

**EAST BRANDYWINE TOWNSHIP BOARD OF SUPERVISORS
REGULAR SESSION
August 17, 2016**

Those in Attendance:

Jay G. Fischer, Chairman
Arnold M. Kring, Vice-Chairman
Kyle P. Scribner, Member
Scott T. Piersol, Township Manager
Luke D. Reven, Assistant Township Manager
Mark Kocsi, Chief of Police
Matthew T. VanLew, Roadmaster
Stacey Fuller, Esq., Township Solicitor
Jan C. Bednarchik, Authority Secretary

The East Brandywine Township Board of Supervisors meeting of Wednesday, August 17, 2016, was called to order by Chairman Fischer at 7:30 PM at the East Brandywine Township Municipal Complex. Approximately 21 visitors were in attendance.

Opening of Meeting

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

Public Comment on Non-Agenda Items

Chairman Fischer asked if there were comments from the public on non-agenda items. There were none.

Minutes: Board of Supervisors – August 2, 2016 – Special Meeting – Hawthorne Drive Roadway Improvements and Stormwater Management

Chairman Fischer asked if there were any additions or corrections to the above minutes. There were none. Vice-Chairman Kring made a motion to approve the August 2, 2016, minutes as presented. Mr. Scribner seconded the motion, with all voting Aye.

Minutes: Board of Supervisors – August 4, 2016

Chairman Fischer asked if there were any additions or corrections to the above minutes. There were none. Vice-Chairman Kring made a motion to approve the August 4, 2016, minutes as presented. Mr. Scribner seconded the motion, with all voting Aye.

Minutes: Planning Commission – August 3, 2016

Chairman Fischer noted that the Planning Commission minutes of August 3, 2016, were not yet available for approval.

Treasurer's Report

Mrs. Bednarchik read the account balances as of August 17, 2016. After reviewing the financial reports, Vice-Chairman Kring made a motion to approve the Treasurer's Report and authorize payment of the bills. Mr. Scribner seconded the motion, with all voting Aye.

Township Manager's Report

Mr. Piersol reported that The Wall That Heals event, a two-year joint effort between Hopewell United Methodist Church and the Township, was a huge success. This event would not have been possible without the combined efforts of the Park & Recreation Board members, Township Staff, Church members, and the numerous volunteers who staffed the Visitors Center and The Wall on a round-the-clock basis from Wednesday evening, July 27, through Sunday evening. The Wall came to our community with a great presence, surrounded by motorcycles and police escort, and honored by those along the route waving their American flags. It was an awesome sight as the motorcade approached the Park. Special thanks was given to the Fire Company for displaying the American flag from Ladder 49 over Dilworth Road for the arrival of The Wall, and during the Opening Ceremony. It was estimated that well over one thousand people visited The Wall during its five-day stay. Bill Kearsing and Patrick O'Neill, the site managers during The Wall's visit, were remarkable resources of information about the Vietnam era, the Vietnam Veteran's Memorial in Washington, D.C., and the background of The Wall That Heals. A slide show of event photos may be created in the near future. The Community Park became a sacred space for a week, and the community treated that space with reverence and grace, giving the names on The Wall the respect they so deserved.

Community Day is scheduled for Saturday, August 20, beginning with the Run for the Parks starting at 9 AM. Registration begins at 8 AM. After the Run, the Day's events begin at 11 AM until 3 PM with the always popular car show, numerous vendors and booths, and other attractions of interest to young and old. The Day will be topped off with a spectacular fireworks celebration provided by the East Brandywine Fire Company, sponsored by several local businesses and residents. Gates open at 7 PM. Residents were encouraged to plan for a full day of activities in the Community Park.

The Osborne Road Bridge project in Caln Township is nearly complete. Paving the bridge and roadway approaches are the last remaining work elements to be completed. The contractor has indicated the paving should be completed during the week of August 15th or August 22nd. The bridge is currently expected to re-open to traffic by August 31. An announcement of the bridge opening will be posted on the Township web site.

Mr. Piersol also reported that he received word today that FEMA is processing the Township's disaster reimbursement request for Snowstorm Jonas on January 22nd and 23rd. The FEMA administrator has requested revisions to documentation, assigning personnel to specific vehicles, and other documentation which was provided but apparently had been misplaced. This information must be provided prior to FEMA's final review. The Township can also submit a request for reimbursement for administrative costs incurred in processing the reimbursement application, which will be provided. The final reimbursement amount should be over \$18,000.

The Ordinance Task Force has requested the Township submit a grant application to the Chester County Planning Commission's Vision Partnership Program. This grant will help fund updates to the Subdivision and Land Development Chapter, associated revisions to the Zoning Chapter, and to the Definitions Chapter. Applications are due to the County Planning Commission no later than 4:00 PM on Wednesday, August 31. Mr. Piersol respectfully requested the Board's approval to submit a grant application in the amount of \$20,000, agree to the required matching funds of \$11,889, and authorize Chairman Fischer to sign the grant application and cover letter. Vice-Chairman Kring made a motion to authorize the Chairman to sign the Vision Partnership Program Grant Application for submission to the Chester County Planning Commission and to agree to the matching fund requirement. Mr. Fischer seconded the motion, with all voting Aye.

Assistant Township Manager's Report

Mr. Reven reported that the Township was not awarded a PECO Green Region Open Space Program Grant due to a very competitive pool of applications. If awarded, the grant would have defrayed the cost of the fee simple acquisition of a small parcel for the purpose of developing a trail segment between the existing trail networks of the Community Park and the Hopewell Development. This trail segment was anticipated in the 2009 Comprehensive Plan, 2011 Official Map, and the 2015 East-West Bicycle and Pedestrian Facilities Plan.

This past spring, West Brandywine Township, Uwchlan Township, and East Brandywine Township (as lead municipality) were awarded a grant in the amount of \$35,000 from the Chester County Planning Commission's Vision Partnership Program to conduct a study of a proposed trail that will provide safe pedestrian and bicycle connections between Hibernia County Park located in West Brandywine Township and Chester County's Struble Trail located in Uwchlan Township. Per the requirements of the grant, a Study Advisory Committee composed of representatives from the Townships has been formed. The Study Advisory Committee has further approved a Request for Proposals (RFP) seeking a qualified consulting firm. The RFP will be distributed to area firms and hosted on the Township's website from Monday, August 22, to Friday, September 16, with proposals due by noon on Friday, September 16. The Study Advisory Committee will meet on September 21st to select a number of firms to interview.

At the July 12th Trails Committee Meeting, special consulting engineer McMahon Transportation Engineers and Planners presented a Conceptual Design for a trail connecting the Hopewell and HeatherWynd West developments via a parcel known as "Open Space D" in the Hopewell Development. This meeting was the beginning of an open comment period on the Conceptual

Design originally envisioned to last until August 9. The Trails Committee has extended the open comment period until September 25th and has plans to actively solicit more feedback from the community, including hosting a special information booth in the neighborhood near the proposed trailhead at 4:00 PM on September 18. All interested parties may review the Conceptual Design and leave comments online via the Township's website.

Grant funding has been identified through a program offered by the Association for Pennsylvania Municipal Management (APMM) that, if awarded, would reimburse 50% of the compensation for a management intern. A number of projects are anticipated in fiscal year 2017 that would provide an intern with responsible work such as the conversion of the land development archives into a searchable electronic database and developing workflows for common requests using Laserfiche software. The fiscal impact of an intern in 2017 would be \$2,500, and a line item for this purpose would appear on the budget presented to the Board in November. Vice-Chairman Kring made a motion to authorize the submission of an application for the APMM Charlie Sterner Internship Program. Mr. Scribner seconded the motion, with all voting Aye.

Report: Building Inspector/Zoning Officer – Report for July 2016

Mr. Piersol read the Building Inspector/Zoning Officer's Report for the month of July as submitted by Mrs. Norann King. There were 17 building permits issued, 10 zoning permits issued, 10 use and occupancy permits issued, and 80 inspections conducted during the month. The total fees collected were \$7,670.

Trails Committee

Vice Chairman Kring made a motion to appoint Charles Lindsey to the Township Trails Advisory Group. Mr. Scribner seconded the motion, with all voting Aye.

East Brandywine Township Police Chief's Report for July 2016

Monthly Statistics

Incidents Reported	2067
Criminal Arrests	2
Summary Arrests	6
Juvenile Petitions	0
Accidents Investigated	3
Traffic Citations Issued	147
Warnings Issued	23
Vacation House Checks	81
Patrol Miles Logged	10,028

Officer Harnish completed the Level 1 On Scene Vehicle Collision Investigation course.

Chief Kocsi reported that the Department recently conducted the first series of aggressive driving enforcement details during July and August as part of the Aggressive Driving Grant awarded by PennDOT earlier this year. A total of 38 citations were issued for speeding as well as incidents of texting while driving, following too closely, disobeying traffic signals, etc. The next detail will be scheduled during November and December.

Fire Company's Activity Report for January 2016

The following is a summary of the July 2016 Fire Company Report as presented by Fire Chief John Edwards. There were 25 fire incidents and 32 medical incidents in total for the month. In East Brandywine Township, there were 7 fire incidents and 21 EMS incidents. In West Brandywine Township, there were 3 fire incidents and 8 EMS incidents. In Upper Uwchlan Township, there was 1 fire incident and 2 EMS incidents. During the month, the Fire Company also provided assistance in Caln, Wallace, Valley and Honey Brook Townships, as well as the Borough of Downingtown and the City of Coatesville. Chief Edwards commended the first responders for their quick and efficient response to a fire call that resulted in the evacuation of an entire floor at Freedom Village, the assisted living facility in West Brandywine Township. The incident had a potential for great tragedy, but there were no injuries and property damage was contained at \$5,000.

Chief Edwards also encouraged the community to support the Fire Company by attending the fireworks display at Community Day on Saturday. The gate opens at 7:00 PM with a beach party theme and musical entertainment.

Swing Zoning Hearing

Kaitlin Miceli, attorney for Josiah and Kim Swing, attended the meeting along with Dan Daily, the applicant's engineer, to request the Board's support of the Swing's request for a variance from the 50 foot side yard setback requirements per Section 399-22.A(4) in order to construct a single family detached dwelling with private water and sewage disposal. Ms. Miceli explained that, due to the narrow lot width of 106 feet, one side yard setback is proposed at 20 feet on the east side and 43.77 feet on the west side. The Swings have spoken with the two adjoining neighbors and have not received any opposition. The application will be considered at the next Zoning Hearing Board meeting on September 6. Vice Chairman Kring recommended that the issue of the neighbor's shed, which is situated partially on the applicant's property, be resolved at the same time to avoid any problems in the future. Ms. Miceli replied that discussions are underway with the adjoining property owner about recording an easement agreement to allow the shed to remain in its current location. Vice Chairman Kring made a motion to support the application of Josiah and Kim Swing for a variance from the 50 foot side yard setback requirement. Mr. Scribner seconded the motion, with all voting Aye. Chairman Fischer noted that the Board's support does not guarantee approval by the Zoning Hearing Board.

Hawthorne Drive Improvements

Chairman Fischer stated that a Special Meeting was held on Tuesday, August 2, to discuss the alternatives for road improvements and stormwater management along Hawthorne Drive. He asked whether there were any comments from the public on this issue before the Board takes action on the alternatives presented by April Barkasi of Cedarville Engineering. Mr. Brian McCarry, 10 Highland Court, said he hoped that some corrective action would be taken to finally resolve the stormwater runoff issues that have been occurring in the Hedgerow community for years. Mr. Upendra Tyagi, 112 Chapel Court, suggested the Board consider mitigation through a combination of Alternatives #1 and #2 and to phase the project to control costs. Chairman Fischer indicated that the decision tonight will be to determine the best direction to move forward with, rather than the actual work, which will be budgeted and phased over a period of time. Chairman Fischer made a motion to pursue Alternative #2 as the best option, which would involve small to medium scale green infrastructure solutions, minimize impact to street trees, private property and existing landscaping, and reduce pollutant loading to the Culbertson Run. Mr. Kring seconded the motion, with all voting Aye.

Brandywine Village Associates and L&R Partnership

Brandywine Village Associates and L&R Partnership submitted a formal request for public hearings to be held on the current final plan submission for the Carlino East Brandywine LP land development plan. Chairman Fischer asked their counsel, Eugene Orlando, Esquire, to indicate what additional evidence and documentation he intends to submit that is new and different from what was presented in the last series of public hearings. Mr. Orlando indicated that professional engineers and traffic consultants have been engaged to review the current plan submission, and that it is his intention to present their testimony once those reports are completed and available. Mr. Orlando added that there may be other issues to address at the hearings, such as issues that remain from the preliminary plan. Chairman Fischer replied that the request for a decision on whether to have additional hearings seemed premature at this time. Mr. Orlando disagreed and proceeded to say that neither he, nor his co-counsel Paul Prince, nor their clients had received written notice of the filing of the plan as required by Section 399-48.E of the Zoning Ordinance. Further, Mr. Orlando said his first notice of the final plan submission was in an email from Scott Piersol on July 8th, and that, as a result of not receiving notice of the final plan submission, he sent the request suggesting that the public hearing process be the process through which the plan should be reviewed. In response to Ms. Fuller's inquiry, Marc Kaplin indicated that as soon as this issue was raised, he had his paralegal confirm that notices were, in fact, sent to the adjoining property owners as required by the Ordinance. Mr. Kaplin also said that, regardless of whether the notice was sent or not, Mr. Orlando and his client knew of the application for final plan approval.

Chairman Fischer said his inclination was that the Board would consider holding a hearing to afford the opportunity to provide testimony and documentation, if there are new issues to present, but not to hear the same testimony and review the same reports from the previous public hearings. Vice Chairman Kring and Mr. Scribner agreed. Mr. Scribner offered to meet with the parties, if the Board so approved, to try to resolve the outstanding issues without the need for

further hearings and court rulings. Mr. Orlando said that he and his client have never been opposed to such a meeting so long as there is real dialog and substantive settlement discussions. Mr. Scribner then asked Mr. Orlando to prepare a list of his client's main issues and submit them to the Board.

In response, Mr. Kaplin summarized the Carlino/Giant planning process and stated that the final plan is basically the same plan that was approved by the Board of Supervisors in 2011. In 2011, Mr. Orlando and Mr. Prince appealed the Board's approval to the Court based on twelve issues, and the Court decided that the only relevant issue was that the Township did not have ownership of the connector road. The 2015 plan was filed after the Township condemned the land for the connector road, and the Township Engineer reviewed it and recommended it be approved. Upon further appeal, the Court ruled that the plan be sent back to the Board of Supervisors for hearings. Numerous public hearings were held at which time three reports were presented by a civil engineer, wetlands expert, and a traffic engineer on behalf of Mr. Orlando's client, and five or six additional minor technical items were noted that had not been previously identified. Upon review of these reports, Mr. Kaplin asked the Board to approve the preliminary plan conditioned upon his client correcting those five or six items in the final plan submission; however, the Board elected not to approve the plan. Carlino/Giant initially appealed that decision, but then revised the plans to correct those items and filed the 2016 final plan. The final plan was reviewed by Chuck Dobson of InLand Design without objection and by Andy Heinrich, the Township's Traffic Engineer. Mr. Heinrich expressed concern about the detour plan that was proposed to go into effect during construction, and asked for the new road to be built and the new traffic light to be installed before the existing road is closed. The plans will be revised to address the traffic detour plan as well as some other minor calculation in the new traffic study at Mr. Heinrich's request. Mr. Orlando has filed an appeal, which will be argued before Judge Nagle in October. In closing, Mr. Kaplin said that, after months of negotiation, there was an agreement between his client and Mr. Orlando's client to have negotiations off site, but this attempt at a settlement has failed, and, further, that he cannot imagine there are any items that Mr. Scribner could mediate that would bring about a resolution. Unless there truly are new issues caused by the minor changes from the approved preliminary plan to the final plan, Mr. Kaplin urged the Board to allow his client to proceed with their project.

In his response, Mr. Orlando cited some misstatements made by Mr. Kaplin, and clarified that he was not involved in the 2011 appeal and that zoning violations are not considered to be minor issues. He encouraged the Board to schedule public hearings to consider the anticipated reviews on the final plan from his client's engineering and traffic consultants. Lastly, Mr. Orlando stated that he wants to get a final resolution from the Court because there are zoning violations that are being overlooked.

Mr. Scribner queried Mr. Orlando's last remark about an appeal after initially expressing his willingness to participate in settlement discussions. He reiterated the Board's earlier position that it was not interested in scheduling a hearing to rehash the same testimony and reports from the first hearings. Chairman Fischer suggested the Board defer a decision on the request for a

public hearing and directed Mr. Orlando to submit an offer of proof of what he would intend to introduce at a hearing that is a new issue and not redundant to Mr. Piersol and Ms. Fuller by Friday, September 16. If there is a new hearing, the record from the hearings on the preliminary plan will be incorporated. A hearing will not be scheduled if there are no new issues to consider. Vice Chairman Kring and Mr. Scribner agreed.

Public Comment

Ted DelGaizo, 318 S. Caldwell Circle, spoke about the need for a grocery store in Guthriesville, and noted that the sign announcing that Giant would be coming soon was already erected when he moved to Applecross in 2009. Mr. DelGaizo expressed his frustration at the repeated delays and urged the Board to do whatever it can do to move the project along. He also expressed his appreciation to Mr. Piersol and the Board for their efforts in bringing The Wall That Heals to the community.

Adjournment

Mr. Fischer announced that the Board will meet in Executive Session immediately following the meeting to discuss legal matters. There being no further business, Vice Chairman Kring moved to adjourn the meeting at 8:30 PM. Chairman Fischer seconded the motion, with all voting Aye.

Respectfully submitted,



Jan C. Bednarchik for
Mary Beth Smedley, Secretary/Treasurer