

March 4, 2014

A meeting of the Ligonier Borough Council was held @ 6:30 pm in the Ligonier Town Hall with Robert Helterbran presiding. The purpose of the meeting was to hold a Conditional Use Hearing for the Ligonier Valley YMCA.

Members present: Robert Helterbran, James McDonnell, Sam St. Clair, Judy Hoffer, Matt Smith, and Mike Bieterman. Absent was Pat Scanlon.

Others present: Secretary-Treasurer Paul Fry, Engineer Ben Faas, Solicitor Dan Hewitt. Absent was Mayor Ormond "Butch" Bellas.

A Conditional Use Hearing was held to consider the following matters:

1. Application of the Ligonier Valley YMCA for the utilization of parcels along Wellington Alley Tax Map #16-01-15-0-164 for surface parking lots in the C-2 District.
2. Consideration of an Ordinance to close the access of Wellington Alley onto North Market Street and the designation of traffic flow on Welling Alley accordingly.

An executive session was called by President Robert Helterbran for legal matters. Council returned @6:40 PM.

Attorney Dan Hewitt explained that an application was filed on February 12, 2014 (marked as hearing exhibit A). The application is for a Conditional Use Permit filed on behalf of the Ligonier Valley YMCA seeking to use two tax map parcels for a surface parking lot. Council acknowledged receipt of such matter at the regular meeting held on February 13, 2014 and directed to move forward with scheduling of a hearing pursuant to the municipality's planning code and the zoning ordinance.

Normal procedure would be for the Planning Commission to review. As the Planning Commission did not meet, there was not a report from them.

The advertisement for tonight's hearing was submitted to the Tribune Review to be advertised on two occasions; February 17 and 14. A copy of the notice as advertised is accepted as exhibit B. A copy of the proof of publication will be marked for the record as exhibit C. Hewitt stated that the legal notice was also posted on the property by Paul Fry which took place February 17, 2014 at the street and alley frontage. The posting was the same as advertised. The certification will be accepted as exhibit D.

Notice was provided to the attorney for the applicant via email on February 14, 2014. Notice of the proceeding particularly as to the alley vacation was provided to Gay Wasserman of 212 N. Fairfield Street also by letter of February 14, 2014 that included the legal notice as well.

Hewitt noted to council and for the members of public as to the application for Conditional Use Permit. Council takes notice of the provisions of section 754 of the Ligonier Borough Zoning Ordinance which establishes the standard to be met by the applicant for the granting of the Conditional Use Permit as to the proposed vacation of a portion of an alley. Council will take legal notice of the provisions of the PA Borough Code at 53 statute section 46731.

Hewitt explained that all persons giving testimony tonight will be sworn in and subject to questions from council and other parties in interest.

The applicant (Ligonier YMCA) has the burden of going forward with testimony in support of the application for the Conditional Use Permit and proposed alley vacation.

Hewitt explained after hearing from applicant (YMCA) testimony will be received from other parties in interest on the issues under consideration by Council at this time. At

conclusion Council will consider the Conditional Use Application and proposed alley vacation as part of its subsequent meeting following the hearing.

Hewitt noted for Council as well as public that under the Municipalities Planning Code the Conditional Use is a Use that is permitted subject to review by the governing body to determine that the applicant has met whatever additional standards may exist in the ordinance. As to the alley vacation, provisions of the borough code establish that Council has the authority to by ordinance; vacate or close any street or portion thereof they previously opened or laid out. Such action terminates all public rights in or to the streets and does not affect private rights acquired by any abutting property owner. This is a matter of legislative discretion to Council. Unlike the Conditional Use, there is no minimum standard for the YMCA to meet.

All individuals wishing to give testimony were sworn in.

Attorney Mark Sorice introduced YMCA's architect Thomas Celli of Celli-Flynn Brennan Architects and Planners of Pittsburgh.

Attorney Sorice stated that the application that is before Council designated as exhibit A contains a drawing that depicts specifically the number of spaces and location as well as proposed greenery and the standards along with Wellington Alley that they believe would be dispositive of the Borough Council's decision. The area in question has been re-zoned Commercial and we believe that the relief requested would meet the standards as cited by Mr. Hewitt within the Borough ordinance.

Sorice: If you would give us your full name for the record.

Celli: Thomas C. Celli

Sorice: Mr. Celli, are you employed?

Celli: I am employed by Celli-Flynn Brennan Architects and Planners in Pittsburgh.

Sorice: Matter of fact, you are a registered Architect, is that correct?

Celli: Yes I am.

Sorice: And how long have you been licensed?

Celli: 35 or 40 years.

Sorice: With regard to our meeting tonight; I'm going to show you a copy of what has been offered as exhibit A. This contains the parking area of lots 163 and 164 on the Northerly side of Wellington Alley. Can you identify the document that you are looking at?

Celli: Yes this document was prepared by John Orly, a landscape architect who is a sub-contractor to my office for this project.

Sorice: Does the particular drawing contain vegetation?

Celli: Yes it shows planting all along the North side of the property, the East side of the property and some up against the building on the South side of the parking area and some to the west side of the parking area along Elm Alley.

Sorice: Its proposed use would be for parking?

Celli: That's correct.

Sorice: The drawing also depicts certain spaces is that correct?

Celli: Yes.

Sorice: Those are these spaces for parking vehicles on these two particular lots?

Celli: That's correct.

Sorice: The Y expansion would not be built on these two lots is that correct?

Celli: That's correct.

Sorice: Meaning the actual building itself?

Celli: That's correct.

Sorice: The Y expansion would be built on the two adjacent lots to the Y on Church Street, the old lots that housed the former Dairy Queen.

Celli: That's correct. Just to the east of the present building.

Sorice: Would that addition be sufficient enough to contain all of the parking for the proposed addition?

Celli: We believe it will be.

Sorice: Now the lots that are asked for (Lots 163 & 164) that are across the street at Wellington; there had been a traffic study done by EADS Engineer. Do you recall that?

Celli: Yes.

Sorice: That had been previously submitted as part of the development plan to Borough Council that had been also approved.

Celli: That's correct.

Sorice: With regard to the traffic and engineering study from EADS, and they had indicated that traffic would be routed through Wellington but it would not be a burden to the community or increase traffic beyond the designed capabilities.

Celli: That's correct, after a lot of study it was decided that traffic would enter on Wellington and exit on Wellington.

Sorice: The lots that are depicted within this drawing that have been attached; is there any design depicting the storm water management?

Celli: There is on this drawing. There are 5 underground pipes shown on what I call the northwest corner of the parking area meant to retain water from a portion of this project.

Sorice: The specific plans have been submitted not to Borough Council but to the Borough Engineer Mr. Faas. Is that correct?

Celli: That's correct. We have been back and forth with Mr. Faas in the last few days.

Sorice: And those are an item that will be addressed by Mr. Faas. Is that correct?

Celli: Yes I believe so.

Sorice: He's shaking his head yes right?

Sorice: Mr. Celli, with regard to any other aspects of this project, there would be access and egress to the parking lot where?...as depicted on this map?

Celli: From the west along Wellington Alley both in and out.

Sorice: That would also demonstrate a need for vacation of a portion of Wellington and the drawing does depict correct?

Celli: Yes, between the building and the parking.

Sorice: Members of Council and Mr. Solicitor do you have questions for Mr. Celli?

Hewitt: Mr. Celli if I may, you have been involved also in the design of the other main building on the other parcels?

Celli: Yes.

Hewitt: Is there any space on the other parcels for this parking?

Celli: No.

Sorice: Any questions from members of Council?

McDonnell: Question please. The original design that we had I believe incorporated 1.85 acres of parking. This one I understand is 2.23 acres. There is a 1/3rd additional acre that has come into play. I don't quite understand all about that.

Celli: I'm not sure I can clear all that up tonight. I can certainly do so subsequently but suffice it to say that the expert who laid out the parking isn't here. Here's in Spain or he would have been here with me tonight. But in general I believe that this drawing is what the YMCA intends to build. I think it's accurate to what is expected.

McDonnell: This is the final plan?

Celli: Yes.

Hewitt: If I may Mr. McDonnell, if Council approves tonight, they are approving this application. So this drawing would be the final drawing.

McDonnell: So if this application would have been approved two months or more ago, this additional third acre would not be in play?

Celli: Well there have been design revisions as there are on many institutional projects. Due to budget, due to site, due to lots and design decisions, there have been design revisions in the last 3 months that have made some changes.

McDonnell: So they are all subject to change no matter how final?

Celli: No, I think we're almost into the construction drawings a pretty good piece now.

Sorice: Mr. Solicitor I believe if there would be a change from this I believe that we'd bear the responsibility, meaning the Y would bear the responsibility for formal approving of that.

Hewitt: You would have to come back for another Conditional Use hearing absolutely.

Celli: That's correct.

Sorice: Any other questions from Council?

McDonnell: Not so much a question at all, and if you want to defer to what I'm about to ask for later I understand that. At a recent meeting at the YMCA with Y personnel and engineers and several members here, I had asked clearly if there would be a way to eliminate any activity north of Wellington with the understanding that there would be made available off street parking. That was not discarded, it wasn't denied. There were some head nods. I did report here a couple of weeks ago to the point man in charge of that, that there is an area that could be rationally negotiated with some sort of a sweetheart deal to accommodate 15 additional parking spaces on top the 27 that are already there. As I recall you had 27, you wanted 35. So this additional area would encompass 15. I don't know what has happened to that since I presented that to the gentleman but...

Hewitt: If I can interject I think the answer is embodied in this petition. They have petition for this as their final consideration of the parking application.

McDonnell: Is that right Mr. Cummings?

Hewitt: Mr. Cummings is not testifying at the moment. I mean if he testifies we can certainly question him on that.

McDonnell: ok. That was an open door and it was fulfilled. That was just a matter of record.

Hewitt: Any other questions?

Hewitt: Any other witnesses Mr. Sorice?

Sorice: I do not Mr. Hewitt I do have some additional copies as a courtesy of the drawings themselves.

Hewitt: Does everyone have a copy of the application packet? I think we all have them Mark thank you.

Sorice: Mr. Hewitt I have no further witnesses. I believe architect Celli's explanation and the physical circumstances warrant relief from questioning.

Hewitt: Thank you. We will now open this up to members of the public to give testimony on the issues under consideration being the Conditional Use application and proposed alley vacation. Anyone? Please come up to the microphone, state your name and mailing address for the record.

Willard: Good evening my name is Joe Willard. I live at Hillside Avenue in the Borough. My question is regarding the parking lot. Unfortunately I did not get to see the latest revision.

Hewitt: Mark if you want to leave those up here, maybe that would help.

Sorice: Alright.

Willard: As I'm looking at this; and we all know that one of the conditions for the parking lot of course is the screening and buffering. And from that stand point I have to believe; and I believe Mr. Celli restated the same thing; that the screening and buffering is a necessary and essential part of this parking lot. Simply saying, even looking at this map I see where this parking lot extends over into the former Wallace property which is zoned R1 and was not a part of the rezoning application. Also I believe that Borough Council does not

have the authority under a Conditional Use application to grant permission to use that property as a parking lot. That would be up to a rezoning application. Thank you.

Wasserman: Gay Wasserman 212 North Fairfield Street. Ligonier is known for being a quaint, charming and historic town. When we are no longer quaint and historic we are just another town in trouble in Western PA. We are about to make a major dent in historic by closing an alley original to the Ligonier plan. Expanding a non-historic building to a mammoth, larger than block long structure and then we are adding a parking lot. Correction, with this change who knows how many parking lots will be added to C2 Zoning. Not historic, not quaint, and certainly not charming. Plus the 100 cars per day that currently cut from Market Street onto Wellington Alley will now need to use the street in front the Y further congesting Church Street or West Vincent Street. A former one block long 100 cars one way alley now becomes a half block long 400 car two-way alley. If all this were not troublesome enough, we never really have gotten a straight answer as to who exactly will use the parking lot and for how many hours. Is it strictly for Excelsa? Is so, where will the 18-20 cars currently parking on Wellington and Elm alleys go? As for bringing in new people and new jobs which was the reason for doing this whole thing and having a parking lot, we are simply moving quick draw and some doctors from one part of town with few traffic or parking issues to another part of town already burdened with significant traffic and parking issues. The impact on the neighborhood is enormous. Factors like lighting that will adversely affect the joining properties and unmonitored isolated parking lot at night. A change in the topography that may affect the underlined artesian wells and potentially cause flooding in adjoining and adjacent properties. A significant part of my house is below the grade of Wellington Alley. No one has yet offered any suggestions for mitigating possible flooding there. Nor the impact for flooding and privacy in removing hedges that have been there between 30-50 years; long before I purchased the property. I'm not sure these changes will really benefit anybody besides a few people and the price the Borough is paying for these changes can be enormous long term. It is not a well thought out decision. It will be outdated and inadequate before construction even begins. Thank you.

Hewitt: Thank you Mam. Any questions of Council for this witness? If not, thank you. Next? Anyone else wishing to speak at this time, come on up.

Dean: Louis Dean North Fairfield Street. I just can't let this go if this is the final final. We keep hearing things about the Y expansion and the 15 parking spots and 30 parking spots but I just verified with the gentleman from Excelsa behind me sitting here today that these spots are for Excelsa patients and staff not Y. So the parking lot that is going to be going in will not be for people using the Y until Excelsa customers are not using it anymore. So is that after 5 PM? Most likely. So the people that are parking there today will have to park somewhere else if this goes in. It's also not a permanent plan; Excelsa is renting the facility for 10 years I believe. So after 10 years what happens to this structure? The Y will probably be successful but will Dr. Offices? Will Excelsa? And then we'll have a parking lot? It just seems so vague to ruin a part of town that's been here how many hundreds of years? Something to think about and if this is the final final plan an architect can be great and I'm sure Mr. Celli is, I've seen some of his buildings. But he can also walk away and we are left with something that is maybe redundant and not part of Fort Ligonier.

Hewitt: Thank you. Any questions for this witness? Anyone else, last call? There appear to be no other persons coming forth to testify. I believe we can close the special hearing and defer.

Helterbran: I'd like to hear some comments from Mr. Faas.

Hewitt: Ben, you're on.

Faas: Over the last couple of days we've been back and forth with the Y's engineers and they submitted a report regarding the storm water. The controlling volume up to the 50

year storm which means that they're theoretically retaining the difference in storm water generated from the site for the 2 to 50 year storm. After that, up to the 100 it's controlled per rate. That's what we requested from the beginning and I think they've achieved that with their design. The plans still haven't been revised to reflect that same thing so we will want to see those moving forward. But the intent of the design reflected in the report is what we asked for.

McDonnell: Is that in lieu of the pervious concrete?

Faas: Yes there is no more pervious concrete.

McDonnell: And this is what was illustrated on your computer? Has there been a cost associated with that at all?

Hewitt: Mark if he's going to respond to questions...

McDonnell: Well one was shaking his head no that there has been no cost associated with it; you're not buying a pig in a poke I take it.

Faas: The tanks used to control the volume did increase in size. So there would be some small cost but the size increase was minimal.

McDonnell: Can I inquire about the alley?

Hewitt: It's what we're here about, the alley.

McDonnell: I don't believe that the Borough is in position to give away an active alley. Now I grant you there have been a few times in my time here of the past 14 years where alleys that have been over grown and disconnected and so on and so forth; have been and I only recall two such instances although there perhaps have been more. But not once ever was there an active alley given away. An asset of the Borough, and I don't think this alley should be given away. There should be a cost associated with that, if this is to take place and I think that needs to be determined. I don't think this is a giveaway game. It's all give me give me give me. I don't think we can give on that. That's my opinion.

Hewitt: There being no other testimony, I would turn this matter back over to the board.

Helterbran: Do I hear a motion?

A motion was made by Sam St. Clair and seconded by Matt Smith to approve the proposed Conditional Use Application.

James McDonnell asked for a discussion and stated that he is opposed, have been, will be always opposed to rezoning. McDonnell feels it is a waste of money and expressed that it is a revolting development. McDonnell repeated that he is not against the YMCA, not against Excelsa but solidly against rezoning.

After asking if there was any more discussion and hearing none Robert Helterbran stated that there was a motion and a second.

A roll call vote was taken resulting in the motion passing 4-2 with James McDonnell and Judy Hoffer opposing.

Special Counsel Dan Hewitt explained that the second matter of business tonight would be the alley vacation which is a separate ordinance of which all of Council has a copy of.

A motion was made by James McDonnell and seconded by Judy Hoffer to evaluate the value of the alley before vacating. The motion carried 4-2 with Sam St. Clair and Robert Helterbran opposing.

Counsel Hewitt stepped in and explained that the Borough does not have a saleable right to the alley. The Borough does not own the alley in fee simple which would be clear title to the alley. The Borough holds rights to the alley for the use as a public street. Upon vacation the

alley rights divest to the underlying property owners on either side. The Borough can maintain the alley for public purposes or vacate it.

McDonnell wished to retract his motion and made a motion to **not** vacate Wellington Alley. The motion was seconded by Judy Hoffer.

Robert Helterbran wished to hold a discussion regarding the motion. Helterbran asked Mr. Byers of Excelsa if it were his understanding that if Excelsa Health requires this parking lot for the physicians and patients that it would now be considered a parking lot that is a necessity for Excelsa Health to have their space in the YMCA?

Mr. Byers answered that it was his understanding.

Helterbran asked that since it was a requirement to have this space for Excelsa Health; the part of the Y that is being leased to Excelsa Health is taxable as would then be the parking lot and the area in which it takes up. Helterbran asked if this were true.

Mr. Byers was not able to answer however Solicitor Sorice stated that it could be. Helterbran said that the Borough lost over \$1,400 per year in taxes when the houses on the YMCA's property were razed. As a parking lot, that space would become a taxable asset. Helterbran further stated that the Borough could more than likely recoup what it lost by the removal of the houses through the value of the parking lot plus Excelsa Health's office lease in the YMCA building. Additionally the appearance of the space would be more favorable.

Councilman James McDonnell feels that the rezoning will destroy a viable residential neighborhood by rezoning.

President Helterbran stated that there was a motion on the floor not to vacate the alley. A roll call vote was taken with Sam St. Clair, Mike Bieterman, Robert Helterbran, Matt Smith opposing and James McDonnell and Judy Hoffer in favor of not vacating the alley. The motion did not pass and Wellington Alley will be vacated.

A motion was made by Matt Smith and seconded by Sam St. Clair to adopt the ordinance that has been advertised to vacate a portion of Wellington Alley in the Borough of Ligonier in accordance with its terms.

A roll call vote was taken resulting in 4-2 with James McDonnell and Judy Hoffer opposing.

Councilman James McDonnell thanked special counsel Dan Hewitt for all the time and work. McDonnell asked Solicitor Hewitt if he was comfortable that he has provided the Borough with his best advice and fiduciary responsibility. Hewitt responded that yes he was comfortable and that he was okay with his advice to the Borough.

The motion concluded the special meeting. Council adjourned @ 7:23PM.

Respectfully submitted

Paul A Fry
Secretary-Treasurer
Office Manager

