

LOWER POTTS GROVE TOWNSHIP BOARD OF COMMISSIONERS
September 8, 2015

The Board of Commissioners of Lower Pottsgrove Township held its regularly scheduled meeting on Tuesday, September 8, 2015 at the Lower Pottsgrove Township Municipal Building, 2199 Buchert Road, Pottstown, Pennsylvania. Meeting was called to order at 7:00 p.m. and the Pledge of Allegiance was recited. The following were in attendance:

Board of Commissioners: Bruce L. Foltz, President; Stephen M. Klotz, Vice President; James W. Vlahos and Earl E. Swavely, Jr.

Robert L. Brant, Solicitor; Edward C. Wagner, Manager; Lew Babel, Fire Marshal; Jennifer V. Marsteller, Treasurer/Tax Collector; Scott Exley and Chad Camburn, Township Engineers and Michele Cappelletti, Secretary.

Commissioner Shawn Watson, Chief of Police Michael A. Foltz and Emergency Management Coordinator Raymond W. Lopez were absent.

A moment of silence was observed in memory of former Lower Pottsgrove Township Police Chief Raymond Bechtel, who recently passed away.

Commissioner Foltz announced the meeting was being recorded.

EXECUTIVE SESSION:

Solicitor Brant announced the Board met in executive session at 6:00 p.m. this evening and discussed three litigation matters that will be dealt with during the regular meeting agenda.

LETTER OF RESIGNATION:

Commissioner President Foltz read Commissioner Shawn Watson's letter of resignation, effective September 8, 2015.

Commissioner Swavely made a motion to accept the resignation of Commissioner Shawn Watson from the Board of Commissioners of Lower Pottsgrove Township effective September 8, 2015. Commissioner Vlahos seconded the motion and it was unanimously approved. Vote was 4-0 in favor.

APPROVAL OF MINUTES:

Commissioner Klotz made a motion to approve the minutes of the August 3, 2015 Board of Commissioners meeting. Commissioner Swavely seconded the motion and it was unanimously approved. Vote was 4-0 in favor.

COMMENTS BY VISITORS:

Joe Zlomek of the Sanatoga Post asked how Commissioner Watson's successor will be selected and how that process gets underway. Commissioner Foltz advised the Board has 30 days to do this and it has not yet been discussed.

Sue Davis, Executive Director of the Pottstown Regional Public Library (PRPL), delivered her 2014 Annual Report to the Board of Commissioners. Ms. Davis asked the Board to consider allocating an additional \$5,000 to the Library for the year 2016.

Commissioner Foltz asked how the Library calculated Lower Pottsgrove Township's percentage of circulation because the Township is part of Pottstown's 19464 zip code. Ms. Davis advised when patrons are registered in the computer, they are assigned by their Township, not their zip code.

Commissioner Swavely asked how they determine the value of services on the Return on Investment chart. Ms. Davis advised they use guidelines from the Pennsylvania Library Association, the American Library Association and some of the major libraries in the country. Commissioner Swavely then asked if the statistics were not based on actual costs incurred. Ms. Davis used Amazon's prices as examples for the costs of books and movies. Commissioner Swavely felt if a \$15 book was borrowed a few times, it would be more than paid for. Ms. Davis said we are talking about the value to the customer.

REPORTS:

Police

In Chief Foltz's absence, Sgt. Wil James presented the Police Report for the month of August 2015. Sgt. James reported during the month of August, there were 1,057 calls for service. There were 122 traffic citations issued and 4 DUI arrests. There were 77 criminal violations recorded that involved 31 adults arrests and 5 juveniles were handled.

Sgt. James highlighted the following from the written report:

1. Traffic Enforcement

- a. On August 24 and 25, 2015 officers conducted the PA Aggressive Driver Enforcement Detail along the 422 corridor. 44 citations were issued for various offenses including speeding, obedience to traffic control devices, inspections violations, seatbelt violations and duty of driver in emergency response areas. Of those citations, 8 were issued for violations along Rupert Road, 5 were issued for violations along Bleim Road and the remainder were issued for violations along SR 422.

2. Calls for Service/Departmental Activities

- a. In response to a complaint from a resident on Randy Drive, traffic studies were conducted in the development of Randy Drive, Gresh Drive and Doris Drive. Currently, there are no speed limit signs posted on any of these roadways. The Police Department may recommend speed limits be posted in that development, depending on the results of the traffic studies. Resident is also requesting approval to install "Children at Play" signs.
- b. On August 22, 2015, the Montgomery County Consortium of Communities held the written testing for police officer candidates. Test was held at Montgomery County Community College Main Campus. 510 people were registered and 393 applicants actually participated in the testing. Physical agility testing will be held on September 19, 2015.

Hotel/Motel Ordinance – Sgt. James reported that Chief Foltz previously encouraged the enactment of a hotel/motel ordinance. A proposed ordinance was drafted and was in the hands of Township administration for input and final review; however, the Chief recently came upon an article in which the constitutionality of such an ordinance was addressed by the U. S. Supreme Court in the City of Los Angeles vs. Patel. As a result of the process, the draft ordinance has been turned over to the Township Solicitor for further review.

Emergency Management

In EMC Ray Lopez's absence, Sgt. James delivered highlights of the Emergency Management Report for the month of August 2015:

1. There were no EOC activations.
2. An emergency management meeting was held on August 12, 2015 at Lower Pottsgrove Township to discuss the various emergency management projects. Chief Foltz provided the major presentation regarding the forecasted impact from the upcoming Papal visit.

Commissioner Foltz, Commissioner Swavely, Mr. Wagner, Chief Foltz and Mr. Lopez will attend an emergency management meeting with the Montgomery County Commissioners on Friday, September 11 at 9:30 a.m. The purpose of the meeting is to discuss the upcoming Papal visit to Philadelphia.

Fire Marshal

Mr. Babel highlighted the following statistics from his report:

Station	Total Calls	Total Hrs. of Service	Total Personnel Hrs.	Total Personnel Training Hrs.	Total Fundraising Hrs.
Sanatoga (Station 58)	29	47	120	78	Not provided
Ringling Hill (Station 59) Statistics for March, April and May					
March	30	42.5	125	Not provided	Not provided
April	23	23.5	120	Not provided	Not provided
May	25	27	133	Not provided	Not provided

(Hours are approximate)

Mr. Babel reported Ringling Hill is getting caught up with their reports.

Commissioner Foltz asked for a report on a fire at Thriftway. Mr. Babel said there was fire in a trash container near the door, apparently from a discarded cigarette. There was no metal ashtray in the lid of the container to stop the cigarette from dropping into the trash. The police arrived first and knocked out the windows, which saved the building. Mr. Babel was not given new keys when the locks were changed by new ownership, which further complicated the situation. This is a bus stop and the bus company will review the tapes for further information. Mr. Babel said the fire is considered suspicious.

Mr. Wagner said we have asked the bus company to no longer stop at Thriftway until the situation is resolved.

Highway—Public Works Department: Commissioner Foltz read the Public Works Report for the month of August 2015. Report will be posted on the bulletin board.

Commissioner Foltz announced starting on September 14, Buchert Road between Pleasant View Road and Kauffman Road will be paved by the state. Pleasant View Road between New Hanover Township and Linfield Road will also be paved. Most of the work will be done by evening but there will be some work done during the day.

C.O.G.—No report.

Engineering—Bursich Associates provided a written Engineers' Report updating the Board on various projects and activities going on in the Township. Scott Exley highlighted the following projects:

1. **Pottsgrove High School Improvements**—Still working on this project. Performed construction observation for improvements.
2. **Spring Valley Farms**—Received updated plans and will start the review process.
3. **Act 209 Study Update**—Public hearing will be held on Thursday, September 10 at 4:30 p.m. on the Land Use Assumption Report (LUAR). If there are no substantive changes or recommendations, the plan will be presented to the Board of Commissioners for its consideration. If the LUAR is acceptable, the engineers will start the process to determine the cost per trip for the Act 209 fee.
4. **Open Construction Projects**—Burisch prepared a memorandum to the Township Manager for discussion on bringing open construction projects to closure.

Treasurer— No report.

Solicitor

Solicitor Brant's written report to the Board of Commissioners provided a synopsis of all projects his office worked on in the past month. He reported on the following:

1. **Tax Assessment Appeal for Danny Garcia, 550 Highland Road**—This litigation matter discussed during executive session.

Solicitor Brant explained the Township usually allows the School District to litigate tax assessment appeals because they have the lion's share of the tax due. In this case, the taxpayer took the appeal to the Board of Assessment Appeals, who kept the assessment the same. The taxpayer then appealed to the Court of Common Pleas of Montgomery County and a resolution occurred with respect to the School District for this property's assessment. The old assessment was \$700,000, which has been reduced to \$402,500. As a result, there is an overpayment of \$853.23 that the Township would have to refund.

The Pottsgrove School District is satisfied that the matter could be settled in that fashion and the County agrees. Solicitor Brant recommended that the Board of Commissioners authorize him to execute the Stipulation on its behalf.

Commissioner Vlahos made a motion to authorize Solicitor Brant to sign the Stipulation to Settle on behalf of the Lower Pottsgrove Township Board of Commissioners. Commissioner Swavely seconded the motion and it was unanimously approved. Vote was 4-0 in favor.

2. **Resolution No. 1076-15. Settlement Agreement for Heritage Hills Golf Club Subdivision/DHLP Limerick Golf Community, LP (“DHLP”)**—This litigation matter was discussed during Executive Session.

Solicitor Brant advised Special Counsel Mike Furey handled this matter. Lower Pottsgrove Township, Limerick Township and the bank declared DHLP in default. The insurance company became involved and Lower Pottsgrove Township instituted litigation against the insurance company in 2012. A settlement agreement was before the Board for its consideration. If the Township approves the settlement agreement, it would accept payment in the sum of \$20,000 and avoid the expense and delay of litigation.

Commissioner Klotz made a motion to approve Resolution No. 1076-15, approving the Settlement of Litigation and authorizing the Township Manager to execute the same on behalf of the Township. Commissioner Vlahos seconded the motion and it was unanimously approved by a vote of 4-0 in favor.

3. **Ordinance No. 319 to Authorize the Issuance of Lease Rental Debt and the Award of a Qualified Interest Rate Management Agreement**—Solicitor Brant advised Lucien Calhoun of Calhoun Baker advertised an ordinance, for consideration this evening by the Board of Commissioners, which authorizes the issuance of lease rental debt and the award of a qualified interest rate management agreement. Calhoun Baker is the municipal advisor to the Delaware Valley Regional Financing Authority (DeVal).

Lower Pottsgrove Township Authority is refunding some debt at a favorable interest rate and, in order to get that interest rate, the Authority needs the Lower Pottsgrove Township Board of Commissioners to guarantee payment of the debt. The refunding is for the 2011 sewer bond and DeVal will be purchasing those notes. This will happen in April 2016.

Solicitor Brant presented the following exhibits:

- T-1: Discussion and approval of the Board of Commissioners in the minutes of July 23, 2015, wherein this project was described.
- T-2: Legal notice that was advertised in the Mercury on August 31, 2015;
- T-3: Proof of publication proving this matter was advertised on August 31, 2105;
- T-4: Proposed Ordinance No. 319, which is the ordinance that was advertised.

Solicitor Brant opened the public hearing at 7:31 p.m. and asked Lucien Calhoun to say a few words about the refunding.

Mr. Calhoun said the ordinance before the Board authorizes lease rental debt under the Local Government Unit Debt Act. He explained anytime a Township pledges its full faith credit and taxing power to guarantee a debt of an Authority, it is lease rental debt. The ordinance authorizes up to a \$7,456,000 guarantee of the obligations to be issued by the Authority. The refunding of the 2011 notes will save almost \$1.2 million in gross debt service and the interest rates are actually a little lower than they were in July. Mr. Calhoun said the market remains volatile and interest rates can change even during the day by as much as a tenth of a percent.

Mr. Calhoun further explained the ordinance before the Board authorizes the execution of the guarantee, it approves the forms of the loan documents that will be executed by the Lower Pottsgrove Township Authority and it pledges the full faith credit and taxing power of the Township to make payments on this obligation, issued by the Authority, in the event that the Authority defaults. It authorizes and approves a qualified interest rate management agreement, which is the device the Delaware Valley Finance Authority uses to provide a fixed rate.

Mr. Calhoun said the Authority would have the ability to convert its note to a variable rate at any time. The Authority's intention is to fix the rate with an option to reset or prepay with no penalty after 5 years. That rate, as of today, is approximately 2.36 percent. Mr. Calhoun said the rate can be fixed as early as tomorrow, after enactment of the ordinance, assuming nothing untoward has happened in the market and we would expect that rate to be within a few basis points, within a few one hundredths of a percent, of that level.

The ordinance authorizes an application to the Department of Community and Economic Development (DCED) to approve the guarantee. That approval is required and it normally takes about 30 days for the approval to be received. The ordinance authorizes advertisement of enactment, if that is the pleasure of the Board, and it repeals any inconsistent prior ordinances.

At the conclusion of Mr. Calhoun's presentation, Solicitor Brant asked for questions and/or comments from the public.

Charles Nippert, Pleasant View Road, asked if the interest rate of 2.36 percent is based on today and if interest rates go up or down, will that interest rate be adjusted. Mr. Calhoun said yes, the rate will be an actual market rate at the time DelVal executes. He said the rates are very volatile and can change as much as a tenth of a percent even during the day in trading. The Authority can lock the rate as early as tomorrow.

Solicitor Brant clarified the Authority locks the rate and the Board of Commissioners guarantee the debt. Mr. Wagner asked if the Authority would need to authorize to lock the rate at a meeting. Mr. Calhoun said it has already been authorized. Solicitor Brant explained a parameters resolutions authorizes a high and a low interest rate and authorizes someone, in between meetings, to execute that interest rate based on the parameters.

Mr. Nippert said what's being presented is a hypothetical interest rate. Solicitor Brant said this is not hypothetical at all; if the Board acts, it is going to be guaranteeing the debt. Mr. Nippert asked if the 2.36 percent would be guaranteed or is it just a talking point. Mr. Calhoun said the rate can go up or down and Solicitor Brant said it is a market rate, it is not hypothetical, and it is a real rate.

There being no further questions from the public, Solicitor Brant asked for questions or comments from the Board of Commissioners. There being none, Solicitor Brant admitted the aforementioned exhibits. He advised if the Board chooses to act tonight, it would

authorize enactment of Ordinance No. 319 of the Board of Commissioners of Lower Pottsgrove Township which authorizes the issuance of lease rental debt and the award of a qualified interest rate management agreement.

Commissioner Klotz made a motion to enact Ordinance No. 319 and Commissioner Swavely seconded the motion. Solicitor Brant called for a roll call vote. Vote was as follows:

Commissioner Vlahos voted yea;
 Commissioner Swavely voted yea;
 Commissioner Klotz voted yea;
 Commissioner Foltz voted yea.

Solicitor Brant said a Notice of Enactment will be published within a few days of the enactment.

4. **Animal Control Ordinance**—Solicitor Brant advised this ordinance was prompted by some complaints and good police work and observations.

Solicitor Brant presented the following exhibits:

- T-1: Motion to advertise the ordinance on July 23, 2015;
- T-2: Montgomery County Law Library letter transmitting this ordinance;
- T-3: Legal notice advertised in the Mercury on August 18, 2015;
- T-4: Proof of publication of August 18, 2015 advertisement;
- T-5: Proposed Ordinance No. 320.

Solicitor Brant advised proposed Ordinance No. 320 was summarized in the advertisement that ran in the Mercury. It prohibits animals causing nuisances, prohibits numbers of animals, and addresses the seizure of animals, exotic and farm animals, duties of the animal control officer and existing ownership of certain animals. Definitions appear in the ordinance and establish certain restrictions.

Solicitor Brant summarized the provisions of the ordinance regarding the duties of the owners of certain animals and noise restrictions. He also advised there is a maximum number of animals permitted. According to **§ 108. Prohibition on Number of Animals**. The following maximum numbers of animals shall be permitted:

A maximum of four dogs, cats or similar domesticated small animals over the age of one year shall be permitted to be kept in a structure accessory to a dwelling on lots of less than two acres. The number may increase to six such animals on lots two acres or larger. A maximum of six rabbits or similar animals shall be kept in a structure accessory to a dwelling. A kennel or equestrian facility shall only be allowed where specifically permitted.

Solicitor Brant pointed out guide dogs being used for disabled persons are permitted and the ordinance addresses notices of violations and penalties for violations. He then asked for questions and/or comments from the public.

Dr. Jennifer Berbaum, Kepler Road, had concerns specifically about chickens. She said

on a minimum lot size of one half-acre, the ordinance allows for 1 fowl. Since chickens are flock animals, she suggested increasing the number to 2. Dr. Berbaum also could not determine if she could have chickens or not based on the ordinance.

Discussion followed on **§302. Keeping of Farm Animals** and **§501 Existing Ownership of Animals**. Dr. Berbaum asked if the Township was going to let residents know the provisions of the animal control ordinance. The Solicitor said that is the purpose of an advertised ordinance; the Township does not specifically write letters to everyone. The Code requires that the Township advertise the ordinance and hold a public hearing.

Tom Troutman, E. High Street, asked about barking dogs. Solicitor Brant said **§105. Noise Nuisance** states that a person cannot own or possess an animal that makes excessive noise, or performs actions that cause excessive noise, for fifteen (15) minutes or greater each one (1) hour.

Tom Dobroskey, 2427 Welsh Drive, said his neighbor's dogs are now not only barking at them, the dogs are starting to growl. He asked about grandfathering and if his neighbor, who owns 5 dogs, has to register those dogs within 45 days.

Solicitor Brant said if the existing, factual circumstance Mr. Dobroskey was talking about is inconsistent with the ordinance, they are grandfathered, providing they comply with **§501 Existing Ownership of Animals**. He noted that the grandfathering deals with the ownership of the animals; the owner is not grandfathered from violating the others sections of the ordinance that are in effect.

Mr. Dobroskey asked if the 5 dogs continually eliminate waste in the same place, could his well water become contaminated. Solicitor Brant suggested that Mr. Dobroskey should call the Montgomery County Health Department. Commissioner Foltz said there is a section in the ordinance that addresses removal and disposal of animal waste.

Dan Brader, Welsh Drive, asked what the protocol is going forward on dealing with barking dogs. Solicitor Brant advised Mr. Brader to call the Township and the Police Department if he thought there was a violation. Mr. Brader asked if the owner would have to pay a fine. Solicitor Brant advised there are fine provisions in the ordinance provided the person is charged, etc. Commissioner Foltz said copies of the ordinance will be available once the ordinance is adopted.

The question was posed if 1 of the 5 dogs dies, can the owner get another dog (and maintain the number of dogs at 5). According to **§501 Existing Ownership of Animals**, if the number of dogs is in violation of the ordinance, and one of the dogs dies, it cannot be replaced.

Commissioner Foltz lives in the same neighborhood and he has also heard the dogs barking for one hour.

There being no further questions or comments, Solicitor Brant closed the public

hearing at 7:57 p.m. Commissioner Klotz made a motion to adopt Ordinance No. 320, An Ordinance Prescribing the Governance of Animal Activity in Lower Pottsgrove Township, the Penalties for Violations and the Authority of the Animal Control Officer. Commissioner Swavely seconded the motion and it was unanimously approved. Vote was 4-0 in favor.

Parks and Recreation

Summer Concert Series—Mr. Wagner reported the Summer Concert Series ended on August 9 with a performance by the Pottsgrove Community Band. Concert was followed by an ice cream social. He said overall, the concert series went very well and credited the Parks and Recreation Board and Katie Smith for organizing the concerts. He also thanked Exelon for sponsoring the Summer Concert Series.

Pottstown Metropolitan Regional Planning Commission

Mr. Wagner reported the Pottstown Metropolitan Regional Planning Commission meeting scheduled for August 26, 2015 was cancelled.

Lower Pottsgrove Township Authority

Mr. Wagner reported the next meeting of the Lower Pottsgrove Township Authority will be held on September 14, 2015 at 7:00 p.m. Capital improvement projects will be discussed. Mr. Wagner will present information on Mission Communications, a company that provides alarm and telemetry equipment and service for water and waste water utilities who wish to monitor, control and perform alarm notifications of remote equipment.

CORRESPONDENCE AND INFORMATION:

None.

SUBDIVISION AND LAND DEVELOPMENT:

None.

OLD BUSINESS:

None.

NEW BUSINESS:

Lease Agreement for 2404 Brown Street—Commissioner Foltz explained the Authority leases this building from the Township for \$5,000 per year. Commissioner Klotz made a motion to authorize Commissioner President Bruce L. Foltz to execute the lease agreement relating to the rental of the building located at 2404 Brown Street. Commissioner Vlahos seconded the motion and it was unanimously approved. Vote was 4-0 in favor.

The lease is for a period of five (5) years commencing retroactively to January 1, 2015 and ending December 31, 2020.

Traffic Signal Maintenance Contract—Commissioner Klotz made a motion to award the traffic signal maintenance contract to Telco in the amount of \$4,294.00. Commissioner Vlahos seconded the motion and it was unanimously approved. Vote was 4-0 in favor. Telco was the only bid received for this contract.

Snow Plow Proposals—Commissioner Klotz made a motion to authorize Township staff to request proposals for snow plowing. Commissioner Swavely seconded the motion and it was unanimously approved. Vote was 4-0 in favor.

RESOLUTIONS AND ORDINANCES:

Ordinance No. 319 and Ordinance No. 320—See **REPORTS: Solicitor**.

Resolution No. 1075-15—Commissioner Klotz made a motion to appoint Chuck Bleakley as a full member of the Lower Pottsgrove Township Civil Service Commission. Commissioner Swavely seconded the motion and it was unanimously approved. Vote was 4-0 in favor.

Resolution No. 1076-15—See **REPORTS: Solicitor**.

Warrant #839—Commissioner Vlahos made a motion to approve Warrant #839 for the month of July 2015. Commissioner Klotz seconded the motion and it was unanimously approved. Vote was 4-0 in favor.

Warrant #840 for the month of August 2015 will be provided to the Board for its review.

Treasurer's Report—Commissioner Klotz made a motion to approve the Treasurer's Report for July 2015, as submitted by Jennifer Marsteller. Commissioner Swavely seconded the motion and it was unanimously approved. Vote was 4-0 in favor.

A resident asked about a settlement agreement discussed during tonight's meeting. Solicitor Brant summarized the two settlement agreements discussed during his report: The Tax Assessment Appeal for Danny Garcia, 550 Highland Road and the Settlement Agreement for Heritage Hills Golf Club Subdivision/DHLP Limerick Golf Community, LP.

Tom Troutman asked if anything was being done about traffic noise. Commissioner Foltz explained a noise ordinance is not being addressed because it is very hard to enforce. Since noise is measured in decibels, specialized equipment and training for our police officers would be required. Sgt. James agreed and said there are other laws that handle traffic noise under ordinances within the vehicle code. Commissioner Klotz further explained decibel ratings and how decibels are measured and recorded. He pointed out that lawnmowers would be in violation of a noise ordinance and it is very difficult to enforce.

COMMISSIONERS COMMENTS:

Commissioner Vlahos and **Commissioner Swavely** had no comments.

Commissioner Klotz thanked the Parks and Recreation Department for a great concert series. He heard a lot of good feedback from residents and the weather was great this year. He thanked Exelon for sponsoring the event and recognized Township employees Katie Smith, Cody Robbins and the Road Crew for their efforts.

Commissioner Foltz again expressed his condolences to the family of Ray Bechtel and the Police Department. Mr. Wagner offered his condolences as well.

The next regularly scheduled Board of Commissioners meeting will be held on Thursday, September 24, 2015.

There being no further business, the public meeting was adjourned at 8:10 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michele M. Cappelletti".

Michele M. Cappelletti
Secretary