

MINUTES
REGULAR MEETING OF THE
UPPER BURRELL SUPERVISORS
WEDNESDAY, JULY 5TH, 2017
MEETING ROOM, 3735 - 7TH STREET ROAD

Board of Supervisors, Chairman, Ross Walker, 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: **Ross G. Walker, III, Chairman**
 Peter F. Dombroski, Vice Chairman
 Allen E. Uhler, Supervisor

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

OPENING OF BIDS – None

OPEN TO THE FLOOR –

Ron Slabe, 516 Angelcrest Drive, asked about correspondence that pertained to the Status Conference for the Oil and Gas Ordinance Validity Challenge. Mr. Slabe thought that hearing had already taken place according to the Solicitor last month. Yakopec stated that said hearing had been cancelled and will take place August 10, 2017, that is the next date the judge is available.

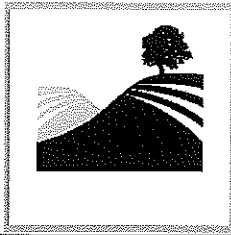
Mr. Slabe also inquired about the correspondence received from the Westmoreland County Elections Bureau in regards to the redistricting of the Township.

Mary Ann Schwan, 133 Sauer Lane, stated that the Bureau has mentioned to her previously that they have considered redoing the districts in the County and that Upper Burrell maybe the first to have this done due to having an unbalanced district.

George Richard, 350 Hunter Hill Road, stated that he was always under the impression that Rte. 780 was the dividing line for the voting districts, but as people moved it seemed as if they got moved into different districts.

Pearl Jones, 201 Merwin Road, asked if there was anything the Supervisors could do to help move along the process to get the voting districts equal and to also make sure that no households are split.

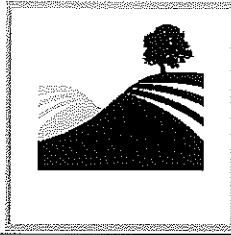
Walker stated he would like to have a letter drafted by the Solicitor, signed by the Supervisors and the Upper Burrell Township Election Board, stating we would like the districts to be split more evenly and to



not include any split households and to revisit this issue every 10 years. Dombroski and Uhler agreed to send the letter.

Ron Slabe, 516 Angelcrest asked about the amending of the Township Police Pursuit Policy. Yakopec stated this cannot be disclosed under state law. Sgt. Speer stated every department has a policy and that said policy is not released due to being used as a tactic for the department.

Mr. Slabe also asked about the information on the Agenda in regards to the landmark environmental decision. A majority of Pennsylvania's Supreme Court Justices established a broad interpretation of the Environmental Rights Amendment to the state constitution, cementing in place the commonwealth's role as trustee for public natural resources. Yakopec stated that this a fight about money, the gas lease fund had been set up to where if the State were to lease it's forest lands or any lands that it owns, any monies must go into a fund for conservation and reclamation of public resources. Now according to PA Environmental Digest there was a diverting under the Corbett Administration of 478 million dollars, from DCNR from that fund into the General Fund taking money out to help with the budget, due to running a shortfall. Article 1, Section 27 of the PA Constitution Environmental Rights Amendment is self-executing. This means that you do not have to pass a law to make it enforceable, legislation does not have to due to it being in the constitution. The Supreme Courts has stated that it is self-executing. Mr. Slabe stated just like freedom of speech and others, Mr. Yakopec stated that's right. Mr. Yakopec stated Page 29, Justice Donahue writing for the majority cites the environmental rights amendment Pennsylvania's public natural resources and she also repeats again on Page 29 and then in the footnotes on Page 30 footnote 22, she says the sentence was also amended to include the term public to indicate that it did not apply to purely private rights. Justice Baer dissented that he agreed with the dismantling of the Commonwealths court Payne test because Justice Donohue and the other Supreme Court Justices said you look at the Environmental Rights Amendment itself that will give you the test based upon what it says. Justice Baer also agreed with the confirmation of the public trust provisions of the amendment is self-executing and on Page 30, Footnote 23 that all agencies and entities of commonwealth government, both state wide and local have a fiduciary duty to act with prudence, loyalty and impartiality. For example under this case if Upper Burrell Township leased land it owned for Marcellus shale exploration they could not take that money and put it into the general fund that money would have to sit aside for conservation reclamation. That is what the Supreme Court is saying in this opinion. There were several other agency who filed briefs. Mya Van Rosen says it will take time before any clear impact will be felt we will not have instant definition and transformation over night because all these rights need time to be defined it has to go thru the court process which is huge step forward for the rights of the people of Pennsylvania for a healthy environment. Mr. Slabe's question to the Solicitor is, what do you see as this local government fiduciary role in relationship to the environmental rights amendment and being part of the commonwealth of the trustee, what is the fiduciary role now? Solicitor replied that will be worked out in a court decision, as it stands right now his opinion would be if they leased public land they would have to keep that money from that public land separate. Slabe asked what about other than public land. Yakopec replied under footnote 22, Justice Donohue says, when originally drafted to include the air, water, fish, wildlife, public land and property of the commonwealth but it was revised to remove the enumerated list and thereby discouraged courts from limiting the scope of the natural resources covered. She goes down to foot note 22, the sentence is also amended to include the term public to indicate that it did not apply to purely private properties rights. Slabe replied



not purely just public as well as private, Yakopec replied that's not what she says in the foot note. Quoting, " the sentence was also amended to include term public to indicate that it did not apply to purely private property rights". Slabe stated the way Steve is reading it and the way he interprets are two (2) different things. Slabe quoted saying that all levels of government are put on notice that they cannot ignore the peoples constitutional rights as guaranteed by the environmental rights of this decision, that those rights are fundamental and enforceable, that goes beyond just talking about public ownership of land and what you can do if you own public land, this is talking about everyone's rights under the constitution under Article 27. Mr. Slabe believes this Township has an obligation as a fiduciary role to come up with something to show how the Township is going to protect their rights under Article 1, Section 27 they are entitled to clean air, water, and aesthetic value of natural environment. It basically took the Robinson decision as plurality and made it a majority decision and there is a lot there to digest. Yakopec state the ultimate result is it will be remanded back to commonwealth court because to consider of other monies that were coming in but the Supreme Court basically says that the royalty payments are coming from the leasing of Pennsylvania state public land cannot go into the general fund. Slabe sked what are you going to recommend to the Board as it fiduciary role? Yakopec stated that as a fiduciary role he is looking at footnote 22 where it says the sentence was amended to include the term public to indicate that it did not apply purely private property rights. Slabe asked are you saying that at this time this board has no fiduciary role. Yakopec replied if they have property they own, "yes". Slabe stated we do not own property that is leased out. Slabe stated so what is your recommendation, you stated there is no fiduciary role. Yakopec replied he believe there is no role right now and that all will eventually get sorted out thru the courts. Yakopec went on to quote the Gettysburg Battlefield Case. Mr. Slabe stated that he would like the Solicitor's opinion noted in record, that a fiduciary role is basically not something the local government does not have to worry about. Yakopec replied go ahead you can put it in the minutes, but then again with the caveat, this will be determined thru the courts.

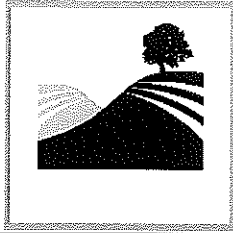
Cari Armstrong, 260 Upper Drennen Road, asked the litigation about state agencies issuing permits and violations, she wondered about those state agencies. Would that apply to strictly to state government agencies or would that allow local municipalities to issue permits. Yakopec replied that would depend on if they had access funds that come out of public property. Yakopec stated another thing on Page 39, she says that plurality of Robinson Township recognize that our prior case law does not result the issue whether Section 27 is self-executing or whether it requires implementing legislation to be effective at least in regard to attempt to enforce the people's rights against owners of private property.

Leon Yurkin, 3603 Baxter Drive, asked if the Status Conference being held on 8/10/2017 is open to the public. The Solicitor replied "no", just the lawyers and judge only.

APPROVAL OF THE MINUTES

Motion made by Walker, second by Dombroski to approve the minutes of the June 7, 2017, regular meeting of the Township Supervisors.

Motion passed 3-0.



CORRESPONDENCE

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

Supervisor Uhler asked a question about the correspondence in regards to the project location on the Zeus well, I see there is another proposed 4G, is that another well head going on that? Yakopec replied that he did put a call in to Huntley & Huntley and his understanding is that this is a proposed well that will be drilled off of the well, it will be a bore hole on pad, that's why the Latitude and Longitude have changed, because you are moving it slightly. Uhler stated so instead of the three (3) you are going to another bore, is that correct? Yakopec replied he believes that is correct.

ROAD REPORT –

Supervisor Dombroski reported that a lot of the time was spent mowing, weed whacking, trimming low branches and cleaning out ditches. Dombroski asked that when residents see the Road Department weed whacking along the roads please try to make eye contact with them, for they cannot hear any horns or vehicles due to the equipment being so loud. Also please do not leave phone books laying out by the mailboxes, please pick them up and throw them away if not being used. Also the paper dumpsters are full, have made contact but as of date no one has come to empty them out.

POLICE REPORT – 82 calls for the month, 28 being Traffic Offenses. Sgt. Cole warned residents about the driveway scams, the Township has not had any calls yet on this but Washington Township and Lower Burrell have, always ask them for a copy of the soliciting permit. Walker asked what was the most serious call for the month? Speer replied, domestics and drug related calls. Speer replied no Narcan was used the month of June, but has been used in the past.

EMC REPORT -

Mr. Knox was absent but had Walker report that he plans to attend the July 26, 2017 meeting.

ENGINEERS REPORT

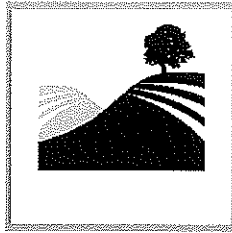
Mr. Kerchner reported that received the contract documents and will send out notice to proceed with the work next week, hopefully work will start by the end of the month.

PLANNING COMMISSION – None

SOLICITORS REPORT –

Solicitor Yakopec stated that the PAED case, the one article indicates that Professor John Gurbach, Law Professor Widener University, he filed an amicus brief with a friend of the court, he says you have the majority of the PA Supreme Court that is now saying the text of Article 1 Section 27, and the public trust responsibilities imposed by this text binds the state of Pennsylvania and limits the way the state of Pennsylvania can manage its public natural resources, that has never been said before by a majority of PA Supreme Court.

Ron Slabe, he agrees with the Solicitor but it goes beyond that. The Solicitor mentioned Delaware River Keeper, for example Jordan Yager, stated that the decision bolsters the strength of the Environmental



Rights Amendment and the ability to challenge state acts that could cause environmental harm just like government can't take action to deprive of your freedom of speech, right to bear arms, private property rights and the same holds true for your environmental rights, he says any unreasonable degradation resulting from permitting, "do you hear that", for legislation can now be challenged in court on constitutional grounds. So this goes back to the fiduciary role of local government. Yakopec states the interesting part is the one quote, like government can't take action to deprive you of freedom of speech, is that fact that he quotes private property rights at the same time he quotes environmental rights. Slabe state he has private property rights, but when those private property rights infringe upon his constitutional rights that" where we are talking about challenging in court, because under Article 1 Section 27 he has those rights. They are now equal to free speech. Solicitor states that's why Maya Van Rose, from the Delaware River Keeper Network says it will take time before any clear impacts are felt we are not going to have instant definition and transformation overnight because off all these rights take time to define. Has to go thru that court process, but this is a huge step forward for the rights of Pennsylvania people for a health environment. It's a wait and see kind of thing.

NEW BUSINESS

A motion was made by Walker second by Uhler to exonerate Joyce Ewing, Tax Collector from collection of the 2016-2017 unpaid 258 Per Capita Items.

Motion passed 3 – 0

A motion was made by Walker, second by Uhler to have the Solicitor write a letter to the Westmoreland County Election Bureau stating the Township would like to see the voting districts in the Township split more evenly and have not splitting of households and to have this issue revisited every 10 years.

Motion passed 3 – 0

A motion was made by Walker, second by Dombroski to send a Township Representative to attend the PennDot Workshop to discuss local projects in Westmoreland County on Thursday, July 27, 2017 at 11:00 am, in Mt. Pleasant, PA.

Motion passed 3 – 0

A motion was made by Walker, second by Dombroski to amend the Upper Burrell Township Police Department's vehicle pursuit policy.

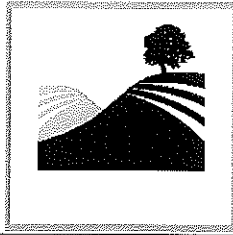
Motion passed 3 – 0

A motion was made by Walker, second by Uhler to hire Andrew Kurnocik as Part Time Patrolman.

Motion passed 3 – 0

A motion was made by Uhler second by Walker, to pay all bills and accept the Financial Report.

Motion passed 3 – 0



OPEN TO THE FLOOR

Ron Slabe, 516 Angelcrest Drive, addressed the Supervisor's stating that last month he talked about several studies and the health effects drilling has on infant mortality. Babies being born near drill sites have greater harm and are dying. Mr. Slabe provided a copy of, Study Finds Fracking is Strongly Related to Increased Infant Mortality, and There's a World of Going on Underground – Infant Mortality and Fracking in Pennsylvania.

Mr. Slabe stated that after all of this, how could you not be looking at this and wondering, then what is wrong with you. He cannot understand people who are strong anti-abortionist have tremendous disconnect with this, how fracking is killing babies.

Ken Slahtovsky, 6200 Schafer Drive, stated yes Mr. Slabe we have been listening to all of this for the last seven years. Mr. Slahtovsky asked if there were any plans to have the culverts on Bethesda Road fixed? Dave Kerchner stated the survey work is done and the preliminary drawings are done just have to get it out to bid. Slahtovsky stated that soon work will begin on the construction of the well pad and several trucks will be traveling Bethesda Road.

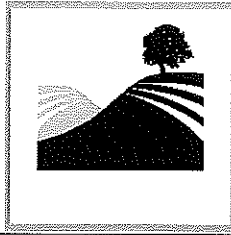
Leon Yurkin, 3603 Baxter Drive, asked about the work on the bridge on Schafer Drive? Dombroski stated a couple of years ago this bridge was to be replaced but has since been placed back to the year 2022. If Dombroski is able to attend to the meeting with PennDot on July 27, he will discuss this along with the paving of Manchester Hill Road. Dombroski stated the bridge on Schafer has issues, the plates come off and he feels the bridge should be raised up and also needs a catch basin.

Pearl Jones, 201 Merwin Road, stated she has a few issues, the low hanging branches on Merwin Road, she was told by PennDot they would cut this spring and to date have not been cut, and the section of Upper Drennen Road is giving away, she has also called PennDot on this. Walker stated can we write a letter to PennDot asking them to address these issues? Dombroski stated I suppose we can. Uhler stated there is also on up off of 780 and Merwin if someone ever goes in there they are not getting out, right before the industrial park. Dombroski stated there are grates missing on the catch basins, does not know if they are being stolen. Kerchner stated that meeting is coming up this would be a great forum for that.

Supervisor Uhler stated he did talk with Corey Howell from PennDot, he is one of the higher ups, about two weeks ago, he going to not dredge but lift and of the debris off of Milligantown Road in the little creek by Bill Spiering's, also mentioned about the Upper Drennen Road eroding away and also about 780 all of the knot weed, our Township cannot be going out there on a state road that is there responsibility there. Pete and Uhler have cut the knotweed at the intersection of 780 and Hillview Road.

Walker stated to Mrs. Jones gets those PennDot locations together and anyone else and will get that info a format.

Paul Schwan, 831 Merwin Road, asked about the orange survey markings along Merwin Road and SR 366, are they for the gas stuff? Dombroski believes that is the gentleman going around with the GPS system marking his grids.



Ron Slabe asked if the map for the seismic testing was still up? Walker stated that yes, it is in the back of room. Slabe wanted to bring it to their attention that, they have marked on there his and his neighbor's property as those are where devices will be located for the testing and that is not correct. Dombroski and Uhler both stated this map is only a proposed draft. Someone from within the audience asked when will this be corrected? Dombroski stated that when the work is completed. Slabe stated this is misleading someone may think he gave permission. Dombroski stated that it says on the proposed map "proposed". Slabe wants it taken down and Dombroski stated it's fine where it is. Uhler stated that if it is misleading to people, he had a few people approach him about this, he spoke with GeoKinetics and they stated this is a "proposed" map. He would meet with any one of us if you would like to meet with him.

ADJOURNMENT

Motion made by Walker, second by Dombroski to adjourn, meeting adjourned at 8:03 p.m.

Minutes Submitted by: Melissa A. Cortilesio,

Note*** Next monthly meeting, will be held on September 6, 2017, beginning at 7:00 pm