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UPPER MOUNT BETHEL TOWNSHIP
BOARD OF SUPERVISORS MEETING MINUTES
MONDAY, OCTOBER 9, 2023 – 7:00 PM

*This meeting was held in person and live streamed through the Upper Mount Bethel Township Facebook page.

I.

Vice Chairman Teel called the meeting to order at 7:00 pm.

The Pledge of Allegiance was recited.

In attendance were Vice Chairman Teel, Supervisor Due, Supervisor Friedman, Supervisor Bermingham, Interim Manager Graziano, Township Solicitor Karasek, and Township Engineer Coyle. Chairman Pinter was present via ZOOM.

II.

APPROVE THE AGENDA

MOTION by Supervisor Friedman to approve the agenda, seconded by Supervisor Due.
Vote: 5-0.

III.

PUBLIC COMMENT

Fred Clark, Crystal Terrace, read his public comment, which will be made part of the official record. Fred commented on the Town's escrow process.

Mark Mezger, Scenic Ct., commented on Home Rule Government, what is it, what will it do, and how to get it started. Home Rule Government is an opportunity to shift Government from State to Municipal Code. This could be done by the Board of Supervisors by Ordinance or by residents petitioned. This also gets in by Referendum.

Charles Cole, Riverton Rd., commented on the RPL Conditional Use Hearing, is there an updated stormwater management plan, if approved, would this be a LEED certified green building. Charles commented on the Municipal Authority, the Board is putting the cart before the horse.

Sharon Duffield, Potomac St., commented on the appearance of the building.

Eleanor Shelton, Heiden Rd., commented that at the last PC meeting, the Developer stated that the water and sewer plan may change. Planning a Sewer Authority seems to be premature.

Judith Henckel, Robin Hood Rd., commented on the buildings being environmentally friendly.

IV. ANNOUNCEMENTS

Supervisor Bermingham stated the Community Wide Yard Sale was a good success and the hope is to have two scheduled for the year 2024. Thank you to Susan Wild for attending his office hours to listen to the residents. Working with BASD and Dr. Haas on scholarships for Juniors/Seniors. Liberty-Water Gap trail clean-up is scheduled for 10/21. Supervisor Bermingham asked to change the date for Trick or Treat to Sunday, October 29th, 2-4 pm. The Board elected to keep the date of October 28th. Thank you to Evergreen Village for putting a Neighborhood Watch Program.

There was a discussion on having Susan Wild come to a meeting to discuss the delay in the opening of Rt. 611.

Supervisor Friedman discussed the potential forensic audit. The estimate to perform the audit is between \$10,000 and \$20,000, but we do have the ability to put a cap on the service.

Manager Graziano thanked the Board for giving him the opportunity as the Interim Manager, which he couldn't do without the help from Cindy, Diann, Lindsey, and the crew.

Secretary Cindy Beck announced the Paper Shred event is Saturday, October 14th, 9-11am at the Township Building and the Electronics Recycling Event is Saturday, October 21st, 8am-12pm, located at the Eastern Industries property.

V. CONSENT AGENDA

1. Approval of the September 11, 2023, Meeting Minutes
2. Approval of the September 11, 2023, Public Hearing Minutes
3. Approval of the September 25, 2023, Meeting Minutes
4. Approval of the RPL Conditional Use Hearing Minutes

Supervisor Friedman asked what the Condition of the Conditional Use Hearing was. Solicitor Karasek stated that he believes it is still open, but rather than creating a

potential issue, he is working with it being closed on September 25th, which he has until November 9th to write his opinion letter. If the Board makes the decision this evening, conditions will be applied to the motion.

MOTION by Supervisor Due to approve the Consent Agenda, seconded by Supervisor Friedman. Vote: 5-0.

VI. FINANCIALS

1. Bill List-Manager Graziano read the bill list, totaling \$421,822.77. **MOTION** by Chairman Pinter to pay the bills in the amount of \$421,822.77, seconded by Supervisor Due. Supervisor Friedman asked for clarification on the Cozza Law Firm Bills. Solicitor Karasek stated a meeting was held with respect to the NID Agreement. Vote: 5-0.

VII. TABLED ITEMS

1. RPL Conditional Use Hearing Decision-Solicitor Karasek stated the conditions the applicant has agreed to are found in the Township Zoning Ordinance Section 4.302, as follows, the use will not:

- 1) Constitute a nuisance or damage to health or any property by reason of dissemination of noxious, toxic, or corrosive fumes, smoke, odor, or dust beyond the property line.
- 2) Result in noise or vibration clearly exceeding the requirements of the Township Noise Ordinance.
- 3) Endanger surrounding areas by reason of radiation, fire, or explosion.
- 4) Produce objectionable heat, glare, or outdoor lighting beyond the property line and compliance with Section 6.909.
- 5) Result in electrical or electro-magnetic disturbance in nearby residences which adversely affect the operation of equipment other than on the property on which the disturbance is located.
- 6) Discharge any untreated sewage or industrial waste into any stream or river or otherwise contribute to the pollution of surface or underground waters.
- 7) Endanger the underground water level or supply for other properties consistent with applicable State
- 8) Create an objectionable traffic condition on the highway or in an adjacent area or generate a nuisance to surrounding property by reason of truck traffic or failure to comply with the Traffic Impact Requirements set forth in Section 4.303 of the Zoning Ordinance.
- 9) Create any other objectionable condition in an adjoining area which will endanger public health, welfare, and safety or be detrimental to the environmental quality of the surrounding area. All uses shall comply with the requirements set forth in Section 4.304- Environmental Sensitive Areas. Solicitor Karasek read an email from Attorney Kaplan stating additional suggested conditions. The applicant stated that they have reviewed Engineer Coyle's suggested conditions of approval, with some exceptions, they agree to the Board to impose the following suggested conditions 1) they agree that at the time of Final LD approval, the developer will have delivered to the

Board a letter of intent, describing the specific use and any industrial processes, or health hazards as a result of the proposed use and that the safeguards that will be used to minimize the hazards 2) they will submit a letter from John Wisner, RPL Traffic Engineer, which states, the traffic that is expected to be generated by the proposed use will be no greater than the traffic that was estimated to be generated by the McMann studies that were submitted to the Township or that the traffic expected to be generated will be greater than has been estimated, in which case, the traffic impact study will be updated as required by the 2020-02 Zoning Amendment 3) they are agreeable to the no idling 4) they will provide the Township with a Fire Protection Plan and water flow analysis that will demonstrate appropriate fire protection measures and water supply 5) they have no objection to the Township implementing the noise ordinance 6) Engineer Coyle's bullet point, some uses may incur risks that create hazardous conditions that may affect the health, safety and welfare of the community, the applicant responded saying that bullet point does not suggest a condition, but merely states that some uses may pose a hazard, therefore there is no condition as to that item 7) they accepted compliance with the conditions set forth in Section 4.302, Performance Standards 8) they agree that the required information will be provided in a narrative on how spilled chemicals will be contained on the site and be preventive from polluting surface water/groundwater be delivered before LD approval 9) the applicant stated that their conditional use plan depicts emergency access 10) the applicant stated on the activities/operations, type of materials stored, methods of disposal of such materials, general scale of operation, any environmental impacts, prior to issuance of CO, this list will be required, therefore they accept this condition. Solicitor Karasek stated the applicant agrees to most of the Township's conditions. Chairman Pinter stated the conditions that were talked about at the last meeting 1) this building would not be used for an Amazon or Alibaba type business 2) to be held to the International Night Sky rules. Attorney Kaplan is in agreement. Engineer Coyle discussed the acceptable uses. The use has not been identified. More information is needed. There was a discussion on the water tower. The size of the building directly impacts the volume of water, fire flows, sprinklers, etc. Attorney Kaplan stated the law on conditional use regarding water tower, height, fire flows, are to be decided during LD or building permit. Attorney Kaplan stated they agree to all of Engineer Coyle's conditions, only changing to before final approval. Supervisor Bermingham discussed the escrow accounts, can a condition be made that the escrow balances cannot fall below a certain percentage. Solicitor Karasek stated that if it is already in our fee schedule, he is not sure, he would have to review the fee schedule to see what it says. MOTION by Supervisor Bermingham to have Engineer Coyle draft a list of bullet points of what he needs to make an informative decision, seconded by Supervisor Friedman. Chairman Pinter stated that Attorney Kaplan's email was in response to the conditions that Engineer Coyle put forth, which Attorney Kaplan has just agreed to. Supervisor Due stated that they have just agreed to Engineer Coyle's conditions. Engineer Coyle stated they have not agreed to all his recommendations, they modified some. The specific use shall be specified at the time of the LD application, not the final stage, as per the SALDO, as well as having adequate water capacity/storage/demand. Rendering have not been submitted, which we have been asking for. Engineer Coyle stated there has not been enough information provided

to make a decision this evening. Supervisor Teel called for vote on Supervisor Birmingham's motion. 2-3. Motion fails. Solicitor Karasek noted the conditions noted are Section 4.302-Performance Standards of the Township Zoning Ordinance, the email that Attorney Kaplan responded to the conditions that were proposed by Engineer Coyle, and the two conditions that Chairman Pinter proposed in respect to not being an Amazon/Alibaba type warehouse and that they follow the International Night Sky regulations, and the escrow accounts are fully funded. Supervisor Birmingham would like it noted no high cube buildings. MOTION by Supervisor Teel to grant the Conditional Use with all conditions regarding Section 4.302 of the Township Zoning Ordinance, the applicants' agreement to Engineer Coyle's conditions, with some modifications, Chairman Pinter's conditions in respect to not being an Amazon/Alibaba, high cube style warehousing, dark sky rules, and that the escrow funds are fully funded as per the Township's fee schedule, seconded by Supervisor Due. Discussion: Steve Walsh discussed the differences in "sort high cube parcel hub" (156 land use ITE manual) warehouse and "high cube cold storage" (157 land use ITE manual) warehouse. Supervisor Teel amended his **MOTION** to include no sort high cube parcel hub warehouse, seconded by Supervisor Due. Further discussion. Supervisor Friedman how can the Board approve this without knowing the use. Vote: 3-2.

2. Joinder Deed-Wilson/Gately –Solicitor Karasek discussed the Joinder Deed that has been requested to consolidate three lots, totals acreage of 98.430. Solicitor Karasek stated that we were waiting for review letters from the SEO and the Zoning Officer, those review letters have been received. There was one concern regarding one parcel being located in the A-1 Zone. Sarah Gately-Wilson stated that the entire 98 acres will be put into Farmland Preservation. **MOTION** by Supervisor Birmingham to approve the Joinder Deed based on the condition that all it goes into Farmland Preservation, seconded by Supervisor Teel. Vote: 5-0

3. Mt. Bethel Fire Department LD Waiver-Supervisor Birmingham discussed the request made by the MBFD to waive the LD process for the emergency shelter. Engineer Coyle recommended a grading plan be submitted. **MOTION** by Supervisor Birmingham to waive the LD process for the MBFD Emergency Shelter, seconded by Supervisor Due. Dale Handelong stated that the is a simple project, about 2,000 sq ft and would like to get it completed. Chairman Pinter commented on this possibly setting a precedent. Solicitor Karasek stated that he does not feel as though they are setting a precedent, due to the nature of the request. Solicitor Karasek stated that under MPC and the Township SALDO, any waivers requested need to be in writing. Solicitor Karasek will prepare a written waiver form to be signed by the Fire Company. Supervisor Due stated that he wants to make sure that NB gets the same kind of waiver if they request one as well. Supervisor Teel called for a vote. Vote: 5-0.

VIII. SUBDIVISIONS

1. Valley Industrial Properties Lot Line Adjustment-Solicitor Karasek stated this plan was reviewed and recommended by the Planning Commission for conditional plan approval. Engineer Coyle agrees with the recommendation of

approval. **MOTION** by Supervisor Friedman to approve the Valley Industrial Properties Lot Line Adjustment, seconded by Supervisor Due. Vote: 5-0.

9:00 pm-Supervisor Teel called for a 10-minute recess.

9:10 pm-The meeting reconvened.

IX.

NEW BUSINESS

1. Municipal Authority Members Appointment-Supervisor Teel stated we received five (5) letters of interest. The applicants are all residents of Upper Mount Bethel Township, they are not employed by RPL. Solicitor Karasek stated that the Township has adopted a Resolution to start an Authority for water and sewer purposes. That Resolution now requires that the Township file with the state Articles of Incorporation with respect to that Authority and those Articles of Incorporation needs to state who the members are. The members will be in staggered terms as follows:
Marty Pinter-5-year term-**MOTION** by Supervisor Teel for Marty Pinter to serve a five-year term, seconded by Supervisor Due. Discussion: Supervisor Friedman stated that we should not be voting on an Authority at this time. Supervisor Birmingham is against a Supervisor serving on such a committee. Solicitor Karasek stated that a Supervisor can be a member of an Authority. Vote: 3-2.
Scott Cole-4-year term-**MOTION** by Supervisor Teel for Scott Cole to serve a four-year term, seconded by Supervisor Due. Vote: 4-1.
Bill Hall-3-year term-**MOTION** by Supervisor Teel for Bill Hall to serve a three-year term, seconded by Supervisor Due. Vote: 4-1.
James Potter-2-year term-**MOTION** by Supervisor Teel for James Potter to serve a two-year term, seconded by Supervisor Due. Vote: 4-1.
Ray Higgins-1-year term-**MOTION** by Supervisor Teel for Ray Higgins to serve a one-year term, seconded by Supervisor Due. Vote: 4-1.
2. 2024 Budget-Supervisor Birmingham stated that he would like to suggest Rick Fisher to assist Manager Graziano with the 2024 budget. Chairman Pinter stated that he does feel as though we should bring in some help, but it should be someone local so they could attend our budget meetings. Supervisor Friedman stated he attended a budget seminar and met a few people that are familiar with municipal budgets and said they would be willing to assist.
3. Garbage Fee Billing-Manager Graziano discussed the proposed garbage billing for 2024. It was determined that going with Berkheimer vs going with the Tax Collector, is the best option. With Berkheimer, the cost per resident will remain at \$7.25 per bill. **MOTION** by Supervisor Birmingham to have Berkheimer collect the garbage fee for 2024, seconded by Supervisor Teel. Vote: 5-0.
4. LSA Grant Resolution-Manager Graziano discussed the LSA Statewide grant opportunity. Manager Graziano stated there is a need for a Bucket truck for the Public Works department. **MOTION** by Supervisor Birmingham to approve the LSA Grant Resolution No. 2023-09, seconded by Supervisor Friedman. Vote: 5-0.
5. Road Crew Equipment-Manager Graziano stated he would like to put two pieces of equipment up on Municibid to sell, the track loader and the excavator. There was a discussion on who worked on the track loader and the cost of

repairing it. Lindsey Manzi, Road Crew Chief, stated the machine does run but there is a problem with the steering. Lindsey stated that a wheel loader is one machine that is needed. Costs continue to rise. They are looking into getting a rental for the winter but does recommend purchasing one. Chairman Pinter stated it is not cost benefited to be buying a new machine, they need to be leased or rented. Manager Graziano stated he will gather more information and numbers for the next meeting. **MOTION** by Supervisor Friedman to table, seconded by Supervisor Teel. Vote: 5-0. Manager Graziano discussed the purchase of a 2023 Chevrolet 6500 Silverado. The chassis is available but the upfit is not available until next year. The cost is \$139,485.00, chassis and upfit. **MOTION** by Supervisor Friedman to purchase the truck, seconded by Chairman Pinter. Vote: 5-0. Manager Graziano discussed the order for six (6) new Mac Trucks. Two tandems are supposed to be delivered next week, two (1-triaxle and 1- tandem) in November and two tandems in February 2024. Manager Graziano stated that typically you stagger the purchase of trucks. There is a definite need for four (4) trucks. We are obligated to purchase all six but the two in February, there is no contract for the upfit. Supervisor Teel asked for this to be on the agenda for the next meeting for further discussion.

6. Advertise for Professional Services and Committee Open Seats-Supervisor Friedman stated he would like the Boards permission to create a position for a part-time office clerk. Supervisor Friedman will create a job description and bring back to the Board before advertising for professional services and committee open seats.
7. Principal Financial Plan Administrator-Manager Graziano stated that Ed Nelson was the previous Principal Plan Administrator of the Police Pension Fund, and now that he has resigned, he has been removed, leaving Chairman Pinter as the sole Administrator. **MOTION** by Supervisor Bermingham for Chairman/Treasurer Martin Pinter to be the Key Decision Maker/Plan Administrator of the Plan, seconded by Supervisor Friedman. Vote: 5-0.

X. EXECUTIVE SESSION

Recess to Executive Session at 10:06 pm to discuss legal matters.

The meeting reconvened at 10:18 pm.

Supervisor Teel stated that a legal matter was discussed in Executive Session. **MOTION** by Supervisor Bermingham to refuse to pay Gaglione On-Site Maintenance for improper work done, and to not pay any outstanding bill due, and countersue for any monies owed to the Township, seconded by Supervisor Teel. Vote: 5-0.

XI. ADJOURNMENT

MOTION by Supervisor Teel to adjourn the meeting at 10:20 pm, seconded by Supervisor Due. Vote: 5-0.

Respectfully Submitted by Cindy Beck-Recording Secretary

Good evening, Fred Clark, Crystal Terrace, Upper Mount Bethel. Thank you for the opportunity to speak.

Today, my comments are on the town's escrow process.

For land development, escrow accounts are established to mitigate the risk of an applicant failing to pay costs associated with reviewing their plans. Applicants demonstrate that "their word is their bond" by maintaining the escrow balances specified in the contract. Town supervisors "trust but verify" the applicants promise by enforcing the escrow balance provisions prior to approving, releasing, and recording plans.

The 2017 Upper Mount Bethel Fee Schedule includes the following:

1. "ALL FEES ARE DUE AND PAYABLE IN FULL **AT THE TIME OF THE SUBMISSION...**"
2. "*When the escrow account falls to 25% below the initial fee all (sic) inspections and professional services **shall cease** until the account is fully funded to the required minimum deposit."
3. "*...Any charges over and above the collected application and review fees and the professional services escrow are the responsibility of the applicant and **must be paid prior** to the release and the recording of the plans...."

Hearing that the escrow accounts for a proposed development were in arrears recently and "bounced checks" may have been involved is concerning. While I have no firsthand knowledge about this situation, I would point out to the supervisors and any applicant that, if true, this reinforces a point highlighted by some that **the town must be protected** from any risk presented by an applicant's financial circumstances and that performance bonds may be warranted in special cases.

To ensure the town has given no approvals subject to legal challenges in the future, I request that our supervisors consider the following:

1. Has the “ALL FEES ARE DUE AND PAYABLE IN FULL AT THE TIME OF THE SUBMISSION” provision of the Fee Schedule been enforced for all recent plan approvals? If not, are the non-compliant approvals valid?
2. Were any professional services performed on behalf of any applicant during the “***shall cease due to underfunding of the escrow account provision***” of the Fee Schedule? If so, were there special circumstances for disregarding the provision?
3. Were escrow and fee accounts current in all instances where plan approvals have been “released and recorded”? If not, are the releases and/or recordings valid?
4. If escrow accounts have been underfunded, a thorough review of the circumstances should be conducted and publicly reported upon. The report should also identify process improvements that could prevent future occurrences.

In the best case, perhaps the reported escrow deficiency situation was clerical or administrative in nature. In the worst, “bounced checks” can be misdemeanor or felony offenses and must be taken seriously. Whatever the case, it is incumbent upon the supervisors to take appropriate actions to protect the town.