

## MINUTES

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

JULY 27, 2006

**PRESENT:** BRYAN GEMBUSIA, TOM FALEY, JIM BAKER, RON REEDER, RICK REIGHARD – SUPERVISORS; Richard Mislitsky – Solicitor; Barbara Wilson – Manager; Jarrett Sweeney – Assistant Manager, Brian O’Neill – Engineer; Sandy Quickel – Recording Secretary, Mark Mateya, George Akens, Gary Folcik, Craig Mellotts, Pam Fisher, Rich Hewitt, Bob Winters, Ken & Mary Seibert, Ed & Jean Williams, Kelly & Steve Hinton, Attorney Roberts Saidis, Gloria Harner, Phyllis Givler, Christie Harner, Anna Paulus, Tony Harner, Randy Diehl, Claire Brehm, Helen & Doug Gale, Attorney Marcus McKnight, Tiffany Harner, Bob Beers, Bob Geist, Frank Burrows, James Cinelli, Ann & Tom Benjey, Gayle Fay, Kevin McCauley, Paul Slifko, Steve Yanek, Kelly Tennyson, Marti Green, Ron Stephens, Denise McCauley, Aaron Hobble, George Reese, Betty Reese, Lyn O’Neal, Jim Bartoli, Marie Bartoli, 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.

#### **OPENING ANNOUNCEMENTS:**

Bryan stated that the meetings are recorded.

#### **MINUTES: 07/13/06 Regular Meeting**

Ron made a motion to approve the minutes. Rick seconded, & the vote in favor was unanimous.

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

Mr. Mislitsky reconvened the hearing. He stated for the record that he did not instruct a court stenographer to attend because he knew the applicant would not be in attendance. The applicant has not completed his work & has asked that the hearing be continued. The hearing was closed.

#### **#05-17 NETHERBY, PHASE 2 – Final Subdivision:**

Attorney Robert Saidis was present for this plan, & gave a brief update. At the last meeting, a short form report was submitted indicating that the stormwater calculations, taken to the extreme of Phase 2, will accommodate the stormwater flow. Photos were presented that were taken after heavy rains that totaled 9+ inches of rainfall in a few days, showed that the basin can handle the flow.

Attorney Marcus McKnight, who represents the Benjey’s, introduced Engineer James Cinelli who gave his interpretation of the new stormwater calculations submitted by the developer’s engineer. Mr. Cinelli stated that the post-development calculations are under estimated, due to 9-

1/2 acres that were not figured into the calculations. These 9-1/2 acres would flow into the stormwater management pond. Mr. McKnight stated that if the entire development is not addressed, the developer will lose options. He asked Mr. Cinelli if the plan should be revised. Mr. Cinelli replied that a comprehensive stormwater plan that encompasses the entire development should be submitted. Mr. McKnight presented a photo of Lindsey Road which, in his opinion, is a deficient road (in the area of Netherby) due to distance problems. Brian noted that the road cartway is 18 or 20 feet wide, & there are telephone poles on the right-of-way line. The Township tried to get permission from a property owner to move the poles back a few feet, but the property owner would not give their permission to move them. Bryan asked Mr. Cinelli if he had documentation that proved that the 9-1/2 acres were missed. Mr. Cinelli said he does not have any documentation with him, but could provide it. Mr. Mislitsky asked Mr. Cinelli if any testing was done on the 9-1/2 acres. Mr. Cinelli replied no. Mr. Mislitsky asked if these acres would matter regarding the calculations. Mr. Cinelli replied yes. Mr. Mislitsky asked if the pond would hold water from these 9-1/2 acres. Mr. Cinelli said that he can't answer that. He said that it should hold some water & pass some water. He was asked what would happen to any downstream property owners. Mr. Cinelli said that the flow would be greater than the pre-development flow & wouldn't meet the ordinance requirements. When asked how long it would take him to finish the calculations, Mr. Cinelli replied 3-5 days.

Mr. Saidis said that the Benjey's chose legal action as their forum. The developer had a moratorium placed on the site, has worked with the property owner experiencing problems & has fixed the problem. He feels the court issue is a separate issue. The Solicitor asked Mr. McKnight when he was going to file an adjoiner to consolidate. Mr. McKnight said he would file next week. George Akens, Akens Engineering, stated that the pond will hold stormwater for Phases 2 & 3a at least.

Tom feels that action on this plan should be delayed for another 2 weeks in order for the engineers to exchange information. Jim agreed. Tom feels that the additional 9-1/2 acres should be confirmed. Ron disagreed because no work was done on this project until 2 days ago when it was discussed 2 weeks ago. Ron asked Mr. Cinelli when he could deliver the information he spoke of to Mr. Akens. He said he could submit it by tomorrow & could sketch out where the proposed additional 9-1/2 acres are located. Ron stated that all information should be submitted to the Township by Monday, August 7<sup>th</sup>.

Tom made a motion to table the plan until the August 10<sup>th</sup>. Jim seconded, & the vote in favor was 3 to 2.

**#06-08S CHARLIE BROWN'S STEAKHOUSE & BANK – Sketch:**

Rich Hewitt discussed this plan that proposes 2 uses (steakhouse & bank) at the current Farmer's Market facility on York Road. Several variances will be requested. Ron Stephens, CEDG Engineers, stated that he has met with PennDOT, & that PennDOT indicated that a traffic signal at this driveway is not warranted. The plan violates a 200 ft. setback requirement. Tom commented that if the restaurant is relocated on the site, it will not be in violation of the setback requirement. However, if that building is relocated, the bank would not be able to be located on the site. Rick pointed out that the proposed use will create more traffic than what is generated by the existing market. Traffic Engineer Craig Mellotts, stated that the proposed use will generate less traffic in the morning, but more in the evening. Tom questioned how the traffic will be

improved without the installation of a traffic signal. He was told that improvements are needed at Petersburg Road/York Road intersection. Mr. Hewitt said it would not be an economically sound transaction to only have 1 use at the site. Bryan asked if calculations were available with & without the bank's drive-through operation. He was told that they do not have this information. Bryan also pointed out that with the 75 ft. protection area, Penn DOT can do anything with this area of the property. Public input was taken.

Tony Harner, has been a baker for 25 years at the market & has lived in the Township for 22 years. There are approximately 21 businesses in the market. He feels that if the market has to be sold, it should be sold as the existing business. He also feels that a restaurant should be located in the appropriate zoning area.

Rick asked why the 75 ft. & 200 ft. setbacks are required. Brian stated that the setbacks are not all along I-81, but are along the interchanges/ramps, and are in place for future interchange expansions. Tom noted that the Board was consistent with the Carlisle Crossing developer adhering to the required setback requirements for their plan.

Phyllis Givler, Forge Road, has been a resident since 1949. She stated that with this proposed bank, there would be 9 banks within a 1 mile radius. She proceeded to name them, & asked why that many banks are needed in the area. Ms. Givler noted that the market is only open for 1-1/2 days, & that banks may be open 7 days a week.

Jim Bartoli, owner of the Farmer's Market, stated that the business has been family-owned since the 1920's/1930's. He said that the average age of the tenants of the market is 60 years of age. He feels the market is a dying business.

Ron asked where the developer would place 53 parking spaces if the 200 ft. setback requirement is not waived. Jim asked the developer if he considered other locations.

George Reese asked if the developer would need a sign variance since businesses like to place signs along the interstate. He was told that there is a sign ordinance. He feels that the market is a good fit for the site.

Aaron Hobble, Carlisle Farm Service owner & tenant of the market, feels that markets are not a dying business. He feels that if the business is sold, it will kill his business. He said that he & his partner cannot afford to buy the market. He feels that the Township ordinances make it difficult for businesses to relocate.

There was no more discussion on the sketch plan.

**(BREAK)**

**EMERGENCY SERVICES REPORT:**

The report was accepted, as submitted.

**RECREATION REPORT:**

Super Saturday is this weekend from 8:00 a.m. to 4:00 p.m. The report was accepted, as submitted.

**ROADMASTER REPORT:**

The report was accepted, as submitted.

**S.M.T.M.A.:**

No report was given.

**SOLICITOR REPORT:**

Mr. Mislitsky stated that the CAPTAX issue is closed regarding the audit issue. He pointed out that the amount of money CAPTAX collects on behalf of municipalities, as well as the money they distribute to these municipalities has never been audited. He also said that audit reports from 1988-2004 contains a disclaimer with the word “unaudited” on it. This does not just mean South Middleton Township’s money but everyone’s. Auditors come into CAPTAX on an annual basis & do a fiscal report to review their assets, liabilities & their accounts. All of the information paid to each municipality is in the back of the reports, but if you don’t read it carefully, you wouldn’t pick up on the language of the supplemental information. The language states “The supplementary information included is being presented for purposes of additional analysis & is not a required part of the basic financial audit. Such information has not been subject to the auditing procedures applied to the audits of the basic financial statements & accordingly we expressed no opinion on it”. Mr. Mislitsky also stated that the Local Tax Enabling Act, Chapter 5, and Section 6913 states that CAPTAX has to have a minimum bond of the highest amount of tax collected at any time. This amount has been determined to be between \$25 - \$35 million. CAPTAX’s bonding amount is \$2 million. Mr. Mislitsky stated that he asked Mr. Harbeson on the stand if he agreed with him that the amount of bonding CAPTAX has does not comply with the statute. His response was “yeah, I’m aware of that”. Tom commented on the Township receiving \$157,000 less in 1989 than in 1988. Tom asked if the school district’s amounts also went down – Mr. Mislitsky replied that theirs were increased. In that time period, the Township was giving part of its earned income tax to the school district but that doesn’t seem to account for all of the difference. In 1988 & 1989, the Township has no fiscal reports. In 1993, the Township became a contractual client of CAPTAX instead of a member. After this point, no fiscal reports were received. Tom asked who polices the Local Tax Enabling Act. The Solicitor replied that apparently nobody does. Bryan asked if a letter could be sent to the State Attorney Generals office to alert them to these findings. Barb agreed to send this letter.

**ENGINEER REPORT:**

A request was received complaining about trucks using Jake brakes along York Road near the Carlisle Crossing shopping center. Jim made a motion to ask PennDOT permission to restrict use of brake retarders (Jake brakes) on York Road from Fairview Street to the Township line. Tom seconded. Ron asked for clarification of the location. Rick asked why Jake brakes are used. He was told that it saves the regular brakes. The vote in favor was unanimous.

**PLANNING/ZONING/CODES ENFORCEMENT REPORT:**

The applicant for the Douglas & Jane Kiehl Final Minor Land Development has requested a 60 day time extension to take action on the plan. Ron made a motion to approve a 60 day time extension. Jim seconded, & the vote in favor was unanimous.

Consensus was given to advertise 2 hearings. The Ruth Jumper property rezoning request will be held on August 31<sup>st</sup>. The Steve & Kelly Hinton Conditional Use will be held on August 10<sup>th</sup>.

**MANAGER REPORT:**

On behalf of the fireworks committee, Duff Manweiler has asked for a \$2,500 contribution for the community fireworks event on Labor Day weekend. Ron made a motion to approve the \$2,500 contribution request. Tom seconded, & the vote in favor was unanimous. The remainder of the report was accepted, as submitted.

**PUBLIC INPUT:**

Gary Folcik, Wood Lane, commented that he feels a street light is needed on Wood Lane. He said it is too dark in the area & cited safety concerns. Jim said that that street is mistaken for a cul de sac & trucks turn around there. Consensus was given to staff to review this situation.

Marti Green, Derbyshire Drive, thanked the township for their prompt attention to fixing a sinkhole on Derbyshire Drive.

**SUPERVISORS' DISCUSSION:**

Ron commented about water running down Valley Street from the Getty Mart. There is an excavated dirt pile that is covered up, but the runoff is not contained. Staff was given direction to look at this issue.

Jim mentioned that Super Saturday is this weekend. He will not be able to attend due to his daughter's 30<sup>th</sup> birthday & his son is home from Iraq.

**BILLS FOR PAYMENT:**

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

**ADJOURNMENT:**

Tom made a motion to adjourn at 8:10 p.m. Bryan seconded, & the vote in favor was unanimous.

**WITNESS:**

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**SOUTH MIDDLETON TOWNSHIP  
BOARD OF SUPERVISORS:**

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Bryan A. Gembusia, Chairman

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Thomas E. Faley, Vice Chairman

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Ronald L. Reeder

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James N. Baker

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Walter G. Reighard