

April 27, 2009

Fredrick Lighty, Esquire
Chairman
Lower Paxton Planning Commission
Lower Paxton Township
425 Prince Street
Harrisburg, PA 17109

SWAN's Response to HRG's Review of SWANs Proposals

Mr. Lighty:

Enclosed please find SWANs' Response to HRG's Review of SWANs Proposals:

- 1) "A requirement for buffer of a least 100 feet for storm water retention or detention basins from neighboring property."
- 2) "Requirement for geologic studies in the areas of detention or retention ponds."

SWAN Proposal #1:

SWAN's recommendations were made after the Autumn Oaks development process, and its potential impact on the neighbors and contiguous property owners, was completed and resolved.

Lower Paxton Township's Board of Supervisors agreed that these issues warranted further study. "Mr. Parmer suggested that the Board of Supervisors and Planning Commission should review the buffer zones for detention basins, and when detention basins are built uphill of existing properties, there should be a requirement for geological studies to ensure that water infiltration would not be a problem. Mr. Hawk noted that Mr. Wolfe made a note for this concern." (November 3, 2008, p. 11)

Stephen Fleming's responses on behalf of HRG to SWAN's proposals unintentionally misinterpreted the intent and design of SWAN's requests. We appreciate the opportunity to clarify our proposals, and work with the Planning Commission and HRG to resolve these issues.

1) Mr. Fleming's response failed to factor in the property rights and due process denied exiting landowners when proposed land development ignores existing problems and legitimate concerns raised by the placement of detention and retention ponds in close proximity to existing housing stock. (Please refer to Enclosure 1.)

SWAN's proposed buffer area provides a level of health and safety for neighboring property owners. For example, presently it is permissible for a developer to construct a 3:1 sloped embankment, eighteen feet high with no buffer area, yet the maximum allowable fence height for the incumbent tax payer is six (6) feet.

SWAN is aware of the economic impact a buffer may cause a developer and has proposed a compromise solution.

While HRG may have misinterpreted the issue as limited to water infiltration affecting neighboring properties (which is *not* an insignificant issue), SWAN is also proposing we reconcile language that affords new and existing landowners commensurate tools.

Compromise Recommendations for Proposal 1:

a) SWAN requests that the Commission credit open space, e.g., density bonus for developers who create open space boundaries between new and existing developments (precedent established with TND "buffers").

b) SWAN also recommends that the Township reconcile the incongruent language that allows aggressive development on the border of an existing landowner, but denies the incumbent tax payer similar flexibility.

We suggest a meeting between HRG, Township staff, and SWAN to address the above mentioned proposals.

SWAN Proposal #2:

Mr. Fleming, noted in paragraph 1 of HRG's Response, that SWAN's request "could be interpreted as arbitrary and place an unfair burden of a smaller scale than the Estates of Autumn Oaks." In paragraph two, Mr. Fleming posits a scaled compliance model relating to the cost to the developer to produce geological studies that could offset wide scale environmental and economic damages.

Yet, without these studies as part of the cost of doing business in the Township, we have experienced problems with development on existing flood plains and wetlands throughout Lower Paxton, e.g., Devon Manner, Earl Drive, and most recently Forest Hills.

In the Autumn Oaks incident, SWAN's engineer demonstrated that detention pond soil composition could fail. Absent the expense, labor and expertise deployed by concerned citizens, the Autumn Oaks detention ponds would likely have failed and created an undue hardship and irreparable harm on adjacent neighbors.

a) By establishing a *de facto* standard for "smaller scale" development projects, HRG has created the potential for a scaled compliance model based on the economics of a developer and the size of project.

b) Moreover, it is precisely this type of developer in which SWAN seeks to identify and assist based on the potential adverse impact for new and existing property owners. Absent a bond or escrow account, Mr. Fleming has concluded that "smaller development" projects would not have the resources to address soil quality issues associated with the construction and possible failure of detention and retention ponds.

Mr. Fleming's recommendation – in paragraph 3 regarding “responsible design” being accomplished with a standard note on the “cover sheet” for certification – is an acceptable part of the solution. It is imperative that regardless of the size of a project, the developer must be fully bonded and the note has to be legally binding. (1)

Presently, there is no requirement for a geologic study even if a proposed detention or retention pond is at an equal or higher elevation than the neighboring property. Clearly, water infiltration has the potential to adversely affect neighboring property owners.

In addition, there is no reference in the Township's governing regulations relating to the occurrence of shale or the depth of proposed detention or retention ponds. The only other citation SWAN could find on this matter was in the *Groundwater Recharge*, 180-616, which triggers a study based on the presence of limestone.

Compromise Recommendations for Proposal 2:

a) SWAN encourages the Planning Commission to adopt the certification recommendation made by HRG, and add a covenant that makes the developer's recommendation legally binding and mandates full bonding.

b) SWAN suggests the Township require soil sampling to include and factor the occurrence of shale in relation to the depth of proposed detention or retention pond, and also factor the proximity of detention and retention ponds to neighboring properties.

We suggest a meeting between HRG, Township staff, and SWAN to address the above mentioned proposals.

1 Autumn Oaks-Centennial Acre issues related to deficient or nonexistent detention and retention pond soil studies. On August 27, 2005, an invalid wetland delineation at a project that could be defined as “small scale” development undermined the construction of the St. Margaret Mary Church on Colonial Road by the Harrisburg Diocese. (Please refer Enclosure 2.)

Sincerely,

Eric Epstein, Chairman
Stay Winds Area Neighbors
4100 Hillsdale Road
Harrisburg, PA 17112
(717)-541-1101

Enclosures

cc
George S. Wolfe, Lower Paxton Township Manager
Lori Wissler, Planning and Zoning Officer