

**TOWNSHIP OF SALISBURY
LEHIGH COUNTY, PENNSYLVANIA
MINUTES FROM THE BOARD OF COMMISSIONERS
June 23, 2011
REGULAR MEETING – 7:00 PM**

The Public Meeting of the Salisbury Township Board of Commissioners was held on the above date in the Township Municipal Building located at 2900 South Pike Avenue, Allentown, Lehigh County, Pennsylvania.

Members attending:

James Brown, President
Robert Martucci, Jr., Vice President
Norma Cusick, President Pro-Tempore
James Seagreaves
Joanne Ackerman

Staff attending:

Randy Soriano, Township Manager
Cathy Bonaskiewich, Assistant Township Manager/Finance Director
John Andreas, Director of Public Work
Allen Stiles, Chief of Police
Cynthia Sopka, Director of Planning & Zoning
John Ashley, Esquire, Township Solicitor
David Tettermer, representative of Township Engineer, Keystone Consulting Engineers

CALL TO ORDER

President Brown called the meeting to order at 7:00 P.M.

PLEDGE OF ALLEGIANCE FOLLOWED

NOTIFICATION

Mr. Soriano informed the attendees that all sessions of the Salisbury Township Board of Commissioners regular meetings are electronically recorded for the purpose of taking the Minutes. All public comments on agenda items would be taken prior to the vote. All public comments related to non-agenda items will be taken after the agenda has been satisfied.

Mr. Soriano announced that the Township records the meetings and archives its tapes and are available pursuant the Right-to-Know Law, if requested.

Mr. Soriano reminded everyone of the three minute rule and asked that everyone who wishes to speak to come to the podium, sign up, announce themselves, and speak clearly in the microphone. Mr. Soriano added that the speaker has a choice not to list his/her address; however, it is preferred

that the speaker announce if he or she is a Township resident. He noted that if a resident does not divulge his or her address, it will impair the Township with administrative follow ups on a particular issue.

APPROVAL OF FINANCIAL REPORT AND BILLS PAYABLE

Motion by Commissioner Cusick, seconded by Commissioner Ackerman, to approve the unaudited Financial Report for the period ending May 31, 2011 and list of Bills Payable for the period 6/04/2011 through 6/17/2011.

Roll Call:

COMMISSIONER ACKERMAN -YES
COMMISSIONER SEAGREAVES-YES
COMMISSIONER MARTUCCI-YES
COMMISSIONER CUSICK-YES
COMMISSIONER BROWN-YES

The Motion passed by 5-0

MINUTES

June 9, 2011

Commissioner Brown declared the June 9, 2011 Board of Commissioners Regular Meeting Minutes approved as presented.

NEW BUSINESS

TREE REMOVAL APPEAL

Consideration of the appeal by Mr. Nabeel Suleiman, 1004 S. 24th Street – Appeal of notice from Shade Tree Code Official to replace a street-tree damaged from excessive cutting.

Mr. Soriano stated that a year ago the Board of Commissioners adopted Ordinance 560 to adopt and promulgate rules governing shade trees. He noted that basically the Ordinance created a Shade Tree Code Official that acts as the administrator for requests regarding shade trees. Mr. Soriano commented that the Ordinance allowed the Board of Commissioners to act as an Appeal Body for residents to use to appeal decisions of the Shade Tree Official.

****Note: The following discussion is verbatim***

Mr. Suleiman- “Good evening. As he spoke, my name is Nabeel Suleiman and I’m appealing the shaded tree removal. I’m just going to go over some events that Sandy and I had went through in regard to the so-called tree removal. My name is Nabeel Suleiman; I’m a Penn State grad, four-year degree in Mechanical Engineering Technology. I deal with Code Officials through a daily basis. I purchased the property in late 2008, the property was neglected. So I’m here in the process of trying to restore the landscaping, and in doing so, some of the trees are a

little overgrown. So the tree that Sandy and I discussed was a little overgrown. I trimmed it back to the main. The tree itself is not cut-off as it is mentioned. I have a picture here of the tree. The main trunk is still there and the main branches are still there. So I want to pass this along.

Mr. Soriano- “We will make that Exhibit Applicant #1, if you wish.”

Mr. Suleiman- “My first appeal... I mean, I have two notices that was first given to me from Sandy Nicolo goes back to May and it pretty much states that I’m in violation of Chapter 27 and subject to enforcement proceedings as referenced of Section 616 and 617. So I came into the office to talk with Sandy Nicolo and requested a copy of the Code. So when I reviewed the Code, I replied with an appeal, an appeal in which I pretty much stated, according to Chapter 27, Section 516, Note 2, “Except otherwise hereby, it shall be unlawful for any person to cut down any tree in any zone in Salisbury which is at six inches or more in diameter, measured at point four and one half feet above the ground.” This clearly states if the tree is cut down. As you can see, the tree is not cut down; the tree is trimmed. And I told Sandy, therefore, I’m not in violation. So this is a copy of what I sent to him.

After that, I get another notice in the mail and I actually had a phone conversation with Mr. Nicolo saying that the documents that were sent before saying that I was in violation of Chapter 27 was incorrect. Then he sent something else telling me that this is the Ordinance I have to follow. So after reviewing that Ordinance, Ordinance No. 06-2010-560, as mentioned earlier this evening, this Ordinance is new about a year ago. And when I looked at this, at the time when I cut the tree, this Ordinance wasn’t in effect. This Ordinance became into effect June 24, 2010, and me cutting the tree is prior to that date. So therefore, this is not applicable to my matter, due to the fact that the issue happened prior to this and this wasn’t an Ordinance.

If it was an Ordinance, and I was trying to look at the website to check to see if I’m in violation, this is not even listed on the website. I had to come in and get this from Mr. Nicolo so I can see what’s going on and what violation I pretty much violated. And according to this, this doesn’t apply, again, because it wasn’t in effect at the time when I cut the tree... actually when I trimmed the tree. So therefore, I’m not in violation.”

Attorney Ashley- “Is that all you have for the Board?”

Mr. Suleiman- “Yes I do, sir.”

Attorney Ashley- “Are there any questions from the Board for this witness?”

Commissioner Martucci- “I guess the question I have is for Sandy. He’s saying that he cut this tree prior to our Ordinance. Did we not have any Ordinance in place prior to that?”

Mr. Nicolo- “Yes. It would still fall under the SALDO requirements. And also under 516, I believe it is, cutting and damaging a tree. At the time, Mr. Suleiman said that... the reason this has been going on so long is because Mr. Suleiman had said that the tree would come back; it would sprout new growth. So I wanted to make sure that I gave it a good amount of time before we moved on with a violation. And it did not have new growth on it.”

Mr. Suleiman- “Could you please specify where that is at in Section 516 so we are all on the same page? Because I’ve reviewed 516 and it goes into tree harvesting and it only mentions a certain section in cutting down a tree.”

Mr. Nicolo- “516: Killing and Damaging 7(B): ‘Shall be unlawful to purposefully kill a tree by artificial means including, but not limited to, girdling, smothering or the application of poisonous chemicals.’ You cannot kill or damage a tree either.”

Mr. Suleiman- “Yeah that’s during construction. This is not in doing construction. I’m not constructing anything. It’s what it says, ‘during the construction or installation of a building or structure.’ I’m not doing neither.”

Ms. Sopka- “Construction is a second entity.”

Mr. Suleiman- “It says, ‘during construction or installation.’”

Ms. Sopka- “Yes, in Section A.”

Mr. Suleiman- “I’m not doing any construction or installation of anything.”

Mr. Nicolo- “According to SALDO requirements of Green Acres subdivision... According to SALDO that proves subdivision, ‘after 18 months, the land owner, tenant, or his agent, if any, shall jointly and severally responsible for maintaining all street tree or other required landscaping in good condition, free from refuse, debris, weeds and undergrowth. All trees, shrubs, ground covers, and other plant materials must be replaced within 120 days if they die...”

Mr. Suleiman- “I’m sorry but that information hasn’t been applied to me, and I cannot challenge that because I haven’t reviewed the code. What I’ve challenged is what’s given in front of me and the information I was provided. And according to the information I’m provided and several documents that were sent to me stating that I’m in violation of Chapter 27, which I’m not, then I’m seeing I’m in violation of Ordinance 06-2010-(560), which I’m not because this is prior to date, now he’s telling me that I’m in violation of something else. I mean we have to get the facts straight because I came in here... First of all, when I came to you first, I wanted to know what the appeal process was. That information was not correct given to me. So therefore, research had to be done to get that information correct. Second of all, the multiple letters, and now the change in what violation that I violated, is in question now.

Mr. Nicolo- “Well you would’ve had to go to the Zoning Hearing Board under the original one. That would’ve been a whole different process.”

Mr. Suleiman- “If that was the case, the process had to have been spelled out and it has not. I’m going with what I was given and according to what was given, I’m in no violation. And I went to the website and checked the website and I checked every single code that there is, and I haven’t found anything saying that I’m in violation.”

Mr. Soriano- “Mr. Suleiman, the purpose of your appeal is in front of the Board of Commissioners pursuant to what Ordinance? 560, right?”

Mr. Suleiman- “Well it changed.”

Mr. Soriano- “Well I know, but I think what Mr. Nicolo did is instead of citing you under the Chapter 27, which is a Zoning Ordinance, this Board has no jurisdiction. You would have to then appeal that to the Zoning Hearing Board. He withdrew his citation and cited you under Ordinance 560, which gives now the Appeal Board of the Township Commissioners the right to hear your appeal. So you’re in front of this body under 560. Now you can argue the grandfather issue of your tree, which I think you’re making that the Ordinance pre-dated your tree. I think that’s your issue here. To talk about Chapter 27 or SALDO is not pertinent to this appeal. I believe that’s what you have done, right? Correct? That’s why you’re in front of the Board?”

Mr. Suleiman- “Yeah, I’m appealing the whole process.”

Mr. Soriano- “Ok, but you’re appealing specifically the notice of Mr. Nicolo sent you pursuant to Ordinance 560...”

Mr. Suleiman- “Correct.”

Mr. Soriano- “... which gives the jurisdiction of this Board to hear your case.”

Mr. Suleiman- “Correct.”

Mr. Soriano- “Ok. So now you have to state your case pursuant to that Ordinance. And I think what you’re - I don’t want to put words in your mouth - but I think what you said is that the Ordinance is passed in 2010 and it pre-dates the condition of your tree? Is that what you’re saying?”

Mr. Suleiman- “It past-dates when the event happened. My event happened in May, the Ordinance was passed on June 24.”

Mr. Soriano- “Was there anything in the Ordinance that grandfathers the trees?”

Mr. Suleiman- “I haven’t seen anything. It has some conflicts with Chapter 27.”

Mr. Soriano- “Well that’s not under their jurisdiction. The Board that deals with Zoning Ordinances is the Zoning Hearing Board. This is not the Zoning Hearing Board. This is the Township Board of Commissioners, which is the body that is pursuant to Section 10, as I recall, of 560. So what you have done to appeal that notice, pursuant to that Section, and this is the Board that has to deal with 560, not Chapter 27. You’re dealing with zoning matters, we’re not talking about zoning matters even though Mr. Nicolo did... we could’ve cited you but then you’d have to appeal to the Zoning Hearing Board and you basically sent a letter, as I recall, to the Board of Commissioners, which at that time I said that was not the body to appeal. So you appeal to the Board under 27 of the first case. That was the wrong appeal. That was the wrong forum to

appeal that. That's when Mr. Nicolo sent you a revised notice under 560 that gives you the right now to be here."

Mr. Suleiman- "Ok."

Mr. Soriano- "All right, now that we've determined what your role is under 560, you can now proceed with your testimony and questions for either the applicant or Mr. Nicolo."

Commissioner Martucci- "I have a question for Sandy. The issue here is what? That he took this action without a permit?"

Mr. Nicolo- "Yes."

Commissioner Martucci- "Number one. Number two, he needs to replace the tree that he cut down? That's the two main issues?"

Mr. Nicolo- "Yes."

Commissioner Martucci- "And do you have a problem with the fact that there was... that you didn't pull a permit and you're being cited for that? Or is your problem that you do not want to plant another tree in place of one that you cut down?"

Mr. Suleiman- "Well I don't... my intention was that the will grow back."

Commissioner Martucci- "And do you think this tree is going to grow back?"

Mr. Suleiman- "That is what my intentions are. As I stated, there's nothing in here stating that I cut the... you're saying cut the tree. I trimmed the tree. The tree is not cut down."

Attorney Ashley- "It says cutting the tree, it doesn't say cut the tree down."

Mr. Suleiman- "It says cut the tree down. It says, 'except as where hereby provided...'"

Attorney Ashley- "That's not a tree that's left there though."

Mr. Suleiman- "... 'shall be unlawful for a person to cut down any type of tree.'"

Attorney Ashley- "That's not a tree. That's a stump."

Mr. Soriano- "That's a trunk. That's a dead stump."

Commissioner Martucci- "I don't see that coming back. I'm not a tree person, but..."

Attorney Ashley- "And how long has it been since he cut it, Sandy?"

Mr. Nicolo- "Since 2010... June, May."

Attorney Ashley- “So roughly a year?”

Mr. Nicolo- “Yeah.”

Attorney Ashley- “Any growth at all?”

Mr. Nicolo- “No.”

Attorney Ashley- “Nothing green?”

Mr. Nicolo- “Moss.”

Attorney Ashley- “Moss? When’s that tree going to grow back? How long is it going to take?”

Mr. Suleiman- “I’m not a tree expert; I cannot answer that question.”

Attorney Ashley- “So you can’t expertly tell us that it is going to grow back.”

Mr. Suleiman- “Well you can take a look at the picture. There are some life there, there is trims coming up from the stop of it so it’s still alive. I saw tree cutters cut trees like back to the limbs and they have grown back.”

Attorney Ashley- “But you just said you’re not an expert, so you really can’t give us an opinion on how long it’s going to take for that tree to grow back.”

Mr. Suleiman- “I’m just saying with my pertinent experience cutting trees. I’m not in there for life, but I’ve pretty much abided by every law, Chapter 27, there is.”

Attorney Ashley- “But you’re not before Chapter 27 here, that’s under the Zoning Ordinance and that’s what’s being explained to you. This is the Tree Ordinance, the Shade Tree Ordinance, that’s applicable to this.”

Mr. Suleiman- “But it’s not applicable...”

Attorney Ashley- “It is applicable.”

Mr. Suleiman- “It’s not because it’s prior to the date.”

Attorney Ashley- “There was an Ordinance in place before that. And you didn’t comply with that Ordinance either, did you? Did you even get that Ordinance?”

Mr. Suleiman- “It wasn’t handed to me.”

Attorney Ashley- “No. And this tree that you said you didn’t get a permit to trim it, correct?”

Mr. Suleiman- “No, I did not.”

Attorney Ashley- “And it’s over a year that it’s been in this condition and there’s no branches growing on it, there’s no sprouts coming of it in places?”

Mr. Suleiman- “If you take a look out of, there is sprouts growing out of it, at the bottom of it.”

Attorney Ashley- “Sandy, have you seen this tree?”

Mr. Nicolo- “Yes.”

Attorney Ashley- “Is there anything growing out of it?”

Mr. Nicolo- “No.”

Attorney Ashley- “And there hasn’t been anything growing out of it for a year?”

Mr. Nicolo- “Right.”

Commissioner Brown- “Did you consult a professional tree trimmer before you took a chainsaw and went out there?”

Mr. Suleiman- “No I did not. I had a previous place where they had a lot of trees and I had cut those down and I had seen a company come out and trim them back and they trimmed them back to the main, which I did, and they grew back.”

Commissioner Martucci- “Sandy, anyone in the Township, or anywhere for that matter, has access to the SALDO and Ordinances, do they not?”

Mr. Nicolo- “They do have access, yes.”

Commissioner Brown- “Yes, part of the question here would be the definition of trimming a tree and the definition of cutting a tree – cutting it to where it’s not going to grow any longer. I’m not a tree expert by any stretch of the imagination, but looking at this, I mean just common sense would look at this and say I don’t see this tree growing back. I’m thinking in my mind that the tree was cut and not trimmed. Now look at the size of the trunk that you cut off of there.”

Mr. Suleiman- “This tree is not a typical tree that you see that grows continuous. It’s straight up and then flares out. So if you think of a tree, of a main trunk running that way, it wasn’t like that.”

Commissioner Brown- “I can see that.”

Mr. Suleiman- “It was coming up and it was just a puff. So it was little branches coming off that main, that’s all it was.”

Commissioner Seagreaves- “How tall was it originally?”

Mr. Suleiman- “What’s that?”

Commissioner Seagreaves- “How tall was it originally?”

Mr. Suleiman- “It was hanging over beyond into my driveway and things were falling onto my driveway, making my driveway a mess.”

Commissioner Brown- “But you didn’t answer his question. How tall was it? Do you have any idea? I mean, you just stated that where you used to live there were a lot of trees there and you trimmed them back so I’m thinking you might have some...”

Mr. Suleiman- “I would say it’s about 70 feet.”

Commissioner Seagreaves- “70 feet? And how tall is this now? Six feet?”

Mr. Suleiman- “No, it’s taller than that.”

Commissioner Seagreaves- “Eight feet?”

Commissioner Brown- “Say ten feet? So you cut 60 feet off? So that’s like 90 percent?”

Mr. Suleiman- “If you look at it that way, yeah.”

Commissioner Brown- “Yeah, 90 percent of the tree was either trimmed or cut, depending upon how you want to...”

Attorney Ashley- “It was removed.”

Mr. Suleiman- “Define ‘removed’ for me.”

Attorney Ashley- “Well it was there and now it’s gone... so it was removed.”

Mr. Suleiman- “The tree itself?”

Attorney Ashley- “Everything that was on that tree that you cut off is removed, right? It’s not there anymore. It was 60 foot tall and now it’s maybe eight or ten feet at best, so 50 feet of the tree, plus all the vegetation and all the branches that have grown out of it, that’s all gone, right? Is it gone?”

Mr. Suleiman- “Ok. I’m going to answer it.”

Attorney Ashley- “Well that’s a yes or no question. It’s either yes it’s there or not it’s not. I’m looking at the picture, is the 60 foot of the tree still there?”

Mr. Suleiman- “Let me respond. Like you said, 60 percent of the tree is there, which you stated is still a tree. But the tree itself is still there as you stated in your sentence.

Attorney Ashley- “Is this stump 60 foot high?”

Mr. Suleiman- “What was that?”

Attorney Ashley- “Is that stump 60 foot high?”

Mr. Suleiman- “Let me ask you this question...”

Attorney Ashley- “No, you answer my question. Is that stump 60 foot high?”

Mr. Suleiman- “No it’s not.”

Attorney Ashley- “So whatever was up to 60 feet down to whatever the stump is, that’s gone, right? Is it gone or not?”

Mr. Suleiman- “Like I said before, correct.”

Attorney Ashley- “And was this just a stick tree or did it have branches that came off of it?”

Mr. Suleiman- “I think I answered that question before when you asked the first question.”

Attorney Ashley- “There were branches that came off of it. They’re all gone, right?”

Mr. Suleiman- “Yes.”

Attorney Ashley- “The branches are gone?”

Mr. Suleiman- “Yes. I’m repeating myself again.”

Attorney Ashley- “Yeah, well, you’re answering my questions because you’re trying to insinuate that there’s something more there that isn’t. You removed most of that tree. It’s removed. It’s gone.”

Mr. Suleiman- “Ok, let me go this route. Once you plant a seed of something, what grows first? What grows first?”

Commissioner Brown- “The roots.”

Mr. Suleiman- “Then after the roots, what else grows? A trunk. And after a trunk grows, then leaves grow.”

Attorney Ashley- “But the question is if you remove that... if it was there and it’s not there... the tree is not there. The tree’s not there, is it?”

Mr. Suleiman- “I’d like to speak so let me speak.”

Attorney Ashley- “No. I want...”

Mr. Suleiman- “I’m going through steps of vegetation where you plant the seed, you first get roots, then you get a trunk and then after the trunk you get leaves. That’s how a tree grows.”

Attorney Ashley- “I understand that. And you know what; part of the trunk is gone, correct?”

Mr. Nicolo- “Can I speak for a second? I don’t know the type of tree, but when these trees are planted in the development, they’re not grown from a seed. They’re already...”

Commissioner Brown- “They’re already saplings that are planted in the ground. They aren’t grown from a seed in a development.”

Mr. Suleiman- “They would have to grow somewhere to be that sapling.”

Commissioner Brown- “That’s true.”

Mr. Soriano- “Sandy, was that part of a subdivision?”

Mr. Nicolo- “Green Acres.”

Mr. Soriano- “The original plan shows the tree?”

Mr. Nicolo- “Yes.”

Commissioner Brown- “I think we’ve heard enough. Joanne, do you have any questions?”

Commissioner Ackerman- “Did you saw a tree down behind it too?”

Mr. Suleiman- “What was that?”

Commissioner Ackerman- “In the back here, it looks like you sawed another tree down.”

Mr. Suleiman- “Yes I did.”

Commissioner Seagreaves- “Did that grow back?”

Mr. Suleiman- “It has... Sandy like you mentioned...”

Mr. Nicolo- “I actually didn’t... For one tree that’s on your property... I didn’t really pay attention to that.”

Commissioner Ackerman- “I thought that possibly the limit; with the amount they can have... like only saw two or three... I was wondering did you really check out the yard to see how many trees that have been taken down other than this by the curb?”

Mr. Nicolo- “No, I did not observe anything in the yard.”

Mr. Suleiman- “By code, you’re allowed three a year. By code, one you can cut without a permit.”

Commissioner Brown- “But you cut two.”

Commissioner Ackerman- “In my estimation, this is...”

Mr. Suleiman- “The one behind, it’s trimmed back also. That was a smaller tree, like a little Japanese Maple goes up that way.”

Commissioner Brown- “Do you have any questions for him?”

Commissioner Seagreaves- “No sir.”

Commissioner Cusick- “No questions.”

Commissioner Martucci- “Nothing.”

Commissioner Brown- “Sandy, do you have any closing remarks?”

Mr. Nicolo- “No.”

Commissioner Brown- “No. Do you have any closing remarks before we take a vote?”

Mr. Suleiman- “I do one thing. As I mentioned before, I’m not here to judge anybody, I’m here just to restore this landscaping that’s there. It’s been overgrown, it’s been overlooked by a previous owner that was there. She was elderly; she couldn’t take care of it. So I’m here trying to restore this landscaping. It’s been a challenge because some of it is overgrown and I’m doing it as best as I can. And for someone to challenge me on this, it gets very frustrating. And in the case of cutting the trees down, there are more than one resident that has cut the trees down within the limit. Now if I’m subject to penalties, everyone has to be penalized and I don’t think I should be penalized because of the Ordinance that was out of date and Chapter 27, which I’m not violated for.

Mr. Nicolo- “Can I say something now?”

Commissioner Brown- “Yes.”

Mr. Nicolo- “Mr. Suleiman’s concerned about his landscaping but having a dead tree stump in his yard doesn’t sound like something you would want to have part of your landscaping.”

Mr. Suleiman- “Everybody is entitled to the way they want their appearance to be. I cannot question how you want your landscaping to look.

Commissioner Cusick- “We need a motion?”

Commissioner Brown- “Yeah.”

Commissioner Cusick- “Motion to deny the appeal?”

Commissioner Brown- “We need to decide what the Motion will be. So we’re looking for a Motion to either...”

Attorney Ashley- “Your decision was that... was what?”

Mr. Nicolo- “The tree should be replaced with the tree that meets the SALDO.”

Attorney Ashley- “And he’s appealing that decision?”

Mr. Nicolo- “Yes.”

Attorney Ashley- “So you decide either he’s got to replace the tree or not. You’re going to deny his appeal and make him replace the tree or grant his appeal and he doesn’t have to replace it.”

Motion by Commissioner Cusick, seconded by Commissioner Martucci, to deny the Appeal of Mr. Nabeel Suleiman, 1004 S. 24th Street, and affirm the decision of the Code Tree Official concerning the replacement of the Shade Tree.

Roll Call:

COMMISSIONER ACKERMAN -YES
COMMISSIONER SEAGREAVES-YES
COMMISSIONER MARTUCCI-YES
COMMISSIONER CUSICK-YES
COMMISSIONER BROWN-YES

The Motion passed by 5-0

Commissioner Brown- “One note, you keep saying Chapter 27 and that’s not what you’re here for. You’re here for the Code of 560; you didn’t get a permit to cut the tree down. And trimming a tree and cutting a tree are two different things. In my opinion, this is clearly cut and not trimmed. I do not envision this tree growing back whatsoever, so that’s why it would be denied so you would have to take that down and plant the other tree, which we have a list of trees that would be acceptable.”

ORDINANCES

Lock Box Ordinance Public Hearing.

Mr. Soriano stated that upon further review of the Uniform Construction Code Statute and the procedural timelines needed to meet when an amendment is requested, the Township needs to further move down the date of the Public Hearing for the new Lock Box Ordinance. He noted that initially, the Code Officials submitted the required letter with the Labor and Industry to satisfy Section 7210.503 (a) (b), and the response from L&I was that the Ordinance exceeds the requirements of the UCC and may further proceed to adopt the change following the requirement found in 35 P.S. Section 7210.503.

Mr. Soriano commented that in order to comply with the Public Hearing Section, the Township must advertise the Public Hearing to meet Subsection (e) and (f). He noted that a copy of the Public Hearing Notice must also be filed 30 days prior to the date set for the Public Hearing in order for L&I to publish this on their website.

Mr. Soriano noted that the Public Hearing date of June 23, 2011 would have not mustered the requirements since there was insufficient time to send a Notice to L&I. He commented that the Board must choose a date far in the past in order to be able to comply with subsection (f), therefore; we are proposing a date in late July to comply with the 30 days window.

35 P.S. Uniform Construction Code

§ 7210.503. Changes in Uniform Construction Code.

(a) ADMINISTRATION. -

(1) Municipalities may enact ordinances which equal or exceed the minimum requirements of Chapter 1 of the 1999 BOCA National Building Code, Fourteenth Edition, or successor codes, relating to administration consistent with the provisions of [section 501\(c\)](#).

(2) An ordinance adopted under this subsection applicable to the exception under section 104(b)(8) may require compliance with any of the following standards:

(i) Flame propagation criteria of the applicable edition of NFPA No. 701.

(ii) The ICC Electrical Code.

(iii) International Fire Code criteria as to number of portable fire extinguishers.

(b) MINIMUM REQUIREMENT. - Subject to the provisions of this act, no municipality may propose or enact any ordinance which is less than the minimum requirement of the Uniform Construction Code. (Satisfied)

*(c) MODIFICATION OF MINIMUM REQUIREMENT. - Subject to the provisions of this act, the municipal governing body may propose and enact an ordinance to equal or exceed the minimum requirements of the Uniform Construction Code under the law governing the adoption of ordinances in that jurisdiction. **An ordinance under this subsection shall not be effective nor enforceable unless subsections (d), (e), (f), (g), (h), and (i) have been satisfied.** Municipalities may enact ordinances pursuant to this section which adopt additional code requirements for alterations or repairs to residential buildings. Municipalities may enact ordinances pursuant to this section which adopt stricter code requirements than required by this act for the regulation of utility and miscellaneous use structures.*

(d) PUBLIC HEARING. - *The municipality shall hold at least one public hearing prior to adoption of the ordinance. (Proposed July 28, 2011)*

(e) NOTICE OF PUBLIC HEARING. - *The municipality shall place notice in a newspaper of general circulation in the municipality at least seven days, but not more than 60 days, in advance of a public hearing to consider the proposed ordinance.*

(f) FILING OF PROPOSED NOTICE AND ORDINANCE WITH DEPARTMENT. - ***The municipality shall provide notice and file a copy of the proposed ordinance with the department at least 30 days prior to public hearing.*** *The notice shall contain the time and place of the public hearing and a summary of the changes proposed by the ordinance, including code sections affected by the changes. The department shall make proposed ordinances available for public inspection and shall post the notice on its internet website within seven business days after receipt. (Township will sent Public Hearing Notice (On or before June 27, 2011))*

(g) MUNICIPAL ACTION. - *Following the public hearing, the municipal governing body may enact the ordinance under the law governing the adoption of ordinance in that jurisdiction. (July 28, 2011 BOC Meeting)*

(h) AMENDMENT OF PROPOSED ORDINANCE. - *If the municipality proposes any substantive amendment to a proposed ordinance, the municipal governing body shall be required to meet the advertising, filing, notice and public hearing requirements of this section before enacting the proposed ordinance.*

(i) DEPARTMENT REVIEW. - ***The department shall review all proposed ordinances required to be filed with the department under subsection (f) for compliance with subsection (b). (L&I letter date May 24, 2011)*** *If the proposed ordinance does not comply with subsection (b), the department shall advise the municipality of its findings, setting forth the reasons in writing. The municipality shall then withdraw the proposed ordinance or revise the proposed ordinance to meet the minimum requirements of the Uniform Construction Code.*

(j) CHALLENGE OF ORDINANCE. -

(1) Aggrieved parties shall have 30 days from date of enactment of the ordinance to file a written challenge with the department and shall serve a copy of the challenge upon the municipality. The challenge shall state the reason or reasons for the challenge. A municipal ordinance may not take effect for a period of 35 days following its enactment. If a challenge is filed in writing with the department within 30 days, the department has five business days from the end of the 30-day filing period to notify a municipality of the challenge. There may be no enforcement of the ordinance until a ruling is issued by the secretary or 45 days after the filing date of the last challenge to the ordinance, whichever occurs first.

(2) The department shall review any ordinance which would equal or exceed the minimum requirements of the Uniform Construction Code based on the following standards:

(i) that certain clear and convincing local climatic, geologic, topographic or public health and safety circumstances or conditions justify the exception;

(ii) the exception shall be adequate for the purpose intended and shall meet a standard of performance equal to or greater than that prescribed by the Uniform Construction Code;

(iii) the exception would not diminish or threaten the health, safety and welfare of the public;
and

(iv) the exception would not be inconsistent with the legislative findings and purpose described in section 102. The department shall take into consideration, in rendering the determination, the provision, code development process history, purpose and intent of relevant provisions of the 1999 BOCA National Building Code, Fourteenth Edition, ICC International One and Two Family Dwelling Code, 1998 Edition, or their successor codes.

(k) *RULING BY SECRETARY.* - A ruling on a challenge by an aggrieved party shall be issued by the secretary within 45 days of receipt of the filing of the last challenge to the ordinance or within 30 days of the hearing on the challenge which must be held by the department upon the request of the municipality in the municipality wherein the ordinance is proposed, whichever last occurs. If the secretary approves the ordinance, the municipality may begin to administer and enforce the ordinance. If the secretary disapproves the ordinance, the ordinance shall be null and void. The secretary shall state the reasons for the disapproval in writing to the municipality.

Motion by Commissioner Cusick, seconded by Commissioner Seagreaves, to advertise the date of July 28, 2011 for the Public Hearing and consideration to adopt the Lock Box Ordinance.

Roll Call:

COMMISSIONER ACKERMAN -YES
COMMISSIONER SEAGREAVES-YES
COMMISSIONER MARTUCCI-YES
COMMISSIONER CUSICK-YES
COMMISSIONER BROWN-YES

The Motion passed by 5-0

RESOLUTIONS

None

MOTIONS

Presentation by St. Luke's Hospital concerning the acceptance and maintenance of Riverside Drive.

Mr. Soriano stated that in attendance for St. Luke's Hospital is Attorney Joseph Bubba from Fitzpatrick, Lenz and Bubba, and Anita Kingsbauer, St. Luke's Hospital Director of Planning, to present and discuss their efforts to negotiate with the County of Lehigh on the issue of

maintaining Riverside Drive once it is accepted. He noted that this issue was a concern of the Commissioners last time they appeared in front of the Board. Mr. Soriano commented that it is his understanding the County of Lehigh has or will agree to assume the maintenance of the roadway from the Township/Fountain Hill border west to where the road would terminate nearby the Treatment Center. He believes both the City of Bethlehem and Fountain Hill have accepted ownership and maintenance of their part of the roadway.

Mr. Soriano noted that the Township Engineer, Dave Tettermer, stepped down during this discussion as he is representing St. Luke's Hospital.

Attorney Bubba introduced additional representatives, Glenn Solt, Lehigh County Director of Capital Projects, and Edward Andres, Lehigh County Assistant Solicitor.

Attorney Bubba explained that St. Luke's Hospital wishes to build a 1.2 mile public road to begin in Bethlehem, traverse all of Fountain Hill and end up in the Township. He noted that they have received conceptual approval, subject to engineering review, by the City of Bethlehem and Fountain Hill.

Attorney Bubba commented that a benefit to having a public road is that there is alternative access to a trauma hospital, which serves citizens of Lehigh and Northampton County. He noted that this road, when built, will eliminate two difficult railroad crossings and will provide new access to Walking Purchase Park with added parking and an added walking trail. Attorney Bubba stated that St. Luke's is absorbing all of the cost to build the road and Lehigh County has agreed that they will be responsible for the maintenance. He also noted that St. Luke's will be responsible for very significant retaining walls.

Attorney Bubba stated that he will come back to the Board and present this road with all the engineering detail necessary for the Township Engineer to review in great detail, but tonight, he just wants to be able to say that the project is able to move forward.

Mr. Soriano inquired if the bioretention areas and the infiltration trenches would also be maintained by the County. Mr. Solt replied that the way the agreement is presently written, the County will be accountable for those items; however, he has not approved that yet. He then indicated that the Township would not be responsible, regardless.

A discussion ensued regarding access to Walking Purchase Park. Ms. Sopka commented that the access to the trails through the roadway might help with "user-friendly behavior." Mr. Soriano noted that in terms of development grants, the state would want to see public access to the park rather than have a private road.

Commissioner Cusick expressed concerns about the Township being responsible for periodic maintenance of the road. She questioned who will decide when maintenance is needed. Attorney Bubba stated that it will be managed like any other Township road with the Public Works Department determining when it needs treatment.

Mr. Soriano explained that Attorney Bubba wants to make sure that the Township will accept this road as a public road. He noted that the maintenance aspect can be tweaked, but the key is accepting the road once it is constructed to the Township's standard.

Motion by Commissioner Cusick, seconded by Commissioner Martucci, to conceptually accept the idea of public ownership of Riverside Drive contingent on the implementation of successful maintenance agreements whereby the County of Lehigh and St. Luke's Hospital will accept responsibilities with regards to maintenance of the roadway and retaining walls, and further contingent on successful review by the Planning Commission and Township Engineer and Township Solicitor.

Roll Call:

COMMISSIONER ACKERMAN -YES
COMMISSIONER SEAGREAVES-YES
COMMISSIONER MARTUCCI-YES
COMMISSIONER CUSICK-YES
COMMISSIONER BROWN-YES

The Motion passed by 5-0

Motion to approve Release of Escrow #3 in the amount of \$29,120.40 for the Cedar Crest Bible Fellowship Church Land Development.

Mr. Soriano stated that the Township Engineer has reviewed the request from the Church to further release their improvements escrow posted for the addition project. He noted that the amount requested to be released is associated with work completed for the storm water retention pond, storm sewer, soil erosion and sedimentation controls, and landscaping. Mr. Soriano commented that \$3,764.25 is still retained, and total improvements completed to date amount to \$60,489.15.

Motion by Commissioner Cusick, seconded by Commissioner Seagreaves, to approve Release of Escrow #3 in the amount of \$29,120.40 for the Cedar Crest Bible Fellowship Church Land Development.

Roll Call:

COMMISSIONER ACKERMAN -YES
COMMISSIONER SEAGREAVES-YES
COMMISSIONER MARTUCCI-YES
COMMISSIONER CUSICK-YES
COMMISSIONER BROWN-YES

The Motion passed by 5-0

Motion to approve Payment No. 10 in the amount of \$500 to Schlouch Inc. for the Lindberg Park Tennis Courts Project.

Mr. Soriano noted that with this final payment of \$500 covering lawn and seeding around the perimeter of the court, the project is pretty much closed out. He stated that the total cost for the reconstruction of the tennis courts was \$137,462.83.

Motion by Commissioner Cusick, seconded by Commissioner Ackerman, to approve Payment No. 10 in the amount of \$500 to Schlouch Inc. for the Lindberg Park Tennis Courts Project.

Roll Call:

COMMISSIONER ACKERMAN -YES
COMMISSIONER SEAGREAVES-YES
COMMISSIONER MARTUCCI-YES
COMMISSIONER CUSICK-YES
COMMISSIONER BROWN-YES

The Motion passed by 5-0

Motion to approve the Patricia Drive Pumping Station Agreement with South Whitehall Township.

Mr. Soriano noted that the Township Solicitor, Attorney Ashley, has been in contact with Attorney Blake Marles, who represents the South Whitehall Township Authority. He stated that South Whitehall Township Authority is adamant on having language in the agreement that will require the Board to adopt an Ordinance regulating grease from entering into their system. Mr. Soriano commented that the Board has discussed this requirement and felt that the project was too important to complete and therefore, if requested, the Township would agree to those requirements. He noted that the timeframe of introducing a Trap Grease Ordinance was also discussed by the two attorneys, and because South Whitehall Township Authority has not yet decided for itself what the scope of its monitoring will be, the requirement would not begin for Salisbury until the customers are on line, at the earliest.

Mr. Soriano stated for the record that the existing Patricia Drive Pump Station, located at 1136 Patricia Drive, will be eliminated from use in favor of gravity fed sewer lines connected to South Whitehall Township's sanitary sewer system. He noted that the existing flow of approximately 54,780 gpd currently travels via force main through Salisbury Township to a connection with the City of Allentown's sanitary sewers. Mr. Soriano stated that as a result of the pump station elimination, these flows are proposed to be re-directed via gravity sewer lines through South Whitehall Township Authority's sanitary sewer system, and ultimately to the City of Allentown. He commented that no new flows or service area boundaries will be created as a result of this pump station elimination.

Mr. Soriano stated that the design plans for the sanitary sewer gravity main will extend north on Patricia Drive from Lincoln Avenue and tie into the existing South Whitehall Township gravity sewer main on Edward Avenue. It will replace approximately 1,180 lineal feet of the existing South Whitehall Township Authority 8" clay sewer main with an 8" PVC main. He noted that in

addition, the Township will need to reconnect approximately 20 of the existing laterals to the new main.

Mr. Soriano stated that the Agreement language will limit current discharge strength for commercial, industrial and residential developments. He noted that the request, in essence, will require that the Township adopt an Ordinance that will require the installation of external grease traps for commercial customers. He commented that this must be in place before any sewer is discharged into the system.

Motion by Commissioner Cusick, seconded by Commissioner Seagreaves, to approve the Patricia Drive Pumping Station Agreement with South Whitehall Township.

Roll Call:

COMMISSIONER ACKERMAN -YES
COMMISSIONER SEAGREAVES-YES
COMMISSIONER MARTUCCI-YES
COMMISSIONER CUSICK-YES
COMMISSIONER BROWN-YES

The Motion passed by 5-0

OLD BUSINESS

Mr. Soriano noted that the trash and recycling flyer will go out soon and will feature rules governing the disposal of grass clippings at the Township's Drop-Off Centers, Franko Farm and Devonshire.

Mr. Soriano stated that LANTA public notices will be sent to all abutting properties that make up the new route around the South Mall that loops around 33rd Street and Regent Way, which will serve the Devonshire Apartments and Bevin House. He noted that the Planning Commission will meet on July 12, 2011, and the role of the Board is to determine use of right-of-ways for bus stop signs. Mr. Soriano commented that he has received three complaints received so far, and Commissioner Brown stated that he has also received some complaints.

COURTESY OF THE FLOOR

Mr. Mark Belletiere of 1761 33rd Street SW questioned how he could obtain the Minutes from the Planning Commission meeting that would include discussions with LANTA. Mr. Soriano replied that he must fill out a Right-to-Know Request form.

Commissioner Cusick inquired about receiving monthly reports from the different departments within the Township. Mr. Soriano commented that if the Board wants that information, the department heads would probably be able to put something together.

Commissioner Ackerman expressed concerns about the Allentown Library Book Van not including Devonshire Park or Green Acres Park in their stops during the Township's Playground

Program. She also mentioned that the children have to obtain a library card before participating. Mr. Soriano stated that it was his understanding the Book Van would be open to anyone in the Playground Program. He commented that Genny Baillie, the Recreation Director, chose the two major parks (Lindberg and Laubach) because they have the most activities. Mr. Soriano noted that he will ask Ms. Baillie to extend the Book Van to other parks, if possible.

Chief Stiles commented that he will be attending NIMS training next week.

Mr. Andreas updated the Board on the current Public Works projects. He noted that the waterline projects on Flexer Avenue and Clearwood Drive are well into completion. Mr. Andreas stated that the Patricia Drive Pump Station project has been in motion with concepts and designs over the past three years, and he believes it will be an outstanding success for the Township. He noted that it will be a great asset to be able to eliminate a pump station because it will take away the burden of maintenance as well as the cost of operations. Mr. Andreas thanked the Board for their continued support with all the projects.

ADJOURNMENT

Commissioner Cusick made a Motion to adjourn the Meeting. Seconded by Commissioner Martucci. The time was 8:54 p.m.