

**UPPER MORELAND TOWNSHIP  
BOARD OF COMMISSIONERS**

**REGULAR MEETING MINUTES**

*July 2, 2007*

**CALL TO ORDER:** A Regular meeting of the Board of Commissioners of Upper Moreland Township was called to order by the President of the Board of Commissioners, Michael Crilly, at 7:00p.m.

**A MOMENT OF SILENCE WAS FOLLOWED BY THE PLEDGE OF ALLEGIANCE.**

Commissioner Crilly stated that the Board of Commissioners will go into an Executive Session to discuss a personnel matter. Upon returning the meeting opened with Public Hearing #1824 to deal with the request for a transfer of a liquor license related to Ruby Tuesday, Inc.

**PUBLIC HEARING #1824 – Request for transfer of liquor license – Ruby Tuesday, Inc.**

Solicitor Kerns asked if the attorney representative for applicant Ruby Tuesday, Inc. was present.

Solicitor Kerns asked the attorney to recognize himself for the Board and the record. The attorney introduced himself as Stanley Wolowski on behalf of Ruby Tuesday, Inc. trading as Ruby Tuesday.

Solicitor Kerns put into evidence the Proof of Publication that the hearing has been legally advertised for the July 2, 2007 Public Hearing.

Solicitor Kerns stated that once the applicant has presented his case the Board would have an opportunity to ask questions of the applicant and his witnesses. Anyone in the audience would then have an opportunity to ask questions and speak for or against the application.

Solicitor Kerns stated that the Board would render a decision at the July 2, 2007 meeting because the act itself requires that the Board take action within a certain time frame which is the July 2, 2007 Regular Meeting.

Solicitor Kerns stated that the Board has a right to deny or approve the application. A Resolution was prepared with both of those alternatives before the Board.

Attorney Wolowski stated that Ruby Tuesday, Inc. would like to open a restaurant at Route 611 and Home Depot Drive and sell alcoholic beverages. He stated that Ruby Tuesday currently owns and holds a restaurant liquor license that was issued for Upper Dublin Township in Montgomery County. Site issues caused Ruby Tuesday to "scrap" the project at the Upper Dublin site. Now they would like to take the liquor license and transfer it to Upper Moreland Township and use the liquor license at the proposed restaurant.

Attorney Wolowski introduced the regional development director for Ruby Tuesday stating that he is familiar with the plans for the proposed restaurant and will oversee the construction and development of the restaurant.

Attorney Wolowski asked that Upper Moreland Township approve a Resolution permitting the transfer of the restaurant liquor license from Upper Dublin Township into Upper Moreland Township.

Attorney Wolowski stated that Solicitor Kerns noted that under the liquor code Upper Moreland Township has discretion whether to approve the request for the transfer or deny it.

Attorney Wolowski gave a detailed history of Ruby Tuesday, Inc.

Attorney Wolowski stated that the development director was present to answer questions.

Commissioner Efkwitz asked what the opening date for Ruby Tuesday's would be. A projected date of 2008 was stated.

There were no other questions from the Board.

Solicitor Kerns asked if there were any questions from the audience. Responding to that question was Mr. Kevin Spearing, 2504 Broadway, Hatboro, PA 19040.

Mr. Spearing was sworn in.

Solicitor Kerns stated that he usually does not have counsel sworn in since they are a member of the bar and would give a factual honest testimony and that was the reason he did not swear in counsel for Ruby Tuesday, Inc.

Mr. Spearing had a comment regarding the presentation that stated the area is commercial and there are no residents or schools in the vicinity.

Mr. Spearing stated that there is, in close proximity, a residential community that is under construction. He stated he would like to make everyone aware of that

fact. Mr. Spearing also stated that there is a church with a daycare across Easton Road at the intersection of Mill and Sycamore.

Mr. Spearing asked that if the liquor license was not approved, if the restaurant would still be built. The reply was no.

Solicitor Kerns asked if there were any other questions or statements from anyone in the audience.

Mr. Thomas McNaulty stated that he recommend the Board approve the transfer of the liquor license.

Solicitor Kerns asked if there was anyone else who wanted to speak on the application.

Solicitor Kerns stated that he would mark for exhibit those items put forth and make one exhibit which includes 9 items that were presented and make it part of the record.

Solicitor Kerns asked Mr. McNaulty if his testimony was his beginning and summation. Mr. McNaulty replied yes.

Solicitor Kerns stated that the hearing was concluded and the Board will, as indicated, make a decision later in its agenda session section at the July 2, 2007 meeting.

Commissioner Crilly asked David Dodies if there were any presentations or announcements.

**ROLL CALL:** David Dodies, Township Manager took roll call. Present: Commissioners Michael Crilly, President; Richard Booth, Vice President; Stacey Efkwitz; James McKenna; James Martin; James Hotchkiss; and Lisa Romaniello.

Others: David Dodies, Township Manager, and Robert Kerns, Township Solicitor.

**PUBLIC COMMENTS – NON-AGENDA ITEMS ONLY:**

Commissioner Crilly called on Jonathan de Jonge.

Mr. de Jonge talked about War Memorial Park. Mr. de Jonge asked the Committee if they are ready to start laying the foundation as part of the new redevelopment of downtown and if there is a certain cost associated with it. He asked the committee to issue the permits at actual cost to the Township for the laying of the foundation and construction of War Memorial Park.

Commissioner Crilly replied that Mr. de Jonge's request would be added as an agenda item on the Community Development Committee which will meet in two weeks and that the decision will be made then.

Mr. Kevin Spearing had a question regarding North Willow Grove Park which he addressed to Commissioner Efkowitz.

Mr. Spearing stated that Commissioner Efkowitz sent a letter to residents stating there was some consideration as to changing the location of the park or building to another park somewhere else. Mr. Spearing asked Commissioner Efkowitz to elaborate on that statement.

Commissioner Efkowitz stated that she would try to respond after the meeting.

There were no other public comments.

**TREASURER'S ACTIVITY REPORT:**

Commissioner Booth made a MOTION, seconded by Commissioner Efkowitz to approve the Treasurer's Activity Report for June, 2007.

Commissioner Booth stated that the monthly Treasurer's Report is a summary of receipts and expenditures only and that a complete financial statement is available for public review in the Township's Finance Office.

MOTION was ADOPTED 7-0.

**APPROVAL OF MINUTES:**

Commissioner Efkowitz made a MOTION, seconded by Commissioner Hotchkiss, to approve the minutes of the June 4, 2007 Regular Meeting.

There were no additional Commissioner comments.

Public comments:

Mr. de Jonge noted that on page 10 of the June 4, 2007 Regular Meeting minutes the word "impervious" should read as "pervious."

MOTION was ADOPTED 7-0.

**FINANCE & ADMINISTRATIVE COMMITTEE:**

Appointments:

Commissioner McKenna made a MOTION, seconded by Commissioner Romaniello to appoint Bill Jenkinson to represent Ward 1 on the Advisory Planning Agency for a 2-year term to expire 6/1/2009.

Commissioner Comments:

Commissioner McKenna stated that the Commissioners did discuss Mr. Jenkinson's qualifications and would like to know if the Commissioner of Ward 1 had any additional comments regarding Mr. Jenkinson's appointment.

Commissioner Romaniello replied that there were no additional comments.

Commissioner Romaniello stated for the residents in attendance that Mr. Jenkinson is a long time resident of Ward 1. He has served the community in the past on the Parks & Recreation Advisory Council and believes he will add another dimension to the Advisory Planning Agency.

No Public Comments.

MOTION was ADOPTED 7-0.

Commissioner McKenna made a MOTION, seconded by Commissioner Efkwitz to recommend approval of the reappointment of Dr. David Robertson to the Parks & Recreation Advisory Council from Ward 5 for a 2-year term to expire on 8/4/2009.

Commissioner Comments:

Commissioner Booth stated that Dr. David Robertson is the director of PERT which is a local ecological area we have on the eastern side of the Township and goes into Lower Moreland and Bryn Athyn. Commissioner Booth stated that Dr. Robertson is a good addition to our Parks & Recreation Committee in that he lends a different thought to the meetings and is a trained biologist. He is a very active member and attends most committee meetings. He served on the Open Space Committee and he is on a committee looking at the Storm Water Ordinance.

Public comments:

Mr. de Jonge commented, with regard to the reappoint of Dr. Robertson, that we couldn't do better.

MOTION was ADOPTED 7-0.

Commissioner McKenna made a MOTION, seconded by Commissioner Hotchkiss to recommend approval of Dean Swedberg for a 2-year term on the Parks & Recreation Advisory Council from Ward 5 to expire on 12/7/2008.

Commissioner Comments:

Commissioner McKenna stated that since Mr. Swedberg is of the 7<sup>th</sup> Ward he appreciates his long term commitment to the soccer organization and his dedication over the years. He believes Mr. Swedberg is an excellent choice for the Board.

Commissioner Hotchkiss commented that Mr. Swedberg has been very active in the community and has volunteered both his time and his family time for many activities which the Parks & Recreation department has sponsored.

Public comments:

Mr. de Jonge asked if the expiration of Mr. Swedberg's term should be 2009 instead of 2008.

Township Manager David Dodies replied that Mr. Swedberg would be finishing the existing term, which would end in 2008.

MOTION was ADOPTED 7-0

List of Bills Payable:

Commissioner James McKenna made a MOTION, seconded by Commissioner Efkwitz to approve the list of bills payable as follows:

<b>General Funds Checks:</b>		Beginning Check
#82083		
		Ending Check
#82377		
General:	\$565,867.31	
Debt:	<u>\$ 1,337.02</u>	(Check #s 82083; 82253)
Total:	\$567,204.33	
Voids: None		
<b>Escrow Fund Checks:</b>		Beginning Check #6727
#6742		Ending Check
Total:	\$7,787.68	
Voids: #6730		

<b>Liquid Fuel Fund Checks:</b>	Beginning Check	#1714
	Ending Check	
#1717		
Total:		\$17,643.36
Voids:		None
<b>Revolving Funds Checks:</b>	Beginning Check	#1716
	Ending Check	
#1720		
Total:		\$9,175.47
Voids:		None

There were no Commissioner or public comments.

MOTION was ADOPTED 7-0.

**OTHER ITEMS:**

Commissioner McKenna made a MOTION, seconded by Commissioner Efkwitz for the Adoption of Police Benevolent Association Contract 1/1/2007 to 12/31/2010.

Commissioner Comments:

Commissioner Efkwitz thanked Township Manager David Dodies and Megan DeLaurentis for working closely with the PBA and the representatives from the PBA in coming to a collective bargaining agreement.

Township Manager David Dodies thanked Commissioner Efkwitz stating that the negotiations were amicable throughout.

Commissioner Booth stated that the agreement was fair for both sides.

No Public Comments.

MOTION was ADOPTED 7-0

Commissioner McKenna made a MOTION, seconded by Commissioner Efkwitz to approve Ordinance No. 1545 Amending Police Pension Plan.

Commissioner McKenna asked Township Manager David Dodies to explain Ordinance No. 1545.

Mr. Dodies replied that this Ordinance puts into place an amendment to the Police Pension Plan and effectively establishes a DROP program which is a deferred retirement plan.

Commissioner Comments:

Commissioner Efkwitz asked Mr. Dodies if the Ordinance permits the DROP program to exist and authorizes the collection and management of the DROP program and then the following Resolution is where we establish the DROP program and recognize it as an official part of the contract.

Mr. Dodies replied yes that it is correct and that it is a two step program to make it official. It is referenced in the contract by the Police Pension Ordinance and must be modified to reflect the existence of the DROP program.

Commissioner Booth asked who is going to be the investment manager of the funds.

Mr. Dodies replied that they will use ICMARC as the administrator of the fund.

Commissioner Efkwitz asked if ICMARC was agreed to by our Township management and the PBA.

Mr. Dodies replied that it was.

Commissioner Booth asked if each individual would be able to direct the way the funds were invested or is it one standard investment.

Mr. Dodies replied that there are options.

Commissioner Booth asked that if the DROP program was in conflict with the law would the Supreme Court declare it illegal and would we have to reopen the police negotiations and provide some other benefit to the police.

Commissioner Efkwitz stated that although the program is not illegal now but could be within the next several years what would happen if the IRS or a state agency decided it was.

Solicitor Kerns replied that it is absolutely legal.

Commissioner Romaniello asked if a participant would be allowed to change the date.

Mr. Dodies replied it cannot be changed.

No Public Comments.

MOTION was ADOPTED 7-0

Commissioner McKenna made a MOTION, seconded by Commissioner Efkwitz to approve Resolution R-2007-16 establishing an employee money purchase retirement plan.

Township Manager David Dodies stated that this is simply establishing a vehicle which will be the ICMARC as the investment vehicle for the DROP program.

No Commissioner or public comments.

MOTION was ADOPTED 7-0

Commissioner McKenna made a MOTION, seconded by Commissioner Efkwitz to approve Resolution R-2007-17, Request to transfer liquor license for Ruby Tuesday, Inc.

Township Manager David Dodies wanted to clarify the address of the proposed restaurant. Mr. Dodies stated that technically there is no South Mill Street. The existing address for the Home Depot is 2250-2300 Easton Road and for the purpose of clarification the address should be amended in the Resolution.

Solicitor Kerns asked if that address was put in the application. Mr. Dodies replied yes.

Solicitor Kerns asked the applicant if the request could be amended as such.

Solicitor Wolowski replied yes.

Commissioner Efkwitz made a MOTION, seconded by Commissioner Hotchkiss, to amend Resolution R-2007-17, with regard to the restaurant in Upper Moreland Township, at Home Depot Drive and Easton Road.

Commissioner Comments:

Commissioner Booth commented that the restaurant is family oriented and would be a benefit to the Township. It will provide jobs and tax revenues.

Commissioner Efkwitz welcomed Ruby Tuesday, Inc. to the Township.

No Public Comments.

MOTION was ADOPTED 7-0

Commissioner McKenna made a MOTION, seconded by Commissioner Efkwitz to approve Ordinance No. 1546, Declaration of taking of property at 102 Center Avenue for the price of \$195,000.00.

Solicitor Kerns stated that the condemnation is called a friendly condemnation.

No Commissioner Comments.

Public Comments:

Mr. Kevin Spearing asked why the Township didn't just purchase the property if it was considered a friendly condemnation.

Solicitor Kerns replied there was no cost or loss to the Township by doing a condemnation and there was a benefit to the property owner who is a Township resident. It works mutually advantageously in these types of situations.

MOTION was ADOPTED 7-0

Commissioner Crilly asked Solicitor Kerns if there was any formal action required for Resolution R-2007-18 that was withdrawn.

Solicitor Kerns replied that there was none.

**COMMUNITY DEVELOPMENT & PUBLIC WORKS COMMITTEE:**

Commissioner Martin stated there were no action items.

**PARKS & RECREATION COMMITTEE:**

Commissioner Efkowitz stated there were no action items.

**PUBLIC HEALTH & SAFETY COMMITTEE:**

Commissioner Hotchkiss made a MOTION, seconded by Commissioner Efkowitz to recommend approval of David Fitzpatrick as candidate for Fire Police.

Commissioner comments:

Commissioner Hotchkiss stated that Mr. Fitzpatrick is an officer in a neighboring township and has extensive training and is qualified for this position and would like the Board to see favor with him.

Commissioner Crilly stated that Mr. Fitzpatrick is from Ward 2 and he is very community minded and always involved in community activities. He believes that Mr. Fitzpatrick would make a good appointment.

No Public Comments.

MOTION was ADOPTED 7-0.

**REDEVELOPMENT COMMITTEE:**

Commissioner Romaniello made a MOTION, seconded by Commissioner Efkwitz that the committee approve the recommendation of Ordinance No. 1543 - Authorizing and Directing the Filing of a Declaration of Taking for the purpose of Obtaining Land from Three Stars Associates for an Entranceway from Old York Road to War Memorial Park.

Solicitor Kerns stated that this is the first step in acquiring necessary properties to conclude the driveway into the park. There is another step which is the acquisition of a piece of property from the county which we are working on. With those pieces and some minor "tweaking" relative to some of the neighboring uses, we would then be in a position to be able to go to bid by having acquired all of the necessary right-of-way for the property. We have had contact with the owner of the property and are still negotiating settlement relative to these condemnations. There are two parcels, one of which is a building and the second one is a piece of the parking lot to the rear of that building. This is why there are two separate condemnations owned by the same party but separately deeded and separately titled. Negotiations will continue.

There were no Commissioner or public comments.

MOTION was ADOPTED 7-0.

Commissioner Romaniello stated that the next item on the Redevelopment Committee is a Proposal from McMahan Associates - Engineering Services for Repair of a Culvert at York and Easton Roads.

Commissioner Efkwitz asked Commissioner Romaniello if the above was a motion. Commissioner Romaniello replied she did not put a motion forward. Commissioner Booth stated that a discussion doesn't take place until there is a motion on the floor.

Commissioner Romaniello stated that the action item she would make this evening is to move this item to the Redevelopment Committee agenda on July 16, 2007 and set a date for a Special Meeting immediately following the committee meeting for the purpose of taking action on the contract for the additional work that is related to this project.

Commissioner Efkwitz stated that the motion is to set a Special Meeting after the Redevelopment Meeting.

Commissioner Romaniello stated that it is two parts. First part is to move this agenda item to the Redevelopment Committee agenda.

Commissioner Efkwitz stated that a motion was not needed.

Solicitor Kerns replied no because it is a matter of bringing it from staff to the necessary committee.

Commissioner Efkwitz stated that Commissioner Romaniello's motion tonight should be that she wants a Special Meeting to vote.

Solicitor Kerns replied that it would be a necessary motion.

Commissioner Efkwitz seconded the Motion. She then asked if there was enough time to advertise.

Solicitor Kerns replied there was.

Commissioner Romaniello stated that the township engineer recommended that repairs be made to an existing culvert which is at the intersection of York Road and Easton Road. The culvert is actually an area where water is passing through under our street so there is a section of the area within 611 & 263 where there is a culvert underneath.

Commissioner Romaniello thanked the consultants that the problem was found. The culvert needs to be fixed to move the redevelopment projects forward. If the problem is not corrected the Township runs the risk of the supports being unstable which poses a serious liability.

Commissioner Romaniello stated that the reason she is giving so much information is that she wants the commissioners to come to committee and be able to make a decision that evening.

Commissioner Romaniello stated that it is important the area in PennDot's right-of-way is structurally sound. The area outside PennDot's right-of-way, in the culvert, is the area which is determined not structurally sound. The Township would be responsible for taking care of this. The design and engineering services are estimated to be about \$14,000.00. The overall total construction cost will not be determined until the bids go out this fall but is estimated it could be another \$45,000.00 in addition to the total construction cost.

Commissioner Romaniello stated that the reason this vote is important is the fact that McMahon has submitted the plans that we have been working on to PennDot under the highway occupancy permit process.

Commissioner Romaniello stated they feel we need to make a decision on this as quickly as possible so they can amend the plans that have already been submitted to PennDot.

Commissioner Romaniello also stated if we belabor the conversation and delay the vote from happening we would have to go back to PennDot for another review. Our Township engineer recommended that the Board vote and make a decision this evening. I feel that we should do everything possible to keep this project on track.

No commissioner comments.

Public Comments:

Mr. de Jonge stated if it were such a matter of urgency why is the Board postponing action on it.

Commissioner Romaniello responded that he would have to ask the Board.

Commissioner Crilly replied that they want to follow the process which is to have it go through a committee. We are not losing much by two weeks and by scheduling a Special Meeting we will be able to deal with the matter the same evening without any further delay.

Commissioner McKenna replied that they are trying to figure out who is responsible for paying for the repair.

Commissioner Booth replied that in committee meetings they have professional engineers present so that they can provide information and the Commissioners can ask additional questions and come up with a judgment.

Commissioner Romaniello stated that there most likely will not be any more information than what the structural engineer has already provided.

Commissioner Booth replied that there might be more questions.

Mr. Spearing stated that public safety and health communicated that PennDot's part is safe and sound. He wanted to know if that was correct.

Commissioner Romaniello replied that was what she was told.

Commissioner Efkowitz stated that the questions Mr. Spearing are asking is the reason why they recognized the fact that it does need to go to committee.

Mr. Spearing stated he would not be at the committee meeting so he was asking the question at this time.

Commissioner Efkowitz replied to Mr. Spearing that he should get in touch with the Township Manager to answer his question if he was unable to attend the meeting.

Commissioner Romaniello stated that it comes down to property lines and right-of-way. The area that is deteriorating is not in the PennDot right-of-way where they would own it and have to replace something that was failing.

Commissioner Romaniello stated that if the Township wants to move forward with redevelopment and there are projects left on the current construction schedule for early 2008, then we need to take care of this. This has to do with public safety. We cannot proceed now that the Township has been put on alert and if that were so we would have big problems on our hands.

Commissioner Booth replied that the other side of that is whose responsibility is it. The Township should not pay for it if it is PennDot's responsibility. If it's a public safety issue we would have our public works people out there to put up cones and flags, close down sidewalks or whatever else we would need.

Mr. Spearing stated that, in his understanding, Easton Road is a county highway at York and Easton Roads at 611. Mr. Spearing wanted to know if anyone is involved from the Montgomery County highway department.

Commissioner Efkwitz stated that this was a question for committee and suggested to Mr. Spearing that if he could not make the meeting on July 16, 2007 that maybe he could forward his questions to Commissioner Romaniello and she would make sure his questions were answered.

Mr. Charles Acker asked who was responsible for the tunnel that runs from the lake under the grill to the creek in War Memorial Park.

Commissioner Crilly asked Commissioner Romaniello to have her committee address that.

MOTION was Adopted 7-0.

### **NEW BUSINESS:**

Commissioner Efkwitz stated that under review are Titles 9 and 10, Subdivision and Land Development Ordinances, and would like to know what the status is. There was an announcement from the Montgomery County Planning Commission regarding funding from the Pennsylvania Department of Community and Economic Development to revise zoning and subdivision ordinances at seriously reduced costs.

Commissioner Efkwitz asked if this applies and how far in the process are we.

Mr. Dodies stated that it more than applies and that the County is preparing the Title 9 and Title 10 revisions to the Township Code under the terms of our

existing contract. We are paying no additional fees for the work. It will take the county some time to get the work done.

Commissioner Romaniello stated the Township held a regional Storm Water Management discussion on how to manage flooding and water quality. The Pennsylvania Environmental Council in conjunction with the Environmental Finance Center have applied to the William Penn Foundation for funding to help the municipalities in the Pennypack Watershed work towards a regional plan and address storm water flooding as a region.

Commissioner Romaniello stated that this is good news that there is more money coming in.

Commissioner Booth asked if it includes aiming for storm water authority.

Commissioner Romaniello replied that it cannot be answered until municipalities decide to have the conversation.

Commissioner Romaniello stated that although there are discussions and a lot of people are interested in talking about it, the end result won't happen until the Township talks to their neighbors.

Commissioner Booth commented that at the State Commissioner's Convention DEP was in attendance and he asked the representative whether there was a possibility that municipalities could set up a storm water authority for communities in the Pennypack tributary. It was the opinion of the DEP that it cannot be done at this time.

**ADJOURNMENT:** 9:30 P.M.

Respectfully submitted,

Arlene M. Nolan