

Easttown Township

BOARD OF SUPERVISORS

Regular Meeting Minutes

February 16, 2021

The Regular Meeting took place via an Authorized Telecommunication Device (GoToWebinar). Supervisors present included Marc Heppe (Chair), Betsy Fadem (Vice Chair), Michael Wacey, Beth D'Antonio and Jim Oram. Also attending were Eugene Briggs (Interim Township Manager and Zoning Officer), Dave Obzud (Chief of Police), Don Curley (Director of Public Works), Bill DeFeo (Finance Director), Sharon Norris (Administrative Assistant to the Township Manager), Brady Flaherty (Township Engineer), and Andrew Rau (Township Solicitor).

1. **Call to Order** – Chairman Heppe called the meeting to order at 7:00 PM. He announced that this meeting is being recorded and made brief remarks regarding meeting protocol.

Mr. Heppe announced that the Board met in Executive Session on February 8, 2021 to discuss personnel issues and again on February 15, 2021 to discuss legal and personnel issues.

2. **Pledge of Allegiance** – Township resident Stacey Ballard led the Pledge of Allegiance.

3. **Board Motions, Presentations and Resolutions:**

- A. **Consideration to Accept the Disability-Related Resignation of Daniel Fox, as Easttown Township Manager** – Mr. Heppe called for a motion. Mrs. Fadem made a motion to accept the disability-related resignation of Dan Fox as Easttown Township Manager. Mr. Oram seconded the motion. Mr. Heppe recognized Mr. Fox's achievements over his tenure as Township Manager. Mr. Heppe called for public comment. Mr. Fox expressed his thanks to the Township. Mr. Heppe called for the vote. The motion passed 5-0.

- B. **Consideration to Change the Employment Status and Position of Eugene Briggs from Interim Township Manager, to Township Manager; and to Remove the Interim Designations for Mr. Brigg's roles as Secretary, Treasurer, and Open Records Officer** – Mr. Heppe called for a motion. Mr. Oram made the motion to change the employment status and position of Eugene Briggs from Interim Township Manager to Township Manager and to remove the interim designations for Mr. Briggs' roles as Secretary, Treasurer and Open Records Officer. Mrs. Fadem seconded the motion. The Board expressed their appreciation to Mr. Briggs for stepping into these interim roles and assuming these extra responsibilities without hesitation. Mr. Wacey expressed his appreciation but

recommended that the Board do an official candidate search. Mr. Heppe called for public comment. Buck Buchanan, 683 Weatherby Lane, thanked Mr. Fox and shared positive comments about Mr. Briggs' appointment. Michael DeFlavia, 125 Bartholomew Road, expressed congratulations to Mr. Briggs. Stacey Ballard, 72 Main Avenue, commented positively on Mr. Briggs' promotion. Joe Kohn, 240 Sugartown Road, commented that he supported a Township Manager employment search. Mr. Heppe called for the vote. The motion passed 4-1 with Mr. Wacey voting nay. Mr. Briggs expressed his thanks to the Board and the residents.

C. Consideration of SD 531 – 578 Lancaster, 4 Midland, and 5 Woodside Avenues (Berwyn Square) Preliminary Subdivision and Land Development Plan – Mr. Heppe announced that the Board would not make a motion until after all public comment has been heard. Brady Flaherty, Township Engineer, summarized the plan which proposes to merge three (3) parcels into one to build one multifamily building with 116 units in the Village Business (VB) District. George Broseman, counsel for the applicant, Mr. Todd Pohlig, township resident and equitable owner of this project and Rob Lambert, the applicant's engineer, were on hand to present the plan. The applicant went before the Planning Commission at their February 02, 2021 meeting. At that meeting, the Planning Commission made no recommendation on the plan as it was submitted after the PC's deadline for acceptance of materials; therefore, the new and/or revised information had not been reviewed by the Township consultants as is the standard practice. Mr. Pohlig gave an overview of the plan, highlighting increased tax revenue to the Township, school enrollment, the benzene remediation process, pedestrian safety, traffic impacts, and in-building parking with more spots than the zoning requires. To comply with the PC's request, they created two artistic renderings of the site which they shared with the Board and Audience, noting they were not required to do so per the Zoning. Mr. Pohlig emphasized pedestrian connectivity, the visual appeal of this project with an extensive landscape design plan and would be willing to adjust items when it comes to the final plan stage. At the January 05, 2021 Planning Commission meeting, the Plan did not get approved as the PC voted 2-2 with one member recusing themselves. The applicant provided an extension of time through February 19 which means at this meeting, the Board would have to make a decision to approve or deny the plan. The Board had an extensive conversation which included a variety of concerns such as the environmental cleanup, recreation space, retail/commercial space, unit density, character, green space and the scale of the building. Additionally, it was noted that the Planning Commission hadn't made a recommendation on this plan. The Supervisors acknowledged they all would like development on that corner and recognize that the Easttown businesses and community would benefit from redevelopment. Mr. Heppe called for public comment and the following people commented on the project: Michael Cappelletti, 606 Midland Circle; John Maseo, 127 Bartholomew Road; Joe Kohn, 240 Sugartown Road; Francine Danenhower, 552 Woodside Avenue; Dave Brown, 658 Augusta Court; Michael DeFlavia; Stacey Ballard; Leslie Kupstas, 217 Church Road; John McDonald, 511 Old Lancaster Road; John Murphy 1132 South Leopard Road; Joseph Quici, 600 and 604 Lancaster Avenue; Meg Robertson, 303 Dundee Place; Paul Riley, 835 Maple Avenue; Scott Carpenter, 539 Woodside Avenue; Avis Yuni, 231 Waterloo Avenue; Buck Buchanan; John Leone, 17 Woodside Avenue; and Michael

DeFlavia. Cheryl Harper, 214 Pheasant Run Drive, representing the Historical Commission (HC), commented on the project and noted that the HC is working to address architectural design issues.

Mr. Heppe asked Mr. Rau what the Board's next steps are. Mr. Rau noted if there is a denial, there must be reasons related to the Ordinance as to why the plan is being denied. Mr. Heppe called for a motion. Mr. Wacey made a motion to deny SD-531, the Application of Berwyn Owner, LLC for Preliminary Land Development and Lot Consolidation Plan at 578 Lancaster Avenue; 4 Midland Avenue; and 5 Woodside Avenue, for failure to address and comply with the Easttown Township Ordinance requirements, and for failure by the Applicant to address and comply with Township Ordinance review standards as outlined by Solicitor Rau and listed below. The motion was seconded by Mrs. D'Antonio.

1. The Applicant fails to comply with the following Easttown Township Ordinance sections, explained herein:
 - a. **§400-58 and Subsection §400-58.C. (Easttown Township Subdivision and Land Development Ordinance)** – The Applicant proposes a density of units (116), which then calls into play a “Minimum Playground and Neighborhood Park Acreage” of 3.0 acres under §400-58 and more specifically §400-58.C., unless the Board of Supervisors selects a fee-in-lieu of open space and recreational facilities and equipment. The Applicant's site contains only 1.7 +/- acres of land. Mr. Broseman's letter of January 18, 2021 asserts that the Board of Supervisors must accept a fee-in-lieu-of the minimum open space acreage, or face a claim of unconstitutional taking of property, and/or a violation of equal protection under the law.

The Board finds the Applicant's argument unpersuasive. The recent Fritztown development, cited by Mr. Broseman in his January 18th letter as an example of a fee-in-lieu being accepted, is a completely different plan: Fritztown has 49 less units than that proposed by the current Applicant, and Fritztown also adjoins a SEPTA station on the same side of Lancaster Avenue.

MPC Section 503(11) as cited by Mr. Broseman provides municipalities with guidance as to what may be contained within a local ordinance. It does not require a fee-in-lieu to be accepted in all cases; nor does it require a fee-in-lieu where a developer proposes an amount of dwelling units and impacts well in excess of the constraints of a small development site. Under the Applicant's theory, it could nonetheless place possibly hundreds of units on any site, regardless of site size, as long as it paid a fee-in-lieu. This would not be a reasonable or proper plain reading, or interpretation, of §400-58 and more specifically §400-58.C.

As shown by the Applicant's own submission, the site is too small to accommodate appropriate open space, and recreational facilities and equipment, given the large unit count and intensity of development proposed. The Board finds the proposed 116 unit count, given the limited

size of the Applicant's site, to be of such a high number that a fee-in-lieu payment is not appropriate to justify or offset the open space, recreational facilities and equipment standards otherwise required. The Applicant fails to comply with §400-58 and §400-58.C.

- i. **§274-48 (Village of Berwyn Development Design Standards)** – The Applicant's January 29, 2021 submission included only Lancaster and Midland Avenue concept building fronts, rather than providing concept building fronts for all four sides. The architectural elevations to show height and story compliance on four sides, sent to Easttown after close of business on February 2, 2021, have not been fully reviewed and were not submitted in time for adequate Township consultant or Easttown Township Planning Commission review that same evening. With these late or incomplete submissions, the Applicant fails to comply with §274-48. By way of further detail as to the denial under §274-48:
 1. §274-48 requires at the outset that “[t]he following development design standards should apply in all Village of Berwyn Districts.” Failure of the Applicant to provide concept building fronts for all four building sides (and only submitting for two sides) creates noncompliance with this Section.
 2. The incomplete or late submissions avoided meaningful review at the Preliminary Land Development stage where design issues could be properly identified and addressed.
 3. The Applicant has failed to comply with Subsection §274-48.A., setting forth the design principles and standards for the “establishment of consistent requirements that promote village design, pedestrian orientation, and the traditional character of the Village of Berwyn,” by submitting incomplete or late materials.
 4. Subsections §274-48.B.(1); §274-48.B.(2); §274-48.B.(3); §274-48.B.(4)(a) state that “all projects subject to the land development application process should comply” with the various design standards. The Applicant has submitted incomplete or late materials, and therefore fails to show compliance under these subsections, or any other part of §274-48.
 5. To the extent that the Applicant argues Subsection §274-48.B. is inapplicable, since §274-48.B. references “nonresidential uses” in the Village Business District, this large apartment complex as proposed is commercial and nonresidential in nature. Note that under general provisions of the Easttown Township Code, for instance at §345-69 relating to sewer rates and charges in the Township, “The term ‘nonresidential property’ shall mean and include all other uses, including without limitation commercial uses, boardinghouses, **apartment buildings**, and townhouse buildings, having a water

connection which serves one or more commercial or industrial use or more than one residential dwelling unit.” (emphasis added).

6. As the Applicant proposes structured parking within the building, it has further failed to demonstrate adherence to the requirements for structured parking facilities at Subsection §247-48.D., by submitting incomplete or late materials relating to design guidelines for site planning, architecture, and pedestrian orientation, or architectural plans and elevations to show compliance.
 7. By submitting incomplete or late materials, the Applicant has further failed to provide specific architectural design elements, façade and building material information sufficient to meet the design requirements of Subsection §247-48.D.(1).
- ii. **§388-25.B.(13) (Easttown Township Stormwater Management Ordinance)**. This Subsection of the SWM Ordinance requires that “[a]ll BMPs, conveyances and other stormwater management facilities shall be located on the plan sheets, including design drawings, profile drawings, construction details, materials to be used, description of function, etc.” The Applicant has failed to provide construction details and elevations for the underground basins shown on the Plan, including but not limited to total basin dimensions including the stone, dimensions and configuration of R-Tank units (i.e., number of units), inverts of pipe inlets at connection to the basins, and inverts of the crossover pipes between the two basins. (See also ARRO Review Letter dated January 26, 2021, SWMO Comment No. 13.) The Applicant fails to comply with §388-25.B.13.
 - iii. **§388-13.L. (Easttown Township Stormwater Management Ordinance)**. This Subsection of the SWM Ordinance requires that “[t]he design of all BMPs and conveyances shall incorporate sound engineering principles and practices in a manner that does not aggravate existing stormwater problems as identified by the Township.” The Applicant has failed to provide gutter calculations tied to the site design, as requested by the Township engineering consultants. Further, drainage areas or inlet areas being evaluated have not been added to the gutter calculations. The notes to the Plan describe adding a second inlet to areas, but no second inlets are apparent on the Plan (See also ARRO Review Letter dated January 26, 2021, SWMO Comment No. 9.) The Applicant fails to comply with §388-13.L.
2. To the extent not referenced in Section One of this denial, the Applicant has further failed to fully comply with, and address, all of the outstanding deficient or open items identified in the following Township consultant review letters, which are attached hereto and incorporated herein as if fully set forth, including all pertinent references to Township Code provisions and references contained in each comment item of the reviews:
 - i. ARRO Review Letters dated December 22, 2020, and January 26, 2021;

- ii. McMahon Review Letters Dated December 24, 2020, and January 29, 2021; and
 - iii. Zoning Officer's Review Memoranda dated December 30, 2020, and January 29, 2021.
3. The Easttown Township Board of Supervisors reserves the right to issue a more formal decision document, if necessary. Not only the Applicant, but also its assigns and successors in interest, shall be bound by and subject to the terms of this Denial. The applicant can appeal the denial.

Mr. Heppe called for public comment. There was no public comment. Mr. Heppe called for the vote on the Denial Motion. The motion passed 4-1 with Mr. Heppe voting nay.

- D. Consideration of Professional Service Agreement with ARRO Consulting to Perform Engineering Services for Compliance with the Township's Municipal Separate Storm Sewer (MS4) Permit** – Mr. Curley outlined the MS4 requirements of the Township's MS4 permit as approved by the DEP. The Board discussed the scope of work and compliance. Mr. Heppe called for a motion. Mrs. Fadem made a motion to authorize the Township to enter into a Professional Services Agreement with ARRO Consulting to perform engineering services for compliance with the Township's MS4 permit. The motion was seconded by Mr. Wacey. Mr. Heppe called for public comment. There was none. The motion passed 5-0.

- 4. Departmental Reports** – Due to the late hour, the Reports below were not reviewed or discussed.

- **Finance Report**
- **Police**
- **Planning and Zoning**

5. Regular Township Business

- A.** Consideration of the January 26, 2021 Special Meeting Minutes – Mr. Oram made the motion to approve the January 26, 2021 Special Meeting Minutes. The motion was seconded by Mr. Wacey. Mr. Heppe asked for public comment. There was none. Mr. Heppe called for the vote. The motion passed 5-0.
- B.** Consideration of the February 01, 2021 Regular Meeting Minutes – Mrs. Fadem made a motion to approve the February 01, 2021 Regular Meeting Minutes. The motion was seconded by Mr. Wacey. Mrs. Fadem discussed the Board's past decision to not take public comment during consideration of the minutes. The Board was in agreement. Mr. Heppe called for the vote. The motion passed 5-0.
- C.** Authorize the Payment of Bills: \$442,158.18; a total of Warrants (\$260,238.41), and Payroll (\$148,695.75), and Payroll (\$33,224.02) date ending February 16, 2021 – Mr. Heppe called for a motion. Mrs. Fadem made a motion to authorize the payment of bills of \$442,158.18; a total of Warrants (\$260,238.41), and Payroll (\$148,695.75), and Payroll (\$33,224.02) date ending February 16, 2021. Mrs. D'Antonio seconded the motion. Mr. DeFeo went through the bills and the

Supervisors asked questions of him and the staff. Mr. Heppe called for public comment. There was none. Mr. Heppe called for the vote. The motion passed 5-0.

6. Board of Supervisors Liaison Reports

- A.** Finance Work Group – Mr. Wacey reported that there are four (4) firms being interviewed to perform the 2020 Audit.
- B.** Parks and Recreation Board – Mr. Wacey reported that the PRB is moving forward on the Fountain Project but questioned whether it should continue due to the Space Study Project that is underway.
- C.** Library Board – Mr. Heppe reported that the Library is still doing contactless pickup.
- D.** Policy Committee – Mrs. Fadem reported that the Conflict of Interest Policy and the revisions to the Appointment Policy are the Committee’s priorities.
- E.** Planning Commission – Mr. Heppe and Mrs. Fadem had no updates to report after tonight’s lengthy discussion.
- F.** Easttown Citizens Advisory Committee – Mrs. Fadem reported that members of the Committee have met regarding public meeting space and have also met with the Police. An ECAC Project Team has been established to look at receivables and reimbursable charges and will be checking with other Townships on their procedures in an effort to determine if there is a better way to handle the processing of these items.
- G.** Municipal Authority – Mrs. D’Antonio reported that the EMA discussed the purchase of additional pumps for the pumping station.
- H.** Historical Commission – Mr. Oram reported that the HC is continuing to look at Code Amendments. They enjoyed a presentation by the Chester County Historic Preservation Network (CCHPN) which was a great networking opportunity and a good way to expand the HC’s resources.
- I.** Fire / Emergency Medical Services – Mrs. Fadem reported that they are looking forward to meeting with the County Commissioners on February 17 to discuss with the Commissioners the recent EMS/Fire Strategic Plan.
- J.** Police Department – Mr. Wacey reported that all of the cars are outfitted with Automated External Defibrillators (AEDs). Additionally, all members of the Police Force should be vaccinated by March 1, 2021.

Mrs. Fadem noted that next month the Environmental Advisory Council will be added under Liaison reports and Mr. Wacey is the Supervisor liaison to this new Council.

7. Other Business

- A.** Discuss Supervisor Liaison Assignments for 2021 – Mr. Heppe noted that he had updated the liaison assignments and provided everyone with a copy.

8. Announcements

Mr. Heppe made the following announcements:

The Township building is open weekdays to the general public by appointment only and exclusively accommodates access by high risk members of the public between the hours of 8:00 AM and 9:00 AM.

The following virtual meetings are scheduled:

- Board of Supervisors Special Meeting for Devon Center District Zoning Amendments, February 17th at 7:00 PM
- Parks and Recreation Board, February 18th at 7:00 PM
- Policy Committee, February 22nd at 6:30 PM
- Zoning Hearing Board, February 22nd at 7:00 PM
- Board of Supervisors Special Meeting for the Village of Berwyn Zoning Amendment, February 23rd at 7:00 PM
- Library Board, February 24th at 7:00 PM
- Environmental Advisory Council, February 25th at 7:00 PM
- Board of Supervisors March 1st at 7:00 PM

Please visit the Township website at www.easttown.org to find information on how to view and participate in each of the meetings.

We also encourage you to visit the website for up to date information on all Township activities.

Mr. Heppe asked for volunteers to recite the Pledge of Allegiance for the next meeting.

9. Public Comment – Mr. Heppe called for public comment and there was none.

10. Adjournment – the meeting was adjourned at 10:46 PM.

Respectfully submitted,

Sharon Norris
Administrative Assistant to the Township Manager