

**BIRMINGHAM TOWNSHIP
BOARD OF SUPERVISORS MINUTES
MAY 19, 2008**

ORDINANCE HEARING

A hearing to consider an amendment to Chapter 122, "Zoning", of the Code of the Township, to enact the definition of "retaining wall"; to modify the definition of "structure"; and to provide regulations pertaining to fences and walls in residential districts was called to order at 7:02 PM in the Township Building by Chairman Conklin.

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
Nicholas DiMarino	-	Planning Commission Chairman
Lloyd Roach	-	Emergency Management Coordinator
Kristin Camp	-	Township Solicitor
Quina Nelling	-	Secretary/Treasurer

The hearing was duly advertised in the Daily Local News on May 5, 2008 and May 12, 2008.

At its April 8, 2008 meeting, the Planning Commission unanimously approved the ordinance revision.

In its May 14, 2008 review letter, the Chester County Planning Commission recommended adoption of the ordinance with the suggestion that the Township consider requiring walls and fences to be set back from lot lines a minimal dimension to allow the owner to perform maintenance on the outside of the fence without trespassing. This could also help to ensure that the fence and wall are actually located on the owner's parcel.

Solicitor Camp entered exhibits B-1 through B-6 into the record.

PC Chairman DiMarino explained that the ordinance was the result of two suggestions for ordinance revisions that came together in this proposal. One issue had to do with a fireplace that was constructed into the side yard and its impact on setbacks. Joe Sofranko, Building Code Official, had asked the PC to look at emergency egress which had not been previously been considered by the PC but was added to the ordinance. The other issue was brought to the PC by Joe Sofranko who thought that the four foot height limit for fences to be considered a structure was cumbersome, especially when dealing with swimming pools, as the gate latching mechanisms are often higher than four feet. The PC's discussion on fences was expanded into the good side and the poor side of fences. Retaining walls were also discussed and on advice of the Township Engineer and

the Building Code Official, retaining walls over four feet require need to be reviewed by a consultant to address safety concerns.

Tom Martin, Radley Drive, asked how the proposed ordinance would affect playground structures. Mrs. Camp replied that playground structures over 300 sq. ft. are considered structures. This provision has not changed in this ordinance proposal.

Mr. Bush moved to adopt Ordinance #08-01 to amend Chapter 122 of the Zoning Ordinance to enact the definition of “retaining wall”; to modify the definition of “structure”; and to provide regulations pertaining to fences and walls in residential zoning districts. (Approved all in favor.)

The hearing was adjourned at 7:08 PM. (WJK)

REGULAR MEETING

The regular meeting of the Board of Supervisors was called to order at 7:31 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
Robert Reder	-	Recreation, Park & Open Space Committee Member
Dave Rathbun	-	Roadmaster
Jim Hatfield	-	Township Engineer
Quina Nelling	-	Secretary/Treasurer

Vice-Chairman Kirkpatrick moved to approve the May 5, 2008 minutes as written. (Approved all in favor.)

Chairman Conklin moved to approve the bills submitted for payment. General Fund Bills totaled \$50,271.83. Sewer Fund bills totaled \$11,973.97. State Fund Ck. #131 for \$554.54 was issued to East Bradford Township for maintenance of East Regimental Drive. (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 case is now before the Supreme Court.

Mr. Hatfield said that the two lowest bidders, JFC Contractors, and D. Malloy Paving, Inc., have agreed to extend their bid prices for ninety days from the bid opening, or until July 21, 2008, contingent on the implementation of an escalator clause which only becomes an issue if the price of asphalt increases by 10%

Mr. Rathbun said that the Township needs an action plan for the road program if the Supreme Court does not make a ruling before it recesses for the summer.

Mr. Hatfield discussed several scenarios for the road program.

1. If the Supreme Court reverses the decision of the Commonwealth Court before it recesses in June, the bid is within the ninety day time frame for acceptance, so the Board could award the bid to the lowest bidder. The two contractors agreed to hold their prices for ninety days contingent upon the inclusion of the escalator clause in the contract. This is standard language in the PennDOT specifications and it is part of the General Conditions of the Township contract. The estimate on the escalator, if this contract is awarded in June, is approximately \$10,000.
2. If the Supreme Court does not make a decision by June the ninety day extension will expire and all bids will have to be rejected. Mr. Hatfield would recommend that a reduced scope of work be advertised for bidding. All overlays would be eliminated. Work that should not be deferred another year includes potholes, sinkholes, and critical drainage areas. The estimate for this reduced scope of work is \$21,000. - \$22,000. This dollar amount would be under the \$25,000. requirement to pay prevailing wage rates.
3. If the Supreme Court affirms the Commonwealth Court decision that prevailing wage rates are required, all bids would have to be rejected and the scope of work could be re-advertised using prevailing wage rates.

Chairman Conklin moved to accept the offer from the two low bidders of the road program to extend their bid prices for ninety days from the date of the bid opening and to authorize the Township Engineer to send letters to the two low bidders indicating that the Township will accept the ninety day extension and implement the escalator clause of the contract if the prevailing wage is not affirmed by the Supreme Court. (Approved all in favor.)

175th ANNIVERSARY FOR GOOD WILL FIRE COMPANY NO. 2

On June 7, 2008, the Good Will Fire Company No. 2 is celebrating 175 years of service to the community with a Firefighters Parade that will traverse Historic Downtown West Chester. Chairman Conklin moved to adopt Resolution #080519 to recognize and thank the Company for its years of dedicated service to the residents of the Township on this anniversary occasion. (Approved all in favor.)

ADVERTISE FOR CONDITIONAL USE HEARING FOR CRICKET COMMUNICATIONS, INC.

Cricket Communications, Inc. has filed a conditional use application to install cellular communication antennas on an existing cell tower located on the Stoltzfus property, 1335 Wilmington Pike. Mr. Bush moved to authorize advertising for a conditional use hearing for Cricket Communications to be held on Monday, June 16, 2008 at 6:45 PM, prior to the regular Township meeting. (Approved all in favor.)

ADVERTISE FOR APPOINTMENT OF CERTIFIED PUBLIC ACCOUNTANT TO PERFORM 2008 AUDIT

Mr. Bush moved to authorize advertising to consider a resolution at its July 7, 2008 meeting for the appointment of the certified public accounting firm of Umbreit, Korengel & Associates, P.C. to make an examination of all Township accounts for the fiscal year 2008 for a fee of \$2,800.00. (Approved all in favor.)

PUBLIC COMMENT

Jim Kron, Pheasant Run, and Vice-President of the Dilworthtown Oaks Homeowners' Association, said that the HOA has been in communication with the Carreros who live on Brinton's Bridge Road, but are part of the Association, concerning a commercial business truck being kept at their house, which violates the restrictive covenants of the HOA. Mr. Kron said that the HOA has been trying to get this issue resolved for the past three years. The Carreros first indicated that they would build a separate garage for the truck, which wasn't done, and then that the truck would be moved from their property, except for occasional stops to unload the materials, but the truck continues to be parked in the driveway. In February the truck was moved to the cul-de-sac on Pheasant Run. The police have indicated that parking the truck on the street does not violate any township ordinances. Mr. Kron said that the development was constructed in the mid 1970's. Commercial vehicles have never been allowed on the lots and the Carreros were aware of this when they purchased the property. Their commercial truck was purchased after they purchased the property. The HOA is not overly concerned with this particular vehicle, but it can't be selective on enforcement. The HOA doesn't know how to handle this problem and came to the Township looking for a resolution. A letter had been sent to the Township on March 17, 2008 from Denis Dunn, legal counsel for the HOA, asking the Board to get involved in the issue.

Chairman Conklin said that upon receipt of the letter the Township ordinances were reviewed and the police department was asked to document the number of times the truck was observed being parked on the street.

Vice-Chairman Kirkpatrick asked how the HOA knows that the vehicle is commercial as he understands that the vehicle has no advertising on it. Mr. Kron replied that the vehicle is registered commercial. The Carreros have never disputed the fact that it is commercial. Mr. Kirkpatrick said that his neighbor is an electrician and his neighbor keeps his business vehicle in his driveway next to his house and it doesn't bother Mr. Kirkpatrick at all. In fact there are numerous commercial vehicles parked in driveways throughout the Township. Mr. Kirkpatrick asked how many homes are in the association.

Mr. Kron replied that there are fifty-nine homes in the association. Mr. Kirkpatrick was curious as to how many of the property owners were bothered by the parking of Mr. Carrero's truck. He felt that it was difficult to get excited over the problem. Mr. Kron did not know how many property owners were concerned about this issue. Mr. Kirkpatrick said that a lot of changes are occurring in business because of the condition of the economy and he didn't want to rush into anything and he also didn't want the Township to get in the middle of an HOA issue. However, if there is an ordinance violation, that is a different issue and it would have to be addressed. Mr. Kirkpatrick also commented that he heard from the police department that the truck had been egged and defaced with markers.

Mr. Kron reported that the association is working on enforcing its restrictive covenants and that the association has bent over backwards trying to work with the Carreros for the past three years but there has been no good faith effort on the part of the Carreros to comply with the regulations, but instead they continue to use stalling tactics. He had heard about the egging and the marking of the truck. He did not know who the guilty party was but the HOA has sent out a letter to the community telling the residents to quit defacing the vehicle.

Chairman Conklin said that on a regular basis the Township is asked to get involved with problems where neighbors disagree. The ordinances are not always clear on dealing with these situations, but the Township is often put in the middle of a neighbor dispute. The Township's involvement in one specific issue must be handled in the interest of all the residents. The Township's legal liability must also be considered. Chairman Conklin thought it might be reasonable to invite the Carreros to present their version of the issue.

Mr. Kron said that the HOA will enforce the parking of the vehicle on the property. John Duttonholfer, Pheasant Run, said that the truck was persistently being parked on the cul-de-sac all day Saturday and Sunday and six nights a week. Mr. Bush confirmed that since the vandalism to the truck that for the last two weeks it has been parked back in the driveway of the Carreros.

Chairman Conklin said that the Township has to look at its options.

1. The Township can do nothing.
2. The Township can determine that there has been an ordinance violation and enforce it.
3. The Township can review its ordinances and determine if an ordinance needs to be re-written.

Chairman Conklin said that the issue will need to be reviewed further with the Township's legal counsel. He also felt it would be appropriate to invite the Carreros to attend the next Township meeting on June 2nd to present their side of the issue.

The meeting was adjourned at 8:05 PM. (WJK)

Respectfully submitted,

Quina Nelling
Secretary/Treasurer