

#06-2022
March 15, 2022

A business meeting of the Whitpain Township Board of Supervisors was held at 6 p.m. Tuesday, March 15, 2022 in hybrid mode – in person and virtually via Zoom. Supervisors Kimberly J. Koch, Michele Minnick, Jeffrey Campolongo, Joyce M. Keller and Scott M. Badami were present. Also in attendance were Township Manager Roman M. Pronczak, P.E., Assistant Township Manager David J. Mrochko, Township Solicitor Michael P. Clarke, Esq., Township Solicitor Alexander M. Glassman, Esq., Police Chief Kenneth Lawson, Finance Director Christine M. Bauman, Fire Marshal David M. Camarda, Township Engineer James E. Blanch, P.E., Assistant Code Enforcement Officer Travis DeCaro, Public Works Director Thomas Farzetta, Parks and Recreation Director Kurt W. Baker, IT Director Nicole M. Leininger, and Recording Secretary Virginia Papale. Human Resources Director Kathleen Yackin was absent. There were 13 members of the public in attendance in person, and 15 participating remotely.

Chair Koch reminded everyone that we will continue to use the closed-captioning service that is autogenerated by Zoom. It is not 100% accurate and not the official minutes of the Board of Supervisors' meetings, as the written minutes are approved at a subsequent meeting of the Board. If anyone has questions regarding the closed-captioning service, please contact IT Director Nicole Leininger. She then asked everyone to stand for the Pledge of Allegiance.

Chair Koch then turned the meeting over to Solicitor Clarke who gave an overview of proposed Resolution No. 1488, which supports the enactment of a Responsible Contractor Ordinance No. 394 scheduled to be considered this evening.

Solicitor Clarke explained that the proposed Responsible Contractor Ordinance codifies procedures for public works' contracts. It is only for Township business and will not impact residents or private businesses. The ordinance will ensure quality workmanship on public contracts, adding certification requirements that craft workers who will work on the project have completed an apprenticeship program. This will apply to all contractors and subcontractors. The proposed bid threshold is \$250,000 or greater. Contracts under \$250,000 are exempt. In order to submit a bid, there is a prequalification requirement, which will enable the Township to evaluate the bids and begin a project more quickly. The ordinance was challenged by the Associated Builders and Contractors (ABC) in 2018 to prevent Plymouth and West Norriton Townships from enacting it, though it was upheld by Judge Smith and the Third Circuit Court of Appeals.

Chair Koch called for a motion. A motion was made by Supervisor Minnick, duly seconded by Supervisor Campolongo to pass Resolution No. 1488. Chair Koch called for any comments from the Board. There were none. She called for public comment.

Tom McHale of 1605 Walton Road is a Township resident and a board member of ABC. He believes this ordinance, as written, will eliminate nearly 90% of the workforce with its restrictions. It is not a union or non-union issue. He is a general contractor and has both on his jobs. The language in the ordinance needs to be opened up to be more

competitive. As a taxpayer, he sees a tax increase in the future due to eliminating so much of the workforce. If there can be discussions, he would like to participate.

Scott Hasson, of 400 Old Penllyn Pike is in favor of the ordinance. He lives and works in the area and believes that qualified contractors should build parks, schools and municipal buildings. The jobs will be prevailing wage, set by the state.

Terry Crouthamel of Asphalt Maintenance Solutions is a pavement preservation contractor. They have been doing work for Whitpain Township for about 20 years. They are a small family company, and passage of this ordinance could potentially affect them. For all the years they have worked for the Township, there have never been any issues with quality or workmanship. They pride themselves in having top-quality, well-compensated people working for them. They are currently under contract with the Township for work this year, and possibly next year as it was a three-year bid. He understands what the Township is trying to do as far as raising the standard and providing a higher quality product. He agrees with the entire ordinance, with the exception of the apprenticeship program. The language, as written, excludes his company. Their process is highly specialized with only about 12 of the specialized machines in eastern US. You might not only eliminate a contractor but will also eliminate a cost-effective product that you have been successfully using for 20 years. They are PennDOT prequalified, belong to the Montgomery County Public Works Association and the Pennsylvania State Association for Township Supervisors. The operators are sent all over the country for training. Some processes are so highly specialized, there is no local training site. If there was an apprentice program suited for their line of work, he would sign them up. If there is not training for the applications they use, it will hurt his company, and ultimately the Township. Supervisor Minnick noted that if there is not a specific apprenticeship program for his line of work that can be documented, and we would have to work with the Solicitor to determine whether or not Asphalt Maintenance Solutions would be excluded from the requirement. Mr. Crouthamel commented that there have been other areas that have adopted this type of regulation, but they put in exclusions for maintenance processes. His applications are not all construction. Some are maintenance. Other companies are in the same spot, where they train their employees, but not as part of an apprentice program. This does not mean they are not a responsible contractor. Chair Koch asked Solicitor Clarke to clarify that if there is no apprenticeship program available, is it an exclusion to the process. Solicitor Clarke said the ordinance is meant to address craft works where there is an available apprenticeship. If the work is considered a craft, i.e. carpenters, operating engineers, plumbers, electricians, there is an apprenticeship program for those and others and they would need to meet the threshold. Chair Koch asked Mr. Crouthamel if there is an apprenticeship for those who have to train on the machinery they use, and he responded there is not for their processes. Supervisor Campolongo said he understands the concerns, and after reading Mr. Crouthamel's letter, asked the Solicitor if there would be an exception in the absence of an apprenticeship program. The Board's concerns and why they feel the need for the ordinance relates to the types of apprenticeships that would be typical in craft industries. Mr. Crouthamel's field is very specialized and very specific. Supervisor Campolongo asked for information about what apprenticeships do exist for his employees,

and what apprenticeships are available with respect to the specialized machinery they use. It would be helpful in understanding what they do.

Peter Addalli, a non-resident, represents IBEW Local 98, and repeated that it is not a union/non-union thing. They only want assurance that trained and qualified personnel are working on projects. Since the projects are prevailing wage, they should all cost about the same amount, no matter who the bidder is.

With no additional comments, and with a motion and second, Chair Koch called for a vote. Resolution No. 1488 passed unanimously.

As advertised, the Board considered Ordinance No. 394, Responsible Contractor's Ordinance (RCO), an ordinance of the Township of Whitpain, County of Montgomery, Commonwealth of Pennsylvania, providing for the adoption of certain procedures related to the solicitation and award of public contracts; providing for certification requirements for public contractors and subcontractors to public contracts; providing for public contract review procedures; providing for assurance on the use of properly trained construction personnel; repealing inconsistent ordinances or parts of ordinances; containing a savings clause and providing for an effective date.

Solicitor Clarke called for a motion to open the public hearing. A motion was made by Supervisor Campolongo, seconded by Chair Koch and unanimously approved to open the public hearing.

Solicitor Clarke noted this is a public hearing to consider the adoption of Ordinance No. 394. He read the summary of the Ordinance, and entered into the record Exhibit 1, Ordinance No. 394, Exhibit 2, Notice of Hearing that appeared in the Times Herald, along with the Proof of Publication. Background of the Ordinance has previously been provided, and he is happy to answer any questions from the Board. He referenced the lawsuits previously, and noted that both ABC and the townships involved agreed that the municipalities have legitimate government interests in ensuring that a well-maintained workforce provides quality workmanship on public projects. They also agreed that apprenticeship programs are an effective training tool. The Court held that this requirement is reasonably related to the municipality's interest in a well-trained workforce providing quality workmanship on public projects, which is why Judge Smith of the Federal Court upheld it, as well as the Third Circuit Court. With the requirement that 70% of the craft workers complete an apprenticeship program, there is no evidence that this eliminates 90% of the workforce, and no evidence that it will increase costs.

A motion was made by Chair Koch, duly seconded by Supervisor Minnick to pass Ordinance No. 394. Chair Koch called for any comments or questions from the Board. Supervisor Badami asked the Solicitor of an ordinance like this is an effort to prevent quality issues, delays or cost overruns. Solicitor Clarke confirmed this. Supervisor Badami asked if Solicitor Clarke is aware of other municipalities or school districts that have had quality issues, delays or cost overruns which required additional work or funding. Solicitor Clarke

responded that it does happen. Supervisor Badami continued asking if the municipalities should look for the lowest bidder, but the lowest bidder with the necessary skill and objective qualifications and expertise to do the job right. Solicitor Clarke responded that it is what the RCO is trying to achieve. The law requires that projects are bid and the lowest responsible bidder is selected. The law also allows certain criteria, or qualifications, to be in place to ensure that the lowest qualified bidder, the lowest responsible bidder is selected. That is the intent of the RCO. Supervisor Badami asked if it is fair to conclude that union shops, as well as some non-union shops have the type of apprenticeship included in the RCO. Solicitor Clarke confirmed the reference and added that there is no mention of union in the RCO. Supervisor Badami, in referencing previous litigation, questioned if the Third Circuit precedent identified is going to be controlling for the language in the proposed ordinance scheduled to be adopted tonight. Solicitor Clarke confirmed. Supervisor Badami asked if all legal issues addressed by the plaintiffs in the case were addressed by the Third Circuit. Solicitor Clarke confirmed that Judge Smith and then the Third Circuit Court of Appeals addressed all of the issues and determined that the issues were not persuasive enough to overcome what is a high burden for an ordinance like this as a legitimate government purpose. All ordinances and legislation have a presumption of validity, and challengers have a burden of proving that there is no rational reason to pass this ordinance. The plaintiff in this litigation was unable to do it. Supervisor Badami added that he raised these issues as part of responsibility and managed risk for the Township. Supervisor Campolongo asked the Solicitor if he handled the lawsuit with ABC. Solicitor Clarke said he represented Plymouth Township and another entity. There were four defense counsels who were part of the lawsuit. Chair Koch called for public comment. There was none. Supervisor Campolongo would like to incorporate the public comments that were received prior to opening the hearing into the record.

A motion was made by Supervisor Badami, duly seconded by Supervisor Campolongo to close the public hearing. With a motion and a second to enact Ordinance No. 394, Chair Koch called for a vote. All voted in favor and the motion carried.

A motion was made by Supervisor Keller, duly seconded by Chair Koch to approve the Consent Agenda as follows:

- a. Minutes of the Board of Supervisors' meetings of February 15th, March 1st and March 9th.
- b. February Voucher List totaling \$487,431.87, check sequence #75221 through #75449.
- c. Treasurer's Reports of December 2021 and January 2022.
- d. Pass Resolution No. 1489 proclaiming April 21, 2022 as the 27th Anniversary of Earth Day in Whitpain Township.

- e. Authorize the Township Manager to advertise bids for the Erbs Mill Road Detention Basin Retrofit and Blue Bell Woods Detention Basin Retrofit projects.
- f. Approve requests for a waiver from the requirement of preparing a land development from:
 - The Wissahickon School District on behalf of the Shady Grove Home and School Association to install a covered pavilion and associated sidewalk improvements at Shady Grove Elementary School located at 351 Skippack Pike; and
 - The Wissahickon School District to install two temporary modular classrooms (approx. 900 SF each) at Blue Bell elementary School located at 801 Symphony Lane.

The waivers from land development are conditioned upon the review and approval of the site plans by the Township Engineer.

- g. Approve the Decision and Order for Conditional Use Application CU44-21, Normandy Development.
- h. Authorize the disposition of public records as follows, in accordance with Resolution No. 1004, adopted March 19, 2013: Sewer cash receipts records from 2011 through 2014.
- i. Pass Resolution No. 1490 extending the provisions of outdoor dining for 90 days to June 30, 2022.
- j. Confirm authorization for McMahon associates to proceed with traffic engineering services for anticipated improvements to extend the existing school zone for the Stony Creek Elementary School on Yost Road in accordance with their proposal dated March 7, 2022 in the amount of \$1,500.
- k. Pass Resolution No.1491 authorizing the taking by deed in lieu of condemnation certain real property for the Pulaski Drive Bridge project.

Chair Koch called for any questions from the Board. There were none. She asked if the public had any comments or questions. There were none. The motion carried.

A motion was made by Chair Koch, duly seconded by Supervisor Badami to approve a Lease Agreement between Whitpain Township and North Penn Valley Boys & Girls Club for 14 parcels of land on Maple Avenue for the purpose of constructing a permanent facility subject to the final review and approval of the Agreement by the Township Solicitor. Chair Koch called for any comments from the Board or the public. There were none and the motion carried.

A motion was made by Supervisor Keller, duly seconded by Supervisor Minnick to appoint Travis DeCaro as the Township Code Enforcement Officer and Zoning Officer. Chair Koch called for any comments. Supervisor Keller welcomed Travis officially. Supervisor Minnick noted that he has been Michael McAndrew's second in command. There was no public comment and the motion carried.

The Board took no action on the Zoning Hearing Board cases scheduled for March 17, 2022:

NO. 2310-22 – DANIEL GEIB. - requests variances from Article XII, Section 160-61.B related to Area Regulations and Article XXVIII, Section 160-202 related to Residential Projections into Front Yards with respect to his property located at 1301 Walton Rd., Blue Bell, PA, in the Township's R-5 Residential District. Applicant's requested relief, if granted, will allow Applicant to construct a 20' by 24' one story addition onto his residence which will project into the front yard when the Ordinance prohibits same and will reduce the minimum front yard setback to 23.3 feet when the Ordinance requires a minimum of 75 feet.

NO. 2311-22 – CHRIS AND JENNA RHOADS – request variances from Article VII, Section 160-34 related to Side Yards for One Family Detached Dwellings, Article XXVIII, Section 160-203 related to Residential Projections into Side Yards and Article XXIX, Section 160-225.B related to Extension of Non-Conforming Use with respect to their property located at 6 Meade Rd., Blue Bell, PA, in the Township's R-2 Residential District. Applicants' requested relief, if granted, will allow Applicants to construct a 782 square foot, two story addition onto their residence which will reduce the minimum side yard width to 7'8" when the Ordinance requires a minimum of 25 feet and will reduce the aggregate side yards to 38' 5½" when the Ordinance requires a minimum of 60 feet in the aggregate.

The following Zoning application is continued to May 19th. The attorney for the applicant, Craig R. Lewis, Esq., gave a brief overview of the relief being sought.

NO. 2308-21 – ALLIANCE PARTNERS HSP, LLC requests variances from Article XVIII, Sections 160-111(F), subsections (2), (3) and (4), related to Use Regulations with respect to their property located at 795 Jolly Rd., Blue Bell, PA, in the Township's R-E Research and Engineering District. Applicant's requested relief, if granted, will allow Applicants to construct research lab buildings on the property which will have storage areas greater than ten percent (10%) of the building's floor area and three loading docks per building, all of which are prohibited by the Ordinance.

The continuance is requested in order to revise the submitted plans and address comments and concerns raised at the Planning Commission meeting, as well as any points the Board might raise this evening.

A motion was made by Supervisor Campolongo, duly seconded by Chair Koch to Appoint the following to the Park and Open Space Board, with terms expiring December 31, 2025:

Jon Wollner as Alternate No. 1
Victoria Hyczko as Alternate No. 2
Chad Merriweather as Alternate No. 3

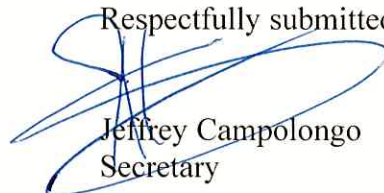
Chair Koch noted that she and Supervisor Campolongo serve on the committee to interview candidates, stating that there were a number of people interested in open positions. She called for any comments from the Board or the public. There were none and the motion carried.

Chair Koch turned the meeting over to Vice-Chair Minnick to conduct the public comment portion of the meeting. Vice-Chair Minnick called for any public comment. There was none.

The meeting returned to Chair Koch who asked for any old or new business or closing comments from the Board. Supervisor Keller welcomed the three alternates to the Park and Open Space Board, and thanked them for their interest.

With no additional comments, a motion was made by Supervisor Keller to adjourn the meeting at 6:54 p.m. This was seconded by Supervisor Campolongo.

Respectfully submitted,



Jeffrey Campolongo
Secretary

/v