

# WESTTOWN TOWNSHIP

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## **AGENDA** **Westtown Township Board of Supervisors** **Workshop Agenda**

**Westtown Township Municipal Building**  
**1039 Wilmington Pike, Westtown**

**Monday, October 2, 2023**

**Start time: 6:30 PM Workshop**

- 1. Update on Oakbourne Park Project – 15 minutes**
- 2. Consider Request from East Side Little League – 25 minutes**
- 3. Consider Township’s Policy on Missed Trash and Recycling Collections – 10 minutes**
- 4. Public Comment on Workshop Items\* - 10 minutes**

*Tonight’s Workshop will be viewable on Zoom via the following link:*

<https://us02web.zoom.us/j/89939917814><https://us02web.zoom.us/j/89939917814>

*Or by phone at: 646-558-8656*

*\*The public comment period at the end of the Workshop will last approximately 10 minutes. The public will be asked to limit their remarks to two minutes each to allow others an opportunity to speak. To the extent that further public comment is required, speakers will be asked to save their remarks until the Public Comment - Non-Agenda Items portion of the Regular Board of Supervisors Meeting.*

## MEMO

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Date: September 28, 2023

To: Board of Supervisors

From: Jon Altshul, Township Manager

Re: Workshop Discussion with ESLL

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Matt DiGuilio and John Timko have asked to speak with the Board in Workshop regarding a number of issues, including:

- A path forward on the use of the Rustin Walk field
  - On a related note, I have attached correspondence from the Rustin Walk HOA on this issue, received on September 25. I have invited representatives from the HOA to attend the Workshop as well.
- Cost sharing for a replacement shed at Oakbourne Park
  - As background, the old shed where ESLL stored its equipment and supplies had to be relocated as part of the construction activities. Unfortunately, the shed was at the end of its useful life and could not be salvaged. I suggested that the cost of a replacement shed be shared 50/50 between ESLL and the Township, given that ESLL would have had to replace the old shed within the next couple of years anyway.
- Field maintenance for the two fields in order to make them playable for spring 2024.
  - Unlike WCASC, ESLL has not been maintaining the fields during the ongoing construction.
  - The lease agreement does require ESLL to maintain the fields, although the lease did not anticipate the current construction project. The Township is not collecting rent for 2023, or \$3,000 annually.
  - I have attached a picture of the Major (larger) field taken a few weeks ago (see next page).
  - ESLL has asked for the Township to waive the rental fees for 2024, which they expect will represent about 50% of the cost of the landscaping to make the fields playable for the spring season.



## Counter-Proposal from Rustin Walk HOA, September 25, 2023

Hi Jon:

The Board appreciates your patience as we maneuver through this issue. As we advised you in August, the Board recently engaged outside counsel to assist us through this issue. Having now preliminarily discussed this issue with our counsel and a few other Association members, the Board offers the following response to the proposed terms of tri-party agreement between the East Side Little League, the Township and the Rustin Walk Community Association:

1. The term of any such agreement needs to be much shorter than 20 years.
2. Based on the Board's concerns (discussed below) about needing a right to terminate any such agreement for convenience should the practicalities of the agreement not play out as envisioned, we also request the use of a limited license agreement, as opposed to a lease or easement agreement. In addition, the agreement cannot allow for any assignment of the rights and benefits to any other party, and the agreement cannot be amended or modified without all three parties executing a written amendment.
3. With respect to parking on Preserve Lane, the Board is not yet sure if it would prefer "No Parking" signs on the entry portions of Preserve Lane so it reserves its right to request same prior to any execution of an agreement.
4. In an effort to help the ESSL and the Township create a draft of such an agreement, the Board offers some red-lined comments below. However, by doing so, the Board is in no way promising that it will agree to any of the proposed terms and conditions (or bullet points) until it, and its counsel, have completed the formal review process of the draft. In addition, the Board also would like to highlight that the Board is required by the Association's regulations to present any agreement that is tentatively reached between the three parties to the Association's unit owners for input and a formal vote for approval. The Board provides this caution because we want to engage in good faith on this issue, but we want to make clear this potential roadblock.
5. Another potential roadblock is as follows: Given the significance of this agreement, the Association will need to keep its legal counsel involved in this process until a resolution is reached (if any). This generally poses a financial challenge to the Association especially for 2023 which already has a set budget. As such, the Association can say definitively that it does not have sufficient funds in its 2023 budget to afford the necessary legal counsel to complete an agreement in 2023. The Association will be attempting to increase its budget for 2024 so that it can have adequate funding available for the necessary legal fees for resolution of this issue, however its annual budget is subject to Association approval, so the Board cannot guarantee now that it will have the adequate funds in 2024.

Conditions for ESSL:

1. The ~~intended~~ use of the fields would be as back-up fields for levels below "Juniors" (i.e. ages 12 and under). The fields would not be used for inter-league divisional games (i.e. All Star games) or any playoff or other similar high profile games related to Districts, Regionals or other paths to the Little League World Series.

## Counter-Proposal from Rustin Walk HOA, September 25, 2023

2. ESLL shall take reasonable measures to advise parents ~~and~~ visitors not to park on Preserve Lane, including in their beginning of the season communications both from ESSL and the head coach of each team that will use the fields, by placing signage that is readable from Shiloh Road, and throughout the season to the extent necessary. The ESSL shall indicate in such communications that parking is allowed in the parking lot adjacent to the fields and any overflow parking shall be in the high school parking lots. In addition, the ~~and that~~ ESLL shall annually designate a representative to identify and address concerns about parking with the HOA.
3. The ~~agreement~~ lease would clarify that ESLL would assume responsibility for all mowing and lawn maintenance of both the field and the Association's ~~eased~~ property surrounding the field that is included in the agreement. This obligation is ongoing throughout the term of the agreement and not dependent on the baseball seasons. To the extent not maintained by the Township, the ESSL will also be responsible for maintaining (including cutting back of brush) the areas alongside the portions of the walking path that surrounds the fields.
4. The ESSL will provide an adequate number of on-site bathrooms (e.g. All-port-a-potties ) and shall have fencing around them. The bathrooms will be installed and maintained at ESLL's expense and be cleaned ~~and~~ pumped out at least weekly while the league is in session. When the league is not in session, the bathrooms shall be removed.
5. ESLL shall also be responsible for ensuring that the entire site (fields, parking lot and surrounding Association property) is tidy at all times and all trash is placed in ESSL provided trash bins daily and removed weekly (or more frequently if needed) ~~at~~ while the league is in session. When the league is not in session, the trash bins shall be removed.
6. No electrification, including ~~any~~ lighting, public address systems or electronic score boards, ~~will~~ be permitted. To the extent that a score board is installed it shall allow for "hanging numbers" and shall not be visible from Shiloh Road. Further, there shall be no solar or battery-powered outdoor lighting.
7. On-site storage shall be limited to materials and equipment necessary to line and maintain the field. Mowers, tractors, heavy equipment or any other materials or equipment not regularly and customarily used to maintain the fields, would not be stored on-site. The storage facility shall be of such color and material as to blend in with the aesthetics of Rustin Walk and shall be secured by locks at all times.
8. There shall be no concession stand.
9. Westtown Township and Rustin Walk HOA would be named as additional insureds on all of ESLL's insurance policies and the ESSL's insurance shall cover the Association's property and be primary while the league is in session. At a minimum, ESSL's insurance shall include the following.....
10. ESLL shall coordinate with WCASD to avoid scheduling games and practices that correspond with major events at Rustin HS, including football games, graduations, and any other events that will need utilization of the parking lots.etc.
11. ESLL shall be responsible for acquiring ~~pull~~ all appropriate ~~building~~ permits, as necessary.

## Counter-Proposal from Rustin Walk HOA, September 25, 2023

12. ESSL will indemnify, defend and hold harmless the Rustin Walk HOA from any and all third-party claims related to the Association's property and the other portions of the Site.

13. The ESSL will provide "Private Property – No Trespassing" signs at selected portions of the Site to indicate where the public is not allowed to congregate and demarcate where the Site ends and the private property (the Association's property) begins.

### Conditions for Westtown Township

· The Township agrees to cut back vegetation encroaching onto the walking trail from the edge of either side of the trail once per year. (i.e.g. Paragraph 2 from the draft 2021 Trail Maintenance Agreement)

· The Township agrees to enforce, or otherwise be responsible for, the obligations of the ESSL under the agreement (including indemnity) to the extent that the ESSL fails to perform its obligations. The Township shall have five (5) business days to rectify such failures of the ESSL or the Township upon written notice thereof.

· The Township agrees to periodically inspect the Site throughout the baseball season to ensure that the requirements of the agreement are being met including enforcement of all speeding limits on Preserve Lane.

### Conditions for Rustin Walk HOA

· The ~~Association HOA~~ shall grant a limited license ~~an access easement~~ to the Township for use of the Association's property that is area around the field (i.e. the orange area in the map) which use shall be limited to the terms and conditions of the agreement.

· The ~~Association HOA~~ shall ~~at all other times of the year~~ be responsible for vegetation clearing along the trail only during the time period when the baseball seasons are not in session and subject to the requirements of any maintenance agreement entered into between the Township and the Association.

· The ~~Association HOA~~ shall indemnify and hold harmless the Township for any losses or injuries related to the Association's failure to perform the vegetation clearing stated above subject to the terms and conditions of any maintenance agreement entered into between the Township and the Association.

· The ~~Association HOA~~ shall indemnify and hold harmless the ESSL with respect to any third-party claims that arise from the for use and/or lack of maintenance of the limited license access easement area of Association's property which occur when the ESSL's activities are not in session provided that the such area was left in a safe condition after such activities ended including the mowing of the lawn and the removal of all debris.

· The Association shall have the unilateral right to terminate the agreement upon thirty (30) days written notice should either or both of the other parties breach their obligations under the agreement,

**Counter-Proposal from Rustin Walk HOA, September 25, 2023**

or if the Association determines that the parking, or vehicular or pedestrian traffic, in the Rustin Walk community during the ESSL's activities have created an unsafe environment or caused a nuisance to the Community. The ESSL and/or the Township shall have ten (14) days to cure such issues following notice thereof. Should such issues not be cured within such time period, the Association shall have the right to effectuate the termination of the agreement as provided above.

. Upon written request of the Association, all parties agree to meet after the completion of each baseball season (Spring and Fall) to discuss possible changes needed to the agreement to address concerns of the Association.

## MEMO

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Date: September 27, 2023

To: Board of Supervisors

From: Jon Altshul, Township Manager

Re: Consider Township Policy on Missed Trash and Recycling Collection

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At the September 18 Board meeting, public comment was made about why the Township does not credit property owners' accounts when the hauler fails to collect their trash, yard waste, bulk items and/or recycling. To that end, I offered to write a memo outlining the considerable challenges that staff would face in crediting individual property owners.

### **Background**

Section 4.08 of the Township's refuse contract outlines the deductions for violations of the contract. Specifically, this section reads in pertinent part:

*...if the violation is not corrected within a reasonable period of time, the Township Manager may deduct from the monthly payments made to the Contractor the following amounts as liquidated damage for violation of this contract:*

- a. Refuse, leaf waste, recycling, or bulk waste not collected, per house, per occurrence* *\$25.00*
- b. Complaint not attended to, per occurrence* *\$25.00*

The Township is serviced on Mondays (properties west of Shady Grove Way) and Thursdays (properties east of Shady Grove Way). While the Township has always tracked missed pick-ups and complaints, until early 2023, the Township had never strictly enforced Section 4.08, because the hauler had consistently addressed misses **within a reasonable period of time** (emphasis added). The Township has always interpreted "a reasonable period of time" to mean the following service date. For example, if the hauler missed a Monday stop, we would expect them to service the missed property on Thursday, when they are back in the Township. Similarly, we would expect a missed stop on Thursday to be rectified by the following Monday.

Note that many of the complaints about missed collection are received by Township staff the day after the scheduled pick up day. For example, reports of missed collection on a Monday may not be received until Tuesday morning when staff arrives for work, as most residents don't realize their trash has been missed until the evening. In those cases, the only reasonable time for the missed property to be serviced would therefore be the next day the hauler is servicing the Township.

In response to a noticeable increase in missed pick-ups in early 2023, the Township began strictly enforcing Section 4.08 in March. Specifically, the Township now levies a \$25 deduction for a missed collection when the hauler misses a scheduled collection date (e.g. a scheduled Monday collection occurs on a Thursday) and another \$25 deduction for a complaint not



attended to if the collection is not corrected within the “reasonable period of time,” as defined above. Year to date, we have charged the hauler \$8,100 in deductions. The largest single deduction occurred as a result of widespread missed yard waste collection on July 15 that impacted at least 69 properties and resulted in total deductions of \$3,450.

However, we are confident that the total number of missed collections so far in 2023 is much higher than reported, because we only assess a deduction based on actual complaints received. But many missed collections can be harder to document, as explained below. Therefore, providing credits to some property owners with a documented missed collections and not others who were also impacted but may not have complained is inequitable and could make any credit system prone to abuse.

### **Reasons Why Crediting Individual Accounts for Missed Collections is Not Feasible**

- We only assess a deduction to the hauler for complaints actually received. We can't charge the hauler based on missed pick-ups for which no one complained. For example, frequently, a resident might say something like, “the hauler also missed a number of other houses on my street”, but this is too general a complaint for us to assess a deduction for those other addresses. Staff would need to independently count and record the number of missed properties, which is not feasible.
- Some people are more likely to call the Township to register a complaint, while others may trust that their trash will eventually be collected. Therefore, a credit system would likely benefit the former more than the latter.
- Many residents bring their trash inside when it's not collected by nightfall, while others leave it at the curb. This is particularly true when rain or snow is forecast. So, even if we had sufficient resources to visually document all missed stops in the Township, staff would have no way of verifying missed stops for residents who brought their material back from the curb.
- A credit system could also incentivize residents to be disingenuous about missed collections. Residents who forget to put their trash out—an oversight everyone has made—could then put their trash out after the hauler has come by and still demand a refund. While this situation is likely to be rare and the hauler does use trucks equipped with GPS tracking devices, staff could be forced to make judgement calls when fielding resident complaints.
- Residents occasionally put out trash that contains items or materials that are not collectable, such as construction debris or used TVs, or trash that might not be recognizable as trash, such as a small paper bag left next to a mailbox.
- If the hauler misses an entire street, should the refund go to everyone on the street or just the residents who put material out? This conundrum is most easily illustrated with yard waste collection, which not all residents use. A credit system may therefore benefit residents who use trash services more than those who don't.

Finally, it is important to stress that the Township's current policy of retaining the deductions within the Refuse Fund provides a broad benefit to all Township residents, as this policy builds up the Refuse Fund reserves and therefore delays the need for future refuse rate increases.

For all of these reasons, I would therefore advise that the Township make no change to our policy on missed collections.