

Maidencreek Township Board of Supervisor

Special Meeting

May 17, 2006, 8:20 PM

Present: Roy Timpe, Robert Kopfer, Claude Beaver, Eugene Orlando, Jr. and Stephanie Dake – Roland & Schlegel, Tom Unger and Ed Kopicki– Systems Design Engineering, Inc., Diane Hollenbach – Recording Secretary

Guests: Muriel Meier, Scott Miller, Chris Bradley, Merv Heller, Terry Esbenshade, Elaine Berish, Patrick Donovan

Roy Timpe called the May 17, 2006 special meeting of the Maidencreek Township Board of Supervisors to order at 8:20 PM in the Maidencreek Township Municipal Building. The purpose of the special meeting was to discuss and take possible action on the Village at Summit Crest and Esbenshade's Greenhouse plans.

**The Village at Summit Crest Phase 3 Preliminary Plan**

Gene Orlando stated that there were two legal issues: the note recommended by the Township engineer that dealt with unanticipated problems on the site from seeps and springs and fee in lieu of open space requirements and how they apply. Roy Timpe stated that the Township engineer was also going to gather costs on improving the intersection at Hill Road and Park Road.

Tom Unger stated that SDE used the costs of the Melrose Place improvements which would be similar to the ones done at Hill Road and Park Road and estimate the improvements to cost about \$236,000.00. The costs were obtained from contractor estimates. Chris Bradley stated that his engineer reviewed SDE's estimate and thinks the improvements will cost \$150,000.00. Ed Kopicki stated that the big factor will be the subsurface conditions.

Merv Heller asked if the Village at Summit Crest owes open space or recreation fee. The plan is showing 30% open space. Ed Kopicki stated that the Township ordinance requires a portion of the open space to be less than a 25% slope and by his calculations, the plan still needs to provide 1.8 acres of open space. Mr. Bradley proposed to pay \$750 per unit to be put toward the intersection improvement, would donate fill and have the open space indicated on the preliminary plan remain as open space. Mr. Bradley stated that his 83 units would bring in about \$35,000 in tax revenue to the Township with little cost impact.

Roy Timpe asked if the road improvement work could be done by the developer. Tom Unger stated that if the Township was going to pay for part of the project, the project would have to be done by the Township and bid per the Second Class Township Code and prevailing wages paid.

Tom Unger stated that one of his concerns is and has always been that there is no water system approved for the site. Chris Bradley stated that he is actively investigating connecting to the public water system. Mr. Orlando made sure the Board understood that the note restricting the community age to 55 and older has been removed from the plan and the property will not be legally bound to this restriction because the Township can not compel age restricted regulations in the R4 zoning district at this time.

There is a significant disagreement between the Township and developer's solicitors in regard to the application of sections 514 and 605 of the Maidencreek Township Subdivision and Land Development Ordinance and the obligations of the developer in regards to open space or if he were to offer fee in lieu of open space and in addition, there are a number of concerns expressed by both the Township and the developer regarding access issues, roads, etc. The developer has asked the Township to consider preliminary plan approval granting a number of waivers. The waivers requested and that were subsequently granted and contained in the April 13 SDE review letter are:

- 1.waive section 503.2.b –to allow the right of way width to be less than 53 feet.
- 2.waive section 503.D.2.a – to allow up to a 12% street grade.

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3. Section 503.J.1 – to allow a single access street to exceed 500 feet in length with more than 20 residential units.
4. Section 503.J.5 – to allow a dead end street.
5. Section 601.B - to allow the side yard setback for each mobile home unit to be 10 feet provided that the number of units does not exceed 83 housing units and 1 community center.
6. Section 513.A.5 to allow roof leaders to directly connect to infiltration trenches in order to comply with PA DEP regulations encouraging groundwater recharge. Those units that will be directly connected to infiltration trenches will be charted on the subdivision plan. All other units will comply with this section of the ordinance.
7. Section 513.F.2.D to allow storage of storm water to be longer than 24 hours in duration.
8. Section 513.F.4.A to allow a dam height of greater than 6 feet provided that the one detention pond height is reduced from 11 feet to 8 feet in height.

As a means of resolving the dispute without litigation and resolving litigation over conditions that might end up being unacceptable to the applicant, a discussion and a dialog took place at the public session which resulted in the following motion.

A motion was made by Roy Timpe, seconded by Robert Kopfer, to grant preliminary plan approval and grant the waivers as outlined in the April 13, 2006 Systems Design Engineering review letter conditional upon:

1. Compliance with the conditions set forth in the April 13, 2006 Systems Design Engineering review letter.
2. Entering into an agreement, which would provide for payment of \$125,000.00 by the developer to the Township for road improvements at the intersection of Hill Road and Park Road. This fee will be paid in the following manner: \$25,000 within 60 days of final plan approval and the balance paid no earlier than 10 months from the Township granting final plan approval and no later than 60 days after Penn DOT approval. Penalties for failure to pay the fee will be negotiated and agreed upon by the Township solicitor and the developer's lawyer and will include but are not limited to the ability of the Township to withhold issuance of use and occupancy permits in the event the developer defaults on the payment of the road improvement money.
3. Permanently restricting the open space depicted on the preliminary plan with a note. The open space will not be dedicated to the Township but will be accepted by the Township as full compliance with any open space or fee in lieu of regulations.
4. Posting additional financial security in the amount of \$100,000 or 10% of the cost estimate, whichever is greater, as part of the Improvement Agreement and cost estimate to address any seeps and springs and unanticipated contingencies that are encountered during the construction phase of the improvements. An agreement will be finalized between the developer's lawyer and the Township's solicitor concerning release of that money when the construction phase is completed.
5. The developer reconstructing the base of Lee Spring Road from Hill Road to the terminus of his property to the satisfaction of the Township engineer and in accordance with Township specifications with the Township installing the final paving course.
6. The developer waiving his right to proceed with construction of the Village at Summit Crest Phase III after preliminary plan approval and only proceed when granted final plan approval.

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Roy Timpe and Bob Kopfer voted, "Aye." Claude Beaver abstained. Motion carried.

**Esbenshade's Greenhouses Final Plan**

Gene Orlando stated that he has been informed that the well on the Greenhouse property has been shut down and that there are no enforcement issues. Mr. Esbenshade has requested to be allowed to withdraw the plan. Mr. Orlando prepared a simple agreement that states the plan that was approved is not accurate and the developer desires to use onsite water, which will be resolved by additional discussion. The plan is being withdrawn and confirms that not all conditions were met. In consideration of the voluntary withdraw of the plan, the Township will allow Mr. Esbenshade to submit revised plans with no additional up front escrow. The agreement does not waive any rights of any parties and does not prejudice anybody.

A motion was made by Claude Beaver, seconded by Robert Kopfer, to authorize the chairman to sign the agreement if it is agreeable to Mr. Esbenshade. All members voted, "Aye." Motion carried.

Elaine Berish, Authority Chair, expressed concern that if the Supervisors changed the mandatory connection ordinance and allowed exemptions that this could become a common occurrence. The water system is a major investment and being a customer, part of the the cost of doing business is purchasing EDUs. EDUs are an investment in the water system and help promote water conservation. Commercial users receive a different rate (\$1.75 per 1000 gallons) than residential users (\$4.00 per 1000 gallons). The water system provides fire protection. 9% of the water from the system is used for commercial and industrial accounts.

Roy Timpe pointed out that the Supervisors are elected and the people have input by voting if they do not like what the Supervisors are doing. The Authority is appointed, so they have the power of coercion without consequence and the Supervisors have the responsibility of appointing the Authority Board.

Bob Kopfer stated that agriculture, like growing plants, doesn't need to use treated water. The Authority dumped money into two wells that were no good and an extra well wouldn't be needed if the commercial and agricultural users could get off the system.

Claude Beaver asked how a customer's EDUs are calculated. Mr. Donovan stated the calculation is based on the highest consecutive 90 day period of usage. Mr. Unger explained that this was customary in order to size the system for the peak periods of use.

A motion was made by Robert Kopfer, seconded by Claude Beaver, to authorize the solicitor to draft an ordinance for the mandatory connection to the water system exempting agriculture conditional upon including in the ordinance: obtaining Township permits, no interconnection with the public system and enforcement options. All members voted, "Aye." Motion carried.

Roy Timpe announced that an executive session was held from 7:50 p.m. to 8:20 p.m. for potential litigation.

Since there was no further business, a motion was made by Claude Beaver, seconded by Robert Kopfer, to adjourn the May 17, 2006 special meeting of the Maidencreek Township Board of Supervisors. All members voted, "Aye." Motion carried. Meeting adjourned at 11:00 P.M.

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Transcribing Secretary

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Cc: Board of Supervisors  
Eugene Orlando, Roland & Schlegel, Solicitor  
Thomas Unger, Systems Design Engineering, Inc., Township Engineer  
Ed Kopicki, Systems Design Engineering, Inc., Planning Commission 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, Maidencreek Township Authority Solicitor  
Greg Unger, Systems Design Engineering, Inc., Maidencreek Twp Authority Engineer Barbara Hassler, Tax Collector  
Daniel Miller, Blandon Fire Company Chief  
Chief Scott W. Eaken, Northern Berks Regional Police