

HALFMOON TOWNSHIP
Planning Commission Meeting
April 20, 2010 7:00 pm

Present: Lorin Nauman, Danelle Del Corso, Bob Eberhart, Larry Fennessey, Jordan Finkelstein
Absent: John Stevens, Joe Tylka, Sebastian DeGregorio (CRPA), Susan Steele (Township Manager)
Others present: Dave Piper, Zoning Officer; Jim May, Planning Director; Mark Maloney, Halfmoon Acres; Melissa Gartner, recording secretary

1. Call To Order

Chair Lorin Nauman called the meeting to order at 7:05 p.m.

2. Citizen Comments

None

3. Approval of April 6, 2010 Minutes

Motion. Mr. Fennessey moved to approve the minutes of April 6, 2010. Ms. Del Corso seconded. Vote: 5-0.

4. Reports

a. Zoning Officer's Report

Mr. Piper was present. He reported there haven't been many permits issued. The lots being built by SSA in Trotter Farms were sold last fall. Mr. Fennessey noted that construction is going in by the donkey barns. Mr. Piper added that they do get a few sheds periodically.

b. Halfmoon/Patton Study

Ms. Del Corso and Mr. Eberhart attended the meeting. Mr. Eberhart reported that most of the meeting centered on trying to predict what the density will be in various tracts across Halfmoon and Patton for the next thirty years and what the current zoning is for each area. Discussion also covered the expectations for future development and the need to come up with a population figure to make a transportation plan. A consultant will be hired to create a traffic plan. Mr. Fennessey and Mr. May clarified that COG is trying to figure out land usage so a consultant can complete a transportation plan.

5. Discussion and Possible Recommendation of RVD Ordinance

Mr. Piper said that he, Ms. Steele, and Mr. May worked with the BOS on revisions of the RVD ordinance.

Mr. May has reviewed and incorporated all of the comments from the joint BOS/PC work meeting and other comments up through April 13.

Mr. Finkelstein asked for clarification on the overlay concept. Mr. Piper explained that the entire property would be rezoned from A-1 to RVD-I, but then an area on the

Spring Creek Watershed side could be rezoned to RVD-III for higher density. This is a "zone within a zone" and RVD-III applies only if the large sewage facility is constructed and used. This will give the township a new zone to work with and amendments can be made as necessary.

Mr. Eberhart asked about the limiting factor: how much wastewater can be pumped up to the ridge. Mr. Maloney stated that initially the mountaintop is where he will put his water, but his long-range plan is to reuse a higher level of the water within the development (watering parks, sending a third pipe into homes, etc). Mr. Piper also said that the township wants the developer to put in a large enough plant so that DEP can ask the developer to expand that plant in the future. The township would not want many individual sand mounds, but rather a single centralized plant. The state will regulate how much water Mr. Maloney can send to a treatment plant. Mr. Maloney said he can't expand the plant unless he has somewhere for the water to go.

Mr. Eberhart asked what does having 150 EDUs tell about the ultimate capacity of the system? Mr. Maloney said that it doesn't tell you anything about the ultimate capacity. He thinks it is the proof of concept, rather than the ultimate capacity that is needed. Also, the cleaner the water going to the mountain, the more water that can be moved to the mountain. Previous consultants for Halfmoon Acres did not give DEP the most accurate model, which is why Mr. Maloney is now working with American Water.

Mr. Eberhart expressed concerns Mr. Piper said Mr. Maloney can't find out if DEP will approve until he submits his module. Mr. Maloney will find out his capacity from DEP after the module is submitted. American Water will do an analysis, then DEP will review the module and approve the permit for whatever they think the system can handle.

Mr. Piper was confident that he could find 150 EDU carrying capacity onsite currently, but the goal is to have a package plant there to treat everything. He clarified again that if Mr. Maloney wants the higher density housing, he would need to include the sewage treatment plant.

Ms. Del Corso summarized that this overlay concept would protect the township.

Mr. Eberhart read from the ordinance that if Mr. Maloney demonstrates the capacity of 150 EDUs, that triggers the RVD-III overlay. This means that DEP would agree that it could handle 150 EDUs. Why does this mean it could handle more?

Mr. Maloney said that additional wording had been added to the ordinance recently. Any additional density above 150 EDUs up to the entire proposed build-out has to be approved by DEP. From p. 11 of the ordinance, Mr. Maloney read "such treatment plant may be phased but shall be designed to accommodate full build-out of the RVD-III, all wastewater facilities shall be planned, designed, operated, and maintained..." His interpretation is that RVD-III is a planning tool, not a guarantee or an entitlement. He would still have to prove that he can accommodate more. Mr. May stated that he added that language to the ordinance.

Mr. Piper said that this should protect the township against an automatic density increase. If Mr. Maloney can't prove to DEP that the land will handle what his proposed project is, he's back to where he is now. He'd just have more rigorous requirements for streets, sidewalks, etc. Mr. Maloney said that RVD-I has more

financial responsibilities than A-1 and only has an increase of .5 units per acre. Staying at RVD-I may not be financially supportable.

Mr. Piper said that the most important issue is to get the mechanism in place to submit the planning module. Mr. Maloney said he might create a phased approach. Mr. May asked if Mr. Maloney was required to submit a master plan. Mr. Maloney said that his master plan would be for the EDUs allowed by DEP, but could also be in smaller phases up to the allowed EDU amount.

Mr. Piper said that once DEP makes its decision on the planning module, then Mr. Maloney and the PC would have a better sense of what needs to happen to the RVD ordinance. He said the

Mr. Maloney said he would like to make some changes to the RVD ordinance to make it more streamlined or functional. He would like his land-use attorney to look over the ordinance. Mr. May said he thought the ordinance was at the point where Mr. Maloney was ready to move ahead, but Mr. Maloney wanted to wait until the end to recommend changes. Mr. Piper said the biggest hurdle won't be the township or the ordinance; it will be for Mr. Maloney's engineers show to DEP whatever he proposes to discharge on the mountain top and convince them. His recommendation was to get the ordinance in place and submit the module, not muddy the waters with changes or amendments at this time. Mr. Maloney pushed to make the RVD-I stand alone without being burdened by the requirements intended for RVD-III.

Ms. Del Corso asked if the PC could revisit the ordinance after DEP makes its decision. Mr. Maloney said he can't submit to DEP until the ordinance is done. Mr. Piper said that the Board can come back and revisit the ordinance at any time. Changes must be approved by the PC and the BOS. Creating a new zone is much harder than changing a zone. Mr. Piper said not to get sidetracked by hypothetical details. Mr. Maloney asked to attach a chart separating the RVD-I and RVD-III responsibilities, to protect future developers from creating a hodge-podge of projects. Again, Mr. Piper said it's more important to get the ordinance passed and Mr. May recommended Mr. Maloney should not undo what's been done up to this point.

Mr. Maloney continued to ask for small changes and "tweaks" to the ordinance. Mr. Piper said that if time was of the essence, he recommended not making any changes to the ordinance at this time and let it get adopted.

Mr. Nauman said that the change Mr. Maloney wants is a division of A-1 and RVD-III. If the RVD-III gets adopted, he's not stuck with the RVD-III requirements without the higher density. If RVD-I is the highest density the site can handle, then Mr. Maloney doesn't want the RVD-I to be burdened with the infrastructures designed for RVD-III. Mr. Maloney asked for a separation between RVD-I and RVD-III before the ordinance is passed. Mr. Nauman reviewed Mr. Maloney's previous plans on phasing from RVD-I out to RVD-II and then RVD-III. Mr. Maloney said that might change. He suggested reviewing the split-out chart that he brought along as a change to the ordinance. Mr. Nauman said that if the township doesn't zone for RVD-III, then Mr. Maloney can't even submit a plan for it. He then asked about submitting an application for the sewage module with the base density of 400 units to DEP.

Mr. Fennessey said that DEP has previously said they want the full build-out for the zoning. Mr. Nauman questioned what the difference would be if Mr. Maloney used his base density instead of an abstract number. Mr. Piper suggested that Mr. Maloney used his maximum build-out. Mr. Fennessey agreed and said it would not be prudent to reopen a docket on a permit, because in the future DEP could require additions to not just new development but retrofit older developments in the project as well. He suggested to Mr. Maloney to accept the zoning, do what Mr. Piper is saying, and submit the module to find out what DEP's decision will be.

Mr. Maloney wanted to discuss the financial feasibility between RVD-I and RVD-III and spent some time explaining why RVD-I should not be burdened with open space contribution offsite, work force housing, required commercial build-out schedules. Mr. May said that the density was there from the beginning, and changes at this point seem to be a big detour and not beneficial to the township. He and Mr. Piper believe that the BOS would be open to changing the ordinance in the future if Mr. Maloney did not get the RVD-III approval. Mr. Maloney continued to ask for refinements to the ordinance.

Ms. Del Corso summarized that the PC seemed to be ready stop debating this tonight and if Mr. Maloney had changes, he should get them to Mr. Piper. Mr. Maloney repeated advice he'd received in the past to wait until the end to make changes.

Mr. Piper told Mr. Maloney that this seems like a little train running down the track, getting where it needs to go – why pull off one of the wheels now? Mr. Maloney repeated that he just wanted some refinements to the ordinance. Mr. Piper said that if Mr. Maloney has changes he wants to include in the ordinance, then write them up with justification and get them to Mr. Piper. Mr. Piper will then distribute them to the PC and the BOS. However, incorporating these changes means the ordinance will go back to PC, the BOS, Mr. May, the attorneys, etc. This will cause a delay in passing the ordinance. Mr. Maloney said again that he had received advice last year to wait until the right time to make changes. Mr. Maloney then handed out a chart showing which concepts should be required for A-1, RVD-I, and RVD-III.

Ms. Del Corso suggested members take this chart home and review it. Mr. Maloney continued to discuss his chart and the connection between low density and low profit. Mr. Nauman said again, the financial issue is Mr. Maloney's, not the township's. The PC has an ordinance that members have worked really hard on that will get the density Mr. Maloney previously said would work. Mr. Maloney continued to discuss profitability for developers.

Mr. May said that Mr. Maloney has a month to put together a master plan for this zoning. He thought getting to this point that the PC and the BOS were comfortable with the ordinance would get Mr. Maloney what he needed. Ms. Del Corso said that until Mr. Maloney gets DEP's decision, nothing is final with the ordinance – why not wait until after DEP responds? Mr. Maloney said again that the ordinance is good, and it only needs to be tweaked to make it functional right from the start.

Mr. Fennessey stated that the members have said the same things for the past forty-five minutes and asked for the next step. Mr. Nauman reviewed Mr. Maloney's chart and made corrections. Mr. Maloney questioned whether traffic studies,

financial studies, and other responsibilities also fall under A-1. His concern, again, was that RVD-I was overly burdened with responsibilities without the financial profit possibility of RVD-III. He would like to keep the ordinance as is, and include an accurate version of his chart.

Mr. Maloney said that the base density is 1.0 and the maximum density is 1.5 in RVD-I. He then said according to the ordinance, the fee-in-lieu and open space (offsite) are required in RVD-I once the project exceeds its maximum density of 1.5. He'd prefer that the fee-in-lieu on RVD-III so it would be more profitable.

Mr. May stated again that if Mr. Maloney wants changes at this point, he needs to put these changes in writing and get them to Mr. Piper, rather than continue to discuss them this evening. Mr. Piper said again, the toughest challenge is to get the new zone passed and perhaps Mr. Maloney doesn't realize this.

Mr. Nauman strongly suggested that Mr. Maloney should not make any further changes because the BOS felt comfortable with the ordinance after the April 8 work session. If Mr. Maloney persists in changing this, it might alienate the BOS. Mr. Maloney said he held off on making changes for two years. Ms. Del Corso corrected him and said that some of this has happened in the last month, not the last two years.

Mr. Nauman cautioned Mr. Maloney again that the BOS seemed comfortable with the ordinance last Thursday; let the changes happen in the future. Mr. Maloney said that if he can't get the amendments, then RVD-I may not be feasible and then he should have done A-1 but it would be too late. Mr. Piper recommended again not changing the ordinance.

Mr. Maloney asked if he set aside any other changes, what is the problem with bumping up the base density to 1.5? Mr. Eberhart said that the PC already recommended that change. The BOS has not commented on this yet. Discussion continued how changing the base density to 1.5 affected the BOS perception of the RVD ordinance. Mr. Piper recommended again making no changes at this time.

Ms. Del Corso and Mr. Nauman asked Mr. Maloney again if he wants his lawyer to review this, the ordinance can wait until the next meeting. Mr. Maloney said that he didn't want to hold up the May 13 public hearing, but Mr. Piper said it would be one or the other.

Mr. Maloney decided to take the ordinance and let his attorney make redline changes. He repeated that he was told two years ago to wait until the last minute to do a final review. Mr. Nauman clarified what Mr. Brooks meant two years ago was not to drop a bombshell at the last minute.

Mr. Fennessey recommended not passing the ordinance this evening because the PC has not had the chance to review the changes from last Thursday.

Mr. Eberhart asked for clarification on what Mr. Maloney would submit. Mr. Piper said that Mr. Maloney can submit a tentative master plan with full build-out for the RVD-III overlay. The "pass key" is DEP approval of the sewage plant and if DEP does not approve the sewage plant, then there is no access to RVD-III. Mr. May said it would make sense to submit for RVD-III, and if it didn't pass, then ratchet down to RVD-I with a new plan. Mr. Maloney could submit an RVD-I plan or an RVD-III plan, but not both concurrently. Discussion continued on hypothetical RVD-I/RVD-III configurations for this project.

Ms. Del Corso asked for some conclusion to this. Mr. Maloney stated that the PC could pass the ordinance as is and he'll deal with it after the fact. If he gets an RVD-I situation that is much less attractive, he'll regret not submitting this as an A-1 plan. He continued to talk about how RVD-I can't afford all of the "bells and whistles" that RVD-III can.

When Mr. Nauman asked for a motion, Mr. Finkelstein said that Mr. Maloney doesn't want it passed as is because his attorneys are telling him to make changes. Mr. Nauman said he read the ordinance and changes from last Thursday's meeting and thought it was a workable document.

Motion. Ms. Del Corso moved to accept the RVD ordinance as is. Mr. Nauman seconded. Vote: 2-3. (Del Corso, Nauman in favor; Eberhart, Finkelstein, Fennessey against)

Mr. Eberhart said he is not comfortable approving the ordinance until the wastewater questions are resolved. Ms. Del Corso questioned that since the PC did not pass the ordinance, what would the next step be? Mr. Piper said it was a dead issue.

Mr. May asked if the recommendation would still go forward to the BOS. Mr. Piper said no since there is no recommendation.

Mr. Nauman said if Mr. Maloney wants to bring his redline version to the next meeting, the PC will discuss it. He will share tonight's discussion with the BOS and the resulting lack of consensus. Mr. Maloney asked how this will affect the May 13 public hearing. Mr. Nauman clarified that there won't be a public hearing on May 13 because the BOS won't have an ordinance to present.

6. Adjournment

Motion. Mr. Fennessey moved to adjourn. Mr. Finkelstein seconded. Vote: 5-0.

The meeting was adjourned at 8:55 p.m.

Respectfully submitted,
Melissa Gartner
Recording Secretary