

LOWER PAXTON TOWNSHIP
BOARD OF SUPERVISORS

Minutes of Workshop Meeting held September 13, 2011

A workshop meeting of the Board of Supervisors of Lower Paxton Township was called to order at 6:04 p.m. by Chairman William B. Hawk, on the above date in the Lower Paxton Township Municipal Center, 425 Prince Street, Harrisburg, Pennsylvania.

Supervisors present in addition to Mr. Hawk were: William C. Seeds, Sr., William L. Hornung, Gary A. Crissman, and David B. Blain.

Also in attendance were George Wolfe, Township Manager; Steven Stine, Township Solicitor; Jeffrey Mirkovich, Expense Reduction Consultant; Mark DiSanto, Triple Crown Corporation; and Ted Robertson and Watson Fisher, SWAN.

Pledge of Allegiance

Mr. Crissman led in the recitation of the Pledge of Allegiance.

Public Comment

No public comment was presented.

Proposal to conduct a review of the Comcast cable franchise fee

Mr. Wolfe noted that the cable providers offer the Township a 5% franchise fee of gross revenues as identified by the law. He noted that the Township does not get 5% of the telephone fees, only from the cable television franchise fees. He noted that Comcast has been the provider of service for many years to the Township, and Jeff Mirkovich of Expense Reduction Consultants has approached the Township to undertake a comprehensive review of the cable franchise fees to ensure that the Township is getting the money due to it. He noted that this proposal was reviewed by the Audit Committee three months ago and at that time Mr. Mirkovich was instructed to discuss this proposal with the Capital Area Region Council of Governments (CAPCOG) to determine if it could become a multi-municipal proposal. He noted that Mr. Mirkovich has done this and it was found that some of the smaller municipalities that are part of

the franchise agreement are too small to conduct an effective review and provide for an economic outcome.

Mr. Wolfe noted that he provided a copy of the second proposed agreement with Lewis and Associates, the subcontractor for this agreement. He noted that the proposal calls for a five-year review with a fee of 40% of the first \$100,000 recovered and 30% of all amounts received in excess of \$100,000. Mr. Hawk questioned, if nothing is recovered then there is no fee. Mr. Mirkovich answered that until the Township cashes a payment check from Comcast, there would be no fee charged. Mr. Hawk questioned if the inference is that the Township is missing funds from Comcast. Mr. Wolfe suggested that the funds could be misdirected to another Township, noting that the Cable provider should have a detailed list of its service providers and they should have the municipal boundary identified correctly. He noted in some cases, Swatara Township may be collecting some of Lower Paxton Township's fees and vice-versa. He noted if Swatara Township has been compensated for five years for some of the Township's customers, then the Township is due that money, and Comcast must reimburse those funds to the Township.

Mr. Crissman questioned if the statute of limitations for that would be seven years. Mr. Mirkovich explained that he is the owner and operator of Expense Reduction Consulting for the South Central Pennsylvania area, and his company's core focus normally deals with purchasing and helping companies reap a cost savings in the expense/spend area. He explained that he has partnered with another firm to conduct research on franchise fees or workers compensation claims. He noted that the Township collects roughly \$650,000 in franchise fees from Comcast, and he reviewed the contract to determine if an audit would be appropriate. He noted that his partner, Lewis and Associates, from Cooper City, Florida has a proven track record for conducting numerous audits over the past 20 years in this capacity. He noted that Mr. Lewis's proposal is for five years, but he could find out what the statute of limitations is. He suggested that five years is well within the limits of the franchise fee review.

Mr. Mirkovich noted that within the definition of gross revenues, there could be billing and coding inaccuracies. He noted that it is very common to find this when conducting a cable franchise fee review. He noted that the initial proposal was a 50/50 split, but Mr. Lewis has negotiated it to 40% of the funds collected under \$100,000 and 30% for the funds collected over \$100,000. He noted that he has spoken to Hampton, Swatara, and Susquehanna Townships and

they will be offered the same proposal. He noted that there are another five or six townships that he will make a proposal to however the difference for the smaller Township's is that they will be required to pay a \$5,000 retainer fee since their overall volume would be much smaller. He noted that he spoke to Keith Metz from Hampton Township and he was told that they plan to discuss the proposal during their meeting scheduled for later in the month.

Mr. Crissman questioned if the proposals are the same for the four larger townships. Mr. Mirkovich noted that they are the same for the four larger townships, however for the other five or six small townships the difference is the upfront \$5,000 retainer in addition to the same fee schedule. Mr. Crissman questioned if there is any room to negotiate a better rates. Mr. Mirkovich noted that the current rate is a negotiated rate.

Mr. Hawk questioned if the general feeling is that the funds have been misdirected and not necessarily some blatant wrong doing. Mr. Mirkovich answered that he did not think that there was any blatant wrongdoing on the part of the cable operators or anyone involved in the process. He noted that it could be a data entry or paperwork error. Mr. Hawk questioned if Mr. Lewis normally finds some funds, otherwise it would just be busy work. Mr. Mirkovich answered that there is no rhyme or reason in consistency for fee errors. He noted that Mr. Lewis has done over 250 audits and come up with over \$30 million in recovered funds. Mr. Mirkovich explained that he has a background in procured pay cycles for over 20 years and has found that there can be a breakdown in the secured process.

Mr. Blain suggested that the proposed rate is a good one, as he has a consultant who works at his office that does reverse sale and use tax audits and his percentage fee is similar to the proposed fee.

Mr. Wolfe questioned how long the process would take. Mr. Mirkovich suggested that, depending on the cooperation of the franchise provider, it may take 4 to 5 months.

Mr. Wolfe questioned if there was any benefit to auditing Verizon since their contract is only 18 months old. Mr. Mirkovich answered that he showed that to Mr. Lewis and he suggested that the money would not be there yet. He noted that Mr. Lewis has had much more success with Comcast. He stated that he could revisit the question with Mr. Lewis.

Mr. Crissman noted with the size of the Township, he questioned Mr. Mirkovich's what his best guess was for a time frame to complete the audit. Mr. Mirkovich answered that the

biggest challenge is securing the cooperation of Comcast. He noted that Mr. Lewis has had a tremendous amount of experience with Comcast outside of Pennsylvania. Mr. Wolfe noted that Comcast working in Pennsylvania would not be used to these audits, and he was not sure if this would be the first for the State. He noted that it would be new to Comcast in Pennsylvania.

Mr. Crissman questioned if this would be the first audit for Pennsylvania. Mr. Mirkovich answered for Mr. Lewis that is true.

Mr. Robertson questioned if the fees are recovered, will Comcast raise the rates for its customers. Mr. Mirkovich answered no as this audit would review past billing and it should have no impact on the rates. Mr. Crissman questioned if Mr. Mirkovich would respond to Mr. Wolfe about his question in regards to the statute of limitations. Mr. Mirkovich answered that he would also question Mr. Lewis about the time frame for completing the work.

Mr. Wolfe noted that he would like to put this on the agenda for the September 20th business meeting for official action. Mr. Crissman questioned if Mr. Mirkovich would have the answers for those two questions to Mr. Wolfe before that time. Mr. Mirkovich answered yes.

Mr. Hornung questioned if the findings would change future revenues. Mr. Mirkovich answered not necessarily, explaining that it is more of an audit to make necessary corrections. Mr. Hornung noted if Mr. Lewis finds discrepancies from the past, then should the Board do this every year or do the corrections continue forward for the Township to reap the benefits of the study. Mr. Wolfe explained if the audit finds that certain properties were misaddressed, Comcast would correct it as opposed to continuing the bad credit. Mr. Wolfe noted if they have not paid the Township in accordance with the franchise agreement then that is a violation and they would be obligated to correct it. Mr. Hornung noted that would provide for additional funding. Mr. Wolfe noted that this audit would cover two franchise agreements, noting that the last agreement ended two years ago. He noted that the audit would be split, looking at two different contracts, noting that the contracts are very similar but there have been changes. Mr. Hornung questioned if Mr. Lewis would collect for the percentage going forward. Mr. Wolfe answered that it would only cover the past five years.

Mr. Hawk noted that it would serve to find any misdirection of funds and correct the Comcast billing data.

Ratification of Emergency Declaration 11-02-02, as issued by the
Township Manager on September 8, 2011.

Mr. Wolfe noted that the Board action is needed for Emergency Declaration 11-02-02 to ratify an Emergency Declaration that he issued following the major storm event as a result of Tropical Storm Lee.

Mr. Wolfe noted that he prepared the Emergency Declaration as permitted by the Township's Codified Ordinances, and as such, he needs to inform the Chairman of the Board and provide notice to all Board members of it. He noted that the Board of Supervisors must ratify that declaration. He noted that this is similar to what occurred in August for the extreme wet weather event that took place on August 6th and 7th, and one month later the Township is again experience emergency conditions due to a severe wet weather condition. He explained that upon Board action, he would provide a brief report to present the current conditions in the Township.

Mr. Crissman made a motion to ratify Emergency Declaration 11-02-02 as issued by the Township Manager on September 8, 2011. Mr. Blain seconded the motion, and a unanimous vote followed.

Status report on response to Tropical Storm Lee

Mr. Wolfe provided a power point presentation of the recent conditions in the Township as a result of Tropical Storm Lee. He explained, when the Board members came to the business meeting last Tuesday, a large storm was approaching the area. He noted that it continued to rain all night long and the next day and for a long period of time the day after that. He noted that the Township received significant flooding during this event.

Mr. Wolfe explained that the first picture is that of the Gontz residence located at 5805 Linglestown Road. He noted that the high water mark is located six inches below their windows. He explained that the Gontz's actually received more water in their home during the August event. He noted that this is the house that the Board took action on during the past meeting to apply for Federal Emergency Management Agency (FEMA) funding for acquisition and demolition of the house due to it location in the floodplain. He noted that their front yard retains a lot of water in a severe rain event. He noted that the home is located next to Goose Valley Run that is a tributary of the Paxton Creek.

Mr. Wolfe noted that the water on Compton Road was significantly higher than shown in the picture and it was probably six to seven feet deep, noting that it was hitting the branches of the trees and was inaccessible for several days. He noted that Piketown Road, in the area of the Central Dauphin High School, was inaccessible to the school due to high water. He noted that the water was as high as the Yield Sign on the roadway. He noted that the water level dropped enough by 4 p.m. in order to allow the buses to take the students home. He noted that an auto body shop across from the school was under water. He noted that the area of Raspberry Alley was also flooded in the area near Mr. Seeds home, and part of the reasons for that is due to the height of the alley since it was recently repaved. He noted that the Township has plans to install two catch basins on the north side of the alley to alleviate this problem. He noted that the bridge at Old Colonial Road and Goose Valley Road had the water topping the height of the guiderail. He noted that Patton Road was again flooded at the bend and he was unable to access the road to get better pictures. He noted that the small stream that runs around the Colonial Golf Course was a river and it jumped the bridge at Goose Valley Road. He noted that the bottom of Nyes Road again flooded at Beaver Creek near the Kendale Oaks Development.

Mr. David Johnson, Public Safety Director, noted on Wednesday evening Nyes Road was completely under water in three locations. Mr. Wolfe noted that the four ponds become one large lake. Mr. Seeds noted that the properties are private but he questioned how much right-of-way the Township has in that area. Mr. Wolfe answered none as it is a State Road. Mr. Seeds questioned if the State had any right-of-way in that area. Mr. Wolfe answered that he did not know.

Mr. Johnson noted that there were water issues along Route 22 and Franklin Street and at 2 a.m. the eastbound lanes had eight to ten inches of water. He noted if you look at what occurred in Derry and Swatara Townships, and the City of Harrisburg, Lower Paxton Township fared very well in this event.

Mr. Hawk questioned if a house partially collapsed. Mr. Wolfe answered yes and noted that four houses collapsed in the August 6th event.

Mr. Wolfe noted that the Township experienced between 7 to 12 inches of rain with the northern portion of the Township receiving the most stormwater. He noted in August the Township received seven inches of rain over a three hour period. He noted that there were

basement backups and sanitary sewer back ups township-wide. He noted that Public Works, Sewer, Police, Fire, and administrative staff all responded to the event and the Emergency Operations Center (EOC) opened its doors on Tuesday night and remained open until Thursday night. He noted that ground water peaked at almost 449.1 feet, unbelievably high for August and September, noting that ground water is significant at 446 feet.

Mr. Hornung questioned how far that is down from the surface. Mr. Wolfe noted that he did not know but he surmised the Mr. Wendle could answer that question.

Mr. Wolfe noted that there is no count on the number of flooded basements and there were 17 sewer basement backups as of Friday. He noted that the home at 4509 Winfield Street suffered a partially collapsed basement wall due to water pressure. He noted that the home has been previously condemned and was waiting reconstruction. He noted that there were 78 sanitary sewer overflows within a 48-hour period. He noted that the Harrisburg and Swatara Treatment Plants either shut down or did not provide secondary sanitary sewer treatment. He noted that the Harrisburg Treatment Plant is back online however Swatara Township's is not. He noted that he was told that they experienced significant damage to a newly renovated \$26 million plant. He suggested that the damage could be in excess of half a million dollars and they do not know when they will be back online for secondary treatment.

Mr. Wolfe noted that United Water PA was under a boil advisory notice and at one time the Township was told that they would lose service from their 6th Street Plant and the Township could have been without water for the entire weekend. He noted that United Water PA's plant on 6th Street has not been flooded since it was rebuilt and they had no idea what the capability of the plant would be. He noted that it was also reported that the Susquehanna River would crest higher than it did. He noted that given that the river crested at 25.8 feet, the plant was able to maintain its operations. He noted United Water PA's Swatara Creek Plant is offline. He noted the Township made plans for potable water source for the citizens, had tanker trucks placed at the fire stations, a plan for the Community General Osteopathic Hospital, and water was available for first responders. He noted that the Friendship Center rented Porta-Johns in order to keep open if the plant went offline. Mr. Seeds questioned if the FC had reduced hours. Mr. Wolfe answered yes noting that people were able to use the showers but it was thought that they would not be

available. Mr. Sees questioned what would staff have done if there was no water to the building. Mr. Crissman answered that there was a potential to close the facility.

Mr. Wolfe explained that there were multiple road closures. He noted that the Township roads did not receive the damage that they did during the August event for storm water. He noted that Waste Management was behind schedule but kept the residents informed of what it was doing. He noted that the Central Dauphin School District missed 2½ days of school. He noted that Authority's liability insurance carrier has provided notice since the August event, that it is increasing the policy premium by \$5,950, increasing the deductible to \$10,000 and deleting sanitary sewage back-up coverage. Mr. Seeds questioned how they can do this. Mr. Wolfe noted that this will take effect upon renewal. He noted that there was a limit on the amount of coverage that they provided for backups and that has been exhausted. He noted that they never anticipated the number of backups that occurred this year.

Mr. Hawk noted that he was in West Hanover Township the past two days and he was amazed at the amount of debris that was removed from homes. He noted that many homes received damage to the items in their basements. He noted that Manada Bottom Road is still closed. Mr. Stine noted that many roads are still closed in South Hanover Township and Hummelstown Borough. Mr. Wolfe noted that according to PENNDOT there are 7 road closures for Dauphin County, 6 road closures in Lancaster County, 8 road closures in Lebanon County, and 15 road closures in York County.

Mr. Wolfe noted that staff has been working with the Pennsylvania Emergency Management Agency (PEMA) in regard to their attendance at the workshop scheduled for September 21, 2011 from 11 a.m. to 7 p.m. in the multi-purpose room at the Municipal Center. He noted that the purpose of this workshop is to discuss the August 6th and 7th wet weather event. He noted that they will be providing information on loan programs that are available. He noted that that event has not been declared a disaster emergency by either PEMA or FEMA so it will not qualify for direct assistance.

Mr. Seeds noted that Tropical Storm Lee has been declared a disaster emergency. Mr. Wolfe noted that no workshop has been scheduled for that event yet. Mr. Seeds questioned if the scheduled workshop is for the August 6th event. Mr. Johnson answered yes. Mr. Seeds

questioned if they will offer the people loans. Mr. Johnson answered that they will offer the Small Business Administration (SBA) loans.

Mr. Wolfe noted for the most current event, the Township has implemented procedures to collect data. He explained that Gary Weisinger, Dave Johnson, and Ralph Palm created a survey for citizens to report their damage on the Township's website. He noted that this website will be advertised and individuals can complete the survey and report their losses to the Township who in turn will transmit an initial assessment to Dauphin County Emergency Management Agency (DEMA), PEMA and FEMA. He noted that the survey is made up of 18 questions requesting information on property damage. He noted this information will be transmitted to the appropriate agencies to determine the Township's need for federal disaster assistance. Mr. Wolfe noted that it would be better if the applicants would complete the form online but if they don't have access to a computer, staff will mail a survey to them. He explained that when the hard copy is returned, staff will enter the data.

Mr. Hornung questioned if he could take some forms to distribute at his business. Mr. Wolfe noted that only one form should be completed per residence. Mr. Johnson noted when residents complete the forms online; the program automatically tallies the results. Mr. Hornung suggested that he would only distribute the information on the website survey and that would direct the people to complete the forms on the website.

Mr. Hornung questioned if the Township had a reporting system for road closures. Mr. Wolfe explained that the Nixle system is used to pass that type of information to the public. He noted when the EOC was open, staff was forwarding road closure information to Dauphin County and they posted the road closures on their website and the PENNDOT website.

Mr. Johnson noted that the Township just reinstated the Nixle system. He explained that Nixle wanted to charge a fee for this service and he told them that the Township would not pay a fee. He noted that Nixle recently reactivated the service for no charge.

Mr. Hornung questioned if the newly renovated Swatara Township Treatment Plant had insurance to cover the damage they sustained. Mr. Wolfe answered that he did not have an answer for that. He explained that the Lower Paxton Township Authority may end up paying 70% of the costs to fix it. Mr. Hornung questioned when they would have an answer for this. Mr. Wolfe explained when Mr. Weaver spoke to them they were still in crisis mode. Mr.

Crissman questioned if Mr. Wolfe would mention this information during the business meeting on September 20th during his Manager's Report. Mr. Wolfe answered yes.

Mr. Hornung questioned if Swatara Township is sanitizing as part of the treatment. Mr. Wolfe answered that they were only doing primary treatment at this time and that he did not know what was operational. Mr. Stine noted if they were using the UV lights, the water would not be clean enough for the light to penetrate through. Mr. Hornung suggested that those who live down stream of the plant should be alerted to this. Mr. Seeds suggested that DEP would be overseeing the operations. Mr. Stine noted that Derry Township's Treatment Plant is the same situation. Mr. Wolfe noted that Mr. Weaver was in discussions with the Swatara Treatment Plant personnel today asking similar questions.

Mr. Johnson noted that Derry Township Municipal Building had extensive damage and their EOC is gone. He noted that the water was three to four feet above the drop ceiling in the EOC. He noted that they had dead fish in their building and sewage. Mr. Hawk noted that the building sits up pretty high. Mr. Johnson explained that the EOC is located in the lower section of the building. He noted that the Police Department's prison cells and evidence room are located on the ground level. Mr. Seeds noted that it will happen again. Mr. Johnson explained that one of their officers had finished helping an elderly woman, and was typing her report in her police car when she looked out the window to find the water rising so fast that she had to crawl out the window and swim to safety. Mr. Stine noted that the people were up in arms about getting the animals to safe ground at ZooAmerica at Hersheypark. He explained that Spring Creek runs through the Park and the Zoo. He noted that water rose from inches to many feet in a matter of seconds in the Park. Mr. Blain explained, on Wednesday, he was stuck in traffic in front of the chocolate plant and the rain came down so hard that the golf course was filled up with water. He noted that it was coming from everywhere.

Mr. Seeds questioned why anyone would build a municipal building that close to a stream. Mr. Blain noted that the Swatara Creek flood stage is seven feet and it crested at 27 feet, 20 feet over flood stage. He noted that the rain data showed that the amount of water and rain in that area was gigantic. He noted that he works in Camp Hill and it did not get that amount of water at his office location. Mr. Stine noted that it was more of a flash flood in the Derry

Township area at first because it rose so quickly. Mr. Blain noted that the highest recorded event before this one was only five feet over flood stage level.

Mr. Hornung noted that the insurance company for the Authority wants to raise their rates \$10,000 and they will not cover any sanitary sewer overflows. Mr. Wolfe noted, in the past, the Authority did not have insurance for sanitary overflow. He explained that was something the current carrier provided to the Authority for the last two years. He noted that they have taken a beating on that provision and they don't want to do it anymore. He noted that staff was surprised that the insurance company would underwrite sanitary sewer overflows in the first place as most will not provide that coverage. He directed Mr. Stine to review the policy to ensure that the change in terms and cancellation of that specific coverage is appropriate.

Mr. Hornung questioned what the Authority should do about this. Mr. Wolfe answered that we will do what we have done in the past when we never had coverage. He noted that it was over and above the Authority's immunity as a governmental entity. He noted that the Authority is immune in situations like this for civil liability and it has always been the Authority's position in the past. He noted that this carrier, two years ago, decided to offer this coverage for sanitary sewer overflows into basements. He noted, in a typical year, there were one or two overflows and the insurance provided \$2,500 maximum coverage per property. Mr. Crissman noted for this year, the insurance company gambled and lost. Mr. Hornung noted in some instances, he has a problem when the sanitary sewer overflows into a person's basement. He noted, in the past he felt that some type of financial assistance should be offered and now we will not be able to do that. He explained that he is not sure that he likes that and he would like to discuss this issue further to determine what the Authority should do in the future. He noted that it will happen again and he would like high priority for those property owners who have had sewer overflows before and had issues in both storms. He suggested that we need to do something as quick as possible. Mr. Wolfe noted that is exactly what staff is doing. He noted that the Forest Hills area has been identified as significant wet water area and there is a design in place and a contract to bid the rehab project for that area. He noted that it was not on the priority list; however, staff does react when there are overflows that never occurred before, especially for those non-grease-based overflows.

Mr. Seeds noted, before the insurance coverage was provided, there were occasions when the Authority provided financial help with sewer backups. Mr. Wolfe noted that was not as Lower Paxton Township. Mr. Hornung agreed that the Sewer Authority did it. Mr. Wolfe noted that never occurred when it was run by the Board of Supervisors. Mr. Hornung agreed. Mr. Wolfe noted that is not to say that the Authority doesn't help to pump out a basement or help sanitize. Mr. Seeds questioned if the Authority paid contractors to clean carpets in the past. Mr. Wolfe noted that was part of the sanitization process. He noted that we do not provide new carpet, drywall or pay for furniture. Mr. Hornung questioned if a homeowner can get insurance for this type of occurrence. Mr. Hawk answered that they could get a rider that would cost from \$60 to \$80 a year. He noted that most insurance policies will only cover flood damage if it is wind-driven.

Request from Triple Crown Corporation to suspend the letter
of credit for Stray Winds Farm, Phase I

Mr. Stine explained that he received a proposal from Attorney Rick Martsolf concerning Stray Winds Farm, Phase I and their improvement guarantee. He noted that Mark DiSanto is present to present the request as well as answer any questions. He noted that the request is fairly self-explanatory; Triple Crown Corporation (TCC) desires to not maintain the improvement guarantee since they are not doing any development work on the site, nor do they intent to in the near future. He noted that maintaining a letter of credit costs a substantial amount of money.

Mr. Mark DiSanto explained that the Phase I Plan was recorded for the Stray Winds Farm and the improvement guarantee was for \$2.2 million. He noted the cost of maintaining that improvement guarantee on an annual basis is about \$22,000. He noted when the plan was recorded, he anticipated starting construction at that time, however, the economy has tanked and litigation followed and there is no clear resolution for when the project can be started. He estimated that it would be at least another two years before they would start the project. He explained that his counsel spoke with Mr. Stine and he is prepared to enter into some type of agreement with the Township in that he would not be permitted to transfer any of the property, or start any development, or request a building permits until a new improvement guarantee is posted. He noted that the agreement would be recorded at the Court House so it would encumber any successor or assigns, whether through bankruptcy, foreclosure, or whatever, that no one

would have development rights to this plan. He noted that you can not un-record a plan, noting that if he could do that he would just do that. He explained that this would save TCC approximately \$22,000 annually until that time that TCC is ready to develop the property. He noted when TCC is ready to develop then it would put the Letter of Credit back in place. He stated that the only way that he could protect the Township would be to have a recorded document filed with the Dauphin County Courthouse. He noted that his counsel and Mr. Stine could create the language and he would pay any of the Township's costs in putting this agreement together. He noted that he was looking for an indication from the Board that it would be willing to do this as long as Mr. Stine is in favor of the agreement. He noted that it is unusual request, but it is a significant cost to TCC.

Mr. Hawk questioned if there was any downside to this agreement from the Township's standpoint. Mr. Stine answered that there would be if there was no agreement and if the plan was not recorded. He noted if the property would be foreclosed upon by the bank and the bank sells it to a third party and the Township has a recorded plan then it would have no improvement guarantee. He noted that another developer could state that he bought the plan and that he is entitled to build it and the infrastructure should be put in or there should be an improvement guarantee and the Township would have no guarantee for this. He noted what would stop this type of issue from occurring is if the Township has a written agreement that provides all the items Mr. DiSanto mentioned as well as having it recorded in the Dauphin County Courthouse. He noted that it would become a condition for the plan and anyone who would seek to purchase the property would have notice before they make the purchase.

Mr. Hawk noted that it would protect Mr. DiSanto or TCC and it would protect the Township. Mr. Stine answered that it may not do anything for TCC but it would protect the Township from 3rd party purchasers who may demand that the Township make the improvements. He noted that they would be on notice that there is no improvement guarantee and no development can take place until one is posted either by TCC or some successor or assigned.

Mr. Crissman questioned if the language will include TCC or successor. Mr. Stine answered yes, noting that it would state successors or assigns. Mr. Crissman questioned if it

would have any impact on any other legal issues that the Township is faced with in regards to this plan. Mr. Stine answered no.

Mr. Seeds noted that he read “TCC is willing to secure its covenants and obligations” by granting a mortgage to Lower Paxton Township. Mr. Stine explained that would not work. Mr. DiSanto noted that he proposed initially that TCC would agree to secure it so that the Township could have a second mortgage on the property since TCC has the first mortgage; however, in discussions with Mr. Stine he felt that it was not a good idea and that the recorded agreement is the best approach. He noted that TCC is in agreement with that. Mr. Seeds noted that it mentioned a pre-executed satisfaction piece. Mr. DiSanto noted that it would only have mattered if TCC had listed the Township as a second mortgagee. Mr. DiSanto noted that the only way that TCC could get its development rights back is to repost the letter of credit. Mr. Hornung questioned if there is any way that anyone could get around this. Mr. Stine stated that is like asking if the Swatara Creek is going to flood again. He noted that he does not know how to answer that, but he noted that he thinks that it would protect the Township sufficiently because anyone who would purchase anything, any interest or any part of it would have constructive notice this is the current status of that development and unless an improvement guarantee is posted there is no development. Mr. Hornung question if as a condition of the sale, the buyer would have to post a letter of credit at that point. Mr. Stine answered if someone is interested in purchasing the property they would do a title search and would find that there is no improvement guarantee on the property, so in order to proceed with the development the buyer would have to post the improvement guarantee in order to do anything. Mr. Hornung questioned if a condition of the sale would be to post the improvement guarantee at that time. Mr. Stine answered no. He noted that the Township has no authority to do that. Mr. DiSanto noted that there is always risk in anything, even with the letter of credit, the bank could go bankrupt. He noted that bonding companies have defaulted. He suggested that the Township would be as secure as it could be.

Mr. Stine noted in the late 1980’s and early 1990’s the Township had numerous letters of credit for developments from savings and loans associations such as Homestead. He noted when the Resolution Trust Corporation (RTC) took over Homestead and John Kerschner, Zoning Officer, went to the bank to draw on the letter of credit, they sent him away, and the next day he received a letter stating that RTC had disavowed the letter of credit. He noted that they had the

authority to do that, so the Township had no security. He questioned whoever thought that would happen, no one.

Mr. Seeds noted that this is different from the Weis Market Plan as they did not have a recorded plan. Mr. Stine answered Weis Market did have a recorded plan but they weren't going to go through with it. He noted that the Township entered into an agreement essentially voiding the plan. Mr. Seeds noted if TCC decided that they would not do the plan at all, they will obviously do something as they cannot sit back and hold the land forever.

Mr. Hawk noted that this would have to be put on an agenda for a business meeting. Mr. Stine noted that he needs to review a final document. Mr. Crissman questioned how long it would take to work out the agreement. Mr. Stine suggested that it shouldn't take very long as he would have Mr. Martsolf complete the first draft.

Mr. Hornung questioned if the Board might end up seeing more of these requests in the future. Mr. Stine noted that it is possible since the builders are not doing much construction work at this time. Mr. Hornung suggested that the agreement should be prepared with the idea that in the future there may be others. Mr. Stine noted that the other difference between this development and others is that TCC's does not have any lot owners. He noted if the Plan had a lot owner it would be a different situation. Mr. Hornung suggested that it should be included as a recital to prevent someone else coming in and asking for it. Mr. Seeds questioned if there is any State law to cover this. Mr. Stine answered no.

Mr. DiSanto noted that the Township will at some point start to work on revising the ordinances and he has presented a text amendment to the Board that is now in limbo. He questioned if any more thought had been given to that. He explained that he asked Mr. Wolfe and Mr. Wolfe suggested that he should ask the Board directly. Mr. Hawk noted that the focus has changed over the past few months due to the budget constraints and it has not been a hot consideration of the Board. He noted until the Board works through the budget crisis, it would not consider amendments to the zoning ordinances.

Mr. Seeds questioned when the Board would be ready for its next review of the comprehensive plan. Mr. Wolfe noted that comprehensive plans are recommended to be done on a ten-year basis and the Township should be starting one soon. He explained that it takes 18 to 24 months to complete. He noted that the last comprehensive plan was started in 2000 and

finished it in 2003, and the zoning amendments were completed in 2006 and the subdivision and land development ordinance was completed in 2010. He noted that he has not pushed for a new comprehensive plan because the Township is working to implement the prior one, and not much has changed. He noted that is not to say that the Board can't pass amendments to the current zoning ordinance when appropriate. Mr. Seeds questioned if there was any regulation that required that a new comprehensive plan be done every ten years. Mr. Wolfe noted that is the suggested time frame. He noted, over time, there have been discussions about amendments, but especially in the area of retirement housing. He noted that he is working on floodplain amendments that will have to be made this year. He noted that the floodplain part of the Township's ordinances is contained in its zoning ordinance however he has drafted a new ordinance for the proposed FEMA floodplain maps. He explained that he would be removing this section from the current zoning ordinance and will become a free standing ordinance. He noted that he will have to amend the zoning ordinance to remove all the floodplain amendments. He noted that he has a list of items that need to be done. He explained when FEMA provide their approval of the draft ordinance, he will move forward with the floodplain ordinance, but he does not expect that notice before the end of the year.

Mr. DiSanto explained when the general ordinance revisions are considered, whether it includes the retirement zone or floodplain, a consideration could be given for his text amendment or some concept of it. He noted that TCC would like to be a part of that dialogue and have that done in the relatively near future.

“Otta Know” Presentation: 2011 Natural Gas Site Spend Detail Report
From Central Pennsylvania Energy Commission

Mr. Wolfe noted that he likes to take the opportunity to brag about the Township's intermunicipal cooperation. He noted that the Township participates in and is a founding member in the Pennsylvania Municipal Health Insurance Cooperative. He noted that it provides healthcare insurance for employees on an intermunicipal basis that allows a municipality, the size of Lower Paxton Township, to self-insure its healthcare benefits. He noted that the Township participate with the Susquehanna Municipal Trust for Workers Compensation insurance. He noted in sitting on that Board, the Township has reduced its insurance costs. He noted that the Township is a member of the Pennsylvania League of Cities and Municipalities

Municipal Utility Alliance and it is the founding member of that foundation. He explained that electricity is purchased through the alliance and has provided significant savings. He noted this past summer, the Township locked into rates that are lower than the previous rates for electricity and newly elected into extremely low rates for street lighting.

Mr. Wolfe noted that the Township is also part of the Central Pennsylvania Energy Consortium (CPEC) for the purchase of natural gas. He noted that CPEC is run out of the IU-12. He explained that it was founded by school districts looking to save money on their natural gas costs for their school buildings. He noted that Lower Paxton Township happened to be big enough to be able to participate with the school districts and has been a member for several years. He noted this past year, through recommendations from CPEC and different pricing structures, he was able to change the rate structure and that has saved the Township \$6,000. He noted for the big ticket items, using intermunicipal agreements, and purchasing in bulk has provided the Township with favorable pricing for those purchases.

Mr. Crissman questioned when the school districts opened the IU-12 to the Township. Mr. Wolfe suggested that the Township has been in it for several years. He noted that most other municipalities are not large enough to participate, but with the spend at the Friendship Center for natural gas it was a given. He noted that CPEC also purchases vehicle fuels but the Township gets a better rate bidding this on its own. He noted that the Township also purchases jointly with the CAPCOG for the negotiation of both the Comcast and Verizon cable franchise agreements. He noted that the Board rarely issues independent bids anymore because much of the high dollar purchasing is done in a bulk format through cooperatives and intermunicipal entities.

Adjournment

There being no further business, Mr. Crissman made a motion to adjourn the meeting. The meeting adjourned at 7:25 p.m.

Respectfully submitted,

Approved by,

Maureen Heberle
Recording Secretary

Gary A. Crissman
Township Secretary