

APPROVED

FRANKLIN TOWNSHIP BOARD OF SUPERVISORS MINUTES SEPTEMBER 16, 2009

Call to Order:

Chairman Richard Whipple called the meeting to order at 7:03 p.m. Present were Supervisors Nan Latimer, Norman Hughes and Eric Brindle. Paul Overton was absent. Also present were Solicitor Mark Thompson, Assistant Township Mgr. Jeff Eastburn, Township Secretary Sharon Norris, Township Engineer John Theisen and Planning Commission Chairman Ralph Olivier. Solicitor Vince Donohue and Engineer Scott Allen arrived at 7:17 p.m. There were 7 members of the public in attendance and a court reporter.

Public Comment: No public comment.

Approval of Minutes:

BOS Minutes – 8/19/09: Mr. Whipple moved, seconded by Ms. Latimer, to approve the Minutes of August 19, 2009 as presented. Motion passed unanimously.

Resolution 2009-37 – Disposition of Records: Mr. Whipple moved, seconded by Ms. Latimer, to approve Resolution 2009-37 authorizing the disposition of records. Motion carried unanimously.

Executive Session: Mr. Whipple announced that there will be an executive session following tonight's meeting to discuss ongoing legal matters.

Reports:

Treasurer's Report: Mr. Whipple moved, seconded by Ms. Latimer, to approve the August 2009 Treasurer's Report as presented by the Township Treasurer, including disbursements and transfers from the General Fund totaling \$128,226.45; the Park & Rec Fund totaling \$20,537.70; the Open Space Fund totaling \$15,299.43; the Traffic Impact Fund-East totaling \$-0-; the Capital Reserve Fund totaling \$170,848.84; the Highway Aid Fund totaling \$132,001.43; the Emergency Services Fund totaling \$59.98; and the Fire Hydrant Fund totaling \$399.30; with total balances in all funds at 08/31/09 equaling \$4,775,128.15. Motion passed unanimously.

Solicitor's Report: Solicitor Thompson had nothing new to report.

Zoning Officer's Report: Mr. Eastburn provided a summary of the Zoning Officer's Report which included the issuance of 9 building permits, with fees totaling \$200. There were 36 building inspections completed.

Planning & Zoning:

Planning Commission/HARB Report: Mr. Olivier summarized the actions taken by the Commission at their September 3, 2009 meeting. The HARB meeting was held on 9/2/09. The "2 Tilden Way" Certificate of Appropriateness (COA) application was approved and a discussion was had on how to facilitate the prompt approval of COAs.

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Solicitor Donohue and Engineer Scott Allen arrived at this point in the meeting.

Energy Endeavors - Preliminary Plan Approval: Due to the fact that all Board members were present at the Planning Commission Meeting on 9/3/09, and heard the applicant's presentation and the Commission's review of the Energy Endeavors Plan, Mr. Whipple suggested that it was not necessary for the applicant to make another presentation.

Mr. Whipple moved, seconded by Ms. Latimer, to approve the Energy Endeavors LLC Preliminary Land Development Plan dated 06/19/09, last revised 08/26/09, 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:

1. All appropriate legal documents in a form acceptable to the Township Solicitor and Township Engineers (and in a form acceptable for recording where appropriate), including but not limited to the following:
 - Declaration of Covenants.
 - 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.
 - Trail/Path Easement Agreement.
 - Reserve Parking Agreement.
 - Receipt by the Township of an approved PennDOT Highway Occupancy Permit.
 - Compliance with all outstanding conditions and comments as set forth in the Township consulting engineers' review letters, including but not limited to:
 1. McCormick Taylor's Review Letter of September 2, 2009.
 2. Tetrahedron's Review Letters of August 21, 2009 & September 2, 2009.
 3. URS's Review Letter of September 1, 2009.
 4. LTL Review Letter of August 28, 2009.
 - A fee-in-lieu of recreational land dedication of \$3,240 to 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.
 - Payment of an impact fee pursuant to the Township Traffic Impact Fee Ordinance in the total amount of \$21,063.60 (based on six PM 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.
 - Payment of outstanding and expected legal/consultant review expenses and funding of the appropriate escrow account in accordance with Township policies, prior to issuance of a building permit.

Motion passed unanimously.

Winery as Accessory to Agriculture Ordinance 2009-06: Solicitor Thompson opened the Public Hearing and advised that this is an ordinance amending the Zoning Ordinance and requiring that the procedures set forth in the Municipalities Planning Code (MPC) be followed. The Solicitor named the following Exhibits:

- Exhibit T1: Ordinance 2009-06 The Winery Ordinance.
- Exhibit T2: Act 247 County Referral and Solicitor's letter dated 8/7/09.
- Exhibit T3: Chester County Planning Commission Review letter dated 9/3/09.

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- Exhibit T4: Draft Minutes of Township Planning Commission, recommending approval of the Ordinance with certain changes.
- Exhibit T5: Public Notice and Proof of Publication of the public notice in the Daily Local News on 9/2 and 9/9/2009.

The Solicitor advised that the ordinance was developed extensively with certain parties in the Township who have experience in wineries, as well as the Board of Supervisors to accommodate wineries used as accessories specifically to agricultural operations in all districts where agriculture is a permitted use. He further explained that the Ordinance has been extensively reviewed and tonight's hearing is to enact this Ordinance as an amendment to the Zoning Ordinance. The Solicitor asked for questions or comments from the public and then from the Board. Mr. Whipple announced that the Board will adopt the Ordinance as advertised and then the Planning Commission will proceed with an amendment at a later date to enact their suggested changes. Solicitor Thompson confirmed that any changes, whether substantial or not, would require that the Ordinance be sent back to the County for a 30-day review and engage the entire process again. It is the Board's option to enact this Ordinance and make the changes at a later time.

Hearing no further comments, the Solicitor closed the Public Hearing.

Mr. Whipple moved, seconded by Ms. Latimer, that the Board adopt Ordinance 2009-06, an Ordinance amending the Zoning Ordinance of Franklin Township, Ordinance 95-07 as amended, to provide a "winery accessory to agriculture" use to be permitted in all districts and adopting regulations governing such use. Motion carried unanimously.

New Business:

South Guernsey Road Repair Discussion: Mr. Whipple asked Township Engineer Scott Allen to provide an overview of this subject. Mr. Allen referenced his memo to Mr. Eastburn dated September 15, 2009, in which he outlined three options for repairing the damage to the embankment caused by the tractor trailer accident on South Guernsey Road. Mr. Allen advised that stabilization of the embankment is required in order to stop the erosion, which has already begun, that will in time undermine the condition of the roadway. The three options considered were 1) a partial rock embankment; 2) a full rock embankment; and 3) Maccafferi Gabion Baskets. Other alternatives were looked at but determined to be too excessive in scope and too costly for this situation. Of the three being considered, he recommends the full rock embankment with a shoulder. The installation of a guide rail was discussed substantially throughout this study. Mr. Allen recommends that the guide rail be considered outside the scope of this project at some future time. He believes there is no imminent danger of the roadway failing and therefore he recommends that this project be pursued by going out for public bid. Regarding submitting a claim to the insurance company, he recommends waiting until the project is completed and submitting a complete and detailed cost summary for reimbursement.

Since S. Guernsey is a narrow rural roadway with many steep slopes and curves, possible improvements to increase safety were discussed, e.g., restricting truck traffic, reducing the speed limit, installing warning signs, etc. These suggestions will be taken under consideration by the Board.

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Mr. Whipple moved, seconded by Mr. Brindle, to accept the recommendation of Township Consultants McCormick Taylor (as outlined in Scott Allen's 9/15/09 memo) and solicit bids for the "Full Rock Embankment" option for repairs needed to the embankment of S. Guernsey Rd., with associated design, bid specification, etc. work by McCormick Taylor not to exceed \$5,000, construction inspection not to exceed \$3,000, and with all associated costs to be submitted to the insurance carrier for the vehicle that caused the damage to the property. Motion passed unanimously.

Avon Grove Charter School (AGCS) Escrow Release #1: Solicitor Thompson led the discussion explaining that the improvements to the Charter School are governed by Resolution rather than the Township's normal land development process which includes a Financial Security Agreement. Therefore, by Resolution, the Township required that the AGCS place \$550,000 in escrow which was the amount arrived at by Township consultants in 2008 to complete the required improvements. A significant amount of the required work has been completed and the School is requesting that funds be released. There are several minor improvements that remain to be completed and one major improvement which is the left turn lane onto Peacedale Rd. from northbound Rt. 896, which involves the relocation of PECO and Verizon poles. Township Engineers Scott Allen and John Theisen have determined that in order to complete these improvements and retain a 15% contingency, the Township requires a balance of \$228,678 in the AGCS escrow account.

Mr. Whipple moved, seconded by Ms. Latimer, that pursuant to the 9/15/09 recommendation by LTL Consultants, construction escrow funds in the amount of \$321,321.35 be released to the AGCS, leaving a balance of \$228,678.65 in escrow. Motion passed unanimously.

Monopole Agreement: Solicitor Donohue summarized the monopole lease history beginning with the original lease entered into on May 4, 1995 with AWACS, Inc., with the successor to AWACS being SPC Tower Holdings LLC (which is managed by American Towers) whose lease expires in 2015. SPC is seeking a 20 year addition, divided into four five-year renewal periods. Solicitor Donohue explained the terms of the proposed extension which include a one-time signing bonus of \$20,000 and a 25% revenue share. The 25% revenue share is for new subleases only and does not apply to previously existing subleases. The annual rental increases will remain at 5%.

Mr. Whipple moved, seconded by Supervisor Brindle, that the Township enter into what will be the 2nd amendment to the 1995 SPC Tower Holdings LLC Lease Agreement, resulting in a \$20,000 signing bonus to the Township, a 25% share of future income to the Township from any additional co-locators (including hanging additional antenna even if there is no associated additional building placed on the site), a continuation of the annual 5% rent increases, continuation of SPC Tower Holdings LLC's reimbursing the Township for all associated real estate taxes, and an addition of four 5-year terms to the lease (extending the lease through 2035). Motion passed unanimously.

Resolution for Property on Rt. 841 – Resolution 2009-38: Ms. Latimer advised that this property is an addition to the Peacedale Preserve. It is approximately 34 acres. Jack Stefferud, of Natural Lands Trust (NLT), asked the Township to contribute towards the acquisition of the property. The Township is contributing 10% and DCNR is contributing 90%. Mr. Whipple moved, seconded by Ms. Latimer, that the Board adopt Resolution 2009-38 supporting the efforts of Natural Lands Trust to acquire for conservation

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purposes, property totaling 33.6 acres +/-, to the east of Route 841, south of Route 896.
Motion carried unanimously.

Public Comment: No public comment.

Adjourn: The meeting was adjourned at 7:53 p.m.

Respectfully submitted,

Sharon Norris
Township Secretary

BOS 09.16.09.v.3.er