

**BIRMINGHAM TOWNSHIP
BOARD OF SUPERVISORS MINUTES
APRIL 5, 2010**

ORDINANCE HEARINGS

A hearing to consider an ordinance to amend Section 122-90.B(10) to provide regulations pertaining to billboard signs in commercial zoning districts and Section 122-102.A(1) to amend the parking regulations for certain uses was called to order at 7:30 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
Thomas Nelling	-	Chief of Police
Rich Jensen	-	Building Inspector & Zoning Officer
Dave Rathbun	-	Roadmaster
Mary Pat McCarthy	-	Planning Commission Member
Jay Monteith	-	Recreation, Park & Open Space Committee Member
Quina Nelling	-	Secretary/Treasurer
Kristin Camp	-	Township Solicitor

Solicitor Camp presented the following exhibits.

- B-1 - Proof of Publication in the Daily Local News on March 8th and March 15, 2010
- B-2 - Correspondence dated February 19, 2010 from Kristin Camp, Esq. to the Chester County Law Library providing proposed amendment for public inspection; acknowledged February 24, 2010.
- B-3 - Correspondence dated February 19, 2010 from Kristin Camp to the Daily Local News providing proposed amendment for public inspection; acknowledged February 23, 2010.
- B-4 Birmingham Township Planning Commission review letter dated March 26, 2010.
- B-5 Chester County Planning Commission review letter dated March 26, 2010.

Comments from the Chester County Planning Commission address the requirements for the submission of a bond to ensure proper maintenance of the billboard which the County found unusual as there are no provisions for release of the bond. The County review noted that the ordinance prohibits the use of digital billboards that allow frequent electronically-changeable messages which have become more prevalent, but have been the subject of concerns regarding potential driver distraction. The billboard signs are permitted by special exception which the County states is a useful means to ensure that potential adverse effects of billboard signs are limited.

Chairman Conklin asked if the Board could waive the bond requirements? Mrs. Camp responded that Section 1.m of the ordinance proposal gives the Zoning Hearing Board the ability to impose the condition on bonding. During the hearing the applicant should explain its maintenance regime to the ZHB. The ZHB could impose a condition that the maintenance regime presented be adhered to rather than requiring that a bond be posted.

Supervisor Kirkpatrick asked whether advertising on a billboard that it could be rented is considered a vacant or abandoned sign by definition, which would have to be taken down after one year, per the ordinance requirements? Solicitor Camp said that she struggled with this issue, but the Township would have the right to have the sign removed. She reminded the Board that the billboard ordinance must meet the minimum net lot area of 8,000 square feet and it must also be the principal use of the lot.

Richard Schwartzman, reporter, asked why the ordinance was being amended and what parts of the ordinance proposal were being amended? Solicitor Camp explained that the billboard ordinance is a new ordinance and Section 1 is an entirely new section. Chairman Conklin added that the billboard ordinance is being proactively addressed as a result of recent court cases from billboard operators. Mrs. Camp said that the parking regulations in Section 122-102.A.(1) are being proposed as a result of Judge Shenkin's order on the Kirk appeal of the CJ Tires Conditional Use Decision. The ordinance is clarifying the parking regulations for various uses.

With no further comment, Chairman Conklin moved to adopt Ordinance #10-01 to amend Section 122-90.B(10) to provide regulations pertaining to billboard signs in commercial zoning districts and Section 122-102.A(1) to amend the parking regulations for certain uses. Mr. Kirkpatrick seconded the motion and it was carried.

The hearing was adjourned at 7:14 PM. (JLC)

A hearing to consider an ordinance to amend Chapter 82, peddling and soliciting, was called to order at 7:15 PM by Chairman Conklin.

Solicitor Camp presented the following exhibits.

- B-1 - Proof of publication in the Daily Local News on March 29, 2010
- B-2 - Correspondence dated February 19, 2010 from Kristin Camp, Esq. to the Chester County Law Library providing the proposed amendment for public inspection; acknowledged February 24, 2010.
- B-3 - Correspondence dated February 19, 2010 from Kristin Camp Esq. to the Daily Local News providing the proposed amendment for public inspection; acknowledged February 23, 2010

Section 82-10.B of the ordinance states that a permit for an off-site sign can be erected for ten consecutive days. At the request of Chief Nelling, the ordinance is being changed to allow the permit for ten days with the ten days to be specified in the permit application. Also, Section 82-13.B is being deleted which required that a \$100. surety

bond be posted.

With no comment, Mr. Kirkpatrick moved to adopt Ordinance #10-02 to amend Chapter 82, Peddling and Soliciting. Chairman Conklin seconded the motion and it was carried.

The hearing was closed at 7:17 PM. (JLC)

Solicitor Camp left at this time.

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. With the exception of the Township Solicitor, those in attendance for the ordinance hearings were also present for the regular meeting.

Mr. Kirkpatrick moved to approve the March 15, 2010 minutes as written. Chairman Conklin seconded the motion and it was carried. Supervisor Bush abstained from voting as he was not in attendance at the meeting.

Mr. Kirkpatrick moved to approve the bills submitted for payment. General Fund bills totaled \$22,163.76. Sewer Fund bills totaled \$10,842.19. Chairman Conklin seconded the motion and it was carried.

CJ TIRES CONDITIONAL USE HEARING AMENDMENT APPLICATION

The Township is in receipt of correspondence dated March 18, 2010 from Patrick M. McKenna with a submission for a conditional use amendment for CJ's Tire to conduct the retail sales of tires and automobile accessories with associated automobile service. The Board's Conditional Use Decision of December 1, 2008 was appealed by Stephanie and Andrew Kirk. The Court of Common Pleas issued an Order granting the appeal, in part, vacating the Decision and Order of the Board, and remanding the matter back to the Board to further consider whether or not the requirement of an overall landscaping plan prepared by a registered landscape architect was waived and whether or not the proposed plan provides a sufficient number of parking spaces. This application is to address Judge Shenkin's Order. Chairman Conklin moved to authorize advertising on a hearing for Monday, May 3, 2010 @ 7 PM. Mr. Kirkpatrick seconded the motion and it was carried. The application will be considered before the Planning Commission on April 13th.

Mr. McKenna also asked that the Board consider waiving the \$2,500. application fee. The Board did not think this would be precedent setting as it was a modification of an existing approval based on the court decision. Mr. Kirkpatrick moved to waive the \$2,500. application fee with the understanding that CJ Tire's would have to pay all the costs incurred for the re-application. Chairman Conklin seconded the motion and it was carried.

ROAD REPORT/ROAD PROGRAM

Mr. Rathbun said that the bids for the 2010 road program would not be opened tonight

due to an error in the bid documents. The bid opening has been pushed back to April 19th. VanDemark & Lynch has notified all parties that received bid packages of the change. Mr. Rathbun reviewed the details of the road program as identified in his first quarter 2010 report.

Mr. Rathbun noted that for the first quarter 2010 there were three resident complaints. Two complaints have been addressed. The third, a sinkhole near an inlet at 1104 Sherbrooke Drive, was filled with dirt but the sinkhole has reappeared. There may be a break in the storm water pipe causing this sinkhole. A major repair at this site may need to be done at a future time.

Discussion ensued on the drainage box installed by PennDOT at the intersection of Rt. 926 and Birmingham Road. Chief Nelling said that it is a six foot deep box with two holes punched in the side, but there is no piping for the water to leave the box. There was also damage done to the traffic signal wires. The Township will keep an eye on this situation to see if this box will solve the standing water problem or if additional involvement from PennDOT is necessary.

HARB REPORT

HARB met on March 16, 2010 to consider an application for a Certificate of Appropriateness from Kevin Koehler, 1025 Little Ridge Drive, for the installation of an in-ground swimming pool. The Plan, dated 1/18/2010, was drawn by Mesko Engineering for Anthony & Sylvan Pools.

Mr. Jensen noted that the lot is at the end of the cul-de-sac and it falls away from the street. There is no screening proposed.

Chairman Conklin moved to approve the Certificate of Appropriateness as recommended by HARB for the swimming pool for the Koehlers, 1025 Little Ridge Drive, with the detailed HARB minutes of the March 16th meeting to be attached as reference for the conditions of approval. Mr. Bush seconded the motion and it was carried.

BRANDYWINE VALLEY SCENIC BYWAY COMMISSION BYLAWS

Mary Pat McCarthy and Jay Monteith represent the Township on the Brandywine Valley Scenic Byways Commission. The Commission has proposed changes to the by-laws which include deleting East Marlborough Township from the group and changing the definition of a quorum to allow the participating townships to choose the representatives. Chairman Conklin moved to approve the bylaw changes for the Brandywine Valley Scenic Byways Commission. Mr. Bush seconded the motion and it was carried.

Chairman Conklin said that he would like the representatives to keep the Board informed as to whether participation in the Commission continues to be worthwhile.

POLICE REPORT

Chief Nelling reported for the month of March. There were 1,200 incidents during the month with the most notable being the assault at Sandy Hollow Park.

Chief Nelling recommended a wage increase to \$17.00/hr. for Patrolman Douglas Ahles who has completed his training and is patrolling on his own. Mr. Bush moved to approve the wage increase for Patrolman Ahles. Mr. Kirkpatrick seconded the motion and it was carried.

SEWER PLANT MANHOLE MAINTENANCE

Sandi Morgan, sewer engineer with URS Corporation, has recommended the rehabilitation of seven manholes. The concrete is deteriorating and will need to be replaced if they are not coated. The vertical footage is approximately 69' with an estimated cost of \$250./vertical foot to apply a fiber reinforced cementitious coating, for a total cost of approximately \$17,250.00. Solicitor Camp has advised that the Township Second Class Code allows for routine maintenance of public works without following the bidding requirements. Mrs. Morgan knows of two contractors that do this type of maintenance. Mr. Kirkpatrick felt it was cost efficient to do the work on all seven manholes. He noted that there are ample funds in the capital reserve to cover this work.

Chairman Conklin questioned whether this should be a capital reserve expenditure? He also asked about the status of the other manholes in the system? Mr. Kirkpatrick noted that these seven manholes have been targeted because they are downstream from the force main and that sewer sits in the force main waiting to be diluted to move it down to the plant.

Chairman Conklin moved to authorize the Township to expend up to \$20,000. on the manhole rehabilitation project with on-going reports to the Board. Mr. Kirkpatrick seconded the motion and it was carried.

PUBLIC COMMENT

Grace Kaminstein, Spring Meadows, requested a copy of the approved March 15, 2010 minutes. She told the Board that two houses in Spring Meadows were built too close to the property line and she wanted assurance that this situation would not happen on the new lot in the Boor Subdivision. Mr. Jensen explained the construction procedure. Mrs. Kaminstein asked about timing on when a new house might be built on the lot? The Board reviewed the timing on the subdivision approval with her.

Chairman Conklin reported that the Board has received a second request from Chadds Ford Township to participate in funding for the Battlefield Park Fund. There was no interest from the Board to participate.

Chairman Conklin reported that the Supervisors authorized the Township Solicitor to do a title search of all the deeds of all the open spaces in the Township and this information

would be shared with the property owners and the homeowners' associations.

The meeting was adjourned at 8:11 PM. (JLC)

Respectfully submitted,

Quina Nelling
Secretary/Treasurer