

The stated meeting of the Board of Commissioners of the Township of Abington was held as a Zoom webinar and teleconference on Thursday, May 14, 2020 with President Spiegelman presiding.

**CALL TO ORDER:** 7:00 p.m.

**ROLL CALL:** Present via teleconference: Commissioners THOMPSON, BOLE, CARSWELL, ROTHMAN, LUKER, MYERS, ZAPPONE, BOWMAN, DiPLACIDO, WINEGRAD, VAHEY, SCHREIBER, HECKER, SPIEGELMAN  
Excused: BRODSKY

Also present via teleconference:  
Township Manager MANFREDI  
Assistant Township Manager WEHMEYER  
Township Solicitor CLARKE  
Township Treasurer BLUMENTHAL  
Director of Engineering MONTGOMERY  
Chief of Police MOLLOY  
Emergency Management Coordinator McANENEY

**PLEDGE OF ALLEGIANCE**

**BOARD PRESIDENT ANNOUNCEMENTS:**

President Spiegelman announced that agenda Items LU-02-040720 and PA-02-051420 were removed from tonight's agenda and will be placed on the agenda of the Board of Commissioners Meeting of June 11, 2020.

Also, there will be another roundtable meeting held on Zoom in regards to the proposed Economic Development Corporation and a finalized version of the ordinance, articles of incorporation and bylaws will be prepared and made public in advance of the June Board meeting. The Board of Commissioners will vote to authorize advertisement at its meeting in June and a public hearing will be held later that month at a standalone meeting or in July.

**PUBLIC COMMENT ON AGENDA ITEMS:**

Keith and Erin Hannum, Van Roden Circle, Huntingdon Valley, expressed concern about a farmers market that opened one house away from theirs. Items are obtained from other vendors and being sold in the driveway. A cease and desist order was issued but never enforced due to the courts being closed. The farmer continues to cite the Pennsylvania Right to Farm Act that permits him to continue to grow on the property; build farm structures and sell directly from his property.

Nowhere in that document does it state that he is allowed to act as a distributor and the farmer has not been legally operating. What can be done to protect the neighbors from this operation invading the neighborhood?

President Spiegelman replied the agenda item pertaining to this matter will be a vote as to whether to authorize Township Solicitor to attend the Zoning Hearing Board meeting in which we expect will be held sooner than June in order to defend the challenge to the Township's Zoning Ordinance.

Alex Carson, Hamel Avenue, Ardsley, commented that he spoke with Commissioner Zappone about a drainage project that has begun on his street and he expressed concern that the contractor who completely demolished the surrounding woods around the creek-bed seems to be "taking a backwards step and wasting taxpayers' money."

Commissioner Zappone replied that Ms. Amy Montgomery, Director of Engineering indicated that she would send a representative out there. It is a bank-stabilization project and he informed her about the resident's concerns.

Walter Draving, Bryant Lane, Meadowbrook, expressed concern that he feels Ms. Lehmann's questions were not being answered after the meeting.

President Spiegelman replied that he has answered Ms. Lehmann's questions.

Mr. Draving expressed concern that if the farmers market passes then many homeowners would be affected and he asked, "Why residents were not alerted in newsletters."

President Spiegelman replied the farmers market issue will be presented before the Zoning Hearing Board and not before the Board of Commissioners. The ZHB is a separate body and a quasi judicial body.

Martin Smith, Harte Road, suggested inquiring whether the farmer has a business license, paying taxes and has a Pennsylvania Agriculture License to conduct a farmers market. Also, in regards to the Township's budget; he suggested sharing with the public what the deficit was last year and how much fund balance remains.

## **CONSENT AGENDA:**

### **Minutes -**

Vice President Hecker made a MOTION, seconded by Commissioner Myers to approve the minutes from the Board of Commissioners Regular Meeting of April 7, 2020.

President Spiegelman asked for any comments from Commissioners. There were none.

MOTION was ADOPTED 14-0.

**NEW BUSINESS:**

**Board of Commissioners -**

Item BOC -01-051420:

Commissioner Spiegelman made a MOTION, seconded by Commissioner Myers to adopt Resolution No. 20-024 amending the policy on the naming of Township facilities.

President Spiegelman said current policy restricts naming facilities in memory of someone for a certain number of years after they passed. The consideration for amending is that, at the beginning of this year, the world and life of Abington Township changed greatly with the passing Mr. Ed Micciolo. Ed was our longtime Director of Public Works, a Marine Corp Veteran and a dedicated member of the Roslyn community where he made a massive impact. He was truly one of the greatest friends that the Township ever had and a true member of the Township family.

Ed accomplished a tremendous amount for this Township throughout his life and one of the most significant accomplishments was the creation of War Memorial Park on the Old York Road spur island. This was a tremendous labor of love on Ed's part and an incredible testament to who he was, what he cared about and how much he cared about our community and about his fellow veterans.

So if the naming policy is amended, hopefully in the very near future, we will be able to have a ceremony and name the Veterans Memorial, the Ed Micciolo Veterans Memorial Park, which will be a celebration of a wonderful man and to all he gave to our community. He asked for any comments from Commissioners.

Commissioner Carswell said she is in favor of changing the policy as three years is an arbitrary number; however, she is not in favor of naming a space that is in memory of many people after just one person. Ed absolutely deserves to be recognized and she loves the idea of naming a space in our Township after him, but this is the first she heard about naming the War Memorial Park after an individual, which seems awkward to her.

Commissioner Bole questioned whether the policy needs to be amended as the language proposed to be stricken says, "as a general guideline for waiting" stipulating that there are potential exceptions to the "general guideline." It makes sense for having a waiting period before naming a space, and he questioned why the entire policy should be amended to make an exception as the policy seems to allow for it.

Solicitor Clarke replied the amendment is so there would be no confusion that this is permissible. The language of “general guidelines” does “muddy the water” and this would provide a level of clarity.

Manager Manfredi commented that when this policy was discussed in previous years, there were Commissioners who wanted to see various people be recognized for their years of service. It is correct that the intent of the policy is to wait three years before the naming of space and this amendment is proposed because he is expecting to hear from other Commissioners about naming space after other people, which would be considered by the full Board.

Commissioner Myers clarified that the island is the Abington Township War Memorial Island and that would not change. When Ed Micciolo took over the project, it was in sad condition and not cared for. In the last years of Ed’s life, it was important to him to honor all of our military and he worked on getting funding for that project. The name would remain as Abington Township War Memorial Island, and this matter is before the Board for serious consideration.

Commissioner Schreiber said she was under the impression that this was a one-time special exception and that does not seem to be true, which causes concern. There could be consideration discussed at every Board meeting of naming space after people and that is why the three-year period was put in, which is arbitrary, but it is to provide some limit as well as further discussion. She knows Ed did a lot and she is fine with breaking the rule this time, but she is not sure she would like that to be an ongoing policy.

Commissioner Bole said if he votes not in favor to amend the policy that does not mean he would not want to honor Ed Micciolo. The materials for review were considering whether to strike the language from the record. It is helpful in a naming policy to have a waiting period so that an institution can make a decision about exceptions to the rule. We are within our right to make that exception and to do it as quickly as we would like to. He does not feel it would delay discussion about appropriately honoring the memory of a person who served the Township with great distinction for many, many years. That is separate from striking language from a policy that would open potentially “Pandora’s Box” in naming things throughout the Township whenever we wanted to. The question is about the policy and not honoring someone.

President Spiegelman asked Solicitor Clarke if there is any issue with having a naming ceremony in the future without making this change to the policy.

Solicitor Clarke replied the purpose of making the change is so that there is no ambiguity regarding the ability for the Board to do this. This is an internal operating policy of the Township, and if the majority agrees under the appropriate circumstance to deviate from the policy, it would be fine. If the Board wants clarity that this is permissible then the policy should be amended.

Commissioner Schreiber suggested pulling this agenda item, and in the future taking a vote on the naming of War Memorial Island after Ed Micciolo, and not changing the policy.

Commissioner Rothman agreed with Commissioner Schreiber. Also, if the Board would like to change the policy to have a lesser time than three years, we can discuss it further, and the current language does not prevent naming anything after Ed.

Vice President Hecker said he was on the Board when this policy was developed and it was in response to a complicated naming scenario, although the three year window is overly restrictive. If the language remains and we make exceptions to general guidelines, we need to be sure how we go about making exceptions as there may be those in the community who are not as well-known to the Township as Ed Micciolo, and we do not want to play favorites in terms of naming public assets. He suggested having more discussion about the approach moving forward recognizing that everyone shares the goal of honoring Ed's legacy in a profound public way and not take the vote on it tonight given the comments that were made.

Commissioner Bole made a MOTION to TABLE Item BOC-01-051420 - Resolution No. 20-024 amending the policy on naming of Township facilities until next month with the support of moving forward as soon as possible with the procedures otherwise set out in the policy for naming, seconded by Commissioner Carswell.

MOTION was ADOPTED 14-0.

Item BOC-02-051420:

President Spiegelman made a MOTION, seconded by Commissioner Myers to adopt Resolution No. 20-025 ratifying the Declaration of Disaster and State of Emergency from April 16, 2020 to May 14, 2020 and approving the Declaration through May 21, 2020.

President Spiegelman asked for any comments from Commissioners. There were none.

MOTION was ADOPTED 14-0.

**Land Use Committee –**

Item LU-01-051420:

Commissioner Thompson made a MOTION, seconded by Commissioner Luker to approve the amended Final Land Development Plan of Philadelphia Presbytery Homes, Inc., for the property known as the Rydal Water Tract, consisting of Rydal Way, Noble Circle and Harbison Way, to amend the number of proposed units to eliminate two sets of twin dwelling units and replacing with three single dwelling units.

Mr. William Kerr, Attorney with High Swartz, 40 East Airy Street, Norristown, PA 19401, representing the applicant, said the single family units have been selling so the decision was made to replace two twin buildings with three single units.

Mr. Gary Tilford, Civil Engineer for the project with Charles E. Shoemaker, Inc., 1007 Edge Hill Road, Abington, PA, 19001, presented the plan noting there are two twin buildings, and due to sales and marketing, the single family homes are more popular, so the applicant would like to exchange four units for three occupying the same location of Noble Circle. The infrastructure will not change except for location of curb depressions; one less water service and sewer lateral. The applicant would like this change to be approved so as to rerecord the land development plan and continue the construction process.

President Spiegelman asked for any comments from Commissioners.

Commissioner Winegrad clarified that the original land development plan was previously approved by the Board in December 2017 and it was recorded. Is that correct?

Mr. Tilford replied yes. It was recorded in the Montgomery County Court House.

Commissioner Winegrad clarified that the only change proposed on the plan is going from four to three units and the land development plan is exactly the same. Is that correct?

Mr. Tilford replied that is correct.

Commissioner Thompson confirmed that the duplexes in question are located on Noble Circle at 1606-1608 and 1610-1612 and 1612 will be eliminated to create single family homes with addresses of 1606, 1608 and 1610. Is that correct?

Mr. Tilford replied that is correct.

MOTION was ADOPTED 14-0.

Item LU-02-051420:

Commissioner Thompson asked for further explanation from Solicitor Clarke.

Solicitor Clarke explained that the Township was made aware that the property owner of 1733 Melmar Road has been operating a commercial farm as well as a farmers market. Township staff was in contact with the property owner and determined that while it is permitted to operate a farm in the R-1 District, it has to be on a minimum of 10 acres and the property is less than one acre. A cease and desist order was issued and then the Township received correspondence from an attorney in California indicating the property owner has the right to operate a farmers market and the right to farm the property under the Pennsylvania Right to Farm Act.

At that point, the matter was referred to his office, and after conferring with Ms. Montgomery and other Township staff, the Right to Farm Act does not apply and the property owner was told to cease the activity on the property. The property owner subsequently filed an appeal of the determination of the Zoning Officer to the Zoning Hearing Board. The appropriate procedure is being followed and the courts want the status quo to remain while the appeal is pending.

This matter will go to the Zoning Hearing Board and property owner is seeking a variance to operate a farm in the R-1 District on one or less than one acre when 10 acres is required. The property owner also filed a substantive validity challenge in which they are challenging the zoning ordinance and claiming that the Township's ordinance is unconstitutional. All zoning ordinances are presumed to be constitutionally valid and the party challenging the ordinance will need to demonstrate that the ordinance is unreasonable, arbitrary or not substantially related to what the ordinance purports to serve.

So these two matters will be going before the ZHB, and if the property owner wins on the variance, they will be able to continue to farm therefore having a legal operation to operate their farmers market consistent with the Pennsylvania Right to Farm Act as long as all other criteria is met. If they win on the substantive validity challenge, then the Township's ability to regulate farming in the R-1 District on properties less than one acre will be thrown out and anyone in the R-1 District can farm on their property. It is being recommended that he attend the ZHB meeting to defend the zoning ordinance against the substantive validity challenge.

President Spiegelman clarified that farming as considered by the Pennsylvania Right to Farm Act is when there is growing and selling of products on the property. Is that correct?

Solicitor Clarke replied that is correct. A commercial farming operation is growing and selling of products and that is what the ordinance was intended to prevent.

Commissioner Vahey asked does the Zoning Hearing Board or the Court of Common Pleas have the jurisdiction to decide on the validity challenge?

Solicitor Clarke replied the Zoning Hearing Board initially; however, if they are unsuccessful, then it will go before the Montgomery County Court of Common Pleas. If they are successful, the next step for the Township would be to rewrite the ordinance or the Township can file an appeal to the Court of Common Pleas.

Commissioner Vahey questioned whether there is precedent in Pennsylvania for striking down an ordinance based on the Right to Farm law.

Solicitor Clarke replied the precedent is that all municipalities are able to create reasonable restrictions on the use of property and limiting commercial farming operation on properties no less than 10 acres is a reasonable restriction. He will not be arguing the Pennsylvania Right to Farm law at the ZHB meeting because that law is clear in that if they are operating a legal farm and meet all other criteria, they can operate a farmers market.

Commissioner Vahey asked for clarification on the property owners' basis for the substantive validity challenge.

Solicitor Clarke replied the basis is that 10 acres is inherently unreasonable.

Commissioner Bowman said that since the ZHB has the ability to make a preliminary ruling on the ordinance, he supports authorizing Township Solicitor to appear and defend Township's ordinance.

Commissioners Myers agreed with Commissioner Bowman. This would be a wise decision to send Township Solicitor to the ZHB so that the Township is well-represented.

Commissioner Thompson made a MOTION, seconded by Commissioner Luker to authorize Township Solicitor to appear on behalf of the Township regarding a Zoning Hearing Board Application for 1733 Melmar Road, Huntingdon Valley Residential Farmers Market for variance, appeal of zoning officer's determination and substantive validity challenge.

MOTION was ADOPTED 14-0.

**Public Affairs Committee –**

PA-01-051420:

Commissioner Bowman made a MOTION, seconded by Commissioner Zappone to ratify and approve the submission of the Ardsley Wildlife Sanctuary Grant and adopt Resolution No. 20-026.



Manager Manfredi noted that the presentation was distributed to the Board of Commissioners and made public for residents.

Dr. Rita Stevens, Chairperson of the Shade Tree Commission, said we are seeking approval to apply for the grant and it follows an established plan that began in 2008 timeframe when the Master Plan for the Ardsley Wildlife Sanctuary was established. The project is to implement a phase of restoration that is high-priority for funding from DCNR. We will learn later this year whether or not the grant will be awarded from the State for 50% of the project and the Board will then have the opportunity to accept it or not. DCNR provides a four-year period for the work to be implemented in which the construction can be done within a one-season period, so there is flexibility as to when the Township decides to incur cost for it and there is also the option to downsize the project.

President Spiegelman asked for any comments from Commissioners. There were none.

MOTION was ADOPTED 14-0.

**Finance Committee –**

Receive Treasurer’s Report:

Township Treasurer Jay W. Blumenthal reported that real estate taxes collected in the month of April 2020 was \$16,270,769 as compared to last year of \$17,786,942 resulting in decrease of \$1,516,173, which was attributed to the slower process this year. Monies received from various Township departments deposited into Republic Bank in April 2020 were \$18,208,451 as compared to last year of \$21,333,713 resulting in decrease of (\$3,125,262). Also, the Township extended the discount period for real estate taxes from April 6<sup>th</sup> to June 8<sup>th</sup> and Business Privilege Tax deadline was extended from April 15<sup>th</sup> to July 15<sup>th</sup>.

Item FC-01-051420:

Commissioner Vahey made a MOTION, seconded by Commissioner Luker to approve the March 2020 expenditures in the amount of \$2,033,287.35 and salaries and wages in the amount of \$1,885,920.04 and authorizing the proper officials to sign vouchers in payment of bills and contracts as they mature through the month of June 2020.

President Spiegelman asked for any comments from Commissioners. There were none.

Roll call resulted in motion being passed 14-0. Commissioner Brodsky was absent during roll call.

Item FC-02-051420:

Commissioner Vahey made a MOTION, seconded by Commissioner Winegrad to approve the Clearing Fund, the Deferred Revenue/Expense activity and Petty Cash balances for the month of March 2020. Clearing fund receipts and disbursements for the month of March 2020 were \$1,127.64 and (\$18.00), respectively. Deferred Revenue/Expense receipts and disbursements for the month of March 2020 were \$23,527.20 and (\$0.00), respectively.

President Spiegelman asked for any comments from Commissioners. There were none.

MOTION was ADOPTED 14-0.

Item FC-03-051420:

Commissioner Vahey made a MOTION, seconded by Commissioner Myers to approve the Travel Expense activity for March 2020. Travel and Expenses for March 2020 were \$4,710.98 and three-month expenses totaled \$11,145.65.

President Spiegelman asked for any comments from Commissioners. There were none.

MOTION was ADOPTED 14-0.

**PUBLIC COMMENT:**

Keith and Erin Hannum, Van Roden Circle, Huntingdon Valley, commented that they used the “Right To Know” process to obtain a copy of the application filed by the farmer, and there was no mention about the farmer seeking a variance to operate a food distribution business. Could a citation of enforcement be issued by the Township to stop that part of the operation?

Solicitor Clarke replied he would rather not address that question at this time.

Lora Lehmann, Bryant Lane, Meadowbrook, commented that the farmer is saying, ‘according to the Farm Act that he is allowed either 10 acres or to make produce resulting in \$10,000 in a year.’ Also, the Right to Farm Act requires “that property owned and operated by a land owner who produces not less than 50% of the commodity sold,” so this should not be going to the Zoning Hearing Board.

President Spiegelman thanked everyone for their patience with the Zoom meetings while under this difficult lockdown. People are having a really rough time with this horrific virus and he encouraged everyone to keep on, keeping on. This community has been remarkable in showing their support for one another and following these difficult rules so that we can put this horrible pandemic eventually in the rearview mirror. He also thanked his colleagues and friends for their forbearance.

**ADJOURNMENT:** 8:37 p.m.

Respectfully submitted,

Liz Vile, Minutes Secretary

The following resolutions were adopted by the Board of Commissioners on May 14, 2020:

Resolution No. 20-025

Resolution No. 20-026



## TOWNSHIP OF ABINGTON

John L. Spiegelman, *President*  
Thomas Hecker, *Vice President*  
Richard J. Manfredi, *Township Manager*  
Jay W. Blumenthal, *Treasurer*

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### RESOLUTION # 20-025 DECLARATION OF DISASTER AND EMERGENCY

May 14, 2020

**WHEREAS**, COVID-19 has been declared by the World Health Organization and the Centers for Disease Control and Prevention a "public health emergency of international concern"; **and**

**WHEREAS**, both the Commonwealth of Pennsylvania and Montgomery County have declared a state of emergency due to the identification of COVID-19 infected citizens; **and**

**WHEREAS**, on or about March 16, 2020 COVID-19 has caused or threatens to cause injury, damage, and suffering to the persons and property of Abington Township; **and**

**WHEREAS**, this incident has or is about to continue endangering the health, safety and welfare of a substantial number of persons residing in Abington Township and threatens to create problems greater in scope than Abington Township may be able to resolve; **and**

**WHEREAS**, Section 74-2.A of the Code of Ordinances of the Township of Abington requires that the Board of Commissioners ratify a Declaration of Emergency within seventy-two (72) hours; **and**

**WHEREAS**, emergency measures are required to reduce the severity of this disaster and emergency to protect the health, safety, and welfare of affected residents in Abington Township;

**NOW, THEREFORE**, pursuant to the provisions of Section 7501 of the Pennsylvania Emergency Management Services Code, 35 Pa. C.S.A, Section 7101 et seq., do hereby declare the existence of a disaster emergency in Abington Township and pursuant to the provision of Chapter 74 - Public Emergencies in the Abington Township Municipal Code, the President of the Board of Commissioners of the Township of Abington is authorized to declare a state of emergency and take any one or more of the specified measures per the legislation, and that the state of emergency in Abington Township is extended, the seventy two (72) duration requirement is waived, and the disaster declaration is affirmed for an additional seven (7) days subject to ratification by the Board of Commissioners at a future date.



**FURTHER**, the Abington Township Emergency Management Coordinator is directed to coordinate the activities of the emergency response, to take all appropriate action needed to alleviate the effects of this disaster, to aid in the restoration of essential public services, and to take any other emergency response action deemed necessary to respond to this disaster emergency.

**STILL FURTHER**, the Abington Township Manager is to act as necessary to meet the current exigencies as legally authorized under this Proclamation, namely, and to include, by the employment of temporary workers, by the rental of equipment, and by entering into such contracts and agreements as may be required to meet the emergency, all without regard to those time consuming procedures and formalities normally prescribed by law, mandatory constitutional requirement excepted.

**STILL FURTHER**, the Board of Commissioners hereby waives the provisions of Section 74-2.A of the Code of Ordinances of the Township of Abington to the extent that ratification of the declaration of emergency is required within 72 hours of the declaration, and to the extent that further formal ratification is required pursuant to the Township Ordinance.

This declaration shall take effect immediately this fourteenth day of May 2020.

John L. Spiegelman  
President, Abington Township Board of Commissioners

ATTEST:

Date: May 14, 2020

**Public Comments submitted to the Township by email in regards to the Board of Commissioners Meeting of May 14, 2020 were summarized as follows:**

Marcia Haire asked why Alverthorpe Park is not open just for walking since Pennypack Park is open.

Richard Blum asked why a non-landowner would be permitted to run a retail business in a residential neighborhood as it is not farmland.

Walter Draving's comments were included in the Board minutes; however, additional comments listed in his email were in regards to that he is not able to find information on the website quickly and he was not able to get information from Code Department.

Mike Toran asked to review final version of bylaws of the Economic Development Corporation prior to advertisement and he feels the push for an EDC may not be necessary.

Natalie Sherstyuk asked that Item LU-02-051420 be removed from agenda in regards to the zoning changes of the property located at 1733 Melmar Road and she was opposed to that residential property becoming commercial. She was also opposed to advertising of the EDC prior to being able to see the final version of the bylaws.

Doreen Cotter asked for the EDC item to be removed from agenda until residents have seen and can respond to revised version of the bylaws.

Liz Vile, Minutes Secretary

**APPROVED**

06.11.20