019, at 8:00 p.m. at the Community and Municipal Center, 98 S. Enola Drive, Enola, Pennsylvania.

Those present were: Commissioners - John Kuntzelman, President; George Tyson, Vice President; Kristy Magaro, Charley Gelb and Raymond "Skip" Magaro; John Pietropaoli, Township Manager; Lisa M. Coyne, Esquire, Township Solicitor; Jared Hockenberry, Township Engineer; Dearan Quigley, Housing & Community Development; Mike Dobson, Facilities Manager; Andy Kirkessner, WWTP Superintendent; Ed Myers, WWTP; Chief Mark Green, Police Department; and Erik Owen, Fire Marshal.

I. CALL TO ORDER

President Kuntzelman called the meeting to order at 8:00 p.m. A moment of silent meditation was held, followed by the Pledge of Allegiance to the Flag.

II. APPROVAL OF MINUTES

MOTION approving the minutes of the Regular Meeting of September 4, 2019, was made by Mr. Tyson, seconded by Ms. Magaro, and was carried by a unanimous aye vote.

III. BUSINESS FROM THE FLOOR

Mr. Gene Assante, 816 Acri Road, inquired about the public address system for the meeting room. Mr. Pietropaoli noted the speakers have been installed in the ceiling and the wires have been run. It should be functional soon.

Mr. George DeMartyn addressed the board reviewing the history of the cooperation agreement for the ownership of the Enola Miller house and how the Historical Society arrived at the decision they made based on the cooperation agreement. He noted he was part of the negotiating team

Board of Commissioners
September 18, 2019
Page 2

and signed the Memorandum of Understanding in 2007 as President of the Board of Commissioners at that time to purchase the Summerdale tract from the State. The agreement was between the Cumberland County Industrial Authority and East Pennsboro Township. In 2008, an agreement was developed and approved by the CCIDA and East Pennsboro Township that the tract was to be deeded to East Pennsboro Township and the CCIDA together.

Mr. Jim Hertzler, 920 S. Humer Street, thanked the Township Manager and Assistant Township Manager for locating the minutes he requested from the township. He reviewed that 10 years ago the General Assembly passed a bill sponsored by Senator Vance that provided for the conveyance of the Summerdale tract from the State to East Pennsboro Township under Act 28 of 2009. Since then, the project has been very complicated and convoluted.

He explained that the Intergovernmental Development Agreement, which followed the MOU approved and signed by Commissioner DeMartyn on July 1, 2008, repeated some of the information that was in the Memorandum of Understanding, but also expanded on it. It mentioned the project development committee shall be made up of six members, three selected by the Cumberland County Industrial Authority and three representatives selected by the township, and that four votes were needed to take any action of the project development committee. It also stated the project development committee shall work with the Commonwealth to obtain the property titled in the name of the CCIDA and the township, engage professionals and/or seek qualified developers pursuant to a Request For Proposal process and recommend to the CCIDA and the township a proposed developer. Further, it outlined how the project development committee would sell or contract for the sale of any portion of the property or project or cause the construction of any capital improvements or make expenditures in excess of \$2,500, borrow money, or enter into any service contracts for a term longer than one year with the approval of both the CCIDA and the township. He asked how the property ended up being titled only in the name of Cumberland County Industrial Development Authority.

Mr. Skip Magaro noted as a County Commissioner, Mr. Hertzler has the authority to get answers to that question from the county. Mr. DeMartyn noted somehow the terms of the signed agreement got lost in the shuffle between three different Solicitors over this time period, two Township Managers, and approximately 10 different Commissioners, but his understanding of the agreement was that the Board of Commissioners has to approve of sales or contracts of sale along with CCIDA, they cannot be approved by the committee.

Mr. Skip Magaro asked if Mr. DeMartyn negotiated the \$9,000 per month interest payment that the township now must make. Mr. DeMartyn noted he was not involved in that as he left the board at the end of 2009. He negotiated the deal to purchase the property from the State and it would be deeded to the township and the CCIDA, but somehow it ended up in CCIDA's name alone, and he cannot find any record in the minutes that the township Commissioners approved for it to only be in CCIDA's name.

Mr. Skip Magaro noted the \$9,000 per month interest payment has hurt the community, as a million dollars will have been spent on the project that could have been spent on the community. Mr. Hertzler asked how the township ended up in that situation of being responsible for the interest payment, as they cannot find records where the Board of Commissioners approved it. Mr. DeMartyn reiterated that he believes the signed agreement in 2008 continues to remain in force that the Board of Commissioners has to make a decision on any sales of property, they have to vote on it and it has to be part of the record. He cannot find any record that indicates the Board of Commissioners ever voted on any of these agreements.

Mr. DeMartyn further noted in 2010 there was a land swap agreement with 200 First Street Associates regarding 2.2 acres from Mr. Steele. The intention was to save the historical house, because as an investor, 200 First Street Associates was not interested in the house. In order to save the house, the board came up with the land swap deal. Mr. DeMartyn left the board in 2009, but Mr. Hertzler, Mr.

Board of Commissioners
September 18, 2019
Page 4

Tom Fry, Mr. Charlie Hall, Mr. Wayne Melnick, and Mr. Scott Dardick were on the Board of Commissioners. The land swap deal was approved in 2010, and the deeds were prepared and notarized but not recorded by CCIDA.

The land swap stated the land was deeded in CCIDA's name with the township, and if the CCIDA did not want it, the township had the right of first refusal. One year later, in 2011, the first agreement of sale went to National Realty Association for \$4.5 million, but there is no record that it was ever approved by the Township Commissioners. Additionally, paragraph 11 of the agreement stated the developer can relocate the house somewhere else on the property or to another property.

In 2015, another sales agreement was entered into with 200 First Street Associates for 4 1/2 additional acres, and there is no record that agreement was approved by the Board of Commissioners.

He further noted by 2016, 200 First Street Associates had an option on 16 acres on the tract. They did not own it, but they had the option to buy it and had control, without any record of approval by the Board of Commissioners. In 2016, an addendum was added to the sales agreement by CCIDA which stated 200 First Street Associates can dismantle the house. By 2017, 200 First Street Associates had an option of sale for the entire tract.

In July or August of 2019, the board was presented with a draft cooperation agreement regarding moving the house. Mr. DeMartyn believes misleading information was presented at a meeting in 2016 at Central Penn College with CCIDA and Historical Society board president Al Bruner and executive director Jim Leonard that the house was in such poor condition that it could not be saved or moved, and that is how amendment 4 in the draft agreement came to be that the house would be moved to Capital Area Intermediate Unit property, they will donate the property to the Historical Society and the house will be donated after it is relocated. The Historical Society has proposed a

revision to the agreement to include requesting that utilities and the existing furnace and air conditioning units be reconnected when it is moved. They also asked for a driveway and parking area, and stormwater remediation. The developer would not agree to any of the requests.

Mr. DeMartyn expressed a concern that a surety bond is also needed to assure that the house will remain in exactly the same condition as it is presently if it is moved, something to fall back on if several months after the move they experience problems. The developer would not agree to a surety bond and said the mover has their own insurance policy and gave the Historical Society until noon last Friday to agree to the original proposed agreement. Their attorney informed CCIDA by Friday that he was unable to advise their client in the short timeframe. Mr. Giorgione, Solicitor for CCIDA, emailed the Capital Area Intermediate Unit, copied to Commissioner Tyson, CCIDA, and the township, that the Historical Society did not respond to their agreement and they wanted Capital Area Intermediate Unit to transfer the land to the township. The Historical Society's attorney responded to them on Monday with several concerns asking for further assurances. That request was also denied.

Mr. Skip Magaro asked what the Historical Society is requesting. Mr. DeMartyn noted they are going to build an accessory building for roughly \$150,000, \$200,000 will be spent to restore the house, so the Historical Society will be out \$350,000. He noted at a previous Board of Commissioners' meeting a motion made by Mr. Tyson passed to sell property in West Fairview and donate the proceeds to the Historical Society, which will help pay for the accessory building. He stated they would like assurances from the Board of Commissioners that they support the requests of the Historical Society for a surety bond or further assurances to make the Historical Society whole should there be a problem, as they would have no other funds to use in case damage is noted later on that would require remediation.

Ms. Magaro noted time is running out and these changes which the developer has been trying to accommodate cost a lot of money. The township and the Historical Society are not putting the money out, the developer is putting the money out to make sure that the house is preserved, that the Historical Society benefits from it, and that it is moved to a more beneficial spot. Ms. Magaro further noted that the move has to be insured, and the company moving it would not take the job if they did not think it would be successful. Mr. DeMartyn asked about covering it under the Township's bond. Ms. Coyne noted that would not be permitted under the SALDO ordinance.

Mr. Tyson stated they have had several conversations with the developer, who has agreed to restore the utilities after moving. Topography and stormwater will be taken care of by township staff. Commissioners Skip Magaro and Tyson concurred that all members of the Board of Commissioners want a very successful project. The agreement has a stipulation of preserving and saving the house, and the township and CCIDA will not deviate from the agreement. Mr. Skip Magaro noted this board is the best board the Historical Society could have because they all have an interest in making sure everything works right. Mr. Tyson asked that the contract be reviewed so that it clearly identifies that if something happens, it is either reconstructed or fixed to the satisfaction of the verbiage in the agreement regarding its condition.

Mr. DeMartyn noted the Historical Society has been treated very well by the township, but after emails from CCIDA and 200 First Street Associates who have reneged on previous agreements, they have concerns working with them.

Ms. Coyne asked Mr. DeMartyn if he was speaking for the Historical Society that they will not be a signatory to the proposed cooperation agreement. Mr. DeMartyn stated he was. Ms. Coyne noted the agreement states the entities agree to convey the property from CAIU to the Historical Society and also convey ownership of the Enola Miller house, with the different provisions discussed, which

included the contribution of \$20,000 toward connection of utilities. Ms. Coyne outlined that absent the Historical Society's participation in the cooperation agreement, items regarding grading of the site and utilities at the site, all of which are to be done at the cost and expense of the developer, the township would own the property and the Historical Society would not own any of it. Mr. DeMartyn concurred, and noted the action the Board of Commissioners has been asked to undertake tonight comes before development plans for the Summerdale tract have been considered or acted on by the Planning Commission. He suggested the Board of Commissioners could make a decision at its next meeting. President Kuntzelman noted the developer has indicated they would pull the plan Monday morning if conditional approval is not given tonight. Mr. Gelb objected to the board being required to approve the agreement this evening.

Ms. Barb Gertzen, 835 Magaro Road, stated she has contacted Mr. Bruce Lee from Mt. Holly Springs to scan the house before and after the move and asked if there could be an agreement that he be permitted to do the scans. Ms. Coyne noted the township does not own the house and cannot give permission. Mr. Pietropaoli noted under the agreement the board is going to consider this evening, after the motion is made, hopefully everything goes positively that they can still alter the agreement to add the Historical Society in the future. Without owning the house, he cannot say if a third party is permitted to scan the house. Mr. DeMartyn noted Metropolitan indicated that if the Historical Society signed the agreement, they will give the Historical Society access to the house.

Mr. Tyson stated he does not like operating under somebody else's timeline, but noted there is not a whole lot the board can control. A loan comes to its termination on October 30, and without an agreement, there will have to be another negotiation with the bank. Last year's negotiation was not a pleasant experience and the township ended up paying a higher interest rate for one additional year. The State's reaction to an additional extension of the grant, which has already been extended three times,

would also be extremely difficult because there were multiple grants across the State out of the same funding source from which the \$2.1 million grant came.

Mr. DeMartyn noted CAIU is not going to vote on this until the September 26, and he does not understand why the board is being required to take action on the agreement this evening.

IV. ITEMS FOR DISCUSSION AND APPROVAL

MOTION authorizing payment of invoices and payroll pending review and signatures of Commissioners, was made by Mr. Tyson, seconded by Ms. Magaro, and was carried by a unanimous aye vote.

MOTION to conditionally approve the Cooperation Agreement in substantially the form submitted this evening giving the Township Solicitor and the President of the Board of Commissioners the authority to amend document to its final form, was made by Ms. Magaro, and was seconded by Mr. Skip Magaro.

Mr. Gelb noted he is not pleased with the developer pressuring the board for action this evening. He stated he is not frightened by the developer, CCIDA, or its Solicitor saying they are going to walk away because with LERTA, this developer came quickly and others will as well. He stated he does not believe it needs to be voted tonight.

Ms. Magaro noted the board has the authority to amend the agreement to the final form. Mr. Pietropaoli noted a key consideration is the negotiations cannot stop at this point, they need to stay open and try to work through some of the obstacles. He noted the first four developers that got to this point pulled out.

Mr. Jim Leonard, 65 Pine Ridge Circle, Executive Director of the Historical Society, noted they are right now in a lease situation at their facility at 410 Cherry Street. He asked under the circumstances if the township could lease the Enola Miller house to the Historical

Board of Commissioners
September 18, 2019
Page 9

Society, like it presently does with its current facility. Mr. Pietropaoli stated he does not know and would have to research that.

Whereupon, the motion passed with a majority of "aye" votes, with Mr. Gelb voting in the negative.

MOTION to approve Resolution no. 2019-14 of the Township of East Pennsboro, Cumberland County, accepting the new five-year winter traffic service Municipal Agreement with PennDOT, was made by Mr. Tyson, seconded by Mr. Skip Magaro, and was carried by a unanimous aye vote.

Mr. Hockenberry noted PennDOT changed the way they calculated their mileage and they will actually be paying the township more money.

MOTION to approve the East Pennsboro Township Fire Police assisting the New Cumberland Fire Police on Saturday September 28, 2019, from 7:00 a.m. to 4:00 p.m. for the Apple Festival, was made by Ms. Magaro, seconded by Mr. Gelb, and was carried by a unanimous aye vote.

Mr. Pietropaoli noted the FRAC meeting next Thursday, and East Penn Authority meeting tomorrow night at 6:30 p.m. Mr. Gelb noted at the Legion event this Saturday with its first annual chili cook-off, the first, second, and third place winners all donated their money awards back to the first responders.

MOTION to adjourn the meeting at 9:18 p.m. was made by Ms. Magaro, seconded Mr. Tyson, and was carried by a unanimous aye vote.