

**WEST HEMPFIELD TOWNSHIP
3401 MARIETTA AVENUE
LANCASTER, PA 17601**

**WEST HEMPFIELD TOWNSHIP ZONING HEARING BOARD
SPECIAL MEETING
January 3, 2013**

A special meeting of the West Hempfield Township Zoning Hearing Board met in the meeting room of the West Hempfield Township Building at 3401 Marietta Avenue, Lancaster, PA, on Thursday, January 3, 2013. Gary Lintner called the meeting to order at 7:30 P.M. Board members Amelia Swiernik and Daryl Peck were also present, along with Rhonda Adams, Court Reporter; Bernadette Hohenadel, Solicitor; Jodi Grove, Zoning Officer and Darlene Diffenderfer, Recording Secretary.

REORGANIZATION: The first order of business was to reorganize the Board for the year 2013

Ms. Hohenadel advised that it would be best to reorganize at the regular monthly meeting to be held January 8, 2013.

Approval of Minutes

Mr. Peck requested a few minor changes to the draft minutes as follows: 1) page 1, paragraph 4, add "of his property" to the next to last sentence; 2) page 3, paragraph 4, date in first sentence should be March 11, 2008.

Motion: Daryl Peck moved, seconded by Amy Swiernik, to approve the minutes of the meeting held December 11, 2012 as amended. Carried 3-0.

Case 1160 - Joseph Meyer (Allimax Farm)

A special meeting was called at the regular meeting held December 11, 2012 to continue this application to a special meeting with testimony remaining open.

Ms. Hohenadel noted that Ms. Cleary had requested disclosure of the file Mr. Meyer was reading from during testimony given at the December 11, 2012 meeting to which Mr. Rausch objected. She stated that Ms. Cleary and Mr. Rausch submitted briefs regarding this request which she reviewed and submitted to the Board members for review. She stated that she did not confer with the Board members individually regarding this matter, but advised each member they would need to make a decision on the request at this special meeting.

There being no discussion, Daryl Peck moved, seconded by Amy Swiernik, to deny the request of Township counsel for Mr. Meyer's file to be disclosed. Carried 3-0.

Ms. Hohenadel stated that testimony regarding Mr. Meyer's appeal would be concluded before beginning testimony regarding his request for modification of conditions imposed on March 11, 2008. It was noted that Mr. Rausch had concluded his questioning of Mr. Meyer and Ms. Cleary would now have the opportunity to cross-examine. She noted that the last exhibit presented by the applicant was #13 with #14 being held for the modification testimony.

Mr. Rausch requested that a correction be made on Applicant Exhibit #11. He stated that the first entry on that exhibit dated January 5, 2008 should be deleted. He stated this activity actually took place at Mr. Meyer's Leola facility and not in West Hempfield Township.

In Ms. Cleary's cross-examination of Mr. Meyer, she referred to Applicant Exhibit #10 and asked a series of questions regarding the breeding of horses by Mr. Meyer. He stated that Allimax Farm has two stallions which are currently located in York County, but they had been in West Hempfield Township prior to July 2012. He stated that breeding occurs in both locations since the horses can be easily moved.

Ms. Cleary referred to Applicant Exhibit's #11 and #12 as well as Township Exhibit #13 and asked a series of questions regarding pony parties and the number of ponies used in regard to the number of children participating.

Ms. Cleary questioned Mr. Meyer's testimony on December 11, 2012 that the numbers listed on Applicant Exhibit #11 included only participants and not adults attending as spectators. He stated he did not recall giving that testimony, but later clarified that the numbers listed do include participants only. He stated activities that involve only children, such as pony rides, do not include the number of adults who accompany them and who do not participate in the actual event.

Testimony by Mr. Meyer revealed that Applicant Exhibit #11 indicated a pony ride on November 4, 2012 with eight participants. Ms. Cleary referred to the picture in Township Exhibit #13 which showed more than eight cars on that same date. Mr. Meyer stated that the additional cars would reflect more than one activity at one time.

Ms. Cleary questioned Mr. Meyer regarding his testimony about Applicant Exhibit #3 which listed the horses on Allimax Farm by name and use. Mr. Meyer stated that none of the horses listed under agricultural use were being trained to pull a plow or to race. He stated that five of those horses were not being trained to be used as part of the trail riding operation: Tory, Geronimo, Fancy, George and Captain. He stated the others were being trained for riding, but would be sold if they proved to be unsuitable for that activity.

Mr. Meyer stated that some of the horses listed under primary agricultural use were ridden by himself, his daughter or his employees when guiding customers on a trail ride.

Ms. Cleary referred to Applicant Exhibit #13 which is a copy of the zoning permit issued October 16, 2008. Ms. Cleary pointed out that special stipulations on this permit stated that any future alterations would require Township permits. Mr. Meyer stated that he did commence operations before obtaining this permit. He further stated that he was not using the pole barn in 2008, but did not obtain any further permits when he did begin using it because he did not see any need for a permit since it was an agricultural use.

Ms. Cleary reviewed with Mr. Meyer his testimony from December 11, 2012 regarding activities occurring after dusk with a 4H Club. Ms. Cleary submitted Township Exhibit #16 which is an excerpt from the facebook page of Allimax Farm advertising an equestrian club as a new program for children. The program was described as beginning at 4:30 PM twice a week and continuing for 1 ½ hours to 6:00 PM and on Saturdays beginning at 9 AM. Mr. Meyer agreed that during certain periods of the year, the evening program would proceed past dusk. He also agreed that he did not mention the equestrian club during his testimony on December 11, 2012.

Ms. Cleary submitted Township Exhibit #17 which is another excerpt from the facebook page of Allimax Farm showing a picture of horses tied to the fence by the Baum's dwelling. Mr. Meyer agreed that the horses were tied next to the fenced area.

Ms. Cleary stated she had no further questions on the appeal portion of this application, but reserved the right to cross-examination on the modification part of the application.

Mr. Lintner stated he had questions concerning the list of horses used for riding versus the agricultural use horses. He stated that he did not hear any testimony that would describe a true agricultural use for any of the horses. Mr. Meyer responded that horses are considered livestock and maintaining livestock is an agricultural use. Mr. Lintner stated that he did not think pulling a wagon for a hayride was a farm use.

As redirect questioning, Mr. Rausch referred to Applicant Exhibit A13 which is a copy of the zoning permit issued in 2008 to Mr. Meyer and had Mr. Meyer read excerpts from the permit. Mr. Meyer stated that he did not see any conditions listed on this permit.

Mr. Rausch stated that the raising and keeping of horses is a permitted use in the Zoning Ordinance. He referred to Applicant Exhibit #3 and asked Mr. Meyer to identify how he categorized his horses on the exhibit as falling within the keeping and raising of horses. Mr. Meyer stated that he listed five horses that were not specifically being trained for

use as trail horses. He stated, of the five, two (Tory and Geronimo) are for sale and George will be trained as a carriage horse. He added that he has two bred mares on the farm which will have foals in the spring.

Mr. Rausch questioned how a horse moves from the agricultural use list to the horse riding facility list. Mr. Meyer stated that, if a horse proves to be reliable to be used as a riding horse, they begin allowing customers to ride it and it becomes part of the riding facility. He added that the training phase can take three months to three years depending on the horse.

At this time, Ms. Swiernik stated that she had read through the actual transcript of the testimony given on March 11, 2008. She pointed out various portions of Mr. Meyer's testimony regarding his plan to keep the number of horses at 17, his plan to keep the riding activities limited to small groups, and the availability of more parking spaces than needed. She also reviewed the testimony regarding barbecues and hayrides and pointed out there was no mention of birthday parties. Ms. Swiernik pointed out there was a lengthy discussion about activities typical of a commercial stable as well as riding versus commercial.

Ms. Swiernik also reviewed the conditions placed by the Board on their approval which included a maximum of 17 horses permitted on the farm, a maximum of two employees, hours limited to 9 Am to dusk 7 days per week, signs be erected to direct traffic onto route 23, a minimum of 10 parking spaces be delineated, no riding within the public right-of-way, no public shows or events held on the property, and all activities be carried out as described in testimony before the Board.

Mr. Peck stated that the testimony was clear that the horse population would be no more than 17 horses. Mr. Meyer replied that the use by right was never discussed and he did not consider his breeding horses as part of his request for the riding stable and boarding facility. Ms. Cleary objected to his statements stating he could not supplement past testimony or explain it away to which the Board agreed.

There being no further witnesses for this portion of the application, Ms. Hohenadel stated each attorney could present a summation for this portion of the testimony.

Mr. Rausch stated that, based on the decision of 2008, there are three uses allowed on this property; a primary agricultural use which includes the raising and keeping of horses, a horse boarding facility by Special Exception, and a horse riding facility by variance. He stated that the 2008 decision did not restrict the number of horses used for the agricultural use. He stated the motions that were made specifically referenced the horse riding facility as accessory to the primary agricultural use for the variance and special exception. He stated he thought it was clear the Board was voting on those two specific uses, not including the primary agricultural use.

Mr. Rausch stated that, in reference to the notices of violation, he did not think there was ever a limitation placed on the number of participants in the various activities; that this was not a condition of the decision. He referred to the notice of violation dated September 20, 2012 which states that picnics and hayrides for family parties, reunions and corporate get-togethers are not authorized by the 2008 decision. He reviewed testimony in the transcript which referred to these activities.

Mr. Rausch stated that Mr. Meyer has been conducting these activities for 4 ½ years and has received no previous violation notices. He referred to Applicant Exhibit #11 and stated that, while some dates reflect larger numbers, the average number of participants over all activities is small.

Mr. Rausch stated that the zoning permit itself authorized a riding stable with no conditions attached to it.

Mr. Rausch referred to the violation notice regarding the number of horses being boarded. He stated there were no boarding activities taking place at that time and no evidence that someone who was boarding a horse was also engaging in one of the activities. As a result, he stated there could be no violation of the horse boarding facility.

In regard to the violation notice for the number of horses, he stated it was their position that 17 horses can only be applied to the uses approved as a special exception and variance and cannot be applied to the permitted use. He stated that Mr. Meyer is not disputing the number of horses that were on the farm at the time of the violation notices, but is disputing that not all of those horses were used for the horse boarding or riding facilities.

Ms. Cleary followed with her summation and stated that the Township disagreed with everything said. She stated the Township's position is that the Board had Mr. Meyer testify in 2008 as to what his use was. She stated he had a single use of a stable that included horse training. She stated the Board approved that use because the stable included the beginning riders and people who practiced riding and limited the number of horses to 17. She stated that, if Mr. Meyer is riding a horse as a supervisor on a trail ride with people, it is not agriculture, but is part of his trail riding business.

Ms. Cleary stated that the Board conditioned Mr. Meyer's operation. She stated the principal agricultural use of this property in 2008 was not horses and was not Mr. Meyer. She stated Mr. Meyer cannot morph his business, which was not the principal agricultural business, into being the principal agricultural business and thereby eliminate all the conditions imposed by the Board.

Ms. Cleary stated that Mr. Rausch's statement that the zoning permit had no conditions is not accurate; that special stipulations mentioned and incorporated the conditions into this permit.

Ms. Cleary stated that Mr. Meyer has been in violation since the first day of his operation; that he started operation before receiving approval; he expanded his use into other buildings without obtaining permission and his operation keeps getting bigger and bigger.

Ms. Cleary stated that the statements regarding the small size of gatherings listed on Applicant Exhibit #11 is also incorrect. She stated that since this exhibit only lists the number of actual participants in various activities, it does not reflect the true number of people actually attending each event. She stated that actual activity on the property is not what was described to the Board during testimony in 2008.

Ms. Cleary asked that the Board affirm the violation notices based on the testimony in the transcript of March 11, 2008 and the fact that Mr. Meyer's subjective view of which horses are agriculture use and which are not cannot be administered.

At 8:55 PM, the Board recessed into Executive Session with Ms. Hohenadel. The meeting resumed at 9:30 PM.

Mr. Lintner stated the Board would not render a decision on the appeal of the violation notices at this time.

Ms. Cleary moved to admit Township Exhibits #16 and #17 into the record. Mr. Rausch moved to admit all Applicant Exhibits with the exception of #14 which will be submitted as part of the modification request. It was noted that some of the Applicant's Exhibits were not presented.

Motion: Daryl Peck moved, seconded by Amy Swiernik, to accept Township Exhibits #16 and #17 and Applicant Exhibits #1, #2, #3, #6, and #10 through 13. Carried 3-0.

Bernadette stated that testimony on the appeal portion of the application is now closed and the Board will render a decision within the required time period. She stated presentation of the request for modification of conditions would proceed by first approving any parties of interest and explained what party status involved. Kevin Mullen, 795 Kames Hill Road, Columbia and Aldus Baum, 4610 Marietta Avenue, Columbia both requested party status.

Motion: Amy Swiernik moved, seconded by Daryl Peck, to grant party status to Mr. Mullen and Mr. Baum. Carried 3-0.

It was determined that, due to the amount of testimony to still be given, this case should be continued to another special meeting to be held Tuesday, January 15, 2013 at 7:30 PM in the meeting room of West Hempfield Township with a decision rendered at that time. Ms. Hohenadel instructed Ms. Cleary and Mr. Rausch to submit any legal briefs to her by January 15, 2013.

Motion: Gary Lintner moved, seconded by Amy Swiernik, to continue Case 1160 to a special meeting to be held January 15, 2013 at 7:30 PM in the West Hempfield Township Building. Carried 3-0.

There being no further business to come before the Board, the meeting was adjourned at 9:45 P.M.

Respectfully submitted,

Daryl S. Peck
Secretary