

Maidencreek Township Board of Supervisor Meeting
July 28, 2008 8:30 pm

Present: Claude Beaver, Roy Timpe, Joseph E. Rudderow III, Eugene Orlando, Jr. – Roland & Schlegel, Thomas Unger– Systems Design Engineering, Inc., Diane Hollenbach – Manager.

Guests: Richard Wick, Tim Krall, Vicki Krall, Dave Kessner, Hank Koch, Terry Manmiller, Robert Hanna

Claude Beaver called the July 28, 2008 meeting of the Maidencreek Township Board of Supervisors to order at 8:30 pm in the Maidencreek Township Municipal Building and asked everyone to rise for the Pledge to the Flag.

Penn State Security Assessment

A motion was made by Joseph Rudderow III, seconded by Roy Timpe, to authorize Township personnel to participate in the Computer Security Readiness Assessment for Small Municipalities in Rural Pennsylvania. Hearing no questions on the motion, all members voted “Aye”. Motion carried. Roy Timpe added that there are no guarantees that the Township will receive an individual assessment of its computer security.

Spirit Court Open Space Sale

A motion was made by Joseph Rudderow III, seconded by Roy Timpe, authorizing advertisement of the sale by sealed bid of .25 acres of Township Open Space on Spirit Court with the stipulation that the Township is not obligated to sell and has the right to reject any and all bids for a reason or no reason. Hearing no questions on the motion, all members voted “Aye”. Motion carried.

Resolution 15-2008 Recognizing the Ongoing Status of the Maidencreek Township Authority

A motion was made by Roy Timpe, seconded by Joseph Rudderow III, adopting Resolution 15-2008, which recognizes the ongoing status of the Maidencreek Township Authority as the provider of public water and sewer services. Hearing no questions on the motion, all members voted “Aye”. Motion carried.

James Hardie Land Development Plan Time Extension

Henry Koch, attorney for Can Corporation, stated that his client has sustained serious flooding from the James Hardie expansion project and is asking that the Supervisors reject the time extension request from James Hardie, revoke the previous preliminary plan approval and instruct James Hardie to submit new revised preliminary plans that satisfy the Township’s ordinance provisions. He further suggested that no occupancy permits be issued for the building and if the issues are not resolved in a timely manner, the building be demolished.

Roy Timpe stated that taking the James Hardie Plan back to the preliminary plan stage would delay resolution of the storm water improvements. Gene Orlando, Jr., Township Solicitor asked James Hardie Representatives, Tim Krall and Dave Kessner, where they are in resolving the storm water issues.

Dave Kessner stated that he has not received an answer from the Township on what has changed up stream to cause an increase in the storm water, if James Hardie is responsible for upstream storm water and who is going to pay for any storm water improvements. Mr. Kessner

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would like data on what was going in the head box prior to 2003 and what building permits have been issued upstream and those new facilities impact on storm water. Tim Krall of Spotts, Stevens and McCoy, engineer for James Hardie, stated James Hardie storm water is in compliance with Township Ordinances. Tim Krall cited a May 20, 2008 Systems Design Engineering letter stating that the Township engineer reviewed a June Avenue Bypass plan and that clarification is needed on this letter asking why the Township is asking for more restrictive design standards.

Gene Orlando stated that this issue is not the Township's problem. James Hardie went ahead and built at their own risk after preliminary plan approval. If the storm water were in compliance then there would be no flooding issues. James Hardie is responsible for the redirection of the storm water flow. The building permits have expired and there is no occupancy permit. James Hardie is responsible for obtaining whatever data it needs and should not expect it to be supplied to them. Mr. Orlando felt that the James Hardie Final Plan did not meet Section 406A of the Township's Subdivision and Land Development Ordinance, which states that a final plan must be submitted within one year of preliminary plan approval. Further, Section 508 of the Municipalities Planning Code allows a landowner to obtain final plan approval in accordance with preliminary plan approval and satisfactory resolution of the conditions of preliminary plan approval. The conditions of preliminary plan approval for this project have not been met.

Tom Unger stated that the May 20th Systems Design Engineering letter was not an official review and no formal storm water plans were ever submitted for the "June Avenue Bypass". The letter Mr. Krall references was a letter written to help James Hardie meet an internal self-imposed deadline for a report on the status of the land development plan to its Board of Directors.

Dave Kessler of James Hardie stated a preliminary design has been completed for a storm water bypass system. Can Corporation will need to agree with the plan, as an easement is needed across their property.

Gene Orlando asked Robert Hanna of Can Corporation, if the storm water design requires an easement across a nonoperational portion of the Can Corporation property; would Can Corporation cooperate in granting an easement? After conferring with legal counsel, Mr. Hanna responded that Can Corporation would cooperate if the Supervisors reject the request for a time extension and direct James Hardie to submit a new preliminary plan with a revised storm water plan within a reasonable amount of time and Can Corporation's professionals are given an opportunity to review the plan and give comment.

Gene Orlando asked that James Hardie and Can Corporation exchange contact information in this meeting and asked that they each respond promptly to communication from each other.

Gene Orlando requested that James Hardie withdraw their final plan without prejudice, have a dialog with Can Corporation, look at the information and resubmit a plan within ninety days.

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The Supervisors recessed into executive session from 9:35 p.m. until 9:45 p.m. to discuss matters pertaining to litigation.

Tim Krall stated that James Hardie could not withdraw their plan.

The Supervisors recessed into executive session from 9:50 p.m. until 10:16 p.m. to discuss matters pertaining to litigation.

Roy Timpe asked the representative of James Hardie if there was a sense of urgency in regards to fixing this storm water. Given the slump in the housing market, was there still a desire to promptly move this plan forward with a ninety day period. Dave Kessner of James Hardie responded that there was. The Company has invested 36 million dollars in this property since they purchased it and they take this very seriously.

Based on the representation that James Hardie Building Products wants to move this plan forward to successful completion, a motion was made by Roy Timpe, seconded by Joseph Rudderow III, to accept the ninety-day time extension request for the James Hardie Land Development Plan as a last and final time extension. The Township in granting the ninety-day time extension does so without prejudice to the Township right to fully enforce Section 406A of the Maidencreek Township Subdivision and Land Development Ordinance and to amplify this, this motion should not be construed that the Township is in any way accepting the James Hardie final plan. The fact that the Township is moving to grant the time extension does not mean that the Township believes it has a proper final plan before it.

Roy Timpe offered comment on the motion, stating since Can Corporation is concerned about flooding, the Township expects cooperation on the part of Can Corporation in returning phone calls to James Hardie representatives during this ninety-day period. Lack of cooperation on the part of Can Corporation in exchanging information with James Hardie, may lead this board to conclude that Can Corp does not view the storm water as a serious issue.

The Chairman asked for comments and questions from the floor. Robert Hanna stated that he does not agree with Mr. Timpe's statement. This issue has been going on for 30 months and Can Corporation has cooperated and allowed James Hardie on their property to do a survey. Mr. Koch asked if the Board is prepared to say what happens at the end of ninety days. Mr. Orlando instructed the Board not to answer.

Hearing no other questions on the motion, all members voted "Aye". Motion carried.

Public Comment

Mr. Wick of East Wesner Road stated that he had come before the Board in April asking that the unsightly condition of David Kopfer's newspaper drop off be addressed. He informed the Board that the condition still exists.

Since there was no further business, a motion was made by Roy Timpe, seconded by Joseph Rudderow III, to adjourn the July 28, 2008 meeting of the Maidencreek Township Board of Supervisors. Hearing no questions on the motion, all members voted "Aye". Motion carried. Meeting adjourned at 10:24 P.M.

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Township Secretary, July 29, 2008

Cc: Board of Supervisors
Eugene Orlando, Roland & Schlegel, Solicitor
Thomas Unger, Systems Design Engineering, Inc., Township Engineer
Planning Commission
Park & Recreation Board
Zoning Hearing Board and Alternates
Paul Herbein, Zoning Hearing Board Solicitor
Maidencreek Township Authority
Patrick Donovan, Maidencreek Township Authority General Manager
JoAnn Schaeffer, Maidencreek Township Authority Secretary
Robert Hobaugh, Jr. Esq., Stevens & Lee, Authority Solicitor
Greg Unger, Systems Design Engineering, Inc., Authority Engineer
Barbara Hassler, Tax Collector
Daniel Miller, Blandon Fire Company Chief
Chief Scott W. Eaken, Northern Berks Regional Police