

**HILLTOWN TOWNSHIP BOARD OF SUPERVISORS  
REGULARLY SCHEDULED MEETING  
Monday, August 22, 2005  
7:30PM**

The regularly scheduled meeting of the Hilltown Township Board of Supervisors was called to order by Chairperson Kenneth B. Bennington at 7:32PM and opened with the Pledge of Allegiance.

Also present were: George C. Egly, Jr. – Vice-Chairperson  
Richard J. Manfredi – Supervisor  
Christopher Engelhart – Chief of Police  
Francis X. Grabowski – Township Solicitor  
C. Robert Wynn – Township Engineer  
Lynda S. Seimes – Township Secretary

Chairperson Bennington announced the Board met in Executive Session prior to this meeting in order to discuss personnel, real estate, and the legal matter of the Guttman Tract re-zoning request.

A. PUBLIC COMMENT ON AGENDA ITEMS ONLY: None.

B. APPROVAL OF MINUTES – Action on the minutes of the July 25, 2005 Supervisor’s Meeting – Mr. Jack McIlhinney of Broad Street noted a correction to page 6, third paragraph, which should state “Mr. Jack McIlhinney, the Commission member who made that final **motion**, explained that last year the applicant presented a plan showing a certain number of lots and a certain amount of open space. However, that **current** open space was proposed to be deed restricted open space to be included with several lots, and therefore would not be available for public access.”

Motion was made by Supervisor Egly, seconded by Supervisor Manfredi, and carried unanimously to approve the minutes of the July 25, 2005 Supervisor’s meeting, as corrected. There was no further public comment.

Action on the minutes of the August 8, 2005 Worksession Meeting – Mrs. Judy Greenhalgh of Blooming Glen Road noted the following correction to page 15, second paragraph, which should state “Mrs. Greenhalgh stated that two more wells have since gone dry on Twinbrook Road (**Russ Berger** and Hange properties).”

Motion was made by Supervisor Egly, seconded by Supervisor Manfredi, and carried unanimously to approve the minutes of the August 8, 2005 Worksession meeting, as corrected. There was no further public comment.

C. CONFIRMED APPOINTMENTS: None.

D. SOLICITOR'S REPORT – Mr. Francis X. Grabowski, Township Solicitor –

1. Solicitor Grabowski presented the proposed PennDot deeds that provide transfer of fee simple ownership of road frontage along Rt. 113 from Hilltown Township to PennDot in connection with the Calvary Church Land Development. Mr. Wynn has reviewed the accuracy of the legal descriptions, which is in fact what the Township had taken title to several years ago.

Motion was made by Supervisor Egly, seconded by Supervisor Manfredi, and carried unanimously to execute the two deeds of road frontage along Rt. 113 and the frontage of Calvary Church, as noted above. There was no public comment.

2. Solicitor Grabowski presented the Engler Subdivision Cash Escrow Agreement, Road Frontage Easement Agreement, Floodplain Drainage Easement and Shared Driveway Easement Agreement for the Board's consideration.

Motion was made by Supervisor Egly, seconded by Supervisor Manfredi, and carried unanimously to accept the Cash Escrow Agreement, Drainage Easement Agreement, and the Shared Driveway Easement Agreement for the Engler Tract Subdivision. There was no public comment.

Motion was made by Supervisor Egly, seconded by Supervisor Manfredi, and carried unanimously to **adopt Resolution #2005-30, accepting the Road Frontage Easement Agreement for the Engler Tract Subdivision. There was no public comment.**

3. Solicitor Grabowski presented the Stormwater Management Agreement, Financial Security Agreement, and Drainage/Retention Basin Easement for the Aichele Tract Subdivision, for the Board's consideration.

Motion was made by Supervisor Egly, seconded by Supervisor Manfredi, and carried unanimously to accept the Stormwater Management Agreement, Financial Security Agreement, and Drainage/Retention Basin Easement for the Aichele Tract Subdivision. There was no public comment.

E. PLANNING – Mr. C. Robert Wynn, Township Engineer –

1. Holly Farms Subdivision (Final) – Mr. Bill Benner, the applicant's legal counsel, Mr. Scott Mease, the applicant's engineer, and Mr. Rich Beres, the applicant were in attendance to present the plan. This 13 lot subdivision located with access to Schoolhouse Road was unanimously recommended for final plan approval by the Planning Commission conditional upon the following being accepted and accomplished by the applicant:

- Sheet 3 of 12 must be corrected so that property boundary information is consistent with sheet 1 and 2 of 12.
- Consideration should be given to providing additional landscaping/buffer plantings to the homeowners who will now have corner lots due to the installation of the eastern entrance to the site.
- Resolution of stormwater management along Schoolhouse Road to reduce the potential of stormwater runoff flowing across the roadway onto the neighboring property.
- Ownership/maintenance of the detention basin should be the responsibility of the owner of Lot #1.
- All items as contained within the July 21, 2005 engineering review must be accomplished except as otherwise modified by the above conditions.

Due to the size of the detention basin, Mr. Wynn had recommended that a Homeowner's Association be established for its maintenance. It was Mr. Benner's understanding that the Supervisors agreed, during the preliminary plan approval phase, that there would not be a Homeowner's Association established; and that instead, there would be a Declaration of Covenants, Easements, and Restrictions to be approved by the Township Solicitor placing ownership and maintenance responsibility of the basin upon the owner of Lot #1. Therefore, Mr. Benner believes this comment in Mr. Wynn's review is inconsistent with the terms of the preliminary plan approval. He is not aware if Solicitor Grabowski has had the opportunity to review the proposed draft of the Declaration, which Mr. Benner forwarded to him very recently. While Mr. Wynn disagreed with Mr. Benner's representation that this was determined during the preliminary plan approval, the motion did include a recommendation that Lot #1 be responsible for the detention basin, not a Homeowner's Association. Since it is a rather significant basin for one property owner to maintain, Mr. Wynn recommended that a Homeowner's Association take responsibility for the basin.

There was also another matter that was discussed during the preliminary approval process concerning the possible need for the applicant to secure the consent of the property owner onto whose property some drainage water flows. At that time, Mr. Benner referred to a case arising from Nockamixan Township, decided by Judge Goldberg, which interpreted identical language, to which Solicitor Grabowski agreed that as long as there was no change in the physical aspect of the point of discharge, the property owner had a common law right to maintain those flows, as long as the design and stormwater management plan reduced the rate of flow consistent with the terms of the Ordinance. In this instance, Mr.

Benner noted that the Township's Ordinance requires that the flows be restricted to 75% of the pre-development condition. It was Mr. Benner's recollection that the Supervisors agreed that although there was no requirement to obtain an easement, one of the imposed conditions was that the applicant ask the affected property owner to grant an easement. The affected property owners, Mr. and Mrs. Eshelman were present this evening, along with their legal counsel and civil engineer, who has reviewed the stormwater management design for this property. At the time of the Planning Commission meeting, Beres Construction agreed to make a minor alteration to the stormwater management design, the nature of which would not change the calculation, but would capture some of the water that was designed to sheet flow across Lot #2 and channel it into an inlet where it would then flow to the pipe in question, which appeared to satisfy the Planning Commission. Mr. Wynn explained that this matter refers to the drainage from the basin along Schoolhouse Road to the swale that is being improved along the south side of the road, then drains into a culvert under the road and through a pipe that flows onto the Eshelman property before discharging into a drainage channel behind their home. He spoke with Mrs. Eshelman last month, who indicated her concern is with the water that flows from the opposite side of the road and then drains into her property. Solicitor Grabowski reviewed the Bucks County court case decided by Judge Goldberg that dealt with pre-development drainage and the issue of stormwater effect, however he does not know whether or not the facts of that particular case are what is present in this matter. He would have to seek the expert opinion of Mr. Wynn as to whether or not there is any increase in the rate of flow. If the facts of this case are the same as the Nockamixan case, then Mr. Benner is correct, however it is a factual determination by the Township Engineer and the Board of Supervisors. Solicitor Grabowski did receive a copy of a proposed Declaration of Covenant, however he did not yet review it since the plan is still under review by the Township.

Mr. Ronald Bolig, Mr. and Mrs. Eshelman's legal counsel, advised that his clients were first made aware of this development last month when correspondence was received from the applicant, requesting but not requiring, that they agree to a stormwater easement over their property. The Eshelman's hired an engineer to review the plans and attended the Planning Commission last week. One of those concerns was that they had not yet had the opportunity to review the stormwater management plans with their own engineer. Late this afternoon, Mr. Bolig received a report from the Eshelman's engineer, Robert Showalter, and shared it this evening with Mr. Benner. Mr. Bolig requested that the Board not grant final plan approval this evening and that the Township Engineer be directed to review and evaluate the report by Mr. Showalter prior to rendering a decision. At present, stormwater runoff sheet flows across Schoolhouse Road from the undeveloped property onto the Eshelman property and is funneled into a swale, which they had constructed approximately 20 years ago. In fact, the Eshelman's engaged a civil engineer approximately 20 years ago, who designed an underground pipe, which connects with the 15 inch pipe that goes under Schoolhouse Road and extends

approximately 160 ft. from the Eshelman side of Schoolhouse Road on their property and then discharges at the end of their property and onto an adjoining property. Mr. Bolig presented photographs for the Board's review, showing the end of the pipe on the Eshelman property and the stormwater erosion that has occurred over that 20-year period on top of the swale. Downstream from there, the culvert has widened, washed out and endangered trees. He noted that the fence that protects a swimming pool on the downstream neighbor's property appears to be collapsing toward the swale itself.

Mr. Benner has not yet had the opportunity to review Mr. Showalter's calculations, however he referred to the summary on page 2 of the report, which states "We suggest that the Township request the developer consider using the existing pipe capacity as the controlling flow constraint." Mr. Benner commented that the applicant's design engineer, Scott Mease, told him that the existing pipe is indeed the controlling flow constraint, and therefore, the first recommendation has been accomplished. He also referred to the second recommendation in Mr. Showalter's report, which states "We suggest that consideration be given to improving and stabilizing the downstream swale on the Eshelman property." If Mr. and Mrs. Eshelman would grant their consent to allow Beres Construction onto their property for purposes of improving and stabilizing the downstream swale as recommended, Mr. Benner advised that Mr. Beres would be pleased to comply with that recommendation. With respect to the design, it is Mr. Wynn's recollection that the controlling factor is the pipe, so that the stormwater runoff entering the basin was restricted more than required by Ordinance because of the downstream pipe. Mr. Wynn does not know to what extent Mr. Beres is willing to repair the erosion as shown on the photographs presented by Mr. Bolig.

Mr. Benner advised that the preliminary plan approval included the issuing of several SALDO waivers. One of the waivers included that the design of the public streets provide a point of intersection to Schoolhouse Road, which in effect would create corner lots of the two property owners who abut this new public roadway. There is a section in the SALDO that discourages such a design, however in this instance, the applicant requested a waiver. The Planning Commission then asked the applicant to secure the consent of the two affected property owners, which did occur. On the strength of that consent at the preliminary plan stage, the Board of Supervisors granted an unconditional SALDO waiver. When the Planning Commission reviewed this application at their last meeting, however some members revisited this issue and thought it would be a good idea, notwithstanding that the SALDO waiver had been issued unconditionally, to provide additional buffering along one of the properties affected. Mr. Wynn presented photographs of the two corner properties that would be created by the installation of the proposed roadway. He explained that one of the properties has heavy existing vegetation along the side, however the rear yard would be totally exposed, and the front yard of the second property is totally exposed with no vegetation. Mr. Wynn admitted that this issue was not a requirement of the preliminary plan as Mr. Benner indicated. He noted that it

was a recommendation by the Planning Commission that consideration be given to the property owners of what will be the corner lots to receive additional landscaping similar to the existing evergreens on the side of the one property.

Motion was made by Supervisor Manfredi, and seconded by Supervisor Egly, to table the Holly Farms Subdivision plan; to instruct the Township Engineer to further review the facts as they relate to the SALDO waiver, the easement, and the additional landscaping for the two corner lots; and to meet with the Eshelman's, their legal counsel and engineer, and to consult with the Township Solicitor in order to provide direction to the Board at a future meeting. No vote was taken at this time.

Public Comment:

1. Mrs. Mary Kate Limbert of 228 Schoolhouse Road is the owner of one of the lots that will be made into a corner lot by the approval of this subdivision. Mrs. Limbert explained that Mr. Beres did visit her home shortly before the start of a Planning Commission meeting in late December of 2004, asking her to sign a letter acknowledging that she was aware of the proposed changes to her property if this development were to be approved, which he needed to the Township. Mr. Beres assured Mrs. Limbert that by signing this letter, she was not agreeing to any changes being made to the zoning of her property. Mrs. Limbert later learned that these changes are pending, which would limit some of the things she wanted to do with her property. One of those changes would include the construction of a new road literally in her back yard. Mrs. Limbert has three children, and when purchasing her home, took into consideration that the dwelling was located away from traffic. There are poured footers in Mrs. Limbert's rear yard in anticipation of constructing an addition to her dwelling, and if this change in zoning occurs, she would not be permitted to construct the addition. She also believes that the construction of this road next to her property would significantly decrease the value of her property. Mr. Beres had told Mrs. Limbert that the Township would formally notify her by mail of any changes that would take place, and that she would publicly be able to voice her concerns and have her opinions heard, however that notification has not happened. When Mrs. Limbert signed that letter for Mr. Beres in December of 2004, she asked if she should attend the Planning Commission meeting that evening, but he told her that would not be necessary. Discussion took place.

Supervisor Manfredi's original motion passed. Plan was tabled.

**\*8:24PM – PUBLIC HEARING – Chairperson Bennington adjourned the regular meeting of the Hilltown Township Board of Supervisors to enter into the advertised Public Hearing to consider the request of D'Angelo Construction to amend the Zoning Ordinance/Map from RR to CR-2 Zoning District for the Guttman Tract (specifically TMP #15-28-21, 21-1, 21-2, 22, and 23).**

Solicitor Grabowski explained that the petition for rezoning, along with a copy of the requested Zoning Ordinance amendment as proposed by D'Angelo Construction, was received by the Township, and a copy was submitted to the Bucks County Planning Commission. A review from the Bucks County Planning Commission dated May 4, 2005 was received. Additionally, the Hilltown Planning Commission reviewed the petition, and a recommendation is so noted in the minutes of the Hilltown Township Planning Commission meeting of July 18, 2005. This Public Hearing was advertised in the Doylestown Intelligencer on August 5<sup>th</sup> and August 12<sup>th</sup>, along with a Proof of Publication dated August 15, 2005 from the Intelligencer stating such. The property has been posted by the Hilltown Township Zoning Officer, and an affidavit providing for the location of and the date of the posting has been provided. A mailing of the legal ad was sent to the property owners to the property owners of the tax parcels noted above, which was accomplished by Solicitor Grabowski's office. A receipt from the Bucks County Law Library is also available for public review, indicating that a copy of the proposed Ordinance was properly filed at the appropriate time. In addition to the re-zoning of the tax parcels as identified by number, Solicitor Grabowski noted that the petition also requests that Section 160-26 of the Zoning Ordinance, Chapter 160 be amended in the Table of Performance Standards so that the reference to Footnote 2 should become Footnote 3 for the single-family cluster option 1 and the single family cluster option 2.

Mr. Bill Benner, the applicant's legal counsel, Mr. Scott Mill and Mr. Scott Guidos, the applicant's engineers, and Mr. D'Angelo, the applicant, were in attendance to present the petition. Mr. Benner explained that the applicant is proposing the re-zoning of an 86 acre property located on Green Street, just outside Silverdale Borough, from the RR (Rural Residential) Zoning District to the CR-2 (Country Residential-2) Zoning District, and includes an application to amend the text of the Ordinance to address an inconsistency. The nature of the text amendment would be to change the table to make it clear that the table itself is consistent with the text of the Ordinance in that any cluster development would necessarily have to be served by both public water and sewer. The applicant first formally approached the Township with a sketch plan in January of 2005, proposing to develop the Guttman property with a cluster style development. There were many discussions about the sketch plan, with direction from the Planning Commission, other agencies, and other consultants to refine the proposal, meet with other reviewing boards and agencies of Hilltown to explore whether this site would be more appropriately developed as a cluster concept or as a by-right development. From the beginning, Mr. Benner noted that Hilltown Township made it clear that it would not consider a cluster option if it resulted in a density bonus. The Township also made it clear that if this property was to develop with a cluster option, they wished to carefully review the ramifications of introducing public water and sewer to a property zoned RR, where there was no demonstrated failure of on-site systems off premise. Therefore, Mr. Benner felt that the message to the applicant was to consider developing the property as a cluster

option, provided there would be no density bonus as a result, to investigate the status of off-site sewer conditions, and to meet with other agencies, including the Planning Commission, Park and Recreation Board, and Open Space Committee, to secure their input. A great deal of activity was spent over the past 18 months engineering a by-right plan, presenting calculations and drawings to the Township Engineer showing the limits of natural resources, the extent of forestry encroachment, the extent of grading, etc., all of which was undertaken so that the Township, if it was to move forward with the cluster concept, would know what these 86 acres could yield if developed under RR zoning. Mr. Benner noted that RR Zoning authorizes the subdivision of property into minimum lot sizes of 50,000 sq. ft. The developer's concept of what this property could yield differed somewhat from the technical advice given by the Township Engineer, however in the end, Mr. Benner advised both parties came to an agreement. Mr. Wynn held his position that the developer's calculations were ambitious and believed that the property could be subdivided into 45 single-family dwelling lots. In the final analysis, rather, D'Angelo accepted that determination and has moved forward with a cluster design proposing subdividing the property into 45 lots, three of which are proposed to contain existing dwellings. Three options were given to the Board of Supervisors – one option was to create a new zoning classification by designating a separate cluster option, the second option was to file for a site-specific dimensional variance to authorize a minimum lot size of less than 50,000 sq. ft., and the third option was site-specific to consider re-zoning this property to the CR-2 District. Following discussions, the Supervisors indicated their preferred method of implementing the cluster concept, making their position clear that they would not prejudge the merits of the application. Therefore, on March 30, 2005, the D'Angelo Construction submitted a formal re-zoning petition.

At the January 2005 discussion about this property, there was concern as to whether the rezoning of this property might constitute spot zoning. At that time, Mr. Benner advised that there is a tract immediately to the north of the site that is zoned CR-2, which led him to believe the re-zoning of the property would be consistent with the existing zoning map. The petition notes that the property contains areas of natural resource protected lands consisting of woodlands, and stream corridors that other agencies believe are worthy of preservation. Further, the property is readily accessible to public water and sewer facilities, and the extension of those facilities into the property would be consistent with Hilltown's Act 537 Plan. The petition states that the Comprehensive Plan noted that in the immediate neighborhood of the site, there are other properties experiencing failing on-site septic systems. Finally, Mr. Benner stated that the re-zoning petition noted that the re-zoning of the property to CR-2 would not create a density bonus because the density had been established through many meetings with the Planning Commission and reviews by the Township Engineer. Accompanying the re-zoning petition, as required by Ordinance, are various impact statements, including that which assessed traffic. Mr. Benner commented that because there is no density bonus, and because the property could develop by-right with 45 single family dwellings, the impact assessment concluded

that the impact on the community would be the same, whether the property is developed with 50,000 sq. ft. or with smaller lots. He advised that the Bucks County Planning Commission's recommendation is an unconditional recommendation of adoption, noting compatibility with the Comprehensive Plan and with existing neighborhood conditions. Further, the Bucks County Planning Commission noted that re-zoning the property to CR-2 offered some benefits to the community, in the form of preservation of open space and in the form of the possibility of creating on-site recreational facilities to link with the Silverdale Borough recreational facilities, which are located adjacent to this property. Mr. Benner stated that the Township Engineer issued a similar recommendation, although Mr. Wynn did note some concern with ownership and maintenance of open space. Mr. Benner believes, however, that he and Mr. Wynn have agreed that the ownership and maintenance of open space was not so much a re-zoning issue as it was an issue to be addressed at the later implementation if the re-zoning succeeds, during the submission of the subdivision plan.

Finally, Planning Commission, after a lengthy meeting on July 18, 2005, by a vote of 4:3, recommended approval of the applicant's re-zoning request for the Guttman Tract. Mr. Benner read the motion taken from those meeting minutes, which states "Motion was made by Mr. McIlhinney to recommend approval of the applicant's re-zoning request for the Guttman Tract from RR to CR-2, if the applicant submits a plan in the future with altering lot sizes of 20,000, 30,000, and 50,000 sq. ft. in a mix that is agreeable to the Planning Commission, as well as providing for a contiguous piece of open space that adjoins Silverdale Borough Park." Mr. Benner noted that the motion was eventually seconded and approved by a 4:3 vote.

Presently, a subdivision plan for 45 lots at 20,000 sq. ft. each is pending, which the applicant believes is in conformance with the CR-2 Zoning regulations. Mr. Benner advised that this plan is similar to that which was presented to the Supervisors in January of 2004. The only difference between the two plans is that, mindful of individual expressions of preference, instead of the lots along Green Street having access to that roadway, the plan proposes reverse frontage lots with a strip of open space fronting on Green Street. The applicant has issued a letter to Hilltown Township placing that subdivision application "on hold" and has suspended all time periods in recognition that the property has not been re-zoned. Mr. Benner is bringing this to the Board's attention as an indication of the good faith of the applicant, acknowledging that if the property were to be re-zoned, there would not be a density bonus associated with it. When the Planning Commission finally took action upon this subdivision by recommending favorable consideration to the re-zoning of the site in July of 2005, Mr. Benner noted that there was concern voiced by the Planning Commission that they were uneasy with the sketch plan before the Supervisors this evening. With no disrespect, Mr. Benner commented that the Planning Commission consists of seven strong willed individuals, each of whom has a mind of his or her own, which means obtaining a consensus is a

difficult undertaking. Some members of the Planning Commission felt that a mix of lots (20,000, 30,000, and 50,000 sq. ft. lots) would be preferable, and some, while supportive of the cluster concept, thought that the cluster plan pursuant to the sketch plan did not take advantage of many of the site's amenities and suggested a more imaginative design. Mr. D'Angelo had told the Planning Commission that he would be willing to work cooperatively and constructively with them to formulate an acceptable design. However, it is the applicant's position that the Supervisors should act favorably upon this petition to put the zoning in place, give the project status, and allow the Planning Commission to do its job to formulate an acceptable scheme of development. Because the Planning Commission suggested that the applicant consider and place before the Supervisors alternate sketch plan designs, which has been accomplished. In showing the Supervisors those sketch plans this evening, Mr. Benner reminded the Board that they are nothing more than sketch plans that have no status because they have not been filed. Both of these sketch plans will require the cooperation of the Township if they are to be implemented. The sketch plans are not in technical compliance with the CR-2 Zoning regulations as they currently exist. In each instance, the amount of required open space is less than that which the current CR-2 Zoning Ordinance provides for. The applicant is more than willing to move forward with either one of these sketch plans, if that is the Supervisor's preference; or with the plan on the board this evening, which Mr. Benner does not believe requires the granting of any zoning variances. The plan would, of course, require the granting of SALDO waivers as virtually every subdivision does. However if it is the consensus of the Township that one of the alternative sketch plans is preferable, and if the Township will actively support the development of this property once it is re-zoned to provide for the lot size mixture, Mr. Benner commented that the applicant is willing to make an appropriate site specific variance application to the Zoning Hearing Board seeking relief from the open space requirements, while making it clear that if they were to grant relief, it would be tied to and specifically conditioned upon the subdivision plan.

Mr. Benner believes that the re-zoning of this property offers an opportunity to provide benefits to Hilltown Township, including the preservation of large areas of open space, the opportunity for active recreation sites, and the opportunity to address regional sewer issues off-site; all without a density bonus and in a manner that is consistent with the property zoned CR-2 immediately to the north of this tract.

Supervisor Manfredi asked if the applicant has contacted Silverdale Borough. Mr. Benner replied that he has not, however during the early stages of the proposal after meeting with the Park and Recreation Board, he believes that one of the renditions of the sketch plans was forwarded to Silverdale Borough for review, though no formal dialogue has occurred.

Public Comment:

1. Mr. Jack McIlhinney of Broad Street took issue with a few of Mr. Benner's statements, commenting that it was never definitively proven, nor was any engineering done to verify that this parcel could support 45 lots in a 50,000 sq. ft. lot configuration, particularly due to the wooded areas, wetlands and steep slopes.

In the original layout of 51-lot layout, Mr. McIlhinney believes that almost every piece of land, except for a small area in the upper right hand corner, was proposed to be developed with 50,000 sq. ft. lots, however 3 lots were shown where the existing structures are located. This was used to calculate the number of lots that could be proposed for the site. Now, on the 20,000 sq. ft. lot size plan before the Supervisors this evening, it is noted that the lower corner is now shown as approximately 4 to 5 acres of deed restricted open space that is no longer proposed to be Township land. Mr. McIlhinney noted that on the upper right hand corner, there is an 11 acre parcel proposed to include deed restricted open space, again no longer proposed to be owned by the Township. Therefore, roughly 17 acres of this plan is now suddenly proposed to be deed restricted open space, when it was not the case when the applicant attempted to gain a 45 or 51 lot layout. Mr. McIlhinney explained that the applicant's premise of going from 50,000 sq. ft. lots was to provide a park that would be available to all Township residents, which in his opinion will cause the Township to lose tax revenue, if the applicant provided the Township with substantial, meaningful open space. Mr. McIlhinney advised that this layout does not meet the requirements of the Zoning Ordinance as it presently exists, and suspects that the only way those requirements could be met would be to reduce the number of lots to bring the open space percentage up to 65%. Therefore, Mr. McIlhinney is not convinced that the proposed layout would benefit the Township, since it would be giving up 17 acres to deed restrictions. He urged the Supervisors to carefully review the applicant's proposal and to consider the site as a whole.

If the property were to be re-zoned CR-2, Supervisor Manfredi asked Mr. McIlhinney if he felt this property could be developed to the benefit of the Township. Mr. McIlhinney replied that it could, as long as there is cooperation from the developer. Supervisor Manfredi commented that the only issue before the Board this evening is whether or not to approve the applicant's request for re-zoning of the property, not the approval of a subdivision plan for the Guttman Tract. Mr. McIlhinney believes that the Supervisors should impose a number of stipulations and conditions if they consider re-zoning the property, because once the developer is granted CR-2 Zoning for the site, they could develop it in any way, as long as it meets the provisions of CR-2 Zoning. Personally, Mr. McIlhinney would like to see this property developed under the RR Zoning provisions, with 30,000 sq. ft. lots because he happens to prefer larger lots.

2. Mrs. Sandy Williamson of Mill Road believes what Mr. McIlhinney was saying was that originally, there was a 3-lot miscalculation based upon using the land that would remain in private ownership as part of the open space calculation. Mr. McIlhinney clarified that he did not say it was a 3-lot miscalculation rather he stated that there are three lots located in the lower left side of the plan, with 11 acres versus 4 acres in the upper right side of the plan. If there was an error in the calculation of the by-right plan, based upon build out on lots that were always intended to remain in private ownership, whether deed restricted or not, Mrs. Williamson suggested that the Township Engineer review the calculation mistake that persists to this day. Discussion took place.

Mrs. Williamson advised that the mayor of Silverdale previously attended an Open Space Committee meeting, when there were just rumors of development on the Guttman Tract. At the time, he expressed great interest in trying to acquire open space to be combined with the Silverdale Borough Park. When the applicant met with the Park and Recreation Board, Mr. Benner explained that they wanted this subdivision design to connect with the open space in the existing Silverdale Borough Park, and as such, the various versions of the sketch plans show active open space immediately contiguous to the Silverdale Borough Park. Based upon the plan before the Board this evening, Mr. Guidos stated that there are approximately 39 acres of overall open space proposed, however the area of active open space is only approximately 5 acres, which would allow for "pick-up" games. He advised that the remaining area of open space would lend itself to a more passive recreation, including a walking trail, due to the anticipated preservation of the woodlands, steep slopes, and other natural features including the existing pond. The pond is actually proposed to remain on one of the existing lots and will be deed restricted, but will contain easements so that people could walk along the trail around the pond for connection to other Township open space and for connection to the existing Silverdale Borough Park.

Supervisor Manfredi asked what site work and calculations were done to determine the number of lots that would be permitted on this site. Mr. Guidos replied that a preliminary design was engineered and submitted to the Township, showing grading, stormwater management, woodlands, and other existing features, at which time the applicant believed that 51 lots would be permitted. Mr. Wynn, who is not a fan of "by-right" plans because the term is so subjective, and because it leads the applicant to believe that the plan is zoning compliant. However, to a municipality, it means that a plan would comply with every Ordinance in the Township, which is very rare due to the SALDO waivers that are always required to implement a plan. He noted that the Township's Ordinance has no requirements for a by-right plan, and explained that Ordinances that contain requirements for a by-right plan vary tremendously in what must be submitted -- everything from a sketch plan to almost a preliminary plan. Mr. Wynn acknowledged that there was a great deal of work done by the developer on this "by-right" plan, ultimately resulting in 46 or 47 lots, which Mr. Wynn felt would not be feasible due to clearing requirements and woodland protection. He reviewed that plan, and then determined that 45 lots could be

maintained on that site. At that time, Mr. Wynn reminded the Board that the Township was not in receipt of all the roadway profiles, stormwater information, etc., which would normally be required for a preliminary plan. He is not certain, however, that the applicant has ever completely agreed with his 45-lot determination in the RR District. Mr. Benner commented that the applicant believed that this property could yield 51 lots, but noted that there were changes that brought that count down to 47 or 48 lots, and then there was concern expressed about the grading around the proposed dwellings that dropped the count to 46 lots. In recognizing that there is a great deal of compromise required in this process, Mr. Benner noted that the applicant decided to accept Mr. Wynn's determination of 45 lots, 42 of which would be new building lots. If this rezoning petition fails, Mr. Benner stated that the applicant will not make a commitment that the subdivision of this property under RR would be similarly limited to 45 lots. If, during the normal subdivision process, the applicant can prove that the lot yield is more than 45 that is what will be proposed. However, for purposes of the discussion this evening, Mr. Benner noted that the applicant agreed that the lot yield would be limited to 45.

At a previous Planning Commission Worksession meeting, Mrs. Williamson advised that the applicant presented two very primitive sketch plans, either of which is better than the plan before the Board this evening, in her personal opinion. These two sketch plans were more creative and more attractive than what is before the Board tonight. Chairperson Bennington reminded Mrs. Williamson that the only issue before the Board tonight is the applicant's request to re-zone the property from RR to CR-2, not the particulars of a specific plan. Mrs. Williamson commented that the purpose of a cluster development is to preserve open space and to create something of beauty and lasting value. Discussion took place.

3. Mr. Jonathon Huss of 338 Green Street asked if there would be one dwelling on each lot. Mr. Benner replied that if the re-zoning request succeeds, the applicant has agreed that the maximum number of subdivided lots would be 45, three of which would contain existing houses, and 42 of which would be new single-family building lots, with each lot containing one dwelling unit. Discussion took place.

4. Mr. Joe Marino of Redwing Road advised that Mr. D'Angelo, at a previous Planning Commission meeting, promised that if the re-zoning request were approved, he would not submit a plan for all lots 20,000 sq. ft. in size. However, if the applicant is successful in re-zoning the property and then submits a plan for all lots 20,000 sq. ft. in size, Mr. Marino feels that the plan should be denied.

5. Mr. Vince Altomare of 1715 Fairhill Road owns an 8.5 acre "T" shaped lot that backs up to the lot containing the existing pond. He expressed concern with the proposed deed restricted open space around the pond that may contain public access for a walking

path and/or a parking area for recreational facilities. Mr. Benner reminded Mr. Altomare that as a subdivision plan goes through process, the Ordinance states that ownership of open space can be to one of three categories – owned by the municipality, owned by a Homeowner’s Association, or deed restricted and owned by the lot owner. He advised that the important distinction is that open space cannot be developed. If the zoning change is granted, Mr. Altomare asked what consideration would be offered to the existing adjacent property owners. Chairperson Bennington explained that if the re-zoning request were denied, the plan showing 50,000 sq. ft. lots would be permitted. However, if the re-zoning request were approved to CR-2, there would be various options as to how to configure the open space area. Mr. Altomare asked if the existing pond would become a detention basin in any scenario. Chairperson Bennington replied that it would not. Mr. Altomare hopes that the existing tree row would be allowed to remain to act as a buffer.

6. Mr. Mike Mirarchi of 330 Green Street wondered if the existing residents would be required to connect to public water and sewer; and if so, questioned the connection costs. Mr. Benner explained that the development of this property with any of the cluster concepts requires the installation of public water and sewer lines, which would be available to those existing residents with failing systems, consistent with the rules and regulations of the Hilltown Water and Sewer Authority. Mr. Mirarchi wondered if there would be any grants available through the Township or the developer to assist the existing neighboring residents with the cost of connection if necessary. Solicitor Grabowski explained that if the re-zoning request were approved, the applicant would be obligated to install the public water and sewer system to serve the development. The existing residents would not be obligated to pay anything toward the construction of the system within the new development, however if they are interested in connecting to the public system, they would be required to pay the tapping fee of the Authority at that time. Mr. Wynn noted that anyone with a failing septic system with a public sewer line along the frontage of the property, could be ordered by the Bucks County Department of Health to connect. Discussion took place.

7. Mr. Will Gredone of 2121 Rickert Road was interested in the 12 acre lot that is a part of this subdivision, which is currently for sale, and was told that the builder had purchased it simply to provide the required open space for this development. He was also told that the entire 12 acres is considered deed restricted open space. If someone would have purchased that property, Mr. Gredone asked how the developer could propose all of these different open space scenarios. Mr. Benner advised that the applicant owns that entire lot, fee simple. Mr. Gredone was told by the real estate agent that the rear portion of the property would be deed restricted open space, and that a walking path was proposed around the pond, which could be used by the general public. Mr. D’Angelo stated that he has since taken the property off the market. Mr. Gredone was under the

impression that the developer required that lot for open space in order to make the CR-2 development work. Mr. Benner replied that was not the case.

8. Mr. Ed Stahley of 222 Green Street asked if townhouses could be built on this site if it were rezoned. Mr. Wynn replied that the construction of townhouses is not permitted in the CR-2 Zoning District.

9. Ms. Dena Roman, a resident of Oak Drive in Silverdale Borough, understands that there are three options under the RR requirements – one being three acre lots, one being 50,000 sq. ft. lots if public water is available, and the third being public water and open space with 30,000 sq. ft. lots. She has reviewed past meeting minutes that detail the issue of the cluster option and how best to utilize it to develop this parcel, which seems to have some appeal because of the open space associated with it. Ms. Roman noticed that all of the discussions in the meeting minutes for implementing the cluster option seems to center around forcing 45 single family dwellings onto the site, no matter what. Unfortunately, it appears that the balancing of the open space, and the number and size of the lots contradict each other, not to mention some of the contradictions of the purpose of the RR District, which discourages premature and haphazard development. As a neighboring resident, Ms. Roman appealed to the Board to proceed with caution with this re-zoning petition because there is an enormous potential for downstream impact to the neighboring residents for possible future development as well as the impact on Township resources. She noted that there are several potential negative impacts that may be avoided with a more creative and sensitive approach to developing this parcel. Ms. Roman stated that a more balanced approach that would consider open space with perhaps a smaller number of larger lots, has either not been considered or is not a popular option. It appears to Ms. Roman that the 45-lot yield on 20,000 sq. ft. lots has consistently been presented by the applicant. She urged the Board to deny the re-zoning request for this property, and to allow the proper plans under the RR regulations to be submitted to be. Ms. Roman encouraged the Township to attempt to achieve a well-balanced subdivision plan that is sensitive to the environmental needs of this property that would address the density and traffic concerns of the existing neighboring property owners. Discussion took place.

10. Mr. Vince Catanzaro of 342 Green Street noticed that both plans presented this evening show one of the egresses coming out on Green Street directly across from Maregan Drive, which is a private roadway. Currently, a bus stop is located on that corner, and Mr. Catanzaro feels it will present a safety concern for the children using that bus stop. He asked if sidewalks are proposed along Green Street. Chairperson Bennington explained that the question could not be answered at this time, since no preliminary subdivision plan for this property has been submitted. Mr. Catanzaro commented that the access to this development and the traffic issues are of great concern to the existing residents of Green Street. Discussion took place.

11. Mr. Sean Wright of 326 Green Street was in attendance representing his parents, who could not be present. Mr. Wright asked if the developer would be required to install roadway improvements beyond the frontage of the site. Mr. Wynn explained that roadway improvements, including cartway widening, curbs, and sidewalks, along the frontage of the site as required according to the Subdivision/Land Development Ordinance.

Mr. Wright is aware that the site contains several areas of wetlands, and asked if any soil testing was done in the event on-site systems are proposed. Mr. Wynn explained that the resolution of on-site sewage disposal systems is a SALDO/Planning Module issue, not a zoning requirement, although the Zoning Ordinance does require certain types of facilities depending upon the type of development. Mr. Wynn commented that 30,000 sq. ft. lots in the RR District requires on-lot sewage disposal systems, not public sewer, which makes it even more difficult to develop that size lot in a cluster format, besides the fact that there is a density loss from 50,000 sq. ft. to 30,000 sq. ft. Discussion took place.

12. Ms. Nancy Boice of Mill Road understands that when public water is extended, it is the property owner's option to connect, but if public sewer is extended, the Ordinance requires property owners within 150 ft. of the line to connect. Mr. Wynn explained that the Ordinance allows that to be done, however the Board of Supervisors would actually have to invoke that requirement.

13. Mr. Dave Guttman of 401 Green Street is the former owner of the tract under discussion this evening. He has lived in Hilltown for 29 years and his mother, who owns one of the other parcels, has been a resident for over 40 years. When he and his mother decided to sell this property, they considered the offers made by several developers and visited some of the housing projects constructed by those developers prior to selling to Mr. D'Angelo. He recommended that the Supervisors grant the applicant's request for rezoning, which would be a great benefit to the neighboring property owners whose sewer systems are failing.

14. Mrs. Jean Bolger of Rt. 152 asked why, when the Township is in the midst of reviewing a number of Zoning Ordinance amendments, they should consider re-zoning various areas in a piece-meal fashion. Supervisor Manfredi explained that he was referring to the comparison to the RR District with respect to lot sizes and cluster developments. Presently, there is only one option to do something creative with a development according to the RR District regulations. The Board has been considering ways to be more creative in the RR District so that there is not a density detriment. Supervisor Manfredi noted that developers have the right to make a request of the Board

of Supervisors, which is why they are entertaining the petitioner's request this evening. Mrs. Bolger felt this was spot zoning.

15. Mr. Bill Godek of 206 Broad Street asked if this proposal has to comply with the existing Comprehensive Plan. Supervisor Manfredi referred to the Bucks County Planning Commission's review of this proposal, which states "Thus, the proposed re-zoning appears to be an appropriate extension of the CR-2 District" and has found it consistent with the Comprehensive Plan.

Mr. Godek noted a typographical error in the proposed Ordinance amendment (Exhibit B, Section 3, last line), which should be corrected to state "The provisions of this Ordinance are hereby declared to be **repealed** to the extent of the inconsistency."

There was no further public comment.

**\*10:15PM – Chairperson Bennington called for a short recess.**

**\*10:55PM – The Public Hearing reconvened at 10:55PM, and Chairperson Bennington announced the Board had met in Executive Session during the recess in order to discuss the legal issue of the D'Angelo Construction re-zoning request.**

Motion was made by Supervisor Manfredi, seconded by Supervisor Egly, and carried unanimously to table the re-zoning request of D'Angelo Construction for the Guttman Tract property, with a future hearing to be re-advertised for Public Hearing at a later date. There was no public comment.

**\*10:55PM – Chairperson Bennington adjourned the Public Hearing and reconvened the regularly scheduled meeting of the Hilltown Township Board of Supervisors of August 22, 2005.**

2. Murphey Subdivision (aka – Hillside Estates – Preliminary) – Mr. Bob Showalter, the applicant's engineer, was in attendance to present the plan. This 4-lot subdivision located on Skunk Hollow Road, which proposes utilizing a shared driveway and existing concrete bridge for access, was unanimously recommended for preliminary plan approval by the Planning Commission subject to completion of outstanding items as contained within the August 3, 2005 engineering review, with the following noted:

- Waivers requested from street improvements, including cartway widening, curb, and sidewalk are recommended for approval (5-1, with Mr. Beatrice opposed) with the stipulation that cartway leveling/overlay be installed along the frontage of the site pursuant to Section 140-28.P of the SALDO, and that a fee in-lieu-of be received for the waived improvements to be

used toward the "secondary path" in the area identified within the Comprehensive Plan at the discretion of the Board of Supervisors. (Mr. Beatrice opposed the motion due to the amendment, which tied the fee in-lieu-of to the secondary path shown on the Comprehensive Plan).

- Section 140-34-B.4 is waived to permit the shared driveway to not be centered on the common property line as shown on the plan. Shared driveway, however, must be paved.
- Section 134-12.L of the Stormwater Management Ordinance is recommended to be waived provided the shared driveway agreement includes a hold harmless to the Township in the event the driveway is flooded in the future, with adequate notification in a manner satisfactory to the Township Solicitor to future owners of the responsibility to maintain the driveway, as well as the possibility that the driveway may be overtopped during severe flooding events.

Motion was made by Supervisor Egly, seconded by Supervisor Manfredi, and carried unanimously to grant conditional preliminary plan approval to the Murphey Tract Subdivision, pending completion of all outstanding items as noted in the engineering review dated August 3, 2005. There was no public comment.

F. ENGINEERING –

1. Mr. Wynn provided a status report of the Hilltown Chase Subdivision. There is still some grading on two lots (29 Beverly Road and 11 Paige Trail) remaining to be completed, one of which will be accomplished tomorrow. There is also one driveway to be paved and two to seal coat. Blooming Glen Contractors is doing the internal road and Telegraph Road paving and has promised to do so prior to the opening of school. Mr. Wynn met with a wetland consultant at the basin this morning, which is loaded with frogs and is naturally well established as a wetland basin. He will be meeting with a landscaper who specializes in wetland plantings to propose a plan for that basin, though the work should not be done until September or October. There are a few dead plantings around the basin itself that will also be replaced.

2. With respect to the Summer Lea Subdivision, Mr. Wynn noted that concrete crosswalks are being installed.

G. NEW BUSINESS:

1. Correspondence was received from the Bucks County Planning Commission seeking municipal requests for projects to be considered by the Bucks

County Transportation Improvement Program, which is updated every two years. From this list, projects are selected for the Delaware Valley Regional Transportation Improvement Program and PennDot's Twelve Year Highway Program. Applications must be completed for each project requested. Deadline for submissions is September 23, 2005. Mr. Wynn explained that the bridge on Walnut Street between Hilltown Township and Perkasio Borough is currently on the list and is being designed by KCI Engineering, who contacted him for additional information about incorporating the pedestrian bike path on one side of the bridge. Discussion took place.

2. At their last meeting, the Park and Recreation Board heard a request from Mrs. Smith, the mother of the fiancée of Marine Lance Corporal Robert Minninger, the Hilltown resident killed while serving in Iraq. Mrs. Smith asked if it would be possible to plant a memorial tree in Corporal Minninger's honor at the Hilltown Civic Park. She explained that since Robert is being buried in Arlington Cemetery, her daughter and their friends cannot visit the grave as often as they would like and they feel they have no place to go to grieve. The Park and Recreation Board unanimously agreed to Mrs. Smith's request, and scheduled the tree planting at the Hilltown Civic Park on Saturday, November 12, 2005. Corporal Minninger's father chose a Dawn Redwood tree, since it was a favorite of his son's. The Park and Recreation Board also recommended that Mr. Buzby be consulted as to where in the park the tree should be planted to address any maintenance issues.

Motion was made by Supervisor Manfredi, seconded by Supervisor Egly, and carried unanimously to approve the requested tree planting of a Dawn Redwood and a commemorative marker for Marine Lance Corporal Robert Minninger at the Hilltown Civic Park on November 12, 2005, at the Township's expense to come from the Tree Planting Fund. There was no public comment.

H. MYLARS FOR SIGNATURE: None.

I. PUBLIC COMMENT:

1. Mr. Jack McIlhinney of Broad Street, at the behest of Mr. Sumpf, announced that the Deep Run Valley Sports Association opening day soccer ceremonies would be held on Saturday, September 10, 2005 at 9:00AM at the DRVSA complex on Callowhill Road.

2. Mrs. Judy Greenhalgh of Blooming Glen Road commented that one of the statements she made at the last meeting was that the quarry may be stopping at a depth of 265 ft. at the Blooming Glen Quarry, however in speaking with a representative of the Quarry, she was told that the permit is to a depth of 300 ft. Therefore, at this point, H & K does not know how deep they will be going. Mrs. Greenhalgh commented that there

are two more instances of wells going dry in the Blooming Glen Quarry area however, she believes that it could be because the pump was not low enough, while the water level was dropping. H & K Quarry is in the process of assisting both those property owners. The property owners within the cul-de-sac are experiencing serious difficulties with water. H & K will be refracturing those wells and supplying a water tank for those residents, as a temporary solution. Additionally, Mrs. Greenhalgh has concerns with the five property owners who have submitted bills to H & K from the 1990's when their wells were less than 200 ft. in depth, and the quarry went down to 200 ft. in depth. H & K is still insisting that the monitoring does not show that those property owners should be reimbursed.

Since residents would not have the opportunity to ask questions or make statements at the August 25, 2005 Public Meeting, Mrs. Greenhalgh asked what specifically the Supervisors would be considering and perhaps voting upon that evening. Chairperson Bennington replied that he and Supervisor Egly would be considering and voting upon only the Stipulation Agreement at the August 25, 2005 Public Meeting. The proposed Ordinance itself would be discussed and considered at the advertised Public Hearing of August 31, 2005. Mrs. Greenhalgh commented that there are some very good things in the proposed Ordinance, which she believes have been changed for the better – for example the specific designation of the no-fault zone. Mrs. Greenhalgh expressed concern with the language of the proposed Ordinance that speaks to office buildings for any permitted principle or accessory uses, but not limited to quarry and construction. When she moved to Hilltown in 1976, Blooming Glen Contractors were not using the property across the street from her home, and she had a view of Haycock Mountain. At the time, Mrs. Greenhalgh was told that that site would not be quarried due to problems with the former quarry. She noted that the site has not been quarried, however the Blooming Glen Contractor's business that operates from that site can, at many times, be a problem because they are permitted to operate 24 hours a day, which Mrs. Greenhalgh does not understand. She also questioned the 50 ft. setback from any property line, which she did not feel was a great enough distance for a quarry operation. She further questioned the maximum height of 65 ft. for buildings. Mrs. Greenhalgh was pleased with the peak velocity of 130 decibels, noting that the quarry is presently at 133 decibels. In May, she complained of a blast that was 131.6 decibels, which was investigated by DEP. With respect to seismographs, Mrs. Greenhalgh feels the Township should know how often DEP calibrates those machines and should request that a copy of those seismograph calibrations be provided to the Township. Mrs. Greenhalgh was encouraged by the requirement that blasting records will be forwarded to the Township. She asked, however, who would police the limitations of quarry operations. With respect to "temporary" quarry operations, Mrs. Greenhalgh believes the word temporary should be better defined. She questioned the calculation that determines whether or not a neighboring property is located within the zone of influence. Mrs. Greenhalgh believes that if a property line is within the 2,500 ft. zone of influence, than it should not matter

where on the property the well is located. Concerning fencing of the quarry site, Mrs. Greenhalgh suggested that green fencing be utilized, which would blend in better with existing vegetation. She questioned why the quarry would be permitted to place utilities, including but not limited to electric, water, sewer and other use, within a buffer zone. Mrs. Greenhalgh also believes that H & K should be required to obtain a well permit even if they are just deepening a well, but not drilling a new one. Discussion took place.

3. Mr. Bill Godek of Broad Street asked if there would be an agenda available for the August 25, 2005 Public Meeting. Chairperson Bennington replied that there would not, since it will be a time for he and Supervisor Egly to consider and vote upon acceptance of a Stipulation Agreement between the Township and H & K.

Mr. Godek referred to correspondence he received from the Township, which mentions that the August 25<sup>th</sup> meeting would be the "settlement of all litigations" and asked specifically how many lawsuits have been filed against the Township. Solicitor Grabowski explained that H & K filed two procedural challenges against the Township with the Zoning Hearing Board within the past 2-½ to 3 years. He noted that these appeals are public records available for review. Mr. Godek asked the Supervisors to identify the experts who reviewed the quarry documentation, conducted the studies on behalf of the Township, and advised the Board of Supervisors throughout the numerous quarry hearings. Chairperson Bennington replied that that information would be divulged at the August 25, 2005 Public Meeting. Mr. Godek feels that this information is being hidden from the general public and believes the public should be informed of this information prior to the August 25, 2005 Public Meeting. Discussion took place.

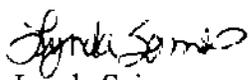
J. SUPERVISOR'S COMMENTS:

1. Supervisor Egly received correspondence from PennDot advising that they will finally begin reconstruction of the bridge in front of his home on Minsi Trail.

K. PRESS CONFERENCE: A conference was held to answer questions of those reporters present.

L. ADJOURNMENT: Upon motion by Supervisor Egly, seconded by Supervisor Manfredi, and carried unanimously, the August 22, 2005 Hilltown Township Board of Supervisors meeting was adjourned at 11:31PM.

Respectfully submitted,

  
Lynda Seimes  
Township Secretary