

MINUTES

SOUTH MIDDLETON TOWNSHIP 520 PARK DRIVE BOILING SPRINGS, PA. 17007

NOVEMBER 30, 2006

PRESENT: BRYAN GEMBUSIA, TOM FALEY, JIM BAKER, RON REEDER, RICK REIGHARD – SUPERVISORS; Richard Mislitsky – Solicitor; Barbara Wilson – Manager; Brian O’Neill – Engineer; Tim Duerr – Zoning Officer, Sandy Quickel – Recording Secretary, Bony Dawood, Shah Mathias, John Melham, Craig Mellott, Attorney Neil Yahn, John Madden, Phyllis Givler, Gary Folcik, Lu Hocker, Commission Rick Rovegno, Mark & Doreen Mullen, Doug & Helen Gale, Attorney Bill Duncan, Ray Tennyson, Ron Hamilton, Bob Beers, Bob Geist, Marti Green, Don & Cathy Baker, Bill Brown, Pam Fisher, Bob & Carolyn Yankowitz, Tom & Ann Benjey, Attorney Lucy Dowd, Dick Moore, George Lulos, Attorney Robert Saidis, John Snyder, Charles Carothers, IV, Bill Thompson, Maria Bartoli, Sandra Ornoldi, Andrea Ciccocioppo – “The Patriot News”, John Hilton - “The Sentinel”.

The meeting was called to order by Chairman Gembusia at 6:00 p.m.

PLEDGE OF ALLEGIANCE:

The pledge of allegiance was led by Chairman Gembusia.

MOMENT OF SILENCE:

A moment of silence was observed for longtime resident, Dutch Dasher, who recently passed away.

OPENING ANNOUNCEMENTS:

Bryan stated that the meetings are recorded.

MINUTES: 11/09/06 Regular Meeting

Ron made a motion to approve the minutes. Tom seconded, & the vote in favor was 4 to 0 (Jim abstained due to not attending this meeting).

PRESENTATION – Representative Bruce Smith:

Bryan presented a plaque with Resolution #06-19 recognizing House of Representative Bruce Smith on his retirement & service to the Township. Mr. Smith accepted the plaque & said that he has great admiration for local governments.

ORDINANCE #06-08 (Vacate portions of Forge Road) Public Hearing:

Mr. Mislitsky opened the hearing & stated the procedure. Brian explained that the right-of-way portions (outside of the cul-de-sac) of Forge Road will be vacated. An agreement between Rite Aid & the First Church of the Brethren needs to be finalized. The Solicitor noted 2 minor language changes to the ordinance. There was no public input.

Tom made a motion to approve Ordinance #06-08, subject to the minor language changes & subject to the satisfactory binding agreement between Rite Aid & the First Church of the Brethren. Rick seconded, & the vote in favor was unanimous. The hearing was closed.

#06-17C HOOKE, HOOKE, & ECKMAN – Conditional Use Public Hearing:

Mr. Mislitsky opened the hearing & stated the procedure. Attorney Bill Duncan & Engineer John Madden were present. The applicant is proposing to establish a commercial center containing 2 buildings, one of which is existing. Mixed use businesses are permitted uses in the Commercial District. The commercial center is to be leased & maintained under unified management. The property is located on Walnut Bottom Road. Mr. Duncan stated that the impervious coverage meets all ordinance requirements. It was noted that on the application, it reads I-80 & should be I-81. The applicant is satisfactory with staff's comments. There was no public input.

Tom made a motion to approve #06-17C, subject to the applicant's acceptance of staff comments. Ron seconded, & the vote in favor was unanimous. The hearing was closed.

#05-08C CARLISLE FORGE – Conditional Use Public Hearing:

Mr. Mislitsky reconvened the hearing. A stenographer was not present. The minutes will be the official record. Attorney Neil Yahn, James Smith Dietterick & Connelly, LLP, was present & represented the applicant. Mr. Yahn stated that a copy of the completed traffic study done by the Township's consultant was received on 11/27/06. Mr. Yahn requested the plan be tabled & will grant a 60-day time extension. Mr. Mislitsky said that there is a question raised regarding deemed approval of the plan. The issue of whether the 100-day time period began at the last hearing. Mr. Yahn said that the applicant has not rested their case. Mr. Mislitsky stated that a maximum of 100 days can be taken for the applicant to present its case. Any opposing parties can request another 100 days. He feels the 100 days began at the last hearing, & asked when that date was. It was agreed that the last hearing was on 10/26/06. Mr. Baker said that the 100 days for any opposition to present its case has not begun because they haven't concluded their case. Mr. Yahn replied yes, & that all parties should agree on this. Mr. Mislitsky feels that a 60-day time extension is not needed. Mr. Yahn said he would like to review the 10/25/06 (date was later clarified) minutes. Mr. Mislitsky pointed out that the Board can make a decision tonight. Mr. Yahn said that they were looking to table the plan & to clarify the time frame.

Mr. Mislitsky asked when the 100 days began. Mr. Yahn answered 10/26/06. He also stated that our client performed a traffic study in 2005. Then Trans Associates was obtained by the Township & our client was billed twice for studies. Mr. Yahn asked if the Board hired an expert to perform a traffic study & that the study was paid for by the applicant. Mr. Mislitsky said that verification is needed to determine what the Board is being told. Mr. Faley said that a consultant brings another point of view. Mr. Yahn again requested tabling the plan. Mrs. Wilson clarified that the date of the last hearing is 10/26/06, not 10/25/06. Mr. Yahn asked how many times the Board has requested a traffic study on other plans. Mr. Mislitsky answered that there are other cases, including the Keystone case, & not just your client's plan, where independent verification of technical data was requested by the Township. Mr. Yahn asked where this is noted in the ordinance. Mr. Mislitsky replied it is in the statute. Mr. Yahn said they expected to go through hoops at the land development stage. Mr. Yahn answered numerous questions challenging the legality of the Township's procedure. In response to what he perceived as an interrogation, Mr. Mislitsky told Mr. Yahn to challenge South Middleton Township's procedure. No one has yet. Mr. Yahn questioned whether this is consistent with conditional use plans (having a traffic study

done). Mr. Faley replied not always, but the procedure depends on the size & impact of the proposal. Mr. Mislitsky stated that it is not done to discriminate against Mr. Mathias. Mr. Yahn said that they will take the Trans Associates study under advisement, but still wants to table the plan.

Mr. Faley mentioned a bankruptcy hearing involving Mr. Mathias. He asked about the ongoing sale of the property. In the hearing, the Judge asks how viable the transaction is. Mr. Mathias came forward & answered “very viable”. Mr. Mathais said that this entity bought \$5 million of real estate from him before. Mr. Yahn said this is not relevant. Mr. Faley said that the Township was led to believe that Shah would be with this project, & saw this as an advantage for both properties. He noted that the bankruptcy proceeding is public record. Mr. Faley said that we are a public entity, & the public should know. Mr. Yahn said that we are not at the bonding stage & questioned the financial integrity questions. Mr. Gembusia noted that the bonding changed with the Carlisle Crossing shopping center. There were questions on who will be responsible for improvements. Mr. Yahn said he does not see the relevance in the Township’s interest in the equity of the project. Mr. Reighard commented about common sense aspect & providing the necessary information for the Board to do the right thing. Mr. Yahn said that we have significant equity. Mr. Reighard asked what that means. There was no response from Mr. Yahn or Mr. Mathais. Mr. Gembusia asked if the bankruptcy transcript is wrong. Mr. Mathais stated that he is tired of hearing about this issue. Mr. Mathais stated that he will still be the general manager & will have an equity stake in this project. He also said there are no other partners developing the project. Mr. Mislitsky said that the Township was told that someone was buying the project from Mr. Mathais. He also said that he read the transcript & read that the project was being transferred. Mr. Mislitsky added that the Township has the right to know who they are dealing with.

Mr. Mathais stated that Ryan Homes will be developing & selling the lots. He has no buyer for the commercial portion. Individual land development plans will be done for this portion. Mr. Reeder said that the Board felt that Mr. Mathais would be with the project through the entire process. Now, there could be a new player for the conditional use plan. Mr. Yahn stated that the any buyer will be bound to the conditions of the conditional use. Mr. Faley said it would be better if the future buyer can see where the Board is coming from. Mr. Baker pointed out that anyone can sell whenever they want to & bring a new person in. Mr. Reeder said that all the Board wants is assurance. Mr. Mathais said that the lot layout is on the record, & the plan cannot be changed because of the agreement of sale. He also said he will be the deed owner. Mr. Mislitsky asked Mr. Mathais if he is in a corporation. Mr. Mathais said it is a limited partnership.

Mr. Yahn reiterated that he would like to table the plan, & to take the Trans Associates traffic study under advisement. Mr. Reighard said that he reviewed the study, & that there are good ideas in the study. Mr. Faley said that he read the report & it appears to have validity. He suggested the applicant weigh the study’s suggestions. Mr. Reeder said that they still have 65 days to conclude the case.

Mr. Mislitsky asked the Board if they want an entrance off of Fairview Street. If yes, it will affect the plan. The Board agreed that they do not want this entrance at this location. Mr. Baker stated that the land borders Fairview Street, & it would be crazy not to have an entrance near

there. They reviewed a previous written list of suggestions. Mr. Reighard feels the Board should stick to the list. Mr. Reeder noted that #3 on the list is important. Consensus was given to stay with the list.

Mr. Faley made a motion to table the plan. Mr. Reighard seconded, & the vote in favor was unanimous.

Mr. Yahn feels that the engineers will need 45 days to study & comment on the traffic study. The applicant was asked if he wants the plan on the January 18th or February 8th agenda. Mr. Mathais replied February 8th. Mr. Reeder said that the 100 days ends on 2/3/07.

Mr. Faley made a motion to grant a time extension until 4/4/07, & to reschedule the hearing for 2/8/07. Mr. Reighard seconded, & the vote in favor was unanimous. The hearing was closed.

(BREAK)

COMPREHENSIVE PLAN & ZONING ORDINANCE AMENDMENTS – Public Hearing:

The hearing was continued with the Chairman reading through the list of recommendations. Mark Mullen, 497 Petersburg Road, stated that he owns property at 319 York Road. He requested that be rezoned to residential-moderate to commercial instead of the proposed village zone. He read the definition of the village zone, & showed photos of the property in 1999 before the construction of the shopping center. He said he has had difficulty selling this property due to the shopping center & is currently renting it. He noted character changes, an increase in traffic signals & other development over the years. He is concerned with health issues as there is black soot on the siding of his house.

Carolyn Yankowitz, asked if just a few properties would be rezoned or the whole area. Bryan replied that the whole area would be rezoned.

The Carothers property on Forge Road was discussed. There are 2 zoning districts on their property. Charles Carothers IV was present. He submitted a letter with their zoning preference in it.

Attorney Robert Saidis discussed 3 remaining out parcels in the Carlisle Crossing shopping center. He said that all 3 parcels needed to obtain variances from the Zoning Hearing Board in order to locate at this site.

George Lulos (WAM Enterprises) discussed the 103 acre parcel (near Giant) that is partially located in Carlisle Borough. They requested a change from AC to V & I1 to V. He is not disputing the committee's suggestion (40/60 split between V & I1 Districts) & showed a concept plan for the site.

PUBLIC INPUT:

Bob Yankowitz asked when comments can be made during the zoning amendment discussion. He was told that anyone can comment at any time during the proceedings.

Doug Gale, Derbyshire Drive, asked the Board to carefully review the York Road area during the zoning process. He said that stacking traffic at Westminster is creating a problem. He was told that the Rite Aid project will be installing a left turn arrow for Westminster Drive.

Gary Folcik, Wood Lane, asked if the Board if they would consider installing a street light on this road. Brian told him that the Board voted not to install a light at a previous meeting. Bryan noted that the electric company will install a dusk to dawn light for free if there is an existing pole, but the homeowner will have to pay the electric bill. Mr. Folcik said he would get back to the Board on this issue.

Commissioner Rick Rovegno talked about property tax assessment.

EMERGENCY SERVICES REPORT:

The report was accepted, as submitted.

RECREATION REPORT:

The report was accepted, as submitted.

ROADMASTER REPORT:

The report was accepted, as submitted. Jim noted that Overfield Drive was line-striped. He thanked the road crew for their promptness on striping the road.

S.M.T.M.A.:

No report was given.

SOLICITOR REPORT:

The owner of the Spring Garden Estates Mobile Home Park needs direction on a zoning matter. The mobile home park was approved in the 1970's. The problem is that as older homes are replaced with newer homes, it creates an expansion in total building area for the entire park since the newer homes are larger. Tim has determined that the increased size constitutes an expansion of a non-conforming use. The owner could handle this issue by obtaining variances for each lot or a blanket special exception or conditional use. The special exception would be the simplest way to proceed. It was noted that the applicant could pay a one-time fee of \$350.00 & apply for blanket coverage for one approval to cover all future applications. Attorney Lucy Dowd represented the owner of the park. After further discussion, Jim made a motion to approve a blanket approval for the replacement of manufactured homes, & that a special exception from the Zoning Hearing Board is the appropriate means to accomplish this action. Ron seconded, & asked who would pay the \$350.00 fee. He was told that the owner pays the fee. The vote in favor was unanimous. After the motion, Attorney Dowd agreed to proceed with the special exception.

ENGINEER REPORT:

The following projects will be finalized for bid packages: Spring Meadows Park, Phase 2, Leaman Farm demolition & Wittlinger Dam demolition. Tom made a motion to advertise bids for the aforementioned projects. Ron seconded, & the vote in favor was unanimous.

PLANNING/ZONING/CODES ENFORCEMENT REPORT:

Tom made a motion to reapprove Netherby, Phase II Final Subdivision plan #05-17 subject to the original conditions in order to meet conditions of plan approval. Ron seconded, & the vote in favor was unanimous.

The owner of Waggoners Holdings (Woodcraft Lane) is requesting a modification to waive the requirement for the submittal & approval of a land development plan in order to construct a 40 x 80 foot building addition onto the existing concrete pad. There will be no increase in impervious coverage. Ron made a motion to approve the waiver of the land development requirement for Waggoners Holdings, LLP. Tom seconded, & the vote in favor was unanimous.

Consensus was given to schedule a conditional use public hearing for R.W. Associates for December 14th.

Tom made a motion to approve time extensions for Georgetowne & Parkview at Boiling Springs Conditional Uses until February 28, 2007. Bryan seconded, & the vote in favor was unanimous.

MANAGER REPORT:

Bryan made a motion to approve Resolution #06-19 recognizing Representative Bruce Smith's retirement from the House of Representatives & his service to the Township. Tom seconded, & the vote in favor was unanimous.

BILLS FOR PAYMENT:

Bryan made a motion to pay the bills, as submitted. Tom seconded, & the vote in favor was unanimous.

SUPERVISORS' DISCUSSION:

Jim noted that he missed the agenda meeting because it was moved to Wednesday instead of Monday. He was told that an email was sent notifying the Board of this change in schedule.

ADJOURNMENT:

Bryan made a motion to adjourn the meeting at 9:10 p.m. Tom seconded, & the vote in favor was unanimous.

WITNESS:

Sandra A. Quickel, Secretary

**SOUTH MIDDLETON TOWNSHIP
BOARD OF SUPERVISORS:**

Bryan A. Gembusia, Chairman

Thomas E. Faley, Vice Chairman

Ronald L. Reeder, Member

James N. Baker, Member

Walter G. Reighard, Member