

**RYE TOWNSHIP
SUPERVISORS' SPECIAL MEETING
October 15, 2007**

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PRESENT: Chairman, Ronald Evans, Vice-Chairman, Charles Kunkle, Supervisor, Sharon Cole-Engdahl, Daisy Lightner, Secretary/Treasurer, Ronald Cree, Zoning Officer, Joe Daubenspeck, Nancy Sunday, Flo Pinci, Dean and Helen Bressler, Robert Moore, John W. Smith, Tyrus Landis, Willa Fry with her Attorney Bruce Foreman, Frank and Ginger O'Rourke, Tammy Matter, Robert and Amy Trump, Alice Stoss, John D. Walker, Carol and Doug Chattin, Cathy Queitzsch, Sean and Peggy Fedder, Gary Roth and P. Richard Wagner, Esquire.

Proof of publication is on file for this special meeting, which was held at the municipal building. Chairman Evans called the meeting to order at 7:30 PM. He convened the meeting with the pledge of allegiance to the flag. The meeting was tape recorded to aid the Secretary/Treasurer with the preparation of minutes.

CITIZEN PARTICIPATION: Chairman Evans welcomed everyone and asked if there was any citizen participation at this time. None was offered.

NEW BUSINESS: Chairman Evans reported that only two applications were received to fill the part-time temporary road/refuse worker. Evans recommended hiring the two applicants received, because the one has a CDL license to plow snow and the other is available to help on an as needed basis on the trash route.

Discussion ensued.

Supervisor Cole Engdahl asked if the one applicant was a relative of anyone. Evans said no. The one applicant dates the daughter of Bob Lightner. However, he is not a relative of Daisy Lightner's. Cole-Engdahl commented prematurely that there is nepotism involved here.

Discussion continued.

Supervisor Cole Engdahl said the public needs to know that Bob Lightner will probably be the next supervisor, unless there's a successful write-in, come the beginning of the new year. Cole-Engdahl said the one applicant for consideration tonight is now dating the daughter of Bob Lightner. Cole-Engdahl said that would not be a problem if there were not court cases that impair our ability to get a supervisor out of office, if they decide to do something that is not quite right. So once a person is in office, they are in for six (6) years with little chance of getting them out of office. Cole-Engdahl said she wanted to present these facts.

Peggy Fedder of 2985 Valley Road asked the names of the two applicants.

Chairman Evans said the one applicant that has his CDL license is Samuel Frederick, a resident of Rye Township, who will be retiring in the near future from the Army Depot. The second applicant is Jaime Curtis Sipe of Enola who is off on Mondays and available to assist with the trash collection route. Evans said both are needed, because there are times when two full time employees want off the same day during hunting season.

Chairman Evans made a motion to hire as part time temporary employees: Samuel Frederick and Jaime Curtis Sipe conditional upon pre-employment CDL drug testing for Samuel Frederick and background checks and physicals for both Frederick and Sipes.

Supervisor Cole-Engdahl amended the motion to add that any decisions for working are made by all three supervisors unless it is an emergency. This amendment died for lack of a second.

Solicitor Wagner said if that is the case the Board will have to call a special meeting each time a decision is needed in order to avoid violation of the Sunshine Law.

The Secretary/Treasurer said the road employees notified her that two part-time employees are needed on November 19th and November 27th, because one full time and one part time refuse employee are requesting off for bear season and deer season.

Discussion continued.

Solicitor Wagner cautioned that if you discuss something to make a decision, that decision must be made at a public meeting to avoid a violation of the Sunshine Law.

Solicitor Wagner recommended if part-time people are hired that a limited number of hours per week are set and give direction to one person to make that determination. Solicitor Wagner said Tom Bitner is now a part-time refuse employee who works on the trash route and the Board does not discuss when or if he should be permitted to work.

Cole-Engdahl stressed that these positions are "part-time temporary positions, PTT" and requested that PTT is placed in the original motion.

The original motion is recorded and amended as follows: Chairman Evans made a motion to hire as part time temporary employees: Samuel Frederick and Jaime Curtis Sipe conditional upon pre-employment CDL drug testing for Samuel Frederick and background checks and physicals for both Frederick and Sipes. Cole-Engdahl seconded. Motion carried unanimously.

OLD BUSINESS: Chairman Evans said the Board would now discuss the application received from Willa Fry of 1790 New Valley Road for a license to operate a junkyard.

Bruce Foreman, an attorney of the law firm of Foreman and Foreman, introduced himself and addressed the Board on behalf of Willa Fry and her application for a junkyard license.

Foreman gave a brief history of the origination and ownership of the property at 1790 New Valley Road known as the former Fry's Salvage Yard, which he said came into being in the mid 1960's. He provided a time line of the salvage operation as follows:

1. Purchased via deed owned by Jack and former wife Vera Fry in June of 1971
2. Transferred in 1987 solely to Jack Fry
3. In the later half of 1987 transferred to Jack and Willa Fry
4. In 2005, with the demise of Jack Fry, the property is now solely in Willa Fry's name

Foreman said that since the mid 1960's the use of the property has been *continuously* a junkyard and therefore predates any ordinance of the Township.

Foreman claims his research revealed that a 1985 Township Ordinance repealed the original 1966 Junkyard Ordinance. The 1985 Junk Yard Ordinance has been in effect since then.

Foreman said there are three regulations that might regulate Fry's Junkyard:

1. The Subdivision Land Development Ordinance (SALDO)
2. The Zoning Ordinance
3. The stand alone Junkyard Ordinance

However, Foreman concluded Fry's Junkyard is a pre-existing use and pre-exists any regulation and certainly the current regulations. Thus Foreman's conclusion is that the property right predates any Township regulation now in effect.

Foreman continued to defend his client and her right to operate the salvage yard.

Attorney Foreman countered the Rye Township Zoning Officer's on-site inspection report of the junkyard and said the comments are not found in the regulations. An example of concern noted on the report was storm water run off from the eroded driveway. Foreman felt this was something controlled by the SALDO or the Zoning Ordinance and therefore did not apply.

In conclusion, Foreman said the applicant, Willa Fry, would be willing to agree to the following conditions if the license application is approved by the Board:

1. Over the course of a license year-remove the tires
2. Fence in the portion of the property used as a junk yard

Foreman warned that if the license to operate is denied, the applicant will have no recourse but to take further legal action.

Solicitor Wagner said the Township has an annual licensing requirement. Wagner asked if a license has ever been issued for the property addressed as 1790 New Valley Road, Fry' Salvage Yard. The answer is "Yes."

Solicitor Wagner said the theory that you don't need one because the use predates the ordinances flies in the face of past history, which is a license is required each year in order to operate the use. Wagner said the Township has consistently required a license.

Wagner sited the example of the removal of hanging advertising signs in Carlisle Borough, which the Court permitted the removal, even though the signs predated the regulation. That same case law has been applied to junkyards when it comes to licensing.

Solicitor Wagner said the question before the Board is that you either grant the license or you deny the license.

Tammy Matter of 1825 Bressler Lane asked a question about the application of Title 25, Chapter 105 and read excerpts from that regulation, which talks about adverse impacts to wetlands, an environmental assessment, an impact analysis, and the completion of soil surveys. Matter said Fishing Creek existed long before the Junkyard. Matter said there are two standing court orders that have not been complied with. Matter challenged the Board with this question: If the concerns with the Junkyard have not been completed through 2006, what assurance would the Board have if they enter into a pre-licensure agreement with regards to additional clean up?

Solicitor Wagner said the Board is aware of that regulation. Unfortunately, that is not part of the Township's regulations. However, the appropriate State agencies have been put on notice regarding these matters, and could, if necessary, shut down the junkyard operation even if the Township grants a license to operate. Chapter 25 is still applicable to the applicant.

Matter expressed concern about the Board's responsibility for the health, safety and welfare of its residents and contacted the following organizations regarding the Junk yard:

1. EPA Wetlands
2. Army Corp of Engineers
3. Shermans Creek
4. PA Health Department
5. Perry County Health Department
6. Rye Township Zoning Officer
7. Marysville Sportsmen Association
8. Marysville Borough Council
9. PA Fish and Boat Commission
10. Central Pennsylvania Conservancy

11. Representative Mark Keller
12. U S Environmental Protection
13. Perry County Conservation and Natural Resources

Matter said all of the above could not believe the approval of a license was even under consideration.

Solicitor Wagner said those agencies have the jurisdiction go forward no matter what the Township Board decides here.

Matter expressed concern for the endangerment of Fishing Creek and the wetlands and asked the Board to entertain those concerns.

Dean Bressler of 80 Fleisher Road said he does not have to look at the junk yard and understood the present concerns expressed here tonight. But he offered that some residents' homes have junk around them that also is unsightly. Bressler said the junk yard has been here for a long time and felt it should be permitted to continue with regulations.

Willa Fry of 1970 New Valley Road commented that in 1971 her children played in Fishing Creek that had sewage and soap bubbles in the stream. Fry said her water supply is fine and nothing is wrong with adjacent property owner, Harrold Guessler's water at 1776 New Valley Road. Fry did not understand why people were pointing fingers at the junk yard as the source of the pollution.

Nancy Sunday of 2759 Valley Road asked when the license for Fry's Junk yard lapsed.

Supervisor Cole-Engdahl said the license was issued in 2006 with contingencies and was not issued yet in 2007 because the contingencies were not met.

Discussion continued.

Nancy Sunday said if there is no license in place, the junkyard is *not* a continuous use as stated previously here tonight by Attorney Foreman.

Solicitor Wagner said the decision that must be made by the Board tonight is:

1. Act on the application and approve the (permit), license
2. Act on the application and deny the license
3. Act on the application and approve the license with conditions

Supervisor Cole-Engdahl discussed and Solicitor Wagner reviewed the 1987 Court Orders involving Fry's Salvage Yard and the lack of compliance at this current time.

John Smith of 15 Cove Road asked when a business transaction was last made at the Salvage Yard.

Willa Fry owner of Fry's Salvage Yard said, "Last week".

Smith said then they are in violation. Fry said, "I guess I could get a fine for it."

Solicitor Wagner said the issue before the Board is approve or deny the application to operate a junk yard at Fry's Salvage Yard.

With due consideration, Evans made a motion to not issue the permit (license), Cole-Engdahl seconded the motion.

Cole Engdahl then said she had some additional questions. Discussion ensued. Solicitor Wagner explained his example of case law. Summarizing the Carlisle case he said an ordinance can be passed to prospectively deal with conditions of health and safety even though they pre-existed prior to the Ordinance.

Attorney Foreman said he disagreed with that interpretation. Solicitor Wagner said a time frame was given to the applicant and the conditions were not met. The challenges presented here tonight cannot be challenged at this level.

Cole-Engdahl expressed concern with the public health and safety of the residents and the tax payer's money with this issue being tied up in court.

Vice Chairman Kunkle asked for the floor. Kunkle gave a brief history of the storm water concerns, the lack of a fence, and accumulation of tires as he has observed them throughout the past thirty years. Kunkle expressed concern that if regulations are not met, people will continue to do what they want to do in the Township.

Discussion ensued.

Kunkle asked if the Board might entertain granting a license contingent upon the three issues resolved: the tires, a partial fence, the storm water,

Willa Fry said she could not get rid of the tires. No one could expect her to get rid of all of the tires.

Solicitor Wagner said a representation was made on behalf of Willa Fry by her counsel that the tires would be removed. Now she is saying she cannot clean up the tires.

Fry clarified that cars come in with tires and there may be some tires there. When removed from the cars the tires would not be stored but removed.

Discussion continued. During the discussion Solicitor Wagner read from Junkyard Ordinance #9 passed in 1966.

Robert Moore of 1814 New Valley Road commented that the Fry's have had from 20-40 years to clean up the property and abide by what the Court said they should do. Moore doubted whether one more year would make a difference after all of these years.

Solicitor Wagner said a motion on the floor was seconded by Cole-Engdahl.

Chairman Evans called for a vote on the motion. Kunkle voted, "yes". Cole voted, "Yes". Evans voted "yes". Motion carried unanimously.

Attorney Foreman thanked the Board and left the meeting at this time.

A voice asked if there were any contingencies on the motion made. Supervisor Cole-Engdahl said, "*Nope. There is no renewal of the permit.*"

PAYMENT OF THE BILLS: The Secretary/Treasurer presented an October 15, 2007 check register. General Fund Checks #s 11088-11110 in the amount of \$17,513.49. No checks void. Payroll Checks #s 4965-4975 in the amount of \$11,262.54. Payroll Checks #s 4976-4986 in the amount of \$4,897.80. No payroll checks void.

With no discussion on the bills presented; Kunkle made a motion and Cole-Engdahl seconded to approve the checks and pay the bills; Motion carried unanimously.

ANNOUNCEMENTS: Chairman Evans made the following announcements:

- **BUDGET MEETING** October 18, 2007 7:00 PM
- **BOARD MEETING** October 22, 2007 7:30 PM
- **TRICK OR TREAT** October 31, 2007 6-8:00 PM

- **ELECTION DAY** November 6, 2007
Polls open: 7:00 AM to 8:00 PM
- **OFFICE CLOSED** November 12th VETERANS' DAY
Trash Collection Tuesday, Nov. 13th

CITIZEN PARTICIPATION: Dean Bressler of 80 Fleisher Road clarified a concern he expressed at a previous meeting. The concern was not with the PennDot grate at the intersection of Fleisher and SR 850, but the sinking of the drainage box located on Fleisher Road.

Supervisor Cole-Engdahl said she read correspondence written by the Secretary/Treasurer to Randy Tressler of New Bloomfield, Penn Dot and found the letter incomplete stating the concern with Spruce Road was not listed.

The Secretary/Treasurer said she understood the concern was explained by Road Superintendent Ron Evans, who said the dip at the intersection was placed there to control the storm water from running across the road on to the Albert Evinger residence.

Cole Engdahl said she did not care what Supervisor Ron Evans said, she wanted the issue checked by PennDot.

The Secretary/Treasurer said a gentlemen was here from Penn Dot looked at the concerns. The road crew cleaned up the rocks from the intersection of Spruce Road and SR 850.

Cole-Engdahl, who lives on Spruce Road, became more agitated and insisted the Secretary/Treasurer purposely left out the concern on Spruce Road.

The Secretary/Treasurer said she is not perfect. Nothing was intentionally left out. She said Supervisor Cole-Engdahl could draft her own letter. Or give her the main body of the letter and she would put the letter together.

John Smith of 15 Cove Road said there is an 800 number to contact PennDot..

Cole-Engdahl said she is a supervisor and can file an act in court that the Secretary/Treasurer did not perform her duties.

A resident challenged Supervisor Cole-Engdahl that her actions, the fighting, and arguments are not in the best interests of the Township. Cole-Engdahl disagreed.

The Solicitor advised adjourning the meeting.

Chairman Evans attempted to explain the situation at the end of Spruce Road.

Supervisor Cole Engdahl said she would send the letter to PennDot herself. Cole Engdahl said the reason the Secretary/Treasurer has a problem is because Cole Engdahl found out the Secretary/Treasurer was stealing from the Township.

ADJOURNMENT OF THE MEETING: With no further business before the Board, Kunkle made a motion to adjourn the meeting. Cole Engdahl seconded the motion. Motion carried unanimously. Meeting adjourned at 8:26 PM.

Respectfully submitted,

Daisy Lightner
Secretary/Treasurer