

**HALFMOON TOWNSHIP OPEN SPACE PRESERVATION BOARD  
REGULAR MEETING – MINUTES  
OCTOBER 27TH, 2010**

**1. CALL TO ORDER**

Chair Ron Hoover called the meeting to order at 7:03 p.m. Other members present were Bob Eberhart, Ben Pisoni, Andy Merritt, Denny Thomson and Jim Strauss (arrived at 7:30 p.m.). Staff present was Susan Steele, Manager and Amy Smith, Minute Recorder. No Audience present.

**2. PLEDGE OF ALLEGIANCE**

**3. MINUTES**

- ***MOTION: Mr. Eberhart moved to approve the minutes of August 25th, 2010 with a few corrected spelling errors; Mr. Pisoni seconded; Vote 5-0-0; Motion Carried.***

**4. HEIM APPLICATION**

This property is 111 acres located at 4181 Halfmoon Valley Road on the western side of the Township adjoining the Nauman/Squier property that has just been accepted into the program. There was discussion on the piece fronting the Heim property and whether that was being included in the program. Mr. Merritt questioned whether there was enough funding for the twenty year advance request. Ms. Steele explained Mr. Heim was offered a ten year advance that was accepted. Mr. Eberhart stated someone would need to complete the land rating on this property at the time of inspection.

Mr. Thomson raised some concern regarding the review of this application while the lease and Ordinance are under review for possible amendments. Mr. Hoover stated the Board is working on a time table where deadlines need to be followed. Mr. Thomson questioned whether the procedure would be for the Board to proceed in reviewing the possible amendments and when completed being made available for Mr. Heim. Mr. Pisoni questioned what part of this application does not follow the Ordinance. Mr. Thomson stated he is questioning whether in good conscience should the Board move forward on an undefined contract. Ms. Steele stated at this point the Board is either accepting or not accepting Mr. Heim's application and if the lease or Ordinance or both were changed by June 30<sup>th</sup> of next year than it would up to him to agree to those terms. Mr. Thomson stated he would like to remind the Board that he recused himself while discussions on the suggested amendments raised by his solicitor were addressed. There was discussion on the withdrawal of the Thomson application and if this is going to be changed then they are out of the loop. Ms. Steele stated this is being reviewed and may not be changed. Ms. Steele stated staff could let Mr. Heim know that the program is under review and may be subject to change. Ms. Steele stated the Board would have to decide what is supported in the lease and not in the Ordinance and vice versa and decide what needs to be changed. Ms. Steele stated she recommends the Board accept the application as they do with anyone else and complete the inspection and just let Mr. Heim know things may change but as of right now this is a copy of your lease and here are the Ordinances that are currently in affect. Mr. Pisoni stated applicants would be grandfathered. Mr. Thomson stated he feels his application has just been compromised because they were told no changes would be made. Ms. Smith stated the financial hardship language would not be changed as voted by both the Open Space Preservation Board and Board of Supervisors but the rest of the

recommendations are being considered. Mr. Thomson stated his application should be ahead of new applications since changes would be made and they were under the impression no changes would be made and their application was withdrawn. Ms. Steele stated the letter stated within this fiscal year 2010, these amendments would not be completed and Mr. & Mrs. Thomson had the option of either signing the lease as is or withdrawing the application until the changes had been made that the Thomson's felt comfortable with have been made and re-submit. Mr. Thomson stated but now his application has been withdrawn and if those changes are made by July 2011 they do not have an application in process. Ms. Steele questioned whether the Board then takes no one else in the program until his application has been approved. Mr. Thomson stated in his mind there is a concern of fairness in the terms of order. Mr. Hoover stated he questioned why the Thomson's withdrew. Mr. Thomson stated he was led to believe the Board of Supervisors was not going to take any action or proceed with any amendments. Ms. Steele stated at least not by December 2010. Ms. Steele stated the Thomson application is a 2008 application and for budget purposes the Board needed to determine the lease obligations for the pending applications. Mr. Hoover stated if the Thomson's decided the lease agreement offered by the Township was not acceptable then why completely withdraw the application and not just leave it in the cue and see what happens in the next year or two. Ms. Steele stated the Board of Supervisors had given the Thomson's two options, sign as is or withdraw. Mr. Thomson stated he and his wife withdrew their application because it was their understanding that no changes were expected. Ms. Smith stated again, the letter stated no changes to the hardship language would be changed. Ms. Smith retrieved the letter that was sent to the Thomson's for clarification. Ms. Steele stated the Board did not know in the foreseeable future when the changes to the lease would be completed. Mr. Thomson stated there are still other issues that were raised other than the hardship language that cause deficiencies in the contract. Ms. Steele stated the Thomson's did not have another year to hold it out there and see what if any changes were made. Mr. Thomson stated he understands it facilitates budget planning. Mr. Pisoni stated the Board of Supervisors and he believes the Open Space Board as well, is the main stumbling block for the Thomson's was the financial hardship language and the Board is not willing to make changes to that language. Mr. Pisoni state the Board of Supervisors did recognize other concerns that were raised as areas that need to be addressed but felt since the Board understood the major stumbling block was the financial hardship language then the lease would never be acceptable because the Board of Supervisors sees no changes in that language. Mr. Merritt stated everyone is acting in good faith and until these other issues get worked out he sees no reason not to continue with this application. Ms. Steele stated staff has not been adhering to the deadlines and applications have gone on too long and maybe this timeline needs to be lengthened. Ms. Steele stated Mr. Heim has a chance to review the lease and if he does not feel comfortable and wants to make changes than he will be right where the Thomson's are and asked to withdraw or sign as is. Ms. Steele discussed budgeting processing. Mr. Pisoni stated there are 20-30 other applications in the program that they can only assume have had an attorney review the lease and can only assume new applicants will continue to have their attorneys look at the lease and if there are major issues than they can bring them up. Mr. Eberhart questioned whether Mr. Heim would be subject to any changes. Ms. Steele stated he would if it was amended prior to signing and recording of the lease. There was discussion on when grandfathering begins on a contract or a plan. Mr. Pisoni stated if the Board misunderstood and the main stumbling block is not the financial hardship than the Thomson application should be put back into cue. There was discussion on whether other large landowners would not participate due to the hardship language would this amendment be considered. Mr. Pisoni stated it would not. There was discussion on extreme tax increases being a financial hardship. There was discussion on the clarification or definition of a financial hardship. Mr. Thomson stated there is ambiguity in the financial

hardship language. Mr. Steele stated Mr. Heim is willing to sign the current lease. Mr. Eberhart stated he can see why Mr. Thomson cannot vote on any decision made by the Open Space Preservation Board regarding the suggested amendments made on his behalf by his solicitor but cannot see why Mr. Thomson cannot participate in any discussions. Ms. Steele stated Mr. Thomson was never told he could not participate in discussions but voluntarily recused himself. There was discussion on ambiguity in the lease and ordinance. The twenty year advanced payments were discussed. Mr. Strauss stated if Mr. Thomson's principal worry is what about my kids when I am gone then don't sign the lease because you do not know what situations will arise in the future. Mr. Eberhart stated no one gets in the program thinking it is the best money deal. Mr. Straus stated maybe financial hardship cannot be defined so maybe there could be a clause to the financial hardship language that requires the pay back of any monies paid out to any property that withdraws due to a premature withdraw. Ms. Steele stated a survey could be sent out to those not in the program to find out why they are not and if there are reasons pertaining to clauses in the lease or Ordinance. Mr. Hoover stated it seems as if every time the Board goes round with these issues it brings a new light to these issues. Mr. Strauss also suggested having a land use attorney review the Ordinance and Lease and review possible challenges to lease agreements. Ms. Steele stated there is no money in the budget to do that and it will be done at a staff level and then the solicitor will make it legal. Ms. Steele stated she would like to complete as much of this with staff as possible to cut down on legal fees. Ms. Steele stated the Board of Supervisors directed staff to complete a policy analysis. Mr. Pisoni stated the Board will not change the financial hardship language to make it easier for an applicant to get out of the program. Mr. Eberhart stated he had thought Ms. Yurchak stated it should not be changed because it would have to change in every contract. Mr. Thomson stated he thought what staff have started so far with the comparisons is a great start. Ms. Steele reviewed the parameters under the financial hardship language. Mr. Strauss stated this clause supports agricultural land use hardships and anyone that does not make a living off the property does not qualify for a financial hardship. Ms. Steele this is why a policy analysis needs to be completed. Ms. Steele stated the purpose needs to be consistent and then you set goals to support the purpose. Mr. Eberhart stated a very well qualified land use attorney had written the ordinance so it was not written by an amateur. The five year review committee was discussed and what their next goal should be to accomplish. Ms. Steele stated a codification of all the Ordinances are under review by General Code. There was discussion on the right of first refusal and refinancing. Mr. Hoover offered to complete the land rating for the Heim property. There was discussion on who is able to attend the inspections scheduled for November 6<sup>th</sup> & 13<sup>th</sup>, 2010.

• ***MOTION: Mr. Thomson moved to accept the Heim Application for the Open Space Preservation Program; Mr. Strauss seconded; Vote 6-0-0; Motion Carried.***

**5. REVIEW STAFF RECOMMENDATIONS OF COMPREHENSIVE POLICY/PROGRAM ANALYSIS**

This item was tabled for the next meeting.

**6. BOARD OF SUPERVISORS RETREAT PRIORITY RESULTS FOR OSPP**

Ms. Steele stated the priorities are policy/program analysis, marketing to absent landowners, revise fee simple acquisitions purchase language and revise the land acquisitions funding language. Ms. Steele stated the township clerk will assume administrator, recording secretary duties and secretary duties. Ms. Steele reviewed the OSPP budget. Mr. Hoover stated there options to reduce the costs in recording fees.

7. **OTHER BUSINESS**

There was no other business before the board.

8. **CITIZEN'S COMMENTS**

There were no citizen's comments.

9. **ADJOURMENT**

The meeting was adjourned at 9:15 p.m.

- ***MOTION: Mr. Pisoni moved to adjourn the meeting at 9:15 p.m.; Mr. Thomson seconded; Vote 6-0-0; Motion Carried.***