

**UPPER MORELAND TOWNSHIP
BOARD OF COMMISSIONERS**

REGULAR MEETING

February 4, 2008

CALL TO ORDER – Comm. Efkwitz, President of the Board of Commissioners of Upper Moreland Township called a Regular meeting of the Board of Commissioners to order at 7:15 p.m. (There was an executive session called prior to the Meeting)

A MOMENT OF SILENCE WAS FOLLOWED BY THE PLEDGE OF ALLEGIANCE

PRESENTATIONS/ANNOUNCEMENTS:

Timothy A. Troxel was sworn in for the position of Sergeant in the Upper Moreland Police Department by District Justice Jay S. Friedenberg.

Commissioner Efkwitz had two announcements. On February 28th at 7:00P.M., at the Upper Moreland Intermediate School, the Board of Commissioners and the Upper Moreland School District will be having a work session to discuss the current status of Willow Grove Redevelopment and TIFs. On February 12th the Chamber of Commerce will be hosting the Temple University students that used Willow Grove as a class project last year.

ROLL CALL: David A. Dodies, Township Manager, took roll call. Present: Commissioners Stacey Efkwitz, President, Sam Valenza, Vice President, James Hotchkiss, Kevin Spearing, Joseph Lavallo, James McKenna and Lisa Romaniello. Also present was the Township Manager, David A. Dodies, and Township Solicitor, Catherine M. Harper.

PUBLIC COMMENTS NON-AGENDA ITEMS ONLY:

Mr. de Jonge commented about a statement that Commissioner McKenna made at last month's meeting and asked for an apology from Commissioner McKenna.

TREASURER'S ACTIVITIES REPORT:

Commissioner Efkwitz made a motion to approve the Treasurer's Report for January 2008. Commissioner Hotchkiss seconded the motion.

The motion was approved unanimously.

APPROVAL OF MINUTES:

Minutes of December 3, 2007 – Regular Meeting

Commissioner Romaniello made a motion to approve the minutes of December 3rd, seconded by Commissioner Hotchkiss. Commissioner Romaniello said on page 3, under Public Comments, third paragraph “Motion was adopted in favor of appointing Dick Sayer” that would be 7-0. On page 12, bottom of page that motion was adopted 5-0, it says that “Commissioner Booth had returned to the dais”, you should remove that, Commissioner Booth was still sitting in the audience. On page 13, under “Public Comments”, 7 lines down, motion was adopted, change 6-0 to 5-0. Go to very bottom of the page under “Resolution R-2007-35, motion was adopted 5-0 not 2-0 and then on page 14, third line from bottom, motion was adopted 6-0, you can insert the line “Commissioner Booth had returned to the dais.”

Commissioner Spearing said that on the first page under “Public Comments” on agenda items it is a complete rewording of the paragraph. It should read “as Commissioner Elect he better understood the reasons of the importance of executive sessions.” It should further say, “and he did not appreciate what was considered confidential appearing in the newspaper.” On page three, in the middle of the page after Dick Sayer, it says “motion to table”, the typo says “table to motion.”

MOTION to approve the minutes from December 3, 2008, as amended, was ADOPTED 7 – 0.

January 7, 2008 – Reorganizational Meeting

Commissioner Romaniello made a motion to approve the minutes from January 7, 2008, seconded by Commissioner Valenza.

Commissioner Romaniello said there was a change on page 3, paragraph 2, which read “motion was adopted 7-0.” It should be “5-2.” Also, the appointment of Township Engineer stated that “motion was adopted 6-0”, it should be “6-1.”

MOTION to approve the minutes from January 7, 2008, as amended, was ADOPTED 7 – 0.

January 14, 2008 – Regular Meeting

Commissioner Romaniello made a motion to approve the minutes from January 14, 2008, seconded by Commissioner Valenza. Commissioner Valenza said on page 4, “Comm. Valenza asked for the current bond rating of the Sewer Authority”, it was Commissioner Spearing not Commissioner Valenza.

Commissioner Romaniello said that on Page 2, the 5th paragraph, 4th line from the bottom, “Commissioner Spearing asked is this a revised copy”, it should read “Commissioner Romaniello...”

MOTION to approve the minutes from January 14, 2008, as amended, was ADOPTED 7 – 0.

Commissioner Romaniello asked Mr. Dodies if he was taking the minutes. He replied that he was not and proceeded to explain that if the Commissioners wanted fully accurate transcribed minutes with word to word descriptions that they pay for a court stenographer to take the minutes. Cross checking of the person who takes the minutes against the tape is going to reveal an incomplete record.

Solicitor Harper said that the purpose of the minutes is to record official action. It is nice to get a flavor of the preceding discussion so that the people know what you were thinking when you voted. She believes the staff has done a good job of summarizing the points of view and they do not even need to be that detailed to comply with the law. They certainly have to get the motions and votes correct and, of course, the Commissioner would want his/her point of view reflected but it is not meant to be word for word.

David A. Dodies , Township Manager, commented that he would like to see how the new year proceeds and if we can avoid using a court stenographer, we will. If there are continued inaccuracies, Mr. Dodies said we can then hire a court stenographer.

Finance & Administrative Committee

Appointments

Commissioner Valenza made a MOTION, seconded by Commissioner Hotchkiss to reappoint Mark Gallagher to the Police and Fire Civil Service Commission for a six-year term to expire on 12/31/2013.

Commissioner McKenna commented that Mr. Gallagher resides in Ward 7 and he has already served at least 6 years on this Board. Also, Mr. Gallagher is an attorney, spent his whole life in Upper Moreland and graduated from Upper Moreland High School. He brings a great deal of experience and is a great asset to the Board. Commissioner McKenna strongly recommends Mr. Gallagher for this position.

MOTION was ADOPTED 7-0.

List of Bills Payable

Commissioner Valenza made a MOTION, seconded by Commissioner Hotchkiss to approve the list of bills as follows:

General Funds Checks: Beginning Check #84233
Ending Check #84526

General: \$ 817,476.53
Debt: \$ 88,302.28 (Check #s 84233, #84377)
Total: \$ 905,778.81
Voids: #84324, 84442 thru and including #84459

Escrow Fund Checks: Beginning Check #6837
Ending Check #6862

Total: \$18,730.07
Voids: None

Liquid Fuel Fund Checks: Beginning Check #1762
Ending Check #1770

Total: \$44,326.45
Voids: None

Revolving Funds Checks: Beginning Check #1751
Ending Check #1757

Total: \$11,151.01
Voids: None

Public Comments: There were no comments.

MOTION was ADOPTED 7-0.

OTHER ITEMS:

Resolution No. R-2008-01 – Revised Upper Moreland Township Calendar

Commissioner Valenza made a MOTION, seconded by Commissioner Hotchkiss to approve Resolution No. R-2008-01 – Revised Upper Moreland Township Calendar.

Commissioner Efkwitz commented that the change to the calendar reflects that the Community Development Meeting and the Redevelopment Meeting will be falling on the second Monday of each month instead of the third Monday of each month.

Public Comments: There were no comments.

MOTION was ADOPTED 7-0.

Resolution No. R-2008-03 – Revising and amending the Bylaws of the Board of Commissioners

Commissioner Valenza made a MOTION, seconded by Commissioner Spearing to approve Resolution R-2008-03 – Revising and amending the Bylaws of the Board of Commissioners.

Commissioner Valenza commented that the revisions of the Bylaws will reflect that the Redevelopment Committee be molded into the Community Development Committee, as well as changing the meeting dates, and also will delete the requirement that the Board shall appoint department heads for each biannual year.

Public Comments: There were no comments.

MOTION was ADOPTED 7-0.

Commissioner Efkwitz requested confirmation from the Township Manager that Bylaws need to go before two consecutive meetings, therefore, this Resolution will be brought before the Board again at the March 3, 2008 Regular Meeting. David Dodies confirmed that this is accurate.

Resolution No. R-2008-07 – Amend Township Code to allow expiration dates of members of the Board of Commissions to be set at December 31st of each year.

Commissioner Valenza commented that this matter will be continued to the Committee Meeting on February 25, 2008 for further discussion and review.

Public Comments:

Rebecca Emerson, Huntingdon Road, commented that when she arrived this evening for the meeting there were no more meeting books available and also she mentioned that she stopped by the Manager's Office in the afternoon to see a specific resolution and was told that the Resolution had not yet been received by the Solicitor's Office.

Kip McFatridge, 4145 Hoffman Road, commented that his term on the Zoning Board has expired. He questioned whether it is correct that he continues in his capacity until it is voted on or until he is replaced. The Solicitor, Kate Harper, said that is correct.

Commissioner Comments:

Commissioner Spearing commented that he thought this item was to be acted on this evening. Commissioner Efkwitz commented that when it was discussed in Committee, they had instructed the Solicitor to draft the Resolution so that it was be available for

review at the next Committee meeting and will be moved for action in March, provided there are no changes.

Community Development & Public Works Committee

Commissioner Lavalley commented that there were no Code Enforcement items on the Agenda for this evening.

Resolution No. R-2008-06 – 2105 Huntingdon Road – Denial of subdivision application

Commissioner Lavalley made a MOTION, seconded by Commissioner McKenna to approve Resolution No. R-2008-06 – 2105 Huntingdon Road – Denial of subdivision application.

Scott Semisch, attorney for Mr. Miller, commented that Mr. Miller believes he has complied with all of the professional staff's comments and conditions and based upon the language of the deeds that he has submitted and the Agreement of 1941 that he has submitted, and based on the fact that Upper Moreland Township has never dedicated the shared driveway that is being used by the residents and due to the fact that 21 years has passed preventing it from being dedicated, that it is now an easement. When a street is not accepted for dedication, then it reverts back to private easement rights. Also, Mr. Miller's engineer took another look at the plan and, based upon a closer look, the plan may be amended so that Lot 1 and 2 are 1 acre, not including the area of the easement. Mr. Semisch is requesting the opportunity to revise the plan for the Board's review.

Commissioner Efkwitz asked whether the Solicitor had any comments for the Board on this action. The Solicitor answered that the Board is free to either move ahead or to grant the applicant a chance to submit revised plans. The Solicitor pointed out that there is one Zoning Code issue and ten subdivision issues.

Commissioner Spearing asked the Solicitor the difference between denying this plan, as it exists now, and then having Mr. Miller resubmit a new plan as opposed to amending the existing plan. Solicitor Harper explained that Mr. Miller is proposing that he can solve the largest issue under the Zoning Code (minimum acreage). However, Ms. Harper pointed out that Mr. Miller is requesting waivers, as well.

Commissioner Spearing made a MOTION to Table this matter, seconded by Commissioner Valenza.

Public Comment:

Rebecca Emerson, Huntingdon Road, commented that she has come to many meetings and has brought up some major concerns, however, these concerns were not addressed in a timely manner. The applicant, just now, would like another opportunity to submit new

plans. The neighbors would like the Board to consider them and the fact that they come out month after month due to unnecessary delays. She believes the applicant has been given more than enough time and opportunity to address the issues.

Commissioner Efkwitz said she is concerned that Mr. Semisch seems to be unaware of some of the waivers, however, believes he can correct the engineering of his plan and would like to allow him another three or four weeks to rectify the plans as well as all of the outstanding concerns.

Mr. Semisch further commented that at the December meeting they had requested a continuance to submit a plan and comply with some of the requirements. The last review letter they received from Chambers was dated October 9, 2007 and had three comments. The second comment referenced erosion control, grading, storm water management and, in addition, landscaping that had not been submitted for Lot No. 2. That issue was taken care of.

Solicitor Harper responded that the engineer said that the storm water management item was shown only in concept and there were no design details or calculations submitted.

MOTION TO TABLE FAILED 4-3.

David A. Dodies, Township Manager, took a poll. Ward 1, no; Ward 2 – yes; Ward 3 – yes; Ward 4 – yes; Ward 5 – no; Ward 6 – no; Ward 7 – no.

Commissioner Comments: There were none.

Public Comments:

Mr. Detweiler, formerly of Dorothy Street, questioned whether the issue is the acreage. He also questioned whether the former Solicitor's opinion was that it was permissible to count the acreage from the private street as part of the one acre requirement. Solicitor Harper replied that she did not see a published opinion on that issue. She further replied that the Ordinance states that easements are allowed to be counted in the acreage and roads or streets are not allowed to be counted. This is an unusual situation in that we have a private street (paper street) that is in use and the issue is if that is a road, you cannot count it.

Rebecca Emerson, Huntingdon Road, reiterated that she hopes the Board considers all of the neighbors' past issues and will repeat the concerns if necessary. She also is asking that the existing Ordinances of Upper Moreland Township be upheld.

Commissioner Spearing commented that he sympathizes with Ms. Emerson and her group, however, the issues are not just about the neighbors but also about the

ramifications on the entire Township. Commissioner Spearing stated that he needs more information in order to make an educated decision.

Another resident commented on the new plan that was submitted. The part where it connects to her driveway has now been marked construction access only and it is now clear where the permanent access will be. They also seemed to have added some tree fencing but as yet have not marked it on their map but still have their driveway going right through it.

Commissioner Efkwitz replied that this is one of the waiver issues that still need to be discussed when and if this plan is approved.

Carol Maltby, 1995 Huntingdon Road, commented that they love their neighborhood the way it is and their realtor assured them there would be no further building due to the zoning codes. She also has issues with all of the construction that has been happening on the road. She also has issues with the drainage.

Josh Bach, 2165 Huntingdon Road, never imagined that there would be 1-acre lot homes built next door to them. Allowing this will affect all of Huntingdon Road. He asked to consider preserving the character of this part of Upper Moreland Township.

Ed Nelling, 2065 Huntingdon Road, asked whether this is in the best interest of the Township. Living next door to this subdivision with the water and runoff and all of the other issues, he can say this is not in the best interest of the Township or its residents.

Commissioner Spearing asked Mr. Nelling how big his lot is and when it was built. Mr. Nelling responded 1-acre, built in 1999.

Commissioner Lavalley asked Mr. Nelling if there has been any other construction on the private road subsequent to you occupying your residence. Mr. Nelling replied that there was a house constructed after 1999 at 2003 Huntingdon Lane. There was another house built more recently at 1959 Huntingdon Road, and there was noticeable damage done to the lane and the builder did not repair that damage. Mr. Nelling also confirmed that the neighbors take care of the road, including snow removal.

Eileen Corkery, 2035 Huntingdon Road, commented that she would like the law abided. When the Nelling house was built, it was built above them and caused them a great deal of water issues and with yet another house built above them, they will be swamped with water.

Solicitor Harper explained that the Board cannot turn down a subdivision or land development plan because the neighbors do not want it. They are only allowed to turn down a subdivision or land development plan if it violates some provision of the Zoning

Ordinance or Subdivision Ordinance if a plan complies in all respects, the Board is required to approve it.

If Mr. Semisch is able to get the plans to comply in all respects to the Ordinances, the Board is required to approve it.

Commissioner Romaniello commented that the subdivision is located in a R1 residential district which requires a minimum lot area of 1 acre. She said she has difficulty with the fact that this is a “paper street” and it seems unclear as to where the law lies. If this was a Township owned road it may be a little easier to come to a decision. We have no ownership over the paper street as a Township. Also, the other biggest problem is the storm water management, the water issues are serious.

Mr. Semisch responded regarding storm water. He said that they did not get a review letter that is why they would like to get a continuance so that they can get a review letter and make it right.

Commissioner Efkwitz said that the only thing they are being asked to do at this point is to approve the subdivision of the lot. The only question posed before us is does that lot satisfy the minimum lot area for an R1 residential property.

Commissioner Spearing asked that they take it back to committee so that no one makes a hasty decision.

Commissioner Efkwitz asked for all those in favor of sending Resolution R-2008-06 back to committee say yes.

Vote was 5 in favor and 2 against.

Mr. Dodies, Township Manager polled the Board, Ward 1 – yes, Ward 2 – yes, Ward 3 – yes, Ward 4 – yes, Ward 5 – yes, Ward 6 – no, Ward 7 – no.

Commissioner Efkwitz said that the Motion carries.

Commissioner Efkwitz asked the Township Manager, Mr. Dodies, to coordinate with Mr. Semisch a chain of events inasmuch that the new plan is received, the amount of time it takes to get all the professionals to review it and the time it takes to get it scheduled back into committee.

Commissioner Efkwitz asked Mr. Semisch to provide the Township with letters that are appropriate allowing the extension. There will be no formal action taken until April.

Gail Devlin, Huntingdon Road, complained about the water issues.

OTHER ITEMS:

Ordinance No. 1555 – Amendment to building setback requirements, rights of way and easements.

Mr. Dodies stated that this was a technical correction to the Township Subdivision and Land Development Code that was discussed at the November 2007 Community Development meeting based on recommendations from John Chambers. The essential purpose of this correction is to address the fact that the way the Ordinance currently states “building setback lines shall be measured from the nearest side of the right-of-way or easement to the proposed building.” It’s been identified as measuring setback lines from the side of an easement is very restrictive and unusual so that is the change that would be affected. It was approved by the committee previously and recommended for adoption.

Commissioner Lavalley made a MOTION, seconded by Commissioner Hotchkiss to approve Ordinance No. 1555.

Commissioner Efkwitz asked Mr. Dodies to note that Commissioner Valenza stepped out of the room at 8:40 and is not present for the vote.

MOTION was ADOPTED 6 – 0.

Commissioner Lavalley made a Motion, seconded by Commissioner Hotchkiss for approval of a recycling vehicle and leaf vacuum for the Public Works Department.

Motion was ADOPTED 6 – 0.

Parks & Recreation Committee

Resolution No. R-2008-05 – Boileau Park Festival Day

Commissioner Spearing made a Motion, seconded by Commissioner Hotchkiss for the adoption of the resolution for allowing farm animals and livestock at Boileau Park for Festival Day.

MOTION was ADOPTED 6 – 0.

Request for Use of Mason Mills Park by Willow Grove Chamber of Commerce

Commissioner Spearing made a Motion, seconded by Commissioner Romaniello for use of Mason Mill Park by Willow Grove Chamber of Commerce.

Kip McFatridge stated he is responsible for running the event in conjunction with Parks & Recreation.

Rogers Myers with the Chamber of Commerce commented how excited they are to have Kip McFatridge as part of the Chamber.

Commissioner Valenza returned to the dais.

MOTION was ADOPTED 7 – 0.

Resolution No. R-2008-04 – M.C. Open Space Funds allocated for Upper Moreland Township to PERT project.

Commissioner Spearing made a Motion, seconded by Commissioner Hotchkiss to approve Resolution No. R-2008-04.

Commissioner Romaniello stated that this piece of ground is wooded with two small sections of stream that run through it and doesn't require any additional work or labor from our Parks & Recreation department.

Nick Scull of 507 Inman Terrace wanted to point out that this is a matching grant and that PERT is putting up 20% match that they raised the money for.

MOTION was ADOPTED 7 – 0.

Public Health & Safety Committee

Resolution No. R-2008-02 – Adopting the Montgomery County Natural Hazard Mitigation Plan.

Commissioner Hotchkiss made a Motion, seconded by Commissioner Romaniello to approve Resolution No. R-2008-02.

Commissioner Hotchkiss commented that if anyone was interested in the plan that it was available on the Montgomery County website.

MOTION was ADOPTED 7 – 0.

Redevelopment Committee

Commissioner Lavalley stated that he had two meetings he wanted to bring up. One was regarding the presentation by the Temple students, next Tuesday, February 12th concerning our Redevelopment area in Willow Grove. The second meeting is the tax incremental financing presentation in unison with the School Board on Thursday,

February 28th. Lastly, we have received a draft Development Information Request Form from KSK outlining the minimum standards for developers that are interested in our revitalization area.

Commissioner Spearing asked whether the school district meeting will be televised. Commissioner Efkwitz responded that Director Wenik was trying to organize that.

Commissioner Romaniello asked whether the Montgomery County Redevelopment Authority had been invited. Commissioner Efkwitz responded that they were.

NEW BUSINESS

Commissioner Lavallo raised a question in regards to the Temple presentation. He had six constituents ask him whether that presentation would be televised with a disk made available for viewing. He asked whether the Chamber would pay for that. Kip McFatridge responded that because of the cost, it was decided that they would offer a copy of the power point presentation rather than have it televised.

Commissioner Efkwitz commented that we should discuss, through the Finance and Administrative Committee, what sort of programming we would permit on Channel 849.

Marc Toth, Barbridge Road, commented that DOG Park received their funding and would probably be coming next year and that also a Master Plan was approved which will lead to land development. He would like to recommend that the Board push the development portions ahead as soon as possible so as not to conflict with the outstanding PENNDOT issue.

He also commented that he is an advocate of environmental issues and would therefore like to propose that the Board consider changing and altering their submission requirements to allow for electronic submissions by Developers.

Commissioner Comments

Commissioner Romaniello commented that democracy is at the heart of good government.

Commissioner Romaniello also had a comment regarding the Suburban Chamber of Commerce. She read a portion of a recent publication released by the Chamber supporting the redevelopment of the Willow Grove Business District. She believes this will be available soon and possibly it could be downloaded off of their website. She suggests contacting the Suburban Chamber of Commerce in order to find out how to get this positive piece of information regarding redevelopment. She would like to see more discussion between the Suburban Chamber of Commerce and the Community Development Committee. Commissioner Efkwitz agreed with Commissioner

Romaniello on this point and added that the article encourages the existing business community to revitalize and reinvigorate their own businesses.

Commissioner Spearing commented that if we have snow this year, he reminds residents to park on the even side of the street if they must park in the street. He also had a comment about appointments. At a recent conference he attended, Commissioner Spearing heard about a case where Harrisburg spent 1 mil. dollars in city funds to defend an appointment by the Board that was overturned in the Supreme Court, and he certainly does not our Township to duplicate that action. He refers back to what Solicitor Harper said in the minutes from the 14th of January that a judge will answer the question for Upper Moreland Township. He wonders how a judge will answer the question, if not asked. He requests that the Solicitor give the Board a written opinion on the appointments that were made on December 3, 2007.

Solicitor Harper commented that it is the Solicitor's job to give the Board advice on action it is about to take. Solicitor Harper was not the Solicitor at the time of those appointments and the Solicitor, at that time, did give the Board advice as to what actions they should take. Solicitor Harper also said that she should not give an opinion on a past decision at a time when she was not a Solicitor for this Board. Solicitor Harper added she is certainly capable of writing a legal opinion but cannot comment whether it is or is not in the best interest of this Board.

Commissioner Efkwitz stated that she agrees with Solicitor Harper that she should not render an opinion when she was, in fact, not the solicitor at that time.

There was further discussion regarding this issue.

Solicitor Harper responded to Commissioner Spearing's question as to what she meant when she said a judge would have an answer. She said at the time there was a request for quo warranto made to the District Attorney of Montgomery County. She assumed, although nothing has happened thus far, at some point, that the District Attorney would offer the case in court and that a judge would render an opinion. She further explained that reasonable minds can differ on whether the appointments were correct or incorrect and the way reasonable minds work out these differences is to let a judge decide.

Commissioner McKenna stated that he would like to respond to the public comment issue. His argument and protest at the previous meeting had nothing to do with himself and had nothing to do with the vote. Public comment was just shut down and was not a part of those issues and his argument was strictly for the public. Since he had plenty of time to speak, he was arguing and protesting specifically in the public's behalf.

Commissioner Romaniello asked whether the District Attorney can still make a decision. Solicitor Harper replied that she did not know whether the quo warranto had been withdrawn.

Regular Meeting

February 4, 2008

Commissioner Romaniello asked what the process was to remove someone off of the sewer authority. Solicitor Harper replied that, in general, if the person has a valid appointment to the sewer authority, you would have to go to court to remove them.

Commissioner Efkwitz stated that the Board would be moving into Executive Session after this meeting to discuss a legal matter related to Abington properties as well as the legal matter regarding appointments.

Commissioner Lavallo commented that he welcomes the public's help and comments so that we can make a positive impact together as a community.

ADJOURNMENT: 9:45 p.m.

Respectfully submitted,

Cynthia Heinemann