

UPPER MERION TOWNSHIP BOARD OF SUPERVISORS  
JANUARY 14, 2016

The Board of Supervisors of Upper Merion Township met for a Business Meeting on Thursday, January 14, 2016, in Freedom Hall, in the Township Building in King of Prussia. The meeting was called to order at 7:40 p.m., followed by a pledge to the flag.

ROLL CALL:

Supervisors present were: Greg Waks, Bill Jenaway, Erika Spott and Carole Kenney. Also present were: David Kraynik, Township Manager; Sally Slook, Assistant Township Manager; Joe McGrory, Township Solicitor; Rob Loeper, Township Planner; Tom Beach, Township Engineer; and Angela Caramenico, Assistant to the Township Manager. Supervisor Philips was absent.

MEETING MINUTES:

It was moved by Mrs. Spott, seconded by Mrs. Kenney, all voting "Aye" to approve the November 12, 2015 Business Meeting Minutes, December 3, 2015 Zoning Workshop Meeting Minutes, December 3, 2015 Business Meeting Minutes, and the January 4, 2016 Reorganization Meeting Minutes as submitted. None opposed. Motion approved 4-0.

CHAIRMAN'S COMMENTS:

Chairman Jenaway stated prior to this meeting an Executive Session was held regarding litigation and personnel matters.

NEW BUSINESS

CONSENT AGENDA RE:

1. Bid Recommendation re: Harley Davidson Police Motorcycle Contract to Montgomery County Harley-Davidson, Inc. in the amount of \$49,791.52. *Mr. Jenaway stated all of the funding for this project comes from a combination of the Montgomery County District Attorney's Office and two local companies. No Upper Merion funds are associated with this project.*
2. Budget Transfer of Funds in 2015 re: Police Department - \$44,500.00 from Fuel/Oil Vehicles to Overtime Budget
3. Resolution 2016-2 re: Disposition of Township Property
4. Professional Service Agreement (PSA) Recommendations re: 2016-2017 MS4 Stormwater Outfall Inspections to ARRO Consulting, Inc. in the amount of \$10,900.00
5. Granting an Extension of Time to May 31, 2016 re: Mancill Mill Road Company Development Plan; Warehouse & Office Facility (298,000 SF) and two hotel buildings (245 units); 22.82 acres, SM/SM1.
6. Amendment to License Agreement between the Pennsylvania Turnpike Commission and the Supervisors of Upper Merion Township
7. Award a Contract for Demolition of the Single-Family Dwelling just east of the township building to Hindle Contracting and Demolition in the amount of \$14,250.00

8. 2015-2016 PJM Curtailment Service Provider Agreement Addendum Comverge Proposal No. UP01LD1 – Renewal
9. Resignation of Steven Burda from the Environmental Advisory Council
10. Resignation of Robyn Briggs from the Board of Community Assistance

Board Comment:

With regard to item #1, Mrs. Kenney asked for more information about the two companies who help fund the motorcycle contract. Chief Nolan responded the two company donors were Simon Property Group and IMC Construction.

Board Action:

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

RESOLUTION 2016-3 RE: DKF11, LLC DEVELOPMENT PLAN; 611 W. DEKALB PIKE; LOT CONSOLIDATION AND CONSTRUCTION OF 2-STORY 18,000 SF RETAIL BUILDING; 1.07 ACRES, LC-LIMITED COMMERCIAL PLAN  
*Plan Expiration 2/17/16*

Mr. Rob Loeper, Township Planner, discussed the site at Forge Road and US 202 (formerly Gino’s and McDonald’s) and indicated this is a continuation of the Hector Veñas redevelopment along the US 202 corridor. The proposed plan is to consolidate two properties. As with other recent commercial developments the two-story building is moved closer to the street rather than having the parking in the front. The building will be approximately 25 feet back from the curb line, parking will be located in the rear and there will be sidewalks around the entire building and along the site. In response to comments from the Business Improvement District the sidewalk along DeKalb Pike has been widened from what would be required.

Renderings of the plan were shown of the site and surrounding area. Mr. Loeper pointed out the two-story building will have two users. The restaurant will occupy a portion of the lower floor and the other user will occupy the rest of the first floor and the entire second floor.

Mr. Loeper discussed waivers associated with the plan as follows:

- Relief to allow grading within five feet of a property line
- To not provide street trees (*the trees will be placed elsewhere on the site*)
- To not provide a traffic impact study and analysis (*using numbers from the Act 209 study the actual peak hour trip generation for this use is lower for the full fast food use that previously existed on the site*)
- To not provide non-residential open space (*the applicant will be providing a fee in lieu*)
- To not provide a minimum stormwater pipe of 15” (*because of clearances for existing utilities – the smaller pipe has been reviewed by the Township Engineer and has been cleared from an engineering standpoint*)

Hector Veñas, developer, commended the professionalism of the township staff.

For the benefit of the viewing audience, Mr. Waks asked for more details about the two users. Mr. Veñas responded Zoës Kitchen is a fast casual restaurant serving Mediterranean and organic food. They do not have a drive-thru. Bassett is a furniture and home products store based in the Carolina’s and is a very successful U.S. company.

Mr. Waks asked if the plan for Zoës Kitchen includes outdoor seating. Mr. Veñas responded in the affirmative.

Mrs. Kenney asked if the plan calls for the required number of parking spaces. Mr. Veñas responded in the affirmative.

Mrs. Kenney asked if the street trees would be provided elsewhere on the property. Mr. Veñas responded in the affirmative.

Mrs. Kenney asked if there would be any plantings or greenery in front of the building as well. Mr. Veñas responded in the affirmative. He pointed out there would be no trees in front.

Mrs. Kenney asked for more detail about the plantings in front. Mr. Veñas responded there will be some shrubbery and flowering plantings to provide some color. The tenants have signed a 15 year lease and plan to be there a long time. Studies were done on the trees and over that period of time would actually block the entire front of the building. In addition, the roots would cause damage either to the foundation or sidewalk.

Mrs. Kenney asked if the trees would be located elsewhere at the back of the property. Mr. Veñas responded in the affirmative. He pointed out the landscape plan shows a significant amount of trees wrapping around the entire property line abutting the residential area.

Mrs. Kenney asked if there is a sufficient amount of screening between this property and the closest residential property behind it. Mr. Veñas responded in the affirmative. He pointed out the landscape requirement is more than what is required. Mr. Loeper stated there is also a 6-foot fence with privacy slats. He also noted the parking lot is further removed from the existing property lines over the existing condition.

Mrs. Kenney asked for more details on the lighting at the site and if that would impact neighbors near the parking lot. John Diemer, engineer for the applicant, responded a lighting plan has been provided and reviewed and the Township Engineer has indicated the lighting plan meets the ordinance.

Mrs. Kenney asked if the light will be prevented from spilling over to the neighbors. Tom Beach, Township Engineer, responded there are requirements at the property line for certain foot-candle readings and the applicant's plan complies.

Mrs. Kenney asked if there are shields on most lights. Mr. Diemer responded in the affirmative. Mr. Loeper stated the light is in a box and the ones closer to the property line also have a back shield behind the fixture so there is not as much back lighting that would spill over to the residential property.

Mrs. Kenney asked about the stormwater pipe and if the smaller pipe will be sufficient in view of the new stormwater requirements. Mr. Beach responded the smaller pipe meets all the hydraulic requirements.

Mrs. Kenney asked about the size of the proposed pipe. Mr. Beach responded it is a 12-inch pipe.

Mrs. Kenney asked if 12 inches is sufficient. Mr. Beach responded it is sufficient to carry stormwater, but might require them [the applicant] to clean it more often.

Mrs. Kenney asked if a stormwater pipe is in currently in place now. Mr. Loeper responded the site currently has no stormwater management and this plan will be a major improvement.

Mrs. Kenney asked if anything else will be done for stormwater purposes. Mr. Loeper responded there will be a basin which is designed to meet the code requirement.

Mr. Loeper said the only other thing that will happen as with all properties along US 202 because they tie into a PennDOT system is that PennDOT places certain requirements on the township which the township places back on the property owner and that involves agreements which will be prepared by the Township Solicitor which will be a recorded covenant to remove liability from the township to the property owners.

Mr. Beach mentioned the amount of impervious coverage is reduced by .19 acres or 8,300 square feet.

Mrs. Kenney asked about the percentage of impervious reduction. Mr. Diemer responded there is approximately 15% less impervious.

Mrs. Spott asked if the applicant has met with the residents again since the plan has advanced and if any comments or concerns were addressed. Mr. Veñas responded he has met with the residents multiple times during the whole process and the last time they met was about five months ago. He believes they are satisfied. Mr. Loeper stated the neighbors were notified in December when the plan was submitted giving them the information they would need if they had any questions.

Mr. Jenaway reiterated the question he raised at the workshop about the distance of the proposed building from the curb. Mr. Veñas responded it is 25 feet and mentioned the expanded sidewalk.

Board Action:

It was moved by Mr. Waks, seconded by Mrs. Kenney, all voting "Aye" to approve Resolution 2016-3. None opposed. Motion approved 4-0.

RESOLUTION 2016-4 RE: REALEN VALLEY FORGE GREENES ASSOCIATION DEVELOPMENT PLAN; VILLAGE GREEN DRIVE; INTERNAL ROAD, FIRE ACCESS ROAD AND BASIN; 15.55 ACRES, COURT STIPULATION *Plan Expiration 2/17/16*

Mr. Loeper stated this development plan is for the creation of Valley Green Lane which is a cul-de-sac which will come off of South Goddard Boulevard opposite the CHOP driveway and extend into the northwest portion of the site. The plan also calls for a fire lane that will connect the cul-de-sac with Guthrie Road. The other aspect of the plan is Basin A which will be the last basin on the site. It was noted this development plan is just for the road and the improvements that will facilitate future development in this area. The cul-de-sac as proposed will be built in two segments. The first phase will be the shorter, temporary turn around, and ultimately it will be extended out to the full length as designed when the other buildings are completed.

Board Action:

It was moved by Mrs. Spott, seconded by Mr. Waks, all voting "Aye" to approve Resolution 2016-4. None opposed. Motion approved 4-0.

RESOLUTION 2016-5 RE: REALEN VALLEY FORGE GREENES ASSOCIATION DEVELOPMENT PLAN; AVE KING OF PRUSSIA; 276 UNIT MF RESIDENTIAL BUILDING; 4.75 COURT STIPULATION *Plan Expiration 2/21/16*

Mr. Loeper stated this building will be located at the corner of Valley Green Drive which was just approved, Goddard Boulevard and North Gulph

Road across from the Sheraton. The 276 residential unit building is a joint venture project and will be developed and managed by Korman Communities. It was noted this is different than most of the other developments because there are two levels of parking; most of the other developments are one level parking.

As with the other plans this will also have an internal courtyard containing the amenities. There will be two roadway entrances, one off of Goddard Boulevard and the other off of Valley Green Lane. The entrance closest to Goddard Boulevard will enter the upper level with the garage and other will enter the lower level of the garage.

A series of renderings were presented showing the building with structured parking built around courtyards containing the amenities.

Mr. Jenaway mentioned this plan was reviewed at a workshop meeting last week.

Mr. Waks stated this project is on the former golf course and as such all that is required for approval is an engineering letter. He pointed out the township has legal obligations in this matter as a result of settlement of golf course litigation that lasted for decades. Mr. Waks wanted to remind those in the audience and viewing at home that this is one of the developments that falls under the litigation settlement.

Mr. Jenaway asked if the engineering letter is on file. Mr. Beach responded in the affirmative.

Board Action:

It was moved by Mrs. Spott, seconded by Mrs. Kenney, all voting "Aye" to approved Resolution 2016-5. None opposed. Motion approved 4-0.

PUBLIC HEARING AND POTENTIAL RESOLUTION 2016-6 RE: REQUEST FROM DAVIO'S STEAKHOUSE FOR APPROVAL OF AN ECONOMIC DEVELOPMENT RESTAURANT LIQUOR LICENSE

Joseph McGrory, Township Solicitor, opened the hearing and noted the process for an economic development liquor license is different than what is normally seen for an inter-county liquor license transfer. He introduced into the record Board Exhibit #1, a copy of the request from the applicant for an economic development liquor license; Board Exhibit #2, the legal notice of the hearing; Board Exhibit #3, proof of publication in the *Times Herald* for December 30, 2015 and January 6, 2016; Board Exhibit #4, the proposed township resolution approving the request for the issuance of the license.

Stanley J. Wolowski, law firm of Flaherty & O'Hara, stated he is the liquor license attorney for 201 Main Street LLC, trading as Davio's Northern Italian Restaurant. He introduced Ettore Ceraso, Director of Operations for Davio's.

Mr. Wolowski stated this hearing is being held at the request of Davio's for approval of an economic development restaurant liquor license. The Pennsylvania Liquor Code allows a municipality to approve the issuance of a restaurant liquor license for the purpose of economic development and the standard to be applied by a municipality in ruling on a request for approval of an economic development liquor license is set forth in Section 3.102(b)(3) of the Liquor Control Board regulations. The standard to be applied is that the municipality should approve the issuance of the license if (1) it would promote economic development and (2) if it would not adversely affect the welfare, health, peace and morals of the municipality or its residents.

Mr. Wolowski stated Davio's is seeking approval of an economic development restaurant liquor license for its proposed upscale fine dining Italian

restaurant to be located in the King of Prussia Town Center. He said approval of this license will promote economic development in Upper Merion Township and will not adversely affect the welfare, health, peace and morals of Upper Merion Township or its residents.

Mr. Wolowski discussed the concept of a Davio's restaurant and how it will operate and why approval of this license to Davio's will promote local economic development. He distributed the menu offered at a Davio's restaurant to the Board of Supervisors which Mr. McGrory asked to be marked at Exhibit A1.

Mr. Wolowski stated Davio's restaurant in the King of Prussia Town Center will be an upscale, fine dining, high quality restaurant and will be operated similar to the Davio's restaurant in downtown Philadelphia. The Davio's in the King of Prussia Town Center will be approximately 9,000 square feet and have seating for 300 patrons.

Mr. Wolowski indicated this will be a high quality, fine dining, upscale restaurant and the menu's focus is on food. He said there will be no live entertainment, no bands, disk jockeys, video games, pool tables or happy hours. The hours of operation will be consistent with an upscale restaurant as follows: Monday, Tuesday and Wednesday 11:30 a.m. to 11 p.m., Thursday, Friday and Saturday 11:30 a.m. until midnight and Sunday 11 a.m. until 10 p.m.

The estimated sales breakdown which is based upon the Philadelphia Davio's is as follows: 75-80% of the sales will come from food and only 20-25% of sales will come from sale of alcoholic beverages (many of which are expensive wines). The typical patron at a Davio's restaurant is 45 years of age or older. People will go to Davio's to celebrate special occasions, birthdays, anniversaries, promotions and is a very popular location for a business lunch or dinner.

With regard to economic development, Mr. Wolowski pointed out this Davio's will be an amenity for businesses located near the King of Prussia Town Center. It will make it more attractive for businesses to lease office space in the King of Prussia Town Center. This Davio's like the Davio's in downtown Philadelphia will be a destination restaurant and will bring people into the Town Center who are then going to patronize other businesses in the area either before or after their meal. Other economic factors include the employment of 150 people (75-80% of these jobs will be full time). It will add to the tax base and increase employment. For all of the foregoing reasons, Mr. Wolowski requested the Board of Supervisors to adopt the resolution approving the issuance of an economic development restaurant liquor license to Davio's.

Mrs. Kenney asked how many Davio's are in the country and how many have liquor licenses. Mr. Wolowski responded there are seven and they all have liquor licenses.

Mrs. Kenney asked if there is a cost for this license. Mr. McGrory responded whatever the Liquor Control Board charges for a fee.

Mrs. Kenney asked if this would establish a precedent in any negative way. Mr. McGrory responded each case would be decided upon on its own merits. If someone else came in this would be of no precedent.

Hearing and seeing no further comment from the Board or public, Mr. McGrory adjourned the hearing and reconvened into the public meeting portion of the agenda placing the resolution in a position for your consideration by the Board of Supervisors.

#### Board Action:

It was moved by Mrs. Kenney, seconded by Mrs. Spott, all voting "Aye" to approve Resolution 2016-6. None opposed. Motion approved 4-0.

## ACCOUNTS PAYABLE & PAYROLL:

### Board Action:

It was moved by Mr. Waks, seconded by Mrs. Kenney, all voting "Aye" to approve the Accounts Payable for invoices processed from December 3, 2015 to January 6, 2016 in the amount of \$4,174,626.49 and the Payroll for December 4, 2015, December 18, 2015 and December 31, 2015 in the amount of \$2,120,754.73 for a total of \$6,295,381.22. None opposed. Motion passed 4-0.

## ADDITIONAL BUSINESS

### BOARD OF COMMUNITY ASSISTANCE APPLICATION DEADLINE

Mr. Waks noted the March 15<sup>th</sup> deadline for Board of Community Assistance grant application for organizations and scholarships for graduating high school seniors who reside in Upper Merion Township and are going on to college, trade or technical school after they graduate. It was noted approximately \$145,000 has been awarded each year for the last three years. Mr. Waks encouraged interested organizations and students to consider applying.

### WINTER MARKET

Mrs. Kenney reminded everyone about the Winter Market being held on Saturday from 10 a.m. to noon.

### AIR SOFT GUN SAFETY

Mr. Jenaway stated on Wednesday, January 13<sup>th</sup> the Police Department along with the Public Information Office and UMGA-TV released an informative video on air soft gun safety and provided specific details on the voluntary program. He noted Upper Merion juvenile detectives introduced this voluntary police department program which was developed with the safety of children in mind to increase awareness of air soft safety issues.

### NORRISTOWN HIGH SPEED LINE EXTENSION PUBLIC MEETINGS

Because of some misinformation posted on a Facebook page, Mr. Jenaway wanted to clarify that the High Speed Line extension is solely a SEPTA initiative. He explained SEPTA is investigating the potential to expand the Route 100 rail into King of Prussia and has undertaken several analytical processes and held several meetings to discuss options. SEPTA has held periodic public meetings in various areas in the township. Mr. Jenaway reiterated this is a SEPTA initiative, not a township project as has been incorrectly assumed by some. No taxpayer dollars are being spent on this project.

Mr. Jenaway stated he has reached out to the SEPTA and directed them to various Facebook pages on this topic commenting both pro and con. SEPTA has provided a fact sheet which is being made available to the public through the Public Information Office and other township communication resources.

It was noted that SEPTA is in the process of scheduling public meetings for mid-March and the final dates will be announced in early February. Every effort will be made to provide the schedule to the public so everyone is aware of where and when these meetings will be held. SEPTA plans include a discussion on the conceptual project schedule, results from last year's survey, an announcement of the preliminary selection of preferred alternative routes, an economic analysis, and the next steps in the process which will include an impact study requiring public comment. SEPTA will also be addressing some of the concerns about crime, noise, safety and residential benefits.

Mr. Jenaway said the best way to provide SEPTA comments now are via their website or send an email to [info@koprail.com](mailto:info@koprail.com).

UPCOMING MEETINGS AND ANNOUNCEMENTS

Mr. Jenaway announced a number of upcoming Township meetings and events.

ADJOURNMENT:

There being no further business to come before the Board, it was moved by Mr. Waks, seconded by Mrs. Kenney, all voting "Aye" to adjourn the meeting. None opposed. Motion approved 4-0. Adjournment occurred at 8:35 p.m.

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DAVID G. KRAYNIK  
SECRETARY-TREASURER  
TOWNSHIP MANAGER

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Minutes Approved:  
Minutes Entered