

**LOWER PAXTON TOWNSHIP
PLANNING COMMISSION**

April 13, 2011

COMMISSIONERS PRESENT

Fredrick Lighty
Ernie Gingrich
Roy Newsome
Dennis Guise
Richard Beverly
Douglas Grove
Robin Lindsey

ALSO PRESENT

Dianne Moran, Planning & Zoning Officer
Tim Smith, Dauphin County Planning Commission

CALL TO ORDER

Mr. Lighty called the regular meeting of the Lower Paxton Township Planning Commission to order at 7:00 pm, on April 13, 2011 in Room 171 of the Lower Paxton Township Municipal Center, 425 Prince Street, Harrisburg, Pennsylvania.

PLEDGE OF ALLEGIANCE TO THE FLAG

Mr. Grove led the recitation of the Pledge.

APPROVAL OF MINUTES

Mr. Grove made a motion to approve the minutes from the March 9, 2011 regular meeting. Mr. Beverly seconded the motion, and a unanimous vote followed.

NEW BUSINESS

**Preliminary/Final Subdivision #11-02
Autumn Oaks, Phase 1, Revised Silver Maple Drive Lots**

This plan represents a revision to the previously approved Autumn Oaks, Phase I Subdivision Plan. The original Phase I proposed twenty-three townhouse lots on Silver Maple Drive. This new plan proposes twelve (12) single-family lots. Recreational requirements were satisfied prior to the recording of the Phase I plan. This plan shall supersede the previously approved plan for Phase I. The property is zoned RC Residential Cluster and will be served by public sewer and public water. The property is located off of Patton Road, north of Linglestown Road and west of Parkway West. No changes are proposed for Phase I except for Silver Maple Drive lots.

The Board of Supervisors granted approval of the Preliminary Subdivision Plan for Autumn Oaks on August 5, 2008.

The Board of Supervisors also granted the following waivers with the preliminary plan approval:

1. Waiver of the minimum street intersection separation requirement. [1117.08(m)]
2. Waiver of the requirement to provide curbing and widening of Parkway West. [1117.08(L)]
3. Waiver of the requirement to provide vertical curb. Slant curb is proposed. [176.9.B]
4. Waiver of the requirement to provide Type "C" inlet grates in streets. [1116.08(m)(8)]
5. Waiver of the requirement to provide low flow channel and basin underdrain in basins. [1117.08(L)]
6. Waiver of the requirement that driveways shall be located not less than ten feet from a catch basin, drain inlet, or fire hydrant. [1117.12(B)]
7. Waiver of the requirement that there be a maximum of twenty dwelling units on a cul-de-sac. [1117.04(a)]
8. Waiver to allow the placement of islands within a cul-de-sac turnaround. [1117.04(b)]
9. Waiver of the street cartway widths. [1117.05]
10. Waiver of the street horizontal curve requirement. [1117.06(2)]
11. Waiver of the requirement regarding the sidewalk location. [905]
12. Waiver of the paved turnaround requirement. [1117.04(b)]
13. Waiver of the requirement to reduce the street vertical curve sight distance requirement.

Ms. Moran stated that Tim Mellott, Mellott Engineering, and Joel McNaughton, The McNaughton Company, were present on behalf of the plan.

Mr. McNaughton stated that they have modified the design of Phase 1 to make 12 single-family homes instead of 23 attached townhomes. He noted that Autumn Oaks hasn't officially opened yet, but has already generated very strong interest. The grand opening should be in May 2011.

There was no additional comment from Dauphin County. There was also no comment from the audience on this plan.

Mr. Guise made a motion to recommend approval of the revised plan reducing the number of units for this phase, subject to resolution of the comments and conditions of the preliminary plan. Ms. Lindsey seconded the motion and a unanimous vote followed.

OLD BUSINESS

Text Amendment

Density Bonus Construction, Triple Crown Corporation

The Township has received a revised proposed text amendment to the Lower Paxton Zoning Ordinance Article 3 (Districts) to add Section 320E.2 (Density) a new Section 320.E.2(5) entitled "Density Increase".

Section 1. Section 320E.2 (Density) of Article 3 (DISTRICTS) of the Zoning Ordinance would be amended to add the following:

(5) Density Increase. The maximum number of dwelling units allowed on the tract through Cluster Development may be increased in an amount not to exceed twenty percent (20%) of the density otherwise permitted through Cluster Development; provided, however that the following criteria are met:

- (a) The property is comprised of two hundred (200) or more contiguous acres.
- (b) At least forty-five percent (45%) of the property is maintained in open space.
- (c) At least ten acres of the open space maintained pursuant to subparagraph (b)

above shall be constructed, dedicated and transferred to the Township for use as a public park designed to the specifications to be determined and approved by the Township.

(d) At least fifteen percent (15%) of the total number of dwelling units which can be constructed on the property shall be sold by the developer of the property to a person or persons fifty-five (55) years of age or older (“Age Restricted Transfers”), and the developer shall certify the Age Restricted Transfers to the Township until the total number of transfers required by the subsection is met.

(e) The zoning district which applied to the property immediately prior to the rezoning to the R-C, Residential Cluster District, was either the R-1, Low Density Residential District, or the A-1, Agricultural District.

On March 9, 2011 the Planning Commission reviewed Triple Crown Corporation’s original text amendment. At that time the applicant requested that action be tabled until the next regular meeting in order to address specific comments and provide additional information.

Ms. Moran stated that John DiSanto was present on behalf of Triple Crown Corporation (TCC) representing the proposed text amendment.

Mr. Newsome asked if the Township Solicitor has reviewed the proposed text amendment. Ms. Moran stated she hasn’t received any comments from the Solicitor, but the applicant attended the Workshop session of the Board of Supervisors which he does take part in.

John DiSanto introduced Paige Macdonald-Matthes, Attorney with Serratelli, Schiffman & Brown, PC. Mr. DiSanto noted that Steve Stine is aware of this and has commented on it directly to Ms. Macdonald-Matthes. Mr. DiSanto stated they requested the plan be tabled last month because of a number of good questions raised.

Mr. DiSanto noted that at the previous meeting, someone questioned how many parcels this text amendment would apply to. The answer is that there are five parcels, and he provided photocopies of the parcels for the Commission.

Mr. DiSanto noted that the only change made to the text amendment is the reduction acreage from 245 to 200, and the R-1 to R-C.

Mr. DiSanto noted that a question was asked previously about spot zoning. This is a text amendment, not a zoning change, so that argument is not applicable. There was discussion that this is special legislation. The applicant does not believe that to be the case, since the amendment does not unjustifiably treat this property any differently than any other property in the Township.

Mr. DiSanto noted that their counsel submitted a letter outlining the benefits of the proposal in great detail. He summarized the letter as follows. The Township's Comprehensive Plan calls for another 4,700 dwelling units, and this plan enables that to happen. There are 12 different references that directly support the intent of the Comprehensive Plan. He emphasized that this is not a zoning issue, and it is not special legislation. They have also submitted 15 different items where the proposed text amendment will benefit the Township and Stray Winds Area Neighbors (SWAN) through various negotiations over two and half years. It is a well thought out effort between the Township and the residents and TCC.

With regard to the Stray Winds plan, not the text amendment, Mr. DiSanto noted that the only difference is the change in the number of age restriction homes, and since that time TCC has met with SWAN twice and agreed to retain the age restriction portion of the plan in the smaller amount, while increased from what the amount was.

With regard to traffic, there were nine people that commented against the proposed text amendment citing traffic, Mr. DiSanto stated there is no need to revisit the traffic study. The Township's engineer (HRG) performed the traffic study on behalf of Susquehanna and Lower Paxton, and it was based on 600 units, none of which were age restricted. The current plan is for 449 units of which some will be age restricted. There is no benefit to restudying the traffic.

Mr. Lighty asked about the five undeveloped parcels of land to which the text amendment could be applied. He stated that there are none that are zoned RC and over 200 acres. Mr. DiSanto agreed and noted that is where he made the connection with the assembly of ground, noting that Stray Winds Farm is made up of several parcels.

Mr. Guise stated that Dauphin County also recommended revisiting the traffic study. Mr. DiSanto stated they are not changing the number of units from what is on the approved and recorded plan. The issue is not that they will not perform a traffic study, it is that it has already been done and submitted to the Township. The Township and SWAN and probably Dauphin County have already received copies. He stated it is a non-issue, because it is based on more units and more traffic that what will really appear there. He also noted that TCC has agreed from the beginning to do \$1.8 million in off-site traffic improvements.

Mr. Guise suggested the text amendment should call for a traffic study. Mr. DiSanto stated that it is not necessary here since the study will be required anyway.

Mr. Lighty noted that there are quite a few people in the audience for this matter, and requested Mr. DiSanto to briefly go over what is being done to help the traffic situation, since it is a valid concern. He asked for information on how it will be handled, the effect and the improvements proposed. Mr. DiSanto stated that at the intersection of Colonial and McIntosh Roads (the eastern boundary of the property), they have acquired right-of-way, and will lower that knob 6.5 feet, and change the over-vertical, increase the sight distance in excess of the PennDOT requirements. That intersection is dangerous as it exists, so they will take care of that. The three-way intersection of Crums Mill and Paxton Church Roads (about in the center of the property), will be rebuilt to the Township Engineer's requirements, addressing the difficult angles that exist. TCC is also contributing

additional money towards the intersection of Linglestown Road and Crums Mill Road. There are signalization changes and work slated for the intersection of Paxton Church Road and Progress Avenue.

Mr. Newsome asked TCC to discuss some of the traffic study itself. Mr. DiSanto stated that HRG did the study, according to their methodology. They identified 15 different intersectional impacts throughout the area. While the development will impact these intersections, it is important to note that it did not change the A-F rating on any of those identified intersections. He explained that A is the best and F is failing. The intersection of Colonial and McIntosh Roads is not an F, so that shows you how bad an intersection has to be to qualify as failing.

Ms. Lindsey asked if the assumption is that the age-restricted homes will generate less traffic. Mr. DiSanto answered yes, and noted that SWAN pushed that point very hard and that typically older residents drive less than younger families. Ms. Lindsey commented that most older people are still driving into their 70's and 80's. She suggested that there will be just as many trips from those homes as those with families. Mr. DiSanto agreed that older people drive more today than they did twenty years ago, but that it has been statistically proven that people with children in the home drive a lot more.

Mr. Smith, Dauphin County Planning Commission, explained that the comment about the traffic study is to ensure that the current proposal will maintain the traffic as was previously determined.

Mr. Lighty called for public comment on the text amendment. He asked that anyone wishing to make comment, please raise their hand and wait to be called to the podium, and give their name and address for the record.

Ms. Helen Gemmill, attorney from McNeese, Wallace and Nurrick, stated that she represents two residents, Andy Snyder and Harry Ulsh. Ms. Gemmill stated that many of their concerns were expressed at the previous meeting, so in addition to that testimony, she wanted to remind the Commission what their role is in this matter-to give a recommendation to the Board of Supervisors based on the role as a Planning Commission. The question is whether there are sound planning reasons to approve this proposed text amendment. She noted she is not here to talk about the plan as previously approved, because the Commonwealth Court has ruled that it is illegal because the number of units was struck down by the Court. She did not want to talk about that plan or any other plan that TCC may build. She noted there are other plans out there, but they would have to come before the Planning Commission to determine if they meet the requirements of the ordinance for the RC which has particular requirements for open space and buffers. Ms. Gemmill also did not want to talk about what was already agreed to before, by SWAN with respect to what that plan would be allowed. That is not what she is here for.

Regarding planning purposes, Ms. Gemmill stated there is no planning reason for this amendment. It has been drafted to benefit one particular developer in exchange for off-site improvements. Those improvements are needed, but it is the responsibility of the Township; it is not something you can get a quid-pro-quo for and then get a zoning benefit, which is what is happening. She thinks this is spot zoning, special legislation, and she is very interested in the Township Solicitor's

position on the matter, as well as the Court's position on the matter. There was a case where they said there is no magic test to determine spot zoning, it is a matter of the facts of the case, and she encouraged the Commissioners to do that.

Mr. Lighty asked if Ms. Gemmill is aware of any Pennsylvania case where a parcel over 200 acres was held to be spot zoning. Ms. Gemmill was not aware of any specific case, but she has not looked at them in that great detail. She was only provided with a letter from Paige Macdonald-Matthes today. She has not researched if a parcel can be rezoned because it is really big. She does not know if there are cases that say that or not, and there could be. She will look into it as the process goes forward, as well as all of the facts. She stated this is spot zoning and special legislation because it is treating one property different than any other property by giving a density bonus, and it will benefit one property and one developer.

Mr. Lighty stated that two legal points have been raised: spot zoning and special legislation. The Commission has received a letter countering those arguments. Mr. Lighty stated from his own experience, he is curious to know if there are any cases of a parcel that large has ever been held to be spot zoning. The size of the parcel is one of the factors to be considered. Ms. Gemmill stated that can be a factor, but there are many things that can be factors, and you have to look at it in the context of the whole Township perhaps. She did not think the size alone will make the difference. With regard to it not being rezoned, there are cases out there that say that even if you don't rezone a property, a text amendment can be considered a defacto rezoning. It is giving more density than what would otherwise be allowed.

Ms. Gemmill stated she is hoping to not get into legal arguments, since that is something the Solicitor will do...Mr. Lighty noted that he is also a lawyer and asked that she indulge for a moment. She noted that was fine, and she likes to make legal arguments. Mr. Lighty stated that a case has been brought to their attention that special legislation must be to the detriment of the property owner, and he asked how this amendment would be to the detriment of the property, noting that her argument is the opposite. Ms. Gemmill agreed there are cases that say that, but she thinks there are also cases that say based on the facts of each case there hasn't been a detriment where there has been a finding of special legislation and spot zoning. She noted that if Mr. Lighty is seeking a legal memo, she would be happy to provide that. She noted she thinks there are cases that do not limit it to that one narrow fact. The case she looked at today was where they looked at all of the facts and considers whether there is discriminatory treatment or if it was being treated differently. It said that every case has to be considered on its facts and it was not focused on detriment to the property owner or detriment to the surrounding property owners as well. She thought that special legislation and spot zoning get lumped together a lot, but they are two different things. Even the courts lump them together, but special legislation of the constitution is any sort of different treatment to the economic benefit as well as detriment of a particular property owner. This would certainly be to the economic benefit for TCC and this particular property.

In terms of the traffic study, Ms. Gemmill stated that she had the benefit of being at the Dauphin County Planning Commission meeting, even though Mr. Smith had not, the night that they spoke about this matter. Their concern as expressed at that meeting she attended, was that this particular traffic study is five years old, and we all know that the Township has not been static for five years. There have been changes, and under PennDOT requirements and Lower Paxton's SALDO, a

five year old traffic study is not good enough in terms of traffic counts. When the Township is considering a new plan and a new approval and an increase in density, you need to have a new traffic study to determine the condition today. Questions such as: what impact has a giant "Giant" store on Linglestown Road had on traffic; is there more traffic than before; what are the current traffic counts. The traffic study is wholly inadequate at this point. The approved plan is out the window at this point. Mr. Lighty agreed that the approved plan was set aside by the Commonwealth Court, but the appropriate time to bring a new traffic study is when the new land development plan is submitted not a text amendment. Ms. Gemmill stated that this text amendment will automatically allow more density. Mr. Lighty stated they will still have to refile their plan. Ms. Moran stated if the number of units or the configuration would change then a new plan would be required, but she does not know their plans at this time. Ms. Gemmill stated there is now a possibility of adding density without having a new traffic study from what she hears Ms. Moran saying. Ms. Gemmill stated that if the applicant wants to take the position that they will have to file a new plan, she would like to hear that said. Ms. Gemmill stated you are allowing more density for a site without necessarily having a traffic study and that it is an automatic bonus that someone gets just based on the size of the property.

Ms. Gemmill introduced a planning expert, Harry Roth, who has prepared a report which she will pass out now. She asked Mr. Roth to explain who he generally represents, what his experiences have been, and to address the planning issues and the comments Mr. DiSanto made with respect to the planning.

Mr. DiSanto began to speak about the things Ms. Gemmill said, and Mr. Lighty asked him to wait until she and Mr. Roth are done, and he can get another chance to speak after that.

Mr. Harry Roth stated he is a community planning consultant, and has been for 26 years. He has devoted his career principally to work for local governments. He writes comprehensive plans, zoning ordinances, and recreation and open space plans. Occasionally he can get involved in cases like this on behalf of a municipality or a citizens' group or even a developer, if in his opinion something is going a-foul. During his career he has written 63 comprehensive plans, 48 zoning ordinances and recreation/open space for 20 municipalities. That is important because some things in the proposed text amendment cover all of those areas of expertise. Currently, he is writing five zoning ordinances and a regional comprehensive plan involving three municipalities. Mr. Roth is a member of the American Institute of Certified Planners, and he has been for almost 30 years. He also has a masters degree in urban and regional planning from Penn State University.

Ms. Macdonald-Matthes asked Mr. Roth who he is retained by. Mr. Lighty stated that Mr. Roth has the floor and asked Ms. Macdonald-Matthes to wait and she will get her turn to respond.

Mr. Roth stated as someone who drafts zoning ordinances, he is very aware of the rules of the road, zoning is meant to be very impartial and is uniformly applied across the municipality and does not treat individual property owners or developers differently than it does adjoining properties in other areas. Zoning is designed with very specific purposes, that are assigned to particular areas. These things respond to the values, goals and objectives that have been articulated within a community. When he looks at a text amendment such as this, he can't draw a rational connection between what is proposed and those underlying principals of zoning. It is quite to the contrary. The discussion that has occurred tonight has focused on a particular plan. Most of the discussion that has taken place, and

even the County's review letter, all talk about the effect the amendment has on that plan. That is not how zoning law is made, it has to be looked at and applied across the entire community uniformly. He believes that this is special legislation. He believes that the reason that the particular characteristics or filters are applied, do render it as spot zoning. As a planning consultant, he is constantly questioned about what is or what isn't spot zoning. Spot zoning is more about a process of decision making than it is about the identification of an area on a map. He noted he is not an attorney, but he has had the opportunity to read many cases that deal with spot zoning and he has always had to defend decisions by local officials when confronted with allegations of special treatment or spot zoning. When a municipality creates zones, those zones are going to have different characteristics. By design, some zones are small, such as neighborhood commercial zones. The point is that it addresses the stated goals of the zone and how they are uniformly applied across the community. This amendment does not apply those principles.

Mr. Roth stated he heard a comment that this amendment is consistent with the Comprehensive Plan of Lower Paxton Township. If you look at the Future Land Use Map, Stray Winds Farm looks residential, and development would comply with the general recommendations. But, if you look at the policies of the Comprehensive Plan, they speak in more detail and talk about good planning principles such as protection of open spaces, all comprehensive plans do that now. The SWF plan looks like it preserves open space. The Comprehensive Plan says to provide incentives to developers to preserve open space concepts, such as rural residential developments. That seems like that is exactly what is being done; he argues that it is not. The problem is when you look at the specifics of the amendment. The density bonus is a great tool to get a developer to work with a municipality, making them a partner in the protection of the open space. In order for these incentives to trigger, there has to be at least 200 contiguous acres. That is insane. The existing RC zone allows open space conservation in as little as 10 acres. That makes far more sense; you shouldn't have to have 200 acres to preserve open space. That is a bad policy and makes no planning sense, bad idea. He noted that 45% open space is also too restrictive, you won't get very much development that way. There are cluster developments that may only have 20%, but that 20% is extremely important in the network of open space existing within a community. Ten acres of parkland, on top of 45% open space is not going to happen; it is too restrictive. It is filtering way too much out of the ordinance. With regard to age restrictions, a cluster development doesn't have to be age restricted at all. The benefits of open space development transcend who is living there because they are environmental considerations and have nothing to do with who will live in the development. With regard to the requirement that the previous zoning of the land has to be R-1 or A-1, that borders on absurdity. That is something he has never seen before. Mr. Roth stated he really feels that the text amendment is zeroing in on this incentive to make an end run around the Township's current zoning requirements, which do not accommodate the intentions of the plan. The amendment is simply a way to shoehorn the old plan into the new zoning framework. That represents something being done ununiformly and is very targeted and provides a special advantage and benefit to the developer and/or land owner. The County's review letter also talks about the impact on the SWF development. That should have nothing to do with this, since it is an amendment to the zoning ordinance.

Mr. Roth stated he plotted the various RC zones, on the County's GIS system. There is only one contiguous RC zone that can satisfy the 200 acre requirement. This shouldn't happen, and it should be more uniformly applied and more welcomed in the community.

Ms. Gemmill asked Mr. Roth to talk about assemblage of parcels and adding more RC zones. Mr. Roth stated that RC zones do exist, and when you read the intent of the zone, there is a different open space methodology and that is the preferred scheme.

Mr. Roth stated there are arbitrary standards in the amendment, such as the 10 acres of parkland. When you look at the SWF-which he doesn't want to do but will since everyone else is-you compare the amount required and the amount proposed, it falls short of what would be required. If you are going to incorporate a need to comply with parkland standards, you should make sure the parkland standards can satisfy the other requirements within your planning policies.

Mr. Roth stated that that filters in the amendment are so severely restrictive, that he believes it is not a uniform application of good planning. he recommends you not do it.

Ms. Gemmill stated that they presented 90 signatures of people against the proposed amendment at the previous Planning Commission meeting, and they have obtained an additional 114 signatures, and she distributed copies of the new signatures.

Ms. Macdonald-Matthes asked Mr. Roth...Mr. Lighty explained this is "comment to the Commission time" not cross-examination time, and this is not a hearing format. He asked that members of the public not question one another, because it gets out of control quickly. Ms. Macdonald-Matthes stated she is not a member of the public, she represents the applicant in this matter, and that Ms. Gemmill said that Mr. Roth would introduce himself and who he represents, and he has not done that. *Ms. Gemmill, Mr. Roth and Ms. Macdonald-Matthes spoke at the same time making it impossible to understand anything else being said.*

Mr. Roth asked for questions from the Commissioners. Ms. Gemmill stated that Mr. Roth is retained by McNees Wallace and Nurrick. Mr. Roth stated he is standing at the podium in the event Commissioners have questions for him.

Mr. Guise gathered from the discussion that Mr. Roth as a planner does not object to the idea of density bonuses if applied more broadly. Mr. Roth stated he does it all the time. Mr. Guise suggested this is a legal argument that goes beyond the jurisdiction of the Planning Commission. They are trying judge this on the basis of whether it is desirable from a planning viewpoint. He suggested that Ms. Gemmill and Ms. Macdonald-Matthes will argue this out in a different forum, but not before the Planning Commission because that is not the role of the Planning Commission.

Mr. Lighty asked Mr. Roth if he agrees or disagrees that the larger parcel size might require greater benefits to be given when you allow clustering. Mr. Roth answered no. Mr. Lighty asked if he thought it would be the opposite. Mr. Roth stated he thinks there should be thresholds. Typically in order to achieve a benefit within a cluster development, you have to have a certain size of site in order for it to be worthwhile for the developer to engage in the additional costs associated with the better site planning process. Two acres is not enough, but ten acres is a very commonly used standard for that threshold. In terms of density bonuses, Mr. Roth stated he disagrees and the size of the site and the way in which we allocate density takes care of itself, it is done on a per-acre basis, so when the site grows it provides for additional compensation in the form of more units. It is a linear relationship and there is no need for a sudden trigger at 200 acres. He felt that is contrary to the purposes expressed

within the Comprehensive Plan and the encouragement of protection of open space in new residential developments.

Mr. DiSanto noted that everyone keeps referring to the plan as illegal, but he stated that the plan is not illegal. There has been a court case on a zoning matter and they have the right to address their concerns through legislation. He stated they are not doing something illegal or sneaky or whatever. Mr. DiSanto stated that text amendments are frequently done to the benefit of a single property owner and that is not uncommon nor is it something they are taking issue with. There is nothing wrong with that. He disagrees completely with what the expert and Ms. Gemmill said about what Dauphin County said. The traffic study spans the three years of the worst economic time, there has been no growth. Even the Giant grocery store isn't enough to impact the traffic significantly. *(laughter and moans from the audience.)*

Eric Epstein, SWAN, reminded the Planning Commission that the testimony submitted by SWAN on February 9 still stands, and he submitted an addendum to that. He stated that SWAN has been meeting since 2005, 60 public meetings, and published 56 newsletters from June 13, 2006 through March 24, 2011, and they have provided research and testimony on a range of issues. SWAN also continues to maintain a website, and encourages the public to visit at any time. SWAN is at every meeting the Township has: the Board of Supervisors, the Authority Board, the Greenway Committee, the Planning Commission, Parks & Recreation, Public Safety Committee, Zoning Hearing Board. He noted that there are times that SWAN is the only public in attendance at a meeting.

With regard to the petition, Mr. Epstein noted it is the people's right to petition its government, but it is important to note that it takes a lot of effort to sustain a watchdog organization and attend all meetings on all issues. He stated that the Planning Commission is familiar with the mission of SWAN, and that it has an acute interest in traffic. He was born and raised in this area and almost lost a sister in an accident at Crums Mill and McIntosh Roads, so he is very sensitive to the issue. It is up to the Township to decide if the traffic study is still valid or not, but unless you are from another planet, you know that these intersections are failing regardless of their official grade.

Mr. Epstein stated that the reality of the situation is that a company has, in a time of economic downturn, committed to \$1.8 million in resources. Regardless of whoever called it quid pro quo, he is trying to come up with a way to deal with a traffic challenge that has not been dealt with for whatever reason for years.

With regard to the traffic study for a plan that nobody wants to talk about but everybody is talking about, Mr. Epstein stated that there are many factors that have not changed, sight distance for example, which is off by 100 feet for one intersection, and the other intersections do not have enough either. He noted he also represents municipalities, and it is very difficult to get transportation money. There might finally be money for a bridge rated as an 8 out of 100. He is not willing to wait until these intersections get to that point when there is an opportunity to have the corrections made now. He also noted it will be done with money that is not taxpayers money. He noted that he lives here, and has a family here. The traffic study breaks down existing deficiencies, deficiencies without development, additional deficiencies with development and necessary improvements to the roadway network. This is reality, and we are all neighbors and hopefully we can all get along. The traffic signal and westbound turn lane are warranted during a peak period with the development and even

without the development at Linglestown Road and Crums Mill Road. It is recommended by 2016. Timing changes will be required by 2016 at Linglestown Road and Colonial Road. Colonial Road and McIntosh Road warrant a northbound turning lane as a result of increase traffic which will also improve the eastbound service but will not fully mitigate the intersection predevelopment conditions. Even with those, there will be some conditions. He also noted that there are other ways out of the development, such as Paxton Church Road and Progress Avenue. Sight distance will require the widening of the left lane at McIntosh Road and Colonial Road and lowering the roadway to maximize sight distance. There will also be a vertical realignment of Crums Mill Road and McIntosh Road and it seems as though some people have forgotten, but the study does encourage secondary entrances at Hillsdale Road and Woodcrest Lane. It also recommends the widening of Paxton Church Road east of Crums Mill Road. Other needed improvements are an upgrade at Paxton Church Road and Progress Avenue, a recommended signal at Colonial Road and Earl Drive in 2016, and stop signs at each of the full access driveways. Mr. Epstein noted this is not his area of expertise, and he cannot rent somebody to counter it since he has a child in college. The study found that single family dwellings produce .73 trips per unit at peak hours, while condos produce .43 trips per unit. Nobody wants the farm developed, but that is not reality anymore. It will be developed and a developer has a right to develop it. There are safety and societal benefits associated with this.

Mr. Epstein noted that SWAN actually argued against increasing density at Laurel Ridge because it did not feel there was enough to adequately support it. Each request is looked at on their own merit. SWAN remains concerned about the ability of the road system to accommodate increased traffic during regular and peak hour periods now and forever. He noted that they think that a superior community will result from the past five years of work and the added value from the text amendment is smart growth. He also reminded the audience that they all have to continue to live as neighbors and he hoped there will be an equitable solution that is also amicable.

William Gannon, Colonial Crest, thanked the individuals on the Planning Commission for their service and dedication to the Township, and acknowledged the long nights spent on projects like this one. He wished to reiterate his testimony from the last meeting, where he spoke in opposition to the proposed amendment. He feels the ordinances are adequate the way they are now, and with the 374 units. He has heard nothing in the presentations that would sway him from his position.

Shelly Kunkle, Haven Croft Road, stated her property is contiguous to the SWF property, and she is a member of SWAN. She stated that if she were asked five years ago whether she would support an amendment allowing more to be built, she would have answered no, and if someone knocked on her door and asked her to sign a petition for 374 and not more units, she would probably have signed it. She noted that her position has evolved over that time while the group of citizens working with the Township and the developer to make something good happen for everybody. She noted she would of course like the farm to stay as it is. She stated that it is difficult to watch a plan that has had so much work and effort put into it fail, based on litigation that was sponsored for individual reasons. She heard some arguments from Attorney Gemmill that suggest that this text amendment is particular and intended to favor one party and her response to that comment is that the opposition is also intended to favor one party.

Ms. Kunkle stated she was approached to be a plaintiff, and she declined to take that role. The individual who is underwriting that indicated that he did not have legal standing to procede so he was

looking for a plaintiff. She finds it interesting that the plaintiffs who are involved in the litigation sought and received concessions from the developer on the plan, and nevertheless, continued with the litigation. She stated she thinks in general it is a good plan and it is superior than the plan that continues 374 units. She noted that Mr. Epstein has addressed the traffic improvements that would be made. Regarding Mr. Roth's comment that 45% open space is ridiculous, she stated that she thinks it is something to be aspired to and should be applauded. Ms. Kunkle stated that if a text amendment is the way to get a plan like this built, she supports it.

Mr. Harry Ulsh, 4203 McIntosh Road (at the corner of Woodcrest and McIntosh Roads), stated he thinks he's lived in the neighborhood the longest, so he has probably counted the most cars out of anybody, and he will probably be counting a few more. He is not against the farm being developed, he knows it is coming, but he wants to keep it under control. His biggest concern is to keep the traffic under control. He is not a member of SWAN but has been to some meetings for information only and they were courteous to him as he has tried to be courteous to them. He was sent a letter from SWAN which included a map of the farm with 449 properties and a map with 374 properties which is what the court told them they could build. They said could open up Hillsdale Road, Valleyview Road and still use McIntosh Road. Mr. Ulsh stated that they are dumping all of the traffic onto McIntosh Road and it is not right. There are a lot of homes: condominiums, townhouses, and single homes going into this home, fine, he does not dislike those sorts of houses, but if you have to get out of the farm you will have to go down McIntosh Road. From one field or the other-it will all come out McIntosh Road. It is not fair. Why can't we open Hillsdale Road and Valley View Road and take some pressure off of McIntosh Road? It's a pain in the neck to get out of Crums Mill Road and Devonshire Road already, especially if you want to turn left (north). That is a bum intersection. If you have to go to Linglestown Road, there should be a light now because of how dangerous it is. Mr. Ulsh asked for consideration. He noted that even the condo's have two-car garages, so 374 units times two cars, which do not make one or two trips out of the house a day, they make four or five, going to Giant. Mr. Ulsh thanked the Planning Commission for the work they do, and noted it is a thankless job and he appreciates it.

Mr. Andrew Snyder, 3975 Paxton Church Road, wished to reiterate his opposition to the text amendment. He feels that a text amendment should only be approved if there are compelling reasons for that approval. He does not see those reasons, but rather he thinks the facts are compelling to disapprove it. No other developer is seeking this text amendment which lends itself to the special legislation argument. He noted he didn't think everyone would be here tonight if it wasn't special legislation to the benefit of one developer. Everyone is here because they have one side or the other in this matter for the Stray Winds Farm. In relation to SWAN, he has attended some meetings, and considered himself a member, and does not deride anything that they have done. Eric is a prominent and well known member of the community, as well as John McNally. They are active in SWAN and active in negotiations. However, Eric's opinion is no more important than Mr. Gannon's opinion and Mr. McNally's opinion is no more important than his own. The recorded opinion shows that 30 members of SWAN support the amendment, and he has provided 214 names of those who oppose the, making a 7:1 tally against the proposal. To say that SWAN represents the community, he thinks that it represents a core group but not the whole community, based upon the numbers.

Mr. Snyder stated that at the SWAN meeting of February 28 John DiSanto offered that TCC could make more money by building 374 homes than they could building 449 units. He believes that

there are people present that could corroborate that statement. There is not an economic hardship that needs to be addressed, based upon that statement.

Mr. Snyder stated that Bill Hawk, chairman of the Board of Supervisors often talks about the quality of life within the Township and he thinks that a lot of people will agree that the quality of life is slowly diminishing, basically because of the traffic issues, in our neighborhood and throughout the Township, and the Linglestown Square fiasco which will make Linglestown Road even worse. He believes that this particular situation could be a defining moment because of upcoming matters in the northwest corner of the Township: Sportsmens Golf Course and some other large tracts, the Colonial Country Club which is owned by the DiSanto's, and other areas that in the future will be likely developed. Across the United States, people have awakened to the economic challenges the Country is facing and realizing that there is a time to draw a line and start reducing spending, I think people of the Township are coming to the realization that there needs to be a line drawn on the amount of density that is allowed in the development of properties, you cannot just allow bonuses to be given out at random or on a regular basis. Linglestown Road is going to fail and there will be development off of the Linglestown Road corridor. There needs to be a time when we put the brakes on this and not just give out increases because they ask for them.

Mr. Snyder stated he has opposed John and TCC for the past five years and he bears no ill will towards John and Mark and TCC, he would have taken this fight to any developer that would have brought a plan like this in. He noted that he appreciates and thinks it admirable the way they have gone at it. He didn't think this battle would be going on, if it weren't for the Zoning Hearing Board's error in granting the variance, which raised expectations that the property could be developed at a higher density. He asked that the Planning Commission perform their duties and not allow this text amendment to be approved.

Mr. DiSanto stated that his opinion of the petitions is that they do not really matter, he doesn't know what was said, and if the law firm was paid to walk around and gather signatures, if they are valid or not, he does not know the answers, but there are 47,000 people in the Township. There are a number of people in opposition to this, but it is not a significant number to address the real issues in the Township.

Mr. DiSanto stated he has a hard time understanding Mr. Gannon's comment. He noted that Mr. Gannon did not mention that TCC bought his house, moved him to a new one and met several times and went over the plan in detail. Economics is not the standard driving this application.

Mr. Gannon agreed that he has met with Mr. DiSanto. Mr. Gannon stated that he attended the first SWAN meeting where Eric pointed out that there were a couple of properties that would be significantly impacted, and he was one of them. The hill in front of 1704 Colonial Road is extremely steep, and any adjustment to the street would make living there in a wheelchair an absolute impossibility. He gives significant credit to the DiSanto brothers and the late Pete Leoni for coming to them and recognizing the impending problem. Mr. Leoni asked the Gannon's what issues will affect them and they told him they did not expect to pay for a new development. They did not oppose it and while they expect that a property like that is developed, they did not expect to pay for it out of their own pockets. They looked into if their property could be retrofitted to deal with his needs or if there was another way to access the house or if there was some other property that could be purchased in

terms of a trade off for the property they were living in. The DiSanto's were very receptive and listened to their ideas, and admitted that some ideas were just not feasible, and he agreed that was fair, and after some negotiating, they bought the Gannon's property and even provided for the ability to take some of the plantings to the new property. They were very fortunate to find another property in the Colonial Crest neighborhood. Mr. Gannon stated he is not concern with DiSanto's desire to develop the property, but he thinks they bought it knowing the regulations in effect. He is thankful for both brothers, and especially Me. Leoni who has since passed, for their considerations as human beings towards his wife and himself, but it doesn't change his position that increasing the density of the farm is inappropriate. He stands against the amendment, but not against the DiSanto's.

Ms. Susan Stachow, 1604 Woodcrest Road, stated her property borders the SWF property, and she is opposed to any increase in density for a number of reasons. Traffic is her most important reason. Everyone would like to see it stay a farm, but being developed at the initial density, she has a child who will drive in 3.5 years and increased traffic will be an issue. She noted she takes McIntosh Road everyday on her way to work and can't imagine having another couple hundred vehicles doing the same thing.

Eric Epstein stated this is not a numbers game and petitions have value. He has no intentions of challenging the petition, even with no way of knowing if the signatures represent households or individuals. He pointed out that the SWAN holds meetings that last up to several hours, and it is difficult to get a large number of people there. He could do a petition, but petitions are usually centered around negative ideas. He has no idea what was said door to door, and nobody came to his door. He noted that it takes a lot of effort to do that, and it should be acknowledged, but it takes a lot of effort to sustain an organization over a six year period and having public meetings and work with ideas. There are different opinions and that is a good thing. Community involvement doesn't have to mean unanimity, and these decisions are difficult. There is a difference between going door to door, and convening 60 meetings over 5 years.

Mr. Guise stated that there is no doubt in his mind that it is appropriate for a single applicant to submit a proposed text amendment to benefit them, that is part of the procedure. It is also clear that the Planning Commission has to look at it and judge the impact on the intended property as well as the whole community. Of course it will benefit the applicant, or they would be applying for it. That is appropriate. The Township has to judge it on the basis of how it will affect the whole Township. He stated he thinks the benefit of the increased open space, parkland, and the other things the developer is planning to do outweigh the negative. He does think there should be some changes. First, it should be a special exception or a conditional use and not a by-right use. The language is such that it doesn't sound like it is a by-right use anyway since it says the Township "may"...if they meet certain criteria. Someone could come in and meet the criteria and the Township could still say no density increase for you if it doesn't support the overall goals. Second, he thinks an applicant requesting an increase in density should submit an updated traffic study. That doesn't mean a whole new traffic study needs to be done, but take what has been done and update it and provide the findings to the Township and its experts to examine. Mr. Guise stated he thinks those changes would make this amendment better. The third thing that Mr. Guise recommends is that the Township Solicitor determines that this is in fact a legal amendment. He thinks that may have been done and simply not communicated to the Commission.

Mr. Newsome agreed with Mr. Guise's comments. He also agrees with Mr. Roth's comment that "E" is not needed, regarding the previous zoning of the land. Mr. Guise stated he believes that limiting it to R-1 or A-1, it does not increase the density as much as if the land had been R-2, where a 15% increase would be a lot more. Mr. Newsome stated there could be an aggregation of property. Mr. Guise agreed. He noted he thinks there is a rational basis to limiting the size since it is a low density.

Mr. Grove stated that he had reservations about this application, and he finds it very telling that someone who has a reputation for not always following the mainstream opinion, he and SWAN worked very hard with the DiSanto's and TCC to work out what appears to be quite a compromise. Mr. Grove also agreed with Mr. Guise to reword some of the text amendment.

Mr. Guise made a motion to recommend approval of the proposed text amendment, subject to the following: The Board of Supervisors consider making the density increase approvable by special exception or conditional use, and not an as-of-right use; the Supervisors should change it to require the applicant to submit an updated traffic study indicating the traffic impacts of the increased density as recommended by Dauphin County; and that the Township Solicitor review and determine on behalf of the Supervisors that the ordinance is legally defensible. Mr. Gingrich seconded the motion. A voice vote followed, 6 ayes, Ms. Lindsey voted no.

Mr. Lighty thanked everyone for coming out and being involved in the process.

The Planning Commission took a recess from 8:42-8:50 pm.

Business Improvement District

Preliminary Plan

Mr. Lighty stated that he has received an electronic version of the parcel list and he will incorporate it into the final format and email it to the Commissioners. Mr. Newsome asked if there will be another chance to meet prior to going to the Board. Mr. Lighty asked the Commissioners to review the document when they get it, and reply to him whether they feel they want to meet or not. Once he has an okay from everyone, he will ask Staff to schedule them for a workshop meeting. Mr. Lighty thanked Ms. Hiner for her work on the list of parcels, noting it was a large task.

Wind Energy Subcommittee **(Alternative Energy Subcommittee)**

Mr. Epstein explained that he is with the sustainable energy fund, and he is leaving after 12 years. One problem is that production is really slow, even in the wind sector because it is hard to bring private capital into the flow. He didn't think that micro-wind is as viable as it was, and solar is not going where he thought it would. He is happy to serve on this subcommittee. The next big thing is biodigesters. There are odor issues and transportation issues associated with this. He noted that there is a boot camp every year as well as a two-day conference in the Lehigh Valley. Part of the boot camp is for students to interact with the technology. There are scholarships available. This is

Pennsylvania-centric for wind, solar, and alternative energy, and they talk about Marcellus. He noted he is on the County task force too, but they haven't met yet either. He noted he thinks the industry is slowing precipitously. He is going to work for Con Solar or Range Resources. He can get the Commissioners the link to the sustainable energy fund so they can look at the boot camp. Mr. Epstein also suggested the Commissioners check out the Green Power Club – they are unbelievable, they just competed in a nano-technology competition. He suggested inviting one of the students from that club to be on the sub-committee. The kids are sharp and shrewd, and much of the industry is software driven. Projects are being done right now in our backyard at the high schools.

Mr. Lighty agreed it is not the hot issue it once was, but the Township needs to have something on the books.

PUBLIC COMMENT

There was no additional public comment offered. Mr. Lighty thanked Mr. Fisher and Mr. Robertson for their attendance at the meetings and their attention to the Township. He commented that their actions are so loyal and respectful, that they should be given a public participation award.

COMMISSIONER COMMENT

Mr. Newsome distributed a draft of the Walking Opportunities Guide for Lower Paxton. Mr. Lighty asked if there is something that can be done about the trails that always seem to be overgrown. Mr. Newsome stated that is one of the issues the Greenway Committee is talking about, and considering getting the Scouts to help with it.

ADJOURNMENT

The next regular Planning Commission meeting is scheduled for Wednesday, May 11, 2011, at 7:00 pm at the Lower Paxton Township Municipal Center, Room 171.

Being no further business, the meeting adjourned at 9:02 pm.

Respectfully Submitted,

Michelle Hiner
Recording Secretary