

## **BOARD OF COMMISSIONERS MEETING MINUTES**

**August 3, 2020**

The regular meeting and public hearings of the Board of Commissioners of the Township of Upper St. Clair, duly advertised and posted in accordance with law, was called to order at 7:30 PM on Monday, August 3, 2020 at the Community & Recreation Center, 1551 Mayview Road, Upper St. Clair, PA. The Pledge of Allegiance was recited by all present.

PRESENT: Commissioner Christie                      President  
Commissioner Paoly                      Vice President (*present via audio conference*)  
Commissioner Enck  
Commissioner Orchowski  
Commissioner Pardini  
Commissioner Plutko  
Commissioner Waller

Matthew R. Serakowski                      Township Manager  
Mark P. Romito                      Director of Finance  
Adam A. Benigni                      Director of Community Development  
Irving Firman                      Township Attorney  
Jennifer Slagle, P. E.                      Township Engineer  
Missy Fenster                      Network Deposition Services  
Prudence Cooper                      Recording Secretary

EXCUSED: Mark Mansfield                      Assistant Township Manager

PUBLIC:                      Approximately 24 people attended.

At 7:00 PM, the Honorable Ronald A. Arnoni conducted a ceremony in which newly appointed Commissioner Pamela L. Enck was sworn into office as Commissioner of Ward 2 of the Township of Upper St. Clair.

Commissioner Christie then announced that the Board will be meeting in Executive Session to discuss legal matters.

### **REVIEW OF BOARD OF COMMISSIONERS' REGULAR MEETING MINUTES OF JULY 6, 2020**

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Commissioner Orchowski moved to approve the Regular Meeting Minutes of July 6, 2020. This was seconded by Commissioner Plutko and carried with a 7-0 voice vote.

### **REVIEW OF BOARD OF COMMISSIONERS' SPECIAL MEETING MINUTES OF JULY 22, 2020**

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Commissioner Waller moved to approve the Special Meeting Minutes of July 22, 2020. This was seconded by Commissioner Enck and carried with a 7-0 voice vote.

**PUBLIC COMMENTS**

Mr. Curtis Turner, 123 Highview Drive, stated that he is an FCC licensed amateur radio operator and he received a Notice of Violation on July 17, 2020 from the Township stating that the 50-foot-high temporary and portable antenna he installed in his back yard was built without a permit and is not allowed in his zoning district. He requested the citation against him be withdrawn since he claims the Township Code pertaining to permanent antennas is geared towards commercial antennas and not for amateur operators and that state and federal regulations limit the height of antennas to 65 feet.

In response to questions from the Board, Mr. Turner provided that he has been an amateur radio operator out of his home for over three (3) years. He has received no complaints from his neighbors; the Code Enforcement Officer was in his neighborhood and noticed the antenna. Mr. Turner shared that he is here tonight before the Board upon advice from his legal counsel and that emails were sent to the Township on or about July 19, 2020 regarding his position on this matter.

Mr. Firman advised Mr. Turner that the Township's Board of Commissioners is not the correct governing body to appeal his violation. He has 30 days to challenge the zoning violation with the Township's Zoning Hearing Board.

Mr. Serakowski added that to preserve his right to appeal, Mr. Turner could appear before the Township's Building and Fire Codes Appeal and Advisory Board. Mr. Serakowski stressed that the Board of Commissioners does not have the right to unilaterally have the violation withdrawn.

Mr. Serakowski stated that an email was received by the Township today from Mr. Craig Stuver, 1740 Quigg Drive, requesting the status of the property owned by Mr. Hawk located at 399 Upper Road. The email was forwarded to the members of the Board. Mr. Stuver has presented his concerns about this property in previous Board meetings. Mr. Serakowski asked Mr. Benigni to provide the current status of this matter so that a response can be made to Mr. Stuver.

Mr. Benigni stated that there has not been much change in the status of this property since Mr. Stuver's inquiries that were shared at last month's Board of Commissioners' meeting. The Planning and Community Development Department is persistent in their follow up with Mr. Hawk to maintain and cleanup his property, including the grass and weeds. This matter is still in litigation, but there is property maintenance still to be done.

Mr. Benigni confirmed for Commissioner Christie that the Township is following up on this matter to its fullest extent.

Commissioner Christie asked if there were any additional public comments or comments from the Board and there were none.

**OLD BUSINESS****RECOMMENDATION RE. PLC20-0004 – WOODSHIRE ESTATES – PRELIMINARY AND FINAL SUBDIVISION APPROVAL**

Mr. Benigni stated that the applicant, M & D Properties, is requesting preliminary and final subdivision approval for a consolidation of seven (7) parcels into two (2) parcels located at 302 Locust Lane.

Mr. Benigni added that this application was tabled from the Board of Commissioners' meeting on July 6<sup>th</sup> to allow the applicant's attorney to provide written revised modifications to the plan. For the record, the Planning Commission recommended denial of this application at its meeting on June 16, 2020. Staff also recommends that the Board of Commissioners vote to deny this application for reasons stated in its Staff Report. The applicant and their representatives are here tonight to present their revised modifications.

Mr. Benigni confirmed for Mr. Firman that the email received from Mr. Jon Cwalina on August 3, 2020 will be entered into the record as a Citizens Exhibit.

Mr. Bill Sittig, attorney with Sittig, Cortese & Wratcher, 1500 Frick Building, Pittsburgh, representing property owner, M & D Properties, Inc., provided clarification pertaining to the modifications to sections of the Township Code being requested which is detailed in the memo dated July 27, 2020 that was provided to the Township. The two (2) areas of relief from the Code include the prohibiting of flag lots and property fronting on two (2) streets.

Mr. Sittig stated that the Township Code requires that the front building line of a property must extend along a private or public street and that the lot width be at least 90 feet. The applicant is seeking a modification to establish that the lot width of proposed Lot 2 not be measured along Locust Lane, but is instead measured behind Lot 1, along the Lot 1/Lot 2 property line. If this modification for a flag lot is granted, which can be accomplished by the Board of Commissioners, the lot width of Lot 2 exceeds 90 feet; therefore, no variance from the Zoning Hearing Board would be necessary.

Mr. Sittig added that the applicant is asking for a common driveway, thereby respecting the court's decision regarding the paper street. M & D Properties purchased the house on Lot 1 to secure the property width of Lot 2 and the condition of this application is that only one (1) house be built on Lot 2. The presentation on the overhead screen is the same one used at last month's Board of Commissioners' meeting.

Mr. Sittig introduced Mr. David Lucci, registered landscape architect with Victor-Wetzel Associates, 409 Broad Street, Sewickley, and reviewed his professional credentials for the Board. Mr. Lucci was asked by the applicant for his professional advice for the cost to develop the property when the four (4) lot development was approved in 2005 and then again at the present time. He has concluded that, as in 2005, the proposed development before the Board this evening with access from Quigg Drive is not viable due to the costs to move 15,000 cubic yards of fill, the installation of a 255 foot pipe for the required culvert across the stream, the 125 feet of concrete to encase the sanitary sewer, mitigation of .03 acres of wetland, and joint permitting with the DEP and Army Corps of Engineers, for a total cost of \$330,000. Mr. Lucci provided a handout to the Board listing these costs. He added that there is no guarantee that the required joint permits would be granted, but this would not be included as a reason for the hardship to develop the property.

Mr. Lucci clarified for the Board that the previous approval in 2005 for four (4) lots included access from Quigg Drive. Mr. Lucci also stated that to develop just one lot with access to Quigg Drive does not justify the expenses to do so; there is justification for access from Locust Drive.

Mr. Jon Cwalina, 499 Locust Lane, commented that the standard of viability to develop the property should be the selling price of the property, which could be as much as \$2 million. Mr. Cwalina also questioned why access to the property could not be from the Locust Lane right-of-way off of Gilkeson Road.

Mr. Lucci responded that access from Quigg Drive is not feasible due the steep terrain of the property and the costs previously discussed. Access from Gilkeson Road is not viable because that access would not be lined up with the property, and grading is not accessible in relation to the location of the proposed house on Lot 2. Mr. Lucci stated that he had not conducted a cost analysis for access from Gilkeson Road.

Mr. Richard DiSante, 431 Cadberry Court, commented that the original master plan for this property had access off of Cadberry Court between two (2) houses, evidencing that there are other ways to access the property in question. Mr. DiSante submitted a copy of the plan to the Board for the record.

In response to Commissioner Enck's inquiry, Mr. Sittig confirmed that the applicant's case for hardship in accessing the property from Quigg Drive is based on cost and not whether they could secure permitting from the DEP and Army Corps of Engineers. Mr. Sittig emphasized that there is legal access from Quigg Drive, but it is not practical.

Mr. Sittig and Mr. Lucci clarified for Commissioners Enck and Orchowski that the driveway to the proposed house on Lot 2 will be a joint driveway to the right of the existing house on Lot 1 and is not part of the existing driveway. A separate driveway cannot be installed to the left of the existing house due the steep topography and it would reduce the buildable area of the proposed house on Lot 2. Mr. Sittig pointed out that no matter where the driveway is placed, it would result in a flag lot and could potentially diminish the front lot line of Lot 1 to less than the required 90 feet.

Dr. Jeff Perri, 433 Cadberry Court, commented that he would be greatly impacted by the proposed 100-yard driveway that would be along the length of his backyard. Dr. Perri submitted to the Board, and for the record, a letter written to the residents of Cadberry Court from 2004 from M & D Properties regarding their proposed development.

In response to Dr. Perri's inquiries regarding access from Gilkeson Road through a paper street, and the grading and elevation of the proposed driveway to Lot 2, Mr. Lucci responded that there could be no access from Gilkeson Road. In addition, although the elevation is higher to the right of Lot 1 from Locust Lane compared to the left side, the length of the driveway is longer and grading would be a lot less.

Mr. Sittig introduced Mr. David Steinbach, part owner of M & D Properties, and reviewed his credentials for the Board. Mr. Steinbach stated that he purchased this property that is being discussed tonight 31 years ago and that his company was responsible for another development in Upper St. Clair and for 15 property developments in Allegheny, Butler and Washington counties. Mr. Steinbach provided a list of these developments to the Board.

Mr. Steinbach stated that since the Township approved the development of the property into four (4) lots in 2004, M & D Properties reviewed the viability of access from Quigg Drive, Gilkeson Road and Locust Lane. The proposed access from Locust Lane to one (1) lot instead of four (4) lots provides the least relief from the Township Code and is the most economical. Furthermore, it is more advantageous to sell Lot 2 with a driveway from Locust Lane to the best location on the property to build a house. The existing house on Lot 1 was purchased by M & D Properties to gain access to Lot 2.

Discussion ensued between Mr. Disante, Mr. Cwalina, Dr. Perri, and Mr. Steinbach regarding access to the property from Quigg Drive, Gilkeson Drive in Mt. Lebanon or Cadberry Court, and requesting approval for four lots, which would garner a higher selling price of the development.

Commissioner Enck asked for the reason for not reserving a right-of-way access to the proposed property when developing Hempstead Woods. Mr. Steinbach responded that during the development of Hempstead Woods, M &D Properties had not purchased the property in question and he could not recall if all the lots in Hempstead Woods were sold before that purchase.

Mr. Steinbach confirmed for Commissioner Pardini that when the four (4) lots were approved in 2004, access to the lots was approved from Quigg Drive going up the hill. He further indicated that it was not viable to develop the four (4) lots then and it is not feasible now. Developing one (1) lot now not only minimizes environmental issues, but the Township will be able to assess taxes at a higher rate.

Mr. Sittig confirmed with Mr. Steinbach that once the infrastructure was complete on Cadberry Court, before the houses there were built, access to the property in question from Cadberry Court was not possible. The original approval of the four (4) lot development provided only for access from Quigg Drive.

Mr. Disante stated that he has no objection to developing this property; he does object to the location of the proposed driveway to Lot 2. The Planning Commission unanimously voted against the proposed flag lot and he agrees that flag lots lower surrounding property values, create environmental flooding concerns, and prevent emergency vehicles from being able to locate the address. Furthermore, there are safety concerns with installing a driveway that would be located in the backyard of several homes as children do play in that area.

Mr. Disante added that the Township Code clearly states that flag lots are prohibited and that Township leaders should uphold its ordinances for the safety of its residents with no exceptions. Developing four (4) lots with access from Quigg Drive, as opposed to the one (1) lot with a driveway from Locust Lane would negate the relief of financial hardship the developer is seeking because selling four (4) lots would garner more revenue than the sale of one (1) lot. The developer has indicated that once they receive approval for this two (2) lot development, it would be sold, leaving the surrounding homeowners to cope with the resulting difficulties of the property.

Mr. Disante submitted to the Board a copy of a letter dated 2004 from residents Catherine and Duane Rieder to Township Staff stating that they were forced to sell their property based on reduction in property values, decreased child safety, and environmental concerns, which are the same issues being raised with the current proposed development.

Mr. Disante also referenced a letter dated 2004 from Ms. Deborah Gibbon, 212 Locust Lane, in which she also cites safety concerns, and the potential for environmental flooding from this development.

Mr. Cwalina stated that M &D Properties has failed to satisfy the prerequisites of Section 512.1 of the Municipal Planning Code (MPC) that require a showing that the modifications sought by the applicant will not be contrary to the public interest and that the purpose and intent of the ordinance will be observed. In this case, the governing body (the Board) may grant the requested modifications, but Section 114.14 of the Subdivision and Land Development Ordinance (SALDO) of the Township Code prevents flag lots in the Township. In addition, with the passing of

Ordinance No. 1977 in 2007, the Board of Commissioners declared that the prohibition of flag lots was in the best interest of the health and welfare of Township citizens and is always mandatory. Therefore, Mr. Cwalina argues that the Board of Commissioners is not authorized to grant modifications to a flag lot.

Mr. Cwalina further shared that M & D Properties has fulfilled the prerequisites if access to the property is from Quigg or Gilkeson Roads. The proposed cost of \$330,000 for the Quigg Drive access is not prohibitive as the average cost of undeveloped land in the Township is \$199,894 per acre according to Zillow, which would total close to \$2 million for the 10 acres of Lot 2. In addition, M & D Properties has not provided proof that the required permits would not be granted by the DEP and Army Corps of Engineers.

Mr. Cwalina added that although M & D Properties implies that the only impact resulting from the requested modifications will be the installation of a driveway from Locust Lane and the construction of a single-family dwelling on a 10-acre parcel, that dwelling and driveway would be adjacent to and in the immediate backyards of several homes on Locust Lane and Cadberry Court due to the topography of the property. This would cause a decrease in those property values, cause water runoff issues on Cadberry Court, and circumvent the desirable general development of the neighborhood and community in accordance with the Comprehensive Plan. Furthermore, M & D Properties was also the developer of the Cadberry Court properties and could have carved out access to the 10-acre property (Lot 2) at the time of that development, but they chose not to.

Mr. Cwalina concluded that M & D Properties is now asking the surrounding property owners of Lot 2 to forgo the Township standards for the desirable general development of the neighborhood by permitting the creation of a prohibited flag lot. M & D Properties should not be permitted to acquire an exception as a result of a situation that they themselves created. Therefore, Mr. Cwalina is asking that this application be denied by the Board of Commissioners.

Dr. Perri stated that although he understands the developing of this property, he does take issue with the driveway access to Lot 2 of the proposed development. The proposed driveway, now a paper road that is located directly behind his property, is very steep from Locust Lane and it is now all grass and very wide with trees bordering it. Dr. Perri has already cleared the property behind his house, graded it, installed trenches and French drains in an attempt to stop the immense flooding from that area into his house, yet it still occurs. He has also had to replace his driveway because water runoff destroyed it. The driveway that M & D Properties has proposed is 60 feet above his backyard and will be 80 yards long with a four (4) to five (5) foot high berm, which will cause all the water to be funneled into his backyard which would destroy his house. Mr. Perri concluded that if this development is approved, M & D Properties should be made responsible for the flooding damage to his property.

Mr. Firman stated that a lot of new information was shared this evening about this proposed development and suggested that this matter be continued to the Regular Board of Commissioners' meeting on September 8, 2020. This will offer an opportunity for the public or Mr. Sittig to provide additional information or comments in writing, which they must do so by August 24, 2020. This will allow the Board time to consider those comments before they render a decision at the September 8<sup>th</sup> meeting.

Mr. Sittig consented to the continuance on behalf of M & D Properties.

Mr. Firman confirmed for Commissioner Orchowksi that the record stays open on this case and a continuance gives the developer time to respond to the legal issues raised this evening.

Commissioner Christie asked if there were any additional comments from the Board or the public and there were none.

**MOTION AND VOTE TO TABLE RECOMMENDATION RE. PLC20-0004 – WOODSHIRE ESTATES – PRELIMINARY AND FINAL SUBDIVISION APPROVAL**

Commissioner Orchowksi moved to table Recommendation Re. PLC20-0004 – Woodshire Estates – Preliminary and Final Subdivision Approval to the Board of Commissioners' Regular Meeting on September 8, 2020. This was seconded by Commissioner Plutko and carried with a 7-0 voice vote.

**NEW BUSINESS**

**PUBLIC HEARING RE. PLC20-0005 HASTINGS VILLAGE PLAN REV. NO. 2 – AMENDED TENTATIVE AND FINAL APPROVAL**

Commissioner Christie introduced the Public Hearing regarding PLC20-0005 Hastings Village Plan Rev. No. 2 – Amended Tentative and Final Approval.

Mr. Benigni announced that late afternoon on Friday, July 31, 2020, the applicant's attorney requested this Public Hearing be tabled to the Board of Commissioners' Regular meeting on September 8, 2020.

Tracy Taylor Perles, 117 Village Court, and Nancy Joiner, 113 Village Court, both stated that they, and others in their plan of 37 homes, did not receive a certified letter from the Township notifying them of this application to develop property in their plan. Their only notification of this matter was a sign posted in their plan and they both know nothing about this proposed development.

Commissioner Orchowksi advised that Ms. Perles and Ms. Joiner can contact the Township's Planning and Community Development department and request information about this development which is a matter of public record.

Mr. Benigni stated that due to the pandemic, the mail carrier is not delivering all certified mail due to postal service protocols. Per the Township Code, certified letters were mailed to property owners within 200 feet of the property in question. Mr. Benigni will make sure those property owners receive information about this development.

Mr. Benigni agreed with Mr. Serakowski that this application should not proceed without approval from the Hastings Village Home Owners Association (HOA) which is the reason the applicant wishes to table this matter. Neither Ms. Perles nor Ms. Joiner received notification of this development from the HOA.

Mr. George Pitcairn, 127 Village Court, stated that he is president of the Hastings Village HOA and his first notice of this application was a certified letter from the Township that he received last Saturday, August 1, 2020. The HOA, governed by the state and bylaws of the HOA, requires a two-thirds majority vote of its residents to permit a resident to acquire ownership of common property of the plan. This process has not begun, but Mr. Pitcairn hopes it will be completed by next month and he will try and obtain a two-thirds vote of the HOA members.

Commissioner Christie asked if there were any additional comments from the Board or the public and there were none.

**MOTION AND VOTE TO TABLE PUBLIC HEARING RE. PLC20-0005 HASTINGS VILLAGE PLAN REV. NO. 2 – AMENDED TENTATIVE AND FINAL APPROVAL**

Commissioner Pardini moved to table Public Hearing Re. PLC20-0005 Hastings Village Plan Rev. No. 2 – Amended Tentative and Final Approval to the Board of Commissioners' Regular Meeting on September 8, 2020. This was seconded by Commissioner Plutko and carried with a 7-0 voice vote.

**RECOMMENDATION RE. ESTABLISH PUBLIC HEARING RE. PLC20-1301 – ZONING MAP AMENDMENT FOR REZONING OF 169 MCMURRAY ROAD FROM R-2 SUBURBAN RESIDENTIAL DISTRICT TO C-2 HIGHWAY COMMERCIAL DISTRICT**

Mr. Benigni stated that Milton E. Hamel, Jr. has submitted an application to amend Chapter 130 of the Township Code entitled "Zoning" to rezone property located at 169 McMurray Road, from R2 Suburban Residential District to C2 Highway Commercial District.

Mr. Benigni explained that under the Pennsylvania Municipalities Planning Code (MPC), rezoning requests are legislative in nature and are handled at the discretion of the municipality's elected officials.

Mr. Benigni added that at its regular meeting on July 16, 2020, the Planning Commission reviewed this proposed map amendment and adopted a motion recommending that the Board of Commissioners deny this application based upon the proposed rezoning not being consistent with the Township's Comprehensive Plan and the existing neighborhood. Staff is recommending that the Board of Commissioners establish the Public Hearing on October 5, 2020 by the adoption of Resolution No. 1689 which can be accomplished by a simple motion and roll call vote.

Mr. Serakowski stated that the applicant has requested that the Public Hearing date be set for November 2, 2020 Regular Board meeting and not on October 5, 2020.

Commissioner Orchowski agreed that the extended Public Hearing date is fair and it will provide the applicant enough time to prepare and state his case.

Commissioner Christie asked if there were any additional comments from the Board or the public and there were none.

**MOTION AND VOTE TO APPROVE RESOLUTION NO. 1689**

Commissioner Orchowski moved to adopt Resolution No. 1689 to establish the Public Hearing date of November 2, 2020 Re. PLC20-1301 – Zoning Map Amendment for Rezoning of 169 McMurray Road from R-2 Suburban Residential District to C-2 Highway Commercial District. This was seconded by Commissioner Waller and carried with a 7-0 roll call vote.

**RECOMMENDATION RE. 2021-2025 CAPITAL IMPROVEMENT PROGRAM**

Mr. Romito stated that in accordance with Chapter 25.2 of the Township Code, this is the public hearing for the Five-Year Capital Improvement Program (CIP) for the years 2021-2025. Mr.

Romito explained that after his presentation, he will recommend that the Board of Commissioners approve Resolution No. 1690 to update the Township's CIP for the years of 2021-2025. This may be accomplished by a simple motion and roll call vote.

Mr. Romito stressed that the adoption of this Resolution does not imply approval or funding of any specific projects or programs included in the CIP, which is a five (5) year plan, unless or until funding is appropriated by separate ordinance as part of the budget process.

Mr. Romito stated that the pandemic has put a pause on some of the items in the CIP; however, the Township department directors have worked hard to provide alternatives to the plan and justification of their capital items. In addition, the CIP was presented to the Budget & Finance Committee of the Board of Commissioners and the plan has remained unchanged since that meeting.

Mr. Romito then outlined the highlights of the CIP with a presentation on the overhead screen which included the following categories: Capital Equipment, Street & Signal Improvements, Storm Sewer Projects, Public Building and Park Improvements, Sanitary Sewer Projects, and Community & Recreation Center.

Mr. Romito stated that the total for the entire five-year CIP is \$81.5 million, which is lower than the previous CIP by \$1.8 million. The CIP is similar to other years and the funding sources do accomplish 100% of the CIP. He pointed out that the fund source designated "Other Sources" in the CIP is made up of mainly debt financing which mostly covers sanitary sewer compliance costs, although other projects in the CIP are proposed to be funded by bonds as well. The Township's commitment to improving its sanitary sewer system requires the most funding in the CIP.

Mr. Romito shared that a few capital improvement projects, such as the municipal building renovation project and repairs to the Public Works building roof have been paused until more financial clarity is obtained as a result of the pandemic. Enhancements to the Community & Recreation Center have been postponed as well.

Mr. Romito concluded his presentation by stating that Year 1 is 15% of the total CIP, and more than half of the total in Years 2 through 5 are planned for sanitary sewer compliance, in addition to commitments in other areas.

Discussion ensued amongst the Board and Mr. Romito regarding the impact to the CIP from the shutdown of the Community & Recreation Center due to the pandemic, the inclusion of the Morton Fields slope stability project, and how the CIP is used as a planning tool in the budget process.

Commissioner Christie asked if there were any additional comments from the Board or the public and there were none.

Commissioner Christie thanked Mr. Romito for his presentation.

#### **MOTION AND VOTE TO ADOPT RESOLUTION NO. 1690**

Commissioner Waller moved to adopt Resolution No. 1690 Re. 2021-2025 Capital Improvement Program. This was seconded by Commissioner Pardini and carried with a 7-0 roll call vote.

**OTHER BUSINESS**

None.

**ADJOURNMENT**

Following a motion for adjournment by Commissioner Paoly and a second by Commissioner Plutko, which carried with a 7-0 voice vote, the meeting was adjourned at approximately 10:04 PM.

Prudence Cooper  
Recording Secretary  
August 2020