

**HILLTOWN TOWNSHIP  
REGULARLY SCHEDULED WORKSESSION MEETING  
Monday, June 10, 1996  
7:30PM**

A. The regularly scheduled Worksession Meeting of the Hilltown Township Board of Supervisors was called to order by Chairman William H. Bennett, Jr. at 7:45PM and opened with the Pledge of Allegiance.

Also present were: Kenneth B. Bennington, Vice-Chairman  
Jack C. Fox, Supervisor  
Bruce G. Horrocks, Township Manager  
Francis X. Grabowski, Township Solicitor  
Thomas A. Buzby, Director of Public Works  
George C. Egly, Chief of Police  
Warren L. Nace, Zoning Officer

Chairman Bennett announced the Board met in Executive Session prior to this meeting in order to discuss legal matters.

B. APPROVAL OF CURRENT BILLING: Chairman Bennett presented the Bills List dated June 11, 1996, with General Fund payments in the amount of \$47,524.52, Fire Protection Fund payments in the amount of \$6,000.00, Debt Service payments in the amount of \$128,362.50, State Highway Aid payments in the amount of 21,911.24, and Escrow Fund payments in the amount of \$790.67; for a grand total of all funds in the amount of \$204,588.93.

Supervisor Bennington reminded Mr. Horrocks to monitor billing from East Rockhill Township for building inspection services, in the event that it might again become more cost effective for the Township to hire a permanent building inspector.

Supervisor Fox questioned the bill from Barry E. Jackson Enterprises in the amount of \$1,850.00. Mr. Horrocks explained that bill is for the installation of exercise stations at the park. There is also another bill from George Ely Associates in the amount of \$4,330.00 which was to purchase the exercise equipment. Mr. Horrocks advised the Township received \$5,000.00 from a legislative initiative grant which has been used to pay these costs, with the Township paying an additional \$1,180.00.

Motion was made by Supervisor Fox, seconded by Supervisor Bennington, and carried unanimously to approve the Bills List dated June 11, 1996, subject to audit.

C. SOLICITOR'S REPORT - Mr. Francis X. Grabowski - Solicitor Grabowski explained he normally does not attend Worksession meetings, however there is an issue of importance that must be discussed with the Board of Supervisors. This issue involves an ongoing zoning matter dealing with the application of Bernie Enterprises located on Keystone Drive in Hilltown Township. There

is a colorful history involved which goes back many years. The Township, on the basis of its own investigation as well as complaints from neighboring individuals, filed certain citations against the Bernie Enterprises property. Those citations resulted in zoning hearings before the Hilltown Township Zoning Hearing Board, who found in favor of the Township's position and that of the protestants in the matter. The decision of the Zoning Hearing Board was appealed to Bucks County Court several years ago. The Bucks County Court of Common Pleas reversed the decision of the Hilltown Zoning Hearing Board and stated that the applicant had a legitimate use on the property. The Township and the protestants filed an appeal from that decision to the Pennsylvania Commonwealth Court, who then reversed the decision of Bucks County Court, and reinstated the decision of the Hilltown Township Zoning Hearing Board. The applicant then filed a petition with the Commonwealth Court for reconsideration, which was denied. An application was filed with the Pennsylvania Supreme Court to consider the decision of the Commonwealth Court. The Pennsylvania Supreme Court refused to grant a petition to hear the case. The Pennsylvania Supreme Court issued its decision on October 2, 1995 to not hear the matter. Since that time, Solicitor Grabowski advised the Township and neighbors of the site have been concerned about the applicant's compliance with the original Zoning Hearing Board order. As a result of discussion and inaction, the Township proceeded to file a complaint with the local District Justice. A hearing was scheduled several weeks ago, where discussion took place between the parties for a possible amicable settlement, by which compliance would be obtained and certain consideration would be given to all sides. Unfortunately, discussions have broken down to a large extent.

The parties involved include Bernie Enterprises Inc., Mr. William Renz who is legal counsel for Bernie Enterprises, and the protestants, Mr. and Mrs. Earl Smith, who are represented by Mr. Frank Buschman. Mr. Buschman and Mr. Renz have proposed agreements by which their clients would agree to a compliance schedule. Essentially, Solicitor Grabowski explained the agreement is approximately 10 pages in length, and for the most part, is written in language that was acceptable to all parties. There are still four issues outstanding however. The Township, as the instrument by which the complaint and the proceedings began, could conceivably enter into an agreement to conclude this matter on its own, however, Solicitor Grabowski believes the Supervisors would like to make all parties privy to this agreement for their own satisfaction.

Solicitor Grabowski presented an agreement providing for the use of the property to come into compliance over a period of one year. The applicant is suggesting that they will begin immediate removal of some vehicles in order to reduce the size of the property back

to four acres which was determined to be the legitimate property size by the Zoning Hearing Board. The proposal is to reduce the size of the property by 1/12 each month over a period of one year. The applicant is also willing to reimburse the Township for some of its expenses in the court battle.

The four items subject to discussion this evening include the following:

- Mr. and Mrs. Smith requested that the agreement contain a release from any and all claims the applicant might have against them, which would come from the provisions of the settlement agreement. At this point, the applicant is refusing to provide such relief to the Smiths.

- Mr. and Mrs. Smith requested that the applicant agree to withdraw its petition for a zoning variance to construct a building on the property. The applicant is willing to do that, however the request also includes a stipulation that Bernie Enterprises will not submit any variance applications to the Hilltown Township Zoning Hearing Board in the future. The applicant is not agreeable to the second portion of this point.

- The agreement states that if there is no compliance with the terms of the proposed agreement, the applicant would be subject to a \$500.00 per day fine. There has been a request for what is referred to as a "confession of judgement" provision be contained in the agreement. This is so that in the event there is non-compliance in the eyes of the Township or the protestants, the agreement itself could be taken to court, and judgement could then be filed immediately upon the applicant. The applicant has not agreed to this point. Bernie Enterprises does agree that they are subject to the \$500.00 per day fine if they do not comply with the agreement in the eyes of the court.

- A sentence which appeared in the agreement as proposed by the applicant states that Bernie Enterprises be permitted to allow temporary parking of unregistered vehicles in the front parking lot for a period of less than 24 hours at a time. Mr. and Mrs. Smith are not agreeable to this sentence appearing in the agreement.

Solicitor Grabowski asked Mr. Buschman and Mr. Renz to present their case to the Supervisors with a 10 minute time limit.

Mr. Frank Buschman, legal counsel for Mr. and Mrs. Smith, thanked the Board for the opportunity to speak this evening. Mr. Buschman received the draft of an agreement prepared by Solicitor Grabowski and was concerned when he noted that his client's names do not appear on this proposed agreement. Mr. Buschman asked the

Board to remember that the Smiths as well as other neighbors of the site in question, stood shoulder-to-shoulder with the Township through five years of litigation. This litigation began due to the complaints filed by the Smiths and their neighbors concerning the condition of the junkyard. Only as a result of these complaints did the Supervisors then conduct an investigation. The Hilltown Township Zoning Officer was sent to inspect the site, determining that Bernie Enterprises had illegally expanded over the years. Mr. Buschman commented his clients when through this litigation not only to protect their own interests and those of their neighbors, but because the Township wanted their support. The Supervisors were concerned that the action taken in 1988 prejudiced the Township's position badly when they granted approval for the expansion or change of use of that junkyard. Mr. Buschman noted that his clients are angry because their names have been excluded from the language in this proposed agreement. Further, the Smiths were promised twice during these enforcement proceedings, that the concerns of the neighbors would be considered and addressed.

Mr. Buschman stated his clients concerns are this:

1. Solicitor Grabowski said that all parties agreed to the \$6,000.00 payment. Mr. Buschman is not certain his clients agree to that stipulation now because he is not certain whether the promise of that payment has affected the Supervisor's judgement.

2. Mr. Buschman is concerned because the Smith's name does not appear on the latest proposed settlement agreement as it had on all earlier versions. Further, Mr. Buschman's concern is heightened because this particular settlement agreement was prepared by the Township Solicitor.

3. Mr. Buschman noted that the settlement agreement states "It is entered into to resolve all differences among all the parties to this litigation," yet the applicant refuses to release the Smiths. Mr. Buschman is wary because Bernie Enterprises still insists on having the right to bring legal action against the his clients.

4. It was expressed to Mr. Buschman and his clients during a meeting in Solicitor Grabowski's office that the applicant, because he is now limited to four acres, intends to sell the site since he could not make it a profitable operation. Mr. Buschman wondered why the applicant is now refusing withdraw his application for the second zoning appeal.

5. With regard to fines and penalties, Mr. Buschman noted the language contained in the agreement merely recites Pennsylvania law, which states "If a person is found guilty of a zoning violation, he may be subject to a \$500.00 fine." When discussions

commenced, Mr. and Mrs. Smith wanted to put "teeth" into this agreement because in their opinion, there is a question as to the credibility of the applicant. The Township's Zoning Hearing Board made findings of fact on eight pages of their decision as to the lack of credibility of the applicant. The Zoning Hearing Board found the applicant to lack credibility, however the Township now seems to be willing to accept the applicant's word that he will not violate the Ordinance if he is given another year to come into compliance.

When this agreement was first proposed, Mr. Buschman's clients had asked that Bernie Enterprises post a bond so that if the agreement was violated, funds would be available. The applicant, however, would not agree to this request. The Township Solicitor then proposed a municipal lien, but the applicant refused to agree to that proposal as well.

Mr. Buschman believes that if the originally scheduled hearings had taken place, the Township would now be receiving fines in the amount of \$500.00 from Bernie Enterprises. Mr. Buschman stated the Supreme Court of Pennsylvania ruled in October of 1995 that the applicant's appeal was denied and that he could not operate on 8.5 acres. Since that time, absolutely nothing has been done to bring that site into compliance. The applicant has not reduced the site, nor has he erected a fence. The only mention of compliance by the applicant was after the Township instituted civil enforcement action, and that was only on the eve of the court appearance. Mr. Buschman feels there should be "teeth" in this agreement to force the applicant to begin compliance proceedings.

Mr. Buschman commented that it is not only Donald Metzger himself who is making these promises to come into compliance, it is his corporation, Bernie Enterprises, who is making promises. Mr. Buschman asked the Board to consider why Mr. Metzger, a man who was found to lack credibility as a witness, would be willing to put his signature on this agreement.

Mr. Buschman stated the Smiths do not want vehicles parked in the front parking lot because it will be unsightly. Further, the applicant wants the right to park unregistered motor vehicles in his lot for 24 hours. From past litigation experience with the applicant, Mr. Buschman believes that means one or two vehicles will be parked for 24 hours, then they will be moved and replaced with two more vehicles the next day. Mr. Buschman feels Mr. Metzger is using his front yard as a junkyard.

6. The Zoning Hearing Board and the Commonwealth Court ordered the applicant to have setbacks, however a question has arisen as to whether those setbacks apply in the four acres of junkyard use minus the setbacks, or in four acres of junkyard use

plus the setbacks. It is certainly Mr. Buschman's contention that the applicant is allowed the four acres including the setbacks, not four acres plus the setbacks.

Mr. Buschman hopes the Supervisors will give his clients the consideration they said they would and that the Township will not exclude his clients from this point forward.

Mr. William Renz, representing Bernie Enterprises, was in attendance to present his argument. Mr. Renz believes Solicitor Grabowski gave a fair explanation of most of the history of the site in question, however one of the items left out was that Bernie Enterprises was not the entity who expanded the use of the site from 4 acres to 8.5 acres. When Bernie Enterprises purchased the property, it had previously been expanded to 8.5 acres. The applicant then asked the Township if he could operate on the 8.5 acre tract, and was told that he could proceed. Mr. Renz noted it should not be lost upon the Supervisors that Bernie Enterprises is the entity that will suffer the monetary loss by reducing their operations from 8.5 acres to 4 acres, which is a significant expense. The applicant will also be required to erect a fence, which is a very costly.

There are several issues brought to light by Mr. Buschman that Mr. Renz does not agree with. Mr. Buschman had stated that all of the proposed agreements contained the name of the Smiths, however Mr. Renz commented that is not correct. The only version of the agreement that ever contained the name of Mr. and Mrs. Smith was that which was prepared by Mr. Buschman. Mr. Buschman is ably representing his clients and has made many impassioned pleas, however Mr. Renz noted that the interest of all citizens of Hilltown Township must be protected, including that of Bernie Enterprises.

1. Concerning the withdrawal of the zoning variance application, Mr. Renz advised his client is certainly willing to comply, however he does not feel it is fair to say that Bernie Enterprises must give up the right to file any application at any time in the future. Mr. Renz does not believe any one would voluntarily give up their rights under a Township Ordinance, and he does not feel it is appropriate to make this request of Bernie Enterprises. It would also prevent some future owner of the site making use of his property. This would impose another financial constraint on Bernie Enterprises and would limit the applicant's ability to market that property in the future.

2. With regard to fines and penalties, Mr. Renz explained one of the reasons the applicant would not agree to an absolute confession of judgement is that if there is a technical violation, such as a vehicle parked 6 inches into the setback, the applicant

would be subjected to a \$500.00 per day fine. If the Township believes there is not compliance, Mr. Renz advised the court should make the final determination as to the amount of a fine.

3. Mr. Renz noted a discrepancy in Solicitor Grabowski's original statement concerning the time frame for compliance. The agreement stipulates a 10% reduction per month for 10 months for the applicant to come into compliance. Mr. Renz has in his possession two versions of the agreement as prepared by Mr. Grabowski, both of which have been executed by Bernie Enterprises. Mr. Renz also has the \$6,000.00 check and the first aerial photograph as required by the agreement.

According to what Mr. Buschman has said repeatedly, the Township wants compliance. Since Mr. Renz has represented Bernie Enterprises, his client began the clean up of the front of the site and has begun to reduce the size. Mr. Renz feels his client has made a good faith effort to bring the site into compliance and believes it is inappropriate for Mr. Buschman to attack his client's credibility. Mr. Renz reminded the Board that it is the corporate entity, Bernie Enterprises, who is the owner and who has the obligation to correct the problems. In Mr. Renz's opinion, it is inappropriate to attempt to shift an obligation to an individual.

4. Concerning the release, Mr. Buschman has repeatedly stated that his clients have done nothing wrong, however Mr. Renz wondered why Mr. Buschman is so desperately seeking a release if that is the case. Mr. Renz feels this is not good faith bargaining.

The applicant is prepared to move forward with either of the two agreements, both of which have been executed by Bernie Enterprises. Mr. Renz believes the items of most concern to Mr. Buschman and his clients can be resolved.

Supervisor Fox attended the Bernie Enterprises Zoning Hearings where Mr. Renz stated his client did not expand the junkyard from 4 acres to 8.5 acres. Mr. Rio, the former owner of the site, not only testified that he advised Bernie Enterprises that only 4 acres could be used, but that there was documentation to support that statement. Therefore, Supervisor Fox believes Bernie Enterprises did expand the junkyard. The stipulation of a 10 month time period for compliance does not necessarily mean, in Supervisor Fox's mind, that Bernie Enterprises will comply. Supervisor Fox commented Bernie Enterprises has a definite history of non-compliance in Hilltown Township. Supervisor Fox believes the applicant should have been fined immediately after the court hearing last year. Supervisor Fox is very concerned about the Smiths, who are a party to this law suit, not having any representation. Supervisor Fox

asked if it Mr. and Mrs. Smith's intention to sign a special contract with Bernie Enterprises after Hilltown Township signs off. Mr. Renz noted his client has no interest in a special deal with the Smiths, because there is nothing to deal with. Supervisor Fox advised the Smiths were a party to this suit, and if it wasn't for their testimony and that of the other neighboring residents, the Township would not have been able to pursue this matter. Mr. Renz reminded the Board that the agreement calls for the entire Township to be included, and does not specify just one resident of the Township. If that is so, Supervisor Fox feels the Township should be representing the Smiths and other neighboring residents.

Supervisor Bennington was under the impression that this was a three party agreement. Solicitor Grabowski replied the initial draft of the agreement provided by Mr. Buschman did name all three parties, however it became very clear to him that there would not be a three party agreement. The agreement before the Board for consideration this evening, for the most part, was acceptable to the applicant. Solicitor Grabowski is not necessarily advocating that this is the agreement the Supervisors should sign. Supervisor Bennington noted the Township fought long and hard, not only for themselves but for the neighbors of the site. Supervisor Bennington asked why the Township would not honor a request by the neighboring residents to be a party to the agreement. Solicitor Grabowski explained it would be a policy decision by the Board of Supervisors as to whether the requests of the applicant and the requests of the protestants are reasonable or unreasonable.

Solicitor Grabowski stated if no agreement is executed and there is no compliance by the applicant, the Township has the ability to request that a hearing be held by the Common Pleas Court, to determine why compliance is not occurring. The issues that will then be discussed will be the term for compliance. Supervisor Bennington asked if the final decision made by the courts in the future could be less of an agreement than what is before the Board this evening. Solicitor Grabowski stated the Court of Common Pleas could hold hearings within the next two months, though what that court may or may not rule, is uncertain. They could give the applicant 30 days, 90 days, or even a year to come into compliance. It would depend on the reasons given by the applicant for how much time is necessary to come into compliance. The other issues would then be discussed and the judge would have to decide whether or not it is reasonable for a release to be granted to the protestants, and whether a confession of judgement should be required. That decision would then be appealable to the next higher level of court. If the Township were to appeal this evening, Supervisor Bennington asked what would be the earliest the next level of court would schedule a hearing for this case. Solicitor Grabowski believes a hearing could possibly be scheduled within 60 days. Discussion took place concerning the time frame involved for an

appeal process. Mr. Renz pointed out that the compliance terms of the proposed agreement requires a 10% reduction each month. If that 10% reduction is not met, the applicant must provide the aerial photograph each month. If the Township believes the applicant is in breach of the agreement during the first month, they could seek compliance immediately. Mr. Buschman wondered how long it would take the property to come into compliance if they were being fined \$500.00 per day. Mr. Buschman believes the applicant would be in compliance very, very quickly if the \$500.00 per day fine was imposed.

Mr. Buschman prepared the first two drafts of the agreement, both of which included his clients, Mr. and Mrs. Smith. When Mr. Renz provided his draft of the agreement, Mr. and Mrs. Smith were also included. Mr. Buschman wished to point out that it was not only his drafts of the agreement which included the Smiths, they were also names in Mr. Renz's draft agreement as well.

With regard to the issue of setbacks, Supervisor Bennington believes it should be four acres including the setback. Mr. Renz feels it is clear that the site is four acres and the setbacks should be in addition to that because the four acres is use, but the setbacks are not. Supervisor Fox commented it is against the law to put anything in the setbacks. Mr. Buschman stated the original junkyard was on 2.6 acres which was a separate parcel of ground that included the setbacks. Solicitor Grabowski is not certain that either the Zoning Hearing Board or the Commonwealth Court addressed setbacks, he believes they spoke in terms of 4 acres for the use. Solicitor Grabowski advised the matter is subject to further argument and could go either way. Supervisor Fox stated it is against the law to place vehicles in setbacks, whether in an approved junkyard or a non-conforming pre-existing junkyard. Supervisor Bennington asked if the language in both those decisions stated "four acres for use" or just "four acres." If it only said four acres, Supervisor Bennington believes it means it would include setbacks. Mr. Renz advised the Commonwealth Court opinion states "Accordingly the Zoning Board found that the original non-conforming use of 2.636 acres was expanded by the maximum amount, 50%, with said additional acreage being 1.318 acres, bringing the total area of the non-conforming to 3.954 acres plus or minus. The maximum allowable area for the non-conforming junkyard is a total of 4 acres." Mr. Renz noted it does not state "use and setbacks," it merely states "use."

Another issue for discussion is the matter of allowing junk vehicles in the front yard area for a period of no longer than 24 hours. By nature, a junkyard is to maintain junk vehicles, and Supervisor Bennington wondered why the applicant should be permitted to have a junk vehicle outside the confines of the junkyard for any period of time. Supervisor Bennington asked if

the applicant, even though he operates a junkyard, is permitted to have one unregistered vehicle outside the fenced area. Mr. Buschman noted that has been addressed in the agreement. The applicant's property is a residential use on the front of the site, and Mr. Buschman stated his clients had no problem with the residents of the house parking their vehicles in the parking area. The only point of contention was that Mr. Buschman felt the junkyard use must be contained within the fence in the four acre site area.

Supervisor Bennington disagreed with the specification in the proposed agreement to deny the applicant the right to appeal to the Zoning Hearing Board for a variance in the future. Mr. Buschman commented his clients are not saying that the applicant can not appear before the Zoning Hearing Board for any reason whatsoever, rather his clients are asking that Bernie Enterprises withdraw the existing application. Mr. Buschman is suggesting that the applicant may never again appear before the Zoning Hearing Board in the future, and Supervisor Bennington feels that is an unreasonable request to make of Bernie Enterprises. Mr. Buschman believes Bernie Enterprises should waive that right under the circumstances. Supervisor Bennington noted that request violates Bernie Enterprises' civil rights.

Supervisor Bennington wished to clarify that the Smiths want Bernie Enterprises to waive any slander up until the time that the agreement is executed and Mr. Buschman agreed. Supervisor Bennington asked Mr. Renz why his client would not release the Smiths from any possible slander up until the agreement is executed. Mr. Renz advised no suits have been filed, nor has the applicant ever contemplated filing a suit, however he wondered why the Smiths were so concerned if they have done nothing wrong. Mr. Buschman read the proposed language in the agreement, which follows "Bernie Enterprises does hereby release Hilltown Township and Mr. and Mrs. Earl Smith from any and all claims which it may have against Hilltown Township and the Smiths arising from the conduct, giving rise to the provisions of this agreement." Mr. Renz noted Bernie Enterprises is not willing to sign off on that because there is nothing being given in exchange for release and the Smiths are not part of the compliance requirement. By not agreeing to this portion of the agreement, Supervisor Bennington feels it indicates that Bernie Enterprises is contemplating filing a suit against the Smiths. Mr. Renz did not agree.

Once the Township determines that Bernie Enterprises is in non-compliance, Supervisor Bennington asked if Bernie Enterprises would have to immediately begin paying the fine, and if they would be allowed to appeal once again to the District Justice. Mr. Buschman stated what was discussed, and what he thought was agreed to, was that the fines would be made retroactive to October 2, 1995. That

date was chosen because it was the day the Supreme Court ruled that Bernie Enterprises lost the suit and that they only had the right to 4 acres, not 8.5 acres, along with any other stipulations that accompanied that ruling. Mr. Buschman noted that the applicant ignored that ruling from that point forward. Further, Mr. Buschman believes Mr. Renz, in a show of good faith, had agreed to this retroactive date during a meeting held in Solicitor Grabowski's office. To allow for due process for the applicant, Supervisor Bennington stated that just because the Township decides they are in non-compliance does not necessarily make it so. The applicant could still appeal to Judge Gaffney to prove they are actually in compliance. Further, Supervisor Bennington feels the fine should not begin until the appeal goes back to the District Justice in order to make that determination. Mr. Buschman advised that is why he proposed that a confession of judgement be added to the agreement, giving the applicant the right to petition to open and strike the judgement to litigate the issue. This would allow for a judgement against the applicant and a priority of liens could be established, providing protection for the Township. Discussion took place. Mr. Buschman advised he is trying to get a mechanism in place to provide for the recovery of those fines now.

Obviously, Solicitor Grabowski noted having all three parties come to some type of agreement is the preferred method, rather than going back to court. Whether or not a court would agree with any of the parties regarding the issues is subject to a great deal of debate. Solicitor Grabowski has before him a very recent case decided in Bucks County Court concerning Bristol Township vs. Aaron Leon. This decision is dated February 7, 1996 and is signed by Judge Weaver. This matter is very similar to the Bernie Enterprises case, in which Bristol Township was not able to get compliance with an applicant concerning a zoning violation. Beginning in May of 1994, Bristol Township filed petitions for contempt proceedings. After Bristol Township issued Cease and Desist Orders, the matter was in for a preliminary injunction. In March of 1995, Judge Weaver found the applicant in contempt of court in that he continued to operate his business in violation of a previous order issued on November 29, 1994. Solicitor Grabowski explained there was a period when action was taken by the Township in May of 1994 to the very first order by Judge Weaver on November 29, 1994, and then March 20, 1995, in which Judge Weaver ordered that the applicant be required to reimburse the Township for the cost of enforcement of the injunction. The court imposed a fine of \$100.00 per day for each day the applicant operated his business in violation of the court order, which was for a period of 56 days. Solicitor Grabowski is sure Bristol Township asked for the maximum of \$500.00 per day, however the court issued an order for only \$100.00 per day. There is no way to know what a judge might say in this instance, and Solicitor Grabowski would like all parties involved to realize the consequences of what may or may not happen.

The applicant in this particular case disregarded Judge Weaver's order issued on November 29, 1994 and additional hearings were held. There was a hearing held on May 10, 1995 in which the judge modified her earlier contempt order, directing the applicant to pay the sum of \$7,600.00 to the Township within 30 days for attorney's fees and costs. Previously imposed fines were eliminated from the sanctions imposed since there was no longer a need to provide the applicant with coercive sanctions to prevent him from illegally operating his business. Instead, the court imposed a fine of \$1,000.00 if and when the applicant again disregarded Judge Weaver's order. The applicant did that, and a second petition for contempt of court was then filed in August of 1995 for his failure to follow the previous order. At this time, the judge held another hearing, ordering the applicant to be incarcerated in the Bucks County correctional facility until such time as the sum of \$7,600.00 was paid. Solicitor Grabowski stated this is a perfect example of how courts don't necessarily do what you might expect them to do. Solicitor Grabowski does not wish to come across as being the weak party in this entire matter by suggesting compromise, rather he is suggesting is that self-help is always the best method, and if the Township can find a way to satisfy all parties involved, it should be done.

Supervisor Fox noted that it would be Bernie Enterprises, not Mr. Metzger, the owner, that the Township would be going up against. Supervisor Fox feels Mr. Metzger will walk away clear from this entire matter, continuing with his remaining businesses throughout the County. Supervisor Fox feels Mr. Metzger personally should be a party to this agreement, not just Bernie Enterprises. Solicitor Grabowski commented that would be fine if Mr. Metzger would agree, however from the very beginning, it has been noted that Bernie Enterprises owns the property, conducts the operation of the site, and was the party that the Cease and Desist Order was issued to.

Mr. Renz presented the first aerial photograph dated May 20, 1996.

Chairman Bennett called for a fifteen minute Executive Session with the Board of Supervisors and Solicitor Grabowski.

\*The June 10, 1996 Board of Supervisors Worksession meeting was reconvened by Chairman Bennett at 9:15PM.

Chairman Bennett noted that earlier in the evening, a statement was made that the Township was eager to make an agreement based upon receipt of the \$6,000.00 check. Chairman Bennett advised that statement is absolutely untrue, noting the Supervisors try to make decisions that are moral and prudent for all concerned.

Solicitor Grabowski explained the Board met in Executive Session to discuss all merits of the matter and they have a proposal to

submit to all parties involved. The Board would like to execute a three party agreement, including Mr. and Mrs. Smith, Bernie Enterprises, and Hilltown Township. Solicitor Grabowski outlined the Supervisor's suggestions for resolving this matter:

- The Township is willing to accept the interpretation that the active junkyard use is of four acres, not inclusive of setbacks.

- The Township is also willing to accept the existence and presence of one unregistered vehicle in the front parking area of the site with no time limit.

- The Township is willing to accept the fact that there will be no needed waiver or release for precluding the applicant or its heirs, from any future Zoning Hearing Board submission or zoning submission.

- The Township requests a release from the applicant for both Hilltown Township and the Smiths, for any possible litigation for the period of time up to the signing of the agreement.

- The Township is willing to accept a condition that fines would not begin until either District Justice Gaffney or a Bucks County Court judge, determines that the applicant is not in compliance with an agreement.

The Supervisors request that this agreement be presented for signature by all parties by 12:00 noon on Friday, June 14, 1996. Further, the Supervisors request that both Mr. Renz and Mr. Buschman discuss this proposal with their clients and if there can be an agreement, they would like it executed by this Friday. If no such agreement is forthcoming, Solicitor Grabowski believes there may be a motion made this evening to determine what further action there may be.

Mr. Frank Beck, a resident, asked if the Supervisors realize that the one unregistered vehicle parked on the site may be a trash truck. Chairman Bennett noted the Supervisors discussed that issue at some length and would hope there would be some good faith on the part of the applicant. The Supervisors agreed that any Hilltown resident, as a private citizen, would be permitted to have one unregistered vehicle on their property and the same should hold true for the applicant.

Motion was made by Supervisor Bennington, seconded by Supervisor Fox, and carried unanimously that if an agreement is not signed by all three parties by 12:00 Noon on Friday, June 14, 1996, the Township Solicitor is authorized to immediately file against Bernie Enterprises non-compliance in Common Pleas Court and with District

Justice Gaffney.

D. HILLTOWN TOWNSHIP WATER AND SEWER AUTHORITY REPORT - Mr. Groff was not present this evening. The Authority Report for the month of May, 1996 is on file at the Township office.

Mr. Horrocks noted that public water and sewer is now available to this building and a plumber has been scheduled to make the connection.

E. DIRECTOR OF PUBLIC WORKS REPORT - Mr. Thomas A. Buzby - Mr. Buzby read the Public Works Report for the period of April 28, 1996 through May 25, 1996, which is on file at the Township office.

While the Board was in Executive Session, Mr. Horrocks and Mr. Buzby opened Bid #96-2 for ID-2 Wearing/ID-2 Binder, and Bid #96-3 for Aggregate. The bid results are as follows:

Bid #96-2 ID-2 Wearing/Binder	- M & M Stone	- \$ 44,625.00
	H & K Quarry	- \$ 43,900.00

Bid #96-3 - Aggregate	- M & M Stone	- \$ 17,619.50
	H & K Quarry	- \$ 17,305.00

Motion was made by Supervisor Bennington, seconded by Supervisor Fox, and carried unanimously to award Bid #96-2 for ID-2 Wearing and ID-2 Binder to H & K Quarry in the amount of \$43,900.00.

Motion was made by Supervisor Bennington, seconded by Supervisor Fox, and carried unanimously to award Bid #96-3 for Aggregate to H & K Quarry in the amount of \$17,305.00.

F. PUBLIC HEARING CONCERNING THE SEVEN YEAR REVIEW OF THE HILLTOWN TOWNSHIP AGRICULTURAL SECURITY AREA, PENNA. ACT 43 OF 1981 - Mr. Horrocks advised all legal requirements have been met dealing with the advertisement of this hearing. There is a grand total of 2,948 acres involved in the A.S.A. of Hilltown Township. With Board approval, these applications will be forwarded to Bucks County for their review. Chairman Bennett advised Hilltown Township consists of approximately 17,000 acres, and with this kind of response, 17% or 18% of the Township will now be involved in the Agricultural Security Area. There was no public comment.

Motion was made by Supervisor Bennington, seconded by Supervisor Fox, and carried unanimously to include within the Hilltown Township Agricultural Security Area, 2,948 acres as specified by the Township Manager.

G. POLICE CHIEF'S REPORT - Chief George C. Egly - Chief Egly read the Police Report for the month of May, 1996, which is on file at

the Township office.

Now that Wal-Mart has opened, Chairman Bennett asked for an update on what additional burden it has put on the police department. Chief Egly advised there have been four shoplifting incidents, one traffic accident, a vehicle fire, and several minor complaints.

Supervisor Fox questioned police overtime. Discussion took place concerning reimbursed overtime from the Cops Grant.

Chief Egly is upset with a recent newspaper article concerning 911 emergency calls. Chief Egly advised 911 emergency services is not to be used for calls concerning smashed mailboxes, or stray dogs on private property, etc.. Chief Egly noted 911 does work if it is used properly. Supervisor Bennington agreed that 911 does work, however he believes the reporter's point is that people are using 911 emergency services for calls that are not necessarily emergencies.

H. ZONING OFFICER'S REPORT - Mr. Warren Nace - Mr. Nace presented the Zoning Report for the month of May, 1996 which is on file at the Township office.

Supervisor Bennington questioned the complaint concerning high grass and weeds. Mr. Nace explained this complaint is against Mr. Thompson whose property is located on Upper Stump Road. Mr. Thompson appeared before the Supervisors last year explaining that he was proposing a bird sanctuary for his property. Mr. Horrocks has left a message for Mr. Thompson, stating that the Township requests a written statement from him as to why he feels Hilltown Township's current Ordinances are unfair; asking what further steps he has taken to qualify his property as a "meadow;" and to advise that the letter Mr. Thompson sent to Mr. Horrocks in no way interferes with the Zoning Violation notice he previously received.

Supervisor Bennington recounted the events as they occurred when Mr. Thompson first appeared at a public meeting last year. At that time, Mr. Thompson could not provide any documentation proving that his property was a bird sanctuary, and the Board's final decision was to have the meadow mowed, which was done. Recently, Mr. Thompson received another Notice of Violation directing him to mow the field in question. Mr. Thompson has not provided any further documentation concerning his meadow, and Supervisor Bennington feels Mr. Thompson should come into compliance with Township Ordinances as specified.

Discussion took place concerning several residents of Country Roads who will appear at the next Supervisor's meeting to discuss a possible amendment to the Zoning Ordinance regarding side yard requirements for the construction of decks.

I. PARK AND RECREATION REPORT - Mr. Nick Lupinacci read the Park and Recreation Report for the month of May, 1996 which is on file at the Township office.

Mr. Lupinacci noted the exercise stations have been installed at the park, and he thanked Mr. Buzby for the installation.

Mr. Lupinacci reported on the progress of the Park and Recreation Comprehensive Plan, which has resulted in a recreational survey as discussed several months ago. Chapter one of the Comprehensive Plan was drafted at the Park and Recreation Board worksession last week, and will be forwarded to the Bucks County Planning Commission for review.

With regard to Community Day which has been scheduled for September 14, 1996, Mr. Lupinacci spoke with Chief Egly and the chiefs of Hilltown Fire Company and Silverdale Fire Company with respect to the proposed 5K run and the bike rally. Mr. Lupinacci hopes to provide a tentative map for their review. Fireworks will also be held on Community Day, and a fireworks company has been secured for the day at a cost of approximately \$3,000.00. The Hilltown Civic Association has made a deposit of \$500.00 towards the cost of the fireworks display. The Park and Recreation Board is hoping that the Township may provide the balance of \$2,500.00.

The next regular Park and Recreation Board meeting will be held on Thursday, June 13, 1996. Representatives of local businesses, schools, churches, and other community groups are scheduled to attend in order to plan events for Community Day.

Mr. Lupinacci mentioned the possibility of a banner being hung above the roadway in the village of Hilltown to promote Community Day. Discussion took place concerning the legalities of hanging a banner across a road and the problems involved.

Supervisor Bennington asked the status of erecting lights at the baseball field. Mr. Horrocks noted a meeting will take place with an electrical engineer from County Electric this week to evaluate the lights and to determine if they are adequate. Supervisor Bennington asked if the lights will be erected for this baseball season. Mr. Horrocks is not certain until after meeting with the engineer. Mr. Lupinacci stated the Park and Recreation Board would like the lights to be installed as soon as possible.

J. HILLTOWN FIRE CHIEF'S REPORT - Mr. Bill Devlin, Fire Chief - Mr. Devlin read the Hilltown Fire Company Report for the month of May, 1996, which is on file at the Township office.

With regard to the Wal-Mart store, Mr. Devlin advised the fire company toured the facility the week before the opening and found

approximately seven Code violations. Those violations were corrected, but three days later when Mr. Devlin visited the store, he found fire doors and fire hydrants blocked. After speaking to management numerous times, the problems were corrected while Mr. Devlin was on the site. Then when Mr. Devlin visited the site a few days later, the same violations existed. Mr. Devlin noted the sprinkler design and the fire alarm system in the store is excellent, however stock and merchandise must be kept 18 inches below the sprinkler in order to extinguish a fire. On Memorial Day weekend, the store's capacity was exceeded by hundreds and fire doors were blocked at the same time. Mr. Devlin does not know what to do about this situation because there is no fee schedule established by the Township to present a fine to the store. Mr. Devlin urged the Supervisors to again consider appointing an individual to the Hilltown Township Fire Marshall position.

Supervisor Bennington suggested Chief Egly be alerted the next time fire doors or fire hydrants are blocked so that he can close the store due to fire code violations. Chief Egly commented he can not legally shut down the store. Mr. Horrocks commented the B.O.C.A. Code has ways to address such violations, but even through B.O.C.A., the store can not be shut down. Solicitor Grabowski advised the B.O.C.A. Code is much like the Township's Zoning Ordinance in that there is the establishment of a Building Inspector/Code Enforcement Officer who administers the Code. There are also provisions for the possibility of fines by way of a complaint filed with the District Justice office in order to issue a non-traffic type citation. Mr. Horrocks asked if the governing body must authorize that complaint as it does with the Zoning Ordinance. Solicitor Grabowski replied that is correct. Supervisor Bennington suggested Mr. Gardner inspect Wal-Mart in order to cite them for each and every violation through Judge Gaffney's office. Mr. Horrocks explained that is within the realm of possibility provided the Code Enforcement Officer can take these matters to the District Justice without Board authorization. Based upon a report by the fire chief of the Hilltown Fire Company, Supervisor Bennington would authorize the Code Enforcement Officer to inspect the Wal-Mart store for Fire Prevention Code violations and to appear before Judge Gaffney seeking fines for those violations. Solicitor Grabowski suggested that Mr. Horrocks meet with Mr. Devlin to determine the specific provisions for violation of codes and discuss the mechanism required with the Code Enforcement Officer as well. Further, Mr. Horrocks feels the manager of Wal-Mart should be told exactly what this procedure is.

Motion was made by Supervisor Bennington, seconded by Supervisor Fox, and carried unanimously to direct the Township Manager to meet with the manager of Wal-Mart to explain that the various violations have been presented to the Board of Supervisors and that the Township will begin to follow the B.O.C.A. Code in order to cite

violations and bring the matter to the attention of the District Justice.

Mr. Horrocks stated the Fire Prevention Bureau will be considering the position of Fire Marshall at their next meeting to be held a week from Wednesday. Chairman Bennett wondered why a fire chief could not have the same responsibility and authority as a Fire Marshall. Mr. Devlin does not believe that scenario would work because Hilltown Township has seven fire chiefs who will have seven different opinions. Supervisor Bennington hopes the issue of Fire Marshall can be addressed at the next Fire Prevention Bureau meeting.

Mr. Devlin noted the Deputy Fire Chief will be conducting a pressure static test at the Super G store in the Hilltown Crossings Shopping Center on Wednesday, June 12, 1996.

With regard to the issue of preemption, Mr. Devlin mentioned the traffic signal at the intersection of Rt. 309 and Hilltown Pike. Mr. Devlin noted it is becoming extremely difficult to get fire fighters in and out of the Line Lexington fire station. Mr. Devlin urged the Board to give serious consideration to the issue of preemption at that particular intersection. Discussion took place concerning preemption and the cost involved. Mr. Horrocks suggested the Fire Fund Budget be researched to determine if money would be available for preemption costs from that fund.

K. EMERGENCY MANAGEMENT COORDINATOR'S REPORT - Mr. Bill Devlin - Mr. Devlin read the Emergency Management Coordinator's Report for the month of May, 1996 which is on file at the Township office.

Mr. Devlin does not yet have all information on incident #96-4 concerning a fuel tank floating in a basement at a Broad Street location. Incident #96-5 took place on April 8, 1996 at Quiet Acres which consisted of a heater unit problem. Incident #96-6 took place last week consisting of a possible oil spill in a waterway on Hillcrest Road. A hydrocarbon pad was used at the site, however no oil was retrieved. An ultra-violet light test was conducted to indicate if there were any hydrocarbons in the waterway. These results were also negative. Mr. Grunmeier's opinion was that the spill was a protein based substance posing no threat to the waterway, the environment, or the residents of the area.

Supervisor Bennington asked if the Fire Tax is capped at three mills. Solicitor Grabowski replied that it is, and he does not believe it is possible to raise the Fire Tax. Supervisor Bennington is concerned that eventually the fire companies will need money for equipment, and he is not happy with the prospect of a paid fire company which will cost the Township a great deal more.

L. SILVERDALE FIRE CHIEF'S REPORT - In the absence of Mr. Stockert, Mr. Tom Loudon read the Silverdale Fire Company report for the month of May, 1996 which is on file at the Township office.

M. CONFIRMED APPOINTMENTS:

1. Mr. Craig Silbert - Wellhouse Query - Mr. Silbert owns the farmhouse directly across the street from the Township building. Mr. and Mrs. Silbert are demolishing the barn on their property since it has become a safety hazard. There is another building on the site, located close to the road, which is a pump house. When Mr. Silbert purchased the property, he received correspondence advising the pump house was to be demolished by the developer of the Hilltown Hunt Subdivision as part of their plan requirements. The developer had previously demolished the corn crib. Mr. Silbert has spoken directly to the developer in the hopes of saving the pump house. It has been discovered that West Creamery Road has been shifted closer to the Township building side of the street by a few feet, which puts the pump house in the public right-of-way by a less significant distance than was originally planned. The pump house is now only a bit more than 2 feet in the public right-of-way. It seems a shame to Mr. Silbert to demolish such an attractive building that is in keeping with the atmosphere of his property and currently serves the purpose of being a well house. With the demolition of the barn, the pump house will be the only remaining outbuilding. Mr. Silbert spoke with the developer to ask if it would be possible to use the funds escrowed for demolition to actually push the building back out of the right-of-way. Mr. Silbert believes the building in question has aesthetic and historic value, and it is currently serving a necessary purpose by housing the wellhead. Mr. Silbert is hoping to find a compromise so that the pump house could remain on the site.

Chairman Bennett introduced Supervisor Fox as the president of the Hilltown Historical Society. Supervisor Fox noted this particular development received approval so many years ago that he can not recall the reason the pump house was to be removed. The Township has approximately 1/2 acre of open space located directly across West Creamery Road which came with the other open space from the Hilltown Hunt development. Mr. Silbert believes the original reason the building was to be removed was because it was located within the right-of-way. It is his understanding that both the cinder block creamery building on the front of the barn and the well house were set to be demolished. Mr. Horrocks noted the demolition was part of the approved plan because both buildings would have been within the legal right-of-way. The silo is also slated to be demolished.

Supervisor Fox asked exactly where the pump is located in the well house building. Mr. Silbert pointed out the location of the pump on a sketch of the well house.

Supervisor Bennington suggested that the Township Engineer review this matter to determine what impact it might have on the Subdivision/Land Development Ordinance requirements. Chairman Bennett and Supervisor Fox agreed.

N. MANAGER'S REPORT - Mr. Bruce G. Horrocks -

1. Linens for the Daryl Derstine Land Development will be available for the Board's signature following this meeting.

2. Mr. Horrocks presented three escrow releases for the Board's consideration:

County Line Shopping Center	Voucher #18	\$ 137.99
Hilltown Crossings	Voucher #18	\$ 7,188.26
Hilltown Hunt	Voucher #16	\$ 365.83

Motion was made by Supervisor Bennington, seconded by Supervisor Fox, and carried unanimously to release the three escrows as noted above.

3. Mr. Horrocks presented a list of references for McComsey Builders, including a great many municipalities within the state of Pennsylvania. Mr. Horrocks will contact a few of the municipalities listed, however he assumes McComsey Builders is a responsible bidder. McComsey Builders has also supplied a 100% Performance Bond to the Township.

4. For the Board's perusal, Mr. Horrocks presented a quote from Chase Partners Inc. for their accounting program at a cost of \$3,950.00. Upon Niessen, Dunlap and Pritchard's recommendation that the Township invest in a new accounting program, Mr. Horrocks and Mrs. Leslie spent a great deal of time last year viewing various programs, most of which were at a considerably higher cost. The program offered by Chase Partners Inc. works off Windows '95. Supervisor Fox asked how much was budgeted for computers. Mr. Horrocks believes approximately \$10,000.00 was budgeted for computer systems for Administration.

O. CORRESPONDENCE - Mr. Bruce G. Horrocks -

1. Mr. Horrocks presented copies of language proposed for the referendum by the Open Space Committee. Supervisor Bennington reviewed this documentation, and would like it to specify "passive open space," rather than "recreational open space." Supervisor Fox commented when open space for recreational use is purchased, it

takes the Township out of the conservation easement for farmers and cuts the buying power down a great deal. Supervisor Bennington stated the Township still wants to leave the option open to purchase a piece of property before a developer purchases it. Mr. Horrocks explained the language as proposed by the Open Space Committee is the end result of three meetings and it is his understanding that the Board wanted their input. The Open Space Committee has no plans to meet again until after any referendum question is authorized, unless the Supervisors direct Mr. Horrocks to schedule a meeting.

P. RESIDENT'S COMMENTS: None.

Q. SUPERVISOR'S COMMENTS:

1. Chairman Bennett is in favor of removing the flashing warning light near the approach to the intersection of Rt. 113 and Diamond Street, now that a traffic signal has been installed. Chairman Bennett feels the flashing light should be erected at the intersection of Green Street and Fairhill Road, or at the intersection of Callowhill Road and Hilltown Pike. Discussion took place concerning which other intersections should be considered. Chairman Bennett directed Chief Egly to advise the Board of Supervisors where the flashing signal should be installed.

Further, Supervisor Bennington asked Chief Egly to prepare a recommendation as to the location of any intersection he feels would warrant a traffic signal.

R. PRESS CONFERENCE: No members of the press were in attendance at this time.

S. ADJOURNMENT: Upon motion by Supervisor Fox, seconded by Supervisor Bennington, and carried unanimously, the June 10, 1996 Board of Supervisors Worksession was adjourned at 11:30PM.

Respectfully submitted,



Lynda Seimes  
Township Secretary

(\*These minutes were transcribed from notes and tape recordings taken by Mr. Bruce Horrocks, Township Manager).