

Notes on Presentation by Jeff Miller, Evans Mills Environmental, at the Westtown Township Planning Commission Meeting of August 8, 2012

Dick Pomerantz

I'll make a suggestion and maybe Jeff Miller can start if off as did Stan Corbett of URS on Monday and just sort of give us a general overview of the plan itself, the proposal as is, say four or five key highlights and then we can ask questions or people in the audience can ask questions.

Jeff Miller

Well, I wasn't expecting this but here we are. The plan as it is currently composed is the plan that was approved in 2006 I believe. It is one that consists of extending public sewer to most if not all of the Township. Subsequent to that plan URS did some additional cost evaluations of the implementation of that plan and discovered that to install public sewer to the eastern part of the Township the per dwelling cost, per lot cost would be somewhere nearing \$53,000.00-55,000.00 per house. They went on to further evaluations of less expensive options going from a gravity system to a low pressure sewer system and those estimates came down into the low \$40,000.00's per house, and it ultimately came down to below \$30,000.00 per house.

The question at the time was whether or not that was an excessive amount of money to have the resident pay to sewer the Township and whether or not indeed the data that was used to come to that conclusion actually supported that conclusion. And as a result of that the Township requested that URS re-evaluate the proposal to sewer the eastern part of the Township, indeed all the Township, although the eastern part was the first part to be sewerred. And to react to a Consent Order and Agreement that was issued by DEP and agreed to by the Township by which they had to resubmit a new plan to the DEP by the end of September, September 30, 2012.

I was brought on board at the request of some of the citizens to help URS to evaluate some of the data and to help perform some edits to the plan, which I did. We met with the Chester County Health Department and dove fairly deeply into their repair system information, the repair permit issuance information. They also have a system they call their Septic Management Program where they have sewage pumpers that are licensed within the County report where and how often they pump out septic systems. We took a look at that data. In addition to that we took a look at the lot sizes in the eastern part of the Township and we looked at which, if any, of those lots have public water available to them.

At the conclusion of that analysis the data really don't support the installation of the public sewer. There weren't that many lots that had problems that currently have not been able to be resolved, I think there was eight total. There were an

additional number of lots, I don't have the number in my head, that had made application to the Health Department for septic systems, that never took final action on the investigation. A number of the requests for permit were made at the behest of an agreement of sale where the people were selling their lots, selling their houses. They had a private contractor come in and evaluate the system and deem the system not to be satisfactory, but that in and of itself does not reflect on the malfunction of the system. It just deems it not to be compliant with the private industry standard.

In order to keep with the timeline, in order to have this plan submitted to the DEP by the deadline - and should the Township miss the deadline, they are subject to penalties, civil penalties that could be levied by the DEP - we need to have certain actions to take place sooner rather than later. Part of the review process is that the Township Planning Commission along with the Chester County Planning Commission and the Chester County Health Department have to review this plan. Typically, those three entities have sixty days from their receipt of the plan to issue their comments. If you take sixty days to issue your comments, we will not make the September 30th deadline. It's unfortunate for this Commission, for you to be placed in that position, but as I stated earlier in the meeting, Stan has worked his butt off in preparing this plan. He spent many days in the hospital with his dad writing this plan and he couldn't have gotten it done any sooner. So you've gotten it at the earliest date possible. Once you issue your comments there's also a thirty day comment period that results from publication from, public notice in the newspaper, the *Daily Local News*. Generally you try to capture a lot of the agency review comments in that public notice so there's not a lot of replication. If we were to do that that it means we cannot put that public notice in until sometime at the end of August, which is probably when it will be done. But has to be done before the 1st of September so the Board can act to get the plan to DEP by September 30th.

The plan also proposes that the Township finally go forward with what it proposed earlier in terms of an operational maintenance program for the existing on-lot disposal systems in which it will have inspections made of every septic system in the Township, evaluations made as to the deficiencies of those systems and proposed Upgrades or enhancements to those systems to bring them into compliance as much as they can be brought into compliance. A tri-annual plus or minus pump out of the septic tanks for each of the systems and an ongoing tri-annual plus or minus inspection of each system. I say plus or minus because there may be some systems that warrant more frequent inspections. Smaller septic tanks than normally are installed today, smaller drain fields than are normally installed today, might warrant more frequent inspection. But there may be other systems that have absolutely no issues at all that may warrant inspections only every four or five

years. That will all be addressed in an upgraded and updated sewage management ordinance a copy of which is appended to this submission. And that's open for comment also. I am sure I have missed a point, but I guess at this point the thing to do is take questions.

Richard Pomerantz

When we met as a Planning Commission we knew that this might be on the agenda for tonight and at that point, just for clarification for the rest of the Planning Commission, at that point because of comments that were made both at the previous Supervisor's meeting and then in the Daily Local News, it appeared, and it was ... factual based on appearances at that time, that the Township Supervisors basically intended to submit two plans. One they would submit the on-lot plan and preview it in advance with DEP, and if they (DEP) didn't like it or rejected it and just said no once it was submitted, then there would be the grinder plan kind of in the back pocket. Is it accurate to say based on your submission, the report and the Supervisors' actions on Monday that this dual path is no longer being followed. It's only going to be the on-lot that's going to be submitted?

Jeff Miller

That's correct. I have not seen a dual path. I have seen nothing written or proposed or submitted to me for review that has anything to do with the grinder pump system. This is the only plan I've seen.

Dick Pomerantz

And as such, it being the only option as you understand it, as you and Stan prepared it from a professional point of view, are you reasonably confident that even with the eight lots that seem to be multi-problematic, that there's nothing, at least on the surface...I better not use the word surface, that sounds like environmental...prima facie which is more legal, that would suggest to DEP, that would say to DEP that this shouldn't conform to what is necessary. In other words, this should be fine.

Jeff Miller

I see nothing in this plan that would overtly make them say no.

Dick Pomerantz

And is there anything in the plan itself that...there may be skeptics because this thing has been laid out so public as you know, is there anything in the plan that you as a professional are uncomfortable with, in saying well maybe we fudged a couple of things because we wanted to make sure that the Supervisors or the Township residents got their way, are you uncomfortable with anything?

Jeff Miller

I've made it perfectly clear from the onset that my position is going to be what the data suggests the position should be. I wasn't going to fudge the data, I wasn't going to

make up data, I wasn't going to delete data, whatever the data are is the data. If the data supported the on-lot management option that's what I was going to support, if it supported something different that's what I was going to support. I wasn't going to make the answer fit the question – the question is going to have create the answer.

Dick Pomerantz

Then can you explain why it was that, going back to public meetings at Ruskin I think it was the end of April and the other might have been in the middle of May or it might have been the middle of April and the end of May, that the grinder pump system was suggested as the most viable... this is the greatest idea, the best idea going forward etc. I know you didn't do that, but do you have any idea, do you have an insight as to why grinders then and on-lots now? And how do we explain that to DEP.

Jeff Miller

You are correct. I was not at the Ruskin meeting, I was not a part of that previous plan preparation. I'm not sure. I can only conjecture. The 2006 plan was based on some data prepared by a survey done by West Chester University, West Chester Regional Planning Commission and (too low to understand) there were a lot of problems in Westtown Township. From that they concluded that the only viable option was to sewer, which led to the gravity option, which led to some other options, which led to the grinder pump option. But when you really drill down in the data and take a look at what's happened a lot of those sewage permits that were issued to do repairs have effectively fixed the problem. When you adjust the numbers to reflect that, you no longer have a large number of systems that need repair. And how URS got from grinder pump being the best thing since sliced bread to actually looking at the real data, I think that had a lot to do with what happened at the meetings at Rustin High School. Beyond that, I don't want to speak for URS and I can't speak for Stan and I am not sure how that process

Jim Lees

Jeff, it was my opinion, and this is the first I've heard of it tonight that we were going with only one system as a recommendation. The ultimate decision here is DEP and if they say "no", what is the alternative? It was my understanding that the grinder pumps was the alternative that we had to have as a backup. How come we switched here at this point of submission. What's going to happen if they say no?

Jeff Miller

The consent agreement says that Westtown must have a submission to them by the end of September. That should be the submission that most accurately reflects the conditions on the ground. That's this submission. DEP has 120 days to review this submission so on October 1st you're not going to have a letter from DEP saying what you gave us is bogus and start over again, but at some point they will come back and they will comment. How they will comment I don't want to predict. I've

dealt with them long enough to know that I don't predict their answers. They may come back and say this plan looks good, we have a couple of questions, please address these issues. They may come back and say we have serious reservations about certain aspects of your XXXX service areas, take a look at them. They may come back and say we want to see something different, you said sewer all along, why isn't it sewer. In any event you have time to respond to their questions. Depending on what their questions are, that will frame the response. You want to go in with your best plan. To do anything other than that makes people question why aren't you going with the other plan and there is no justification based on the data to go with the other plan. They will not fine you on October 1st if they don't like what you submitted. They will not - because the Consent Order only requires that you submit a completed, fully locally approved plan, it doesn't require that they like it.

Jim Lees

Was the grinder system ever submitted to them?

Jeff Miller

Not to my knowledge.

Jim Lees

So they have nothing?

Jeff Miller

They're not demanding anything until the end of September.

Jim Lees

So that's your reasoning for going with only the one plan.

Dick Pomerantz

The other issue, beside the technical data which you've already stated fully the justifies, warrants the on-lot, but then there is the other aspect – forgive me, I am trying to look at Jim and everybody else I am supposed to look at here -the other issue is that were this to come down to grinder or even gravity cause if I am correct that is the 2006 plan xxxxxx we actually go back to the original plan the gravity plan and that would \$53,000.00 according to the numbers then and probably higher now.. But if the number now is the 21,000.00-30,000.00 whatever it is, is not the issue, the people in this room, how many of you would be impacted by this? Second thing is, is that how many people here have actually seen, have read the survey that was sent to you asking how many of you are retired or on fixed incomes? For those who haven't seen it I would suggest you take a look at it, you'll probably want to fill it in because the issue it comes down to is, and I think it was, it might have been Tom Haas himself or it might have been Carol in one of the Supervisor meetings is the reason...that as bad as it appeared, the economics appeared back in 2006 and 2007, the impact on people's finances as a result of the market crash going all the way back with the real estate crash, whether it's 21 or 31 whatever the out-of-pocket number is, would have an even greater impact. So the question I'll ask you that I asked them is, the citizens' comment plays how

much of a role in terms of the fiscal implement ability if there is such a term for it, of those who are impacted and being able to actually afford it. Does it play a role in the DEP's decision process?

Jeff Miller

Let me rephrase your question so I make sure I can understand it. Are you asking if the people can't afford it does it make an impact?

Dick Pomerantz

Yes.
(Laughter)

Jeff Miller

When DEP evaluates a plan, regulations require that they look at a number of things. Included in that list is whether or not the chosen option is technically feasible. Well, clearly this option is technically feasible. Either one of the options is technically feasible. Hell, all the options are technically feasible. We can physically do them. Is it financially feasible, well that goes back to the implementation and the ability to implement the plan. If you can't come up with the cash to buy the goods, you can't implement the plan. So it's significant if the residents literally cannot afford to implement this plan it's not going to get implemented. So if we submit a grinder pump, for example, with a \$31,300.00 per house figure which I think is quoted in this current edition of the update and the people can't afford it, then it's not going to happen. Well what happens then, well you'll fight about what you're going to do all over again. It doesn't make any sense, but the plan has to be technically feasible and it has to be, the municipality has to be able to implement it. It shouldn't place an overly reaching burden on the municipality for some other administrative function, which is really what you do. It makes a difference. If you can't afford it, you can't implement so why write it.

Eric Rohrbach

I think we've pushed the edge of the envelope as far as we can here, asking for a legal interpretation here. For my edification, if in fact hypothetically they come back and say "no, we hate this", what our redress? Can we do this over again, or do we automatically go some onerous other option?

Jeff Miller

Let me preface this by saying I do not have "Esq" after my name. I do not believe they are going to come back and say you didn't comply, you have to do the other plan, we are going to fine you for not complying with this Consent Order Agreement. I don't think that's what they're going to do. I think a lot of it will be dependent upon the presentation to them, the number and conciseness of any comments from you as a Planning Commission, the County Planning Commission, and the County Health Department and most certainly the residents. It's all about making a good faith effort. We spent a lot of time researching data and drilling down the data to

make sure we have the right answer. We believe we have the right answer. We have to make our best presentation to make sure the DEP understands we have the best answer. And a lot of it has to do with whether or not you can literally afford to do it

(Unknown speaker and question)

Jeff Miller

During that 120 days of review, yes. When they get it they'll start to review and if they have questions they'll contact us.

Jim Lees

Jeff, I'm sure one of the questions that will come up, whether it's six, eight, ten or twelve systems that aren't working or can't be made to work, what kind of solution do you have to offer for those people?

Jeff Miller

Jim, I don't have an answer for all those. I know they are going to ask those questions. But as you well know, every day technology advances, DEP comes out with new options for on-lot systems once or twice a year. There are some systems that have been recently approved that weren't part of the evaluation process when these 8 lots were last reviewed. I'm really not in a position to make that answer. Worst case for those eight lots is that they would have to pump out their systems frequently to keep them from overflowing. But that begs the question. If they have a bill for that every year and that bill equals x dollars is that in and of itself justification for the other residents to spend a considerable sum of money to fix something that is not broken. And that's what it comes down.

Jim Lees

One of the options might be for those residents to try to get an reassessment on their property to lower their tax bill, could that devalue the value of the property? And use that cash to pay for repairs.

Jeff Miller

Absolutely. That is a possibility.

Jim Lees

You are saying they do have some onsite package systems now that can work as well.

Jeff Miller

Anecdotally, I looked at some of the field reports on some of these lots but I in no way feel comfortable saying there is no option, or that this or that is an option. Haven't been to them yet.

Jim Lees

Thanks, Jeff. That was a big help. Is there any one here who wants to ask a question.

Mike 1530 Woodland Road

The 8 homes, the 8 residents you speak about in the current draft. Was that out of the 392 or the full Township 2,500 homes?

Jeff Miller

I believe it is out of the 392.

Dick Pomerantz

Can the 8 homes be hooked up to public sewer? Just like the Lain's were, as part of the settlement.

Jeff Miller

I really can't answer that at this point. It's conceivable, but I'd have to go back and look at exactly where they are, and what's around them. It's possible.

Jim Lees

Have those numbers been pretty well defined?

Jeff Miller

The problem lots, yes. As you review this plan you'll see there are several maps which go into detail on which lots have a problem and which were unresolved, which are uncertain.

Russ Hatton

Did you use whether the fact that the lot has public water or well water as a criteria? Or was lot size the only criteria or was there another criteria like how much water goes through the system? I'm just curious.

Jeff Miller

The issue of public water deals with the issue of setbacks from wells. As a general rule of thumb if you have an acre lot you can fit a house, a well and two of septic systems. You've got to remember there is a 100 foot separation, a 100 radius around the well, that you can't put a septic system on. Well, when you remove those wells, you put in water laterals which only have 10 foot separation distance, you pick up a lot of ground available for a septic system. So for the purpose of the report, when URS put this report together, they further refined the definition of lots so that $\frac{3}{4}$ of acre (too low to understand) which is reasonable.

Jim Lees

Do you have any idea how many wells are in the Township?

Jeff Miller

No, we have a fairly good idea where the water mains are. But we have no idea

who is hooked up to public water. The Health Department used to have a requirement that if public water was available, you had to abandon your well. But their solicitor opined they couldn't enforce that, so they removed that. And the public utilities have no desire, no inclination to tell us who is tied in. So the only way you can determine who has a well and who doesn't have a well is to go out and look, even in those areas that have public water.

Jim Lees

Isn't it required that you have to have a well permit now, before you get a building permit? Isn't that part of our ordinance?

Jeff Miller

You need a lot of permits to get a building permit. You need a well permit if there is no public water, you need a septic system permit or a sewer connection permit if there is public sewer, you need to do storm water work and go through the Township Engineer and the Conservation District. There is a myriad of permits that you have to get.

Elaine Adler

Do I understand that DEP could approve the plan, but say "not in one particular area" and we would have to come up with some other option for that area.

Jeff Miller

xxxxx that they agree with our analysis for 85% of the eastern end of the Township. But for the remaining 15 percent they still have questions as to whether or not this is a viable option. At which point we would have to address those questions about the remaining 15%. I frankly expect they will have questions. That's what they are paid for.

I don't want to pressure the Commission, but the calendar pages are flying fast and September 30th will be here before we know. If you feel comfortable making your recommendation tonight, I think the Board would appreciate it.