

MINUTES OF PUBLIC MEETING

AUGUST 25, 2008

7:30 P.M.

Prior to the start of the meeting, Mrs. Myronowski asked for permission to tape the meeting. Permission was granted.

1. CALL TO ORDER

The August 26, 2008 Public Meeting of the Board of Commissioners was called to order at 7:30PM by President of the Board, James A. Santi. The following individuals were in attendance:

James A. Santi	President
Eugene P. Ziembra	Vice President
Kenneth E. Kroberger	Commissioner
M. Clare Edelmayer	Commissioner
Thomas A. Duffy	Commissioner
Richard Watt	Solicitor
Arthur Boesler	Engineer
David W. Duffy	Police Chief
David M. Poirier	Deputy Chief

Prior to proceeding, Mr. Santi announced that the order of the evening's agenda would be changed.

2. APPOINTMENT OF MICHAEL GOLEBIEWSKI TO THE POSITION OF POLICE OFFICER WITH UPPER GWYNEDD TOWNSHIP.

Mr. Ziembra introduced Michael Golebiewski, a recent graduate of Penn State University and the Allentown Police Academy and advised that Michael was being appointed as a Patrolman with the Police Department. He further noted that Michael was employed by the Lehigh Valley Sheriff's Department and serves as a volunteer fire fighter and EMT. Upon motion by Mr. Ziembra, seconded by Mr. Kroberger, Officer Golebiewski was appointed and then sworn in by Judge John S. Murray, III. Chief Duffy made some brief comments and presented Officer Golebiewski with his badge.

3. MOTION TO APPROVE THE PROMOTION OF THEODORE M. CAIOLA TO THE RANK OF SERGEANT WITH THE UPPER GWYNEDD TOWNSHIP POLICE DEPARTMENT.

Mr. Ziembra advised that Theodore M. Caiola had been an officer with the Police Department since 1999. Assigned to the Detective Division since 2002, Officer Caiola also serves as a Dare officer and Junior Police Academy instructor. Upon motion by Mr. Ziembra, seconded by Mrs. Edelmayer, Officer Caiola was promoted to the rank of Sergeant. Sergeant Caiola was sworn in by Judge Murray and presented with his badge by Deputy Chief Poirier.

Mr. Santi thanked Chief Duffy, Deputy Chief Poirier and other members of the Police Department for their attendance and their support.

**4. INTRODUCTION OF SALLY SLOOK, NEW ASSISTANT TOWNSHIP MANAGER.**

Mr. Santi introduced the Township's new Assistant Manager, Sally Slook. Mr. Santi advised that Ms. Slook was a graduate of Villanova University's Master of Public Administration program and had previously worked as an intern with Upper Merion Township. Ms. Slook was welcomed by the other members of the Board.

**5. MOTION TO APPROVE THE MINUTES OF THE WORKSHOP MEETING HELD ON JULY 15, 2008.**

Mr. Santi noted that the Workshop Minutes had been received with the Agenda packet. Hearing no questions or comments, upon motion by Mr. Duffy, seconded by Mr. Kroberger, the Minutes of the July 15, 2008 Workshop were approved as presented.

**6. MOTION TO APPROVE THE MINUTES OF THE PUBLIC MEETING HELD ON JULY 28, 2008.**

Mr. Santi noted that the Minutes of the Public Meeting had been received with the Agenda packet. Hearing no questions or comments, upon motion by Mr. Duffy, seconded by Mr. Ziemba, the Minutes of the July 28, 2008 Public Meeting were unanimously approved.

**7. MOTION TO APPROVE THE DEPARTMENTAL REPORTS FILED BY TOWNSHIP STAFF.**

Mr. Santi informed that the Departmental reports had been sent with the Agenda and asked for comments or questions. Hearing none, upon motion by Mr. Ziemba, seconded by Mrs. Edelmayer, the Department Reports were approved as submitted.

**8. PRESENTATION OF PUBLIC COMMENTS AND CONCERNS (LIMIT OF FIVE MINUTES PER INDIVIDUAL).**

Mr. Santi asked for questions or comments on issues other than the Horgan Recycling matter. Paul Shelton, 624 Collins Avenue, commented about last year's leaf pick-ups by the private trash collectors which took place in October. Mr. Shelton requested that the leaf pick-ups be scheduled for later in the fall since last year's pick-ups took place before all the leaves had fallen. Mr. Perrone advised he would speak with the vendors about that issue, noting that the DEP may have prescribed the period of time during which pick-ups are to be made.

**9. MOTION TO APPROVE THE COMMONWEALTH OF PENNSYLVANIA'S OFFER OF \$10,700 FOR THE RIGHT-OF-WAY REQUIRED FOR PENNDOT'S ROUTE 202 PROJECT.**

Mr. Santi advised that this matter related to PennDOT's acquisition of a 13,354 square foot piece of Township property for its Route 202 Project. Upon motion by Mrs. Edelmayer, seconded by Mr. Kroberger, the Board approved PennDOT's offer of \$10,700 for the land.

**10. MOTION TO APPROVE MERCK & CO., INC.'S REQUEST FOR A WAIVER FROM CHAPTER 113-1 WITH RESPECT TO THE OPERATION OF HEAVY EQUIPMENT ON SATURDAY, SEPTEMBER 6 AND SUNDAY, SEPTEMBER 7, 2008.**

Mr. Kroberger reported that Merck & Co., Inc. had requested a waiver from Chapter 113-1 of the Township Code in order to perform crane lift activities in the main parking lot of the West Point Site on the weekend of September 7 and 8, 2008, with a rain date of September 13 and 14. Mr. Kroberger noted that the Board had granted similar waivers to Merck in the past. Upon his motion, seconded by Mr. Duffy, the Board approved the waiver.

**11. MOTION TO APPROVE GWYN HOLDINGS, LLC'S REQUEST FOR A SIX MONTH EXTENSION OF THE DEVELOPMENT AGREEMENTS ASSOCIATED WITH ITS LAND DEVELOPMENT PROJECT AT WISSAHICKON AVENUE AND CHURCH ROAD. THE NEW AGREEMENTS WILL EXPIRE ON FEBRUARY 27, 2009.**

Mr. Kroberger advised that Gwyn Holdings had requested a six-month extension of the Development Agreements associated with its land development project located at 298 Wissahickon Avenue. Mr. Kroberger added that the internal portion of the building and landscaping need to be completed. Upon motion by Mr Kroberger, seconded by Mr. Ziemba, the Board unanimously approved the agreement extension until February 27, 2009.

**12. MOTION TO APPROVE A PROPOSAL IN THE AMOUNT OF \$1,750 FROM HEINRICH & KLEIN FOR THE PREPARATION OF A STUDY TO SUPPORT PROHIBITION OF THE USE OF ENGINE BRAKE RETARDERS IN THE VILLAGE OF WEST POINT.**

Mr. Kroberger advised that at the Township's request, Heinrich & Klein had provided a proposal in the amount of \$1,750 to perform a study on the use of engine brake retarders in West Point. Mr. Kroberger indicated the Board was interested in seeing what would need to be done to restrict brake retarders. Upon motion by Mr. Kroberger, seconded by Mrs. Edelmayer, the Board approved Heinrich & Klein's proposal.

**13. MOTION TO APPROVE WORTH & COMPANY, INC.'S APPLICATION FOR PAYMENT NO. 20 IN THE AMOUNT OF \$283,275.68. THIS PAYMENT RELATES TO WORK COMPLETED ON THE EXPANSION OF THE WASTEWATER TREATMENT FACILITY.**

Mrs. Edelmayer informed that Worth & Company, Inc. had submitted Application for Payment No. 20 in the amount of \$283,275.68 for work completed on the Wastewater Treatment Plant Expansion. Mrs. Edelmayer further informed that the Township was retaining \$10,000 for seeding and mulching work that will be done in early Fall. Upon motion by Mrs. Edelmayer, seconded by Mr. Ziemba, the Board unanimously approved the payment to Worth & Company.

- 14. MOTION TO APPROVE WORTH & COMPANY, INC.'S CHANGE ORDER NO. 1 IN THE AMOUNT \$60,914.45. THIS CHANGE ORDER EFFECTIVELY REDUCES THE ORIGINAL CONTRACT PRICE FROM \$9,184,000 TO \$9,123,085.55.**

Mrs. Edelmayer informed that Worth & Company, Inc. had submitted Change Order No. 1 representing a credit in the amount of \$60,914.45, which effectively reduced the amount of the original contract by \$60,914.45. Upon motion by Mrs. Edelmayer, seconded by Mr. Duffy, the Board unanimously approved the change order and commended Worth for a job well-done.

- 15. MOTION TO APPROVE BSI ELECTRICAL CONTRACTORS' APPLICATION FOR PAYMENT NO. 19 IN THE AMOUNT OF \$212,163. THIS PAYMENT RELATES TO WORK COMPLETED ON THE WASTEWATER TREATMENT PLANT EXPANSION PROJECT.**

Mrs. Edelmayer reported that BSI Electrical Contractors had submitted Application for Payment No. 19 in the amount of \$212,163 for work completed on the Wastewater Treatment Plant Project. Upon motion by Mrs. Edelmayer, seconded by Mr. Duffy, the Board unanimously approved the payment.

- 16. MOTION TO APPROVE A CONTRACT IN THE AMOUNT OF \$9,975 WITH INTERNATIONAL FIREWORKS MANUFACTURING COMPANY. THIS CONTRACT RELATES TO THE TOWNSHIP'S CARNIVAL WHICH WILL BE HELD FROM SEPTEMBER 25<sup>TH</sup> THROUGH SEPTEMBER 28<sup>TH</sup>.**

Mrs. Edelmayer informed that the Township had received a contract in the amount of \$9,975 from International Fireworks Manufacturing Company for this year's Carnival, which will run from September 25<sup>th</sup> to 28<sup>th</sup>. Mrs. Edelmayer also commented that volunteers for the ticket booths and sausage stand would be welcomed. Upon her motion, seconded by Mr. Kroberger, the Board unanimously approved the contract with International Fireworks.

- 17. MOTION TO APPROVE A CONTRACT WITH MERCK & CO., INC. RELATING TO THE TOWNSHIP'S USE OF MERCK'S UPPER GWYNEDD SITE PARKING FACILITIES FOR THE CARNIVAL.**

Mrs. Edelmayer reported that Merck & Co., Inc. had provided an agreement with respect to the Township utilizing Merck's Upper Gwynedd Site parking facilities on Friday, September 26 and Saturday, September 27 for the Carnival. Upon motion by Mrs. Edelmayer, seconded by Mr. Ziemba, the Board approved the agreement.

- 18. MOTION TO APPROVE A WINTER SERVICES AGREEMENT BETWEEN UPPER GWYNEDD TOWNSHIP AND THE COMMONWEALTH OF PA FOR THE 2008/2009 WINTER SEASON.**

Mr. Duffy informed that the Township had received the customary Winter Services Agreement with the Commonwealth of PA for the Township to plow State roadways within the Township. Under the Agreement, the Township will received \$16,387.96 for these services for the 2008/2009. Upon motion by Mr. Duffy, seconded by Mrs. Edelmayer, the Board unanimously approved the Agreement.

**19. MOTION TO APPROVE A SNOW AND ICE CONTRACT BETWEEN UPPER GWYNEDD TOWNSHIP AND THE COUNTY OF MONTGOMERY FOR THE 2008/2009 WINTER SEASON.**

Mr. Duffy informed that the Township had received the customary Snow and Ice Agreement with the County of Montgomery for the Township to plow County roadways within the Township. Under the Agreement, the Township will received \$6,988.76 for these services for the 2008/2009 winter season. Upon motion by Mr. Duffy, seconded by Mrs. Edelmayer, the Board unanimously approved the Agreement.

**20. MOTION TO AUTHORIZE THE PREPARATION AND ADVERTISEMENT OF A SNOW PLOW EQUIPMENT RENTAL CONTRACT FOR THE 2008/2009 WINTER SEASON.**

Mr. Duffy advised that the Board wished to authorize the advertisement of bid specifications for snow plow equipment rental for this year's winter season. Mr. Duffy noted that the Township historically requires three sizes of dump trucks and a rubber tire loader, each with operators. Upon motion by Mr. Duffy, seconded by Mr. Ziembra, the Board unanimously authorized the advertisement of bids for snow plow equipment rental.

**21. APPROVAL OF THE AUGUST 2008 BILLS.**

Mr. Santi noted that the Board had received a copy of the General Fund bills. Hearing no questions, upon motion by Mr. Kroberger, seconded by Mr. Duffy, the General Fund bills for August were approved. Mrs. Edelmayer abstained from approving the Zoning Solicitor's bill.

Mr. Santi advised that the Board had also received a copy of the bills from the Sewer Fund and asked for questions or comments. Hearing none, upon motion by Mr. Duff, seconded by Mrs. Edelmayer, the Board unanimously approved the bills for all other funds.

Mr. Santi advised that the Board was also being asked to approve invoices from all other funds, including Traffic Improvement, Sewer Expansion and Industrial Development Authority. Upon motion by Mrs. Edelmayer, seconded by Mr. Kroberger, the Board unanimously approved these invoices as well.

Mr. Santi advised that there were a number of invoices that had been prepaid. Upon motion by Mr. Ziembra, seconded by Mrs. Edelmayer, the Board unanimously approved the pre-paid invoices.

**22. INTRODUCTION OF ROBERT D. FOX, ESQUIRE.**

Mr. Santi introduced the Township's consulting solicitor for the Horgan Recycling matter, Rob Fox, noting that Mr. Fox played an instrumental part in the Environmental Hearing Board matter. Mr. Santi advised that there were two issues to be discussed, the first being the disqualification hearing in County Court where the judge decided to throw out the Township's request for disqualification of an attorney serving both the Township and Horgan Recycling sides concerning the Zoning Hearing Board issue. Mr. Santi advised that the judge had offered no opinion on his decision. The second issue involved the Environmental Hearing Board matter where the Township withdrew its appeal.

Mr. Fox introduced himself and advised that he was an environmental attorney who represented Upper Gwynedd Township in its appeal of Horgan Recycling's plan approval before the PA Environmental Hearing Board. Mr. Fox stated it would be helpful if he provided a brief background.

Mr. Fox advised that the Department (DEP) had issued a plan approval to Horgan Recycling in April 2007. That plan approval related to a new crusher that Horgan Recycling had located at the facility. There were two primary grounds upon which the Township appealed the issuance of the plan approval. The first was that Pennsylvania has a statute referred to as Act 67 and 68. What that statute says is that the DEP shall consider and may rely upon local zoning and planning in the issuance of their permits. There is a policy that the DEP has issued as to how they implement their requirements under Act 67 and 68. It was the Township's position that in reviewing the application for the plan approval, and in issuing that plan approval, that the DEP did not properly follow the requirements of Act 67 and 68 and their own policy on that issue.

The second portion of the appeal, where there were certain provisions (every plan approval has conditions associated with it), the Township believed that some of those conditions, which deal with the technical provisions relating to the operation of the crusher, were not clear and needed to be clarified. The Township appealed on that basis as well, for clarification of certain technical requirements in the plan approval.

Mr. Fox added it was important to understand the relief that was being sought. The Township was seeking two things: 1) if successful in establishing that Act 67 and 68 had not been followed, that the plan approval would be remanded to the DEP for a proper review under Act 67 and 68, and 2) clarification of those technical issues in the plan approval. The Township filed its appeal sometime in mid-May of 2007 and commenced discovery with both the DEP and Horgan. Horgan, as a matter of right, had the right to participate in the appeal and they did so fully. As part of that, there were a number of depositions that were taken of both DEP Horgan and Township representatives. There was an exchange of paper discovery, interrogatories, and requests for documents that both sides served on each other. The discovery in the case was completed around mid-January of 2008. After the completion of the discovery, the DEP informed the Township that even if the Township were to prevail on the Act 67 and 68 issue, during the course of the appeal, the DEP had gone back and completed a further review under Act 67 and 68, subject to public comment, the DEP was going to reissue and plan approval. Even if the Township won, the DEP was going to reissue the plan approval because they had already completed an Act 67 and 68 review. That was confirmed in writing and verbally to Mr. Fox on numerous occasions. In addition to that, in the course of the written discovery and the depositions taken of DEP representatives, the DEP clarified about 90% of the provisions of the plan approval on which the Township had sought clarification.

Based upon those two facts, the Township decided to withdraw its appeal. To continue would have been costly to pursue the hearing which was scheduled in September. There were filing deadlines in advance of the hearing and it was decided because of what the DEP had advised, both in discovery and what they would do with respect to Act 67 and 68, it made sense to withdraw the appeal. Mr. Fox reported he had filed a Notice of Withdrawal on August 4<sup>th</sup>. On August 5<sup>th</sup>, the Environmental Hearing Board withdrew the appeal and marked the record closed. Ten days later, Horgan Recycling filed a motion with the Environmental Hearing Board requesting the Board to mark the withdrawal "with prejudice". Mr. Fox further advised that he had filed a response to that motion and commented there were numerous unsupported allegations in Horgan's motion and that he had responded to each and every one them, with support in the record. Mr. Fox stated that not only were the allegations unsupported, they are inaccurate and that he had pointed out the inaccuracies to the Environmental Hearing Board. The Environmental Hearing Board will probably resolve that motion within the next two weeks.

Mr. Santi stated that the Township has contacted the attorney handling the zoning issue and directed him to move forward forward with the Zoning Hearing Board matter.

James Mirynowski, 644 Eagle Lane, asked for the basis of Mr. Fox's response; did he object to the marking "with prejudice"? Mr. Fox advised his response would be on line, but there were a number of responses, one it was legally wrong. The EHB amended its rule in 2002; it used to be that the prior rule said you were supposed to mark your appeal with or without prejudice. The EHB specifically amended the rule to take that out and said any issues that dealt with what the effect of a withdrawal would be, would be decided on a case-by-case basis. Mr. Fox also stated the motion was not filed properly; it should have been filed as a Motion for Reconsideration and it was unsupported and unverified and the factual allegations made regarding the Township's motivation were false and the allegations made as to merits of the appeal were false and that was all documented in his response. Mr. Mirynowski asked if the Township could reopen the case. Mr. Fox advised the case was done; the appeal of the plan approval was done. Mr. Fox explained that when the Township withdrew it, it withdrew its appeal of this plan approval. He further stated there are various interpretations of the effect of a withdrawal of a case means and they all must be decided in subsequent times. For example, Horgan will have an operating permit at some point. One of the issues "with or without prejudice" means what can you challenge in that operating permit? That's why it was withdrawn. Mr. Fox confirmed Mr. Mirynowski's statement that in essence Horgan Recycling was trying to foreclose potential future issues by the mark "with prejudice".

Ed Elborne, 627 Collins Avenue, stated that prior to the appeal, the Township made many comments about the permit prior to its issuance. One issue dealt with solid waste and he quoted "the activities within the Township may have been in violation of certain requirements of the PA Solid Waste Management Act and Horgan's operation under its general waste permit. The Township has notified the DEP of these potential violations and the Township understands the DEP is evaluating the allegations." He stated the public had never heard back from the Township on that issue. Mr. Fox stated that there were a number of issues that arose under the solid waste permit, including whether Horgan Recycling was authorized to take certain materials at its facility. It was not an appeal of the solid waste permit, it was an interpretation of what Horgan was authorized to do under the solid waste permit. At this point, nothing is proceeding with that. The DEP is not taking any enforcement action against Horgan under the solid waste permit.

Mr. Elborne stated there was another issue where the (residents) were told there were discrepancies and/or deficiencies involved in the appeal. Mr. Fox stated there were a number of technical issues in the plan approval that needed to be clarified and he stated he believed the DEP's responses during the course of the appeal clarified those issues.

Andy Foster, introduced himself, and at Mr. Santi's request, advised that he was an environmental attorney and he represented Horgan Recycling in the Environmental Hearing Board matter. Mr. Foster stated that the evening's Agenda included an item stating that the Board would ratify its decision to withdraw the Township's appeal to the PA Environmental Hearing Board. Mr. Foster reiterated that this case was filed in May 2007, after the permit was issued. In Horgan's view, it was filed in violation of the Sunshine Act. Mr. Foster stated he did not believe the Board of Commissioners deliberated upon or made a decision to file the appeal in public. Mr. Foster also reiterated that there were two main issues in the appeal the Township filed: 1) Act 67 and 68 and 2) some technical issues.

Mr. Foster stated that Mr. Fox left out of his presentation on the Act 67 and 68 was that the central premise of the papers filed on behalf of the Township was that the reason the DEP did not follow its policy was because Horgan had allegedly filled out some forms incorrectly. What the extensive discovery showed is that the Township's previous environmental attorney, Mitchell Burack, had in his file, properly filled out paperwork from Horgan Recycling and there was nothing that Horgan filled out that had in any way prevented anyone from commenting to the DEP in any way.

On the technical issues, Mr. Foster advised that the DEP had answered interrogatories eight or nine months ago that “clarified” the technical issues the Township raised in its appeal. Mr. Foster stated that eight or nine months ago, that issue could have been resolved. Rather, the case involved seventeen depositions, including six DEP employees (one hauled out of retirement). Mr. Foster stated it cost the Township hundreds of thousands of dollars to pursue the appeal.

Mr. Foster stated that in February 2008, discovery was over and the EHB entered an order which said trial would take place in September and thirty days prior to that, on August 4, 2008, the Township was to file pre-hearing papers. Five months passed with nothing happening on the case. Mr. Foster stated that the week prior to the Township’s papers being due, Mr. Fox called him and said the Township wished to talk about settlement. In the course of that week, Mr. Fox raised several different versions to settle the matter. At the same time, Mr. Foster stated Mr. Fox called the (Department) and went to them with several settlement offers that would cut Horgan out of the process. Mr. Foster stated that each time Mr. Fox approached the (Department), the Department said “no”, because they viewed the appeal as meritless.

After the Department continued to say no, and the day came for the Township to file its papers in the case, instead of filing the pre-hearing memo, the Township filed a withdrawal and gave up on the case. Mr. Foster stated that the irony of the evening was that the Township made the decision to withdraw the case in the same way the decision was made to file the case: by not doing it in public. He stated that the decision was made behind closed doors and the reason for the ratification is to comply with the Sunshine Law. Mr. Foster stated that the Township had violated the Sunshine Act.

Mr. Foster stated he was not present to harangue the Board about doing this evening what he felt should have been done fifteen months ago. Mr. Foster asked the Board to pause and think about where it has been and where it is going, noting that what is left is the Zoning Hearing Board matter. Mr. Foster asked how much more Township money will be wasted on that case? Mr. Foster stated that the essence of the Township’s case on the zoning issue is there has been an alleged expansion of Horgan Recycling. Mr. Foster stated that last year Horgan had produced truck counts showing that is not true. Mr. Foster stated there was a technical problem with the Township’s theory: the constituents and the Board of Commissioners were confused by the difference between a theoretical, technical calculation that said what would happen if Horgan ran the crusher as fast as it could, 24 hours a day, how many trucks could be brought in; which has nothing to do with reality and the real limits in the permit which demonstrate there is no expansion.

On the health side of things, Mr. Foster asked how many more agencies needed to “crawl all over” Horgan Recycling? The Agency for Toxic Substance Registry, the Army Corps of Engineers, the DEP, the EPA have all been out and not a single one found a health impact from the Horgan Recycling enterprise. Mr. Foster suggested that the Board think about the issue and conclude it is proud of Horgan Recycling because it is a recycling facility. He stated that everyone has sidewalks, driveways, the Township puts out a milling contract each year and he rhetorically asked what the Board intended to do with the asphalt and concrete; put it in a landfill? Mr. Foster stated the DEP has supported Horgan Recycling 100% because it is a green industry.

Mr. Foster stated that Mr. Fox ended his presentation by talking about the new motion filed by Horgan Recycling asking that the EHB mark the appeal “withdrawn with prejudice”. He stated that Mr. Fox left out a key item: the DEP concurs with Horgan Recycling that the appeal should be withdrawn with prejudice. He stated that time will tell; it is not just Horgan that is in favor of the motion; the Commonwealth of PA is in favor.

Mr. Foster stated it had been many months since anyone from Horgan Recycling had stood up to speak before the Board of Commissioners. Mr. Foster further stated that the people who get up and talk the most and the loudest are not always saying the right things. Good government is about judgement; you do not have to do everything that a small constituency asks be done. He stated that the Board was

elected to make decisions and the Board should cut off, at some point, the hijacking of a Township's budget by a small group of citizens to persecute a small business when agencies have continued to review and say there are no health impacts and it is a permitted organization and the DEP supports it.

Mr. Foster asked the Board to do the right thing; it did a good thing by withdrawing the EHB appeal. He asked the Board to withdraw the Zoning Hearing Board case; there is no merit to it; it is a waste of taxpayer money.

Donna Miryonowski, 644 Eagle Lane, stated there is not just a small group of citizens; there is a large group of children who are unable to speak for themselves. Mrs. Miryonowski appealed to the Board to continue with its efforts.

Regina Kuliga, 1915 West Point Pike, spoke positively about businesses in West Point. She briefly addressed Mr. Foster, stating that she felt the Commissioners were there for the residents. She commented that Horgan had taken over what was originally a very small crushing operation. She stated that she felt that, perhaps by oversight, the crushing site grew into a big operation. Ms. Kuliga spoke favorably about recycling, but felt this type of operation should be in an industrially-zoned area. She stated that although the studies do not show dangerous levels, the people who live there are affected. She differed with Mr. Foster about his comment about a small group of people, stating that it is a community of people.

Ginny Oldt, Gosling Drive, stated she took exception to the comment with regard to the theoretical amount that could be crushed. She stated that if Horgan did not want to crush that much, then they should not have submitted a permit to crush that much. She stated if they applied for that number, that is what they should be judged upon.

Lee Buzby, 831 Clover Drive, stated that Mr. Foster had referenced of hundreds of thousands of dollars spent on the Horgan matter and asked what had been spent to date. There was some uncertainty about the exact dollar figure spent since 2004. Mr. Perrone indicated he was not prepared to answer that question with absolute certainty. Mr. Santi commented that since putting the issue on hold in February, the Township had not accumulated much in the way of costs.

Mr. Fox stated that he wished to respond to the residents about some of the comments made by Mr. Foster. Mr. Fox stated Mr. Foster's characterization of the Township's appeal was not accurate. It was true that Horgan filed three separate forms that were incorrect and had to refile until they were correct. He stated that was not the basis of the Township's appeal. It was true that Horgan was supposed to provide the Township with a specific notification as required by law and did not. The basis of the appeal was that the DEP, after the Township provided comments about how it thought the plan approval was inconsistent with the Township's zoning ordinance, did not follow their own procedures. The reason the forms and notice were highlighted was because of the Township had received them, the Township would have put its comments in sooner. The basis of the appeal was what the DEP failed to do, not what Horgan failed to do. What Horgan failed to do slowed the Township down in getting its comments to the DEP. Further, the DEP stated in discovery that they did not follow their own procedures because they were never told by the Township that there was a zoning conflict. Mr. Fox advised that his response included numerous examples where the Township advised of the zoning conflict and, in fact, one of their own representatives, the day before the meeting the Township had with the DEP, stated that the Township was coming in to talk about the zoning battle with Horgan. Mr. Fox stated that Horgan's characterization of what the Township said was wrong. With respect to the technical issues that the Township waited eight months, was false. Mr. Fox stated that Mr. Foster knows that any settlement communications are for settlement purposes only and they should not have been brought up here.

On the technical issues, Mr. Fox stated the Township had gone to the DEP and Horgan after they answered their interrogatories and indicated that portion of the case is resolved, let's settle and just deal with the Act 67 and 68 issues. They would not do that. Mr. Fox provided specific language and the DEP and Horgan would not agree to it so the Township remained in the case.

With respect to the depositions of the case, Mr. Fox stated there were seventeen depositions, five depositions of Horgan representatives, thirteen and one half hours. Mr. Fox advised Horgan had deposed six Township employees. Mr. Fox stated the Township had deposed DEP employees and Horgan had participated in those depositions and they asked questions. The total time for the DEP depositions, less than eighteen hours.

Mr. Fox spoke to the accusation that the case was meritless. If it was meritless, why did the DEP go back and do the Act 67 and 68 review again?

Donna Mirynowski displayed a document and asked if that was the current zoning for industrial. She was told it was.

Mr. Foster asked if the Township's case was so great, why did they withdraw it? Mr. Foster commented that the case was never great and that the Township withdrew it because it did not have merit and he stated that fifteen months had been spent fighting over something that both Horgan Recycling and the DEP thought was meritless and the Township has walked away from it. He asked that the Board not do the same thing with the Zoning Hearing Board matter and if the Board is going to walk away from it, he asked that the Board do it now and not waste everyone's time and money.

In response to Mr. Foster's question about why the Township withdrew the case, Mr. Santi explained that Mr. Fox had approached the Board about preparing the documentation for the September trial. The Board inquired what Mr. Fox had to do, how long it would take, what were the pluses and minuses of doing it, what happens if the Township does it or does not do it? Based on the information received from Mr. Fox and upon Mr. Fox's recommendation it was decided to move forward with the zoning issue and suspend the dollars spent on the environmental issue. Mr. Santi reminded that the issue holding up the zoning issue was the disqualification matter and he made a brief comment on the outcome of that issue.

Karen McCafferty, West Point, spoke to the comment made by Mr. Foster about letting the zoning case go, stating no one wants that. She stated that while all the results from the agencies were negative, what is hard for the residents to swallow is that they (Horgan / Allied?) have always known the agencies were coming to test them. She asked that the Board pursue the zoning matter.

**23. RATIFICATION OF THE BOARD OF COMMISSIONERS' DECISION TO WITHDRAW THE TOWNSHIP'S APPEAL TO THE PA DEPARTMENT OF ENVIRONMENTAL PROTECTION HEARING BOARD ON THE MATTER RELATED TO HORGAN RECYCLING, INC.**

Mr. Santi advised that the Board wished to ratify its decision to withdraw the Township's appeal to the PA Department of Environmental Protection Hearing Board on a matter related to Horgan Recycling, Inc. Upon his motion, seconded by Mr. Kroberger, the Board ratified its decision as noted.

**OTHER BUSINESS:**

In response to comments made by Mr. Foster about multiple violations of the Sunshine Law, Mr. Santi advised that the Board was extremely cognizant of the law and did not believe the Board had violated it.

**24. CALL FOR ADJOURNMENT**

Prior to a call for adjournment, Mr. Santi responded to Mrs. Foster's comment about the Sunshine Law. Mr. Santi stated the Board was extremely aware of this issue and stated he did not believe the Board had violated the statute.

There being no further business, upon motion by Mr. Ziemba, seconded by Mrs. Edelmayer, the meeting was adjourned at 9PM.

Respectfully submitted,

Charles J. Testa  
Secretary

/sac

**Approved September 22, 2008**