

MINUTES

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

SEPTEMBER 30, 2010

PRESENT: TOM FALEY, RICK REIGHARD, RON REEDER, BRYAN GEMBUSIA, DUFF MANWEILER, – (absent) – SUPERVISORS; Richard Mislitsky – Solicitor, Barbara Wilson – Manager, Brian O’ Neill – Engineer, Tim Duerr – Zoning Officer, Sandy Quickel – Recording Secretary, Linda Larson, Eric Edstrom, Darlene Anderson, Ron Hamilton, Janet Hosey, Randy Souders, Paul Hedin, Doug & Helen Gale, Ruth Averson, Chet Hagenbarth, George Heberlig, Bill Sangrey, Charlie Mallios, Bill & Kyang Hartman, Ken Kieber, Paul Slifko, Paul Reichart – “The Patriot News”, Joe Cress – “The Sentinel”.

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

PLEDGE OF ALLEGIANCE:

The pledge of allegiance was led by Chairman Faley.

MOMENT OF SILENCE:

A moment of silence was observed.

PRESENTATION:

The Board presented a resolution of appreciation & expressed their gratitude to Darlene Anderson for the great job she did with the Senior Expo & the Township’s 200th Birthday events. Tom said it was the biggest expo ever.

OPENING ANNOUNCEMENTS:

Chairman Faley announced that the meetings are tape recorded & to turn off cell phones.

MINUTES: 09/09/10 (Regular Meeting)

Rick made a motion to approve the minutes. Ron seconded, & the vote in favor was 3 to 0.

#2010-0016 RSJ HOLDINGS – Conditional Use Public Hearing:

The applicant has granted a time extension to the Township until December 31, 2010 to hold a hearing on this plan. Ron made a motion to accept the time extension until midnight on December 31, 2010. Rick seconded, & the vote in favor was 3 to 0.

#2010-0008 WESTMOORELAND – Conditional Use Public Hearing:

Mr. Mislitsky opened the hearing. No time extension was granted to the Township. The applicant thought the hearing was to be on October 14th. Ron made a motion to reschedule the hearing on October 14, 2010. Tom seconded, & the vote in favor was 3 to 0. The hearing was closed.

#2010-0009 WESTMOORELAND – Preliminary Subdivision:

This plan was tabled.

PUBLIC INPUT:

Bill Sangrey, 17 Sebastian Drive, asked the Board to reconsider the waiver granted to Mr. Capozzi, 1655 Holly Pike, of mowing requirements. He is looking for a response to his letter previously sent to the Township. Tom asked Mr. Sangrey if he feels the covenants were violated. Mr. Sangrey replied yes. Tom said that covenants are signed, but no one is around to enforce them. Tom asked if there is a Homeowner's Association. There is not. Mr. Mislitsky said that covenants do not lean towards the benefit of the Township. Mr. Mislitsky asked Mr. Sangrey if his deed calls for a Homeowner's Association. Mr. Sangrey said he believes it does. Mr. Mislitsky told Mr. Sangrey that he could seek legal action, but not through the Township. The property has only been mowed three times in five years. Mr. Sangrey asked the Board to reconsider granting this waiver. Rick stated that this waiver was the second waiver granted of the mowing requirements, & added that the Board grants waivers numerous times, not just this time. Waivers are granted on different issues. Ron feels that lots should be maintained at a reasonable level so conditions do not impact the neighbors. He also feels that the waiver should not have been granted because it is an abuse of the process. He feels if you are a responsible neighbor, it should be mowed. Ron said that once houses are built, the lots around them should be mowed. Rick stated that the vote was unanimous. Ron said that he was not present at this meeting, & that it would not have been unanimous vote that night. Barb added that three conditions were included in granting the waiver. Two of the three conditions have been met. One condition was to transfer the lots were being transferred from the property's name into the individual homeowner's name. This has been done. Secondly, the properties would be combined into one property & not separate lots & put into Clean & Green. This is in the process. The third condition was that the property is to be mowed 2-3 times a year. This has not occurred. Tom said that the waiver may have been granted on information that was misleading. Rick said that part of the waiver should be enforced. Rick said action should be taken to enforce the violation since the third condition was not met. Mr. Sangrey said that the development sign was hidden due to the weeds. Barb & Tim explained the citation process. Tom made a motion to authorize Tim Duerr to start the enforcement/citation process for the violation. Ron seconded. Mr. Mislitsky stated that the person who is cited has 30 days upon receipt of the letter to respond. Rick suggested that the entire Board should be present to make the decision. The vote in favor was 3 to 0. The Solicitor suggested asking both parties to be present at the next meeting. Mr. Sangrey said he made an effort to meet with Mr. Capozzi, but he was not home & never received a returned phone call.

The impervious coverage issue at Westgate was discussed. Randy Souders, spoke on behalf of Alpha Realty & Ruth Averson, on the impervious coverage issue at Westgate. He said she is the owner of equity of Lot #143 in the Westgate Development. Rick asked Mr. Souders what his position is. Mr. Souders said he is a consultant dealing with building codes & zoning – that's what he does for a living. Tom asked Mr. Souders to clear up for him what owner of equity means. Mr. Souders said that she (Ruth Averson) has put money down on the project – so she has financial interest. Mr. Souders said that when this plan was approved many years ago, the Board affixed some conditions & notes on the approval of that plan limiting certain lots to the overall impervious area to not exceed 2,300 s.f. – which I think it is in R-M district – far less than what you would currently allow in this district. Rick said it was specific to that plan – it does not apply to the R-M district. Mr. Souders said that it says the owner, the homeowner, may come before this body & request an increase in impervious coverage from 2,300 s.f. to 2,875 s.f. Rick said that it was to allow for pools & sheds. Rick said the spirit of it was to do exactly that.

Mr. Souders said that the oddity of this is that Ms. Averson has entered into a contract to build this particular home. She is moving from Florida & is present tonight. She's seen this design & would like to build it. So rather than modify the home, by the builder to 2,300 s.f., & then have her come back here after it is built & ask for the additional – actually she wants to enlarge it to 2,861 s.f. including driveway, sidewalks, & the area for the air conditioner. That basically leaves her with a 1,800 s.f. home. Mr. Souders said we have applied for a permit & it can not be granted until this Board renders a decision, & if this decision is negative, this lady will have to look around for another area. He said he has a copy of the letter she signed saying she is aware of all the restrictions that the Township has set forth. He also said he has the contract of sale & a plot plan with the area & pictures of the home. Mr. Souders said he realized there are stormwater issues in that area, & he will be looking at those in the future with an engineer to see if it can be resolved. Mr. Mislitsky asked if she owns the property. Mr. Souders said not yet – the deed has not been transferred – she is the owner of equity. Tom said we wanted a real life owner. Mr. Souders asked the Solicitor how many subdivision/land development plans does this Board approve based on an owner of equity. Mr. Mislitsky said that equitable owners/land developers come in all the time with an agreement of sale – but I am sure this agreement of sale has contingencies & until an actual transfer, she doesn't own the property. Mr. Mislitsky said what he believes the Board is looking at is an actual owner. He asked why she doesn't buy it. Mr. Souders said that she doesn't want to buy it without the Board granting that increase in square footage. Mr. Mallios said Ms. Averson is putting 5% down. Mr. Mislitsky stated that he has had several agreements of sale where the closing never occurred for various reasons. Mr. Mallios said that if you are building a custom home today, you have to buy the land & put 20% down – the down payment would be \$75,000. She has pre-approval for a mortgage. Mr. Mislitsky asked what is stopping her from buying it now. Mr. Mallios said it is the down payment – she has pre-approval for 95% financing. Mr. Souders said that the Board could say that this could be granted specifically to this particular owner & allow that prior to when the deed is made up, we will present to the Board a copy of the deed with her name. Mr. Mislitsky told the Board that Mr. Souders is suggesting approving it contingent upon presentation of ownership. Mr. Mallios said he thought the Board wanted a real life person. He was told they want an owner. Mr. Souders asked to approve his request contingent to this particular individual becoming the proper owner at such time that the loaning institute puts all their stuff together. Mr. Mislitsky added – contingent upon ownership of this person. He disagreed because if ownership doesn't take place, then you have a house that you haven't approved the waiver. Rick said he was not here when this plan was approved. He said that what he has heard is that the reason for this exception was that after homes were built, we passed this waiver in the spirit of giving the owner some flexibility of certain lots to put in pools, decks, & sheds. That was the spirit of why this was done – not to start allowing larger houses up to this limit on those lots. Ron said that the thinking was that they had such a small footprint to deal with, & then found out they didn't have the storage for mowers, gardening tools, etc on the larger lots. He also said that it looks like the garage is bigger than the normal garage – it appears that she is accomplishing what we were doing by putting up a shed. It looks like this space is incorporated into the house. Rick said that this would not be the last one. Brian said he thinks there are maybe 10 more lots that meet the criteria. Mr. Souders said he will be looking at the remaining lots, then will meet with Mr. O'Neill, then the Board to address this issue & see if there is an engineering practice to use to relieve that restriction. Barb pointed out that there is more history than this issue. She said that the plan started out as a trailer park – that's why the lots were so small. The trailer park, through the courts, to change to a housing development, the lots got larger, but didn't get as

large as they were required to. The later phases of the lots were designed a little bigger, & the stormwater management was retrofitted to fit in the neighborhood. The trailer park lots & the impervious coverage issue is because of the history of Foxwoods, Westgate, Southview, & the Pine Road Acres area – that’s why this stormwater issue became so important. Mr. Souders said that the lot is 13,746 s.f. & that’s a pretty small lot. Tom said that if we have bonifide owner asking, rather than a developer, he would be comfortable voting as 1 person. He said he is still struggling to make sure we have a bonifide owner – buy the property, get recorded in her name, then go forward with your plans. Mr. Mislitsky said an owner is someone that holds title/deed to the property. Mr. Mislitsky asked what would happen if this deed of sale falls through. Mr. Souders said he guessed he would not put in the sidewalk or make the driveway as big. Rick said that he would have to because it’s part of the development plan. Mr. Mislitsky asked who owns the lot now. No answer. Mr. Souders asked if Mr. Mallios could apply for the permit – he’s the owner paying taxes on it. Ron said he doesn’t want to see the size of the house cut down & then set a shed in the yard. If you are going to have the same amount of impervious coverage, he’d rather do it now. Rick asked what to do with the next 9 lots. Ron said he doesn’t have a problem if someone has an approved contract with an approved mortgage. Rick said there will be a precedent set for the next 10 lots. Mr. Mislitsky said that Tim Duerr made a suggestion. Mr. Mislitsky asked if they will agree not to apply or receive a building permit until the ownership is in the lady’s name. Mr. Mallios said he owns the mortgage on the property. Mr. Souders said we can’t get a clear deed for it without her making a payment. Mr. Mallios agreed that he can go through the transfer – just not start to build it. He said he could do that. Mr. Mallios said that once settlement is done & ownership is in her name, then apply for a building permit. Rick said he is still uncomfortable with it. Ron made a motion to approve the additional space of 2,861 s.f. contingent upon the deed being transferred from Mr. Mallios to Ruth Averson. Tom seconded. The vote was 2-1 (Rick was a nay vote).

Bill Hartman, on behalf of the Boiling Springs VFW, presented the annual request to closure of certain streets & to request no-parking from Café 101 to Second Street for the Boiling Springs Halloween Parade. He also asked for a donation towards the parade. Tom made a motion to approve the street closures & no-parking, as requested. Rick seconded, & the vote in favor was 3 to 0.

Tom made a motion to donate \$250.00 towards the parade. Ron seconded, & the vote in favor was 3 to 0.

Janet Hosey, E. Hunter Road, distributed information on the Marcellus Shale issue. Since this is a new industry, she is concerned about water quality, chemicals that will be used, etc. Ms. Hosey asked the Board if the Township is taking any preventive measures on this issue. Rick said that he attended a seminar on this issue. He said that the Township’s wellhead ordinance has restrictions that could prohibit any drilling. She noted that this industry is eliminating local zoning in areas where they are working.

EMERGENCY SERVICES REPORT:

Ron Hamilton reported that Mountain Road & Holly Pike were closed due to the weather conditions. A tree was knocked down onto utility lines on Mountain Road. The report was accepted, as submitted.

RECREATION/PARKS REPORT:

No report was given.

ROAD SUPERINTENDENT REPORT:

Barb reported that brush pickup begins the weeks of October 11 & October 18. The report was accepted, as submitted.

SOLICITOR REPORT:

Mr. Mislitsky reported on the Werner Truck issue. He said that there has not been any satisfaction with a phone call to the main office. He asked staff if “No Truck” signs could be posted at each street in the village area. Brian said this would require a traffic study. Barb has heard that the terminal on Mill Street may move out of state. The remainder of the report was accepted, as submitted.

ENGINEER REPORT:

The applicant has submitted a time extension for Carlisle Regional Medical Center Subdivision & Land Development plans (#05-03, #05-12, & #05-16). Tom made a motion to approve a 90 day time extension. Ron seconded, & the vote in favor was 3 to 0.

The SMTMA is beginning the water tower project, & will be submitting a conditional use application. They are requesting the following be waived: Conditional Use Application fee, Zoning Permit fee, Requirement to submit land development plans, & all non-third party building permit fees. Tom made a motion to approve the waivers requested. Rick seconded. Ron asked where for the location of the water tower. It is on Rockledge Drive by the wellhead. The vote in favor was 3 to 0.

The applicant for the Summerfield, Phase 4 & 5 (#05-35) have submitted as-builts & requested street dedication & a security reduction. Although Eastgate Drive was accepted for dedication, the Board never waived the requirements for sidewalks along Eastgate Drive. Brian feels that the Township does not want the developer to install sidewalks & street trees along Eastgate Drive since they will be ripped up when the commercial lots are developed.

Ron made a motion to defer the requirement to build sidewalks & street trees along Eastgate Drive until construction occurs along Eastgate Drive. Tom seconded, & the vote in favor was 3 to 0.

Rick made a motion to approve a reduction of the security to \$105,000 to cover street trees & sidewalks along Touchstone Drive & the maintenance amount. Tom seconded, & the vote in favor was 3 to 0.

Tom made a motion to approve Resolution #13 of 2010 accepting the streets (Touchstone Dr, Brighton Dr, & Gladwyn Dr) for dedication. Ron seconded, & the vote in favor was 3 to 0.

The Furnace parking lot project involves paving the parking lot. The project is being funded by a grant that Trout Unlimited (T.U.) obtained. Trout Unlimited is asking for a waiver of the requirement to submit a land development plan. Tom made a motion to approve the land development waiver. Rick seconded, & the vote in favor was 3 to 0. Eric Edstrom, T.U.

representative, stated that he appreciates the Township's assistance with this project. Rick also thanked the Municipal Authority (owner of the property) for allowing the improvements to be done.

PLANNING/ZONING/CODES ENFORCEMENT REPORT:

Consensus was given to schedule a public hearing on October 27, 2010 for Group & Group Conditional Use plan.

MANAGER REPORT:

Rick made a motion to approve Resolution #14 of 2010 expressing gratitude to Darlene Anderson for handling the 200th Birthday Celebration & Senior Expo. Tom seconded, & the vote in favor was 3 to 0.

A request was received from Jo Pion to close certain streets for the 2nd annual fun run on November 13. Tom made a motion to approve the street closures, as requested. Ron seconded, & the vote in favor was 3 to 0.

A flag retirement ceremony will be held on October 9th. Old flags may be taken there for disposal.

Barb commended & expressed appreciation to Darlene Anderson for her help with the 200th Birthday events & Senior Expo.

PUBLIC INPUT:

Ron Hamilton said that Petersburg Road will be closed due to the inclement weather conditions.

SUPERVISORS DISCUSSION:

Ron noted that there is a temporary piece of plywood over a drain at Indian Hills. Brian said that Don Group was told to fix it.

Ron mentioned the issue of trees down on utility lines on Schoolhouse Road. He said that homeowners need to take care of their trees. It is not the Township's responsibility.

Ron also mentioned that Dickinson Township employees have been certified to train a class on flagger training. He offered their services for training of South Middleton employees.

BILLS FOR PAYMENT:

Tom made a motion to pay the bills, & to include payment of the construction bills. Rick seconded, & the vote in favor was 3 to 0.

ADJOURNMENT:

Tom made a motion to adjourn the meeting at 7:40 p.m. Ron seconded, & the vote in favor was unanimous.

WITNESS:

Sandra A. Quickel, Secretary

**SOUTH MIDDLETON TOWNSHIP
BOARD OF SUPERVISORS:**

Thomas E. Faley, Chairman

Walter G. Reighard, Vice Chairman

Ronald L. Reeder, Member

Bryan A. Gembusia, Member

R. Duff Manweiler, Member