April 5, 2017

Township of Maidencreek
P.O. Box 319
Blandon, PA 19510

Re: Melrose Place Subdivision
Maidencreek Township, Berks County, PA
Berks County Conservation District Violation

Dear Planning Commission Members:

It came to the attention of the Berks County Conservation District that the current soil erosion control plan for the Melrose Place was in violation. The Conservation District required a Corrective Action Plan(CAP) to be submitted by Folino and approved. Mark Kitzmiller and myself have reviewed this situation and we offer the following comments and concerns.

BACKGROUND:

- 14 of the lots were built and sold without having the required amended soils placed on them (as per their approved NPDES permit).
- In response, Folino was required by Berks County Conservation District to develop a Corrective Action Plan in order to mitigate the lost runoff storage volume caused by the missing amended soils.
- To resolve this, McCarthy came up with 5 new rain gardens and 6 new seepage beds to be placed on 11 of the lots yet to be built.
- These new "BMPs" are separate and independent from the original approved stormwater management plan reviewed by the Township. They do not adversely affect the approved stormwater facilities as designed and constructed.
- In addition to the new BMPs, Folino will tear out lawn and replace with amended soils on Lot 15, which is a model home lot still owned by Folino.
- There are 17 lots remaining to be built and sold. Each will get amended soils per original permit.
- Folino/McCarthy assigns responsibility for maintenance of the new rain gardens and seepage beds to the individual lot owner.

CONCERNS:

- As we understand , BCCD/DEP continues to have regulatory authority over the NPDES permit (by way of enforcement of the Clean Streams Law), even after the Notice of Termination (NOT) is filed. The applicant is required to record a copy of his Operation and Maintenance (O&M) obligations at the courthouse, which serves as a means for the obligations to run with the land.
- The Township approved the subdivision plan with an O&M agreement that pertains to BMPs proposed on the plan as they existed at the time of plan approval. These additional BMPs are not covered under that agreement; therefore, I would think the Township is under no obligation to enforce their O&M provisions.
- However, individual home purchasers of the lots having the new BMPs will likely come to the Township with applications for sheds, decks and/or other features. If a proposed shed or a pool meets Township code, but is too big per the CAP, this could become an issue. Does the Code Enforcement Officer need to contact BCCD when these applications come in? What happens if the

Township issues a permit for a code-compliant shed that happens to be too big under CAP – is the Township liable for facilitating a violation of the Clean Streams Law?

- Does the Township get involved if one of the lot owners fills in their rain garden?
- One way that we see the Township getting involved in a regulatory capacity would be if Folino and/or the future lot purchasers enter into an O&M agreement with the Township. Fees and/or escrows should be deposited to cover agreement prep, and inspections.
- If the Township does get involved in regulating, then we believe the BMPs need to have easements leading from public rights-of-way for the Township and/or its staff to inspect them (the CAP plan does not depict any new easements).
- We don't know if the Township signed the Memorandum of Understanding(MOU) with BCCD when it came around in January, but we didn't see anything in there that would obligate the Township to do anything in terms of NPDES O&M enforcement. The only thing it mentions is the Township won't release final escrows until the Developer gets his NOT approval.
- It appears this is an issue between Folino, his purchasers and the BCCD/DEP. The Township may want to decide on how much, if any, of an "enforcement" role to play, even if it's merely contacting BCCD each time one of these lots come in for a structure permit. But, I think it's worth checking into whether the Township has any responsibility with permitting structures that may comply with Township code, but conflict with the CAP.

Should you have any questions, please contact our office.

Sincerely,
SYSTEMS DESIGN ENGINEERING, INC.

Ed Kopicki

Ed Kopicki
Planning Commission Representative