

**DERRY TOWNSHIP PLANNING COMMISSION  
MEETING MINUTES  
October 1, 2013**

**CALL TO ORDER**

The Tuesday, October 1, 2013 Derry Township Planning Commission meeting was called to order at 6:01 p.m. in the meeting room of the Derry Township Municipal Complex, 600 Clearwater Road, Hershey, PA, by Chairman Matt Tunnell.

**ROLL CALL**

Commission Members Present: Matt Tunnell, Chairman; Joyce St. John, Vice Chairwoman; Ned Wehler; Glenn Rowe

Commission Members Absent: Gregg Mangione, Secretary

Also Present: Chuck Emerick, Director of Community Development; Matt Bonanno, HRG; Diane Krug, Dauphin County Planning Commission representative; Jenelle Stumpf, Community Development Secretary

Public Registering Attendance: Joe Burget, Jr., Burget & Associates, Inc.; Mark Jones, Hartech Engineering; Kenny Hinebaugh, Evans Engineering; Melanie Boehmer, Milton Hershey School; Jim Rafferty, Tana Properties, LLC

**APPROVAL OF MINUTES**

*At the beginning of the meeting (prior to Member Wehler's arrival):*

On a motion made by Vice Chairwoman St. John and seconded by Member Rowe, the Planning Commission unanimously approved the minutes of the September 3, 2013 meeting as written.

*At the end of the meeting:*

Member Wehler commented that he thought the motion<sup>1</sup> he had made (*at the September 3, 2013 meeting*) for the adoption of proposed Ordinance No. 639 included the words "within 18 months." Jenelle Stumpf informed him that she transcribed the motion verbatim from the recording of the meeting, and there was no mention of a timeframe.

Chairman Tunnell remembered having a discussion about the timeframe, and that the Planning Commission wanted to have the Board of Supervisors be aware of that sentiment. He suggested amending the recommendation to ensure that the message to the Supervisors includes the idea that the district expansion should only exist for a period of 18 months until the Comprehensive Plan is completed and the Zoning Ordinance rewritten. Mr. Emerick believes that it will take 8-10 months to hire a consultant to complete the Comprehensive Plan, and an additional 10-12 months to rewrite the

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<sup>1</sup> **MOTION:**

*Member Wehler made a motion that the Planning Commission recommend adoption of Ordinance No. 639 as proposed, with the understanding that there will be a public hearing and a public process where the design review criteria will be made more specific and less subjective.*

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Zoning Ordinance. He added that the Request for Proposals has been posted and bids are due by October 17, 2013, so the process is moving forward.

Member Wehler was of the opinion that there was an intention to have this completed within a defined timeframe, that it was not an open-ended recommendation. He would prefer that the motion be amended. Vice Chairwoman St. John clarified that the reasoning behind this timeframe is that the Comprehensive Plan is evolving and things will change once it is finalized.

Chairman Tunnell commented that the broadening of the overlay districts was seen as somewhat of a defense mechanism to allow the Township to have the Comprehensive Plan completed and to ultimately have new zoning in place in the downtown which would cover the range of issues of how the Design Review Board operates, what kind of uses, etc., but if this proposed ordinance is not adopted, then the Township will be vulnerable to development that would change the character of the downtown. Without it, we could allow not only uses but designs that, for the long term, would not be desirable.

Member Wehler made a motion that the Ordinance No. 639 motion made and adopted by the Planning Commission at the September 3, 2013 meeting be revised to reflect a recommendation that would be accomplished within the next 18-24 months. Member Wehler's motion was seconded by Vice Chairwoman St. John and passed unanimously.

**OLD BUSINESS**

**A. Report of the Board of Supervisors' action regarding the Hershey Trust Company, Trustee for Milton Hershey School's request for a waiver from filing a land development plan**

Mr. Emerick reported that the Board of Supervisors granted the waiver for the construction of a staff home on Crest Lane.

**B. Review and recommendation of proposed Ordinance No. 637 to amend Chapter 225 (Zoning) of the Code of the Township of Derry by defining and regulating formula fast casual restaurants**

Mr. Emerick stated that this item has been listed on the agenda so that he can update the Planning Commission on the recent activities related to this ordinance. Members of the Board of Supervisors have met with some of the affected parties, and Mr. Emerick anticipates there will be a revision to the draft ordinance, at least in regards to the Chocolate Avenue corridor. As currently proposed, the ordinance restricts the number of formula fast casual restaurants in zoning districts throughout the Township and prohibits them in some zoning districts. It appears as though the ordinance will be revised regarding the permitted number of such restaurants, especially in the Chocolate Avenue corridor, and also regarding the purpose and intent of the ordinance. The revised draft ordinance will come back before both the Derry Township and Dauphin County Planning Commissions.

Vice Chairwoman St. John asked if the revisions involve the permitted number of formula fast casual restaurants or the elimination of the restriction of such restaurants. Mr. Emerick responded that the

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revisions would involve the number of formula fast casual restaurants that are permitted in certain zoning districts. The 'purpose and intent' section would also be revised so that the ordinance is more defensible. Mr. Emerick has met with the Township's solicitor since the last Planning Commission meeting, and the solicitor concurs with the revisions.

Vice Chairwoman St. John asked if, once the ordinance is adopted, someone can ask for relief from the requirements. Mr. Emerick responded that the ordinance will be part of the Zoning Ordinance, so it will be subject to appeals made to the Zoning Hearing Board. It is also an ordinance that the Township can manipulate in the future if conditions warrant.

Member Wehler noted that the Dauphin County Planning Commission wrote a strong recommendation letter regarding this ordinance, and he asked if the Township has replied to that letter. Mr. Emerick answered no, the Township typically does not respond to the County's recommendation letters. Member Wehler stated that it would be beneficial for everyone to be on the same page by the time the ordinance returns to the Planning Commission for consideration.

Member Wehler asked Mr. Emerick what his opinion is on a conditional use concept for this ordinance. Mr. Emerick thinks a conditional use would be another way to enable the ordinance; however, a by-right with limitations is what is presently being considered. Chairman Tunnell commented that the permitted number of establishments could be part of a conditional use, but it would still be subject to a challenge. Mr. Emerick stated that another advantage to a conditional use is that if there are a lot of a certain type of restaurant, the conditional use could limit that type because each one would be judged individually. Chairman Tunnell stated that he is unsure about forcing that limitation. Mr. Emerick commented that the goal is to have a variety of formal fast casual restaurants, not to limit competition.

Vice Chairwoman St. John commented that she does not know if government should dictate what type of business is allowed. She believes that marketing and the economy will determine whether or not a business will thrive, and will address the issue of competition. She added that it would be nice to see more restaurants in Hershey, and restrictions will not help.

Chairman Tunnell agreed with Vice Chairwoman St. John that the Township would be dictating something that marketing would normally indicate. He added that there is a risk of not getting any restaurants because the regulations are restricting them. Mr. Emerick pointed out that this ordinance only relates to formula fast casual restaurants. He added that part of the goal of the ordinance is to keep the uniqueness that Hershey has. Chairman Tunnell believes there is much more that could be done downtown and he does not think barriers are going to help.

Member Rowe also agreed that the market will indicate the success of a business; however, sometimes there is an unusual situation where several of the same type of business do well in close proximity to each other.

The Commission will act on a revised version of the proposed ordinance at a future meeting.

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**NEW BUSINESS**

**A. Review and recommendation of the Revised Preliminary/Final Land Development Plan for Milton Hershey School Capital Improvements, Plat #1237**

Mr. Emerick explained that this plan is being processed in order to remove the ability of the Milton Hershey School to install improvements as proposed on Plat #1061 that was recorded in 2006. The original purpose of Plat #1061 was to revise the Preliminary/Final Land Development Plan for the Milton Hershey School Student Housing Expansion, 6th Wave, Plat #1028, which depicted capital improvement projects that were proposed to be made during the years 2005 and 2006, involving additions and renovations to 3 student homes and the conversion of the Kinderhaus to a historical records and archives facility. The plan further depicted a locker room addition to the Henry Hershey athletic field complex and a maintenance building and locker room addition to the ice rink facility. Since that time, portions of the approved plan have been completed and other portions have been removed from the capital improvements schedule and will never be completed as proposed.

The applicant has requested numerous waivers from the Subdivision and Land Development Ordinance due to the unusual circumstances of the plan. Mr. Emerick recommended that the waiver requests be granted.

**MOTION ON WAIVERS**

On a motion made by Member Rowe, seconded by Vice Chairwoman St. John, and a unanimous vote, the Planning Commission recommended that waiver requests ‘a’ through ‘dd’ (*as listed under item 2 of the Township staff report*) be granted.

**MOTION ON PLAT #1237**

On a motion made by Member Rowe, seconded by Vice Chairwoman St. John, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that Plat #1237 be approved.

**B. Review and recommendation of the Preliminary/Final Subdivision and Stormwater Management Site Plan for 11 and 19 East Chocolate Avenue, Plat #1238**

Mr. Emerick stated that Plat #1238 represents the next element for The Hershey Company in its “Next Century Project.” Approximately 390,000 square feet of floor area of the facility at 19 East Chocolate Avenue is being remodeled, restored, and preserved as office space intended to house nearly 1,000 employees. The plan proposes to reconfigure the land holdings of The Hershey Company and Chocolate Realty DST surrounding the office building and 11 East Chocolate Avenue by combining 11 parcels of ground to become 4 parcels.

Mr. Emerick reviewed the applicant’s waiver requests from the Subdivision and Land Development Ordinance, and went over his plan review comments. Matt Bonanno, HRG, and Diane Krug, representative for the Dauphin County Planning Commission, also went over their plan review comments.

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Brian Evans and Kenny Hinebaugh of Evans Engineering represented the plan. Mr. Evans noted that they are requesting an additional waiver regarding the bearings and distances for some of the easements for the stormwater facilities. During construction there may be some minor modifications and rather than giving bearings and distances now, this will be addressed as part of an as-built plan.

Vice Chairwoman St. John asked if all of the proposed 1,350 parking spaces are needed for the office use. Mr. Hinebaugh answered yes, but the parking also allows for expansion in the future when the building is fully occupied. In response to an inquiry from Chairman Tunnell, Mr. Evans stated that the applicant will submit a revised parking plan when the demolished portion of the 19 East Chocolate Avenue facility is redeveloped.

Vice Chairwoman St. John asked if parking garages are being considered in conjunction with the future redevelopment. Mr. Evans responded that different options are being considered.

Member Rowe asked if there are any plans to develop the parking lots located south of East Chocolate Avenue. Mr. Evans stated that it could be a possibility in the future. The intent is to provide adequate parking for the current use and then re-evaluate parking needs in the future if needed. Member Rowe agreed with Mr. Bonanno's comment that a traffic study will have to be submitted to account for the new trips generated by the future redevelopment.

Member Wehler asked if the driveway located between 11 and 19 East Chocolate Avenue is a public street. Mr. Hinebaugh responded that it is a parcel of The Hershey Company and has never been public. Member Wehler asked if there would be any need for the driveway to become public. Mr. Emerick answered no. Member Rowe asked if there is an access agreement. Mr. Hinebaugh stated that there is an existing access easement for use of the driveway by the bank.

Member Wehler questioned whether the numerous easements are proposed because of land development requirements or to facilitate future access. Mr. Evans stated that because there are limited points of access along East Chocolate Avenue, and in order for Lots B and C to have access, there needs to be an access from Park Boulevard. Mr. Hinebaugh stated that the easements are in place for the current proposal, although they could also be beneficial to the redevelopment project in the future.

In response to a question from Member Wehler, Mr. Hinebaugh explained that all parking shown is part of the special exception that was granted by the Zoning Hearing Board. The Hershey Company set a certain amount of spaces that it wants to maintain throughout its growth in the downtown and with any potential development. The parking agreement that will be established as part of this subdivision plan will have to be modified as a result of any future development, but this will guarantee that The Hershey Company will always have the use of 1,350 parking spaces.

Mr. Hinebaugh clarified that there currently are no plans in place for the redevelopment, but since the decisions were made to demolish the remainder of the eastern portion of the facility and to change the zoning of the property, interest for redevelopment has greatly increased.

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MOTION ON WAIVERS

On a motion made by Vice Chairwoman St. John, seconded by Member Rowe, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that the following waivers be granted:

- a. From Sections 185-12.D.(2) and 185-13.E.(3) regarding plan scale.
- b. From Sections 185-12.D.(3).(a).[7] and 185-13.E.(4).(a).[7] regarding metes and bounds for all existing street centerlines.
- c. From 185-13.E.(4).(a).[7] regarding providing easements on the final plan, deferring the metes and bounds until the as-built survey is provided.
- d. From Sections 185-12.D.(3).(a).[21] and 185-13.E.(4).(a).[19] regarding existing stormwater profiles for all unaffected facilities.
- e. From Sections 185-12.D.(3).(a).[22] and 185-13.E.(4).(a).[20] regarding existing sanitary profiles for all unaffected facilities.
- f. From Sections 185-12.D.(3).(a).[23] and 185-13.E.(4).(a).[21] regarding existing utility profiles for all unaffected facilities.

The Planning Commission also recommended that the following waiver be denied:

- a. From Sections 185-12.D.(4).(b) and 185-13.E.(5).(b) regarding a sewage facilities planning module.

MOTION ON PLAT #1238

Vice Chairwoman St. John made a motion, seconded by Member Rowe, that the Planning Commission make a recommendation to the Board of Supervisors that Plat #1238 be approved, subject to the following being satisfactorily addressed:

- a. The comments in Item 3 of the Township staff report, with the exception of 'ii'.
- b. The comments in the September 23, 2013 HRG letter.
- c. The comments in the September 24, 2013 DTMA letter.
- d. Comments 1, 2, 4, 5, 6, 7, and 8 of the September 26, 2013 Dauphin County Planning Commission report.

*Discussion:* Member Wehler asked about the sewer capacity issue that the Derry Township Municipal Authority refers to in their letter. Mr. Emerick responded that they are referring to a fee that was paid for sewer capacity.

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The motion passed unanimously.

**C. Review and recommendation of the Preliminary/Final Subdivision and Land Development Plan for Curry Mill, Plat #1239**

Mr. Emerick stated that this plan depicts the development of the former Curry Mill located on Old West Chocolate Avenue, in the vicinity of the intersection of Old West Chocolate Avenue and North Hockersville Road. It is similar to the plan processed as Plat #1223, with the exception of the participation of the neighboring property held by E. W. Properties, LLC. In fact, that lack of participation is the catalyst of this new plan.

In the original preparation of this development, the applicant sought relief from the Zoning Hearing Board for the use of the property as a full-service restaurant with a nightclub element, and also sought relief from certain dimensional requirements. Most of this proposed plan is substantially consistent with the relief already granted. The new plan requires additional relief from the Zoning Hearing Board related to parking along the property boundaries. During the presentation to the Zoning Hearing Board on September 18, 2013, E.W. Properties, LLC, opposed the Board granting this additional relief, especially as it relates to the western side of the parking area. A final determination from the Zoning Hearing Board on this newly-requested relief is not anticipated until October 16, 2013. Mr. Emerick suggested that any recommendation from the Planning Commission to approve the plan include a condition that the Zoning Hearing Board grant the requested relief.

Mr. Emerick has been informed that the developer (Tana Properties) and the neighboring property owner (E.W. Properties, LLC) have been working to come to terms. He received a letter from legal counsel for E. W. Properties, LLC, noting that they are willing to withdraw their opposition to the requested zoning relief if the developer gives consideration to a larger access easement for E.W.'s property.

Mr. Emerick reviewed the applicant's waiver requests from the Subdivision and Land Development Ordinance, and went over his plan review comments. Matt Bonanno, HRG, and Diane Krug, representative for the Dauphin County Planning Commission, also went over their plan review comments.

Joe Burget of Burget & Associates represented the plan. He explained that a 30' easement exists that E.W. Properties uses through Tana Properties' land, and there are points in the easement where it is difficult to turn. Part of the agreement between the property owners involves Tana providing E.W. with a permanent easement and widening the corners. Tana is also proposing stormwater improvements to divert water into Tana's inlet so E.W.'s property is receiving less water. The developer's engineers will find where the drainage limit is so they can make sure Tana's stormwater facility can handle all of the water it will be receiving.

Member Wehler asked how Mr. Bonanno knows that the stormwater system is adequate if he does have the drainage calculations to the west. Mr. Bonanno answered that at this point he does not know, but he thinks it is a large stormwater management area that would be able to handle the runoff. He will need to confirm this through the developer's engineers' calculations.

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Member Wehler mentioned that some of the water has drained back to the neighboring property into the inlet that goes underground, and he asked if it is prudent to eliminate that drainage path. Mr. Bonanno responded that HRG looked at that very closely when E.W. Properties had submitted a plan a few years ago, at it is his understanding that there has never been a problem with the system.

**MOTION ON WAIVERS**

On a motion made by Member Wehler, seconded by Vice Chairwoman St. John, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that the following waivers be granted:

- 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 Section 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. This waiver was recommended to be granted as a deferment.
- g. From Section 185-42 regarding providing a traffic study.

**MOTION ON PLAT #1239**

On a motion made by Member Wehler, seconded by Member Rowe, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that Plat #1239 be approved, subject to the following being satisfactorily addressed:

- a. The comments in Item 3 of the Township staff report.
- b. The comments in the September 18, 2013 HRG letter.
- c. The comments in the September 23, 2013 DTMA letter.
- d. The comments in the September 27, 2013 Dauphin County Planning Commission report.



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- e. The Derry Township Zoning Hearing Board rendering a decision to grant the necessary relief.

**OTHER BUSINESS**

None.

**ADJOURNMENT**

On a motion made by Member Wehler, seconded by Vice Chairwoman St. John, and a unanimous vote, the meeting adjourned at 7:36 p.m.

Respectfully submitted,

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Gregg Mangione  
Secretary

Submitted by:

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Jenelle Stumpf  
Community Development Secretary