
WARRINGTON TOWNSHIP BOARD OF SUPERVISORS

MINUTES FOR FEBRUARY 10, 2009

The regular meeting of the Warrington Township Board of Supervisors was held on February 10, 2009, 7:30 p.m., at the Township Building located at 852 Easton Road, Warrington, PA 18976. The members present were as follows:

1. ATTENDANCE:

Carol M. Butterworth, Chairperson; Michael W. Lamond, Jr., Vice Chairperson; Glenn McKay, Secretary; Rebecca A. Kiefer, Assistant Secretary; and Paul Plotnick, Member; Timothy J. Tieperman, Township Manager; Michael P. Clarke, Esq.; Township Solicitor; Thomas F. Zarko, Township Engineer; Carolyn Hanel, Director of Administrative Services/Parks and Recreation; Gay Currie, Communications Officer; and Vivian S. Bell, Township Treasurer.

2. PLEDGE OF ALLEGIANCE

The meeting opened with a pledge to the flag.

3. EXECUTIVE SESSION REPORT. Mr. Clarke reported that at the conclusion of our last meeting held on January 27, 2009 the Board held an executive session to discuss personnel and litigation matters.

4. APPROVAL OF BILL LIST: 1/27/09-2/10/09 - \$457,928.95

Motion – It was moved by Mr. Lamond, seconded by Mr. Plotnick, that the Board of Supervisors voted to approve the bill list from 1/27/09 to 2/10/09 in the amount of \$457,928.95. This motion passed by a roll call vote of 5 yeas.

5. APPROVAL OF MINUTES

a) December 3, 2008

Motion – It was moved by Mr. McKay, seconded by Mr. Plotnick, that the Board of Supervisors voted to approve the minutes of the December 3, 2008 meeting as amended. This motion passed by a vote of 4-1. Mr. Lamond abstained.

b) January 5, 2009

Motion – It was moved by Mr. Lamond seconded by Mr. Plotnick, that the Board of Supervisors voted to approve the minutes of the January 5, 2009 meeting as amended. This motion passed by a vote of 5-0.

c) January 13, 2009

Motion – It was moved by Mr. Lamond seconded by Mr. Plotnick, that the Board of Supervisors voted to approve the minutes of the January 13, 2009 meeting. This motion passed by a vote of 5-0.

6. MINUTES FOR POSTING**a) January 27, 2009**

Motion – It was moved by Mr. Lamond seconded by Mr. Plotnick, that the Board of Supervisors voted to post the minutes of the January 27, 2009 meeting. This motion passed by a vote of 5-0.

7. **PRESENTATION: Recognition of Eagle Scout Stephen McDermott.** Mrs. Butterworth presented a commendation resolution to Eagle Scout Stephen McDermott. She said the Board of Supervisors of Warrington Township recognizes and congratulates Stephen McDermott on the receipt of this award.

8. **APPOINTMENT TO ADVISORY BOARDS.** Mrs. Butterworth reported that prior to tonight's meeting the Board interviewed two individuals being considered to serve on two of the advisory committees.

a) **Environmental Advisory Council.** Mrs. Kiefer, liaison supervisor to this Council reviewed the background of the individual being considered to be appointed to the Environmental Advisory Council.

Motion – It was moved by Mrs. Kiefer, seconded by Mr. Lamond, that the Board of Supervisors recommended the appointment of Marilyn (Lynn) Laurelli as an alternate to the Environmental Advisory Council. This motion passed by a vote of 5-0.

b) **Permanent Finance Committee.** Mr. Plotnick, liaison supervisor to this Committee reviewed the background of the individual being considered to be appointed to the Permanent Finance Committee.

Motion – It was moved by Mr. Plotnick, seconded by Mrs. Kiefer, that the Board of Supervisors recommended the appointment of James Furlong as a member to the Permanent Finance Committee. This motion passed by a vote of 5-0.

9. PUBLIC HEARING:

a) Ordinance enacting Part 6 (Mercantile and Business Privilege Tax) under Chapter 24 (Taxation Special.) (The Ordinance, if enacted, will repeal and replace an identical ordinance previously enacted by the Board of Supervisors on December 9, 2008. The enactment of this Ordinance is being undertaken only to eliminate procedural challenges that have been brought in regard to the previously enacted Ordinance of December 9, 2008, and will neither change the contents of the previously enacted Ordinance nor add any new taxes.)

Motion – It was moved by Mr. Lamond, seconded by Mr. McKay, that the Board of Supervisors approved opening the public hearing for the Mercantile and Business Privilege Tax. This motion passed by a vote of 5-0.

Mr. Clarke reported that this is the Mercantile and Business Privilege Tax. He said as you will recall this ordinance was first proposed and discussed in November 2008. He said the Board at one of its meetings back in November 2008 voted to advertise the Ordinance creating the Mercantile and Business Privilege Tax and at that time the Board voted to tax at a certain dollar amount and a \$250,000 exemption threshold. He said as the Board went through the budget process the amount of the threshold changed to \$1,000,000 and the amount of tax was set at \$2,600. At that time the Ordinance was adopted on December 9, 2008 although at the time there were some concerns regarding the procedure in which the Ordinance was adopted because it was our last meeting of the year and we needed to adopt our budget and we needed to have a balanced budget. He said he recommended the adoption of the Ordinance that night with the intention of doing exactly what we're doing this evening, which is just re-advertising it and

making sure that everything was done correctly, making sure that we could eliminate any procedural challenges to the Ordinance.

Mr. Clarke said from the time that decision was made up until today a challenge has been filed challenging the ordinance and they have challenged it on two grounds: 1) Substance; and 2) Procedural grounds. He doesn't believe that anything the Board does this evening will lead to the substance grounds going away. He does believe that by adopting this Ordinance tonight and repealing Ordinance 2008-16, which originally was the one adopted back on December 9, 2008 we will be eliminating the procedural challenge.

Mr. Clarke said, as the Board members are aware, a hearing on the Ordinance is scheduled for Wednesday, February 18, 2009 in Bucks County Court of Common Pleas.

Mrs. Butterworth reported that the Board held a hearing on this Ordinance and we discussed how each member felt about the Mercantile and Business Privilege Tax. She said the vote was 3-2.

Mr. Plotnick commented that he doesn't believe that anybody is in favor of a new tax but we needed this tax to balance our budget and the source of the tax is supposed to be balanced for some of our costs that are coming into the community where we do not recoup enough in the business community.

Mrs. Kiefer commented she feels this tax is not being imposed fairly and it is extremely detrimental to the business community in Warrington and she feels it will take them at a time where they are struggling to try to survive and putting many of them out of business.

Mr. McKay reiterated what Mr. Plotnick said and that is this tax is allowed by the State in our interpretation. Whereas, there is another Mercantile and Business Privilege Tax that was repealed in 1989, which I feel is a fair way to distribute taxes to the business community if we have to. He said the reason this came about we came up with a shortfall in revenue because of the economy and it was the decision of the Board to split the sources of increased taxation between the residents and the business community.

Mr. Lamond commented that this is flat tax, which he doesn't feel is fair. He said as far as our options go the State of Pennsylvania doesn't allow us to tax like our other municipalities who border our community. He said we are trying to spearhead an effort in the State to try to open up that tax.

Mrs. Butterworth commented that she has been a business owner for 23 years in Warrington Township. She said she does understand the business owner and she does understand being a supervisor. She understands as a supervisor that the services that are used by the businesses, yes, they should contribute more for the services that are rendered. However, the time when this so called tax is enacted the economy is bad. She feels it is unfair to pass this tax for the purpose of balancing a budget.

Mr. Steve Harris, who resides at 1760 Bristol Road, said he is the attorney that filed the challenge on behalf of the business owners. He said he is not here tonight to talk about the challenge. He said he was here to ask the Board to not adopt this Ordinance tonight; but, in fact, to repeal the Mercantile and Business Privilege Tax Ordinance. He talked about what this Ordinance does to the business community. He said this Ordinance was poorly drafted and creates an incredible burden on every business in the community.

Lucy Jones, who resides at 567 Mallard Drive, Chalfont, felt that this tax should be repealed. She said it is a huge flat tax and doesn't feel it is a fair tax.

Pat Lyons, who resides at 968 Easton Road, requested that this tax be repealed.

John Pileggi, Jr., who resides at 3494 Limekiln Pike, Chalfont, said he wanted the Board to know that there are a lot of businesses in this community that give back to the children's organizations, and the special equestrians. He said with the new tax coming to a lot of these businesses, there is going to be less money for us to give to those organizations.

David Eastburn, who resides at 305 Lower State Road, Chalfont, said he has lived in Warrington for 40 years and we like to participate in our community and to be involved there but sometimes when you get hit from so many angles and especially in today's economy it can become very difficult. He requested the supervisors to repeal this Ordinance. He said as supervisors you are entrusted with maintaining a healthy community both of residents as well as businesses and asked the Board to think this through very carefully before you enact this Ordinance.

Motion – It was moved by Mr. Lamond, seconded by Mr. Plotnick, that the Board of Supervisors approved closing the public hearing for the Mercantile and Business Privilege Tax. This motion passed by a vote of 5-0.

Motion – It was moved by Mrs. Kiefer, seconded by Mrs. Butterworth, that the Board of Supervisors recommended that the Board repeal the Mercantile and Business Privilege Tax Ordinance. This motion failed by a vote of 2-3. Mr. Lamond, Mr. McKay, and Mr. Plotnick voted no.

Mr. McKay asked if he could put a motion on the floor to discuss potential changes in the language in the Ordinance. He said hearing Mr. Harris speak about the various sections and what he said about how do you establish when your gross receipts are \$1 million if we were to act upon this Ordinance tonight. He said could the Board act upon it making minor changes.

Mr. Clarke said he doesn't necessarily agree with Mr. Harris' interpretation of certain sections of the Ordinance. He said the Ordinance that the Board has in front of them this evening is intended to assess a Mercantile and Business Privilege tax against businesses located in Warrington Township with gross receipts of \$1 million or more and the \$2,600 tax is the Business Privilege Tax for the privilege of doing business in the township for that coming year. In future years the filing of your returns and the payment of the tax will be done in January of successive years. He said if this Ordinance would pass this evening and if it were to be upheld in January 2010 businesses making over \$1 million would have to file their returns and would have to pay the Business Privilege Tax. The tax would be for the year going forward but based on the year that just occurred.

Mr. Clarke said what is clear about this Ordinance and the way this Ordinance will be carried out is what he has said to the Board several times over the last several months regarding this Ordinance. He said it is clear that unless you had a progressive Business Privilege Tax on the books in 2008 you are not allowed to collect the taxes now based on your gross receipts.

Mr. Clarke said what he believes is equally clear is the fact that a flat tax is permissible in the Commonwealth of Pennsylvania even if you didn't have one on the books in 1988. He said the imposition of a tax that sets an exemption level of \$1 million as we have discussed, both privately and in this meeting room, is not as yet been decided in Pennsylvania. There is no case law that specifically addresses that issue. This will probably, in many ways, be the test case with regards to that. He said not agreeing with Mr. Harris' interpretation and understanding that when we appointed Berkheimer to collect this tax we also appointed Berkheimer to create the forms and to take what steps are necessary to carry out the intent of this Ordinance.

Mr. Clarke said clearly the intent is if you make under \$1 million you are not required to pay \$2,600 and wait somewhere down the road to prove that you didn't make \$1 million. He said the intent is if your business has gross receipts of over \$1 million your subject to the tax.

Mr. Plotnick asked if we could add to the Ordinance a stipulation, to relieve the feeling that the township is going to raise the tax every year that we maintain it at this level for five years.

Mr. Clarke said, in responding to Mr. Plotnick's question, there are two issues. The first is while a section like that could be added to this Ordinance there is nothing under the Second Class Township Code, which would prevent this Board and the Board in 2010 or any Boards subsequent to this, to changing that. He said while it may place a burden on a future Board not to attempt to undue what you've done its legal effect will only be limited by the power of a future Board to govern what they want to do and to govern the township as they see fit. In light of the fact that it would have only a certain binding effect on the township and in light of the fact that he would prefer not to be standing there next Wednesday talking about a substantial amendment to this Ordinance, he recommended doing that at this time. If following the legal argument, and the first round of that legal argument, which will take place in the Bucks County Court of Common Pleas, and if the Ordinance is determined to be enforceable and the Board wants to revisit this as an amendment to it he would recommend that the Board do that at a subsequent time. He recommended that the Board leave the Ordinance as it is now and not run the risk of somebody saying that we made a substantial change to the Ordinance before adopting it.

Motion – It was moved by Mr. Lamond, seconded by Mr. Plotnick, that the Board of Supervisors adopted An Ordinance establishing a Mercantile and Business Privilege Tax in the Township of Warrington, Bucks County, Pennsylvania, amending the General Code of the Township of Warrington, Chapter 24, Taxation – Special, by adding thereto Part 6, Mercantile and Business Privilege Tax, setting the amount of the tax at \$2,600 per calendar year, providing an exemption for businesses that generate less than \$1,000,000 in gross receipts, providing for the display of the license on the business' premises, and providing a penalty for failure to obtain and display the license. This motion passed by a vote of 3-2. Mrs. Butterworth and Mrs. Kiefer voted no.

Motion – It was moved by Mr. Lamond, seconded by Mr. Plotnick, that the Board of Supervisors recommended to repeal Ordinance 2008-16. This motion passed by a vote of 3-2. Mrs. Butterworth and Mrs. Kiefer voted no.

10. **MANAGER'S REPORT.** Mr. Tieperman reviewed the manager's report which included a) Snow Emergencies; b) Maple Avenue Extension; c) Advertising Revenue; d) Boy Scouts in Attendance; e) Efficient Growth for Growing Suburbs (EGGS); f) Bike and Hike Trails Committee Award; g) Pennsylvania Council on the Arts Grant; h) 2010 U.S. Census; and i) Other Business.

a) **Township Engineer's Report.** Mr. Zarko reviewed the engineer's report which included a) Neshaminy Gardens Drainage Improvement Project, Phase 2; b) West End Fire Station Project; and c) Pickertown/Folly Road Signalization.

NEW BUSINESS (ACTION/DISCUSSION ITEMS):

11. **Authorization to advertise ordinance amendment restricting U-Turns on Valley Square Boulevard.** Mr. Zarko reported that the police department has said that this has been a problem. He said we had the traffic engineer take a look at it. In order to provide that restriction on the roadway you have to meet certain warrants and they did the warrant analysis and the installation of the sign is warranted. He said in order to install the sign the Board has to ordain the signs, which is the purpose of the draft ordinance.

Motion – It was moved by Mrs. Kiefer, seconded by Mr. Lamond, that the Board of Supervisors authorized the advertisement of an ordinance of the Township of Warrington, Bucks County, Pennsylvania, to amend the Warrington Township Motor Vehicles and Traffic Ordinance restricting U-Turns on Valley Square Boulevard. This motion passed by a vote of 5-0.

OLD BUSINESS (ACTION/DISCUSSION ITEMS):**12. To consider the following escrow releases:**

Development Name	Release #	Amount
Valley Square, Phase II Parcel C	21	\$683,328.24

Mr. Zarko said the developer had requested a release of the remaining escrow that was posted for the project with the exception of \$11,200, which was an estimate to complete the remaining punch list work on the project. His office has prepared an updated punch list and estimated the cost associated with the work and are recommending a partial release so that the amount of the escrow that would be withheld would be \$100,000.

Motion - It was moved by Mr. Lamond, seconded by Mrs. Kiefer, that the Board of Supervisors approved the escrow release for Valley Square, Phase II Parcel C, Release #21 in the amount of \$683,328.24 with the conditions as stated by the solicitor, township engineer, and as agreed to by the applicant. This motion passed by a vote of 5-0.

Mr. Dave Grasso, Owner of Valley Square Lifestyle Center, talked about escrow funds for site work improvements. He said his concern only relates to the lifestyle portion of Valley Square. He reviewed what had been happening since entering into a development agreement in 2005. He said in that development agreement was the obligation of the developer to escrow about \$8 million funds for various site work improvements. He said most of the items on the new punch list don't relate to the items to be dedicated. The one big item on the punch list that he has a problem with is related to a repair that has to be done on his property. He said that is the bulk of the \$100,000. He doesn't believe that it is fair that the township continues to hold that amount of money in escrow. He said the big issue is that he built the Center according to the plans that the township approved. There is a storm water issue on his property that has to be addressed and we know it is an issue that we have to address. He said this storm water issue is on his property and it's not something related to Valley Square Boulevard or any public road or improvement. He feels it is unfair for the township to request him to escrow funds to repair his property. This item was never on the approved plans and we believe it was a design error on the plans. Mr. Grasso requested a reduction in the escrow amount being withheld and not include this item on the punch list.

Mr. Zarko agrees with Mr. Grasso and feels that he has been cooperative. He said that the issue that we have here is that we're talking about the lion share of this release is retainage. He said typically we don't recommend to the Board a release of any retainage until all of the improvements are completely done and that includes all of the punch list items. However, considering the economic conditions that we're up against we looked at and put, what we thought was a reasonable value, on the remaining items to be completed out there on the project and came up with this retainage of only \$100,000. He said we are recommending a release of \$683,328.24 and he thinks we are being cooperative with the developer on this issue. He said he feels uncomfortable in releasing more than that amount because he wants to make sure that there is enough money in that account if there is any sort of a problems to address remaining items that have to be completed out on that project.

Mr. McKay recommended that we go with the original release and review the developer's request for two weeks from now to do an additional release. In the meantime this will give the township engineer time to review this request with the Board.

William Benner, Esq., for the owner, and said that Mr. Zarko is correct that your developer agreement does provide that if there are changes that need to be made to the storm water management system the township reserves the right to do that. He said the developer agreement doesn't say that the township has the right to require additional financial security. What the development agreement says is that when the

improvements are completed and upon the acceptance of dedication the retainage gets released. He said suggested if there is concern over this item being completed to provide for financial security rather than taking out of the escrow, there is a very easy mechanism that all parties can achieve their end. He said that would be to reduce the retainage to a reasonable amount to take into account those punch list items that had been earlier identified and those punch list items have been quantified at about \$11,000.

Mr. Benner said there is going to be application for an occupancy permit in the future and that's the security that the township has to assure that this drainage work gets completed. He said if you accept this recommendation you can reduce the retainage, which is now at \$783,000, down so you're holding in escrow, if it's \$11,000 to complete the punch list items that have been previously identified, a factor of 200% is more than commercially reasonable. He said the request is authorize a release, not \$683,328.24 but to reduce the amount held in escrow so that you're holding no more than \$20,000.

Mr. Clarke said if Mr. Benner goes back to his office tomorrow and sends the township a letter that says he will agree that his client will not apply for a Use and Occupancy Permit until such time as this work has been completed then it will be legal and bind Mr. Benner and his client.

Mr. Zarko said if the township gets that assurance from Mr. Benner and it is acceptable to the solicitor he would suggest to the Board that the amount that is held in retainage be \$50,000. Mr. Clarke said then the escrow release amount would actually be \$733,328.24.

Motion – It was moved by Mr. Lamond, seconded by Mrs. Kiefer, that the Board of Supervisors accept the Release of Certificate of Completion #21 for Valley Square Parcel, Phase II Parcel C (Village Center) in the amount of \$733,328.24 with the conditions as stated by the solicitor and engineer and as agreed to by the applicant. This motion passed by a vote of 5-0.

13. **To consider the following extension requests:**

a) **Highgrove Manor**

Motion – It was moved by Mr. Lamond, seconded by Mrs. Kiefer, that the Board of Supervisors approved the extension request for Highgrove Manor until 5/23/09. This motion passed by a vote of 5-0.

14. **To consider the following dedication requests:**

a) **175 Titus Partners, L.P.**

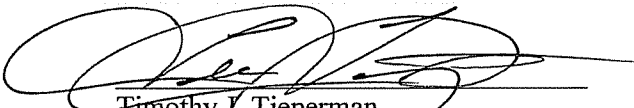
Motion - It was moved by Mrs. Butterworth, seconded by Mr. McKay, that the Board of Supervisors approved the resolution for the dedication of public improvements at 175 Titus Partners, L.P. This motion passed by a vote of 5-0.

b) **Valley Square Phase II Parcel C & C-1 (Village Center)**

Motion - It was moved by Mrs. Butterworth, seconded by Mr. Plotnick, that the Board of Supervisors approved the resolution for denial of the dedication of public improvements at Valley Square Phase II Parcel C & C-1 (Village Center). This motion passed by a vote of 5-0.

15. **ADJOURNMENT**

It was moved by Mr. McKay, seconded by Mrs. Kiefer, the Board of Supervisors voted to adjourn the meeting at 9:25 p.m. This motion passed by a vote of 5-0.



Timothy J. Tieperman
Township Manager

3/17/2009
Date