

UPPER MERION TOWNSHIP BOARD OF SUPERVISORS
SPECIAL MEETING
May 27, 2010

The Board of Supervisors of Upper Merion Township met for a Special Meeting on Thursday, May 27, 2010, in Freedom Hall, in the Township Building in King of Prussia. The meeting was called to order at 5:35 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; Judith A. Vicchio, Assistant Township Manager; Angela Caramenico, Assistant to the Township Manager.

BOARD COMMENT:

Mrs. Spott stated for the record that she is recusing herself from the vote on the ordinance and discussion since she is employed by a company impacted by the ordinance. A written explanation has been submitted for inclusion with the minutes.

Mr. Waks stated for the record that there were rumors that the ordinance would increase taxes for residents. He said this was not true and that this affects commercial properties only.

BUSINESS IMPROVEMENT DISTRICT HEARING:

Mr. Joseph Pizonka, Township Solicitor, stated that notice of this hearing was published in the Times Herald on May 14, 2010. All witnesses were then sworn in as a group prior to their testimony.

Mr. Andy Hamilton, consultant for the Business Improvement District (BID), provided the background and development of the project.

Mr. Rich Kubach discussed the governance and stated that in drafting the bylaws an effort was made to recognize the diversity of the various businesses within the township so that the nominating committee would represent a cross section of the BID.

Mr. Brian McElwee, Valley Forge Investment Corporation, stated that the Business Improvement District is designed to provide a mechanism to enable the property owners to speak with one voice, provide capital improvements and marketing opportunities for those business areas. He pointed out that this would also provide a vehicle for studies with respect to economic impact, zoning ordinances, and cooperation with the Township so that Upper Merion's commercial properties can realize their full potential.

Utilizing the aerial, Mr. Andy Hamilton pointed out the areas for assessed and non assessed or industrial properties in the Business Improvement District.

Mr. Pizonka asked what kind of properties can be assessed. Mr. Hamilton responded it would be office and commercial in accordance with the county tax code.

Mr. Pizonka asked about residential. Mr. Hamilton responded that residential would not be assessed and it is so stated in the bylaws of the BID.

Mr. Hamilton then discussed the yearly .0089 millage. Mr. Pizonka asked if that millage is now fixed for the five years of the BID. Mr. Hamilton responded in the affirmative.

Mr. Pizonka asked if the ordinance would be in effect for five years. Mr. Hamilton responded that the BID would be authorized for five years and after that the BID must be renewed. He went on to explain that with the adoption of this ordinance those property owners within this district will have an opportunity to vote over the next 45 days to support or not support the BID as it has been discussed and developed for two years. Support from a certain percentage of affected property owners would be required; otherwise the ordinance would be defeated.

Mr. Pizonka asked about the notification process for property owners. Mr. Hamilton responded that once they are notified the property owner would report back to the Township in writing to the Executive Secretary of the Township.

Mr. Pizonka asked if the millage number translates into a percentage so that property owners would know by what percentage their tax will be affected. Mr. Hamilton responded approximately 4%.

Mr. Scott Sibley, a member of the Upper Merion Township Economic and Community Development Committee (ECDC), stated that the ECDC is a volunteer committee appointed by the Upper Merion Township Board of Supervisors to review economic issues and to promote community development in the township. He said that when some members of the business community suggested a Business Improvement District about five years ago, the Board of Supervisors referred the issue to the ECDC for review and recommendation. Mr. Sibley indicated that ECDC supports a BID as an opportunity for the business community to invest and improve the township. He pointed out other benefits such as providing more opportunities for grants, attracting attention from SEPTA to improve transit in the area and possibilities to obtain partnerships for additional funding.

Jeff DeVuono, Brandywine Realty Trust, stated that he represents a real estate investment trust that owns about 20 properties totaling about 2 million square feet within the boundaries of the proposed Business Improvement District. Brandywine Realty opposes the ordinance unless there is a provision for study of business tax reform. They also oppose the exclusion of industrial properties. Mr. DeVuono explained that of the 2 million square feet owned by Brandywine about 500,000 or 600,000 square feet are industrial properties that are now excluded in the proposed plan. He explained that Brandywine's experience in other BIDs has been that the perimeter boundary is the differentiation between being excluded or included, not individual selections within the overall boundaries. The last request Mr. DeVuono outlined is for further detail and support in the governance for the prioritization of proposed capital projects and how the money is allocated. He said that the company has a history of supporting such districts and would like to be able to support it, but in its current form the above three issues need to be further addressed, expanded upon or modified in order to garner Brandywine's support.

Mr. McBride asked for additional information about the two BIDs that Brandywine helped get off the ground. Mr. DeVuono responded these BIDs involved a district in Richmond, Virginia and Northern Virginia. He said he was involved post creation but was on the board of the University City District in West Philadelphia. Mr. DeVuono noted that another representative of his firm is on the board of the University City District and he is a member of the Center City District and part of its expanded use which is the Center City Development Corporation.

Mr. McBride asked if Mr. DeVuono has had discussions with the BID organizers about Brandywine's concerns. Mr. DeVuono responded in the affirmative.

With regard to the prioritization of capital improvement funds, Mr. McBride asked Mr. DeVuono if this would not be a natural board function. Mr. DeVuono responded that it typically is, but there is a question about the makeup of the board, how the seats are taken and what representation they make.

Mr. Pizonka made the case that because of the way the BID is structured, the three highest assessed property owners would be entitled to a seat on the board and as such Brandywine would be entitled to a seat. Mr. DeVuono agreed.

Mr. McBride said he wanted to be clear that it is not a matter for the prioritization of capital improvements, it is not a matter of how the bylaws are written for that function, but that Mr. DeVuono's concern is the way the board is structured. Mr. DeVuono responded that from his company's experience the organization of a BID is a very complicated process. He said they had difficulty in understanding the structure that was being proposed and was confused by the inclusion of certain properties, certain products types versus non inclusion of others and how everyone is treated equally.

Mr. McBride expressed his concern over Brandywine's position and indicated that there has to be a way to reconcile their differences.

Mr. DeVuono stated that he believes BIDs can be very productive and Brandywine has a history of participating in them. He reiterated his concerns as previously expressed with regard to the tax reform study and inclusive versus exclusive.

Mr. Waks addressed what Mr. DeVuono stated with regard to [business] taxes. He indicated that over the next few months the Upper Merion Township Economic and Community Development Committee (ECDC) will be addressing what he perceives to be a myth. Mr. Waks noted that the township's tax rate is \$150 for every \$100,000 in sales and that the ECDC will be disseminating tax information through the township's new website and deal with businesses more directly to address the misperception that Upper Merion is more heavily taxed than neighboring municipalities.

Mr. DeVuono stated that Brandywine views the Business Improvement District as a way to have designated funds to pursue a tax review and focus on a few of the details. He said that with the significant capital commitment Brandywine has made to Upper Merion Township they want to see the Business Improvement District do well and make it a better place.

Mr. McBride asked if anyone on the organizing committee would like to comment.

Mr. Brian McElwee stated that BID group had significant dialog with Brandywine, was very interested in what they had to say and would very much like Brandywine's active support and participation in the BID. Mr. McElwee indicated that he was empathetic to what Brandywine had to say about the need for the BID to assume as one of its responsibilities a review of the overall business tax structure to make sure that Upper Merion is competitive with other townships. From his personal experience he knows that the rumors warrant a close look to make sure that Upper Merion is positioned as competitively as we can possibly be. Mr. McElwee said that the examination of the tax structure would be high on their agenda. He said he was at a loss as to what other

governing structures Brandywine would like to see. Mr. McElwee pointed out that the BID organizers believe there are some property owners that are so large that they should be assured a seat on the board and if there is anything beyond that Brandywine specifically would like to suggest in the governing structure the BID group would be open to consider it, but as yet they have not heard it. Mr. McElwee then addressed the industrial issue. He said that originally the industrial properties were included, but after receiving strong comments from some of the industrial properties against this approach, the BID organizing committee's response was that this should be a collaborative process and they should not be forced into the BID. Mr. McElwee stressed that while the industrials were welcome to be included in the BID, the resulting product reflected the best structure that would garner the most support.

Mr. McBride asked for clarification about the final outcome of the industrials since it was his understanding that they [industrials] did not close the door and would give it a year and then may want to come in later. Mr. McElwee responded if the industrial property changed its use it would be included. He also pointed out that if the industrial property owners would see the benefit, they might opt to participate; however, he does not have a high expectation that a spontaneous ground swell would occur.

Mr. Mike Cochran followed up with the points just raised in the discussion with respect to the industrials and said they are actually included, but are not assessed at this time. He indicated they are on the map and are included. Mr. Cochran clarified that they would be assessed when the use changes. With respect to the tax situation, Mr. Cochran indicated the preliminary plan includes research to determine how the mix of taxes paid by service area property owners might be adjusted so as to make taxation rates more competitive with nearby municipalities. Mr. Cochran indicated he was unaware of the concern with office since he is primarily retail. He noted that he works with a company that manages the King of Prussia Mall, Henderson Square, DeKalb Plaza and the Atrium Office Building which is only 100,000 square feet. Mr. Cochran said that the organizers are very concerned that we maintain a competitive environment in all uses and stay focused and together as a group to promote this area. He said that funding possibilities will be explored both at the state and federal level and the need exists to leverage our dollars.

Mr. DeVuono restated Brandywine's position and indicated they are very motivated to make sure that we all work together to create the best atmosphere possible. He stated Brandywine is not opposed to the BID as a general theme and he expressed appreciation for the revised draft that includes some focus on tax reform. Mr. DeVuono indicated he may not have made it clear that Brandywine did make some modified changes to the governance. He pointed out that Brandywine's concern is more driven by the inclusion or exclusion of certain properties. Mr. DeVuono said that he appreciates the sense of community, listening attitude and willingness to make modification during the BID process; however, on behalf of Brandywine he requested that the tax reform comments have "a bit more teeth." He indicated that there should be more definition, some time lines, a percentage of the money and what is done with the review of information at a later date. In closing Mr. DeVuono stated Brandywine is not here to discourage the BID but to have a voice in how it can be modified so that collectively we can move ahead as a township.

Mr. Adrian Castelli, owner of Gulph Mills Tennis Club, asked why his section of Henderson Road was included in the district. Mr. Castelli also asked if any traffic studies have been done with regard to the actual destination of people coming off at Gulph Mills and onto Henderson Road.

An unidentified BID organizer answered the question with regard to Henderson Road. He said that Henderson Road would be a natural "gateway"

for King of Prussia. With the new exit from the expressway at Henderson Road and the amount of traffic anticipated coming down that corridor, it was brought up by businesses on Henderson Road that they would like to be included. The BID organizer indicated that communication was made with every business that could be identified with letters, emails, and telephone calls.

Mr. Castelli asked if any traffic studies were done with regard to the actual destination of the cars coming off at Gulph Mills and onto Henderson Road.

Unidentified BID member responded that traffic studies were not done as they exist today, but as they will exist with the change in the road patterns on Henderson Road.

Skip Kunda, one of the incorporators on the BID, stated that he is one of the persons that suggested the inclusion of Henderson Road which is evolving into a retail corridor. He said that even if Mr. Castelli's use is not an ideal retail use at some future time if he decides to sell his building one of the side collateral benefits of the BID is that all real estate values tend to rise.

Mr. Castelli asked if studies have been done with Business Improvement Districts with a similar composition to indicate that it produces an increase in rents, property values, and traffic through the door.

Larry Houston, BID consultant, responded to the question as to the effect that has been produced by BIDs that have had enough time to prove themselves. He said the one that he knows best is the Center City District in Philadelphia. It was started with about 2,200 properties and over the next 15 years the number of properties within the same district doubled. The rate of the assessment was slightly reduced and there was growth in the number and the value of the properties within that area. Mr. Houston pointed out that these kinds of questions were raised during the big community sessions and the working meetings with the organizing committee and it encouraged the organizing committee to keep moving forward. Mr. Houston explained that the purpose of BIDs is to improve property values and improve business profitability. That is the message and mission of the more than 1,200 Business Improvement Districts across the United States and they work best when they are organized from the ground up in a place to solve issues and opportunities that are specific to a certain area.

Mr. McBride indicated that the question was is there any knowledge or is there any record of BIDs that are established like this one and proved to be successful. Mr. Houston responded in the affirmative. He said that a BID was established in Northern Virginia of about the same acreage, the same composition, with an abundance of retail in the center, one or two shopping centers, and a wide mix of hotels and restaurants. This particular BID has been reauthorized at the request of the board members twice since its formation which is evidence that it is apparently doing something good.

Mr. Castelli stated that the Philadelphia Center City Business District is irrelevant and asked if statistics exist for the Northern Virginia BID that identify rental rates, property values and if traffic through the doors was increased and directly attributed to the BID and not to regional growth or anything that is not specific to the BID.

Mr. McBride stated that the success of the Center City District cannot be discounted since they had a similar mission about how to grow the business, grow the profitability, and increase property values. Mr. McBride pointed out that every yearly report out of Center City District that he has seen mentioned all the successes and their driving issues within Philadelphia that need to be dealt with outside of what they were originally organized to do. Mr. McBride said if the statistical information was requested months ago it might have been obtained,

but irrespective of that, the BID organizers did a good job of drawing up the bylaws and the mission.

Mr. Houston asked for Mr. Castelli's business card so that he could send him some material.

Mr. Waks said even if specific statistics do not exist, the fact is that the Northern Virginia BID decided on their own volition to reauthorize the district twice.

Mr. Jay Bound, industrial owner in the business district, expressed opposition to inclusion in the BID. He wanted to go on record that he has no problem with the BID as it is drawn up on the map but would have a problem with it to include the industrial.

Mr. Michael Pearlstein, owner of a small office building at 601 S. Henderson Road, commented that in his opinion the zone is too large. He said that the interests of the mall and the office industrial park on the other side of the turnpike are very different than his interests. Mr. Pearlstein pointed out that many properties are part industrial and part retail and some are excluded because they are considered industrial and others are included because they are considered retail. He said there is a serious flaw in the methodology for picking and choosing properties by Montgomery County records.

Brian McElwee commented that Mr. Pearlstein made some very good points regarding the reality of how a property is used versus the reality of how a property is classified. He said this was discussed during organizing sessions and noted that it is possible that the county assessment classification has not kept up with use. Mr. McElwee said that the organizing committee and township should remain alert to situations when a property does not appear to be classified properly so that the use classifications are kept up to date.

Mr. McBride asked about the process for updating county records. Mr. Wagenmann responded that if the BID committee believes properties are inappropriately identified, they should schedule a meeting in the County Assessor's Office so that they have an understanding of the process and then bring their questions or concerns to their attention.

Mr. McBride expressed concern about certain properties that are in the BID but not assessed. An unidentified member of the BID committee responded that this occurs because the assessment is based on the use classification of the county and the property owners would be assessed if the use classification changed.

Mr. McBride stated that the BID should make it a priority to meet with the tax assessor to make sure the use classifications are accurate.

Mr. McBride explored the possibility of a condition with a sunset provision whereby the Board of Supervisors would receive progress reports on the use classification. Mr. Pizonka responded that a vote would be necessary to amend the ordinance to include that language and if the ordinance was amended a rehearing would be necessary.

Mr. Bartlett asked if it is within the purview of the Board of Supervisors to change use classifications. Mr. Pizonka responded that the Board of Assessment has this responsibility but the Board of Supervisors could take the initiative and ask them to investigate inappropriate classifications.

Mr. Waks stated that the Board of Supervisors should strongly encourage [progress reports] but in his view it should not be a condition and the ordinance should remain as is.

Mr. Sibley expressed concern that an amendment would be a setback in the process. He said that in order to address these concerns the Township has one position on the nine member board and it could certainly be made a requirement of whoever is appointed to that position that the Board of Supervisors be kept informed with that process.

Mr. Wagenmann suggested that the board of directors agree to create as one of its objectives for the first year a comprehensive review of assessments and designations of the properties within the BID area and seek modification or changes by the County.

Mr. McBride indicated that he wants to assure that the issue remains as a focus but he does not want to send it [the ordinance] back through the process.

Dan Hoffman, one of the project consultants, offered comments about the assessment issue for different classifications.

Rose Hykel, Upper Merion Real Tax Collector, wanted to make the BID organizers aware that if they wanted to be included in the real estate tax bill that goes out from her office on February 1, 2011 everything would have to be in place before the end of this year. She provided additional details about the billing process and offered to help the Business Improvement District in any way with the collection details and procedures.

Mr. Bruce Hartlein, Liberty Property Trust, wanted to go on record that his company supports the BID but was concerned about the inclusions and exclusions in the current map and in the tax revenue process.

Dale Kline, owner of a kitchen cabinet business in King of Prussia, stated that he lives in Roxborough in Philadelphia and that the BID there has been a big improvement for his neighborhood. There was previous opposition to the BID but because of all the improvements in the neighborhood it was approved for another five years

Mr. Waks made the motion to approve the ordinance. Mr. Bartlett seconded.

A brief discussion ensued between Mr. McBride and Mr. Pizonka regarding the need for a property assessment report from the BID. Mr. McBride did not want to delay the process, but was emphatic in keeping this focus and getting this done. Mr. Pizonka suggested that the director appointed by the township be tasked to insure that this happens.

Mr. Jenaway recused himself since he is President of the King of Prussia Fire Company, a non profit, which has property within the BID.

Board Action:

It was moved by Mr. Waks, seconded by Mr. Bartlett, to approve the Business Improvement District Ordinance. Mrs. Spott and Mr. Jenaway abstained. Motion passed 3-0-2. Ordinance No. 2010-791 was adopted and will be filed in Ordinance Book 15.

Solicitor's Comments:

Mr. Pizonka explained that the process for this ordinance differs from a normal ordinance. Now that the Board of Supervisors has adopted this ordinance it will be sent to all affected property owners who will have 45 days to respond. If 40% of those property owners vote in the negative the ordinance is defeated.

ADJOURNMENT:

There being no further business to come before the Board, the meeting was adjourned at 6:58 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.