

The stated meeting of the Administrative Code and Land Use Committee of the Board of Commissioners of the Township of Abington was held on Wednesday, February 28, 2018 at the Township Administration Building, Abington, PA., with Commissioner Sanchez presiding.

CALL TO ORDER: 7:16 p.m.

ROLL CALL: Present: Commissioners SANCHEZ, GILLESPIE, HECKER, THOMPSON

Excused: BRODSKY

Township Manager MANFREDI
Assistant Township Manager WEHMEYER
Township Solicitor CLARKE

Also Present: Commissioners LUKER, KLINE, SPIEGELMAN, BOWMAN, SCHREIBER, DiPLACIDO, MYERS, ROTHMAN, ZAPPONE, VAHEY

APPROVAL OF MINUTES:

Commissioner Sanchez made a MOTION, seconded by Commissioner Gillespie to approve the minutes of the January 31, 2018 Administrative Code and Land Use Committee Meeting.

MOTION was ADOPTED 4-0.

PRESENTATION: None.

UNFINISHED BUSINESS: None.

NEW BUSINESS:

Item ACL-01-030818:

Consider approving Land Development application submitted by ABH Builders, Inc. for the vacant property located at 1043 Easton Road, Abington, PA., 19001.

Commissioner Sanchez called on Planning & Zoning Official, Mr. Mark Penecale.

Mr. Penecale said the applicant is present this evening, and this application was presented before the Township's Planning Commission, who provided a copy of their recommended conditions and list of approved waivers requested by the applicant to the Board. It is a land development of a four-unit apartment complex with access to the site from Easton Road. Items within Township staff review letter need to be addressed by the applicant and the applicant will also make the plan conform to two zoning requirements; one being the size of the apartments as well as buffer requirements.

Commissioner Sanchez commented that he does not have a copy of the Planning Commission's recommendations.

Commissioner Kline added that he does not have a copy of the staff review letter.

Mr. Penecale said there was a staff review letter generated, and originally there were two zoning related issues; parking stall size was 9X18 instead of required 10X18 and side yards had ample green space on both side property lines, but no plantings were shown on the plan. Also, the MCPC reviewed this plan and provided recommendations.

The Planning Commission recommended approval of the plan subject to conditions of staff review letter as well as other conditions. The applicant submitted a DEP Planning Module to Mr. Wrigley, which is currently under review. The County would like a crosswalk installed at the base of the driveway to connect to newly installed sidewalk. Parking lot lighting needs to be installed that complies with code. There will be public sidewalk installed and a retaining wall and the street trees will be planted in side yard areas. Small portion of the neighbor's driveway shown on the plan will need to be removed and the applicant will comply. There is a portion of the parking lot that is a hashed area that is recommended by the Planning Commission to be returned to green space.

Also, the Planning Commission recommended that a sidewalk be installed behind the building to connect with parking lot out to public sidewalk and also the walkway should be large enough to allow access for trash cans on Easton Road.

Stormwater management plans needs to be revised slightly due to widening of parking spaces to 10 feet. Also, applicant will contact Township Refuse Department in regards to trash removal. There were a list of waivers requested by the applicant and waiver for a landscape plan was denied by the Planning Commission.

The applicant will have his engineer revise the plan with any recommendations made by the Administrative Code and Land Use Committee prior to the full Board meeting next week.

Commissioner Sanchez clarified that the applicant still needs to go before the Zoning Hearing Board. Is that correct?

Mr. Penecale replied no, the applicant will revise the plans to comply with zoning code.

Commissioner Sanchez asked for any comments from Commissioners.

Commissioner Gillespie asked about the crosswalk.

Mr. Penecale replied crosswalk will run north to south on Easton Road in-line with sidewalk to be installed.

Commissioner Hecker clarified that the applicant will comply with recommendations made by the Montgomery County Planning Commission. Is that correct?

Arthur Herling, applicant, ABH Builders, Inc., replied he will make modifications to the plan as recommended by the Township's Planning Commission as well as the MCPC. He provided a rendering to the Board.

Commissioner Thompson commented there are grading issues on the plan.

Mr. Herling replied the plan will be modified and the retaining wall will stop right before the sidewalk.

Commissioner Spiegelman commented that notification has been sent to residents of the ward and there was no feedback. He agrees that the applicant should comply with recommendations of the MCPC and asked for a copy of staff review letter as well as recommendations made by the Township's Planning Commission prior to next week's Board meeting.

Commissioner Kline suggested that the committee pass this item onto the full Board without recommendation until staff review letter, the Township's Planning Commission's recommendations as well as the MCPC's recommendations are received by the Board and how those items relate to the plan prior to the full Board meeting next week.

Commissioner Spiegelman concurred with Commissioner Kline's recommendation and he would like to see the plan for sidewalks.

Commissioner Kline suggested that the applicant attend next week's Board meeting to respond to any questions or concerns by the Board.

Commissioner Sanchez made a MOTION, seconded by Commissioner Hecker to pass this item onto the full Board without recommendation until staff review letter and recommendations made by the Township's Planning Commission and the MCPC as well as the applicant's resubmission of the plan are received by the Board.

Commissioner Sanchez asked for any public comments.

Lora Lehmann, 1431 Bryant Lane, commented that it is “refreshing to see someone come in and build to code and cooperate in so many ways, and we need more green space and wider parking spaces.”

MOTION was ADOPTED 4-0.

Item ACL-02-030818:

Commissioner Sanchez made a MOTION, seconded by Commissioner Hecker to establish a policy where Township permit or fees of any kind are not waived except for political subdivisions of the Commonwealth to be effective six months from the enactment of the Resolution setting forth this policy.

Commissioner Sanchez asked for any comments from Commissioners or staff.

Commissioner Hecker asked for “political subdivisions of the Commonwealth” to be defined.

Manager Manfredi replied it is defined by law and he will provide that for the full Board.

Commissioner Bowman clarified that if this is adopted, only the School District would be entitled to a waiver. Is that correct?

Manager Manfredi replied any political subdivision of the Commonwealth such as the School District.

Commissioner Hecker asked about Penn State University.

Manager Manfredi replied Penn State is exempted under the law. The idea is to end the practice of waiving fees and the recommendation is a six-month period so as to provide notice to those who may want a period of time.

Solicitor Clarke added that Penn State is in its own category.

Commissioner Myers said in the six month interim would the Board be taking requests on a case-by-case basis?

Manager Manfredi replied yes.

Commissioner Myers said Township Solicitor mentioned that Penn State is in its own category, is there anything else in a category of its own?

Solicitor Clarke replied Penn State does not qualify as a political subdivision. Any entity created by a legislature such as school districts, townships and boroughs are considered political subdivisions.

Commissioner Myers clarified that there is no other nonprofit entity that fits in this category. Is that correct?

Solicitor Clarke replied that is correct.

Commissioner Zappone clarified that the Township is automatically waiving permit fees for the school district regardless of the amount of those fees, which are taxpayers' dollars. Is that what this means?

Manager Manfredi replied if the school district is made to pay those fees it is still coming from the same taxpayers.

Commissioner Zappone said he does not feel the Township should be in the position of waiving permit fees.

Manager Manfredi replied this is just a recommendation, but if the majority of the Board feels we should not waive fees, then that is what we will do.

Commissioner Zappone said when he personally has work done on his house he has to pay fees, so to waive fees is unheard of and he does not agree with this at all because it is not right.

Commissioner Bowman said he agrees with the motion as written because it is reduced to just governmental entities and private entities cannot get a waiver.

Commissioner Kline clarified that this is just for permit fees and not for any type of professional consultant fees. Is that correct?

Manager Manfredi replied that is correct. Professional service costs are not fees.

Commissioner Gillespie questioned how often is fees requested to be waived by the Township.

Manager Manfredi replied there has been a few recently such as the VFW.

Commissioner Spiegelman asked do other municipalities in Montgomery County enact policies such as this one.

Manager Manfredi replied most deal with it on a case-by-case basis. Also, the Township does not pay any fees to Abington School District for anything.

Commissioner Hecker questioned whether this represents change from past practices with respect to a relationship with the School Board, and when they rebuilt the elementary schools, etc, what was the position of the Township with respect to those projects?

Commissioner Zappone replied they asked the Township to waive fees and the majority of the Board gave the School Board whatever they wanted.

Commissioner Sanchez asked for any public comments.

Lora Lehmann, 1431 Bryant Lane, was opposed to proposed motion.

MOTION FAILED – 1-3. Commissioners Hecker, Thompson and Gillespie opposed.

Item ACL-03-030818:

Commissioner Sanchez made a MOTION, seconded by Commissioner Gillespie to adopt Resolution No. 18-016 of the Township of Abington authorizing the approval of letter amendment E to the reimbursement agreement with the Pennsylvania Department of Transportation to amend the final design costs in accordance with Supplement E to the Engineering Agreement with the Project Engineer, Pennoni Associates, Inc., for the road reconstruction project located along or near State Route 2034 (Edge Hill Road), Section MGI R/W and/or State Route 2036 (Tyson Avenue), Section MGI R/W, Federal Project number X064193-L240, Pennsylvania Department of Transportation Project MPMS-57865.

Commissioner Sanchez called on Solicitor Clarke.

Solicitor Clarke said this is amending the agreement between Department of Transportation, the Township and Pennoni Associates on the Edge Hill/Tyson Roads project due to revisions of the plan made by Pennoni in regards to right-of-way acquisitions; redesign of stormwater management as well as to get ready to go out for bid. Township has acquired right-of-way from 205 of the 209 property owners. Four remaining property owners are not willing to sign as well as those who do not have all documentation yet. PennDOT requires that when engineer exceeds amount budgeted they have to submit modification to reimbursement agreement and this will carry Pennoni through bidding and construction phases. PennDOT approved amended agreement.

Commissioner Sanchez asked for any comments from Commissioners.

Commissioner Thompson asked is the Township been through most of the hurdles of the design phase of this project.

Solicitor Clarke replied design of the project is completed and PennDOT is ready to put it out for bid. Most of the changes by Pennoni will not alter ultimate design or change timetable of construction.

Commissioner Kline said final design costs went from approximately \$2.6 million to \$2.8 million, what is Township's match?

Solicitor Clarke replied he will confirm that the split is 80/20 by next week's Board meeting.

Commissioner Thompson clarified that total cost project is \$5.3 million dollars and design fees are 50% of the project. Is that correct?

Solicitor Clarke replied yes, but it still needs to be sent out for bid.

Commissioner Sanchez asked for any public comments. There were none.

MOTION was ADOPTED 4-0.

Item ACL-04-030818:

Commissioner Sanchez made a MOTION, seconded by Commissioner Hecker to appeal the decision of the Zoning Hearing Board rendered on February 20, 2018 for application number #17-07 – Application of Baederwood Residential Partners, LP.

Commissioner Sanchez called on Solicitor Clarke.

Solicitor Clarke said the ZHB rendered their decision on the second Baederwood zoning decision. Previous decision of the ZHB ruled against Baederwood Residential Partners and they appealed that to the Montgomery County Court of Common Pleas. While that appeal was pending, they filed a new application to the ZHB and that was heard and the ZHB rendered a decision and approved the application of Baederwood Residential Partners. It is recommended that the matter be appealed before the Montgomery County Court of Common Pleas and then a recommendation that the appeals be consolidated.

Commissioner Sanchez asked his colleagues to support this appeal against the Zoning Hearing Board's decision and to engage Solicitor Clarke to take on that appeal on behalf of the Township and authorize payment to Rudolph Clarke as it would be outside of the retainer. He asked for any comments from Commissioners.

Commissioner Gillespie asked what are the grounds for appeal?

Solicitor Clarke replied the Board should consider appealing it because the decision is not supported by evidence at the hearing and the owners were involved in the writing of the FTD Ordinance and that is the ordinance they are appealing from. Issues raised at the ZHB were in the form of what their hardship was and all were self-inflicted hardships.

Main reason for appeal is that the decision of the ZHB eviscerates the intent of the FTD Ordinance and ignores completely some of the public safety concerns raised during the hearing specifically issues related to parking and ingress/egress on the Fairway. For all of these reasons, an appeal should be taken on the ZHB's decision.

Commissioner Vahey asked for a copy of the original application submitted by the applicant.

Commissioner Luker clarified that the recommendation is to consolidate original appeal by the applicant and the second would be to appeal the Zoning Hearing Board's decision. Is that correct?

Solicitor Clarke replied yes, we will ask for appeals to be consolidated, so we are not arguing two different cases at the same time and that will be cost-effective for the Township.

Commissioner Luker clarified that the Solicitor for the ZHB is aware of appeal on the part of the Township. Is that correct?

Solicitor Clarke replied he is aware of the first one, but he is not sure whether Solicitor for ZHB is aware that the Township is contemplating appealing the second one.

Commissioner Gillespie clarified that this will be additional legal fees taken from Fund Balance. Is that correct?

Solicitor Clarke replied yes. We estimate this will take about 30-40 hours to conclusion of the case and fees will be in the range of \$5,000-\$7,000.

Commissioner Sanchez added that any legal fees beyond retainer will come from Fund Balance.

Commissioner Kline said he attended two of the three hearings and he agrees with Commissioner Sanchez to support the appeal of decision by the Zoning Hearing Board in which that decision is detrimental to the Township.

Commissioner Hecker commented that he also supports recommendation made by Commissioner Sanchez to appeal decision of ZHB.

Commissioner Sanchez asked for any public comments.

Lora Lehmann, 1431 Bryant Lane, commented that “residents want to see compliance with this particular developer and want to see that appeal.”

MOTION was ADOPTED 4-0.

PUBLIC COMMENT:

Commissioner Sanchez asked for any general comments relating to Administrative Code and Land Use.

Lora Lehman, 1431 Bryant Lane, commented that she is “grateful there will be no waivers for the school and she does not want to see an exception for a political subdivision.”

ADJOURNMENT: 8:19 p.m.

Respectfully submitted,

Richard J. Manfredi, Township Manager/Secretary

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