

EAST PENNSBORO AUTHORITY
JULY 16, 2020

Regular Meeting

6:30 p.m.

A Regular Meeting of the East Pennsboro Authority was held on Thursday, July 16, 2020, at 6:30 p.m., telephonically.

Those present were: Commissioners George Tyson and Kristy Magaro, Dr. Glenn Zehner, Randy Martin, and Mario Billow, members of the Authority; Lisa M. Coyne, Esquire, Solicitor; John Pietropaoli, Township Manager; John Owen, Assistant Manager; Dearan Quigley, Housing & Community Development; Ed Myers, Assistant WWTP Superintendent; Jared Hockenberry, Consulting Engineer; and Robert Coyne, Coyne & Coyne, P.C.

I. CALL TO ORDER

The meeting was called to order at 6:30 p.m. by Mr. Tyson. A moment of silence followed by the Pledge of Allegiance to the Flag.

Chairman Tyson noted the meeting is being held via teleconference per the Township's resolution for the State emergency disaster. Visitors will be called upon by the Chairman at the appropriate time.

II. APPROVAL OF MINUTES

MOTION approving the minutes of the June 18, 2020, meeting, was made by Dr. Zehner, seconded by Mr. Martin, and was carried by a unanimous aye vote.

III. PUBLIC COMMENT

Mr. Corey Stone, with his mother, Ms. Kathy Stone, addressed the Authority regarding 140 Lancaster Avenue, inquiring about the assessment for that property. They believe their calculations are correct and asked if the Authority had a different set of calculations.

Chairman Tyson asked if they filled out the appeal form, which initiates the process, making sure the calculations are correct and addressing any other issues.

Mr. Tyson noted several appeals have been submitted for township properties. Mr. Stone stated they have filled it out but have not submitted it yet. He noted the house started construction in 2015, and general construction was finished in August 2016. They installed, according to township ordinances and building codes, a 20' by 60' stormwater retention drain field in their back yard. It was professionally designed, and approved by the township. Further, the house sits on a bed of shale. The entire time they built the house there was zero water in the basement. They are 100 percent confident in that system and the back yard is draining properly. The only water runoff at this point is when there are extreme storms that everyone experiences. He noted his parents have already spent more than \$8,000 worth of investment into the township and doing their part to remediate runoff into the Chesapeake Bay from their property.

Chairman Tyson asked the Stones to submit their appeal form and any additional documents, which will go to the appeal officer, who will then report back to the Authority. Mr. Myers noted there is no fee to submit the appeal, there is a \$25 fee for a credit application. Mr. Stone stated they will submit the appeal, noting he believes they have done their part to help the township reduce stormwater output to the river basin and the Chesapeake Bay.

Mr. Tom Denslinger, representing Our Lady of Lourdes Church, 225 Salt Road, had questions before they submit a credit application. He questioned the definition of "stormwater," noting that it includes the words "and springs." He asked why springs are included as stormwater. Mr. Myers explained if there is rain going into a facility that manages it or there is water coming up from the ground that goes into a facility that manages it, the facility, the downstream piping, the boxes, and eventually how it makes its way to the streams, are all parts of the infrastructure that require maintenance that the fee would go toward. Mr. Denslinger suggested including springs disagrees with the township ordinance, which does not have the wording "and springs" in it. Mr.

Myers stated that is an interpretation, and if that is included in details of their credit application, it would be reviewed in kind. Mr. Denslinger noted Hampden Township's ordinance limits their definition to the first few words of East Pennsboro's, and then their stormwater regulations or resolution includes the words "and springs."

Ms. Coyne stated the resolution is what the Authority codified. The Authority does not enact any ordinances, they only enact resolutions. The township can codify a different definition of stormwater than the Authority. This is the codification for the Authority, which was enacted under the Municipality Authorities Act. She further noted this Authority is a separate governmental entity and has adopted the language in the resolution, through consultation with its experts and consultants in drafting the resolution.

Mr. Denslinger also asked whether hiring a lawn service would qualify under the fertilizer management credit. Mr. Myers stated he spent a considerable amount of time on the Penn State Extension Web site, and also looked at the Cumberland County Conservation District Web site, looking for some type of regular routine fertilizer management courses. There are a few, but they are not really courses, basically just discussions of what fertilizer management is.

Mr. Denslinger asked what constitutes the successful application of the fertilizer credit, what would they need, and if that could be supplanted by a professional service that they would employ to spread fertilizer on the grounds, which the church has been doing for quite a few years. Mr. Myers asked if they would get a fertilizer credit, would they have someone, either the owner or the elected body of the owner that holds responsibility to those fertilizer activities and could provide the credentials and proof, are the representatives of the church willing to keep those credentials on hand and certify to that credential, holding the responsibility in case any type of problem

would arise relating to fertilizer or any type of chemical spread onto the ground? Mr. Denslinger noted technicians of lawn service companies that apply pesticides have to be registered with the Department of Agriculture. Mr. Myers noted in that instance they are certified in a group, and being certified as a group would not be sufficient. If they can supply the owner with the credentials that give them the proper knowledge on how to put the product onto the ground and the church is in a position to certify that credential, to certify that contracted entity in their stead to put that product on the ground to be responsible for that, that is more along the lines of what they would like to see.

Chairman Tyson noted the credit resolution identifies the property owner and/or grounds keeper must take a fertilizer management course by the Pennsylvania State Extension, the Cumberland County Conservation District, or other provider of proof by East Pennsboro Authority and implement recommended fertilizing practices. The course must be taken, documentation including proof of enrollment and implementation of a number of applications must be submitted annually. That is what the resolution identifies what would qualify for the credit. Mr. Denslinger will consult with the maintenance person at the church.

Mr. Denslinger also asked about number 9 and number 23 of the credit resolution, Article 14, the rates, rules and regulations. He noted it is similar to language in Hampden Township's stormwater resolution, but believes this section may need to be changed. Chairman Tyson noted they will take it under advisement.

Mr. Denslinger also questioned different nomenclature used in the definitions section when they cite the Township's ordinances, in the definitions it is Sections 22-725, 22-723, 22-732, but then when it goes back to Section 4, they start getting broken down into Chapter 22, Part 7, Section 31. Chairman Tyson noted they will make note of that comment and will take it under advisement as well.

Mr. Denslinger further noted clarification might be needed in the inspection report language. It says that it must document compliance for the preceding year, whereas in Chapter 22-732, under inspections, it requires annual reports for the first five years, and then once every three years after that, and then also after any major flood event it requires an inspection report. Chairman Tyson stated they will take that under advisement as well.

Mr. Denslinger further stated he did a comparison with Hampden Township's Sewer Authority on 4.11, and they essentially have the same language, however, they do not require a qualified professional to do the inspection report. Ms. Coyne stated she is also the Solicitor for Hampden Township's Sewer Authority, and that was a decision that that body elected. This body elected otherwise.

Chairman Tyson asked Mr. Denslinger to forward his enumerated comments to Mr. Myers, which will be beneficial for their review.

IV. MANAGER AND ASSISTANT MANAGERS' REPORT

Mr. Owen noted a month ago he submitted two projects for potential funding relative to stormwater issues in the Township. The memo from C.S. Davidson dated May 28, 2020 lays out design work for the Beaver Avenue stormwater culvert and the Edenderry Way stormwater culvert. The Beaver Avenue general permit estimate for professional services is \$6,200, the Edenderry Way general permit estimate is \$8,700 for professional services to develop the necessary permits and design work for these projects.

Chairman Tyson asked if they anticipate those would be coming to the Authority for approval at an upcoming meeting. Mr. Owen noted he would like to get it on the agenda for approval as soon as possible. Mr. Pietropaoli noted they have been hearing the general permit turnover time has been increasing over the last several months,

and this is too important, they would like to have it done during this construction season. Chairman Tyson noted the Beaver Avenue culvert has been an issue for some time, and suggested it be on the agenda for the August meeting.

Mr. Owen reported yesterday evening the township Commissioners gave permission to the Township Manager to start negotiating with a candidate who was selected to be an in-house Township Engineer. That person potentially will be designing other projects on behalf of the Authority and the township, as well as doing project management for various projects in the township.

Mr. Owen and Mr. Myers reported that they have been doing a lot of outreach with constituents. They received an email from a resident on 3427 Linda Circle, Camp Hill, whom he spoke to this evening, concerning ponding on a cul-de-sac near the Camp Hill/Hampden Township line. He said he would bring it up tonight to the Authority. Mr. Brewbaker and Mr. Myers have been out to the site. It is an issue where there needs to be milling and reclamation and a change in elevation. It is in the Howard Gale development, built in the late 1950s, early 1960s, with sparse stormwater facilities. This might be a case where East Pennsboro has to work with not only Hampden Township but also the borough of Camp Hill to come up with stormwater management. Even with best management practices in that area, there is no way to get rid of the water in that area without building the infrastructure for it.

V. FINANCE REPORT

Mr. Myers reported they were finally able to open bank accounts for the Authority, once banks opened for in-person services. The township has collected, from January 1 to June 30, \$272,135.17 as a combination of residential and commercial collections. The township prepared a transfer letter to transfer that sum to the Authority account, upon favorable action this evening.

The township, through labor and materials, has incurred expenses for services rendered during the same time period for \$78,223.07.

VI. MS4 COORDINATOR REPORT

Mr. Myers reported regarding the stream bank restoration project, there will be a public outreach effort to notify the approximately 400 residents who live along the streams and waterways of the work to be done. There will be a cost incurred, whether by township personnel or whether the whole amount is outsourced. A price was gathered for that purpose at approximately 40 to 43 cents per mailing for the 400 properties.

Mr. Quigley asked for the Authority's opinion regarding properties within the township that are zoned in a particular way for a particular land use, but perform and behave on that land as a different entity. Such as, they may be zoned residential but then perform commercially as a business or otherwise. The subject of how to treat them when it comes to billing for the stormwater fee has come up, and staff would like clarification. One example is a nonconforming lot which has been illegally constructed. Staff opinion is they do not want to reward somebody for doing wrong by allowing them to use the underlying zoning district as the basis for their stormwater fee when they are in fact contributing substantially more than someone who actually has a residential use. Other examples would include nonconforming uses, and those may be legally in place, however, they are still a greater burden than their neighboring properties. It also disincentivizes conformity if they are treated as a residential property because they are in a residential district, it is a disincentive to leave that area and bring that area into conformity or sell it to be a residential lot.

They discussed 5 Americana Way, which is in a residential district but more closely resembles an agricultural use. He noted a lot of these matters, if they are done with the intent of trying mitigation, that

would include incentivizing conformity with the zoning district in which they are located.

Chairman Tyson asked for an opinion from counsel as to how to best manage those unique situations. Mr. Pietropaoli suggested perhaps using the most restrictive district and let them use the credit format for mitigation. Ms. Coyne cautioned against conflating zoning versus use. A property owner saying they are in a residential zone does not obliterate the fact that they are utilizing it for commercial or nonresidential. There could have been a commercial use in a residential zone that is now going back to a residential owner. They may be 100 percent impervious if they move in as a residential lot. That does not mitigate the underlying issue. Ms. Coyne will review the issue and get back to the Authority.

Mr. Hockenberry noted the fee that was generated by ARCADIS considered the land use of the properties in the township. Land use is how the ERUs were calculated, and if a mistake was made, it certainly could have been what was analyzed, but someone being mistaken for commercial and was charged one more ERU would certainly let the Authority know. Mr. Pietropaoli noted one case was a use change, but they will have to look at them individually. Going from commercial back to residential, there are approximately a half-dozen that they are questioning what to use. Mr. Hockenberry noted a use change might trigger a review of the stormwater fee.

VII. ENGINEER'S REPORT

Mr. Hockenberry and Mr. Myers provided a brief update on the stream restoration project. Mr. Myers noted he has seen activity by the consultant on only township-owned property for the basin retrofit analysis, and received a Pennsylvania One Call to submit plans. He has not been updated on the stream bank or the riparian buffer.

Chairman Tyson asked if this would be an opportunity for volunteers from the community to be involved. Mr. Hockenberry indicated not at this point. The first step is to assess 10-15 miles of stream. The consultants did not go on any private property, just sections of stream that were township owned. They are experts in looking at what the stream looks like now, what it should look like, and if it is chosen to be restored, how much credit the Authority would give for that project.

Chairman Tyson noted there are groups looking to do something on the Conodoguinet Creek, like the Conodoguinet Greenway, and he suggested a great initiative could be for them to partner with East Pennsboro and the Authority to maintain the stream banks. Mr. Hockenberry noted after the initial assessment, when the sites are selected and the design is completed as to what it should look like will be the opportunity to get groups involved and get buy-in from the community. The Conodoguinet itself will not be one of the streams that will be restored, but it will certainly be a tributary and they can help to maintain the banks.

VIII. SOLICITOR'S REPORT

Ms. Coyne reported they have been meeting telephonically with Norfolk Southern with regard to the appeal they filed. They are going to exchange some calculations with Mr. Hockenberry and Mr. Myers for their review. In light of that, she circulated to all members of the Authority an email from Norfolk Southern requesting an extension from appeal determination, as well as suspension of the interest and penalty that is determined, which will be an action item this evening.

Ms. Coyne noted subsequent to the Authority's decision last month providing clarification to the appeal process by appointing a hearing officer and an appeal officer, she provided proposed Resolution no. 3-2020 for the Authority's consideration that would implement that practice and procedure, tying into that the request to have the credit resolution reflect that the credit is

retroactive to April 1, 2020. The resolution provides clarity to staff as well as a road map for the citizens as to what happens when they file an appeal, who is going to review it, when they are going to review it, and what their options are if they do not agree with the hearing officer. An appeal will go to the appeal officer, who is John Owen, and beyond that it goes to the Court of Common Pleas, under local agency law.

IX. OLD BUSINESS

There was no old business.

X. ACTION ITEMS

Mr. Myers noted last meeting a number of fee appeals were affirmed, but one was tabled for 9 Sherwood Drive, the Enola First Church of God. His opinion on the appeal was that it would be granted because staff agreed with the recalculation that was provided by the representative. The item was tabled to be reevaluated.

Mr. Hockenberry thought the motion was to deny the appeal because ARCADIS' analysis was correct. Ms. Coyne reviewed that the initial suggestion was for the applicant, upon review of staff and coordination, that the appeal would be granted. Mr. Myers stated communication had been given to the resident that it would be accepted based on their calculations. Mr. Hockenberry noted ARCADIS' calculations and the ERUs are correct as billed. Ms. Coyne stated the understanding was there was communication to the applicant based on staff coordination, and that was the finding and recommendation to grant the appeal.

MOTION to adopt findings and recommendations of township staff for appeal filed for the property 9 Sherwood Drive, was made by Dr. Zehner. There was no second. Ms. Coyne noted as the resolution is written, if the Authority fails to take action, it is passed automatically. The appeal was deemed approved.

MOTION to authorize the township to file electronic paperwork that registers the newly formed Authority bank account with PennVest to enable electronic funds transfers, was made by Dr. Zehner, seconded by Mr. Martin, and was carried by a unanimous aye vote.

MOTION to accept the transfer from the township of stormwater fee revenue received from 1-1-20 to 6-30-20 totaling \$272,135.17 to the Authority account, was made by Mr. Billow, seconded by Dr. Zehner, and was carried by a unanimous aye vote.

MOTION to pay the township \$78,223.07 for services rendered between 1-1-20 and 6-30-20, was made by Dr. Zehner, seconded by Ms. Magaro, and was carried by a unanimous aye vote.

Mr. Pietropaoli noted some of that money will come back to the Authority from PennVest once the reimbursements are made. Dr. Zehner suggested at some point the Authority should receive a monthly, bimonthly, or quarterly report. Chairman Tyson stated a Treasurer's report will appear at each meeting.

MOTION to accept Norfolk Southern's extension request on their appeal to August 19, 2020, and waive the penalty and interest during the appeal period, was made by Mr. Martin, seconded by Dr. Zehner, and was carried by a unanimous aye vote.

MOTION to adopt Resolution no. 3-2020, outlining the appeal process, was made by Dr. Zehner, seconded by Mr. Billow, and was carried by a unanimous aye vote.

XI. NEW BUSINESS

Mr. Myers reported he and Dr. Zehner contacted Holly Smith of the Penn State Extension Master Stewards in an effort to explore all avenues of educational curricula for credit. They had a productive Web meeting, including the exchange of educational materials and links to resources. Dr. Zehner stated he contacted Superintendent

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Dunar from the East Pennsboro School District to make her aware of the curriculum materials available from Penn State that the Authority would like to forward to her and to the curriculum director of the district. She was very interested, and the materials have been forwarded to her. She and Mr. Moore, the director of curriculum, will take the lead and contact Penn State Extension to get the ball rolling and will keep Dr. Zehner apprised of what happens. He also shared with Dr. Dunar the language from the resolution dealing with educational credits so that she is aware of what the Authority has passed. Chairman Tyson thanked Dr. Zehner for the outreach.

Chairman Tyson noted the next Authority meeting is Thursday, August 20, at 6:30 p.m.

MOTION to adjourn the meeting at 7:40 p.m., was made by Dr. Zehner, seconded by Ms. Magaro, and was carried by a unanimous aye vote.