

**BIRMINGHAM TOWNSHIP
BOARD OF SUPERVISORS MINUTES
JUNE 5, 2023**

The regular meeting of the Board of Supervisors was called to order at 7:00 PM in the Township Building by Vice-Chairman Michael Shiring with the pledge of allegiance. A quorum of Supervisors was declared.

Michael Shiring	-	Vice-Chairman
J. Daniel Hill	-	Supervisor

Absent due to illness was Chairman Scott Boorse. Also in attendance was Township Solicitor Kristin Camp, Esq.

Supervisor Hill moved to approve the May 1st minutes as written. Vice-Chairman Shiring seconded the motion and the minutes were approved.

Supervisor Hill moved to approve the bills submitted for payment from May 2nd through June 5th. Vice-Chairman Shiring seconded the motion and the bills were unanimously approved. General Fund bills totaled \$146,705.09. Capital Reserve Fund Ck#102 was approved for an engineering bill for the Township building addition.

BIRMINGHAM HILL SIGN DEDICATION

Vice-Chairman Shiring stated that a new historical sign marker has been installed at Birmingham Hill. A dedication ceremony was held on May 31st. Historical Commission (HC) Vice-Chairman Kelly Fleming was responsible for all the leg work on the sign. Grant monies for the sign were provided from the Pennsylvania Society of Sons of the Revolution and its Color Guard. HC Chairman Mike Forbes presented Kelly Fleming with a recognition placard from the Chester County Preservation Network and from U.S Representative Chrissy Houlahan. HC Vice-Chairman Fleming was applauded for her efforts on the project.

**FRIEDBERG/345 FIRETHORNE DRIVE/ZONING HEARING BOARD (ZHB)
APPLICATION**

The ZHB will be meeting on June 21st to consider an application from Joshua Friedberg, 345 Firethorne Drive, for a variance from Section 122-14.G (accessory buildings and structures) to allow for the installation of a swimming pool and an equipment pad within the side yard setback. Dave Thompson, contractor, and Joshua Friedberg were present.

Mr. Thompson explained that the proposed location for the pool is the most practical because of the topography of the property which has steep slopes. The lot is also very wooded. The goal is to remove as few trees as necessary. Six trees have already been removed. The pool will be located behind the deck and in front of a boulder wall. The existing deck already encroaches into the 15' side yard. The pool and equipment pad will not extend further than the deck. If the pool equipment pad is relocated out of the side yard encroachment, it will require the removal of thirteen ash trees.

Vice-Chairman Shiring moved to remain neutral on the application and to take a non-position and defer to the expertise of the ZHB. Supervisor Hill seconded the motion which was approved.

HARB APPOINTMENT

Dave Shields was appointed as Planning Commission (PC) liaison to HARB by the Supervisors at the February meeting. Mr. Shields is unable to fulfill the requirements of the position and has resigned. Dave Shields assumed the position of Scott Garrison. Mr. Garrison is agreeable to return to HARB as the PC liaison. Vice-Chairman Shiring moved to appoint Scott Garrison to HARB for a term ending in 2027. Supervisor Hill seconded the motion which was approved.

1290 WILMINGTON PIKE PERMIT FEE FOR HEAT PUMP

Brandywine Valley Heating and Air Conditioning did an HVAC job at 1290 Wilmington Pike (Stillman Volvo) in February. The cost of the permit was \$597.50 for a \$39,500. job. According to the fees resolution the minimum fee for commercial projects is \$1,500. The fee was changed by the Supervisors in January. The building inspector missed the fact that this was a commercial project and only charged 1 1/2% of the project cost instead of the \$1,500. While this job was being done it was discovered that another heat pump and handle needed to be replaced on the roof. Cost of the job is \$9,500. The building inspector charged the \$1500. permit fee for this job. Brandywine Valley Heating and Air Conditioning is contesting the fee.

Sect./Treas. Nelling said that the building inspector said that the job will only require one inspection so he is fine with a fee of \$150. Mrs. Nelling added that the Township is not supposed to make money on permits.

Supervisor Hill moved to adjust the permit fee for 1290 Wilmington Pike for the \$9,500. job for the heat pump and handle replacement from \$1,500. to \$150. Vice-Chairman Shiring seconded the motion and it was approved.

COMMERCIAL BUILDING PERMIT FEE

Vice-Chairman Shiring moved to have the Township Solicitor work with the Building Inspector for a suggestion for a commercial building permit fee. Supervisor Hill seconded the motion and it was carried.

CHAPTER 122, ARTICLE VIII-A HISTORIC PRESERVATION ORDINANCE **DISCUSSION**

Vice-Chairman Shiring stated that discussions on Chapter 122, Article VIII-A, Historic Preservation, started at the June 6, 2022 Township meeting. What has occurred since that time is the Supervisors have taken into consideration the CCPC review letter of April 1, 2021 and comments from the Township Historical Commission and provided their input to the Township Solicitor for an updated draft to this ordinance for discussion. The draft has been posted on the Township's web site for several weeks. Some of the input to the draft are policy decisions for the Supervisors. The intent is not to reduce historic preservation in the Township but to streamline the ordinance and make it more user friendly and less burdensome on the residents.

Vice Chairman Shiring said that the HC impact study requirement has been removed from the new ordinance proposal. In the current ordinance the requirement is routinely waived because it doesn't bring value as anticipated. An HC impact study was done by a developer for a 3 lot subdivision because of the distance from an historical resource on Old Wilmington Pike but it wasn't accepted by the HC.

Vice-Chairman Shiring cited his property as an example of an historic resource with a lot of road frontage. The current ordinance requires property notifications to owners within 500' of the property line which would stretch to the end of Wylie Road at Birmingham Road. The Board has looked at how to make it more specific and to reduce the requirement to 200' from the historic structure. Also, the Historic Resource list is vague. It needs to be more specific, such as outbuildings should be identified.

HC Chairman Forbes said that the HC went through the updated ordinance at its May meeting. The HC members agreed on many of the changes but not all. They agreed to drop the 500' notification requirement from a property line to 200' from the historic resource.

HC Chairman Forbes stated that the CCPC said that the minimum building setbacks provide minimal protection for historic resources. The HC suggests that the setbacks be doubled.

Solicitor Camp said that landscaping and screening and building setbacks have been separated into two sections: 122-36.5 for landscaping and screening and 123-36.6 for minimum building setbacks. Under the current ordinance, if a subdivision and land development is within 500' of an historic resource a landscape plan must be prepared.

The current ordinance has the minimum building setback as 200' from a Class I, II or III historic structure for a new building. That has been changed to two times the required setback.

HC Chairman Forbes said the HC would like the 200' reinstated for the minimum setback for any new buildings or structures unless the new building or structure replaces a previous structure that was within 200 feet of the Historic Resource in which case the setback shall be two times the otherwise required setback. Vice-Chairman Shiring noted that it would be a lawful non-conforming structure. Solicitor Camp agreed that it didn't hurt to add the language. HC Chairman Forbes said that the first 200' is a non-issue except in the village of Dilworthtown.

HC Chairman Forbes agreed that it was beholden upon the HC to clean up the Historical Resource Inventory list.

Robert Schwan, Dorset Drive, (also ZHB Chairman), was looking at the overall historic protection of the Township, not the specific historic preservation ordinance. He was concerned about the cookie cutter approach by the Township for handling historic preservation. He wanted assurance that the Township would be protected from developer pressure and higher density housing such as Crebilly Farm in Westtown Township.

Vice-Chairman Shiring explained that the Township's zoning ordinance is set up for minimum lot sizes. Crebilly Farm was zoned for the higher density housing. The challenge is to work

within the existing zoning ordinance. The Township's Comprehensive Plan identifies the long term plans for the Township and it may be a good time to review it.

Sharon Duranza, Penns Way, was also concerned about a Crebilly Farm type application coming into Birmingham Township. She had some concerns with the comments from the CCPC review letter. She was most concerned about losing Township parks.

Paige Worth, Meetinghouse Road, was interested in a list of all preserved properties. Solicitor Camp said that she and the Township have a binder of recorded declarations of all preserved open space areas in the Township.

HC Chairman Forbes asked for more explanation on who will review the landscaping in the new ordinance proposal, the HC or the Supervisors? Solicitor Camp explained that under the Subdivision and Land Development Ordinance (SLDO), the Township can hire a professional consultant for landscape reviews, it is an existing right under the law and doesn't need to be repeated in the historic preservation ordinance.

HC Vice-Chairman Fleming said that the HC doesn't have a process for reviewing landscaping or the exterior of properties.

HC Chairman Forbes said that the proposed historic preservation ordinance is different from the State Commissions and the standard role for the HC has been stripped away to review of demolitions only.

Vice-Chairman Shiring noted that on page 15 of the draft ordinance the HC added item #7 under Section 122-36.7 – Alterations to Historical Resources: "Estimated square footage of any new structure of addition to the Historic Resource: if the planned addition or new structure is greater than 20% of the square footage of the existing Historic Resource or if the plans call for removing exterior sections of the Historic Resource, the Building Inspector will inform the Applicant that their application must be reviewed by the Historical Commission, if the proposed changes do not meet these criteria, the application can proceed directly to the Supervisors".

HC Chairman Forbes wanted to make the ordinance simpler for the owners without completely removing the HC from the review process.

Sect./Treas. Nelling commented that the HC suggestion would be impossible to administer. The Building Inspector does not review if an application is an historic resource. This is done administratively by the Township office staff. It's enough of a job to get the office staff to remember to check to see if a property is on the HC list. The staff does not have the expertise to determine percentage increases in square footage.

HC Vice-Chairman Fleming expressed concern about actions on HC resources by future Supervisors. She also didn't understand how eliminating the HC review would benefit the overall process.

HC Chairman Forbes requested that the Historic Resource Impact Study remain as a requirement for structures within 500' of Battlefield sites.

HC Chairman Forbes said that the HC only needs to review changes to an HC structure, not a repair or replacement in-kind. Vice-Chairman Shiring concurred that if a structure is destroyed or there is an in kind replacement that there is no need for HC and Supervisors' review. Vice-Chairman Shiring asked about solar panels and swimming pools. HC Chairman Forbes felt that only changes to the historical structure needed review by the HC.

Mary DeNadai, Meetinghouse Road, commented that though intended it is not verbalized in the ordinance that viewsheds for historic resources should be considered and the HC should review the impacts on historic viewsheds. She also said that historic impact studies should be required for all subdivision and land development plans.

Vice-Chairman Shiring noted that review of interior renovations of HC properties have been eliminated from the new ordinance.

Kathy Shea, Wylie Road, said that residents want to avoid what happened before on Birmingham Road when a mansion was built; the viewshed was destroyed and no landscaping was required. She also said that the CCPC made a big deal in its review letter about preserving the role of the HC. She said that the ordinance talks about some applications being turned over to the HC for review and some just going to the Supervisors. She had no sympathy for developers having to go through an arduous process. She added that much of the Township is preserved. However, the Township is at a critical junction where two 10 acre historic properties are currently for sale.

Robert Schwan said that Linden Farm on Birmingham Road is on the Historic Resource list. The property is currently up for sale and he wanted to know what the Township is doing to preserve that property. He also wanted to know what was happening to the old Steele Farm on West Street Road.

Vice-Chairman Shiring said that Linden Farm is a private property. Historic preservation attempts on the property were not viable. Solicitor Camp added that the provisions of Article VIII-A still apply to the property.

Steve Lamy, Cedar Mill Lane, concurred with Dr. Schwan and questioned whether it made sense for the Township to buy Linden Farm.

Doug Marshall, Meetinghouse Road, stated that many properties in the Township have been preserved through the Brandywine Conservancy and Natural Lands Trust. He asked what the current Board is doing for historic preservation in the Township.

Vice-Chairman Shiring said that the Township has 4,000 residents. It's not feasible to consider purchasing these properties. Also, the Township isn't set up to maintain properties as there is no recreation and park department. What is needed is a strong historic preservation ordinance on the books.

Catherine Marshall, Meetinghouse Road, said that the HC had turned ordinances over to the Supervisors for review and implementation several years ago. The ordinances needed to be put in place to protect properties. She had previously asked Chairman Boorse why they weren't implemented and he had explained that the Township was involved in some legal issues and it wouldn't be the right time to consider the ordinances. HC Chairman Forbes will e-mail the ordinance proposals to Vice-Chairman Shiring. HC Vice-Chairman Fleming said that the changes to the ordinance initially began with the HC changing the definition of Class I, II and III structures.

Peter Shea, Wylie Road, asked the Supervisors to use Linden Farm as an example and see if the newly proposed ordinance would lessen or strengthen the preservation of the historic resource. He felt that historic resources in the Township were in danger. He felt the Township should be pro-active in preserving historic structures and viewsheds to protect the Township as much as possible.

Discussion ensued around painting properties. Mary DeNadai said that only Cape May and Gettysburg have ordinances to control paint colors. It can't legally be controlled.

HC Vice-Chairman Fleming asked for the next steps in the process. The HC will clean up the historic resource list. Vice-Chairman Shiring envisions another discussion like tonight at a future meeting and then sending the ordinance to the PC and CCPC. He noted that he had responded to Megan McNish from PHMC that the Township wasn't adopting the ordinance tonight and he would be glad to meet with her to discuss the ordinance proposal.

**AUTHORIZE SENDING CODIFICATION UPDATE TO TOWNSHIP PC AND CCPC
AND ADVERTISE FOR ADOPTION**

PC Solicitor Kim Venzie has been diligently working on an updated codification of the Township's Code of Ordinances which includes changes and revisions which were identified as being needed during the codification review process. Many of the changes were updated references to current laws. The Zoning Ordinance and Subdivision and Land Development Ordinance of the Code need to be reviewed by the Township's PC and the CCPC.

Supervisor Hill moved to send the updated codified ordinance to the Township's PC and the CCPC and to advertise for adoption at the July 10th Supervisors' meeting. Vice-Chairman Shiring seconded the motion which was approved.

The meeting was adjourned at 8:35 PM. (JDH;MTS)

Respectfully submitted,

Quina Nelling
Secretary/Treasurer

Check Register**BIRMINGHAM TOWNSHIP**

11-Jul-23

From: 02-May-23 To: 05-Jun-23

Check No	Check Date	VendorNo	Vendor	Check Amount	Status
Bank Account: 11 TRUMARK GENERAL FUND					
22073	5/15/2023	11	21ST CENTURY MEDIA - PHI	\$392.24	O
22074	5/15/2023	366	BUCKLEY,BRION,MCGUIRE	\$1,908.75	O
22075	5/15/2023	617	CHESTER WATER AUTHORI	\$217.80	O
22076	5/15/2023	422	HARRY TILLMAN AUTOMOTI	\$413.00	O
22077	5/15/2023	904	MATTHEW BENDER & CO.,I	\$67.08	O
22078	5/15/2023	1002857	RADIO IP SOFTWARE INC.	\$200.00	O
22079	5/15/2023	171	REILLY & SONS INC.	\$1,064.30	O
22080	5/15/2023	278	UNRUH, TURNER, BURKE &	\$1,762.00	O
22081	5/15/2023	1002214	WE R TECHNOLOGY	\$1,500.00	O
22082	5/15/2023	557	ALL SEASONS LANDSCAPIN	\$993.98	O
22083	5/15/2023	775	CONVENIENT CAR CARE C	\$199.75	O
22084	5/15/2023	1002182	GALE M FITZPATRICK	\$270.00	O
22085	5/15/2023	746	V.E. RALPH & SON,INC.	\$175.00	O
22086	6/5/2023	11	21ST CENTURY MEDIA - PHI	\$262.74	O
22087	6/5/2023	811	AGM LLC	\$388.00	O
22088	6/5/2023	1002659	ARRO CONSULTING, INC	\$18,878.60	O
22089	6/5/2023	1002659	ARRO CONSULTING, INC	\$282.75	O
22090	6/5/2023	1002091	BBD, LLP	\$5,500.00	O
22091	6/5/2023	1002862	BRETT & ALICIA STOUTLAN	\$521.10	O
22092	6/5/2023	366	BUCKLEY,BRION,MCGUIRE	\$774.00	O
22093	6/5/2023	1002782	CELS LANDSCAPE & TREET	\$1,380.00	O
22094	6/5/2023	1002695	CHADDS FORD TOWNSHIP	\$4,143.00	O
22095	6/5/2023	4	CONCORDVILLE FIRE & PR	\$37,278.00	O
22096	6/5/2023	1002606	CRYSTAL SPRINGS	\$55.48	O
22097	6/5/2023	1001970	EAST BRADFORD TOWNSHI	\$4,143.00	O
22098	6/5/2023	232	ELYSE/BERBEN INSIGNIA	\$191.20	O
22099	6/5/2023	1002863	FISHER BROTHERS EXTERI	\$499.60	O
22100	6/5/2023	1001930	FRY COMMUNICATIONS, IN	\$87.00	O
22101	6/5/2023	1002182	GALE M FITZPATRICK	\$185.00	O
22102	6/5/2023	289	GENERAL CODE PUBLISHE	\$5,136.00	O
22103	6/5/2023	782	GOOD FELLOWSHIP CLUB	\$7,352.00	O
22104	6/5/2023	422	HARRY TILLMAN AUTOMOTI	\$247.98	O
22105	6/5/2023	711	JUDY JENSEN	\$1,250.00	O
22106	6/5/2023	1002859	KENNETT TOWNSHIP	\$4,143.00	O
22107	6/5/2023	1001755	MAJIC LANDSCAPES	\$2,870.00	O
22108	6/5/2023	1002053	MICHAEL J HOCHHAUS	\$250.00	O
22109	6/5/2023	1002864	MILESTONE PLANNING AND	\$875.00	O
22110	6/5/2023	3	PA TWP HEALTH INS COOP	\$2,553.54	O

Check Register**BIRMINGHAM TOWNSHIP**

11-Jul-23

From: 02-May-23 To: 05-Jun-23

Check No	Check Date	VendorNo	Vendor	Check Amount	Status
22111	6/5/2023	178	PAGE EXCAVATING COMPA	\$4,505.00	O
22112	6/5/2023	1002860	PENNSBURY TOWNSHIP	\$4,143.00	O
22113	6/5/2023	171	REILLY & SONS INC.	\$983.79	O
22114	6/5/2023	75	RJCRAIG GRAPHICS & DESI	\$144.00	O
22115	6/5/2023	115	THOMAS R. NELLING	\$124.99	O
22116	6/5/2023	1002861	THORNBURY TOWNSHIP	\$4,143.00	O
22117	6/5/2023	1002858	WESTTOWN TOWNSHIP	\$4,143.00	O
22118	6/5/2023	917	WITMER PUBLIC SAFETY G	\$113.79	O
22119	6/5/2023	79	BRANDYWINE VALLEY SPC	\$179.27	O
22120	6/5/2023	1002121	CLEVENS K-9 SCOOP	\$285.00	O
22121	6/5/2023	775	CONVENIENT CAR CARE C	\$299.60	O
22122	6/5/2023	780	LAND ART	\$3,051.00	O
22123	6/5/2023	205	PARKWAY DRY CLEANERS,	\$135.05	O
22124	6/5/2023	542	TRITECH SOFTWARE SYST	\$2,583.82	O

Bank Total: \$133,245.20**Bank Account: 22 GF - Electronic Payments**

100116	5/15/2023	80	AQUA PENNSYLVANIA	\$2,679.67	O
100117	5/15/2023	1001902	COMCAST BUSINESS	\$174.89	O
100118	5/15/2023	29	PECO ENERGY	\$372.39	O
100119	5/15/2023	1002798	TRUMARK FINANCIAL CRED	\$734.00	O
100121	5/15/2023	61	VERIZON 753-804-167-0001-	\$362.29	O
100122	6/5/2023	517	INDEPENDENCE BLUE CRO	\$7,812.56	O
100123	6/5/2023	30	PECO ENERGY (TRAFFIC LI	\$56.39	O
100124	6/5/2023	1001913	VERIZON WIRELESS 722423	\$159.88	O
100125	6/5/2023	1001926	AJ BLOSENSKI, INC.	\$170.80	O
100126	6/5/2023	80	AQUA PENNSYLVANIA	\$76.41	O
100127	6/5/2023	1001902	COMCAST BUSINESS	\$174.89	O
100128	6/5/2023	61	VERIZON 753-804-167-0001-	\$362.96	O
100129	6/5/2023	30	PECO ENERGY (TRAFFIC LI	\$29.14	O
100130	6/5/2023	29	PECO ENERGY	\$293.62	O

Bank Total: \$13,459.89**Bank Account: 30 Capital Reserve Fund**

102	6/5/2023	483	BIRMINGHAM TWP TRUMAR	\$1,577.75	O
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Bank Total: \$1,577.75**Total Of Checks: \$148,282.84**