

MINUTES

SOUTH MIDDLETON TOWNSHIP BOARD OF SUPERVISORS 520 PARK DRIVE BOILING SPRINGS, PA. 17007

FEBRUARY 14, 2008

PRESENT: RICK REIGHARD, BRYAN GEMBUSIA, TOM FALEY, RON REEDER, JIM BAKER (Absent) - Supervisors, Barb Wilson – Manager, Jarrett Sweeney – Assistant Manager, Richard Mislitsky – Solicitor, Brian O’Neill – Engineer, Tim Duerr – Zoning Officer, Sandy Quickel – Secretary, Aaron Navarro, Ron Hamilton, Attorney Robert Saidis, Carol Shetter, Leonard Kuhn, Doug & Helen Gale, Attorney Jim Hughes, Bob Geist, John McAdoo, Lou Capozzi, Charlie Mallios, Randy Diehl, Raymond Diehl, Andrew Mele, Gary Eichelberger, Mark Juliana, Attorney Stacy Wolf, Linda Franz - “The Patriot News”.

Chairman Reighard called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE:

Chairman Reighard led the audience in the pledge of allegiance.

MOMENT OF SILENCE:

A moment of silence was observed.

OPENING ANNOUNCEMENTS:

Chairman Reighard noted that the meeting is recorded & to turn off cell phones.

MINUTES: 01/24/08 Regular meeting

Tom made a motion to approve the minutes. Ron seconded, & the vote in favor was 3 to 0 (Bryan abstained due to being absent at this meeting).

#07-15 RAYMOND E. & GENEVIEVE A. DIEHL – Final Minor Subdivision:

The applicant proposes to subdivide an existing Lot 1 into Lot 1 & 1A & join Lot 1A with Lot 2. The property is along Rockledge Drive. Attorney Robert Saidis, Attorney Stacy Wolf, John McAdoo, Raymond Diehl & Randy Diehl were present. Mr. Saidis said, as you recall, 2 weeks ago, motion failed to approve it. It was 2-2, there was a deadlock. I sent out a letter suggesting that, I think legally, & I’ll refer to Rich, that it was done in 2 separate motions. One to approve the plan withholding how many signatures, & the second one – how many signatures. That way if either party would appeal your decision, I think it would minimize the Township’s involvement because that becomes a legal issue. But what we have here is a lot addition in the A-C zone with no development planned. There is only 1 issue is how many signatures. Mr. Baker voted against us last time because custom to Township is 2 signatures. I guess the only acknowledge I can think of – my custom is to drive 65 mph when it is 55 mph, but that doesn’t make it legal. I think we have given you adequate authority that the MPC allows 1 signature to get this plan recorded, & we ask you to approve it that way based on 2 motions. Thank you. Rick said, well Rich, I don’t know –oh I’m sorry.

Ms. Wolf said, Members of the Board, I am here on behalf of Mr. McAdoo, if I may. Rick said, yes you may. Members of the Board, I’m Stacy Wolf & I’m here on behalf of Mr. McAdoo

tonight. I am here in place of Nathan Wolf who was not able to be here tonight because he had another commitment in Carlisle Borough. Members of the Board, I believe there are a few issues that you need to consider. Number 1 – we believe the agreement entered into is void because it lacks consideration. But, number 2, - even if the agreement were valid, the agreement provides for an option on conveying the whole property, & if you take a look at the agreement, it is actually in number 12 (Lessee's Option to Purchase) where it states that during the term of the lease, provided the lessee is not in default, & provided that the premises may legally be conveyed to lessee, lessee is granted an option to require conveyance of the premises to lessee for no consideration. And, it specifically states there are requirements & conveyance of the premises. And, if you flip to the first page of the agreement, number 1, where it defines premises. It says that the premises are defined by all that certain tract of land consisting of approximately 250 feet in width & extending along the southern boundary of Lot 2, etc. So, what we extend to you is that the conveyance must be of the whole premises as contained within the agreement, not just a part, & what the Diehls are suggesting is that only a part be conveyed so that subdivision may be approved on just a part. This is directly contrary to what the provisions within the agreement provides – that it must be a whole, not just a part. Also, I believe the Zoning Officer has already determined that the entire premises can not be legally conveyed. According to the agreement, not just a part can be conveyed, & according to the Zoning Officer's determination, the entire parcel cannot be conveyed because of the setback requirement due to the frontage requirement.

Tom to Ms. Wolf, may I ask you a question? I just have to clear up in my own mind. The Diehls had an agreement with the original owner, I believe, to lease that strip, & then it progressed. But when Mr. McAdoo bought it from that individual – is that right? Ms. Wolf said that is correct. Tom said, I thought that if I bought my home & there were like prior agreements, I thought I was bound by them – like people said to check for liens on your property & go check for commitments the property owner made before. I thought you were bound if you took over the property – you were bound by those prior agreement – that's not true? Ms. Wolf said, well, our argument is number 1 is that the agreement is actually void. That this agreement because the original property owners & the Diehls was void because it does not have any consideration. There is no consideration whatsoever for this agreement that was entered into. So, regardless of how our client, Mr. McAdoo, takes it, it was void from its inception. That was what we were saying as the first... Tom said, consideration of some form of a payment, like a \$1.00 or something – is that what you meant? Ms. Wolf said, some sort of consideration – a payment or some sort of benefit that both parties could contract, there must be consideration of some sort, yes. Rick to Mr. Mislitsky, let me ask a question. Are we, we are not here, I believe, to pass judgment on this agreement. Mr. Mislitsky said no, well...Rick said, in the content of this agreement. Mr. Mislitsky said, Robert's argument is that his client is equitable owner, that's all that is required. I think what Stacy is saying is that he is not equitable owner unless his client buys the whole property. Bottom line, the issue is whether or not you are going to require Robert's client & Stacy's client to sign the plans to be filed, or are you just going to let Robert's clients sign the plans. I don't know how else to address it. Rick said, one of those two. Mr. Mislitsky said, did I state that right? Ms. Wolf said yes, that is correct.

Ms. Wolf said, the other argument that I want to make relates to who has to be required to sign this. If I can direct your attention to 501 of the SALDO (Subdivision and Land Development Ordinance). This will specifically be Section 501 b (4) & b (7). Tom said, and the reason you are before us rather than in court, both parties, is the signatures. Because we have jurisdiction on the

plan, you deem us, rather than a court, the appropriate form for this matter to be resolved? Ms. Wolf said, well, actually our argument is... Tom said, I'm asking. Ms. Wolf said, yeah, right. Well, actually our argument is that the application for subdivision should not be before the Board. It's not proper at this time to be before the Board. Mr. Mislitsky to Ms. Wolf, I'm sorry, which section are you talking about? Ms. Wolf said, this is 501 b(4) & b(7) – okay. And what I would like to say about those. Four & seven within the SALDO differentiate between the owners of the property & the applicant. Number 4- with the names & addresses of the record owners, & number 7 – the signatures of the owners certifying approval of the plan. So this differentiates between the applicant & the owner, & Mr. McAdoo has not signed the application because he does not approve of a partial conveyance of this property & without his signature, it cannot be conveyed. Mr. Saidis said, in the memo I gave you, your ordinance cannot over-rule the MPC. The MPC provides the landowner (inaudible). Every time we come back we have a new issue. Two weeks ago, they had to have access to Rockledge Drive. Now, its there is no consideration. And then its what's the premises. I agree with Rich. I don't think any of those are your decision – we can fight with them in court about those things. That's why I'm suggesting 2 motions. If you do the one and approve the plan, then whoever is going to fight isn't going to drag you in on these other issues. The second one is who has to sign the plan. Whoever has to sign the plan, I believe from a legal interpretation is a question of law, & it's going to minimize anything the Township gets involved with. But what I gave you says what is required. It's specifically in there from the MPC. I don't think there is any question that this qualifies. The lessee, if he is authorized, under the lease to exercise the right to the landowner. And the landowner is the applicant. They have been for 29 years for one dollar rent (inaudible). I don't think the Township should get involved – there's no need to get involved. Rick said, I recall from the last meeting that you (to Mr. Saidis) said that if we did require 2 signatures, that you would be providing a lawsuit to the Township based on that. Are you suggesting that this 2 part motion would eliminate that? Mr. Saidis said, it wouldn't eliminate it, but defines the issue. The only issue the Township is involved with is the legal required of 2 signatures. Ron said to Tim Duerr, can you tell me on Mr. McAdoo's property if we were to take the lease literally as Ms. Wolf has indicated – that is says to transfer the entire 15 acres or the entire parcel. The access Mr. McAdoo currently has off of Rt. 34, is that a deeded/recorded right-of-way into that property? Tim said, I don't know if it is deeded or not. It's just a right-of-way, either by law or right-of-way they have access to. Brian O'Neill said it's a private drive. Ron said, my question, well I know, but if that access gets cut off to Mr. McAdoo & if we agree that this piece says the whole thing has to go. I guess my problem is, in a sense, that Mr. McAdoo will be landlocked. Tim said, that is not something we would know about. We don't have access to people's individual right-of-ways – it's a private right-of-way, not a Township right-of-way. Ron said yeah, I guess I'm looking at it is we don't see it as being a deeded or recorded right-of-way, we would essentially be – Mr. McAdoo would be either in his house or he is out on 34. Brian said the Zoning Ordinance requires frontage on a public road. Right now they have frontage on a public road. If that entire portion was conveyed, they would no longer have frontage on a public road & will be in violation of the Zoning Ordinance. They have already applied for & one was denied for a variance to do just that. The Diehls did prior to submitting this plan. Ron said prior to this plan. Mr. Saidis said the variance failed because the Diehls were part of the subdivision & this was self-created. But your question Ron, is something the courts will have to decide & that's why I keep dropping back. Brian said the only thing you need to decide is the one issue. The plan has been recommended to you, it complies with your ordinances. If you approve the plan, reserve that issue. The Diehls indicated they would remove the stumps – that was a concern the

Planning Department had, & we can work it out between ourselves somehow. The only issue for the Township is for someone to move forward is someone has to sign the plan. I talked to Upper Allen & they let 1 equitable owner. I called Hampden Township, they said it has never come up. I didn't get a chance to call other townships. Rick to Mr. Saidis, you implied that Mr. Baker said it was tradition or something. Mr. Saidis said custom. Rick said that 2 signatures were required. It's probably custom & precedent – is that a correct statement Tim? Tim said, it's in the ordinance that the owners have to sign. We just put this as a post-approval item on every plan. This has never come up before. If there is 2 owners, 2 owners sign. Rick said there's that issue & to me is the issue of common sense – you've got 2 parties involved with a change in a document who sign it that to acknowledge it that they understand that it is changing. That seems to make common sense & may not apply to the law. Mr. Saidis said, we lawyers like to think that common sense is the law, but... Ms. Wolf said, if I may. I don't believe we need to reach the issue of whether both signatures are required because first we have to reach the issue of whether this can be a lawful transfer, & if they are suggesting only a partial transfer be done, & the agreement provides in plain language that the entire parcel must be transferred. Then I don't think we reached whether or not we need 2 signatures because its not lawful according to this agreement & because of the zoning. Mr. Saidis said, we are nowhere near a conveyance. We need our subdivision plan & we have another issue to get Mr. McAdoo to sign the deed – that's a totally separate issue. Ms. Wolf said, but the subdivision can not be a subdivision of only a partial part of that parcel, it must be the entire, according to this agreement, so we don't even have to reach the issue yet of who's signature is required if it isn't lawful under the plain language of the agreement. Bryan to Ms. Wolf, why does your client not want to sign this? Ms. Wolf said, well number 1, he doesn't feel the agreement is valid – he feels the agreement is void because there was no consideration. That's number 1 – that he doesn't feel this is a valid agreement. Bryan to the Diehls, is there anything you guys can give up to make Mr. McAdoo fill whole? Randy Diehl said about a letter wanting \$150,000 – its all about money, he couldn't care less what the agreement..... Ms. Wolf said, actually that is irrelevant – there were prior counsel that weren't involved in this case that were involved in the prior letters. Also, it was in the content of settlement negotiations that it is not the proper thing to be before the Board tonight.

Rick, Mr. McAdoo? Mr. McAdoo said, well I have a feeling that the Township placed that 250 foot strip there for a reason. I didn't make that up – the Township required that at one time. I would like to have a viable right-of-way from Rockledge to my farm. I've offered to the Diehls & Mr. Saidis that I would be happy to have a street stub come to my farm. They are going to develop that somehow & if they had a cul-de-sac in the middle of it, divide that into lots, I want not a 25 foot or 10 foot strip coming down through there, but a street coming back to my farm. Other townships require a 100 foot gravel lane coming in so if you are going to drag other townships into this, my brother-in-law is a surveyor & he can't believe this is happening. He would be laughed out of the township if he tried to get a 25 foot strip coming in on a subdivision. Tom asked, is this \$150,000 credible? Mr. McAdoo said it was credible. I'll tell you about the credibility on that. They came to me 5 years ago when the Church of God was buying & said they were interested in the property & they were just trying to sprinkle me & wanted to know what I would be happy with or whatever. So I talked to a lawyer. They didn't offer to buy this – they just wanted to know, so I just tossed out a number & said \$150,000. Now that was 5-6 years ago. Recently there have been lots around there that sold for \$150,000 for 6 acres. So this makes this 15 acres worth around \$450,000, so it is the value of the piece of land. It's also that it

can be accessed to the Weibly Farm. So there is 97 acres there & I have 50-65 acres – the Diehls just wanted to add onto the side of their property. It is a viable access coming into a bunch of landlocked properties & I think it will be a shame to see it dropped back down to 25 feet. I'll settle for a street right-of-way coming in off of Rockledge to my property. There is a 10 foot right-of-way I've got to Rockledge on the northern edge of that thing, & the Diehls were interested in that. I would be happy to bring everything together – the 10 foot right-of-way, the 250 foot right-of-way. Mr. Saidis said, we spent a year & a half negotiating with this man. That's why we're here tonight. The letter I just gave to Mr. Faley says you wanted \$150,000 & doesn't need access to Rockledge – it says it right in there. Ms. Wolf noted her objection & said it is not relevant to be considered tonight. Mr. Saidis said, it's at the Board of Supervisors. Ms. Wolf said it's still not relevant – it's just misleading. Rick to Mr. Mislitsky, I would like to hear from you. Mr. Mislitsky, said what you are being presented with are complex legal issues whether or not there is consideration on a contract, definitions from the MPC, interpretation of the Ground Lease you were quoting from – they're complex legal issues. A judge is going to have an evidentiary hearing to minimize your authority, but you are not equipped to handle these issues. Frankly, both sides have good arguments. You need to flip a coin or go with your gut because we can go on back & forth – this letter, that letter, I want to do this, I want to do that, which really relevant is if that agreement is valid & let the court determine who needs to sign. Mr. Saidis to Mr. Mislitsky, would you agree with me Rich, that with 2 motions it will minimize the Township's involvement? Otherwise, you are in the whole mix. We were here 2 weeks ago & Brian said there was only 1 issue, everything else is resolved. It was going to be approved subject to the Planning Commission's memo. If you can do that, withhold the signatures.... (inaudible). Rick said, let him answer your question. Mr. Mislitsky said, you have another alternative. You can approve the plan conditioned that you have both signatures. You can do it Robert's way. Rick to Mr. Mislitsky, from the standpoint of the Township, which way do you think is better for us? Mr. Mislitsky said, you're asking me to decide. Tom said, really that's important. Mr. Mislitsky said, you're asking me to become a judge. Tom said, asking you for a legal venue, otherwise on the route to go.

Rick asked, is there a third option – deny the plan? Tom said, see that's what I want. Mr. Mislitsky asked, is there a basis to deny the plan? Tim replied, signatures. Mr. Mislitsky said, you can deny the plan for lack of owner's signature. Mr. Saidis said, but we've met everything else. Mr. Mislitsky said, you're either going to approve it or not approve it. I mean if they are saying the plan doesn't satisfy our ordinance because there is a signature missing, then they are not approving the entire plan. Mr. Saidis said, right- you are defining the legal issues... (inaudible). Mr. Mislitsky said, if I'm not mistaken, all the technicalities, other details, specifications have been satisfied, I'll let Tim & Brian answer that. The issue is who needs to sign that plan & whether or not that agreement is valid. Mr. Saidis said, who needs to sign the plan is the only issue in front of this Board. Mr. Mislitsky said, oh I know that, but Stacy is right. Ms. Wolf said, I don't believe so because the plain language which everyone here can read says that it must be the whole parcel, not just a part of the parcel. Mr. Mislitsky said, you need to interpret the agreement – you can't do that. Ron asked Mr. McAdoo, if the Diehls were willing to agree to build you a... to give you a 50 foot right-of-way along with the construction of a base driveway to go in there, would you be willing? Mr. McAdoo said, it sounds pretty good. I like the idea of a street. I don't know what the 50 foot – does that meet the requirements of a street? Ron said, well that's normally our 50 foot right-of-way. But to give you a good driveway that would be able to be added to become a legitimate street. Very honestly, I wouldn't

want to see a 28 foot blacktop driveway just going back & stopping at the edge of your driveway. Would you be willing to accept their agreement to give you a 50 foot right-of-way with a 20 foot wide cartway with a legitimate stone base that would pass our normal specs for a base on a road. Would you be willing to get this thing settled? (Too many people were speaking to hear). Mr. Saidis said this has been part of what has been dragging this down, in addition to these other issues, was the access. You've got this in the A-C zone, the Diehls aren't looking to develop, they want to farm – they're farming it. Well they can't commit to themselves that if 50 years from now someone wants to develop it. If you look at the terrain you can't go on that – its not a right-of-way. When Terry Rickert was here, there was that background plan to connect these with a 250 foot wide right-of-way. The Township saw the foolishness of that & that's when the ordinance was (inaudible). We have been dealing with this for 3 years. Mr. McAdoo said, as far as he knows, the Diehls are interested in selling this whole property. If they weren't, they are already allowed to farm it or else they wouldn't need it to farm as he's indicated. They want to sell it. Mr. Diehl engaged into conversation with Mr. McAdoo but it was not clear on the tape. Rick said, I would personally agree with Rich. I'm not here as a judge & not in a position to pass judgment on this. But as far as the legal validity, I'm not interested in trying to define that. Mr. Mislitsky to Rick, I have a suggestion – just off the top of my head & I get into trouble when I do this. Why don't you take no action & make 1 or both of them file an action mandamus. Mr. Saidis said, this will get you sucked in on all these issues, unless the motion is to deny only for the lack of a signature. Bryan to Mr. Saidis, said he could not believe you do not want to bill more fees for something like this. Rick to Mr. Saidis, you already indicated we were going to get sucked into this. Mr. Saidis said, if you do it Rich's way, you're in for the whole dollar. My way you are only in for a nickel. Mr. Mislitsky said, we may get named, I go into that courtroom & say to the judge that this is an argument between these 2 parties. If the judge isn't going to like that, I'm going to get hell for it, not you. Mr. Saidis said, but the problem with that is that they are going to come back & say I'll have to drag your staff in to say that this plan would have been approved except for the signatures. Mr. Mislitsky said, we can probably stipulate to that if these guys are willing. Mr. Saidis & Mr. McAdoo both spoke, but it was not heard clearly. Rick said that the precedent we have established in the past for this multi-party agreement, we have required signatures of all parties. Tim said, we have never had this situation before – no one has ever brought this issue before us ever. Brian said, we have recorded plans that the landowner (person that actually owns the land) did not sign, but the equitable owner did. I'm trying to think of one – Rite Aid, Carlisle Crossing. Tim said, almost all of the commercial plans. Brian said, Carlisle Crossings, Washco AFC signed the plan & we recorded it. The Blacksmiths owned the land at the time we recorded it. The Blacksmiths still owned the land at that time & it wasn't until after we recorded the plan that they settled on the land. So we have done that as equitable owners. In this case, the owner of the land of record is fighting the fact that they are equitable owners. So, what do you do in that case? Our choices are approve it & you can say it only needs the Diehls signature & they sign it & record it & its encumbent on Mr. McAdoo to fight it in the court. Rick to Mr. MaAdoo, that's what you said you wanted. Mr. McAdoo said, he would like to see it settled, & he would like to someone, besides these people tell me what is to be done. Ms. Wolf said, I don't think Mr. McAdoo is saying he wants you to approve this just so he can take it to court. I don't believe that is what he is saying. I think he's saying if he has to go to court, but I don't think he wants to unless it is absolutely necessary. And the other issues I wanted to raise is that maybe in these other cases the owner did not object to only having the equitable owner's signature, & in fact, in the Jenkintown case which I believe was brought up at the last meeting, the landowners did not

object. And so, once again, we have a difference here where we have the landowner objecting & asking that both signatures be required in accordance with the ordinance – what is necessary. Mr. Mislitsky said, I told you there are no clear cut answers here. Tom said, no, but I heard what you recommended & I weigh it significantly. Mr. Mislitsky said, what did I recommend? Tom said, you recommended that it go to court, period. Mr. Mislitsky said, yeah, but which one of those people would have to initiate the action. Tom said he thought we would leave that up to them. Brian said, but your decision is going to determine – if you say they both have to sign, then the Diehls & the Saidis' are going to sue the Township saying you need to record it with just the Diehls. If we approve it & say that McAdoos have to sign it, or no, the other way around, just the Diehls, then the Diehls sign it & we record it, then it will be encumbent upon Mr. McAdoo to challenge that subdivision. Tom to Mr. Mislitsky, say again what you recommended a few minutes ago. Mr. Mislitsky said, I just tossed out another alternative is that you make no decision on the plan. Let someone file an action mandamus to force the Township to act, but I understand.... Several people spoke at once & was not understandable on the tape. Mr. Mislitsky said, yeah, he's right. You're right, you're right, you're right, you're right, you're right. He's right. If a mandamus action, the court would send it back. Tom said, telling us the same thing, telling us 1 signature or 2 signatures, the court wouldn't say which position to take. Mr. Saidis, the mandamus will send it back. Mr. Mislitsky, gentlemen if you... Ron said, we don't want it back. Mr. Saidis said, we're ok (inaudible). Ms. Wolf said, well actually, the other alternative is the application for subdivision is not or should not be before the Board. You could decide this is an improper place to bring this action & not make a decision due to that. Mr. Mislitsky said, can I ask counsel to just sit down. We can go back & forth with this for another hour. Rick said, I'm going to call for a motion in regards to approving this plan & the signatures required to do so. Ron asked, 2 motions or 1? Rick replied, 1 motion.

Bryan said, I'll make a motion to approve the plan with the requirement that it receives both signatures. Rick said, do I hear a second? Ron seconded. Rick said, its been first & seconded, all those in favor indicate by saying aye. Ayes. Rick said, those opposed? None. Mr. Mislitsky said, I'm sorry, but I need to refine your wording. If you are saying that both signatures are required, then you need to say that we are denying the plan on that basis because the owner needs to sign. It's the same thing, its just... Bryan said, so we are going to do a denial? Tim said, or you can approve it subject to the conditions. Mr. Mislitsky said, yeah. Ron said, that's what he just did. Bryan said, no I was sitting here, I know what I did. Mr. Saidis, (inaudible) approve it subject to. Bryan said, which is the 2 signature requirements. If you want me to say we are approving it subject to. Mr. Mislitsky said, you're right – that's good. Bryan said, subject to the post approval items. Rick said, so you need to withdraw your first motion. Bryan said, I'll withdraw my motion. Ron said, I'll withdraw my second. Bryan said, my motion will be approve it subject to post-approval items which requires 2 signatures. Rick asked, do I have a second? Ron seconded. Rick said, all those in favor, please indicate by saying aye. Ayes. Rick asked, those opposed? None. 4-0. Motion carries. Ms. Wolf said thank you.

#07-23 SPARKS TRACTS LOTS 2 & 3 – Preliminary Land Development:

Attorney Jim Hughes represented this plan. The applicant proposes to construct a 39,700 s.f. office, employee parking area, entrance drives, & a stormwater management pond in SMT. These facilities are in support of a 1,286,800 s.f. warehouse located in Dickinson Twp. The entrance into the site is on Ames Drive (in SMT). Mr. Hughes stated that the Planning Commission approved the plan, & that the comments have been met.

Modifications: Sidewalks, Curbs & Gutters, Upgrade existing roadway, & Stormwater retention facilities. Bryan made a motion to approve the modifications. Tom seconded, & the vote in favor was 4 to 0.

Ron made a motion to approve #07-23, subject to the applicant's acceptance of staff comments. Bryan seconded, & the vote in favor was 4 to 0.

Turning to the Engineer's report:

The applicant for the Trammel Crow Preliminary Plan is proposing to provide sewer & water to this property. An inter-municipal agreement is needed for public sewer in order to approve this plan. The applicant is proposing to bring SMTMA sewer service into Dickinson Twp. An inter-municipal agreement for public water currently exists; however, another agreement is required to allow a different point of connection than what was proposed before. Tom made a motion to approve an inter-municipal water & sewer agreement subject to a satisfactory review by the Solicitor. Bryan seconded, & the vote in favor was 3 to 1 (Ron abstained).

#07-25 MEMBERS 1ST FEDERAL CREDIT UNION – Final Minor Land Development:

The applicant proposes to contract a drive-through bank on Lot #8 of the Carlisle Crossing shopping center. Conditional use approval has been granted. Mr. Aaron Navarro presented the plan. The Planning Commission had concern with traffic exiting the shopping center & blocking traffic at the signal. It was suggested placing a "Do Not Block Driveway" sign on Westminster Drive & to restripe the area for a left turn lane. Mr. Navarro said he will escrow \$4,000 for striping if needed.

Modifications: Preliminary Plan, Wetland Certification, Planning Module, Stormwater Management Plan, Documentation for conformity to EIA & TIS, No parking closer than 10 feet to building, Islands every 10 parking spaces, 20 ft. wide planting strip, Traffic Impact Study, EIA report. Tom made a motion to approve the modifications. Ron seconded, & the vote in favor was 4 to 0.

Ron made a motion to approve #07-25, subject to the applicant's acceptance of staff comments & placing \$4,000 in escrow for restriping an area for a left turn on the lot. Bryan seconded, & the vote in favor was 4 to 0.

RETURNING TO #07-15:

Rick said, it has been brought to my attention that as part of the #07-15 Raymond & Genevieve Diehl Final Minor Subdivision plan, there were some modifications of requirements as part of that also. And we should to back & approve those modification requests. They were sections 501, 501 b (15), 502 g (5), 601 b (1), 602 c, 602 d, 602 f, 602 g, 711 b(2) (g) & 716 c (5) (c). Can I have a motion to approve those modifications? Bryan said, Ill make that motion. Rick said, second? Rick said, I'll second. All those in favor, please indicate by saying aye. Ayes. Rick asked, opposed? None. Motion carries 4-0. Rick to Mr. Mislitsky, do we need, as a point of precedent, do we need to go back & reapprove the subdivision to the modifications or are we alright? Mr. Mislitsky replied, I don't think you have to, but could I make a suggestion? You need to incorporate that bantering & discussion as part of your motion. I mean you approved it subject to 2 signatures. All I would like to do is frame the issues for the court & they are coming

from the attorneys. Like we move to approve the plan... Rick said, subject to bantering – how do we do that? Brian said, after exhaustive... Mr. Mislitsky said, we move to approve the plan subject to both parties signing based on the arguments that were presented. Bryan asked, didn't we do that? Mr. Mislitsky said, I don't think you put in arguments presented, but that's fine, Sandy will. Rick said, so you are saying that your recommendation is we still go back & ... Mr. Mislitsky said yes. Rick said, another motion & approve it & that is basically because we have now done the modifications that we should have done before. Mr. Mislitsky said, exactly. Rick said alright.

Bryan said, I'll make a motion to approve plan #07-23 subject to post-approval items. Brian said, no - #07-15. Bryan said, sorry #07-15 subject to post-approval items, staff comments, bantering, 2 signatures & anything else the Solicitor deems important to our case. Mr. Mislitsky said, wow, I feel important. Rick asked, do I have a second to that? Ron seconded. Rick said, all those in favor please indicate by saying aye. Ayes. Rick asked, opposed? None. 4-0. Mr. Mislitsky asked, can I ask for 1 other thing? Make a motion that the Township does not take a lead in any appeal that is filed & the matter should be addressed by both parties. Bryan said, so moved. Ron seconded. Rick said, all those in favor please indicate by saying aye. Ayes. Rick asked, opposed? None. 4-0.

SOLICITOR REPORT:

No report was given.

ENGINEER REPORT:

Bryan made a motion to approve a security reduction for Westgate, Phases 5, 6, & 7 (#06-24). Ron seconded, & the vote in favor was 4 to 0.

Bryan made a motion to approve a 90 day time extension for the United Telephone Company (#07-11). Tom seconded, & the vote in favor was 4 to 0.

The developer for Misty Meadows, Phase 2 is requesting that a swale that was to be built between his development & the Wheatstone development be eliminated. There is a tree line along the back of those properties that would have to be removed. No impact to drainage will occur since there are no homes along the Wheatstone property. Bryan made a motion to approve a waiver request for Misty Meadows, Phase 2 (#03-04). Ron seconded, & the vote in favor was 4 to 0.

Regarding dedication & a maintenance agreement for the A.C. Kuhn, Lot 3 (Dennison Tract) #07-05, an access road from the cul-de-sac at the end of Commerce Drive in SMT to the warehouse in Dickinson Twp is required. Dickinson has requested that the developer dedicate this roadway, & the easement agreement for this right-of-way calls for a public road. The developer is requesting SMT accept for dedication the portion that is in SMT. There would be no benefit to the Township to accept this portion. Attorney Jim Hughes said that only 200 ft. is in SMT. Tom made a motion to accept dedication subject to submission of an agreement approved by the Solicitor that covers maintenance & indemnifies the Township. Bryan seconded, & the vote in favor was 3 to 1 (Ron abstained).

PLANNING/ZONING/CODES ENFORCEMENT REPORT:

No report was given.

MANAGER REPORT:

Tom made a motion to appoint Jeff Straub as a member to the UCC Appeals Board, & to appoint Mike Scherer as Solicitor at \$110/hr. Ron seconded. It was noted that Mr. Scherer is an alternate Zoning Hearing Board member & this could present a conflict of interest. Tom amended his motion to include asking Mr. Scherer to resign as ZHB alternate member. Ron seconded, & the vote in favor was 4 to 0.

The Township is a member of the Capital Region COG & has agreed to participate in the negotiation of a cable franchise agreement with Verizon. Tom made a motion to participate in the franchise agreement negotiation. Bryan seconded, & the vote in favor was 4 to 0.

Consensus was given to advertise an ordinance for the special fire police agreement.

A joint meeting will be held on March 5 at 7:30 a.m. at North Middleton Township. Tom, Rick & Ron said they will attend.

A letter was received from Bruce Pinto regarding a benefit bike tour on May 31. A good portion of the tour is in the Township. Indemnification of the Township & traffic/police control is needed. Tom made a motion to contact Mr. Pinto to supply indemnification & necessary controls for safety for the participants & residents/motorists. Bryan seconded, & the vote in favor was 4 to 0.

Tom noted that Waste Management was unable to pickup the trash on Tuesday & Wednesday due to the inclement weather. He said they will pick up double next week. Tom noted that there is a clause in the contract that allows for this provision, & suggesting reviewing this clause when the contract is up for bid. Ron disagreed, & stated how terrible the road conditions were. He said that with losing 2 days of pickup, they would never be able to catch up within the same week. He felt Waste Management acted responsibly by staying off the roads when they were bad while offering to pick up extra trash later.

PUBLIC INPUT:

Carol Shetter asked where the new Members 1st Credit Union will be located. It will be at the Carlisle Crossing shopping center.

Lou Capozzi, 1565 Holly Pike, requested a hearing to discuss a possible rezoning issue of the Mallios property. Bryan made a motion to schedule a hearing. Ron seconded, & the vote in favor was 4 to 0. The hearing will be held on March 27.

SUPERVISORS' DISCUSSION:

Rick would like the Board to hold a workshop meeting. It was suggested a meeting be held on March 1 at 7:00 a.m. He also asked about changing the time of public input (non-agenda items) on the agenda. Two people in the audience would like to see it moved up on the agenda. It will be placed after the minutes & prior to Supervisors' Discussion.

BILLS FOR PAYMENT:

Tom made a motion to pay the bills. Bryan seconded, & the vote in favor was 4 to 0.

ADJOURNMENT:

Ron made a motion to adjourn the meeting at 7:29 p.m. Tom seconded, & the vote in favor was 4 to 0.

ATTEST:

**SOUTH MIDDLETON TOWNSHIP
BOARD OF SUPERVISORS:**

Sandra A. Quickel, Secretary

Walter G. Reighard, Chairman

Bryan A. Gembusia, Vice Chairman

Ronald L. Reeder, Member

James N. Baker, Member

Thomas E. Faley, Member