

**EAST BRANDYWINE TOWNSHIP PLANNING COMMISSION
REGULAR SESSION
Wednesday, December 7, 2005 - 7:30 PM**

Those in Attendance:

Mr. Bruce Rawlings, Chairman
Mr. Stephen Cushman, Vice-Chairman
Mr. Michael Corbin, Member
Mr. Charles Giordano, Member
Mrs. Deborah Marshman, Member
Mrs. Sandra Moser, Member
Mr. Scott T. Piersol, Township Manager
Mr. Albert Giannantonio, Township Engineer
John Spangler, Esq. Planning Commission Solicitor
Mrs. Mary Beth Smedley, Township Secretary/Treasurer

Absent:

Mr. Mervin Thomas, Member
Mrs. Beth Valocchi, Ex Officio Member

Mr. Rawlings opened the meeting at 7:45 P.M.

Notice: The Planning Commission met in Executive Session with their Solicitor and Township Engineer to discuss the Mama Lena's Demolition Permit application on December 7, 2005 at 7:00 P.M.

Planning Commission Minutes – November 2, 2005

Mr. Rawlings asked if there were additions or corrections to the above minutes. There were none. Mrs. Marshman made a motion to approve the November 2, 2005 minutes as presented. Mr. Giordano seconded the motion, with all voting Aye.

Demolition Permit Application for Claudio DiGiamberardino

At the November 2, 2005 meeting, Mr. Rawlings polled the Planning Commission for their recommendations and comments regarding the demolition permit application for the former Mama Lena's building at 1192 Horseshoe Pike. At that meeting, Mr. Cushman had no opposition to the building being demolished. Mrs. Marshman and Mrs. Moser stated they need further information before they can make a recommendation. Mr. Rawlings, Mr. Corbin and Mr. Giordano (who did not attend the meeting but provided his recommendation to Mr. Rawlings) wanted the applicant to meet all required state and federal regulations, including the Section 106 review, prior to the demolition permit being approved. The Planning Commission decided to withhold their formal recommendation until the December meeting so they would have the opportunity to discuss this issue with their Solicitor, John Spangler.

After discussion regarding the demolition permit application at the December meeting, Mr. Rawlings made a motion stating that the Planning Commission generally supports the intent of the Historic Commission's recommendation to save historic properties. Preliminary plan approval was granted to Wawa for their land development application on this property with the understanding that certain conditions would be met prior to granting final plan approval, including compliance with all state and federal regulations. If the Mama Lena's building were demolished prior to all conditions of the approval being met, the Planning Commission would consider it a violation of the preliminary plan approval, and believes that it would put Wawa's preliminary plan approval in jeopardy. Mrs. Marshman seconded the motion, with all voting Aye.

In addition, the Planning Commission unanimously requested that Wawa formally acknowledge, in writing, that they are the equitable owner of the Mama Lena's property, and they are aware that the owner of the property, Claudio DiGiamberardino, has applied for a demolition permit.

Mr. John Black, Chairman of the Historic Commission, asked for clarification on the Planning Commission's position. Mr. Spangler stated that the Planning Commission's role is to advise the Board of Supervisors in such matters. From the Planning Commission's point of view, if the building was demolished prematurely, it may put Wawa's preliminary plan approval in jeopardy.

DeCovny Property

The plans depict a proposed 25-lot subdivision of an existing 89.211 acre parcel located on the north side of Dowlin Forge Road. The parcel contains an existing farmhouse and farmstead buildings, wooded steep slopes, ponds, wetlands, and a tributary stream to the East Branch of the Brandywine Creek. The parcel is situated within the R-1 Zoning District and each lot is to be served by on-site water supply and sewage disposal.

Mr. Adam Brower, engineer for the applicant, discussed the revised plan and the Yerkes December 1, 2005 review letter. He stated that the wetlands delineation was completed with the Army Corps of Engineers in the fall and he hopes to receive a copy of the Jurisdictional Determination prior to the next Planning Commission meeting.

The revised plan is similar to the one previously submitted with a reduction of one lot from 26 lots to 25 lots. The road has been moved farther west on the property. In shifting the road Mr. Brower stated that although the road is slightly longer, he has decreased the slope and softened the horizontal curve. The length of the cul-de-sac road will remain at 1,000 ft.

6. Section 399-14.B.3 – Any road proposed to cross a wetland must include a plan for the establishment of replacement wetland areas that are twice the size of the wetland area impacted by the road crossing. The proposed mitigation area locations and all applicable construction notes and details for the mitigation area

must be added to the plan. The applicant indicated that the locations are not yet determined and the locations of mitigation will be discussed to determine if the wetland mitigation must be 25 feet from existing wetlands to avoid buffer encroachment. Mr. Brower stated that the mitigation areas will be adjacent to the wetlands. This will change some lot areas. Mrs. Moser asked if this plan adequately protects the wetlands. Mr. Giannantonio stated that it does. Mr. Brower stated it essentially expands the wetlands. The construction of the mitigation area requires the applicant install super silt fence during construction.

3. Section 399-13.1.B(2) and Net Lot Area Definition – The net lot area determinations are complicated by the presence of water hazard soils, wetlands, floodplain, steep slopes, water features and riparian corridors. To clarify net lot determinations, Mr. Giannantonio asked that a table be added to the plan that tracks the Net Lot Area Code Definition (as revised per the Riparian Buffer Ordinance). Additionally, a marked-up plan that illustrated which areas were subtracted from each lot gross area to arrive at the net lot areas should be provided. Mr. Brower stated he would provide a table. Riparian strips have been netted out. Mr. Giannantonio asked that tabulations and calculations for each lot be shown on the plan.

Mr. Corbin asked about disposal areas on the site. In the past some dumping of materials occurred along Dowlin Forge Road, and there may have been dumping around the barn area, which at one time was a meat packing plant. Mr. Brower said that Mr. Balbirnie from Robert Bruce Homes was looking at companies to perform a cleanup around the barn area. Mr. Brower also agreed to provide a copy of the Phase I environmental study done on the property.

The Planning Commission suggested that the applicant consider deed restricting riparian buffer areas and proposed wetland areas so that homeowners are aware that no buildings can be constructed in there.

Mr. Brower stated that he would resubmit plans in January so they can be reviewed at the February 2006 Planning Commission meeting.

Extension

Mrs. Smedley reported that the applicant is granting an extension to review the subdivision plan until January 31, 2006. Mr. Rawlings made a motion to recommend the Board of Supervisors accept an extension to review the plan until January 31, 2006. Mrs. Marshman seconded the motion, with all voting Aye.

Dilworth Tract

Mr. Jonathan Penders approached the Planning Commission to discuss a revised sketch plan for the Dilworth property.

The property is 71 acres on the western side of Dilworth Road, in the R-2 Zoning District. It has an existing barn and equipment shed. The parcel is bordered by the Hide-A-Way Farms subdivision and the Okie property to the north, the Cross Keys development to the west and the Clavier property and the East Brandywine Township Community Park to the south.

It is the applicant's intention to design the subdivision using the R-2 Cluster option. The revised plan shows 38 single family homes. The plan proposes over 40% open space including 14.6 acres of private open space that will include the existing shed, barn, and future dwelling. The public open space will be maintained by a Homeowners Association. The homes will be between 3,200 s.f. and 4,200 s.f. in size.

Mr. Penders submitted a revised sketch plan that maintains the "greenway" along the eastern portion of the tract. This plan creates 24 acres of contiguous open space along Dilworth Road. The hedgerow will be maintained as much as possible. This will be discussed further. In addition, the plan shows a full-access roadway connection to Evergreen Drive instead of an emergency access. This was accomplished by shifting the Road B intersection further to the east and by relocating the trail connection to the Township Park to the western side of the cul-de-sac.

The plan will require relief from the subdivision ordinance to allow a 1,450 linear foot cul-de-sac for Road A north of the new Evergreen Drive roadway and permit horizontal tangents shorter than 100 feet on Road A. The Planning Commission will support those waiver requests because of the compromises the applicant has made in order to protect the viewshed.

Mr. Penders stated that soils and percolation testing have been concluded and he plans to meet with the Municipal Authority's engineer to review the findings. It is his understanding that adequate areas exist for septic absorption fields for the 38 lots and that the revised plan may allow the option to utilize individual on-lot wells instead of installing public water for the project. Three drainage areas were tested. Mr. Penders confirmed that there were sufficient disposal areas, as well as backup disposal areas.

Mr. Rawlings asked that Lots 24 and 25 be heavily buffered on the east side using natural vegetation.

The Planning Commission was concerned about making sure that the small areas designated as open space remain open space. Mr. Penders stated that this will be spelled out in the Homeowner's documents and that he would be willing to install some sort of monuments, acceptable to the Planning Commission, to delineate that area.

Mrs. Okie, on behalf of the Open Space Committee, thanked Mr. Penders for revising the plan to protect the viewshed. She showed the Planning Commission pictures of the property from different areas and pointed out the location where homes would be constructed. Mrs. Okie wanted to ensure that basins constructed on the property were designed to protect the aquifer and that wetlands will be protected. Mr. Penders stated that they will be refeeding the wetlands. It is not the applicant's intention to change the flows either positively or negatively.

Overlook Road Farm AKA Applecross Extension

Mrs. Smedley reported that Pulte Homes is granting an extension to review the Overlook Road Farm Plan until January 19, 2005. Mr. Rawlings made a motion to recommend the Board of Supervisors accept this extension. Mr. Giordano seconded the motion, with all voting Aye.

CMR Development Corporation Extension

The applicant provided a letter granting an extension to review the plan until April 20, 2006. Mrs. Moser made a motion to recommend the Board of Supervisors accept this extension. Mrs. Marshman seconded the motion, with all voting Aye.

AWI Croppers Extension

Mrs. Smedley reported that the applicant is granting an extension to review this plan until January 31, 2006. Although it was the applicant's intension to either resubmit a revised plan or withdraw the plan prior to December 31st, there are discussions with the equitable owner of the Watters' property to purchase a portion of their property. The applicant is in the process of obtaining a letter from the equitable owner of the property to confirm this. Mr. Rawlings made a motion to recommend the Board of Supervisors accept this extension. Mrs. Moser seconded the motion with all voting Aye.

Forge Hill Subdivision

Mrs. Smedley contacted the applicant's engineer Dennis O'Neill twice today asking him to contact his client regarding granting an extension to review the above subdivision. Mr. O'Neill stated that he needed to contact the applicant's attorney, Sean O'Neill to obtain this letter, but hadn't been able to do so. Mr. Sean O'Neill contacted Mrs. Smedley after 5:00 P.M. stating that he was attempting to reach his client, but hadn't been able to make contact with him and that at this time he was not authorized to send a letter granting an extension of time to review the letter.

Mr. John Shelton, representing Pine Hill Associates, the equitable owner of the Forge Hill Subdivision attended the Planning Commission meeting to ask for a recommendation for preliminary plan approval. He feels the Planning Commission has had sufficient time to review the plan and he intends to go to the December Board of Supervisors meeting asking them to grant preliminary plan approval.

According to Mr. Shelton, he has submitted three plans on this subdivision and that according to bills he has received from his consultants, a landscape plan was submitted that has not been reviewed. In addition, Mr. Shelton asked that the minutes specifically reflect that he believes that 18 copies of one set of plans disappeared. Mrs. Smedley stated that she was not aware of this. Mr. Shelton went on to say that he has spent approximately \$130,000.00 on consulting fees and that he would like a recommendation for preliminary plan approval. Mr. Shelton stated that he was only asking the Planning Commission to act on what was outlined in the East Brandywine Township Ordinances.

Mrs. Smedley provided a copy of the last Yerkes review letter for the Planning Commission to review. In that letter it stated "The plans are not recommended for preliminary plan approval at this time. The plans as submitted should be revised to address all of the concerns noted above and be resubmitted for review". This letter, dated October 28, 2005 was signed by the Township Engineer, Albert J. Giannantonio, P.E. To date, the Township has not received revised plans as requested in the October 28, 2005 review letter.

Planning Commission members were concerned that Mr. Shelton's ultimatum left them with no choice but to take steps to recommend the Board of Supervisors deny the plan. The Planning Commission began discussion on how to proceed with Mr. Shelton's request. Mr. Shelton stated that if the Planning Commission were going to discuss this issue amongst themselves, they should go into an Executive Session.

Executive Session

The Planning Commission went into Executive Session at 8:45 P.M. in order to discuss the Forge Hill Subdivision and contact their attorney for his recommendation on how to proceed with Mr. Shelton's request.

The regular Planning Commission meeting reconvened at 8:55 P.M.

Mr. Spangler, Solicitor for the Planning Commission, recommended either writing the applicant a letter stating that all items in the October 28, 2005 review letter have not been satisfied, and attaching a copy of the review letter, or holding a special meeting to recommend the Supervisors deny the plan.

The Planning Commission and Mr. Giannantonio feel that there are outstanding issues that would not allow them to make a recommendation for preliminary plan approval at this time. In order to specifically outline all areas where the plan is deficient, the Planning Commission will schedule a special meeting, likely for Wednesday, December 14, 2005 at 7:30 P.M. to discuss recommending that the Board of Supervisors either grant preliminary plan approval or turn down the plan by citing specific areas where the plan fails to meet the criteria for preliminary plan approval. This meeting will be advertised and the applicant's attorney will be informed of the final date and time. Mr. Spangler will be asked to attend the meeting on behalf of the Planning Commission.

Sunoco Convenience Store Proposed Site Development Plan Modifications to Canopy and Parking Lot

The plans propose modifications to the fueling area canopy, fuel pumps, underground fuel storage tanks, seven parking spaces, sidewalk and grading to the northeast side of the site. The fueling area canopy is lengthened approximately six feet and the two northerly sets of fuel pumps have been shifted northeast. The set of fuel pumps closest to Horseshoe Pike is in the same location as originally approved. The underground fuel tanks have been enlarged and extended underground toward the south. The seven parking spaces and sidewalk on the northern boundary of the site have been shifted approximately five feet toward the northern property line. The dividing island to the west of those seven spaces has been modified somewhat and minor grading modifications have been made.

Mr. Giannantonio stated that the proposed modifications appear to have been made to accommodate more efficient refueling to the underground storage tanks. The proposed modifications do not appear to conflict with any Subdivision or Zoning regulations and provide more space between the pump islands. No changes were made to the entrance drives.

Mr. Giannantonio has no objection to the proposed modifications and feels that the proposed changes can be incorporated in the drawings submitted with the building permit application. He stated that the revised plan should improve traffic circulation. Mr. Giannantonio was asked to bring a copy of the plan to the next Planning Commission meeting for their review.

K. Hovnanian Stipulation Agreement

Mr. Rawlings stated that discussions are ongoing about the Stipulation Agreement. Mr. Michael Macaninch will attend the next Municipal Authority meeting to discuss their comments pertaining to sewage treatment.

Ordinance Task Force Items

The Ordinance Task Force meeting scheduled for December 28, 2005 will be moved from the Laird Building to another location, either the Delaware County Community College or the East Brandywine Fire House.

Proposed Revisions to Subdivision Ordinance Requiring Plan Revision Narratives

Mr. Piersol reported that Mrs. Smedley asked if the Township could require subdivision applicants to submit a response letter along with their revised plans. Mr. Piersol crafted language for the Ordinance Task Force to consider, which is currently being reviewed by Township Solicitor, Stacey Fuller.

Nitrate Concentration and Regulation Issue

For any subdivision or land development application requiring a subsurface sewage treatment system that must be approved by either the local Sewage Enforcement Officer (the Health Department in Chester County) or DEP, the Department required that a preliminary hydrogeologic evaluation be done if there are any wells within one-quarter mile of the proposed site that have nitrate-nitrogen levels that exceed five (5) parts per million (ppm).

The Ordinance Task Force has discussed providing information about the new regulations as part of the Township's subdivision packets and building permit applications. The Planning Commission discussed whether this information should be provided to residents through the Township, or perhaps the Chester County Health Department. The Planning Commission asked that Mr. Piersol contact the Health Department regarding this issue and possibly contact other Municipalities to see what they are doing to educate their residents about this since if it is determined that nitrate levels exceed the limits allowed by DEP it could prove very costly. This is an issue that might also be discussed with our State legislators. The Planning Commission would also like to know if there is a map available showing where the nitrate problems are commonly occurring. This item will be discussed at the next Planning Commission meeting. It has been determined that high levels of nitrate in water can be very dangerous, particularly to children. The Planning Commission and Municipal Authority need to pay close attention to this issue since if residents can't install septic systems on their property they are likely to request public sewers be made available.

Ordinance Amendments for Consideration

In response to Chester County Act 247 review comments on draft ordinance amendments this fall, and a response from Ordinance Task Force consultant, David Sweet dated October 10, 2005, the Task Force revisited the County's comments at its November 30th meeting. The Task Force agreed to recommend proposed amendments regarding the following:

1. Mobile Home Park Ordinance – Section 325-2 regarding Common Open Space.
2. Zoning Ordinance – Section 399-9 regarding “Small-Scale Keeping of Livestock”.
3. Zoning Ordinance – Section 399-85 Subsection [1] regarding “Keeping of Small Domestic Animals.
4. Zoning Ordinance – Section 399-102c- Subsection [14] regarding “Continuing Care Development”.
5. Zoning Ordinance 399-102c-D - regarding the age of residents of a continuing care development.

After review, Mr. Rawlings made a motion that the Board of Supervisors re-advertise and adopt the above Ordinance Amendments. Mr. Giordano seconded the motion, with all voting Aye.

MISA Corporation

A letter dated October 17, 2005 was sent to the Planning Commission updating them on MISA Corporation’s land development plan. It appears that a permit might have been issued for a well that was placed in the middle of the road, although the Planning Commission opposes this well placement. MISA is currently working towards satisfying the requirements for final plan approval. The Planning Commission may want to send a letter to the Chester County Health Department stating their position. This will be discussed at the next Planning Commission meeting.

Comments from the Audience

Mr. Rawlings asked if there were comments from the audience. There were none.

Adjournment

There being no further business Mr. Cushman made a motion to adjourn the meeting. Mrs. Marshman seconded the motion, with all voting Aye. The meeting was adjourned at 9:45 P.M.

Respectfully submitted,

Mary Beth Smedley
Secretary/Treasurer
East Brandywine Township