

APPROVED

FRANKLIN TOWNSHIP BOARD OF SUPERVISORS MINUTES AUGUST 19, 2009

Call to Order:

Chairman Richard Whipple called the meeting to order at 7:07 p.m. Present were Supervisors Nan Latimer, Norman Hughes and Eric Brindle. Paul Overton arrived at 7:12 p.m. Also present was Solicitor Bob McClintock, Assistant Township Mgr. Jeff Eastburn, Township Secretary Sharon Norris, Township Engineer John Theisen and Planning Commission Chairman Ralph Olivier. There were 10 members of the public in attendance and a court reporter.

Public Comment: No public comment.

Approval of Minutes:

BOS Minutes – 7/08/09: Mr. Whipple moved, seconded by Ms. Latimer, to approve the Minutes of July 8, 2009 as presented. Motion passed unanimously.

BOS Minutes – 7/15/09: Mr. Whipple moved, seconded by Ms. Latimer, to approve the Minutes of July 15, 1009 as presented. Motion passed unanimously.

Resolution 2009-35 – Disposition of Records: Mr. Whipple moved, seconded by Ms. Latimer, to approve Resolution 2009-35 authorizing the disposition of records. Motion carried unanimously.

Reports:

Treasurer's Report: Mr. Whipple moved, seconded by Ms. Latimer, to approve the July 2009 Treasurer's Report as presented by the Township Treasurer, including disbursements and transfers from the General Fund totaling \$98,067.97; the Park & Rec Fund totaling \$7,252.43; the Open Space Fund totaling \$669,386.56; the Traffic Impact Fund-East totaling \$-0-; the Capital Reserve Fund totaling \$-0- the Emergency Services Fund totaling \$55.95; and the Fire Hydrant Fund totaling \$-0-; with total balances in all funds at 07/31/09 equaling \$5,119,775.22. Motion passed unanimously.

Solicitor's Report: Solicitor McClintock had nothing new to add to the Solicitor's report.

Zoning Officer's Report: Mr. Eastburn provided a summary of the Zoning Officer's Report which included the issuance of 18 building permits, two of which were for new homes, totaling \$6,255.05. There were 25 building inspections completed.

Mr. Overton arrived at this point in the meeting.

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Planning & Zoning:

Planning Commission Report: Mr. Olivier summarized the actions taken by the Commission at their August 6, 2009.

Charlton Final Plan: Mr. Whipple cautioned the members of the Board to be mindful of anything said during discussion of this plan due to the fact that a Traffic Impact Fee related lawsuit had been filed by the applicant, against the Township, subsequent to the plan's 6/17/09 conditional preliminary approval. Mr. Whipple also noted that he had been advised by the Solicitor that the Board should not consider conditional final approval of this plan until there is agreement regarding the financial security agreement and associated escrow. Both the Municipal Planning Code (MPC) and Twp. Ordinances address the determination of financial security cost estimates and the Solicitor advised that any interpretational differences be cleared up before conditional final approval be considered. It was agreed that cost estimates did not need to be specifically calculated by a professional engineer working for the applicant but that any contractor supplied cost estimates were only acceptable once agreed to by Township Engineer Theisen. Mr. Whipple stated that, in a phone conversation with Solicitor Thompson prior to the meeting, the Solicitor suggested that a brief agreement be drafted which states that the applicant agrees to abide by the reasonable conclusions of the Township engineer regarding the adequacy of financial security estimates submitted by a contractor. Such an agreement was drafted and signed by the applicant and the Township.

Mr. Fritsch asked that the Township clarify that Item #1, under General, in the 8/17/09 LTL review letter (ADA compliance) has been satisfied. Engineer Fritsch proceeded to display a page of the most recent plans and indicated what he has done to address Item #1. The Board acknowledged that this item has been adequately addressed by the changes detailed by Mr. Fritsch.

Mr. Whipple moved, seconded by Mr. Brindle, that the Board approve the Vaughn Charlton Final Land Development Plan dated 12/12/08, last revised 08/13/09, as well as the PennDOT Low Volume Permit Plan dated 04/04/09, last revised 08/04/09 with the condition that all necessary Final Plan approval items, including but not limited to the following, be addressed to the satisfaction of the Township:

Conditions:

1. Compliance with all outstanding conditions and comments as set forth in the Township consulting engineers' review letters, including but not limited to:
 - LTL's Review Letter dated August 17, 2009.
 - URS's Review Letter of August 17, 2009.
 - McCormick Taylor's Review Letter of August 18, 2009.
 - Tetrahedron's Review Letter of August 18, 2009.

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2. A Fee-in-Lieu of recreational land dedication, in the amount of \$2,688, be paid to the Township in two installments, one-half at the issuance of a building permit and one-half at the issuance of a Certificate of Occupancy.

3. Payment of an Impact Fee pursuant to the Township Traffic Impact Fee Ordinance in the total amount of \$38,616.60 (based on 11 peak hour trips at \$3,510.60/trip) to be paid as specified by the appropriate Ordinance at such time as a building permit is issued, and placed in an escrow account until pending litigation regarding this matter has been resolved.

4. Payment of outstanding and expected legal/consultant review expenses and funding of the appropriate escrow account(s) in accordance with Township policies, and to the

satisfaction of the Township Treasurer, prior to the signing and recording of the land development plans.

5. Completion and execution of all appropriate legal documents (and the payment of any associated fees and/or the establishment of any associated financial security) in a form acceptable to the Township Solicitor, the Township Engineers, and the Township Treasurer (and in a form acceptable for recording where appropriate), including but not limited to the following: (Each to be executed, paid, established, etc. either before the plans are signed and recorded or before a building permit is issued, as specified by the Township Solicitor.)

- Declaration of Covenants, Restrictions and Easements.
- Subdivision and Land Development Agreement.
- Subdivision and Financial Security Agreement (in accordance with construction cost estimates agreed to by the Township Engineer).
- Stormwater Management Facilities Maintenance Agreement.
- Sewage Holding Tank O & M Agreement.
- Signing of an "Approval Letter", as prepared and presented by the Township Solicitor.

Motion passed unanimously.

Paradocx Vineyards: Mr. Whipple referenced the latest revision of the potential agreement which was received today at 5:22 p.m. and asked the applicants to review it and advise him if they agree to it or does it require further revision. Dr. Hoffman read from emails that were sent to Paradocx's attorney by Township Solicitor Mark Thompson. Basically the Paradocx owners requested clarity that, if the Chester County Health Dept. (CCHD) regulations allow for two events per year (involving greater than 70 attendees) using port-a-potties, the language in the Stipulation does not preclude Paradocx from doing this, as long as Paradocx follows all applicable CCHD rules and regulations. The Board acknowledged this right of Paradocx, if the CCHD has such provisions, while stipulating that the Board did not have specific awareness of what CCHD regulations allow or don't allow in this regard.

Regarding the preservation of the applicant's right to appeal any future assessments of the Traffic Impact Fee, Mr. Whipple asked what words Dr. Hoffman would suggest adding to the last sentence of 8(a). Solicitor McClintock suggested the following sentence be added: "Notwithstanding any of the above,

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Paradocx reserves the right to challenge or appeal future traffic impact fees generated as allowed under the Township Code."

Mr. Whipple stated that the Board has been advised by the Township Solicitor not to take action until they have assurance from Paradocx that Paradocx agrees to execute the revised agreement. He also asked that the Township Solicitor and Paradocx attorney have the opportunity to review and approve the verbiage used in the added sentence. Solicitor McClintock indicated that a verbal commitment from the applicant regarding these two items is acceptable. Drs. Harris and Hoffman proceeded to indicate their acceptance of the agreement as discussed.

Mr. Whipple moved, seconded by Ms. Latimer, that the Board agrees to the Stipulated Settlement Agreement, version dated 8/19/09 at 5:22 p.m., subject to the acceptance of the Township Solicitor and Paradocx's attorney, regarding the added sentence concerning the right of Paradocx to appeal any future impact fee decisions and subject to Paradocx's execution of the Agreement as Paradocx has verbally indicated they will do. Motion passed unanimously.

Extensions: Mr. Whipple moved, seconded by Mr. Hughes, that the Board accept the following requests for extensions:

- Wood's Edge – February 28, 2010
- Hess Mill Lots 6 & 8 – December 19, 2009
- Brothers Property – December 24, 2009
- Ashby Hills (formerly Christens) – December 30, 2009
- 101 Stonegate (Fisher) – December 30, 2009
- Sarana (Davis) – December 30, 2009
- Logan – December 30, 2009
- Miller Property – December 31, 2009
- Abel Property – March 28, 2010

Motion passed unanimously.

New Business:

Ordinance 2009-04 Contractor's License Ordinance: Solicitor McClintock opened the public hearing for the Home Improvement Consumer Protection Act (HICPA) amendment to the Zoning Ordinance. Public Notice was advertised in the Daily Local News on August 6 and 12, 2009. Solicitor McClintock gave the background of the Act explaining that currently the Township has an ordinance that requires all contractors to be licensed by the Township prior to doing any work in the Township. HICPA now exempts certain home improvement contractors with a total projected cost in excess of \$500 from Township licensing requirements. Under the Act these individuals are required to be licensed by the state and to present that license and their liability insurance certification to the Township when obtaining a building permit. Contractors doing work that costs less than \$500 are still required to obtain a license from the Township as are home building contractors such as Wilkinson, Ryan Homes, etc. The Solicitor noted the following Exhibits: T1 is the Proof of Publication and T2 is Ordinance 2009-04. Comments and/or questions were accepted from the Board members and the

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public. Mr. Olivier stated that a general contractor usually does both kinds of work, i.e., home improvements and constructing a new residence. Would the contractor be required to have both licenses? The Solicitor stated that a new home does not meet the definition of a home improvement however it is possible that in some situations the contractor would be required to be licensed by the state and the Township.

Solicitor McClintock closed the hearing.

Mr. Whipple moved, seconded by Mr. Hughes, that the Board adopt Ordinance 2009-04, the Contractor's License Ordinance. Motion passed unanimously.

Ordinance 2009-05 Codification: Mr. Whipple advised that consideration of this Ordinance does not require a public hearing. Solicitor McClintock advised that the purpose of this Ordinance is to codify the Township's ordinances into one "Code of Ordinances" which is compiled into one booklet. Mr. Whipple moved, seconded by Mr. Hughes, that the Board adopt Ordinance 2009-05 concerning the codification of Franklin Township's Ordinances. Motion passed unanimously.

Interim Road Program Contract Extension to October 2, 2009: Mr. Whipple moved, seconded by Ms. Latimer, that we extend the Interim Road Maintenance Contract through October 2, 2009. Motion passed unanimously.

Public Comment: Mr. Eric Schad and Diane Urich new property owners of 107 Cavender Lane asked the Board what the Township could do about a serious flooding problem that occurs on their property when there is a heavy rain storm. They advised that most of the stormwater appears to be coming from the farm adjacent to their property (Ford Farm). The water has destroyed several trees that they have had removed and has undermined part of their driveway and part of their pool. Duane Brady, the Township's Building Inspector, has met with them on several occasions and is looking into the situation. They have also been in touch with Urban Resource Conservationist, Daniel Miller of the Chester County Conservation District (CCHD). They would like to know who is legally responsible for correcting the problem. Mr. Whipple explained to them that the Township has to act according to state statutes and must also be careful not to set a precedent by making improvements on private property with taxpayers' money. Mr. Whipple made the following three promises: 1) The Township Solicitor will offer an opinion on whether the Township has any legal responsibility to attempt any remedies or partial remedies; 2) The Township will provide to Matt Miller of the Chester County Conservation District, the contact information for the current owner of the Ford Farm; and, 3) The Township engineer will study the conditionally approved final plans for the Ford Farm to determine if those plans proposed holding back more stormwater than the minimum required.

Mr. Olivier asked that copies of the codified ordinance be provided to members of the Planning Commission prior to their next meeting.

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Mr. Earl Hatton congratulated everyone involved with the latest Township Newsletter. He greatly enjoyed reading the history of the Township and seeing the pictures that were provided. He has had several people tell him how much they enjoyed it as well.

Mr. Whipple announced that there will be a brief Executive Session immediately following the meeting.

Adjourn: The meeting was adjourned at 9:03 p.m.

Respectfully submitted,

Sharon Norris
Township Secretary

BOS 08.19.09.v.2.er