

**EAST BRANDYWINE TOWNSHIP BOARD OF SUPERVISORS
REGULAR AND WORK SESSION
THURSDAY, AUGUST 3, 2006**

Those in Attendance:

Jay G. Fischer, Chairman
David A. Kirkner, Member
Scott T. Piersol, Township Manager
Mark Kocsi, Chief of Police
Matthew T. VanLew, Roadmaster
Mary Beth Smedley, Secretary/Treasurer

Absent:

Hudson L. Voltz, Vice-Chairman

The East Brandywine Township Board of Supervisors meeting of Thursday, August 3, 2006 was called to order by Chairman Fischer at 7:40 P.M. at the East Brandywine Fire Company. There were fifteen visitors in attendance.

Opening of Meeting

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

Public Comment for Non-Agenda Items

Chairman Fischer asked if there were comments on non-agenda items. There were none.

Notices

The Sunoco Zoning Hearing will be held Thursday, August 3, 2006 at 7:30 P.M. at the East Brandywine Fire House.

The Eldridge/Shanaman Zoning Hearing will be held Thursday, August 3, 2006 directly following the Sunoco Zoning Hearing at the East Brandywine Fire House.

Zoning Hearing Board: Eldridge/Shanaman

The Zoning Hearing Board of East Brandywine Township will meet on Thursday, August 3, 2006 directly following the Sunoco Zoning Hearing to hear the application of Laurie Eldridge and James Shanaman, owners of the property located at 123 Ridgewood Circle. The applicants are requesting a variance from the side yard setback requirements of Section 399-28.A.(4) of the Zoning Ordinance to permit construction of a garage at the end of their existing driveway and to convert an existing garage into a family room. The proposed garage would be located a distance of 13 feet from the property line.

Mr. Piersol provided a copy of a zoning hearing decision for a property located at 104 Laurelwood Drive, a property that is adjacent to the Eldridge/Shanaman residence. In 1985, the

property owners requested a variance to reduce the side yard setback from 40 feet to 17 feet due to the addition of a breezeway and garage to the existing single family home.

At the conclusion of the 1985 hearing, the Board voted unanimously to grant the application. The Conclusions of Law included the following:

1. The Zoning Ordinance allows accessory buildings to be erected within fifteen feet of the side lot lines in residential districts.
2. A garage is an accessory building if it is used solely for the storage of family vehicles and other incidental storage and is subordinate to the principal building on the lot.
3. Even though the garage is attached to the house by a breezeway, the garage is still a subordinate building under the facts of this specific case.

Mr. Piersol suggested that the applicant be asked to sign a Memorandum of Zoning Hearing Board Decision, similar to one used for in-law suites, where the accessory structure could only be used as a garage and would be prohibited from being used as living space. Mr. Piersol discussed this with Township Engineer Al Giannantonio and Township Solicitor Stacey Fuller and they agreed to it in concept.

After review of the application, the Board of Supervisors had no comment, and took no position on this application.

Zoning Hearing Board: Sunoco Convenience Store

The Zoning Hearing Board will meet Thursday, August 3, 2005 at 7:30 P.M. to hear the application of Sunoco, Inc. for a variance allowing the delivery of fuel and other supplies to the Sunoco convenience store located at 1201 Horseshoe Pike between the hours of 8:00 P.M. and 7:00 A.M. Section 399-84.A.(1) and (2) of the East Brandywine Zoning Ordinance of 1989, as amended, prohibits nonresidential loading and operation of vehicles in excess of 8,600 pounds between 10:00 P.M. and 6:00 A.M. and on Sundays and legal holidays. The property is located in the VC Zoning district. Jack Wuerstle, Esq. and Clayton McCain attended the meeting on behalf of the applicant.

At last evening's Planning Commission meeting it was suggested that, the applicant request relief to make deliveries between 10:00 P.M. to 6:00 A.M. In addition, the Operations Agreement signed in April of 2004 could be modified to allow for deliveries between 9:00 P.M. and 10:00 P.M. The applicant agreed to those limitations and would allow deliveries during other times only with the permission of the Township Manager. The Planning Commission agreed to support this compromise.

Chief Kocsi stated that his preference would be for deliveries to take place before midnight. He was concerned that residents would be bothered by noise. He went on to state that historically when truck deliveries are made to the Brandywine Village Shopping Center, the Police Department receives numerous complaints from nearby property owners. It was explained that deliveries will take place five to six times a week. Drivers are required to shut down the trucks

during deliveries that can last anywhere from thirty minutes to forty-five minutes. The lids for fuel deliveries are made a fiberglass, rather than metal, which also cuts down on the noise. Mr. Fischer stated that refrigerated trucks would not be able to turn off their refrigeration units. It was noted that deliveries of retail merchandize products via tractor trailers will not be scheduled during peak hours of traffic generation as is outlined in the Operations Agreement (7:00 A.M. to 9:00 A.M. and 4:00 P.M. to 7:00 P.M.) and will not be scheduled between 10:00 P.M. and 6:00 A.M. plus all day Sunday and legal holidays.

Other than the above discussion, the Board of Supervisors had no other comments.

Minutes: Board of Supervisors – June 21, 2006

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 June 21, 2006 minutes as presented. Chairman Fischer seconded the motion, with both voting Aye.

Minutes: Board of Supervisors – July 6, 2006

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 July 6, 2006 minutes, as presented. Chairman Fischer seconded the motion, with both voting Aye.

Minutes: Planning Commission Minutes – July 5, 2006

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

Minutes: Municipal Authority Minutes – June 13, 2006

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. Chairman Fischer seconded the motion, with both voting Aye.

Minutes: Municipal Authority Minutes – July 11, 2006

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

Treasurer's Report

Mr. Kirkner made a motion to approve the Treasurer's Report for the period ending July 19, 2006, and authorize payment of the bills. Chairman Fischer seconded the motion, with both voting Aye.

Brandywine Regional Police Commission – Amendment to the Regional Police Agreement

Mr. Kirkner explained that the Brandywine Regional Police Commission is recommending that the term of Commissioner-at-Large be changed from one year to three years. In addition, if the Brandywine Regional Police Commissioners can't agree on the selection of a Commissioner-at-Large, the Commissioners will request the Center for Resolutions to interview and appoint a qualified candidate. Chairman Fischer asked if there were any questions. There were none. Chairman Fischer made a motion to approve the Amendment to the Regional Police Agreement. Mr. Kirkner seconded the motion, with all voting Aye.

Amendment to Settlement Agreement with Pulte Homes of Pennsylvania, L.P.

Mr. Ray Grochowski from Pulte Homes stated that the scope of the changes were fairly simple and have been reviewed and approved by the Settlement Committee. One issue that was clarified is that no windows will be in excess of 35' in height. Chairman Fischer asked if there were questions or comments. There were none. Chairman Fischer then made a motion to execute the Amendment to the Settlement Agreement. Mr. Kirkner seconded the motion, with both voting Aye.

Pulte Access Issue from West Brandywine Township

Mr. Grochowski stated that the Pulte West plan currently shows two full service access roads, one intersecting East Reeceville Road and one intersecting Old Homestead Road. There is also an emergency access in the southern portion of the development onto Hadfield Road. During the Conditional Use hearings in West Brandywine Township, the applicant was asked to consider providing access into East Brandywine Township from the proposed Norland Drive near Lot #621. Although Norland Road is a private street, it is not gated as are other portions of the development.

One concern about constructing a through road at Norland Drive is that it would allow access to more than 100 homes through a smaller residential development, thereby bringing additional traffic into that portion of East Brandywine Township. In addition, these are two very different communities; one is a 55+ community and the other a community that will likely have small children. If this access was constructed, it would necessitate a revised traffic study.

It was noted that early in the planning process a stub road was shown on the plan in the vicinity of Norland Drive. At the request of the Planning Commission the road was reconfigured so that it wouldn't be constructed as an access road into West Brandywine Township. Mr. Piersol stated that in his discussions with West Brandywine Township Manager Ron Rambo, Jr. there were concerns by West Brandywine Township officials that there were no other areas of ingress/egress for a certain portion of the development if the primary access road was blocked during an emergency situation.

At last evening's Planning Commission meeting they recommended either providing only an emergency access or have nothing at all. The Supervisors agreed with the Planning

Commission's recommendation. Mr. Piersol will contact Mr. Rambo and let him know the Board's decision.

Chief Kocsi recommended that the emergency access be marked by planting evergreen trees along the perimeter or paving it and having it gated.

Extension

The Planning Commission recommended that the Board of Supervisors accept two extensions, one to review the Pulte application until July 22nd and the other until August 17th. Chairman Fischer asked if there were comments from the audience. There were none. Mr. Kirkner made a motion to accept both extensions. Chairman Fischer seconded the motion, with both voting Aye.

Dilworth Property

Extension

The Planning Commission recommended the Board of Supervisors accept an extension to review this subdivision application until November 6, 2006. Chairman Fischer asked if there were comments from the audience. There were none. Chairman Fischer made a motion to accept the above extension. Mr. Kirkner seconded the motion, with both voting Aye.

Watters/Spence Property

Ross Unruh, Esq. and Mr. Joseph Gambone from Gambone Development Company discussed the plan for 51 acres of the Watters farm. The applicant is proposing 115 town homes and development of a 10 acre commercial area.

There is open space and a trail system shown on the plan. Since the applicant is proposing to develop the commercial area first, the land development plan for the commercial area will be submitted to the Planning Commission prior to submission of the proposed town home community.

In a letter dated June 23, 2006, Ross Unruh, attorney for Gambone Development Co. requested that the Board of Supervisors make a decision that allows the reserve area for the sanitary sewer drip system to be included in the calculation of the minimum amount of common open space required by the Ordinance.

Mr. Unruh said that if the reserve area needs to be used, the primary area will be decommissioned, so there would be a land "swap" meeting their open space obligation. Secondly, Township Ordinance 04-20 amends Section 399-58C(5)(g) to permit community wastewater systems to be eligible for calculation in the minimum required open space where the Board determines that such a wastewater system will not interfere, in whole or in part, with the functions and purposes of the common open space, and will not make the affected open space unsuitable or ineligible for other open space uses provided in subsection (f) of the Ordinance. The applicant believes that the proposed wastewater system will be compatible with several of

the open space uses permitted by subsection (f). One of the open space uses permitted by subsection (f) is a community subsurface land application wastewater system. Although the sewer system may not technically be a community system under PA DEP regulations, Mr. Unruh believes it is reasonable to interpret the Zoning Ordinance so that the proposed sanitary sewage drip field will be a community system.

At the July meeting, the East Brandywine Township Municipal Authority discussed whether the Township would own the open space or if the Township would have an easement and the beds would be owned by the Homeowner's Association. The Municipal Authority suggested that routine maintenance, such as mowing, handled by the Homeowner's Association. The Municipal Authority will require that Gambone install the beds and equipment for the primary and reserve areas at the beginning of construction. This will allow the Municipal Authority the flexibility of periodically resting beds if appropriate and will ensure that the piping and pumps remain in better condition and will be functional when they are needed. The use of open space will need to be limited to passive type activities so that the beds aren't damaged.

The Municipal Authority unanimously recommended that the Supervisors approve the applicant's request as outlined in Mr. Unruh's June 23, 2006 letter as they find the description of bed uses and construction consistent with the intent of the ordinance, but did say that there are still details to be worked out, such as ownership and easements associated with the open space.

Chairman Fischer asked if there were comments from the audience. There were none. Chairman Fischer then made a motion to approve Mr. Unruh's request as outline in his June 23, 2006 correspondence. Mr. Kirkner seconded the motion, with both voting Aye.

Resolution 18 of 2006 – Authorizing Scott T. Piersol to complete the required forms and documents for the purpose of obtaining financial assistance under the Robert T. Stafford Disaster Relief and Emergency Act

Mr. Piersol stated that he attended a meeting last week at Fame Fire Company where PEMA and FEMA discussed the recent storms. Chester County was declared a disaster area after the flooding in June. This may be extended to include the recent wind storm. The first step in receiving reimbursement for costs incurred related to the storm is to designate an agent to complete the paperwork required by certain agencies. Mr. VanLew has provided a breakdown for some of the costs and repairs sustained by the Township. Chairman Fischer asked if there were questions or comments from the audience. There were none. Mr. Kirkner made a motion to adopt Resolution 18 or 2006. Chairman Fischer seconded the motion, with both voting Aye.

Additional Public Comment

Chairman Fischer asked if there were additional public comments. There were none.

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Adjournment

There being no further business, Mr. Kirkner made a motion to adjourn the meeting. Chairman Fischer seconded the motion, with both voting Aye. The meeting was adjourned at 8:25 A.M.

Respectfully submitted,

Mary Beth Smedley
Secretary/Treasurer