

**EAST BRANDYWINE TOWNSHIP BOARD OF SUPERVISORS
REGULAR SESSION
Wednesday, September 19, 2007**

Those in Attendance:

Jay G. Fischer, Chairman
Hudson L. Voltz, Vice-Chairman
David A. Kirkner, Member
Scott T. Piersol, Township Manager
Mark Kocsi, Chief of Police
Mary Beth Smedley, Secretary/Treasurer

The East Brandywine Township Board of Supervisors meeting of Wednesday, September 19, 2007 was called to order by Chairman Fischer at 7:30 P.M. at the East Brandywine Township Municipal Complex. There were twenty-eight visitors present.

Opening of Meeting

Chairman Fischer opened the meeting with a Salute to the Flag.

Notices

The Spain Conditional Use Hearing will be held Tuesday, September 25, 2007 at 7:30 P.M.

Public Comment for Non-Agenda Items

Chairman Fischer asked if there were comments on non-agenda items. Mr. Daniel Fallon provided the Board of Supervisors with the following petition that was signed by fifty-one residents of the Township. The petition read:

"The undersigned resident(s) of East Brandywine Township hereby petition the Board of Supervisors as follows:

Whereas, certain amendments to the Township Village Commercial Zoning Ordinance were made in 2002 with the intent of facilitating the placement of a Wawa Market in Guthriesville with 12 gas pumps and pavilions for same; and

Where, the zoning ordinance and comprehensive plan prior to 2002 was very specific in requiring that the historic Village of Guthriesville be limited to traditional, compact neighborhood uses, and not accommodate highway oriented business or attract regional traffic, and that the historic resources of the Village be preserved; and

Whereas, the above changes will significantly alter the character of the village the VC ordinance was designed to protect and allow demolition of the Guthriesville General Store, a building with historic value; and

Whereas, due to various errors in the process, those changes and the approvals granted pursuant to them have yet to take effect and require further action by the Board of Supervisors before they take effect;

Now, therefore, we the undersigned voters and residents of East Brandywine Township, do strongly petition the Supervisors to rescind all approvals and permits granted to Wawa, and any relating to their plan, and restore the zoning provisions that applied prior to 2002."

The Board thanked Mr. Fallon for providing the petitions. Mr. Fallon then asked if the Supervisors would take questions regarding the petition. One resident asked if they could have copies of the petitions. Mrs. Smedley said that residents could complete a request for information form and copies of the petitions would be provided.

Mr. Warren Popjoy asked if the Township had in any way worked with Wawa to change the zoning ordinance to allow the convenience store. Mr. Piersol stated that the Township had not worked with Wawa, but Wawa's attorney brought it to the Township's attention that the 1989 East Brandywine Township Zoning Ordinance stated that convenience stores were permitted uses in the VC District as defined by the ordinance, but there was no definition. The 2002 amendment was done in order to define standards for convenience stores. The Wawa plan received preliminary plan approval prior to the 2002 amendment and its status is not affected by the amendment. Mr. Popjoy then stated that the amendment would permit an 8,000 square foot convenience store to be constructed in the Village of Lyndell. Again, it was pointed out that a convenience store could have been constructed in Lyndell prior to enactment of the 2002 ordinance, with no size limitations. Mr. Popjoy asked about the size of the new municipal complex. It is 19,500 square feet. Mr. Popjoy stated that a convenience store built in the Village Commercial District could be almost half the size of the Township building.

Mrs. Kate Okie stated that she is confused as to why preliminary plan approval was given to Wawa since its construction would be incompatible with the intent of the 1989 Zoning Ordinances which reads: *"The VC Village Commercial District is intended to reflect and support the properties and uses that are predominant in the villages of Guthriesville and Lyndell, and to assure that new uses or changes in use, and the dimensional and design standards to which they must adhere, are compatible with the traditional, compact neighborhood commercial character and complementary residential uses within these villages. These standards take into account the limits imposed by reliance on on-site water supply and the existing and potential problems related to on-site sewage disposal (note: public water and sewer are currently provided in the Guthriesville VC District). Unobtrusive transition to the surrounding residential districts is to be achieved; the District is not intended to accommodate highway-oriented business uses nor to attract significant regional traffic. The standards of the VC District also are intended to address potential concerns relating to air quality, pedestrian and vehicular access, and off-street parking"*. Mrs. Okie feels that the Wawa convenience store is totally incompatible with the intent of the ordinance.

Mrs. Linda Morrison stated that she wasn't sure why the 2002 convenience store amendment was originally enacted and maybe it was just a misunderstanding. She went on to say that a lot

of people do not want the convenience store amendment reenacted. She does not want East Brandywine Township to look like Thorndale. Chairman Fischer stated that even if the 2002 convenience store standards aren't reenacted; a convenience store is still a permitted use in the Village Commercial District per the 1989 Zoning Ordinance. The only purpose it would serve is that the Township now does not have a definition for convenience store. It could also open the door for developers to put in whatever type of convenience stores they want in the Village of Guthriesville or the Village of Lyndell. The Township cannot deny the Wawa plan if the convenience store standards aren't adopted because preliminary plan approval was granted in 2001 based on the 1989 ordinance, not on the 2002 amendments.

Ms. Barbara Thompson stated that she is concerned about losing Mama Lena's because of its historic value to the Village. She went on to say that her parents worked very hard to help preserve Guthriesville. She feels that the Supervisors would be selling out to allow the Wawa to be built.

Mr. Richard Reale stated that he is concerned about traffic control, particularly with the explosion of growth in the area. He mentioned that a person was killed in the Village and that traffic needs to be addressed. Vice-Chairman Voltz said that the Township Traffic Impact Committee has recommended construction of a loop road. The Township has attempted to put this project on PennDOT's Twelve Year Plan and that the Traffic Impact Fees paid by developers may in part help to design the road. Since Rt. 322 is a State Road, the Township doesn't have jurisdiction over it. It was suggested that residents contact their State Legislators about this. State law prohibits Townships from denying subdivisions or land development plans based on potential traffic impacts. A traffic study has been done as part of Wawa's land development plan and there are certain roadway improvements that would need to be done as part of final plan approval.

Mrs. Morrison stated that she hoped the Board would change their mind about adopting the convenience store amendments and hopes that they will take the resident comments under advisement. She also stated that even if Wawa would sue the Township some residents would still like the Supervisors to deny the Wawa plan.

Mrs. Marjorie Applebee wondered if the Supervisor's attitude was just to defend themselves, and also wondered if they had a cavalier attitude with regard to the resident's concerns. Chairman Fischer assured Mrs. Applebee that the Supervisors would take all the comments under advisement. He went on to say that the Supervisors have tried to promote Historic Guthriesville. The Township attempted to have Guthriesville added to the National Historic Register, but the majority of residents living within the Historic District did not want this to happen. In addition, the Township's Ordinance Task Force is working on a master plan for the Village of Guthriesville.

Mrs. Renee Pugh asked why convenience stores were deleted as a permitted use in the Mixed Use Commercial District in the amended ordinance. Chairman Fischer stated that the Supervisors don't make these decisions alone. The Ordinance Task Force, along with Township Engineer and Zoning and Comprehensive Plan Revision Consultant, is the advisory body to the Board of Supervisors that generally proposed ordinance revisions, changes and deletions.

The revisions are then reviewed by the Chester County Planning Commission and Township Planning Commission and recommendations are made to adopt certain ordinances. These steps generally take a good deal of time. Chairman Fischer stated that he didn't specifically remember why the convenience stores were removed from the MU District, but it was likely done so that convenience stores would be constructed only in the VC District. A convenience store was already in the VC District (Landhope then Sunoco). Again, it was noted that the Wawa application was received prior to the 2002 convenience store amendments, so they would not apply to the Wawa application. Mrs. Jane Kessler asked if prohibiting a convenience store in the MU District would be considered "restraint of trade". Chairman Fischer noted that some people might consider zoning regulations restraint of trade since they regulate where certain uses are permitted. Chairman Fischer stated that he will provide a specific answer as to why convenience stores were deleted from the MU District.

Mrs. Kate Okie stated that when she read the Intent Section for the Village Commercial District in the Zoning Ordinance it was her impression that the Township planned for cottage industry type of businesses. She asked if the Township could deny a plan for a convenience store because of this. Chairman Fischer stated that the Intent Section of the Ordinance could not override the actual ordinances.

Ms. Suzanne Tucker stated that it sounded like business such as Wawa have more rights than residents. Chairman Fischer stated that since a convenience store is a permitted use in the VC District, Wawa would have more rights than residents opposing the project. It was noted that Pennsylvania State law requires municipalities to allow for all different property uses within their municipal boundaries. The Township does have to allow for commercial uses.

Ms. Tucker stated that residents voted for a tax increase to help purchase open space and asked the Supervisors to update residents on this. Chairman Fischer asked Mrs. Okie, as Vice-Chairman of the Open Space Committee to discuss this. Mrs. Okie stated that the Open Space Committee has worked very hard to acquire land and/or easement rights. The Township has been successful in purchasing one parcel and placing easements on another parcel. Unfortunately, the Township is competing with developers who will offer residents a great deal of money for their land. By law, municipalities can only offer the appraised value as the purchase price.

The Open Space Committee is working with several other property owners at this time to acquire easements. The Township hopes to be successful in these purchases, but it does take time. The first acquisition took approximately three years to complete.

Mr. Dan Fallon asked for an update on the Mama Lena's building and Mr. Scott Silverman asked if there are any guidelines regarding what will happen to the Mama Lena's building. The Army Corps of Engineers offered its opinion that re-use of the building is not a practicable or feasible option. They would like to develop a Memorandum of Agreement to include measures to mitigate the adverse effects to the historic district. This agreement might include buffering, determining the architectural design of the Wawa building and lighting issues, all of which might lessen the impact of the demolition. They will attempt to schedule a meeting with interested

parties. Mr. Piersol stated that Dr. John Eddins, from the Advisory Council on Historic Preservation will be reviewing the Army Corps decision to ensure that the Army Corps acted within the guidelines of the Preservation of Historic Places Act of 1966. In addition, Wawa will be asked to justify why the building can't be preserved. Until this process is completed there may be severe penalties if the Mama Lena's building were demolished, although the owner has been issued a demolition permit. Mr. Piersol and Mrs. Jane Davidson have been discussing these issues and will continue to work with the Army Corps and Advisory Council.

The Supervisors thanked the residents for their time and interest.

Minutes: Board of Supervisors – August 15, 2007

Chairman Fischer asked if there were any additions or corrections to the above minutes. There were none. Vice-Chairman Voltz made a motion to approve the August, 2007 minutes as presented. Mr. Kirkner seconded the motion, with all voting Aye.

Minutes: Board of Supervisors – September 6, 2007

Chairman Fischer asked if there were any additions or corrections to the above minutes. There were none. Mr. Kirkner made a motion to approve the September 6, 2007 minutes as presented. Vice-Chairman Voltz seconded the motion, with all voting Aye.

Minutes: Planning Commission Minutes – September 5, 2007

Chairman Fischer asked if there were any additions or corrections to the above minutes. There were none. Vice-Chairman Voltz made a motion to approve the minutes as presented. Mr. Kirkner seconded the motion, with all voting Aye.

Minutes: Pension Committee Minutes – September 6, 2007

Chairman Fischer asked if there were any additions or corrections to the above minutes. There were none. Mr. Kirkner made a motion to approve the minutes as presented. Vice-Chairman Voltz seconded the motion, with all voting Aye.

Treasurer's Report

Mrs. Smedley read the account balances as of September 19, 2007. After review of the Treasurer's Report/Financial Statement, Chairman Fischer made a motion to approve the report and authorize payment of the bills. Vice-Chairman Voltz seconded the motion, with all voting Aye.

Report: Township Manager's Report

A reminder to our residents and business owners of our Open House, scheduled for next Thursday, September 27th from 4 to 8 PM. This is an opportunity for our residents to meet the Township Supervisors and staff, and members of the Brandywine Regional Police Department.

Building tours will be provided during the Open House. Light refreshments will also be provided.

A comprehensive report from the Bondsville Mill Committee was provided to the Supervisors earlier this month. The Report recommends various passive recreation uses for Bondsville Mill Park, including walking, hiking & biking trails through the site linking to adjacent developments, creation of natural areas to show gardening techniques, bird habitat, and preservation of an important piece of industrial history in the Township to share with future generations. On-going presentations by members of the Bondsville Mill Committee are planned during the Open House on September 27th. Former mill workers will be invited to share memories of their work experiences at the Mill.

We have been gathering preliminary information on the process for grant applications for this project. A consultant will be secured to create a master plan for the site as an initial step. Two potential consulting firms Mr. Piersol has interviewed remarked about the diversity within this project, combining passive recreational uses with nature and birding areas, as well as the interpretation of Township industrial history. Potential consultants will be interviewed, which will assist the Committee developing information needed to develop a project scope. The County's Parks and Recreation Department has provided Mr. Piersol with a list of several consultants used in the past. It is our intention to seek a qualified consulting firm to handle the project from the initial discussions phase through the submission of grant applications, and project construction oversight. Managing the project and the involved groups and contractors will be complicated, likely more than the Township can handle in-house, so a consultant to manage all aspects of this project will be critical.

The Township received a letter from the U.S. Army Corps of Engineers September 5th which announced their decision to issue the stream crossing and relocation permits for the Wawa project as proposed by the applicant. In their letter, the Corps indicated they did not feel the restoration or rehabilitation plan proposed by the Township's Historic Commission was economically feasible. The following steps in the process would include the development of a Memorandum of Agreement, which would include measures to mitigate the adverse effect to the proposed Guthriesville Historic District.

Mr. Piersol was contacted last Friday by the Advisory Council on Historic Preservation from Washington D.C. The Advisory Council proposes to become involved in this matter, to make certain the Corps complied with the terms of Section 106 of the Preservation of Historic Places Act of 1966, which are federal guidelines applicable to this matter. The Advisory Council will ask the Corps to justify why they determined the impacts to the wetlands were more important than the impacts to the historic structure, and will ask Wawa and their consultants to provide their justification as to why they are unable to compromise on any of the alternatives proposed. A meeting of all stakeholders involved in this issue, originally scheduled to be held here on Friday, September 21st, appears to have been postponed to a later date.

Specifications for our 2007 Paving Projects were issued yesterday. Three separate contracts are proposed within this project, as follows:

- Pancoast Lane – road base repairs as needed, macadam overlay of existing surface.

- Crawford Road - storm sewer inlets and pipe, base repair, leveling the existing roadway, paving to all existing and new storm drain facilities to assure proper drainage, and 4-foot widening at the intersection of Creek Road.
- North Buck Road – storm sewer inlet and pipe, road base repairs as needed, and roadway widening to achieve a consistent 18-foot cartway

Bid specification packages are available at the Township Office.

Our Open Space Committee recently provided Mr. Piersol with a signed copy of a Request for Services from David & Joann Earll of 200 North Buck Road. This formalizes the recommendation of the Committee to the Supervisors on April 5th. Brandywine Conservancy was contacted, and has decided this project is too small for their involvement. Mr. Piersol has contacted Natural Lands Trust to ask them to consider assisting the Township in exploring options for the acquisition of an open space interest in the Earll property, which is flanked by conserved property on three sides.

Pulte Homes is currently making significant roadway renovations to Bollinger Road. Widening their half of the roadway to a 14-foot width, and other renovations, are required as part of their land development plan. Roadmaster VanLew and Mr. Piersol met with Pulte representatives last week to discuss expanding the scope of Pulte's work to include other roadway improvements done by their contractor, which ultimately benefits all motorists using the roadway. This work will be done without direct cost to the Township. A small portion of the traffic impact fees due from Pulte will be discounted to cover these road improvement costs.

Proposed ordinance revisions in our Land Use Code on Historic Preservation, Convenience Store Standards, and revisions to create a four-step process for conservation and cluster developments, had been advertised for consideration and possible adoption this evening. The legal notice advertised in the Daily Local News contained the standard language required by the Municipalities Planning Code. An attorney representing a client with particular interest in the proposed Convenience Store definition revisions notified the Township last week that, in his opinion, the legal notice lacked certain phrases which are required by appellate case law, potentially rendering the notice defective. The missing phrase states "the amendments could affect the value of properties in East Brandywine Township, although the nature and extent of this effect are not known." To avoid a possible procedural challenge to the adoption of these ordinance amendments, Solicitor Stacey Fuller has suggested, and the Supervisors agreed, to postpone consideration of these revisions until the October 17th public meeting.

Report: Building Inspector/Zoning Officer – Report for August 2007

Mr. Piersol read the Building Inspector/Zoning Officer's Report for August 2007. There were ten building permits issued, six zoning permits issued, eight use and occupancy permits issued, and ninety-three inspections conducted during the month. The total fees collected were \$5,586.50.

Report: Brandywine Regional Police Commission

Mr. Kirkner reviewed the Brandywine Regional Police Commission minutes for July of 2007.

Office Denise Knoke will be off for approximately four months due to a shoulder injury. Chief Kocsi stated that overtime may increase in an attempt to cover Officer Knoke's shifts and scheduled vacations from other officers.

Chief Kocsi provided the Commission with a copy of General Order 103. The Order outlines job descriptions for each position in the Department. Updates were made to the sections related to Sergeants and Corporals to include responsibilities that were being done, but were not part of their job descriptions.

Mr. Ron Stern of the Governor's Center for Local Government Services has agreed to prepare a limited management study on the policy budget and manpower. The study may be available by the end of September.

The next meeting of the Brandywine Regional Police Commission will be held Thursday, September 27, 2007 at 8:00 A.M. at the Wallace Township building.

Report: Police Chief - Police Activity Report for August 2007

Police Activity Report – August 2007

Investigations	178
Traffic Citations	154
Traffic Warnings	53
Traffic Accidents	14
Criminal Arrests	7
Summary Arrests	1

Criminal Investigations – August 2007

Burglary/Criminal Trespass	2
All Assaults	0
Theft/Fraud	5
Disorderly Conduct/ Harassment	4
Disturbances	6
Suspicious Activity/ Persons	22
Domestics	2
Criminal Mischief	9
Juvenile Complaints	0
Missing Persons/ Runaways	2
Driving Under the Influence	2
Fugitive Warrants	5
Drugs	0

The Brandywine Regional Police Commission and Chief Kocsi offered their congratulations to Sergeant Gene Babetski on his graduation from the FBI Academy. Chief Kocsi attended his graduation last Friday in Virginia.

The Police Department has purchased a new speed trailer, which is due to be delivered in November. The speed trailer is equipped with a digital scrolling message board and can be upgraded to include software for conducting speed and traffic studies. The trailer was purchased with a \$10,000 grant which was received with the help of State Representative Tim Hennessey.

Chief Kocsi thanked Mr. Bill McQueen from Brandywine Metals for giving the Police Department a \$1,000 donation. This money was used to purchase a language translation device. Chief Kocsi gave a demonstration of the device which can be used to communicate in several different languages including Spanish, Vietnamese, and Arabic.

Report: Fire Company's Activity Report for August 2007

Mr. Piersol read the Activity Report for the month of August, 2007, as submitted by Fire Chief Robert Zynn, Jr. There were seventy-five total incidents. In East Brandywine Township there were eight fire calls and twenty QRS calls. In West Brandywine Township there were ten fire calls and thirty-one QRS calls. The Fire Company provided assistance in West Bradford Township, Honeybrook Township, West Chester Borough and Phoenixville Borough. Estimated fire damage for the month was \$70,000.

The East Brandywine Fire Company will hold an Open House on Wednesday, October 10, 2007 from 6 P.M. to 9 P.M. The public is invited to attend. Mr. Piersol stated that this has been a very successful event for the Fire Company in the past and they expect a large turnout this year. Also, representatives from the East Brandywine Fire Company will be visiting several elementary schools to provide education to students during Fire Prevention Week.

Subdivision: The Weaver Tract

The Planning Commission is recommending the Board accept an extension to review this subdivision application until October 18, 2007. Vice-Chairman Voltz made a motion to accept this extension. Mr. Kirkner seconded the motion, with all voting Aye.

ORDINANCES - The following ordinances are scheduled to be considered for adoption at the October 17, 2007 Board of Supervisors meeting:

1. Ordinance 07 of 2007 – Amending Various Provisions of the Land Use Code including Chapter 350 Concerning Conservation and the Four-Step Design Process and Chapter 399 Concerning Conservation and Cluster Development.
2. Ordinance 08 of 2007 – Amending Chapter 399, Article XII, Historic Resource Protection Standards; Article II, Terminology; Article XVI, Signs; and Article XVIII, Administration of the Land Use Code.

3. Ordinance 09 of 2007 – Amending Chapter 350, Concerning Historic Resource Protection.
4. Ordinance 10 of 2007 – Amending Chapter 399, Article II, Definitions; Article VIII, VC District, Article IX, Mixed Use Commercial District, and Article XIV, Supplemental Regulations Regarding Convenience Stores, Automobile Service Stations and VC Village Commercial District.

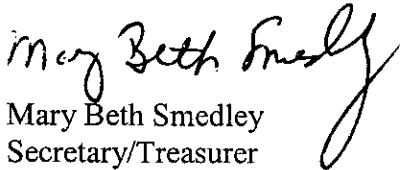
Additional Public Comment

Chairman Fischer asked if there were additional public comments. Mr. Dan Fallon and Mr. and Mrs. Robert Thompson stated that it was very difficult to hear what the Supervisors were saying. Mr. Piersol said that the Township is investigating a sound system.

Adjournment

There being no further business, Vice-Chairman Voltz made a motion to adjourn the meeting. Chairman Fischer seconded the motion, with all voting Aye. The meeting was adjourned at 8:55 P.M.

Respectfully submitted,


Mary Beth Smedley
Secretary/Treasurer