

**UPPER ALLEN TOWNSHIP
BOARD OF COMMISSIONERS MEETING I
May 1, 2024 - 6:30 P.M.**

COMMISSIONERS

Kenneth M. Martin, President
Richard A. Castranio, Jr., Vice President
Virginia M. Anderson, Assistant Secretary
Eric Y. Fairchild, Assistant Secretary
Phil J. Walsh, Assistant Secretary

TOWNSHIP OFFICIALS

Scott Fraser, Township Manager
Timothy Wendling, Assist. Town. Manager
Andy Parsons, Chief of Police
Jennifer Boyer, Comm Dev Director
Brian Barnes, Lieutenant(absent)
Barry Cupp, Sewer Dept. Manager(absent)
J. Stephen Feinour, Solicitor
Josh Bonn, Solicitor(absent)
Jason Reichard, Engineer(absent)
Tom Shumberger, Fire Chief(arrived late)

CALL TO ORDER

President Martin called the Board of Commissioners meeting to order at 6:30 p.m. A moment of silence was observed; all present recited the Pledge of Allegiance. Mr. Fraser performed roll call; all Commissioners were present.

PRESIDENT'S ANNOUNCEMENTS

The President had no announcements.

**CONSIDERATION/APPROVAL OF MINUTES OF
BOARD OF COMMISSIONERS MEETINGS**

The meeting minutes for April 3, 2024, were reviewed; there were no proposed corrections, amendments, or deletions. Commissioner Walsh made a **MOTION** to approve the minutes from April 3, 2024, which was **SECONDED** by Commissioner Anderson. The motion carried unanimously.

PRESIDENT'S RECOGNITION OF VISITORS

President Martin welcomed Bryon Brookmyer, of 7 Broadmoor Drive in Mechanicsburg. Mr. Brookmyer has been a Township resident for 14 years. Per Mr. Brookmyer, approximately 3 years ago a large sinkhole opened between the road and the sidewalk on Wineberry Drive. At the time, the Township's response was to install riprap surrounded by construction fencing. Mr. Brookmyer provided photographs of the property where the riprap and fencing remain in place to this day. On his property, he now has a six-foot culvert because there is no appropriate water diversion, and the existing detention pond is not working. There are bog-like conditions on his land.

Mr. Brookmyer shared his concerns that the Township is overly focused on Meadowview, and that UAT is allocating its resources disproportionately to that area.

Mr. Brookmyer also expressed concern over the lack of an established street sweeping schedule.

President Martin acknowledged Mr. Brookmyer's two concerns: the sinkhole, and the lack of a street-sweeping schedule. Mr. Martin assured Mr. Brookmyer that the Board would commit time to researching these items, to be addressed at a later date.

Commissioner Fairchild inquired as to the nature of the sinkhole's origin, noting that it appears to be caused by the pipe coming out of the stormwater inlet; Mr. Brookmyer confirmed that the pipe is totally deteriorated.

Vice President Castranio affirmed that this item would be placed on the Public Works and Stormwater Agendas.

CONSENT AGENDA

There were no items for consideration.

PUBLIC SAFETY COMMITTEE

Fire Chief Shumberger was out in the line of duty and absent during this portion of the meeting. [Note: Chief Shumberger later announced that the Fire Department will host its first barbecue chicken fundraiser on Saturday, May 4, 2024, at 11am.]

Police Chief Parsons discussed the dangerous proliferation of motorized scooters in the Township. The Chief relayed that, on the weekend of April 20th, there was a motor vehicle accident involving a motor scooter at the intersection of South Market and Cumberland Parkway. According to Chief Parsons, such motor scooters lack the appropriate equipment to pass inspection and should therefore not be permitted on the roadway under any circumstances. As motor scooters are also prohibited on sidewalks, they are legally and effectively relegated to private property. The Police Department has addressed the issue on their website and in their newsletter. President Martin asked how residents should report motor scooter violations to Police. Chief Parsons advised residents to call Police immediately upon spotting such a vehicle, via 911 or non-emergency line.

PLANNING AND ZONING COMMITTEE

Ms. Boyer brought before the Board a request to schedule a Public Hearing for a Zoning Text Amendment to Chapter 245, Article XVIII, Signs. Based on input from the Board of Commissioners Meeting on March 6, 2024, changes were made to the proposed ordinance. These changes were reviewed and approved by the Township solicitors, then sent to Cumberland County for review. Per Ms. Boyer, the proposed ordinance was approved at the County level.

President Martin began a discussion of dates for a public hearing. He noted that it would be most accessible to residents, as well as efficient for the Board members and Township staff, if the hearing were to take place on a previously scheduled Board of Commissioners meeting date in the late afternoon. Mr. Martin then opened the floor for discussion on readiness for a public hearing on the issue.

Land Use Attorney Jeffrey Esch McCombie, of McNees, Wallace & Nurick, LLC, appeared before the Board to represent the interests of Paul B. and other local businesses. He took contention with section **245-18.4.B.2**, which states that: "When two sign faces are placed back-to-back, so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of the same sign structure and are not more than 18 inches apart for on-premise signs or five (5) feet apart for off-premise signs, the sign area shall be computed by the measurement of one of the faces. In the event the sign faces are different sizes, the largest sign face applies. In the event such sign faces are more than 18 inches apart for on premises signs or five (5) feet apart for off-premises signs, each sign face shall be counted as a separate sign." Per Mr. McCombie, the 18-inch provision makes most electronic message centers (EMCs) count as two signs, and is therefore prohibitive in nature. Mr. McCombie proposed two solutions: (1) to increase the distance allowable between the front and rear of signage, or (2) to insert language about angles, which would allow for back-to-back signs at a lesser angle to be counted as one. Mr. McCombie advocated for the latter change.

Vice President Castranio asked if an increase to 24 inches would be acceptable to the County; Ms. Boyer had already inquired with the County and is awaiting a response.

Ms. Boyer discussed the merits of the ordinance as written; that it serves to close loopholes on excessive signage on single lots. She went on to say that an increase in distance to 24 or even 36 inches would not represent a divergence from the spirit of the ordinance and would therefore be acceptable. Mr. Castranio asked about the currently prescribed angle limit; the threshold is set at 25 degrees. Mr. McCombie was satisfied that the width would be increased and found the angle threshold to be acceptable.

Mr. Don Farinelli, of 1849 Fisher Road, in Mechanicsburg, posed a question about the sign ordinance's treatment of the Agricultural District. He observed that under the ordinance, illuminated street signs are not permitted there. Mr. Farinelli noted that most farms are located a fair distance away from the road and would benefit from illumination of their street signage for public safety reasons. He inquired why the illumination prohibition was specific to the Agricultural District. Ms. Boyer responded that the Township does not allow illuminated signage for any home-based business, (a farm being considered a home-based business), regardless of District. Mr. Farinelli accepted the explanation and proposed placing a lamp-post next to his street sign to achieve his stated goal.

Commissioner Fairchild expressed dissatisfaction with the lack of work-sessions amongst the Board of Commissioners surrounding the sign ordinance prior to its being submitted to the County. Ms. Boyer explained that the County requires the latest version for review prior to a Public Hearing, that there is always the potential for change when an issue comes before the

public, and that the Township is careful to allot the appropriate time for the change-approval process to occur at the County level. She further noted that the Ordinance could be amended after the Public Hearing, which would again trigger the County-level approval process.

Commissioner Fairchild then inquired about the ordinance's treatment of free-standing monument signs in the Village District, (an area constituted of Bowmansdale and Grantham). Ms. Boyer provided the following information: the Village District is only allowed to have an aggregate of all signs not to exceed 20 square feet in size. They can have free-standing ground pole signs, projecting signs, wall signs, and message board signs. Commissioner Fairchild made the case that sign size in the Village District should not be comparable to that in commercial districts. He proposed reducing the size of monument signs there from a maximum of 40 square feet down to 32 square feet.

Mr. Fairchild called the Board's attention to **245-18.J.2**, related to drive-through menu signs, which states: "If the sign is completely screened from view from any right-of-way and any adjacent or abutting residential use or residentially zoned property, there shall be no maximum sign area." Mr. Fairchild expressed concern that no limit was defined for sign size. President Martin rejoined that because the provision ensures that the signage is "completely screened from view," and therefore isolated, that limiting size sign is unnecessary. A discussion ensued about the advisability and practicality of regulating the size of drive-through menu signs.

Ms. Boyer provided the following rationale for the ordinance's treatment of drive-through signs: provided the lanes and associated signage are not impacting any rights-of-way, and are in commercial, but not residential districts, the allowable square footage ought to be no less than 42 but no more than 48 square feet. Ms. Boyer continued to explain that this type of signage is not always regulated by municipalities. President Martin reiterated that limitations on signage are generally meant to protect residential areas, which he applauded. Ms. Boyer added that the screening provisions ensure the safety of passing motorists.

Commissioner Fairchild initiated a discussion about **245-18.N.3**, which reads, "No roof sign shall be placed higher than 35 feet from grade nor shall it exceed the highest architectural point of the building to which it is mounted." He inquired if that entails a cap on a roof sign's height at 35 feet, regardless of building height. Ms. Boyer explained that this provision is meant to address signage on sloped roofs, which are treated effectively as wall signs. Commissioner Fairchild noted that the signage at the Mills of Shepherdstown is higher than 35 feet, which would be in violation of the proposed ordinance. Ms. Boyer explained that the property may qualify as part of the Master Sign Plan, which could make it exempt from this limitation. Commissioner Fairchild endorsed including the Mills in the Master Sign Plan.

Commissioner Fairchild took issue with the language in **245-18.P.1**, which states that "no window sign may be illuminated" and that "no digital or EMC signs are permitted." He wanted to know whether this applied to illuminated "We're Open" signs. After some deliberation, Ms. Boyer determined that such signs do not contain commercial advertising, and would therefore be allowable. She went further to say that window signs which explicitly advertise a product would be disallowed. Ultimately, a distinction was made between "We're Open" signage and advertising signage, allowing the former and prohibiting the latter.

Commissioner Fairchild then addressed Electronic Message Centers (EMCs), and questioned **245-18.15.B**, which allows for 2 EMCs per lot or property. He pointed out that this represented an increase from the previously-allotted 1 per lot or property and queried the change; Ms. Boyer was unsure of the rationale behind the change. President Martin noted that the change would benefit owners of corner lots. He also pointed out that the proposed ordinance contains parameters which limit how frequently the signs may change, as well as providing for illumination standards.

Commissioner Fairchild requested an update on the development and distribution of a map which would pinpoint locations of EMC signage along Route 15. Ms. Boyer responded that such a map will be created and made available by the time of the Public Hearing.

Vice President Castranio summarized the changes to the proposed ordinance as follows: (1) in **245-18.4.B.2**, the 18-inch limitation on the distance between on premises signs will be increased to 36 inches; and that (2) free-standing monuments signs in the Village District will be limited to 32 square feet (a decrease from 40 square feet).

Commissioner Walsh made a **MOTION** to authorize the appropriate Township staff to advertise the ordinance and schedule a public hearing to be held on June 19, 2024 at 4:00 p.m. to discuss the Zoning Text Amendments to Chapter 245 for sign regulations. The Board shall hear testimony during the public hearing. Following the close of the public hearing, the Board can consider acting to either approve or disapprove the proposed ordinance at the regular BOC meeting on June 19, 2024, at 6:30 p.m.

President Martin took a vote, and the motion passed unanimously.

Discussion moved to Agenda Item 3.b., related to the Zoning Hearing Board (ZHB) Meeting set for May 9, 2024. Per Ms. Boyer, there is one case to come before the Board, which is a variance request for 381 Cumberland Parkway. The site formerly housed a hotel that burned down. A new hotel is to be built there. The hotel's owners are coming before the ZHB because their current plans do not meet setback requirements. Their variance request is to situate parking within the setbacks and to build the rear patio about 7 feet into the side yard setback.

Vice President Castranio confirmed with Ms. Boyer that the owners of the new hotel will be required to go through land development planning, even though the site previously housed that same type of structure. President Martin addressed the Fire and Police Chiefs, asking if they had safety objections to the proposed variance; they did not. The Board of Commissioners had no further comment on the matter for the benefit of the ZHB.

The HARB meeting scheduled for May 21, 2024, has been cancelled.

PUBLIC IMPROVEMENTS COMMITTEE

Ms. Boyer commenced a discussion of the street opening permit request for 1910 McIntosh Drive.

Per Ms. Boyer,

“Township staff contacted UGI regarding a street opening along McIntosh Drive. It had come to our attention that UGI cut into the street to install a new service to the home at 1910 McIntosh Drive without a permit. The builder of the home, EG Stoltzfus, received approval to cut into the curb in October 2023 to relocate the driveway. In December 2023, UGI received a request from EG Stoltzfus to install gas service to the home, stating this phase of development had not yet been dedicated to the township. Earlier this year, UGI proceeded to install the service without verifying the status of the road with us, assuming the road was privately owned.

This portion of McIntosh Drive received a final wearing course in June/July 2021 and was dedicated to the Township in October 2021. Per Section 217.12 of the Streets and Sidewalk Ordinance, any person seeking to open or excavate a street that has been paved within five years must receive approval from the Board of Commissioners.

The Township has since received an application from UGI for the street opening, which states the cut would occur across McIntosh Drive for the purpose of installing a new gas service to the home at 1910 McIntosh Drive. The open cuts are 2’ x 33’ and 3’ x 5’ in size. Jason Mansure, New Business Specialist with UGI, stated he would not be able to attend the Board of Commissioners’ meeting, but he was aware that UGI did not follow the proper procedures, saying:

‘Given the condition of the roadway and the location, UGI should have recognized this lot was added to Phase 5B. UGI should have followed the permit process and applied to the township. This was an oversight by UGI. We hope that the township recognizes that this was an irregular request and the confusion was legitimate. UGI takes ownership of the oversight and understands that we will be responsible for any restoration requirements the township deems necessary.’

Per Chapter 217, the paving restoration of the area must be a minimum of ten (10) feet wide around the cut, for the full length of the roadway. At this time, staff feels this will be a sufficient width of restoration around the cut. We will monitor the restoration of the roadway closely.

Per the township’s fee schedule resolution, fees are to be doubled if work commences without a permit. Given the base permit fee and the degradation fee for a street paved less than five years ago, the permit amount would have been \$1,500.00, but will now be \$3,000.00.”

UGI did not provide a representative at the Board of Commissioners meeting.

Ms. Boyer clarified for the Board that the roadwork in question has already been completed, but that UGI was remiss in obtaining appropriate permitting at the time. Per Ms. Boyer, there are missed fees associated with the permit which will now be collected. There are also potential fines for completing this type of work without a permit. These fines go up to \$80,000 and will be determined by the District Justice.

Vice President Castranio made a **MOTION** to approve the open cuts 2’x33’ and 3’x5’ in size, performed by UGI on McIntosh Drive, for new gas service at 1910 McIntosh Drive. UGI will be required to pay all applicable fees for work performed without first securing a permit, and perform all required temporary and permanent restoration to the openings, as presented, and in accordance with Chapter 217 of the Township Ordinances. Commissioner Anderson **SECONDED** the motion. The motion carried unanimously.

SANITARY SEWER

There were no items for discussion.

ADMINISTRATION COMMITTEE

There were no items for discussion.

PARK AND RECREATION COMMITTEE

There were no items for discussion.

MISCELLANEOUS

Solicitor Update

Mr. Feinour noted that there is currently a case before the United States Supreme Court regarding homeless encampments in Grants Pass, Oregon. Per Mr. Feinour, municipalities have been using either property maintenance ordinances or other statutes to prohibit people from camping in public parks. The question before the Court is if such statutes constitute “cruel and unusual punishment” toward homeless people engaging in what may be a protected activity. What has come down thus far from the higher courts is that municipalities must prove that they have provided housing opportunities before they can effectively ban people from camping in parks. The case has broad social implications, but Mr. Feinour noted that it is not currently applicable to Upper Allen Township.

Commissioner Fairchild inquired about a case in West Chester Borough challenging stormwater fees (stormwater taxes). Mr. Feinour summarized the question before the Court as follows: is the stormwater fee an illegal tax or is it a service fee? The Commonwealth Panel, on the specific issue of the West Chester University case, held that it was a tax and therefore illegal. The implications are that stormwater fees could be universally found to be invalid. The case is still pending.

Tax Collection Committee (TCC) Update

There was no update.

Capital Region COG Update

President Martin provided the following information: on April 24, 2024, there was a conference at Harrisburg Area Community College for the fire departments under the COG umbrella that took advantage of the Federal SAFER grant. The grant runs out in 2025. Prior to that, the goal is to recruit 100 junior fire fighters in the region; the emphasis is to be on youth recruitment.

Municipal Advisory Board (MAB) Update

There was no update.

Municipal Advisory Board (MAB) Update

There is an upcoming conference for First Class Townships in Lancaster, to be held this summer. Details to come.

PUBLIC COMMENT

There was no public comment.

EXECUTIVE SESSION

President Martin recessed the Board of Commissioners Meeting at 7:41 p.m. An Executive Session was convened to discuss matters covered by Attorney-Client Privilege, with no action anticipated.

At 8:32 p.m., Commissioner Walsh made a **MOTION** to adjourn the session, **SECONDED** by Vice President Castranio. The motion passed unanimously, and the meeting was adjourned.