

## **FERGUSON TOWNSHIP BOARD OF SUPERVISORS**

Regular Meeting  
Monday, May 17, 2010  
7:00 pm

### **I. ATTENDANCE**

The Board of Supervisors held its second regular meeting of the month on Monday, May 17, 2010 at the Ferguson Township Municipal Building. In attendance were:

<b>Board:</b>	Richard Killian, Chairman	<b>Staff:</b>	Mark Kunkle, Township Manager
	Robert Heinsohn		Trisha Lang, Director of Planning and Zoning
	Steve Miller		David Modricker, Director of Public Works
	Bill Keough		
	George Pytel		

Others in attendance included: Marsha Buchanan, Recording Secretary; Bill Hechinger and Pam Steckler, 127 Hoy Street; Christine Bailey, 115 N. Butz Street; John Simbeck, 117 Delaware Road, PA Furnace; Harry Marshall, Westfield Subdivision, Doug Loviscky, and Greg Dreibelbis, Westfield Subdivision; David R. Williams; Phyllis Mansfield, 1000 W. Beaver Avenue; Gary Mitchell and Catherine Alloway, Schlow Library; and Nick Molawskey, Centre Daily Times.

### **II. CALL TO ORDER**

Mr. Killian, Chairman, called the May 17, 2010 meeting to order at 7:00 pm.

### **III. CITIZEN'S INPUT**

Pam Steckler, 127 Hoy Street, said her home is within the proposed TS District. She read a letter on behalf of several area residents, which was directed to the Board of Supervisors.

Bill Hechinger, 127 Hoy Street, provided solar data regarding shadowing of taller buildings along Beaver Avenue. He noted that one of the intended goals of the TS zoning is to promote multi-modal transportation and expressed concern about its failure to do this completely. He expressed further concern about parking in the proposed TS District and about the district not being bicycle-friendly. He suggested rethinking the width of the street.

Phyllis Mansfield, 1000 W. Beaver Avenue, said her neighborhood is unique. She said the TS District is a neighborhood in transition and the Board has the power to keep its original, beautiful character. She urged the Board to be sensitive to what the proposed TS District with tall buildings on W. College Avenue would do to the neighborhood.

### **IV. ABC REPORTS**

Gary Mitchell, Schlow Library, introduced the Library's new director, Cathy Alloway. Ms. Alloway said one thing that attracted her to this library was the community's support of it. Once again this year, the state is discussing public library funding cuts. They are proposing another 2% cut in the subsidy. She pledged to raise funds in an effort to close that gap. She would appreciate the Board's support in contacting state officials to urge them not to cut this funding.

Mr. Miller asked if the state has cut back on district center aid as well. Ms. Alloway said the Library is still expected to stay open 65 hours per week. If not, they could lose the remainder of the state aid they receive.

Mr. Kunkle asked how much of the \$181,000 in state revenue that was lost was for the district library operation versus the local library operation. Ms. Alloway said not much of it was from the district operation. The biggest hit was taken in the direct public library subsidy. The other hit came in Power Library, which purchases databases.

## **V. PUBLIC HEARINGS – ORDINANCES**

### **1. A PUBLIC HEARING ON AN ORDINANCE OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, PENNSYLVANIA, AMENDING THE CODE OF ORDINANCES, CHAPTER 19, SIGNS AND BILLBOARDS, SECTION 110, COMMERCIAL USES, BY ADDING SUBSECTION I, AUTOMOBILE DEALERSHIP SIGNS**

The proposed ordinance is to reinstate a section of the sign ordinance that was inadvertently deleted in 2006 when the entire sign ordinance text was re-written and re-adopted. This particular section deals with automobile dealership signs. The Planning Commission recommended approval to the Board.

Mr. Pytel made a motion to adopt Ordinance 934, amending the Code of Ordinances, Chapter 19, Signs and Billboards, Section 110, by adding Sub-Section I, Automobile Dealership Signs. 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 PUBLIC HEARING ON AN ORDINANCE OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, PENNSYLVANIA, AMENDING THE CODE OF ORDINANCES, CHAPTER 27, ZONING, AS FOLLOWS: (1) PART 12, DEFINITIONS, SECTION 1202, DEFINITIONS, BY ADDING THE DEFINITION OF COMMUNITY GARDEN; (2) PART 2, DISTRICT REGULATIONS, SECTION 204, USE REGULATIONS, BY ADDING SUBSECTION MM, COMMUNITY GARDENS; (3) PART 4, RESIDENTIAL DISTRICT, SECTION 401, SINGLE-FAMILY RESIDENTIAL DISTRICT, SECTION 402, FAMILY RESIDENTIAL DISTRICT, SECTION 403, TOWNHOUSE RESIDENTIAL DISTRICT, SECTION 404, MULTI-FAMILY RESIDENTIAL DISTRICT, SECTION 405, VILLAGE DISTRICT, SECTION 406, MOBILE HOME PARK DISTRICT, AND SECTION 407, PLANNED RESIDENTIAL DEVELOPMENT DISTRICT, BY ADDING COMMUNITY GARDENS AS A PERMITTED USE IN EACH; AND (4) PART 6, INDUSTRIAL DISTRICT, SECTION 602, LIGHT INDUSTRIAL RESEARCH AND DEVELOPMENT DISTRICT, BY ADDING COMMUNITY GARDENS AS A PERMITTED USE**

On April 19<sup>th</sup> the Board reviewed and approved for advertisement an ordinance permitting Community Gardens in various zoning districts. This request was brought before the Board in late 2009 by one of the churches located on Science Park Road. The Commission has reviewed and recommended that the Board approve the ordinance permitting community gardens in all residential zoning districts and in the IRD zoning district with certain regulations.

Mr. Heinsohn objects to planting a cover crop “no later than mid-October” as well as to the phrase “cover crop,” saying this has nothing to do with public health and safety. The proposed ordinance will be ignored by most sensible gardeners, which will make enforcement very difficult.

Mr. Killian noted the Board's previous discussion on moving the time period of the cover crop or eliminating it. Mr. Pytel suggested dropping “cover crop” and simply saying “after all gardens are tidied and prepared for winter.”

Mr. Miller believes it *is* within the scope of safety and health to require a cover crop, but believes it is not a very practical thing to do.

Mr. Heinsohn made a motion to adopt Ordinance 935 as written, amending the Code of Ordinances, Chapter 27, permitting community gardens in all residential zoning districts and in the IRD zoning district.

Mr. Pytel seconded the motion. With Mr. Heinsohn, Mr. Keough, Mr. Killian, Mr. Miller, and Mr. Pytel all voting yes, the motion passed unanimously.

Mr. Keough asked if "no signage permitted" would include a No Trespassing sign, a sign containing regulations for the community gardens, and a directional sign. Ms. Lang said the regulations include only signs that are for advertising purposes. Mr. Keough suggested adding more definitive language to distinguish that this regulation is referring to advertising.

Mr. Pytel made a motion to re-advertise an amendment to the ordinance to reflect the Board's decision to eliminate the words "by planting a cover crop no later than mid-October," leaving the requirement that "all gardens shall be tidied and prepared for winter." In addition, the phrase "no signage related to the garden is permitted" should be changed to "no signage related to the advertising of the garden is permitted." Mr. Heinsohn seconded the motion. The motion passed unanimously.

## **VI. PUBLIC HEARINGS – RESOLUTIONS**

### **1. A PUBLIC HEARING ON A RESOLUTION AUTHORIZING THE CHAIRMAN AND SECRETARY TO EXECUTE A GROUND LEASE BETWEEN THE TOWNSHIP AND SHELDON CORL FOR TAX PARCEL #24-735-100A**

Mr. Kunkle said this property was recently surveyed in anticipation of getting the park master plan for a 5.5+ acre parkland. He has issued an RFP and the Township will be seeking a community project oversight group to work with the consultant to develop this park master plan, but this will take time. Sheldon Corl has been farming this portion of the property for several years. This ground lease is consistent with what has been done with the Whitehall Road parkland and the rate per acre lease is consistent with similar ground leases within the Township. Mr. Corl has reviewed and agrees with the lease. Mr. Kunkle said this is only for the 4 acres received from Mr. Sahakian.

Mr. Pytel made a motion to adopt Resolution 2010-14, authorizing the Chairman and Secretary to execute a ground lease between the Township and Sheldon Corl for Tax Parcel #24-735-100A. 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 PUBLIC HEARING ON A RESOLUTION AUTHORIZING THE TOWNSHIP TO FILE DECLARATION OF TAKING FOR RIGHT OF WAY FOR THE EXTENSION OF OLD GATESBURG ROAD BETWEEN SCIENCE PARK ROAD AND BLUE COURSE DRIVE**

Mr. Kunkle said right of way plats for the three parcels of property have been completed by Keller Engineering. Chris Aumiller's appraisal will probably not be completed within the next couple of weeks. This project needs to be out to bid in September 2010. Prior to that, there are a number of critical benchmarks that must be met, one of which is the clearing of right of way. Two of the parcels are owned by John Imbt. Mr. Imbt will be gifting the right of way for those parcels to the Township at no cost. A third parcel is owned by Galen Dreibelbis, who is aware of this project. Prior to suggesting that the Township move forward with this, Mr. Kunkle contacted Mr. Dreibelbis. By filing the Declaration of Taking, the Township will then be able to meet the milestone for beginning the clearance of right of way. In the interim, staff will speak with Mr. Dreibelbis to provide him with appraisals and other necessary information.

Mr. Modricker clarified that some of the plats have been revised. He clarified that the three parcels are now five parcels, but have the same property owners.

Mr. Pytel made a motion to adopt Resolution 2010-15, authorizing a condemnation of lands of certain property owners for right of way for Old Gatesburg Road Extension between Science Park Road and

Blue Course Drive. Mr. Heinsohn seconded the motion. With Mr. Heinsohn, Mr. Keough, Mr. Killian, Mr. Miller, and Mr. Pytel all voting yes, the motion passed unanimously.

## **VII. COMMUNICATIONS TO THE BOARD**

Mr. Heinsohn said farmers along Whitehall Road have contacted him regarding surveying. They are concerned that metal posts are being used to hold up flags, and metal could eventually end up in their animal feed. They urged the Township to only use wooden stakes to attach surveyors' flags. Mr. Modricker will forward this suggestion. Mr. Keough said the request should include the collection of all metal flag posts.

Mr. Pytel said he received several calls regarding the W. College Avenue redevelopment project from concerned residents. He explained to them that no decisions have yet been made.

Mr. Keough said he communicated with a resident regarding signing up for the Ag Security Area Program and also followed up with some discussion about the park master plan. In addition, he attended the PADOT meeting on May 13<sup>th</sup> that dealt with changes that will be made from W. College Avenue to Atherton Street. He was pleased with the thoroughness of their design and ultimate implementation of the road. There is an anticipated 2014 completion date.

## **VIII. ACTION ITEMS**

### **1. WESTFIELD PROPERTY OWNERS REQUEST FOR FUNDING**

Mr. Kunkle said the Westfield property owners have met since the Board last received information on December 7<sup>th</sup> regarding the basins. The developer of Westfield, Don Coyne, passed away. There was an offer from the developer to the property owners that he would contribute up to \$1,000 toward repairing one of the deficient basins. The property owners did not come to the conclusion to contribute the balance of the funds needed to make that repair. Based upon a soils engineering report by CMT, a total cost estimate was provided in the amount of \$1,944, making the property owners about \$1,000 short of having sufficient funds to make that repair. The property owners have requested that the Township contribute the remaining \$1,000 to make the necessary repairs.

The Homeowners Association (HOA) documents indicate that the association is responsible for the maintenance of those basins. Mr. Pytel fears putting any money into this. There are a lot of basins with problems. This may end up setting a precedent, which the Township does not want to do. He does not believe the Township should get involved.

Mr. Keough is always concerned about setting a precedent, but said the history of this situation is unique in terms of Mr. Coyne's lack of initial action to establish the HOA when it should have been done. He thinks the reclamation of this sinkhole is prudent and the Township needs to move forward. He is sympathetic to the HOA's unwillingness to accept responsibility of this basin and feels the Township should contribute the remainder of funds necessary to make the repairs.

Mr. Miller said this is not a question of whether the HOA accepts responsibility. The responsibility is there contractually. He believes setting a precedent could create problems in the future. He is opposed to the Township contributing to these costs.

Mr. Modricker noted that sinkholes are a common occurrence. He echoed the concern regarding setting a precedent and urged the Board to be cautious about granting requests such as this.

Mr. Killian asked, based upon the number of members in the HOA, what the cost per homeowner would be. Mr. Kunkle said it would be about \$25 per property owner.

Doug Levitsky, Westfield, said the HOA met. There was concern as to the responsibility for turning over the basin in working order and, if they do have that responsibility, how they would go about collecting dues. In the interest of trying to resolve this in a timely manner, they proposed that \$1,000 from Mr. Coyne plus \$1,000 from the Township would give them the time they need to form a more organized HOA. He said there is another storm water basin on a separate lot, which Mr. Coyne retained and refused to turn over to the HOA.

Mr. Miller asked, if the issue is getting the money available quickly, whether the Township could loan the money to the HOA until they are able to form a more organized group. Mr. Kunkle said normally that is secured by the ability to file a municipal lien against the property. In this case, the HOA does not have an asset to which a lien could be attached. The Township Solicitor could possibly assist the Board in coming up with a resolution.

Mr. Kunkle said the third party whose property contains the other basin is aware that it is their responsibility to maintain it. Mr. Killian cautioned against using taxpayers' funds to donate to any private property. Mr. Keough said there is a history in this development with Mr. Coyne, where in order to meet the law, he created a HOA with himself as the President, and only officer. Ms. Lang said it is fairly common for the developer to act as the sole officer until a certain number of lots are sold.

Greg Dreibelbis, Westfield, said the HOA still has not been turned over to the residents. He stated that the Township does bear a responsibility with the storm water basin since it was either faulty construction or faulty design that led to this issue. Mr. Modricker added that active sinkholes exist in the Township even under the best scenarios. Mr. Dreibelbis said this is not classified as a sinkhole according to CMT. Mr. Modricker disputed that, saying it is in an area that is prone to sinkholes. Mr. Levitsky said those lots and the basin were built on fill material. The basin was not constructed according to standards. Mr. Modricker said this is a prevalent issue and repairs vary according to each situation. He cannot speak to the design, construction, or inspection of the basin.

Mr. Pytel made a motion *not* to contribute funds toward the repairs to the south storm water detention basin in the Westfield Subdivision. Mr. Miller seconded the motion. With Mr. Keough opposed, and all other Board members voting yes, the motion passed.

## **2. REPORT ON ENERGY PURCHASING CONSULTING SERVICES**

Mr. Kunkle reported that the Township has been working with other municipalities, school districts, and authorities to determine the best approach to address the January 1, 2011 deregulation of electric energy to those customers of Allegheny Power. Regionally, most municipalities will be selecting Premiere Power Solutions. In addition to the metered electric energy needs, there are also unmetered needs (street lights). All but a few of the street lights work according to a rate tariff that is set for different intensities of lights. Premiere Power Solutions can provide a competitive rate from Allegheny Power. Mr. Kunkle anticipates entering into a contract with Premiere Power Solutions to bid the Township's electric needs beginning January 1, 2011. They will also evaluate the benefit of going longer term over a three-year period and will be willing to evaluate the Township's current electric bills with Allegheny Power, which could save money. Last month the General Forum approved Premiere Power Solutions as the energy consultant.

Mr. Kunkle clarified that Premiere Power Solutions would broker the purchase. The Township would be buying energy off of the grid. Mr. Keough said there may be some interest in the Region looking at something more than just the municipality issues, but also the possibility of taxpaying residents being able to take advantage of opportunities.

## **3. VARIANCES**

**A. NICHOLAS FAMILY LIMITED PARTNERSHIP, 3075 ENTERPRISE DRIVE, STATE COLLEGE, PA**

Mr. Miller made a motion to remain neutral on the variance application of Nicholas Family Limited Partnership. Mr. Heinsohn seconded the motion. The motion passed unanimously.

**B. APPEAL OF NOTICE OF VIOLATION AT 4607 WEST WHITEHALL ROAD, PA FURNACE, PA**

Mr. Kunkle said there has been an appeal of the Zoning Officer's decision. This is property represented by Lisa Campbell. The notice of violation is in response to a second business being operated on the property. This has been determined to be in violation to the RA zoning district regulations. In the alternative, the applicants are requesting a variance to a second business being located on the property. Staff recommends that the Board oppose the variance. Mr. Heinsohn said the address is actually the address of the Campbell Farm farther down on Whitehall Road. They are using the property throughout the day and store their vehicles there. He does not know if the address needs to be changed. Mr. Kunkle said that is the address of the owner.

Mr. Miller expressed concern that granting this variance could set a precedent in the Township. Parking two trucks on the farm is not a big problem, but if there are six tractor trailers needing parking spaces, there is a bigger problem. The line must be drawn somewhere. Ms. Lang said this is a business that has grown too big for the home occupation permit he has. The business end of it is in his home. Mr. Killian pointed out that the Zoning Officer did not drive by and notice this; it was based upon a citizen's complaint. If ordinances are not enforced, they will become obsolete.

Mr. Pytel made a motion to oppose the variance and support the Zoning Administrator's Notice of Violation in response to the application filed for 4607 West Whitehall Road. Mr. Miller seconded the motion. With Mr. Heinsohn opposed, and all other Board members voting yes, the motion to oppose the variance passed.

**4. APRIL 2010 VOUCHER REPORT**

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

**5. CONSENT AGENDA**

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

**IX. REPORTS**

**a. Public Works Director**

Mr. Modricker provided detailed information about various 2010 Contracts and reported the following:

Last week he attended the Centre County MPO technical committee meeting where two projects from the 5-year capital improvement program (which he is preparing) were discussed. The first project is the Pine Grove Mills traffic signal, which appears on the LRTP in the year 2031. It is currently in the 5-year plan. The second project in the LRTP is the lower truck ramp. The preliminary engineering has started on that project. It is in the transportation improvement plan for the years 2015-2018. It may be moved up sooner than that. Chestnut Street is in the 5-year capital improvement plan, so he adjusted that as well.

**b. Director of Planning and Zoning**

Ms. Lang provided information on the Policy Plan chapter of the adopted 2000 Comprehensive Plan entitled Community Design. At the meeting, Ms. Lang provided Commission members with information documenting the results of the public input process for the Comprehensive Plan which has now concluded, as well as additional information they requested on shadowing related to building height along the W. College Avenue corridor.

Ms. Lang provided an overview for Board members on the Amendment of RA Buffer Area Requirements. She said the provision for a 5-foot vegetative buffer tends to conflict with some areas of the existing ordinance. She outlined those for the Board. *She asked Board members if the Township can utilize the existing landscape buffer requirements and simply amend them to add a buffer between single family/residential and Ag land. In addition, she asked if they should re-think the requirement to add landscaping adjacent to active farmland, and whether or not they still want to create a new landscape requirement that applies to some properties and not others, while the existing regulations continue to apply in some cases to some of the same properties.* The Board had a lengthy discussion regarding fences, vegetative buffers, and tree rows, and decided to add this discussion to the agenda for the next Board of Supervisors meeting.

Ms. Lang summarized the Board's comments: Where there is an existing tree row that is on the farmer's side of the property boundary instead of *on* the boundary, there should be a fence put up by the developer. There was consensus among Board members.

The Board will add the Ag Buffer issue to their June 7<sup>th</sup> meeting agenda for further discussion.

**c. Chief of Police Report**

Mr. Modricker reported on Chief Conrad's behalf as follows:

Part 1 and Part 2 crimes are down. A DUI checkpoint was conducted as part of the DUI grant, and 11 DUI arrests were made.

**d. COG Committee Reports**

- a. *Public Services and Environmental* – Mr. Heinsohn said there was a report regarding the collection of food waste.
- b. *Public Safety* – Mr. Keough said the Board will receive a report regarding pre-hospital care service providers. They have created a table to provide information on numbers of calls, etc. and are very pleased with the amount of interaction and support each of them give. Centre County has also been preparing a hazard mitigation plan. Discussions have been taking place regarding the Centre Region traffic pre-emption system. A new resolution will come forward soon. One issue is that of the maintenance of these pre-emption systems. According to the data they received, all traffic lights since 2007 or 2008 now include the technology for pre-emption systems. The only technology that must be purchased is what goes in the vehicle.
- c. *Joint Meeting for Transportation and Land Use and CRPC* – Mr. Pytel said they discussed finding a way to use the money they already have for projects such as the Pine Grove Mills ramp. The money for the next four years has already been committed. They are looking at the Comprehensive Plan update. There is a grant for which they plan to apply. They amended the agreement with the MPO to include Robert's Rules.

**X. POTENTIAL AGENDA ITEMS FOR UPCOMING MEETINGS**

- CNET Annual Report – Cindy Hahn
- Land Development Plans currently under review
- Discussion on W. College Avenue TS District Design Guidelines – Ms. Lang suggested waiting one more meeting so the Board can receive a recommendation from the Planning Commission. She would amend the Design Guidelines to go along with those recommendations.
- Notes from Worksession regarding meeting guidelines

## **XI. MINUTES**

### **1. May 3, 2010 BOS Regular Meeting**

Mr. Pytel made a motion to approve the May 3, 2010 BOS regular meeting minutes. Mr. Heinsohn seconded the motion. The motion passed unanimously.

## **XII. ADJOURNMENT**

With no further business to come before the Board of Supervisors, Mr. Killian adjourned the May 17, 2010 Regular Meeting at 9:56 pm.

RESPECTFULLY SUBMITTED,

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Mark Kunkle, Township Manager  
For the Board of Supervisors

Date approved by the Board: 06-07-2010