

FERGUSON TOWNSHIP BOARD OF SUPERVISORS

Regular Meeting
Monday, April 5, 2010
7:00 pm

I. ATTENDANCE

The Board of Supervisors held its first regular meeting of the month on Monday, April 5, 2010 at the Ferguson Township Municipal Building. In attendance were:

Board: Richard Killian, Chairman
Robert Heinsohn
Steve Miller
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; Rob Crassweller, Planning Commission; Dave Palmer, S&A Homes; Web Glebe and Christine Bailey, 115 N. Butz Street; Bill Hechinger and Pam Steckler, 127 Hoy Street; Matt Leitzell, Brownies Valley Tavern, Inc.; Gary Vratarich; and Jeffrey Powers.

II. CALL TO ORDER

Mr. Killian called the April 5, 2010 Regular Meeting to order at 7:00 pm.

III. CITIZEN'S INPUT

Wes Glebe, 115 N. Butz Street, commented on the repaving issue for Route 26 with PADOT. He said the main water lines are on the north side of Route 26 and if there will be any development on the south side, he asked if there were adequate laterals of crossover to the south side.

IV. PUBLIC HEARINGS – RESOLUTIONS

1. A PUBLIC HEARING ON A RESOLUTION AUTHORIZING THE CHAIRMAN AND SECRETARY TO EXECUTE AN AGREEMENT BETWEEN S&A HOMES AND THE TOWNSHIP, VOIDING AND NULLIFYING THE LAND DEVELOPMENT PLAN ENTITLED FOXPOINTE PRD, SECTION 1C, PHASE 1 – THE GABLES AT FOXPOINTE AND FOXPOINTE PRD FINAL RELOT AND RESUBDIVISION PLAN LOTS 1, 2, AND 4

Mr. Kunkle said the purpose of the agreement and the nullification is that the developer has determined based upon the current market that they are not prepared to move forward with those plans. The agreement also requires that within 90 days the developer resubmit a subdivision plan for Phase 4 of Foxpointe so that future phases of the Foxpointe PRD that are not affected by these public improvements can continue. The developers reviewed the agreements and the Township is in possession of those. Mr. Kunkle said this affects the transportation improvements that would be required for development.

Mr. Pytel made a motion to adopt Resolution 2010-10, authorizing the Chairman and Secretary to sign an agreement making the Foxpointe PRD, Section 1C, Phase 1 – The Gables of Foxpointe land development plan, and the Foxpointe PRD Final Relot and Re-subdivision Plan Lots 1, 2, and 4, null and void. 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. CONTINUATION OF A PUBLIC HEARING ON A RESOLUTION TO APPROVE AN APPLICATION FOR A LIQUOR LICENSE TRANSFER OF BROWNIES VALLEY TAVERN, INC., 105 EAST MAIN STREET, MILLHEIM, PA TO 1301 WEST COLLEGE AVENUE, STATE COLLEGE, PA

Mr. Kunkle said the hearing was continued from March 15th to resolve outstanding conditions that might accompany the liquor license transfer from Millheim into Ferguson Township. The proposed conditions for approval have been revised to address amplified entertainment, non-employee access to non-public areas, and on-site parking designations. They have come to an agreement on all but one of the conditions that are outlined. That one condition deals with the distance from the main entrance that they need to restrict smoking. This will be discussed.

Pam Steckler, 127 Hoy Street, outlined a few concerns:

- Regarding the food/alcohol ratio, she and Bill Hechinger believe they should start with a 60 food/40 alcohol ratio. They fear that if they begin with a 50/50 ratio, it will push the business to be more of a bar. This is only natural since the profit margin is much higher on alcohol than food.
- She urged Board members to include a condition that would require the business to close by 11:00 pm. Allowing the business to stay open much later will have a negative impact on the atmosphere.
- She expressed great concern regarding the potential business name of "West End Stadium," which has the feel of a sports bar.
- She asked how much table seating there will be compared to bar seating and how many televisions there will be in the bar area. She suggested that one would be sufficient.
- She expressed concern about King Printing possibly vacating the lower level, saying there could be disastrous results if this business expands.
- She thanked staff for working hard to make this a positive addition to their neighborhood.

Mr. Heinsohn expressed strong objections to Condition 6C. He said they should refrain from telling the proprietors how to operate this business by forcing them to maintain a food to alcohol sales ratio of 1 to 1. He said if these same conditions are not imposed on all other restaurants/bars, then the Township invites legal action for being capricious. He does not believe the Township would be able to properly enforce such a condition. He wants to abandon Condition 6C.

Mr. Keough suggested adding the phrase "on premises" to Item 6E. His concern when reading this was DUI. Mr. Killian said the owner is only responsible for reporting what he sees. Mr. Leitzell agreed. He will report everything he sees, but cannot report things he does not see. Mr. Keough further suggested adding the phrase "if observes or has knowledge of" as well as "on premises." If they see something, they have an obligation because of this agreement to report it. Mr. Kunkle asked what happens if someone else reports something to management. Mr. Keough said the Township would like to have the cooperation of this restaurant in terms of violations that involve criminality. Incidents need to be enforceable. Chief Conrad said if either the owner or the staff sees the activity they will call the police. If someone outside the bar sees something and reports it to staff, there will be the expectation that the police will be called.

Regarding Item K, Mr. Leitzell said he is not a smoker, but he believes 18 feet seems too far of a distance. It will be very difficult to patrol. Signs will be posted, and they will have a designated area. No other restaurant/bar in Centre County or in the entire state has a specific distance for smoking. He proposed a smoking area with signs posted. Mr. Keough asked about someone smoking in their car. He would much rather see the owner address this issue with the promise and intent to have a smoking area designated than to run a bubble around a particular footage from an entrance. Mr. Killian agreed.

Mr. Keough noted that the naming of the facility is outside the Board's jurisdiction.

Mr. Killian summarized the Board's comments. They agreed to change Item 6E to read, "Owner is responsible for reporting of crimes 'on-premises' that 'he has observed or has knowledge of.' These include but are not limited to...." They agreed to change Item K to the language proposed by the applicant, as follows: "The applicant shall designate an outdoor smoking area by posting signs in prominent areas outside of the establishment. Smoking areas shall be in areas that shall be a reasonable distance from any public entrance/exit door and no nearer than ten feet." Ms. Steckler asked about smoking in the outdoor seating area. Mr. Leitzell said they are planning on making that non-smoking.

Mr. Miller made a motion to adopt Resolution 2010-11 with changes as stated, approving the liquor license transfer for Brownies Valley Tavern, Inc., 105 East Main Street, Millheim, PA to 1301 West College Avenue, State College, PA, subject to the conditions set forth in a memorandum from the Manager to the Board dated March 29, 2010. Mr. Keough seconded the motion. Mr. Heinsohn made a motion to amend the motion to withdraw Item C on page 2, but the motion did not receive a second. With Mr. Heinsohn, Mr. Keough, Mr. Killian, and Mr. Miller voting yes, and Mr. Pytel voting no, the original motion passed.

V. COMMUNICATIONS TO THE BOARD

Mr. Heinsohn received great compliments on the Township newsletter. Also, he commented to Dave Modricker on Marengo Lane, saying the road there satisfied standards 40 years ago, but does not anymore. The Township never took the road over. There are 7 homes on that lane and it tends to flood. These residents say this affects the value of their homes when they go to sell. He asked if there is anything that can be done to increase the quality/value of Marengo Lane. Mr. Modricker said it is a private road and has been a discussion item with residents. Marengo Lane is a private road, where the Township does not do maintenance. If residents petitioned the Township to take over the road and succeeded, there may be a chance of the Township maintaining this road in the future.

Mr. Pytel received compliments on the Township newsletter. In addition, he received calls from people on Devonshire Drive for a problem existing in Patton Township. A homeowner between the sidewalk and the curb has put in a garden. Dave Modricker said in Ferguson Township they would need a road occupancy permit and he would be concerned about structures and sight distance, but people often do landscaping there. Mr. Kunkle said this is the second year of this person's gardening in this area. He will inform Patton Township about this issue.

Mr. Keough requested that Mr. Kunkle copy and distribute to the Board a correspondence from Wes Glebe regarding the 200' buffer.

Mr. Miller received a request that the Board consider a formal public input procedure into any land use regulations that require a public hearing. A correspondence was received from Mr. Kunkle. The question is whether or not the Board wants to pursue this as an agenda item. Mr. Keough thinks it deserves discussion by the Board, but he would not want staff to draft something at this point. He has had discussions with the COG Planning Director about his concerns with the Township's procedures to generate public input. He is concerned about the lack of public input at meetings. Mr. Pytel believes the Board has a good working condition with the public, especially with the help of C-Net. Mr. Killian does not perceive this as a problem. In the Centre Region, each municipality has its own Planning Commission. There is a lot of discussion from the various levels. Mr. Miller agreed.

VI. ACTION ITEMS

1. REPORT ON SARATOGA DRIVE PARKING RESTRICTIONS

On March 1st the Board received a request to limit parking on Saratoga Drive between Bristol Avenue and Concord. After discussing this matter, the Board requested the Public Works Engineering Section to study whether or not parking should be limited in this area and further to investigate with CATA the impact that parking along this section of Saratoga Drive may be having on operating a bus within this block. The study recommends posting the street from Bristol Avenue to Charleston Street as No Parking.

Mr. Modricker said the warrant for No Parking was met in the study. In addition the study reviewed corner sight distance. The recommendation of the Public Works Engineer is that on-street parking be restricted at all times on both sides of Saratoga Drive between Bristol Avenue and Charleston Drive as the southern terminus and on-street parking be restricted at all times on the west side of Saratoga Drive between the southern and northern termini of Charleston Drive.

Mr. Modricker checked the Lexington Place duplexes plan for parking. Required parking is 2 spaces per unit plus half of a space for spillover. They have provided 20 spaces as required. Four of them are in the rear parking area. It appears that garage parking was included in the parking ratio. Parking restrictions are warranted, and the Board can take action as appropriate.

Mr. Heinsohn said when people have 2 or 3 cars on busy weekends, they want to be able to park on the street. He feels these restrictions could be cumbersome for residents.

Mr. Miller is opposed to having No Parking on both sides of any street, because in that case, there will be speeding problems. With parking on the street, cars move much more slowly. At the most, he would agree with No Parking on one side of the street, especially around the bus stop and at the corner.

Mr. Pytel is opposed to garages and driveways counting as required parking spaces. He suggested mandating No Parking for a shorter distance along Saratoga Drive.

Mr. Modricker said they have talked with CATA about the bus stops at that location. Mr. Keough said there was no parking anywhere on Saratoga when he was there for an extended period of time. But he observed buses turning onto this road. When buses turn onto Saratoga off of Bristol, if there is a car coming down Saratoga turning onto Bristol, the bus will wait for the car because there is not enough room to turn. Mr. Modricker received CATA's input. They are not concerned about the turning radius; they do not want to move the bus stop; and they have no concern with where the bus stop is currently located.

Rob Crassweller, Planning Commission, lives on Charleston Drive. He said all duplexes there are primarily month to month rentals, so there is a lot of turnover. He agreed with Mr. Miller that on-street parking slows traffic down.

Mr. Kunkle said staff does not have any problems with regard to the study, but he cautioned the Board to be judicious in requesting engineering studies for No Parking. In this case they are taking action to resolve a problem where a problem did not really exist. Mr. Keough noted that it would help if the consequences of requesting a study would have been made known in advance. Mr. Pytel asked, in the future, if an engineer could just go out and take a look at it without completing a formal study.

Mr. Pytel made a motion to have an ordinance prepared, posting No Parking on the east side of Saratoga from Bristol to Concord for the entire distance and on the west side from Bristol to the second entrance of

Charleston Drive. Mr. Heinsohn seconded the motion. With Mr. Heinsohn voting no, and all other Board members voting yes, the motion passed.

2. VARIANCE REQUEST – CONFER TOYOTA

Mr. Kunkle said this is a sign variance request to allow Confer Toyota to construct a wall sign larger than that permitted under the sign ordinance. The applicant has indicated the hardship being that the building is over 200 feet from the roadway. He suggested that the Board remain neutral.

Mr. Miller would favor taking a position opposing the sign because it is a lighted sign facing a residential neighborhood along Clinton Avenue. It is more than twice as big as what is currently permitted. Mr. Killian suggested possibly opposing the sign with the restriction that it can only be lit during hours of operation. Mr. Miller is opposed to having a lighted sign at that location period. Mr. Pytel agreed. Mr. Heinsohn wants to remain neutral. Mr. Keough is not opposed, so he would be willing to remain neutral. Mr. Killian does not see the purpose of this sign, so he would be willing to recommend opposing it.

Mr. Miller made a motion to recommend opposing the variance request for Joel Confer Toyota. Mr. Pytel seconded the motion. With Mr. Killian, Mr. Miller, and Mr. Pytel voting yes, and Mr. Keough and Mr. Heinsohn voting no, the motion passed.

3. REPORT ON PADOT WEST COLLEGE AVENUE RE-SURFACING PROJECT, ADA REQUIREMENTS

Mr. Modricker said last year PADOT had a re-surfacing project planned for West College Avenue within Ferguson Township, but it never got underway. This was partly because of the necessity for them to address ADA handicap accessibility issues for sidewalks that adjoin the roadway along West College Avenue. They began discussions with the Township and finally in March received correspondence indicating that they were proceeding with the project and outlining those streets that had sidewalks and they wanted to know how the Township planned to address these issues.

He reviewed all locations, determined those that he believed were Township responsibility, etc. and talked to a representative with PADOT. They were anticipating entering into an agreement for 50/50 participation on 3 of the ramps. But he had concerns about the terms of the agreement. As it turns out, there are few municipalities that are actually entering into a formal agreement with PADOT. Instead, PADOT will do their re-surfacing project. They will take care of those ramps that they feel are their responsibility. On side streets, they will transition into them the best that they can. PADOT will do the pavement project. There are some areas where handicap ramps need to be addressed. The Township will address its part of the project after PADOT has completed their paving projects. He provided details on specific projects.

4. DISCUSSION OF TOWNSHIP CONTRIBUTION TOWARD LOCAL SHARE OF WHITEHALL ROAD PARKLAND ACQUISITION

The General Forum has authorized submission of a grant application to the Department of Conservation and Natural Resources to provide funding toward the acquisition of a 25-acre parcel which the Township has an option to purchase with Penn State. The Board has previously approved a contribution toward the 50% matching share.

Mr. Kunkle said this is a regional park that has been master planned. All of the master plans seen so far incorporate the 25 acres, which the Township has a 10-year option on to acquire that land from the University. The COG Capital Parks Committee authorized an appraisal of the property, which was completed. Revised appraisals have been completed. Mr. Kunkle provided the breakdown of funding. With the revised appraised value of the property, if Ferguson Township retains the 30% share, its contribution would be around \$70,530.

Mr. Miller said, with the difference in appraisal, the Township may be able to count a PSU contribution as part of the local match. He recommended approval matching with 30% of the monetary amount of the local share.

Mr. Miller made a motion to contribute 30% of the cost outlay of the local share of the purchase. Mr. Pytel seconded the motion. The motion passed unanimously.

5. CONSENT AGENDA

- a. Thistlewood Subdivision Public Improvements Surety Reduction Request Number 7

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

VII. REPORTS

a. Manager

The PLCM Annual Convention will be held in Bethlehem on June 23-25.

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: They are awaiting final utility drawing and right of way plans from Trans Associates prior to scheduling a meeting with affected residents to review the status of the project.

Old Gatesburg Road Extension: A “design field view” meeting was held on March 22nd. Comments are being addressed by the designer, Keller Engineering, and the project is still on schedule for a bid letting in September. A right of way plat was prepared for the property of Galen Dreibelbis. Once an appraisal is completed, an offer for the right of way will be presented to Mr. Dreibelbis.

c. Director of Planning and Zoning

ZONING FOR COMMUNITY GARDENS

Staff presented a revised draft of proposed text which had previously been forwarded to the applicant. This text was divided into a set of proposed guidelines and a set of proposed regulations in an attempt to avoid any over- regulation of the operation of this use. Discussion included which zoning districts should permit the use, permitting the use within the floodplain, and placement of the gardens within a site developed for another use. Staff has made revisions to the text based on this discussion and anticipates presenting the Commission with the final version at their next meeting on April 12, 2010.

RA BUFFER TEXT AMENDMENT

The Commission discussed text that was prepared based on the Board's action at their meeting on March 15, 2010. This included the provision of a 50' "buffer area" with a 6' fence or the use of a 5' wide landscaped area as well as a requirement to remove all invasive plant species present in an existing tree row. The Commission continued to debate the appropriateness of the installation of either of these improvements and urges the Board to reconsider adopting any regulation that requires either of them. Staff has drafted language which has been sent to the Township's Solicitor to ensure it is appropriate in retaining the existing buffer and imposing the new buffer on land which might be rezoned in the future. After obtaining the Solicitor's review, the amendment will be advertised for a public hearing.

OTHER TEXT AMENDMENTS

A series of minor amendments is being proposed to address a number of issues that have been discussed by the Commission in the past year. These include changes to the permitted uses on farm lots in the RA zoning district, to the language identifying the applicability of the parkland fee-in-lieu requirements to all residential development, and to the provisions which identify the procedure for filing a minor alteration plan for recording. Two additional amendments are being developed to be included with this group. They include the potential inclusion of hunting preserves in the RR zoning district and the elimination of language recently adopted to regulate the location of Treatment Centers in the Township.

Mr. Keough said the Commission is working on the revised Ag Buffer regulations. He suggested hearing a brief overview from Rob Crassweller, Planning Commission member, since he was present at this meeting and since his primary profession is agriculture.

Mr. Crassweller spoke on behalf of the Planning Commission. As a group, the Commission feels that the 200' buffer is an admirable thing this Township has. Many growers have had to stop planting because it was right next to the boundary of a housing development. If the buffer is not in place, people start complaining as drifting occurs. It is the responsibility of all farmers to keep drift within their property boundaries, but it is difficult to convince residents of this. In some places there is no setback, and land is essentially lost. Also, the Board has asked the Commission to look into a fence or some type of vegetation. If there is an existing tree line, they would keep that. But they do not feel it is appropriate to require them to install a fence due to the ambiguity of who would maintain it, etc. Mr. Pytel said the buffer must be on the property that is *not* the farmland. He wants whoever buys the property to understand they are abutting a farmer. Mr. Crassweller said they have a very good ordinance as it is and he would like to see it maintained. Ms. Lang said the Commission's position has been consistent to leave the buffer at 200' and not require a fence or vegetative buffer. The vegetative buffer was meant to be 5' wide, not 5' high. Mr. Crassweller suggested that it may be difficult to find plant material to meet these requirements. Mr. Pytel said the Board wants some type of barrier between residential property and a farm. Ms. Lang said they have been looking for some sort of plant material that is resistant to pesticides used on field crops, but that has been difficult to find. Mr. Keough said near hedgerows, they have to be aggressive with their herbicides because of invasive species issues.

d. COG Committee Reports

- a. *Transportation and Land use* – Mr. Pytel said they met on April 5th. He was shocked that the Pine Grove Mills bypass was removed because Ferguson Township did not request it. Every year the Township needs to request it in order for it to remain on the LRTP. Mr. Miller said they actually voted to remove that last year. Mr. Pytel strongly feels the Pine Grove Mills bypass should be put back on the list. He noted that they discussed how they prioritize these projects. They are trying to get more of

the smaller projects moving up into a realistic timeframe. A problem that came up was that they are looking at doing some work in Valley Vista. That might fit into a program where some money could be obtained for this project. Also, on May 3rd they will meet again. There is a joint meeting with the CRPC and transportation on May 11th. The meeting with the MPO will be in Ferguson Township again on April 27th.

- b. *Parks Capital* – Mr. Miller attended last week. There was discussion on how parks will be funded. There is dissension among COG members regarding this. At the current state, the idea of continuing as they have been does not seem feasible to several members. The idea of paying for the whole thing through a bond issue is not feasible for others. They are looking for a compromise. One option would be to turn all three parks into playing fields, and nothing else. This would be funded with \$8.1 million. There will be a revised proposal for the initial phases at the April 15th meeting. The idea is to develop all three fields concurrently, so there would have to be some sort of bond issue. Hess Field is part of the overall proposal. Mr. Heinsohn noted that dealing with them as playing fields now and parks at a later time is a way of getting started more quickly. Mr. Killian pointed out the Board's previous position that all 3 parks should go through concurrently.

I. MINUTES

Mr. Miller made a motion to approve the March 15, 2010 BOS Regular Meeting minutes. Mr. Heinsohn seconded the motion. The motion passed unanimously.

II. ADJOURNMENT

With no further business to come before the Board of Supervisors, Mr. Killian adjourned the April 5, 2010 Regular Meeting at 9:10 pm.

RESPECTFULLY SUBMITTED,

Mark Kunkle, Township Manager
For the Board of Supervisors

Date approved by the Board: 04-19-2010