

KTHL LAW OFFICES, P.C.

MEMO

To: EHT – Marie Beaudet

From: Jaromir Kovarik

cc: Norm Ulrich

Date: February 1, 2008

Re: West Hanover Township Stormwater Discharge Issues

Per request of Supervisors, I visited the West Hanover Twp. municipal building on Jan. 30th, 2008 at about 1pm, for the purpose of reviewing documents related to development applications underway there. I spent about two hours reviewing various documents related to the project known as the Hotel on Harper Drive. I did not review any other project to save EHT money since I felt that Hotel projects is troubling enough to evoke discussion between the townships to address “intertownship interaction” for the future, which should resolve both issues. We were helped by Bob Leonard at WHT. Bob provided us with various documents related to the projects and was very helpful and knowledgeable in answering our questions. The EHT engineer, Norm Ulrich, was also present and was still reviewing documents when I left. Based on my review I am inclined to conclude that:

- 1) In general terms the project is likely to change the character of the runoff discharge into Manada Creek from infiltration and surface runoff into a concentrated point discharge through a single pipe. The collection/conveyance pipe extends parallel to the road and will receive untreated stormwater from the road and upgradient surface runoff area plus discharge from the new project site with only rudimentary treatment. It is troubling that there is no mechanism to control the increased runoff which inevitably will be created by the project. This is allegedly due to impossibility to infiltrate.
- 2) It is strange that the project sponsor would claim that there is no possibility for infiltration at site and at the same time classify the soil at the property as “well drained” B & C soils (A is the most infiltrable soil and D is the least). My quick review of the infiltration test suggests that the test might not have been conducted properly. I have no doubt the project will worsen both peak runoff and water quality in Manada Creek since its “no-harm” status (for flow only) has been achieved on paper only due to skilful play with numbers and requirements. I am sure Norm will have more to say on peak flow and retention topic since this is his area of expertise. My major concern is with water quality and not with the peak flow, since I think this may be a several orders of magnitude larger problem if not addressed. This is due to not negligible potential of pollution generated by traffic and spills on highway next to the conveyance/collection pipe discharged directly into the creek.
- 3) There does not appear to be any documentation for compliance with the WHT Stormwater Ordinance water quality requiremnts addressing the above issue, particularly under section 168-15 (“Water

Quality Requirements for Post Construction BMPs”). I did not find any information which would demonstrate that the post construction stormwater discharge will not degrade the physical, chemical or biological characteristics of the receiving waters (see paragraph 168-15C). To my inquiry about NPDES permits for the discharge, Bob Leonard suggested that at this time only a conditional or preliminary permit will be issued and the township will request compliance with NPDES permit requirements by DEP before issuing the final permit. However, DEP has been slow to stop certain types of projects similar to this one...

In conclusion I believe that the project is very likely to negatively impact the segment of Manada Creek flowing directly into EHT on water quality and potentially also on flood potential. However, it is very difficult to quantify the impact at this stage.

It also appears that EHT may have several options at this time, including one or more of the following:

1. Do nothing;
2. Try to delay issuance of the conditional permit until the situation between the townships is negotiated to mutually satisfactory result – i.e. addressing quality and quantity of discharge to satisfy EHT or agreeing to conditions to such an effect.
3. Start testing water in Manada Creek for quality and flow to establish a baseline to document potential project impact after the completion, should the project be completed “as is”, in order to demand mitigation or compensation should the potential deterioration materialize.