

**FRANKLIN TOWNSHIP  
BOARD OF SUPERVISORS MINUTES  
NOVEMBER 15, 2006**

**Call to Order:**

Chairman Richard Whipple called the meeting to order at 6:35 p.m. Present were Supervisors Juanita Bennett, Norm Hughes, and Roger Wilson. Also present were Solicitor Vince Donohue, Planning Commission Chairman Eric Brindle, Township Manager Stephen Ross, Sanitary Engineer Sandi Morgan from URS and Township Engineers John Theisen from LTL and Grant Hitchens from Kohli & Associates. There were approximately 10 members of the public in attendance.

Chairman Whipple announced that as a result of discussions between counsel earlier in the day, an agenda item has been added under "Planning & Zoning" regarding the legal and consulting fees which are owed to the Township under the Settlement Stipulation. Mr. Whipple provided this information at this point in the meeting in order that those present would have the opportunity during the first Public Comment Session to ask questions and/or make comments. Mr. Whipple announced that a brief Executive Session will be held prior to Agenda Item VI, "Planning & Zoning", to review certain legal issues involved in discussing the Stipulation and a second Executive Session to be held following tonight's meeting to discuss personnel issues and other legal issues.

**Public Comment:** There was no public comment.

**Approval of Minutes:**

- a. BOS Workshop - October 11, 2006: On motion by Mr. Whipple, seconded by Mrs. Bennett, the minutes of October 11, 2006 were approved as submitted. Motion carried by a 4-0 vote.
- b. BOS Meeting - October 18, 2006: On motion by Mr. Whipple, seconded by Mr. Hughes, the minutes of October 18, 2006 were approved. Mr. Wilson suggested a change to Page 5, 2<sup>nd</sup> sentence. After the word "school", replace the word "and" with "who" so that the sentence reads: "He had a conversation with Fran Lutz of the Avon Grove Charter School who was questioning .... for this purpose." Motion carried by a 3-0 vote with the suggested changes. Mrs. Bennett abstained because she wasn't present at this meeting.

Mrs. Price arrived at this point in the meeting, approximately 6:40 pm.

**Reports:**

- a. Treasurer's Report - October 31, 2006: Mr. Ross provided a summary of the report including a total balance of \$1,866,221.47 for all funds. On motion by Mr. Whipple, seconded by Mrs. Bennett, the Treasurer's Report for the month of October was accepted as presented. Motion carried by a vote of 5-0.

- b. Manager's Report – November 15, 2006: Mr. Ross provided a summary of his monthly report which includes the 2007 Budget, Personnel, Building Improvements, 2007 Plan of Action, and Developments.
- c. Solicitor's Report: Mr. Donohue, confirming the Chairman's earlier comments, announced a mid-meeting Executive Session at which time he will provide the Board with an update on legal issues.
- d. Zoning Officer/Building Inspector Report – November 10, 2006: Mr. Ross reviewed the report from Duane Brady dated November 10, 2006. The fees collected for the month totaled \$8,854.07 with 15 permits issued. The report lists the dates and locations for building inspections, zoning tasks performed, HARB activities and zoning site visits.
- e. Open Space Committee Report: No report.

**Ford Farm Study Committee:**

Mr. Ross advised that the following individuals have agreed to serve on a Committee to study and recommend potential future uses of the Ford Farm.

- Keith Herrington
- Norm Hughes
- Wendy Toman
- Tina Chromey
- Steve Ross

It was moved by Mr. Whipple, seconded by Mrs. Price, to appoint the above named individuals to serve on the Ford Farm Committee. The objective of the Committee is to comply with Exhibit "O", #6, Sentence #2 of the Stipulation which reads as follows: "The Applicant agrees to construct a split rail wooden fence around the perimeter of the 4.5 acre parcel as indicated on the plan and to demolish all buildings designated by the Township, which designation shall be made within one year following execution of the Stipulation, within the 4.5 acre parcel and to restore the ground to finish grade." Discussion included Mr. Wilson's suggestion that the Committee also make a determination on whether the Township should accept the parcel. Motion carried by a vote of 4-0, with Mr. Hughes abstaining due to his nomination as a member of the Committee.

**Route 896 Traffic Study:**

Mr. Ross advised that one of the action items from the recent Stipulation was to have a traffic consultant prepare a study on Rt. 896 to identify certain road improvements. McCormick Taylor presented a proposal to perform the study within 8 weeks at a cost of \$23,200. At the conclusion of completing the initial study the developers will provide cost estimates for them to complete the projects. Following receipt of the cost estimate the Township will determine priority of improvements. Mr. Whipple moved, seconded by Mrs. Price, that McCormick Taylor be authorized to comply with Item #13-A in the Stipulation calling for the Township to engage a traffic consulting

firm to provide a traffic study at a cost of \$23,200. In answer to a question from Mr. Wilson it was confirmed that the developers would reimburse the Township as stated in the Stipulation. Motion carried by a vote of 5-0.

**Latimer Conservation Easement:**

Mrs. Price advised that she was abstaining from the discussion and vote because of her current employment with Brandywine Conservancy. Mr. Ross led the discussion by explaining that Mrs. Latimer had agreed to donate a Conservation Easement on her 41.32 acre property located on Appleton Road. The Brandywine Conservancy (BC) has prepared the Baseline Documentation Report for the Grant of Easement and Declaration of Restrictive Covenants. Mr. Whipple read the proposed Resolution, #2006-18, which provides for the Township to reimburse BC from Open Space funds for the expenses they incurred in the preparation of the Conservation Easement. The Resolution further provides that the Conservation Easement would be granted to the BC as the Grantee, with Franklin Township as a Co-Grantee. The preparation expenses are estimated at \$5,715 and the Endowment Fee at \$7,625. Mr. Whipple moved, seconded by Mr. Hughes, to approve Resolution 2006-18. On a question from Mrs. Bennett the Solicitor confirmed that there were no substantive changes to the document that is before the Board from the original document. Motion carried by a vote of 4-0 with Mrs. Price abstaining.

At 7:20 pm Mr. Whipple advised the Board that it was necessary to go into Executive Session for purposes of discussing a legal issue with the Solicitor. The meeting reconvened at 7:45 pm.

**Planning and Zoning:**

- a. Planning Commission Report – November 2, 2006: Mr. Brindle provided the Board with a summary of the November 2, 2006 meeting. The minutes are available at the Township office.
- b. Extension Letters: Mr. Whipple advised that the Township was in receipt of an extension request to December 31, 2006 from Paradox Vineyards. On motion by Mr. Whipple, seconded by Mrs. Bennett, the extension request from Paradox Vineyards was approved. Motion carried by vote of 5-0.
- c. Escrow Releases: Mr. Ross indicated that Happy Harry's requested Escrow Release #9 in the amount of \$59,953.65. By letter dated November 9, 2006, Mr. Theisen recommended release of \$39,046.22. On motion by Mr. Whipple, seconded by Mr. Hughes, the release of \$39,046.22 was authorized from the escrow fund for Happy Harry's. Motion carried by vote of 5-0.
- d. Consultant fees: As announced by Mr. Whipple prior to the first Public Comment, this item was added to the agenda due to today's discussions between the Solicitor and the developers' attorney. Mr. Whipple provided background information that included reference to Section 14 of the Stipulation where payment from the developers of \$88,440.86 to the Township for legal and consulting fees is required. Negotiations between the Township solicitor and the

developers' attorney have resulted in the Township's consideration of accepting the \$88,440.86 payment with the provision that \$3,930 of that money, which represents penalties and \$4,322 which represents imbedded interest, will be kept by the Township and applied to expenses incurred after July 31, 2006.

Mr. Whipple moved, seconded by Mr. Hughes, that the Township proceed as just described.

There was significant discussion around the need for the developers to put in place a mechanism to have the Township's invoices paid promptly. Attorney Jaros suggested that perhaps the Township could facilitate that result by properly allocating expenses to specific projects. He indicated that the Developers are allocating internally to the TND, the Sewer and to each individual project. In answer to Mr. Ross's question regarding who should be invoiced for the charges allocated to sewer, Mr. Jaros said copies should be sent to him and to all his clients. Attorney Jaros said that going forward he will make every effort to insure that the Township's invoices are paid promptly. It was agreed that ambiguities need to be discussed as they occur and not be allowed to linger.

The motion carried by vote of 3-2 with Mrs. Bennett and Mr. Wilson voting nay.

- e. Final Subdivision Plans: Mr. Whipple referenced a November 10, 2006 memo from Mr. Ross in which he described three separate developments that received tentative approval in conjunction with the Stipulation entered into by the Township and Developers and approved by the Court. The latest revision of this memo will be appended to these minutes. The Stipulation provides that the Township will grant final plan approval within 30 days from the date the Court signed the Stipulation and Order.

The Solicitor was asked to comment on the question posed by Supervisor Bennett at the November 8<sup>th</sup> meeting regarding whether the fact that she voted against the Stipulation requires her to then vote against these plans as they come up individually for approval. The Solicitor advised that there is no legal requirement to vote either way and each supervisor has the responsibility to decide if each of these plans is ready for final approval.

The following development plans were considered separately by the Board in the order they appear in the Stipulation.

1. Banffshire 9-lot Subdivision Plan:

Mr. Whipple moved, seconded by Mr. Hughes, to approve the nine-lot final subdivision and land development plan of the Banffshire Plan dated April 15, 2003 and last revised October 13, 2006, as described on the Plan and to approve the signature and recording of said Plan, subject to: (1) the procedures set forth in the letters from Surrender Kohli dated October 10, 2006 and November 7, 2006; (2) satisfaction of all conditions as noted above; and, (3) compliance with all applicable provisions of the Stipulation and

Settlement Agreement dated September 19, 2006. Satisfaction of the foregoing shall be required prior to the Township's signature and release of the Plan for recording.

Mrs. Bennett asked Engineer Grant Hitchens for an overview of the stormwater issues related to this development and Mr. Wilson questioned whether the language in the motion should indicate that the Stipulation has been amended. The Solicitor advised that the Stipulation has not been amended.

Motion carried by a vote of 3-2 with Mr. Wilson and Mrs. Bennett voting nay. The motion was revised at the last moment based upon a memo from Mr. Ross dated November 10 with a revision date of November 15. Mrs. Bennett felt that she wasn't given ample time to review the motion and changes.

2. Avignon Subdivision Plan, aka Mackie:

As recommended by the Planning Commission on May 4, 2006, Mr. Whipple moved, seconded by Mr. Hughes, to approve the 42 lot subdivision plan of the Avignon Final Plan dated May 20, 2005, last revised November 14, 2005 and the Landscape Open Space Plan dated May 20, 2005, last revised April 21, 2006, as described on the Plan and to approve the signature and recording of said plan, subject to: (1) the procedures set forth in the letter from Surrender Kohli dated February 22, 2006; (2) satisfaction of all conditions as noted above; and, (3) compliance with all applicable provisions of the Stipulation and Settlement Agreement dated September 19, 2006. Satisfaction of the foregoing conditions shall be required prior to the Township's signature and release of the Plan for recording.

Mrs. Bennett questioned whether the conditions and waivers are the same that appear in the Stipulation. The Solicitor confirmed that they are verbatim from the Stipulation as Exhibits "M", "N" and "O". It was also confirmed that the Stipulation is a public document. Mr. Wilson asked for clarification of the figure that appears in Condition #11.

Motion carried by a vote of 3-2 with Mr. Wilson and Mrs. Bennett voting nay. This motion was revised at the last moment based upon a memo from Mr. Ross dated November 10 with a revision date of November 15. Mrs. Bennett felt that she wasn't given ample time to review the motion and changes.

3. Fox Hunt Farm, aka Ford Farm:

As recommended by the Planning Commission on May 4, 2006, Mr. Whipple moved, seconded by Mr. Hughes, to approve the 100 lot final subdivision/land development plan of the Fox Hunt Farm Plan dated March 28, 2002, last revised August 5, 2005, as described on the Plan and to approve the signature and recording of said Plan, subject to: (1) satisfaction of all conditions as noted above; and (2) compliance with all applicable provisions of the Stipulation and Settlement Agreement dated September 19, 2006. Satisfaction

**APPROVED**

of the foregoing conditions shall be required prior to the Township's signature and release of the Plan for recording and satisfaction of all conditions as noted above.

Discussion included questions from Supervisors Hughes, Wilson and Bennett regarding Conditions #10 & 11.

Motion carried by a vote of 3-2 with Mr. Wilson and Mrs. Bennett voting nay. The motion was revised at the last moment based upon a memo from Mr. Ross dated November 10 with a revision date of November 15. Mrs. Bennett felt that she wasn't given ample time to review the motion and changes.

**Public Comment:** There was no public comment.

**Adjournment:** Meeting was adjourned at 8:43 pm.

Respectfully submitted,

Stephen J. Ross  
Township Mgr./Secretary

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