

**West Hanover Township Planning Commission**

7171 Allentown Blvd, Harrisburg, PA 17112

Thursday, June 27, 2019

Minutes from February 28, 2019

**Members Present**

Jim Zeiters  
Tom Stewart  
Richard Mula  
Jim Shandersky  
Kyle Miller  
Debra Packer  
Alan Williamson

**Others Present**

Alex Greenly, HRG  
Keith Heigel, Engineer  
Kurt Williams, Attorney for Township  
Debra Gauker, Rustrum Realty  
Alison Russell, Rustrum Realty  
Michael Russell, Rustrum Realty

**Staff Present**

Janet Hardman, Zoning & Planning Administrator  
Sharmaine Harman Assistant: Zoning & Planning

**I. CALL TO ORDER**

The meeting was called to order by Janet Hardman at 7:00 p.m.

**II. Board Reorganization for 2019**

Ms. Hardman asked for nomination for Planning Commission Chairman.

Mr. Stewart nominated Mr. Zeiters seconded by Mr. Shandersky. All members were in favor.

Ms. Hardman asked Mr. Zeiters to take over the meeting.

Mr. Zeiters asked for nomination for Vice Chairman.

Mr. Stewart nominated Ms. Packer seconded by Richard Mula. All members were in favor

Mr. Zeiters asked for nomination for Secretary.

Mr. Shandersky nominated Mr. Stewart seconded by Richard Mula. All member were in favor.

Mr. Zeiters asked for nomination for Assistant Secretary.

Mr. Stewart nominated Mr. Shandersky. All member in favor.

**III. Approval of Minutes from December 12, 2018**

Mr. Shandersky noted error in last 3 sentence. Noted and changed

Mr. Stewart noted error in spelling.

Noted: All errors changed from December 12, 2018 meeting.

**IV. Public Comments**

None at this time

**V. New Business**

◆ **18.005 Rustrum Realty**

Mr. Heigel is representing Rustrum Realty opened up meeting introducing the owners of Rustrum Realty that are present tonight, there is Debra Gauker, Allison Russell and Michael Russell.

Mr. Heigel stated that back on July 2018 the Planning Commission approved this plan for Rustrum after all staff comments were addressed. The comments were addressed but the owner is taking exception to one of the conditions ask by HRG Township Engineer. The exception was for the condition that the owner to provide a legal description and show the land being dedicated to the township to have a 50 foot right of way instead of having a 33 foot right of way. This condition is sited in the Subdivision Land Development Ordinance 173-11FF. Our plan and the one before on Pheasant Road show the 33 foot right of way so Rustrum is opposing a 50 foot right of way. Rustrum believes that the Township should give some compensation to them. Since the Township has not offered compensation, they are requesting Planning Commission to remove the Engineers condition #2 from the plan. Rustrum does have an Attorney that couldn't be here tonight but there are at least 5 state laws cases that are important to this issue. They are as follows: 1. 166A.3D 53 Ruling 2017 2. 428A.2D282 1981 3. 181A.3D5 2018 4. 94A.20 624 208 5. 2018WL 3213113. These state cases saying its illegal to take land without legal compensation. To make it clear Rustrum has no problem with the other comments their objection is to the land dedicated to the Township without compensation. We are showing a 33 foot right of way and the 50 foot right of way that was proposed what they are asking is to not give this land away without compensation.

Ms. Gauker said you are asking for additional 8.5 feet more on each side.

Mr. Stewart stated the last plan that came to the Planning Commission was recorded with the dedicated right of way of 50 foot and was agreed upon. Now you are coming back and want us

to not have this plan recorded with a 50 foot right of way. The certification and dedication statement on the 1<sup>st</sup> plan block filled in and signed. That statement indicated the willingness to offer whatever areas are set aside for dedication whether they be road or stormwater easement whatever that indicates a willingness to offer dedication to township.

Mr. Heigel stated they are willing to do that with compensation.

Mr. Williams stated that its already done its already been offered and its signed. These state law cases you stated do you know if any of these cases were subdivision or land development? Are you familiar with the final plan specs and ordinance?

Mr. Heigel yes 173.15 there is a provision the last one I think #34 legal descriptions for final plans are be submitted before final approval of plan.

Ms. Gauker stated we understand but we feel we should be compensated for you taking our land.

Mr. Shandersky stated that the plan shows the Township has the right of way, I don't know if there is a legal requirement and why there is no compensation.

Mr. Williams stated Rustrum has already offered the land.

Ms. Gauker stated Rustrum didn't deed it.

Mr. Williams stated is doesn't matter. A deed is not actually required. You offered for dedication by your signature on the recorded plans.

Ms. Gauker stated do you honestly think what you are doing is fair? The township can take your land and not be compensated.

Mr. Williams stated the legal issue is still the same. The other plan Rustrum had I wasn't involved with, so I am not sure why it was missed but we are not going to miss it on this plan.

Ms. Hardman stated this is a recommendation. Part of the sub-division plan. It was submitted t with the plan. When the review was completed by HRG and the review was sent to your engineer. The review stated that that all conditions are to be meant. Rustrum doesn't want to meet the 2 conditions and that's why we are here today.

Mr. Zeiters stated that if the township wants to widen the road they may come and condemn the land.

Mr. Williams said when you request a sub-division/land development the township has ordinances that must be followed. Then it imposes requirements to the sub-divider. One of those requirements is to offer for dedication x-amount of road for a right of way. The Planning Commission can't ignore the ordinance.

Ms. Gauker stated that last sub-division we done we did not have to dedicate any land.

Mr. Williams -- stated if that's the case two wrongs don't make a right. The applicant doesn't seem to understand there is already an offer not to be compensated.

Ms. Gauker stated that our lawyer advised us that you can't take land without compensation. That is not why we came here tonight. We came in for the legal descriptions you have put on Rustrum.

Mr. Shandersky stated that the reviews show you didn't have the correct land descriptions. The plans need to be in accordance to our ordinance.

Ms. Hardman stated a motion that the board is not requiring what the EAC recommended to put onto the deed.

Mr. Shandersky I think not a deed, but a legal description is needed. I make a motion that EAC recommendation doesn't want a deed they want the recommendation to be recorded with the deed. The future buyers or realtors will know that there are easements if this is in place.

Mr. Stuart stated that Planning Commission already approved this plan with all conditions and all comments must be addressed.

Mr. Williams stated you must change the recommendations of the Planning Commission Board.

Mr. Heigel stated that there would be a note on the plan of the restriction to be recorded with the deed.

Ms. Hardman doing this will require the Planning Commission to change their vote on the EAC's recommendation.

Mr. Williams stated to modify Planning Commissions previous recommendation. Modify EAC's portion that the plan must have a note saying the deed shall have requirements to see the plans number from the recorded deed and referenced on each deed for each lot.

Mr. Stewart state I make that motion.

Mr. Miller second the motion.

Motion passed unanimously.

Mr. Zeiters asked if any other comments.

Mr. Zeiters adjourned the meeting