

**MINUTES OF MEETING
MONTGOMERY TOWNSHIP BOARD OF SUPERVISORS
OCTOBER 24, 2022**

1. Call to Order: The October 24, 2022, public meeting of the Montgomery Township Board of Supervisors was held at the Montgomery Township Municipal Building, 1001 Stump Road, Montgomeryville, PA. Chairwoman Tanya C. Bamford called the meeting to order at 7:01 p.m.

IN ATTENDANCE:

Chair Tanya C. Bamford
Vice Chairwoman Candyce Fleuhr Chimera
Supervisor Annette M. Long
Supervisor Beth A. Staab
Supervisor Audrey R. Ware
Township Manager Carolyn McCreary
Township Solicitor Sean Kilkenny, Esq.

ALSO, IN ATTENDANCE:

Fire Chief, William F. Wiegman
Director of Rec. & Community Center Floyd Shaffer
Public Information Coordinator Derek Muller
IT Associate, Favian Zendejas
Recording Secretary, Deborah Rivas
Deputy Zoning Officer, Marianne McConnell

2. & 3. Pledge of Allegiance and Announcements: Following the Pledge of Allegiance, the following announcements were made by Ms. Bamford:

- Ms. Bamford acknowledged the Diwali holiday and Township residents who celebrate.
- **Autumn Festival** – thank you to our premier sponsor, Jefferson Lansdale Hospital, and to all other sponsors, community volunteers, and Township staff, especially Angelina Capozzi, Derek Muller, and Brian Sullivan, for their planning and executing efforts. Thank you also to our community, who donated 1,164 pounds of food and essential items donations for Manna on Main Street. Resident Lori Irizarry was present to accept her solar-powered phone charger raffled off by the Ready for 100 Committee at the Autumn Festival.
- **Community Outreach Drives:** The Township is serving as a collection site for the following:
 - Winter Coat Drive, now through December 30, 2022, for new coats only, please;
 - Thanksgiving meal – collecting non-perishable food items for Montgomery County families in need. Gift cards (\$10 or \$25) will also be accepted.

4. Board of Supervisors' Statement Regarding Litigation Related to Zehr Tract Acquisition: Ms. Bamford read the following statement into the record:

Recently, Montgomery Township was involved in litigation to settle a dispute with the Zehr Family Limited Partnership about property the Township acquired from the Zehrs through an act of eminent domain.

In October 2010, the Board of Supervisors adopted a resolution unanimously approving the acquisition of two parcels of land comprising 51+ acres utilizing eminent domain as allowed by the PA Township Code. The properties are located along Stump Road adjacent to the Township's largest park. At the time of the taking, the Board's expressed desire was to save this land from development, eliminate the potential for additional vehicular traffic and congestion, and incorporate the parcel into the Township's parks system. The Township paid a little over \$1.53 million to the Zehr family for both parcels in December 2014. This property valuation was subsequently disputed by the Zehr family.

The Township's valuation reflected costs to remediate significant soil contamination on the property that resulted from a chain link fence manufacturing business that had been operated on the site. Testing by the Township's environmental consultant revealed the presence of heavy metals including three lagoons of toxic sludge containing high levels of Hexavalent chromium, a known carcinogen. The consultant estimated the cost to remediate the property at over \$2 million.

The Zehrs disputed the appraised value and filed an appeal before the Board of Viewers in January 2014 and the hearing was held in November 2016. The Board of Viewers found the property value to be \$3,348,000 and agreed with the Township's estimate to remediate the property.

The Zehrs appealed this decision to the Montgomery County Court of Common Pleas. On the advice of legal counsel, this Board of Supervisors authorized a second appraisal for the property utilizing the services of Indian Valley Appraisal Company who valued the property at \$2.67 million.

Due to the ongoing legal dispute, the Board of Supervisors was advised not to proceed with improvements to the property. The Township attempted to settle this litigation but could not arrive at an amount that was agreeable to both parties. Ultimately, the result was a civil trial before a jury who awarded in favor of the Zehrs and requires the Township to compensate them for the difference in the property value, as well as interest for delayed compensation. The total paid is \$7,534,234.62.

The Board of Supervisors believes this 51+ acres parcel is an integral part of the Township's efforts to preserve land for both passive/active recreational use and open space in keeping with our Comprehensive Plan and our residents' comments about both.

As a next step, the Township will begin the process of demolishing several buildings on the site that are in a state of disrepair. Further, the Township will be moving forward with the necessary environmental clean-up required by the PA Department of Environmental Protection (PaDEP) to make the site safe for public use.

This concludes the Township's statement on the Zehr matter and the Board will have no further comment on this matter of litigation.

5. Public Comment – Nicole Gill of 107 Gwymont Circle stated that she and her neighbors in Gwymont Farms continue to be concerned about the proposed development of the Penn Medicine Ambulatory Center on DeKalb Pike. Township Manager McCreary provided a preliminary plan, and after reviewing it, Ms. Gill and her neighbors believe that the development will interfere with the character and integrity of their neighborhood as well as present a danger to the over 30 children who live and play there. Ms. Gill stated that they are concerned that Penn will plan to open up the road at the back of the development, which is a major safety concern. In addition, there are privacy concerns regarding the four-story height of the building. Visitors can look out the windows and see children playing in the neighborhood and the tall light fixtures that will be shining down on the neighborhood. Ms. Gill asked that plans continue to be shared so that everyone can work together to provide a safe and comfortable environment for all residents.

6. Announcement of Executive Session – Township Solicitor Sean Kilkenny, Esquire, announced that the Board of Supervisors met this evening at 6:30 p.m. in person at the Township building to discuss two litigation matters. Mr. Kilkenny stated that the topic discussed is a legitimate subject of an Executive Session under the Commonwealth of Pennsylvania's Sunshine Law.

7. Consent Agenda:

MOTION: Upon motion by Ms. Bamford, seconded by Ms. Chimera, and unanimously carried (5-0), the minutes of the October 10, 2022 meeting and the payment of bills for October 24, 2022, were approved as presented.

Presentations:

Presentation of Donations: Ms. Bamford presented a check in the amount of \$1,500 to the North Wales Area Library. Jayne Blackledge, Director, accepted the donation. Ms. Bamford also presented a check in the amount of \$1,500 to the Visiting Nurse Association Community Services organization. Denise Frattara, Director of Development/Administrator of Children's Programs, was present to accept the donation.

Planning and Zoning:

8. Review of New Zoning Hearing Board Applications: Ms. McCreary identified the two new pending hearings before the Zoning Hearing Board (ZHB). Application 22100001 is for Tail Spinz, LLC, 411 Doylestown Road, for a dog daycare center. Application 22100002 is for Higher Rock Partners, LP, 1004 Bethlehem Pike, to construct a mixed-use building consisting of three stories and approximately 18,521 square feet in size. The applicant requests a variance to provide 80 parking spaces where a minimum of 118 spaces is required.

Board consensus was to not enter an appearance for the two new applications, allowing the Zoning Hearing Board to render a decision based on the testimony provided.

9. Higher Rock Townhouse Development – Preliminary/Final Subdivision Land Development

Approval: Ms. McConnell reported that Higher Rock Partners, LP, proposes to construct 36 new townhouses on the 4.58-acre vacant tract, Lot #5, on top of the retaining wall behind the existing Wawa at 105 Witchwood Drive. This development would be a private Homeowners Association responsible for all improvements. Chris Canavan, President of W.B. Homes, stated that the proposed resolution was acceptable with a few revisions to several waivers. Section D. (bollards) was to be removed; Section H. was to be modified to the engineer's satisfaction for the percentage of gutter flow to be captured; Section K. (shade trees) was to be removed; and Section N. (driveway apron slope) was to be removed. Ms. Chimera reported that the Planning Commission was in favor of this development and had reported no concerns. Township consultants Judith Stern Goldstein, Damon Drummond, and Jim Dougherty all reported that their concerns were addressed by the applicant.

MOTION: Upon motion by Ms. Chimera, seconded by Ms. Staab, and unanimously carried (5-0), the Board adopted Resolution 2022-39, granting Land Development Plan approval for the proposed 36 Townhouse project at 105 Witchwood Drive – Higher Rock Development, granting waivers as noted.

10. LUV Car Wash – Preliminary/Final Subdivision Land Development Approval: Ms. McConnell reported that LUV Car Wash Northeast, LLC, proposes demolishing the existing vacant two-story building and development of a drive-thru car wash on the 1.08 commercial lot frontage on Horsham Road and Bethlehem Pike. The proposal includes a car wash building along with the associated drive aisles, parking areas, and vacuum stations. The plan was previously introduced as Caliber Car Wash and was granted conditional use on February 28, 2022. Matthew McHugh, Esquire, represented the applicant, who stated that the resolution as presented was acceptable to the applicant. Ms. Chimera reported that the Planning Commission was good with the application, and Township consultants, Ms. Stern Goldstein, Mr. Drummond, and Mr. Dougherty, reported that all concerns were addressed.

MOTION: Upon motion by Ms. Bamford, seconded by Ms. Chimera, and unanimously carried (5-0), the Board adopted Resolution 2022-40, granting Land Development Plan approval for the proposed demolition of the existing two-story building and development of a drive-thru car wash – LUV (fka Caliber) Car Wash, with waivers as requested.

Administration and Finance:

11. Ratification of Payment for Award for Acquisition of 1216 Stump Road: Ms. McCreary reported that as a result of a verdict in favor of the Zehr Family Limited Partnership, the Board of Supervisors is required to ratify the payments made in the matter of the acquisition of 1216 Stump Road.

MOTION: Upon motion by Ms. Bamford, seconded by Ms. Chimera, and unanimously carried (5-0), the Board ratified the payments of \$4,858,013 and \$6,221.62 to Zehr Family Limited Partnership No. 1 and Zehr Family Limited Partnership No. 2 in the matter of the acquisition of 1216 Stump Road.

12. Township Participation in Board of Assessment Appeal – Ms. McCreary reported that the Township has received a request from the North Penn School District Solicitor, Alex Glassman, asking the Township to actively participate in the real estate tax assessment appeal relating to 1250 Welsh Road. The property is owned by ALL-IN-PA-OH LLC and is occupied by Wesco Industrial Products LLC. The current assessment is \$2,062,180, and the recent sale price was \$6,191,800. The NPSD believes the property is significantly undervalued based on this sales transaction.

MOTION: Upon motion by Ms. Long, seconded by Ms. Staab, and unanimously carried (5-0), the Board authorized the Township Solicitor to participate in the real estate tax assessment appeal for the property located at 1250 Welsh Road.

13. Funds Transfer to Capital Reserve – Ms. McCreary reported that in October of 2022, the Township received real estate transfer tax from the sale of Airport Square Shopping Center in the amount of \$412,000. All real estate transfer taxes are accounted for in the General Fund, which is an operating fund of the township. As this sale is atypical, the revenue generated from that sale would not be classified as recurring revenue. With the receipt of one-time revenues, this revenue should be transferred to the Capital Reserve Fund.

MOTION: Upon motion by Ms. Bamford, seconded by Ms. Staab, and unanimously carried (5-0), the Board approved the transfer of \$412,000 from the General Fund to the Capital Reserve Fund.

14. Update on Township Website Redesign: Ms. McCreary reported that at the May 9th meeting, the Board approved the proposal from eGov Strategies to redesign the Township website. Staff had been evaluating the website to be more user-friendly and help promote one of the goals of citizen engagement. Derek Muller, Public Information Coordinator, presented the mock-up redesign of the homepage and a separate subpage to show the planned changes for the website. Board members made several suggestions, including ensuring that the phone number or phone touch icon was prominently displayed near the top of the home page for easy access to call the Township. The Board was pleased with the redesign, and staff will move forward as agreed.

Public Works:

15. Purchase of Two Peterbilt Trucks (2023 Budget) – Ms. McCreary reported that the Preliminary 2023 Capital Investment Plan included purchasing two (2) Peterbilt Dump Trucks to replace Trucks #16 & 17. The Township received notification from our Costars vendor, GL Sayre,

Inc., that all of the first half of 2023 trucks have already been allocated to other buyers and that if we would like to purchase two (2) Peterbilt Dump Trucks in 2023 that he would need a signed buyers order for each truck reserving it for their second half allocation of 2023. If the Township does not reserve them for 2023, the 2024 engines will be required to meet more stringent emissions at a much higher cost.

MOTION: Upon motion by Ms. Chimera, seconded by Ms. Bamford, and unanimously carried (5-0), the Board authorized the preordering of two (2) 2023 Peterbilt Dump Trucks included in the Preliminary 2023 Capital Investment Plan.

Old Business:

16. Advertisement of Bid for Construction of Dog Park: Ms. McCreary presented the rendering of the proposed Dog Park project that was included in the 2022 adopted budget as part of the Capital Investment Plan. At the public meeting on October 10th, the Board discussed the current Bark Park and its many concerns, such as drainage, access, etc., and asked for cost estimates to make the necessary improvements to the existing park. Improvements to the current park were estimated to cost between \$475,000 and \$670,000. These estimates do not include costs related to acquiring any easements. The estimate for the proposed new dog park is approximately \$213,000. Discussion followed. The Board agreed to move forward and bid the project for the new dog park and make plans to remove the original Bark Park once the new park is open for visitors.

MOTION: Upon motion by Ms. Bamford, seconded by Ms. Staab, and unanimously carried (5-0), the Board authorized the advertisement of the bid for the construction of the dog park to be located at Knapp Road and the 202 Parkway.

17. Township Park Regulations Pertaining to Dogs: Ms. McCreary reported that on January 19, 2022, the Public Safety Committee addressed correspondence received from a Montgomery Township resident regarding dogs running at large in Montgomery Township Parks. Currently, the Police Department utilizes a provision under the Pennsylvania Dog Law that does not require dogs to be on a leash, only *under the reasonable control of some person*. After discussion, the Public Safety Committee unanimously recommended that the Board of Supervisors consider an ordinance requiring dogs to be leashed in Montgomery Township Parks. This matter was discussed at the February 14, 2022 Board of Supervisors meeting. At that time, the Board directed the Police Department to monitor for similar complaints and report back after the summer months. Since February 14, 2022, two complaints have been received regarding dogs running at large in Township Parks (February 23, 2022 and September 20, 2022). Staff reviewed municipal park regulations in surrounding communities, many of whom require dogs to be on a leash while in municipality-owned parks. Staff is seeking the Board's direction. Several options were provided for the Board's consideration: 1) create and enact an addendum to the township ordinance governing park rules, adding a leash provision; 2) continue to follow the statute regulating the control of dogs and craft signage to post in parks indicating "*All dogs must be under control at all times*"; or 3) continue to follow the PA statute regulating the

control of dogs with no signage (current practice). Discussion followed. With regard to enacting an ordinance requiring dogs to be on a leash in Township parks, Ms. Bamford, Ms. Chimera, Ms. Staab, and Ms. Long were not in favor of enacting an ordinance; however, they were in agreement that dog owners should be held responsible for their dogs and keep their dogs under control. Ms. Ware preferred to enact an ordinance in favor of a leash law. The consensus was to continue to follow the statute regulating the control of dogs and craft signage to post in the parks indicating that *"All dogs must be under control at all times"* with the statute noted.

18. Discussion on Prohibiting Single-Use Plastic: Ms. McCreary reported that Township resident Don Hamp spoke to the Board at their October 10th meeting under public comment and asked the Board to consider a ban on single-use plastic bags, noting that he was speaking on behalf of the Environmental Advisory Committee (EAC). In May 2022, the Board adopted a resolution encouraging voluntary participation in reducing the use of single-use plastics. The law passed by the state legislature was being challenged in the courts by several municipalities at that time. The Solicitor has shared an ordinance that his office drafted for another municipality which the Board could use as a model should they decide to enact an ordinance. Staff is seeking direction as to whether they should pursue this ban or continue to utilize the EAC and Township communications to encourage everyone to discontinue the use of single-use plastic bags. Discussion followed. Ms. Bamford stated that this is a movement and people will adjust and have been adjusting to stores that no longer or never supplied single-use plastic bags. Ms. Staab spoke about Wegmans and the program they have implemented. Ms. Long stated that an ordinance would not just affect grocery stores, but other businesses that utilize plastic bags to sell products, and it is important to make sure that people understand how this would impact them. Ms. Chimera said that she felt people would get used to it. Ms. Kilkenney suggested that if the Board enacted an ordinance, it would be a good idea to have a grace period and that education was a key component for its success. The consensus was to come back to the Board with a plan to educate the public and draft an ordinance with less language than the sample draft that would work for the Township.

New Business:

19. Department Reports: Monthly reports were submitted by each department for activity in the month of September. Ms. McCreary updated the Board on recent administrative activities. She expressed her appreciation for all the staff who worked tirelessly to make this year's Autumn Festival a success, especially Angelina Capozzi and Derek Muller. She advised the Board that the Department Heads continue to work on the Continuity of Operations Plan (COOP) under the guidance of Chief Wiegman, our Emergency Management Coordinator. This plan will provide a blueprint for the Township in the event of an incident at one of our buildings, the Township, or the region. The budget presentation is scheduled for the November 14th public meeting along with the MTMSA budget presentation and adoption of the comprehensive plan after the 45-day comment period. Under project updates, the Stump Road sidewalk by Newport Lane will commence. The design is being finalized for Fellowship Park to submit to DCNR for approval before authorization to advertise the project on PennBID. The Township was awarded a \$271,072 grant from the County for installing rapid flashing beacons at Spring Valley and

Whistlestop Parks entrances. Angelina Capozzi, Brian Sullivan and Derek Muller will present a session at the 2023 PRPS conference, as well as Brian Shapiro. Ms. McCreary also announced that she spoke at a Chamber of Commerce event held on October 19th at Horsham Township, where she provided an update on everything that is going on in Montgomery Township.

20. Committee Reports: Ms. Ware reported that the Senior Committee discussed their community outreach efforts while attending Rep. Todd Stephens Senior Expo as well as the Township's Autumn Festival event. Rep. Todd Stephens attended the meeting and provided an update on the state's budget. Ms. Staab reported that the BDP met the new Police Canines, Dante and Riggs, and learned about their training. Ms. Staab also reported that she met the new general manager of the Montgomery Mall, Theresa Napoli, and she shared some of the upcoming activities that may be happening there. Ms. Bamford reported on the Shade Tree Commission where they discussed ideas on how to assist homeowners with the replacement of street trees. Ms. McCreary said that there had been a discussion about possibly lowering the size of the replacement trees so that they would be less expensive and more inclined to thrive when planted. The Sewer Authority will be making its budget presentation at the November 14, 2022 Board meeting, and they continue to participate in the wastewater surveillance program. They are seeing spikes in the presence of COVID in the wastewater now that people are spending more time indoors again. Ms. Chimera recognized the members of the Autumn Festival Committee and thanked them for their efforts for this year's event. There was no Planning Commission meeting, and the Park and Recreation Board discussed the dog park. Ms. Long reported that the Public Safety Committee discussed the dogs running at large in Township parks issue. The Fire Department discussed its fire prevention month activities and completed its smoke detector installation project. Graduates of the Citizens Police Academy recently met and stuffed 1,100 bags of Halloween candy for the Police Department to distribute on Halloween.

21. Adjournment: Upon motion by Ms. Bamford and seconded by Ms. Staab, the meeting was adjourned at 8:50 p.m.

Respectfully submitted,

Deborah A. Rivas, Recording Secretary