HALFMOON TOWNSHIP OPEN SPACE PRESERVATION BOARD
REGULAR MEETING – MINUTES
FEBRUARY 24TH, 2010

1. **CALL TO ORDER**
Chair Ron Hoover called the meeting to order at 7:03 p.m. Other members present were Bob Eberhart, Brooks Way, Ben Pisoni, Dennis Thomson, Jerry Brown and Andy Merritt. Staff present was Dave Piper, OSPB Administrator; Susan Steele, Manager and Amy Smith, Minute Recorder. No Audience present.

2. **PLEDGE OF ALLEGIANCE**

3. **MINUTES**
Mr. Thomson requested a spelling error be corrected and a word be added to the February 3rd minutes.

● ***MOTION: Mr. Thomson moved to approve the minutes of February 3rd, 2010; Mr. Eberhart seconded; Vote 7-0-0; Motion Carried.***

● ***MOTION: Mr. Thomson moved that the Open Space Preservation Board wishes to express its sincere and deep appreciation to retiring member Lee Pressler. We are grateful for his many years of conscientious, meticulous and dedicated service. Thank you Lee and best wishes for continuing a long, happy and healthy life in Halfmoon Township; Mr. Eberhart seconded; Mr. Thomson stated he would like Ms. Steele to draft a certificate or letter of appreciation using this motion; Vote 7-0-0; Motion Carried.***

4. **THOMSON LEASE AMENDMENTS**
Ms. Yurchak stated in the case of the Thomson lease amendment request the areas are not very gray and these amendments would create major legal issues. Ms. Yurchak stated the first legal issue is the people that have entered into the lease program under the same Ordinances do not have these changes so the question is what authority the Open Space Preservation Board has under the Ordinance to allow these changes. The Ordinance simply says that the lease can be changed upon recommendation to the Board of Supervisors but it does not say what changes can be made. Ms. Yurchak stated the law generally is that Ordinances have to be applied equally to each citizen that is called equal protection and due process and if you do not apply them equally you better have a darn good reason to do so. Ms. Yurchak stated the property should be unique and there should be some unique feature that you have to change something in the lease to meet those properties requirements but if you are making changes based upon a request and with no basis to do so then it is problematic. Ms. Yurchak stated in her opinion that making the changes at the Thomson's request and should it be challenged it would not hold up legally. Ms. Yurchak stated there are other options such as amending the Ordinance so those options are available to everyone.

Mr. Eberhart stated he had a few questions. Mr. Eberhart referred to section 3.03 in the memo from Attorney Elizabeth Dupuis regarding new mortgages. Mr. Eberhart reviewed the section in the Ordinance that refers to mortgages and requested Ms. Yurchak clarify this section. Ms. Yurchak stated when you file liens on properties they have certain priority so if you have mortgage on your property and then the lease is put on second then that would

have second priority so if the first mortgage had to foreclose than the lease would be wiped out because the mortgage was there first. If the lease is put on first before the mortgage then the lease would not affect the mortgage so the position of the lease is important. Mr. Eberhart stated the memo states basically that it would be unlikely that a bank would finance a property with the lease agreement. Ms. Yurchak stated that is correct and that if a bank came and saw the lease there and realized that they would prioritize second then you most likely would not get financing on the property. Ms. Yurchak stated Ms. Dupuis points are very valid issues but the question is what do you do about them. Mr. Eberhart stated the practical implication of that is it may make it hard to sell a property that is in the lease program. Ms. Yurchak stated it is a balancing act but you have protections. Ms. Yurchak stated you are not getting rid of the value of the land it just discounts that value a little bit. Mr. Brown stated he did not think so and it has been proven by research early on and the leases do not decrease the value any and they have been sold. Mr. Way stated sometimes it increases the value and described a sale in Lancaster County. Ms. Yurchak stated if you change this language in the Ordinance than you are losing the protection but if people are not scared away by that provision then it may not matter. Mr. Brown stated there have to be things given up when you get in the program and everyone knows that and it can not be perfect.

Mr. Merritt questioned what Ms. Yurchaks legal opinion is and does this open to many legal issues. Ms. Yurchak stated it absolutely opens too many legal doors for all applicants. Ms. Yurchak stated she is not criticizing the ideas Ms. Dupuis has provided but open so many doors that can not be foreseen and could be very costly for the Township to accommodate these requests from all applicants and it puts the Township at risk in some way that they are not now. Ms. Yurchak stated she does not recommend changing the lease for the Thomson property. Mr. Pisoni stated the only option is to amend the Ordinance.

Mr. Thomson stated although this issue has been raised by his attorney it is not essential. Mr. Thomson stated it would be helpful if the OSPB could walk through these items one at a time and make suggestions to move this forward and provide some direction on the issues that are raised in the memo. Mr. Thomson stated it would provide a sense of where thing are going. Ms. Yurchak stated this property is not unique and not different than everyone else that has come through the program. Ms. Yurchak stated if the OSPB thinks this property is unique and the lease should be modified or the Ordinance amended then she can look into options. Ms. Yurchak stated the OSPB needs to make a decision whether they want to address this request and make the changes or not. Mr. Thomson stated he would argue that the property is very unique as a consequence of scale. Mr. Thomson stated there are other properties in the Township where similar interest may be held and what the OSPB and Board of Supervisors decide may factor into what happens with not just their property but other landowners to participate in the program. There was discussion on why making changes to his lease would apply to every contract that was previously written. Ms. Yurchak stated it is the government acting and has a constitutional obligation to treat its citizens equally. Ms. Yurchak stated again that the Ordinance could be amended and the changes would apply to everyone and not one individual.

Mr. Piper stated he and Mr. Thomson went down and met with the Chief Assessor at the County Office and some of the concerns Mr. Thomson had about real estate tax increases have been somewhat alleviated. Mr. Piper stated they found out that the clean and green rates are fixed by the State and the County Board of Commissioners elected to hold at a fixed rate. Mr. Piper stated the rates can bounce up and down a little bit. Mr. Piper stated if an adjoining property owner would put in million dollar homes it would have not bearing on your property that is in the clean and green program. Mr. Piper stated after meeting with the

Chief Assessor that issue may not exist anymore and may be scratched as a concern. Mr. Piper stated the evaluation of the property is what is fixed per forestry or agriculture use. Mr. Eberhart stated that would not stop the school board from raising taxes. Mr. Piper stated the land is protected by clean and green and the school board may raise their taxes but they will only get the taxes on the clean and green rate.

Mr. Piper stated he feels some of the Thomson's concerns could be alleviated by a Memorandum of Understanding. Mr. Piper stated this could spell out constitutes as a major catastrophe. Mr. Piper stated this could be worked out. Ms. Yurchak stated some of the concerns are sub categories that could be addressed but the taxes are a major issue and does not know how Mr. Thomson feels about a Memorandum of Lease or how his attorney would feel about that. Mr. Thomson stated the language needs to be clarified regarding hardships. Mr. Brown stated he feels it is defined in the language. Mr. Brown questioned whether Mr. Thomson ran the figures on what his income would be coming from lease payments. Mr. Brown reviewed those figures. Mr. Thomson stated their concerns are a matter of the cancellation of the clean and green program and/or county taxes increasing. Mr. Brown stated it is not a matter of if but when taxes double but all property owners face that increase. Ms. Yurchak questioned whether the language in the memo states that the Thomson's are requesting a way out only if the taxes double from last years taxes and would not come into effect only in extreme scenarios. Mr. Merritt questioned whether the Memorandum of Understanding was an open ended way around the lease and open a never ending door. Mr. Piper stated he had a pre-existing business and received a Memorandum of Understanding so he could keep his business. Mr. Merritt stated that was a pre-existing condition and if everyone can come in than every lease becomes very unique into itself and the Ordinance becomes a formality. Ms. Yurchak stated a Memorandum of Understanding could fall under the Thomson property **if** he were only asking what a hardship means and what does farmwork housing mean and request clarification but the request regarding taxes is really pushing the envelope. Ms. Steele read the language in the Ordinance states regarding a financial hardship. There was discussion on whether the rent Mr. Thomson receives is dependent upon his income to help pay the taxes. Mr. Thomson stated a financial hardship needs to be defined and it does not seem fair that he and his wife should have to lay out their finances to have to make their case. Ms. Yurchak stated the clarification of defining a hardship does not trouble her as much as modifying the lease but it is still troublesome. Mr. Brown stated he provided the figures on the lease payments because he does not feel there will ever be a problem paying the taxes. Mr. Brown stated he feels the lease the way it is structured more than takes care of any concerns of paying the taxes. Mr. Brown stated Mr. Thomson has the option of lowering or increasing the rent he receives from the property on top of the lease payment he would receive from the Township and feels like Mr. Thomson is worrying needlessly. Mr. Way suggested the solicitors could sit down and clarify the language for the Ordinance that suits everyone. Mr. Brown stated when you start making loop holes it makes it too easy to get out and the applicant has received all that money and gets out and the Township has nothing to show for it and is out of all that money. Mr. Hoover questioned that if you are not in the program and the taxes sky rocket than what is the recourse at least in the program you have a 10% exemption you could use to help alleviate a financial hardship. There was discussion on the 10% exemption. Mr. Piper stated he would like to see an attempt to try to reconcile an agreement and if the parties sat down and discussed the requests than something could be worked out. Mr. Pisoni stated the Solicitor has given her opinion and she does not recommend changing the lease so the only option is to change the Ordinance. Mr. Thomson will speak to his wife and Ms. Dupuis about the options and come back to the OSPB. Mr. Hoover requested that Mr. & Mrs. Thomson remove some of the requests that are not essential. There was no action taken on this agenda item.

5. APPOINTMENT OF OSPB MEMBER TO THE OSPB 5 YEAR REVIEW COMMITTEE

- ***MOTION: Mr. Eberhart nominated Mr. Hoover for appointment to the OSPP 5 year review committee; Mr. Way seconded; Mr. Hoover stated he could only fill this position if the committee did not start meeting until May; Ms. Steele stated she did not think the Board of Supervisors would have a problem holding off until May to start this process; Vote 6-0-0; Motion Carried.***

6. OSPP 2010 ADVANCED PAYMENT REQUESTS

Ms. Steele reviewed the figures provided that included 2010 end of year balances using twenty, fifteen and ten year advance payments. Ms. Steele commented that the approval of the twenty year advances that were requested would depend how low the OSPB would like to take the end of year balance. There was discussion that if the money was there then the requests should be granted and the OSPB can not foresee who will bring in an application, number of acres and what requests would be made so there was no reason to hold onto the money in anticipation of a large landowner entering the program.

- ***MOTION: Mr. Thomson moved that if the resources were available then the twenty year advance payments shall be approved as requested by the applicants; There was discussion on the Wildlife Corridor and legal issues regarding advanced lease payments; annual lease payments and funding availability; Mr. Pisoni stated the CPI for 2010 is .086. Ms. Steele stated the price per acre is $29.89. Mr. Eberhart stated the Township is committed to making the payment to Clearwater for the Wildlife Corridor; Mr. Eberhart questioned whether the Wildlife Corridor has to be purchased before the 64 acres goes into the OSPP; Mr. Pisoni stated he thought the 64 acres had to be in the OSPP before the Wildlife Corridor agreement is completed; Mr. Eberhart seconded; Vote 7-0-0; Motion Carried.***

7. MARKETING PLAN

Ms. Steele requested this agenda item be tabled.

8. OTHER BUSINESS

Mr. Eberhart stated if there would be an amendment to the Ordinance Dennis, Jerry and himself would not be able to vote so would there be a quorum to vote. Mr. Piper explained it is the majority of a quorum that votes so as long as there were four other members present that were able to vote then the motion could pass or fail by quorum. Mr. Hoover stated there is a vacancy left by Mr. Pressler and there were two names that were suggested. Mr. Hoover suggested the OSPB invite the interested parties to a future meeting.

9. CITIZEN'S COMMENTS

There were no citizen's comments.

10. ADJOURMENT

The meeting was adjourned at 8:50 p.m.

- ***MOTION: Mr. Merritt moved to adjourn the meeting at 8:50 p.m.; Mr. Thomson seconded; Vote 7-0-0; Motion Carried.***