

**Union Township Board of Supervisors  
Special Meeting  
April 4, 2018  
4:00 pm.**

The Union Township Board of Supervisors Special Meeting was held at the Union Township Municipal Building, 3904 Finleyville-Elrama Road, Finleyville PA. The purpose of the meeting was to consider the Grading Permit Application submitted by W.G. Tomko.

Board members in attendance by roll call were Richard Lawson, Charles Trax, Paul Chasko, Deborah Sargent and Heather Daerr.

Also in attendance Robert Balogh-Manager, Gary Sweat-Solicitor, Nicole Dooley-Secretary, James Harshman-Engineer and Jarrod D'Amico-Zoning/Code Enforcement Officer.

Supervisor, Heather Daerr stated opening public comment would be skipped and asked all members to hold their comments.

**Review of Agenda Items:**

Consider Extension of Tomko Grading Permit and Other Related Issues.

Mrs. Daerr asked the Engineer, James Harshman to provide his comments regarding the review of Mr. Tomko's grading permit application. Mr. Harshman's review of the grading permit application had nine final comments dated on February 29, 2018. Mr. Harshman stated Mr. Tomko has provided a response. Mr. Harshman reviewed all nine comments and provided a brief synopsis of each comment and response.

**Engineers comment #1.**

We asked for a more detailed schedule.

**Mr. Tomko's response:**

We have met your ordinance requirement. The start date will be when the permit is issued, completion date within one year because that is the term of the Grading Permit.

**Engineers comment #2.**

Our Grading Ordinance requires a land development application. If the Grading Permit is issued in consideration with the building addition it should be contingent on a land development approval.

**Mr. Tomko's response:**

A misreading of the ordinance, it just requires submission of a Land Development Application, which has been completed.

**Engineers comment #3.**

Township Fees. Any approvals are conditioned on Township costs being satisfied with an escrow.

**Mr. Tomko's response:**

No response

**Engineers comment #4.**

More detailed dust control plan. Engineering asked for a more detailed specifically targeting the points mentioned in the Ordinance.

**Mr. Tomko's response:**

The dust control plan submitted meets with the Township ordinance.

Mr. Harshman noted he feels this is disagreement on the level of detail that should be provided. Engineering is looking for direction from the Boards on that item.

Engineers comment #5.

Noise, due to the numerous complaints over the history of this project regarding nuisance noise, Engineering asked for a plan regarding dealing with nuisance noise not specific to decibel levels but that to nuisance noise in the surrounding neighborhoods.

Mr. Tomko's response:

Would consider implementing certain things as noise blankets, sound barriers if there were safe and feasible.

Mr. Harshman felt a more specific response as to how and when those items would be implemented. However, Mr. Tomko did not respond.

Engineers comment #6.

Bond in place for the Grading project is scheduled to expire less than one year from now.

Mr. Tomko's response:

They are in good standing with respect to the capability of being bonded.

Engineers comment #7.

Mining has been a topic of discussion at the Tomko worksite. Mr. Harshman asked for acknowledgement that the issuance of a grading permit should be qualified that Mining which our ordinance calls Mineral Extraction is not permitted at the site. This is just a clarification related to our ordinance and does not allow.

Mr. Tomko's response:

No action is needed.

Engineers comment #8.

Continued compliance and maintaining a current NPDES Permit.

Mr. Tomko's response:

No response

Engineers comment #9

Continued Geotechnical oversight. Given the history of some geotechnical issues on the worksite, the condition that Geotechnical Engineering Inc. will be responsible to provide onsite Engineering oversight and ensure their recommendations are implemented by Tomko, that includes weekly site activity reports, a summary of events, and compaction certifications.

Mr. Harshman stated at this point it is to the discretion of the Board if Mr. Tomko's responses are adequate. Mr. Harshman noted there was a level of detail Engineering would have like to see in the responses made by Mr. Tomko. Mr. Harshman stated his review of the comments and responses were summarized. He asked the Board to give Mr. Tomko the opportunity to respond.

Solicitor, Gary Sweat stated for the record typically the Zoning Officer would issue a grading permit. In this instance the complexity of the application and the numerous issues involved, the Zoning Officer has deferred the decision of the grading permit and requested the Board of Supervisors make the determination.

Supervisor, Heather Daerr asked the other Board members if they had any additional comments or remarks to make. No comment was made. Mrs. Daerr then asked legal counsel for Mr. Tomko, Chris Coppula if he would like to speak to the comments made by Engineer, James Harshman. Mr. Coppula stated he would like to provide clarification to the noise comment. Mr. Coppula noted he believed Mr. Harshman was referring to the adoption of the performance standards in the 2017 revision of the grading ordinance. Mr. Coppula stated the way in which the ordinance is drafted construction activity is still exempted which their work has been defined as in the past, he does not believe the actual term nuisance

noise is in the ordinance. It has issues about sixty-five decibels which would be what the C2 standard is and to the extent that is being imposed on us we have consistently been under that based on the sound measure that has been used. Mr. Coppola noted Mr. Harshman has accurately described the responses made by Mr. Tomko. Mr. Coppola also stated he would like to add information to the noise issue. Mr. Tomko is investigating and have made headway in the idea of blasting. Blasting would significantly reduce the scope of work and reduce any type of hammering that would occur. Mr. Tomko has also made representation that he would stop the use of hammers on Saturdays as a concession. Mr. Coppola also proposed to address the noise and dust issues at a monthly meeting with representatives from the community at the Tomko worksite. Individuals would be apprised of the progress of the work. Representatives would have the opportunity to voice concerns and complaints to Mr. Tomko and in turn he would be able to address the complaints directly. Mr. Coppola noted as the work progressed a hotline system would be implemented for complaints that need immediate attention. Mr. Coppola stated those two action items may help remedy the principal complaints from the residents those being of noise and dust. Mr. Coppola reported a sprinkler system powered by an existing high pressure 4" water main at the building being extended to the hillside via high pressure hoses that would deliver water at a rate of 170 PSI at 1,000 gallons per minute. In addition, a 2,000-gallon water truck will be on site and serve as back up to the sprinkler system.

Solicitor, Gary Sweat asked that all public comment be constructive. He asked that all comments stay on the issue of the grading permit. Mr. Sweat asked to keep the discussions civil and productive.

Public Comment:

Linda Morrow: 10 Boyka Drive, Finleyville PA. Mrs. Morrow voiced her concerns and opinion regarding the noise and dust coming from the Tomko worksite. Mrs. Morrow expressed her concerns regarding the decreased value in her property because of the nuisance issues from the Tomko worksite. Mrs. Morrow also expressed concerns regarding the issuance of a mining number to Mr. Tomko's daughter for his business address. Mrs. Morrow asked for clarification of why Mr. Tomko needs a mining number.

Frank Latorre: 7 Boyka Drive, Finleyville PA. Mr. Latorre asked for clarification if Mr. Tomko's consent order of decree was complete and satisfied with the DEP?

Engineer, James Harshman asked to break meeting protocol and respond to Mr. Latorre's question. Mr. Harshman stated conversations with the DEP concluded the consent order of decree is satisfied according to the DEP. Mr. Coppola confirmed the consent order with the DEP has been satisfied. Mr. Latorre expressed his opinion regarding the implementation and installation of the sprinkler system at the Tomko worksite. Mr. Latorre expressed his concern regarding the decrease in his property value because of nuisance issues related to the Tomko worksite.

Hal Breinig: 44 Finley Avenue, Finleyville PA. Mr. Breinig expressed his concern regarding the dust and noise coming from the Tomko worksite. Mr. Breinig applauded Mr. Tomko for offering to not work on Saturdays. Mr. Breinig asked for an agreement of specific workday hours. Mr. Breinig asked for fairness, consideration, and a reasonable understanding with regards to Mr. Tomko's grading permit.

Sandy Banazak: 5 Boyka Drive, Finleyville, PA. Ms. Banazak thanked Supervisor, Heather Daerr for her timeline of construction events that was presented at a previous meeting. Ms. Banazak expressed her concerns regarding enforcement of Mr. Tomko following the plans of his new grading permit. Ms. Banazak expressed concerns regarding the completion timeline and its validity. Ms. Banazak expressed her concerns regarding dust and noise nuisance from the Tomko worksite.

Motion to go to executive session.

Motion by Heather Daerr, Second by Deborah Sargent

Roll Call Vote: Richard Lawson-YES, Paul Chasko-YES, Charles Trax-YES, Deborah Sargent-YES, Heather Daerr-YES.

Motion carried.

The Board of Supervisors returned from executive session at 5:10 pm and was back on record. Supervisor, Heather Daerr stated the Board discussed litigation issues surrounding Bill Tomko and his grading permit. Mrs. Daerr stated the Solicitor, Gary Sweat will speak on the issue.

Solicitor, Gary Sweat noted there are a number of legal issues to be considered as he advises the Board of Supervisors. Mr. Sweat stated there is a lot of history with Tomko industries. Most of the history proceeded all current Board members as well as himself. It is Mr. Sweats position that Mr. Tomko has received multiple approvals from prior Boards

permitting him to do what has been done thus far in terms of grading and excavation. The problem is Mr. Tomko's business is in a C2 district sitting in the middle of densely populated plans in Union Township. The purpose of this meeting is considering the request of Tomko Industries and Missionary Partners for the issuance of a Grading Permit to continue excavation of their commercial property on Route 88 in Union Township. Normally the Grading Permit Applications are reviewed by the Township Zoning Officer, decisions are made if a property owner does not like the decision the appeal of a denial if you will go to the Zoning Hearing Board. They have findings of fact, testimony etc. If you don't like that decision it goes to the Court of Common Pleas in, Washington. In this instance the Zoning Office did not feel comfortable with making the decision and turned the issue over to the Board of Supervisors and they have the authority to make the decision. Mr. Sweat stated hour upon hours of meeting have occurred. Over the past 2 ½ years at every public meeting the Tomko issue has been dealt with in one form or another. This Board has the impossible task of balancing the rights of Tomko and Missionary Partners verses the interest of the residents. The residents have a right to quietly enjoy their property as well as Mr. Tomko has the right to expand his property and make as much money as he would like. The residents are entitled to be protected from activities that rise to the level of a public nuisance. Tomko Industries is entitled to a fair determination of their Grading Permit Application and Land Development Plan under the current Township Zoning Ordinance and Grading Ordinance. In addition, this Board is required to consider pervious Board decisions regarding the development of the Tomko Property and the various activities that have been permitted over the years. That becomes an equitable argument that is something to be aware of. The Board understands this property 60 plus acres located in a C2-R3 District and there are multiple legal issues that have been raised. Considering all discussion, the Board has requested the Solicitor recommend a motion concerning this grading permit application. After the motion is complete there may be discussions, additions or subtractions to the contents of this motion and the board will take a vote.

**Motion** in an attempt to address the request of Tomko Industries and Missionary Partners and at the same time acknowledge the numerous complaints of noise, dust and traffic that have been voiced by the residents of the Boyka Plan and Stonebridge Plans and other residents of the Township, my motion is to approve the application filed by Tomko Industries and Missionary Partners for the issuance of a new Grading Permit in compliance with the 2016 air pollution and dust control ordinance of the Township, the 2017 Grading Ordinance, as amended; and application of the current Fee Schedule of the Township subject to the following conditions:

1. The Grading Permit shall be for one (1) year only. The one (1) year period will begin after the appeal period of this Board's decision to issue the Grading Permit expires. Until the appeal period expires, Tomko and Missionary Partners will be permitted to continue under the 2016 Grading Permit for an additional thirty (30) days. In the event the Applicant files an Appeal to this Grading Permit Approval, all grading and excavation activities at the Tomko Site must cease until the Parties obtaining a Resolution of the Appeal and/or enter into a Consent Order or Court Order is issued by the Washington County Court of Common Pleas.
2. Tomko and Missionary Partners will not be granted any extension on the Grading Permit. It is further my Motion that the Applicant closely review its Development and Business Plan and adjusts its' site work accordingly so that all activities can be completed within the stated one (1) year period. In this regard, Applicant is encouraged to consider a Blasting Plan as has been discussed.
3. Noise- Because Tomko Industries has elected to remove the stone layers on its hillside by "hammering the rock", the residents have been required to endure a constant hammering/noise which in my opinion has risen to the level of being a Public Nuisance even though the measurement of a single hammering event may not violate the decibel limits of the Noise Ordinance for the Township. In order to reduce and hopefully eliminate the constant hammering noise that has so affected the residents, the Applicant shall be required to install c-cam sound blankets at the height sufficient to muffle the hammering noise. In the event the c-cam blankets do not sufficiently decrease the noise emanating from the site, the Applicant will be required to construct and install sound-wall barriers. The decision on whether sound-wall barriers are required shall be in the sole discretion of the Township Board of Supervisors.
4. Applicant will be permitted to conduct excavation activities on the Site Monday thru Friday, 7am until 5pm. No work of any kind will be permitted on Saturdays or Sundays.
5. The Applicant will be permitted to truck stone and other soil constituents off site during the grading permit period. However, no truck activity will be permitted on State or Township roads during school bus hours. Tomko is directed to contact the transportation coordinator for the Ringgold School District to adjust its' truck activity related to this particular excavation site during hours of pick-up and drop-off of students by the Ringgold School Buses.

6. In so far as the dust has been a major complaint of the residents, the Applicant will be required to maintain and use a water truck with a 2,000-gallon tank on site as well as a water tank back-up of 2,000 gallons in the event the truck is not operable.
7. The Applicants Grading Plan will be updated if needed and the Township Engineer will review the same. In addition, the Township will require the Applicant to install survey controls on the property so that Operators, Engineers and Township Inspectors know where digging is going to take place.
8. Applicant will be required to provide weekly activity reports to the Township Engineer. In addition, the applicant will be required to provide Geotech verification for the review and approval by the Township Engineer which shall consist of the following.
  - (A) Verification of compaction with percentage of moisture and elevation of each lift.
  - (B) Verification of keyway/fences/drains installed.
  - (C) Identification of compaction equipment to be used.
  - (D) Monthly aerial photos to be taken by Finleyville Airport personnel to show progress on site.
9. Applicant must maintain an ongoing Escrow Account with the Township in the amount of \$5,000.00 to cover the Township's engineering review, inspections and applicable legal fees. In addition, the applicant must pay all escrow overruns incurred to date. Before any monies are taken from the Escrow Account, the Township Secretary/Treasurer will provide Tomko with an itemized statement of the amounts to be deducted against the Escrow and Tomko will have five (5) days in which to respond or voice any objection. No monies will be deducted until the invoice has been approved by Tomko which approval should not be unreasonably withheld.
10. Violations- In the event there is a violation of any of the terms of this Grading Permit Approval, Tomko will be given written notice of said violation and 48 hours to remedy the situation. In the event the violation continues and is not remedied in 48 hours, Tomko will be assessed a daily penalty of \$500.00 a day until the same has been corrected in the sole opinion of the Township and its Engineer. During the time of the said violation, all operations will be suspended and no start-up will be permitted until the conditions have been satisfied and the fines paid.
11. The parties agree that a committee of citizens will be assembled to meet on a biweekly or monthly basis with Mr. Tomko and his representatives to consider any complaints that the residents in the community have. It is recommended that the committee consist of five members. Comprised of one supervisor, the Township Engineer, one representative from the Boyka Plan, one representative from the Stonebridge plan, and a fifth member to be a resident of the Township.
12. As far as dust complaints that member of the Stonebridge and Boyka plans may experience it is recommended that they submit these complaints to the citizens committee and that Tomko industries make arrangements to cover any expenses needed to clean a person's property because of the dust that may accumulate.
13. This approval of the Grading Permit Application is not to be construed as an admission or approval by the Township of Tomko's Land Development Plan to construct an additional building on the property which is not being approved at this time. That issue will be dealt with by the Township and Tomko Industries at a later date.

Motion to approve.

Motion by Deborah Sargent, Second by Charles Trax

Roll Call Vote: Richard Lawson-YES, Paul Chasko-YES, Charles Trax-YES, Deborah Sargent-YES, Heather Daerr-YES. Motion Carried.

Motion to return to executive session at 5:30 pm to discuss the EQT Application for the Caton Well Pad.

Motion by Heather Daerr, Second by Deborah Sargent

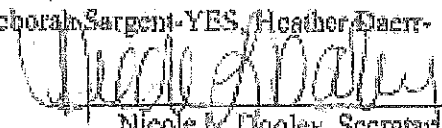
Roll Call Vote: Richard Lawson-YES, Paul Chasko-YES, Charles Trax-YES, Deborah Sargent-YES, Heather Daerr-YES. Motion Carried.

The Board of Supervisors returned from executive session at 5:47 pm. Supervisor, Heather Daerr stated legal issues were discussed regarding EQT and their application for the Caton Well Pad.

Motion to Adjourn at 5:48 pm.

Motion by Heather Daerr, Second by Charles Trax

Roll Call Vote: Richard Lawson-YES, Paul Chasko-YES, Charles Trax-YES, Deborah Sargent-YES, Heather Daerr-YES. Motion Carried.

  
Nicole M. Dooley, Secretary