

UPPER MERION TOWNSHIP BOARD OF SUPERVISORS
WORKSHOP MEETING
DECEMBER 11, 2014

The Board of Supervisors of Upper Merion Township met for a Workshop Meeting on Thursday, December 11, 2014, in the Township Building. The meeting was called to order at 7:32 p.m., followed by a pledge of allegiance.

ROLL CALL:

Supervisors present were: Greg Philips, Erika Spott, Greg Waks, Bill Jenaway and Carole Kenney. Also present were: David Kraynik, Township Manager; Sally Slook, Assistant Township Manager; Rob Loeper, Township Planner; Scott Greenly, Associate Planner; John Waters, Director, Safety/Codes Enforcement; Joseph McGrory, Township Solicitor; John Walko, Solicitor's Office.

CHAIRPERSON'S COMMENTS:

Chairperson Waks reported an Executive Session was held prior to this meeting to discuss personnel matters.

DISCUSSIONS:

705-715 W. DEKALB PIKE DEVELOPMENT PLAN, 6020 SF RETAIL BUILDING, 0.94 ACRES, CO (ZHB APPROVAL) *Plan Expiration 1/14/15*

Mr. Loeper stated an extension until mid-February has been granted for Hector Venus' plan for the property located in the block currently occupied by the Cummins Automotive Services. The applicant went before the Zoning Hearing Board and was granted relief. Mr. Loeper noted the Cummins station and several other buildings will be demolished. The plan has changed slightly since the first time it came before the Board of Supervisors. Because of the configuration of Crockett and Shaffer Road (both one-way in from US 202), the plan will have a right in and right out onto US 202 which will be the only driveway on US 202. Any other access would be off of Crockett Road.

Review letters have been received from the Montgomery County Planning Commission, McMahon and Associates and Remington Vernick Engineers.

With regard to pedestrian access, sidewalks are shown on all frontages which was of paramount importance to the supervisors in looking at these plans. There are also the pedestrian connections from the sidewalk on the street to the building and parking which is primarily in the rear. There are also additional

parking fields to either side of the building.

Mr. Waks asked the nature of the new retail. Mr. Venus responded it is planned for a Verizon telephone store.

For additional clarity, Mr. Jenaway asked if it is correct that the plan includes the frontage properties between Shaffer and Crockett and stops at that property line and not the store toward the back or the single family dwelling. Mr. Loeper responded in the affirmative.

Mr. Philips asked for clarification about the one-way streets. Utilizing the aerial Mr. Loeper pointed out the two streets that are one-way in. He said the applicant was looking at the possibility of making some changes and the early discussions with PennDOT resulted in some potential problems regarding modifications to signalization along US 202.

John Diemer, Wilkinson Engineering, stated PennDOT was approached about the possibility of turning Shaffer Road into a signalized intersection and making it two-way. Comment from PennDOT is that signalization would involve 12 intersections. It is currently a three-phase signal and making Shaffer two-way would involve making that a four-phase signal. As limited as that movement would be because it is not a large volume it would necessitate a very involved traffic study. Consideration was also given to potentially turning Crockett into two-way for the first 150 feet. Several meetings were held with residents and the residents were very receptive to that idea. The problem is the limited sight distance to the left. For this reason Shaffer and Crockett will remain one-way into the neighborhood. It was noted the applicant added an access onto US 202 and fully intends to propose to turn Crockett into two-way for the first 150 feet if the zoning goes through and the applicant moves forward with the development on the neighboring property.

Mr. McGrory asked if the applicant intends to close the access on US 202 at that point. Mr. Diemer responded it is not the applicant's intention to close that entrance.

Mr. McGrory inquired if the architectural has been submitted as yet and stated he would like to see that run concurrent with plan approval.

Mr. Jenaway asked if the total square footage existing there now and if the occupiable space is more than what will result with this plan. Mr. Loeper responded the application shows the existing building square footage is 5,299 square feet and the proposed is 6,020 square feet.

Mr. Waks stated the Board of Supervisors has a right to architectural review and asked if there is a consensus to bring the plan into a workshop. It was agreed to bring the plan for architectural review at the first workshop in

January. This would be the last step in the process prior to consideration at a business meeting, possibly in January.

REVIEW OF DRAFT ORDINANCE REGULATING OUTDOOR WOOD FIRED BOILERS

Mr. John Waters, Director Safety/Codes Department, provided an overview of the draft ordinance to provide for the regulation of outdoor wood-fired boilers. The proposed ordinance would add a new section to Chapter 10 of the International Mechanical Code and is based on the Pennsylvania Department of Environmental Protection's model air pollution ordinance. In addition, the Zoning Code would have to be amended to reflect the proposed new section. Since this change would be part of the Uniform Construction Code, it would have to go to the state for a review.

Highlights of the proposed ordinance are as follows:

- New installations are required to be Phase II certified (already state law)
- Phase II relate to particulate standard requirements
- No person shall use or operate an outdoor wood-fired boiler unless it is installed at least 150 feet from the nearest property line
- stack height would be a minimum of ten (10) feet, has to extend at least two feet above the highest peak of any residence within 150 feet from the OWB. The property being served by the boiler would need to be two feet above any section of the house within the (10) feet.
- For existing installations, the minimum stack height of ten (10) feet would apply. If it is not a Phase II it must be two (2) feet above the highest peak of any residence within 500 feet.

A discussion followed since there was some confusion about the disparity in the documents distributed for discussion.

Mr. Waters stated he is providing an overview of the mechanical code ordinance. He said there was also a discussion about doing a zoning ordinance as well. Mr. McGrory stated the draft he has simply adds a paragraph to zoning indicating outdoor wood-fired boilers would be subject to requirements of Chapter 69 "Construction Codes, Uniform." It is just a cross reference so the election can be made to enforce through the Uniform Construction Code or zoning because zoning provides some equity relief. Mr. McGrory stated before the ordinance is adopted it is necessary to notify the state, wait a sufficient time period, and then pass the ordinance. The state does not necessarily approve the ordinance; however, if there is an appeal an administrative hearing would be scheduled.

In response to a question, Mr. McGrory responded the zoning and the UCC are in the same ordinance.

Mr. Waks asked if there is anything in the proposed ordinance that would affect any current OWB anywhere in the township. Mr. McGrory responded fuel source can be regulated or replacement unit can be regulated, but not setback because the setback is part of use and relates to zoning. For the issues this township is facing, it would be of no help to what currently exists.

Mr. Waks referred to the email he received from Chris Kaasman, Chairperson, Environmental Advisory Council, who strongly recommends that the proposed ordinance be sent to the Montgomery County Planning Commission prior to Board of Supervisors consideration. Mr. McGrory responded this would be part of the zoning process and would be sent to the county for their input.

Mr. McGrory said he did not see much relevance to the reference to lot size in the draft. He indicated we vary from the DEP model ordinance and also from the county in that a setback of 150 feet is proposed. The DEP model ordinance has a setback of 50 feet. The law is the township could do something more stringent than DEP regulations and there is nothing in the DEP regulations that would stop the township from doing that. The issue is how reasonable is 150 feet versus 50 feet. Mr. McGrory indicated he favored 150 feet as more appropriate because by its very nature it puts the OWB on a larger lot. Instead of a lot size he would rather have a setback.

Mrs. Spott asked if that would rule out most properties in the township. Mr. McGrory responded as long as it could be placed on a reasonable number of properties it is not excluding use.

Mrs. Spott commented other than commercial properties; it would probably exclude almost every residential property.

Mrs. Kenney noted it would be necessary to have a 300 by 300 square foot property (about 2 acres) in order to have the OWB in the center.

A discussion followed during which various setbacks were discussed as well as the exclusionary argument, and the option of a total prohibition in the future. During the discussion it was pointed out some residents expressed concern this could lead to a total prohibition on fireplaces, fire pits, etc.

Mr. Waks asked a resident in attendance at this workshop to comment on a hypothetical question which assumes a heavily restricted or total ban on future OWB's which would not help with his situation. Mr. Joseph Rapine responded he understands the township cannot do anything about his situation and said he is just in attendance at this meeting to make sure that the position he is in never has to be endured by anyone else in the township. He indicated he has no problem with a total ban and commented this [OWB] cannot be compared to a fire pit or fireplace.

A discussion followed during which it was noted the same arguments are being made or will be made about fire pits, wood burning stoves, etc. and the suggestion was made to indicate the ordinance would not apply to these.

Mr. Waters stated the International Code Council (ICC) is looking at outdoor wood burning stoves for future editions of the mechanical code and he wanted to make sure that the ordinance is in agreement with the regulations in the National Mechanical Code. Mr. Philips commented the ICC will be out with its version in January 2015 and the question is does Pennsylvania adopt it.

Mr. Waks stated he would like to hear what Chris Kaasman has to say on this issue, and it was agreed that he should be invited to the next workshop for further discussion.

INSPECTION OF RENTAL PROPERTIES

Mr. David Kraynik, Township Manager, stated staff was asked to look at what neighboring communities are doing as far as rental programs and provide information for an initial discussion of the prospects for implementing a similar program in Upper Merion Township.

Mr. John Waters, Director, Safety/Codes Enforcement, presented his findings as follows:

- Upper Merion Township has a little fewer than 12,000 housing units. About two thirds of them are owner occupied, one-third are tenant occupied.
- During the period January 1 through October 30, 2014 his department received 995 property maintenance complaints. Of these 886 concerned residential properties and 767 of these dealt with owner occupied properties. 119 were tenant occupied properties, and of these 6 were generated from managed facilities, and 113 are "absentee rental" single family dwellings, duplexes or townhouses.
- Approximately 12 surveys were sent to a number of neighboring municipalities.
- Responses included the following comments: some municipalities do inspections upon change of tenant and complaint, another charges \$50 per rental, another does not have an ongoing inspection program without the change in tenant, one charges \$2,000 per student housing and all other rental properties are charged \$50 for registration and then a \$30 inspection fee. One municipality hired a third party consulting firm to do about 1,100 inspections a year and charged a \$75 registration fee for each rental unit. When they implemented the rental inspection program they took that to \$95 and the co-consultants charged them \$62.50 per inspection. Another one looked at rental units bi-annually and does about 600 a year. They receive a \$50 annual fee for each of them and do not

have any dedicated staff member doing the work. It is spread through the building and fire staff. Because of the amount of income and hours they are reviewing it now to see if the value is there. I

- In Upper Merion Township the 2010 census indicates there are about 4,000 tenant occupied dwelling units, including all of the apartments.
- The last time staff looked at a rental inspection program was 2005 with a view toward making a change in tenant inspection program.

Mr. Waters asked the Township Solicitor if someone is renting a house how would the inspector get into a house without a search warrant. Mr. McGrory responded it would be necessary to go to the local District Justice and get a warrant. Under the township's licensing rule it is possible to get a warrant.

Mr. Waters noted one of the responding municipalities did not have any problems with that. They send a letter to the owner and tell the owner it is their responsibility to get an inspector in there once a year.

Mr. Waters said when staff researched inspection of rental properties in 2005 they did some time motion studies indicating the amount of what it would take arranging for the inspection, doing the inspection, documenting the inspection, re-inspecting if something was wrong, and dealing with notices of violation. Mr. Waters indicated if the Board would like him to work up some costs he would do so.

Mrs. Spott asked what happens after the properties are inspected if there is a problem. Mr. McGrory responded if anyone is required to have a rental license, the license is not valid until the violations are fixed.

Mr. Philips asked the group if they had any additional comments. Mr. Waters responded staff reviewed all the inspections that have been done over a period of ten months from January to October 2014 and classified what the problems were from a complainant standpoint. Most of the complaints regarding both owner occupied and tenant occupied residential units relate to exterior issues (sidewalks not shoveled, grass too high, fences in disrepair). Of all the complaints that were listed an inspection would have caught about 29 out of 119 tenant occupied issues. In looking at the 119 tenant occupied complaints out of the total of 886 residential complaints, six of them were managed residential, 113 were absentee rental.

Mr. Waks asked if rental licenses are currently issued. Mr. Waters responded in the negative.

A discussion followed about the option of requiring rental licenses and making it clear that at any point in time the township can inspect and possibly posting a phone number to call if there is an internal problem.

Mrs. Kenney asked what the draft ordinance provides that cannot be done already. Mr. McGrory responded the township already has a property maintenance code with the ability to get into the unit through the warrant process.

Mr. Jenaway commented these systems [rental inspection programs] are designed for something totally different. They are designed to look at structures over time in order to provide a feel for their maintenance or deterioration and should be self-funding.

Mr. Waks stated the next time this subject is discussed he would want to see an economic model, cost for employees, how much would be covered on the front end, and whether the inspections should be done annually or bi-annually.

Mrs. Spott suggested a licensing option similar to what some municipalities have, but require a third party certification without assuming any cost of the inspections. Mr. McGrory commented because of the township's size an in-house inspection would be preferred.

A resident from 200 Prince Frederick Street commented on his experience as a tenant with a mold issue and he supports a proactive approach.

Mr. Waks and Mr. Jenaway indicated they would like to see an economic workup. Mr. Waters responded that can be done.

Mr. Waks would also like to have a comparison of in-house versus third party. Mr. Waters said every year a review is made on in-house and third party inspectors and the in-house hourly rate is less than paying a third party inspector. Mr. McGrory pointed out there is more control in-house.

Mr. Walko stated the way the law is set up fees that are charged cannot be more than it costs the township. It is necessary to first figure out a reasonable basis whether it is third party or in-house and base the fee on both of those.

Mr. Philips stated he is looking at two models. In one scenario the developer pays the third party directly and provides a certificate to Safety and Codes. The other model is where the township pays the third party inspector and is then reimbursed. Mr. Philips said he would like to see two models – one based on not paying a third party and one paying a third party and being reimbursed. Mr. McGrory said the two models are going to have costs over and above the third party charges. He explained in paying the third party direct, it will still require paying the township because there are administrative costs and it would be necessary to cut two checks.

Mr. Kraynik commented there have there been communities that have had problems with the quality of the third party inspector.

Mr. Jenaway noted at last year's PSATS meeting there were three companies in attendance that provide this service. Mr. Waters indicated he would follow up on these.

Mr. Philips asked that this be placed on the agenda for January or later if more time is necessary. Mr. Kraynik indicated it would be placed on the agenda no later than February or the January agenda if the requested information is available sooner.

UPPER MERION FOUNDATION

Mr. Kraynik stated questions have been raised about how the Upper Merion Foundation works, how was it established, and who runs the Foundation. He provided an overview of the summary provided by former Assistant Township Manager, Judy Vicchio. The Foundation was established as 501(c)3 in 1999 by the Board of Supervisors. The by-laws call for seven (7) members of the Board of Directors, five (5) are the elected Board of Supervisors and two (2) are residents appointed by the Board of Supervisors. Mr. Kraynik indicated it is his understanding that the Foundation has not operated that way since it was established, but it is something that could be done if so desired by the Board

Mr. Philips stated tonight's discussion is to provide an understanding and education as to what the Foundation was intended to do, how it should operate, and how to move forward using the Foundation.

A discussion followed about the ways the money coming from the Valley Forge Casino into the Foundation is being utilized and the process for disbursement. Also discussed was the appointment of two resident members of the Board of Directors, the proposed meeting schedule, the approval process, and authority for disbursing the funds.

Mr. McGrory suggested one of his firm's tax attorneys review the by-laws since governance goes hand and hand with the tax issues.

A discussion followed about the next steps to be taken with regard to the appointment of two more people.

Mr. Waks stated since the Foundation Board will meet infrequently, he would like the two residents to be exempt from the "serve on only one Board" rule.

Lydia Dan Sardinias asked if it would eliminate any organization under the Foundation's 501(c)3 umbrella from applying for a Board of Community Assistance (BCA) grant. Mr. Philips said that would be a good question for the attorney.

A discussion followed about having a separate 501(c)3 for the BCA.

Mr. McGrory asked if anyone has calculated the terms of the two people to be appointed. Mr. Kenney responded no more than six consecutive one (1) year terms, but the supervisors are not restricted.

Mr. McGrory will have his tax attorney contact Nick Hiriak, Director of Finance, to follow up on issues discussed at this workshop.

2015 FEE SCHEDULE

Mr. Waks stated during the recent budget discussions it was noted increased expenses the township will be facing in the next few years. Also discussed was the possibility of increasing inspection fees on commercial real estate redevelopment properties which have remained the same for quite a while. At the request of the Board of Supervisors, the Safety/Codes Director drafted a memo to providing some options.

Utilizing the aerial, Mr. John Waters, Director, Safe/Codes Department, provided an overview of staff findings of a commercial permit fee comparison among neighboring municipalities for a sample project in Upper Merion Township. The average fee was \$21,713.

Currently, Upper Merion fees are based on the square footage of the shell of a new building; this has not changed in over 25 years. The interior fit-out is additional. The permit fee for the base building has remained the same for a given square footage for over two decades. By basing it on the cost of construction, the permit fees charged will change automatically as inflation affects the value of the construction.

Mr. Waters noted he was also asked to see if his department was covering the cost of codes enforcement and he indicated his department has always covered cost with their fees. This is for operating costs only and does not include capital which is minimal.

Mr. McGrory asked if all fixed costs and the cost of office space are factored in. Mr. Waters responded in the affirmative.

Mr. Philips mentioned case law indicating fees should cover the cost of the inspection.

Mr. Philips asked when a big project comes if a projection is made of how much everything is going to cost to handle the inspection. Mr. Waters responded in the negative.

Mrs. Kenney pointed out the fees for the shell are based on square footage and have not changed in over two decades and a case could be made to change how the fees for the shell are calculated. Mr. Waters agreed and said if the fees for the shell were based on the cost of construction as the cost of construction goes up so would the revenue.

Mr. Philips emphasized that is why he is asking how much time is actually spent on inspections.

Mr. Jenaway provided an example of how insurance inspection work is done and how time was tracked to get a good handle on the true costs involved. He also believes it is necessary to right size the fee for the type of structure.

Mr. Philips stated there is case law indicating whatever is charged for inspections has to be reasonable in terms of covering the cost of inspection. He also pointed out it is not the cost of running the department; it is the number of hours an individual spends inspecting the job. Mr. Waters said staff would have to come up with an hourly rate that takes into consideration all of the costs in his entire safety and codes budget.

Mr. Waks said he would like to have this matter examined further. He indicated there are different models to be reviewed.

Mr. Jenaway said he will look into various research sources such as Bureau of Labor Statistics (BLS) because it is necessary to move forward.

Mr. Philips stated another look be given to business models and costs and see if this can be placed back on the agenda for February or March.

ADJOURNMENT:

It was moved by Mrs. Spott, seconded by Mr. Jenaway, all voting "Aye" to adjourn the workshop meeting at 9:25 p.m. None opposed. Motion approved 5-0.

DAVID G. KRAYNIK
SECRETARY-TREASURER/
TOWNSHIP MANAGER

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Minutes Approved:
Minutes Entered: