

# TOWNSHIP OF DERRY BOARD OF SUPERVISORS MEETING

Tuesday, November 13, 2012  
600 Clearwater Road, Hershey, Pennsylvania 17033

## CALL TO ORDER

The November 13, 2012 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  
Patrick O'Rourke, Chief of Police  
Terry M. Weinhold, Manager of Accounts Payable & Receivable  
Jon A. Yost, Township Solicitor  
Brenda Van Deursen, Recorder

**Public Present:** Dorothy Richett, Erma Weigel, Elvira Ebling, Charleton Zimmerman, Virginia Locker, Jane Rickert, Rich Gamble, Attorney Ron Lucas, George Raynes, John Osmolinski, David, Tshudy, Lou Verdelli, Tim Horstmann, Mike LaCesa, Marzella Sheehan, Janice Huddy, C. Gates, Paul Thompson, Laine Huddy.

**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 issues.

## OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD

Chairman Abruzzo announced that the first opportunity for the public to address the Board will be taken during the discussion of the first agenda item.

## APPROVAL OF MINUTES

Chairman Abruzzo called for a motion to approve the Minutes of the October 23, 2012 Board of Supervisors Meeting. Supervisor Ballard made a motion to approve the Minutes of the Board of Supervisors Meeting. Supervisor Moyer seconded. ***The motion carried, 5-yes 0-no***

## **NEW BUSINESS**

### **A1-21 The Preliminary/Final Subdivision and Land Development Plan for 777 Middletown Road, Plat No. 1216.**

**Chuck Emerick, Director of Community Development** –This site contains 12.72 acres located on the east side of Middletown Road and the north side of Stoverdale Road. This property is in the Neighborhood Commercial zoning district along the Middletown Road frontage and extends to the east into the Agricultural/Conservation zoning district. Lot 1 contains 2.706 acres and depicts a 6,180 square foot retail/fuel sale store with a single bay car wash. Fast food restaurants are not permitted in this zoning district; therefore, the applicant was informed that outdoor or indoor seating for consumption of food was not permitted. Lot 2 contains 9.6661 acres and is partially in the Neighborhood Commercial zoning district and partially in the Agricultural/Conservation zoning district. It is designed to contain a bank with four drive-through lanes and a retail office building. Lot 1 exceeds the required parking spaces by 14 spaces and Lot 2 meets the required standard parking, but contains one extra handicap space. The plan meets the stormwater requirements.

A traffic study was prepared by HB Engineering and the study indicated there would be 5,740 additional trips weekly. The traffic study also supports the improvements proposed to Middletown Road and to Stoverdale Road. Stoverdale Road will be widened and a left lane added for access to Middletown Road. The developer is also proposing a bypass from Wood Road through the commercial property to Stoverdale Road to provide drivers the access of the traffic signal at the intersection of Stoverdale and Middletown.

Mr. Emerick reviewed the changes made from the first plan as well as the waivers being requested. He recommended the plan be approved subject to stated items and waivers.

Chairman Abruzzo explained what occurred regarding this plan. This rezoning of land occurred approximately three years ago and at that time the room was filled with folks from Stoverdale Church and the Mormon Church who wanted this area rezoned. It provided an opportunity to bring some light retail establishments down to the Middletown Road corridor, which did not currently exist. This was the subject of some lengthy public hearings and a Supervisors' meeting when the Board voted to rezone that tract of land. Once it was rezoned Neighborhood Commercial there were several different kinds of establishments that could be developed in that area. While the Board was very open during the process of what it would mean, they also did not have the legal authority to restrict what kinds of light retail establishments the market dictated would be created there.

It is important to understand that throughout this project whatever information the Board of Supervisors received from the public was always communicated to the appropriate people either at the Planning Commission, Community Development, Zoning Hearing Board, etc. so that these concerns could be addressed properly with the developer. The majority of respondents to our Comprehensive Plan Survey want a walkable and bikeable community and this plan is consistent with that vision. We have heard the concerns of residents across the community, but we have also heard a lot of support for the project. People are upset about the kind of development, but it should not be against Sheetz. Sheetz is a tremendous corporate citizen.

Mr. Emerick read the list of establishments permitted: business and professional offices, financial institutions, churches, funeral homes, personal care establishment, retail stores for the sale of household commodities, pet grooming facilities, Laundromats, parks, playgrounds, private conservation areas, municipal buildings, dry cleaning services, post office, schools, group child

care facilities, public or non profit fire services, restaurants except those referred to as fast food, libraries, photocopy service, retail sale, vehicle fuel with a maximum of 8 fuel dispensing devices.

Supervisor Ballard summarized that a few years ago the land was rezoned and now anyone who owns that land by law has the right to build any one of those establishments that Mr. Emerick listed. Now that the uses are clarified, we are discussing how wide the sidewalk is and how many driveway access points there are, and is there safe ingress and egress...the details of how the buildings, parking lots and stormwater are constructed in a general sense. Supervisor Foley added there is a total of 28,260 square feet that is being developed here. Out of that 6,180 is going to be Sheetz...that is only 21% of the project.

**Discussion:**

**Rich Gamble, Hockersville Road** – There has been a lot of discussion regarding our Comprehensive Plan and redeveloping our community. The Board has been trusted to do what is best for the community. Reviewing some of the notes and listening to some of the people that were at the meeting it was my understanding that we were going to get things that were necessary to support the development. This is a duplicate service of a business 200 yards away. What is to stop another same business to be built 200 yards down the road? Redevelopment should be based on what people need. We need to set up ordinances that safeguard we are not duplicating businesses.

**Jan Huddy, 542 Farmhouse Lane, Deer Run**

Q: Who owned the land three years ago when the zoning request took place? Mrs. Huddy found it hard to believe the churches would really want the land rezoned.

A: Chairman Abruzzo: The room was packed with people from the churches wanting the rezoning because it would allow the Church to actually build a church in that district.

Q: Has this project received PennDOT approval for traffic?

A: Mr. Emerick: The developer is working with PennDOT. The way the municipal code and PennDOT regulations are written, you can't hold up a land development approval for PennDOT permitting. They run concurrently. The developer has been updating the plan with our comments and with PennDOT comments. That is how we ended up with the curbing at the entrance along Middletown Road.

Q: The connector would be an improvement. Will it be a two-way?

A: Mr. Emerick: Yes.

Mrs. Huddy said that it would be very dangerous for vehicles pulling in and out of Sheetz on to Middletown Road directly. Mr. Emerick explained the connector road.

Q: There has been so much opposition from the public especially the residents of Deer Run. We signed a petition that we were not in favor of this project. What would happen if the Board did not approve Sheetz?

A: Solicitor Yost: The developer and applicant could litigate the issue. If it meets the requirements of the law, it would be in poor judgment to vote it down.

Q: Who is the developer and owner of all the property?

A: Mr. Ron Lucas, Attorney representing the applicant, Sheetz: The developer and owner of the property is Southside Community Partners, LP. Sheetz will be a lessee of Lot 1.

Q: Have all the taxes been paid on that property?

A. Chairman Abruzzo: They are current through 2011. 2012 taxes are not delinquent until December 31.

Q. Would they have to pay the taxes before construction is started?

A. Solicitor Yost: The taxes should be paid before construction starts.

Q. What is the timeframe for it to start?

A. Attorney Lucas: The intention is to break ground this spring and open by October 2013.

### **George Raynes**

Q. Are there going to be improvements to the Stoverdale Road intersection?

A. Attorney Lucas: The intersection at Stoverdale Road is going to be widened. There will be two lanes exiting and the road will be realigned for a thru right lane and a left lane entering the intersection from Stoverdale Road.

Q. Any changes to the stream that runs along there?

A. Attorney Lucas: The stream will be retained where it is but will be improved.

Q. Will the stormwater runoff be routed toward that creek?

A. Attorney Lucas: The stormwater runoff meets all requirements of the Township ordinance. Quality control is being dealt with by detention basins and an underground detention facility and it all connects to the piping that goes to PennDOT. In addition, there will be rain gardens.

Mr. Raynes pointed out that with the tropical storm the runoff coming down the side of the mountain went into Deer Run resulting in a lot of flooding.

Q. Has the amount of lights been considered?

A. Attorney Lucas: The lighting plan is part of the package and it has been approved. A couple of years ago, Sheetz went to all LED lighting and recessed lights under the canopy.

Q. Are there any improvements at the intersection for people wanting to walk over from Deer Run?

A. Mr. Emerick: When you start to mess with the traffic light, PennDOT is very critical of pedestrian accessibility. They have had to do some upgrades for that. The developer has agreed to put in a sidewalk system that runs thru the property and to the property.

Q. What grading will occur at the curb which is steeply banked at the Church on Middletown Road?

A. Mr. Emerick: PennDOT will only allow that intersection if adequate site distance is provided. There is some substantial grading happening there.

Q. Is that going to be a right turn only exit out of the complex?

A. Mr. Emerick: Yes.

**Rich Gamble** - Will all the buildings be developed at the same time and no occupancy granted until all buildings are completed? Mr. Emerick said the Wood Road connector has to be put in before anything is occupied. Mr. Gamble asked if there is any potential as far as when we could expect that to be developed. Supervisor Ballard mentioned the new state law states all permits that we approve are good until 2016. That is an extension that we have no control over. Mr. Lucas said with the state of the economy the last four years has made it very difficult to do any development. That was why the legislature passed a permit act twice and it was extended from 2013 to 2016. Initially, Lot 1 will be developed and the access from Middletown Road all the way

back to the connector. The connector between Stoverdale Road and Wood Road will be completed prior to occupancy for use on either lot. He also stated that the entire stormwater management system has to be put in up front.

**Jane Huddy** – Mrs. Huddy asked if there will be consideration given to landscaping to help it blend in with the surrounding community. Mr. Emerick said the requirement is one tree for every eight parking spaces. They have placed screening around lights at the church so they don't shine to the residential areas, and added special plantings. They have gone above and beyond our standards.

**Motion:** A motion made by Supervisor Foley and seconded by Vice-Chairman Fedeli that the Preliminary/Final Subdivision and Land Development Plan for 777 Middletown Road, Plat No. 1216, is hereby approved subject to the following:

- a. That the applicant reimburse the Township for costs incurred in reviewing the plan no later than December 13, 2012.
- b. That performance security be provided to guarantee the completion of required improvements and the accompanying agreement signed no later than May 13, 2013.
- c. That a digital copy (DXF format) of the final version of the plans be provided no later than May 13, 2013.
- d. That signatures and notary certifications of signatures be provided on the plan by the appropriate representative of the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints no later than May 13, 2013.
- e. That signatures and notary certifications of signatures be provided on the plan by the appropriate representative of the Garver tract no later than May 13, 2013.
- f. That the wetlands certification on the cover sheet be signed and dated no later than May 13, 2013.
- g. That a copy of the Traffic Signal Upgrade Plans for the intersection of Middletown Road and Stoverdale Road be provided to the Township no later than May 13, 2013.
- h. That the signed and notarized Stormwater Best Management Practices Operation and Maintenance Agreement be provided to the Township no later than May 13, 2013.
- i. That the developer execute a right-of-way agreement with the Derry Township Municipal Authority for the sanitary sewer easements within the project no later than May 13, 2013.
- j. That a copy of the Water Obstruction and Encroachment Permit and Section 404 Federal Permit be provided to the Township prior to the recording of the plan.
- k. That the net lot area, impervious coverage, and vegetative coverage of Lot 2 be verified/corrected prior to the recording of the plan.
- l. That all deeds for right-of-way dedication be recorded concurrently with the plan.
- m. That the Stormwater Best Management Practices Operation and Maintenance agreement be recorded concurrently with the plan.
- n. That the required deferment agreement between the applicant/landowner and the Township for the installation of curbing and parking lanes be recorded concurrently with the plan.
- o. That the Declaration of Easements and Restrictions associated with the two lots be signed in substantially the same format as presented to the Township on November 6, 2012.

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

- a. From Section 185-22.E.(5) regarding installing curbing along Middletown Road, Stoverdale Road, and Wood Road. This waiver is granted as a deferment for Middletown Road, Wood Road and the north side of Stoverdale Road; provided, however, that if PennDOT deems the developer should provide curbs in this area, the Township will support the PennDOT request; and with the stipulation that the applicant/landowner enter into an agreement with

the Township no later than May 13, 2013 which would allow the Township to require the installation of curbing in the future if deemed necessary.

- b. From Section 185-34.A.(1) regarding sidewalk location along Middletown Road, Stoverdale Road, and Wood Road.
- c. From Section 185-22.D., Table 185-22 regarding parking lane width for the north side of Stoverdale Road, and for the south side of Stoverdale Road to a point approximately 300 feet east of the intersection. Regarding the remaining portion of the south side of Stoverdale Road adjacent to the development site, this waiver is granted as a deferment with the stipulation that the applicant/landowner enter into an agreement with the Township no later than May 13, 2013, which would allow the Township to require the installation of parking lanes along the remaining portion of the south side of Stoverdale Road in the future if deemed necessary.
- d. From Sections 185-12.D.(2) and 185-13.E.(3) regarding plan scale for the subdivision plan (SD-1) and the easement plans (EP-1 and EP-2) to be provided at a scale of 1"=60".
- e. From Sections 185-12.D.(3).(a) and 185-13.E.(4).(a) regarding plan requirements for the depiction of land holdings of the Garver property affected by this subdivision.

***The motion carried, 5-yes 0-no.***

### **B1-35 Approval for Ordinance No. 627, authorizing the issuance of General Obligation Bonds, Series of 2012.**

**James N. Negley, Township Manager/Township Treasurer** – Manager Negley explained that the Township Series of 2008 bonds in the amount of \$3,955,000 are outstanding and eligible for refinancing. Presently, it has interest rates higher than what is available currently. The Township has an opportunity to generate a savings of about \$200,000 based on the current rates.

**Mr. Lou Verdelli, RBC Capital Markets** – Mr. Verdelli announced that Standard & Poors reaffirmed the Township's very strong credit rating of AA+. The rating reflects the Standard & Poors opinion of the Township's strong and growing economy, very strong wealth and income levels, improving finances, and moderate debt with limited additional debt. Mr. Verdelli explained the following regarding refinancing the bonds:

- New interest rate is 1.31% fixed for 12 years (2008 bonds interest rate currently is 3.25-4.05)
- Based on the new rate, it lowers the debt service on these bonds by \$282,499. The number is net of the issuance cost.
- No extension or restructuring of the debt, just replacing what is there now.
- Close December 13 on transaction.
- Call date is February 15, 2013.

**Motion:** A motion made by Supervisor Ballard and seconded by Supervisor Foley that Ordinance No. 627, the issuance of General Obligation Bonds, Series A of 2011 as presented by Bond Counsel, is hereby approved. ***The motion carried, 5-yes 0-no.***

### **C1-16 Approval of Resolution No. 1346, authorizing and adopting Post Issuance Compliance Policies for Tax-Exempt Bond or Notes and Taxable Bonds or Notes that have been and will be issued by the Township of Derry.**

**James N. Negley, Township Manager/Township Treasurer** – Manager Negley said this policy is intended to establish a program to insure that the requirements imposed upon the Township

pursuant to the Internal Revenue Code of 1986, as amended and the finance documents will be satisfied by the Township, authorizing incidental action and rescinding inconsistent resolutions.

**Donna Kreiser, Bond Counsel, McNees Wallace & Nurick LLC** – Mrs. Kreiser explained that over the course of the last several months, the IRS has been sending strong messages to governmental issuers in particularly, tax exempt bonds. They want to see those governmental issuers have in place policies to ensure that they are doing everything that is required to maintain the tax exempt status of those bonds after they were issued. Each time you issue tax exempt bonds, one of the documents Mrs. Kreiser prepares is a tax agreement whereby the Township agrees to do all the things the tax code requires so that you are using the bond proceeds and spending them in a way that is not only consistent with the ordinance, but with the tax requirements and regulations.

Just in the last couple of months, the IRS has added two questions to form 8038G that you sign each time you issue bonds. They have asked the specific question of whether or not you have written procedures in place to ensure post issuance compliance. No regulations or codes have been passed to require this, but they are encouraging us to treat it very seriously. She, Mr. Verdelli, Manager Negley and others of the Township developed policies for the Board's approval by resolution so that all future financings you undertake and have already done demonstrate you have policies in place. The policies not only include the requirements of the IRS, but also other requirements such as the Township's continuing disclosure requirements and having to report certain information to the marketplace on an annual basis.

Supervisor Moyer asked if this factors in the Standard & Poors. Mr. Verdelli said in the report they talk about administrative practices and policies and the next time we can say the Township has these in place.

**Motion:** A motion made by Supervisor Ballard and seconded by Supervisor Moyer that Resolution No. 1346, Authorizing and Adopting Post Issuance Compliance Policies for Tax Exempt Bond or Notes and Taxable Bonds or Notes that have been, and will be issued by the Township of Derry, is hereby approved. ***The motion carried, 5-yes 0-no.***

#### **D1-29 Approval of Agreement regarding final subdivision plan for Glendale site.**

**Chuck Emerick, Director of Community Development** – In 2000 the Hershey Trust Company subdivided a portion of their property called the Glendale Site. The plan created two lots. Lot No. 1 was 6.6 acres and Lot No. 2 was 235.6 acres. The purpose of the plan was to enable the conveyance of Lot 1 to Purcell Properties, LTD. Since that time, Lot 1 has been developed and reconveyed back to the Hershey Trust Company. The purpose of the attached agreement is to eliminate the subdivision line that created Lot 1 so that they don't have setbacks and other issues associated with that line. All other aspects of the approved plan, stormwater and easements, will remain in full force and effect.

**Motion:** A motion made by Supervisor Foley and seconded by Supervisor Ballard that the Board of Supervisors authorizes its Chairman to sign the Agreement regarding Final Subdivision Plan – Glendale Site on behalf of the Township, is hereby approved. ***The motion carried, 5-yes 0-no.***

#### **E1-3 Adoption of Resolution No. 1345, establishing the Board of Supervisors' regular meeting dates for the year 2013.**

**Jill E. Henry, Assistant Township Manager** – Asst. Manager Henry provided set dates for the 2013 meetings. There were a couple exceptions including in October for the Halloween parade and then in December where both meetings were moved up a week. They will be published in the newspaper on posted on the website.

**Motion:** A motion made by Chairman Abruzzo and seconded by Vice-Chairman Fedeli that Resolution No. 1345, establishing the Board of Supervisor's meeting dates for the year 2013, is hereby approved. *The motion carried, 5-yes 0-no.*

**F1-2 Lease Agreement with Wells Fargo Equipment Finance, Inc. for a five-year lease of a 2012 SA Galaxy Street Sweeper.**

**Thomas Clark, Director of Public Works** – Mr. Clark said this agreement requires a resolution by the governing body to be adopted appointing designees to execute the lease paperwork for the sweeper. We are planning on taking possession of the sweeper on Friday. Every three months we are paying \$8,271.77 for the lease of the vehicle for a five-year period.

Supervisor Ballard asked how much it would cost to buy one. Mr. Clark said about \$155,000, but at the end of this lease, we own the sweeper.

**Motion:** A motion made by Supervisor Moyer and seconded by Supervisor Foley that the Board adopt Resolution #1347 and execute the attached agreement indicating their acceptance of the conditions for the lease agreement of a 2012 SA Galaxy R-6 Sweeper with Wells Fargo Equipment Finance, Inc., and the Township, is hereby approved. *The motion carried, 5-yes 0-no.*

**CORRESPONDENCE** – No correspondence to report.

**BOARD/COMMITTEE INFORMATION** – No information to report.

**REPORTS**

**Patrick O'Rourke, Chief of Police** – Approximately three weeks ago the Police Department unveiled their new motorcycle unit. They have two-2013 Harley Davidson's that will expand our traffic safety enforcement efforts. They are being very well received by the community.

Chief O'Rourke reported that on October 29 we were fortunate enough to dodge Hurricane Sandy, but we were well prepared in Derry Township. He thanked the Township Manager, his staff and all the members of this board, and former member Todd Pagliarulo who was instrumental in running our emergency operation center. He also recognized the Hershey Fire Company and Public Works. Others were less fortunate in surrounding states. His brother in law is a NYC officer who worked in Howard Beach and they were not so fortunate in that area. We are partnering with the Hershey Company and a trucking farm to collect relief supplies to send to New York.

Supervisor Moyer noted the motorcycles were not paid for by taxpayers. Chief O'Rourke said they were donated anonymously and he was also able to have six officers trained at no cost.

**Thomas Clark, Director of Public Works** - They are up to date with collecting leaves. The trench line on Areba Avenue will soon be paved. The Water Company should be starting on Linden and then on Mansion this week.

**Barbara Ellis, Hershey Public Library** – Two weeks ago they had a program for girl scouts and out of the event came a giving tree which they put in the middle of the library to give thanks for what we have. The intent is to take a tag off the tree and bring back a gift for a child who is involved in the program called Vinney's Kids.

**Terry M. Weinhold, Manager of Accounts Payable & Receivable** – The end of October revenues are slightly under budget and expenses slightly over due to pension transfer of funds.

**Matt Mandia** – The Bullfrog Valley project streambank restorations are 90% complete and the trails are 70% complete between Stoney Run and Shank Park. The surveying is completed for the pedestrian bridge. The Annual Art and Craft Show will be held this weekend at the Hershey High School with over 170 vendors.

Chairman Abruzzo asked if there is anything people can do to help with restoring Bullfrog Valley. Mr. Mandia said at this point the contractors can handle it, but he will plan some general cleanup projects in the spring for the community to help.

**Matt Bonanno, HRG Township Engineer** – Mr. Bonanno reported the following:

- Clean up continues on Cocoa Avenue. The majority of the curb throughout Cocoa Avenue will be done by the end of the week.
- Sanitary sewer work continues on Mill Street.

Mr. Bonanno shared that he was out during the rain and the system seems to be functioning as designed.

Chairman Abruzzo wanted to make sure we are doing everything we can to try to help the area by Java by the tennis courts. Mr. Bonanno said there is a plan coming up in the future where we are looking at some downstream and mitigation improvements to help that area.

Supervisor Moyer suggested the Board discuss implementing a program for residents to adopt a storm drain located near their house.

**Jill E. Henry, Assistant Township Manager** – Asst. Manager Henry reported the Safety Committee was recertified for another year with the Department of Labor and Industry.

Supervisor Ballard asked about the status of the website. Asst. Manager Henry said our website has a virus and Brian, the I.T. Manager has been working on it. He put up a temporary site while he works on restoring the old site. Manager Negley added that it was a hacking from an Eastern European country.

**James N. Negley, Township Manager/Township Treasurer** – Manager Negley announced a budget meeting is scheduled for Wednesday, November 28, 2012 at 5:30 p.m.

**APPROVAL OF ACCOUNTS PAYABLE (\$557,457.24) AND TWO PAYROLLS (\$579,025.08).** Supervisor Foley moved to approve accounts payable in the amount of \$557,457.24 and two payrolls in the amount of \$579,025.08. Supervisor Ballard seconded. ***The motion carried, 5-yes 0-no.***

#### **OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD**

Mr. Raynes asked for a copy of the 777 Middletown Road complex. Mr. Emerick said the plan has not gone to record yet, but he will provide him with a progress print.

**ADJOURNMENT**

Supervisor Ballard moved to adjourn the meeting at 8:45 p.m. Chairman Abruzzo seconded. ***The motion carried, 5-yes 0-no.***

SUBMITTED BY:

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Marc A. Moyer  
Township Secretary

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Brenda Van Deursen  
Recording Secretary