

Board of Supervisors
July 13, 2022
Minutes

Board Members Present: Scott Lambert, Chair (remote); Rich Orlow, Vice-Chair; and Peter Fixler, Member(remote)

Staff Present: John Nagel, Township Manager; Steve Brown, Assistant Township Manager; Donna Wikert, Operations Manager, Board Secretary; John Neild, Direct of Public Work; Zach Barner, Director of Planning and Development; Usha Hogan, Direct of Finance Chris Yeager, Police Chief; Bernadette Kearney, Township Solicitor.

Mr. Lambert called the Zoom meeting to order at 7:15 P.M.

Pledge of Allegiance

Board Briefings:

Executive Session(s) were held on July 8 at 1:30pm (legal, personnel and real estate) & July 13 at 6:15pm (legal, and real estate)

Route 30 Corridor – Mr. Lambert mentioned in April the Township applied for the RAISE grant Federal Infrastructure grant application for twenty-five million dollars. This was submitted and we are waiting for the outcome to be announced August 12, 2022. Staff along with the Board of Supervisors and Delta have been in constant contact with elected officials and the Assistant Deputy of US Department of Transportation, keeping them up to date with the scope of the project. Feedback has been positive. Monday we are meeting in Harrisburg with the Assistant Director of PennDOT and other legislators.

Sewer System Sale - Mr. Nagel said we are patiently waiting for the PUC to decide on Aquas Application to acquire East Whiteland Townships sewer system. Tentative settlement is August 12, 2022.

Campus Master Plan – Jerry Gorski presented details and a schedule for the timeline of the project with respect to the Re Zoning. Jerry is seeking approval tonight, authorizing a hearing in September for the re zoning of the Townships property that is currently residential. Gorski engineering will attend the Planning and Commission meeting July 27 for their review of the project and then plans would go to the County. As far as Plan development and pricing they expect to have the Plans to appoint, and a firm fixed price along with the schedule to present to the Board mid-October.

Task or Action:	Date:
Board Authorization of Hearing Date (to be held on Sept. 13 th)	Wed. July 13 th
Planning Commission Meeting – Informal Project Presentation of Plan and Rezoning	Wed. July 27 th
Submit Plan to County Planning Commission (30 Days to Review)	by Thu. Aug 11 th
Initiate Notice Requirements for Rezoning Hearing (30 Days prior to Hearing)	by Thu. Aug 11 th
Planning & Development Subcommittee (Set PC Agenda)	Wed. Aug 17 th
Planning Commission Meeting – Consideration of Rezoning	Wed. Aug 24 th
Planning Commission Meeting – Review and Consideration of Plan	Wed. Aug 24 th
Board of Supervisors Meeting – Hearing for Rezoning	Tue. Sept. 13 th
Board of Supervisors Review and Consideration of Plan	Tue. Sept. 13 th
Board of Supervisors Approval of Plan (with Zoning in place)	Wed. Oct. 12 th

National Night Out, Tuesday August 2 – Chief Yeager announced August 2, 2022, will be the first annual National Night Out. National Night Out enhances the relationship between neighbors, law enforcement, fire and EMS while bringing back a true sense of community. Come join the fun there will be giveaways, food trucks and music. Greg Lewis also mentioned there will be fire department vehicles on display and fire safety information. Location will be 40 Liberty Blvd, next to the Grove.

Summer Concert Series – Mr. Lambert said the first and second concerts held at Valley Creek Park drew a great crowd. Mr. Brown said there are two more concerts. July 20th, Sarah Shook & the Disarmers with special guest Sug Daniels. The final concert in the park is August 17 at 6:30 pm Jeffrey Gains with special guest Roadstar.

Mr. Lambert read the following concerning the Catalyst:

On the evening of June 30th, a resident with a keen eye notified the Township that extensive tree removal had been performed around the Catalyst billboard site situated along Rt. 202 and Conestoga Road. The resident provided disturbing pictures of the tree's removal.

Pursuant to previously signed documents with 202 (L)East Whiteland Land Holdings LLC (Catalyst), no trees were to be removed without prior review and approval from the Township. This was a point of extensive conversations during the initial review process and an element of the project which the Board carefully negotiated to minimize impact to the site and surrounding properties.

I notified the Board, Staff and Solicitor that I wanted to conduct a site visit Friday morning to view, document, and secure the site from further ecological damage. Despite being a holiday weekend with a skeleton staff, I was joined at 11:15 am by our Codes Department, and our Township Engineers from ARRO – who had a representative drive in from Reading to assist with the information gathering. Members of our Codes Department then notified the Chester County Conservation District and PennDOT of the incident. At the site, we observed topped trees, extensive pruning, and complete removal of trees and vegetation - not only along Little Valley Creek but also on the steep slope areas leading down to the creek from the approved construction area. At this juncture, the township solicitor had not determined if the permit could be temporarily pulled, and all work stopped. We proceeded with an action plan and received a commitment from the Catalyst site manager for the following:

- 1) No additional tree or vegetation removal would occur until Township approval had been granted
- 2) All earthwork and debris removal would cease until all stakeholders had input on an ecologically safe removal plan

3) To protect the Creek and stabilize the site to prevent erosion of the now barren slope, especially with the forecasted weekend storms they were to install erosion control devices (such as silt sock) as directed by our Engineer by the end of the day (This was completed).

4) All township engineer costs related to this issue beginning immediately are to be paid by Catalyst.

Following the initial site visit, the Township hired an arborist to assess the physical damage to the trees, vegetation and determine the potential monetary value of the trees that were trimmed or removed.

On Friday July 11th, the Board of Supervisors, our Solicitor and Staff met to discuss our response and on July 12th the Township sent a notice of default to Catalyst pursuant to the terms of the lease.

The township provided Catalyst with six conditions that must be met to cure (remove)the default, including a \$151,000 penalty / tree value, plus an additional minimum of \$15,000 for ongoing expenses incurred by the Township. Additional details regarding the conditions of the cure were read into the record during the Board of Supervisors meeting on July 13th. Should the conditions not be met, and payment not made by September 12th, the lease is terminated, and the Township will demand Catalyst remove the sign at their expense.

More information on this subject is available by viewing the July 13, 2022, EWT Board of Supervisors meeting <https://www.municipalmeeting.com/east-whiteland>

[Scott Lambert Board Chairman East Whiteland Town](#)

Mr. Lambert asked Ms. Kearny to explain the cure of the default:

On July 12, 2022, the Township sent a notice of default pursuant to the Lease. After meeting with representatives of 202 (L) East Whiteland Land Holdings, LLC on July 11, 2022, and further discussions with the Manager of the Lessee, the Township will accept the following as a cure of the default:

- 1) Payment of \$151,000.00 for the unauthorized removal plus an additional \$15,000 for professional, consultant, and staff fees/expenses presently incurred due to the Lessee's default for a total of \$166,000.00 to be paid to the Township on or before the issuance of the use & occupancy permit for the advertising display sign described in the Lease but no later than September 12, 2022 whether a use & occupancy permit is granted or not.
- 2) Preparation of a Soil Erosion and Removal plan in compliance with Township ordinances demonstrating how the Lessee will implement the re-establishment of vegetation in the areas disturbed outside of the Premises with a schedule of the items to be completed and the date of completion.
- 3) Preparation of a plan in compliance with Township ordinances demonstrating how the Lessee will remove debris and remediate the area disturbed by the Lessee's unauthorized actions with a schedule of the items to be completed and the date of completion.
- 4) Review and approval by Township professionals, consultants and staff of the plans set forth in paragraphs 2 and 3 (together the "Plans").

- 5) Implementation of the work set forth in the Plans once approved by the Township in a timely manner as set forth in the schedules on the Plans.
- 6) Reimbursement to Township professionals, consultants and staff for its fees, costs and expenses related to review and inspections and any other work related to the cure of the default from the date of this letter.
- 7) If the Lessee fails to make the payment in paragraph 1 or fails to proceed in accordance with paragraphs 2, 3, 5 and 6, the Lessee shall be considered in default of the Lease, no further opportunities to cure will be provided, and the Lease is terminated.

Martin Lutz first wanted to thank the Township and staff for jumping on this issue especially since it was over the holiday weekend. Martin asked several questions about how we prevent this from happening again. The applicant clearly ignored what they originally agreed upon on the application. There was to be no disturbance of the steep slopes. Yet they removed trees and vegetation. On the application it asks do you plan to remove trees or vegetation yes or no. They said no yet continued to remove trees. He asked if PennDOT and or the Chester County Conservation had been notified. Mark Moses, Director of Codes, said he reached out to both and have not had a response yet. Martin is genuinely concerned how to prevent this from happening five or ten years in the future. Mr. Orlow said the Catalyst intentionally disregarded their obligations. He suggested the Police keep and eye out on the property or install a camera. He suggested barriers be put in place on other parts of the parcel which would not allow this to happen again.

Public Hearings:

Ordinance Amending Chapter 154 of Township Code regarding Sewers and Sewage Disposal to add requirements related to Sewage Grinder Pumps.

Ms. Kearney opened the hearing at 7:46PM.

Exhibits for the Hearing:

1. Ordinance Considered for Adoption
2. Legal Notice
3. June 30, 2022, Email with letter and enclosed Proposal Ordinance and Legal Notice of Hearing to the Daily Local News.
4. June 30, 2022, Email with letter and enclosed Attested Ordinance sent to Chester County Law Library
5. Proof of Publication in the Daily Local Newspaper on July 1, 2022

Ms. Kearney mentioned the two subdivisions are Bacton Hill and Plane Brook this ordinance needs to be in place before the sewer sale. No questions from the public, Mr. Orlow asked if these subdivisions are part of the six units being marketed, Mr. Neild said no. Ms. Kearney closed the hearing and went back into the public meeting to vote upon the ordinance.

Mr. Orlow made a motion to adopt Ordinance Amending Chapter 154 of Township Code regarding Sewers and Sewage Disposal to add requirements related to Sewage Grinder Pumps. Mr. Fixler seconded the motion; the motion was approved 3-0.

Board Motions & Resolutions:

Consider Resolution for Application for DCED Multimodal Transportation Fund Grant for Route 30 Preliminary Design (\$1,000,000)

Christian Muniz from Delta described the process of the Multimodal Transportation Fund Grant. This grant is through the State Department of Community & Economic Development. It is overseen by the Common Wealth Finance Authority. What the Board is considering tonight is a resolution, any public sector applicant for State programs must pass a Resolution requesting the grant.

John Nagel said McMahon is preparing a revise estimate of the projects cost. Once the Board considers an approval of the resolution, we will have more details forth coming of the preliminary design work, the deadline for this Resolution is July 31, 2022. Mr. Orlow asked how competitive these grants are. Chris Muniz said State wide anywhere between 750 to 1000 applicants. Chris said we will outreach to the siting house member, Senators, and upcoming Senators, we will engage directly with DCED, Governor's Office, Leadership Staff, and any local Political support from legislators. We will put forth a vigorous effort. Mr. Orlow asked what the timeline to award this grant is. Chris said typically in their November Board meeting, however there can be delays, but there is a good chance if they have reviewed all applicants, it will be in November. Mr. Lambert added that any work done under this grant for preliminary work will be looked at in the second round if we do not receive the grant this time around.

Mr. Fixler made a motion to approve the Resolution for the application. Mr. Orlow seconded the motion; the motion was approved 3-0.

Approve MS4 Stream Restoration Partnership with PennDOT for Valley Creek Park

John Neild introduced Robert Maiden (Working Lands Investment Partners) to talk about the MS4 work that the Turnpike would like to do in Valley Creek Park.

Robert Maiden and Mary Paist-Goldman gave a presentation on the MS4 stream partnership project. Mr. Orlow asked if the program is fully funded by PennDOT and do they have other programs for State Roads. Ms. Paist-Goldman said yes there is opportunity for State Roads if the Township is interested, they can send a list of the Roads they are interested in to Working Lands Investment Partners, they would be glad to investigate this. The Township along with PennDOT will received MS4 credits and if they exceed the MS4 credits they would be rolled over to the next permit cycle. Mr. Goodman from Trout Unlimited called in a question, he asked if the Turnpike and PennDOT has their own requirements for MS4, he said it sounded like the Turnpike and PennDOT are acting as one. Ms. Paist-Goldman said no they are independent of each other for their permit obligations but have teamed up on this project. They are meeting separate permit obligations.

No approval is necessary however the Board would like it to be known they are all in support and agreement to move forward.

Mr. Lambert made a motion to move forward with this project. Mr. Fixler and Mr. Orlow both seconded the motion; the motion was approved 3-0.

[..\July 2022\East Whiteland Presentation MS4.pdf](#)

Approve Resolution to Adopt Amended Act 537 Plan – Ms. Kearney explained this is part of the sewer sale. DEP requires the Township to adopt a Resolution amending the Act 537 Plan. The resolution has been reviewed and approved. Public comment period was in place and all comments have been managed. Mr. Lambert asked if the sewer sale does not go thru what impact would this resolution have. Ms. Kearney said it is required by DEP for the sale, if the sale does not occur it would be void.

Mr. Orlow made a motion to Adopt the amended Act 537 Plan. Mr. Fixler seconded the motion; the motion was approved 3-0.

Approve Maillie engagement letter for using to help with ARPA as needed - Mr. Brown said this is a standard engagement letter, we will use Maillie as needed to be complaint with ARPA and Federal government.

Mr. Fixler made a motion to approve. Mr. Orlow seconded the motion; the motion was approved 3-0

Approve Proposal & Contract from Blue Scope Construction for Heating, Ventilation and Air Conditioning Improvements to Administration and Police Department Building (\$765,233)
Approve Proposal & Contract form Blue Scope Construction for Electrical Improvements to Administration and Police Department Building (\$40,755)

The contract has two minor changes that need to be made. Ms. Kearney said the attorney Laura Lawson for Blue Scope Construction has agreed to make the changes to the contract. Once these changes are completed, they will be ready to sign.

Mr. Gorski updated the status of the equipment it will be in after Labor Day. Work will begin first week in September.

Including take down and installing equipment should be wrapped up by the end of October. Mr. Lambert asked if the HVAC goes down how will the employee be able to continue to work in a comfortable setting. Mr. Gorski said there will be temporary equipment brought in for that climate control. Mr., Nagel said the administrative side of the Township is non-essential and will be working from home.

Mr. Orlow made a motion to approve Proposal & Contract with Blue Scope Construction for the HVAC for \$765,233 and for the Proposal & Contract for Blue Scope Construction for Electrical Improvements to

Administration and Police Department Building (\$40,755) subject to contract being in final acceptable form and substance to our solicitor as negotiated.

Appoint William Wrabley to the Planning Commission for a term of 4 years (12/31/25)

Mr. Fixler made a motion to approve appointment. Mr. Orlow seconded the motion; the motion was approved 3-0.

Approve Conditional Job Offer to John Mateja for Zoning Officer Position – Mr. Brown said an offer was made and accepted by John Mateja, he comes highly recommended.

Mr. Orlow made a motion to approve conditional job offer. Mr. Fixler seconded the motion; the motion was approved 3-0

Planning & Development (ZB): Planning & Development:

Consider Rendering a Decision on the Following [Development Applications](#):

WLD-04-2022 for Request for Waiver of Land Development for Electric Vehicle Charging Station at Wawa on the corner of Route 29 and Matthews Road

Mr. Henry Wood spoke on behalf of Tesla, and stated they are in compliance with the resolution.

Mr. Fixler made a motion to waive request for land development. Mr. Orlow seconded the motion; the motion was approved 3-0.

Consider Extension of Time to Render a Decision on the Following [Development Applications](#):

LD-12-2021 for 9 Malin Road Flex Building until October 31, 2022

LD-01-2022 for 41 Moores Road Parking Structure until October 31, 2022

LD-02-2022 for 10 Malin Road Flex Building until October 31, 2022

Mr. Orlow made a motion to approve extension for all three. Mr. Fixler seconded the motion; the motion was approved 3-0.

Consider Final Release of Financial Security for the Following Developments:

Ducklings Early Learning Center (105 Church Road Partner) – Letter of Credit

Mr. Fixler made a motion to approve release. Mr. Orlow seconded the motion; the motion was approved 3-0.

45 Liberty Boulevard (Equus/ IPS Liberty Boulevard Investors) – Bond

(This was not ready for tonight's meeting)

Ratify Great Valley School District Escrow Agreement and Interim Cost Estimate for Erosion, Sedimentation & Parking Lot Work

Mr. Fixler made a motion to approve. Mr. Orlow seconded the motion; the motion was approved 3-0.

Consider Authorizing Hearing Date and Legal Notices for Amended Conditional Use Application of Feters Mill Community Association, Inc. – Hearing to be held on August 10, 2022

Mr. Orlow made a motion to approve the Hearing on August 10, 2022. Mr. Fixler seconded the motion; the motion was approved 3-0.

Consider Authorizing Hearing Date and Legal Notices for Zoning Map Amendment related to 6 Mill Lane to rezone from R-1 (Residential) to INS (Institutional) – Hearing to be held on September 13, 2022

Mr. Orlow made a motion to approve the Hearing on September 13, 2022. Mr. Fixler seconded the motion; the motion was approved 3-0

Zoning Property Maintenance Codes

Consider Sending Township Solicitor to Zoning Hearing Board to Support or Oppose:

ZHB-2022-05 – Application of Mark Helmle for a variance from Section 200-20A 1. Minimum side yard (aggregate) 2. Minimum side yard (one side) 3. Minimum set back from streets, any building face to existing local street ultimate right of way 4. Minimum set back from streets; surface parking areas to existing local street ultimate right of way 5. Section 200-63 Buffers: Canopy Tree Required (3” caliper).

Mr. Lambert asked if the surrounding neighbors been notified? Mr. Mark Gordon representing the applicant gave an overview on the project. They will seek variances as mentioned above. Notices to all neighbors have been sent out.

No need to send the solicitor.

Consider Action on Zoning Hearing Board Decision:

ZHB-2022-2 – Application of 10 Malin Road Associates, LP for variances related to setbacks, impervious coverage, and parking requirements. Written Decision dated June 27, 2022

ZHB-2022-3 – Application of Evergreen Landscaping, Inc. for variances related to various setbacks and a special exception to permit outdoor storage. Written Decision dated June 27, 2022

Mr. Barner said this is a new process added to the agenda. Once the Zoning Hearing Board has decided on the application the Zoning officer will report back to the Board of Supervisors in case there are any questions or want to take a position or appeal the decision.

The Board had no questions but said they thought it was an innovative idea to make the Board aware of the decisions after the Zoning Hearing Board.

Public Comment:

Mr. Miles, resident of the Township said he is here today to discuss the oversight relationship between the Police and the Board. Partially the regulations and procedures that are currently in place to maintain and ensure quality and fairness in our local law enforcement. He stated his goal is not to make this specially about him but to address the needs of the Township residents at large. He asked if anyone wanted to comment. None was made.

Then he referred to an article Keating Discrimination and said he was trying to prevent something like this from happening again and save the residents from paying hundreds of thousands of dollars of tax payers money and insurance money making settlement claims. He sees similarities with a case he has been involved with. He referred to the article and said the Board was to involve with the Police hiring process. His experience is the opposite it has been difficult to get anything investigated year after year. He said he would like to get on the Board Agenda and hopes this will not be denied, he is opened to a smaller group Board group if possible so that he can be more specific. He thanked the board and staff for all they do.

Consent Agenda:

Approve Meeting Minutes from June 8, 2022

Ratify Payment of Bills: \$1,228,059.53 (June 2022)

Accept Treasurer's Report as of May 31, 2022

Approve Memorandum of Understanding for Township Manager, Police Chief and Police Lieutenant

Approve Amendments to Employee Handbook for Paid Time Off Benefits

Approve Proposal from Standard Insurance for Short Term Disability Benefits

Approve payment #5 in the amount of \$130,403.70 to Mecco Constructors for work done.

Approve Revisions to 2022 Fee schedule – Recreation fee increase to \$3,155

Approve 2022 Fee schedule Detail rate increased from \$110.00 per hour to \$120.00 per hour for each officer and the corresponding cancellation to \$240.00 per officer (2 hr. minimum).

Approve COSTARS Purchase of Replacement Tire Loader \$188,000

Approve purchase from Nextgen for the replacement of the two cameras \$1710

Mr. Orlow made a motion to approve as read by chair. Mr. Fixler seconded the motion; the motion was approved 3-0

Adjournment: