

**BIRMINGHAM TOWNSHIP
BOARD OF SUPERVISORS MINUTES
JUNE 6, 2022**

The regular meeting of the Board of Supervisors was called to order at 7:00 PM in the Township Building by Chairman Boorse with the pledge of allegiance. A quorum of Supervisors was declared.

Scott Boorse	-	Chairman, Board of Supervisors
Michael Shiring	-	Vice-Chairman, Board of Supervisors
J. Daniel Hill	-	Member, Board of Supervisors

Also present was Township Solicitor Kristin Camp.

Vice-Chairman Shiring moved to approve the May 2, 2022 minutes as written. Supervisor Hill seconded the motion and the minutes were approved. Chairman Boorse abstained from voting as he was not in attendance.

Vice-Chairman Shiring moved to approve the bills submitted for payment from May 3 – June 6th. Supervisor Hill seconded the motion and the bills were unanimously approved. General Fund bills totaled \$76,454.69.

HARB REPORT

HARB met on May 3, 2022 to consider three applications.

YANCICH/1001 CEDAR MILL LANE/SPLIT RAIL FENCE

Vice-Chairman Shiring moved to approve a Certificate of Appropriateness, as recommended by HARB, for Kara Yancich, 1001 Cedar Mill Lane, for the installation of a four foot, three rail, and curved cut split rail fence in a natural pine color with black vinyl coated mesh. Chairman Boorse seconded the motion which was unanimously approved.

SANET/1352 WOODED KNOLL/ROOF

Supervisor Hill moved to approve a Certificate of Appropriateness, as recommended by HARB, for Steven Sanet, 1352 Wooded Knoll, for the installation of a new roof. The material will be Atlas Pinnacle Pristine shingles in the color Copper Canyon. Chairman Boorse seconded the motion which was unanimously approved.

MARKLE & SLAW/1220 BIRMINGHAM ROAD/FENCE

Vice-Chairman Shiring moved to approve a Certificate of Appropriateness, as recommended by HARB, for Daniel Markle and Erica Slaw, 1220 Birmingham Road, for the installation of pressure treated natural wood and hemlock rails with a Riverdale black wire mesh and split rail style gates. Chairman Boorse seconded the motion which was unanimously approved.

ZONING HEARING BOARD APPLICATIONS

The Zoning Hearing Board is meeting on June 15th to consider two applications.

DUEA/1229 CREEK ROAD/DEER FENCE

Nanette Duea is requesting a variance from Section 122-14.G (area and bulk regulations for accessory buildings and structures) and Section 122-105.7.A(2)&(3) (fences and walls) in order to install an 8-foot high deer fence along the front, side and rear lot lines, as well as to construct a 5-foot high natural stone wall and an 8-foot high arch garden gate. Ms. Duea was present with legal counsel, Tim Kneur. Mr. Kneur stated that two variances are being requested. There is a significant number of deer on the property. Ms. Duea would like to create a shade/woodland garden in the backyard. The deer management guide on the web site says that deer fence should be no less than 8 feet.

Chairman Boorse moved to take a non-position on the application and to defer to the expertise of the Zoning Hearing Board to render a decision after hearing all the testimony. Vice-Chairman Shiring seconded the motion which was unanimously approved.

MCMAHON/1037 GENERAL LAFAYETTE/ADDITION ON NON-CONFORMING LOT

Daniel and Lisa McMahon are requesting a variance from Section 122-82 (area and bulk regulations pertaining to lot coverage, side yard setback, and green space coverage) in order to construct a proposed residential building addition on their non-conforming lot.

Mr. McMahon stated that the addition will be 25x20 with a concrete foundation. The addition will be on the east (right) side of the house. The addition is being constructed for his ill mother so she doesn't have to navigate stairs. Allowable lot coverage is 20% which will increase by 4.5% to 24.5%. Minimum green space requirement is 80% which will decrease by 4.5% to 75.5%. Side yard setback aggregate requirement is 60 feet which will decrease by 15.2 feet to 44.8 feet.

Chairman Boorse asked if Mr. McMahon had talked to his neighbors about the addition. Mr. McMahon has talked to one neighbor who had no issue, but he hasn't talked to other neighbors. Mr. McMahon was advised to get supportive input from his neighbors. Solicitor Camp stated that a variance has to create no harm to neighbors.

Vice-Chairman Shiring moved to take a non-position on the application and to defer to the expertise of the Zoning Hearing Board to render a decision after hearing all of the testimony. Chairman Boorse seconded the motion which was unanimously approved.

CONDITIONAL USE DECISION/1305 PENN OAKS DR./PENN OAKS HP ENTERPRISES

A hearing was held on March 30th to consider the conditional use application of Penn Oaks HP Enterprises LP to construct a three-story office building at 1305 Penn Oaks Drive for a combination of office, retail, and/or restaurant uses. The Property is zoned C-2 Heavy Commercial and is currently vacant.

Solicitor Camp reviewed some of the key twelve conditions:

1. Hours of operation are limited to 7 AM – 11 PM.
2. No drive-through facilities and no outdoor seating is approved.

3. A traffic impact study must be submitted with the land development plan submission which will analyze the impact of the use on the intersection of Wilmington Pike and Penn Oaks Drive, including the traffic signal and auxiliary turn lanes on Wilmington Pike. The traffic study should also examine if the proposed access driveway is in a safe location that does not interfere with proper circulation
4. Applicant shall analyze in its traffic study whether the existing traffic signal at Penn Oaks Dr. and Wilmington Pike should include additional pedestrian accommodations.
5. Applicant shall install only LED lighting, or similar high efficiency lighting devices, as part of its outdoor lighting fixtures. No metal halide lighting can be installed.
6. Applicant shall install outdoor lighting with the capability to be dimmed to 50% capacity at 11 PM with full shut-off at midnight. Minimal security lighting or sensor lighting may be provided for security purposes.

Chairman Boorse moved to approve the Conditional Use Decision for Penn Oaks HP Enterprises as prepared by Solicitor Kim Venzie and reviewed by applicant's counsel, Allyson Zarro, who provided minor input. Supervisor Hill seconded the motion. Mike Shiring abstained from voting due to a conflict with his firm representing the applicant. The motion was carried with two in favor and one abstention.

POLICE PERSONNEL

Prior to tonight's meeting, the Supervisors interviewed a candidate for the position of part-time police officer. At the recommendation of Chief Nelling, Chairman Boorse moved to hire Kevin White of Bryn Mawr, PA as a part-time police officer at the training rate of \$23.00/hr. Vice-Chairman Shiring seconded the motion which was unanimously approved. Mr. White will be sworn in at the July 11th meeting.

ACT 167 STORMWATER MANAGEMENT UPDATE

Per Solicitor Camp, the Township must update its stormwater management ordinance and adopt the revised model Act 167 Ordinance that was adopted by Chester County on February 10, 2022. The amendment is required in order to comply with the PA Department of Environmental Protection's MS4 program and update to the State's model stormwater ordinance. All municipalities are required to adopt the updated ordinance by September 30, 2022. There are 57 changes to the ordinance, some of which are policy decisions and some are mandated.

Solicitor Camp has proposed a work session with the Township Engineer; herself and Vice-Chairman Shiring in order to get an ordinance proposal ready in order to meet the deadline.

Pratap Kesarkar, 1370 Old Wilmington Pike, asked how the change would affect the residents and if it would be more restrictive.

Solicitor Camp referred him to the Chester County Water Resource Authority web site which clearly delineates the changes made in colors with green being additions; red being deletions; and yellow being optional. One change is a modification to the simplified stormwater management approach requirements. Another is that pet waste cannot be placed in storm sewers.

Tim Rzepski, 1061 Wylie Road, complained about a retention basin in Heartsease that hasn't held water for years. He wondered who inspects it as his yard is being destroyed. Mr. Rzepski was advised to follow up with correspondence to the Township on the issue which will be forwarded to the Township Engineer for review.

HISTORICAL COMMISSION (HC) ORDINANCE

Vice-Chairman Shiring stated at the May 2nd meeting that the Supervisors have been working on changes to the Historical Commission Ordinance, Article VIIIA, in order to streamline the process for the residents and to make changes to the ordinance which have not been working as intended. The Supervisors reviewed the ordinance in two public meetings with the Township Solicitor who drafted an ordinance proposal that was sent to the HC and CCPC, each of which have provided specific comments on the proposal. The intent is not to reduce the historic resource protection of properties, but to make the process easier for the residents. Nor is the Board trying to do anything fast or "under the darkness of night" as stated in a circulated flyer to residents. Vice-Chairman Shiring applauded the residents for being active in the review process of the ordinance.

The Board had intended on working through the comments from the HC and CCPC at tonight's meeting, but due to the standing room only crowd, the Board decided to first take comments from those present.

Kelly Fleming, HC Member, thanked the Board for taking comments. She did not feel as if there had been a lot of public notice about the ordinance amendment.

Chairman Boorse said that all the discussion on the ordinance had been at public meetings which have been attended by the public. The HC had been notified of all the meetings when the discussions were taking place and the meeting notices were posted on the web site. The Board's intention is not to take away the HC review process but to make the process more streamline and to amend those sections of the ordinance that aren't working.

Mary DeNadai, 1190 Meetinghouse Rd and Preservation Architect for 45 years, said that she was on the HC task force in 2015. The task force worked extensively and made a recommendation to the Board on streamlining the process and updating the resource list.

Solicitor Camp said that the Board had looked at the HC recommendation, but due to a pending law suit about the ordinance, the Board did not want to pursue any changes at that time. She asked Ms. DeNadai to resend the original comments for review now.

Mr. Kesarkar said he had a difficult time finding the new ordinance proposal on the web site. He said that the new ordinance doesn't have Class I, II or III classifications. Solicitor Camp said that the draft ordinance has no classes, just an historic resource list.

Mr. Kesarkar questioned renovations adjacent to historic resources. Solicitor Camp responded that the ordinance only addresses adjacent historic resources for new development on empty lots which require a buffer.

Doug Marshall, 1001 Meetinghouse Rd. commented that the HC review had been removed from many applications. Vice-Chairman Shiring said that in order to streamline the process the Board was proposing that minor modifications go directly to the Board and bypass the HC. However, the Board would have the option to send the application back to the HC if they felt their input would be helpful. Mr. Marshall added that the Board hasn't always agreed with the HC recommendations and has accepted the applicant's proposal. Mike Forbes, HC Chairperson, added that there has never been any feedback from the BOS to the HC if it doesn't agree with the HC recommendation. Mr. Marshall emphasized more communication on the process.

Vice-Chairman Shiring said that Mr. Marshall is insinuating that the Board is trying to hide something and asked Solicitor Camp to explain the process. She stated that there is no final version on the ordinance. The ordinance is just in the draft working stages. The Township is required to send a final draft to the Township PC and the CCPC for comments. Out of courtesy, the Board sent the ordinance to the HC for comments. A red-line draft was initially circulated but a clean version without the red lines was re-circulated since the red-line draft was difficult to understand. The Board has not sent the draft version to the Township PC yet as it is looking at the HC and CCPC comments first.

Mark Landon, 1270 Birmingham Rd. said it felt like the guidelines were being loosened from looking at the existing and proposed ordinances. Future Boards may act differently on HC proposals than this Board. He appreciated the efforts of the Supervisors and for taking the comments from the public.

Christopher Lang, Friends Meeting, appreciated the picture of the Friends Meeting sign on the Township web site. He is concerned with the lessening of the restrictions on preserving historic resources and he feels that certified notices to neighbors of changes is needed, not just a posting of the property, as proposed in the new draft. He said that the CCPC comments made sense.

William Worth, 1075 Meetinghouse Rd., asked if it is the intention of the Brandywine Conservancy to tear down the original O'Dell house and build a common visitor's center. Chairman Boorse said that no application had been submitted to the Township.

Mary DeNadai said that the national historic register does not regulate interior changes. The task force didn't suggest regulating interior renovations. Chairman Boorse responded that the issue becomes how to determine if a building is structurally sound without review of interior changes.

Ellen Moyers, 1135 Queens Rangers Lane, asked if the Federal and State governments can change zoning or come into the Township and take land for low income housing. Solicitor Camp responded that zoning falls under township purview.

Mindy Rhodes, 331 Board Run Rd. (non-resident) discussed a weakening of Westtown township ordinances where there was a specific overlay provision where apartment buildings were not permitted on the Crebilly Farm property. In 2016 the special use overlay was repealed and Toll Brothers swept in and tried to densely develop the property. She suggested the Board learn from the mistake of Westtown Township in looking at weakening the HC ordinance.

Mr. Kesarkar talked about the 60 day review time for the HC and the 90 day review time for the SLDO; the township assessment on lots that could be subdivided; and the ordinance allowing the density to change. Chairman Boorse said that the Township is built out. Most large lots have been eased; preserved or developed. The SLDO ordinance is not being changed.

Tim Rzepski said that more HC review was done in the past. Slowing down the process makes the residents more at ease.

Peter Shea, 1042 Wylie Rd., said that more communication is necessary. He didn't even know his house was an historic resource until he saw the list.

Kelly Fleming, said that she had never been notified that her house was an HC or HARB property. She felt that the notifications and communication could be improved.

Terry Hawkins, 502 Dilworth Farm Lane, said she had received notification from the Township that her property was an HC resource. Sect./Treas. added that since the original notification, each month upon receipt of real estate transfer from the County Recorder of Deeds, new residents that move into HARB or HC properties are notified that their property is a HARB or HC property and the requirements associated with HARB and/or the HC.

Jarl Mork, 706 Brinton's Bridge Rd., suggested that the Board take the CCPC review letter seriously while working on the HC ordinance update.

Eric Hawkins, 502 Dilworth Farm Lane, said that the 1994 RPOS open space plan had the HC resources listed in the plan. There was a 6' map from the County that was prepared by Bob Adolph that identified the resources with up to five different layers of resources on some properties. Chairman Boorse added that the 1967 Comprehensive Plan included the list of HC resources.

Mary Ann Rzepski, 1061 Wylie Rd. said that the web site needs to be upgraded to be more user friendly.

John Stoviak, 1175 Birmingham Rd., asked if the Board would accept written comments on the ordinance draft. Written comments are accepted and appreciated.

Jeff Silverman, 1280 Wylie Rd., has provided the Township with written comments for the record.

Sect./Treas. Nelling said that all those present want to see the HC resources preserved, but when they come into the Township for permits they don't want to send out or pay for the required certified notices. They also don't want to wait a month or more to come to an HC meeting and then to have to come to a subsequent Township meeting because they and their contractors are ready to do the work now. On top of this, applications required by ordinance to be reviewed by the HC, are dismissed at the HC meetings as not needing review and applicants are questioned on why they are in attendance. Mrs. Nelling noted that two of the vocal people present that

wanted the historic resources preserved had done work in the past without getting permits or HC approval.

Mrs. Nelling also said it was counterproductive to send out a letter to residents on the ordinance and have them contact the Township office for information when the office hasn't seen the letter nor does it make changes to ordinances and can't speak on the Board's behalf. Vice-Chairman Shiring said he was very accessible to the residents and encouraged those present to call or text him with issues.

Mike Forbes suggested breaking out three changes to the ordinance draft to expedite the process.

1. Definition of historic resource
2. Definition of site
3. Section 122-36.7, Sections A & B, for resources damaged

These changes address the issue of damaged property and changes from the Class I, II and III designations. Chairman Boorse thought it still made sense to do all the changes to the ordinance at one time. Vice-Chairman Shiring agreed but thought if the process was taking too long that he would be willing to break out certain sections of the ordinance for action.

Kelly Fleming asked about the process going forward. Chairman Boorse said that the Supervisors will go through the HC; CCPC and public comments and each of them will provide comments to the Solicitor who will revise the ordinance based on the comments. The new draft will then be distributed to the HC; CCPC; PC and posted on the web site.

PUBLIC COMMENT

Kathy Shea, 1042 Wylie Rd., said that there is a lot of erosion and road damage on the side of Wylie Road near Firethorne Estates. She has contacted PennDOT who has told her it is on their list. Chief Nelling has also notified PennDOT. It was suggested that State Senator Carolyn Comitta be notified as she is always asking how she can help Birmingham.

Mary DeNadai said that Creek Road is a raceway during the summer with hot rod vehicles. Chief Nelling said that the road is being patrolled on each shift.

There were comments on funding the Westtown Township plan to buy Crebilly Farm. Chairman Boorse said that the Township doesn't have funds set aside for open space purchases. Mr. Rzepski suggested "go fund me" as a resource.

Mr. Rzepski mentioned the Brandywine Battlefield Re-enactment scheduled for September 24th & 25th.

The meeting was adjourned at 9:05 PM. (SCB;MTS)

Respectfully submitted,

Quina Nelling
Secretary/Treasurer

Check Register**BIRMINGHAM TOWNSHIP**

12-Jul-22

From: 03-May-22 To: 06-Jun-22

Check No	Check Date	VendorNo	Vendor	Check Amount	Status
Bank Account: 11 TRUMARK GENERAL FUND					
21577	5/16/2022	11	21ST CENTURY MEDIA - PHI	\$135.83	O
21578	5/16/2022	1001926	AJ BLOENSKI, INC.	\$170.80	O
21579	5/16/2022	366	BUCKLEY,BRION,MCGUIRE	\$328.00	O
21580	5/16/2022	873	CARDMEMBER SERVICE	\$123.52	O
21581	5/16/2022	1002121	CLEVENS K-9 SCOOP	\$228.00	O
21582	5/16/2022	775	CONVENIENT CAR CARE C	\$279.65	O
21583	5/16/2022	422	HARRY TILLMAN AUTOMOTI	\$948.48	O
21584	5/16/2022	517	INDEPENDENCE BLUE CRO	\$6,842.79	O
21585	5/16/2022	205	PARKWAY DRY CLEANERS,	\$84.75	O
21586	5/16/2022	171	REILLY & SONS INC.	\$2,961.58	O
21587	5/16/2022	811	S & S CLEANING SERVICE	\$388.00	O
21588	6/6/2022	11	21ST CENTURY MEDIA - PHI	\$267.92	O
21589	6/6/2022	557	ALL SEASONS LANDSCAPIN	\$2,500.00	O
21590	6/6/2022	1002659	ARRO CONSULTING, INC	\$15,376.34	O
21591	6/6/2022	849	BATTAVIO/B&F SERVICE CO	\$629.85	V
21592	6/6/2022	366	BUCKLEY,BRION,MCGUIRE	\$2,461.50	O
21593	6/6/2022	1002011	FRANCOTYP-POSTALIA INC.	\$237.00	O
21594	6/6/2022	1001930	FRY COMMUNICATIONS, IN	\$87.00	O
21595	6/6/2022	21	H. A. THOMSON	\$5,069.75	O
21596	6/6/2022	422	HARRY TILLMAN AUTOMOTI	\$895.48	O
21597	6/6/2022	711	JUDY JENSEN	\$1,250.00	O
21598	6/6/2022	1002023	KEY BUSINESS SOLUTIONS	\$132.36	O
21599	6/6/2022	1002526	MCDONALD UNIFORM CO., I	\$836.99	O
21600	6/6/2022	3	PA TWP HEALTH INS COOP	\$244.20	O
21601	6/6/2022	75	RJCRAIG GRAPHICS & DESI	\$59.00	O
21602	6/6/2022	542	TRITECH SOFTWARE SYST	\$2,460.78	O
21603	6/6/2022	1002659	ARRO CONSULTING, INC	\$13,468.41	O
21604	6/6/2022	849	BATTAVIO/B&F SERVICE CO	\$606.50	O
21605	6/6/2022	79	BRANDYWINE VALLEY SPC	\$47.75	O
21606	6/6/2022	873	CARDMEMBER SERVICE	\$25.42	O
21607	6/6/2022	1002121	CLEVENS K-9 SCOOP	\$285.00	O
21608	6/6/2022	775	CONVENIENT CAR CARE C	\$239.70	O
21609	6/6/2022	1002182	GALE M FITZPATRICK	\$155.00	O
21610	6/6/2022	1002053	MICHAEL J HOCHHAUS	\$250.00	O
21611	6/6/2022	3	PA TWP HEALTH INS COOP	\$1,832.46	O
21612	6/6/2022	205	PARKWAY DRY CLEANERS,	\$205.50	O
21613	6/6/2022	171	REILLY & SONS INC.	\$1,705.06	O
21614	6/6/2022	1002792	SUNNY GARDEN LANDSCAP	\$1,390.50	O

Check Register**BIRMINGHAM TOWNSHIP**

12-Jul-22

From: 03-May-22 To: 06-Jun-22

Check No	Check Date	VendorNo	Vendor	Check Amount	Status
21615	6/6/2022	1002214	WE R TECHNOLOGY	\$1,500.00	O
21616	6/6/2022	780	LAND ART	\$3,790.00	O
21617	6/6/2022	1002526	MCDONALD UNIFORM CO., I	\$406.69	O
21618	6/6/2022	26	SIGNAL SERVICE INC.	\$270.00	O
21619	6/6/2022	1002801	GREG RADFORD, ARCHITE	\$500.00	O
21620	6/6/2022	278	UNRUH, TURNER, BURKE &	\$184.50	O
Bank Total:				\$71,862.06	
Bank Account: 22 GF - Electronic Payments					
100000	6/6/2022	80	AQUA PENNSYLVANIA	\$2,600.59	O
100001	6/6/2022	29	PECO ENERGY	\$591.51	O
100002	6/6/2022	30	PECO ENERGY (TRAFFIC LI	\$86.53	O
100003	6/6/2022	1002798	TRUMARK FINANCIAL CRED	\$670.40	O
100004	6/6/2022	61	VERIZON 753-804-167-0001-	\$359.64	O
100005	6/6/2022	1001913	VERIZON WIRELESS 722423	\$113.14	O
100006	6/6/2022	1001913	VERIZON WIRELESS 722423	\$170.82	O
Bank Total:				\$4,592.63	
Total Of Checks:				\$76,454.69	