

August 20, 2010

Mayor's Quarterly Newsletter

Since I write a bit less often than our Council President, I have a bit more to report since my last newsletter so I apologize for the length of this newsletter. Please do not hesitate to contact me (mayor@indianlakepa.us) if there are any other issues not addressed for which you have concerns.

POLICE BOAT LAUNCHED

As mentioned previously, Borough Council authorized the purchase of a new Police Boat to help ensure that our lake remains safe for all. After soliciting bids from dealers of over forty boats, we were surprised to have only received one proposal. Fortunately, it was one of the boats that we were especially interested in and the proposal was within our budget. We purchased a 2002 Trophy Center Console boat with a new outboard motor. We outfitted the boat with the lights, siren and searchlight necessary to convert it to Police use. Thanks to Shawn Hillegas for helping me fabricate the mounts necessary to install this equipment. Thanks also to St. Clair Resort Development who graciously provided more convenient dock space at its commercial docking facility at the base of the lodge for \$1.00 for the season. While our former location was also provided free of charge, it was far removed from the Borough office, was difficult to get to, and would have exposed the boat (which remains largely uncovered) to falling debris from overhanging trees.

By now it is hoped that all have noted the presence of the Police on the lake as the new boat is hard to miss. If nothing else, we hope that the presence and visibility of the new Police Boat is a reminder to operate safely. We want all to enjoy the lake and do so safely.

LET'S ALL WORK TOGETHER TO KEEP OUR ROADS SAFE

It is not uncommon to forget yourself when driving through the Borough. We truly live in a beautiful environment and taking in the scenery can be distracting. Unfortunately, while distracted by the scenery, some may tend to travel faster than our speed limits permit. With our narrow roads and blind hills and corners, driving in excess of the posted speeds can create a dangerous situation. In the summer months especially, cars are not the only form of traffic you might encounter. Motorcycles, bicyclers and walkers/joggers are found in abundance. Keeping your speed at or below the speed limit will help to ensure that we avoid an unfortunate accident on our roads.

For those that enjoy bicycling and walking, you are encouraged to use the Borough's hiking and biking trail. Not only will you be able to enjoy what is truly a scenic environment, but it will relieve congestion on our roadways and diminish the potential for an accident. While I don't want to discourage use of the roads by bicyclist and walkers/hikers, I do hope to encourage more use of the McIntyre hiking and biking trail that was dedicated last year. There is plenty of

parking at the trail heads and since motorized vehicles are banned from the trail, serenity is guaranteed.

CHANGE IN POLICY REGARDING GOLF CARTS AND OTHER UNREGISTERED VEHICLES ON ROADS

Since we are on the subject of road safety, a recent complaint forced me to evaluate past Borough Policy pertaining to the operation of Golf Course maintenance vehicles on the roads of Indian Lake. Fundamentally, driving an unregistered vehicle on any highway is prohibited. There are, however, a substantial number of exceptions including exceptions pertaining to golf carts as well as golf course maintenance vehicles. Specifically, golf carts are permissible for transportation of persons across a public highway during any game of golf. Additionally, any vehicle used for golf course or resort maintenance is permissible if the distance traveled is less than one mile and the land on both sides of the road is owned by the golf course or resort.

Consistent with the express language of the vehicle code, the following change to our Borough Policy regarding golf cart and golf course maintenance vehicles and other unregistered vehicles is revised as follows:

1. The exception pertaining to golf course/resort maintenance vehicles is applicable only where the golf course/resort owns the land adjacent to the roadway on both sides. To my knowledge, such a condition exists only on Palmer drive, an extremely limited portion of Airpark drive, and the portion of South Shore that bisects the large parking lot near the Lodge. As a result, I have communicated with both the public and private golf course's to advise them that as a result of the inquiry generated by incident referenced above, golf course maintenance vehicles are effectively precluded from use the Borough roadways.
2. With respect to the exception pertaining to golf carts, it is notable that the provision itself does not clearly define what constitutes "crossing [a] public highway." I could find no case where the Pennsylvania courts have been called on to define what is considered "crossing" in the context of this provision. I believe it reasonable to interpret this provision as permitting a generally perpendicular crossing only. I do not believe that this conflicts with past understanding or past enforcement by the Indian Lake Police. As a result, you may not travel down the road to get to an access path as a means of obtaining access to the golf course.
3. Some have questioned whether use of the berm is permissible by unregistered vehicles such as ATVs, off-road motorcycles and snowmobiles. I have researched this issue as well. As noted above, an unregistered vehicle cannot be operated on a public highway. While some ATV's and snowmobiles are registered by DCNR, they are not registered by PennDOT. The term "Highway" is defined as follows:

The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

By contrast, the term “Roadway” is defined as follows:

That portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the sidewalk, berm or shoulder even though such sidewalk, berm or shoulder is used by pedalcycles.

Based on these definitions, it is clear that the paved road or “Roadway” is only a subset of what constitutes the “Highway.” The “Highway” therefore includes the entire improved and maintained area of the road, which includes the berm, but does not include the unimproved area beyond the berm that is owned by the Borough. As such, I have concluded that unregistered vehicles may not use the paved roadway or berm area. To the extent that an unregistered vehicle can travel beside the “Highway” within the Borough’s property (generally within 25 feet of the center of the road) without being on the improved berm area or trespassing on the adjoining private property, this would appear to be permissible.

I have informed the police department of this determination and have instructed them to enforce the vehicle code as it pertains to an unregistered vehicle seen on the publicly maintained “Highways” of the Borough. A violation is a summary offense, the penalty for which is a monetary fine. It is truly unfortunate that the underlying issue could not have been resolved in another way. I apologize if this creates an inconvenience to anyone. If you have any questions, please contact me or a member of the police department for clarification as it pertains to your specific situation.

ARBITRATION OF POLICE CONTRACT CONTINUES

As some may know, the officers of the Indian Lake Police department elected to organize with the Fraternal Order of Police. Contract negotiations have proceeded to binding arbitration and that process continues. Solicitor Dan Rullo has done an excellent job as usual in representing the Borough’s interest in this matter. We expect to get the decision of the independent arbitrator shortly. At that point, the arbitration process will be concluded if either the Borough or the FOP arbitrator concurs in full with the independent arbitrator’s decision. Once the arbitration process is concluded, we will have a contract to operate under and will then be able to assess the financial implications moving forward. I will provide more information as it becomes available.

LITIGATION CONTINUES DESPITE RULINGS FAVORABLE TO BOROUGH

While not figured prominently in much of the Borough correspondence lately, I am happy to report that all of the litigation pending before the Court in Somerset against the Borough related to the Lodge development has been concluded successfully on behalf of the Borough. Those who filed this litigation have unfortunately decided to continue their efforts by appealing the various decisions of Judge Klementik to the PA Commonwealth Court.

The most recent opinion handed down by Judge Klementik addressed the Borough's enactment of Zoning Ordinance 144. While the Court ruled earlier in a one paragraph order that Ordinance 144 was a valid enactment, the recent opinion in support of the order provided a detailed and instructive analysis of the Borough's actions and concluded that the challenger's arguments against adoption of Ordinance 144 were without merit.

Unfortunately, the failure to prevail in this or any of the many other pieces of litigation has done little to discourage Mr. Lyons, Mr. Rohric and Mrs. Takacs from continuing litigation. Mr. Ging, attorney for Lyons and Takacs, was recently quoted as saying that he was encouraged by the fact that they now have a friend at the helm of Council and will therefore continue litigation apparently in the hopes that Council will accede to their demands. True to this assertion, four cases have been appealed to the Commonwealth Court. Additionally, Mr. Lyons and Mrs. Takacs have filed a suit challenging the DEP approval of the additional docks installed at the base of the lodge. Still another suit has been filed by Mr. Rohric's attorney against the Somerset Planning Commission challenging its approval of a modification to the Lodge subdivision plan. Yet another challenge has been lodged with DEP challenging its approval of the erosion and sediment control plans associated with the development.

With no apparent end to litigation and a singular focus on the Lodge development, it is becoming more apparent that these individuals have a personal or business interest in continuing these suits. It was reported that Lyons/Takacs have invested well over \$100K in their efforts thus far. The cost to the taxpayers is not quite that much but it is not far behind. Unfortunately, the taxpayers will continue to pay a heavy price as this incessant litigation continues with not only the cost of direct defense in the appeals process, but in lost tax revenues as development is delayed. The low density plan forwarded by St. Clair Resort Development should be celebrated, not challenged. The series of challenges to St. Clair have not only delayed the progression of that development, but have had a chilling effect on the progression of other development activity within the Borough. In a recent ruling associated with one of the many challenges, Judge Klementik summarized the litany of attacks against Mr. St. Clair and concluded that the apparent purpose of these attacks was delay. The Judge further characterized the complaint in that particular matter as frivolous.

To say that the amount and nature of the litigation thrust upon us has proceeded beyond the point of ridiculousness would be an understatement. At its next meeting on September 22, 2010, I will ask the Borough Council to approve a resolution that 1) denounces the litigation efforts of these individuals as being contrary to the interests of the Borough and 2) affirms that the success of the Lodge development as well as other planned developments of Pine Cove (the old Marina), a 3 acre portion of the Musser property, and the interior of the golf course are in the Borough's best interest. I encourage all to communicate support for this resolution to the Borough Council. Maybe with a sufficient expression of support, those behind these suits will place the interest of the community ahead of their personal or business interest and cease this wasteful and frivolous litigation. You can communicate with Council via e-mail at: council@indianlakepa.us.

PLANNING PROPOSES REVISIONS TO PREVIOUSLY PUBLISHED ZONING ORDINANCE

Last November, the Borough Council authorized publication of a new zoning ordinance, which was to be Ordinance 155. Ordinance 155 was developed over a nearly 1 year period by a rather diverse group of dedicated folks. Because the new Council failed to take action within the 90 day period following the public hearing, the ordinance proposal failed by operation of law despite any notable objection from the community. The Council then directed the Planning Commission to perform a substantive review and make a proposal of its own. After months of little action, and due to the insistence of Mr. Cornez, Planning Commission was given a timetable to complete its work. Although a little late, the Planning Commission recently published its recommendation. No one knows better than I how much effort is involved in drafting an ordinance as complex as a zoning ordinance. While I commend Planning for their effort, my initial review revealed substantial problems with the Planning proposal. While there are a number of helpful clarifications, the proposal also contains a number of significant changes that will have negative consequences that make the ordinance harder to understand and enforce, and which will expose the Borough to additional litigation. For these reasons, and because I was only given a short time to review the proposal, I advised Council recently that I could not support the proposal and would veto the Ordinance proposal if passed. Concluding that time was not of the essence, Council requested that I confer with members of the former Zoning Committee and prepare a formal list of objections for Council's review. I anticipate that this process should be complete by the end of the year. Council agreed to take the issue up again next summer. For the time being, we will have to continue to operate under Ordinance 144.

Thanks for reading and enjoy the rest of your summer!

Michael Miscoe
Mayor
Indian Lake Borough