

EAST BRANDYWINE TOWNSHIP BOARD OF SUPERVISORS
REGULAR SESSION
Wednesday, February 17, 2010

Those in Attendance:

David A. Kirkner, Chairman
Jay G. Fischer, Vice-Chairman
Hudson L. Voltz, Member
Scott T. Piersol, Township Manager
Mark D. Kocsi, Chief of Police
Matthew T. VanLew, Roadmaster
Mary Beth Smedley, Secretary/Treasurer

The East Brandywine Township Board of Supervisors meeting of Wednesday, January 20, 2010 was called to order by Chairman Kirkner at 7:30 P.M. at the East Brandywine Township Municipal Complex. Also in attendance from the East Brandywine Township Police Department were Lt. Ronald Marshman, Sgt. Gene Babetski, Corporal Steven Leifholt, Corporal Glenn Mooney, Corporal Mark Twaddell, Officer James Ferraro, Officer Steven Tyree, Officer Beau Shephard, John Black and Jim Buczala from the Historical Commission and 24 visitors.

Opening of Meeting

Chairman Kirkner opened the meeting with a Salute to the Flag.

Swearing In Ceremony – Gregory H. Dawson

Chairman Kirkner administered the Oath of Office to Gregory H. Dawson as a member of the East Brandywine Fire Company Special Fire Police.

East Brandywine Township Police Department Unit Commendations

Unit Commendation Awarded to Sgt. Gene Babetski, Corporal Mark Twaddell, Officer Steven Tyree and Officer Joseph Glasgow

On August 18, 2008, while responding to a suspicious condition, Corporal Mark Twaddell observed what he believed to be marijuana plants growing in a garden outside a residence. Further inspection by Corporal Twaddell, Sgt. Babetski and Officer Glasgow raised suspicions that illegal drug activity was taking place at the residence.

A search warrant was executed for the residence later that day. Upon execution the Officers discovered a large quantity of marijuana plants growing in and around the house. A marijuana cultivation system was found operating in the basement of the house. Numerous marijuana plants, drug paraphernalia, cultivation supplies and a large amount of cash was taken into custody and processed by evidence technician Officer Steven Tyree.

As a result of this investigation, three persons residing at the residence were arrested and charged with numerous drug violations. The subsequent court case resulted in the suspect's home, cash, and personal property being seized and forfeited to the Chester County District Attorney's office.

The funds generated by the forfeiture are being used to help support the Chester County District Attorney's Drug Task Force.

Sgt. Babetski, Corporal Twaddell, Officer Tyree and Officer Glasgow are to be commended for their keen observations, teamwork and professionalism in the arrest of three drug suspects and the subsequent forfeiture of property and cash to the Chester County District Attorney's Office.

Unit Commendation Awarded to Sgt. Gene Babetski, Corporal Glenn Mooney, Corporal Mark Twaddell and Officer Michael McBride

On April 14, 2009 East Brandywine Police Officers, Sgt. Gene Babetski, Corporal Glenn Mooney, Corporal Mark Twaddell and Officer Michael McBride responded to the 900 block of Creek Road for a vehicular accident involving a car and school bus. The accident resulted in the death of a young woman and her unborn child. The driver suffered numerous injuries, but survived. Officers remained at the scene for hours conducting the preliminary accident investigation, retrieving evidence from the scene and making the proper family notifications.

For months, these Officers worked on the reconstruction and investigation into the facts of what occurred that day. The Officers have had to testify and endure cross-examination and legal challenges to the evidentiary and technical aspects of this case. The successful defense of these challenges is a credit to the Officers and an example of their desire to maintain the highest in professional standards.

Under very difficult circumstances, these Officers have exhibited outstanding teamwork and professional excellence while in the performance of their duties.

Unit Commendation Awarded to Sgt. Gene Babetski, Corporal Steven Leifholt and Officer Steven Tyree

On July 10, 2009 East Brandywine Township Police Corporal Steven Leifholt responded to a residence in the 900 block of Horseshoe Pike for a reported drug overdose. The on-scene Police investigation revealed that the elderly resident at the address had been drugged and \$22,000 in cash had been taken. The cash was to have been in payment for a driveway paving job being done by a company named "Ready Rock Paving".

The subsequent six-month investigation by Sgt. Gene Babetski, assisted by Officer Steve Tyree, revealed that four suspects from the Massachusetts area had been operating a multi-state driveway paving scam for over a year. The suspects traveled state to state targeting elderly victims. The paving work was always substandard or not done at all. The suspects would use deception, drugs and alcohol to steal money and property from the victims before disappearing. The investigation revealed that the suspects always used leased equipment and transient day laborers to conduct their scams. The suspects consistently used different names, false identifications, false driver's licenses and never stayed in an area for more than a few days. All of these factors made this investigation extremely difficult to follow-up on and investigate.

The investigation led Sgt. Babetski to law enforcement agencies in California, Colorado, Massachusetts, Texas and Hawaii, all of whom were searching for the suspects. It was estimated that the suspects had scammed victims out of close to a million dollars. By helping coordinate efforts with other agencies, Sgt. Babetski's persistence paid off when in December of 2009 the first of four suspects was arrested and identified in California. As of this date, all four suspects have been identified, arrested, and are awaiting court dates. Full restitution is expected for the East Brandywine Township resident.

Sgt. Gene Babetski, Corporal Steven Leifholt and Officer Steven Tyree are to be commended for their teamwork, outstanding effort and persistence in investigating, pursuing and arresting the suspects responsible for this crime.

Unit Commendation Awarded to Officer Michael McBride

On August 11, 2009, while on routine patrol in the 400 block of Creek Road, Officer Michael McBride noticed a white colored pickup truck parked in the old water treatment plant at 457 Creek Road. Officer McBride initiated an investigation as to why the truck was there.

As Officer McBride approached the vehicle, he noticed a male subject sitting in the weeds alongside the Brandywine Creek. The male was in visual site of persons walking along the Struble Trail. Upon Officer McBride's approach, the male stood up and turned towards Officer McBride. The subject was exposing himself and was subsequently arrested.

As a result of the arrest, information was made available to surrounding Police agencies as to the identity of the suspect. The information led Uwchlan Township Police to secure a positive identification and file charges of Indecent Exposure and Open Lewdness against the suspect for an incident that occurred in their jurisdiction on May 15, 2009.

Officer McBride's alert patrol activity and his diligent investigation led to the arrest of a sex offender who had committed offenses in both East Brandywine Township and Uwchlan Township.

Valor Commendation Awarded to Corporal Mark Twaddell

On December 23, 2009 Corporal Mark Twaddell responded to 950 Hopewell Road for a reported house fire with an evacuation in progress. Upon arrival, Corporal Twaddell observed fire on the exterior of the residence and noticed a woman screaming for someone to get out of the house.

Corporal Twaddell quickly ascertained that there was a male resident inside attempting to find the family cat. The house was full of smoke and Corporal Twaddell's attempts to verbally order the resident out of the house failed. Corporal Twaddell retrieved a fire extinguisher and entered the house. While moving through the smoke-filled house, Officer Twaddell used the fire extinguisher to knock down some of the flames and locate the resident. Once located, Corporal Twaddell escorted the resident out of the house and to safety. Corporal Twaddell confirmed that no one else was in the house and that all of the occupants were safe.

While in performance of his duties, Corporal Twaddell placed himself as risk of serious bodily injury by entering a house, which was on fire and filled with smoke, Corporal Twaddell located the resident of the house and removed the resident, thereby protecting the resident from serious bodily injury or death.

Corporal Twaddell is to be commended for his quick response, actions taken at the scene, and his bravery for rescuing the resident from harm.

The Board of Supervisors thanked the Officers for their fine work and, along with Chief Kocsi, thanked them for an outstanding job during the recent snow storms.

Public Comment for Non-Agenda Items

Chairman Kirkner asked if there were comments on non-agenda items. There were no comments.

Minutes: Board of Supervisors – January 20, 2010

Chairman Kirkner asked if there were any additions or corrections to the above minutes. There were none. Mr. Voltz made a motion to approve the January 20, 2010 minutes as presented. Vice-Chairman Fischer seconded the motion, with all voting Aye.

Minutes: Board of Supervisors – February 4, 2010

Chairman Kirkner asked if there were any additions or corrections to the above minutes. There were none. Mr. Voltz made a motion to approve the February 4, 2010 minutes as presented. Vice-Chairman Fischer seconded the motion, with all voting Aye.

Minutes: Planning Commission – February 3, 2010

Approval of the minutes was deferred until the March 4, 2010 Board of Supervisors meeting.

Treasurer's Report

Mrs. Smedley read the account balances as of February 17, 2010. Vice-Chairman Fischer made a motion to approve the Treasurer's Report and authorize payment of bills. Mr. Voltz seconded the motion. All voted Aye, with the exception that Chairman Kirkner abstained from voting on check #13163, a reimbursement check.

Report: Township Manager's Report

The public meeting to discuss our Bondsville Mill project, held on Monday evening, January 25th, was very well attended, with approximately 35 attendees. Members of the Bondsville Mill Committee, our Park & Rec Board, and Supervisors Voltz and Kirkner also attended. Consultants from Rettew & Associates did a slide presentation which discussed the ecological issues of the stream and woodlands on the site, and the opportunities these provide for the

future development plans. An overview of the history of the mill operations was presented, along with the status of the remaining buildings. Finally, the overall plans for the site, as discussed by the members of the Bondsville Mill Committee, were presented to the public. There were some very good questions asked by members of the public about the plans, what amenities were being considered, and what activities could occur there.

This public input is part of the process required by the DCNR grant. The presentation concluded with information on what happens after the planning is completed, and how the project could be funded. The attendees were encouraged to advise us if they knew of people who may have worked at the Mill, or if they know of potential grant funding sources. Mr. Piersol was encouraged by the response by others who learned of this public meeting, either by our road-side sign announcing the meeting, or from the Daily Local News article run later that same week. Additional photos and artifacts were identified and will be provided to the Mill Committee, and other former employees of the Collins & Aikman Company who live locally were identified by their relatives. This was a successful event.

Mr. VanLew and Mr. Piersol, along with Engineer Sandra Martin of McCormick Taylor, and representatives of Upper Uwchlan Township, will be meeting with PennDOT representatives on Friday, February 19th, to further discuss the Lyndell Bridge repairs, and their promise of potential funding being made available. This is a follow-up to our initial November 4th meeting. We want to understand exactly what the Department will require from the Townships to make the necessary repairs to one of the wing walls which were not installed in 1970 when this bridge was installed as part of the Marsh Creek State Park project. We want to evaluate whether it will be more cost-effective and less time-consuming to undertake this project on our own, and forego the reimbursement funding, or to seek reimbursement under the Transportation Improvement Program, also known as the "TIP." Once we have a clearer understanding of the scope of planning and construction work PennDOT will require, both municipalities can decide how best to proceed.

Mr. VanLew, Chief Kocsi and Mr. Piersol attended the Route 30 Incident Management Task Force meeting on Friday, February 5th. DVRPC and the County Planning Commission asked for participation of the municipalities along the Route 30 Corridor since PennDOT has been mandated to create plans to handle traffic detoured onto local roadways. These incidents are recurring more frequently, and are due primarily to increasing traffic volumes. Funds for significant capital improvements to the roadway to handle the current and future volumes are unlikely to be available for some time. There is a definite need for additional planning to handle these incidents, in particular the number of volunteer personnel needed for directing significant traffic volumes that are likely across roadways and intersections not equipped to handle the potential number of vehicles directed onto the roads. The plans were done in a vacuum by persons not familiar with these areas, with no input from local municipalities.

Mr. Piersol received word from Manager Ronald Rambo from West Brandywine Township that Governor Rendell signed the order yesterday approving the PA DEP equipment acquisition grant for a tub grinder. This grant application was submitted over 21 months ago. The grant was submitted on behalf of Caln, East Brandywine, West Brandywine and West Bradford Townships, who will be able to share in the use of this equipment. This unit will help process the leaves and wood chips we are collecting at curbside. Each municipality will pay ¼

of 10% of the final invoice cost for the purchase of this equipment, which should be approximately \$2,400.00 if the dealer will continue to hold his initial bid price.

Report: Building Inspector/Zoning Officer – Report for January 2010

Mr. Piersol read the Building Inspector/Zoning Officer's Report for January 2010. In January there were ten permits issued, no zoning permits, six use and occupancy permits issued, and seventy-five inspections conducted during the month. The total fees collected were \$7,968.20.

Minutes: Park and Recreation Board

Next year's "Family Day in the Park" will be held Saturday, May 22, 2010 from 1 P.M. to 5:30 P.M. The Board is scheduling new activities that will include tethered balloon rides, additional crafters and a band.

The Annual Golf Outing is scheduled for Tuesday, October 5, 2010 at the Applecross Golf Club, starting at 11:30 A.M.

East Brandywine Township Police Chief's Report

Chief Kocsi filed a complaint with the Ford Motor Company Fleet division, over a fan motor assembly repair that had been done to all three of the 2007 Ford Crown Victoria vehicles at around 50,000 miles. The repairs done in 2009 totaled \$1,800.00 for the three cars and appears to be the result of defective parts, although there was no recall. Last week Chief Kocsi was notified that Ford will be reimbursing the Township for 50% of the costs.

Chief Kocsi thanked the Officers who worked the past few weeks during the recent snow storms. They left their families at home and reported to work during the worst of conditions. Most of them worked twelve hour shifts and then went home to dig themselves out, or in some cases, into their homes. They are all to be commended for an outstanding job. The Board of Supervisors thanked the officers, as well as Mr. Piersol, Mr. VanLew and the Road Department for great job during the snow storms.

Police Activity Report – January 2010

Incidents Reported	118
Criminal Arrests	2
Summary Arrests	2
Accidents Investigated	12
Traffic Citations Issued	217
Warnings Issued	30
Vacation House Checks	69

Report: Fire Company's Activity Report for January 2010

Mr. Piersol read the Activity Report for the month of January 2010, as submitted by Fire Chief Joseph Edwards. There were fifty-four total incidents. In East Brandywine Township there were eight fire calls and sixteen QRS calls. In West Brandywine Township there were seven fire calls and nineteen QRS calls. The Fire Company provided assistance in Wallace Township, Caln Township and Downingtown Borough.

HeatherWynd East and West –Road Improvement Construction Escrow Agreements

Ross Unruh, Esq., attorney for Gambone Development said that his client wishes to refinance the project. The documents have been reviewed by Mr. Piersol and Township Solicitor, Stacey Fuller, Esq., and are satisfactory. Mr. Voltz made a motion to approve the Road Improvement and Construction Agreements for HeatherWynd East and West and to authorize Mr. Piersol to notify the previous lender of the change in order to release the original financial security. Vice-Chairman Fischer seconded the motion, with all voting Aye.

Pulte Homes – Third Amendment to the Settlement Agreement

The applicant has submitted a Third Amendment to the Settlement Agreement as it relates to the Revised North Tract Subdivision and Land Development Phase II to IV. The Zoning is under the "Clustered Residential Development" regulations of the R-3 Residential Zoning District. The revised North Tract plans propose a revision to the originally submitted Subdivision and Land Development Phases II through IV, due to changing real estate market conditions. The original North Tract plans consisted of 95 single-family detached dwellings, 38 twin dwellings and 399 townhouse dwellings, totaling 532 dwelling units with an overall density of 1.96 dwelling units. The revised plans proposes 306 single family homes, 129 townhouses and no twins, totaling 435 dwelling units with an overall density of 1.61 dwelling units. Sam Carlo from Pulte Homes, Jeremy Madaras from Wilkinson & Associates, Inc., and Lou Colagreco, Esq. attended the meeting on behalf of the applicant.

Several years ago Pulte Homes and the Township reached a court approved settlement agreement for the Applecross North Tract. Since that time there have been several amendments to that agreement and because of current market conditions they would like to amend the agreement once again.

Changes in the plan will result in a net decrease of approximately 100 units on the North Tract. The original road network and the stormwater management system will remain the same. The plan has been reviewed by the Settlement Committee and Pulte integrated their comments into the plan, which includes revising the trail system that will be owned and maintained by the Homeowner's Association.

At the February 3rd Planning Commission meeting they recommended that the Board of Supervisors grant approval of the Settlement Agreement and the North Tract Revisions with the following conditions:

1. Satisfaction of all outstanding items in the February 1, 2010 Yerkes review letter.

2. Approval of all applicable permits from outside agencies including the Chester County Health Department, the Chester County Planning Commission, the Chester County Conservation District, the Pennsylvania Department of Transportation and the Pennsylvania Department of Environmental Protection.
3. Approval of all applicable escrows and financial security.
4. Approval of the landscape and signage plans.
5. The fire lanes are labeled to the satisfaction of the Emergency Management Coordinator.
6. Traffic and sidewalk improvements are coordinated with the Downingtown Area School District and are completed to the satisfaction of the Township and Planning Commission so that the proposed middle school can open in the fall of 2012.

Chairman Kirkner asked who would own and maintain the trail system. The Homeowner's Association will own and maintain it. This is outlined in item #22 in the Agreement.

The Board discussed several minor items in the Agreement, and was generally satisfied with it. Chairman Kirkner asked if there were any comments. There were no comments. Vice-Chairman Fischer made a motion to approve the revised Third Amendment to the Settlement Agreement dated February 16, 2010 and the Settlement Plan dated February 8, 2010 with the conditions outlined above and in the Planning Commission February 3, 2010 minutes. Mr. Voltz seconded the motion, with all voting Aye.

Applecross Temporary Clubhouse

Pulte has submitted plans for a maintenance facility and temporary clubhouse, to be henceforth known as Clubhouse #1 and Clubhouse #2. There was some question as to whether this requires a land development plan. Mr. Colagreco spoke to Township Solicitor Stacey Fuller, Esq., and they agreed that it would be submitted as a land development plan. Signature lines have been added so it can be recorded.

Clubhouse #1 will be used only until Clubhouse #2 is constructed. There should be no additional impervious cover since this building will not co-exist with the permanent structure. Mr. Colagreco said that if Clubhouse #1 isn't torn down it will require an amendment to the Settlement Agreement and submission of another land development plan. This clubhouse will also have a restaurant, bar and pro shop that will eventually move to the permanent structure.

At their February 3rd meeting, the Planning Commission recommended the Board of Supervisors approve this land development plan for Clubhouse #1 with the condition that all outstanding comments in the January 5, 2010 Yerkes review letter are satisfied and that note #3 on the plan is satisfactory to the Board of Supervisors and Township Solicitor. Vice-Chairman Fischer made a motion to approve the land development plan with the above conditions. Mr. Voltz seconded the motion, with all voting Aye.

Applecross Final Plan Approval for Phases II through IV – Record Plans

The Board of Supervisors granted conditional final plan approval for Phases II through IV in August of 2008. Pulte Homes plans to record those plans within the next several weeks. Several lots are scheduled for settlement later in February and the plan needs to be recorded before the

settlements can occur. The plans have been reviewed by Yerkes Associates and are ready to record. Mr. Colagreco asked that the Township provide a letter to the Chester County Recorder of Deeds waiving the 90-day period normally required to record the plan. Vice-Chairman Fischer made a motion to authorize recording the Applecross Phase II through IV plans dated July 15, 2008. Mr. Voltz seconded the motion, with all voting Aye. Mr. Colagreco thanked the Township staff and Solicitor for expediting this process.

The Board meeting adjourned at 8:25 P.M. in order to hold a public hearing on Ordinance 01 of 2010

Public Hearing – Ordinance 01 of 2010 – An Ordinance of East Brandywine Township, Chester County, Pennsylvania, Amending the Historic Resources Map and the Historic Resources Inventory Contained in Appendix 1 of the Township Zoning Ordinance

Chairman Kirkner opened the hearing and entered the following exhibits into the record:

- B-1 A copy of Ordinance 01 of 2010.
- B-2 Copy of the letter dated December 16, 2009 to the Chester County Planning Commission enclosing the Act 247 Notice and the proposed Ordinance.
- B-3 A copy of the Act 247 Notice.
- B-4 Sample letters sent to Class I and Class II property owners.
- B-5 A letter dated January 15, 2010 from the Chester County Planning Commission to Scott T. Piersol, Township Manager.
- B-6 A copy of the letter dated February 1, 2010 by Stacey Fuller, Esq., to the Chester County Law Library providing a full text of the Ordinance for their files.
- B-7 A copy of the newly added Class I and Class II historic Resources.
- B-8 Notice and Proof of Publication from the Daily Local News.

The proposed Ordinance has been available for public review since February 2, 2010.

Letters were sent to each affected property owner and properties were posted. This Ordinance was considered last year, but at that time wasn't adopted because it was determined that several properties may not meet the criteria for inclusion. After the Historical Commission and their consultant, Robert Wise, reviewed the list again, it was resubmitted for consideration. Chairman Kirkner asked if there was any Board discussion. There was none.

Chairman Kirkner asked if there were comments from the audience. Mr. Dan Fallon, a resident of Hopewell Road said that he just read Ordinance 08 of 2007. He asked if the new Ordinance was replacing that Ordinance. Mr. Piersol said that it isn't replacing that Ordinance, but rather is amending the Historic Resource Map. Mr. Fallon then asked if he could opt out by verbally informing the Board. He was told there is a formal procedure and it must be done in writing.

Mr. Fallon went on to say that the letter sent to residents was very positive, but he characterized Ordinance 08 of 2007 as "mostly stick and no carrot". He said that if a property falls into a state of disrepair and the Township determines the property owner must complete repairs, they must do it at their own cost. He said that the Ordinance is punitive and he finds it offensive. Mr. Fallon said that that Township doesn't pay his taxes or mortgage and shouldn't be able to dictate

what he can do with his property. Mr. Voltz said that the Board isn't debating the merits of Ordinance 08 of 2007 this evening; they were simply adding Class I and Class II historic resources to the list.

Mr. Fischer stated that Zoning Ordinances typically tell residents what they can and can't do with their properties. In past years the Ordinance Task Force and Historical Commission determined that there weren't sufficient provisions in the Ordinance to protect historic buildings, so additional sections were added to the Ordinance for demolition of historic resources and demolition by neglect.

Mr. Fallon asked what criterion was used for inclusion in the directory. Mr. Black and Mr. Buczala explained that they toured the Township, along with Robert Wise from Wise Preservation, to determine which buildings are historically significant and should be included. Mr. Fallon asked if anyone entered his property. Mr. Buczala said that photographs were taken from the road, but did not trespass on the property. Buildings that were over 50 years old were considered.

Mr. Christopher Janczak asked which building on his property was included in the inventory. He was told that it is his barn. He then asked about converting the barn. He was told that to convert or alter the barn he would need permits from the Township required for all buildings, not just those deemed historic. If he were to demolish the barn he would have to follow the ordinance for demolition of a historic resource. He was also told that adding the barn to the inventory may provide him with additional options for its use.

Mr. Fallon said that he was still perplexed by the Ordinance. He said that the approach used by the Open Space Committee or the Bondsville Mill Committee were very different. He went on to say that all buildings should be protected and there should be a general ordinance.

Vice-Chairman Fischer suggested Mr. Fallon attend Ordinance Task Force or Historical Commission meetings and provide alternative ordinance language for them to consider. Mr. Black said that Mr. Fallon attended a Historical Commission meeting approximately eight months ago and he suggested the same thing. Mr. Fallon acknowledged that he had attended a Historical Commission meeting, but said that he is a very busy person and he didn't think updating the Ordinance should be up to him.

Chairman Kirkner asked if there were additional comments from the audience. There were no comments.

The Public Hearing was closed at 8:55 P.M.

Ordinance 01 of 2010 – An Ordinance of East Brandywine Township, Chester County, Pennsylvania, Amending the Historic Resources Map and the Historic Resources Inventory Contained in Appendix 1 of the Township Zoning Ordinance

Vice-Chairman Fischer made a motion to adopt Ordinance 01 of 2010. Mr. Voltz seconded the motion, with all voting Aye.

Additional Public Comment

Chairman Kirkner asked if there were additional comments. There were no comments.

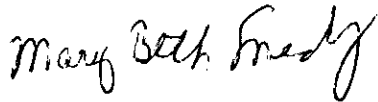
Notice

The East Brandywine Township Board of Supervisors will meet directly following this meeting in Executive Session to discuss personnel issues.

Adjournment

There being no further business, Vice-Chairman Fischer made a motion to adjourn the meeting. Mr. Voltz seconded the motion, with all voting Aye. The meeting was adjourned at 9:00 A.M.

Respectfully submitted,



Mary Beth Smedley
Secretary/Treasurer