

APRIL 23, 2008

The South Harrison Township Committee held a special meeting on Wednesday April 23, 2008 at 8:00 p.m. in the South Harrison Township Municipal Building.

Mayor Charles T. Tyson called the meeting to order and was followed by the flag salute.

Requirements of the "Open Public Meetings Act" were met. Notice of this meeting was given by: (1) sending sufficient notice herewith to the Today's Sunbeam of Salem and the Gloucester County Times of Woodbury; and (2) posting notice on the public bulletin board at the South Harrison Township Municipal Building.

Roll Call: James McCall - present, Cornelius McIntyre - present, Charles Tyson - present, Robert Campbell - present, Gary Spinner - present, John Eastlack, Solicitor - present, Christie Melfi, CFO - present, Nancy Kearns, Municipal Clerk - present, Celeste Keen, Deputy Clerk - present.

Old Business:

Sun Valley Orchard Use Variance

Gary Thompson, SH Planning/Zoning Board Solicitor, addressed the Committee regarding a hearing held before the GC Agriculture Board on April 10, 2008. It was determined that Mr. Marino's proposed use of a cold storage and packing house constructed on his property for produce not grown on his property was a site specific agricultural management practice or operation. Mr. Thompson did appear at the hearing at the request of the Zoning Officer because he believes, under the applicable state statute, that it is clearly not a site specific agricultural management practice or operation when the facility is used for produce which is not grown on the agricultural farm. The decision the Township Committee would need to make is whether it desires to appeal the decision of the County Board to the State Agriculture Committee. The issue is a legal issue; the applicable statute is NJS 4:1c-9 entitled Commercial Farm Owners and Operators permissible activities. When commercial farms engage in the permitted activities, their activities trump local land use ordinances; hence, if Mr. Marino was limiting his cold storage and packing facility simply to produce grown on his farm there would be no dispute because that is a permitted activity under the statute and the County Board would have had jurisdiction to make the ruling.

Mr. Thompson stated that the statute is quite clear about processing and packaging the agricultural output of the commercial farm; he thinks the fact that it is limited explicitly to the output of the commercial farm indicates when, in effect, it becomes a business. Taking in produce from outside, it no longer received the protection of the right to farm act, which means Mr. Marino should have come before the Planning/Zoning Board for a use variance and thereafter for site plan approval.

Mr. Thompson stated that under the statute the State Agricultural Development Committee has the right to expand permitted activities, but the County Board does not. Committeeman McIntyre asked if Mr. Thompson thinks the County Board had the jurisdiction to make the decision one way or the other. Mr. Thompson responded yes - to make the decision yes; you must go to the County Board; they have initial jurisdiction, and the issue then is whether it was the correct decision. Mr. Marino was entirely within his rights to go to the County Board and request the relief that he did. You can appeal, and if there is no appeal the County ruling stands. Mr. Marino's request in the zoning permit application was an addition to a packing house, pre-cooling and cold storage for vegetables. Mr. Wille issued the permit, writing "to be used strictly for produce grown on the existing farm only." Mr. Marino consulted counsel of his choice and proceeded before the Ag Board. How can the Marino's actually use that building for produce grown on their existing farm only when they farm over 2000 acres in different townships and counties? Mr. Thompson's understanding is that he is bringing in peaches from California, not from other sites that he is growing produce on.

Committeeman McCall stated that if he (Mr. Marino) has so many customers that want his peppers and peaches and cucumbers and tomatoes, and they also want oranges

from California, and he has to satisfy his customers, in order to run a successful farm business, they need to open up to whatever it would take to actually keep the farm successful and stay in business.

John Eastlack stated that is not what the Statute says and not what it requires. The statute specifically says “process and package agricultural output of the commercial farm” and the commercial farm is Mr. Marino’s farm. This does not include fruit from other states; that does not qualify. It then becomes a trucking depot, which is a commercial business, and in addition to needing its farmers very badly, this town needs commercial ratables. It is unfair for the residents of this community, the people who own homes, who pay taxes; commercial businesses pay taxes, but under the guise of the right to farm act they actually operate a commercial business and do not pay taxes they’re supposed to be paying.

Mr. Eastlack states that under the statute the GC Agricultural Board should have said “no,” because it is crystal clear that it is not permitted under the statute. Mr. Eastlack states that the Committee needs to make a decision in closed session about whether or not the appeal is taken. Committeeman McIntyre asked about a court case where the court stated that because the authority of the agriculture board is not unfettered when settling disputes that directly affect the public health and safety, the board must consider the impact of the agriculture management practices on public health and safety and temper determinations with these standards in mind. Mr. Eastlack responded that the court is talking about is whether or not the agriculture development board can disregard the land development regulations of particular townships. What the court is saying is they can’t, they are not unfettered in their discretion, and they have to consider those regulations and which things are accepted commercial farming operations, which do not pose a direct threat to public health and safety, and these are spelled out; none of them are even close except B, because that is what they are talking about: the processing and packing of what the agriculture produces.

The Board disregarded planning and zoning and squeezed it under one of the categories, even through it doesn’t fit. What the Board should have done was look at it and say this is not the output of your farm and this doesn’t fit and you should go back to your town. There is nothing here saying that Mr. Marino can’t do exactly what he is doing on his piece of property, but he would need a zoning variance and would have to submit a site plan. Mr. Eastlack believes that after the low, tiny hurdle of the use variance, site plan approval would be granted. This is not a question of preventing Mr. Marino from engaging in his business.

Mr. Eastlack has concerns about the precedent - the impact of this decision upon other operations that are going on or future operations, because the very operation, no matter what it is, could cause the township to lose even more ratables or future ratables, at great expense to the taxpayers and property owners. Deputy Mayor Campbell asked if this really is a legal issue. Mr. Thompson stated that in his opinion it is. If this Committee makes a recommendation to appeal and the State Ag Board upholds the local Ag Board, Mr. Eastlack advised that that appeal would then go to the appellate division.

Open Meeting to the Public:

Motion to open the meeting to the public was made by Cornelius McIntyre, second by Gary Spinner. Motion carried.

Teri Catalano, Ferrell Road addressed the Committee requesting full disclosure regarding a mailer that was sent out asking if anyone on the Township Committee is a member of the group Concerned Citizens of South Harrison, and/or has made a financial contribution towards the printing and/or mailing, and whether or not any privileged Township information was used in sending the flyer. Ms. Catalano further asked how much money is being paid to Mr. Randazzo to review the school budget. All Committee Members said no to contributing to the mailer, and advised that the cost for Mr. Randazzo is \$2,500.00.

Close Meeting to the Public:

Motion to close the meeting to the public was made by Gary Spinner, second by Robert Campbell. Motion carried.

New Business:

School Budget

Deputy Mayor Campbell spoke about the defeated budget, advising there was an educational seminar on the procedures to be followed on defeated school budgets, which he and Mayor Tyson attended. The seminar outlines clearly what the School Board and Township Committee's responsibilities are in regard to certifying the general fund tax levy to the County Board of Taxation. Since the Township Committee does not have the formal background or training in school budget, an independent consultant has been engaged for this review. Deputy Mayor Campbell suggests the meetings be held on Friday afternoon, April 25th, then again Monday, May 5th, and wrap up on Monday, May 12th as this will allow us to resolve any major differences. The information has to be to the State by May 19th. Children can not be used as bargaining chips. Mr. Randazzo's findings will be presented to the residents. Committeeman McIntyre states that these meetings should involve the full Committee and not a subcommittee.

Committeeman Spinner would like to get a working relationship with the School Board and open up the communications so that we work in conjunction with the School Board. Debbie Cunningham addressed the Committee, advising that the School Board is interested in working with the Committee and would like to come to some agreement.

The School Board does not want it sent to Trenton, and does not want the Commissioner of Education to make the decision for our children. Ms. Cunningham has a concern; there are two (2) failed budgets in this Township, why is Mr. Randazzo only going over the South Harrison School Budget. Deputy Mayor Campbell thinks that if we get through one budget we will know how to apply it to Kingsway. Ms. Cunningham requested if we do meet as a whole, that the meeting would be for the school budget and not part of another meeting agenda. Fran Adler asked about items on the list being requested by Mr. Randazzo and will review to see what has already been given to Mr. Campbell. Jonathan Feinbaum suggested that since the list was put together before the defeated packet was given to Mr. Randazzo, and any other forms that have been given to this Committee or members of the Committee through an OPRA form, it does not make any sense for the School Board to respond to this. He asked why don't you just let your expert review the information he has and if he has any additional questions, those can be submitted to the School Board and they will try to respond. Meeting dates were discussed with the date of April 28th, 2008 at 5:00 pm being set.

Resolution – R-08-58

Resolution for Excluding the Public (Litigation)

Motion to adopt Resolution R-08-58 was made by Robert Campbell, second by Gary Spinner.

Roll Call Vote: James McCall – yes, Cornelius McIntyre – yes, Charles Tyson – yes, Robert Campbell – yes, Gary Spinner – yes. **R.C.V.: 5 - yes', 0 – no's. Motion carried.**

Return to Open Session:

Motion to return to open session was made by James McCall, second by Robert Campbell. Motion carried.

Deputy Mayor Campbell made a motion to appeal the GC Agriculture Board decision to the State Agriculture Board, second by Charles Tyson.

Roll Call Vote: James McCall – no, Cornelius McIntyre – no, Charles Tyson – yes, Robert Campbell – yes, Gary Spinner – no. **R.C.V.: 2 - yes', 3 – no's. Motion failed.**

Township Budget

Christie Melfi, CFO, made adjustments to the budget based on the last meeting to get it under the CAP and highlighted the revenues that there were questions on and the amount of surplus to be used. Items that were left to discuss are the fund balance, the interest on taxes, and interest on deposits. Right now \$500,000.00 of surplus is used and

\$500,000.00 is left in the fund. Last year the Committee used \$475,000.00. The two (2) biggest ones you brought in where interest on taxes and interest on deposits. You lost \$118,000.00 in State Aid, which is also why you are looking at an increase.

Committeeman Spinner spoke about the State charging Municipalities for State Police coverage and the cost of this being in the budget. Ms. Melfi stated that if and when the State does come back and say we have to pay for State Police coverage, and then at that time you can do a special emergency appropriation, because that is a cost they are making us incur, you pay it out this year, but raise it in the following year. Christie will ask Henry Ludwigsen about the waiver issue regarding the police budget. The Committee discussed the Lincoln Road project and engineering costs. Deputy Mayor Campbell stated his salary can be used to pay Mr. Randazzo. The Committee discussed a budget for the Ethics Board, with nothing being inserted into the budget for this Board. The Committee again reviewed the anticipated revenue side of the budget with no resolve.

Open Meeting to the Public:

Motion to close the meeting to the public was made by Gary Spinner, second by Robert Campbell. Motion carried.

Theresa Roeder addressed the Committee regarding a tax increase and asked where does the re-assessment fall in, and will it off-set another tax increase. Ms. Roeder was advised that a municipal increase will be off-set by a decrease in the Kingsway school tax. A revaluation/re-assessment is just basically redistributing the wealth, some people will come up in assessed value, some will go down and some will remain the same. Ms. Roeder then asked about the mowing of the basins in Saddlebrook and where that stands. Committeeman McCall suggested taking action now to hire someone to cut the grass and charge to the escrow account.

Motion to have Public Works get quotes for the mowing of the basins in Saddlebrook was made by James McCall, second by Robert Campbell.

Roll Call Vote: James McCall – yes, Cornelius McIntyre – yes, Charles Tyson – yes, Robert Campbell – yes, Gary Spinner – yes. **R.C.V.: 5 - yes', 0 – no's. Motion carried.**

Marc Nagtegaal addressed the Committee stating he would like to add his list of basins to the Saddlebrook basins so they all can be mowed and maintained the way they are supposed to be. Then, the Township can go after the people who are responsible for the maintenance of the basins. Mr. Nagtegaal was advised to give his list to Joe Wille, the Township Zoning Officer. Mr. Nagtegaal asked about a vote regarding the Marino's. Mr. Nagtegaal was advised there was a motion to appeal and the motion failed. Committeemen McCall, McIntyre and Spinner voted no and Mayor Tyson and Deputy Mayor Campbell voted yes.

John Coleman stated that there is a difference between a farm being used as commercial and being rated as commercial. Mr. Sorbello is an excellent business man and has the where-with-all to take this town on. When you get sued and go to JIF and they see the minutes and see you went against the advice of your attorney, that will change things and you may end up paying that legal bill, too. Fred did what the ordinance said he had to do, divided the land and put land in farmland preservation and the rest in commercial. You are nickel and dime-ing the budget while you let \$80,000.00 walk out the door.

Sarah Freeman addressed the Committee asking what is going on with Parks & Recreation; the Chair isn't communicating, so it's a one person committee right now and nothing is happening with Community Day. The Chair decided things with no in-put from the rest of the committee. Donna is refusing to communicate with the Committee or the Mayor. When the functions do not happen Sarah does not want it coming back on her. Mayor Tyson said there is a meeting on Monday and they will take care of it then. He has not heard from Donna either.

Resolution R-08-59

Resolution Appointing Theresa Roeder to the Board of Recreation Commissioners of the Township of South Harrison, County of Gloucester, State of New Jersey for the Term Specified

Motion to adopt Resolution R-08-59 was made by James McCall, second by Gary Spinner.

Roll Call Vote: James McCall – yes, Cornelius McIntyre – yes, Charles Tyson – yes, Robert Campbell – yes, Gary Spinner – yes. **R.C.V.: 5 - yes', 0 – no's. Motion carried.**

Ben Freeman asked what is the CAP. Christie Melfi explained what the CAP is and that the Township is allowed to go 3 and 1/2% over last year's budget. The tax rate for now is 3.467 and after the re-valuation will it go down? Deputy Mayor Campbell responded that it will go down.

Close Meeting to the Public:

Motion to close the meeting to the public was made by James McCall, second by Gary Spinner. Motion carried.

Committeeman McCall left at 11:20 pm.

Adjournment:

Motion to adjourn was made by Gary Spinner, second by Cornelius McIntyre. Motion carried.

Respectfully submitted,

Nancy E. Kearns, RMC
Municipal Clerk