

LOWER PAXTON TOWNSHIP
PLANNING COMMISSION

September 9, 2009

COMMISSIONERS PRESENT

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

ALSO PRESENT

Lori Wissler, Planning & Zoning 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 7:00 pm, on September 9, 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

Mr. Beverly made a motion to approve the minutes of the August 12, 2009 regular meeting, with the clarification as noted by Mr. Grove. Mr. Newsome seconded the motion. Mr. Lighty abstained from voting since he was absent. The minutes were approved.

OLD BUSINESS

Noise Ordinance

Ms. Tara Mead, Knoll Crest Road, stated that even if the issue her family faces went away tomorrow, it is still an issue that needs to be addressed, especially with the proliferation of "boom cars". Ms. Mead stated that her attorney advised that the best way to handle the situation is through the local government, rather than legal action. She noted that they have already spent a lot of money on the issue. She stated that she belongs to SWAN, who supports the efforts to ensure that families across the Township can be in their homes without dealing with noise from cars or other sources.

Mr. Lighty stated that the Commission will work further on a draft of a new noise ordinance, but wanted input from the Police Department, who will be available at the next meeting.

Mr. Newsome stated that he firmly believes that the noise ordinance is inappropriate in the zoning ordinance. He stated that this has to be addressed to avoid further disservice. He stated that it should be the Planning Commission's position that it should be moved out of zoning. Mr. Lighty asked

if it should be transferred to Public Safety. Mr. Newsome agreed that would be more appropriate. Mr. Grove agreed, and noted that it is difficult to enforce the ordinance through the zoning ordinance, but if it were in the public safety area, the police officers would have the unenviable task of enforcing it. That is the only place that real enforcement can take place. If it is under public safety, it can be charged as criminal. Mr. Newsome stated a zoning ordinance is not designed to address issues related to disturbing the peace or health and welfare. Noise as it relates to land use, belongs to zoning, but abuse of the use has no place in zoning. Mr. Guise agreed in general, but felt it is appropriate to regulate noise in zoning as it relates to the nature of the use of the property. He did not want to see noise entirely removed from zoning, because there should be different standards for noise in different zones. Mr. Newsome agreed that performance standards are appropriate in zoning, but disturbing the peace or health and welfare are not. Mr. Guise suggested the offense of disturbing the peace should be redefined or a new one could be created. Mr. Lighty stated that disturbing the peace is in the state crimes code too, and the crime should be criminal not civil. He felt that Ms. Mead's problem needs to be solved, but zoning won't be able to. Mr. Newsome commented that changing the zoning ordinance will not change her situation.

Mr. Guise asked if the police officer should still attend, or if the Public Safety Committee might be able to attend. Mr. Lighty agreed that there are noise provisions that need to be in the zoning ordinance. He asked what if the Public Safety Committee comes up with something that conflicts with the zoning ordinance. Mr. Newsome suggested the Public Safety Committee and the Planning Commission could have a joint meeting to talk over the issue. Ms. Wissler stated they also meet once a month, and she will invite them to the next Planning Commission meeting.

Preliminary/Final Land Development Plan #09-17
Mid-Penn Oral and Maxillofacial Surgery

Ms. Wissler stated that the purpose of the plan is to develop Lot 53, consisting of 0.567 acres, as a medical office for oral and maxillofacial surgery. The property is located north of Linglestown Road and east of Dover Road and will be served by public sewer and public water.

The applicant has changed the waiver requests: a waiver of the requirement to submit a preliminary plan and a waiver of the requirement to install sidewalks along Dover Road from the northern side of the existing driveway to the northern boundary of Lot 35.

This plan was tabled at the previous meeting.

Dr. Dinello, applicant, and Christopher Pecora, Hartman & Associates, were present on behalf of the plan.

Regarding the sidewalk waiver, Ms. Lindsey asked if the request to defer installation of sidewalks is meant to be several years in the future. Ms. Wissler stated that it is deferred until the adjoining property is developed, but it could be months or years.

Mr. Pecora distributed revised site plans. He stated he has been able to address most of the comments, and there are still some to be worked out. He stated that they reviewed the requirements regarding orientation of the layout in the BC zone. They did consider changing it, but they also

discovered that the ordinance states that parking in the front should serve visitors and handicapped, while other parking should be to the side or rear of the building. The plan does show parking for the guests, patients, and handicapped in the front, with parking for the doctors and employees to the side.

Mr. Pecora presented two architectural renderings, one from the Dover Road side and one from the other side. The road is slightly lower, by about 2 feet, than the first floor of the building. That means a person on the road will see the vehicles, but not necessarily the parking lot itself.

Mr. Fleming stated that the plan does technically meet the ordinance requirements regarding parking in relation to the buffer yard.

Mr. Pecora stated that they have received approval from Dauphin County Conservation District, and they have provided copies to Staff and the engineer. It was Mr. Pecora's understanding that if their water usage is less than 400 gallons per day, a DEP Planning Module is not required. He provided water usage information from Dr. Dinello's office in Hershey showing they use about 100 gallons a day. They anticipate a direct connection to the sewer system.

Mr. Pecora explained the pictures he presented to the Commission showing different vantage points of the site: lack of sidewalks along the street, lack of sidewalks going into the residential development, lack of sidewalks across the intersection, lack of handicap access ramp at the other corner, lack of sidewalk along south side of Linglestown Road and no curb cuts either, items obstructing the path of the proposed sidewalk (PennDOT sign, street sign, telephone pole, and a hydrant), traffic signal controller box which obstructs the path where the sidewalks would be, lack of handicap ramps on either corner, and dead-end sidewalk along Linglestown Road approaching the intersection.

Mr. Pecora stated that the revised plan shows the sidewalk everywhere that it is required, except where the waiver is requested. The sidewalk along Linglestown Road is set back 12 feet from the face of the curb, meaning it is outside of the PennDOT right-of-way, and on private property. A waiver to make that a bituminous path may be sought, but Dr. Dinello would prefer to keep concrete sidewalks. The sidewalk goes around the corner to the location where the handicap ramp is proposed. Mr. Pecora emphasized that they do not want to get a PennDOT permit to put in a handicap ramp on Route 39. One reason for that is safety, people are funneled down from a sidewalk on private property onto a road where there are full-height curbs on all three other corners, where they cannot get back up. A handicap ramp is provided further down. If sidewalks ever get extended on the opposite side of the street or further up into the residential development, then they would be willing to discuss putting the balance of the sidewalks in along Dover Road.

Regarding HRG comment #3, Mr. Pecora stated he put a general note on the plan that says there is an easement agreement in place. Mr. Fleming stated the solicitor will still need to review the cross access easement for parking facilities between the two doctors offices.

Mr. Newsome stated the main objection is installing a handicap ramp on Route 39. He stated the Township does not grant waivers for handicap ramps. Mr. Fleming stated he does not support that request. Regardless of whether it is in the PennDOT right-of-way, sidewalks will require handicap ramps if not now, then in the future. Because it will be required at some point, it should be installed by this applicant, and the right-of-way issue also needs to be addressed.

Mr. Pecora asked if the handicap ramps could be deferred. Mr. Newsome stated it is not right to add more wrong decisions on top of other wrong decisions that had been made in the past. He stated that the applicant does not justify relief from the requirements simply because others in the past did not make improvements.

Mr. Pecora stated that he is also considering the safety aspect. Mr. Newsome stated he can appreciate the concern, and he shares the concern in places like Linglestown Road and Route 22.

Mr. Pecora suggested that it might be PennDOT's responsibility to install the ramps within their right-of-way. He thought it would make sense to install ramps if they were installing two new streets in a residential area, but it is not safe to install a ramp to nowhere. He would prefer to defer the installation until such time as the intersection gets further improved, something is done across the street, or PennDOT does ramps.

Mr. Beverly stated someone has to be the first to do something. He noted it is not fair to exclude the handicapped. Ms. Lindsey stated that if this applicant is permitted to defer improvements, then the next one will also want to defer and no one will ever do their required sidewalks or ramps. She stated the idea is to get sidewalks for the length of Linglestown Road and Route 22. Mr. Grove stated that if there are handicapped residents in the area, they are already using the intersection, they are already taking a chance trying to cross the road, this will give them at least one ramp to use.

Mr. Newsome stated that the applicant is not opposed to installing a ramp at the other location, where the person is dropped into a driveway with no connecting sidewalk. The argument is inconsistent. He stated that this is an ongoing issue, but it is an issue that the Planning Commission feels strongly about.

With regard to the crosswalk configuration, Mr. Grove asked about the possibility of bringing a ramp from the sidewalk towards Dover Road instead of Linglestown Road, based on where the crosswalk is located. The ramp would then be located in the Township right-of-way.

Mr. Newsome suggested the issue is cost. Mr. Pecora stated it was more of a liability issue.

Mr. Guise stated that locating the ramp further up Dover Road takes it away from the signalized intersection, which is the safe place to cross. He suggested it would be best to construct the ramp where it would normally be placed, and take advantage of the fact that there is a signalized intersection.

Mr. Pecora asked the Commission if it would be acceptable to locate the ramp to the northwest of the signal pole. It would miss the pole and take the person down to the crosswalk. That is also outside of the PennDOT right-of-way. Mr. Guise suggested that if it is satisfactory from an ADA standpoint at giving access to the crosswalk, it might be ok. He stated that the Commission's issue is not whose right-of-way it is in.

Mr. Pecora asked staff if it would be ADA compliant. Mr. Fleming stated the issue of whether an ADA compliant ramp can be built to PennDOT specifications at that location without entering PennDOT right-of-way may not be possible. During the meeting between staff, HRG and the applicant,

it was noted that there is probably additional right-of-way or easements beyond what is shown on the plan. That issue must be dealt with. If it is an easement, and is not right-of-way, then something might be able to be engineered to comply with one of the at least 16 ramp configurations that PennDOT has. If the right-of-way issue hasn't been dealt with, it has to be addressed with this plan.

Mr. Fleming stated that Kings Pointe has an open improvement guarantee with the Township, so it is very likely that they will be installing sidewalks and ramps, and just have not completed their project yet. Mr. Pecora stated that he thinks there is an easement. Mr. Fleming requested the documentation to resolve the issue. Mr. Pecora stated he wanted to round off the corner, but the title of the tract still shows it as the original layout, as lots 56 and 53. He will find out if right-of-way was taken or an easement was obtained. Mr. Fleming stated that this plan also shows the old alignment of Linglestown Road.

Mr. Lighty stated that he understands the concern for liability, and also realizes that someone has to go first. He noted that if there is an accident, the person will not sue the doctor, he will sue the car that hits him.

Mr. Pecora stated he will work with HRG to see if they can come up with something. He asked how the Commission felt about one ramp or two. Mr. Lighty instructed him to make it compliant. Mr. Fleming stated there is a configuration that allows a single ramp. Mr. Lighty did not want to get the applicant in the middle by requiring something different than what PennDOT requires of them.

Mr. Guise asked if the tree is the reason why the applicant does not want to install that section of sidewalks. Mr. Pecora stated there is a tree and a slope to deal with. Mr. Guise asked if the applicant was agreeable to a deferral rather than a waiver. Mr. Pecora stated that if the sidewalk comes down to the site from the residential area, he would be bound to do the sidewalks, he is agreeable.

Mr. Pecora stated he hears the Commission saying they want one ramp at that corner. Mr. Guise stated that ADA compliant ramps have to be installed; the Commission does not have a preference how that is achieved. Mr. Newsome asked the distance from the proposed sidewalks to the tree. Mr. Pecora stated the distance is 8 feet from the edge of the curb to the centerline of the tree. The trunk of the tree is about 5-6 feet from the curb. Mr. Gingrich stated he has seen sidewalks curved to avoid trees. Mr. Newsome stated that the photograph suggests that there is one limb that needs to be cut off. Mr. Pecora stated that would bring the pedestrian closer to the roadway. Mr. Newsome stated that is irrelevant. Mr. Guise stated that the sidewalk on Colonial Road north of Linglestown Road goes along the road. Mr. Pecora stated there is a speed limit sign and a no parking sign.

Mr. Newsome stated these issues were discussed already, and it seems as though the applicant did not really look at solving the issues. Getting a sidewalk between a tree and a curb is common. Decreasing the width, curving it around, trimming a limb and removing signs are not complicated and are done all the time. The Commission asked the applicant to get the sidewalks through this area. He stated that if the engineer is not capable of doing it, he should say so, otherwise everyone in the room can see that the sidewalks can be put between the tree and the road. Mr. Pecora stated he thinks a sidewalk could go through there. Mr. Pecora thought it had been discussed that a deferral would be sought for this portion of sidewalks. Mr. Newsome did not remember it that way, and thought that sidewalks were desired all the way through on this property. Mr. Guise asked if the curb extends the

length of the property. Mr. Pecora stated it does. Mr. Newsome stated he would not be in favor of sidewalks adjacent to the curb along Linglestown Road, but he does not see a problem with it that way on Dover Road. Mr. Pecora stated he and the Commission are in agreement about the sidewalks and ramps. Mr. Newsome asked him to clarify the agreement. Mr. Pecora stated that everyone agrees to the deferral on the north side, and concrete sidewalks on the south side and along Linglestown Road, and they will look at the ramps to get something that meets regulations.

Mr. Pecora asked about HRG comment #10, and if it refers to the whole system. Mr. Fleming answered yes. The inlets and pipes connect into the Township basin and the underground detention system does not, and there is no diagram of the pipes.

Mr. Pecora asked about HRG comment #13, regarding the discharge of stormwater from the closed depression. The original subdivision of the area shows Flint Road going up the center of that swale. That was never constructed. There was no closed depression, the plan show it splitting from a high point in one direction, near the printed word "Flint" and goes east and then west around lot 50 and 52. There is additional topography shown on the 11x17 plan. That shows an existing cleared end section and an inlet which crosses under Dover Road. There is a closed depression right off of the property line on Dr. Chotiner's property. There is also a closed depression that happens near the 24 inch plastic pipe that goes under Dover Road. He thinks they were formed when the road was put through. He suggested they may have to open up the 465 contour to let the water go. Mr. Fleming did not disagree with how it was formed over the years, but the undersized pipe causes the water to sit in these areas, however, in Karst Geology, when the water sits and ponds, it can start underground activity. He noted that the comment is precautionary calling attention to the closed depressions. Mr. Pecora asked about opening up positive drainage. Mr. Fleming stated that would help the problem, it may not remove the likelihood of something happening. Mr. Pecora stated he would prefer to control the volume on site, so that he would not be responsible for looking at that situation. Mr. Fleming explained that the comment is not asking for additional work, it is a precautionary statement, made to acknowledge a situation, so that everyone involved is put on notice that if something happens during or after construction as a result of the development, the property owner is aware of the situation.

Mr. Gingrich asked about Karst Geology. Mr. Fleming stated it is a type of geological formation underground, typically limestone formations, characteristically prone to sink holes. Mr. Gingrich noted the plan calls it Berks. Mr. Fleming stated he looked at the soils map and it changes from property to property.

Mr. Guise asked the number of new handicap spaces being proposed. Mr. Pecora stated there is a total of three, which includes the two on Dr. Geyer's lot. Mr. Guise stated they are far away. Mr. Pecora stated he has considered this one parking lot with one entrance onto Dover Road. Mr. Guise stated the width would allow for handicap spaces if needed. Mr. Fleming stated that the width required by the Township is sufficient to convert to ADA spaces if L&I should require additional spaces.

There was no comment from the audience.

Mr. Guise made a motion to recommend approval of the plan, subject to compliance with the comments, and further recommend approval of the preliminary plan requirement, and denial of the waiver of the sidewalk requirement on Dover Road north of the existing access drive to the northern

property line-provided that it would be agreeable to defer construction of the sidewalk until sidewalks are determined by the Township to be in close proximity as to require construction, and recommend that all ramps required be compliant with all ADA and PennDOT requirements. Mr. Gingrich seconded the motion and a unanimous vote followed.

Wind Energy

Ms. Wissler suggested the Planning Commission form a subcommittee to work on wind energy. Mr. Epstein offered to work with the Planning Commission on the subcommittee. He explained that this is his field of expertise. This field is fluid, and is not solely about wind energy, but also other types of alternative energy. There is a solar farm planned for Stoney Valley. The Authority is also planning a solar project at the sewage facility, which might be a large expenditure for the result. These projects have to have a power purchase agreement in order to move forward. His focus is making these projects marketable. Wind energy is turning into conventional energy. One problem with wind energy, is the need for wind. There are issues with height, access to transmission as well as avian issues.

There are three large pieces of litigation going on at this time, Act 129 (EE&C Compliance Energy), environment conservation, and time of use tariff.

Mr. Epstein noted that the Board of Supervisors made a wise decision to go with Constellation Energy for bulk energy purchases through the League of Cities.

He offered to bring his technical advisor to the Planning Commission to help define the goals. Solar thermal is another option to consider, and it is very affordable, although it is more residential than commercial.

Mr. Lighty stated that the Township might not need a complicated ordinance. The smaller, newer technology windmills will be most of what Lower Paxton Township will see. He felt the ordinance has to cover the minimum, including bases, how the windmill is attached, setbacks, color, noise, electrical connectivity, decommission/removal, and permitting. The setback for a tower is what would apply right now, but it might not be appropriate. With regard to permits, the land owner should not have to go through the land development process.

Mr. Lighty asked the subcommittee to cover those ideas, or pull the best language out of the samples, as a place to start. Mr. Epstein stated that DEP has a model ordinance that should be looked at.

Mr. Epstein stated that height should be addressed so that other height ordinances do not conflict. Avian issues are bigger than most would imagine. The noise can also be a big issue. Mr. Lighty stated that the large windmills are not very loud, but the smaller ones that look like drums with fins, make a high pitch whir. Mr. Epstein stated that there are land use issues if they are sited on the mountain.

Someone may want to use wind as a back up, not as a primary source. That is something else that should be talked about.

Mr. Lighty stated it should not be so overregulated that it discourages people from its use. There are safety concerns and other basics that have to be addressed.

Ms. Lindsey asked about surrounding municipalities. Ms. Wissler will get a copy of West Hanover Township's ordinance.

Mr. Lighty asked for volunteers for the subcommittee. Ms. Lindsey, Mr. Grove, Mr. Guise and Mr. Lighty volunteered as well as Mr. Epstein. That group can discuss meeting times and dates via email.

NEW BUSINESS

Ordinance 09-10 **Amending Chapter 170, Stormwater Management**

Mr. Guise asked for a summary of the major changes between the new and the old stormwater management ordinance. Mr. Fleming stated that the changes are a result of the Township's requirement to meet the MS4 requirements, which is the report that has to be filed every year. It is also a reflection of the requirements of DEP for NPDES stormwater regulations. It is a clarification of a lot of issues that fall under public safety and welfare as it relates to stormwater, giving the reviewer the understanding as to why certain comments are made and gives an ordinance to cite. It makes sure that the Township's stormwater management ordinance agrees with other regulatory agencies.

Mr. Guise asked if Mr. Fleming had any major areas of concern. Mr. Fleming stated that most of the comments about the new ordinance say that it is more requirements than the Township has used in the past. He noted, however, that it is very similar to the ordinances written for other townships, and is very similar to DEP requirements that the applicant would have to meet anyway.

Mr. Newsome asked about the impact on administration, and the Township's ability to work with developers. Mr. Fleming stated that Public Works and the staff in the field will have an ordinance to use to make sure that facilities are being built and maintained properly. This helps the reviewing engineer to see that the regulations of other agencies are being upheld through to the township level, and gives the ability to properly inspect a site. He noted that if facilities are not installed properly, it may eventually be the responsibility of the Township to correct certain issues.

Mr. Lighty asked about exemptions.

Mr. Lighty asked about the economic impact on the large and the small developer. The consequences will be passed on to the consumers or those that buy a lot and build a home. Mr. Fleming stated that a typical single family dwelling being built on a lot should fall under the exemptions because they would be below the 5,000 square feet. There should not be a significant burden on them.

He explained that anything over 5,000 square feet will require DCCD review and approval anyway. A small commercial lot is basically designed to the current ordinance, so they will see an increase. The amount of increase in stormwater management requirements could be as much as 30%, including design and construction. Mr. Lighty asked if that means that their overall costs will increase up to 30%. Mr. Fleming stated site conditions and availability of good soils will affect the amount of increase. He also explained that the 30% increase is in the stormwater management portion of the

project, not necessarily a 30% increase on the total. For example, if the project costs \$1 million, and the stormwater portion would have been \$100,000, it will go up to \$130,000. Some projects would see that much of an increase, many will not, it will be largely based on the site conditions.

Mr. Lighty asked if there are one or two significant changes that create that increase. Mr. Fleming discovered that after the designers work with the ordinance, they are able to find the more common sense or lower cost way of accomplishing the same result. Many of the requirements are similar to DEP, so the designer is already designing to meet those requirements. The two items that significantly increase the cost are infiltration and water quality. These are already required by DEP and DCCD. A large scale development is already looking at stormwater on a regional basis with regard to water quality and infiltration. Mr. Fleming noted that the Shadebrook development required several waivers dealing with stormwater because they were designing the plan with this proposed ordinance in mind, as well as meeting the existing requirements for the other regulatory agencies. He did not think they incurred any significant increase because these were implemented in their designs from the beginning, and they were able to synchronize and apply smart design to mitigate large costs.

Mr. Fleming stated that many of the requirements can be incorporated into landscape buffer areas. The practical application of these regulations make for nicer developments.

Mr. Newsome asked if other municipalities have similar ordinances already. Mr. Fleming stated that many do already have these requirements in place and Lower Paxton Township would be basically parallel to them and to the other regulatory agencies. He further noted that one requirement of the MS4 program, which Lower Paxton Township must comply with, requires the Township to adopt a new ordinance and this is written to meet those requirements.

Mr. Lighty called for comments from the audience.

Mr. Epstein stated that SWAN strongly supports the ordinance, and commented that it is progressive. He stated that East Hanover Township has passed the most aggressive stormwater management ordinance in the County. That was done as a prescriptive and almost indemnifying measure against encroaching in more aggressive federal state and local regulation. Water has become a commodity and people are paying attention. Globally, it is the right move to make as well.

Mr. Epstein asked about sump pumps discharging into the sewer. Mr. Fleming stated that sump pumps have been a problem for the sanitary sewer system, because it was common practice to connect them to the internal plumbing. If there was high ground water, it pulls the water from underneath the house and puts into the sanitary sewer and increases the amount of flow at the treatment plant. As part of the I&I projects, the Authority goes into the homes to verify that the sump pumps have an exterior discharge instead of a plumbing connection. That is also covered by the building code. While that problem is not addressed in the stormwater management ordinance, it is addressed through other avenues. Ms. Wissler stated it is also addressed at the resale of a house.

Mr. Guise made a motion to recommend approval of the ordinance, with the correction as discussed. Mr. Newsome seconded the motion and a unanimous vote followed.

Business Improvement District

Mr. Lighty stated that the next BID meeting is scheduled for September 28, 2009, and a second stakeholders' meeting on October 22, 2009.

PUBLIC COMMENT

Eric Epstein, SWAN, complimented the Planning Commission on the follow-up efforts regarding the carwash on Mountain Road. SWAN does not oppose a carwash there, but does have concerns that the area doesn't turn into the situation like at Elmerton Avenue at Colonial Road.

COMMISSIONER COMMENT

ADJOURNMENT

The next regular Planning Commission meeting is scheduled for Wednesday, October 14, 2009, at 7:00 pm at the Lower Paxton Township Municipal Center, Room 171.

Being no further business, the meeting adjourned at 8:53 pm.

Respectfully Submitted,

Michelle Hiner
Recording Secretary