

**TOWNSHIP OF DERRY
BOARD OF SUPERVISORS MEETING**

Tuesday, May 14, 2013
600 Clearwater Road, Hershey, Pennsylvania 17033

CALL TO ORDER

The May 14, 2013 Township of Derry Board of Supervisors meeting was called to order at 7:05 p.m. by E. Christopher Abruzzo, Chairman.

ROLL CALL

Supervisors Present:

E. Christopher Abruzzo, Chairman
Sandy A. Ballard
Kelly C. Fedeli, Vice-Chairman
John Foley, Jr.
Marc A. Moyer, Secretary

Also Present:

Matt Bonanno, HRG Engineer
Thomas R. Clark, Director of Public Works
Barbara S. Ellis, Director of Hershey Public Library
Charles W. Emerick, Director of Community Development
Jill E. Henry, Assistant Township Manager
Matt J. Mandia, Director of Parks and Recreation
James N. Negley, Township Manager/Township Treasurer
Lt. Timothy C. Roche, Assistant Chief of Police
Ed T. Svirbely, Fire Company
Terry M. Weinhold, Manager of Accounts Payable & Receivable
Jon A. Yost, Township Solicitor
Brenda Van Deursen, Recorder

Public Present: Elvira Ebling, Rich Gamble, Charleton Zimmerman, Matt Weir, Jim Rafferty, Jonathan Crist, Susan Foxx, Susan Newkam, Sue Stough, Todd Pagliarulo, John Dunn, Steve Yingst, Brian Shiflett

Chairman Abruzzo advised that all public meetings are recorded for providing accurate minutes.

Chairman Abruzzo announced that the Board of Supervisors met in executive session to discuss land, legal, and personnel matters.

OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD

Rich Gamble, Hockersville Road – Mr. Gamble said with the two members of the Board of Supervisors changing at the end of the year the decision the Board makes tonight is going to reflect into the future. The Hershey entity emphasizes bringing teenagers back in to town, but they took the very things away that brought them to town such as the Boy's Club, the Women's Club, the Community Center, etc. Mr. Gamble said bringing in Chipotle's and restaurants like that is not what the residents are looking for. It is to the benefit of the Board to move slowly and accurately. You asked the townspeople what they wanted and you

heard what they wanted but it is not quite exactly what the Hershey entity is proposing. Even though the Hershey entities have the monopoly, the Board and the Planning Commission need to be involved to help redirect the community downtown in the best interest to meet the needs of the citizens.

Charleton Zimmerman, 119 N. Roosevelt Avenue – Mr. Zimmerman commented on Ordinance No. 632 and the definition for a full service restaurant. He has heard others say that the Township has no right to tell a property owner how to run their business, but it sounds like that is what is happening with this Ordinance. You can't put building codes into zoning because the state does not enforce a zoning code book. He also commented on the Zoning Board meeting tomorrow night in Palmdale regarding plans for a Subway restaurant and the issues with parking and the dumpster in that location. He told the Board they need to put more thought in the ordinances instead of reacting.

Jonathan Crist, 226 West Chocolate – Mr. Crist suggested the Board reconsider voting on Ordinance No. 632 tonight. He referenced a case in 2001 in Berks County regarding advertisement of zoning ordinances and the language used. Under the Municipality's planning code, Section 609 addresses having a public hearing and Section 610 addresses the language about notices. Section 610 states - proposed zoning ordinances and amendment shall not be enacted unless Notice of Proposed Enactment is given. Berks County and Derry Township both use the Notice of Intent to Consider in newspaper advertising which essentially makes some ordinances void. As a result of the Berks County case, the Community of Economic Development sent out a notice to all the Townships advising them of this decision and advising them that when they put their ad in the newspaper, do not use a Notice of Intent to Consider. Derry Township over the years has not advertised properly. The Zoning Board will rule tomorrow on Chipotle and he assumes they will grant the variances and Mr. Crist plans to file an appeal for the zoning. He does not want to file both that appeal and an appeal for the ordinance. In addition, he believes the location of the proposed Chipotle is hazardous in regards to traffic.

Mr. Emerick presented Solicitor Yost with a copy of PSATS guidelines for adopting ordinances. These are the guidelines Derry Township follows. It was published in 2012 and it does not make any warning of the language in the notice. Mr. Crist said he believes Notice to Consider can be used for other ordinances other than zoning, but he believes the case he mentioned is specifically directed to Section 610.

APPROVAL OF MINUTES

Chairman Abruzzo called for a motion to approve the Minutes of the April 23, 2013 Public Hearing.

Supervisor Ballard suggested an amendment on page 3, bullet point 2 to change the word "goals" to "measurable standards." Supervisor Foley made a correction to the spelling of Bob Schellhorn's name for both the Public Hearing and the regular meeting. Supervisor Ballard made a motion to approve the Minutes with the two amendments. Supervisor Foley seconded. ***The motion carried, 5-yes 0-no***

Chairman Abruzzo called for a motion to approve the Minutes of the April 23, 2013 Board of Supervisors meeting.

Chairman Abruzzo noted that the motion Supervisor Ballard made to amend the Board of Supervisors meeting minutes from April 23, 2013 to include both Mr. Foley's comments and her own comments were made under the Public Hearing Minutes. Supervisor Foley added that Ed Svirbely was shown as public present in the regular meeting when in fact he was present under the staff as a Representative of the Fire Company.

Chairman Abruzzo called for a motion to reopen the Public Hearing Minutes.

Motion: Supervisor Foley made a Motion to reopen the Public Hearing Minutes from April 23, 2013. Supervisor Ballard seconded. ***The motion carried 5-0.***

Chairman Abruzzo called for a motion to approve the Minutes of the April 23, 2013 Public Hearing.

Supervisor Foley made a motion to approve the Minutes with the correction to the spelling of Bob Schellhorn's name. Supervisor Ballard seconded. ***The motion carried, 5-0.***

Chairman Abruzzo called for a motion to approve the Minutes of the April 23, 2013 Board of Supervisors meeting.

Motion: Supervisor Foley made a motion to approve the Minutes with changing the word "goals" to measurable standards on Page 3 - bullet point 2, the spelling of Bob Schellhorn's name, and adding Ed Svirbley as the Fire Company representative and removing his name from public present. Supervisor Ballard seconded. ***The Motion carried, 5-0.***

NEW BUSINESS

A1-6 Consideration of the adoption of Ordinance No. 632, which would amend Chapter 225 (Zoning) of the Code of the Township of Derry by defining types and permitted locations of restaurants.

Mr. Emerick suggested we proceed with Agenda Item B to allow Solicitor Yost more time to review the guidelines. Supervisor Moyer asked that they go into executive session before they continue this meeting. Vice-Chairman Fedeli suggested proceeding with the rest of the agenda before going into executive session. The Board proceeded to Agenda Item B.

B1-19 The Preliminary/Final Subdivision and Land Development Plan for Curry Mill, Plat No. 1223.

Charles W. Emerick, Director of Community Development – This is the development of the former Curry Mill located at the intersection of Old West Chocolate Avenue and North Hockersville Road. The site is located in the Industrial Zoning District. The applicant sought relief from the Zoning Hearing Board for the use of the property as a full service restaurant with some entertainment. They also sought relief from certain dimensional requirements. The plan is consistent with the relief grant. The applicant will be adding approximately 69 regular parking spaces and 3 handicap spaces. The site will be developed with two means of egress and a subsurface stormwater management facility. The subsurface system consists of underground pipes in both wings of the parking field.

The proposed property includes the combination of existing lots owned by Tana Properties; a land swap with the adjacent property of E. W. Properties, LLC, and vacation of a portion of Hockersville Road. A public hearing and consideration of adoption of an ordinance for the roadway vacation is scheduled for May 28, 2013. Both lots are serviced by public water and sanitary sewer facilities. A traffic statement was included with the submission. Although it projected 72 new weekday peak hour trips and 93 Saturday peak hour trips, these projections were based on a 175-seat restaurant. Based on the proposed 207-seat restaurant, the weekday hour trips would be 85 and the Saturday trips would be 110. The ordinance requires that if you contribute more than 100 peak hour trips that you would be required to do a traffic study which is addressed in a waiver. The E. W. Properties, LLC currently has an access easement across the Curry Mill site and the easement will be retained, improved, and expanded. Mr. Emerick reviewed each of the 7 waivers. Mr. Emerick recommends approval subject to Items A through K in his report.

Motion: A motion made by Supervisor Ballard and seconded by Supervisor Foley that the Preliminary/Final Subdivision and Land Development Plan for Curry Mill, Plat No. 1223, is hereby approved subject to the following:

- a. That the applicant reimburse the Township for costs incurred in reviewing the plan no later than June 14, 2013.
- b. That performance security be provided to guarantee the completion of required improvements and the accompanying agreement signed no later than November 14, 2013.
- c. That the size of the utility mains, service laterals to the site, and water meter pit assembly be indicated on the plan no later than November 14, 2013.
- d. That a signed and executed easement to Tana Properties, LLC from E.W. Properties, LLC, for the proposed off-site grading be provided no later than November 14, 2013.
- e. That the comments in the May 9, 2013 HRG letter (attached) be satisfactorily addressed no later than November 14, 2013.
- f. That the comments in the May 7, 2013 DTMA letter (attached) be satisfactorily addressed no later than November 14, 2013.
- g. That a letter of intent be provided by Tana Properties, LLC no later than November 14, 2013 to document the verbal offer to provide an \$800 contribution toward the installation of the traffic signal at the intersection of West Chocolate Avenue and Hersheypark Drive.
- h. That a digital file of the revised drawings be provided in AutoCAD or DXF format no later than November 14, 2013.
- i. That the Township formally vacate the requested portion of Hockersville Road prior to the recording of the plan.
- j. That the deed for right-of-way dedication be recorded concurrently with the plan.
- k. That the Stormwater Best Management Practices Operation and Maintenance agreement be recorded concurrently with the plan.

It is further moved that the following waivers are granted from the Subdivision and Land Development Ordinance:

- a. From Sections 185-12.D.(3).(a).[21] and 185-13.E.(4).(a).[19] to be permitted to show the storm sewer profile at a different scale.
- b. From Section 185-25.B regarding driveway grade within 20 feet of the edge of adjacent street paving.
- c. From Sections 185-12.D.(2) and 185-13.E.(3) to be permitted to show the plan at a scale of 1" = 60'.
- d. From Section 185-22.D.(3) regarding providing additional right-of-way for West Chocolate Avenue.
- e. From Section 185-22.D.(3).(c) regarding street cartway widening of West Chocolate Avenue.
- f. From Section 185-22.E.(5) regarding providing curbing along West Chocolate Avenue, with the stipulation that the applicant/owner enter into an agreement with the Township no later than November 14, 2013 that would allow the Township to require the installation of curbing in the future if deemed necessary.
- g. From Section 185-42 regarding providing a traffic study.

The motion carried, 5-yes 0-no.

C1-8 Request for a donation to the Bowman Trust for the beautification of Hershey.

Jill E. Henry, Assistant Township Manager - Every year we budget \$2,500.00 for hanging baskets on Chocolate Avenue.

Motion: A motion made by Vice-Chairman Fedeli and seconded by Supervisor Foley that the request for a donation to the Bowman Trust for the beautification of Hershey, is hereby approved. ***The motion carried, 5-yes 0-no.***

D1-3 Authorization to advertise an ordinance amending the Code of the Township of Derry (Ordinance No. 553) Chapter 210, Section 210-38. Parking prohibited at all times in certain locations by establishing "no parking" restrictions on both sides of N. Lingle Ave. for the entire length.

Motion: Vice-Chairman Fedeli made a Motion to table this agenda item in order to receive clarification from the Chief of Police regarding the scope of the proposal. Supervisor Foley seconded. ***The motion carried, 5-yes 0-no.***

E1 Request to conduct a walk celebrating the Feast of Corpus Christi requested by the Saint Joan of Arc Parish on Sunday June 2, 2013, starting at 1:00 PM on various Township roadways.

Lt. Timothy Roche, Assistant Chief of Police – A written request was received from Reverend Michael Rothan, who is the pastor from Saint Joan of Arc Church, to conduct this walk in celebration of the Feast of Corpus Christi. This request will involve some road closure and possible police assistance. The walk route will involve W. Areba Avenue, Ridge Road, Beech Avenue, and Orchard Road. The organizers of the walk are aware of and have accepted the Township's policy on special event reimbursement.

Motion: A motion made by Supervisor Foley and seconded by Supervisor Ballard that the request to conduct a walk celebrating the Feast of Corpus Christi requested by the Saint Joan of Arc Parish on Sunday, June 2, 2013, starting at 1:00 PM, on various Township roadways, is hereby approved. ***The motion carried, 5-yes 0-no.***

CORRESPONDENCE – No correspondence to report.

BOARD/COMMITTEE INFORMATION

Vice-Chairman Fedeli reported that FEMA has reimbursed the Derry Township Municipal Authority 60% of what was lost during the flood, which is almost \$6 million dollars. There are requests that are still outstanding and we are hoping to get an even higher percentage back.

Vice-Chairman Fedeli also reported that this Sunday afternoon is Family Fun Day at the library in recognition of the Library's 100-year anniversary. She encouraged all to come out and enjoy the day.

REPORTS

Lt. Timothy Roche, Chief of Police – Lt. Roche reported that the National Police Memorial Week commenced this week. Chief O'Rourke is participating in Washington DC with the ceremonies honoring the fallen brother and sister officers in the law enforcement community. We had several members from our Police Department participate in last week's ceremony at the State Capitol.

Supervisor Ballard referred to the minutes last week regarding Mr. Royer's offer to sell his vans to help pay for a speed bump and reaching out to the Neighborhood Dispute Resolution group to help work out the

issue with the Homeowners Association. She asked if either of these had been enacted upon. Lt. Roche said he checked on the situation about five minutes prior to this meeting. There has been no update from Mr. Royer or the Homeowners Association. However, our traffic safety unit will have recommendations for the Board at the next scheduled Township meeting.

Supervisor Ballard commented that it was great to see the police officers on Bike to School Day. One gentleman with a very small child said he was having a problem with people not stopping when they got off their bikes to cross. A neighbor mentioned that Palmyra did some pedestrian enforcement recently using volunteers to serve as “pedestrians.” Lt. Roche said Palmyra used plain clothes police officers. He said that the Derry Township Police Department did conduct an operation very similar to Palmyra prior to Palmyra doing so. As manpower permits they will engage in as much crosswalk enforcements they can and encroach on the plainclothes details as well.

Thomas Clark, Director of Public Works - Mr. Clark reported that the Water Company started their work on Beech and Cedar. They will work in the west end of the Village for the next couple of months. He expects in the next couple of weeks the crew will begin reconstruction of the roads that had infrastructure put in them last year. The intent is they will be done by the latter part of June.

Barbara Ellis, Hershey Public Library – Mrs. Ellis reported that Sunday, May 19 is the 100-year Anniversary Family Fun Festival and our kick off for the summer reading program. There are a variety of things happening from 1:00 to 5:00 at the Library. They want to focus on the things that are added resources with the Library that serve the Community. There will be several non-profits there as well as Zoo America to show off some animals and Boy Scout Troop 203 to help serve food. This week we received our 100-year anniversary brochure. The brochure contains advertisements from a variety of businesses throughout town that helped pay for not only this brochure, but also several of our 100-year anniversary events. She thanked all the sponsors.

Terry M. Weinhold, Manager of Accounts Payable & Receivable – Ms. Weinhold reported that after four months, the Township still continues to do well. The revenues and expenses are coming in under budget, but the revenue actually exceeds the expenses. During the week of May 28, Hamilton & Musser will be here to start the 2012 audit.

Matt Mandia, Director of Parks & Recreation – Mr. Mandia thanked the Police Department and Public Works for their assistance on May 4th at the Annual Fishing Derby at Bullfrog Valley Pond. They had a great turnout. He also thanked the Hershey Kiwanis, Friends of Park & Rec, and Bass Pro Shops for all their assistance with the fishing derby. He reminded everyone to come out and participate in both the Memorial Day Parade and the Ceremony on May 27. The parade will begin promptly at 10:00 a.m.. The staging begins at the Rec Center at 8:00 a.m. Once the parade has disbanded the Memorial Day Ceremony will begin at the War Memorial in front of the Recreation Center. That will be at approximately 11:30 a.m. Mr. Mandia announced that the outdoor pool opens on Saturday, May 25.

Matt Bonanno, HRG Township Engineer – Mr. Bonanno reported that the contractor is still on Mill Street with the stormwater project. The reason for the delay on Mill Street is that the workers hit rock areas. They will continue up Mill Street toward Cedar without much anticipated delay. They are doing stream restoration at 322 and 743 and also the wetland mitigation area. In all the areas they are doing more top soil, reseeding, and mulching throughout the project.

Vice Chairman Fedeli asked Mr. Bonanno for an estimated time when Mill Street will be done and paved. Mr. Bonanno said they have given no estimation on the pavement. Their crews are going to continue up Mill Street and then go towards Hockersville Road in the next month or so.

Charles W. Emerick, Director of Community Development – Mr. Emerick shared that last week Jeff Keiser passed away. He was Director of Community Development from 1975 to 2007. He had the pleasure of working with him from about 1985 to 2007. He will be missed.

Supervisor Ballard thanked the Community Development staff for taking over the drafting of the update to the Comprehensive Plan based on the vision and survey. Several people were there from the Comprehensive Plan Working Group and were very pleased with the chapter on Community Character. It really captured a lot of the comments the people had given us. She asked Mr. Emerick if we are going to be proceeding with the hotel path - 6 feet and 5 feet. Mr. Emerick said if that is the general direction of the Board. Chairman Abruzzo said that was the consensus of the Board.

Supervisor Ballard asked if the Township filed a lien on Petrina's other properties to collect the \$5,000-6,000 dollars so far that we spent. Solicitor Yost said we have not. We are going to adopt an ordinance within the next couple of weeks, which will give us the power to collect the attorney fees and filing fee for the lien because the Municipal liens regulations and statutes require notice to the property owner of the potential fees, attorney fees, etc. The Township has not had to do this before, but the Sewer Authority did it; therefore, we need to adopt an ordinance to establish this process. Solicitor Yost said we will proceed with a civil action once we change the ordinance for the lien.

Supervisor Ballard referenced an article recently about a retention pond that was on private property in Palmyra. After the flooding, we ran into a lot of problems with retention ponds in Derry Township. When a housing development is built and a retention pond is put in, it is usually the Homeowners Association responsibility to maintain the retention pond or if it is on private property, it is the responsibility of homeowner. There is actually a provision to have the owner give the Township a certificate saying that a professional engineer has inspected their retention pond and that on-going maintenance is being performed. So the expense is not on all the taxpayers but whoever happens to own the retention pond. We need to move on it so that the next time we experience flooding we can assure the retention ponds are actually working.

James N. Negley, Township Manager/Township Treasurer - Manager Negley said he had the privilege to work with Jeff Keiser for 32 years. He was intelligent, diligent, spot on in everything he did, and a great asset to this Township. He was a great man, a nice man, and a decent person. He was about the best in his field that we will ever see. Solicitor Yost said he worked with many municipalities and agreed that Jeff was one of the best. Chairman Abruzzo said Jeff was highly thought of throughout the area.

APPROVAL OF ACCOUNTS PAYABLE (\$552,173.86) AND TWO PAYROLLS (\$586,034.65).

Vice-Chairman Fedeli moved to approve accounts payable in the amount of \$552,173.86 and two payrolls in the amount of \$586,034.65. Supervisor Ballard seconded. ***The motion carried, 5-yes 0-no.***

The Board recessed into executive session at 8:00 p.m. to discuss the legal issue raised earlier regarding Agenda Item A.

The Board reconvened at 8:18 p.m.

Motion: A motion made by Supervisor Moyer to table the consideration of the adoption of Ordinance No. 632 for further consideration and to potentially readvertise if warranted. Supervisor Ballard seconded. ***The motion carried, 5-yes 0-no.***

OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD

John Dunn, 712 Linden Road – Mr. Dunn mentioned that yesterday the Derry police bike detail actually chased down a Humvee going up Ridge Road and summoned the person to pull over, which resulted in a traffic ticket. He thanked the Police Department for the surveillance for people that violate the 4-way stop at Ridge going to Cocoa.

Susan Foxx, 675 Old Ventura Farm Road, Hummelstown – Ms. Foxx reported that the issue in Stoney Run Development with parking has been resolved. The cars are no longer permanently parked there. As an Association, they are concerned with the speed and are sympathetic to Mr. Royer’s concern with speed. They are curious to see what the Police Department has found with their sight distance study. They are looking at perhaps a stop sign at Quail Hollow as a way to slow traffic down as well. Ms. Foxx would like to meet with the police and Mr. Royer prior to the meeting in two weeks. Lt. Roche said that could happen.

Ms. Foxx thanked Sandy Ballard for the tree replacement program. They took advantage of it in Stoney Run. She also thanked Tom Clark for the sidewalk replacement program. Supervisor Ballard acknowledged Matt Weir and Tom Clark for their work with the tree replacement program.

ADJOURNMENT

Supervisor Ballard moved to adjourn the meeting at 8:25 p.m. Supervisor Foley seconded. ***The motion carried, 5-yes 0-no.***

SUBMITTED BY:

Marc A. Moyer
Township Secretary

Brenda Van Deursen
Recording Secretary