

**Mt. Joy Township  
Planning Commission Regular Meeting  
Tuesday, October 13, 2015**

**Meeting Minutes**

**Present:** Terry Scholle, Chairman, Sindy Jennings, Vice-Chairman; Curtis Hawkins, Fred Lang; Ken Roberts; Erik Vranich, Engineer; Sheri Moyer, Secretary

The Mount Joy Township Planning Commission met this date, as publicly advertised, at the Mount Joy Township Building located at 902 Hoffman Home Rd., Gettysburg, PA 17325.

**Call to Order:** Starting Time: 7:00 pm

**Chairman Comments:**

**Public Comments:** None.

**Approval of Minutes:** Planning Commission Meeting Minutes from September 8, 2015. Ms. Jennings moved, seconded by Mr. Hawkins, to approve the meeting minutes as presented. Motion carried unanimously.

**Preliminary/Final Plans:** Amended Preliminary/Final Subdivision Plan Richard A. and Bonnie L. Klein: Mr. McDowell explained that last month they presented a plan with 14 lots and a new roadway. Mr. McDowell presented the plan with the existing lot 2 on which the dwelling exists. They are proposing to subdivide and move lot lines around which is consistent to one of the lots shown on the original plan submission eliminating any discussion on this plan the other lots and the roadway. Mr. McDowell pointed out a triangular piece which would be taken from the Links at Gettysburg and added to the lot with the dwelling making it 0.979 acres. That lot would not front a public or private street. Access would be via the existing driveway from Mason Dixon Road. Water and Sewer are a private well and septic system. This would not be connected to the public water and sewer system via laterals and abandoning the private well and septic system. Mr. Roberts questioned if the existing driveway and existing utilities would remain until the adjacent homes are built. Mr. McDowell indicated that they would remain until the temporary connections to water and sewer and the temporary connections would remain in effect until public sewer was run to the lot and access would continue as it exists today. Mr. Scholle indicated that there was one problem. There is no road frontage. Mr. McDowell said that they are seeking a modification and a waiver from this. Mr. Scholle said that he is not sure that is a good idea as it opens up a “can of worms”. Mr. Klein indicated that for about 75-80 years this lot has not had the proper road frontage. When he purchased it there was an existing house with about 1,000 washing machines out there. It was a non-conforming lot when he purchased it and he added 3 acres to it and it still is not a conforming lot because of the frontage issue. It was grandfathered in. It’s still not compliant today. It’s important to understand the history. The access would be granted and would stay for five years, 50 years or 1,000 years. Mr. Klein stated as he has done throughout the process of this community these waivers are under the guidelines that can be waived. It is an unusual situation but to me it’s a non-compliant lot forever. Mr. Klein said essentially he’s getting the right to sell that parcel. He indicated he has purchasers that want him out before November 1<sup>st</sup>. Mr. Vranich said the big question tonight is the road

frontage. A lot of the other items can be worked through. The big question for the township is the frontage. Because there is a lot with no frontage as now proposed. There is talk about future development but he believes the Township has to look at this as if there is no future development. The Township has to be comfortable with what you have on the plan. There are two sections in the zoning ordinance and the PCG ordinance that reference the road frontage and then there is one in the subdivision ordinance as well. Mr. Scholle agreed that road frontage is the real sticking point in this whole deal. Mr. McDowell believes it's a real hardship in that the plan that was presented previously wasn't acceptable because the road was not improved. It was not constructed and so you are asking the developer to build a roadway in order to provide this potential approval of a lot. And that doesn't seem, I mean it seems to be a real burden on a developer in my view." Mr. Scholle said, it is landlocked. How do you get around it? The Township needs to stick with the Ordinance.

Mr. Roberts questioned if the right-of-way for the driveway is permanent and recorded. Mr. Klein stated his attorney has the easement agreement. It will need to be forwarded to Ms. Smith for her review. Once finalized it will be recorded. Mr. Vranich said that as part of their review they are requesting it be depicted on the plan. There is a note on the plan but they are requesting graphically it be shown on the plan with the width assigned to it.

Mr. Vranich indicated that the Commission would first need to move on the modification/waivers and also the Non-building Declaration prior to the whole plan.

ZO 110-70.C(h) All lots depicted in and upon the PGC plan which are proposed for fee-simple conveyance by the applicant/developer, regardless of the proposed form of ownership thereof, shall front on or have access to public (or proposed public) road/street. All dwelling units constructed within a PGC shall front on or have access to an internal public or private street or access drive system. Ms. Jennings moved, seconded by Mr. Roberts to deny the modification. Ayes – Mr. Hawkins, Ms. Jennings, Mr. Roberts, Mr. Scholle. Mr. Lang abstained because he did not have time to review everything. Modification denied.

ZO 110-70.C(3)(c)[6] All single-family detached residential lots created in a PGC shall front on proposed public or private streets as defined hereinabove, for which design criteria are set forth in Chapter 86, Subdivision and Land Development, and Subsection C(5)(k) herein below. (In the event of any conflict or inconsistency between such design criteria, the latter shall prevail relative to a PCG). Mr. Roberts moved, seconded by Mr. Hawkins to approve the modification. Mr. Scholle said as a point of discussion is that the lot does not have road frontage. This section does not talk about easements or any mention to access to road. It specifically speaks about road frontage. Mr. Vranich read the entire section.

Mr. Klein said, "If I could speak. The Boards have approved other lots without frontage. That I have accesses throughout the development.

Mr. Scholle said, "I have no control over that."

Mr. Klein said, "I just wanted to point it out that there is basis."

Mr. Scholle said, "It doesn't matter. I'm going by what the ordinance says."

Mr. Klein – “And I guess I want to bring another point. If we went strictly by the ordinance the development would not stand. There are many cases of variances...”

Mr. Scholle said, “So there’s been violations of the ordinance?”

Mr. Klein said, “No. They’ve been worked through of how we got to be a magnificent community Terry. That was the difference. Just philosophical difference of how we got there. Many modifications.”

Mr. Scholle said, “If we don’t stick to the law what do we have? If you don’t like the ordinance then maybe there’s a way the ordinance can be changed. But as of right now that’s what the ordinance states.”

Mr. Klein said, “Terry, I’m just trying to describe what I’ve been through.”

Mr. Scholle said, “I understand, I understand.”

Mr. Klein said, “I’m getting a stricter letter of the law that wouldn’t allow two of the supervisors that live there would not be allowed to live there. There’s been waivers and modifications granted along the way and I’m asking for some flexibility here which I’ve been able to get along the way. That’s what I’m asking for.”

Mr. Roberts said, “Certainly my intent is to allow access to that particular property. Which means as this says they are asking for a modification for this particular lot. I think that’s what he wants and I see no reason not to do it.”

Mr. Scholle said, “I’m just telling you what the ordinance says but everybody has their own opinion. Any other discussion? No discussion, let’s put it to a vote. All in favor of allowing the modification of 110-70.C(3)[6]?” Ayes – Mr. Hawkins, Mr. Lang, Mr. Roberts; Nay – Ms. Jennings, Mr. Scholle. Modification approved.

SALDO 86-22.B(1) All lots shall front upon a dedicated public street (existing or proposed), or upon a fully improved private street constructed to Township specifications as set forth in this chapter. Lots fronting upon unimproved private streets or not fronting upon a street shall not be approved. Mr. Vranich indicated that they have requested a waiver from that section. A waiver from that section would remove the requirement so they could create a lot without frontage. Ms. Jennings moved, seconded by Mr. Scholle to deny the waiver request.

Ms. Jennings said, “We have ordinances so they’re basically laws for us to go by. If we continue to set precedence that go against them. What’s the point? There are reasons for it. In other situations it may not work. Something could happen where it ends up where there is contention. Somebody passes away that had ownership, I mean I think we are just setting a really bad precedent continuing to do this. I think the ordinances are there because they make sense and there is a good reason for them.”

Mr. Scholle said, “I have a tendency to agree. Like I say if somebody doesn’t like the ordinance then they should investigate it and possibly change it. For right now this is what the ordinance says and if we willy nilly continue to grant variances for every little thing that comes along

pretty soon what good are the ordinances? They're not any good. They're gone. Because we've usurped their power. So I'm in full agreement that we should continue to enforce the ordinances until such time as something can be changed with the ordinance."

Ms. Jennings said, "I agree. I think that our ordinances should not be run over roughshod on a regular basis."

Mr. Scholle said, "Someone else could come in with a similar situation that's maybe not as neat as this and say 'well look you gave a variance for this why can't you do this for me. You're just opening up a can of worms and the ordinances are really clear and I think we should stick to the ordinances."

Ms. Jennings said, "There are other ways to make it happen. It's a lovely 2 acre lot to go with the house."

Mr. Scholle said, "Exactly".

Mr. Klein said, "Is it okay to talk?"

Mr. Scholle said, "Sure."

Mr. Klein said, "Again, I started this community forever ago and I couldn't disagree with you more. This community would never happen under that type of thought process. I went to the Board of Supervisors when this thing started and I took them and again, we started with a set of rules and they said, 'Rick why aren't you building? We've changed these rules four times.' Again I was honed in so tight on these restrictions. Took them down to Frederick. Showed them that project and they say this is perfect. Why aren't you building? Because your ordinances are too restricted. We'll give you waivers and modifications that started day one and these modifications have been given. Day one. That's how I got to this magnificent community and if you go back to the original plan the same waivers and modifications have been granted and now all of a sudden you're saying stick to the ordinances. I've tried to loosen the rules Terry, and you might say well anybody can do it. Nobody can do this planned golf community again so its flexibility. It's how we got started off with this set of rules and said Rick how can we make it better? We will we work together. That's the type of cooperation I'm getting."

Mr. Scholle said, "I agree we should work together. We have to work together according to what the ordinance say. Otherwise why have an ordinance?"

Mr. Klein said, "Terry because when we wrote the planned golf community there were certain sections that could not have waivers and modifications. Everything else could. This could make sense to happen. I'm just asking for you guys - help to keep this moving. It's a wonderful community. This is a no-brainer. They're going to have this access road forever and they do have access to the public roads. It's a matter - it's there."

Mr. Scholle said, "But it doesn't have road frontage."

Mr. Klein said, "No it's never had the proper road frontage. That's what I'm saying. It's been a noncompliant lot forever."

Mr. Scholle said, "But now that you've made a modification that doesn't apply anymore."

Mr. Klein said, "I hear you, I guess I'm pleading to the other three. Terry, I hear you loud and clear and I'm pleading to the other three to help this."

Ms. Jennings questioned, "It was grandfathered with the two acre lot?"

Mr. Klein replied, "It was grandfathered with the one acre lot that had minimum lot frontage. I added the ground to it. It still never complied with the road frontage. It does not comply today. So it's the same issue. I do not have the proper road frontage today. The access drive I still have so, you know, it's a noncompliant lot 80 years ago it's still a noncompliant lot. I'm just asking to be able to sell this so I don't get blocked to do the rest of the subdivision. And I'm asking for the other three that have an open mind to give it strong consideration."

Mr. Scholle said, "Wait a minute. Are you saying that I have a closed mind because I want to follow the rules?"

Mr. Klein said, "No Terry. I do say that."

Mr. Clark stood up and said, "The rules include making waivers, Terry. Terry one of the purposes of the Planning Commission is to make waivers and grant modifications. If you don't do that what is your purpose? We can submit this to a computer. It's the human component that we have to have here."

Mr. Scholle said, "Correct."

Mr. Clark said, "And you're not behaving in a human way. You're simply saying 'no, I don't want to hear this.'"

Mr. Scholle said, "I'm simply saying, if we're going to have Ordinances and we're going to have, um, um..."

Mr. Clark speaking over Mr. Scholle, "Then we don't need you! We need a computer. Your role is in fact to listen to human concerns and human problems and make judgement. You're sitting there and saying you do not want to make a judgement."

Ms. Jennings said, "He has made a judgement, sir."

Mr. Clark speaking over Ms. Jennings, "No there's no judgement. When you say I refuse to consider anything. The rule is the rule. That's not the way I see the Planning Commission function."

Mr. Scholle said, "Ok good. Then you don't see it that way. That's fine."

Mr. Clark speaking over top of Terry – I just wanted to...ok... I made"

Mr. Scholle said, "Then we can agree to disagree on that point."

Mr. Clark said, "Alright fine I've said my piece."

Mr. Scholle said, "Alright. So let's put it up for a vote. This is SALDO 86-22.B(1) developer has requested a waiver from this section. We have a motion to deny the waiver. All in favor?" Ayes – Ms. Jennings, Mr. Scholle; Nay – Mr. Hawkins, Mr. Lang, Mr. Roberts. Waiver approved.

Mr. Vranich explained that the Commission has acted on the waiver and modifications. Ultimately, at the end of the night the Commission will need to decide to move this plan on to the Board of Supervisors. Those items were critical to move that forward. One item that needs to be addressed is a planning module non-building waiver. Ms. Jennings moved, seconded by Mr. Hawkins to authorize the Chairman to sign the non-building declaration. Motion carried unanimously.

Mr. Vranich said of the remaining comments on his review letter is number 21 that deals with the title of the plan as it relates to other plans that have been submitted this year. Mr. Vranich went on to inform them that it is their feeling this plan should be treated as a new submission. He believes it is not an amended plan because it is substantially different from what was presented to the Commission a month ago. Should the Commission move this forward, there is that preliminary plan that was reviewed last month and there was a number of previous revisions to this plan that were submitted to the Township. Those should be withdrawn before this plan moves forward. He is recommending that be a condition, that the other plans be withdrawn. Mr. Vranich questioned Mr. Klein who indicated he had no objection withdrawing those other plans. Mr. Scholle moved, seconded by Ms. Jennings to conditionally approve it when the previous plans are withdrawn and on the resolution of the Zoning Officer's review letter dated October 13, 2015 and the Wm. F. Hill letter dated October 13, 2015. Motion carried unanimously.

**Other Business:** Ms. Smith wanted the Commission to know that the plan presented has frontage on Mason Dixon Road. It has had frontage since at least 2000 so the representation tonight that this is a nonconforming, landlocked lot is not correct. Second she stated that as the Planning Commission they have a host of roles as a recommendatory body to the Board of Supervisors. That the job is not to simply rubberstamp a request for variance, modification, waiver that comes before you. To the extent the Commission was told that this evening, that is not your job. That is not true. The Commission's job is to think independently, to provide good recommendations and counsel to the Board of Supervisors to consider when they act upon plans. Her third comment was a procedural one. Ms. Smith stated that once a motion has been on the table and are in discussion they are not obligated to hear comments from anyone in the audience. They have had their opportunity to make their case to you.

- **Zoning Ordinance – Wireless Telecommunication Facilities:** Ms. Smith said that FCC's 2009 declaratory ruling and FCC Report and Order released October 21, 2014 addresses issues of presumptively reasonable local/review time frames and applicability of guidelines to DAS and small-cell deployments wireline facilities and collocation. She then went through each of the sections, Definitions; Permitted Uses; Collocation, replacement or modification; Zoning Permit and Application Review Procedures; Bulk and Area Requirements; Design, Construction, Operations; Discontinuation, Abandonment and Removal; Performance Security. Mr. Hawkins

said that he would like the setback to be the height plus 50'. Mr. Scholle and Mr. Lang both stated that they feel the application must identify who received notification and also would like to see it in the local paper to allow for the residents to provide feedback.

**Adjournment:** With no further business to be discussed by the Commission, Ms. Jennings moved, seconded by Mr. Roberts to adjourn the meeting. Motion carried unanimously. Meeting adjourned 9:04 pm.

Respectfully Submitted,

Sheri L. Moyer  
Secretary