

Ligonier Township Supervisors
Public Meeting
June 17, 2014

The Ligonier Township Supervisors met in public session at 6:00 pm. Present were Chairman Paul Knupp, Vice Chairman D. Scott Matson and Timothy R. Komar.

Special Council Attorney Gary Falatovich announced that an executive session took place immediately prior to the work shop to discuss a variety of legal issues associated with the Foxley Farm litigation. He reported that, at this point in time, there are a variety of matters that are pending in the Court of Common Pleas of Westmoreland County. First, there is a petition for contempt that was filed by the interveners in that case and joined in by the township. The actual testimony on that action closed in the middle of April and the judge has not yet disposed of that particular case. There was also a hearing on a rule to show cause why the original consent order in that case that was entered on April 12, 2013 should not be vacated. The purpose of today's hearing was to take testimony from our current solicitor Scott Avolio who had represented the Nieds at the time the consent order was entered back in 2013. Attorney Avolio testified that the Nieds knew what they were doing when they entered the consent order and that he had appropriately advised them of what their rights were and what the limitations upon them would be if the consent order was entered. His testimony took over 2 ½ hours and Attorney Falatovich stated he was surprised that it lasted that long. At the end of the hearing, the council for the Nieds asked whether it would be appropriate to also hear from Maggie Nied in rebuttal to Attorney Avolio's testimony and the judge agreed to reschedule this so that Maggie Nied could testify. Because of that, he decided to hold up on any decision and a briefing schedule that he had made on the contempt petition so he has essentially indicated that he will make decisions rather rapidly after Maggie Nied's testimony is taken and will make a decision on both cases at that time. In the meantime, there was a complaint mandamus filed against the township alleging that the township failed to meet its statutory obligations to conduct hearings consistent with the time limitations of the Pennsylvania Municipalities Planning Code with respect to the Conditional Use application that was filed by the Nieds back in late March or early April. That action was filed by Attorney Scott Gallagher on behalf of the Nieds and Foxley Farm Inc. The township has a deadline to file a response to that action on or before the 30th of June. Also, there was recently filed an appeal from the Zoning Hearing Boards decision denying the request of the Nieds and Foxley Farm for additional relief to conduct wedding reception events. That appeal was filed on or about June 6th. An order was issued to the solicitor for the Zoning Hearing Board that would require them to transcribe the record in that case and file the record. As was discussed in the Executive Session, Attorney Falatovich stated that he is certain that the interveners represented by Mr. Sittig will be involved in that action as they were involved in the proceedings before the Zoning Board. Falatovich stated that since Attorney Hamilton represented the township before the Zoning Board, he feels it is important that the township at least enter our appearance and participate to some extent in that case. Attorney Falatovich stated that he has already entered his appearance in the mandamus action so that is taken care of and we will respond accordingly. There is also a pending District Justices' hearing in front of Dennis Thiel scheduled for June 25th. Unfortunately, Attorney Falatovich said he is not available at the time that hearing is going to be conducted. He stated that he has already spoken to Mr. Doheny who is representing the Nieds in that matter and they have agreed to continue that hearing until a later date. He stated that it is appropriate to do that because to some

extent the hearings on these citations are going to be affected by what Judge Feliciani decides on the cases that are up in front of the Court of Common Pleas. The only other matter that remains is the Conditional Use decision. A public hearing was conducted on the conditional use request and neither the Niede or anyone representing the Niede showed up to present their case. He stated that be Mr. Sittig spoke on behalf of his clients briefly. There is no testimony or evidence to support the Niede request to the Board of Supervisors and if you should choose to, I would ask if you are ready to vote on that request tonight. There were two requests, one was for a Bed and Breakfast and the other was for a social club type use with related operations. There was no testimony presented on either use and it is their burden of proof to at least establish a prima fascia case of their entitlement to relief. Unfortunately, they choose to not appear at the hearing. They are going to rely on this potential deemed decision that is pending along with the action mandamus in the Court of Common Pleas, but you are still required under the municipalities planning code, because we disagree with that, to go forward and issue a decision on the conditional use request. Also, you are required to vote on that decision in public and then issue a written decision together with written findings within 45 days of the date of the decision. If you do vote on this tonight, what I would like to do is get out the written findings and issue the written findings under my signature very shortly so that they can be used in the defense on the mandamus claim. Attorney Falatovich then asked the supervisors if they are comfortable voting on these conditional use requests. The Supervisors stated that they were. Attorney Falatovich asked the supervisors if there was a motion to deny the conditional use request for the conduct of a bed and breakfast?

- A motion was made by Paul Knupp and seconded by Timothy Komar to deny a request by Foxley Farms LLC for a conditional use for a Bed & Breakfast. Motion carried.

Mr. Falatovich then asked the Supervisors if there was a motion to deny a request for a conditional use for the conduct of a social/recreational club?

- A motion was made by Timothy Komar and seconded by Scott Matson to deny a request for a social/recreational club by Foxley Farms LLC. Motion carried.

Attorney Falatovich stated that written findings on this matter will be issued within a relatively short period of time for the supervisors review.

A motion was made by Timothy Komar and seconded by Scott Matson to adjourn the public meeting at 7:00 pm. Motion carried.

Respectfully submitted,

Barbara L. Hollick
Assistant Secretary