

UPPER MERION TOWNSHIP BOARD OF SUPERVISORS  
BUSINESS MEETING  
FEBRUARY 9, 2023

The Board of Supervisors of Upper Merion Township met for a Business Meeting on Thursday, February 9, 2023, in Freedom Hall, in the Township Building in King of Prussia. The meeting was called to order at 7:18 p.m., followed by a pledge to the flag.

ROLL CALL:

Supervisors present were: Greg Philips, Bill Jenaway, Tina Garzillo and Carole Kenney. Absent was Greg Waks. Also, present was Anthony Hamaday, Township Manager; John Walko, Esq., Solicitor's Office and Leanna Colubriale, Township Engineer.

MEETING MINUTES:

January 3, 2023 – Business Workshop  
January 12, 2023 – Business Workshop  
January 12, 2023 – Business Meeting

Board Actions:

It was moved by Supervisor Kenney, seconded by Vice-Chair Jenaway, all voting "Aye" to approve the minutes. None opposed. Motion passed 4-0.

CHAIRPERSON'S COMMENTS:

Chairwoman Garzillo stated that there was an Executive Session prior this meeting involving litigation.

CITIZEN BOARD VACANCIES:

Community Center Advisory Board – 1 Vacancy – Student Member  
Environmental Advisory Council – 1 Vacancy  
Human Relations Commission – 2 Vacancies – Alternates  
Public Safety Advisory Board – 1 Vacancy  
UM Foundation Sub-Committee – 1 Vacancy  
UM Historical Commission – 3 Vacancies

NEW BUSINESS:

SWEARING IN OF NEW FIRE FIGHTERS BY JUDGE JAMES GALLAGHER:

Chief Nolan, Director of Public Safety introduced Chief Johnson, Fire Chief who presented Mr. Arman Force and Mr. Matthew Speers, newly hired Fire Fighters/EMS employees to District Judge James Gallagher. Judge Gallagher administered their oaths and their individual family members presented them with their badges.

RECOGNITION OF UPPER MERION TOWNSHIP'S PUBLIC WORKS COLLECTIONS TEAM – Winner of the 2022 DVT Risk Management Innovation Award:

Mr. Geoff Hickman, Director of Public Works described the award that the Upper Merion Collection Team won due to using technology of the Sewer Line Rapid Device which can access the condition of thousands of liner sewer pipes in a single day. Geoff wanted to acknowledge and thank the two employees who implemented using this device, Dan Legerton, Lead Operator of the Collection System and Rob McKernan, Chief of Wastewater for Trout Run and Matsunk Sewer Plants. Congrats to them and their staffs for a job well done.

PROCLAMATION – Celebrating Black History Month:

Supervisor Carole Kenney read the Proclamation Celebrating Black History Month in Upper Merion Township.

RESOLUTION 2023-4 – Resolution of the Upper Merion Township Board of Supervisors Affirming Upper Merion Township's Commitment to Valuing Diversity, Equity and Inclusion:

Chairperson Tina Garzillo read the Resolution and explained how the Township aims to service the needs of DEI (Diversity, Equity and Inclusion).

Board Actions:

It was moved by Supervisor Phillips, seconded by Supervisor Kenney, all voting "Aye" to approve Resolution 2023-4. None opposed. Motion passed 4-0.

PUBLIC HEARING – Proposed Ordinance amending Article XXXVII, Sexually Oriented Businesses, of the Township Zoning Code:

Mr. Walko, Township Solicitor adjourned the Public Meeting to open the Public Hearing to amend Article XXXVII then he presented six (6) exhibits...

- 1) The Ordinance itself
- 2) Legal Notice of tonight's Public Hearing that was in The Time Harold
- 3) Proof of submission of this Ordinance to Upper Merion Planning Commission on January 9, 2023
- 4) Proof of submission of this Ordinance to Montgomery County Planning Commission on January 10, 2023
- 5) Proof of submission of this Ordinance to Montgomery Law Library on January 10, 2023
- 6) Map exhibit from the Township Planner showing the available bi-right parcels for this proposed use in the LI and Heavy Industrial use area

Mr. Walko explained that this Ordinance is being amended to update and clean up some of the language but mostly to make sure that this type of business is not in residential areas or within eye sight of children. He then asked if there were any Public Comments. There were none so the hearing was closed.

Board Actions:

It was moved by Supervisor Phillips, seconded by Vice-Chair Jenaway, all voting "Aye" to approve the amended ordinance. None opposed. Motion passed 4-0.

PUBLIC HEARING – Proposed Ordinance amending Chapter 165, Section 165-160.2 – Use Regulations of the Township Zoning Code to modify the requirements for mixed use buildings in the KPMU Zoning District:

Mr. Walko, Township Solicitor adjourned the Public Meeting to open the Public Hearing to amend Chapter 165, Section 165-160.2. He presented five (5) exhibits...

- 1) The Ordinance itself
- 2) Legal Notice of tonight's Public Hearing that was in The Time Harold
- 3) Proof of submission of this Ordinance to Montgomery County Planning Commission on January 9, 2023
- 4) Proof of submission of this Ordinance to Planning Upper Merion Commission on January 9, 2023
- 5) Proof of submission of this Ordinance to Montgomery Law Library on January 10, 2023

Mr. Walko explained that this Ordinance is being amended to the KPMU district requiring a 30% change in multi-family buildings (apartments) to maintain a mix use which includes either offices or retail business.

Public Comment:

Mr. Matthew Popek, Planning Commission Chairperson and resident at 2000 Valley Forge Circle stated that Upper Merion Planning Commission does not recommend this proposal as listed nor does Montgomery County Planning Commission. Mr. Popek said that a mixed used zoning should not necessary be per building, a mix use zoning is meant to encourage a number of usages in the same area together. One idea that was mentioned for mix use zoning is by tract size...ex: a tract size up to 20 acres would have to meet different requirements than a 10-acre tract size, so a 10 acre would have to have 1 or 2 requirements and a 20-acres would have 3 or more requirements.

Mr. Eric Goldstein, President of KOP BID (Business District) agrees with Mr. Popek that the Board should not follow through with the propose Ordinance tonight. Mr. Goldstein said he was on the original board when the KPMU was established and mixed use was not meant for buildings only, it could be for an individual building but mostly it was created for specific areas... ex: a tract of land could have an office building within walking distance to an apartment building plus some retail/restaurants and a park/open space.

Board Actions:

It was moved by Vice-Chair Jenaway, seconded by Supervisor Kenney, all voting "Aye" to continue this hearing at April 13, 2023 Business Meeting. None opposed. Motion passed 3-1.

CONDITIONAL USE HEARING (cont.) – Royal Garden, LP., 1100 First Avenue, Public Hearing on the Conditional Use application of Royal Garden, LP., 1100 First Avenue to permit the construction of multi-family apartments, structured parking garage and sidewalk construction variances on the KPMU Zoned property.

Mr. Ari Christakis representing Royal Garden, LP turned the meeting over to Mr. Walko who introduced the following Board exhibits:

- 1) The conditional use application that was filed by Royal Garden that was date August 31, 2022

- 2) Proof of publication of the original hearing in The Times Herald on November 23 & 30, 2022 for schedule hearing on December 8, 2022
- 3) Proof that December 8<sup>th</sup> Hearing was continued to January 12, 2023 and then to tonight February 9, 2023
- 4) Notices that were provided to the adjoining property owners within 110 to 500 feet of the subject property being 26 Notices
- 5) Proof of submission and review of this conditional use application by the UM Planning Commission on November 9, 2022
- 6) A letter from the applicant's attorney Mr. Christakis to continue the application through December 31, 2022 in order to process the application related to the applicant's decision which was then continued to January 12, 2023
- 7) An email received from the applicant's council on January 12, 2023 asking for continuance again until this meeting February 9, 2023

Before Mr. Walko turned the hearing over to Mr. Christakis he mentioned the applicant is requesting conditional use pursuant to pedestrian ways to allow a variation of the required sidewalk and landscaping along First Avenue and Moore Road. Mr. Walko also wanted to clarify that there was a conditional use plan that was originally submitted with the conditional use application. However, the conditional use plan that was with the original application was later amended to what he believes is now re-marked as exhibit #10 which is also depicted as applicant's exhibit #5 of the site plan. Mr. Walko wants to make sure that the plan that was revised is the same plan that the Planning Commission reviewed and is what is being preceded with today. Mr. Christakis agreed with Mr. Walko and then they proceeded with the hearing.

Mr. Christakis introduced the client's architect Mr. Joe Horan, who was sworn in then they presented into evidence A2 thru A12 as the applicant's exhibits. Mr. Horan described exhibit A3 and 4, the existing conditions of the site which contains an Office Building and Warehouse with substantial parking. This site gradually slopes from the south along First Avenue towards the north to Trout Creek and Rogers Road and there are no residential joining properties.

Mr. Horan said the applicant wants to renovate the existing one (1) floor warehouse making it more efficient and creating a separate loading dock to keep the trucking traffic away from vehicular traffic. As for the existing Office Building it would be constructed within the footprint to approximately seven (7) stories not to exceed 80 ft. high and will be 207,000 sq. ft. which would require 829 parking spaces. The applicant would also like to construct two (2) six (6) story multi-family residential dwelling buildings with 171 units in each totaling 342 apartments between the two with 50% of them having balconies.

In addition, they will construct an eight (8) story parking garage with about 1,052 spaces along with 245 outside spaces totaling 1,297 residential parking spaces. Plus, they have an additional 350 shared parking spaces with the neighboring parcel in case of any over flow, so about 175 extra parking spaces.

Following questions and answers Mr. Christakis introduced the client's Civil Engineer, Mr. Stephen J. Saltzline who was then sworn in. Mr. Saltzline spoke about stormwater management and that there would be underground and above ground water detention basins, a combination of several surface and subsurface systems. Next, there was a long discussion about trucking delivery times and trash pickup as well as if there is sufficient space for fire trucks in case of an emergency. Due to traffic questions Mr. Andreas Heinrich, Traffic engineer was sworn in to explain his transportation impact study on this site and to answer questions. Mr. Heinrich mentioned about changing Moore Road to two (2) lanes with a center turning lane like First Avenue which brought them to another long discussion about how the traffic lights would or should work. Also, he mentioned that the truck entrance should be moved further from the corner so it does not interfere with the turning lane.

Public Comment:

Mr. Chris Basler from the KOP District ask the Board if the property owner and developer would involve the BID with their plans to make sure the pedestrian connections along the entire length of First Avenue meets the design standard for the Linear Park that has been installed already. Mr. Christakis said that they will work with the BID but not sure if they could promise everything due to where the property meets with open space and Trout Creek.

Since there were no more public comments Mr. Walko closed the Public Hearing and stated that the Board has forty-five (45) days to render a decision.

Board Actions: None

Chairperson Garzillo change the Agenda by moving Item I before the Consent Agenda due to the applicant waiting a long time.

PRELIMINARY/FINAL LAND DEVELOPMENT PLAN – Brandywine Operating Partnership, LLC, 631 Park Avenue & 650 Park Avenue. Consideration of a preliminary/final Land Development Plan for Brandywine Operating Partnership, 631 Park Avenue & 650 Park Avenue, prepared by Bohler Engineers, dated October 14, 2022, last revised November 2, 2022 for the construction of a proposed 4-story research and development building at 650 Park Avenue and a structured parking garage at 631 Park Avenue as well as associated site improvements on the two parcels including waivers as outlined in a February 2, 2023 request letter. Zoned KPMU. Resolution 2023-5

Mr. Al Fuscaldo, Council for Brandywine Operating Partnership, LLC, stated that the Planning Commission approved their final plans for Park Avenue and asked the Board if they have any questions. Vice-Chair Jenaway asked Mr. Fuscaldo to go over all the waivers for both properties. Mr. Fuscaldo said that they are almost identical except that one property, 650 Park Avenue had one (1) additional waiver which is #4.

- 1) To allow less than a minimum requirement of 9.5 by 19.5 parking stalls to be 9 by 18 feet which reforms to ADA requirements
- 2) To not construct a concrete curb and sidewalk along all existing streets as discussed previously
- 3) To not providing all the required building plantings but they will be relocated on the property
- 4) To allow grading closer than five (5) feet to property line along the southern border of 650 which will improve the site by forcing the stormwater back onto their property

Chairperson Garzillo asked Ms. Colubriale, Township Engineer if her office went over the waivers and she said they did and they were all good.

Public Comment:

Resident Mr. Scot Sibley asked if a traffic light was going to be installed at First and Park Avenue. Mr. Hamaday said per McMahan Associates letter as of now there was no need due to the other properties in that vicinity being vacant and that a Slip Ramp from the Turnpike might be coming so it would be looked at a later date if needed.

Board Actions:

It was moved by Supervisor Philips, seconded by Supervisor Kenney, all voting "Aye" to approve the Land Development on Park Avenue. None opposed. Motion passed 4-0

CONSENT AGENDA re:

1. First Avenue Linear Park Phase II Contract Payment No. 4 – Road-Con, Inc. Approval of Contractor's Application for Payment No. 4 to Road-Con, Inc. in the amount of \$255,451.22 for work completed to date on the project.
2. Change Order No. 1 – Tannery Drive at Crow Creek Stabilization. Approval of Change Order No. 1 to Ecotone, LLC. for the reduction of \$13,928.96 from the original contract amount as a result of reduction of material quantities.
3. Tannery Drive at Crow Creek Stabilization Payment No. 1 – Ecotone, LLC. Approval of Payment Application No. 1 to Ecotone, LLC. in the amount of \$71,151.62 for work completed to date on the project.
4. Community Center Lighting Replacement Project – Kendall Electric, Inc. Authorization to purchase new LED lighting on the main floor of the Community Center from Kendall Electric in the amount is \$18,700.00 with a PECO rebate of \$14,960.00 for a net cost of \$3,740.00.
5. Upper Merion Township Building HVAC System Replacement Project – West Chester Mechanical Approval of the following contracts with West Chester Mechanical, Inc. of Aston, PA, through the PA Costars Program, for the replacement for various HVAC equipment in the Township Building as recommended by the Director of Public Works:
  - a. Cooling Tower Replacement Contract in the amount of \$241,100.00
  - b. Boilers Replacement Contract in the amount of \$282,610.00
  - c. HVAC Controls Replacement Contract in the amount of \$108,486.00
6. Resolution 2023-6 - Disposition of Township Personal Property (Three Public Works Generators) to auction for a minimal sale value of \$30,000.00.
7. Financial Escrow Security Release No. 2, Phase 3 – Stonebridge at Upper Merion Subdivision, DeKalb Pike – Approval of Phase 3 Escrow Release No. 2 to Toll Mid-Atlantic, LP., in the amount of \$866,660.00 for the completion of required site improvements to date as part of the subdivision as recommended by the Township Engineer.
8. Authorize to Advertise – Proposed Amendment to Ordinance No. 2006-754, Upper Merion Township Reimbursement for Emergency Fire Services Ordinance for consideration at the March 9, 2023 Business Meeting.
9. Township Defined Contribution and 457 Supplemental Pension Plans Provider – Authorization for the proper Township officials to take the necessary action to transition from Mission Square to Empower Retirements Services, as the new plan provider for the Township's Defined Contribution 401As, 457 Retirement Plans as recommended by the Pension Advisory Committee.

Board Action:

It was moved by Supervisor Kenney, seconded by Supervisor Philips, all voting "Aye" to approve the Consent Agenda as presented. None opposed. Motion approved 4-0.

PUBLIC COMMENTS: None

ACCOUNTS PAYABLE & PAYROLL:

Board Action:

It was moved by Vice-Chair Jenaway, seconded by Supervisor Kenney, all voting "Aye" to approve the Accounts Payables for invoices processed from January 5, 2023 through February 1, 2023 and Payrolls dated January 6, 2023 and January 20, 2023 for a total of \$4,429,548.97. None opposed. Motion approved 4-0.

ADDITIONAL BUSINESS: None

PUBLIC COMMENTS: None

ADJOURNMENT:

There being no further business to come before the Board, it was moved by Supervisor Philips, seconded by Vice-Chair Jenaway, all voting "Aye" to adjourn the meeting at 11:15 pm. None opposed. Motion approved 4-0.

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ANTHONY HAMADAY  
TOWNSHIP MANAGER

lr  
Minutes Approved:  
Minutes Entered:

