

A special meeting of the Middle Smithfield Township Board of Supervisors was called to order on Monday, September 19, 2011 at 10:00 A.M. at the Schoonover Municipal Center with Scott R. Schaller presiding.

Members present Scott R. Schaller, Robert (Bob) F. Spano, Sr., Also in attendance Township Solicitor Jennifer Ann Wise, Township Receptionist Maria Oliveras, Fred I. Courtright, Engineer from Gilmore & Associates, Inc., (2) Pennsylvania State Constables and numerous interested parties. Absent from the meeting was Supervisor Mitchell K. Marcus and Township Secretary Michele Clewell.

### **Approval of the Payables**

Scott Schaller made a motion to approve the listed payables. Bob Spano seconded the motion. Motion carried 2-0.

### **Solicitors Report**

Jennifer Wise discussed the adoption of Ordinance No. 178 Solid Waste & Recycling and Resolution 2011-09-02 to amend the code of the township Chapter 155 Solid Waste & Recycling. A consent order and agreement was entered into by and between DEP and Middle Smithfield Township. The consent order requires the Township to appoint a recycling coordinator. Ms. Wise read the responsibilities of the recycling coordinator. Ms. Wise advised the board that they have to designate a recycling coordinator and adopt the resolution.

Scott Schaller stated that we are not ready and have only two resumes. Ms. Wise read the names of the two applicants who submitted resumes, Joanne L. Bennett and Patrick J. Calpin and she mentioned that Mitchell Marcus had spoken to David Manter who was also interested.

**Bob Spano stated that if Mitchell Marcus was so concern about the budget where would we fit this into the budget? Jennifer Wise said there is a dead line and not to play games. You need a recycling coordinator.**

Judy Summers asked where did we get the resumes from and if the position was advertised? Jennifer Wise confirmed with David Pierce from Pocono Record who was in the audience that he wrote an article in the paper about the position and stated that if anyone was interested they should submit a resume.

Discussions took place regarding the position, salary and grants, etc.

Scott made motion to schedule a work session on September 20, 2011 at 10 am to interview the two applicants. Bob seconded the motion. Motion carried 2-0

### **Engineers Report**

Fred Courtright presented Change Order No. 2. from Doley Construction who had previously submitted Change Order No. 1 which was a credit change in the amount \$99,000.00. Change Order No. 2 is an increase of \$118,771.55 which brings the original bid over by \$19,732.95. Mr. Courtright explained the breakdown of the increase which includes \$60,750.00 for Penn Dot shoulder mill and overlay which was not planned for in the original documents. The plan anticipated that we would be further away from the shoulder and would not be doing shoulder restoration, but because of the utilities and other obstacles and Penn Dot, we have 1,350 square yards of shoulder restoration. An increase of \$29,670.93 for No. 57 stone instead of No. R2C stone per Penn Dot. There was an increase for the loss of production to off set against the credit we took for not boarding under Primrose Lane and down by the flea market and there is 153 feet of additional four inch pipe.

Mr. Courtright also stated that he was working on this project with Deanna Smoyer who had gotten a lot of the quantities and Fred finished the project for presentation today. Mr. Courtright worked with Robyn Pugh a number of times and they both meet with Doley Construction. There were a number of things that Doley Construction requested. Fred and Robyn said no to some of their requests and they made their own request to Doley Construction. Mr. Courtright stated that the numbers are fair and he recommended that the board approve the change order.

Scott Schaller asked who is responsible for repairing the pipes by Werry's? Mr. Courtright said that it's Penn Dot. Scott Schaller asked who should really be responsible? Fred Courtright stated that the PA American Water contractor because they went the closest.

Fred Courtright stated that sediment in the stone was washed in. The pipe goes underneath 209 and it continues to Richards building down into the Lake. Seth Richards told Fred it appears to be clogged between his building and the lake. Mr. Courtright said it work before the construction work took place and not it does work now. Mr. Courtright said that Penn Dot won't fix it.

Bob Spano stated he feels the blame should be put on Krueger. Bob Spano stated that he is affiliated with the property and phone calls were placed into the state and then Krueger had done some shale work there. Krueger had promised to come back and blow it out. Bob Spano stated that with the heavy rains it has gotten worst.

Fred Courtright will contact Bill Malace from PA American Water and Krueger.

Scott Schaller made a motion to accept the net Change Order No 2. from Doley Construction in the amount of \$118,771.55. Bob Spano seconded the motion. Motion carried 2-0.

## **New Business**

### **Economic Development Committee Vacancy**

Scott recommended advertising in the paper for the Economic Development Committee vacancy because we have not been receiving any applications. Scott stated that we should put something up on the township website. Jennifer Wise asked how many positions are we trying to fill? Scott said there was only one vacancy. Ms. Wise said that Bill Trainor submitted his request. Maria Oliveras stated that she will mention it to Michele Clewell so we could put the vacancy position up on township website. Maria also stated that a notice was posted on the bulletin board outside the building.

### **Authorize Reimbursement for legal expenses for all Township employees for cost's associated with there employment with the Township**

Scott made a motion to authorize reimbursement for legal expenses for all township employees for cost's associated with their employment with the Township. Scott stated that this came about with the Mitchell Marcus case that if he could get his legal expenses paid then we should reach out to our employees to get their legal expenses paid. Jennifer Wise stated that you can not do that. Ms. Wise stated that Mitchell Marcus attorney's fees have not been court ordered, they have not be approved, and they have been referred to mediation. Scott Schaller asked Ms. Wise, "show me where it says that"? Ms. Wise said "you can't do that". The township tax payer dollars that it receives are not intended to be used to allow employees to hire counsel to represent themselves in matters. You absolutely unequivocally do not this or you will end up with a surcharge.

Ms. Wise said that it would have been nice to know that you were going to do this instead of the last minute. Scott said I talked to you a couple of weeks ago. Ms. Wise said you did from George Wiesmeth office and I told you absolutely no. Scott said you said that there might be way to do reimbursement. Jennifer said no what I said was in the instance of Mitchell Marcus, yes he may be reimburse for his expenses because of a court order. Lets' not manipulate my words. It's not an employee benefit.

Mr. Gary Summers asked if you or any other employee of Middle Smithfield Township requires the services of an attorney to represent you for something that you have done as an employee of the township, first of all I would think the township would pay for it. Ms. Wise stated that that is different then what they are proposing. Mr. Summer said I know that that is why I am bring it up. **Mr. Summers said that it is obviously that there is a specific reason for you wanted to do this. Mr. Summers ask Scott is there a hidden agenda?**

**Scott stated that there is no hidden agenda. Scott stated that through out the whole system Mitchell Marcus started and brought up and instigated there's no law that has been broken, but yet our employee has been brought into it including us.**

Lengthy discussions took place. Ms. Wise again stated that Mitchell Marcus in his official capacity suing as a supervisor against the board not him personally suing the township. If it is him suing personally that is an entirely different situation under the umbrella of the Law, but if you or someone has the FBI or DA's office coming after you criminally then you are not entitled to be compensated with taxpayer dollars.

**A resident** asked Scott we are paying Jennifer Wise for your legal counsel. Jennifer stated no I represent the Board as per what the code explains. I do not serve the township as a whole or serve them individually. The resident stated to Scott "you never go with her recommendations for anything".

Nancy Bittner stated that Jennifer Wise told Bob Spano he was not allowed vote. He had to hire an attorney when he went to court. He refused legal advice. Scott stated that they charged him because of what Jennifer said. Ms. Bittner stated it was not only Jennifer Wise, but it was town other attorneys. Scott Schaller stated that Jane Maughan was right. Scott said that Jane Maughan read a letter saying "unless you're not the applicant than I apologize". Jennifer Wise stated that you are taking her statement out of content.

Scott Schaller stated that you can get six different lawyers and get six different opinions. Jennifer Wise stated that the only time you seek outside counsel is when I tell you no. Scott said I have to because I don't always believe what you tell me.

Mr. Mike Dwyer asked "if you don't believe your solicitor, then why don't you find another solicitor"? Jennifer Wise said he did. He went to George Wiesmeth's office. George Wiesmeth called me over the phone with Scott there and asked me if this could be done and I said no. George said I agreed. **Scott said the George actually said that if she would sign a letter saying she has no criminal background she can get paid. Scott said you don't represent us individually, you represent the board. So Mitchell gets his paid for and we don't.**

Jennifer stated that Mitchell has not had his attorney fees approved, they have referred to mediation. He sued in his official capacity which is completely different and distinguishable from the FBI and the District Attorney coming in here and arresting Bob and now he needs counsel and representation. This township board can not approve that representation and cannot reimburse your employee for their attorney fees. Scott asked "show me where it says that"? Jennifer replied, "I am telling you and if maybe you gave me more ten minutes I could have pulled the case law coming here this morning, but you changed the agenda". Scott stated that "you knew about it two weeks ago you could have looked it up". Jennifer replied "I did not, you called me from George's office and I told you no and that was it". I never heard about it since until this morning when you changed the agenda at ten am.\_

Mr. Oscar Woerlein stated that throughout reading newspaper any public official that has been doing something wrong and illegal has to obtain his own counsel. In the court of law if it was proven that he was not guilty then he can submit for payment.

Mr. Garry Summers made reference to case in Luzerne County with the two judges and stated that the county did spent one nickel on their defense. Mr. Summers stated that he knows where you are going with this and you are opening up a huge issue for yourself and township taxpayers. Scott asked “again where does it say we can’t? Mr. Summers stated I am not a lawyer but give me some time and I will look it up. You are ethically challenged one more time and the taxpayers are getting tired.

Scott stated that Bob and I laugh all the time because everybody talks about ethics, but not once have we been charged with any ethics violation or any ethics investigation here. But you all throw out there we violated these ethics and ethics rules, it isn’t happening. If there was an ethics violation or an ethics investigation we would have been notified and there has not been one, zero.

Mr. John Davis said to Scott that you keep asking “show me where it’s written”? That is a completely unfair thing to do. Mr. Davis stated have you ever walked into a law library and see how vase it is the case study you have to do. Mr. Davis stated that is why you have a counsel sitting next to you.

Mr. Mike Dwyer asked Scott “you put this on the agenda, do you know a case law that states you can do it? Scott replied “no” I just believe that you should be able to give that as an employee benefit. It can be put right in the employee handbook. Mr. Dwyer asked “do you have a case law that says you can”? Scott replied “no” we are the board of supervisors if we want to do it then let have somebody challenge it and we will go from there.

After more lengthy discussions, Scott stated that he would have Michele Clewell contact PSATS.

Mr. John Davis stated when Mitchell gets his bill paid don’t complain to Jennifer complain to the judge it is the judge’s order.

Scott Schaller made a motion to go into executive session at 11:00 pm. Bob second the motion. Motion carried 2-0

Scott Schaller made a motion reconvene from executive session at 11:45

Scott made a motion to adjourn the meeting at 11:46 pm. Bob Spano second motion. Motion carried 2-0

Maria Oliveras, Recording Secretary  
For Michele Clewell