

Maidencreek Township Board of Supervisor Meeting
October 22, 2008 7:30 pm

Present: Claude Beaver, Roy Timpe, Joseph E. Rudderow III, Eugene Orlando, Jr. – Orlando Law Offices, Tom Unger, PE – Systems Design Engineering, Inc., Diane Hollenbach – Manager.

Guests: Hank Koch, Scott Miscus, Rami Hanna, Robert Hanna, Terry Manmiller, Daniel Miller, Chris Kline, Dan Becker, Dave Kessner, Tim Krall

Claude Beaver called the October 22, 2008 meeting of the Maidencreek Township Board of Supervisors to order at 7:30 pm in the Maidencreek Township Municipal Building and asked everyone to rise for the Pledge of Allegiance and a moment of silence for the late Senator Jim Rhoades.

Executive session was held from 7:30 p.m. to 7:45 p.m. to discuss possible litigation and personnel.

CVS

A motion was made by Joseph Rudderow, seconded Roy Timpe, upon the recommendation of engineer, to release \$64,777.26 from the CVS Maidencreek Improvement Escrow Account. The Chairman asked for questions on the motion. Hearing none, all members voted, "Aye." Motion carried.

2008 Minimum Municipal Obligation

A motion was made by Roy Timpe, seconded by Joe Rudderow, to authorize payment of the 2008 Minimum Municipal Obligation to the employees' pension in the amount of \$37,613.00. Hearing no questions on the motion, all members voted, "Aye." Motion carried.

James Hardie - The Board considered the James Hardie Building Products Land Development Plan time extension. A time extension to the plan review period was requested until December 11, 2008.

Dan Becker, solicitor for James Hardie, stated that James Hardie is committed to trying to start the construction of the storm water facilities as soon as possible. Representatives met with Can Corporation today. Things went well and James Hardie is trying to move forward. Hank Koch, solicitor for Can Corporation, stated that there have been two meetings between the two parties since October 9, 2008 and some issues are still outstanding. This does not have anything to do with the time extension, which relates to the status of the plan. Can Corporation still holds with the position that the time extension should be denied in order to comply with the Township's ordinances. Mr. Koch pointed out that in the July 2005 minutes, the Township gave James Hardie all sorts of warnings that construction was at their own peril prior to final plan approval without the resolution of the storm water issues. The storm water was to be returned to how it existed in 2003 and Can Corporation has not seen anything that takes the storm water to that condition. Dan Becker stated that James Hardie believes the plan being reviewed, complies with the preliminary plan approval. The storm water problem remains if the Board rejects the plan and James Hardie would like to get this large project done. Gene Orlando stated that the grant of the extension does not address the legal issues that both parties have brought up and granting an extension of time is not a determination that the plan before the Board is proper or not proper. Can Corporation again asked that the Supervisors live up to what they represented in the past and reject the James Hardie Plan and make it be resubmitted as a preliminary plan. Mr. Becker asked if Can Corporation would agree that a preliminary plan did not have to meet the storm water ordinance in place at time of filing the new plan. Mr. Koch stated that he would agree that they would continue negotiations and would not compromise his client's legal

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position by agreeing with what Mr. Becker had just said. Mr. Becker stated, "When you ask for one million dollars to purchase an easement to resolve a storm water problem on your property, it becomes very difficult for James Hardie. James Hardie is trying to get this matter resolved and negotiate in good faith but this is what they are up against." Bob Hanna stated that Can Corporation's private negotiations with James Hardie have nothing to do with the Township applying their ordinances.

A motion was made by Roy Timpe, seconded by Joe Rudderow, to grant the plan review time extension for the James Hardie Land Development Plan until December 11, 2008 and in so doing the Township is not waiving Township rights in respect to this plan and is not expressing an opinion as to whether the plan meets the Township Ordinances. The Chairman asked for questions on the motion.

Roy Timpe stated that he is encouraged that James Hardie is coming to the realization that they are in a serious situation and seem to be taking some action in a positive direction toward resolving it. Joe Rudderow asked Dave Kessler what his position is with James Hardie. Mr. Kessler answered that he is Vice President of Manufacturing. Mr. Rudderow asked if Mr. Kessler was the authorized person. Mr. Kessler stated there is a capital project of \$300,000 for storm water and it can be moved forward and installed. There is no expiration date on the capital project.

Bob Hanna asked how long this will continue. Claude Beaver stated that he hopes the two companies can work out their differences and the storm water facilities can be installed, solving both companies problems. Mr. Hanna asked the Board to assume that Can Corporation can not reach an agreement with James Hardie and want James Hardie to solve their problem on their own land. Mr. Hanna asked, "Will the Township at that time take the appropriate action in proceeding in accordance with the ordinances and provisions of the MPC?" Mr. Orlando stated that the Township has been previously threatened with litigation regarding this matter and the Township's future action may be impacted by that litigation. As Township Solicitor, Mr. Orlando recommended that the Board not address Mr. Hanna's question because the answer may have a direct and specific impact on Township rights and remedies with regard to the potential litigation that had been previously brought up. Mr. Becker stated that it is their hope to come to a resolution with Can Corporation but if they can't, there are other options available to James Hardie. Mr. Becker believes that James Hardie has rights through the easement now that will require court action. Mr. Hanna stated, "If the Township will not take appropriate action to alleviate the problem, Can Corporation will. They will appeal any decision made by this Board."

Hearing no further questions or comments, all members voted, "Aye." Motion carried.

Wyatt Drive Tot Lot – The Board considered payment request #1 in the amount of \$63,115.65. The tot lot is not completed, no lights have been installed and the contractor is 95 days late on the project. The Board felt that only partial payment should be made taking into consideration the possibility that the contractor will owe liquidated damages of \$300 per day and the excess engineering fees paid after the July 19, 2008 contract completion date.

A motion was made by Roy Timpe, seconded by Joe Rudderow, to authorize payment to Progressive Products for the Wyatt Drive Tot Lot in the amount of \$31,343.19. The Chairman asked for questions on the motion.

Scott Miscus of Progressive Products asked the Board to dismiss the liquidated damages because his intent was to complete the project, and the Township has not suffered any damages. He did not believe that the fees were applicable and will force him into bankruptcy. Joe Rudderow stated

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that this is not a final payment and encouraged Mr. Miscus to finish the contract. At the end of the project, the Township Solicitor will advise the Board on the matter. Mr. Orlando stated that the payment the Board authorizes tonight does not reflect what the Township may or may not do in the future. This is not a draw down or waiver and is made without prejudice. The Board will take Mr. Miscus' request into consideration.

Hearing no further comments on the motion, all members voted, "Aye." Motion carried.

Resolution 18-2008 Real ID

A motion was made by Roy Timpe, seconded by Joe Rudderow, to adopt Resolution 18-2008 asking Pennsylvania Representatives and Senators to oppose the Real ID legislation. Hearing no questions on the motion, all members voted, "Aye." Motion carried.

Request for the Larken Shopping Center to be allowed to rent a unit to a church – Diane Hollenbach explained that a church is a permitted use in the Commercial Zoning District; however, the shopping center does not have enough parking to allow the use. The Larken Shopping Center received a variance to the Maidencreek Township Zoning Ordinance to reduce the parking requirement for a retail center from 5 spaces to 4 spaces per 1000 sq. feet of building. A church requires 20 spaces per 1000 sq. feet of sanctuary space. The Board agreed that a variance would need to be obtained or the Larken Shopping Center would have to agree not to rent a portion of its retail space to allow the church to have adequate parking. Diane Hollenbach will pass this information along.

Cassidy Court Storm Water Agreements – The Chairman signed the easement agreements for the Cassidy Court Storm Water Project.

Kemmerer Road Repair

A motion was made by Roy Timpe, seconded by Joe Rudderow, to authorize purchase of plastic pipe at a cost not to exceed \$692.00 for the repair of Kemmerer Road. Hearing no questions on the motion, all members voted, "Aye." Motion carried.

2009 Budget

The Board reviewed the 2009 draft budget. Revenue has decreased due to the drop in the real estate transfer tax. The Manager prepared the budget using the operating reserve fund and including minimal projects. The draft budget does not include any road work for 2009. Mr. Rudderow asked if the budget contained enough money for road salt and overtime. Diane Hollenbach stated that she allowed for the purchase of 450 tons of salt, which is more than the Township has purchased in any one year since 2000 and 60 hours of overtime.

The following expense reductions were proposed by the Mr. Timpe:

- Move .0001 mill from the Recreation Fund to the General Fund for one year,
- Reduce the Northern Berks Regional Police Budget by \$40,000.

Mr. Rudderow proposed the following expense reductions:

- 10 to 20% decrease to the Park and Recreation Budget, and
- 3 to 5% decrease in all donations,
- eliminate paying for the ambulance fuel at Berks Products but allow them to fuel up at the Township tanks,

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- reduction of cost or elimination of Township drinking water and coffee for staff,
- ask the engineer and solicitor to hold their rates with no increase for 2009 or go out to bid on the services,
- ask the Township Manager to cut the Public Works/Road, Highway and Street Budget further.

After much discussion on the correct dollar amount to cut from the Park & Recreation budget, Mr. Beaver suggested a .0002 mill decrease.

The Board agreed to the following changes to the budget:

- Park & Recreation millage shall be reduced from .0004375 to .00025,
- General Fund millage shall be increased by the Park & Rec reduction to .000875
- reduce Blandon Ambulance donation to \$33,000,
- reduce Berks County Visting Nurse donation to \$2,000,
- reduce Northern Berks Regional Police budget by \$40,000,
- stop paying Blandon Ambulance Berks Products bill, but allow them to use the Township fuel,
- maintain the Blandon Fire Company donation at \$89,250 and eliminate the promised 5% increase,
- reduce Advance Life Support donation to \$9,000,
- reduce the Animal Rescue League donation to \$900

The Manager was further instructed to do the following:

- educate the residents of the cost of calling in complaints and nuisance 911 calls,
- reduce the Public Works/ Road, Highway and Street Budget further,
- look at reducing or eliminating the cost of the water cooler service and coffee maker rental,
- contact the engineer and solicitor and ask that they not raise their rates in 2009,
- send letters to all entities whose budgets are being cut explaining that the Township does not wish to raise taxes and that revenue has fallen due to the poor economy.

A motion was made by Joe Rudderow, seconded by Claude Beaver, to direct the Maidencreek Township Police Commissioner to reduce Maidencreek Township's contribution to the 2009 Northern Berks Regional Police Budget by \$40,000. Hearing no questions on the motion, all members voted, "Aye." Motion carried.

A motion was made by Joe Rudderow, seconded by Claude Beaver, to send a letter to the Northern Berks Regional Police stating that Maidencreek Township has no desire to pay any increase in rent in 2009 and to inform the Department and other Commissioners that Maidencreek Township has directed their Commissioner to reduce the police budget for Maidencreek Township by \$40,000. Hearing no questions on the motion, all members voted, "Aye." Motion carried.

There were questions from Mr. Rudderow on the employee's pension and pulling the funds out to put them in "safe" investments. Mr. Timpe suggested the Township allow the professionals to handle the investment of funds. The Board will discuss for the 2010 budget a dedicated Fire Tax and

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increasing the Cable Franchise Fee from 3 % to 5%. Roy Timpe suggested looking at removal of some street lights to cut electricity costs. Claude Beaver asked that the street light poles in Blandon Meadows IV be checked.

Since there was no further business, a motion was made by Joe Rudderow, seconded by Roy Timpe, to adjourn the October 22, 2008 meeting of the Maidencreek Township Board of Supervisors. Hearing no questions on the motion, all members voted, "Aye". Motion carried. Meeting adjourned at 11:10 P.M.

Township Secretary, October 27, 2008

Cc: Board of Supervisors
Eugene Orlando, Orlando Law Offices
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