

Regular Meeting

June 27, 2017

The regular meeting of the Millcreek Township Board of Supervisors was called to order at 7:02 p.m. by Chairman Brian McGrath in the Assembly Room of the Millcreek Township Municipal Building. Present were Mark Zaksheske, John Groh, Brian McGrath, John Morgan, Mark Shaw, Esq., Matthew Waldinger and Sheryl Williams. Richard Morris, P.E. was absent.

Following the Pledge to the Flag, led by Boy Scout Troop #54 and leader Mark Johnson, Chairman McGrath called for public comment on agenda items other than development or rezoning applications.

Richard Koerner, 273 S. Portage Street, Westfield, NY, President of the Board of St. Nicholas Orthodox Church, stated that his church feels it has been unfairly represented recently regarding the Township's proposed Noise Ordinance and incidents at St. Nick's Grove. He reported that five Stag n' Drag parties have been scheduled for the summer at St. Nick's Grove, but also numerous church, civic, family and community events and fundraisers, some for which the church is donating the grove free of charge. He also noted that the rental contract has been amended, forbidding any explicit music lyrics and the hours have been changed to 10 a.m. – 9 p.m. Mr. Koerner said he has researched the National Institute of Health website to learn common decibel levels and feels that the Township has made the levels in the proposed ordinance too low. He is concerned about the upcoming German Festival, and feels that the ordinance will allow some residents to "cherry pick" portions of the ordinance to use to their advantage if they do not like a particular genre of music being played at the time. Mr. McGrath assured him that the Board has no intention of impacting any organization, but rather wants to listen to all issues and comments that have been brought forth and then act in the best interest of the Township. Solicitor Shaw recommended that the Board wait to act on the Noise Ordinance until the July 25, 2017 meeting.

Fred Huttel, Jr., 1719 Brookside Drive, representing the organizers of the German Heritage Festival, asked for clarification on whether it is considered a public activity, and what is considered exempt. Atty. Shaw explained that the Board's intent is to take action on both the Noise and Special Events Ordinances on July 25th, and the goal is to have the final drafts of both proposed ordinances uploaded to the website by next week. He stated that the German Festival would be considered to be a publicly sponsored event. Mr. Huttel invited the Supervisors to attend the German Festival and noted that there will be no broadcasting over the public address system after 8:00 p.m., with the entire event to be shut down by 10:00 p.m. Mr. Groh added that the purpose of the ordinance is to define what is offensive.

It was moved by Mr. Groh, seconded by Mr. Morgan and carried by unanimous vote to approve the minutes of the Board's June 13, 2017 Regular meeting.

It was moved by Mr. Groh, seconded by Mr. Morgan and carried by unanimous vote to approve payment of the General Fund bills in the amount of \$722,297.81, and Sewer Revenue Fund bills in the amount of \$77,475.99.

Chairman McGrath administered the Loyalty Oath to new Millcreek Police Officer Katrina Morris, and the Board congratulated her and her family. Chief Scott Heidt reported that Officer Morris is a graduate of the Mercyhurst Municipal Police Training Academy, and has held previous positions with the North East, Wesleyville and Lake City Police Departments. The addition of Officer Morris now brings the MPD force to a full complement of 63 officers.

Consideration of Land Development and Subdivision Plans.

SCOTT & SARAH SWIFT. Small Subdivision Plan. A small subdivision plan to show the creation of a 6,300 square foot Parcel "A" which is to become an integral part of Erie County Tax Parcel (33) 40-138-9, located along the west line of Wilkins

Road, south of Helen Street in Tract 282. Index 135-042 & 044.

Land Development Coordinator Matthew Waldinger reported that at the June 6, 2017 meeting, the Planning Commission recommended approval with one requirement, that the 6,300 sq. ft. Parcel "A" is to become an integral part of the neighboring parcel, Erie County Tax Parcel (22)40-138-9. Scott Swift, 748 Wilkins Road, speaking on his own behalf, stated that he understands the requirement. No one else spoke in favor of or in opposition to the request. On recommendation of Mr. Waldinger, it was moved by Mr. Groh and seconded by Mr. Morgan to approve the SCOTT & SARAH SWIFT Small Subdivision Plan, with the condition that the 6,300 sq. ft. Parcel "A" is to become an integral part of the neighboring parcel, Erie County Tax Parcel (22)40-138-9. Motion carried by unanimous roll call vote.

HAROLD K. & GLORIA J. MORGAN. Small Subdivision Plan. A small subdivision plan to show the creation of a 7,184 square foot Lot 2B which is to become an integral part of Erie County Tax Parcel (33) 118-466-39, located along the west line of Niemeyer Road, south of Glenridge Road in Tract 343. Index 829-005

Mr. Morgan announced that he would not be taking part in this public hearing because his parents are the owners of this subdivision. Land Development Coordinator Matthew Waldinger reported that at the June 6, 2017 meeting, the Planning Commission recommended approval with one requirement, that the 7,184 sq. ft. parcel Lot 2B is to become an integral part of the neighboring parcel, Erie County Tax Parcel (33)118-466-39. Harold Morgan, 5354 Niemeyer Road, speaking on his own behalf, stated that he understands the requirement, and that his intention is to sell 5344 Niemeyer Road to Carlie Smith. No one else spoke in favor of or in opposition to the request. On recommendation of Mr. Waldinger, it was moved by Mr. Groh and seconded by Mr. McGrath to approve the HAROLD K. y GLORIA J. MORGAN Small Subdivision Plan, with the condition that the 7,184 sq. ft. parcel Lot 2B is to become an integral part of the neighboring parcel, Erie County Tax Parcel (33)118-466-39. Motion carried 2-0, with Mr. Morgan abstaining.

DOLLAR GENERAL RETAIL STORE. Land Development Plan. A land development plan to show a proposed 9,100 square foot retail building with associated sidewalks, parking areas and stormwater management facilities, located at the northwest corner of Wattsburg Road (S.R. 8) and East Gore Road (S.R. 4028) in Tract 339 and the South Gore Tract. Index 906-009

Land Development Coordinator Matthew Waldinger reported that at the June 6, 2017 meeting, the Planning Commission recommended approval. Mr. Waldinger added that some questions were raised regarding stormwater management at the Planning Commission meeting, and clarified that ALL stormwater requirements must be met. Michael Lusaitis, 279 North Zinns Mill Road, Lebanon, PA, representing the developer, stated that Stockbeck Engineering Firm is willing to work with the Township and developer on an emergency spillway to an adjacent parcel and has requested a waiver of the location of stormwater facility, which Mr. Waldinger confirmed was approved by Zoning Administrator Charles Pierce. Solicitor Mark Shaw stated that no waiver was required. No one spoke in favor or in opposition to the request. On recommendation of Mr. Waldinger, it was moved by Mr. Groh and seconded by Mr. Morgan to approve the DOLLAR GENERAL RETAIL STORE Land Development Plan. Motion carried by unanimous roll call vote.

LARSON TEXTS OFFICE BUILDING. Land Development Plan. A land development plan to show a proposed four story office building having an 8,400 square foot footprint with associated sidewalks, parking and stormwater management

facilities, located along the north line of Norcross Road (S.R. 4030), east of Schrimper Road in Tract 338. Index 913-017.

Land Development Coordinator Matthew Waldinger reported that at the June 6, 2017 meeting, the Planning Commission recommended approval, with the requirement that the existing flood plain be shown and labeled on the drawing, and a request for a traffic signal contribution of \$10,000 for the intersection of Norcross Road and Conrad Road. David Harrington, 1319 Sassafras Street, of Urban Engineers, stated that he has given a paper drawing to the Engineering Department, and will provide a mylar copy momentarily. He also indicated that Larson Texts has agreed to make a \$10,000 traffic signal contribution. Mr. McGrath asked Mr. Harrington to thank Larson Texts for the traffic signal contribution. No one spoke in favor or in opposition to the request. On recommendation of Mr. Waldinger, it was moved by Mr. Groh and seconded by Mr. Morgan to approve the LARSON TEXTS OFFICE BUILDING Land Development Plan, with the condition that the existing flood plain be shown and labeled on the drawing, and agreement for a traffic signal contribution of \$10,000 for the intersection of Norcross Road and Conrad Road. Motion carried by unanimous roll call vote.

ROCKGOLF REALTY LLC. Small Subdivision Plan. A small subdivision plan to show the creation of a 1.424 acre Lot A and a 1.018 acre Lot B, located along the west line of Grubb Road (S.R. 4011), just north of Hershey Road in Tract 353. Index 555-001

Land Development Coordinator Matthew Waldinger reported that at the June 6, 2017 meeting, the Planning Commission recommended approval, with the requirement that Rockgolf Realty provide the Township with an amended agreement regarding open space. Mr. McGrath then referred to Agenda Item #16, Whispering Woods Golf Club Proposed Subdivision Agreement, and Atty. Shaw confirmed he has reviewed the agreement between the Township and property owner, amending a previous agreement. Mr. McGrath stated this will preserve the density of the overall development, and Mr. Waldinger confirmed that it will limit it to a maximum of 334 total units. On recommendation of Atty. Shaw, it was moved by Mr. Groh and seconded by Mr. Morgan to approve the Whispering Woods Golf Course Subdivision Agreement. Motion carried by unanimous roll call vote.

Rich Rocky, 4647 Meadowbrook Drive, Erie, representing Whispering Woods Golf Club, 7214 Grubb Road, stated that he wants to have the property reappraised in order to build a club house to bring in more revenue for the golf club. He clarified that access to the club house would be from Grubb Road, with no additional traffic through the subdivision. No one spoke in favor or in opposition to the request. On recommendation of Mr. Waldinger, it was moved by Mr. Groh and seconded by Mr. Morgan to approve the ROCKGOLF REALTY LLC Small Subdivision Plan with the required condition having been met. Motion carried by unanimous roll call vote.

It was moved by Mr. Groh and seconded by Mr. Morgan to refer to the Planning Commission a Petition Requesting a Change in Zoning Classification for Ryan G. Molli, for the property located at 4806 & 4812 West Ridge Road, now zoned Rural Residential District and I-1 Light Industrial District, asking for a change of classification to C-2 General Commercial District. Township Index 403-010 & 031, County Index (33)042-230.1-007.00 & 010.00. Motion carried by unanimous roll call vote.

It was moved by Mr. Groh and seconded by Mr. Morgan to refer to the Planning Commission a Petition Requesting a Change in Zoning Classification for Mikhail and Yelena Kolesnichenko, for the property located on the east side of the 6100 block of Perry Highway, now zoned Rural Residential District, asking for a change of classification to R- 4 High Density Residential District.

Township Index 843-020, County Index (33) 193-632.0-001.02. Motion carried by unanimous roll call vote.

Mr. McGrath and Mr. Waldinger announced the June 15, 2017 Bid Opening results for the Millcreek Township Sidewalk Accessibility Project – Phase V as follows: Amendola Development - \$150,390, Empire Construction - \$120,250, Leatherneck Contracting – No Bid, Marsh Y Marsh Construction – No Bid, Mayer Brothers Construction - \$249,000, and Vavala Construction LLC - \$122,888. On recommendation of the Engineering Department, it was moved by Mr. Groh and seconded by Mr. Morgan to award the contract to Vavala Construction LLC for \$122,888. Motion carried by unanimous roll call vote.

On recommendation of Richard Whitbread, Head Foreman, Traffic Department, it was moved by Mr. McGrath and seconded by Mr. Morgan to purchase 1,375 gallons each of yellow and white traffic line paint and 2,000 lb. reflective beading from Ennis Paint, Inc. (dba Ennis-Flint) under COSTARS Contract #4600015792. Motion carried by unanimous roll call vote.

Quotations for approximately 200 traffic signs were solicited and received by Traffic Department Head Foreman Richard Whitbread as follows: Custom Products Corporation - \$4,273.56, US Municipal - \$4,613.90, TrafficSigns.com - \$6,731.33. On recommendation of Mr. Whitbread, it was moved by Mr. McGrath and seconded by Mr. Morgan to award the contract to Custom Products Corporation for \$4,273.56. Motion carried by unanimous roll call vote.

On recommendation of Public Works Director Gary Snyder, it was moved by Mr. McGrath and seconded by Mr. Groh to authorize Insight Pipe Contracting, LLC, under COSTARS contract #16, to perform a 24” Storm Sewer Pipe Rehabilitation Project with CIPP Liner on West Street. This is a budgeted project for 2017 with a total price of \$24,412.50. Motion carried by unanimous roll call vote.

Mr. McGrath read Proposed Ordinance 2017-12, tabled from June 13, 2017; An Ordinance of the Township of Millcreek, Erie County, Pennsylvania, prohibiting the parking or standing of vehicles along the right of way of both sides of Amherst Road from 50’ south of the centerline of Merilee Drive & Amherst Road to 545’ north of the centerline of Merilee Drive & Amherst Road. Mr. Groh reported that he, Sgt. Tony Chimera and Assistant Engineer Sokol met with neighbors at 5:30 p.m., but Engineer Richard Morris was unavailable to attend. It was moved by Mr. Groh to table action on this ordinance until the July 11, 2017 meeting so that Mr. Morris’s investigative comments can be recorded. Mr. McGrath agreed that he would like to hear Mr. Morris’s comments as well as a possible alternative solution, and so the motion was seconded by Mr. McGrath. Motion carried 2-1 with Mr. Morgan voting no.

Solicitor Mark Shaw reported that there are four upcoming ordinances which will be advertised and require action at upcoming meetings: On July 11, 2017: Action on Ordinance 2017-13, Amendment to the Zoning Ordinance (Rezoning of 5942 Peach Street) and Ordinance 2017-14, Amendment to the Zoning Ordinance (Rezoning of 2315/2401 West 12th Street). On July 25, 2017: Action on Ordinance 2017-15, Noise Ordinance, and Ordinance 2017-16, Special Events Ordinance. Atty. Shaw explained that all proposed ordinances will be posted on the website as soon as possible.

A Public Hearing was held regarding two Intermunicipal Liquor License Transfers from the City of Erie into Millcreek Township:

Jeremy Toran, Esq., Knox Law Firm, 120 West Tenth Street, reported that for the past three years his client has operated The Cork Restaurant in North East, and would like to expand his business by opening another restaurant in the West Erie Plaza. He stated that he has never had any issues with his current liquor license, and presented a letter of support from Fr. Scott Jabo, President of Cathedral Preparatory School and Villa Maria

Academy, who will be a future neighbor of the new restaurant. No one spoke in support of or in opposition to the request.

It was moved by Mr. Groh, seconded by Mr. Morgan and carried by unanimous vote to adopt Resolution 2017-R-24; A Resolution of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania, Approving the Intermunicipal Transfer of Restaurant Liquor License No. R-8530 into the Township of Millcreek from the City of Erie.

Kurt Sundberg, Esq., Marsh Spaeder Law Firm, 300 State Street, and Wen Lin, 3202 Pittsburgh Avenue, reported that Mr. Lin is the owner of the Golden Wok restaurant and plaza, and he would like to open a wall to build a lounge and serve beer and wine. He has operated his restaurant at the current location for 13 years and for the past 2 years has allowed customers to BYOB with no incidents. Atty. Sundberg stated there are no schools or churches nearby and the addition of the lounge would create 5-10 new jobs. The hours of operation would not change, and are currently Sunday through Thursday: 11:00 AM – 10:00 PM, and Friday and Saturday: 11:00 AM – 10:30 PM. Mr. McGrath asked what businesses currently occupy each address of the plaza. Mr. Lin replied Golden Wok occupies 3202-3204-3206, 3208 was a former dog grooming business, and 3210 is currently unoccupied. No one spoke in support of or in opposition to the request.

It was moved by Mr. Groh, seconded by Mr. Morgan and carried by unanimous vote to adopt Resolution 2017-R-25; A Resolution of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania, Approving the Intermunicipal Transfer of Restaurant Liquor License No. R-8368 into the Township of Millcreek from the City of Erie.

It was moved by Mr. Morgan, seconded by Mr. Groh and carried by unanimous vote to adopt Resolution 2017-R-26; A Resolution Approving Millcreek Township's FY 2017 Action Plan Requesting CDBG Financial Assistance From the U.S. Department of Housing and Urban Development. Mr. McGrath reported that he received correspondence from HANDS requesting termination of their agreement with the Township, and reimbursement for the portion of the agreement they have fulfilled. Attorney Shaw advised postponing action on the agreement to allow time to review it before the next meeting.

Treasurer Mark Zaksheske reported that Chief Scott Heidt has submitted his monthly request to dispose of video dash cam records. It was moved by Mr. Groh and seconded by Mr. Morgan to adopt Resolution 2017-R-27; A Resolution Pursuant to Resolution 2015-R-20 and the Municipal Records Manual to Approve Proposed Disposition of Certain Township Records. Motion carried by unanimous roll call vote.

Solicitor Shaw reviewed the history of events of the Granada Apartments/Clover Management Property Maintenance and Fire Code violations and lawsuit, stating approximately 13 actions were filed with the District Justice, and that Granada had defaulted on their mortgage and a Sheriff's sale is scheduled for July 21, 2017. Atty. Shaw had recommended that the Township enter into a negotiated agreement, which resulted in Granada paying the Township \$150,000.00, which will cover claims, fees, costs, including billed expenses of \$5,125.00 to be paid to Kearsarge Fire Department. In exchange for the settlement, the Township will withdraw violations filed with the District Justice and release Granada from all claims.

Mr. Groh thanked Fire Code Officials Matthew Exley and Caleb Dixon and Atty. Shaw for all of their hard work, expressed that it is difficult to believe that people were living under those conditions, and is hoping for a positive outcome from the future owners. Mr. Morgan echoed his comments and noted that the Township is sending a message to other property owners that we do have high standards. Mr. McGrath agreed with his fellow Supervisors, recognized that this is a significant settlement, and hopes that one day Granada will return to being what it once was, a very nice place

to live. On recommendation of Atty. Shaw, it was moved by Mr. Groh and seconded by Mr. Morgan to approve the Settlement Agreement with Granada Apartments, subject to minor modifications in language, but with no change in dollar amount. Motion carried by unanimous roll call vote.

Solicitor Shaw reported that in April of this year, Louis Montefiori filed a lawsuit in Federal Court alleging that the sign ordinance in existence at the time was in violation of his First Amendment Freedom of Speech rights. Atty. Shaw noted that the Township was at that time in the process of making changes to the sign ordinance, and approached the Plaintiff about resolving his claim. Both parties engaged in negotiations, with Mr. Montefiori subsequently agreeing to receive \$15,000.00 to essentially cover his attorney's fees in exchange for the filing of a Joint Stipulation of Dismissal With Prejudice to end the lawsuit. Atty. Shaw continued, stating that as part of the Settlement and Release Agreement, the Township is generally released from any claims related to the sign ordinance prior to the effective date of the agreement, and the Township is released from any liability and wrongdoing.

Mr. Groh opined that it was an unnecessary lawsuit, to which Mr. McGrath added that the issue was soon to be resolved by a new sign ordinance, but they did not give the Township a chance to enact it. Atty. Shaw stated that it was more cost effective to resolve the lawsuit rather than to litigate it. Mr. Morgan pointed out that not only Millcreek Township's former sign ordinance, but most sign ordinances across the USA, could be affected in the same way. On recommendation of Atty. Shaw, it was moved by Mr. Morgan and seconded by Mr. Groh to approve the Settlement and Release Agreement regarding the Montefiori Lawsuit. Motion carried by unanimous roll call vote.

On recommendation of Human Resource Manager Diane Lyons, it was moved by Mr. Groh and seconded by Mr. Morgan to adjust Chief Scott Heidt's annual salary in accordance with 1985 legislation, bringing his current annual salary to \$106,090.00, retroactive to January 1, 2017. Motion carried by unanimous roll call vote.

Mr. Groh reported on the major flood event of June 18, 2017, noting that in 5 hours, 5.05 inches of rain fell, when usually the Township would receive that amount of rain during a 24 hour period. He cited numerous resident basement flooding incidents ranging from 2 inches to 5 feet. Mr. Groh thanked EMA Coordinator Matt Exley and Deputy Caleb Dixon for their efforts in coordinating the many emergency services, volunteer fire departments, Emergency Operations Center workers, PennDOT, Salvation Army and American Red Cross.

Mr. Groh announced upcoming Independence Day festivities for July 4th, noting the annual parade will begin at 9:45 a.m. this year at 12th and Marshall Streets, and streets will be closed to the parade route beginning at 8:15 a.m. He added that the Township was fortunate to secure \$10,000 in donations from Highmark, Giant Eagle and Baldwin Brothers for another fireworks display this year, to be held at the MYAA Sports Complex at 15th and Pittsburgh Avenue at 10:00 p.m. This year the fireworks are being sponsored by, and permission has been given by store owners for people to park in the West Erie and Yorktown Plazas.

On recommendation of Human Resource Manager Diane Lyons, it was moved by Mr. McGrath and seconded by Mr. Groh to hire Kyle Bowden as Part Time Building Maintenance Staff at an hourly rate of \$7.65. Motion carried by unanimous roll call vote.

On recommendation of Parks and Recreation Director Ashley Marsteller, it was moved by Mr. McGrath and seconded by Mr. Groh to hire Amber Chipoletti as Part Time Office Staff at an hourly rate of \$8.45. Motion carried by unanimous roll call vote.

On request of Mr. McGrath, it was moved by Mr. Groh and seconded by Mr. Morgan to authorize Mr. McGrath to attend the PSATS quarterly meeting July 10-12, 2017 in State College, with all expenses to be covered by PSATS. Motion carried by unanimous roll call vote.

Mr. McGrath reported that the Board met in Executive Session with Solicitor Mark Shaw on June 15 and June 22, 2017.

Mr. McGrath announced that the Township has again partnered with DCNR, Keep Erie County Beautiful, PA DEP and Mercyhurst University to reduce cigarette litter by installing a cigarette butt receptacle at Beach 10. There are already similar receptacles at Beaches 1, 6, 7, West Pier Boat Launch, Perry Monument, and several of the Township's Parks, and used cigarettes can be recycled into composite decking, picnic tables and plastic pallets.

On recommendation of Assistant Engineer Anne Sokol, it was moved by Mr. Morgan and seconded by Mr. Groh to authorize the following people to attend these LTAP training courses with use of Township vehicle and no other fees: Rob Donikowski - ADA training on September 13, 2017, Oil City, PA, and Rob Donikowski and Anne Sokol – Managing Utility Cuts training on September 26, 2017, Hermitage, PA. Motion carried by unanimous roll call vote.

Chuck Felix, 2744 McKee Road, reported that the area of 28th Street and McKee Road has been flooded three times this year and neighbors are asking for a moratorium on building until the problem can be fixed. Mr. Felix claims that two larger water pipes coming from opposite directions on Rt. 20 converge at a smaller 42" pipe with nowhere for the water to go, and feels that the flooding has been much worse since the new medical center was built.

Mr. McGrath clarified that this land development and other plots are required to build their own stormwater management systems, and Mr. Waldinger specified that the medical building has an underground retention system as well. Mr. McGrath added that he spoke with PennDOT last week and they are looking at options for installing a second pipe under Rt. 20 and the possibility of water storage area on property below Rt. 20. He stated that during his tenure as Supervisor, the Township has added 6 stormwater detention basins at an attempt to fix problems of past years. Atty. Shaw noted that the basins are built on standards to handle rainfall over a period of 24 hours, but not for high intensity rainfalls. Mr. Groh stated that the Township may need to spend some money or even raise taxes, as this season's rainfall is already 9" over the yearly average, and Mr. McGrath noted that the Supervisors have raised taxes before to build stormwater management structures. He said he will keep the McKee neighborhood updated and perhaps even involve PennDOT in neighborhood meetings. Mr. Morgan assured Mr. Felix that the Township is investigating this issue and is very much involved.

Bill Storten, 4505 Tulane Avenue, reported that he experienced his 32nd flood on June 18th, and in April, the Township crews found that a sewer line was blocked and opened it up, but only to 5-6". He stated this time his pool flooded, 32 ft. of his driveway is washed out, and now his neighbor's basement is flooding. Mr. Storten suggested reopening a ditch which was a former creek bed and removing the trees. Mr. McGrath stated this was a preliminary suggestion of Engineer Rick Morris, and would take some work and an easement, but is a possibility.

There being no other citizens to be heard or any further business to come before the Board, it was moved by Mr. Groh and seconded by Mr. Morgan to adjourn the meeting at 8:52 p.m.

Sheryl A. Williams
Assistant Secretary

Approved: July 11, 2017

Brian P. McGrath _____

John H. Groh _____

John E. Morgan _____