



**WARRINGTON TOWNSHIP BOARD OF SUPERVISORS  
MINUTES FOR DECEMBER 18, 2012**

The regular meeting of the Warrington Township Board of Supervisors was held on December 18, 2012, 7:30 p.m., at the Township Building located at 852 Easton Road, Warrington, PA 18976. The members present were as follows:

**ATTENDANCE:**

Gerald Anderson, Chairperson; John Paul, Vice Chairperson; Marianne Achenbach, Secretary/Treasurer; Matthew W. Hallowell, Sr., and Shirley A. Yannich, members. Staff present were Timothy J. Tieperman, Township Manager; William R. Casey, Esq., Township Solicitor; Richard Wieland, Township Engineer; Barbara Livrone, Executive Assistant to the Township Manager; and Barry Lubber, Chief Financial Officer.

**MOMENT OF SILENCE**

Mr. Anderson asked for a moment of silence.

**PLEDGE OF ALLEGIANCE**

The meeting opened with a pledge to the flag.

**EXECUTIVE SESSION REPORT**

Mr. Anderson reported that there was no executive session held.

**APPROVAL OF BILL LIST:**

1. **December 11, 2012 – December 18, 2012 - \$217,815.61**

Mrs. Achenbach motioned, seconded by Mr. Paul, to approve the bill list from 12/11/12 to 12/18/12 totaling \$217,815.61. This motion passed by a roll call vote of 5-0.

**APPROVAL OF MINUTES:**

2. **November 27, 2012**

Mr. Paul motioned, seconded by Mrs. Yannich, to approve the November 27, 2012 Meeting Minutes. The motion passed by a vote of 5-0.

**MINUTES FOR POSTING:**

3. **December 11, 2012**

Mr. Paul motioned, seconded by Mrs. Yannich, to approve the posting of the December 11, 2012 Meeting Minutes. The motion passed by a vote of 5-0.

4. **Consider adoption of Resolution approving 2013 Budget.**

Mr. Paul motioned, seconded by Mrs. Achenbach, to adopt the 2013 Budget. Mr. Paul noted that he continues his discussions with the Fire Company officials to see if there are any further adjustments required in the current incentive program. Any future funding changes to this program – if deemed appropriate – would be done through a budget amendment. The motion passed unanimously. (*See Attachment A*)

Mr. Anderson reported that there will be no tax increase other than the approved Open Space Referendum and noted that township employees will receive a 2% increase in 2013.

5. **Consider adoption of Resolution setting compensation rate for tax collector.**

Mr. Paul motioned, seconded by Mrs. Yannich, to adopt the Resolution setting compensation rate for tax collector at 1% starting in 2014. The motion passed unanimously. (*See Attachment B*)

6. **Fire Department's Incentive Program.**

Fire Company Chief Mike Bean appeared before the Supervisors to respond to a budgetary change which restores the incentive program to the old program enacted in 2001. He cited numerous examples why the Supervisors should reconsider restoring full funding to this line item, especially the *paid on call* features.

Supervisor Paul commented that he reviewed both the old and new incentive programs and opined that the revised 2006 program included features that were never part of the original incentive program enacted in 2001. He reiterated it was never the Board's intent to hurt the fire company but to adhere to the programs original intent in which he was involved.

Mr. Paul stated that he would be willing to review the revised program and the new features to determine whether they are warranted. In that regard he asked Chief Bean to furnish him with a copy of the Company's Standard Operating Guidelines (SOG), which he will share with the ESC (Emergency Services Committee). Mr. Paul advised the Board he will report back to them at a future date with the Committee's recommendation(s).

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

7. **Consider adoption of Southeastern Pennsylvania Regional Fire Fighting Task Force Participation Agreement.**

Mr. Paul gave a synopsis to the Board on the Southeastern Pennsylvania Regional Fire Fighting Task Force Participation Agreement. He outlined the type of emergency conditions under which the Task Force may be activated. To allay some fears, he assured the Board that there is no intent to deprive the Township or the immediate region of vital emergency response apparatus to response to local incidents that might occur. He asked the Solicitor to review the agreement and prepare a recommendation at the next meeting.

**8. MANAGER'S REPORT:****a. Ratification of 2013 Electricity Contract**

Mr. Paul motioned, seconded by Mr. Hallowell, to approve a 12-month electricity contract with the ratification of 2013 twelve month electricity contract with Superior Plus Energy Company, as recommended by Township Staff. The motion passed unanimously. *(See Attachment C)*

**b. Affirm Park Board Recommendations for Field Improvements at Barness and King Parks.**

Mr. Paul motioned, seconded by Mrs. Achenbach, to affirm the Park Board recommendations for field improvements at Barness and King Parks subject to the Association obtaining all necessary permits and government approvals for work to be initiated. The motion passed unanimously. *(See Attachment D)*

**9. CHAIRMAN'S REPORT:****a. Review January 7, 2013 Reorganization Meeting Agenda**

Mr. Anderson reviewed the preliminary agenda that will be used for the Board's reorganization meeting on January 7, 2013.

**b. Comments on 202 Parkway**

Mr. Anderson noted that there have been several incidents on the new 202 Parkway.

**10. ENGINEER'S REPORT:****a. Summary Status on All Active Projects**

Mr. Wieland gave a status report on all major active projects:

1. Warrington Meadows (Toll Brothers)
2. Oak Creek of Warrington (site work by Cutler, homes by NV Homes)
3. Warrington Glen (Toll Brothers)
4. Penrose Walks (site work by Metropolitan )

He indicated that he would be providing a more complete project listing by the Board's January 8, 2013 meeting.

**11. SOLICITOR'S REPORT:****a. Meridian.**

Mr. Casey reported that Staff has solicited requests for three contractors to perform the Meridian code work. He said we have received an approval letter from the Homeowners Association who will serve as the pass-through agent for the invoice payment. The Board gave its consent to Staff to proceed with the repairs. Mrs. Yannich recused herself on this matter because she is a Meridian resident.

**b. Malcolm's.**

Mr. Casey reported that Malcolm's is still in the pleading stage. He said in lawsuits the other party gets a certain period of time to respond and they haven't answered. He sent Malcolm's the ten (10) day warning. If Malcolm's doesn't answer in that period of time, the Township wins by default.

c. 202 Parkway.

Mr. Casey updated the Board on his review of the 202 Parkway Maintenance Agreements. He also updated the Board on the current state of the Township's appeal before the Board of View. He has received a copy of PennDOT's appraisal and forwarded to our appraiser for his evaluation of the comparables that PennDOT utilized in determine the property's fair market value.

12. ESCROW AND MAINTENANCE BOND RELEASES.

a. Oak Creek at Warrington Escrow Release #1 in the amount of Nine Hundred Eighty Eight Thousand Sixty Five Dollars and Thirty Five Cents (\$988,065.35).

Mr. Anderson motioned, seconded by Mr. Paul, to approve the Oak Creek at Warrington Escrow Release #1 in the amount of Nine Hundred Eighty Eight Thousand Sixty Five Dollars and Thirty Five Cents (\$988,065.35). The motion passed unanimously.

SUPERVISOR COMMENTS:

a. Shelley vs. Warrington Township

Mr. Anderson reported that a decision was handed down by the Supreme Court of Pennsylvania denying the Township's tax case. The Township had been holding \$1.1 million in an escrow account waiting for a decision to be made by the State. Hopefully, the State legislators will see fit to reenact the tax. On Page 8 of the decision it says that accordingly the order of the Commonwealth Court is reversed, and the matter is remanded for entry of judgment in favor of appellants. *(See Attachment E)*

b. Traffic Light at Pickertown and Folly Roads

Mr. Paul asked for a status report on the traffic light to be installed at Pickertown and Folly Roads. He feels it's time to take another step with the school board. Mr. Casey will send a letter to the school board notifying them that they are in default of their agreement and get a timetable from them. He will report back to the Board at their January 8, 2013 meeting.

c. Snow Plowing Priorities

Mr. Tieperman reported he has talked to John Bonargo about the protocol list for snow plowing Township roadways and municipally-owned sidewalks, which will be reviewed at the Board's January 8, 2013 meeting.

d. Real Estate Transactions

Mrs. Yannich reported that she regularly follows the real estate transactions in the newspaper and noted that CVS recently paid \$1.9 million for their property located at the corner of County Lin and Lower State Roads.

**ADJOURNMENT**

Mr. Paul motioned, seconded by Mrs. Achenbach, to adjourn the meeting at 8:37 p.m. The motion passed unanimously.

Edited and Reviewed By:



Timothy J. Tieperman, Township Manager

# ATTACHMENT "A"

RESOLUTION 2012-R- 42

WHEREAS, on November 27, 2012, the Board of Supervisors approved a preliminary budget in the amount of \$25,278,014 for all operating and capital expenditures in 2013; and

WHEREAS, since the preliminary budget's adoption the Township Manager's Office has continued to refine the final budget numbers based on new information and Supervisor feedback; and

WHEREAS, these final refinements have been incorporated into the final budget document on which the Board has deliberated;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Warrington Township that it hereby approves a final 2013 budget in the amount of \$24,454,314. This budget conforms to the new accounting structure that was implemented on January 1, 2012.

Summarized in Table I below is a compilation of all the associated funds in the 2013 budget:

**TABLE I**  
*All Funds Summary*

| FUND CATEGORY                | FINAL                |
|------------------------------|----------------------|
| General Fund                 | \$ 10,840,402        |
| Water and Sewer              | \$ 7,391,775         |
| Open Space                   | \$ 1,500,000         |
| Water and Sewer              | \$ 1,962,824         |
| Capital Reserve (2008 Bonds) | \$ 328,200           |
| Debt Service                 | \$ 1,657,757         |
| Highway Aid Fund             | \$ 567,509           |
| Internal Service Fund        | \$ 205,847           |
|                              | <b>\$ 24,454,314</b> |

BE IT FURTHER RESOLVED by the Board of Supervisors that in order to fund properly the above appropriations, the Board hereby adopts a 2013 mill levy schedule as summarized in Table II:

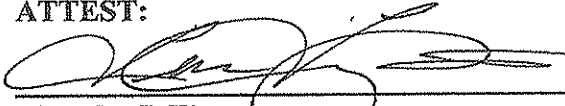
**TABLE II**

| MILL CATEGORY            | 2012 LEVY    | 2013 LEVY    |
|--------------------------|--------------|--------------|
| General Fund             | 3.60         | 5.90         |
| Debt Service Fund        | 2.44         | 4.06         |
| Fire Protection Fund     | 1.50         | 0.00         |
| Road Machinery Fund      | 0.25         | 0.00         |
| Park and Recreation Fund | 2.26         | 2.26         |
| Ambulance Fund           | 1.00         | 0.00         |
|                          | <b>11.55</b> | <b>12.22</b> |

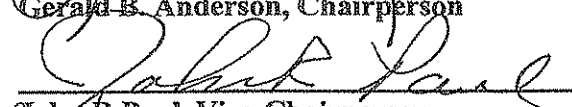
RESOLVED this 18<sup>th</sup> day of December, 2012

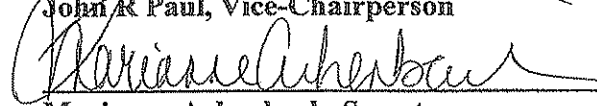
BOARD OF SUPERVISORS OF WARRINGTON TOWNSHIP

ATTEST:


  
\_\_\_\_\_  
Timothy J. Tieperman  
Township Manager

  
\_\_\_\_\_  
Gerald B. Anderson, Chairperson

  
\_\_\_\_\_  
John R. Paul, Vice-Chairperson

  
\_\_\_\_\_  
Marianne Achenbach, Secretary

  
\_\_\_\_\_  
Matthew W. Hallowell, Member

  
\_\_\_\_\_  
Shirley A. Yannich, Member

# ATTACHMENT “B”





**RESOLUTION 2012-R- 41**

**TAX COLLECTOR COMPENSATION**

**WHEREAS**, compensation of tax collectors is governed by the Pennsylvania Local Tax Collector Law (72 P.S. § 5511.1); and

**WHEREAS**, the term of the elected Warrington Township Tax Collector will expire December 31, 2013; and

**WHEREAS**, the Board of Supervisors of Warrington Township wants to establish compensation for the elected tax collector for the term 2014 - 2017;

**NOW THEREFORE**, be it and it is hereby resolved by the Board of Supervisors of Warrington Township, Bucks County, Pennsylvania, that the compensation of the Warrington Township Tax Collector elected for the term of office beginning January 1, 2014 through December 31, 2017 as follows:

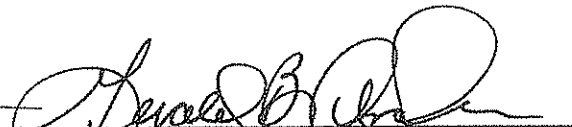
1. One (1%) percent of real estate tax, including interim bills;
2. Three (3%) percent per fire hydrant assessment of one quarter (1/4) mill;
3. Three (\$3.00) Dollars per trash bill collected

**RESOLVED**, this 18<sup>th</sup> day of December, 2012.

**BOARD OF SUPERVISORS OF WARRINGTON TOWNSHIP**

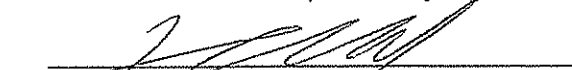
**ATTEST:**

  
\_\_\_\_\_  
Timothy J. Tieperman  
Township Manager

  
\_\_\_\_\_  
Gerald B. Anderson, Chairperson

  
\_\_\_\_\_  
John R. Paul, Vice Chairman

  
\_\_\_\_\_  
Marianne Achenbach, Secretary-Treasurer

  
\_\_\_\_\_  
Matthew W. Hallowell, Sr., Member

  
\_\_\_\_\_  
Shirley A. Yannich, Member

# ATTACHMENT "C"

# Warrington



# Township

852 EASTON ROAD, WARRINGTON, PA 18976  
215-343-9350 ■ FAX 215-343-5944  
[www.warringtontownship.org](http://www.warringtontownship.org)

**BOARD OF SUPERVISORS**  
JOHN R. PAUL, Chairperson  
GERALD B. ANDERSON, Vice Chairperson  
MARIANNE ACHENBACH, Secretary  
MICHAEL W. LAMOND, JR. Asst Secretary  
PAUL H. PLOTNICK, Member

TOWNSHIP MANAGER  
TIMOTHY J. TIEPERMAN

December 17, 2012

MEMO TO: BOARD OF SUPERVISORS  
ATTN: TIMOTHY J. TIEPERMAN, TOWNSHIP MANAGER

FROM: BARRY P. LUBER, CHIEF FINANCIAL OFFICER

RE: ELECTRICITY SUPPLIER FOR 2013

### *Background*

Our current contract for electricity with PPL expires in January 2013. Our current rate with PPL is \$.0784 per KWH. A broker, Commercial Utility Consultants (who are conducted an analysis of our utility bills), has been soliciting quotes on the township's behalf. The lowest quote received this past week was (.0808 per KWH) from Superior Plus Energy Company. This is an approximately 3% increase. Due to the Volatility of the market, electricity vendors will only offer a quotation for a one day period. Therefore, the contract was reviewed by the Solicitor and signed by the Township Manager.

### *Recommendation*

Staff is recommending that the twelve month contract with Superior Plus Energy Company be ratified.

# ATTACHMENT "D"

# Warrington



# Township

852 EASTON ROAD, WARRINGTON, PA 18976  
215-343-9350 ■ FAX 215-343-5944  
[www.warringtontownship.org](http://www.warringtontownship.org)



BOARD OF SUPERVISORS  
GERALD B. ANDERSON, Chairperson  
JOHN R. PAUL, Vice Chairperson  
MARIANNE ACHENBACH, Secretary-Treasurer  
MATTHEW W. HALLOWELL, SR., Member

SHIRLEY A. YANNICH, Member

TOWNSHIP MANAGER  
TIMOTHY J. TIEPERMAN

December 17, 2012

MEMO TO: BOARD OF SUPERVISORS

FROM:  TIMOTHY J. TIEPERMAN

RE: PARK BOARD RECOMMENDATIONS:  
WARRINGTON YOUTH BASEBALL PROPOSALS

At its recent regular meeting the Park Board reviewed two (2) separate proposals from the Warrington Youth Baseball Association.

### *Barness Park*

The first involves the construction of four (4) new practice infields at Barness Park, which would be construction in the open space area behind Tim Raymond Field. The open space areas would be modified to provide a 75' x 75' infield. The grass and 4" of soil will be removed and replaced with 4" of clay modified infield mix. (Attachment 1)

### *King Park*

The second project area involves repairs and upgrades to King Park baseball field located on Kelly Road. The existing field has dimensions comprising a 50' pitching mound and 70' base baths. The renovation will makes these dimensions convertible to allow 46' to 50' pitching distances and 60' to 70' base distances. These renovations will accommodate more age groups between 8 and 12 years old. Among the enhancements are a new sprinkler system and various infield repairs as identified in the attached proposal. (Attachment 2).

### *Park Board Recommendation*

The Park Board is recommending approving of the Warrington Youth Baseball proposals for Barness and King Parks subject to the Association obtaining all necessary permits and government approvals for work is initiated.

Enclosure(s)

xc: Project File

**ATTACHMENT 1**  
*Barness Park Proposal*

## Warrington Youth Baseball

### Proposed New Practice Infields at Barnes Park

Warrington Youth Baseball (WYB) requests permission from the Warrington Township Park and Recreation Board to construction four (4) new practice infields at Barnes Park. These infields are proposed to be constructed in the open space behind Tim Raymond Field, along Bristol Road (please refer to the attached figure). WYB plans to fully fund the construction of these fields. We propose to construct two fields this year (Spring of 2011) and two fields in the near future.

WYB is a Cal Ripken Organization which provides the opportunity for approximately 800 children ages 4 through 12, and over 80 teams to play both intramural and travel baseball. Barnes Park is WYB's main complex for hosting both intramural, travel and tournament baseball games. Currently, once the baseball season games begin in late March and all of the baseball fields are occupied for games there is not sufficient field space for teams to practice. In recent years teams have been practicing in open space at both Barnes Park and other public parks in the Township, however, these open fields and their unlevel playing surfaces are not the optimum place for children to safely be taught the game of baseball.

In addition, the improvements and field construction that WYB has performed at Barnes Park (well over \$100,000 in the past 3 years) and the success of WYB within the Cal Ripken Baseball Organization has enabled us to begin hosting District and State Tournaments, and this year for the first time to host a Mid-Atlantic Regional Tournament. These tournaments, especially the State(wide) and Regional, bring teams (along with their families and friends) to Warrington and its businesses from across Pennsylvania as well as New York, New Jersey, Maryland and Delaware. Having a complex as nice as Barnes Park and continuing to improve on its amenities will ensure that WYB is able to continue to host and bring the additional revenue to Warrington Township.

The following provides a brief description of the proposed new practice infields, and how they would be constructed:

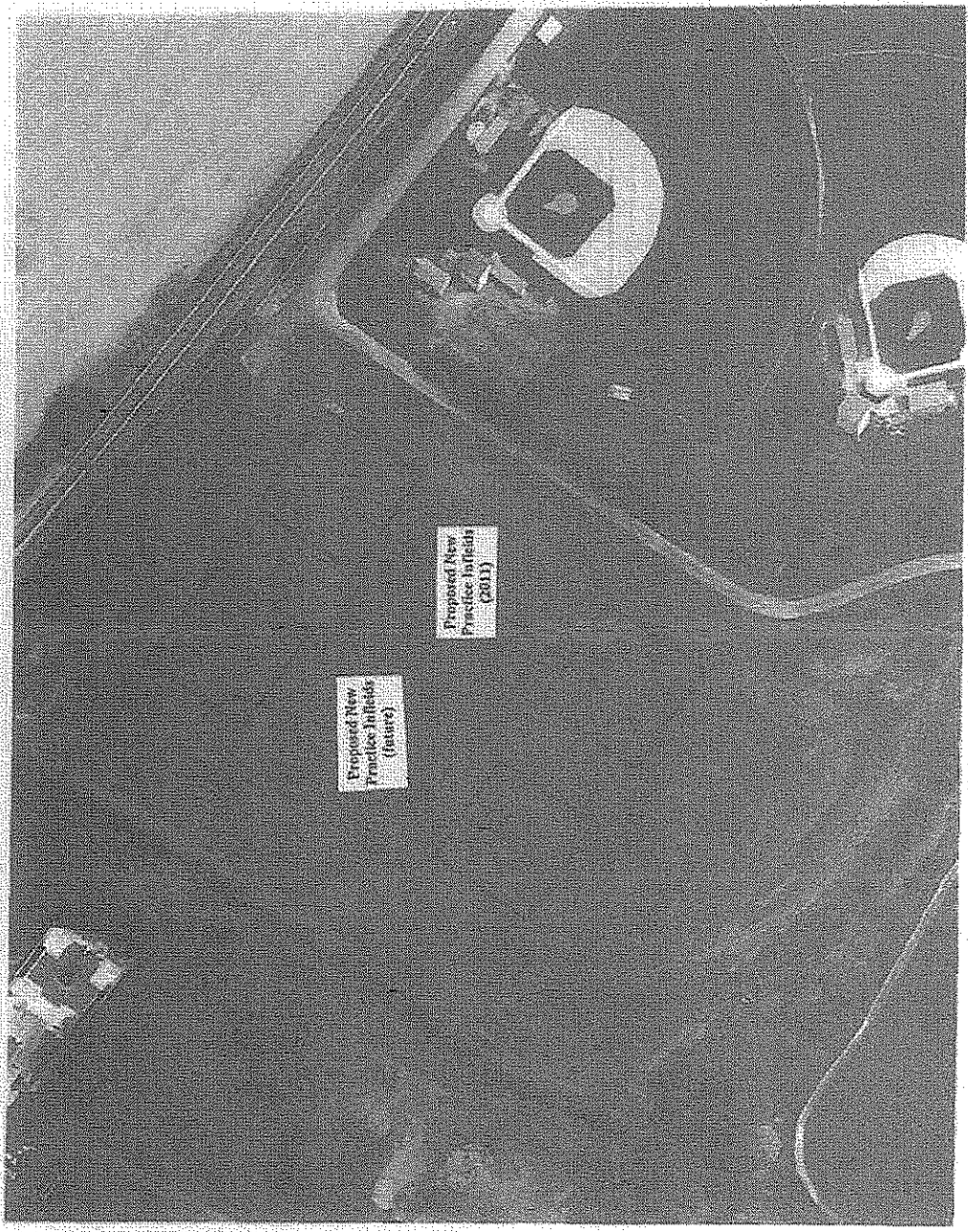
Four areas within the open space at Barnes Park will be modified to achieve Baseball infields.

- Each area to be a 75' x 75' square.
- The grass and 4" of earth will be removed in these areas.
- 4" of clay modified infield mix will be installed in these "excavated" areas.
- Infield mix will consist of sand, silt and clay. Same appearance and mix as the other current baseball infields in the complex.

- Infield mix will be compacted to prevent any washouts. It will match elevation of adjacent undisturbed grass.
- New grade of infield mix to match the current grade of grass. (no change in grading or water flow will be done)
- No back stops or permanent structures to be installed; so the open space and flexibility of the area will still remain.
- No mounds or permanent bases will be installed.



**WYB Proposed Location of New Practice Infields**





## Carroll Engineering Corporation

February 2, 2011

Timothy J. Tieperman, Township Manager  
Warrington Township  
852 Easton Road  
Warrington, PA 18976

Subject: Barnes Park – Proposed Practice Infields.

Dear Mr. Tieperman:

We have reviewed the proposal from Warrington Youth Baseball for the installation of four (4) practice infields to be located at the southwest corner of the park adjacent to Bristol Road concerning the impact these practice infields will have on the stormwater runoff for the park. The practice infields will consist of a skinned area containing infield mix similar to the other ballfields within the park. These infield areas consist of sand, silt and clay, which will be compacted. The infield areas will absorb only a small portion of stormwater and the remainder will run off the infields. This will cause stormwater that currently infiltrates the soil in the existing grassed areas to run off and contribute to the total stormwater runoff for the site.

We performed a comparison of the stormwater runoff for the park in the current condition against the addition of the practice infield areas. We also compared the stormwater runoff for the park with the practice infields against the stormwater runoff for the park conditions in 2003 before the addition of the basin, paths and additional ballfields. The result of the comparison between the existing park conditions and the addition of the practice infields indicates that a minimal amount of stormwater runoff will be added to the stormwater runoff leaving the park currently. However, this additional amount of runoff added to the existing park runoff is considerably less than the runoff leaving the park in 2003 before the detention basin and other improvements were installed. Therefore, there should not be any adverse effects on the downstream properties from the addition of these practice infields. In addition, the location of the practice infields will not create any stormwater problems for other areas of the park, as they are to be located at the lowest part of the park and would drain to an existing drainage swale that discharges to the existing stormwater culvert before leaving the park.

If you have any question or need additional information please do not hesitate to call me.

Very truly yours,

CARROLL ENGINEERING CORPORATION

Richard A. Wieland, P.E.

RAW:cam

cc: K. Frederick Achenbach Jr., Manager, Warrington Township  
William H.R. Casey, Esquire  
Roy Rieder, P.E., CEC

*Today's Commitment To Tomorrow's Challenges*

555 Second Avenue - Suite G-101  
Collegeville, PA 19426  
Telephone: (610) 489-5105  
Fax: (610) 489-2574

949 Easton Road  
Warrington, PA 18976  
Telephone: (215) 343-5700  
Fax: (215) 343-0875  
Corporate Office

105 Raider Boulevard - Suite 206  
Hillsborough, NJ 08844  
Telephone: (908) 874-7500  
Fax: (908) 874-5762

10-6209.00 (1062000065.DOC)

[www.carrollengineering.com](http://www.carrollengineering.com)

**ATTACHMENT 2**  
*King Park Proposal*



## Warrington Youth Baseball

### PROPOSED KINGS PARK BASEBALL FIELD REPAIR/UPGRADE (11/29/12)

#### Project Description:

Warrington Youth Baseball proposes to repair and upgrade the baseball field located at Kings Park on Kelly Road, Warrington, Township. This field and park is owned by Warrington Township, however, WYB would perform the work proposed. The existing field is currently dimensioned with a 50' pitching mound and 70' base paths. The renovated field would be convertible so that games can be played at pitching distances of both 46' and 50', and on bases with distances of both 60' and 70'. This will allow the field to be used by age groups from 8-12 years old. The work proposed to be performed is to repair and upgrade the playing surface and improve the surface water drainage of the field. Based on when the project can be performed the goal is to have the field playable during the spring 2013 baseball season.

The current condition of the field is nearly level with a low spot behind the pitcher's mound which creates ponding of rain water rendering the field unplayable for up to 1-2 weeks following a significant storm event. In addition, the existing condition of the infield and outfield grass is clumpy and uneven, which has created an unsafe playing surface.

#### SCOPE OF PROJECT

The following work is proposed to be performed:

##### **1 - SPRINKLER SYSTEM INSTALLATION:**

- Due to the location of the field getting water to the field in order to prevent the grass from dying off during the baseball season is an issue.
- Installation of a sprinkler system over the entire field area (infield and outfield) is proposed.
- System will be an automatic underground lawn sprinkler system.
- Materials of construction are proposed to be PVC Piping and Fittings.
- Sprinkler heads are anticipated to be Rain Bird Gear Driven Sprinkler Heads.
- System will include a digital electronic timer and rain sensor.
- Point of connection will be existing vault with a shutoff valve and backflow preventer.
- WYB will work with the proper Township officials to obtain permits and approvals on the system to be installed.

##### **2 – INFIELD REPAIRS:**

- WYB's proposal is to renovate the field to be both a 46'/60' and 50'/70' (convertible) field involves performing the following work on the infield:
  - Surface preparation (roto-tilling and scarification as necessary).
  - Laser leveling of the grade to elevations necessary to ensure that the infield will drain properly without ponding of rain water – includes bringing in the necessary topsoil to achieve proper grades.
  - Pre-installation fertilization (limestone and starter fertilizer).
  - Installation of new grass infield of Kentucky Bluegrass/Tall Fescue Sod – including foul territory up to the outfield cutouts.
  - All infield sod will be cut at home plate, pitcher's mound, and at the base lines for the field to be fully convertible.
- All weeds will be removed from the existing infield mix in the baselines, infield area, home plate, pitcher's mound and coaches' boxes.
- New Premium Grade infield mix will be tilled into existing infield soils, followed by tilling in to a depth of approximately 2" Pro-Select Blend infield conditioner.



- The infield mix portion of the field will be Laser leveled to ensure the proper grade for tying into the new sod, and establishing proper drainage to ensure ponding does not occur during normal rain events.
- A new home plate, and infield base system (and anchors) at distances of 60' and 70' will be installed.

### 3 – PITCHER'S MOUND REBUILD:

The pitcher's mound is proposed to be reconstructed as a convertible mound to enable both 46' and 50' pitching distances as follows:

- Base of mound is proposed to be constructed with Hilltopper Mound Clay compacted with a vibratory plate tamper.
- A 2" layer of Premium Grade infield mix will be placed over the entire mound area, and compacted with Pro Select Blend (for pitching mounds) infield conditioner.
- A permanent 50' pitcher's plate will be installed to proper specifications (8" above the level of home plate). The 46' pitching plate will be removable.

### 4 – OUTFIELD:

- It is proposed that topsoil will be brought in to level and ensure proper drainage in the existing outfield.
- Outfield will be seeded with a 90/10 mix of fescue/blue grass seed at a rate of 12-16 pounds per thousand square feet, raked to prevent seed runoff, fertilized and watered.

### 5 – PROJECT COMPLETION:

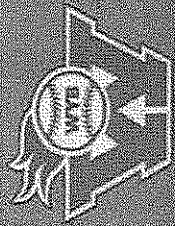
- Contractor will be held responsible for cleaning up any and all debris generated during the work activities and properly dispose of the debris offsite.
- Any damage to fencing, pavement or grass areas within Kings Park will be repaired following completion of the work.
- Work as proposed will not involve alterations to any existing storm water structures. Any work of this nature that becomes necessary is understood to require Township approvals.
- Contractor will warrant work for a period of 12 months from acceptance, and include grading issues as well as the sprinkler system.

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### FUTURE PROPOSED WORK

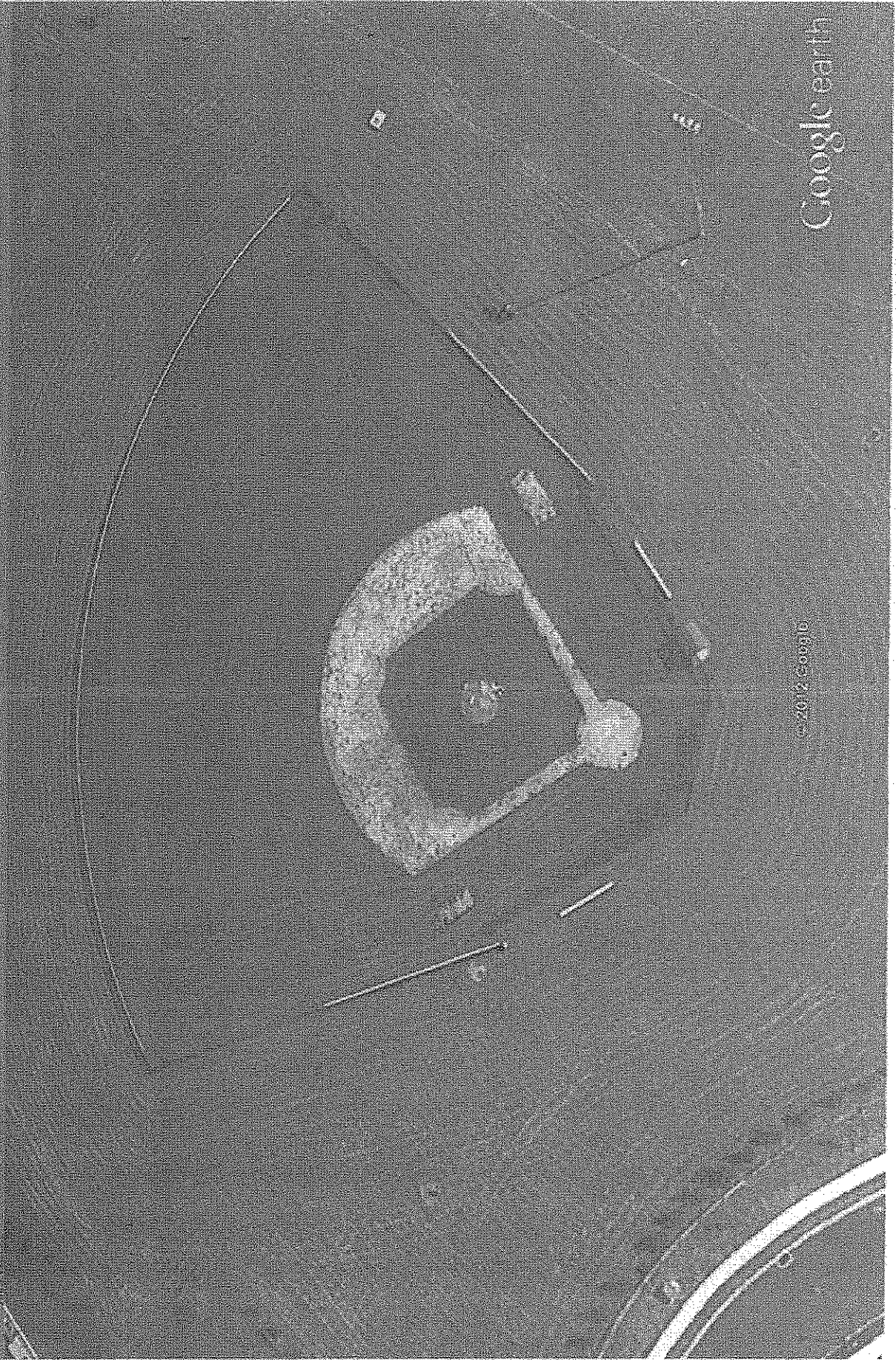
1 – DUGOUTS: Would be similar in appearance and construction as at Barnes Park

2 – LIGHTS: It is understood that lights for Kings Park Field has been in the Township's plans and that certain infrastructure for the lighting system is already in place at the field. Considering the Warrington Township Open Space Referendum, which included items for improvements to existing parks, is the plan still for the Township to complete the lighting project at Kings Park?



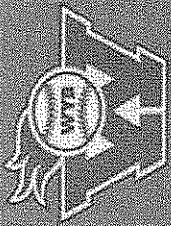
# King's Park Baseball Field

Existing Conditions



© 2012 Google

Google earth



# King's Park Baseball Field

## Proposed Sprinkler System Coverage

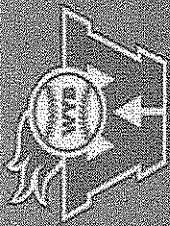
Approximate Area of  
Sprinkler coverage



- Sprinkler System**
- PVC Pipe & Fittings.
  - Installed at 10" depth.
  - Rain Bird Gear Driven Sprinkler Heads.
  - Rain Sensor.
  - Digital Electronic Timer.
  - Connection to existing vault with shutoff valve and backflow preventer.

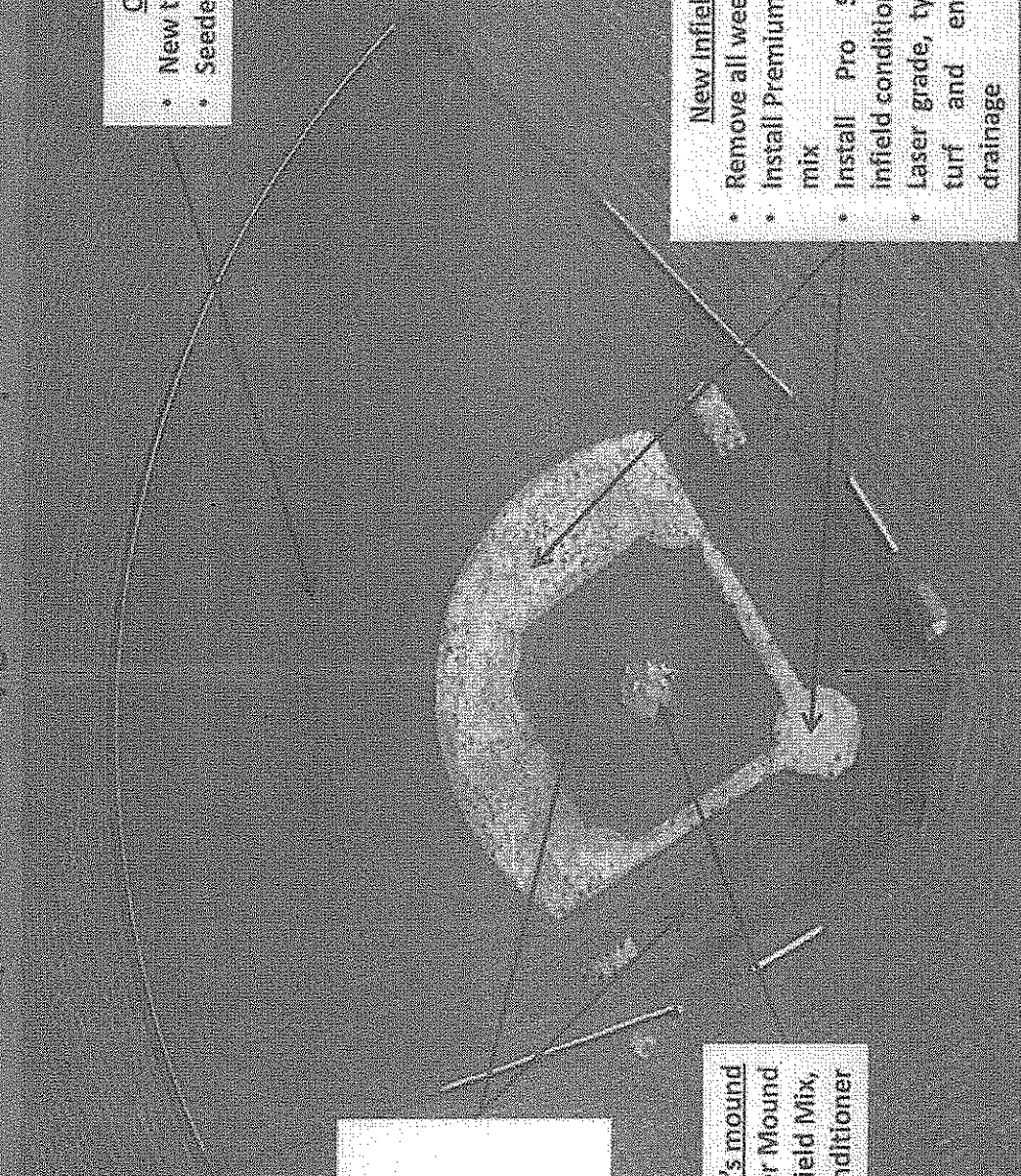
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# King's Park Baseball Field

## Proposed Field Upgrade and Repairs



### New Infield Turf

- Surface Preparation & Topsoil
- Laser Grading to ensure proper drainage
- Sod Infield and foul territory

New convertible pitcher's mound  
Constructed of Hilltopper Mound  
Clay, Premium Grade Infield Mix,  
and Pro Select Blend Conditioner

### Outfield

- New topsoil to level
- Seeded

### New Infield Mix

- Remove all weeds
- Install Premium Grade infield mix
- Install Pro Select infield conditioner
- Blend
- Laser grade, tying into new turf and ensure proper drainage

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# ATTACHMENT "E"



## OPINION

MR. JUSTICE SAYLOR<sup>1</sup>

DECIDED: December 18, 2012

The issue presented is whether an ordinance imposing a fixed tax on businesses with gross receipts over a certain threshold violates a statute prohibiting business privilege taxes “on gross receipts or parts thereof.”

Pursuant to the Local Tax Enabling Act of 1965 (the “LTEA”), in 2009 the Warrington Township Board of Supervisors (the “Board”) enacted Ordinance 09-0-1, entitled “Mercantile and Business Privilege Tax,” which imposes a \$2,600 annual business privilege tax on all businesses in the township with gross receipts over \$1,000,000, and exempts from liability all businesses with gross receipts of \$1,000,000 or less.<sup>2</sup> Appellants, twenty-seven businesses located within the township, challenged the validity of the ordinance in the common pleas court, arguing, *inter alia*, that it violates Section 533(a) of the Local Tax Reform Act,<sup>3</sup> which states in relevant part:

After November 30, 1988, . . . no political subdivision may levy, assess or collect or provide for the levying, assessment or collection of a mercantile or business privilege tax on gross receipts or part thereof.

72 P.S. §4750.533(a).

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<sup>1</sup> This matter was re-assigned to this author.

<sup>2</sup> Under the ordinance, “gross receipts” are “[c]ash, credit or property of any kind or nature, received or allocable or attributable to business conducted in the Township of Warrington without deduction therefrom on account of the cost of property, of the material used or the labor, the service performed or any other cost of doing business.” Warrington Township Ordinance No. 09-0-1 §603, reproduced in R.R. 38a.

<sup>3</sup> Act of Dec. 13, 1988, P.L. 1121, No. 145 (as amended 72 P.S. §§4750.101-4750.3112) (the “LTRA”). Although much of LTRA has been repealed, Section 533 remains in force.

At a hearing before the trial court, the parties agreed that the case could be decided on the briefs and the notes of testimony of the public hearings before the Board.<sup>4</sup> That testimony reveals that: (1) the Ordinance was enacted to generate enough revenue to close a \$400,000 budget shortfall; and (2) in considering the nature of the tax, the Board took into account the number of businesses that would be subject to the tax, the flat amount that each would have to pay to generate the revenue needed to cover the shortfall, the number of businesses that would be exempt from the tax at different levels of gross receipts, and the fact that businesses that generate more than one million dollars in gross receipts tend to be larger and require more municipal resources than those with lower gross receipts. Appellants argued that, because the ordinance imposes a flat tax for businesses earning over \$1,000,000, while exempting businesses with gross receipts below that amount, it constitutes a tax “on gross receipts or part thereof,” namely, the part of gross receipts over \$1,000,000.

The common pleas court upheld the ordinance, explaining that it imposes a flat tax, albeit with an exemption for any business earning no more than \$1,000,000 in a particular year. Thus, because the tax is not levied as a percentage of a business's gross receipts, the court reasoned that it does not constitute an improper tax “on” gross receipts for purposes of Section 533(a) of the LTRA.

The Commonwealth Court affirmed in an unpublished disposition, rejecting Appellants' contention that the ordinance levies a tax on that part of a taxpayer's annual gross receipts in excess of \$1,000,000. The court explained that, on its face, the ordinance does not tax any portion of gross receipts, but rather, imposes a flat tax. In this regard, the court observed that flat taxes were deemed permissible in Smith and

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<sup>4</sup> The primary transcript relied on by both parties is that of the December 9, 2008 public hearing of the Board. At the conclusion of that hearing, the Board adopted the Ordinance in question. Due to a minor procedural defect, however, the Board re-adopted the Ordinance at its subsequent February 2009 meeting. This aspect of the enactment history is of no moment to the legal issue raised herein.

McMaster, P.C. v. Newtown Borough, 669 A.2d 452 (Pa.Cmwlth. 1995) (en banc) (upholding a flat \$100 business privilege tax levied on all for-profit business within the municipality). See Shelly Funeral Home, Inc. v. Warrington Twp., No. 769 C.D. 2009, slip op. at 4-5 (Pa. Cmwlth. Dec. 31, 2009) (unpublished memorandum).<sup>5</sup>

This Court granted further review, limited to the question of whether the Ordinance violates Section 533 of the LTRA. Because the overarching issue is one of law, and as the facts as reflected in the Ordinance and as related in the transcripts of the Board's hearings in December 2008 and February 2009 are not in dispute, we exercise plenary review.<sup>6</sup>

Appellants acknowledge that an ordinance imposing a flat tax on all businesses in a township is lawful under the holding of Smith and McMaster. They note, however, that the challengers' argument in that matter was that the tax was invalid because it was inevitably paid out of each business's gross receipts – a position that was rejected since the amount of the tax was in no way dependent on the amount of gross receipts, and the source of the payments was deemed immaterial for Section 533(a) purposes. See Smith & McMaster, 669 A.2d at 455. Appellants maintain that the situation here is different because the present Ordinance only imposes a tax on a business when its annual gross revenue exceeds \$1,000,000. Therefore, Appellants reason, the tax depends on, and is calculated with respect to, a business's gross receipts, making it a tax "on gross receipts or part thereof" – in particular, that part of gross receipts that exceeds the \$1,000,000 threshold. Appellants claim that, in reaching a contrary

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<sup>5</sup> The common pleas and intermediate courts also rejected other challenges to the Ordinance, including one based on tax uniformity precepts. Those issues are not before this Court in view of the limited grant of discretionary review. See Shelly Funeral Home, Inc. v. Warrington Twp., 606 Pa. 49, 994 A.2d 1082 (2010) (*per curiam*).

<sup>6</sup> During proceedings in the common pleas court, the parties effectively stipulated to the contents of, inter alia, the Board's December 9, 2008, hearing transcript. See N.T. Feb. 18, 2009, at 2, 6, reproduced in R.R. 264a, 268a; see also supra note 4. Thus, we may rely on the statements of the Board members as contained therein during our review.

conclusion, the Commonwealth Court failed to recognize the difference between a tax that is imposed on all businesses in a municipality and one that is imposed on only those meeting a certain annual threshold of gross receipts. They also assert that the common pleas court erred by limiting the scope of the Section 533(a) proscription to taxes calculated as a percentage of gross receipts.

Appellants continue that this conclusion – that the tax depends on, and is calculated with respect to, gross receipts – is confirmed by the manner in which the Board arrived at the tax. During its meetings, Appellants contend, the Board did not consider a flat tax on all business, but instead debated the amount of the tax that would have to be imposed at each exemption level in order to generate the funds required to alleviate the \$400,000 budget shortfall. As such, Appellants argue that the tax imposed under the Ordinance ultimately depends (and was designed to depend) on the gross receipts of each business in the township.

Appellees, the Board and Warrington Township, argue that, in Smith and McMaster, the Commonwealth Court concluded that a flat business privilege tax paid from gross receipts is permissible under Section 533(a), and that it logically follows that only taxes based on a percentage of gross receipts are prohibited by that provision. Since the flat levy of \$2,600 per non-exempt business is set by ordinance and not calculated based on the taxpayer's actual gross receipts, Appellees reason it is not a tax "on gross receipts or part thereof" for Section 533(a) purposes.

This matter "presents an issue of statutory interpretation, in which our task is to determine the will of the General Assembly using the language of the statute as our primary guide." Mitchell Partners, L.P. v. Irex Corp., \_\_\_ Pa. \_\_\_, \_\_\_, 53 A.3d 39, 45 (2012) (citing 1 Pa.C.S. §1921). The central interpretive question concerns whether the phrase, "on gross receipts or part thereof," as used in Section 533(a), 72 P.S. §4750.533(a), was intended to subsume the type of ordinance presently in issue. The LTRA does not define the phrase, and it does not appear to be a term of art with a

special, technical meaning within the arena of tax law. Thus, we must construe its words according to their common and approved usage. See 1 Pa.C.S. §1903(a).

Consistent with the common pleas court's holding, a tax measured by gross receipts is a tax "on" gross receipts. See generally Trinova Corp. v. Mich. Dep't of Treasury, 498 U.S. 358, 374, 111 S. Ct. 818, 829 (1991); Airpark Int'l v. Interboro Sch. Dist., 558 Pa. 1, 735 A.2d 646 (1991) (equally divided court). It does not follow, however, that Section 533(a) prohibits only that type of tax, particularly since the word "on" is not necessarily synonymous with "measured by" or restricted in its meaning to percentage-based liability schemes. Here, it is not the amount of the tax that is measured based on the taxpayer's gross receipts. Rather, the applicability of the tax to a particular category of taxpayers is defined by the amount of the taxpayer's gross receipts in a given tax year. Whether Section 533(a) precludes an ordinance of this nature is an issue of first impression.

We need not presently determine the viability of all flat taxes containing an exemption based on a threshold level of gross receipts. For example, nothing in this Opinion should be viewed as evaluating the permissibility of a flat tax subject to a very modest gross-earnings threshold predicated on a business's ability to pay the tax. Here, however, the \$1,000,000 threshold and the \$2,600 tax amount were not established based on this type of concern. Rather, as Appellees concede, a high threshold for tax liability was favored as a convenient proxy for storefront businesses and "big-box" stores that consume the most municipal resources, see Brief for Appellees at 2 (quoting N.T., Dec. 9, 2008, at 36, reproduced in R.R. 160a), and Appellants emphasize further that the specific exemption figure and tax amount were calibrated at various different levels to ascertain which set of numbers would be sufficient to close the township's \$400,000 budget gap, see Brief for Appellants at 8-9 (quoting N.T., Dec. 9, 2008, at 52-53, 63, reproduced in R.R. 176a-177a, 187a).

Board members also expressed their dissatisfaction that Section 533(a) prevented a "sliding scale" type of tax, N.T. Dec. 9, 2008, at 8, reproduced in R.R. 132a, since that prohibition made it more difficult to achieve tax fairness by taxing large businesses more than small ones. See N.T. Dec. 8, 2008, at 7, reproduced in R.R. 131a; see also id. at 37, reproduced in R.R. 161a (statement of a Board member that "we feel that a percentage tax i[s] the most fair way . . . , but unfortunately the State Legislature does not allow u[s] to have that type of tax").<sup>7</sup> Additionally, a small flat tax on all businesses was suggested, but was not seriously considered because the Board felt that it would not "put the tax where the cost is," id. at 58, reproduced in R.R. 182a, namely, with the businesses that generate significant gross revenues. Thus, the Board ultimately chose a \$2,600 flat tax with a million-dollar gross-receipts exemption because, at that level, it could balance its budget by taxing only large businesses. See id. at 25, reproduced in R.R. 149a (statement of the Board Chairperson that "if we had a tax that was [only several hundred dollars] we would have to tax down to levels of small business and that's what we didn't want to do.").

We can appreciate the underlying logic of the Board's rationale insofar as it considered that businesses with high gross receipts tend to be larger and more likely than small ones to consume municipal resources such as police services. As well, we have no reason to doubt that the tax itself may have been designed as a salutary measure to serve public purposes, most notably, balancing the township's budget. Still, this Court's role is to evaluate the tax's legality, not its wisdom or fairness – topics that, in any event, are more suited to legislative decision-making.

Insofar as legality is concerned, the General Assembly, for reasons of its own, has precluded municipalities from laying a tax on any part of a business's gross

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<sup>7</sup> See generally id. at 19, reproduced in R.R. 143a (reflecting that the Board was seeking to calibrate its tax so as to ensure the larger businesses paid a "fair share"); id. at 7, reproduced in R.R. 131a (testimony that a \$250,000 exemption level could "hurt small business" and hence, a \$750,000 exemption would be preferable).



receipts. See 72 P.S. §4750.533(a). See generally City of Phila. v. Schweiker, 579 Pa. 591, 605, 858 A.2d 75, 84 (2004) (explaining that municipalities are creatures of the state and have only such authority as the state expressly grants them). As illustrated by the above examples, the Board's method of calculating the dollar amount of both the tax and the threshold for exemption indicates that its intent was to approximate a business privilege tax where the taxpayer's liability would depend upon its gross receipts. The Board would apparently have preferred a sliding-scale tax, but as that option was foreclosed by law, it enacted a business privilege tax that it viewed as the best substitute: a substantial flat tax with a high exemption threshold designed to tax large businesses while shielding small ones from liability. We conclude that, when construed according to its common and approved usage, the prohibition on levying a business privilege tax "on gross receipts or part thereof" was intended to cover this type of tax. Therefore, we find that, regardless of how well intentioned, the Board's actions were contrary to Section 533(a).

It may also be noted that, in practical effect, the Ordinance lays a tax on that portion of a business's gross receipts that exceed \$1,000,000, as Appellants have emphasized throughout this litigation. This is relevant because, irrespective of how taxes are described, reviewing courts assess their validity based on how they operate in practice. See Okla. Tax Comm'n v. Jefferson Lines, Inc., 514 U.S. 175, 183, 115 S. Ct. 1331, 1337 (1995); Airway Arms, Inc. v. Moon Area Sch. Dist., 498 Pa. 286, 300, 446 A.2d 234, 241 (1982); see also Allfirst Bank v. Commonwealth, 593 Pa. 631, 643 n.10, 933 A.2d 75, 82 n.10 (2007); Commonwealth v. E. Motor Express, Inc., 398 Pa. 279, 297, 157 A.2d 79, 89 (1959) ("[I]n the last analysis the nature of the tax depends not upon its label, but upon its incidence, i.e., its practical operation and effect."). We therefore conclude that the Ordinance cannot be sustained.

Accordingly the order of the Commonwealth Court is reversed, and the matter is remanded for entry of judgment in favor of Appellants.

Madame Justice Orié Melvin did not participate in the decision of this case.

Mr. Chief Justice Castille, Messrs. Justice Eakin and Baer, Madame Justice Todd and Mr. Justice McCaffery join the opinion.