

**EAST BRANDYWINE TOWNSHIP PLANNING COMMISSION  
REGULAR SESSION**

**Wednesday, October 1, 2008 - 7:30 P.M.**

**Those in Attendance:**

Mr. Bruce Rawlings, Chairman  
Mr. Stephen Cushman, Vice-Chairman  
Mr. Michael Corbin, Member  
Mr. Charles Giordano, Member  
Mrs. Sandra Moser, Member  
Mr. Mervin Thomas, Member  
Mr. Scott T. Piersol, Township Manager  
Mr. Matthew VanLew, Roadmaster  
Mrs. Mary Beth Smedley, Township Secretary/Treasurer

**Absent:**

Deborah Marshman, Member

**Opening of Meeting**

Mr. Rawlings opened the meeting at 7:30 P.M. with a Salute to the Flag. There was one visitor present.

**Planning Commission Minutes – September 3, 2008**

Mr. Rawlings asked if there were additions or corrections to the September 3, 2008 minutes. There were none. Mr. Rawlings made a motion to approve the minutes as presented. Mrs. Moser seconded the motion, with all voting Aye.

**Dilworth Tract**

The applicant is granting an extension to review this subdivision application until February 1, 2009. Mr. Rawlings made a motion to recommend the Board of Supervisors accept this extension, but did ask that the applicant be invited to the December Planning Commission meeting to provide an update on the plan. Mr. Cushman seconded the motion, with all voting Aye.

**Corner Ketch Landing**

According to Building Inspector Jeff Cantlin, Mr. Zalkind will be contacting Mr. Piersol to schedule a time to meet and discuss the outstanding landscaping issues. Mr. Rawlings stated that the optimum time to install the additional plantings was in October or early November. The Planning Commission is recommending that no additional building permits be issued until the landscaping installation is satisfactorily addressed.

Mr. Piersol reported that there have been ongoing problems with water run-off from the subdivision to a neighboring property on Corner Ketch Road. The applicant has installed some improvements to the berm/spillway at the direction of the Chester County Conservation District, but according to the affected neighbor it hasn't worked. Unfortunately, the property owner didn't call until two weeks after the last significant rainfall event so Mr. Cantlin wasn't able to determine what might be causing the problem. He will inspect the site during the next significant rainfall.

### **All Terrain Vehicle Ordinance**

Mr. Rawlings stepped down from the Planning Commission for this discussion since he is a concerned resident. Mr. Cushman reported that the group working on the ATV Ordinance met last evening to discuss how to resolve outstanding issues and revising the proposed Ordinance. He went on to say it appears that a small group of people are causing problems for many people. Although noise complaints are the biggest issue, there are also concerns about riding in environmentally sensitive areas.

At the Supervisor's direction, the group is working on two separate ordinances. The first is a noise ordinance that will amend Section 399-84 of the Zoning Ordinance. The second is a revision of the proposed ATV Ordinance that will include, in part, limitations on the number of ATVs allowed to operate on a property at any given time, prohibit riding in environmentally sensitive areas, and require written permission to ride on a property if the person is not an immediate family member.

Mr. Piersol has spent a great deal of time reviewing noise and ATV ordinances used by other municipalities and has re-drafted Section 399-84 of the Zoning Ordinance to include time-frames and acceptable decibel limits at the property boundary of the receiving land use. He also made changes to the May 28<sup>th</sup> ATV ordinance draft to take out some of the language regarding time frames, since that has been inserted in the noise ordinance, although the Ordinance still prohibits riding ATVs after dusk. Mr. Piersol provided drafts of the ordinances for the Planning Commission to review. These ordinances still need to be refined and will be discussed at tomorrow morning's Board of Supervisors meeting. In addition, the ordinances will need to be reviewed by the Township Solicitor.

Mr. Thomas asked for clarification about the decibel level in the draft ordinance. He commented that 55 decibels seemed low. Mr. Piersol stated that he would look into how decibel levels compare to certain other activities. Mr. Thomas also stated that it appears that the noise ordinance might exclude certain activities. Mr. Piersol said that the ordinance did provide for some exceptions.

There are concerns about enforcement of the noise ordinance. Mr. Piersol stated that the noise ordinance would be enforced by use of a decibel meter. According to Township Engineer Al Giannantonio, a decibel meter can be purchased for less than \$500 and is

fairly easy to operate. There still remains a question as to whether the person operating the decibel meter needs to be certified.

Mr. Corbin asked at what point does riding ATVs become a commercial activity. Mr. Piersol stated he thought it would only be considered a commercial operation if money were exchanged. Mr. Corbin went on to say that he still thinks that there are unresolved issues and suggested that the Planning Commission Solicitor, Thomas Oeste, Esq., also review and comment on the Ordinance.

The Planning Commission would like to discuss these Ordinances at the next Ordinance Task Force Meeting so that their comments and suggestions can be provided to the Board of Supervisors. There are still concerns about riding the ATVs in environmentally sensitive areas and there are objections to allowing their use on Sundays and holidays. This will be discussed again at the October Planning Commission.

Mr. Cushman asked if there were comments from the audience. Mr. Rawlings stated that he and his family are personally affected by the use of ATVs on a daily basis and that it has negatively impacted their quality of life. He went on to say that he thought the May 28<sup>th</sup> draft ordinance was a good ordinance that he had hoped would be adopted by the Board of Supervisors. He doesn't think it is reasonable that he has to call neighboring property owners to ask them not to ride their ATVs if he will be having a picnic or other outdoor activity. Mr. Rawlings is concerned about the environmental issues and said that the ATVs are being ridden on steep slopes and in riparian buffer areas. On several recent occasions riders have trespassed on his property. He is disappointed that the May 28<sup>th</sup> or September 25<sup>th</sup> drafts haven't been passed. He would like to see the ordinances adopted as soon as possible.

Mrs. Elizabeth Barr said that she moved to this area for the peace and quiet. She recounted a story when a piano tuner was at her home and wasn't able to tune the piano because of the noise from the ATVs. She also said that she can't have a conversation in her yard when the ATVs are operating because they are so loud. She is concerned about contacting the police when they likely have more important things to do. She is very frustrated that her quality of life is being compromised.

Mr. Rawlings stated that one of his neighbors has moved and another is planning to move because of the noise. Mr. Corbin mentioned that he is aware of several ordinances in New Jersey that require a 50 foot buffer from the property, rather than 25 feet. It was also mentioned that in the summer, dusk is late and this would allow riders to use the ATV much later in the evening. Mr. Rawlings noted that the Township doesn't allow construction activities on Sundays so there is a precedent for not allowing the use of ATVs. Mr. Corbin reported that in some areas of the country ATV operation isn't allowed on residential properties, rather there are ATV parks designated for their use.

The Planning Commission is suggesting to the Board of Supervisors that these ordinances need to be finalized and adopted as quickly as possible.

### **Applecross Lighting Issue**

Mr. Thomas said that at the August 6, 2008 Planning Commission meeting John Curtin, from Pulte Homes, agreed that lights could be installed with timers at the entrances so they can be turned off in the middle of the night. To date, these timers haven't been installed. Mr. Piersol will contact Mr. Curtin about this.

### **Vegetation Management Issue**

Mr. Thomas stated that there was still an issue with overgrown vegetation on the Guthriesville General Store. Mr. Piersol has contacted the owners attorney, Louis Colagreco, Esq. about this, but do date, the vegetation hasn't been cut back. The property owner is currently out of the country. Mr. Piersol will contact Mr. Colagreco once again.

### **Hopewell United Methodist Church**

Mr. Piersol and Mr. VanLew met at the site to determine whether a fence or guardrail could be installed along Hopewell Road that is out of the road right-of-way. Mr. Piersol stated that it may be possible, but that the Church may lose some parking spaces. In addition, the installation of a fence would have to meet certain sight-distance regulations. Mr. Rawlings said that the Planning Commission has tried to encourage the Church to install some sort of barrier from Hopewell Road because of safety concerns due to the parking lot being so close to the road. The Planning Commission has advised the Church about their concerns on numerous occasions and feels it is now up to the Township and the Church to address this safety issue. Mr. Piersol and Mr. VanLew will meet with Church officials and PennDOT to see if this can be accomplished.

### **Rothman Tract**

The applicant received a letter from the Department of Environmental Protection regarding an inspection of the dam that was done on July 30<sup>th</sup>. They found that the dam was overgrown with vegetation cover, the root system of the trees was potentially hazardous, and the stone masonry was deteriorated. Although it is unclear from the letter whether DEP will require any improvements to the dam, it is the responsibility of the owner of the dam to maintain and operate it in a safe condition. Although a division of DEP, it was suggested that the Bureau of Dam Safety be notified about this letter. Mr. Piersol will contact DEP to see if they are planning to take further action against the property owner or whether there is any response required by the Township. The applicant agreed to maintain the dam and repair the dam as part of their representations when the Planning Commission reviewed the preliminary plan.

### **Watters Tract**

Mr. Rawlings noticed that one of two signs sales signs has disappeared from the property (sign stating sale of 41 acres). Mr. Piersol stated that there may be an interested party, but he has no definite information. He will update the Planning Commission as developments warrant.

### **Wawa Update**

Mr. Piersol reported that the Guthriesville General Store did not sell during the marketing period that was outlined in the Programmatic Agreement. Although there were several interested parties, it appears that the major stumbling block was the high cost for constructing the retaining wall. The Planning Commission was concerned about the exorbitant costs that were associated with construction of the wall.

On September 23, 2008 Mr. Giannantonio met with Stacey Fuller, Esq., Michael Gill, Esq. and Greg Newell, P.E. to discuss and view the soils report data forms that were done to determine what soils exist on the Wawa site at Route 322 and Bondsville Road.

After reviewing the data provided, it is Mr. Giannantonio's opinion that the soils where Wawa is to be built are classified as "Made Land". There are also Worsham Soils on the property, but they are not in areas where construction is proposed. Mr. Giannantonio stated that he can see no technical reason, or reason because of Ordinance non-compliance, that a building permit cannot be issued for the proposed structures and facilities on the Wawa Land Development Plan.

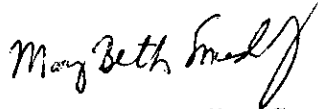
### **Comments from the Audience**

Mr. Rawlings asked if there were additional comments from the audience. There were no comments.

### **Adjournment**

There being no further business Mr. Rawlings made a motion to adjourn the meeting. Mrs. Moser seconded the motion, with all voting Aye. The meeting was adjourned at 8:55 P.M.

Respectfully submitted,



Mary Beth Smedley, Secretary/Treasurer