

FERGUSON TOWNSHIP BOARD OF SUPERVISORS

Regular Meeting
Monday, March 15, 2010
7:00 pm

I. ATTENDANCE

The Board of Supervisors held its second regular meeting of the month on Monday, March 15, 2010 at the Ferguson Township Municipal Building. In attendance were:

Board: Richard Killian, Chairman
Steve Miller, Vice Chairman
Robert Heinsohn
Bill Keough
George Pytel

Staff: Mark Kunkle, Township Manager
Trisha Lang, Director of Planning and Zoning
David Modricker, Director of Public Works
Diane Conrad, Chief of Police

Others in attendance included: Marsha Buchanan, Recording Secretary; Ralph Wheland, Planning Commission; Bob Poole and Dave Palmer, S&A Homes; Wes Glebe, 115 N. Butz Street; Pam Steckler and Bill Hechinger, 127 Hoy Street; Cheryl Lees, PennPRIME; Matt Leitzell, Brownies Valley Tavern Inc., and Tom Schrack, Attorney; Cecil Irvin; and several others.

II. CALL TO ORDER

Mr. Killian, Chairman, called the March 15, 2010 meeting to order at 7:00 pm. He noted that an Executive Session will follow to discuss Personnel issues.

III. CITIZEN'S INPUT

Wes Glebe, 115 N. Butz Street, presented facts and questions regarding the proposed rezoning along W. College Avenue. In particular, he asked about the optimal size for a parking structure.

IV. PRESENTATION OF PENNPRIME PEAK PERFORMER AWARD

For the fifth year in a row Ferguson Township has received the PennPRIME Peak Performer Award. The award is presented to municipalities that achieve certain goals and benchmarks during the policy year. Cheryl Lees, Manager of Loss Control Services for PennPRIME, highlighted information for the Board. This included benefits of Risk Management, the definition of a Trust, and reasons for choosing PennPRIME.

V. PUBLIC HEARINGS – RESOLUTIONS

1. A PUBLIC HEARING ON A RESOLUTION AMENDING THE 2010 TOWNSHIP BUDGET BY INCREASING EXPENDITURES FOR TRAFFIC SIGNAL UPGRADES AND TUDEK PARK IMPROVEMENTS

Mr. Kunkle said during the preparation of the 2010 budget there were a couple of capital items not carried over from the 2009 budget that were approved. He listed those.

Mr. Pytel made a motion to adopt Resolution 2010-8, amending the 2010 Township Budget. Mr. Heinsohn seconded the motion. With Mr. Heinsohn, Mr. Keough, Mr. Killian, Mr. Miller, and Mr. Pytel all voting yes, the motion passed unanimously.

2. A RESOLUTION OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, PENNSYLVANIA, AUTHORIZING THE CHAIRMAN AND SECRETARY OF THE BOARD OF SUPERVISORS TO EXECUTE A QUIT CLAIM DEED FROM THE TOWNSHIP OF FERGUSON TO GALEN E. AND NANCY J. DREIBELBIS FAMILY LIMITED PARTNERSHIP FOR SECTION OF WEST CHERRY LANE ABANDONED ON DECEMBER 5, 2005 BY ORDINANCE 865

Mr. Kunkle said the Galen and Nancy Dreibelbis Family Limited Partnership will be receiving the quit claim deed for that portion of West Cherry Lane that used to connect Blue Course Drive to West Cherry Lane in the vicinity of a small apartment complex going down toward Radio Park Elementary. When they rebuilt Blue Course Drive and extended Martin Street down to Cherry Lane, there was no need to maintain this short section of West Cherry Lane, so the Board abandoned it in 2005.

Mr. Pytel made a motion to adopt Resolution 2010-9, authorizing the Chairman and Secretary to execute the quit claim deed to the Galen and Nancy Dreibelbis Family Limited Partnership. Mr. Miller seconded the motion. With Mr. Heinsohn, Mr. Keough, Mr. Killian, Mr. Miller, and Mr. Pytel all voting yes, the motion passed unanimously.

VI. PUBLIC HEARINGS

1. A PUBLIC HEARING ON AN APPLICATION FOR A LIQUOR LICENSE TRANSFER OF BROWNIES VALLEY TAVERN, INC., 105 EAST MAIN STREET, MILHEIM, PA, TO 1301 WEST COLLEGE AVENUE, STATE COLLEGE, PA

Mr. Kunkle said this transfer would increase the number of liquor licenses in the Township from 9 to 10. The applicant for VJK, Inc. has also filed for a transfer to the liquor control board (LCB) to be relocated to S. Atherton Street. This is a restaurant liquor license.

Tom Schrack, attorney, said there is no change of ownership, just a change of location. The applicant intends to operate a restaurant at what is currently the Link's location. There will be a take-out aspect as well. The applicant, Matt Leitzell, said the restaurant will be on the top floor of the building.

Mr. Pytel suggested that Ferguson Township may not want to provide another liquor license. Mr. Killian asked if the current license would have dormancy in this situation. Mr. Kunkle has not had a chance to talk to the LCB but said they should clarify the status of the VJK to date as it relates to the progress of their liquor license being transferred to a new location. Mr. Pytel expressed concern. If that license is still there when another one is added, then this applicant is almost guaranteed that he can move his license somewhere else. Mr. Kunkle said the regulations are that there cannot be two licenses at the same location. Mr. Leitzell believes the VJK license is in safe keeping at 1301 W. College Avenue.

Mr. Kunkle reviewed the potential conditions for approval.

Pam Steckler, 127 Hoy Street, was very encouraged regarding the protective measures discussed. They welcome a full service restaurant, but they are concerned about a bar with food service as a secondary use. They worry about noise, behavior issues, DUI's, etc. impacting their neighborhood. Interior acoustic entertainment would be welcome, but amplified music would adversely affect their neighborhood and their home, which is within 500 feet of 1301 W. College Avenue. Corl Street Elementary School is within 750 feet of this property, so that should be part of the decision-making process regarding the activities on the parcel. She urged the Board to consider their concerns and encourage the type of establishment which will benefit their neighborhood rather than degrade it.

Wes Glebe, 115 N. Butz Street, asked about their business plan and their target market. The applicant said they will not hire a professional chef. They will serve standard neighborhood fare and beverages will be served in glasses.

Bill Hechinger, 127 Hoy Street, addressed the issue of parking, which the Township will probably end up taking care of. The nearest place for someone to park would be on Hoy Street, which could create extra noise there. He suggested that police patrols on that street may need to occur more frequently. Regarding the LCB, when the Link's went in, they attended a hearing as concerned residents. At the end of the hearing, a mere recommendation was received. He likes the way the Township is taking precautions.

Mr. Pytel asked what the benefit is for Ferguson Township of having another liquor license. Mr. Leitzell said he has been a lifelong resident of Ferguson Township. He would not want to put in a restaurant that would not be family-oriented where people will have good food and a good time. Mr. Schrack said the benefit will be what the business will provide. Having that license will be the method by which the restaurant will be competitive with other restaurants in the area. The residents will get a top-notch restaurant, and they hope it will contribute to the economy.

Mr. Heinsohn is supportive, as long as there is a limit to the number of six packs that can be sold out of doors. Mr. Pytel does not think another liquor license is necessary. Mr. Keough is supportive. He believes the food business struggles a great deal. If the Township were not to allow any new restaurant to have a liquor license, they would probably eliminate a huge number of business models of restaurants and would be left with mostly fast food. He supports the business model they are presenting. Mr. Miller is okay with it as well. Mr. Killian also supports it. He asked if outside seating will be available. Mr. Leitzell said yes; there will be an awning over the patio.

At their April 5th meeting the Board will discuss the conditions in more detail.

Mr. Kunkle will clarify these conditions. The Board consented to continue this public hearing until the April 5th meeting.

VII. COMMUNICATIONS TO THE BOARD

Mr. Keough said a resident contacted him to ask about including installation of sewer lines where there is a concentrated group of houses that are not part of the Ag zone with regard to tearing up Whitehall Road and its borders. He also received an email regarding the pedestrian and vehicle uses of the space in the proposed TS District.

VIII. ACTION ITEMS

1. RE-APPROVAL OF S&A SUBDIVISION – RE-PLOT TAX PARCELS 24-4-23 AND 24-3-30, AND SUBDIVISION OF TAX PARCEL 24-4-23

On August 17, 2009 the Board approved the above plan with conditions. On March 1, 2010 the Board granted a modification of the condition to provide fee-in-lieu of parkland at the time of plan approval and deferred that required contribution to the application and receipt of a zoning/building permit for each lot.

Ms. Lang said according to the MPC, not accepting one condition is the same as refusing all of them. So a process was needed to re-establish the plan. The plan was resubmitted. It moves forward to the Board with the same conditions that were remaining after the applicant had addressed some of the conditions. She showed a view of the proposed plan, which creates 7 lots. Four of them are larger and are therefore farm lots. Three of them are for residential development and are between 1 and 2 acres each.

Ms. Lang said the largest remaining issue is that they are waiting for DEP approval. The easement issue is not yet resolved either. Mr. Keough suggested that the 3 outstanding conditions may need to be dealt with *before* approval is granted. Other Board members noted that the motion will be subject to completion of these outstanding conditions. Ms. Lang said the applicant asked for clarification and direction, which she has provided twice.

Ms. Lang described the easement. Staff's concern is that this impacts the owner of Lot #4 because it runs through their property. It also grants rights to people other than the owner of this acreage and as such there is a concern about what the ability is of providing this easement if there is not a clear title to it.

Bob Poole, S&A Homes, said he can look into addressing this.

Mr. Miller made a motion to approve the S&A Subdivision Plan subject to the completion of the outstanding conditions set forth in the Director of Planning and Zoning Memorandum dated March 10, 2010. Mr. Heinsohn seconded the motion. The motion passed unanimously.

2. RURAL AGRICULTURE (RA) BUFFER YARD REGULATIONS

On March 1st, the Board referred to the Planning Commission a request to provide a recommendation on a) revised distance of the buffer yard for lands that have been rezoned from RA to another zoning district; and b) if a fence, landscaped buffer, or combination of both should be required. The Planning Commission discussed this matter on March 8th and has forwarded the following recommendation:

- First choice is to retain the 200' buffer as is currently set forth in the Zoning Ordinance
- If the Board desires to amend the buffer yard, reduce the distance from 200 feet to 100 feet but not require a landscaped buffer or fence

Mr. Heinsohn changed his former view. He does not wish to restrict homeowners regarding what they can build or place on their property. He now wishes to back up the Planning Commission on their recommendation, leaving the buffer at 200'.

Mr. Pytel said changing the buffer would keep people from encroaching into farmland. Lowering it to 100 feet would do no good. He believes a 50' buffer would work, but feels there should be something to indicate that this is farm land to protect the farmer – a fence, shrubbery, etc. – but with certain specifications.

Mr. Killian said 200 feet seems too large because of the potential loss of additional farm land. No buffer seems too small. Fifty feet has become the compromise. He does not want to require fences in lieu of vegetation. He recommended that any additional buffering be “planting or a fence.” But he does not want trees. Ms. Lang said the other question was whose trees these are if they are actually on the farmer’s property line. Mr. Pytel said if the fence row is on farm property, it belongs to the farmer. He does not want to use the farmer’s fencerow as somebody else’s buffer. He wants the buffer to protect farmers.

Mr. Miller does not favor requiring either a fence or a vegetative buffer. Mr. Heinsohn said the ordinance specifies acceptable types of plantings.

Mr. Killian suggested differentiating R-4 area from other areas. Ms. Lang said this would be possible. When a property that requires a land development plan outside of R-1 is developed, there is a requirement under this section of the ordinance to buffer all of the property boundaries from adjacent uses. The more distinctive the difference between the two uses, the heavier the buffer is supposed to be. If the Board takes a position on what should be between developed land and RA land, they should be consistent throughout the ordinance.

Mr. Killian believes there should be a fence in R-4. Anywhere else it will be difficult to require anything besides the 50' buffer. Ms. Lang said they could require the retention of the tree row, but there will still be a discussion regarding whose plant material it is. Mr. Killian said the idea is to retain whatever hedgerow is there. Mr. Pytel has no problem with this except that the farmer may be required to keep the trees even if he may not want them. Mr. Killian said the property owner must retain the buffer of existing vegetation. Mr. Pytel expressed the importance of including language in the ordinance that requires the retention of a buffer.

Mr. Heinsohn said requests are made often for a buffer zone with acceptable plant species. The Township can insist that there be an adequate buffer at the time the plan is approved. Mr. Pytel said he wants something in the plan to indicate there must be a buffer.

Mr. Miller asked how wide the vegetative buffer should be. Mr. Pytel said he just wants to separate the farm land from residential with a vegetative buffer. Mr. Miller asked, if the Board were to give an option of one or the other, how much of a vegetative buffer would need to be on the property. Mr. Pytel said trees should be 10 feet away; shrubs should be 5 feet away. Mr. Miller asked if the

Board could require either a fence or a 5-foot vegetative buffer on the residential property. This way, if the tree line is on the farm side, there would still be a buffer.

Ms. Lang said those two buffers achieve totally different things. If there is no existing tree row or if that tree row is completely on the farm side, they would put in a fence. If it is a mixture, they would put in 5' of vegetation or could add 5' of vegetation on the residential side along the tree row. The tree row must extend into the residential side by 5'.

Mr. Keough said if the commercial involves parking lots, 50 feet is not very far, especially with drift issues. These are not people who own property on commercial. It raises the level of liability significantly. He also does not believe this should be extended to R-4 residential, since that is such a dense population and elevates the level of possible negative encroachment. This Township has a 200' requirement for outdoor furnaces in residential areas, but they are willing to take an industrial use like farming and subject it to only a 50' buffer.

Cecil Irvin said he agreed with the 200' buffer originally, but now believes it is a significant waste of land. The fencerows are not sacred. Protecting them is a very subjective issue. Fencerows are a pain for farmers. He does not know if they should require a planted buffer or not. The building setback is very important. He thinks 50 feet is appropriate for a buffer. Having a 200' buffer would not be preserving farmland. Mr. Irvin said he does not see electronic interference, noted by Mr. Heinsohn, as a big enough problem.

Mr. Keough asked if that includes the University land zoned RA and the commercial land along College Avenue. Ms. Lang said yes.

Mr. Miller made a motion to reduce the buffer bordering RA to 50 feet and that it require either a 6-foot fence or a 5-foot acceptable vegetative buffer on the property. Mr. Pytel seconded the motion. With Mr. Keough and Mr. Heinsohn voting no, and all other Board members voting yes, the motion passed.

Mr. Keough asked about the procedure going forward. Mr. Kunkle explained the next steps that will be taken. Mr. Keough asked if the Board would object to something other than the mandatory advertising to notify the agricultural community that this amendment is being proposed. Mr. Kunkle said there are not that many properties that are adjacent to where this change is going to occur, so property owners/farmers could be notified. Mr. Keough said because of the history of this particular ordinance and the way it was developed, he would feel better if no farmer objects to what is going on. Mr. Killian does not see a need for additional public communication. Mr. Miller said the Township has adequate venues for informing the public.

3. DISCUSSION OF STATE COLLEGE BOROUGH STREET NAMING POLICY

Borough Council began considering a revised policy for street naming in mid-February. They further considered the draft policy and adopted it at their meeting on March 1st. At a work session on March 8th, Council considered opportunities for renaming public streets and properties. Mr. Kunkle has expressed to Borough Manager, Tom Fountaine, that this policy may be of concern to the Board, given that Westerly Parkway is one of the streets that could be renamed.

Mr. Kunkle said this policy came out of interest in having a public place or street named after significant individuals. One concern was the fact that some of the streets being considered for renaming crossed municipal boundaries. He had suggested that the policy might reflect staff's concern. The Council has not taken any action at this point. Mr. Heinsohn said if roads are going to be renamed that cross municipal boundaries, this Board should approve it. Mr. Pytel said those street names should remain the same.

4. REVISED TOWNSHIP FACILITY USE POLICY

The Board discussed the Revised Township Facility Policy at their March 1st meeting and requested that the proposed changes be placed in a final draft for their consideration.

Mr. Heinsohn made a motion to approve the revised Township Facility Use Policy, effective May 1, 2010. Mr. Pytel seconded the motion. The motion passed unanimously.

5. FEBRUARY 2010 VOUCHER REPORT

Mr. Heinsohn made a motion to approve the February 2010 Voucher Report. Mr. Pytel seconded the motion. The motion passed unanimously.

6. CONSENT AGENDA

Mr. Miller made a motion to approve the Consent Agenda. Mr. Heinsohn seconded the motion. The motion passed unanimously.

IX. REPORTS

a. Manager

- The PA League of Cities and Municipalities Central District meeting is scheduled for April 21st. Board members should register to attend.
- The Township received its State Liquid Fuels Tax Fund payment early this year as a result of the Governor's Proclamation of Disaster Emergency in an effort to assist municipalities hit hard by snow storms. The Township's base allocation is \$343,180.31. Turnback funds have not been received.

b. Public Works Director

Mr. Modricker provided detailed information about various 2010 Contracts regarding bids, proposals, and Open House projects. Highlighted were:

Whitehall Road Widening (SR 26 to Tadpole Road): Staff met on March 11th to discuss right of way issues. That is still in the design phase.

Mr. Keough commented on the phone call he received. He asked about sewer lines. Mr. Modricker said it has been discussed with property owners with staff. Besides the fact that there would be differing opinions from residents as to whether they wanted on-lot sewer, the biggest issue is how it

affects the Act 537 Plan and if it is outside of the sewer district. Mr. Keough said it makes sense that there is some justification in serving that area. Mr. Modricker said they decided not to include it. Mr. Kunkle said service to that area may come from Pine Grove Mills and up through the drainage area into the back side of that development.

Old Gatesburg Road Extension: Staff met on March 11th to discuss right of way issues. The next progress meeting to review the “design field view” submission is March 22nd.

c. Director of Planning and Zoning

REVISIONS TO THE DRAFT TERRACED STREETSCAPE ZONING DISTRICT

The Commission began discussion of the 6 issues referred to them by the Board. The Commission agreed to hear commentary on concerns outside of the scope of the 6 agenda items. Of the 7 individuals in attendance, 2 do not own property in the district, and the other 5 have non-conforming uses in the district.

Of the 6 items referred for further consideration, the Commission reached consensus on 2 and is awaiting additional information from staff on the others. Commission members agreed that drive-through uses should not be permitted in the district, and that the use of on-street parking spaces should not be counted toward the quota of spaces required for any individual development. The Commission will continue discussing the remaining items at their next meeting on March 22nd. If sufficient information can be provided to them in the is timeframe, they will be prepared to make a recommendation to the Board at that time.

ZONING FOR COMMUNITY GARDENS

The Township received a request to permit the operation of a community garden on a property in the R-1 zoning district. Staff presented draft language to regulate this use. However, continued discussion will be necessary to determine where, and on what size lots, the use should be permitted, as well as what percentage of a lot which already has a primary use should be permitted to be dedicated to this “accessory” use. The Commission is looking for community input and hopes to finalize a draft for the Board's consideration in time for their first meeting in April.

Mr. Keough urged the Township *not* to micromanage the community gardens. Ms. Lang said that was a concern of the Planning Commission as well. The Township will not get too involved in the details.

d. Chief of Police

Part 1 Crimes this year were lower than in February 2009. Part 2 Crimes were up both for February and year to date, so totals are higher than this time last year overall. Other calls for service are way down. Overall things are the same.

The Board briefly discussed Facebook and water sampling issues with Chief Conrad.

e. COG Committee Reports

- a. *Finance* – Mr. Killian said the Library's Capital budget will be included in COG's budget and there will be a greater emphasis on fund balance reporting.
- b. *Public Safety* – Mr. Keough said they got a good report from Dave Jones, the Penn State EMS Manager. They talked about the impact of State Patty's Day, which is clearly significant to the hospital system. They talked about the codes that will be proposed. Mr. Kunkle said Walter Schneider, Director of Code, indicated they would like to see codes adopted by municipalities by June 1st. Mr. Keough said there are about 9 unresolved items with regard to the building and safety code.
- c. *Transportation and Land Use* – Mr. Pytel said they discussed the Eastern Inner Loop.
- d. *Spring Creek Watershed Commission* – Mr. Miller said the C-Net sponsorship has been going on in two-month cycles in municipalities. He suggested that Ferguson Township sponsor for April and May 2010. Mr. Kunkle said this would just be added to the total number of hours of use. Mr. Miller made a motion to sponsor C-Net for the months of April and May 2010. Mr. Keough seconded the motion. The motion passed unanimously.

I. MINUTES

Mr. Heinsohn made a motion to approve the March 1, 2010 Board of Supervisors regular meeting minutes. Mr. Miller seconded the motion. The motion passed unanimously.

II. ADJOURNMENT

With no further business to come before the Board of Supervisors, Mr. Killian adjourned the March 15, 2010 Regular Meeting at 10:20 pm.

RESPECTFULLY SUBMITTED,

Mark Kunkle, Township Manager
For the Board of Supervisors

Date approved by the Board: 04-05-2010