

Board of Supervisors Meeting

MINUTES

July 24, 2007

The meeting was called to order at 7:30 p.m. by Chairman Jim Brownlow and opened with the Pledge of Allegiance.

Supervisors Present : Karen Bedics, Jim Brownlow, and Rob Zisko. **Absent:** Chuck Halderman and Rod Wieder. **Also present:** Sandy Everitt, Secretary/Treasurer; Scott MacNair, Solicitor; Rich Schilling, Township Manager; and Bob Wynn, Township Engineer.

Jim Brownlow noted that the Supervisors had an executive session prior to this meeting to discuss personnel matters.

Minutes

Rob Zisko **moved** to approve the June 12 and June 26 minutes as distributed. Karen Bedics **seconded**; the motion **passed** unanimously.

Approval of Bills

Rob Zisko **moved** to accept the bills (\$63,119.25) for payment as listed on the July 11 - July 24, 2007, bills list. It was noted that the largest portion of this bill was \$29,283.61 which represented the annual payment to Palisades School District for collection of the Earned Income Tax (EIT). Karen Bedics **seconded**; the motion **passed** unanimously.

Public Comments on Agenda Items - None

Planning Matters

Penn Meadows Subdivision – Bob Wynn presented the current status of the Penn Meadows Subdivision. Rob Zisko **moved** that the Penn Meadows Subdivision maintenance period was not satisfactorily completed and the list of remaining improvements listed in the July 17, 2007, Township Engineer's letter, must be completed before the township will accept the maintenance period as being complete. Karen Bedics **seconded**; the motion **passed** unanimously.

Old Business – None

New Business

Palumbo Zoning Hearing Board Decision – Jim Brownlow explained that the Palumbo family had received approval from the Zoning Hearing Board to put a swimming pool in a buffered area and a number of people have expressed concern about the ruling. The adjudication of that hearing was received today and was distributed to the Board for their review. If, upon review of the decision, the Township or an individual wishes to appeal the decision of the ZHB, that appeal must take place within 30 days from July 23, 2007, the date of the mailing of the decision. Jim opened the discussion for public comment.

Scott Douglas, Chairman of the Environmental Advisory Council of Springfield Township – Scott presented several points of concern, which he will submit in writing after the EAC has an opportunity to review the written decision:

1. There appears to be a misunderstanding of the purpose of increasing the size of the riparian buffers as defined in the High Priority Ordinance #129.
 - They help to maintain stream bank integrity

- They provide a wild life corridor
- They filter and attenuate storm water runoff and reduce the amount of contaminants that enter the creek, especially sedimentation.
- They provide a flood control mechanism to attenuate flood waters
- They provide cooling for the creek waters, which improves conditions for wild life and for drinking water—there is a direct connection between the ground water and the surface water
- They protect the seeps and springs that are the primary source of water to the system

The ZHB decision appears to focus on the presence of transitory impacts that are happening now as a function of the construction of the Palumbo house and the construction of the storm water construction basin. There is a big difference between the long-term impacts caused and the permanent disruption of the buffer by the pool and the deck, which creates a large amount of new impervious surface. These structures are being placed very close to a stream which can come up high, thus causing debris to end up in the pool and the decking around it. The cumulative impact of multiple small impacts is of concern to the Planning Commission, of which Scott is also a member. This is one of the reasons the high-priority amendment was put in place.

Scott is also concerned with the removal of additional trees. Although the Ordinance requires submission of an environmental impact analysis if the watercourse margin is being reduced, it does not appear that such a study was submitted prior to granting of the applicant's request.

Finally, it appears that the Township Engineer was asked to render an opinion about the influence of the pool on the storm water facility. It is not noted whether the engineer's comments were given to the ZHB for their review. From reading the Township Engineer's memo, it appears he requested additional information and there is no record that was ever provided to him. Scott is concerned about whether the storm water management system will function properly in the presence of the pool.

Hans Reimann, Vice President of the Cooks Creek Watershed Association – The Watershed Association is very concerned about this decision. Upon a more careful review of the ZHB decision just received, they will submit their concerns in writing. Hans summarized some preliminary concerns:

1. He quoted a portion of the application submitted to the ZHB: "The ecological balance of the areas will not be threatened or harmed by the proposed activities," and "currently there is no wild life existing in the watercourse margin." Hans questions the validity of those assumptions.
2. From the decision itself, Mr. Calvetti, the pool contractor, certified as a witness at the hearing that the pool would be serviced by a cartridge filter which would require no back washing. Hans questions the validity of this statement as well. Mr. Calvetti also testified that any runoff from the pool would be directed into a water quality basin for treatment before it is discharged into the adjacent water course. Hans questioned whether the ZHB heard any other testimony about what "treatment" would be needed, as he was not aware that the storm water basin was to be used for pool water treatment.

Steve Smith, Slifer Valley Road – Steve feels that if an ordinance (Ordinance 129) has been enacted, it should be followed. He is concerned about the precedent set by granting this special exception.

Of primary concern is the precedent of granting a special exception to an ordinance without considerable questioning about the reasons behind the request—it should not be granted just because a person asks for it. In order to maintain the integrity of local government decisions, the granting of exceptions should be an "exception," not a rule. The riparian buffer has become very important along the Cooks Creek corridor because of increasing development.

Dick Cernok, Chairman of the Zoning Hearing Board – Dick pointed out that a ZHB decision relating to a special exception does not set a precedent for future hearings; each case must be determined on its own merit. This was confirmed by Scott MacNair, Township Solicitor.

Jim Brownlow asked for clarification about whether this was actually a special exception or a variance. Scott MacNair, referring to Ordinance 129, 509.B.4.b., indicated that a special exception was the correct designation. Scott listed from

the ordinance some of the information to be submitted in order to grant a special exception:

1. A contour map showing the flood plain
2. Geological formation underlying the site
3. Slope features
4. Soil types
5. Types and amount of vegetative cover in the margin
6. Other hydrological features of the water course, including stream depth
7. Any critical features that are present regarding carbonate bedrock areas
8. Areas of significant wildlife habitat within the margin
9. Type and location of construction activity

It is apparent from the decision that some of these were discussed; however, it doesn't appear that all report(s) required by the township's ordinance were submitted and/or discussed. The Board may want to have this additional required information. This can occur in one of two ways. An appeal can be filed with a request that additional evidence be submitted at the Court of Common Pleas level. If that is not permitted (which may be the case because objectors had an opportunity to present their concerns at the ZHB and did not), a request can be made to remand the decision to the ZHB so that the additional information can be presented.

Jim Brownlow asked for Scott MacNair to comment on a statement within the hearing decision: *Considering the Special Exception request, the law is clear that a Special Exception is a permitted use which must be approved unless an opponent can establish that the use would have an adverse effect on the community.* Scott commented that the applicant must establish three things: 1) If granted, the construction will not harm the watercourse or the wetlands in any way; 2) That there are no significant wildlife areas within the margin; and that, 3) The ecological balance of the area will not be threatened or harmed. If the applicant submits satisfactory evidence in regards to those three areas, technically, the burden shifts to the opposition to disprove. As Scott understands, there were no opponents present at the Palumbo hearing to refer to the items from the Ordinance that were not submitted.

Karen Bedics asked whether the Township's Engineer's letter commenting on the storm water management issues relating to the proposed pool should have been presented to the ZHB. Scott felt that if the township had concerns about the special exception, at a minimum, the engineer's letter should have been presented. Rich Schilling noted that the ZHB usually requires the letter writer to be present so that questions that come up that are not covered in the written communication could be answered.

Karen asked Scott if was accurate to state that the burden of proving that the pool construction would harm the watercourse, the wildlife, etc., would fall upon whoever might decide to appeal the Palumbo ZHB decision. Scott said that was accurate.

Scott MacNair said he would use the transcript from the original hearing to argue with a judge that the requirements of the Township's Zoning Ordinance were not met in the hearing (located under Section 509.C. of Ordinance 129). Scott would first attempt to have the decision overturned because the applicant did not meet the requirements of the Zoning Ordinance to obtain the Special Exception. His second argument, if the judge would not withdraw the special exception, would be to have the decision remanded to the ZHB so that evidence could be heard on the issues that were not previously addressed. His final alternative would be to see if the judge would hear evidence that was not produced at the hearing. Scott said that it would ultimately come down to proving that having the pool in the watercourse margin is or could be a potential detriment to the public's health, safety and welfare.

Rob Zisko stated there are probably hundreds of pools in the township already that fall within 125' of a watercourse margin. Rob is concerned that taxpayer funds should not be used to pay legal fees to contest the decision of the ZHB. Rob feels that the Palumbo family purchased their property when it was legal to have a pool, but that the ordinance changed before they had an opportunity to construct it. Rob perceives the "watercourse" behind the Palumbo's home as a drainage ditch. Scott Douglas stated that the watercourse on the Palumbo property is a perennial stream. Rob viewed the site during a rainstorm and there was little or no water running in the ditch. He feels that this family went through the proper channels. When Jeff wouldn't grant them a permit to construct a pool in the watercourse margin, they paid \$550 to the Township, paid to hire an attorney, and went before the ZHB to obtain a special exception to build the pool, which the Township's ZHB granted. Rob Zisko clarified to the news

reporters present that township residents need to be aware of the impact this ordinance will have, because it designates as a stream an area that only has water in it during a very heavy rainstorm. Much of Springfield Township will be impacted as to what they can do with their properties. Scott Douglas clarified that different types of streams have different buffer areas; different restrictions apply the closer the buffer gets to the stream center.

Dick Cernok noted that the application for this home started two years ago. On that application, there was a building envelope. The proposed pool is not outside that original building envelope. During the construction of the home, the ordinance changed. Now, the home, septic system and water quality basin are all within the restricted 125' watercourse margin.

Hans Reimann noted that the pool and deck around it will create 1,500 SF of additional impervious surface. Hans quoted from the EAC Handbook: *Incremental land use decisions allow for the destruction of parts of ecosystems causing widespread environmental deterioration.*

Rob Zisko feels there is a delicate balance we must maintain between individual's rights as property owners and ecological concerns.

Karen Bedics went to the property and made a list of concerns and observations that she, as a resident who cares about water quality, has:

1. The area from the proposed outer pool edge nearest the stream bed is a minimum of 40 – 50' from the stream.
2. This perennial stream area is a blue-line tributary to Cooks Creek and it is mapped on the township streams map.
3. The building area may be prone to ground water seepage, and the pool is flanked by a septic system on one side and a storm water management area on the other side.
4. A letter regarding storm water control was sent to Jeff Mease by the Township Engineer, but was not presented to the ZHB members. This letter expressed concerns as to whether a 12" storm water pipe would provide sufficient storm water management. This pertinent information was not brought to the Zoning Hearing Board members' attention.
5. There were no environmental impact studies done or presented before the special exception was granted.
6. This area is just downstream from a convergence of intermittent watercourses that flow during heavy rains via two 36" pipes. One pipe runs under Bursonville Road and the other under Tulpe Road at the entrance to the development.
7. The stream bank infrastructure might be seriously compromised when back hoeing and constructing of the pool take place.
8. The stream bank may become unstable because of the close proximity of the pool.
9. Excessive erosion of the stream banks from high water flow may cause damage to the pool over time or cause a pool wall to collapse and release chlorinated water into the water course.
10. There was much physical evidence of times of heavy water flow on the stream bed—i.e., fallen trees, leaf debris and marked curving of stream bed meanders.

Karen feels that permitting this pool to be constructed in a 100% protected area will encourage other landowners to build in watershed protected areas. The additional impervious surface of the pool will add to the storm water discharge rate. Additionally, there were concerns expressed about backwashing of the pool filter and discharging chlorine into the stream. Karen feels the stream bank will already be compromised and weakened from mandated storm water management construction. Finally, the fence required around the pool will encroach even more into the watercourse margin.

Karen asked Bob Wynn if he expected a response to his letter. Bob said his letter was not a review of any formal plan, only a sketch submitted to him by Jeff Mease, Zoning Officer. Bob gave a summary of past activity on the Palumbo storm water plan. Bob stated that it is customary for an improvement escrow fund to be approved by his office and established by the applicant prior to beginning construction of a storm water facility. Although such an escrow fund is in place for the Palumbo's, it was not reviewed by anyone in Bob's office. Bob covered a number of issues relating to this plan which he had noted today from a review of his files he did following a telephone call from the Palumbos.

Jim Brownlow indicated it appears some activity has taken place outside of the approval process. Rob Zisko stated that this may not be the Palumbo's fault. Scott MacNair said that in a letter he wrote to the Palumbos dated 2/12/07, he made a specific request for them to submit a construction escrow estimate, and requested them to contact Bob Wynn to discuss all of the issues Scott listed in the letter. If the Palumbos had complied with the direction given in that letter, these issues would have come out earlier.

Jim Brownlow said even if the special exception holds, the Palumbos still have to comply with all of the outstanding issues. Bob Wynn said they may not realize they need to do anything. Rob Zisko said that in order to even build a house today, an engineer and an attorney are needed, with the entire process often taking 2+ years. Rob Zisko noted that the Palumbos deposited over \$10,000 into an escrow account in January 2007, which they won't get that back until all the storm water work is completed satisfactorily. In addition to the \$10,000 escrow to guarantee that all the storm water improvements are completed, the Palumbos must still pay their contractor to do all the improvements.

Jim Brownlow feels at the very least the Palumbos need to be advised that in order to proceed with their special exception, they will have to redesign their entire storm water plan. Bob Wynn is not sure that the plan will need to be redesigned, but it will need to be re-evaluated to determine if everything is still satisfactory and the pipe as shown is still adequate.

Jim Brownlow made the following comments:

1. He is troubled by the fact that the Palumbos had their building plans approved under one zoning ordinance, and before they could finish everything, the zoning was changed.
2. On the other hand, Jim is very concerned about where the Palumbo's home was built, even under the old Zoning Ordinance. His concern is about what this might do to the waters of Cooks Creek. He hears Rob Zisko's concerns, but on the other hand, the cumulative effect of what the township has been doing will ultimately catch up to them.
3. Jim is not sure that everything that should have been presented was presented to the Zoning Hearing Board. Jim feels strongly that if it is in the ordinance, applicants should do what is required.

Rob Zisko feels that the Palumbos have followed all the rules, at great expense to them, and now, there is still no guarantee after they have received the decision of the ZHB that they can do what they are requesting. He doesn't feel it is right to make them spend an enormous amount of money to fight an appeal in court. Rob feels that the supervisors appointed the Zoning Hearing Board, they gave a decision, and the supervisors should respect that decision and should not spend taxpayers' money to appeal the decision.

Jim Brownlow clarified that the Township did not entrust the ZHB with this decision; the ZHB process was set up by the State. Jim noted that every zoning change will affect somebody; this is just part of the process.

Karen Bedics requested the Zoning Hearing Board solicitor to send a copy of the transcript to the township building. Karen has concerns with the whole ZHB process. She does not feel hearings are advertised well enough so that people understand what hearings are coming up and what they are about. Rich Schilling indicated that hearings are advertised in the newspaper, published on the website, placed on supervisors' agendas as upcoming events and are included in the Zoning Officers monthly report to the Board which is also posted on the township bulletin board. Jim Brownlow said "shame on us" for not paying close attention.

Scott MacNair suggested some other townships that he works with include a 1 or 2 line synopsis of all upcoming zoning hearings on their agendas. They also announce Zoning Hearings at every meeting, irrespective of how vague or small a hearing issue may seem. This particular hearing would have had a synopsis like: *Applicant is requesting special exception for a pool within the watercourse margin.* Had that happened, questions could have been raised prior to and at the Zoning Hearing.

Dick Cernok said that the English dictionary defines a “structure” as something which is “raised up” or “lifted up.” For swimming pool, the dictionary defines it as a tank filled with water—not a structure. Dick feels that the definition of a structure in the Zoning Ordinance may need to be reviewed.

Jim Brownlow summarized that further discussion on this topic will be held until a transcript of the hearing is received and reviewed. This topic will be placed on the August 14, 2007, Supervisors agenda.

Correspondence

Jim Brownlow noted that a number of correspondence items had been received and copies were distributed to the Supervisors.

Of particular note, Stefanie Campbell submitted a letter of resignation from the Planning Commission. Stefanie thanked the Township for the opportunity to serve on the Planning Commission, but because of personal circumstances, she will not be able to continue serving. This will create an opening on the Planning Commission. Rich Schilling stated that there is a Resolution in place (of which he recently became aware) that obligates the township to advertise for each opening on any Board or Commission. Additionally, each person who applies for any position is to have an interview with the full Board. Although Rich feels this process should be reviewed by the Board, the Resolution is currently in force. Jim Brownlow **moved** that we advertise for qualified applicants for the Planning Commission. Rob Zisko **seconded**; the motion **passed** unanimously. Rich will arrange interviews with the full Board for any applicants. The opening will also be placed on the website.

Public Comments - None

Supervisor’s Comments

Adjournment

At 8:50 p.m., Jim Brownlow **moved** to adjourn the meeting. Rob Zisko **seconded**; the motion **passed** unanimously.

Respectfully submitted,

Sandra L. Everitt
Secretary/Treasurer

Next meeting: August 14, 2007

Approved: August 14, 2007