

UPPER MERION TOWNSHIP BOARD OF SUPERVISORS
DECEMBER 8, 2011

The Board of Supervisors of Upper Merion Township met for a Business Meeting on Thursday, December 8, 2011, in Freedom Hall, in the Township Building in King of Prussia. The meeting was called to order at 7:34 p.m., followed by a pledge to the flag.

ROLL CALL:

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

MEETING MINUTES:

It was moved by Mr. Bartlett, seconded by Mrs. Spott, all voting "Aye" to approve the November 17, 2011 Business Meeting Minutes as submitted. None opposed. Motion approved 5-0.

CHAIRMAN'S COMMENTS:

No executive session. Chairman McBride asked Ron Wagenmann, Township Manager, to report on the economic development award which was presented to Upper Merion Township from the King of Prussia Business Improvement District (BID). Mr. Wagenmann reported the BID recognized Upper Merion Township for the Henderson Road ramps project because of the positive economic impact it will have on the Henderson Road corridor.

NEW BUSINESS

CONSENT AGENDA:

1. Authorization to Approve Recommendation re: Auditors
2. Supplemental Budget Transfer - Fire Vehicles

Mr. McBride noted that township staff recommended the hiring Of Maillie, Falconiero & Company as township auditor .

Mr. Wagenmann explained the funding adjustment (from the Fire Fund into the Operating Budget) that is necessary when fire companies incur more than \$5,000 in repairing the fire equipment. The emergency repair is for the fire pump itself, as a bearing and clapper valve failed.

Board Action:

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

RESOLUTION 2011-30 RE: MARTIN LUTHER KING, JR. HOLIDAY OBSERVANCE

LaVera Seymour, a member of the Martin Luther King Observance Committee, expressed appreciation to the Board of Supervisors in honoring the memory and achievements of Dr. King. She stated the 2012 program will be held at the Upper Merion Middle School on Wednesday, January 11, 2012 at 7:00 p.m. The theme is, "Unfinished Business," and all entertainment will be provided by Upper Merion Middle School students.

Board Action:

It was moved by Mr. Waks, seconded by Mr. Bartlett, all voting "Aye" to approve Resolution 2011-30. None opposed. Motion approved 5-0.

RESOLUTION 2011-31 RE: ADOPTION OF 2012 CAPITAL IMPROVEMENT BUDGET

Board Action:

It was moved by Mr. Jenaway, seconded by Mr. Bartlett, all voting "Aye" to approve Resolution 2011-31 as presented. None opposed. Motion approved 5-0.

RESOLUTION 2011-32 RE: ADOPTION OF 2012 GENERAL OPERATING BUDGET

Board Action:

It was moved by Mr. Waks, seconded by Mr. Bartlett, all voting "Aye" to approve Resolution 2011-32 as presented. None opposed. Motion approved 5-0.

ADOPTION OF SEWER REVENUE FUND BUDGET

Board Action:

It was moved by Mrs. Spott, seconded by Mr. Jenaway, to approve the Sewer Revenue Budget as presented. None opposed. Motion approved 5-0.

RESOLUTION 2011-33 RE: 2012 FEE SCHEDULE

Board Action:

It was moved by Mr. Bartlett, seconded by Mrs. Spott, all voting "Aye" to approve Resolution 2011-33 as submitted. None opposed. Motion approved 5-0.

PLAN AMENDMENT RE: O'NEILL PROPERTIES, 750 MOORE ROAD. EXTENDED STAY HOTEL (248 UNITS). REQUEST TO AMEND CONDITION OF APPROVAL REQUIRING THAT 40% OF UNITS BE FURNISHED. PRIOR APPROVALS DP 2004-08 (SEPTEMBER 2, 2004) AND DP 2008-14 (FEBRUARY 5, 2009)

Mr. Rob Loeper, Township Planner, stated that 750 Moore Road is property located at the intersection of Moore Road and 8th Avenue. In 2004 O'Neill Properties received land development approval to construct a 350-unit extended stay facility. In 2009 the plan was amended slightly reducing the size of the building, changing the layout of the facility and also reducing the unit count by two. Mr. Loeper explained extended stay hotels are not typical hotels in that they have suites that have separate bedrooms or sleeping areas, kitchens and laundry facilities.

In 2004, the plan was approved with a series of 9 conditions one of which was that at least 40% of the units had to be fully furnished. The applicant is requesting the elimination of this condition noting that the 40% requirement is

creating difficulties in obtaining financing for the development.

During the approval process in 2004 and 2009, because of the nature of the facility (not a regular apartment and not a hotel) one of the questions was the issue of providing adequate parking. Mr. Loeper provided a table that identifies parking requirements for the building when treated as residential or hotel use and also identified the number of proposed bedrooms in the facility. According to the table, the hotel parking requirement is lowest at 248 required spaces plus employee spaces and residential would be 420. The current plan provides 353 spaces - above the hotel, but below the residential.

The applicant is requesting the removal of the 40% requirement for furnishing; however, the other original 8 conditions would still apply to the site. Mr. Loeper pointed out that one of the remaining conditions does prohibit the conversion to a full residential use without coming before the Board of Supervisors.

Mr. Edmund J. Campbell, representing the applicant, stated that the owner of the property is 750 Moore Road Associates and the developer is O'Neill Properties Group. He explained how the 40% requirement has been creating difficulties with prospective investors and lenders where it is viewed as an anomaly for an extended stay workforce housing project.

Mr. Campbell stated that he and his client believe the project is more than overparked. It is zoned as a hotel and the project is designed as an extended stay workforce development and not for permanent residence. In previous presentations before the Board of Supervisors questions arose if there would be enough parking if the project were used as a straight residence. Mr. Campbell indicated that he could state with confidence that there is more than enough parking on the site for 248 units.

Mr. Bartlett asked for clarification about the background of the 40% requirement. Mr. Campbell responded that at the time the plan was originally discussed there were questions about how the project would be managed and there was a discussion about the number of one versus two bedroom units. There was a concern about density and use on the site and it was thought if 40% of the units were required to be furnished it would have an effect on its use and its operations. Mr. Campbell stated the concern about the intensity of use is ameliorated by the fact that 160 of the 248 units are one bedroom instead of two bedroom. Sixty-five percent of the project is one bedroom.

Mr. Waks raised the hypothetical situation if the 40% clause were eliminated, what percentage of the facility would actually become rental (other than extended stay). Mr. Campbell responded that the way this project will be developed is unlike anything else in the township that may or may not be similar to this. He explained that the purpose of the project is designed to attract workforce long-term housing, but temporary housing, for the significant commercial and business interests in the immediate area. Mr. Campbell stated he could not guarantee that a certain percentage would be one month versus a certain percentage that would be nine months. It is envisioned that the facility would have a concierge service on the first floor and other amenities that are consistent with extended stay workforce housing that are not consistent with a standard traditional multi-family apartment. In addition, the cost associated with delivering those amenities would be inconsistent with traditional rentals.

Mr. Waks asked for some examples of the difference between this facility and traditional rental housing. Mr. Campbell responded that one difference would be the concierge and service staff amenity that traditional rental housing does not have. Other amenities that are more consistent with the extended stay workforce housing rather than lower end multi-family housing would include business suites for computer access and recreational facilities.

Mr. Jenaway recalled approximately 25 years ago when Valley Forge Suites presented their original plans and the concept was similar in that they had

a concierge service in a separate building. There were five buildings that were supposed to be long term stay buildings; however, these eventually became all apartments. While Mr. Jenaway applauded what the applicant is trying to do, he commented that based upon experience in Upper Merion Township, the realistic scenario might be that this project eventually turns into high end apartments with a concierge service.

Mrs. Spott asked for clarification about the business model without the 40% requirement and asked if the companies would still be able to rent furniture from the applicant. Mr. Campbell responded that the business model would be more nuanced. In many instances his client will provide furnished units, but in many instances an executive who is moving to the area might have a stipend or expense for furnishings; their company might have a different contract with a furniture provider, or the executives may have to furnish it themselves. These are considerations that are not inconsistent with high end executive long stay arrangements. Mr. Campbell stated that the applicant will provide 100% of the furnishings if that is what the market demands. He emphasized that when an investor, lender or source of capital does their due diligence, the 40% requirement causes them to pause and consistently this is the line item that initiates a discussion of their concerns.

Mrs. Spott asked if any of the currently operating long-term extended stay units in Upper Merion have similar requirements that a certain amount of units be furnished. Mr. Loeper responded when he reviewed the Valley Forge Executive Suites, it was a similar situation in that it was very clear that the buildings looked more like apartment buildings and functioned that way, but he is not aware of any such furnishing requirements.

Mrs. Spott asked if this plan resembles The Lofts at Valley Forge and further what is being envisioned. Mr. Campbell responded that 153 of the 248 units are 633 square feet with a wall dividing the sleeping space from the living space. He said these are not large units which would be consistent with families and growing children; they are units of a size consistent with the market his client is targeting. Mr. Campbell was not sure this answered the question directly, but thought it gives a sense of the size that is available and what can be done with it. He said the units are not laid out as a typical hotel room with a bathroom. They are more than that, but the vast majority is much more modest than a traditional apartment would be. Mr. Campbell did not know the square footage for most of the units at the referenced Valley Forge facility, but he believes that the applicant's units would be significantly smaller than many if not most of their units.

Mr. Campbell addressed Mr. Jenaway's comment and said while no one with absolute certainty can predict the future, in his view, he does not believe that the applicant's project will turn into anything like the suites that were referenced.

Mrs. Spott commented that the real estate market is burgeoning for apartments and rental units because the bottom has dropped out of single family housing and said that for some people 643 square feet is a lot. Mr. Campbell agreed.

From the Public:

Ms. Laurie Gay, Jean Drive, asked if expatriates would have a limit on their stay here, and Mr. Campbell responded that there is no such limitation in place.

Mr. McBride asked for a motion to amend the conditions of approval for the land development plan for 750 Moore Road to eliminate the condition that a minimum of 40% of the units will be furnished.

Mr. Jenaway commented he would make the motion based on the fact that it has not been a requirement on prior similar type facilities that have been under construction in Upper Merion.

Board Action:

It was moved by Mr. Jenaway, seconded by Mr. Bartlett, to approve the application to remove the requirement that a minimum of 40% of the units would be furnished; the remaining 8 conditions remain in effect as previously stipulated. Mr. Waks opposed. Motion approved 4-1.

HEARING RE: ORDINANCE AMENDMENTS TO CHAPTER 165 - ZONING CODE

- a. Single-Family Detached Residential Districts
- b. Flag Lot (Rear Lot)

Joseph Pizonka, Township Solicitor, stated that this hearing was properly advertised in the Times Herald on November 23, 2011 and November 30, 2011.

Mr. Rob Loeper stated that the Upper Merion Planning Commission and staff have been working on a major update of the Upper Merion zoning code. The Single Family Districts which include the R-1, R-1A, R-2 and R-2A were chosen for several reasons. Together these districts include 63% of the parcels and 24% of the total land area in the township. The planning commission, in reviewing the districts reached several conclusions. The districts are built-out with limited opportunity for new development other than occasional infill, replacement or redevelopment. One of the prime rules in updating zoning codes is to avoid creating a lot of non conforming uses which can cause problems from an administrative standpoint and create some legal issues with regard to zoning. The current Upper Merion Code was adopted in the 1960's with various amendments over the years.

The Upper Merion Planning Commission reviewed the Single Family Residential District for consistency, understanding and ease of use. One item that stood out is use of references to other districts and sections of the code. These references were determined to be confusing, unnecessary and sometimes problematic. The commission determined that by joining similar districts into one section of the code, the uses and dimensional criteria could be displayed as tables rather than text and word. This results in a more readable and understood code. This format also reduces the length of this portion of the code and makes future revisions easier due to the lack of cross references.

Land uses across the Single Family Districts are similar; however, the districts are unique with regard to dimensional criteria. The district lot minimums are one acre (R-1A), one-half acre (R-1), one-quarter acre (R-2 and R-2A). After reviewing from a conformity standpoint, the commission concluded that the district should remain as individual and distinct districts. The changes to the single-family district are relatively minor. A new use (flag lot) was created and is allowed as a permitted conditional use in the R-1A and R-1 District, which are the larger lot sizes. Flag lots are excluded in the smaller districts. The other major change is that all of the districts now have a maximum impervious cover limitation. Impervious surface would include anything under roof as well as anything paved.

Regarding flag lots, the proposed ordinance includes a definition and regulations regarding access, lot size, lot stacking, driveway requirements and modified setback. The commission reviewed several alternatives before agreeing to those presented.

Montgomery County Planning Commission (MCPC) reviewed the proposed zoning code amendments and provided a report of their review and recommendations. It was noted that the flag lot definition might be misconstrued to include wedge-shaped parcels along curved roads or cul-de-sacs in which the lot is significantly narrower in the front than in the rear.

The MCPC also suggested that the flag lot stack provisions might actually

allow for different stacking than what was intended. Mr. Loeper indicated that he would discuss and clarify the language with MCPC staff.

With regard to the Single Family District, the MCPC stated that using a table to organize the different dimensional requirements of each of the detached residential districts makes the information more accessible to users not familiar with zoning code. However, the MCPC believes the format loses some of the detail found in the narrative description of dimensional regulations. It was recommended that additional language be included, wherever applicable, that further defines how these dimensions should apply.

With regard to open space in lot averaging, the MCPC recommends the ordinance include language that encourages the use of bioretention and other innovative stormwater management strategies, as well as provisions that describe procedures for maintenance agreements. Mr. Loeper said while he fully supports that he believes this language does not belong in this section of the code and would be more appropriate in other sections of the code.

Mr. Loeper stated he recommends that this hearing recess so that staff can make a few minor adjustments, resubmit to the MCPC and then continue the hearing in January 2012.

Mrs. Spott stated for conditional use approval the applicant would come before the Board of Supervisors and not the Zoning Board. Mr. Loeper responded in the affirmative.

Mrs. Spott asked Mr. Loeper to elaborate on the conditional use procedure. Mr. Loeper responded the conditional use procedure has the same requirements as a zoning amendment in that there are advertising requirements and public notification requirements that are very similar. An applicant would make their case in front of the elected officials and the Board could attach reasonable conditions.

Mrs. Spott commented from a legal standard standpoint it would be the same analysis. Mr. Loeper responded in the affirmative.

Mrs. Spott commented that a shed is an accessory use and it is easily understood why it would be in the rear and asked if a garage would be considered an accessory use or non dwelling building. Mr. Loeper responded that garages are typically considered an accessory use.

Mrs. Spott indicated more thought should be given to the treatment of detached garages. Rather than have a long driveway, with more impervious space, it would be better to plan for placement options that would eliminate a need to run a long driveway all the way in the back.

Mrs. Spott agreed with continuing the hearing in January to resolve some of these issues.

Mr. Jenaway also agreed with continuing the hearing in order to make refinements to the code revisions.

Mr. Waks asked for clarification about the administrative status of the Montgomery County Planning Commission. Mr. Loeper was not aware of the status, but noted that under law the township would have to submit ordinances to the MCPC. A brief discussion followed about some of the possible implications of the county's financial shortfall.

Mr. Jenaway commented that the use of tables in zoning codes as opposed to traditional language is definitely an improvement and much easier to read.

Mr. McBride asked if there is a limit as to how long the hearing record can remain open. Mr. Pizonka responded in the negative and recommended that the

hearing recess and continue on a date certain so that it is publicly announced. It would also have to be readvertised and republished with the proposed changes.

Without objection, the hearing was recessed until Thursday, January 26, 2012.

ACCOUNTS PAYABLE & PAYROLL:

Board Action:

It was moved by Mr. Bartlett, seconded by Mrs. Spott, to approve the Accounts Payable for invoices processed from November 3, 2011 to December 1, 2011, in the amount of \$882,481.12 and the Payroll for November 11 and November 25, 2011 in the amount of \$1,196,464.27 for a total of \$2,078,945.39. None opposed. Motion passed 5-0.

ADDITIONAL BUSINESS

SUPPLEMENTAL BUDGET APPROPRIATIONS

Mr. Wagenmann explained the supplemental budget appropriations going into Municipal Industrial Pretreatment Program (MIPP) as the result of surcharges that were paid and expense items that were incurred. One was for \$20,000 due to a sewage equipment failure to take that up to \$100,000 and the other for \$10,000 for fuel oil to take it up to \$25,000. The fuel oil was necessary because of such emergencies as Hurricane Irene, other storms, and a number of increased PA One calls.

Board Action:

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

FAREWELL PRESENTATION TO CHAIRMAN MCBRIDE AND SUPERVISOR JOE BARTLETT

Mr. Jenaway recognized Mr. McBride and Mr. Bartlett for their public service and expertise during their tenure on the Board of Supervisors.

Mr. Bartlett commented that he looks forward to his continued involvement in Upper Merion Township and expressed his appreciation for the opportunity to serve on the Board of Supervisors. Mr. McBride also expressed his thanks for those who supported and encouraged him during his public service tenure. He listed a number of achievements during his six years on the Board.

LAST TELEVISED BOARD OF SUPERVISORS MEETING FOR 2011

Mr. Jenaway stated that this is the last official televised Board of Supervisors Meeting for the year.

From the Public:

Gene Lonchar, Swedeland, complimented Supervisors McBride and Bartlett for their roles on the Board.

Another resident complained about the conduct of another resident; she was asked to bring this up privately.

ADJOURNMENT:

There being no further business to come before the Board, the meeting was adjourned at 8:44 p.m.

RONALD G. WAGENMANN
SECRETARY-TREASURER
TOWNSHIP MANAGER

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Minutes Approved:
Minutes Entered: