

**LOWER GWYNEDD TOWNSHIP BOARD OF SUPERVISORS
REGULAR MEETING
TUESDAY, DECEMBER 12, 2017**

SUPERVISORS PRESENT:

Stephen Paccione, Chair
Kathleen Hunsicker, Vice-Chair
Edward J. Brandt
Dr. J. Richard Booth
Mark Grey

STAFF:

Craig T. McAnally, Township Manager
Jamie Worman, Assistant Township Manager
Carole Culbreth, Assistant Secretary
Thomas Speers, Esq., Interim Solicitor
Ken Amey, Zoning Officer
Paul Kenny, Police Chief

Call to Order and Pledge of Allegiance

The Chair called the meeting to order at 7:30 p.m. in the Lower Gwynedd Township Municipal Building and led those in attendance in the pledge of allegiance. The Chair stated the Board of Supervisors met in an Executive Session before the meeting on a personnel matter.

The Chair read a statement regarding Michael Savona, Esq., of Eastburn and Gray, which informed the township of his criminal investigation in Lower Southampton Township. He stated Lower Gwynedd Township was not impacted. The Chair stated that on December 11, 2017 Eastburn and Gray informed the township that they would not provide legal counsel as previously discussed and recommended the township get interim counsel.

Appointment of Interim Solicitor - Thomas Speers, Esq.

The Chair asked for a vote on the Appointment of Thomas Speers, Esq. as the Interim Solicitor. Mr. Brandt made a motion, seconded by Dr. Booth to appoint Thomas Speers, Esq. as Interim Solicitor for Lower Gwynedd Township.

Receipt of Meeting Minutes: November 14, 2017
November 28, 2017

The Board of Supervisors received the minutes of the November 14, 2017 Meeting and the November 28, 2017 Meeting. The Chair asked if there were any questions or corrections on the above minutes. There were none. Ms. Hunsicker made a motion, seconded by Dr. Booth to approve the minutes of November 14, 2017 and November 28, 2017 Meetings. The motion carried 5 - 0.

2018 Budget and Fiscal Plan

Resolution No. 2017 - 28: Budget Resolution

Resolution No. 2017 - 29: Tax Resolution

Mr. McAnally stated on November 14, 2017, the Board authorized the advertisement of the 20-day public review of the 2017 Budget and Fiscal Plan. He asked for approval of the 2018 Budget and Fiscal Plan as presented with no tax increase (no tax increase for the last six years (since 2012). Mr. Brandt made a motion, seconded by Mr. Grey to adopt Resolution No. 2017 - 28: Budget Resolution (\$16,224,240 in revenues; \$18,007,226 in expenditures). The motion carried 5 - 0. Dr. Booth made a motion, seconded by Mr. Grey to adopt Resolution No. 2017 - 29: Tax Resolution with no change in millage. The motion carried 5 - 0. The Chair thanked Mr. Weisner and the entire staff for their work on the 2018 Budget and Fiscal Plan.

Wissahickon Fire Company Contribution from Lower Gwynedd Township

Mr. Paccione presented a check to Robert Gilman, President and Al Comly, Fire Chief of the Wissahickon Fire Company in the amount of \$60,017.11 representing the Township's Annual Contribution minus the loan payment for the radios. He stated the existing fire tax does not cover all of the Wissahickon Fire Company's expenses to provide service to Lower Gwynedd Township so the Township has made a contribution in the years passed and this year.

PUBLIC COMMENTS

The Chairman opened the meeting for public comment for items not on the agenda.

John Pilling, Swedesford Road, asked why Township Public Notices are not advertised in the Ambler Gazette. The Township Manager stated he would look into why the Public Notices are not in the Ambler Gazette.

There were no further comments.

BUILDING & ZONING

Ordinance No. 518: Zoning Amendment Ordinance

Thomas Speers, Esq. stated that the November 28, 2017 public hearing on Ordinance No. 518: Zoning Amendment was not concluded as a public hearing. He stated there will be additional comments tonight following the below guidelines:

- Comments limited to Ordinance No. 518 itself not its uses
- Residents only permitted to comment
- Only new commenters, no one who spoke at the last meeting; no repeat comments; and all comments will be taken into consideration by the Board
- Please keep comments brief

Ed Beneto, 1614 Kingville Road, asked what Ordinance No. 518 is repealing? Mr. Amey stated he did a summary of the existing prohibited uses at the November 28, 2017 Board meeting. He explained what the permitted uses are in each district and if it was not a permitted use then it is a prohibited use in that district. He stated we are removing the listed prohibited uses so challenges to the ordinances will be reduced. (See November 28, 2017 Board of Supervisors minutes.) Mr. Brandt stated it clarifies what the permitted uses are in the Zoning District.

Paula Schafer, presented and read a petition with over 500 signatures in support of Ordinance No. 518 which would control future development on Sumneytown Pike and asked Dr. Booth and Mr. Brandt to recuse themselves because of a conflict of interest.

John Pilling, Swedesford Road, asked that the Township stay current in zoning issues.

James Jacquette, Esq., Cedar Lane, commented that this is an emotional reaction to the property and potential buyer. He stated we are not going to regulate manufacturing by zoning; we can make it secure, guarantee environmental issues and have the Township get control of Treweryn Trail and pursue the acquisition of the property.

Andrew Mill, Hallow Circle, stated the Board of Supervisors and staff have a right to have control over zoning. He stated the property could become an industrial park and have an environmental impact. He asked to please take this action.

Mark Schafer, asked what transpired at the Merck Meeting on December 5th? Mr. Amey summarized the discussion about Merck's desire to sell the property and clarification on the ordinance. He stated the end result was Merck felt the Township was being too restrictive; and the Township felt the ordinance protected the community. He stated they agreed to disagree.

Mike Parnell, Springwood, stated he is an advocate for property rights which include seller and buyer. He stated this provisions of the ordinance limits Merck to sell the property narrowing their ability to sell. He stated the Board had a chance to change the zoning many times. Mr. Parnell stated the buyer has the right to due process. He stated Merck is a good citizen. He stated cleaning up the zoning and removing prohibited use is good and should have been done prior to the parcel being put on the market for sale.

Susan Fitzwater, 207 Bridle Lane, stated she would like to see a precise definition of precision instruments and its detrimental effects.

Ron, a resident on Francis Drive, asked has the economic and environmental long term impacts been evaluated. He asked if the Board has considered the potential manufacturer may not align with the residents views.

Fran Rhodes, liason for Foulkeways, stated the Township did its due diligence throughout the last two months and have clearly acted with transparency in a professional manner. She stated Ordinance No. 518 should be adopted and continue to update the residents.

Thomas Cash, 1388 Lamplighter Circle, stated the environmental impact is to be taken seriously. He stated Merck does not vote; businesses come and go; we do not want to change the character of the Township.

Jeff Wilhelm, Esq., Reed Smith, Merck's attorney, explained the ordinance was on the books since 1987; and no studies have been performed on precision instruments. He stated the ordinance would impede Merck's property rights and asked that the Board vote "No". Mr. Wilhelm stated Merck wants to be treated fairly as we have for the past thirty years. He stated Merck will preserve its rights if impeded.

Tesse McNealy, 921 Surrey Drive, stated she fully supports the Board of Supervisors and hopes you will pass this ordinance.

There were no further comments.

Mr. Speers stated the comment portion of the hearing is re-closed at 8:28 p.m.; and the public hearing was closed at 8:28 p.m. The Board of Supervisors can now move to a vote.

Mr. Grey made a motion to table the vote in reference to the loss of our attorney. He stated he just met Mr. Speers an hour and a half ago; and with everything that's taken place how can we honestly make a decision. Mr. Paccione seconded the motion. The motion carried 2 ayes (Grey and Paccione) and 3 nays (Hunsicker, Brandt and Booth).

Mr. Brandt made a motion, seconded by Dr. Booth to deny passage of Ordinance No. 518: Zoning Amendment Ordinance. Ms. Hunsicker presented the red herrings; two supervisors visited a potential buyer of the Merck property. She stated the two supervisors realized that they were facing a vote on this zoning amendment that, in effect, would allow or deny this company from doing business in Lower Gwynedd Township. She stated the two supervisors had little knowledge of this company and felt, as a matter of due diligence and in an effort to cast an informed vote visiting the site was appropriate. Ms. Hunsicker stated it was not an endorsement, it was gathering information. She explained that it is only when a party has a financial interest in the outcome of a vote that they must recuse themselves from the vote. She stated that is not the case here. Ms. Hunsicker then explained the issue which is not about gun control or about guns; the issue is *what effect does the Board's legislative action of passing this ordinance have on the land owner's property rights?* Ms. Hunsicker presented the facts: it was presented by our former solicitor that the zoning ordinances should be "cleaned up" and there should be a clearer distinction between permitted uses and the F-1 light industrial district, which includes the Merck property, and the regular F industrial district. She stated it was also noted that the amendment would limit gun manufacturing from the F-1 district; the amendment was crafted by our solicitor with specific attention to the definition of "precision devices" and we advertised the ordinance on October 24. She stated Merck officially embarked on a national marketing and sales campaign in late September of this year when they issued their offering memorandum through their commercial broker. She stated Merck set a closing date for bids on the property for October 28; Merck identified a buyer and began negotiations with that buyer who did their own due diligence on the property. She stated Merck's marketing, selection and negotiation with the buy were done in reliance on the current F-1 zoning. She stated that it surfaced that the buyer is a manufacturer of gun components. Ms. Hunsicker explained the ordinance was aimed

directly at a specific buyer who is in the middle of negotiations with a landowner that would effectively defeat a land transaction; this is not the proper use of zoning and is a direct infringement of a landowner's property rights and the parties' right to enter into a contract. She further stated the F-1 district zoning on this property has been in effect since 1986 and given the timing of this amendment amounts to a government action aimed at one person, the buyer, effectively killing a private land transaction. She stated this disregards the rule of law that limits government from infringing on private property and for those reasons I cannot support this zoning change and vote NOT to pass this ordinance. Ms. Hunsicker votes not to pass the Ordinance No. 518: Zoning Amendment Ordinance. Mr. Grey stated he did not know about any transaction of the sale of this property. Mr. Grey abstains. Mr. Paccione abstains. The motion carries 3 ayes (Hunsicker, Brandt and Booth) and (2 abstain (Grey and Paccione). The ordinance was not adopted.

Mr. Brandt thanked everyone for coming out tonight; and stated we all love Lower Gwynedd Township. He stated the law permits a minority group to visit the buyer and I visited Geiselle Automatics because I wanted to know what potentially could be coming into the Township. He stated we have to listen to both sides and we have done that. He votes no.

Dr. Booth stated he has lived in Lower Gwynedd Township since 1959. He stated he watched the property develop and the goal was to keep the property as pristine as it is. He stated the ordinance takes away the owner's property rights and he cannot pass the ordinance at this time.

Mr. Paccione stated the Ordinance No. 518 was not adopted. He stated when and if an application is made it will go before the Zoning Office if permitted and if not it will go before the Zoning Hearing Board. He stated for clarification that the no vote means we are not moving forward with Ordinance No. 518.

Mr. Speers stated the motion was to deny Ordinance No. 518.

MANAGER'S REPORT

Report from the Manager – Municipal activities, projects

Mr. McAnally thanked Mr. Speers for coming out tonight on such late notice. He wished everyone a Happy Holiday.

SUPERVISORS/STAFF COMMENTS

Mr. Grey stated it was an interesting meeting and respects everyone's decision.

Mr. Brandt wished everyone a happy holiday.

Mr. Speers thanked the crowd for their professionalism.

Ms. Hunsicker stated she looks forward to working with Merck. Wished everyone a Merry Christmas and a Happy New Year.

Dr. Booth stated this is the democratic process and we made the right decision. He wished everyone a Happy Holiday. Thank you for your support.

Mr. Paccione stated the people are disappointed. He agreed with Mr. Grey that Merck is a good steward. He thanked the staff for their efforts. Mr. Paccione wished everyone a Merry Christmas and a Happy New Year.

There being no further questions or comments, the meeting was adjourned at 9:00 p.m. until the next Regular Meeting scheduled on January 2, 2018 at 4:00 PM. at the Lower Gwynedd Township Building.

Respectfully submitted,

Carole Culbreth
Assistant Secretary