

**LOWER PAXTON TOWNSHIP  
PLANNING COMMISSION**

October 14, 2009

**PLANNING COMMISSIONERS PRESENT**

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

**PUBLIC SAFETY COMMITTEE MEMBERS PRESENT**

David Johnson	Ed Crum	Ginny Stapf	Matt Hunt	Doug Lowman	Bill Payne
George Byerly	Doug Vene	Janet Smith	Chris Judd	James Rowell	

**STAFF PRESENT**

Lori Wissler, Planning & Zoning Officer	Dianne Moran, Planning & Zoning Officer
Amanda Mitchell, Codes Enforcement Officer	Omar Syed, Dauphin County Planning Commission

**CALL TO ORDER**

Mr. Lighty called the meeting of the Lower Paxton Township Planning Commission to order at 7:00 pm, on October 14, 2009 in Room 171 of the Lower Paxton Township Municipal Center, 425 Prince Street, Harrisburg, Pennsylvania.

**PLEDGE OF ALLEGIANCE TO THE FLAG**

Mr. Beverly led the recitation of the Pledge.

**APPROVAL OF MINUTES**

Mr. Beverly made a motion to approve the minutes of the September 9, 2009 regular meeting, and the September 28, 2009 workshop meeting. Mr. Grove seconded the motion and a unanimous vote followed.

**PUBLIC COMMENT**

Mr. Lighty called for comment from the audience on anything that is not on the agenda.

Kay Lingle, 1136 Daystar Drive, Harrisburg PA 17111, stated she and some of her neighbors came to the meeting about the WillowBrook Townhouse Community. They have concerns about the impact Bishop McDevitt will have on the traffic in their neighborhood. They are interested in having

sidewalks installed in the development and along Page Road Extended to make it safer to walk. She understood that there is a traffic signal being put in at Union Deposit Road and Page Road Extended. She noted that there is a lot of construction traffic going through Page Road for the work being done on Union Deposit Road. She asked for advice on how to address the concerns of her community, or how they can communicate the items they would like implemented.

Ms. Wissler stated that sidewalks are not shown on the approved plan, so that is a concern that could be taken to a Board of Supervisors meeting. They meet the first and third Tuesdays of the month. She noted that the construction taking place on Union Deposit Road is for the Montrail development. Their Highway Occupancy Permit is for widening on Union Deposit Road, which is going to expire soon. Montrail cannot start the construction on the development yet, so the only work being done at this time is to Union Deposit Road.

Maryanne Baker, 5601 Twilight Drive, stated the construction vehicles are parking on Page Road Extended and Twilight Drive. Twilight Drive is a private drive. If damage is done to the road the residents have no recourse. She also noted that there are safety concerns because they are not using cones or other protocol when they are parking their vehicles on these roads.

Ms. Wissler will notify the developer of the issues.

## **OLD BUSINESS**

### **Noise Ordinance**

Mr. Lighty stated that the Planning Commission has been studying the noise ordinance and there is at least one situation where the Township is unable to solve the problems with the ordinance as it exists. During the discussions, the issue of who should enforce the ordinance keeps coming up. It can remain a civil action through Zoning, or it could be made a criminal action enforceable by the Police Department. The Planning Commission felt it should work with someone who has the expertise to guide such a decision.

Ms. Wissler stated that the ordinance is in the Zoning Ordinance but mostly pertains to land use and the noises that could be associated with a certain use. If there is a violation, a 30-day notice is required, after which, a civil citation can be filed with the district justice. If the offender rectifies the situation, and then violates the ordinance again, the process must start at the beginning each time. This gets to be a very long process with no resolution. The requirements in the Zoning Ordinance are designed to deal with regulating land use, with special emphasis on residential uses abutting non-residential uses. Other issues, such as the situation that has been ongoing, aren't sufficiently addressed.

Mr. Lighty stated the Planning Commission has looked at ordinances from other municipalities in the area to consider what might be best practices. He asked for an open discussion between the two groups, and suggestions on how to move forward.

Mr. Hunt stated it seems the issue is civil versus criminal. Director Johnson stated that from a police perspective, there will be equipment to be purchased, training for 57 officers, and court time-preliminary hearings and summary violations or higher. That could result in an overtime nightmare for the Township. He stated that in 2009, the Department has received about 300 calls involving loud music, barking dogs at late hours, and domestic disputes involving noise that disturb neighbors. The police department initially responds by asking the offender to turn the music down or quiet the vehicle or animal. If a return call is made, the officer responds by charging the offender with disorderly conduct, engaging in activity that serves no legitimate purpose. Director Johnson stated that one issue that may arise from making noise complaints a criminal matter, is that they would have to arrest a person every time they are called out on a complaint. This means the officers will be tied up in court all day long.

Director Johnson stated he has not had an opportunity to speak to Ms. Mead or her family about the circumstances. In his opinion, the noise ordinance is sufficient. He suggested that the situation that has not been resolved needs to be addressed, in a firm and expeditious manner.

Mr. Lighty asked if those 300 calls have been generally resolved on the first visit by an officer. Director Johnson stated that for the most part they were, but noted that some disorderly conduct arrests have been made.

Mr. Lighty asked if the Director felt the police department needs an additional ordinance to have the additional enforcement power. Director Johnson felt that the options available to the department are sufficient. His opinion of the matter is based on his knowledge of the laws regarding disorderly conduct and his review of the noise ordinance. He further noted that he is not aware of what steps were taken with the Mead Family's case.

Mr. Hunt agreed that what is in place seems to have enough teeth if needed. The first call the officer generally says turn off the music and if I have to come back someone will be arrested. The second call usually results in an arrest.

Director Johnson stated that if an officer has to cite someone for every offense, they will be spending a lot of taxpayers' money sitting in court. It is likely that both district and county judges are not going to find a person guilty if they do comply.

Ms. Lindsey stated that if arrests are made over noise complaints, the person will have a record which will affect the person's ability to get a job. Director Johnson responded that if an officer responds to a late night party or a loud vehicle and the person refuses to comply, the citation is a result of that person's choice to not comply, and that person must live with the choices they make.

Mr. Newsome asked if the Township operates under a disturbing the peace/disorderly conduct law, not a noise law per se. Director Johnson agreed. Mr. Newsome suggested the laws duplicate each other, and each have their own remedies. Director Johnson stated that law enforcement will cite someone using the criminal methods. The civil matters are in the Zoning Ordinance and are created to deal with land use. Director Johnson stated that the police department deals with issues in a criminal/non-criminal light, and if someone refuses to comply with the officer's request to turn down the

music at 11:00 at night, a citation will be issued. Mr. Newsome stated he felt that was an appropriate remedy.

Mr. Newsome stated that the zoning ordinance is designed to regulate the use of the land. If someone is disturbing the peace, they are no longer dealing with zoning laws. He did not think the zoning ordinance needs to be changed.

Mr. Guise asked how many of the 300 noise complaints resulted in disorderly conduct charges. Director Johnson did not know the exact number, but stated it was not extensive. Mr. Guise surmised that just having an officer appear corrects the situation. Director Johnson agreed that the overwhelming majority of the time, the people comply when asked to.

Mr. Guise asked if disorderly conduct is a summary offense. Director Johnson stated that the first offense is, but it can rise to a misdemeanor.

Mr. Grove stated most of the discussion has involved situations at night, and asked if the same process occurs during the day. Director Johnson stated he felt it would apply 24 hours a day. He noted that many noise ordinances only apply to certain hours. The crimes code does not say what can happen at what hours, it says if a person engages in activity that serves no legitimate purpose and it disturbs the peace, then that person can be cited.

Mr. Grove asked if there is a stipulation on how quickly the police have to be called back, such as within several hours. Director Johnson stated he does not look at it that way, however, if it is a second call four days later, it may not be considered a second call. If it is a habitual process that an officer is there every so many days, then it would be something the officers should take action on. He also noted that once an officer responds to a noise complaint, he may stay in the area to check if the person continues to comply.

Mr. Rowell stated that it seems appropriate to give a verbal warning then cite if the action reoccurs. He thought that dealing with such issues with the same laws that govern parking lots instead of the laws that already address the issues, seems far reaching and overly confining.

Mr. Lighty suggested that both sections of the law should have enough teeth to address the problems. He noted that burden of proof is different when dealing with civil matters than with criminal matters.

Director Johnson stated that if the police officers rely on a device, they will have to be able to prove to a judge that the instrument is accurate. That means the instruments will have to be certified on a regular basis, and they would have to be in all police vehicles. The cost for that would be extreme, as would the cost to train and certify the officers.

Ms. Lindsey asked if some of the noise complaints are neighborhood disputes. Director Johnson replied absolutely. He also noted that the police are often called to resolve civil issues between neighbors. Ms. Lindsey asked if the Department tries to send the neighbors to dispute classes or mediators. He responded that they do try, and sometimes the people go and sometimes they do not.

Mr. Lighty called for public comment with regard to the noise ordinance discussion.

Eric Epstein, Chairman of SWAN, stated SWAN precipitated the issue. He stated that the words on paper are not working. There is a chronic problem, involving harassment, intimidation and quality of life. These are things people should not have to go through. His concern is that this will probably not be the last time such a problem goes on. They are interested in fixing it so someone else does not have to go through what the Mead Family has endured. "Noise police" is not the goal, but there is a collision of lifestyles, and communities are getting denser. There are also more age-restricted communities, which have a mix of 80/20. Mr. Epstein stated that the issue they have experienced is auto noise. The noise gets unbearable, the police are called, the noise desists, when the police leave, the noise comes back. He explained that the Mead Family has two different work shifts, and small children. People have a right to live in solitude. He also noted that there are people who will not come forward because they have to live next door to these people.

Mr. Epstein asked how many of the 300 calls were chronic, and if the calls have increased over the previous year, and if the tone has changed.

Tara Mead, Knollwood Drive, asked what ordinances or laws pertain to persistent and repeat violations. She stated that her neighbors have never been cited. The issue is consistent, and no citations have been issued. The only resolution came when her family spent its own money to hire an attorney to fight for them. She hoped that this could get rectified so that everyone can have peace of mind.

Ms. Mead stated she has been dealing with this problem since March of last year. She presented copies of testimony she has presented to the Planning Commission in May 2008, and to the Board of Supervisors on April 7, 2009, and a copy of the comments and the PowerPoint presentation given to the Planning Commission on August 12, 2009. Ms. Mead spoke with Director Robert Martin of Susquehanna Township Police Department. SWAN feels that Susquehanna Township has a well written and thorough noise ordinance, which Lower Paxton Township could use to strengthen its own ordinance. Ms. Mead stated that Director Martin told her his ordinance was "absolutely good" and has been very effective since its enactment, and has been met with a good response from his officers.

Ms. Mead stated that the Borough of Royalton has also taken steps to address noise issues. She presented the group with copies of her family's noise log. She noted that while the number of occurrences has decreased, due primarily to hiring an attorney to protect their rights to live in a home in peace and quiet, it is still an ongoing issue. It is an issue that she and SWAN believe could be effectively addressed by strengthening the current noise ordinance and putting enforcement powers in the hands of the police department rather than code enforcement.

Ms. Mead stated that her family has been through enough, and the issue is not going away. There will be more loud mufflers, more kids blasting their radios. This is a world-wide problem, and the World Health Organization (WHO) has weighed in on the issue. Ms. Mead would like to see the Township be proactive instead of just reactive. Other communities are dealing with this issue. She noted she is urging and begging the Township to please take the issue seriously.

Mr. Epstein agreed with the suggestion that the Township can arrive at a compromise so it does not overreact, but still has the ability to react.

Mr. Lighty stated the Commission does want to fix the problem and has spent several meetings working on it.

Director Johnson stated that no family should have to put up with what is contained in her log. He believes they can work on a plan to address this to put an end to it.

*A brief recess took place while the Public Safety Committee left the meeting to reconvene its own monthly meeting in Room 174 of the Municipal Center.*

### **NEW BUSINESS**

#### **Preliminary/Final Subdivision Plan #09-20** **Best Western Hotel & Suites**

Ms. Moran stated that the purpose of this plan is to subdivide the existing parcel into two lots. Lot #1 will include the hotel and Lot #2 will contain the restaurant. The property is located west of North Mountain Road, south of North Lockwillow Avenue, and north of Interstate 81. The property consists of 5.7672 acres total. Lot #1 will consist of 5.0269 acres and Lot #2 will consist of 0.7403 acres. The property is zoned CG, Commercial General District and is served by public sewer and public water.

The applicant has requested the following waivers: waiver of the requirement to provide a preliminary plan, waiver of the requirement to provide a stormwater management plan, waiver of the requirement to provide an erosion and sedimentation control plan, and waiver of the requirement to provide elevation contours for the project.

Ms. Moran stated that on July 23, 2009, the Zoning Hearing Board granted a variance via Docket #1263 for impervious coverage and side yard setback requirements. The restaurant lot has 89.52% impervious coverage, and a side yard setback of 3.8 feet.

Jeffrey Staub, Dauphin Engineering Company, was present on behalf of the plan.

Mr. Staub stated that the motivation behind the subdivision is to separate the restaurant from the hotel. There has been an ongoing dispute between the property owners about the restaurant. Physically, the restaurant is a part of the hotel, but as a practical matter, it is not. In order to avoid the regulations that Best Western is trying to impose on the owner regarding the restaurant, it needs to be physically disconnected. The existing canopy is going to be removed.

Several variances were needed: side yard setback relief, and relief from impervious coverage regulations.

Mr. Staub stated he has received comments from Staff, County and HRG, and can address them.

Mr. Lighty asked about the parking and cross access agreement. Mr. Staub stated there is a general note on the plan that there will be cross easements for parking, vehicular and pedestrian access, and utilities. Ron Lucas will prepare the documents which will be approved by Best Western and recorded with the plan.

Mr. Syed asked about improvements to the property. Mr. Staub stated that the parking lot will be adjusted for both uses in the form of reconfiguration. The lot will be restriped and islands will be added, which will add more parking spaces and improve the flow of the lot. He stated the canopy will also be removed.

Mr. Syed asked if this will meet Best Western standards. Mr. Staub stated all of the plans and submissions to the Township have also been copied to Best Western, and they have not objected to anything. He has not asked his client if Best Western has agreed, but he assumes that they are in agreement.

Mr. Newsome stated that the parking improvements will be significant, and he complimented Mr. Staub on the much-needed changes there.

There was no comment from the audience.

Mr. Newsome made a motion to recommend approval of the plan and approval of the four requested waivers, subject to resolution of the comments. Ms. Lindsey seconded the motion and a unanimous vote followed.

**Preliminary/Final Subdivision Plan #09-21**  
**Paxton Towne Centre, Lot #2**

Ms. Wissler stated that the purpose of this plan is to create Lot #2 for conveyance from the existing land owner, PRGL Paxton LP to the Estate of Park C. Sheesley. Proposed Lot #2 consists of 4.31 acres, is zoned CG, Commercial General District, and is located south of Hampton Court Road and east of Devonshire Road. The lot will be served by public water and public sewer.

The applicant has requested six waivers:

1. waiver of the requirement to submit a preliminary plan
2. waiver of the requirement to provide contours on Lot #1 at intervals of 2 feet and 5 feet
3. waiver of the minimum scale requirement
4. waiver of the requirement to provide sidewalk along Hampton Court Road
5. waiver of the requirement to provide stormwater management
6. waiver of the requirement to provide E&S Controls

Tim Diehl and Mark Hipp, both of J. Michael Brill & Associates, and Sandy Prah1 were present on behalf of the plan.

Ms. Wissler noted that HRG is recommending that the sidewalk waiver not be granted. She stated that an option could be to defer installation until the time when Lot #2 is developed. She did talk to Mr. Fleming, and he is agreeable to that option.

Mr. Diehl stated that Lot #2 will remain undeveloped at this time. If it is developed, a land development plan will be submitted to the Township. At that time, sidewalks can be reconsidered. Mr. Lighty stated that the Commission is probably not inclined to grant a waiver for sidewalks.

Mr. Diehl stated he can readily address the comments.

Sandy Prah1, 1001 Homestead Avenue, stated there is sidewalk along some of Carpet Mart, but if sidewalks are installed for Lot #2, it would go nowhere. The topography is also very limiting.

Mr. Lighty asked the general purpose for the lot. Ms. Prah1 stated that at the time the land was sold to be a shopping center, there was a clause that if it wasn't developed within a certain period of time, the Estate had the option of reclaiming the lot.

Mr. Guise made a motion to recommend approval of the plan, subject to resolution of the comments. The motion included a recommendation to disapprove waiver of the sidewalk installation, and to defer installation until a land development plan is submitted for lot 2 and additional sidewalks are installed in the area, and a recommendation to approve the balance of the requested waivers. Mr. Grove seconded the motion and a unanimous vote followed.

### **Business Improvement District**

Mr. Lighty stated that the business improvement district meeting with stakeholders is being changed to November 9<sup>th</sup> at 6:45pm, with refreshments available at 6:30 pm.

### **PUBLIC COMMENT**

Eric Epstein stated that Act 124 has passed which affects idling. This may impact the fueling operation at CD Middle School. It also says that you cannot idle more than five minutes in an hour unless the population is special education students, or if there are students on board. He asked how that would be implemented or enforced. The enforcer, DEP or the State Police, is what determines who gets the share of the money. It applies to parking lots of 15 or more vehicles.

Mr. Lighty stated the Planning Commission has not considered it yet. Mr. Epstein will email the concerns that SWAN has on the issue. Mr. Newsome stated it could affect what the Township permits or creates regarding parking lots.

**COMMISSIONER COMMENT**

There were no additional comments from the Commissioners.

**ADJOURNMENT**

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

The next BID meeting will be a stakeholders meeting, and will take place November 9, 2009 at 6:45 pm.

Being no further business, the meeting adjourned at 8:04 pm.

Respectfully Submitted,

Michelle Hiner  
Recording Secretary