

MINUTES OF SPECIAL MEETING

AUGUST 17, 2016

The Special Meeting of the Morris County Municipal Utilities Authority was held on August 17, 2016 at 6:07 p.m. at the Offices of the Morris County Municipal Utilities Authority located at 214A Center Grove Road, Randolph, New Jersey. The necessary notice of this meeting was sent to the papers according to the law.

Chairwoman Szwak called the meeting to order and she read the Notice in accordance with the Open Public Meetings Act.

The purpose of the meeting was to consider the following Agenda item:

- A. Discussion regarding the Wharton Woods project.
- B. Public Comment.
- C. Executive Session.

Formal action may or may not be taken at that time.

Chairwoman Szwak requested a Roll Call.

PRESENT: Mr. William Hudzik, Mr. James Barry, Mr. Frank Druetzler, Mr. Fletcher Platt and Ms. Laura Szwak.

ABSENT: Mr. Christopher Dour, Dr. Arthur Nusbaum and Dr. Dorothea Kominos.

Also present as Glenn Schweizer, Executive Director; Marilyn Regner, Secretary; Brent Carney, Esq., Maraziti Falcon LLP; and Anthony Milonas, MCMUA Water Superintendent.

Present from the Public was John Crimi, County Concrete Corp. & Wharton Woods; Kurt Peters, Esq., in-house counsel for Wharton Woods and County Concrete, Police Chief Fernandez, Wharton Borough and John Inglesino, Attorney representing Wharton Woods, LLC.

Chairwoman Szwak read the following Resolution for the meeting to go into closed session at 6:08 p.m. to discuss contract negotiations involving the Authority:

RESOLUTION AUTHORIZING A CLOSED SESSION FOR DISCUSSIONS REGARDING CONTRACT NEGOTIATIONS INVOLVING THE AUTHORITY

WHEREAS, the Morris County Municipal Utilities Authority desires to discuss various matters in connection with contract negotiations regarding the Wharton Woods project; and

WHEREAS, the Morris County Municipal Utilities Authority is authorized to conduct a closed session in each of these instances pursuant to N.J.S.A. 10:4-12(b)(7) and N.J.S.A. 10:4-12(b)(5).

NOW, THEREFORE, BE IT RESOLVED by the Morris County Municipal Utilities Authority as follows:

1. A closed session will be held immediately following the Public Portion of this meeting for discussion regarding contract negotiations regarding the Wharton Woods project.

2. The matters discussed during this closed session relating to contract negotiations shall be recorded and duly approved by the Board but shall be held in confidence and shall not be made available for public disclosure until such time as the matter has been settled, an unappealable decision has been rendered by a court of competent jurisdiction or as otherwise required by law.

MOTION: Mr. Hudzik made a Motion for the meeting to go into closed session at 6:07 p.m. and Mr. Platt seconded the Motion.

ROLL CALL: AYES: 5 NAYES: NONE ABSTENTIONS: NONE

The meeting returned to open session at 6:48 p.m. with a Motion made by Mr. Druetzler, seconded by Mr. Platt and carried unanimously.

PUBLIC PORTION:

Chairwoman Szwak called on the Public for their presentation. The members of the Public introduced themselves: John Inglesino, attorney representing Wharton Woods, LLC, which is a company owned by John Crimi, which has approvals to develop townhomes in Wharton.; Chief Fernandez from the Wharton Police Department; John Crimi, owner of Wharton Woods; Kurt Peters, in-house counsel for Wharton Woods and County Concrete Corp.

Mr. Inglesino thanked the Board for having this special meeting and mentioned that they are here to try shed some light and understanding on what they think is perhaps a miscommunication. As everyone knows, Mr. Crimi has been a good partner with the M.U.A. over 25 years and he is seeking now to develop 67 townhomes on part of what was originally the 439 acre tract and has received all approvals from Wharton and is now commencing the site work necessary to construct the project. He mentioned that back in March sometime they were discussing the Pre-Construction Meetings with Wharton and the plan originally was to haul the dirt, a lot of it, 26,000 cubic yards of fill needs to come off the site and they were going to take it out Mill Street, past the homes, out to Main Street in Wharton. Mr. Inglesino handed out a map showing the site where the townhomes are being built. He showed the internal haul road to the quarry which is about $\frac{3}{4}$'s of a mile. The MUA owns about 500 feet of this haul road and the rest is owned by the quarry operations and Wharton. So what they could have done was exit out of Mill Street and onto Main Street in Wharton, go out to Route 46, make a right and go through Mine Hill and down into Roxbury and circle all the way around back into the site. They could have done that but they would have had to have smaller trucks and a lot of dust and rather than write Mayor Morris a letter to let him know that all these trucks with all this dust will be coming through your town, and writing Mayor Rilee in Roxbury and let him know that we are going to have all these trucks loaded with dust coming through your town. The Chief had the common sense of an idea of why do that when you can just go internally along old woods roads and drop all your loads right here in the quarry, which is going to become part of the quarry operation anyway and that made perfect sense and we didn't have to send letters to Mayor Morris and Mayor Rilee or give notice to residents that they are going to lose parking, disrupt Main Street etc. So that was the common sensical idea and it was from Wharton. We want to cooperate with Wharton so Wharton took the initiative, and the Chief is going to speak to that in a moment, to get the approvals needed from State. We were not involved in it; frankly we were told to stay out of it. It was not our application, we were just deferring to Wharton. We offered to notify folks, we offered to become involved in the application. We offered to go to DEP, MUA and the County. We were told by Wharton no, Wharton would handle it. Mr. Inglesino mentioned that there are all kinds of emails to that effect. My understanding is that we will have some sort of notice back in April, I don't know what it was, but that was all to be handled through Wharton and here we are today. He mentioned that Mr. Crimi has been a partner of the M.U.A. and has always worked cooperatively with the M.U.A. From our perspective, this is not about negotiating because we could just go out to Main Street, no skin off our back, but we are looking to accommodate Wharton and frankly to accommodate the residents and the

businesses in the other municipalities who would be impacted by this operation and deal with it in a common sense way. By the way this is a three month operation. Three months from now we are done and we don't need this road anymore and from what I understand there are actually improvements being made to this road in terms of wood chips and so forth, which is also a benefit to you and to everybody else whatever that is worth or whatever that is. That is what this is all about.

Mr. Druetzler commented that we all can see that is the best way to go but I don't think that is a big issue. What's an issue is, your right, John Crimi has been a long time known factor and he has worked with the M.U.A. for a long time. But he didn't pick up the phone. Nobody picked up the phone to request permission from the M.U.A. and you are just doing it, going on people's property here and not saying listen is there something out there that we shouldn't be doing. Are there any concerns or issues? Do you have a well out there some place? Nobody did that.

Chairwoman Szwak said you talked about three months and you started already, so how much longer? Mr. Inglesino and Mr. Crimi replied about 2 ½ to 3 months.

Mr. Inglesino said we didn't say we didn't want to notify M.U.A. or anybody else and I will underscore this point and the Chief is here and he will speak to it. We were told not to notify anybody. We were told that Wharton is taking care of this and I have seen the email. Between Wharton and us, we will call the County. The County is actively looking at its files, we have been in touch with the County and Mr. Druetzler said no you didn't. Mr. Inglesino said he can't say, because he wasn't there. I have a client and my client has really not done nothing wrong, hasn't attempted to do anything behind the M.U.A.'s back, has acted in complete good faith, has not said no we don't want to notify the M.U.A. We were told not to notify anybody.

Chairwoman Szwak asked if we could hear from Wharton. Chief Fernandez commented as Mr. Inglesino said we were at a Pre-Construction Meeting and they were talking about bringing this dirt through town and I grew up in Wharton, I spent my whole life there and was well aware of this dirt road that went back to Mr. Crimi's property. So I raised the issue of why can't we use this road instead of coming down through Main Street. He mentioned that Mill Street is a steep incline. When they cleared the lumber from the property, they came down Mill Street and onto Main Street and it was obvious that was a problem. Then they were going to bring dozens upon hundreds of trucks down onto Main Street, down to 46 and it was going to create a huge problem for us. So I asked about that, everything stopped, everybody started thinking about it and they said okay we will take a look. That was at my request. Then the town said it was Green Acres funding so you know what that means. There is a time out because it is Green Acres funding and we had to jump through hoops to get that approved and the Borough took the lead on that because it is our property through Green Acres funding and that is why the Borough took the lead. Why the M.U.A. did not receive notification I don't know. Jon Rheinhart was our point person on this and he is on vacation in Carolina. I don't know what happened with that. He was the person that was putting all this together. He was the person who had all the contact with Green Acres and all the other parties that were involved so I can't speak to what happened. If there was a failure to notify, we may have dropped the ball. I can't say we did, I don't know. If we did, I apologize on behalf of the Borough. I can't speak for Jon because he is not here. All I can tell you is that it was Wharton's request. Mr. Crimi and his company never asked for this. We were asking for it because we didn't want the trucks on the streets. They just paved and restriped the streets and we were trying to keep the trucks off the streets. I estimated maybe three miles that the trucks would have to go and they would be half the size, they are using earth moving equipment through the woods to get the site cleared. They would have to use regular tandem trucks to come through town which would be double the truckloads coming through town. Chairwoman Szwak asked if you have signage up for recreational users to warn them about this activity because it is recreational land? Chief Fernandez said nobody has really been up there. It has been dormant, nobody has been up there for years and that was the other part of it. When speaking to the Mayor and Jon, what they hope to do is redevelop this now and revitalize it. One of the things that was required as part of the agreement was to put down a new foundation, clean it up and put it back into a shape that could be used for bikes or walking. I think that town has plans of putting picnic tables or sitting areas. They plan to redevelop it to do that. There haven't used it in years and there really was no access because it was land locked on that side of town. One of the things they hoped to do was to loop it around to another part of our Park system. Mr. Schweizer asked was that the same concept that you were going to make it into a trail. Were you going to restore the entirety of this road? Chief Fernandez said I don't know. I am law enforcement and I don't get involved in all those meetings, but I know when they were talking about, they want to tie it into other trails that they have. Mr. Schweizer asked John Crimi that the whole road that they use now, with your agreement you

have with Wharton, after you are done, you were going to restore that and make it usable as a trail. Mr. Crimi replied that what the DEP had requested was for us to put wood chips over the recycled concrete aggregate (RCA). First we have the approval to put residential rated RCA down which has been approved by the testing labs and it is only our material and a very thin layer to stabilize it because the soil gets greasy and so when it was done, the grades would be exactly the same as what they were other than the layer of wood chips on it and its back to nature immediately. Mr. Schweizer said that you are going to scoop up all this RCA? Mr. Crimi replied no, the RCA stays. It gets graded down and then wood chips gets spread over the whole thing and then we walk away from it and all you see is wood chips in the woods. He mentioned that the DEP was very careful in not making it more than 18 foot wide, which was the existing width of the existing road from the Allenwood Steel days when they pulled the iron ore out and so we followed the exact configuration of the existing road and there was road material down on that. There was QP on the existing road. All we did was cleaned it up and are going to improve it at the end with the wood chips because that is what DEP asked us to do. Chairwoman Szwak said that is on the Wharton property and asked about the M.U.A. property. Mr. Crimi replied the same thing. Mr. Crimi commented that his in-house counsel, Kurt Peters, asked Jon Rheinart do you want us to call Glenn, we were over on the property. I know it was owned by the County since it was my property, we sold it, we worked this all out with everyone, I'm going to call. He said no don't you call anybody because it is not your application, its Whartons because Wharton asked to do this, we did not ask Wharton, Wharton asked, and we said okay. So we delayed our project for two months before we could start and we said okay. He said that he was told not to do anything so I sat back and did nothing except when they came out for the inspections, the Division of Fish & Game, the Green Acres and the DEP. They came out with the Chief, the Mayor, Jon Rheinart and Kurt Peters and they all walked with our surveyor and then we went into all these agreements and I think everything is fine. Mr. Crimi commented that with all the hoops they jumped over, nobody would have stepped over you, it was an oversight. There is no way we would have done this on purpose. He mentioned that we jumped through so many hoops to get this approved, and when they had this Pre-Construction, their intent was to start in two weeks so I was really concerned that they were just going to start and not wait for the approvals. So when the project was delayed for two months, Mr. Crimi said okay great they are going to give us time to get these approvals. It is not that someone supposedly overlooked the M.U.A. It was an oversight. Mr. Crimi added that I hope you would understand that the environmental positives, the people that live in the total area are positives and getting the project over with is good for all concerned and at the end it is going to be better than what it was before. We are going to make sure everything is clean, the wood chips are there and it was like we were never there. It is just going to be better and I would hope you would understand and I would be the first one to call. I would never ever not call if it was my position to call. I was told not to call. Mr. Inglesino mentioned that Mr. Crimi offered repeatedly to call MUA, DEP and everything else and was told not to, this was Wharton's application.

Mr. Schweizer mentioned that he called John Crimi on Friday, August 12th after he observed the trespass activity. Mr. Crimi said there was no intention to omit the M.U.A. Mr. Druetzler said that he would buy all of that. He mentioned that on the same token you have this gigantic agreement, indemnification for Wharton and all that and what if someone said what about the M.U.A. Mr. Crimi said that John Inglesino is my attorney and we will indemnify the M.U.A. and the same thing we agreed with the DEP, Green Acres, Wharton and N.J. Fish & Game, we will do the exact same thing immediately.

Mr. Druetzler commented that he is not sure that we want to have wood chips on our portion. Mr. Crimi said fine, tell me what you want.

Mr. Carney mentioned that approval from DEP Green Acres is only up to the municipal boundary between Wharton and Mine Hill. The section we are talking about is in Mine Hill. All the requirements in the agreement between Wharton Woods and Borough of Wharton is not applicable. You need a separate Temporary Access Agreement between the County, the M.U.A. and Wharton Woods. Mr. Crimi said that when Jon Rheinart gets back from vacation, we will do whatever agreements you want and we will sign them. Mr. Crimi said if then you tell me you want RCA, crushed stone, ¼ inch grit, tell me, I will put it down. He said that is 520 feet of road and Mr. Schweizer said it may be more than that due to the loop road. Mr. Crimi replied that whatever it is, it is not an issue. Mr. Platt asked our attorney that our agreement with Mr. Crimi would be direct, wouldn't be through Wharton, right? Mr. Carney replied it is with the entity that is making the use of road. Your Temporary Access Agreement is not with Wharton, it is Wharton Woods LLC.

Chief Fernandez asked why would you not want to be part of the trail? Mr. Schweizer replied we have a proposed well and we are very sensitive about protecting our public water supply and because of security reasons.

Mr. Druetzler mentioned that there is problem with using the lower road because you are right next to the well. He asked Mr. Crimi do you have to use the lower road, can you just use the higher road? Mr. Crimi replied that we need to use two roads because the trucks can't fit on one road. Mr. Druetzler asked, can you just say by radio when you are coming and work like that; you are using the higher road most of the way. Mr. Crimi replied that we have to cut the road over a bit if you are concerned about being near the exploratory well. But the reason for that is the loaded trucks wait to let the other ones come down and the way they get loaded and going all the way down to the pit, to have no where for them to back up and wait, it would be a very tenuous situation for us to do that. Mr. Carney asked is it the empty trucks that are coming by the well or is it the loaded trucks? Mr. Crimi replied it is the loaded trucks, but we could reverse that. Mr. Schweizer mentioned that it is the opposite, the empty trucks are coming on the lower road and the loaded trucks are going on the high road. Mr. Crimi replied that they might have changed the course without telling me. Chairwoman Szwak asked does it matter though whether it is full or empty? They are still awfully close to the well. Mr. Crimi commented that he could put orange fencing around the well. He mentioned that everybody that runs these trucks, they are all my guys and there has not been any issues so far and we can corner it off with orange fencing and bring it out three or four feet and put a box around it and do it first thing in the morning myself. Mr. Schweizer commented that what you are hearing is a concern with the integrity of that well casing and the amount of time, energy and money that has gone into the development of this potential production well, given the physical location between the edge of the lower loop road and well. Mr. Crimi responded, so if you tell me that you want the empty trucks there and you want to corner it off and put up an orange fence, as long as the trucks can get by. I don't need 18 feet; the DEP said don't make it bigger than 18 feet. The trucks are 9 or 10 feet wide and whatever we need, we will just make it that so it comes 5 or 6 feet away from the well, we will do that immediately. Chairwoman Szwak asked if there is no way to do the coordinated one road up and back. Mr. Crimi replied that he thinks it is physically impossible. If I had to do that, we would have to go on the hard street. Mr. Crimi mentioned that it is more expensive for him to do it this way than to bring a fleet of trucks in to get the site done because it takes a lot of time. He mentioned that he just started to run a fourth truck this week. We were not able to run four because they couldn't pass each other. Mr. Platt asked where is the bottleneck for the trucks, on the site you are clearing? Mr. Crimi replied the whole road on the bottom because it is not wide enough to pass two trucks together.

Mr. Druetzler asked Mr. Crimi if we need another easement, are you going to work with us to get an easement? Mr. Crimi replied that I want to say that I was very taken back by that comment that was made to me because in the 25 years that I have been working with Glenn and John Scarmozza anytime the M.U.A. came to me, we always tried to work out things for the best. No one ever came to me and said well if you do this, I will do that for you. He said that he does not like to be in the position. Mr. Druetzler replied don't look at it as a demand and Mr. Crimi replied that's how I felt it was. Mr. Crimi commented that he has always been very open in working with the M.U.A. My intention is still to be open. Mr. Druetzler said he has been on the board a long time and I know you have been that. That is why I am surprised that we are even here tonight but we are going to work this out. Mr. Druetzler told Mr. Crimi that I don't want you to feel that we are trying to beat you up. Mr. Schweizer commented that we first got wind of the project in late April and we thought if Wharton was successful in getting Green Acres approval on the Wharton piece, then someone would have to come to the M.U.A. for approval to utilize our open space property. Because I've known Mr. Crimi for a long time, I decided to bring this issue to the Board in May to start getting them thinking about the issues if we do get the phone call. Our consulting engineer Andrew Holt, Tony and I were out on the site in late April, we had determined that if John comes to us maybe one of things that we should ask him, because of our long relationship, is if we are developing the well and if we have a problem with bringing the water from the production well to the meter pit or we got into a regulatory snag, could we talk to you about an easement, without interrupting the proposed development that you have, so that we have an alternative. Otherwise it is going to be very complicated to get water from this well, and what better time to do that, when you are petitioning the M.U.A. for approval to access our property. So it was not a demand, it was a suggestion to take care of each other as we have always done. Mr. Crimi replied that he did not know that he was petitioning the M.U.A. to do anything because I had nothing to do with it, the Borough did. I was sitting there doing the Borough a favor by taking my trucks through the woods, which is costing me more money to do that. I was under the impression that they notified the M.U.A. and the County. I did not know I was petitioning anyone and I need to make that clear because if I was, I would have called you myself and I would have talked

to you about it and what was going on. If you needed something from me and asked me, I would come forward and do what I could do. As I told you on the phone, I couldn't say I could give you an easement to the property, because I don't know where the building is and I don't know where anything is and at the right time we will sit down and talk about it. I would help you anyway because you help the general public. Mr. Crimi commented that is why all this land is left for open space and we didn't build on it all because we have to leave something behind and you help the general public and water is, to me, our most valuable commodity. So I am here to work with your folks. Mr. Platt thanked Mr. Crimi and said let's move on.

Chairwoman Szwak thanked them for their consideration and feedback and the Board needs to decide what we are going to do here and we will discuss it in closed session and will come out with a decision in open session.

There being no further comment from the Public, this portion of the meeting was closed.

Chairwoman Szwak called for the meeting to go into closed session at 7:20 p.m. for the purpose of contract negotiations:

**RESOLUTION AUTHORIZING A CLOSED SESSION FOR DISCUSSIONS
REGARDING CONTRACT NEGOTIATIONS INVOLVING THE AUTHORITY**

WHEREAS, the Morris County Municipal Utilities Authority desires to discuss various matters in connection with contract negotiations regarding the Wharton Woods project; and

WHEREAS, the Morris County Municipal Utilities Authority is authorized to conduct a closed session in each of these instances pursuant to N.J.S.A. 10:4-12(b)(7) and N.J.S.A. 10:4-12(b)(5).

NOW, THEREFORE, BE IT RESOLVED by the Morris County Municipal Utilities Authority as follows:

1. A closed session will be held immediately following the Public Portion of this meeting for discussion regarding contract negotiations regarding the Wharton Woods project.
2. The matters discussed during this closed session relating to contract negotiations shall be recorded and duly approved by the Board but shall be held in confidence and shall not be made available for public disclosure until such time as the matter has been settled, an unappealable decision has been rendered by a court of competent jurisdiction or as otherwise required by law.

MOTION: Mr. Hudzik made a Motion for the meeting to go into closed session at 7:20 p.m. and Mr. Barry seconded the Motion.

ROLL CALL: AYES: 5 NAYES: NONE ABSTENTIONS: NONE

The meeting returned to open session at 7:55 p.m. with a Motion made by Mr. Hudzik, seconded by Mr. Druetzler and carried unanimously.

Chairwoman Szwak asked Mr. Carney to make a Motion for the Board's consideration. Mr. Carney asked if somebody from the Board would like to entertain a Motion to authorize Wharton Woods, LLC to utilize the County roadway situated in Block 101, Lot 1.02 as identified on the Tax Maps for the Township of Mine Hill for a term not to exceed three months upon receipt by Wharton Woods, LLC of insurance and indemnification approved by the County Risk Management, and subject to jersey barriers or equivalent being placed adjacent to the MCMUA's Scrub Oaks Mine Well. The number of barriers and the location of barriers are

to be to the satisfaction of MCMUA Staff, together with a restoration plan that would be acceptable to the MCMUA Staff and Engineer and negotiated at a later date.

MOTION: Mr. Druetzler made a Motion to accept the above Motion as stated by Mr. Carney and Mr. Barry seconded the Motion.

ROLL CALL: AYES: 5 NAYES: NONE ABSTENTIONS: NONE

There being no further business, Chairwoman Szwak asked the Board for a Motion to adjourn the meeting at 7:58 p.m.

MOTION: Mr. Druetzler made a Motion to adjourn the meeting at 7:58 p.m., seconded by Mr. Hudzik and carried unanimously.

ROLL CALL: AYES: 5 NAYES: NONE ABSTENTIONS: NONE

/mr

Marilyn Regner
Secretary