

# HEREFORD TOWNSHIP BOARD OF SUPERVISORS

June 7, 2022

Due to the COVID-19 Pandemic the regular meeting of the Hereford Township Board of Supervisors was held via Zoom and in person. Those present were Supervisors John Membrino, Keith Masemore, and Karla Dexter, Secretary/Treasurer Diane Hollenbach, Engineer Jennifer Van Dyke, Solicitor Eugene Orlando,

Guests: Larry Iampietro, John Aston, Maryjean Sell, Kathy & Jerry Bean, Bill Shea, Matt Ferdock, Carl & Joanne Denslow, Joe Brooke, Hilary & John Yanan, Joe & Greta Nock, Sandra and Stan Perambo, Bob Stockdale, Cliff Kerchner, Bill Weaver, Michael Chyu, Amanda Emrick, Tim & Gwen White, Brian Newman, Matt Moyer, Tom Ritter, James Itterly, Matt and Jenn Spangenberg, Caryl Pettijohn, James and Joann Mauser, Steve Keim, Barb & Gary Snyder, John Artim, John Yanan Jr., David Dunne, Cecilia Fresco, Deb Moyer, Nicole Moyer, Tom & Mary Malinaric, Greta & Frank Salmons, Sharee & Tim Kenna, Paul Grenewald, Joy Davies, Greg & Kim Goodge, Greg and Amy Daub, Micah Fisher, John Weller, Erik Clare, Carolyn Saracino, John & Dawn Conway, Keara, Sherry & Thomas Laessig, Albert Ciccarone, Susan Pireda, John Fisher

Zoom attendees: Tom O'Connor, Candace Perry

Mr. Membrino called the meeting to order at 7:30 PM and acknowledged the passing of former Zoning Hearing Board member Bill Haines.

## MINUTES

Mr. Membrino made a motion and Ms. Dexter seconded approving the May 7, 2022, regular meeting minutes. All were in favor. Motion passed.

## PAYMENT OF BILLS

Mr. Membrino made a motion and Mr. Masemore seconded to pay the bills and approve the Treasurer's bill list. All were in favor. Motion passed.

## PERSONAL APPEARANCES - None

## WORK CREW REPORT

Mr. Masemore reported the road crew has been paving Five Points Road and Schweitz Road in Rockland Township. The mowing contract began June 1<sup>st</sup> and they will be starting mowing next week.

## ENGINEER

**Young Subdivision** – The Young's own a forty-nine-acre parcel on Greenhouse Lane and Old Mill. They wish to subdivide off a ten-acre lot with a driveway on Greenhouse Lane. The plan does not show full development. They are asking that the fee in lieu of open space be used to upgrade the existing parks. Tom Ritter of Greenhouse Lane asked if there will be a culvert. Ms. VanDyke stated that drainage must be addressed, and the driveway must be compliant with the Township Ordinances.

Mr. Membrino made a motion and Ms. Dexter seconded to approve a waiver to Section 204-207 for the Bryon and Mary Young Subdivision to allow a combined preliminary/final plan approval. All were in favor. Motion passed.

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Mr. Membrino made a motion and Mr. Masemore seconded to approve a waiver to Section 302.1.j & k for the Bryon and Mary Young Subdivision related to existing features to only show those on the submitted plan. All were in favor. Motion passed.

Mr. Membrino made a motion and Ms. Dexter seconded to approve a waiver to Section 502.1 for the Bryon and Mary Young Subdivision to not require existing streets to be graded to the full ROW width. All were in favor. Motion passed.

Mr. Membrino made a motion and Mr. Masemore seconded to approve a waiver to Section 502.2 for the Bryon and Mary Young Subdivision to not require existing streets to be paved to the full cartway width. All were in favor. Motion passed.

Mr. Membrino made a motion and Ms. Dexter seconded to approve a waiver to Section 502.3 for the Bryon and Mary Young Subdivision to not require curbing along existing streets. All were in favor. Motion passed.

Mr. Membrino made a motion and Mr. Masemore seconded to approve a waiver to Section 502.4 for the Bryon and Mary Young Subdivision to not require sidewalks along existing streets. All were in favor. Motion passed.

Mr. Membrino made a motion and Ms. Dexter seconded to approve a waiver to Section 502.9 for the Bryon and Mary Young Subdivision to not require concrete monuments beyond those shown on the submitted plan. All were in favor. Motion passed.

Mr. Membrino made a motion and Mr. Masemore seconded to approve a waiver to Section 503.2 for the Bryon and Mary Young Subdivision to not require street trees to be planted. All were in favor. Motion passed.

Mr. Membrino made a motion and Ms. Dexter seconded to accept fee in lieu of dedication of open space with the funds to be used to improve the existing Township parks. All were in favor. Motion passed.

Mr. Membrino made a motion and Mr. Masemore seconded to accept the deferral of full stormwater design and layout of Lot 1 until the time of building permit application. All were in favor. Motion passed.

Mr. Membrino made a motion and Ms. Dexter seconded to grant conditional final plan approval to the Bryon and Mary Young Subdivision based on the applicant complying with the comments in the May 19, 2022, Technicon Enterprises Inc. II review letter which is incorporated by reference. All were in favor. Motion passed.

### **1904 Tollgate Land Development Plan Financial Security Release**

Mr. Membrino made a motion and Ms. Dexter seconded to release Financial Security in the amount of \$28,791.48 for 1904 Tollgate Land Development project upon the recommendation of the township engineer. All were in favor. Motion passed.

**Hollyberry Road Tree Removal Bid Package** - Ms. VanDyke reported that the bids for the removal of the trees on Hollyberry Road were advertised, and bids are due June 17, 2022.

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**Arborist Project** – Ms. VanDyke reported that the arborist work is still on hold while the work is reviewed. Mr. Membrino suggested that the arborist work on updating the sheets to remove the live trees, those with critical lean and trees outside the right-of-way.

Mr. Membrino made a motion and Ms. Dexter seconded to authorize the arborist to work with the township engineer on the required mapping to remove trees discussed at previous meetings. All were in favor. Motion passed.

### PUBLIC COMMENT

Matt Ferdock of Weaver Road asked the Supervisors to repeal the Dangerous Tree Ordinance because:

- The Township has all the rights necessary to maintain roadways free from falling trees and branches.
- The Township should be clearing downed trees, but the responsibility has fallen on the local fire companies. They should be compensated for this service.
- The ordinance is written in future tense and violates Pennsylvania law requiring ordinances be written in present tense.
- The ordinance is too broad and therefore unenforceable. There is no limit on where the trees can be marked (private property), no description of specific criteria.
- There are conflicting opinions as to which trees should be marked as hazardous. We have experts from PPL and Met Ed as well as other arborists who refute the markings.
- The ordinance fails to detail how the residents will be compensated for damages for destroying valuable trees on their properties.
- The cost to fell marked trees is prohibitive. The current estimate for seventeen properties is \$398,830. Estimating a cost for 1700 trees at a cost of \$500 to \$1000 a tree will cost residents up to \$1.7 million.
- Township has not provided direction on road closing, tree cutting and safety procedures.
- The Township has changed an act of God into a personal liability without regard for cost.
- Home values have been depreciated because of the tree's marks.
- The ordinance violates the residents' Constitutional rights against unreasonable seizure by Government.
- Tree owners need to be identified by land survey in some cases.

Mr. Ferdock asked the following questions:

- How will the disagreement be resolved between the Township arborist and the utility forester and other arborists?
- How will you deal with live and healthy trees that are marked?
- How will you deal with removing trees on private land?
- How do we go about getting the fire company paid for cleaning up fallen trees?
- Many feel that the Township should not hold the residents to a higher standard than the Township can maintain.

Mr. Membrino stated that the Township has not completed the mapping yet and doesn't know the number of trees, but it was stated in one of the first meetings that trees outside the right-of-way were taken off the list. Mr. Ferdock asked what future boards would do and stated that is one reason we need to deal with the ordinance now. Mr. Membrino felt that there was not a consensus among the Board to repeal the ordinance.

Maryjean Sell, former Township employee, asked the Board why they were not looking for grants. Ms. Sell stated she knew of several grants the Township had received in the past.

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Joy Davies of Seisholtzville Road asked the Supervisors to repeal the Dangerous Tree Ordinance and the residents will work with the Board. Ms. Davies was concerned about erosion from the removal of all the trees, who would replant trees to replace those removed, Hazmat and spill issues from the equipment needed to remove the trees, damage to other trees on the property, who will pay for tree removal, will cut trees be removed from the property and how will the infected trees be disposed of. Ms. Davies suggested residents paint a purple band around their trees to indicate “no trespassing.”

John Yanan of Sigmund Road questioned the Board on the District Township Ordinance, which was not adopted, and asked why the Supervisors or Solicitor did not mention the District Township ordinance when Mr. Yanan asked if there was a precedence in February. District Township opted out of passing the ordinance. Mr. Masemore stated that each township must do what they think is best for their residents. Mr. Orlando stated that precedence meant to him a township that had an ordinance in place to deal with the dead trees and he does not know of any.

David Dunne of Sigmund Road asked how many municipalities the solicitor had peddle the Dangerous Tree Ordinance to and how many times he had billed for the same thing. Mr. Dunne asked whose idea the ordinance was. Mr. Orlando stated that he had written the ordinance for Hereford Township and District Township.

Mr. Orlando made a brief presentation.

- The ordinance was written because of concerns brought forth by the Hollyberry Road residents at the June 2021 township meeting. Residents asked for help with fifteen to twenty dead ash trees. In July 2021, Mr. Pettijohn of Hollyberry Road reported at the meeting that a girl had almost been hit by a falling branch.
- There were seven to ten residents in attendance at the township meetings from June of 2021 through September of 2021 when the ordinance was being discussed and adopted.
- Section 2907a of the Second-Class Township Code, which allows the Supervisors to take action for the removal of dead and dangerous trees and place a lien on the property, has been in existence since 1933. Ninety-five percent of the language in that section of the Code is contained in of the Township ordinance.
- The public hearing was advertised in the Town and Country for adoption of the ordinance. After the ordinance was adopted and the arborist was hired, the Supervisors were surprised by the number of trees he found in need of removal.
- Citizens always have the right to attend and speak at a public meeting, but the Supervisors have the obligation to protect the health, safety, and welfare of all their citizens.
- Related several incidents where local people were killed or injured by falling ash tree limbs.
- Believed that everyone agreed the trees need to come down. The issue is the cost.
- Asked if a bond were issued to remove the trees, would this be fair to residents who had no trees to remove.

Ms. Dexter commented that an Act of God is a live tree falling but a dead tree falling is negligence of the property owner.

Mr. Dunne questioned why all Board votes were unanimous and asked if there was a meeting before the public meeting to decide how the Board would vote. Mr. Masemore stated that the Board members are given information packets to review before the meeting. Mr. Dunne also noted that District Township residents received a notice in the mail informing them of the draft ordinance discussion. Ms. Dexter added that the Board assumed that people in the Township read the Town and Country, which was where notice of the ordinance public hearing was published. Ms. Dexter would

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like to implement an email list so that notices could be sent to residents electronically.

Cliff Kerchner of Hollyberry Road commented that some people cannot afford computers.

John Yanan Jr. of Weaver Road had a quote to take down his trees from Beyond the Leaf for \$23,000. Many live trees were marked on his property. Mr. Yanan Jr. agreed that the ash trees are an issue and asked if the Township will help with costs if a tree falls and the property owner gets sued. He felt the ordinance was government overreach and was concerned about the impact in the future. Would he have this \$23,000 bill every year?

Hillary Yanan of Sigmund Road asked for the Dangerous Tree Ordinance to be repealed and work with the residents on a new ordinance that is enforceable and reasonable. Ms. Yanan pointed out that the ordinance was written in future tense and that thirty days was not enough time to take down the number of trees marked. Mr. Membrino commented that from the beginning the Supervisors understood that the residents would need a period of time. The Township has always worked with the property owners on property maintenance and sewage enforcement issues. The arborist has prioritized the trees and designated which trees require lift assist. Mr. Membrino suggested that property owners could come to the Board with a plan for tree removal based on the tree priority.

Tim White of Old Company Road was concerned that if all the trees were removed per the ordinance language that seventy-five feet on either side of Old Company and Gun Club Road would be without trees. This changes the attractiveness of the Township. Mr. White asked if the Forestry Ordinance would require a forester to file a plan if a resident had more than six to eight trees to remove and asked how the two ordinances mesh.

Greg Daub of Weaver Road asked how the Township can claim right-of-way when it is convenient but absolve themselves from responsibility when there is an expense.

Matt Spangenberg of Township Road does not receive the paper and did not know about the issue until his trees were marked. His estimate for removal is \$42,000. Mr. Spangenberg stated that they are responsible homeowners but stopped removing trees once they found out about the ordinance. He offered to help craft a new ordinance if this one was repealed. He felt that more cars and people are hurt by deer than falling trees. Mr. Spangenberg supported a bond concept and used the example of taxes supporting schools and people paid the school tax who did not have children in the schools. He asked that the Township consider removing the difficult trees for property owners. Mr. Membrino asked if there was a consensus townshipwide, not just the people in the room, for the Township to use tax money to pay for tree removal. When the bids for Hollyberry tree removal are opened, the Township will have a better idea of what this will cost but Mr. Membrino felt that the property owners would get a better price because the Township must pay prevailing wage which could cost twice as much. Ms. Dexter was concerned about inexperienced people taking trees down.

Joe Brooks of Crow Road asked why his tax dollars should be spent to remove the trees on Hollyberry Road when tax dollars won't go to taking trees down on his road. Mr. Membrino stated that the Township owns the right-of-way on Hollyberry.

Bill Weaver of Wetzal Road asked why the danger from the trees doesn't exist on the state roads. Mr. Membrino suggested that the State Senator be asked if the state was addressing the issue along state roads because the problem does exist on state roads.

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John Yanan of Sigmund Road had spoken with a Sullivan County Commissioner. She said that the County Commissioners and State Legislature will not get involved because the Supervisors run the township. Mr. Yanan asked that the Dangerous Tree Ordinance be repealed, and the Board start over. He has one hundred thirty people on an email chain he would be glad to share. Hilary Yanan added that half the Township is not aware of the ordinance because their trees haven't been marked yet.

Joe Nock of Church Hill Road asked that the Dangerous Tree Ordinance be put on hold for six months in order to work on it. Mr. Membrino stated that the ordinance has been on hold since March. Mr. Yanan repeated that request and suggested that the group have a real conversation with the Board to make suggestions like the Township budget twelve to twenty thousand dollars annually for the road crew to remove dead trees in the right of way. Or annually bid only twenty-five thousand dollars' worth of work to keep the project under prevailing wage.

A suggestion was made for homeowners to take down their trees and turn receipts in to the Township.

Caryl Pettijohn of Hollyberry Road explained that the Township owns the right-of-way on Hollyberry Road and the Township is subject to its own ordinance in regard to the trees. He cannot touch the trees he does not own. Mr. Pettijohn suggested the Township and residents present a united front to the County and State and ask for help.

Larry Iampietro of Five Points Road suggest working with the power company. Mr. Iampietro felt the arborist did a terrible job and more people would be hurt trying to take the trees down then be injured with trees hitting cars. The arborists are getting booked and a \$350 job now costs \$700.

David Dunne of Sigmund Road stated that people fear the penalty in the ordinance and are taking out loans and incurring hardship. The Township is putting a burden on people who can not afford to take their trees down.

Cliff Kerchner of Hollyberry Road stated that the Supervisors had been sold a bill of goods by the solicitor. The arborist was receiving instruction from the engineer. Mr. Kerchner suggested that the solicitor and engineer should be replaced. Mr. Membrino stated that the solicitor and engineer were two of the finest professionals he had worked with.

Renea Flexer of Weaver Road asked if the Second-Class Township Code allowed the Township to go beyond the right-of-way. She felt the ordinance could be interpreted differently and felt it could be interpreted so that the Township could lien her property if an X'd tree fell in the road that the Township had to clean up. Ms. Flexer asked that the ordinance be amended to include an appeal process and suggested looking for grants. Mr. Masemore stated that the lien provisions are common in ordinances and used the dilapidated building ordinance as an example. He stated that a resident has been looking for grants and there have not been any so far. Mr. Masemore added that Route 663 was shut down seven hours because of a downed tree. Roads are being closed once or twice a week and the fire companies are using a lot of man hours dealing with the trees. Mr. Masemore has spoken with several residents who have said they do not wish to pay for taking down other resident's trees.

Maryjean Sell commented that the Board had the ability to make changes to the ordinance and should not be putting it on the people to come up with changes.

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Bill Weaver asked what was to stop the Township from deciding that they no longer would mow the right-of-way and then fine people who did not maintain it. He felt this was the same thing as the tree removal. Mr. Membrino asked what the plan was if it wasn't to follow the ordinance and remove the dead trees. He did not feel it was prudent to do nothing and to let the trees fall.

The Board concluded public comment by saying that they have the arborist on hold and will look at whatever the public submits as proposed changes to the ordinance at the next meeting.

### **SEWAGE ENFORCEMENT OFFICER**

The Board reviewed a copy of the SEO report for May 2022.

### **BUILDING INSPECTOR and ZONING OFFICER REPORT**

The Board reviewed a copy of the Building Inspector's and Zoning Officer's report for May 2022.

### **SOLICITER**

**Reimbursement Resolution 13-2022** – Mr. Orlando stated Treasury Regulations allow that when a township expends money that may later be reimbursed with public funding, the township may reimburse itself for those prior expenses if a resolution has been adopted prior to the Township pursuing funding through a bond. The resolution must be adopted but does not obligate the Township to pursue the bond financing.

Mr. Membrino made a motion and Ms. Dexter seconded to adopt Resolution 13-2022 announcing the Township of Hereford's intention to seek reimbursement for expenditures incurred prior to the issuance of general obligation note regarding removal or assistance in removal of dead or diseased trees. All were in favor. Motion passed.

**Act 537 Plan Working Group** – Nothing new to report.

### **SECRETARIES REPORT**

Ms. Hollenbach provided the Board with a written report. Employees were paid using direct deposit. The Hollyberry Road bid was advertised and sent to fourteen companies. The traffic signal service contract expires in June and Signal Services was contacted for a new contract. Several Right to Know requests were responded to and the Act 205 pension actuarial study was filed online.

### **UNFINISHED BUSINESS**

Mr. Membrino made a motion and Ms. Dexter seconded to authorize the Solicitor to prepare a resolution to eliminate the stipend for the Planning Commissioners created by Resolution 2002-05. All were in favor. Motion passed.

### **NEW BUSINESS**

#### **Resolution 14-2022 Adopting a Memorandum of Understanding**

Mr. Membrino made a motion and Mr. Masemore seconded to adopt Resolution 14-2022 Memorandum of Understanding with the Berks County Conservation District. All were in favor. Motion passed.

#### **Richard Kohl 90-Day Probationary Period**

Mr. Membrino made a motion and Mr. Masemore seconded to end the 90-day probationary period for Richard Kohl effective May 17, 2022. All were in favor. Motion passed.

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**Berks Book Box** – The Board liked the idea of the Book Box being placed in a park by the Berks County Library System. The matter was referred to the Recreation Committee to review, and if in agreement with receiving a box, to determine which park to place the box in, Treichler Park or the Community Park.

**ADDITIONAL INFORMATION**

Mr. Masemore received a complaint from a resident regarding thistle on a property. Thistle is a noxious weed and he asked that residents please cut thistle before it goes to seed and spreads.

**Invitation to Resident Meeting** – Mr. Yanan invited the Supervisors to attend the next citizen meeting at the Gun Club on June 28<sup>th</sup>. Mr. Membrino explained that the Supervisors cannot meet and deliberate outside of an advertised meeting. Mr. Orlando suggested the group mark up the Dangerous Tree Ordinance and bring suggested changes back to the Supervisors.

**Candace Perry, Town and Country Newspaper** commented via Zoom that she had reported exactly what went on at the citizen’s meeting.

There being no further business, Mr. Membrino made a motion to adjourn at 9:40 PM. All were in favor. Motion passed.

Respectfully Submitted,

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Diane Hollenbach, Secretary/Treasurer