

LOWER PAXTON TOWNSHIP
PLANNING COMMISSION

May 13, 2009

COMMISSIONERS PRESENT

Fredrick Lighty
Ernest Gingrich
Dennis Guise
Roy Newsome
Douglas Grove
Robin Lindsey

ALSO PRESENT

Lori Wissler, Planning & Zoning Officer
Dianne Moran, Planning & Zoning Officer
Steve Fleming, HRG, Township Engineer
Omar Syed, Dauphin County Planning Commission

CALL TO ORDER

Mr. Lighty called the regular meeting of the Lower Paxton Township Planning Commission to order at 7:00 pm, on May 13, 2009 in Room 171 of the Lower Paxton Township Municipal Center, 425 Prince Street, Harrisburg, Pennsylvania.

PLEDGE OF ALLEGIANCE TO THE FLAG

Ms. Lindsey led the recitation of the Pledge.

APPROVAL OF MINUTES

Mr. Newsome made a motion to approve the minutes for the following meetings: March 12, 2009 and April 8, 2009 regular meetings, and the March 16, 2009 and April 20, 2009 Route 22 Business Improvement District workshop meetings. Mr. Grove seconded the motion, and a unanimous vote followed.

OLD BUSINESS

There were no items of old business to discuss.

NEW BUSINESS

Special Exception #09-04
Beau Brown & Naomi Williams, 4015 Jonestown Road

Ms. Moran stated that Mr. Brown has submitted an application for a Special Exception to allow him to live at a property that is zoned CG, Commercial General District. A single family detached

dwelling is a Special Exception use in the CG zone and requires a decision by the Zoning Hearing Board. The property will also be used for a commercial office in the future. The property is located at 4015 Jonestown Road. Mr. Brown's narrative was provided to the Planning Commission. Staff is providing the application to the Planning Commission for any advisory review the Commission may want to provide to the Zoning Hearing Board.

Mr. Beau M. Brown, 1944 Swatara Street, was present on behalf of the application.

Mr. Brown explained that the house was originally constructed as colonial style house and used as a residence through the 1990's when it was purchased by an association. His intentions are to live in it for a period of time and renovate it completely. The renovation will have met office codes such as handicap access, data connectivity, and parking. Eventually, 12-16 months, Mr. Brown would like to open a commercial real estate office at the site at which time he would probably move out. Currently he has a home in Bellvue Park and he cannot afford both properties.

Mr. Newsome asked for a description of the neighborhood. Mr. Brown stated that the block contains Jiffy Lube and Dunkin Donuts. Friendly's and the funeral home are across the street. All the other properties around it are residential uses.

There was no comment from Dauphin County.

There was no comment from the audience.

Mr. Newsome made a motion to recommend approval of the application. Ms. Lindsey seconded the motion and a unanimous vote followed.

Preliminary/Final Land Development Plan #09-10
Mountain Road Carwash

Ms. Wissler stated that the purpose of the plan is to develop a self-serve/automatic carwash and related site improvements. The property is located south of Larue Street and west of North Mountain Road and is zoned CN, Neighborhood Commercial District. The tract of land possesses 0.69 acres and will be served by public water and public sewer.

On March 26, 2009, a Special Exception was granted by the Zoning Hearing Board to allow a carwash use on this site. The applicant has requested a waiver of the requirement to submit a preliminary plan.

Mark Coakley, Triple Crown Corporation, and Bob Fisher, RJ Fisher & Associates, were present on behalf of the plan.

Ms. Lindsey asked about the real estate sign that says "Build to Suit". Mr. Coakley stated that is something they do as a general practice until all approvals are in place. Their intentions are to absolutely proceed with the carwash.

Mr. Lighty asked if the applicant has received comments from Staff, Engineer, and County. Mr. Coakley stated he has received them.

With regard to the comment about the HOP, he stated they plan to do nothing in the PennDOT right-of-way. It will remain exactly as is. Terry Grove from Grove Miller Traffic Engineers did some trip generation reports, and the carwash use is significantly intense and produces significantly less number of trips than the former gas station use. Mr. Fleming stated he agreed with Mr. Coakley and will write a letter to that effect. He suggested the applicant get a letter from Joe Briget with the original permit numbers.

Mr. Coakley asked about the comment about a loading space. There is no need for one with this use, the only deliveries will be very minor delivered via pick-up or small van. Mr. Fleming stated that the loading space is part of the parking requirements, so if the applicant does not propose to designate one a variance will have to be requested. Ms. Wissler advised the applicant to designate one, and noted that there is one extra parking space shown, which could be used for the loading zone.

Mr. Coakley asked about the requirement for fire suppression. Ms. Wissler stated that it will not be required for this use.

Mr. Coakley stated the other comments will be addressed.

Mr. Syed suggested limiting traffic to one way in and out. Mr. Coakley stated that they would prefer to not change the driveways so they do not have to go through the HOP process.

Mr. Syed asked if there will be an attendant on-site. Mr. Coakley stated the operation is fully automated, so there is no attendant. Maintenance people will come to the site early in the morning and late in the evening, but no other employees.

Mr. Lighty called for comment from the audience.

Mr. Eric Epstein, SWAN, 4100 Hillsdale Road stated he is not opposed to the application but had some questions.

He asked if vehicles are permitted to turn left out of the carwash. Mr. Coakley answered that they are. Mr. Epstein stated that vehicles are not allowed to turn left out of the Colonial Crossings onto Colonial Road. He noted these sites are similar, and the traffic being backed up for the Square intersection adds to the difficulty. He asked why they would be different. Mr. Fleming stated the driveways are governed under the PennDOT HOP from the gas station, and that will be reaffirmed by PennDOT. Mr. Epstein asked if the reaffirmation takes into consideration the school nearby and the fact that the Square will be redone soon. Mr. Fleming stated that the existing permit was obtained using traffic volume numbers that are based on projection. The carwash use is a less intense use than the gas station use. Mr. Epstein stated the reconfiguration of the Square and additional population in the area should be considered. He asked if the site is looked at as an isolated lot and if they look at traffic counts with previous and projected uses. Mr. Fleming stated that is correct for the Township requirements;

PennDOT may take into consideration the other factors so he has asked that the applicant correspond with PennDOT to make sure their design will correspond with the design of the design of the Square. The appropriateness of turning left out of there is a determination to be made by PennDOT. Mr. Epstein asked if that determination has been made. Mr. Fleming answered that it has not yet been determined. Mr. Lighty noted that the Township requires that the applicant comply with whatever PennDOT wants them to do. He noted that the mall on Colonial Road was new construction. Mr. Epstein agreed, but noted that the change in use on the gas station/carwash site is the opportunity to reconsider and/or correct the conditions. Mr. Epstein asked if an accident count was done. Mr. Fleming stated that was not looked into. Mr. Epstein suggested that be done because that may be a factor. He stated he is not opposed to a carwash on the site but noted that the site is in a congested area. Mr. Fleming noted that the Public Safety Committee does also review plans prior to the Planning Commission meeting. Mr. Epstein asked specifically about accident counts. Ms. Wissler stated they do review the plans and do make recommendations. She did not know what criteria are involved in their review, but will find out.

Mr. Epstein asked if the plan has to be reviewed by the Susquehanna River Basin Commission or if the carwash will use public water. Mr. Coakley stated they will use public water, and they have a letter of intent to serve from PA America Water. Mr. Fisher added that there will be a recycling system in place.

Mr. Fisher noted that the carwash is a less intense use than a shopping center, and the traffic counts are much less. In addition, the majority of the traffic will be in off-peak hours. He agreed that if someone goes there at a peak travel time, they may not be able to make a left turn out onto Mountain Road, but that is not when the majority of the traffic comes to a carwash. The use is atypical.

Mr. Guise made a motion to recommend approval of the plan, subject to compliance with the comments. Mr. Grove seconded the motion and a unanimous vote followed.

SWAN's proposed changes to the SALDO
Stormwater Retention/Detention Basins

Ms. Wissler stated that SWAN is requesting two changes to the Subdivision and Land Development Ordinance (SALDO). The first is that a requirement should be added to provide a buffer of at least 100 feet to a stormwater retention or detention basins from neighboring property. The second is that there should be a geologic study done in the area of detention/retention basins. The changes were reviewed by HRG and his memo is provided for the Planning Commission.

Eric Epstein and Ken Parmer were present on behalf of SWAN and its proposal.

Geologic Study. Mr. Epstein stated they are looking for a common ground, and that 100 feet is probably beyond what the Township can authorize. The response to HRG's memo is presented for the Commission. He noted that SWAN is not concerned with the size or net worth of the developer. SWAN spent \$5,000 to show the soil in the detention pond will not work. There was nothing on the books to compel the developer to do that testing. If a pond is to be built next to a person's home, the developer needs to be made to at least test the soils to see if they will fail or not fail. The detention pond

that SWAN put to the test would have been built and would have failed. If there were some kind of bond or agreement that has some strength to it. If it fails, any recourse is after the failure.

The issue is how can the township take the developer's word for it when they say the detention/retention pond will work. Mr. Epstein stated numerous failures have occurred in the Township with flooding and related problems. He asked that there be a way to address or cure the problems that SWAN has just spent 8 months to address.

Buffer. Mr. Epstein stated that an 18-foot mound can be built next to an existing property with a scale of 3:1, yet the existing land owner is permitted to have fencing 6 feet high. The issue here is can a creative space be built between an old and a new development. SWAN's creative suggestion is offer a density bonus or some kind of credit, similar to what is given in a TND.

Mr. Epstein offered to withdraw and resubmit the proposals.

Mr. Newsome asked about the failures, and noted there are many ways a pond can fail. If the engineering is correct, there should be no problem. The issue of bonding may make sense. Permeability, subsurface soil makeup, sizing and other parts of the whole could fail. Mr. Epstein stated that the core issue is permeability. He noted that McNaughton had failures in York and Cumberland Counties, where real damage was done and fines were levied. Mr. Newsome stated this shows faulty engineering. Faulty engineering is a different issue than a faulty ordinance. He agreed that bonding may make sense. Mr. Epstein stated the request is to specifically ask for soil samples. Mr. Fleming stated that is already addressed in DEP's requirements. DEP has extensive design requirements, as well as voluntary guidelines. HRG does review those, and anything above and beyond those requirements is going to be received as excessive or overkill. 100 feet of buffer may be too much. Mr. Epstein agreed they could find a creative way to still achieve the same effect. Each of the ponds in Autumn Oaks was originally planned to be adjacent to existing homes.

Mr. Fleming stated that the detention ponds are typically sited at a low point to grab all or as much of the stormwater runoff as possible with minimal disturbance.

Mr. Ken Parmer, 4292 South Carolina Drive, felt the buffer issues stem from courtesy. The detention pond was going to begin at the property line with his home. He recalled the when the Target store was built. The neighbor to the back could step out his back door and one misstep and he wouldn't stop until he was dead at the bottom. They have since put trees and a fence so it isn't so threatening looking. They do not take into consideration the neighbors that have to live next to what they build. Mr. Parmer felt that was wrong. He noted that there are new requirements from DEP, but asked if these were in effect when this was designed or if it will be something for future developments. Mr. Fleming stated that it was in effect and the infiltration design was revised. Mr. Parmer stated that the engineer came to meeting after meeting saying he met all the requirements. The detention pond may have been at the low point of that property, but it was up hill from existing properties. The subsequent studies show that the bottom of the basin site is shale and the water will end up going out through the existing neighborhood. The bottom of the detention pond was 10 feet above the neighbor's basement. That is asking for problems.

Mr. Newsome agreed that there are issues, but felt the issues result from poor engineering. He also noted that the toe of the bank should not be at a property line, and that is something the Township should have seen. He felt that the proximity of the toe of the bank to property lines is a legitimate issue. The draft does not propose a change in engineering, which was shown to be wrong. It is a shame it got by and was not done correctly. It also brings to the Township's attention that it needs to be more attentive to buffers around non-natural features.

Mr. Parmer stated that if there are problems, and there is a bond in place, the Township has the means to rectify the problem.

Mr. Epstein noted that the McNaughton's did respond to the issue, and they installed a liner and have had a good working relationship throughout the process.

Mr. Gingrich commented that a buffer is appropriate, in the same way there is a building setback line for construction. If there is a problem with infiltration design, that would be an issue for DEP. If the site of the pond must be located there, then a liner may be appropriate. Mr. Epstein stated it was an education to neighbors of new developments, where they cannot expect a developer to fix problems that already existed.

Mr. Lighty stated that one issue is the engineering of the basins, and the other is the location of the basins. Some common sense would go a long way, and the Township could be willing to work on that. The issue of engineering is more complex. McNaughton has had issues in the past, but they were in different municipalities under different ordinances and different enforcement mechanisms. He asked Township Staff and Township Engineer if Lower Paxton Township has ever had detention basins go bad or fail. Mr. Lighty stated the answer is no, which tells him that the engineering is not bad generally. He asked if the engineer or developer is being held to the engineering. The ordinance does require that the soils be looked at, and if they did not do that, then the Township has to make them do that. The distance is not an issue the engineer will consider, it is more an aesthetic issue. If it is going to fail, the distance to a property line is irrelevant. As the Subdivision and Land Development Ordinance is looked at, the buffer should be considered. The engineering may not be a problem. Mr. Lighty read some of the requirements, and Mr. Parmer stated that those requirements address recharge, which is what will flood the basements of the neighbors. Mr. Fleming stated the requirements are from the proposed SALDO, not what is currently in place.

Mr. Epstein asked if the proposed SALDO addresses the concerns SWAN has raised. Mr. Fleming answered yes, that the recharge requirements and the DEP requirements, if followed, provide for a properly functioning basin. Problems arise occasionally due to construction practices, maintenance, or unforeseen circumstances, and have to be addressed in the field as they are encountered. The exception is the one that is the problem. Mr. Epstein stated the exception is also the one that gets the headlines. Mr. Lighty stated that whatever is in place has and does work. Mr. Epstein suggested the proposed changes will enhance the current ordinances. Mr. Lighty suggested that adding expenses to every project because of one exception may not be appropriate either. Mr. Epstein and Mr. Lighty agreed that the bonding may be a good compromise, less expense, yet still covering the what if or the exception. Mr. Epstein stated that an inventory of basins was not done, so it is not determined if there has been a failure or not. Mr. Lighty suggested that if a neighbor was affected by a malfunctioning

basin, the Township would be the first to be told. Ms. Wissler stated there have been complaints, but they have centered around maintenance, and they have been paying closer attention to that.

Mr. Guise stated that the suggestion was for certification, not bonding. He agreed the setback issue could be discussed more with the ongoing SALDO discussions.

Mr. Lighty asked if SWAN would work with the Township on the setback issue at one of the SALDO workshop meetings. Mr. Epstein agreed, and suggested that the people with the opposite view also should voice their thoughts then. Mr. Lighty would also be interested in the cost of these ideas.

Mr. Fisher stated he has experienced many of the circumstances in Lower Paxton Township and Susquehanna Township. He is also involved with the Chesapeake Bay and DEP regulations and local regulations. The 100-foot buffer is extreme. There are some municipalities with buffer requirements, and they are around 10-15 feet, similar to minimum building setback. He noted that Lower Paxton has done a good job at using common sense, not regulating to cover every circumstance there could be; each site needs to be looked at individually. He added that regardless of what he as the design engineer or the Township want or say, DEP or DCCD will override both.

Bob Dobslaw/Schiavoni LTD
Discussion regarding possible Text Amendment to Zoning Ordinance and SALDO
Commonwealth Court Decision

Ms. Wissler stated that Mr. Robert Dobslaw met with the Board of Supervisors at their workshop meeting last night to discuss the recent Commonwealth Court Decision that has created a need for municipalities to address criteria which may now conflict with current regulations. This may result in a text amendment.

Ms. Lindsey recused herself from comment or recommendation on the subject. Mr. Lighty advised that she may ask questions throughout the discussion since the Planning Commission will not take action on this issue.

Mr. Robert G. Dobslaw, Attorney at Law, 110 Ridings Way, Lancaster, stated that the Pennsylvania Commonwealth Court passed down a decision which addresses parcels of property called units, and parcels of property called lots. Prior to last year, the Commonwealth Court has held that the creation of a unit, a portion of a condominium, or a portion of a planned community, is not a municipal item. In 1975, the Court addressed creation of Condominium units by saying that condominium is a form of ownership and not subject to municipal regulation.

Mr. Dobslaw explained that a unit is a portion of a condominium or a portion of a planned community. There are two acts, the uniform condominium act (UCA), and the Uniform Planned Community Act (UPCA), are virtually identical. A unit is a portion of either a condominium or a planned community. Most people think of a condominium as air or an apartment measured wall to wall floor to ceiling. A condominium can be inside a multilevel building, or it can be in townhome buildings. Those units can include land, and do not have to be limited to air space. In some cases, they are only land (land units) such as Paxton Towne Centre, which can also be called a site condominium or a

horizontal condominium or dirt condominium. The same is true under the UPCA, interior spaces, pieces of ground or whole structures.

Prior to the Court decision, the creation of those units was felt to be simply the change in ownership of the overall parcel, as stated in the definition of unit. Last year, the Commonwealth Court ruled for the first time that the creation of units constitutes a subdivision, a subdivision into lots. The problem is that lots are defined in such a way that a unit does not fit. Lower Paxton Township's Zoning Ordinance and Subdivision and Land Development Ordinance have that problem. If it is said that every unit is a lot, then an 8th floor apartment is now a lot. A lot must meet requirements for side/rear/front yards, frontage, lot lines, et cetera, that it cannot do in a condominium. A lot is considered a piece of ground, but the decision has changed that. Township ordinances do not recognize a lot as being something interior.

Mr. Dobslaw explained that a developer has purchased the Schiavoni development which was approved as a land development plan of townhome configured residences. The developer will sell those residences as units under the UPCA. When the land is divided into units, the units become lots, and the lots do not meet the definition or requirements of lots. This creates an illegal subdivision. The solution is to modify the ordinances to address these otherwise conflicting actions.

Both the UPCA and the UCA state that a change in the structure cannot be a requirement of the form of ownership. That means that a development that can be built and rented out and owned by one owner, cannot have different requirements if it is converted into a condominium or planned community. That means it is illegal to tell the developer that he can rent the units, but if he intends to sell them he will have to make some other configuration of the living spaces.

The things that must now be accomplished are:
recognize that a unit is now a form of a lot;
make sure that when that unit is deemed to be a lot, that some of the lot requirements are not applied to that unit;
unit lots will have to be exempt or explain that when a lot is a unit, that certain provisions do not apply; and
when a land development plan has been approved by a municipality, that approval constitutes the approval of the subdivision into individual unit lots if they are created in accordance with either the UCA or the UPCA.

This can be accomplished with a text amendment to the Zoning Ordinance and possibly the Subdivision and Land Development Ordinance. Mr. Dobslaw noted that Solicitor Stine attended a seminar that mentioned the Shaffer case, but no municipality has addressed it yet, Lower Paxton Township will be the first.

Mr. Newsome thanked Mr. Dobslaw for the information. He asked what the chances are that the Shaffer Case will be challenged within the court system. Mr. Dobslaw stated the decision was issued in October, and in November a petition was filed with the Supreme Court for allowance of appeal. The Supreme Court does not have to take an appeal of the Commonwealth Court Decision. The petition has

been there since November, and they have not yet ruled on whether they will accept the appeal. Mr. Dobslaw filed the appeal.

Mr. Newsome stated the ruling is horrible, and the problems it generates are great. Mr. Dobslaw stated that if they do take the appeal, a decision on the appeal cannot be expected until late 2010 at the earliest. Developers that proceed before a decision is made will create illegal subdivisions.

Mr. Fleming asked if cooperatives and other forms of ownership should be included in the appeal. Mr. Dobslaw stated that coops are a third and separate form of ownership. In a coop, all land, units and everything is owned by one entity such as a corporation. The residents buy shares of the corporation and enter into an occupancy agreement for the individual space. The ruling does not apply to coops, only to division of real estate into units.

Mr. Epstein asked about legislative relief that could make the decision mute. Mr. Dobslaw stated that has been considered, but unfortunately, both acts have language that should have made this decision impossible. Both contain provisions that state the creation of a condominium or a planned community out of an entire parcel of ground shall not constitute subdivision or land development for any purposes of ordinances. There is another section that says the UPCA does not turn over any land use ordinances. The Commonwealth Court relied on the opinion of Robert Ryan that the Acts are not clear. While it is possible to take the issue to the legislature, that will also be a lengthy process.

Mr. Dobslaw stated he will submit a draft text amendment to the Township addressing the issue.

Mr. Newsome stated he would like to know what the municipal associations response to this has been. Mr. Dobslaw did not know, but suggested they may not have an opinion yet since it is so new and has yet to impact a lot of projects. Mr. Newsome felt the Pennsylvania State Association of Township Supervisors (PSATS) should be very interested in this issue which will cause them much grief. Mr. Dobslaw stated the solution may be as simple as a text amendment. However, if the issue goes to the Supreme Court, there are several groups that are prepared to argue on either side. The land title people are going to be interested in this as well because they have insured title to units which may be illegally subdivided lots. The home builders will be impacted as well. When the Schiavoni project was sold to Balanced Development Group, the issue was brought to Mr. Dobslaw.

PUBLIC COMMENT

There was no additional public comment offered.

OTHER BUSINESS

ID Cards

Ms. Wissler stated that there was a request for business cards for the Commissioners. In lieu of that, the Township will provide identification cards for each member. She distributed forms to be filled out. Pictures will be taken late afternoon, on a date to be announced. She will contact the Commission when a date has been selected.

Wind Energy

Ms. Wissler stated that Dauphin County is conducting outreach meetings to discuss Regulating Wind Energy Facilities/Windmills. She noted that staff will not be able to attend, and asked the Commission members to consider attending the meeting. Mr. Lighty stated he will be there as a member of Tri-County. Mr. Grove and Mr. Newsome expressed an interest in attending.

Ms. Wissler stated the Township is beginning to receive questions about wind energy, and does not yet have regulations in place.

ADJOURNMENT

The next regular Planning Commission meeting is scheduled for Wednesday, June 10, 2009, at 7:00 pm at the Lower Paxton Township Municipal Center, Room 171.

There is a Business Improvement District workshop meeting scheduled for Monday, June 1, 2009, at 5:30 pm, with a light meal available at 5:00 pm, in Room 174.

Being no further business, the meeting adjourned at 8:29 pm.

Respectfully Submitted,

Michelle Hiner
Recording Secretary