

**EAST MANCHESTER TOWNSHIP
BOARD OF SUPERVISORS
FEBRUARY 12, 2008**

Present: Chairman Steven H. Gross, Jr., Vice-Chair David L. Naylor, Supervisor Barry E. Rudisill, Township Secretary/Treasurer/Manager Terry R. Gingerich, Engineer Byron Trout, Attorney Andrew Miller, and Zoning & Codes Enforcement Officer Katrina Rife

At a regular meeting held at the township building, Steven H. Gross, Jr. called the meeting to order at 7:00pm.

The Pledge of Allegiance was given to the Flag of the United States of America.

Steven H. Gross, Jr. stated that the Board has not met since the January 8th meeting.

The minutes from the reorganization meeting of 1/07/08 were approved with a motion from Barry E. Rudisill upon the addition of Troy Rentzel's name as the Vacancy Board Chairman, seconded by Steven H. Gross, Jr. and carried unanimously.

The minutes from 1/08/08 were approved with a motion from Steven H. Gross, Jr. seconded by David L. Naylor and carried unanimously.

Public Comments -none

Land Development/Subdivision plans

Asbury Pines – North Westminster Court final

Chris Owens of Stahlman & Stahlman representing Asbury Pines LLC presented plan #A07003 dated October 19, 2007 proposing phase 2 development of Asbury Pines for 15 lots across from Westminster Court - Asbury Point. Central water and sewer will be provided by Asbury Point. This plan is the final plan and not much different from the preliminary plans presented a few months ago except that the waiver requests for widening and curbing of Codorus Furnace Road are no longer being requested. Planning Commission requested notes describing restrictions relative to the well easement areas, which have been added.

Chris - With the curbing and widening along Codorus Furnace Road we are still waiting on Penn DOT approval for HOP. Street addresses have been added; other things are planning modules approval and HOA documents (asking Attorney Andrew Miller for input)

Attorney Andrew Miller confirmed the HOA document amendment was reviewed and acceptable. The original HOA declarations reserved the right to add phase 2 to it. Katrina acknowledged receipt of Attorney Andrew Miller's January 22nd letter confirming that.

Chris - Surety would be the other thing.

Barry E. Rudisill – well back up here a minute, (looking at the Planning Commission report), the street addresses – they have been taken care of, the planning module is still an open item, the HOA documents have been reviewed (Attorney Andrew Miller confirmed and further explained the amendment). So you just have the planning module, the HOP permit for the improvements on Codorus Furnace Road, and surety – those are the outstanding items?

Chris – yes

Steven H. Gross, Jr. – why don't you have the Highway Occupancy Permit yet?

Chris - After your decision to widen the road, we had applied for a waiver and we didn't get started. As soon as you told us we were going to have to do that, we submitted the

application to PennDOT and they are reviewing it so we just have to wait for them.

Terry R. Gingerich asked if we have anything from DEP in reference to the water system – that you can add phase 2 onto the water system.

Chris – yeah, we got that letter a while ago during the preliminary plan.

Katrina Rife – It may be in the preliminary file, I do not have it here in the final file.

Chris – that was one of the comments first time with the preliminary.

David L. Naylor – do we know the answer to the question if trees can be planted in the well-restricted area?

Chris – yeah, they can be it is listed right on the plan. It doesn't say trees, but it tells you what you can't put in the easement - anything that can damage the water supply

Steven H. Gross, Jr. – It says here that it was to be emailed to Katrina- do you have that?

Katrina Rife – no email

Chris – I faxed it.

Katrina Rife – I will have to look for a fax.

Bob Nace commented on the well easements restrictions and the building envelope, what can you do in that easement, the one lot has the easement that when you step out the backdoor the easement is there. He is concerned for the future property owners and their use or lack of use of the property.

2 lots have easement within building envelope

Chris – You didn't get to read the comment I added after your comment – we took the DEP restrictions which is listed on the plan specific to every lot where anything that can damage the water supply or decks you can even build footers for decks just not anything with chemicals that can damage the water supply. The note from DEP says that if you do it has to be above ground and contained. It is note #18 a, b, c, & d that comes right off the DEP well restriction code. That will also be on their deeds. It is the same well that Mr. Hoke had restrictions drawn up for.

Barry E. Rudisill – It appears to me that we have 3 open items and that's what he confirmed Bob Nace- commenting on the public improvements on the road that was talked about at the Planning Commission meeting – with the problems we have been having getting public improvements finished, did you want to address that or not.

Steven H. Gross, Jr. – they don't have their HOP yet for those improvements and I'm assuming that HOP is going to require the improvements

Barry E. Rudisill – they couldn't come forward with the project till they have the HOP, you do have to do the improvements along Codorus Furnace Road

Bob Nace – it is the timeline that we've been running into with some of the other developments, a timeline of when the improvements will have to be done. It is something that we have to start looking at.

Terry R. Gingerich – the HOP only affects one lot that comes out onto Codorus Furnace Rd

Chris – it is the whole frontage of the property – the whole frontage had to be widened with curbing – lot 15, the basin lot, and lot 1 also fronts on Codorus Furnace Road

Byron Trout – they have 2 lots that they have to do the curbs and sidewalk which is part of their HOP, they have 1 new access onto the state road (Codorus Furnace) for 1 residential lot the other lot is the storm water management lot

Barry E. Rudisill – are you saying the total improvements on Codorus Furnace Road would have to be complete according to the HOP or just the two lots that front.

Byron Trout – everything, those two lots are the total improvements on Codorus Furnace Road, we asked them as part of the storm water management plan to make some changes on rip rap and inlets, which they complied with. They will have to bond those improvements.

Steven H. Gross, Jr. – we have a lot of improvements in the township that are bonded and that's Bob's issue

Barry E. Rudisill – we have them bonded and they can post surety for it and in some cases can take their good old time putting the public improvements there and in some cases we've had a safety hazard in the meantime. I think his concerns are duly noted.

Can we require the improvements to be done at a certain time during the development of the project?

Attorney Andrew Miller - if they are bonded there isn't really a lot you can do to require them to be done on a certain timeframe. Building permits can potentially be withheld till the roads are passable and mud-free condition. Beyond that it's hard to do too much more. One of the things you may want to consider in the future if you want to address this is asking the developer to enter into a developer's agreement that would set out some kind of a timeline that they would comply with. How hard that would be to get developer's to enter into, I think you'd have to see how that goes, but it would at least dialog to discuss what the timeline is going to be and if you can get the developer's agreement signed, it's probably enforceable.

Barry E. Rudisill asked how other municipalities handle this.

Byron Trout – bonded. The only other thing I can offer is that 1 lot storm water management is an integral part of the HOP improvements. I think they are going to do all storm water and improvements all in one shot. Some pressure can be put in that way - they have to be done towards front of project.

Chris asked if there were any problems with phase 1, it is the same developer as phase 1

Bob Nace – it is just something that is starting to happen and need to be looked at and gain control of

David L. Naylor – appreciate the risk to get here tonight (weather conditions) however I want to caution the Board that if we continue to discuss this plan and even vote on it, it has 3 outstanding items and it goes against our policy

Steven H. Gross, Jr. – so do you want to make a motion or ?

Chris – the PennDOT permit counts as one of these open items?

David L. Naylor – yes, I see 3 out of 5 are open, so I make a motion that we do not act on this plan tonight until the open items are completed

Barry E. Rudisill – essentially have to table it

David L. Naylor – I make a motion to TABLE

Barry E. Rudisill seconded

Attorney Andrew Miller asked Katrina Rife if they have submitted an extension request for the 90-day approval time.

Katrina Rife – no and the submission date was 10-30-07

Attorney Andrew Miller – so will you (Chris) grant an extension, at least a 30-day extension so those open items can be addressed and brought back in front of the Board at the March meeting.

Chris-sure, if we don't hear from Penn DOT as long as we come with a surety check then that

Barry E. Rudisill –all we need is one more item

Chris – that's fine

Steven H. Gross, Jr. – we have a policy that if you have more than 2 outstanding items then we've been tabling them. We were getting 7 and 8 items.

Steven H. Gross, Jr. –have a motion on floor and second any further discussion – Motion carried unanimously.

J G Leasing reverse subdivision – 70/84-90 Zions View Road

Blaine Markle of James Holley & Associates presented a plan for a reverse subdivision drawing # L050909 rev 1/11/08 to join parcels 17 and 6 at 70/84-90 Zions View Road. There are requests for waivers of SALDO 8.6.2 street design and 8.7 curbs and sidewalks.

After discussion and deliberation with consideration of prior comments and recommendations from township staff, Planning Commission, Township Engineer, York County Planning Commission, Sewer Authority, and public as well as applicant and/or applicant's representatives, a motion by David L. Naylor to approve the plan and to grant the 2 waiver requests which apply only to this plan and are not applicable to any subsequent plans for these parcels. Barry E. Rudisill seconded motion, which carried unanimously.

KS Tooling final land development

Andrew Miller of LSC Design requested via email to Katrina Rife that the Land Development plan be tabled due to ongoing coordination with the Township's engineer with regard to outstanding comments and to be placed on the March Board of Supervisors meeting agenda. A waiver of the approval time has been sing Motion to TABLE by David L. Naylor, seconded by Steven H. Gross, Jr. and carried unanimously.

Special Requests – none

Solicitor's Report – Attorney Andrew Miller

A pair of tax assessment appeals are going on and becoming active again, the school district, which obviously has much more money at stake, is taking the lead on these. Will keep informed but main thing is that it is moving forward.

Steven H. Gross, Jr. has learned that one of these properties has inquired of putting up another building. Question on LERTA participation. Discussion on program.

We've had this discussion before and I'm not opposed to the LERTA program and I think it's a worthwhile program and I would hate to deter any new people from using it but on the same token I think they are taking advantage of the situation and they are taking advantage of the township, school district, and community. It defeats the purpose of even having it. If you were in LERTA and didn't have a problem with what your assessment was but all of a sudden after enjoying LERTA for 10 years now you have a problem with what you assessment is. I really think that's wrong and it's taking advantage of the system and I think we need some way to correct that. I think the diplomatic means were tried with these people in particular with both the school district and the township jointly and it didn't go anywhere and now becoming active again, I would really look into doing something.

Attorney Andrew Miller – I can take a look at LERTA and give you an idea next month of what some of your options may be with respect to it. As far as, I don't know where the assessment appeal will go on that one. The KWZ, I think was kind of a different one, I don't think there was a negotiation with respect to that one, I think that one was just sitting around for some time and the county picked it up to move it forward. Motor Technology, you're right, there were attempts to negotiate and compromise on the assessed value of the property, which Motor Tech has so far rejected.

Steven H. Gross, Jr. – what made Motor Technology start to move again? Did the county move them or is Motor Tech moving them?

Attorney Andrew Miller – I'm not sure, I got the letter from Greg Gettle on behalf of the school district and it was in response to, and I'm still not sure to where this came from, because I don't think Greg Gettle was sure either, but that attorney for Motor Technology compiled a list of what they had paid in taxes based on their assessment over the last 3 years, which I'm not sure what the value of that was, anybody can calculate that knowing what their assessment and the millage rates are. It basically showed how much they saved in taxes over the last few years, so I'm not sure what the purpose of that was in the first place. I think the county is pushing this one forward and the school district.

Steven H. Gross, Jr. – Are you going to be at this pre-trial conference on February 20

Attorney Andrew Miller – I wasn't planning on attending because if I go to that then I'm going to be part of those proceedings and the judge is probably want me involved in trying that case and especially the KWZ one the county is taking the lead on. The township gets the benefit of that either way and at this point there isn't even an agreement and the county is bearing all that cost.

Terry R. Gingerich asked of the LERTA program would pertain to an accessory building.

Attorney Andrew Miller – I'll have to check on the detail of what they are proposing to build. I think it does apply and I can remember if there's a difference between new construction and renovation. The county will pick up the improvement and reassess.

Steven H. Gross, Jr. – Andy, you stated earlier that you didn't plan to be at the hearing. I know it's been maybe two years since we've discussed this but I believe the Board members at that time went along with this – we want a very strong message that we don't have everyone who is in LERTA appealing. So I'm going to say that I think you should be there. I don't know what you do there, but I do want that message to get out loud and clear so that everyone else hears it so whether we prevail or not, so that everyone else on LERTA we don't have a whole change reaction. I really think that it's disreputable to enjoy a program and then have a real problem with it after it happens.

David L. Naylor asked if Gettle would be there representing the school district.

Attorney Andrew Miller doubts if he would be because the county is taking the lead and doing a follow through with multiple appeals to clear up files according to Bill Haas, attorney for county. The one that's going to pre-trial is KWZ. A pre-trial conference is to move the case forward – it is not a hearing.

After continued discussion it was agreed on township's position of sending strong message, but not in township's advantage to be at the pre-trial.

Attorney Andrew Miller will convey that to Bill Haas so that he is clear on this. It is as much a countywide problem as a township problem.

Barry E. Rudisill -as long as Andy is aware of timing that we do not miss our opportunity to make point – as long as that happens that serves our purpose

David L. Naylor – I think what Motor Tech did was in poor form and I don't want to see one bad apple spoil the whole barrel but I would be interested in knowing our options going forward with LERTA whether we can carve out a section of that designated area and not make that LERTA.

Attorney Andrew Miller – I think the answer to that is that you most definitely can, in fact this township is a little bit unique in that you've designate all Industrial area as LERTA area and typically a municipality designates specific tracts are LERTA tracts that they identified as they want them developed and they are willing to give them significant breaks in order for that to happen. I think it is a little bit unusual to have that big of a LERTA area as you have and if you want to re-think that, it is well within your discretion to do that.

David L. Naylor – I would rather have Andy put his emphasis on research the LERTA and educating us on what we can and cannot do there or what our options are.

Attorney Andrew Miller –I think the assessment appeals themselves are going to be in front of a judge and that's really going to come down to appraisal experts dueling over the property value or the proper way to appraise the property, the judge really can't consider whether the property was in LERTA before or what kind of tax breaks they got in the past and because it is in front of a judge and the judge is going to be pretty strict and not going to let those kind of things in, those appeals are pretty cut and dry typically

Barry E. Rudisill –because we approve the LERTA program on an annual basis, relatively new if we have a property in LERTA program for 5 years and discontinue or do not renew the program does the property go to full assessment or are they grandfathered into the 10 year program?

Attorney Andrew Miller –I think they are grand fathered in, I don't think you can take them out. Although since I don't have the statute in front of me but fairly certain that would be the case.

Barry E. Rudisill –the KS Tooling addition is larger than existing building, have they completed the LERTA and gone through the 10 year cycle. So this would be a reassessment then and would hopefully fall under the LERTA program because it would again be more taxes than the original property as far as the structure is concerned.

Attorney Andrew Miller –if they properly apply and do it in the correct time frames then that addition is potentially eligible for those kinds of tax breaks

Barry E. Rudisill – I know when we met with Motor Tech they were very adamant about their position and I can understand they are going to fight tooth and nail to retain and stay where they are.

Attorney Andrew Miller – Yes, and it's really not an expensive thing to litigate for them and so they roll the dice and if they lose their assessment is not going to go up from what it is – they really only have upside in appealing it and pressing forward.

Steven H. Gross, Jr. questioned the surety and surety reductions memo regarding releasing money so they can pay contractors, he commented that letter of credit is posted not cash

Attorney Andrew Miller explained cash and letter of credit regarding their credit worthiness

Barry E. Rudisill asked if the money is earmarked for the purpose of the amount of the credit

Attorney Andrew Miller explained that bank's obligation to provide the money if the letter of credit is called.

Steven H. Gross, Jr. commented that tabling a request is also acting. What is the outcome of tabling?

Attorney Andrew Miller – It depends how the request is framed. If it is framed as a specific dollar amount that they want to have reduced, I think if you don't act, even if you table it, if you don't make a decision on the request I think it's deemed to be approved and that amount is reduced. Now in reality whether or not the bank or surety company is going to release that amount back to them is a whole other story. Most of them won't take the chance based on that kind of information.

James Craft was agreeing with Attorney Andrew Miller and he explained bond, letter of credit from his view as developer.

Attorney Andrew Miller – if developer goes to their bank or surety company saying the township didn't act and under MPC, it is deemed approved to reduce surety, I doubt they would.

David L. Naylor – technically they could for a 45-day period, so we can table the surety reduction for one meeting

Attorney Andrew Miller – It depends on when Byron give his certification. Byron has to certify the amount that can be released and it hinges on that engineer's certification. If Byron disagrees with the requested amount then Byron's amount is what governs. You've got 45 days from request to have Byron give you that certification of what should be released and then act on it.

David L. Naylor – so basically it is very important for us to rely on Byron, especially on sureties that are going to have some remaining surety in place.

Attorney Andrew Miller – that's right, you are relying on your engineer to make sure the township is adequately protected by those sureties.

David L. Naylor – and if our engineer uses a rule of thumb of 10% overage and we instruct him to make that 15 or 20%, we could do that.

Byron Trout – just to let you know I do 20%. I do 10% then another 10%. Actually come outs to about 20.5 or 21% and that's pretty much the highest in the county. Everybody else is about 12%. The second 10% remains in place till everything is done – stays in place till end of project.

Attorney Andrew Miller summarized the issue.

Barry E. Rudisill – typically we do rely on Bryon's certification and recommendations and I think for the record we need to point out that we are not looking to sidestep any of that, we are just questioning what our right are in the MPC so we know going forward what really we can and can't do, because in the past I don't think we've questioned that with any developer.

David L. Naylor –well put

Attorney Andrew Miller – and the way the MPC is worded you are only required to release surety to the extent they need it to pay subcontractors. If you want to require some kind of certification that's what the money is being used for or invoices from their subcontractors to something to that effect, that's an option as well.

Steven H. Gross, Jr. – Is there anywhere else that they are asking for the invoices from the subcontractor as proof?

Byron Trout – I usually ask for them. When we have the pre-construction conference, I make it one of the first things I tell them is that when you ask for a surety draw down I hand them a form and say this is our format and you need to get this to me x number of days before the meeting or it will be at the next meeting. Bit I go down through that and I want something from the contractors. Typically I ask for a highlighted plan of what they've done and we do not accept a contractor's estimate when we decide to post surety. If a developer hands me an estimate I will put my numbers, numbers I'm comfortable with if we have to put this out for bid that will cover the township. My numbers are typically higher than a contractors, I've been on both ends of this, you can never match the two numbers.

David L. Naylor – Has any board ever instructed you to receive all invoices before certifying any reduction in surety?

Byron Trout – no

Attorney Andrew Miller – most municipalities view it as once the improvements are done you are entitled to the surety reduction, although the MPC is not actually worded that way and there is a waiver provision that entitles you to full surety reduction when the improvements are completed. I've never heard of a municipality requiring those kinds of invoices.

Terry R. Gingerich mentioned to Jim Craft that we require annual automatic renewal on sureties.

Engineer's Report – Byron Trout

Surety reductions per recommendation from Gordon L. Brown & Associates

- § Northern Heights phase I – came in late-asking for everything - recommending no reduction at this time, Steven H. Gross, Jr. motioned to follow recommendation per Gordon L. Brown & Associates for no reduction. Motion seconded by David L. Naylor and carried unanimously. Reasons: concrete monuments are in but not satisfactory, E & S problems in pond and swale
- § Northern Heights phase 2 and 3 – A motion to reduce in the amount of \$235,007.25 by David L. Naylor per recommendation of Gordon L. Brown & Associates was seconded by Barry E. Rudisill and carried 2-1 with Steven H. Gross, Jr. opposed.
- § Other requests are not ready or the work has not been completed
- § Rentzel, Mitzel, Waltersdorff – 2 million reduction was approved last month, they were going to contact the Board to discuss

Barry E. Rudisill questioned how serious they are about reduction if they do not come before Board

Steven H. Gross, Jr. commented on lack of action on prior concerns and how else to get their attention now that they are getting building permits other than holding surety. Seems like there is no other control and this gets their attention. Agreeing that there are some legal issues, but it does get more attention more than lip service.

Terry R. Gingerich mentioned that Jim Jaeb won't be the one coming, Engle is not involved anymore.

- § Dauberton Park remove few trees for fence, stripe parking lot, Terry R. Gingerich mentioned damage in park by fence installer
- § Zions View Rd / Garrod Hydraulics called bond to complete work. Will need to post surety to PennDOT for est. \$29,000.00. Should this be put out for bid? preliminary estimate \$35,000.00 to widen road 5'-7' on that side from entrance drive around corner to end, install pipe at intersection of Locust Point and Canal down along Locust Point to little stream with 2 inlets installed, 394' Curbing, 2 inlets, 128' 24" RCP, relocate signs, E&S control

recommend instead of bidding this as all one project where prevailing wage rate would apply, wait for Terry R. Gingerich when putting materials out for bid include as line item, then bid labor to install. This work was bonded to do and the bond was called. All PennDOT comments have been addressed and surety is needed

David L. Naylor asked what curbing would do there. Byron answered it was required to be installed and shown on plan and would help channel storm water at intersection.

Steven H. Gross, Jr.- what concerns me more is that they presented a plan telling us they would make these public improvements and didn't do it.

Barry E. Rudisill commented that this all goes back to what we were just talking about - developers bond for the public improvements and don't do them.

Discussion on improvements for the area and the amount of bond covering the cost of the project. The bond is \$75,000.00, which should be adequate to have work bid. Any balance not used should be returned to the developer.

- § Orchard Glen – not ready, paving to be completed
- § Conewago Heights sewer– work to be done in Spring per Newberry Township

Correspondence

Davidson's letter – York County will need to detour traffic through township for estimated 6-month period while bridge 193 over Little Conewago Creek will be closed. Conewago Creek Road would be closed from Canal Road intersection to Park Street intersection. It would be better to have Conewago Creek Road also closed from N. George St intersection. Byron Trout will send letter to that effect.

Manager's Report

Northeastern York County Sewer Authority – David L. Naylor asked if the other government agencies such as Manchester & Mt. Wolf fire companies buildings are paying quarterly service sewer rates and tap in fees. He has learned that the police building was denied waiver on tap in fee.

Would police department be considered Commercial or Industrial?

David L. Naylor will search for these answers.

Zoning Officer – Motor Technology will need a land development plan for potential 5000 sq ft building

Public Works Director – questioned storage and heating of building

Bob Nace Commented on construction and code compliance. He also informed of a company they use for record storage. Terry R. Gingerich asked for more info on storage.

Tax exonerations – list of per capita totaling \$275.00 for 1,375 people – motion from David L. Naylor, seconded by Barry E. Rudisill was carried unanimously

Supervisors' Comments

Barry E. Rudisill

- Ø code books. Terry R. Gingerich not heard
- Ø computer back-up – done
- Ø Record Club progress – Katrina Rife reported that personal conversation with owner was held and should result in action
- Ø Van - Terry R. Gingerich will check
- Ø County voting - seeking another location
- Ø loft in equipment building

David L. Naylor

- Ø Officer Frey doing fine and back on duty
- Ø audit costs-not yet
- Ø emergency services study - recommend holding
- Ø motioned to allow the Park program to close Manchester park to public during playground hours died for lack of second
- Ø electric for reader board -Terry R. Gingerich reported that Dietz-Nauman has been contacted to give estimate
- Ø agree with recommendation that planning commission have a large Zoning map on display in the meeting room, Byron Trout can make a 36" x 36" for cost – he needs the disc, Attorney Andrew Miller will forward to him
- Ø Industrial park - sidewalks for entire Orchard Business Park, send letter to all to install

Steven H. Gross, Jr. added to follow up with Beshore School Road on sidewalks also, agree on completion by September, that gives at least 6 months notice Attorney Andrew Miller to produce and outline a procedure for install around Kennington

Attorney Andrew Miller -keep in mind limitation for assess of value

- Ø Saginaw Park - get on construction list for parking area and fence
- Ø Penn Waste recyclables from other municipalities-tipping fees? Terry R. Gingerich will check

Steven H. Gross, Jr. – nothing new to add

Motion by Barry E. Rudisill to pay all bills by, seconded by David L. Naylor and carried unanimously.

Public Comments - none

Steven H. Gross, Jr. motion to adjourn at 8:54pm

Respectfully submitted,

Terry R. Gingerich
Secretary/Treasurer/Manager