

UPPER MERION TOWNSHIP BOARD OF SUPERVISORS  
JULY 15, 2010

The Board of Supervisors of Upper Merion Township met for a Business Meeting on Thursday, July 15, 2010, in Freedom Hall, in the Township Building in King of Prussia. The meeting was called to order at 7:38 p.m., followed by a pledge to the flag.

ROLL CALL:

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

MEETING MINUTES:

It was moved by Mr. Jenaway, seconded by Mr. Waks, all voting "Aye" to approve the May 27, 2010 and the June 3, 2010 Business Meeting Minutes as submitted. None opposed. Motion approved 5-0.

It was moved by Mr. Jenaway, seconded by Mrs. Spott to approve the June 17, 2010 Business Meeting Minutes as submitted. Mr. Waks abstained. Motion approved 4-0-1.

Board Comment:

Mr. Waks stated that he abstained from voting on the June 17, 2010 Business Meeting Minutes since he was out of town on personal business on that evening.

CHAIRMAN'S COMMENTS:

Chairman Bartlett reported on the success of the library's summer reading program which has enrolled more than 1,000 children.

NEW BUSINESS

CONSENT AGENDA:

1. Permission to Advertise & Receive Bids re:
  - a. 2010 Emergency Sanitary and Sinkhole Repair Service Contracts
  - b. Police Department Vehicle #70 Lease (*Mr. Wagenmann explained that because of the Township's participation in the Pennsylvania Car Theft Task Force the state reimburses the Township for the full cost of a leased vehicle. It is now time to lease a new vehicle and permission is requested to receive proposals for the leases.*)

Board Action:

It was moved by Mr. McBride, seconded by Mr. Jenaway, all voting "Aye" to approve Consent Agenda item #1. None opposed. Motion approved 5-0.

2. Resolution 2010-11 re: Authorization for Disposition of Township Equipment

Board Action:

It was moved by Mrs. Spott, seconded by Mr. Waks, all voting “Aye” to approve Consent Agenda item #2. None opposed. Motion approved 5-0.

3. Request for Waiver re: Trinity Nursery and Kindergarten

Board Action:

It was moved by Mr. McBride, seconded by Mrs. Spott, all voting “Aye” to approve Consent Agenda item #3. None opposed. Motion approved 5-0.

NEW BUSINESS

MINOR PLAN RE: FRANCIS SCHULTZ DEVELOPMENT PLAN. 529 FLINT HILL ROAD. 408 SQ. FT. OFFICE ADDITION. 2.7 ACRES, LI LIMITED INDUSTRIAL. *Plan Expiration: September 7, 2010*

Mr. Rob Loeper, Township Planner, stated that Francis Schultz has submitted a development plan for property located at 529 Flint Hill Road which is located at the intersection of Flint Hill and Hertzog Boulevard. The 2.7-acre property is in the HI Heavy Industrial District and occupied by Shorty’s U-Pull It. Improvements on the site currently include a 9,000 square foot office and industrial structure, equipment storage, as well as a unit for dismantling of vehicles.

The applicant is requesting permission to build a 408 square foot office addition adjacent to the existing building. The structure will replace a demolished office trailer at the same location. The improvements will not result in new impervious area.

Staff has reviewed the plans, found them to comply with township codes, and will provide formal approval on June 21, 2010 pending comment from the Board of Supervisors.

Mr. Bartlett commented on his firsthand observations when he visited the site today and indicated that it is basically an upgrade on the same property.

Without further comment from the Board of Supervisors, the minor plan is approved and able to proceed.

MINOR PLAN FRANCIS SCHULTZ DEVELOPMENT PLAN. 235 FLINT HILL ROAD. 2,277 SQ. FT. STEEL STORAGE BUILDING. 9.17 ACRES, HI HEAVY INDUSTRIAL. *Plan expiration: September 7, 2010*

Mr. Loeper stated that Francis Schultz has submitted a development plan for property located at 235 Flint Hill Road which is adjacent to the Pennsylvania Turnpike. This property is owned by PECO and is part of a 9.1-acre tract zoned HI Heavy Industrial and used for vehicle storage.

The proposal is to construct a 2,277 square foot steel building for the storage of equipment. The improvements will not result in new impervious area.

Staff has reviewed the plans, found them to comply with township codes, and will provide formal approval on June 21, 2010 pending comment from the Board of Supervisors.

Board Comment:

Mr. McBride stated that he recused himself from this application and will sign appropriate documentation.

Mr. Bartlett stated that during his onsite visit he also discussed this application with Mr. Schultz and explained that the structure would basically be a canopy to provide cover for vehicles and it would not make any significant change in appearance or usage of this property.

Without further comment from the Board of Supervisors, the minor plan is approved and able to proceed.

DISCUSSION RE: POSSIBLE ABANDONMENT OF COUNTY LINE ROAD

Mr. Loeper stated that this proposal is in tandem with the development plan for YSC Sports formally known as Rocket Sports. He referred to the memo prepared by T and M Associates that outlines some issues regarding consideration for the possible abandonment of County Line Road. Utilizing the aerial Mr. Loeper pointed out that County Line Road is approximately a block long and is located at the boundary between Upper Merion and Tredyffrin Township and serves three properties: YSC Sports in Upper Merion, an Aqua Water Company pump house along the railroad tracks and an office development with an entrance in Tredyffrin Township. Since the road only serves a few properties it was proposed that the Township consider abandonment.

Mr. Loeper explained that the applicant plans to use a portion of the road for on site parking and when this road is abandoned the applicant would ultimately be responsible for the maintenance of the road. Easements would be required for the Aqua Water Company to maintain their site and coordination would be required with Tredyffrin Township and the owner of the office complex.

Mr. Waks asked about the relation of County Line Road with Pugh Road. Mr. Loeper responded that it is not connected and it picks up again after the railroad track crossing and then runs into Pugh Road.

Mr. Waks asked if the discussion is about the more commercial section. Utilizing the aerial, Mr. Loeper pointed out the portion which is approximately from Devon Park down to the railroad.

Mr. Jenaway commented that he does not have any problems conceptually with what is trying to be accomplished but it is important to communicate with Tredyffrin Township since we have no idea of their plans to possibly make some connection here at some point in time. Mr. Pizonka responded that a hearing would have to be held, an ordinance would have to be approved and the various owners contacted. As part of the process and at the Board's direction discussions will be held with Tredyffrin Township.

PHASE III DEVELOPMENT/SUBDIVISION PLAN. 224 COUNTY LINE ROAD. DEMOLITION/RENOVATION AND EXPANSION OF EXISTING INDOOR SPORTS FACILITY. EXISTING: 26,853 SQ. FT. NEW CONSTRUCTION: 59,846 SQ. FT. TOTAL: 81,861 SQ. FT. AG-AGRICULTURAL DISTRICT, 7.47 ACRES. Plan expiration: August 7, 2010

Utilizing an aerial photo, Mr. Loeper pointed out what once was the old Delaware Valley Swim and Tennis Club, more recently Rocket Sports, and is now under new ownership and planned for development for YSC Sports. He indicated that this facility has always been used as a recreational facility and has undergone a great deal of change over the last several years. The aerial photo

of the site also featured the main indoor building and the area where the swimming pools have been filled in and converted into turf fields with outdoor lights. Mr. Loeper noted that the Board granted a special exception to allow the placement of outdoor lighting for this field. The applicant has been working with the township to upgrade the facility and is proposing to demolish the three small buildings and construct a 59,000 square foot building containing indoor soccer fields and other facilities. Parking will be redone and an underground stormwater detention will be installed.

The Montgomery County Planning Commission issued a review letter on April 6, 2010. The commission commented primarily on the status of the Chester Valley Trail. Utilizing the aerial, Mr. Loeper illustrated the proposed path of the Chester Valley Trail as it goes through this property, continues through Chester County and into Upper Merion Township, through the PECO right of way and ultimately over to the Borough of Bridgeport. The commission recommended approval provided all issues were addressed to the satisfaction of the township.

The Upper Merion Planning Commission reviewed the plans on March 24, 2010 and April 28, 2010. Key items reviewed by the commission included the potential impact on the nearby neighbors, the athletic field lighting, landscaping and buffering. The commission recommended approval including the request for waivers to accommodate the Chester Valley Trail and additional landscaping.

The Shade Tree Commission reviewed and recommended approval of the landscaping plans on June 9, 2010.

The applicant obtained several variances from the Zoning Hearing Board [in November 2009]. One was to allow a 24% building coverage whereas 10% is permitted in the Agricultural District. The second variance was to allow a lighting structure 10 feet from the property line, within the required 40 foot setback. Additional relief was granted in June to allow an increase in building height because of the type of structure and to permit one ground sign and a wall sign at the facility.

T and M Associates reviewed the plans for code compliance and engineering related issues. A third review issued on June 7, 2010 included comments primarily related to the requested waivers and drafting issues. The final review letter did not include any major issues. Any plan approval is contingent upon the applicant addressing those issues to the satisfaction of the Township Engineer.

The recreation use is permitted as a Special Exception in the Agricultural District. This applicant and prior applicants have obtained the zoning relief that was required from the Zoning Hearing Board.

Site access is obtained from Devon Park Drive and County Line Road. One driveway off of Devon Park Drive is a newly relocated road that was part of the 202 project. The other driveway is off of County Line Road and that driveway is being relocated so that it forms a cross intersection with the adjacent development.

The site will have parking for 127 vehicles including 5 handicap accessible spaces which would be up close to the building. Additional spaces would be provided with the possible abandonment of County Line Road. The applicant has also indicated that they have permission to use the adjacent office development for overflow parking when needed.

With regard to pedestrian access, Mr. Loeper indicated that the applicant is requesting waivers from providing sidewalks as there are no sidewalks along either Devon Park or County Line Road and there are no connections to other

sidewalks. The Chester Valley Trail is proposed to track parallel to Devon Park and then through the PECO property and ultimately onto land owned by Upper Merion Township. Mr. Loeper stated that he has been communicating with the attorney for the Chester County Trail and agreements have not been finalized as yet. The owner is waiting to get land development approval as well as waivers prior to signing the final agreement.

No roadway improvements are proposed, however, the applicant will be required to execute a highway capital improvement agreement with the Upper Merion Transportation Authority.

Utilizing the aerial Mr. Loeper pointed out the location in the parking lot of the proposed underground detention system that would tie in with the existing systems in the area. The system is designed to handle flow in accordance with township code. The applicant is currently in the process of obtaining the necessary NPDES permit from DEP and the Montgomery County Conservation District.

With regard to landscaping and buffering, Mr. Loeper explained that waivers are requested for street trees due to existing above ground and underground utilities. He noted that the applicant has made an attempt to address landscaping issues as best they can given constraints at the site.

The applicant will be providing buffer plantings in various areas of the site; however, one unique aspect of the plan is to provide some of the buffer planting on the nearby residential properties on the other side of the railroad track. These plantings include approximately 40 trees.

At the May 27, 2010 Board of Supervisors meeting, the applicant suggested a payment of \$15,000 to the township in lieu of additional planting that can not be located on the site.

The applicant is requesting a waiver from providing a payment or dedication of recreation land. Traditionally, the Board has accepted a request for recreational uses.

The other remaining issue is the existing turf field encroachment onto township property. Mr. Loeper explained that the prior owner overdeveloped a small corner of the property when the turf field was built and it encroached onto lands then owned by PECO. Subsequently the township purchased that land and during the review it was suggested that the issue be resolved. The applicant has met with the township to discuss obtaining an easement which would address the various issues concerning the encroachment. An easement agreement has been prepared and the Township Solicitor has reviewed the document.

The applicant is requesting the following waivers:

1. § 145.10.E which states that local roads require a 50 foot ultimate right-of-way, a cartway width of 24 feet with no parking or a cartway width of 30 feet with parking on one side. *Mr. Loeper stated that this request is for the ultimate right-of-way for County Line Road. He pointed out that traffic does not utilize this road since it is not a through road and it dead ends at the site.*
2. § 145-20.C (2) which states that concrete curb and sidewalk shall be constructed along all existing streets and roads.

3. § 145-24.A(1), which states that for 90° parking angle, the stall width is 9'6", and the stall to curb length is 19 feet and the aisle width is 24 feet. *Utilizing the aerial, Mr. Loeper pointed out the area of proposed parking on the site and he explained that the waiver would allow additional space to accommodate the trail. This waiver request is for parking stall length which would be reduced by two feet.*
4. § 145-24.1.E(1)(a) which states that street trees shall be required along all existing streets when they abut or lie within the proposed subdivision or land development except where existing trees serve to meet the planting requirement. In accordance with Section 145-24.1.E.2.d, street trees shall be planted at a rate of 1 tree per 40 linear feet of frontage or fraction thereof. Trees shall be distributed along the entire frontage of the property, although they need not be evenly spaced. *Mr. Loeper explained that waivers are requested for street trees due to existing above ground and underground utilities. In addition, they want to provide this area for the trail.*
5. § 145-24.1.G(1)(a) which states that buffer plantings shall be installed in subdivision and land developments to integrate new development with its surroundings to separate incompatible land uses by providing screening and to minimize or eliminate views to certain site elements in compliance with the following regulations: Buffer plantings shall be required in all nonresidential development. *Mr. Loeper stated that buffer plantings are typically required in all non residential development. The applicant is proposing to plant trees on the properties located on the other side of the railroad.*
6. § 145-24.1.G.3 (d), which states that parking is not permitted within the buffer area except parking areas approved as shared parking by the Board of Supervisors. *Utilizing the aerial, Mr. Loeper pointed out the areas where parking is located within the buffer area.*
7. § 145-24.1.H.1 which states that all proposed structures, including parking garages and excluding single family residences, shall incorporate the following minimum plant materials in the landscape areas adjacent to the proposed structure:
  - a. one canopy tree (2-2 1/2" minimum caliper) or two understory trees (8' minimum height) shall be planted for every 50 linear feet of the proposed building perimeter.
  - b. 5 shrubs shall be planted for every 20 linear feet of proposed building perimeter. *Utilizing the aerial Mr. Loeper pointed out that between the building there is a hard surface area more or less a patio area that provides for access and egress from the two existing buildings to the two turf fields. The applicant is requesting a waiver. The only areas where foundation plantings would be put in would be along the County Line Road frontage.*
8. § 145-24.1.H.1(c), which states that landscaped area adjacent to the proposed structure shall be a minimum 150 square feet with a minimum 10 foot width.

9. § 140-10.A(2) which states that all grading shall be set back at least five feet from property lines unless a waiver is received from the Township Board of Supervisors. *Mr. Loeper explained that this provision in the code was created to protect properties, especially where fill material would be placed on the lot and create a stormwater issue for adjacent properties. He noted that in this case the only adjacent properties would be the Aqua property, the township and a small portion of the PECO property.*

Staff requests the Board of Supervisors consider the following conditions:

1. Prior to site work commencement, the plans shall be revised to address the July 7, 2010 review letter to the satisfaction of the Township Engineer. *(Refer to Condition #9 and discussion below)*
2. The land development approval incorporates all conditions imposed and representations made to the Zoning Hearing Board.
3. No building permit shall be issued until the owner has executed a Highway Traffic Capital Improvement Assessment Agreement with the Upper Merion Township Transportation Authority.
4. The applicant shall obtain an easement satisfactory to the Township Solicitor and Board of Supervisors for the encroachment of the existing turf field onto township property. *Mr. Loeper stated that has been submitted and under review by the Township Solicitor.*
5. The applicant shall supply a copy of the settlement with the neighbors as well as agreements from the affected property owners related to the placement of landscaping on the neighbors' properties. *Mr. Loeper stated that this has been received.*
6. The applicant shall execute and provide to the township copies of the easement and other required agreements for the construction of the Chester Valley Trail on the subject property.
7. The plans shall be recorded in accordance with the Pennsylvania Municipalities Planning Code.
8. The applicant shall provide a fee of \$15,000 in lieu of additional landscaping.
9. If for any reason the landscaper failed or refused to fulfill the two year guarantee for the trees, the applicant would be responsible to fulfill this commitment. *(see discussion below)*

Robert J. Kerns, Esq., Kerns, Pearlstine, Onorato & Fath, stated that the conditions are acceptable, with the exception of condition #1 relating to the Township Engineer's letter. The specific issue concerns a provision in the letter at page 5 (No. 7) which indicates that since these trees are being utilized to fulfill buffer requirements the trees must be guaranteed for 18 months and maintained by the developer of the YSC property for 18 months in accordance with SLO Sections revised note on the plan. Mr. Kerns explained that the applicant in this case provided and paid for a landscaper (Shreiner Tree Care Specialists) to go onto the properties of the neighbors and plant the trees. He referred to the letter from Shreiner that sets forth the guarantee that all plantings are guaranteed for two years. Mr. Kerns stated that the applicant does not want to get into the maintenance of the trees and in the applicant's view believes that the two year guarantee should be sufficient for township purposes relative to the plantings on someone else's property. He said that would be the only issue the applicant has.

Mr. Loeper pointed out that Mr. Shreiner is one of the neighbors.

Mr. Pizonka asked if this is guaranteed to the Township. Mr. Kerns responded that it is guaranteed to the owners.

Mr. Pizonka stated in that case if there was a default, the owners would have to enforce that. Mr. Kerns responded that the only default would be if the trees died, they have to go back to Shreiner and he would give them another tree.

Mr. Jenaway asked what would happen if Shreiner went out of business. Mr. Pizonka responded that the guarantee would be useless.

Mr. Pizonka stated that his point is that if there were a default the owners would have to enforce it since the Township would not have the authority or ability to enforce it.

Mr. Kerns stated if Shreiner would not live up to that guarantee the applicant would “come on and do it.” He explained that the applicant does not want to be in the middle between Shreiner and the property owners since Shreiner did the work and he is guaranteeing the trees. Mr. Kerns stated that the applicant would be willing to do the “belt and suspenders” **and state in the land development agreement that if Shreiner failed or refused [to fulfill the guarantee] that the applicant would be responsible to go back on the properties and provide the guarantee.**

**Mr. Pizonka stated that would be added as a condition [condition #9]. Mr. Kerns said that would not be a problem with the applicant.**

Mr. McBride indicated that he had no problem with that approach to the situation.

Mr. Jenaway asked for clarification on the parking issue and asked if the parking spaces are down near the railroad as previously discussed or up closer to Devon Park Drive. Mr. Kerns responded that both areas are involved since the spaces on Devon Park are going to be limited because of the location of the Chester Valley Trail easement. He indicated that was one of the reasons for the request for parking space reduction. Mr. Kerns then explained that the other parking spaces would be on County Line Road past the driveway entrance into the apartments and other than once a month maintenance at the Aqua Pennsylvania pump station there is no use for County Line Road.

Mr. Jenaway asked for clarification about the second entrance, the one further down on County Line Road that goes into the woods and how the traffic pattern is envisioned if the road is vacated. Mr. Kerns responded that when a road is vacated that no longer becomes a public surface. Agreements have to be made with all the utilities that use the easements underneath since they still have the right to use the easements. If the decision is made to vacate at that point the balance of the road would go back to the two property owners on either side. As a private road with the right of access, the applicant could then park on it and would have to maintain it. Mr. Kerns said that obviously the applicant does not want to maintain it unless they have to, he pointed out that the applicant does not have any problem with maintaining it since that would be the township's prerogative.

With regard to the waiver request for parking stall length, Mrs. Spott commented that the waiver should be worded so as not to just limit parking to compact cars. Mr. Kerns indicated that he understands.



Mrs. Spott asked for clarification about the street plantings. Mr. Kerns responded that all the trees are accounted for in the following way: they have either been moved on the site, placed on neighbors' properties or a cash consideration will be provided for every tree under the township's ordinance.

Mrs. Spott asked for clarification about the \$15,000 payment to the township in lieu of additional planting. Mr. Kerns responded that payment covers all the trees that can not be located on the site.

Mr. Pizonka asked if the applicant agrees to all the conditions. Mr. Kerns responded in the affirmative as amended with the first condition.

Board Action:

It was moved by Mr. Jenaway, seconded by Mr. McBride, all voting "Aye" to approve the Phase III Development Plan [with 9 waivers and 9 conditions]. None opposed. Motion approved 5-0.

EASEMENT AGREEMENT IN CONNECTION WITH YSC DEVELOPMENT PLAN

Mr. Pizonka stated that the easement agreement has been reviewed by the Township Solicitor and found acceptable and suggested that the Board of Supervisors authorize acceptance of this easement so that it can be executed in connection with the development plan.

Mr. Ron Wagenmann, Township Manager, explained that it covers the overlap of the turf field onto the piece of ground that the township purchased from PECO.

Board Action:

It was moved by Mr. Waks, seconded by Mr. Jenaway, all voting "Aye" to approve the acceptance of the easement agreement as submitted. None opposed. Motion approved 5-0.

ROAD DEDICATIONS RE: CLEMENT CIRCLE/REEDEL ROAD (GAMBONE BROTHERS) (RESOLUTION NO. 2010-14)

Mr. Jenaway referred to the memo that was written regarding the final inspection on the subject road that indicates that the curbing, sidewalks, paving and inlets all met the expectation. He noted that there was nothing in the memo regarding the road bed and wanted to know if core samples were done to assure that the road bed actually meets township's specifications. Mr. Bob Norman, Director, Public Works, responded that he believes the Township Engineer inspected the road and that in house inspections were also conducted. He said he would double check to make sure it was done.

Mr. Jenaway commented that he raised this issue since there was no mention in the memo. Mr. Norman said it was an oversight with regard to the paperwork and expressed confidence in the inspections that were done.

Mrs. Spott concurred with Mr. Jenaway's concern and stated that the Board should have the assurance about the road inspection in writing and that it should be a condition of approval.

After a brief exchange, it was decided that the condition should require a letter from the Township Engineer that the road was constructed in accordance with the plans and specifications and also that the 18 month maintenance bond has been posted as required by state law.

Mr. Jenaway stated in the future if there are any similar scenarios that develop to make sure that is part of the process.

Mr. Jenaway clarified that the motion indicate acceptance of the dedication of this roadway contingent upon the Township Engineer [in writing] assuring that the road bed condition meets the specifications of the land development plans as well as the other related specifications and that the maintenance bond be secured as well.

Board Action:

It was moved by Mr. Jenaway, seconded by Mr. McBride, all voting “Aye” to accept the dedication of this roadway contingent upon (1) the Township Engineer [in writing] assuring that the road bed condition meets the specifications of the land development plans and (2) securing the maintenance bond. None opposed. Motion approved 5-0.

ADDITIONAL BUSINESS

BUSINESS IMPROVEMENT DISTRICT

Mr. Waks reported on the successful establishment of the King of Prussia Business Improvement District (BID) after a two and a half year process of meetings with local landowners, businesses and township officials. The goal of the BID is to improve the economic competitiveness of Upper Merion Township at no cost to the taxpayers. He said the group would invest some \$5 million in the township.

JOINT MEETING WITH THE SCHOOL BOARD

Mr. Waks also reported on the joint meeting of the Board of Supervisors and the School Board which was held earlier in the week. The meetings will continue on an ongoing basis.

Mr. McBride followed up with comments that the joint meeting with the School Board was helpful on a wide range of issues and he is looking forward to the benefits of this productive exchange.

CONSTRUCTION SITE COMPLAINTS

Mr. McBride commented on some complaints regarding construction sites in the township. He expressed an interest in working with the contractors to take into consideration the impact on residents and try to clean up these sites and keep them orderly. He requested that the Safety and Code Enforcement Director visit the sites and report back to the Board of Supervisors.

Mr. John Waters, Safety and Code Enforcement Director, stated that he and his staff are familiar with the problems referred to and are working to solve these issues.

FARMER’S MARKET

Mrs. Spott commented on the attractions of the Farmers’ Market. She also urged attendance at the Concerts Under the Stars every Sunday evening at 7 p.m.

From the Public:

A resident from Valley Forge Towers announced that Alex’s Lemonade Stand would be operated this Saturday.

ADJOURNMENT:

There being no further business to come before the Board, the meeting was adjourned at 8:33p.m.

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RONALD G. WAGENMANN  
SECRETARY-TREASURER  
TOWNSHIP MANAGER

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Minutes Approved: 8/19/10

Minutes Entered: 8/20/10

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.