

**Ligonier Township Supervisors
Regular Meeting
May 14, 2013**

The Supervisors of Ligonier Township met in regular session with Timothy Komar and Grover Binkey present. Supervisor Komar brought the meeting to order at 7:01 pm.

With no audience participation, the Board proceeded with the agenda items.

A motion was made by Grover Binkey and seconded by Timothy Komar to approve the minutes of the April 9, 2013 regular meeting. Motion carried.

A motion was made by Grover Binkey and seconded by Timothy Komar to approve the minutes of the April 26, 2013 special meeting. Motion carried.

A motion was made by Grover Binkey and seconded by Timothy Komar to approve the minutes of the May 2, 2013 special meeting. Motion carried.

A motion was made by Grover Binkey and seconded by Timothy Komar to table the April Treasurer's Report until the June Regular Meeting. Motion carried.

A motion was made by Grover Binkey and seconded by Timothy Komar to approve payment of the current bills. Motion carried.

A motion was made by Timothy Komar and seconded by Grover Binkey to accept the Police Incident Report for April 2013. Motion carried.

Zoning Office - Cynthia J. Angelo

A motion was made by Grover Binkey and seconded by Timothy Komar to approve the Waiver of Time for Coal Loaders - Mellon #1 GFCC project from the February 2013 meeting until June 30, 2013. Motion carried.

A motion was made by Timothy Komar and seconded by Grover Binkey to set the reconvened public hearing for Coal Loaders - Mellon #1 GFCC project on June 11, 2013 at 7 pm. It was announced that the hearing will begin at 7 pm or shortly thereafter. Motion carried.

Due to the large number of residents attending, the Reconsideration of the withdrawal of the Conditional Use Approval for Foxley Farm was set aside so that the Board could complete the agenda and business items prior to accepting comments on the Foxley Farm agenda item.

Old Business -

Supervisor Komar reported that Dumpster Day held April 27th was a success again this year. 44 electrical devices were collected and two dumpsters of iron were recycled. The costs of the collection were completely covered by the donations received and at no cost to the taxpayers.

New Business -

The Zoning Officer reported that she had become aware of program being offered by the County that would allow the Township to visualize current and future proposed zoning changes with the CommunityViz program. In the next few months, the program will be introduced to the Planners and public. Work has been taking place to gather the information and input it into the program software. The program is being offered to the Township at no cost.

A motion was made by Grover Binkey and seconded by Timothy Komar to accept the resignation of Rose Stepnick from the Zoning Hearing Board. A letter of appreciation for her service is to be sent. Motion carried.

A motion was made by Grover Binkey and seconded by Timothy Komar to appoint the current Zoning Hearing Board Alternate, Rick Penrod to the Zoning Hearing Board to replace Rose Stepnick. Motion carried.

It was announced that the Township continues to accept letters of interest for those wishing to serve as an alternate on the Zoning Hearing Board.

It was announced that work continues on the House Numbering Ordinance. Supervisor Binkey asked that the fire departments be involved along with the Township and Police Department in putting together an ordinance that will assist EMS to find residents when there is a need. Komar went on to state that the Township understands that some individuals do not wish to be found and to remain invisible, but if they should need EMS response and EMS can not locate them it could mean the difference between life and death as in a case a few years ago.

A motion was made by Grover Binkey and seconded by Timothy Komar to appoint Timothy Komar as the Pension Administrator, replacing Keith Whipkey. Motion carried.

A motion was made by Grover Binkey and seconded by Timothy Komar to approve the Ligonier Valley YMCA's request for police coverage for the annual 5K Race to be held May 27, 2013 even though the Police Department really had to juggle their schedule to handle it due to the lateness of the request. Motion carried.

A motion was made by Grover Binkey and seconded by Timothy Komar to appoint Albert H. Shadron as the interim Supervisor, replacing Keith Whipkey, until the end of the year, which officially will end at the reorganization meeting in January to be held January 6, 2014. An auditors' meeting will be scheduled to set Shadron's wage and benefit package. Motion carried.

The Supervisor's opened the floor to comments on the Foxley Farm Bed and Breakfast Conditional Use Withdrawal. Supervisor Komar stated that the withdrawal (as requested by P.J. and Maggie Nied dated May 11, 2011), will stand and the Supervisors will not reconsider the withdrawal. Komar went on to state that the Nields bought the property with certain expectations and while they should be able to utilize their property it can only be to a certain extent allowable under the ordinance. Komar stated he felt the Supervisors had been "duped" by the Nields but that games have been played with petitions, rumors and in this case it appears that no one can be neighborly. "It is a shame that more people show up at a meeting for a bed and breakfast than for

a coal mine." remarked Komar. Komar stated that it was recently brought to the board's attention that the Neids' withdrawal of the application was indeed accepted by the township solicitor.

Chris and Carolyn Turner questioned what Komar wants to do with it and whether Komar would spot zone the property for "his" friends. Supervisor Komar stated that the property should be used to some extent but a commercial banquet facility for 35-40 events per year up to 5 months a year would be making it commercial and is not proper.

Don Korb stated that before the Nieds owned the property the library was a "library" and it wasn't used for commercial purposes. He stated he also has a "view" of the parking area and events from his property. "It would be precedent setting to allow commercial uses in a residential zone", he stated. "They continue to break the law, there are only 9 more court-order approved events left."

Donna Tidwell/Guier stated that she was a realtor and her husband, Tom Guier, said he was a business owner that conducts business with the Nieds. Both stated that they recently moved to the Ligonier Valley and have no issue with the Nieds, knew of the business when they moved to Ligonier and believe the business generated would help the distressed Ligonier Valley.

The crowd attending reacted to the comment that the area was distressed. In response to the reaction, Ms. Tidwell said that there were empty distressed and business buildings in the Ligonier area. "We have a dying town", she added. She then questioned neighboring property uses such as the Ligonier Country Club and the property owned by USX. She stated there is a lot of noise and traffic generated by the Country Club that causes her more discomfort than the Nieds.; their (Country Club) outings are noisy. Supervisor Komar quipped that the Township crew has avoided Country Club Road on Thursdays because it is "Ladies Golf Day" at the Country Club. Ms. Tidwell/Guier stated she would also like to see a winery and that she's been a Realtor for 31 years and the Foxley Farm, Maggie and PJ Nied have also brought her business, even though the business is located in Greensburg, and she is a Ligonier Township taxpayer.

Donna Tidwell/Guier asked the Supervisors if they ever saw cars at Foxley Farm during an event. Supervisor Komar responded he didn't go by. Supervisor Komar said but that he wouldn't want a CAFO (Concentrated Animal Feeding Operation) next to his house either.

David Barnhart added that 400 people and 200 cars is not a simple bed and breakfast. He read a prepared statement by William Sittig, attorney for the opposing neighbors which is attached to these minutes in its entirety. Mr Barnhart also added that opening up the R2 Residential Zone to commercial banquet hall use for 400 people events isn't a farm, it's a commercial business."

Scott Avolio, attorney for the Neids argued that the solicitor did not have the authority to approve the withdrawal without action from the board at a public meeting and it should be rendered null and void. Avolio went on to say that he believes the conditional use application this board approved exists. Supervisor Komar responded that the Township will follow their legal advice and that he should "sue us".

Chris Turner stated that they (the neighbors) object to Attorney Avolio's statements and interpretation and that the Nields did all this before they bought the property. Carolyn Turner added that Tidwell/Guier is a ½ mile away from Foxley Farm; she (Turner) is next door and sees everything; she has a Walmart parking lot next door when these events are held at Foxley Farm. She stated that no traffic studies have been done for events/uses of this magnitude at that site and that this illegal commercial use is right in the middle of a residential district. They have also received debris in their yard that has blown away from the Foxley Farm events. Mr Barnhart stated he couldn't understand why Ms Tidwell/Guier thinks a commercial use in the middle of a residential district wouldn't be a detriment to property values since she is a Realtor. Tom Guier added they are 3/10 of a mile from Foxley Farm and he didn't see a traffic safety issue any worse than the opposing intersection of Country Club Road and Route 711.

Supervisor Binkey added that the court and judge had the withdrawal documents and letters and should have read it and he was sure he probably did during the court hearings held there. He also stated that he was supervisor for 12 years and is now serving until the end of the year to help out. "Supervisor Carns once told me that you can only make 51% of the people happy." Binkey also stated that you can't change the zoning (the ordinance) for one or each person.

In answer to a question about zoning ordinance changes, the zoning officer and township solicitor responded that the planning commission reviews proposed changes and makes recommendations to the supervisors, who then hold a public hearing, advertise and make the amendments available to the public for comment before they are adopted. The solicitor stated that she had spoken to the Attorney General's office and other agencies about the ACRE law and that it does not regulate Agritourism or Agritainment activities, which both are separate types of uses and that those uses are for local determination.

Supervisor Komar added that the Township did not want this to drag out and wanted a judge to decide it. There was a court-ordered compromise and that any complaints about possible violations of that court order should be made to the judge and courts. He also questioned why a neighbor, Pete Sikora, who is right next door, has never said a word for, or against, Foxley Farm.

David Barnhart asked if the court order superceded the township issuing occupancy permits and with the eleven weddings that are occurring there without DLI inspections or permits what if something happens? Is the Township liable? The solicitor responded that DLI is in charge of enforcement of the code and that complaints of this nature should be filed with DLI.

Vicki Ransel stated that Foxley Farm has passed all inspections and has all the DLI permits including for fire, sprinklers and signs. The Library can hold 200 people.

Chuck Shadron added that he's traveled that road (Barron Road) probably as much or longer than anyone and he feels there is no difference in safety issues with the Barron Road/Route 711 intersection than at the Country Club Road/Route 711 intersection. He feels this is driving business out of Ligonier by not allowing the use to exist over five people that don't want it there. Supervisor Komar added that the Fox Hunts of Rolling Rock Club have been in that area long before the zoning and is no different than what the Nields want to do. "It's different but also similar", he stated. "The withdrawal of the conditional use has to stand", said Komar.

A motion was made by Grover Binkey and seconded by Timothy Komar to approve the Bethlen Communities request to amend page S-7 (Floor Plan) of their second floor Heritage Center Building Graceful Aging and Archives approval Resolution # 2011-R-11. Changes had to be made to the floor plan and room labeling of storage and offices due to DLI requirements. It was noted that the offices labeled on the new floor plan will be utilized by the Graceful Aging Program staff and Archives staff only and will not be an expansion of the Bethlen Communities office approval/use on the first floor of the Heritage Center (Old Nursing Home) Building. Motion carried.

Being no further business before the Board, a motion was made at 8:22 pm to adjourn the meeting by Grover Binkey, seconded by Timothy Komar. Motion carried.

Respectfully submitted,

Cindy Angelo
Asst. Secretary

SITTIG, CORTESE & WRATCHER LLC

Attorneys at Law

1500 Frick Building
Pittsburgh, PA 15219

412/402-4000
412/402-4011 fax

Email: wsittig@scwlaw.com

May 14, 2013

The Supervisors of Ligonier Township
One Municipal Park Drive
Ligonier, PA 15658

**Re: Paul J. Nied and Margaret S. Nied
118 Foxley Lane**

Dear Board Members:

The Nieds are requesting the reinstatement of the Decision dated April 12, 2011 approving a conditional use application for a Bed and Breakfast use of Foxley Farm (the "Decision"). By letter dated May 11, 2012, the Nieds withdrew their conditional use application. Several of my clients, namely Christopher Turner, Carolyn Turner, Donald Korb, Carolyn Korb and David Barnhart, appeared at the public hearing in opposition to the Nied conditional use application. For the following reasons, my clients oppose any attempt to reinstate the Decision.

The Nieds withdrew their conditional use application during the 30 day appeal period for challenging the Decision. If the Nieds' request is approved, the Township would deny my clients, and any other parties who appeared at the public hearing, the right to challenge the Decision. It is clear in land use law that there can be no reinstatement or reconsideration of a conditional use decision because there are mandatory notice provisions, mandatory public hearing requirements and mandatory appeal rights associated with any conditional use approval.

The Nieds' only option is to file a new conditional use application that provides appropriate due process protections. The Nieds withdrew their original application. Now they are seeking to withdraw their withdrawal. Sanctioning a withdrawal of their withdrawal would make a mockery of the appeal process and would deny the residents of Ligonier Township their statutory due process rights. My clients and all residents of Ligonier Township are entitled to those due process protections. My clients will take appropriate action against the Township if those protections are denied.

The Consent Order entered on April 12, 2013 in the Court of Common Pleas of Westmoreland County also explicitly prohibits overnight accommodations unless or until a

certificate of occupancy is issued. There is clearly no certificate of occupancy for overnight accommodations at Foxley Farm. The Nields have already violated the Consent Order by providing overnight accommodations at Foxley Farm. Irrespective of the status of the Decision, the Nields are prohibited from providing overnight accommodations without a certificate of occupancy. In order to obtain a certificate of occupancy from the Township, the Nields are first required to obtain approval from the Department of Labor and Industry. The Township cannot legally issue a certificate of occupancy for a Bed and Breakfast use without first obtaining Labor and Industry approval.

The Township has also allowed the Nields to violate the Uniform Construction Code (the "UCC") by permitting public assembly uses at Foxley Farm. Specifically, the Township has allowed structures at Foxley Farm to be occupied for wedding receptions without requiring review of and approval by the Department of Labor and Industry. The Township is placing Foxley Farms visitors at risk, and exposing the Township to liability, by failing to require compliance with UCC regulations for public assembly uses. My clients have repeatedly requested that the Township take necessary action to assure compliance with all applicable regulations, including but not limited to UCC regulations. To date, the Township has only pursued compliance with sanitary sewage regulations. My clients again request that the Township require compliance with all regulations that are applicable to public assembly uses at Foxley Farm.

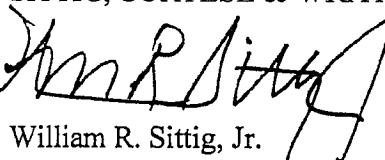
The Nields are also expected to request an amendment to the Ligonier Township Zoning Ordinance that would allow large scale commercial uses, such as wedding receptions, on all properties located in the R-2 District. The Nields, in a selfish attempt to expand their existing banquet facility, desire to amend the Zoning Ordinance in a way that would permit large scale commercial activities throughout the largest residential classification in the Township. While my clients support ancillary farm activities that can generate income needed to assure the financial viability of farms in the Township, they strongly oppose any amendment of the Zoning Ordinance that would allow large scale commercial activities in residential districts. The ongoing viability of residential uses in the Township is just as important as the ongoing viability of farm uses in the Township. The existing zoning regulations recognize the need to balance those uses so they coexist in a mutually beneficial fashion. Any attempt by the Township to destroy the existing balance in order to satisfy the self-serving desires of a single property owner will be vigorously opposed.

Thank you for your consideration of our position.

Sincerely,

SITTIG, CORTESE & WRATCHER LLC

By:



William R. Sittig, Jr.