

WARWICK TOWNSHIP BOARD OF SUPERVISORS
JUNE 21, 2023
7:00 p.m.
WARWICK TOWNSHIP MUNICIPAL BUILDING

Chairman Ken Eshleman convened the June 21, 2023 meeting of the Warwick Township Board of Supervisors at 7:00 p.m. In attendance were Supervisors Ken Eshleman, Kelly Gutshall, Ken Kauffman, Jeff Tennis, and Jeremy Strathmeyer. Also in attendance was Brian Harris, Township Manager; William Crosswell, Township Solicitor; Tom Zorbaugh, Zoning & Code Officer; Nelson Peters, 6 Pebble Creek Dr. Lititz; Laura Knowles, Lititz Record; Jim Bushong, 1403 Brunnerville Road, Lititz; Kevin Varner, Diehm & Sons; Christopher Poje, 513 Deer Run Road, Lititz; Tyler Eshelman, Landmark; Roger Gerhart, 910 Brunnerville Road, Lititz; Dale Keeney, Brunnerville Road; and Mark Will, Compass Mill Complex.

Ken Eshleman stated that the Board of Supervisors held an executive session on June 7, 2023 to consult with the Township Solicitor in connection with issues relating to the Conditional Use Application submitted by Compass Mill Complex LLC and to obtain attorney-client privileged advice.

On a motion by J. Strathmeyer and seconded by K. Kauffman, the Board unanimously approved amending the agenda to reflect the public hearing for the opening of Tupelo Street to be moved to the front of the agenda.

PUBLIC HEARING & CONSIDER ORDINANCE 300 FOR THE OPENING OF TUPELO STREET TO CONNECT THE ROADWAY TO WEST WOODS DRIVE:

W. Crosswell stated a public hearing must be held when a Board of Supervisors is considering opening a street and this public hearing relates to the opening of an extension of what is now known as Tupelo Street and that extension would extend from the current terminus of Tupelo Street to West Woods Drive. This extension has been considered by the township for planning purposes for many years. Mr. Crosswell described the difference between the township official map and the zoning map. The most recent official map was adopted by the Board of Supervisors on November 18, 2020 by Ordinance #293. Mr. Crosswell noted that this proposed extension of Tupelo Street has been reviewed and recommended by the Warwick Township Planning Commission and the Lancaster County Planning Department. The Warwick Township Planning Commission meeting minutes pertaining to this street extension were made part of the record. The correspondence the township has received from the Lancaster County Planning Department was also made part of the record. The public hearing and the proposed ordinance that is related to the opening and the extension of Tupelo Street were advertised in the Lancaster Newspaper on Wednesday, June 7, 2023 and that legal notice met the requirements of the second class township code. That code also requires that ten days written notice be given to property owners abutting the street that is to be opened and that notice was sent on May 31, 2023 and met the 10-day requirement.

Tyler Eshelman, attorney representing Landmark Builders, noted that it will be a continuous street going from the Crosswinds development currently to West Woods Drive and a portion of this is currently referred to as Hillcrest Avenue. The portion within the Walton tract is not built or available for public use yet as there needs to be surfacing and paving done later and then an actual act of dedication to the public. T. Eshelman was affirmed by the court reporter.

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On a motion by J. Strathmeyer and seconded by J. Tennis, the Board unanimously approved enacting Ordinance 300 for the opening of an extension of Tupelo Street (T-810) to connect Tupelo Street to West Woods Drive (T-899).

CONSIDER ORDINANCE 301 AUTHORIZING THE ACQUISITION BY CONDEMNATION OF A FEE SIMPLE TITLE TO ENABLE IMPROVEMENTS TO AND THE EXTENSION OF TUPELO STREET AS A THROUGH STREET TO WEST WOODS DRIVE:

B. Crosswell stated that included in the legal notice posted in the Lancaster Newspaper was the intent on the part of the Board of Supervisors to consider an additional ordinance which if enacted would be Ordinance 301 which would authorize the acquisition by condemnation of a fee simple title for public street purposes over a tract of land that contains approximately 5,171 square feet. The purpose for acquiring that land would be to enable the making of the improvements to and the extension of Tupelo Street which is designated by PennDot as T-810 as a through street to West Woods Drive which is known on the PennDot liquid fuels map as T-899.

Tyler Eshelman stated the portion of land to be condemned is just over 5,000 square feet on what is formerly known as Hillcrest Avenue. Eshelman mentioned that when the Woodcrest subdivision was originally subdivided by Samuel & Mary Becker they had identified the area in question to be dedicated to public use as a street. In the subdivision and sale of all the lots the street was never formerly dedicated or accepted by the township and it was never conveyed to anyone. In Landmark's title work they could not identify anyone after Mr. & Mrs. Becker that owned the area in question even though it was clear from Mrs. Becker's estate records that she did not know when she passed away that she would have retained ownership. There are no estate documents or anything that they could find that would say who the tract in question would have gone to. The options are limited because Landmark does not have a clear person they can contact to purchase the tract so it can be dedicated to the municipality. For this reason they have been exploring the condemnation option in consultation with the township and Solicitor Crosswell. Landmark believes this is the most effective way to acquire clear title and ultimately make it part of the public system.

B. Crosswell stated that it would be appropriate for the Board to now consider a second ordinance which would be an ordinance known as Ordinance 301 that would authorize the condemnation of this tract of land for public street purposes. If condemned it would be condemned in what is known as fee simple title which would mean that the township would have full title to the strip of land to be added to Tupelo Street. The two ordinances are interrelated and both are necessary to allow the extension of Tupelo Street. This is not the end of the condemnation process, rather it is the beginning. There is a declaration of taking that needs to be filed with Lancaster County Court of Common Pleas, a recording of a notice of condemnation in the Recorder of Deeds office, and other steps that need to be taken before the developer can even take possession of the property. K. Eshleman asked what would happen if during that period of time any of the heirs would come forward. Crosswell stated the process that would be followed if the declaration of taking is filed, which this ordinance would authorize, there is a process and a procedure if you cannot identify those who are entitled to any just compensation to pay those monies into court. The developer has had an appraisal made of the tract that at the point and time in the court proceedings that the developer is ready to take possession, the developer would have to post security with the court and then if someone comes forward and establishes the right to that compensation it would be paid to them. Crosswell stated there is a 5 year provision that is in the second class township code from when a street is legally opened, which it did tonight, and when it can actually be used by the public. B. Harris asked if the applicant has satisfied all other conditions of land development approval based on the actions taken tonight, is the plan able to be recorded or do you have to wait until the declaration of taking is filed and the rest of the condemnation process goes through. Crosswell stated the township or developer cannot have possession of what was condemned until the money is paid into the court. Immediately upon the filing of the declaration of taking for condemnation purposes and the recording in the Records Office of the notice of condemnation, that in and of itself does not allow possession of the condemned land. You have to then petition the court and the court has to approve the estimated just compensation and then enter an order that would give the township the right to occupy it.

T. Eshelman stated that under the eminent domain code title immediately passes to the condemnor when the declaration of taking is filed. Legal title does not always equal the right to enter and possess property which that would be tied to the posting of the security or the funds with the county. From a plan recording perspective he believes that if legal title would pass to the

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condemn for plan recording purposes you would be able to proceed but the right of entry and right of possession would still be contingent on posting the funds and you would have to have the order before full access and the right of possession would go to Warwick Township. B. Crosswell stated that after the declaration of taking, which is the document that effectuates the condemnation is filed then there is a necessity to serve that declaration taking like you would have to serve a complaint on somebody in a lawsuit. There would have to be another legal notice to the heirs of the Becker's published in the Lancaster Newspaper and generally there is a 30-day period for somebody to file preliminary objections to a condemnation. We will need to wait for the filing of the declaration of taking and the recording of the notice and then the legal notice giving notice. K. Eshleman asked if the posted money gets refunded after a certain time. B. Crosswell explained how the funds are handled. There was some discussion on the recording of the plan.

On a motion by K. Kauffman and seconded by K. Gutshall, the Board unanimously approved the enacting of Ordinance #301 authorizing the acquisition by condemnation of fee simple title for public street purposes over the tract of land containing 5,171 square feet located adjacent to the proposed Walton Hill development to enable the making of improvements to and the extension of Tupelo Street (T-810) as a through street to West Woods Drive (T-899).

On a motion by J. Tennis and seconded by J. Strathmeyer, the Board unanimously approved the closing of the hearing.

CONSENT AGENDA: B. Harris acknowledged Ryan Martin representing the Public Works Department. Back in May Ryan was promoted to foreman and he was thanked for his service. Harris mentioned 6th Street paving is scheduled for next week. Kreider is going to be starting the portion from Siegrist Farm Road to Lititz Reserve Lane. The Orchard Road subdivision has a detour in place as phase 1 is getting underway for water and sewer work and there have been no complaints to date. The north tank subdivision is moving along. It will be in front of the Board of Supervisors at the July meeting to consider the subdivision. We did get the Zoning Hearing relief as well as Planning Commission recommendation. Harris stated that we are in the process of negotiating the Regional Police collective bargaining agreement. On a motion by J. Tennis and seconded by J. Strathmeyer, the Board unanimously approved the consent agenda as submitted.

CONSIDER AN EXTENSION OF TIME FOR THE COMPASS MILL LAND DEVELOPMENT PLAN: B. Harris stated the Compass Mill Land Development Plan was submitted over a month ago and as part of that the applicant is requesting a 90-day extension which will push the date to act on the Land Development Plan to September 20, 2023. There is a letter from RGS dated June 6, 2023 requesting the extension. On a motion by K. Kauffman and seconded by K. Gutshall, the Board unanimously approved the extension of time for the Compass Mill Land Development Plan.

CONSIDER THE COMPASS MILL CONDITIONAL USE DECISION: W. Crosswell stated that after the hearing was held before the Board of Supervisors there was an executive session held which under the Sunshine Act no decisions can be made but it is an opportunity to discuss and deliberate issues that maybe come before the Board with legal counsel present, particularly when it involves a matter of potential litigation. The executive session provided an opportunity for the supervisors to comment and ask questions about the legal issues involved in this application. As a result of that executive session, Mr. Crosswell drafted a proposed decision after hearing from the individual supervisors as to their desires concerning this application with the options being to approve the application unconditionally, to deny the application, or to approve the application with conditions. The proposed decision was provided to the supervisors and Mr. Crosswell requested the supervisors contact him with any additions or changes. Now before the Board for its consideration is a proposed decision and that decision has several parts. It has findings of fact, a discussion portion, conclusions of law and it has 24 proposed conditions which would be imposed if the conditional use application is granted.

Case 2023 - #2: I, J. Strathmeyer, move to grant in part the application of Compass Mill Complex LLC for Conditional Use approval to demolish the Compass Mill subject to conditions, to deny the request for relief from Sections 340-46.2.B.(5).a. of the Zoning Ordinance which prohibits the issuance of a demolition permit prior to the approval and recording of a subdivision or land development plan, and to adopt as a decision of the Board of Supervisors the 27 findings of fact, the discussion, the 8

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conclusions of law, and the 24 conditions contained in the written decision of the Board presented at this meeting consisting of 9 pages. There was a second from J. Tennis and the Board unanimously agreed.

CONSIDER A REDUCTION OF THE LETTER OF CREDIT FOR CEDAR RUN CONSTRUCTION: B. Harris stated that Cedar Run Construction requested a reduction in their existing letter of credit. ELA provided the township with a letter dated June 5, 2023 recommending a partial release of escrow. The balance to finish after the release is \$7,149.00 and is primarily for the basin landscaping and seeding. On a motion by K. Kauffman and seconded by K. Gutshall, the Board unanimously approved the release of \$11,550.00 for the Cedar Run construction plan.

CONSIDER A RELEASE OF THE LETTER OF CREDIT FOR 2058 MAIN STREET: B. Harris stated ELA provided the township with a letter dated June 5, 2023 recommending a full release of the escrow for 2058 Main Street. The escrow amount that was being held was \$35,369.84. On a motion by J. Tennis and seconded by K. Kauffman, the Board unanimously agreed to release the escrow in its entirety.

CONSIDER THE CHRISTOPHER S. POJE FINAL SUBDIVISION PLAN: B. Harris mentioned that Kevin Varner is present along with Chris Poje and Roger Gerhart. The proposal is the annex off a 1.6 acre lot that is in the RE portion of Mr. Gerhart's property. As part of this subdivision the township is also acquiring the 50 foot access strip to Woodview which was incorporated into the Orchard Road subdivision phase 1. As part of this process Mr. Gerhart is working through the Ag Preserve Board to preserve a portion of his property. ELA has provided the township with a review letter dated June 1, 2023.

Kevin Varner mentioned that the Gerhart farm is going through the agriculture preservation process so there will be an eventual rezoning to agriculture which changes the setbacks on the lot. In anticipation of that the proposed house was shifted up to provide the 100 foot buffer from the ag zoned district. The lot will stay zoned RE. Public sewer is located on Woodview Drive and they are proposing to extend that in and service the house with that. They are proposing on lot water. Varner mentioned that infiltration testing went well and they are proposing an underground system to the rear of the lot. B. Harris stated that typically the county requires the rezoning to happen prior to preservation. He has been in contact with Kevin Bear from the Ag Preserve Board indicating that the township is going through their comprehensive plan update and would they consider proceeding prior to it being rezoned and they were agreeable to that which is the reason it hasn't been rezoned yet. Varner reviewed the requested waivers and deferrals and the justifications for those waivers and deferrals.

On a motion by J. Tennis and seconded by K. Kauffman, the Board unanimously approved the Christopher S. Poje final subdivision plan with ELA's letter dated June 1, 2023 the comments related to the waivers and the rest of the plan.

CONSIDER MOTION TO APPROVE THE PAYMENT OF BILLS: B. Harris stated the total bill register is \$852,000.00 of which \$804,000.00 is out of the general fund. There was the \$240,000.00 check to the LRCDC, the installment to NLCRPD, and contributions to Lititz ReCenter, Library, and WRRRC. Harris mentioned the approval of replacing the steel doors in the front of the municipal building so you will notice two deposits to the company that is going to be doing the work. They required a 50% down deposit. On a motion by J. Tennis and seconded by J. Strathmeyer, the Board unanimously approved the payment of bills as submitted.

CONSIDER MOTION TO APPROVE THE TREASURER'S REPORT: B. Harris stated that to date our revenue is at about 48% which is roughly \$3.36 million dollars. The expenditures are at 52% which is almost \$3.5 million dollars. EIT continues to be strong and local services tax is doing well. Harris mentioned the cable franchise fee lagging a little bit. On the expense side of things he noted the expenses to the Joint Comprehensive Plan which at the end of that process the expenses will be diluted amongst the member municipalities. There are a few grants in the works and some of them are reimbursable grants so the township is incurring the expenses first and then seeking the reimbursement. On a motion by J. Tennis and seconded by J. Strathmeyer, the Board unanimously approved the Treasurer's Report as submitted.

CONSIDER THE APPOINTMENT OF MIKE WETHERHOLD AS ALTERNATE PLANNING COMMISSION MEMBER: B. Harris mentioned the resignation of Marcello Medini and the Planning Commission ultimately recommended that Bob Kornman,

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as the alternate, be slid into the full-time role. Mike came to the las Planning Commission meeting to indicate his interest in serving. Mike has been a Warwick Township resident since 1999. He has been a project manager with EG Stoltzfus since 1997 so he understands the building end of things. If the Board appoints him the long-term plan would be when Mr. Kimmel gets off the Planning Commission Mike would slide in to that position. On a motion by K. Kauffman and seconded by J. Tennis, the Board unanimously approved appointing Mike Wetherhold as the alternate Planning Commission member.

Nelson Peters stated that the residents of Pebble Creek were very pleased with the work of the street improvements and the crew that was hired did an excellent job and cooperated very well with the community. He mentioned the youth of the community being able to see other careers and how people can work together.

NEXT MEETING: Wednesday, July 19, 2023 at 7:00 p.m. (no morning meetings in July or August)

ADJOURNMENT: On a motion by J. Tennis and seconded by J. Strathmeyer the meeting was adjourned at 8:08 p.m.

Respectfully Submitted,

Brian Harris
Township Manager