

**Pledge of Allegiance**

**Present:**

Present at the meeting: Bob Mitall, Ed Patrick, Zachary Kansler, Bill Yant, Frank Muzika, Jayne Hoy, Hayley Welsh - Municipal Planner, and Tony Spadaro, Council Liaison.

**Absent:** John Bosetti

**Minutes:** Mr. Yant moved to approve the minutes; Mr. Patrick seconded. All present voted aye. Motion approved.

**Public Comment:** None.

**New Business: S-3-19, Neuwirth Subdivision, 3440 School Road, 4.892 Acres, R-2 Zoning District**

Mr. Mitall explained that the requested subdivision is two lots served by a private road coming off of School Road. He asked if any of the houses in the Scenic Heights Plan of Lots are served by the private drive. Ms. Welsh said not to her knowledge. Mr. Mitall said that it is indicated that there is a former parcel line to be extinguished and asked if it is two pieces of ground that are just going to be a lot line revision. Ms. Welsh said it is just a two-lot minor subdivision – just taking the big original lot and making a new lot. Ms. Hoy said that it was one lot and now is going to be two. Ms. Welsh said that is correct. Mr. Yant asked for clarification. Ms. Hoy said it was one lot; there is an existing structure on what will become Lot 1. Mr. Yant said he didn't understand what line is being extinguished and why there is a line on the plan if it's only one lot. Ms. Hoy said she didn't understand either and asked if they are simply moving the lot line. Mr. Mitall asked again if this is a lot line revision or a subdivision. Ms. Welsh said it is a subdivision.

Mr. Yant asked if anyone had any comments and asked if the park fee was going to be waived. Ms. Welsh said this has not been given to the Parks Commission yet. Mr. Mitall asked if the Planning Commission should put a condition on the plan to pay the "in lieu of" fee in the amount of \$1,200. Ms. Hoy asked if there are utilities to the lots. Ms. Welsh said there are. There was further discussion on available utilities and Mr. Mitall asked if there is another plan that shows the utilities; the only one showing on the plan presented shows a sewer easement. Mr. Mitall then found a gas line coming off School Road on the upper side of the private drive, but didn't see anything about water. Ms. Hoy asked if they were planning on using the 20' wide sanitary easement for the gas line or if it is just a utility easement. Mr. Mitall noted that the plan indicates a proposed access right-of-way. Mr. Mitall suggested that the proposed 33' wide extension be labeled as an access and utility easement. There was additional discussion about the waterline and the house (that is no longer there). Mr. Mitall asked what the administration's position is since there is a tap ban. Mr. Morrison replied that the lot can be subdivided, but not recorded. Mr. Mitall said, "in other words, they can go through the Municipality to get it approved, but it cannot be recorded at the courthouse." Mr. Morrison said that was correct and made some additional comments, but

was not at a microphone and could not be heard. Ms. Hoy asked since it is over 2 acres, could they go septic? Ms. Hoy then asked how the Commission could pass something forward if it couldn't be recorded at the courthouse. Mr. Morrison then approached the microphone and said that he didn't know when the tap would be released; it could be released tomorrow – and the applicant has 30 days to record the plan. He continued that, as of the notification of the tap ban, the Municipality is holding all subdivisions for recording until the taps are released. Ms. Hoy said that once the taps are released, they have 30 days to record the plan. Mr. Morrison said that if it's beyond 30 days, they will have to come back to Council to get re-approved, which is the County's rule.

Mr. Yant said he didn't look too deep into this because he saw that the old lot line went through the cul-de-sac and thought it was simply a matter of moving the lot line. It was asked if a maintenance agreement was provided for the private road right-of-way. Ms. Welsh said they did not. Ms. Hoy said the Commission's questions are: utilities, water, and if the applicant is aware that the plan can't be recorded. Mr. Morrison said that if the lot is 300 feet or less, they would have to tap into the sewer. It was noted that it's 277'. Mr. Mitall asked if it's the house or the lot line; Mr. Morrison said it's the lot line. Mr. Morrison said he would prefer to see an access agreement. Mr. Mitall asked if the members would like to have this brought before the Commission in two weeks. Ms. Hoy asked what that would accomplish. Mr. Mitall said the Commission's questions could be answered. Mr. Morrison said he thinks the applicant should be present. Mr. Muzika made a motion to table this matter until the next meeting; Ms. Hoy seconded. All present voted aye. Motion approved.

**Old Business:** None.

**Other Business:**

### **Ordinance Review of Definitions of Adult Massage Parlors and Therapeutic Massage**

Mr. Morrison provided the members with definitions as currently in the Code. Mr. Morrison said this issue came to light due to the recent police action at the massage parlors in Murrsville, a review with code enforcement of the Certificate of Occupancy, and the interpretation of the definitions and uses in relationship to the zoning ordinance. He continued by explaining that the ordinance defines adult business and provides for it in the use table as a conditional use. The use table identifies adult entertainment centers, adult massage, and adult hotels as adult uses. He is not sure why there is a definition for them, and noted that there is a separate definition for therapeutic massage. The difference between the two is the statement relating to specified sexual activities and specified anatomical areas. Therefore, it is assumed that all of the adult businesses that are defined are, in fact, adult businesses in the use category in the ordinance. He explained that when someone comes in for an occupancy permit for a massage parlor, the applicant says it is for therapeutic massage because it's a use by right in the B district; an adult business is a conditional use, which requires certain conditions as outlined in 220.31. The applicant is circumventing the ordinance by defining the use at the time of occupancy. Staff is looking to try to clean this up so the application can be evaluated to ensure that what (the applicant says) is going in.

Mr. Yant said that one of the first things that should be done is to advise the applicant that, as per the requirements of the State of Pennsylvania, anyone who deals in therapeutic massage has to be certified by the State and prove that he or she has had the training and certificate. Mr. Morrison said that everyone who applies for an adult massage parlor also produces that certificate and staff requests proof of that license before a certificate of occupancy is issued. Mr. Yant asked if all masseuses provide the certificate. Mr. Morrison said that all that are identified as part of the application produce the certificate. Mr. Muzika said there are some legitimate therapeutic massage businesses in Murrysville and asked Mr. Morrison if staff talked to any of those businesses for any ideas as to how to move the others out. Mr. Morrison said he has not had any specific conversations with anyone, but could possibly approach them. He said staff's thoughts were to make therapeutic massage an accessory use, since that is typically in conjunction with physical therapy or chiropractor activities, and, if it is an accessory use, it would make it more difficult for the adult massage parlor to meet that requirement. The other option is to make therapeutic massage a conditional use. Staff believes that if an applicant for an adult massage parlor is brought before the Planning Commission and Council to require him/her to meet the conditions of the use, it would probably deter the application because of the requirements under 220.31. Mr. Mitall said that if they provide certificates issued by the State, they won't have trouble standing before Council. Mr. Morrison said in looking at the provisions, there are setback and landscaping requirements, so they can't just move into a storefront.

Mr. Yant said he has no problem assisting staff with this, but that he envisions getting this as an accessory use would be much more difficult than it would be as a permitted use. Mr. Morrison said that, typically, these parlors are showing up in storefronts. Mr. Yant said they're like "pop-ups," and that if it is made more difficult for them, the therapeutic people need to jump through the same hoops. Mr. Mitall asked what would happen if a massage parlor also sells vitamins, CBD oil, etc. and says it also does some massages; therefore, it is an accessory use. Mr. Morrison said the arrests at the two massage parlors in Murrysville took almost three years of undercover work and staff is trying to prevent the reoccurrence of that as best as they can through a zoning ordinance. He said staff thinks that the more public the application process is made, the less of a chance that the applicant will come in, whether it's a conditional use or an accessory use. By just having it as a use by right in the commercial district, there is nothing stopping them from coming into a storefront. Ms. Hoy asked about making it a conditional use. Mr. Morrison said the conditions that would have to be met are those on the last 2-3 pages of the hand-out given to the members, as an adult business is now defined in the ordinance. Mr. Morrison said that he doesn't know why it is defined that way because, as defined, it's illegal. Ms. Hoy asked how the places get approved if the adult massage falls under these many requirements. Mr. Morrison said that may be the third alternative – just to amend that definition out. Mr. Kansler said he was thinking of what can be done in an adult massage parlor, and everything he could think of is illegal, so why does Murrysville even have that definition?

Mr. Mitall said that he recalls that this was a hot topic around the Commonwealth around 10-15 years ago and everyone was passing ordinances regarding this matter. He said he likes Mr. Muzika's idea of contacting some of the local chiropractors and legitimate massage parlors and get input from them. Ms. Hoy noted a "boot camp" she attends, and has been for several

years, for physical training. The woman running the business also does massages and is 100% legitimate. Ms. Hoy said she is not an accessory use except for her business and is concerned that changes to the ordinance may tie the owner's hands and doesn't know what the solution to this is. Mr. Morrison suggested that maybe every massage business be identified as therapeutic and just eliminate the definition of adult massage. Ms. Hoy asked how often the code officer is permitted to inspect the premises without it being harassment. Mr. Morrison said if a complaint is received, the officer will respond. Mr. Muzika said that in the definition of an adult business, 25% of the content has to be adult-oriented, but how is it determined that it may be 24%? The definition is kind of ridiculous because it won't be approved. Mr. Morrison said he doesn't like the definition; staff is just enforcing it. Mr. Yant mentioned adult day care businesses, which is obviously an entirely different use. Mr. Morrison said, in his interpretation, adult day care is not defined as an adult business because it has a separate use listed under the use table. Mr. Morrison said that, under conditional use provisions, there is a statement that the zoning permit can be suspended if charged by appropriate law enforcement authority and it can be revoked if convicted.

Regarding following up on a complaint, Mr. Patrick said if someone just wanted to harass a business person, they could just keep filing complaints and he was struggling with this. Ms. Hoy read from the ordinance which states that no adult [business] use shall be located within 500 feet of any residential use district and mentioned the business on Rt. 22 has a back yard that abuts the neighbor's back yard. Mr. Morrison said that business was approved as therapeutic massage because when applicants come in, they automatically say it's a therapeutic use because it's a permitted use in the business district. Mr. Yant asked if it is possible to take therapeutic massage away from any adult commutation and put specific requirements on for therapeutic massage, including licenses, inspections, etc. He asked if there was any place between a conditional use and a use by right that would enable staff to increase the pressure. Mr. Morrison said it's either a permitted use or a conditional use. Mr. Patrick mentioned Ms. Hoy's trainer and said this would just give that person a bigger headache. He said the Municipality is creating rules to take care of ½ of 1% of the "baddies" and then saddle the rest of the population with the rules. He asked why illegal uses just can't be listed. Mr. Morrison said he thinks that was what the attempt was by defining an adult massage parlor. Ms. Hoy said the problem is that they don't come in and apply for an adult massage parlor but say they are therapeutic massage. She asked how the ordinance can differentiate between the two. Mr. Kansler said there will be the same problem with any type of business, i.e., doctors are a reputable profession; some of them are pill mills. There is no way to separate them; they just have to be investigated and prosecuted.

Mr. Mitall said he understands the problem administration has, but he doesn't know how it can be enforced just through the zoning ordinance. Mr. Patrick said Murrysville is not the only community confronted by this problem and when running into similar situations, staff typically looks at what other communities have drafted to see if there's a lesson to be learned. Mr. Morrison said staff looked at several communities and they are pretty much the same as Murrysville's ordinance. Mr. Spadaro asked how long the business can be kept closed. Mr. Morrison said that, according to the ordinance, the occupancy permit can be suspended once charged and it can be revoked once they plead guilty or are found guilty.

Ms. Hoy said that she believes other communities have this problem and she doesn't know that there is a solution. Mr. Morrison said a lot of communities require them to go through a conditional use process; they don't want to go through a public presentation – they would have to go before Planning Commission, go through a public hearing, develop a site plan and go before Council – and they don't want that process. Mr. Morrison said that an accessory use is an administrative approval. Mr. Yant said he doesn't have a problem with making therapeutic massage a conditional use. Mr. Patrick said he has a problem with that because it makes legitimate people jump through a lot of hoops. Mr. Mitall asked Mr. Morrison to draft some specific language, both as a conditional use and as an accessory use, as well as an amendment to the ordinance, for the Commission members to review.

### **Review of Markosky Final Traffic Study Alternative Selection**

Ms. Welsh advised that Markosky submitted its final traffic study report at the beginning of January, in which was listed 7 alternatives for relieving traffic congestion for the Sardis Road/Franklinton Court/Logan Ferry Road intersection. Staff is now looking for some direction from the Commission as to which alternative(s) they feel is the best for this type of project. Mr. Mitall asked if the whole traffic committee was involved with this and shouldn't that whole committee address this? Mr. Yant said that he believes staff should give the Commission some direction. In looking at the alternatives from a cost perspective, 1 or 2 alternatives may be considered; looking at them from a traffic perspective, others might be considered. He said he is opposed to taking the Heather Drive Bridge out because the emergency response time would be affected. Mr. Mitall said he doesn't know why the Municipality would even consider taking out the Heather Drive Bridge – it's part of the infrastructure and bought into it when the plan was approved. He said that the Municipality needs to bite the bullet and fix the problem intersection, which is the bottleneck – he doesn't care what it costs. He said only part of that problem was in the study. Mr. Yant agreed with Mr. Mitall and said that any of the solutions, except the very expensive one of going across and dumping it off on Old 22, does not change by any great number the automobiles at the intersection; they still stack on Sardis and he has concerns about a safety hazard when the vehicles are stacked beyond the first bend.

Mr. Morrison said this has been ongoing for over a year and the Traffic Impact Committee is essentially made up of the Planning Commission, less two members, who also participated in the process. He asked if all input was provided to the members during that process. Mr. Mitall asked if a similar issue would be put before Council and told that two members were excluded from the process. Mr. Morrison said the Heather Highlands Bridge was looked at as an alternative; it's ultimately Council's decision as to whether they want to do that or not. Alternatives were provided for the intersection. He continued by saying that, through the planning process, that information was exchanged with the Planning Commission, which is essentially the Traffic Impact Committee. Mr. Morrison said this has been going on too long and staff would now like a recommendation from the Planning Commission/Traffic Impact Committee to forward to Council. Mr. Yant said, with all due respect, staff already has the Planning Commission's recommendation. Members said they would go forward and do that, provided that the intersection at Sardis Rd./Old 22 was included. After it went to Council, the second part of the recommendation either never went forward or Council said no. Mr.

Kansler said they have the recommendations and asked if they could ask the other members of the Traffic Committee to attend the next meeting and make a recommendation. Mr. Morrison said that would be fine. Mr. Kansler mentioned the larger problem and also said that when the study was authorized and bid by Allen, it did not include the larger component; the scope given to the Traffic Committee did not include the main intersection. It was the consensus of the group to invite the other members of the Traffic Impact Committee to the next Planning Commission meeting.

### **Legal Executive Session**

Mr. Mitall said he consulted with legal advisors who said that the issue does not meet the definition of an executive session and asked Mr. Morrison to explain the reasoning. Mr. Morrison said when the agenda was put together, staff consulted with the Municipal solicitor and he advised that it was a proper use of an executive session, so it was scheduled that way. If the members have a contrary opinion, it is solely the Commission's discretion as to whether they want to go into executive session. Mr. Kansler said that he talked to the Chairman and expressed that, in his experience, executive sessions would be appropriate if a complaint was filed or if there is an identifiable complaint intended to be filed against the Commission, and he wasn't aware of either of those factors. Therefore, he didn't believe it was appropriate. Ms. Hoy asked if there is an identifiable complaint. Mr. Kansler said the Commission hasn't approved anything that would provide standing for litigation. Attorney Bill Sittig said there is not an identifiable complaint, but there are statements filed by the applicant that they will challenge certain action that has been proposed. Mr. Mitall asked if holding an executive session would give the applicant further ammunition. Mr. Sittig said he is not defending, but is here to say the Municipal solicitor made the determination. As for Mr. Yant's position, Mr. Sittig said you just can't turn off the cameras and meet as a quorum; it's either an agenda item being done in the light of day or as an executive session – there is no other option. Mr. Mitall said he didn't know of anything that was so secretive that it couldn't be debated in public and passed on to Council, which has the ultimate decision-making capability. Mr. Kansler said that if there is any challenge, it won't be on what was talked about here or what was proposed, but the challenge would be on what was ultimately approved as being a condition on the permit. Mr. Sittig said he agrees, but that if it is not an agenda item and the public and applicant have to have the proper Sunshine Act notice, then they are limited. The idea was to move the process along to get some background information on the conditions in order to get to a recommendation. Mr. Mitall asked if the conditions were already sent to the applicant and, if so, what is the need for a potential Sunshine violation? Mr. Sittig said the issue can't be talked about in public because it wasn't advertised, so there is no other venue. Mr. Morrison said the matter was originally identified as an agenda item but then moved and, thus, not properly advertised. Mr. Sittig updated the members and noted that the conditions were sent out, the applicant responded to each of the conditions and Mr. Sittig has analyzed what can be done. Mr. Kansler asked if Mr. Sittig could provide that in memo form. Mr. Sittig said he just took the pdf of the responses, inserted his comments in red, and could send that to the members as privileged. Mr. Patrick asked if the applicant is taking exception to all of the conditions or specific ones. Mr. Sittig said that he couldn't get into details. Mr. Kansler explained that, since this is on the agenda as an executive item and not advertised as being a discussion of the permit, the applicant has a right to be present and counter any

discussions that the Commission or legal counsel would have. Since the applicant didn't have that opportunity, they can claim that their property rights have been infringed upon.

Mr. Yant said that when conditions are sent out, and the applicant responds, the members get that response to review; he asked why they haven't been provided with the response. Mr. Sittig said he can't speak to what has been disseminated. Mr. Sittig said that part of the public record that's in the file – both the land development and conditional use – is the applicant's response to the conditions. After further discussion, Mr. Mitall asked if the members wanted to have an executive session or tell the staff that this is to be discussed in public to get all the legal input. Mr. Kansler said he would prefer to have the response letter to the extent that legal counsel can conclude his analysis and have an agenda item advertised to be discussed at the next meeting. Mr. Yant seconded. All present voted aye.

**Adjournment:**

Mr. Yant: Moved to adjourn at 8:08 p.m.

Mr. Patrick: Seconded

Motion Approved: 6-0