

The stated Special meeting of the Board of Commissioners of the Township of Abington was held on Wednesday, July 18, 2018 at the Township Administration Building, Abington, PA., with President Luker presiding.

CALL TO ORDER: 7:00 p.m.

ROLL CALL: Present: Commissioners MYERS, BRODSKY, ROTHMAN, DiPLACIDO, SANCHEZ, THOMPSON, SCHREIBER, HECKER, VAHEY, GILLESPIE, ZAPPONE, KLINE, LUKER
Excused: SPIEGELMAN, BOWMAN

Also Present: Township Manager MANFREDI
Township Solicitor CLARKE

PLEDGE OF ALLEGIANCE

BOARD PRESIDENT ANNOUNCEMENT:

President Luker announced that the Board of Commissioners held an Executive Session this evening at 6:30 p.m. for the purpose of discussing a matter of litigation.

At this time, the Board of Commissioners will consider a mutual release and settlement agreement between Old York, LLC, Metropolitan Properties of America, Inc., the Township of Abington and Kenneth J. Clark, and he called on Township Solicitor Clarke.

Township Solicitor Michael Clarke said we are here this evening to consider a mutual release and settlement agreement between Old York, LLC, Metropolitan Properties of America, Inc., the Township of Abington and Kenneth J. Clark. This meeting came about due to a notice from President Luker calling an Executive Session and Special Board Meeting for this evening. That notice was sent to all Board members on July 13, 2018 announcing that the Special Meeting will be held this evening.

Pursuant to Section 709 of the Sunshine Act, public notice was properly given 24-hours in advance of convening the meeting. The ad ran in the Intelligencer on July 17, 2018 and proof of publication is in Township records.

The parties to this settlement agreement are Old York, LLC, Metropolitan Properties of America Inc., the Township of Abington and Kenneth J. Clark. The release that is before the Board this evening, in addition to it being reviewed by Counsel for Old York, LLC and Metropolitan Properties, it has been reviewed by the Township's Insurance Counsel, Deasey, Mahoney & Valentini, and it also has been reviewed by his office.

As we prepare to consider this release this evening, the Board should be aware that Old York, LLC and Metropolitan Properties of America Inc. have agreed to settle this matter as has Kenneth J. Clark.

There is no monetary settlement involved in this release and there is no exchange of money between the parties. This release will resolve all open matters currently involving the parties who were mentioned previously and those matters that are being resolved are two matters in Federal Court in the Eastern District of Pennsylvania; one is Old York, LLC v. Abington Township, a 2015 case docketed at 2015-2089; the second is Old York v. Abington Township and Kenneth J. Clark, a 2016 case docketed at 2016-1731. Three cases currently in the Montgomery County Court of Common Pleas will be resolved by this release; one is Old York v. Abington Township, a 2016 case docketed at 2016-11116 and Old York v. Abington Township, a 2017 case docketed at 2017-20466, and in addition, Abington Township v. Old York, LLC will be resolved and that is a 2016 case docketed at 2016-11418.

Finally, non-vehicle citations filed by the Township on May 10, 2016 and June 18, 2016 will be resolved if this release is approved this evening by the Board.

All of the cases he just mentioned will be dismissed with prejudice, which means all cannot be reinstated or revived by the parties. The factual claims cannot form the basis of any new action unless such claims are based on actions taking place after the effective date of this release. The release also contains language regarding sealed filings in the Federal Court Action related to a motion for a protective order and a motion to compel production of a video inspection.

Two important sections of the release are Paragraph 11 that says, "The release is not deemed as a waiver of the Township's right, duty and obligation to enforce all applicable laws, ordinances and codes." Section 5 is the mutual non-disparagement language between the parties, which is the release before the Board of Commissioners this evening.

The Executive Session held earlier this evening was for the purpose of discussion of this matter with the Board that is completely consistent with the Sunshine Act discussing a matter of open litigation. The Board was given advice and questions were answered from their legal counsel regarding this matter.

On July 17, 2018, an email was received by President Luker, Manager Manfredi and himself from Vice President Steven Kline that said, 'Although I am no longer involved with the Colonade 100 York Apartments project, I will attend the Board of Commissioners meeting on Wednesday, July 18, 2018; however, I will not participate, deliberate or vote on the agenda item related to the property of the project. I will state the same during the meeting and would like this email to be entered into the official record of the meeting.'

It is clear that Vice President Kline has a right to be in attendance this evening, but as Commissioner Kline correctly stated in his email, he cannot participate, comment or vote on the matter before the Board this evening.

President Luker asked for any public comments.

Lora Lehmann, 1431 Bryant Lane, said that “the fact that Board of Commissioners does not know the total cost of this legal matter is frightening.”

Solicitor Clarke replied his bills are public record and the speaker could file a “Right To Know” request for those bills.

Ms. Lehmann expressed concern that “the monies of the Township are not being safeguarded and also about the names on the filings of the case and the MOU (Memorandum of Understanding) was the cause of the lawsuits, and it is not in the interest of the citizens to end this suit in this way.”

President Luker asked for any comments from Commissioners or staff.

Commissioner Zappone said that this is not an attack against anyone. It is a vote to protect lives and that is the job of every Commissioner sitting up here. It is our job to protect our residents’ lives and property and knowing there may be some open violations and not knowing if these violations have been corrected in good faith, he cannot support this. He votes his “heart” and he has an issue with this.

Commissioner Sanchez made a MOTION, seconded by Commissioner Vahey to approve the mutual release and settlement agreement between Old York, LLC, Metropolitan Properties of America, Inc., the Township of Abington and Kenneth J. Clark as set before the Board.

President Luker asked for a Roll Call vote on the motion on the floor as follows:

Commissioner Myers voted no. The only positive is that this ends it, but it does not end well or fairly.

Commissioner Brodsky voted yes.

Commissioner Rothman voted yes.

Commissioner DiPlacido voted yes.

Commissioner Sanchez voted yes.

Commissioner Thompson voted yes.

Commissioner Schreiber voted yes.

Commissioner Hecker voted yes.

Commissioner Vahey voted yes.

Commissioner Gillespie voted no, because it does not end all of what is going on there.

Commissioner Zappone said it is our job, our responsibility to protect every citizen in this Township, every taxpayer, and to protect their life and their property. He voted no.

Commissioner Kline recused himself from voting on this matter.

Commissioner Luker voted yes.

MOTION was ADOPTED 9-3.

Manager Manfredi said there was public comment made this evening that the 'Board of Commissioners does not know the total legal cost of this case and it is frightening and that we are not taking a safeguard of the monies of the Township.' The Township's Finance Director knows exactly where the dollars are, and the Board of Commissioners approves every monthly bill. In a matter of minutes, the total cost of this case could be presented to the Board and he does not want the public to think that those were true statements just because the dollar amount was not produced this evening.

John DiPrimio, 1324 Warner Road, commented that "the people who send the check to the Township should know where all of the money is, and a FOIA (Freedom of Information Act) request to know how the Township is spending our dollars is a little ridiculous."

Manager Manfredi said the question was asked of the Board of Commissioners if they know the total legal cost of fees at this moment in time, and because they do not have that information immediately in front of them, it was stated 'how frightening it is and that they are no safeguarding of Township's monies,' and he does not think that is a fair assessment.

Commissioner Hecker said that taxpayers have every right to understand how their tax dollars are being spent, and over the past four years, this Board has safeguarded tax dollars and every expense is accounted for monthly.

Mr. DiPrimio asked if he comes to the Township building tomorrow, can he have that information.

Manager Manfredi replied he will ask Finance Director Barron to provide total legal costs of this case and he will have it tomorrow.

President Luker said until this date it was under litigation, so the Board was not at liberty to convey any figures to the public. Is that correct?

Solicitor Clarke replied his bills are a public document and the public is entitled to a copy of them.

ADJOURNMENT: 7:50 p.m.

Respectfully submitted,

Richard J. Manfredi, Township Manager/Secretary

sev

Approved
August 9, 2018

