

UPPER MERION TOWNSHIP BOARD OF SUPERVISORS  
JUNE 16, 2016

The Board of Supervisors of Upper Merion Township met for a Business Meeting on Thursday, June 16, 2016, in Freedom Hall, in the Township Building in King of Prussia. The meeting was called to order at 7:42 p.m., followed by a pledge to the flag.

ROLL CALL:

Supervisors present were: Greg Philips, Greg Waks, Bill Jenaway, Erika Spott and Carole Kenney. Also present were: David Kraynik, Township Manager; Sally Slook, Assistant Township Manager; Joe McGrory, Township Solicitor; Rob Loeper, Township Planner; Tom Beach, Township Engineer, and Angela Caramenico, Assistant to the Township Manager.

MEETING MINUTES:

It was moved by Mr. Waks, seconded by Mrs. Kenney, all voting "Aye" to approve the April 28, 2016 Joint Meeting Minutes, May 5, 2016 Workshop Meeting Minutes, May 5, Zoning Workshop Meeting Minutes and May 12, 2016 Joint Meeting Minutes as submitted. None opposed. Motion approved 5-0.

CHAIRMAN'S COMMENTS:

Chairman Jenaway stated an Executive Session was held prior to this meeting to discuss litigation and personnel matters.

NEW BUSINESS

SWEARING IN OF POLICE OFFICER MICHAEL RICHARD LOANE

Police Chief Tom Nolan introduced Officer Michael Richard Loane to the Board of Supervisors and the public. He explained the department's hiring philosophy is first and foremost to hire someone of high moral character and additionally look for candidates who possess intelligence, common sense and integrity. Chief Nolan said these qualities are reflected in our newest police officer.

Chief Nolan noted the current hiring process started with nearly 150 applicants applying for the position of police officer over a 5 month period. Potential candidates worked through a series of testing procedures which involved a written examination, physical agility test, oral interview panel, polygraph examination, comprehensive background investigation and a Command interview. This newest hire is coming on board from the eligibility list and will bring the police force to 65 officers serving Upper Merion Township.

Officer Michael Loane was sworn in by District Justice Francis J. Lawrence Jr.

Mr. Jenaway congratulated and welcomed the newest police officer to the best police department in the state.

PRESENTATION OF THE EARTH DAY AWARD TO THE FRIENDS OF VALLEY FORGE

Dan Russell, Director Park and Recreation, and Tina Garzillo, Chairperson, Park and Recreation Board presented the Earth Day award to the Friends of Valley Forge. Mr. Russell read the proclamation and presented the plaque to Mr. Don Naimoli, President, Friends of Valley Forge Park.

Mr. Neimoli stated the Friends of Valley Forge is the lead advocate for the Valley Forge National Historical Park. He said their outreach involves contacts with corporations, organizations and others to develop partnerships and grants to enhance the visitor experience. The Friends of Valley Forge also rely heavily on their membership which provides a strong voice in fostering their mission.

PRESENTATION BY DCNR TO THE TOWNSHIP RE: TREE CITY USA AWARD

Mr. Russell asked two members of the Shade Tree Commission, Barley Van Clief and Ann Marchino, to come forward for the Tree City USA award presentation. Mr. Russell introduced Heather Kerr, Service Forester, Department of Conservation and Natural Resources (DCNR).

Ms. Kerr stated she is pleased to present the Tree City USA award to such an environmentally active community like Upper Merion. She indicated the Tree City USA program is sponsored by the Arbor Day Foundation in partnership with the U.S. Forest Service and National Association of State Foresters. Upper Merion has achieved Tree City USA recognition by meeting the programs four requirements: (1) a tree board or department, (2) a tree care ordinance, (3) a community forestry budget of at least \$2 per Capita, and (4) an Arbor Day observance or proclamation.

Ms. Kerr indicated Upper Merion Township has demonstrated a commitment to caring for and managing its public trees. It was noted this year marks the 40<sup>th</sup> anniversary of the Tree City USA program with more than 3,400 communities nationwide. Only 16 of the original Tree City USA communities are celebrating 40 years in 2016 and Upper Merion is one of them.

Mr. Russell recognized all the volunteers with the Shade Tree Commission and the Park and Recreation Board who have worked so hard on numerous park projects.

Mr. Jenaway expressed appreciation to all the members of the Upper Merion community who have participated in the greening up of our township for 40 consecutive years.

CONSENT AGENDA RE:

1. Budget Transfers re:
  - a. Public Works – Township Building Improvements – Water Infiltrations - \$41,673
  - b. Public Works – Replace 20+ year old HVAC wall units - \$27,000
2. Authorization to Sign Settlement Stipulation re: Upper Merion Area School District v Realen Valley Forge Greenes Associates and the Montgomery County Board of Assessment Appeals, et al
3. Community Center Project Change Orders re:
  - a. Herman Goldner Company (Mechanical) Change Order #11 in the amount of \$29,940 for the following: 6 month extension of warranties on all mechanical equipment and installation of generator exhaust equipment
  - b. Pinnacle Electrical Construction (Electrical) Change Order #10 in the amount of \$0. This was to have the substantial completion of the Electrical contract match that of the General Contract
  - c. Pinnacle Electrical Construction (Electrical) Change Order #11 in the amount of \$8,570 for the following: removal and installation of multiple electrical devices located in the Fitness Center, Small Aerobics Room, Classrooms and Art Studio
  - d. Pinnacle Electrical Construction (Electrical) Change Order #12 in the amount of \$35,097.50 for the following installation of power

supply to the kiln, security camera wiring to the elevators, installation of emergency shutdown switches in 2 boiler rooms, conduit and wiring of power to court curtains, cost to purchase and expedite manufacture and delivery of generator muffler, additional exit signage as required by Township code, power supplies to interface and operate card swipe locksets

- e. Jay R. Reynolds (Plumbing) Change Order #8 in the amount of \$0. This is to have the substantial completion of the Plumbing contract match the General Contract
  - f. Jay R. Reynolds (Plumbing) Change Order #9 in the amount of \$22,863 for the following: revisions of the sprinklers to accommodate ceilings in the Fitness Center, Small Aerobics Room, Classrooms and Art Studio. Also for additional sprinklers installed under the Senior Center/Storage Rooms. *Mr. Jenaway noted even with these change orders we are still at about 90% of the anticipated costs so we are still under budget by about 10% on the total cost of the project*
4. Resolution Closeout 2016-24 re: Transportation and Community Development Initiative (TCDI) Grant – KOP BID Linear Park
  5. Motion to Ratify the Designation of \$2,000,000 in the Revenue Stabilization Fund as committed fund balance in the 2015 Upper Merion Township Financial Statements
  6. Rejection of Single Bid re: Township Skatepark – Bid amount is over budget
  7. Bid Recommendations re:
    - a. 2016-2019 Emergency Sinkhole Repair Contract to Scavello and Sons, LLC in the amount of \$7,886.88
    - b. 2016-2018 Janitorial Services Contract to CNS Cleaning Co., Inc. in the amount of \$223,778.16
  8. Resolution 2016-25 re: Disposition of Township Property – PW Vehicles to Auction – Minimum Sale Value of \$27,500.00
  9. Approve Extension Letters re:
    - a. O'Neill Properties Group; 2901 Renaissance Boulevard through July 31, 2016
    - b. Losty Subdivision; 231 Matsonford Road through August 31, 2016

Board Action:

It was moved by Mr. Philips, seconded by Mrs. Spott, all voting "Aye" to approve the Consent Agenda as submitted. None opposed. Motion approved 5-0.

PUBLIC HEARING RE: AMENDMENT TO THE OVERLAY FLOOD PLAIN MANAGEMENT ORDINANCE

Mr. Joseph McGrory, Township Solicitor, opened the hearing and introduced into the Record Board Exhibit #1, the ordinance itself, Board Exhibit #2, the Proof of Delivery to the *Times Herald* dated March 29, 2016; Board Exhibit #3, Proof of Publication showing ads on June 1, 2016 and June 8, 2016; Board Exhibit #4, Letter to the Upper Merion Township Planning Commission; Board Exhibit #5, letter to the Montgomery County Planning Commission; Board Exhibit #6, copy of the attested ordinance to the Law Library marked received May 26, 2016 and Board Exhibit #7, the Legal Notice itself.

Mr. Kyle Brown, Associate Planner, provided a summary of the necessity for this ordinance. Mr. Brown discussed two minor revisions to the Flood Plain

Ordinance 2016-844 that were requested by FEMA. There are two minor revisions: (1) Section 11 re: developments containing certain hazardous substances is clarified with regard to non-residential versus residential structures. In its current state it was unclear whether flood proofing was prohibited or not for residential structures and (2) Section 12 provides a change in wording from the term "mobile home" to "manufactured home." Manufactured home is a standard term for what is thought of as trailer park or mobile home type residences and is consistent with our existing definitions.

Board Action:

It was moved by Mr. Philips, seconded by Mr. Waks, all voting "Aye" to approve Ordinance No. 2016-846 as presented. None opposed. Motion approved 5-0. Ordinance No. 2016-846 was adopted and will be filed in Ordinance Book No. 18.

CONTINUANCE OF CONDITIONAL USE RE: O'NEILL PROPERTIES GROUP;  
2901 RENAISSANCE BOULEVARD; 300-UNIT MF RESIDENTIAL BUILDING;  
10.928 ACRE, SM-1

Joseph McGrory, Township Solicitor, opened the continued hearing.

Edmund J. Campbell, representing the applicant, stated this hearing will focus on responding to questions from the previous two hearings followed by the traffic witness.

Mr. Campbell addressed the question posed by Mr. Mark McKee at the last meeting regarding the building height of the proposed building. He indicated Mr. McKee was correct and, in fact, the existing building and prior building were not approved at 70 feet, but rather 65 feet. An exhibit was submitted to correct that error.

Referencing a question Mrs. Kenney asked at a prior hearing as to why lot 4 was not considered for more robust use, Mr. Campbell called attention to the exhibit of the site plan. Mr. Campbell explained as part of earlier approvals in 2001 and 2007, his client agreed not to develop on the portion of the site which he pointed out on the screen. He noted those approvals also address other matters which Mr. Campbell indicated would be included in the record later. Mr. McGrory asked if Mr. Campbell's client would agree that the conditions and prior approvals will also be a condition of this conditional use approval. Mr. Campbell responded in the affirmative.

Mr. Campbell referred to one of the questions raised by a resident regarding the proposed site elevations when construction is completed. He summarized the exhibit prepared by Mr. Michael Bowker, the project manager for the civil engineering site development plans for this project, showing the elevation on Crooked Lane, at the base of the retaining wall and the highest point of elevation at the site. It was also noted there would be a 2-3 foot increase in elevation because of the construction of the cap.

Mr. Campbell stated at the last hearing a request was made to provide a demonstrable exhibit showing the layers of the cap. The cap composite profile was shown on the screen which detailed cross section materials comprising the permanent cap over the quarry areas.

Mr. Campbell asked Mr. Bowker how the cap was designed, who is responsible for it and how it was approved. Mr. Bowker responded the cap was approved in conjunction with an approved work plan through EPA.

Mr. Campbell asked if it is Mr. Bowker's understanding that for the overwhelming portion of the site the temporary cap that is in place will remain in place. Mr. Bowker responded in the affirmative.

Mr. Campbell asked in what instances would the temporary cap be disturbed. Mr. Bowker provided examples of when additional excavation might occur for a light pole foundation and/or building foundation.

Mr. Campbell asked if it is correct that except for those limited areas the entirety of the site will remain covered. Mr. Bowker responded in the affirmative.

Mr. Campbell stated one advantage to that is that it will drastically eliminate or reduce exposure of contaminated materials to the surface. Mr. Bowker agreed.

Mr. Campbell asked if the erosion and sediment control (E&S) protocol that will be part of the land development plans are essentially the standard E&S control measures for any construction site. Mr. Bowker responded in the affirmative.

Mr. Campbell asked if it is correct that to the extent anything needs to be different Mr. Bowker will coordinate with the environmental remediation construction experts and those protocols would be part of the work plan approved by EPA. Mr. Bowker responded in the affirmative.

Mr. Mitchell Moss, Synergy Environmental, was sworn in as an expert in the field of construction and environmental remediation and his testimony would focus on construction around the intrusion of the cap during construction. It was noted Mr. Moss actually has experience designing remediation plans for the office park.

Mr. Campbell asked Mr. Moss to describe his roll with regard to quarry 3. Mr. Moss responded quarry 3 was cleaned and involved removal of all the contaminated soil down to the bedrock of the old original quarry. The work plan for that remediation was created by the consultant. Mr. Moss developed the actual implementation and a work plan to implement that remedial construction.

Mr. Campbell asked if Mr. Moss will develop similar plans and work with his client to make sure construction on the site is consistent with all appropriate safety and health regulations. Mr. Moss responded in the affirmative.

Mr. Campbell stated there was a concern shown at an earlier hearing about what happens to soil when it is exposed for the purpose of the penetration of the cap. Mr. Campbell asked if the work plan Mr. Moss helped put together and which will be approved by the EPA would address that concern. Mr. Moss responded in the affirmative.

Mr. Campbell asked for examples of the types of things that are likely to be in the work plan and asked if it is correct that the work plan is not approved as yet. Mr. Moss responded the work plan will have to be developed and approved with review by EPA, the state and the township. Mr. Moss stated the plan will address the health risk for the construction workers and the community. There will probably be dust monitoring to make sure there is no dust generated that can get off site. There will be requirements to limit physical contact by the construction workers with this material and there will also be controls to make sure the material is properly managed once it is touched, excavated, or moved.

Mr. Campbell asked if it is correct if the material stays on site it will essentially be placed back under a cap. Mr. Moss responded in the affirmative.

Mr. Campbell said if it is removed off site it would be removed in a way and to a place approved by the EPA.

Mr. Campbell asked if it is correct that the specific protocol would include the depth of the intrusions into the cap, the amount of material to be removed and the timing and the sequence. Mr. Moss responded in the affirmative.

Mr. Campbell asked for examples of the types of things that might be done when there is excavation in and around the area of the cap to make sure there is no run off, for example, in the case of a rain event. Mr. Moss responded the work plan will require developing or establishing an exclusion zone which will be the actual work area. Outside of that area would be some contamination reduction areas. Mr. Moss said these are all standard requirements for EPA plans which will require implementation of means and methods that will manage the control of any water and be very specific as far as when material is excavated and how it is handled. If the material has to go off site the protocols for handling it, getting it into a container and keeping it segregated from the environment will all be specified in that plan.

Mr. Campbell asked if the protocols in place adequately provide safety to the public and those who are working on the site. Mr. Moss responded in the affirmative.

Mr. Campbell stated Mr. Bowker discussed the cap composite exhibit which is the previously approved cap in its design. Mr. Moss responded in the affirmative.

Mr. Campbell asked if it is correct that his client is working under the presumption that the EPA approved cap will maintain the same integral elements. Mr. Moss responded in the affirmative.

Mr. Campbell asked if Mr. Moss agrees that the bottom layer of the cap is already in place and for the most part will remain encapsulated. Mr. Moss responded in the affirmative. Mr. Campbell asked if the benefit of this is that it will cause the vast majority of contaminated material to remain sealed and contained during construction. Mr. Moss responded it will be contained underneath the existing cap.

Mr. Philips asked Mr. Moss how long it takes to create one of these plans. Mr. Moss responded creating the plan is normally not that difficult. He said it may be several weeks to a month to create something that is compatible with the construction requirements suitable for the owner, the site and the contractors. The plan then goes to EPA and the other parties for review and it may take anywhere from a month to six months until all of the comments and questions are resolved and the final plan is developed.

Referring to comments from residents at the last two meetings about previous construction runoff, Mr. Philips asked what is being proposed to encapsulate or keep rainwater as well as any water used in remediation from running off the site. Mr. Moss referred to Mr. Bowker's comments that there will be conventional E&S controls because the bulk of the work is going to happen on top of clean soil. In the specific areas where they will be digging out contaminated material Mr. Moss said it would be improper for him to say how it will be handled at this point. He indicated the simplest thing on most sites is that the work area, if it is not a really large area, is covered in plastic. The material is contained on an isolation barrier and is cleaned up afterwards. Mr. Moss said general construction generally does not occur in the rain and it would not work for remedial construction on environmental sites. If the concern is an open pit after all the trucks have left at that point there are other measures that are usually put in place where water is diverted and these things are all part of the plan.

Mr. Philips said while it is the intention not to work in the rain what is done to keep the contaminant under the cap if there is an open pit during some excavation and there is a downpour. Mr. Moss responded if there is a pit it is likely to stay in the pit. If work is being done in a small area there will be runoff diversions so that surrounding water will not runoff. Mr. Moss said in the case of this cap it is a porous cap and the material is porous and unless there is some unreasonable downpour that kind of water would not be collected and it would just percolate down into the quarry.

In looking at the cross section of what Mr. Moss is proposing, Mr. Philips asked how everything is placed back underneath the existing cap. Mr. Moss responded "you don't once that is in place."

Mr. Philips stated Mr. Moss' testimony indicated there is material that is going to be placed back underneath the cap. Mr. Moss responded that could only be done during the construction process. He said that cap cannot be opened. He said no one would want to open it since he does not think any regulatory body would allow it to be opened without some extraordinary circumstances.

Mr. Campbell asked if it is correct that what exists right now is just the first layer. Mr. Moss responded in the affirmative.

Mr. Campbell said if there is excavated soil there might be a small area where the existing first layer is removed and everything else is placed on top.

Mr. Philips emphasized the issue for him is underneath the existing subgrade or fill there is a non-woven geotextile fabric that is really the cap. All the rest of the material keeps the cap in place and if it is disturbed then maybe some of that soil is suitable to put back underneath the cap and keep it on site. He asked how that is done without really disturbing a large area. Mr. Moss responded he has never seen that done. He said the relocation of fill would all be done before the final cap is placed.

Referring to the exclusion zone in the contamination reduction area, Mr. Philips asked as contaminants are being removed if trucks are being washed as they go off the site. Mr. Moss referred back to the cleaning of quarry 3 when trucks ran across a truck wash and everything was cleaned off so there was no mud and they went out on a clean road.

Mr. Jenaway asked about the overall composite profile and if it is more significant of a total cap than is typically found, and if so why, and if it is not as significant as might be found, why not. Mr. Moss responded this is one of the more substantial caps.

Mr. Jenaway asked if this is indicative of the degree of seriousness. Mr. Moss responded there are a number of factors that EPA uses to determine how thick they want the cap to be such as the material, the location, the proposed final use.

Dennis Rathore, Philadelphia Avenue, asked if quarry 3 has a temporary cap. Mr. Moss responded contamination was completely cleaned out of quarry 3. Final excavation was completed after all the analytical testing for any remaining materials came back below the Record of Decision required levels. He said quarry 3 has no cap. It is backfilled with clean soil.

Mr. Rathore asked additional questions regarding quarry 3 which Mr. Campbell deemed irrelevant since it is not his client's property and is not part of this project.

Rick Boyer, Lawndale Avenue, asked about the potential length of time there might be some exposure during excavation for beams and foundation. Mr.

Moss responded that would depend specifically on the area of the building but to open a hole for a foundation form would be a matter of days before it is covered up again.

Jim Rapine, Foulkrod Boulevard, Hughes Park, noted quarry 3 was cleaned out to the bedrock and questioned why this was not done on the proposed site. Mr. Moss responded EPA determines the best remedy that is most protective of human health and the environment.

Patti Erickson, Lawndale Avenue, asked about the vegetation growing on top of the cap. Mr. Moss responded the cap is the layer of geotextile fabric as well as an 8-12 inch layer of stone to provide a barrier against the actual material that is in the quarry. It was always intended that stone would not support growth. Before any work would be done the growth would be cleared off back down to the stone. Whatever root structure is there is essentially irrelevant unless it presents a foundation issue.

Ms. Erickson asked about runoff issues. Mr. Moss responded runoff would be handled by erosion and sediment controls required by development plans.

Rob Erickson, Lawndale Avenue, asked if ground water has been tested in the area located closer to Crooked Lane and the trolley bridge. Mr. Campbell stated this witness is testifying about environmental construction rather than risk assessment.

Jonathan Spergel, managing partner of Manko, Gold, Katcher & Fox LLP, was sworn in as an expert in environmental law. His specialty is environmental compliance and counseling and within that subject falls a number of areas one of which is site remediation and brownfields redevelopment. Mr. Campbell indicated Mr. Spergel is the consultant for this development relating to the EPA and will offer testimony to provide the Board of Supervisors with an understanding of where this project is in the EPA approval process.

Mr. Spergel explained Superfund is a subset of a larger category of sites referred to as brownfield sites and each regulatory agency has slightly different definitions. The U.S. Environmental Protection Agency defines a brownfield as real property where the reuse, expansion or redevelopment of it is impeded because of the actual or perceived presence of hazardous substances. Superfund sites are a subset of brownfield sites and are actually sites that have been scored by the U.S. EPA and have a particular scoring mechanism based on the potential for risk that places them on the National Priorities List (NPL). In 2015 there were over 1,300 superfund sites in the United States and U.S. territories. There are many more brownfield sites.

Mr. Campbell asked about the kinds of sites that would qualify as a Superfund site. Mr. Spergel responded it is necessary to look at both the nature and extent of contamination present at a site and how far and wide are they distributed at that site. Other factors include exposure to those contaminants, land uses in the area, receptors, sensitive receptors, environmental receptors (stream/wetlands), and human or animal receptors.

Mr. Campbell asked if there is an effort or desire to reuse or repurpose Superfund sites. Mr. Spergel responded in the affirmative. He said the Superfund law, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) was enacted in 1980 and amended a few times. CERCLA established a very onerous liability holding many different categories of parties jointly and separately liable for contamination at sites. This was a good thing as far as establishing a broad net to pay for cleanup of contaminated sites but it had some unintended and unwanted consequences. By the early 1990's there was the phenomena that developed where people who wanted to develop sites or end users who wanted to build a building did not want to come anywhere

close to a site that had the potential for any type of contamination for fear of getting caught up in this “joint and separate liability” web. This is what exacerbated suburban sprawl. Both state and federal regulators recognized from a policy standpoint that is not a good thing and the law started to change in the early 1990’s first on a state level and then on the federal level when U.S. EPA started to implement policies encouraging the reuse of impacted sites and the reuse of Superfund sites.

Mr. Campbell asked if there is any data indicating what types of repurposing has occurred at Superfund sites. Mr. Spergel responded these sites have been used for commercial, industrial, park and recreation, ecological, and residential purposes.

Referring to a 2005/2006 EPA report, Mr. Campbell pointed out an exhibit indicating 50 Superfund sites have been repurposed for residential use.

Mr. Spergel stated there are a number of superfund sites within the Delaware Valley that are already being used or currently being redeveloped for residential purposes. He mentioned the North Penn Superfund site in Lansdale that is so large it is broken down into different areas. A contaminated groundwater plume runs beneath many of those properties. It was noted a significant amount of single family residential redevelopment has already taken place or is taking place in the North Penn area superfund sites.

Mr. Campbell asked what protocols are in place for Superfund sites to make sure finalized remediation is effective in future years. Mr. Spergel responded Mr. Moss referenced a Record of Decision or ROD which is part of the remediation process. He said EPA has a detailed process for not only identifying and scoring Superfund sites but also investigating, selecting a remedy and ultimately remediating Superfund sites. That is contained in regulations that are referred to as the National Contingency Plan (NCP). The selected remedy could involve a complete clean up as took place in quarry 3 or it can involve leaving certain contaminants in place and utilizing engineering or institutional controls making sure even though contaminants are remaining in place measures are implemented so that it will not present an unacceptable risk to human health or the environment. Where any contaminants remain in place even though the remediation is complete EPA comes back and does an analysis and assessment of that site to make sure it remains protective of human health and the environment. EPA publishes a 5-year review identifying any issues that were observed as part of that assessment that need to be addressed.

Mr. Campbell stated there were at least two residents talking about water monitoring wells on the site and emphasized his client has nothing to do with these. He asked Mr. Spergel why monitoring wells are on his client’s property. Mr. Spergel responded the Record of Decision, the remedy that was selected for the entire Crater Resources Superfund site which encompasses the Renaissance Corporate Center had different associated elements. It addressed quarry 3 as discussed by Mr. Moss and also capping quarries 1 and 2 dealing with the soil media. Mr. Spergel referred to the PRP and at this point in his response Mr. Campbell asked Mr. Spergel to explain what PRP means. Mr. Spergel responded PRP means Potentially Responsible Party, but it is being used to mean Responsible Party as they are no longer potential.

Mr. Campbell stated there has already been a determination there are responsible parties who have past history with this site and are responsible for some of the remediation that is not the responsibility of his client.

Mr. Spergel continued his previous response and said after EPA issued the Record of Decision they issued an order to a number of parties who are colloquially referred to as potential responsible parties or responsible parties. EPA ordered them to implement the remedy at this site for everything. Representatives of Renaissance Land Associates, an O’Neill entity, negotiated

with those parties who were responsible for doing this work that they would implement for them the remedies with respect to quarries 1 and 2 which involved the necessary capping to the extent there was any of waste ammonia liquor present in soils within the Renaissance Land Associates properties. As part of a private agreement the Renaissance Land Associates entities agreed to do that work (capping of quarries 1 and 2) on behalf of the responsible parties. Renaissance Land Associates entities did not agree and has not taken on any contractual responsibility or any responsibility from U.S. EPA to either investigate or remediate or in any way address groundwater associated with the Crater Resources site. Instead the responsible parties are the ones who are responsible for groundwater at this site just as they were responsible for remediating quarry 3. The remedy that was selected for groundwater is referred to as a contingent ground water remedy. What it means is the PRP's are required to monitor the ground water. There is a significant monitoring well network with the goal that groundwater quality is going to naturally attenuate or improve over time. If for whatever reason at some point in the future EPA determines that it is not cleaning up quickly enough on its own they would then require the PRP's to take some type of active steps to remediate groundwater.

Mr. Campbell clarified when his client bought the property he assumed responsibility for the soil, but not the groundwater.

Mr. Campbell asked what his client has to do in order to get EPA approval to build residential development on this site. Mr. Spergel responded the Record of Decision (ROD) defined the EPA selected remedy which was capping of quarries 1 and 2 that identified the non-residential land uses at the Renaissance Corporate Center at the time. The capping envisioned there would continue to be non-residential land uses at the Renaissance Corporate Center. In order for the residential redevelopment to take place EPA will have to modify that Record of Decision to indicate residential reuse, capping of those quarries is permitted and then a new remediation plan which has already been submitted to EPA. A new remediation plan which details the capping will have the exact same cross section that has been shown on the slides and will need to be approved by EPA. Mr. Spergel described the EPA process for modifying the ROD. He said there are a couple of different ways to change a ROD. One is the most significant which is referred to as an amendment to the ROD which would be required if there were a fundamental change to the ROD. There could also be something extremely informal such as a letter to the file or Explanation of Significant Differences or ESD. Mr. Spergel indicated EPA has indicated that the path for them to modify the ROD at this site to allow for residential reuse would be through the ESD process – the middle path. Mr. Spergel stated the request to modify the ROD through the ESD process has been submitted to EPA and part of that request included the risk assessment and other supporting documentation referred to earlier in the hearing.

Mr. Campbell asked if it is fair to say that EPA wants to work hand in hand with state and local agencies to make sure the plan in place is satisfactory to everyone. Mr. Spergel responded it is more than that they want and they have a statutory obligation and directive to ensure that the remedy is protective of human health and the environment.

Mr. Campbell asked if the plans that are eventually approved will be submitted to the state and/or local municipal authorities for review and comment. Mr. Spergel responded in the affirmative.

Mr. Campbell asked if Mr. Spergel has any doubt that the project can meet the required regulatory standards to permit residential use. Mr. Spergel responded he has no doubt and said the main difference between the planned residential use and the commercial reuse is described in the risk assessment. He pointed out whether it was commercial or residential Renaissance Land Associate's addressed the plan in a way to eliminate any potential pathway of exposure to contaminants. Their plans had zero exposure to any contaminants

because of the extensive capping that will take place so there will not be any touching or any kind of exposure of soil. Mr. Spergel said there will also be vapor mitigation and pointed out the occupants of the structure will not be on the first level, but will be on the second level above the parking.

Mr. Philips asked if the EPA entered into a consent agreement. Mr. Spergel responded the EPA entered into a settlement agreement with those parties [PRP] embodied in the form of a consent decree.

Mr. Philips asked if that included the well monitoring. Mr. Spergel responded in the affirmative.

Mr. Philips asked if the EPA currently does a 5-year review of what is happening on the site. Mr. Spergel responded in the affirmative. He indicated five year reviews are issued after the ROD is issued.

Mr. Philips asked if this process will continue once the construction is done with this particular project. Mr. Spergel responded in the affirmative.

Mr. Philips asked how long it will take to get through the EPA process. Mr. Spergel responded it is anticipated to take less than six months from today. He said there have been numerous positive discussions with both EPA and the responsible parties.

In view of Mr. Spergel's extensive background in environmental law dealing with Superfund sites, Mr. Waks asked if this is the type of site that would be appropriate for residential development. Mr. Spergel responded in the affirmative.

Mr. Waks asked if this type of site has been redeveloped for residential housing in the 5-county area or the southeast PA area. Mr. Spergel responded there have been sites that have been far more contaminated that have been remediated in the Delaware valley for residential reuse. Some of those sites were not designated Superfund sites even though they were significantly more contaminated than the portion of the Crater Resource site that is owned by Renaissance Land Associates.

Mr. Waks asked of those sites that were redeveloped for residential housing were there any environmental issues that arose either on that site or to adjacent properties. Mr. Spergel responded he is not aware of any remediated sites requiring further remediation. He said DEP has indicated as recently as a couple of months ago they have never had a reopener in Pennsylvania which would include residential sites as well. Mr. Spergel was aware there have been issues in New Jersey that were remediated decades ago not using current cutting edge environmental remediation processes.

Mr. Waks noted in 2006 this site was approved by the Board of Supervisors at that time for commercial redevelopment. He asked if Mr. Spergel saw any potential difference in the safety of the site going forward between a potential commercial redevelopment as has already been approved versus a residential redevelopment for those living or adjacent to that site. Mr. Spergel responded in the negative.

Mr. Jenaway asked if the cap provided for this site is consistent in type, size, dimension, construction, etc. with ones that Mr. Spergel may have seen at other sites that would have had a residential property. Mr. Spergel responded this cap is much thicker and more protective than other sites he has seen for residential use.

Mrs. Kenney asked for clarification about when remediation started to occur after CERCLA was enacted in 1980. Mr. Spergel responded remediation

occurred prior to CERCLA at the state level, but 1980 is when federal remediation started.

Mrs. Kenney said the figures provided for reused superfund sites are from 2005/2006 and asked if there is a more recent update. Mr. Spergel responded he is sure EPA has their statistics, but they did not see anything that was publicly available.

Mrs. Kenney asked how much history is available of superfund sites that were remediated and then reused. Mr. Spergel responded from his personal knowledge when he first started practicing law at the end of 1993 one of his colleagues worked on a Superfund site located (non-residential) at the base of the Walt Whitman Bridge which was developed for warehouse use and is still in use today.

Mrs. Kenney asked if that site had reviews every five years for safety reasons. Mr. Spergel responded he does not know the details of that site but any site that relies on engineering institutional controls has to have a five-year review.

Mrs. Kenney asked what an EPA five-year entails. Mr. Spergel responded the EPA retains an environmental contractor consultant to evaluate whether the selected remedy in the ROD is still in place and whether the assumptions on which that remedy was based are still valid. There is both a site visit as well as interviews and review of reports.

Mrs. Kenney asked if there are measurements taken of the surrounding areas of the water, soil, and particulates of vapor in the air. Mr. Spergel responded it depends on the kind of site. He said for a capping remedy it is unlikely there would be sampling done. It would be more of an evaluation and understanding of whether there has been any visual observation of any questionable impact to the integrity of the cap.

Mrs. Kenney asked who is interviewed for the five-year report. Mr. Spergel responded it could be the site owner, the party who conducted the remediation, or the consultants involved in implementing the cap.

Mrs. Kenney asked if there are any studies where people who live or work in or near reused sites are asked or interviewed or polled in some ways to see if there are any health problems. Mr. Spergel responded he does not believe that is part of the EPA's five-year review.

Mrs. Kenney asked if the Department of Health is involved at the federal, state or local level. Mr. Spergel responded he does not know every specific facet of the five-year review process and would have to look it up and supplement the record, but based on his understanding unless there is a specific question, complaint or concern he does not believe the five-year review evaluates the health in general of the neighbors.

Mrs. Kenney asked for more information about the reopened site in New Jersey and asked about the nature of the problems. Mr. Spergel responded that site was not a Superfund site and a residential development was built on top. It was determined after cleanup took place there was other contamination that was not addressed (chromium) that could pose additional risks. The former owners of that site were required by the state agencies to come in and do a significant amount of additional investigation or remediation since it was not cleaned up properly the first time.

Mrs. Kenney asked if Mr. Spergel is aware of any Superfund sites anywhere in the country where they were reopened or had to go back because of health problems. Mr. Spergel responded he knows of sites that had contingent ground water remedies and were required to implement active ground water remediation which was incorporated into the Record of Decision. He said he is

aware of sites where there were removal actions after Records of Decision were established where additional contamination was found. Mr. Spergel was unable to provide specific locations, but he said he was generally aware there have been instances where previously unknown contamination was identified and additional action needed to take place.

Mrs. Kenney asked if there were any former Superfund sites that were reused for commercial, residential, or recreational uses where subsequent to the new use after it was cleaned up health problems were discovered such as cancer of any kind of respiratory problems. Mr. Spergel said he is not aware of any such cases.

Mrs. Kenney asked if the five-year reviews are available to the public. Mr. Spergel responded in the affirmative.

Phil Pasquarello, Lawndale Avenue, asked if it would be safer procedure to evacuate the site rather than cap. Mr. Spergel reiterated what Mr. Moss said earlier about the number of different factors the EPA looks at in evaluating what remedy they select for a particular site, including the potential for more harm by digging it up than leaving it in place. At this site EPA made a different decision for quarry 3 because it was significantly more contaminated and posed a greater risk to ground water, but for the other two quarries they made the decision it would be best to cap it.

Mr. McGrory stated the next hearing session will be taken up with traffic engineering testimony and another hearing continuation will be needed after that to entertain public comment. It was noted the continuation of the hearing will occur at the next business meeting on July 21<sup>st</sup> at 7:30 p.m.

#### ACCOUNTS PAYABLE & PAYROLL:

##### Board Action:

It was moved by Mr. Waks, seconded by Mr. Philips , all voting "Aye" to approve the Accounts Payable for invoices processed from May 11, 2016 to June 8, 2016 in the amount of \$2,105,121.44 and the Payroll for May 20, 2016 and June 3, 2016 in the amount of \$1,417,006.90 for a total of \$3,522,128.34. None opposed. Motion passed 5-0.

#### ADDITIONAL BUSINESS

#### JULY 4<sup>TH</sup> EVENTS TO BE HELD AT VALLEY FORGE NATIONAL HISTORICAL PARK

Mr. Waks noted the special events held every July 4<sup>th</sup> include the July 4<sup>th</sup> Independence Day festivities at Valley Forge National Historical Park from 11 a.m. to 3 p.m.

#### FARMERS MARKET OPENING

Mrs. Kenney discussed the Farmers Market opening on Saturday and the wide variety of activities planned.

#### ENVIRONMENTAL GOATS HAVE ARRIVED AT BOB WHITE PARK

Mrs. Spott announced the environmental goats have arrived at Bob White Park to take care of the invasive vine problem at the park. Several years ago the township looked at a way to irradiate the invasives through herbicides and actual removal which would have been a very expensive option. After additional research, Mrs. Spott reported goats were found to be an environmentally friendly resource for this type of treatment and much less expensive. It was noted when goats forage and consume vegetation the seeds are not released through their

digestive system thereby preventing the vegetation from growing again.

Mrs. Spott expressed appreciation to the Park and Recreation Board for seeing this environmental project through to its successful completion. The goats will be here for several weeks throughout the summer and volunteers are being recruited to assist in keeping the worker goats hydrated.

#### DEPARTMENT OF PUBLIC SAFETY RESPONSE DRILL

Mr. Jenaway reported on the five county regional task force exercise to train and test the emergency response in the event of a Bakken crude oil spill or train derailment. He said while the frequency of an incident and the probability of an incident is very low it is important to be prepared for such an event.

#### SPECIAL TOWNSHIP EVENTS

Mr. Jenaway discussed July 4<sup>th</sup> events at Heuser Park and the Concerts Under the Stars 32<sup>nd</sup> season.

#### ADJOURNMENT:

There being no further business to come before the Board, it was moved by Mr. Philips, seconded by Mrs. Kenney, all voting "Aye" to adjourn the meeting. None opposed. Motion approved 5-0. Adjournment occurred at 9:52 p.m.

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DAVID G. KRAYNIK  
SECRETARY-TREASURER  
TOWNSHIP MANAGER

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Minutes Approved:  
Minutes Entered