

**BUILDING CODE APPEALS BOARD OF HANOVER TOWNSHIP,  
NORTHAMPTON COUNTY, PENNSYLVANIA**

<b>APPLICATION OF APPEAL OF</b>	<b>:</b>	<b>DATE OF HEARING:</b>	<b>08/19/16</b>
	<b>:</b>	<b>DATE OF DECISION:</b>	
	<b>:</b>		
<b>DEBRA R. ANDREWS</b>	<b>:</b>	<b>APPEAL NO.:</b>	<b>2016-01</b>

**DECISION AND OPINION OF THE BOARD**

This matter is before us on an application by **DEBRA R. ANDREWS** (hereinafter referred to as “Appellant”) appealing a Notice of Code Violation dated May 26, 2016 issued by the Hanover Township, Northampton County Zoning and Code Enforcement Officer.

The issue for consideration by the Building Code of Appeals Board (the “Board”) is Section 302.2 of the Hanover Township Property Maintenance Code which provides:

302.2 Grading and Drainage: All premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon, or within any structure located therein.

**PRELIMINARY INFORMATION**

1. The Notice of Hearing with regard to Appellant’s application has been properly advertised by the Township of Hanover.
2. At the time of testimony, the following Board members were present: Steve Elton, Fred Bonsall, Keith A. Young, and Mike Schmalzer. The stenographer assisting the Board at the time of this hearing was Jessica Mondello.
3. The Township of Hanover appeared at the hearing as an objector and was represented by Township Solicitor Leo DeVito of the law firm Broughal and DeVito, L.L.P.

4. Appellant was represented at the hearing by Attorney Robert F. Brasko of Margle Law Offices, P.C.

5. A hearing with reference to this application was conducted before the Hanover Township Building Code Appeals Board on August 9, 2016. During the hearing the following documentation was submitted into evidence:

Board Exhibit 1 – Proof of Publication from the Press Group Newspaper.

Board Exhibit 2 – July 13, 2016 correspondence from Attorney Stanley J. Margle III, waiving the applicable time period set forth in the Pennsylvania Municipalities Planning Code (“PMPC”).

Board Exhibit 3 – Email notification of Board Solicitor Joseph J. Piperato, III notifying all parties of the August 9, 2016 hearing date.

Township Exhibit 1 – Deed for subject property dated April 23, 1999.

Township Exhibit 2 – Utility and Improvement Plan for Birchwood Estates, Section II, prepared by C. Douglas Cherry & Associates.

Township Exhibit 3 – Section of Record Plan for Birchwood Estates, Section II.

Township Exhibit 4 – Google Earth photos consisting of four (4) pages: Page 1 – April 17, 2016; Page 2 – April 20, 2014; Page 3 – April 3, 2005; Page 4 – April 23, 2003.

Township Exhibit 5A-5I – Nine (9) photographs taken by the Township Zoning and Code Enforcement Officer.

Township Exhibit 6 – Relevant Section of Hanover Township 2015 Property Maintenance Code.

Township Exhibit 7 – May 26, 2016 Notice of Code Violation issued by Yvonne Kutz, Zoning and Code Enforcement Officer.

Appellant Exhibit 1 – Easement Agreement between Hanover Township and Wein-Ron Estates, Inc. dated October 5, 1995.

**FINDINGS OF FACT**

1. The subject real estate is known as 917 Rainbow Drive, Hanover Township, Northampton County, Pennsylvania and is further identified as Tax Parcel No. MLSW4/11/2, (the “Property”). The property is owned by Debra R. Andrews (the “Appellant”).
2. Appellant obtained title to the Property by deed dated August 23, 1999.
3. The Property consists of a single-family residential dwelling of 1,976 square feet on a lot of 11,840 square feet.
4. On May 26, 2016, Yvonne Kutz, Zoning and Code Enforcement Officer for Hanover Township, issued a Notice of Code Violations (the “Notice”) to Appellant.
5. The Notice cited Appellant for a violation of Section 302.2 of the 2015 Hanover Township Property Maintenance Code. Section 302.2 entitled “Grading and Drainage” provides: “All premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon, or within any structure thereon.”

6. On June 14, 2016, Appellant filed an Appeal to the Notice with the Board appealing the determination of the Zoning and Code Enforcement Officer.
7. A hearing on Appellant's appeal was held on August 9, 2016.
8. Yvonne Kutz testified that she is the Zoning Officer, Building Code Official and Code Enforcement Officer for Hanover Township. Mrs. Kutz obtained her certification as the Building Code Official in May of 2005. Mrs. Kutz testified that the matter to be considered by the Board is the International Property Maintenance Code which was formerly known as the International BOCA Property Maintenance Code. (H.T. Page 7).
9. On February 26, 2016, Mrs. Kutz was advised by a co-worker that a sink hole had opened up resulting in property damage on Rainbow Drive in Hanover Drive. Mrs. Kutz, who was on vacation on February 26, 2016, visited the property upon her return from vacation. Mrs. Kutz testified as follows: "I could see there was some depressed area. There was a sink hole in the back corner by the fence, and the fence gate was racked, the air conditioning was leaning and tilted on the property. So it appeared that they had some type of settlement depression and possible sink hole closer to the home." (H.T. Page 9
10. Mrs. Kutz, referring to the subdivision plan for Birchwood Estates, Section II, and in particular the page identified as the "Utility and Improvement Plan" testified that a 20 foot drainage easement exists to the west of the Property. (H.T. Page 11).

11. Mrs. Kutz testified that the southern boundary line is 159.56 feet. Beginning at the front property line and proceeding to the rear of the Property, she identified a sink hole at 112 feet. The edge of the fence was located at 115 feet and thereafter she encountered a “depressed area where there is soil erosion back to approximately 142 feet.” (H.T. Page 13). The measurements were identified by her on Township Exhibit 3. Mrs. Kutz testified that the sink hole existed under the fence and that the concrete that holds the fence post was exposed and hanging. (H.T. Page 14).
12. Mrs. Kutz confirmed that the sink hole was located on the Property. (H.T. Page 14).
13. In addition to investigating the sink hole, Mrs. Kutz also identified the condition of the 20 foot wide drainage easement located on Appellant’s Property. Mrs. Kutz testified as follows:

“When I walked back there, there is considerable amount of settlement from the sink hole and whatever washed down, and that is in the easement area, according to my measurements. So there is a considerable amount of soils that have eroded. There also, in that easement, it looks like there are piles of .... I marked it as piles of debris, which looks like shrub or tree clippings.” (H.T. Page 14).
14. Mrs. Kutz identified Township Exhibit 4 which consisted of 4 separate Google Earth photos representing different time periods from 2003 to 2016. Mrs. Kutz testified that the earliest photo depicts the easement area in a grass condition. She testified that over time, “there is considerable amount of grass, trees and other vegetation that has grown in those areas, as well as erosion of soil. (H.T. Page 18).

15. Mrs. Kutz identified 9 photographs she took of the Property. Mrs. Kutz testified that the pictures depicted the sink hole located on the Property, the location of a depression, cut tree branches and other things of that nature located in the easement, and the sink hole. Mrs. Kutz opined that as a result of her inspections of the Property, the easement “did not look like it was being maintained.” (H.T. Page 22). Mrs. Kutz reviewed Section 302.2 of the Hanover Township Property Maintenance Code and opined that the condition of the easement was not maintained such as to prevent the erosion of soil or to prevent stagnant water. (H.T. Page 25).
16. Mrs. Kutz testified that she issued Township Exhibit 7, the May 26, 2016 Notice of Code Violations as result of her investigation and inspections. (H.T. Page 25).
17. On Cross examination, Mrs. Kutz testified that she did not witness any stagnant water on the property.
18. Mrs. Kutz was asked to identify an area at the intersection of Stoke Park Road and Jacksonville Road in Hanover Township. Mrs. Kutz testified that the area once contained a water area however the area was not an approved detention or retention pond. (H.T. Page 29). Mrs. Kutz was unable to testify as to whether or not the elimination of the pond could have affected the storm water running onto properties that abut Rainbow Drive.
19. Mrs. Kutz testified that the Utility and Improvement Plan of Birchwood Estates, Section II depicts the easement is not filed with the Recorder of Deeds Office of Northampton County. (H.T. Page 34).

20. Mrs. Kutz was asked to identify a 75 foot drainage easement which runs between Appellant's Property and 907 Rainbow Drive. (The drainage easement was referred to as the Rockel Swale). Mrs. Kutz testified that the Rockel Swale is located entirely on the adjoining lot at 907 Rainbow Drive. Mrs. Kutz testified that the Rockel Swale takes offsite water from property formerly owned by the Rockels, which is vacant pasture that exists today as well as offsite water from behind Appellant's Property and behind Lot 53, the adjoining property, as well as other properties. (H.T. Page 35). Mrs. Kutz identified Appellant's Exhibit 1 as an easement agreement between Hanover Township and the previous owners of Lot 53 for the maintenance of the Rockel Swale. Mrs. Kutz was unable to opine whether the sink hole on Appellant's Property was caused by water originating from the failure of the Rockel Swale.
21. Mrs. Kutz testified that it is possible the water flowing through the drainage channel through Lot 53 caused the sink hole on Appellant's Property. (H.T. Page 38).
22. Mrs. Kutz testified that she first investigated Appellant's Property the first week of March 2016 and issued a Violation Notice to Appellant on May 26, 2016. Mrs. Kutz was notified to enforce the property maintenance of the Rockel Swale as well as Appellant's Property. Mrs. Kutz thoroughly investigated the situation as set forth in her previous testimony and issued citations for both Appellant's Property and the adjoining property as well. (H.T. Page 40).

23. Mrs. Kutz testified that the Township received correspondence from Attorney Stanley Margle dated April 5, 2016 indicating that Appellant believed that she had a claim against the Township and would be pursuing an insurance claim. (H.T. Page 41).
24. Mrs. Kutz testified that although she could not opine concerning the cause of erosion on Appellant's Property, if soil erosion exists it needs to be addressed and remediated as it pertains to the 20 foot drainage easement existing on her Property. It is Appellant's responsibility to maintain her Property so that soil erosion does not occur and to fill in those areas that are low and depressed. (H.T. Page 44). Appropriate maintenance could include filling in low areas, regrading, and providing stone.
25. Appellant testified that she purchased her Property on August 23, 1999. She further testified that since the time of her purchase, she did nothing to alter the 20 foot easement area behind her home. (H.T. Page 52).
26. Appellant testified that she never planted trees, never removed trees, and that the trees that currently exist in the easement area existed at the time she took ownership and possession of the Property. (H.T. Page 52).
27. Appellant testified that she has observed water flowing to her neighbor's property from the north, south and west. She testified that 99% of the water flows from underneath Stoke Park Road through 2 round concrete channels. The water is supposed to flow through the Rockel Swale; however, she believes the water is



flowing underneath her Property because the Rockel Swale has failed. (H.T. Page 54.)

28. Appellant testified that during the 14 to 15 years she has owned her Property, water has increased exponentially coming through the Swale coming down behind her neighbor's property and onto her Property. (H.T. Page 54).
29. On February 24, 2016, a heavy rain caused water to hit her house and crack a foundation wall. Appellant testified that there is nothing she can do to her Property that will stop the storm water that comes from the south. Appellant is not responsible for the maintenance of the Rockel Swale and cannot control water coming from Stoke Park Road. (H.T. Page 55). Appellant depicted a video for the Board to witness. The video depicted water flowing under Stoke Park Road and thereafter traveling northbound toward the back of her Property. (H.T. Page 57).
30. On cross examination, Appellant testified that she inspected the easement area behind her fence and did not notice erosion. However, Appellant did testify that she did put clippings and other items in the easement area. She further testified that she never performed any maintenance on the 20 foot drainage easement. (H.T. Page 60).

**CONCLUSIONS OF LAW**

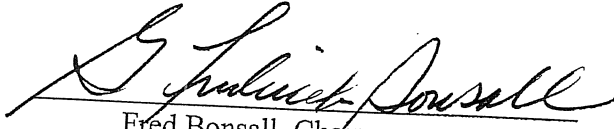
1. There was proper notice of the hearing in this matter and proper posting of the Property.
2. The matter proceeded to a hearing on August 9, 2016.
3. The 2015 Hanover Township Property Maintenance Code was adopted by the Hanover Township Board of Supervisors in 2015.
4. Appellant's application for appeal was filed in response to the Notice of Code Violations dated May 26, 2016.
5. The Board determined to deny Appellant's appeal of the Notice of Code Violations dated May 26, 2016.

**DECISION**

It is the decision of the Building Code Appeals Board of Hanover Township, Northampton County, Pennsylvania, to deny Appellant's appeal of the Notice of Violations dated May 26, 2016.

Dated: October 12, 2016

**HANOVER TOWNSHIP BUILDING  
APPEALS BOARD  
BY THE BOARD:**

  
Fred Bonsall, Chairman