

BALDWIN TOWNSHIP SPECIAL MEETING

October 16, 2014

Present – Supervisors Jay Swanson, Jeff Holm, Larry Handshoe and Randy Atwood. Supervisor Tom Rush not present as he was attending the Park Committee meeting and arrived at the Baldwin Town Board special meeting at 8:17 p.m.

Call to Order – The October 16, 2014 special meeting of Baldwin Township was called to order by Chairman Jay Swanson at 7:00 p.m.

Pledge of Allegiance – All present recited the Pledge of Allegiance.

Discuss SBA Issues – Mike Couri, township attorney with Couri & Ruppe, stated that this was a 35 year total lease. 15 years to start with 20 years of 5 year options. It is a typical lease. It is their tower and their equipment. Lease itself is at \$500/month which is low. It should be about \$1,500/month. Bob Vose initially thought they were in violation of contract. They assigned it without consent. Mr. Couri does not know if that would be a material breach. He thinks we are on good ground on that one. If the board terminates the lease odd are that we would win. Mr. Vose thought lease had 7 years to go with 20 years of options and thought they would pull their tower. He disagrees with that. They will not want to move the tower. There has to be negotiating room. The township asked for \$1,500/month and their attorney said no as it would cause negative cash flow. There is a lot of room in these things and the numbers are all over the board. Their last proposal is \$615/month. He would like to see \$1,200/month. He thinks there is a decent chance of winning this one. He did talk to their attorney.

Their \$350 number will end up to be \$711 in 26 years for a total of \$160,000. Plus their \$100,000 plus up to \$7,500 in attorney fees. Total cash flow of \$268,000. The offer on the table now is \$615 which will end up being \$1,250 26 years from now with total rent being \$282,000 for a total cash flow of \$322,000. If \$1,200 which will end up to be \$2,400 26 years from now plus attorney fees, etc. Total cash flow of \$591,000. There is a likely technical violation of the lease.

Atwood asked if we did evict, what about the footings and the groundwork with Mr. Couri replying that it does call for removal of the concrete foundation. They will pay for attorneys quite a bit to litigate this. He would like to see that if another carrier is on the tower then come back and renegotiate. There was discussion regarding the site plan that should have been part of the original agreement.

Atwood stated that he would want to be notified if they wanted access. Mr. Couri stated that there are separate antennae pieces for different carriers. Atwood stated he has a concern about them putting in tenants without our knowledge. Holm asked if there could be a provision with a penalty for not disclosing. Mr. Couri stated that he is pretty confident that they will not walk out from this site.

Mr. Couri explained that in this current draft agreement in the event that either party goes to court, whoever wins gets their fees paid. If they win, the township will pay their fees. Summary judgments cost between \$10,000-\$25,000. It is a double edged sword. His experience with these attorneys is that it will mean nothing to them. We need to get a one sided clause where they pay township attorney fees.

Mr. Couri stated that he has yet to see someone dismantle a tower. No one knows what the future of this technology is and he believes it is a growing industry. The rent needs to be substantially higher. He does not want to mess with the term. He would like a piece of anything else that goes on the tower. Propose and go back tell their attorney. He feels he has a good idea of what the township wants. The township will litigate if not acceptable. If we don't win then we are out our attorney fees. If we win, then SBA is out. Atwood stated he would like to see a fresh start cleaner agreement. Mr. Cori stated that he thinks they will trade money for certainty. We want to drive a hard bargain when they put up another tenant. The sublease is big to them but not to us. We want to make sure the money issue is secured.

Discuss Lake Helene Access Issues – Mr. Couri stated that a previous board tried to vacate the public access but did not follow procedure. A court would look at this and probably vacate. In 1991 that board had a change of heart and meanwhile one of the adjoining property owners put in a septic system. He is suggesting a license agreement which the town board reviewed. The board would like to remove the septic system completely if found not compliant. Mr. Couri suggests deleting paragraph #5 which deals with liability insurance. He suggests running equipment down the access for "maintenance". Swanson stated that Mr. Gabrielson told him that he did want to sign this agreement and fees there are three choices:

1. Sign agreement.
2. Move septic off town property; or
3. Let a judge decide.

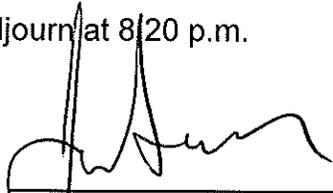
Couri & Ruppe attorney Bob Ruppe called Gabrielson's attorney and found what Gabrielson really wants is to move the septic off the property but wants the town to pay for it. The board cannot use public funds for a private matter. Mr. Couri stated that we don't want to take this to court as current law says you cannot vacate anything by a lake without DNR notice. Swanson stated that it was a land company that owned the land at that time when the quit claim deed came through. Mr. Couri stated that it is his view that a quit claim deed helps us. A license agreement would get recorded with the property. If the board would like him to make the modifications to the license agreement he will send to Gabrielson's attorney. If not, then no action will be taken at this time.

Swanson questioned if the other half of the property should be included. Mr. Couri stated that as long as the plat says it is dedicated to the public then his opinion is to "let sleeping dogs lie" as the road statute preserves the access. Swanson stated he would like to resolve the whole issue with Couri responding that he does not suggest that. After six years the town board will have certainty as to where the road is.

Approve Check #18778, Baldwin Auto & Truck Repair, in the Amount of \$6,858.28
Handshoe/Rush unanimous to approve check number 18778 to Baldwin Auto & Truck Repair in the amount of \$6,858.28.

Adjourn – Handshoe/Atwood unanimous to adjourn at 8:20 p.m.


Submitted/By: (s/) Cathy Stevens
Clerk/Treasurer
Baldwin Township


Approved By: (s/) Jay Swanson
Chairman, Board of Supervisors
Baldwin Township
11-18-2014
Date