

**BIRMINGHAM TOWNSHIP
BOARD OF SUPERVISORS MINUTES
OCTOBER 5, 2009**

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 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
Dave Rathbun	-	Roadmaster
Michael Langer	-	Recreation, Park & Open Space Committee Chairman
Greg Kurey	-	Recreation, Park & Open Space Committee Member
Lloyd Roach	-	Historic Commission Chairman and EMC
Joseph Brion	-	Township Solicitor
Quina Nelling	-	Secretary/Treasurer

Mr. Kirkpatrick moved to approve the September 21, 2009 minutes as written. Chairman Conklin seconded the motion and it was carried. Mr. Bush abstained from voting as he was not in attendance for the meeting.

Mr. Kirkpatrick moved to approve the bills submitted for payment. General Fund bills totaled \$5,684.51. Sewer Fund bills totaled \$50,169.65. State Fund Check #139 was issued to Page Excavating Company for \$3,890.00 and Check #140 was issued to East Bradford Township for \$535.27. (Approved all in favor.)

DURHAM AGENDA REQUEST

John and Lisa Durham were present to discuss a business venture for the Bennigan's property. Legal representation was from John Jaros. The proposal is for a high turn over, sit down restaurant (tavern), with some entertainment. The proposed restaurant is Bill Durham's Texas Barbeque & Steak House. In talking with the Township Solicitor prior to the meeting, and in response to his letter of September 14, 2009, Mr. Jaros understood that there were some concerns with the proposed plans for entertainment for the Bennigan's restaurant. The restaurant would open at 4 PM and close at 10 PM Sunday through Tuesday; 12 AM on Wednesday and Thursday and 2 AM on Friday and Saturday. The hours of operation would be divided as 38 hours for restaurant and 16 hours for a restaurant and entertainment, but a full service menu would be available during all hours of operation. The restaurant portion of the business would encompass 70% of the revenues. There is no cover charge for the entertainment, which would include dance lessons, karaoke, a DJ, or live bands. The entertainment would be geared towards the over thirty crowd with a western theme.

Chairman Conklin said that the Board relies on legal counsel for advice. The issue comes down to the interpretation of the ordinance definitions.

Mr. Jaros added that the facility does not fall under the definition of night club establishment. Mr. Jaros said that the Durhams would be willing to have conditions imposed on the use and occupancy permit to address any concerns of the Board.

Solicitor Brion said that high turnover means that clients leave within an hour or an hour and fifteen minutes on an average, but with entertainment the turnover time is much longer so he does not feel that the proposal falls under the high turnover restaurant definition.

Mrs. Durham said that the planned use for the restaurant complies with the C-1 accessory use requirements for comparable uses elsewhere.

Chairman Conklin said that the Board is not opposed to the use. However, the process is to modify the existing conditional use order so there are no surprises for the Township and its residents.

Further discussion ensued on the activities at Bennigan's; the conditional use modifications for Bennigan's; and comparable businesses in the area.

Solicitor Brion opined that the conditional use modification was a more stable process than attaching conditions to a use and occupancy permit.

Mrs. Durham expressed concern over deadlines; bank commitment requirements; and costs associated with the conditional use process that may prevent the restaurant proposal from going forward if she has to go through a lengthy hearing process.

RECREATION, PARK & OPEN SPACE COMMITTEE **TRAILS DISCUSSION**

RPOS Chairman Michael Langer and Sheila Fleming, Senior Planner of the Brandywine Conservancy, were present to get feedback on the proposed action plan presented at the September 8, 2009 meeting for the feasibility of a volunteer trail program along the Brandywine River between Meetinghouse Road and Rt. 926 as well as a footpath to connect to the trails on the O'Dell farm. They had also attended the September 21, 2009 meeting but Supervisor Bush was absent so the Board deferred action on the proposal.

With no comment on the proposal, Chairman Conklin moved to approve the action plan proposed by the Brandywine Conservancy for a feasibility study of a volunteer trail program along the Brandywine River. (Approved all in favor.)

Mr. Kirkpatrick asked if the Brandywine Conservancy could prepare a cost analysis plan showing the estimated costs and the responsible parties for the costs associated with the trail. Mr. Langer noted that the nature of the trail would impact the costs.

Ms. Fleming said that the timing is ripe for this presentation with the recent purchase of the O'Dell property and the possibility of connecting the trail on the O'Dell property to the Brandywine.

Lloyd Roach informed those present that the area along the Brandywine is not a hazard assessment area. It would become a hazard assessment area with the installation of a trail. This area can be dangerous during times of flooding and closure of the trail during peak flooding times may be warranted.

SANDY HOLLOW PARK

Mr. Langer said that the fencing at Sandy Hollow Park needs to be refreshed. It is a Daniel Boone style fencing with broken slats, some of which are lying on the ground. Fenceworks has some useable recyclable fencing which they are willing to donate for labor cost only to the Township which would be \$2,400. - \$4,800., depending on whether the slats that needed replacing were at the bottom or on the top of the piles. Mr. Langer estimated 100 sections of fencing that need to be looked at for replacement.

Mr. Rathbun said that Sandy Hollow is the face of the Township. The fencing looks run down. It should be replaced to spruce up the area.

The Board agreed to put \$4,800. in the budget with the understanding that it would be discussed at the October 19th budget meeting and if approved that the item would need to be revisited by the Board in the Spring for a determination on proceeding, depending on the financial position of the Township at that time.

BIRMINGHAM HILL TRAIL

Chairman Conklin said that the Township received an e-mail requesting that the Birmingham Hill trail be better defined. RPOS will be reviewing this issue with regards to signage and/or different levels of mowing to identify the location of the trail.

Grey Kurey is organizing a ribbon cutting ceremony with the County Commissioners for the official opening of the Birmingham Hill trail. Saturday, October 24th has been chosen as the date with November 7th as the rain date. Mr. Kurey asked the Board for their expectations on the magnitude of the event. Chairman Conklin said that there were two reasons for the event: 1. introduction to the community; and 2. to thank the County. After discussion it was decided that beverages and donuts under a tent would be appropriate. Mr. Kurey has an invitation list which was provided from the Brandywine Conservancy.

Mr. Kirkpatrick was not available on either date but encouraged the continuation of the event planning as all the other parties were available.

Chairman Conklin moved to approve a budget cost of \$750. for the ribbon cutting ceremony for Birmingham Hill on October 24th. (Approved all in favor.)

ROAD REPORT

Mr. Rathbun reported for the third quarter 2009. There were two resident complaints. One was about the overgrowth of weeds along Brinton's Bridge Road. Chief Nelling said that PennDOT has turned over that responsibility to the township. Numerous locations for site distance problems due to overgrowth were discussed. Chief Nelling will develop a list of areas that could be addressed over the winter months. Chairman Conklin suggested that that liquid fuels funds be used for this work.

The second complaint was about a sinkhole on Independence Drive near a school bus stop. It was determined to be a safety hazard. Mr. Rathbun complimented the prompt action of VanDemark & Lynch, Inc. and Page Excavating Company in getting this repair done so quickly.

Mr. Rathbun reported that Page Excavating Company finished the 2009 road program in mid-August at a cost just under \$25,000. Some additional shoulder work on Meetinghouse Road and Old Wilmington Pike was added to the road program.

The 2010 road program will include patching and repaving on several township roads, including portions of Country Club Road, at a cost of \$245,000. Liquid fuels for 2010 is estimated between \$110,000. and \$115,000., with \$238,000. anticipated available for the road program.

The fall road inspection is scheduled for October 22nd.

POLICE REPORT

Chief Nelling reported for the month of September 2009. There were 950 incidents during the month, including six criminal arrests. There was one forced entry at a residence on Wylie Road. Three of the incidents remain open. There were 7,963 patrol miles logged on the vehicles during the month.

Chief Nelling recommended a change to the Police Policy Manual, specifically Sections 400.4(1)(Z) and 400.4(2) regarding rules and procedures. A resolution was prepared by the Township Solicitor who reviewed the policy changes. Mr. Bush said that the policy was being changed to eliminate confusion.

Chairman Conklin moved to adopt Resolution #091005 to amend the rules and procedures of the Police Policy Manual. (Approved all in favor.)

Chief Nelling recommended a pay increase for Part-Time Officer Michael O'Donnell from \$13.75/hr. to \$15.10/hr. Mr. O'Donnell was hired on August 2nd. All in house training was completed by October 2nd. Mr. Bush moved to approve a pay increase for Mr. O'Donnell from the training rate of \$13.75/hr. to \$15.10/hr. (Approved all in favor.)

EMERGENCY OPERATIONS PLAN

With the help of Chief Nelling, Mr. Roach has updated the Emergency Operations Plan and the associated Hazard-Specific Checklists and Notification and Resource Manual. This is done every couple of years. Chairman Conklin moved to adopt the Emergency Operations Plan as presented. (Approved all in favor.)

HISTORIC COMMISSION

With the recent resignation of Historic Commission member Donna Landon, the commission lost its minute taker. Chairman Lloyd Roach has been taking the minutes. The commission asked that the Board consider paying someone to take the minutes. Jacquie Roach, PC Secretary, is agreeable to taking on the position as Historic Commission Secretary. Chairman Conklin moved to appoint Jacquie Roach as Historic Commission Secretary at the rate of \$100.00 per meeting. (Approved all in favor.)

SET HEARING DATE FOR SPRINT/NEXTEL CONDITIONAL USE HEARING

The Township is in receipt of a second application for a conditional use modification for Sprint/Nextel to add onto the tower on the Stoltzfus property on Rt. 202. A hearing for Cingular Wireless was set for November 2nd @ 7 PM. Chairman Conklin moved to set the hearing date for Sprint/Nextel for Monday, November 2nd at 6:30 PM. (Approved all in favor.)

Mr. Roach specifically requested that the Board remember that space needs to be left on the tower for Delaware County emergency response. Chester County is currently utilizing the tower. This is the end of the coverage area for Delaware County. This space was reserved during the initial application and it should continue to be reserved. Mr. Roach also expressed concern over the wind load for the cell tower with additional antennas being added. Mr. Bush will convey these concerns to the PC.

INSURANCE DEDUCTIBLES

During its annual insurance review the Supervisors asked B. J. Giangliulio of H. A. Thomson to provide the Township with premium quotes on various deductibles. The current deductibles are \$250. The change in premium was negligible between \$250. and \$1,000. so the Board made no change to the policy and kept the deductibles at \$250.

2010 BUDGET

Mrs. Nelling announced that the 2010 budget meeting had been continued until October 19th @ 6:30 PM. The meeting scheduled for November 9th has been cancelled.

PUBLIC COMMENT

There was no public comment.

The meeting was adjourned at 9:04 PM. (WJK)

Respectfully submitted,

Quina Nelling
Secretary/Treasurer