

MINUTES
SOUTH MIDDLETON TOWNSHIP BOARD OF SUPERVISORS
520 PARK DRIVE
BOILING SPRINGS, PA. 17007

APRIL 14, 2005

PRESENT: RON REEDER, TOM FALEY, JIM BAKER – (Absent), PHYLLIS GIVLER & BRYAN GEMBUSIA – SUPERVISORS; Richard Mislitsky – Solicitor; Barbara Wilson – Manager; Brian O’Neill – Engineer; Tim Duerr – Planning/Zoning/Codes Enforcement Officer; Sandy Quickel – Recording Secretary; Robert Winters; Mary Zeigler; Jesse & Kay Owens; Charlie Mallios; Attorney Phil Spare; Jeff Ammerman; James Houston; Pam Fisher; Dan Deitchman; Gregory Line; David Prescott; Len Lobaugh; Attorney Chris Rice; Eric Edstrom; Dave Palmer; Patty Sanker; Doug & Helen Gale; Lee Shenk; Harry Whistler; Steve Hanzlik; Jeff Lobach; Attorney R.J. O’Hara; George Mallios; Robert Beers; Bob Geist; Connie McHugh; Mark Pennell; Doug Glass; Rick Reighard; George Stapleton; Paul Slifko; Martha Green; Sara Nicholas; Bill Sheehan; Mark & Doreen Mullen; Chris Dellinger; Gary Blacksmith; Deb Ealer; Attorney Robert Saidis; Rick Johnston; Eric Harkreader – “The Sentinel”; Andrea Ciccocioppo - “The Patriot News”.

Chairman Tom Faley called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE:

Chairman Tom Faley led the audience in the pledge of allegiance.

MOMENT OF SILENCE:

A moment of silence was observed.

OPENING ANNOUNCEMENTS:

The Board & staff members introduced themselves.

MINUTES: 03/31/05 (Regular Meeting)

Bryan made a motion to approve the minutes, as written. Tom seconded, & the vote in favor was 4 to 0.

#05-04C GLOBAL RENEWAL – Conditional Use Public Hearing:

Mr. Mislitsky opened the hearing & stated the procedure. Len Lobaugh of Aspen Contractors represented the applicant. The applicant is proposing to establish an office in an existing building at 204 Third Street. There is a problem with obtaining the required number of parking spaces. A letter from the adjacent Lutheran Church is allowing Global Renewal to use some of the church’s parking spaces. It was decided that the letter is not definitive enough, & a 3-party agreement may be needed in case the church changes its mind in the future. Mr. Lobaugh was advised to submit an irrevocable agreement on the use of the 6 parking spaces offered by the church for Global Renewal’s use. The Board wants to review the agreement. There was no public input.

Tom made a motion to continue the hearing at the April 28, 2005 meeting. Ron seconded, & the vote in favor was 4 to 0. The hearing was closed.

#05-05C WEST SHORE PROPERTIES – Conditional Use Public Hearing:

Mr. Mislitsky opened the hearing & stated the procedure. Pam Fisher represented this plan. The applicant is proposing to construct a commercial center containing 4,800 s.f. of mixed use businesses as listed as permitted uses in the Commercial District. The property is located on Alexander Spring Road. The offices will be leased & maintained under unified management. Ms. Fisher stated that there will be 31 parking spaces. The center will most likely contain doctor's offices, retail shops, etc. At the Planning Commission meeting, the applicant requested adding a restaurant to the plan. The Planning Commission did not have a problem with this request. There was no public input.

Tom made a motion to approve #05-05C, subject to the applicant's acceptance of staff comments. Bryan seconded, & the vote in favor was 4 to 0. The hearing was closed.

#05-06C BOILING SPRINGS HIGH SCHOOL – Conditional Use Public Hearing:

Mr. Mislitsky opened the hearing & stated the procedure. Dave Madary, Engineer, & Superintendent Patricia Sanker presented the plan. The school district is planning to expand & renovate the existing high school building. The school will be relocating existing parking which will be removed to accommodate the new building additions. The building additions will total 35,000 s.f.. No parking is permitted within the 100 ft. setback on all yards of the property. The applicant will ask for relief from this requirement. Phyllis asked about the estimated enrollment figures. Dr. Sanker replied that enrollment over the next 10 years (approximately) should be sufficient for the proposed additions. Phyllis asked about handicap parking. Brian said that this is based on the number of spaces regardless of the type of use. Ron commented on Parking Area D. Dr. Sanker said that the athletic entrance will be relocated to the pool area. Ron asked for the cost of Lot B (58 space parking lot). The estimated cost is \$177,000. The lot is for student parking & will have lighting & security cameras. The faculty parking lot will be affected & 2-3 rows will need to be replaced. This parking area will either be moved back to the maintenance building or to the front of the building. Ron feels this cost is too much for taxpayers to pay so students can drive to school. He suggested restricting the number of student drivers or to raise the cost of the student parking permit. He feels that more drivers create more unnecessary traffic. Bryan suggested allowing only seniors to drive. He stated that this could be made a condition of plan approval. Dr. Sanker said that this decision can only be made by the school board. She will pass this suggestion/concern onto them. Public input was taken.

Mary Zeigler, Allen Street, stated that she has seen as few as 8 students on a bus. She noted that the high gas prices & that this is wasteful. She agreed that there are too many kids driving & the number of drivers should be limited.

Doug Gale, Derbyshire Drive, asked if all the approved & pending developments were considered as far as future enrollments. Dr. Sanker said that the school is not overbuilding, & that an enrollment study was done a year ago & projections indicate that this project will be sufficient for the next 10 years. Due to the Department of Education regulations, additions/renovations can only be made to a building every 20 years.

Debi Ealer, 3 Ashley Court, asked about impervious coverage, occurrence of sinkholes, & screening (she stated that lights from the Yellow Breeches School shine on her house). Mr. Madary stated that the existing impervious coverage is at 23% & the proposed will increase it to

30%. They will still be under the maximum 50% coverage. A geologist is studying the area for possible sinkholes. Screening will be directed to the perimeter of the property. Ms. Ealer also asked if a traffic study was completed. She was told no, since there is no increase in student population. She stated that W. Springville Road has no berm, is inadequate & dangerous. Dr. Sanker stated that a traffic study was done when the Yellow Breeches School was planned, & the speed limit was reduced. Ms. Ealer asked the Board to require an updated traffic study.

Len Lobaugh, 5 Logan Dr, stated that the bus transportation over the mountain side of the Township is 3 kids to a seat. If students don't drive, the buses will be even more crowded. He feels a lot of kids have after school jobs & need to drive. If some students don't drive, this creates problems for the parents that would have to take the kids to school. He also stated that the kids in this area car-pool with 2-3 kids per car.

Ron agreed that the students in the Gardners area car-pool, but he has noticed only 1 student in a car in this area. Bryan asked for the start-up construction date for the project. Dr. Sanker replied they are ready to proceed as soon as approval is given. She asked that the school board be given time to study the parking restriction issue instead of making it a condition of approval. Bob Winters, Liberty Court, said that Mechanicsburg School District limited their parking & this created problems with cars parking in people's driveways. He feels the students will park along Forge Road & Earl Street. Bryan feels that the hearing be continued until the parking issue is studied. It was suggested approving the plan conditioned upon submitting an updated traffic study, & to require the school district to complete road improvements if an area is identified as a problem area. Mr. Madary said that this project is not creating an increase in student population, thus a traffic impact study is not required.

Tom made a motion to approve #05-06C, subject to submitting a traffic study update & acceptance of staff comments. Phyllis seconded. Action needs to be taken on the setback requirement for the parking lot. No vote was taken on this motion. Ron made a motion to approve a modification request for Section 1622 (3) (c) – setback requirement for the parking lot. Bryan seconded, & the vote in favor was 4 to 0. South Middleton School District Attorney Phil Spare suggested addressing the traffic study at the land development stage.

Tom amended his motion to approve #05-06C, subject to the applicant's acceptance of staff comments, & to submit an updated traffic study that will be addressed at the land development stage. Phyllis seconded, & the vote in favor was 3 to 1 (Bryan voted nay). The hearing was closed.

(BREAK)

WASHCO (CARLISLE CROSSING) PLAN UPDATE:

Attorney Robert Saidis gave an update on this plan. He said that settlement will be tomorrow (April 15th). Citizens Bank is agreeable to the type of Letter of Credit form requested by the Township & will be submitting the Letter of Credit. An easement was secured to relocate Westminster Drive, but now with the subdivision plan, the land is being dedicated by deed. On April 12th, the new entity is now called AFC/Carlisle Crossing Limited Partnership. Arthur Fefferman is now in charge of the project. Washco representatives had previously promised that the center would have their own security guards, & Mr. Fefferman has agreed to keep that

promise. The required documents are being prepared now. Mr. Saidis asked who would be responsible for the Letter of Credit. He said the Limited Partnership will be the legal holder. The L.P. will own the property; will be the developer & grantee of deed. Mr. Saidis noted that once the Letter of Credit is filed at the Township, the subdivision plan can be recorded at the courthouse. Bryan cautioned that if the Letter of Credit is not to the Township's satisfaction, he suggested rescinding approval of the plan. Ron said that if the Letter of Credit is delivered on Friday & is not exact, the plan will not be recorded. Brian asked if John Henry is still the principle of Washco LLC & equitable owner. Mr. Saidis replied yes. Mr. Mislitsky expressed concern over who will be signing the documents. Mr. Saidis promised that everything will be to the Township's satisfaction.

ECONOMIC DEVELOPMENT LIQUOR LICENSE (Red Robin Restaurant) – Public Hearing:

Mr. Mislitsky opened the hearing & stated the procedure. Attorney R.J. O'Hara represented the applicant. The liquor code has quotas as how many liquor establishments can exist in the Township. There are 2 ways to secure a license. One is to purchase a license from an existing business, & the other way is to apply for an Economic Development Liquor License. Red Robin is applying for the latter. Mr. Mislitsky asked Mr. O'Hara for a time extension for making a decision on the hearing (a decision must be submitted 45 days after the hearing). Mr. O'Hara agreed to the time extension. The Township received a call from Mr. Koppleman who has a liquor license for sale. There are certain criteria in the liquor code to be met in order to apply for a license. One is that the applicant has exhausted all reasonable means to obtain a license. Mr. O'Hara stated that this business will promote economic development & will not be detrimental to the area. Another hearing must be held by the Liquor Control Board. A fee is paid to the State of Pennsylvania. This type of economic development license is not transferable to another business. He explained the search process for purchasing a license. As far as Mr. Koppleman's license that is for sale, Mr. O'Hara stated that anything is for sale, but they have to pay a reasonable price. Mr. Koppleman, 1319 Marian Street, Harrisburg, owns a restaurant in Carlisle & has the license to sell. Charlie Mallios, realtor & restaurant owner, said that licenses go up & down in price per the demand. Steve Hanzlik, Lehigh Valley Restaurant Group, stated that timing was an issue in applying for this type of license. Mr. Koppleman's restaurant was the Sandwich Man. He lost the lease & has not had any citations. Mary Zeigler asked if Red Robin will only serve adults. She was told yes, & take-out is not offered. George Mallios, Mechanicsburg, asked why they wouldn't buy the available license. Mr. O'Hara said that it wasn't available when the applicant had to make a decision on the license issue.

Ron made a motion to approve Resolution #05-11 that declares the applicant (Red Robin) for the Economic Development Liquor License would promote economic development in South Middleton Township, & will not be detrimental to the general public, & that the applicant has exhausted all reasonable avenues to secure a license. Tom seconded, & the vote in favor was 4 to 0.

PUBLIC INPUT:

Mary Zeigler, Allen Street, asked if the name of the "for profit" group that is collecting items in the area is known. She said that she has called them to pickup some items, but has not heard from them.

(BREAK)

WHITLINGER DAM FEASIBILITY ANALYSIS – Public Hearing:

Mr. Mislitsky opened the hearing & stated the procedure. Brian gave a brief explanation of the options presented in the Skelly & Loy study. Rick Johnston of Skelly & Loy was present. The 5 options include: 1) do nothing to the dam; 2) remove the dam; 3) install a rock weir; 4) reconstruction of the dam; & 5) construction of a new dam. Since the reconstruction & construction of a new dam is over \$1 million, these options were eliminated. This left 3 options. One “do nothing”, which would require warning signs at a cost of approximately \$4,000. Two, removal of the dam at a cost to the Township of \$25,000 with another \$25,000 in grants. Three, installation of a rock weir at a cost of approximately \$90,000. Another issue, which could be dealt with separately, is the disposition of the race. There is an alternative to restore water in the race at an approximate cost of \$100,000. A streamlined permit will be required to remove the dam & the permit, dam removal & stream restoration should cost approximately \$50,000. The American Rivers & Fish & Boat Commission, together, will donate one-half of the cost to remove the dam. Once a decision is made on the dam, then a decision will have to be made on the race. Attorney Chris Rice, who was representing Evelyn Brennaman who owns property near the dam, asked how the dam will be accessed. Brian said that no decision was made on that issue. It could be accessed through the trail near the pool, or through the property near the railroad that is owned by the Township.

Greg Line, Park Drive, does not want the dam removed. He said the wetlands serve several functions, & that the water would have to be shocked from the headwaters to the river. He said that there is a diversity of reptiles, amphibians, etc. located in the area.

Rick Johnston of Skelly & Loy said that a field meeting was held on the site. There was concern over the sediment, & felt that the best option was to remove the dam. The solicitor asked if the water could be diverted into the wetlands to save it.

Dave Prescott, Park Drive, said that this section is too high to divert the water into the wetlands.

Eric Edstrom, 400 Front Street, is President of the Cumberland Valley Chapter of Trout Unlimited. He feels the dam should be removed. He stated that most dams are old & obsolete & can be removed easily & cost effectively. Mr. Edstrom also added his concern for safety. He mentioned the kayak accident that happened near the dam.

Mark Pennell, a resident of Carlisle, owns a business called Stream Solutions, said that he is speaking for Scott Carney (Fish & Boat). He said that by removing the dam, nothing will happen to Children’s Lake & that the Fish & Boat Commission will assist with funding to remove the dam.

Mark Mullen, Petersburg Road, stated that DEP would not let equipment in the creek to dredge it when a relative’s property on Ladnor Lane was flooded. Now, DEP is in support of removing the dam. He feels the dam should left as is, & if it is removed, he feels this will create more problems. He said that Skelly & Loy’s report did not mention locating any wildlife, & that wildlife should be preserved.

Mr. Pennell explained the permitting process. Mr. Edstrom stated that a possible grant could be applied for to assist other groups for habitat restoration. Mr. Mullen commented on the safety issue with the kayak accident. He understood that this person was in high water & was not experienced with kayaks. Mr. Prescott stated that he has been in favor of removing certain dams due to having a stagnant pond, but this is not the case with this dam. Mrs. Mullen stated that she has kayaked over the dam & feels it should not be removed.

Tom said that he called absent Board member, Jim Baker, for his input. Jim is in favor of removing the dam. Ron stated the liability concern, & that DEP has told the Township that it should be removed. He states there is no functionality to the dam. Phyllis agreed with the liability issue, & feels the dam can be successfully removed. Tom also agreed. Bryan said that DEP has tied the Township's hands on this issue, & that the Township would be sued if there is an injury at the dam.

Gerry Christopher, Race Street, asked about the rock weir option. Brian explained this option. Rick Reighard, Whitley Court, suggested placing a historic sign at the site of the dam for historic purposes.

Tom made a motion to remove the dam contingent upon the Township receiving funding for the project & to prepare a bid package for the removal. Ron seconded, & the vote in favor was 4 to 0. The hearing was closed.

Ron suggested that, since we don't know what the impacts to the race are, that the issue with the race should be evaluated after the dam has been removed & the impacts are more defined. Tom suggested that, should there be a problem with stagnant water between the time that the dam is removed & we figure out what to do with the race, that the road crew treats any stagnant water to prevent mosquitoes.

PUBLIC INPUT:

Bill Sheehan, Hickory Court, discussed the possibility of a lease agreement with the Township & South Middleton Youth Baseball Association for the Woodcrafters Field. The association has joined the Little League organization & wants to make the field a Little League approved complex with lighting. Mr. Sheehan asked if a 99-year agreement could be achieved. The Township has a standard lease agreement (usually for 10 years). Tom made a motion to approve a lease agreement of Woodcrafters Field with the South Middleton Youth Baseball Association, subject to working out the conditions for the lease agreement. Ron seconded, & the vote in favor was 4 to 0.

EMERGENCY SERVICES REPORT:

The report was accepted, as written.

RECREATION REPORT:

The report was accepted, as written

ROADMASTER REPORT:

The report was accepted, as written.

S.M.T.M.A. REPORT:

No report was given.

SOLICITOR REPORT:

The report was accepted, as written. The Solicitor requested an Executive Session after the meeting to discuss litigation.

ENGINEER REPORT:

Plan #04-36 (Indian Hills, Section 4 Final Subdivision) was approved with a condition that the developer pays all expenses in the alteration of the detention pond in Section 1 until the Township determines that the weir is working. The developer has asked that this condition be more specific. Ron made a motion to reapprove plan #04-36, subject to the applicant's acceptance of staff comments, & subject to paying all expenses related to installation of a permanent metal plate to replace the plywood on the outlet structure of Pond D, should the Township desire such, to the satisfaction of the Township. Tom seconded, & the vote in favor was 4 to 0.

James & Mary Houston, 411 Petersburg Road, want to relocate their driveway to a safer location with better sight distance. If moved, it will violate the access spacing requirements. They have requested a modification to do so. Ron made a motion to approve the modification request to Section 716-1, access spacing subject to removing the existing driveway. Tom seconded, & the vote in favor was 4 to 0.

Regarding the request for a security reduction for Indian Hills, Section 3 (#02-02), the issue was raised regarding E & S control. Brian stated that John Bixler has developed a plan & that the developer is willing to address this issue. It was suggested that the developer install super-silt on the site. Ron made a motion to approve the security reduction in the amount of \$392,415.98. Bryan seconded, & the vote in favor was 4 to 0.

Bryan made a motion to approve the security reduction for Jefferson Court (#03-08) in the amount of \$170,287.35. Ron seconded, & the vote in favor was 4 to 0.

PLANNING/ZONING/CODES ENFORCEMENT REPORT:

Ron made a motion to approve a 90-day time extension for the New Beginnings Loft Minor Land Development plan. Bryan seconded, & the vote in favor was 4 to 0.

Roy & Maryl Leaman have submitted a variance application for the Leaman Farm Subdivision. The variances requested are for maximum lot size, minimum lot frontage & minimum front, rear & side yard setbacks have been requested on behalf of the Township for subdividing the property along the Yellow Breeches in the land swap that was necessary for the Shentel settlement. The Leaman's are requesting a variance of maximum lot size in order that 2 lot additions may be subdivided off & added to 2 neighboring properties. Board consensus was given to support the variance requests. Barb will prepare a letter of support to the Zoning Hearing Board for the variance requests.

MANAGER REPORT:

Since the Parks & Recreation Supervisor's departure, the parks & recreation department has been covered by Donna & Kurt. Kurt's time was split between roads & parks, but he now needs to be moved full time to the parks department. When this move is made, a road crew position will become available. Phyllis made a motion to approve the road crew job description & to advertise the position. Bryan seconded, & the vote in favor was 4 to 0.

The V.F.W. has requested closure of certain streets in order to hold their Memorial Day Parade on May 29th at 1:30 p.m. Tom made a motion to approve the requested street closure to hold the Memorial Day Parade, as requested. Ron seconded, & the vote in favor was 4 to 0.

#04-35 RED ROBIN RESTAURANT – Final Land Development:

Chris Dellinger was present for this plan. The applicant proposes to construct a 6,540 s.f. restaurant within the parking lot of the Carlisle Crossing shopping center. There are no modification requests.

Tom made a motion to approve #04-35, subject to the applicant's acceptance of staff comments & subject to the finalization of the Carlisle Crossing subdivision plan. Phyllis seconded, & the vote in favor was 4 to 0.

SUPERVISORS' DISCUSSION:

Tom commented on the issue with Capital Area Tax Collection Bureau & their policy on sending out certified letters.

BILLS FOR PAYMENT:

Bryan made a motion to pay the bills, as submitted. Tom seconded, & the vote in favor was 4 to 0.

The meeting was adjourned into Executive Session at 9:50 pm. The topic of discussion will be litigation.

EXECUTIVE SESSION:

The topic of discussion was litigation. No decisions were made. Executive Session was adjourned at 10:09 p.m. & the regular session reconvened.

ADJOURNMENT:

Tom made a motion to adjourn the meeting at 10:10 p.m. Ron seconded, & the vote in favor was 4 to 0.

WITNESS:

**SOUTH MIDDLETON TOWNSHIP
BOARD OF SUPERVISORS:**

Thomas E. Faley, Chairman

Bryan A. Gembusia, Vice Chairman

Phyllis W. Givler

James N. Baker

Ronald L. Reeder