Manager's Report

Activity in the Month of January

- Permit applications, bills, deposits and bank reconciliations were handled in a timely manner. Review fee letters were emailed. Auditor was contacted to begin annual audit.
- Attended Board of Supervisors meeting (Jan. 7 & 10), Planning Comm. (Jan 2), Auditors (Jan. 8), Police Commission meeting (Jan. 14), Authority meeting (Jan. 17), 115 Grove Zoning Hearing (Jan. 29),
- Participated in the Berks County Cooperative Purchasing Council meeting and two additional meeting on animal control (Jan. 8, 22, 29)
- Held a safety meeting (Jan. 24). Pat Donovan completed application for Certification of Safety Committee. Building security was discussed.
- Attended Schaeffer Road Bridge progress meeting (Jan 2 & 15). Project completion date is April 16, 2019.
- Completed the following reports:
    - DCED annual reports – Elected Officials, Municipal Tax Information and Financial.
    - State Liquid fuels
    - Public Utility Real Estate Tax Assessment (PURTA)
    - Floodplain Management
    - Uniform Construction Code (Quarterly Permits)
- Processed Recycling Grant paperwork.
- Registered supervisors for PSATS convention.
- Updated life & disability pay rates, union wages
- Mailed W2s and 1099s
- GSP Letter of Credit received.
- Received W Shore Bridge inspection report.

Respectfully Submitted,

Diane Hollenbach, Manager

PHONE: 610-926-4920 FAX: 610-926-6314

MAIDENCREEK TOWNSHIP
BOARD OF SUPERVISORS

1 QUARRY ROAD * P.O. BOX 319 * BLANDON, PA 19510
www.maidencreek.net

February 1, 2019

Recently, there has been much discussion in the community and in the Reading Eagle regarding the Township's relationship with the Animal Rescue League (ARL). The Animal Rescue League is a non-profit that currently provides the Township with animal control services for dogs and cats. These services include the intake of stray animals, animal cruelty investigations, and veterinary services as well as others. In return for these services, the Township made an annual contribution of $1,000.00 as recently as December of 2017.

In a letter from September of 2018, ARL wrote to inform the Township that they would no longer offer animal control services to the Township unless a contract was agreed to. As of today, there were two options available to us. The first was a fee for services model, which we projected to cost the Township approximately $9,000. The second option was a $2.00 per-capita charge, which was projected to cost approximately $18,200.00. Importantly, ARL shared that the per capita charge model would only be available for 2019 but going forward a municipality would need to engage in a multi-year fee for service contract.

At the time this notification was issued, the Township had been in the budget process for a few weeks. This created significant administrative hurdles to include these unforeseen expenses and added to ever-increasing costs for other vital municipal services such as police or roadwork. The Board of Supervisors directed staff to investigate the issue but made no commitments to enter into a contract with ARL. The Township sought clarity around several issues including the fee structure, the invoicing structure, the financial condition of ARL, the data being used to estimate anticipated fees, the scope of the services offered, as well as legal concerns around the proposed contract.

The Township's desire to seek clarity around these issues is consistent with our commitment to handle every resident's tax dollars responsibly. Unfortunately, where we sought clarity only more questions and concerns were brought to light. The Township identified significant issues with the proposed contract. Among them, ARL had proposed to charge on the basis of the zip code where an animal was brought from. However municipalities may have several zip codes and that zip code may not be where the animal is owned. This could incur costs on the Township for an animal that was found or is owned in another municipality.

These concerns have been raised to ARL. Unfortunately, they have not been responsive to requests for more information and have, in most cases, been unwilling to amend their proposed contracts for municipal concerns. While its possible these issues could be resolved, ARL has placed pressure on municipalities to comply with their desires in timeframes that have been unrealistic for the Township to work within. For these reasons, the Board of Supervisors has not signed a contract with ARL, because of this they will no longer provide residents with most animal control services.

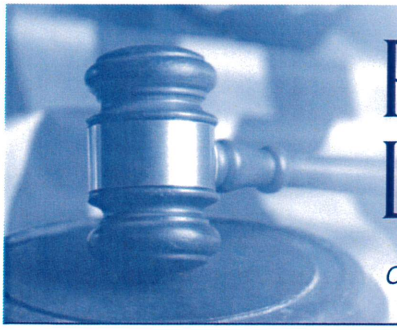
ARL has promised to continue investigating claims of animal abuse without expense to the Township, which we are grateful for. However, if residents take animals to ARL's shelter, they will be turned away and forwarded to the Township. This transition will take place on January 31st, 2019.

In order to explore alternative methods to these services, the Township will participate in a search for another contract with the Berks County Cooperative Purchasing Council. The governing body has final say as to whether the Township will participate in another contract, but this search will offer more options for the Board of Supervisors to consider.

Other options for services can be provided by various local organizations. These include *No Nonsense Neutering*, which offers to safely neuter wild cats. There are Facebook groups, including *Berks Dog Search*, where lost pets may be posted, which oftentimes have good results. Dogs may also be brought to the Humane Society. The Humane Society asks that residents call before bringing any stray pet. They do not however take feral cats. If you encounter a vicious or rabid animal, please do not approach it and call 911. The police department and dog warden will be notified through proper channels.

This interruption of services is regrettable, and we are thankful for the work that the Animal Rescue League has done on behalf of our community. The path moving forward is not completely clear, but our interest is serving the Township residents in the best ways possible. We will continue to do that as we seek out more alternatives for these services.

Diane Hallenbach
manager



PSATS Township Legal Defense Partnership

WINTER 2019

Case summaries are compiled by Scott E. Coburn, PSATS General Counsel.

Elected Auditors Lose Surcharge Ability When Townships Use CPAs

The court's decision provides clarity on the authority that boards of auditors retain when they do not conduct financial audits.

Boards of auditors have no authority to impose surcharges on township officials if the township has appointed a certified public accountant (CPA) to audit its finances, the Commonwealth Court has ruled.

In *Watts Tp. Bd. of Auditors v. Raudensky*, ___ A.3d ___, 2018 WL 6542469 (Pa.Cmwlth. Dec. 13, 2018), *Watts Tp. Bd. of Auditors v. Smithgall*, No. 1430 C.D. 2017, 2018 WL 6542363 (Pa.Cmwlth. Dec. 13, 2018), and *Watts Tp. Bd. of Auditors v. Gutheil*, No. 1432 C.D. 2017, 2018 WL 6543907 (Pa.Cmwlth. Dec. 13, 2018) the board of auditors in Watts Township, Perry County, sought to impose surcharges against the township supervisors for allegedly taking meeting pay in violation of the Second Class Township Code because no ordinance was in place establishing the supervisors' compensation.

The township supervisors challenged the board of auditors' authority to impose surcharges because the township had appointed an accounting firm to perform its 2015 audit. *(The supervisors also challenged the merits of the surcharges, arguing that the payments did not violate the Second Class Township Code.)* The board of auditors argued that Section 907 of the Second Class Township Code required that it impose a surcharge "any time" an elected or appointed official causes a loss to the township even if the board of auditors does not retain audit authority. The trial court ruled in favor of the township supervisors.

On appeal, the Commonwealth Court acknowledged that the Second Class Township Code is silent as to when a board of auditors may impose a surcharge. Because Section 907 provides little guidance, the court looked at that section in the context of the rest of Article IX of the Township Code and determined that the entire article "reveals a statutory scheme indicating that a surcharge flows from the audit."

The court then held that there is "no case law — or any other persuasive authority — to support" an interpretation of Section 907(a) of the code that the board of auditors may impose a surcharge, without first conducting an audit, anytime a township officer violates the law and causes a loss to the township. Because the court found that "any imposition of a surcharge must flow from the findings of an audit," the board of auditors had no authority to surcharge the township supervisors.

The Township Legal Defense Partnership filed a brief in support of the township supervisors. The Commonwealth Court's decision provides clarity on the authority that boards of auditors retain when they do not conduct financial audits. Although boards of auditors do not retain surcharge authority in these situations, they may continue to perform the other duties of their office, such as approving compensation of township supervisors who are employed by the township.

Township Supervisors Successful in Bid To Undo Board of Auditors' Compensation Cuts

In *In re Appeal of Bd. of Auditors of McKean Tp./2017 Meeting*, ___ A.3d ___, 2018 WL 6710667 (Pa.Cmwlth. Dec. 21, 2018), the Commonwealth Court ruled that a board of auditors acted in bad faith when it significantly reduced the compensation earned by two township supervisors who were also employees of the township.

In 2017, the board of auditors in McKean Township, Erie County, reduced the wage of one township supervisor in his capacity as roadmaster from $23.60 to $20.19 per hour and that of another township supervisor in her capacity as secretary from $23.60 to $14 per hour. The wage of the third township supervisor, also a roadmaster, remained the same. The board of auditors also eliminated the township supervisors' compensation for working overtime and greatly reduced their benefits.

The township supervisors, in their individual capacities, appealed and argued that the board of auditors' decision violated Section 606(a) of the Second Class Township Code because the compensation was not "comparable" to that paid elsewhere in the locality.

At trial, the members of the board of auditors testified that they contacted numerous townships

(Continued on back page)

This newsletter is a member service brought to you by

PSATS

Pennsylvania State Association of Township Supervisors
David M. Sanko, Executive Director
4855 Woodland Drive
Enola, PA 17025
Phone (717) 763-0930
Fax (717) 763-9732
psats.org
facebook.com/psats
twitter.com/psats
linkedin.com

Board of Auditors' Compensation Cuts

(Continued from front page)

about their compensation levels and determined that the township supervisors were paid "too much" and the township offered a benefits package that was "unheard of in this marketplace." However, the auditors also testified that they had no problems with the work performance of the township supervisors. The auditors stated that they reviewed the results of PSATS' 2016 Wage and Benefits Survey and determined the supervisors' compensation with a "formula" that the court subsequently rejected.

The court's decision provides guidance to boards of auditors on how to appropriately determine compensation and will be helpful to township supervisors when there is a disagreement about compensation.

After appointing an employee benefits expert, who made different calculations, the trial court ultimately rejected the board of auditors' determinations, finding them tainted by improper bias. Relying on the expert, the court set the hourly rate for the roadmasters at $26.17 and the secretary at $21.75. It also reinstated their benefits and overtime pay and ordered the township to pay the supervisors' attorney's fees.

On appeal, the Commonwealth Court noted that while the board of auditors possessed discretion when setting compensation under Section 606(c) of the Second Class Township Code, that discretion is not unlimited. Relying on the evidence presented to the trial court, the Commonwealth Court concluded that the board of auditors' compensation decisions "were the byproduct of bad faith, improper bias, and/or constituted arbitrary or capricious action." For example, there was evidence that the township supervisors did not have performance issues as employees and the township did not have financial problems that necessitated wage reductions. Furthermore, it appeared that the board of auditors was "upset" that the township appointed a CPA firm in its stead to conduct the annual audit.

The court supported the trial court's finding that the auditors "engaged in statistical 'cherry picking'" and used a flawed methodology to calculate the new wages. It also held that the trial court did not err in appointing an employee benefits expert to assist it in calculating new, appropriate compensation levels.

The Township Legal Defense Partnership filed a brief in support of the township supervisors in this matter. The court's decision provides guidance to boards of auditors on how to appropriately determine compensation and will be helpful to township supervisors when there is a disagreement about compensation.

Landowners Appeal Decision Permitting Unconventional Gas Operations in Residential Districts

Several residents of Allegheny Township in Westmoreland County have appealed the Commonwealth Court's decision in *Frederick v. Allegheny Tp. Zoning Hearing Bd.*, 196 A.3d 677, (Pa.Cmwlth. 2018) to the Pennsylvania Supreme Court.

In its decision, the Commonwealth Court upheld a township ordinance that permitted unconventional gas operations in a residential/agricultural zoning district that makes up approximately 90 percent of the township. There is no timetable for a decision from the Pennsylvania Supreme Court as to whether it will hear the appeal.

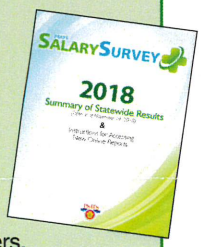
COMPARE SALARY INFORMATION WITH...

PSATS SALARY SURVEY

PSATS' latest salary survey — known as Salary Survey Plus — is available onine. The information is posted on a secure website, where townships can compare themselves to others based on population, budget size, county, benefits provided, and more.

Features of the Salary Survey Plus include:

- An interactive database allows member townships to create customized reports.
- Townships can compare their results to other townships by budget size, population, region, and more.
- Real-time data is accessible year-round, and townships can enter current data at any time.
- The online customized reports are available only to townships that participate in the survey.



To get started, go to **connect.psats.org,** log in with your member ID and password, and click on the Salary Survey Plus link. A printed summary document of statewide results has also been provided to all members.

PSATS 97th Annual Educational Conference & Exhibit Show
April 14-17, 2019
Hershey Lodge, Hershey, PA

MARK YOUR CALENDAR...

Solicitors Spring Seminar

Please alert your township solicitor about the Solicitors Spring Seminar to be held April 15 at Hotel Hershey in conjunction with PSATS' 97th Annual Educational Conference and Exhibit Show at the Hershey Lodge.

The conference registration and hotel reservation system is online at **conference.psats.org**. Register for the Solicitors Seminar at **solicitors.psats.org**.

Maidencreek Township Board of Auditors
January 8, 2019 @ 7 p.m.

Attending: Joan Garza, Michael Paules, Carl Weston

The Board of Auditor meeting was called to order at 7:08 p.m. in the Maidencreek Township Municipal Building.

Reorganization of the Board of Auditors
A motion was made by Joan Garza to appoint Carl Weston as Chairman of the Board of Auditors for 2019. Michael Paules seconded the motion and hearing no questions, the motion passed unanimously.

A motion was made by Carl Weston to appoint Joan Garza as Vice Chairman of the Board of Auditors for 2019. Michael Paules seconded the motion and hearing no questions, the motion passed unanimously.

A motion was made by Joan Garza to appoint Michael Paules as Secretary of the Board of Auditors for 2019. Carl Weston seconded the motion and hearing no questions, the motion passed unanimously.

Public Comment - None

Business
Set Pay for A Working Supervisor
A motion was made by Carl Weston to keep the hourly rate of pay for a working supervisor to $26.30 for fulltime. Joan Garza seconded the motion and hearing no questions, the motion passed unanimously.

A motion was made by Michael Paules to keep the hourly rate of pay for a working supervisor to $16.80 for part time. Joan Garza seconded the motion and hearing no questions, the motion passed unanimously.

Rate of Pay for a Working Supervisor
Fulltime rate of pay for a working supervisor - $26.30 per hour
Part time rate of pay for a working supervisor - $16.80 per hour

Approval of Minutes from 2018
A motion was made by Carl Weston to approve the meeting minutes from January 3, 2018 as presented. Joan Garza seconded the motion and hearing no questions, the motion passed unanimously.

Having no other business, a motion was made by Carl Weston, seconded by Joan Garza to adjourn the January 8, 2019 meeting of the Board of Auditors. Meeting adjourned 7:15 p.m.

Township Manager January 15, 2019