

**LOWER PROVIDENCE TOWNSHIP  
BOARD OF SUPERVISORS BUSINESS MEETING  
JULY 20, 2017**

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**Call to Order:** Chairwoman Eckman called the meeting to order at 7:30 p.m.

**Pledge of Allegiance**

**Roll Call:**

- a. The following members were in attendance: Chairwoman Eckman, Supervisors Duffy, MacFarland, Sorgini and Zimmerman.
- b. Also in attendance were: John Rice, Township Solicitor; Don Delamater, Township Manager; William Roth, Director of Special Projects and Technology; Mike Mrozinski, Community Development Director; Karl Lukens, Director of Parks and Recreation; Tim Woodrow, Township Engineer; Geri Golas, Assistant Township Manager; Susan Law, Accounting Manager; John Primus, Director of Public Works; and Stanley Turtle, Chief of Police  
Chairwoman Eckman announced that prior to the meeting the Board met to discuss legal and personnel matters.

**1) Consent Agenda**

- A) **MOTION:** Supervisor Zimmeramn made a motion to approve the consent agenda items 1(a), 1(b) and 1(c), including moving the meeting minutes of June 15, 2017 into the record. Mr. Sorgini seconded the motion. The motion *passed* 4-0. Supervisor Zimmerman recused herself from voting on the minutes due to her absence at the last meeting.

**2) Presentations**

- A) Presentations to Officer Jeremy Bonner in recognition of five years of service to the Lower providence Township Police Department.
- B) Presentation to Ryan Beil in recognition of his service to the Lower Providence Township Parks and Recreation Board.
- C) Sponsorship check presentation – Tosco Real Estate Services, LLC.
- D) Mid-year budget update.

**3) New Business**

- A) Consideration of final plan approval for S-16-04, Courts at Brynwood townhomes, Germantown Pike and River Road.
  - i) Solicitor Rice reviewed the plan. Chris Canavan said that if the plan is approved they would begin construction in September.
  - ii) Mr. Woodrow said that most issues were addressed at preliminary/final approval and that all additional issues have been addressed since that approval.
  - iii) Supervisor MacFarland asked about further planning strategies in regard to congestion on Germantown Pike as mentioned on the Bohler letter dated June 2, 2017. Mr. Canavan said they are making a financial contribution by way of their traffic impact study fee and a fee in lieu of for a waiver request that will be put in a restrictive fund to support initiatives toward applicable larger improvements.
  - iv) **MOTION:** Supervisor Zimmerman made a motion to approve Resolution No. 2017-19 approving the final plan for S-16-04, Courts at Brynwood townhomes, Germantown Pike and River Road. Supervisor Sorgini seconded the motion. The motion *passed* 5-0.
- B) Discussion of preliminary/final approval of S-17-02, nine-lot subdivision at 2711 and 2725 Woodland Avenue.

- i) Mr. Mrozinski reviewed the plan.
- ii) Andrew Laird and Susan Rice appeared on behalf of the applicant.
  - (1) Supervisor Sorgini thanked the applicant for their work on this proposal, noting it has gone through several revisions and is now lining up with an existing intersection.
  - (2) Mr. Woodrow reviewed the previously outstanding issues including drainage, handicapped accessible ramps on corners and extending sidewalks. He noted that there was still an issue regarding an orphan parcel created by the construction of the new roadway. Mr. Laird said he has spoken with the County regarding the parcel and hopes to have it resolved prior to next Board of Supervisors meeting.
    - (a) Solicitor Rice stated that the orphan parcel must be addressed prior to approval. Mr. Laird reviewed the options for the parcel, stating that the worst case scenario is that the parcel be maintained by an association for purposes of maintaining common areas.
    - (b) Mr. Woodrow explained that there was some concerns about a single property owner being responsible for the retention basin and that if a neighboring property does not want to assume that responsibility, it will be made common ground and a Home Owner Association formed to maintain this area. Solicitor Rice asked if that lot is currently a building lot. Mr. Woodrow said that it was. Discussion was held regarding options for the Lot A and the HOA's responsibilities in the neighborhood.
  - (3) Solicitor Rice said that a resolution would be prepared for approval at a later meeting once all issues have been resolved. He confirmed that no other waivers are requested beyond the May 5, 2017 letter and that the applicant will comply with all engineering review letters. Mr. Laird said that the orphan parcel is currently operated by the DEC and once that board can convene he will have a solution for the issues relating to this parcel.
  - (4) Supervisor MacFarland asked who would be responsible for the buffer along the roadway. Mr. Laird said that the intent is for a HOA to be established for responsibility of maintaining the buffer and retention basin and, if necessary, the orphan parcel. He confirmed that this would be part of the final resolution to be approved by the Board.
  - (5) Supervisor Duffy asked if the intent was to dedicate the roadway to Township. Mr. Laird said that it was.

C) Consideration of request for field modification to land development plan for Phase 1 Audubon Square V.

- i) Mr. Mrozinski reviewed the modification request.
- ii) Brad Macy of Audubon Land Development gave an update on the progress of the project.
- iii) Supervisor Zimmerman asked when landscaping would be planted. Mr. Macy said all landscaping would be done in the fall. He said their landscape architect will come up with design and their landscape company will maintain the plantings. Mr. Woodrow said he feels that the planter boxes are a suitable substitution for the curb.
- iv) **MOTION:** Supervisor Sorgini made a motion to approve the modification to land development plan for Phase 1 Audubon Square V. Supervisor Zimmerman seconded the motion. The motion *passed* 5-0.

D) Discussion of revised final plan for S-17-04 – Mascaro – 224 Summit Ave.

- i) Mr. Mrozinski reviewed the plan.
- ii) Albert DeGennaro and John March appeared on behalf of applicant. He reviewed the proposal saying that the property is being divided for financing purposes.
- iii) Mr. March reviewed the proposal and the waiver requests.

- (1) Solicitor Rice said that the County review letter raised a few questions regarding a shared driveway. Mr. March explained the easement which came with the lot when it was purchased with the intent of building an eight lot subdivision. He said that the driveway will be shared and that a copy of the easement agreement was submitted with the application. Mr. March said he is not sure if there is an agreement for maintenance but he will confirm. He said both property owners will need to maintain the driveway in order to access it, so he does not believe there will be an issue.
- (2) Solicitor Rice asked about the future plans of the property. Mr. DeGennaro said that this is an Act 319 property, that there is no intention to develop and he will send Solicitor Rice a copy of the assessment notice which confirms this. Discussion was held as to how Act 319 properties work. Mr. DeGennaro said that if this status should ever change they would have to come before the Board for approval.
- iv) Mr. March said that the property is under a transferred EDU and the sewer is approved under the previous subdivision so there should not be any issues. Mr. Woodrow agreed saying the property already has eight to nine EDU's attached and no further planning is needed at this point.
- v) Solicitor Rice said that a resolution will be prepared for the August meeting. Mr. DeGennaro requested that the resolution be prepared for the August 3 meeting as the applicant is seeking swift approval for mortgage purposes.
- vi) Mr. Duffy asked Mr. March for update on the Mascaro baseball park. Mr. March reviewed their progress, stating that he believes work will be complete in mid-to-late September.
- E) Consideration of an ordinance amending Section 143-11 of the code of Lower Providence Township concerning the extension of zoning district boundaries on split-zoned properties.
  - i) Solicitor Rice reviewed the ordinance amendment. He said that this has been reviewed by the Township's Planning Commission, which could not make a recommendation, as it did not have a quorum, and the Montgomery County Planning Commission. He said that the MCPC reviewed the amendment and felt it was appropriate to amend the ordinance.
  - ii) **MOTION:** Supervisor Sorgini made a motion to enter into a Public Hearing. Supervisor Zimmerman seconded the motion. The motion *passed* 5-0.
  - iii) Supervisor MacFarland asked if split zoning was uncommon in other townships. Solicitor Rice said that every township has some split zoning but that it is not good practice as it can cause problems. He said that he has not seen this in more current ordinances so it has probably been on books for some time. Solicitor Rice feels this will allow for more flexibility to deal with split zoning on a case-by-case basis.
  - iv) Chairwoman Eckman asked Mr. Mrozinski if there is a map of properties that are affected by split zoning. Mr. Mrozinski showed a map of the approximately 20 properties in the Township that are affected. Discussion was held regarding the Park Ridge Shopping Center parcel and how a possible redevelopment would be affected by the ordinance.
  - v) Audience Comments
    - (1) Donald Thomas, North Trooper Road, asked for an explanation as to how the solicitor came to review this ordinance. Solicitor Rice noted that this part of the hearing was for public comment, however, he said that the issue came to the Township's attention because of the Zoning Hearing Board proceeding regarding the Lidl plan. He said that Mr. Thomas' attorney brought the matter to the Township's attention and staff agreed that this issue needed to be addressed and that this ordinance is the solution to that. Mr. Thomas said that this was an issue that occurred in 1999 when the ordinance was re-

- codified and the wording was bad regarding a by-right 50-foot incursion. He questioned the Township's solution for this issue by changing the code. Solicitor Rice said that he doesn't think split zones are ever a good idea as they create problems and costs, and that the idea is to clarify how a property can be developed. Mr. Thomas said he is concerned because protections and buffers originally in place are being removed in this amendment. Solicitor Rice said that the Lidl project is still subject to land development. Mr. Thomas said that is correct, but it is still subject to the Zoning Hearing Board which will be impacted by this amendment. He reviewed the history of the Norristown Ford property and how it became split zoned. He said there was no intent to create a split-zone but that the split-zone creates protections for neighbors. Mr. Thomas said the code amendment would not allow for review from Board of Supervisors and reviewed the by-right comment by the Montgomery County Planning Commission. Mr. Thomas said that he is eager to see the property developed but does not want it developed, carte blanche, with no regard to zoning protections. He reviewed the issues he had with the Lidl development and their lack of cooperation with the community. He expressed concern that this ordinance removes the protections for residents, stating that if the ordinance is passed Lidl will get carte blanche approval as they will not be required to seek any zoning relief.
- (a) Chairwoman Eckman reviewed the existing conditions of Norristown Ford and how that site has been used and is currently being used. She stated that the property has been used as a commercial property up until its closure ten years ago. Mr. Thomas said that he believed it to be a non-conforming use of an R2 district that has not been addressed by the Township. He said the Township is supposed to control development of properties in the Township with regard to the general welfare of the community. Mr. Thomas said that Lidl has the ability to work within the code as it stands and feels this amendment is reprehensible.
  - (b) Solicitor Rice said that Lidl does not have carte blanche and that they will need to file a land development plan and come before the Board in the land development phase. He said that they will need to put up a buffer that will be determined during land development. Mr. Thomas expressed concern that the Lidl is not conforming to zoning and this amendment will change that. Solicitor Rice said that any restrictions put in place on the property will be there forever. Mr. Thomas does not feel that is a bad thing as residents will also be there forever. Solicitor Rice said that all of Mr. Thomas' issues are primarily land development issues and will come before the Board again during the land development process. Mr. Thomas feels this ordinance will neuter the Zoning Hearing Board. He urged the Board to not adopt the amendment and to let the case that is currently running play out.
- (2) George Gibson, Grant Road, Trooper, expressed concerns that Lidl is an outside company coming into the Township and building their business to their European model rather than to fitting into the Township. He took the public plans to a public engineer who also expressed concerns about the project. He echoed Mr. Thomas' concerns, stating that he would like to see the property developed but they should conform to the Township's rules and be a resident or part of the Township as much as possible.
- (i) Chairwoman Eckman stated that the sign issue is still in front of Zoning Hearing Board and the Zoning Hearing Board will listen to residents concerns at that hearing. She stated that the traffic will be determined during land development and that the staff has not received a set of plans for review. Chairwoman Eckman

said that these issues of concern are way down the road and will be thoroughly scrutinized. She said they are not specifically looking at Lidl but rather are looking to address a problem in the current ordinances. Mr. Gibson asked if there are any other properties the sizes of Lidl in the process of being developed that are being hindered by the current zoning. Chairwoman said that she is not aware of any. Mr. Gibson said that is why this change looks bad as it he feels the ordinance is being amended to benefit Lidl. Chairwoman Eckman said the issue was brought to our attention as a result of this case so now we need to address it. Mr. Gibson said that he feels checks and balances are important and feels they should stay in place.

- (b) Earl Thomas, Grant Road, questioned the development of the 1.5 acre parcel purchased by Lidl. He reviewed the history of non-conforming use granted to Norristown Ford. Mr. Thomas feels the Zoning Ordinance should be changed to reflect the original language and that this change is spot zoning.
  - (c) Aude Thomas, N. Trooper Road, expressed concern that Lidl is relying on their business model system rather than proving a hardship.
  - (d) Tyler Thomas, N. Trooper Road, said that he agrees with his father, Don Thomas. He expressed dismay at that way the elected officials speak, and the condescending tone used, to his father. He said the Board has a moral obligation to the residents and that he doesn't feel the Board is representing the residents with this action. He asked the Board to come to a decision do what is morally right rather than based on views of his father or his family.
  - (e) Frank Ivans, Hollywood Ave, said the one way to settle this is to hold off on amending the code until the Lidl issue is settle. He said there is no reason to pass this today
- vi) Chairwoman Eckman asked if there were any other public comments on the zoning change and there were none. She then asked for comments by the Board.
  - vii) Supervisor MacFarland said that of the other 20 properties affected by this change, there are some for which the depth does not exceed the property line so they would not be affected. Mr. Mrozinski agreed. Mr. MacFarland said that the split zoning existence on a property impairs the owner of that property for selling the property without going before the Zoning Hearing Board to get an exception which makes the property less valuable than one that is not split-zoned. Solicitor Rice agreed that they are less valuable for developers because there is an extra Zoning Hearing Board loop to go through. He said that, in this case, Lidl is going through the Zoning Hearing Board for signage but also have to go through land development. Supervisor MacFarland asked if that, by changing this zoning, the Township will be helping those other properties. Solicitor Rice said they will be better off by this change.
  - viii) Discussion was held as to whether or not public comment has been closed. Public commenting was re-opened.
    - (1) Don Thomas expressed concerns about the procedure of, and language used, at the June Planning Commission. He said the amendment does not end split zoning and only serves one purpose. He admonished the Board not to hide behind this ordinance. Mr. Thomas said that if the Township is so concerned about this ordinance they can wait until after the Lidl case is resolved. Mr. Thomas asked why there was not a court reporter present for this hearing. Mr. Rice explained what Township hearings require a court reporter saying that this is a legislative hearing, not an evidentiary hearing.

- (2) Earl Thomas, said that owner of Norristown Ford should realize that it is more expensive to buy a split-zoned property and deal with that reality. He said the Board should not change the zoning to benefit another company. Mr. Thomas asked if there is recourse to appeal or to leave this hanging in limbo. Solicitor Rice said that he could ask Mr. Furey. Mr. Thomas said that he did and Mr. Furey said they could but it would be expensive. He said they don't want to have this hanging on the courts but they might have to.
  - (3) George Gibson, asked if Lidl is the only company that is looking at development among the 20 split zoned properties. Solicitor Rice said that Lidl is the only one at this time. Mr. Gibson also expressed the opinion that this did not have to be voted on this evening.
  - ix) Chairwoman Eckman closed the public hearing at 9:44 p.m.
  - x) **MOTION:** Supervisor MacFarland made a motion to approve Ordinance No. 644 amending Section 143-11 of the code of Lower Providence Township concerning the extension of zoning district boundaries on split-zoned properties. Supervisor Duffy seconded the motion. The motion *passed* 5-0.
- F) Authorization to advertise audit RFP
- i) Don Delamater reviewed the request to advertise the RFP for a three-year term with an option for two additional years should the Board so desire. This would take affect for the 2017 fiscal audit, which will take place at the beginning of 2018.
  - ii) **MOTION:** Supervisor Sorgini made a motion to authorize the advertisement of the Audit RFP. Supervisor Zimmerman seconded the motion. The motion *passed* 5-0.
- G) Approval of Directives for Floodgate usage and authorization to install
- i) Mr. Delamater reviewed the proposal to install floodgates at 325 Level Road and 3610 Arcola Road. He also reviewed the directive as to who is responsible to activate the floodgates and when they will be activated. He said the gates have already been ordered but there is a cost of approximately \$3,000 to install.
  - ii) **MOTION:** Supervisor Sorgini made motion to approve the Directives for Floodgate usage and authorize installation. Supervisor Zimmerman seconded the motion. The motion *passed* 5-0.
- (1) Supervisor MacFarland asked if there was an opportunity for cars to turn if the gates are closed. Chief Turtle said they could execute a three-point turn but that there is advance warning signs indicating that the gates are closed. Supervisor MacFarland asked if the signs are permanent. Mr. Delamater said that the signs are permanently installed but that the signs are closed and flipped open when the gates are activated. Discussion was held as to flood areas and mitigation measures.
- The motion *passed* 5-0.
- H) Solicitors report on zoning ordinance update
- i) Solicitor Rice discussed the process for reviewing the zoning ordinance updates. He said the local businesspersons group has been working with Mr. Mrozinski on a sign ordinance updates. He said there have been several court cases and litigation in Pennsylvania regarding on and off-premise signs. Solicitor Rice said that he has discussed this with Mr. Delamater and Mr. Mrozinski and is recommending the adoption of a resolution that would trigger a procedure for admissible curative amendments which would give the Township six months to address any deficiencies in their sign regulations. He said he would suggest a subcommittee formed by the planning commission to examine this issue. Solicitor Rice said the proposed resolution triggers the procedure and directs the Planning Commission to prepare and

consider a zoning amendment which would address any zoning deficiencies regarding both on and off-premise signs.

(1) Mr. Delamater clarified that the Resolution number as 2017-20

- ii) **MOTION:** Supervisor Duffy made a motion to approve Resolution 2017-20. Supervisor Sorgini seconded the motion. The motion *passed* 5-0.

**4) Announcements**

A) The Planning Commission will meet on July 26 at 7 p.m.

- i) Mr. Mrozinski said that Providence Place will submit a revised preliminary plan and a presentation will be made by Gambone Development for the Evansburg Tract.

B) The Zoning Hearing Board will meet on July 27 at 7 p.m.

- i) Mr. Mrozinski said that the Lidl matter will be heard as well as an administrative matter with Lou Gambone's proposal to construct a garage in a flood zone. In addition, Audubon Land Development will appear seeking a variance for a sign to be placed on the former Royal Bank on Egypt Road which they have purchased and will be using as an employment center.

**5) Comments and Other Business**

A) Supervisor MacFarland reported that the Business Development Committee met and discussed topics regarding development and strategic approached to the Ridge Pike West area. He stated that Corropolese Bakery is expected to open in next few weeks as well as a new ice cream store on Germantown Pike. In addition Nook and Cranny Diner, which is successful in Phoenixville and owned by a local resident, will be opening in Eagleville

**6) Adjournment**

A) **MOTION:** Supervisor Sorgini made a motion to adjourn the meeting. Supervisor Zimmerman seconded the motion. The motion *passed* 4-0. The meeting adjourned at 10 p.m.

**Next Business Meeting:** August 3, 2017

August 17, 2017