

**EAST BRANDYWINE TOWNSHIP PLANNING COMMISSION  
REGULAR SESSION**

**Wednesday, April 1, 2009- 7:30 P.M.**

**Those in Attendance:**

Mr. Bruce Rawlings, Chairman  
Mr. Stephen Cushman, Member  
Mr. Charles Giordano, Member  
Mrs. Sandra Moser, Member  
Mr. Mervin Thomas, Member  
Mr. Carl Croft, Ex-Officio Member  
Mr. Scott T. Piersol, Township Manager  
Mr. Michael Mayhew, Yerkes Associates Inc.  
Mrs. Mary Beth Smedley, Township Secretary/Treasurer

**Absent:**

Mrs. Deborah Marshman, Vice-Chairman  
Mr. Michael Corbin, Member  
Mr. Ray Crossan, Ex-Officio Member  
Mr. Michael Wagoner, Ex-Officio Member

**Opening of Meeting**

Mr. Rawlings opened the meeting at 7:35 P.M. with a Salute to the Flag. There were three visitors present.

**Planning Commission Minutes – March 4, 2009**

Mr. Rawlings asked if there were additions or corrections to the March 4, 2009 minutes. There were none. Mr. Rawlings made a motion to approve the minutes as presented. Mrs. Moser seconded the motion, with all voting Aye.

**Applecross Development**

Golf Course - Mr. Piersol reported that Pulte Homes has signed an agreement with golf course operator Bob Levy. Mr. Levy will manage the golf course, restaurant facility and fitness center in Applecross. A meeting will be scheduled with the Board of Supervisors and Mr. Levy to discuss operation of the facilities and his intentions with regard to the liquor license. At last month's meeting Mr. Piersol said that Mr. Levy's attorney, Neil Stein, was not aware of the issue of the referendum presentation, or the representation by Club Corp regarding the proposed operation of the golf course and restaurant facilities.

Fencing Issue – Mr. Mayhew is sending a letter to Pulte Homes that conveys the Township's concerns regarding the Applecross lagoon no. 1 wall and golf path retaining wall.

A portion of lagoon no. 1 has a vertical wall that appears to have 6-foot to 8-foot drop-offs that could result in a dangerous fall to persons in the area. The Applecross approved final plan does show a permanent fence to be installed at the lagoon; however, it has not been installed yet.

Similarly, a portion of the golf path retaining wall located near the intersection of Bollinger Road and East Reeceville Road is vertical and appears to have a 5-foot drop-off, or more, that could also result in a dangerous fall to persons in the area. The Applecross approved final plan shows a permanent fence to be installed along the retaining wall although it hasn't been installed yet.

The Township is requesting that the permanent fence at lagoon no. 1 and the golf path retaining wall be installed as soon as possible in an effort to reduce the risk associated with these structures and that Pulte Homes provide East Brandywine Township with a written schedule for completing the work.

The Planning Commission reviewed the letter. It was suggested that Mr. Mayhew change the letter to note that the concerns reflected are those of East Brandywine Township rather than just the Planning Commission. Mr. Mayhew stated that it will be hand-delivered to Pulte tomorrow.

Mr. Piersol said that Pulte is currently working on N. Caldwell Circle, Trego Lane and behind Mercer Drive. He expects work to resume in full-force at the golf course by the middle of spring.

#### **Notice**

The East Brandywine Township Board of Supervisors, Planning Commission and Municipal Authority met in Executive Session on Thursday, March 19, 2009 at 7:30 A.M. to discuss the Downingtown Area School District's proposal to construct a middle school on the Weaver Tract.

#### **Downingtown Area School District – Proposed Middle School**

Mr. Rawlings reported that the Board of Supervisors and several Planning Commission and Municipal Authority members discussed the proposed middle school. Much of the conversation centered on traffic concerns, placement of the road system and the School District's responsibility with regard to the Applecross Sewer Treatment Plant, sewer capacity and placement of infiltration beds.

Mr. Thomas asked if a traffic study has been completed. Mr. Piersol said that it hasn't been done yet. The Planning Commission was assured at an earlier meeting that the traffic study would include days when school was in session and on good and bad weather days. The traffic study will also include consideration of the proposed loop road and surrounding areas.

At last month's meeting Mr. Croft suggested that there were several days when the Downingtown West Middle School Traffic backed up at least a half mile on Rock Raymond Road. He stated that the PSAA tests were being conducted on those days and students were allowed to come in late or leave early. On those days, and possibly a few others, students are primarily picked up and dropped off by their parents rather than taking the school bus. He thought this should be considered during planning of the school, road layout, and parking facilities.

Mr. Rawlings suggested that the School District should reconsider providing either an entrance along Rt. 322, directly opposite the traffic light at the Brandywine Village Shopping Center, or an entrance along East Reeceville Road. Mr. Thomas agreed, stating he is concerned about traffic from the proposed school and believes an additional entrance, besides those entrances along Bollinger Road, is needed especially from the standpoint of providing access for emergency vehicles. The School District has agreed to install curbing along Bollinger Road. The Planning Commission remains concerned about traffic issues and expect this be to a major focus of the land development process.

The East Brandywine Township Municipal Authority has discussed the location for the infiltration beds proposed by K. Hovnanian and have asked the School District to use the same location and show the beds on future plans. Mr. Piersol said that the School District has agreed to assume K. Hovnanian's obligations with respect to sewer reservation and treatment.

The effluent from the middle school will be treated at the Applecross Sewage Treatment Plant. However, since it is a much smaller amount than would have been treated by K. Hovnanian's active adult community, it will initially affect the operation of the treatment plant. Mr. Thomas asked if this would affect the golf course. Pulte Homes is currently in discussions with Aqua Pennsylvania about the purchase of raw water to irrigate the golf course and are also looking into other alternatives. If the properties within the Guthriesville Sewer District treat their effluent at the Applecross Plant, this should help alleviate the problem with irrigation and operation of the treatment plant.

Although School District officials have stated there are no construction plans beyond the current middle school, they have discussed this site for a possible magnet school, which is essentially a smaller, alternative senior high school. This is not an item for discussion at the present time.

Mr. Croft said that the Open Space Committee is very interested in obtaining conservation easements and would be happy to assist the Planning Commission in this effort.

At last month's meeting, The Planning Commission questioned how open space would be maintained. Since the open space will be very expensive to maintain, the School District will likely allow open areas to be farmed. Mr. Piersol stated that although there are no plans currently, a portion of the property is shown within the Village Overlay concept. Since it is only a concept, Mr. Piersol isn't sure how the property might be developed in

the future. Mr. Thomas questioned whether the property is contiguous to the Village Commercial District. Mr. Piersol said that it was.

### **ATV/Noise Ordinance Meeting**

Mr. Rawlings recused himself from the Planning Commission because of his involvement with the ATV issue.

A meeting was held on Monday, March 23, 2009 with members of the Noise/ATV Committee. From that meeting, Mr. Voltz and Mr. Piersol crafted language for the Township Supervisors and members of the ATV Committee and Planning Commission to review and provide comments. The Board of Supervisors will review the ordinances tomorrow morning and will consider whether to authorize advertisement of them at their April 15<sup>th</sup> meeting.

Mr. Cushman stated that the new language in the All Terrain Vehicle Ordinance includes a definition for "Immediate Family", and also areas where it will be illegal for a person to operate an ATV, including those considered environmentally sensitive. Mr. Voltz had some concern about whether the Township could regulate this on private property. Mr. Piersol said that he discussed this with Township Solicitor Stacy Fuller who feels that it can be regulated. Mrs. Moser said she thought the Township could enforce this portion of the ordinance. She likened it to prohibiting construction of a house within the Steep Slope Conservation District.

Mr. Thomas asked who would enforce the Ordinance. The Ordinance can be enforced by both the Township Zoning Officer and the East Brandywine Township Police Department.

Mr. Holmes suggested that there be a statement within the Noise Ordinance that any vehicles must operate within the noise standards set forth by the Township. Mr. Piersol explained that the Township wants to have two ordinances; one that regulates noise of all kinds and one that regulates the use of all terrain vehicles. He also stated that #2 in the Noise Ordinance requires ATVs to comply with the Pennsylvania Consolidated Statutes pertaining to All Terrain Vehicles. Since #2 of the ordinance requires ATVs to meet a separate standard for decibel levels than those in the All Terrain Vehicle ordinance Mr. Piersol was asked which ordinance should the Township enforce? He said that both could be enforced if there was a complaint.

Mr. Rawlings, speaking as a resident, stated that Committee members who want to see limits placed on the use of ATVs would like to prohibit Sunday use of the vehicles. The draft ordinance currently under review allows their use from noon to 4:00 P.M. In addition, they would like to see their use limited to 9:00 A.M. to 5:00 P.M. on weekdays and Saturdays, although they will support the proposed hours as a second choice. Those members wanting to see limits were satisfied with #6 of the Noise Ordinance, which prohibits the operation of ATVs on certain holidays.

Mr. Thomas said he didn't think Sundays should be completely eliminated. Mr. Giordano said he thought they should.

Mrs. Moser made a motion to recommend that the Board of Supervisors forward the All Terrain Vehicle Ordinance to the County Planning Commission for the Act 247 review and advertise it for adoption as written, with the exception that the hours of operation on Sundays be changed in subsection #5 from 11:00 A.M. to 4 P.M. to Noon to 4 P.M. Mr. Cushman, Mrs. Moser and Mr. Thomas voted Aye. Mr. Giordano voted no, stating he did not support the use of ATVs on Sundays. Mr. Rawlings noted that Mrs. Marshman and Mr. Corbin did not vote. Since they were not able to attend this meeting the vote taken this evening will be passed along to the Board of Supervisors for their consideration.

Mr. Piersol explained that the draft of Section 399-84 of the Zoning Ordinance has been amended to include sound level limits, additional restrictions and exemptions to the Ordinance. Mr. Piersol provided decibel levels for the Planning Commission to review, based on limits used by several other municipalities, as well as suggested decibel levels at the last ATV meeting. As an example, he said that the noise level in the meeting room generated by the heating system was approximately 55 decibels.

When Mr. Piersol recently conducted sound level tests of certain ATVs in the vicinity of Reeds Road and Delaney Drive only one ATV was able to meet 65 dBA at 100' from the property line. Mr. Holmes wondered why the Township would consider an Ordinance whose standards could not be met. Mr. Piersol explained that vehicles not meeting the sound level limits would be required to ride at distances from the property line where they could meet the limits set forth in the Ordinance. Mr. Cushman said that that the Supervisors need to set the limits somewhere. Once the Ordinance is passed they can change it, if need be.

Mr. Thomas asked if the noise standards would affect fox hunting. Fox hunting isn't exempted by the Ordinance, but it was pointed out it would be unlikely that someone would complain and it would be difficult to measure the decibel levels since the riders and dogs don't remain in a contained area. Mr. Thomas said he would vote against the ordinance if it stops fox hunting. He said that his hunting group has permission to ride on the Brandywine Conservancy property this year. Mr. Thomas asked if they would need a permit to hunt and asked how much it might cost. Mr. Piersol stated he couldn't answer that at this time.

Mr. Rawlings stated that he listens to the noise on a daily basis. He said a constant noise level of 55 dBA is unbearable. He went on to say that the use of ATVs has affected the quality of his life and those of his neighbors. He said that at times he has to wear ear muffs or go into his basement to escape the noise. Mr. Rawlings said that one of his neighbors recently lost the sale of their property to a potential buyer, because of the ATV noise and that recently a piano tuner at another neighboring property couldn't do his job because of the noise.

Mr. Thomas questioned why agricultural sounds were exempted in #14 of the Noise Ordinance, but were included in the sound limit level. Mr. Piersol explained that although agricultural sounds were exempted the use of ATVs on agricultural land for recreational purposes was not. Mr. Thomas thought this would be difficult to prove or enforce.

Mrs. Moser made a motion to recommend the Board of Supervisors forward the Noise standards as last proposed to the County Planning Commission for their Act 247 review and advertise it for adoption as written with the exception of removing the word "agricultural" from the receiving land use category under Section B. Mr. Cushman, Mr. Giordano, Mrs. Moser and Mr. Thomas voted Aye. Mr. Thomas qualified his vote by stating that if fox hunting was affected he would vote no.

Mr. Rawlings rejoined the Planning Commission at the conclusion of this discussion.

Mrs. Moser left the meeting at 8:55 P.M.

### **Verma Zoning Hearing**

The Zoning Hearing Board of East Brandywine Township will meet on Tuesday, May 5, 2009 at 7:30 P.M. to hear the application of Lalit Verma for a special exception pursuant to Section 399-127 of the Township Zoning Ordinance to modify the limitations of the extension of a non-conforming historic structure; and for variances from the minimum lot area, front yard setback and side yard setback requirements of Section 399-40 of the Zoning Ordinance. The relief is necessary to permit the applicant to demolish a portion of an existing structure and construct a building addition for apartments and retail space. The property is located on 1189 and 1193 Horseshoe Pike, in the Village Commercial Zoning District.

Mr. William Steimer, architect for the applicant, represented Mr. Verma at the meeting. Mr. Steimer explained that Mr. Verma proposes to demolish one building and construct a large addition to the other to create a space for four apartments and a retail space. Section 399-40.B of the Zoning Ordinance requires a net lot area of not less than 20,000 square feet. Where a lot is to contain a combination of uses, a minimum net lot area of 10,000 square feet per use shall be required. Mr. Verma's lot is less than 20,000 square feet. Mr. Steimer said that most properties in the village of Guthriesville are smaller than the minimum lot area required by ordinance. Although the property doesn't meet the minimum lot area Mr. Steimer pointed out that the proposed addition would meet requirements for maximum impervious surface, vegetative cover and building height.

Although both buildings are in a state of disrepair, it has been determined that the building closest to the intersection of Rt. 322 and Hopewell Road (1193 Horseshoe Pike) is in structural failure. The building has had two major additions prior to Mr. Verma's ownership and Mr. Steimer reports that this has created serious structural deficiencies.

The first addition consisted of adding approximately five feet to the rear of the building. Both floors and roof were supported by an exterior bearing wall resting on a stone foundation. The supporting wall sill and top plates were mortised and the studs were pinned to the plates. When the addition was completed the old bearing wall was

removed, leaving the top plate to act as a beam, supporting both floor joists and rafters. When the studs were removed the top plates remained with holes extending vertically through the plate reducing the member to a  $\frac{3}{4}$ " side by  $6\frac{1}{2}$ " deep beam spanning 12' – 10". The holes are approximately 24" on center. According to Mr. Steimer, this should have collapsed years ago.

A wall 11' – 9" from the front wall was the main interior bearing wall supporting second floor and ceiling joists. The wall was supported by timber joists with no foundations at the point of the wall loading. The joints have continued to fail through the years and have been propped up with all types of rough and finished lumber to flat stone on dirt. It is Mr. Steimer's opinion that this too should have collapsed years ago.

All sill plates have rotted and no longer provide structural support.

The second addition is a stucco and concrete block structure housing a stairway and mechanical space. The structure is slab on grade and is separating from the earlier addition due to settlement.

Mr. Steimer believes there is no feasible way to save the structure. In order to replace the sill plates and rotten stud bottoms the entire structure would have to be elevated for a period of time during construction. All floor joists on the first floor must be replaced.

The proposed building shows the front porch of the building as 6.6 feet from the front lot line. Mr. Steimer explained that the building is to remain at 6.6 feet. He was asked if the building that will be demolished is currently at 6.6 feet. He said that building is farther from the lot line, but since the remaining building will have an addition he isn't sure that he actually needs relief for the minimum front yard. Although this is an issue to be determined by the Zoning Hearing Board, the Planning Commission thinks the applicant does need relief.

Mr. Steimer was asked what would happen if PennDOT decided to widen Rt. 322. PennDOT has not proposed widening at this time. Mr. Steimer was asked if the applicant planned to construct sidewalks in front of the property. There are no plans for sidewalks, but Mr. Steimer said that could be discussed if the Planning Commission requested it.

Mr. Steimer was asked if he could move the building farther back so that it meets the 15 foot requirement. Initially he thought it couldn't be done because of the amount of rock in the back yard, but after discussion with Mr. Mayhew, who believes the slope is mostly man-made, he said that he could possibly cut into the slope, move the building back, and construct a retaining wall. Another suggestion was that the applicant could have two buildings. The original building could be rehabilitated and a second building could be constructed farther back on the property. It is the Planning Commission's recommendation that the building be moved back so that it meets the 15 foot minimum front yard requirement.

The Planning Commission suggested that the applicant consider constructing a narrower building than the one currently proposed. They expressed particular concern about ingress and egress since the parking lot will be very close to the Rt. 322 and Hopewell

Road intersection. Depending on the type of retail business in the building there could be many trips in and out of the parking lot, creating a dangerous situation, particularly for those making a left hand turn into the property. The Planning Commission recommended that a traffic study be conducted as part of the land development plan. In addition, the applicant will need PennDOT approval for the entrance to the property.

The Planning Commission expressed concern about the minimum lot area. It was pointed out that if the applicant were to construct six apartments rather than four apartments and a retail space, relief may not be needed from Section 300.40.B of the Ordinance, or it would be a de minimus request since the property is over 19,000 S.F. They thought the requested relief was excessive.

The Planning Commission asked Mr. Steimer about the hardship for the variance requests. Mr. Steimer said that if both buildings were demolished according to zoning regulations nothing could be built on the property. He is attempting to create a plan that is in keeping with the Village Concept, but is also financially viable for his client. Mr. Rawlings said that the Planning Commission appreciated what Mr. Steimer was trying to accomplish, but there were still concerns, particularly about traffic.

Mr. Thomas stated that he thought the property was overbuilt and that the applicant was requesting too many variances. He suggested that the building be downscaled to a smaller footprint. Mr. Steimer said that if they downscaled the design they probably could not meet the requirement for apartments to be 1,000 S.F.

Mr. Steimer discussed the side-yard setback, which is 1.6 feet from the property line. This is the current setback for the building. The Planning Commission supported the applicant's request for this variance.

Overall, it is the Planning Commission's opinion that the proposed building has too much square footage and that there are no hardships that aren't financial in nature. Mr. Rawlings asked Mr. Mayhew his opinion on the application. Mr. Mayhew said that he agreed with the Planning Commission's assessment.

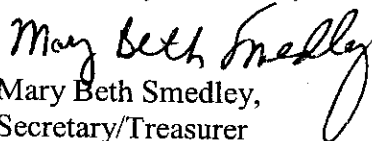
#### **Comments from the Audience**

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

#### **Adjournment**

There being no further business Mr. Rawlings made a motion to adjourn the meeting. Mr. Thomas seconded the motion, with all voting Aye. The meeting was adjourned at 9:40 P.M.

Respectfully submitted,

  
Mary Beth Smedley,  
Secretary/Treasurer