

**HALFMOON TOWNSHIP OPEN SPACE PRESERVATION BOARD
REGULAR MEETING – MINUTES
NOVEMBER 4TH, 2009**

1. CALL TO ORDER

Chair Lee Pressler called the meeting to order at 7:03 p.m. Other members present were Ben Pisoni, Andy Merritt, Ron Hoover, Bob Eberhart and Jerry Brown. Staff present was Karen Brown, Acting Manager; Amy Smith, Minute Recorder and Dave Piper, Open Space Preservation Administrator. Audience: Bill Hilshey.

2. PLEDGE OF ALLEGIANCE

3. MINUTES

- ***MOTION: Mr. Pisoni moved to approve the minutes of October 14th, 2009; Mr. Merritt seconded; Vote 5-0-0; Motion Carried.***

4. RT VENTURES DISCUSSION

Mr. Hilshey reviewed the changes in the Conservation Lease Agreement that was completed in May 2009. Mr. Hilshey stated two Wildlife Biologists reviewed the fencing and stated it was adequate. Any new fencing will be located 100 feet away from the stream. Mr. Brown commented that the wire strands on the fencing need to be far enough apart so the deer can duck under them. Mr. Brown explained deer will duck under fencing before they will jump over it so it needs to be high enough off the ground so they can duck under and suggested height requirements for the fencing. Mr. Brown asked Mr. Hilshey to give that some thought. Mr. Hilshey reviewed the building areas. There are two allowable building areas on this property. The potential property owners would like to build a camp in building area two and building area one is where current structures are now.

Mr. Hilshey reviewed the May Conservation Lease;

Page 5 Section 3.04 (b1) – Exhibit D will be changed to Exhibit E.

Page 5 Section 3.04 (b2) – Mr. Hilshey explained construction of new farm structures will be permitted but only in building area 1 and not be closer than 100 feet to a body of water.

Farm lanes shall not exceed 14 feet in width and may be constructed to service new structures.

Page 5 Section 3.04 (b3) – Mr. Hilshey commented that this language is deleted and Farm Worker Housing is prohibited so this would also strike the language for Rental Housing of the Farm Worker Housing.

Page 6 Section 3.04 (c1) – timber may not be cleared for additional agricultural purposes but is permitted to be removed for commercial timbering.

Page 6 Section 3.04 (c2) – quarrying and surface mining are prohibited but are allowing for horizontal drilling.

Page 7 Section 3.04 (e) – **Mr. Eberhart questioned whether this section has any meaning in this Conservation Lease and should it be deleted.** Mr. Hilshey stated this came from the Township Ordinance. Mr. Eberhart stated this section states that there is a 10% subdivision exemption. Mr. Hilshey commented that his understanding was this could not happen anyhow due to the number acreage. Mr. Pisoni stated this property would have 6 acres they could subdivide under the 10% exemption rule since there are 66 acres. Mr. Hilshey stated he did not think you were allowed to do that as it was presented to him by Mr. Love. Mr. Eberhart stated this is not his interpretation. Mr. Hilshey stated Clearwater Conservancy does not want to see it subdivided but would allow it if the Ordinance allows it. Mr. Hilshey

stated the potential property owners would like to build a camp on building area 2 if the Ordinance allows it and Clearwater would have no problem with that and is limited to 1,000 square feet. Mr. Pressler stated building area 2 is a half acre and is not big enough to put a dwelling there and needs to be an acre lot. Mr. Brown stated it would not have to be subdivided off the lot if it is their dwelling. Ms. Brown questioned whether septic and water would have to be contained to the half acre. Mr. Piper stated it would not have to be contained to the half acre since there is other acreage around it owned by the same property owner. Mr. Piper stated they could not rent it out. Mr. Piper stated they would have to go through a land development plan process. Mr. Brown stated he has a cabin that he wants to place on his property that he had to take out of the Gamelands. Mr. Eberhart stated the subdivision plan has been approved for this property that shows the camp site. There was discussion on septic requirements. Mr. Pressler stated you have to define the septic areas and they will not be defined to that area. Mr. Hilshey stated it does not matter that the septic areas are not defined to building area 2 it is just defined as the building site. Mr. Piper questioned whether there were any restrictions where the septic system or well are placed. Mr. Hilshey stated there are no restrictions because it would not affect the Wildlife Corridor. Mr. Pressler stated this lease is not on the Wildlife Corridor. Mr. Hilshey stated this property is part of the Wildlife Corridor and is not a legal description but just a name. Mr. Eberhart stated Mr. Love's interpretation was that you can not subdivide less than 10 acres with the exemption that you are taking land away from open space use. Mr. Piper stated he never understood that it was limited to a ten acre minimum. Mr. Pisoni referred to section 3.04 (d.1) which references 10 acres minimums. Mr. Piper stated if he remembered correctly, this section permits adjoining landowners who are in the Open Space Preservation Program to subdivide land off their properties to sell to the adjoining owner but no subdivision is allowed after that transaction on the piece that was subdivided to the neighbor. Mr. Piper stated he also never took the minimum lot size to be 10 acres in Section 3.04 e. Mr. Piper stated a landowner could take 2 acres off their property for a family member under this exemption. Mr. Piper stated there would need to be 60 acres to be able to qualify for the 10% subdivision exemption for non-open space uses. Mr. Piper stated you could subdivide 2 acres but not as a transference. Mr. Pisoni stated he reads it as the minimum you could subdivide is 10 acres. Mr. Brown stated it should be one acre lots and not a ten acre minimum. Mr. Eberhart questioned what if the landowner has less than 60 acres. Mr. Piper stated the 10% exemption would not apply but they could transfer property to an adjoining property owner in the Open Space Preservation Program. Mr. Piper stated this property has 66 acres so the maximum acreage they could use for an exemption would be 6 acres. Mr. Hilshey stated he did not care what they subdivided off because they can only build in area 1 and area 2. Mr. Eberhart explained that if the property owner would choose this option than that piece would come out of the OSPP and would no longer be part of the lease. Mr. Hilshey stated he did not realize it would come out of the program so then it would be a problem. Mr. Pisoni requested Mr. Hilshey get that change to Ms. Yurchak. Mr. Piper questioned whether Clearwater Conservancy has some sort of agreement with the potential property owner that supersedes what they have with RT Ventures. Mr. Hilshey stated the potential property owner has no intention of subdividing any property but they may not own the property for the next 99 years. Mr. Piper stated Clearwater Conservancy could have an agreement with the potential property owners that states they are not eligible for the 10% exemption via contract with Clearwater. Mr. Hilshey suggested just taking out section 3.04 (e3). Mr. Eberhart suggested taking out all of section E. Mr. Piper questioned whether the potential property owner could build the 1,000 square foot cabin and then move into it and would want to lease out the farm house is this acceptable. Mr. Hilshey stated Clearwater Conservancy would have no problem with that. Mr. Hilshey stated Section 3.04 (e.3.iv) would be moved to Section 3.04 (b.5) under permits. **Mr. Pisoni suggested revisiting the sections referring to exemptions for clarification at a later meeting.** Mr. Hilshey reviewed

Article 6 section 6.01 (a) and stated it was changed from a 5 year inspection to yearly inspections. Mr. Brown questioned whether Clearwater Conservancy was willing to complete the inspection or would Halfmoon Township be responsible. Mr. Hilshey stated Clearwater is asking if Halfmoon Township will complete the inspection. Mr. Brown stated this is a voluntary board. Mr. Piper commented that Clearwater Conservancy would have to be given a right of entry to complete the inspection. Mr. Pressler questioned why they would want to delete the 5 year requirement and make it every year. Mr. Hilshey stated a lot could happen in 5 years. Mr. Brown stated it is illegal whether it happens in five years or one year. Mr. Pressler stated since this is an open space property it should come under the other requirements as the other open space properties. Mr. Hilshey stated if the Township wants to leave it at 5 years it is not a deal breaker. Mr. Piper questioned what type of problems they find on other properties. Mr. Hilshey stated it is usually encroachment problems. There was discussion on whether an inspection could be done more often if the Township would choose to do so. Mr. Pisoni stated he sees it as problematic for the Township and if Clearwater wants to do it yearly they would have to do it. Mr. Piper stated this contract is going to be very different from previous contracts and questioned whether the Township has the legal justification to amend the Lease Agreements because Clearwater is involved in this project or is there discrimination going on with this property owner. Mr. Pisoni stated a contract is a contract and they are agreeing to it or they do not have to sign it. Mr. Pressler stated if Clearwater is going to do a one year inspection then the Township should be informed and should probably accompany Clearwater. Mr. Hilshey stated that would be okay and they would also need to send a report to the Township. Mr. Piper stated there should at least be the option. Mr. Hilshey stated on page 14 they will be taking his name off of the agreement since he will not be here for 99 years.

The Board switched to the June version after revisions were made for review. Mr. Eberhart questioned does the Township want to state that the easement can only be amended if Clearwater Conservancy agrees. Mr. Hoover questioned why Clearwater Conservancy is a signee on the Open Space Preservation lease for the 66 acres. Mr. Hilshey stated it would be because of the amendment. Mr. Hilshey stated there are two questions, one, if the Township wants the amendment to the Conservation Lease and two is it legal. Mr. Hilshey stated that if the Township wants Clearwater on the lease as a signatory it should be reviewed by Ms. Yurchak. Mr. Hilshey stated if Clearwater is going to be involved in the amendment than Clearwater should be on as a signee. Mr. Piper commented that if by example the Township would decide that the property is no longer viable to the Township and the Board of Supervisors, Open Space Preservation Board and landowner all agree that this is not working and Clearwater comes back and says they do not agree so the authority is no longer contained by the Board of Supervisors. Mr. Piper stated it could bind the Township into leasing this property for the entire 99 year lease. Mr. Hilshey stated Clearwater is signing onto the lease according to the Township terms and does not want to break the Township. The Board reviewed page 10 section 4.06 & 4.07 of the May Conservation Lease Agreement. Mr. Pisoni requested Ms. Yurchak review these sections. Mr. Piper stated this agreement could not be broken without the approval of Clearwater Conservancy. Mr. Hoover stated this takes them back to the question of why Clearwater has to be involved in this agreement. Mr. Pisoni stated it just needs clarification. Mr. Piper stated it may need to say that the Township has the control. Mr. Brown stated he does not have a problem with the extra amendments being in the lease but it should end there and Clearwater should not be a signee. Mr. Pisoni questioned who is to say in 5 years the Township wants to remove those restrictions than Clearwater has no say. Mr. Brown stated the landowner would have to agree with those changes so there is a check and balance. Mr. Pressler stated Clearwater should not be involved in the lease program. Mr. Hilshey inquired whether that meant taking Clearwater Conservancy completely out of the Conservation lease. Mr. Piper stated the restrictions

could still be and Clearwater could still do the inspections but they do not necessarily have to be signees on the lease agreement. Mr. Pisoni questioned whether Mr. Hilshey would have a problem removing Clearwater from the first paragraph of the amended lease agreement. Mr. Hilshey stated there could be something in the document that states Clearwater would be notified and would be involved and if they felt it was unjustified than come speak to the Township. Mr. Merritt stated it could be worded with the consent of Clearwater that a one month notification be provided for any amendments to this lease. Mr. Hilshey stated it is usually the landowner that would bring something to the Board that they would want to change and request an amendment. Mr. Brown stated the Board of Supervisors would have to agree to the amendment. **Mr. Hilshey stated the language could be stronger in section 4.06 & 4.07 so that it is at the sole discretion of Halfmoon Township.** Mr. Hilshey stated Ms. Yurchak could look at that language and if the Board wanted a place for Clearwater Conservancy to sign under that section that could be added. Mr. Brown stated that would take the landowner out of the picture. Mr. Piper stated it would be between the landowner and the Township. Mr. Piper stated the Township being a government entity would have to have complete control over whether they wanted to honor the lease or amend the lease that would be by and between the property owners and the Township with no other organization getting in the middle. Mr. Eberhart stated that would also have to go into section 1.07. Mr. Eberhart stated he also likes what Mr. Merritt said about consulting Clearwater Conservancy for comment with no vote. Mr. Merritt stated notification and consulting carry two different meanings and would have to be reviewed by the Solicitor. Mr. Merritt stated he likes the idea of consulting with Clearwater Conservancy to give them a chance to respond but with no voting rights. Mr. Hilshey stated Clearwater Conservancy would like 45 days notice. Mr. Hilshey questioned whether they would be taken off then as signatories. The Board agreed they would be taken off but language would be added so that Clearwater would be consulted and able to respond to the Township with any concerns with this lease or any amendments. Mr. Hilshey went back to reviewing the June amendment. **Mr. Merritt suggested asking Ms. Yurchak if Section 3.04 (5) first paragraph should be stricken and leave only the underscore language.** The Board thanked Mr. Hilshey for his attendance.

5. 2009 OSPB APPLICATIONS

Mr. Pressler reviewed where the applications were per the Solicitor. Mr. Pisoni stated payments have been made retroactive and just wanted to the OSPB to be aware. Ms. Smith stated she would provide the appraisal to the OSPB at the end of the meeting but Ms. Yurchak has not had a chance to review this appraisal yet. There was discussion on when the RT Ventures subdivision will be officially approved since it was conditionally approved. Mr. Piper stated DEP has some requirements that he must complete before he can sign off.

Mr. Pressler reviewed the dates and times of inspections for this coming Saturday. Mr. Eberhart stated since he will not be here on November 14th he will switch with Mr. Thomson to complete the land descriptions. Mr. Hoover stated he spoke with Mr. Nauman about the advance payment situation and Mr. Nauman stated he was committed to getting into the program regardless. Mr. Hoover questioned whether there was the opportunity to payout the advance in a percentage. There was discussion about the payment increments. Mr. Brown discussed using the point system for the advanced payments. Mr. Pressler suggested waiting until the OSPB speaks with the property owners. Ms. Smith stated she spoke with Ms. Yurchak today and the Board can not make payments unless they are done in the increments specific to the Ordinance. Mr. Pisoni stated he re-ran the numbers and these applicants can have a fifteen year advance. Mr. Eberhart reviewed the advanced payment option in the Ordinance.

6. OTHER BUSINESS

There was no other business.

6. **CITIZEN'S COMMENTS**

There were no citizen's comments.

7. **ADJOURMENT**

The meeting was adjourned at 8:30 p.m.

- ***MOTION: Mr. Merritt moved to adjourn the meeting at 8:50 p.m.; Mr. Hoover seconded; Vote 6-0-0; Motion Carried.***