

Caln Township Board of Commissioners
253 Municipal Drive Thorndale, PA 19372
August 27, 2020 Minutes
7:55 PM

Attendance – Paul Mullin-President, Jane Kennedy-Vice President, Joshua Young-Commissioner, Lorraine Tindaro-Commissioner, Mark Evans-Commissioner, Kristen Denne-Township Manager/Secretary, Kevin Barron-Township Finance Director, Bryan Kulakowsky-Township Engineer, Kristin Camp-Township Solicitor, and Denise Miller-Assistant Township Secretary.

Commissioner Mullin called the Virtual Zoom meeting to order, and called for the Pledge of Allegiance to the flag.

Citizens to be Heard

Commissioner Mullin called for Citizens to be Heard. There were none.

Commissioner Evans Updates

Commissioner Evans noted that meetings are a neutral ground, a place to hear, and be heard.

September-National Recovery Month – Commissioner Evans noted that the month of September is dedicated to increase the awareness, understanding of mental and substance abuse disorders, and celebrate those who have recovered. Commissioner Evans also noted that Commissioner Josh Maxwell read the Chester County BOC Proclamation for the 2020 recovery month, and as a member of the Chesco Department of Drug and Alcohol Advisory Board, he was asked to speak.

Commissioner Evans noted that the recovery concert and 5K color run was cancelled, due to COVID-19. Both fundraisers help to raise funds for the Chester County Overdose Prevention Task Force. He noted that he will send you a list of local non-profits, if you are interested.

School House – Commissioner Evans noted that the school house roof has been repaired.

Spackman Farm Large Barn Roof – Commissioner Evans noted that Mr. Kulakowsky will be conducting a pre-bid meeting with Contractors September 1, at the Barn.

Storms – Commissioner Evans noted a storm this Saturday, and noted Ms. Denne will have an update on their “storm planning” meeting.

Zoning Task Force – Commissioner Evans noted that there will be a Zoom Zoning Update Task Force meeting on Tuesday, September 1.

COVID-19 – Commissioner Evans noted that we haven’t reached stable or reduced case counts, over a fourteen day period, yet. Since the August 13, 2020 meeting, Chester County has seen 207 positive cases, compared to 260 in the previous week. Caln Township’s positive cases are up 3.7%, over the past 14 days from 181 cases to 188, and no new deaths however, it is still 16 lives lost.

Commissioner Evans noted to continue wearing masks, stay six feet apart from others, and do not attend gatherings where others are not wearing a mask.

Township Solicitor – Ms. Camp

Taco Bell Conditional Use Decision – For Board consideration, and possible approval, Ms. Camp offered the Board Downingtown Investors LLC, request to modify their Conditional Use Approval for a commercial drive-through establishment, for the proposed Taco Bell.

Ms. Camp noted the three conditions of approval.

1. The commercial drive-through establishment shall be developed in accordance with the testimony, and evidence presented at the Conditional Use hearing on July 30, 2020, and the revised plans.
2. The Applicant and any successor or assign in title who utilized the commercial drive-through shall adhere to all conditions imposed in the original Conditional Use Order shall remain valid and in effect.
3. The Applicant and its successors and assigns in interest to the property shall be strictly bound by:
 - a. All the representations, warranties, and commitments made by or on behalf of the Applicant and the testimony, plans or other exhibits that were introduced into the record on these proceedings whether or not express reference is made to said representations, warranties, and commitments in this Decision
 - b. All of the foregoing conditions of approval.

Ms. Camp noted the following exhibits admitted on behalf of the Board.

- B-1: Conditional Use Application dated June 23, 2020, with cover letter from Louis J. Colagreco, Jr., Esquire
- B-2: Final Land Development Plan prepared by Landcore Engineering Consultants, P.C. dated April 27, 2018 last revised June 15, 2020, showing two drive-through lanes.
- B-3: Proof of Publication of the hearing published in the Daily Local News on July 15, 2020 and July 22, 2020
- B-4: Affidavit of Posting on July 8, 2020
- B-5: Conditional Use Decision and Order, dated September 13, 2018
- B-6: Motion dated April 11, 2019 granting Final Land Development approval
- B-7: Approved Final Land Development Plan prepared by Landcore Engineering Consultants, P.C., dated April 27, 2018, and last revised December 6, 2019, showing one drive-through lane
- B-8: Email dated July 3, 2020 from Albert Federico, P.E. regarding the impact to external site traffic
- B-9: Memorandum from Traffic Planning and Design, dated July 16, 2020
- B-10: Email correspondence from Bryan Kulakowsky, P.E., dated July 22, 2020

Commissioner Evans noted that he still has concern with the decibel level with two drive-through speakers, as opposed to one.

Ms. Camp noted that they are bound by the Township noise ordinance, and Mr. Stackhouse will investigate any complaints, and work with the property owner. If it becomes a problem and they are not adhering to the conditions, they would send enforcement notices, and start a civil enforcement process however, they would first go the cooperative route and try to get them to address the concerns and lower the decibel levels, if that was creating a problem with the neighbors.

Commissioner Young asked if it is correct that if traffic would become worse than what they testified to, they would have to come up with a plan to remediate that or the Township would try to enforce that. Ms. Camp noted "I'm not sure about that". They do an estimate of what their traffic is based on the ITE manuals and the Township Traffic Engineer reviewed it, and felt that the methodology used was appropriate. Ms. Camp noted that she is not sure the Township could go back after the fact and make them do any more or less, as far as traffic improvement. As much as we think our ordinances, zoning approvals, and all the conditions in the land development plans are put in place to protect uses coming in, maybe there are sometimes things we don't think about or things develop. She also noted that she works with Mr. Stackhouse on some concerns, and they have a good track record of trying, to resolve those concerns without needing to get courts involved. She noted that the property is zoned commercial, and is allowed to have a Taco Bell restaurant there.

Commissioner Young noted that the first conditional use mentioned that the drive-through speaker has to be buffered, and he asked if that will also apply to this conditional use or should it be added to this one.

Mr. Stackhouse noted that they could test the speakers before a use and occupancy is issued.

Ms. Camp noted that she will add two conditions to the conditional use.

- Both speakers that are utilized will be buffered, similar to the language in the first order.
- The Applicant will be subject to a test by the code department of the speaker systems, to make sure they comply with the conditions in the approval, as well as the noise ordinance, prior to issuance of a use and occupancy.

Commissioner Mullin entertained a motion to approve Downingtown Investors, LLC, Taco Bell, conditional use decision, with the two conditions added. Moved by Commissioner Young and seconded by Commissioner Evans. Commissioner Mullin called for public comment. There were none. With Commissioner Tindaro voting nae, Vote passed 4-1.

Fireworks Ordinance Hearing – For Board consideration, Ms. Camp offered an ordinance regulating the use of fireworks within the Township code. She noted that this ordinance will bring awareness to what the state law is, distinction between consumer and display fireworks, and to make sure the township codes are compliant with the state law. Ms. Camp noted that the Board had concern with the restrictions to establish time constrictions. After research, she noted that the state law preempts the township from restricting the time frame when consumer fireworks could be utilized. The state law is meant to be an all-encompassing regulation, as far as who is allowed to use them, store, and sell them. Someone could possibly challenge the ordinance if it were over and above the law. She recommended not adding a time restriction, and use the township noise ordinance for compliance.

Commissioner Young asked for explanation of consumer fireworks versus display fireworks, and which ones need a permit. Ms. Camp noted that the consumer definition specifically states that it does not include devices such as ground and hand held sparkling devices, novelties or toy caps so, the ones you can buy at the “Giant” are consumer and the ones you would use at the township “Community Day” are display, which you need a permit from the Department of Agricultural. Mr. Stackhouse noted a certain level of powder in the firework which, becomes a commercial firework. Mr. Stackhouse also noted that over the counter fireworks are consumer ones. The person handling, storing, and setting off display fireworks has to have a federal, and township permit with huge liability insurance attached.

Commissioner Young asked if the consumer fireworks, that do not require a township permit, have to adhere to all the rules such as, setting them off 150 feet away from an occupied structure, no drinking alcohol, and following the noise ordinance. Mr. Stackhouse replied “That is correct”.

Commissioner Evans asked if fireworks such as an “M-80” is not a consumer firework. Mr. Stackhouse noted that they got around that a little bit because now they have “M-60’s”, which is just below the grain that separates them from being a consumer firework to a display firework. He noted the answer to Commissioner Evans question is “yes”.

Commissioner Young noted that he received a question “Why do we need this, did we not have something in place beforehand”. Ms. Camp noted that the Township does not have anything in their codes. She also noted that the Township does not have to do anything. The state law is what is in this proposed ordinance however, she noted that it will be helpful for someone to go onto the township website and have easy access to standards to follow.

Ms. Camp noted that the state law was enacted in 2017, and all Municipalities in the Commonwealth have to adhere to it.

Commissioner Young asked if it is correct that sparklers and the fireworks that you can buy at “Giant” are not restricted to setting them off within 150 feet away from an occupied structure. Mr. Stackhouse noted that if they are the smaller sparklers and fire crackers, those types of things, as long as they are not violating the township noise ordinance, they are not regulated by the 150 foot residential setback.

Commissioner Young asked Chief Elias if he will notify all his Officers. Chief Elias noted that since the ordinance mirrors state law, they would cite using the state law. Chief Elias also noted that it will also be in their legal update training that they get anytime there is a law change.

Commissioner Mullin called for public comment.

Bob Hetzel of 585 Lloyd Avenue asked if there is an age limit such as, can a ten year old buy fireworks. Ms. Camp noted that there may be an age limit for individual retail establishments. She also noted that the state law requires you to be 21 years or older to buy display fireworks.

Commissioner Mullin noted that under “Use, Sale and Storage of Consumer Fireworks (A) Conditions” it reads; “A person who is at least 18 years of age and meets the requirements of this Chapter may purchase, possess and use Consumer Fireworks”. Mr. Hetzel noted that this answers his question.

Mark DeYoung of 20 Beaver Run Road asked what kind of fireworks are sold at the “pop up” stands. Mr. Stackhouse noted that consumer fireworks are sold at those however, they are not allowed by the township zoning to be sold in Caln Township. The only ones allowed sold in the township are consumer fireworks that are sold in grocery stores and convenience stores, as part of their retail sales.

Commissioner Kennedy suggested putting this information in the township newsletter, and on the township website.

Ms. Denne asked Ms. Camp if this ordinance goes into effect upon passage or if there is a waiting period. Ms. Camp noted that the township ordinances pass upon passage.

She noted the following Board exhibits.

- B-1: Proof of publication in the Daily Local News on August 19, 2020
- B-2: Email dated August 17, 2020 from Kristin S. Camp to the Chester County Law Library and the Daily Local News providing the proposed amendment for public inspection

Commissioner Mullin entertained a motion to adopt Ordinance 2020-03 regulating the use of fireworks within the Township. Moved by Commissioner Evans and seconded by Commissioner Young. Commissioner Mullin called for public comment. There were none. Vote passed 5-0.

Ms. Camp noted that the hearing for the proposed apartment complex at 2131 Lincoln Highway has been continued to September 10, 2020 at 6:00 PM. Ms. Camp noted that Mr. Oeste is drafting the Decision and Conditional Use Hearing held at the last meeting, and asked for Board concerns, questions or suggested conditions be sent to her office. She also noted that the Board has forty-five days from the last hearing which, would be until the second meeting in September, to work on the decision.

Township Engineer – Mr. Kulakowsky

Planning Commission Update – Mr. Kulakowsky noted a few highlights from their August meeting.

- Willows at Valley Run Planning Commission Recommendations
 - To evaluate additional fire sprinklers
 - To have the emergency access evaluated through land development
- AGC Chemical Final Land Development
 - Recommendation of conditional approval was passed
 - Resolution presentation in September
 - Their time clock is good until early October
- Small Wireless Facilities Ordinance known as “5G”
 - Discussion held at the August meeting
 - Discussion to be held at their September meeting
- ARLE Grant
 - PennDot has all the documentation from the Township
 - PennDot is currently working on executing the agreement to move forward with the Grant
- DCED H2O Grant Award
 - The Township was awarded \$500,000 for the sanitary and storm sewer work along Reed Street in the area of 13th and 17th Avenue
- DCED Grant Award
 - The Township was awarded \$418,000 through the PA Small Water & Sewer Program for the sanitary and storm sewer work along Reed Street in the area of 13th and 17th Avenue
 - Commissioner Mullin and Commissioner Kennedy have signed the contract documents, and they have been returned to the state
- Spackman Farm Large Barn Roof
 - Pre-bid meeting September 1, 2020 at 9:00 AM, at the barn
 - As of 7:30 tonight, twenty-four companies downloaded the bid documents
- 2020 Road Paving Program
 - Contracts have been provided to the Township for execution
 - Once the contract is fully executed by the Township, a pre-construction meeting will be coordinated with Berg Construction
 - Berg has sixty days to complete the contract, from the notice to proceed date

The Commissioners noted that the Township should thank Senator Muth for all her help in obtaining the two grants. Ms. Denne noted that she has already sent her a thank you letter.

Township Manager – Ms. Denne

Emergency Declaration Extension – For Board consideration, Ms. Denne offered an extension to the Emergency Declaration for an additional thirty days.

Commissioner Mullin entertained a motion to approve an Emergency Declaration for an additional thirty days. Moved by Commissioner Evans and seconded by Commissioner Kennedy. Vote passed 5-0.

Census – Ms. Denne noted that the Census intake has increased 1.6% from the August 13 meeting, and that the area approximately receives \$1,500 per resident between school, transportation, and county funding. Ms. Denne also noted that the deadline is September 20, and you can participate via phone or web. 58% of Caln Township residents participated via the web.

Zoning Task Force – Ms. Denne noted that the next zoning task force meeting will be held on Tuesday September 1, 2020. Business district and commercial uses will be discussed.

Storm Planning Meeting – Ms. Denne noted that she had their first storm planning meeting today with the department directors for pre-planning. Ms. Denne thanked the public works department for all their work regarding the last storm.

Commissioner Young noted that he filled out his census online, and three times someone came to his door because his form was not being registered so, in total he filled it out four times. He noted that if someone comes to your door, make sure that your form has been registered.

Ordinances and Resolutions for Consideration

Resolution 2020-45 A Resolution for Plan Revision for New Land Development – Arbor Hill Associates identified as Dwell at Caln – Ms. Denne offered Resolution 2020-45 relating to Act 537 planning.

Commissioner Mullin called for Board and Public comments. There were none.

Commissioner Mullin entertained a motion to approve Resolution 2020-45 for plan revision for New Land Development for Arbor Hill Associates. Moved by Commissioner Tindaro and seconded by Commissioner Young. Vote passed 5-0.

Resolution 2020-46 A Resolution Acknowledging the 2021 Minimum Municipal Obligation for the Police Pension Plan – For Board consideration, Ms. Denne offered Resolution 2020-46 acknowledging the 2021 Minimum Municipal Obligation (MMO) for the police pension plan. Ms. Denne noted that every year, by the end of September the Township has to have the actuary (MMO) for the police department pension. As per the Auditor General of PA, this has to be adopted publically so, the Board is aware of their pension fund.

Mr. Barron noted that the uniform pension went down a little, and the non-uniform pension increased a little.

Commissioner Young noted that when he first became a Commissioner, the uniform and non-uniform pensions were covered by the state check.

Ms. Denne noted that she will get back to the Board on the increase and decrease amounts.

Commissioner Mullin asked if the total pension is \$664,132. Ms. Denne noted that \$664,132 is the correct amount, and roughly \$285,000 is received from the state. She also noted that the Township has to make up the difference.

Commissioner Mullin called for Board and Public comment. There were none.

Commissioner Mullin entertained a motion to approve Resolution 2020-46 acknowledging the 2021 Minimum Municipal Obligation for the police pension plan. Moved by Commissioner Tindaro and seconded by Commissioner Young. Vote passed 5-0.

Ordinance 2020-03 An Ordinance Regulating the use of Fireworks within the Township – Ordinance 2020-02 was adopted under “Township Solicitor – Ms. Camp”

Minutes to Approve/Acknowledge

August 13, 2020 Board of Commissioners Minutes – Commissioner Mullin noted that under the Finance Department from the August 13, 2020 minutes, Commissioner Evans seconded and recused himself on the motion to approve the checks. Commissioner Young recommended redoing a motion for those.

Commissioner Mullin entertained a motion to approve General Checks 45326 to 45376, and Manual Checks 143 to 149 from the August 13, 2020 Board of Commissioners meeting. Moved by Commissioner Young and seconded by Commissioner Tindaro. Commissioner Evans recused himself. Vote passed 4-0.

Commissioner Mullin entertained a motion to approve the August 13, 2020 Board of Commissioners minutes. Moved by Commissioner Young and seconded by Tindaro. Vote 5-0.

Acknowledge Receipt of the Approved July 21, 2020 Planning Commission Minutes – **Commissioner Mullin entertained a motion acknowledging the receipt of the July 21, 2020 approved Planning Commission minutes. Commissioner Evans noted that the only mention of him saying anything in these minutes regarding the Taco Bell Application to amend the Conditional Use is him stating that he agreed with adding the second drive-through ordering lane, due to COVID-19 to help sustain the business. He noted that he does not want someone to open and not succeed because of COVID-19 so, he understands why they want the second drive-through. He noted that he also stated that he has concern about the noise factor, headlights onto Manor Avenue, and the potential destruction to residents of that area. Commissioner Mullin called for further comment. There were none. Moved by Commissioner Kennedy and seconded by Commissioner Tindaro. Commissioner Evans abstained. Vote passed 4-0.**

Directors Reports

Police Chief Elias – Chief Elias noted a few highlights from his July 2020 report, which was previously provided to the Board.

- The department continues to see an significant reduction in Part 1 crimes, which are the most serious – down 80%
- Part 2 crimes are down 30%
- Traffic cases are down 80% for the same period a year ago
- The department continues to see an increase in fraud and identify theft crime
- The entire area is seeing an increase in drug overdoses
- Chief Elias commented on the Wisconsin shooting
- The department has certified expert training Officers in lethal and non-lethal use of force
- In October, all supervisory level Officers are scheduled to attend a comprehensive program in law enforcement ethics, professionalism, conflict management, and de-escalation technique
- Next week, all other Officers are scheduled to attend real world de-escalation training, and duty to intervene training
- With Board support, body cameras will be in place, by early fall

Chief Elias noted that given the worst civil arrest in over fifty years and the public growing lack of trust in law enforcement, he wants the Board and Residents to know how serious the police department takes this, and all the proactive things they are doing internally to keep the public and police officers safe.

Fire Chief Donnachie – Chief Donnachie noted a few highlights from his July 2020 report, which was previously provided to the Board.

- Second fundraiser mailing has been mailed with a good return

- The recruitment and retention group created banners and flyers for community events however, due to COVID-19 they will hopefully be used for the inside of businesses

Commissioner Mullin asked if the banners could be put on the side of the road. Mr. Donnachie noted that they are light retractable banners, and could not be used for that.

Commissioner Mullin asked the status of the fire staff retention, and if there has been an increase in fire staff. Mr. Donnachie noted that every month they get one or two people, and recently they had contact from two people, who already have training.

Commissioner Mullin asked if those who have already donated will get another mailer. Mr. Donnachie noted that they only send out the second fundraiser mailer to those who have not donated from the first fundraiser mailer. Commissioner Mullin also asked if you can donate through their website. Mr. Donnachie noted that you can.

Ms. Denne asked Mr. Donnachie to explain the spin game that they are doing on Facebook. Mr. Donnachie noted that their club room has been electronically raffling items for purchase. He also noted that they are currently revamping it, and it will be back soon.

Commissioner Evans noted that with his knowledge in marketing, the best time to do a fundraising mailer is around the holidays. Mr. Donnachie noted that the initial mailing does go out on holidays, and they have changed their mailing times around a couple of times. Their marketing company, Choice Marketing has suggested mailing the fund mailer during tax season however, with COVID-19 it did not go so well. Mr. Donnachie noted that he will compare this year with last year to see if this year has been better.

Commissioner Young asked the status of the rescue truck. Mr. Donnachie noted that it is still being repaired, and he does not know the completion date.

Director of Building & Life Safety Mr. Stackhouse

- Applied for Fema Grant for COVID-19 reimbursement of approximately \$16,000
- Attended quarterly training for emergency management discussing COVID-19, and recent storms
- Department Heads continue to meet on a regular basis to discuss operational and staff status during the COVID-19 changes to keep staff and residents safe.

Commissioner Mullin asked what residents can be doing now regarding stormwater. Mr. Stackhouse noted that the biggest thing to do is, that if you know you have stormwater facilities or old culverts in your yard, to take responsibility and keep them clean, when you know rain is coming. He also noted that Caln's biggest issue is where the stormwater facilities have not been conveyed to the township or there is not a Homeowners Association to take care of them. He further noted that discussion has been held on a stormwater fee however, every single parcel in the township would have to be evaluated, and that could be a multi-million budget.

Commissioner Mullin noted that both entrances of his neighborhood were flooded, and what would someone do if there was a medical emergency. Mr. Stackhouse noted that you should call 911 immediately if you're stranded or feel you are in jeopardy.

Director of Public Works Mr. Fragale – Mr. Fragale noted a few highlights from his July 2020 report which was previously provided to the Board.

- Doing a lot of drainage work, bridges, creeks, and trimming work
- Working with homeowners with their private property stormwater issues

Ingleside Golf Manager Mr. Ward – Mr. Ward noted a few highlights from his July 2020 report, which was previously provided to the Board.

- Rounds July 2020 3,765 – Rounds July 2019 2,678 – Increase of 1,087 rounds
- Revenue July 2020 \$110,237 – Revenue July 2019 \$68,192 – Increase of \$42,000 in revenue

Commissioner Evans would like Mr. Ward to add the percentages to his presentation. Mr. Ward noted that he will do that.

Commissioner Young noted that the beginning year balance was negative \$657,530.26, and as of today the balance is negative \$363,334.00.

Commissioner Young asked Mr. Barron if September is the \$125,000 bond payment. Mr. Barron replied that it is.

Commissioner Mullin asked if Mr. Ward expects a decrease in rounds, since school is starting. Mr. Ward noted that they usually have a decrease however, not everyone is going back to school.

Commissioner Mullin asked the status of the survey cards. Mr. Ward noted that they gave away one round so far.

Commissioner Mullin asked the status on the sprinkler system. Mr. Ward noted that they are down to a three man crew now therefore, they will re-work that whole area in the fall.

Commissioner Mullin noted that the Golf Task force will possibly meet Wednesday, September 2, at the golf course.

Finance Department – Kevin Barron

Finance Report – Mr. Barron noted a few highlights from his July 2020 report, which was previously provided to the Board.

- Real Estate 59% collected at the end of July – \$183,000 behind from last year
- Earned income tax 35% collected
- Fire Revenue 94% collected at the end of July
- Interest 67% collected compared to last year negative \$1,049 because the face period was moved to August
- Expenditures 40% expended at the end of July - \$72,000 spent compared to last year, this time
- Their ten day letter was inadvertently sent to some residents who already paid.

Commissioner Young asked Mr. Barron if he will use the post mark as the penalty cutoff. Mr. Barron noted that, that is the law so, he will not add a penalty if the postmark is before the deadline date.

Commissioner Mullin asked if the COVID-19 expenses in the 40%. Mr. Barron noted that the COVID-19 expenses are under the contingency line.

General Checks 45377 to 45443 and General Manual Checks 150 to 154 – Commissioner Mullin entertained a motion to approve general checks 45377 to 45443 and general manual checks 150 to 154. Moved by Commissioner Young and seconded by Commissioner Kennedy. Vote passed 5-0

Additional Business

Commissioner Mullin called for additional business. There was none.

Public Comments

Cheryl Spaulding of 406 Lloyd Avenue asked when the written reports will be uploaded to the website. Ms. Denne noted that she responded to Ms. Spaulding email earlier. Ms. Denne also noted that Director Reports are done at the second meeting of the month, and Ms. Swan was working on uploading them today. Ms. Spaulding asked where they would be located. Ms. Denne noted that they will be under the agenda section.

Adjournment

Commissioner Mullin entertained a motion to adjourn the August 27, 2020 meeting at 9:29 PM. Moved by Commissioner Evans and seconded by Commissioner Young. Vote passed 5-0.

Respectfully Submitted by,

Denise Miller
Assistant Township Secretary