

**BIRMINGHAM TOWNSHIP
BOARD OF SUPERVISORS MINUTES
MAY 5, 2008**

The regular meeting of the Board of Supervisors was called to order at 7:32 PM in the Township Building by Chairman Conklin with the pledge of allegiance and the customary moment of silence. A quorum of Supervisors was declared. The following Township Officials were in attendance:

John Conklin	-	Chairman, Board of Supervisors
William Kirkpatrick	-	Vice-Chairman, Board of Supervisors
Al Bush	-	Member, Board of Supervisors
Thomas Nelling	-	Chief of Police
Debbie Hineman	-	Planning Commission Member
Michael Langer	-	Recreation, Park & Open Space Committee Chairman
Greg Kurey	-	Recreation, Park & Open Space Committee Vice-Chairman
Robert Reder	-	Recreation, Park & Open Space Committee Member
Dan Hill	-	Recreation, Park & Open Space Committee Member
Carol Leeson	-	Recreation, Park & Open Space Committee Member
Mark Beauchamp	-	Recreation, Park & Open Space Committee Member (arrived at 8 PM)
Joseph Brion	-	Township Solicitor
Jim Hatfield	-	Township Engineer
Quina Nelling	-	Secretary/Treasurer

Chairman Conklin moved to approve the April 21, 2008 minutes as drafted. (Approved all in favor.)

Vice-Chairman Kirkpatrick moved to approve the bills submitted for payment. General Fund bills totaled \$19,383.42. Sewer Fund bills totaled \$1,529.75. (Approved all in favor.)

2008 ROAD PROGRAM

Bids for the 2008 Road Program were opened at the April 21st meeting. The bids were given to the Township Engineer, Jim Hatfield, to review for a recommendation at this meeting. Since the last meeting some releases have surfaced which indicate that the interpretation of the prevailing wage requirements that have been used for the last thirty years by the Pennsylvania Department of Labor and Industry (L&I) has changed. Work similar to the Township's 2008 Road Program is being classified as construction, not maintenance, and would be subject to the State's prevailing wage rules. The Commonwealth Court recently held that a street milling and resurfacing project was subject to the prevailing wage requirements. The Prevailing Wage Act requires that all workers on a public project must be paid the prevailing minimum wage as determined by L&I. The case is now before the Supreme Court. Mr. Hatfield contacted four other engineering firms, three of which were not aware of this issue. Using prevailing wage rates would increase the road program by \$20,000. - \$30,000. Mr. Hatfield also

contacted L&I directly. Legal counsel for L&I sent the Township a letter dated April 30, 2008 advising that prevailing wages should be used. Mr. Hatfield felt that the Township had several options. 1) Throw out all bids, and re-bid the contract with prevailing wages; 2) Award the contract to the low bidder, and negotiate a change order with the contractor for the inclusion of prevailing wages; or 3) Defer making a decision until the Supreme Court has rendered its decision.

The Board members were appalled that the State was requiring townships to pay up to 15% more for the same work. The State is already requiring that the contract go through a bidding process only to say that the taxpayers will now have to pay 15% more. The consensus of the Board was to get a better legal understanding of their options and to consider waiting until this issue is resolved by the Supreme Court

Solicitor Brion said that the Township is in receipt of a legal ruling from L&I. He did not recommend that the Supervisors proceed with the road program against the L&I ruling. The only options that the Township has are to re-bid with prevailing wage rates or to defer making a decision pending the outcome of the court appeal. The Supervisors could hold off on awarding the bid until the Supreme Court renders a decision but he did not think it would be rendered in June and that a decision probably wouldn't be rendered until the fall. He personally thought that the L&I interpretation was incorrect.

Mark Gross, Lambourne Road, confirmed that the bid specs were the same with or without prevailing wage.

Supervisor Bush moved to put a hold on the 2008 road program until more information is received on the options from the Township Engineer; the Roadmaster, and the Township Solicitor and that the Township Engineer and the Roadmaster come up with a short list of necessary road work items for 2008. (Approved all in favor.)

POLICE REPORT

Chief Nelling reported for the month of April 2008. There were 1,301 incidents during the month. One incident remains open. There were 8,144 patrol miles logged on the vehicles during the month. Chief Nelling said that Corporal Urbany received two certificates, one from Congressman Joseph Pitts and one from MADD, for the most DUI arrests for the department in 2007.

Prior to tonight's meeting, the Supervisors interviewed a new candidate for part-time police officer. At the recommendation of Chief Nelling, Chairman Conklin moved to hire Joseph Arnold of Downingtown at the rate of \$13.50/hr. (Approved all in favor.)

"MARLEY & ME/FOX 20TH CENTURY FOX PICTURES

Patricia Taggart, location manager, and Julian Ruhe, assistant location manager, were present to discuss the shooting of a motion picture in Birmingham Township titled "Marley and Me" and the impact that it will have on the community. The film is based on a book by John Grogan about a family and its dog. The film is currently in production

in Florida. The production crew is expected to be in the Township for two weeks, starting May 12th. There will be ten tractor trailers and eight other vehicles. The filming will be concluded by May 29th. Part of the filming will also be done in the Borough of West Chester.

Chairman Conklin informed the location managers of the need to comply with Township ordinances, including the lighting and noise ordinances.

Supervisor Kirkpatrick expressed concern with traffic being impeded during rush hours.

Dr. Reder asked about filming Memorial Day weekend? Ms. Taggart said that filming is not done on weekends and there will be no filming on Memorial Day. There will be filming done the Friday before the Memorial Day weekend. Filming will be concluded by 7 PM each day except for one planned night filming.

Ms. Taggart said that she has already talked to Chief Nelling about police services and traffic control. Several trailer parking locations are being considered. There are 125 people associated with the production. Flyers will also be distributed to the neighbors advising them of the filming.

Solicitor Brion said that a Certificate of Insurance will need to be provided to the Township and that an indemnification agreement will need to be executed.

RECREATION, PARK & OPEN SPACE COMMITTEE REPORT

The Recreation, Park & Open Space Committee (RPOS) is working on a public walking trail along a portion of Meetinghouse and Birmingham Roads. There will also be a twelve car parking lot on Birmingham Road across from Thornbury Road. The majority of the trail will be unimproved and will be delineated by the installation of post and rail fence. The parking lot will be constructed with modified stone, and the entrance driveway will be paved with asphalt.

RPOS has asked the Township Engineer for a proposal for construction administration services for the project which will include the following:

- Preparation of construction bid packages for public bidding.
- Coordination of the advertisement, pre-bid meeting, analysis of bid results, and recommendation for bid award.
- Construction survey layout services for the parking lot and the layout of the unpaved portions of the trail; and
- Pre-construction meeting, construction review, processing of contractor's requests for payments, and recommendation for final approval and payment.

The proposal for these services is \$14,100.

Since preparing the proposal, Jim Hatfield has been in contact with Register Associates, an engineering firm, which prepared some base mapping for the property. Register

Associates has agreed to allow Jim Hatfield to use this information which will decrease his proposed costs.

Michael Langer reported that RPOS had met with representatives from the County on the municipal grant program requirements. David Shields of the Brandywine Conservancy will work on archaeology at no cost to the Township.

A PennDOT highway occupancy permit application is part of the proposal. It can take two to three months from submission to receive the permit from PennDOT.

Chairman Conklin moved to approve a revised proposal from VanDemark & Lynch, Inc. for civil engineering services; construction plans; and bid documents for the Birmingham Hill Parking Lot and Trail, not to exceed \$12,000. (Approved all in favor.) Mr. Hatfield will submit a revised proposal.

MUZII ZONING HEARING BOARD APPLICATION

John and Margaret Muzzi have applied to the Zoning Hearing Board for a variance from the 28 foot rear yard setback requirement of ' 122-67-E(1)(e) of the Zoning Chapter of the Code of the Township to allow at the rear of their home a 2.2 foot cantilevered addition to accommodate an interior fireplace which would result in a 25.8 foot setback at their property located at 914 Adams Way. A hearing has been scheduled on the application for May 29, 2008.

Supervisor Kirkpatrick moved to take a non-position on the application and to defer to the expertise of the Zoning Hearing Board to render an appropriate decision after reviewing the testimony. (Approved all in favor.)

TREASURER'S REPORT

Mrs. Nelling reported for the 1st quarter 2008.

General Fund Balance - \$504,642.

Sewer Fund Balance - \$389,213.

State Fund Balance - \$109,238.

General Fund Total Revenues - \$158,409.

Real Estate Property Taxes - \$ 47,293.

Building Permits - \$ 6,874.

Vehicle Code Violations - \$ 21,605.

General Fund Total Expenses - \$293,764.

General Government - \$ 79,740.

Police & Fire - \$139,287.

Building & Planning - \$ 16,567.

Highways - \$ 45,261.

Insurance/Benefits/Other - \$ 21,909.

Sewer Fund Total Revenues - \$ 83,851.

Sewer Fund Total Expenses - \$185,024. (includes \$100,000. payment on debt).

Complete financial statements were provided to the Supervisors. Chairman Conklin moved to accept the Treasurer's report for the first quarter 2008. (Approved all in favor.)

Mrs. Nelling will have pie charts for the budget and for quarterly revenues and expenses posted on the web site in the near future.

PUBLIC COMMENT

Carol Leeson asked if the Township was looking into adopting a Green Incentive Package. She had read an article about funds available to convert to a cleaner energy source. Solicitor Brion said that townships constructing new buildings are looking at how green they can get, but he commented that the cost of going green is expensive and townships are looking into rebate opportunities to help with the cost. He was not aware of growing greener rebates for residential construction.

Mark Gross, Lambourne Road, presented the Board with a letter requesting that the run-off from the uphill neighbor's driveway and from the cul-de-sac at the end of the street be addressed when Lambourne Road is resurfaced. He would like to have the crown in the center of the road removed and the street slanted toward the existing ditch and catch basin on the east side of Lambourne which were designated to carry the rain water away from the street. He feels this would eliminate the flooding on his property.

The Board acknowledged that this location was reviewed on the Spring road inspection. A copy of the letter was given to the Township Engineer prior to tonight's meeting.

Carey Gross, Lambourne Road, told the Board that her property overlooks the Sullivan Farm on Birmingham Road. She understands that the Township issued a permit to the Sullivans for dirt movement onto the property. She asked the Board if they had any idea how much this activity has impacted the neighbors. Trucks move dirt onto the site daily from 8 AM, every twenty minutes, and the trucks make a beep, beep sound backing up to the property, which continues all day long and this activity has been going on for over a month now. She said that the activity and the noise are annoying. She feels that commercial dumping is taking place on a residential property.

Chairman Conklin said that the activity was reported to the Township. The site was inspected by the Building Inspector who required that a plan be submitted to the Township. The Township Engineer reviewed the land disturbance plan for the temporary stockpile storage of dirt which was being generated from a project at the West Chester University. It is anticipated that the stockpile will be completely removed in three to six months. Some of the stockpile is being used for fill behind the Bedwell house for a larger level area. A permit was approved with seven conditions.

Mark Gross expressed concern that the trucks hauling the dirt exceed the gross weight limit for the bridge on Birmingham Road which is already in disrepair. Mark Gross

reiterated his wife's comment that the dirt storage is a commercial venture in a residential district.

Solicitor Brion commented that the Chester County Conservation District will be looking at this site as well to address earth moving activities.

Linda Wilson, Cedar Mill Lane, was present to complain about the truck activity on the Sullivan property. A similar activity occurred last summer. It is annoying to the neighborhood. She said that it is like living next door to an industrial park.

Cathy Levy, Stoney Run Drive, said that she was the first person to call the Township and complain about the activity. The trucks start at 7 AM, one right after the other. It has been on-going since March, but it has been non-stop the last two weeks. It is also having a detrimental impact on traffic flow.

Chairman Conklin said that this issue will have to be reviewed to determine if there has been an ordinance violation. The Board will also look into the need for an ordinance to address this issue.

The meeting was adjourned at 8:36 PM. (AWB)

Respectfully submitted,

Quina Nelling
Secretary/Treasurer