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FRANKLIN TOWNSHIP PLANNING COMMISSION MEETING MINUTES SEPTEMBER 3, 2009

Call to Order: Planning Commission Chairman Ralph Olivier called the meeting to order at 7:07 p.m. Present were Mr. Brindle, Mr. Squadron and Dr. Harris. Dr. Hoffman arrived at 7:30 p.m. Others present included Township Secretary Sharon Norris, Township Engineers John Theisen and Scott Allen, Township Solicitor Mark Thompson and Assistant Township Manager Jeff Eastburn. Ten members of the public were in attendance.

Public Comment: There was no public comment.

Approval of Minutes – August 6, 2009: On motion by Mr. Brindle, seconded by Mr. Harris, the Minutes of the Planning Commission Meeting of August 6, 2009 were approved as submitted. Motion passed by a vote of 3-0 and one abstention from Mr. Squadron who did not attend the August 6th meeting. (Dr. Hoffman had not yet arrived.)

Planning & Zoning:

a. **Energy Endeavors (EE) (aka Property Endeavors) – Preliminary Plan:** Present on behalf of the applicant were the following: Project Engineer Ronald Ragan; Sean Sheehan, B. Jones and John Sheridan from EE; Project Architect Kerry Haber; and Project Landscape Architect Martha Strauss. Mr. Ragan expressed his appreciation to the Township consultants for their diligence in expediting their review of two sets of plans this past month in order to meet the applicant's desire to move forward as quickly as possible. With the exception of a few administrative and financial issues that will need to be worked out prior to final plan review, and the issuance of a Highway Occupancy Permit (HOP) from PennDOT, Mr. Ragan stated his belief that the revised preliminary plan being presented tonight is compliant with Franklin Township's ordinances and requested a favorable recommendation from the Planning Commission. Mr. Ragan invited questions and comments from the Planning Commission members. The following issues were discussed:

- **Location of the Reserve Parking Area:** Mr. Ragan advised that this issue is covered by a separate agreement which was drafted by Applicant's Attorney, Mary Ann Rossi and reviewed by Township Solicitor Mark Thompson. There will be an exhibit to the agreement which will show the location of the reserved parking area and the proposed agreement is an exhibit to the preliminary plan. Solicitor Thompson recommends that the preliminary plan approval include a condition requiring the approval of this agreement by the Solicitor's office and its' proper execution prior to final plan approval. The agreement will be recorded with the Recorder of Deeds and there is a note on the revised preliminary plan which will be carried over to the final plan, indicating that if the extra parking is ever required the provisions of the agreement will apply.

APPROVED

- Traffic Impact Fee: Mr. Olivier referred to Mr. Ragan's request in his letter of August 28, 2009, to discuss the impact fee with the Board of Supervisors. Mr. Ragan explained that the basis of his request was whether the basement area should be included in the calculation of the traffic impact fee. In the previous use the basement was listed as "accessory to the principal business" and its square footage was not included in calculating the impact fee. Mr. Ragan's point is that the basement is also an "accessory" to the proposed use and therefore should not be included in the calculation. This information was provided to the Township consultants, the fee has been recalculated without the basement area and the applicant has no issue with the new fee.
- Sight Distance: Mr. Ragan recognizes the issue of not enough sight distance to the right when exiting the driveway. Engineer Scott Allen has deferred resolution of this issue to PennDOT. Mr. Ragan has made application to PennDOT for a Highway Occupancy Permit (HOP) but has not yet received their review.
- Fire Department: The Fire Chief's only request is that a "Knox box" be placed outside the building for emergency access.
- Fee-In-Lieu: Mr. Ragan had requested to speak with the Board of Supervisors about the calculation of the fee-in-lieu of recreational facilities. His request was based on the same logic on which he based his request regarding the traffic impact fee. When the additional information was provided to LTL, the fee was recalculated excluding the basement. The applicant has no further issue in this regard.
- Sidewalks: Notes have been added to the plan that addresses this issue. The Township Solicitor has approved the language in the note.
- 50 ft. Right-of-Way: Township Engineer Allen advised in his letter of September 2, 2009, that the easement agreement has been reviewed with the Township Solicitor and there is no remaining issue with regard to the easement as it relates to this plan. Solicitor Thompson agreed with Mr. Allen's statement.
- Landscape Review: Because Mr. Squadron was not present at last month's Planning Commission meeting, Ms. Martha Straus, Landscape Architect for the applicant, provided a summary of the applicant's Landscape Plan. She referred to the Township's agreement that the applicant will restore the woodlands at the rear and sidelines of the property, rather than adding to, or replacing, what is already there. At the request of the Planning Commission, Ms. Straus took several photographs on July 30, 2009 of the woodlands around the perimeter of the site and surrounding the stormwater basin, which will be made part of the permanent record. The purpose of the photographs is to show that there is sufficient density of existing material at the current time, which if allowed to mature as detailed in the plan, will provide a visual and spatial buffer to meet the opacity requirements of the Township's Ordinance. Ms. Straus listed the existing species on the site and stated that 90% of the saplings can be considered native to the area. She stated that there is a list of invasive plants along with a plan to manage and/or remove them. (Dr. Hoffman arrived at this point in the meeting.)

APPROVED

- Existing stormwater basin: Mr. Olivier asked for an update regarding efforts to confirm whether or not the existing stormwater basin was built in conformance with Township Ordinances. Mr. Ragan stated that with his second submission, he provided a copy of the as-built plan which, when overlaid on the recorded plan, shows the same footprint. From this fact he inferred that the existing basin was built in conformance with the Township's ordinance. He will re-submit copies of both sheets to Township Engineer Theisen for his review.

Mr. Brindle moved, seconded by Mr. Squadron, that the Planning Commission make a recommendation to the Board of Supervisors that they approve the Land Development Plan of Energy Endeavors LLC, 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 be submitted to the Township 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.
2. Receipt by the Township of an approved PennDOT Highway Occupancy Permit.
3. Compliance with all outstanding conditions and comments as set forth in the Township consulting engineers' review letters, including but not limited to:
 - McCormick Taylor's Review Letter of September 2, 2009.
 - Tetrahedron's Review Letters of August 21, 2009 and September 2, 2009.
 - URS's Review Letter of September 1, 2009.
 - LTL's Review Letter of August 28, 2009.
4. A Fee-in-Lieu of Recreational Land Dedication of \$3,240.00 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.
5. Payment of an impact fee pursuant to the Township Traffic Impact Fee Ordinance in the total amount of \$21,063.60 (based on six 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.
6. 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.

Mr. Olivier offered a friendly amendment that the word "Preliminary" be inserted before "Land Development Plan" in the second sentence of Mr. Brindle's motion. The friendly amendment was accepted by Mr. Brindle and seconded by Mr. Squadron. The motion passed unanimously.

APPROVED

- b. Winery Accessory to Agriculture Ordinance 2009-06: Solicitor Thompson explained that the impetus for the proposed ordinance was to permit a winery accessory to agriculture use which would permit associated activities such as wine tastings, winery tours and special events such as parties, weddings, etc. He reviewed the provisions of the proposed ordinance and advised that ordinances adopted in neighboring townships were considered in its' preparation.

There was discussion regarding whether the two members of the Commission that are owners of Paradoxc Vineyard, and therefore are directly impacted by the proposed ordinance, should recuse themselves from these discussions. Drs. Hoffman and Harris declined to recuse themselves stating that they have in-depth knowledge of the issues associated with this ordinance and therefore chose to participate in the discussions. The suggestion that they could always participate as Township residents was not acted upon by Drs. Hoffman and Harris.

As the discussion continued, Drs. Harris and Hoffman shared their views based on their own experience at Paradoxc. The first concern they had relates to Section 2.1 of the proposed ordinance regarding the need to have at least two acres of the property where the winery accessory to agriculture is located, planted with a vineyard. They do not disagree with the requirement that a minimum of two acres be dedicated to planting vines, however they described several scenarios where the owner may need up to three years before that criterion can be achieved. They also described scenarios where a winery has met the initial requirement to have two acres planted, but because of insect infestation, or some other reason, they are required to remove and replant. A gap is created during which they no longer meet the agricultural requirement and, according to the ordinance as it is currently written, they could lose their right to operate a winery during this period because they no longer have a sufficient acreage of vines planted. Although this would not be an issue for Paradoxc because of their acreage, Drs. Harris and Hoffman would like to see language in the ordinance which protects the landowner from losing their ability to operate their winery because they have not met, or have been unable to maintain, the two acre minimum planting requirement. The Commission members did not agree on a solution. Some felt that the ordinance should not be revised at this point and that individual situations should be dealt with as they arise. Mr. Squadron stated that he was open to considering some type of revision to deal with the possible gap in compliance that might occur as a result of pest infestation or other issues over which the landowner has no control.

Dr. Hoffman raised a concern about signage and requested that wineries be permitted to put up larger signs than are allowed in agricultural districts. The Planning Commission discussed this issue at length. Mr. Olivier advised that the appropriate approach to dealing with this concern would be an amendment to the Sign Ordinance.

Dr. Hoffman requested that consideration be given to the "Special Event" section of the ordinance, specifically the requirement that special events end no later than

APPROVED

9:00 p.m. and breakdown and cleanup be completed no later than 10:00 p.m. The Planning Commission discussed this issue at length.

Dr. Hoffman questioned the 150 setback referred to item 4.b. The Planning Commission discussed this issue at length. After review of the ordinance it was determined that the current setback requirement in the Township Zoning Ordinance is 100 feet.

Dr. Harris asked for an explanation of Item #8 – "Limitation of Use" which indicates that any change or expansion is only permitted by conditional use. The Planning Commission discussed this issue at length. Solicitor Thompson indicated that a zoning officer could determine that any modification is a newer use or an expansion that requires a conditional use hearing.

Mr. Squadron moved, seconded by Mr. Brindle, that the Planning Commission recommend to the Board of Supervisors that it approve the Wine Accessory to Agricultural Ordinance, 2009-06, as presented to the Planning Commission, with the following changes:

- In Section 4.b, 2nd line, the 150 foot limitation from any property line be changed to 100 feet from any property line in order to bring the limitation in line with the current Zoning Ordinance requirements.
- In Section 4.e, in the parenthetical expression, the word "departure" be added before the word "breakdown" at the beginning of the parenthetical to clarify the meaning and timing requirement for ending "Special Events."
- In section 7, in the second sentence, the word "designate" be corrected to "designated".

Motion passed by a vote of 3-0 with 2 abstentions from Drs. Harris and Hoffman.

Mr. Olivier stated that he would entertain a motion to the Board that they pursue an amendment to the Sign Ordinance.

Mr. Squadron moved, seconded by Mr. Brindle, that the Planning Commission recommend to the Board of Supervisors that it consider and adopt an amendment to the Sign Ordinance, Section 27-2006, to provide for larger permanent signs for Winery Accessory to Agricultural Uses. Motion passed unanimously.

Mr. Olivier recommended that citizens in the winery business consider language for dealing with the issue discussed in Item 1, regarding the minimum wine producing crop requirement.

Public Comment: Mr. Whipple asked the Planning Commission Chairman to ask the Solicitor, prior to the Board meeting, to analyze the suggested changes to determine whether or not they would require re-advertising the ordinance.

The Solicitor advised that "any" change, no matter how insignificant, to a zoning ordinance must be submitted to the Chester County Planning Commission and re-advertised. However, the Board does not have to accept the Planning Commission's

APPROVED

suggested changes, they have several options, including adopting the ordinance as advertised and subsequently amending it to incorporate the changes recommended by the Planning Commission.

Adjourn: Mr. Olivier adjourned the meeting at 9:28 p.m.

Respectfully submitted,

Richard J. Squadron
Planning Commission Secretary

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