

## WARRINGTON TOWNSHIP BOARD OF SUPERVISORS

### MINUTES FOR MARCH 25, 2008

The regular meeting of the Warrington Township Board of Supervisors was held on March 25, 2008, 7:30 p.m. at the Township Building located at 852 Easton Road, Warrington, PA 18976. The members present were as follows:

#### 1. ATTENDANCE:

Paul Plotnick, Chairman; Carol Butterworth, Vice Chairman; Glenn McKay, Secretary; Michael W. Lamond, Jr., Assistant Secretary; Rebecca A. Kiefer, Member; Timothy J. Tieperman, Township Manager; Robert Sugarman, Esq.; Michael Mrozinski, Director of Planning and Economic Development; Paul Gdanski, Director of Public Works; Thomas F. Zarko, Township Engineer; Richard Lesniak, Director of Fire, Inspection and Emergency Services; Dan Hinkle, Fire Chief; Carolyn Hanel, Director of Administrative Services/Parks and Recreation; Lorraine Sciuto-Ballasy, Communications Officer/Special Projects; and Vivian Bell, Finance Director.

#### 2. PLEDGE OF ALLEGIANCE

The meeting opened with a pledge to the flag.

#### 3. PUBLIC HEARING:

a) Consideration of Conditional Use approval for Cricket Communications, Inc. to install a communications wireless antenna and related equipment on an existing monopole. Mr. Sugarman said the applicant, Cricket Communications seeks the land use and zoning approvals required for the installation of a wireless communications facility on an existing structure.

Richard Lemanowicz, Esq. said he was the attorney representing Cricket Communications. He introduced the two witnesses that were in attendance: John Genovesi, applicant's professional engineer; and Syee Agha, applicant's radio frequency engineer.

Mr. Lemanowicz reviewed the application for conditional use approval for 320 Lower State Road. He said this property is within the PI 2 Zoning District and there is a 185 ft. monopole tower located on this property. He said there are currently four communication carriers that occupy this tower. He said the section of the ordinance that guides our testimony is Section 1303.2 of the Warrington Township Zoning Ordinance. He said on this 185 ft. pole and we are adding three antennas to this tower at an elevation of 140 ft. above ground level.

Mr. Lemanowicz said in this area of Warrington Township we have a gap in our communications network. This gap prevents us from providing adequate communication services. The terms of our FCC License requires us to provide adequate services and adding our antennas to this tower at 140 ft. above ground level will allow us to fill this gap in coverage and satisfy the terms of our FCC License.

Motion – It was moved by Mrs. Butterworth, seconded by Mr. Lamond, that the Board of Supervisors to consider the conditional use approval for Cricket Communications, Inc. to install a communications wireless antenna and related equipment on an existing monopole owned by the Omnipoint Eastburns SBA. This motion passed by a vote of 5-0.

b) **To receive public comment on proposed agreement between Warrington Township and Comcast of Southeast PA, LLC.** Mr. Sugarman said the proposed agreement between Warrington Township and Comcast of Southeast PA, LLC would change the terms in regard to fees, services, and enforcement. He said the proposed agreement would extend for twelve years.

Mr. McKay said the Township has a ten year agreement with Comcast that expired at the end of December 2007. He said we had standard negotiations to renew the franchise agreement. He said Daniel Cohen, Esq. of a Pittsburgh-based Cohen Law Group represented the consortium of townships and he was an intermediary in negotiating this renewal with Comcast. He said all of the consortium voted to adopt the agreement for a twelve-year term. Our Cable Advisory Board also recommended approval of this franchise agreement and it runs simultaneous years with the Verizon franchise agreement. He said this agreement will initiate from the date the Board approves it for the following twelve years.

Mr. Tieperman said by adopting this new ordinance the Board will be ratifying the new franchise agreement, which also includes a side letter agreement regarding the one-time PEG Grant to enhance the Township's education and government channels. We expect this grant to be around \$35,000, which equates to \$5 per Comcast subscriber as of October 2007.

Mr. McKay said the one concern in negotiating a Comcast agreement when we just finished a Verizon agreement is to have parity. He said Comcast has given us essentially the equivalency of Verizon with a couple of benefits; i.e., a better grant program.

Mr. McKay recommended that we adopt the agreement as it is for one year and monitor those items 9 through 20 and if we find next year that it ends up becoming a significant portion then we can go back to the table. At that time we can then change and eliminate Items 9 through 20 from collection. Mrs. Kiefer said if we do that she recommended that we eliminate it from the Verizon contract as well so we have parity.

Motion – It was moved by Mr. McKay, seconded by Mr. Lamond, that the Board of Supervisors approved the proposed agreement between Warrington Township and Comcast of Southeast PA, LLC and to authorize the solicitor to advertise the ordinance of implementation for a public hearing as stated by our solicitor. This motion passed by a vote of 5-0.

4. **MANAGER'S REPORT:** Mr. Tieperman reviewed the manager's report which included a) Transit Report; b) Responses to TDR Presentation; c) Local Government Week; d) Open Space Report; e) County Line Road; f) Fire Chief's Monthly Report; g) Fire, Inspections, and Emergency Services Monthly Report; and h) Other Business.

a) **Fire Chief's Monthly Report.** Fire Chief Hinkle updated the Board on the Fire Company's activities for the month of February. He mentioned that the Annual Appreciation Banquet is scheduled for April 26 at The Warrington Country Club and reminded the Board that invitations had been sent out to them.

b) **Document Management Initiative Update.** Mr. Plotnick updated the Board on his site visit to one of the three firms being considered for document management and imaging software for our township.

c) **Transit Report.** Mr. Walter Cherwony, P.E. with Abrams-Cherwony & Associates gave a brief synopsis on the transit study and some of the conclusions and findings and where the township may want to go from here. He indicated that this project came out of Traffic Planning and Design. They are currently doing a traffic analysis of the entire township. The objective of this analysis was to provide

sufficient information to residents and elected officials on the desirability of proceeding with community-based transit services. He discussed possible additional steps in the development of an overall transit strategy in Warrington. He said this study gives you the information to make an informed decision as to what the next steps would be.

#### **NEW BUSINESS (ACTION/DISCUSSION ITEMS):**

5. **Consider adoption of a Resolution for Local Government Week.** Mr. Tieperman reported that he didn't know if the township had ever endorsed Local Government Week but he knows that other townships do it. It's an annual thing that PSATS endorses and it's a standard resolution that we've put together for the Board's consideration. Ms. Ballasy said in celebration of Local Government Week we thought the township would do some type of event to kick off the week. She suggested we do an essay contest and offer medals to students that would be winners of the essay contest. She said there would be three categories. She said 6<sup>th</sup> grade would be judged separately, middle school, and high school.

Ms. Ballasy had contacted local businesses to inquire if they would be interested in supporting it as far as giving a cash prize or a bond.

Mrs. Butterworth asked what was the question that the students would be asked. Ms. Ballasy said it was "What would your goal be if you were a public elected official".

Mr. Lamond said since the purpose of this essay is to get kids more involved in local government he would like to see if the winner could be placed on the Board for a year.

Motion – It was moved by Mrs. Butterworth, seconded by Mrs. Kiefer, that the Board of Supervisors approved establishing Local Government Week in Warrington Township designating the week of April 14 through 18, 2008, as "Local Government Week" in Warrington Township, Pennsylvania. This motion passed by a vote of 5-0.

6. **Consider repealing Ordinance 93-0-2 in favor of a new Resolution establishing a Communications Advisory Board.** Mr. Tieperman reported that the Cable Advisory Board has expressed an interest to revise or expand its charge for a broader communications function. He said the old Cable Advisory Board was created by an ordinance. We are recommending that the ordinance be repealed and replaced with a standard resolution. We would need to set a public hearing to repeal the ordinance and consider this new resolution. Ms. Ballasy reported that the CAB is interested in just expanding their scope to cover more than just the Cable TV Station and to give them input on equipment purchases, etc.

Motion – It was moved by Mrs. Butterworth, seconded by Mr. Lamond, that the Board of Supervisors approved the advertising of a public hearing to repeal Ordinance 93-0-2 in favor of a new Resolution establishing a Communications Advisory Board. This motion passed by a vote of 5-0.

7. **Consider approval of change order for traffic study.** Mr. Plotnick said that at our last meeting our township engineer recommended additional intersections be considered in our Traffic Impact Study. Mr. Zarko said there are a total of 9 minimum intersections recommended and 20 maximum intersections recommended. He said the price quoted is from Traffic Planning and Design, who are the consulting firm that's doing the traffic study. He said they have proposed an increase in costs for the 9 additional intersections of \$16,200 for an increase of cost of \$36,000 to 20 intersections.

Mr. Zarko said as requested at the workshop meeting, TPD has also prepared a table summarizing the intersections under the two options.

Phil Burstone, traffic engineer with Pennoni, said he's here tonight as a private citizen. He said we've asked on behalf of Titus Elementary School and to ask the Board to support a left turning advance arrow northbound onto Lower Barness Road. He said he feels PennDOT will provide one with the Board's support. He said it is a very minimal cost and we feel it will eventually provide some significant safety improvements.

Motion – It was moved by Mrs. Butterworth, seconded by Mrs. Kiefer, that the Board of Supervisors adopt a resolution for Traffic Planning and Design Proposal Addendum to the Transportation Study not to exceed \$36,000. This motion passed by a vote of 5-0.

8. **Review request from Central Bucks School District for the waiver of permit fees.** Mr. Lesniak reported that contacts had been made with other municipalities to see how they handle similar requests. Representatives from these municipalities said that permit fees are collected from the School District just as with any other commercial permit applied for in the respective jurisdictions.

Motion – It was moved by Mrs. Butterworth, seconded by Mr. Lamond, that the Board of Supervisors denied the permit fee waiver request from the Central Bucks School District associated with proposed improvements at Tamanend Middle School. This motion passed by a vote of 4-1. Mrs. Kiefer voted no.

9. **Review permit fee schedule for modular home applications.** Mr. Lesniak said Staff is looking for direction regarding permit fees for the construction of modular homes in the township. As these homes are largely manufactured and inspected off-site, the need for our staff to inspect is greatly reduced (to approximately half). Our recommendation is to allow for the reduction of the fees charged for the inspection component of the permit fee package by fifty percent (i.e., from \$1.00/SF to \$0.50/SF). This would reduce the permit from \$7,215.00 to \$3,607.50.

The consensus of the Board is that they are in agreement to allow for the reduction of the fees charged as recommended by Staff.

10. **Review pending issues before the Zoning Hearing Board.** Mr. Mrozinski updated the Board on Zoning Hearing Board hearings coming up in April. He said at the April 21 meeting the Zoning Hearing Board will be reviewing the Frank Palazzo property located at 1335 Shadow Creek Lane. The applicant is seeking variances (stream buffer and steep slopes) to facilitate the subdivision of the subject property into two lot subdivision.

Mr. Mrozinski said at the April 23 meeting the ZHB will be reviewing the Garges property located at 2796 Pickertown Road. Their request is to allow for a 2 acre substandard lot created as part of the conservation easement process. Mr. McKay recommended that the Board support Garges variance. Mr. Mrozinski said the second issue for this meeting is for Interstate Signs Billboard Appeal. He said they are proposing to construct two billboards along Easton road opposite of Creekview Shopping Center.

Motion – It was moved by Mrs. Butterworth, seconded by Mr. Lamond, that the Board of Supervisors authorized the solicitor to represent the township in supporting the Garges zoning issue. This motion passed by a vote of 5-0.

Motion – It was moved by Mrs. Butterworth, seconded by Mr. McKay, that the Board of Supervisors authorized the solicitor to defend the ordinance for the township in the Interstate Signs Billboard Appeal. This motion passed by a vote of 5-0.

11. **Appointments to the Transferrable Development Rights (TDR) Review Committee.** Mr. Plotnick said that our TDR program that was presented at Central Bucks South went over very well with the township residents that have lots of 5 acres or more. He said in our resolution it indicates that we need two members to serve from the Planning Commission on that TDR Review Committee and one member from the Board of Supervisors.

Motion – It was moved by Mrs. Butterworth, seconded by Mr. Lamond, that the Board of Supervisors recommended appointments to the Transferrable Development Rights (TDR) Review Committee: Two from the Planning Commission (Doug Skinner and Anton Kuhner) and as a representative from the Board of Supervisors Glenn McKay and as an alternate the Chairman, Paul Plotnick and all being appointed for a one-year term. This motion passed by a vote of 5-0.

### **OLD BUSINESS (ACTION/DISCUSSION ITEMS):**

12. **To consider the following escrow releases:**

<b>Development Name</b>	<b>Release #</b>	<b>Amount</b>
Happy Tymes	Final	\$ 73,242.85

Motion - It was moved by Mrs. Butterworth, seconded by Mr. Lamond, that the Board of Supervisors approved the escrow release for Happy Tymes, Final Release in the amount of \$73,242.85 upon the conditions set forth by the township engineer. This motion passed by a vote of 5-0.

13. **To consider the following extension requests:**

a) **Paul Valley Center**

Motion – It was moved by Mr. McKay, seconded by Mr. Lamond, that the Board of Supervisors granted the extension request for Paul Valley Center until June 30, 2008. This motion passed by a vote of 5-0.

14. **To consider the following dedication requests:**

a) **Happy Tymes**

Motion – It was moved by Mrs. Butterworth, seconded by Mrs. Kiefer, that the Board of Supervisors approved the dedication of the roadway right-of-way for Happy Tymes Family Fun Center conditioned upon the satisfactory title insurance policy and submission of the trail easement in a format acceptable to the township solicitor, and the submission of a final deed of dedication to PennDOT for 3,852 sq. ft. of right of way along County Line Road. This motion passed by a vote of 5-0.

15. **Public Hearing for Happy Tymes Tax Appeal.** Mr. Sugarman said this is a public hearing on the Happy Tymes tax appeal, which includes the application for a refund. Catherine Harper, Esq., attorney for Happy Tymes said she had previously requested that our solicitor step aside as she felt that he co-mingled the functions of prosecutor and adviser to the Board as judges. She said that would be a violation of Bud Murray's due process rights, owner of Happy Tymes, to have an impartial hearing panel because you were being advised by an attorney who had taken an aggressive approach as a prosecutor. At that time she had requested that the Board consider getting a separate solicitor so that the functions would not be co-mingled and so we could be sure that you were getting fair and impartial advice.

Mr. Plotnick said that Robert Sugarman represents the Board in a legal way, he is familiar with your case, and we don't want to go to the extra expense of bringing in another attorney. Mr. Plotnick said the Board acts as the judge and not Mr. Sugarman. He may give us advice and we may ask him for advice but we don't have to take his advice.

The majority of the Board feels there is no conflict with Mr. Sugarman representing the Board in this matter. Mrs. Kiefer said she does see a conflict because correspondence was sent to Mr. Murray to which the Board was copied after the fact and that it was not something we discussed and directed for that specific correspondence. She said she's not saying that he didn't act in good faith but she is saying because he has taken a position like that it is adversarial she doesn't feel that it is a fair representation.

Ms. Harper said all she is asking for is a fair hearing. She distributed copies of a letter dated 1/18/08, which has the basic theories behind the objections. She explained to the Board Happy Tymes position in respect to the taxes and distributed copies of some exhibits. She said their basic position is that neither the amusement tax or device game fee has been or can be fairly applied in Warrington Township and it has not been fairly applied to Happy Tymes and Bud Murray. She said our basic thrust is that we are asking for not only refunds of game fees paid and amusement taxes. We are quite frankly asking the township to reconsider having the amusement tax at all in Warrington Township.

Ms. Harper said she would be distributing exhibits to show the Board how they feel that that tax has been unfairly applied to Happy Tymes to its detriment. We are also going to give you exhibits to show you how it is a very small part of the township's budget but it is a large expense to Happy Tymes. Most of my arguments that I have made and will be making are summarized in my letter dated 1/18/08.

Ms. Harper said her biggest objection is to the tax on bowling, which she believes was clearly repealed by the State Legislature prior to bowling coming into Happy Tymes. Our basic argument with respect to bowling is that there is a statewide prohibition on taxing bowling and the township is trying to collect the bowling tax from Happy Tymes, which you are not authorized to have. Your solicitor has taken the position that you're grandfathered and had asked to produce law regarding that. She said she has produced law regarding that fact under the statutory construction laws of Pennsylvania and has put that information into writing for the benefit of the Board.

Ms. Harper said one of the big objections that Happy Tymes has to the way amusements are taxed in Warrington is that Happy Tymes is paying the bulk of all amusement taxes collected in this township. She produced a list of ten other amusements in Warrington that are not being taxed the way Happy Tymes is.

Ms. Harper said to summarize our petition we don't believe the township is authorized to tax bowling to the extent that you believe that you are grandfathered. We do not believe that the township is grandfathered and one of the letters distributed spells out the legal arguments why you are not grandfathered. She said the game fee is not being charged to other amusement places that have fees. She said as a matter of policy the whole tax should be repealed as its unfair.

Mr. Plotnick said there are three separate issues: 1) Bowling tax. You say you have presented to us State law that says bowling taxes are illegal. We are not going to fight the State. His position is that if we have a local bowling tax ordinance we should rescind it. The rest of the Board agreed and are in favor of not charging the bowling tax and rescinding the ordinance might accomplish that. 2) Game fee. Mr. Plotnick said it seems like the township was negligent in not inspecting these games and also negligent in not going to the other games in the township and collecting the fees. He said it may be a valid fee to charge to inspect these games for electrical safety, etc.

Mr. Plotnick said that Happy Tymes has had these games for a long time and since you've had those games you've been paying \$200 a game per year for this permit fee. Therefore, it has been your cost of doing business and its been reflected in your tax returns as a cost of doing business. He said it's not something that can be taken out and repealed and reversed out. As far as going on in the future he thinks we should examine the fee and make sure we do the inspections and go to all the games in the township and tell them they are going to get charged this permit fee and that the township should do the inspections.

Mr. McKay said Ms. Harper gave the Board a lot of information regarding other amusements classified as amusements in the township. He said if all the games that came under the definition of games were equally inspected and taxed appropriately besides Happy Tymes would Happy Tymes be satisfied. Ms. Harper said only if the township could demonstrate that it actually cost \$200/game that you inspect and that it cost \$200 a game to inspect.

Mr. Sugarman suggested to the Board that they put over for another meeting consideration of T1 and T2 whether you need any evidence to verify that.

Mr. Plotnick said there are three different problems presented by Ms. Harper to the Board: 1) Your saying is this tax unfair; 2) Is it unfairly placed on Happy Tymes versus other amusement places in the township; and 3) Should the township rescind this tax or reduce this tax in the future.

This item will be placed on the Board's April 29 meeting.

#### **CONSENT AGENDA:**

##### **16. Consider adoption of the purchasing policy.**

Motion – It was moved by Mr. McKay, seconded by Mrs. Butterworth, that the Board of Supervisors adopted the Purchasing Policy Manual for 2008. This motion passed by a vote of 5-0.

**17. Consider approval to submit a grant application to Water Resources Education Network (WREN) for a Watershed/NPS Education Project.** Mr. Gdanski said the Environmental Advisory Council is applying for a grant for \$4,997 for the purchase of rain barrels, construction of the rain barrels, facilitation of the "healthy yard" program and naturalization of a detention basin. He said the grant requires a 5% match, which will mostly be done through volunteers and minimal Township contribution.

Motion – It was moved by Mrs. Butterworth, seconded by Mrs. Kiefer, that the Board of Supervisors approved submitting a grant application to Water Resources Education Network (WREN) for a Watershed/NPS Education Project. This motion passed by a vote of 5-0.

##### **18. APPROVAL OF BILL LIST: 3/11/08 to 3/25/08**

Motion – It was moved by Mrs. Butterworth, seconded by Mr. Lamond that the Board of Supervisors voted to approve the bill list from 3/11/08 to 3/25/08 in the amount of \$502,989.57. This motion passed by a roll call vote of 5 years.

**19. APPROVAL OF MINUTES****a) February 19, 2008**

Motion – It was moved by Mrs. Butterworth, seconded by Mr. McKay that the Board of Supervisors voted to approve the minutes of the February 19, 2008 meeting. This motion passed by a vote of 5-0.

**20. MINUTES FOR POSTING****a) February 26, 2008**

Motion – It was moved by Mrs. Butterworth, seconded by Mr. McKay that the Board of Supervisors voted to post the minutes of the February 26, 2008 meeting. This motion passed by a vote of 5-0.

**b) March 4, 2008**

Motion – It was moved by Mrs. Butterworth, seconded by Mr. McKay that the Board of Supervisors voted to post the minutes of the March 4, 2008 meeting. This motion passed by a vote of 5-0.

21. **SLEEP CENTER.** Mr. Sugarman reported that he had conversations with the counsel for the Sleep Center who tells him they want a short-term lease and he told them he would work on such a lease.

**22. ADJOURNMENT**

Motion – It was moved by Mrs. Butterworth, seconded by Mr. Lamond that the Board of Supervisors voted to adjourn the meeting at 11:15 p.m. This motion passed by a vote of 5-0.



Timothy J. Tieperman  
Township Manager

5/6/2008  
Date