

# APPROVED

---

## FRANKLIN TOWNSHIP BOARD OF SUPERVISORS' MINUTES April 20, 2016

### **Call to Order:**

Mr. Auerbach called the meeting to order at 7:07 p.m. Present were Supervisors Dea, Schenk, Torres and Snyder. Also present were Township Solicitor Mark Thompson, Planning Commission Chairman Dave Hoffman, HARB & Historical Commission Chairman Paul Lagasse, Manager/Treasurer Joan McVaugh and Secretary Sharon Norris. There were 2 members of the public in attendance and a court reporter.

The meeting was commenced with the Pledge of Allegiance to the Flag.

**Public Comment:** There was no public comment at this time. Chairman Auerbach stated that public comment would be permitted during discussion of certain agenda items.

### **Approval of Minutes:**

- a. BOS Minutes of March 16, 2016: A motion to approve the March 16<sup>th</sup> minutes was withdrawn due to revisions suggested by Mrs. Dea. The Board will review the revised minutes at the May meeting.
- b. Disposition of Records – Resolution 2016-14: Mr. Auerbach moved, seconded by Mr. Torres, that the Board approve Resolution 2016-14 regarding the Disposition of Records for the Planning Commission Meeting of March 3, 2016. Motion passed 5-0.

### **Reports:**

- a. Treasurer's Report for March 2016: Mr. Auerbach moved, seconded by Mrs. Schenk, that the Board approve the March 2016 Treasurer's Report which includes the following disbursements: The General Fund with disbursements and transfers of \$167,843.92; the Park & Recreation Fund with disbursements of \$56,859.02; the Open Space Fund with disbursements of \$7,172.61; the Capital Reserve Fund with disbursements of \$6,204.64; the Emergency Services Fund with disbursements of \$34,943.99; and the Fire Hydrant Fund with disbursements of \$580.80, leaving a balance in all funds totaling \$581,565.38.

**Discussion:** Mr. Torres inquired about the balance in the real estate tax category in the General Fund. Manager McVaugh explained that since the end of March, the Township has received another disbursement of the real estate tax monies and the balance in that account is currently greater and more in line with last year.

Motion carried 5-0.

- b. Zoning Officer's Report March 2016: Mr. Auerbach reported that during the month of March, 4 new permits were issued and 36 various inspections were performed. Building/zoning fees collected were \$712.60; Recreation and Impact fees 0; and \$685.00 in miscellaneous fees were collected. There are 2 zoning issues.
- c. Planning Commission (PC) Report: Chairman Dave Hoffman reported on the April 7<sup>th</sup> meeting at which the PC discussed the draft ordinance on adding brewery as an accessory to agriculture. The revised ordinance will be discussed at the May PC meeting. Details of the April 7<sup>th</sup> discussion may be found in the approved minutes of that meeting.

## APPROVED

---

- d. HARB/HC Report: Chairman Paul Lagasse reported on the April 6<sup>th</sup> meeting of the Historical Commission (HC). The HARB did not meet in April. The HC discussed the Eastern Shore Natural Gas (ESNG) archeological surveying activity along the stretch of the pipeline south of Walker Rd. which will be occurring in 2017. Mr. Lagasse advised of two historical talks – May 12<sup>th</sup> at the New London Academy at 7 p.m. The New London and Franklin Historical Commissions are sponsoring a talk by historian Emily Kilby who will speak about the former residents of Fair Hill; and on May 19<sup>th</sup> the Kennett Township Historical Commission will present a talk by Catherine Quillman titled “Agricultural Roots: How We Grew What We Grew”. The HARB and the HC have submitted their annual reports to the Board and Mr. Lagasse offered to answer any related questions.

### **Old Business:**

- a. Public Hearing – Ordinance Adoption: The Board considered the adoption of the following ordinances as recommended by the Attorney General’s Office and the Township Planning Commission. All ordinances were duly advertised in the Daily Local Newspaper on April 6<sup>th</sup> and 13<sup>th</sup>, 2016:

1. Ordinance 2016-02: In accordance with the Municipalities Planning Code (MPC), Solicitor Thompson opened the Public Hearing regarding Ordinance 2016-02, an Ordinance amending the agricultural provisions of the Zoning and Subdivision and Land Development Ordinance, pursuant to a letter from the Attorney General dated August 17, 2015. The Solicitor named the following exhibits:

- Exhibit T1: Ordinance 2016-02;
- Exhibit T2: August 17, 2015 letter from Senior Deputy to the Attorney General (AG), Susan Bucknum to Mark P. Thompson, indicating the issues that the AG had with the original ordinance;
- Exhibit T3: March 3, 2016 letter from Susan Bucknum to Mark P. Thompson, indicating that the Ordinance being considered for adoption tonight is acceptable to the AG;
- Exhibit T4: Public Notice of the Ordinance;
- Exhibit T5: Proof of Publication;
- Exhibit T6: March 4, 2016 letter to the Chester County Planning Commission (CCPC) providing the Ordinance for their review;
- Exhibit T7: March 29, 2016 letter from the CCPC reviewing the Zoning Ordinance portion;
- Exhibit T8: March 29, 2016 letter from the CCPC reviewing the Subdivision and Land Development portion.

Prior to calling for comments from the Board and the public, Solicitor Thompson provided a summary of what was done to comply with the Deputy Attorney General’s mandate in her letter of August 17, 2015, the essence of which is that the Township cannot unduly restrict agricultural activities in the Township. He also answered a question from Pat Talwin, a Township resident, which was one of two questions raised by Mr. Talwin in his email of March 16, 2016. The question related to the use of the term “mushroom growing spent compost” which was used in the original version of the ordinance but does not exist in the version being considered for adoption, although the definition is referenced in section one. He explained that the inclusion of that reference was an oversight which will be corrected

## APPROVED

---

when the ordinance is codified, and it does not affect the Board's ability to enact the ordinance.

**Comments from the Board:** Hearing none, the Solicitor called for comments from the public.

**Comments from the Public:** Mr. Talwin, referencing his email of March 16th, requested an answer to his 2<sup>nd</sup> question regarding an amendment to the ordinance which allows consenting property owners to waive the requirement for a 100 ft. setback from the property line for the construction of a building. Mr. Talwin's concern involves the fact that Gourmet Mushroom's property crosses the property line between Franklin and London Grove Townships and they possibly could waive the setback requirement for themselves in both townships and place a building adjacent to, or straddling the property line between the two townships. Solicitor Thompson advised that this ordinance only applies to Franklin Township and if an applicant can obtain consent from an adjoining property owner they could put a building adjacent to the property line, but it could not straddle the property line. If the adjoining property owner doesn't agree to waive the 100 ft. setback requirement then the building must be at least 100 ft. from the adjoining property line. Mr. Snyder confirmed with the Solicitor that it is not possible for an applicant to build a structure that crosses the Township property line. Additional discussion with Mr. Talwin regarding what constitutes "Normal Agricultural Operations" established that even though mushroom composting activities do not have a direct connection to the land, they are still considered normal agricultural operations because they are a necessary part of growing mushrooms. Solicitor Thompson explained further that the ordinance makes the distinction between normal farming operations and commercial composting fertilizer mulch operations, where spent substrate is mixed with other materials and sold as mulch. He explained that this is not considered a farming operation and is allowed only in the "Special Use District" where it is regulated as a processing operation.

Hearing no further comments from the public, the Solicitor closed the Public Hearing and called for a motion to take action on the ordinance.

Chairman Auerbach reconvened the regular meeting and made the following motion:

The Board of Supervisors, based on the recommendation of the Planning Commission, moves to enact Ordinance 2016-02, amending Chapter 27 to add and delete definitions, to permit agriculture and buildings related to agriculture in the AR Zoning District, provide for building setbacks, permit a commercial compost, fertilizer or mulch operation in the Special Use District, delete Section 1506 governing Composting, add a new Section 1720 governing design standards for normal agriculture operations, repeal Part 26 governing mushroom substrate processing and amending Chapter 22, Subdivision and Land Development to add the definition of Normal Agricultural Operation and amend parts 6 and 7 to specify provisions applicable to normal agricultural operations. The motion was seconded by Mr. Snyder and passed 5-0.

2. *Ordinance 2016-03:* In accordance with the MPC, Solicitor Thomson opened a Public Hearing regarding Ordinance 2016-03, an Ordinance amending Chapter 27, Zoning, Part 15, General Standards, to add a new section 1515 governing the Keeping of Horses. The Solicitor named the following exhibits:

- Exhibit T1: The Ordinance;

## APPROVED

---

- Exhibit T2: Public Notice;
- Exhibit T3: Proof of Publication;
- Exhibit T4: Letter dated March 18, 2016 from Solicitor Thompson to the CCPC with the Ordinance;
- Exhibit T5: Letter from the CCPC dated March 29, 2016.

**Comments from the Board:** Mr. Auerbach stated that the purpose of the Ordinance is to make it easier for residents to have several horses on a smaller parcel. The previous ordinance was too restrictive.

**Comments from the Public:** There were no comments from the public.

Solicitor Thompson summarized the significant provisions of the Ordinance which allows residents to have two horses on three acres. Hearing no further comments from the Board or the public, the Solicitor closed the Public Hearing and asked for a motion to take action on the Ordinance.

Chairman Auerbach moved, seconded by Mrs. Schenk, that the Board of Supervisors based on the recommendation of the Planning Commission, enact Ordinance 2016-03, adding a new Section 1515 to Chapter 27, Zoning, governing the Keeping of Horses. Motion passed 5-0.

3. *Ordinance 2016-04:* In accordance with the MPC, Solicitor Thompson opened the Public Hearing regarding Ordinance 2016-04, an Ordinance permitting agriculture as a Use By Right in all Zoning Districts. The Solicitor named the following exhibits:

- Exhibit T1: The Ordinance;
- Exhibit T2: The Public Notice;
- Exhibit T3: Proof of Publication;
- Exhibit T4: March 18, 2016 letter to the CCPC with the Ordinance;
- Exhibit T5: March 29, 2016 letter from the CCPC;
- Exhibit T6: Minutes of the March 3, 2016 Planning Commission Meeting.

**Comments from the Board:** There were no comments from the Board.

**Comments from the Public:** Mr. Paul Lagasse, a resident and Chairman of the Historical Commission and the HARB, expressed his concern that permitting agriculture as a Use By Right in all zoning districts, including the Village District and the Traditional Neighborhood Development District (TND), may have unintended consequences in the future. He believes agriculture is fundamentally incompatible with these two districts – the Village District based on small lot size, and the TND because it's designed to encourage the "urban rural life" that currently exists in the Township. He categorized the Township as a rural bedroom community rather than an agricultural community. He would support permitting agriculture as a conditional use which may allow the Township to have more control. Mr. Auerbach explained that the TND was a failed project. The developer sold his development rights and the entire property has now been eased for agriculture. Two of the three existing parcels have been sold and are in agriculture and the third remains for sale. He noted that, since the property is eased for agriculture only, it seems appropriate that the Township revise its zoning to permit agriculture in the TND District. Regarding "unintended consequences", Mr. Auerbach admitted that unintended consequences are a possibility in all zoning ordinances. He cited the issue with North Creek Nursery's expansion project which was negatively impacted by the fact that a portion of their property in Chesterville was zoned Village which precluded them from expanding their agricultural operation without a zoning variance. Mr.

## APPROVED

---

Lagasse continued to press his position, making the point that, in theory, making agriculture a Use By Right in all districts could affect the way all properties in the Township are developed agriculturally. Supervisor Torres expressed concern that the Township is making a blanket change when the issue is only with the parcels in the TND. Supervisor Schenk categorized the Township as an agricultural community and noted that agriculture is already a use by right in all zoning districts except the Village and TND and is already being practiced throughout the Township. In addition, the Township has already had an issue with not having agriculture as a permitted use in the Village District and the potential for a TND in the Township is minimal. Dr. Hoffman, Chairman of the Planning Commission, asked the Solicitor if the AG easement trumps the TND zoning, even though the easement came after the zoning. Solicitor Thompson stated that the fact that the property has always been in agriculture, an applicant would have the right to continue to maintain an agricultural use, and considering it's a non-conforming use, the Township doesn't have the ability to regulate it. At least making it a conforming use gives the Township a limited ability to regulate the AG activities.

Solicitor Thompson closed the Public Hearing and reconvened the public meeting to consider action on the ordinance.

Chairman Auerbach moved, seconded by Mr. Snyder, that the Board of Supervisors based on the recommendation of the Planning Commission, enact Ordinance 2016-04, amending Chapter 27, Zoning, Sections 802 (Village), 904 (TND) and 1102 (Light Industrial) to allow Agriculture as a Use By Right. Motion passed 4-1, with Mr. Torres voting Nay.

4. *Ordinance 2016-05*: In accordance with the MPC, Solicitor Thompson opened the Public Hearing regarding Ordinance 2016-05, an Ordinance amending Zoning Chapter 27, to add, amend and delete definitions to Part 2, Section 27-202 related to Definitions. The Solicitor named the following exhibits:

- Exhibit T1: The Ordinance;
- Exhibit T2: Public Notice;
- Exhibit T3: Proof of Publication;
- Exhibit T4: March 18, 2016 letter to the CCPC, with the Ordinance;
- Exhibit T5: March 29, 2016 letter from the CCPC commenting on the Ordinance;
- Exhibit T6: Minutes of the March 3, 2016 Planning Commission Meeting.

**Comments from the Board:** There were no comments from the Board.

**Comments from the Public:** Mr. Pat Talwin asked about the definitions. Mr. Auerbach explained that this Ordinance clarifies Ordinance 2016-03. Township Mgr. McVaugh read the list of definitions covered by this Ordinance.

Solicitor Thompson closed the Public Hearing and reconvened the public meeting to consider action on the ordinance.

Mr. Auerbach moved, seconded by Mr. Snyder, that the Board of Supervisors, based on the recommendation of the Planning Commission, enact Ordinance 2016-05 – Amending Chapter 27, Zoning, to add, amend, and delete definitions to Part 2, Section 27-202. The motion passed 5-0.

## APPROVED

---

- b. Resolution 2016-13 – FEMA Reimbursement: This Resolution allows the Township Manager to process the necessary paperwork to secure reimbursement funding from PEMA/FEMA for snow removal from Winter Storm Jonas. The Township will recover approximately 75% of the costs generated during a 48 hour period on January 22-24, 2016. The reimbursement is expected to be approximately \$50,000. Mr. Auerbach moved, seconded by Mr. Torres, that the Board of Supervisors, adopt Resolution 2016-13, designating Township Manager, Joan McVaugh, as Agent to process the necessary paperwork to secure reimbursement funding from FEMA for Winter Storm Jonas. This Resolution was adopted on April 6, 2016 as the Manager had a reimbursement workshop scheduled prior to this meeting. Motion carried 5-0.
- c. Resolution 2016-15 – Hazard Mitigation: Mr. Auerbach moved, seconded by Mr. Snyder, that the Board of Supervisors adopt Resolution 2016-15, adopting the updated Multijurisdictional Hazard Mitigation Plan for Chester County.
- Discussion:** Township Secretary Sharon Norris explained that the Township's Emergency Management Coordinator, Harold Walls, advised that the County updates their Hazard Mitigation Plan every two years and all of the townships in Chester County are required to formally adopt it. The motion passed 5-0.

### New Business:

- a. Great American Clean-up: Mr. Auerbach moved, seconded by Mrs. Schenk, that the Board of Supervisors support the Great American Cleanup of Pennsylvania by hosting a Great American Cleanup of Franklin Township on Saturday, April 23, 2016 from 8 a.m. until noon with a raindate of Sunday, April 24<sup>th</sup>.
- Discussion:** Mr. Auerbach stated that all necessary supplies are provided, including small flags that can be used to mark large objects for later pickup. Filled trash bags can be returned to the Township to be taken to the dump. Participating residents sign a waiver of liability. Motion passed 5-0.
- b. White Clay Wild & Scenic and Neighboring Township Collaboration re: MS4 Discussion: This was an initial discussion regarding the potential of a matching grant in the amount of \$100,000 from the National Fish and Wildlife Fund to assist with the Township's MS4 requirements. The townships in the Christiana Watershed are seeking permission from DEP to collaborate and develop one plan for all interested townships. Ms. Shane Morgan of the White Clay Wild and Scenic organization is planning to come to the May BOS meeting to discuss the details of the grant. As information becomes available it will be sent to the supervisors.
- c. Renovations to Township Office Building: The Board discussed the plans for renovating the Township office. The work will be done sequentially, as the budget allows. The primary goals are to be able to have a dedicated meeting room and to have a designated enclosed office for the Township Manager. The preliminary plans include redoing the restroom in the meeting room to make it ADA compliant and moving the Township Manager into the office behind the secretary's area. The back room storage area will be renovated to include two small offices, one for the Assistant Township Mgr. and one for the Zoning Officer, along with an area for the filing cabinets that are currently in the meeting room. There will also be an area for storing all the subdivision files and boxes of supplies. Mr. Auerbach is moving forward developing the plans for the renovations so that cost estimates can be obtained.

### Extensions:

## APPROVED

---

**Abel Subdivision:** Mr. Auerbach moved, seconded by Mr. Torres, that the Board accept the extension of time to the review clock for the Abel Subdivision Plan, to September 22, 2016.

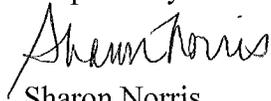
**Discussion:** Mr. Auerbach explained that Mr. Abel has a subdivision plan with the Township for his property but isn't ready to implement it. He has a significant amount of money invested in the project which he would lose if the Township refused to grant him an extension. Mr. Auerbach does not see a downside to continuing to extend the review clock.

Motion passed 5-0.

**Public Comment:** Mr. Lagasse had questions regarding the Winery/Brewery Accessory to Agriculture Ordinance, specifically in the section governing Special Events. This Ordinance will be discussed at the May 5<sup>th</sup> Planning Commission meeting.

**Adjourn:** The meeting was adjourned at 9.19 p.m.

Respectfully submitted,



Sharon Norris  
Township Secretary

BOS Mtg. 04.20.16.v.3.ER