

**BIRMINGHAM TOWNSHIP  
BOARD OF SUPERVISORS MINUTES  
JUNE 2, 2008**

The regular meeting of the Board of Supervisors was called to order at 7:30 PM in the Township Building by Chairman Conklin with the pledge of allegiance and a 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
Michael Langer	-	Recreation, Park & Open Space Committee Chairman
Dr. Robert Reder	-	Recreation, Park & Open Space Committee Member
Jim Hatfield	-	Township Engineer
Quina Nelling	-	Secretary/Treasurer

Mr. Bush moved to approve the May 19, 2008 minutes as written. (Approved all in favor.)

Mr. Kirkpatrick moved to approve the bills submitted for payment. General Fund bills totaled \$15,204.91. Sewer Fund bills totaled \$4,476.57. (Approved all in favor.)

**COMMERCIAL SIGNAGE**

Mrs. Nelling was contacted by Paul Canavarro, PHP Enterprises, 1313 Wilmington Pike, asking the Board to consider updating its regulations on commercial signage. Mr. Canavarro had previously gone to the Zoning Hearing Board asking for a variance from the regulations, which was denied. Subsequently he came before the Board asking for an amendment to the regulations for commercial signage.

Mr. Kirkpatrick suggested that it might be useful to revisit the current regulations to determine whether modifications are in order to better fit the allowable configurations with available sign material and lighting technologies. However, he did not feel there was a necessity to enlarge, reduce, or otherwise change the existing dimensional characteristics of allowable signage and he also did not feel that the number of signs allowed on a property needs to be re-visited. He thought that attention should be given to the use of LED, plasma, or other technologies that allow the message on the sign to change and better illustrate the business name. He did think that the message change should only be once a day. However, he felt strongly that the appearance of a "carnival bazaar" in the commercial district should be restricted and that flashing, rolling, high intensity, or other active techniques designed to divert the driver's attention should be avoided on Rt. 202. Such signage could also be a nuisance to the adjacent residential districts.

Mr. Kirkpatrick suggested that the Planning Commission (PC) be asked to review the sign ordinance with guidance from the Supervisors.

Mr. Bush commented that only one person has requested a change in the sign ordinance. He expressed concern about the cost of legal fees for the Township to pursue this ordinance modification.

Mr. Kirkpatrick noted that in the past the Township has had other entities request different signage, including R. J. Waters, Acura, and the gas stations.

Mr. Canavarro said that the existing sign is old deck board. It is larger than allowed by ordinance, but the sign is grandfathered. It is close to the road and motorists have to pull out onto Rt. 202 to see around the sign. A new sign with current technology, as suggested by Mr. Kirkpatrick, could be raised in the air and comply with the existing ordinance for size. It would also be more aesthetically pleasing. He has about twenty businesses on the property. He was hoping to have a message sign that changes every three minutes.

Chairman Conklin said that a change in signage on Mr. Canavarro's property will have a limited impact as the property has a large number of tenants and is a long narrow lot on a down hill slope on a high speed road. If the ordinance is forwarded to the PC he suggested that the PC be given specific direction and not too broad a charter in reviewing the sign ordinance.

Mr. Kirkpatrick moved to ask the PC to review the commercial sign ordinance provisions. (Approved all in favor.) Mr. Bush will discuss the ordinance review with the PC Chairman.

### **BIRMINGHAM HILL**

Mike Langer reported that RPOS is working on the Birmingham Hill trail which traverses along Birmingham Road and Meetinghouse Road (to the end of the Worth property). The easements are completed. Mr. Langer met with Mr. Worth and the Township Engineer and identified challenges on the Worth property for the trail.

Mr. Hatfield stated that after walking the trails a number of issues were identified that need to be resolved. Mr. Worth had requested that the fence be located on the easement line. Mr. Hatfield explained that this would entail a costly survey. Mr. Worth was agreeable to an approximate location being used when provided with this information. It will still be a month or two for the finalization of the bid documents for the trail installation. Mr. Hatfield presented the Board with plans for the proposed parking lot which will be located 400' from the Dorothy Carroll property and 250' from the intersection with Thornbury Road. The site distance is good. PennDOT has requested the location be staked for the highway occupancy permit application. The parking area will be a compacted gravel lot with twelve spots. The entrance to the lot will be asphalt to tie into Birmingham Road. A portion of the trail must be handicap accessible so the trail from the parking area to Wylie Road will be compacted gravel. The rest of the trail

will be mowed grass except for the wooded area where there will be wood chips installed. The trail will cross Meetinghouse Road twice to avoid the thirteen acre O'Dell property and her driveway. Pedestrian crossing signs will need to be installed but there will be no markings on the street.

Mr. Borer, Birmingham Road, asked if the trail will be extended down Wylie Road. Mr. Kirkpatrick said that was a good question. There is potential for the trail to be connected to Sandy Hollow Park via the Spackman and Wylie easements. The success of Sandy Hollow required the construction of an additional eight parking spaces from twelve to twenty. He thought it was a mistake not to push the Brandywine Conservancy for twenty parking spots as it would be more cost effective to do it now rather than to add on parking spots in the future.

Philip Moore said that there was a magnificent view of the property from Birmingham Road. He suggested that the parking area be moved to a less conspicuous location. Chairman Conklin said that preservation of the view is a reason to keep the parking area smaller. Extending the trail to Sandy Hollow is difficult from a safety perspective. Mrs. Nelling added that the County participated in the funding for the purchase of the property and required the trail and the parking area in the location designated.

Mr. Bush moved to authorize the Township to send a letter to PennDOT acknowledging and supporting the highway occupancy permit for the parking area for the Birmingham Hill trail. (Approved all in favor.)

### **HARB REPORT**

HARB met on May 20, 2008 and reviewed five applications.

#### **1102 DANIEL DAVIS LANE/WHITE/PAINT**

HARB recommended that a Certificate of Appropriateness be issued to Mr. & Mrs. Patrick White, 1102 Daniel Davis Lane, to re-paint the siding on their garage. The paint color is Cheyenne Red by Sherman Williams. Chairman Conklin moved to approve the Certificate of Appropriateness as recommended by HARB. (Approved all in favor.)

#### **1237 BIRMINGHAM ROAD/BIRMINGHAM LAFAYETTE CEMETERY**

HARB recommended that a Certificate of Appropriateness be issued to the Birmingham Lafayette Cemetery, 1237 Birmingham Road, to refurbish the board and batten walls, replace the roof beams, replace the asphalt roof with cedar shakes and repaint the exterior of the storage shed on the property. Chairman Conklin moved to approve the Certificate of Appropriateness as recommended by HARB. (Approved all in favor.)

#### **1175 BIRMINGHAM ROAD/BORER/SWIMMING POOL AND ROOF REPLACEMENT ON OUT BUILDING**

HARB recommended that a Certificate of Appropriateness be issued to Mr. & Mrs. Edward Borer, 1175 Birmingham Road, for a swimming pool. The plan, dated 5/6/08 was drawn by Rodney Robinson Landscape Architects, Inc. and consists of three pages. The pool will be constructed by Outer Spaces, Inc. HARB also recommended that a

Certificate of Appropriateness be issued to replace the roof on a small out building on the property which is located behind the pool.

HARB had requested that Mr. Borer provide pictures of the out building for the Supervisors. Mr. Borer was present with the requested pictures. He explained that the front part of the roof on the out building needs to be replaced and the pitch of the roof is too shallow for cedar shakes. The roof will be a stone gray metal roof.

Mr. Borer said that there was an Olympic size swimming pool on the property which was filled in with dirt in 1995. Mr. Hatfield said that he had received a land disturbance permit for the swimming pool but that he did not receive the plot plan and he did not know that a pool had previously existed in this location. Because of this information, Mr. Hatfield said that Mr. Borer would be exempt from needing a land disturbance permit.

Mr. Kirkpatrick moved to approve the Certificate of Appropriateness as recommended by HARB for the swimming pool and the metal roof on the pool out building. (Approved all in favor.)

#### 901 BIRMINGHAM ROAD/MOORE/STORAGE BUILDING

HARB recommended that a Certificate of Appropriateness be issued to Richard and Philip Moore, 901 Birmingham Road, to erect a metal pole barn to be used to store farm equipment. The building will be constructed by Conestoga Builders. The siding color will be Hickory Moss and the roof will be evergreen.

Richard Moore explained that the family has been in the hay farming business for forty years and plans on continuing the farming operation. The building is needed to store farm equipment.

Mr. Kirkpatrick asked about preservation plans for the property. Mr. Moore explained that the family is working to restrict future development. The Moore property is 35 acres in Birmingham Township and 55 acres in Westtown Township. There is no more building allowed on the Birmingham portion which is part of the Hamilton Place Subdivision. It is anticipated that no more than two houses will be built on the Westtown portion of the property.

Mr. Hatfield asked for the size of the building which will be 30' x 60' x 12.4'. It is exempt from the land disturbance permit requirements. However, Mr. Hatfield noted that the land disturbance permit is cumulative for a property.

Chairman Conklin moved to approve the Certificate of Appropriateness for the storage shed for 901 Birmingham Road as recommended by HARB. (Approved all in favor.)

#### 1311 BIRMINGHAM ROAD/GARRISON/RENOVATIONS

HARB recommended that a Certificate of Appropriateness be issued to Mr. & Mrs. Scott Garrison, 1311 Birmingham Road, for renovations to their house. The changes include adding a shed dormer on the back of the house; replacing a wood deck with a sunroom;

and changing an existing porch. The plan, dated 4/25/08, was drawn by John Milner Architects, Inc. and consists of four pages. Mr. Bush moved to approve the Certificate of Appropriateness as recommended by HARB. (Approved all in favor.)

### **POLICE REPORT**

Chief Nelling reported for the month of May. There were 978 incidents. One incident remains open. There were 9,798 patrol miles logged on the vehicles during the month. Chief Nelling said that the 2004 Ford Crown Vic was sold to East Marlborough Township. Chief Nelling asked the Board to authorize advertising for bids for the 2000 Ford Crown Vic. Chairman Conklin moved to authorize advertising for bids for the 2000 Ford Crown Vic to be opened at the June 16<sup>th</sup> meeting. (Approved all in favor.)

### **SEWER PLANT**

Mr. Kirkpatrick explained that the sewer plant is about fifteen years old. The existing EQ pumps are progressive cavity pumps with variable frequency drives. These pumps continue to fail and rupture in low flow conditions. The Township sewer engineer, URS, has been asked to review options for the EQ pumps. Sandi Morgan of URS, in a proposal dated May 8, 2008, has indicated that two types of pumps are feasible for the replacement with either submersible pumps installed directly in the EQ tank or horizontal centrifugal self-priming pumps installed in the control building where the EQ pumps are located. URS is suggesting the installation of the horizontal centrifugal self-priming pumps. The proposal is broken down into three phases. The evaluation phase for the EQ pump replacement is \$5,500.; the design phase is \$16,500.; and the PLC improvements are \$7,000. The cost of two pumps; two drives and two starters is \$22,000. This is approximately what the Township has spent on the repair of the existing pumps over the last five years. PADEP approval and permitting is not necessary since the work changes the type of pump and does not constitute a process design change. This is a significant capital project, but the Township has maintained a capital reserve fund for the sewer plant for this type of work.

Chairman Conklin explained that the sewer fund is self-funded by the users and is separate from the general fund. The Supervisors handle the operation of the sewer plant as there is no sewer authority. Mr. Kirkpatrick noted that the Township's handling of the sewer plant saves the residents approximately 20% in sewer rent.

Mr. Kirkpatrick moved to authorize URS to proceed with the evaluation phase of the EQ pump replacement at a cost of \$5,500. (Approved all in favor.)

### **PUBLIC COMMENT**

#### **DILWORTHTOWN OAKS HOMEOWNERS' ASSOCIATION**

In attendance at the May 19<sup>th</sup> meeting were representatives from the Dilworthtown Oaks Homeowners' Association requesting the Township's help in getting a commercial vehicle removed from the Carrero property which violates the restrictive covenants of the Association. The HOA also believes that the commercial vehicle violates the Township's zoning ordinance. The Carreros were asked to attend tonight's meeting to discuss the

issue. Mrs. Nelling advised that the Carreros were unable to attend tonight and have asked that the matter be discussed at the June 16<sup>th</sup> meeting.

Jim Kron, Vice-President of the HOA, was present and provided the Board with pictures of the truck. At the May 19<sup>th</sup> meeting, Mr. Kirkpatrick had asked how many of the 59 homeowners in the development had an issue with the truck. Mr. Kron provided the Board with a petition dated June 2, 2008 which was signed by 41 of the 47 out of 59 residents that were contacted. The petition requests action by the Board to enforce the ordinances and zoning regulations pertaining to parking of commercial vehicles in residential areas. The Board has asked to hear from the Carreros but the Carreros are either in compliance with the Township ordinances or not in compliance. There is no dispute that the Carrero's truck is a commercial truck. Legal counsel for the HOA has opined that the parking of commercial vehicles in a residential district is a violation of the zoning ordinance. Mr. Kron said that Mr. Carrero is entitled to request a variance from the zoning ordinance for variance relief from the ordinance requirement.

Mr. Bush confirmed with Mr. Kron that the truck has been parked on the Carrero property for the last several weeks. Mr. Bush said that Mr. Kron had indicated at the May 19<sup>th</sup> meeting that if the truck remained in the driveway that the HOA would pursue enforcement of the HOA regulations. Mr. Kron agreed that the HOA has the authority if the truck is parked in the driveway and the HOA would need assistance from the Board if the truck was being parked on the street, however the HOA feels that an ordinance violation exists with the parking of the truck on the Carrero property or on the street.

Mr. Kirkpatrick said that the HOA was trying to amicably work with Mr. Carrero for the past three years while the truck was being parked in their driveway. However, Township involvement wasn't pursued until the Carreros started parking the truck on the street. Mr. Kron said the HOA wasn't initially aware of Township ordinances. He reviewed the HOA discussions with the Carreros over the past three years with the Board. He said that the Carreros have not worked in good faith with the HOA.

Mr. Kirkpatrick confirmed with Mr. Kron that the HOA is asking the Township to take action against all commercial vehicles parked in the Township, starting with Mr. Carrero. Mr. Kirkpatrick felt that the HOA has dealt with this issue for three years and the Township should deal with this in a deliberate manner after taking the time to gather all the information. Mr. Kirkpatrick said that the Board has heard from the HOA at two meetings and he would like to hear from the Carreros. There are always two sides to an issue. Reviewing an ordinance amendment on commercial trucks parking on township streets is a separate issue from the case specific issue of the Carreros.

Ken Gallagher, Pheasant Run Road, said that Mr. Carrero knew he was in violation of the HOA covenants when he purchased the truck. He is doing what is best for him. When he was parking his truck on the street he parked it in the wrong direction against traffic. He didn't know why Mr. Carrero didn't come to tonight's meeting as there were numerous cars in his driveway. Not showing tonight is consistent with the pattern that Mr. Carrero has established in dealing with this situation. Mr. Gallagher said that the Carrero's

parking their truck on the street violates the Township ordinance as a home based business that interferes with the quiet enjoyment of their neighbors is prohibited.

Jim Duttenhofer, Pheasant Run Road, said that the Township Solicitor Kristin Camp sent a letter to the HOA dated April 14th. In the letter it clearly states that the Carreros parking their commercial truck either in the street or in their driveway is a violation of township ordinances and he is asking the Township to enforce its ordinances.

Chairman Conklin said that the Supervisors need to evaluate how many of these issues they should run down and spend Township resources on enforcing. The Board's job is to not get involved in issues that are clearly under the purview of the HOA and to review rewrite and revoke ordinances. This issue is in the middle of these options.

Mr. Duttenhofer asked when the Board would make a decision. Chairman Conklin said he had no definitive date. He didn't know all the issues that need to be considered; he didn't know what advice the Board would receive from legal counsel; and he didn't know the Board's position.

#### OTHER PUBLIC COMMENT

Mrs. Nelling said she had a call from a resident today complaining about trash, specifically dog droppings and bags being left with the droppings, at Sandy Hollow Park. The resident was directed to bring up the issue at a Recreation, Park & Open Space Committee meeting.

The meeting was adjourned at 8:55 PM. (WJK)

Respectfully submitted,

Quina Nelling  
Secretary/Treasurer