

**BIRMINGHAM TOWNSHIP
BOARD OF SUPERVISORS MINUTES
APRIL 5, 2021**

The regular meeting of the Board of Supervisors was called to order at 7:35 PM by Chairman Scott Boorse via a recorded virtual meeting through Zoom in order to practice safe distancing during the COVID-19 crisis. Also in attendance at the Township Building with Chairman Boorse were Secretary/Treasurer Quina Nelling and Police Chief Thomas Nelling. Participating in the meeting in virtual mode were Vice-Chairman Michael Shiring; Supervisor J. Daniel Hill; and Township Solicitor Kristin Camp.

Vice-Chairman Shiring moved to approve the March 1, 2021 minutes as written. Supervisor Hill seconded the motion and the minutes were unanimously approved.

Vice-Chairman Shiring moved to approve the bills submitted for payment from March 2 – April 5th. Supervisor Hill seconded the motion and the bills were unanimously approved. General Fund Bills totaled \$85,749.15. Sewer Fund bills totaled \$47,513.18. State Fund Check #192 for \$718.44 was approved for payment to East Bradford Township for the maintenance of .12 mile of East Regimental Drive located in Birmingham Township.

POLICE DEPARTMENT PERSONNEL

Part-time Police Officer Michael B. McCardle was sworn in by Chairman Boorse. Officer McCardle was hired at the March 1st meeting.

Prior to tonight's meeting, the Supervisors interviewed Scott R. Lutte for the position of part-time police officer. Chairman Boorse moved to hire Scott R. Lutte for the position of part-time police officer effective April 5, 2021 at the training rate of \$21.50/hr. Vice-Chairman Shiring seconded the motion which was unanimously approved.

VERIZON CABLE FRANCHISE ORDINANCE HEARING

Dan Cohen, Esq. of the Cohen Law Group, has been working on a cable franchise renewal agreement with Verizon for the Chester County Consortium. Birmingham Township is a participant in the negotiations by Cohen Law Group. An agreement has been reached with Verizon. The ordinance to authorize execution of the cable franchise renewal agreement with Verizon was duly advertised in the Daily Local News on February 18th for consideration at the March 1st. meeting. Probably due to high winds in the area on March 1st, the internet/WIFI kept disconnecting so the hearing was continued until tonight's meeting. The ordinance had been sent to the Chester County Library and the Daily Local News on February 16th for public inspection.

Solicitor Camp highlighted provisions of the agreement.

Chairman Boorse moved to adopt Ordinance 2021-01 authorizing the execution of the cable franchise renewal agreement with Verizon Pennsylvania LLC. Vice-Chairman Shiring seconded the motion which was unanimously approved.

HARB & HISTORICAL COMMISSION (HC) RECOMMENDATIONS

FLEMING/1025 MEETINGHOUSE ROAD/ADDITION

At its meeting on March 16th, HARB recommended that a Certificate of Appropriateness be issued to Stephen and Kelly Fleming, 1025 Meetinghouse Road, to add a two-story addition on the northwest side of the house. Color and materials for the addition include:

- Roofing on addition will match the existing roofing.
- Siding: Benjamin Moore; color will be Grant Beige. The siding will match the existing German shiplap siding.
- Shutters: Benjamin Moore; color will be Cottage Red

At its meeting on March 23rd the HC also reviewed and recommended approval of the application for the modifications to 1025 Meetinghouse Road aka William Dan Tenant House (HR #17).

Vice-Chairman Shiring moved to approve the Certificate of Appropriateness as recommended by HARB and to approve the recommendation by the HC for the addition and modifications to 1025 Meetinghouse Road. Supervisor Hill seconded the motion which was unanimously approved.

HISTORICAL COMMISSION RECOMMENDATIONS

O'DONNELL/1075 CREEK ROAD/STAIRS & AWNING

At its meeting on March 23rd, the HC reviewed and recommended approval of the application from Amy O'Donnell, 1075 Creek Road, for the replacement of the exterior staircase to an outbuilding located on the property of HR #70.

Ms. O'Donnell explained to the Board that the support structure would be wood, the stair treads would be composite wood material and the handrails will be aluminum. Colors will be white and gray.

Chairman Boorse moved to approve the recommendation by the HC for the stair renovations to the outbuilding at 1075 Creek Road. Supervisor Hill seconded the motion which was unanimously approved.

APPOINTMENT OF HC MEMBER

Prior to tonight's meeting the Supervisors interviewed Patricia Kelly of Lambourne Road to fill the vacancy on the HC. Vice-Chairman Shiring moved to appoint Patricia Kelly to the HC for a term ending 2024. Supervisor Hill seconded the motion which was unanimously approved.

HARB

MATERIAL LIST UPDATE RECOMMENDATION

HARB Chairman Scott Garrison said that at its January meeting HARB developed a list of acceptable materials in an: 1) effort to help residents; 2) to provide consistency in the material used; and 3) to not make the list so arbitrary. Currently, HARB makes motions to accept materials not in the guidelines. HARB feels it is more appropriate to recommend approvals for what is listed in the guidelines. The HARB guidelines are an appendix in the Township Code and need to be changed by ordinance.

The recommendations in the January HARB minutes will be inserted into the existing ordinance with the changes highlighted so the Board can see the changes (additions and deletions) being proposed. The proposed ordinance will be presented to the Board at the May 3rd meeting for action.

HARB BOUNDARIES

Chairman Boorse said that recently the HARB boundaries as depicted on the map prepared by the Township Engineer, VanDeMark & Lynch, Inc., have been questioned. Originally the HARB boundaries were established as a certain distance from Birmingham Road or to include a property owner's entire property. The varying distances have been 300'; 500'; 750' and 1,000'. The re-alignment of South New Street Road has affected this distance and changed the HARB boundary for properties in the Knolls of Birmingham development.

HARB Chairman Garrison said that it has always been confusing for HARB whether they should be reviewing applications where a HARB boundary line traverses the property but not necessarily the structure on the property. He would like this resolved so there is no ambiguity in the review requirements.

Solicitor Camp said that the HARB district is authorized by Act 167 through the PA Historical and Museum Commission (PHMC). If the HARB boundary is extended there is a process from the PHMC that must be followed. However, if the HARB boundary is decreased there is no required process from the PHMC. She noted that the Township Engineer had a difficult time deciphering the original mapping and transposing the lines as it was not clearly legible. The issue becomes determining what should and what should not be protected.

HARB Chairman Garrison said that HARB needs to look at the maps and determine what properties should be on or off the list of properties reviewed by HARB and to streamline the process for the residents. The Township Office has lists that can be worked on by HARB.

Vice-Chairman Shiring took the opportunity to thank Mr. Garrison and all the volunteers that put so much tedious time into the work required for the committees to operate efficiently.

ANNOUNCE HARB SECRETARY

The Supervisors approve the rate of the HARB Secretary at the organizational meeting. The position is filled by an outside contractor. Christy Mobile was fulfilling the position and is no longer able due to the obtainment of other employment. Melissa Urbany will take on the responsibilities of HARB Secretary starting with the April meeting.

RECREATION, PARK & OPEN SPACE COMMITTEE (RPOS)

2021 MOWING BIDS

At the March 1st meeting, RPOS had presented bids for mowing and landscape services for Sandy Hollow Heritage Park; Birmingham Hill, Rt. 926 embankment; and the sewer plant. There were items missing or that needed verification so the award of the bid was tabled until tonight's meeting. RPOS submitted four bids for 26 cuts; mowing of the sewer plant until June 30th; and various landscaping services. Bids received were: Majic Landscaping Services -

\$15,535.; J. Downend Landscaping Services - \$19,010.; Andrews Lawn and Landscaping Services - \$22,122. and W.S. Harwood Property Services - \$15,590.

Chairman Boorse moved to accept the low bid from Majic Landscaping Services of \$15,535. for mowing and landscaping services recommended by RPOS. Supervisor Hill seconded the motion which was unanimously approved.

**BRANDYWINE CREEK GREENWAY PROGRAM – BRANDYWINE CONSERVANCY
REQUEST FOR LETTER OF SUPPORT FOR DCNR GRANT**

The Township has received a request from the Brandywine Conservancy for a letter of support for the Brandywine Conservancy's grant application for a Community Recreation and Conservation Program grant from the Pennsylvania Department of Conservation and Natural Resources to continue the Brandywine Creek Greenway Mini-Grant Program into 2022 and 2023. The vision for the Greenway is a forty mile long corridor of interconnected open spaces, parks, water access, and trails from Honey Brook to Wilmington, Delaware.

RPOS Chairman Anne Seimer stated that Birmingham Township has not formally taken advantage of this grant opportunity but it is handy to have it in place if the need arises. The grant opportunity is for \$2,000. - \$10,000. Nothing that RPOS is working on fits into the scope of the grant, but she recommended that the Township continue to support the funding opportunity.

Vice-Chairman Shiring moved to have Chairman Boorse execute a letter of support for the Brandywine Creek Greenway Mini-Grant Program. Supervisor hill seconded the motion which was unanimously approved.

LEGACY LANE/BUILDING RESTRICTIONS/VINCE POMPO

Vince Pompo, Esq., representing Kevin and Julie Gates, 1115 Legacy Lane, submitted a letter to the Township dated February 16th requesting that the Board remove the restriction in Article V, Section 7, "Township Rights" of the Longview at Wylie Farm Declaration, which restricts in-ground swimming pools and associated fencing in the rear yards of Lots 11, 12, 13, 14, 15, 16, 17 and 19 along Legacy Lane, per Note 26 on the Subdivision Plan. The Declaration states that the owners of the restricted lots "shall not place nor locate any above-ground structure of any nature whatsoever on that portion of the rear of their premises that is located north of the building restriction line on their properties". In 2005, the Board considered a similar request to amend these provisions when the Burns, owners of one of the restricted lots, constructed a swing set in their rear yard. The Board at the time did allow an amendment to Article III of the Declaration, but the amendment did not allow the construction of swimming pools and only permitted the construction of swing sets limited to 300 sq. ft. and landscaping walls.

At the March 1st Township meeting, it was decided that Mr. Pompo would draft an amendment to the Wylie Farm Subdivision Plan Note 26 and the Declaration for the subdivision as well as get input from surrounding property owners and then return to tonight's meeting for further consideration.

Mr. Pompo has drafted the requested documents and sent notices of tonight's meeting with explanatory notes to all the residents on Legacy Lane; homeowners on Heartsease Drive whose

properties back up to Legacy Lane; several Wylie Road properties; and to the owner of lot 20 (farm lot) of the development. All 19 homeowners on Legacy Lane have signed a consent form agreeing to the amendment. Affirmation by the Supervisors is all that remains. The change to the documents would permit in-ground swimming pools; infiltration and heating equipment and fences as required by ordinance.

Vice-Chairman Shiring stated that he is a property owner on the north side of Wylie Road across from Legacy Lane so he will abstain from voting on this requested amendment to the Declaration. However, as a resident has no objection to the request as the vegetation has grown up in the development and he did not feel that in-ground pools would change the viewshed.

Supervisor Hill questioned the effect the construction would have on stormwater. He asked if a professional engineer had been retained for stormwater management input. Mr. Pompo responded that a professional engineer had not reviewed stormwater management, which would be addressed in the permitting process of the swimming pools.

Patricia Heldt, Heartsease Drive resident, said that the building restriction should not be a surprise to the homeowners of the affected lots. She opposes the proposed amendment as she feels the swimming pools will affect the viewshed of Wylie Road which should be protected and it is not in keeping with the original intent of the approved plan.

Kevin Gates, 1115 Legacy Lane, said he is trying to sell his house and he can get the house under contract for sale if a swimming pool is permitted and the building restriction can be amended. The Declaration was already amended one time for a massive 15' playground structure and swimming pools would be less obtrusive for the viewshed.

Michele Magness, 1120 Wylie Road, said she resides in the original farmhouse that is lot 20 of the subdivision. She denied receiving written notification of the change to the amendment. She received a phone call from Julie Gates that she thought was a request for support for a variance. She said that the initial building restrictions were put in place for a reason. Without receiving official notification she needs more time to review the proposal.

Mr. Pompo said that lot 20 is not a member of the homeowners' association for Longview at Wylie Farm, including the responsibility of the homeowners' association to consent to the Declaration amendment. She was provided with notice of the meeting, but not all the documents that needed to be executed by the homeowner's association members.

Erin Smolenski, 1105 Legacy Lane, said that some, but not all, of the properties where the building restriction applies are adjacent to the Magness property.

Neil and Kelly Strong, 1111 Legacy Lane, said that their property values are impacted because of the building restriction. They were in favor of removal of the restriction for quality of life, property value; and because it would be good for the neighborhood where he plans to stay long term with his family.

Sean Adam, 1113 Legacy Lane, expressed support for the amendment.

Joseph Marsini, 1101 Legacy Lane, said he is the original owner of Lot 19. Since April of 2004 the land has changed. His house is the first house on the left on Legacy Lane which now cannot be seen from Wylie Road due to evergreen and spruce trees that were planted. He felt that all the properties on the street should have the same rights.

Chairman Boorse said the Supervisors had concerns with pools on some of the properties because of slopes; frontage and setbacks. He asked if all the lots with building restrictions had to be in the amendment or if some could be excluded.

Mr. Pompo responded that unless a pool was inappropriate for a property, the request is for the change to the amendment to be evenly applied.

Chairman Boorse suggested a study on the slopes of the properties with building restrictions might be appropriate to determine if pools are possible on all the affected properties, as they may not be appropriate for the steep sloped properties.

Mr. Pompo said that the permitting process would address the suitability of the lot for a pool.

Chairman Boorse said that the Supervisors need to understand what has been drafted for action by Mr. Pompo and they need to evaluate the pros and cons from the residents as well as provide Mrs. Magness the ability to review the proposal.

Mrs. Magness said that the development was created with the building restrictions on certain lots for a reason. She didn't know why but she felt that the original property owner, Wylie, wouldn't have required this without a reason. She expressed concern for easements that might be needed through her property to access the pool and pool equipment. She encouraged the Board to have an engineering review for stormwater management done now and not with the permitting process. She said that stormwater had already changed negatively on the property with deep flooding issues. She was concerned with chemicals from the pools and pool water being drained onto her working farm land.

Kristin Waterfield, 1117 Legacy Lane, was supportive of the amendment and was uniting with her neighbors for the change. The building restriction was not disclosed to her when she bought the house. She had started the permitting process for a pool and found out about the restriction. She questioned the right of the fence to be installed behind her property on the Magness farm lot.

Chairman Boorse stated that the Supervisors were not ready to move forward with a decision on the request for a Declaration amendment change. He expressed concern in changing the original decision of a prior Board without compelling evidence.

Mr. Pompo was unsure of the reasoning for the building restriction other than a visual impact which wouldn't be an issue today because of the mature landscaping. All 19 members of the homeowners' association for the development have approved a change to the Declaration amendment, now it is up to the Board.

Chairman Boorse said that a decision would be rendered at the May 3rd meeting.

SALE OF SEWER PLANT

Chairman Boorse reported that progress is being made on the sale of the Township's sewer plant.

Mary Pat McCarthy, Adams Way, wanted assurances that the fees for sewer certifications; mortgage refinances and other similar sewer fees would be in line with those charged currently.

Solicitor Camp responded that the Township is selling the sewer plant to Bucks County Water and Sewer Authority. It is a municipal authority so it must comply with the same rules and regulations that have been followed by Birmingham Township. Fees charged will be in line or lower than those being charged by Birmingham Township. Action on the Asset Purchase Agreement is anticipated for the May 3rd meeting. A June 30th settlement date is being planned.

ROAD PROGRAM

SUMNER WAY PIPE REPLACEMENT

Part of the 2021 Road Program included the replacement of the failed corrugated metal pipe on Sumner Way. While replacing the pipe a water main was struck. The water deteriorated the trench walls. The pipe has been replaced and the trench is backfilled with modified stone. Due to this situation the mill and overlay work on Sumner Way will need to be postponed until the 2022 Road Program in order to monitor this pipe and potential settlement issues in case additional repairs in the area of the pipe is necessary.

CREST DRIVE PIPE REPLACEMENT

At the December 7, 2020 meeting, the Crest Drive pipe replacement was approved at an estimated cost from VanDeMark & Lynch, Inc. of \$10,000. In a memorandum dated March 25, 2021, the Township Engineer, Lisa Donlon, said that a cost estimate of \$25,915. has been received from Page Excavating Company. This item was not included in the road program bids for 2021 so it will be filled with stone temporarily until the pipe can be replaced in the 2022 Road Program.

VIDEO INSPECTION

Videoring the storm pipes within the road right-of-ways for Birmingham Hunt and the Knolls of Birmingham has been discussed during the road inspections. In the March 25, 2021 Memorandum from the Township Engineer, Lisa Donlon, she estimates a cost of \$21,000. per subdivision to hydro-jet clean and inspect the pipes.

Chairman Boorse moved to authorize advertising for bids for vide inspections of the storm pipes of both developments with the bid to be phased as Phase I – Knolls of Birmingham; Phase II – Birmingham Hunt; and Phase III – both developments, with the option to award none, one or two. Vice-Chairman Shiring seconded the motion which was unanimously approved.

Nick Ridgley, Crescent Drive, talked about safety concerns with the durability of the pipe casing as well as sink holes that are developing at the pipes. Chairman Boorse explained that the sink holes are being monitored by the police department and when repaired the existing CMP pipe will be excavated between the stormwater inlets and replaced with HDPE pipe. Mr. Ridgley was

reminded that the Township is only responsible for maintaining pipes in the rights-of-way of the roads.

PUBLIC COMMENT

Pat Kelly, Lambourne Road, asked if the meetings were always so long. She was told that the meetings are usually no more than an hour or so.

The meeting was adjourned at 10:01 PM. SCB;MTS

Respectfully submitted,

Quina Nelling
Secretary/Treasurer

Check Register**BIRMINGHAM TOWNSHIP**

04-May-21

From: 02-Mar-21 To: 05-Apr-21

Check No	Check Date	VendorNo	Vendor	Check Amount	Status
Bank Account: 11 TRUMARK GENERAL FUND					
20870	3/8/2021	80	AQUA PENNSYLVANIA	\$2,404.98	O
20871	3/8/2021	79	BRANDYWINE VALLEY SPC	\$46.35	O
20872	3/8/2021	1002121	CLEVENS K-9 SCOOP	\$228.00	O
20873	3/8/2021	1001902	COMCAST CABLE	\$138.39	O
20874	3/8/2021	1002606	CRYSTAL SPRINGS	\$27.49	O
20875	3/8/2021	1002258	EASTERN SALT COMPANY I	\$7,988.13	O
20876	3/8/2021	146	F.O.P. LODGE #37	\$336.00	O
20877	3/8/2021	29	PECO ENERGY	\$1,017.21	O
20878	3/8/2021	30	PECO ENERGY (TRAFFIC LI	\$74.06	O
20879	3/8/2021	811	S & S CLEANING SERVICE	\$388.00	O
20880	3/8/2021	1002710	SRIG LLC	\$234.86	O
20881	3/8/2021	1001833	STAPLES BUSINESS ADVAN	\$124.48	O
20882	3/8/2021	61	VERIZON 753-804-167-0001-	\$368.40	O
20883	3/22/2021	9	BRUCE E MAPES, PHD	\$200.00	O
20884	3/22/2021	66	CCATO	\$250.00	O
20885	3/22/2021	702	GEORGE SPYROPOULOS, D	\$150.00	O
20886	3/22/2021	517	INDEPENDENCE BLUE CRO	\$4,226.56	O
20887	3/22/2021	1002052	JENNIFER A BOORSE	\$400.00	O
20888	3/22/2021	1002573	NMS LABS	\$275.00	O
20889	3/22/2021	205	PARKWAY DRY CLEANERS,	\$217.94	O
20890	3/22/2021	424	UNITED STATES POSTAL S	\$1,000.00	O
20891	3/22/2021	1002154	VERIZON 250-441-074-0001-	\$62.78	O
20892	4/5/2021	1001926	AJ BLOSENSKI, INC.	\$170.80	O
20893	4/5/2021	1002400	AXON ENTERPRISE, INC.	\$1,324.00	O
20894	4/5/2021	1002091	BBD, LLP	\$5,000.00	O
20895	4/5/2021	79	BRANDYWINE VALLEY SPC	\$46.35	O
20896	4/5/2021	366	BUCKLEY,BRION,MCGUIRE	\$5,307.32	O
20897	4/5/2021	873	CARDMEMBER SERVICE	\$277.99	O
20898	4/5/2021	617	CHESTER WATER AUTHORI	\$653.40	O
20899	4/5/2021	1002121	CLEVENS K-9 SCOOP	\$285.00	O
20900	4/5/2021	628	COHEN TELECOMMUNICATI	\$1,283.34	O
20901	4/5/2021	1001902	COMCAST CABLE	\$138.39	O
20902	4/5/2021	4	CONCORDVILLE FIRE & PR	\$37,278.00	O
20903	4/5/2021	775	CONVENIENT CAR CARE C	\$359.40	O
20904	4/5/2021	1002606	CRYSTAL SPRINGS	\$18.66	O
20905	4/5/2021	1002258	EASTERN SALT COMPANY I	\$3,062.06	O
20906	4/5/2021	585	EMERGENCY SYSTEMS SE	\$2,500.98	O
20907	4/5/2021	1002011	FRANCOTYP-POSTALIA INC	\$116.86	O

Check Register**BIRMINGHAM TOWNSHIP**

04-May-21

From: 02-Mar-21 To: 05-Apr-21

Check No	Check Date	VendorNo	Vendor	Check Amount	Status
20908	4/5/2021	114	FRONEFIELD CRAWFORD. J	\$799.50	O
20909	4/5/2021	46	GALLS, LLC	\$138.02	O
20910	4/5/2021	422	HARRY TILLMAN AUTOMOTI	\$593.94	O
20911	4/5/2021	1002712	HEUSER DESIGN	\$630.00	O
20912	4/5/2021	904	MATTHEW BENDER & CO.,I	\$53.44	O
20913	4/5/2021	3	PA TWP HEALTH INS COOP	\$366.30	O
20914	4/5/2021	29	PECO ENERGY	\$554.44	O
20915	4/5/2021	30	PECO ENERGY (TRAFFIC LI	\$13.25	O
20916	4/5/2021	1002204	PENN STATE JUSTICE	\$499.00	O
20917	4/5/2021	171	REILLY & SONS INC.	\$1,292.52	O
20918	4/5/2021	507	ROTHWELL DOCUMENT SO	\$148.53	O
20919	4/5/2021	1002713	SAFE KIDS WORLDWIDE	\$95.00	O
20920	4/5/2021	1001913	VERIZON WIRELESS 722423	\$188.45	O
20921	4/5/2021	832	WEST CHESTER PUBLIC LIB	\$2,104.00	O
20922	4/5/2021	917	WITMER PUBLIC SAFETY G	\$291.58	O
Bank Total:				\$85,749.15	
Bank Account: 81 TRUMARK SEWER FUND					
10204	3/8/2021	1002509	AQUA PA WW	\$1,327.53	O
10205	3/8/2021	80	AQUA PENNSYLVANIA	\$2,301.49	O
10206	3/8/2021	1002290	DELAWARE RIVER BASIN C	\$638.00	O
10207	3/8/2021	585	EMERGENCY SYSTEMS SE	\$4,280.09	O
10208	3/8/2021	29	PECO ENERGY	\$3,657.57	O
10209	3/8/2021	1001834	WM P MCGOVERN INC	\$720.00	O
10210	3/22/2021	1002509	AQUA PA WW	\$2.30	O
10211	3/22/2021	586	VERIZON 450-748-892-0001-	\$62.66	O
10212	3/22/2021	1001834	WM P MCGOVERN INC	\$1,044.00	O
10213	4/5/2021	1002509	AQUA PA WW	\$1,327.53	O
10214	4/5/2021	80	AQUA PENNSYLVANIA	\$210.19	O
10215	4/5/2021	1002659	ARRO CONSULTING, INC	\$3,844.25	O
10216	4/5/2021	366	BUCKLEY,BRION,MCGUIRE	\$3,799.00	O
10217	4/5/2021	780	GUMBALL MEDIA/LAND ART	\$2,300.00	O
10218	4/5/2021	1002691	OBERMAYER	\$8,106.43	O
10219	4/5/2021	29	PECO ENERGY	\$2,725.50	O
10220	4/5/2021	1002493	VERIZON 350-442-985-0001-	\$41.85	O
10221	4/5/2021	1001695	W G MALDEN INC	\$630.00	O
10222	4/5/2021	1002401	WALTON WATER SERVICES	\$7,179.77	O
10223	4/5/2021	574	WASTE MANAGEMENT OF S	\$217.52	O
10224	4/5/2021	1001834	WM P MCGOVERN INC	\$3,097.50	O
Bank Total:				\$47,513.18	
Total Of Checks:				\$133,262.33	