**M I N U T E S**

**LOWER SWATARA TOWNSHIP \*REGULAR MEETING**

**PLANNING COMMISSION MAY 27, 2021 7:00 P.M.**

\*Tonight’s meeting was held as both an in-house meeting and an electronic meeting via Zoom due to the ongoing COVID-19 restrictions.

Meeting was called to order by Chauncey Knopp at 7:00 P.M. with the following present in person:

Chauncey Knopp, Chairman Shawn Fabian, HRG

Kimber Latsha Ann Hursh, LST Planning & Zoning Dennis Fausey Tonya Condran, Recording Secretary

James Young

Present via Zoom:

Peter Henninger, LST Solicitor Joel Winston, Cohen Law Group

Alexa Korber, DCPC

Others present in person:

Judd Dayton, SSA Ron Secary, SSA

David Goode, Kinsley Properties Joe Caughy, Kinsley Properties

Dale Messick, resident Ben Kirk, Burget & Associates

Absent:

Eric Breon, Vice Chairman

**ROLL CALL**

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF MINUTES:**

Mr. Knopp asked if there was a motion to approve the March 25, 2021 meeting minutes. Motion was made by Mr. Young to approve the minutes and seconded by Mr. Fausey. All were in favor. Minutes were approved.

**OLD BUSINESS:**

**a. Preliminary Plan for Kinsley Residential Development for DHK Residential, LLC,** Planning Commission File #PC2021-02, 72.2 acres for 103 single family lots located in the Residential Urban District, submitted by Snyder, Secary & Associates. Project is located north of the turnpike and east of Stoner Drive.

Judd Dayton gave a quick summary of this plan that was presented a couple of months ago, where there was a lengthy discussion about adding a second access off of Stoner Drive into the development. They have since revised the plans and the overall look of the lots and the road itself is largely unchanged except for the other access drive. The infrastructure that goes with it has been completely revamped in order to be able to accommodate that access drive. He feels they have made a lot of progress with the second set of engineering comments. He then asked for any questions or concerns that need to be focused on this evening.

Mr. Fausey asked about the rolled curbing. He asked if that type of curbing required a variance.

Mr. Fabian responded that it is not rolled curb, it is slanted curb that is being proposed. The rolled curb is specifically called out as not allowable, but nothing says they cannot propose the slanted curb, but it is up to the Township to decide whether or not they will accept the slanted curb. There is slanted curb in a number of places within the township.

Mr. Fausey explained that the reason he asked, is because the rolled curbing in his neighborhood is being eliminated.

Mr. Fabian confirmed that.

Mr. Knopp asked about the fees in lieu of recreation. He asked if since there is 103 homes with young homeowners with children, is it possible to put a Tot-Lot in there somewhere, then give the difference of the money to the Township. He feels a Tot-Lot would be a great idea in that area.

Mr. Dayton responded that the Home Owners Association that ultimately would go in there would have the opportunity to do that if they chose. Other than providing a fair amount of open space for the development, they really haven’t discussed putting in anything specific in the way of infrastructure.

(Ron Secary and Ann Hursh discussed this a little further but they were inaudible.)

Mr. Knopp said that he just felt it was important to do something for the younger children down there.

Mr. Dayton asked if that was something they could think about when they get to the point of making a formal decision in full Fee-In-Lieu-Of.

Mr. Knopp said he would think so and the rest of the Planning Commission agreed.

Mr. Fabian added that we do have some of the Fee-In-Lieu-Of in our most recent letter, so he said he was not sure if everyone on the Planning Commission got that letter or had the chance to read it. A number of items, since this came in as a preliminary plan, are place savers for what is going to be addressed as they move in the final plan.

Mr. Knopp said he would like to leave that comment in there for the final plan.

Mr. Fabian went on to say that for the bulk of HRG’s review, they are very happy with a lot of the revisions. There were substantial changes in the stormwater conveyance systems with the additional road. HRG were happy with those revisions. He said a lot of HRG’s comments are either addressing previous comments or things that will be addressed as the E&S plans, permits, final plans all get prepared. So he reiterated that HRG is satisfied that the bulk of their concerns were addressed.

Mr. Knopp asked Mr. Henninger if he had any questions or comments on this.

Mr. Henninger said not at this stage. He said a lot of things that HRG noted in their comments will be addressed at the final plan stage. He added that it has been a while since LST had a major residential project. With previous residential developments, there were some Recreation Fees collected and some Fees-In-Lieu-Of, so it could end up being some sort of hybrid type model to add to the Final Plan. He also feels that the Recreation Board should take a look at this for their input.

Mr. Knopp asked the Planning Commission for their recommendation on this plan.

Mr. Fausey made the motion to forward the plan to the Board of Commissioners for their approval based on the stipulations mentioned.

Mr. Young seconded the motion.

All were in favor.

**NEW BUSINESS:**

**a. Wireless Facilities Ordinance -** The purpose of this Law is to establish uniform standards for the siting, design, permitting, maintenance, and use of wireless communications facilities in Lower Swatara Township.

Joel Winston from Cohen Law Group in Pittsburgh introduced himself via Zoom.

Mr. Henninger explained that the Township has contracted with Cohen Law Group, who are specialists in this field in Pennsylvania and surrounding states, to update our Wireless Facilities Ordinance, but more so for the mini cell-towers in the neighborhood that are gaining attraction throughout the United States. It is an amendment to LST’s Zoning Ordinance and thus must go thru formal review by the Planning Commission and the County Planning Commission, so that is what is before the commission members tonight.

Mr. Winston explained that the proposed amendments will update the existing Township code language with respect to Wireless Communications Facilities to reflect changes in Federal Law and mobile communications technology. The newest generation of the wireless technology is known as 5G and requires the installation of thousands of small cell wireless facilities throughout the Commonwealth. In 2018, the FCC issued orders relating to the installation and management of these small cell facilities including the manner of which local authorities can regulate them. These new FCC regulations were issued in accordance with the Federal Telecommunications Act. The proposed amendments to the LST’s Wireless Communications Facilities Ordinance will update the definitions and the categorizations of all available commercial mobile wireless technologies including 5G and henceforth all of the wireless communications facilities under this ordinance are classified into three (3) categories: 1. The tower base wireless communication facilities, which are the traditional style large towers; 2. Non-tower wireless communication facilities, these are antennas that are situated on the top of existing structures; 3. The new class of small wireless communications facilities, aka 5G facilities. The FCC regulation has referred to them as “Small Wireless Communications Facilities” but they are not tiny small, they are of a certain size and cubic diameter. The category of the Wireless Communication Facility that an applicant or operator is using will determine which set of regulations apply. So the approval process, the application requirements, the application review time period, the design and siting regulations, and the insurance requirements will vary based on whether they are seeking to install or operate a tower based facility or a small facility. Our updates to the Township’s Wireless Communication Facilities Ordinance incorporates Federal Law and the FCC’s new orders and it covers four (4) broad categories: 1. Local Zoning Authority; 2. Application Shock Clocks; 3. Application Annual Fee; 4. Design and Standards.

Mr. Knopp asked Mr. Henninger for any input.

Mr. Henninger said he did perform a review and had lots of comments, but they have all been addressed. A lot of it is very Federal Law related under the Communications Act. To a great extent, our hands are tied, but the Township is given as much control as possible over these facilities and the siting of these facilities. It is a lot of technical data and a lot of very specific criteria but it is all in there based on his review. So he would recommend that the Planning Commission recommend approval to the Board.

Mr. Latsha asked Mr. Winston to briefly summarize what control the Planning Commission would have over the process and how many of these would we have in the township. He asked if when it is approved does it comes through the Planning Commission every time.

Mr. Winston replied that as to the number, he has no speculation. They have modeled it off the current process of conditional use. For the tower based and the non-tower based, those applicants would come into the conditional use process. They have a longer time. The new small cell facilities have a shorter review time, this is what they call the “Shock Clock”. The shorter review time is under Federal Law. But with those applications that come in, they should be more “cookie cutter” that fall under a more strict style of application and those are under an administrative process.

Mr. Henninger clarified that those will go through the LST Zoning Office. The idea here is to have them sited on existing poles instead of putting up an unwanted new pole in someone’s front yard. Technology demand is increasing greatly for capacity. The good news is that we are in a fairly flat and suburban setting and there are a lot of cell towers in existence around with significant capacity within these existing facilities. So he doesn’t see this as big of a deal as if in a major metropolitan area where the demand is significantly higher.

Mr. Winston added that in working exclusively with municipalities and local governments, his firm does not represent any wireless carriers or operators and their plans on how they develop their networks are very closely held in some cases they are kept secret and won’t tell them where they plan to go in the future. So what Mr. Winston’s firm does is utilize the existing local, state, and federal law to the broadest extent possible to provide protection and control for local regulating municipal authorities so that you can provide the most amount of protection. Then also to the extent as possible, to obtain application fees and annual fees on top of that. The big difference in addition to technology for 5G is that the third category (small wireless communications facilities) are almost always going to be sited somewhere in the public right-of-way thanks to the FCC order. The two traditional styles (tower based and non-tower based) are generally always going to be on private property. So that is what makes these new 5G facilities a little different and the fact that they are going to proliferate because they need to be everywhere to effectively work. The Federal Law has greenlighted them to be in the public right-of-way. So we try to take advantage of as much local Zoning Authority as possible, as well as siting and review processes and then design guidelines and standards, for camouflaging mechanisms to try to preserve the appearance and character of the locality where they are sited. As far as existing towers, the ordinance does contain preferences that require operators to try to site their facilities on those existing towers before they can install new towers.

Mr. Henninger stated that he feels the biggest problem and the reason why these small wireless facilities aren’t going to go through the Planning Commission is because of the Shock Clock rule or time frame. The Communication Act makes it literally impossible to go through that process in a timely manner.

Mr. Winston agreed with that. He said with the Shock Clock with these new small wireless facilities, the Township has 10 days from the submission of the application to review it for completeness and notify the applicant of any missing elements. Then the Township has 60 days in order to review or deny an application and then provide a written decision with evidence for the basis of the denial.

Mr. Latsha asked Mr. Winston if there is anything happening across the country (or in other states or in our state) in putting them up in residential areas. If something would happen, are there any controls within this proposed ordinance that would preclude a resident having an antenna in their backyard?

Mr. Winston responded that the issue at Federal Law is that local municipalities maintain full zoning authority in control over these facilities provided that they don’t prohibit or have the effect of prohibiting wireless. So what that means for small wireless facilities still has yet to be fully litigated towards, but when it’s required that in residential neighborhoods that all utilities be underground, then any of these types of small cell facilities in the public right-of-way would also be required to be underground. One of the key points of Federal Law is that you can’t discriminate against different types of providers in the right-of-way. So if there are utility poles in a residential neighborhood, then the small cell facilities will have to be sited on top of those existing poles. Legally, it is not possible to ban only the facilities. However, there is an issue in us requiring them to only be underground because a small cell facility cannot work if it is totally buried underground. This creates a separate issue that we have yet to fully engage in with the wireless companies but to the extent that the federal and local laws allow us to universally require undergrounding in residential neighborhoods.

Mr. Latsha asked if that was written into the ordinance.

Mr. Winston said to answer the question about if your neighbor puts up a wireless tower, the regulations will prevent them from putting up any type of tower in a residential neighborhood where it is prohibited. The small 5G facilities can cheaply site in a right-of-way at an amount set by the FCC of $270 per year per location. So if your neighbor charges any more than that, they will not pay to site in their backyards. So for $270 a year, it is not a great economic proposition for your neighbor to put up a commercial tower.

Mr. Latsha thanked Mr. Winston for that information. He then asked about the requirement that any small wireless facilities be underground, is that the way the proposed ordinance is written?

Mr. Winston clarified that it is drafted in the proposed ordinance that where there are required underground utilities, the wireless facilities are also required to be underground.

Mr. Latsha asked if this issue (requirement of being underground) has ever been litigated. He asked if it has been challenged in our State.

Mr. Winston said in addition to the wireless providers themselves, there are companies that provide tower services and antenna services to rent out. One of these companies who goes by the name of Crown Castle obtained a certificate of public convenience from the Pennsylvania Utilities Commission, so technically they operate as a utility. But they have so far worked very willingly with local communities and there hasn’t been an issue. They are the ones that give us the most push-back about the undergrounding but still it’s an issue that the FCC litigated.

Mr. Knopp asked for any other questions or comments from the Planning Commission.

There were none.

Mr. Knopp then asked for any questions or comments from the public.

There were none.

Mr. Henninger added that the County review would be happening on Monday, June 7, 2021.

Mr. Knopp asked if there was a recommendation to the Board of Commissioners to schedule a public hearing on this next month.

Mr. Latsha made the motion to recommend approval of the proposed ordinance.

Mr. Young seconded the motion.

All were in favor.

**b. Preliminary/Final Subdivision Plan for Thomas & Susan Coble,** Planning Commission File #PC2021-03, Parcel # 36-013-104, corner of N. Union Street and Grandview Avenue. The purpose of this plan is to subdivide an existing tract into two separate lots.

Ben Kirk with Burget & Associates introduced himself. He explained the currently have a .66 acre tract at the intersection of Grandview Ave. and N. Union Street. The majority of this tract (95%) is in Lower Swatara Township, the rest being in Middletown Borough. They are proposing to create two lots, each would be .335 acres. One lot would access onto N. Union Street and one would access onto Grandview Avenue in Middletown Borough. Last evening they attended Middletown Borough’s meeting and they are proposing to waive the review to Lower Swatara Township and they had no further comments. They asked for a waiver deferring sidewalk and curb to the time of construction within the Borough. One of the requests of HRG was to ask Middletown Borough their opinion. Also asking for a waiver of the sidewalk along N. Union Street since there is no other sidewalk at that northern end.

Mr. Fabian confirmed that those were his two big concerns: confirmation that Middletown Borough was deferring to LST for their comments; and then since there is sidewalk on Grandview Avenue the whole way except for this lot, and there is a very reliable sidewalk on the east side of N. Union Street, it makes sense to proceed that way.

Mr. Kirk said they are ok with the rest of the comments.

Mr. Knopp asked if there were any comments or questions from the Planning Commission.

There were none.

Mr. Knopp asked to go over the waivers.

Waiver #1: Asking to print on 24” x 36” paper.

Mr. Young made the motion to approve this waiver. Mr. Fausey seconded the motion. All were in favor. Waiver approved.

Waiver #2: Use a scale of 1” equals 10’. (This was revised from 1”=20’).

Mr. Young made the motion to approve this waiver. Mr. Fausey seconded. All were in favor. Waiver approved.

Waiver #3: Review as a preliminary/final plan.

Mr. Young made the motion to approve this waiver. Mr. Latsha seconded. All were in favor. Waiver approved.

Waiver #4: Defer sidewalks until time of construction/development.

Mr. Young made the motion to approve this waiver. Mr. Fausey seconded. All were in favor. Waiver approved.

Mr. Knopp asked what the Planning Commission would like to do with this overall plan.

Mr. Latsha asked if there were any comments from the Engineer.

Mr. Fabian stated that the comments were all minor ones.

Mr. Latsha then made the motion to approve this plan with stipulations. Mr. Young seconded the motion. All were in favor.

The plan was approved.

**c. Zoning Docket #SE/V2021-03 Special Exception for DHK Lot 2 –** located on the south side of Rosedale Ave, east of White House Lane and west of the Airport Connector. Review and discuss for recommendation a Special Exception to §27-1005.7 to allow increase of the building height of 40 feet to 50 feet, as submitted by McNees Wallace & Nurick LLC on behalf of their client DHK Lot 2 LLC.

Judd Dayton from Snyder, Secary & Associates explained their request for a Special Exception for Building Height. This site is on Rosedale Ave. and it is across the street from the D&H facility. The access drive there is immediately across from D&H and is currently going up as a warehouse. This is one of the residual parcels of that estate, it’s the furthest south tip of the Jednota property. There is an existing office building in the midst of this particular lot and development. It is a warehouse similar to D&H across the street and like D&H, they are asking for two pieces of zoning relief. One being the amount of parking for a warehouse; the other for an increase in building height. They are looking for a slightly higher clear height inside the building underneath the roof structure to provide the racking and storage for modern day warehousing. So in this case, 40 feet is not enough. The additional 10 feet would allow this to meet industry standard for building height. The ordinances do have provisions for the increase in height over 40 feet as a Special Exception and the first step on that quest is to come before the Planning Commission.

Mr. Knopp asked how large this building is going to be.

Mr. Dayton said about 420,000 square feet.

Mr. Knopp asked how large the D&H warehouse was on the other side of the street.

Mr. Dayton said that one was about 745,000 square feet. So this one is a little smaller.

Mr. Knopp asked if due to the topography, if this building be lower than the other building.

Mr. Dayton said yes, by about 70 feet or so.

Mr. Knopp said that if they got approval for the 50’ height on the other one, they most likely would for this one also.

Mr. Knopp then asked for a motion from the Planning Commission.

Mr. Latsha made the motion to recommend approval for the Special Exception. Mr. Young seconded the motion. All were in favor.

Special Exception for Building Height was approved for recommendation.

**OTHER BUSINESS:**

The next Planning Commission Meeting will be scheduled for Thursday, June 24, 2021 at 7:00 P.M.

**ADJOURN:**

A motion was made by Mr. Young and seconded by Mr. Latsha to adjourn the meeting. All were in favor.

Meeting adjourned at 7:39 P.M.

Respectfully Submitted,

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Ann Hursh, Planning and Zoning Coordinator