

**PORTAGE TOWNSHIP REGULAR
MONTHLY MEETING MINUTES, OCTOBER 1, 2014
MUNICIPAL BUILDING – MILLER SHAFT**

Chairman Cooper opened the meeting at 7:00 pm with a salute to the flag.

Roll call: Supervisor William Cooper – present; Supervisor Rick Olshavsky – present; Supervisor Jeffrey Kostan – present.

Before the Board opened the floor up for Public Participation, Supervisor Kostan read a prepared written statement from our special counsel, Attorney Nathan Karn, regarding the Shoemaker Circle/Lumber Road issue. The following was read:

Before we accept public comment at tonight's meeting, we want to provide an update with respect to the Shoemaker Circle/Lumber Road issue.

The investigation by the Township Engineer has been completed, and the Township has been provided his report. It is worthy to note that there has not been a reportable accident in this area for at least ten years. While the Supervisors understand the local resident's concern for ongoing safety issues, which always exist in any neighborhood, the traffic history of this area reveals that the greater problem is the amount and effect of the coal truck traffic.

The primary focus of the township Engineer's investigation was whether the Township was justified in setting a weight limit for Shoemaker Circle/Lumber Road. It is important to understand that a weight limit for these roads would not eliminate the ability of the coal trucks to use these roads. Rather, it requires those vehicles exceeding the specified weight, in this case a weight of ten tons, to obtain bonding and/or enter an excessive maintenance agreement with the Township to financially support the repair of those roads as a result of the wear and tear caused by the heavy vehicles. The Board of Supervisors is aware that many residents wrongly believe that the Township's weight limit ordinance could allow the Township to prohibit the use these roads altogether by vehicles in excess of ten tons. The Township's special counsel has made it clear to the Board of Supervisors that this is a misunderstanding of how the ordinance works, in conjunction with state statute, and as interpreted by the courts. If the Township were to add Shoemaker Circle/Lumber Road to the weight limit ordinance, it would only allow the Township to require Amfire and Interpower to provide bonding or to enter into an excessive maintenance agreement.

While the investigation revealed that a ten ton weight limit is warranted for these roads, the Township's special counsel has advised us that Act 89 of 2013 makes such action by the Township useless. Specifically, the legislature has defined local deliveries to included vehicles transporting coal to or from permanent reprocessing or preparation plants (Local deliveries are

exempt from the bonding or excessive maintenance requirements of state statute and consequently, local ordinance.) State law prohibits any municipality from enforcing any local ordinance that is not consistent with state law. In fact, PENNDOT has advised that the bonds/excessive maintenance agreements have been closed out for State Route 2012, Dulancey Drive, and the trucks will no longer be required to provide such financial support. As a result, it does not make any sense for the Township to proceed with placing weight limits on Shoemaker Circle/Lumber Road since it will not only provide no assistance to the residents of this area, but it will not provide any financial support to the Township.

It has been suggested that the Township consider undertaking a noise study. There are several things to understand about the issue of noise. First, the Township does not currently have a noise ordinance. Second, the Board of Supervisors does not believe it is in the best interest of the Township to pass such an ordinance any ordinance would have to be universally applied across the entire Township. Further, enforcement of noise ordinances is extremely difficult and expensive. They would require an expertly trained professional to not only make the initial study, but also every time someone was deemed in violation of noise limits. The Courts have held that local officials are not properly trained to run a device that measures decibels as part of any enforcement action. Next, noise limits cannot be applied to normal traffic, such as the coal trucks simply driving on the roads. Lastly, state law supersedes the ability of the Township to regulate the facilities. Those facilities are regulated by state agencies.

In summary, the Township would not receive any benefit from a noise study especially as compared to the expense of the study. While a noise study may benefit the residents of this area in addressing complaints to those state agencies regulating those facilities, the Township is not legally permitted to incur expenses that do not generally benefit all of the citizens. Therefore, if this is something the residents of this area believe would be beneficial to them, they should undertake to have the study performed directly on their behalf.

As we indicated last month, you are welcome to provide us with additional information you believe we do not possess. Consistent with our special counsel's advice, we will make a note of that information without comment at this time, and if it warrants a comment at a future meeting, we will address it then. While you are permitted to pose questions to the Board during the public comment portion of the agenda, we will only make note of your questions at this time. If we are able to answer any questions at a future meeting and after consultation with the special counsel, we will do so at that time.

PUBLIC PARTICIPATION

Duane Lamar stated he heard Amfire is selling out and was wondering if this meant that they (Shoemaker Circle) would have to start all over again. Supervisor Cooper said rumors are always circulating but cannot verify if that was false or true.

Renee Maul then spoke to the Supervisors said that she is disappointed but not surprised and she has been waiting for this from the Supervisors for over a year and all she ever hears is how

the Supervisors hands are tied. The situation that is up there at Shoemaker Circle anyone can see how we live up there, something is not right she stated. She feels this is more than “just legal this legal that”. After making phone calls to DEP and representatives, “nobody cares”. And she also stated that she will be at every meeting and if something is proposed that does not affect every taxpayer in the Township she will be there to protest.

Ray Asfar then spoke regarding the same issue also voicing his complaint being of safety. He then stated that Representative Burns advised him to get video with regards to the safety of children. He also stated that the District Traffic Controller was amazed that nothing has been done regarding Shoemaker Circle truck traffic. His conversation continued regarding various complaints and issues that he so expressed. He also shared his video with the Supervisors.

Supervisor Olshavsky talked about the Informal Public Conference that will be held sometime in November. He added that they will be attending the Conference which is to be held at the Township Building. Supervisor Olshavsky also said that the Supervisor’s did offer for the residents of Shoemaker Circle to send in any of their own comments to be forwarded along with the Townships concerns and comments, which no one did provide.

Duane Lamar spoke stating that two gentleman were at his residence one early am asking to park in his yard to watch the traffic with the trucks for that day. To him it seems like they (the truck drivers) know when someone is there to do a study or witness the traffic because not many trucks came through on that particular day. Mr. Lamar feels somehow they (truck drivers) know when someone is there watching and they don’t run the road for that day.

Supervisor Olshavsky questioned why Representative Frank Burns has information and not sharing anything with the Supervisors. They should be contacting the Supervisors if they have information on what is right or wrong with regards to Shoemaker Circle not commenting to the residents only. If the State is telling you (Mr. Asfar) how the Township should be dealing with the road they should be contacting the Supervisors. Comments were made that Portage Township is in arbitration with Amfire. This is not so or true said Supervisor Olshavsky. Amfire never dictated to the Supervisors regarding widening of the road. Amfire can buy property privately but cannot take it. Only the Township can take property by way of (condemnation) or by right of way to widen a road.

Ray Asfar then said spokesman Dave Pigeon of Norfolk Southern spoke with Portage Township by phone and quoted that there was no problem with using that road and basically stifled the whole conference. Mr. Asfar was told by Norfolk Southern if there were any concerns they would break the train. More discussion again was held regarding the same issue.

Supervisor Cooper related that the Act 89 has changed everything. PennDot has all new rules and was to come out with them in July. Ray said to Supervisor Cooper that he felt Act 89 was only for the only access in to that property. Supervisor Cooper also wanted to let them know that he did talk to Mrs. Huschak regarding the Soman Mine site and she has maps that shows the sign placement which was requested is nowhere near the site of the actual mine.

Supervisor Cooper then related to the Shoemaker Circle residents regarding the noise study done for the windmills. The cost to the Township was almost \$7000.00 and this was not done until a complaint was filed after the windmills were already up and operating. At this point in time, the noise study should not be done until a situation would arise, then maybe the Township would look further into it. DEP makes the regulations that they abide by.

Matt McCoy of the Portage Fire Company spoke requesting the Portage Township Supervisors to possibly make a large donation for the Fire Company's leaky roof. Mr. McCoy was looking for a commitment for funding tonight. Supervisor Olshavsky stated to Mr. McCoy the Supervisors will discuss this at the 2015 Budget Meeting scheduled for the following Tuesday. Mr. McCoy talked briefly regarding the Knox-Box entry system. Supervisor Olshavsky told him they need to ask some questions regarding this system and will let the Fire Company know.

John Crum of Beech Street asked the Supervisors if they knew anything regarding his street and Liquid Fuels. Supervisor Cooper said according to it being a dead end alley you need to have an 80' diameter turnaround which is just one stipulation you need to get on as a Liquid Fuel Road and that there are many more stipulations. Mr. Crum stated that if the Township has maintained this road for all these years the 21 year role comes into effect. Supervisor Olshavsky stated he is aware of this and he, Mr. Crum could be right. This will need to be reviewed with the Board.

Jill Lamar was next to speak with the Supervisors regarding the minutes from the meeting when the pipe project was approved. Supervisor Olshavsky stated he did look through the minutes and that he started in 2007 and found in 2009 the \$10,000.00 grant. Ms. Lamar said she was willing to come and look at the minutes to find out exactly what was mentioned regarding this issue. All three Supervisors were down to see the pipe and how it is. Supervisor Cooper said that it was told to the Supervisors that the Engineer at that time said they were to keep part of the stormwater system open. It was suggested to take our Engineer down to look at it and for now have the Roadmaster keep an eye on it and keep it cleaned out. She asked if we could find the Engineer Study that was performed at that time. Not sure if it is available or able to find, but Supervisor Olshavsky will check into it.

Renee Maul asked if she could have a copy of tonight's opening statement. Once the minutes are approved at the November Regular Monthly Meeting, then she can obtain a copy.

Ray Asfar spoke again stating that on behalf of the whole community, can they make a request for the Township to contact, Norfolk Southern in the ethics and compliance department regarding the public safety issue concerning Shoemaker Circle. This is the Townships jurisdiction to make the complaint and it is the right thing to do for public safety, Mr. Asfar stated.

Approval of Minutes

September 3, 2014 Regular Monthly Meeting and the Special Budget Meeting September 22, 2014

Supervisor Kostan made a motion to approve the September 3, 2014 Regular Monthly Meeting Minutes and the Special Budget Meeting held on September 22, 2014 with Supervisor Cooper seconding the motion. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes.

Secretary's Report

The secretary's report was presented to the Board which included the Minimum Municipal Obligation Worksheet for the Portage Township Pension Plan for Plan Year 2015 with Supervisor Cooper making a motion to accept the secretary's report and Supervisor Kostan seconding the motion. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes.

Road Master's Report

The Road Master's Report was presented by Supervisor Cooper, with the Road Master working on the following:

1. Paved various Township Roads – Sportsman Road, Fowler Lane, Shady Springs, Cemetery Road. Also paving in catch basins on Chappells Hill, Jamestown Road, Sportmans Road. With burming done on Sportmans Road, Hemlock Drive, Burkey Drive, Popish Road, Fowler Lane.
2. Brush hog and week eating in various places throughout the Township.
3. Placed shale and topsoil along various parts of the Township Roads paving project.
4. Tree trimmed at various spots within the Township.
5. Checked and replaced school bus signs where needed.
6. Repaired machinery as needed.

Supervisor Kostan made a motion to accept the Road Master's Report with Supervisor Olshavsky seconding the motion. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes.

Code Enforcement Officer's Report

The Code Enforcement Officer's Report was presented to the Board by Supervisor Cooper with the following report read:

1. Received a complaint from a resident on Springhill regarding the property at 1808 Springhill – stopped at the property no one was there, sent letter to the owners of the property giving 30 days to come into compliance with various Ordinances they are currently in violation of.

Supervisor Olshavsky made a motion to accept the Code Officer's report with Supervisor Cooper seconding the motion. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes.

Old Business

a. Schedule Budget Meeting

The Supervisors discussed when would be a convenient time for all three to attend another Budget Meeting. They decided on the date of October 7, 2014 at 2:00 pm.

New Business

a. UPMC Health Insurance

Supervisor Olshavsky made a motion to accept for the Township to keep the UPMC Health Insurance we currently have for 2015 for our employees with Supervisor Cooper seconding the motion. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes.

b. Fire Company Knox Box Entry System

This will be tabled until they can find out more information on this. Supervisor Olshavsky made a motion to table this with Supervisor Kostan seconding the motion. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes.

c. Martindale Sewer Project – Street Opening Permit Fee Waived

Supervisor Olshavsky made the motion to waive any permit fees for this project knowing the roads will be bonded which is good for the Township and this will also help save money for the Sewer Authority with this project. Seconding the motion was Supervisor Kostan. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes.

d. Mulch for Jamestown Playground

Supervisor Olshavsky explained how the Township did some renovations to the playground. With the old mulch being washed away over the years, Supervisor Olshavsky made a motion for the Township to purchase and donate the mulch for the playground to help improve conditions where the children play. Total cost to the Township would be \$750.00. Supervisor Cooper seconded the motion. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes.

e. Nicholson Subdivision

The planning commission approved the subdivision with that being said Supervisor Olshavsky made a motion to approve the subdivision contingent on that the correct and proper drawings and signatures are signed for the Nicholson Subdivision. Supervisor Kostan seconding the

motion. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes.

f. Secretarial Status

Supervisor Olshavsky then spoke regarding a letter received from our Secretary/Assistant Treasurer Ruby Moore to change her status to hourly clerk. With deep regret the Board accepted her status change, with Supervisor Olshavsky making the motion for the change in status to hourly clerks, and Supervisor Cooper seconding. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes.

Then Supervisor Olshavsky made a motion to appoint Michelle Kostan as the new Secretary and Assistant Treasurer which will take effect upon receiving her new bonding (assistant treasurer) and as fulltime status of Secretary effective October 30, 2014. Supervisor Cooper seconded the motion. **Motion carried 2-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – abstain. (Supervisor Kostan then wanted for the record in the minutes that he abstained from vote due to the relation with Michelle)

g. Donation for Halloween Parade

Supervisor Olshavsky made a motion to donate \$100.00 for the Halloween Parade when we receive a letter of request for such donation. Supervisor Cooper seconded the motion. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes.

Adjourn

Meeting was then adjourned at 8:25 pm.

Those guests in attendance: John Crum, Duane Lamar, Jill Lamar, Patty Rousell, Joe Walters, Francis and Renee Maul, Paul Maul, Paul Husar, Jr., Andrew Gruse, Larry Duray, Amanda Petrunak

