

**UPPER MORELAND TOWNSHIP
BOARD OF COMMISSIONERS**

REGULAR MEETING MINUTES

January 14, 2008

CALL TO ORDER – Comm. Efkwitz, President of the Board of Commissioners of Upper Moreland Township called a Regular Meeting to order at 7:00 p.m.

A MOMENT OF SILENCE WAS FOLLOWED BY THE PLEDGE OF ALLEGIANCE

PRESENTATIONS/ANNOUNCEMENTS:

There were none.

ROLL CALL – David Dodies, Township Manager took roll call. Present: Commissioners Stacey Efkwitz, President, Sam Valenza, Vice President, James Hotchkiss, Kevin Spearman, Joseph Lavallo, James McKenna and Lisa Romaniello

Others: David Dodies, Township Manager, and Catherine M. Harper, Township Solicitor

PUBLIC COMMENTS – NON-AGENDA ITEMS ONLY:

Len Spearing said on April 25, 2006, a letter was sent to Mr. Dodies in regard to him sending a letter to DEP. He did not send such a letter. What was said in this room on December 3, 2007 was not true.

TREASURER’S ACTIVITY REPORT:

Comm. Romaniello made a MOTION, seconded by Comm. Spearman to approve the Treasurer’s Activity Report for December, 2007.

Comm. McKenna asked is the Treasurer here this evening?

Comm. Efkwitz replied no, but we have the opportunity to contact the Treasurer at any time.

Comm. McKenna said he would like the Treasurer to attend a meeting to comment on his report.

MOTION was ADOPTED 7-0.

APPROVAL OF MINUTES:

November 19, 2007 – Special Meeting:

Comm. Hotchkiss made a MOTION, seconded by Comm. Valenza to approve the minutes of the November 19, 2007 Special Meeting.

MOTION was ADOPTED 7-0.

December 3, 2007 Regular Meeting:

Comm. Hotchkiss made a MOTION, seconded by Comm. Romaniello to approve the minutes of the December 3, 2007 Regular Meeting.

Comm. Efkowitz noted that a revised copy of the minutes have been provided to the Board this evening.

Mr. Dodies noted that one of the corrections to the minutes were that Commissioners Booth and Efkowitz left the dais at midpoint so several votes were amended to 6-0 votes. Another correction was a vote of 5-0 on the original appointment vote and thereafter 6-0 on the remainder of votes taken. And, also that Commissioners Booth and Efkowitz returned to the dais.

Comm. McKenna made a MOTION, seconded by Comm. Romaniello to adopt the meeting minutes of December 3, 2007 at the next Regular meeting since the revised copy was received this evening.

MOTION was ADOPTED 7-0.

December 10, 2007 Special Meeting:

Comm. Hotchkiss made a MOTION, seconded by Comm. Valenza to approve the minutes of the December 10, 2007 Special meeting.

Comm. Romaniello asked is this a revised copy?

Mr. Dodies replied it is the original.

MOTION was ADOPTED 7-0.

December 17, 2007 Special Meeting:

Comm. Hotchkiss made a MOTION, seconded by Comm. Romaniello to approve the minutes of the December 17, 2008 Special Meeting.

MOTION was ADOPTED 7-0.

FINANCE & ADMINISTRATIVE COMMITTEE:

Comm. Efkwitz noted that Comm. Valenza is the Chairman of the Finance & Administrative Committee.

Reappointment of Kent Nelson:

Comm. Valenza made a MOTION, seconded by Comm. Hotchkiss to reappoint Kent Nelson to the Upper Moreland-Hatboro Joint Sewer Authority for a five-year term to expire on 12/31/2012.

Comm. Romaniello suggested bringing candidates to the committee meetings prior to voting at Regular Board meetings, and asked for the Board to entertain that idea.

Kent Nelson introduced himself, and said he was raised in Upper Moreland and has worked in the finance business for 25 years. His father recommended that he become a member of the Sewer Authority and, five years ago, he made himself available and was selected.

The Sewer Authority has some very big items on their plate such as: the expansion of the plant in the next few years. DEP has become stringent with respect to nutrient removal from the effluent flow of Pennypack Creek. We will expand the plant and improve the performance of the plant, but we will need to raise \$20-\$30 million dollars in financing, and his background will be beneficial for that.

Comm. Romaniello asked why the issues of odor, plant capacity and nutrients were not addressed as capital improvement projects that were necessary at the time.

Mr. Nelson replied we had \$6 million dollars of cash on hand and the bond financing had just ended so we had about a \$1 million dollar decline on our tax flow rates and made the decision to reduce the rates. DEP talked about nutrient removal for two years and, it may be another year, before we know what those limits are so we cannot design a plan to standards that we don't have.

Comm. Romaniello asked Mr. Nelson if he knew two years ago, that the plant expansion would be postponed until a future date.

Mr. Nelson replied the capacity of the plant was not an issue at that time. The process for getting approval for a plant expansion is a three to five year process. We have to be in step with DEP.

Comm. McKenna said there is a lawsuit between the Sewer Authority and DEP and, in his view, there *has* been some direction from DEP.

Mr. Nelson replied the effluent standards and the litigation are two separate issues.

Comm. McKenna said he sees inconsistencies where the Sewer Authority is involved in a lawsuit and DEP obviously gave a standard and the standard is not being met.

Mr. Nelson replied Comm. McKenna is referring to litigation related to certain plant operations and the litigation has nothing to do with effluent standards.

Comm. Spearing asked for the current bond rating of the Sewer Authority.

Mr. Nelson replied we do not have a bond rating because we have not paid for one.

MOTION was ADOPTED 6-1. Comm. McKenna opposed.

Reappointment of John Knauss:

Comm. Valenza made a MOTION, seconded by Comm. Hotchkiss to reappoint John Knauss to the Parks & Recreation Advisory Council, Ward 2, for a two-year term to expire 12/4/2009.

MOTION was ADOPTED 7-0.

Ratify and reaffirm appointments to Upper Moreland-Hatboro Joint Sewer Authority and Zoning Hearing Board:

Comm. Valenza made a MOTION, seconded by Comm. Hotchkiss to ratify and reaffirm the approval of the MOTION to appoint Herbert Matthews, Jr. to the Zoning Hearing Board.

Comm. Valenza said we are standing by the earlier appointment of Herb Matthews to the Zoning Hearing Board and, in no way, support the decision by the previous Board in December, 2007.

Comm. Romaniello asked was this going to be discussed in committee?

Comm. Efkowitz said this is an appointment that some of us on the Board feel needs to be made. There are meetings of the ZHB scheduled and meetings scheduled for the Sewer Authority, and it is important that this Board take a stand to reaffirm the appointments to those two entities.

Solicitor Harper said there was a request to the District Attorney to determine whether someone's appointment was valid. That was filed on behalf of Mr. Dunleavy and Mr. Matthews, who are the old appointees. It was answered by the prior Solicitor, Bob Kerns on behalf of the new appointees, and it raises issues with respect to whether the theory used to appoint the new members is appropriate in this case. The old members were appointed and never removed in accordance with law and their positions were ratified by no one raising a question whether their appointment was proper or by paying their stipend. It is probably a good idea for the Board to reaffirm that it is not ratifying those new appointments so that when the District Attorney makes a decision; she will know what the Board of Commissioners of Upper Moreland Township's position is.

Comm. Romaniello asked why hasn't this gone through committee and discussed there.

Solicitor Harper said the theory that Mr. Kerns used to invalidate the two earlier appointments is the *void ab initio* theory. When members are appointed to the ZHB or Sewer Authority, they cannot be removed unless you go to court. The members who were replaced still had existing terms so unless a court rules that their terms were *void ab initio* they had every right to stay on the Board. Mr. Kerns's office determined that because the appointments were made in December and they were made when there was no vacancy. Mr. Bartle's office determined that even though those appointments were made when there was no vacancy, they were ratified and reaffirmed by this Board by its conduct.

Comm. Romaniello said this Board was not aware of this until December 3, 2007. This Board's conduct was that we were following the law in which we and our Solicitor had been participating in.

Comm. Efkowitz said it would be practical for this Board to take a vote to affirm the decision that was made on December 3, 2007 or reaffirm the original appointments of Mr. Dunleavy and Mr. Matthews.

Comm. Spearing corrected Solicitor Harper in that the letter from Mr. Kerns was on behalf of the Board of Commissioners in their decision.

Solicitor Harper replied the letter does say, "The Board of Commissioners asked me to respond to the letter sent to the Board on behalf of Dunleavy and Matthews." The letter from Mr. Kerns' office supports the new appointees and the letter from Mr. Bartle's office supports the old appointees.

Comm. Romaniello asked for the dates of those letters.

Solicitor Harper replied the letter from Bartle's office is dated December 17, 2007 to Bruce Castor and the letter from Kerns' office is dated January 4, 2008 to Bruce Castor.

Comm. Spearing asked Solicitor Harper when she was asked to review this case.

Solicitor Harper replied she has reviewed it for a couple of weeks.

Comm. Spearing said he does not remember any meeting of the Board of Commissioners authorizing Solicitor Harper to investigate this case. Since this is a legal matter; it should be discussed in executive session before moving forward.

Comm. McKenna asked Solicitor Harper, was the appointment of Herb Matthews in December, 2005 that was made by the previous Board before his term expired, proper or improper?

Solicitor Harper replied with municipal authority appointments; it is clear that appointments should be made on the first Monday in January. The law is not definitively clear that the *void ab initio* theory would be applied in these particular cases.

Comm. McKenna asked was the appointment of Herb Matthews in 2005 a proper or improper appointment?

Solicitor Harper replied a judge will answer that question for Upper Moreland Township.

Comm. McKenna asked how can this Board make a decision on a legal matter that the Solicitor is not willing to advise us on?

Comm. Efkowitz replied the solicitor will follow the wishes of a majority of the Board.

Comm. Romaniello asked can the ZHB and Sewer Authority function under the terms and appointments made today?

Solicitor Harper replied she does not know.

Comm. Valenza called the question.

Comm. McKenna asked will public comments be taken?

Comm. Efkowitz replied there is no need for public comment.

A Roll Call Vote resulted in MOTION being PASSED 4-3. Commissioners Romaniello, Spearing and McKenna opposed.

Comm. Valenza made a MOTION, seconded by Comm. Hotchkiss to ratify and reaffirm the approval of the MOTION to appoint John Dunleavy to the Upper Moreland-Hatboro Joint Sewer Authority.

Comm. Valenza said the Board is sustained by the earlier appointment of John Dunleavy and, in no way, do we support the decision made by the previous Board of December, 2007.

Comm. Efkowitz asked would it be appropriate for Comm. Spearing to vote on this matter or abstain from the vote?

Solicitor Harper replied Comm. Spearing cannot vote to appoint his father to a position on the Authority and, if the vote he takes tonight has the affect of appointing his father to a position on the Authority; that would be problematic and she suggested that he abstain from voting.

A Roll Call Vote resulted in MOTION being PASSED 3-2-2. Commissioners McKenna and Romaniello opposed. Commissioners Spearing and Lavalley abstained.

Comm. McKenna asked will public comments be taken.

Comm. Efkowitz said she asked for public comments at the beginning of the meeting as these are recommendations.

Comm. McKenna protested this point because it is a departure from the way our Township has run.

List of Bills Payable:

Comm. Valenza noted there is a check to Mike Casey - Check # 84141, in the amount of \$100. Should this be eliminated?

Mr. Dodies replied it is up to the Board.

Comm. Efkowitz asked should that check be voted on separately?

Solicitor Harper said since the Board has made it clear how they feel about the appointments she sees no harm in paying Mike Casey for the month that he served.

Mr. Dodies added that the check has already been sent.

Comm. Valenza made a MOTION, seconded by Comm. Hotchkiss to approve the List of Bills Payable as follows:

General Fund Checks: Beginning Check #83953
Ending Check #84232

General: \$1,325,506.65
Debt: \$ 1,650.44 (Check #s 83954 & 83955)
Total: \$1,327,157.09
Voids: #84039 & #84076

Escrow Fund Checks: Beginning Check #6823
Ending Check #6836

Total: \$9,327.54
Voids: None

Liquid Fuel Fund Checks: Beginning Check #1755
Ending Check #1761

Total: \$24,646.12
Voids: None

Revolving Fund Checks: Beginning Check #1746
Ending Check #1750

Total: \$12,101.85
Voids: None

Comm. Romaniello said she sent an email to Mr. Crawford regarding Check #0183967 to Chambers & Associates for War Memorial Park in the amount of \$12,461.28, and Mr. Crawford was waiting for call back from them. Did he get it?

Mr. Dodies replied he does not know at this time.

MOTION was ADOPTED 7-0.

COMMUNITY DEVELOPMENT & PUBLIC WORKS COMMITTEE:

Zoning Hearing Board Applications:

Comm. Lavalley noted that there are two zoning issues that will come before the Zoning Hearing Board on Thursday, January 24, 2008.

Comm. Romaniello noted that there is an application of 510 Davisville Road where the applicant is seeking a special exception from the Upper Moreland Township Code for the placement of four-storage trailers.

Comm. Spearing said we should give public notice regarding the Huntingdon Road application.

Mr. Dodies replied that is scheduled for action at the February 4th Regular Meeting.

PARKS & RECREATION COMMITTEE:

There were no action items at this time.

PUBLIC HEALTH & SAFETY COMMITTEE:

There were no action items at this time.

REDEVELOPMENT COMMITTEE:

There were no action items at this time.

Comm. Efkowitz announced that the Redevelopment Committee meeting will be a part of the Community Development Committee meeting and that committee will meet on January 28, 2008. The Finance & Administrative Committee along with the Parks & Recreation and Public Safety Committee meetings will meet on Tuesday, January 22, 2008 due to the Martin Luther King Holiday. In February, after the new calendar is adopted, the second Monday of the month will hold the Community Development, Public Works and Redevelopment Committee meetings and the third Monday of the month will hold the Finance & Administrative, Public Safety and Parks & Recreation Committee meetings.

COMMENTS FROM CITIZENS:

Len Spearing said he will take action and pursue a lawsuit against the Sewer Authority.

Charlie Acker, Grant Avenue, said he had high hopes with a new Board that things would take a different direction and, he sees by what happened tonight, that we are on the same path. We have had so many executive sessions and so much has been hidden from this Township, it is pathetic. He feels that Comm. Efkowitz ran a good meeting tonight and will make a fine President and he hopes that she will get moral support from the Board.

Kip McFatrige, Chairman of the ZHB, said he is concerned that his appointment along with Mr. Flynn's appointment is legal as we have not heard any hearings in the last month. Should we continue not hearing applications?

Solicitor Harper advised Mr. McFatrige to stop sitting on the sidelines. "You sit unless your appointment has been challenged."

Mr. McFatrige said that he sent a letter to the Willow Grove Chamber of Commerce regarding using Masons Mill Park to begin a new "Community Day." He asked for approval of the Board of Commissioners and this will be done in conjunction with the Parks & Recreation Department. Everyone is invited.

Tom McLaughlin, Mill Road, said he is on the Police & Fire Civil Service Commission and he wants to be assured that everyone on that Commission will be reappointed.

Comm. Efkowitz replied that as long as your position has not been challenged; it is legal and right to sit on that committee.

Ronnie Sax asked is there any recourse or anything that can be put in place that if a member of the Board is forced to abstain that we can have representation.

Solicitor Harper replied the First Class Township Code does not provide for alternates to the Board of Commissioners.

NEW BUSINESS:

Comm. Efkowitz made the following appointments: Comm. Valenza was appointed to the Pennypack Ecological Restoration Trust; Comm. Lavalley was appointed to the Upper Moreland Historical Commission; and Comm. McKenna was appointed to the Police Pension Fund.

COMMISSIONER COMMENTS:

Comm. Romaniello commented that the Zoning Hearing Board has been operating with three members on the Board. On the Upper Moreland-Hatboro Joint Sewer Authority, our Township has three appointed members and Hatboro has three appointed members.

The Regular Board meetings are voting meetings and we should not be conducting committee business. She does not appreciate getting a revised agenda right before a Regular Board meeting. Ratifying and reaffirming the appointments that have been made to those Boards and Commissions should be discussed in committee.

Comm. Spearing commented that he is disappointed in the Chairperson of the Board because he was reassured that all items would be discussed in committee. He is disappointed in his fellow Commissioners who voted in favor of the action to ratify and reaffirm those members to the ZHB and UMHJSA because in the words of our Solicitor, "she was not familiar with the facts." He does not know how this Board can make an educated, logical decision without proper information. He is also disappointed with the Chairman of the Committee for Finance & Administration that an item was revised today, January 14th, and the Solicitor only had this information last Friday. Therefore, any Commissioner who made that decision without adequate time and research did not make the right decision. He hopes that in the future, all items will be discussed in committee before any action is taken.

Comm. McKenna commented that item was presented to us at 7:00 p.m. this evening and, it is obvious, it was presented to the Solicitor hours or weeks before this meeting. He hopes we do not have two years of bending the law. Questions he asked of the Solicitor this evening, received no answers. It was even stated that, that issue is not a legal issue and a Zoning Hearing Board member asked for legal advice based on a decision that was not legal. No public comments are a departure from previous meetings, and he knows the new Board members hoped there would be better communication.

Comm. Efkowitz reassured the public that public comments will be taken. It is unfortunate that we had to ratify and reaffirm appointments this evening. However, it was felt it was in the best of the parties involved for this Board to take a position as quickly as possible. She feels the new Board members are aware of what transpired in December, 2007.

She recognizes that there are some members of this Board that are not happy with how reorganization has taken place and the end result. Reorganization is the last chapter in any election and, now that that chapter has closed, she asked the talented Board members to work toward doing the job in which we were elected to do on behalf of and in the best interest of the citizens of Upper Moreland Township, the business owners in our community and Township staff.

ADJOURNMENT: 8:30 p.m.

Respectfully submitted,

S. Elizabeth Vile

