

The Regular Monthly Meeting for the Moore Township Board of Supervisors (BOS) was called to order on Thursday, September 9, 2021 by Chairman Daniel Piorkowski at 6:00 PM. The meeting was conducted at the Klecknersville Rangers Volunteer Fire Company fire hall. Members present were Chairman Daniel Piorkowski, Vice Chairman David Shaffer, Supervisor Richard Gable, Township Manager Nicholas Steiner, Township Solicitor David Backenstoe, and Township Engineer Kevin Horvath from Keystone Consulting Engineers (KCE).

### **SUB-DIVISIONS AND LAND DEVELOPMENT**

Mr. Brian Wilhop representing Aqua Pennsylvania is seeking approval for land development plans with respect to the Evanwood and Christian Springs projects. These projects are designed to enhance water treatment. They obtained a variance for the Evanwood project, and for Christian Springs they have conditional approval. The Chief Engineer, Patrick Boggs, for GHD said Aqua Pennsylvania services water to approximately fifty homes, and they want to do improvements to the filtration of the water. They received a zoning variance for Evanwood which is a relatively small site. The Christian Springs site did not require any variances, but they did work with the Zoning Officer, Township Engineer, and Planning Commission (PC) to get conditional approval. They're seeking final approval from the BOS with conditions. Attorney Backenstoe said the PC thoroughly reviewed the plans and are here for BOS approval as a conditional approval. They have a conditional approval document ready, and the applicant has agreed to conditions. Mr. Horvath said there is a KCE review letter for each project dated June 21 containing minor comments mostly related to drafting and clarifications. These are typical items and gives no reason to recommend denial of the plans.

#### **#21-07 Aqua PA-Evanwood Land Development**

Mr. Horvath read the conditions of the Evanwood plan to comply with technical comments of Keystone review letter dated June 21, submit to the Township two mylar six paper prints with the plan to be recorded with original signatures, plan will be recorded once all conditions satisfied and fees paid. As agreed to by the applicant tonight following conversations with Attorney Backenstoe, he's adding a third condition that reads applicant is to provide bond in amount acceptable to the Township Engineer to cover potential damage to roads by construction vehicles. Attorney Backenstoe said that has never been a problem, but the Public Works Director, Mr. Craig Hoffman, mentioned it. Attorney Backenstoe spoke with applicant counsel and engineer who agreed to that additional condition. He asked if the conditions were acceptable to the applicant, and the applicant said yes.

**Mr. Shaffer made a motion to grant conditional approval for #21-07 Aqua PA-Evanwood Land Development Plan with conditions set forth in Keystone review letter dated June 21, 2021 in addition to the remarks from Mr. Horvath about bonding the road**

**Mr. Gable seconded the motion**

**Public comment**

None

**Motion carried with all Supervisors present voting aye**

#### **#21-08 Aqua PA-Christian Springs Land Development**

Mr. Horvath said the conditions are identical to the Evanwood plan.

**Mr. Gable made a motion to grant conditional approval for #21-08 Aqua PA-Christian Springs Land Development Plan with conditions set forth in Keystone review letter dated June 21, 2021 in addition to the remarks from Mr. Horvath about bonding the road**

**Mr. Shaffer seconded the motion**

**Public comment**

None

**Motion carried with all Supervisors present voting aye**

#### **WAIVERS & DEFERALS**

#### **REGULAR BUSINESS**

#### **MINUTES**

**Mr. Shaffer made a motion to approve the minutes from August 4, 2021**

**Mr. Gable seconded the motion**

**Public comment**

None

**Motion carried with all Supervisors present voting aye**

#### **FINANCIAL REPORT**

**Mr. Gable made a motion to approve the Financial Report**

**Mr. Shaffer seconded the motion**

**Public comment**

None

**Motion carried with all Supervisors present voting aye**

#### **PAYMENT OF THE BILLS**

**Mr. Shaffer made a motion to pay the bills**

Mr. Steiner noted bills for the month from General Checking are \$129,711.96. The Liquid Fuels bills are \$49,337.81.

**Mr. Gable seconded the motion**

**Public comment**

None

**Motion carried with all Supervisors present voting aye**

#### **APPROVE PAYROLL**

**Mr. Gable made a motion to approve the payroll**

**Mr. Shaffer seconded the motion**

**Public comment**

None

**Motion carried with all Supervisors present voting aye**

#### **POLICE DEPARTMENT**

Officer Thomas Roberts read the report for the month of August 2021.

#### **FIRE & AMBULANCE**

Mr. Jason Harhart read the most recent month's fire and ambulance report.

#### **PUBLIC WORKS DEPARTMENT**

Mr. Hoffman said the department completed the W. Dell Road project. They patched a couple other roads including Beacon, Dannersville, E. Best, and Copella. Moving forward, they will be replacing

failing pipes. Mr. Gable said there were pictures of the new W. Dell Road on social media with many positive comments about how good it looks, and he also thinks it looks good.

#### **FIRST REGIONAL COMPOST AUTHORITY (FRCA)**

Mr. Gable said everything is up and running. They have an interim director. They're grinding, hauling, and have a lot of mulch to get rid of. Compost will be in short supply until spring, but if anybody needs mulch there should be plenty at the Township building.

#### **NAZARETH COUNCIL OF GOVERNMENTS (COG)**

No meeting.

#### **RECREATION COMMISSION**

Mr. Mike Tirrell said they're still finalizing the volleyball court design and should have it to Mr. Steiner this week.

#### **MTAA Add Scoreboard to Gestl Field**

MTAA would like permission to put up another scoreboard on the backside of the McCandless scoreboard facing Gestl. MTAA will pay for it, but they wanted to get the Board's approval to put it up. Mr. Piorkowski asked if the two scoreboards would be back to back. Mr. Tirrell confirmed it'll be on the same set of poles.

**Mr. Shaffer made a motion to add to the agenda the discussion for MTAA to add a scoreboard for Gestl Field**

**Mr. Gable seconded the motion**

#### **Public comment**

Mr. Piorkowski explained a new state law passed that if an item is not on the agenda and the Board would like to discuss it, they need to make a motion to add it to the agenda. Mr. Steiner explained when they need to make a motion or take action on an issue, it needs to be added to the agenda before taking action.

**Motion carried with all Supervisors present voting aye**

**Mr. Shaffer made a motion to approve MTAA to put up the scoreboard at Gestl Field**

**Mr. Gable seconded the motion**

#### **Public comment**

None

**Motion carried with all Supervisors present voting aye**

#### **HISTORICAL COMMISSION**

Mr. Gable said the Edelman School is looking very good. Mr. Bob Fedio has been doing a lot of work on the bricks outside. The windows and sills are now being installed. A used door was donated by Kratzers. The commission is having Oktoberfest at the Klecknersville Rangers fire hall on October 14. Tickets are \$18 a piece, \$35 for two. They're having pork roast, bratwurst, sauerkraut, schnitzel, mashed potatoes, beer, and German chocolate cake. If anyone is interested, contact him or any of the Historical Commission members.

#### **LAND & ENVIRONMENTAL PROTECTION BOARD (LEPB)**

Mr. Bob Romano said the Land Preservation Open House is this Monday, September 13 at 7pm at the Moore Township Recreation Center pavilion. They'll have a representative from the Wildlands Conservancy who will do a presentation and answer questions. Anybody interested in learning about land preservation is welcome. In addition, he visited Schiavone Park and commented on how Mr. Biery, Mr.

Clawson, and Mr. Hoffman are doing a great job. The pond treatments must be working because they are clearing up.

### **COMMUNITY DAYS COMMITTEE**

Mr. Piorkowski thinks the committee did a good job this year, and the weather cooperated for the most part. He thanked the committee for the event.

### **New Member**

Mr. Tirrell asked the Board to officially approve Mr. Josh Cesanek as a member of the Community Days Committee.

### **Mr. Shaffer made a motion to appoint Josh Cesanek to the Community Days Committee**

### **Mr. Gable seconded the motion**

### **Public comment**

None

### **Motion carried with all Supervisors present voting aye**

Mr. Tirrell said there is a concert tomorrow at the park featuring Steel Creek. Movie night is September 24 showing Secret Life of Pets 2.

### **ZONING AND BUILDING OFFICER**

Mr. Harhart submitted his report for the month of August. He attended the tax exemption hearing for Schiavone Park at Northampton County courthouse. Both parcels are now tax exempt.

### **TOWNSHIP ENGINEER**

#### **Schiavone Farm Sediment Erosion Project**

Mr. Horvath said the contract was awarded to Semmel Excavating last meeting. The pre-construction meeting is next Tuesday, September 14. They haven't received confirmation but expect construction to start the next week or two before the end of September.

### **TOWNSHIP SOLICITOR**

#### **Trapper Road**

Several weeks or months ago, the Supervisors asked Attorney Backenstoe to draft an ordinance to vacate Trapper Road also known as Township Road 570 (TR 570). Trapper Road is about a half mile but was never laid out, maintained, or opened. There was some intermittent snow removal. In the field, they can't identify the road and don't know where it is or have ever known where it is. It is ordained and on the map, but it is very unclear. The Township tried to tackle this issue in 1981 entering into a general agreement with the two contiguous property owners who at the time were Chester and Dorothy Clauser and Russel Becker. The nature of the agreement of June 2, 1981 was that everybody agreed nobody could identify where the road was and the nature of this simple agreement would be to attach a map identifying where the road was. The map was a tax map with a hand drawn dotted line indicating where the road is. It's not clear in the field, and his understanding is the Township doesn't know where it is. The Township does receive Liquid Fuels Tax money but aren't really able to use it for the road because it isn't a road. It's partially stoned and grass. There may be contiguous property owners who have an interest in it, but he doesn't believe, based on what he found, that there's any prejudice to any property if they vacate the road. Once a road is ordained, it is technically on the road map. When it is vacated, the Township gives it up and gives up the public interest in the road. It doesn't mean the private rights are vacated. If someone is using that road privately, they can continue to use the road. However, ultimately when a road is vacated, by operation of law the center of the road east is given to the eastern property owner and from

center road west is given to the western property owner. He created a draft ordinance. It states the Township never formally laid it out or opened it. The Township historically hasn't been able to identify an exact location. They never improved or maintained except for an occasional snow plow. There was an agreement in 1981 which specifically says it was for convenience of contiguous property owners to use it. The Township does have a right under the Second Class Township Code to vacate a road. If this ordinance and concept is acceptable, he will tighten up the language and they can authorize him to advertise for a hearing at the next meeting. It is a formal hearing and must give the contiguous property owners ten day written notice. They have a right to be here and have a right to contest. They can tell the Board why they don't want it vacated, why it's important, and maybe they have a compelling reason. On the other hand, the Board still has a right to vacate it as it's a Township responsibility. If the Board feels it's in the best interest of the Township to vacate it because it's no longer a viable road and the Township doesn't want to spend money on it, they have a right to vacate it. Somebody who comes, appears, and reports evidence to the contrary has a right to appeal to the Court of Common Pleas.

**Mr. Piorkowski made a motion to move forward with the process to vacate Trapper Road**

**Mr. Gable seconded the motion**

**Public comment**

Mr. Jeffrey Ayers asked confirmation they are receiving Liquid Fuels for this road. Attorney Backenstoe said yes. Mr. Ayers asked if they're obligated as the Township to maintain it if they're collecting Liquid Fuels. Attorney Backenstoe said they use Liquid Fuels as a tax at large. They get Liquid Fuels based on the square miles so it's not a per capita dollar for dollar offset, but the answer is yes. That's part of the reason he thinks the Township thinks it's appropriate to vacate. Mr. Ayers said if they're not spending money on the road, they might as well vacate it in good conscience. Attorney Backenstoe thinks that's the intent of the Board.

**Motion carried with all Supervisors present voting aye**

**W. Dell Road Ordinance**

Attorney Backenstoe said the W. Dell Road ordinance prohibits truck traffic except for emergency vehicles, school buses, and local deliveries from accessing or in any way passing on W. Dell Road also known as Township Road 614 (TR 614) between Copella Road (TR 612) and Moorestown Drive, State Road 512 (SR 512). The Board requested Mr. Horvath prepare a traffic study to determine whether or not it would be appropriate to limit and restrict truck access on the road. The study was done, dated July 2, and provide to the Board who then asked Attorney Backenstoe to prepare an ordinance instituting the prohibition from commercial trucks on that section of road. It shall be unlawful for a person driving a vehicle other than a passenger car on W. Dell Road between Copella Road and Moorestown Drive. Nothing in this ordinance shall prohibit any person from driving an emergency vehicle or school bus on W. Dell Road, or from driving a truck or commercial vehicle from making local deliveries for pickups to a premise along W. Dell Road. The ordinance also indicates appropriate traffic devices, and any persons found guilty of violating this will be cited under the Motor Vehicle Code. He cites in the ordinance it is pursuant to KCE's review letter.

**Mr. Shaffer made a motion to advertise the ordinance restricting trucks on W. Dell Road**

**Mr. Gable seconded the motion**

**Public comment**

None

**Motion carried with all Supervisors present voting aye**

## **Klecknersville Substation**

Met-Ed contacted the Township through Mr. Steiner and Mr. Harhart a few months ago indicating they purchased property off Point Phillips Road at the intersection of Williams Road and intend to construct a substation. The Township has not received any paperwork, and they may not receive paperwork. The Met-Ed project is regulated by the Public Utility Commission (PUC). Under Pennsylvania law, when something is regulated by the PUC, the Township is preempted from enacting or enforcing any laws which effect the implementation of the project set forth by the PUC. He read the applicable provision within an email Mr. Harhart received. The proposed substation will be located in Moore Township, Northampton County near the southeast intersection of Point Phillips Road and Williams Road. Met-Ed customers in the municipality of Moore Township, Nazareth, Bath, are expected to be supported by the project. Met-Ed purchased an agricultural parcel to construct a new 235.5 kilowatt substation to support the distribution of electricity to Med-Ed customers in the area. They provided a memorandum of law indicating they don't think the Township has any authority to impose its zoning and/or subdivision regulations. Attorney Backenstoe agreed. He prepared a memorandum of law to the Board indicating generally municipalities have no ability to regulate public utilities. The Public Utility Code provides without question that the Commonwealth committed regulation of public utilities to the PUC. The courts determined if local townships were to interfere or regulate public utilities, they would do so without looking at greater picture. There is one exception. In section 619 of the MPC, if a public utility were to erect a building, and the PUC entity did not receive a certificate of convenience from the PUC, they would have to do that and request a hearing. Attorney Backenstoe wrote a letter to Met-Ed and indicated they are pre-empted from regulating PUCs. However, if there is going to be a building, they want to see the certificate of convenience and have a public hearing. He received no response other than please forward any further documents to their lawyer. He assumes they sent this to their lawyer. The Township didn't hear anything since that time from Met-Ed, but they did receive a letter dated May 17 from Northampton County Conservation District to Met-Ed indicating there were technical deficiencies in their submission. Mr. Horvath requested and received plans from the conservation district. The Township received a letter August 26, 2021 indicating the conservation district approved the NPDES permit for the project. At this point they haven't seen anything to determine whether or not there is a building. In the Northampton Conservation District letter, the Township does have a right to appeal the conservation district's decision until September 25. He asked if this is a big deal noting there is a substation elsewhere in the Township, and they serve a purpose to provide electricity to the community. Furthermore, he doesn't know whether or not their proposed plan has any impervious cover issues. He asked the Board to consider giving Mr. Horvath authorization to look into the plan and provide any recommendations he might think appropriate, review it against the conservation district reason for issuing the NPDES permit, and tell the Board whether or not there is an issue to appeal. Again, if they want to appeal, they must do it within 30 days of receipt of the letter which is about September 25. If then they hold an informal hearing and the Board is not satisfied with the result, they have the right to appeal to the Pennsylvania Environmental Hearing Board. Attorney Backenstoe noted he look at this with Mr. Harhart, and the Township does allow utility substations in the AR district where this is located. If it were a private entity, they do allow for substations in this district as a special exception. Mr. Piorkowski asked confirmation they don't know what it will look like. Attorney Backenstoe said they got a site development plan which Mr. Horvath has. They don't know exactly what it will look like. The land is bifurcated by a very extensive easement. They intend to instruct in the northeastern corner. They have some drainage run off. Other than that, they don't have serious plans. Mr. Shaffer asked Mr. Horvath if he has experience in other municipalities with substations and assumes the conservation district approves their plans after thorough review. Mr. Horvath said the conservation district review was for purposes of issuing a NPDES permit. This is a permit that regulates runoff from construction sites, essentially erosion and sediment pollution control, as well as post construction storm water management. Those are the only things reviewed by the conservation district and/or Department of Environmental Protection (DEP). Met-Ed is

proposing a vegetated channel to direct run off to a detention basin near the intersection of Williams Rd and Point Phillips Rd. It is a large, enclosed fenced area as many will see in other substations with a large gravel surfaced fenced area occupying a third of the ten-acre lot with a driveway extending north to Williams Rd and a detention basin in the upper northwestern corner of the lot. The conservation district didn't review anything pertaining to zoning or SALDO. He's had projects reviewed by the conservation district and DEP before, and they're very thorough in reviewing those particular areas. Attorney Backenstoe said they're pre-empted from regulating through zoning and SALDO, but that doesn't mean Mr. Horvath can't call their engineer to find out what's going on with the project. If they do find out they're going to have a building, they do have a right to request to the PUC a hearing in Harrisburg. Mr. Jeff Ayers asked confirmation it only takes up a third of the ten-acre property. Mr. Horvath said roughly, yes. Mr. Ayers asked if it's centered on the property and what's going to happen to the other acreage. If they let trees grow, people may not see it anyway. If it isn't centered, that might be our only recommendation. Attorney Backenstoe said it definitely isn't centered with Mr. Horvath noting there is a high-tension tower and overhead utility line easement that runs over the property. Attorney Backenstoe said this is the reason they're only allowed to build in the one corner. Mr. Shaffer asked if they can require buffering for substations. Attorney Backenstoe said they do not have a right to impose township SALDO regulations. However, if they were to put up a building, they could request a hearing with the PUC and request buffering at that point.

**Mr. Gable made a motion to have Keystone look into the Met-Ed substation project and speak to their engineer**

**Mr. Shaffer seconded the motion**

**Public comment**

None

**Motion carried with all Supervisors present voting aye**

## **TOWNSHIP MANAGER**

### **2022 PMRS Uniform and Non-Uniform MMOs**

Mr. Steiner provided the pension MMO worksheets to determine the pension obligation for the following year. Next year's non-uniform obligation is \$75,200. This would keep pension contributions at \$3 per hour up to 40 hours a week for employees. This has been the same amount since 2016. The police pension obligation will be \$211,434. Typically, the Township receives assistance from the state for pensions and puts it toward the police obligation.

### **Interest Transfer from Disaster Account to ARP Fund**

Mr. Steiner transferred the ARPA funds from the Disaster account to the ARP Fund. Unfortunately, it took some time to set up the ARP Fund, so interest accrued in the Disaster Account. He asked they make a motion to transfer any remaining interest into the ARP Fund. Interest from that fund can be spent on anything and is not restricted to the items listed in the legislation.

**Mr. Shaffer made a motion to transfer any remaining interest from the Disaster Account into the ARP Fund**

**Mr. Gable seconded the motion**

**Public comment**

None

**Motion carried with all Supervisors present voting aye**

## **Website Update – ARP Fund**

Mr. Steiner said ARPA funds can be used to update the website. Their website is outdated and doesn't support smartphone or tablet operating system browsers. He is looking for a motion to upgrade the website using the ARPA funds. They received a quote from NA Studios, who manages the website, in the amount of \$4,540.

**Mr. Gable made a motion to use the ARPA funds to upgrade the website at a cost not to exceed \$5,000**

**Mr. Shaffer seconded the motion**

**Public comment**

None

**Motion carried with all Supervisors present voting aye**

## **RESOLUTIONS & ORDINANCES**

### **Ordinance 2021-04 Warehouse Amendment**

Attorney Backenstoe said this is the ordinance they've been working on with community members regarding warehouses. Warehouses have been permitted by right since 1973 in the industrial district. The section was amended in 1980 again allowing warehouses as a permitted use in that district. In 2019, this Board effectuated a comprehensive warehouse ordinance which provides a significant regulation for warehouse but nonetheless still permitted them as a by right use. With the proliferation of warehouses throughout the Lehigh Valley, the Township felt it was important to again review its ordinance and update it. They spoke with and reviewed the matter with an engineer in the area who had a lot of experiences with warehouses. They also had a citizens group headed by Matt Flower. They gave a letter dated July 7th which had some really good ideas for an updated ordinance. Pursuant to that, Attorney Backenstoe started drafting a revised and amended warehouse ordinance. After drafting the amendment, he reviewed it with Mr. Horvath. They rephrased and clarified language, and they made sure traffic and facility issues could be addressed as well as possible. Mr. Horvath provided a lot of very significant and important input. Once the draft was done, it went through the PC, and they did a full reading. The PC recommended the Board adopt the ordinance. And at the next meeting of the BOS, they reviewed the ordinance in great detail with a lot of great input and questions until they finally came up with the final version of the ordinance. The draft of the ordinance had to go back to the PC, even though it had been there several times, to the Lehigh Valley Planning Commission (LVPC), and it had to be advertised. It was also sent to the Northampton County Law Library where it was registered. At the residents' request, although they ordinarily only advertise in one publication, they advertised in both the Home News and the Express Times. The draft was sent again to the PC who voted unanimously to recommend. The PC also had some good input along the way. He thinks it was one of the PC members, who might even be here tonight, that suggested there be a snow scraper. It turned out to be a huge issue everybody appreciated. They also sent the ordinance to the LVPC who managed to have a full review of the ordinance. Attorney Backenstoe was pleased to report that they gave the ordinance a glowing recommendation. As they did in 2019 when they commended the Board for its future and forward thinking, they ostensibly said the same kinds of things about this draft ordinance. He read some of the applicable provisions from the letter from the LVPC about the ordinance. They did a full review with both the comprehensive planning committee and the full commission, and they provided a number of comments. He read, the proposed zoning ordinance amendments clarifies the definition of warehouse, changes the use of a warehouse from a permitted by right to a conditional use in the industrial district and introduces additional standards for a warehouse. The designation of a warehouse as a conditional use will allow the township to examine proposals on a case by case basis, determine reasonable conditions or safeguards necessary for the proposal to meet the goals and objectives of the township and ultimately protect the health, safety and welfare of the public. That is consistent with their policies for warehouses. The letter continues, the amendments exhibit consistency with the future of the Lehigh Valley regional plan because the proposed

standards help to protect farmland preservation areas within the general land use plan which encompass the majority of the township land and ensure that freight facilities are located in an area with available and planned transportation capacity. The LVPC offers the following commendations and additional recommendations for the township's consideration. They were very pleased that the ordinance requires access points to be both on a collector and arterial road and requires a traffic study. They were also pleased with the spacing requirements for inbound trucks and the snow removal tool designation which all warehouses in the future will have to use. Again, they commend the board for its forward thinking on the snow removal tool. They do recommend in the future when looking at the ordinance that the Township consider sidewalks and bike paths. The letter mentions alternative transportation as a recommendation. They very much appreciated the facility amenities, feeling that it will ensure drivers are safe and well rested when returning to the Lehigh Valley transportation network. In particular, they like the driver lounge and restrooms and food and beverage dispensing machines. They like truck parking spaces and the electrical outlets for the trucks to use. They like the layout of spaces for outward trucks accessible during and after operating hours. They suggested a provision regarding trash receptacles, although Attorney Backenstoe thinks they have that in another part of the Township ordinance which is why they didn't have that in this ordinance. They very much liked the environmental considerations and thought the buffer yards were excellent. They thought the landscaping provisions were very good, which will minimize the environmental impacts of development and mitigate the visual impacts on a large scale in the community. They liked the maximum building height of 44 feet. They liked the 100 foot wide property frontage agricultural and residential zoning districts from which buffer yards would be placed. They really liked the idling restriction provisions. Basically, the Lehigh Valley Planning Commission commends Moore Township for taking the initiative to address a region wide issue and promote best practices in establishing an efficient development and process responsive to the regional needs through a well written and thoroughly reviewed zoning ordinance and amendment. With that, they have discussed at great length this particular draft ordinance. The Planning Commission has recommended approval. The Lehigh Valley Planning Commission has recommended approval.

**Mr. Gable made a motion to adopt Ordinance 2021-4 amending the warehouse ordinance**

**Mr. Shaffer seconded the motion**

**Public Comment**

Mr. Gable thanked Attorney Backenstoe, who put in an awful lot of hours and a lot of time in putting this ordinance together. He also thanked Mr. Flower, his committee, and the residents. Everybody did a great job, and he think it's a super ordinance. Ms. Lisa Hochrine asked if it's voted yes tonight, does the new plan that was submitted have to follow this ordinance. Attorney Backenstoe said no. Unfortunately, that plan was submitted before this was adopted. Although, he thinks they made some attempt to comply with some of the provisions. Anything that comes in afterwards, within five days after tonight, would have to comply with this. Mr. Piorkowski thought the impending ordinance rule would cover them with this new zoning on the current warehouse plan. Ms. Hochrine said so did everybody in here. Mr. Flower said that's what they thought, too. Mr. Piorkowski said they still need to vote going forward but asked if it doesn't pertain to the plan that was submitted. Attorney Backenstoe said what they talked about, the pending ordinance doctrine, does not apply to subdivision and land developments, but it applies to zoning permits. The subdivision plan was in prior to the amendment, so they are not going to be required to comply with this unless something would happen and they had to submit a new plan.

**Motion carried with all Supervisors present voting aye**

**OLD BUSINESS**

**Schiavone Park Pond Improvements**

No updates.

## **NEW BUSINESS**

### **John Valkovec Waiver to Consolidate Lots**

Mr. Valkovec has a malfunctioning septic system. Attorney Backenstoe explained Mr. Valkovec has been working with the Sewage Enforcement Officer (SEO) Chris Noll to put in a new system. When a property owner can't comply with regulations, they can use best technical guidance to put a system in that complies as much as possible. Mr. Valkovec has an interesting situation as he owns two contiguous lots. Mr. Noll told him he can use the second lot to effectuate a new system to better serve his house. He would like to consolidate the two lots. Even though it isn't a subdivision but a consolidation, the Township would require a subdivision plan unless the Board would grant him a waiver. Mr. Horvath has no objection, and Mr. Horvath spoke to Mr. Noll who has no objection to a waiver. Mr. Valkovec had his attorney, Al Pierce, provide a consolidation deed which Attorney Backenstoe found appropriate. He asked Mr. Valkovec to provide a letter to the Board asking to allow him to consolidate his lots. The reason a vote is important is when his lawyer goes to file the consolidation deed, the county won't let him do it without a letter from the Township authorizing it. He is requesting the Board to allow him to consolidate lots J551 and J552.

**Mr. Shaffer made a motion to grant a waiver to Mr. Valkovec to consolidate lots J551 and J552**

**Mr. Gable seconded the motion**

**Public comment**

None

**Motion carried with all Supervisors present voting aye**

### **Trick or Treat Night**

**Mr. Gable made a motion to establish Trick or Treat night on October 31, 2021 from 6-8 pm**

**Mr. Shaffer seconded the motion**

**Public comment**

None

**Motion carried with all Supervisors present voting aye**

### **October and November Meeting Dates**

Mr. Piorkowski thinks they should continue holding meetings at the Klecknersville Rangers.

**Mr. Gable made a motion to schedule the October regular meeting for October 7, 2021 at 6 pm at the Klecknersville Rangers fire hall and November regular meeting for Thursday, November 4 at 6pm at the Klecknersville Rangers fire hall**

**Mr. Shaffer seconded the motion**

**Public comment**

None

**Motion carried with all Supervisors present voting aye**

## **CORRESPONDENCE/MEMOS**

### **OPEN TO THE FLOOR**

Ms. Patricia Steager of Carol Lane said they have a major water problem on Carol Lane. She provided pictures to the Board and the cost to construct the swale and make improvements so the water would flow better for them and the neighbor. The first picture shows the storm sewer on 542 Carol Lane is supposed to be running back, underneath the road, and to the other side which it does not. The other picture is across the road. She described where the water would go and where it goes now. She showed a picture of the stones they took out of the swale after they did construction. This is all coming from across the

road on Wood Avenue. It did damage to all the work and money they spent on the swale. She also showed an image of the stone on Wood that ends up in their swale. She said the last couple years it has been getting bad, and she doesn't know what's causing the water from not going behind the house. The water could be deferred somehow noting she had a lot coming behind the house before, and now it's coming toward the front of the house. She said something needs to be done. Mr. Steiner said they discussed a similar issue previously noting water coming down the hill between properties is not coming to the culvert. Another resident said Mr. Steiner and Mr. Shaffer have been out and nothing has been resolved. Her driveway is being washed away. They discussed the images and issues with Mr. Steiner and Mr. Horvath. Mr. Piorkowski explained to the crowd what is being looked at in the pictures. He said Mr. Steiner, Mr. Horvath, and the Public Works Director will go to the property to see how the water is being diverted. Someone asked if a person has the right to divert stormwater. Attorney Backenstoe said no. The resident explained water would come down through the cross pipe like a river when she first moved there. Mr. Steiner said there's a pipe that enters across the street from her property. The water runs down hill through a few properties and is being diverted away from the culvert. It sends the water either across the street or down the street to another culvert. Attorney Backenstoe said an individual can't change the flow of water onto someone else's property, but he looks to Mr. Horvath on that. Mr. Piorkowski said Mr. Harhart told him it should be noted on the recorded subdivision plan. If someone has impeded, they should be able to look at the plan. When the engineer and Public Works Director goes out, they can review the plan before going out. Mr. Steager said the subdivision plan was done in the 1950s and asked if they required swales then. Mr. Piorkowski doesn't know and said Mr. Harhart can pull to see if a plan was there. Mr. Steager said they have their plan noting they built in 1998, 1999. It shows the swales on their lot. His problem is the water and stones from Wood Ave from peoples' lots wash onto the road, down the road, and into the catch basin which brings the water under Carol Lane and down the swale to the left side of his house. Two times he dug it out because of the stones and shale coming down. He showed the pictures of how the swale looks after they spent \$3,000 to have it done. Mr. Piorkowski said they have a Public Works Director, so they're in better shape to address the problem. Mr. Steager suggest four or five years ago to install a catch basin at the entrance so stones would stay there and not come through the pipe, or they can dig deeper for the stones to settle and clean it out every couple years. Mr. Hoffman said they usually clean the stones out of the outlet pipe. With them landscaping around the outlet of the pipe, it's going to be very difficult to remove. Mr. Steager said they aren't going to dig it out of the landscaped side. Mr. Hoffman asked if it was landscaped before. Mr. Steager said yes. Mr. Hoffman asked confirmation they always had a block wall with landscaping stones. Mr. Steager said no, he had a bulkhead with a pipe coming out. Mr. Steager asked if it can't be stopped at the entrance of the pipe. Mr. Piorkowski said they aren't going to resolve it now, so they'll go out and discuss what can be done.

Mr. Matt Flower of W. Scenic Drive said a number of them are disappointed to hear the pending ordinance doctrine does not protect them in this case. They were under the impression it would. He asked Attorney Backenstoe if there's any interpretation of law that may support that position. Attorney Backenstoe said he will continue to look into it. The pending ordinance doctrine is a tricky doctrine. He explained the law is not entirely clear. However, the pending ordinance doctrine has traditionally applied to somebody coming in for a zoning permit. For instance, a landowner seeking a building permit for a particular use permitted under the current ordinance but prohibited under a new ordinance pending when the landowner files the application. In these situations, the court will look for the new ordinance rather than the prior one if the ordinance was pending if the governing body resolved to consider a particular scheme. The law was unclear and up in the air, and his position would have been the pending ordinance doctrine did apply to this plan. In 2019, the Pennsylvania Supreme Court answered the question. They always provided that pending ordinance doctrine does not apply to land development plans which have been submitted. He said, there's zoning permits and land development plans. The court ruled the

statutory protection of a pending land development application which precludes a municipality from changing its zoning, subdivision, or other governing ordinance subsequent to the filing of a land development application and then applying the new version of any of those municipal enactments to the then pending application extends to zoning applications submitted to the Zoning Hearing Board that are related to the land development plan. If a land development comes in prior to adoption of a new ordinance, it always was exempt to the pending ordinance doctrine. The question is whether or not the zoning permit would be exempt. This case clarifies a zoning permit sought pursuant to a land development plan is also protected, unfortunately. He is happy to provide copies of the cases. In his opinion, it was very up in the air for years. With that Supreme Court ruling, it's clear. If something would happen, this plan is withdrawn, or it's denied because it doesn't comply with current the ordinance, and they need to resubmit, the resubmittal would be under the new ordinance. Mr. Flower asked if the submitted plan is denied for noncompliance or any other reason, the new plan they submit wouldn't be grandfathered in as an extension of an existing plan, or if it would be a new submission. Attorney Backenstoe said yes and no. They submitted a plan and will get a review letter. They'll have an opportunity to modify the plan to comply with the review letter. If they have to come back with such a substantial and significant revision of the plan that this Board would determine it is a new plan, they could deny the plan, they'll file a plan, and they'll be in court. They could deny the plan, and if the decision is upheld, the new plan would fall under the new ordinance. The other way would be if they flat out didn't comply with some significant, substantive provision and the plan was denied, they'll file an appeal, and if the Township is successful, the new plan would come in under the new ordinance. Both of these circumstances would depend on court rulings on appeal. Mr. Flower asked confirmation both of these circumstances are subject to the Board here today. Attorney Backenstoe said when he says its subject to the discretion of the Board, it's true, but the Board can't just deny it because they don't like it. They need to point to a section or provision of an ordinance. Mr. Piorkowski thinks what Mr. Flower's question was with the pending ordinance doctrine is they made it into a conditional use, so the supervisors had the final word. He asked if that's not the case if it goes under the old plan. Attorney Backenstoe said, no, the Supervisors still make that decision. It is a by use now, which means it is permitted. It doesn't go to Zoning Hearing Board or Supervisors to determine the use because it's by right and has been since 1973. If a plan was submitted tomorrow, it would come to the BOS for a conditional use hearing. What he's probably saying is ultimately whether or not the plan is pending for approval, it is going to be up to this Board. Yes, it will be up to this Board to determine whether or not it complies with the provisions in zoning and SALDO right now as written. Mr. Flower asked if the determination of whether or not a resubmission is so radically different as to constitute a new plan would also be at the discretion of this Board. Attorney Backenstoe said yes. If that situation came up and the Board felt the submission was so substantively and substantially different, and they deny the plan, Attorney Backenstoe would be arguing at the Court of Common Pleas pursuant to appeal, the Commonwealth Court, and then the Supreme Court.

Mr. Eddie Joe Marshall of Cherrywood Lane asked how many other places in Moore Township they can put a warehouse. He asked if Southmoore is the only spot. Mr. Harhart said they have two industrial zoning districts created in 1973, and they've been the same on the map. There's an area around Southmoore golf course, not specifically Southmoore golf course, on SR 512 that already has commercial and industrial development. The other area is north of Moorestown between Dell Road, SR 512, and Copella Road. Mr. Marshall asked if all the work they did is now moot. Attorney Backenstoe said not if another warehouse goes in. Someone else said they're not worried about another warehouse, they're worried about this one. She asked if they approved the plan. Attorney Backenstoe said no. She asked if they approved the second plan. Mr. Gable said they only submitted one plan. She said they submitted two sketch plans. Attorney Backenstoe explained sketch plans aren't formal plans. People are allowed to come in with a sketch plan to ask for thoughts, input, and concepts. Based on our thoughts, inputs, and

concepts, they changed their plan substantially because they went from about a million square foot warehouse to two smaller warehouses. He realizes they still have significant impact to the community, and he's not downplaying it. They went to two smaller buildings just north of Jones Road. Mr. Horvath said it's about 150 sq ft and 350 sq ft. Attorney Backenstoe said they initially came in with a huge warehouse that straddled Jones Road. He thinks they realized there's no way it could happen because the Township would have to vacate Jones Road which the Board wouldn't have done. They submitted two sketch plans which are not formal submissions and for which the Township does not vote. Now, they submitted a plan. It's a preliminary plan, the first submission, and it's before the PC. The PC will take its first look at it the fourth Monday of September. Mr. Horvath will have a review letter outlining what they comply with and what they don't comply with which will really start the formal review process. Someone asked if they have access to the plan. Attorney Backenstoe said Mr. Harhart can show the plan. Another person said they were all under the impression the Board has so many days to review it. Attorney Backenstoe said its true. She continued, they thought this ordinance provision would come in and they would have to review under that. Attorney Backenstoe said unfortunately they submitted a plan about a month ago and there was no way to get an ordinance adopted prior to the submission. They submitted, so the Board now has 90 days to review it. Ordinarily the process takes six months to a year. Normally there's a submission, the PC will start to review, they'll indicate the deficiencies, and the applicant can come back and try to rectify the plan. If they have to make a substantive or substantial change to the plan that is so significant it constituted a new plan, then the Township can completely deny it. He isn't saying that is going to happen, but this answers the hypothetical that was asked.

Mr. Ayers of Pheasant Drive asked if the swales discussed earlier is something the Township installed. Mr. Steiner said they were discussing a number of swales some of which run under the road noting the developer probably installed them. The would be the Township's responsibility, but they need to do a site review. Mr. Ayers reminded them the Township got in trouble because they corrected swales on private property and had neighbors complaining because Attorney Backenstoe reminded them they can't do work on private property. Mr. Steiner and Mr. Piorkowski said they're aware of that. Mr. Ayers said he can't and won't discuss the impending warehouse noting he is the chairman of the ZHB. They have dealt with zoning issues where people have tried to develop certain properties over and over again. Right now, he thinks there's four pending cases where they've been taken to court. The developer keeps coming in with plans, and they keep rejecting them because it's not permitted. They keep trying to revise them. There's a whole legal process, and the BOS has final say noting the BOS has overridden the ZHB in the past. The ZHB has made decisions, they were taken to court, and the BOS thought it was in the best interest of the Township to come up with a compromise instead of spending legal fees. On the other hand, the BOS has also backed them in the four pending court cases because what they're proposing is ridiculous. It has nothing to do with warehouses, but other uses they want to do. It's very difficult, he's not a lawyer, and they have their own Zoning attorney to guide them through what they need to do. He's been on the ZHB for over twelve years, and they're 6-0. He's not saying anything is guaranteed, but they do things legally, by the book, and listen to their attorneys. If there's anything they feel they need to apply, that's what they do.

## **ADJOURNMENT**

**Mr. Shaffer made a motion adjourn the meeting at 7:35 PM**

**Mr. Gable seconded the motion**

**Public comment**

None

**Motion carried with all Supervisors present voting aye**

Respectfully submitted,

Nicholas C. Steiner  
Township Manager

**Not intended to be word for word, but a synopsis of the meeting.**