

JANUARY 15, 2009 SUPERVISORS' MEETING:

The Mount Joy Township Board of Supervisors met this date, as publicly advertised, at 7:30 p.m. in the meeting room of the Mount Joy Township Municipal Building, 902 Hoffman Home Road, Gettysburg, PA 17325 with Board Chairman James W. Waybright presiding. Others in attendance were: Supervisors William Chantelau, George Scott, Samuel Dayhoff, and Robert Rhodes; Solicitor Walton V. Davis; Treasurer Robin Crushong; and Secretary Brenda J. Constable.

Others in attendance were: News Reporters Aaron Young (*Gettysburg Times*), Wendy Beauchat, Bob Sharrah, and Phil Hileman representing Horizon Group, Inc.; Dave Updyke representing the Watchdog Group; John Gormont; Carol Holtz; Eileen T. Holmes; Audrey Weiland, Jerry Althoff, and Tom Dunchack representing the Planning Commission; Kim Birkhead; Roger Birkhead; and LynnAnne Sukeena.

Board Chairman Waybright led everyone with the Pledge to the Flag.
The Township recorded the meeting.

Minutes:

Mr. Scott moved, seconded by Mr. Rhodes, to approve the December 18, 2008 minutes as presented. Motion carried unanimously.

Mr. Chantelau moved, seconded by Mr. Scott, to approve the December 29, 2008 Special Meeting minutes as presented. Motion carried unanimously.

Mr. Chantelau moved, seconded by Mr. Scott, to approve the January 5, 2009 Reorganization Meeting minutes as presented. Motion carried unanimously.

Public Comment:

1. Carol Holtz: referencing last month's meeting minutes regarding Stop sign request on White Church Road. She asked for an explanation on this request. Mr. Dayhoff explained the various options for traffic calming.
2. Eileen Holmes: asked the Supervisors to use the microphone system during meetings. Asked how the ASA Advisory Committee is comprised. Mr. Dayhoff responded that the Supervisors appoint the members, who must be three active farmers, one government representative of the township that shall be the chair of the board, and one citizen. They are not paid. She asked who currently served on the Board and Mr. Dayhoff responded: Sam Dayhoff, Chairman; Craig Yingling and Dave Kehr, farmer representatives; and Lou Shuba, citizen representative. The vacancy occurred from the resignation of Jeff Cooke, farmer.

Announcements:

Ms. Constable announced the following:

- Partnership for Land Use Education January 27 – Affordable housing: where will we live?
- Rec Bd and Ag Land Preservation Board meeting every other month in 2009 on Tuesdays; Rec Bd at 7:00 p.m. and Ag Bd at 7:30 p.m.
- ASA Advisory Committee vacancy in farmer category; meets as needed; no term limits.
- Adams County Ag Land Preservation opening Round IX, information meetings at the County Agricultural & Natural Resource Center on January 26, January 28, and January 29. Application filing is February 2 – April 3, 2009.

Treasurer's Report:

Mr. Scott moved, seconded by Mr. Chantelau, to approve the monthly Treasurer's Report as presented. Motion carried unanimously.

Mr. Chantelau moved, seconded by Mr. Scott, to approve the monthly bills to be paid as presented. Motion carried with Mr. Dayhoff abstaining.

Subdivision/Land Development Plans:

Cooper, Timothy: re-approval of subdivision plan that was approved in August 2008. Mr. Cooper missed the recording deadline from the County Recorder of Deeds Office. Mr. Dayhoff moved, seconded by Mr. Scott, to re-approve the subdivision plan. Motion carried unanimously.

Road Report:

Mr. Scott moved, seconded by Mr. Chantelau, to approve the Road Report as presented. Motion carried unanimously.

Zoning Officer's Report:

Mr. Chantelau moved, seconded by Mr. Scott, to approve the monthly Zoning Officer's Report as presented. Motion carried unanimously.

Mr. Scott moved, seconded by Mr. Chantelau, to accept the Zoning Officer's 2008 Year End Report as presented. Motion carried unanimously.

Correspondence:

Ms. Constable noted receiving the following correspondence:

- Tax Collector's 2008 Settlement Report of Real Estate and Per Capita taxes
- County Planning notice of CDBG application for 2009
- Point-In-Time count on January 28, 2009, 8:00 a.m. – 8:00 p.m.

Committee Reports:

Personnel: On behalf of the Personnel Committee, Mr. Chantelau announced that the Committee has developed a policy statement with regard to employee birthday recognition and giving that day as a day off for the employee. The policy statement was distributed to the Supervisors for review and preparation for adoption at the February 19, 2009 meeting.

Finance: On behalf of the Finance Committee, Mr. Chantelau moved, seconded by Mr. Scott, to authorize the Treasurer to negotiate with Susquehanna Bank for a lower interest rate regarding the Ag Land Preservation Letter of Credit. Motion carried unanimously.

Planning, Land Use & Zoning: Mr. Rhodes noted this committee is working on three items; fire company reviewing plans, table of permitted uses, and Rock Creek Corridor application for grant money. Mr. Rhodes is to call PennDOT to see what the process is and get an indication as to when PennDOT plans to grant the grant.

Building & Grounds: Nothing to report.
Roads: Nothing to report.
Public Safety: Nothing to report.

Agricultural Land Preservation:

Mr. Dayhoff moved, seconded by Mr. Scott, to approve the monthly report as presented. Mr. Chantelau pointed out that with the last farm preserved, a total 962.294 acres have been preserved; approaching 1,000 acres. Motion carried unanimously.

With recommendation from the Ag Land Preservation Board, Mr. Dayhoff moved, seconded by Mr. Scott, to approve the opening of Round VI from April 7, 2009 through May 19, 2009. Mr. Chantelau cautioned that not all applications may be approved. Farms that are waiting from Round V that are not approved prior to the opening of Round VI, would need to reapply again. Mrs. Crushong, Coordinator, is to send those farms a reminder letter. Further discussion regarding re-applicants having to pay an application fee again. Fees were established to help cover the administrative costs in the ranking process. However, re-applicants would not have to go through the entire ranking process; they would keep their ranking score and just be re-ranked with the new applications so there would be minimal administrative costs involved with the re-applications. With no further discussion on the opening of Round VI, the motion carried unanimously.

Mr. Chantelau moved, seconded by Mr. Scott, to waive the \$150 application fees for farms that are on the previous rounds but were not reached because the Township did not have the funding at the time to reach them, and if they reapply and there are no changes to the application except to reapply, then the fee be waived. Discussion: Mr. Waybright asked if the program would need to be changed for this. Would have to ask Solicitor John White this question. Mr. Dayhoff moved, seconded by Mr. Chantelau, to table this issue until next month. Motion carried unanimously.

Recreation Board:

Mr. Scott moved, seconded by Mr. Chantelau, to approve the monthly Recreation Board report as presented. Motion carried unanimously.

Vacancy Appointment: Mr. Chantelau noted the Supervisors received two applications from interested citizens wishing to fill the vacancy on the Recreation Board. After interviews were conducted by the Personnel Committee and a member of the Recreation Board, and recommendation from the Personnel Committee, Mr. Chantelau moved, seconded by Mr. Scott, to appoint LynnAnne Sukeena to the Recreation Board for a five-year term through December 31, 2013. Discussion: Both candidates were good but LynnAnne has been a member of the Rec Study Committee and has more experience with the recreation program. Motion carried unanimously.

Noted that there is no meeting scheduled for February 13, 2009 as previously announced at the November 2008 meeting.

Other Business:

Horizon Group, Inc. Conditional Use Decision: Supervisors reviewed a draft decision prepared by Mr. Davis, Solicitor. A few edits/revisions were addressed. Mr. Davis read the proposed decision aloud, including the revisions. Mr. Dayhoff moved, seconded by Mr. Chantelau, to approve the decision as stated,

based on Mr. Davis's certification that all revisions will be included in the final written decision. It was noted that Horizon would have 30 days to appeal if they so desired. Supervisors thanked the Horizon Group and its representatives for patience in working through this issue over the last year. With no further discussion, the motion carried unanimously.

Horizon Group, Inc. – Proposed Text Amendment: Ms. Beauchat presented a proposed text amendment regarding steep slopes and building setbacks for consideration on a future agenda. Mr. Sharrah and Eric Mains will be getting together to review and discuss these proposed amendments. Supervisors recommended the Planning, Land Use & Zoning Committee to stay involved with this review by the Engineer, Solicitor, and Mr. Sharrah.

Floodplain Management Ordinance: Mr. Dayhoff moved, seconded by Mr. Chantelau, to adopt Ordinance No. 1 of 2009, Floodplain Management Ordinance. Motion carried unanimously.

ASA Hearing: Mr. Scott moved, seconded by Mr. Chantelau, to authorize the Secretary to advertise a ASA Hearing for February 19, 2009 at 7:15 p.m. to consider additions to the Mount Joy Township ASA for Randy & Stephanie Reiner on Schwartz Road, and Kenneth & Linda Hilbert on Baltimore Pike. Motion carried unanimously.

New Business:

Drug & Alcohol Administrator: Mr. Chantelau moved, seconded by Mr. Scott, to appoint Brenda Constable as the D&A Administrator. Discussion: Ms. Constable explained that this position coordinates the scheduling of random drug & alcohol testing for CDL drivers for the Township, as well as the administrative work associated with the testing. Motion carried with Mr. Dayhoff abstaining.

PennDOT Agreement: Mr. Dayhoff moved, seconded by Mr. Scott, to approve an Agreement with PennDOT authorizing electronic access to PennDOT systems for State Liquid Fuel reporting purposes. Motion carried unanimously.

Mr. Chantelau moved, seconded by Mr. Scott, to adopt Resolution #15 of 2009 authorizing the above-referenced PennDOT Agreement. Motion carried unanimously.

Delinquent Per Capita Taxes: Mr. Chantelau moved, seconded by Mr. Rhodes, to authorize the Secretary to send the collectable per capita tax list for 2008 to JP Harris, Associates, delinquent tax collection agency. Motion carried unanimously.

Records Retention/Destruction: Mr. Scott moved, seconded by Mr. Chantelau, to adopt Resolution #16 of 2009 authorizing the Retention and Destruction of Municipal Records as set forth in the Schedule For Records of Pennsylvania Municipalities, adopted by the Local Government Records Committee of Pennsylvania Historical and Museum Commission. Motion carried with Mr. Dayhoff abstaining.

Act 537 Workshop: Discussion to hold a workshop to discuss possible sewage management districts within the township, and include this as an ordinance to the Township's Act 537 Plan for submission to DEP. If approved by DEP, the Township would be eligible for reimbursement for about half the cost of the Comprehensive Plan. Supervisors instructed the Secretary to set up a workshop for sometime in February with the Sewage Enforcement Officer and the Township Engineer.

Continuing Law Suit – Stephen C. Alexander: Mr. Davis reported that Mr. Alexander, in one of his many filings, filed for a Zoning Hearing before the Mount Joy Township Zoning Hearing Board for some

amorphous challenge of the zoning ordinance, as he did many times before, only this time he did not send a zoning hearing application fee. This was back in July of 2008. The Mount Joy Township Zoning Ordinance is very clear and concise, if no fee is paid, the request will not be filed. The entire request was returned to Mr. Alexander with a letter stating that the Township cannot accept and file the application until a proper filing fee is made. Mr. Alexander appealed to the Court of Common Pleas, in which the Court sent the Township a Writ of Certiorari, to which the Township responded that there is nothing to send to the Court because nothing was filed because no fee was paid, which is what the ordinance requires. Judge George (County) addressed the appeal and responded that there was nothing to look at because there was no file because Mr. Alexander did not pay the fee, so the appeal is quashed. Mr. Alexander then filed an appeal with the Commonwealth Court. Commonwealth Court has asked Judge George to write an opinion as to why the appeal was quashed, in which he will respond.

In the meantime, it was suggested by the Zoning Hearing Board Solicitor that the Township might want to consider some type of procedure to be set up for *in forma pauperis*, or a poor person's petition, so that people like Mr. Alexander can file an application without having to pay for it. Mr. Davis responded to the Zoning Hearing Board Solicitor that he would raise this issue with the Supervisors. However, after his research, he found nothing in the PA Municipalities Planning Code that allows a local governing body to set up any type of procedure such as that. The Court of Common Pleas does have such a procedure so that if someone in Mr. Alexander's position had a legitimate claim, they could go to the court and petition the court to be given the right to proceed without filing the fee. If the court orders that, then the Township would have to respond. (It was noted that Mr. Alexander did file an *in forma pauperis* petition with the court on one of his other appeals and the court denied it, saying that he had an interest in the real estate in which he lives.) The issue here is there anything in the authorizing statutes that allows the Township to go through that procedure, and Mr. Davis does not think there is anything that authorizes it, nor does he think the Township has the capacity or the experience to do it. Mr. Davis responded to the Zoning Hearing Board Solicitor stating that the Township could not do this and if someone did not want to pay the fee for a zoning hearing, then they should go in front of the court first and plead their case there. If the court says yes, they should be allowed to hear their case without paying for it, then that's what would happen. Mr. Davis presented this to the Supervisors to see if this is the correct position that the Township wants to take, or if the Supervisors would prefer to look at suggestions for setting up some type of procedure for those not paying a fee.

The Supervisors concur that if the MPC does not allow this type of procedure, then the Township should not do it. Mr. Davis added that there is a general rule known as "Dillon's Rule", which states a local government such as a township, only has those powers that the legislature expressly gives to you or which by necessary implications from their expressions must exist. All Supervisors affirmed Mr. Davis' decision that he expressed to the Zoning Hearing Board Solicitor.

Adjournment:

With no further business to come before the Board, Mr. Waybright adjourned the Meeting at 8:50 p.m. this date.

Respectfully submitted,

Brenda J. Constable
Secretary