

**BOARD OF COMMISSIONERS**

**Reorganization Meeting**

**Revised - AGENDA**

**Monday, January 5, 2015 - 7:30 PM**

1. Pledge of Allegiance
2. Election of President
3. Election of Vice President
4. Oath of Office to President
5. Oath of Office to Vice President
6. Reappointments to Advisory Boards and Commissions

**Board of Health**  
Andrew Forman

**Planning Commission**  
Kathy Bogosian  
Elizabeth Springer

**Rental Housing Appeals Board**  
Joseph Voegele

**Stormwater Advisory Committee**  
Joseph Schanne  
Maya Van Rossum

7. Announcements of Vacancies on Various Boards & Commissions

<b>Board &amp; Commission Vacancies – Effective Immediately</b>	
Civil Service Commission – 1 Alternate Vacancy	<b>Planning Commission - 1 Vacancy</b>
Parks & Recreation Board - 1 Vacancy	<b>Rental Housing Appeal Board - 1 Vacancy (Alternate)</b>
CARFAC – 2 Vacancy	

8. Ordinance #2014-16 – (**Adoption**) - Amending Article VIII, Personnel Policies, Section 5-70, Civil Service Provisions, Of The Administrative Code Of Radnor Township
9. Discussion of Capital Funding Plan
10. Discussion on the Conditional Use Hearing and Orders Process
11. Adjournment



## **Reappointments to Advisory Boards and Commissions**

### **Board of Health**

Andrew Forman

### **Planning Commission**

Kathy Bogosian

Elizabeth Springer

### **Rental Housing Appeals Board**

Joseph Voegele

### **Stormwater Advisory Committee**

Joseph Schanne

Maya Van Rossum

**Board & Commission Vacancies – Effective Immediately**

Civil Service Commission – 1 Vacancy (Alternate)	Planning Commission - 1 Vacancy
Parks & Recreation Board - 1 Vacancy	Rental Housing Appeal Board - 1 Vacancy (Alternate)
CARFAC – 2 Vacancy	

**ORDINANCE NO. 2014-16**

**AN ORDINANCE OF RADNOR TOWNSHIP, DELAWARE COUNTY, PENNSYLVANIA, AMENDING SECTION 5-70, CIVIL SERVICE PROVISIONS, OF CHAPTER 8 OF THE RADNOR TOWNSHIP MUNICIPAL CODE, MODIFYING THE GENERAL QUALIFICATIONS FOR PROMOTIONAL POSITIONS.**

The Board of Commissioners of Radnor Township does hereby and ENACT and ORDAIN the following Ordinance:

**Section 1. Chapter 8, Section 5-70, Civil Service Provisions, is hereby amended to read as follows:**

3.6 General Qualifications – Deputy Superintendent, Captain, Lieutenant, Sergeant and Corporal.

a. All applicants for a promotional position shall currently be Radnor Police Officers and have continuous prior service with the Police Department of the Township of Radnor as follows:

1. An applicant for the position of Corporal shall have at least three (3) years of experience as a Patrol Officer in the Police Department of the Township of Radnor.
2. An applicant for the position of Sergeant shall have at least four (4) years of experience as a Patrol Officer of higher rank in the Police Department of the Township of Radnor.
3. An applicant for the position of Lieutenant shall have at least six (6) years of experience as a Patrol Officer or higher rank with the Police Department of the Township of Radnor and two (2) years of experience as a Sergeant or higher rank with the Police Department of the Township of Radnor.
4. An applicant for the position of Captain or Deputy Superintendent shall have at least ten (10) years of experience as a Patrol Officer or higher rank with the Police Department of the Township of Radnor and two (2) years of experience as a Lieutenant or higher rank with the Police Department of the Township of Radnor.

**Section 2.** Repealer. All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

**Section 3.** Severability. If any section, paragraph, subsection, clause or provision of this Ordinance shall be declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole or any part thereof other than that portion specifically declared invalid.

**Section 4.** Effective Date. This Ordinance shall become effective in accordance with the Home Rule Charter of Radnor Township.

ENACTED and ORDAINED by the Board of Commissioners this \_\_\_\_ day of \_\_\_\_\_, 2014.

TOWNSHIP OF RADNOR

BY: \_\_\_\_\_  
Elaine P. Schaefer

ATTEST: \_\_\_\_\_  
Robert A. Zienkowski, Township Manager/Secretary

J. LAWRENCE GRIM, JR.  
JEFFREY G. TRAUGER  
MARY C. EBERLE  
JOHN B. RICE  
DIANNE C. MAGEE \*  
DALE EDWARD CAYA  
DAVID P. CARO ♦  
DANIEL J. PACI ♦ †  
JONATHAN J. REISS †  
GREGORY E. GRIM †  
PETER NELSON \*  
PATRICK M. ARMSTRONG  
COLBY S. GRIM  
DIANE M. SODANO \*  
JOEL STEINMAN  
SEAN M. GRESH  
KELLY L. EBERLE \*  
MATTHEW J. MCHUGH  
ALISON PAIGE WASSERMAN \*  
MATTHEW E. HOOVER

\* ALSO ADMITTED IN NEW JERSEY  
◊ ALSO ADMITTED IN NEW YORK  
† MASTERS IN TAXATION  
♦ ALSO A CERTIFIED PUBLIC ACCOUNTANT

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PLEASE REPLY TO:  
PERKASIE

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FAX (215) 348-2520

December 18, 2014

Delaware County Law Library  
Delaware County Courthouse  
201 W. Front Street  
Media, PA 19063

Re: Radnor Township – Civil Service Ordinance Amendment

Dear Sir/Madam:

Enclosed herewith for filing with your office is an Ordinance for possible enactment by the Radnor Township Board of Commissioners at their meeting on January 5, 2015.

If you have any questions regarding the enclosed, please do not hesitate to contact my office.

Sincerely,

**GRIM, BIEHN & THATCHER**

By: 

John B. Rice

JBR/hlp  
Enclosure

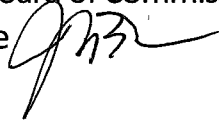
cc: Robert Zienkowski (w/encl.) - via e-mail only  
Jennifer DeStefano (w/encl.) – via e-mail only

# Discussion of Capital Funding Plan



Discussion on the  
Conditional Use Hearing  
and  
Orders Process

# Memo

To: Radnor Township Board of Commissioners  
From: John B. Rice, Esquire   
Date: 12/30/14  
Cc: Robert Zienkowski  
Re: Conditional Use Deliberations; Charter Requirements

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In response to questions raised publicly by two Township residents and pursuant to Board direction, I have set forth below the applicable Charter and statutory requirements which governed the Board deliberations in the Villanova conditional use matter. Based on various resident statements, it is obvious that there is a fundamental misunderstanding of the scope of the Radnor Home Rule Charter under the State Home Rule Charter Law, 53 Pa. C.S.A. 2901, and the nature of conditional use proceedings under the Municipalities Planning Code, 53 P.S. 10101 (MPC). The relevant legal issues are discussed below.

**I. Board deliberations and discussion with legal counsel prior to the public vote regarding a Conditional Use Application do not violate the Radnor Township Home Rule Charter.**

Section 2.09 D.(1) of the Radnor Home Rule Charter (“Charter”) permits executive or closed sessions of the Board only when the purpose of the session includes one of four subjects under consideration including: (a) matters of litigation to which the township is a party.

Section 2.09 G. of the Charter further states in part: “No formal action shall be taken by the Board except at a regular or special meeting, with an opportunity provided for comments and questions by the public prior to the vote.” In order to answer the question as to whether or not a Conditional Use Application is a “matter of litigation to which the Township is a party”, the Board’s role in a Conditional Use Application must be understood.

Conditional Use Applications are specifically authorized by the MPC, 53 P.S. 10603 (c) and Section 280-134 of the Township’s Zoning Ordinance. Villanova’s application was filed under Ordinance No. 2013-21 which established a Comprehensive Integrated College Development Use within the PI Zoning District as a Conditional use. Under the MPC when a Conditional Use Application is filed with the Township, the Board can either appoint an independent hearing officer (as the Board did in the Ardrossan application) or the Board can hear

the matter sitting in its quasi-judicial capacity as a Hearing Board.(as the Board did in the Villanova application). Once the Board decides to hear a particular application, it must render its decision based upon the sworn testimony and evidence which is submitted on the record before the Board. The Municipalities Planning Code prohibits ex-parte communications outside of the four walls of the hearing room 53 P.S. 10908 (8), 10913.2. This prohibition against ex-parte communications was specifically explained to the Board, the resident parties (of which there were 9), the Applicant, and Township special counsel and staff during the Villanova Conditional Use proceedings.

The Commonwealth Court has stated that while a township governing body, such as the Radnor Board of Commissioners, deciding a Conditional Use application acts as a quasi-judicial tribunal, the governing body also has a right to participate **as a party in the proceedings** in order to ensure that the Conditional Use application is in conformity with its Zoning Ordinance, and that the governing body can achieve such dual purposes by appointing independent counsel to advocate its position. K. Hovnanian Pennsylvania Acquisitions, LLC v. Newtown Township Board of Supervisors, 954 A.2d 718 (Pa. Commw. Ct. 2008). This is precisely what that Board of Commissioners did in the Villanova Conditional Use Application when it appointed William J. Bolla, Esquire, to represent the Township **as a party**. Mr. Bolla presented testimony and evidence from other Township consultants and staff within the course of the Villanova proceeding. Similarly, during the Ardrossan conditional use proceeding, the Board appointed an independent hearing officer and I represented the Township **as a party** before the hearing officer, calling witnesses, presenting testimony, and cross examining the applicant's witnesses in that case.

As noted above, the Charter permits executive sessions in litigation involving the Township. Although the Charter does not define "litigation", the Pennsylvania Sunshine Act, 65 Pa. C.S.A. 701 does. That definition of litigation includes "any pending, proposed or current action or matter subject to appeal before a court of law or administrative adjudicative body, the decision of which may be appealed to a court of law." 65 Pa. C.S.A. 703. A conditional use proceeding meets this definition since it is a "pending, proposed or current action or matter" and since the Board of Commissioners' decision can be appealed to a court of law.

In addition to the Villanova and Ardrossan proceedings, this Board heard a Conditional Use Application for 115 Strafford, LLC in 2013. Although special counsel was not appointed in that matter, Township staff appeared before the Township **as a party** and presented testimony and documentary evidence. In all three of these conditional use proceedings, the Board deliberated and discussed with me the parameters of the application, ordinance interpretations, and potential conditions which could be attached to any approval. As noted above, since it is, in fact, litigation, it was and is in the Township's best interest to have the full benefit of counsel's advice prior to making a decision. Attorney-client communications are necessarily private and confidential in order that candid and robust opinions can be exchanged. The Board's pre-decisional deliberations regarding Villanova's application falls within the litigation exception of Section 209 of the Home Rule Charter.

**II. Pre-decisional deliberations with counsel regarding a Conditional Use Application are protected by the attorney-client privilege which is statutory.**

The Board of Commissioners' deliberations in the Villanova conditional use proceeding were conducted to discuss with the Township Solicitor and each other the testimony presented and the submissions by the parties as to valid conditions on an approval or as to legal reasons for a denial. Only Board members and counsel were present and no staff members attended, since staff had participated on behalf of the Township **as a party**. This meeting was not a negotiation over a development deal as has been incorrectly asserted but an opportunity to discuss the application, the testimony and the evidence presented at the seven hearings.

The statement has been made that the only valid reasons which permit a Board to meet in executive session under the Charter are those four reasons set forth at Section 209 D. This is not an accurate statement of the law with respect to Charters under the Home Rule Charter statute, 53 Pa. C.S.A. 2901 et seq. If Section 209 D. contained an exclusive list of permissible reasons to meet in executive session, the attorney-client privilege would be abrogated by the Radnor Township Home Rule Charter. The attorney-client privilege and duty of confidentiality are statutory and apply with respect to an attorney's representation of a government client. City of Pittsburgh v. Silver, 50 A.3d 296 (Pa. Commw. 2012). The privilege fosters full and frank communication between attorneys and their clients, thereby promoting broader public interests in the observance of law and administration of justice. Levy v. Senate of Pa., 65 A.3d 361 (Pa. 2013)

If the Charter is not the exclusive enumeration of reasons to meet in executive session, it is equally important to note that under the Home Rule Charter statute, 53 Pa.C.S.A. 2901 et seq., there are *several limitations* on municipal powers which can be exercised by a Home Rule Municipality. Generally, a Home Rule Charter cannot give any power or authority to a municipality which (i) is contrary to, or in limitation or enlargement of powers granted by statutes which are uniform and applicable in every part of the Commonwealth or which (ii) would violate a right granted by a specific constitutional provision. The Home Rule Charter statute also contains express prohibitions in the exercise of powers by a Home Rule municipality.

Although the attorney client privilege is not one of the four permissible Radnor Charter exceptions for executive sessions, it is a common law privilege, established by statute and exclusively regulated by the Pennsylvania Supreme Court pursuant to the State Constitution, Art. V, Sec. 10(c). The Radnor Home Rule Charter cannot abrogate the attorney client privilege in the same way that it cannot take away any of the protections, limitations or rights provided by the Sunshine Act, 63 Pa. C.S.A. 701, the Right-To-Know Law, 65 P.S. 67.101, the MPC, the Pennsylvania Uniform Fire Arms Act, 18 Pa. C.S. 6111 and other statewide statutes of general application to all municipalities. The Board's pre-decisional meetings with counsel are permissible notwithstanding the Charter's limitations. In conclusion, the Board had the authority to deliberate with counsel regarding the testimony and evidence in the Villanova matter pursuant to Section 209 D. of the Charter and it has a separate right beyond the Charter to meet with legal counsel in sessions protected by the attorney-client privilege.

**III. Whether to conduct public pre-decisional conditional use deliberations is a policy issue, however, public deliberations would be inconsistent with the Board's judicial function in a conditional use proceeding.**

The Pennsylvania Supreme Court in Kennedy v. Upper Milford Township Zoning Hearing Board, 572 Pa. 105, 834 A.2d 1104 (2003) set forth important policy and legal reasons why confidential deliberations of a zoning board or governing body are essential to reaching a proper decision in controversial land use applications when the Court stated:

...Emotional rancor of great intensity typically accompanies disputes of these types. Members of the local zoning board are charged by law to arbitrate these embroilments without passion or prejudice. They are expected and required to resist the intense pressure to which they are subjected from all sides and to decide the issues on their legal merits without regard for the identity or influence of the parties. The legal merits frequently turn on the credibility of and weight to be accorded to the testimony of witnesses appearing before the board; often including public officials and community leaders. Frequently, zoning boards must choose between unpalatable alternatives. Under these circumstances, it is simply not possible for zoning board members frankly to exchange their views in a public forum. The deliberation of matters so charged with emotion and political signification must be cloaked with the protection of privacy if it is to assist the board in carrying out its weighty decisional responsibilities.

In the same way that judges meet privately to debate a particular case, the Board met privately to debate the proposed findings and conditions received from multiple parties who participated in the proceedings. In accordance with Section 209 G. of the Charter, the Board then met in public session to vote on the application at which time the Board had a second opportunity to debate the decision and conditions. Although there may be uncontested conditional use applications which are appropriate for public pre-decisional deliberations, an application with multiple parties taking adverse positions should follow the procedure most consistent with the Board's judicial function as described by our Supreme Court in reaching a decision.