

**TOWNSHIP OF SALISBURY
LEHIGH COUNTY, PENNSYLVANIA**

**MINUTES FROM THE BOARD OF COMMISSIONERS
REGULAR MEETING – 7:00 PM
July 22, 2010**

The Public Meeting of the Salisbury Township Board of Commissioners was held on the above date in the Township Municipal Building located at 2900 South Pike Avenue, Allentown, Lehigh County, Pennsylvania.

Members attending:

Joanne Ackerman
James Brown, President
Norma Cusick, President Pro-Tempore
Robert Martucci, Jr., Vice President
James Seagreaves

Staff attending:

Randy Soriano, Township Manager
Cathy Bonaskiewich, Assistant Township Manager/Finance Director
John Andreas, Director of Public Works - EXCUSED
Allen Stiles, Chief of Police
Cynthia Sopka, Director of Planning & Zoning
John Ashley, Esquire, Township Solicitor
David Tettermer, representative of Township Engineer, Keystone Consulting Engineers

CALL TO ORDER

President Brown called the meeting to order at 7:00 P.M.

PLEDGE OF ALLEGIANCE FOLLOWED.

NOTIFICATION

Mr. Soriano informed the attendees that all sessions of the Salisbury Township Board of Commissioners regular meetings are electronically recorded for the purpose of taking the Minutes. All public comments on agenda items would be taken prior to the vote. All public comments related to non-agenda items will be taken after the agenda has been satisfied.

Mr. Soriano announced that the Township records the meetings and archives its tapes and are available pursuant the Right-to-Know Law, if requested.

Mr. Soriano reminded everyone of the 3-minute rule and asked that everyone who wishes to speak to come to the podium, sign up, announce themselves and speak clearly in the microphone.

APPROVAL OF FINANCIAL REPORT AND BILLS PAYABLE

Commissioner Cusick questioned the amount of the Water Fund miscellaneous expenses. It shows that the Township budgeted \$2,000, but the year-to-date amount is \$10,000. Mr. Soriano stated that they did not budget for the financial consultant and that was the cost of financial services for refinancing the bond.

On motion by Commissioner Cusick, seconded by Commissioner Martucci, to accept the unaudited Financial Report for the period ending June 30, 2010 and approve the list of Bills Payable for the period 7/3/2010 through 7/16/2010.

Roll Call vote:

COMMISSIONER ACKERMAN -YES
COMMISSIONER SEAGREAVES-YES
COMMISSIONER MARTUCCI-YES
COMMISSIONER CUSICK-YES
COMMISSIONER BROWN-YES

The Motion passed by unanimous vote

MINUTES

July 8, 2010

Commissioner Brown declared the July 8, 2010 Board of Commissioners Regular Meeting Minutes approved as presented.

OLD BUSINESS

None

NEW BUSINESS

None

ORDINANCES

None

MOTIONS

Consideration of a Motion to consider a Waiver for the well isolation distance for the 2940 Saucon Avenue property.

Mr. Soriano noted the home was sold and the new owners, Dailing and Sherry Cheng, are requesting waivers in order to comply with the 100 ft well isolation distance required by the Ordinance. Due to restrictions of the property the waiver requests distances are as follows:

From the existing on-site well:

- To nearest proposed septic tank corner – 83.19’*
- To nearest proposed micromound bed corner – 71.00’*
- To nearest proposed drip tube – 72.95’*
- To nearest proposed dosing tank corner – 90.50’*
- To nearest proposed filter unit corner – 95.69’*

The Sewage Enforcement Officer, John Burkhardt, has reviewed the design of the new septic system and is recommending the approval of the requested waiver. If granted, the new owners will be required to enter into a Hold Harmless Agreement and Restrictive Covenant Agreement with the Township and also enter into a Maintenance Agreement. Enclosed are the pertinent information supplied by the SEO.

Commissioner Martucci questioned if they are going to be required to get the water tested. Mr. Burkhardt stated that there are currently no requirements, but he would recommend putting a suggestion in the Hold Harmless Agreement that states the property owners should have their water tested periodically.

Commissioner Brown stated that he would like to see a recommendation in the Agreement for the property owners to test their water periodically.

Motion by Commissioner Cusick and seconded by Commissioner Ackerman to grant a waiver request of approximately 28 feet for a well isolation requirement of 100 feet for the property located at 2940 Saucon Avenue subject to the owners entering into a Hold Harmless and Restrictive Covenant Agreement.

Roll Call:

- COMMISSIONER ACKERMAN -YES
- COMMISSIONER SEAGREAVES-YES
- COMMISSIONER MARTUCCI-YES
- COMMISSIONER CUSICK-YES
- COMMISSIONER BROWN-YES

The Motion passed by unanimous vote.

Consideration of a Motion to authorize entering into an agreement for the automated notification system services with Swift911.

Mr. Soriano reiterated the discussion from the work session, stating that the Public Notification rule revisions of 2009 promulgated by DEP required that Public Water Suppliers improve the delivery of Tier 1 public notices. Certain events (i.e. e-coli water contamination) trigger the need for the Township to alert water customers. DEP outlined acceptable methods for direct delivery of notices to include hand delivery, electronic mail, automated telephone dialing systems, or

other direct delivery approved in writing by DEP. In the past, the Township has chosen the hand delivery method, which in this day and age has been proved to be very cumbersome and ineffective. The PA Rural Water Association conducted a study on the best way to comply would be with the use of technology. They spent over six months comparing notification services and narrowed it down to eight services. Of the eight services, they are recommending Swift Reach Networks.

Mr. Soriano noted that Mr. Andreas, by his memo dated April 5, 2010 and comments provided at the work session, is recommending that the Township accept the Swift Reach proposal. The Solicitor reviewed the Agreement written mostly to favor the company and pointed out that in case of disputes, we would litigate them in New Jersey since they want this to be construed under NJ laws. The system can also be utilized for other emergency notifications. The issue is the Board of Commissioners willing to accept this clause realizing that there will be extra legal expenses associated with litigation.

Mr. Soriano stated that this is a one year agreement and the consensus of the Board is to try it for a year and see how it goes.

Motion by Commissioner Cusick and seconded by Commissioner Seagreaves to enter into an Agreement with SwiftReach Networks, Inc., 31 Industrial Avenue, Mahwah, NJ, for Swift911 Emergency Notification Services.

Roll Call:

COMMISSIONER ACKERMAN -YES
COMMISSIONER SEAGREAVES-YES
COMMISSIONER MARTUCCI-YES
COMMISSIONER CUSICK-YES
COMMISSIONER BROWN-YES

The Motion passed by unanimous vote.

Consideration of a Motion to approve Payment No 5 and No. 6 to Schlouch Incorporated in the amount of \$1,709.05 and \$3,559.14 for the Lindberg Park Tennis Court Project.

Mr. Soriano noted that with the payment of these invoices, the outstanding retainage will be \$8,397.94 or 7% of the contract. A punch list was developed and all work has been completed and the courts are being enjoyed by the residents. A Maintenance Agreement will be in place for the next 12 months.

Motion by Commissioner Cusick and seconded by Commissioner Martucci to approve Payment No 5 and No. 6 to Schlouch Incorporated in the amount of \$1,709.05 and \$3,559.14 for the Lindberg Park Tennis Court Project.

Roll Call:

COMMISSIONER ACKERMAN - YES
COMMISSIONER SEAGREAVES- YES
COMMISSIONER MARTUCCI- YES
COMMISSIONER CUSICK- YES
COMMISSIONER BROWN- YES

The Motion passed by unanimous vote.

RESOLUTIONS

Consideration of the Crossroads Baptist Church Lot Consolidation and Land Development Plan.

Mr. Soriano noted that the Planning Commission reviewed the Final Plan for this development on June 8, 2010 and is recommending approval of the Land Development Plan contingent of the developer complying with the comments of the Township Engineer's letter dated June 2, 2010 and the Zoning Officer comments outlined in a letter dated June 1, 2010 and other legal conditions set forth by the Solicitor as for Agreements and compliance with all other applicable Federal, State and Local requirements.

Mr. Bob Hoppes representing the Crossroads Baptist Church gave a brief description of the proposed development. He stated that the addition to the church is 3,821sqft and will adjoin the existing church. They are also proposing additional parking to the rear of the property. He noted that they have an approval letter for E&S control from Lehigh County and has satisfied almost all conditions of Township Engineer.

Commissioner Cusick questioned how many parking places the church has now. Mr. Hoppes stated that they have 39 spaces and are adding 9 more. Commissioner Cusick then inquired as to how many parishioners the church currently has. Pastor Becker responded 70-80 parishioners.

Commissioner Cusick asked Chief Stiles about the traffic coming in and out from the church and traffic from the Daisy Hill. The Chief responded that he does not see a problem because of the separation of driveways

Commissioner Cusick asked Ms. Sopka if all the SALDO requirements been met, to which Mrs. Sopka replied that yes they have.

Commissioner Martucci asked Mr. Tettermer if he is comfortable with the additional parking spaces. Mr. Tettermer stated that yes; they have met all the requirements. He noted that the size does not require detention, but they are providing an infiltration area to capture some of the water and allow it to infiltrate it on the surface, mitigating any initial first flush type problems that could occur.

Mr. Tettermer reviewed Waivers and Deferral requests as follows:

He referenced his July 15th letter, item #4 – one Waiver would allow this to be treated as a preliminary and final plan submission, which is SALDO 3.2; have no problem with because of the size and type of development.

Item # 5 - SALDO 5.3.F.2(h) – Waiver

Items # 8 & 9 are deferrals - Deferrals of SALDO 10.12; SALDO 10.16 – having to do w/ curb and sidewalks and additional street trees.

Mr. Tettermer noted that they submitted a revised landscape plan on July 19 that meets all the requirements, assuming that the Waivers and Deferrals would be approved.

Mr. Tettermer noted that the Planning Commission is recommending approval of the plan, Waivers and Deferrals.

Motion by Commissioner Cusick and seconded by Commissioner Martucci to grant the Waiver from SALDO 3.2; Waiver from SALDO 5.3.F.2(h) and Deferrals from SALDO 10.12 and SALDO 10.16

Roll Call:

COMMISSIONER ACKERMAN -YES
COMMISSIONER SEAGREAVES-YES
COMMISSIONER MARTUCCI-YES
COMMISSIONER CUSICK-YES
COMMISSIONER BROWN-YES

The Motion passed by unanimous vote.

Motion by Commissioner Cusick and seconded by Commissioner Martucci to approve the Crossroads Baptist Church Lot Consolidation and Land Development Plan contingent on the developer complying with the Township Engineer’s letter dated July 15, 2010 and Zoning Officer comments outlined in the letter dated July 15, 2010 and complying with all other Federal, State, and Local requirements and regulations.

Roll Call:

COMMISSIONER ACKERMAN -YES
COMMISSIONER SEAGREAVES-YES
COMMISSIONER MARTUCCI-YES
COMMISSIONER CUSICK-YES
COMMISSIONER BROWN-YES

The Motion passed by unanimous vote.

Consideration of the Bruce Uhl Final Major Subdivision Plan – Birchwood.

Mr. Soriano noted that this development received Preliminary Plan approval by the Board of Commissioners on July 12, 2007. The Final revised Plans were submitted on February 11, 2010. Because of a conflict of interest, the Township Engineer (Keystone Consulting Engineers) has removed himself from the review. The conflict of interest stems from their involvement as engineers prior to being appointed by the Township. Therefore, the alternate Engineer, Hanover Engineering Associates, Inc. is undertaking the review of this Final Plan.

In attendance for the developer were Bruce Uhl, Erich Schock, Esq., Kevin Markell from Barry Isett and Associates and David Bell from Barry Isett and Associates.

Attorney Schock introduced into the record the following:

Preliminary Plan prepared by Barry Isett

Final Plan prepared by Barry Isett

UHL-A- Resume and Professional Vita of David Bell, PhD-Barry Isett & Associates

UHL-B-Resume and Professional Vita of Kevin Markell, P.E-Barry Isett & Associates

UHL-C- DEP Letter dated June 23, 2009 regarding NPDES Permit for Discharge of Storm water from Construction Activities

UHL-D-Memorandum of Law from Erich Schock, Esquire to John Ashley, Township Solicitor, dated June 15, 2010

***Note: The following discussion is verbatim**

Attorney Schock- “This is a final plan for the Uhl subdivision. The Commissioners already granted Preliminary Plan approval and in the interim, we have taken care of some of the other items that needed to be done; primarily obtaining the NPDES permit from DEP. We have now filed a Final Plan, which is the same layout that we have proposed and gotten approval previously and I’ll ask the engineer to open up the plan and just a quick overview of what the subdivision is because it was a couple of years ago obviously since this has been approved and we’ve been getting it reviewed by the outside agencies.”

Mr. Markell- “This is a five-lot subdivision, five new lots at the end of existing Birchwood Road or Birchwood Drive. This includes the extension of Birchwood Drive for an additional cul-de-sac, Mr. Uhl’s existing residence, which is located on the property itself. As I said, we’re proposing five individual lots, on-lot sewer, on-lot septic, storm water management controls. As Attorney Schock stated, we have our approvals from the Lehigh County Conservation District, PA DEP for the NPDES permit, as well as Lehigh Valley Planning Commission. And we do have the sewer modules from DEP as well. And it is the same layout, the same orientation, same number of lots as what was approved with the preliminary plans.”

Commissioner Brown- “What year did you submit this plan originally?”

Mr. Uhl- “The original start of the preliminary plan submission was back in 2002. The length of cul-de-sac extension was denied by the Township, taken to court, and court approved the length of the cul-de-sac. I forget exactly what year that the court approved that. We came back after

the court approval of the length of cul-de-sac to complete the rest of the subdivision and receive preliminary plan approval. I think it was June or July of 2007 with conditions and those conditions were basically obtaining all the outside agency approvals and retesting of the water, which has all been completed and all been approved and I think it has all met the Engineer's requirements as I read from his letter. You gave us Preliminary Plan approval with conditions, we've met all the conditions, and we're back for Final Plan approval."

Attorney Schock- "The Resolution was July of 2007 when the approval was obtained."

Mr. Uhl- "And I believe several of you folks were on the Board and involved in that vote at that time."

Commissioner Brown- "Have the plans changed dramatically since..."

Mr. Markell- "No. the only revisions to the plan were to address Lehigh County Conservation District's Erosion Control comments as well as some storm water comments from PA DEP. It's the same storm water concept; same lot layout, the lots haven't moved, haven't changed in size; the road hasn't moved, hasn't changed in size."

Commissioner Brown- "The impervious coverage hasn't changed at all?"

Mr. Markell- "No."

Commissioner Brown- "Mrs. Cusick, do you have any questions?"

Commissioner Cusick- "I have a couple questions. One, is the one thousand foot-long road sketch on your private property?"

Mr. Uhl- "It's on my property, yes."

Commissioner Cusick- "And you are going to be taking care of that?"

Attorney Schock- "No, he is proposing to dedicate the cul-de-sac to the Township. That was discussed during the Preliminary Plan phase and in fact, we made some changes to the plan in request of the Township, indicating all it wanted to be responsible for was the maintenance of the road itself so storm water facilities and other things that would have been encompassed in that were moved so that all that would occur would be the dedication of a road, much like many, many other roads in the Township and I think a lot of cul-de-sacs that are public and that's what you maintain, just the road, none of the maintenance of the facilities."

Commissioner Cusick- "But it's not mandatory that we accept the dedication, correct?"

Attorney Schock- "No it is not."

Mr. Uhl- "It is not mandatory; however, all the indications and the requests were to pull it because we originally had some of the storm water control in the right-a-way of the road and it

was pulled out because the discussions were based around the fact the road would be accepted, but you weren't interested in taking care of the storm water so we've taken all the storm water control out of the right-of-way of the road and the plan is for storm water control all to be maintained by the lot owners and not by the Township. So it was only the road that was looking to be dedicated and indications of acceptance".

Attorney Schock- "That's the reason why I answered your question since when we prepared and submitted and approved the Preliminary Plan, the intention had been made to dedicate the road and that still remains Mr. Uhl's intention."

Commissioner Cusick- "The proposed dwellings are 30x50, correct? That's the impervious surface that you're saying is on the property?"

Mr. Uhl- "Those are the example size that we are showing on there. 1,500sqft two stories, 3,000sqft houses. That's correct."

Commissioner Cusick- "Does the impervious surface include or not include the driveways?"

Attorney Schock- "Yes it does."

Mr. Uhl- "Sure."

Commissioner Cusick- "So the driveway is considered as impervious surface also?"

Mr. Schadler- "Yeah they are considering their driveway as impervious and they have it as shown going to what they're calling infiltration basins 217 and 218, not to the individual home seepage beds. The home and any impervious associated with the home goes to that seepage bed."

Commissioner Cusick- "Ok, but it does not include a deck in the back or..."

Mr. Schadler- "There is none on the plan."

Commissioner Cusick- "None? What would happen if someone wants a deck on their house?"

Commissioner Martucci- "Or a garage or shed or tennis court or basketball court?"

Mr. Schadler- "The applicant has placed an equation on the plan that is to be used by the homeowner that will adjust the size of the seepage bed to be sized adequately for any additional impervious area- a deck, a sidewalk, a pool, shed, those type of structures."

Commissioner Martucci- "At whose expense?"

Mr. Schadler- "The future property owner's."

Mr. Uhl- “The lot owner. It’s all on them. That would be the lot owner’s responsibility. To size a seepage bed based on the size of the home, any extraneous impervious. And there was a formula, accepted by DEP and, I believe also by your engineers.”

Commissioner Martucci- “And would it be decided that way? Would those properties be decided that way?”

Mr. Uhl- “Yes, absolutely.”

Attorney Schock- “That was a discussion at the Preliminary Plan stage about there being proper notice to the owner and we agreed to do that. And that was something that I think I had indicated, we had indicated, that I would propose to work out with the Township Solicitor as to that and it has been shown on the plan.”

Commissioner Cusick- “Now this is a cul-de-sac off of a cul-de-sac, is that correct?”

Attorney Schock- “Off an existing cul-de-sac, yes.”

Commissioner Cusick- “And the Fire Police, EMS have reviewed this plan?”

Mr. Uhl- “They have been in, absolutely, and they didn’t have any problems with that.”

Commissioner Cusick- “Jim?”

Commissioner Seagreaves- “Initially there are some changes. I know I’ve been at Bruce’s house and trees and all that stuff will be removed for the right-of-way. That was the only issue back then.”

Commissioner Cusick- “Do I want to hear comments from the Zoning Officer before or after the rest of the Board speaks? Because I believe there are some issues, SALDO issues.”

Commissioner Brown- “If a homeowner puts a shed up, Cindy, do we have the Ordinance to go in and monitor the shed going up to make sure it doesn’t change the...”

Ms. Sopka- “I think there is a notation on the site plan that indicates any changes to impervious area on individual lots will be the responsibility of the Township Engineer to review. And so that’s actually putting a liability, I would believe, on the Township in the event that that should fail. That’s my interpretation of that and that’s one of the reasons why the Planning Commission became alarmed at the fact that it was understood that the intent would be to allow the property owners to build larger homes and within that 30x50 footprint. The other thing that I do know is that our Ordinance indicates that within our SALDO that once the Plan is approved, typically there’s no changes to a plan for a least five years. And what they’re saying is that once the plan is approved, they anticipate changes to the plan. That might constitute a re-submission. The other thing I do know also from the state of Pennsylvania, the Department of Environmental Protection, I had a conversation with one of the individuals involved with, I guess he’s the manager of storm water management, he indicated that any changes to those properties, in the

event that they make more impervious area on individual lots, might also require minor modifications with the state. So I don't think it's as cut and dry because storm water is also... There is a storm water management plan that was reviewed by the state and any changes to this plan would more than likely have to go back."

Commissioner Cusick- "I have a letter from... concerning this plan and the Planning Commission unanimously made the recommendation to the Board not to accept the Deed to the proposed road. So we don't have to take it. And not to accept any public utilities associated with the development associated with the residential land developments such as road storm water facilities. And the Planning Commission unanimously made the recommendation to this Board not to approve this Major Subdivision."

Ms. Sopka- "This is nothing new, but one of the things in my review letter, and during the process of some of the communications or the hearings with the Planning Commission, we did address, I did walk the sites, and we addressed the issue of possible natural drainage areas, which are regulated under our SALDO and are very specific by definition and those definitions are included in my comments to the Board of Commissioners. In addition, I was very specific about the topography, making reference to the fact that the potential for an existing drainage channel, natural drainage, subsequently Barry Issett Engineers, I believe it was their wetland scientist and soil scientist did go out and identify the groundwater seep originating on the property. The soils have been very dry lately. As I stood in the drainage path of the seep area and I was sinking so the soils, to me, at the top were considered a mucky kind of soil, which is reminiscent of discharges originating from seeps. I reviewed their comments and one of the things that's been rather consistent is that the Barry Issett Engineering firm has been consistently been making reference to natural drainage areas as not being regulated streambed with defined bed and bank. Whereas, if you evaluate our SALDO, and our SALDO criteria is a little bit more restrictive, it's specifically defined and it would include discharge from groundwater seeps or in the natural drainage channel which would be conveying storm water. If they were to use our definitions, they would probably have to come to the same conclusion as I have. So these were things that were never presented during the Preliminary Plan process, even though I do believe SALDO 5.3.2 requires all natural features to be submitted and it is the responsibility of the applicant or the developer to make sure that happens. That is also supported in our Zoning Ordinance."

Attorney Schock- "And at the time the plan was submitted, they did in fact do that. So the plan that was submitted for the Preliminary Plan showed, to the best of their knowledge, all the features that were out there, number one. Number two, these are matters that were... these reviews are part of the Preliminary Plan process and the law is when a preliminary application has been approved, the applicant shall be entitled to final approval in accordance with the terms of the Preliminary Plan when it's substantially similar, like this one is. We did go out, though, and determine, which I think was personally beyond what the obligation would need to be legally in this instance, and we examined that and the conclusion of the engineers and Mr. Bell is here, I don't know how much experience he has but significant experience, I'm going to submit Curriculum Vita so we have it on record the experience of these two gentlemen and they've made the determination that it is of no consequence, with respect to all of the planning and all of the features, and all of the design that's put on this plan. I liken it to, I get my house appraised for a quarter of a million dollars and the appraisal shows I have white walls in my kitchen. I

paint that blue, and someone says your appraisal report's wrong and you need to re-do that. The appraiser comes out; he shoots some photos of the blue walls and they say, ok, reappraise my home. But I don't need to. That's inconsequential for determining what the value of the house was. My appraisal remains good. That's the same thing that happened here. The section that is being cited is saying depict something. We've now gone out there and depicted what is there, number one, it could have changed over the last years... that's why approvals last for a period time because they recognize that land is fluid. You get an approval, the next day there might be something different out there. If it made some major impact, then you might have to do something to accommodate for it. But we don't know and the scientist can't tell you when, that in fact that appeared, and I understand that Ms. Sopka wasn't here back in 2007. What he's telling you is that he went out there then, it's a small feature, and it has no consequence. Mr. Bell, is what I said, correct?"

Mr. Bell- "Pretty much, yes."

Commissioner Martucci- "Your wall analogy falls somewhat short. This is a pretty sensitive area; it's not just painting a wall."

Commissioner Cusick- "The people that have to live below this development who have to absorb the water coming down and destroying their property is significant."

Attorney Schock- "The Engineer has made a determination that this feature did not change his conclusion."

Commissioner Cusick- "And will the engineer then pay for the all the properties that are damaged by the storm water?"

Attorney Schock- "He doesn't need to pay for those. The plan needs to be reviewed like every other plan you've reviewed. If you've required the Engineers to pay for damages to everyone's property in all other instances, then I guess we would have to consider that. But you need to review this plan like every other plan in the Township has been reviewed. He's entitled to a fair shake and that is the Final Plan needs to be reviewed under the basis of the law, which is we have Preliminary Plan approval when these items were taken care of. We have now looked at this additional feature that was raised by Ms. Sopka and the Engineer, who has submitted a report and indicates it does not change his conclusions as to what is in this plan."

Commissioner Martucci- "Who is responsible for any problems we have if this system fails and the people who live downstream from this property?"

Attorney Schock- "Number one, it is whatever the law is with respect to that and number two, if there is something in your Development Agreement with regard to that that has always been in there, then Mr. Uhl has to enter into a Development Agreement with the Municipality."

Commissioner Cusick- "So does he then also have to ask the people who will be receiving the run-off permission to accept the run-off from this property?"

Attorney Schock- “Not in this instance because there are instances where you require an Express Easement, there are instances where you have a Common Law Easement, that is something we had to prove to DEP in the course of obtaining the NPDES permit. We demonstrated to DEP that we have a Common Law Easement; therefore, that does not require us to go get Express Easements or written easements from the landowners. You, as a landowner, are entitled to develop your property and as part of that, things may change, it’s called the Common Enemy Doctrine and part of that is if you do certain things that take you out of that Doctrine, you must go get an Express Easement from the landowner. If you do not and you have a Common Law Easement, you are permitted to discharge the water. Mr. Uhl went to great expense and the Engineers went to great lengths to prepare a plan that satisfied that and that was part of the review with DEP. In fact, we met with the attorney for DEP to discuss that issue and present them with that information. The permit got approved because we showed to them that this was something that fell under the Common Enemy Doctrine, a Common Law Easement, and thus the permit could be approved. The sections that are cited with regard to getting an Express Easement apply to a different test. If we were doing different things with this water, we might have to get an Express Easement.”

Commissioner Martucci- “Cindy, do we have the original drawing that the Preliminary was approved and does anybody know, does it show the seep that would be on the property of the Keller’s? And does it also show the area of a spring that would be on the DeAngelis property?”

Mr. Uhl- “The spring on DeAngelis’s property was identified. The seep was not because it’s seasonal and not always there.”

Commissioner Martucci- “If you look at the topography, that seep is at one of the highest points of that property.”

Mr. Uhl- “No, it’s actually one of the lowest points. Where the seep is, that’s uphill of my property that flows down onto my property so it is higher, but as you go out the length of the property, it’s in a bit of a low spot.”

Commissioner Martucci- “Even if it were seasonal, has that been calculated into the infiltration system?”

Mr. Uhl- “Yes.”

Attorney Schock- “Everything up stream of the property gets by-passed through.”

Commissioner Martucci- “But if this wasn’t on the original drawing, and you’re saying nothing changed through here, everything is the same, and this wasn’t on the original drawing, which is now adding water to the entire area, how could that have been calculated into that infiltration system?”

Mr. Uhl- “It’s only adding water during storms. And that’s what the calculation is based on, the storm water.”

Attorney Schock- “Any of the off-site, upstream water gets sent straight through the site to level spreaders. Only the water on-site goes to the infiltration basins and the seepage beds, so the road impervious, the houses, the driveways, that’s what goes to the seepage beds. Everything upstream gets bypassed through that and does not go into those infiltration basins.”

Mr. Uhl- “All the storm water coming from the upstream side is being captured because this road is not crowned by a single slope so we’re capturing all the storm water coming from off my property, above my property onto this road. We’re capturing it and taking it under the road and re-discharging it in the same type at or below the existing rate and volumes. So we’re capturing and just passing on what’s already coming down. Then what we’re doing is capturing all the storm water from the impervious... the roadway, driveways, etc. on the lower side of the road and that is all going to infiltration so we’re taking that and re-discharging it back into the ground. A third system is on each lot that will have its own small infiltration or dry well that will be sized based on the size of the house and any other impervious structures that are added. The on-lot is what will vary depending on exactly what size house, what additional features, etc. the landowner may decide to put on there. As you are aware, when any landowner goes to request a building permit, they need to provide a site plan for their individual lot so they need to go through that process, whether it’s a 1,500sqft shadow or whether it’s a 2,000sqft shadow.”

Ms. Sopka- “As part of the Natural Resource Inventory, it was also identified. I also have GPS mapping of right below Mr. Uhl’s property is an un-matched tributary that originates and heads all the way down the mountain and so typically associated with it is a massive wetland vernal pool and groundwater seep system. This was the other concern of the Planning Commission, as they talk about having these people resize homes and increase impervious coverage, the potential for these houses to infiltrate all of that water, there’s never been any hydro-geologic studies done to see if that could impact that existing system that’s just below his property.”

Attorney Schock- “As part of the design through DEP, we did do infiltration testing at each of these systems and at the on-lot to show that the soils would accept the storm water. That testing was to determine the infiltration capacity of the soil and you size your system and based on that infiltration rate.”

Mr. Uhl- “The percolation rates and capabilities of the soils have been tested. Testing for hydrologic off site is not part of our requirements. Our requirements are to control the volume, the rate and the type of flow off our property, not to evaluate everybody else’s property.”

Ms. Sopka- “SALDO, in fairness, does require that properties’ natural features be identified along any property that is moving forward with land development for subdivision.”

Mr. Uhl- “And the natural features that were required were shown at the Preliminary Plan approval. We added the spring on Mr. DeAngelis’s at the request of the Township because that was identified and people wanted to locate it. We can’t just go off-site and start randomly surveying on other people’s properties. We did what you requested when the Preliminary Plan was approved. Going back and asking for all this now, I think, is putting the cart in front of the house.”

Attorney Schock- “The plan was approved. It was reviewed by your Engineer, it was reviewed by the prior Planning Director, it was reviewed by your Planning Commission and then it was approved by you. What we showed was what was required of us at that point and that plan was approved. We’re talking about a depiction requirement, just like they asked to depict the spring on Mr. DeAngelis’s property. It’s not something that would ultimately change the lot sizes.”

Mr. Uhl- “The storm water obviously runs down across my property and onto Mr. DeAngelis’s property below. When this subdivision is completed, the water will still run the same way, but it will not run at a higher rate, it will not run at a higher volume, and it will not run in a different type. And that’s what DEP looked at and that’s why we spent two years working with DEP to come up with a satisfactory plan and design to meet that requirement. The reality is the storm water plan that we are providing actually reduces the rate of runoff and reduces the volumes, compared to the current.”

Commissioner Martucci- “I think that’s where I have a problem. As drawn, I don’t think anyone is going to build a 3,000sqft house there and I think that there are going to be a lot more impervious groundwater added to it.”

Mr. Uhl- “I’ve got 3,100-3,200sqft. I don’t know what they’re going to build, but the reality is that it doesn’t matter what size they build, as long as they’re able to get within the building restriction area because the size of the seepage bed they put on is going to be determined by the size and shape house they want to put on and any of the other accessories. And to be honest, the amount of the impervious that each of these houses adds is a minuscule amount compared to the roadway and other impervious which we have already addressed and taken care of. So we’re talking about 80-90% of it being addressed through the main infiltration beds and 10% probably maybe 15% of the impervious being the house and the road.”

Commissioner Seagreaves- “Are the seepage beds built in conjunction with the homes?”

Mr. Uhl- “Yes.

Commissioner Seagreaves- “So they’ll be based on if it’s a 1,500sqft home or 5,000sqft home?”

Mr. Uhl- “Yes. There’s a formula that has been provided so that the homeowner can figure out exactly what size seepage bed they need to put depending on the square footage.”

Commissioner Brown- “And the homeowner will know that before?”

Mr. Uhl- “Yes, it’s part of the plan, part of the deeds.”

Attorney Schock- “Yes, we had agreed to that and put it in the deed restriction. In number 10 of your Engineer’s letter, he explains and goes through what we’ve just been talking back in regards to that calculation. And I note, he says, “it’s an acceptable method and it’s good engineering.” We’re not trying to sneak anything by anybody that’s not appropriate.”

Commissioner Brown- “I’d like to hear a comment from Mr. Beck.”

Richard Schreiter, Salisbury Township Planning Commission- “Under ideal conditions, this storm water plan will work. These are going to be huge vaults on the side of the road; huge vault size, maybe of a tractor trailer, filled with stone. They’ve got to dig these things out of rock and put these vaults in beside the road. They’re going to get full of leaves, they’re going to get full of debris, and they’re eventually, 10-15 years from now, they’re going to fail because they’re going to be clogged. We get ice, we get snow, we get zero degree temperatures, we get snow piled up where these drainage things are supposed to go in and you’re going to have a road that’s going to act like a drainage trough and all that water is going to go running down onto the property down below. These property owners are not going to want to take the expense of opening up these huge vaults and cleaning them all out, putting all fresh stone back in and then covering them up again. It’s going to cost a fortune. Who’s going to get the burden? The Township is going to get the burden. They’re going to get us up there cleaning all these vaults out. Also, you have all this water going into these vaults, where do you think that water is going? You think it’s going to go straight down the mountain, ten thousand feet down? It’s going to hit an impervious layer and it’s going to come gushing out down below on other people’s property. That’s common sense. You can do everything you want but common sense tells you what’s going to happen. This is a disaster for the Township. What is the Township getting out of this subdivision? It’s a one thousand foot road. That was our biggest concern. Mr. Uhl can develop his property but this is going to affect the properties down below. They didn’t delineate the wetlands that are close to the property. There are seeps down there. What’s going to happen to all these wetlands after all this water is traveling underground?”

Commissioner Ackerman- “Would it pass a perc test?”

Mr. Schreiter- “It can perc and that’s fine but you’re doing a perc test with ten gallons of water and you’re going to have a hundred thousand gallons of water going in here and coming out of these vaults. You’re going to have a tremendous amount of water. It’s gotta go somewhere. That’s why retention ponds are really nice because water can sit in the retention pond, some can perc into it, and then it is released at a control with a pipe. And if they would have an easement across somebody’s property that would go down and go into a natural stream that’s a lot different. Who knows where this water is going to go. We have no control once it goes into the vault. And how do we know the vault is even going to work after it gets filled with debris? These property owners are going to be faced with a lot of liability. And does the Township have the authority to go in and tell them they have to go in and clean this up and spend thousands of dollars to clean their vault up? In the meantime, they’re ruining the property down below.”

Mr. Uhl- “To start with, Salisbury Township’s Water Management Plan encourages infiltration as storm water, not retention or detention. This was basically the Act 167. This infiltration has become the way that all of your storm water management programs say that you should handle the storm water. It would have been a lot easier, a lot less costly, and a lot simpler to put detention ponds on there. The Engineer said that the state is requiring infiltration now. That’s what your storm water management plans are saying to do. So I’m following your guidelines, the state guidelines and what I have to in order to deal with the water. Secondly, this type of infiltration systems have been installed by the original engineers who started this program in

subdivisions in South Whitehall Township and it works great and they love it because you don't have the detention pond issues. It's a lot less expensive to put detention ponds than to dig out and put these huge pipes and stone in there. I would have gladly done that. It is easier to maintain because the groundwater infiltration beds are going to require maintenance, no different than a septic system. The way that we're handling that is that it is going to be the responsibilities of the lot owners and it's going to be deeded as such. So it is not the Township that is expected to pick this up."

Commissioner Seagreaves- "How long have they been in place in South Whitehall?"

Mr. Uhl- "I can't say exactly, but probably at least five years."

Commissioner Seagreaves- "What's the life expectancy of these?"

Mr. Uhl- "Basically, we dig a hole, 10-12ft deep and we put 5ft diameter perforated plastic pipe and then fill in around it with stone for good drainage and line it to keep the soil out. So from a life standpoint, there is no real service life, essentially. If any dirt and stuff gets in these pipes, there's service access ways to get down there and they gotta be cleaned out. The lot owners are responsible."

Commissioner Ackerman stated the established resident at the bottom of the hill will be the one to suffer if lot owner refuses to maintain vaults.

Mr. Uhl- "Downstream of this, there is no resident, there is no home. There are no houses downstream, it's wooded land."

Ms. Sopka- "If your seepage pits fail, the ones up from the road will be intercepted by the road. Where does your road discharge out to? It discharges into level spreaders. And where are those two level spreaders facing? Schramke's drainage field for their septic and the drainage field for the septic for Mr. DeAngelis."

Mr. Uhl- "Mr. DeAngelis's property is above any of my level spreader discharges. Nothing goes to Mr. DeAngelis's. It goes to the Schramke's and you'll notice Mr. Schramke has not been to one of these meetings. Why? He does not object. You're right, he's the one that would be most impacted and that's the smallest amount of run-off coming this way. The majority of the run-off goes onto Mr. DeAngelis's property which is wooded property; there's no homes to be impacted."

Commissioner Cusick- "And that's ok?"

Mr. Uhl- "No, I'm not saying it's ok. I'm saying I'm reducing the amount of rate. I put in a plan that is going to reduce the amount of rate that is going there right now."

Mr. Schock- "And you had to do a plan that complied with the Ordinance and that is what this plan does."

Mr. Uhl- “I wish I could make the water go away. The bottom line is that the water exists and it will exist after the subdivision is there. The Township and all the outside agencies put together guidelines and requirements as far as what you need to do and how you needed to treat it and I have met and gotten approval by all those agencies.”

Mr. Schock- “And it was the design that was on the Preliminary Plan.”

Mr. Schadler- “I would like to bring to your attention that the property owner will have to sign an Operations and Maintenance Agreement with the Municipality.”

Commissioner Martucci- “What if they don’t? You can put anything on paper but what if they don’t have the money to spend to make the corrections? Then whose burden does it become?”

Ms. Sopka- “One other issue: SALDO 10.4.5 is not resolved with the Planning Commission. Even though the road design shows the cart-way will be the 30’, they’re advocating they don’t have to conform. They have requested a Waiver to that requirement. John Andreas supports the cul-de-sac conforming with the requirements of the standards of SALDO.”

Attorney Schock- “Nothing has changed and it was approved during the Preliminary Plan approval with the same exact layout with respect to the road. There was no Waiver required at that point. The Ordinance hasn’t changed so I don’t know how a Waiver now becomes pertinent because they stayed the same.”

Mr. Uhl- “SALDO has the word “may require” which gives you the option. And the fact that it has been approved as shown indicates what the decision was. Let me point out as well when we went to the court for the length of the cul-de-sac, the plan clearly showed removing the bulb and conveying the property back to the owner. There was discussion and the adjacent land owner said that he would prefer to have the cul-de-sac there and the decision was to leave the cul-de-sac so that’s how it’s depicted and that’s how you approved it. So we had originally planned to debulb it and the decision was to leave it as is and it was approved as is.”

Commissioner Brown- “Is there anybody in the audience who would like speak?”

Charles Beck of 930 E. Lexington Street stated that vaults were put in at Dr. Weiner’s place and they blew out and caused damage all the down the stream.

Attorney Schock- “The form of the agreement that Mr. Schadler mention is in the Township’s SALDO [Appendix E] and says that the owner has to give permission to the Municipality. If the owner fails to do the work, the Municipality has the right to go in and charge them back and the owner also “hereby releases and holds harmless the Municipality with regard to any liability...”

Ms. Janet Keim of 11 Pine Street- “I would like to expand on what Mr. Beck said about Dr. Weiner’s storm water system. At the first heavy rain, the system clogged. The water poured down over Allentown park system, wiped out the whole park and wiped out all the ponds at the Fish Hatchery. Fortunately, he had to pay for everything to be corrected. Also, a man has the right to develop his property. Yes he does, but not if it injures somebody else’s property or his

neighbor. That's the whole law. We talked about diverting the water. You're diverting natural water channels and I don't think that's in keeping with storm water management laws or our SALDO. Another thing I would like to point out, if you look in the back of the SALDO, there is a section called Calculation Methodology. There is a listing of things that must be met and Part M says that you must apply DEP Chapter 105.17, which reads if you "have an endangered plant within a half mile of the same hydrological cycle, you cannot disturb land." There is an endangered plant on the Conservancy plant."

Mr. Wayne DeAngelis of 2839 DeWalt Street- "I'm going to take the brunt of the run-off. And just so you know, this has been going on for about nine years. He talks about how much money he spent, but I had to spend a lot of money just to try and defend my property. One main reason why I oppose this, I can't believe you can take a cul-de-sac away from someone after they've sold those lots, and people built homes. They bought those homes because it was a cul-de-sac and now you want to make it a thru street." Mr. DeAngelis also noted that the Lehigh Valley Planning Commission turned the plan down.

Bruce Haigh, Engineer for Mr. DeAngelis- "I'm not here to tell it Wayne's way, I'm here to tell you what will and will not work. When the Preliminary Plan was approved by the Board in 2007, there was a commitment made that all the storm run-off from the new impervious surfaces would be infiltrated. The entire volume of run-off from the proposed impervious areas will be infiltrated for the entire one hundred year event through the use of infiltration systems and individual on-lot seepage beds. If you look at the drawings, you will notice that Birchwood Drive is about 86,000sqft. You have, in addition to that, driveways that are off Birchwood Drive that the Township Engineer has said are impervious surfaces. You have on top of that, five residences that are 1500sqft a piece. Discount Uhl's existing because Uhl's existing is not new. You've got the seepage pits 1.72 and you've got the driveways, which I don't know what they are. Worksheet 4, which was given to DEP says that there is 77,050sqft of impervious. It's 1.631 acres. That new impervious is less than the impervious is for Birchwood Drive. So he is not infiltrating the full one hundred year storm water run-off from Birchwood Drive, which is what he said he was going to do when the Board of Commissioners approved the Preliminary Plan."

"The seepage pits are designed for the two year storm, not the hundred year. If you look at the next page, you will see that the volume of the two year storm is 354cuft. The capacity of those seepage pits, as designed, is 388. The hundred year storm is 900. So let's assume the homeowner has to put in the seepage pit for the hundred year, which was the condition of the preliminary plan approval. He doesn't put in a 10x10x7 ½ ft deep, he's gotta put in a 16x16x7 ½ ft deep. A lot more money. There was talk about the fact that infiltration basins work. The DEP policy guidelines is to infiltrate the difference between the pre and the post two year storm. It's not there to infiltrate the ten, the 25 or the 100."

"The question was how big are these things? Infiltration basin 217, which is down near the DeAngelis's is approximately 105,000cuft. The other one is even bigger. What do they cost? The cost, by the DEP cost figures, is \$138,000. The problem is not that the pipes get plugged, the problem is that the storm water goes into the pipes, infiltrates through the pipes to the bottom

of the basin and that bottom of the basin gets plugged and it doesn't infiltrate. So now you have to take out the pipe and all the stone to make it work."

"Level spreaders. The DEP has a supplemental guidance as to how you should take and design a level spreader. What you have in storm water report is calculations; no consideration of if it will work or not. It calculates flows, velocities and that's it. If you look at the first letter, the question is, "is the Final Plan consistent with the preliminary plan?" No. In the Preliminary Plan, subsurface infiltration basin 217 and 218 were about 1/3 of the size. The level spreader for 218 was totally separate from the infiltration basin, but it is now tied to the infiltration basin. It's all moved closer to the property line. As I said, the basis of design is the two year storm. The hundred year storm is not the same as the two year storm. The hundred year storm, we tend have a real cloud burst, the two year storm is uniform, distribution over the area over 24 hours. The hundred year storm doesn't act that way."

"Testing for the infiltration trenches. The individual on-lot seepage beds... there was a perc test performed at that location. For the rest of them, for infiltration basin 217 and 218, there is not a single perc test that was performed underneath the bed of that infiltration basin and DEP says you're supposed to do it. Now, in all honesty, the infiltration testing was done in 2005 in the drainage swale. The policy guidelines came out in December 2006, the training was 2007. But I ran the numbers on this and the infiltration for the test that were used for the infiltration basins average between three inches an hour and twelve inches an hour. That's a mean of 6.21 but the first standard deviation is between 3.8 and 8.62. They don't know what the infiltration rate is underneath those basins. They're guessing at it."

"We talked about loading ratios. The infiltration bed is supposed to be 2-3ft thick, it's 9ft thick. What happens? On the lower storm events, no problem. On the higher storm events, you get a hydraulic pressure on the bottom of the bed that takes all that mud, silt, and everything else and starts pushing it into the soil. Even on your infiltration rates, it's not consistently uniform. As I said, the level spreader, there is no design standard that has been useful. The engineer can use any standard he wants, as long as it is a standard that works. All the level spreader is calculations. The velocity of that level spreader is about 8' per second. The flow out of the level spreader 218 is 25cuft per second. DEP says if you go over 4cuft per second, you ought to put in a plunge pool and a knife edge. What he has on his level spreader is a pipe stuck in stone and comes out of this stone bed into a geotextile and it comes into contact with the soil surface. Now how are you going to get sheet flow coming out of that when you can't control the surface?"

"Separation distances. The separation distance from wells and from septic systems was based upon a two year storm. My engineering professional opinion is that if you want the owners to put in their own seepage pits, you're talking about \$20,000-\$30,000 a piece if you're going to make them comply with the hundred year return storm event. And that was what he designed his storm water based upon. You're not going to find anybody who's going to buy Lot 5 with this monster sub-surface infiltration basin, if he knows it's going to cost him \$138,000 to replace it. You're not going to find anybody who's going to buy Lot 6, which is the other one. These comments are based upon his calculations. He says that he's got new impervious, around 68,000 in his calculations, but when you look at the area that's being infiltrated on the impervious surface calculation, he's only about 50,000. If the Township Engineer and I are right, if you

count Birchwood Drive and you count the driveways, which those are going to those two infiltration basins, he's short a half acre of impervious surface. He hasn't done what he was supposed to do to prove, and agreed to by the Board of Commissioners when they approved the Preliminary Plan."

"These things are a disaster. Roadside channels are supposed to have a half a foot of free board; most of them have 2/10 of a foot of free board. The velocities are reasonable. They've made efforts to try and spread that out. But when you're taking credit for the drainage swales, swale 3 is the big one, going into infiltration basin 218 and you're saying, "I'm taking credit for that," and you're not going to be able to infiltrate the hundred year storm, the standard is 1% slope (there is not a drainage swale out there that has a slope less than 1/7%). As this is drawn right now, the individual homeowners' lots will satisfy two year and probably close to the ten year because they have not done basin routing. Infiltration basin 218, 217, I think they'll probably work for the two year, they'll probably work for the ten year and that's about it."

"This plan, first of all, I don't think meets the requirements the Commissioners gave when they approved the Preliminary Plan and it will not work the way it's supposed to work. Mathematically, the numbers are there. But engineeringly it's not going to work."

Mike Siegel, Little Lehigh Watershed Coalition- "I want to specifically site your SALDO so you have some reason to deny it, legally. One of the issues that really concern me is 10.10.A6, which says, "No storm water runoff or natural drainage shall be diverted as to overload the drainage system." And I strongly believe this system will be overloaded. My concern is that you're going to have roadside swales that are going to become discharge points and I'm more concerned about your road. It's my experience after looking at this plan and my experience in a Municipality, it would be a cold day in hell before I accepted that road. And the reason why is because you're going to ... of the soils, you're going to have a road that they just submitted tonight for the first time that's not going to be crowned. If your Public Works Director heard that, he'd have fit. That water is going to hit that road, sit on it or become a conduit for water running down to the adjoining properties below."

"But most of all, I'm concerned about the damage to the road. You're going to have pumping of the soils, they're going to be wet from the infiltration beds, and you're going to have a road that's going to look more like this than this Your engineer can swear it's going to be in good shape when they do it but I've seen too many roads in my time that have been done where when they're done with them, they're in bad shape. They have to go out there and do core samples to find out just how bad they really are. With all this infiltration, I'm really concerned about the Township taking the acceptance of that road. I usually don't come to other Municipalities and state that on the record, but I have some concerns here."

"Plowing of the roads is another issue. That's going to be a lot of snow on the side of those roads and you're telling those homeowners, at which he admitted tonight, that it's their responsibility for handling the snow melt in those swales. They're going to be coming to this Municipality after the first couple 12 inch snow storms and blaming you guys for any damage that's done to those swales. And in fact you're going to be the ones that have to maintain them under the NPDES regulations; I don't see how they can do that. And under your NPDES

Municipal permit, you, I think, have some responsibility if you allow this road to be accepted. So I would carefully look at the legalities of your NPDES permit.”

“I realize that a Preliminary Plan is a basis for acceptance of a Final Plan, but there are some conditions that have changed now. You found out there are seeps out there and that wasn’t shown on the plan. To me, that’s enough of a change to change the whole plan. Your Ordinance has specific recommendations as to how to handle that by putting in easements and other things under the definition of water course. I don’t think any easements have been show for any of those seeps or water courses that are out there. Regardless of what DEP says, there should be easements in here and deed restrictions, and things are just missing here that should be on a Final Plan before it’s brought forth to you. I think that’s one of the reasons why the Planning Commission was concerned. They’re bringing up a half-completed plan here, trying to throw it out in front of you and get your permission when they haven’t looked thoroughly at this plan, especially at the fact you just found ground seeps out there.”

“Under your Storm Water Management, again, where “areas of diffused drainage discharged shall be subject to any applicable release criteria.” And again, “the developer must document that there are adequate downstream conveyance facilities that safely transport concentrated discharge or otherwise prove that no harm will result from the concentrated discharge.” Well it is my opinion that during the winter time, that road is going to be your concentrated discharge. A road that’s not crowned, that has snow and ice and it melts and the swales are frozen, that water has to go somewhere and it’s going to come down that road. Your Public Works Director is going to have a nightmare of an ice jam at the end of that street. So basically I’m here not to push so much the environmental aspects of it, but to show you, under my experience that a plan like this, you really need to think hard before accepting it. Please don’t accept the road. A cul-de-sac 1,000lf is now pretty much banned in a lot of Townships for fire reasons, for emergency management reasons, for access reasons, especially.”

Attorney Schock- “There is nothing of record that would show that we don’t meet the provisions in the SALDO. That’s been our provision all along that we do meet the requirements. We’re certainly aware that there are some aspects of it that aren’t going to win a vote of popular opinion, but we’ve complied with the Ordinance and that’s what we’ve been trying to do from the beginning.”

Commissioner Brown- “There is just an awful lot for us to absorb right now.”

Ms. Keim- “I’ve just heard tonight that this plan has been going on for nine years. I think the Municipal Planning Code says that you have five years from filing to have preliminary plan approval.”

Attorney Ashley- “The developers don’t get penalized for the time lost while it’s in court.”

Mrs. Keim- “Another issue: just recently the county courts decided that Municipal officials can be held liable for run-off caused by development that comes down on their property. And that was just last week and I just want you to know that you can be held liable for the property owners downstream.”

Mr. Schadler- “A lot of points have been made. It is a lot of information to take. We stand behind our review.”

Commissioner Ackerman- “I’m afraid that if this doesn’t work according to the way they say, who’s responsible? I don’t want it to come back to the Township and become a hardship to us. I don’t want it to become a hardship to the people that are already there and even for these new people. Do they have any idea what they’re getting themselves into? And then to take trees down, and all the water flow and the seeps and all this natural habitat and just destroy it.”

Commissioner Seagreaves- “I have a lot of confusion. It was brought up that the Final Plan didn’t delineate from the Preliminary one, but then you hear from other testimony that it has. The other thing I question is putting in the deed with the pits but what if that person sells the house in three years? Is that deed transferable? Is the second person liable?”

Attorney Schock- “Yes, it runs with the land. The deed restriction will run with the land as does the language in the Operations Agreement.”

Attorney Ashley- “If it’s in the deed, it carries through with each deed. So each successive deed would have the same language. You could also put it on the plan, which would be public record so that way the notice would be out there.”

Ms. Sopka- “I think most of the information that was reported was rather compelling. I might agree with the fact that there are some differences between the Preliminary Plan and the Final; maybe not to such a technical level as was given, but I still have some concerns about the variability of the impervious area and how that responsibility will be translated over into the Township. Most of the research I ever did with respect to calculations of impervious is that usually there is a minimum and maximum that’s reported to the Township. So if you give the maximum amount of capability of build-out and you still could comply with the pre-construction discharges, then it’s usually easier to make a decision. Well that has not been reported to us. It seems the variability will occur after a final plan is approved. Those are concerns for me.”

Attorney Schock- “I mentioned before that I just wanted to put into record the CD’s for the Engineers who worked on the project and submitted things. I also wanted to make sure, it should be part of the record, but since we’ve talked about it so much, I was going to put the NPDES permit in also. And then I did a short memorandum that I sent to your attorney before, which I would like to provide you a copy of with respect to the law I mentioned this evening.”

“Just a couple of notes on that: when we talk about same, the law’s clear that it means “substantially the same.” And we’ve said all along that the plan is substantially the same, number one. Number two, where we’ve talked about there’ve been some changes, those were things that were done with respect to outside agency approval to satisfy for the NPDES permit. None of the layout of the plan, with regards to the Municipal review aspects of it, has changed. The plan looks virtually identical with respect to the number of lots, where the road is, etc. I think if you went through, I would welcome your counsel to comment on that if he thinks I’m misrepresenting something, but the cases that talk about this, talk about instances where there

have been more drastic changes than the small items that have been noted with respect to this. With regard to that one item that Ms. Sopka pointed, that seepage, we went the extra step and took a look at that and we think we've addressed it. So even if you said we think it might have changed, even if we wanted to consider that to be a change, we've addressed that and it doesn't result in any noncompliance with the Ordinance. That still remains the bottom line at the end of the day."

Mr. DeAngelis- "I really don't think this plan is fair to me. If you look at the plan, almost every lot's going to need a variance. There's no room for decks behind the house. That means I'll be coming to this Township for another nine years probably. They're creating variances with this plan. It just doesn't make any sense. I have twenty three acres that goes along this development and they do hold the springs. People fill their jugs out of those spring and drink from it. There's a SALDO for safety, and this is going to affect safety of that water source."

Attorney Ashley- "Cynthia, what's the time period that they have to have this plan?"

Ms. Sopka- "They could offer an extension too."

Attorney Ashley- "Do we have to act on it tonight?"

Ms. Sopka- "The deadline is July 30th."

Mr. Uhl- "I guess I would like to understand what it is that you need the extension for."

Commissioner Brown- "Personally, I would like to read more of this and study it a little bit more."

Attorney Ashley- "How long of an extension? Would you be able to act on it at the next meeting in two weeks or at the end of August?"

Commissioner Brown- "The end of the August. Would that be acceptable to the rest of the Board or did the Board want to vote on it? We'll go by the consensus of what the Board would like to do."

Attorney Ashley- "Maybe you don't want to indicate what your feelings are as far as the plan tonight. Maybe tonight is deciding whether or not you want additional time to process everything that has been given to you on paper and testimony. Or if you feel ready, you can move forward with this tonight."

Commissioner Ackerman- "I'm ready to vote."

Commissioner Seagreaves- "I'm not."

Commissioner Brown- "I'm not."

Commissioner Cusick- “I’m ready. I’ve read everything that has been given to me and I listened to all the testimony.”

Commissioner Martucci- “I’m ready to vote.”

Attorney Ashley- “Those who are ready to vote, are you willing to give your colleagues some time to think on it?”

Commissioner Martucci- “In fairness, I believe, yes.”

Commissioner Brown- “I would like to put it off until next meeting.”

Attorney Schock- “We would like to talk about it if we could. When is the next meeting?”

Attorney Ashley- “The second Thursday in August, August 12th.”

Attorney Schock- “I think Mr. Uhl would just prefer that a vote be taken.”

Motion by Commissioner Cusick and seconded by Commissioner Martucci to not accept the proposed roadway and right of ways shown for all of the proposed lots.

Roll Call:

COMMISSIONER ACKERMAN -YES
COMMISSIONER SEAGREAVES-YES
COMMISSIONER MARTUCCI-YES
COMMISSIONER CUSICK-YES
COMMISSIONER BROWN-YES

The Motion passed by unanimous vote.

Motion by Commissioner Cusick and seconded by Commissioner Martucci to deny a partial Waiver from SALDO 10.8.B.2 recommended by the Planning Commission on April 13, 2010, concerning the tests for VOCs and SOCs associated with the on-site-water supply systems.

Roll Call:

COMMISSIONER ACKERMAN -YES
COMMISSIONER SEAGREAVES-YES
COMMISSIONER MARTUCCI-YES
COMMISSIONER CUSICK-YES
COMMISSIONER BROWN-YES

The Motion passed by unanimous vote.

Motion by Commissioner Cusick and seconded by Commissioner Martucci to deny the Final Plan of the Uhl Subdivision based on the “The Planning Commission unanimously made the recommendation to the Board of Commissioners not to approve the Major Subdivision Residential Plan based on comments heard and raised during the hearing as they related to SALDO requirements; storm water management and the possibility of storm water management failure and the downstream environmental impacts. In referenced in Article 6 of SALDO 6.1, the purpose of the Final Plan is to require formal approval before plans for all Major Subdivisions and Land Developments are recorded. In addition, the Planning Commission shall review and make its recommendation to the Board of Commissioners.” Ms. Cusick referenced the memorandum of the Planning Director dated July 14, 2010 which cited the specific SALDO sections that her motion is referring to as the basis of her denial.

Roll Call:

COMMISSIONER ACKERMAN -YES
COMMISSIONER SEAGREAVES-YES
COMMISSIONER MARTUCCI-YES
COMMISSIONER CUSICK-YES
COMMISSIONER BROWN-YES

The Motion passed by unanimous vote.

COURTESY OF THE FLOOR

Mr. Soriano noted that at the last meeting of the Board of Commissioners, a resident, Ms. Bauer, chose not to speak. Later, Ms. Bauer emailed the Township and conveyed that she felt intimidated by the Board’s action and these were the reason for her not speaking. The Township would like to go on record and reiterate that everyone who wishes to speak on a subject matter will be given opportunity to do so and encourages residents to speak and be heard. The Board’s policy is not to curtail free speech and will not deny anyone the right to be heard.

Ms. Cusick also commented that she supports Commissioner Brown on his handling of the comments and did not see any behavior to discourage anyone from speaking.

Chief Stiles briefly reminded the Board that he will be available to guide any Commissioner on a tour of the new Police Station.

ADJOURNMENT

Commissioner Cusick made a Motion to adjourn the Meeting. Seconded by Commissioner Martucci. The time was 9:48 p.m.