

North Middleton Township Planning Commission

Township Building
2051 Spring Road
Carlisle, PA 17013

Minutes of the Planning Commission Tuesday, August 2, 2016

The meeting was held at the North Middleton Township building on Spring Road, in Carlisle, PA.

Attendance

Board Members-**Harry Kelso** (Chairman), **Bradley Mitchell** (Vice-Chairman), **Ronald Anderson** (Secretary), **Pamela Martin**, and **Dennis Hurley**

Codes Officer-**Rodney Borda**

Solicitor-**Mark W. Allshouse**

Cumberland County Planning Department-**Steve Hoffman**

A representative from Brehm-Lebo Engineering was not present this evening.

Visitors

Nancy R. Augustine-222 Overfield Drive, Carlisle, PA
Nancy S. Tritt-33 Silver Maple Drive, Boiling Springs, PA
Richard Tritt-33 Silver Maple Drive, Boiling Springs, PA
John Augustine-222 Overfield Drive, Carlisle, PA
Dennis J. Rydberg, FAPLD-147 East High Street, Carlisle, PA
Linda Y. Rydberg-147 East High Street, Carlisle, PA
Pat Grabey-15 Hendel Loop, Carlisle, PA
Fred Seltzer-515 West North Street, Carlisle, PA
Anthony Lorenz-724 Macarthur Drive, Carlisle, PA
Alan Wentz-980 Waggoners Gap Road, Carlisle, PA
Debbie Wentz-980 Waggoners Gap Road, Carlisle, PA
Chris Hinkle-Burget & Associates, Inc., 1797 New Bloomfield Road, New Bloomfield, PA
Trudy Bailey-10 Donegal Drive, Carlisle, PA

Call to Order

Chairman Harry Kelso called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

Public Input (non-agenda items)

Numerous visitors arrived for this meeting, expecting a discussion of Phase 1 of the Brubacker Plan. The visitors were informed prior to the start of the meeting that this matter was not on the agenda this evening and would not be discussed or voted on.

Chairman Kelso asked if anyone wished to make a statement. Solicitor Allshouse was asked if he could provide an explanation of what is going on with this plan, and why it keeps getting "cancelled." Mr. Allshouse gave the following explanation:

When plans are reviewed, it's controlled by something called the M.P.C. It's a state law. The M.P.C. says that a developer generally is the one in control of when a plan is reviewed. So a developer will bring a plan into our office, and we'll put it on the schedule. The law says we have to review this plan within so many days or it's a deemed approval. What happens though is as we review it, we find a number of issues, and in the case of the Brubacker Plan, there were a number of issues. So our engineer responds with a letter and says here are the issues. The developer then chose, based on the number of issues and the things that our engineer said he had to overcome, to pull the plan off the agenda. We can set an agenda based on the plans we have, and if no one pulls them, we will review them at the open meeting, but a developer, even up to the day of the meeting, and it's standard, it's not just this developer, can pull those plans and say we're not ready yet, will you please table the plan.

In the event the time period gets towards the expiration, when we have to make a decision and the developer's plan is not ready yet, what a developer will do, standard practice, is send a letter requesting an extension, and actually the law says he's granting us an extension, a longer period to review his plan before it would be a deemed approval. In the event that a developer does not ask for an extension and we run against that time period, we generally deny the plan, because it doesn't meet our requirements. That's rare. Most of the time when an extension is granted or requested, the Board of Supervisors, not this board, decides to grant extensions. Sometimes, the state law grants extensions. You all know that this plan has been around forever, and the reason it's been around forever is at one point it was approved, and the State of Pennsylvania passed a law that extended everything and kept extending it and kept extending it to January of this year. So this plan probably had a six or seven year extension that we didn't control either. The state said all plans will be extended until such and such a date.

So what's happened today is, a day or so ago, the developer pulled the plan, and that modified the agenda of what plans we had to review for this evening. So what I always recommend to people, if they're coming to look at a plan is, the day of, call the Township Office and ask to know what plans are on the agenda for the evening, and they'll tell you gladly, and then you won't make those trips. So, what we only have the power to do is review the plans that the developer keeps in front of us. If he chooses to pull his plan, we don't review it. We don't have the ability to hold onto it and say, we don't care what you want, we're going to review it. That's what the state law says and the Municipalities Planning Code. That's why, unfortunately, they pulled it and that's why you guys are all here tonight, because they pulled it at the last minute. And so, it originally was scheduled for this month, and tentatively it may be on next month, but the developer is going to drive that scenario, not us.

Numerous questions were asked at this time. Mr. Allshouse was asked what the expiration date of this plan is. This question was referred to Mr. Borda. He stated that at the present time, the date, without the developer asking for another extension, is October 28, 2016. Mr. Borda explained that the developer did ask for the plan to be put on the agenda for the September meeting, which is the day after Labor Day (September 6, 2016). He added that the developer could ask for it to be tabled at that meeting, and that it won't be known if that is going to happen until the developer does it. A question was then asked about the response given to the builder listing the issues that the Township has with the plan. The questions was whether or not this information was a matter of public knowledge. Mr. Allshouse replied that this is a public record that can be obtained with a record request form from the Township. Mr. Allshouse was asked if that request could be made tonight. The response from Mr. Allshouse was, "No." He explained that under current state law, the Right to Know Law says that a record request from a municipality must be on a form given to the Keeper of Open Records. He noted that that person is not on the Planning Commission, and therefore, someone would have to come back in to the Township Office and ask for those documents. He added that this information is in the file, and that it is an open file. Mr. Allshouse was asked if he knew what the issues were in the memo that was sent to the developer. Mr. Allshouse stated that the letter was sent to the developer by Brehm-Lebo Engineering, the Township Engineer. He further stated that his recollection was that there were a number of comments, as in more than twenty. He said that he did not have the comments memorized and that it would be necessary to read the memo.

At this time, Mr. Allshouse was asked about what was described as "the big issue." Mr. Allshouse said he knew that the main question is whether or not there is an easement addressed in the plan. He stated that he doesn't know the answer to that for sure. Mr. Mitchell asked the visitors for an overview of why they are so interested in this plan. The response was that Meeting House Springs Road was abandoned by the

Township a number of years ago, and that the Turnpike closed the underpass in order to widen the Turnpike to three lanes each way. Meeting House Springs Road was described as formerly being the primary access to their cemetery property. The solution was described as being an agreement between the Turnpike and the property owner to provide a gravel road to the cemetery. This gravel road was described as being very unsafe, which has made it impossible to have any public functions there. It was stated that the group is vitally interested in having an access road provided now by the land owner, and not after multiple phases of development are approved. At this point there was further commentary about the hazards and inadequacy of the gravel road and the difficulty and frustration involved in accessing and using the cemetery. There was further commentary that the Board of Supervisors were very excited about this project when it began in 2006 because the cemetery was going to be fixed up. It was stated that all of the work was done and now the cemetery can't be safely used. It was stated that the church owned all of that property in 1734. At this point it was suggested that Mr. Kelso be made aware that this matter is under litigation. Mr. Kelso acknowledged that he was aware of that. He noted that the Township is not a party in that.

Mr. Kelso noted that there will be a road there in Phase 4 when this project is finished. He asked how close this road will be to the cemetery. The response was that this will be 50 feet. It was stated that the plan does not show a connection there and that access would also involve the George property. At this point there was some discussion about the cemetery being the oldest public cemetery in Cumberland County, and the degree to which it is being maintained very well.

Mr. Kelso pointed out that this matter is not going to be discussed tonight, and that a different plan is being considered this evening. He said it will be insured that as the streets are done, there will be a way to get back there eventually. Mr. Kelso added that he couldn't say how quickly that will happen. Solicitor Allshouse spoke to the visitors at this time. His comments follow.

The remedies you're looking for, we don't have ordinances for. We have an ordinance that says here's what must be on your plan for design for stormwater for location for house spacing. Those are our ordinances. That's all we have the legal ability to enforce. That's why you're in Common Pleas Court, because your attorney recognized your remedy for those things is not with us. We can't make the developer develop it quickly. That's why he had an approved plan all those years back and it sat for seven or eight years and no development ever occurred. We can't make him develop it. All that we can do is say to him, there was an access, there's an access now, you can't block that access while you're developing it. You can't build anything in that access, but we can't make your access better. That would be us taking his land. Just like I can't come to your house and say I want your driveway to be 10 feet wider than it is. Do it now. And so, those are all things that are equitable solutions, and those are the things that the Court of Common Pleas is going to help you with. We unfortunately, if we do not have an ordinance, we cannot make a developer do anything. That's the law for municipalities in Pennsylvania, and the state gives us very little power to do much more than some good planning with streets and widths and stormwaters and drainages and spaces and elevations and things like that, and outside of that we really can't tell a developer five houses here, big road here, five houses here, lose those four houses. So, we're kind of stuck.

Mr. Allshouse asked if it was correct that the existing access cannot be blocked. Mr. Allshouse responded that the existing access cannot be blocked and that this would be a comment from the engineer. He noted that this is a standard comment on all plans in which there are right-of-ways going through a developed property, and that is that you can't block another landowner's or another individual's right to continued use of an existing right-of-way. Mr. Allshouse acknowledged that the existing right-of-way is the one that the group doesn't like. He stated that the plan wouldn't be approved if the developer tried to build over the right-of-way.

There was one further question from the visitors. It was mentioned that there is a hazardous culvert within 50 yards of the gravel road access. The question was if the township engineer has any authority to inspect this culvert. Mr. Allshouse responded that this can't be done if the culvert is on private property, unless that property is dedicated to the Township. He explained that if the property is being developed, the engineer can then specify certain design requirements.

There were no further questions or comments.

Approval of the Minutes for Tuesday, July 5, 2016

Mr. Kelso asked for any changes, corrections, or additions to the minutes from the Tuesday, July 5, 2016 Planning Commission meeting. None were requested. Mr. Kelso asked for a motion.

Bradley Mitchell moved to approve the July 5, 2016 minutes as presented. Ronald Anderson seconded. All votes were in favor, and the minutes were approved as written.

Pending Applications

Robert E. & Sondra McCoy & Neil McCoy, Final Minor Subdivision, Zoned Agricultural, Total Acreage: 89.21, Revised, Expiration Date: October 29, 2016

From the Agenda:

This plan is to subdivide two existing lots to create one new lot.

It was noted that no representative from Brehm-Lebo Engineering was present. Chris Hinkle came forward to represent this matter. He offered to give a brief overview. He referred to the plan set and noted that the second sheet shows the existing property, with North Middleton Road along the bottom edge. He stated that the property is at the intersection of Hoy Road and North Middleton Road. Mr. Hinkle pointed out Lot 15 on the right side of Hoy Road, which he described as an existing stand-alone lot with an existing dwelling, outbuildings, and an existing driveway off of Hoy Road. He then pointed out Lot 1 on the other side of Hoy Road, which he stated is an existing 75-acre tract. He stated that Lot 1 has existing barns, outbuildings, a house, well, and septic. Mr. Hinkle then pointed out an existing pond near the bottom of the site along North Middleton Road. He described this location as pretty much an open working farm. He stated that Lot 15, on the other side of the road has some horse stables and an existing house, but is pretty much an open piece of ground. Mr. Hinkle indicated that the Plan is starting out as two existing lots with existing houses on each.

Mr. Hinkle then referred to sheet #3 of the plan set. He noted that this is more of a blow-up of the house at the center of the property. He pointed out that an odd-shaped lot is being shown as proposed Lot 16. He explained that this is the existing house with an existing drain field. Mr. Hinkle stated that this portion of the property is being taken off as an existing house lot of almost two acres. He further explained that the residual farm lot with the barns is being taken off and being created as a new building lot. He added that a new house is going to be placed on the farm lot. Mr. Hinkle then noted that Lot 15 is still being shown on the right side of Hoy Road. He pointed out that when Lot 1 and Lot 15 were originally created, the plan at that time didn't have the property line going right down the center of the road. He noted that the property line jogs back and forth across the road and creates a triangular sliver in the road. He explained that this plan will clear that up and take both ownerships to the center of the road and straighten out the property lines down the center of Hoy Road.

Mr. Hinkle summarized that a house is being taken off of a big farm lot so that a new house can be placed on the farm lot, and that the property line down the center of Hoy Road is being straightened out. Mr. Mitchell asked if it was correct that all of the setbacks on the property they are cutting out are working with the existing buildings. Mr. Borda acknowledged that this was correct, and stated that all of the new lines meet today's ordinance.

Mr. Hinkle then referred to sheet #4 of the plan set. He explained that this page depicts a shaded-out area in the center of the sheet which shows the location of the proposed house and the proposed location of the driveway extension that comes back through the farm ground. Mr. Hinkle explained that the intent is to construct the new house on the crest of the hill and run the driveway along the existing contours. He stated that there will be very little disturbance. Mr. Hinkle then pointed out the location of a proposed sand mound to the rear of the house. He added that the disturbance is under one acre for the proposed improvements. He noted that the stormwater will be handled with a seepage pit surrounded by geo-mesh to prevent sediment from the sides and the top. Mr. Kelso asked if it was correct that the existing lane is going to be used to get back to the new house. Mr. Hinkle acknowledged that the existing lane will be used to come off of Hoy Road.

Mr. Kelso asked if this lane is improved. Mr. Hinkle replied that he believed this road to be well stoned along the entire length.

The memo of July 20, 2016 from Brehm-Lebo Engineering was referred to at this time. Mr. Allshouse pointed out that there were comments from Cumberland County dated June 10, 2016 and a response memo from Burget & Associates dated July 11, 2016. Mr. Borda mentioned that he did not have a response letter to the Brehm-Lebo memo of July 20, 2016 from Mr. Hinkle. Mr. Hinkle stated that a lot of the comments in the July 20th memo were marked as "comment satisfactorily addressed." Mr. Hinkle indicated that Mr. Brehm developed some new questions based on the changes that were made.

It was noted that eight waivers were being requested. The memo from Burget & Associates describes these as AOR requests, or Alterations of Requirements. There was some discussion about the response to County comment #7, which states that the proposed dwelling unit on Lot 1 will be set back a distance greater than 50 feet, and that the minimum required front yard setback for accessory structures should be shown at 50 feet. Mr. Hoffman said that the zoning table says that if it is set back a distance greater than 50 feet, then the setback becomes 50 feet. He added that the reason he made the comment is that the proposed dwelling is obviously much further back than 50 feet, so he should just show the setback at 50 feet. Mr. Borda spoke at this point. His comments follow.

The Zoning Ordinance requires a 35-foot setback in this zone. Front setback. It also has as an accessory structure that if the main structure, because a lot of this area is farmland or whatever, if the main structure is set back more than 50 feet, then the accessory structure can be placed at 50 feet. Other than that, if the main structure is 40 feet, you cannot have an accessory structure in front of it. So that's where the 50-foot part comes in. The setback is still 35, so that if somebody decides that they want to subdivide that again somehow, there would still be a 35-foot front setback. It's the accessory structure that falls into the 50-foot category.

Mr. Hurley noted that the 35-foot setback being shown is correct. Mr. Borda acknowledged that this was correct. Mr. Kelso then pointed out that the Brehm-Lebo memo consists of 34 comments. Mr. Kelso asked Mr. Hinkle which comments he is still working on. Mr. Hinkle said he had looked at the second round of comments and said he thought that his secretary had transmitted the responses back to Brehm-Lebo. Mr. Hinkle stated that he thought the remaining issues were mainly cleanup items. He further stated that he would be happy with a conditional recommendation for approval so that he could continue on to the Board of Supervisors with the condition that he satisfy any remaining comments from Brehm-Lebo. Mr. Kelso pointed out to Mr. Hinkle that he would have to clear up any Brehm-Lebo comments before the Supervisors will even look at it. Mr. Hinkle acknowledged that this was correct.

There was some discussion about two comments from the Brehm-Lebo memo pertaining to showing clear-sight triangles at all driveway locations and the location of driveways to provide adequate sight distances at intersections with streets. Mr. Hinkle indicated that the clear-sight triangles are all on Hoy, and that these are all existing driveways. Mr. Mitchell pointed out that a new dwelling is being added to that same driveway. Mr. Allshouse explained that the only thing being modified are the lot lines and that the cartway there is existing. He explained that if there was a neighbor behind the McCoy property using that same cartway, that neighbor has the right to use that cartway, and it can't be said that this is a new cartway only for this property, but an existing cartway for the land behind it. He added that cartways exist, but lot lines change. Mr. Borda explained that the only thing that could be confined as far as a driveway would be a joint-use driveway that already has the maximum number of allowed users.

Mr. Hinkle said his main issue was the sight triangles and the sight distances. He pointed out that the new house lot has multiple access points that already come out onto Hoy Road. He indicated that Mr. Brehm's comment was that one of them didn't meet the criteria. He stated that one of them had a lot more of an available sight distance there. Mr. Hinkle further stated that an existing driveway is being dealt with here and that he didn't know what the compromise is. He further stated he didn't know if it's physically possible to make a new driveway entrance there and that he didn't look at this. Mr. Borda suggested to Mr. Hinkle that he discuss this comment with Mr. Brehm.

Mr. Kelso asked if this matter should be tabled. Mr. Borda said he didn't see anything drastic enough to require Mr. Hinkle to come back here. He pointed out that he has to clean up some things before it goes to the Supervisors. Mr. Borda asked Mr. Allshouse if he saw anything. Mr. Allshouse noted the recent memo from Brehm-Lebo and the responses to the County comments. He pointed out the number of comments that have been addressed or will be addressed, and added that he didn't see anything major that Mr. Hinkle couldn't address before the Plan goes before the Board of Supervisors. Mr. Allshouse pointed out that the Commission has said that it should be cleaned up before the Board of Supervisors and that if it is not cleaned up before then, the Applicant will have to request an extension until it's cleaned up and it doesn't get to the Supervisors next month if it's not cleaned up. He added that if they don't want the extension, then the Plan gets denied. He mentioned that he didn't think that would happen.

The eight requested waivers were considered at this point. Mr. Hinkle presented a list of all of the waivers.

Regarding the requested waiver of the requirement for a Preliminary Plan, Section 180-15, Mr. Kelso asked for a motion.

Bradley Mitchell moved to recommend approval of the requested waiver of the requirement to submit a Preliminary Plan, Section 180-15, and to allow the Plan to be considered as a Final Plan. Dennis Hurley seconded. All votes were in favor, and the motion carried.

Regarding the requested waiver of the required drawing scale, Section 180-24.B(1) and Section 180-27.B(1), Mr. Kelso asked for a motion.

Dennis Hurley moved to recommend approval of the requested waiver of the drawing scale requirement, Section 180-24.B(1) and Section 180-27.B(1). Bradley Mitchell seconded. All votes were in favor, and the motion carried.

Regarding the requested waiver of the requirement to show utility pole locations, Section 180-24.B(14), Mr. Kelso asked for a motion.

Bradley Mitchell moved to recommend approval of the requested waiver of the requirement to show the existing utility pole locations, Section 180-24.B(14). Dennis Hurley seconded. All votes were in favor, and the motion carried.

Regarding the requested waiver of the requirement for two means of access, Section 180-37.C, Mr. Kelso asked for a motion.

Pamela Martin moved to recommend approval of the requested waiver of the requirement for two (2) means of access, Section 180-37.C. Ronald Anderson seconded. All votes were in favor, and the motion carried.

Regarding the requested waiver of the requirement for land dedication or a recreation fee, Section 180-41.C, Mr. Kelso asked for a motion.

Bradley Mitchell moved to recommend approval of the requested waiver of the requirement to provide land dedication or to pay a recreation fee, Section 180-41.C. Dennis Hurley seconded. All votes were in favor, and the motion carried.

Regarding the requested waiver of the requirement to show proposed contours, Section 180-24.B.16 and Section 180-28.F, Mr. Kelso asked for a motion.

Bradley Mitchell moved to recommend approval of the requested waiver of the requirement to show proposed contours, Section 180-24.B.16 and Section 180-28.F. Dennis Hurley seconded. All votes were in favor, and the motion carried.

Regarding the requested waiver of the requirement to submit a Stormwater Management Plan, Section 180-25.D, Mr. Kelso asked for a motion.

Bradley Mitchell moved to recommend approval of the requested waiver of the requirement to submit a Stormwater Management Plan, Section 180-25.D. Dennis Hurley seconded. All votes were in favor, and the motion carried.

Regarding the requested waiver of the requirement to provide a wetlands investigation, Section 180-27.B.10, Mr. Kelso asked for a motion.

Pamela Martin moved to recommend approval of the requested waiver of the requirement to provide a wetlands investigation, Section 180-27.B.10. Ronald Anderson seconded. All votes were in favor, and the motion carried.

Regarding the Plan itself, Mr. Kelso suggested a motion to recommend approval, based upon the satisfaction of all comments from Brehm-Lebo Engineering.

Ronald Anderson moved to recommend approval of the Robert E. & Sondra L. McCoy and Neil McCoy Final Minor Subdivision Plan based upon the satisfaction of all comments from Brehm-Lebo Engineering. Pamela Martin seconded. All votes were in favor, and the motion carried.

Mr. Allshouse asked what the deadline would be if Mr. Hinkle wished to have the Plan cleaned up and back in time for the end-of-the-month workshop meeting. Mr. Borda indicated that the latest would be Friday, August 12, 2016. Mr. Allshouse provided some explanation of what would take place at the workshop meeting. He noted that this meeting is on August 25, 2016 at 6:00 p.m. He added that if Mr. Hinkle were to miss the August 12th deadline, he still has another month since the plan doesn't expire until October 29, 2016.

Mr. Hinkle thanked the Commission.

Mr. Borda mentioned that he had received a request to have the Brubacker Plan placed on the agenda for the September meeting, as he had for tonight's meeting and the July meeting. He added that it will be known in September if they do actually attend that month's meeting.

Chairman Kelso asked for any further business. None was offered. With no further business before the Planning Commission at this time, the meeting adjourned at 8:00 p.m.

Respectfully Submitted,

Ronald Anderson
Secretary,
North Middleton Township Planning Commission

Michael S. Medvid
Recording Secretary