

## ZONING HEARING BOARD MEETING

August 28, 2013

The Zoning Hearing Board Meeting, duly advertised and posted in accordance with law, was called to order by the Vice Chairman at 8:00 P.M., Wednesday, August 28, 2013, in the Board of Commissioners' Meeting Room, Upper St. Clair Township, 1820 McLaughlin Run Road,

### PRESENT

#### **BOARD MEMBERS**

Dwight Ferguson, Vice Chairman  
Gregg Zegarelli, Member  
Robin Weissert, Alternate Member

#### **BOARD ATTORNEY**

E.J. Strassburger, Esquire

#### **TOWNSHIP STAFF**

Randy Hindman, Chief Building Inspector  
Amy Martin, Recording Secretary

#### **TOWNSHIP ATTORNEY**

David Mongillo, Esquire

#### **COURT REPORTER**

Lina Hersberger - Pittsburgh Reporting Service

ABSENT: David E. Tungate, Chairman

PUBLIC Approximately three (3) persons

### CONSIDERATION OF THE APRIL 24, 2013 MEETING MINUTES

On motion by Mr. Zegarelli, seconded by Ms. Weissert, the above minutes were approved and accepted for filing as written.

### OLD BUSINESS

#### ZHB13-0001 – MOIRA CAIN-MANNIX, 1913 HIGHGATE ROAD

Asserting a substantive challenge to the validity of Upper St. Clair Ordinance No. 2056, adopted on October 3, 2011, amending the Township Zoning Ordinance.

The Vice Chairman stated that the Board wanted to acknowledge the receipt of proposed Findings of Fact and Conclusions of Law and all Legal Memoranda which were distributed via email to the Zoning Hearing Board. Mr. Ferguson further stated that he asked the Board Solicitor, E.J. Strassburger to prepare a draft decision, which the Board had not yet discussed. Mr. Ferguson then moved that the Board adjourn to a brief executive session to consult with the Board Solicitor on the draft decision and after they had an opportunity to ask questions and receive answers they would deliberate publically and receive motions in regard to the disposition of the appeal.

A brief recess for Executive Session was taken.

Upon return, Mr. Ferguson stated that it was his opinion that after having heard all arguments, to the extent that many of the issues that were raised by the appellant were procedural, he did not feel that the statute permitted the Board to adjudicate any procedural issues to the extent that the issues were substantive. Mr. Ferguson further stated that he believes that the applicant has not established the grieved party's standing to raise them. Mr. Ferguson moved that the appeal be dismissed.

Motion by Mr. Ferguson, seconded by Mr. Zegarelli.

**MOTION: THAT ZHB13-0001 – MOIRA CAIN-MANNIX, 1913 HIGHGATE ROAD asserting a substantive challenge to the validity of Upper St. Clair Ordinance No. 2056, adopted on October 3, 2011, amending the Township Zoning Ordinance be dismissed.**

Mr. Ferguson then asked if there was any further deliberation on the Motion.

Mr. Zegarelli wished to add that he had listened to the testimony at the last meeting (on April 24, 2013) and it was his view that the applicant did not meet the legal burden of proof.

Ms. Weissert then added that she was also present at the last Zoning Hearing Board Meeting and reviewed the minutes, testimony and briefs that were provided which confirmed her understanding between procedure and substantive in this case and she did concur with the decision.

Upon the Vice Chairman's suggestion a vote was taken. The motion was approved by voice vote.

Attorney Strassburger and Mr. Ferguson confirmed that an adjudication would be provided to the appellant within forty five (45) days of the official close of hearing.

#### ADJOURNMENT

There being no further business, the meeting was adjourned at approximately 8:30 PM.

Respectfully submitted,  
Amy Martin  
Recording Secretary