



Borough of Ben Avon Heights

Thursday, May 6th, 2021 – Public Meeting of Council

A quorum is in attendance

Present:

Council Members: Brown, Cuteri, Dawley, Mihalko, Neunder, Radcliffe, Stiller

Mayor: Dismukes

Solicitor: Vogel, Tucker Arensberg

Secretary: DiNuzzo

Residents: Maureen Sweeney 40 Wilson Drive,

Mr. Cuteri began the meeting at 7:00 PM.

- 1. Public Comment:** Maureen Sweeney at 40 Wilson Drive questioned where the public could get a copy to review. Mr. Vogel stated that once the Borough finalizes this, what will happen is that it will be introduced at a future public meeting by the planning commission, if it's okay after that, the Borough will then send it down to Allegheny county for their comments. HRG confirmed that it would go on public display on the Borough website. Mr. Cuteri added that they would look at the comments from the public and make any changes that are appropriate. Ms. Sweeney also added that she was just curious as to what the changes were because we haven't had access to the zoning ordinance, so I'm unsure of what's being discussed. Mr. Cuteri responded that just so everyone is clear, a few years ago we entered into a joint planning study with 3 of the neighboring Boroughs. That joint planning study was then developed and approved by the county; the reason we did that was because our zoning ordinance has not been updated in 40-50 years. The long-term goal has always been to re-do our zoning ordinance. So now that we had the comprehensive plan and allocation of zoning uses for the entire district, which was a joint plan approved by Allegheny county, then we were able to go in and modify our zoning ordinance. We're creating a zoning ordinance that's more current and up to date with the times.

Ms. Sweeney then asked if the zoning ordinance would just be for Ben Avon Heights or it's not going to be joint with Ben Avon or Avalon. Mr. Cuteri responded that no, I think the other municipalities did a joint zoning board and stuff like that, but we're staying independent. We were part of it and paid for the comprehensive joint plan 6 years ago. But, it's just us, we have our own zoning officer, we have our own building inspector that's a third-party contractor.

Alexis McCune at 14 Oxford Road questioned who is drafting the zoning ordinance, is it the zoning officer? An independent consultant? Mr. Cuteri responded that Lauren Ludwick who is with HRG, who specializes in this was hired almost two years ago. We started our work with HRG with an audit of our zoning ordinance to see what things about Ben Avon Heights, since we have such limited uses and in order to comply with the law and maintain that limited use of residential and the country club, we had to be part of that bigger comprehensive plan. So that's part of our plan, that supports our zoning ordinance that all those other uses are available in our comprehensive plan, so we can pretty much keep our community the way it is.

Ms. Sweeney then asked so that means you're not going to provide for commercial uses? Mr. Cuteri responded that no, other than the country club property which is recreational use. So, there's a single family residential and recreational. Ms. Sweeney then asked if you were relying on the joint comprehensive plan, but not a joint ordinance? Mr. Vogel responded correct, and Mr. Cuteri added that there is no joint ordinance that Ben Avon Heights is in. Ms. Sweeney then asked but isn't there a joint ordinance with Avalon and the others? Mr. Cuteri responded that yes, but we're not apart of that. Mr. Vogel added that he understands

what you're saying, but because there are provisions provided in the joint comprehensive plan that we're covered. Ms. Ludwig added that some of the discussions that we talked about certain things, council felt that it was conducive to keep it solely residential.

Ms. Sweeney then asked wasn't that an issue with the case in front of Judge James on whether or not it was unconstitutional that you didn't provide those other uses? Or did Judge James not reach? Mr. Vogel stated that it never went to that issues, because what happened was, we did a curative amendment to allow recreational use, and as a result of that when it did go in front of Judge James, the parties were able to work something out. It never got to that, there was a little realization that, because we're part of a multi municipality comprehensive plan, that under which constitutes of that plan had in their zoning ordinances, some being join, reflected that comprehensive plan, we were able to keep the zoning ordinance the way it is, because of the comprehensive plan. Ms. Sweeney then asked if there has been as case law upholding that in Pennsylvania? Mr. Vogel responded that he believes that there is an LPC on that. And relying on the comprehensive plan.

Jenny Liska at 19 Banbury Lane stated that she just wanted to make sure she's clear, ordinances will be posted on the web, and there will be a meeting for comments? Or you'll collect them digitally? Mr. Cuteri replied that there will be a meeting, a public meeting for comment. Ms. Liska then asked and after that, what's the process for you to incorporate these comments? Mr. Vogel responded that this is how it should go, as I sent a memo about this to council. The zoning officer will give his comments and then also, if they are accepted, what will happen is the Boroughs Planning Commission has to have a public meeting, with public notice, then after that it's then proposed to the Borough council who will do a short overview; assuming there are not changes, as suggested by council, then what happens is the ordinance along with a revised map would be sent to county for their review for 45 days. What I'm suggesting also is that we won't do any adoption until the Borough gets the changes back. Because in that way they may have some good suggestion. Then we would go through a second process. Ms. Ludwig added that she always recommends sending it to county agency first before the public hearing, so that way any changes that are going to be perhaps implemented into the draft, you can discuss them at those two public meetings.

Ms. Sweeney responded that it would just be helpful to see the draft before it goes to the planning commission because we don't have staff, so we can't pull it ourselves. Mr. Cuteri responded that he did not feel the zoning officer was going to be an issue. Should we have the public meeting first and then have the county and then the zoning officer? Mr. Vogel responded that he would start with the zoning officer, have his comments and then if they are fine, the planning commission can incorporate them and then have that.

Ms. McCune stated that she would like to make a suggestion that the public meeting be made available in a hybrid format to allow all residents to participate if they want to, you know if they're not able to attend in person, they can still be a part of that process. Mr. Cuteri responded, when you say hybrid do you mean video conferencing? Ms. McCune responded yes, so all residents can have access to that. Mr. Cuteri responded that yes, that is not a problem. Mr. Cuteri also thanked those residents who attended for their input as the meeting continued on.

2. Discussion on Drafted Zoning Ordinance: Mr. Stiller questioned the verbiage of residential signs, he felt it was confusing. After some discussion it was clear to all. There was also a question on the definition of temporary, Mr. Cuteri explained that he felt 7 days was reasonable.

Mr. Dawley proposed adding an additional definition – Temporary sign, public property. Mr. Dawley shared some documents supporting his proposal. He feels currently there is no way for the Borough to manage the signs posted. In his proposal he feels there should be a permit filled out with the Borough. Mr. Cuteri noted many of the points and definitions Mr. Dawley had in his document were already in place in the current ordinance. After much discussion council agreed to incorporate some of what Mr. Dawley had proposed.

Mr. Stiller wanted to discuss, section 315, table 7 on page 44. He thought that the maximum size and height for storage buildings of 10 by 10 seemed small. Mr. Cuteri did not that a lot of the lots in our community are not that large. He also added that he had no problem increasing the size as long as it's reasonable. After some discussion amongst council, it was agreed on 10 by 15.

Mrs. Neunder wanted to discuss B1 page 45, section 312. She questioned if this section was necessary as she was unaware of a lot large enough to do so. Mr. Cuteri noted that there are some double lot properties, that they could sub-divided.

Mrs. Neunder also wanted to discuss section 314 D, sub 2 page 41. She questioned why a porch on the side of the property could not be converted into living space. Mr. Cuteri responded that porches are allowed to encroach a certain amount into setbacks, which if we allowed this, now the property is violating the setback. Mrs. Neunder asked if it could be worded in a way that could allow residents to convert their porch if it was not violating the setback requirements. Mr. Cuteri noted that the section being discussed falls under easements.

Mrs. Neunder had another section she wanted to discuss, 315 B -3. She would like us to put in what the amount of the right of way is. Mr. Cuteri noted that each road has it's own width, therefore each street is different and they're recorded on the plot lands.

Mrs. Neunder wanted to discuss another section 315 C 3. She noted the current draft limits residents to a 2-car garage, she feels there are lost in the neighborhood that could have a 3 car garage, and there are already some properties with 3 car garages. She requested that the lot size determine this. Mr. Brown noted that he felt this should stay as is, if residents would like a 3-car garage, they should apply for a variance. Mr. Cuteri agreed.

Mr. Stiller had a question in section 501 -A, 2, C. He wanted to know what recreational use was. Mr. Cuteri informed him it was the country club.

Mr. Dawley wanted to further discuss section 7. He would like to create a new section called temporary signs on public property. He would like there to also be a permit process, for those interested in putting signs up on Borough property. Mrs. Neunder questioned if this was legal. Mr. Dawley stated he had done some research, there was a supreme court case in 2015 over a sign ordinance. Mr. Vogel asked if the case dealt with permits. Mr. Dawley responded that it did, it was Reed vs the Town of Gilbert 135 supreme court. Mr. Vogel requested the case be forwarded to him. HRG noted that temporary signs typically are excluded from permitting, but the difference with this is it being on Borough property. Mr. Stiller noted that PENNDOT owns two feet off of the road so in theory they can come and take down most signs. Mr. Radcliffe wanted to know what restrictions will be put in place with the permit process he is proposing.

Mr. Dawley responded it would be a simple process of: name, address, and phone number with a 10-dollar fee. Mr. Cuteri asked Mr. Vogel if this process was an infringement on people's privacy. Mr. Vogel noted that freedom of association and that an issue with that. There was a case where they were making aware of who was in the ACP. Mr. Cuteri added that if we used the last election as a reference, the Trump signs made people angry all because of Trump. Signs have been in that location for a month now and the only complaint the Borough and Mr. Cuteri have received is that someone had their sign taken down. We should not as a Borough endorse signs.

Mrs. Neunder noted that in the current drafted ordinance, with the new restrictions stating no signs on the fence, did Mr. Dawley not feel that would be enough to help reduce the issues in the past. Mr. Dawley stated he really did not know. Mr. Cuteri made a motion to allow permitting process for temporary signs on public property if deemed legal by our solicitor. Mr. Brown seconds the motion. Mr. Radcliffe – voted no. Mr. Brown – voted no. Mr. Dawley – voted yes. Mr. Stiller – voted no. Mr. Mihalko – voted no. Mrs. Neunder – voted no. Mr. Cuteri – voted no. motion fails.

Mr. Stiller wanted to discuss page 704 section 11, 11 and 12. He suggests a height restriction for political signs, as standard political signs are 4 square feet. He would also like to add language to keep signs away from crosswalks and or intersections. He added that there are other Boroughs and Townships that do have this in an ordinance and that we have one currently for private residences, ordinance 125. Mr. Mihalko felt we should use the term crosswalk vs intersection as the term intersection can be a bit confusing as to where it begins. Mr. Cuteri agreed with this and asked council if within 15 feet of a crosswalk would work. Council agreed. Mr. Stiller questioned the language in section 12 as it talks about permits for signs. After reading over the section, Mr. Cuteri and HRG both agreed this was supposed to be for residential properties.

**Ben Avon Heights Borough
12 Lynton Lane
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Mr. Brown proposed after all the discussion over signs and where they can be, that perhaps we should make a sign zone, a place where signs can only be placed. Council felt that would be harder to police.

Mr. Cuteri stated that council should discuss design standards, at least material or quality standards, he wants this but also does not want to get too detailed about it. HRG noted that they have some general stuff they can send out. Mr. Cuteri asked if this needed to take place at a public meeting. Mr. Vogel suggested going through the process. If you want to zoning officer input, have him look over it before it goes for to the planning commission. Mr. Vogel reminded council the order that will take place; the zoning officer will review, then the planning commission will hold a public meeting, the council will meet, then it goes down to county for approval, then the final hearing.

3. Meeting ended at 8:05 pm

The next scheduled meeting is June 17th, 2021 at 7:00 pm at Shannopin Country Club

Jessica DiNuzzo, Secretary