

## DERRY TOWNSHIP MID-MONTH MEETING

The Derry Township Board of Supervisors held its Mid-Month Meeting, Monday, April 19, 2021 at 5:30 p.m., Municipal Building, 73 Reserve Lane, Lewistown.

Present:	Chairman	Ronald E. Napikoski, Jr.
	Vice-Chairman	Donald R. Warntz, II
	Supervisor	John T. Sipe
	Manager	Kelly J. Shutes
	Solicitor	Jeffrey L. Snook

R. Napikoski called the meeting to order at 5:30 p.m. Mr. Napikoski announced that an Executive Session was held just prior to this meeting from 4:30 p.m. to 5:15 p.m. to discuss potential litigation in relation to the Blossom Hill Development.

D. Warntz made a motion to approve the Minutes of the Monday, April 5, 2021 Special Workshop Meeting and the Monday, April 5, 2021 Regular Meeting. J. Sipe seconded the motion. Motion carried 3 - 0.

### SOLICITOR:

Atty. Snook noted that a public hearing for the Proposed Omnibus Zoning Amendment will be advertised and scheduled for Monday, May 17, 2021 at 4:30 p.m.

### VISITORS:

Ryan Fetzer, owner of 30 Exeter Lane (Lot # 47), Blossom Hill development, was present, along with his attorney, Dan Searer, to discuss encroachment of his pool on the bordering property (Lot # 55) in the Blossom Hill Development.

Chairman Napikoski noted that the Township position is that the encroachment is a civil matter between the two property owners, in this case, Ryan Fetzer and Berks Homes.

Atty. Searer stated that his client does not dispute the fact that there is an encroachment by the pool constructed in 2017 and is willing to move the portions of the fence and concrete that impinge on the neighboring property and is aware that the pool is also located in a stormwater easement. He also indicated his client is willing to pledge \$1000 towards the stormwater "work around" plan to resolve the issue. Atty. Searer noted that potentially, if this went to litigation, laches could be applied due to the 2017 installation of the swimming pool.

Berks Homes engineer has prepared a plan to correct the stormwater problem by piping the stormwater and staying within the existing easement at an estimated cost of \$22,000. Although Berks does not think they have any responsibility for the encroachment, they are willing to contribute \$11,000 to the project. It was noted that Atty. Colby, Berks Homes legal counsel was not in attendance at this meeting and that Devon Warner spoke on behalf of Berks Homes.

D. Warntz made a motion to go into executive session at 6:00 p.m. to discuss the legal matters surrounding the pool encroachment. J. Sipe seconded the motion. Motion carried 3 - 0.

Executive session ended at 6:10 p.m.

Chairman Napikoski commented that the Township considers the encroachment by the Fetzer swimming pool and the encroachment of the stormwater easement as two separate issues.

After discussion by all parties present and after Mr. Fetzer and Ms. O'Donnell conferred with Mr. Fetzer's attorney a motion was made by John Sipe to agree to the following terms between Mr. Fetzer, Ms. O'Donnell, Berks Homes and Derry Township: Mr. Fetzer should have the encroaching portion of the concrete and fence surrounding the pool removed by the end of this week so that it does not cross his property line, preferably at least one foot behind the property line. The Township is willing to split the costs of the stormwater work with Mr. Fetzer to correct the problem the existing pool creates by being in the stormwater easement. There is an estimated cost of \$22,000 to correct the stormwater issue. The Township will contribute \$5,500 to that cost, Mr. Fetzer will also contribute \$5,500 and the remaining \$11,000 will be funded by Berks Homes. Fetzer will put \$1000 down on the stormwater work and then pay \$250/month for 18 months, interest free until the total sum of \$5,500 is paid to Derry Township. Derry Township requires a municipal lien to be placed on the Fetzer property until full amount is paid. In addition to these requirements, Fetzer will be asked to file for a variance regarding the pool setbacks with the Derry Township Zoning Hearing Board. Derry Township Supervisors and Berks Homes are willing to send letters of support to the Zoning Board on behalf of Mr. Fetzer and ask the Homeowner's Association to do the same. There will be representatives from all parties present at the zoning hearing. There is to be no further contact between Berks Homes representatives and Mr. Fetzer on the matter. Attys. Snook, Colby and Searer are to confer and develop a written agreement to memorialize these points. D. Warntz seconded the motion. Motion carried 3 - 0. Mr. Fetzer, Devon Warner, on behalf of Berks Homes and the Board of Supervisors, Derry Township all agreed to these terms.

#### PUBLIC COMMENT:

Matt Yerger, Lot # 31 Blossom Hill owner, asked why he was told by the Zoning Officer that a five-foot setback was required for a shed and the Township Manager told him a ten-foot setback is required. The Township Manager explained that there has been confusion with setback requirements with Blossom Hill due to the HOA requirements versus the Township requirements. Within the PRD Zone, which Blossom Hill is in, setbacks for structures are 10 feet. Discussion was held regarding the Blossom Hill HOA and the fact that they should establish set back requirements in their Rules & Regulations Manual.

#### OLD BUSINESS:

Shane Strohecker attended the meeting on behalf of the Yeagertown Ball Association. He submitted his signed lease. He stated that the League plans to fix the floor of the dug out this season. D. Warntz made a motion to execute the lease with the Yeagertown Ball Association for 2021. J. Sipe seconded the motion. Motion carried 3 - 0.

Devon Warner, Berks Homes, presented a revised plan dated 4/9/21 for the stormwater swale at the Blossom Hill Development between Cambridge and Exeter Lanes. The plan is designed to take care of the stormwater issues at the Fitzgerald and Bradley properties. The plan was reviewed briefly and will be forwarded to the Township Engineer for review. Mr. Warner indicated that all the property owners affected were notified about the changes. There were residents present that said they were not aware of the proposed stormwater changes. The Board

looked over the stormwater plan. They indicated it looked like a favorable alternative but wish for the Township Engineer to give his comments before any formal approval is given. Mr. Warner said that they would submit as-builts and Atty. Snook reminded him that a Minor Land Development plan should be submitted for final approval for the changes and including the stormwater work around Lots # 47 and # 55 since this is a change to the original Blossom Hill Land Development Plan.

NEW BUSINESS:

Paul Fagley presented a Park Use Application for the Embassy Fair at Kish Park for the dates of May 30, 2021 through June 6, 2021. He indicated the first two and last two days were for set up and tear down. In speaking with the ride operator, Mr. Fagley said that the current State guidelines call for no more than 50% occupancy for outdoor events. Kish Park, he estimated, has an occupancy of 10,000 or 5,000 at 50%. He estimated that the Fair sees 2,000 attendees per day. The Board asked that he submits a diagram/plan of how the Fair will be set up to abide by the social distancing and COVID-19 health protocols and ask the ride operator for a copy of the State guidelines they will be following. J. Sipe made a motion to approve the Park Use Application for the Embassy Fair contingent on receipt of the proper documents and fees and on insuring that all COVID-19 protocols are in place. D. Warntz seconded the motion. Motion carried 3 - 0.

D. Warntz made a motion to approve the March bills as presented. J. Sipe seconded the motion. Motion carried 3 - 0.

There being no further business D. Warntz made a motion to adjourn at 7:00 p.m.

DERRY TOWNSHIP BOARD OF SUPERVISORS

Kelly J. Shutes  
Township Manager