

EAST FALLOWFIELD TOWNSHIP
BOARD OF SUPERVISORS MEETING
April 9, 2012
Approved special meeting minutes
6:53 PM

Call to order, silent meditation, and pledge of allegiance.

In attendance were Chris Amentas, Acting Chairman; Mark Toth, Member; Ed Porter, Member; Joe Pomorski, Member; Denise Miller, Township Secretary; Rosemary Moore, Township Treasurer; Vince Pompo, Township Solicitor. Member Chris Makely was absent.

John Good – Bawa Fellowship:

Mr. Pompo presented the Board with the Bawa Fellowship (“Bawa”) matter that is under appeal on a zoning issue before the Commonwealth Court. Mr. Good has sent the township a March 20, 2012 proposal letter to settle on the terms very similar to the terms in his April 29, 2010 letter. In that settlement the Board essentially indicated that the applicant should design the proposed development in accordance with a sketch plan that Tom Comitta, township landscape architect, put together for the Zoning Hearing Board proceeding as well as some other provisions including a provision that the development be served by private wells and sewer, rather than a community on line system and community water system that is required by the ordinance. As a result of that letter, “Bawa” community submitted additional requests of settlement which would have essentially done away with the requirement of going for conditional use approval which the Board rejected. The recent judgment by Judge Nagle was to affirm the position of the township. “Bawa” has come back to the Board on a more limited settlement request. Mr. John Good informed the Board that they developed a plan for an age restricted community for fifty-five and older, with twenty three 30,000 minimum lot sizes meeting the setbacks. They also propose that their road is a “thru road” out to Timacula Road or they could cul-de-sac it and create an emergency access road out to Timacula Road. Mr. Pompo stated that if the Board does not want a “thru road” then they would have to grant a waiver. Mr. Good stated that the street system and stormwater management will be done upfront but the houses will be built over decades. Mr. Good presented 2009 prices for community water at \$951,000.000 and sewer at approximately \$900,000.00. Mr. Amentas asked Mr. Pompo to clarify the specifics of when the Board opposed public water and sewer for “Bawa.” Mr. Pompo replied that his April 29, 2010 letter indicated that the Board was in concurrence with the proposal to the community sewer system and water supply system would not be required. There was a concern with the prior Board in extending the public water system to that area of the township and there was no availability for a community sewage system. The Board also did not want to become the “co permittee” and be responsible for the community system. Mr. Porter asked Mr. Pompo if there are any other community systems in the township. Mr. Pompo replied “he is not aware of any.” Mr. Amentas stated that the Lamb McErlane April 29 letter states that the Board wanted the reduction of homes from forty three to twenty two. Mr. Pompo asked Mr. Good why the plan shows twenty three homes instead of twenty two. Mr. Good replied “because twenty three fit and it complies with the ordinance.” Mr. Pompo informed the Board that the plan by Mr. Good has not been reviewed by anyone. Mr. Amentas asked if the plan will be submitted shortly. Mr. Good replied that it depends on the outcome tonight. Ed Porter asked how big the homes are. Mr. Pompo replied the foot print shows 3,200 square feet. Mr. Good replied that is just to show that they fit easily and meet all the zoning requirements. Mr. Amentas asked Mr. Good if he is only interested in finding out tonight if whether or not the Board will be accepting the on-lot single individual system rather than the community system. Mr. Good replied “correct.” Mr. Porter asked Mr. Good if they are willing to go with community or individual onsite septic. Mr. Good replied that if they have to go to a community system they will continue with the appeal. Mr. Pompo stated that the Board could have an executive meeting on April 17 and then go into the regular meeting. Mr. Good stated that he cannot attend the April 17 meeting.

Fieldstone Village Development/Longview Investments:

Mr. Pompo presented Fieldstone Village Development that was developed by Deluca Homes (“Deluca”) which is now in a receivership with a court appointed developer named Rouse Chamberlin, (“Rouse”) who has the responsibility to liquidate the asset. Longview Investments “Longview” is interested in purchasing the development from “Rouse” and hold onto it until the market gets better and then sell it to a builder for completion of the development and the homes. “Longview” has asked the township to enter into an agreement with them so they can maintain the existing performance bond. In order to do this “Longview” would like the township to enter into an agreement where the township would not enforce the performance bond against the surety for the reason that the development is not completed; however there would be an agreement that the bond could be called in the event that “Longview” does not undertake routine maintenance of the development as it exists today and as defined in a draft agreement that is being negotiated between the parties. There would be an agreement for the “Deluca” escrow, which is used for township expenses in administering the development, to switch over to “Longview.” All of the agreements have to be

approved by the court since this property is in receivership. Once "Longview" pays over a "down" money deposit to "Rouse", "Rouse" will fix the infiltration facility that should have been constructed, but was not. This stormwater problem was inspected by the township engineer and the Chester County Conservation.

The original condition of approval that started with the original approval for the development would minimize the number of front loaded garages. The original approval by the Board, years ago, prohibited all front loaded garages. When "Deluca" acquired the property they asked the Board for relief from that provision so the Board allowed for a maximum of eleven front loaded garages. "Longview" has requested that there be a further amendment that removes any prohibition against front loaded garages.

Mr. Amentas stated that the time frame that he requested, within which they would need to begin undertaking building or development in exchange for the Boards' agreement to forebear enforcement of the performance bond during that time frame, is not in the agreement. Mr. Pompo agreed and asked Mr. Amentas if he has a specific time frame. Ms. Xue stated that they previously stated five years. Mr. Amentas suggested three years. Ms. Xue replied that they preferred five but she will speak with "Rouse" and get back to him. Mr. Amentas also asked Ms. Xue why the money for the basin construction is not included in the agreement. Ms. Xue replied that "it is in the separate agreement between "Longview" and "Rouse." Mr. Graham, "Rouse", stated that "Rouse" will share the agreement on the stormwater infiltrated on #4 and incorporate it in the township agreement. Mr. Graham also stated that once "Longview" decides to move forward they have a contractor ready to move forward within the next thirty to forty five days.

Mr. Porter asked Mr. Pompo if the garage changes a zoning issue. Mr. Pompo replied no, because it commends with the conditional use and it became a condition of approval of the conditional use. The conditional use order gives the Board the right to essentially make amendment to those conditions on any matter on which it and the applicant agreed. Because of what was in the conditional use the Board required as a condition of plan approval that there be no front loaded garages. That condition of plan approval was then amended in order to allow for eleven. You would also have to amend the final plan approval in order to take that condition away. Mr. Porter asked Ms. Xue is she is not sure of what the developer wanted to do as far as what is going into the development. Ms. Xue replied "right." Mr. Xue also stated that their interest as a holding company is for investment in the property with the intent to sell to a home builder. The fewer restrictions that they place on a home builder the sooner it can be sold.

Fieldstone Village residents:

Dennis Weiner of 63 Pelham Drive stated that the Fieldstone residents had their own meeting to discuss their concerns. Mr. Weiner asked the Board if they are giving "Longview" a five year limit. Mr. Amentas replied that the Board is discussing a period of time to not call the bond. Mr. Weiner also asked Ms. Xue if she is guaranteeing the residents that she will find a builder in five years because if she doesn't their homes value will plunge. Ms. Xue replied that in five years if they do not perform then the township has the ability to call on the 1.5 million dollar bond to complete the site work for the residents. Mr. Weiner asked the Board how it would work if they made an agreement with "Longview" for five years and a builder wants to buy the property before the five years. Ms. Xue replied that if they move forward on the basis then they will be the owner of the existing vacant lots and therefore market the lots. Mr. Pompo stated that once development started the township would not be agreeing to not call the bond for five years. Mr. Weiner asked who the owner of the property is. Mr. Graham replied "Deluca" and "Rouse" is the receiver. Mr. Weiner asked "will the new builder use the "Deluca" plans." Mr. Pompo replied that the only component of the plan that would change is the front loaded garages. Mr. Weiner has concerns that the homes built may not be the same value as the current homes. Mr. Pompo replied that the plan cannot change so there will be single family dwellings built on the same lot configured as the plans recorded at the recorder of deeds. The township cannot guarantee the quality of the houses. Mr. Amentas asked Mr. Pompo "to what extent is the actual type and size of the home specified anywhere in the recorded set of documents." Mr. Pompo replied that it is really driven by the lot configurations. Mr. Pompo stated that there are two areas of homes on the proposed plans that have rear alleys with the condition that requires the garages accessed from the rear alley. That condition will remain in place. Mr. Amentas asked Mr. Pompo where it shows that condition. Mr. Pompo replied that traditionally it would be memorialized both as a conditional use condition and the plan approval condition as notes on the recorded plan. Mr. Amentas asked Mr. Pompo if it is possible that those conditions also include conditions that pertain to size and type of homes. Mr. Pompo replied that he doesn't believe that there is any condition for the size of the house. When "Deluca" asked for relief in 2006 there were some models that were presented to the Board and the condition of approval for allowing eleven front loaded garages did essentially confirm that they could build the type of design that they presented to the board, but it did not require that they build that. Basically it says that the applicant agrees to submit the design and layout of the new models to the planning commission for review and approval prior to offering the models for sale.

Eric Dyer of 10 Derry Lane asked the Board why they cannot guarantee that the new homes are built as "stone front" homes. Mr. Amentas replied "because the Board did not originally impose that condition." Mr. Dyer asked Ms. Xue if the development

will be sold as a “whole” or by “individual lots.” Ms. Xue replied that ideally they would like to sell the fifty five remaining lots to a builder but with the economy, they may not be in the position to sell it as a “whole.” Mr. Pompo asked Ms. Xue if they could come up with objective criteria that would give flexibility for purposes of marketing the lots that would put the resident’s minds at ease that they will end up with similar quality of houses. Ms. Xue replied that this was talked about internally and they could not come to a set of standards that make sense. Ed Porter asked Ms. Xue why “Longview” is so concerned about the township “calling the bond.” Ms. Xue replied because they have a tentative agreement with the bonding company and if the township calls on the bond then “Longview” will have to replace the money to the bonding company or they will foreclose on the property.

Lee Sorenson of 2 Derry Lane stated that he has concerns with the township entering into an agreement with “Longview” for five years. Mr. Amentas asked Mr. Sorenson what he thinks the alternative is. Mr. Sorenson replied that it is only fair for the township to insist on an equitable amount of consideration from “Longview” when they remarket the property.

Dennis Kozlowski of 1100 South Caln Road spoke about the flooding to his property from the Fieldstone Development. Mr. Kozlowski also stated “homes are to live in; not an investment.”

Stephanie Waterman of 12 Derry Lane asked “Rouse” or “Dewey” if they had other bids from builders. Mr. Graham replied “yes, but “Longview” is the only company that has proceeded this far.” Mrs. Waterman also expressed her concern with what type of house that will be built and that the residents are paying a home owners association (“HOA”) fee that has \$90,000.00 in reserve. Mr. Amentas asked if the “HOA” is holding the payments in reserve. Mrs. Waterman replied that the fees have been reduced but she would like them frozen until there is a builder. Steve Gallo, representing “Rouse”, stated that the association is still declaring control. Mr. Gallo also stated that the ‘HOA’ fees pay for a professional property manager and the street light bills. The street plowing and mowing are paid by the receiver. The money that is in excess of expenses are held by the “HOA” in a separate account. Mrs. Waterman stated that she has a contract that states those funds will be used for a trail or maintenance of the property. Mr. Pompo replied that there is a purely public trail and a trail that is more internal to the “HOA” that is on the approved plan. Mr. Pompo asked Ms. Xue if “Longview” will control the “HOA” if this transaction went through. Ms. Xue replied that she believes that is the case. Mr. Pompo asked Ms. Xue if “Longview” has a position on how they would manage those responsibilities. Ms. Xue replied “what is difficult is that when you buy into a house in a community and you start paying the “HOA” fees and the developer pays for all the deficits of the “HOA.” According to Mike Rouse the fees collected from the nine homeowners is not enough to pay all the expenses of the community, so “Longview” would pick up the deficit and pay the rest of the snow plowing, mowing, maintenance, and upkeep of the community. Robin McGill, Longview Managing Investments, stated that the homeowners pay \$400.00 per year towards the managing fee, insurance, and the liability insurance only. Mr. Porter asked Ms. McGill what the cost of the managing fee is. Ms. McGill replied “\$27,000.00”.

Dennis Weiner of 63 Pelham Drive asked Mr. Amentas “what protection do the residents have.” Mr. Amentas replied that if the township follows through with this agreement, “Longview” will be required to maintain the status of the community.

Becky Mason 95 Wanda Way asked the Board who they should contact to request that the building debris in the lot beside them be removed. Mr. Gallo replied that Ms. Mason can direct her request to “Rouse.”

Ed Porter asked Chris Della Penna, Township Engineer, if the “infiltration system” will fix the problems on South Caln Road. Mr. Della Penna replied that it will not solve the problem but it will help it. Mr. Della Penna also stated that there are additional stormwater facilities that have to be installed in the main part of the development. Mr. Porter asked if Mr. Della Penna knows the cost of the system. Mr. Della Penna replied approximately \$50,000.00. Mr. Della Penna also stated that now that “Rouse” is in receivership they have been asked to put the system in and they replied “in order to get a large expense item like that accomplished that they would have to go to court to release the funds.” Mr. Gallo stated that “Rouse” does not have authority to currently install the system but the arrangement that has been worked out is that if they move forward with the bond differential agreement “Rouse” is committed to use the deposit funds, from the transaction, to install the system within the next thirty to forty five days.

Brandon Waterman of 12 Derry Lane stated that in order to make a good decision it should be a “win win” situation for everyone.

Steven Horrocks of 10 Pelham Place has concern with the possible change in the garages.

Fay Wanda of 20 Pelham Place stated that five years is a long time to have nothing done in the development.

Dennis Weiner asked Ms. Xue if the residents of the development could meet with a potential builder. Ms. Xue replied that to just meet the builder would be ok but to approve the builder is not ok.

Mr. Amentas stated that he does not see such a dramatic improvement occurring in the community within the next three or five years, so that in his opinion the Board is not surrendering all that much by saying to "Longview" that the township is not going to call the bond within that time frame, so by allowing this deal to go through they are finally taking a "zombie developer" out of the picture and bringing in another company that has a vested interest in completing the development. Mr. Porter asked Mr. Pompo if "Rouse" represents "Deluca", in any way, to make sure the best deal goes through. Mr. Pompo replied that he believes they are looking out to preserve the assets. Mr. Porter also asked Mr. Pompo if anyone reviews the bids as they are submitted. Mr. Pompo replied that every sale requires court approval. Mr. Pompo asked Mr. Gallo if they sold off all their properties. Mr. Gallo replied that they sold 85% of their twenty- two properties and they had to get appraisals to demonstrate to the court that they are not selling the property at a ridiculously low value. The initial process went through the entire portfolio. "Longview" is also aware of the required "auction" that is stipulated once they have a builder or buyer contract purchaser, and once they go "hot", advertising will be done for a required four weeks in the Philadelphia and local paper. It is a low percentage that a builder will appear and go to the auction bid 3% overbid, plus the 2% breakup fee. The Board moved further discussion until the April 17, 2012 meeting.

Harrington & Sons Inc. contract:

Mr. Toth is concerned with doing work in bits and pieces and wasting money. Mr. Porter stated that the proposed work is a "code" and "work place" issue. The Board agreed to use this format as the "standard contract" for East Fallowfield Township.

Mr. Amentas made a motion to approve the contract between East Fallowfield Township and Harrington & Sons for electric and heat work in the township building. Mr. Pomorski seconded. Mr. Amentas amended his motion to approve the contract between East Fallowfield Township and Harrington & Sons which has been designated by Vice Chairman Chris Amentas as "Exhibit 1" on the bottom of the form presented to the Board for review at this meeting of April 9, 2012. Mr. Pomorski seconded. Mr. Porter asked the office staff to be aware of the electric usage for the baseboard heat. Vote: Unanimous.

Mr. Amentas excused Mr. Pompo from the April 9, 2012 "special meeting."

Mr. Amentas made a motion to adjourn the Board of Supervisors meeting at 8:20 PM. Mr. Toth seconded. Vote: Unanimous.

Respectfully Submitted,

Denise Miller,
Township Secretary