

YORK TOWNSHIP ZONING HEARING BOARD RULES OF PROCEDURE AND BYLAWS

Article 1. General Provisions

- 1.1 The Zoning Hearing Board of York Township shall be governed by the provisions of the Pennsylvania Municipalities Planning Code (the "MPC"), the Code of the Township of York, Chapter 265 (Zoning) (the "Zoning Ordinance"), by these rules of procedure and bylaws ("Rules") and other applicable law.
- 1.2 The Board shall become familiar with law under which it may be expected to act as well as all applicable state statutes including the Right-to-Know Law and the Sunshine Law.
- 1.3 The Board shall become familiar with the York Township Community Development Objectives, as set forth in Section 265-4 of the Zoning Ordinance, and shall grant the minimum relief that will insure that the goals and objectives of the community are preserved and that substantial justice is done.
- 1.4 Nothing herein shall be construed to give or grant the Board the power or authority to alter or change the Zoning Ordinance, including the zoning map, which authority is reserved to the Board of Commissioners.
- 1.5 Within the limits of funds appropriated by the Board of Commissioners, the Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical or clerical services.

Article 2. Officers and Duties

- 2.1 **ELECTION.** The Board shall, at its annual organizational meeting, elect from its own membership, officers which shall consist of a Chair, a Vice-Chair and may either elect a secretary, or appoint a non-member as secretary. These officers shall serve annual terms as such and may succeed themselves.
- 2.2 **CHAIR.** The Chair shall perform all duties required by law, the Zoning Ordinance and these Rules; shall preside at all meetings of the Board; shall decide on all points of order and procedure, subject to these Rules, unless directed otherwise by a majority of the Board; shall appoint any committees found necessary to carry out the business of the Board; and shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers. The Chair's signature shall be the official signature of the Board and shall appear on all decisions as directed by the Board.

- 2.3 VICE CHAIR. The Vice-Chair, in the absence, disability or disqualification of the Chair, shall perform all the duties and exercise all the powers of the Chair.
- 2.4 SECRETARY. The secretary shall record and maintain permanent minutes of the Board's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact; shall keep records of the Board's examinations and other official actions; shall cause to be made a stenographic records of all hearings, including the names and addresses of all persons appearing before the Board; shall, subject to the Board and the Chair, conduct the correspondence of the Board; shall cause to be published, in a local newspapers, public notices of meetings or hearings as required by law and by these rules of procedures; shall cause to be conspicuously posted a written notice on the affected tract at least one week prior to the hearing; shall file Board minutes and records in the municipal office, which minutes and records shall be a public record; and shall submit a report of the Board's activities to the Board of Commissioners once a year or as required by the Board of Commissioners. The secretary may utilize one or more assistants to help form these duties.
- 2.5 ASSISTANT SECRETARY. The assistant secretary shall perform the duties of the secretary, when the secretary is unable or unavailable to perform such duties. The Board may appoint one or more assistant secretaries.
- 2.6 VACANCIES. The Board shall promptly notify the Board of Commissioners of any vacancies which occur. If the Board has a preference for any individual to be appointed, it shall further notify the Board of Commissioners of that individual and the basis for the request that such person be appointed. Should a vacancy occur among the officers of the Board, such office shall be filled by election, for the unexpired term, at the next meeting of the full Board.
- 2.7 ALTERNATE MEMBERS. When alternates have been appointed by resolution of the Board of Commissioners, the Chair of the Board shall designate as many alternates as necessary to replace members who are unable to attend a hearing or to reach a quorum. When the designation of an alternate is necessary, the Chair of the Board will contact an alternate member to serve at a particular meeting, on a rotating basis. If an alternate is unable to serve for a particular meeting, then another alternate will be called for that meeting. The opportunity to serve at a meeting as part of the Board shall continue to be provided to alternatives on such rotating basis. Once seated, the alternate shall continue to serve on the Board in all proceedings involving the matter or case for which the alternate was appointed, until the Board has made a decision on the case. When an alternate has not been designated to sit for a hearing by the Chair, the alternate may participate in any proceeding or discussion before the Board, but shall not vote or be compensated. Alternates shall hold no other office in the Township, including membership on the planning commission or zoning officer.

Article 3. Meetings

- 3.1 REGULAR MEETINGS. The regular meeting of the Board shall be held on the fourth Tuesday of each month at 6 p.m. at the York Township Municipal Building located at 190 Oak Road, Dallastown PA 17313, unless the meeting date is adjusted to accommodate holidays or extraordinary circumstances.
- 3.2 ANNUAL MEETING. The annual organizational meeting of the Board shall be the first regular meeting of the year.
- 3.3 SPECIAL MEETING. Special meetings may be called by the Chair at the Chair's discretion or upon the request of two other board members provided that public notice shall be given as required.
- 3.4 PUBLIC NOTICE. The Board shall hold all meetings at specified times and places of which public notice shall be given in accordance with applicable law as follows:
 - (A) Public notice of the schedule of regular meetings shall be given once for each calendar year and shall show the regular dates, time and place at which meetings are held. This notice shall be given in a newspaper of general circulation within the municipality at least three (3) days prior to the time of the first regularly scheduled meeting.
 - (B) Public notice of each special meeting and of each rescheduled regular meeting shall be given in a newspaper of general circulation within the community at least twenty-four (24) hours prior to the time of the meeting.
- 3.5 QUORUM. A quorum shall not be less than a majority of all members of the Board and is required for any decision, or official action by the Board, except as modified herein.
- 3.6 CANCELLATION OF MEETINGS. Regular meetings may be cancelled by the Chair when there are not applications pending or other business to transact, provided that twenty-four (24) hour notice is given to each member. As a courtesy to the public, a notice of such cancellation shall be posted at the place of the meeting.
- 3.7 PUBLIC PARTICIPATION IN MEETINGS AND HEARINGS. Per Resolution 2012-01, adopted March 27, 2012, the Board recognizes the right of public involvement in its meetings and its hearings pursuant to the Sunshine Act, Zoning Ordinance, and other applicable law. The Board desires to facilitate such public involvement in a fair, appropriate, and judicious manner. As presiding officer over meetings and hearings, the Chair shall have final determination as it relates to involvement of the public. However, certain rules shall apply for public participation, as set forth in the Resolution, as follows:

- (A) Any person shall be provided a reasonable opportunity to address the Board on any agenda item or any public matter in which the Board has jurisdiction or authority.
- (B) Speakers on any item are encouraged to make every attempt to keep their comments concise and focused upon the issue at hand and avoid repetition of the comments of previous speakers on an issue. Simply stating agreement with points raised by the prior speaker(s) will help move the meeting along so that all who wish to speak have the opportunity to do so within a reasonable time.
- (C) Questions and/or comments raised by a speaker that may not be able to be answered by the Board or administrative staff during a meeting may be referred for follow-up investigation and/or comment in the discretion of the Board
- (D) Groups of persons wishing to address the Board are encouraged to nominate a spokesperson to address the Board on issues of unified concern to avoid unnecessary repetition.
- (E) In the case of a nonagenda item, citizens are requested, but not required, to present the matter to the Board Chair or the Township Zoning Officer in an attempt to resolve the matter beforehand.
- (F) Any person wishing to speak during a public meeting shall raise his or her hand, be acknowledged by the Board Chair; and await permission to offer his or her comment(s). It remains in the sole discretion of the Chair, or in case of disagreement by majority vote of the Board, to permit public comment outside of the duly recognized Public Comment portion of a meeting.
- (G) Proper decorum is to be maintained at all times by all persons at a meeting including Board members, Township staff, speakers and/or members of the audience.
 - (1) The Chair shall be responsible for maintaining order and decorum of meetings by requiring speaker(s) and the audience to refrain from abusive or profane remarks, disruptive outbursts, protests, or other conduct that disrupts or interferes with the orderly conduct of the business of the meeting.
 - (2) No one shall interrupt another who is speaking.
 - (3) Personal attacks on Members, Township staff, other speakers, or members of the public will not be tolerated.
 - (4) Failure to adhere to these standards of order and decorum can result in any/all of the following:
 - (i) A formal warning issued by the Chair of the Board;
 - (ii) The speaker will forfeit his or her right to be heard;
 - (iii) Removal from the meeting by the York Area Regional Police Department;
 - (iv) Referral to the York Area Regional Police Department and/or Office of the District Attorney of York County for prosecution pursuant to 18 Pa.C.S.A. §5508, as amended, relating to the unlawful disruption of a lawfully held meeting.
- (H) Each member of the Board shall cooperate with the Chair in preserving order and decorum, and no member shall, by conversation or otherwise, delay or interrupt

the proceedings of the Board, nor disturb any member while speaking, or fail to abide by the order to the Board or its Chair.

Article 4. Order of Business

- 4.1 PROCEEDINGS. All meetings of the Board shall proceed as follows, subject to reasonable adjustment upon decision of the Board:
- (A) Meeting called to order
 - (B) Roll call and declaration of quorum
 - (C) Reading and approval of minutes
 - (D) Voting and announcement of outstanding decisions
 - (E) Continued hearings
 - (F) Hearing of cases
 - (G) Unfinished business
 - (H) New business
 - (I) Adjournment

Article 5. Board's Functions

- 5.1 The Board shall have exclusive jurisdiction to hear and render final adjudications in matters authorized by MPC Section 909.1(a) Jurisdiction. As specified in the MPC, the Board has nine functions:
- (A) Substantive challenges to the validity of any land use ordinance, except a curative amendment.
 - (B) Procedural challenges on land use ordinances.
 - (C) Appeals from the determination of the Zoning Officer, including but not limited to:
 - (i) the granting or denial of any permit, or failure to act on the application.
 - (ii) the issuance of any cease and desist order.
 - (iii) the registration or refusal to register any nonconforming uses, structure or lot.
 - (D) Appeals from determinations by the municipal engineer or Zoning Officer with respect to floodplain ordinances or provisions.
 - (E) Variances.
 - (F) Special exceptions.
 - (G) Appeals from determinations in the administration of transfers of development rights or performance density provisions.
 - (H) Appeals from the Zoning Officer's determination of a preliminary opinion under Section 916.2.
 - (I) Appeals from determinations by the Zoning Officer or engineer regarding sedimentation and erosion control or storm water management not involving Article V or Article VII applications.

Article 6. Hearings

6.1 INITIATING ACTION BEFORE THE BOARD. All action before the Board shall be initiated by a written application for hearing which shall be filed with the Zoning Officer at least three weeks prior to the meeting at which the matter is to be heard. All applications shall be made on forms specified by the Board. No application shall be accepted unless the same shall be fully and legibly completed and unless all exhibits and supplemental materials required by the application shall be attached and until all fees required shall have been paid.

6.2 TIME LIMITATIONS.

(A) Landowner Appeals. All appeals from determinations adverse to the landowner shall be filed by the landowner within thirty (30) days after notice of the determination is issued.

(B) Appeal of Persons Aggrieved- No person shall be allowed to file any proceeding with the Board later than thirty (30) days after an application for development, preliminary or final, has been approved by the appropriate municipal officer, agency or body if such proceeding is designed to secure reversal or limit the approval in any manner unless such person alleges and proves that he had no notice, knowledge or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest.

A person aggrieved may not appeal a final approval on a tentative plan pursuant to Section 709 or preliminary opinion of the Zoning Officer under MPC Section 916.2, unless the final submission substantially deviates from the approved tentative approval.

6.3 HEARING SCHEDULE. The Board may conduct hearings and make decisions at any regular or special meeting. In no instance will a hearing be scheduled later than sixty (60) days from the date of the applicant's request for a hearing, unless the applicant has agreed in writing to an extension of time. Any continued hearings shall be held within forty-five (45) days of the prior hearing, unless otherwise agreed to by the Applicant in writing or on the record.

6.4 NOTIFICATION OF HEARING. Notification of hearing shall be provided in accordance with Section 265-168 of the Zoning Ordinance.

(A) Whenever a hearing has been scheduled, public notice shall be given to the general public by means of publication once each week for two successive weeks in a newspaper of general circulation with the community. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered. The first publication shall not be more than thirty (30) days and the

second publication shall not be less than seven (7) days prior to the date of the hearing.

- (B) Written notice shall be given to the applicant, the municipal planning commission, the Zoning Officer and any person who has made timely request for such notice.
- (C) In addition to the notice provided herein, the Zoning Officer shall conspicuously post notice of said hearing on the affected tract of land no less than seven (7) days prior to the date of the hearing.

6.5 CONDUCT OF HEARING. The hearing shall be conducted by the Zoning Hearing Board or the Board may appoint any member as a hearing officer. The decision, or where no decision is called for, the findings, shall be made by the Board, but the appellant or the applicant, as the case may be, in addition to the municipality, may waive the decision or findings by the Board and accept the decision or findings as final.

6.6 ORDER OF HEARING.

- (A) Hearing called to order.
- (B) Chair's statement of reason for hearing.
- (C) Chair's statement of parties to hearing.
- (D) Identification of other parties wishing to be heard.
- (E) Outline of procedures to be followed during hearing.
- (F) Applicant's presentation of their case.
 - (1) Objectors cross-examine applicant's witnesses.
 - (2) Board cross-examines applicant's witnesses.
- (G) Statement of the Zoning Officer, if any.
- (H) Objector's presentation of their case.
 - (1) Applicant cross-examines objector's witnesses.
 - (2) Board cross-examines objector's witnesses.
- (I) Other testimony and evidence.
- (J) Rebuttal by Applicant.
- (K) Rebuttal by Objectors.
- (L) Concluding remarks and notice of when decision is expected to be made.
- (M) Adjournment of hearing.

6.7 RECORD. The Board shall keep a stenographic record of the proceedings. A transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any party at cost.

6.8 PARTIES. The parties to the hearing shall be the municipality, any person affected by the application who has made timely appearance of record before the Board, and any other person including civic or community organizations permitted to appear by the Board. All persons who wish to be considered parties shall enter appearances in writing on forms provided by the Board for that purpose. Persons aggrieved shall not

be denied standing because they do not reside nor have a property interest within the municipal boundaries.

- 6.9 REPRESENTATION. All parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument, and to cross-examine adverse witnesses on all relevant issues.
- 6.10 WITNESSES. All witnesses shall testify under oath.
- 6.11 EVIDENCE. The Board shall not be bound by strict rules of evidence, but it may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence. The Chair shall rule on all questions relating to the admissibility of evidence, which may be overruled only by a majority of the Board.
- 6.12 COMMUNICATION. The Board shall not communicate, directly or indirectly, with any party or its representatives in connections with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials except advice from the Solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.
- 6.13 DECISIONS.
- (A) The Board shall render a written decision or when no decision is called for, make written findings, within 45 days after the last hearing before the Board.
 - (B) If the Board elects to utilize a hearing officer, and there has been no stipulation by the appellant or the applicant and the municipality that the hearing officer's decision or findings are final, the Board shall make the hearing officer's report and recommendations available to the parties within 45 days and the parties shall be entitled to make written representations thereon to the Board prior to final decision or entry of findings. The Board's decision shall be entered no later than thirty (30) days after the report of the hearing officer.
 - (C) The Board shall conduct its deliberations and vote on all matters in public session at the meeting in which evidence is concluded. If additional time for deliberation is necessary, the Board shall reschedule the deliberations to a date within the allotted forty-five (45) day time limit.
 - (D) All matters shall be decided a voice or roll call vote, such that the Decision of each member can be determined. Decisions on any matter before the Board shall require the affirmative vote of those present and voting unless otherwise specified herein.
 - (E) No member of the Board shall sit in hearing or vote on any matter in which he or she is personally or financially interested. Said member **shall not** be counted by the Board in establishing the quorum for such matters, i.e. for a three member board, if one member removes himself or herself, two members are still required

for a quorum. To the extent that the member has a conflict of interest, that member shall abstain from voting and prior to vote being taken, publicly announce and disclose the nature of his or her interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken.

- (F) To the extent that a member has a reason that the member desires to recuse himself or herself from a vote, which reason is not a conflict of interest, the member may do so by announcing his or her recusal to the Board and removing himself or herself from the table at which the Board sits. While a reason is not required for such a recusal, excessive recusals shall not be permitted.
- (G) No member of the Board shall vote on the adjudication of any matter unless he or she has attended the public hearing thereon.
- (H) A tie vote shall be considered a rejection of the application under consideration. However, if a person aggrieved has appealed the grant of a permit or approval, a tie vote upholds the prior approval.
- (I) A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant, or the applicant's representative if represented, personally or mailed to the applicant not later than the day following its date. The Board shall provide by mail (or otherwise), a brief notice of the decision or findings and a statement of the place at which the full decisions or findings may be examined to all persons who have filed their name and address with the Board regarding a particular case.
- (J) The relief granted by the Board shall be only that specifically authorized by the Board. There shall be no relief granted, nor portions of the zoning ordinance or any other ordinance waived, except as specifically approved by the Board.

6.14 CONTINUANCES. On its own motion, or on approval of requests by applicant, appellants or their authorized agents, the Board may provide for later continuances of cases on which hearings have begun. Such continuances shall be permitted only for good cause, stated in the motion, and unless time and place is stated, shall require new public notice, with fees paid by applicants or appellants if continuances are at their request or result from their actions.

A notice of the place, date and time of the continued hearing shall also be posted prominently at the municipal office where the hearing will be continued.

6.15 FAILURE TO HOLD HEARING OR RENDER DECISION. Where the Board fails to render a decision within the period required, or fails to hold a hearing within the period required, the decision shall be deemed to have been rendered in favor of the applicant unless otherwise specified. However, the failure to act on a validity challenge results in a deemed denial. When a decision has been deemed to be rendered in favor of the applicant because of the failure of the Board to meet or to render a decision, the Board shall give public notice of deemed approval within ten (10) days from the last day it could have met to render a decision in the same manner as in Section 6.4 (A).

~~6.16 RECONSIDERATION. Once an application has been voted upon and the meeting adjourned, there shall be no reconsideration of the decision of the Board, unless an applicant reapplies and submits a new application based upon new evidence that substantially alters the conditions of the prior application upon which the decision was based. In such case, the applicant shall submit a supplement to the new application within which the applicant shall provide the following information:~~

- (A) A list of all facts found in the prior decision that remain unchanged.
- (B) A list of all facts found in the prior decision that might be changed
[Between these two subsections, the applicant shall address all Findings of Fact in the Decision for which reconsideration is being sought]
- (C) A summary of the new evidence that will be presented during a hearing to prove a substantial alteration of the conditions of the prior application.

It shall be the sole and exclusive responsibility of the applicant to provide this information with the application. Failure to do so shall result in the application being rejected as incomplete, in which case the application shall not be accepted and processed for a hearing before the Board for reconsideration.

6.17 EXTENSION OF TIME FOLLOWING AUTHORIZATION OF A SPECIAL EXCEPTION. An applicant who has received a special exception may seek an extension pursuant to section 265-145.A(3). The Board may grant such an extension upon good cause shown, which shall include, but not be limited to, proof that the failure to obtain the building permit or file the land development plan was not the result of the applicant's lack of action, but rather the result of other forces beyond the control of the applicant, such as necessary third party approvals. The Board may adopt a form for use by an applicant seeking such an extension, the completion of which shall be a necessary prerequisite to the grant of any extension.

Article 7. Meeting Minutes

- (A) When possible, the minutes of a prior meeting shall be distributed to the members prior to their next meeting.
- (B) If the draft minutes are distributed in advance, then the reading of the minutes shall be waived unless a member objects at the meeting, in which case the secretary shall then read the minutes.
- (C) If the minutes are acceptable as presented, then they shall be approved by unanimous consent or by motion formally adopted.
- (D) If the minutes require any correction, the Chair may so recognize the correction or corrections needed. Thereafter, the minutes may be approved by unanimous consent of by motion formally adopted.

Article 8. Appeals

8.1 The procedure set forth in Article X-A of the Pennsylvania Municipalities Planning Code and in the Judiciary Act Repealer Act shall constitute the exclusive mode of appeal from any decision of the Zoning Hearing Board.

Article 9. Adoption and Amendment of Rules

- 9.1 These Rules of Procedure and Bylaws are adopted in accordance with Section 906(c) and Section 265-163 of the Zoning Ordinance.
- 9.2 These Rules shall be adopted and may be amended by an affirmative majority vote of all members of the Board.
- 9.3 Any proposed amendment must be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

The foregoing Rules of Procedure and Bylaws are hereby adopted, by the Zoning Hearing Board of York Township, Pennsylvania on July 25, 2013.

WITNESS/ATTEST

YORK TOWNSHIP ZONING
HEARING BOARD

William T. Descar
Secretary
William DESCAR

By: Glenn L Myers
Glenn Myers, Chair