

A special meeting of the Middle Smithfield Township Board of Supervisors was held on Wednesday, April 25, 2012 at 6:00 p.m. at the Schoonover Municipal Building with Mitchell K. Marcus presiding.

Members present: Mitchell K. Marcus, Annette Atkinson and Michael J. Dwyer. Also in attendance: Township Solicitor Michael Gaul, Township Engineer Fred Courtright, Township Zoning Officer Wayne Rohner, Stenographer Donna Kenderdine, Township Secretary Michele Clewell, and numerous residents.

Interested parties in attendance: Attorney Erik Schock on behalf of Wawa, Scott Nathanson and Frank Ciani for the 209 Plaza Associates, Inc. Conditional Use Hearing.

Attorney Gaul stated that a conditional use hearing will be held and if anyone wishes to be a party to the proceedings, you must sign in.

Engineers Report

CCP Phase 3 Section 5 Request for Modifications - Mitchell Marcus made a motion to table action on the modification requests until the next regular meeting. Annette Atkinson seconded the motion. Motion carried 3-0.

Andrew Daros Minor Subdivision Reaffirmation – Fred Courtright stated that the Supervisors previously affirmed a plan, however, there was a plan with a later revision date and supporting documentation that was provided by Mr. Daros as stated in Mr. Courtright's review letter dated April 19, 2012. Upon review of the plan and documentation, Mr. Courtright stated that he would recommend reaffirmation of the November 6, 2007 plan.

Mitchell Marcus made a motion to reaffirm the November 6, 2007 minor subdivision plan of Andrew Daros. Annette Atkinson seconded the motion. Motion carried 3-0. Attorney Gaul stated that a note should be added to the plan that this plan supersedes all other previously recorded plans.

Solicitors Report

Routunda Tax Assessment Appeal - Attorney Gaul stated that this is a Stipulations of Settlement between Routunda and Monroe County Board of Assessment and East Stroudsburg Area School District. Attorney Gaul is required to sign on behalf of the Township.

Mitchell Marcus made a motion authorizing Attorney Gaul to sign the Stipulations of Settlement. Annette Atkinson seconded the motion. Motion carried 3-0.

Wawa Amended Land Development Plan - Attorney Schock reviewed the draft improvements agreement.

Attorney Gaul asked if all the outside approval have been met. Fred Courtright stated that he does not have the PennDOT HOPs. The Monroe County Conservation District and PA DEP approvals are in place. Attorney Schock stated that he will provide the PennDOT permits to Mr. Courtright.

Attorney Schock stated that the Cost Estimate was re-done. Fred Courtright stated that he is satisfied with the revised Cost Estimate.

Attorney Gaul stated that the final form of the Improvements Agreement needed to be approved. Some of the prior conditions to WAWA's zoning approval are not relevant anymore. The status of these conditions are set forth in Exhibit B of the Improvements Agreement, and are as follows:

- ⤴ Condition No. 11 – Clarification to confirm that the condition does not prohibit the parking of customer vehicles on the property during overnight hours as the proposed Wawa is a 24-hour facility,
- ⤴ Condition No. 19 – Refuse removal will be in an enclosure and adjacent to the store as depicted on the revised plan,
- ⤴ Condition 27 – Deleted, the revised plan removed the parking spaces that had been the subject of Condition No. 27,
- ⤴ Condition 28 – Deleted, the revised plan eliminated the access to the adjoining property,
- ⤴ Condition 29 – Modified to refer to Section 100-080 of the existing Zoning Ordinance as reference to subsection 5.227 of a previous Zoning Ordinance is obsolete due to new technology of lighting.

Mitchell Marcus made a motion to approve the form of the Improvements Agreement for Wawa subject to any additional revisions requested by the Solicitor and approved by the Board of Supervisors signing. Annette Atkinson seconded the motion.

Al Decker asked if Wawa has a hazmat on site and Attorney Schock stated yes and a run off and spill plan is in place.

Motion carried 3-0.

Wawa Stormwater Facilities Maintenance Agreement for the Land Development Plan – Fred Courtright provided a letter dated April 24, 2012 that establishes stormwater fees to defray the cost of plan review and construction inspections. Attorney Schock stated that he has reviewed the letter and is satisfied with its contents.

Mitchell Marcus made a motion to approve the security amount(s) and letter as presented by Fred Courtright. Annette Atkinson seconded the motion. Motion carried 3-0.

Attorney Gaul stated that in order to approve the recording of the Wawa Revised Land Development Plan in its current form or with such revision approved by the Township Engineer and Solicitor the following conditions would be required to be met:

1. Execution, and delivery of the Improvements Agreement with the Township, with regards to the Township required improvements,
2. Letter of Credit satisfactory to the Township Solicitor in regards to the Township required improvements,
3. Execution and delivery of a Stormwater Facilities Maintenance Agreement in a form satisfactory to the Solicitor and the Supervisors signing it, which agreement is approved, and

- payment of the required escrow fees,
4. Execution of Improvements Agreement for improvements permitted in Township's name under PennDOT HOP in a form acceptable to the Township Solicitor and Supervisors signing it; and
 5. Providing PennDOT with a Letter of Credit for the permitted improvements in the Township name in the PennDOT right-of-way.

Upon the completion of the above, with approval of Township Engineer and Township Solicitor, the plan can then be executed and released to be recorded, as it will not be coming back to the Board of Supervisors.

Michael Dwyer made a motion to approve based on the conditions as stated by the Township Solicitor. Annette Atkinson seconded the motion. Motion carried 3-0.

Crossings at Marshalls Creek – Attorney Gaul stated that the Cost Estimate and a form of an Improvements Agreement has been reviewed by Fred Courtright and is satisfactory.

Michael Dwyer made a motion to approve the form of the Improvements Agreement for the Route 209 Bypass Associates, LLC with such changes as required or approved by the Township Solicitor and Board of Supervisors. Annette Atkinson seconded the motion. Motion carried 3-0.

Attorney Gaul stated that he is satisfied with the Letter of Credit provided him, except the L/C calls for a presentation in Alabama. The L/C is with Regions Bank, which apparently does not have a branch in Pennsylvania. The Supervisors indicated their reluctance to accept such a L/C. Mitchell Marcus asked for a clarification that the L/C is irrevocable. Attorney Gaul confirmed that it is irrevocable. Following further discussion, Attorney Gaul stated that he will continue to work on resolving this location of presentation.

Attorney Gaul stated that the developer thought they had PennDOT approval, but in fact do not have an HOP. The developer is requesting to begin site work without the PennDOT HOP, with the understanding that the Certificate of Occupancy would not be issued until the HOP is obtained.

Following further discussion, the Board of Supervisors did not grant the request to begin work without the PennDOT HOP.

Fred Courtright provided a letter dated April 24, 2012 that establishes stormwater fees to defray the cost of plan review and construction inspections.

Michael Dwyer made a motion to approve the stormwater fees letter dated April 24, 2012. Annette Atkinson seconded the motion. Motion carried 3-0.

Public Hearing – 209 Plaza Associates, Inc.

Donna Kenderdine took a stenographic record of the public hearing.

Michael Dwyer made a motion to open the public hearing for the 209 Plaza Associates, Inc. outdoor flea market. Annette Atkinson seconded the motion. Motion carried 3-0.

Scott Nathanson and Frank Ciani presented a Conditional Use Application for a Public Hearing for a proposed outdoor flea market to be located within the Liberty Square Shopping Center off of Route 209. Mr. Nathanson stated that he does not have legal representation.

Attorney Gaul went through the Township exhibits with Zoning Officer, Wayne Rohner.

The applicant presented numerous alleged signed petitions in favor of the outdoor flea market. There were objections to their admissibility. Attorney Gaul stated that this will be ruled on later.

Testimony regarding the number of vendors, access into the proposed outdoor flea market, signage, and safety issues were received.

Mitchell Marcus made a motion to adjourn the public hearing until Thursday, May 31, 2012 at 6:00 p.m. Annette Atkinson seconded the motion. Motion carried 3-0.

Mitchell Marcus made a motion reconvene the regular meeting at 8:40 p.m. Michael Dwyer seconded the motion. Motion carried 3-0.

New Business

Act 90 Blight Ordinance – Annette Atkinson made a motion directing Attorney Gaul to draft a Blight Ordinance. Mitchell Marcus seconded the motion. Motion carried 3-0.

Schedule Conditional Use Public Hearing for the Pocono Square Mall Open Air Market - Mitchell Marcus made a motion to schedule the Pocono Square Mall Conditional Use Public Hearing for May 18, 2012 at 6 p.m. Annette Atkinson seconded the motion. Motion carried 3-0.

Public Comment

Larry Dymond asked a question about trees being removed on Lower Lakeview Drive behind Lake of the Pines development. Michael Dwyer stated that the township public works department did the work as the cable company or PennDOT would not respond. Mr. Dymond thanked Mr. Dwyer.

Michael Dwyer stated that the township is giving away excess road material and if anyone is interested to please contact Cory Lyon. The road material is due to crushing excess material that is being hauled in due to the Marshalls Creek Traffic Relief project.

Temporary signage along Route 209 was discussed and the Supervisors should conduct a site visit to Country Club of the Poconos to inspect the site that the developer is requesting the modification requests.

Executive Session

Mitchell Marcus made a motion to go into executive session at 8:47 p.m. to discuss Hillside Inn Conditional Use. Annette Atkinson seconded the motion. Motion carried 3-0.

Mitchell Marcus made a motion to reconvene the meeting at 10:02 p.m. Annette Atkinson seconded the motion. Motion carried 3-0.

Michael Dwyer made a motion to adjourn the meeting at 10:03 p.m. Annette Atkinson seconded the motion. Motion carried 3-0.

Respectfully submitted,

Michele L. Clewell,
Township Secretary
April 25, 2012.