

**EAST MANCHESTER TOWNSHIP  
BOARD OF SUPERVISORS  
DECEMBER 9, 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 7:24pm.

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

**PUBLIC HEARING for ordinance 2008-3**

At 7:26pm, Steven H. Gross, Jr. opening the public hearing for Rezoning request and map change for 24 acres of property in Orchard Business Park along Canal Road and proposed extension of Espresso Way to Industrial, which is currently zoned Commercial.

Jeff Lobach, attorney from Barley Snyder representing Kinsley Equities III along with Tim Kinsley and Mike Jeffers of Kinsley were present.

Steven H. Gross, Jr. asked if there was any one present to oppose this request. No one acknowledged opposition.

A brief overview of the property and intentions was presented with exhibits and included a memorandum of law. The property is 24 acres of 32 acres parcel along Canal Road on the north side of Espresso Way in the Orchard Business Park. It is surrounded by other Kinsley holding and allows to the orderly development of Orchard Business Park.

According to Attorney Lobach this is a designated growth area along a major highway (183) and is consistent with the Township's Comprehensive plan and Zoning ordinance. Public sewer and water can be brought to the site.

Jeff mentioned the 3 part legal standard:

Relatively small – it is 24 acres

Land treated in a manner consistent with surrounding area – are asking for treating like adjacent area

No justification for zoning, which is not the case.

East Manchester Township Planning Commission unanimously recommended approval, York County Planning Commission did not; it has one issue, which was that this request differs from the township future use map.

Steven H. Gross, Jr. asked if there was timeline for the construction of Espresso Way to Canal Road.

Tim explained that a plan has been submitted, but the hold-up is from PennDOT HOP approvals. The draft traffic study has been completed. They anticipate 2 years till authorization. They are proceeding with the plans and have a potential user. Espresso Way is engineered to line up with township's future roads map.

David L. Naylor asked about the cartway width from Planning Commission comments. Tim answered that they are aware of that.

Barry E. Rudisill asked about the plans for the temporary cul-de-sac of Espresso Way proposed earlier on a sketch plan.

Tim – We are still going to pursue that but do with a bigger project. We would like to get Espresso extended to a temporary cul-de-sac and concurrently with doing that we are going to be seeking the PennDOT approval to connect with Canal Road, which has a variety of improvements that are being studied that included either Willow Springs and Canal or Susquehanna Trail and Canal that PennDOT can look at and provide possible improvements for. Like I said, we would like to extend to a temporary cul-de-sac and continue to pursue and we are offering and willing to sign developer's agreement that says we will diligently pursue those PennDOT approvals.

Terry R. Gingerich confirmed property was posted and advertised for the record.

Attorney Andrew Miller confirmed adjoining landowners were notified on 11/6/08 of the public hearing.

A motion to adopt ordinance 2008-3 to allowing the rezoning of the 24 acres to Industrial from Commerical was made by David L. Naylor, seconded by Barry E. Rudisill and carried unanimously.

At 7:35pm hearing was closed.

Steven H. Gross, Jr. disclosed that no meetings of the Supervisors were held since last meeting of 11/19/08.

There was an Executive session of approximately 20-30 minutes prior to this meeting.

Minutes of 11/11/08 were approved as presented per motion from David L. Naylor, seconded by Barry E. Rudisill and carried unanimously.

Minutes of 11/19/08 were approved as presented per motion from Barry E. Rudisill, seconded by David L. Naylor and carried unanimously.

**Public Comment** - none

### **Subdivision/Land Development**

**Benderson Development Company lot consolidation plan** for 4035/4045 N. George Street was TABLED till January meeting per their letter requesting such action per motion from Steven H. Gross, Jr., seconded by Barry E. Rudisill and carried unanimously.

### **Paul & Helen Musser 2-lot subdivision and add-on**

Robert Katherman, attorney representing Snyder Developers and Dave Kegerize of Lake Roeder Hillard presented plan #564102 FN1 and FN2 revision 4 dated 12/1/08.

The Planning Commission action report and response letter of 12/1/08 was reviewed. Dave explained that they took care of all the comments from East Manchester Township Planning Commission and York County Planning Commission, which were relatively minor. A few minor items administrative in nature were also taken care of.

Steven H. Gross, Jr. – wait a minute, you said you took care of all of them? If I looked at this right, it indicates you still showing cul-de-sac on Musser property. I believe that was brought up in the Planning Commission minutes, was brought up from last time you guys were here, I think we were pretty clear that you were supposed to keep the cul-de-sac on your property or somehow, and this shows that exact same thing last time you were here.

Barry E. Rudisill and David L. Naylor agreed that was the issue last time.

We are talking about the cul-de-sac that is on another piece of property, not on your property and I think we were very clear last time you were here that was a concern of ours and the Planning Commission brought something up about it. I agree that it should tie into the existing property somehow, but we were very clear about not having a cul-de-sac on another property. So there is one issue that I don't see you done anything differently since you were here last time.

Discussion continued. Dave Kegerize was not at the Planning Commission meeting.

Bob commented on his recollection of all discussion at Planning Commission to cul-de-sac in new lots, not to the other one. He recalls discussion on whether or not there should be an actual roadway shown or whether or not the plan should simply make provision for a roadway depending on how the roadway system was built into lot 3. Their concern was access over lot 1 to connect to lot 3. The exact definition of where that roadway was going to be was something that Laymon was concerned because it was going to shift a little bit and our position was, well fine if you want us to, it is already shown on the plan, and we would do whatever is necessary to save it in case it had to shift a little bit. To the best of my memory at that meeting no one ever raised the issue of the other cul-de-sac. And I believe, I don't think we ever went to that end of the property. The Mussers were there. Helen commented that she is now confused. She could not remember ever talking about that other cul-de-sac at the Planning Commission meeting and wanted to know what do they need to do.

Steven H. Gross, Jr. asked Bob Nace, Planning Commission member to comment. He disagreed because they did discuss that cul-de-sac because he was the one who brought it up. The Planning Commission does want to see Paul and Helen complete this subdivision but the issues on this cul-de-sac were mentioned. A concern to allow a full build-out and a cul-de-sac on another property might set a precedent. One thing that was discussed was possible hammerhead and it was said that Terry R. Gingerich won't like a hammerhead because of snow removal. Terry R. Gingerich confirmed the reason he doesn't like them is because PennDOT will not approve and there will not be liquid fuels for that street.

Bob mentioned that it is a strange situation with this plan. Have to be creative; it is a unique situation, how much money in liquid fuels would be lost. That portion could be a private street.

Bob remembered that discussion, but he was referring to the notes from Gordon L. Brown & Associates letter where they were referring to the lot 1 and the other cul-de-sac.

Discussion continued.

Dave explained lots 1 and 2 are to be combined with Musser Manor project for reverse subdivision with front lot. Reason for 2 lots is clean and green requirements

Steven H. Gross, Jr. asked of timeframe.

Dave - Start build-out construction in Spring and lot conveyance in December 2008, other in January 2009. Bob added that time is of the essence.

Barry E. Rudisill – whatever they do with the (garbled) isn't the issue before us and it's our decision whether that should or should not be allowed. My concern is not that is there now, my concern is if we allow it now we set a precedent here and I can see in the future somebody coming up to us and saying well look you allowed that cul-de-sac on someone else's property.

David L. Naylor – (jokingly) and Bob will be representing them

Bob – No, I already made a promise I wouldn't. By the way I have the 11/25/08 Planning Commission minutes, and my statement to you earlier was and my recollection was that we were talking only about down here regarding lot 1.

Steven H. Gross, Jr. – I don't have a problem with lot 1, I'm concerned with that one.

Bob – And I want to make clear for the record the open item from the Planning Commission did not deal with this cul-de-sac. The open issue from the Planning Commission dealt with lot 1.

David L. Naylor – I am clear on that but I have a problem with this. I am not opposed to making this a private road, put a hammerhead there retain the right-of-way to line and forgo the liquid fuels – it will be minimal.

Steven H. Gross, Jr. – that is a good compromise

Barry E. Rudisill – since you are going to lose the liquid fuels money anyway on that short section, and it's no big deal why not keep it a public street and put hammerhead in?

David L. Naylor – Yeah, and like I said last time I can't make a decision on speculation on this property being sold. But if and when it is, then that street will continue down through there and we can adopt that street.

Barry E. Rudisill – There seems to be all kinds of speculation about what happens with that property. It seems the resolution at this point would be to sacrifice the liquid fuels money by putting the hammerhead at the property line and we will still have a public street.

Byron Trout explained that liquid fuels money would be received for the street from Board Road to the intersection before the section with the hammerhead.

David L. Naylor – I agree and let's maintain a public street. This would set a very dangerous precedent to allow this to happen. I think what we are doing here is to protect Musser's remaining property.

Bob – If hammerhead will work, we will accept that.

Barry E. Rudisill – what we are looking at is a subdivision plan and we really don't have to be concerned about cul-de-sac or hammerhead, because at such time there will be a land

development plan presented with that issue coming to the forefront then, and we can address it then.

Dave – and that will be revised on that plan. The waivers primarily are because of the nature of the plan. A number of them are just plan preparation and for lot 3 – the remaining ones

Barry E. Rudisill commented that it is highly unusual to see this number of waiver requests; he never saw this many waiver requests. It is 11.

Bob - It is kind of an unusual minor subdivision it came about because of other concerns the township had. What we've done in conjunction with the Mussers and their legal council is created this minor subdivision which as Mr. Gross has indicated, assuming that we would receive it, ultimately will be reversed back, rejoined at this time only because I believe because of the stormwater and other concerns that were raised. And of course, as you so aptly pointed out the land development plan will be coming in here shortly to be addressed.

Barry E. Rudisill – when a land development plan comes in, don't expect all those waivers to be approved, that should never happen.

Bob K – understood

Barry E. Rudisill - You will need to show those.

Bob K - We are using this minor subdivision as a vehicle to get from where we were stymied to get to where we would like to go with the Musser Manor

Barry E. Rudisill – You will have to go through this exercise eventually. I'm just questioning why we don't do it upfront. You are going to use the same plan when you present the land development.

Dave K – It will be a modified version of the Musser manor plan which will have everything that we just talked about except lot 3 that will remain the body of the farm. This has all been topo'd except for the farm itself.

Steven H. Gross, Jr. – just for question, why isn't this line straight, why does it have that curve in it?

Dave K – It was initially straight. I've included the entire cul-de-sac, there was some discussion with our client, the Mussers, and the township, and the future street was put in there.

Steven H. Gross, Jr. – ok that will follow the future street keeping property line to the street line.

Dave K – they will have access to the street

Discussion on layout of future street

Steven H. Gross, Jr. – Barry, you raised a good point when you said a lot of this stuff will be

addressed in land development this is a minor subdivision.

Open items from the 11/26/08 Planning Commission Action report:

Per Gordon L. Brown & Associates, Inc. letter of 10/9/08:

The following comments relate to the Township Subdivision and Land Development Ordinance:

2. The following information should be on or with the plan:
  - A. Form B waiver approval for sewage facilities (s.5.1.1.C(1)f). ok, but need fully executed copy
3. Temporary cul-de-sacs are to be located "...in such a way as to permit future extension into the adjoining tract." It appears as if the configuration of Lot 1 could preclude that in the future. The Musser property would only have one future access until connection would be made to Zions View Road (s.8.6.3.C). – OPEN, discussion.  
Consider a sketch plan showing how the future development of Musser farm is compatible with the design of this plan.  
Questions regarding a blanket easement over lots 1 & 2 for future development.  
Stormwater basin on lot 2 possibility for future relocation - this is highest point of the natural drainage system. Consider agreement to make relocateable and give ability for road to go over both lots.

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 Barry E. Rudisill to approve the plan subject to the following conditions and to grant the following waivers:

- q The applicant/owner shall submit a Form B waiver for approval by the Pennsylvania Department of Environmental Protection in accordance with SALDO s. 5.1.1.C.1(f).
- q The temporary cul-de-sacs shall be constructed in such a way as to permit future extension into the adjoining tract in compliance with SALDO s. 8.6.3.C. Cul-de-sac on Lot 1 should have ample easement for the extension onto the residual Musser tract. Cul-de-sac on the residual Musser land should be reconfigured as a hammerhead turnaround on the existing Snyder property.
- q The applicant/owner shall pay recreation fees for the two (2) newly created lots in the amount of \$2,400.00 in accordance with SALDO s. 8.9.1.B.1(a).
- q Waivers granted:
  - SALDO 3.5 preliminary plan
  - SALDO 6.1.1.B.1.d – field survey
  - SALDO 6.1.1.B.1.l – minimum set back lines
  - SALDO 6.1.1.B.1.o – location of utility structures, right-of-ways, or easements
  - SALDO 6.1.1.B.1.p – location of existing structures, facilities, or features
  - SALDO 5.1.1.B.1.f – existing contour lines
  - SALDO 5.1.1.B.1.i – existing water courses, wetlands, tree masses, or other significant natural features
  - SALDO 5.1.1.B.1.j – existing sewers, water mains, culvert, petroleum lines, electric lines, and other manmade features
  - SALDO 5.1.1.B.1.r – location, size, and inverts of existing and proposed sanitary sewers

SALDO 5.1.1.B.1.s – existing and proposed storm sewers  
SALDO 5.1.1.B.1.t – existing and proposed water mains

was seconded by David L. Naylor and carried 2 yes 1 abstain by Steven H. Gross, Jr. as neighboring property owner

**Codorus Stone / Kinsley concrete plant**

Neal Metzgar of LSC Design presented a plan for Codorus Stone/Kinsley concrete plant to convert the temporary plant site to the permanent plant location. They have been to Zoning Hearing Board for approvals and received requested variances.

Steven H. Gross, Jr. asked why keeping current location.

When they erected it, it took more time and effort to erect than they thought. At the time they weren't sure about the move to Manchester Township while operating since may they made decision that they feel this is the best location for it and would like to keep it at this location in East Manchester Township.

Access to Mundis Race Road was discussed – no new access is created. Will continue using the road to the left of the concrete plant which us the main entrance to the quarry.

Waivers of SALDO 3.5 and 6.1.1.B.I.d were discussed.

Barry E. Rudisill commented on ordinance regarding concrete monuments - nearly every plan that comes in is asking for waivers to get around that, it gets to a point of why pass ordinances if we are going to continue to grant waivers for every time someone has a desire to eliminate or not to install.

Bob Nace comment from Planning Commission discussion on earthen berm with trees on top along Mundis Race Road. Discussion on asking if possible to extend to other property of Codorus Stone in future to make aesthetically appealing especially with the Rail Trail extension now there.

Tim Kinsley – will take this up with his brother who oversees this division.

Any UCC conditions needs to be shown in compliance since this is being converted to over 180 days placements.

Byron Trout added that surety needs posted for trees shown in berm and the 4 monuments that are to be placed.

The Planning Commission action report of 10-30-08 was reviewed. Open items, comments and requested waivers were discussed.

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 Barry E. Rudisill to approve the revised plan subject to the following conditions and to grant the following waivers:

- q The reference on the cover sheet to waiver of location and elevation of all boundary lines should be corrected so it refers to SALDO s. 6.1.1.B.1(d).
- q The structures constructed or modified on-site must meet all applicable provisions of the Uniform Construction Code prior to issuance of a Certificate of Use and Occupancy under Zoning Ordinance s. 805.
- q The applicant/owner shall post surety for site improvements, including trees and concrete monuments, in accordance with SALDO s. 6.1.1.C.1(m) and 10.1. Upon final inspection of improvements by the Township, the applicant/owner hereby agrees to provide a maintenance guarantee in accordance with SALDO s. 10.8.
- q waivers were granted:
  - SALDO s. 3.5 submit a preliminary plan
  - SALDO s. 6.1.1.B.1(d) to show the location and elevation of all boundary line markers is granted.
  - SALDO s. 9.9 is granted with the following modification: Four (4) concrete monuments shall be placed as indicated on the plan.

was seconded by Steven H. Gross, Jr. and carried unanimously.

### **Codorus Stone discharge / DEP**

Terry R. Gingerich presented a drawing on the relocation of a discharge location from the quarry. When quarry was enlarged, a 48" pipe was required under Mundis Race Road. Now moving away from Rail Trail up toward curb.

DEP needs letter indicating township has no issue with this relocation.

They will have a pond area prior to discharge point with a stone base to channel to pipe.

Discussion on discharge, closeness to Rail Trail and ponding.

Byron Trout expressed concerns in letter. He also plans to make sure obtain all DEP permits

Barry E. Rudisill expressed opinion on hazard with water too close to trail.

They also need letter on prior Zoning Hearing request conditions, which was a 30' berm. Dave Gentzler reported to Terry R. Gingerich that it is a 30' berm.

A motion from Barry E. Rudisill, seconded by David L. Naylor to have Terry R. Gingerich submit the letter to DEP was carried unanimously.



**Gingerich 3-lot subdivision plan** at 145 Saginaw Road revision to 2-lot

Dave Fuhrman of C.S. Davidson presented plan #482630100\_A revision 3 dated 12/4/08, which is now a 2-lot subdivision due to DEP's Carrie Wilt disagreeing with the form B waiver – it is not acceptable. In her opinion, the lots were configured in a way that they were Residential and considered building lots in nature and not supportive of Agricultural activities. The Gingerichs chose to reconfigure the 2 lots to become 1, which will allow resubmission of form B waiver to DEP. For record, the Gingerich's plan to place the lot and its adjoining lot into clean and green. Byron Trout commented that all comments have been previously addressed and the only outstanding issue was the form B waiver.

It was noted that the recreation fee in the amount of \$2,400.00 for 2 new lots was paid and a refund of \$1,200.00 will be due.

All comments and waiver requests carry on and are part of this revision.

After discussion and deliberation with consideration of prior comments and recommendations from township staff, Planning Commission, Township Engineer, York County Planning Commission, and public as well as applicant and/or applicant's representatives, a motion by Steven H. Gross, Jr. to reapprove the revised plan subject to the following conditions and to grant the following waivers:

- q Form B Waiver approval (s.5.1.1.C(1)f).
- q Concrete monuments to be placed as indicated (s.9.9)
- q Recreation fee in the amount of \$1,200.00 (\$2,400.00 paid \$1,200.00 refund due)
- q Waivers granted with 6-month note:
  - SALDO 3.5 preliminary plan
  - SALDO 8.6.2.A street width
  - SALDO 8.7.1 curbs
  - SALDO 8.7.2 sidewalks

was seconded by David L. Naylor and carried unanimously.

**Special Request**

SADG-II land development plan for Glen Drive/N. George Street property

Ron Perry, attorney representing SADG-II and Mark Paradise, partner of SADG-II explained that in March of 2008, a letter from East Manchester Township Planning Commission dated 3/18/08 on action recommending conditional approval and to their knowledge the open items have been addressed. A letter from Byron Trout dated 11/13/08 that he reviewed the plans and all comments and concerns from 9/26/08 have been adequately addressed. On 12/8/08 UPI letter was issued and UPI obtained. Purpose here to night is to request signatures for recording and release of building permit.

Attorney Andrew Miller questions on signed conditional approval letter – yes, have along with stormwater agreement and the development agreements – Mark signed and returned, bond was signed as surety for developer's agreement.

Any shared driveways on property? – They run with the land and are in the declarations.

Steven H. Gross, Jr. concerned about the improvements to N. George St. and Beshore School Road - feel unresolved and open to discussion on this. Board has position that this needs to be resolved.

Ron – client understands and has indicated a willingness to do that even to a point where there has been discussion on providing a contribution to do help resolve that – the sum of \$5,500.00 and are committed to working with the township to take care of that and get that done. The problem that we see is that the approval of the plan, which I don't have in front of me, my understanding is that the approval was conditioned that the garage would have to be removed and that's clearly a condition on the plan, and my client understand that's a condition that has to be taken care of before they can get that access. What we don't think is that the removal of the garage now should be a legitimate reason for holding up for signatures for recording of the plans and the issuance of a building permit. The plan was approved subject to conditions in your letter of 3/18 and the condition was placed on that plan. My experience is that it is not unusual to place a condition like that on a plan to allow everybody to go forward knowing absolutely that's got to be done. My client understands that. It is on the plan and it will have to be taken care of. They understand that and have expressed that they are willing to take care of it. Once again, I don't think that should be an impediment to having the plan signed and recorded and having a building permit issued. Now, if you feel strong enough about that that you don't want to sign the plan and record it till that's taken care of, but you would be willing to issue the building permit to allow them to get started, we are ok with that. We want to cooperate to the extent that we can and get done what you want done. Here's the problem, the longer that they wait the less likely it becomes that they will be able to finish the construction, or at least get it to a stage of finished construction that Giant is able to say to their current landlord, Hey we are not renewing, we are leaving. They have to tell the landlord and have some confidence in the instruction that if they give to their landlord that we are out – they want to know that they can get into their building. So time is a critical factor to them. It is not that they don't want to cooperate with you, it is not that they don't understand that this is a significant issue and serious issue that has to be taken care of, but they want to get started so that can get this thing to a state of completion that Giant will be able to say that they will be able to give notice and not bind themselves in a situation where they have given notice to the other landlord and can't move in.

Steven H. Gross, Jr. – And I certainly understand that and I believe the Board, and I don't want to speak out of turn here, we are concerned that Giant would get done and we have all the traffic issues not have a finished intersection. So somehow we both need to reach our end goal simultaneously; not Giant opens and 6 months to year and a half later we have our public improvements done, which we sort of have a track record and are trying to correct. We want public improvements to coincide with completion of your building. But we have this issue of what is going to happen with the first part of that garage and we are at everyone else seems to do one of these, for lack of better saying. We need to resolve how we are going to proceed.

Ron - I don't see the connect between the filing of this plan and the getting of a building permit and how that - Let me put this right - I don't see how not giving them a building permit helps solve that problem. I can't make the connection.

David L. Naylor - Technically you are correct, however we are just pushing off the inevitable, you can't have opening day without public improvements done

Ron - I understand that, again, we know that problem is there, it's on the plan there, no doubt about it, we clearly know get plan recorded with the building permit issued and start moving forward with our construction and at the same time work on other problem. This doesn't have to

be an either or is what I'm saying.

Steven H. Gross, Jr. – I don't think so either, I think the township wants to resolve it with you, we just all need to agree on what that procedure is because you guys were here in March and we had a lot of discussion about this issue and then we really didn't hear nothing and now we hear we need the permits and this needs to be resolved. I must have been mistaken I thought we were going to have discussions about this from March up through now and now here we are time for the permits and we haven't resolved this issue. We don't need to rehash history this is where we are at and we need to go and the concern from our engineer. Does the note on the plan clearly state what the township contentions are?

Byron Trout – The note on the plans and the way the plan is drawn shows the sidewalk will be constructed basically where the building is currently located

Ron – So the sidewalks are going to be there, which means the building can't be there. There's no doubt we understand that, yet what I'm saying is there's no reason to keep them from building while we work on how to get rid of that garage. My understanding is that an ordinance passed that requires taking that garage down.

Steven H. Gross, Jr. – That was a very good faith gesture on the township to proceed with the process, and I think we did that with hesitation and it needed to be done. I don't like all development that happens but I don't want an unsafe intersection either, so it's the lesser of two evils and I believe we did that. I guess we are getting back to the no body really want to do the work or the cost. So we'd like to resolve that.

Mark – Do I understand correctly in that the removal of that garage is part of the land development approval from when it was built, in other words, everyone knew it was built in the right-of-way and at some point in time when the intersection is going to be improved, the owner knew, he would have to tear this garage down, that's my understanding.

Attorney Andrew Miller explained there was no note on plan. With research of special exception, minutes, and recollection of people who were in attendance, it is indicated that owner agreed to take building down, but it is not in a decision on plan. The Township has nothing to enforce. Plan shows right-of-way on plan and ordinance provided for township to accept dedication and require removal of obstruction. There was no condition of approval to require removal.

Ron – I hear the Board saying you are looking for solutions and offered a substantial sum of money to help solve the problem. So I guess I would ask what do you want? What solutions are you proposing here because I don't hear any and it's difficult to respond? We are willing to keep an open mind and try and help which I think we demonstrated. Keep in mind we are kind of fresh out of ideas.

Mark – Keep in mind, we did in March agree to place sidewalks all the way up that side of Beshore School Road and beyond our project past the Craley property up into the development. That was kind of above and beyond our project's scope to resolve that Beshore School Road situation, that was to the tune of about \$100,000.00. We did offer that in March now again we are offering a contribution only because we don't feel, when Byron first asked if we could tear

the garage down, we don't feel we can get into that liability. If we go in there and tear down that garage I don't know how far or where will we stop. We will say that my other garage is cracked or damaged or this wasn't like this before. We just can't get into that liability, so that's how Mr. Gingerich and I came up with cash contribution for that, we felt that just as far as we can go to pay for a portion of it. I'm not sure what else we can go but again, we have an open mind if you have a solution, we are certainly willing to listen.

Barry E. Rudisill – I haven't seen any hard facts but my understanding is that the contractor on site was asked to bid that job and my understanding is the contractor bid \$16,500.00 to do it. That would seem to me a large sum of money but that's what the contractor says that's what it would cost to remove it.

Ron – If we agree to give you \$16,000.00 to pay for it, you'll approve our plan, you'll sign and record it and give us a building permit tomorrow? Is that what I hear you saying?

Steven H. Gross, Jr. – No, I think he just said that's what the figure was to tear it down.

Ron – I'm looking for what solutions are you suggesting here. The problem is, you are saying you are looking for a way out, you are willing to consider a way out, but if you have those suggestions I'd like to have them presented to us on the record.

Attorney Andrew Miller -Terry did you confirm, you were looking for the development agreement Did you see?

Terry R. Gingerich – I don't have a development agreement. I do have their bond however, so if it would have come with the bond it would be in the file, no with the bond but it would be in with the agreement.

Attorney Andrew Miller – Do you have any objection to signing that development agreement? Here's a copy

Ron – I understand that it already has been done.

At the time this was discussed as well one of the other issues that came up was the timing of getting the improvements done and the issuance of the occupancy permit and what was agreed to in the development agreement was that the occupancy permit wouldn't be issued until all the improvement were done that are shown on the plan. That is what the development agreement reflects; I just want to make sure that we have that.

Ron – You should have it and if you don't I don't know why it should be here.

Attorney Andrew Miller – I have the stormwater agreement

Steven H. Gross, Jr. – that brings us back to our garage issue.

David L. Naylor - we all agree \$16,500.00 is a little high so if we would get competing bids and accept the low bid would the client be in favor of paying for that in condition for approval?

Ron- I want to know if what you are saying to me is that if they agree to pay for the removal of that garage that you would give them their approval and a building permit tomorrow?

David L. Naylor – no

Attorney Andrew Miller - I don't think that's an appropriate question to answer at this point, I mean ultimately the development agreement is in place and there's a place to force that requirement and if you have to go there, that's what you will have to do. A contribution towards condemn a building wasn't a condition on the conditional approval letter and I don't want you conditioning your signatures on the plan to that kind of contribution. Obviously, it would make a lot of things in the future as this project progresses go a lot smoother if we had resolution of that issue. Ultimately, the Peters aren't here tonight for one thing and if we can get resolution on that issue from you tonight that would be great.

Ron-unless it is absolute unconditional granting of the signing of the plan and the giving of the building permit tomorrow that's not going to happen. If that is not the condition then my question is, we would like to have the plan signed tonight and have the building permit tomorrow, and

Katrina Rife – I'm sorry but there is one small glitch and I do not have the full facts, but the sewer authority does have to sign that plan and I have an email from John Leen that they have one little detail that tonight Jim Coble is not to sign it. At their meeting of 12/22/08 they can be dealt with. To record without sewer authority approval is not possible.

Steven H. Gross, Jr. – I believe I heard you state earlier in your conversation if you had your building permit and were able to start pouring your foundations, that the signing of this plan might be able to hold off a bit longer as long as you were able to do your foundations and continue your work. So realizing that we still have this issue to resolve by those parties.

Ron - I think that's a long way towards resolving the problem.

Steven H. Gross, Jr. – Let's confirm with Andy. This is a little strange. Andy, I restated what I thought I heard Mr. Perry say earlier tonight and he confirmed that's what I thought he said that if they were allowed to proceed with their foundation with the building permit and we held off on the signing of the plan till we resolved this issue that might suffice and I would ask for your opinion on that and I agree with Mr. Naylor when he said that's very strange and unusual for us. And I would ask the other two Board members what their opinion is – I'm just trying to be solution oriented.

Attorney Andrew Miller – Ultimately I am not sure what, really the building permit is what they need to move forward and with the development agreement, if the improvements aren't done you can withhold the occupancy. I mean ultimately, I would think they could if they have a building permit they would get the whole way to the occupancy permit without a recorded plan. So you are at the same place. It would be an additional thing you would have to do at that point, but I think you already have that stick to make sure the improvements get done with the occupancy permit.

Steven H. Gross, Jr. – And I understand your concern about if you remove it and the liability and everything and my counter question to that would be would those same concerns be raised by anybody in the township that has another entity or whatever, we are still going to have to address those concerns that you raised. So it's not just simply saying to the township you do it and we will give a contribution, that same issue weighs heavy on our minds.

Mark – absolutely and whoever does it should be a contractor or under a subcontractor for Peters or the Township who knows what they are doing, I can't physically do it, I don't have the equipment to do it, so I would have to contract with someone and then on the other end I would have to contract with Peters or the Township for a specific sum of money for a specific scope of work and then those liabilities would be defined.

David L. Naylor – I think that's our answer. I hate putting the cart before that horse and we definitely are without a signed plan, but the way Andy explained it, it made sense. So we have to come to a resolution and I don't think it should be under the burden of the township to come up with the resolution and I think the man has the ways and means to fulfill a solution.

Ron – that would require the Peters' signature. Therein lies a big part of the problem you can't do this without the Peters' permission. The only one that quite frankly that can do it without the Peters permission is the Township. I mean, and you are right there will be some objecting to doing that. The only part that can do anything without the Peters' permission is the Township because of the ordinance, but if we get the Peters' permission to do this, then all things are possible sort of to speak.

Steven H. Gross, Jr. – What's your recommendation, Andy?

Attorney Andrew Miller – I think with the ordinance in place and if the township is willing to potentially or at least make the threat of enforcing the ordinance against the Peters I think its and if your client is willing to do the work if the Peters agree to the contract and waive that liability damage. I think they would be foolish not to accept that agreement or arrangement. I think that is feasible going forward. I don't think that should be a condition of your signing the plan tonight, but I think that is certainly something that could be agreed to in the future.

Barry E. Rudisill – condition of sewer authority signature

Attorney Andrew Miller – that plan could not be recorded until you get the sewer authority signature. Is that something you would be willing to add to the development agreement that already exists?

Ron – What we are willing to do is say is we are willing to cooperate with the township in solving the problem. And that would include the possibility of getting their subcontractor involved and doing it based on an agreement with the Peters. I think that is as far as we are willing to go at this point, but I think that the township's willingness to go out on a limb, to go outside your standard procedures I understand and grant the building permit would be highly motivational to my client without making it a condition I think it would be highly motivational in terms of pursuing that type of resolution.

Steven H. Gross, Jr. – And listening to Mr. Perry say that, and listening to all the discussion, I want to make sure I heard this right. You have stated and I believe our people have stated that we all agree that improvements have to be done before occupancy and that's in black and white on the plan or somewhere.

David L. Naylor – In the minutes

Attorney Andrew Miller – Also in the development agreement it says that the developer will commence and complete construction of the public improvements shown on the plan including without limitation curbs and sidewalks, road improvement and traffic signal improvement prior to the issuance of an occupancy permit for any new construction shown on the plan.

David L. Naylor – And I have here I made a motion to approve the plan contingent on the aforementioned conditions and note the action on the waiver requests for installation of curb and sidewalks on both sides of Beshore School Road by opening day.

So let me put this in a nutshell – the carrot on the end of the stick is the building permit and you are willing to subcontract your people to meet with the Peters that the caveat that the township will enforce the ordinance.

Ron – we didn't go that far and we won't go that far. I just got done saying we are not going to condition getting the building permit on saying yes we will assume total responsibility on taking down that garage. What we are saying is, can I have 10 minutes with your solicitor?

David L. Naylor – that was not the intent of what I was trying to say

Steven H. Gross, Jr. granted a 10-minute recess; after which, an Executive session was held.

Meeting reconvened at 9:32pm.

Attorney Andrew Miller commented on the Executive session discussion regarding potential litigation from Peters and SADG regarding the demolition of the garage.

David L. Naylor motioned to release building permit providing the amendment to developer agreement to address the garage is made and the sewer permit is obtained, Barry E. Rudisill seconded motion.

After discussion, Steven H. Gross, Jr. clarified and detailed the motion - Improvements to both sides of Beshore School Road, amend the developers agreement to include this issue with the Peters garage and in exchange for these agreements, we are going to issue a building permit as you just stated only for the Giant building pending the sewer issue so that you can start your foundations and start your building on the Giant and then when everything is all together on one we will sign your plan and record it which hopefully will be expedient and won't drag out 3 or 4 months.

Steven H. Gross, Jr. asked if all agreed that was what was agreed to. All agreed

David L. Naylor called for question. Motion carried unanimously

### **Solicitor's Report – Attorney Andrew Miller**

- § resolution 2008-14 adopts Open Records Law establishing procedures and fee schedule effective 1/1/09. Some training with Terry R. Gingerich and Judy Deveney was done. Steven H. Gross, Jr. motion to adopt was seconded by Barry E. Rudisill and carried unanimously. Policy and fee schedule need to be placed on website.
- § skateboarding ordinance info handed out for review
- § Penn Waste letter requesting municipalities to take over billing and collection was discussed, agreed not something to consider at this time. 3-year contract just signed

### **Engineer's Report – Byron Trout**

- § Surety reductions:
  - Orchard Glen surety reduction of \$21,377.48 per motion from David L. Naylor, seconded by Steven H. Gross, Jr. and carried unanimously.
- § 105 Willow Springs drainage issue – reviewing repairs to alleviate and make infiltration work
- § Brylea surety of \$37,758.66 in place of which \$10,000.00 is held in cash
- § Garrod Hydraulics withheld 5% of payment for repair, \$3531.41 final payment released per motion by David L. Naylor, Barry E. Rudisill seconded and carried unanimously

### **Correspondence**

- § Sr. High post prom party request for donation. Discussion on number of students attending. No indication last year or this year. Agreed to authorize Terry R. Gingerich to contact Sharon Hershey for statistics.
- § Heritage Rail Trail 2009 budget request for \$500.00 discuss at 12/22/08 meeting. Possibly from Recreation fund.

### **Manager's Report – Terry R. Gingerich**

- § Northeastern York County Sewer Authority - no questions. Jim Coble spoke on the used Vac-con truck that will be for flushing and vacuuming of manholes, line, and at the plant. The 1985 truck is primarily for flushing. The newest pick-up truck is a 2003.
- § Zoning Officer - no questions
- § Public Works Director - no questions
- § Recreation Board – no questions
- § Animal Control 2009 - Enter into a Service Agreement with Chris Miller per a motion from David L. Naylor, seconded by Barry E. Rudisill and carried unanimously. Post on website
- § Tax exonerations – John Morgan \$114.67 per motion from David L. Naylor, seconded by Steven H. Gross, Jr. and carried unanimously.
- § SPCA 2009 proposal of 50 cents per capita of 2000 census. Discussion was held. The SPCA \$2,539.00 contract price for dogs was approved per motion from David L. Naylor, seconded by Barry E. Rudisill and carried unanimously
- § Emergency services donations
  - David L. Naylor's motion to release funds to Mt Wolf and Manchester Fire Companies in the amount of \$22,500.00 and \$12,250.00; \$1,850.00 to Northeastern Area EMS, and \$1,950.00 to Sr. Center was seconded by Steven H. Gross, Jr.
  - David L. Naylor commented that Ryan gave him update. They have scheduled meeting in January and will include ambulance club. After discussion on concerns with seeing action and not just words, David L. Naylor retracted previous motion and Steven H.



Gross, Jr. retracted his second.

David L. Naylor motioned to release Fire Equipment Fund balance of \$12,250.00 each to Eagle Fire Co. and Union Fire Co., the Ambulance Club of \$1,850.00 and Sr. Center of \$1,950.00. Motion seconded by Steven H. Gross, Jr. Barry E. Rudisill commented-not feedback, state put in position

David L. Naylor added that Ryan was here, has early work start tomorrow and had to leave which was reason for update. Called for vote, which carried unanimously.

§ Junkyard license renewal – Carl Cassell has requested 2009 renewal. Steven H. Gross, Jr. motioned to approve his renewal. Barry E. Rudisill seconded and motion carried unanimously based on Katrina Rife's recommendation of current compliance.

§ Manchester Borough payment for shared cost of \$1,329.77 for park maintenance motion to pay by Steven H. Gross, Jr., seconded by David L. Naylor and carried unanimously.

§ Workers Compensation billing of \$4,827.00 for fire company shared cost with Manchester Borough. Motion to pay by Steven H. Gross, Jr., seconded by David L. Naylor and carried unanimously.

§ Beshore School Road sidewalks – 3 people have called asking if must do in freezing conditions - can be completed in Spring.

### **Supervisors' comments**

David L. Naylor

- records retention – questioned time or length for keeping records

Attorney Andrew Miller explained that a policy can be adopted, but it must follow the PA Museum Commission requirements, 92-page schedule, essentially should destroy records in mass and pass ordinance to do that. Sizeable undertaking to do, it is a good thing to do but cannot implement and do overnight. More discussion and explanation was held.

- snow and ice - call state legislator, poor service

Discussion on NERPD involvement on state roads, not appreciate officers time to sit with the lights on warning of bad conditions along N. Sherman Street due to state not responding.

Officers have other duties that need their time.

Barry E. Rudisill

- agree state roads terrible last week. Service on our township roads was commendable

Steven H. Gross, Jr.

- were addressed during meeting

### **Public Comments**

Dave Bloss mentioned that the fire retention fund was used entirely. A copy of Eagle Fire Co. budget is to be presented in January.

Motion to pay bills by Steven H. Gross, Jr., seconded by Barry E. Rudisill and carried unanimously.

Motion to adjourn at 10:33pm.

Respectfully submitted,  
Terry R. Gingerich  
Township Manager/Secretary/Treasurer