

**EAST BRANDYWINE TOWNSHIP BOARD OF SUPERVISORS  
WORK SESSION  
Thursday, May 1, 2008**

**Those in Attendance:**

Hudson L. Voltz, Chairman  
David A. Kirkner, Vice-Chairman  
Jay G. Fischer, Member  
Scott T. Piersol, Township Manager  
Stacey Fuller, Esq., Township Solicitor  
Al Giannantonio, P.E., Township Engineer  
Matthew T. VanLew, Roadmaster  
Mary Beth Smedley, Secretary/Treasurer

The East Brandywine Township Board of Supervisors meeting of Thursday, May 1, 2008 was called to order by Chairman Voltz at 7:55 A.M. at the East Brandywine Township Municipal Complex. There were sixteen visitors present.

**Announcement**

The Board of Supervisors met in Executive Session this morning with Mr. Piersol and Solicitor Stacey Fuller to discuss the Wawa plan and the Programmatic Agreement.

**Public Comment for Non-Agenda Items**

Chairman Voltz asked if there were comments on non-agenda items. Mrs. Jane Kessler stated that she emailed Mr. Piersol and Mrs. Smedley several weeks ago about signage at the recycling center. The sign says that cardboard isn't accepted although there is a dumpster dedicated to paper and cardboard recycling materials. Mr. Piersol stated that the sign is to make sure that cardboard isn't placed in the dumpster used for co-mingle recycling products such as clear and colored glass, #1 and #2 plastics, and aluminum and tin cans. He also said that the contractors will be providing new containers shortly that will have recycling information on them. Hopefully, that will resolve any confusion.

**Bondsville Mill Committee – Nomination of Gerald Kirkpatrick as Chairman**

Chairman Voltz made a motion to nominate Gerald Kirkpatrick as Chairman of the Bondsville Mill Committee. Mr. Fischer seconded the motion, with all voting Aye.

**Bondsville Mill Committee – Nomination of James Buczala as Historical Commission liaison to the Bondsville Mill Committee**

Chairman Voltz made a motion to nominate James Buczala as the Historical Commission liaison to the Bondsville Mill Committee. Mr. Fischer seconded the motion, with all voting Aye.

### **DCNR Grant Application**

Mr. Piersol explained that in order for Mr. Piersol's involvement with the Pennsylvania Department of Conservation and Natural Resources grant application to be reimbursed, the Board of Supervisors must approve the in-kind rate. This rate is equal to the billable rate for their actual hourly rate, plus the hourly benefit rate. Mr. Fischer made a motion to approve the memo dated May 1, 2008 that sets the Township Manager's rate at \$50 per hour. Mr. Kirkner seconded the motion, with all voting Aye.

### **Guthriesville General Store/Wawa Plan**

Chairman Voltz stated that the East Brandywine Township Board of Supervisors reviewed the Programmatic Agreement and has five areas of concern with which they take issue. These areas are:

1. The insurance requirement in Attachment B;
2. The amount of the Letter of Credit required for the Agreement of Sale;
3. Attachments, D, E and G and H are blank;
4. The marketing period is too short;
5. The requirement that any subdivision must be completed by December 31, 2008 since the Township has no control over approvals by any other agencies.

Michael Gill, Esq., attorney for Wawa, stated that the Programmatic Agreement has been the subject of intense discussion by all the involved parties. He went on to say that the content of the Agreement has been agreed upon by Wawa, the Army Corps of Engineers and the Pennsylvania Historical and Museum Commission. Although East Brandywine Township and the Chester County Historic Preservation Department have been invited to sign the Agreement, it is not a requirement of the Army Corps that they enter into the Agreement.

Louis Colagreco, Esq., attorney for Claudio DiGiamberardino, of the Guthriesville General Store stated that the reason for the insurance requirements is Wawa and Mr. DiGiamberardino can't bear the risk should someone be injured while going through the building. The letter of credit has been a long-standing requirement to ensure that there are funds to actually complete improvements to the building. Mr. Colagreco also stated that Mr. DiGiamberardino was only agreeable to an eight week marketing period.

Mr. Gill stated that the requirement for subdivision approval was first discussed in January or February of this year. He stated that should be sufficient time for a prospective buyer to obtain an approved plan. He stated that the Agreement should be signed within seven to ten days and the building will be marketed right away.

With regard to the attachments, Mr. Gill stated that they were provided with the draft Agreement in February.

According to Mr. Gill, Wawa is prepared to move forward with signing the Agreement. Although the Township and County are not required to sign Agreement, Mr. Gill hoped that both agencies will do so. He also stated that East Brandywine Township has been helpful throughout the process.

Mr. Fischer expressed his concern that the insurance requirements would discourage the interested buyers. He thought that prospective buyers could simply sign an indemnification agreement. Mr. Gill stated that anyone can look at the building. They would simply contract the broker to see what would need to be done in order to meet the requirements outlined in the Agreement.

Chairman Voltz asked if there was any public comment. Mrs. Jane Kessler said that the plot plan provided showed a one-dimensional view of the property. She would like to see side and perspective views. Mrs. Kessler suggested that the Township conduct a traffic study now that the Sunoco Convenience Store is in place and provide a projection for what additional traffic could be expected from the Wawa. She is concerned that if there was an emergency the Fire Company volunteers may have a difficult time getting on to Bondsville Road. Mrs. Kessler also asked if Wawa had a plan to clean up possible oil spills on the asphalt. Chairman Voltz stated that the Board would take Mrs. Kessler's questions under advisement.

Wawa's engineer, Mr. Gregory Newell was asked to elaborate on the proposed retaining wall heights in relation to the building by Mr. William Inslee. Mr. Newell stated that he has been working on this project since 2000. He stated that in order to preserve the building, changes needed to be made to the grading plan. He showed both the original plan and the new plan. He said that he looked at several different ways to approach this. If the entire site was lowered, they would encroach on to wetlands. The preferred plan will not encroach on the wetlands, but will allow the water source to continue into the wetlands. The proposed retaining wall that goes around the back and to the east of the building will have varying heights of two to five feet. Mr. Nicholas Rakowski from Nave-Newell stated that the retaining wall to the east will protect the Polling House on the Inslee's' property. Although some of the retaining walls are on the property that will be kept by Wawa, the Agreement indicates that it will be the responsibility of the owner of the Guthriesville General Store to construct and pay for them. The retaining walls on the Wawa property will be maintained by Wawa. Mr. Gill pointed out ten parking spaces for dedicated use of the General Store building.

Mr. Warren Popjoy asked if the retaining wall could be removed and a terraced area be provided. Mr. Newell explained that the terraced area would actually be lower than the access drive and would create a ponding condition. That ponding condition would necessitate installation of a drain that would discharge water to the basin. However, for the basin to be able to accept the discharge it would need to be lower than the existing wetlands, essentially making the basin non-functioning.

Mr. Inslee pointed to porches on the Guthriesville Store and asked if the porches were to be retained with the building. Mr. Newell stated that a shed and some of the porches would be removed. Mr. Inslee stated that most, if not all of the porches are structurally original.

Mr. Colagreco stated that Mr. DiGiamberardino was very frustrated at the February meeting, but did agree to an eight week marketing period. He stated that he hoped the marketing period would begin very soon. Mr. Colagreco also stated that his client can't financially continue to carry the building. He stated that it would be a shame to have gotten this far and have the building come down.

With regard to requiring insurance for persons entering the building Mr. Colagreco stated that it was probably an oversight that it wasn't required earlier, probably because he was familiar with the people who were entering the building. He went on to say that now with broader exposure his client can't be strapped with additional potential liability. He hopes that only prospective serious buyers contact the realtor.

Mr. John Black, Chairman of the East Brandywine Township Historical Commission stated that he is concerned about the insurance requirement as well. He feels that the requirements are onerous and that it would take some time to obtain the insurance requested. Mr. Black stated that he was not aware that this was a normal practice. He also suspects that no one will look at the building because this is a pretty big hurdle.

Mr. Colagreco stated that the insurance requirement is a practice used in the sale of commercial real estate. Mrs. Jane Kessler stated she would contact her insurance broker to see how difficult it would be to obtain the required insurance. Mr. Colagreco stated that the property does have safety issues and he must protect his client's interest. If there were no insurance it could cause serious problems for Mr. DiGiamberardino; the requirement is simply a minor inconvenience. Mr. Colagreco stated they were interested in the serious buyer, not the casual observer. Both Mr. Gill and Mr. Colagreco assured the Supervisors that there was no subterfuge or effort to thwart prospective buyers. The insurance is a matter of providing protection for their clients. Mr. Gill pointed out that if someone was injured on the property, Wawa would almost certainly be named as a defendant.

Mr. Gill stated that Wawa has agreed to move forward with alternative 5A. He said that although not everyone was in agreement, he hoped that all parties could move forward.

Mr. Popjoy stated that although Wawa stated they wanted to comply with the Section 106 process, they may have given inaccurate information that would invalidate the process and Mr. DiGiamberardino's demolition permit.

Mr. George Holmes remarked that it would be difficult to absorb the whole agreement since it was the first time he has seen this draft.

Again, Mrs. Fuller explained that the Section 106 process does not require Township approval. East Brandywine Township has been invited to sign the Agreement, but it isn't necessary.

Ms. Karen Marshall, Chester County Historic Preservation Officer said that she was asked by the Pennsylvania Historic and Museum Commission to try to assemble some economic strategies for the General Store. She also suggested that the Township look at forming a Task Force that would meet weekly throughout the marketing period. The Task Force could include members of the Township, the realtor, Wawa if they chose to be involved, and other interested parties. She hopes that the renovated General Store will be a compliment to the Guthriesville Master Plan being proposed by the Township's Ordinance Task Force.

Mr. Black stated that he still wasn't satisfied with the insurance requirement. Mrs. Fuller was asked if the insurance requirement was a standard practice. She said that she was not familiar with requesting this type of insurance, but couldn't say definitively that it wasn't required in some circumstances.

Mrs. Jane Davidson thought that it would be difficult to obtain an occupancy permit from the Pennsylvania Department of Labor and Industry because the retaining wall will be too close to the building. She also questioned the provision that required the acquiring party to pay for construction of the retaining walls. Mrs. Davidson said that the Programmatic agreement lacked respect and did not take local government laws and procedures into account. She remained very concerned about the eight week marketing period.

The Agreement stated that all approvals for subdivision must be obtained by December 31, 2008. Mr. Gill was asked what would happen if a prospective buyer was in substantial compliance, would Wawa be willing to extend the time-frame. Mr. Gill stated that Wawa would consider this if it should happen, but he would make no guarantees about extending the time-frame.

**The Board of Supervisors adjourned to Executive Session at 8:45 A.M. to discuss the Programmatic Agreement.**

**Chairman Voltz reopened the meeting at 8:57 A.M.**

Chairman Voltz asked if there was a motion to sign the Programmatic Agreement. There was no motion by the Board. Chairman Voltz stated that the Board recognizes that their approval is not needed for the Agreement to be executed. He went on to say that the Board would not take a position opposing or supporting the Agreement although the Board hopes they will be part of the decision making process in the future. The Board's concerns were outlined in a February 15, 2008 letter to the Army Corps of Engineers.

### **ATV Ordinance Revisions**

Mr. Piersol provided a draft revision of the Ordinance for the Board to review. The Ordinance was reviewed based on comments from a meeting on April 10<sup>th</sup> with Township representatives, members of the Planning Commission and concerned residents. Also, Mr. Piersol attached a copy of a letter from a resident on Reeds Road who has ongoing concerns about noise and environmental issues.

Mr. Fischer suggested that the last sentence of Section 7 be changes to ATVs "while engaged in" (removed the word used) snow removal, emergency repairs or services, farm or agricultural uses, or for emergency service purposes, shall be expressly exempt from these provisions.

Chief Kocsi asked how you would define the term "unreasonable" as described in Section 5. The Supervisors suggested that the District Justice would need to define the term. Chief Kocsi will look into the costs and training involved in operating a decibel meter.

Chairman Voltz stated that the review draft would be sent to the Committee for review.

### **McCausland Hall Roof Replacement**

Mr. VanLew provided cost estimates for replacement of the roof. He stated that cedar shake shingles would cost approximately \$26,400 and would last 40 to 50 years. A fiberglass shingle would cost \$18,700 and would also last about 50 years. The Supervisors would like to use wood on McCausland Hall because that is the material originally used. It was suggested that Mr. VanLew ask for an alternative with the bid. Mr. Fischer stated that some wood products have the look of cedar, but are much less expensive. Mr. VanLew will prepare a bid package.

### **EBYA Request for PA systems at Community Park and Spatola Field**

Mr. Piersol reported that EBYA would like to install PA systems at the Community Park and Spatola field. The PA systems will be donated and EBYA will provide the material and labor. Mr. Fischer stated that since both parks are in close proximity to homes we would have to let property owners know before a decision could be made. Mr. VanLew stated that several years ago a PA system was used at Spatola Park and it was very loud at his home on Clearview Drive, which is distant from Spatola Park. He stated that he would object if a PA system was used on a routine basis. The Supervisors stated they would need more information before making a decision although periodic use of the system on certain occasions such as Opening Day might be acceptable. Mr. Piersol stated that there may be a deed restriction prohibiting the use of PA systems at the Community Park. He will investigate this.

### **Announcement**

The East Brandywine Township Board of Supervisors met in Executive Session with the Wallace Township Supervisors on Wednesday, April 30<sup>th</sup> to discuss Wallace Township's intention to withdraw from the Brandywine Regional Police Commission.

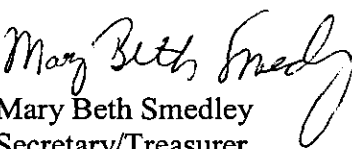
### **Additional Public Comment**

Chairman Voltz asked if there were any additional comments. There were none.

### **Adjournment**

There being no further business, Vice-Chairman Kirkner made a motion to adjourn the meeting. Mr. Fischer seconded the motion, with all voting Aye. The meeting was adjourned at 9:25 A.M.

Respectfully submitted,

  
Mary Beth Smedley  
Secretary/Treasurer