

**Mt. Joy Township  
Planning Commission Regular Meeting  
Tuesday, September 8, 2015**

**Meeting Minutes**

**Present:** Terry Scholle, Chairman, Sindy Jennings, Vice-Chairman; Curtis Hawkins, Ken Roberts; Randy Bailey, Engineer

**Absent:** Fred Lang; Sheri Moyer, Secretary

The Mount Joy Township Planning Commission met this date, as publicly advertised, at the Mount Joy Township Building located at 902 Hoffman Home Rd., Gettysburg, PA 17325.

**Call to Order:** Starting Time: 7:00 pm

**Chairman Comments:** Mr. Scholle reiterated that if any of the members are not able to make a meeting or will be late to please notify Ms. Moyer as soon as possible so that she can make sure we have a quorum.

**Public Comments:** None.

**Approval of Minutes:** Planning Commission Meeting Minutes from August 11, 2015. Mr. Hawkins moved, seconded by Mr. Roberts, to approve the meeting minutes as presented. Motion carried unanimously.

**Preliminary/Final Plans:** Preliminary/Final Subdivision Plan – The Links at Gettysburg/Powder Creek Phase I: Joe McDowell from Martin and Martin introduced himself along with Mr. Klein. Mr. McDowell gave a brief overview of the plans presenting a preliminary subdivision plan for Powder Creek – Phase I which was approved in 2008. Mr. McDowell explained that back in April 2015 the conditional use application was updated and as part of that update there was a proposal to increase the number of lots within the Powder Creek development by eight. The plans that are before the Planning Commission for review are showing in accordance with the approved conditional use plan the first 14 single family lots along Cantor Way which is being called Phase I. Mr. McDowell stated that the reason they are stopping where they are and calling this Phase I is because there is an existing lot on which a home currently exists. Mr. Scholle said that this house has its own well and septic which would be abandoned. Mr. McDowell stated “Yes it would eventually be abandoned.” The concept with that house is the house would be located on Lot No. 14. Upon approval of this plan there would be bonding put in to place to secure construction of the roadway, utilities and at that point there would be a separate private agreement with the buyer of this home until the road way and utilities are constructed. They would continue to use the well and septic. Mr. Bailey stated in reference to Lots 2 and 2A, if they reference the Wm. F. Hill letter on page 2 item No. 14 as the way it is presented on that plan they are suggesting it not be done because if they subdivide 2 and 2A and make them two separate properties it is landlocked. This should be a separate subdivision plan. Also, the well and septic are no longer associated with the lot the house is on. Mr. Bailey is recommending that based on the review comments of the Zoning Officer and Engineer that the plan be tabled and no action be taken by the Planning Commission. There is

also a significant number of stormwater comments that need to be addressed. He is recommending that someone from Wm. F. Hill and the engineer from Martin and Martin sit down and discuss how these stormwater issues be addressed.

Mr. Bailey said that items 13 and 14 from their review letter are the most important items that need to be addressed. For the other items there will need to be waivers requested from the developer before the Planning Commission can make a recommendation to the Board of Supervisors.

Mr. McDowell wanted to make sure he is understanding what they are looking for stated that Lot 2 as they are looking at it needs to be added to the adjoining properties which keeps ownership of the access, well and septic which are the sources of water and sewage. Then come back and subdivide that lot as Lot 14 once the road and utilities are installed. Because there is an existing structure if you subdivide the house would be landlocked with the well/septic on another lot. Mr. McDowell questioned why the plan cannot be approved as 14 lots, put bonding in place for the roadway and the utilities, then have a private agreement between the buyer of the lot and the Links at Gettysburg LLC to continue to use the access, water and sewer until such time as the construction is complete. Mr. Bailey stated that it cannot be because the lot the house is on would be landlocked. There would not be any frontage. Mr. Bailey indicated that this was discussed extensively with the Township Solicitor and stated that it is not just their office but also the Solicitor's. Mr. Klein stated "I agree. I agree with that statement. So it is the Solicitor's driving the whole ship here." Mr. Bailey said that they agree with this also because if you subdivide that lot there is no access to that lot except through an easement and part of the ordinance requirement is that each lot has to have frontage. Mr. McDowell said that it does have frontage on Cantor Way. Mr. Bailey questioned if he wanted to occupy that house could he get an occupancy permit with the water/septic and access on another person's property? You would have an access that is no longer on your property. Mr. Klein said "We're driving this not- to make it clear - the Solicitor is driving the blank ship here. That's what I hear here." Mr. Baily said, "That is not what I said. What I said is that the Solicitor's office and our office are on the same page on this matter." Mr. McDowell questioned, "Why if the Township is holding the bonding for the roadway and utilities couldn't the plan be approved? If the developer does not complete the project the property owner could come to the Township and the Township take that bonding money to complete the project." Mr. Bailey said "That is what the bonding is for. But that property would be landlocked having no frontage access. If you look at SALDO 86-22.B(1) reads 'All lots shall front on a dedicated public street (existing or proposed), or upon a fully improved private street constructed to Township specifications as set forth in this chapter. Lots fronting upon unimproved private streets or not fronting upon a street shall not be approved.' " Mr. Klein said, "This would be done with an easement that until water and sewer was in place the easement would exist. It would be done with agreements that would stay there. I'm asking this Township to work with me. I'm trying to put this lot for sale, bond all these lots so you have the security, but obviously, the Solicitor is going to drive this ship and that's what I'm asking not to be done with the Planning Commission. That concerns me. I've been around this Township now for a long time and I've seen this Solicitor drive this ship aground many times and this gives me great concern. You guys are my neighbors." Mr. Scholle said. "We want what is best for everybody." Mr. Klein said, "Exactly, and what I'm asking, I'm pleading to this board to not let this Solicitor drive this ship aground. That's what I'm asking for because you guys will be much more reasonable with me than that attorney from Camp Hill. And that's where I have a problem." Mr. Scholle questioned, "Don't we want to do this all legally?" Mr. Klein said, "We

do. But I'm telling you - when you say that." Mr. Scholle questioned, "Who is the legal authority?" Mr. Klein said, "I guarantee you I'll be in legal authority- but that's my point - that's been driving me to insanity for the last five years. What should cost me \$20,000.00 costs me \$250,000 because of that Camp Hill Attorney. And that's my problem that I have. This Township has always been fair to me but that Solicitor will make me put three acts of Congress and you get one act of Congress done today and God bless ya. She'll put me through three acts of Congress and I can tell you time after time after time that's occurred to me and that's what I'm frustrated about. You don't understand a fraction of my frustration." Mr. Scholle said "Well I can see that you're frustrated." Mr. Klein said, "This girl, I met for the first time, came out there and - I had to have plan after plan after plan after plan on these trails. This girl finally took ten minutes and took a ride with me through these trails that these people made me spend thousands and thousands and thousands of dollars. Nobody took the time to come out to this development to ride these trails to say Rick you are in complete compliance. These are the issues I got with that Solicitor and I've got a real issue with her. And she feeds the engineer this shit and I got a problem with that."

Mr. Bailey said, "Excuse me I think it's time I speak up. It says here by the Ordinance, we read the Ordinance and go by the Ordinance. We do not create anything in addition to this. It reads Lot frontage – verbatim. Is this supposed to be a private road is that correct? This is going to be a private street. That's what your plan said it is." Mr. Klein said, "Yes". Mr. Bailey said, "Let me read it to you again. And we think for ourselves sir." Mr. Klein said, "No you don't. I disagree with you." Mr. Bailey said, "Lots fronting upon unimproved private streets or not fronting upon a street shall not be approved. Plain and simple that's what it says. You get your attorneys have them look at this page and this statement and let me tell you - if they don't agree - that's what it says right here – lots fronting upon unimproved private streets – it's not improved at this point – or not fronting upon a street shall not be approved. Period. That's what it says, Okay?" Mr. McDowell questioned, "But you don't agree that once the security is in place it is improved? You don't agree with that?" Mr. Bailey said, "What did I just read to you? It says unimproved. It's unimproved until the point that it is improved. Is that right?" Mr. McDowell said "To me it's unimproved until the point that it's secured." Mr. Scholle said, "But secured doesn't include that the infrastructure is available. It just means that you've secured the bond." Mr. Bailey said "We're not saying you can't subdivide that property. We're just saying in this plan we do not recommend that it be approved with that property for the reasons given." Mr. McDowell questioned, "In what manner would you suggest to subdivide?" Mr. Bailey said, "What we – and I understood – Erik Vranich from our office had a discussion with you so I don't know where this is going but from what I understand is that we were saying that you please – if you are going to do that – do a lot addition to where you put it to the adjoiners and then you come back and do the subdivision at a later date. Because there is no difference at that point. It's a sequence of how the improvements are and access and how this ordinance is written." Mr. McDowell said, "Our issue is – we would like to sell this lot, lot 14, this one. Now you are saying that if we add this lot 2 to the surrounding properties and if we sell that, I mean the problem is we can sell the lot of ground here." Mr. Bailey said, "What we threw out here is you could keep lot 2 as shown but again that lot 2 doesn't conform to your subdivision plan with the lot lines and everything else." Mr. McDowell said, "Keeping that aside. I understand that just because the lines didn't match up. But keeping that aside." Mr. Bailey said, "Wasn't that important for the lines to match? You are subdividing a piece of property here." Mr. Klein said, "I think we might be able to get there but I'm coming in to the Township to try to get from point A to point B. I'm not here to hurt anybody. I'm just trying to get from point A to point B that's

all I'm trying to do." Mr. Scholle said "There is no argument there. The only thing is we're pointing out something that probably should be re-evaluated." Mr. Klein said, "I'm with you there. I'm with you Terry." Mr. Scholle said "That's all we're saying." Mr. Klein said, "I'm thinking I can rethink it how I convey this and have the conveyance in my hands so that when I come back I have everything I need." Mr. Bailey said, "We're not against what you want to do it's just the procedure and methodology and sequence." Mr. Klein said, "I guess that's my point. I'm looking for this Township to help me work to get there." Mr. Scholle said, "We can only help as far as what the ordinance says. We did not make up the ordinance but we have to follow what the ordinance says." Mr. Klein said, "And I need you to know that I have some good minds with McNees, Wallace, I mean they are good attorneys and they say Rick this should fly. And I'm listening." Mr. Scholle said "Right, right and its written there. And that is what we have to follow." Mr. Klein said, "I got ya. We'll dig in to there and see if we can figure it out. But alls I'm trying to do is put this thing for sale. Not hurt the Township. Put the bonding in place and have what I need so nobody blocks me when I go to do future subdivisions." Mr. Scholle said, "Then following the ordinance you shouldn't have any problem whatsoever." Mr. Bailey said, "And even if you read the first sentence says, 'All lots shall front on a dedicated public street (existing or proposed), or upon a fully improved private street constructed to Township specifications as set forth in this chapter.' So with that first sentence and the second sentence we feel that the plan does not comply with that section and it is noted as such. We are not creating something. The attorney or the Solicitor is not telling us how to do our job. We just did that, we made that observation with independent thinking we compared notes and they agreed with what we had stated. So we are not taking any direction from the Solicitor. Contrary to that thought, that's we're okay." Mr. Klein said, "That's was maybe my other 15 comments before that I got the shit kicked out of me for last night. Trust me them scars are there." Mr. Scholle said, "I know this is not an easy thing to do. This is a massive project and there are a lot of these innuendos that unfortunately - they are in the book so they have to be followed." Mr. Klein said, "And alls I want to do is start a communication that I can talk to you guys and be friends with forever. Yeah, it's been 14 years. I'm glad to see you back. I'm just trying to do it right." Mr. Scholle said, "Exactly, exactly and that's what we want. We want you to do it right and we're trying to give you guidance based on what we have in our ordinances so that it is right so that there's no problem in the future. Once you meet that and the zoning you're golden. That's all we're trying to do. We're trying to help you make sure that everything's in order. To make sure you have all the "t's" crossed and the "i's" dotted. It may be a pain in the butt which I'm sure it probably is because of all the garbage you have to go through. But in the long run everybody's going to be better off for it." Mr. Bailey said, "And there's one way to approach this - and I'm not recommending this and I'm not recommending that the Planning Commission recommend for approval by the Board of Supervisors. But you could always ask for a waiver. Okay? The ordinance states what it states and we're taking verbatim for what it says. And all we're doing is going through our list checking your plan again what the ordinance says. We're not making up rules, regulations, ordinance requirements. We're just going by what it says. The ordinances are here to protect the developer and to protect the Township. If you follow the ordinance to the law there is nobody who could disapprove your plan. That's what it comes down to. I've been on both sides of the fence. I've worked for the developers. I've worked for the Townships, for the Boroughs. I've reviewed plans, I've designed plans and my thing was - Ok you're right I've got to do that. I've got to do what it says or ask for a waiver or modification request. I'm not saying, maybe you missed it but according to this item here it specifically states it is a private street the street has to be improved. Yah and that's where we're coming from. So I'm sorry I don't want to create any hardship for you but we're just pointing out those items that we've

picked up on that don't meet the requirements of the subdivision land development ordinance. Period."

Mr. McDowell said, "So I understand you correctly, this lot cannot be subdivided until this roadway is actually constructed." Mr. Bailey said, "That's what I read." Mr. McDowell said, "But not the utilities." Mr. Bailey said, "it didn't say that but it only makes sense to – how are you going to serve public water and sewer - if you're putting public utilities in there and you subdivide that lot - but that's what it says. It says "All lots shall front on a dedicated public street (existing or proposed), or upon a fully improved public street constructed to the Township's specifications..."

Mr. Klein asked, "If I came in with agreements that stood up to the Township that said hey I'll give this perpetual easement if this doesn't ever show up. Could that be something that the Planning Board could consider? I'm just trying to get this done. Do you hear what I'm saying? In other words, I've got a lot that exists today and alls I'm saying is truly whoever buys this, if someone buys it, I'm saying you got my easements until you got my road, my driveway, my water and my septic. Until the water and sewer shows up is that something the Township would consider as a waiver? I guess that's where my heads going. I'm just trying to move this, bond the roads so that I don't leave the Township hang so I'm meeting in the middle. I'm hearing it, what's your name?" Mr. Bailey stated, "Randy Bailey." Mr. Klein said, "Randy suggested that's maybe there's a waiver there." Mr. Scholle said there is a potential there but it really should be approached the way it originally was suggested because we know that that's going to work. Mr. Klein said, "But the economics of that." Mr. Scholle said, "I understand that but you want to do it right." Mr. Klein said, "I do and I'm just thinking that wow I could come into the Township with a perpetual easement to the Township until it shows up then everybody's covered. I'm just trying to get from point A to point B with the least amount of pain." Mr. Bailey said, "You brought up a good point and you said it yourself - which I didn't bring to the table – but if, if this gets built – that's the thing that hangs in the balance – that if it gets built. So if you would do the subdivision plan and this doesn't go through then you are going to have a separate lot that's landlocked with just a separate easement which no frontage. So that's one of the things that hangs in the balance." Mr. Klein said, "And I hear you Randy. But if I come in with an easement that says this is what you're getting – when I show up with this this is what you got – I'm just trying to split this thing in the middle. Then all of a sudden I can get the thing to work." Mr. Bailey said, "And how you approach it is up to you. I'm not giving you a recommendation either way. I'm just saying if you want to work with the Township and they want to work with you." Mr. Scholle said, "We want to make it safe." Mr. Bailey said, "safe and, and..." Mr. Klein said, "This is what I'm trying to do." Mr. Scholle said, "You said you don't know how soon those lots are going to sell or if they are going to sell with the economics today you don't want to get stuck with something you can't do anything with. Then it's going to cost you even more to try to rectify that." Mr. Klein said, "And I don't want to stick the Township with the problem." Mr. Scholle said, "So you should want to do it right now." Mr. Bailey said, "I have just one thing to add to that. Whatever they do they will be setting a precedent. So if someone else comes in with the same type of situation and plead hardship and then what happens is you open the box up again. As just with that as caution we want to make sure everything's on the table. If there is a consideration but as a modification or waiver request or whatever it may be. I'm not suggesting that. I think our office is suggesting what we first stated, it be a separate item outside of this plan - and then come back once everything is in place – you come back and add that lot with maybe another phase." Mr. Klein said, "I am, but the

purpose is to sell this and that's the whole reason for the plan. That's why Joe was up front with you." Mr. McDowell said, "The purpose of this plan was to secure this road so that if that doesn't work then this plan has no purpose." So if I'm understanding this right which we define in these plans a blanket easement for them to use the utilities and access here but we would need a waiver specific to lot 14 or specific for all these lots." Mr. Scholle said, "Don't you think it would be better if you just made your plan for these 13 first and then made that separate?" Mr. Klein said, "Again knowing the reason we are coming in is for this baby." Mr. Scholle said, "Right, but as you said at the beginning you don't know how long it's going to take for all that to go through. And in the meantime what's going to happen to an existing piece of property?" Mr. Klein said, "And what I'm saying it is going to stay an existing – to me it is all words on paper – I mean these words are going to match it. The paper stays as an existing lot until this shows up. That's what I'm trying to do Terry. I mean I know I can do it in a weekend. I'm trying to say, if there's a will – there's a way." Mr. Bailey said, "Alright, I've said what I wanted to say but..." Mr. McDowell said, "This existing lot 2 has frontage on Mason Dixon Road and has sewer, has water and has access. If we sell that lot we lose the ability for future development so in order to protect that we were recommending to Rick let's do this phase I to get back to his house on these improvements then he can sell just this lot 14 with his house. Mr. Roberts said, "But requires the full investment in the roadway and all the utilities and the road, is it going to have curbing to?" Mr. Klein said, "We are going to have to recharge the aquafer – put the water back into the ground. The concept is good. Put that water back in the ground so that's why I promote open section road." Mr. McDowell said, "I think where we differ is posting the security is not improved." Mr. Bailey said, "That's how it reads. You are welcome to look at it yourself and I suggest that you do. And have your attorneys look at it. If there's a different interpretation than that I would be surprised but it's pretty clear. And that's our position. We're taking a position that what it says in the ordinance is the measure you have to apply for this plan and in this case we do not feel the plan meets the requirement. So I'm not – we're not making this up. I'm just taking it verbatim and again, independently, when I saw the plan and without even looking at the ordinance that was the first thing that came to my mind. I done so many plan reviews it's unbelievable and designed so many subdivision/land development plans and when I saw it I didn't even look at the ordinance. I said well that's going to be a landlocked piece of property and as you show on your subdivision plan you have parcels of land that go around that are basically useless and then your septic and well and access road are off your property and you have a landlocked property. Those were the first – and then we tied it back to the ordinance and sure enough – these are pretty standard in a lot of ways - when you go through municipalities – we're not reinventing the wheel here. So it is what it is. So that's how we looked at it. Again we're not trying to add anything or take anything away. That's how we see it and that's how we called it."

Mr. Roberts asked, "Rick what is your ideal plan in getting these sold? You want to start building this – not until you sell these?" Mr. Klein said, "The reality of what we want to do is be able to sell this, bond these so the Township is protected and wait for the market to improve. I mean I've got 40 some lots back there that I have no intention of doing it. All I wanted to do was sell that lot but I didn't want to come – so we missed a detail in there. That's all I was trying to do was to sell this home and, but, not leave the Township hang. So to me it's, I believe this board and I believe the Supervisors would work with me if they understood the concept. I hear Randy that I have to be careful that I don't open a can of worms but alls I'm trying to do is leave the septic, well and right of way in place and that agreement would be ripped up when I hook up to sewer/water and the roads there. That's really what I'm trying to do so I can tell you." Mr.

Roberts said, "I agree." Mr. Klein said, "So I've got one vote so I don't leave things hang out for you there." Mr. Roberts questioned, "How are you going to document this?" Mr. Klein said we can document that with an easement – the lawyers would put it that the easement would stay until these show up, the road, water, sewer connected so I know we can do it." Mr. McDowell said, "And that's all we are really trying to do. Sheet No. 4, the only thing we were trying to show here with this plan was that this lot 2A goes to the adjoiner and this part goes to part of lot 14 – not the whole of – just a part of." Mr. Klein said, "In case I sell it to Terry and Terry gets mad at me I don't want you to block me in the future. I still think I can do it. If I get the right agreements written these all get ripped up when the roads and improvements get done." Mr. Bailey said, "Just be careful to – I don't know which direction this is going to head and which way it would be accepted – but on your access and on your well and your septic system you should have some well protection radius in there plus you would need an easement for the line from the well to the house." Mr. McDowell said, "There would be a blanket easement that includes access." Mr. Bailey said, "I'm not suggesting that but I'm just saying not that you have to double your efforts and go back and change something. Just make sure that whatever is done for whatever reason that you cover all the ability to get in to do maintenance, repair. I'm not saying we're advocating that." Mr. Scholle said, "We trying to protect the Township but we're also trying to protect you as well and the only way we can do that is by following the ordinance. So as long as you follow the ordinance then that's what we are going to suggest not to approve this until we get revised..." Mr. Klein said, "And we didn't expect to get approval tonight too." Mr. McDowell asked, "As a general question, is it more palatable to present this plan as creating this landlocked piece of property back here and requesting a waiver and just deal specifically with this and not talk about Powder Creek and 13 other lots." Mr. Bailey said, "I mean that's up to you and your legal advice and then how that would be viewed. I don't know how the Township would view that. Again, it's got to be sustainable." Mr. McDowell said, "You understand what I'm saying. If we're going to just create this easement do we just deal with that?" Mr. Scholle said, "Just block that off from the rest. Take the 13 and a..." Mr. McDowell said, "Take the 13 out of play. This exists. We're going to subdivide this. Yes, it is landlocked. Yes, it doesn't front a public road, doesn't front on a private road. We're asking for a waiver for that requirement. Is that a better approach to this?" Mr. Scholle said, "That is an approach. I don't know if it's better or not. I don't know what all of the options you might have are. I think you ought to discuss it with your legal folks and see what they say. I mean also, I don't know how that falls in within any of the other ordinances but I think you should really hit that book hard to make sure." Mr. Bailey said, "Again, it won't have frontage directly. Again, and here's where I will say the Solicitor would need to be involved with that conversation so I'm not trying to make her to be the bad person or make us to be the good whatever is done has to be in the best interest of the Township. But we're just going to view it for what it is and if there's any reason to go outside what the ordinance allows you know waivers or modifications would have to be filed." Mr. McDowell said, "But either way we would file the same waiver under your interpretation – whether it be this or the current plan. Either way it would require the same waiver." Mr. Bailey said, "We're not – we're in the position where we have to interpret the ordinance the way we do." Mr. Scholle said, "We do not interpret the ordinance we follow the ordinance. We are not like the Supreme Court – we do not interpret the law. We follow the law. I don't want to go there."

Mr. Roberts said, "Are you sure you could get the right verbiage in an agreement?" Mr. Klein said, "I am confident. I am confident that Charlie could pull that out with Susan in a heartbeat. Because what I'm really trying to do is say you've got this until this shows up. I can put it in my

words – they can put it in their words. It’s just gonna be a 10 page document. Mine would be a 2 sentence but it would be the same thing Ken. So it sounds like Charlie is going to talk to Susan. And I did talk to Charlie, by the way, and Charlie thought we had it but...” Mr. Roberts said, “From an economic standpoint I think getting the right agreement for this is not going to cost you near as much money.” Mr. Klein said, “Right, I know you’re right.” Mr. Roberts said, “I’m not talking five or ten cents either.” Mr. Klein said, “But that’s what I want to do – thank you. I apologize for being emotional. That’s my mother, she’s Italian so I have a little bit of Italian in me.” Mr. Scholle said, “Don’t worry about it we’re Okay.”

Mr. Scholle said, “I guess it’s going to be our recommendation that we are going to wait for them to come back with an alternate approach to that especially with that landlocked chunk of property and not approve anything that they have here so far. When I looked at this list that they had to address I knew from the get go there were too many things to address. Does anyone want to make a motion?” Ms. Jennings moved, seconded by Mr. Roberts that they not recommend approval of the Powder Creek - Phase I and that they table the plan. Motion carried unanimously.

**Other Business:** None.

**Adjournment:** With no further business to be discussed by the Commission, Mr. Roberts moved, seconded by Ms. Jennings to adjourn the meeting. Motion carried unanimously. Meeting adjourned 8:09 pm.

Respectfully Submitted,

Sheri L. Moyer  
Secretary