

Record of Proceedings: **August 9, 2016**
West Chester Township Board of Trustees - Regular Meeting

Convene: President Welch convened the meeting at 6:01 p.m.

Roll Call: Mr. Welch, Mr. Lang, and Mr. Wong responded.

Pledge of Allegiance: Repeated by those present.

Citizen's Comments

Joe McCarthy, 8120 Clearmeadow Drive, said he believes the proposed Professional Psychiatric Services (PPS) facility is the wrong location.

Gail Stanforth, 8011 Tara Drive, expressed concern about what kind of treatment would be rendered in the PPS facility, saying she didn't know anything about it. She objected to PPS locating at the proposed location.

Mike Kunze, 7877 Tara Drive, said his property backs up to the proposed PPS facility. He said there are other locations in West Chester that would be more suitable. He's also concerned with harm to property values.

Nancy Willis, 8890 Meadow View Drive, said people along Route 42 feel like the step children of West Chester. She suggested the three like facilities in West Chester should be consolidated into one, at a different location other than the one proposed by PPS.

Tim Heenan, 8850 Brook Knoll Drive, said he had no objection if the PPS facility were located behind him, but he didn't want it located across from a youth facility.

Presentations

(Fiscal Officer Note: The following is the summary of the presentation by Austin Musser from Frost, Brown, and Todd as submitted by Mr. Musser.)

Austin Musser of Frost Brown Todd gave a presentation to update the Board on findings of staff and counsel as a result of two moratoria adopted by the Trustees, as well as to identify additional recommended revisions to the Zoning Resolution.

The first item discussed by Mr. Musser was the moratorium regarding the issuance of zoning certificates for treatment or professional services, uses, or facilities for addiction or other similar services, uses, or facilities: The moratorium was adopted April 12, 2016 and expires December 31, 2016. The moratorium was prompted by what appeared to be a substantial increase in the need for these facilities and provision of these services, resulting in several newer such facilities attempting to locate in the Township. Unfortunately, the Township had little information regarding the operation of these facilities, which led to concerns by the community and difficulty on the part of staff trying to classify these uses and facilities from a zoning perspective. The moratorium directed staff and counsel to "investigate and review the law applicable to treatment

or professional services, uses or facilities for addiction or other similar services...and if modifications to the West Chester Zoning Resolution governing such uses or facilities are recommended, the Community Development Director and Law Director are advised to prepare zoning amendments properly regulating or prohibiting the operation of treatment or professional services, uses, or facilities for addiction or other similar services...in conjunction with the Purpose, Spirit, and Intent of the West Chester Township Zoning Resolution and West Chester Township Comprehensive Land Use Plan.” After reviewing applicable law, counsel and staff have concluded that courts prohibit local governments from discriminating against such facilities in the context of zoning. Courts generally require local zoning authorities to look to the manner in which a facility is operated rather than the treatment being provided when making zoning decisions. In the course of doing their research, staff and counsel identified that facilities or uses allowing for patient stays of intermediate or longer durations appear to require additional township services than other uses and may warrant closer scrutiny in the initial zoning process; thereby, recommending definitions and zoning permitting processes for institutional care facilities. If the Board elects to make these revisions to the Zoning Resolution, it will take approximately four months for the revisions to become effective. The Board will need to determine whether to lift the moratorium now (which would allow any facility to come in under the current regulations until the changes are effective), or to leave the moratorium in place pending the effectiveness of the proposed revisions.

Mr. Musser answered miscellaneous questions for the trustees: Mr. Musser indicated that the research performed by staff and counsel related generally to treatment or professional services, uses, or facilities for addiction or other similar services, uses, or facilities, and did not relate to any specific proposed facility, location, or application. Mr. Musser indicated that the Board of Zoning Appeals will have some discretion to identify appropriate conditions on a case-by-case basis. Mr. Musser indicated that the revisions proposed related to definitions and the text of the Zoning Resolution. The Board has the discretion to request additional revisions to the Zoning Resolution that would either rezone certain parcels on the Zoning Map, or identify particular zoning districts the Board believes would be appropriate for institutional care facilities.

The second item discussed related to the November 2015 moratorium relating to sexual encounter establishments and similar uses: The moratorium was enacted in order to give counsel and staff an opportunity to review the law regarding whether or not sexual encounter establishments are entitled to the same First Amendment protections as other sexually oriented businesses such as adult bookstores and cabarets. Counsel and staff have concluded that although the First Amendment protects speech and expressive conduct, this protection does not extend to sexual conduct. Because sexual encounter establishments and sexual encounter centers are centered on sexual conduct, they are not entitled to the same First Amendment protections. Counsel and staff recommend many revisions to the licensing resolution governing sexually oriented businesses, as well as corresponding revisions to the Zoning Resolution. Most of the substantive revisions are contained in the licensing resolution, which can be enacted much more quickly than the corresponding revisions to the Zoning Resolution. Proposed revisions include:

- Significant clarification of definitions to better conform to current law.
- Make it more clear that sexual contact is prohibited within sexually oriented businesses.

- Better tie the issuance of a sexually oriented business to the issuance of a zoning certificate.
- Ensure that volunteers are required to obtain an employee license.
- Adjustments to certain processes.
- Adjustments to parking requirements for sexually oriented businesses.

Mr. Musser concluded by noting three additional recommended revisions to the Zoning Resolution: First, a recommendation that the Zoning Resolution be revised to ensure that the definition of telecommunication tower includes small cell towers located in the right of way and to ensure that these towers are regulated in residential areas. The goal is to ensure that such small cell towers are not located above ground in residential areas with only underground utilities. Second, a suggestion to update the variance standard to better align with the Revised Code standard for variances. This is primarily a terminology change rather than a substantive change. Third, a recommendation to update the use table to include residential uses.

Action Items – For Approval by Motion

MOTION made by Mr. Lang, seconded by Mr. Wong, to approve the Trustee Meeting Minutes for July 26, 2016. Discussion: none. **Motion carried unanimously.**

MOTION made by Mr. Lang, seconded by Mr. Wong, to approve payment of bills. Discussion: none. **Motion carried unanimously.**

Mrs. Boyko submitted the following requisitions greater than \$2,500:

Requisitions – Greater than \$2,500.00

1. Adm \$30,736.70 Frost Brown Todd, LLC – Legal services through June 30, 2016
(various departments)
2. Adm \$5,000.00 Ohio Pyrotechnics Arts Guild – Purchase fireworks for display at the
UCBMA 2016 Food Truck Rally event
3. Adm \$4,500.00 Cincinnati USA Regional Chamber – Remit payment for tuition for
Township Administrator to participate in Leadership Cincinnati
Program
4. Fire \$3,121.25 National Hose Testing Specialties Inc. – Perform aerial and ground
ladder tests
5. Services \$10,849.35 Superior Implement & Supply Co. – Purchase Grasshopper mower
(CIP #843)

Mr. Wong initiated discussion on the matter by asking Mr. Welch if he was a member of the UCBMA, to which Mr. Welch answered that he was, and Mr. Wong asked if that would constitute a conflict for him to vote on requisition item 2. Law Director Crain then opined that it would not constitute a conflict for Mr. Welch to vote on that item. Subsequently the requisitions were voted upon separately at the request of Mr. Wong.

MOTION made by Mr. Lang, seconded by Mr. Welch, to approve payment of requisitions 1, 3, 4, and 5. Discussion: none. **Motion carried unanimously.**

MOTION made by Mr. Lang, seconded by Mr. Welch, to approve payment of requisition #2. Discussion: none. **Motion carried.** Mr. Wong voted in opposition.

Personnel Items

There were no personnel items.

Business Items

MOTION made by Mr. Lang that, having reviewed the staff report and affidavit, we declare the properties listed on the West Chester Township Board of Trustees meeting agenda dated August 9, 2016 to be public nuisances as authorized by the Ohio Revised Code.

Staff is directed to cause removal of the nuisances identified, and monitor these properties for 90 days to require continued compliance. An administrative charge of 25% shall be added to the contractor fee for these properties. Motion seconded by Mr. Welch. Discussion: none. (Fiscal Officer Note: The five subject properties were 9447 Hadley Drive, Parcel # M5610-020-000-002 (Liberty Way), 9770 McCauly Road, 5675 Winding Creek Way, 7663 Christine Avenue.) **Motion carried unanimously.**

Mrs. Boyko introduced the next item saying the fire department Emergency Services is required to operate under the review and purview of a Medical Director pursuant to the Academy of Medicine of Cincinnati protocols for southwest Ohio. The current Medical Director is retiring after 26 years. Fire Chief Prinz has been searching for a replacement for several months and brings for the Board's consideration the University of Cincinnati Physicians Company, LLC proposal.

MOTION made by Mr. Lang, seconded by Mr. Wong, to approve a contract between the West Chester Township Board of Trustees and the University of Cincinnati Physicians Company, LLC, beginning August 10, 2016 and ending December 31, 2018, for Medical Director services to the West Chester Township Fire Department not to exceed an annual fee of \$13,907.00 and the 2016 prorated fee of \$5,795.00 and to authorize the Township Administrator to make non-substantive changes with Law Director approval and to execute said contract. Discussion: none. **Motion carried unanimously.**

MOTION made by Mr. Lang, seconded by Mr. Wong, to not object to a liquor permit stock transfer for Walgreen Co., DBA Walgreens 06682, 8614 Princeton Glendale Road. Discussion: none. **Motion carried unanimously.**

MOTION made by Mr. Lang, seconded by Mr. Wong, to not object to a liquor permit stock transfer for Walgreen Co., DBA Walgreens 05762, 7804 Cincinnati Dayton Road. Discussion: none. **Motion carried unanimously.**

Mrs. Boyko introduced the next item saying, if the Board approves the following motion, she will nevertheless be asked to sign a document saying the Township acknowledges the applicant will be receiving a non-objectionable liquor permit - because the Township owns adjacent property, the VOA property - and the Board does not object to the transfer. She asked that the Board grant her authority to sign the acknowledgment.

MOTION made by Mr. Lang, seconded by Mr. Wong, to not to object to a liquor permit stock transfer, and grant Mrs. Boyko authority to sign the referenced documentation, for Fresh Market Inc. DBA The Fresh Market, 7720 Voice of America Centre Drive. Discussion: none. **Motion carried unanimously.**

First Reading of Resolutions & Reading of Emergency Resolutions

Mrs. Boyko introduced the next item saying the original resolution enacted in November, 2015 expires August 17th of this month.

Mrs. Boyko read, "Resolution No. 24-2016 declaring and authorizing an extension to a moratorium until December 31, 2016 on the issuance of a zoning certificate or license for a "Sexual Encounter Establishment" or related uses initially enacted by West Chester Board of Trustee Resolution 32-2015 and declaring an emergency and dispensing with the second reading". None of the Board members had any questions or need for clarification.

Citizen's Comments

Karen Werling, 9057 Cincinnati-Columbus Road, owner of Hickory Dickory Dock Daycare Center, shares a border with the proposed PPS facility. She expressed concern with residential property values, noted there are four Lakota schools within 1 ½ mile of the proposed facility, and some of the students may not qualify for busing, requiring them to walk to their school. She concluded by expressing concern with the location and the judgment that would go into making the decision as to whether or not to permit the proposed PPS facility.

Norma Lloyd, 7903 Wise Avenue, suggested the Board member would not want the PPS facility at the proposed location if they lived in that area. She also expressed concern for area children.

Chris Wunnenberg, 8132 Dimmick Road, said he was shocked to hear the Township attorney tell the Board earlier that evening that the Board needed to treat this type of facility (PPS's) just as they would a senior citizen's home or a convalescent rehab facility. He said that would mean any conditions or changes the Board would propose would have the unintended result of needing to be apply those conditions to all like facilities. He suggested the Board may want to make this a map provision, meaning the PPS type of facility can only be in certain areas; they cannot be in an area other than industrial, for example, thereby keeping them away from residences. Otherwise other conditional use facilities might be restricted. He observed that the proposed PPS facility would need to be treated exactly the same as that which previously occupied that location. He cautioned the Board that applying a conditional use to the property might not solve the problem.

Joy Steidle, 8752 Rambling Ridge, said the facility previously located at the proposed PPS facility entailed critical care, but the proposed PPS facility would treat addicts. She said it would be 60% outpatient and pharmacy. Ms. Steidle referenced a PBS Frontline video entitled "Chasing Heroin" and expressed significant concern with drug users and drug dealers, saying the PPS facility was the kind of place that attracts drug dealers. She said laws should be changed, and the Board should put the PPS matter on hold until it understands what it's dealing with.

MOTION made at 7:18 p.m. by Mr. Lang, seconded by Mr. Wong, to recess the Regular meeting for five minutes. Discussion: none. **Motion carried unanimously.**

MOTION made at 7:25 by Mr. Lang to reconvene the Regular August 9th Board of Trustee meeting, seconded by Mr. Wong. Discussion: none. **Motion carried unanimously.**

Nick Stevens, 8333 Ashley Hall Court, began by saying the proposed PPS facility would not be similar to a long term elderly care center. He proceeded to site numerous articles of the West Chester Zoning text which he said were violated or to which the proposed PPS facility did not comply. He concluded by offering his input in any future meeting pertaining to these zoning ordinances.

Gene Drodz, 8382 Country Oaks Station, commented that there were 239 police service calls at the Beckett Springs facility between August 4, 2015 and July 3, 2016, and noted the purposes for those calls. He said opponents did not want that activity concentrated by the PYO, residents, or Hickory Dickory Dock. Mr. Drodz said they are up to 895 signatures on their petition in opposition to the proposed PPS facility, they have 234 online petition signatures, including 44 comments in opposition. He hoped the Trustees would be of the same opinion, asked for people in the audience in opposition to raise their hand – a significant majority of the audience, and asked the Board to allow Dr. Aziz to have his facility in a different location.

Tom O'Brien, 9139 Revere Run, began by terming statements from PPS staff as “misleading and contradictory”. PPS said their proposed facility would be comparable to their current Mason facility though the proposed facility will be up to 70,000 square feet and their current Mason facility is 2,000-3,000 square feet. He said their comments were offensive, accusing the Trustees and Township Administrator of racism, discrimination, collusion, and corruption. He said it was unfortunate PPS did not disclose all of the facts in the beginning, and suggested they should not have bought the property at the proposed site until they had approval from the Township.

Roger Melford, 8125 Woodward Drive, said there would be 60 beds at the PPS facility and noted the adult and youth clientele. He said 25 area businesses signed the petition in opposition to the proposed facility. Mr. Melford suggested treatment at the facility may entail pedophiles and it was his understanding that there is a law prohibiting them from being close to a daycare center. He said there was no comparison between the PPS facility and the nursing home that was formerly there.

Dr. Tara Ripley, 6265 Gulfstream Court, said she works for PPS and wanted to clarify that her clientele is children, adolescents, and young adults. She said there were misconceptions and she wanted people to understand the population they serve and the support they provide the community.

Second Reading & Vote on Pending Resolutions & Vote on Emergency Resolutions

MOTION made by Mr. Lang, seconded by Wong, to declare Emergency Resolution No. 24-2016 an emergency and dispense with the second reading. Discussion: none. **Motion carried unanimously.**

MOTION made by Mr. Lang, seconded by Mr. Wong, to approve Resolution No. No. 24-2016 as read and as already declared an emergency. Discussion: none. **Motion carried unanimously.**

Mrs. Boyko introduced the next Second Reading saying the Board conducted a Public Hearing on case MC-02-16, Lucke Property, El Rancho Grande, at the July 26th Board meeting where the First Reading was conducted. Thereupon Mrs. Boyko read, "Now therefore be it resolved on the basis of the above actions and findings, the West Chester Township Board of Trustees does hereby concur with the recommendation of approval of the West Chester Township Zoning Commission and does hereby approve the application for a Major Change to a PUD and Preliminary Development Plan with the following conditions", adding that the Zoning Commission recommended 19 conditions of approval.

MOTION made by Mr. Lang, seconded by Mr. Wong, to concur with the recommendation of approval of the West Chester Township Zoning Commission and approve the application for a Major Change to a PUD and Preliminary Development Plan and the Zoning Commissions recommended conditions for Resolution No. 23-2016 approving a Major Change and Preliminary Development Plan for Case #MC-02-16 – El Rancho Grande. Discussion: Mr. Lang proposed adding three conditions. Mr. Wong clarified that there would now be 22 conditions. Mr. Welch spoke at length about the history of traffic in the immediate area and the impact on traffic posed by the proposed development. Mr. Lang and Mr. Wong contributed comment as well. Subsequently, based on standards of the Township's comprehensive land use plan, this motion was amended to include these three conditions; (1) the right-out access proposed on Cincinnati Columbus Road (US 42) as illustrated on the Preliminary Development Plan is denied or at a minimum shall be redesigned to eliminate detrimental impact to and conflict with the intersection at Windwood Drive pending ODOT review and determination. If ODOT determines a right-out is still permitted, then WCT shall approve any right-out design at the Final Development Plan stage and any reference in this Resolution to the right-in shall mean right-in/right-out; (2) a photometric lighting plan for any outdoor lighting, including but not limited to parking lot, exterior building, signage, etc., shall be designed to direct downwardly and away from any residence adjacent to or within immediate proximity to the proposed building and shall be approved at the Final Development Plan stage; (3) no live or amplified music, including a PA system, shall be permitted in the outdoor seating area after 10:00 p.m. Sunday-Thursday and after 11:00 p.m. Friday-Saturday. **Motion carried unanimously.**

Discussion Items & Elected Official Comments

Mrs. Boyko offered to answer any questions the Board might have regarding the presentation or testimony during Citizens Comments.

Mr. Wong said he's been respectfully listening to all the comments about PPS over the last four months. He noted the subject property is zoned for the proposed use, the PPS facility is protected by ADA (Americans with Disability Act), it is not a methadone clinic, which he attributed to misinformation, and their patients are a lot safer than people who do not receive treatment. He said he does not want to see another lawsuit and thousands of dollars have been spent so far on this matter. He expressed concern with unintended consequences if conditions are applied to the PPS facility.

MOTION made by Mr. Wong to lift the moratorium on the PPS property. Motion failed for lack of a second.

Mr. Lang said the Board was not racist when they voted to extend the moratorium, rather they voted for the moratorium because they decided the PSS facility was not the type of establishment we really want in our community. There are negative, unintended consequences. As other misinformation he cited the insinuation someone may have profited on the Lumiere land deal. He said that was an unsupported accusation and is the way people bring personal lawsuits on themselves. He agreed with Mr. Wong's assertion that there had been misinformation expressed on the matter. He said he was not prepared to lift the moratorium, but would be prepared to make a decision at the next meeting given input from citizens and legal counsel. He concluded by noting activities scheduled for The Square.

Mr. Welch said he wasn't prepared to lift the moratorium either. He said they're required to treat PPS the same as the previous facility, but added they want to write zoning text to differentiate without discriminating, and they would leave that up to the Law Director and staff. He said it was not unreasonable that people would want some kinds of conditions on a place like PPS, places like churches, daycares, parks, etc. Mr. Welch said he felt no guilt given Dr. Aziz's failure to perform his due diligence before buying the property. He called numerous cities in the area and they all have conditions for these kind of facilities. He planned on making a decision at the next meeting.

Recess to Executive Session

At 8:21 p.m., Mr. Welch asked for a motion to recess the Regular meeting and go into Executive Session with legal counsel for the purpose of considering and discussing (1) personnel matters: (a) provision of benefits and compensation for a non-contract employee, (b) contract negotiations for a certain collective bargaining unit; (2) Current and pending litigation. Motion made by Mr. Lang, seconded by Mr. Wong. Discussion: none. **Motion carried unanimously.** Mr. Welch declared the meeting in recess and said the Board would return after Executive Session to adjourn the Executive Session and the Regular meeting respectively.

Post Executive Session/ Adjournment

MOTION made at 9:10 p.m. by Mr. Wong to adjourn the Executive Session and resume the August 9, 2016 Regular meeting, seconded by Mr. Lang. Discussion: none. **Motion carried unanimously.**

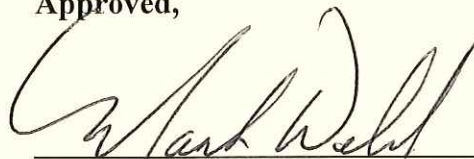
MOTION made by Mr. Lang, seconded by Mr. Wong, to adjourn the meeting. Discussion: none. **Motion carried unanimously.**

Respectfully Submitted,



Bruce Jones, Fiscal Officer

Approved,



Mark Welch, President