

**Minutes – Board of Commissioners
Upper Pottsgrove Township**

March 20, 2017

The regular meeting of the Upper Pottsgrove Township Board of Commissioners was held on Monday, March 20, 2017, at the Upper Pottsgrove Administrative Office, 1409 Farmington Avenue, with Commissioners John Bealer, France Krazalkovich, Herb Miller, Martin Schreiber and Elwood Taylor present. Also present were Township Solicitor Charles D. Garner, Jr., Police Chief Francis Wheatley, Public Works Director Frank Quinter, and Township Manager Carol R. Lewis. The meeting was called to order at 7:00 P.M.

MOMENT OF SILENCE - Mr. Taylor requested a moment of silence in honor of the men and women who have served and are currently serving our country in the armed forces.

PLEDGE OF ALLEGIANCE - Those assembled pledged allegiance to the flag.

PUBLIC COMMENT:

JAMES CAPINSKI – 1948 Yarnall Road – Read a statement which will be included in the record regarding Highview Lane and the collection of the two escrows for the completion of it.

KEITH KEHL - 1941 Gilbertsville Road – Commented that after the last Commissioners meeting there was a porta-potty installed at the work site.

REPORTS:

EMERGENCY SERVICES LIAISON – M. Schreiber presented the Emergency Services Reports. This month there were only two (2) vehicle accidents which he attributes to the traffic enforcement that has been going on. Noise complaints are down as well. The Fire Company had twelve (12) calls for the month with twenty nine (29) year to date. A new Civil Service Commission Rules and Regulations have been recommended to the Commissioners for approval. It defines the process for promotions. Motion by M. Schreiber seconded by J. Bealer and unanimously carried to approve the amendments to the Civil Service Commission. Motion by M. Schreiber seconded by J. Bealer and unanimously carried to approve advertising for promotions.

PARKS, RECREATION AND OPEN SPACE LIAISON – H. Miller reported that there was no Parks, Recreation and Open Space meeting due to bad weather. He outlined work that has been done on the trails and work that needs to be done. He reported that to date there have been twenty five (25) dead deer off of State Route 100. Motion by H. Miller seconded by J. Bealer and unanimously carried to approve an archery hunt for September of 2017. F. Krazalkovich commented that this item was not on the agenda. **Greg Churach** asked if the “No Hunting” signs would be taken down and that the Township has a big problem with illegal hunting. This program, he feels, will need to be monitored. Two (2) letters of support were requested for improvements to Memorial Park and renovations to Gerald Richards Park. H. Miller wanted “I” changed to “we” in the letters. Motion by H. Miller seconded by M. Schreiber and unanimously carried to approve the letters of support with the corrections as outlined by H. Miller.

PLANNING LIAISON – J. Bealer advised the Board that there was a minor subdivision plan changing property lines from Citadel to 1097 State Street. Solicitor C. Garner outlined the

conditions of the resolution highlighting the fact that the waivers are only for this plot line readjustment but would not apply to any future development on the property. Motion by F. Krazalkovich seconded by H. Miller and unanimously carried to approve the resolution. M. Schreiber questioned waivers K and L regarding trees and curbs. E. Taylor explained that once the development occurs waivers will go away and those items will be installed at that time. Kevin McCartney and Ted Kochen outlined the concept plan of where the cul-de-sac will be going and the road that ties in with the Citadel property. M. Schreiber questioned whether West Pottsgrove was amenable to the plan. Ted Kochen explained that they were at the meeting with PennDOT and were happy with the suggested plans. Motion by F. Krazalkovich seconded by H. Miller and unanimously carried to approve the resolution for preliminary final minor subdivision for 1097 State Street, LLP.

ZONING & ADMINISTRATION – M. Schreiber questioned why some of the permits that were closed out on the report were from 2005. C. Lewis explained that some of them were permit renewals and some of them were permits that were covered under the permit extension act that just finished.

PUBLIC WORKS – F. Quinter explained that our current mower is from 1997 and it is time to replace it. The company is a Costars vendor and is giving us a 20% discount and \$1,000 trade in on our old mower. He had gotten one other quote and it was around the same price. Motion by H. Miller seconded by J. Bealer and unanimously carried to purchase a new mower in the amount of \$9,898 out of the Open Space and Recreation fund. Motion by H. Miller seconded by J. Bealer and unanimously carried to accept the bid of H & K for the 2017 road projects who was the low bidder subject to the review of the bid documents by C. Garner.

SEWER AND WATER – The Board reviewed the letter prepared for the residents. In the letter the Board is not requiring residents to hook up initially until Regal Oaks Phase II. The ordinance requires connection if they are within 150 feet of the main. E. Taylor explained that there are six or so people who are eligible to hook up. Some will be thrilled but some will not. H. Miller questioned whether it would cost more in the future and it probably will. J. Bealer expressed concern that they will be setting a precedence. He thinks that they should be required to hook up or conditional on the sale of the home. **Michelle Reddick, 1416 Kummerer Road,** said that there is no way to force them to connect. The Township has this problem right now on Farmington Avenue. C. Garner explained that under this scenario the Township is not mandating connection and so they will not be billed in sixty (60) days. It is a different enforcement issue. M. Reddick explained that we have an Agreement with the Borough of Pottstown that they notify new owners when they get a sewer certification. **Keith Kehl** asked who was paying to run the sewer lines. The money will be coming out of the sewer fund. He expressed that it is not fair to sewer customers who are currently connected. **Dennis Elliott** asked in regards to last month's minutes it sounds like three (3) Commissioners are opposed. **Michelle Reddick** asked why they were approving a project before the homeowners were notified. The paving will be coming from the sewer fund for the area where the lateral is going in. She asked why that was since all of Maple Leaf Lane was approved as part of the Roads Project. E. Taylor explained that the square footage of the road is not spelled out. J. Bealer explained that every sewer project contains road restoration. C. Lewis explained that the

residents will have the notice well ahead of the time of the project. Motion by J. Bealer seconded by F. Krazalkovich and unanimously carried to award the project to Doli Construction who was the low bidder upon review of the bid documents by C. Garner. Motion by J. Bealer seconded by H. Miller and unanimously carried to approve the lateral work by Bartman for Mimosa in the amount of \$4,877.96. **Letter** – Motion by F. Krazalkovich, seconded by M. Schreiber to send the letter of intent to install public sanitary sewer on Maple Leaf Lane. The motion was discussed prior to a roll call vote on the motion listed below. **Michelle Reddick, 1416 Kummerer Road**, said that Ordinance #450 does not say “may connect” it says “shall connect”. At the last meeting it seemed like three (3) Commissioners were in favor of requiring connection. She questioned why they have the ordinance if they are making concessions. The rest of the rate payers had no choice and are paying for the work. She advised that there are programs available to assist the people with the cost of hooking up and also low interest loans to help them. C. Garner explained that the Board has the authority to defer or waive an ordinance without repealing them. It is a policy decision for the Board. They can also defer connection. J. Bealer felt that they should stay with the ordinance and require hook up. He agreed that it is not pleasant but it needs to be done. H. Miller agreed with him. C. Garner explained that if the Board decides to mandate connection the letter would be sent requiring hook up within sixty (60) days and then bills would go out. **M. Reddick** explained that notifying them to connect doesn’t mean that they will but at least they will be collecting some sewer rentals and can lien the property for connection fees. She feels that there will be protection for the township so a connection is not missed in the future. E. Taylor explained that there are a number of other homes that the township could force to connect in Regal Oaks to be consistent. He did not see it as being equitable to require these and not those. He knew it would be required in the future. **M. Reddick** asked how they planned to fund future projects if they don’t have additional revenue. E. Taylor explained that when Heather Place came in they did not charge them the full amount to hook up. There have been a few developments that had systems in place that when they failed the township had to take them over and provide public sewer. Each of these had different scenarios. He is trying to be as fair to everyone as he can be. **Gloria Parker – 1209 Springhill Lane** – Asked if the financial consideration for Heather Place was made due to elderly people. E. Taylor explained the process. Regal Oaks was similar; the township did not put in lines, not everyone had lines. G. Parker felt that in 2017 it is not fair if everyone does not pay. She understands that if they are elderly and need to be hooked up. E. Taylor explained that they cannot discriminate based on age.

M. Schreiber explained that in Regal Oaks there are 128 homes and 68 are hooked up to public sewer, the rest have on lot septic. F. Krazalkovich stated that the township is choosing to provide sewer because they are rehabbing the road. They are urging the residents to hook up but not forcing them. M. Schreiber expounded that when the township was saddled with a project they took out a low interest loan knowing that eventually everybody would be required to hook up. E. Taylor pointed out that they also have an ordinance that when sewer is put in by a developer they do not require residents to hook up. M. Reddick ascertained that the difference is private vs. public projects. The motion passed with the following votes: H. Miller ~ nay; E. Taylor ~ aye; F. Krazalkovich ~ aye; J. Bealer ~ nay and M. Schreiber ~ aye.

Cleaning Project – Motion by H. Miller, seconded by J. Bealer and unanimously carried to approve the high pressure washing from Pipe Data View to clean 13,500’ of sewer line for \$4,500.

INTERGOVERNMENTAL RELATIONS LIASON – F. Krazalkovich presented the Commissioners with four resolutions and is asking them to be added to the agenda for next month. They are the same that had been passed last year for Sterling Act, Municipal Pension Reform, Allowing Radar for Local Police and Act 111 Amendment regarding Collective Bargaining. He reported that Representative Toepel headed a bill dealing with TV recycling which died last year. She is planning on reintroducing a new bill this session. C. Garner reported that many municipalities were approached regarding mini towers within the right of way and a new decision from the PUC counters that.

TOWNSHIP MANAGER – C. Lewis advised the Commissioners that her Manager’s Report is included in their packet; there was one addition that was not on the report. The regular audit is being conducted this week. M. Schreiber asked the amount that needed to be transferred for the Liquid Fuels Audit. C. Lewis responded that it was \$7,000 for the emergency purchase of salt that was not part of the bid salt contract. C. Lewis reported that all of the drawings have been received and they are in the process of putting together the bid packet. She reported that Douglass Township bid out their Public Works building and it came in at \$1.2 million. Based on these numbers she is anticipating our project to come in close to \$2 million. With the amount set aside from the real tax and the amount we will save in electricity for the solar and the sale of the SREC credits we will be able to afford the project. Motion by H. Miller seconded by J. Bealer to authorize the bidding of the Public Works building. Motion carried with F. Krazalkovich voting nay.

MONTHLY FINANCIAL REPORTS – M. Schreiber asked why the budget figures are not shown on the report. C. Lewis advised that they are still in the process of setting up the new Quick Books software and that they should be in there for April.

OLD BUSINESS

CONSIDER ADOPTION OF ANIMAL ORDINANCE – C. Garner reviewed the changes that were made to the ordinance since the last meeting. F. Krazalkovich pointed out that the Township is not regulating the number or kind of animals that people can have. C. Garner agreed that it was a nuisance ordinance that controlled noise, odor, security of animals, etc. He also explained that it is an enforcement ordinance not a zoning ordinance under which people would be grandfathered. M. Schreiber asked if police canines needed to be added to the exemptions. C. Garner did not believe so. He also asked if someone puts up a “Beware of Dog” sign are they admitting that they have a vicious animal. C. Garner stated that the Chief also agreed with the Animal Ordinance as presented. Motion by H. Miller seconded by J. Bealer and unanimously carried to authorize the advertisement of the ordinance.

CONSIDER FIRE COMPANY ACTIVITIES – Motion by M. Schreiber seconded by F. Krazalkovich and unanimously carried to approve the Fire Company activities for the month.

OTHER PUBLIC COMMENT

KEITH KEHL – 1941 Gilbertsville Road - Asked if the Commissioners votes would be noted in the minutes. He was assured that they would be.

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JAMES CAPINSKI – 1948 Yarnall Road - Asked E. Taylor if he put white out over Highview Lane on the map. E. Taylor replied that he had because it was causing confusion. J. Capinski asked if he knew he was tampering with evidence. J. Capinski asked if he did it on his own without other input. E. Taylor responded that he did not know. J. Capinski advised the Board that Saturday night the ambulance went by their drive and had to ask the neighbors where they were. He also said that Highview Lane does show up on GPS.

DENNIS ELLIOTT – 576 Evans Road – Asked that No Litter signs be placed under the Township signs with a fine of \$800. If we collected this money it would pay for more cameras. C. Lewis will investigate the cost and add it to the agenda for next month.

COMMISSIONER COMMENTS:

MARTIN SCHREIBER wanted to recognize residents Mikie Pryor and Patrick Agnew. Mikie Pryor won the 200 yard individual medley for District I and Patrick Agnew won the 50 free and 100 free and now holds the high school record for both of these events.

HERB MILLER- Asked if the Board had accepted Cindy Saylor’s resignation. He also advised that no applications have been received for the part time road crew yet.

FRANCE KRAZALKOVICH – Expressed disappointment that the Board was asked to authorize a \$2 million project that was not on the agenda. He again requested that all action items be listed on the agenda ahead of time. E. Taylor apologized and agreed that he did not catch it.

ELWOOD TAYLOR – Apologized to the Board and the Solicitor that he had the gall to respond to Mr. Capinski. He is confident in his points and what the courts have decided. He was trying to clarify why the township is doing what they’re doing but it simply led to further conflict with Mr. Capinski.

APPROVAL OF MINUTES – February 21, 2017 – H. Miller asked that the minutes be corrected on page 4 that the engineering not exceed \$15,000. M. Schreiber asked that on page 2 the spelling of cardiac be corrected and on page 7 include the amount of the bills being approved. Motion by F. Krazalkovich seconded by H. Miller and unanimously carried to approve the minutes with the suggested corrections.

DENNIS ELLIOTT – 576 Evans Road – Said that he is disappointed with the integrity of the vote as it pertains to the minutes.

MARTIN SCHREIBER – Asked that under the discussion of the letter in the minutes “telling” be changed to “urging”.

DIANA UPDEGROVE - 1404 Farmington Avenue – Agreed with the residents when they were saying the Board should require them to hook up.

GLORIA PARKER – 1209 Springhill Lane - Asked if all the Commissioners paid sewer bills. E.

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Taylor and H. Miller do not. Nor did they vote for it. E. Taylor was affronted and felt that she was accusing them of corruption. They are making their decisions taking all of the history with the best interest of the residents.

PAYMENT OF BILLS – M. Schreiber questioned the amount of LTL’s bill for putting together the sewer bid. He also asked about the Met-Ed bills listed under 409. C. Lewis will look them up and get them to him later. Motion by F. Krazalkovich seconded by J. Bealer to approve the Bill List in the amount of \$224,286.32. The motion carried with Martin Schreiber voting nay.

EXECUTIVE SESSION – The Board adjourned into Executive Session at 9:38 pm to discuss matters of litigation with no action to be taken afterward. The Board reconvened at 9:57 pm.

ADJOURNMENT – Motion by J. Bealer, seconded by M. Schreiber and unanimously carried to adjourn the meeting at 9:58 pm.

Respectfully Submitted,

Carol R. Lewis, Assistant Secretary

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Attachment I

This statement is made “for the record” and it’s in response to Mr. Taylor’s two page statement which was made part of the minutes of the Board of Commissioner’s meeting on January 17, 2017 regarding Highview Lane and the collection of the two escrows for the completion of Highview Lane.

My wife had a medical emergency Saturday evening (March 10, 2017) which required Goodwill Ambulance rushing her to the Pottstown Hospital. Based on the reported nor’easter for Tuesday March 12, 2017, I contacted the Township and requested the township to plow the snow on Highview Lane because the hospital told us if my wife had future health issues to get her to the hospital immediately. The township’s response to me was “the township does not plow private shared driveways” and the township refused to plow Highview Lane.

In my opinion, Mr. Taylor’s statement was very misleading. Regarding Mr. Taylor’s statement, there are two township approved subdivisions which show Highview Lane as a road and not a private shared driveway. Regarding the first escrow of \$1,000, Mr. Taylor emphasizes in his statement “a bond for only \$1,000” underlining \$1,000, was given in 1963. This was for an 800’ long road. This was a lot of money in 1963 with the average price of gas being approximately \$0.30 a gallon. The first new house on Highview Lane was sold in 1968 for approximately \$15,000. Mr. Taylor states that the \$1,000 was for only part of the improvements and building permits would not be issued until the full amount was paid. Please note, two building permits were issued and two houses were built implying the township collected sufficient funds. Please read the lawsuit the township filed against Aetna in 1966 to collect the escrow. It refers to the “proposed roads and streets”. Not a private shared driveway. Mr. Taylor also states that there is a Court Order stating “this action is discontinued, settled and ended”. This statement is on a document signed by Sherwood Yergey who was the township solicitor at the time, and it was not signed by a Judge. It was dated December 28, 1966 which was less than two months after the lawsuit was filed, obviously this lawsuit was settled out of Court. Mr. Taylor than states “all claims to the \$1,000 bond were relinquished to the township with no strings attached”. If any commissioner believes that a municipality can take possession of an escrow with “no strings attached”, they need to read Sections 509 and 511 of the Pennsylvania Municipalities Planning Code which state escrows secure to the public the completion of the improvements and they can only be used for the collected use, and no other use. I believe any attorney will tell you, once a municipality collects an escrow, there are strings attached. This is when the municipalities’ responsibility begins. You either collect an escrow or you don’t collect an escrow; however, if you do, there are strings attached. In 1981 the township sued to collect the escrow for Gary Heights and completed and ordained the roads. More recently the same was done for Coddington View. Imagine the uproar if the residents of Gary Heights and Coddington View were told that the roads weren’t going to be completed because “there are no strings attached” when collecting an escrow.

Regarding the second developer for Highview Lane who had a revised subdivision plan approved by the township, this plan shows three lots along Highview lane which was reduced to 400’ long. The plans specifically state the commissioners acknowledge “this plan to be the official plan of streets and property shown therein”. It does not state “private shared driveway”. My deed state that my property has frontage along a “proposed road” and not a “private shared driveway”. I asked the Montgomery County Assessment Office why Highview Lane does not have a tax parcel number and no taxes are collected for Highview Lane; and I was told because the approved plan show it as a road and not a private shared driveway. Commissioner Mr. Miller can show his tax bill for his shared private driveway. The second developer was told the plan must conform to the township’s Ordinances. Ordinance No. 32 dated March 4, 1968 state “no subdivision shall be approved if any lot, tract or parcel of land contained therein does not have at least fifty (50’) feet of frontage along a road or street” – not a private shared driveway. The plan for Highview Lane was approved in 1969; however, according to the BOC minutes, the Daniel Freese subdivision of two lots was rejected by the township because the proposed lots did not have frontage on a public street as required by the township Ordinances. Mr. Taylor states that the second developer claimed it was supposed to be a shared driveway. This was

because he wanted his escrow returned. However, based on the approved plan and Ordinance No. 32, Highview Lane cannot be a private shared driveway.

In 1972 the township approved the Comprehensive Plan. This report took 15 months to complete and it was completed during the period of the escrow issues regarding the second developer. This was completed by individuals who knew firsthand the issues with Highview Lane, not forty or fifty years later by somebody trying to figure out the issues. Highview Lane is listed many times in this report as a township road, not a shared private driveway. If Highview Lane was a private shared driveway why does this document specifically state that the township inspected and measured Highview Lane stating its width, stating Highview Lane should be widened, and that a cul-de-sac should be constructed at the end of Highview Lane. Show me one private share driveway in the report that was measured and has comments about future improvements. Are we stating that the individual involved with the 1972 Comprehensive Plan, including the township commissioners, engineer, and solicitor were wrong regarding Highview Lane. If Highview Lane was a private shared driveway, why did the township maintain it for over 30 years with tax payer's money? Why did the township use it as a storage yard for its maintenance vehicles and equipment? Why did the township use it as a private dumping site with piles of macadam still in the wooded areas of Highview Lane? Why did the township maintenance crew use Highview Lane as a private rest room? Somebody actually placed white-out over Highview Lane on the township open space map. Shortly after, Mr. Taylor sent an email to the Montgomery County Planning Commission requesting Highview Lane be removed from the open space map. Mr. Taylor did not request any other road or even private driveways, such as Mr. Miller's driveway, to be removed from the open space map, only Highview Lane. This was before any Court ruling regarding the escrow lawsuit. If somebody would put white paint over one of the township's open space signs, they would be arrested.

I never wanted to sue my township. Regarding the escrow lawsuit, the Judge ruled against me because I didn't prove Highview Lane was a dedicated road. That wasn't our lawsuit. We asked the Court to order the township to use the two collected escrows to finish Highview Lane so it can become a dedicated road, no different than Gary Heights and now Coddington View. We filed a Post Trial Motion for Reconsideration which was granted to us with the Judge ordering a new trial. The township appealed his Order to the Commonwealth Court instead of letting this case be settled in the County Court. Regarding my Right-to Know lawsuit, I was issued two Final Determinations by the Office of Open Records which ordered the township to supply me with all responsive records regarding the use, collection, and current status of the two escrows. I filed a Petition to Enforce after the township refused to give me one document. Please note that the township's attorney filed a Brief in Court stating the records that I collected from the township were inadmissible in Court because I did not get the "directly from the custodian of records". After a hearing in Montgomery County and the township's testimony, the Judge ruled against me stating the township proved that it was not in "constructive possession" of any of the records. I filed an appeal with the Commonwealth Court. If you read Mr. Taylor's statement where he references many of these records, I believe Mr. Taylor proved the Court wrong.

I will be attending a panel discussion at Widener University in Harrisburg tomorrow which will focus on the Right-to-Know law. Erik Arneson who is head of the Office of Open Records will be one of the panelists. Charles Brown who is the chief legal counsel for the Office of Open Records, told me he is looking forward to my participation. They have a copy of the Judge's ruling and they also have a copy of Mr. Taylor's statement proving the documents are in the constructive possession of the township. Everybody is waiting for the Commonwealth Court to rule on my appeal of the Court of Common Pleas' Order regarding my Petition to Enforce the Office of Open Record's two Final Determinations.

Jim Capinski 3/20/17