

BOARD OF COMMISSIONERS of NETHER PROVIDENCE TOWNSHIP
MEETING of October 25, 2018

A public meeting of the Board of Commissioners of Nether Providence Township, duly advertised and posted in accordance with law, was called to order at 7:30 PM on Thursday, October 25, 2018 in the Board of Commissioners' Meeting Room, Township Municipal Building, 214 Sykes Lane, Wallingford, PA 19086.

ROLL CALL

PRESENT: Commissioner Sullivan
Commissioner Garson
Commissioner Baker
Commissioner O'Connor
Commissioner Dougherty
Commissioner McKenzie-Fiumara

Gary Cummings	Township Manager
Dave Grady	Assistant Township Manager
Robert Scott	Township Solicitor
Lisa Swan	Finance Director
David Splain	Chief of Police
Charles Catania	Township Engineer
Tom Kelley	Special Counsel

NOT PRESENT: Commissioner Knapp

PUBLIC

Approximately 11 people in attendance.

ROLL CALL AND PLEDGE OF ALLEGIANCE

Mr. Sullivan noted a brief executive session was held prior to the meeting and then led the audience in the Pledge of Allegiance. Mr. Sullivan then noted a Public Hearing along with comments after the hearing would take place, but he first asked for other public comments.

PUBLIC COMMENTS

Terrea Stubbs of 706 Forrest Avenue thanked the township for providing a bulk trash collection and noted the change of location for the container from the SMFC lot to the Public Works garage. She noted the new location was hard to get to time-wise during the day and noted that Mondays were a tough day since people work and suggested it be held on a Saturday. She wasn't sure people were aware of this happening on Monday. Mr. Sullivan noted the day and location is a cost issue and we had issues with non-residents dumping and then we had to pay employees to be at those locations. Mr. Sullivan noted the Board is working to provide trucks at the old sites to collect items and take them back to the garage. Mr. Baker noted his residents have the same issues in the 5th Ward.

Lisa Jacobs of 201 Ryanard Road asked about suggested changes to the tree ordinance. Mr. Sullivan said we will look at this in November.

PUBLIC HEARING ON CONDITIONAL USE BY ECHO MEDIA FOR MEDIA SHOPPING CENTER

Presentation

Present were Ernie Angelos, attorney representing ECHO Media LLC, Drew Gorman and Bob Linn. Mr. Angelos noted the conditional use allowance in the code and they are here with two requests to increase the area of coverage and amend the landscape plans. Mr. Angelos also noted they were here to separately extinguish the alcohol prohibition and introduced Mr. Gorman who has worked acquisitions for ECHO Media LLC for years out of Pittsburgh. Mr. Gorman went through the history of the center beginning with the rezoning to allow the shopping center use in 1957, the 1959 court decree to settle the suit resulting in 13 restrictions, including prohibition of sales and on-site consumption of alcohol. He noted the suit was settled and the center was built in 1963. He noted the site plan approval in 2002 to permit the expansion of Acme that part of the center is located in Media and there was an agreement to not allow restaurants in the strip store area. Mr. Gorman stated that shortly after purchasing the property that Luk oil notified they were leaving. He stated the property is in Media so they worked with Media on the redevelopment of the Luk oil site. He noted 5 meetings were held with 30 homeowners over these issues and most favor Acme's offering beer and wine. He noted the last meeting with residents was here at the township building with Acme representatives and noted improvements to sidewalks, consolidation of trash and that the court allowed an amendment to the decree in May to permit alcohol sales and use. He displayed a rendition of the new building on the Luk oil site. Relative to the landscaping plan, he stated plantings were installed in 2002 but were removed by SEPTA. He showed photos of the work to relocate new plantings next to SEPTA Row.

Bob Linn, Linn Architects, noted he was retained by ECHO Media LLC. Mr. Linn stated they are doing overall improvements to the shopping center and noted a package of information has been given to the Board. Mr. Linn noted in 2002, plantings were planted within the SEPTA Row but now have to be planted on the side of the hill with planters. He noted they are planting 14 Japanese Cedars of 6' which will grow to 35'. He said their request is to go from 23% to 25% building area coverage and an amendment to the planting plan and that they also planted trees next to the new walk along Beatty Road and installed new accessible parking spaces.

Mr. Sullivan asked about the underlying zoning restrictions. Mr. Linn said the building coverage limit is 15% but they are allowed up to 25% as a conditional use. Mr. Sullivan asked about their planting request. Mr. Linn said their request is to just approve the improved landscaping plan.

Ms. McKenzie-Fiumara asked about 2002 planting plan. Mr. Gorman showed the specific plan while noting the plantings were within the SEPTA ROW. Mr. Baker asked about the sale of beer and wine and asked is it had to be a restaurant. Mr. Gorman said he couldn't speak for Acme but noted they would need 30 seats and need a specific license under LCB Law. Mr. Gorman noted the amended court decree allows it and of the 30 residents, 27 agreed to permit alcohol sales and consumption and 3 did not show. Mr. Dougherty asked if the increased coverage request was due to the new building and Mr. Linn said yes. Mr. Knapp asked how long the Acme lease was for. Mr. Gorman said it started in 1963 and there were many options to renew. Mr. Knapp asked when leases in the strip store were up and Mr. Gorman said some are coming up in a year. Mr. Gorman noted it was an opportunity to put in a restaurant at the old Luk oil site and Acme needs to stay competitive. Mr. Garson asked about the average size of a supermarket. Mr. Gorman stated it is about 50,000 sq. ft. and this Acme is 40,000 sq. ft.

(Mr. Knapp arrived at 8:00PM)

Public Hearing Comments

Roseanne Mulcahy of 916 Surrey Road asked if this is a public hearing and what the procedures are with respect to alcohol. Ms. Mulcahy asked about comments on alcohol and has evidence and memorandum of law. Mr. Angelos asked on whose behalf was Ms. Mulcahy submitting. She said on behalf of Rosemary Mulcahy of 916 Surrey Road. She noted her objections and listed deed restrictions on a number of items. She noted conditions of the previous conditional use approval and noted a fence requirement on the embankment. Mr. Angelos said the fence was in a resolution and not a deed and what is submitted satisfies the intent of resolution. Ms. McKenzie-Fiumara asked if there was ever a fence there and Mr. Angelos said no. There was a discussion on item #4 (fence) of the resolution not making it into the deed. Ms. Mulcahy noted there are legal tests for changes under conditional uses and have they been met. Mr. Kelley, alternate solicitor for the Township said they have met the tests. Mr. Baker asked if she was a part of the 30 residents party to the restrictions. She said no. She said there is an adverse impact and she is in the neighborhood. Ms. McKenzie-Fiumara said she heard from 4 residents who all felt there will be no adverse effects. Mr. Baker asked if she had standing. Mr. Knapp said he understands what ECHO Media, LLC wants to do but he is not sure what Ms. Mulcahy wants us to do. Ms. McKenzie-Fiumara noted she is comfortable with the procedure, but asked Ms. Mulcahy what suggestions does she want the township to consider. Mr. Sullivan said there are two issues: area coverage and a landscaping plan and asked Ms. Mulcahy if she has issues with either of these. She said no. She stated public interest will be harmed. She offered her documents to the Board. Mr. Knapp said he appreciated all her comments. She said her concern is with alcohol and crime. Mr. Angelos said a decree was in effect to July 2018 when a judge removed the alcohol restriction and in doing so, also removed the restriction in the 1963 agreement.

Paul Jacobs of 216 Ash Road noted the trees appear to be relocated over a PECO gas line. Mr. Linn noted they were moved up the hill not directly over the gas line.

Ms. Mulcahy entered her exhibits and answers to the Board. Mr. Angelos asked to have a copy.

Tom Gallagher of 107 Mulberry Lane and former Commissioner stated he was involved with dealing with the former shopping center owner, Mr. Shooster. He noted he is pro-bono counsel for Bowling Green Community of 30 and stated the majority of the community want beer and wine as well as the Starbucks on the old Luk oil site. He noted of the 30 residents party to the restrictions, 27 favored the change and 3 did not show up. He noted Acme agreed to security measures and noted the community has changed since the original deed restriction was put into place. Mr. Gallagher noted if Acme goes it will be a problem and asked the Board to take his comments on behalf of the Bowling Green 27. Mr. Baker noted the Raven Motel is closing.

Mr. Sullivan moved to amend the conditional use agreement to allow the increase from 23% to 25% and to replace the Landscaping Plan with the September 20, 2018 plan. Ms. McKenzie-Fiumara seconded the motion which passed by a vote of 7-0.

Mr. Sullivan said there is also a petition to amend 1965 agreement and moved to adopt Resolution No. 2018-11 to remove condition # 5 to allow for the sale and consumption of alcohol at Acme. Ms. McKenzie-Fiumara seconded the motion. Mr. Baker asked if it would be limited to beer and wine. Mr. Angelos said they are only seeking beer and wine and felt they would have to come back to add liquor. Mr. Dougherty said he took what Mr. Gallagher said into consideration and stated he did not want to see Acme leave. Mr. Knapp said he concurred with the loss of another anchor store and supports the sale of beer and wine. Mr. Kelly stated the petition and resolution is fine as drafted. The Motion passed by a vote of 7-0.

APPOINTMENTS TO BOARDS AND COMMISSIONS

Nothing at this time.

APPROVAL OF MINUTES

Legislative Meeting of August 23, 2018, September 13, 2018, September 27, 2018, and October 11, 2018 - Mr. Sullivan moved to approve the minutes of Legislative Meeting of August 23, 2018. Mr. Garson seconded the motion which passed by a vote of 6-0-1 with Mr. Dougherty abstaining as he was not present.

Mr. Sullivan moved to approve the minutes of Work Session Meeting of September 13, 2018. Mr. Dougherty seconded the motion which passed by a vote of 7-0.

Mr. Knapp moved to approve the minutes of Legislative Meeting of September 27, 2018. Mr. Dougherty seconded the motion which passed by a vote of 6-0-1 with Mr. Sullivan abstaining as he was not present.

Mr. Sullivan moved to approve the minutes of Work Session Meeting of October 11, 2018. Mr. Garson seconded the motion which passed by a vote of 6-0-1 with Mr. Dougherty abstaining as he was not present.

SOLICITORS REPORT

None.

ENGINEERING REPORT

Mr. Catania said he submitted his report and noted Aqua's offer of \$217,000 for payment in lieu of work to be done on the Callender Lane project and it would cost the township \$280,000. Mr. Sullivan moved to accept the amount offered by Aqua. Mr. Dougherty seconded the motion which passed by a vote of 7-0.

MANAGERS REPORT

Mr. Cummings noted the Boo Run is on October 28, the Pajama Run is on November 10, there is an electronics recycling event on November 3 in Aston, the Furness Library "Well Red" event is on November 2 and the Oy Vey 5 and 10k run is on November 4.

BUILDING AND ZONING COMMITTEE REPORT (Mike Dougherty)

SBA cellular tower proposal on Swarthmore College property – It was noted the balloon test would be held on November 13th from 8:00AM to 10:00AM and that township personnel would be on hand to take pictures.

Subdivision sketch plan for 6 E. Brookhaven Road – Mr. Sullivan noted the sketch plan for 6 E. Brookhaven Road was a 3-lot subdivision with an existing home and that it is going back to the Planning Commission.

Zoning change request for 116 and 120 E. Baltimore Pike – Mr. Scott noted the ordinance amendment needs to go to the County and Township Planning Commission and then needs to have a public hearing. Ms. McKenzie-Fiumara noted she has some comments and will forward these to Mr. Scott. Ms. Conan said she represents the applicants and would like to talk to Mr. Scott on the amendment. Mr. Sullivan moved to authorize Mr. Scott to prepare the amendment. Mr. Dougherty seconded and the motion which passed by a vote of 7-0.

Ordinances on maintenance of curb and sidewalk within ROWs – Mr. Cummings noted we are waiting to authorize the advertisement as we wanted to combine with other ads to keep the cost down.

Regulating tree contractors (require permit/registration) - Mr. Knapp noted this will be discussed in November.

COMMUNITY ENHANCEMENT COMMITTEE REPORT (Larry Baker)

Community Clean Up Day – Mr. Baker noted the event will take place on Monday October 29th at the Public Works garage.

(Mr. O'Connor left the meeting)

FINANCE AND ADMINISTRATIVE COMMITTEE REPORT (Ms. Kait McKenzie-Fiumara)

Motion to approve warrant list – Ms. McKenzie-Fiumara went through the warrant list. Mr. Baker noted he is not in favor of the SPCA cat fees. Ms. McKenzie-Fiumara listed the SWIF fee for Volunteer Fire Fighters. Ms. McKenzie-Fiumara then moved to approve the warrant list. Mr. Sullivan seconded the motion which passed by a vote of 6-0.

Ordinance allowing delinquent tax collection by Portnoff Associates – Ms. McKenzie-Fiumara noted the collection fees and that the Board will hold off until the November meeting.

Repairs to leaf machine – Ms. McKenzie-Fiumara noted Mr. Dixon's email on possibly getting a new motor and after discussion, Mr. Dixon is to obtain the specific amount, so the Board can make a decision.

2019 Budget Schedule – Ms. McKenzie-Fiumara noted the schedule of upcoming meetings.

INFRASTRUCTURE COMMITTEE REPORT (Matt Sullivan)

DCED Multi-modal grant – Mr. Sullivan noted the RFPs for design are due Oct. 29.

Street lighting requests – Mr. Sullivan noted the request for LED lights for Oakland Avenue and E. Possum Hollow Road. It was noted the cost for each is \$330. The staff was asked to check if the installation on Oakland Avenue is acceptable to the two affected residents.

PARKS AND OPEN SPACE COMMITTEE REPORT (Matt Garson)

Summit School – Mr. Garson noted the Township is in the process of getting pricing and specifications for the demolition of the school building.

PECO Green Region Grant – Mr. Garson noted the grant was for \$10,000. Mr. Garson moved to approve Resolution No. 2018-12 authorizing the grant application. Mr. Dougherty seconded the motion which passed by a vote of 6-0. Mr. Garson also noted the need to address the Bog Turtle study.

PUBLIC SAFETY COMMITTEE REPORT (Micah Knapp)

Motion to advertise ordinances establishing stop signs and Maryland Ave. parking restriction – Mr. Sullivan moved to authorize advertising of these ordinances with other ordinances. Mr. Baker asked to clarify that there are two stop signs on Parkview Slope

Request authorization from PA DOT for a 4-way stop at Plush Mill and Turner Roads –

Ms. McKenzie-Fiumara stated the Township Manager is to send a letter to PA DOT with this request.

PUBLIC WORKS COMMITTEE REPORT (Mr. Sullivan in Mr. O'Connor's absence)

Leaf collection – Mr. Sullivan noted the leaf trucks are out in full force and remaindered residents to keep the leaves on their lawn and in the yard.

ADJOURNMENT – Mr. Sullivan noted the next meeting is a budget meeting on November 1st.