

# London Britain Township Board of Supervisors Meeting

August 27, 2012

Approved at the 9/10/12 BOS meeting

Board of Supervisors Member Glenn Frederick opened the Board of Supervisors meeting at 7:10 PM. In attendance were Supervisors Aileen Parrish and David Owens and Aileen Parrish, Secretary Carolyn Matalon, Treasurer Nette Stejskal and residents.

Flint Hill Crossing- Glenn Frederick noted the subdivision approval process was completed and reviewed in depth with the Township Solicitor Tom Oeste, the developer representative Tony Yarmolyk, HOA President Mr. Messaro and those in attendance at the Board of Supervisors meeting held on August 13, 2012. At the August 13, 2012 there were two (2) items identified that were needed for Subdivision dedication. Those items are the HOA open space deed and the Lot #36 Easement which are to be executed and recorded. Glenn Frederick noted that both items noted above are now executed recorded and received by London Britain Township.

Supervisor David Owens stated that the Township is in receipt via email, as of late this afternoon, of a complaint that is put together and pending being filed. Supervisor Owens noted that the Township consulted with the Township attorney Tom Oeste about the complaint received. Supervisor Aileen Parrish noted that the meeting held tonight is not normally a Subdivision review night and suggested that the Supervisors may want to wait until the next Subdivision review night, in September, to review again. Glenn Frederick read and commented on the complaint items that were received late this afternoon.

Complaint items #11-35 are as follows:

11. On or about \_\_\_\_\_, the Township granted final land development approval of the Final Subdivision Plan of "Flint Hill Crossing", prepared by Hillcrest Associates, Inc., dated April 9, 2001, last revised August 20, 2001 ("Final Plans").

12. The Final Plans depict a 60-lot single-family residential subdivision on a 155-acre parcel of land located on Stricklersville Road and Flint Hill Road in London Britain Township, Chester County ("Property").

13. The developer of the project at the time of approval was RML Enterprises, Inc.

14. Upon information and belief, at some time after the Final Plans were granted approval, RML Enterprises sold the Property, including the approved Final Plans, to Flint Hill, LLC of Middletown, Delaware.

15. Upon information and belief, Kershaw Constuction began performing site work and constructing the required public improvements on the Property in 2002.

16. At the time of the Final Approval, and throughout the construction process for the development, the London Britain Township Subdivision and Land Development Ordinance ("SALDO") was in full force and effect.

17. Pursuant to the Final Plans, streets and portions of the open space within the development are proposed to be dedicated to the Township.

18. The Final Plans contain the following plan notes:

No. 6: "All lots with Stormwater Management facilities shall be graded such that stormwater runoff from the impervious areas shall drain to the Stormwater Management facility."

No. 10: "The developer shall be responsible for ensuring that all erosion and sedimentation controls are installed, stabilized, and functional before any site disturbance takes place within the tributary areas of those controls ..."

19. Section 601 of the SALDO states, in relevant part:

All streets, storm drains, sewers and sewer laterals, water mains and services, monuments, street signs and other public improvements required shall be installed in accordance with the approved plans, and the applicable regulations of the Pennsylvania Department of Transportation specifications. The construction or installation of all public improvements shall at all times be subject to inspection by a designated representative of the Township. If such inspection reveals that work is not in accordance with approved plans and specifications or that construction is not being done in a workmanlike manner, the said representative shall stop the work and require that corrections be made.

20. The first building lot was sold to a homeowner in October 2003.

21. Section 903 of the SALDO states, "No construction shall be commenced, no lot in a subdivision shall be sold, no permit to erect any building upon land in a subdivision shall be issued and no building shall be erected in a subdivision except after compliance with this Ordinance."

22. Section 1003.C.(1), entitled Issuance of Building Permit, states, in relevant part, "The Zoning Officer **shall** review the plans for compliance with the Zoning Ordinance."

23. Section 1003.C.(4) states, in relevant part, "A Certificate of Occupancy for the use or occupancy of vacant land ... shall be applied for and issued ... **provided such proposed use is in conformity with the provisions of this Ordinance.**"

24. Plaintiffs believe and therefore aver that the Township, through Walsh and Gargula, have issued numerous building permits for construction of site improvements, stormwater management improvements and lot improvements that fail to conform to the approved Final Plans and is in violation of the provisions of the Zoning Ordinance and SALDO.

25. Plaintiffs believe and therefore aver that building permits and occupancy permits have been issued for the development notwithstanding that the construction of the required site improvements, grading and lot improvements do not conform to the approved Final Plans and is in violation of multiple provisions of the SALDO and the Zoning Ordinance, including but not limited to the following:

Failure to install required drainage facilities pursuant to the approved Final Plans and as required by Section 503.C.6, 503.C.5.b, 508.E of the SALDO.

Failure to construct required stormwater management facilities in the form of drainage pipes under the driveways on Lot Nos. 3,7,18,29,30,51,52.

Failure to complete grading in conformity with the Final Plans on Lot No. 11, 17, 28, 34.

Construction of a single-family dwelling on Lot 50 in violation of the 35-foot height requirement of section 1304.A.8 of the Zoning Ordinance.

Failure to stabilize and complete permanent swales to Final Approved Plan per page \_\_\_\_\_

Failure to require fulfillment to the specific Final Approved Development Landscape plan for tree height and diameter compliance.

Failure to inspect for compliance with permanent stabilization specifications per Final Approved Plan page \_\_\_\_\_

26. Plaintiffs have attempted to raise these violations to the Township, Walsh and Gargula at multiple public meetings.

27. In response to the concerns of Plaintiffs, the Township Board of Supervisors issued a letter dated July 26, 2011. A true and correct copy of the July 26, 2011 letter is attached hereto and incorporated herein.

28. The July 26, 2011 states, in relevant parts:

Once a permit is issued by the property Township official, it indicates that the construction authorized by the permit is in compliance with the applicable Township regulations.

29. Section 509 of the Pennsylvania Municipalities Planning Code ("MPC"), 53 P.S. § 10509, states, in relevant part:

No plat shall be finally approved unless the streets ... are improved as may be required by the subdivision and land development ordinance and any walkways, curbs, gutters, street lights, fire hydrants, shade trees, water mains, sanitary sewers, storm sewers and other improvements as may be required by the Subdivision and Land Development Ordinance have been installed in accordance with such ordinance.

...the subdivision and land development ordinance shall provide for the deposit with the municipality of financial security in an amount sufficient to cover the costs of such improvements or common amenities including, but not limited to, roads, stormwater detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements, or buffer or screen plantings which may be required."

53 P.S. § 10509(a).

30. Section 511 of the MPC states, in relevant part:

"In the event that any improvements which may be required have not been installed as provided in the Subdivision and Land Development Ordinance or in accord with the approved final plat the governing body of the municipality is hereby granted the power to enforce ..."

53 P.S. § 10511.

31. The Township, Walsh and Gargula lack the discretion to issue permits for construction that does not comply with the approved Final Plans, the provisions of the Zoning Ordinance and/or the provisions of the SALDO. See 53 P.S. § 10509.

32. The Township had a duty to require completion of the required improvements consistent with the approved Final Plans and the provisions of the SALDO. See 53 P.S. § 10509.

33. The Township breached its duty by failing to require the required improvements to be constructed pursuant to the Final Plans and the requirements of the SALDO.

34. The Township failed to retain adequate financial security to ensure the developer's completion of the required improvements.

35. Pennsylvania Courts have construed sections 509 and 511 to impose an affirmative duty on a municipality to properly complete the required improvements at its own expense where the developer fails to do so or has failed to post sufficient financial security to guarantee the completion of the required improvements. See, e.g., *Safford v. Board of Commissioners, Annville Township, et al.*, 35 Pa.Cmwlth. 631, 387 A.2d 177 (1978).

### Supervisor Frederick comments on the items received above are as follows:

Items # 11-17 are ok; #18 according to what Supervisor Frederick has seen is ok noting that under 18 No.10 occurred 10 yrs ago before construction; #19 Supervisor Frederick stated this was followed by Township Engineer Pat Walsh and Zoning Officer Dave Gargula; #20 history; #21-23 Supervisor Frederick noted these were complied with; #24 Supervisor Frederick has no idea where this occurred; #25 Supervisor Frederick stated a) did not happen b) piped or swaled which are both acceptable ways c) changes were made at time of building permit because of contour of lot d) does not exist. This requirement is on the front of the structure e) Chester County Conservation methods preferred methods applied in some areas f) different species of plantings may have been substituted, some plantings may have died and the developer will replant when appropriate g) everything stabilized; #26 Supervisor Frederick noted that in previous meetings during the review period various items have been raised, discussed and either handled or deemed not significant; #27-28 ok; #29. Supervisor Frederick indicated complied with and financial security placed; #30. Supervisor Frederick noted complied with; #31. Supervisor Frederick stated this is true with final plans and the SALDO but not true of the Zoning Ordinance; #32 Supervisor Frederick noted this is completed; #33. Supervisor Frederick noted that this is not a true statement; #34. Supervisor Frederick noted that financial security is in place; #35. Supervisor Frederick noted that the Subdivision is completed and the proper financial security in place.

Aileen Parrish commented that the emailed complaint has come to us at the 11<sup>th</sup> hr. noting that the discussion of the Flint Hill Crossing subdivision dedication with the Township Engineer, Township attorney, the developer, HOA representatives and residents was on the agenda for the last Board of Supervisors meeting on August 13, 2012. Mr. Messaro the HOA representative and developer Tony Yarmolyk attended this meeting. Supervisor Parrish requested the HOA representatives opinion on the email complaint received at the last hour today regarding the Flint Hill Crossing subdivision. HOA President Mr Messaro is not familiar with the document/complaint that the Township is in receipt of and he does not have a copy of the document. Mr. Messaro noted that the turnover of HOA open space has been signed and recorded. Mr. Messaro indicated that the HOA only had concerns with receipt of a maintenance schedule and this has been received and the issue closed. Supervisor Frederick noted that all Flint Hill Crossing outstanding issues were discussed at length at the August 13, 2012 meeting. The Board of Supervisors then agreed the only outstanding items for dedication were the HOA Open Space deed and Lot #36 Easement being executed and recorded.

Lee Heffernan stated that the emailed document/complaint she sent to the Board of Supervisors was from individual homeowners and not the HOA. Ms. Heffernan stated that multiple items have been brought up over that last year and the items are not all addressed by Township nor the developer. Lee Heffernan stated that the private professional engineer report she provided to the Township previously shows that. Lee Heffernan noted that the homeowners thought the Flint Hill Crossing HOA would present homeowner issues and she just found out they weren't discussed

so this complaint drafted months ago is being presented by her to the Board. The punchlist was discussed by the Board, developer and Lee Heffernan. The Township punchlist completion has been verified by Township Engineer noting that some street trees need to be replaced. Flint Hill Crossing resident Mrs. Dobsch asked that the engineer list presented by Ms. Heffernan and the Township punchlist should be looked at side by side and compared. Supervisor Frederick noted the Township refers to the punchlist that the Township Engineer presents to the Board of Supervisors. Zoning Officer Dave Gargula stated that all punchlist items have been satisfied with the exception of street trees which will be planted when appropriate. An escrow has been established for the street trees.

Drive, Brunswick Lane, Durham Drive and portions of Flint Hill Rd and Strickersville Rd as shown on the Final Subdivision Plan of the Flint Hill Crossing Subdivision. Lee Heffernan made a comment that the punchlist Zoning Officer Dave Gargula spoke of is not complete. Glenn Frederick made a motion to approve Resolution #12-12 as read. David Owens seconded the motion and the motion carried with Aileen Parrish abstaining from the vote.

Mrs. Dobsch commented that she would like a compromise. She does not believe the issues tonight require a law suit. Glenn Frederick indicated that the punch list is complete with the exception of the street trees which will be planted when appropriate. Glenn Frederick noted the Township looked at the independent engineer punch list when it was presented by Lee Heffernan. The Township punch list is completed with the exception that has been noted.

Developer Tony Yarmolyk noted that all driveways which were ROW concerned are all fixed. Most driveways issues are between the homeowner and builder not the developer or the Township. Mr. Yarmolyk noted a January punch list split into a. and b. columns (Township and HOA) and all items were repeatedly discussed and addressed. There were pictures of driveways and proposed problems and these were addressed. There has been no lack of attention and/or response to all punchlist items. Some items have been addressed multiple times. Supervisor Parrish states that that is so frustrating and disheartening. The Flint Hill Crossing subdivision has been such a painful process. That being said we have gotten to the home stretch with new leadership in the HOA and working with representatives of the HOA to get to finish line. At the 11<sup>th</sup> hr a former Flint Hill Crossing HOA member presents this complaint to the Township The homeowners communication levels are frustrating. The current HOA President Mr. Messaro stated that he has been involved in HOA for the last 8 months. Mr. Messaro indicated that the Flint Hill Crossing HOA is already significantly in debt because of legal fees incurred with previous HOA member legal involvement. Mr. Messaro noted that at a HOA members meeting last week Lee Heffernan's independent engineers report was requested from Ms. Heffernan and he cannot get a copy of it. Mr Messaro stated that he as the HOA President would not have signed the HOA Open Space deed or anything if he believed there was items that were not clearly done. Mr. Messaro noted that it is difficult to get clear information from the former HOA member and the HOA does not have the ability to get into another law suit financially. Township Zoning Officer Dave Gargula noted that Lee Heffernan's private engineer report/punchlist is not an official report. The Board of Supervisors official punchlist report is produced only by the Township Engineer. Glenn Frederick called the motion to approve Resolution #12-12 as read. David Owens seconded the motion and the motion carried with Aileen Parrish voting not to approve.

Zoning and Building Permit fees- Treasurer Nette Stejskal reviewed with the Board, Secretary Carolyn Matalon and Zoning Officer the change in fees proposed. Nette Stejskal will prepare a resolution for fees for the 9/10/12 Board of Supervisors meeting.

2013 Budget work sessions- Budget advertised by 11/26/12. A budget work session will be held on 9/14/12 @ 9:30 am. The next work session 9/21 @ 9:30 am.

Names and contacts for budget - Carolyn Matalon stated that 5 resident names have been received for participation in budget discussions. The work session dates and times will be added to the Township website.

Hazardous waste program- Supervisor Glenn Frederick signed the 2013-16 Regional Household hazardous waste collection program commitment form.

## **Old Business**

Stephanie Town/Appendix G SLDO - Rick Dark has not returned Planning Commission contact for review of Appendix G for SLDO. The Board approved the Planning Commission to contact Ellen Tracy for review of Appendix G. Nette Stejskal noted that \$110 per hr was the 2011 rate for Ellen Tracy. Stephanie Town does not think the review time will be long for a review of appendix G.

## **Treasurer Report**

Nette Stejskal read the August 27, 2012 Treasurer Report (report attached)  
Bills over \$1000

Wright Express	\$1172.49	Walsh Eng	\$6809.99
Walton Water	\$3695.64	Indep Const	\$3340.51
Martin paving	\$2098.40	Hillcrest Const	\$1940.00
Martin Paving	\$1500.00	Walsh Eng	\$5747.00
Indep Const	\$19912.66	Indep Const	\$19425.84
Martin Paving	\$26402.00	Walsh Eng	\$9955.76

General Fund- Glenn Frederick made a motion to acknowledge the ACH payments of the DVRFA Loan principal and interest and the ACH payment of Workers Comp Insurance to Selective Insurance from the General Fund. Aileen Parrish seconded and the motion carried unanimously.

General Fund – Glenn Frederick made a motion to pay bills as represented by General Fund M&T with checks# 13714-13731 from the General Fund. Aileen Parrish seconded and the motion carried unanimously.

Plgit-General Fund- Glenn Frederick made a motion to pay bills with ck# 5781-5803 and an ACH payment from the Plgit General Fund. Aileen Parrish seconded and the motion carried unanimously.

Plgit-General Fund- Glenn Frederick made a motion to acknowledge the transfer of funds from the General Fund to the Park Fund, Open Space Fund and Capital Fund. Aileen Parrish seconded and the motion carried unanimously.

Parks Fund- Glenn Frederick made a motion to pay bills with ck#2610-2615 from the Parks Fund. Aileen Parrish seconded and the motion carried unanimously.

Parks Fund- Glenn Frederick made a motion to acknowledge the transfer of funds from the Parks Fund to the General Fund. Aileen Parrish seconded and the motion carried unanimously.

Open Space Fund- Glenn Frederick made a motion to acknowledge the transfer of funds from the Open Space Fund to the General Fund. Aileen Parrish seconded and the motion carried unanimously.

Capital Fund- Glenn Frederick made a motion to pay bills with ck#1360-1361 from the Capital Fund. Aileen Parrish seconded and the motion carried unanimously.

Capital Fund- Glenn Frederick made a motion to acknowledge the transfer of funds from the Capital Fund to the General Fund. Aileen Parrish seconded and the motion carried unanimously.

Highway Fund- Glenn Frederick made a motion to pay bills with ck# 6164-6172 from the Highway Fund. Aileen Parrish seconded and the motion carried unanimously.

Flint Hill LLC Escrow Account- Glenn Frederick made a motion to pay bills with ck# 186 from the Flint Hill LLC Escrow Account. Aileen Parrish seconded and the motion carried unanimously.

Meadows II Escrow Account- Glenn Frederick made a motion to pay bills with ck# 172 from the Meadows II Escrow Account. Aileen Parrish seconded the motion carried unanimously.

Adjournment- David Owens made a motion to adjourn the meeting at 9:45 pm. Glenn Frederick seconded and the motion carried unanimously.