

BOARD OF COMMISSIONERS MEETING MINUTES

March 1, 2021

The regular meeting 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, March 1, 2021 at the Community & Recreation Center, 1551 Mayview Road, Upper St. Clair, PA. The Pledge of Allegiance was recited by all present.

PRESENT:

Commissioner Paoly Vice President
Commissioner Enck
Commissioner Orchowski
Commissioner Plutko
Commissioner Waller

Matthew R. Serakowski Township Manager
Mark Mansfield Assistant Township Manager
Mark P. Romito Director of Finance
Adam A. Benigni Director of Community Development
Irving Firman Township Attorney
Jennifer Slagle Township Engineer
Prudence Cooper Recording Secretary

EXCUSED: Commissioner Christie President
 Commissioner Pardini

PUBLIC: Approximately 18 people attended.

REVIEW OF BOARD OF COMMISSIONERS’ REGULAR MEETING MINUTES OF FEBRUARY 1, 2021

Commissioner Waller moved to approve the Regular Meeting Minutes of February 1, 2021. This was seconded by Commissioner Orchowski and carried with a 5-0 voice vote.

PUBLIC COMMENTS

None.

OLD BUSINESS

None.

NEW BUSINESS

RECOMMENDATION RE. PLC16-0008 – TUSCANY POINTE PRD – FINAL APPROVAL – EXTENSION REQUEST

Mr. Benigni stated that Jeffrey W. Thomas, developer of Tuscany Pointe, has submitted a request for a two-year extension of the approval granted by the Board of Commissioners on November 7, 2016 by Ordinance No. 2154. Mr. Thomas and his counsel are present tonight to discuss this request.

Ms. Maureen Sweeney, with the law firm of Blumling & Gusky, stated that she is here tonight with Mr. Jeff Thomas, developer of Tuscany Pointe. Mr. Thomas is requesting a two (2) year extension of the prior approval. Due to the COVID-19 pandemic, business was unexpectedly interrupted, all construction was put on hold, and financial matters were in turmoil. The applicant is therefore requesting an extension of time so he may gather the resources to move forward with this project.

Ms. Sweeney is aware of the letter from Township property owners and a letter from attorney Wilhelm of Reed Smith that was submitted today suggesting that the Board has no authority to grant such an extension citing Pennsylvania statute Section 53 P.S 508 and that the only way an extension can be granted is if substantial improvements have already been constructed. Ms. Sweeney called attention to Section 53 P.S. 508, subsection 4 and stated that Mr. Wilhelm's position is a gross mischaracterization of this statute. The statute does not say that subsequent completion of the development is a predicate to granting an extension, but that it is at the discretion of the governing body to do so. Ms. Sweeney asked the Board for its discretion and support of the developer and grant the two (2) year extension.

Commissioner Orchowski stated that he can not speak to the legality of the extension as that is up to the Township solicitor to review; however, he does think the Board does have the authority to grant the extension. He is compelled by the COVID argument as these have been extraordinary times and asked of Mr. Thomas if two (2) years is sufficient time to begin development.

Mr. Thomas confirmed that the two (2) year time frame is an adequate amount of time and will be implemented shortly. Although COVID is ongoing, he does have permanent financing and conveyed that this development will be less impervious to better retain water.

In response to Commissioner Paoly, Mr. Thomas stated that he anticipates building to begin by this time next year or early summer next year. At that time, a bridge will be constructed for temporary access to the site, and then sanitary sewers will be installed.

Commissioner Plutko understands the delays that have occurred due to COVID; however, the construction industry was the first to return to work and he asked Mr. Thomas when that return to work date happened. In response, Mr. Thomas stated that rules were enforced of taking temperatures and mask wearing which was not efficient and slowed down development. He is the permanent owner of the site of which he pays principal and interest, so there are no partners at this time. He stressed that he will not fail the Township with this development.

Mr. Dimitri Shiry, 1309 Wellington Drive, stated that his property is adjacent to this development, and expressed his opposition to the Board granting an extension to develop Tuscany Pointe. He referenced a community impact letter dated February 19, 2021 addressed to Commissioners Christie and Plutko, and Mr. Benigni which was signed by 63 Township residents who reside in neighborhoods impacted by the development and who support the opposition to the extension to begin building.

Mr. Shiry raised the following reasons for opposing this development:

- In the five (5) years since the Board approved this Planned Residential Development (PRD), nothing has been done to advance the project. Of the five (5) new plans that have been subsequently submitted seeking an increase in density of the PRD, all had been subsequently denied by the Planning Commission or withdrawn by the developer.

- The Township Planning Commission and Allegheny County's Planning Division raised concerns of the adverse impact of the dense development on surrounding neighborhoods, including potential for landslides, mine subsidence and flooding.
- In the last five (5) years, severe flooding has occurred along McLaughlin Run Road, and mine subsidence has threatened the stability of Painters Run Road. The remediation of the landslide east of Truxton Drive, caused by the same Pittsburgh Coal seam that runs underneath Mr. Shiry's neighborhood and Tuscany Pointe, will be reviewed by the Board later tonight.
- The bridge permit to allow access to the development and approved in 1998 was extended many times before being denied in 2017. A new permit, submitted in 2018, was returned in 2019 citing 22 deficiencies; the application was then withdrawn. Again, this illustrates the developer's proclivity to delay progress of this PRD.
- Although the Township was notified in July, 2020 of the developer's intent to apply for general permits for this property, none have been submitted.
- Residential construction was and has been thriving during the pandemic; therefore, progress should have been made on this development.

Mr. David Rowles, 1417 Deepwood Drive, shared that he is the current president of the Wingate Homeowners Association. He expressed his opposition to granting the two (2) year extension of the Tuscany Pointe development. For the last six (6) years, he and fellow residents of the Wingate neighborhood have voiced their adversity to this PRD citing that it will reduce their property values due to the potential for landslides, flooding, traffic congestion, noise, outdoor lighting, garbage dumpsters, and air condenser units thereby making it difficult to resell their properties. Furthermore, Tuscany Pointe is not in keeping with the aesthetic of the residential neighborhoods of Upper St. Clair. In addition, the developer submitted and resubmitted plans to develop for years and has not yet began construction.

Mr. Jerrid Remaley, 1405 Deepwood Drive in the Wingate plan, also asserts that all the homes in his plan will be adversely affected by the Tuscany Pointe development due to declining property values and residents have voiced their opposition to this development for the last six (6) years. When moving into Upper St. Clair, residents do not expect an apartment complex to be built in their neighborhood. He asked the Board to deny the request for the two (2) year extension of the Tuscany Pointe PRD.

Ms. Teresa Rowles, 1417 Deepwood Drive, shared that her house overlooks the proposed Tuscany Pointe site. She opined that the developer's modifications, submissions, resubmissions, and withdrawals have lasted long enough. For years, fellow residents have voiced the same concerns about this development that have been raised tonight. She added that there would be no opposition if single family homes were going to be built on this site.

Ms. Ann Shiry, 1309 Wellington Drive, noted for the record that the COVID-19 pandemic did not prevent Mr. Thomas to continue his residential home construction, and they have appeared before the Planning Commission for Phases 2, 3, and 4 of the Bedner Farms development.

Mr. Jeff Wilhelm, attorney with Reed Smith, 225 Fifth Avenue, Pittsburgh, representing Dimitri and Ann Shiry, disagrees with the attorney representing Mr. Thomas. He referenced his letter that was emailed today to Mr. Benigni and the Township attorney where he asserted that no authority for the extension request exists under Article 7 of the Pennsylvania Municipalities Planning Code (MPC). Section 508 of the MPC only addresses the time provision of five (5) years to begin development of a PRD, which should be reviewed in context with Article 7.

Mr. Wilhelm continued that under the MPC there are only three (3) circumstances in which a developer can seek an extension:

1. If there has been litigation, which there has been none since this development was approved in 2016.
2. The developer has had the opportunity to begin building for the last four (4) years. The COVID pandemic has only taken up one of those years so far, and the developer had three (3) years prior to apply for permits. PennDOT's permitting office has remained open during the pandemic, so they had the opportunity to apply for the bridge permit to advance the project. The developer is asking for a total of seven (7) years to begin this project when they have not secured any permits.
3. If the developer has "substantially completed" 90% of the development, unless it is a phased development. This is not a phased development.

Mr. Wilhelm concluded that there is no authority for the Board to entertain the developer's request of a two (2) year extension. Under Article 7 of the MPC, at the end of the five (5) year period, nothing can be developed on this property without the entire approval being resubmitted to the Board for consideration for what should go on the property. The Board is eight (8) months away from being able to reevaluate whether or not this development fits. The developer should not be rewarded for having done nothing, especially when the Board does not have the authority to do so.

Mr. Wilhelm emphasized that his firm, Reed Smith, stands by the letter he submitted to the Township today and the position that the Board does not have the authority to grant this extension. Even if the Board did decide that it had the authority to grant the extension, it should not do so.

Mr. Thomas responded that the surrounding residents should have done their due diligence research when purchasing their properties and they would have realized that the Tuscany Pointe property is zoned R4 for multifamily dwellings. He claimed that he has been very transparent about this development and that upon its completion, the surrounding residents will be overlooking the apartment buildings, and not looking in their windows. There is a large ravine between the surrounding residents and the development site and there will be a fence around the development with quality landscaping. With all the development that he has done, there has not been one mine or subsidence problem. The Fox Chase II development is an example of his successful challenges with topography.

Mr. Thomas continued that there have been many misrepresentations about this development. There will be less density, not more. Township Staff approved the development plans, although the Planning Commission was not supportive. He has been very transparent with the residents and he is very serious about the Tuscany Pointe development. He assured that it will be of very high quality.

Ms. Sweeney summarized that the Tuscany Pointe development is, and always has been, zoned multifamily, is within the Zoning Code, and the modifications granted are not due to density. There is nothing nefarious in their request to extend the time to make it a better plan and Mr. Thomas is making the best of the property as it is zoned. She disagrees with Mr. Wilhelm's interpretation of the MPC and respectfully asked the Board to grant the two (2) year extension.

In response to Commissioner Paoly's inquiry, Mr. Thomas responded that although no permits have been filed yet, he does anticipate doing so in the next two (2) months.

Mr. Remaley stated that he takes issue with Mr. Thomas's transparency. At first, a nursing home was supposed to be built, then townhomes and now apartments. If he knew apartments were going to be built on the property, he would not have purchased his home. He would have no objection if single family homes would be built there.

Mr. Benigni responded to Mr. Wilhelm by stating that the plan for this development has not been recorded and the performance security by the developer has not been posted.

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

Commissioner Paoly added that Staff recommends that this item be tabled for consideration at the Board of Commissioners Regular Meeting of April 5, 2021.

MOTION AND VOTE TO TABLE PLC16-0008 – TUSCANY POINTE PRD – FINAL APPROVAL – EXTENSION REQUEST

Commissioner Orchowski moved to table PLC16-0008 – Tuscany Pointe PRD – Final Approval – Extension Request to the Board of Commissioners' Regular Meeting on April 5, 2021. This was seconded by Commissioner Enck and carried with a 4-1 voice vote. Commissioner Plutko cast the opposing vote.

RECOMMENDATION RE. DISPOSAL OF RECORDS

Mr. Mansfield stated that Staff has prepared Resolution No. 1696, which authorizes the disposal of various Township records in accordance with the Municipal Records Retention and Disposition Schedule referenced in Chapter 11.7. of the Township Code. Staff recommends the adoption of Resolution No.1696, which may be accomplished by a simple motion and roll call vote.

Commissioner Paoly asked if there were any questions from the Board or the public and there were none.

MOTION AND VOTE TO ADOPT RESOLUTION NO. 1696

Commissioner Plutko moved to adopt Resolution No. 1696 authorizing the disposal of various Township records in accordance with the Municipal Records Retention and Disposition Schedule referenced in Chapter 11.7. of the Township Code. This was seconded by Commissioner Waller and carried with a 5-0 roll call vote.

RECOMMENDATION RE. SCHOOL DISTRICT INTERGOVERNMENTAL AGREEMENT – TRUXTON DRIVE EARTH DISTURBANCE & WALL

Mr. Serakowski stated that the Board has been provided a copy of the Intergovernmental Agreement between the Township and School District which is necessary to complete improvements along Truxton Drive to address the slope remediation issue that occurred during June, 2018. The contract for this work will be addressed later this evening.

Mr. Serakowski concluded that approval of this Intergovernmental Cooperation Agreement may be accomplished by adoption of Resolution No. 1697 which may be accomplished by a simple motion and roll call vote.

Commissioner Paoly asked if there were any questions from the Board or the public and there were none.

MOTION AND VOTE TO ADOPT RESOLUTION NO. 1697

Commissioner Orchowski moved to adopt Resolution No. 1697 Re. School District Intergovernmental Agreement – Truxton Drive Earth Disturbance & Wall. This was seconded by Commissioner Plutko and carried with a 5-0 roll call vote.

RECOMMENDATION RE. APPROVAL OF CONTRACTS

Mr. Mansfield reviewed the following contracts for the Board’s approval in accordance with the Township Code:

A. Merante Contracting, Inc. Pittsburgh, PA	Truxton Retaining Wall Installation w/ Alternate #1 – Driveway and Parking Area Paving Off Truxton Drive	\$787,045.00
Independent Enterprises, Inc. Oakdale, PA	2021 Annual Street Resurfacing (unit price contract)	\$1,557,381.30
Matcon Diamond Pittsburgh, PA	2021 Street Crack Sealing (unit price contract)	\$39,000.00
Yeadon Fabric Domes, LLC Minneapolis, MN	Tennis Air Structure “B” Courts 7 & 8 Replacement	\$340,336.00
Laurel Ford Windber, PA	Two (2) 2021 Ford Police Interceptor Utility AWD Vehicles @ \$34,075.00 each, per the SHACOG contract	\$68,150.00

Mr. Mansfield stated that approval of the above contracts may be accomplished by a simple motion and voice vote.

Commissioner Paoly commented that he noticed that the parking lots for the tennis bubbles were full this evening. Mr. Mansfield responded that the tennis courts have been better utilized during the COVID pandemic.

Mr. Mansfield confirmed for Commissioner Orchowski that the Township does have experience with Independent Enterprises, who finished up the trail project after R&B Construction stopped construction.

Commissioner Paoly asked if there were any questions from the Board or the public and there were none.

MOTION AND VOTE TO APPROVE THE ABOVE-MENTIONED CONTRACTS

Commissioner Enck moved to approve the above-mentioned contracts. This was seconded by Commissioner Waller and carried with a 5-0 voice vote.

RECOMMENDATION RE. APPROVAL FOR A GRANT APPLICATION THROUGH THE REDEVELOPMENT AUTHORITY OF ALLEGHENY COUNTY COMMUNITY INFRASTRUCTURE AND TOURISM FUND FOR THE MORTON COMPLEX – FIELD LIGHTING RETROFIT

Mr. Mansfield stated that Resolution No. 1698 will authorize a grant application through the Redevelopment Authority of Allegheny County (RAAC) Community Infrastructure and Tourism

Fund (CITF) in the amount of \$180,000 to be used for the Morton Complex – Field Lighting Retrofit project in Boyce Mayview Park. The total amount of the project is slightly over \$300,000.

Mr. Mansfield added that Staff is recommending the approval of Resolution No. 1698, which may be accomplished by a simple motion and roll call vote.

Commissioner Paoly asked if there were any questions from the Board or the public and there were none.

MOTION AND VOTE TO ADOPT RESOLUTION NO. 1698

Commissioner Orchowski moved to adopt Resolution No. 1698 Re. Approval for a Grant Application through The Redevelopment Authority of Allegheny County Community Infrastructure and Tourism Fund for the Morton Complex – Field Lighting Retrofit. This was seconded by Commissioner Plutko and carried with a 5-0 roll call vote.

RECOMMENDATION RE. APPOINTMENT TO THE YOUTH STEERING COMMITTEE

Mr. Serakowski stated that members of the Youth Steering Committee (YSC) are jointly appointed by the Board of Commissioners and the Board of School Directors. Staff is recommending that Lauren Wharton be approved for appointment to the Committee for a four (4) year term which may be accomplished by a simple motion and voice vote.

Mr. Serakowski confirmed for Commissioner Plutko that recommendations to appoint members of the YSC are done equally by the Township and School District.

Commissioner Paoly asked if there were any questions from the Board or the public and there were none.

MOTION AND VOTE TO APPROVE AN APPOINTMENT TO THE YOUTH STEERING COMMITTEE

Commissioner Waller moved to approve the appointment of Lauren Wharton to the Youth Steering Committee. This was seconded by Commissioner Enck and carried with a 4-1 voice vote. Commissioner Plutko cast the opposing vote.

OTHER BUSINESS

Commissioner Orchowski stated that the bond measure went through for the current bond funding and that the repayment structure is the same as what was approved by the Board last month. He sought confirmation from Staff that due to the less favorable market conditions, the rates did increase slightly.

Mr. Romito did confirm that the market conditions were less favorable compared to 30 days ago and even one (1) year ago. There is no significant out-of-pocket expense; the debt service for the first 12 – 14 years is up about \$19,000 annually. The timing of the bond funding is about as good as it could have been.

Commissioner Waller offered his official statement to the citizens of Upper St. Clair, his esteemed colleagues, and Township Manager, Mr. Serakowski that, effective March 2, 2021, he will be

resigning as Commissioner At-Large as he and his wife have purchased a home in Washington County. He expressed that it has been a distinct honor to serve the Township of Upper St. Clair and to serve on the Board of Commissioners.

Commissioner Paoly thanked Commissioner Waller on behalf of himself and the Board for his service to the Township and that it has been a pleasure to have Commissioner Waller on the Board.

Mr. Serakowski confirmed for Commissioner Paoly that under the Home Rule Charter, the Board has thirty (30) days to fill the open Commissioner position. The vacancy will be publicly advertised tomorrow that will put forth the time line and process to accept individual resumes and set up interviews in order to appoint a new Commissioner At-Large within that 30-day period.

ADJOURNMENT

Following a motion for adjournment by Commissioner Waller and a second by Commissioner Orchowski, which carried with a 5-0 voice vote, the meeting was adjourned at approximately 8:31 PM.

Prudence Cooper
Recording Secretary
March 2021