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September 16, 2016

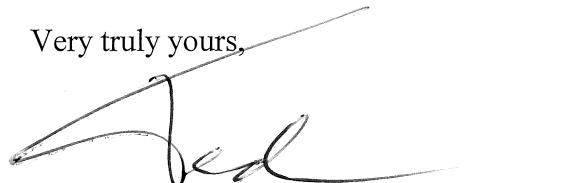
Yvonne D. Kutz, Zoning Officer
Hanover Township Municipal Bldg.
3630 Jacksonville Road
Bethlehem, PA 18017

Re: Hanover Township Zoning Hearing Board – Debra R. Andrews

Dear Yvonne:

Enclosed herewith find copy of Findings of Fact and Conclusions of Law in the above matter, along with a copy of the cover letter enclosing the same.

Very truly yours,



Theodore R. Lewis, Esquire

TRL/pcc
Enclosure

HANOVER TOWNSHIP ZONING HEARING BOARD
OF NORTHAMPTON COUNTY, PENNSYLVANIA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Appeal of	:	Debra R. Andrews
	:	from the Enforcement
	:	Notice of May 26, 2016
Property	:	917 Rainbow Drive

The Hanover Township Zoning Hearing Board, after conducting a hearing on Wednesday, August 3, 2016, and rendering its oral decision confirming the Enforcement Notice sent by the Zoning Officer that the Appellant is in violation of the ordinances as cited therein, hereby makes the following findings of fact and conclusions of law in support thereof:

1. The Appellant, Debra R. Andrews, is the owner of property known as 917 Rainbow Drive.
2. On May 26, 2016, Yvonne Kutz, as Zoning and Code Officer of Hanover Township, issued an Enforcement Notice to the Appellant, a copy of which was made a part of the record as Township Exhibit 8.
3. The owner appealed from the Enforcement Notice and completed an application which was filed with the Township on June 22, 2016. The hearing was originally advertised for Thursday, July 28, 2016. Counsel for the Appellant requested a continuance which was objected to by the Township attorney. Both counsel thereafter agreed that the matter could be heard on August 3 and requested the Board to continue the hearing to that date. On July 28 the Board voted to continue the matter to August 3.
4. Since the matter involved the Enforcement Notice pursuant to the provisions of the Municipalities Planning Code, the township proceeded first.

5. The Township was represented by Leo V. DeVito, Jr. of the Solicitor's Office.

6. He called as his two witnesses the Zoning Officer, Yvonne Kutz, and Brien Kocher, P.E., of Hanover Engineering, the Township Engineer.

7. In addition, Mr. DeVito introduced the following exhibits into the record, all of which were admitted:

Twp-1 Deed of the subject premises to the Appellant, Debra Andrews dated August 23, 1999, and recorded in Book Vol. 1999-1, Page 131077;

Twp-2 Utility and Improvement Plan of Birchwood Estates Section II;

Twp-3 Four photographs marked A, B, C. & D.;

Twp-4 Portion of Subdivision Plan with markings provided by the Zoning Officer;

Twp-5 Four pictures from Google earth with image dates of 4/23/2003, 3/31/2005, 4/20/2014, and 4/17/2016;

Twp-6 Sect. 67-1 thru 67-3 of Township Ordinance Chapter 67 entitled Construction Standards;

Twp-7 Sect. 152-10 up to and including letter N., being pages 152:34 thru 152:38 of the Township Ordinance and titled Storm Drainage System Requirements;

Twp-8 Copy of the Enforcement Notice dated May 26, 2016.

8. The Appellant was represented by Attorney Stan Margle who called as his principal witness the Appellant and owner of the property, Debra R. Andrews.

9. Mr. Margle also introduced into the record three exhibits, all of which were admitted into the record over objection of the township as to Exhibits A1 and A2:

- A-1 Easement Agreement between Wein-Ron Estates, Inc. and Hanover Township dated October 5, 1995, and recorded in Book Vol. 1995-1, Page 101040;
- A-2 Placard on the property issued on February 26, 2016 by Code Official, Joseph Bednarik, Jr., dealing with building code violations.
- A-3 Letter of Attorney Margle to Hanover Township dated April 05, 2016.

10. The Zoning Officer, Yvonne Kutz, testified that she has been the Zoning Officer for eleven years, that the deed to 917 Rainbow Drive indicates that Debra Andrews is the owner of the same and that the property is designated as Lot 55 on Birchwood Estates, Section II.

11. Using Township Exhibit No. 2, Mrs. Kutz outlined in red the perimeter of Lot 55 and in blue the location of the drainage easement on Lot 55 as shown on the plan. She stated that in late February she was advised to look at the situation. Mrs. Kutz using a blown up portion of the subdivision plan, (Twp 4), depicted the location of the fence on the subject property as well as a sinkhole and various measurements that she took.

12. She also indicated that she had taken pictures of the drainage easement on the property which were marked Township Exhibits 3 A thru D. She testified that she observed overgrown vegetation and lawn and leaf debris in the easement area. She stated that on the basis of these observations she concluded that the Appellant was in violation of the sections of the ordinance of Chapter 67 and 152 as set forth in her Enforcement Notice.

13. On cross examination Mrs. Kutz acknowledged that there were no particular notes on the Subdivision Plan specifically referring to the obligations of Lot owners with regards to drainage easements. She also acknowledged that there was no reference to a drainage easement in the deed to Mrs. Andrews, only a reference to it being Lot 55 of the Subdivision Plan.

14. She stated that she had inspected the property two to three times before sending out her Enforcement Notice.

15. She acknowledged that she was aware of the letter that Attorney Margle had sent to the Township, Exhibit A-3. She stated that she was advised to send out a notice to the owner of Lot 53 but believed that it would be inappropriate to only send out the notice to Lot 53 and to not also send out a notice to Lot 55.

16. She acknowledged that she did not see things such as junk, automobile tires, etc. within the drainage easement.

17. She also indicated that she did not observe whether or not the drainage easement was functioning properly and whether any of the things that she saw within the drainage easement were in fact interfering with drainage.

18. Brien Kocher testified that he has been an engineer for the last twenty-one years. Attorney Margle stipulated as to his qualifications as an expert in civil engineering

19. Mr. Kocher then indicated that there was a master drainage plan accepting drainage from other portions of the Township going through Lot 53, on what is sometimes referred to as the Rockel drainage easement. He stated that the additional drainage easement as outlined on Lot 55, and the additional drainage easement as outlined on Lot 53 were integral parts of this master plan.

20. He testified that when he went to the premises he observed overgrown vegetation, cut branches and other yard debris and trees and brush all within the drainage easement.

21. On cross examination Mr. Kocher also acknowledged that the plan does not contain any specific reference to the duties of maintenance of the drainage easement.

22. After the Township rested, Attorney Margle called the Appellant to testify. She indicated she was the owner of Lot 55, and that on February 24, 2016 there was a very big snow storm. The next day, February 25, she had all kinds of problems at her property, including a crack in the foundation and apparently a very large sink hole.

23. She stated that before she received the letter on May 26 she was never told about a drainage problem.

24. She stated that she had complained to the Township about drainage problems associated with Lot 53. She stated that there was never any backup of water or problems with respect to the drainage easement on her property.

25. Based on the testimony, it is undisputed that the Appellant is the owner of property on which a drainage easement exists in the rear. The Appellant seems to argue that the Township has a duty to give her a special notice about the responsibility of maintaining the same, and that because the condition has existed since she purchased the property she should not now be asked to do anything further with respect to the drainage easement.

26. The Township's Exhibit No. 5, showing pictures of the property over the years would seem to contradict that the situation has always been the way it is today.

27. In any event, the Board does not believe that she is excused from any duty to maintain the easement merely because the Township did not send her a courtesy letter or a prior notice with respect to her responsibilities. While these facts may be a consideration for one who would have to determine the penalty for violating the ordinance, that is not the issue before this Board. This Board's responsibilities are confined as to whether Township ordinances impose a duty to maintain the easement and whether the Appellant has failed to comply with that duty.

28. Moreover, the Board does not believe that it is necessary to explicitly outline the duties and responsibilities, either on the plan or in the deed, of maintaining a drainage easement in order for the Township to enforce the ordinance provisions which require an owner to maintain it.

29. Nor does the Board believe that the fact that there is a recorded agreement dealing with Lot 53 as to maintaining the drainage easement imposes a higher standard with respect to providing notices to other lot owners within the subdivision as to respect to the responsibilities to maintain the drainage easement on their property.

30. Based on the testimony and the exhibits, the Board finds that it is undisputed that the Appellant's deed indicates that she was purchasing Lot 55 of Birchwood Estates, Section II. It is also undisputed that the Birchwood Estates, Section II, Subdivision Plan introduced into the record has an area clearly marked on Lot 55 as a drainage easement. Thus, pursuant to the recording statutes, the owner is on constructive notice of the existence of that easement.

31. The Appellant has not challenged the validity of the Township's ordinance which imposes a duty upon land owners to maintain drainage easements.

32. Turning then to the ordinances in question, Sect. 67-2 of Sect. I.(4) states as follows: *"The owner of the private property shall maintain the easement or right-of-way in a grassed or improved condition in according with the elevations, grades and designs shown on the approved development plans. These easements or rights-of-way shall be maintained free of obstructions such as fill, temporary or permanent structures, and plants, except as may be shown on approved development plans."*

33. In addition, Sect. 152-10 of the Storm Drainage System Requirement § B(2) states: *"The landowner shall be responsible for all other maintenance and repairs within this easement. For example, the landowner must:*

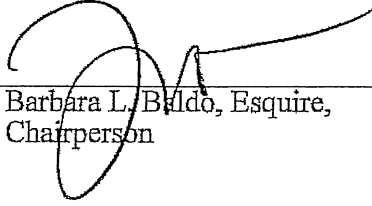
- (a) Mow the lawn;*
- (b) Repair or replace fencing;*
- (c) Repair or replace landscaping;*
- (d) Repair sinkholes that may develop in the easement;*
- (e) Keep the area free of obstructions, structures, vegetation or accumulated sediment that may block or hinder the function and purpose of the easement;*
- (f) Keep the area free of litter or garbage;*
- (g) Repair erosion and restore vegetation as necessary to keep the easement in good repair."*

34. Based on the testimony of both the Engineer and the Zoning Officer who viewed the property, as well as the pictures, the Board finds that the easement has not been kept free of obstructions, plants, vegetation, and yard debris, and therefore the Board believes that the easement has not been maintained in accordance with all of the requirements of the above sections of the ordinance.

WHEREFORE, the Board confirms the Enforcement Notice issued by the Zoning Officer that the Appellant is in violation of the sections as cited therein.

HANOVER TOWNSHIP
ZONING HEARING BOARD

By: _____


Barbara L. Baldo, Esquire,
Chairperson

Dated: _____

9/15/16

THEODORE R. LEWIS
THOMAS L. WALTERS

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September 16, 2016


Stanley J. Margle, III, Esq.
Margle Law Offices, P.C.
3839 Easton Avenue
Bethlehem, PA 18020-1421

Re: Hanover Township Zoning Hearing Board – Debra R. Andrews

Dear Stan:

Enclosed herewith please find a true and correct copy of the Decision of the Hanover Township Zoning Board concerning your client Debra R. Andrews.

Very truly yours,


Theodore R. Lewis, Esquire

TRL/pcc
Enclosure

cc: Yvonne D. Kutz, Zoning Officer