

COLLEGE TOWNSHIP COUNCIL  
SPECIAL MEETING  
MARCH 27, 1979

The meeting was called to order by Chairman J. Carroll Dean at 7:30 p.m. in the College Township Municipal Building.

Members present: Donald E. Bailey, J. Carroll Dean,  
Dolores A. Taricani, Clarence E. Trotter,  
and John H. Ziegler

Others present: Manager Elwood G. Williams, Sr.

Chairman Dean reported that a signed lease had been received from ConRail.

BUSINESS

A. Consideration of application of Witmer Construction Company for a Zoning Permit leading to a Building Permit for construction of a post office building on the Elmwood Street site. Chairman Dean reported that Council had met in closed session with the Solicitor to consider this matter and agreed to seek additional advice. On March 19, three Council members and the Solicitor visited Radnor, PA, and met with Sondra Slade, an authority on Zoning Law and Land Use, to discuss the many facets surrounding this application. Specifically Council members asked Mrs. Slade: (1) What could the position of Council become should they appeal the decision of the Zoning Hearing Board (as requested by the CCL) based on the fact that the Zoning Hearing Board did not address the original appeal by the CCL relative to the intent paragraph of the Zoning Ordinance; (2) What position would Council find itself in should they refuse the Zoning Permit; (3) Is Council a "public trustee"; and (4) What recourse does Council have in preventing the post office from occupying the building on the Elmwood Street site?

Mrs. Slade answered the Council's questions at their March 19 meeting with her and then in writing by her letter to Chairman Dean (copy attached). Chairman Dean read portions of the letter.

Mrs. Slade felt that Council had done everything they could do in this matter and felt Council's chances of winning an appeal to the Zoning Hearing Board's decision were very slight. Mrs. Slade additionally indicated that pressure brought on legislative representatives and post office officials by sources other than Council might be helpful.

During the session with Mrs. Slade, the subject of the amendment to the Zoning Ordinance (including the post office only in the Village District and excluding it from other districts), as proposed by the CCL was discussed. Mrs. Slade indicated that a use cannot be written in one part of the Ordinance excluding the use in another part of the Ordinance. Additionally, she informed the Council members that the Postal Department, being an arm of the Federal Government, was not subject to the local zoning ordinances.

Mr. Trotter moved that the Council authorize the issuance to the Witmer Construction Company of the Zoning Permit for the Elmwood Street site. Mr. Bailey seconded the motion.

Virginia Eisenstein, Counselor for the CCL, indicated that the Board of Directors of the CCL would be meeting on March 28 to consider further action. If the decision was made to go forward with an appeal, it would be to the Federal Court based on the lack of the environmental impact considerations, lack of proper procedures, and lack of proper consultation with the Historical Preservation Organization. She additionally indicated that in their opinion not all of the requirements on the Application for Zoning Permit had been complied with, specifically a soil sedimentation control plan. Mr. Williams indicated that the application had met all of the requirements.

Members of the citizenry present questioned the value of the Intent paragraph of the Zoning Ordinance. It was explained that the Intent paragraph is of value when the Zoning Hearing Board is making their decisions but is not a good basis for court action.

Additionally, questions were raised concerning the functioning and position of the Zoning Hearing Board. Mrs. Taricani explained the Zoning Hearing Board position for the audience.

Mr. Ziegler offered his personal comments on the various facets of the post office relocation issue.

The question was called for. The motion that the Council authorize the issuance to the Witmer Construction Company of the Zoning Permit on the Elmwood Street site was carried unanimously.

B. Surface and Ground-water Quality in the Area of the Ruetgers-Nease Property. Mr. Ziegler presented a March 23, 1979, letter from the Commonwealth of PA Department of Environmental Resources inviting the Township to participate in a discussion on this matter. Mr. Ziegler suggested that the letter be passed on to the College Township Environmental Advisory Council for their study and recommendation. Chairman Dean asked Mr. Williams to: forward the letter to the Environmental Advisory Council; and write DER telling them that Council has referred their letter to the Township EAC and that the EAC will be in touch with them.

C. Statement of Work Study of Public Water Systems in College Township. Chairman Dean indicated that the Statement of Work had been reviewed by the Solicitor and was now ready to be sent out for bids.

Mrs. Taricani moved that the Council advertise for bids for the Planning Study of the Public Water Systems in College Township. Mr. Ziegler seconded the motion. Chairman Dean asked if there was any objection to sending a direct solicitation to the two parties that had given unsolicited bids; there was no objection. Council established a due date for the sealed bids as May 7; the bids to be opened and reviewed at the Council's regular meeting on May 10. The question was called for and the motion was carried unanimously.

Chairman Dean asked Mr. Williams to proceed with the advertising; to send copies of the statement of work to the water suppliers to

keep them informed of Council's action; and to send a copy of the statement of work to Stan Hoy informing him that Council will want him to review the bids.

Chairman Dean explained for the audience that this was a study of the public water systems supplying water to College Township and not a study for a public water company. Mrs. Taricani added that the Council's goal was to improve the water systems and that hopefully this study would provide the information necessary to do that.

D. David Allison informed the Council of a situation involving the Sewer Authority. Paul Freeman had purchased property at 1951 East College Avenue, State College, requested and was granted a variance to construct a duplex. Mr. Freeman was held up in his construction last fall because of the Authority waiting for approval from DER to cross Spring Creek to provide service for Mr. Freeman's property. DER approval was obtained late December/early January and Mr. Freeman started construction recently. At the onset of construction, Mr. Freeman discovered that his excavation was filling up with drainage from a sewage system. Investigation revealed that a backhoe had hit a corner of the drain field for the sewage system on the adjoining property owned by Mr. Lally (the drainage field being partially on Mr. Freeman's property). Code Enforcement has since stopped Mr. Freeman's construction. Mr. Allison explained that the Authority would provide Mr. Lally service if he requested it and a suitable cash contribution was negotiated. Mr. Lally has indicated opposition to this proposal. Mr. Allison was informing Council of the situation because in the event Mr. Lally does not agree to a suitable correction of the situation (namely connection to the sewer), then a Zoning Ordinance would be necessary to make him comply.

Chairman Dean asked Mr. Williams to contact Stan Hoy and have him check the Lally system to determine if it is working properly and to advise what steps should be taken.

E. Reed McCormick reported that it is necessary to inform ~~the PUC~~ when negotiating a lease with a utility such as ConRail. Mr. McCormick had done this when the lease was first requested and has since received the PUC's approval on the lease. Mr. McCormick said he would now serve notice on ConRail that this certificate of approval had been received.

Mr. Williams indicated that he had already notified by phone Mr. John Kenyon, of the Postal Department, of the receipt of the signed lease. Chairman Dean asked Mr. Williams to formally notify the Postal Department in writing of the receipt of the lease and to send them a copy of the signed lease.

Mr. Ziegler moved that the College Township Council inform the College Township Industrial Development Authority that it remains unalterably opposed to the post office on the Elmwood Street site and, therefore, believes that the approval of the application of the Witmer Construction Company for a loan would be in opposition to the Council's desires. Mrs. Taricani seconded the motion.

Discussion followed wherein the method of application to the Industrial Development Authority and the function and procedures of the IDA were explained. It was felt that it was important to let the College Township IDA know the Council's feelings in this matter. Mr. Ziegler agreed to have the wording of his motion changed to read "move that the College Township Council inform the College Township Industrial Development Authority that it remains unalterably opposed to the post office on the Elmwood Street site and, therefore, believes that approval of the application of the Witmer Construction Company would not be in the best interest of the Township." Mrs. Taricani also agreed with this word change. The motion was carried unanimously as changed.

Ms. Eisenstein asked if a similar letter could be sent to the Ferguson Township IDA since the Witmer Construction Company has also applied to them for a loan. Council felt it would not be a

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good idea to do this - that the Ferguson Township IDA knew of the facts surrounding the issue of the post office relocation.

F. John Olivero indicated that previously he had been asked to serve on the Centre Region Housing Study Committee and has attended several of the Committee's meetings. Mr. Olivero said he would be willing to report on the activities of the Committee at a Council Meeting. The members of the Committee have been asked to go back to their municipalities and get opinions and questions to bring before the Committee. Mr. Olivero asked the advice of the Council as to the best way to obtain this information from the citizenry. Mr. Ziegler suggested a solicitation of the entire region with College Township doing its part. Mr. Olivero indicated he would take this idea to the Committee.

The meeting adjourned at 8:55 p.m.

Respectfully submitted,

Elwood G. Williams, Sr.  
Secretary

EGW:lf:bh

Attachment

**PEPPER, HAMILTON & SCHEETZ**

ATTORNEYS AT LAW  
NUMBER ONE RADNOR STATION  
KING OF PRUSSIA ROAD  
RADNOR, PA. 19087  
215-687-8440

123 SOUTH BROAD STREET  
PHILADELPHIA, PA. 19109  
215-693-3000

10 SOUTH MARKET SQUARE  
HARRISBURG, PA. 17108  
717-233-8483

1776 F STREET, N.W.  
WASHINGTON, D. C. 20006  
202-862-7500

2049 CENTURY PARK EAST  
LOS ANGELES, CA. 90067  
213-879-0904

March 20, 1979

Mr. J. Carroll Dean, Chairman  
College Township Council  
College Township  
1481 East College Avenue  
State College, Pennsylvania 16801

Re: Concerned Citizens of Lemont  
Application of Witmer Construction

Dear Mr. Dean:

At a conference in my office on 19 March 1979, you requested my opinion on certain questions arising out of the matter referenced above. Specifically, you (and Council members Ziegler and Taricani) wished to know whether the Township should take an appeal from your Zoning Hearing Board's decision of March 2, 1979 in the above and whether a permit should be granted to Witmer on the application which it filed following the Board's decision against it. In posing these questions, you presented to me the complete factual matrix of problem as well as the concerns of the township residents and Council.

As to the first question - whether the Township should appeal the Board's decision - I pointed out to you yesterday and will repeat this morning that, since the purpose of your appeal would be to support Concerned Citizens of Lemont, no appeal will lie. Concerned Citizens of Lemont was successful in its application to the Board; as a "judgment winner," it has no right to appeal whether or not it (or Council) would have preferred the Zoning Hearing Board to decide the case on other grounds. Council, technically, could file an appeal and a notice of intervention under

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M.P.C. §1006 (2)(b), 53 P.S. 11006 (2)(b) but, in so doing, it would not be aiming to reverse the Board's order but would only be pressing for the substitution of other grounds in support of the Board's order to rescind the issuance of the permit. It is my opinion that such an appeal would fail when met with a motion to quash which would, in my opinion, most certainly be filed on Witmer's behalf.

The second question you posed was whether a permit should issue to Witmer on the second application - an application which, you tell me, has been reviewed by your Planning Commission and adjudged to meet all technical code requirements. There is, then, only a single issue left to be explored as a possible reason for denying the Witmer application: the issue of zoning. Plainly, the site is to be used by the U. S. Postal Service as a post office. Thus, the question arises (indeed, it has been raised by the Concerned Citizens of Lemont) whether a post office use fits within the categories enumerated in Article V, Secs. 2 & 3 of your Zoning Ordinance. Section 2.2.1 lists as permitted uses in a General Commercial District: "All service establishments \*\*\*" as well as "all permitted uses of the Office Commercial District." Section 3.2.1 lists a wide variety of service uses permitted in an office Commercial District including municipal uses and other such service oriented uses as hospitals and libraries. It is hard to conceive of a more "service" oriented use than a local post office. It is my opinion that the proposed use fits plainly within your General Commercial Zoning and that, therefore, there is no legitimate zoning ground on which to refuse a permit.

The Concerned Citizens have argued that the Postal Service is an "essentially governmental" entity performing a "government function." This is, no doubt, true. But it does not lead to the conclusion that a post office is a "mail order agency." Counsel for Concerned Citizens tacitly admits as much when she states that the post office is a "mail agency" rather than a "mail business." Montgomery Ward and Spiegels, to name only two, are "mail order agencies" or "businesses;" the U. S. Postal Service, as its name implies, is a service or agency. Moreover, the question is really a moot one. No matter what "use" nomenclature is applied to a local post office, the U. S. Postal Service is an

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arm of the United States Government and the United States Government, under the Supremacy Clause of the Constitution, is not subject to zoning regulation in the absence of legislation to the contrary. See e.g. United States v. City of Chester, 144 F2d 415 (3rd Cir. 1944). Nowhere in Title 39 of the United States Code ("The Postal Service") can I find any provision subjecting the Service to local control - zoning or otherwise. Indeed, a number of specific provisions of Public Law 91-375 creating the Postal Service (84 Stat 720, 39 U.S.C. [pocket part] §101 et seq.) establish plainly that Congress had no intention to subject the agency to local control. See §§ 101 (postal policy), 401 (general powers including eminent domain) and 410 (application of other laws). And it has been flatly and unequivocally held by the Superior Court of New Jersey that the immunity from local zoning ordinances which extends to the United States in establishing a post office facility applies whether the United States owns the land in question or merely leases it. Thanet Corp. v. Board of Adjustment of Princeton Township, 104 N.J. Super. 180, 249 A2d 31 affirmed 108 N.J. Super 65, 260 A2d 1.

Very truly yours,



Sondra K. Slade

SKS/va

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