

January 20, 2009 Council Meeting Minutes

The January 20th meeting of the Penn Hills Council was called to order at 7:32 p.m. in Council Chambers of the Municipal Building, Mayor Anthony L. DeLuca presiding.

Approval of Agenda Items

The Mayor announced that Petra Ministries and/or lawyers for the Walmart/Lowe's Development were being added to the agenda prior to the expenditures and Item No. 7. c. Ratifying the 2009-2013 labor agreement with Teamsters Local #249 representing employees of the Public Works Department was being deleted from the agenda. There were no other changes and the agenda was approved as amended.

Pledge of Allegiance

Council and the audience stood for the Pledge of Allegiance.

Roll Call

Roll was called and the following members of Council responded:

Present: Mr. Underwood
Mayor DeLuca
Mrs. Kuhn
Mr. Palumbo

Absent: Dr. Kincaid (Out of town – Business)

Also present were: Manager Van Horne, Solicitor Brimmeier, Gateway Engineer Minsterman, Finance Director Schrecengost, Planning Director Davidson and Deputy Clerk Fitzhenry.

Presentation – Petra Ministries – Lowe's, etc.

Attorney Mike Gavin spoke on behalf of Lowe's regarding the letter denying the dedication of roadways by Penn Hills. He asked Council to reconsider their initial denial of street acceptance of roadways in the new development. He stated that as a private road Lowe's cannot control or insure the risk. Likewise, he said, as a private road the municipal police could not control the road. He stated that Lowe's is looking to become a citizen of the community and have a great record in other communities where they are located as far as corporate citizenship is concerned. He provided information developed by the Lancaster Workforce Board for a store in Lancaster, PA of similar size to the one proposed in Penn Hills and he relayed the proposed jobs, etc. A store of

Presentation (Continued)

the size being proposed would generate direct jobs of 150 full-time and 30 part-time, indirect jobs of 20, i.e., truckers making deliveries, etc., and another 49 induced jobs. He stated that these figures do not include any contractors who would be used to installed windows, flooring, etc. He stated revenues from a store this size would include Lowe's payroll in excess of \$12 Million, indirect revenues of \$1.7 Million and induced revenues of \$4.2 Million. He asked Council to reconsider providing this service that Lowe's cannot provide for itself by agreeing to accept the roads. He stated that Lowe's is willing to pay operational and maintenance costs associated with the request for Penn Hills to accept the roadways, including increased costs for insurance, etc.

Attorney Peter Kogan of Pepper Hamilton spoke on behalf of Wal-mart in connection with the development. This issue is a critical issue to Wal-mart as is the inclusion of Lowe's in the development. Wal-mart fully supports Lowe's request and agree that this request will result in no cost to the Municipality as the developers have previously agreed to reimburse the Municipality for any increase in insurance premiums that would be charged as a result of owning these roads and there will be an escrow account established in the amount of \$25,000 in perpetuity for the maintenance and repair of the roads. Mr. Kogan believes that this is a unique situation that would not set any type of precedent for council in the future. He feels that any developer looking at this property will have the same issues with road ownership, etc.

Solicitor Brimmeier asked for clarification of the relationship between Wal-mart, Lowe's and Project Nehemiah.

Attorney Kogan stated that both Wal-mart and Lowe's will own the parcels within the center.

Solicitor Brimmeier asked if they will be fee simple owners.

Attorney Kogan stated that was correct. They would be fee simple owners and pay property taxes, etc.

Solicitor Brimmeier wants the record to be clear that the only time a roadway is a public roadway is when it is open and accepted by the Municipality. She stated emphatically that this is not a public roadway.

Presentation (Continued)

Attorney Kogan stated that Lowe's participation in this project is critical to the development.

Mrs. Kuhn explained for the public that the road is connecting the far end of the development to the housing units in the City of Pittsburgh and the main entrance to the facilities will be off of Robinson Boulevard. She explained the traffic flow for people coming from Wilksburg and the people of Penn Hills will be Robinson Boulevard. The road that Penn Hills is being asked to take-over will be used 98% of the time by residents of the City of Pittsburgh.

Attorney Kogan stated that there are actually two roads involved and the reason Penn Hills is being asked to take them over is because they are in Penn Hills. He stated that he was in touch with the County to determine if they would be interested in taking over ownership of the roads in question and they are not.

Mrs. Kuhn questioned Mr. Kogan as to whom he dealt with at the County. She stated that Council had expressed an interest in meeting with Dan Onorato and County staff and nothing has materialized with that request.

Attorney Kogan stated that East Hills Drive has been in use by the public since 1960 or so; therefore, the public has the legal right to use that road. He stated that his client could not effectively close down those roads on their own. This situation is different than almost any other situation we have encountered elsewhere. He reiterated the details on the proposed escrow account for the maintenance of the roadway.

Mrs. Kuhn asked if the property was being sold or handled under a long-term lease.

Attorney Kogan stated that both Wal-mart and Lowes will own the parcels and their buildings. He explained there is an agreement of sales with some conditions.

Mr. Underwood asked for an explanation on the conditions attached to the sales agreement.

Attorney Kogan stated the primary issue is resolving the issues of the roadway. He stated that he will follow-up with their engineer to determine why the County is not interested in taking over the road and who made that decision. He stated there is no legal right for a municipality to acquire property outside its boundaries, so they have not been able to go to Wilksburg or the City of

Presentation (Continued)

Pittsburgh to require them to do so. We are asking Penn Hills to take over these roads solely because they are within the municipal boundaries.

Mayor DeLuca asked what timeframe the developers were looking at for a decision to be made.

Ms. Connie Balthrop spoke on behalf of Operation Nehemiah. She stated that time is of the essence so they can go to closing as soon as possible. She stated that this project will provide jobs for the community and this will be an enrichment of a blighted area in the community.

Mayor DeLuca asked for staff to assist in holding a meeting with the County to resolve these issues.

Solicitor Brimmeier raised some issues regarding the insurance issues and covenants in deeds to bind successor owners, etc. She has some serious concerns to protect the Municipality.

Attorney Kogan stated if Penn Hills took over the roads, the developers would be willing to address these outstanding issues with Penn Hills.

Mrs. Kuhn stated that Penn Hills is certainly interested in resolving these issues and bringing this development to Penn Hills. She also stated that there were issues needing clarification and Council has not received such clarifications.

Attorney Kogan stated that a letter with bullet points was sent for clarification purposes back in November and they would be willing to meet with the County and Penn Hills again this week to resolve the issues.

EXPENDITURES
Approval of Warrants

Mr. Underwood made a motion to approve the Master Expenditure Summary dated January 20, 2009 including Journal Vouchers numbering 1 in the amount of \$33,374.78; C.D. Requisitions numbering 21 in the amount of \$172,732.99; and Master Check Nos. 9931 to 9999 in the amount of \$434,221.65, making a grand total of \$640,329.42.

Mr. Palumbo seconded the motion and it was approved by a vote of 4 to 0.

Ordinances:

Mrs. Kuhn made a motion to approve Ordinance No. 2508 repealing Part Two, Title Ten, Chapter 288, Section 288.25 "Family and Medical Leave Act (FMLA) Policy and Procedures" of the Codified Ordinances in its entirety and replacing it with a New Section 288.25 "2009 Family and Medical Leave Act Policy."

Mr. Underwood seconded the motion and it was approved by a vote of 4 to 0.

Resolutions

Mr. Underwood made a motion to approve **Resolution No. 2009-011** authorizing the filing of a declaration of taking for the partial condemnation of a parcel of land located in the Municipality of Penn Hills for the laying, erecting, installing, reconstructing, repairing, replacing, altering and/or removing of a sanitary sewer over the property located at Lot/Block 632-S-190.

Mr. Palumbo seconded the motion.

Mr. Joseph "Mickey" O'Connor questioned the use of a resolution when the Charter requires an ordinance.

Solicitor Brimmeier stated that she has addressed this issue before and she has determined the use of a resolution is permitted. Ms. Brimmeier stated when Mr. O'Connor becomes an attorney she will be willing to debate the charter issues with him.

Roll was called and the motion was approved by a vote of 4 to 0.

Mr. Palumbo made a motion to approve **Resolution No. 2009-012** authorizing the filing of a declaration of taking for the partial condemnation of a parcel of land located in the Municipality of Penn Hills for the laying, erecting, installing, reconstructing, repairing, replacing, altering and/or removing of a sanitary sewer.

Mrs. Kuhn seconded the motion and it was approved by a vote of 4 to 0.

Items for Consideration

Ratify MEO – retirement window and call-back procedures

Mrs. Kuhn made a motion to ratify an agreement with the Municipal Employees Organization regarding a recently negotiated retirement window and call-back procedures for displaced and/or laid-off employees.

Mr. Palumbo seconded the motion and it was approved by a vote of 4 to 0.

Ratify 2007-2010 Police Labor Agreement

Mr. Underwood made a motion to ratify the 2007-2010 labor agreement with the Penn Hills Police Advisory Board.

Mrs. Kuhn seconded the motion and it was approved by a vote of 4 to 0.

Ratify 2009-2013 Teamster's Labor Agreement

The labor agreement with Teamster Local #249 was deleted at the beginning of the meeting.

Appointments

Mayor DeLuca nominated Judy Donahue for re-appointment to the Library Board.

Mr. Underwood seconded the motion and it was approved by a vote of 4 to 0.

Introductions of Ordinances, Resolutions, etc.

Council had no legislation to introduce at this time.

REPORTS – Mayor, Council, Manager, etc.

Council had no reports at this time.

DISCUSSION SESSION

1. Stimulus Plan (S. Kuhn)
2. Sewage Charges (S. Kuhn)
3. Code Enforcement Areas (S. Kuhn)

DISCUSSION SESSION (Continued)

4. Specifications for Vehicles purchased (S. Kuhn)
5. New Business (A. DeLuca)
Administrative Consent Order
Letter to Congress for funding of projects
6. Public Comment Period (3 minutes per person)

Mr. Ed Zullo congratulated Council on finally being out of the federal consent decree. He then suggested that all the funds from the Wal-mart and Lowe's Development should be earmarked to pay down the sewer debt and eliminating the \$30 per quarter fee. He discussed a program in Monroeville where new businesses are able to receive tax abatements for the year and suggested Penn Hills might try a similar program.

State Representative Anthony DeLuca asked Council to consider a proposal whereby if Wal-mart or Lowe's closed their facilities, the roads and liability could revert back to the owners of the center – Operation Nehemiah.

Mr. Joseph "Mickey" O'Connor wanted to comment again on a Charter procedure, but thinks he will wait and see how much of the document is still legal.

Mr. David Wolf thanked council for adding public comments to the discussion session agenda. He asked if the Municipality has a publicist. He suggested changes to the web site to make it more appealing and user friendly. He discussed website templates, etc. available online. He questioned what is going on with the Liaison with the School District.

Manager Van Horne stated that the staff is meeting with the school district on Thursday. He feels this will be the first in a series with the staff and the officials will be meeting on an on-going basis.

Mr. Wolf asked why email accounts are not available for members of council, etc. He feels email would provide a better opportunity for residents to get in touch with the elected officials and can be sent when it is convenient for the parties to do so.

CLOSED SESSION – Workers Compensation Tracking

Adjournment

There being no further business, the Mayor asked for a motion to adjourn the meeting.

Adjournment (Continued)

Mr. Underwood made a motion to adjourn the meeting.

Mr. Palumbo seconded the motion to adjourn and it was approved by a vote of 5 to 0.

The meeting adjourned at 9:01 p.m.

Respectfully submitted,

/s/ Diane Gionta Fitzhenry
Deputy Municipal Clerk

These minutes approved by Mayor and Council on April 6, 2009.