

# **WEST AMWELL TOWNSHIP COMMITTEE MEETING**

**February 15, 2017 - 7:30 p.m.**

## **CALL TO ORDER AND STATEMENT OF COMPLIANCE WITH THE OPEN PUBLIC MEETINGS ACT**

The regular meeting of the West Amwell Township Committee was called to order at 7:35 p.m. Present were Mayor John Dale, Deputy Mayor Stephen Bergenfeld, Committeeman James Cally, Gary Hoyer, Clerk Lora Olsen and Attorney Philip J. Faherty III. Committeeman Zachary T. Rich was excused. Also in attendance were Ryan Rollero, Rob & Heidi Tomenchok, Dave Beaumont, Hal Shute and Cathy Urbanski.

Mayor Dale announced that this meeting is called pursuant to the provisions of the Open Public Meetings Act. Notice of this meeting was included in the Resolution faxed to the Hunterdon County Democrat and Trenton Times on January 2, 2017, was posted on the bulletin board in the Municipal Building on said date and has remained continuously posted as required under the Statute. A copy of this notice is and has been available to the public and is on file in the office of the Municipal Clerk.

The meeting was recorded via digital recording system.

## **FLAG SALUTE**

The mayor led those in attendance in the pledge to the nation's flag.

## **AGENDA REVIEW BY TOWNSHIP CLERK**

The following item was added: 11.G Animal Holding Facility.

## **ANNOUNCEMENTS**

- Dog Licenses are overdue. A late payment of \$25 per dog is now assessed.
- Municipal Offices Closed February 20<sup>th</sup> for Presidents' Day
- County Hazardous Waste Day, March 11<sup>th</sup>, 9am-1pm, Rt 12 County Complex
- Please Come to the Table if You Wish to Address the Committee
- Kindly Turn Cell Phones Off During Meeting

## **PRESENTATION OF MINUTES**

The February 1, 2017 Regular minutes were unanimously approved on motion from Hoyer, seconded by Bergenfeld.

## **OPEN TO THE PUBLIC/TOPIC NOT ON THE AGENDA**

Rob Tomenchok, 135 Rocktown-Lamb. Road, came forward concerning his loss of farmland assessment. He also expressed interest in knowing who else had been affected and stated that the reason given to him about there not being 5 acres of activity did not make him happy. His farming activity has been in place for 10 years with income produced every year. Mr. Tomenchok relayed his various connections with the farming world as well as his community support for agriculture. He is at his wit's end and is looking for help from the Committee as to what is going on. When questioned as to the entity that took this assessment away, Mr. Tomenchok stated that it was the County Tax Board. The tax assessor was contacted concerning the matter and relayed that he no longer inspects farms as this role is now at the County level. Mr. Tomenchok questioned why his farm was chosen, noting that he had not been approached or previously advised. However, he has been informed that submitting a woodlands management plan would re-instate his assessment. As to this latter item, he was told by the tax assessor when he purchased the property in 2005 that such a plan was not needed and was an unnecessary expense. An application for farmland assessment is filed every year and, although production numbers are up, everything is based on activity. Attorney Faherty advised that Mr. Tomenchok get on the agenda of the County Tax Board and then file an appeal. Mr. Dale relayed that the farmland assessment law changed and if a property is over 50% woods, a woodlands management plan is required. Mr. Tomenchok spoke about the configuration of his property and that his neighbor has more woods than he does. All that being said, contact has been made with Mr. Alpaugh to set up a woodlands management plan, but the 'why' is still an open question. He has also been told that there was an inspection of his property and that there's a new program in use for making a determination. Mr. Tomenchok requested information as to who else has been denied farmland assessment; the reason for same; and, the block/lot numbers involved. An OPRA request was recommended. Mr. Tomenchok will also request to be on the Tax Board agenda and intends to file an appeal. In the meantime, he will take steps to build his case and jump through the necessary hoops as it is his wish to leave a legacy to his son.

Dave Beaumont expressed his appreciation to Road Supervisor Rollero and the Township Committee for the STOP signs that were installed. He advised that most vehicles are now stopping and that the busses are also doing so. In addition, people are definitely slowing down.

### **SPECIAL PRESENTATION(S)**

**Reports by Department Heads** – Road Supervisor Ryan Rollero presented a comprehensive overview of his road improvement plan for 2017 and the process by which this will be achieved. His research has revealed that the most effective way to maintain the roads is with an overlay followed by chip seal. This process will improve roadway surfaces and provides a life expectancy of at least 10 years. Working with the Hunterdon County cooperative will eliminate engineering costs, formal bids, and should expedite the process. The program has been modeled after those of other townships. Mr. Rollero reviewed the five year plan set up last year and presented the 2017 plan which includes Goat Hill Road, Hewitt Road and Old York Road. The focus of the first two is access to the park and bringing the road bed into tip-top shape. The process to be used will be much cheaper than the cost of the 1/3 mile section of Rocktown-Lamb. Road. In addition, the proposed work will be within the same budget as last year. He further explained that the County's late adoption of their budget last year didn't allow for co-op pricing to be utilized in 2016. Mr. Rollero continued that the overlay/chip seal process is exponentially cheaper; is a proven technique that works well with the type of township roads involved; and, that his crew will work with the contractor for the prep and post work to achieve a quality product. Appreciation was expressed to Mr. Rollero for his ideas and presentation.

### **INTRODUCTION OF ORDINANCE AND/OR PUBLIC HEARING**

**Public Hearing:** Ordinance 01, 2017 CALENDAR YEAR 2017 ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS AND TO ESTABLISH A CAP BANK (N.J.S.A. 40A: 4-45.14)

Proof of publication in the January 26, 2017 issue of the Hunterdon County Democrat was presented. The ordinance has been posted and available to the public since its introduction at the January 18, 2017 Township Committee meeting. Mr. Dale read the Ordinance by title and opened the public hearing. Hearing no comments, the public hearing was closed.

*The Ordinance was unanimously adopted on motion by Hoyer, seconded by Bergenfeld.*

### **STANDING COMMITTEE REPORTS**

#### **Open Space**

- *Re-Sale Deed, 31/7:* Hal Shute spoke about the concern raised by the assessor that the deed language did not reference the 2003 easement. He has since been in touch with both Attorney Faherty and Attorney Dragan and there is a variety of opinion on the topic. Although there is no legal problem, as once the conservation easement is in place it doesn't go away, but the problem is that a future buyer needs to know about it and its restrictions. Attorney Faherty stated that he represented the Hunter estate and that the buyer is well aware of the restrictions. The title company was contacted, the deed prepared to transfer to new owner, and that the title company was retained by the buyer. He was informed that there was no need to change the deed as the information in the title binder references the property, the policy contains sections including being subject to right of way (ROW) and deed of Conservation Easement 280 pg 571. As to the description, the old deed from the previous transfer was added to it. The title company is satisfied, the owner knows about the restrictions, and the easement is referenced in the title. If the deed were to be re-recorded, the question is who would pay for it. Discussion ensued over such topics as title insurance not being a requirement; whether other deeds were recorded differently; possible problems on re-sale; concern over after spending millions something like this getting lost in the shuffle; and, that the township does have records that would preclude this. Mr. Shute again expressed the opinion that something this big should be on the actual deed. Mr. Bergenfeld commented that moving forward, this should be done and that there needs to be something in the agreement to this effect. However, going back is questionable. Mr. Dale offered that the Deed of Easement is a governing document. Questioned as to the cost of a re-recording, Attorney Faherty indicated that recording fees would run around \$180.00 in addition to attorney fees. Mr. Shute also noted that the Stieffle deed is even more confusing as it speaks of restrictions in the option agreement. He relayed that more discussion is needed with the Open Space committee and a determination made as to the number of properties involved.

- *Project Status Updates:* Mr. Shute reported that appraisals for **Runkle** are due by the end of the month. **Holcombe** is tentatively set to close on February 23<sup>rd</sup> but there's no commitment as the County attorney is on vacation. No request from the County for a check has been received and the CFO needs to know the dollar amount before there can be a closing. The CFO will be given a heads up on the matter.

### **Environmental**

- *Well Water Testing*: Cathy Urbanski explained that the Environmental Commission would like to offer well water testing in the spring, something that was last offered in 2013. The kits would be available at the municipal building on May 20<sup>th</sup> and would need to be returned the following Monday, May 22<sup>nd</sup>, for pick up by Raritan Headwaters. Approval was requested to hand out the flyer at a Saturday depot, posted to the website and school list serve, and printing of approximately 500 flyers by the County. Approval for the foregoing was given.

### **UNFINISHED BUSINESS**

#### **Possible Appointments** – none

**Updates** – 1) The **construction clearance** item was held. 2) Attorney Faherty reported that he received a call concerning the **well** on **Block 23 Lot 12**. Mr. Helleva relayed that he thought the problem had been solved due to a previous conversation with a township official, which Attorney Faherty construed to mean that there is no interest in digging a new well. Discussion ensued on whether a right to use has been acquired over time; whether that right was lost upon foreclosure; who would be responsible for clean water; whose electricity runs the pump; a potential sale of the property; and, restricting the ability to use the well to Mr. Helleva. Also that all expense in connection with the well be borne by Mr. Helleva. Attorney Faherty was requested to draw up a hold harmless and indemnification agreement but will first have another conversation with Mr. Helleva. 3) Mr. Bergenfeld relayed that the **fire house generator** is waiting for the gas company to install a meter, after which JCP&L will disconnect the power. According to an e-mail received from David McCreedy of Oliver Communications, the gas company was to send out a crew today to see what needs to be done. There is no guarantee that anything will be done at that time but there is some movement. JCP&L has made contact and a write out of what needs to be done will be prepared in order to provide a scheduled date. 4) Attorney Faherty reported on his conversation with Jeff Warford concerning title charges for **Block 46 Lots, 5, 6, 7** that came to \$4300. Mr. Warford will be in touch but as the attorney advised, title insurance is needed. This was a big title mess and costs are involved to clean it up.

**Fire Company Research** – Mayor Dale advised that this topic is now moot. A request for a statement of yearly contributions, their budget, and a certified financial statement is to be made to fire company officials. The Clerk will check the files for previous submissions.

**Request Received from Tilson for Verizon Wireless re: Consent to Locate & Operate in Right-of-Way**. Continued discussion on this topic commenced. Additional information has been provided by Mr. Cally who spoke at length concerning his research and readings to date. This included the San Antonio's annual master license fee, which allowed the small cells to come in but may not be applicable to New Jersey. Also mentioned was that Tilson is not the actual service provider but a secondary company who is trying to obtain the rights and who will be the ones facilitating the installation of the small cells on the poles. Thereafter, Verizon would rent space from them. The question remains, however, if Tilson is regulated by the FCC and whether they can prove that fact. Actually providing the service is stipulated by the FCC, but this is a gray area as mentioned in the League's paper. Currently there are these secondary companies coming in to trouble shoot and do the installation. As there is financial gain, they'll want to lease out to multiple vendors or other utilities. The Township has some oversight through the Planning Board but, with respect to the Township Committee, there's a resolution involved that allows the company to proceed. However, the Township cannot necessarily hold them up or say that it can't be done. The FCC says that Township has 150 days to give the company something reasonable, in writing, as to the specifics of what is and is not being allowed. The trick becomes trying to determine the best way to protect the community as companies other than Tilson would not be precluded. Mr. Cally suggested that ROW agreements with other agencies be sought, e.g., the State of New Jersey for state highways, the County, etc., as well as the agreement that Tilson has with Verizon as to contracting with them. Another question would be if Tilson has the ability to contract with other wireless carriers as then they are the ones to reap the financial benefits and be on the tower first. Exclusivity doesn't not have to be given in terms of using the poles but there has to be an agreement in place for that as well with the pole owner. Mr. Cally is of the opinion that the Township Committee should request this information from Tilson so that there is an opportunity to review the contracts already in place with other entities before deciding on how to proceed. Also mentioned was that nothing can be said about any health aspects of the use of these small cells as along as FCC guidelines are followed. There is no ability to set a different standard. Mr. Cally further noted that Tilson does not have to be given blanket coverage for the whole community, which means that other companies cannot be excluded, and that equal opportunity

be allowed. There can also be no charge for use, although the question of a master license is still open. As for granting access, this alone does not provide the ability to install new poles. To do so would need land owner permission and there are certain rights in that respect. However, these small cells can be installed anywhere through a negotiation process with the property owner. Every pole is separate and line of sight is important, which is why additional height is sought. The question of Tilson's status as not being a provider of the actual service in that they are not a utility was again noted as was collecting existing agreements for review and study. Concern was expressed about towns being inundated with these huge requests and the 150 day time-frame which limits a town's basic ability to function due to the concentration of effort required to deal with the process. Mr. Cally also advised that the FCC is accepting comments on their potential ability to override local say in ROW decisions. They ask for specific comments as to the process although if this has not happened, it would be difficult to make an assessment as to what to relay to the FCC. He also noted that it appears from his reading that the FCC is looking to thwart local ability to management ROWs with respect to cell pods...most likely because they license them and collect huge amounts of money. There's an organization called 'municipal solutions' that provides a list of things that should be considered as this group has dealt with several other states over the past 3-4 years. Mr. Cally will provide the link. The situation at the shore following Hurricane Sandy was referenced as Verizon made use of these pods so that didn't have to replace the copper wiring.

Dave Beaumont inquired as to what was driving the group to West Amwell and if coverage for the entire town was sought or just areas along major roads. Also, if there may be a longer term plan to eliminate Comcast. He was advised that these requests are happening all over the County.

Continuing with his presentation, Mr. Cally relayed that there are most likely several different entities that Verizon has contracted with in order to not have to deal with the process themselves. Mr. Hoyer added that these pods are typically used in denser areas in order provide a net and that, although they can be used in certain dead areas, it is limited to line of sight ability, but an upgrade to 5G, from his current 3G, would be a good thing. This is going to be an ongoing issue, per Mr. Cally, and urged the other members of the Committee to review the information that he provided for more insight. The March 1<sup>st</sup> meeting was where the Tilson presentation was tentatively scheduled, but has not yet been confirmed.

**Closed Session Resolution** (*Litigation*) – Held until later in the meeting.

## **NEW BUSINESS**

**Condition of Existing Electrical System; Possible Quote for Repair** – The pro-offered quote for replacing the compromised wire feed to the municipal building has not been received. A specific request will be made.

**Township Communications** – Heidi Tomenchok spoke to the condition of communications through a passive website which is not being used as well as being outdated, with the exception of Nixle. She proposed a communications outreach that would push information out to the community, noting that the money proposed for the flyers could be saved through such a tool. She envisions a group of volunteers for the purpose of seeing that appropriate information gets sent out. For example, dog licensing, garbage permits, the solar installation and upcoming road improvements. Mr. Beaumont questioned the capacity of the website but thought that the recommendation was an excellent way to reach out to the community. A brief exchange about how the volunteers would gather, produce and receive approvals ensued. A volunteer communications outreach committee consisting of Bob Birmingham, Leila Rice, Heidi Tomenchok and Dave Beaumont was unanimously approved to provide a more detailed proposal as to procedures, content, etc., on motion by Bergenfeld, seconded by Hoyer.

**Release of Performance Bond/JCP&L** – The Township Engineer, Bill Burr, has recommended the release of the referenced bond. His memorandum stated that the applicant has satisfactorily completed the site work and submitted as built plans, a sound analysis report, and a deed for the purchase of the adjacent properties, Lots 34, 35, & 36. He has no objections to the release of the performance bond. No maintenance bond is required.

## **RESOLUTION #40-2017**

WHEREAS, Jersey Central Power & Light Company has completed the JCP&L electric substation expansion project located at 7 Rocktown-Lamb. Road; and

WHEREAS, JCP&L has requested the release of their Performance Bond for the project; and

WHEREAS, the said expansion project has been inspected and approved by the Township Engineer; and

WHEREAS, no concerns were noted; and

THEREFORE BE IT RESOLVED by the Township Committee of the Township of West Amwell, County of Hunterdon, State of New Jersey that the requested performance bond established by JCP&L for the electric substation expansion project is hereby released

*The Resolution was unanimously approved on motion by Hoyer, seconded by Bergenfeld.*

**Zoning Consultant Status for 2017** – The agreement for this individual expired on December 31, 2016.

However, a bill for January has been received and no authorization exists as to renewal. Mr. Bergenfeld relayed that he and Mr. Rich spoke and were in agreement as to a 6 month extension as being beneficial. This agreement is to be reviewed at the end of June and a determination made as to where everything stands and what kind of services are going to be needed.

*A motion for a six month extension was made by Bergenfeld. Dale provided the second. Motion carried unanimously.*

**Cell Phones at Meetings; Use for Township Business; Recorded meetings** – Mayor Dale stated that he has two items to be covered with regard to this topic. Specifically, at the beginning of every meeting, it is stated that cell phones be turned off. This is for more reasons than just wanting it quiet. The concern is if an attorney sues us, and a cell phone is being used at the meeting, that cell phone can be subpoenaed and the user relieved of its presence. If the cell phone is used for township business, this can actually happen. Therefore, caution was advised about keeping cloud storage up to date so that in such an eventuality the information can be downloaded/restored. Additionally, Mr. Dale advised that he's had some complaints about people texting during the meetings with the general consensus being that this is very disrespectful to the people talking to the Committee, which is something he agrees about as well. Although leaving a cell phone in front of you in case of a family need to reach you is not objectionable, but if that were to happen, pick up the phone and leave the room. The second concern involved making sure that everyone is aware that these meetings are officially being recorded. Unofficial recording by someone in the audience is a different problem. However, the Committee is being recorded and these recordings are also discoverable. Therefore, it was advised that everyone count to three before blurting out something that could get the Township in trouble. It is important to think about what is said as it's going right into the microphone and onto the recording.

**Permit Fee Refund Resolution** –

RESOLUTION #41-2017

WHEREAS, it has been determined by the Construction Official of West Amwell Township that the following permit fee can be refunded due to the cancellation of Permit #16-00148+A as the work permitted in this update will not be completed and has therefore been voided; and

WHEREAS, the Township Committee has approved a refund of the following amount

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of West Amwell that the Treasurer is hereby authorized to refund the following amount to the applicant:

Applicant	Amount Refunded
Eric Zuccarelli	\$60.00
8 Chimney Hill Drive	
Lambertville NJ 08530	

*The Resolution was unanimously approved on motion by Hoyer, seconded by Bergenfeld.*

**Animal Holding Facility** – Lambertville City Clerk Cindy Ege has advised that Pierson Creek Kennels is willing to act as the impound facility for the City and West Amwell. The fee is \$30 per day per dog and the question is whether West Amwell is ok with this arrangements—for dogs

only—and, if so, an agreement with Mr. Kilmer will be needed. The situation for cats is still up in the air. The situation is if the ACO picks up a stray dog, a facility is needed until the owner is located. Attorney Faherty advised that options be weighed and see what the State mandates.

### **OPEN TO THE PUBLIC**

Mr. Tomenchok requested that the cell phone and recording information be codified and sent to all committees as a policy to abide by.

### **ADMINISTRATIVE REPORTS**

#### **Treasurer –**

##### Presentation of Bills for Approval:

#### **RESOLUTION #42-2017**

BE IT RESOLVED by the Township Committee of the Township of West Amwell that the vouchers listed on the Bill List, in the amount of \$696,694.72, dated February 15, 2017, as presented by the Township Treasurer/Chief Financial Officer, be paid from existing appropriations.

*Cally motioned to approve the evening's bills for payment, seconded by Hoyer, and carried unanimously.*

#### **Tax Collector –**

##### **- Redemption Resolution**

#### **RESOLUTION #43-2017**

WHEREAS Tax Sale Certificate #201603 for Block 28, Lot 1.51; 15 Northfield Court assessed to Vahidin Neslanovic and Kata Jubo was sold on October 11, 2016 to West Amwell Township, and

WHEREAS the amount of \$57.96 has been received from Unity Title and Abstract LLC for the owner of the property for the redemption of this certificate,

THEREFORE BE IT RESOLVED that the Treasurer be authorized to prepare, and the Mayor, Clerk and Treasurer be authorized to sign a check in the amount of \$57.96 payable to West Amwell Township.

*The Resolution was unanimously approved on motion by Cally, seconded by Dale.*

- The monthly report for January 2017 was received showing receipts in the amount of \$877,259.44.

**Construction** – The Permit Fee Log Summary for January 2017 reflect the issuance of 34 permits/updates for a total of \$21,639.00 for West Amwell. Forty one (41) CO/CA/CCO/TCO's were processed per the Certificate Log Summary. The Permit Fee Log Summary for East Amwell reported 19 permits/updates issued and \$6,280.00 collected. Thirty one (31) CO/CA's were processed according to the Certificate Log Summary.

**Court** – Not received

**Police** – The January 2017 Monthly Report showing 892 incidents, 72 summonses and 4 special complaints. Thirty five (35) summonses were issued in conjunction with the shared service with East Amwell.

**Website Review** – No comments received.

The preceding reports were received without comment.

**Closed Session Resolution** – This item was held from earlier in the meeting.

#### **RESOLUTION #44-2017**

WHEREAS, Section 8 of the Open Public Meetings Act, Chapter 231, P.L. 1975, permits the exclusion of the public from a meeting in certain circumstances, and

WHEREAS, this public body is of the opinion that such circumstances presently exist,

NOW, THEREFORE, BE IT RESOLVED by the Committee of West Amwell Township, County of Hunterdon, State of New Jersey, as follows:

1. The public shall be excluded from discussion of and action upon the hereinafter specified subject matter.
2. The general nature of the subject matter to be discussed is as follows:  
LITIGATION (Brookmill/Lubchansky)
3. It is anticipated at this time that the above stated subject matter will be made public when the matter has been resolved.
4. This Resolution shall take effect immediately.

*The Resolution was unanimously approved on motion by Bergenfeld, seconded by Cally.*

The Closed Session portion of the meeting was entered at 9:48 p.m. with a return to Open Session at 10:30 p.m.

#### **CORRESPONDENCE**

The correspondence as listed on the Agenda was ordered filed.

#### **ADJOURNMENT**

There being no further business, the meeting was unanimously adjourned at 10:31 p.m. on motion from Dale.

Respectfully submitted,

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Lora Olsen, RMC  
Township Clerk

APPROVED: March 1, 2017