

UPPER MERION TOWNSHIP BOARD OF SUPERVISORS
JANUARY 26, 2017

The Board of Supervisors of Upper Merion Township met for a Business Meeting on Thursday, January 26, 2017, in Freedom Hall, in the Township Building in King of Prussia. The meeting was called to order at 7:48 p.m., followed by a pledge to the flag.

ROLL CALL:

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

MEETING MINUTES:

It was moved by Mr. Waks, seconded by Mr. Philips, all voting "Aye" to approve the December 1, 2016 Zoning Workshop Meeting Minutes; December 1, 2016 Business Meeting Minutes; December 15, 2016 Business Meeting Minutes; January 3, 2017 Reorganization Meeting Minutes; and January 5, 2017 Zoning Workshop Meeting Minutes as submitted. None opposed. Motion approved 5-0.

CHAIRMAN'S COMMENTS:

Chairman Jenaway indicated earlier this evening a reorganization of the Upper Merion Foundation was held; also an Executive Session was held prior to this meeting regarding personnel and litigation matters.

SWEARING IN OF NEW POLICE OFFICERS

Police Chief Tom Nolan introduced the two newest police officers Scott Samuels and Jamie West who were sworn in by District Justice William Maruszczak. Chief Nolan stated the Upper Merion Police Department has set very high standards for candidates to meet before they are considered for hiring with the department. He explained successful candidates work their way through an entire process consisting of a written examination, physical agility test, oral interview panel, polygraph examination, comprehensive background investigation and a command interview. The two newest officers come from that eligibility list.

On behalf of the Board of Supervisors, Mr. Jenaway expressed best wishes to the police officers for their successful career in law enforcement.

NEW BUSINESS

CONSENT AGENDA RE:

1. Resolution 2017-2 re: Fixing the Salary of the Upper Merion Township Tax Collector for the next Four-Year Term beginning in the Year 2018. *(Mr. Jenaway explained this resolution sets the salary of the Upper Merion tax collector - for the Township aspects only - for the next four-year term beginning in the year 2018. This is a required document that must be filed prior to elections every four years so that whoever wishes to run for the position of tax collector would know what that salary would be from the Township.)*
2. Authorization for the Solicitor to sign Settlement Stipulations re:
 - a. UMASD v. DDRTC Overlook at King of Prussia, LLC, Access Drive, 232 Mall Boulevard

- b. UMASD v. DDRTC Overlook at King of Prussia, LLC, United Artist's Cinema, 300 Goddard Boulevard
 - c. UMASD v. DDRTC Overlook at King of Prussia, LLC, Best Buy, 310 Goddard Boulevard
 - d. UMASD v. DDRTC Overlook at King of Prussia, LLC, Bahama Breeze, 320 Goddard Boulevard
 - e. UMASD v. DDRTC Overlook at King of Prussia, LLC Champ's Restaurant, 330 Goddard Boulevard
3. Resignation of Thomas Minger from the Pension Advisory Board
 4. Award an annual roof maintenance contract for the Community Center to Jurin Roofing Services in the amount of \$10,200.00
 5. Budget Transfer re: Public Works – Money needed for additional costs due to extra ADA ramp installations and field supervision not covered under Liquid Fuels funding - \$10,000.00
 6. Community Center Project Change Order re: Pinnacle Electrical Construction (Electrical Contractor), Change Order #14 is a credit in the amount of \$10,390.87 for reimbursement to the Township for electrical service charges during construction
 7. Settlement Agreement and Release re: Upper Merion Township and Candlebrook Marquis Property Owner, LLC c/o Vantage Properties, LLC – 251 West DeKalb Pike
 8. Appointment to the Media Advisory Board – Blake Holden and to the Vacancy Committee – LaVera Seymour

Board Action:

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

O'NEILL PROPERTIES GROUP DEVELOPMENT PLAN; 2901 RENAISSANCE BOULEVARD; 300-UNIT MF RESIDENTIAL BUILDING; 10,928 ACRES, SM, RESOLUTION 2017-3, *Plan Expiration: 1/30/17*

Mr. Loeper stated O'Neill Properties submitted a land development application for property located at 2901 Renaissance Boulevard which was the subject of numerous hearings over the past year. This property is sited at the end of Renaissance Boulevard at the intersection of Crooked Lane, Philadelphia Avenue and Yerkes Road at the edge of the Renaissance Business Park adjacent to the King Manor Station.

The property is located in the SM-1 Suburban Metropolitan District. This district permits multi-family residential use in a Transportation Oriented Development (TOD) as a conditional use which requires, among other things, that the property had to be in proximity to a train station and have access and parking for the train station.

The Board of Supervisors approved the conditional use on December 15, 2016 with a series of conditions covering a variety of issues including requirements for the land development plan, traffic and transportation improvements, environmental remediation, and various other general requirements.

The proposal includes 300 residential units on a 10.93 acre site with associated improvements including parking, landscaping, stormwater management and residential amenities. The site had prior land development

approval (June 21, 2007) for a five-story 167,000 square foot office building. The approved 2007 plan was part of a larger site for three office buildings. Of these buildings, only 2701 Renaissance was built and the remaining area remains vacant.

There are three waivers associated with this development. The first waiver is to not provide the number of parking lot trees due to planting restrictions associated with the environmental cap. The second waiver is to not provide the required number of softening buffer canopy trees and understory trees along the SEPTA railroad property due to planting restrictions associated with the existing retaining wall. The third waiver is to allow the site driveways to exceed the maximum allowable slope of 4% due to grading restrictions associated with the environmental cap.

Mr. Loeper stated all the conditions of approval for the conditional use will be rolled into the approval for land development. It was noted the most significant conditions are those related to transportation impact fees and how impact fees may be credited for improvements to intersections identified on the Township's Act 209 Traffic Improvement Plan. Other conditions relate to additional funding to examine traffic issues and look at some alternate traffic solutions for this area.

Mr. Jenaway pointed out the Resolution only identifies two waivers and the waiver regarding the 4% grading slope was not included in the Resolution. He mentioned there are 27 conditions that are part of the approval process.

Mr. McGrory asked if the 4% grading is referred to in the engineer's review letter. Mr. Loeper responded in the affirmative. Mr. McGrory stated it is delineated by incorporating the engineer's review letter. He said the Resolution can indicate language to the effect that in addition the 4% grading slope is waived as depicted in the engineer's letter. Mr. McGrory stated the change will be made to the executed resolution.

Mr. Philips asked if the revision to the Resolution is acceptable to the applicant. Mr. Edmund Campbell, on behalf of the applicant, responded the revision to the Resolution is acceptable.

From the Public:

Ken Foreman, Gulph Mills, wanted to know if there would be a road from Renaissance Boulevard to Crooked Lane. Mr. Campbell responded it is not part of the applicant's plan now under consideration by the Board of Supervisors.

Mr. Foreman commented about Fed Ex trucks going down Holstein and also mentioned concern over Balligomingo Road. Mr. Foreman was informed Fed Ex would be reminded they have a certain route to adhere to. With regard to the Balligomingo issue Mr. Foreman was informed this concerns litigation with West Conshohocken and the owner of the particular property and is out of the control of the Township.

Mr. Foreman continued to engage in dialog about opening Renaissance Road. Mr. Jenaway pointed out the traffic studies that were presented as part of this project over the last several months did not demonstrate true value to opening that road and did not provide public safety comfort that opening that road would not create additional problems at other points in the township.

Mr. Foreman mentioned the future construction on the Church Road bridge, and he was informed the Transportation Authority engineer has been working with PennDOT and SEPTA on this project.

Richard Dougert, Trinity Lane, Gulph Mills Civic Association expressed interest in having planning sessions for citizens to help residents know about

road closings and proposed construction such as the Church Road bridge project. Mr. Kraynik responded the Transportation Authority engineer is still in preliminary design of the project. Mr. Philips invited citizens to check the schedule on the township website and come to the Upper Merion Transportation Authority public meetings.

Mr. Dougert asked if there is a 500 foot limit to the length of cul-de-sacs in the Upper Merion ordinance. Mr. Loeper responded there is a provision in the subdivision ordinance recommending cul-de-sacs be limited at 500 feet and because it is in the subdivision ordinance it is a waivable provision. He pointed out there are several cul-de-sacs that are in excess of 500 feet, i.e., Hansen Access Road and Renaissance Blvd. Mr. Loeper stated this development does not have any extension of the cul-de-sac. The cul-de-sac that is present at this location right now is what was put in several years ago with prior development and it would not be something that would come up for a waiver with this application.

Mark McKee, Jones Road, mentioned the land development for the MedRisk building at 2701 Renaissance Boulevard, approved in 2001, which included an offer for dedication of the right-of-way for potential future connection of Renaissance Boulevard and Crooked Lane and asked for the status of the dedication. Mr. Campbell responded the conditional use conditions approved by the Board includes an obligation for the applicant to offer for dedication the land under which the road extension is laid out as shown on the plan and those conditions are adopted by reference again in the resolution before the Board of Supervisors at this meeting.

Mr. McKee asked why the township still does not own the right-of-way. Mr. Campbell responded just because a condition requires that it be offered for dedication does not mean the municipality is required to accept or require it. It is there for the municipality to exercise that option if so desired and there are reasons why the township might not want to accept that dedication of the road.

Mr. Waks commented about the conditional use hearing and said it is important to remember that in the middle of the conditional use hearings there was a third party intervener that changed the tenor of the testimony. And at that point in time there was a very extensive discussion about the potential road opening.

Mr. McKee engaged Mr. Campbell in a discussion about the background for lot line changes for the subject property and 2701 and 2501 Renaissance.

Mr. McKee discussed the adequacy of parking for 2701 Renaissance Boulevard. Mr. Campbell responded the prior approval referenced lot #4 would be held in reserve for parking. He said it is no longer held in reserve because it has been developed and built out as parking. Mr. Campbell indicated his client has an application to install 82 more parking spaces immediately adjacent to 2701 which EPA has approved for the applicant to construct part of the cap. Mr. Campbell emphasized the testimony was overwhelming there is far more parking that will be available on this site for the anticipated uses than the code requires. The cap required the applicant to build more parking than is necessary. There will be a vast quantity of parking created closer to 2701. There is a cross easement across all 2501, 2701, 2901 and lot #4 for parking among all of the users. Mr. Campbell said there is no question about the adequacy of parking that will be made available to the public on lot #4.

Mrs. Kenney commented on her reaction to the three traffic studies that were done over several years which came to different conclusions about the pros and cons of opening the road. She also mentioned other issues that came up during the conditional use hearing regarding the opening of the Gulph School, the traffic and poor situation for parking at the train station along Yerkes Road,

and the lack of communication among O'Neill Properties, the school district, SEPTA, PennDOT and the township.

Mr. Philips asked Mr. Campbell talk to discuss the parking and if it meets the township's requirements. Mr. Campbell asked Mr. Kyle to respond. Mr. Kyle stated (off microphone) there are 1.2 parking spaces per unit which well exceeds the code. Mr. Campbell pointed out there will be more than 100 parking spaces more than the code requires for all of the uses.

Mr. Philips said he was referring to the 300 units. Mr. Campbell clarified there is more than enough for the 300 apartments units that are proposed to be built at 2901 Renaissance and there will be more parking on site than the code requires for the maximum occupancy of all three uses.

Mr. Campbell stated not counting the 87 spaces on lot #4, the parking that will be built on 2901 will be approximately 150 spaces more than the use on 2901. If the cap were not being built the applicant would not have to build nearly as much parking. Mr. Campbell said because building a cap is part of the environmental remediation it makes sense to add it as parking and solves a problem Mr. McKee believes exists.

Jim Rapine, Foulkrod Boulevard, asked if EPA has ruled it is okay for people to live on this site and also asked if SEPTA has made any indication how wide the sidewalk should be or anything that would accommodate the new stream of riders on the small train platform. Mr. Campbell responded the applicant continues to work with EPA and the condition of the conditional use would be to satisfy all the environmental issues before anything is built. Mr. Campbell indicated the applicant has not had input from SEPTA. Mr. Philips indicated he has had a conversation with Liz Smith from SEPTA and their development staff about this particular station and improvements needed. One of the things the supervisors would like to see is parking for that station and overall improvements to that station. SEPTA has taken it under advisement.

Board Action:

It was moved by Mr. Philips, seconded by Mrs. Spott, all voting "Aye" to approve Resolution 2017-3 to include incorporate the language to waive the 4% grading of the slope in the Township Engineer's letter. None opposed. Motion approved 5-0.

PUBLIC HEARING RE: REQUEST FOR INTERMUNICIPAL TRANSFER OF LIQUOR LICENSE TO REGAL CINEMAS, INC. 300 GODDARD BOULEVARD, KING OF PRUSSIA, PA

Mr. Joseph McGrory, Township Solicitor, opened the hearing and introduced into the Record Board Exhibit B1, proposed resolution granting approval; Board Exhibit 2, December 12, 2016 letter to the township requesting approval of an Intermunicipal Liquor License Transfer; Board Exhibit 3, legal notice of public hearing and public meeting; Board Exhibit 4, Proof of Publication showing advertisement dates of November 10 and November 17, 2017.

Matthew N. Goldstein, Goldstein and McHugh, representing Regal Cinemas, Inc. for their Intermunicipal Transfer of Restaurant Liquor License R-18410 from Blair Mill Inn, Inc. in Horsham, Upper Moreland Township to their current business location at 300 Goddard Boulevard. Mr. Goldstein introduced Mr. Jake Bishop, Vice President, Alcohol and Culinary Concepts, Regal Entertainment Group which is Regal Cinemas parent company publicly traded on the New York Stock Exchange.

Mr. Goldstein reviewed the floor plan and pointed out the location of the concession stand for the proposed alcoholic beverage service area and the additional service area upstairs which is for consumption only. Mr. Goldstein

stated the applicant's position is the granting of this transfer would not be detrimental to health and welfare of the community.

Mr. Jake Bishop was sworn in and expressed agreement with Mr. Goldstein's Offer of Proof and accepted Mr. Goldstein's statement as if it were his testimony in full.

Mr. Jenaway asked if the beverages would be allowed to be taken into the viewing areas. Mr. Bishop responded in the affirmative and delineated the series of steps in the control plan. He stated starting at the point of sale they have dedicated certain areas only for alcohol. It is the only place alcohol can be purchased. Every customer is provided an ID without exception. Once the ID has been electronically verified the individual is given a fluorescent wrist band. At that time they can be issued one alcoholic beverage. There is a limit of one beverage per person per transaction. All the beverages are placed in dedicated translucent vessels that are clearly distinguishable from the traditional beverage containers for soda, coffee, etc. At that point they can take the beverage into the auditorium which is continuously monitored to identify who has alcoholic beverages and that they have a corresponding wrist band. That is done throughout the feature. Alcohol is not allowed off premises; it could be consumed in that seating area upstairs as well.

Mrs. Kenney asked if there are any other establishments in the area where Regal has this type of service available. Mr. Bishop responded this would be the first one in Pennsylvania, but Regal has establishments throughout the country in major metropolitan markets and smaller suburban markets as well.

Mrs. Kenney asked if Regal has other competitors in Pennsylvania who offer this same type of service. Mr. Bishop responded in the affirmative.

Mrs. Kenney asked how long Regal has been doing this in other states and wanted to know more about their history. Mr. Bishop responded Regal started their alcohol service in 2008 and the program has grown slowly and methodically over the years. Their control plan is designed to make sure they are not changing the movie-going experience. It is not about the introduction of alcohol but more about offering choice to their guests should they choose to have a glass of wine with their movie.

Mrs. Kenney asked what kinds of problems Regal has encountered in terms of people who might imbibe too much. Mr. Bishop responded this has not been a problem at Regal. He explained the mandatory Responsible Alcohol Management Program (RAMP) training. In addition there is a responsible beverage server course every employee handling alcohol has to complete prior to being approved. It goes through a comprehensive checklist including understanding visual signs of intoxication and how to respond to those situations. Mr. Bishop pointed out the biggest deterrent to overconsumption is the nature of their business which is people are there to watch a movie. Alcohol is not served in the seats.

Mrs. Kenney asked what times beverages are sold. Mr. Bishop responded alcohol sales are made available during their busiest times usually 4 p.m. through evening. It was noted hours fluctuate seasonally and they are open longer in the summer.

Mrs. Kenney asked if alcohol sales would be available the entire time the theater is open. Mr. Bishop responded it becomes a payroll question and if it is worth it to staff the concession. Many of their establishments do not staff the dedicated alcohol service area until the late afternoon hours.

Mr. Waks asked if the theater business depends heavily on concession stand usage, especially movies that recently premier. Mr. Bishop responded in the affirmative.

Mr. Waks asked if there is any type of guarantee that some individual who receives the wrist band cannot come up again and again to get a drink. Mr. Bishop responded an important part of their control plan is that the dedicated wrist bands have their logo crown icons affixed in a manner it will be damaged if it is taken off. After the first drink there are two additional crown logos that are marked off when a patron comes back up. Part of the training comes into play in recognizing patrons that come repeatedly and they are observed more closely.

Mr. Waks asked how long it will take to work through the implementation process for training etc. before the theater would start serving alcohol. Mr. Bishop responded it is anywhere from 45 to 90 days depending on how long it takes to obtain permits and complete the modifications in retrofitting the back quadrant of the concession area to be the alcohol service area.

Mr. Goldstein stated Mr. Bishop spoke about the two aspects of training, one is their internal training and the other is RAMP, Responsible Alcohol Management Program. He said in all likelihood there will be someone from the State Police who is a RAMP instructor come to the premises and teach all the employees in one sitting. This training will also address the potentially visibly intoxicated patron who shows up already having had five or six drinks somewhere else. Such an individual would not be served at all – not even the first drink. Referring to Mrs. Kenney's previous question, Mr. Goldstein said there is one other Regal location in Pennsylvania that has been approved by the Pennsylvania Liquor Control Board in Dickson City, but they are not yet selling alcohol there. As far as local competitors there are three movie theater taverns. The difference there is they actually serve in the seats.

Mr. Philips asked if there will be other events such as conferences at the theater. Mr. Bishop responded there is an advertising arm that coordinates such things as the Met Opera and other alternative content for their customers from time to time.

Mr. Philips asked if the alcohol service would be available for such special events as well. Mr. Bishop responded it would depend on the type of event, when it is occurring, and whether it is a private event. In all those instances staff has to follow the exact same procedures as they would during normal business hours.

Mr. Philips asked if additional employees will be added to staff the concession stand. Mr. Bishop responded they anticipate hiring 10-15 new employees, a little bit older and meeting the age requirements to sell, serve, and pour alcohol.

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

Board Action:

It was moved by Mr. Philips, seconded by Mrs. Kenney, all voting "Aye" to approve Resolution 2017-4 as presented. None opposed. Motion approved 5-0.

PUBLIC HEARING RE: REQUEST BY FOUNDING FARMERS KOP, LLC,
TOWN CENTER, 255 MAIN STREET, KING OF PRUSSIA, PA FOR APPROVAL
OF INTERMUNICIPAL TRANSFER OF RESOLUTION 2017-5

Mr. McGrory opened the hearing and introduced into the Record Board Exhibit 1, the proposed resolution; Board Exhibit 2, the December 30, 2016 letter to the Township requesting the approval of the intermunicipal transfer; Board

Exhibit 3, the legal notice of the hearing and Board Exhibit 4, Proof of Publication for the hearing dated January 10, 2017 and January 17, 2017.

Ellen Freeman, Flaherty and O'Hara, representing Founding Farmers, stated the applicant is requesting Upper Merion Township approve a resolution permitting the Intermunicipal Transfer of a Restaurant Liquor License from outside the township to within it to be used at Founding Farmers, 255 Main Street. She indicated Founding Farmers was before the Board of Supervisors last May to request approval of an application for an economic development license. This resolution was approved; however, Founding Fathers no longer needs the economic development license because they found a license within Montgomery County.

Mr. McGrory stated the Board of Supervisors has been through a complete hearing describing this use and the only difference is the applicant is asking for one type of license versus another. Mr. McGrory indicated he would have no objection to incorporating the prior record from the previous hearing.

Mr. Waks asked about the timing of the opening of the restaurant. Ms. Freeman indicated Founding Fathers is anticipating opening late spring/early summer.

Mr. Jenaway asked where the liquor license is coming from, and he was informed Bowling Refreshment, Upper Moreland Township.

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

Board Action:

It was moved by Mr. Waks, seconded by Mrs. Spott, all voting "Aye" to approve Resolution 2017-5 as submitted. None opposed. Motion approved 5-0.

PUBLIC HEARING RE: REQUEST BY MUSE PAINTBAR, LLC,
TOWNCENTER, 160 N. GULPH ROAD, KING OF PRUSSIA, PA FOR
APPROVAL OF INTRA-COUNTY LIQUOR LICENSE TRANSFER –
RESTAURANT LIQUOR LICENSE, RESOLUTION 2017-6

Mr. McGrory opened the hearing and introduced into the Record Board Exhibit 1 the proposed resolution granting approval of the license; Board Exhibit 2, the December 30, 2016 letter to the Township requesting approval of an Intra-County Liquor License Transfer; Board Exhibit 3, legal notice of hearing; Board Exhibit 4, Proof of Publication dated January 11 and January 18, 2017.

Ms. Ellen Freeman, Flaherty and O'Hara stated a correction is needed on the address on the application for Muse Paintbar and it should read 220 West Main Street instead of 160 N. Gulph Road.

Ms. Freeman introduced Stan Finch, President and Co-Founder of Muse Paintbar and indicated the applicant is requesting approval of a resolution permitting the Intra-County transfer for a restaurant which will be in the King of Prussia Town Center at 220 West Main Street.

Ms. Freeman stated Muse Paintbar is not a typical restaurant concept in that it is a combination restaurant and art studio. Patrons will be able to return home with a painting they have created with the help of an experienced artist. Stan Finch and his partner have opened 23 Muse Paintbar locations across the Northeast and this will be their first location in Pennsylvania.

The menu offers a wide variety of food items anything from small bites to a full dinner. The hours of operation for this restaurant concept are difficult to determine since it is an event based operation, but will be between 10 a.m. and 11:30 p.m. with many events occurring on the weekend. Event goers will go to the calendar on their website, choose a painting they would like to paint and it will list the times the artist will be available to teach that painting.

The aesthetics of the restaurant are very relaxed with vintage style barn pendant lights and wood tables. The bar offerings alternate and are advertised at the restaurant each day and typically include a variety of wine and beer. No hard spirits are served at the current time although they remain open to that possibility in the future.

Muse Paintbar does not offer any beer or wine to go. It is just for on premises consumption. Alcohol sales as compared to total sales of the restaurant are 20% of restaurant sales.

Muse Paintbar employs five full-time and six part-time employees. Employees will be 21 and over and all those handling alcohol will go through the Responsible Alcohol Management Program (RAMP) training. Muse Paintbar has not received any type of citations for any mismanagement of alcohol at any of their 23 locations. They plan on implementing the same safety policies at the restaurant concept in Pennsylvania.

Mr. Stan Finch was sworn in and expressed agreement with Ms. Freeman's Offer of Proof and accepted Ms. Freeman's statement as if it were his testimony in full.

Mr. Jenaway asked where the liquor license is coming from. Mr. Finch responded it is coming from Philadelphia.

Mr. Jenaway asked about possible venues for cultural events such as arts and craft shows providing an opportunity to see some art and paint some art. Mr. Finch responded their local artists sell their artwork but Muse Paintbar does not collect any commission. Mr. Jenaway said this might be something to discuss with the Park and Recreation Director about possible art events once this establishment opens.

Mr. Waks asked if someone is not inclined to paint and would just like to come in for a drink. Mr. Finch responded there are some locations where it has to be allowed according to local law. For that reason as a general rule and to make it consistent it is allowed, but it is taken advantage of very rarely because of all the other activities ongoing.

Mr. Waks asked for their specific location in the Town Center. Mr. Finch responded it will be right next to Founding Farmers and very close to City Works.

Mr. Waks asked about their projected opening. Mr. Finch responded late spring/early summer. He mentioned the space has not been turned over to them as yet and it would be 90 days from whenever that occurs.

Mr. Waks asked if the cost of the drink and food would be separate from the cost to paint. Mr. Finch responded in the affirmative.

Mr. Philips asked how Painting with a Twist differs from the Muse Paintbar concept. Mr. Finch responded they are very similar in that they both offer the same type of painting sessions, and they differ in that Muse Paintbar provides more upscale and newer lifestyle locations.

Mr. Philips asked if there is a way to determine when a class is full or available. Mr. Finch responded in the affirmative and explained the process.

Mr. Philips asked if it would be possible to just walk in. Mr. Finch responded in the affirmative. He said it would be similar to going to a movie. There might not be seats, but the best way is to reserve in advance.

Mr. Philips asked about the typical operating hours in their other locations. Mr. Finch responded there will typically be three time slots on Saturday, i.e., noon, 3:45 p.m. and 7:30 p.m. The Saturday night sessions will end around 10-11 p.m. On week nights the standard sessions are 7:30 p.m. until about 9:30 p.m.

Mr. Philips asked if the only time they would be open is at 7:30 to 9:30 p.m. during the week. Mr. Finch responded they are only open when there is a session of some kind. There are also private parties. For example, there might be a private party at noon on a Tuesday if it is a corporate event, but those are not hours they would typically be open.

Mrs. Kenney commented she thinks this is more of an art studio that happens to serve food and drinks on the side. Mr. Finch said while he would not discourage just coming in to eat it would probably not be a good experience if there is an ongoing event which is why they would not actively promote it.

Mrs. Kenney mentioned the three events on Saturday and asked how many would occur on Sunday. Mr. Finch qualified they do not always have three events on Saturday and the noon slot is frequently private parties; they do many children's parties. He said sometimes they will have just two on Saturday. On Sunday they will have one or two depending on demand and season, but if there are two it is usually 1 p.m. and 5 p.m.

Mrs. Kenney asked if during the week there is usually just one event in the evening. Mr. Finch responded in the affirmative. He said sometimes they will have two ongoing sessions because there are three studios in this location. and there can be three events going on simultaneously. Mr. Finch indicated there is one main room seating around 50 and two private studios typically for private parties. They can have public sessions in there as well.

Mr. Philips asked if the paint used is acrylic based. Mr. Finch responded in the affirmative.

Mr. Philips asked if any oils or linseed is used. Mr. Finch responded in the negative.

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

Board Action:

It was moved by Mr. Philips, seconded by Mr. Waks, all voting "Aye" to approve Resolution 2017-6 as revised with the new address. None opposed. Motion approved 5-0.

CONTINUANCE OF CONDITIONAL USE HEARING RE: EXTENET SYSTEMS; C/O RILEY, RIPER, HOLLIN & COLAGRECO; POLE FIXTURE WITH DAS ANTENNA/TELECOMMUNICATIONS FACILITY; 575 PRINCE FREDERICK STREET AND 139-155 ROSS ROAD

Mr. Jenaway noted for the record that at this point in the proceeding Mrs. Spott had to leave.

Mr. Christopher H. Schubert, representing ExteNet Systems, indicated this is the third conditional use hearing with two remaining applications. He indicated

one of the witnesses, Mr. Richard Angelini, Director of Engineering and Implementation, ExteNet, is in attendance and is still under oath from previous testimony.

Mr. Schubert summarized the status of outstanding applications. He said there is an application on Ross Road for a proposed node location which was discussed at the last hearing which is now proposed to be relocated to Leo Ross Park. This location is about 300 feet further east of the original proposed location. One of the benefits of this location is it is off the right-of-way and placed in the park where there are more trees and natural buffering. This facility could also be painted brown or green to help better conceal the installation.

Mr. Schubert referred to the issue Mrs. Kenney raised at the last hearing as to whether or not the township actually owned the underlying property. There was confirmation that the property is not owned by the township but is actually leased. The original property owner was Bethlehem Steel Corporation. That lease was signed in 1967 and provided a one-year term after which the term went month to month. Since 1968 that park has been in existence under a month to month lease. The lease now provides that the current owner of the property, Glasgow Inc., purchased the property from Bethlehem Steel and can cancel that lease on 60 day notice. That property has been in existence under that lease and that park has been utilized since 1967 under those terms. One of the conditions the applicant had to satisfy was to obtain permission from Glasgow Inc., to allow this installation to be placed. Last week Mr. Schubert tendered to Glasgow, Inc. a draft of a proposed license agreement that would be utilized for this installation. Suggested revisions include any licensing fee would go to the township with regard to this installation. Mr. Schubert stated the revisions run in favor of the Township and limit some of the indemnity ExteNet would be able to seek against both the Township and Glasgow. Within the week there will be a final draft Mr. Schubert will discuss with Mr. McGrory and have circulated.

The applicant has requested an amendment of the conditional use application to allow this installation to be placed at the Leo Ross Park with the understanding that either the Township or the property owner on 60 day notice could ask the applicant to leave and terminate the lease. With this installation 300 plus residents in this area would take benefit of this facility with regard to better wireless coverage, especially with regard to moving this forward for the next wave of 5G technology which is going to be very important by 2018.

In response to Mr. Schubert's question, Mr. Angelini indicated he accepts Mr. Schubert's summary testimony as if it were his testimony.

Mr. Philips commented recently in the news there has been some mention about Verizon going strictly to a digital streaming service and Comcast is also looking at this. He asked if DAS would also include that as part of 5G technology. Mr. Schubert responded in the affirmative.

Mrs. Kenney asked if ExteNet is obtaining permission from the land owner to do this installation. Mr. Schubert responded in the affirmative.

Mrs. Kenney asked if Township approval is needed regarding the lease. Mr. Schubert responded in the affirmative. He said since the Township has the primary lease on the property ExteNet would also need the Township's permission as well. For this reason there is a three party agreement which provides both the Township and property owner control over the site.

Mrs. Kenney asked for clarification about the provision indicating the lease shall occupy and use the premises for playground and recreation purposes and for no other purpose. Mr. Schubert responded that provision is a lease provision; a lease restriction that could be modified in the license agreement.

Mrs. Kenney asked if the proposed installation will be closer or further from residences. Mr. Schubert responded it would be further from residences from the standpoint that the other location was in someone's backyard 300 feet to the west near a fire hydrant on Ross Road. With this location it is placed out of the right-of-way back into an area with better buffering and pulled back away from the roadway.

Mrs. Kenney asked how far the proposed installation is from the closest residence. Mr. Schubert responded there is nothing on that side of the street. It would be about 150 feet from the closest resident which would be more generous than 20 by right DAS nodes already placed around the township.

Mr. McGrory noted if the Township owned the land instead of a long term lease conditional use approval would not be needed at all.

Sandy Dworecky, 161 Ross Road, commented the original site was right in front of her front yard and she is satisfied with the proposed alternate site.

Mr. Jenaway stated this matter will be taken under advisement and the Solicitor will develop a document [within the next 45 days].

Mr. Schubert stated the last application is for DAS Node 13 which is near the location of 575 North Prince Frederick Street. He mentioned Catherine Valleo, who is in attendance at this hearing is here on behalf of her mother, Catherine Kelley, 575 Prince Frederick Street, where this site was originally proposed. The applicant proposed relocating the DAS about 40 feet down the street where there is a lot more natural buffer in the right-of-way along the common property line between the Kelly property (Ms. Valleo's mother's property) and the property where Mr. Greenberg resides.

A photo simulation was shown of the proposed location for this node on the common property line between the Greenberg residence and the Kelly property. Mr. Schubert pointed out previously the pole was not buffered and was very obvious. It was noted there is an already existing Peco pole supporting a power line, some cabling and an electrical transformer. This proposed relocation of the DAS node pole was to be adjoining very close by that existing Peco pole. There is an existing pine tree about 40-45 feet in height. After the last hearing Mr. Schubert and Mr. Angelini went out to the property along with some other representatives of ExteNet to have a conversation with Mr. Greenberg to see if there was any place near Mr. Greenberg's property that would be the best suited for this installation. Based upon the site visit and looking at all the alternatives it was determined this is absolutely the best location for this DAS node given the fact there is existing natural buffering.

Mr. Schubert directed the supervisors' attention to some further research that was done with regard to the issue raised by Mr. Greenberg about this installation possibly being located on his property. The deed for the Greenberg property reflects that Mr. Greenberg is not the owner of the property but is essentially a tenant on the property. The legal description describes a certain utility easement 20 feet wide at the back of the property. The original subdivision plan for this property that was developed in 1956 as Cinnamon Hill and this section where Mr. Greenberg's residence is located is part of section C of Cinnamon Hill.

Further research indicated this DAS node location is not only clearly located in the right-of-way of Prince Frederick Street, but is also not on the fee simple ownership of Mr. Greenberg's property and is located adjoining this existing utility easement where the power line runs and the Peco poles are located. One other matter Mr. Angelini clarified there is testimony from Mr. Greenberg last time that one of the issues he was concerned about was the location of this facility in relation to his home and had testified it would be located 25 feet from the back of his house. That location is actually 60 feet measured

out from his porch area to the node location where there is existing natural buffer. It is not on his property. It is next to an existing utility easement. The applicant is willing to provide additional buffering, screening to Mr. Greenberg and paint this facility either a dark green, dark brown or a combination of those colors. A photographic representation was shown of what the pole would look like from Mr. Greenberg's back porch. There is a large maple tree between his back porch and from spring until fall the pole would not be visible. They went through another exercise and determined there was additional leeway with 12 feet from the curb line to the start of that utility easement. This means the pole could be tucked back even further thereby addressing any concerns with regard to aesthetics and visibility of that site from the Greenberg residence.

Mr. Schubert asked Mr. Angelini that if the summation he presented is accurate and if there is anything Mr. Angelino would add, or charge or provide further testimony. Mr. Angelini said the only comment he has is that the photographs are about a month old and represent the worst case scenario as far as visibility is concerned. He indicated during spring and summer all the trees would fill in and it would be pretty much impossible to see the facility from anywhere on that property. Mr. Angelini agreed Mr. Schubert's testimony is correct.

Mr. Waks asked if the residents have seen the new photograph prior to this hearing. Mr. Schubert responded he sent out photo simulations to the new residents.

Mr. Waks stated there are features not in this picture that were described as being possibilities with regard to additional screening and pushing the pole back further. He asked if it is possible to come up with an additional picture or rendering for the Board of Supervisors and residents. Mr. Schubert responded if they were to do that you would not see the pole. It will be back behind the pine tree and the only thing visible would be a small 2 foot cantenna that might be protruding to one side of the pine tree.

Mr. Waks asked if one type of additional buffering/remediation that was mentioned was painting. Mr. Schubert responded in the affirmative.

Mr. Waks asked about planting an additional tree. Mr. Schubert responded the applicant offered that to Mr. Greenberg and it would require his permission.

Mr. McGrory said he does not believe there can be a condition of approval requiring landscaping on private property that you do not control. He said it would be possible to ask the pole be moved to screen it better with existing vegetation and paint the pole as conditions of approval.

Mr. Waks expressed the hope the Board would be able to trust applicant's counsel and the landowner to work things out if the Board of Supervisors were to approve the conditional use.

Mr. Philips asked how the signal is affected if it is in the tree. Mr. Angelini responded the top two or three feet would still have enough clearance to propagate a signal. He said it would not be perfect but the applicant could live with it.

Mr. Philips asked what happens when the tree grows into the cantenna. Mr. Angelini responded the reduction is not that significant. It would be a minor propagation decrease. Mr. Angelini indicated it will be fine even with growth in the spring and summer.

Mr. Philips asked if Peco would still have access to the transformer if it blew and if it would take out the ExteNet equipment. Mr. Angelini responded if there was a pole fire he was sure it could jump. He said the ExeteNet equipment

is going to be above and below it and as long as the wood from the pole did not ignite it would be fine.

Mr. Philips asked if the high tension line affects the signal. Mr. Angelini responded in the negative.

Mrs. Kenney asked if ExteNet has a maintenance plan like Peco to cut tree limbs near their equipment. Mr. Angelini responded in the negative.

Mrs. Kenney asked if the tree next to the pole is in the right-of-way or on the property where Mr. Greenberg lives. Mr. Schubert responded it is in the right-of-way.

Ms. Katherine Valeo was sworn in and commented she was satisfied with the alternative.

John Heritage, 201 Hawthorne Road, voiced support for this antenna as well as the other Ross Road antenna.

Mr. Philip Greenberg, 587 Prince Frederick Street, was sworn in and expressed concern about creating an industrial/commercial look in a residential area. He asked why the pole could not be placed 12 feet into the right-of-way and painted green or something similar. He said that fits with the compromise he tried to come up with a couple of months ago.

Mr. McGrory asked Mr. Schubert for clarification on the right-of-way. Mr. Schubert responded the right-of-way from the curb line to the beginning of the property is 12 feet. Mr. Greenberg said he thought the applicant was proposing moving it back behind the tree. Mr. Schubert said he is not sure how far that is and thought it was about 2 feet off the curb line. Mr. Angelini indicated that was correct. Mr. Schubert said it could definitely be pushed back another couple of feet, but not 12 feet. Mr. Angelini said that was correct and the reason is to service and build the facility ExteNet needs to get a bucket in there. It is not like the giant line trucks utilities have.

Mr. McGrory asked if the applicant would agree to 6 feet from the property line. Mr. Angelini responded 6 feet from the curb line not from the property line. Mr. McGrory asked 6 feet from either one. Mr. Angelini responded the applicant could manage 6 feet from the curb. Mr. McGrory asked Mr. Greenberg if 6 feet from the curb reasonably satisfied his concerns. Mr. Greenberg responded in the affirmative.

Mr. McGrory asked if the applicant was comfortable making that a condition of approval. Mr. Schubert asked Mr. Angelini if that would be an acceptable condition of approval. Mr. Angelini responded in the affirmative.

Mr. Jenaway mentioned the discussion about buffering with some type of vegetation and asked Mr. Greenberg if that would be a value to him and something he would agree to. Mr. Greenberg responded in the affirmative and expressed confidence that ExteNet would make sure it is as "livable as possible." Mr. Angelini said they would have to find the right tree to buffer. He noted they cannot have something that is going to extend and grow into the road or require a lot of maintenance. He was confident they could come up with a mutual solution that would work.

Hearing and seeing no further comment from the Board of Supervisors and public, Mr. McGrory adjourned the hearing and reconvened into public meeting portion of the agenda.

Mr. Jenaway stated this matter will also be taken under advisement and the Solicitor will develop a document [within the next 45 days].

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 15, 2016 to January 18, 2017 in the amount of \$3,763,295.09 and the Payroll for December 16, 2016; December 30, 2016 and January 13, 2017 in the amount of \$2,352,386.67 for a total of \$6,115,681.76. None opposed. Motion passed 4-0.

ADDITIONAL BUSINESS:

UPPER MERION COMMUNITY CENTER PASSHOLDERS

Mr. Waks mentioned the Upper Merion Community Center (UMCC) as of January 23, 2017 has over 1,600 passholders; and in addition, more than 200 additional people accessed the UMCC either through Silver Sneakers or Silver&Fit.

INVITATION TO ATTEND PUBLIC MEETINGS

Mr. Philips encouraged residents to attend public meetings to learn about what is going on in the Township, ask questions and get involved.

Mrs. Kenney emphasized that all workshops are public meetings and residents are encouraged to participate.

WINTER FARMERS MARKET

Mrs. Kenney reminded everyone that Saturday is the Winter Farmers Market from 10 a.m. to noon in the Township Building parking lot.

UPPER MERION POLICE DEPARTMENT NEW OFFICER APPLICATIONS

Mr. Jenaway stated on February 1, the Upper Merion Police Department will begin a recruitment campaign to solicit candidates for the next round of hiring in spring 2018.

RACE FOR PEACE HOSTED BY UPPER MERION POLICE DEPARTMENT

Mr. Jenaway indicated Saturday from 5-8 p.m. the UMPD will be hosting a Race for Peace Event at the JC Penney Court in the King of Prussia Mall – actively working to strengthen the relationship between police departments and the communities they serve.

ADJOURNMENT:

There being no further business to come before the Board, it was moved by Mr. Philips, seconded by Mrs. Kenney, all voting "Aye" to adjourn the meeting. None opposed. Motion approved 4-0. Adjournment occurred at 11 p.m.

DAVID G. KRAYNIK
SECRETARY-TREASURER
TOWNSHIP MANAGER

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Minutes Approved:
Minutes Entered