

WESTTOWN TOWNSHIP BOARD OF SUPERVISORS REGULAR MEETING  
STOKES ASSEMBLY HALL, 1039 WILMINGTON PIKE  
Monday, August 15, 2011 7:30Pm

In attendance were Supervisors Chair Thomas A. Foster, Vice Chair Charles P. Barber and Police Commissioner Carol R. De Wolf; Township Manager Robert Layman; Westtown-East Goshen Police Chief John M. Dumond; Township Solicitor Robert F. Adams; and Planning Commission Member Elaine Adler. There were eleven guests in attendance.

**I. Call to Order.**

As there was a quorum present, Mr. Foster called the meeting to order at 7:35Pm. and led those present in the pledge of allegiance to the flag.

**II. Approval of Minutes (August 1, 2011 Regular Meeting).**

Mr. Foster made a motion, seconded by Ms. De Wolf, to approve the minutes of the August 1<sup>st</sup>, 2011 regular meeting (Mr. Barber was not present at the 8/1/11 meeting). Mr. Foster asked for public comment. Ms. De Wolf stated the Board had received an email from David Moldoff with a concern that he had been misquoted in the minutes. She asked that the minutes be tabled for review. Approval of the August 1<sup>st</sup>, 2011 minutes was tabled.

**III. Summary of Board of Supervisors Workshop 8/15/2011.**

Mr. Foster stated the workshop was devoted to discussions with URS pertaining to compliance with the DEP Consent and Agreement Order for the Township's Act 537 plane.

**IV. Departmental Reports.**

**A. Westtown-East Goshen Police Department – Chief John M. Dumond.**

Chief Dumond stated the Department responded to 439 calls in Westtown for the month of July. Because of the traffic concerns of residents on Route 352 Chief Dumond reviewed the dates that the Traffic Safety Unit was patrolling Route 352 and citations issued. Mr. Foster asked that this information be sent to the Medoro's and the Madison's, residents on Route 352.

**B. Township Solicitor Robert F. Adams.**

**1. Approve Settlement Agreement Chester County Outdoor, LLC. (Bill Board).**

In attendance for Chester County Outdoor were Thaddeus Bartkowski, and Gregg Adelman, his attorney. Thomas Comitta, Westtown Township Planning Consultant, was also in attendance. Notice of the Board's consideration of the settlement agreement was provided to all residents located in the C-2 Zoning District and to owners of properties within 500 feet of that District.

Mr. Adams reviewed the reasons for the settlement agreement. He stated that in January 2011 Chester County Outdoor, LLC. had made a Substantive Validity challenge against the Township's Zoning Ordinance stating that the ordinance was exclusatory of off premises advertising signs and billboards. Mr. Adams stated that Westtown's ordinance classifies 40 square foot signs for off premises outdoor advertising but that the ordinance was vulnerable to challenge. Mr. Adams stated that when the substantive validity of your ordinance is challenged it means the challenger feels that it contains substantive provisions that are invalid as a matter of law. A hearing was scheduled with the Township's Zoning Hearing Board but because of the preparation time and expert witnesses needed, the hearing was continued several times until the end of this month. In the interim the Township has come to a resolution of this matter with Chester County

Outdoor. Mr. Adams stated that settlement of this matter is separate from the recent outdoor advertising zoning amendment that the Board of Supervisors considered and adopted. That was a measure that the Board took to try and protect its ordinance against future challenges. The property on the west side of Route 202 from the Westtown Meat Market to the Route 202 bypass was rezoned C2. The rezoning provides for outdoor advertising signs by conditional use and set standards for the signs and requirements to mitigate the impact of the signs. The Township has considered a proposal from Chester County Outdoor to put an off premises sign on the Davis Oil property, 1018 Wilmington Pike, on which they have an agreement of sale. Mr. Adams stated that the proposed installation of a billboard on Route 3 is what precipitated the zoning challenge but that the Board felt the 202 location was preferable. He also stated that at the end of Mr. Bartkowski's presentation and comments by Mr. Comitta the meeting would be opened to public comment.

Mr. Comitta stated that the Board of Supervisors considered the overall cost of defending the challenge. This would be a great expense to the Township as it has been to other municipalities in the same situation. By creating the C2 District which will allow billboards the Township has taken a more reasonable approach to this issue than some other municipalities. Mr. Comitta stated that the Township could not force Chester County Outdoor to choose a site in the C2 District but the applicant had looked at the Davis Oil property and felt it would be a good location. Mr. Comitta said the applicant is proposing a monument sign which will be landscaped.

At this time Mr. Bartkowski presented a Power Point presentation on the proposed monument sign, the landscaping and proposed improvements to the site. (copies of the power point are available at the Township Office).

Mr. Adams opened the meeting to public comment.

James Cahill, 9 Jacqueline Drive stated that he likes the look of the monument sign and improvements to the site but expressed the following concerns. He stated that there was a gas leak at the site approximately 20 years ago and DEP had put in a monitoring well but he is not sure that total remediation has been completed. He also stated he is afraid that the sign will interfere with the sight visibility for vehicles exiting Old Wilmington Pike onto Route 202. Mr. Cahill asked how the landscaping would be maintained and also questioned if the lighting of the sign would be as powerful as the billboard lighting on Route 422. Mr. Bartkowski said there would be funds in escrow for maintenance of the landscaping. He stated that the lighting used on the billboards on Route 422 is old technology which they will not be using. Mr. Bartkowski stated that they will not move forward unless all environmental issues are satisfied. The old house will be removed as so far research shows that the house is not on the historical register. Ms. De Wolf would like the Township to look into the status of the old house.

Mr. Foster asked Chief Dumond if there have been any serious accidents in the area where the sign will be located. Chief responded that he is not aware of any but will review this. Mr. Foster asked Chief Dumond to have the landscaping plans reviewed by the Police Traffic Safety Unit. Ms. De Wolf asked if the applicant has a permit from PennDOT. Mr. Bartkowski responded in the affirmative and that the site is within PennDOT regulations. Ms. De Wolf asked if the applicant has looked at PennDOT's requirements pertaining to the ingress and egress of traffic from Jacqueline Drive. Mr. Bartkowski responded that PennDOT does not provide that analysis. Mr. Bartkowski also stated that as part of the agreement of sale they will have an independent environmental assessment. Mr. Barber said it is his understanding, by what Mr. Bartkowski has said, the applicant will not take title to the property if the environmental assessment fails. Mr. Bartkowski stated that is correct.

Stephen Oakes, 119 Oakbourne Road, said he was in attendance on behalf of his mother, who lives at 1017 Wilmington Pike. He asked how the properties on the east side of 202 will be buffered from the sign. Mr. Bartkowski stated that they have two landscaping options, depending on what the Board approves, the residents on the east

side will only see the landscaping not the sign face. Mr. Oakes said that the look of the sign is attractive but he is objecting to the sign because of traffic concerns.

Mary Beth Oakes, 1017 Wilmington Pike, thanked Mr. Bartkowski for his presentation. She stated her concern with the size of the sign and that the sign will change the character of the neighborhood. Ms. Oakes said she has concerns that the landscaping will not be kept and feels that the location of the sign will affect the traffic on Route 202 and cause accidents.

Mr. Comitta stated that in the draft settlement agreement the duration of the timing of the sign ads is six seconds. He stated that in reviewing this he feels the timing should be changed to seven or eight seconds. Mr. Barber asked how the six second timing was determined. Mr. Bartkowski stated every sign location is different as traffic moves at different rates of speed. Once the sign is installed they will have an opportunity to determine what will work best with the timing. Mr. Foster asked that the timing be changed to seven seconds. Mr. Bartkowski said he would be fine with the seven seconds. Mr. Adams stated this should be part of any motion to approve the agreement. Ms. De Wolf asked if the applicant is in compliance with the "dark sky" section of the Township ordinance pertaining to "spill over". Mr. Bartkowski stated that there will be zero spill over and they are in compliance in the agreement. Mr. Adelman speaking on behalf of the applicant stated that one of the restrictions under "dark skies" is that the light glare will not spill on neighboring properties or roadway.

Mr. Adams stated that the landscaping plan is an exhibit in the agreement. Mr. Comitta reviewed the landscaping plan. Ms. De Wolf asked the estimated cost of the landscaping. Mr. Bartkowski responded \$150,000 without the cost of irrigation. Ms. De Wolf asked for clarification on the environmental issue. Mr. Adams asked the applicant if the Phase 2 study is more compromised than previously thought would they file on another location or move on the Route 3 location. Mr. Bartkowski said in the event Phase 2 does not come back clean they have two choices: one to deduct any remediation from the purchase price; two if not financially feasible they would not move forward with the purchase of the property.

Mr. Cahill stated that he still feels that complete remediation was not done and would like to see test results from the Sunoco monitoring at the Liberty Gas station and the wells on the Papenfuss property. Mr. Adams stated that this is not in the Township's jurisdiction and this is not an opportunity to reopen the entire remedial investigation on these sites. He stated that Westtown cannot and will not do this. He also stated that the Phase 2 report that the applicant provides will be public record and that this is not an opportunity to cure problems that have existed for years if they do exist. He also stated that the applicant would not be obliged to cure these problems if they do indeed exist. Mr. Cahill said the answer you are giving me is that this is no one's jurisdiction. Ms. De Wolf said that she is well aware of the area and asked the applicant what remediation would they need for the sign and would Phase 2 be involved with this. Mr. Bartkowski said the site has been abandoned for half a decade and that anything they do will enhance the site. Mr. Adams stated this issue is ultimately under the control of DEP.

Thomas Haws, 1609 West Lynn Drive, asked if this location does not work out will the applicant proceed with the Route 3 location. Mr. Bartkowski said they are planning on moving forward at this location and the environmental issue would be the only thing that would change this. He stated he cannot predict what the next step would be.

Mr. Foster asked if the challenge to the Township Zoning Ordinance will be withdrawn once the agreement is signed. Mr. Adams said that upon entry of a final and unappealable court Order approving the settlement agreement the applicant would have ten days to withdraw the zoning order challenge with prejudice. Ms. De Wolf asked if the applicant will not apply for another sign in the Township. Mr. Bartkowski said it is their intent to enhance the Davis Oil property and create what they believe will be a pleasing gateway to Westtown. Ms. De Wolf asked Mr. Adams if accepting the agreement completely satisfies the Township from any further challenges. Mr. Adams said that it would not as he cannot speak as to how another lawyer would interpret our ordinance.

Ms Oakes said she does appreciate the Township saving money but would ask the Board to consider whether or not saving money with this agreement is worth putting lives at risk.

Mr. Adams asked that a letter from John Yori, 2 S. Garden Circle, opposing the billboard be made part of the minutes of this meeting.

Mr. Adams said he feels that the settlement agreement as proposed is a reasonable document. The only agreed upon change that was discussed this evening was in Paragraph 8:G changing the timing from six seconds to seven seconds. It was discussed that the landscaping would be reviewed at the time of installation for its effect on the east side of Route 202.

Mr. Foster stated no one wants a billboard in Westtown but he feels his concerns have been addressed and he is in favor of moving forward. He stated that he feels the Township would have not succeeded in the long run had they opposed the billboard. He also stated that Chester County Outdoor will be reimbursing the Township for our consultant costs. He also stated that the Township will try to research the old house on the property.

Ms. De Wolf said she does agree that the Davis property has its challenges and is an eye sore but her concern is the dangerous intersection of Old Wilmington Pike and Route 202. She feels a sign at this location will be compromising and distractive to traffic. Ms. De Wolf said she does not want to see a billboard, anywhere in Westtown as it is not in character with the beauty of our Township. Ms. De Wolf said that Westtown has tried not to have the appearance of the municipalities south of us on Route 202 with their abundance of signs and commercial establishments. Ms. De Wolf also stated that she felt that the Township should have continued to fight having a billboard in the Township. There are municipalities who have been successful in fighting this and even though it would have cost us over \$100,000 to her it would have been worth it to maintain the character of Westtown. Ms. De Wolf said she feels by allowing one billboard we will have more. She expressed concern about the maintaining of the landscaping and that the income from the sign would not have any benefit to the Township. Ms. De Wolf said she cannot support the agreement and the placement of a billboard at this location.

Mr. Barber made a motion, seconded by Mr. Foster, to approve the agreement with Chester County Outdoor LLC., with the proposed changes. Mr. Foster asked for public comment. There was not public comment. The Board of Supervisors approved the motion as presented, Ms. De Wolf opposed.

**C. Planning Commission – Elaine Adler.**

Mrs. Adler stated that the Commission has reverted to one meeting a month for the rest of the year unless there is need for the second meeting. She stated that the Rossiter project is still in extension as a new plan has not been received. Mrs. Adler said the Commission is working on revisions to the zoning ordinance and a proposed amendment to the C2 district. The Commission received Mr. Foster's comments on the fence ordinance and is preparing a new draft. The Commission is also working on an alternate energy ordinance and feels they need the help of a consultant or the Township Engineer in drafting the ordinance. Mrs. Adler also stated that the Commission discussed the updating of the Township's Comprehensive Plan. Ms. De Wolf said this was to be discussed at the workshop but the Board did not have the time to do this. Mrs. Adler stated that a consultant will be needed for this project. Ms. De Wolf said she feels that a plan for the Township open space should be the first thing addressed in any study.

**V. Public Comment-Non Agenda Items.**

David Moldoff, 1442 Johnnys Way, said he wanted to clarify what he said at the last meeting which is that 40% of the households in Westtown have children less than 18 years of age. He discussed with the Board the number of parks in Marple Township compared to what is in Westtown. Mr. Moldoff said a plan for the next ten years is needed so young children will be able

to play and learn the game. Mr. Barber stated that East Side Little League (“ESLL”) was offered a lease for the field at Penn Wood. Mr. Foster said the residents in the area of Penn Wood did not want baseball fields in their neighborhood. Mr. Barber said according to the WCASD the population is going down. Mr. Foster there was very little difference from 2000 to 2010 in the latest census. Mr. Moldoff said that the homes now being sold are to young families who want recreation facilities. Mr. Foster said that this is a regional issue and facilities will need to be shared. Mr. Moldoff said the Township has land which is being used for farming when Westtown is no longer a farming community and feels that the Township is not serving the needs of young families. Ms. De Wolf asked what the needs of ESLL are. Mr. Moldoff said 15 – 20 acres is needed for 4 to 5 ball fields. Ms. De Wolf said does this include parking. Mr. Moldoff responded in the affirmative. Mr. Barber asked Mr. Moldoff where he envisions this complex. Mr. Moldoff said the Cope or Stratton property. Mr. Barber said the Stratton property is prohibitive because of the traffic situation on Route 926. Mr. Foster said there are wetlands on these properties and there is no perfect piece of ground for what ESLL envisions. Mr. Moldoff said a plan is needed for how the open space in the Township is going to be used now and in the future.

Mr. Haws addressed the baseball field issue. He suggested talking to the WCASD about the acreage still available at Bayard Rustin. Mr. Foster responded at this time the School District is considering selling this acreage to help lower their debt. Mr. Haws said as a father and resident it is important to the Township to have sport facilities.

Mr. Moldoff said that he had met with the School District about Rustin and Starkweather but does not have a commitment. He also stated that he had a meeting with Westtown School but they did not want to make a long term commitment. Mr. Barber asked how long a commitment they are looking for. Mr. Moldoff responded at least 25-30 years.

**VI. Old Business:**

There was no old business.

**VII. New Business.**

**A. Award Sodium Chloride Bid for Winter 2011-2012.**

Mr. Foster stated that the bids received were \$7.00 to \$8.00 over last year and not reflective of the PennDOT bids which actually went down from the previous year. The consensus of the Township Manger and Road Master is to reject the bids and re-bid.

Ms. De Wolf made a motion, seconded by Mr. Barber, to reject the Sodium Chloride Bids for Winter 2011-2012 and rebid. Mr. Foster asked for public comment. There was no public comment. The Board of Supervisors unanimously approved the motion as presented.

**B Approve Bid Award Oakbourne Mansion Air Conditioning Unit.**

Mr. Foster stated that the cost of the installing air conditioning for the Adam Room and Chapel Room would be \$7,300. Ms. De Wolf asked if this is in this year's budget. Mr. Layman responded that it is not a line item in the budget but would come out of the Oakbourne Mansion Commission's budget which is \$3,000. The Commission has had very few expenses this year and that the revenues for events at the Mansion are higher than were expected. Ms. De Wolf said she has mixed feelings about doing the work this late in the year and felt it should be in next year's budget. Mr. Foster stated this has been discussed for two years and would like to move forward with the installation. Having the air conditioning installed now will certainly help with scheduling events for next year. Ms. De Wolf asked why not do the whole first floor now. Mr. Layman said that it is not certain how the air will flow and how much of the Mansion it will service. He stated he would like to determine this before spending additional funds. He also explained that if a project is under \$10,000 the Township can obtain three quotes but if it is over \$10,000 a bid would have to be prepared and advertised.

Mr. Barber made a motion, seconded by Ms. De Wolf, to approve the installation of air conditioning in the Adam Room and Chapel Room in Oakbourne Mansion in the amount of

\$7,300.00. Mr. Foster asked for public comment. There was no public comment. The Board of Supervisors unanimously approved the motion as presented.

**VIII. Public Comment.**

There was no public comment.

**IX. Payment of Bills.**

On the motion of Ms. De Wolf, seconded by Mr. Barber, the Board of Supervisors unanimously approved payment of the bills as presented.

**X. Adjournment.**

On the motion of Ms. De Wolf, seconded by Mr. Barber, the meeting was adjourned at 10:00Pm.

Respectfully Submitted,  
Robert Layman, Township Manager