

MIDDLETOWN TOWNSHIP  
DELAWARE COUNTY, PENNSYLVANIA  
MAY 9, 2016

Minutes of the Regular Meeting of Township Council Held on, May 9, 2016 at 7:00 P.M., in the Township Administration Building located at 27 North Pennell Road

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Present: R. Carlson, S. Galloway, S. Powell, C. Quinn, and D. Helm

B. Clark, E. Janetka, Engineer, and J. Damico, Esquire

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1. OPENING

Mr. Galloway called the meeting of the Council to order at 7:04 P.M., and led recitation of the Pledge of Allegiance to the Flag. He stated he was filling in as Chair for the evening due to the absences of Mr. Kirchgasser and Mr. Shropshire. He noted there was an executive session prior to the meeting to meet with the solicitor representing Sun Pipe Line and to discuss items 6B and 6E.

2. APPROVAL OF MINUTES

Mr. Carlson moved to approve the minutes for the March 28, 2016 meeting. Mr. Quinn seconded this motion and Council approved unanimously with a vote of 5-0.

Mr. Carlson moved to approve the minutes for the April 11, 2016 meeting. Mr. Quinn seconded this motion and Council approved unanimously with a vote of 5-0.

Mr. Carlson moved to approve the minutes for the April 25, 2016 meeting. Mr. Quinn seconded this motion and Council approved unanimously with a vote of 5-0.

3. COMMENTS FROM THE PUBLIC

None

4. REPORTS

A. CHAIRMAN

Mr. Galloway informed the audience that Community Day would be held at Penn State Brandywine on May 14<sup>th</sup> from 11 AM through 3 PM, rain or shine.

B. LAND PLANNING

Mr. Quinn reported that Mr. Clark advised the Committee to send a letter to the PA Public Utility Commission regarding the regulation of cellular antennas and WV-PP (Franklin Mint Development) was present to discuss an issue that will be the topic of a different Council meeting.

C. FINANCE AND ADMINISTRATION

Mr. Carlson reported that the Committee reviewed the animal control shelter services contract for Brandywine Valley SPCA.

D. MANAGER

None

5. PUBLIC HEARING

- A. Conditional Use Application of Granite Run Buick GMC to permit a motor vehicle parking lot on the property located at 8 S. New Middletown Road in the B-General Business Zoning District pursuant to Section 275-124C-4 of the Zoning Ordinance.
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Tim Sullivan, legal representative of the applicant, explained that a conditional use application was filed March 28<sup>th</sup> in order to allow Granite Run Buick GMC (GRBG) to park vehicles temporarily at the former Denny's property. He entered the following into evidence:

A-1: 3 return receipt cards and 1 envelope returned to the 4 abutting properties

A-2: Deed for the property, listing JR & Sons, Inc. as the owner of 8 S. New Middletown Road and A-3: Consent of the Board of Directors of JR & Sons, Inc.

A-4: The Parking Lease Agreement entered into by the applicant and JR & Sons, which allows for the applicant to rent the parking lot on a monthly basis and cancel at any time once providing a 30-day notice. Although the lease is dated March 1, 2016, Mr. Sullivan noted it was not signed until April, 20 2016.

A-5: An aerial photo of the property in question, which shows that the parking lot is L-shaped. He also identified the part between Denny's and the Cloverleaf that is also being utilized.

A-6 5 photographs of cars, as they are stored at the Denny's property.

Mr. Quinn motioned to open the hearing and permit all of Mr. Sullivan's comments to be part of the official record of the meeting. Mr. Helm seconded this motion and Council approved unanimously with a vote of 4-0.

Ryan Irish, owner of GRBG, was sworn in by the court recorder. Based off of questioning by Mr. Sullivan, Mr. Irish testified that he was the owner and auto dealer for GRBG, and submitted the conditional use application in order to park cars at the former Denny's property. He also reported that he provided Mr. Sullivan with the evidence submitted as A-1 through A-4 and worked with Mr. Sullivan to provide A-5. Mr. Irish went on to report that prior to the hearing, he and Mr. Sullivan counted 40 lined parking spaces. His plan is to park 60-70 cars there in a stacked fashion. The photograph indicated the arrangement this would be done.

Based on Mr. Sullivan's questioning, Mr. Irish explained that they looked at the 27 criteria for considering conditional use applications, and most importantly, #5. He does not believe parking at this lot would affect the health and/or safety of Township residents. He also felt that #24 through #26 did not apply to this specific application since there are no changes to the property being proposed. There would also be no changes to the lighting plan. He also noted that while he was not currently parking cars in the grass at this property, he would agree to not do this if the Township made that part of the approval negotiations. While this is a month to month lease, he had no intention of terminating it soon unless the building was successfully rented out by the Landlord.

Mr. Galloway asked what he did with parking prior to using this lot. Mr. Irish reported he used to park his inventory at Limburg Truck Center in Media and at Elwyn. Based on further questioning by Mr. Galloway, Mr. Irish testified that he was parking vehicles at the property in question for about a month prior to formally submitting the conditional use application. He got notice from the Township to file this application since cars were being parked there without permission from the Township. Mr. Galloway stated that in the future, Mr. Irish should ask before parking elsewhere. Mr. Helm asked if he used to park at the Gold Lot across the street from the dealership and Mr. Irish answered in the affirmative.

Mr. Galloway asked what would happen if Denny's was leased and Mr. Irish stated he would have to get the cars sold. He also noted he was looking for a better car storage option. Mr. Damico stated that his understanding was that parking was limited to paved asphalt in Exhibit A-5 and Mr. Irish agreed.

Based on further questioning by Mr. Galloway, Mr. Irish reported that maintaining inventory was done on a continuous basis.

Mr. Clark entered two items into evidence on behalf of the Township:

T-1: Proof of publication for the hearing in the Daily Times on April 10<sup>th</sup> and April 17<sup>th</sup>

T-2: Notice posted on the property about the hearing, which was posted on site on April 27<sup>th</sup>

There were no objections by Mr. Sullivan to these new exhibits.

There were no questions or comments from the audience.

Mr. Carlson motioned to close the hearing. Mr. Helm seconded the motion and Council approved unanimously with a vote of 5-0.

## 6. NEW BUSINESS

A. Review of Conditional Use Application 16-2—Granite Run Buick FMS—8 S. New Middletown Road

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Mr. Quinn motioned to approve Conditional Use Application 16-2 contingent upon Mr. Damico's restriction of only using the paved area as shown by Exhibit A-5. Mr. Carlson seconded the motion and Council approved Resolution 2016- 51 unanimously with a vote of 5-0.

Mr. Galloway noted that Mr. Sullivan was present for Item 6D as well and asked him if the matter was brief. Mr. Sullivan answered in the affirmative. Mr. Galloway then asked Mr. Mita, who was there for Item 6B, if he was accepting of having Mr. Sullivan present 6D first. Mr. Mita agreed. Mr. Carlson motioned to move to Item 6D. Mr. Helm seconded the motion and Council approved unanimously with a vote of 5-0.

D. Review of Reverse/Lot Line Adjustment subdivision plan of property of Sunnybrae Farm, LP: 79-81 S. Pennell Road (Wolff)

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Mr. Sullivan, legal representative for the applicant, explained that this was a subdivision application for the Wolff property, which is on both sides of Whirlaway Road (79 S. Pennell Road, where the original farmhouse is located, and 81 S. Pennell Road). Fran Wolff and Ashley Wolff were present and are the current owners of the property due to the death of Peter Wolff last year.

Mr. Sullivan explained that the Wolff's came to the Township for a reverse subdivision of the two properties; at which time they were informed by Mr. Clark that the lot south of Whirlaway Road was a separate lot, as per a subdivision agreement previously signed by Ken Wolff and the Township. Mr. Sullivan reported that the current plan would make the property conforming with this 1979 agreement and defined the property South of Whirlaway Road as one lot and the rest of the property as another lot.

Mr. Sullivan reported that he spoke with Mr. Clark and Mr. Damico earlier in the day about changing the labels on the plans and Mr. Houtmann got this task completed. While there are a few minor details needing to be addressed, he felt the plan properly reflects the request of the applicant.

Mr. Damico commented that now Lot 1 includes the property on Whirlaway Road past the 2-story structure. There are 2 folio numbers and there should only be 1. He stated that when this plan is filed, he will request the tax assessment department to make 79 S. Pennell Road to be the current folio number and request another be made for the other lot. He also reported that the area south of Whirlaway Road will be given a new address - 8 Whirlaway Road. The other lot will be recorded as 79 S. Pennell Road. 81 S. Pennell

Road will cease to exist. Lastly, Mr. Damico commented that he reviewed the application and was satisfied with the changes.

There were no questions.

Mr. Carlson motioned to approve the application. Mr. Quinn seconded the motion and Council approved Resolution 2016-52 unanimously with a vote of 5-0.

Mr. Carlson motioned to move to agenda Item 6E. Mr. Quinn seconded the motion and council approved unanimously with a vote for 6-0.

E. Request for Modification of Conditions of Approval-WV-PP Towne Center: Wawa Convenience Store—1242 W. Baltimore Pike

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Steve Polaha, legal representative for the applicant, reported that the preliminary subdivision and land development plan was approved with 10 conditions by Council. He stated there was a problem with 2 of these conditions that he wished to address.

First, condition #5 stipulates that site lighting should be a maximum of 4,000 K bulb and the applicant wishes to change this language to 4,000 K color temperature. Mr. Galloway stated that should not be a problem.

Second, Mr. Polaha stated condition #6 stipulates that the rear service road be designed in order to meet the requirements to receive Liquid Fuels funding from the State, should the road ever be dedicated to the Township. Mr. Polaha explained that it is not the intention of the applicant to ever dedicate this road to the Township and that it may not be possible to meet the requirements mandated by the State to qualify for Liquid Fuels funding.

Mr. Galloway asked Mr. Damico how to handle that request. Mr. Damico recommended a clause be added to condition #6 with language stating “if can be done to PADOT specifications and approval.” Mr. Polaha was agreeable to this language addition.

Mr. Carlson motioned to make the modifications discussed. Mr. Quinn seconded the motion and Council approved Resolution 2016-53 unanimously with a vote of 5-0.

Mr. Clark noted that for clarity, all prior conditions would be listed in the new Resolution to assure they were all in one place.

Mr. Galloway asked if any audience member was present for Item 6C. Nobody answered so he noted Council would move to Item 6B.

B. Review of Preliminary 3-Lot Subdivision Plan: Mita—272 Oak Avenue

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Mike Gavin, legal representative for the applicant, explained that the house at 272 Oak Avenue is currently boarded up and not attractive compared to the properties surrounding it that are well maintained. As a result, it could cause a 10% price swing for homeowners in the area, according to a Temple University study. He went on to state that it is Mr. Mita’s intentions to tear down the house and redevelop the property. His goal is to complete a 3-lot subdivision.

The main concern for redevelopment of the property is stormwater management; as water tends to run down the property to the adjacent properties behind it. Keeping this in mind, Mr. Gavin reported the developer wanted to remain 80% green, preserve a portion of the wooded area and have 4 rain gardens. He informed Council that the lot does not perc, so the proposed development would offset the placement of homes in relation to the surrounding homeowner's properties with the rain gardens. Mr. Gavin, provided a brief overview of rain gardens and highlighted that they are an approved form of stormwater management that should help rain issues of not only the purchasers of the home but also the surrounding community.

In order to balance interests, Mr. Gavin explained there were several waivers being requested. First, the applicant submitted a waiver regarding widening the Oak Avenue cart way. He commented that doing so would be out of place for this roadway and would not allow the developer to maximize the amount of green space. Mr. Clark informed Mr. Gavin that the requirement isn't to widen the cart way but only to provide additional right of way to the Township in case road widening is determined to be needed at a later point. He noted that this request has been made of other properties on the road in order to possibly bring it to the current standard of 50 feet in the future. Mr. Gavin stated he had no issues with granting the right of way request.

Mr. Gavin went on to make a second waiver request, related to the grading and sloping. He explained that the original house cut into the slope and the entire back area of the property is in-fill. As a result, the property cannot be developed without disturbing fill. Because this is fill and not a steep slope, he did not believe the requirement applied. He stated the engineer was present to answer any questions about this.

The third waiver Mr. Gavin requested dealt with infiltration volume requirements. He reported the property is clay-based and cannot perc and that the Township engineer instructed the developer to go to PADEP for guidance. The developer did so and was recommended by the PADEP to develop 4 rain gardens, which would be able to retain water during storm events and provide for a certain level of cleaning the water. Using a diagram, he showed how the rain gardens would be effective. He explained that each lot would have one, which would drain to the wetlands and reduce the flow. He reiterated that because of the clay soil, the property cannot meet infiltration volume requirements.

Mr. Galloway asked for additional testimony on this manner. Ken Farrell, engineer for the applicant, reported that infiltration testing was completed and showed the property does not perc. He provided this information to Mr. Janetka. The report then went to PADEP for best practice guidance. The rain gardens have the same effect on water infiltration, with the difference being they are above ground. He stated the 4 proposed rain gardens would decrease the rate of stormwater and run off. Each house would have a dedicated rain garden. There would also be an additional rain garden to act as a collection point for water gathered off the road.

Mr. Janetka explained that he does not disagree with Mr. Farrell, but emphasized that water infiltrated below ground goes away, whereas that would not be the case with rain

gardens. Instead, the flow of the water would be slowed down and released in the same manner. It is supposed to be designed to be consistent with DEP requirements for these types of sites. While it is not the best approach traditionally, it is the next best thing. Mr. Quinn asked for information on the maintenance of rain gardens. Mr. Janetka stated it was hard to predict for the long-term, but that maintenance was necessary in order to be effective. This was no different than any other stormwater management system though.

Mr. Galloway asked what the difference was between a retention basin and rain garden. Mr. Janetka explained that with basins, water runs in off the surface, is detained and then released slowly. Rain gardens are similar but also have a filtering system underground with impervious liners to stop water getting through the house foundation.

Mr. Galloway asked if Mr. Janetka needing anything additional from the applicant. Mr. Janetka reported that there were several comments made regarding the rain garden design to assure they are PADEP compliant and that he expected to get a response soon. Mr. Farrell stated that he agreed with Mr. Janetka's summary and that the applicant would comply with Mr. Janetka's comments. The response would be received within the next 2 weeks; however, it was the applicant's intention to keep the process moving.

Mr. Quinn noted that retention basins usually have rain gutters empty into the pit and asked what happened with rain gardens. Mr. Farrell reported that rain gardens are designed for gutters to drain directly into the system. Mr. Helm asked if one of the homeowners would be responsible for the 4<sup>th</sup> rain garden identified for the roadway runoff. Mr. Farrell stated Lot 3 would maintain two rain gardens; Lots 1 and 2 would each have one.

Mr. Galloway asked for the approximate lot sizes and what Mr. Mita was valuing them at. Mr. Gavin reported that Lot 1 was .95 acres, Lot 2 was .58 acres, and Lot 3 was .3 acres; for a total of 1.83 acres. Mr. Mita reported the homes are planned to be between 2,100 and 3,100 square feet and he expected to sell them for \$500,000-\$600,000.

Mr. Gavin noted that the Ordinance requires 4 to 1 slopes and that the applicant was requesting a waiver be granted to proceed at 2 to 1. If this was permitted, he could make the basins steeper to better manage stormwater management for these homes as well as the neighbors. With rain gardens, vegetation is self-managed and does not need to be mowed or weeded.

Mr. Gavin went on to highlight 3 other waivers: relief from having to meet a minimum of a 10-foot wide detention (rain garden) basin berm; changing the diameter of the basin outlet pipes from the required minimum of 15 inches to 12 inches, which would allow them to maintain the pipe at a more feasible volume than the 15 inch would allow; and allowing an overall volume of 3 to 1 instead of 2 to 1. Mr. Gavin also noted that the required setback of 50 feet from wetlands is a buffer that could not be met; however, the rain gardens have been designed as deep as possible. In addition, the developer would offer a deed of dedication to the Township or an easement for this land so that the wetland buffer could be preserved and the Township would be able to enforce it easily. Mr.

Janetka stated his recommendation would be for a deed restriction in order to protect the area. He noted that he would make that recommendation regardless of lot size.

Mr. Galloway noted that Council had no plans to make a decision on this matter at the meeting, but would plan to do so at the May 23<sup>rd</sup> meeting. He asked if anybody had any questions.

Susan Masters, 6 Laurel Lane, stated she lived behind the proposed Lot 3 for 47 years. She noted that the Planning Commission unanimously denied recommending this proposal for development. Mr. Galloway commented that the Planning Commission's role is to advise Council only, and regardless of how they vote it still comes in front of Council for review and consideration. Ms. Masters stated she understood this but felt the Planning Commission did not serve the intended purpose if Council did not consider their recommendation. She went on to state that her property sits at the lowest point of the proposed development. She has spoken with Mr. Mita's consultants and understands that some of the property is not meant to be developed. She expressed that the rain gardens would eventually leach out to her property and that she was upset because she has had extensive work done to reduce water on her property via a pipe. She reported that water runs out of this pipe at a rate of 2 gallons every 2.5 seconds and that the water is coming from Oak Avenue. She stated that Mr. Gavin told her that her methods to reduce water on her property were illegal. Her house would have collapsed by now without them though. She went on to share that many people have taken issue with this project, including the engineer.

Ms. Masters went on to express that the problems with 272 Oak Avenue are not only stormwater related, but also spring-water related. Springs are unpredictable and it is possible that the new homes may have them. She questioned if the new houses would have sump pumps.

She felt the developers wanted impervious upon impervious and that just can't be done because of the implication to the homes on Laurel Lane. She stated that residents on Laurel Lane have spent thousands of dollars on water issues and the developer's idea of doing rain gardens won't work because the gardens won't grow under all of the trees on the property. She emphasized it would be a complete disaster for Laurel Lane if the development was approved. She noted that all the work she has had done on her property to reduce the water issue has failed and that last year Brian Seck of Helbeck Engineering in Downingtown told her it was one of the worse water issues he's ever seen. She felt Building 3 houses on the Oak Avenue property would disturb the springs and make matters even worse.

Ms. Masters shared that Rob Rovito had his property surveyed and a point at the bottom of the applicant's proposed development is in his land. Mr. Rovito, 276 Oak Avenue, was present and verified that was correct. Ms. Masters felt there were too many red flags and waivers necessary to make this project work. She shared that her lower level windows are ground height and she was sure this project would mean she would get water through

them. She went on to state that her son works at CHUB Insurance and estimates the slope from her property to the applicant's to be 30 to 50 feet, which is very steep in her opinion.

Ms. Masters also expressed concern for the maintenance of the rain gardens and cleaning out any clogs that may occur. She felt there would be disastrous consequences if the project is approved and felt the land should just be left as open space.

Ms. Masters asked where the sewer connection would take place and how it would impact the area. Mr. Clark stated he believed it would connect to Oak Avenue via force main. Typically, each house has a small pump and tank that collects sewage and pumps it to the public sewer main.

Marian Bennett, 10 Laurel Lane, stated she agreed with everything Ms. Masters expressed. She informed Council she lives behind the second proposed home and that there are no trees behind it. She stated the property line is just feet from her home. The water runoff from the Oak Avenue property comes onto her property. She currently has 2 berms, and a sump pump that runs three times an hour and requires an in-house generator to keep it running. She noted the issues she is discussing primarily deal with spring water; not rain water. Ms. Bennett shared that she has spent over \$35,000 in water retention management. She reported there are springs in her yard and Mr. Kagarise's. She is concerned that the money she has spent to retain the water on her property will be disturbed by the development.

Ms. Bennett went on to state that she doesn't want to see another house behind her; nor does she want to have standing water that attracts mosquitos. She agreed with Ms. Masters that there were too many issues with the development for it to be approved. While she feels the developers may be doing the best they can, she did not think it was enough in order to avoid water damage to the homes on Laurel Lane.

Bob Fadgen, 267 Oak Avenue, empathized with the residents of Laurel Lane, but expressed that this is an existing problem. He felt there was no way of telling if the development would really make the problems for Laurel Lane worse or if it would only be the existing problems. He stated the only thing he knew for sure was that it definitely would not get better if the applicant's property remained as-is. Mr. Fadgen also felt that the existing structure on the property was not safe and felt it was dangerous for the kids of the neighborhood.

Richard Kagarise, 12 Laurel Lane, informed Council he lived there since 1968 and agreed the houses on Laurel Lane should never have been built. Those houses are already existing though and he felt allowing the development of 272 Oak Lane would be a second mistake. He felt there was no guarantee rain gardens would solve the problems of springs or stormwater. Mr. Kagarise stated that the PADEP can measure storms with names like 50 year and 100 year rain events; however, there is no guarantee storms of that size wouldn't come sooner than that. He also felt that granting so many waivers to allow the project to continue could result in major damage to Laurel Lane. He suggested that

Council consider an escrow fund be set up for such damage in the amount of \$200,000 or more if approval occurs.

Randall Sampson, 14 Laurel Lane, informed Council that he lived at the highest point of Laurel Lane and commented that most of the trees shown on the diagram no longer exist. Over the past 20 years, his house has flooded 5 times. He now has a pile of sand bags by his garage so he is ready if another flood is eminent because he can't afford for his ground floor to flood again. He requested Council to not consider granting waivers if the project is to be approved.

Tim Donnelly, Mr. Mita's partner for the project, stated that he grew up at 214 S. Pennell Road, which also had a lot of water problems. He reminded the Laurel Lane residents that the water they get does not just come from 272 Oak Avenue, but also from Highland Avenue. He said that he would not be involved in the project if he didn't think they could make it better for all involved; including residents on Laurel Lane.

Mr. Carlson motioned to continue this matter to the May 23<sup>rd</sup> meeting. Mr. Quinn seconded the motion. Prior to the vote, Mr. Masters asked what Council wanted to see in done in the next two weeks. Mr. Galloway stated the engineer still was waiting on information that was promised, but that it was not Council's job to detail how the applicant should conduct his/her presentation. Council approved the continuance unanimously with a vote of 5-0.

C. Review of Zoning Hearing Board Application 2016-5: Rossi—8 Church Road

Mr. Clark explained that the application was for a residential property on Church Road. When the subdivision was originally approved, the lot was split into R-1 and R-2 zoning, and then rezoned as R-1 in 1986. The applicant wants a pool and is looking for a special exception. Council did not feel the Township needed to be legally represented.

F. Approval of Bill List

Mr. Galloway read aloud the bill list presented for Council's consideration for approval for payment.

Mr. Quinn moved that payments under the May 9, 2016 Bill List be authorized for payment by the Finance Department:

<b>GENERAL FUND</b>		
Chili's Inspection Services	Contracted Services-March	\$7,040.00
Longley Insurance Agency	Renew Policy--Commercial Package	\$27,802.00
Independent Blue Cross	May Health Insurance	\$10,121.93

Highway Share	\$10,714.11
Cobra Share	\$904.40
Recreation Share	\$3,998.76
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	\$25,739.20
Total General Fund	<u>\$60,581.20</u>

**RECREATIONAL ENTERPRISE FUND**

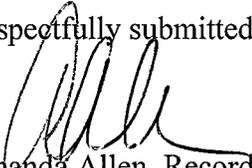
PNC Credit Card-To G/F	Various Trips	\$16,815.91
Touriffic Travel	Nashville, Niagara Falls & Boston	\$44,995.00
	Total Recreation	<u>\$61,810.91</u>

Mr. Galloway seconded this motion and Council approved Resolution 2016-54 unanimously with a vote of 5-0.

8. ADJOURNMENT

Mr. Galloway adjourned the meeting at 8:55 PM.

Respectfully submitted,



Amanda Allen, Recorder