

LOWER POTTS GROVE TOWNSHIP BOARD OF COMMISSIONERS
November 3, 2011

The Board of Commissioners of Lower Pottsgrove Township held its regularly scheduled meeting on Thursday, November 3, 2011 at the Lower Pottsgrove Township Municipal Building, 2199 Buchert Road, Pottstown, Pennsylvania. Meeting was called to order at 7:00 p.m. The following were in attendance:

Board of Commissioners: Jonathan H. Spadt, President; Bruce L. Foltz, Vice-President; James C. Phillips, Michael McGroarty and James D. Kaiser.

R. Kurtz Holloway, Solicitor; Rodney P. Hawthorne, Manager; Alyson E. Elliott, Assistant Manager; Jennifer V. Marsteller, Treasurer; Scott Exley, Township Engineer and Michele Cappelletti, Secretary.

Michael Shade, Chief of Police and Lew Babel, Fire Marshal were absent from the meeting.

CONSIDERATION OF TRASH CONTRACT BIDS:

Solicitor Holloway reported that after reviewing all bids submitted by Waste Management, J. P. Mascaro & Sons and Republic Services, he determined that all three bids did not comply with all the conditions specified in the bid documents. This makes all three bids non-conforming and non-responsive. Solicitor Holloway's recommendation to the Board of Commissioners was to reject all bids and to authorize re-advertisement and re-bidding of the contract.

Solicitor Holloway further stated that if the Board takes his recommended action, he would hold a meeting on Monday, November 7, 2011 at 1:30 p.m. at the Lower Pottsgrove Township Municipal Building, to review with all bidders all things that are non-conforming and to try to resolve any ambiguity in the bid documents.

Commissioner Phillips said before a vote is taken, he would like to know what the problems were. Solicitor Holloway said he did not bring all his notes but the problems were quite substantial. He said if the Board wished him to do so, he would go through the issues and estimated it would take about 45 minutes. Commissioner Spadt preferred that the Solicitor not go through the issues at the meeting.

Commissioner Phillips said that time is money and the bidders would now have to come back again at 1:30 on Monday. Solicitor Holloway said he would like all bidders to hear what he was saying at the same time. He said we went through a pre-bid meeting, answered questions, issued two addenda and two letters during the process for the first bid and there were still questions and issues. Since there was only one bidder present at the Board meeting, that being J. P. Mascaro & Sons, the Solicitor still recommended having the meeting on Monday, November 7, 2011.

Pat Mascaro, President of J. P. Mascaro & Sons, said they have always taken our bids seriously and assured the Commissioners that the J. P. Mascaro & Sons bid is in order. He asked the Board to consider the intent of the bidding laws and said J. P. Mascaro put its best bid on the table. He felt there was no need for a re-bid. Mr. Mascaro requested that the Solicitor tell them why the bid was deficient and give them a chance to respond in writing.

Commissioner Spadt said that once the Board has the clarification it needs, J. P. Mascaro may have the best bid. Solicitor Holloway explained that looking at the base contract price, Waste Management was the low bidder. Looking at the 4-year contract price, Waste Management was the low bidder. J. P. Mascaro & Sons is low bidder only on a five-year contract with leaf collection for 12 months of the year. Solicitor Holloway again recommended rejecting all bids. He said by rejecting the bid, the Township will have begun the process of eliminating any potential ambiguity.

Mr. William Fox, Corporate Counsel for J. P. Mascaro & Sons, said J. P. Mascaro was low bid once a week on all options and low bid on five years. Mr. Fox said the Board is being asked to reject bids without knowing the numbers. He said before you reject bids, you have to notify the bidders why the bids are being rejected. Mr. Fox said the Board was acting based on its Solicitor's recommendation and responsible government is finding out what the alleged defects are before taking action. Mr. Fox said he was confident that the J. P. Mascaro bid is in order and he respects Solicitor Holloway's opinion; however, he felt that there was no reason to rush to judgment.

Commissioner Spadt asked Mr. Fox what the problem is with rejecting the bids. Mr. Fox responded that J. P. Mascaro's numbers are on the table for everyone to see. He said this is not fair if there are no material defects. Commissioner Spadt said the Board has been advised, by the Solicitor, that there are material defects. Mr. Fox said it is not good public policy and urged the Board to vote against the rejection.

Commissioner McGroarty said, with all due respect to Mr. Fox and J. P. Mascaro, the Board received information from its Solicitor that there are defects with the bid. Commissioner McGroarty took offense to an earlier comment that the Board is trying to use the bids as a "litmus test." He supported following the Solicitor's advice.

Mr. Fox said Solicitor Holloway has an opinion and no factual basis. Commissioner Foltz wanted to hear the reasons for the recommendation to reject the bids. Solicitor Holloway advised that J. P. Mascaro & Sons submitted no certified financial statement with their bid. Solicitor Holloway said the specifications called for a financial statement certified by a CPA; J. P. Mascaro submitted a summary. Mr. Mascaro presented a financial document to the Board.

Solicitor Holloway noted that the other bidders had significant departures from the instructions. Commissioner Spadt said he took offense to the assumption that the Township was going about this in an underhanded way. He said the Board is relying on the advice of counsel to get the job done right. Mr. Mascaro said with all due respect, they would be willing have a third party look at their financial statement.

Commissioner Phillips said he personally did not understand the necessity to reject the bids. J. P. Mascaro, Waste Management and BFI will have to go through the entire process again. Solicitor Holloway said he can make his interpretation clear to bidders on Monday and they can then elect to submit something different. Solicitor Holloway said deferring taking action would not change his mind and the Township would lose valuable time. He said we could fix the problems, come back to the Board with numbers and get the process completed in a timely fashion.

Commissioner Phillips wanted to try to avoid having to re-bid. He said if the errors were of a subjective nature, at that point the bidders would have to restructure their bids. Mr. Fox asked that the Township tell J. P. Mascaro where they are deficient and then give them a chance to respond. Mr. Fox asked that the Board not take bona fide bids and discard them. He said there is a down side to doing it again--you can't forecast the bids.

Solicitor Holloway explained the contract options. With a five-year contract, and if the Board decides to use Arborganic Acres to compost leaf waste, the Township is only required to have curbside leaf waste collection twice a year. The low bidder under this option is Waste Management by almost \$23,000 and here lies the problem. When you take it five years with twelve months of curbside yard waste collection, J. P. Mascaro was, indeed, the low bidder but the Board asked for options for leaf waste collection. The Township used a 12 (month) multiplier to determine the cost of leaf waste collection and the bid specifications are very clear. The Solicitor said when the Board does make a decision, part of the award will be for curbside leaf pickup "X" number of times per year.

Commissioner Phillips said we are not awarding the bid tonight, what we are doing is voting to reject all bids because of abnormalities inherent in all three bids received. Commissioner Phillips said he had a problem, not in taking the Solicitor's advice but, having not seen the bids, being asked to vote on something he knew nothing about. Commissioner Phillips was not convinced that tabling the bids is a proper compromise.

Commissioner McGroarty asked for a timetable for the bidders to fix their deficiencies. Solicitor Holloway did not think J. P. Mascaro was asking to fix its deficiencies; they want to convince the Township their current bid is in order. The Solicitor said the document (presented to the Board by Mr. Mascaro) is not going to satisfy him and he was not going to change his opinion. Solicitor Holloway said if the Board deferred taking action until its meeting on November 17, 2011 he would still be going with the same recommendation. He estimated that we would be able to complete everything associated with the re-bid by the end of December.

Commissioner Kaiser said that the Township pays Solicitor Holloway to do a job and, as Commissioners, they do not read every contract. Commissioner Kaiser said he does not have a legal background and he was fine with relying on Solicitor Holloway's opinion to finalize the bids by the end of December.

There was discussion between the Solicitor and the J. P. Mascaro representatives concerning other errors in the Mascaro bid raised by the Solicitor. There was further discussion among Solicitor Holloway, the Commissioners and Mr. Fox regarding the bid options and rejection of the bids.

After discussion, Commissioner McGroarty made a motion that all trash contract bids be rejected and that the trash contract be re-advertised for a new round of bidding. Commissioner Kaiser seconded the motion. Vote was as follows:

Commissioner Spadt	Aye
Commissioner McGroarty	Aye
Commissioner Kaiser	Aye
Commission Foltz	Nay
Commissioner Phillips	Nay

Motion carried by a vote of 3-2.

Regarding curbside leaf waste collection, Mr. Hawthorne presented the option of having the hauler pick up six times per year. Collections would be once a month in October, November and December (Fall) and once a month in March, April and May (Spring). There would still be a 60-day notice required if the Township wanted to change the schedule for the next year. Solicitor Holloway said using a 6-month multiplier will make it clear that the bid award will be based on six months of curbside collection.

Commissioner Phillips asked if this option was in the original bid specifications. Solicitor Holloway said no, it is a departure from what we had before and it is an attempt to clarify this option for bidders. Commissioner Foltz asked if we were changing the original bid. Solicitor Holloway said yes, we are getting new bids and it is a clarification. Commissioner McGroarty said the original contract did not have an option for less than twelve months. Solicitor Holloway said it was left completely open for the Board to decide how many months they wanted curbside leaf pick up. Commissioner Phillips asked if there were bids from all three bidders for six or twelve months. Solicitor Holloway said we used a 12 multiplier. Commissioner Phillips said we put it in the bid for 12 months. Solicitor Holloway responded that we only used a 12-month multiplier but left it open so the Board could pick anything up to twelve months. Commissioner McGroarty said we are not changing the contract significantly, we are clarifying the specifications.

Commissioner Kaiser made a motion that the bidding instructions for the trash contract state the 6 months of curbside leaf waste collection per year will be used for the purpose of determining the successful lowest bidder for the contract, but that the instructions further provide that after the contract is awarded, the Township retain the right to increase or decrease the number of collections each year. Commissioner McGroarty seconded the motion. Vote was as follows:

Commissioner Spadt	Aye
Commissioner McGroarty	Aye
Commissioner Kaiser	Aye
Commission Foltz	Nay
Commissioner Phillips	Nay

Motion carried by a vote of 3-2.

Commissioner Kaiser further moved that a special meeting of the Board of Commissioners be held on Wednesday, November 30, 2011 at 5:00 p.m. at the Lower Pottsgrove Township Municipal Building for the purpose of reviewing bids and awarding the trash contract and authorized advertisement of same. Commissioner McGroarty seconded the motion and it was unanimously approved. Vote was 5-0.

COMMENTS FROM VISITORS:

Tony Doyle, 1745 Kepler Road, asked for a copy of the trash bid requirements. Solicitor Holloway said he did not have the new specifications yet. He advised there will be a meeting on Monday, November 7, 2011 with the potential bidders to clarify issues. The Solicitor will then make changes (to the bid specifications), if needed, to clarify.

Mr. Doyle asked about leaf collection. He understood that leaf collection could be based on 6 months of curbside collection one year, and then the Board might decide it only wants it 2 months during the next year. Commissioner Spadt said the Board wants to be able to save money and have flexibility. Ms. Elliott advised that as a requirement of the Department of Environmental Protection (DEP), the Township must provide 12 months of curbside leaf pick up. Previously, the Township did not have an alternate drop-off location, but we can now use Arborganic Acres for that purpose.

APPROVAL OF MINUTES:

Commissioner Kaiser made a motion to approve the minutes of the October 24, 2011 Board of Commissioners meeting. Commissioner Phillips seconded the motion and it was approved by a vote of 5-0 in favor.

REPORTS:

Police

Chief Shade was not present at the meeting.

Emergency Management

The Emergency Management Report for the month of October, prepared by Lt. Michael A. Foltz, Emergency Management Coordinator, was distributed to the Board for its review.

Fire Marshal

Mr. Babel was not present at the meeting but his written report was distributed to the Board for its review. The following statistics are for September 2011:

Station	Total Calls	Total Hrs. of Service	Total Personnel Hrs.	Total Personnel Training Hrs.	Total Fundraising Hrs.	Community Service
	Sept. 2011	Sept. 2011	Sept. 2011	Sept. 2011	Sept. 2011	Sept. 2011
Sanatoga (Station 58)	26	27.5	235	215	Not provided	Not Provided
Ringling Hill (Station 59)	25	25.5	118	97	233	58.5

(Hours are approximate)

Highway—Public Works Department: Commissioner Foltz read the Public Works Report for the month of October 2011. The report will be posted on the bulletin board.

C.O.G.—Commissioner Phillips reported that the next C.O.G. meeting will be held on December 8, 2011.

Engineering—Mr. Exley had no report.

Treasurer—Ms. Marsteller delivered the Tax Collector's Monthly Report to Taxing Districts for the month of October 2011. The Board took the report under advisement.

Solicitor—No report.

Parks and Recreation—Ms. Elliott reported that the Sprogel's Run Nature Trail bid opening was held on October 19, 2011. The low bid for the project came in at approximately \$156,000, which is well above the Township's budgeted \$75,000.

Ms. Elliott provided a memo outlining options for the Board to consider:

1. Complete the project and take the difference, \$81,078, out of the Reserves Fund.
2. Throw out the bids and rebid just for the bridge over the stream on the project.
3. Throw out the bids and talk to the funding agencies about spending the grant money on another project that meets their funding guidelines. The Parks and Recreation Board supports this option. It is their recommendation to use the money to install a tot lot/playground at Gerald Richards Park.
4. Complete the project and pay the low bidder the amount we have budgeted (\$75,000), and then spread the cost out over 24 to 36 months, with interest. This option was proposed by the lower bidder.

Commissioner McGroarty asked when the grant expires. Ms. Elliott said we have been asking for extensions. If the Board would choose Option 3, we could install the playground this Spring.

Commissioner Kaiser made a motion to authorize Option 3 and to accept the Parks and Recreation Board's recommendation to use the money to install a tot lot/playground at Gerald Richards Park. Commissioner Phillips seconded the motion and it was unanimously approved. Vote was 5-0 in favor.

Pottstown Metropolitan Regional Planning Commission--Ms. Elliott reported on the Draft Community Assessment Report for the Pottstown Metropolitan Regional Planning Commission.

CORRESPONDENCE AND INFORMATION:

The following information was included in the Commissioners' packets:

1. Memo from Chad Camburn, P.E. Subject: Sunnybrook Ballroom.
2. Municipal membership request from Dulcie F. Flaharty, Executive Director, Montgomery County Lands Trust.

SUBDIVISION AND LAND DEVELOPMENT:

None.

OLD BUSINESS:

Approval of Mucibid for 2000 Ford Taurus—Commissioner Foltz made a motion to accept the highest bid in the amount of \$1,100.00 for the 2000 Ford Taurus, Item No. 11690 on Mucibid, submitted by Brad Tigue. Commissioner Kaiser seconded the motion and it was unanimously approved. Vote was 5-0 in favor.

At its public meeting held on September 6, 2011, the Board authorized the action to list and sell this vehicle on Mucibid by resolution (No. 908).

NEW BUSINESS:

Approval of Audits—Commissioner Kaiser made a motion to authorize Reinhart and Company, Certified Public Accountants, to perform the following services:

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|--|-------------|
| 1. Lower Pottsgrove Township Tax Collector Audit | \$ 1,645.00 |
| 2. Lower Pottsgrove Township Audit | \$10,300.00 |
| 3. Ringing Hill Fire Company Audit | \$ 1,825.00 |
| 4. Sanatoga Fire Company Audit | \$ 1,825.00 |

Commissioner Phillips seconded the motion and it was unanimously approved. Vote was 5-0 in favor.

Commissioner Foltz recommended that the Township look for another auditor next year.

Sanatoga Park—Mr. Hawthorne recommended that the entrance to Sanatoga Park be closed from December 1, 2011 through March 1, 2012 to eliminate people from cutting through the park during the winter months.

Commissioner Kaiser made a motion to close the entrance to Sanatoga Park from December 1, 2011 through March 1, 2012, after first checking the game schedules of the local sports organizations. Commissioner Foltz seconded the motion and it was unanimously approved. Vote was 5-0 in favor.

RESOLUTIONS AND ORDINANCES:

Stop Signs on South Park Road—Commissioner McGroarty made a motion to advertise an ordinance authorizing the proper placement of two stop signs, one at Eastern Road and one at the upper exit of Sanatoga Park at South Park Road, the posting of a 30 mph speed limit on South Park Road and the posting of warning and caution signs, as recommended by TSO Robert Diesinger. Commissioner Phillips seconded the motion and it was unanimously approved. Vote was 5-0 in favor.

Warrant—Warrant No. 794 for October 2011 will be distributed via email for the Commissioner review.

COMMISSIONERS COMMENTS:

None.

MANAGER'S COMMENTS:

None.

EXECUTIVE SESSION:

Commissioner Spadt announced that an executive session was held immediately prior to the public meeting to discuss personnel matters as they relate to the proposed draft budget.

There being no further business, the meeting was adjourned at 8:30 p.m. Next meeting will be held on Thursday, November 17, 2011 at 7:00 p.m.

Respectfully submitted,


Michele M. Cappelletti, Secretary