

LOWER PAXTON TOWNSHIP
PLANNING COMMISSION

July 8, 2009

COMMISSIONERS PRESENT

Fredrick Lighty
Dennis Guise
Roy Newsome
Richard Beverly
Douglas Grove
Robin Lindsey

ALSO PRESENT

Lori Wissler, Planning & Zoning Officer
Omar Syed, Dauphin County Planning Commission
Amanda Mitchell, Codes Enforcement Officer
Steve Fleming, HRG, Township Engineer

CALL TO ORDER

Mr. Lighty called the regular meeting of the Lower Paxton Township Planning Commission to order at 7:01 pm, on July 8, 2009 in Room 171 of the Lower Paxton Township Municipal Center, 425 Prince Street, Harrisburg, Pennsylvania.

PLEDGE OF ALLEGIANCE TO THE FLAG

Mr. Guise led the recitation of the Pledge.

APPROVAL OF MINUTES

No action was taken on meeting minutes.

OLD BUSINESS

There were no items of old business to discuss.

NEW BUSINESS

Preliminary/Final Subdivision Plan #09-12
Select Medical

Ms. Wissler stated that the purpose of this plan is to subdivide the existing parcel into two lots. Lot 1 will contain 4.88 acres and Lot 2 will contain 1.31 acres. The property is zoned IN, Institutional District and is located at 1251 Avila Road. The property is the former Villa Theresa Nursing Home site and is served by public sewer and public water. No construction is proposed with this plan.

On June 25, 2009, the Zoning Hearing Board granted a variance allowing a reduced side yard set back of 14.65 feet on each lot.

The applicant has requested a waiver of the preliminary plan requirement.

Mr. John Murphy of Alpha Consulting Engineers was present on behalf of the plan.

Mr. Lighty asked if the applicant has received copies of the comments. Mr. Murphy stated he has received the comments and will comply with them.

Mr. Lighty asked the intended use of the parcels. Mr. Murphy stated that the use of the Villa Theresa building has not been determined, but the Diocese wants to purchase the other lot with the convent building.

Mr. Omar Syed, Dauphin County Planning Commission, had no additional comments.

There were no comments offered from the audience.

Mr. Guise made a motion to recommend approval of the plan, and approval of the waiver request, subject to compliance with the comments as the applicant has indicated he will. Mr. Newsome seconded the motion and a unanimous vote followed.

Special Exception #09-05
MLG Enterprises, Inc.

Ms. Wissler stated that MLG Enterprises Inc. has submitted an application for a Special Exception to reduce the number of parking spaces for the restaurant use on Lot 2 in conjunction with the hotel use on Lot 1. The property is zoned CG, Commercial General District and is located at the Country Oven site at 300 North Mountain Road.

The applicant has provided a narrative outlining the parking reduction request. As per Article 116, Staff is providing the application to the Planning Commission for any advisory review the Commission may wish to provide to the Zoning Hearing Board.

Mr. Ron Lucas was present on behalf of the application. Mr. Lucas stated the land development plan was approved in 1999 to expand the hotel. At that time the site complied with, and actually exceeded, the parking requirements for both the hotel and the restaurant. Under the new Ordinance, the restaurant requires more spaces. He explained that the reason for the subdivision plan is that the Best Western has taken the position that since the restaurant is physically attached to the hotel and on the same property, the restaurant building has to be renovated to comply with all Best Western standards, even though it is not operated by the owner of the hotel. Best Western also wants the right to inspect the restaurant at all times. These requirements have made it very difficult to lease the restaurant space. The subdivision will put the restaurant on a separate property. The special exception is to reduce the number

of parking spaces to what exists today. No paving or development is planned with this plan. The uses overlap; the guests at the hotel typically use the restaurant. The hotel typically serves transient travelers who will not conflict with the restaurant. There has not been a conflict with the parking between the hotel and restaurant, especially since 1999 when the expansion took place. There will be cross-access easements for parking.

Mr. Lighty stated that there is adequate parking for the hotel, but it is not very convenient parking for the restaurant.

Mr. Lighty asked if the hotel would not have enough parking spaces if the lot lines were drawn to give adequate parking to the restaurant. Mr. Lucas responded that the two uses combined would require 20 more spaces than what is currently there. The requirements were exceeded in 1999 before the zoning ordinance changed.

Mr. Lighty asked if the hotel has room to add some spaces in the rear. Mr. Lucas stated topography is a problem on the site. There is a retaining wall to the rear, and a steep drop-off towards I-81 which is wooded providing a buffer area. Using the aerial photograph on the projection screen, Mr. Lucas showed the Commission the location of the physical features of the parcel. The lot lines shown on the aerial were removed with the plan in 1999.

Mr. Lucas stated that the lunch crowd for the restaurant will take place before most hotel guests arrive.

Mr. Newsome commented that the current parking arrangements are very inefficient. He suggested that additional spaces could be obtained by rearranging the parking layout.

Ms. Lindsey asked if having too few parking spaces would be a deterrent for potential tenants. Mr. Lucas stated that has not been a problem in the past 10 years. The problem currently is that the restaurant will have to be brought up to Best Western's standards and be subject to inspections. The property is non-conforming according to the ordinance, but a couple years ago did comply.

Ms. Lindsey suggested a chain restaurant may draw a bigger crowd than the diner-type place and may use more of the parking. Mr. Lucas stated that a chain would have other requirements of the site that would make this site not an option to them.

Mr. Lighty stated the exit out of the site is terrible.

Mr. Lucas stated that if it weren't for the position of Best Western, they would continue to lease the restaurant as they have always done.

Mr. Stephen Fleming, HRG, Township Engineer, suggested condominiumizing the hotel and restaurant. They could have two forms of ownership, a condo unit for the hotel, a condo unit for the restaurant, and common ground for parking. He suggested that the subdivision would be unnecessary as would the variance. Mr. Lucas stated that it was considered, but the non-conforming parking is still an issue, as well as other more costly issues.

Mr. Syed asked where the lot line is proposed to be. Mr. Lucas showed him on the aerial map, basically a straight line north and south through the breezeway. It does meet the setback requirements for the hotel building, but a variance is needed for the setback requirement for the restaurant. The other variance being requested is for impervious coverage, another existing condition.

Mr. Syed asked how many parking spaces would there be if there were no cross easements. Mr. Lucas stated the cross easements are necessary and are permitted according to the zoning ordinance. The total is 20 spaces short. Mr. Lucas stated there will be 39 spaces on the restaurant lot, 212 on the hotel lot, for a total of 251. 271 spaces are needed under the current ordinance. Mr. Syed agreed that there is a lot of wasted space in the parking lot.

Mr. Guise asked if there was a reason to divide the lots so unevenly. Mr. Lucas stated the restaurant requires more spaces than the hotel. They want the hotel to not require a variance for setbacks, so the lot line has to be where it is shown, and to simplify things they kept it a straight line.

Mr. Lighty called for comments from the audience.

Mr. Guise made a motion to advise the Zoning Hearing Board that the Planning Commission finds the application for special exception to be unobjectionable, although it does have some concerns about the configuration of the parking. Mr. Grove seconded the motion and a unanimous vote followed.

Ordinance 09-07, Amending the Zoning Ordinance
Ordinance 09-08, Amending the SALDO
As they Pertain to Condominiums

Ms. Wissler stated that Ordinance 09-07 adds definitions regarding condominiums, regulations within the districts and special uses. She noted a typographical error in part 8.2.a, omit the word "not". Mr. Guise noted another correction, section 4.17.c & d, omit the comma in the citation.

Mr. Robert Dobslaw, 110 Ridings Way, Lancaster, was present on behalf of Ordinances 09-07 and 09-08.

Mr. Dobslaw stated that the proposed text amendments are a result of a Commonwealth Court Decision that establishes that the creation of units in the Planned Community Act (PCA) constitutes the subdivision of property, and that the division of property into condominium units is similarly a subdivision. The purpose of the text amendments is to create a mechanism for the subdivision of units in either a condominium or a planned community. The approach has been presented previously, as well as reviews and responses from Solicitor Stine and Charlie Schmehl of Urban Research and Development.

Ms. Wissler stated that the comments from Mr. Schmehl dated July 7, 2009 were distributed this evening.

Mr. Dobslaw noted that Mr. Schmehl raised some issues that were not applicable. He directed the Commission to the chart titled "Zoning Ordinance" in the packet of information. The Zoning Ordinance changes are described in the right hand column and referenced in the left column. The primary change is to permit the subdivision of units as subdivided parcels but not as lots. Lots is defined in the Municipalities Planning Code (MPC) and it envisions the division of land into lots. Dividing a farm or piece of ground into lots is common and familiar, but dividing units does not fit the definition. Units are defined under the PCA and the Uniform Condominium Act (UCA) as portions of a condominium or a planned community designated for separate ownership or separate ownership and occupancy. The result is that a unit can be almost anything that is real estate, a piece of ground, a block of air, located many floors above the ground. The ordinance describing the subdivision of land does not describe the division of a block of air on the 12th floor. Therefore, the suggested change is to recognize a new form of subdivision and call it a subdivided parcel. That puts it on par with a lot so that subdivided parcels can be lots or they can be units. If they are lots then they will comply with the provisions in the ordinances that apply to lots. If they are units, then the method of review and approval follows the current practice, submitted as a land development plan, a review is done of the overall property (usually a lot) and addresses within the overall plan the placement of buildings, parking, buffers, landscaping, et cetera, and the land development plan is approved. The ordinance revisions say that by that process, the approval of the municipality constitutes the division of the overall lot, which has been approved, into units. That will subsequently meet the requirements resulting from the Commonwealth decision. The chart shows the changes necessary to prevent further conflicts.

Mr. Dobslaw stated that the issue raised by Mr. Schmehl in his first review memo, suggested requiring that if units are created, then there should be additional requirements placed upon the buildings containing the units, such as placement, if they are to be condominium units or planned community units, and he proposed a new section. Mr. Dobslaw's response to this is dated July 7, 2009 and has been distributed to the Planning Commission this evening. The PCA and the UCA both contain a requirement that a municipality may not place a requirement on the development of property based on the form of ownership. Mr. Schmehl's suggestion might violate Sections 5106.a of the PCA and 3106 of the UCA. The municipality is directed to "be blind" to the form of ownership.

Regarding the memo from Mr. Schmehl dated July 7th, Mr. Dobslaw stated separation distances between buildings, without regard to form of ownership, is important, but is only addressed in the TND section. Mr. Dobslaw stated that is not relevant to the issue of the Commonwealth Court decision. He asked that those comments not related to the Commonwealth Court decision be addressed at another time. This land development plan, as approved, does meet Mr. Schmehl's suggestions.

The Schiavoni Ltd. land development plan was approved and recorded, and has now reached the marketing stage. The developer wishes to market the townhomes as either condominium units or planned community units. To divide the units in that way, after the Commonwealth Court made this decision, constitutes a subdivision.

Mr. Dobslaw explained there is no such thing as a condominium lot, only a condominium unit, and a lot. Mr. Schmehl's memo uses the term condominium lot and contrasts it with a fee simple lot. Fee simple is a form of ownership, and a person can own a condominium in fee simple. He also noted

that it is common to refer to a condominium unit as a condominium. The condominium is in fact the entire project; the component of it is a condominium unit.

Mr. Dobslaw noted that Mr. Stine stated in his memo to Ms. Wissler that he concurs that the amendments should be adopted and points out that the amendments are intended to address the implication of the Shaffer Case. Mr. Dobslaw stated that Mr. Schmehl's comments are valid, but addresses other issues in the ordinances beyond the focus.

He asked that the Planning Commission recommend approval of the amendments so that they may be considered by the Board of Supervisors.

Mr. Lighty stated that Mr. Stine's memo says the outstanding question is how to resolve the differences between Mr. Dobslaw's and Mr. Schmehl's comments and suggestions. The Commission has seen some of the correspondence, but has also just received more correspondence tonight. He did not feel comfortable making a decision at this time and whether the issues have been worked out.

Mr. Dobslaw stated that none of Mr. Schmehl's comments impact what the text amendments are trying to accomplish.

Mr. Guise stated this is not an applicant-submitted text amendment, it is being done by the Township, so the Township can adjust it in whatever manner it deems necessary. Ms. Wissler confirmed his statement.

Mr. Newsome asked if any other municipalities have amended their ordinances as a result of the Shaffer Case. Mr. Dobslaw stated that this will be the first that he is aware of. Mr. Newsome asked where Mr. Dobslaw's client would be if the Court had not ruled as it did. Mr. Dobslaw stated it is his opinion that they would not be before the municipality at this point because the division of property into units was ruled by the Commonwealth Court, as early as 1975, to be outside municipal regulations.

Mr. Newsome asked what will become of the ordinances Lower Paxton Township is modifying if the Supreme Court does hear and rule on the Shaffer Case. Mr. Dobslaw stated he has filed an appeal with the Supreme Court and is waiting to hear if they will take the appeal. If they do, they will decide which side is correct, a form of ownership and therefore not involving municipalities, or a subdivision which a municipality will have to address as any other subdivision. If the Supreme Court does not take the case, the State will be stuck with a confusing area of the law, and municipalities will be forced to address the situation. The request for appeal was filed in November 2008.

Mr. Newsome stated he is not prepared to come to a conclusion or pass a recommendation on to the Board of Supervisors at this time.

Mr. Grove stated that most municipalities will have to address this at some point. His concern is that most of the information was received on very short notice. He was also not ready to send a recommendation on to the Board of Supervisors. How will the Supreme Court's decision impact this Township from a legal standpoint when and if Lower Paxton Township does amend its ordinances. Mr. Dobslaw stated that depending on how the Supreme Court reacts, Lower Paxton Township's ordinances

may again have to be changed or reversed. The likelihood of that happening in the next few years is slight. He felt that doing nothing at this time is equally as bad as doing something that may have to be reversed. Mr. Grove wasn't necessarily suggesting to wait on the Supreme Court, but also is not ready to make a move on the topic.

Mr. Guise agreed with the comments made by the other Commissioners, but commented that the Township has to rely on the advice of its solicitor that it needs addressed, and he would like to see the solicitor review the draft with the revisions.

Mr. Guise noted that even though some of Mr. Schmehl's revisions may not specifically pertain to the court decision, there is no problem with incorporating it as long as it doesn't confuse the ordinance. He did not think it was appropriate to wait for the Supreme Court to decide.

Mr. Newsome asked if Staff has had any contact with PSATS on this matter. Ms. Wissler stated she has not. Mr. Newsome suggested the Township should bring this to their attention if they are not aware of it because they should be working on a solution too.

Mr. Syed had no further comments, and there was no comment from the audience on this matter.

Mr. Newsome made a motion to table the plan. Mr. Grove seconded the motion and a unanimous vote followed.

Noise Ordinance

Mr. Lighty asked if there was anyone present from SWAN to discuss the subject, and there was not. Ms. Wissler introduced Amanda Mitchell, Codes Enforcement Officer, for the Township.

Ms. Wissler stated that the Tara Meade case is what brought this issue to SWAN's attention. She explained that Tara Meade's husband works nights and her neighbor's son is a young man and works on his vehicle during the day disturbing the Meade family.

Ms. Mitchell stated that the police do not feel the activity is worthy of a citation since the noise is during the daytime, and often on weekends. Since the police are not able to resolve the Meade's situation, SWAN is attempting to make the ordinance more specific.

Ms. Wissler stated that SWAN proposes to take excerpts from Susquehanna Township's noise ordinance, but Staff has gathered ordinances from other surrounding municipalities, West Hanover Township, South Hanover Township, Susquehanna Township, and Swatara Township. She noted that Lower Paxton Township's ordinance seems to be very similar to the surrounding municipalities.

Mr. Lighty stated the ordinances seem to all measure decibels at the property line and asked if the Township has a sound meter to measure decibels. Ms. Mitchell stated the Township does have a meter, but it is inexpensive and not always accurate. It is unable to do what SWAN's proposal would need it to do. If the Township did what SWAN is asking, the Township would need a newer, more

expensive meter, as well as the training on how to use it. She also noted that there are companies that will perform a sound reading; the problem becomes who should pay for that.

Ms. Mitchell stated that the proposal as it is written, would significantly increase the number of complaints, especially regarding dogs. Mr. Guise stated that the section regarding dogs cannot be used as it is written.

Ms. Mitchell also noted that there is a problem with the ordinance being located in the Zoning Ordinance. The Zoning Department may not issue citations; they must file a civil action. This means a complaint would be received, a letter would be sent to the offender, a second complaint would be received, a civil action would be filed, there would be a three-week waiting period, a notice to defend would be filed, a date for a hearing would be set, and eventually, a hearing would take place about a dog that barked for more than 10 minutes several months ago.

Ms. Mitchell stated that the zoning office is open from 8-5, and most complaints are received outside of that time.

Ms. Wissler stated that noise was never regulated by Zoning, until the 2006 ordinances were adopted. Mr. Guise suggested the noise complaints should be handled by something other than Zoning, possibly under the Township ordinances enforceable by the police.

Mr. Newsome stated that it might be appropriate to keep noise in the Zoning Ordinance if it did have and was using true performance standards, but they are not defining uses by performance standards. Mr. Guise agreed Zoning would be appropriate if it was about the abuse of the property, this may be more related to disturbing the peace. Mr. Lighty asked about the disturbing the peace ordinance, and suggested decibel levels be added to it to make it more enforceable or easier to use. Ms. Mitchell stated noise complaints in general are very difficult for the police to enforce because it is very hard to tell how annoying a dog has to be before it is citation worthy.

Mr. Newsome stated the case can be made both ways. If someone is shooting fireworks, are the police called because the colors are annoying, the explosions are too loud or for the danger of it all. He asked if police address vehicles that are too loud, and what disturbing the peace covers. Ms. Mitchell stated it is mostly used for parties that have several warnings and then get cited under disturbing the peace.

Mr. Lighty questioned how big a problem noise really is. He acknowledged the noise of a motorcycle going down Route 22, or Independence Day fireworks at all hours. There are 44,000 people living in Lower Paxton Township. Ms. Mitchell stated she has dealt with four. One of which was one neighbor who was bothered by the HVAC system at CD Middle School. Two were about motorbikes in a residential neighborhood.

Mr. Guise noted the Meade family has now brought a civil action against their neighbor. Mr. Lighty agreed that was the proper mechanism, because the issue is two families that disagree, not necessarily the level of noise.

Ms. Lindsey asked how many complaints the police department gets. Ms. Mitchell stated they do get a lot of complaints. The Meade case started there, and when the police had exhausted the case, it was passed on to Codes.

Mr. Guise stated that some of the samples say a noise cannot be audible from 50 feet away, and questioned who determines what can be heard.

Mr. Lighty stated the decibel levels in our ordinance and the other municipalities' ordinances were clearly consistent. West Hanover has different levels for commercial zones, and he thought that made a lot of sense. Otherwise, Lower Paxton Township's ordinance is not really out of the ordinary.

Ms. Mitchell stated that some have a limit on construction noise, such as limiting it to between the hours of 6am and 9pm. In LP, if a complaint is received about construction, the building inspector generally calls the contractor and asks them to wait until 6am or 7am to begin, and there hasn't been an issue that has gone beyond that.

Mr. Lighty asked Ms. Mitchell what could improve the situation for the residents and the Township. She suggested something could be added about radios and mufflers, and possibly some other areas, but she cautioned that the items in some of the samples were ridiculous. Mr. Lighty stated the Township does not want to over-regulate.

He asked if the Township is convinced that the ordinance is insufficient. Ms. Wissler stated the item is raised by SWAN, who is not present to discuss it, and Staff did do some research in response to SWAN's concerns.

Mr. Guise suggested Staff look over SWAN's proposal and if any changes suggested are appropriate they bring a draft back to the next meeting incorporating the changes.

Mr. Lighty will invite Mr. Epstein to the next meeting.

Ms. Lindsey asked if the other municipalities have noise meters that are more reliable than ours. Ms. Mitchell was not sure how they measure or enforce their ordinance.

Ms. Wissler stated that Hampden Township was contacted because they are the most comparable municipality in the area, and they do not have a noise ordinance.

Mr. Syed stated he would check in the model ordinance for noise regulations.

Mr. Grove asked about the City of Harrisburg. He thought the City adopted an ordinance regulating the music from vehicles, but questioned if it is enforceable and how usable it is. He suggested that enforcement is the real issue, and that maybe there is some other mechanism for aggrieved neighbors to deal with each other. Ms. Wissler stated she will get information from the City for the next meeting.

Mr. Fleming stated that HRG can do noise readings, but they are not certified.

Wind Energy

Mr. Lighty stated the County's model ordinance section relating to wind energy was presented to the Commission. Ms. Lindsey stated there is a windmill on Earl Avenue and there is one near the Township border in Susquehanna Township. They are small ones, but it shows the area is getting interested in alternative energy. She also noted that PP&L will be increasing their rates very soon, so the interest will grow. The seminar she attended talked a lot about safety concerns.

Mr. Lighty asked the Commission to review the model ordinance and be prepared for next meeting to discuss wind energy. Ms. Wissler offered to provide some additional information as well. She noted that there have been a few calls to the office in reference to windmills.

Mr. Guise preferred to see it as a special exception rather than a conditional use. Mr. Lighty stated that some areas allow it by right in some districts, such as an agricultural district. Mr. Guise cautioned that Lower Paxton Township has a lot of residential developments in the AR zone. He noted that it is an issue that needs action.

Ms. Wissler stated that the ones that are up did not get a building permit, but she was not sure if that is because a building permit is not required, or because the resident didn't call to inquire about a permit.

PUBLIC COMMENT

There was no additional public comment offered.

ADJOURNMENT

The next regular Planning Commission meeting is scheduled for Wednesday, August 12, 2009, at 7:00 pm at the Lower Paxton Township Municipal Center, Room 171.

There is a Business Improvement District Stakeholders' meeting scheduled for Monday, July 27, 2009, in Room 174.

Being no further business, the meeting adjourned at 8:40 pm.

Respectfully Submitted,

Michelle Hiner
Recording Secretary