

APPROVED

**SPRINGETTSBURY TOWNSHIP
ZONING HEARING BOARD
APRIL 7, 2011**

The Springettsbury Township Zoning Hearing Board held a regularly scheduled meeting on the above date at the Township offices located at 1501 Mt. Zion Road, York, Pennsylvania 17402.

MEMBERS IN

ATTENDANCE: Dale Achenbach, Chair
John Schmitt
James Deitch
Michael Papa
Teresa Johnescu
Sande Cunningham, Alternate

ALSO IN

ATTENDANCE: Gavin Markey, ZHB Solicitor
Nicole Ehrhart, Township Solicitor
Jim Baugh, Director of Community Development/Zoning Officer
Sue Sipe, Stenographer

1. CALL TO ORDER:

Chairman Achenbach called the meeting to order at 6:00 p.m. He introduced the members of the Board and led the Pledge of Allegiance.

2. ACTION ON THE MINUTES:

A. February 3, 2011

MOTION MADE BY MR. DEITCH, SECONDED BY MR. PAPA TO APPROVE THE MINUTES OF FEBRUARY 3, 2011 AS CORRECTED. MOTION UNANIMOUSLY CARRIED.

Chairman Achenbach asked Mr. Baugh whether or not all cases had been properly advertised. He responded that all notifications had been made.

3. OLD BUSINESS - NONE

4. NEW BUSINESS

A. Case Z-11-04 - Ian Hadgraft

Ian Hadgraft

All witnesses were sworn in.
The ordinances are provided:

325-121. Fences.

- A. Fences may be erected, altered and maintained within the yards, provided any such fence or wall shall not exceed four feet in height. A fence not exceeding four feet in height may be installed on top of a retaining wall, provided that all such fences shall contain openings distributed on each square foot of the vertical surface of not less than 50% of the area of the fence.

Comments: The applicant is requesting to install a five foot fence in his yard. This property is located in the Kingswood development and fronts on both Rex Drive and Kingston Road. The desired fence would be installed in the rear of the dwelling on the Kingston Road frontage. There is also a stormwater basin located on this property. The fence would be installed outside of that area.

Recommendations: If the findings of Fact and Conclusions of Law meet with the approval of the Board, staff would not oppose the applicant's request.

Mr. Hadgraft stated he lives at 3102 Rex Drive and is requesting to erect a five foot fence on his property. He is requesting a variance due to the fact that the property has a significant slope off the back of his house down to the storm water management area. He indicated a four foot fence would not be effective for his purpose. He submitted photographs illustrating the slope in the back. The fence would be an aluminum picket fence and will not infringe on the storm water management area. In response to a question from the Board, Mr. Hadgraft indicated his property is approximately ¼ mile from the corner of Kingston and Edgewood Road. He noted they are the fourth house on Rex Drive away from Edgewood Road.

Mr. Hadgraft indicated there are other homes in his neighborhood that have similar fences.

Mr. Baugh had nothing further to add.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant.

Attorney Markey commented that the facts presented addressed the hardship, and recommended noting the stormwater management basin that abuts the applicant's property.

MR. PAPA MOVED IN THE CASE OF Z-11-04 TO APPROVE THE 1 FOOT VARIANCE FOR ARTICLE 325-121. SECONDED BY MR. DEITCH. MOTION UNANIMOUSLY CARRIED.

B. Z-11-06 Longstown United Methodist Church

Eric Hoover, Civil Engineer, NuTec Design

All witnesses were sworn in.

The ordinances are provided:

325-116. Design standards.

C. Parking spaces may be located on a lot other than that containing the principal use as a special exception.

P. All parking lots shall be curbed. For infiltration and water quality purposes, curbing may be eliminated if the developer can show approved and accepted methods of water quality and infiltration techniques being in place. In cases where curbing is eliminated, another method of vehicle control shall be employed (i.e., wheel stops, berms). The Township Engineer should determine the applicability of the infiltration and water quality techniques proposed. Bituminous curbing is not acceptable.

T. Access to the public highway or street shall be controlled in the interest of public safety. The off-street parking, loading and service areas shall not be within any yard area other than those specified by this article.

***There are no parking regulations listed for an R-10 zoning district.

(4) Access drives shall not open upon any public right-of-way where the sight distance in either direction along the public thoroughfare would be less than 500 feet when the posted speed limit exceeds 35 miles per hour; however, when the posted speed limit is 35 miles per hour or less, the sight distance requirement may be reduced to 250 feet.

325-20. Area and bulk requirements.

Maximum Percentage Lot Coverage = 40%

Comments: The applicant is requesting to construct a parking lot on a vacant parcel that is located next to the currently used church building. The congregation members currently use on street parking. Applicant is requesting a special exception to permit this as well as variances to exceed the maximum lot coverage by 10%, not install curbing in the proposed parking lot, allow the parking lot to be located within required yard areas and for a reduction in sight distance to the left from the required 500 feet to 295 feet.

Recommendations: If the findings of Fact and Conclusions of Law meet with the approval of the Board, staff would not oppose the applicant's request.

Mr. Hoover indicated this is a church located at 750 Edgewood Road. The church is looking to add a parking lot in a vacant lot owned by the church, since they does not have any off street parking. He noted that Sunday mornings and Wednesday nights vehicles park along Carol Road. The parking lot would be 28 spaces, two of which are handicapped spaces. This will allow ADA accessible sidewalk to the church which they do not have currently. Due to the size of the lot they are requesting four dimensional variances to allow the parking.

Mr. Hoover provided a layout of the property showing the area of the parking lot. Mr. Hoover indicated that the church was built in 1855. At that time it was open space but currently there is development all around the property. They purchased the land some time ago which presented the opportunity to provide off street parking.

Mr. Baugh had no further comment.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant.

Joshua Crumm & Kim Barts

Witnesses were sworn in.

Mr. Crumm indicated they live in the residence next to the vacant lot. They noted that although they are in favor of the parking lot, they share the entrance way and have a legal easement from the previous owner indicating they would be able to park there indefinitely. Mr. Crum pointed out on the drawing the location of the easement of their driveway and where they park their cars. They indicated their concern about the entrance of the new parking lot which will cut into their front yard. Mr. Crumm noted they have talked to the pastor of the church and will obtain a notarized letter regarding parking in the new lot.

In response to Attorney Markey's question Mr. Hoover indicated they are aware of the access easement over their land. Attorney Markey stated that is a private property issue. He noted the Zoning Hearing Board does not have control over that situation. He recommended as the plans are being processed and recorded by the applicant, they should make sure there is a note placed on the plan by the engineer that acknowledges their ability to use the new parking lot.

Mr. Crumm indicated they were okay with that and just wanted to make sure everyone was aware and that it was addressed.

Mr. Hoover indicated that the surveyor will survey the property to determine where they want to add parking. The church is willing to allocate three parking spaces for them.

Mr. Baugh indicated since their land development plan will include the Crumm property and they will need to sign off on the plan.

It was also noted that current parking situation creates a hazardous situation to the through traffic on Mt. Zion Road and for congregants of the church.

Attorney Markey commented there is a special exception for the off-street parking, a variance to exceed lot coverage, a variance not to install curbing, a variance for the parking lot to be located in the yard areas and a variance to reduce sight distance.

Chairman Achenbach called for a motion.

MR. DEITCH MOVED IN THE CASE OF Z-11-06 TO APPROVE THE SPECIAL EXCEPTION OUTLINED IN THE CASE BRIEFING. SECONDED BY MR. PAPA. MOTION UNANIMOUSLY CARRIED.

MR. DEITCH MOVED IN THE CASE OF Z-1106 TO APPROVE THE VARIANCES AS OUTLINED IN THE CASE BRIEFING. SECONDED BY MR. SCHMITT. MOTION UNANIMOUSLY CARRIED.

C. Case Z-11-04 Darrah Motorsports, LLC

Attorney John Ogden
Joe Darrah

All witnesses were sworn in.

General Case Summary:

The ordinances are provided:

325-105. Prohibited signs.
D. Mobile Signs

325-112. Administration.

A. Applicants for a sign permit shall provide the following information:

(1) Site Plan to include:

a. Building location

1. Dimensions of building: width, depth, height.
2. Distance from property lines.
3. Distance from centerline of street.
4. Distance from street right-of-way lines.

b. Location of access drives and parking areas.

c. All freestanding sign locations, proposed and existing.

1. Distance from property lines.
2. Distance from parking areas.
3. Distance from centerline of street.
4. Distance from street right-of-way lines.
5. Distance from building.
6. Adjacent property uses.

(2) Building elevation and photographs to include:

a. All attached sign locations, proposed and existing.

- b. Distances of signs from top, bottom, and sides of building.
- (3) Sign renderings for all signs, proposed and existing, to include:
 - a. Indicate single or double-sided.
 - b. Indicate dimensions of sign.
 - c. Indicate lettering of sign.
 - d. Indicate height of sign.
 - e. Indicate method of support for sign.
 - f. Indicate type, angle and foot-candles of any lighting.
- (4) Photometric plan for all illuminate signs.
- (5) Fee to be established by resolution of the Board of Supervisors.

B. Within fifteen (15) business days of the receipt of all items contained in subsection A above, the Township shall either issue a sign permit or a written denial of the requested permit. If the information shows that the requested sign is in accordance with the requirements of this Ordinance, a permit shall be issued.

325-187. Permits.

- A. Requirements. It shall be unlawful to commence the excavation for or the construction or erection of any building or structure, including an accessory building, or to commence the moving or alteration of any building, including an accessory building, until the Zoning Officer has issued a zoning permit for such work.

Attorney Markey indicated this case is an appeal from an enforcement notice that was issued by the zoning officer. He noted the township would be first to present their case.

Attorney Ehrhart confirmed that the Board had a copy of the enforcement notice, marked as Springettsbury, Township Exhibit 1.

Through testimony conducted by Attorney Ehrhart, Mr. Baugh stated the applicant's property is located at 1190 Graham Street, York, PA 17402. The owner of the property is Darrah Motorsports, LLC. Mr. Baugh confirmed that he issued a copy of an enforcement notice shown as Exhibit #1 which states that there are prohibited signs on the referenced property in the form of mobile signs. It also states that no permit was applied for by the applicant. Mr. Baugh provided photographs of the site which were marked as Springettsbury Township Exhibit #2, and also presented the photos in a PowerPoint presentation.

Mr. Baugh stated that the billboards shown in the photos are not part of the enforcement notice.

Mr. Baugh described three signs that were subject to the notice of violation, noting two on the left which show Kohler & Kohler, J&K Salvage and to the rear Eichelberger's. Mr. Baugh stated all the photos shown on the PowerPoint were taken January 18, 2011 the day the citation was issued. In the package the photos are dated through March 29, 2011.

Mr. Baugh stated the package represents that the mobile signs were there over that period of time, 80-90% of the time. He noted there are also mobile signs for Bajas Suntanning, which remained for a period of time as well. Mr. Baugh cited the section of the ordinance which prohibits mobile signs as §325-100 defines the mobile sign as "Any sign that is capable of moving from one premise to another including ... and are parked and stored on location other than where the activity associated with said vehicle is conducted. Unless the vehicle has been used in normal day to day operations and the use of the premises on which the vehicle is parked or stored. §325-105 also mentions prohibited signs, Item D, "It shall be unlawful for any person, firm or corporation to erect any signs in the township unless it is specifically permitted in this article. Unlawful signs include, but are not limited to, Item D mobile signs". Mr. Baugh confirmed that the signs represented in the photos are mobile signs. He also confirmed that the applicant did not have a permit to have any signs on the property, noting that all business signs require permits.

Mr. Baugh further stated that the property does not have a use and occupancy permit.

Mr. Ogden objected to that stating that it was a matter of record that Darrah Motorsports is in that building and stated by the Court that Darrah Motorsports is lawfully there and in fact stated in the court order that at least two trailers presented by the township in photographs could stay there because they were connected to Darrah Motorsports.

Mr. Baugh affirmed that this property has been the source of litigation.

Attorney Ogden objected to the line of questioning on the court order.

Attorney Ehrhart asked Mr. Baugh to provide background on the property in question and the enforcements. Mr. Baugh stated when he came to the township in May 2009 the first thing was the rejection of a permit because the property is located in the open space zone and also in the flood plain, with a portion of the property possibly in the floodway. The denial was supported by the Township Engineer. Since that time there have been inspections of the property in an effort to do some work on the property by the applicant and get an occupancy permit. The applicant received a variance from the state for one of the accessibility requirements which was accepted by the Township. The next step was to be DEP approval of the actual location of the building, etc.

Mr. Baugh confirmed that with the property being in the open space district and the flood plain district it poses problems with outside storage on this property.

Attorney Ogden objected because he stated the court order doesn't talk about storage.

Attorney Ogden objection to commentary on what the court found.

Attorney Ehrhart presented as Springettsbury Township Exhibit #3 the Court Order dated September 8, 2009.

The order states on the second page, "Accordingly it is hereby ordered, adjudged and decreed as follows:

1. Defendant shall have 20 days of this date to remove all trailers stored on the property located at 1190 Graham Street, Springettsbury Township, York PA. Only two trailers identified more particularly as a red transporter with a number 89 on it so long as it is attached to a tractor and a white transporter with a number 89 on its side may remain on the property on a regular basis.
2. Defendant shall refrain from any outside storage on the property, in trailers or otherwise, located at 1190 Graham Street, Springettsbury Township, York, PA.
3. The permanent injunction shall remain in effect until further order of court."

Mr. Baugh affirmed in the photos provided as Exhibit #2 none of the trailers shown are the red and white trailers.

Attorney Ogden asked Mr. Baugh if the enforcement notice which indicates three different sections of the ordinance - §325-105 which identifies (D) mobile signs, §325-112 a sign permit and §325-187 which states that it is unlawful to commence the excavation for or construction or erection of any building or structure including accessory building or to commence the moving for alteration of any building including accessory building until the zoning officer has issued a zoning permit for such work.

Through questioning from Attorney Ogden, with regard to §325-187, Mr. Baugh stated the following:

- It is the township's position that photos in Exhibit #2 constitutes the erection of a structure.
- The term structure in the ordinance is defined as "any manmade object having an ascertainable stationery location owned or in land or water whether or not affixed to the land."
- He did not check to see if the vehicles had a license plate, were inspected or insured.

Attorney Ogden asked if he was proceeding under §325-187 that if someone such as Mr. Darrah or Darrah Motorsports, puts a sign on the side of their truck or any vehicle that is the erection of any building or structure. Mr. Baugh stated the enforcement notice cites that a mobile sign is illegal and is located on the property. He further stated under the requirements – “shall be unlawful to commence the excavation for or the construction of or the erection of any building or structure...”

Through line of questioning by Attorney Ogden, Mr. Baugh stated that he believed that Darrah Motorsports is a promotional activity for Cody Darrah who is Joe Darren’s son, and presumed the work is on cars. Mr. Baugh did not recall when Mr. Darrah applied for any approvals if it was indicated it was a race car operation.

Attorney Ogden referred to a letter from Attorney Katherman dated July 15, 2007.

Attorney Ehrhart objected due to not being relevant and Attorney Katherman was not present.

Attorney Ogden indicated the reason he believed it was relevant since the letter advises the township that a race car operation will held on that premises and the trucks are involved in this race car operation and therefore have the right to be there and are not mobile signs.

Mr. Baugh stated he did not recall seeing correspondence back and forth between Mr. Katherman’s office and the township concerning a race car operation at the time he reviewed the case.

Attorney Ehrhart objected stating the letters were beyond the scope of mobile signs on the property and Attorney Katherman was not present.

Attorney Ogden stated it was his argument that the Board needs to know what the use is because he was going to match that against the definition of a mobile sign.

Mr. Schmitt stated in his opinion the two tractor trailers with 89 on them are part of the operation, but at this point he believed the other 3 trucks in question sitting out front are mobile signs.

Attorney Ogden asked Mr. Schmitt to recuse himself since Attorney Ogden believed Mr. Schmitt had already made his decision without hearing the evidence.

Attorney Markey stated it was not necessary for Mr. Schmitt to recuse himself, as he was making an observation based on reviewing the photos and to allow Mr. Schmitt the opportunity to change his opinion based on the evidence to be presented.

Attorney Ogden asked to have three letters entered as exhibits – July 5, 2007, June 26, 2007 and May 22, 2007 between Attorney Robert Katherman and Harish Rao, former Zoning Officer. He also referenced a copy of the Springettsbury Twp. Zoning Hearing Board application which was not acted upon since it was determined a permit was not required.

Attorney Ehrhart objected stating there is no foundation.

Attorney Markey stated if Attorney Ogden could establish that the letters are on the township’s stationary and signed by the former zoning officer and they are referencing this particular property, they should not exclude that evidence from being part of the record. He recommended allowing the letters into evidence.

Attorney Ehrhart renewed her objection for the letters.

Attorney Ogden marked the application as A-1, signed on 2/16/2011, July 5, 2007 letter as A-2, June 26, 2007 letter as A-3, and the May 22, 2007 letter as A-4.

Attorney Ogden asked the Board to take notice that in the township’s Exhibit 3 which is the Court of Common Pleas order 2009 SU3691-07, Page 2 states “The court finds that the defendant is carrying on a

motor sports operation, whether it be considered a business or a hobby.” Page 4 of the court order states “given common sense and the court’s knowledge of the local racing scene, we assume racing is conducted every week. We find it difficult to believe, however, that the cars shown in DMS picture 2 are used on any regular basis in a racing operation. We find on the contrary they are stored on premises in trailers used for storage.”

Attorney Ogden referred to §325-100 the definition of a mobile sign which states “any sign that is capable of moving from one premise to another including those painted on vehicles that are part and or stored at a location other than where the activity associated with said vehicle is conducted.”

Mr. Baugh clarified what constitutes a mobile sign stating if the truck were parked in a parking space that is reserved for patrons then it would be a sign. If it is parked where a truck is normally parked and associated with the business, then it is not a sign.

Attorney Ogden asked where that is located within the ordinance and Mr. Baugh indicated it is part of the parking ordinance.

Attorney Ogden noted that the definition states “unless said vehicle is being used in the normal day to day operations of the use of the premises on which the vehicle is parked or stored.” He asked how Darrah Motorsports is in violation of that particular part.

Mr. Baugh stated because the sign advertises a business that is not located on that property.

Ms. Cunningham referred to the letters from May, June and July noting that there is a statement from Attorney Katherman indicating there will be no signage on this property.

Attorney Ogden stated that the mobile sign ordinance does not apply to Darrah Motorsports, and would prohibit every work truck, every commercial truck on the road in Springettsbury Twp. that has a name on it.

Mr. Deitch referred to the letter dated July 5 2007 from Attorney Katherman to Harish Rao in which he stated, “This will be a private operation. There will be no employees; there will be no advertising signage.” He asked Mr. Darrah if it was his position that there is no advertising signage showing on the photos.

Mr. Darrah stated it would be advertising in the sense they park it at various places for advertising and when the truck is not in use it is parked on his property.

Mr. Achenbach asked Mr. Darrah if he is paid by the entities whose names appear on the trucks to have them in full view.

Mr. Darrah stated vendors are presented with a marketing package. They can decide to sponsor races.

Mr. Deitch asked if the photos shown on the screen represent advertising.

Mr. Darrah stated it could be assumed it is advertising – yes. He also stated when that truck is not in use that is its home spot.

Mr. Papa asked Mr. Darrah if he owned the trucks which he indicated he does. Mr. Papa also asked if there is advertisement anywhere on the truck for Darrah Motor Sports. Mr. Darrah indicated all of the trucks have the wording “Proud Sponsor of Cody Darrah”. He pointed it out on one of the photos.

Attorney Ogden indicated that under §325-100 which states the definition of mobile sign, Mr. Darrah does not meet the definition, so therefore it is not a mobile sign under the ordinance. He referenced the last sentence which states ‘unless the vehicle is being used in the normal day to day operation of the use of the premises on which the vehicle is parked or stored’. He stated he would be presenting testimony

from Mr. Darrah that this is a racecar operation and these trucks support the race car operation solely. He also mentioned this ordinance would apply to every vehicle or truck that was driven into the township and there is no time limit. Attorney Ogden also stated he believed it is pre-empted and cited a case on pre-emption, noting the vehicle code 6109 is the only source of law to control and regulate and none of them have a right to regulate what is written on the side of a motor vehicle. He cited the case of Pugh and Muha, 1982 Common please, Somerset County. He also cited another case from Jan. 19 2011- Holst Cigar Co. vs. the City of Philadelphia.

Through testimony conducted by Attorney Ogden, Mr. Darrah stated he was the only owner of the property at 1190 Graham Street and the Company Darrah Motorsports LLC, purchased in 2007. Prior use of the company was Granite Cutting and Kitchen Cabinet facility. Before purchasing the company Mr. Darrah contacted the township to inform them of establishing a race car operation, and has been operating that business since that time.

With regard to the trucks – Mr. Darrah noted there are no trailers associated with trucks that have the signs on them. He has eight 1 ton trucks which do not require a commercial driver license. He noted on the back of the truck is a latch to hang a sign which Mr. Darrah installed. The signs are affixed to the vehicles and are made of vinyl. They are attached to the metal part of the truck and the vinyl is interchangeable as different sponsors come along.

Mr. Darrah stated the purpose of Darrah Motor Sports is to house the racing car operation for his son Cody. There are six race cars. Two photos were shown of the race cars, and marked as Exhibits A-5 and A6. The purpose of the trucks is to provide sponsors for marketing purposes. For a certain amount of money the sponsor put their name on a part of the car or part of the trailer. Mr. Darrah also has a merchandise trailer that holds t-shirts and collectibles with that signage on the truck. Mr. Darrah stated the trucks are parked where the activity associated with the truck is conducted.

Mr. Darrah stated that the trucks are backed into his property so that the signs on the trucks are out of sight. He also noted it would be possible to remove the vinyl when they are not in use.

Mr. Achenbach stated if the objective is to make the signs invisible or not viewable by passersby, it seemed a reasonable process to remove the vinyl signs from the trucks.

Mr. Achenbach asked Mr. Baugh in regarding to the enforcement notice – what his primary concern was – the fact that there were other vehicles on the property or that there were vehicles on the property with signs on them.

Mr. Baugh stated his concern with the enforcement notice is with the signs.

In regards to the trucks, Attorney Ehrhart stated that would be deferred to the court order, which states the defendant shall refrain from any outside storage on the property in trailers or otherwise. There is not allowed to be anything on that property except the white trailer and the red trailer.

Mr. Deitch pointed out from the photos; the trucks appear to hold the signs without a bed for additional storage. Mr. Darrah confirmed that he uses FRP trailers and cuts the wood out of the trailer to utilize it for the sign.

Mr. Deitch stated it appeared these are just sign faces that are on the back of this truck. And the truck has wheels so it appears it is a mobile sign.

Mr. Achenbach reiterated Attorney Katherman comments in the July letter which says “If Mr. Darrah buys this property he will use it for the following purposes only. Inside the existing structure his son will work on his race cars. This will be a private operation. There will be no employees there will be no advertising signage.” Mr. Achenbach stated it was reasonable to interpret the operation on the property as working on race cars inside a building. The advertising that goes with this operation is associated with racing those cars. So if a racetrack is on that property, then the signage is associated with the business. If

simply maintaining cars on that property inside a building, that is not where the advertising is connected to the operation. It is on the race track where the advertising is shown. Mr. Achenbach felt it was a reasonable interpretation of what the function is on that property, and that there was a difference between racing the car and maintaining the car.

Mr. Achenbach also noted that a vehicle that comes into this township with signing on it would not be considered to be a regulated or impermissible mobile sign. He cited the example if Harley-Davidson drives a tractor trailer through Springettsbury Township they cannot prevent them from doing that. He pointed out the difference in that situation is those trucks have a primary purpose which is to haul equipment, products and materials, whereas the primary purpose of the vehicles in question is to be a sign.

Mr. Achenbach stated it was his opinion the best solution is for the applicant to take the vinyl down.

Attorney Markey asked Attorney Ehrhart to address the accessory use vs. the prohibited mobile sign.

Attorney Ehrhart stated this is not an accessory. There has been testimony that this is in the flood plain overlay and accessory uses under the flood plain overlay, this is actually in the floodway. There are specific requirements that must be met and one of them under accessory uses is H “the structure shall be adequately anchored to prevent flotation or movement and shall be designed to automatically provide for entry and exit of flood waters. It is not an accessory.

Mr. Achenbach asked Mr. Baugh if he would be satisfied if the vehicles remained on the property with respect to the enforcement order but did not have the signs in place.

Mr. Baugh stated from the perspective of signage – yes.

It was noted that the ordinance is rendered uncompromised with respect to the regulation of motor vehicles, because Mr. Baugh is not regulating the vehicles he is regulating what is on them.

Attorney Markey stated given the definition and the facts submitted he offered his legal advice that they are mobile signs. He also stated that the signs on these trucks are not accessory uses because the prohibition of a mobile sign eliminates the argument that it is an effective accessory use plus the citations that were given by the township solicitor regarding the location of the property in the flood plain and floodway also prohibit the accessory use concept. He also stated that the Township regulation under this language of the ordinance is not a violation of the commerce clause as well.

Attorney Markey recommended the motion be to sustain the zoning officer’s interpretation that the vehicles discussed in evidence are in fact mobile signs. They do not constitute an accessory use and there is no violation of the commerce clause. The ruling should be in favor of the zoning officer and against the issues raised on appeal by the applicant.

Chairman Achenbach asked if anyone in attendance wished to speak for or against the applicant.

Attorney Ehrhart stated the other one outstanding issue is that the signs do not have permits and there was no application made which is a violation of the ordinance as well.

MS. JOHnescu MOVED IN THE CASE OF Z-11-05 TO SUPPORT THE DECISION OF THE ZONING OFFICER THAT THE SIGNS ARE MOBILE SIGNS WITH THE INTENT TO ADVERTISE AND THEY ARE NOT ACCESSORY USE BECAUSE OF THEIR PLACEMENT IN THE FLOOD ZONE. ALSO THAT THE SIGNS ARE NOT PERMITTED AND NO PERMITS WERE ISSUED FOR THE SIGNS. ADDITIONALLY, THERE IS NO VIOLATION OF THE COMMERCE CLAUSE. SECONDED BY MR. DEITCH. MR. SCHMITT ABSTAINED FROM THE VOTE IN ORDER THAT HIS COMMENTS WOULD NOT BE TAKEN INTO CONSIDERATION. MOTION CARRIED.

5. ADJOURNMENT

Chairman Achenbach adjourned the meeting at 8:15 p.m.

Respectfully submitted,

Secretary

/ses