

INDEX
Council Meeting
October 19, 2022

Pledge of Allegiance to the flag of the United States of America	1
Moment of Silence	
 Opening of Meeting	 1
 Roll Call	 1
 Rules for Meeting Decorum	 1
 Approval of the Minutes from September 2022	 1
 Public Forum	 2
 The Honorable Mayor Barbarann Keffer	 2-3
 Presentation by Donna Stilwell of Brinker Simpson regarding the 2023 Budget	 3
 President of Council, Brian K. Burke	 3
 Treasurer's Report by David Haman, Treasurer	 3
 Solicitor	 4
 Old Business	 4-5
 Motion to UN-TABLE the Motion from the last meeting for a Special Solicitor	 5
 Approval of Motion	 5
 Motion to hire a Special Solicitor as to the issues/conflicts of the CAO's office on the next Agenda	 5
 Approval of Motion	 6
 New Business	 6
 Motion to adjourn at 8:52 p.m.	 6

**MINUTES
Council Meeting
October 19, 2022**

The video of this meeting can be viewed in its entirety on youtube.com/upperdarby.org

Pledge of Allegiance to the flag of the United States of America
Moment of Silence

Opening of Meeting

Roll Call

Andrew Hayman (AH), Danyelle Blackwell (DB), Brian Andruszko (BA), Sheikh M. Siddique, (SS),
Lisa Faraglia (LF), Matt Silva (MS), Brian K. Burke (BB), Michelle Billups, (MB), Meaghan Wagner (MW),
Hafiz Tunis Jr. (HT), Laura Wentz (LW)

Laura A. Wentz, via Zoom

Present at the Meeting

Barbarann Keffer, Mayor
Chief Municipal Clerk, Alexis Cicchitti
Solicitor Sean Kilkenny
Solicitor Courtney Richardson
Solicitor Colleen Marsini
Mike Galante, Township Engineer
David Haman, Treasurer, via Zoom
Sergeant of Arms, Officer Bateman
Sergeant of Arms, Officer Walsh

Guests

Donna Stilwell, Brinker Simpson

Rules for Meeting Decorum

“Upper Darby residents have the opportunity to speak for three (3) minutes. Residents are prohibited from making threats, using profanity, or acting in a manner that would impede or prevent the conduct of the business of the meeting.” Public Forum should not exceed thirty (30) minutes.”

Approval of the Minutes

Approval of the Minutes from the Council Meeting of September 21, 2022
Approval of the Minutes from the Special Meeting of September 28, 2022

**Motion to approve the Minutes of September 21 and 28, 2022: MB/AH
Moved and seconded. All in favor. The Minutes are approved.**

Public Forum

Joanne Nommavong, 133 N. Pennock Ave, spoke of the Mayor's Press Release from September 28 and believes that Solicitor Boggs' investigation is correct and believes that the Home Rule Charter was violated. Money was spent without Council's approval.

Sharaii Johnson, 347 Sherbrook Blvd, referred to the land development at BHMS and the plan to make an ADA ramp in front of her home. She has many concerns for her safety. Council President Burke asked Councilman Hayman to reach out to Mike Galante, Township Engineer and UDSD.

Jackie Hill, 351 Sherbrook Road, safety concerns for children regarding the BHMS land development

John Vizzari, 353 Kirks Lane, referred to Mayor Keffer's response from the previous meeting regarding ARPA funds and spoke of the PLGIT funds.

Mayor Keffer stated that the Township contracted with Marcum, an internationally recognized and awarded accounting firm to adhere to municipal accounting standards and they stand by the report that was presented.

Mayor Keffer stated that she believes that the Administration is in the clear concerning the ARPA funds.

Olivia Taylor, 204 Kent Road, upset about the state of the 2nd Ward Playground.

Mike Galante gave an update from the contractor.

Ms. Taylor further inquired about why illegal parking at the Mosque is overlooked, but illegal parking in 69th Street is always ticketed. Council President Burke explained the speed hump process in the Township.

Becky Duggan, 129 N. Pennock Avenue, asked when audits would be finished so questions could be answered. She asked when the Community Center development would begin. She asked if there were permits pulled for the event at the 69th Street field.

The Honorable Mayor Barbarann Keffer

MAYOR'S MESSAGE

OCTOBER 19, 2022

Good evening.

This Saturday, October 22nd, Upper Darby is holding another Shred event from 9am until noon at Upper Darby High School (601 N. Lansdowne Ave, Drexel Hill 19026). Two boxes are allowed per vehicle and non-confidential documents, magazines, newspapers, catalogs, flyers, and junk mail will NOT be accepted. There will be on site data destruction of laptops, tablets, hard drives, and cell phones, but NO TELEVISIONS. Delaware County's Drug Take Back Van will also be on site. For more information, visit our website www.upperdarby.org

October is Breast Cancer Awareness Month. I encourage everyone to check and see when their last mammogram was and to make an appointment if it's been over a year. Yearly mammograms remind us to take care of ourselves on a regular basis.

October is also Domestic Abuse Awareness Month. Locally, the Domestic Abuse Project works to support survivors of domestic abuse and to prevent domestic abuse. Our township supports the Domestic Abuse Project on a regular basis through our Community Development Block Program. Next Thursday, the Domestic Abuse Project will have a grand opening of their Upper Darby office. We welcome them, and their mission and the opportunity to more directly serve the residents of our township and of Eastern Delaware County.

Last night, there was a residential fire where a civilian and a firefighter were injured. Our thoughts are with the resident and firefighter as they recover. I would like to take the time to remind everyone to practice fire safety around portable oxygen units and electric space heaters in addition to preparing and practicing a fire escape plan. This year's Fire Prevention Week was "Fire Won't Wait, Plan Your Escape". Please test your smoke alarms on a monthly basis and call the UD Fire Department at 610-734-7673 for installation of a free smoke detector if you are in need of one.

Tonight, our representative from Brinker Simpson, Donna Stilwell will present to Council and the public our 2023 preliminary budget. I would like to pause now and allow Donna to give her presentation.

That concludes our presentation and my message.

PowerPoint Presentation by Donna Stilwell of Brinker Simpson regarding the 2023 Budget

The Presentation can be viewed in its entirety on YouTube.

President of Council, Brian K. Burke

Council President Burke stated that there will be a Budget Hearing on November 2, 2022 and the second Budget Hearing will be scheduled as soon as possible.

Councilman Tunis asked why the Grant Resolutions were not included on the Agenda.

President Burke stated that he has been waiting for the truck Ordinance for months and he is under the impression that the Grant Resolutions are not time sensitive.

HT added that the Resolutions should be on the next Agenda, as we are stopping the people's business.

Solicitor Richardson stated that Mr. Galante completed the Fire Map yesterday and it was given to Sekela Coles, Director of Parking Enforcement and Chief Sawyer for review. Instead of defining commercial vehicles by weight, they will be defined by width to ensure that there is enough clearing for the fire trucks to pass and make turns.

Council President Burke stated that he would like all of the Council to receive this along with the Public Safety Committee for review.

MS made a Motion to put the Resolutions forward at the next meeting.

HT seconded the Motion.

All in favor. The Resolutions will be on the November

**Motion for the Grant Resolutions to be on the November 2, 2022 Agenda: MS/HT
Moved and seconded. All in favor. The Motion is approved.**

Treasurer's Report by David Haman, Treasurer

Treasurer Haman stated that he is working with the Finance Committee on the Budget and should be resuming his regular reports soon. He stated that one of the things that they are running into is some departmental overspending that will have to be dealt with just as it was last year.

COMMITTEE REPORTS

Public Safety Committee

Chair: Lisa Faraglia

Members: Andrew Hayman, Danyelle Blackwell, Meaghan R. Wagner

President Burke announced that this Public Hearing should have been placed on the November 2, 2022

Committee Meeting, as advertised.

Public Hearing for Ordinance No. 3126, an Ordinance of the Township of Upper Darby, Delaware County, Pennsylvania, **amending Chapter 570-3 "Vehicles and Traffic"** titled "Residential Parking Permits" to add and remove street to the Permit Program; provide for subsequent streets to be added and removed to the Program by Resolution; providing a severability clause; repealing all inconsistent Ordinances; and; and providing an effective date

Solicitor

No report

Old Business

BA asked if the findings of the investigation done by Solicitor Boggs was turned over to the Auditor General's and Attorney General's Office.

Council President Burke and Vice President Wentz stated that they did not know if it had been turned over but VP Wentz stated that she could forward it as it is in the Minutes.

Solicitor Kilkenny suggested sending an email to verify.

BA further asked Solicitor Kilkenny to explain how he originally came to decide that he had a conflict.

Solicitor Kilkenny stated that there is an Executive Branch and a Legislative Branch and when the two are in conflict, meaning the Legislative Branch wanted to investigate the Executive Branch, he, as the Solicitor of the Township, cannot opine on both. Therefore, he reached out to the Pennsylvania Bar Association and they provided an advisory opinion from another body in another situation from a Home Rule Municipality that states that there is a conflict. In those circumstances, where there is a strong Executive and a weak Council and you are the Solicitor for the Township, then you represent the Administration in those terms of conflict and the Legislative Branch should get their own Counsel, which was Mr. Boggs.

BA asked if there is a waiver that needs to be signed by Council that gives Solicitor Kilkenny permission to represent the Executive Branch.

Solicitor Kilkenny stated that there is not a waiver required and that he notified Council President Burke and then Mr. Boggs was chosen.

Council President Burke stated that at one of his first meetings as a Councilman, Solicitor Kilkenny represented Upper Darby Township and Millbourne. There was a fee schedule for the Fire Department and Solicitor Kilkenny had a conflict of interest and asked for permission from Council to either step aside or represent both. He asked what the difference was of not asking Council to represent the Administration at this particular time back in March. BB believes that Solicitor Kilkenny "chose" himself rather than coming to Council.

Solicitor Kilkenny stated that he did not view the situation between Millbourne and Upper Darby particularly contentious, as he believed that their interests were aligned. Therefore, in an abundance of caution, he requested a waiver of conflict. He added that if Upper Darby or Millbourne had objected to that, then they should have gotten their own counsel.

Solicitor Kilkenny stated that he would be happy to forward the Pennsylvania Bar Association decision that gave him guidance.

BA asked if a definition was ever given for what the scope of the conflict is that Solicitor Kilkenny has.

Solicitor Kilkenny stated that it was in his email to President Burke.

BA feels that the conflict is not clearly defined and that Council should have some kind of input into Solicitor Kilkenny's representing the Executive Branch.

Solicitor Kilkenny stated that what generates a conflict is that the interests are adverse. If the Legislative Branch is investigating the Administration, that is a clear conflict of interest and that is why he provided the opinion to President Burke. He added that he was asked for a legal opinion as to what a Deputy CAO and a CAO was by a Council member and he answered it.

BA stated that the situation is still somewhat fluid and as conversations come up, he could see certain people seeing Solicitor Kilkenny's opinion as conflicted. He believes it is a fluid situation and things that continue to develop could also become conflicts. BA further stated that he sees the office of the CAO as a whole as an ongoing conflict and his recommendation would be that if there is any sort of conflict Counsel, they should opine only on opinions of the office of the CAO.

Solicitor Kilkenny stated that he was asked for an opinion related to what the Charter says related to the CAO and he gave his interpretation of it as the Township Solicitor. He did not view that as a conflict. He added that the Charter is pretty clear in that it says nothing about Deputy CAO's or anything related to that. Solicitor Kilkenny stated that people are free to disagree with his opinion and that is fine but he does not believe that he has a conflict in giving his opinion.

Council President Burke stated that Solicitor Kilkenny just stated that "the Charter is very clear" and added that if the Charter is what he rules by, and if it is very clear, then the forfeiture of Office in the Charter is very clear.

He added that if Solicitor Kilkenny represents the Administration then he would think that he would tell the Administration that the Charter is very clear.

MW stated that she believes that Solicitor Kilkenny appears to have a conflict anytime it comes to a Council action either against the CAO or about the CAO. Therefore, she believes that a Special Solicitor is needed. Solicitor Kilkenny stated that he understands the concerns and that he has done his best to stay out of this and if Counsel feels that Special Counsel is warranted, then that is a policy decision for the Council.

AH stated that he is not aware of any situation where Solicitor Kilkenny stated that he was conflicted where it was not pertaining to the investigation. He has opined on the Sunshine Act and the Home Rule Charter and this is what he is employed to do. AH stated that there is a big difference between not liking what he says and finding it to be a conflict when it is convenient. He does not understand the need for Conflict Counsel.

Solicitor Kilkenny stated that he represents the Township and following the PBA decision's guidance, when there is a conflict between the Administration and Council, then he represents the Administration. He has told Mayor Keffer that when it comes to your court litigation of this, he does not want to represent either and chooses to stay out of it.

MW added that it was not just the investigation but Solicitor Kilkenny also found a conflict in the removal of Mr. Rongione from the office.

Solicitor Kilkenny stated that in relation to the removal of the CAO, he views that as a continuation of the investigation and he should not be opining on it.

MW stated that she has made it very, very clear that it was not just the investigation but also his complete lack of total qualifications for the job. She added that Solicitor Kilkenny still has conflicts.

Solicitor Kilkenny stated that if he were asked by Council to opine and say should Mr. Rongione be removed based on the criteria that was established, he would say that he had a conflict.

LW stated that in lawsuits between the Council and the Administration, Solicitor Kilkenny stated that he stayed out of it. She further stated that when CAO Rongione, as a resident, went to sue six members of Council, her understanding is that the taxpayers of Upper Darby paid for his attorney to represent him; but he was suing not as the CAO of Upper Darby, but as a resident of Upper Darby. She asked for clarification.

Solicitor Kilkenny stated that this came to his attention today and he does not feel fully able to opine on that.

BA stated that based on this conversation, he still believes that there are things that are unclear and he would like to take the Motion from the last meeting off the table, if permitted, for hiring Conflict Counsel for Council itself. He believes that the scope of it should be related to the office of the CAO and he agrees with the recommendation that all Council members can submit a recommendation for whom it should be.

Motion to UN-TABLE the Motion from the last meeting for a Special Solicitor: BA/MW

MB asked that it be made clear what the Conflict Solicitor would be for.

Solicitor Kilkenny suggested that when a person is hired, a paragraph could be put in the engagement letter so people understand what it is related to the office of the CAO.

AH stated that an attorney was already hired for the investigation.

Council President Burke stated that Solicitor Boggs was hired for the investigation of ARPA funds.

MW explained what the next Motion would be after un-tabling the previous Motion.

DB asked if we were hiring a special lawyer to review a conflict of interest from the CAO's office.

MW clarified her previous statement.

DB asked if we have the money to do this.

BA stated that the Finance Committee met with Donna Stilwell to discuss the 2023 Budget and there is \$100,000 for a Council Solicitor that came out of other line items.

HT does not believe that his colleagues have an understanding of what Solicitor Kilkenny's conflict was.

In answer to HT, BA stated that he believes that they need a Special Solicitor to opine for Council. Solicitor Boggs was external from Council itself and he believes that it is necessary to have a Solicitor present to opine on those matters of the CAO's office during Council meetings. BA also stated that he believes that they need to get a definitive letter of engagement that simply says "for the office of the CAO."

MW called the question.

**A roll call vote was taken. 6 in favor, (BA, LF, MS, BB, MW, LW) 5 opposed (AH, DB, SS, MB, HT)
The Motion to UN-TABLE is approved.**

**Motion to hire a Special Solicitor as to the issues/conflicts of the CAO's office on the next Agenda:
MW/BA**

MB stated that it needs to be clear and say that it is for that particular purpose only. It also needs to be clear

what a Conflict Attorney is and everyone needs to be involved in hiring this person. It cannot be six to five.

BB reiterated that all Council members have the option to submit an engagement letter for a Solicitor.

AH asked who determines when there is a conflict.

**A roll call vote was taken. 6 in favor (BA, LF, MS, BB, MW, LW) 5 opposed (AH, DB, SS, MB, HT)
The Motion is approved.**

New Business

AH spoke of a Halloween Animal Show at the Watkins Senior Center on Saturday, October 29, from 12:30-2pm. The show starts promptly at 1pm.

HT spoke of the email from LW three days ago regarding the summary of the meeting with UHY and Donna Stilwell.

He referenced and read the section that refers to premium pay. His interpretation is that all Council members should stand against receiving premium pay, as they had the option to work via Zoom, unlike Township workers. He would like to add that money to the overall sum to increase the individual pays for each employee. BA agreed with HT. He also spoke of a vape shop on Township Line with continuing problems, such as drug paraphernalia outside and underage kids. While he is in support of thriving businesses in the Township, he believes that the risks that these vape shops post in the community and to our youth should be addressed and that the Ordinances should be reviewed.

MS asked if there is any course of action for those shops that are, or have been, in violation.

Solicitor Kilkenny stated that if there were a zoning violation, then the zoning officer would file a notice of violation that would go before the District Judge.

AH added that slot machines also create issues and asks if the Township can limit or regulate them.

MB added that there is a Zoning Public Hearing regarding the smoke shops in the 4th and 5th District on the 25th.

LW stated that she forgot to bring up under Old Business that Upper Darby Community Heroes will have Trunk or Treat on October 29, 2022 from 4-8 pm at Arlington Cemetery and they are looking for more participants. In the 4th District, Helping Paws of Upper Darby is having a yard sale for fundraising at 102 Foster Avenue from 8-3 on October 29, 2022.

MW reminded everyone of the Ferne Blvd. Fall Fest on Saturday, October 29, 2022 from 1-6 pm.

Adjournment

Motion to adjourn: MW/LF

Moved and seconded. All in favor. The meeting was adjourned at 8:52 p.m.

Respectfully submitted,

Alexis Cicchitti

Alexis Cicchitti

Chief Municipal Clerk

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