

**Minutes - Board of Commissioners Meeting
Upper Pottsgrove Township**

January 17, 2017

The meeting of the Board of Commissioners was held on Tuesday, January 17, 2017, at the Upper Pottsgrove Township Administrative Offices, 1409 Farmington Avenue, with Commissioners Elwood Taylor, Herbert Miller, Jr., John Bealer and France Krazalkovich present. Martin Schreiber arrived at 7:57pm. Also present were Solicitor Matthew Hovey, Chief Francis Wheatley 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 – 1958 Yarnall Road – Advised the Board that he recently submitted a Right to Know request for updated legal invoices from the Attorney(s). The Township has spent over \$28,000 in law suits. The Norristown Judge ordered a new hearing and the Township has appealed it. E. Taylor read a statement. He put out the position of the Board and read a two page document that will be included into the record. He declined to say anything regarding current litigation but did say that the costs that Mr. Capinski quotes are correct. Unfortunately, the Township is spending money on a case that has drug out for years. J. Capinski stated that back in those days \$1,000 was a lot of money to fix the problem. The MPC states that escrow can only be used for what it is collected for. He asked if H. Miller had to escrow for his private driveway. H. Miller advised him that it is in their deeds that they maintain a certain portion of their shared driveway. J. Capinski rebutted that his deed states that he has road frontage on a proposed road. He further pointed out that the Montgomery County Planning Commission in 1972 states that Highview is a road and it is mentioned fifteen (15) times as being a public road. It has not been assessed, no taxes have been paid and no liquid fuels have been paid. E. Taylor stated that he is going over questions that have been asked and answered over the past fifty (50) years.

DENNIS ELLIOTT – 576 Evans Road – Informed M. Schreiber that he received copies of the Yellow Dot Book which lists medications, information, etc. people can keep in their glove compartment in case of an emergency. These can be disseminated to the residents.

REPORTS

EMERGENCY SERVICES – F. Krazalkovich questioned how many man hours per year are used as part-time officers. Chief Wheatley advised that it may be approximately one hundred and thirty hours. Motion by F. Krazalkovich seconded by H. Miller and unanimously carried to increase the part time hourly wage from \$20 an hour to \$25.00 an hour.

PARKS, RECREATION AND OPEN SPACE – H. Miller advised the Board that twenty two (22) deer have been hit in the township. He advised that the Open Space Board would like to hold an archery hunt to only be open to Upper Pottsgrove residents. The open space properties will be walked and marked for the areas available for hunting. They plan to ask the Commissioners for approval at the

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March meeting and advertise the hunt to the residents. Applications will be accepted until the June Open Space meeting at which time they will draw applications for the hunters. A mandatory meeting will be held in July for all participants. The Open Space Board is reviewing the baseball contracts for the next meeting. They are requiring a deposit in the amount of \$100 to insure that the fields are cleaned up after each use. They are also going to be billing all three (3) entities for trash pick-up at the beginning of the season. The Board discussed how they would like to develop the open space in the future. Chuck Note will be polling residents via face book for their input. They unanimously feel that a dog park is needed and are discussing which park would be ideal for this. They are looking for something close to a development to allow people to walk to the park. The Manager, Frank Quinter and H. Miller met with the new Circuit Rider, Michael Lane to discuss the Tri County Trail Study. He is hopeful that the trail connections will be ready to be installed in the spring. H. Miller then reviewed the activities of the Althouse Arboretum and the Green Allies. He presented the 2016 usage stats. H. Miller then read excerpts from an article which outlined benefits of having an arboretum in your township that was provided by the National Wildlife Federation. At this time Dennis Elliot shared an article regarding the fact that Pennsylvania leads the United States in cases of Lyme disease. He urged people to protect themselves and asked that the article be shared in the Newsletter.

PLANNING REPORT – On January 23, 2017, the Zoning Hearing Board will meet to review an application for a Special Exception for 2015 North Charlotte Street for a monument design and display center. The Planning Commission has made a recommendation in support of the application. Russ Gofus presented his application and advised that the property is R-1 at this point. He is asking for a Special Exception for a Commercial Use on the property for a design center for grave markers. This business will be very low impact in regard to traffic. As to deliveries there may be three (3) flatbeds a week in the early morning or late afternoon. They will conduct normal business hours with little traffic. They are not changing the building or the services. They plan to beautify the property which has great visibility. They will be resurfacing the existing sign. Motion by F. Krazalkovich seconded by H. Miller and unanimously carried to pass on to the Zoning Hearing Board that the Board of Commissioners favorably approves this application. When asked if he should bring an attorney to the hearing M. Hovey suggested that he should. **Cul-de-sac** – E. Taylor advised the Board that they have a request from Citadel to transfer land to Gambone in regards to a minor subdivision. Motion by H. Miller seconded by J. Bealer and unanimously carried to authorize the Solicitor to present a formal letter to have the cul-de-sac installed according to PennDOT specs. M. Schreiber arrived at 7:57 pm.

The Board went back to the **Emergency Services Report**. - M. Schreiber reported that it was the consensus of the Fire Committee to move the truck money to a dedicated line or account for a truck. F. Krazalkovich stated that none of us can bind future Boards unless they legally restrict the money such as they did for the Public Works building. E. Taylor stated that he would be concerned about tying up funds that may not be needed in five (5) years. M. Schreiber asked if there is the ability to tax for a piece of equipment. M. Hovey will research the matter. M. Schreiber then reported that the Fire Company is purchasing an AED for \$690. He suggested that the Township look into providing these for a public works trucks and all police cars. It would also be a good idea for all

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lobbies to have one. They then discussed how long it takes for an ambulance to arrive on site. Next M. Schreiber requested that a sign be installed at the corner of State and Farmington not allowing right turns for tractor trailers. Motion by M. Schreiber seconded by J. Bealer and unanimously carried to authorize the installation of said sign. In response to a question by H. Miller, Chief Wheatley responded that all cars carry Narcan in their first aid kits in their trunks.

PUBLIC WORKS REPORT – Motion by M. Schreiber seconded by J. Bealer and unanimously carried to authorize the 811 Proclamation. Motion by M. Schreiber seconded by H. Miller and unanimously carried to upgrade the Road Crew’s phones to Smart Phones and also checking into the Police piggybacking on this as well. Motion by M. Schreiber seconded by H. Miller and unanimously carried to authorize the preparation and advertising of the 2017 Road Projects as outlined by Frank Quinter.

SEWER AND WATER REPORT – J. Bealer advised the Board that some properties on Mapleleaf have requested to connect to public sewer. He suggested that the sewer be installed before the overlay is done. The various options were reviewed and discussed by the Board. Motion by F. Krazalkovich seconded by H. Miller and unanimously carried to authorize the preparation and the advertising of the bid for the new installation and replacing and repairing the six (6) inch clay section. E. Taylor stated that ultimately the rest of the development will be connected when Regal Oaks Phase II is completed. The Township will need to communicate with the property owners that the project is coming up. M. Schreiber brought up a concern that sewer materials are being stored at Willow and Diamond Street. C. Lewis will talk to Pottstown Borough about this.

INTERGOVERNMENTAL RELATIONS REPORT – F. Krazalkovich reported that the Council of Governments meeting was cancelled. He will attend the Montgomery County Association of Township Commissioners meeting on January 26th. The Eastern Region meeting will be held on January 30th. From February 5th to the 7th he plans to attend the Pennsylvania State Association of Township Commissioners Committee meeting. The Township acted on some of the Committee’s priorities in 2016 and they may need to act on them again. He read the priorities. M. Schreiber pointed out that they had asked Representative Toepel to look into the recycling of TV’s as they are being dumped and nothing is being done.

TOWNSHIP MANAGER REPORT – Motion by F. Krazalkovich seconded by J. Bealer and unanimously carried to authorize the purchase of the QuickBooks Payroll module at \$273 for the first year and \$390 the following years with a \$2 per employee per month fee. M. Schreiber asked if there was any update on the lighting at Turnberry. C. Lewis advised him there is not.

PUBLIC WORKS, AD HOC COMMITTEE – Motion by F. Krazalkovich seconded by J. Bealer and unanimously carried to authorize the preparation of the bid documents for the Public Works building.

FINANCIAL REPORT - M. Schreiber asked if the sewer transfer had ever been done last year. C. Lewis will look into it.

NEW BUSINESS

CONSIDER REAPPOINTMENTS FOR 2017 – M. Schreiber advised the Board that he is now the President of the Fire Company. The Fire Committee reviewed the make-up of the Committee. They agreed that the goal is to separate the Fire Company from the Township. F. Krazalkovich agreed but the goal has been pushed back due to past problems. Motion by F. Krazalkovich seconded by J. Bealer and unanimously carried to appoint the slate of reappointments for 2017 as presented. Motion by F. Krazalkovich seconded by H. Miller and unanimously carried to approve the Resolution reappointing John DahDah to the Zoning Hearing Board. The Board then discussed the Property Maintenance Code Board of Appeals. It is hard to find people to sit on this Board as there are additional requirements for the members. Next M. Schreiber questioned the appointment of LTL and when it is appropriate to consider engineers. This falls under professional services and can be done at any time.

CONSIDER RATIFICATION OF ESCROW RELEASE #2 FOR CODDINGTON VIEW PHASE 3 IN THE AMOUNT OF \$179,676.78 – Motion by F. Krazalkovich seconded by J. Bealer and unanimously carried to ratify the escrow release #2 for Coddington View Phase 3 in the amount of \$179,676.78.

Solicitor Chuck Garner arrived at 8:50 p.m.

CONSIDER ESCROW RELEASE #3 FOR CODDINGTON VIEW PHASE 3 IN THE AMOUNT OF \$2,493.90 – Motion by F. Krazalkovich seconded by H. Miller and unanimously carried to authorize escrow release #3 for Coddington View Phase 3 in the amount of \$2,493.90.

DISCUSS DRAFT ANIMAL ORDINANCE – M. Hovey presented a draft ordinance as a starting point for discussion. There is a recurring issue with animals in the Township. The one presented tonight is a police powered nuisance ordinance requiring owners to secure animals and control noxious odors, etc. It could include a section on exotic animals. M. Schreiber asked if under Noise thirty (30) minutes should be changed to fifteen (15) minutes to be consistent with our other ordinances. F. Krazalkovich asked if it would be repetitive to the Noise Ordinance. M. Hovey clarified that there would be some overlap. The Board discussed combining the Dog Ordinance and the Animal Ordinance. H. Miller felt that this issue comes up frequently and the Township needs to make sure that our Officers have the tools they need to control these issues. The Board then discussed chickens as pets or chickens as farm animals. They also discussed lamas, pigs, etc. M. Schreiber stated that he was not in favor of limiting the number of animals on a person's property but if they smell they should they should be regulated. E. Taylor suggested that they give a definition of larger animals as pets. M. Schreiber suggested that fish should be included in this ordinance as some people have koi ponds which can smell.

DIANA UPDEGROVE - 1404 Farmington Avenue – Asked if there is a warning before people are cited. She stated that farm animals such as horses, pigs, etc. have smells and flies and can be a real problem. E. Taylor agreed that large animals also need to be addressed.

OLD BUSINESS

DISCUSS NOISE ORDINANCE – E. Taylor expressed that from a legal point of view the Board is in agreement that the Noise Ordinance meets the Township’s needs. M. Hovey pointed out that the biggest change is to include a notice that the activity may cause a disturbance. H. Miller stated he was glad that they kept the fifty (50) feet. M. Schreiber asked if it was cheaper to advertise both ordinances at one time. There would be no savings. J. Bealer stated that the idea of the ordinance is not to fine people but to control obnoxious behavior. Motion by H. Miller seconded by J. Bealer and unanimously carried to authorize the advertisement of the Noise Ordinance for adoption at the February meeting to include the severability clause.

CONSIDER FIRE COMPANY ACTIVITIES – Motion by M. Schreiber seconded by J. Bealer and unanimously carried to approve the Fire Company activities.

PUBLIC COMMENT

J. CAPINSKI - 1958 Yarnall Road – Stated that he was confused. He filed a Right to Know Request and the Township did not provide his requested records. He appealed and the Township did not appeal the decision. There is a petition to enforce and it is in Harrisburg right now.

APPROVAL OF MINUTES – Motion by F. Krazalkovich seconded by J. Bealer and unanimously carried to approve the minutes of the December 19, 2016, meeting as presented.

PAYMENT OF BILLS – Motion by E. Taylor, seconded by M. Schreiber and unanimously carried to approve the Bill List in the amount of \$317,991.19.

EXECUTIVE SESSION – At 9:40 the Board adjourned to Executive Session to discuss personnel. They reconvened at 10:14 pm. F. Krazalkovich asked that the minutes be amended to include that personnel was discussed at the Executive Session.

ADJOURNMENT – Motion by F. Krazalkovich seconded by M. Schreiber and unanimously carried to adjourn the meeting at 10:15pm.

Respectfully submitted,

Carol R. Lewis, Manager

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Attachment I

Mr. Capinski, in his most recent letter dated 1/31/2014, clearly acknowledges that High View Lane is not a dedicated public road and is therefore not eligible for any public maintenance. This has been the position of the Township all along and was also the decision of the recent court case he pursued against the Township. However, he states that the judge did not properly consider his lawyer's argument that the Township should be compelled to build and take ownership of this road on the basis of two escrow deposits that were made for that purpose. My review of the available records reveals the following. The first escrow in the amount of \$1000 was given by the first developer, Arthur Goodhart, when his project for 12 lots was approved for development, over 50 years ago, in February of 1963. The minutes of the BOC meeting state that *"a bond for ONLY \$1000 was given and an additional bond for the price of the remainder of the street and storm sewer must be given before permits will be given."* The record for this first development is sparse, but Goodhart asked that the original plan be changed and a new one was reviewed by the Township engineer. Over two and a half years later, in October of 1965, *"Goodhart's street problem was discussed."* He was ordered to comply with Township regulations *"or the Township will do the work and bill him."* The *"additional bond for the price of the street..."* had apparently never been received and so the Township would need to bill him for any work that needed to be done. Clearly, the initial bond for one thousand dollars would be insufficient to complete this project. In any case, by August of 1966, the minutes reflect that neither Goodhart nor the Township had constructed this road and *"it is the conception of the Board that it probably won't be."* Pressure, via a lawsuit, was then put on the bonding agency that eventually turned over the initial thousand dollar bond to the Township in December of 1966. The court order noted that *"this action is discontinued, settled and ended."* Clearly Mr. Goodhart was unable to justify the expense of building the infrastructure to support his proposed development, and the Township was certainly not willing to expend other taxpayer's money to do it for him. With the court order, all claims to the \$1000 bond were relinquished to the Township with no strings attached.

Less than a year later the minutes of 9/5/1967 reflect that a prospective buyer of Goodhart's lot was told *"that storm sewer, street and curbing must be constructed (or a bond for the full amount) before approval can be given. The \$1000 forfeited by the Bonding Co. for Goodhart's could be used or does not have to be used toward this street."* At this point, it appears that the Township may have considered contributing the \$1000 bond proceeds in order to help a new developer complete the required infrastructure, but explicitly made the point that they were not required to do so. Throughout the course of these earlier events, it is plain that the Township's primary concern was the affect that the access to this property was having on Yarnall Rd and that storm water management was needed to correct runoff. For this, they appeared willing to help defray the developer's costs with the aforementioned \$1000 bond.

Almost another year goes by when in June of 1968, the BOC sends a letter to Mr. Mauer stating that a new plan for the "Goodhart Development" must be submitted and reviewed and that no building permits would be issued until the infrastructure was *"completed or the equivalent money put into an escrow account."* Later that year, in November of 1968, Mauer's attorney writes the BOC and agrees *"to deposit the sum of \$1500 in escrow to be applied to the cost of street construction when and if the same is done,.....and that it will not be used except for future street construction."* The minutes of the November 1968 BOC meeting adds that *"Mr. Mauer would like to sell the remaining subdivision off in one parcel and maintain the road in front of the two existing homes as a private drive."* The next month Mauer presented a revised development plan which was approved in January of 1969. This final development plan, according to Mauer's attorney in his letter of 3/11/1969, *"was recorded in the Recorder of Deeds Office....There is a private driveway on said Plan.....There is nothing in the Plan to indicate the installation of a street, storm sewers, sidewalks, or curbs."* Mauer's attorney goes on to state, *"It was quite apparent...that the revised plan was submitted so that Mr. Mauer could avoid the*

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expenditures required by the installation of the various facilities.” He continues, “The township assumes no responsibility or obligation in regard to street, storm sewer, curbing or other facilities....Certainly there is no moral or legal obligation upon the township to undertake the responsibility of any said items.” He concludes by stating, “I wish to state that the township has no obligation to make any improvements. The owners of the three lots in the tract do not expect any improvements, and a revised plan was submitted and drawn in a fashion that it was, so that no improvements would be required. Retention of the escrow fund by the township under these circumstances would be a gross injustice.”

The Township attorney replies on 3/18/1969 saying, “The Township, of course, at your request made certain concessions that are not ordinarily made so that your client could dispose of his property now with a minimum amount of expense. However, no one agreed that the road should not be improved eventually, and the deposit was required to secure this.There is a definite drainage problem on this road, affecting another township road which should be corrected.”

At this point, Paul Mauer sues the Township for the return of the \$1500 escrow rather than fixing the drainage problems his driveway creates onto Yarnall Rd. Litigation is not settled for 4 years until March of 1973 when the Township and Mauer agree to a settlement in which Mauer receives \$1000 and the Township retains \$500 of the escrow bond. The Township notes they have agreed to this settlement even though the cost of just the piping across the driveway onto Yarnall Rd would be close to \$2000.

IN SUMMARY-

1963 – Goodhart submits \$1000 bond for approved 12 lot subdivision BUT building permits for construction would not be issued until an additional bond of unspecified amount was submitted for “street and storm sewer.”

1965 – Goodhart has yet to construct/complete street improvements and the TWP threatens to “do the work and bill him.” There is no evidence that bond or escrow money was in place to do the construction, since the TWP would need to bill him to do so.

1966 – TWP is frustrated that they cannot get Goodhart to complete road work and note that “it probably won’t be.”

1966 – Goodhart’s initial bond for \$1000 is turned over to the TWP and the issue is “settled” by way of a lawsuit.

There is no evidence that sufficient money was escrowed to do the required infrastructure improvements and the \$1000 bond appears to have been used as settlement for the expenses incurred by the TWP over the years, in their attempt to make Goodhart comply with the law.

1967 – A new developer, Mauer, who is interested in the Goodhart subdivision, is offered Goodhart’s forfeited \$1000 to help defray the cost of the required infrastructure improvements.

1968 – Mauer gives \$1500 bond to use **IF** street construction is done.

1969 – Mauer submits new development plan that eliminates the need for the construction of any public infrastructure in lieu of a private driveway and states that **there is now no moral or legal obligation for the Township to make any improvements**. Township continues to hold \$1500 escrow until Mauer fixes the drainage from his driveway onto Yarnall Road. Mauer sues for return of the escrow.

1973 – Lawsuit is settled with Mauer receiving \$1000 and the Township retaining \$500.

This issue was settled over 40 years ago.