

**MINUTES AUGUST 4, 2021**  
**UPPER NAZARETH TOWNSHIP BOARD OF SUPERVISORS**

Meeting called to order at 7:00 p.m. by Chairman Mike Rinker. The meeting was live streamed for anyone wishing to hear.

Pledge of Allegiance

Board members present were: Mike Rinker, Robert Disbrow, Scott Sylvainus, Donna Hirst, and Kristin Mullen.

Also present were Township Manager, Lisa Klem, Township Solicitor, Gary Asteak, Township Engineer, Sean Dooley, and Treasurer, Betty Parrish.

**COURTESEY OF THE FLOOR**

Township resident Jason Mohap asked about the Zoning Permit the Zoning Officer issued pertaining to the Tadmor project. Attorney Asteak gave a copy of the Zoning Permit to Mr. Mohap. Mr. Mohap asked what the interim agreement on the agenda was about stating he had requested a copy via a Right to Know Request on Tuesday. Mr. Mohap stated he thought the interim agreement was for the developer to proceed with work on land despite the Citizen's Group filing an appeal to the Zoning Hearing Board about. How does Section 111F of the UNT ordinance affect the agreement. Attorney Asteak asked for this discussion to continue when the subject comes up on the agenda as the developer is here to present this item.

**APPROVALS**

**Motion** was made by Mrs. Hirst and seconded by Mr. Disbrow to approve the agenda. Motion carried by all voting aye. (5-0)

**Motion** was made by Mr. Disbrow and seconded by Ms. Mullen to approve the minutes of the July 7, 2021 meeting. Motion carried by all voting aye. (5-0)

**Motion** was made by Mr. Sylvainus and seconded by Ms. Mullen to approve payment of the bills. Motion carried by all voting aye. (5-0)

**Motion** was made by Mr. Sylvainus and seconded by Mr. Disbrow to approve the June, 2021 Financial and Treasurer's Report. Motion carried by all voting aye. (5-0)

**SUPERVISORS' COMMENTS**

Mr. Rinker announced an executive session was held prior to the meeting.

Mrs. Hirst announced that Tuesday night was National Night Out and thanked the Police and the Fire Departments for hosting the evening at the Fire Station.

Township resident Jeanie Morgano questioned the decision of the Community Days Committee preventing political candidates from having a table and campaigning at Community Days.

Discussion took place between Ms. Morgano, Mr. Tim Schantz, and Mr. Jeff Fassl pertaining to this decision by the Committee. Mr. Brian Sayago stated he plans on going to Community Days as an individual and hand out campaign literature, meet the residents and the voters and talk to people about what I stand for. Mr. Sayago asked if others would be permitted to campaign at the park during Community Days and what will happen since the Committee decided there would be no political activity. Attorney Asteak responded, although the Committee has determined that they do not sanction political booths, to prevent you from walking around and campaigning as an individuals would be a deprivation of your first amendment rights. There is nothing to prevent you from doing what you want to do regarding your walking and campaigning personally anywhere. Mr. Asteak stated it has been made known that the Committee would not like to see political activity, but they cannot prevent you from doing so. The first amendment protects that right.

### **TOWNSHIP ENGINEER**

Nothing at this time.

### **TOWNSHIP SOLICITOR**

Attorney Asteak received a request from Counsel for Tadmor 2 to enter into an interim agreement to move dirt pending final approval from third party agencies and entering into an improvements agreement and recording of a final plan. Attorney Asteak invited Counsel to make that presentation to the Board. Attorney Durso, representing Tadmor 2, addressed the Board stating they have conditional final approval, pending approval from outside agencies. The NPDES permit has been received which allows them to move dirt. In order to record the land development plan, documents for the township have to be executed, security posted, convey the right of way. Many municipalities will enter into an indemnity agreement which essentially protects the township as the developer moves dirt in accordance with the NPDES permit. The agreements provide for escrow to be posted to ensure that whatever work is being done is also being properly inspected, however, this is just limited to the moving of dirt. There is not building permit issued, no building being constructed. What the developer is requesting is nothing unusual. The developer understands that they are proceeding at their own risk.

Mr. Disbrow asked if there wasn't something legal that was appealed recently that would prohibit this type of activity. Attorney Durso responded there have been 4 different complaints filed with the Court of Common Pleas, two of which have been dismissed with prejudice, one without prejudice, was refiled, and we are waiting for a decision in that case. That appeal pertains to Tadmor 1 preliminary plan approval and a letter that was issued by Mr. Soloe to Attorney Asteak. Most recently the Citizen's Group has filed an appeal to the Zoning Hearing Board for the Zoning Permit that was issued by the Zoning Officer in April as well as some other issues that were alleged actions by the Board of Supervisors that I would argue the Zoning Hearing Board does not have jurisdiction over the Board of Supervisors because that is land development. Mr. Disbrow asked if it would be wise to move dirt with the pending litigation. Attorney Durso responded the applicant is confident and comfortable in proceeding to move dirt at their own risk. Attorney Durso stated the appeal was untimely and does not fall under the jurisdiction of the Zoning Hearing Board.

Mr. Dooley asked for clarification in "just moving dirt." Mr. Dooley questioned if storm sewer pipe was going to be laid. Attorney Durso responded yes. Mr. Dooley responded Upper Nazareth Township has done this with Heritage Village and this is a relatively normal practice once

an applicant has their NPDES permit to allow earthwork to proceed. From an engineering point of view and a procedural point of view, I do not have an objection.

Mr. Rinker asked what happens if the Citizen's Group were to win their suit, would the developer have to put the field back into its prior condition. Attorney Durso responded it would depend on the nature of the determination that is made, as the land development is different that the zoning and what the developer is proceeding with is the zoning. If it was determined that the use was not permitted, the developer would not proceed with the use. It would not be required to be put back into its existing state unless something is installed that is not finished and is having an adverse effect on surrounding properties. This agreement protects the Township and indemnifies the developer to the Township. Attorney Durso commented again the developer proceeds at their own risk. If they thought the risk was high, they would not be proceeding. Mr. Sylvainus commented there is a risk to the Township, that is why this agreement is being requested therefore alleviating the Township of liability. Attorney Asteak stated the agreement provides for inspections by the Township Engineer to ensure that the earth moving, stormwater and whatever construction there is, is done in conformity with the plan.

Township resident Jason Mohap asked how the Board could act on this request when there is pending litigation. Attorney Asteak responded there is no court ordered stay. The appellants have not gone to the courts to direct the Township to stop consideration or stop our compliance with the MPC, SALDO or Zoning Ordinance. They have not gone to court to stop construction. If they choose to do so, they may wish, but as the developer said they are proceeding at their own risk. Mr. Mohap stated in the Township Ordinance 111.F it does not state the Citizens have to go to the court. Attorney Durso commented the MPC has additional language than 111.F which must be followed. Mr. Rinker requested moving forward with a vote. Attorney Asteak requested a few moments to review language in the ordinance and MPC. Attorney Asteak allowed the Board to proceed with their vote. Mr. Rinker asked if there was a motion to approve the Interim Agreement for Tadmor 2.

**Motion** was made by Mr. Sylvainus and seconded by Mr. Disbrow to approve the Tadmor 2 Interim Agreement. Motion carried by a vote of 4-1 with Ms. Mullen opposed.

### **TOWNSHIP MANAGER/ADMINISTRATION**

Mrs. Klem informed the Board there are eight individuals interested in serving on the Environmental Advisory Committee, three of which are supervisors. Concerns regarding three supervisors serving together on a committee, Mrs. Klem reached out to PSATS Legal for guidance. PSATS Legal response was, although this is permitted, it is advised against having this situation occur as a quorum of supervisors would exist. Attorney Asteak commented it is a problem having quorum of the Board of Supervisors serving on the council. As no supervisor wanted to rescind their interest in serving on this council, the Board proceeded to appoint the remainder of the committee. The remaining individuals interested in serving on this council are Nathan Pritchard, George Hasker, Anton Shannon, Frank Hirst and Brian Sayago.

**Motion** was made by Mr. Rinker and seconded by Mr. Disbrow to appoint Nathan Pritchard, George Hasker and Anton Shannon to a three-year term, and Frank Hirst and Brian Sayago to a two-year term, with Nathan Pritchard serving as the Chairman of the Environmental Advisory Council. Motion carried by all voting aye. (5-0)

Mrs. Klem informed the Board the NCATO County Convention would be held September 30, 2021, from 2:30 to 8:00 pm at Green Pond Country Club and requested approval for any staff wanting to attend the convention.

**Motion** was made by Ms. Mullen and seconded by Mr. Sylvainus to approve staff and Board attendance at the NCATO Annual Convention. Motion carried by all voting aye. (5-0)

Mrs. Klem requested approval to advertise for the Treasurer Position.

**Motion** was made by Ms. Mullen and seconded by Mr. Disbrow to approve advertising for the Treasurer's position. Motion carried by all voting aye. (5-0)

### **APPROVAL OF DEPARTMENT REPORTS**

**Motion** was made by Mr. Rinker and seconded by Mrs. Hirst to approve the June, 2021 Fire, Police, Public Works, and Zoning. Motion carried by all voting aye. (5-0)

### **PLANNING & ZONING**

Mr. Chris Brown Design Coordinator and Landscape Architect for MorningStar Heritage Village presented a pathway extension plan which would connect the pathway out to Porter Street allowing the residents to walk to Nazareth Borough Park. This plan was submitted to the Township Engineer. It was suggested that MorningStar come to the Board and to possibly roll the pathway extension into the overall plan and record it. It will then be memorialized into the entire project. Mrs. Klem asked since this would change the plan, would this have to be reviewed by the Planning Commission. Attorney Asteak stated this is a minor revision and the review by the Planning Commission would not be required. However, a revised overall plan will be required to reflect that change so that a final recorded plan shows the change to extending the pathway out to Porter St. Mr. Brown commented if the Board is in approval of the pathway extension, it will be included in their submission for approval for Phases 5 and 6. Attorney Asteak stated an overall final plan needs to be recorded that shows everything as finally approved. Mr. Dooley stated there were other changes made after approval, therefore, something needs to be documented on the plan that these items changed. Attorney Asteak requested putting a note on the plan stating this final plan represents the following phase amendments incorporated over the course of the development.

**Motion** was made by Mr. Sylvainus and seconded by Mr. Disbrow to approve the Heritage Village Pathway Extension. Motion carried by all voting aye. (5-0)

Mr. Brown began discussion on Heritage Village Phases 5 and 6, Phase 5 being the southernmost pocket neighborhood, Phase 6 is to the north along Beil Avenue. These phases are the same trend and fashion of the previous phases and will consist of 38 units total comprised of single and twin cottages. All townhouse buildings have been removed from Phases 5 and 6 which has dramatically brought down our unit counts. Our last approval was for 153 units. The total number of units for the overall project will be 124. Our density per acre projections are below what is permitted. Our open space ratios are adequate and stormwater calculations remain constant. Phase 3 is 100% sold with about 50% sold in Phase 4. Sales are strong right now. MorningStar is comfortable with the sales and will probably begin Phases 5 and 6 by the end of the year. Possibly coming back for an indemnification agreement. Everything is consistent with previous phases.

There is one more resident garden, an emergency access onto Beil Ave. in the same location as approved originally that will not be a permanent connection. A design feature in Phase 6 will allow for future expansion if the opportunity presented itself to acquire additional land to the north. This will bring us to full completion of our plan. Associated with the plan approval, tonight we have two waiver requests, one is the standard one which has been requested in every phase which is for the distance of driveways to intersections, and a new request having to do with the stormwater management which has been discussed in detail with the Township Engineer and the Planning Commission.

**Motion** was made by Mr. Disbrow and seconded by Mr. Sylvainus to approve the requested waiver of SALDO 733.616 and 733.612 for Heritage Village Phases 5 and 6 for units 89, 90, 107, 108, 109, 112, 113, 114, 124 and 126 per Hanover Engineering Letter of May 12, 2021. Motion carried by all voting aye. (5-0)

**Motion** was made by Mr. Sylvainus and seconded by Mr. Rinker to approve Heritage Village request of waiver to SALDO Chapter 23A, Section 307.9 per Hanover Engineering Letter of May 12, 2021. Motion carried by all voting aye. (5-0)

**Motion** was made by Mr. Disbrow and seconded by Mrs. Hirst to approve Resolution No. 21-13 Heritage Village Phase 5 and 6 Final Land Development Plan conditional upon KCE's letter dated June 6, 2021 and review of the plan by the Upper Nazareth Township Fire Chief. Motion carried by all voting aye. (5-0)

## **PUBLIC WORKS**

Mr. Shupe requested approval to purchase a Line Lazer from Gelco Paints in the amount of \$3,939.00 to eliminate borrowing the equipment from another municipality.

**Motion** was made by Mr. Sylvainus and seconded by Ms. Mullen to approve the purchase of a Line Lazer from Gelco Paints in the amount of \$3,393.00. Motion carried by all voting aye. (5-0)

## **MS4**

Mr. Shupe reported DEP has performed our first audit of the Township's MS4 program. There were no violations noted. Mr. Shupe stated the meeting with DEP was productive and informative as the Township now has a better understanding of how MS4 recording is to be conducted. Mr. Shupe stated it is also a requirement to have MS4 on the agenda to prove MS4 is being discussed. DEP would like more information in our newsletter. DEP would like to put MS4 back on the residents for clean water going into the storm drains. This will be a group effort among administrative staff. Mrs. Klem stated DEP looked at our Stormwater Ordinance wanting the Township to revisit the ordinance as our ordinance does not contain language pertaining to enforcement. DEP is sending sample ordinances that will be forwarded to Attorney Asteak for amending our current ordinance. The Board may also want to appoint a code enforcement officer to enforce the stormwater issues. Regarding community outreach and engagement, Mr. Nathan Pritchard stated he works with the Bushkill Creek Water Association for Upper Nazareth Township and the Conservation District has MOU's with Plainfield Township and several other townships so there help with support programs.

## **RECREATION**

Mrs. Klem stated two individuals are interested in serving on the Recreation Board and requested appointment of Jeanie Morgano and George Haker to the Recreation Board.

**Motion** was made by Ms. Mullen and seconded by Mr. Sylvainus to appoint Jeanie Morgano and George Haker to the Recreation Board. Motion carried by all voting aye. (5-0)

## **POLICE DEPARTMENT**

Nothing at this time.

## **EMERGENCY MANAGEMENT**

Nothing at this time.

## **SAFETY COMMITTEE**

Nothing at this time.

## **FIRE DEPARTMENT**

Nothing at this time.

## **OLD BUSINESS**

Nothing at this time.

## **NEW BUSINESS**

Nothing at this time.

## **ADJOURNMENT**

**Motion** was made by Mr. Disbrow and seconded by Mrs. Hirst to adjourn at 8:25 p.m. Motion carried by all voting aye. (5-0)

*Respectfully submitted,*

*Betty Parrish  
Recording Secretary*