

# North Middleton Township Planning Commission

Township Building  
2051 Spring Road  
Carlisle, PA 17013

## **Minutes of the Planning Commission Tuesday, January 5, 2010**

The meeting was held at the North Middleton Township building on Spring Road, in Carlisle, PA.

### **Attendance**

Board Members-**Harry Kelso** (Chairman), **Bradley Mitchell** (Vice-Chairman), **Ronald Anderson**, and **Clifford Wolaver**

Solicitor-**Mark W. Allshouse**

Codes Enforcement Officer-**Paul Fegley**

North Middleton Authority-**E. Lee Koch**

Brehm-Lebo Engineering-**Doug Brehm**

Cumberland County Planning Department-Jim Bennett

*Commission Secretary Pat McDowell was not present this evening.*

### **Visitors**

Dave Marschka-Blackford Development, Lancaster, PA, Keystone Arms  
Eric Brinser-Rettew Associates, Inc., Camp Hill, PA  
Charlie Courtney-McNees, Wallace, and Nurick

### **Call to Order**

Chairman Harry Kelso called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

### **Reorganization of the Planning Commission for 2010**

Solicitor Allshouse explained that the Vice-Chairman should initiate the reorganization until the Chairman is elected. Vice-Chairman (for 2009) Bradley Mitchell asked for any nominations for Chairman of the Planning Commission.

***Clifford Wolaver moved to nominate Harry Kelso for Chairman. This was seconded by Ronald Anderson.***

Mr. Mitchell asked for any other nominations for Chairman. None were offered. The nominations were closed.

***All votes were in favor, and the motion carried.***

Mr. Mitchell yielded the proceedings to Mr. Kelso. Chairman Kelso asked for any nominations for Vice-Chairman of the Planning Commission.

***Clifford Wolaver moved to nominate Bradley Mitchell for Vice-Chairman. This was seconded by Ronald Anderson.***

Mr. Kelso asked for any other nominations for Vice-Chairman. None were offered. The nominations were closed.

***All votes were in favor, and the motion carried.***

Chairman Kelso asked for any nominations for Secretary of the Planning Commission.

***Bradley Mitchell moved to nominate Pat McDowell for Secretary. This was seconded by Ronald Anderson.***

Mr. Kelso asked for any other nominations for Secretary. None were offered. The nominations were closed.

***All votes were in favor, and the motion carried.***

The lineup for 2010 will be:

- Planning Commission Chairman-**Harry Kelso**
- Planning Commission Vice-Chairman-**Bradley Mitchell**
- Planning Commission Secretary-**Pat McDowell**

### **Public Input (non-agenda items)**

Chairman Kelso asked for any public input. No member of the public came forward at this time.

### **Approval of the Minutes for Monday, November 2, 2009**

Chairman Kelso asked for any changes, corrections, or additions to the minutes for the Monday, November 2, 2009 Planning Commission meeting. None were requested.

***Ronald Anderson moved to approve the November 2, 2009 minutes as presented. Bradley Mitchell seconded. All votes were in favor, and the minutes were approved as written.***

### **Pending Applications**

#### **Resolution 2009-14: Wes Ketner Small Flow Sewage Treatment Facility**

No one came forward to represent this matter. Mr. Fegley described the documentation in the Commission members' binders. This included a location map, a project narrative created by John Madden, and a copy of the Resolution. Mr. Fegley noted that the location of the property is along Route 74, on the left-hand side, just prior to the Conodoguinet Creek Bridge. He described the location as having "two dilapidated homes, more or less," with a big open area in the back. Mr. Fegley spoke further:

*So that you know, the small flow is for a secondary backup for the existing lot. We have just received yesterday the subdivision for that property up there. They were able to find percs. The small flow is not for the new lot. This small flow is for the backup for the existing lot.*

Mr. Fegley said he believed that this had come before the Board of Supervisors last night, and that it is being presented tonight so that the Planning Commission knows what's going on. Mr. Mitchell asked for clarification that this is just a backup and is not a primary for either lot. Mr. Fegley indicated that this was correct. He referred to the narrative and noted that this is explained there.

Mr. Kelso asked if it was correct that an area is going to be backfilled also and that this facility is going to be a backup for the backfilled area in case it doesn't pass. He said he recalled reading something about that.

Mr. Mitchell noted the second paragraph of the project narrative. He also pointed out a reference to "Lot #2," and questioned which Lot #2 this is referring to. Mr. Fegley stated that this would be the Lot #2 created by the subdivision, and not the lot that the house is sitting on. Mr. Fegley explained that the Applicants don't plan to install this system unless there is a failure. He said that they wish to have that "permit in their pocket" in the event that D.E.P. changes their mind down the road. Mr. Fegley also pointed out that this process takes a very long time anyhow. He further explained that if they have this right away, they can install the system right away if need be, instead of waiting six or nine months for D.E.P. to approve the project, and possibly having to rely on a Port-a-Potty, or whatever. Mr. Fegley again mentioned that this is just for the existing house.

Mr. Kelso asked who keeps the map for these, and if the map provided is from the Township. Mr. Fegley stated that the Township does have a copy, but that the map in the packet was provided by Lenny Sizer, who Mr. Fegley explained does the S.E.O. work for John Madden's office. He said that Mr. Sizer used the Township's Zoning Map, and then overlaid all of the sites on it. Mr. Fegley further explained that in the past, D.E.P did not require submissions to include a map of the other sites. He stated that within the last several months, D.E.P. has begun to require a map showing the locations of all of the other sites as part of the package.

Mr. Wolaver asked if the small flow system is for the new lot where there is no house. Mr. Fegley replied that it is not and that it is a backup in case the current system for the existing structure fails. Mr. Wolaver asked if it is going to be on the new lot. Mr. Fegley answered that it will not be. Mr. Mitchell asked if it has to be in place simply because they are subdividing at this time. Mr. Fegley stated that there is a concern because the lot size is near the minimum required. He noted that the ground is poor up there, so the Applicants have decided, as he understands it, that if they want to sell that house and lot and property, they want to have something in position that is "appealing as a marketable thing." Mr. Fegley added that his understanding is that a potential buyer could be told not to worry about the system since there is a permit for a small flow system as a backup. Mr. Kelso pointed out that it may never be built. Mr. Fegley acknowledged that that was correct. In response to a comment from Mr. Mitchell, Mr. Fegley said that most of these actually do get built, and that there are two in the Township, other than the one being discussed, that may or may not ever get built. He stated that the rest of them are in place and functioning.

Mr. Kelso asked if it was correct that the State will only allow so many of these on a small stream. Mr. Fegley acknowledged that that was correct. Mr. Kelso asked if it was also correct that if a bunch of these are approved for a small stream, the State will eventually say "no" to somebody. Again, Mr. Fegley acknowledged that that was correct. Mr. Kelso asked if the ones would be counted where there is a backup system already approved. Mr. Fegley responded that they would. He referred to the map that had been provided, which, as he noted, is now required, and explained that D.E.P. can do a volume count of any one of those tributaries that feeds the creek. Mr. Mitchell asked if it was correct that this is also an area that is expected to have public sewer someday. Mr. Koch answered, "Someday."

Mr. Fegley explained that D.E.P. requires a resolution from the Board before they will even look at it, and that D.E.P. will then get a "pretty thick packet." Mr. Fegley further explained that D.E.P. will look at it, and will look at the map, and that eventually a limit will be reached as to how much effluent will be allowed to go into any one tributary or stream. He noted that when that limit is reached, D.E.P. will stop issuing permits and that will be it. Mr. Kelso asked if approving all of these systems as backups that may never be built will "mess over" somebody down the road that may really need a permit to get one. Mr. Fegley replied, "The possibility exists." He stated that it would be no different than the amount of E.D.U.'s that the Township has to sell. He pointed out that somebody may buy a whole bunch of them up front and never use them. He added, "First one to the trough."

At this point Mr. Wolaver indicated that he didn't understand. He referred to the narrative and stated that the way he interprets it is that the small flow system is going on the lot that doesn't have a house right now. Mr. Fegley reviewed the narrative. He acknowledged that Mr. Wolaver was correct. He read the following from the narrative:

- "We are also doing the planning for the use of a SFSTF for the residual in the event the fill site does not pass for an on-lot system in the future."

Mr. Wolaver noted that that paragraph implies that there will be two systems. Again, Mr. Fegley acknowledged that Mr. Wolaver was correct. Mr. Fegley reviewed the map. Mr. Mitchell referred to the text of the narrative. He pointed out that the given areas of Lot #2-A at 2.46 acres and Lot #2-A1 at 3.4 acres add up to 5.86 acres, and not 5.64 acres, as stated. He again noted the reference to "Lot #2," and asked which Lot #2 this is referring to. Mr. Kelso mentioned that from reading it, he couldn't quite tell what they were asking for. At this point Mr. Fegley pulled out the subdivision which he mentioned had just been received. He studied the subdivision and then stated that Lot #2-A is the residual and is the lot that will have the existing structure and all that on it. He further stated that Lot #2-A1 is the proposed new lot from this, and that five probes had been done on it. He explained that Lot #2 would actually be Lot #2-A1. Mr. Kelso pointed out that that is the new lot. Mr. Fegley acknowledged that that was correct. Mr. Fegley referred to the second paragraph where it mentions "new Lot 2." He pointed out that this should read "Lot #2-A1." He read the following:

- "Fill material will be placed to create a fill site for a backup system for the home in the event of failure in the future. We are also doing planning for the use of a SFSTF for the residual in the event the fill site does not pass for an on-lot system in the future."
- "The proposed method of sewage disposal for the new lot is the Small Flow Sewage Treatment Facility (SFSTF) with a stream discharge."
- "The existing dwelling on the property has a septic system that has been certified during the recent real estate transfer. A site could not be found for a replacement on-lot system. A SFSTF is proposed as the backup for this lot. A fill site will be constructed on this lot as mentioned in the project narrative."

Mr. Fegley mentioned that the narrative almost seems to be talking about two lots. Mr. Kelso asked Mr. Fegley if Mr. Madden was talking about two lots in the narrative. Mr. Fegley consulted the subdivision print. Mr. Kelso suggested that this be clarified before moving it on. Mr. Fegley stated that according to the print, he is calling for one and it is on the new lot. Mr. Wolaver stated that he is using it as a primary and the narrative says it is wanted as a backup. Solicitor Allshouse spoke at this point:

*Gentlemen, I think I know what it says...not what it says, but I think I know what it means. 2-A1 he's going to put on a small flow as the primary system, and it will work for a primary system for that lot. Now the other lot has a primary system. He wants to put fill on that lot. In the event that fill doesn't work, doesn't perc, can't be used as a backup, he'll fall over to his second lot to his on-lot that you're going to approve. What he's saying is I'm going to put this on-lot for this lot, that's what I want approved, and then he went on to tell you, in the event I can't get this fill to perc as a second site, I'm probably going to use that on-lot on the other lot. He'll take the line away. That's what his narrative says. The difference is he's placing fill for a second on the existing lot, and he says that. So, what he really wants to do is somehow get this fill to be a second site. Now I think that takes a number of years.*

Mr. Mitchell added, "In any way that he can," and, "Either lot, whichever way it works out, it's all good." Mr. Allshouse acknowledged this. He stated that the small flow being proposed is just the primary for this other lot. Mr. Allshouse spoke further:

*And I think right now what the Board has to figure out is, if that other lot, because it does stand alone and it's subdivided, is a small flow an acceptable use for that other lot? If someone puts a house on that lot someday; if that lot gets developed someday, is a small flow acceptable for that lot?*

Mr. Kelso asked which lot Mr. Allshouse was talking about. Mr. Allshouse replied that it is the new lot without the house which is where he is putting the small flow. Mr. Kelso noted that that is going to be the primary system for that house. Mr. Allshouse responded, "For that lot." He pointed out that there is no house there. Mr. Allshouse spoke again:

*So what I'm telling you is, you have to figure out...let's say he never uses that as a backup for his other house. Do you want a small flow on that undeveloped lot that can be sold as a primary system for that lot? He can go to a realtor and market it and say, there's a small flow facility approved for this lot.*

Mr. Kelso asked what about his original. He pointed out that the Applicant doesn't have a secondary site, and can't really split them off. He also noted that two people can't use the same system. Mr. Allshouse replied that that's a subdivision issue. Mr. Kelso said that the Commission can't then move this until the subdivision is done. Mr. Wolaver pointed out that the narrative doesn't say "if" there's going to be a house there, but rather it says there is going to be a house there. He noted the words "during construction." Mr. Allshouse questioned what is going on there. He asked Mr. Fegley if Mr. Ketner is building a new house and getting rid of his old one. Mr. Fegley responded, "I don't believe." Mr. Allshouse questioned if he is selling. He explained that right now what is before the Commission is an individual lot with a request for an on-lot on that lot. He stated, "That's what you're approving. The other lot is its own problem." Mr. Kelso pointed out that the subdivision may not even occur if these issues aren't clarified. At this point Mr. Fegley stated that he is not aware of any code that says Mr. Ketner is required to have a backup for that first lot. Mr. Allshouse indicated that this is what he was going to say. He added that it sounds like he is trying to make one. Mr. Allshouse said that legally, he is not sure that Mr. Ketner is required to have the backup on an existing lot. Mr. Fegley pointed out that the property meets the minimum in dimension.

Mr. Mitchell asked if the new lot needs a primary and a backup. Mr. Kelso said a backup is not needed with a small flow. Mr. Kelso asked if he can split that land and give up a site. Mr. Fegley replied that there is apparently no site since they couldn't get it to pass perc, and that this is why he has to put a small flow in. Mr. Kelso asked if it was correct that he has a septic system on his original property, but has no secondary site. Mr. Fegley acknowledged that this was correct. He added that it sounds to him like he is just trying to "cover all the bases." He stated that he doesn't know that the law requires him to have it. He again pointed out that the ground didn't pass perc, and that this why the small flow is being proposed on the other part.

Mr. Kelso asked if it was correct that this request basically just goes to the State and has nothing to do with the subdivision. Mr. Fegley indicated that this was correct. Mr. Allshouse stated that the subdivision stands or falls on its own, and that one of the reasons for the possible denial of the subdivision could be a lack of proper septic. Mr. Allshouse commented again:

*He's asking you to do what he's asking you to do, so if his plan falls, it's not your problem. Right now the subdivision is not in front of you. The only question is, are you willing to approve that new lot to have a small flow as a primary.*

Mr. Kelso pointed out that the new lot does not exist yet. Mr. Allshouse responded that this is normal and is done all the time. He stated, "We pass it on to the State and we say the State can decide if you're allowed to have it and if you don't have a new lot, you can't put it in." Mr. Allshouse commented that this sort of comes up every time when the question seems to be why the cart is ahead of the horse. He added that this is sort of the process the State has for this. Mr. Fegley pointed out that it is also a timing issue. Mr. Kelso said that he hoped whatever application is going to the State is clearer than what is being looked at here. He stated that what he should be requesting is just a small flow on the proposed lot. Mr. Fegley said that he would talk to Mr. Madden tomorrow to clarify. Mr. Allshouse said that if there is confusion about the intention, the motion should be for approval of a small flow treatment facility on this lot, with a direction to the Zoning Officer to clarify that point, and if that is not what he's applying for, then he needs to come back. Mr. Kelso mentioned that this makes sense to him.

Mr. Kelso suggested a motion to recommend approval of a small flow treatment facility on the unapproved lot, 2-A1. Mr. Allshouse suggested the following wording:

*If the Board would like, they can make a motion to recommend approval for an on-lot sewage treatment facility as the primary sewage handler for the unapproved Lot 2-A1, and Mr. Fegley is directed to clarify that the application being sent to the State is indeed a request for that. If it is, we are recommending approval. If it is not, the narrative must be clarified and the issue must be brought back before the Board.*

Mr. Kelso asked for the motion.

**Clifford Wolaver moved to recommend approval for an on-lot sewage treatment facility as the primary sewage handler for the unapproved Lot 2-A1, and Mr. Fegley is directed to clarify that the application being sent to the State is indeed a request for that. If it is, we are recommending approval. If it is not, the narrative must be clarified and the issue must be brought back before the Board. Ronald Anderson seconded. A vote of "no" was received from Bradley Mitchell. All other votes were in favor, and the motion carried.**

**#09-01: Keystone Arms, Revised Final Land Development, Zoned R-2, Total Acreage 2.53, (Lots 1-4), Expiration Date: March 11, 2010**

This matter was represented by Eric Brinser, Charlie Courtney, and Dave Marschka. Mr. Brinser introduced Mr. Marschka as the representative for Keystone Arms and Mr. Courtney as the attorney for Keystone Arms.

Mr. Brinser gave the following initial comments:

*We're here this evening for a revised Final Land Development Plan for the Keystone Arms Subdivision. This is in reference to the four lots on the westernmost end of the property. Internally we refer to these as the Post Road Unit Revisions. It's basically the four lots that lie along Post Road. The original plan for this area showed townhouse units with no garages, three-story units, and there was an internal driveway leading into an internal off-street parking area because there was no garages. Just to make a long story short, based on market...driven by the market basically, they are looking at, and proposing to replace those three-story, no garage units with two-story units with garages and individual driveways. So what we essentially have done is taken the original footprint for those buildings, which was a smaller footprint, and stretched that out to allow it to be two-story instead of three. It's essentially the same square footage, with the exception of adding the garage onto it. That was the original plan, so the footprint grew a little bit, but it went from three-stories to two-stories, if that makes sense.*

*We then removed the off-street parking spaces and provided an individual driveway, and then it would also have the garage to allow for the required number of parking spaces. So that's one change that we're making. The number of units did not change. There's a minor modification of the impervious area which we're addressing with the engineer to make sure the stormwater is still comparable and meets the Ordinance. So from a plan perspective, improvement perspective, those are basically the changes we've made. There were some alterations that we had to make to the sewer and water laterals. Some of those are being replaced, taken out, and shifted as a result of the footprints modifying a little bit. We had to reallocate those. So that will be completed. The landscaping's been adjusted, and, like I said, the stormwater is being adjusted as well to account for that.*

*One additional thing that we've done, and I'm going to let possibly Charlie answer any questions you have on this. This is something originally we took to the Board of Supervisors, requesting to add dirt lines, or planned community lines to the plan. And these are not considered subdivision. They are just basically lines that for the people purchasing these, it identifies basically the area of use that they are allotted with their unit. This was presented to the Board of Supervisors earlier in, I guess in the fall of 2009. They agreed to the concept of this. Originally it was going to just go through a staff and Board of Supervisors review to make these adjustments. Once we got into submitting the plans and all of the engineering changes that were involved with it with the stormwater, the pervious paving, landscaping, the utilities, things like that, it was determined, I believe, I forget which meeting it was, but the Board did ask that it come back before the Planning Commission. So that's why we're here this evening. The improvements were felt to be a little bit more than originally thought, and they wanted it to come back through you.*

*So this plan basically shows those same units and essentially we've added dirt community lines. And like I said, if you have any specific questions, Charlie can answer those for you from the legal aspect of how that works, but the Board did agree to that concept at one of their earlier meetings.*

Mr. Wolaver asked what drives the incremental sizing being shown. Mr. Brinser responded to Mr. Wolaver:

*The sizing of each lot...no different than a normal subdivision right up between the middle of the buildings, so it appears as though it would if it were a normal subdivision, but they are just basically lines on the paper.*

*They're not going to be pinned and actual property lines out there. It's a paper line that goes along with their planned community documents that identifies their area of use, essentially.*

Mr. Kelso asked Mr. Brinser if that goes from road to road. Mr. Brinser stated that there is an access easement through the middle for internal access, and that the dirt community line goes up to that access easement. He explained that it is just an area in there and that the access easement would provide access to the driveway. Mr. Kelso asked, "The driveway and also the grass, the front yard, and the back yard then, right?" Mr. Brinser acknowledged that this was correct. Mr. Fegley asked Mr. Brinser if it will still be a four-lot subdivision. Mr. Brinser stated that it will still be four lots and will still be the same number of units. He said that the only real change is the footprint being adjusted and the removal of the off-street parking and replacing those with actual driveways into each unit. He added that those are really the only physical changes from plan perspective. Mr. Fegley asked Mr. Marschka if each homeowner will be responsible for mowing his own yard or if this will be part of the community homeowner's deal. Mr. Marschka stated that the community will be responsible. Mr. Brinser spoke again:

*So from that perspective, that really didn't change from the original plan. This was always four lots; one lot per set of units, so that really doesn't change with this plan.*

Mr. Mitchell pointed out that the access roads are already in. Mr. Brinser acknowledged that that was correct. He explained that there was pervious paving on the parking spaces and that that would be removed and replaced with driveways. He further explained that the roadway is basically the same as it would be and is only in binder right now. He said that this would be cut up for the utility modifications, and then patched and then eventually the wearing would be put in. Mr. Brinser continued with his comments:

*We have made some adjustments for the stormwater; adding a few inlets because the pervious paving was capturing that runoff. Now with that removed, they're draining to the driveway, so we've had to add some inlets at the low points to capture that instead of the pervious paving, but there again, that goes along with the stormwater, making sure that works. That's a couple of modifications we had to make, as well. We did originally get a comment letter or two from the engineer. We've resubmitted plans to them.*

At this point Mr. Brinser asked if the Commission members had all received copies of the last letter. Mr. Fegley indicated that they had. Mr. Brinser referred to this December 9, 2009 letter from Brehm-Lebo. He noted that there were a number of comments that had to be addressed. He stated that the majority of those comments have been addressed. He also pointed out that there were some questions. Mr. Kelso suggested that Mr. Brehm go through that.

Mr. Kelso referred to the yards and the dirt lines. He asked Mr. Brinser what is the difference between this condominium and the other condominiums. He asked if people will have more control over what they do to their yards. Mr. Brinser suggested that Mr. Courtney respond to that. Mr. Courtney came forward. The following are his comments:

*The purpose of doing these dirt unit lines is so that...one of the challenges in marketing the footprint units, what previously under the old plans without the garages, what was contemplated would be people would get title to essentially the footprint of the building, so what most people would think as a condo kind of thing. That's what they would get title to. And, you know, in the market today, that hasn't been real attractive. People want to have a house and some yard area. And so, what creating dirt unit lines and creating dirt units does is it gives the property owner the ability to own both the home and have a yard area. And that's what you're getting there. From a functioning standpoint, it is really not any different than if you subdivided down those lines. It's no different, and that's the advantage of doing this. From a legal standpoint, I don't really want to get into that too much but there's a provision in the Planned Communities Act that says the creation of planned community units in and of itself isn't a subdivision or land development. That's a discussion that Mark and I had back in July, prior to the Board's approval of the dirt unit concept. To answer your question, it functions the same way.*

Mr. Kelso said his recollection was that there was some underground storage of water back between those units at one time. He asked about this. Mr. Brinser replied that this was located in what were the old parking spaces. He pointed out the locations of trenches. Mr. Kelso asked if these are still functioning. Mr. Brinser

stated that they are and that it is their proposal to leave those in, and to put in some more inlets to capture the water and feed it into that system. He stated that there are still some outstanding comments to be resolved with the engineer, but that it is their desire to leave those in.

Mr. Kelso asked if there were any questions before moving on to Mr. Brehm. No questions were offered. Mr. Kelso asked Mr. Brehm for his comments. At this point Mr. Kelso asked Mr. Brehm if it was correct that there had already been some memos going back and forth. He pointed out that some comments have been satisfied, but that those memos hadn't been seen by the Commission. Mr. Brehm explained that this hadn't been done as sort of a typical land development process. Mr. Allshouse clarified that this had gone to the Board of Supervisors first for a significant amount of time, and that the changes sort of triggered things that people didn't anticipate. He explained that now it has come back here, and that the Commission is now getting it after it has gone three-quarters of the way through, to get it finished up.

Mr. Brehm spoke at this point:

*Our last memo was December 9, which I'm assuming that's the one you have in front of you, and like Mark said, the memo has a lot of comments that were, I guess, provided in the fall there when we were reviewing this that have been satisfied. So we've kind of whittled this down to...it's kind of been a little disjointed but there were some questions about is this a subdivision and do the zoning requirements apply with setback. I think those were taken off the table. So, to summarize our memo, I think we're talking about just some clerical issues with how the plans are going to get finalized and recorded. We got sort of a slip-sheeted submission and so I think before we record, we need to know that we have the right composite set of documents that supersedes the previous plan. And that would include, in our memo if you read like Comment 13, we're kind of posing the question to Mark, do we need to revisit the waivers that were granted in the previous plan and just reapprove them for grass strips, landscaping, things like that along the sidewalk. I mean they're minor things but...*

Mr. Allshouse spoke at this point:

*If they're not being adjusted by this plan, then this plan is just an amendment to the portions of the changes, so we wouldn't need to reapprove. As is, there's an existing approved plan and we're not disapproving that plan. We're just making some changes, so we don't have to reapprove something that's not being changed. Now, if there's something being changed, if there's grass strips and we approved them and they're not there anymore, then I think the note, I think 13 is directed and that is, that note would then say previously approved grass strips which were eliminated in this remandment...*

Mr. Brehm spoke again:

*I think we can sort through those. I mean the bottom line was that the Township granted most all of the waivers they granted previously. One of them was as the driveways went into the other townhouses we allowed them to depress the curb the entire length of the townhouse instead of up and down and up and down, and you didn't even have that situation here before and that's what you want now.*

Mr. Brinser acknowledged that this was correct. He said they had indicated that it will be the same, and also the same with the grass strips. Mr. Brehm said that he is not opposed to that or anything but the Board ultimately has to approve a waiver for that. He pointed out that there was no waiver previously for this section of the development and it was previously a parking lot. Mr. Brinser stated that it is consistent with the waiver that was granted for the rest of it. Mr. Brehm said he would leave that to Mr. Allshouse and the Board to sort out. Solicitor Allshouse responded to this:

*I guess my recommendation is if it wasn't something that was approved on the original plan for this area, and the Board's been sort of piecemeal in granting that waiver, I'd recommend you request the waiver and just put in it that we're requesting it to make sure it's consistent with the rest of the development. I don't think you're going to have any trouble getting it. What I wouldn't want is, no one to grant a waiver and someone...who knows...to cause a problem for you. It's much easier to ask and get it. I don't think there will be a problem. It's just an extra letter. That'd be my recommendation is that a letter be submitted for...and the reason is there is at least an argument that on this section that wasn't approved yet. So why not just ask and*

say to the Board, it'll match. Because I remember the conversation, the Board says what's it going to look like and you're going to say we want it to look exactly like the one across the street, except there is going to be invisible lines. So, I don't think you'll have a problem with that.

Mr. Brehm continued with his discussion. He spoke as follows:

*One of our other comments, and they alluded to it earlier, were mostly stormwater related, so, in the meeting I was in with the Board, again, months ago when we were trying to help them understand what the project was about and what changes or impacts there were. We had a discussion about infiltration, and Harry was in that meeting, I think. And there's a sinkhole out there and probably going to be some others but, we were suggesting in our latest review that possibly some of that infiltration could be removed. We're concerned about opening up the pervious pavements there. The bed is there. Now you're going to cut through in different places for utility connections. You're going to, as we said in the meeting, you're going to kind of hog it up, and so you're probably going to compromise the bed here and there anyway, so we're starting to wonder if didn't make sense to...it's going to be up to you...but either eliminate it, I guess what I'm saying is, we didn't have a problem with you considering not having as much infiltration there, because we think it could actually be a liability in some aspects. Some of the trenching you're going to run through it, for example, for laterals into the building, the water is going to seek the trench. It's going to move in those areas and it's not going to stay in that confined bed that you have out there now. So, I don't know if you've given that any more thought since you received the memo in the middle of December.*

Mr. Brinser indicated that his engineer had been in contact with one of Mr. Brehm's engineers. Mr. Brehm mentioned that this was Sarah that Mr. Brinser's engineer had contacted. Mr. Brinser commented:

*One of the issues that we have is that drainage area doesn't connect to the other stormwater facilities in the development. It kind of stands alone. So, by removing say those internal trenches in between the buildings, we lose volume and I don't know that we can meet the stormwater criteria for the site by removing those facilities unless we install some...a new system, a new underground non-infiltration system. So now you're looking at the cost of removal of all the stone, and what Sarah I think had indicated, you would want all of it removed. So you're looking at the removal of that and now the installation of some other sort of stormwater to accommodate that volume requirement...or to meet the Ordinance. So that, all of a sudden, adds a ton of cost to doing that. So, that's something we have to revisit and we may want to try to meet with you about that to discuss a few things.*

Mr. Brehm referred to an earlier point in this project when Brian Fishbach had been involved. Mr. Brehm said there was some talk about a "beat the peak" scenario into the stream. He stated, "I think you sort of backed off of that, but I don't think we had an issue with it." Mr. Marschka replied, "I thought we met the beat the peak." Mr. Brehm said he thought that the first submission was to not do any stormwater and to let the water get into the Letort and move it on. He then mentioned the permitting for the project and them being forced to infiltrate and do things anyway. Mr. Brehm stated:

*So, all that being said, and now that a lot of the site is stabilized, you know, there may still be some room as far as the Township is concerned to look beyond having to do any detention. But you've still got a permit that you have to respect.*

Mr. Brinser stated that it would be necessary to look at the permit for the overall development and make sure the infiltration requirements for the N.P.D.E.S. permit are met and to make sure there would still be adequate infiltration if those are taken out. He said that if that's the case, then it may be possible to proceed that way. He added that this would be looked at. Mr. Brehm spoke again:

*We're open to that. I think when I met with the Board, and Harry can correct me is, we were concerned about sinkholes. And some of the beds now because the building got bigger up near Macarthur, folks were worried about water being close to the foundations and if a hole opened up closer to a building like that, the whole sinkhole issue was making everybody nervous.*

Mr. Brinser spoke again:

*Just for the Board's reference, the original easements around these were not quite 10 feet off of the edge of the trench. Normally on a stormwater pipe you're going to have a 20-foot easement, 10 feet on either side. Well, with these trenches, the original design did not have it 10 feet off of that trench in these locations. The other areas they were; not in these. So when we looked at this, one of the things that we looked at is having the buildings a minimum of 10 feet away from the edge of the trench and that basically puts you right up on the easement line, so we have adjusted the plan to do that and we've added a note to the plan that indicates that the buildings must be 10 feet away from the edge of the trench. If you recall that, if you agree with that, that's kind of where we ended up last was to maintain a minimum of 10 feet away from the trench, to give some sort of comfort level.*

Mr. Brinser mentioned the sinkhole that had been referred to. He pointed out the location of it on the map. He described it as being about the size of a basketball and sunk down about two or three inches into the pervious pavement. Mr. Brinser stated that it hasn't grown in months, and that it is not certain that it is a sinkhole or some sort of settling underneath. He explained that with infiltration, there is opportunity for sinkholes to develop. Mr. Brehm acknowledged that this was correct. He said that along those lines, he felt that adding the extra excavation through the trenches is just going to "agitate a touchy situation." Mr. Brinser said he would speak to Mr. Marschka about this and that they would look at costs for removal and all of these things. He indicated that he would call Mr. Brehm and Mr. Fegley, and then decide which route they are going to go with that. Mr. Brehm stated that he wasn't suggesting that they be removed either. He said that he just couldn't imagine that when the laterals are put there that they aren't going to probably open up some other issue. Mr. Brehm spoke further:

*And we talked about it. It's like well, can they do it? Yeah. So you're going to have to have folks on site watching that construction happen to make sure that things get put in the way they should, and, you know, barriers and clay because water will follow the trenches. Lee knows that. You bury a pipe. You're going to put stone in it and water is going to leave the infiltration trench and move toward the building. How we get from where we are now to being satisfied, I'm not sure yet either. So, yeah, we'll talk about. I don't think it's something that we can't overcome, but we want to...if I remember the Board...their concern was, they don't have a problem with the idea of this. We just want to make sure we don't put people in a bad spot with sinkholes and water backing up and drainage, and that sort of thing. That's all. That's really the gist, I think, of where we are right now as far as our review.*

Mr. Kelso asked if it was correct that the water is basically all taken care of right in that area right there underground and doesn't get to the creek. Mr. Brinser stated that it does get to the creek. He pointed out where it is collected and where it goes from there. Mr. Brehm explained to Mr. Kelso that the program they have is infiltration that is supposed to deal with practically all of the storm events. He stated that if in the event it fills up, it rises to a level and spills into a pipe system and then drains out. Mr. Brinser added that this allows them to meet their infiltration requirements for the permitting. He pointed out some infiltration features on the map. Mr. Fegley referred to the townhomes and asked Mr. Marschka if they are going to sit on slabs like the rest of them, and not have basements. Mr. Marschka indicated that this was correct.

Mr. Kelso asked Mr. Brehm to continue. Mr. Brehm replied that he was basically done, and that he wasn't going to read through the whole thing. He summarized that the last couple issues with stormwater need to be sorted out and maybe a waiver or two that wasn't caught. He also said it was necessary to make sure that the set of plans that are ultimately approved here are complete enough to make sense. Mr. Brehm added that when that plans goes in he wants to make sure it's obvious in the courthouse and for the folks down the road that this is what got changed. He also mentioned that there was a sheet or so missing from the plans that he felt should be in that package.

Mr. Kelso asked Mr. Koch for his comments. Mr. Koch stated that he had been working with Mr. Brinser and Mr. Marschka, and had had meetings with Township staff. He said that his biggest concern on the water and sewer issues is that the laterals are within the dirt lines. He explained that all of the water and sewer laterals were installed as on the original plans, and now they are on the other side of the dirt lines. Mr. Koch said that this had been discussed and it was agreed that they would abandon the laterals that wouldn't be needed and would install new ones. At this point Mr. Brinser noted that a sheet had been added to the plan set to identify the laterals to be capped and the new ones to be installed for both water and sewer. It was noted that this

was Sheet 18A. Mr. Koch stated that those involved have been looking at this since August (2009), and that the first review was in September.

Mr. Koch indicated that he was interested in what Mr. Brinser and Mr. Brehm had been going back and forth about. Mr. Koch stated that the trenches being discussed are where the water and sewer lines are. He said that if they do get removed, it would be a lot easier for the water and sewer lines since the lines go deep. He pointed out that the laterals go under the infiltration pipes in "numerous locations." Mr. Mitchell asked how deep the trenches are. Mr. Koch stated that they are "big pipes." He explained that a small pipe can't be put right underneath a big pipe because the air inside the big pipe will allow the small pipe to freeze. He said that generally speaking, there should be at least 12 inches of undisturbed earth. He added that the water lines go "down and under." Mr. Brehm commented:

*Not to bring this back up again, but that's what we're kind of getting at. If you can envision a trench with a pipe running down the middle. Everything's perfect right now. So then we come along and we've got to go perpendicular through there with all of these crossings, and below the stormwater pipe, until you get a backhoe in there and lay that all out, there's not going to be much left of the infiltration bed. There's going to be dirt everywhere. There's clean stone in there now. With all of that excavation, you're going to have it all "mucked up."*

Mr. Koch said that he agreed with Mr. Brehm that it is doable, but is not an easy task. Mr. Brinser commented:

*The only thing I would add to that is, if you look at the current conditions as it is now, those laterals are installed underneath that trench now. The same stone backfill underneath there that's installed now. That was the way it was originally approved so, from that perspective, the only difficult issue will be the actual construction; keeping the dirt out of the stone and keeping it clean and fixing it, but the original design is no different than what we are proposing now.*

Mr. Koch acknowledged that this was true, but pointed out that it was the sequence of the installation. Mr. Brehm explained that the lower stuff went in first. Mr. Brinser acknowledged that this was the difficulty but stated that as far as having the trenches cut through and below, it is that way now. Mr. Koch stated that the Developers have agreed to do what they are asked to do, and that's fine if they are willing to do that. He again said that he does agree with Mr. Brehm that it is not going to be an easy task. He added, "I have a feeling they'll be visiting me again at my office to talk to me."

Mr. Mitchell noted that fundamentally it comes back to the idea that all of the movement of the laterals coming in is in response to a marketing decision. This was acknowledged to be correct. Mr. Mitchell stated, "Because you're just saying the laterals should be within *my* slice of the dirt." Mr. Koch pointed out there are issues with that already in some other places and with some of the other condo associations. He stated, "It becomes a real nightmare for us down the road." He also said that others have been made to move them and that some of these types of situations predate him. Mr. Brehm asked Mr. Koch if the lines that are out there will be removed. Mr. Koch replied that they are going to be abandoned and that they will be abandoned at the main. He stated that this is a big thing that was started many years ago. He described a situation like this that occurred when Rite Aid went in on Route 34. He explained that there had been three homes on that lot there that were torn down. He said that it would have been undesirable to have the water and sewer laterals crossing under Route 34 forever, because eventually something is going to leak or go bad. He explained that the solution to this is to plug the lines at the main, and that this is what is going to be done here.

Mr. Kelso asked for any other questions. Mr. Bennett noted Comment #3 from the Cumberland County comments. The comment states that the proposed front yard setbacks for the multifamily dwelling units do not appear to comply with Table 5 of the Zoning Ordinance. Mr. Bennett noted that the setback for a townhouse is 35 feet, while a multifamily is 50. A copy of the three comments was given to Mr. Brinser.

At this point Mr. Fegley presented a letter from Dale F. Shughart, of the Letort Regional Authority, to Charles Courtney. Mr. Fegley stated that Township Manager Ealer had asked that this be brought before the Planning Commission. Copies of the letter were read by the Commission members. Mr. Courtney indicated

that he had not yet seen it. He was provided a copy by Mr. Fegley. Mr. Courtney then spoke at some length about the history of an easement on the site that had been granted in favor of the Letort Regional Authority at an earlier stage of the project. He explained that this easement had been terminated when an agreement couldn't be reached over the adjustments of some of the boundaries on the site. He also stated that the future intentions of the Developer are to grant an easement or possibly fee-simple land to the Letort Regional Authority. Mr. Courtney noted that it hasn't been possible to pin down when this will happen. There was some discussion about this. In response to a question from Mr. Fegley, Mr. Koch indicated that this easement was not shown on the recorded print, and was shown only on some of the preliminary plans. Mr. Courtney stated that the easement was established on a whole separate document. Regarding the issue of the easement, Mr. Allshouse commented:

*For our purposes, it's irrelevant. An interest in ground is an interest in ground. They own the property and what's between them and Letort is between them and Letort. We can approve. It doesn't remove or grant Letort any greater or lesser rights to their property. So, it's sort of a nonissue for us.*

Mr. Wolaver referred to Mr. Koch's comments on behalf of the Authority. He asked Mr. Koch what the Authority's final take is on this and if Mr. Koch was recommending approval. Mr. Koch responded that he is recommending approval as long as the Developers agree to do what they are being asked to do. Mr. Koch noted that this is documented in his memo of October 28, 2009. Mr. Koch added that he had been provided sheet 18A on October 29, 2009 by Mr. Brinser. He noted that the Developers were already working on it at that point.

Mr. Kelso asked for any other questions. None were offered. Mr. Kelso indicated that he was ready to send this forward. He suggested a recommendation for approval based upon satisfaction of the comments from Engineering, and the Authority. He asked for a motion.

***Bradley Mitchell moved to recommend approval of the Keystone Arms Revised Final Land Development, based upon satisfaction of the comments from Brehm-Lebo Engineering and the North Middleton Authority. Ronald Anderson seconded. All votes were in favor, and the motion carried.***

The representatives thanked the Commission.

## **Review of 2009 Planning Commission Report**

Mr. Fegley presented this report to the Commission, as required by the Code. He noted that 2009 had not been a very big year, compared to some. The report is retyped below:

Subdivision	Costopoulos	#08-10	Recorded
Subdivision	The Villages at N. Ridge Phase II Final	#08-11	Recorded
Subdivision	Hurley West	#08-09	Recorded
Resolution 2009-04	Ross Garner Small Flow Treatment Facility		Approved
Subdivision	Darr	#09-01	Recorded
Rezone	Concerned Citizens of North Middleton Township		Current
Land Development	Keystone Arms	#09-01	Current

Mr. Fegley read through the report and briefly discussed each item. Mr. Fegley mentioned that there would be a meeting in February, as he had received a subdivision. He mentioned that he would contact John Madden to resolve the questions about that.

Prior to adjournment Mr. Fegley described a pamphlet concerning an upcoming training program put on by the Governor's Center for Local Government Service entitled "Zoning Decisions." Mr. Fegley stated that this will be held at the PSATS Center, on March 5, 2010, and that the Township will reimburse the Commission members for the \$50 registration fee, if they wish to attend. He asked those interested to forward the registration forms to Joan Fordham.

At this point Mr. Fegley responded to a question from Mr. Brehm about the status of the Bennington project. This was briefly discussed. Mr. Brehm asked about the status about several other projects in the Township. Again Mr. Fegley responded. He said he believed he had eleven or twelve projects that nobody has yet "pulled the trigger on." He listed several of these. Mr. Kelso asked Mr. Fegley how many approved lots are currently out there that could be built. Mr. Fegley said he believed this number is right around 1000.

Mr. Kelso stated that last night the Board of Supervisors approved Rettew to update the Zoning and Subdivision Ordinances. This was briefly discussed. Mr. Kelso said that hopefully this project can get kicked off in the next month or so, and will likely be a year's project. He explained that when everything is done, the Comprehensive Plan and the Zoning should be merged.

### **Adjournment**

Chairman Kelso asked for any further business. None was offered.

***With no further business before the Planning Commission at this time, Ronald Anderson made a motion to adjourn. This was seconded by Clifford Wolaver, and the meeting adjourned at 8:27 p.m.***

Respectfully Submitted,

**Pat McDowell**  
Secretary  
North Middleton Township  
Planning Commission

**Michael S. Medvid**  
Recording Secretary