

**WILLISTOWN TOWNSHIP BOARD OF SUPERVISORS
688 SUGARTOWN ROAD, MALVERN, PA
MONDAY, OCTOBER 10, 2022, AT 7:00 PM**

MINUTES

The Regular Meeting of the Willistown Township Board of Supervisors came to order at 7:00 PM. Supervisors Robert T. Lange, Molly H.B. Perrin, and William R. Shoemaker were present. Also present were Township Manager Shanna Lodge, Police Chief Robert Klinger, and Solicitor Bill Christman.

Supervisor Shoemaker led the Pledge of Allegiance and a moment of silence for military personnel and first responders.

Announcements

Supervisor Shoemaker announced an executive session was held on October 10, 2022 regarding legal matters. Supervisor Shoemaker announced an upcoming meeting on October 20 to provide an update on the Comprehensive Plan. He encouraged residents to attend.

New Business

Minutes – Supervisor Perrin moved to approve the minutes of September 26, 2022. Supervisor Lange seconded the motion. There were no comments from the Board or the public and the motion carried unanimously.

Expenditures – Supervisor Perrin moved to approve the list of expenditures and interfund transfers dated October 7, 2022. Supervisor Lange seconded the motion. There were no comments from the Board or the public, and the motion carried unanimously.

Appointment – Supervisor Perrin moved to appoint Erin Smith to the Parks and Recreation Board. Supervisor Lange seconded the motion. There were no comments from the Board or the public, and the motion carried unanimously.

Police Report – Chief Klinger reported that the department made arrests for a DUI and a simple assault and issued a citation for harassment. The department is investigating a fraud complaint. Chief Klinger reminded the public that PECO and other utilities will not request money over the phone or via third-party digital payment applications. He noted that the department is continuing in the “Blue Beards for Charity” fundraising program.

Resolution – Supervisor Shoemaker introduced Resolution 17 of 2022, the Designation of Signatories for the Police Pension/OPEB Plans. Signatories on these retirement accounts will be the Board of Supervisors, the Township Manager, and the Township Treasurer. Supervisor Perrin moved to adopt the Resolution, and Supervisor Lange seconded the motion. There were no further comments from the Board or the public, and the motion carried unanimously.

Administration Item – Ms. Lodge introduced an Investment Advisory Agreement with Apella Capital, LLC, formerly Structured Asset Management, Inc. Structured Asset Management, the investment advisor for the Township employee 457 retirement plan, is becoming a part of Apella Capital; this agreement codifies this change. Supervisor Perrin moved to approve the agreement. Supervisor Lange seconded the motion. A resident asked whether there are any fee changes associated with the change in the company. Ms. Lodge noted that the Township Treasurer reports that there are no fee changes. A resident inquired whether all the Township retirement funds are managed by the same advisor. Ms. Lodge and Supervisor Shoemaker noted that they are not; the various funds are managed by different advisors. There were no further comments from the Board or the public, and the motion carried unanimously.

Purchase – Ms. Lodge introduced a request to purchase a shed from Stoltzfus Structures, LLC to replace the shed damaged by a storm. The cost of the shed is \$19,995.00; of the total, \$17,066.16 will be covered by insurance. Supervisor Perrin moved to approve the purchase. Supervisor Lange seconded the motion. There were no comments from the Board or the public and the motion carried unanimously.

Settlement Agreement – Solicitor Christman introduced a Settlement Agreement regarding neighbor disputes on Castlebar Lane. The agreement memorializes the Township’s position on the permitted uses as codified in the Township Zoning Ordinance, dismisses ongoing litigation, and supersedes previous agreements. Once all parties sign the agreement, it will be approved by the Court, after which it will go into effect. Supervisor Perrin moved to approve the agreement. Supervisor Lange seconded the motion. Carol Meerschaert, 133 Spruce Lane, asked if the document will be public. Mr. Christman noted that when approved, it will be a part of the public record. Joe Heenan of 713 Monument propounded that the Ordinance passed by the Township last month brings the Township up to speed with the state law. Mr. Christman confirmed that language from the state statute was included in a recent amendment to the Township Zoning Ordinance. Mr. Heenan suggested that this legitimizes the property owner’s action. Mr. Christman stated that the current use of the property has not been an issue; it is reasonable to say that current use can continue assuming that it continues to comply with the current ordinance. There were no comments from the Board or the public and the motion carried unanimously.

Citizens’ Comment

Allie Barchi of 21 Laurel Circle inquired about deer hunting on Township property. Supervisor Shoemaker advised that hunters should inquire with the Township.

Mike Kerr of 33 Stonehenge Lane asked whether there have been any change orders on the Fairview Road sewer repair project. Ms. Lodge reported that no, but there have been delays due to weather.

Norm Dodge of 28 Sunset Drive inquired about markings on the edge of the roadway on Sunset. Supervisor Shoemaker conjectured that this work is related to the Township stormwater planning in the area.

Brian St. Clair of 12 Moreland Drive inquired how open space is funded in the Township. Supervisor Shoemaker noted that there are several funding sources and pointed out the conserved properties on the Township map. In 1999, a ballot referendum approved an increase in the Earned Income Tax to fund open space acquisition and preservation. One-eighth of one percent of the EIT is placed in a designated Open Space fund.

Cindy Myers of 735 Hillview Road inquired about erosion and riparian buffers near the White Horse Bridge. She noted there was high water during a recent storm. Supervisor Shoemaker noted there are a lot of places in the Township where property owners have mowed or removed important buffers, and the Township is in communication with those owners about restoration.

Julie Frissora of 34 Chetwynd inquired about legal answers to questions she and some fellow residents had emailed regarding the sewer sale. Supervisor Perrin thanked the public for continuing to follow the sewer sale. She noted that some residents are asking for a firm commitment that the Township intends to terminate the contract. She referred to the pending appeals and stated that the Township will not make a premature decision regarding termination before that option is legally available or in the absence of all the facts. The Board has not discussed termination of the contract in public or in executive session as to do so would be premature. She further noted that the Willistown Board of Supervisors cares about every resident of the Township and has been listening to their concerns. The Board has been asked to confirm that the termination clause exists, and the Board did; the Board has been asked to confirm that the sale will not close while appeals are ongoing, and the Board did. The Obermayer firm's attorney-client privilege extends only to those authorized to act for the Township, and therefore it would not be prudent for legal questions to be answered in an open public meeting. The Board will continue to answer questions from the public on this issue at public meetings to ensure that information is equitably shared. Ms. Frissora asked follow-up questions and asked for confirmation of the decision the Board will make regarding the termination clause. Supervisor Shoemaker referred to the statement made at the previous meeting and noted that the Township has been and will continue to comply with the Asset Purchase Agreement. The Board will await the outcome of appeals and will not close on the sale unless or until a Final Order is issued.

Ellen O'Shea of 612 South Warren asked if the Board intends to meet before or on the termination date to take action. Supervisor Shoemaker noted that the Board can meet in executive session at any time, but that no action will be taken during executive session; he further noted that there is much that could take place between now and that future date. Supervisor Perrin added, by example, that the results of appeals could include restrictive provisions that would impact the Board's decision.

Jerry Childers of 8 Colonial Way asked if the Township is required to give advance notice of an intention to terminate. Supervisor Shoemaker assured him that all information will be gathered before any decision is made. He reiterated Supervisor Perrin's statement that changes may result from the appeals process.

Ms. Meerschaert of 133 Spruce Lane asked that the Board ensure that they do not miss the dates required. Supervisor Shoemaker confirmed that the Board will make sure that required dates are not missed, but the Board is not committing to taking any action at this time.

Carol Forte of 3902 Tall Oaks Lane asked how Aqua responded to the opposition at the meeting on September 12. Supervisor Shoemaker stated that Aqua representatives did not say anything to the Board following the meeting.

Supervisor Perrin suggested that Aqua likely intends to continue toward the purchase regardless of the opposition. She further stated that she is disheartened and disappointed by the threats of residents that they will not vote for her if she does not say what they want her to. She stressed that while she is not in support of the sewer sale, she intends to get all facts and will not act prematurely simply due to external pressure.

Francis Burke of 20 Lloyd Ave said she does not feel the public is hearing that the Board wants to stop the sale, and that residents do not feel heard. Supervisor Perrin apologized for the Board not being forthcoming, but noted that they are seeking facts in an evolving issue. She further noted that under the Asset Purchase Agreement, the full Board must support the sale, her own opinion notwithstanding. Supervisor Shoemaker noted that much of the opposition began in the discussion about proceeds, reiterated that the sale is not a money-making venture, and re-stated his own position regarding proceeds being set aside for rate stabilization for sewer users.

Mr. Heenan inquired about the termination clause and the impact of the breach of contract, specifically regarding damages, and if the Board has asked Aqua if they intend to seek damages. Supervisor Shoemaker and Supervisor Perrin have both previously approached Aqua with a request to terminate the deal, and Aqua has indicated that they have no interest in termination and would seek damages for a contract breach.

Ms. Frissora referred to Supervisor Perrin's comments and stated that she and her fellow residents are not asking for a commitment to terminate the contract but are asking for clarification on details of the Asset Purchase Agreement. Supervisor Shoemaker noted that some are asking for commitment – including many emails containing personal attacks demanding a breaking of the contract. He stated that the public needs to understand that the Township is in a legally binding agreement. The Township does not intend to break the contract and will not act without all the facts that will be available at such time when future options are available.

Frank Mayer stated he believes it is a sensible approach to refrain from taking action without all data. He asked when the Commonwealth Court is expected to rule on the appeals. Supervisor Shoemaker stated that this is unknown. He asked if the Board has sought to extend the timeline under which they can terminate. The Board has not discussed this. Mr. Mayer inquired about the engagement letter with Obermayer, which Ms. Lodge noted is available on the Township website.

Jackie Springman of 36 Chetwynd inquired about attorney-client privilege and why the ratepayers would not have access to the attorneys. Supervisor Shoemaker noted that the attorney-client privilege extends only to the decision-making body of the municipality. She inquired how much money has been spent on fees to Obermayer. Supervisor Shoemaker noted that this information can be made available to her.

Mr. St. Clair inquired about the use of the proceeds of the sale and objected to the use for open space; he asserted that sewer users should not be funding a common use for all residents. Supervisor Lange noted that the open space use is his opinion, not the opinion of the full Board. Supervisor Shoemaker reiterated his own position on the issue but further restated that the Board has not made any decision on the use of proceeds.

Mr. Childers expressed his disappointment that in his opinion due diligence was not done before the sale was finalized. He suggested that there was no public engagement on the issue.

Ms. Meerschaert expressed her concern about public utilities being controlled by private entities.

Lewis Pettinos of 6 Applewood Lane inquired about the history of the sewer sale issue. Ms. Lodge advised that the history of the issue is archived on the Township website. Supervisor Shoemaker noted that all the action was done in public meetings legally and properly advertised.

Pam Schaefer of 129 S. Cedar Hollow Road suggested that Obermayer may not be the best representation for the Township on the issue. Maureen McLaughlin of 6 Treyburn Drive asked whether other lawyers would be available. The Board advised that changing counsel at this time would not be prudent.

Ms. Frissora thanked Supervisor Perrin for her clarifications on the issue.

Mr. Heenan inquired about the bid process.

Mr. Childers asked about the importance of attorney-client privilege. Solicitor Christman spoke generally on the definition, case law, and its importance.

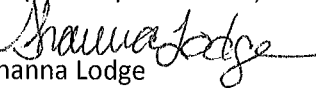
Next Meeting

The next meeting of the Board of Supervisors will be held on October 24, 2022, at 7 PM at the Township Building and on Zoom.

Adjournment

There being no further business of the Board, the meeting was adjourned at 8:29 PM.

Respectfully submitted,


Shanna Lodge
Township Manager