

UPPER MERION TOWNSHIP BOARD OF SUPERVISORS
OCTOBER 14, 2010

The Board of Supervisors of Upper Merion Township met for a Business Meeting on Thursday, October 14, 2010, in Freedom Hall, in the Township Building in King of Prussia. The meeting was called to order at 7:35 p.m., followed by a pledge to the flag.

ROLL CALL:

Supervisors present were: Greg Waks, Bill Jenaway, Joseph Bartlett, and Edward McBride. Also present were: Judith A. Vicchio, Assistant Township Manager; Joseph Pizonka, Township Solicitor; Russ Benner, Township Engineer; and Angela Caramenico, Assistant to the Township Manager. Supervisor Erika Spott was absent.

MEETING MINUTES:

It was moved by Mr. McBride, seconded by Mr. Waks, all voting "Aye" to approve the September 16, 2010 and the September 23, 2010 Business Meeting Minutes as submitted. None opposed. Motion approved 4-0.

CHAIRMAN'S COMMENTS:

Chairman Bartlett reported on an executive session dealing with litigation and potential litigation. He also commented favorably on Challenger Day, a day of activities for disabled children which was organized by the Park and Recreation Department with the help of Upper Merion High School and Middle School student volunteers.

NEW BUSINESS

PRESENTATION OF 2010 GRANTS TO UPPER MERION SPORTS ORGANIZATIONS

Mr. Dan Russell, Director, Park & Recreation, presented the various sports organizations with grants approved for 2010. Mr. Russell stated that Upper Merion Township is fortunate to have several sports organizations completely run by volunteer groups that work tirelessly with the Park & Recreation Department on an annual basis. The following were presented with 2010 grants:

\$2,850	Upper Merion Baseball Association
\$2,850	Upper Merion Crew Boosters
\$2,850	King of Prussia Indians
\$2,850	Upper Merion Aquatics Club
\$2,850	King of Prussia Soccer Club
\$2,850	Upper Merion Lacrosse Club
\$1,900	Upper Merion Youth Wrestling
\$1,900	Valley Forge Generals
\$1,900	Upper Merion Music Boosters

CONSENT AGENDA:

1. Approval re: Temporary Signal During Construction – Warner Road over the Chester Valley Trail
2. Bid Recommendation re: 3 Year Uniform Service Contract – Aramark Corporation - \$15,100.00

3. Resolution 2010-22 re: 2011 Sanitary Manhole Adjustments – King of Prussia Road

Board Action:

It was moved by Mr. McBride, seconded by Mr. Waks, all voting “Aye” to approve the Consent Agenda as submitted. None opposed. Motion approved 4-0.

BID RECOMMENDATION RE: TOWING SERVICES CONTRACT

Mr. Joseph Pizonka, Township Solicitor, stated that bid proposals on the towing services contract were received at an open public meeting on September 14, 2010. He explained that after the bids were received and reviewed by staff it became apparent that there was conflicting language in the contract itself and ambiguity as to the terms of the agreement. The staff recommendation to the Board of Supervisors is that the bids be rejected and rebid after the terms of the contract are clarified.

Public Comment:

Mr. William Anderson, one of the owners of Samantha’s Towing, asked if the bids submitted in September will be null and void and if the contract would have to be rebid. Mr. Pizonka responded in the affirmative and indicated that the specifications would be republished and rebid.

Mr. Anderson asked about the conflict in the contract. Mr. Pizonka explained that in reading the contract it is unclear whether it is a five year contract or a series of five one-year contracts and in his view the bids reflected that. Because of the ambiguity of the contract it is necessary to clarify so that the bidders know exactly what the terms are and the duration of the contract.

Board Action:

It was moved by Mr. Jenaway, seconded by Mr. McBride, all voting “Aye” that the bids received and opened at the public meeting on September 14, 2010 in conjunction with the proposed towing services contract be rejected as not being in the best interests of the Township and that for the reasons stated by the Township Solicitor which preceded this motion further dictate that the Township be authorized to publish a revised invitation to bid as required by law. None opposed. Motion approved 4-0.

HEARING RE: ORDINANCE AMENDING CHAPTER 91 OF UPPER MERION TOWNSHIP CODE – GARBAGE, RUBBISH & REFUSE

Mr. Joseph Pizonka, Township Solicitor, stated that notice of this hearing was published in the Times Herald on September 29, 2010.

Mr. John Waters, Director, Safety/Codes Enforcement, stated that the purpose of this ordinance is to revise an old ordinance to eliminate outdated language and add some language requested by the Department of Environmental Protection (DEP). He explained that the wording would indicate that each person or entity who or which generates municipal waste shall have such waste collected by a municipal waste collector who is legally operating within the township and that such collection shall be no less frequent than once per week. This applies for both residential and commercial. Mr. Waters noted that through the efforts of township staff in submitting grant applications and because of the overwhelming success of our businesses and residents since the year 2000, a total of \$1.8 million in DEP grants has been received and deposited

in the General Fund. Of that total \$443,000 was allotted for specific equipment such as the tub grinder, recycling truck, etc. Mr. Waters said that the revised ordinance will not only enable the Township to comply with DEP's request but also help to maintain the cooperative record for future grant opportunities.

Mr. McBride asked if this was a state requirement. Mr. Waters responded in the affirmative.

Mr. McBride asked for clarification about people who reside in and also have commercial property in the township. He indicated that his understanding is that if they take their residential trash to their commercial property for pick up there they are not paying twice. Mr. Waters responded, "that is correct."

Mr. McBride asked how these individuals are affected. Mr. Waters responded that in the above scenario they are seen as meeting the intent of the ordinance. Their trash is not being piled up at their house and they are in fact having their trash picked up once a week.

Board Action:

It was moved by Mr. Waks, seconded by Mr. Jenaway, all voting "Aye" to approve the ordinance as submitted. None opposed. Motion approved 4-0. Ordinance No. 2010-794 was adopted and will be filed in Ordinance Book 15.

PROPOSED SETTLEMENT AGREEMENT RE: METRO PCS

Mr. Pizonka stated that the proposed settlement agreement involves current litigation that the Township is engaged in with ATI Metro PCS with suits in both Federal Court and State Court as a zoning appeal. He explained that this case involves access rights to a site developed by ATI which is located next to Bob Case Park. Mr. Pizonka stated that the proposal before the Board of Supervisors would settle the matter by allowing ATI and Metro access to the site through Township property in exchange for payment of \$35,000 to the Township's General Fund. He noted that in addition the developer of the site has built the road that accesses back to Bob Case Park and parking lot. The total package will be \$35,000 plus the access that was constructed. Mr. Pizonka stated that this would end and conclude the two matters currently under litigation.

Mr. Bartlett asked if the Board of Supervisors would have to agree to this agreement as settlement. Mr. Pizonka responded in the affirmative.

Mr. Jenaway stated that the actual cell site that is in question is situated on property owned by the King of Prussia Fire Company yet accessed through a Township roadway. As President of the Fire Company, Mr. Jenaway recused himself from the vote on this issue. He also pointed out for general information that the fire company was involved in this piece of litigation and is also party to this settlement.

Board Action:

It was moved by Mr. Waks, seconded by Mr. McBride, that the township ratify and approve the settlement agreement and release with American Towers Incorporated and Metro PCS Pennsylvania LLC and the King of Prussia Volunteer Fire Company No. 1 in the form as presented and authorize the Chairman of the Board of Supervisors to execute the Memorandum of Agreement attached thereto as Exhibit E. Mr. Jenaway abstained. Motion approved 3-0-1.

ACCOUNTS PAYABLE & PAYROLL:

Board Action:

It was moved by Mr. Waks, seconded by Mr. McBride, all voting “Aye” to approve the Accounts Payable [for invoices processed from September 9, 2010 to September 30, 2010, in the amount of \$1,237,885.37] and the Payroll [for September 3, 2010 and September 17, 2010 in the amount of \$1,140,152.15 for a total of \$2,378,037.52]. None opposed. Motion passed 4-0.

ADDITIONAL BUSINESS

Nomination of Russell Swisher to the Economic Community Development Committee

Mr. Waks stated that as a result of the resignation of the Chair, Sharyn Clauson, there is currently a vacancy on the Economic Community Development Committee (ECDC). Two candidates were interviewed both of whom would make excellent additions to the ECDC, but a choice had to be made of one candidate. Mr. Waks nominated Russell Swisher for the vacancy on the ECDC.

Board Action:

It was moved by Mr. Waks, seconded by Mr. Jenaway, all voting “Aye” to appoint Russell Swisher to fill the vacancy on the ECDC. None opposed. Motion approved 4-0.

SCHOOL BOARD MEETING

Mr. Waks called for public input into a School Board meeting to be held on Monday, October 18, 2010 at 7 p.m. at Caley Elementary School. He noted that this special meeting was called to discuss the strong possibility of a referendum that will be put on the ballot some time either late this year or early next year. He encouraged anyone who wants to learn more about the issues regarding the School District and some of the demographic issues that we are facing in Upper Merion Township to attend this meeting.

PERFORMANCE INDICATORS FOR UPPER MERION SCHOOLS

Mr. McBride stated that about 18 months ago he attended a joint meeting with the Board of Supervisors, the Upper Merion Area School Board and the Superintendent. During this meeting he cited a survey in a local publication and asked why Upper Merion did not measure up to some of the nearby districts. He questioned what performance criteria were used to measure how well targets were being met for educating our children and what performance indicators were established each year to measure the leadership of the school district against other districts. Specifically he wanted to know if there were measurements similar to those used in business to manage their respective goals and objectives. He pointed out that these performance indicators would ultimately be tied to the performance of the children and would help him understand why the school district was comparing low to the other neighboring school districts. He was promised at that meeting that he would receive the information; despite several subsequent requests, he still has not received an answer.

Mr. McBride emphasized that his issue is about leadership. He pointed out that recent surveys have ranked the school district lower than its neighbors in the measurements of math, reading, science and writing; however, on other measurements such as cost per student and teacher salaries our school district finished higher with salaries in the sixth highest of the 105 measured and the cost per student in the seventh highest in the 105 measured.

As a taxpayer, Mr. McBride would like to see our students test at the top level of the districts being compared. He pointed out that in business each year indicators and goals are established and the leadership manages the company to attain those goals and this should apply to the school district as well.

Mr. McBride wants to know if the school district administrative salaries are part of the cost to educate our children. If that is one of the reasons that the cost per student is so high then at what level do the administrative salary and benefits compare with these other townships.

Mr. McBride stated that the school district is hosting a meeting as a precursor to a bond issue to rebuild Caley School. He said if this bond issue is approved there may be other similar bond issues coming down the pike in subsequent years. He pointed out that as a supervisor he and his peers strive to maintain a high quality of life that we all enjoy with very reasonable taxes. Mr. McBride's request to the Superintendent and the School Board is to bring the test scores to the same level – the top 10 percent – as the cost to educate each student and the cost of the salaries of the teachers. Mr. McBride emphasized that this needs to be reviewed as much as building programs and school facilities.

EFFECTS OF RECENT RAIN STORM

Mr. Jenaway commented on the recent storm and complimented staff on preparing for and responding to the storm-related events. He said prior to the event the Public Works Department, Code Enforcement, Police Department and Fire and Rescue services went through a series of preparatory activities to prevent and alleviate potential problems.

Mr. Jenaway reported that from the morning of September 30 through the afternoon of October 1, 2010 the fire department responded to 27 storm-related calls. This compares to 3 response calls on a normal day in Upper Merion. Mr. Jenaway pointed out that there were 18 water rescues with citizens either trapped in a car or in other potentially problematic positions. The EMS team as well as the police department also responded to these rescue calls. Mr. Jenaway noted that during this storm there was a hazardous materials event in the township which required the Montgomery County Hazmat team as well as a fire response in a commercial building. He noted that the volunteer fire and rescue services cadre during that period of time performed in excess of 30 events which is ten times the norm and effected 18 rescues. Mr. Jenway said he wanted the public to be aware that there was a dedicated group of people on duty saving people and protecting property in Upper Merion.

Mr. Bartlett also complimented the response of the volunteer firefighters and emergency service personnel who do so much more than people realize to save lives and protect property.

From the Public:

William Anderson, Samantha's Towing, read part of the bid document and insisted his bid was proper and should be awarded to him. *Mr. Pizonka asked if Mr. Anderson was the low bidder for five years or first year.* Mr. Anderson responded he was the low bidder for the first year. *Mr. Pizonka asked about over the totality of the contract.* Mr. Anderson responded that he does not know. *Mr. Pizonka said he was not the low bidder over the totality of the contract and that is where the ambiguity lies. Is it a five year contract or one year contract and it is his opinion that the terms of this contract are patently ambiguous. Consequently it will be resolved, clarified and rebid.*

Mr. Anderson stated that he assumed his company would get the contract since his property was inspected. Based on this assumption he had two agreements drawn up and posited a scenario that during a rebid someone could submit all zeros in order to obtain the contract. *Mr. Pizonka pointed out that the contract would go to the lowest responsible bidder whoever that is. Mr. McBride commented that the Solicitor used the right words – “the lowest responsible bidder.” Mr. McBride said that as the Solicitor indicated several times there was ambiguity that entered into this process and it had to be struck down. He indicated that Mr. Anderson will have an opportunity to rebid just like everyone else.*

Mr. Anderson asked when this contract would be put out for rebid. *Mr. Pizonka responded that there is no specific timetable, but staff is working to have it done soon.*

Mr. Gary Schwab, Wayne, complained about the level of traffic particularly during rush hour on North Warner Road where the rear driveway of WalMart exits onto North Warner Road. He said the police have had many complaints about the situation. *Mr. Waks commented that he believes Guthrie Road will be open relatively soon. Mr. Brian Keaveney, Traffic Engineer, stated that this intersection has been studied as part of ongoing development in the area and is slated for the installation of a traffic signal at some point in the future. He noted that this is not set in stone with a firm schedule. Mr. Keaveney commented that he does not know if the condition that exists today is really caused by the closing of Guthrie Road, but it is possible that congestion at that intersection may be relieved once Guthrie is opened and this will be reviewed.*

Mr. Schwab asked if a traffic signal could be installed at that intersection even though it is coming out of a private drive. *Mr. Keaveney responded in the affirmative and explained that typically the property owner would participate in the cost of installing the signal.*

Mr. McBride asked for clarification on the location of the proposed traffic signal. *Mr. Keaveney indicated that it would be located at the intersection of where the driveway intersects with Warner Road.*

Mr. Jenaway asked for clarification about the roadway once development begins. *Mr. Keaveney responded that the curvature in that section of North Warner Road is going to be changed to make it a smoother curve so that a 90 degree bend is going to be a more conventional 35 mile per hour curve through that area. He said that as part of that work the signal is on the horizon although he does not have a firm schedule on that piece of work.*

Mr. Jenaway stated that there is a short term and long term issue to this roadway issue and it would be appropriate to have Sgt. Andreyko in Traffic Safety review this situation to see if there is something else that might be appropriate until a permanent fix is installed. This could be possibly approaching WalMart for a guard at certain times or a person to direct traffic or for some other activity.

Mr. Bartlett asked for clarification about the timing for installation of a signal. *Mr. Keaveney responded that it is partially dependent upon how the development in the area occurs and how the phases come about.*

Mr. Bartlett asked if there is a currently a problem there why a signal couldn't be installed now if that would alleviate the problem. *Mr. Keaveney responded that it could certainly be done if the traffic would warrant a signal now. He said that with Guthrie closed the traffic that exists today may return to Guthrie once it is opened and while the signal may be warranted today theoretically it might not be warranted three weeks from now. Mr. Keaveney agreed with having*

Sgt. Andreyko look at it; there may be some low cost signage or similar type of improvements that could be put in for the short term.

Mr. McBride asked staff to be prepared to have an answer to this issue at the November meeting of the Board of Supervisors.

Roland Urbano suggested that the Board of Supervisors give up all or part of their compensation due to the state of the economy. *It was explained that the less than minimum wage stipend that the supervisors receive would not affect a \$28 million budget.*

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.