

FERGUSON TOWNSHIP BOARD OF SUPERVISORS

Regular Meeting
Monday, July 2, 2012
7:00 pm

I. ATTENDANCE

The Board of Supervisors held its first regular meeting of the month on Monday, July 2, 2012 at the Ferguson Township Municipal Building. In attendance were:

Board: George Pytel, Chairman
Richard Masoclo, Vice Chairman
Elliott Killian
Andrew Clemson
Bill Keough

Staff: Mark Kunkle, Township Manager
Trish Lang, Director of Planning & Zoning
Dave Modricker, Director of Public Works

Others in attendance included: Barbara Donnini, Recording Secretary; Ben Locke; Thierry Daubenspeck; Gary Schell; Chris Schell; John Spychalski; Keith Jervis; Karen Jervis; Tony Fruchtl; Dave Palmer; Lani Daubenspeck; Mark Tornetti; Cathy DeSanto; Nicole West; Jeremy Wimpey; Lynn Sedehamer; Lou Oliva.

II. CALL TO ORDER

Mr. Pytel, Chairman, called the July 2, 2012 Regular Meeting to order at 7:00 pm.

III. CITIZEN'S INPUT

- Dr. Gary Schell provided an update on the Overlook Heights Park parcel that is being sold by State College School District. He said it is a buffer between the commercial Atherton Street and the residential Overlook Heights. He said that the School District will make a decision on the sale of the parcel at their August 13th meeting. Dr. Schell said there are both commercial and residential bidders and that although the Overlook Heights Homeowners Association put together \$8,000, they were outbid by Fozard, who offered \$20,100. Dr. Schell believes Fozard plans to develop this property commercially and requested a letter of support from the Ferguson Township Board of Supervisors.

Mr. Pytel said he has no problem sending a letter to the School Board in favor of keeping this land a park and the Board directed the Township Manager to send a letter of support to the school board.

- Mr. Daubenspeck stated that he is the Scout Master for Troop 44, and that last Tuesday Mr. Killian and Mr. Keough came to visit his troop. He said that this helped some of the scouts meet their requirements for advancement and he thanks the two Supervisors for their support.
- Mr. Locke stated that he lives on Berkshire Drive, which is a loop road that comes off of Devonshire Drive. He said that the western leg of the loop is extremely dangerous and that there was a serious accident there in the past few days, where an SUV rolled over. Mr. Locke said that he has lived there for 9 years, and that there is a steep unbanked decline. He said the change of direction going around that corner is >90 degrees. Mr. Locke said that the speed limit is 25 mph, but no one except the people that live there actually drive that speed. He

suspects people are going 40-50 mph, as it's a steep downhill. Mr. Locke said that trees between the sidewalk and the street obscure vision, so people on the inside tend to ride in the middle of road. Mr. Locke said that 661 Berkshire Drive, where the corner begins, has replaced their mailbox 5 times in the last 4 years. Mr. Locke provided additional data regarding the danger of the corner and said that 35 children live in that span from birth to teens.

Mr. Killian asked if there were ordinances against the obstructive brush. Mr. Kunkle said that if they are between the sidewalk and the road they can be trimmed or removed. Mr. Modricker said he will take a look at the situation in person.

Mr. Pytel said he has no problem with Mr. Kunkle asking police to continue to monitor speed there.

Mr. Killian asked if traffic calming is possible in this location instead of enforcement. Mr. Modricker said that 25 mph is the lowest enforceable speed, and that it seems to be a blatant speeding issue more so than design constraints.

IV. ABC REPORT – JOHN SPYCHALSKI – CATA

Mr. Spychalski said that there are new busses on street and that 27 out of the 28 ordered busses have been delivered to CATA by the manufacturer. He said that 20 are actually in service and the others are being set up in the shop for things such as fare boxes. Mr. Spychalski said that a number of the busses being replaced by new ones have already been disposed of and more are online and up for sale. He said that cumulative annual ridership from July 1, 2010 to the end of April 2011 stood at 6,700,562. For the same period from July 1, 2011 – April 2012, annual ridership was 6,627,267. He said this is a decline of a little over 1%.

Mr. Spychalski said that work is in progress for the auxiliary outdoor parking at the CATA main site. He said the lowest bidder was Stone Valley Construction. Mr. Spychalski continued saying that CATA is not a fixed route transit provider, but that they have vanpool options as well. He said that last year at this time, 21 vanpool groups were in operation, and now one year later, there are 31.

Mr. Spychalski announced that CATA employee Dave Effinger is back safely from serving in Afghanistan. He is CATA's lead operations supervisor.

Mr. Kunkle asked about the results of the public hearing with Centre Ride and the fare increase. Ms. Oliva said about 4 people showed up, and although part of the discussion was regarding fare increases, the rest was about contractors and how services would work. She said that all comments were pretty minor.

V. PUBLIC HEARINGS – ORDINANCE

- 1. AN ORDINANCE OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, PENNSYLVANIA, AMENDING THE CODE OF ORDINANCES AS FOLLOWS: 1) CHAPTER 27, ZONING, PART 5, COMMERCIAL DISTRICTS, BY DELETING TABLES 501 AND 502 AND SUBSTITUTING THEREFORE NEW TABLES 501 AND 502; (2) CHAPTER 27, ZONING, PART 6, INDUSTRIAL DISTRICTS, BY DELETING TABLES 601 AND 602 AND SUBSTITUTING THEREFORE NEW TABLES 601 AND**

602; AND (3) CHAPTER 27, PART 12, DEFINITIONS, SECTION 1202, DEFINITIONS, AS FOLLOWS: (A) BY ADDING A DEFINITION FOR MAXIMUM IMPERVIOUS COVERAGE.

Mr. Kunkle said this zoning ordinance amendment would remove limitation on maximum building coverage and substitute it with maximum impervious coverage for development of lots in the Industrial and Commercial zoning districts.

Ms. Lang confirmed that this ordinance was developed after Ferguson Township was approached by CATA due to issues with their on-site parking requirements. She said she gave the Planning Commission 6 or 7 options as to how this could be addressed, and they chose to recommend the option of eliminating the max coverage requirement.

Mr. Mascolo made a motion to adopt the ordinance amending the Code of Ordinances Chapter 27 for the commercial district by changing the maximum impervious and maximum building requirements as stated in the specified districts. Mr. Clemson seconded the motion.

Roll Call Vote: Mr. Killian – Yes; Mr. Pytel – Yes; Mr. Keough – Yes; Mr. Clemson: Yes; Mr. Mascolo: Yes. Mr. Kunkle announced that this is Ordinance 968.

VI. PUBLIC HEARING

1. CONTINUATION OF A PUBLIC HEARING ON A REVISION TO THE FOXPOINTE PRD MASTER PLAN AND TERMS AND CONDITIONS, AMENDMENT #5

Mr. Kunkle said that this is a continuation of the Board's hearing regarding this issue that began on May 21. He clarified that this is regarding amendment 5 to the Foxpointe PRD terms and conditions. Mr. Kunkle said that under a section of the terms and conditions entitled "others" is the expanded covenant that will be placed in the deeds of lots 155-166 and 169-178. These additions will include noise at various non-typical times, odors, wind drifts, pesticides and herbicides. Mr. Kunkle said that other than these changes, the terms and conditions remain the same as they were at the previous meeting. Mr. Mascolo made a motion to approve the Foxpointe PRD master plan and amendment 5 to the terms and conditions. Mr. Killian seconded the motion.

Mr. Killian said that this decision has been difficult to make, and there was much long discussion and public input. He said that if such practices were carried out as the allegations brought forth about improper advertisement, he would be appalled. He said that he sympathizes with Mr. Lewis, and that the Board shares his feelings. Mr. Killian said that it is not the job of the Board to fix all ethical issues, as it is impractical and they cannot always legally do so. Mr. Killian said that they must act in the best interest of the residents of Ferguson Township, and that the motion is the product of long discussion.

Mr. Jervis announced that he has come before the Board a few times previously, and that he wants clarification as to what is being approved. He stated that he appreciates that this covenant was added and that there is a barrier of plants to mitigate the drift of spray. He requested specifics from the Board as to which plants will be in the barrier. In addition, Mr. Jervis said that his research has found that the trees in the barrier should be semi permeable, at least 50% taller than target plant, which in this case are grapes. Grapes are 6' or 7' high, so a

10.5 ft. tree would be appropriate. He asked if the Homeowners Association would be responsible for paying for this vegetative barrier.

Mr. Kunkle said that it is the individual property owners' responsibility, not the Homeowners' Association, and that if you are one of the owners of lots 169-173, you will have the responsibility of maintaining the plantings on your property only. Mr. Kunkle said it is not an obligation of the whole Homeowners Association and that this provision is placed in the deeds.

Mr. Daubenspeck said he was not given the entire development plan and felt like he was misled. Mr. Mascolo said that the elimination of the ag buffer change impacted more than just this development; it is for all other properties in the Township. Mr. Pytel and Mr. Mascolo said they do not disagree that the homeowners may have been misled, but that this is not relevant.

Keough asked what will be in the vegetative buffer. Ms. Lang said it is a matter for the subdivision plan, at which time the buffer plantings would be approved.

Mr. Kunkle said that the developer is using a few species that Mr. Stewart, owner of the neighboring winery, suggested were best.

Roll Call Vote: Mr. Keough: NO; Mr. Clemson: YES; Mr. Killian: YES; Mr. Mascolo: YES; Mr. Pytel: YES. The motion passed 4 to 1.

VII. COMMUNICATIONS TO THE BOARD

Mr. Killian said that a citizen was concerned about the expense for Oak Hall Park, specifically about how big it would be, and the associated parking. This person did not like the cost for taxpayers.

Mr. Pytel said he got a call from a neighbor on Deepwood Drive stating she had a problem with stormwater flowing off the mountain and impacting her garage. Mr. Modricker said he would look at this.

VIII. ACTION ITEMS

1. FOXPOINTE PRD SUBDIVISION PLAN

Ms. Lang said this is a plan subdividing 12 lots in new phase of Hunter's Chase, Phase 9 of the PRD plan. Ms. Lang said that the Planning Commission recommended that the Board approve this, subject to the remaining conditions.

Mr. Mascolo made a motion that Board of Supervisors approve the Foxpointe PRD Phase 9, subject to the conditions in Planning Director's memo dated 2/26/2012. Mr. Clemson seconded the motion.

Mr. Keough asked if the plan shows the location of the 5ft. sidewalk and Ms. Lang said yes it does. Mr. Keough asked if it is at this stage that the Board gets a final chance to review the planting buffer. Ms. Lang stated that the project will not come back to the Board again after approval.

Mr. Keough said he wants tree plantings 8ft. instead of 6 ft. at installation and he wants to see something that identifies the opportunity of getting that buffer in reasonably soon after approval. He said he might concede to staying with the 6ft. plantings if something was written regarding timing of planting. Mr. Palmer said the trees will be put in immediately upon approval anyway, and that the best time to plant them is this fall. He said that this was the case for Foxpointe phase 10.

Mr. Kunkle said that the memo says the plants are to be installed by property owners. Ms. Lang said that this is not the case, and that the revision to the note will reflect that the developer will install the plantings in by Fall 2012. Mr. Mascolo said he would like to add this recommendation as part of his motion, and Mr. Clemson continued second.

Mr. Keough was opposed to the motion. The motion passed 4 to 1.

2. AWARD OF TUDEK PARK, PHASE 3, CONTRACT 2012-C6

Mr. Modricker said that bids were opened publicly for Tudek Park Phase 3, contract 2012-C6 on June 26. He said the Township received 4 bids. There was a base bid, and an alternate A and B, which represented additional concrete sidewalk. Mr. Modricker said that favorable bids were received, and that in addition to contract work, the Township will be purchasing some owner-supplied equipment, a pavilion, backstop fencing, and backstop benches for \$29,981. Mr. Modricker said there was an issue where a contractor made a math error and is claiming they should be able to take the bid bond because the Township was notified within 48 hours. Mr. Modricker said he could check with the Township Solicitor, but that it would not be to the Township's advantage to award it to next low bidder. This is because the difference in bid amounts was significant. Mr. Modricker said that he recommends that the Township award the base bid to the lowest responsible bidder and then pursue alternate work separately.

Mr. Modricker reiterated that his recommendation is to award to the lowest bidder, Ameron Construction, at \$292,935.80 for the base work. Mr. Keough made a motion to award the contract to Ameron Construction in the amount of \$292,935.80 for Tudek Park Phase 3, Contract 2012-C6. Mr. Mascolo seconded the motion.

Mr. Killian asked if the Township can legally approve a modification and not accept the next lowest bid. Mr. Modricker said yes.

The motion passed unanimously.

3. CONSENT AGENDA

Mr. Killian made a motion to approve the Consent Agenda, that includes the Payment Authorization and Surety Reduction. Mr. Clemson seconded the motion. It passed unanimously.

IX. REPORTS

1. Manager

Mr. Kunkle said that Mr. Killian accepted a check for the Township in the amount of \$1091 at a PLCM Conference in Pittsburgh.

He also said that the flow study for the Radio Park Interceptor has been completed. Mr. Kunkle said that DEP indicated there is sufficient conveyance capacity for both the development of Turnberry and Pine Hall. Both developers had to address concerns with DEP, however.

2. Public Works Director – No Report

3. Director of Planning and Zoning

Ms. Lang said that the Planning Commission met June 25, and that the two action items discussed were Foxpointe and the Driscoll Parking Lot Expansion. She elaborated that the Driscoll property is the one that hosts the Audi and Volkswagen dealerships. Ms. Lang said the Driscoll Expansion is requesting new access off of Leisure Lane, across from the Mercedes dealership, and additional display parking for the Audi and Volkswagen lots. She said that residents are concerned about storm water issues, and the lighting issue.

Ms. Lang said that the Township Engineer has stated that the original site was built to the plan, despite the issues. The Township Engineer also stated that he feels the best way to fix the current situation is to allow the approval of the second plan. Ms. Lang said the Planning Commission is still concerned about this, since so much went wrong the first time. Ms. Lang said that the Township is usually very conservative, so it's a surprise that this is happening. Mr. Keough asked if the Township considers the Audi/Volkswagen dealership to be associated with one person and Ms. Lang said yes.

Ms. Lang said that the Planning Commission reviewed R2 zoning, and the executive summary of the regional development capacity report. She said there were two issues with regard to summary. Firstly, she said that this document is not identified as part of comprehensive plan. Secondly, at the end of document there are 6 questions that are significant policy issues with regard to the RGB, but there are no answers to any of the questions and no indication as to how they will be discussed.

The first of these 6 questions is a need for an amendment to the Development of Regional Impact (DRI) process. Second is growth in Halfmoon Township, which is all outside the RGB. Ms. Lang said that third is the policy that addresses advanced wastewater treatment systems outside of the RGB. Fourth is a project for the Centre Region regarding long term costs of infrastructure. She said fifth is about existing municipal zoning districts within and outside the RGB. She said the final issue is regarding beneficial reuse.

Ms. Lang said that the Planning Commission only has 3 elements left to review. She said that natural resources and land protection were covered, as well as transportation related issues. Ms. Lang said that the focus of the transportation element was complete streets. She said that the goal is not necessarily widening roads, but fixing them before expansion. Ms. Lang said that

the housing plan includes direction for protecting residents from the adverse impacts of high density projects, and for affordable housing.

4. COG Committee Reports

a. Public Services and Environmental

Mr. Killian said that the Public Services committee discussed the Calvary Baptist Church Harvest Field DRI request. He said that the COG Forum moved it to the public service committee to discuss the conditions. Mr. Killian also stated that he received an e-mail from Jim Steff saying that the Borough's position is the removal of 10 acres and a conservation easement to protect rest of the 28 acres. Mr. Mascolo said he feels the request should never have been approved because it corrupts the system of having an RGB and sewer service area to start with. Mr. Mascolo also stated he is against all conditions for this request, but he does prefer if this does go forward that there be some sort of guarantee the property will remain 28 acres. A second thing he would like if this does go forward is the removal of 28 acres of buildable land within the sewer service area of Harris Township, to replace these 28 acres. Mr. Mascolo said he doesn't believe the Hawbaker/Bigatel offer is for buildable land. Mr. Kunkle confirmed this, saying the wooded mountain land is not applicable.

Ms. Lang said that it is important not to confuse EDUs and development potential. Mr. Mascolo said he wants 28 acres period, and that all they build is a church, no housing units, no elderly homes. Mr. Pytel said he isn't sure if that restriction is legally possible. Mr. Clemson and Mr. Mascolo said they believe it is possible. Mr. Clemson said that the Church cannot submit a final site plan to Harris Township until it gets approval, and that any conditions need to be added now.

Mr. Kunkle reminded the Board that it only makes sense to have that 28 acres removed if it is not already able to connect to public sewer, and that a hole in the RGB would not make sense.

X. ADJOURNMENT

Mr. Mascolo made motion to adjourn the Board of Supervisors Regular Meeting. Mr. Killian seconded the motion. It passed unanimously.

With no further business to come before the Board of Supervisors, Mr. Pytel adjourned the meeting at 9:57pm.

RESPECTFULLY SUBMITTED,

Mark Kunkle, Township Manager
For the Board of Supervisors

Date approved by the Board: 08/06/2012