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**MINUTES  
REGULAR MEETING OF THE  
UPPER BURRELL SUPERVISORS**

**WEDNESDAY, MARCH 3, 2014 7:00 PM  
MEETING ROOM, 3537 - 7<sup>TH</sup> STREET ROAD**

Board of Supervisors Chairman, Ross Walker II called the regular meeting of the Upper Burrell Township Supervisors to order at 7:00 pm.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL:** The following members of Council responded to roll call:

**Present:** Chairman Walker  
Vice Chairman Dombroski  
Supervisor Uhler

**Also present:** David Kerchner, Engineer  
Melissa A. Holmes, Secretary  
Stephen Yakopec, Solicitor

**COMMENTS ON AGENDA ITEMS – None**

**APPROVAL OF THE MINUTES**

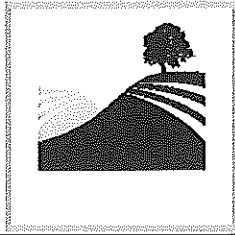
Motion made by Walker, second by Uhler, to approve the minutes of the February 3, 2014, regular meeting of the Township Supervisors. Motion passed 3-0.

**CORRESPONDENCE**

Chairman Walker asked Ms. Holmes, to review the correspondence from the month. Ms. Holmes reviewed the items that were listed on the agenda.

**ROAD REPORT**

Supervisor Dombroski reviewed the activities of the Road Department for the month of February. Supervisor Dombroski asked if he could add to the road material bid to advertise for antiskid materials. Solicitor Yakopec stated yes. Supervisor Walker stated that Roadmaster, Dombroski collected salt all year so the Township is in good shape when it comes to salt.



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### **POLICE REPORT**

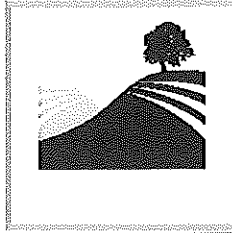
There were 72 incidents for the month and a few vehicle accidents and 23 traffic citations were issued.

### **EMC REPORT**

Coordinator Knox reported that he has been working with the Committee at Westmoreland County for Hazardous Mitigation, has attended at least 3 meetings last week and is almost finalized. Once finalized it can be reviewed on the County's website, however be advised that 3 sections will not be available online but a copy will be provided to the Township and those 3 sections can be seen within that copy. The Township needs to adopt a resolution to participate in the Westmoreland County Hazardous Mitigation Plan. Mr. Knox advised the residents that they can now go on the County's website and answer questions in regards to the Hazardous Mitigation, and these answers will only pertain to our community then information is then tabulated by a 3<sup>rd</sup> party, they then meet and review this information, being he is the delegate for Upper Burrell he tries to make sure that all of our information is up to date, then what happens if a disaster is declared we are already listed based on the response we had, which are pre-identified once a disaster is declared we are automatically on the list. This new system will allow you to be pre-approved and cuts down on the paperwork makes it a lot easier. If we identify any issues we may have, what this does is then it goes with the new plan, once on the list we will be automatically notified of monies available, well on top of this, Ross has given him verbal permission to go ahead and complete whatever it is that needs done. Everyone here can get on the County's website and do the questionnaire and the more they get the better it is for our community, it only take 10 minutes. Also, trying to get an informal community presentation together as we go along with this, will bring everyone up to speed. Walker asked are you trying to 1 or 2 generators for here, Mr. Knox stated only 1 specifically for this building. However, the County will have 2 mobile generators available. The Township building is the Emergency Facility for our community and that is why it gives us the ability to put a generator here. Walker asked could we get one for the VFD, probably could ask, the VFD responded by stating they have. Walker asked about the grant from Eli Evankovich, he wants to give it to the VFD now. VFD did state that Chief Fitch did discuss this with them. Any positive ideas please let Melissa know and we can get a list together and we could benefit from this. Walker thanked him for all of his help.

### **ENGINEERS REPORT**

Mr. Kerchner reported that the preliminary design for Johnson Street is almost done and once completed he will go over it with Supervisor Dombroski, also looking into to see if CDBG monies would qualify. The application for the generator grant needs a resolution for Ross to be able to sign the Grant. Motion made by Uhler second by Dombroski to allow Walker to sign the documents pertaining to the generator grant. Motion passed 3 – 0. Motion made by Walker second by Uhler to allow the electrical engineer to stop by the building and meet with the Supervisors in regards to what information he needs to complete the work for the generator grant. Motion passed 3 – 0. Mr. Kerchner also reported that a preconstruction meeting was held for the Lower Drennen Road Slide Project and the contractor was placed on notice to proceed and has 120 days to complete said project.



**PLANNING COMMISSION** – Did review Ordinance #1-2014, provided to them from Solicitor Stephen Yakopec, in regards to the Zoning change request from Kathy Henry Myers to rezone 93 acres located on Myers Drive from CC (Community Center Mixed Use) to RA (Residential Agricultural). The Commission did approve the zoning change.

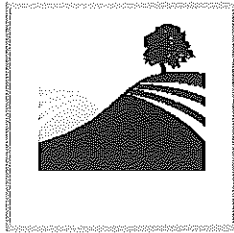
#### **SOLICITORS REPORT**

Reported on the Kathy Henry zoning issue on the property located on Myers Road and stated the next step is advertise the Ordinance and have a public hearing probably will schedule said hearing before the start of the Supervisor's April meeting. The property will need to be posted along with all residences within that CC area. Solicitor Yakopec also stated that he received correspondence from Westmoreland County Planning Department, who determined that the zoning change request has been determined to conform to the short and long term planning goals and objectives of Westmoreland County and is consistent with its efforts and intents.

Solicitor Yakopec, stated that all looks good with the renewal of the Comcast agreement just a few items need worked out with Mr. Polito, once issue is how the Township is paid, he asked if we are paid on a quarterly basis or annual basis, and some language modifications he asked for approval of agreement subject to his review. Motion made by Walker second by Dombroski that once the Comcast agreement has final approval from the Solicitor said agreement can be signed. Motion passed 3 – 0

Solicitor Yakopec addressed the letter received from the Firearms Industry Consulting Group, he does understand what they are saying and most of the things they deal with in this letter the ownership, possession and transfer and transportation of firearm. Walker asked what about the discharge of a firearm. Yakopec, stated this is a completely different issue which was not addressed in that letter. Walker asked about the information on South Heidelberg Township which was based on a resident's complaint of noise. Yakopec, went on to state that South Heidelberg Township Supervisors had a large outcry from their community against it, so the Supervisors did not pass it. Walker asked is this like the Upper Burrell Township 1972 Firearm Ordinance? Yakopec stated that our 1972 Ordinance has no exemptions and was written way before his time if someone were to break into your home and you were to shoot them you would be in violation of the current Ordinance. Walker asked if the current 1972 Ordinance could not pass as a constitutional challenge? Yakopec, stated it would not and would be very hesitant to enforce this Ordinance. Walker stated the Commonwealth of Pennsylvania has plenty of laws both civil and criminal to enforce and he sees no reason for this Ordinance as it stands, and stated the Commonwealth Pennsylvania has plenty of laws to cover this. Yakopec, stated yes there is definitely enough laws there concerning firearms it is clear that the state has preempted the regulations of firearms other than the discharge of them the state law would supercede us in just about every compacity in that way and is simply a question of everyone getting along with each other.

Leon Yurkin, 3603 Baxter Drive, asked about the New Firearm Ordinance, how does this all fit in? Walker started that new Ordinance is much more restrictive than the old ordinance not allowing the discharge of center fire handguns, rifles, long guns, and shotguns, so that is everything except for rim fire. Solicitor Yakopec, stated that the new Ordinance does have does have exemptions and also contained elements of the Castle Doctrine which can fire upon someone in your home which is



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Pennsylvania law now also. Walker also went on to state that the new Ordinance would not allow you to discharge all 3 kinds of weapons where the current Ordinance now allows 2 of the 3.

Dan Rowe, 905 Merwin Road, asked in relation to the current Ordinance about Solicitor Yakopec's comments regarding the current Ordinance not being constitutional why have it? Why not remove this Ordinance, Yakopec, stated an Ordinance would have to be done to remove this, Rowe stated why not take baby steps to remove the current ordinance and start to work on a new one. Walker stated he does not feel we need an Ordinance at all and would like to remove the page from the book. Rowe asked what would it take to do that. Walker stated it would take another vote from the board. Walker stated, we can get to that in new business and he has not yet brought it up to the other 2 supervisors yet but they would probably like a little time to think about it. Walker stated he has been talking to this firearm industry consultant, Joshua Prince, he is a 4<sup>th</sup> generation attorney, he is niche firearm attorney, and only one of the few attorneys who handle this and he is located in Berks County, he generously offered his services to the Township and Walker also thanked John Trzeciak for getting his name to him. Mr. Prince is very well thought of throughout the United States and he put this letter together in a fairly short time, Mr. Prince does not know Upper Burrell like the residents do but he and Walker are both under the opinion that an Ordinance is not needed.

Supervisor Dombroski, asked when he responded to your questions which talks about defending your property, he stated he does not care if someone is breaking into his property Ordinance or no Ordinance its game on, Walker stated about the Castle Doctrine law which allows you to defend your property and is relatively a new law, 20 years ago if you would defend your property you would have to drag them back into your house. Dombroski stated this is dealing with possession and the right to carry. Walker stated this is dealing more with the right to safely discharge and practice your shooting at your own discretion at your own house safely. Dombroski stated he did not see that, saw where it mentioned about ranges and public land call his attention to this. Walker stated our Ordinance now makes it illegal to fire a 9 mm or a 45 or a rifle if you want to practice sighting your gun, both stated then that they have been in violation now for many years. Walker stated if we take that page out of the Ordinance book then would not be in violation. This Ordinance has been enforced only when there have been complaints which have not been many, very many people in Upper Burrell enjoy the sport of shooting, he has never called the police on anyone however, he has been called on, this will make it not illegal to fire your own gun on your own property.

Dan Rowe, II, 905 Merwin Road, this Ordinance puts a lot on undo pressure on any enforcement officers. Have to enforce an Ordinance that pretty much nobody agrees with this is an undo burden for officers. How do you determine who to go to and who not to go to if not enforcing the law. He is all for getting rid of the Ordinance but using State Law to enforce any issues civilly or criminally. Look into the noise issue and any other issue. Walker stated that he does not feel if this Ordinance is removed from the books that there will be any increase in normal shooting, if everyone use common sense and most do use common sense, if someone were to call you up and ask you to cut it down that's the important thing be considerate to your neighbor and count it down and not say no I will not it's my right, that's where you get into trouble, if you cut it down rather than saying no, you should be reasonable. Mr. Rowe stated you should eliminate the Ordinance due to our own Solicitor stating that this Ordinance is unconstitutional and not able to be enforced. Walker stated never had an Ordinance prior to 1972 and



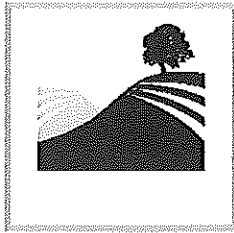
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have had 1 since, and it really has not been enforce much. Mr. Rowe stated the guys/girls who have to enforce it are being put in quite a position.

Ron Slabe, 516 Angelcrest Drive, last meeting was brought up briefly, and he stated at that time that safety factor has to be paramount, not one issue in this letter addresses that and Ross has not done yet this evening. Walker stated I did just mention it and Slabe said where you said on a voluntary basis, Walker stated has to be paramount when shooting a gun, it is the most important thing and have to have a proper backstop, and safety is paramount. Slabe stated this is not mentioned what so ever in this letter. Walker stated well I don't know I did not draft the letter.

Dan Myers, Turkey Ridge Road, stated that PA Game Laws are very specific, that you cannot discharge your weapon within 150 yards of a building, if that were to happen he guarantees that the PA Game Commission stating that someone is shooting he guarantees they will come out and enforce this, not trespassing but discharging. It is 150 yards not 149 but 150 and if this happens call the PA Game Commission and they will come. Slabe stated that is only if your hunting, Myers replied no. Slabe asked are saying basically that the hunting law states that you must not fire a gun within 150 yards of a residence does that apply also to target practice. Walker stated he cannot answer that question. Slabe stated he has done some research on this and what he has found is that you need an Ordinance that deals specifically with that. Yakopec, stated this letter does not deal with the discharge of firearms. He believes, Slabe is correct on that matter nothing deals with the discharge of a firearm. Yakopce, stated he knows there are Ordinance that have been upheld on the discharge of firearms for hunting and law enforcement, self protection and protecting crops and livestock and all of those different types of exemptions, whether or not the game code specifically all the time, he can't answer that cause he has not been authorized to do this research. He can't tell you what that answer is he knows everyone has a different opinion. Slabe agrees with Mr. Myers on the 150 yard issue if it applies to target practice also, he spoke to the Game Commission on this matter and they referred him to the State Police, he who stated have him various answers of up to 1000 feet from a dwelling, so he thinks we are on safe grounds here and he does agree that the State Law preempts the Township Law, but at the same time we need to come up with something that states how many feet or yards we are allowed to be from a dwelling to discharge a weapon, which can be done by Ordinance here, every town wants this to be done, and this would deal with the safety factor and put everyone on a lot solid ground. Walker, stated that according to state law you can hunt in Upper Burrell with a high powered rifle. Mr. Rowe addressed the safety factor, he understands that under the current Ordinance you can hunt in Upper Burrell with a high powered rifle, Walker stated that is the state law, so you can hunt in Upper Burrell with a high powered rifle talk about safety but you can shoot a shotgun within 150 yards of a house, now first of, don't get that far, but don't shoot a skeet 160 yards away from that house, but can be 150 yards away shooting at a deer correctly you are not to shoot a deer around a house, and if a bullet goes into that house what safety factor covers that, there is not an Ordinance you could put out there to stop that, just saying 150 yards you can hunt/shoot anything greater than 150 yards except for the state laws. Mr. Myers stated he is sure the game commission did a lot of work to come up with that number.

George Banyas, 361 Hunter Hill Road, stated that you could say that any day of the year you are hunting opossum, raccoons, coyotes, groundhogs, they are paying a bounty for coyotes now, there is no time, let me see you prove that I was target practicing and not shooting coyotes. This is why this should be



thrown out and this is why the majority of the people are here tonight, and you should throw it out, take a vote to the audience. Walker asked how many in the audience would like to see this Ordinance thrown out? Slabe stated come on Ross you know this is not the way to do things. Walker stated he can ask this question, how many in the audience would like to see the 1972 Ordinance repealed? Walker stated looks like about 90%, and that does not mean you cannot bring in something else afterwards. Walker asked George if he read this letter, he replied yes, and he agrees with it and that it should governed on a state or federal level, for the simple fact, of bringing it upon the police due to the police may not like him as much as they like you so they may hassle him before you. One time he called Cruz cause someone was shooting a fully automatic rifle on Upper Drennen Road, big difference with a fully automatic, sound you can never forget, Cruz told him it's ok they have a permit, meanwhile, he was hassled for shooting on his property, it's not fair, let the state govern this, or even the county, throw it out tonight. Walker stated he may do this under new business. Walker stated that he told the community he would have something to bring up tonight on this firearm Ordinance tonight, in this letter did you something in there about the right to hunt, something about VA and the right to hunt, on page 4, district of Columbia vs. Heller, the new recognition in VA, the constitutional right to hunt.

#### **NEW BUSINESS**

A motion was made by Walker, second by Uhler, to advertise for letters of interest for the vacant elected auditor seat. Motion passed 3 - 0

A motion was made by Walker, second by Uhler, to advertise for Road Materials, 2A Limestone, No. 3 Limestone, Unleaded and Diesel Fuel and also including Type 1A processed cinders, Type 2 AntiSkid (PennDot), and #9 Special (PennDot). Motion passed 3 - 0

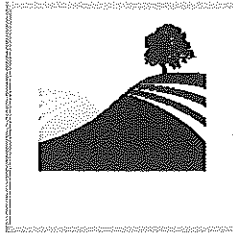
A motion was made by Walker, second by Dombroski, to advertise Ordinance #1-2014, an Ordinance of Upper Burrell Township, Westmoreland County, Pennsylvania, amending the Upper Burrell Township Zoning Map by rezoning 93 acres of property located on Myers Road from CC to RA.

Motion passed 3 - 0

Walker made a motion, to repeal the Firearms Ordinance of 1972, no second to the motion, Motion failed 1 - 2.

Dombroski made a motion, second by Walker to have the Solicitor check into the PA Game Laws in regards to the 150 yard safety zone. Motion passed 3 - 0

A motion was made by Uhler second by Walker to pay all the monthly bills and accept the financial report. Motion passed 3 - 0



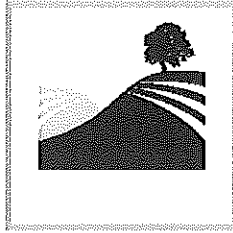
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## COMMENTS FROM THE PUBLIC

Ron Slabe, 516 Angelcrest Drive, stated he has hunted, not recently but does own guns, shoots guns from time to time. The hunting laws clearly preempt the local ordinance, that's understood, the question is not one of possession or self defense, if you own a gun your allowed to defend yourself, the question here centers on the discharge of guns or target practice use. Here are some of the questions that arise, 1-How close to a dwelling should someone be allowed to fire a gun. 2-What is the duration of someone discharging a gun, how long, 5 hours, 5 minutes. 3-What is the level of the noise that should be tolerated? Flintlock or a bazooka is a lot different. If 150 yards is ok with hunting should that not at least apply to target shooting as well? The safety zones are not made for the rabbits and squirrels they are made for the people for the safety of the people. In some of reading in PA Hunting and Trapping Digest, they call for 200 yards from a camp or someone's quarters so that is something also that could be considered. 150 yards is for hunting but extending can be done as he stated before the State Police mentioned up to 1000 feet all depends on the Ordinance the Township comes up with. In regards to the noise he came up with some places actually have up to a number of decibals that are allowed. Besides noise violations you may run into there are also nuisance violations, reckless endangerment, negligence, and even criminal trespass come into play. Cities, Boroughs and Townships, can pass laws to making it illegal to discharge a weapon within their boundaries unless your legally hunting or defending yourself. But we can come up with laws to make it illegal to discharge a firearm. Just recently in Lancaster City the courts upheld the Ordinance on the discharge of fire arms . What troubles about the letter we got, 2 things 1-fact that it encourages the use of bringing the weapon to a public meeting or convention and also the fact of being able to bring your firearm to a local park. Is that what we want what we should encourage? Always above all take into account the concern for safety, all need to remember the words of Isiah and come into reason together. Not just jump off a cliff with all of this.

George Banyas, 361 Hunter Hill Road, response to Ron do you know what the age limit to buying a firearm is? 21 to buy alcohol, 18 to vote, and no age on owning a firearm. Right now according to the laws a 2 year old little kid could shoot a high powered rifle at a deer. As far as target practice there are a lot of other issues. As a gun owner he feels it is right to be able to shoot his gun and Mr. Slabe agrees as long as he follows the rules.

Dan Myers, Turkey Ridge Road, stated he is very disappointed that you did not get a second to your vote on the motion to remove that Ordinance. What he would like for you to do now, is that you know its not enforceable don't you have the obligation to remove it. Walker stated that we know it is constitutional suspect and will continue to work on it, and he brought it up to the other 2 Supervisors rather quickly and he is also a little disappointed he did not get a second. Walker stated they are going to continue to work on this to change it and make it better. Someone from the audience stated once again that now you it is unconstitutional don't you have the obligation to remove it. Solicitor Yakopoc stated at some point it should be removed as of right now it should not be enforced because it cannot be enforced because it is too broad the way it is drafted and they are no exemptions in it that would comply with the state law it really should not be enforced. Walker stated maybe next month they will remove it and put something else in it that would be much better. Mr. Myers stated that the reason in 1972 the Ordinance was written cause no one wanted high powered rifles used on Alcoa's property who claimed they had a bullet come thru the building. Walker stated he was a Supervisor then. Mr. Myers



replied that he was not at that time. The whole intent at that time was safety, cause a bullet was found. They also actually placed signs in Upper Burrell stating no hunting, and that was also illegal, because you can't do that the game commission does that, you can hunt anywhere in the state of PA as long as you don't violate the state game laws. Supervisor Uhler stated that he sits he and looks at the a few faces who want this Ordinance to be shot down, but yet they have called to complain about other people violating this. How is that, kind of contradicting, isn't it?

Brian Uhler, Turkey Ridge Road, stated that if you do shoot this Ordinance down then you need to have something viable to cover it.

Supervisor Dombroski stated the point he likes to shoot he shoots at his house a few clips, guarantee if he goes and buys 3000 rounds of ammo and was within earshot of your house and he decided he was going to shoot everyone, you would complain about it. That constant pow, pow, for 4 hours you would complain. There is someone at this table who did that, and he was very cordial about it. If someone owns 95 acres of property he should be allowed to shoot of 5000 rounds compared to someone who owns a quarter acre, it's not fair to either one. Dombroski stated that in moderation its fine. Does not know how to change the Ordinance to reflect that. Mr. Myers stated that as far as he knows there is no public hunting in Upper Burrell, so in order to stop people from hunting they can put up no trespassing signs. You could then call the police and have them taken to the Magistrate for trespassing, if you are trespassing believe me she will find you guilty and make you pay a fine.

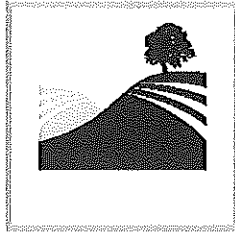
Mr. Rowe stated if someone right now wanted to shoot of 5000 rounds there is nothing they can do about it and he can't believe that knowing this you are not wanting to remove this from the books especially when there are criminal and civil laws that the state already covers for this. How can noise be of an issue he if wants to sit there for 5 hours with tuba making noise he can, the point is if you call in a complaint on someone where is it going to go?

Solicitor Yakopec ,stated that he knows there are some unconstitutional laws that remain on the books and are not enforced and he knows that at one point in time for the Oath of Office there was a provision that was unconstitutional but remained on the books could not be enforced. There are situations where laws that are unconstitutional are on the books but are simply not enforced. I guess when they take an Oath of Office they should uphold the constitution of the laws of the state.

John Trzeciak, 1500 Menk Road, stated that there has to got to be on some state or federal level about safely discharging firearms. No one wants anyone to get hurt, if someone is screwing off being unsafe about it, then call the police but if it a noise issue how can you enforce that, what if he was to have is log splitter run all day and quads.

Solicitor Yakopec stated that noise Ordinances are extremely difficult to enforce. Because you would need a decibal meter to monitor that and in some situations that if it is dispute between neighbors it goes into court concerning a nuisance violation which constitutes a nuisance, whether its landfill a chainsaw, shooting, quads, goes to the courts on an individual basis. That is usually brought up on a civil complaint, not on an Ordinance and can go to the commonwealth. Solicitor Yakopec ,stated there are





cases out there that even though something is lawful the courts have declared them a nuisance and have restrained what is typically a lawful use. Not as a result of an Ordinance something beyond that.

Ron Slabe, Angelcrest Drive, stated just wanted to mention about the safety issue a few months ago the Police Chief was at the meeting and he addressed the residents it was very surprising how many cases they were of this type of call where bullets landed so closely to a person, and this is the major concern.

Walker stated that criminal and civil law deals with those issues, if someone is hurt the PA Criminal Law will deal with these issues and civil law, as if your house were to get hit with a bullet. But were dealing with the Ordinance and what can be done on these issues. Concern is also for the safety of the Police who have to deal with issues like this with an individual who maybe under the influence of something. Walker stated if you took all the guns away then you would not have to worry about it. Slabe had the experience of a neighbor who was under the influence and shot his dog, a long time ago, these are the concerns that should be taken into account. The Police Department has to investigate these situations. Walker stated if it criminal or civil the Police Department will have to investigate it.

Mr. Rowe, Merwin Road, question in regards to the firearm ordinance, safety is an issue but he is curious about the time issue this is starting to snow ball started this whole thing last May and coming up on the year anniversary going to have a difficult time coming up with an Ordinance to satisfy everyone, has a whole lot a grey area. Does not understand the current Ordinance and want to replace it with something else then why keep it? Let's eliminate now and work to achieve the perfect Ordinance. Puts the citizen in kind of predicament, hey we are allowed to shoot but is it going to be enforced, also puts a burden on the police even though it's bs, it still leaves that grey area. Walker stated how about he brings it up again next month either that they will try to work on something either that or he will bring it up again next month to repeal it. Mr. Rowe what do you want to see to repeal this Ordinance. Walker stated that he really threw this on the other 2 supervisors who did not have time to review this. Uhler asked did you get a copy of this, Mr. Rowe stated yes, Uhler stated look at the date I just got this on Friday. Uhler stated that Walker was on his own on this. Yakopec stated they need to read this letter and digest it in order to make an informed decision. Walker thanked everyone for coming and for the support and please come back next month.

A motion by Walker to adjourn, second by, Dombroski, meeting adjourned at 8:14 pm.

Minutes Submitted by:

Melissa A. Holmes

Note\*\*\*

Next monthly meeting will be held on Monday, April 7, 2014  
Beginning at 7:00 p.m.