

The stated Working Session of the Board of Commissioners of the Township of Abington was held on Thursday, April 14, 2022, via webinar and in-person at the Township Administration Building, Abington, PA, with President Hecker presiding.

CALL TO ORDER: 7:44 p.m.

PRESENT: Commissioners BRODSKY, ROTHMAN, DiPLACIDO, VAUGHN, THOMPSON, WINEGRAD, HENRY, ZAPPONE, BOLE, SCHREIBER, HECKER
Excused: Commissioners CARSWELL, SPIEGELMAN, BOWMAN, VAHEY

Also Present: Township Manager MANFREDI
Township Solicitor CLARKE

CONSIDER APPROVAL OF MINUTES:

President Hecker made a MOTION, seconded by Commissioner Schreiber to approve the minutes of the Working Session of February 10, 2022.

MOTION was ADOPTED 11-0.

PUBLIC COMMENT ON AGENDA ITEMS:

Lora Lehmann, resident, commented that “an ordinance for responsible contractor has been problematic in every Township because they have the same onerous clauses that had to be amended at great expense,” and she asked for it to be brought back to a working session for further review.

Matt Toomey, resident, said he is in full support of the Township considering an RCO (Responsible Contractor Ordinance) because he pulled certified payrolls for the Abington High School project and the two issues were the site package and general contractor.

He is in the construction industry and “the reason why contractors do not bid on projects is because there is built in cheats, so when you build a system that they can cheat in, you are not raising the bar for other people.” Get a prenuptial agreement when working with any kind of contractor, get unscrupulous contractors out of our Township, hire local, pay the prevailing wage, and don’t let anyone cheat.

Mike Tobin, resident, said his issue with the contractor ordinance is Section 3(c)(10) that says, “70% of the workforce need to complete apprenticeship,” which implies that 70% of the workers will be journeymen, and if that is what Abington is requiring, construction costs will be astronomical, and who will monitor this?

UNFINISHED BUSINESS: None.

NEW BUSINESS:

Consider and discuss comprehensive wireless ordinance and wireless facility design standards:

Mr. Dan Cohen, Cohen Law Group, said his law firm represents local governments with cable wireless and broadband issues, and on the wireless side, there has been two major developments over the past few years, technological and regulatory. Because of the spike in demand for wireless broadband, the industry has been rolling out facilities in public rights-of-way, which has been a game changer for the management of wireless facilities by local governments. The term used by the FCC for these facilities is “small wireless facilities,” in which they boost capacity to allow for broadband usage by smartphones, digital tablets, etc.

Last year, the Pennsylvania General Assembly passed PA Act 50, which is the Small Wireless Facilities Deployment Act, and prior to the two developments, Township’s wireless provisions were more than satisfactory, and now they are not because the two provisions in the Township’s zoning code does not address wireless facilities in the public rights-of-way and there are no timeframes for approval, which is now necessary.

The fee schedule in the current ordinance is out of compliance and the passage of PA Act 50 for local governments requires enactment of objective design standards for small wireless facilities. So, the biggest issue is that the current code does not provide the Township with the authority to manage small wireless facilities in public rights-of-way, and we recommend that the Township move forward with amending the wireless provisions to address small wireless facilities in public rights-of-way and draft separate design standards as two separate documents, and by doing so, it would allow the Township to preserve the character of its community when it comes to wireless facilities.

President Hecker clarified that portions of the current zoning code that pertain to this are out of compliance per PA Act 50, so the Township has no control over what would be installed in the public rights-of-way. Is that correct?

Mr. Cohen replied that is correct.

President Hecker asked for any comments from Commissioners.

Commissioner Bole clarified that the next step would be for Township staff to work with the Cohen group to develop an ordinance and draft design standards. Is that correct?

President Hecker replied that is correct.

Commissioner Winegrad asked how widespread could this be under PA Act 50?

Mr. Cohen replied extremely widespread. The WIA (Wireless Industry Association) estimates that by 2026 there will be over 1 million because as the demand for wireless broadband increases, the need for small wireless facilities becomes greater and the coverage area is small about 1,000 ft., and that will multiply in the rights-of-way.

Commissioner Winegrad clarified that they need to be permitted throughout the entire Township. Is that correct?

Mr. Cohen replied that is correct. PA Act 50 requires that they must be permitted throughout, although the Township can manage locations and what they look like, etc.

Commissioner Rothman questioned whether PA Act 50 addresses radiation from wireless facilities.

Mr. Cohen replied that the Telecom Act of 1996 says, “local government may not prescribe radio frequency emission standards or anything else related to the health effects of wireless facilities,” so the Township would be preempted. He attended public hearings during which studies were cited showing there are health effects from radio frequency emissions as well as the opposite in which there are none. The last time the FCC studied it was in 1996, and since then, wireless technology has changed dramatically; however, the Township does not have the legal authority to do that, but the Township does have a right to require wireless providers be certified and demonstrate that their radio frequency emissions are within FCC’s standards.

President Hecker said there seems to be sentiment by the Board that it would be appropriate to move this forward for formal consideration.

Consider an ordinance establishing procedures for Certification of Responsible Contractor Requirements:

President Hecker called on Commissioner Schreiber.

Commissioner Schreiber said the RCO (Responsible Contractor Ordinance) covers public construction projects over the amount of \$250,000.00 and goes a step beyond just looking at the lowest responsible bidder. There would be some other requirements put in place to ensure the taxpayers that qualified contractors will be bidding on public works projects.

Anyone can bid provided they meet the RCO requirements, so for example, the RCO recognizes the importance of employee training and safety and would preclude companies that have been convicted of a felony related to their labor practices. Many municipalities have passed similar ordinances to help protect taxpayers' dollars, and she is glad we are finally considering this in Abington.

Solicitor Clarke added that the proposed ordinance provides and codifies procedures related to the solicitation and award of public works contracts and this ordinance does not have any impact on private companies or residences. It serves the legitimate government interest in ensuring that a well-trained workforce provides quality workmanship on public projects. Many if not most of the requirements in the ordinance are existing established law related to the awarding of municipal contracts and the ordinance adds a requirement and a certification that 70% of the craftworkers who will perform on the project have completed an apprenticeship program.

This requirement will apply to all contractors and subcontractors and the proposed threshold for this ordinance is \$250,000.00 and contracts under that amount are exempt from the ordinance. Also, the ordinance contains a prequalification requirement and those contractors who wish to bid a job will need to prequalify to submit a bid and this prevents contractors who do not qualify from spending time and money submitting a bid. Also, this enables the Township to evaluate bids, award contracts and begin projects more quickly.

In 2018, the ordinance was challenged in Federal court, and was upheld in Federal court in the Eastern District of Pennsylvania, and subsequently upheld in the Third Circuit Court of Appeals.

This ordinance has a change from the existing ordinance, which has been in effect for the past 10-15 years and that is adding a requirement that the 70% of the craftworkers on the job will have completed an apprenticeship program and this helps eliminate a loophole where a company may be certified but has workers that have not gone through an apprenticeship program.

President Hecker asked for any comments from Commissioners.

Commissioner Bole referring to Section 2 (a) of proposed ordinance and noted that the language in that section should be grammatically corrected for clarity.

Commissioner Zappone commented that he has been on the Board for 22 years and there have been no issues in this regard. Also, will the Township be strictly using a union shop?

Solicitor Clarke replied there is no requirement in the ordinance that bidders must be from a union shop, anyone can bid if they meet all requirements of the ordinance.

Commissioner Zappone said he has been doing a lot of research and most union shops have an apprentice program, but nonunion shops do not. He deals with subcontractors and general contractors on million-dollar projects daily and nonunion contractors are highly trained in their field. The Township would get more bidders without the RCO, but if this is passed, we would get fewer bidders, only high-level bidders, which will raise taxes and he is not in favor of that as well as other things in the ordinance. Also, in Allentown and Bethlehem this type of ordinance failed there. He suggested doing more research and have a meeting with contractors and those who have been in this business a long time to provide their input and advice, which is the right thing to do.

President Hecker asked how many public projects a year would fall under this category?

Manager Manfredi replied we do many projects using the Township's construction services team, and it was confirmed that those projects would not be subject to this ordinance. However, one upcoming project will be sent out for bid, which is the new HVAC system for the Township Administration Building estimating \$3.1 million dollar project that would fall under this ordinance.

Commissioner Rothman commented that we are exploring a dynamic of being proactive rather reactive, and he has also done some research, and although it is not flawless, it would be incredibly responsible for the Board to continue discussion and pursuing it.

Commissioner Thompson questioned whether the Crestmont Clubhouse project, a Township facility built using Federal funds, falls under this ordinance.

Solicitor Clarke replied if any Township funds are involved it would fall under this ordinance.

Commissioner Thompson continued that it is difficult to get bidders as there is a lot of work out there and there is a shortage of manpower and supply chain issues, but that will not be permanent as we have seen in 2008/2009 when work dried up and unqualified contractors were bidding on anything that was publicly listed. The State requires awarding contract to the lowest responsible bidder, but they are not always the most qualified, and this ordinance will provide protection for the Township when the economy shifts and work becomes scarce, and then we will see interest from every firm, qualified or not.

Commissioner Schreiber said the Township should be looking for the best, the strongest and the safest way, and it is the responsible thing to do.

Commissioner Rothman clarified that if we can provide an extra layer of protection by seeking a safer and more reliable way for certain construction projects to be done in the Township then we should consider it.

Commissioner Schreiber recommended moving this matter to next month's Regular Board Meeting for passage.

Commissioner Winegrad agreed to move this forward; however, we owe it to the residents to inform them that their taxpayer dollars will be put towards these projects, which may cost more as well as for budgetary reasons in which we may need to allocate additional funds towards these projects.

Commissioner Zappone expressed concern about escalating costs that will hit the pocketbooks of our taxpayers because he has seen it and he is trying to protect that. Also, dealing with union and nonunion is a major difference as he has dealt with it every day for the past 45 years.

President Hecker said we all share that concern, and he would like to see more data in that regard. If the Township is already paying prevailing wage, that cost is baked in; however, clearly in this era of supply chain shortage, the cost of goods and services has skyrocketed, which is out of our control, but he would be happy to continue that dialog. The Township is trying to get the best possible work done and there is a belief that adhering to these standards goes a long way to ensuring it, but it is not perfect, nothing ever is, and he agrees with a lot of the comments made tonight, so we will work on a path forward.

ADJOURNMENT: 8:31 p.m.

Respectfully submitted,

Liz Vile, Minutes Secretary