

## FERGUSON TOWNSHIP BOARD OF SUPERVISORS

Regular Meeting  
Monday, November 16, 2015  
7:00 pm

### I. ATTENDANCE

The Board of Supervisors held its first regular meeting of the month on Monday, November 2, 2015, at the Ferguson Township Municipal Building. In attendance were:

**Board:** Richard Mascolo, Chairman  
Drew Clemson, Vice Chair  
Steve Miller  
Elliott Killian

**Staff:** Mark Kunkle, Township Manager  
David Pribulka, Assistant Township Manager  
David Modricker, Director of Public Works  
Diane Conrad, Chief of Police  
Joseph Green, Township Solicitor

*Others in attendance included:* Heather Bird, Recording Secretary; Janet Engeman, Deanna Nardozzo, Joseph Cusumano, Peter Buckland, Kelli Hoover, Bob Lindsey, David Stone, Laura Dininni, Robert Baillie, Chris Paeglio, Pam Steckler, Bill Hechinger, Rhonda Johanneson, Nancy Chiswick, John Sepp and many other Centre Region community members

### II. CALL TO ORDER

Mr. Mascolo called the Monday, November 16, 2015, regular meeting to order at 7:00 pm.

### III. CITIZENS INPUT

Mr. Bill Hechinger, resident, discussed the future Whitehall Road Regional Park stated that it should be modified to include more passive uses. The proposed park has too many lighted fields. The need for this park should have been decided by a referendum question on the ballot. Mr. Mascolo stated that the proposed park is part of a regional park plan. Ms. Laura Dininni, resident, stated that the sports fields at this proposed park will flood because they are detention basins.

### VII. RESOLUTIONS

#### 1. A PUBLIC HEARING ON A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, PENNSYLVANIA, REPEALING RESOLUTION #2014-32 BY ADOPTING A REVISED SIDEWALK SNOW REMOVAL MAP.

Mr. Kunkle stated the Board had this before them on November 2<sup>nd</sup> at which time the Board tabled the decision to allow Mr. White to present his request for exemption. Mr. White was not present at this meeting. The sidewalk map is adopted annually depicting the locations of the sidewalk network in the Township that falls under the snow removal requirements.

Mr. Killian made a motion to ADOPT resolution 2015-31 repealing resolution 2014-32 and adopting a revised sidewalk snow removal map. Mr. Miller seconded the motion. The motion passed unanimously.

ROLL CALL: Mr. Clemson: YES; Mr. Killian: YES; Mr. Mascolo: YES; Mr. Miller: YES

#### 2. A PUBLIC HEARING ON A RESOLUTION APPROVING A PLANNED RESIDENTIAL DEVELOPMENT FOR THE COTTAGES AT STATE COLLEGE FINAL PRD PLAN

Mr. Joseph Green, Township Solicitor, stated that under the Municipalities Planning Code (MPC) and the Ferguson Township Zoning Ordinance the Planned Residential Development (PRD) approval is a two-step process. There is a tentative approval and a final approval. On March 2, 2015 tentative approval for the Cottages PRD was granted. When the tentative approval was granted there were a number of conditions as part of the tentative approval. Now that the Board is

at the final approval stage the job before the Board is not to revisit all of the conditions but to determine if the applicant will comply with the conditions placed on the approval. The Board is to determine whether or not the conditions have been complied with. The MPC and applicable law empowers the municipality to grant final approval but not to impose new or amended conditions compared to those established at tentative approval.

Mr. Stolinas, Director of Planning and Zoning, began with the Lot Consolidation and Subdivision Plan (Subdivision of Tax Parcel 24-004-094, Lot Consolidation of Tax Parcel 24-004-076 and Right-of-Way Dedication from Tax Parcels 24-004-076 and 24-004-076A). The parcel locations are located on Whitehall Road just southeast of the State College Borough boundary west of the College Township boundary. Tax parcel 24-004-094 is 197 acres and owned by Penn State and both 24-004-076 and 24-004-076A equal approximately 15.2 acres and are also owned by Penn State. The zoning is multi-family residential with proposed PRD. 5.5 acres of tax parcel 24-004-094 will be subdivided and consolidated with tax parcel 24-004-076 for the proposed stormwater management facility along with a portion of 3,253 square feet for a proposed dedication of right-of-way to form a revised lot of 28.46 acres. Also 3,253 square feet of tax parcel 24-004-076A will be subdivided and consolidated with the proposed dedication of right-of-way to form a revised lot of 15.18 acres.

The next plan is Subdivision of Tax Parcel 24-004-076 and Lot Consolidation with Tax Parcel 36-028-011C The Cottages at State College. This plan is for the same location as described above. Tax parcel 24-004-076, 28.72 acres, is owned by Penn State and parcel 36-028-011C, 0.487 acres is owned by Charles A. and Constance B. Farrell. The zoning districts are multi-family residential (R4) in Ferguson Township and Townhome Residential 3 in the State College Borough. A portion, .19 acres, of 24-004-076 will be subdivided and consolidated with tax parcel 36-028-011C to form a revised lot size of 0.677 acres. The State College Borough provided a letter of conditional approval for the lot consolidation on November 6, 2015.

The third plan is the Cottages at State College final PRD plan. This plan is located at the same location mentioned above. The proposed plan will be located on tax parcels 24-004-076 and 24-004-076A of approximately 38.193 acres owned by Penn State. The zoning district is multi-family residential (R4) with proposed PRD. It is a 268 unit planned residential development consisting of single family duplex and townhome structures. A component three sewage facilities planning module is pending submission. The plan includes 1,038 parking stalls and 3.994 acres of recreational open space. A timeline indicates the Ferguson Township Board of Supervisors approved a tentative PRD plan on March 2, 2015 with conditions. FEMA issued a Conditional Letter of Map Revision (CLOMR) on September 22, 2015. Ferguson Township Planning staff forwarded final PRD plans for reviewer's comments and received reviews from the Centre Region Planning Agency, Centre Area Transportation Authority, State College Borough Water Authority, NTM Engineering, Pennoni Associates along with the Ferguson Township Arborist. The Ferguson Township Planning staff also met with reviewers on November 5, 2015 and discussed unresolved comments and a final draft was submitted on November 13<sup>th</sup>. Planning staff conducted a review of the final PRD related to variations from the tentative PRD and amended initially approved Terms and Conditions. The CLOMR is a statement from the Federal Emergency Management Agency stating that if the project is constructed a Letter of Map Revision can be issued later for the one of the eleven panels that make up Ferguson Township's Flood Insurance Rate Map (FIRM), the official rate map for the community. Due to the CLOMR there are no effects on flood insurance rates downstream or Township wide. The designation for this segment of flood plain will change from Zone A, no base elevations determined, to a Category AE base elevations determined. The affected panel was from May 4, 2009. Mr. Stolinas reviewed a list of technical changes from the tentative plan to the final PRD submission including stormwater management revisions, transportation revisions, miscellaneous planning revisions, revisions to FEMA review of Floodplain letter map revision request and schedule review.

The public input period began.

Ms. Janet Eggeman, newly elected Borough Council member, stated when she was running for office she spoke to a lot of people about this regional issue which is not about tall vs sprawl it's a matter of location. In this location there are well heads that produce 2/3 of the water production for the community. Is this project worth the risk? Who would get sued? To construct the basins blasting of bedrock will occur, this could destabilize the limestone in the area. She stated there is a lot of concern throughout the area on this plan regarding the water and traffic issues.

Ms. Diana Nardoza thanked those elected officials who make wise decisions for the public. She is opposed to the Toll Brothers project. She knows there is a lot of money invested into this project. What amount of money do we place on open space, farmland, beautiful vistas, nature and aesthetics. She asked the Board to deny the plan and join her in standing up against the plan.

Mr. Joseph Cusumano, resident, stated he is expecting the Board to vote in favor of the proposed plan. He is against the plan. He is hoping that this plan is the start to a different way of thinking about development that doesn't think about economic value but what development does to the wealth of the community. That water is valuable to the community. There were plenty of independent people prior to the up-zoning stating that the zoning change was not a good idea. All the experts that would be commenting on this plan knew they couldn't stop the plan from happening. There has been much public outcry which led to the election which all three candidates were elected to office. The Planning Commission unanimously voted to not approve the plan. We know how we got here, who the players were and we're not going to forget. He asked that the Board respect the community and the fact that new people were elected to the Board and they should be allowed to weigh in on the plan. He urged to Board to deny the plan.

Mr. Peter Buckland, resident and Board Supervisor elect, stated the evening has a lot of anxiety, anger and sadness. Many people already feel as though they lost something. Toll Brothers has lost the trust of the community. Penn State will be seen by being more motivated by money than by the good will of the community. PennTerra Engineering is now put into a difficult community situation by working on a project that the community despises. The current Board lost the trust of those who elected you. Members of the community are concerned that sprawl will continue to spread outside of the growth boundary again and again. Citizens are worried that they have no recourse. Trust has been totally sidelined. There is not a simple solution. His thoughts are to honor all those involved, the preordained failure of this project can teach us something and he hopes that Board will do everything it can to preserve the community and ecological integrity of this area most importantly the growth boundary. No single person can make it right, but all must stay involved. We must learn from this and do everything we can to rebuild trust in the community.

Ms. Kelly Hoover, resident, presented documents to the Board. Her attorney wrote a letter stipulating why this particular plan has lots of problems that are the basis for a lawsuit. Her attorney is an expert in land use policy. We reserve the right to sue should you approve this plan. The second document she presented was a letter from residents in the community. She read the letter from those signed, which requested a no vote.

Mr. Bob Lindsey, resident, stated we all agree there are risks to this project and we may disagree on the degree of those risks. Who will pay if a problem occurs with this project? Mr. Green says at this time conditions can't be added so a condition for environmental insurance may not be added. He can't believe the Board is a rubber stamp and does not consider the risks to the public. Please exercise your discretion to deny the plan.

Mr. David Stone, Borough resident, stated subsequent to Planning Commission meeting many got together to review the plans and found grounds to deny the plans. He would like to work on a process to work on this and avoid litigation. One area not finalized is the agreement of financial responsibility. He talked briefly on the matter of the lot consolidation and change. He learned today there is a new sewer module proposed to DEP. He stated Landmark is listed on permits and now they are out of the project. He requested that we all work together to avoid litigation. There is hope for the community.

Ms. Laura Dininni, resident and Board Supervisor elect, requested the Board to table the decision for tonight. Her understanding is that the most recent final plan was submitted on November 13<sup>th</sup>. The supervisors have stated that the SC Borough Water Authority has assured them the plan is ok. The work the water authority has done has not been included in the plan. The blasting that is of concern is still in the plan; the monitoring well is too close to the blasting to ensure the well will give a proper baseline read. Please do not pass the plan tonight. If the blasting had been removed and the well location moved then it could be passed. Please table plan until it is verified that what the Borough Water Authority requested is in the plan.

Mr. Robert Bailey, resident, handed out an article to the Board about the Ann Arbor water supply. The article discusses a company that from the mid-60s to the mid-80s spread a chemical on lawns when they were done with it. Ever since this time those dangerous chemicals have been spreading toward the Ann Arbor water supply and contaminating it. His point is that once you get a plume of pollution underground you can't stop it. Please protect the water supply and vote no on this plan and change the zoning back to agriculture.

Mr. Chris Pveglio, resident, asked what happens with our water supply once it is contaminated. He is not against development and future growth but is concerned with development on this location because it is a sensitive water area. What happens if despite developer's best efforts there is a spill? Our water supply is extremely valuable. What is the backup plan to contaminated water? We need to sustain the life here and the agriculture. One thing we need to keep life here is clean water. Please vote no or table this item.

Ms. Pam Steckler, resident, stated we have been told that this land is zoned R4 and there is nothing we can do but regulate the water. We should not pay for an error that was decided in 2004. This is not a zoning issue it is an ethical and moral issue. Many agree this plan is a mistake. Ethically and morally the Board should vote no on this. Water is life and we shouldn't be risking it. She read a quote from Max Gill when Musser Gap was saved. These wells will be able to serve the community forever and that is what the community wants. Please vote with your conscience, ethically and morally. We will back you up if litigation occurs.

Mr. Bill Hechinger, resident, emphasized what Ms. Steckler said about the wells that are down slope from the development. He stated these wells are the best and we need them. They are worth more than any legal suit that could be brought against the Township. Just say no to the plan.

Ms. Ronda Johanason, resident, stated she has a broad background in student housing. She is not anti-development. The project is large by any national standard. She hopes that Toll Brothers has found a very good management company to manage the property. Water is the issue because we can't live without it. Please analyze and ensure you have all the experts to secure the success of this project. The developer will be on site for 1-2 years and then comes the management of the facility so the management agreements for the future should have good stormwater management and emergency protocols included in them. Urged the Board to verify these items are included with this project.

Ms. Nancy Chiswick, resident, stated she is neither an engineer nor an environmental expert but she has heard enough from those qualified to speak to lend her voice in the hopes to persuade the Board to not approve this plan. Her expertise is a psychologist and she knows that people only change if they want to change. Corporations only change if they want to change. She has been told that Toll Brothers has bad reputation. She researched that and found that in June 2012 Toll received a violation for failure to comply with permits issued pursuant to Clean Water Act, Section 402, US Code 1342 resulting in the discharge of pollutants in stormwater from construction sites which is a violation of Clean Water Act Section 301. The settlement covered 370 sites in 23 states including 40 sites in the Chesapeake Bay Watershed, 55 sites were in Pennsylvania. She doesn't trust Toll Brothers with the responsibility of protecting the water in this community.

Mr. John Sepp, PennTerra Engineering, represents the Cottages final PRD Plan. The final PRD plan adds the detail required to have the project approved. The plan is basically the same plan the Board approved in March except they have responded to numerous requests and comments from the staff as well as the water authority. The plan before you is one of the cleanest plans he's ever submitted. The number of conditions remaining for approval on this plan is comparable to those of a small plan submission.

Mr. Miller addressed some of the questions and comments from this meeting and the Planning Commission meeting last week. He has been involved in this project for quite some time. He was on the Board in 2004 when the rezoning occurred. He has been represented as saying this was the less bad option. The R4 development would not be a bad option but he does feel that this proposed plan is the better option. Under the PRD option the Township was able to negotiate with the developer to receive a better project overall. Given that the zoning does exist, he thinks we have approached the best possible way to do this. During the process of working with the Water Authority he has spoken with a number of Authority Board members and hydro geologists not involved with this project and no one who knows the property has expressed a significant risk of contamination. The Water Authority representatives that spoke at their joint meeting described it as minimal risk of contamination from this proposed plan. The protections built into this plan are all of the items David Yoxheimer has said in a much quoted letter. Mr. Miller has heard how this development will destroy the water supply. We have a well on Circleville Road that sits in a detention basin and is surrounded by development; this well still produces good water. The perception that this development will destroy our water supply is based on fear. He is concerned about environmental issues and he does not feel that this plan is a problem. He stated that there have been no threats of a lawsuit against the Township. The MPC and Township ordinances are a contract that defines how we deal with public issues and we are expected to follow these. He is going to vote yes.. We are not rushing through this vote; the original date for this plan was in June. He will be voting yes and he feels the plan meets all of the requirements that have been placed on the PRD and exceeds anything that has been done under a R4 development.

Mr. Sepp stated that there has never been an agreement not to blast on site. Blasting is a routine construction practice. He has a letter from Gwin Dobson dated November 9<sup>th</sup> refers to following the criteria for blasting. On page two of the plan, note 19 the criteria for blasting is listed.

Mr. Clemson asked Mr. Green in the event of a contamination, although not that probable, where the liability would fall. Mr. Green stated the law would provide remedy if there were some sort of contamination. It would depend on what the contamination is and who caused the contamination. Generally there would be a monetary action of recovery. It is hard to say exactly what would happen without knowing the exact situation.

**A. THE COTTAGES LOT CONSOLIDATION AND SUBDIVISION PLAN (SUBDIVISION OF TAX PARCEL 24-004-094, LOT CONSOLIDATION OF TAX PARCEL 24-004-076**

**AND RIGHT-OF-WAY DEDICATION FROM TAX PARCELS 24-004-076 AND 24-004-076A) PLAN LAST DATED NOVEMBER 5, 2015 PLAN DEADLINE DECEMBER 31, 2015.**

Mr. Killian made a motion to APPROVE the Cottages Lot Consolidation and Subdivision Plan subject to the completion of the outstanding conditions as set forth in the Director of Planning and Zoning memorandum dated November 11, 2015. Mr. Miller seconded the motion. The motion passed unanimously.

**B. SUBDIVISION OF TAX PARCEL 24-004-076 AND LOT CONSOLIDATION WITH TAX PARCEL 36-028-011C THE COTTAGES AT STATE COLLEGE – PLAN LAST DATED NOVEMBER 5, 2015 PLAN DEADLINE FEBRUARY 3, 2016.**

Mr. Killian made a motion to APPROVE the subdivision of tax parcel 24-004-076 and lot consolidation with 36-028-011C The Cottages at State College subject to the completion of the outstanding conditions as set forth in the Director of Planning and Zoning memorandum dated November 11, 2015. Mr. Miller seconded the motion. The motion passed unanimously.

**C. RESOLUTION APPROVING A PLANNED RESIDENTIAL DEVELOPMENT FOR THE COTTAGES AT STATE COLLEGE FINAL PRD PLAN**

Mr. Killian made a motion to ADOPT the resolution approving a Planned Residential Development for The Cottages at State College final PRD plan. Mr. Miller seconded the motion.

ROLL CALL: Mr. Clemson: YES; Mr. Killian: YES; Mr. Mascolo: YES; Mr. Miller: YES

**VIII. COMMUNICATION TO THE BOARD**

Mr. Miller and Mr. Clemson stated they received communications on The Cottages.

**IX. ACTION ITEMS**

**1. KLINE MUTH LOT CONSOLIDATION AND SUBDIVISION PLAN – PLAN LAST DATED NOVEMBER 2, 2015 PLAN DEADLINE JANUARY 10, 2016.**

Mr. Stolinas stated the parcel is located in Pine Grove Mills between State Route 45, West Pine Grove Road and Reed Alley. Tax parcel 24-009A-023 will be subdivided into two tracts of land and consolidated with the existing parcels for the Kline's and the Muth's adding an additional 3,208 square feet or .074 acres to their existing lots.

Mr. Killian made a motion to APPROVE the Kline Muth lot consolidation and subdivision plan subject to the completion of the outstanding conditions for approval as set forth in the Director of Planning and Zoning memorandum dated November 11, 2015. Mr. Clemson seconded the motion. The motion passed unanimously.

**2. CONSENT AGENDA**

Mr. Killian made a motion to APPROVE the consent agenda including Surety Reductions for Hunters Chase, Phase 8 \$71,473.05, Hunters Chase, Phase 10 \$62,565.30, The Landings, Phase 1B \$99,709.50, Saybrook, Phase 9A \$18,875, Saybrook, Phase 9B \$4,398, Saybrook Phase 10 \$170,101.81, Stonebridge Section 5 Senior Apartments \$50. Mr. Miller seconded the motion. The motion passed unanimously.

## **X. REPORTS**

### **1. Manager**

Mr. Kunkle stated that the roof on the Township main building is under a preventative maintenance agreement with Marcon. Marcon has completed an inspection of the roof and found deficiencies with some of the bridging. There are no active leaks at this time. The warranty on the roof through Firestone, indicates that the warranty covers repairs to active leaks. In good faith Firestone has agreed to provide a contribution toward the repairs identified by Marcon in the amount of \$8,180 leaving cost for the recommended repairs of \$16,160. Is this an expenditure the Board would like to make as a preventative expense? Mr. Modricker stated that he thinks it is prudent to go ahead and make the repairs, because you never know when a leak will happen. Once the repairs are completed, after the next year we can purchase another 5 year warranty for around \$500 and then again in 5 years another for \$500.

The Board is in agreement to move forward with repairs and purchase the 5 year extended coverage for \$500.

### **2. Public Works Director**

Mr. Modricker stated that during budget talks an application for a recycling grant was discussed. At that time staff suggested a grant for the chipper and talked about refurbishing two one man leaf collectors. Staff still wants to refurbish one leaf collector and purchase two boxes that dump. They cost \$20,000 each and our share would be \$4,000, DEP grant pays 90%. The Board had no objection to this change. The Rosemont / Selders project is on hold waiting for Verizon to relocate a utility line. Curb ramps for micro surfacing are in progress. West College Avenue streetscaping has final right-of-way plans completed. Miller Pipetech will be in town to camera storm pipes.

### **3. Planning and Zoning**

Mr. Stolas stated the Planning Commission had a discussion on updating with SALDO. The land development projects included the Cottages. Staff has also been looked at the proposed sewage facilities module. The Ordinance Enforcement Officer position will be accepting applications until November 30, 2015.

### **4. Chief of Police**

Chief Conrad stated the October Part One crimes were one less than last year. Generally overall crimes are only up 4% year to date. Under other calls for service there were 404 this year compared to 422 last year. Traffic incidents are up by 5%. Traffic citations are down by 5%, parking tickets are way up and criminal arrests are higher. Our Crisis Intervention Team was featured on a local radio show. She is still awaiting word on the School Resource Officer. There was a 32 year old who died due to an apparent drug overdose.

## **5. COG Committee Reports**

### **a. Finance**

Mr. Mascolo attended on Friday, November 13<sup>th</sup> where they reviewed the municipal and public comments on the COG budget. The only request for a reduction in the budget was for the ADA compliant doors at the COG building. Halfmoon Township made a comment that they will not dispute the fire safety storage trailer building that will be constructed on Ferguson Township property. The regional parks loan amendment was approved and recommended to General Forum.

### **b. Parks Capital**

Mr. Mascolo stated the committee discussed the Whitehall Road Regional Park. They also discussed the Senior Center renovations which will cost about \$250,000. There was a change in

the regional parks loan modification to extend the date of the loan for Whitehall Road Regional Park.

**c. Public Safety**

Mr. Clemson stated this was a joint meeting with Public Services and Environmental Committee. They received a good report from PennDot but did not have any road project updates. They received a PowerPoint from First Energy on their emergency response protocols. There was a round table discussion from other emergency services. Mr. Killian stated there seems to be more direct communication between utilities and 911.

**XI. ADJOURNMENT**

Mr. Killian made a motion to ADJOURN the meeting. Mr. Clemson seconded the motion. The motion passed unanimously.

With no further business to come before the Board of Supervisors, Mr. Mascolo adjourned the regular meeting at 9:19 pm.

Respectfully submitted,



Mark Kunkle, Township Manager  
For the Board of Supervisors

Date approved by the Board: 12/14/2015