

UPPER MILFORD TOWNSHIP
BOARD OF SUPERVISORS
TOWNSHIP BUILDING, OLD ZIONSVILLE, PA 18068
JUNE 2, 2016 AT 7:30 P.M.
REGULAR MEETING MINUTES

ATTENDANCE: Supervisors: George DeVault, Daniel Mohr, Robert Sentner; Township Manager, Daniel DeLong; Asst. Township Manager, Timothy Haas; Solicitor, Marc Fisher.

Meeting called to order at 7:52 P.M.

Pledge of Allegiance to the flag.

ANNOUNCEMENTS:

- 1.) This meeting is being recorded principally to aid in the preparation of Minutes and for such other purposes as the Board sees fit. For that reason, will each person wanting to give any comments during this meeting, please state your name for the record and address the Board of Supervisors.
- 2.) There will be a meeting of the Agricultural Security Advisory Board of Upper Milford Township on Tuesday, June 7th, 2016 at 7:30 P.M. at the Township's Municipal Office, 5671 Chestnut St, Old Zionsville, PA. The purpose of the meeting will be to discuss properties proposed for inclusion into the Upper Milford Township Agricultural Security Area.
- 3.) Notice is hereby given by the Board of Supervisors of Upper Milford Township, Lehigh County, Pennsylvania, that it is their intention to consider and act upon proposed Ordinance No. 147 entitled "AN ORDINANCE OF THE BOARD OF SUPERVISORS OF UPPER MILFORD TOWNSHIP, LEHIGH COUNTY, PENNSYLVANIA PROVIDING FOR A QUESTION TO BE PLACED BEFORE THE ELECTORS OF UPPER MILFORD TOWNSHIP BY A REFERENDUM AT THE GENERAL ELECTION OF NOVEMBER 8, 2016, ASKING WHETHER THE ELECTORS OF UPPER MILFORD TOWNSHIP FAVOR THE IMPOSITION, BY UPPER MILFORD TOWNSHIP, OF AN ADDITIONAL EARNED INCOME TAX AT THE RATE OF 0.1385 (%) PERCENT ON AN ANNUAL BASIS BEGINNING JANUARY 1, 2017, TO BE USED FOR THE PURPOSES OF FINANCING THE ACQUISITION, PROTECTION, CONSERVATION OR PRESERVATION OF UNDEVELOPED OPEN SPACES OR AREAS, FORESTS AND FARMLANDS, NATURAL AND SCENIC RESOURCES, AND RECREATIONAL OR HISTORIC LANDS; AND PAYMENT OF THE ATTENDANT COSTS ASSOCIATED WITH SUCH ACTIONS" at a public meeting to be held on June 16, 2016 at 7:30 P.M. in the Upper Milford Township Municipal Building located at 5671 Chestnut Street, Old Zionsville, Lehigh County, Pennsylvania.

PUBLIC INPUT:

UMT property owner, Thomas Dewire (6701 Vera Cruz Road South) spoke for himself and on behalf of 60 +/- other petition signers relating to the Meadowbrook Farms special events venue, located at 6575 Vera Cruz Rd S, Zionsville, PA 18092, and the recent violations to the Zoning Hearing Board decision (2016-01) not approving their use to continue. He provided the Township information indicating that the venue has bookings throughout the remainder of the year, 2016. He is requesting information on what the Township's future actions are regarding this venue.

Solicitor Fisher summarized a proposed agreement that has been created. If the proposed agreement would be agreed upon by the Sarver family and the Board it would hopefully bring finality and resolution to a difficult situation. The agreement includes the following: 1.) *The aforementioned recitals are incorporated herein as fully as though the same were set forth herein at length.* 2.) *The Sarvers are allowed to use the Property for a wedding reception on June 11, 2016 for no more than one hundred (100) guests; a wedding reception on June 18, 2016 for no more than one hundred and thirty (130) guests; and a wedding reception on September 3, 2016 for no more than one hundred (100) guests. The Sarvers agree to continue to use their best efforts to cancel the September 3, 2016 wedding reception with the consent of the persons with whom they contracted for this event, but cannot at this time give any assurance that they will be able to obtain such consent. With respect to each of these events, all parking must be conducted on-site in accordance with the current PennDot Highway Occupancy Permit limited to twenty-five (25) round trips per day. In addition, guests who do not park on-site must arrive and depart the Property via a shuttle bus. A private security firm must be engaged to service the event which will, among other things, enforce the parking requirements and prevent guests from parking on any public road or in any surrounding neighborhood. Finally, a band or DJ is allowed for each event; however, all amplified music must cease no later than 9:30 p.m.* 3.) *Other than the above, no other commercial event can be held until the Sarvers receive a zoning use permit(s) or appropriate zoning relief is granted, and all Building Code requirements are permitted, necessary renovations are implemented and met, and certificates of occupancies allowing the use of the onsite facilities and buildings are issued.* 4.) *In the event that the Sarvers conduct commercial events on any date other than that set forth in Paragraph 2 above or violate any condition set forth in Paragraph 2, the Sarvers agree that in the event that the Township institutes litigation which may include seeking injunctive relief, that they will not oppose any relief sought by the Township and shall reimburse the Township for all legal fees and expenses incurred related to that litigation.* 5.) *Simultaneous to their execution of the Agreement, the Sarvers agree to reimburse the Township in the sum of one thousand (\$1,000.00) dollars to cover the Township's costs incurred to date in enforcing its Ordinances and in preparing this Agreement.* 6.) *The Sarvers hereby release the Township, its Board of Supervisors, employees, attorneys, insurers, and other agents from any and all liability arising out, or related to the conducting of on-site events at their Property and any matter related to the subject matter of the Agreement. The Sarvers further agree to indemnify and hold harmless all of the foregoing entities or persons in the event of*

personal injury or property damage, and agree to be solely responsible for any such damages or injuries, and to defend all of the foregoing entities or persons and be responsible for all of their legal fees and expenses incurred. 7.) By entering into this Agreement, the parties agree that the terms of this Agreement shall not be precedential for any purpose whatsoever, (even if not executed by the parties) and cannot be used as the basis for the Sarvers securing any subsequent relief anywhere, including in any judicial or administrative forum. The parties further agree that they are entering into this Agreement as a result of a compromise of their respective positions recognizing the uncertainty of legal relief, the delay in securing in legal relief, the hardship to those who may already have entered into contracts with the Sarvers, to avoid additional fees and expenses that may be incurred, and to minimize any harm to the neighbors of the Sarvers. 8.) This Agreement may be executed in multiple counterparts and facsimile signatures shall be considered as originals. He asked Attorney, John Hacker to confirm to the Board and to the audience that other than those five (5) potential events no other events will occur unless or until all appropriate permits are achieved.

Attorney John Hacker, who represents Paul Sarver, verified that no additional events will occur until all required permits have been achieved.

Solicitor, Fisher asked Attorney Hacker to confirm that they will not be holding wedding and other events on the following dates: 8/5/16 – 8/7/16, 9/9/16 – 9/11/16, 9/16/16 – 9/18/16, 9/23/16 – 9/25/16, 9/30/16 – 10/2/16, 10/7/16 – 10/9/16, 10/20/16 – 10/28/16, 6/23/17 – 6/25/17, and 9/1/17 – 9/5/17.

Attorney Hacker verified that no additional events will occur except those five (5) events listed within the agreement.

Solicitor Fisher asked Attorney Hacker to confirm that the events listed within the agreement are limited to one (1) day.

Attorney Hacker verified that the events are limited to one (1) day.

Solicitor, Fisher summarized why it's important that the Township might be willing to enter into the agreement. The judicial process is such that the timeline entailed would not provide judicial relief until at least a date after the third event date. There's always some legal uncertainty as well. There is also some difficulty given the reality that the Township has to also be mindful of the difficulties imposed on the people who contracted with the Sarvers all while serving and protecting the quality of life for the surrounding residents.

Supervisor Sentner believed it's impossible for the Sarvers to not exceed the 25 daily trip maximum contained in the PennDot Highway Occupancy Permit. He would like to see a fine set within the proposed agreement.

UMT property owner, Kimberly Dewire (6531 Vera Cruz Road South) asked if the Cease and Desist order is violated can it then be handled as a criminal offense and, if so, could there be retribution if the Sarvers violate the Cease and Desist order. Either way it looks like there is no way to stop the next three (3) events. She expressed her frustration that there can't be immediate action to stop the illegal actions by the Sarvers.

Solicitor, Fisher clarified that a Cease and Desist order is a written decision by a judge stating you can't do something. Only after a violation of a court order can fines and any other punishments be levied. The reality of the situation is the Township can only pursue the following: 1. The Township can serve a civil enforcement notice, which includes a certain amount of time to come into compliance or challenge the decision at a Zoning Hearing Board; 2. The Township can serve an injunction and have a judge order the activities to stop. The proposed agreement has been created to try to bring quicker finality to the situation. It is a way the Township can control the outcome. The solution may not be preferred but at least it brings resolve.

Resident, Linda Maxon (4541 Queens Lane) asked if a fine could be included in the proposed agreement because there is trust factor.

Solicitor, Fisher clarified that there is no fine included in the proposed agreement, but a fine could be included within the agreement if both parties agreed upon it.

Supervisor DeVault asked if a security posting could be established within the agreement.

Solicitor Fisher clarified that a security posting could be included within the agreement if both parties agreed upon it.

Resident, Laura Gouldy (4558 Queens Lane) expressed concerns that the events will always be labeled as friends or family. She is also concerned about the lack of trust and potential intimidation from the Sarvers.

Attorney Hacker summarized his client's position. His client was told by the Township's Zoning Officer that a similar use in the area was approved by the Zoning Hearing Board and it seemed like it would not be a problem to receive approval. Paul Sarver scheduled weddings prior to receiving Zoning approval. They are trying to resolve the issue as quickly as possible. They have cancelled as many events as possible. He was disgusted with the neighbors' actions, claiming they were hounding the people during the weddings.

UMT property owner, Philip Dewire (6531 Vera Cruz Road South) clarified that the actions were between himself and a guest and had nothing to do with the Sarvers.

Supervisor DeVault clarified that the Township did not create this mess and wants to know what the Sarvers have done to remedy the situation since the Zoning Hearing

Board's decision from April 18, 2016. He doesn't appreciate the Board, the Township and its residents being put in this situation.

Resident, Paul Sarver (6575 Vera Cruz Road South) clarified that he took immediate action by taking down websites and other advertisements and called clients to cancel their weddings and other events. He claimed that he was contacted by Ms. Kimberly Dewire and told her that he was no longer doing weddings. He has been upfront and honest with everyone. He never intended to create such a mess.

Kimberly Dewire claimed that Paul Sarver's remarks were untrue and slanderous.

Upper Saucon Township resident, Dr. Richard D. Baylor announced that he is getting married there on Saturday, June 4, 2016. He is an educator of historical buildings. He advocated that the neighborhood should embrace the renovation and preservation of the bank barn located on the Sarver property. His fiancé, urged the neighbors to understand the situations of the brides and grooms that have their events planned at the venue. It can be very difficult to cancel a wedding on such short notice. She is having difficulty finding a place willing to lend their parking lot for their event.

Supervisor Sentner agreed that there does need to be some understanding from the neighbors. He wants to work towards a resolution. His major concern is the traffic and how people are getting to and from the venue safely.

Supervisor DeVault provided some helpful parking information to Dr. Richard D. Baylor.

Supervisor Mohr does not like bending to an agreement. He is concerned of the liability aspect of the agreement. If the Sarvers have violated their Zoning decision what is to keep them from violating the proposed agreement.

Supervisor DeVault asked if a written Zoning Hearing Board decision for the Sarver application has been issued.

UMT Administrative Assistant, Cynthia Kuhns clarified that a written decision was issued and has been distributed on June 1, 2016 to the Sarvers and the adjoining property owners that filed an entry of appearance to the March 14th and April 11th Zoning Hearing Board meetings.

Solicitor Fisher clarified that it is indeed an official decision even though the applicant has a right to appeal.

MOTION:

Supervisor Sentner made the motion to enter into an agreement between the Sarvers and the Township, not liking it. The motion died for lack of a second vote.

Manager DeLong summarized a similar situation that entailed two (2) years of judicial time and a lot of tax payer money for the Township's efforts in attempting to stop the unlawful use.

Supervisor DeVault expressed that he would be much more comfortable if the agreement contained a security of \$6,800.00 and the Sarver's assurance not to take the Township to court over comments made during the May 19, 2016 BOS meeting.

Attorney, Hacker and his client, Paul Sarver stepped out of the meeting to discuss the proposed change to the agreement.

The topic of the proposed agreement was temporarily tabled

ACCEPTANCE OF MINUTES:

May 19, 2016 Workshop and Regular Meeting Minutes

MOTION:

Supervisor Sentner made the motion to accept the May 19, 2016 Workshop and Regular Meeting Minutes. Supervisor Mohr seconded the motion. Any questions or comments, all were in favor, and the motion carried unanimously.

APPROVAL OF PAYMENT OF BILLS:

GENERAL FUND:

PLGIT XXXX7096 - Check No's. **15649** to **15682** in the amount of **\$16,644.97**

PAYROLL FUND:

PLGIT XXXX7015 – Check No. **7335** in the amount of **\$160.28**

ACKNOWLEDGEMENT OF BANK TRANSFER(S):

Transfer No. 2016-033

MOTION:

Supervisor Mohr made the motion to pay the bills as read and acknowledge the bank transfer. Supervisor Sentner seconded the motion. Any questions or comments, all were in favor, and the motion carried unanimously.

OLD BUSINESS: None

NEW BUSINESS:

1.) Resolution No. 2016-024

a. Rescinding Resolution No. 2011-032 and terminating the Upper Milford Township non-uniformed employees defined contribution pension plan

MOTION:

Supervisor Sentner made the motion to adopt Resolution No. 2016-024. Supervisor Mohr seconded the motion. Any questions or comments, all were in favor, and the motion carried unanimously.

- 2.) Board of Supervisor acknowledgement of receipt of request from Mr. & Mrs. Charles D. Peters Jr. to add 5621 Chestnut Street, PIN 548279873543, 21.974 acres to the Upper Milford Township Agricultural Security Area
- 3.) Board of Supervisor acknowledgement of receipt of request from Ms. Barbara E. Peters to add 5633 Chestnut Street, PIN 548380463204, 20.25 acres to the Upper Milford Township Agricultural Security Area
- 4.) Board of Supervisor acknowledgement of receipt of request from the Estate of Richard Fleming to add 7661 Beryl Road, PIN 547270479192, 25.03 acres to the Upper Milford Township Agricultural Security Area

MOTION:

Supervisor Sentner made the motion to acknowledge receipt of the three (3) properties and direct the Township Solicitor and Township staff to advertise and process accordingly. Supervisor Mohr seconded the motion. Any questions or comments, all were in favor, and the motion carried unanimously.

- 5.) Recommendation of full-time employee to fill vacancy from the resignation of Cody Schmeltzle
 - a. Memo from Township Manager, Dan DeLong

MOTION:

Supervisor Sentner made the motion to employ Mr. Dakota DeLong as a full-time employee of Upper Milford Township per Dan's letter, dated June 1, 2016 (starting wage of \$16.50 per hour, subject to a six (6) month probationary period and obtaining a CDL status within six (6) months). Supervisor Mohr seconded the motion. Any questions or comments, all were in favor, and the motion carried unanimously.

SOLICITOR'S REPORT:

- 1.) Ordinance No. 145
 - a. Establishing a maximum speed limit of 35 MPH on Sweetwood Drive between Macungie Mountain Road and Stone Croft Circle

MOTION:

Supervisor Sentner made the motion to adopt Ordinance No. 145. Supervisor Mohr seconded the motion. Any questions or comments, all were in favor, and the motion carried unanimously.

2.) Ordinance No. 146

- a. Approving the entry of an Intergovernmental Wastewater Transportation Agreement

MOTION:

Supervisor Sentner made the motion to adopt Ordinance No. 146. Supervisor Mohr seconded the motion. Any questions or comments, all were in favor, and the motion carried unanimously.

DEP MODULES / SEWAGE PLANNING: None

PLANNING COMMISSION – OLD BUSINESS: None

PLANNING COMMISSION – NEW BUSINESS:

1.) Recommendations for Time Extension Requests

- a. Letter from Planning Coordinator, Brian Miller

MOTION:

Supervisor Sentner made the motion to grant the time extensions per Brian Miller's letter, dated June 2, 2016. Supervisor Mohr seconded the motion. Any questions or comments, all were in favor, and the motion carried unanimously.

SUBDIVISIONS – IMPROVEMENTS:

1.) Indian Mill Creek Major Subdivision Improvements Agreement time extension request from Gregory Harris.

- a. Memo from Assistant Manager, Tim Haas

MOTION:

Supervisor Sentner made the motion to grant the Indian Mill Creek Major Subdivision time extension request per Tim Haas's memo, dated May 24, 2016. Supervisor Mohr seconded the motion. Any questions or comments, all were in favor, and the motion carried unanimously.

CORRESPONDENCE: None

OTHER ISSUES:

- 1.) Fulmer Tract Purchase

MOTION:

Supervisor Sentner made the motion that the Township enter into an Agreement of Sale to purchase 3750 Quarry Drive from Christopher G. Fulmer for the sum of \$100,000.00 and to purchase 3641 Main Road East for the sum of \$288,000.00 from Christopher G. Fulmer. Supervisor Mohr seconded the motion. Any questions or comments, all were in favor, and the motion carried unanimously.

Solicitor Fisher summarized for the public's understanding why discussions regarding the purchase of the subject properties were not done publically. Under the Sunshine Act, law permits the Board to meet in executive session to discuss the purchase of real estate. The second reason was out of respect for the Fulmer Family, who requested the matter to remain private until the Board agreed to purchase the property. The third reason is that the subject properties are highlighted on the Township's Official Map as Future Potential Public Recreation and/or Conservation Area and they didn't want a developer catching wind of the proposed purchase and potentially make an offer of their own.

REPORTS:

Emmaus Library: None

Township Emergency Management Coordinator, Bill Stahler: None

Fire Companies: Citizen's Fire Company Chief, Joseph Sherman announced that Citizen's Fire Company will be partnering with the American Red Cross for a Home Fire Safety Campaign, which entails distributing smoke alarms to portions of the Township (the Village of Vera Cruz and the Rabbit Farm) as well as provide helpful fire safety information with the residents. This event is scheduled for Saturday, June 11, 2016 from 10 A.M to 3 P.M.

Resident, Todd Lagler announced that Western District Fire Company is having their annual chicken BBQ on Saturday, June 25, 2016. Their monthly breakfast will be on Sunday, June 5, 2016.

Recreation Commission: None

Fire Company Steering Committee:

- 1.) Month of May Call Report.

Asst. Manager, Haas summarized that Western District Fire Company had five (5) calls and Citizen's Fire Company had 16 calls in the month of May, 2016.

Supervisors:

George DeVault – Indicated no report.

Daniel Mohr – Indicated no report.

Robert Sentner – Indicated no report.

Township Manager:

Dan DeLong – Indicated no report.

EXECUTIVE SESSION:

The Board held an executive session from 9:40 to 9:44 P.M. to discuss litigation matters.

The topic of the proposed agreement was revisited

Attorney Hacker summarized the major problem of his client not feasibly abiding by the 25 daily trip count trip maximum imposed by their PennDOT Highway Occupancy Permit, which is included in the proposed agreement. They also disagree to the \$6,800.00 security deposit. For these reasons they are unable to move forward with the agreement.

Todd Chide and his fiancé are scheduled to get married at the Sarver property in June, 2016. He understands the neighbors' frustrations, but urged them to show compassion.

Thomas Dewire reminded Mr. Chide that none of the neighbors have stopped any weddings. They walk on their own property.

Supervisor DeVault urged everyone to remain respectful and to patiently allow for the legal process to proceed.

ADJOURNMENT: 9:52 P.M.

George D. DeVault, Chairman

Date

Timothy A. Haas, Asst. Twp. Manager/Secretary