

**BIRMINGHAM TOWNSHIP
BOARD OF SUPERVISORS' MINUTES
DECEMBER 15, 2008**

ORDINANCE HEARINGS

Three hearings to consider ordinance amendments were considered prior to the regular meeting. The hearings were held in the Township Building. The first ordinance hearing was duly advertised to begin at 6:45 PM. The following Township Officials were in attendance for the hearing:

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 Chairman arrived at 7:15
Carol Leeson	-	Recreation, Park & Open Space Member arrived at 7:30
Kristin Camp	-	Township Solicitor
Quina Nelling	-	Secretary/Treasurer

CHAPTER 122, ZONING

A hearing to consider an ordinance to amend Chapter 122/Zoning of the Code to define what accessory uses are permitted within a planned residential development in Section 122-66; to establish minimum green space requirements for single family dwellings, two family dwellings and multi-family dwellings in a planned residential development in Section 122-67.E; and to amend section 122-119.B.(2) regarding notice of conditional sue hearings and to delete Section 122-125.A.2 regarding the jurisdiction of the zoning hearing board was called to order at 6:51 PM in the Township Building by Chairman Conklin. The hearing was duly advertised in the Daily Local News on November 28th and December 5th. Solicitor Camp presented exhibits B-1 – B-5 for the Board's consideration.

Comment #1 in the December 3, 2008 letter from the Chester County Planning Commission (CCPC) suggests that the provision that regulates the placement of swimming pools be reworded to clarify the Township's intent. Solicitor Camp feels that the proposed wording is very clear. She noted that the CCPC may review the ordinance amendment without having the entire ordinance in front of them so they don't have a global view of the ordinance amendment.

Comment #2 in the CCPC December 3, 2008 letter suggests that the amendment be revised to specify the percentage of green space required for a four-complex dwelling unit. Again Mrs. Camp said that the draft ordinance establishes the 55% minimum green space. She feels that the CCPC may not have looked at the heading and the language of the entire ordinance, but just the amendment.

The Township Planning Commission at its meeting on November 8, 2008 approved the ordinance amendment but at the same time suggested that the Board look at broadening the definition of impervious cover in the future. Mrs. Camp will discuss this with the PC Solicitor, Frone Crawford, Jr.

Mr. Kirkpatrick moved to adopt Ordinance #08-02 to amend Chapter 122, Zoning. (Approved all in favor.)

CHAPTER 101, STORMWATER MANAGEMENT AND LAND DISTURBANCE

A hearing to consider an ordinance to amend Chapter 101, Stormwater Management and Land Disturbance by adding a new article XI, titled "Prohibited Discharges to Storm Sewer System" was called to order at 7:00 PM by Chairman Conklin. The ordinance was duly advertised in the Daily Local News on December 5th. Solicitor Camp presented Exhibits B-1 – B-3 for the Board's consideration.

This ordinance proposal is a model ordinance from DEP in order for the Township to be fully compliant with the NPDES requirements. The ordinance proposal has been reviewed by the Township Engineer, Jim Hatfield. The ordinance establishes prohibited discharges into the storm sewer system.

Mr. Bush moved to adopt Ordinance #08-03 to amend Chapter 101, Stormwater Management and Land Disturbance. (Approved all in favor.)

CHAPTER 47, UNIFORM CONSTRUCTION CODE

A hearing to consider an ordinance to amend Chapter 47, Uniform Construction Codes, was called to order at 7:15 PM by Chairman Conklin. The hearing was a continuation from a hearing held on November 3rd. The ordinance proposes that a building permit be required for all structures and buildings which are accessory to a single family dwelling which have an area greater than 250 square feet. Currently, the Uniform Construction Code only requires permits for accessory structures more than 1,000 square feet. Accessory structures include carports, detached garages, sheds, and decks.

Subsequent to the ordinance being advertised, Mrs. Camp has had conversations with the Building Inspector who believes that all sheds should require a permit, since they are weight bearing. Mrs. Camp will seek clarification on decks from L&I.

On November 5th, Mrs. Camp forwarded a letter to L&I advising that an amendment was being considered which would require permits for all unenclosed decks. A reply letter was received from L&I on November 12th which states that the change equals or exceeds the requirements of the UCC and it is in compliance with State law.

Mr. Kirkpatrick moved to adopt Ordinance #08-04 to amend Chapter 47, Uniform Construction Codes. (Approved all in favor.)

Chairman Conklin moved to close the ordinance hearings at 7:17 PM. (Approved all in favor.)

REGULAR MEETING

The regular meeting of the Board of Supervisors was called to order at 7:32 PM by Chairman Conklin with the pledge of allegiance and a moment of silence. A quorum of Supervisors was declared.

Chairman Conklin moved to approve the December 1, 2008 minutes as written.
(Approved all in favor.)

Mr. Kirkpatrick moved to approve the bills submitted for payment. General Fund bills totaled \$70,325.89. Sewer Fund bills totaled \$11,760.36. (Approved all in favor.)

ROAD REPORT

Dave Rathbun had presented a written fourth quarter 2008 road report to the Board. Mr. Rathbun stated that there were ten road complaints in 2008 which were all addressed in the road program. The only complaint for the quarter was about tree overgrowth on Heartsease Drive which was pruned last week by Buckley Tree Service.

All work on the 2008 Road Program has been completed except for the channel restoration on Kadar Drive. There are no major road problems that need to be addressed at this time.

No major road program is planned for 2009, however \$25,000. has been requested in the General Fund budget for unanticipated maintenance and repair work. This figure also includes line painting as determined necessary by Chief Nelling.

The Spring road inspection is scheduled for March 19, 2009.

Chairman Conklin expressed concern about the roads in the Knolls of Birmingham and Birmingham Hunt developments all coming due at the same time. Mr. Rathbun suggested that the Pavement Management System report, which is prepared by the Township Engineer, be prepared for a longer period of time to project into 2012 – 2014 to address these developments and those road requirements.

Mr. Rathbun provided the Board with an article from the Daily Local News dated November 7th which reviewed the status of the Rt. 202 widening project. The original project cost has escalated and State revenues have declined so the project scope has been downscaled. At this time construction isn't anticipated before 2016.

Harry Miller, Bottom Lane, thought that the Township should consider repaving Country Club Road in the Radley Run development in 2009 since the oil prices are down and the economy is in a slump. Mr. Rathbun thought this was a good idea and he said that this issue would be reviewed by the Board in the Spring. However, he noted that Country Club probably wouldn't be ready for an overlay for a couple of years. Mr. Rathbun

added that the possibility and timing of the State changing the prevailing wage laws for maintenance projects could also impact the Board's decision.

GIANT FOOD STORE EXPANSION

At its meeting on August 18, 2008, the Board of Supervisors approved the Final Land Development Plan for R.J. Waters & Associates to increase the square footage of the building currently held by Blockbuster by 12,500 square feet. The space would be utilized as an expansion by the Giant Food Stores. The Plan, dated 11/30/07, last revised 7/24/08, consisting of seven sheets, was drawn by Chester Valley Engineers. The Plan was approved with the condition that the Applicant continue to work with the Township Sewer Engineer, URS Corporation, on any sewer related issues, including the determination of the appropriate number of EDU's for the project. If additional EDU's were deemed to be necessary, R.J. Waters & Associates, Inc. would need to come before the Board of Supervisors to request the additional allocation.

Kevin Lahn, developer with R.J. Waters & Associates; Randall Schauer, legal counsel; and Neal Camens, engineer with Chester Valley Engineers attended the November 17, 2008 meeting to request that the Supervisors reserve three to five EDU's for the Giant Food Expansion. R. J. Waters & Assoc. was asked to prepare a sewer agreement for consideration by the Board.

Mr. Schauer has worked with the Township Solicitor, Kristin Camp, on a sewer capacity reservation agreement for the Township to enter into with the developer for reserving the EDU's. Solicitor Camp had suggested that the capacity reservation expire in June 2010. Mr. Schauer requested that this date be extended until June 2011. Mr. Lahn explained that the lease for Blockbuster doesn't expire until November 2010 and time is needed to proceed with the expansion.

Chairman Conklin asked if the Board could just sign off on the plans without allocating sewer since the need for sewer capacity won't be known for several years. Solicitor Camp confirmed with R. J. Waters & Assoc. that Thornbury Township is not requesting the sewer allocation but they are requiring that the plans be signed by Birmingham Township. Mrs. Camp indicated that the Township Sewer Engineer, Sandi Morgan, has advised that there are 130 EDU's available at the Township's sewer plant with no one knocking down the door to connect so there should be ample sewer capacity in 2010/2011 when the sewer needs for the Giant are known. Mr. Schauer said that, for the applicant, having the sewer capacity reserved is a comfort level of assurance for them and for Giant.

Chairman Conklin preferred to have the plan approval and sewer capacity issues separated.

Chairman Conklin moved to confirm the Supervisors signing of the Final Land Development Plan for R.J. Waters & Associates to increase the square footage of the building currently held by Blockbuster by 12,500 square feet. The space would be utilized as an expansion by the Giant Food Stores. The Plan, dated 11/30/07, last revised

7/24/08, consisting of seven sheets, was drawn by Chester Valley Engineers. (Approved all in favor.)

Mr. Schauer asked that the Board reserve five EDU's for sewer capacity for the Giant Expansion until June 2011. The Board felt that the reservation of capacity was not a monetary issue. Mr. Kirkpatrick moved to enter into a Sewer Capacity Agreement with Birmingham Devco for the reservation of five EDU's of sewer capacity in the Township's sewer system for the Giant Food Store expansion at the Shoppes @ Dilworthtown Crossing Shopping Center. (Approved all in favor.)

Mr. Lahn said that he understood that the Township is in the process of publishing a newsletter. Mr. Lahn showed the Board a sample insert to promote the businesses at the Shoppes at Dilworthtown Crossing Shopping Center that had been used for the Thornbury Township newsletter. He asked that the Board consider allowing the insert in the upcoming Birmingham newsletter.

Mr. Kirkpatrick had no problem including an advertisement insert promoting commercial businesses in the township. Chairman Conklin said that it was precedent setting and he mentioned opening up the option to all the commercial businesses. Mr. Bush preferred an insert as opposed to ads being part of the newsletter. Mr. Kirkpatrick said that R. J. Waters & Associates would have to cover the printing cost of the insert and any incremental postage costs. This insert advertisement will be a trial for the Township. The Board agreed to allow the insert in the upcoming newsletter.

RECREATION, PARK & OPEN SPACE COMMITTEE (RPOS) MEMBER APPOINTMENT

RPOS has recommended that Jeffrey Corrigan of Firethorne be appointed to fill a vacancy on the Committee. Mr. Corrigan was interviewed by the Board prior to tonight's meeting. Chairman Conklin moved to appoint Mr. Corrigan to RPOS to fill the unexpired term of Dick Gross which expires in 2011. (Approved all in favor.)

2009 BUDGET MINUTES

Chairman Conklin moved to approve the minutes from the first 2009 budget meeting held on September 29, 2008. Mr. Bush seconded the motion and it was carried. Mr. Kirkpatrick abstained from voting as he was not in attendance.

Chairman Conklin moved to approve the minutes from the second 2009 budget meeting held on November 12, 2008. (Approved all in favor.)

2009 BUDGET

The 2009 budget was advertised for public inspection at the November 17th meeting.

The general fund budget proposes \$1,683,603. in revenues in 2009, which includes a \$475,025. carry forward from 2008, and \$1,276,450. in expenditures. The budget proposes a tax increase from 1.35 mills to 1.5 mills.

Budgeted 2009 sewer fund revenues are \$745,781., which includes \$312,651. in capital reserve carry forward and \$106,429. in the fund balance carry forward. Budgeted expenditures are \$422,397. Sewer rent will increase from \$115./quarter to \$125./quarter effective with the April 1, 2009 billing.

Mrs. Nelling asked the Board to approve a minor change to the budget. Funds of \$53,000. allocated for the Birmingham Hill trail construction project will not be expended until 2009. There is no change in the expenditure only that the anticipated timing for the payment has been delayed.

RPOS Chairman Langer said that RPOS is planning a 325th celebration in 2009. He asked the Board to allocate a maximum of \$7,500. for this event.

Chairman Conklin moved to adopt the 2009 budget with the change for the Birmingham Hill trail construction payment schedule from Mrs. Nelling and the request from Chairman Langer for \$7500. for the RPOS budget account 01454000 for the 325th anniversary celebration event. (Approved all in favor.)

OPERATION OF THE SEWER PLANT

The Township is in its last year of the contract with Applied Water Management for the operation of the WWTP. Four proposals were requested, with two complete proposals received and one e-mail expressing interest. The Supervisors met with Tom Czop, Operations Manager with Applied Water Management, Inc., in executive session to discuss clarifications on the proposal as well as to open up negotiations. The Board has asked for some clarification on the numbers in the proposal as well as some possible improvement in the numbers. Since the Agreement for Operations expires on December 31, 2008, the Township has asked Applied Water Management, Inc. to provide an agreement to extend the initial term until such time as the Township has selected a new service provider and entered into an agreement with the service provider. Applied Water Management Inc. will continue to operate in accordance with the provisions of the Agreement which expires on December 31, 2008. Mr. Kirkpatrick said that since the Agreement is open ended that it is incumbent upon the Township to continue to work on negotiations for a new contract. Mr. Kirkpatrick moved to accept the Temporary Operating Agreement submitted by Applied Water Management to continue to operate the Township's sewer plant until such time as a new agreement is entered into by the Township. (Approved all in favor.)

POLICE REPORT

Chief Nelling reported for the month of November 2008. There were 1,362 incidents during the month of which six remain open. There were 10,158 patrol miles logged on the vehicles during the month. Chief Nelling said that the Township is still having problems with thefts from unlocked vehicles. It has never been on a Saturday or Sunday night. There were incidents on Masters Way, Pheasant Run, Penns Way, and Fieldpoint last Thursday night. This is a problem not just in Birmingham Township but throughout Chester and Delaware Counties. The problem has been on-going for the past three months. Even if no valuables are left in the cars the garage door openers are in the car

which enables the garage and or house to be accessed. It was suggested that a blurb be put in the newsletter.

Chief Nelling said that there were three underage drinking parties during the month. Two incidents were in the same house in Radley Run, one week apart, and another occurred on Meetinghouse Road.

AMENDMENT TO CONDITIONAL USE DECISION FOR CJ'S TIRE

On December 1, 2008 the Supervisors approved a Conditional Use Decision for CJ's Tire & Automotive Services to use the property at 1309 Wilmington Pike (Hannum property) for the retail sale of tires and automobile accessories; automobile service and repair; and a second use for storage for an unrelated business (Hannum's). Mrs. Camp advised that there was a mistake in the findings of fact in the Decision which listed the Kirks of Thornbury Township as having party status. The Kirks were not granted party status, which is critical, as only parties of interest can appeal a decision.

Chairman Conklin moved to approve an amendment to the Decision and Order for CJ's Tire & Automotive Services to correctly state that the Kirks' request for party status in the proceeding was denied. (Approved all in favor.)

PUBLIC COMMENT

There was no public comment.

The meeting was adjourned at 8:14 PM. (JLC)

Respectfully submitted,

Quina Nelling
Secretary/Treasurer