

The regular meeting of the Middle Smithfield Township Planning Commission was held on Thursday, August 15, 2013 at 7:00 p.m. at the Schoonover Municipal Building with Mark Oney presiding.

Members present: Mark Oney, Bob Early, Parin Shah, Carrie Wetherbee and Gary Summers. (Wayne Bolt was absent). Also attending: Planning Commission Solicitor Todd Weitzman, Esq., Planning Commission Alternate Solicitor Michael Gaul, Esq., Planning Commission Engineer Fred Courtright, P.E., Planning Commission Alternate Engineer Christopher McDermott, Township Secretary Michele Clewell and several interested parties and members of the public.

### **Approval of Minutes**

Carrie Wetherbee made a motion to approve the July 18, 2013 minutes. Bob Early seconded the motion. Motion passed 5-0.

### **Plan Submittals**

Philip & Virginia Cozzi and Ronald Meinders, and Michael Elwell Minor Subdivision Plan – Fred Courtright provided his letter dated August 15, 2013 recommending acceptance of the submittal. Mr. Courtright explained that the owners of the properties propose combining (3) lots to create (2) final lots. Bob Early made a motion to accept the submittal for review. Carrie Wetherbee seconded the motion. Motion passed 5-0.

(Fred Courtright and Attorney Weitzmann were excused from the meeting at 7:06 p.m.)

### **Plan Reviews and Unfinished Business**

Monroe Pike Land LLC, CCP Phase 3 Section 5 PRD Plan – Applicant's attorney, Charlie Vogt, Esquire stated that Brick Linder of Linder Engineering submitted revised plans that are before the commission members for their review.

Attorney Gaul provided his review memorandum dated August 15, 2013 to the commission members, Attorney Vogt and Brick Linder. Brick Linder provided a response letter to Chris McDermott's review letter dated August 13, 2013.

Attorney Vogt provided an overview of the changes made to the plans, including changes made over the last couple of months to the maintenance responsibilities, common areas and limited common areas. In particular, Attorney pointed out that a change to the Subsection 5A boundary line was completed to include the detention basin and the recharge area.

Brick Linder presented Subsection 5A for the commission members to review.

Attorney Vogt stated that the goal is to build initially all the improvements necessary to support the residential units identified in Subsection 5A. However, the developer would like for the Township to give final approval for all proposed subsections now, with the expectation that only one consolidated plan would actually be recorded once all improvements were built out. The improvements in subsection 5a only and therefore it would be for all the sections and that all the sections would have a final plan and then record just one plan for phase 5a.

Carrie Wetherbee asked if they were going to clear cut the land in the other phases. Attorney Vogt and Brick Linder both said no, but there is a good deal of earth work that has to be done that will create a significant amount of fill that will be used on the upper section.

Attorney Gaul stated that the rule for a PRD is that you have tentative approval and then final approval, and not a preliminary final approval as the Developer appears to be proposing. The overall Big Ridge development was previously given tentative approval. Thus, the developer should now be applying for final PRD plan approval for the Section 5 property. When the final plan is approved and recorded, all future municipal zoning and land development requirements are considered reflected in the recorded plans, and generally speaking municipal land use regulation of the property, beyond the requirements reflected in the recorded plans, ends. As a result, the Township PRD ordinance does not contemplated a process whereby a developer can obtain preliminary final approval of multiple subsections plans at one time, particularly when the property involves a single lot. Each proposed subsection would need to reflect plans for the entire lot, but once the first plan was approved and recorded, no further development of the lot would be contemplated, even if only a subsection development is reflected on the lot as a whole. Attorney Gaul further pointed out that approval and recording of a plan that only showed the proposed Subsection 5A residential units could result in a final residential unit count much less than that originally contemplated under the Toll Bros Declaration Amendment applicable to the Section 5 property.

Attorney Vogt stated that he thinks all of this can be resolved.

Ray White of the north association was present and stated that there is still a major issue to resolve.

Attorney Gaul stated that the metes and bounds are not reflected on the plan with the exception of the external lines and this is a requirement for the subsections.

There was lengthy discussion regarding the phasing concept. Attorney Gaul stated that it should be one plan for the overall lot/parcel as there are problems with phasing.

Attorney Vogt stated that he will speak to Bob Brown and the Monroe County Assessment Office to see if something else can be worked out because if all units are reflected on a single approved as one plan, the developer will immediately begin receiving a tax bill for all 70 units even before they are built out.

Attorney Vogt presented an extension of time letter, dated August 15, 2013 that would waive the requirements to render a decision on the plan within the time specified in SALDO and the MPC until November 15, 2013.

The 50' foot buffer was discussed again. Attorney Gaul stated that, it is unclear from the tentative decision, and the tentative plans he has received, whether the reference to a 50 ft buffer means anything more than what is stated in the PRD Ordinance. Due to the lack of clarity, he was not in position to provide a legal opinion that the developer's plans were non-compliant. The Planning Commission had already determined that the developer's plans satisfied the requirements of the Ordinance. There was further discussion that there would essentially be only a grass stormwater detention basin in the buffer, and that there would be a wooded area and ridge that would largely shield the residential area from the view of the adjoining southern property. Commissioners Oney and Shah stated that they considered the matter previously resolved and did not see a reason to re-visit it. No further action was taken.

Attorney Gaul asked if the stone wall will be disturbed. Mr. Linder said no.

Ray White stated that the north association still has some concerns with stormwater, roads, etc. The north association needs to find out from its attorneys if they have legal authority to acquire the common areas.

Chris McDermott stated that a modification request for the thickness of the stone base under the roads was previously presented.

Request for a Modification of Regulations; Applicant requests approval for a base course and other Specifications as set forth on the Typical Street Cross Section and Typical Split Travel-way Street Cross Section of the plans.

Mr. McDermott stated that he recommends approval of the request if a note is placed on the plan requiring site specific testing of soil to verify that it is adequate for modified cross section.

Attorney Gaul asked why the possible need for this modification could not be resolved prior to final plan approval. Chris McDermott stated that until the developer knows the thickness, the road cannot be built. In general, the developer will not know the suitability of the soil until actual construction occurs. As a result, it makes practical sense to resolve the issue at that point, instead of now in connection with final plan approval.

Chris McDermott asked if the applicant has spoken to PA American Water, Brick Linder said they have. Mr. McDermott also told them that they need to start looking at the sewer calculation. Attorney Gaul asked who owns the sewer lines that they want to connect into. There was discussion as to who owns the lines. There was some discussion that the Township does not own the sewer line at the point it connects to the Section 5 property. Attorney Gaul stated that the applicant would need to come to an agreement with the owners of the sewer line if the applicant expected to use the privately owned lines to convey sewage.

Chris McDermott stated that, in connection with the request for a modification, a note has been added to the Overall Plan Phase III, Section 5, sheet 4B of 8.

Parin Shah stated that the wording on the note under Typical Street Cross Section, sheet 4B of 8 on the Overall Plan be changed to say **“suitable to the township engineer” and unsuitable by the township engineer.** Attorney Gaul stated that the modification request will not go to the Board of Supervisors. Instead, the purpose of the Planning Commission discussing it now, and voting on it, was just to get the topic off the Planning Commission agenda. A vote on the modification was not intended to commence any deadline for Supervisor review. The Supervisors would not be reviewing the modification request until the plan in general moves on to the Supervisors. . Attorney Vogt agreed. Based on that understanding, Attorney Gaul had no objections with the Planning Commission making a recommendation on the modification request.

Bob Early made a motion to recommend approval of the modification request and revising the Typical Street Cross Section note on page 4b of 8 on the Overall Plan to read. “On-site soil testing of the prepared road subgrade shall be performed every 500’ of roadway or as suitable to the township engineer prior to the placement of the stone base. Soil testing results must be provided to the township prior to placement of the stone base. If the soil condition is considered suitable **to the township engineer**, stone base construction shall follow option 1 below. If the soil condition is considered unsuitable **by the township engineer**, stone base construction shall follow option 2 below”.

Parin Shah seconded the motion. Motion was called, Mark Oney, Parin Shah and Bob Early in favor. Carrie Wetherbee voted no and Gary Summers abstained. Motion passed.

Bob Early questioned to phrase “common limited element”. Attorney Vogt stated that it is still “a common element”; the wording was changed to match what is in the north association’s verbiage. Common limited area virus element.

Parin Shah made a motion to accept the extension of time letter to render a decision on the plan, dated August until November 15, 2013. Carrie Wetherbee seconded the motion. Gary Summers abstained. Motion passed.

### **Adjournment**

Bob Early made a motion to adjourn the meeting at 8:25 p.m. Parin Shah seconded the motion. Motion passed 5-0.

Respectfully submitted,

Michele L. Clewell  
Township Secretary