

EAST BRANDYWINE TOWNSHIP MUNICIPAL AUTHORITY
Tuesday, March 11, 2008
7:30 A.M.

Those in Attendance:

Michael Corbin, Chairman
Gerald Kirkpatrick, Vice-Chairman
David L. Summers
Joseph Anthony, Secretary
Sandra Moser

Also in Attendance:

Scott T. Piersol, Township Manager
Matthew T. VanLew, Roadmaster
Thomas Oeste, Esq., Municipal Authority Solicitor
Joseph Boldaz, Municipal Authority Engineer
John Vena, CMX Engineering
Justin Scarth, CMX Engineering
John Hammell, CMX Engineering
Mary Beth Smedley, Secretary/Treasurer

The Municipal Authority met on Tuesday, March 11, 2007 at the East Brandywine Township Municipal Building. Mr. Corbin called the meeting to order at 7:30 A.M. There were three visitors present.

Minutes: December 11, 2007 and January 8, 2008

Mr. Corbin asked if there were any addition or corrections to the above minutes. There were none. Mr. Summers made a motion to approve the minutes as present. Mr. Kirkpatrick seconded the motion, with all voting Aye.

Minutes: February 12, 2008

Mr. Corbin stated that since there was not a quorum at the February 12th Municipal Authority meeting, there were no formal minutes, but that the proceedings were formally documented. Mr. Corbin also noted that no formal actions were taken at that meeting. Mr. Summers made a motion approve the record of the February 12, 2008 meeting as presented. Mr. Corbin seconded the motion, with both voting Aye.

Treasurer's Report

Mrs. Smedley reviewed the Treasurer's Report and Account Balances as of February 12, 2008 and March 11, 2008. Mr. Summers made a motion to approve both Treasurers's

Reports and authorize payment of bills. Mr Anthony seconded the motion, with all voting Aye.

Delinquent notice letter for the first quarter user fees were mailed on March 4, 2008 to the following Hopewell customers: Best Specialty Foods, Timothy Breslin, Sean McKinney, Duane Oakes and Craig Redden. Municipal claims will be filed if payment is not received by April 3, 2008. There are currently two open liens against Craig Redden.

Delinquent notice letters were mailed on March 10, 2008 to the following Keats Glen customers: Brian McAnally and Tom Slate. Municipal claims will be filed if payment is not received by April 9, 2008.

In February, two more properties at Applecross were added to the customer list: Lot #301 settled on February 29, 2008, and Pulte added a model home on Lot #54. There are now 13 customers at Applecross.

Installation of Hydrogen Peroxide Feed – Update

Mr. Corbin asked if there have been observations or meter readings to date that provided information regarding whether or not the peroxide addition to pump station effluent was helping to eliminate odors. Mr. Boldaz stated that he continues to receive information from Mr. VanLew so he does have a record of all readings and observations. Mr. Boldaz again stated that the meter readings might not indicate whether the hydrogen peroxide feed is helping until the spring when the weather gets warmer.

Watters Tract

The plan depicts a commercial and residential land development plan located on the north side of Horseshoe Pike adjacent to the Brandywine Village Shopping Center. Development is planned in two phases, with Phase 1 being the development of the commercial tract. The commercial portion is zoned MU – Mixed Use Commercial District, and three free-standing commercial buildings are proposed.

The commercial tract is approximately 10.645 acres in size. A road is proposed which subdivides the commercial tract into two parcels. The development of this road was requested by the Township to facilitate traffic flow between North Guthriesville Road and Horseshoe Pike. The lot areas for the two resulting lots are 7.258 acres and 1.985 acres in size. There is an existing sewage disposal area located at the rear of the commercial tract that will be decommissioned. Public water and public sewer are proposed.

Declaration of the Brandywine-Watters Sewer Association

Mr. Oeste reviewed the Declaration and offered several comments. The existing sanitary sewer treatment facilities on the Gambone property must be abandoned and

decommissioned when public sewer capacity becomes available for the Brandywine Village and Gambone properties. Brandywine Village and the Gambone properties would be responsible for connection to the Applecross Treatment Plant and pay the appropriate fees as set by the Authority. The Authority requested that the draft Planning Module be amended to indicate that the ultimate method of sewage disposal will be conveyance to and treatment at the Applecross Wastewater treatment Plant.

The draft declaration must also be amended to provide that the treatment facilities, as defined in the Declaration, will be decommissioned in accordance with applicable law when public sewer capacity becomes available. A separate article should be included in the Declaration which discusses the procedure for transition to public sewer, decommissioning the treatment plant and the ultimate responsibility for the collection and conveyance system on the property. The Declaration must also require Township approval for any amendment or termination of the Association. The revised Declaration must be included with the Planning Module.

CMX February 19, 2008 Review – Sewage Facilities Planning Module

Mr. Boldaz provided comments for the applicant to review in the above correspondence. To date, he has not received a response. The Municipal Authority would like an acknowledgement from the applicant that they will be signing the Sewer Reservation Agreement. Mr. Boldaz will contact Gambone about this, and he did say he expects a revised Planning Module within the next month.

AWI/Croppers

Mrs. Smedley contacted Deborah Shulski, Esq., attorney for AWI/Croppers, and asked that the following note be added to the plan:

The existing package sewer treatment plant shall be decommissioned, and sewage from the Brandywine Village Shopping Center shall be treated at the Applecross treatment plant as soon as treatment capacity and conveyance is available and permitted.

Applecross Development (AKA Overlook Road Farm)

The applicant is proposing to build a combination of single family homes, carriage homes, and townhouses for a total of 655 units on both the north and south side of East Reeceville Road. The plan also shows an 18-hole Jack Nicholas-designed golf course with a clubhouse. The property encompasses approximately 621.74 acres of land, comprised of 307.58 acres north of East Reeceville Road and 314.16 acres south of East Reeceville Road. The southern portion of the proposed development is a 310 acre tract located in the R-2 Zoning District and proposes single family homes on individual lots and approximately half of the golf course. The portion of the property north of East Reeceville Road was granted preliminary plan approval in March of 2004.

The "North Tract" is being reviewed under the "Clustered Residential Development" regulations of the R-3 Residential Zoning District in conjunction with the Settlement Agreement dated April 1, 2004. The "South Tract" is being reviewed under the "Clustered Residential Development" regulations of the R-2 Residential Zoning District. The project is proposed to be constructed in five phases. The applicant received final plan approval, with conditions, for Phase 1 of the development on November 2, 2006. Mr. John Curtin attended the meeting on behalf of the Pulte Homes.

CMX February 13, 2008 letters – Construction Clarification #11 and #12 and DMX February 22, 2008 letter – Construction Clarification #11

Mr. Boldaz stated that most of his comments have been resolved although there are several outstanding issues with the pipe discharge velocities into the lagoon.

According to Table 9 in the DEP Erosion and Sediment Pollution Control Program Manual, the minimum size stone for velocities between 9 and 11.5 ft/sec require R-5 stone.

The theoretical force created by water flowing through a full 8-inch pipe striking a surface at 10 ft/sec is approximately 65 lbs. The estimated weight of a 6" stone is approximately 10 lbs. It is Mr. Scarth's opinion that this size is too small and that the liner could potentially be exposed and its integrity compromised. He asked that the applicant provide R-5 rip-rap around the inlet/outlet of each pond or other energy dissipating mechanism.

CMX February 15, 2008 letter – Pump Station G, Wet Well

CMX conducted a review of the shop drawings for the Wastewater Renovation Facility. The shop drawings were reviewed for conformance to the East Brandywine Township Municipal Authority Water and Sewer Specifications and Details. CMX has no additional comments and provided the applicant with two stamped submittal copies.

CMX February 21, 2008 letter – Air Release Vault

Mr. Scarth reported that the proposed detail with the check valve on the 8" Effluent Transfer Line is generally acceptable. At this time CMX has no further comments.

Treatment Plan Redesign

Mr. Curtin reported that Ebert Engineering submitted revised plans on February 20th. As soon as all outstanding items are resolved they hope to proceed with shop drawings. The project will be completely re-bid once a clean review letter is received. Mr Boldaz said that some of the pumping arrangements have been changed and the equalization tank is

now inside the building. Mr. Boldaz should have initial comments within the next several weeks.

Addendum to Agreement for Construction and Operation of Community Sewage Facilities Sewer Construction Agreement with Respect to Developer's Operating Deficit Obligations

Mr. Oeste has reviewed the latest draft of the Agreement and will provide his comments to the Authority and Pulte for their consideration. Mr. Oeste recommended that there should be a legal agreement between the Municipal Authority and Pulte leasing the sewer conveyance system, wet wells, etc. He will craft an agreement for the Authority to review. Hopefully, this Agreement can be executed at the April 8th Municipal Authority meeting.

Pump and Haul Agreement – Extension Number One

Mr. Oeste and Mr. Boldaz have reviewed this document. Mr. Boldaz had no outstanding comments. Mr. Oeste strengthened the indemnification language and also suggested that Pulte provide insurance relative to system operations. Initially Pulte was reluctant to agree to this additional provision but Mr. Curtin agreed to provide a certificate of insurance that covers the Authority Board, the Engineer, Solicitor and all Authority personnel while acting on Authority business.

Mr. Kirkpatrick asked if the volume numbers and unit numbers tie into the flow (e.g. do the flows and expected volumes from each unit match). Mr. Boldaz stated that the volume and units are adequate and the applicant is providing frac tanks, which are not yet on site. Right now the effluent is collecting in the lines. Mr. Summers asked if Applecross residents realized that frac tanks will be on site for at least a year or more. Mr. Curtin said he wasn't sure, but that they did understand the proposed layout of the wastewater treatment system in general. The treatment plant is slated to be completed in August of 2009, but they could be pumping from the equalization tank before that.

The Authority asked if there were any circumstances where the Township might have to take over the pump and haul. Mr. Oeste said that the applicant has posted a Letter of Credit for \$90,000. The Letter of Credit expires in December of 2008, but does automatically renew. If Pulte failed to follow through with the pump and haul the Authority can go against the Letter of Credit.

It was noted that the Authority needs a copy of the Holding Tank Agreement signed by Pulte. Mr. Curtin will provide the signed copy that will be an attachment to the Pump and Haul Agreement.

Mr. Kirkpatrick made a motion to approve the Pump and Haul permit pending Mr. Oeste's review and concurrence with the insurance language. Mr. Anthony seconded the motion, with all voting Aye.

Weaver Tract

The applicant is proposing to build 273 units (184 – 35 foot wide units and 89- 40 foot wide units). The subdivision is on a 140.458 acre lot located at the southeast corner of Bollinger Road and Horseshoe Pike. The lot is being developed under the R-3 Zoning District requirements per a settlement agreement. The Settlement Agreement with the Township was approved on November 2, 2006.

Sewage will be treated offsite in an SBR treatment plant (conceptually agreed to be the Pulte-constructed plant) and the treated effluent will either be disposed of on-site in subsurface disposal systems or off-site where the sewage is treated at the Applecross Wastewater Treatment Plant. Hydraterra Professionals and CMX Engineers are reviewing the sanitary sewer design.

Ms. Patricia Bunn and Mr. Doug Leach attended the meeting to provide an update on the status of the project and discuss the Sewer Reservation Agreement.

At last week's Planning Commission meeting K. Hovnanian attorney Michael Macaninch said he and Municipal Authority Solicitor John Spangler have been working on the Sewer Reservation Agreement and they were very close to agreement. He thought that it would be finalized shortly. Ms. Bunn stated that Mr. Spangler sent Mr. Macaninch a revised sewer agreement late last week. According to Ms. Bunn, it is Mr. Macaninch's belief that the revised Agreement does not reflect their past discussions and that K. Hovnanian cannot sign the Agreement. Mr. Oeste indicated that it is Mr. Spangler's and Mr. Boldaz's opinion that the parties reached agreement on the terms and conditions in December of 2007, subject to K. Hovnanian Corporate approval and the agreed upon language is what Mr. Macaninch has, but is contending is not correct and not that to which he agreed.

K. Hovnanian desires to post a Letter of Credit for \$1.6 million and pay tapping fees for each home as they are connected. The balance of unpaid tapping fees would be paid off within 10 years, even if all homes aren't connected at that time. Ms. Bunn stated that K. Hovnanian expects the build-out time for the project to be between 7 and 8 years.

The Authority's concern is the sewer treatment plant is being sized to treat sewage from Applecross, the Weaver tract, Gambone (commercial and residential), Hopewell and other properties. East Brandywine Township Municipal Authority will have an obligation to reimburse Pulte for certain costs since Pulte is building the treatment plant to a size allowing treatment of other projects. If K. Hovnanian does not pay for their reserved capacity up front, the East Brandywine Township Municipal Authority and residents of East Brandywine Township could be subsidizing K. Hovnanian's sewer costs. This arrangement is unacceptable.

Ms. Bunn stated that it is K. Hovnanian's position that they should only pay tapping fees, like other new users would to a "typical" treatment plant. Mr. Kirkpatrick remarked that

this is an atypical situation in that this is a new treatment plant that is being sized specifically to treat K. Hovnanian's effluent.

Mr. Corbin said that the Authority needs to consult with their attorney regarding this matter. The Authority strongly feels that this issue needs to be resolved and they have to make a decision on the viability of moving forward with the treatment plant's current size. K. Hovnanian may want to consider alternative ways to pay for their portion of the treatment plant, since they cannot expect the tax payers of East Brandywine Township to fund this.

As a practical matter it was brought to K. Hovnanian's representatives' attention that:

- PA DEP will insist that K. Hovnanian connect to the Applecross treatment plant, as such, it is unrealistic for K. Hovnanian to pretend that any other possibility can be practically implemented ;
- The fact that K. Hovnanian flows will be going to a treatment plant not yet even constructed, makes the K. Hovnanian suggestion that this project be handled "like any other" project untrue; and that
- The taxpayers of the township will not pay for, or finance a developer's project;

Mr. Anthony also stated that it is not the Municipal Authority's or resident's responsibility to fund this. The Authority unanimously agreed that K. Hovnanian's connection to the sewer system must be cost-neutral for the Township and Authority.

The Authority members unanimously agreed that this issue must be resolved and agreements must be signature ready by next month's Authority meeting. Mr. Oeste will send a letter to Mr. Macaninch stating that the Authority requires the Agreement to be executed at the April 8, 2008 Authority meeting.

In order to meet this deadline K. Hovnanian needs to provide the Authority with a revised agreement no later than March 26, 2008.

Keats Glen/DCCC Treatment Plant

American Water Proposal – Additional Sampling and Laboratory and NPDES Permit Changes

American Water provided several letters presenting a proposed revised scope of work and fees to perform additional laboratory services for the treatment plant. Mr. Boldaz will review the additional costs and also make a recommendation for exactly what additional laboratory services need to be done. The current maintenance contact with American Water expires at the end of March 2008. Mr. Boldaz will contact American Water to discuss an extension of several months in order to give the Authority adequate time to resolve this. It was noted that there have been no violations at the treatment plant in the past year and that the Authority has been satisfied with American Water's operation of the plant.

Engineers Estimate for Aeration/Recoating Project

Mr. Boldaz provided an estimate for repair/replacement of on the galvanized aeration piping and the carbon steel tank structure. The inside of the air piping has corroded due to the warm moist air that is continually blown through it. Normally, galvanized piping would not be used for this type of application. The tank structure has corroded because of the corrosive environment created by the treatment process and deficient tank coating. CMX Engineering has provided a revised proposal for the scope of services to prepare the bid documents to have the work completed and bid/construction services.

The Authority has not, to its knowledge ever received "as-built" plans for the treatment plant. Mr. Piersol will contact Gannett Fleming and Evans Mill environmental so that the Township can have a copy of the final plans for the Township files.

The contractor who is chosen to complete the plant repair work must submit shop drawings showing the materials and coating that will be used. When proposals are submitted, the contractors will need to break down costs and attach a reasonable value to each work item. It is Mr. Boldaz's opinion that the construction project shouldn't take more than two months to complete. He also estimated that the pump and haul should last no longer than two weeks. The Authority would like the project completed as soon as possible to minimize the pump and haul. Mr. Oeste suggested that the contract could include either an incentive to finish the work or a liquidated damages clause. There will be stringent, objective standards in place for contactors bidding on the project, such as years of experience and expertise in completed projects of a similar nature.

Mr. Corbin asked if contactors would be required to provide a Letter of Credit or a bond. Mr. Boldaz stated that bonds are typically provided.

Mrs. Moser asked if inclement weather such as rain might delay the project. Mr. Boldaz suggested that the project be completed in the summer, which is the best time for completing maintenance projects.

Mr. Summers made a motion to approve the CMX proposal for aeration piping and tank recoating in the amount of \$20,600. This proposal includes contract document preparation, bidding services inspections, and construction administration. Mrs. Moser seconded the motion, with all voting Aye.

Resolution 02 of 2008 – A Resolution of East Brandywine Township Municipal Authority Establishing Sewer Rates for the Applecross Sewer Area

Mr. Corbin asked if there were any questions or comments about this Resolution. There were none. Mr. Anthony made a motion to adopt Resolution 02 of 2008. Mr. Summers seconded the motion, with all voting Aye.

Appointments

Mr. Kirkpatrick made a motion to appoint Hydraterra Professionals as the principal Municipal Authority Engineer for 2008 and CMX as the Associate Engineer for 2008. Mr. Anthony seconded the motion, with all voting Aye.

Mr. Vena of CMX thanked the Authority and said he looked forward to the ongoing relationship. He also introduced John Hammell who will be working in CMX's Pennsylvania Water Resources Unit. Mr. Boldaz of Hydraterra Professionals also thanked the Authority for the opportunity to serve as the Authority Engineer.

Correspondence

A letter was received from the Upper Gwynedd Towamencin Municipal Authority which stated that they are about to file a temporary restraining order against the EPA in Federal Court, since the procedures they are using to develop TMDL's are not in compliance with the Clean Water Act. The letter is asking for support from other Municipal Authorities. Mr. Boldaz stated that the TMDL's for phosphorus limits only affect the Keats Glen Treatment Plant. At this time the Authority believes that the costs of joining said TMDL litigation would likely unnecessarily increase Authority short-term operating costs and offer limited long-term benefit. The Authority agreed to take no action on the correspondence at this time.

Notice

The East Brandywine Township Board of Supervisors and Municipal Authority met on Friday, March 7, 2008 at 8:00 A.M. to discuss pending legal issues.

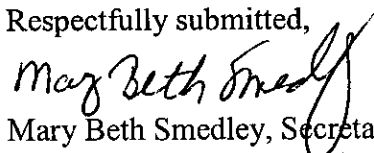
Public Comment on Non-Agenda Items

Mr. Corbin asked if there were comments on non-agenda items. There were none.

Adjournment

There being no further business, Mr. Summers moved to adjourn the meeting at 9:00 A.M. Mr. Kirkpatrick seconded the motion, with all voting Aye.

Respectfully submitted,



Mary Beth Smedley, Secretary/Treasurer
East Brandywine Township

Directly following the meeting, the Municipal Authority met in Executive Session with their Solicitor, Thomas Oeste, Esq., to discuss pending legal issues.