

**BIRMINGHAM TOWNSHIP
BOARD OF SUPERVISORS MEETING
JUNE 16, 2008**

CRICKET COMMUNICATIONS CONDITIONALS USE HEARING

A hearing to consider a conditional use application from Cricket Communications, Inc. was held at 6:45 PM prior to the regular Township meeting. The purpose of the hearing was a request to install cellular communication antennas on an existing cell tower located on the Stoltzfus RV property, 1335 Wilmington Pike. The hearing was transcribed by Court Reporter Pat Post. George Asimos, Esq. represented Cricket Communications, Inc. The application was approved and a letter will be forthcoming from the Township Solicitor, Kristin Camp.

REGULAR MEETING

The regular meeting of the Board of Supervisors was called to order at 7:36 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:

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| 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 |
| Lloyd Roach | - | Emergency Management Coordinator |
| Jim Hatfield | - | Township Engineer |
| Kristin Camp | - | Township Solicitor |
| Quina Nelling | - | Secretary/Treasurer |

Chairman Conklin moved to approve the June 2, 2008 minutes as written. (Approved all in favor.)

Chairman Conklin moved to approve the bills submitted for payment. General Fund bills totaled \$57,681.75. Sewer Fund bills totaled \$13,713.30. (Approved all in favor.)

BIDS FOR 2000 FORD CROWN VICTORIA

At the June 2nd meeting the Board of Supervisors authorized advertising for bids for the 2000 Ford Crown Victoria Police Vehicle. Chief Nelling presented proof of publication that the bid notice had been duly advertised in the Daily Local News on June 6, 2008. Six bids were received.

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| 1. | Richard Wilson, West Chester, PA | - | \$550. |
| 2. | Rogers Auto Sales, Rogers, OH | - | \$510. |
| 3. | Bay Ridge Motors, Inc., Staten Island, NY | - | \$455. |
| 4. | Police Car Store, LLC, Bala Cynwyd, PA | - | \$897. |
| 5. | James Goodwin, Trenton, NJ | - | \$601. |
| 6. | Grace Quality Used Cars, Inc., Morrisville, PA | - | \$245. |

Mr. Bush moved to accept the bid of \$897. from Police Car Store, Bala Cynwyd, PA.
(Approved all in favor.)

2008 ROAD PROGRAM

At the May 5, 2008 meeting the bid award for the 2008 road program was put on hold in order to ascertain the implications of prevailing wage on this year's road program. The Department of Labor and Industry has opined that the Birmingham Township 2008 Road Program is 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 State Supreme Court upheld the decision of the Commonwealth Court which means that the road program will have to be bid under the prevailing wage requirements.

Based on the Supreme Court's decision, the options for the Township are to re-bid the project under the prevailing wage requirements or to hold off on doing the overlay work this year and just do the bare minimum urgent work which Mr. Hatfield estimates is under \$25,000. and wait to see if the legislators consider enacting legislation to change the prevailing wage requirements. Mr. Hatfield said that the advantage to doing the work this year is that the contractors are anxious to get the work after waiting for the prevailing wage issue to be resolved and asphalt prices continue to rise.

The Supervisors confirmed with Mr. Hatfield that the work scheduled for Meetinghouse Road is included in the bare minimum alternative to be done in 2008.

Mr. Kirkpatrick discussed writing the legislators, the governor, and PSATS protesting maintenance and repair work being classified as prevailing wage work. The Township bid the project and received five competitive bids from contractors ready to do the work with wage rates of \$40./hr. in each of the bids. Prevailing wage will raise the bid 12% - 15% to \$46./hr.

Chairman Conklin said that he will support a protest by the Board to all Pennsylvania politicians of the prevailing wage requirement on maintenance and repair work on the roads. The additional \$30,000. that the road program will cost the taxpayers under prevailing wage is a terrible thing for a small township on a tight budget. He will vote to support the minimum road program with strong words to follow for the State's politicians.

Mr. Rathbun said that a protest in numbers is the most effective. Chairman Conklin said that there have been some protesting e-mails through PSATS, but it is too early to tell if there will be a swell of protests from the municipalities. He noted that what has been accomplished through this decision is the shutting down of a lot of road projects throughout the State.

Mr. Kirkpatrick wondered if there would be some benefit in re-bidding the same package under the prevailing wage requirements as the contractors know the bids received and could “sharpen their pencils” to come in with bids very close to those originally bid.

Mr. Hatfield felt that the original bids were very competitive. Asphalt prices have increased and with the prevailing wage requirement the bids will come in higher. He felt that it would be relatively inexpensive to re-bid two projects as the bid packages are already prepared and it will only require a change to include prevailing wage. Mr. Kirkpatrick felt it was worthwhile to see what re-bids would be on the same program, using prevailing wage.

Mr. Kirkpatrick moved to authorize re-advertising for the 2008 road program with the prevailing wage requirement and to authorize advertising for a second program which would include a minimal scope of work to complete road repairs deemed necessary by the Township Engineer and Roadmaster. The second bid package is designed to come in under \$25K and would not be subject to prevailing wage requirements. The bids are to be opened at the July 21, 2008 meeting. Mr. Bush seconded the motion. Chairman Conklin opposed the motion to re-advertise the 2008 road program. He was only in favor of advertising for bids for the minimal scope of work. The motion was carried with two in favor and one opposed.

1304 BIRMINGHAM ROAD – EDGEWOOD PROPERTY

Bob Adams, legal counsel, was present on behalf of John and Doris Rudibaugh, new owners of the 1304 Birmingham Road property, known as Edgewood. Also present were William Dolan, contractor with Pine Street Carpenters, and James Bradbury, Architect. Mr. Adams had discussions with the Township Solicitor, Kristin Camp, regarding the property and the need for a variance to increase the height of the tower portion back to its original height of almost 50'. Previous owners of the property reduced the height of the tower from four stories to three stories because of its deteriorating condition. The current tower height is 37 feet, which is already non-conforming as it exceeds the maximum height allowed by ordinance. Mr. Adams was hopeful that the Township may allow an interpretation of the ordinance which permits a nonconforming structure to be enlarged, even if the enlargement would increase the nonconforming condition, as long as setback, land coverage, or density requirements were not involved.

Mr. Adams said that the property is a Class I Historic Resource under §122-6 of the Zoning Ordinance which requires any alteration to be approved by the Township's Historic Commission. Mr. Adams understood from Solicitor Camp that the Historic Commission has not been established, but as the Commission would be an advisory board with the ultimate decision on the alteration coming from the Board of Supervisors, Mr. Adams was hopeful that the Supervisors would approve proposed exterior modifications to the house.

Mr. Dolan expounded on these modifications and detailed some history of the property. A package of the proposed renovations with accompanying pictures was presented to the Supervisors. The house was vacant for about four years and purchased by the

Rudibaugh's in late 2007. Interior structural repairs have been on-going since the purchase in preparation of the Rudibaugh's moving into the house. The Rudibaugh's are committed to the restoration of the house. The house was built in 1845 by the Sharpless family without a tower. The Biddle family added a four story tower in the 1960's. The battlement on the tower was all serpentine stone which deteriorated and was taken down in the 1980's. Mr. Dolan noted that the serpentine stone on the main house is in really good shape for being over 150 years old. The stone tower deteriorated because it was exposed to the weather. The house is protected by a 3 1/2 'overhang. Mr. Dolan suspected that the stone used on the tower may also have been from a different location in the quarry. The tower roof was chopped off and is not architecturally pleasing and it has to be replaced which was the impetus for the architectural exploration and findings about the history of the tower.

Mr. Bradbury added that the house is a classic mid-century lovely Victorian house. There is no functional reason for the tower to be increased to 48' and the tower space will not be used. Stone will not be used on the roof; instead it will be a mansard roof.

Mrs. Roach, Meetinghouse Road, wanted to make sure that the mansard roof proposed for the tower will not affect its placement on the National Historic Register.

Mr. Adams repeated his request for a determination that a variance will not be required to restore the tower portion of the structure to its original height of not more than 50'. He noted that there was never intent to permanently abandon the tower. The tower was chopped off as a measure to address the deterioration. Mr. Adams said that the Township has to give approval for the exterior of the structure to be modified since it is on the National Register of Historic Structures.

Solicitor Camp advised that the Township Zoning Officer has concurred by e-mail with a determination that a variance will not be required for the tower restoration.

There was discussion as to the appropriate procedure since the Historic Commission has not been established. Mr. Bush confirmed with Solicitor Camp that the renovation needs to go before HARB. Mr. Kirkpatrick had no problem with the proposal but wanted HARB's review and input and he suggested that the adjacent neighbors be contacted for concurrence that they don't have a problem with the tower extension. Chairman Conklin concurred with sending the request to HARB.

Mrs. Camp asked if the Board wanted HARB's review as part of its function or as a substitute for the Historic Commission, which has not been formed, as there are certain functions mandated by ordinance for the Historic Commission which are different from HARB's functions. Mr. Adams said that since the Historic Commission has not been formed that the Board of Supervisors can take action under the ordinance to recommend the issuance of the necessary permits for the renovation. He did not think that HARB should replace the Historic Commission as it wasn't formed for that function.

Mr. Bush thought that the correct procedure is for the application to go before HARB as part of HARB's function under Act 167. The Supervisors are also asking for the blessing of the neighbors.

Mrs. Camp summarized the discussion. The Rudibaugh's can proceed with the tower extension application without the need for a variance from the Zoning Hearing Board. The application will be reviewed by HARB per Act 167 at the HARB meeting on July 15th. The Rudibaughs will come before the Supervisors on July 21st with the submission that would be presented before the historic commission per §122-36.4 for Class I Historic Resource alterations.

Mrs. Roach asked for the reasoning for the 35' height limit. She thought it might be because of concern for fire protection. Chief Nelling responded that the height restriction is not associated with fire protection. His concern is with the in-ability for a fire truck to access the property from Birmingham Road because of the angle of the driveway. There were no comments explaining the height requirement for a structure.

BRANDYWINE RIVER NURSERY ZONING HEARING BOARD **APPLICATION**

On July 1, 2008 the Zoning Hearing Board will consider an application from the Brandywine River Nursery and Carl DiPiazza for the property owned by 237 Beekay Investments located at 1200 Creek Road for 1) an appeal from the Enforcement Violation which asserts that certain activities on the property violate the flood plain hazard district regulations; 2) variance relief from the 1992 Zoning Hearing Board Decision; 3) variance relief for a non-conforming use; and 4) a variance/special exception from §122-60.B(2) of the Code. Jack Wuerstle, legal counsel, was present for the applicant.

Mr. Wuerstle stated that a zoning enforcement notice was issued by Joe Sofranko on April 16th and subsequently modified on May 27th. Mr. DiPiazza has committed to comply with the Township's regulations on some of the issues in the violation notice.

The May 27th violation notice was reviewed with the Board by Mr. Wuerstle. Most of the issues deal with activities occurring in the floodplain.

- Mr. DiPiazza is in the process of cleaning up most of the debris on the property but he noted that this debris was inherited from the prior owner.
- Mr. DiPiazza would like until the end of August 2009 to clear the site.
- The dumpsters have been removed from the site.
- It is not felt that the raised mulch beds, the boulders, and the dirt on site are impervious cover.
- The prior owner stored bulk mulch. The mulch is currently being stored at a higher elevation than the building and it may not be in the flood plain.
- The road millings will be taken to the landfill by the end of the summer.
- Mr. DiPiazza would like to include the sale of lobsters and crabs as an accessory use.
- The property will be fenced within thirty days with fencing that is agreeable to all parties.

Mrs. Camp asked if the debris was on the property since the issuance of the 1992 ZHB decision. Regardless, if the debris was on the property when it was purchased, the violation runs with the property. She added that the ZHB decision stated what was and was not permitted. Section 122-60.B(2) of the Code specifically states that no material whatsoever is permitted in the floodplain, so if it was not approved by the ZHB then it is prohibited by the Code. The ZHB decision had a plan of the property attached and if it wasn't on the plan then it isn't permitted. Mr. Wuerstle said that he needs to review the decision in detail. The ZHB Order can be amended which would require Mr. Wuerstle to amend the ZHB application submitted.

The Board felt that the selling of lobsters and crabs was a different and inappropriate use for the property. Mr. DiPiazza noted that he did not feel that prepared food was an appropriate use, but this is not prepared food and there is a four hour turn around on the sale of the product. He researched this issue with the FDA. Since the crabs and lobsters are live, there is no threat to anyone at any level. Mr. Kirkpatrick moved to oppose the sale of lobsters and crabs at Brandywine Nursery as an accessory use. (Approved all in favor.)

There was discussion between legal counsel that the best approach may be to defer the July 1st hearing to see what issues can be resolved and to allow Mr. Wuerstle to get a better handle on what requests need to come before the ZHB and/or the Supervisors.

CARRERO/DILWORTHTOWN OAKS' HOMEOWNERS' ASSOCIATION

In attendance at the May 19th and June 2nd Township meetings were representatives from the Dilworthtown Oaks Homeowners' Association (HOA) 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 Supervisors heard the side of the HOA and had asked the Carreros to attend tonight's meeting to hear their point of view.

Richard and Joan Carrero were in attendance. Mr. Carrero said that his truck had been egged and permanently marked while it was parked on the street in the development. Mrs. Carrero said that they have lived in their house for ten years. They keep to themselves and they have enhanced the property and maintained the common open space. They can't afford to buy another truck as they have \$40,000. invested in this truck. They had a Chevy Silverado which they traded after going through the lemon law on the truck. The Chevy box truck they have now was on the lot and available. They weren't trying to intentionally violate the by-laws. They have had trucks before and this was just another truck. They considered building a garage for the truck, but it would not only be costly but it would look like a warehouse on the property. Mrs. Carrero said that they were not conducting any business from their property, including any bookkeeping, for Mr. Carrero's electrical business. All payments are to Mr. Carrero at the time and place of service. There is also no storage of equipment on the property. All business calls are through Mr. Carrero's cell phone.

Mr. Kirkpatrick confirmed that the truck was an unmarked vehicle that Mr. Carrero uses to drive to work. In response to Mr. Kirkpatrick, Mr. Carrero advised that he does not have a commercial license.

Mrs. Carrero said that when the HOA advised that the truck couldn't be kept in their driveway as it was a violation of the Declaration of Covenants it was moved to the street after they checked with the Township and the Police Department that there was no violation by parking on the street. Mrs. Nelling added that the Township Zoning Officer, Joe Sofranko, had talked with Mrs. Carrero who had determined that there was no violation of the home occupation ordinance.

Chairman Conklin said that often the Township is approached to get involved in an issue between homeowners. The ordinances are written to preserve the quiet enjoyment of the residents. There is an ordinance which addresses home occupation and commercial vehicles.

Mrs. Carrero said that their property is on Brinton's Bridge Road. They would prefer not to be part of the Dilworthtown Oaks HOA.

Mrs. Camp advised that even if there isn't a violation of Township ordinances the Carreros may still be violating the HOA Declaration of Covenants.

PUBLIC COMMENT

Chairman Conklin said that the Supervisors held an executive session on June 12th to interview a new building inspector/zoning officer with Yerkes, Pete Marberger, who will replace Joe Sofranko.

The meeting was adjourned at 9:16 PM. (WJK)

Respectfully submitted,

Quina Nelling
Secretary/Treasurer