

Board of Supervisors:  
 Ronald Flatt, Chairman  
 Andrew Erie, Vice Chairman  
 Brian Hortert, Supervisor  
 Edward Latuska, Supervisor  
 Thomas Schiebel, Supervisor



Michael Gallagher, Solicitor  
 Olsen & Associates, Engineer  
 Crystal Wilson, Secretary  
 Anthony Amendolea, Treasurer  
 Mark Lauer, Public Works Director  
 Richard Round, BCO/Zoning Official

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Board of Supervisors  
 Regular Meeting Minutes  
 April 9, 2008  
 6:30 p.m.

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**CALL TO ORDER:**

Chairman Ron Flatt called the regular meeting, of the Center Township Board of Supervisors, to order at 6:30 p.m. The meeting was held at the Township Building at 419 Sunset Drive, Butler, PA 16001.

**ROLL CALL:**

Present in addition to Chairman Flatt, were members Andrew Erie, Brian Hortert, Ed Latuska, and Tom Schiebel; Township Solicitor Mike Gallagher; and Township Engineer Ron Olsen. Public Works Director Mark Lauer was absent.

**PUBLIC TO BE HEARD:**

1. Roger Lutz, 208 Summit Road, express his opinion against the Corner Properties rezone request to the Board.
2. David Festog, 114 Elise Drive, stated he felt Rite-Aid would be a good neighbor. Also, he thought apartment buildings would be less desirable.

**MINUTES:**

1. ***Hortert made a motion to approve the minutes of the Agenda Setting Meeting held on March 10, 2008. Erie seconded. Motion carried unanimously.***
2. ***Latuska made a motion to approve the minutes of the Regular Meeting held on March 12, 2008*** with the following corrections: (1) Page 2, Subdivisions and Land Developments, should read "(2) a [noted] note be added to the mylar that states no further development of Lot 4 shall occur unless served by a private or public street approved by Center Township"; (2) Page 3, Computer Purchase, should read "In addition, a request to purchase an external hard [drives] drive for backup of files"; (3) Page 4, 2007 Audit, should read "(3) personal injury case for vehicle accident on Mercer Road was [turn] turned over to the insurance company (statue of limitations due to expire May 2008)"; and Page 5, Adjournment, should read "The meeting reconvened at 7:50 p.m. after the executive session [will] with no action taken. **Erie seconded. Motion carried unanimously.**
3. ***Latuska made a motion to approve the minutes of the Public Hearing for***

**Corner Properties held on March 27, 2008** with the following correction: Page 2, Item 2, should read *"In addition, she reviewed the Center Township Zoning Ordinance and Zoning Map to determine the [authorize] authorized uses in the [in the] R-3 (High Density Residential District) and C-1 (Retail and Service Commercial District). Hortert seconded. Motion carried unanimously.*

#### **TREASURER'S REPORT:**

1. March 2008: **Hortert made a motion to approve the March 2008 Treasurer report. Latuska seconded. Motion carried unanimously.**
2. Warrant List 08-03-06: **Latuska made a motion to approve Warrant List 08-03-06. Schiebel seconded. Motion carried unanimously.**
4. Warrant List 08-04-07: **Schiebel made a motion to approve Warrant List 08-04-07. Latuska seconded. Motion carried unanimously.**

#### **ZONING REPORT:**

1. March 2008: Construction costs for March were \$431,700.00. Fees collected totaled \$1,782.72.

#### **SUBDIVISION & LAND DEVELOPMENTS:**

1. Cleora McCandless Estate, 157 S Benbrook Rd, Major Subdivision #08-01-01, Plan Review Deadline April 22, 2008: Dennis Crawford presented the plan. Butler County Planning Commission did not have any comments or recommendations. **Flatt made a motion to grant final approval for the Cleora McCandless Estate, Major Subdivision # 08-01-01. Erie seconded. Motion carried unanimously.**
2. Ellen Revelli, 104 Victoria Ln, Minor Subdivision #08-03-02, Plan Review Deadline June 24, 2008: Jaci Shield presented the plan. The proposed subdivision consists of 9.96 acres, which will create three (3) lots of 8.33 ac, 1.36 ac, and .27 ac to be conveyed to Chester and Twila Dellen at 105 Victoria Lane. The Planning Commission recommended final approval, March 26, 2008, with the following contingencies: (1) show the 100 year floodplain on the plan; (2) add the impact fee statement; (3) add a note that Victoria Lane is a private sixteen foot (16') right of way for exclusive use of the adjoining owners for ingress and egress and maintained by said owners, no public dedication will be made; (4) label ditch as a stream, add note building or filling within fifty feet (50') of the top of the bank of the stream may require a joint permit from PADep/US Army Corp of Engineers; and (5) remove non building waiver statement. With the contingencies from the Planning Commission being met, **Flatt made a motion to grant final approval for the Ellen Revelli, Minor Subdivision #08-03-02. Erie seconded. Motion carried unanimously.**
3. CSR Sewage Facilities Planning Module: Ron Bole submitted the DEP application to the Township office for signatures to be forwarded to DEP. The module is for a proposed five (5) lot subdivision located north of Moore Road and east of State Route 308. **Flatt made a motion authorize Schiebel to sign the CSR Sewage**

***Facilities Planning Module Resolution 2008-04-05 and the transmittal letter. Hortert seconded. Motion carried unanimously.***

**OLD BUISNESS:**

1. Corner Properties Rezoning Request: The Planning Commission held a public hearing on February 27, 2007. The Board of Supervisors held their public hearing on March 27, 2008. An ad, Intent to Adopt an Ordinance, was place in the Butler Eagle March 25, 2008 and April 1, 2008. ***Flatt made a motion to deny Corner Properties Development Group rezoning request. Latuska seconded.*** The Board provided the following comments to support their vote. ***Latuska voted yes to deny the request for the following reasons:*** (1) during Attorney Graham's presentation of his case rezone two (2) properties located at 1518 North Main Street Extension and 1520 North Main Street Extension from R-3 to C-1 for purposes of developing a Rite-Aid pharmacy, he called on the testimony of Ms. Sarraf, a professional land planner. Before going further, I feel that it is very important to recognize, first and foremost, where Ms. Sarraf's allegiance lies and that is with Corner Properties. Center Township also received a planning and technical report in reference to Corner Properties rezone request from Jeff Pierce, Director of Community Planning, of Olsen and Associates Engineering. Center Township paid for this service to obtain a more objective and less biased viewpoint. Ms. Sarraf was very skillful in selecting excerpts from the Center Township Comprehensive Plan to justify her testimony. She stated that the most significant consistency for rezoning is the Center Township Future Land Use Map contained in the Comprehensive Plan. What she failed to mention is that the parcels in question are not even located within the boundaries of the Growth Area South. Ms Sarraf also stated the lack of available suitable sites made this site the only one available. I beg to differ. I know of at least two (2) or three (3) sites already zoned C-1. Center Township's Zoning Ordinance list five (5) objectives or policy statements concerning the development or redevelopment of land in Center Township. Two of those five (5) objectives pertain directly to this rezoning request. The first objective states the protection of present and future agricultural and residential areas is a prime concern. Objective number 4 states to preserve the character, appearance and integrity of the Township in keeping with the present pattern and character of development. The preceding Subsection B also states that the protection of existing development is an objective supported by Center Township officials. The issue arising from the subject request to rezone two (2) previously developed properties is whether redevelopment can occur with safeguards to existing residential development on abutting properties; (2) while I agree that there are cases where spot zoning is unclear, I feel that in this case there is no question that it is spot zoning; and (3) my voting in rezoning matters has been consistent over the years. I represent the residents of Center Township and when the majority of its residents, who are directly impacted by a rezoning request, oppose that request, I also oppose that request. ***Erie voted no to deny the request for the following reasons:*** (1) there is a very good chance that Rite-Aid will be gone from Center Township, if this property is not rezoned; (2) Planning Commission recommended 4 to 1 to grant the rezone request; (3) today, at noon, the Supervisors received a petition from seven (7) residents that live on Elise Drive, who are more affected than anyone in Center Township, supporting the zoning change; and (4) if this property is not rezoned, a developer could place a three-story housing complex with fifty to one hundred individuals living there, talk about lights

and noise, no one wants that. **Schiebel voted no to deny the request for the following reason:** I have heard maybe a dozen times, sitting in this chair, that my job is to listen to the residents, twenty to one the residents want the property rezoned. **Hortert voted yes to deny the request for the following reasons:** (1) for some unknown reason, when we sit here and talk about land use and rezonings, this Board is continually hit with "you must follow the Comprehensive Plan". Somehow, magically, this plan, which was developed a number of years ago takes all of the decision-making ability out of the hands of the Supervisors and places it with that document. However, when the Comprehensive Plan seems to support certain changes, then, somehow, that does not become the rule. It does not make a lot of sense to me; (2) there was a comment made during the hearing that commercial zoning was placed on one side of Route 8, with Route 8 being the natural barrier to divide that. If that was truly the case, I am not sure why the Comprehensive Plan would call for the other side of Route 8 to become commercial at some point. Those two comments are a little bit inconsistent. I do think the Comprehensive Plan supports rezoning across from the Mall; (3) I do not believe this is spot zoning, even though, any time we go into these, there are a number of residents who will always use that as their mantra. I guess I just have to get to a point where I accept certain things as being normal and then it won't be quite so frustrating; (4) an area directly across from a traffic signal is a natural place for development to occur; (5) for all intents and purposes, many of the properties along that corridor are already commercial or at least have use other than residential. The Route 8 corridor is a natural spot for commercial zoning; (6) many times, we sit up here and hear we don't want out of town developers to come in and make money off our Township. For me personally, those comments hold no weight. The reason is unless those people can also tell me that if it were a Township resident making this request, they would support it. Then those are probably just a convenient excuse. I would prefer people would give their true reasons rather than blaming a developer; (7) there was a comment, at our hearing, questioning the planners if they were doing their job, how could they support rezoning this area. In my opinion, they planners did exactly what they were asked to do. They reviewed all of the available information along with public comment, which at the time it seemed to support this. I want to applaud the planners for, in my opinion, the first time in a very long time them taking a look at rezoning request or land use request with no preconceived notion, listening to the available information, along with public comment, and making a decision. However, the one thing the planners did not have at their meeting was a strong public opinion against the rezone; (8) I think it is very important to take the residents concerns and weigh them very heavily. However, that is not a sole reason to vote to deny the request. If a litmus test for denying a request were the loudest winds, then there would be no reason for the Board of Supervisors. We would simply place everything on the ballot. If you place on the ballot, a "yes", "no", or "I don't care" vote, 99% of the time "I don't care" would win because it's not in my backyard. (9) You cannot allow, in my opinion, simply to have the vote of minorities making the policy decisions. Unfortunately, when that happens, you go down the path the United States is going down now with legalized abortions, gay marriages, and those type of things which most people do not want but it is the people with the loudest voice seem to win; (10) I do believe though that there is still commercial area within the Township that could support the development in question; (11) I have some concerns with the presentation and the drawings of the potential apartment buildings that could be built there. The two concerns are: (a) during the hearing, with the planners, the question was raised if the rest of the property was rezoned to R-1, at that point, the developer

said they considered the rest of the land non-buildable; (b) if it is non-buildable, I am not sure why the residents are shown drawings of the entire property having apartment buildings on it. You can't have it both ways, non-buildable for one purpose and buildable for another; (12) if you overlay the proposed Rite-Aid pharmacy on top of the areas for the apartment buildings, it certainly appears that you could end up with the Rite-Aid on the C-1 and an apartment building in R-3 directly behind it and an apartment building to the right side. That would only make sense to have a full service pharmacy and some apartment buildings built around it; and (13) I am not comfortable in doing a rezoning in a piecemeal way. If the Comprehensive Plan calls for the opposite side of Route 8 to be commercial, then that is what we should look at. We should review the Comprehensive Plan. That is not a blanket statement that I would support rezoning the entire area, but we should be looking at it as a whole. **Flatt voted yes to deny the request for the following reasons:** (1) my decision was not based on consideration of spot zoning because I don't think it is spot zoning, although a court could disagree. It does create a peninsula and that could be considered spot zoning. The idea the Route 8 was a barrier was not persuasive with me; (2) as far as resident opposition, there are seventy-five to one hundred families, we had less than ten against and many others supported the idea to me personally and subsequently here by the way of a petition with no animus toward the applicant for this type of business that would not be a detriment necessarily in a decision I would make; (3) why did the Planning Commission recommend the change? Their concern was to keep our taxes low by having a diversified tax base and economical vitality. In 1998, the minutes record that Mrs. Schenck said, "commercial development eases some of the burden on the taxpayers. The Township cannot be an all bedroom community with no business to support it." Supervisor Plaisted, echoed those comments, said, "commercial development did cut back on taxes from the individual." The Planning Commission was not in error in their thinking in that regard; (4) furthermore, I believe it is a widely held and accepted opinion that frontage on arterial highways should reasonably be considered commercial. Former Planning Commission member, Kefflas, and I have talked about this at length as my time as a planner and subsequent to that; (5) The Center Township Land Use map, as part of our Comprehensive Plan, depicts this site and the strip of sites along Route 8 as commercial highway. The Solicitor has, from time to time, told us, although I would blame him for quoting him at this point, the specific overrules the general. This map is very specific in its depiction. I believe that this map has caused applicants to assume that we want to change. We are going out of the way to change this zoning or use. It has caused Mr. Kefflas and me the same confusion and other members of the Planning Commission. The Comprehensive Plan was adopted in 2000, including this map by the previous Board. I realize it is possible with our vote on the Act 537 Plan and Traffic Impact Fees to overlook certain details that would happen on the map. Very few members of the public commented on the Comprehensive Plan, back in 2000. The minutes do not record much in the way of objection to this map being placed in there; (6) so why did I vote no or move to deny? Our Act 537 Plan, as was quoted by Mr. Pierce, presumed this area to have no growth. I voted for that plan as prepared by our Engineer. The Traffic Impact Fee Land Use Assumption plan presumed no growth and no change of growth in this area. I voted for that plan; (7) several years ago, I voted against the Howard Hanna request on this same site to convert a real estate office and bank. I, also, voted five (5) years ago to remove a peninsula of residential land in the commercial area along Henricks Road, directly north of the Trinity Lutheran Church. I believe I was reelected because people knew the things I have done in the past and

would expect me to be consistent with those votes. I do believe that our Traffic Impact Fee Land use Assumption Report should be modified and reconvening of our committee in place. I, also, believe our Comprehensive Plan needs to be reviewed to either eliminate this map or to enforce it. (8) I, as well, use the word piecemeal approach to this part of the Route 8 corridor. I do not think it serves to help protect the health, safety, and welfare of the residents of the municipality. If we are to rezone this area consistent with the Comprehensive Plan map, we should do as a municipality a better job of planning the rezoning particularly with regard to traffic flow. ***The vote is recorded as three (3) to two (2) to deny the request. Motion carried.***

#### **NEW BUSINESS:**

1. Appoint Township Secretary: ***Schiebel made a motion to appoint Crystal Wilson as the part time Township Secretary at \$12.00 per hour. Flatt seconded. Motion carried unanimously.***
2. Butler County Spring Convention: There was no interest in attending the 2008 Spring Convention.
3. Municipal Secretary Training: ***Flatt made a motion authorizing the Township Secretary to attend the Municipal Secretary Training in Mars covering the \$50 fee and necessary expenses. Erie seconded. Motion carried unanimously.***
4. Release Consultant Fee: The Treasurer submitted a request to release \$1,650.25 to the Duffy Trails Subdivision. ***Flatt made a motion to release \$1,650.25 to Duffy Trails Subdivision. Schiebel seconded. Motion carried unanimously.***
5. Spithaler Building Permit Refund: The Building Code Official received a request from David and Dana Spithaler asking for a refund of \$195.08 they paid for a building permit to install an above ground pool, which will not be installed. Based on the recommendation of the Building Code Official, ***Flatt made a motion to approve the reimbursement of \$195.08 for the unused building permit. Erie seconded. Motion carried unanimously.***

#### **PUBLIC WORKS DIRECTOR:**

1. Release Allegheny Wood Products Road Bond: ***Based on the recommendation of the Public Works Director, Flatt made a motion to release Allegheny Wood Products road bond for Whitmire and Pine Tract Roads in the amount of \$25,000. Erie seconded. Motion carried unanimously.***
2. Release McIntire Coal, Oil, and Gas Road Bond: ***Based on the recommendation of the Public Works Director, Flatt made a motion to release McIntire Coal, Oil, and Gas road bonds for Shroyer Mill, Mahood, Unionville, Brown and Maser Roads. Erie seconded. Motion carried unanimously.***
3. Release Matson Lumber Road Bond: ***Based on the recommendation of the Public Works Director, Flatt made a motion to release Matson Lumber road bond in the amount of \$22,500. Erie seconded. Motion carried unanimously.***

4. "Watch Children" Sign – Shady Lane Farms: The Township received a request from James Ranko, 206 Fox Hollow Drive. After some discussion, since the road is not a through road, the Board took no action.
5. "School Bus Stop" Sign: A request was submitted to Andrew Erie from Leonard Nichter, 170 North Benbrook Road, to place a "School Bus Stop" sign on North Benbrook Road. **Flatt made a motion to authorize the Public Works Director to access the request of Mr. Nichter for meeting the legal requirements of the "School Bus Stop" sign and if requirements are met, authorize him to install the sign. Schiebel seconded. Motion carried unanimously.**
6. 2008 Summer Projects: The major projects for this year are widening of Heinz Road, estimated cost of \$50,000, replacing pipes under Mack Road and McCandless Road, widening and berming Glenwood Way, and the Paving Program will focus on the secondary roads.
7. Street Sweeping: The street sweeping will begin April 10, 2008. **Flatt made a motion to authorize the Public Works Director to use Pave Care at \$95.00 per hour. Erie seconded. Motion carried unanimously.**
8. Authorize Ad for Excavator and Operator: **Flatt made a motion to authorize the ad for an excavator and operator on site during the Heinz Road Project. Erie seconded. Motion carried unanimously.**
9. Authorize Ad for Summer Student Hires: **Flatt made a motion to authorize ad for Summer Student hires. Erie seconded. Motion carried unanimously.**

#### ENGINEER'S REPORT:

1. Route 8/Benbrook Road Intersection: The Township has been looking into what could be done to improve the level of service at the intersection and make it safer. The Township wanted to signalized the intersection but North Benbrook Road did not warrant a signal. Flatt met with Olsen to discuss this intersection. They suggest that the Board sends a letter to PennDot requesting they review this matter and possibly design improvements to the intersection, which may include signalization of South Benbrook Road and Route 8 intersection. **Erie made a motion authorizing the Engineer and Chairman to compose a letter to PennDot asking them to reconsider this intersection, including the possibility of doing their own engineering and making recommendations, consistent with the idea that the Township will likely expend the monies. Latuska seconded. Motion carried unanimously.**
2. Crown Pointe Update: This development is located at Henricks Road and Glenwood Way. Crown Pointe received approval in the mid 90's. In the past year, the developer and representatives from their new engineering firm, Civil and Environmental Consultants, met with the Planning Commission. The owners are concerned with the steepness of some of the slopes in the plan. **Latuska made a motion authorizing the Engineer to contact Crown Pointe to request they prepare an update for the Board on what they ultimately intend to do and prepare a more formal as-built of**

***the existing piping to ensure substantial changes are not being done, which would require further review by the Planning Commission and the Board. Hortert seconded. Motion carried unanimously.***

3. On Lot Sump Standard Detail 22 Revision: The Township passed an Ordinance in 2002 requiring on lot sumps on developed properties. Based on the Engineer's experience, Olsen suggests some changes to the current design of the on lot sumps. The drawings will be submitted to the Township for adoption.

4. Release Kress Brothers' Bond: The Township received a request to release the performance bond for Phase I & II. The developer posted \$678,429.15 at the start of construction for Phase I. Since Phase II has been approved, the Township is responsible to ensure improvements are constructed. Therefore, Olsen calculated the performance bond for Phase II is \$442,667.00. In order for the Township to release the full amount, as requested, Phase II would need to be null and void by agreement with Kress Brothers or a bond established in the amount as calculated by Olsen. ***Based on Olsen's recommendation, Flatt made a motion to retain \$442,667.00 from the current sequestered account, Mars National Bank, with the remainder of \$235,762.00 is released unless he agrees to withdraw Phase II or establish a bond for \$442,667.00, as calculated. Erie seconded. Motion carried unanimously.***

5. Community Alliance Church: Construction is scheduled for the new additions in May 2008. Since they do not need to add parking to meet current Township ordinances for the new building additions, Olsen suggested the developer submit new plans depicting the additions and existing parking. Then a second plan will be submitted showing their new parking lot and stormwater management.

#### **SOLICITOR'S REPORT:**

1. Canadian National Invoice: Neither Gallagher or the Treasurer has heard for PennDot on partial reimbursement. The consensus of the Board is to continue sending requests until finalized or rejected by PennDot.

#### **MISCELLANEOUS:**

1. The Township has been pursuing to obtain property to build new public works facilities. We learned the most recent attempt we made to do that failed and were unable to move on. At this time, we have no fixed property that we are looking at.

#### **ADJOURNMENT:**

1. The Board adjourned to executive session at 8:02 p.m. for discussion of property acquisition, which became available today. No action or discussion will be taken upon return.

2. The meeting reconvened at 8:25 p.m. after the executive session with no action taken. ***Hortert made a motion to adjourn the meeting at 8:27 p.m. Schiebel seconded. Motion carried unanimously.***

RONALD E FLATT  
Chairman

ANDREW ERIE  
Vice Chairman

BRIAN K HORTERT  
Supervisor

EDWARD G LATUSKA  
Supervisor

THOMAS G SCHIEBEL  
Supervisor