

**BUILDING AND FIRE CODES APPEALS
AND ADVISORY BOARD MINUTES
April 22, 2009 Revised March 24, 2010**

The Building and Fire Codes Appeals and Advisory Board Meeting, duly advertised in accordance with law, was called to order by the Chief Building Inspector, Randy Hindman, at 8:28 a.m., Wednesday, April 22, 2009, in the Board of Commissioners' Meeting Room, Township Municipal Building, 1820 McLaughlin Run Road.

PRESENT: BOARD MEMBERS

Michael P. McDonnell
David J. McLean
James A. Sampey
Robert T. Stevens, Sr.
Joseph F. Valvo

TOWNSHIP STAFF

Randy Hindman, Chief Building Inspector
Kathleen R. Oberle, Recording Secretary

TOWNSHIP ATTORNEY

Christopher W. Cahillane, Representing the Township Attorney

PUBLIC: None

ELECTION OF OFFICERS

Mr. Hindman requested nominations for Chairman. On motion by Mr. Valvo, seconded by Mr. Sampey, Mr. McLean was nominated and elected Chairman by unanimous voice vote, 5-0.

Mr. Hindman then turned the meeting over to Chairman McLean. Mr. McLean asked for nominations for Vice Chairman. On motion by Mr. McLean, seconded by Mr. Sampey, Mr. McDonnell was nominated and elected Vice Chairman by unanimous voice vote, 5-0.

On motion by Mr. Sampey, seconded by Mr. McDonnell, Mrs. Oberle was appointed Secretary.

CONSIDERATION OF MINUTES OF MAY 28, 2008

On motion by Mr. Valvo, seconded by Mr. McDonnell, carried by unanimous voice vote, the above minutes were approved and accepted as written.

OTHER BUSINESS

Mr. Valvo requested clarification concerning the Township's position, in the event of an appeal, on providing independent counsel for the Building and Fire Codes Appeals and Advisory Board as a whole as well as for individual members. He cited an appeal of a case concerning the Outback Steakhouse wherein every Board member was named as a defendant. Mrs. Oberle quoted from the Rules of Procedure and Bylaws adopted March 15, 1989 and amended June 4, 1997 and May 27, 2003 as follows:

ARTICLE 1. GENERAL PROVISIONS

- 1.3. Within the limits of funds appropriated by the Board of Commissioners, the Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services.

- 1.4. Legal counsel to the Board shall be consulted in cases where the powers of the Board are not clearly defined.

Mr. Cahillane confirmed that in cases of appeals of decisions, the Zoning Hearing Board has been represented in the past by independent counsel E. J. Strassburger. The Township would typically step in and provide counsel. If counsel would be needed for individual Board members, the Rules provide for the same.

Mr. Valvo noted that the Outback case was ultimately settled out of court. He added that while the Township was prepared to provide an attorney, he wasn't aware of any "commitment within any document" that specifically says they "will" provide an attorney. The Rules say it "may." Mr. Cahillane clarified that "the Board" referred to in the Rules is the Building and Fire Codes Appeals and Advisory Board who may, if they wish, employ counsel. The fees are paid by the Township.

Mr. Cahillane explained that a typical appeal of a decision by this Board would be filed in Common Pleas Court as "John Doe versus the Building and Fire Codes Appeals Board of Upper St. Clair." At that point, the Board would bow out and the Township would be the "intervener" and would litigate the matter. In a rare instance where Board members are named as individual defendants, they could employ their own counsel, the cost of which would be borne by the Township. An appeal of a decision of this Board would typically be to overturn a decision. Monetary damages are not normally sought. Mr. Cahillane felt certain that the Township fully recognizes the services provided by this Board and thus the members would be supported.

Mr. Valvo stated that in Monroeville this Board has its own attorney present at every hearing. Mr. Hindman commented that the only thing to appeal would be his interpretation of the Code or an extension of time for a permit. Mr. Sampey noted that Monroeville had a Fire official who would add conditions beyond the Code, which was within his right. In that case, he wondered if

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an appeal would come before this Board. Mr. Hindman commented that as of today, the State has not adopted the Fire Code. It is merely referenced as part of the Building Code. Mr. Sampey replied that it is his understanding that the Fire official supersedes the requirements of the Fire Code.

Due to the potential financial impact on individual Board members in the event of an appeal, Mr. McDonnell requested specific clarification on the following two points:

1. How the amounts are identified with regard to decisions made by the Township Manager, and is there a cap on what is funded?
2. Does the provision for counsel to be compensated by the Township for the benefit of the Board also extend to the individual in the event that the individual is cited as part of a claim?

Staff noted that these questions will be brought to the attention of the Township Manager.

COMMENT FROM MEETING ON MARCH 24, 2010:

At the reorganization meeting on March 24, 2010, Mr. Valvo noted that after the issue of legal representation was raised at the April 2009 meeting, at the request of the Board, staff forwarded emails that further clarified the matter. Mr. McDonnell requested that this comment be added to the April 22, 2009 minutes.

ADJOURNMENT

There being no further business, it was moved, seconded and carried unanimously that the meeting be adjourned at 8:55 a.m.

Prepared by Kathleen R. Oberle
Recording Secretary

Revised 3-24-2010