

HILLTOWN TOWNSHIP BOARD OF SUPERVISORS
REGULARLY SCHEDULED PUBLIC MEETING
Monday, October 23, 1995
7:30 PM

The regularly scheduled public meeting of the Hilltown Township Board of Supervisors was called to order by Chairman William H. Bennett, Jr. at 7:37PM and opened with the Pledge of Allegiance.

Also present were: Kenneth B. Bennington, Vice-Chairman
Jack C. Fox, Supervisor
Bruce G. Horrocks, Township Manager
C. Robert Wynn, Township Engineer
Larry Cherba, Township Solicitor's Office
George C. Egly, Chief of Police
Lynda Seimes, Township Secretary

A. APPROVAL OF MINUTES:

Action on the minutes of the September 25, 1995 Board of Supervisors Meeting: Supervisor Fox noted several corrections:

- page 2, first sentence, should read "Supervisor Fox feels **a little sorry** for Mr. Snyder, **but more sorry** for the residents of Hilltown Township."

- page 3, middle of the paragraph, should read "Mr. Moyer feels this request is in order because the only other offers for this property have been from developers who have the wherewithal to install a community water system for Lots #1 and #2, as well as **several homes** on Lot #3."

- page 5, first full paragraph, last sentence, should read "Supervisor Bennington noted the Township just put **\$23,000.00** into the Hartzel-Strassburger Estate for re-pointing, which has now become a legal issue."

- page 5, second full paragraph, second sentence, should read "The repair of **one road** and **one bridge** is outside the area so that they would not be funded."

- page 21, nine lines from the bottom of the page should read "**Solicitor Grabowski** believes it is evident that the Township can do that because it has been done by other municipalities."

Supervisor Bennington noted the following correction:

- page 5, first full paragraph, should be prefaced by the following sentence "**Supervisor Bennington asked Mrs. Pfeil, as a taxpayer and a Historical Society member to make a comment.**"

Supervisor Bennington asked for clarification of a statement made by Supervisor Fox on page 21 of the minutes, which states

"Supervisor Fox felt this particular Planning Commission is worse than anything he has ever seen when it comes to overriding motions." Supervisor Bennington asked if that is what Supervisor Fox actually meant by his comment. Supervisor Fox replied at the time of that meeting, Supervisor Bennington interrupted his original comment by saying that Supervisor Fox hates all the Planning Commission members. Further, even though Supervisor Fox does not believe correspondence should be read at public meetings, he questioned why the letter actually read by Chairman Bennett at the September 25, 1995 meeting was not made a part of the record. Mr. Horrocks explained he made the administrative decision, without consulting any of the three Supervisors, to not include Mr. Carney's letter in the September 25, 1995 meeting.

Discussion took place concerning the contents of the minutes and it was agreed that they would be deferred for final action at the November 27, 1995 Supervisors Meeting, pending review of the actual tape recording of the September 25, 1995 meeting at that time.

Action on the Minutes of the September 30, 1995 Community Development Block Grant Public Hearing: Chairman Bennett noted the following correction:

- page 6, last sentence should read "Upon motion by Supervisor Fox, seconded by Supervisor Bennington, and carried unanimously, the advertised Public Hearing for Community Development Block Grant Funding was adjourned at 9:40AM."

Motion was made by Supervisor Bennington, seconded by Supervisor Fox, and carried unanimously to approve the minutes of the September 30, 1995 Community Development Block Grant Public Hearing, as corrected.

Action on the Minutes of the October 9, 1995 Worksession Meeting: Supervisor Fox noted the following correction:

- page 5, number one under "Supervisor's Comments" should read "Supervisor Fox commented he made **that statement** in the heat of the moment, and that he thinks very highly of Mrs. Bolger."

Motion was made by Supervisor Fox, seconded by Supervisor Bennington, and carried unanimously to approve the minutes of the October 9, 1995 Worksession Meeting, as corrected.

On page five of the minutes, Mrs. Bolger observed that there is no light on top of the Comcast tower, as was promised. Chairman Bennett asked if the light has been installed on the top of the tower. Mr. Horrocks advised Comcast has not yet installed the light on the tower.

To clarify matters concerning the Hilltown Crossings project, Chairman Bennett explained the Wolfson Group, developer of the project, has in fact contributed \$150,000.00 to the Township, of which \$75,000.00 is expected to be spent on the construction of a sewer system on Rt. 309, at the recommendation of the Township Engineer.

B. APPROVAL OF CURRENT BILLING: Chairman Bennett presented the Bills List dated October 24, 1995, with General Fund payments in the amount of \$123,260.28, and State Highway Aid payments in the amount of \$13,099.25; for a grand total of all funds in the amount of \$136,359.53.

Supervisor Bennington questioned the bill from Wilwert TV in the amount of \$380.22 for VCR repairs. Chief Egly noted this bill was for the repair of the time-lapsed VCR which is used for monitoring of the cells. Supervisor Fox questioned the bill from Marinucci Electric in the amount of \$3,245.00 to salvage the lights for the park, which were a gift to the Township. Supervisor Fox felt that was a great deal of money. Mr. Horrocks advised that bill was for time and materials to remove the lights, poles, and netting, as well as transportation of those items to the Township park.

Motion was made by Supervisor Fox, seconded by Supervisor Bennington, and carried unanimously to approve the Bills List, dated October 24, 1995, subject to audit.

C. TREASURER'S REPORT - Mr. Bruce G. Horrocks, Township Manager - Mr. Horrocks presented the Treasurer's Report with the following balances as of October 20, 1995:

General Fund Checking Account	\$ 163,633.45
Payroll Fund Checking Account	\$ 415.40
Fire Fund Checking Account	\$ 57,703.53
Debt Service Fund Checking Account	\$ 104,570.06
State Highway Aid Fund Checking Account	\$ 74,447.34
Escrow Fund Checking Account	\$ 112,927.40

Motion was made by Supervisor Fox, seconded by Supervisor Bennington, and carried unanimously to approve the Treasurer's Report, dated October 20, 1995, subject to audit.

D. RESIDENT'S COMMENTS ON AGENDA ITEMS ONLY: None.

E. CONFIRMED APPOINTMENTS:

1. Mr. Carl Fretz - Spur Road Associates - Mr. Fretz's letter of October 13, 1995, was reviewed. Mr. Fretz advised the location of the street lights must be moved approximately fifteen feet north along Spur Road due to a limitation of PP&L to run power

from an existing supply pole. Mr. Wynn noted that fifteen feet will not impact the project, and recommended the Board authorize relocation of the street lights. It is also important to Mr. Fretz's business to have exposure to Rt. 309, therefore he is proposing rearrangement of the buffer trees required to be planted along Rt. 309. Mr. Fretz proposes relocating some trees which were to be placed along the rear of the property, to the south side of the property along the retention basin. Supervisor Bennington noted that some trees on this property were cut down. Mr. Wynn presented a plan showing trees marked in yellow which were shown to remain on the approved land development plan. Those marked in red have been removed from the site. Mr. Wynn commented one tree that was removed was very large, though most ranged from 6" to 18" caliper. The largest tree removed from the site was a 76" caliper maple tree. Mr. Fretz does not believe that there was ever a 76" caliper tree on the site. Mr. Wynn commented the trees were all present at the time of plan approval. Mr. Fretz stated some trees were cut prior to his purchasing the site approximately one year ago. As a minimum, Supervisor Bennington feels the trees which were removed on the original plan should be replaced. Supervisor Fox agreed. Even if that 76" caliper tree was never there, Mr. Wynn advised the removal of the other six trees, if they were replaced in equal caliper, would constitute approximately 31 trees at 2 1/2" caliper.

Further, Mr. Fretz is proposing to donate \$1120.00 to the Hilltown Park and Recreation fund in order to provide for the placement of ten to twelve 2 1/2" caliper trees at a location of their choice.

Motion was made by Supervisor Fox, seconded by Supervisor Bennington, and carried unanimously to direct Mr. Fretz to replace the trees which were cut down with 2 1/2" inch approved caliper trees, and to place the other trees on Township property, at the direction of the Township Manager or the Township Engineer.

Motion was made by Supervisor Fox, seconded by Supervisor Bennington, and carried unanimously to authorize relocation of the nine trees to another location on the site for the Spur Road Associates plan.

For clarification, Mr. Wynn noted the motion does not include the 76" caliper tree which was removed.

F. MANAGER'S REPORT - Mr. Bruce G. Horrocks, Township Manager -

1. Mr. Horrocks advised there are three lines for signature following this meeting, including the Olesky Land Development and the Bouleware Subdivision (both of which have been signed by the Planning Commission); and the Finkelstein Subdivision.

2. Mr. Horrocks is seeking Board authorization for advertisement of a bid for construction of the traffic signal at Rt. 113 and Diamond Street. Mr. Wynn noted PennDot approval and the Labor and Industry Wage Rates have been received. Specifications were prepared by Mr. Wynn today, in anticipation of Board authorization.

Motion was made by Supervisor Bennington, seconded by Supervisor Fox, and carried unanimously to authorize advertisement of a bid for construction of the traffic signal at Rt. 113 and Diamond Street.

3. Certified letters will be mailed tomorrow to every Hilltown Township resident who owns property on Rt. 113, advising of house number changes for the entire length of that road. Mr. Horrocks explained these changes were made to address any numbering discrepancies in order to facilitate 911 services. Mr. Horrocks asked the press in attendance to mention this change in their newspaper.

4. The Board previously directed Mr. Horrocks to seek Planning Commission recommendation on two different location sketches for placement of the proposed salt storage buildings. One proposed location is the site at Rt. 113 and Callowhill Road, and the other proposed location is to the rear of the Township building. The final result of the Planning Commission's recommendation, with Supervisor Fox abstaining, is that four members recommended the site behind the Township building; one member recommended the site at Rt. 113 and Callowhill Road; and two members recommended the open space property located directly across Rt. 152 from the Township building. Mr. Horrocks would like to proceed with the bid process for the salt storage buildings, and asked direction from the Supervisors as to where these buildings will be placed.

Supervisor Bennington would like to review a revised drawing of the actual storage buildings, showing the proposed buffer. The Board was in agreement to review the proposal at the next Worksession meeting.

5. Three applications have been received from residents who are interested in filling the vacancy on the Planning Commission. Those individuals will be interviewed by the Planning Commission at their worksession meeting in November.

Supervisor Bennington asked the status of the proposed Advisory Panel. Mr. Horrocks noted it has been advertised in the News Herald. At their last meeting, Supervisor Fox asked the Planning Commission members to volunteer to serve on this committee, however there was no interest.

6. Mr. Horrocks presented nine Escrow Releases, two of which are cash held by the Township, for the Board's authorization:

Bricks Villa	Voucher #06	\$	1,213.15
Bricks Villa	Voucher #07	\$	37,945.35
Country Roads Phase II	Voucher #15	\$	486.40
Gro-N-Sell, Inc.	Voucher #04	\$	150.15
Hilltown Hunt	Voucher #06	\$	1,895.40
Ralph G. Moyer Subdivision	Voucher #01	\$	302.60
Sara A. Nickel Land Dev.	Voucher #01	\$	1,316.55
Santos Subdivision	Voucher #02	\$	80.10
Santos Subdivision	Voucher #03	\$	4,766.22

Motion was made by Supervisor Bennington, seconded by Supervisor, and carried unanimously to authorize release of the nine Escrows as noted above.

G. CORRESPONDENCE:

1. Correspondence was received from Bunny's Animal Shelter advising there are 140 dogs residing at the shelter as of September 30, 1995.

H. SOLICITOR'S REPORT - Mr. Larry Cherba, Township Solicitor's Office -

1. Solicitor Cherba presented the Declaration of Easement for right-of-way of Telegraph Road for the Loeffler Subdivision.

Motion was made by Supervisor Bennington, seconded by Supervisor Fox, and carried unanimously to **adopt Resolution #95-44 for the Declaration of Easement for right-of-way of Telegraph Road for the Loeffler Subdivision.**

2. The executed Land Development Agreement and the cash escrow in the amount of \$2,200.00 has been received for the Olesky Land Development. This escrow is being established to guarantee the cost of uncompleted improvements and inspections.

Motion was made by Supervisor Bennington, seconded by Supervisor Fox, and carried unanimously to **adopt Resolution #95-45, accepting the Declaration of Easement for right-of-way of Spur Road and the utility easement for the Olesky Land Development.**

3. In reference to the Bernie Enterprise Supreme Court appeal, Solicitor Cherba notified the Township that the Supreme Court denied the petition for allowance of appeal. No further information has been received from the Prothonotary of the Supreme Court as to any motion for reconsideration. There was a seven day period in which to file for that reconsideration.

4. At the September 25, 1995 meeting, the Board had requested the Township Solicitor to contact the Pennsylvania Attorney General's office and the District Attorney's office in reference to investigation of Mr. Fox's insinuations of implied threats against him. Solicitor Cherba explained the Attorney General's office is an office of limited jurisdiction who can not enforce every criminal law that may or may not be perpetrated in the Commonwealth. Although they will prosecute crimes under the Crimes Code, it is usually at the insistence of the District Attorney. This normally takes place in smaller counties where there is a part-time District Attorney who may not have the staff, the resources, or the knowledge to enter into complicated murder cases, for instances. These smaller counties will ask the Attorney General to send in an attorney who is experienced in that area to undertake that type of prosecution. Knowing that, Solicitor Cherba reconfirmed it with an Assistant Attorney General and then proceeded to the Bucks County District Attorneys office. Solicitor Cherba discussed the matter with that office, who reiterated the fact of the limited jurisdiction of the Attorney General. The Bucks County District Attorney's office was not of the opinion that they would request the Attorney General to investigate this matter because they feel the manpower and the resources to conduct their own investigation are adequate. However, if there was going to be an investigation to these telephone threats, they would like the supervisor involved to contact Bell Telephone security concerning the annoyance calls, and then to proceed to the local police department for their investigation at the local level. When Supervisor Fox contacted the District Attorney's office, they said they did not have the manpower or the time to deal with the matter.

I. PLANNING - Mr. C. Robert Wynn, Township Engineer -

1. Philadelphia Glider Port Subdivision - The Planning Commission unanimously recommended approval of the Subdivision Ordinance waivers as requested by the applicant, due to the nature of the subdivision; and approval of the preliminary/final plan conditional upon completion of outstanding items as contained in the engineering review dated September 28, 1995. A "proof" plan was submitted by the applicant on October 13, 1995 which satisfactorily addresses the drafting requirements included within the engineering review.

The outstanding recommended conditions of approval are as follows:

- Right-of-way area of Mill Road and Green Street should be dedicated to the Township as offered by Note 6 on the plan.
- Property pins and monuments as shown on the plan should be installed and certified in writing by the responsible surveyor prior to plan recordation.

Mr. Wynn advised this proposal does not create any new building lots. The site is located at the intersection of Green Street and Mill Road. The plan proposes transferring Lot #3, consisting of approximately 18 acres, into the ownership of the Philadelphia Glider Council in order to protect their runway, which is located just beyond this property. The parcels involved in this subdivision currently exist as two individual lots with the existing lot line to the rear. One parcel is a non-conforming lane lot consisting of 10 acres, however it does not contain 50 ft. of frontage required on Mill Road because the access to that road is divided in half. The subdivision will make the flag lot conforming with respect to frontage by moving the property line such that the entire frontage of Mill Road will provide frontage to the 10 acre parcel. Mr. Wynn noted Lot #1 is the existing Hewitt property containing a house, barn and other outbuildings.

Motion was made by Supervisor, seconded by Supervisor, and carried unanimously to grant preliminary and final plan approval to the Philadelphia Glider Port Subdivision, pending completion of those outstanding items as noted above.

2. Escrow Funds - At their last meeting, Mr. Wynn stated the Planning Commission approve the following motion for consideration by the Board of Supervisors:

"The Planning Commission asked the Board of Supervisors to place into legal language the process for receiving escrow funds from developers. These funds are to be used to pay for environmental, water, traffic, wetland, etc. studies."

Motion was made by Supervisor Bennington, seconded by Supervisor Fox, and carried unanimously to authorize the Township Manager to review and place into legal language the process for receiving escrow funds from developers. These funds are to be used to pay for environmental, water, traffic, wetland, etc. studies.

J. ENGINEERING - Mr. C. Robert Wynn, Township Engineer -

1. Stoneycrest Road - Mr. Wynn noted the Perkasio Borough Authority added a water line in the Stoneycrest Subdivision but had not restored the road as necessary. Mr. Wynn met with the Perkasio Borough Authority Manager and engineer last week, who advised they will be overlaying the cul-de-sac turnaround area as originally indicated.

2. Santos Subdivision - This subdivision is located next to Hawk Ridge on a private roadway, which Mr. Wynn understands is still in the process of litigation with the neighboring property owners. There is a house on that property nearing completion though it has not yet received a Use and Occupancy Permit from the

Township. The applicant established a cash escrow with the Township to guarantee the installation of trees and a hedgerow along the one property line. Specifically, the applicant was required to install 100 hedges. Mr. Wynn noted 110 have been installed. Mr. Santos is requesting acceptance of the completion of buffer requirements.

Motion was made by Supervisor Bennington, seconded by Supervisor Fox, and carried unanimously to accept the completion of buffer requirements for the Santos Subdivision.

K. PHINNEY SUBDIVISION HEARING - Mr. Terry Clemons, representing Mr. Wayne Phinney; and Mr. John Van Luvanee, representing Bypass Road residents - Since this matter has been before the Planning Commission and the Board of Supervisors many time, Chairman Bennett limited speaking time to 15 minutes for each party, and advised the Board would not entertain resident's comments, only those of their respective attorney.

1. Mr. Terry Clemons, representing Mr. Wayne Phinney - Since a court stenographer is present this evening, Mr. Clemons would like to have identified as an exhibit in these proceedings, Ordinance #87-3 as Exhibit A-1. This is the Ordinance which requires a community well system. Mr. Clemons reminded the Board that Section 513 A of that Ordinance provides that a community water system is required for major subdivision where the lots are smaller than 5 acres each, if mandated by the Board of Supervisors. Therefore, Mr. Clemons interprets that language to mean that the Board of Supervisors, under appropriate circumstances, can find that a community water system is not required. The second exhibit presented by Mr. Clemons was identified as Exhibit A-2, which is a map showing the future water system plan. As this map shows, the Bypass Road area is not part of the Comprehensive Plan of the Hilltown Township Water and Sewer Authority to extend public water supply to the area of the Phinney Subdivision. In fact, Mr. Clemons noted, the nearest water main to the Bypass Road property is three miles away. The next exhibit identified by Mr. Clemons is the Water Resources Impact Study for this subdivision, prepared by Del-Val Soils, and dated June of 1995, which is Exhibit A-3. Exhibit A-4 is the review letter of C. Robert Wynn Associates, dated May 2, 1995. As the Board may recall from prior discussions, that letter basically states that all issues of this subdivision have been satisfactorily addressed with the exception of the community water supply system requirement. Exhibit A-5 is the review letter of C. Robert Wynn Associates, dated August 11, 1995, which is the review of the water resources impact study that was performed by Del Val Soil and Environmental Consultants. The findings of Del-Val Soils indicated that individual wells will pump at much shorter intervals and decreased rates across the entire site. Therefore, if there were individual wells as opposed to a

community water supply, the individual wells will pump at shorter intervals and decreased rates across the entire site. Secondly, problems which occur with a single source water distribution system may leave three separate homes without water during a system malfunction or routine system maintenance, as opposed to individual problems with single wells. Finally, Mr. Clemons stated single well community systems are more likely to create drawdown or stress on the aquifer. Mr. Clemons recognizes that these are observations that Mr. Russek of Mr. Wynn's office included in his comments. Further, he feels it is noteworthy that the Township Engineer's letter does not take issue with any of the findings in the Del Val Soils report, including that the pump rates observed in this well test will not adversely affect surrounding water supplies and that the proper procedure and methodology was used by Del Val Soils in their second water test. As a result of that methodology, including adding additional wells to the pump test, Mr. Clemons advised there was no demonstrated adverse impact on surrounding water supplies.

Mr. Strothers of Strothers Engineering was in attendance this evening to present a document marked as Exhibit A-6, which is an estimate of the cost of constructing a community water supply system on the Phinney three lot subdivision. The assumptions made by Mr. Strothers are described in the second page of this report. These findings are based upon a review of the Township Well Ordinance, the Township Water and Sewer Authority design standards for a small public water system, and also after consultation with Mr. Bill Kee of Cowan Engineering, who is the Authority's engineer. This does not include items which presently exist at the site, such as a second well. Mr. Strothers concludes that the total projected cost to install a community water system to this three lot subdivision is \$83,869.00, or approximately \$27,956.00 per lot.

In Mr. Clemons opinion, to require a community water system under these circumstances where the Board of Supervisors has the authority to waive the requirements, would be confiscatory. The Subdivision/Land Development Ordinance in effect at the time of filing of this subdivision application permitted a subdivision with 50,000 sq. ft. lots. Mr. Clemons believes Mr. Phinney has demonstrated that he can meet all the requirements that the Planning Commission has recommended concerning the subdivision. This would include the installation of a small detention basin facility, addressing all the engineering issues, and creating lots consisting of 1.5 to 3 acres. The only thing that interferes with the implementation of this subdivision is the requirement of spending \$28,000.00 per lot for construction of a community water system which will not ever be tied into a township-wide water system. Mr. Clemons feels it is a waste of time and money because there is no plan to service this area of the Township with public water. Mr. Clemons presented Exhibit A-7, a letter from Mr. Wynn

dated February 27, 1995, in which Mr. Clemons asked Mr. Wynn to supply him with information on all community water supply systems submitted after the adoption of Ordinance #87-3. Mr. Wynn responded listing all the subdivisions that had been submitted since the development of that Ordinance. Mr. Clemons noted the Board of Supervisors had previously granted a waiver for a major subdivision where the lots sizes were less than 5 acres. This was the four lot Gro-N-Sell Subdivision. Mr. Clemons believes there were at least two lots in that subdivision that were under five acres in area.

Mr. Wayne E. Phinney has lived at the 232 Bypass Road address over 11 years and has lived in Hilltown Township since 1974. Mr. Phinney has reviewed the cost analysis prepared by Strothers Associates for the construction of a community water system on his property. Further, Mr. Phinney has also reviewed the other subdivision costs he has incurred in connection with this proposed subdivision, including the performance of the two water studies by Del Val Soils and other engineering, legal, and administrative fees. Mr. Clemons asked Mr. Phinney if, at \$27,959.00 per lot as an additional cost for the construction of a community water system, the cost could be recovered from the sale price of the lot. Mr. Phinney does not believe that cost could be recovered. Mr. Clemons asked if there is a market determined price that Mr. Phinney could get for the sale of lots of comparable size in Hilltown Township, and Mr. Phinney replied that there is. It is Mr. Phinney's opinion that these lots would not be marketable at a price that would afford him a reasonable return if he is required to install the community water system.

In summary, Mr. Clemons not only feels that this is an appropriate case for the Board to find that no community water supply system is required; but he also feels that reconstruction of the Ordinance is required in order to avoid it being confiscatory by effectively taking Mr. Phinney's property without due process of law. Therefore, Mr. Clemons is requesting that the Board of Supervisors approve the preliminary plans for the Phinney Subdivision, subject to all of the conditions in Mr. Wynn's letter of May 2, 1995, with the exception of the requirement for a community water supply.

Supervisor Bennington questioned page three of the analysis by Mr. Strothers, which indicates an estimated project cost and asked how many costs are overlapping, whether or not there is a community well or three individual wells. Mr. Strothers does not feel any of the costs overlap. Supervisor Bennington noted lawns and shoulders would still have to be restored. Mr. Strothers explained the lawn restoration would simply be from the well to the house, however the restoration listed as \$14,000.00 included restoration coming from the 8 inch line out on the street back to the house, which is a considerably longer distance than the distance from the

well. If Mr. Phinney proposed a two lot minor subdivision, Supervisor Bennington advised all these costs would be a moot point. Mr. Clemons reminded the Board that according to the Subdivision/Land Development Ordinance, the applicant has a right to pursue a three lot subdivision.

2. Mr. John Van Luvanee, representing Bypass Road residents
- Mr. Van Luvanee thanked the Board for scheduling this hearing for tonight since he was unable to be present at the last meeting. Mr. Van Luvanee can not speak to the intent of the Board of Supervisors when Ordinance #87-3 was enacted eight years ago. Presumably, as an expression of intent, the Board recognized potential concerns with water supply in Hilltown Township and felt that the best way to address that was to impose a requirement for a community water system on three or more lot subdivisions that came before the Board from that date forward. Since then, that section has remained in the Ordinance. After reading the provisions of the Ordinance, Mr. Van Luvanee suggested that Section 600 of the Ordinance is what the Board should apply. That Section is entitled "Hardship," however it is the only Section Mr. Van Luvanee sees in the Subdivision/Land Development Ordinance which really addresses or authorizes the waiver of requirements which are otherwise generally applicable. That suggestion indicates that it is the burden of the applicant to prove that the requirements of the Ordinance are unreasonable or will cause undue hardship. Mr. Van Luvanee advised Section 600.B of the Ordinance suggests that "hardship" does not involve showing that an applicant could make a greater profit if they did not have to comply with the requirements of the Ordinance, in this case, the community water system. In essence, the issue of whether or not the applicant chooses to propose a two lot subdivision or a subdivision of three or more lots, is an economic decision. One of the factors involved in making that economic determination is the cost of doing business in the Township. As Mr. Van Luvanee reads the Ordinance, one of the costs of doing business in Hilltown Township if you choose to pursue a major subdivision, is the development of a community water system. Mr. Van Luvanee is certain the Board has reviewed all of the minutes of the many Planning Commission meetings and has read the testimony of the residents in the Bypass Road area, many of whom own 10 acre lots, and several of whom have experienced water problems. Mr. Van Luvanee is not going to suggest that the water problems experienced will occur only because a particular well on Mr. Phinney's property may pump .7 gallons per minute or some multiplier thereof, however he believes there is a definite water problem in this area. There is the potential under the Ordinance for each of those ten acre lots to be further subdivided. Mr. Van Luvanee presumed that if a developer came before the Board with a proposal of 20 or 30 lots, there would not even be an issue of the waiver of the required community water supply system. If this particular waiver is granted, Mr. Van Luvanee suggested the Board

re-evaluate the policy behind the Ordinance as it was passed in 1987 because he does not see any difference between the proposed Phinney three lot subdivision and any other three lot subdivision that may be presented. Mr. Strothers has determined what it will cost for a three lot subdivision, and Mr. Van Luvanee assumes the cost will be the same in every other three lot subdivision. Mr. Van Luvanee does not feel there is anything unique about the Phinney proposal that will cause him to incur greater costs in the development of a community water system than any other property owner who may wish to subdivide their 10 acre parcel into three lots. In the future, if there were a proliferation of small community water systems, Mr. Van Luvanee reminds the Board that under the Ordinance, they have the right but certainly not the obligation, to request an offer of dedication. If the Board were to require the community water system to be developed and required an offer of dedication, Mr. Van Luvanee believes there may be as much as 21 years to accept the offer of dedication of that community water system. That would allow the Supervisors time to determine what might happen in the neighborhood, and at some point, may determine that it is appropriate to collect a series of these small systems for interconnection in order to guarantee that Hilltown Township residents have a safe and reliable water supply. If the Supervisors objective was to take action by passing Ordinance #87-3, Mr. Van Luvanee fails to see how a waiver of those standards advances the objectives of the provisions of the Subdivision/Land Development Ordinance. For that reason, Mr. Van Luvanee would urge the Board to reject the waiver request, since there is no indication that there is any uniqueness to Mr. Phinney's property as it relates to the application of the community water system standards. Mr. Van Luvanee does not feel there has been any justification for a waiver under Section 600 of the Ordinance. Mr. Van Luvanee believes Mr. Phinney should be held to the same standards as any other resident of this Township who proposes a three lot subdivision.

Mr. Clemons requested five minutes for rebuttal, which was granted by the Board. Mr. Clemons commented Mr. Van Luvanee suggested that one of the criteria is whether or not a waiver can be granted consistent with the objectives of the Ordinance. Mr. Clemons believes that everyone agrees the objective of Ordinance #87-3 is to provide some assurance that there will be an adequate water supply to this development without having adverse impacts on water supplies in the area. Mr. Clemons feels that the Del Val Soils study demonstrates that the pumping rate on these wells, as Mr. Van Luvanee suggested at 7/10ths of a gallon per minute, will not have an adverse impact on the surrounding water supplies, and that there is no purpose to be served from the standpoint of protection of community water supplies by requiring a community water system on Mr. Phinney's lot. The information is to the contrary. Single wells in this situation will have less of an impact on drawdown

rates and surrounding properties water supply than a single well. Secondly, when Mr. Van Luvanee referred to Section 600 of the Ordinance, he correctly decided that one of the reasons the Board can grant this waiver request is due to the unreasonableness of the regulation. It is Mr. Clemons position that a regulation which requires a community water supply system installation, when it is three miles from the nearest water main in the Township water system; and when there are no present plans on the part of the Hilltown Water and Sewer Authority to extend water supply to the area, is an unreasonable regulation. Otherwise, Mr. Clemons feels the Ordinance is constitutionally suspect and also confiscatory.

Supervisor Fox noted part of Mr. Clemons' earlier argument was that having one community water supply well instead of three separate wells, would be more of an adverse drain on the well, yet Mr. Clemons just stated that the water being pumped was so minor that it really had no effect whatsoever on neighboring wells. Mr. Clemons agreed, stating it would be even less with single wells. If a single well is having an adverse affect, then Supervisor Fox feels there must be a problem with lack of water. Mr. Clemons would like to clarify his statement, explaining that what he said and what Del Val Soils has confirmed, is that the pump test showed there is no adverse affect on surrounding water supplies by pumping at the rates necessary to supply water to these three proposed dwellings. Further, there was an observation made by Del Val Soils that three different wells drawing their water on an "as-needed" basis would have less of an impact on the aquifer than a single well being called upon to refill those tanks because a switch came on requiring it to pump for a longer period of time. Therefore, Mr. Clemons believes three separate wells would have less impact on the stress of the aquifer than one single well supplying all three homes.

Mr. Van Luvanee advised the statement in the letter from Mr. Clemons dated September, 1995 that Mr. Phinney has been deprived of his ability to use his property is incorrect, since Mr. Phinney presently resides on this property. The fact that the Township may impose an Ordinance that restricts in some way, Mr. Phinney's ability to further subdivide it and to obtain a more intensive use, does not rise to the level of a taking. Therefore, Mr. Van Luvanee feels that argument should be dismissed as not relevant to the Board's consideration in this case. Further, with reference to the issue of one well, Mr. Van Luvanee did not see any language in the Ordinance that states a community water system must only have one well. There is nothing to prevent Mr. Phinney from designing a system to connect his two existing wells, thereby integrating both into a community water system.

Supervisor Bennington commented water is a precious resource, as we all realize, and the purpose of Ordinance #87-3 was to prevent

residents of Hilltown Township from running out of water. Supervisor Bennington fought long and hard to retain the three acre minimum Rural Residential requirement in the new Zoning Ordinance adopted earlier this year. In this case, Supervisor Bennington feels the Ordinance should be reinforced, thereby protecting Hilltown Township residents by requiring Mr. Phinney to install the community water system.

Supervisor Fox concurred with Supervisor Bennington, stating a new Zoning Ordinance was just enacted this year in which the three acre minimum was required. All the information Supervisor Fox received shows that the Township is nearing a level where the groundwater is being used faster than it is being recharged. The Delaware River Valley Basin Commission is conducting a study at this time, in conjunction with the U.S. Geodetic Service. Supervisor Fox explained their feeling is that we are nearing the point where there will be a deficit at which time we would have to use surface water. Approximately 9 years ago, during a drought period, a very thorough study was conducted from the Hilltown village area into Bedminster and including Dublin. At that time, it showed that the entire area could only sustain another 2,100 people. Supervisor Fox is very concerned because a great deal of water is being drawn off, yet only so much water is going back into the ground for recharge. There is a cone of depression that runs from Dublin to the quarry, which is very close to the Bypass Road area. Therefore, Supervisor Fox is in favor of adhering to the community water system requirement for the Phinney Subdivision.

Chairman Bennett felt the case presented by both parties this evening was excellent. Chairman Bennett believes the case for water in this Township has been overstated, advising he is only aware of relatively few wells that have gone dry during this extended drought period, with most of those being very shallow. Chairman Bennett stated he was against three acre zoning in Hilltown Township and still believes 50,000 sq. ft. was adequate. However, Chairman Bennett recognizes that there is an Ordinance which must be upheld. The problem with the Ordinance is that it applies to the entire 27 square miles of Hilltown Township, though it might very well be more applicable in some areas more so than others. There was a similar situation presented to the Board of Supervisors several weeks ago where the applicant's waiver request was denied. Not wishing to set a precedent, Chairman Bennett believes the Board should uphold the Ordinance which requires a community well, even though he has some mixed emotions about the matter.

Mr. Wynn reviewed the other conditions, in addition to that of the community water system, still outstanding with the Phinney Subdivision, including the following:

- the ultimate right-of-way dedication of Bypass Road offered by notation on the plan.
- Planning Module approval by Penna. Department of Environmental Protection.
- Bucks County Conservation District approval for erosion and sedimentation control (approval had been received, however the plan was revised, requiring reapproval).
- Installation of property pins and monuments; and certification of their installation by the responsible surveyor.
- Execution of Financial Security and Land Development Agreements to insure the construction of all required improvements, such as the retention basin, community water system, and buffer trees, as shown on the plan.

Motion was made by Supervisor Bennington, seconded by Supervisor Fox, and carried unanimously to approve the preliminary/final Phinney Subdivision plan with the conditions as specified above, as well as the requirement for a community water system in compliance with Ordinance #87-3.

Chairman Bennett called for a recess at 9:15PM. The meeting reconvened at 9:27PM.

L. RESIDENT'S COMMENTS:

1. Mr. Bill Gardner advised the sign notifying of a cross street at Green Street for the Schade Tract Subdivision had been knocked down.

Further, in lieu of a centralized post office which had been requested and denied in the past, Mr. Gartner suggested all Hilltown Township residents begin using "Hilltown Township" as the city name, and then continuing to use whichever zip code they normally use. For instance, Mr. Gardner has been receiving his mail using the address "Hilltown Township, PA 18944," with 18944 designating the Perkasio mailing area. Mr. Gardner stated New Britain has been using the Doylestown zip code, but specifying "New Britain Township" for quite some time. Discussion took place concerning the possibilities of this suggestion. In 1987, Chairman Bennett recalls that Mr. Grunmeier and Mr. Singley spoke to postal authorities concerning a centralized post office for Hilltown Township, however they were told that there are many, many communities in the United States that have multiple mailing addresses. The Board felt this system could work on a voluntary basis.

2. Mrs. Jean Bolger asked the status of the water run-off problem at her neighbor's property on Rt. 152, which had been discussed at a previous meeting. Mr. Wynn has inspected the site following recent heavy rains and noted that no extreme run-off problems such as those that were experienced originally, had taken place. Mrs. Bolger noted there are huge rocks near Mr. Godshall's pond. Mr. Wynn explained he and Mr. Horrocks met with PennDot concerning this matter. Rather than placing stone and topsoil back on the site, the developer will be installing gabion baskets so that it will not continue to wash out. Mrs. Bolger noticed that a great deal of run-off is flowing into Mr. Godshall's pond, and asked if the developer has permission for that water to flow into the pond. Mr. Wynn replied the pond is on 1960 aerial photographs showing that it is the low point in which that entire property drains to. In fact, Mr. Wynn noted, more water drained to the pond before the developer began work on the site because the developer put the ditch along the roadway back to the way it was before the Hilltown Authority had directed the water to the pond. Mr. Godshall did not want the site restored that way, so the developer extended the ditch down along the road, which then caused run-off problems for other neighboring property owners. The water from the retention basin naturally flows directly into Mr. Godshall's pond. Mr. Wynn stated Mr. Godshall has complained that he wanted the water directed around his pond. Mr. Godshall's main complaint is that the developer, at Mr. Godshall's request, removed the drainage swale that the Authority had previously constructed without any notification to Mr. Wynn's office. Mr. Wynn directed the contractor to restore the property back to the way it was before any development took place, with the drainage ditch running into Mr. Godshall's pond. The water that runs out of that pipe happens to drain to Mr. Godshall's pond, due to the natural contours of the site.

M. SUPERVISOR'S COMMENTS: None.

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

O. ADJOURNMENT: Upon motion by Supervisor Bennington, seconded by Supervisor Fox, and carried unanimously, the October 23, 1995 Board of Supervisor's meeting was adjourned at 9:40PM.

Respectfully submitted,



Lynda Seimes
Township Secretary