

MIDDLETOWN TOWNSHIP

DELAWARE COUNTY, PENNSYLVANIA

November 25, 2013

Minutes of Regular Meeting of Township Council Held on Monday, November 25, 2013 at 7:00 PM in the Township Building, 27 N. Pennell Road

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Present: L. Bradshaw, S. Galloway, M. Kirchgasser, C. Quinn, N. Shropshire  
B. Clark, J. Damico, Esq., A. Rothe

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1. Chairperson Ms. Bradshaw opened the meeting with the Pledge of Allegiance to the Flag.

Ms. Bradshaw announced that Council met in Executive Session prior to tonight's meeting to discuss procedural issues and some legal matters.

2. Special Presentation

Ms. Bradshaw stated she was pleased to present a check for \$1,000 representing the Township's contribution to the Middletown Township Historical Society to MTHS President Sue Mescanti, who accepted the check on behalf of the Historical Society. Mrs. Mescanti expressed appreciation for the Township's continued support. She stated that the money will be used toward purchase of PastPerfect software that will enable MTHS to record and catalog historical pictures and documents for their archives.

Mrs. Mescanti explained that MTHS has accomplished quite a bit over the past three years, and described projects completed this year. She pointed out that the "Middletown Monday" lecture series concluded its third successful year in November. The lectures were held at Lima Estates and had an average attendance of 100+ at each lecture. She stated that for the third consecutive year MTHS projects have been recognized by the Heritage Commission of Delaware County. This year David and Molly Burk received the award for creating a scale model of the Smedley barn. She noted that MTHS memorabilia is currently on display in "The History of Delaware County" exhibit at the Delaware County Historical Society Museum in Chester. In October she and several members participated in the Delaware County Celebration of History event at Rose Tree Park.

Mrs. Mescanti noted that MTHS encouraged the Township to undertake restoration and preservation of the silos on the Smedley property that have been Middletown Township icons for many years. MTHS salvaged some of the beams for use in future projects

when the barn was partially demolished; however, storage became a problem and ultimately a restoration group was able to take some of the timber and other pieces were donated to the Colonial Plantation at Ridley Creek State Park.

Mrs. Mescanti went on to say that MTHS received permission from the Township for a project to refurbish the exterior of the "Oaklawn" house located at North Middletown Road and West Rose Tree Road. Williamson Trade School students and members of the Penncrest High School Art Honor Society plan to donate their talents for the project. She explained that a Life Scout has expressed interest in using some of the remaining timber from the Smedley barn to build one or two benches for the Oaklawn property as part of his Eagle Scout project.

Ms. Bradshaw stated that Council is pleased with all that MTHS has accomplished to preserve the history of Middletown Township.

3. Comments from the Public

Bill DeFeo, General Manager of the Middletown Lions Semi-Pro Baseball Team, stated that the team had an excellent season and made it to the semi-finals. Several players were named to the All-Star team. He explained that for the past five years the team has been a member of the Delco League, which is the oldest semi-pro baseball league in America.

Rusty Abrams, team coach, described some of the season highlights. He explained that the team members are basically in their early twenties and many played in the Aston-Middletown Little League as youngsters and continued to play in high school.

Mr. DeFeo stated they have been pleased to see more people attending the games, which are held at Penncrest. On behalf of the team he expressed appreciation for the Township's continued support and stated that they are proud to represent Middletown Township.

Mr. Galloway noted that he attended one of the playoff games and was impressed with the quality of the players. He thanked Mr. DeFeo and Mr. Abrams for the time and effort they devote to the team. He explained that Council is in the process of reviewing the 2014 budget and will consider a donation to the team. He wished the team good luck in the 2014 season.

4. Reports

A. Chairperson: Ms. Bradshaw extended best wishes for a safe and happy Thanksgiving.

B. Finance & Administration: Mr. Galloway reported that the Committee and Council members began review of the draft 2014 Budget in early October, and it is anticipated that a balanced budget will be on the agenda for approval at the December 9<sup>th</sup> meeting.

C. Roads & Highways: Mr. Shropshire stated that the Committee has been gathering information on planting and maintenance of bamboo in preparation for drafting an ordinance to regulate the use of bamboo in landscaping. The plant grows quickly and spreads to adjoining properties if not properly maintained. A resident who is very knowledgeable about bamboo is assisting the Township in reviewing ordinances adopted by other municipalities that could serve as a basis for a bamboo ordinance for Middletown.

D. Land Planning: Ms. Bradshaw explained that representatives of BET Investments, the new owner and developer of Granite Run Mall, reviewed plans for redevelopment of the mall.

E. Manager: Mr. Clark noted that the Township is once again collecting toys for the U.S. Marine Corps Toys for Tots Foundation which provides new toys for children with life-threatening medical conditions. For the past several years the large collection box in the lobby of the Township building has been filled to overflowing and they hope to have a good collection again this year. He urged residents to donate toys before the box is picked up on December 16<sup>th</sup>.

F. Mr. Kirchgasser stated that the State recently passed the transportation budget for 2014 and the budget was signed by the Governor on Saturday. Middletown Township will benefit in several ways. The budget includes funding to continue service on the R3 line to Elwyn. Funding was also approved for installation of a permanent traffic signal at the intersection of Forge Road and Rt. 352. State Representative Thomas Killion was a strong supporter for installation of the traffic signal and had a specific interest in making certain the intersection was properly signalized. Engineering to support installation of the signal will begin shortly.

5. Public Hearings

Ms. Bradshaw announced that the agenda will be amended to consider the items that do not relate to the Pond's Edge development project before continuing the Public Hearings on the ordinance amendment and Conditional Use Application for the Pond's Edge development.

Mr. Kirchgasser moved to amend the agenda to consider Agenda Items 7D through 7K before the items relating to the Pond's Edge development (Agenda Items 5A, 5B, 6A, 7A, 7B, 7C). Mr. Galloway seconded the motion, and the motion was approved by unanimous vote 5-0.

7. New Business

D. Adjustment of Sewer Rate Charges –  
2014 and Following Years

Timothy Sullivan, Esquire, Chairman of the Sewer Authority Board of Trustees, and John Ibach, Manager of the Sewer Authority, were present to discuss introduction of an ordinance to authorize an increase in the annual sewer rate for 2014. Mr. Sullivan explained that

the rate increase is necessary in connection with the Sewer Authority's transition to DELCORA for sewage treatment in late 2014. It is proposed that the annual sewer rate for residential customers will increase from \$300 per equivalent dwelling unit (EDU) to \$350 per EDU effective January 1, 2014. Rather than billing customers for a large lump sum payment, the annual sewer rate will increase by increments each year until reaching a plateau of approximately \$450 per residential customer.

Mr. Sullivan went on to say that the quarterly base rate for commercial and industrial users consuming zero to 24,000 gallons of water per quarter will increase from \$87.50 to \$100.00, plus \$4.17 per 1,000 gallons (or portion thereof) consumed over 24,000 gallons per quarter.

Mr. Sullivan pointed out that Middletown's sewer rates compare very favorably with the rates of other municipalities, and for many years the annual rate was maintained at \$194 for residential customers. He explained that in anticipation of the closing of the Southwest sewage treatment plant in 2017, the Sewer Authority negotiated an agreement with DELCORA to treat Middletown sewage at their plant in Chester. In order to convey the sewage to the Chester treatment plant, it was necessary to install a new interceptor in the Chester Creek and share in the cost of constructing a new larger pump station.

Mr. Clark stated that the proposed ordinance authorizing the rate increase can be introduced tonight, and could be considered for adoption at the December 9<sup>th</sup> meeting.

Mr. Galloway moved for introduction of an ordinance amending the Code of Ordinances, Chapter 180, Article II, Section 180-10 to increase the annual sewer rent or charges from \$300.00 to \$350.00 for calendar year 2014 and each year thereafter until amended, for each house, apartment, condominium, trailer or dwelling unit. The quarterly base rate for commercial and industrial users will be increased from \$87.50 to \$100.00 in the calendar year 2014 and each year thereafter until amended, plus an increase in the charge for each 1,000 gallons (or portion thereof) consumed over 24,000 gallons per quarter from \$3.65 to \$4.17 for the calendar year 2014 and each year thereafter until amended. Mr. Kirchgasser seconded the motion, and the motion was unanimously approved 5-0.

Ms. Bradshaw expressed Council's appreciation for all the work the Sewer Authority does to maintain and improve the sewage disposal system. Mr. Sullivan thanked Council for its support.

- E. Consideration for Adoption – An Ordinance Amending the Code of Ordinances of the Township of Middletown, Delaware County, Pennsylvania, Chapter 215, Taxation, by Enacting a New Article V to be Entitled “Local Services Tax”, Which Provides for the Assessment, Liability, Collection and Payment of a Local Services Tax, for Exemptions from Assessment of the Local Services Tax, for the Use of Funds Collected Pursuant to the Local Services Tax, for Administration and

Enforcement of the Local Services Tax and for Interest, Fines, and Penalties for Violation of this Ordinance

Mr. Kirchgasser explained that an ordinance was introduced at the October 28<sup>th</sup> meeting authorizing enactment of the Local Services Tax, and he presented a brief power point summary of the tax. He stated that Council has always been and will continue to be fiscally responsible. The major problem in the Township is traffic conditions at the Rt. 1/Rt. 452 intersection. The traffic congestion at the intersection has basically been created by increasing populations in communities surrounding Middletown. Motorists from surrounding communities drive through Middletown to reach I-95, I-476, and the Pennsylvania turnpike. He displayed a map with shaded areas representing surrounding roads within Middletown's boundaries that are also affected by congestion at the Rt. 1/Rt. 452 intersection, and noted that motorists find routes through residential neighborhoods to avoid the intersection. He pointed out that the State does not have funding for improvements at the intersection, and no line item in the Township budget can carry the financial burden for improvements. A revenue source must be found that will not burden Township residents, and one alternative is enactment of the Local Services Tax (LST).

Mr. Kirchgasser explained that the Local Services Tax is based on an annual flat tax of \$42 to be assessed on people who work within Middletown Township and have an annual income of more than \$12,000. By law, 25% of the money collected must be designated for emergency services provided by first responders and volunteer fire fighters. The balance of the funds will be designated for highway improvements to relieve congestion problems at the Rt. 1/Rt. 452 intersection. It is estimated that the LST will generate \$350,000-\$400,000 per year. He noted that 40 of the 49 municipalities in Delaware County have enacted the Local Services Tax.

In conclusion Mr. Kirchgasser stated it is his opinion that enactment of the Local Services Tax is an appropriate source of revenue for raising funds to benefit emergency services and for improvements at the Rt. 1/Rt. 452 intersection

Mr. Kirchgasser moved for adoption of the ordinance amending the Code of Ordinances of the Township of Middletown, Delaware County, Pennsylvania, Chapter 215, Taxation, by enacting a new Article V to be entitled "Local Services Tax", which provides for the assessment, liability, collection and payment of a Local Services Tax, for exemptions from assessment of the Local Services Tax, for the use of funds collected pursuant to the Local Services Tax, for administration and enforcement of the Local Services Tax, and for interest, fines, and penalties for violations of this ordinance.

Mr. Galloway seconded the motion, and Ordinance No. 741 was adopted by unanimous vote 5-0.

F. Appointment of Collector for Local Services Tax

Mr. Clark stated that with adoption of the Local Services Tax, Council must authorize an agreement with Berkheimer as its exclusive collector of the Local Services Tax.

Mr. Kirchgasser moved that it is resolved that:

1. Middletown Township, Delaware County, hereby appoints Berkheimer as its exclusive collector of the Local Services Tax for the initial term commencing January 1, 2014 and ending December 31, 2016, and any subsequent renewal terms thereafter, said initial and renewal periods to include all quarterly and annual collections pertinent to the tax years therein. This appointment resolution shall be deemed to encompass any renewal terms agreed upon by the parties without further reenactment of this resolution or re-appointment.
2. Further, Berkheimer is authorized to retain any costs of collection incurred in recovering delinquent taxes and assessed to the delinquent taxpayer as allowed by law.
3. Further, Middletown Township, Delaware County approves and adopts the Agreement negotiated with Berkheimer for the collection of the Local Services Tax.
4. And further, Middletown Township, Delaware County adopts and incorporates the Local Services Tax Rules and Regulations as promulgated by Berkheimer in their entirety.
5. Any resolution or part of this resolution conflicting with the provisions of this resolution be and the same are hereby repealed to the extent of such conflict.

Mr. Galloway seconded the motion, and Resolution 2013-92 was approved by unanimous vote 5-0.

G. Designation of Tax Hearing Officer – Local Services Tax

Mr. Clark stated that Council should also appoint Berkheimer as Tax Hearing Officer to adjudicate appeals of the Local Services Tax.

Mr. Kirchgasser moved that Middletown Township, Delaware County, appoints Berkheimer as its Tax Hearing Officer and further, adopts and incorporates the Act 50 Regulations as promulgated by Berkheimer in their entirety. Mr. Galloway seconded the motion, and Resolution 2013-93 was approved by unanimous vote 5-0.

H. Establishment of Fees and Costs –  
Collection of Delinquent Local Services Tax

Mr. Clark pointed out that Berkheimer will incur certain costs in recovering delinquent payments of the Local Services Tax. A Cost Collection Schedule outlining fees and costs was supplied by Berkheimer. Any costs or fees due assessed against the delinquent taxpayer will be collected when the delinquent tax is eventually paid.

Mr. Kirchgasser moved that Middletown Township, Delaware County approves and adopts the Cost of Collection Schedule attached hereto and made a part of this Resolution to be imposed by Berkheimer upon any taxpayer whose taxes are or become delinquent and/or remain due and unpaid. Berkheimer is authorized to retain said costs of collection set forth in the attached schedule incurred in recovering delinquent taxes and assessed to the delinquent taxpayer as allowed by law. Any resolution or part of this resolution conflicting with the provisions of this resolution be and the same are hereby repealed to the extent of such conflict.

Mr. Galloway seconded the motion, and Resolution 2013-94 was approved by unanimous vote 5-0.

For clarification, Mr. Clark explained that the motion appointing Berkheimer as collector for the LST also approves and adopts the contract agreement with Berkheimer for collection of the tax. The actions taken by Council adopts and incorporates the Local Services Tax rules and regulations as part of that whole process.

I. Authorized Township Representative – Sharing of Confidential Tax Information – Local Services Tax

Mr. Clark stated it is recommended that Tim Sander, Finance Director, be appointed as the Township authorized representative to make requests upon and receive information and records from Berkheimer regarding collection of the Local Services Tax.

Mr. Kirchgasser moved that:

1. Middletown Township, Delaware County appoints Timothy Sander as its authorized representative to make requests upon and receive all tax information and records from Berkheimer relative to the collection of taxes for Client, as desired and deemed necessary by Client to be used for official purposes only, and
2. Berkheimer is hereby directed to provide and/or transmit any and all tax information and records, or any portion thereof, relating to the collection of taxes for Middletown Township, Delaware County, upon request, to Timothy Sander as the authorized contact representative for it.
3. Middletown Township, Delaware County hereby saves harmless, indemnifies and/or absolves Berkheimer from and against any and all liability in connection with the release of said confidential information.

Mr. Galloway seconded the motion, and Resolution 2013-95 was approved by unanimous vote 5-0.

J. Acceptance of Proposal – Credit Card Processing Service

Mr. Clark stated that at the last meeting Council accepted the proposal of Republic Bank for banking services beginning January 1, 2014 through December 31, 2016. He noted that in prior years credit card services to accept payment for Township trips, permits and property taxes were bundled with the banking services at no direct charge to the Township. Due to recent competition in the banking industry, the new proposals from TD Bank and Republic Bank offered credit card service at little or no charge to the Township but a 3% transaction fee would be charged to the card holder. The Finance Committee recommended that credit card services be eliminated from the banking services bundle and that the Township investigate contracting with an independent credit card company at a lower fee for processing credit card transactions.

Mr. Clark pointed out that Visa, MasterCard and Discover charge a processing fee and in addition would bill the Township as the card acceptor for a fee based on the amount of the transaction.

Mr. Clark went on to say that Mr. Sander received quotations from four credit card processors. The low bidder was MerchantCore at an annual charge of \$521.35, based on the Township's past credit card transaction totals. The highest proposal was from Nationwide at an annual fee of \$1,615, followed closely by TD Bank at \$1,408. He explained that MerchantCore is the local sales representative for Clearent, which provides the credit card payment processing and billing. Mr. Carlson's son Shane is the principal of MerchantCore; however, Mr. Carlson is not affiliated with MerchantCore. At Council's request Mr. Damico's staff researched the issue of conflict of interest, and Mr. Damico is satisfied that conflict of interest would not be an issue in awarding the contract to MerchantCore as the low bidder. He noted that Mr. Carlson recused himself from participation in the process of bidding and awarding the contract to MerchantCore.

Mr. Galloway moved that the proposal of MerchantCore, LLC be accepted beginning on January 1, 2014 consistent with their proposal submitted to the Township as tabulated on October 31, 2013. Mr. Quinn seconded the motion, and Resolution 2013-96 was approved by unanimous vote 5-0.

K. Approval of Bill List

Ms. Bradshaw read aloud the bills presented for Council's consideration for approval for payment.

Mr. Kirchgasser moved that payments under the November 25, 2013 Bill List be authorized for payment by the Finance Department:

General Fund

Aqua Pennsylvania, Inc.	October Hydrant Rent	\$11,280.75
Independence Blue Cross	November Health Insurance	23,303.44
	Highway Share	
	Sewer, Cobra & Library Share	
	Recreation Share	
McCusker & Ogborne	September & October Recycling	35,387.08

Recreational Enterprise Fund

TD Bank	Golf Outing, Miscellaneous, Trips	5,955.99
Celebrity Limousine	Various Trips	5,500.00

State Aid

International Salt	Salt	5,244.78
Innovative Construction Serv.	2013 Road Resurfacing Program	300,004.90

Mr. Galloway seconded the motion, and Resolution 2013-97 was approved by unanimous vote 5-0.

5. Public Hearing

- A. Proposed Amendment of Zoning Ordinance to Permit a Campus Mixed Use Development as a Conditional Use within the R-4 Residential District and Provide Area and Bulk Regulations and Design Standards for Such Development
- B. Conditional Use Application of Ponds Edge, LP. For Approval to Construct a Campus Mixed Use Development on Property Located at 1278-1328 W. Baltimore Pike Consisting of 221 Single Family Attached Dwelling Units and Two Retail Buildings Containing a Total Floor Area of 32,500 sq. ft. Within the R-4 Residence District Pursuant to a Proposed Amendment of Chapter 275, Section 275-35.C(8) of the Zoning Ordinance

Ms. Bradshaw opened the Public Hearings continued from the October 28<sup>th</sup> meeting relating to the proposed Ordinance Amendment to permit a Campus Mixed Use Development as a Conditional Use in the R-4 Zoning District and the Conditional Use Application of Pond's Edge L.P. for Approval to Construct a Campus Mixed Use Development on the property located at 1278-1328 West Baltimore Pike.

The testimony was recorded by Lorraine Evans, court reporter.

Joseph Riper, Esquire, representing Pond's Edge LP, explained that progress has been made in several areas since the last hearing. James Faber, project landscape architect,

completed the landscaping, lighting and project enhancement plans; a meeting was held with PADOT with respect to off-site highway mitigation; and Mr. Houtmann, project engineer, made some modifications in the Preliminary Subdivision/Land Development Plan to maintain the 100 ft. setback area adjoining Overlook Circle and to increase the area of tree preservation.

Mr. Riper noted that on November 14<sup>th</sup> he, Andreas Heinrich and Gregory Peil, representing the applicant, and Bruce Clark, Art Rothe and Al Federico representing the Township, met with Francis Hanney, PADOT Engineering District 6-0, and other PADOT representatives to discuss traffic issues in relation to the Transportation Impact Study (TIS) for the Pond's Edge development. They discussed existing conditions and considered some specific off-site mitigation projects that PADOT thought might be appropriate for this project. They also discussed improvements that might be made to improve traffic congestion at the Rt. 352/Rt. 452 intersection as an Alternative Transportation Plan in lieu of mitigation as the Rt. 1/Rt. 452 intersection. A contribution in the range of \$350,000-600,000 toward improvements at the Rt. 1/Rt. 452 intersection was suggested. Mr. Riper pointed out that the applicant recently offered to increase his contribution for off-site highway mitigation from \$350,000 to \$450,000.

Mr. Riper explained that Mr. Heinrich prepared minutes of the meeting with PADOT. Mr. Clark added some comments and the minutes are being prepared in final form for distribution to those in attendance.

Mr. Riper stated that he received Mr. Comitta's review comments today, and except for a few items, the applicant agreed to accept the recommendations. Exhibit A-37 is the review letter dated November 25, 2013 prepared by Thomas Comitta Associate, Inc. Exhibit A-35 is the Landscape, Lighting and Enhancement Plan prepared by McCloskey & Faber dated November 18, 2013.

Mr. Riper stated that the Township Planning Commission reviewed the text changes to the Amendment of the Zoning Ordinance at their November 12<sup>th</sup> meeting and recommended approval for adoption of the ordinance as amended, subject to Mr. Riper and Mr. Rothe reaching agreement regarding active recreation facilities to be credited against the recreation fee-in-lieu. If they cannot agree on whether specific items should or should not be credited against the fee-in-lieu payment, Council will make the decision. Exhibit A-36 is a list of playground equipment prepared by Mr. Houtmann, and Exhibit A-38 is a list of recreational facilities proposed by the applicant to be credited against the fee-in-lieu of payment.

Mr. Riper went on to say that the core issue, which Council will have to address, is that Mr. Rothe favors recreational facilities that promote physical activity more strenuous than walking or relaxed activities, while Mr. Faber is attempting to establish an overall recreational plan for the community. Mr. Faber's goal is to encourage residents of the community to take advantages of recreational facilities throughout the community and to enjoy socializing in the gathering areas.

Mr. Riper requested that Exhibits A-34 through A-38 be entered in the record.

Mr. Riper stated that the most notable change in the proposed Zoning Ordinance Amendment appears in Section 275-38.1.C.1.b, and explained that minimum gross density originally required 4.25 dwelling units per acre. Due to site constraints density has been reduced to slightly less than 4 dwelling units per acre.

Mr. Riper pointed out other changes. (1) In Subsection F the words "Public Improvement Enhancements" were missing in the title and have been added. (2) Section 38.1.F.13, Public Trail, referred to an "unpaved walking trail" and the design guidelines required a "paved trail". In discussions with Mr. Damico and Mr. Clark it was agreed that the term "unpaved/paved" should be deleted, and the requirement would simply require a walking trail. Construction of the walking trail would not be considered as a credit toward the fee-in-lieu but the cost of paving the trail could warrant a credit.

(3) The ordinance requires a minimum of 35% of the Campus Mixed Use Development Tract shall be designated for open space uses. Mr. Riper pointed out that from the beginning the draft ordinance required that not less than 1% of the open space was to be set aside for active recreational facilities, such as a gazebo, swings, bocce ball court, etc. Text has been added to confirm that the cost of active recreational facilities and the cost of public improvement enhancements in the nature of active recreational facilities shall be applied as a credit toward the recreation fee-in-lieu payable by the applicant.

Mr. Rothe pointed out that Mr. Comitta prepared new definitions for active and passive recreation, and suggested the information should be introduced as an amendment in the definition section.

Mr. Rothe stated that the applicant proposes credit not only for the cost of paving the walking trail, but also for trail signs, stone retaining walls, etc. He pointed out that the Township should not be expected to pay for paving a private walking trail to be used only by the residents of Pond's Edge. He went on to say he asked the applicant several times to supply a list of active recreational items proposed to be credited toward the fee-in-lieu, and suggested that Mr. Riper meet with him and Mr. Clark to discuss the applicant's requests for credit. He did not receive the information until Friday and did not have time to review it in any detail before tonight's meeting, nor did he have time to discuss it with Mr. Comitta.

Mr. Rothe stated that the ordinance listed examples of active recreational facilities such as a community swimming pool, clubhouse, tennis courts, etc. A developer may not claim credit for the cost of providing such amenities unless the facilities were shown on the plan.

Mr. Riper explained that over the past month Mr. Faber worked very hard to complete the plans for landscaping, lighting and enhancements for tonight's meeting. He suggested that there are no right or wrong answers regarding what does and does not qualify for credit toward the fee-in-lieu. It is a matter of opinion, and he recognizes that Council may not be making a decision tonight.

Mr. Clark stated that the Planning Commission minutes of the November 12<sup>th</sup> meeting with a recommendation for adoption, and the County Planning Department review

comments and recommendation for adoption are part of the record for the Township. Proof of publication for advertisement of the ordinance amendment in the Delaware County Daily Times on November 10 and November 17, 2013 is also entered into the record.

Kevin Gale, 9 Overlook Circle, noted that the Planning Commission reviewed the ordinance amendment at the August meeting and voted not to recommend adoption of the ordinance.

There were no additional comments or questions regarding amendment of the ordinance to permit a Mixed Use Campus Development as a Conditional Use in the R4 District. Mr. Damico stated that the ordinance amendment has been fully discussed and the Public Hearing on the Conditional Use application can continue.

Mr. Rothe was sworn and briefly summarized the history of proposals for development of the property located at 1278-1328 West Baltimore Pike. He stated that the property was rezoned to R4 in 2002 and a plan was submitted for construction of 117 townhouses on 57 acres. The plan was not finally approved and recorded, and State permits for wetlands and crossings were never issued. Two by-right plans were proposed by Pond's Edge but could not be approved because of impingement on wetlands, buffer zones, etc. The current plan proposes 211 units plus two commercial buildings fronting on Baltimore Pike. By reducing the space between units the developer was able to place more buildings on the property, and proposed enhancements are meant to make the development more attractive.

Mr. Galloway pointed out that a number of changes have been made in the plan at Council's request during meetings with the Land Planning Committee and Council as a whole. Mr. Kirchgasser noted that the perimeter of the property looks very much the same as in the original plan but the interior has been more densely developed.

Mr. Rothe stated that there has been considerable discussion about construction of a secondary access and the applicant agreed that the commercial component would not be built until the second access was completed. He has not conducted an engineering review of the plans, basically because the plans have been changed a number of times. For the record, he introduced a review letter dated March 5<sup>th</sup> and a June review letter that was last revised October 7<sup>th</sup>. He and Mr. Houtmann went through the review letter and made a number of changes in the plan.

Mr. Rothe stated he estimates the fee-in-lieu payment for active recreational facilities to be approximately \$622,000. He suggested he would like to meet with Mr. Riper and Mr. Comitta to discuss the proposed credits. Mr. Galloway asked if it would be possible for them to meet prior to the December 9<sup>th</sup> meeting. Mr. Comitta noted that he will make himself available.

Mr. Rothe stated that in his review comments he referred to correspondence from the Township Sewer Authority dated May 14, 2013 indicating that the Authority was unable to approve the Planning Module. He received an email from Walter Fazler, Engineer for the Sewer Authority, listing a number of reasons why the Planning Module could not be approved, and also

indicating that no sewer capacity is available to serve development of the Pond's Edge property, the Franklin Mint property and the Sleighton property. Mr. Fazler suggested the possibility that the developers of those properties fund installation of an interceptor in Chester Creek to provide sewage disposal capacity.

Mr. Rothe noted that the proposed emergency access for Pond's Edge to Lenni Road and the water main connection are still outstanding issues. Mr. Damico stated he received information today regarding these matters, and only had time for a brief review to the extent that he felt comfortable commenting on it, but will need further study before offering an opinion. Two weeks ago he made a preliminary review of the details contained in today's memo from Mr. Riper that included a number of attachments and copies of plans back to 1924. The plans have been updated over the years due to housing development in the area. The emergency access and water main are very important to development of the Pond's Edge property, and without them the plan cannot be approved.

Mr. Rothe stated that another major issue is the cross easement on the Donovan parcel. He understands that Mr. Riper has been working diligently with the Franklin Mint developers to establish parameters for an amended and restated cross easement. Mr. Riper commented he anticipates that he will be able to work with The McKee Group now that the litigation among the partners has been settled.

Kevin McLaughlin, Esquire representing The McKee Group, stated they are hopeful that the refined easement agreement will address and resolve all of the issues.

Mr. Rothe stated among other open issues Mr. Comitta and staff must review and approve the landscape and lighting plans, the Fire Marshal must approve the location of the fire hydrants, the cross easement agreement must be finalized, the emergency access to Lenni Road must be resolved, and plans must be made for sewage disposal. He requested that comments No. 34-44 be included in the record as part of his testimony.

John Gallagher, 16 Overlook Circle, inquired how the Overlook Circle parties in interest can obtain copies of the Township's exhibits entered into the record and updated exhibits on behalf of the applicant. Mr. Clark stated that within the next few days he and Mr. Rothe will put together a combined set of exhibits introduced on behalf of the Township for distribution to the parties in interest.

Joseph Dellavecchia, 19 Overlook Circle, explained that the parties in interest want to make certain they have sufficient time to prepare their presentations. They have other questions regarding the cross easement and emergency access to Lenni Road, and want to be certain that the plan is legally acceptable. Mr. Galloway stated now is the time to ask questions of Mr. Rothe on matters to which he testified.

Mr. Shropshire suggested that Mr. Dellavecchia may not understand Mr. Damico's position as Solicitor for Council. Mr. Galloway pointed out that there is a distinction between representation of the Township and the parties in a legal matter. It would not be proper

for Mr. Damico to give advice to the parties in interest. If Mr. Dellavecchia or any of the Overlook Circle parties is looking for legal advice, they should retain an attorney.

Thomas Comitta was the next witness to testify on behalf of the Township. He was sworn and explained that he was engaged by the Township 34 years ago to assist with preparation of the 1981 Comprehensive Plan and subsequently with the 2001 updated Comprehensive Plan.

Referring to his review comments dated November 25, 2013 (Exhibit A-37) Mr. Comitta noted that the lighting plan prepared by McCloskey & Faber shows a continuously illuminated streetscape, and suggested that the continuous illumination in the residential section might be too intense and probably should be reduced somewhat. He stated he was comfortable with the items on Mr. Riper's list of active recreational facilities with certain modifications. He suggested that Council could use his review comments as a checklist in considering action on the Conditional Use plan. If he, Mr. Riper, Mr. Rothe and Mr. Clark can meet next week they should be able to come to agreement on most of the issues relating to active recreational facilities, playground equipment, etc. He expressed appreciation to Mr. Faber for the detailed plans he prepared, and commented that the plans are the best he has seen in the 34 years he has worked with the Township. Given the constraints of the site, Mr. Faber did the best he could as far as landscaping, lighting and enhancements plans.

Ms. Bradshaw inquired whether the Overlook Circle parties in interest had any questions for Mr. Comitta regarding his testimony.

Mr. Gale stated that Mr. Comitta testified for the developer, which is clearly a conflict of interest. Mr. Comitta's comments were very much in favor of the developer. Mr. Comitta responded that he has never testified for any applicant in the 34 years he has served as a landscape consultant for the Township. In fact, he has only testified two times regarding the Pond's Edge development – once at the September 9, 2013 Council meeting and tonight.

Mr. Galloway asked Mr. Gale when and for whom he was suggesting that Mr. Comitta testified for the applicant. Mr. Shropshire stated that Mr. Comitta was never retained by Mr. Riper as a consultant. Council values Mr. Comitta's professional opinions and never questioned them. Mr. Comitta is not endorsing the plan but simply offering his opinion that it is a good plan.

Mr. Gale stated that the Overlook Circle parties in interest were present at the September 9<sup>th</sup> meeting when Mr. Comitta appeared as a witness for the developer. Mr. Galloway stated he would like to review the minutes of the September 9<sup>th</sup> meeting and would like to defer any further discussion of this matter until Council has an opportunity to review the minutes of the September 9<sup>th</sup> meeting.

Mr. Comitta stated that he does not agree with Mr. Gale's characterization, especially when the information has not been read completely. He stated that if Mr. Gale would like to retract his comment as a courtesy to him, he would appreciate it. He commented that if a plan has weak points he identifies them and describes the issues still to be resolved item by item.

Ms. Bradshaw pointed out that the Township is fortunate to have Mr. Damico as its Solicitor. He is one of the best attorneys in the County and the State in handling real estate matters.

There were no further questions for Mr. Comitta, and Albert Federico, traffic consultant with McCormick Taylor, was the next witness.

Mr. Federico was sworn, and indicated that he was asked by the Township to review the draft traffic study submitted on behalf of the applicant. The traffic study dated July 30, 2013 was prepared by Andreas Heinrich. The most critical issue was the impact of traffic generated by the Pond's Edge development at the Rt. 1/Rt. 452 intersection. He noted that his report contained a number of technical comments regarding the manner in which the study was performed, and a new study has not been submitted to address those comments. It is difficult to make a formal recommendation at this point based on the level of information available.

Mr. Federico stated that the draft traffic report was forwarded to PADOT, and a review letter was issued that also contained a number of technical comments, together with PADOT's opinion that Pond's Edge will impact the intersection of Rt. 1/Rt. 452 and mitigation will be required.

Mr. Federico went on to say that it is not expected that all of the problems at the Rt. 1/Rt. 452 intersection can be resolved by this developer. Where improvements are not feasible due to environmental constraints or land is not available, an Alternate Transportation Plan could focus on improvements at the Rt. 352/Rt. 452 intersection. However, it would be necessary to obtain rights-of-way from property owners, and it may be necessary to do something else of a similar nature elsewhere.

Mr. Rothe noted that additional traffic counts may be required. If the data was not collected prior to the Thanksgiving holiday and because of the retail elements in this area that data may be skewed. He was aware that a traffic count was taken at Rt. 452 by the Delaware Valley Regional Planning Commission.

Mr. Riper presented additional testimony to be entered into the record, including a letter to Mr. Heinrich from Mr. Hanney listing PADOT's preliminary comments on the plans for compliance with the PADOT regulations, Mr. Heinrich's draft minutes of the November 14, 2013 meeting with PADOT representatives, information regarding the applicant's meetings with the Township Sewer Authority, correspondence with Walter Fazler, Sewer Authority Engineer, and with Mr. Majeski and Mr. Ibach, a letter from Bradford Engineering to the Sewer Authority.

Mr. Riper explained that he has had several meetings with the Sewer Authority, and the issue is not a question of capacity at the DELCORA treatment plant but interceptor capacity to convey sewage to the DELCORA plant. The Sewer Authority is currently working on the first and second phases of extension of the interceptor. The developers of the Pond's Edge, Franklin Mint and Sleighton School properties are formulating a plan with the Sewer

Authority to begin the planning process for a third phase. It is estimated that capacity could be available within two years or less.

Mr. Gale explained that he cannot be present at the December 9<sup>th</sup> meeting and would like to make his presentation on the proposed development of the Pond's Edge property at this time. He noted that he sent an email to Mr. Clark and Mr. Majeski on September 5<sup>th</sup> that he would like to have entered into the record. Mr. Damico stated that Mr. Gale's correspondence will be entered into the record as Exhibit Gale-1.

Mr. Gale stated he and the other Overlook Circle parties have numerous concerns about the proposed Pond's Edge development, including use of the property, density, traffic issues, proximity of roadways and certain buildings to their neighborhood, and the overall health, safety and welfare of the Overlook Circle residents. While the Point Ardashes proposal was not ideal, the Overlook Circle residents were aware of the proposed development before purchasing their homes. The Pond's Edge development will increase housing by 85% more than the 117 units proposed for Point Ardashes and will add two commercial buildings. The higher density and the commercial component of Pond's Edge is unacceptable and will create a significant reduction in the value of the Overlook Circle properties. It will create more traffic, more noise, more light and pollution.

Mr. Gale pointed out that there is no way Pond's Edge can be considered an acceptable transition from development of the Franklin Mint property. He would prefer that the Pond's Edge property be developed as single family detached homes valued at approximately \$600,000.

Mr. Gale stated that he and the other residents appreciate the fact that the applicant altered the direction of Donovan Drive to move it farther away from the Overlook Circle homes; however, the Point Ardashes road system was more acceptable.

Mr. Gale suggested that there should be a clear demarcation between the Overlook Circle homes and the Pond's Edge townhouse units. The Overlook Circle residents recommended constructing an earthen berm with a minimum height of 12 ft. with fencing and a double row of evergreen trees on top. The berm should begin at the 100 ft. location of disturbance. More expansive buffering on the Pond's Edge side of the common property line and elimination of 10-29 townhouse units was also suggested.

Mr. Gale pointed out that it is not clear when or if public sewer service might be available for Pond's Edge, and without it development of the property is not feasible. They are also concerned that there could be a drop in the housing market and the partially constructed Pond's Edge development might never be completely constructed.

Mr. Gale stated it is the request of the Overlook Circle residents that any Pond's Edge residences or parking areas adjoining the Overlook Circle homes should be the last units to be constructed. It is also requested that the Township conduct formal reviews of the easements required, particularly the emergency access easement to Lenni Road, and the land designated for open space.

Mr. Kirchgasser asked Mr. Gale if it was his position that any more than 117 townhouse units is not acceptable. Mr. Gale replied that he suggested at the outset that he was mostly concerned with the 29 units adjoining the Overlook Circle homes but not with the remainder of the Pond's Edge development.

Mr. Quinn stated he would not be in favor of a 12 ft. high berm in the 100 ft. buffer area. Mr. Gale acknowledged that construction of the berm would require removal of more trees.

Mr. Riper asked Mr. Gale whether his presentation was made on behalf of the other parties in interest. Ryan Wells, 20 Overlook Circle, stated that Mr. Gale's presentation is not the extent of the presentations by the parties in interest.

A copy of Mr. Gale's remarks was entered into the record as Exhibit Gale-2.

Mr. Riper requested that the copy of the old Point Ardashes plan supplied by Mr. Gale be marked as Exhibit A-39 and made part of the record.

Mr. Riper inquired whether Mr. Gale purchased his property knowing that the Point Ardashes development was to be constructed and that some of the units would be close to his property. Mr. Gale stated he knew that 117 units were going to be built and some would be close to his property.

There were no further comments and Ms. Bradshaw stated that additional testimony will be presented at the December 9, 2013 Council meeting.

Mr. Kirchgasser moved to continue the Public Hearings on the Zoning Ordinance Amendment and the Conditional Use Application to the Council meeting of December 9, 2013. Mr. Shropshire seconded the motion, and the motion was approved by unanimous vote 6-0.

Mr. Kirchgasser moved to table consideration for adoption of the Ordinance amending and restating a Land Conservation Easement and review of the Preliminary Subdivision Plan for the Pond's Edge development to the Council meeting of December 9, 2013. Mr. Shropshire seconded the motion, and the motion was approved by unanimous vote 6-0.

8. Adjournment

The meeting was adjourned at 10:10 PM.

Respectfully submitted,



Carolyn Doerfler, Recorder

