

UPPER MERION TOWNSHIP BOARD OF SUPERVISORS
WORKSHOP MEETING
JULY 12, 2012

The Board of Supervisors of Upper Merion Township met for a Workshop Meeting on Thursday, July 12, 2012, in the Township Building. The meeting was called to order at 7:35 p.m., followed by a pledge of allegiance.

ROLL CALL:

Supervisors present were: Greg Philips, Greg Waks, Bill Jenaway and Carole Kenney. Also present were: Ronald Wagenmann, Township Manager; David Kraynik, Township Manager Designee; Joseph McGrory, Township Solicitor; Judith A. Vicchio, Assistant Township Manager; Angela Caramenico, Assistant to Township Manager. Supervisor Erika Spott was absent.

VICE CHAIRPERSON'S COMMENTS:

Vice Chairperson Waks stated an executive session was held prior to this meeting dealing with litigation.

DISCUSSIONS:

T&M UPDATE - TRAIL

Mr. Waks reiterated his recusal from all matters in regard to the trail extension from Heuser Park to Valley Forge National Historical Park which will run behind the Valley Forge Towers where he resides. He noted the reason is not because it will run behind the property in which he resides, but because there is a possibility a benefit may be conferred to the Valley Forge Towers in the way of an access point from the Valley Forge Towers to the trail between Heuser Park and the national park. While he realizes he would probably be exempt from a conflict of interest under the class exemption, he does believe supervisors and elected officials need to hold themselves to higher standards, and for the foregoing reasons he will not participate in the discussion.

Mr. Russ Benner, T&M, introduced Evan Stone, T&M landscape architect who provided an update on the status of the project and the discussions held with Norfolk Southern. Mr. Stone reported on the completion of the topographic survey and proposed trail alignment making a connection from Valley Forge National Historical Park to Heuser Park. Meetings were held with representatives from PennDOT and Boles Smyth to go over the pedestrian bridge project as well as the US Route 422 project to determine how it would affect the connection with the trail. The decision at this point in time has been to make basic improvements to the trail as it goes under the existing roadway bridge, making it safe and essentially making it a PennDOT project. When the PennDOT bridge is repaired and replaced there will be a new alignment and

elevation for the trail which will then meet back to the existing trail at that point.

Mr. Stone stated meetings were held with representatives from Valley Forge Towers and Westover Properties. A preliminary agreement has been secured to run trail segments from their properties. These parties are pleased to have the trail connection which represents a great asset for their communities.

Through preliminary conversations held with planners working on the project it was learned there are some environmental issues on the site that need to be dealt with. Rather than run the trail even temporarily through the affected parcel, it will be bypassed with an alternative alignment through the Valley Forge Towers site and through the Municipal Authority's site so there will be a complete connection. Then at such time as the aforementioned affected property is developed, they can build their section of the trail and connect back into the existing trail.

The original plan was to build the paved trail parallel to the main rail lines of Norfolk southern and over the culvert carrying water from Trout Run Creek under the rail lines. About 200 feet down from the culvert crossing, the trail was proposed to cross the abandoned rail spur at grade level since the rail spur had been abandoned at least five years ago. Norfolk Southern officials initially cooperated with the original plan; however, after a change in railroad personnel, the township engineers learned at recent meetings the trail location next to the rail line and the on-grade crossing were not possible. Although the spur has been inactive and several grade crossings have already been removed, the railroad also nixed crossing the spur with an on-grade crossing because they may want to reactivate that line at some point.

After studying various options, the only way left at this point for getting across the spur is to build another bridge over the tracks. The railroad provided some design guidelines which present a variety of issues relative to making a free flowing trail and path. Additional avenues are being explored for other possible resources (Rails to Trails, abandonment of rail lines).

Mr. Wagenmann reported on his meeting with the Deputy Secretary of PennDOT wherein he reviewed the proposed use of the existing bridge. He provided a set of plans indicating how the trail would go across the current railroad bridge and updated him on the railroad situation. It was noted the rail spur has been inactive in excess of nine years. According to township tax maps, it does not indicate a separate fee simple parcel for the railroad right-of-way, but rather as an easement for the rail spur across the Authority property. The Deputy Secretary is to follow through to arrange a meeting with the principals.

Mr. McGrory commented on the option of doing a title search for the easement. A brief discussion followed about this and other contacts to be made.

Mr. Benner stated while the right-of-way issue is being researched and the issue with the railroad is resolved, the next step is to follow up with DEP on

bridge structure so as to be prepared to move ahead with the permit situation, if needed.

Mr. McGrory asked if footers for the bridge could be placed outside of the creek area thereby eliminating the need for permits. Mr. Benner responded that is the reason why he wants to talk with DEP since there are a couple alternatives to discuss including their acceptance of a lower flow channel since it is for a pedestrian structure which would cost substantially less.

UPDATE ON 2011 DRAFT AUDIT FROM MAILLIE FALCONIERO

Mr. Edward J. Furman, Maillie Falconiero and Company, LLP reviewed and explained the Annual Financial Report for the year ended December 31, 2011. Highlights include:

- net equity slightly over \$69 million, the business type activity (sewer fund) is \$13 million, and overall net assets of the Primary Government total slightly over \$82 million.
- total liabilities are about \$29.5 million
- debt to equity ratio over 2 to 1 coverage which is an overall solid balance sheet
- In comparing 2011 with 2010, cash increased \$13.7 million versus \$12.6 million, investments are fairly comparable, receivables not much of a change, capital assets not much of a change, net of appreciation increased slightly.
- accounts payable and accrued expenses are comparable and debt decreased
- change in net assets - a positive surplus of approximately \$1.5 million for the year
- property taxes dropped about \$400,000 mainly due to reassessment appeals
- Business Privilege Tax and Mercantile Tax up significantly from 2010 and 2011
- transfer taxes are still erratic and down from the prior year
- sewer billings and most of the expense categories were fairly comparable year to year
- surplus for 2011 of approximately \$1.5 million which compares to the surplus in 2010 of about \$115,000
- General Fund total approximately \$15.3 million - net unassigned fund balance slightly over \$5 million at the end of 2011 which is approximately 21% of General Fund expenses - three months of expenses in reserve in

the fund balance which represents a very strong fund balance. Mr. Furman noted 'safe harbor' is 6 to 8% of General Fund expenses.

- positive surplus for the year approximately \$771,000 for the General Fund which compares to the surplus in the prior year of about \$500,000
- Proprietary Fund (Sewer Fund) - Liability is \$440,000 and net assets \$13 million
- after an interfund transfer there is a small loss for the year of about \$258,000 - previous year had a small surplus.
- there were no changes or new accounting procedures that affected the township in 2011
- fixed assets of the township under governmental activities totaled almost \$2.4 million with depreciation of about \$2.4 million thereby making it a flat change in the capital assets of the governmental funds.
- Non-uniform personnel have a defined contribution plan; once the township makes its contribution to the plan that liability is set at that point. The Police Pension Plan is a defined benefit plan; an actuary does a calculation for the township's annual required contribution and the overall actuarial liability of the pension plan.
- The township has fully funded its annual pension costs which the actuary has calculated. At the last actuarial report, the plan was 101% funded.
- revenues came in at about \$1.4 million better than budget
- expenditure total represents a positive budget to actual of about \$415,000 - before any transfers or other financing sources the township had a favorable \$1.8 million to actual which made it a very good budget to actual year.
- municipalities are allowed to use a modified approach in depreciation for infrastructure for maintenance of its street system. If roads are maintained at a certain level, it is not necessary to depreciate the roads, just capitalize any new improvements going forward in the future.
- at the end of 2011 the overall assessment of the roads fell slightly below what the supervisors set up as a target level of the roads. Mr. Furman indicated reevaluation of the overall target is probably one area which will need to be revisited in 2012, otherwise, it will be necessary to start depreciating the roads going forward.

Mrs. Kenney asked if the current target level is 6.75 or better. Mr. Furman responded in the affirmative and said in 2011 the rating was at 5.91.

Mrs. Kenney asked for clarification on the rating system and what kind of scale would apply for a brand new road. Mr. Furman responded it is his understanding the engineers are using 1-8 rating and the township's overall target has been very high in the past. He noted for budget purposes there has been minimal road work done in 2011. Mr. Wagenmann pointed out for 2012, the township has budgeted approximately \$1,500,000 for street resurfacing in order to bring the township's maintenance level back up to the required condition level.

Mrs. Kenney asked who evaluates the roads and what the evaluation is based on. Mr. Nick Hiriak, Director of Finance, responded T&M Associates was recently hired to do a complete evaluation of the roads; and prior to that, it was done by the former Public Works Director.

There was a brief discussion about the notation on page 54 of the Financial Report dealing with litigation and the implications the township's credit rating. In view of the debt settlement, Mr. Furman indicated it would be reflected in the 2012 financial statement. He indicated if the township were going out for a bond issue it would be something that would be disclosed and put into a prospectus and it would be factored in that way.

Mr. Jenaway referred to Mr. Furman's comment that the township's debt to equity was good and asked in their auditing practices what they look for in a municipality's ratio. Mr. Furman responded at least 2 to 1 coverage as far as equity over debt.

From the public:

Ken Brown, 1078 Croton Road, asked a series of questions about real estate assessment appeals.

WOODS AT WAYNE - STORMWATER ISSUE

Don Hermany, President of Woods at Wayne Homeowners Association, stated the south side border of their properties abut the border of Chester County in Tredyffrin Township. About two years ago, homes on the Chester County side of their border were torn down for a future townhouse development. No construction has been done; however, initial preparation work has created a tremendous water flow issue onto their properties. Mr. Hermany provided photos from a May 2012 storm illustrating the water flow affecting six of the homes represented by four homeowners who were present at this meeting. These homeowners have had considerable damage to their homes due to repeated flooding. There have been attempts to have Tredyffrin Township make the property owner deal with this stormwater issue, but these attempts at resolution have been unsuccessful.

Mr. McGrory asked if the property in Tredyffrin is causing the water issue

affecting the homes in Upper Merion. Mr. Hermany responded in the affirmative.

Mr. McGrory asked about the status of the Tredyffrin development causing the water issue, if they have done clear cutting and stockpiling materials. Mr. Hermany responded some grading has been done, a couple of homes have been raised, and trees have been taken down. He was not familiar with the clear cutting issue.

Mr. McGrory asked if the developer is proceeding in accordance with the approved plan or different than the approved plan. Mr. Hermany responded the developer is not doing anything at this point.

Mr. McGrory asked if silt fences and E&S controls are in. An unidentified member of the homeowner group responded the silt fences are in, but not effective because rain produces a lot of silt.

In order to obtain the most immediate relief, Mr. McGrory pointed out the Soil Conservation District in Chester County has enforcement powers and has jurisdiction over this site and they should be notified to check into this situation making sure the E&S controls as approved in the plan are in place. He also stated even if the controls are in place, if they are not sufficient, the Soil Conservation District might require more safeguards. Mr. McGrory noted this is something the residents can do on their own with just a phone call to the Soil Conservation District.

Various unidentified homeowners described the property damages they have sustained as a result of the flooding. They indicated the group tried to obtain an emergency Temporary Restraining Order (TRO) in Chester County, but the judge did not want to get involved.

Mr. McGrory stated granting an emergency TRO is a much greater standard than a normal trespass case for stormwater. He said it is rare that a judge in suburban counties will grant a TRO since it has to be a life threatening type of situation. Mr. McGrory pointed out part of the TRO would have had a complaint attached to it and then a preliminary hearing would have emanated. Mr. McGrory asked if they had a preliminary hearing.

An unidentified member of the group responded there was a preliminary hearing, and the judge tried to resolve the case through some kind of settlement. There was an engineering report prepared outlining a way to correct the problem at a cost of over \$60,000. The other parties would not agree and the lawsuit was discontinued as of December.

After questioning by Mr. Philips, the following additional information was provided by the homeowner group:

- their attorneys informed them if they get to a point they want to pursue this

for money damages, they will look at it again.

- It was a voluntary discontinuance by the homeowners' attorney, without prejudice.

In light of what he is seeing, Mr. McGrory commented the homeowners have recourse through the courts in Chester County, and they should try again. He explained when he does a TRO, he then does a preliminary hearing, and then does the monetary damages with an underlying complaint with the litigation and maybe it is that last step where the homeowners fell short in the process.

An unidentified member of the homeowners' group said at that particular time the expectation was the developer was going to develop the property which he has since not done so.

Mr. McGrory commented development construction is regulated by a land development agreement and represents a relationship between the developer and the township. There is a construction schedule that has to be followed in the land development agreement, and this is something Tredyffrin should be enforcing.

Mr. Wagenmann stated he has talked with Tredyffrin several times in regard to this matter, and they are not pursuing anything with the developer. He talked to CSK, the homeowners' management company and advised them to contact Chester County's Soil Conservation personnel since an E&S permit is needed and additional measures need to be taken to resolve the situation.

Mr. Philips commented since the suit was dismissed without prejudice it can be filed again.

In addition to the Chester County Soil Conservation Service, Mr. McGrory suggested the homeowners also go to their local state senator and state representative and ask them to advocate this cause with the various entities in Harrisburg in order to obtain a better response. Mr. McGrory stated this is a case worth pursuing; and if the homeowners work collectively, it will move more expeditiously. He said another approach would be through the Association with an assessment for everyone in the complex because it is an Association matter in a common area that is also being damaged.

Mr. Tom Beach, Township Engineer, stated the homeowners had an engineering study done which clearly documents the conditions existing before did not create the issues that currently exist. He said the study clearly identifies prior to the developer clear cutting the site and knocking down buildings, the flow did not come across the way it does right now. Mr. Beach advised this is where the homeowners have to start with the engineering study which will help with the issues of mud and debris, although probably not help with the issues of how much water flow is going through. Mr. Beach pointed out he does not know where the ultimate development will be discharging to. He said it would be

helpful if the developer put up a small berm to deflect the flow so it does not come down across the homeowners' property, but rather would go to where the developer is ultimately discharging. Mr. Beach stated the Soil Conservation will come out and issue a citation with a financial penalty and make them stabilize the site.

Mr. McGrory suggested hiring a land use attorney; and with the proper pleadings, properly represented, this can get done.

Mr. Ken Brown discussed a problem which was exacerbated at his property at Martin's Dam as a result of the situation in Tredyffrin. Mr. McGrory stated while this issue falls within DEP's jurisdiction, he has no problem with the township reaching out to DEP on Mr. Brown's behalf to ask them to take another look at it. Mr. Wagenmann indicated he would ask Dams and Encroachments to do so. Mr. McGrory suggested arranging a meeting with DEP to provide Mr. Brown with an opportunity to state his concerns. He reiterated that ultimately it is DEP's jurisdiction.

Mr. Waks asked that a resident from Kerwood who suffered from frequent erosion and exposed wires attend the DEP meeting as well.

A discussion ensued about the intensity of recent storms and how existing problems are exacerbated.

A resident on Radnor Road who lives two properties below Woods at Wayne discussed the damage to his property during the last two storms. Additional Radnor Road residents identified specific issues on their properties.

PROBLEM PROPERTIES SUMMIT STREET

Mr. Tom Beach, Township Engineer, stated he inspected the Summit Street properties and found the suspected problem unit was not really the problem. He discovered a large sinkhole under one of the units that can be remedied in one of two ways.

1. demolish both properties, fix the sinkhole
2. gain access into the buildings, remove portions of the floor, fix the sinkhole and rebuild connecting foundation walls between the units.

Each unit has a basement with a common wall. It was originally believed the end unit was the problem; however, it is actually the one next to it. Mr. Beach pointed out it is the wall between the end unit and the next one that has major cracks and is falling down.

Mr. John Waters, Safety/Codes Enforcement, detailed the extent of the

issues involved with the problem properties.

Mr. Waks asked Mr. Beach to provide more information on the two options. Mr. Beach said the first option would remove the two end units, fix the sinkhole, cap it, seal the side wall and fill in the holes involving an estimated cost of \$79,000. The other option involves accessing the units from the back since they cannot be accessed from Summit Street. Because of the congested spaces, cuts would have to be made to get equipment down into the basement to do the work. The floor would be taken out and the sinkhole sealed. One of the easiest ways would be to remove the kitchen, fill up the sink hole, replace the common wall between the two units and complete other repairs inside the building for a cost of about \$55,000. Mr. Beach noted the common wall is starting to fall apart and some of the other walls are starting to go.

Mr. McGrory recommended nothing be done because this is private property. He pointed out the township's jurisdiction is to condemn property that is unsafe, not to fix it up and make it safe for the homeowner. The purpose of getting the Township Engineer involved at the Solicitor's request was because the third house was asked if their house was in danger. The scope of the review was to see whether it was necessary to continue to condemn down the line and the Township Engineer reached the conclusion the third house was not in danger. Mr. Beach stated it is currently stable.

Mr. Beach commented the wall between this [second] unit and the third unit in the mores is fallen away from the stone so it is just a matter of time. He also noted it is not known what the full extent of the sinkhole is, and if the sinkhole continues to grow and move towards the common wall, that wall may at some point become an issue also.

Mr. McGrory stated for clarification at this point in time the third unit does not have to be condemned. Mr. Beach responded the third unit does not have to be condemned if the wall is stabilized between the second and third unit.

Mr. Beach noted, according to the county, both houses were built about 1820, one of which is assessed at \$81,500.

Mr. Jenaway asked if the houses are removed and a sinkhole remains, what kind of hazard is created because of the exposed sinkhole. Mr. Beach responded the sinkhole would have to be repaired.

Mr. Philips asked if the houses are just condemned and nothing else is done and someone falls into the sinkhole, what type of liability does the township have. Mr. McGrory responded this is why we are getting a report from our engineer about the stability of the wall that has human occupancy right now. If we get a report from our engineer in the future saying that unit is in danger of collapsing then we can have the unit [condemned].

Mr. McGrory stated the real issue is should the third unit be condemned,

not whether the sinkhole is fixed necessarily.

Mrs. Kenney asked for the total number of connected houses. Mr. Waters responded technically there are six houses.

Mr. McGrory asked if the water feeding the sinkhole is no longer running. Mr. Waters responded the water was turned off when Safe/Codes were there.

Mr. Waks asked the Township Engineer, if in his opinion, the third house is currently not in any imminent danger. Mr. Beach responded if you go inside their property you would not even know there was a problem.

Mr. Jenaway said he gets the impression from the discussion if action were taken on the first two units then there would be problems with the wall because there would be some kind of an intervention on the wall because of the general demolition of the other two buildings.

Mr. Beach commented if the buildings were demolished the wall would be repaired. You would need an insulated exterior wall with stucco facing. The stucco would go all the way down to the basement floor.

Mr. Waters commented the end unit owner is walking away from the property since she does not have the financial wherewithal to fix the property, nor does the second unit owner.

Mr. Waks asked if the properties could be sealed up. Mr. Waters responded Safety and Codes has been down to seal and they were secure as of four weeks ago.

Mr. Waks asked if either Safety and Codes or police could drive by now and then to confirm the properties are sealed up. Mr. Waters responded in the affirmative.

Mr. McGrory commented it is still not certain what the fix is for the sinkhole. Mr. Beach responded he knows it goes back at least 4 ½ to 5 feet.

Mr. Jenaway asked if there was some way to get a visual image with some type of technology.

Mr. McGrory cautioned once it is touched it becomes your issue.

Mr. Waters commented citations are not being issued since property owners cannot fix the problem, nor do they have the financial capability to do so.

Mr. McGrory asked about claims against homeowners insurance. Mr. Waters responded both insurance companies denied claims to repair houses.

Mr. Wagenmann stated a check will be made with the county to see if Community Development Block Grant (CDBG) funds are available. He said the only question is the county has discretion with funds, but he did not know if they have discretion to use the funds in non-qualified areas.

Mr. Waters pointed out all six of the houses received a Montgomery County grant in 1981 for window replacement.

Mr. Wagenmann commented in 1981 there were some areas of the township that qualified for CBDG, but a subsequent census indicated that Upper Merion does not have any census tracts qualifying for funds.

Mr. Jenaway asked if that street was a qualified area at one time. Mr. McGrory said you may want to look at the street itself.

Mr. Waks stated this will be the next step to consider.

Mr. Beach commented he is now in contact with the historic commission and there may be some grants for building stabilization.

Mr. McGrory said that is the CDBG grant is directly to the homeowner and does not need a township conduit.

ORDINANCE AMENDING CHAPTER 133 OF THE UMT CODE, ARTICLE IV, SEWER RENTS, SECTION 133-29, PENALTIES FOR DELINQUENT PAYMENTS.

Mr. McGrory stated the ordinance for collections and liens is being updated to be in conformance with the law and various other minor tweaks to bring the fee to the township more in line with the actual cost to the township to do a lien.

ANTI-DISCRIMINATION ORDINANCE

Mr. Waks stated everyone who lives or works in Upper Merion should have some type of legal protection, including the enforcement arm, which is the Human Relations Commission.

Mrs. Kenney asked about the purpose of the anti-discrimination ordinance, what it would be fixing that is not already covered by our civil rights laws and the cost to the township, if any, to set it up, keep it going, and use it.

Mr. McGrory responded there is a void in the law for sexual orientation. The ultimate remedy, in his opinion, is for the county to do this rather than each individual township, but the county does not seem inclined to do it right now. For this reason, various townships, depending on their philosophy, are undertaking it or not undertaking it. As a result of his discussions with Lower Merion's Solicitor,

Mr. McGrory was informed there are volunteers knowledgeable in these areas who are ready and able to handle the various administrative aspects to put it together and set up the procedures. As far as costs involved, it would not involve much more than the cost of a normal ordinance.

Marlene Pray, Doylestown Borough Council Member, discussed her municipality's experience with the ordinance passed two years ago with a great deal of help provided by the Pennsylvania Human Relations Commission (PHRC). She noted the Commission provides free training for human relations commissions that are set up in local municipalities. Their volunteer group spent the first year drafting the by-laws and the mission statement and came up with language for their website.

Mr. McGrory indicated when he spoke with Lower Merion's Solicitor he reported they have had no complaints, but their demographic is different from Upper Merion's demographic where more complaints are likely. Mr. McGrory said as a model he would start with Lower Merion since it is a well thought out, balanced approach.

Mr. Kraynick commented Cheltenham struggled with this for several years and adopted an ordinance in January of this year which was modeled, in part, on the Lower Merion ordinance. He noted Springfield Township has an ordinance where there is no public hearing. A complaint is filed and the Human Relations Commission reviews the complaint. If they feel there are grounds, a decision can be issued and then the remedy is right to county court which limits the township's expense. Mr. Kraynik said by putting it on the books the residents of Springfield have some recourse for this type of discrimination.

Ms. Pray said one of the strongest statements from their residents when we were looking at different versions was that people should not be treated differently based upon their protected class.

Mr. McGrory asked how many complaints there have been in Doylestown. Ms. Pray responded there have been no complaints.

Mr. Kraynik commented when the research was done on the Cheltenham ordinance there were very few communities that had a complaint.

Mr. Philips asked if there is a filing fee for a complaint. Ms. Pray did not believe so, but she was not sure. Mr. McGrory noted he does not recall a filing fee in the ordinances he looked at.

Mr. McGrory asked if the state agency charges a fee. Ms. Pray responded she does not believe so.

Mr. McGrory said he will have to research it.

Mr. Jenaway asked what is the potential for cases, other than this issue,

that currently go to the PHRC to then go to the Upper Merion Human Relations Commission. Mr. McGrory responded for the particular class being discussed at this meeting, they do not go to the state, since the state does not cover it.

Mr. Jenaway followed up by asking if Upper Merion establishes a Human Relations Commission does the state then shift their view of how cases are handled and then push them back to the local level as opposed to handling them at the state level. Mr. McGrory responded he does not believe the state would do that. He said the state has “more teeth” than any of these ordinances so there is an incentive for the complainant to go to the state.

Ms. Pray stated if Upper Merion follows the Lower Merion ordinance one of the aspects some people do not like about it is it actually states in it if it is a complaint covered by the state, you have to go to the state.

Mr. McGrory stated that is what he likes about the Lower Merion ordinance since this is being done to fill a void, not to create concurrent jurisdiction where it is already being taken care of.

Mr. Jenaway asked if there is an idea for the number or types of cases that have gone to the PHRC from Upper Merion Township for the past three to five years for any kinds of issues. Someone in the group remarked it would be easy to find out.

Mr. Waks commented the difference might be any other type of discrimination can go to the Montgomery County Court of Common Pleas.

Mr. Jenaway asked if the last time the county was contacted was during the last administration or current administration.

Mr. Philips said he talked with Chairman Shapiro and nothing is currently on the agenda due to the press of other issues.

Ms. Pray commented she has worked with other county commissioners, and there is some concern because there is no police authority at the county level that may actually be challenged in court. She said it has to be done locally because it will be at least a decade until anything happens on the Commonwealth level, and it may never happen on the county level.

Mr. Jenaway commented it appears there is a gap at the state level that really should be addressed.

Ms. Pray stated it gets killed in committee even though 78% of Pennsylvanians favor this. One of the state senators said the way this is going to happen on state level is if enough municipalities and jurisdictions are able to push this through from the grass roots up.

Mrs. Kenney asked if Doylestown has civil penalties. Ms. Pray responded

there is no civil penalty at this point.

In response to Mrs. Kenney's question about possible redundancy in the Doylestown ordinance, Ms. Pray responded there are a lot of examples of concurrent jurisdiction. Their HRC's task is not just to address narrow gaps, but to be a voluntary group that would promote the cultural well-being of Doylestown for all protected classes in their own community without having to travel outside their area.

Mr. McGrory suggested starting by limiting the ordinance as Lower Merion does and see how it functions. He said there is no reason to fix something that is not broken. There is one void that can be remedied at the local level.

Mr. Waks commented when he first read about this in the *Times Herald* his thought was how do we protect this class which has no protection whatsoever. He emphasized that an enforcement arm is absolutely necessary.

Mr. Jenaway asked if the township's management liability policy has a provision for a Human Relations Commission already. Staff will check on this.

Mr. McGrory stated this ordinance will take some time and he will begin by comparing other ordinances. He said the consensus is to limit it to the void that is not covered and to give it "some teeth." Mr. McGrory indicated Lower Merion has a hearing process and enforcement and he envisions the Upper Merion ordinance would be similar to what they have done.

Mr. Kraynik said it is important to note the hearing process comes only after there is an act for mediation. Mediation would be in the ordinance and hopefully would be as far as some claims need to go.

Mr. McGrory stated he would do the basic ordinance and volunteers can handle the rules, procedures and process for the hearing so he does not have to "reinvent the wheel."

DRAFT LEASE RE: PETRUCCI ICE CREAM STORE

Judy Vicchio, Assistant Township Manager, stated Rusty Bubbles and his partner requested an extension of the Petrucci Ice Cream Store lease. She explained the changes from the previous lease. The new lease would start on January 1, 2013 for five years with two five-year options after that. Since it is difficult to predict the economy at that point, the CPI will be used to compute the rent for the Philadelphia Region for the month ending August 31st of the year prior to the next term for both of those five-year options. Rates for cold water (they do not use hot water); trash and sewer rent will be reviewed on an annual basis to determine if an increase is warranted for those particular bills.

Mr. McGrory stated the first consideration is whether the lease should be for this long term.

Mr. McGrory asked if this property is part of open space. Mr. Wagenmann responded in the negative and explained this property was isolated and no open space funds were used to purchase sites that were commercial in nature and had leasing.

Mr. McGrory stated the issue is whether a 15-year lease is desired (five years with two five-year options).

Ms. Vicchio stated Petrucci is a very good tenant, pay their rent on time and take care of their property.

Mr. Philips commented Petrucci is a good corporate citizen, a fixture in the community for everyone, and they are profitable

Mrs. Kenney asked about the previous lease. Ms. Vicchio responded there was one year left on their lease and at the end of last year Petrucci's came in and asked the township to extend the lease.

Mr. Wagenmann asked about the length of the first lease. Ms. Vicchio responded five years. She said the Board at that time did not want to make it any longer because of the economy.

Mr. McGrory said his concern is if the township changed its mind on what they wanted to do with the property it would be tied up for 15 years and it would be necessary to buy the lessee out of the options.

Mr. Wagenmann commented open space surrounds Petrucci's. The township created a subdivision for the ice cream store and the house. Everything else, the barns, pastures, etc. were acquired with open space funds and have open space restrictions.

Mr. Waks commented it seems like Petrucci's are doing pretty well and it is something the Board would probably want to do.

From the Public:

Jim Kravitz, 239 Pinar Drive, asked if the lease had a sublet option. Ms. Vicchio responded in the negative.

DRAFT BOARD POLICIES RE: SOCIAL MEDIA POLICY

Mr. Waks stated this policy would establish a one-way social networking policy wherein the township would communicate with the community, but because of litigation and liability concerns there would not be a message board established for people to post comments.

Mrs. Kenney asked what kind of training would be necessary for township

employees. Mr. Wagenmann responded the only person who would be able to post the township's message and determine content would be the Chief Information Officer and that would be the only person requiring training.

Mr. Jenaway believes the social media policy should have a provision providing limitations expected of employees. He said there is a lot of insurance claim money being paid out because of the actions of employees who use their own social websites to criticize communities or provide information that should not be in the public domain on their own personal sites.

Mr. McGrory questioned whether home computer use could be regulated.

Mr. Jenaway said you are not going to see it in case law, but you are going to see it in insurance claim experience.

Mr. McGrory stated he does not doubt that, but he did not know how to stop it.

Mr. Philips said there is case law on it.

Mr. Jenaway said there are significant policy changes coming from major counties, in particular, that are starting to address this issue with individual employee activity.

Mr. Jim Kravitz, Media Communications Advisory Board, said one of the issues they ran into was everyone was thinking there is Facebook, Twitter, LinkedIn, but he pointed out over the next five years there are going to be different types of social media sites that will all interact with one another. Pinterest is the third largest site behind Facebook and Twitter. He asked what if someone posts a picture where they are standing in front of the township building and displaying an offensive gesture. These are the kinds of issues that will have to be addressed. The difficulty is addressing everything in a blanket statement.

Mr. McGrory stated this is an issue to be discussed at a later time so that it will not delay this particular social media policy which is for the township's own site and under township control.

Mrs. Kenney had concerns about the section on page 11 of the draft policy indicating that township employees cannot identify themselves on social networks as employees of Upper Merion Township or make certain remarks about the Board of Supervisors, but they could about the manager, solicitors and other staff members. Mrs. Kenney said she does not think this would hold up in court under the First Amendment.

Mr. Waks stated there are people who have their township employee status on LinkedIn and he does not see any harm in that. He said it is understandable why it is not desirable to have anyone on a social network

appearing as if they are speaking for the township when, in fact, they are not. He agreed with Mrs. Kenney that it is a bit overbroad.

Mr. Wagenmann stated certain changes will be made to the draft policy as previously discussed.

Mr. Waks stated this policy will be placed on the agenda for the August workshop.

SPONSORSHIP POLICY

With regard to sponsorship and ads, Mr. Waks stated *Township Lines* revenue has gone down and there are concerns about what the cost might be and how this might be passed onto the township. During the most recent Media Board meeting the question arose as to whether or not they could put *Township Lines* on the website in PDF form, but that would entail having ads on the website.

Mr. Wagenmann indicated the township has been approached by the casino asking for a Rambler stop as well as advertising on the Rambler. This would involve a policy change as well as a dollar amount for the advertisement.

Mrs. Kenney pointed out on page 5 of the draft policy it lists gambling as the type of sponsorships to be avoided.

Mr. Waks asked about having a casino ad in the *Township Lines*. As something to think about and nothing that needs an immediate answer, he mentioned that the Tredyffrin version of Township Lines, which is also published by Franklin Maps, has political ads - not campaign - but political ads. Mr. Waks expressed neutrality on the idea, but he noted the Upper Merion Monopoly Game features political ads so it is already being done.

Mr. Waks noted this Board, himself included, expressed serious reservations about having ads on BID banners, but he knows there are those who want it.

Ms. Vicchio said this policy has been in existence in draft form for a long time. The original intent of the banner references starting on page 6 were to control the banners on fences at Heuser Park, and these references could be taken out.

Mr. Wagenmann commented some mistakenly view the BID banners as advertising particular businesses.

Ms. Vicchio mentioned that the Bicentennial group worked on a corporate sponsorship package and depending on the level of contribution it refers to pole

banners. Ms. Vicchio assumes that whoever provides a certain level of contribution will be able to place some type of advertising on the pole banners. She is awaiting clarification from the BID regarding Peco since in the State of Pennsylvania such advertising on utility poles is not allowed.

Mrs. Kenney referred to Don Herbert's rendering of a proposed banner and explained for businesses that contribute a certain amount of dollars that becomes one of their perks. The banner would have a Tricentennial-type logo and at the bottom would be the name of one of the sponsors indicating their proud support of the Tricentennial. If someone donated \$20,000 the pole banner would replace one of the current BID banners. There would be five banners for \$20,000.

Mr. Philips pointed out some believe that the entire \$20,000 is all tax deductible and it is not.

Mrs. Kenney indicated it is a 501(c)(3).

Mr. Philips stated it does not matter if the donor is receiving something in return, in this case advertising. He said it would be necessary to figure out how much the advertising is worth and that part of it would not be tax deductible.

Mr. Waks suggested having a notation in the letter to the effect that the donor should check with their accountant about the tax deduction as to the range of what the "advertisement" could be worth. He said the wording should be checked by the Solicitor.

Mrs. Kenney commented the Farmer's Market had a similar process with levels of contributions and with the highest level their logo on the bags that were sold. She pointed out the bags that were sold were not big banners on the streets and that was a 501(c)(3) also.

Ms. Vicchio commented the utility pole banners are available for purchase and would be displayed within the township throughout the year at locations on main corridors where the King of Prussia BID banners are currently hung. The letter indicates banners are a cost effective way of promoting your organizations to thousands of motorists and pedestrians. It will be 3 x 7, printed in color and each banner will showcase the company or organization name and is theirs to keep at the end of the year 2013 year. The levels of contributions are \$20,000, \$10,000, \$5,000 and \$2,000. Ms. Vicchio indicated she mentioned this in case any changes are to be made.

A discussion ensued raising various issues such as controversial sponsors, businesses outside the township, banners next to residential neighborhoods, preventing use of electric signs, etc.

Mr. McGrory suggested appointing a working subcommittee of two supervisors since there are major issues and questions to be addressed.

Mr. Waks stated no action will be taken at this point and the Board will proceed with the subcommittee idea suggested by the Solicitor.

A discussion followed about corporate sponsorship of Tricentennial events.

TOWNSHIP VEHICLE USE POLICY

Mr. Jenaway stated three points on this issue:

- marked vehicles being out of town more than they are in town - the value of marked vehicles rely in their being in its municipality, not outside the municipality. One of the concepts of marked vehicles being taken home, whether it is a police car, fire department, or ambulance is so that the general public has a feeling of safety.
- use of emergency lights and sirens through other municipalities to get to Upper Merion Township - there is a risk issue here and in today's environment not necessary for those vehicles to be used in that fashion.
- use of fire company vehicles for personal use, driving back and forth to work outside Upper Merion Township when they cannot respond to emergencies.

Mr. Wagenmann stated there would be no problem taking the markings off.

Mr. Jenaway noted police have a different jurisdictional capability and they can literally move through a municipality. There are no issues because they are operating those vehicles in Upper Merion when they are here.

Mr. Jenaway said he will mark up the draft policy and tighten it up for further review by the supervisors.

ADJOURNMENT:

It was moved by Mr. Philips, seconded by Mr. Jenaway, all voting "Aye" to adjourn the workshop meeting at 10:55. None opposed. Motion approved 4-0.

RONALD G. WAGENMANN
SECRETARY-TREASURER/
TOWNSHIP MANAGER

rap
Minutes Approved:
Minutes Entered:

