

**EAST BRANDYWINE TOWNSHIP BOARD OF SUPERVISORS
WORK SESSION
June 6, 2019**

Those in Attendance:

Kyle P. Scribner, Chairman
Jay G. Fischer, Esquire, Vice-Chairman
Jason R. Winters, Member
Scott T. Piersol, Township Manager
Mark Kocsi, Chief of Police
Matthew VanLew, Roadmaster
Kristin S. Camp, Esquire, Township Solicitor
Mary Kemble Slade, Secretary/Treasurer

Absent:

Luke Reven, Assistant Township Manager

The East Brandywine Township Board of Supervisors meeting of Thursday, June 6, 2019, was called to order by Chairman Scribner at 8:00 A.M. at the East Brandywine Township Municipal Complex.

Opening of Meeting

Chairman Scribner announced that this morning's meeting is being audio and video recorded.

Public Comment on Non-Agenda Items

Chairman Scribner reminded those in attendance of Resolution 2001-08, Rules for Conduct at Public Meetings, stating "The times allocated to each individual making comments shall be three minutes, unless otherwise set by the presiding officer. Additional public comment may be granted by the presiding officer at the conclusion of the meeting."

Chairman Scribner asked if there were comments on non-agenda items.

Mr. Matt Kanapesky, 425 Creek Road, offered comments on the Carlino East Brandywine Giant project, and noted his continued concerns regarding alleged irregularities with his property boundaries.

Mr. Dennis Whitely, 1199 Horseshoe Pike, also offered comments on the Giant project, and revisited the difficulties he experienced in developing his past business project within the Township.

Supervisor Winters stated that the Ulrichs, owners of Joe Burns Beverage, recently reached out to him and inquired about the Township paying up to \$4,000 for engineering and legal assistance, related to additional right-of-way needed by the Township in order to complete the necessary intersection improvements at US322, Bondsville and Hopewell Roads. Supervisor Winters indicated that he was unaware of this being discussed and asked who authorized this expenditure. Solicitor Camp noted that there has been discussion at recent public meetings regarding reaching out to the Ulrichs and, as part of the initial discussions with the Ulrich's attorney, this was

mentioned. Solicitor Camp further explained that if the Township proceeds to eminent domain, the Township would by law be required to pay up to that amount. She noted the importance of the property owners having their own representation to begin the dialogue for this process. She also reminded the Board that there have been no conversations with the Ulrichs since November of 2017, until recently. Supervisor Winters expressed concern regarding the expenditure of funds for this purpose and the possibility that they were authorized by the Township Solicitor. Vice-Chairman Fischer noted this was a mischaracterization of Solicitor Camp's statement, that nothing has been committed to and she is aware that she does not have the authority to make decisions on behalf of the Board. Solicitor Camp asked the Board if they want staff to meet with the Ulrichs, and if they were willing to authorize offering the Ulrich's their entitlement of \$4,000 to facilitate starting the process again. Chairman Scribner noted he is not in favor of eminent domain as a practice; however, in this instance, the Township is left with little choice and if it is a friendly process, he would support it. Supervisor Winters suggested the Ulrich property be marked to show the area needed for the additional right-of-way, in order to better see the impact. Chairman Scribner recommended that since this issue has been at a standstill, and in order to rekindle efforts, that the Ulrichs should have the opportunity for representation. He stated his support towards paying for at least the initial meeting, to be held at the Ulrich's property. Vice-Chairman Fischer asked if reimbursement is part of the condemnation process, to which Solicitor Camp responded that the affected party will need to incur the costs, and the Township would reimburse said costs upon receipt of the associated invoices. Vice-Chairman Fischer expressed his support for the property owners to have the proper representation. The Board agreed by consensus that the Township should pay for the Ulrich's costs for representation associated with the initial meeting. Chairman Scribner inquired if any other developer or developers could approach the Ulrichs to assist with facilitating the right-of-way issue. Solicitor Camp stated her belief that they could, however, the land would ultimately have to come to the Township.

Vice-Chairman Fischer announced a moment of silence in honor of the many brave Americans who were lost 75 years ago today on D-Day.

Minutes: Board of Supervisors – May 16, 2019

Chairman Scribner noted the May 16, 2019 minutes were offered for consideration. Vice-Chairman Fischer made a motion to approve the minutes as presented. Chairman Scribner seconded the motion, with all members voting Aye. Motion passed 3-0.

Minutes: Planning Commission – May 1, 2019

Chairman Scribner noted the May 1, 2019 Planning Commission minutes were offered for consideration. Vice-Chairman Fischer made a motion to accept the minutes as presented. Chairman Scribner seconded the motion, with all members voting Aye. Motion passed 3-0.

Old Business

East Brandywine Township Planning Commission Appointment Recommendation

Manager Piersol referenced a resignation email received from Township Planning Commission member Jonathan Wright, due to his family expecting their second child. He advised that the Planning Commission, at their May 1, 2019 meeting, recommended that upon receipt of Member Wright's resignation, the Board of Supervisors fill this vacancy with Associate Member Jim Grisillo. Vice-Chairman Fischer made a motion to accept the resignation of Jonathan Wright from the Planning Commission, and to appoint Jim Grisillo as a full member to the Planning Commission, filling the remainder of the unexpired term. Chairman Scribner abstained from the vote, noting his professional association with Mr. Grisillo. Supervisor Winters seconded the motion. Motion passed, 2-0.

New Business

Participation in the 2020 Census New Construction Program

Manager Piersol shared a memorandum from Assistant Manager Reven with the Board regarding the 2020 Census New Construction Program. He asked the Board if they were interested in participating in the program, and if so, requested Chairman Scribner be authorized to execute Form NC-F-100. Manager Piersol also suggested Assistant Manager Reven be designated as the Liaison to the Census Bureau. Vice-Chairman Fischer was in favor of participating and made a motion to authorize Chairman Scribner to execute Form NC-F-100 and appoint Assistant Manager Reven as the Liaison to the Census Bureau. Supervisor Winters seconded the motion, with all members voting Aye. Motion passed 3-0.

At 8:41 A.M., Chairman Scribner announced that the Board would take a short recess for an executive session to discuss an email he received regarding the Giant Project.

At 8:50 A.M., the Board reconvened, and Chairman Scribner advised that the email he received would be made part of the formal record of the Giant proceedings. Chairman Scribner noted for the record that he did not reply to the email.

Subdivision & Zoning Applications

Carlino East Brandywine, LP, Preliminary/Final Land Development Plan Decision

Solicitor Camp stated that a draft Order was prepared and circulated to the Board. This Order would approve the Carlino East Brandywine, LP, Preliminary/Final Land Development Plan consisting of 34 sheets; prepared by ARNA Engineering, Inc. dated June 27, 2018, last revised October 16, 2018, as such plans are further revised to comply with the conditions outlined in the order. Solicitor Camp reviewed and highlighted some of the items contained in the Order. The highlighted items included, but are not limited to, approval of 13 waivers from the Subdivision and Land Development Ordinance (SALDO), seven waivers from the Stormwater Ordinance, and 26 conditions.

At the conclusion of Solicitor Camp's review of the proposed Order, Vice-Chairman Fischer made a motion to approve the Carlino East Brandywine, LP, Preliminary/Final Land Development Plan as presented. Supervisor Winters expressed his disagreement with the draft Order. First, he noted his belief that the Township Traffic Engineer did not review the correct plan. He felt that this and the Township Engineer's reviews should have been more thorough, and left too much discretion to the Board. Supervisor Winters also questioned the ability of the Memorandum of Understanding (MOU) to bind a new board member, and noted that it was ruled as unenforceable. He added that the adjacent shopping center will suffer due to the design of the road, and his belief that it could be redesigned to accommodate both Carlino and BVA. He also expressed concerns regarding sewage and stormwater discharges associated with the project. He recommended the project be given more review and consideration, and voiced his concern about additional litigation. Given these items, Supervisor Winters stated his inability to vote yes. Chairman Scribner noted his past four years of experience as a Board member, and his attendance at a number of hearings, on which the courts have ruled. He further noted that he has spoken to the reviewing engineers and counsel to seek answers to the questions he has had. Chairman Scribner stated that he was in favor of the Order, and seconded the motion to approve the plan. Supervisor Winters voted Nay. Motion passed 2-1.

EBBC LEAP Preschool Conditional Use Decision

Solicitor Camp stated that a draft Order was prepared and circulated to the Board. This Order would approve the East Brandywine Baptist Church LEAP Preschool. Solicitor Camp reviewed and highlighted some of the items contained in the Order. Vice-Chairman Fischer noted that a condition was discussed as part of the hearing specifying that during school hours, the driveway from Horseshoe Pike was to be restricted to ingress only, and this was not documented in the draft Order. After brief discussion with Township Engineer Cline, it was agreed to amend the draft to include this condition. With that amendment, Vice-Chairman Fischer made a motion to approve the draft Decision and Order for the Conditional Use application of East Brandywine Baptist Church. Supervisor Winters seconded the motion, with all voting Aye. Motion passed 3-0.

NVR, Inc. / Weaver Tract Conditional Use Decision

Solicitor Camp stated that a draft Order was prepared and circulated to the Board. This Order would approve the NVR, Inc. Conditional Use application. Solicitor Camp reviewed and highlighted some of the items contained in the Order. Supervisor Winters questioned the location of the trail system in the direction of Bollinger Road, related to buffering and proximity to the properties located there. Vice-Chairman Fischer and Solicitor Camp noted that Condition 19 addresses the landscape buffering to be installed between the Proposed Development and the rear property lines of these properties. Vice-Chairman Fischer made a motion to approve the proposed Decision and Order for the Conditional Use application of NVR, Inc. for tax parcel number 30-5-3.6. Supervisor Winters seconded the motion, with all voting Aye. Motion passed 3-0.

Ordinance Task Force Update

Manager Piersol advised that the Planning Commission last evening recommended that the Board of Supervisors forward to the Chester County Planning Commission for Act 247 Review, an amendment to Chapter 300, Land Use, Section 300-17 to amend the definition of School, an amendment in Chapter 399, Zoning, to permit a School as a Conditional Use in the Mixed Use (MU) Commercial District, and an amendment to Section 399-137 titled "Conditional Uses" to amend the criteria and standards for Conditional Use. Vice-Chairman Fischer motioned to submit the proposed amendments to Chester County Planning Commission for Act 247 Review. Supervisor Winters seconded the motion, with all members voting Aye. Motion passed 3-0.

Manager Piersol advised that the Planning Commission last evening recommended that the Board of Supervisors advertise for adoption the Zoning Ordinance amendment for the definition of Consumer Fireworks and Sales in the CS/LI District. Vice-Chairman Fischer motioned to advertise the amendment as presented. Supervisor Winters seconded the motion, with all members voting Aye. Motion passed 3-0. Solicitor Camp asked the Board if they were in agreement to hold this amendment's hearing at their meeting on July 11, 2019. The Board agreed on this date by consensus.

Public Comment on Agenda Items

Lindsay Dunn, Esquire, addressed the Board to clarify that she is the attorney for NVR, Inc. and separately the attorney for the Ulrich's. She noted that although she is the attorney for both entities, there is separate representation.

NOTICES

Chairman Scribner stated that there were no notices for today's meeting.

Adjournment

Vice-Chairman Fischer made a motion to adjourn the public meeting at 9:25 A.M. Chairman Scribner seconded the motion, with all members voting Aye. Motion passed 3-0.

Respectfully submitted,



Mary Kemble Slade
Secretary/Treasurer