

UPPER MERION TOWNSHIP BOARD OF SUPERVISORS
JANUARY 13, 2011

The Board of Supervisors of Upper Merion Township met for a Business Meeting on Thursday, January 13, 2011, in Freedom Hall, in the Township Building in King of Prussia. The meeting was called to order at 7:39 p.m., followed by a pledge to the flag and a moment of silence for the victims of Tucson, Arizona and for the late Bernard Finnin, who was a volunteer fireman and a Township crossing guard.

ROLL CALL:

Supervisors present were: Greg Waks, Joseph Bartlett, Edward McBride, Bill Jenaway and Erika Spott. Also present were: Ron Wagenmann, Township Manager; Joseph Pizonka, Township Solicitor; Rob Loeper, Township Planner; Russ Benner, Township Engineer; Judith A. Vicchio, Assistant Township Manager.

MEETING MINUTES:

It was moved by Mr. Bartlett, seconded by Mr. Waks, all voting "Aye" to approve the November 11, 2010 Budget Workshop Meeting Minutes, the November 18, 2010 Business Meeting Minutes and the December 2, 2010 Business Meeting Minutes as submitted. None opposed. Motion approved 5-0.

CHAIRMAN'S COMMENTS:

Chairman McBride reported on an executive session dealing with legal and administrative matters.

NEW BUSINESS

RECOGNITION OF STAFF/BUSINESSES/RESIDENTS

Chairman McBride, along with Director of Safety & Codes John Waters, recognized the outstanding efforts of staff members, residents, and businesses that helped a family whose house needed extensive repairs. The following staff and companies received certificates of appreciation for their efforts.

Pastor George Searfoss	Hope Community Church
Joan Palumbo	Hope Community Church
Santos Ramos	Liberty Roofing Center
Fran Whitman	Liberty Roofing Center
David Domino	Liberty Roofing Center
Darek Falkowski	KP12 Inc.
Jan Kulpinski	KP12 Inc.
Anthony Labrusciano	Labrusciano Construction Co.
A. J. Catagnus	Catagnus Container Co.
Michael & JoAnn DiBussolo	DiBussolo Container Services
	Habitat for Humanity
Rose Grosso	Upper Merion Codes Enforcement
Angela Haris	Upper Merion Codes Enforcement
Bill Henderson	Upper Merion Codes Enforcement
Bob Rudzinski	Upper Merion Codes Enforcement
Brian Sakal	Upper Merion Codes Enforcement
Mark Zadroga	Upper Merion Codes Enforcement

CONSENT AGENDA:

1. Change Order No. 1 – Charles Street Sanitary Sewer Replacement
2. Resolution 2011-02 re: Disposition of Computer Equipment
3. Resolution 2011-03 re: Support Study for Route 100 Extension – *Mr. McBride noted that this study is at no cost to the Township and does not necessarily reflect any position of the Township either pro or con. It is merely the Township's support of a study that will bring back more information about the Route 100 extension.*
4. Budget Transfer re: Leaf Collection - \$12,000
5. Resignation re: Bruce Mitchell from the Economic & Community Development Committee
6. Appointments re:
 - a. Brad Murphy to Zoning Hearing Board
 - b. Gene Lonchar to Fire and Rescue Services Board
7. Ratification re: Resolution 2011-04 re: RACP Grant – Upper Merion portion of the Schuylkill River West Trail from Heuser Park to Valley Forge National Historical Park

Board Comment:

Mrs. Spott asked about the proposed routing for Route 100 that will be studied. Mr. Wagenmann responded that the routing to be reviewed would take it from the general area of Gulph Mills as it comes up to the Trenton cutoff that would take it over to the King of Prussia Mall. He noted that during a prior review it was recommended that the study be broadened to look at other alternatives that might take it to the mall itself. Mr. Wagenmann further explained that the original routing that was reviewed was the Trenton cut off to King of Prussia Road area and then across to Route 202. He said that one of the other alternatives that the Business Improvement District (BID) would like reviewed is possibly using the turnpike right of way and coming into the rear of the mall by the Court. The study will also consider the financial capability of the line to support itself.

Mrs. Spott asked if proper procedures are in place to scrub township computers prior to disposal. Mr. Wagenmann responded in the affirmative and stated that the IT staff provides the necessary follow through in this regard.

Board Action:

It was moved by Mr. Bartlett, seconded by Mr. Jenaway, all voting "Aye" to approve the Consent Agenda as submitted. None opposed. Motion approved 5-0.

AUTHORIZATION OF AGREEMENT RE: eCIVICS GRANTS NETWORK

Mr. Ron Wagenmann, Township Manager, explained that eCIVICS is a tool that will help the Township find and research grants from federal and state sources, and also private foundations for the various projects undertaken by the township. He explained how this information is kept up to date through a license search. There will be a one year trial period to determine the cost benefit of this investment. T&M would still do the actual writing of the grants, but this would enable greater research of these funding sources for the township.

Board Action:

It was moved by Mrs. Spott, seconded by Mr. Waks, to approve the authorization as submitted. None opposed. Motion approved 5-0.

MEMORANDUM OF UNDERSTANDING RE: KING OF PRUSSIA PLAYERS

Mr. Joseph Pizonka, Township Solicitor, stated that the King of Prussia Players is an acting troupe centered in King of Prussia, but without a permanent performance venue. The Players have indicated that the Moore-Irwin House located at 700 Moore Road would be an ideal place for them to construct an amphitheater and playhouse. Mr. Pizonka explained that this memorandum of understanding expresses their intention to do that and that the Township's reciprocal obligation would be to provide the grounds. Assuming the Players obtain proper financing, once the building is demolished they plan to construct a playhouse subject to a long term lease to the township. Mr. Pizonka pointed out that it is obviously a condition on the Players to have the financial wherewithal to do all this, but the memorandum of understanding expresses the intent of the parties to take the next step in this process.

Board Comment:

Mr. Waks asked if the building would be demolished with the exception of the historic portion. Mr. Pizonka clarified that the portion of the building that is not historic would be demolished.

Mr. Waks commented on the importance of the Moore-Irwin house in the Township's history and the long time efforts of those who worked to preserve the house.

Mrs. Spott commented that while this is a good solution and good for the community, due diligence is necessary to make sure that this is the agreement that we want. In reading over the document, Mrs. Spott stated that there is more to the Township's obligations than just leasing the land as some demolition costs would be the Township's responsibility as well as some obligations to use the facilities. Mrs. Spott also questioned the terms of the lease which provided for an initial term of 25 years and four additional terms of 25 years for a total of 125 years. Mrs. Spott also questioned the availability of long and short term funding as well as what is meant by using the facilities. Mr. Wagenmann responded that during discussions it was determined that the Park and Recreation Department would work with the Players and offer such programs as acting and art classes that would provide somewhat of an income stream and that is what is meant by the usage offer. Mr. Pizonka responded to the funding question and noted that this is clarified in paragraph D of the Memorandum of Understanding.

Mrs. Spott raised a hypothetical scenario if after moving forward the circumstances change and the funding cannot be obtained. Mr. Pizonka responded that the contract is written without any recourse to the Township "if we can't" and no damage to them "if they can't."

Mr. McBride stated that counsel has already tightened up this agreement in areas wherein he was concerned. He stated that if the Board of Supervisors agree he has no problem with tabling this matter for one week thereby providing more time for fine-tuning.

Mrs. Spott indicated that she would provide some comments to counsel.

Board Action

It was moved by Mr. Waks, seconded by Mr. Bartlett, all voting “Aye” to table the authorization agreement for one week. None opposed. Motion approved 5-0.

VOLUNTEER FIRE DEPARTMENT RE: PENSION PLAN

Mr. Wagenmann stated that this plan has been developed in conjunction with township staff, the Fire and Rescue Services Board and the chiefs of all the individual emergency service providers in the township. He pointed out that collectively Upper Merion’s volunteer system saves taxpayers in excess of \$8 million dollars every year by not having to pay for a standing army of firefighters. Mr. Wagenmann explained that the proposed pension plan would be a 401a defined contribution pension program and not only reward those volunteers but also offer an incentive for individuals to become volunteers with those organizations. The money would be earned by the volunteers based on the efforts that they put out. The volunteers would have the ability to earn points for their response to fires and other emergency events as well as their participation in firefighter certification and ambulance corps medical responder training classes and organizational meetings. Mr. Wagenmann explained that record keeping would be facilitated by a software package whereby responses would generate points and the pension would be calculated on the basis of how many points an individual received as a ratio of the total points earned by the total volunteer corps. Mr. Wagenmann noted that the Township has budgeted \$40,000 for this program in 2012. The 401a accounts would be held by the ICMA as are the Township’s pension funds. While the funds would be held in trust the individual would have the ability to direct the type of investment instruments that are offered. After 15 years of service the pension would be vested and once separated with the volunteer corps the volunteer would have access to those monies. The Pension Advisory and Health and Welfare Board of Trustees would receive and review the records, do the calculations, and then come back to the Board of Supervisors with their recommendations.

Mr. Jenaway pointed out that this program could possibly affect as many as 100 volunteers. As a way to point out the bargain to the township for a limited amount of money and the great return on our investment, he noted that the cost to Upper Merion Township in the first year would be approximately half the cost of one person for a 40 hour work week.

Mr. Bartlett emphasized that the procedure is very specific and the volunteer will not get credit just by being a member of the fire or ambulance corps, but they have to physically perform certain actions in order to qualify. Mr. Wagenmann reiterated that volunteers receive points for obtaining training and responding to emergency events. He pointed out that the report that each company makes has to be posted for all of the members of that company to see. This is a built in auditing function to make sure that only those individuals who have truly responded are earning the points.

Mr. Waks commented that he agrees with everything his colleagues just said, but in view of recent talk around the state and in other municipalities in other states about pension issues he asked Mr. Wagenmann to explain how this pension system is different from the troubled pension systems in other localities. Mr. Wagenmann responded that the pension plans that have gotten into the serious trouble are called “defined benefit” plans. These plans have a specific dollar amount that will be paid to the individual when they retire for the remainder of their life. The defined benefit plans require that actuarial reports be completed on a bi-annual basis in Pennsylvania to determine the future costs of those benefits and then minimum annual payments are made into that pension plan so that the dollars are there when the individuals retire. Mr. Wagenmann noted that

unfortunately many of the pension plans in many of the cities have not been making adequate payments or as occurred with the downturn in the stock market equities in 2008 and 2009, the pension plan suffered a significant loss of funds. After this occurred their latest actuarial studies indicated that the municipalities needed to make increased minimum payments on an annual basis. The difference with the proposed Upper Merion pension plan is that it is a defined contribution plan. The Board of Supervisors is only committing to \$40,000 and there is no guarantee on any interest rate of return on the money. It will be the responsibility of the individuals and their investment. If the person leaves before they are vested or if any prohibited activities occur, they would forfeit the funds and the money will come back to the township's fire fund.

Board Action:

It was moved by Mr. Bartlett, seconded by Mr. Waks, all voting "Aye" to approve the pension plan as submitted. None opposed. Motion approved 5-0.

MINOR PLAN RE: MOTHER OF DIVINE PROVIDENCE CHURCH. DEVELOPMENT PLAN. CONSTRUCTION OF SIX (6) HANDICAPPED PARKING SPACES AND RELATED SIDEWALKS. A RAIN GARDEN IS PROPOSED TO MANAGE STORMWATER MANAGEMENT. 14.02 ACRES, R-2A SINGLE FAMILY RESIDENTIAL DISTRICT *Plan Expiration: February 7, 2011.*

Mr. Rob Loeper, Township Planner, stated that Mother of Divine Providence Church is located on Allendale Road and utilizing the aerial he pointed out the location of the current handicapped parking which is not convenient to the church entrance. The proposal is to construct six handicapped accessible parking spaces on the north side of the church. New concrete sidewalks will connect the parking with the handicapped accessible church entrance. A rain garden consisting of water absorbing soils and plant materials will provide stormwater management.

In keeping with past tradition the church is also requesting that the Board of Supervisors waive the application and review fees.

Staff has reviewed the plans and found them to comply with township codes. Mr. Loeper noted that the church is on a 14-acre site as a special exception through the Zoning Hearing Board. The site contains a church, school, rectory as well as a church hall which is located between the rectory and the church. Staff would be willing to provide formal approval pending comment from the Board of Supervisors.

Mr. McBride pointed out that without further comment from the Board the plan will proceed with the aforementioned waiver of associated township fees.

Without further comment from the Board of Supervisors the plan is able to proceed along with the requested waiver.

AUTHORIZATION TO ADVERTISE RE: PUBLIC HEARING TO CONSIDER ADOPTION OF ZONING CODE AMENDMENT, CHAPTER 165, ARTICLE XXVII, OFF STREET PARKING AND LOADING REQUIREMENTS. (NON-RESIDENTIAL USES).

Mr. Loeper stated that a year ago the Board of Supervisors amended the parking requirements for residential uses and since then staff has been working on parking and loading requirements for non residential uses. In December 2010, both the Upper Merion Township Planning Commission and the Montgomery County Planning Commission issued their final recommendation on

the draft. Mr. Loeper requested that the Board of Supervisors consider authorizing a hearing on February 3, 2011 which would give staff adequate time to advertise a public hearing.

Mr. Loeper explained some of the aspects of the code update. He indicated that there are some aspects of parking for non residential uses where there is a slight increase in the parking requirements and others that have a decrease. Uses are being added that are currently not covered by the township code. Provisions are being added that deal specifically with and authorize reserve parking, shared parking, as well as in special cases, reduced parking where circumstances would warrant because of a unique property or a unique occupancy of the property where it does not fit into a standard classification. Loading dock requirement discrepancies are being cleaned up since a literal interpretation of the current code would require a phenomenal number of loading docks for many commercial buildings.

Board Action:

It was moved by Mr. Jenaway, seconded by Mrs. Spott, all voting "Aye" to provide authorization to advertise for a public hearing on February 3, 2011. None opposed. Motion approved 5-0.

Board Comment:

Mr. McBride asked about the possibility of obtaining a zoning code review schedule to be presented to the Board of Supervisors at their meeting in early February. He said that once the schedule is adopted it will help keep the Board and staff focused on the zoning code review. Mr. Loeper responded that staff is working on the zoning review and it was discussed at last night's planning commission meeting at which time additional input was requested from the planning commission.

Mr. McBride said if another week in February is required to bring it forward that would be acceptable. He emphasized that a schedule would provide an objective to move week to week and month to month.

AUTHORIZATION TO SIGN RE: THE VILLAGE AT VALLEY FORGE HAS CREATED FOUR (4) SEPARATE PARCELS: MAIN PARCEL, WEGMAN'S, PUMP STATION, AND DRIVEWAY EASEMENT FOR ABUTTING PROEPRTY. THE SETTLEMENT AGREEMENT ALLOWS FOR SUBDIVISION WITHOUT FURTHER TOWNSHIP APPROVAL. THIS IS AN ACKNOWLEDGMENT OF THE SUBDIVISION AND AUTHORIZATION BY SIGNATURE.

Utilizing the aerial, Mr. Loeper pointed out the plan that creates four lots. Lot 1 which is approximately 12 acres would be the area for the Wegman's. Lot 2 is a small lot that will be occupied by the pump station along Guthrie Road. Lot 3 is a very small lot which will address an existing driveway encroachment. Lot 4 is 108 acres and represents the balance of the property. Mr. Loeper pointed out that the settlement agreement allows for further subdivision without formal approval by the Board. The agreement is being presented to the Board of Supervisors to authorize the signing of the subdivision plans so that it can be recorded.

Mr. Bartlett stated that he has a problem agreeing to allowing further subdivisions without Board of Supervisors approval.

Mr. Pizonka explained that this is different than the typical subdivision in that part of the comprehensive settlement agreement basically created a whole new zoning code for that property. He said that the idea was that Realen would have flexibility to do internal subdivisions without having to go through the whole land development process and that it has essentially already been approved.

Mr. McBride commented that he does not know if “approved” is the right word as it was dictated by the Pennsylvania Supreme Court.

Mr. Pizonka stated that it gives Realen flexibility internally to configure lots. The ground is compliant with the zoning code and it has “passed muster.” Mr. Pizonka noted that the Township Engineer has passed on all of this and this is merely a formality so that they can record the plans.

Mrs. Spott asked if there is any sense of what the plan is. Mr. Loeper responded that the approved plan is shown on the aerial with the various buildings and parking fields. As part of the plan they are allowed to conduct certain improvements within certain limitations per the Pennsylvania Supreme Court decision as well as the stipulation agreement. The agreement provides Realen with certain flexibility to move certain uses around. The Township would still get an opportunity to review; however, it would not be necessary to go through a formal land development process. Mr. Loeper pointed out that this subdivision is similar to what currently exists in other areas of the township, for example, the King of Prussia Mall. He said that most of the department stores are on separate individual tax parcels that are not part of the actual mall property. They are still governed by the overall land development but this is done for finance or tax purposes so it is similar to that. Mr. Loeper stated that this subdivision does not change any of the prior approvals, does not change any of the density amounts or at this time the location of any improvements. It is basically drawing the parcel lines so that they can be given tax parcel numbers.

Mr. Wagenmann commented that the man with the driveway will now own the land the driveway is on and it is not now going to be on Realen’s land. The pump station issue was brought to the Municipal Utility Authority and subsequently to the Board of Supervisors for approval and it was agreed that the Little Flower Wastewater Company was created to operate and maintain the wastewater systems under contract in the development. This authorization is giving Realen the ability to transfer the pump station to that particular company.

Mr. Bartlett reiterated his strong opposition to the statement that allows for subdivision without further township approval. Mr. Loeper responded if they are doing land development in terms of improvements there would still be a separate review process for the Board of Supervisors. He provided the example if they would decide to make a change in the configuration, there would still be a review process or if they wanted to change the mix of uses outside of what are already approved, they would be coming back to the Board of Supervisors. Mr. Loeper emphasized that this does not authorize any change to the plan that has already been approved. All it does is divide that plan into four separate parcels.

Mr. Bartlett asked for clarification of the definition of subdivision as used in the phrase “settlement agreement allows for subdivision without further approval.” Mr. Loeper responded that subdivision is the creating of a parcel as opposed to land development which would be the approval to make improvements to the parcel.

Mr. Bartlett asked if this means they can do whatever they want as far as parcels go. Mr. Loeper responded in the affirmative.

Mrs. Spott asked if Realen would still have to comply with subdivision lot sizes. Mr. Pizonka responded that it is outside the township's normal land development process and is a distinct and separate zoning area. Within the confines of that zoning area they have to comply with everything that the township has already approved.

Mrs. Spott commented that she was trying to find a way to give Mr. Bartlett some comfort that there are still some parameters that they have to live within. Mr. Pizonka responded in the affirmative. Mr. Pizonka explained that Realen requires this as a formality to record the plans at the Recorder of Deeds Office and that is why this matter is before the Board of Supervisors for signature, but it does comply and configure with the plan that has already been approved by this Board so this is just a further reiteration on what has already been approved.

Board Action:

It was moved by Mrs. Spott, seconded by Mr. Waks, to authorize signature acknowledging the subdivision. Mr. Bartlett opposed. Motion approved 4-1.

ACCOUNTS PAYABLE & PAYROLL:

Board Action:

It was moved by Mr. Bartlett, seconded by Mr. Jenaway, all voting "Aye" to approve the Accounts Payable [for invoices processed from December 20, 2010 to January 5, 2011, in the amount of \$1,093,819.63] and the Payroll [for December 10, 2010 and December 24, 2010 in the amount of \$1,201,797.35 for a total of \$2,295,616.98]. None opposed. Motion passed 5-0.

ADDITIONAL BUSINESS

UPPER MERION AREA SCHOOL BOARD

Mr. Waks reported that the Upper Merion Board of Supervisors along with the Bridgeport City Council and the Upper Merion Area School Board met this past Monday. The proceedings are now airing on the Viking Channel and may soon air on UMGA-TV. A variety of issues were discussed including the school district referendum.

Mr. McBride commented that two items he requested were left off the agenda at this School Board meeting. He said that these concerns are associated with testing scores relative to the neighboring communities and decreasing revenues due to the increase in successful real estate assessment appeals. Mr. McBride cautioned that the number of these successful appeals is drawing down on the money that the township gets in the form of taxes and is affecting the school district much more than the township. He expressed continued interest in discussing what their plan is to deal with the increased cost and reduced revenue. Mr. McBride reported that one of the issues he raised at the meeting was the upcoming referendum that the public is being asked to vote on. He does not understand why school buses are included in that referendum. Mr. McBride said that there is a need to have more frank discussions with the school board on finances and testing scores.

ADJOURNMENT:

There being no further business to come before the Board, the meeting was adjourned at 8:30 p.m.

RONALD G. WAGENMANN
SECRETARY-TREASURER
TOWNSHIP MANAGER

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Minutes Approved:

Minutes Entered:

The entire proceedings of the business transacted by the Board at this Business Meeting were fully recorded on audio tape, and all documents submitted in connection thereto are on file and available for public inspection. This is not a verbatim account of the minutes, as the tape is the official record and is available for that purpose.