

WHITPAIN TOWNSHIP

ORDINANCE #354

AN ORDINANCE AMENDING THE TOWNSHIP'S CODE, BY REPEALING AND REPLACING CHAPTER 126, ARTICLE III [STREETS AND DRIVEWAYS/OBSTRUCTIONS AND EXCAVATIONS IN STREETS], AND REPLACING IT WITH A NEW ARTICLE III [OBSTRUCTIONS AND EXCAVATIONS IN STREETS], MAKING PROVISIONS FOR (1) PURPOSE; (2) DEFINITIONS; (3) PERMIT, PROCESS AND REQUIREMENTS; (4) PENALTIES AND ENFORCEMENTS (5) EXCAVATION; (6) BLASTING; (7) BACKFILLING; (8) PAVEMENT REPLACEMENT; ROAD RESTORATION; AND (9) SCHEDULE OF INSPECTIONS.

ENACTED: _____

The Whitpain Township Board of Supervisors has scheduled a public hearing for Tuesday, February 7, 2017 at 8 p.m. in the Whitpain Township Administration Building, 960 Wentz Road, Blue Bell, PA to consider enactment of the following ordinance. Persons with a disability who wish to attend the Administrative Hearing should contact the ADA Coordinator at 610-277-2400. Copies of the proposed ordinance are available at the Township Administration Building during normal business hours of 8:30 a.m. to 4:30 p.m., Monday through Friday, and on the Township website.

WHITPAIN TOWNSHIP

ORDINANCE #354

AN ORDINANCE AMENDING THE TOWNSHIP'S CODE BY REPEALING AND REPLACING CHAPTER 126, ARTICLE III [STREETS AND DRIVEWAYS/OBSTRUCTIONS AND EXCAVATIONS IN STREETS], AND REPLACING IT WITH A NEW ARTICLE III [OBSTRUCTIONS AND EXCAVATIONS IN STREETS], MAKING PROVISIONS FOR (1) PURPOSE; (2) DEFINITIONS; (3) PERMIT, PROCESS AND REQUIREMENTS; (4) PENALTIES AND ENFORCEMENTS (5) EXCAVATION; (6) BLASTING; (7) BACKFILLING; (8) PAVEMENT REPLACEMENT; ROAD RESTORATION; AND (9) SCHEDULE OF INSPECTIONS.

IT IS HEREBY ENACTED AND ORDAINED by the Whitpain Township Board of Supervisors as follows:

SECTION 1. Amendment to the Township's Code by Repealing and Replacing Chapter 126, Article III [Streets and Driveways/Obstructions and Excavations in Streets] and Replacing it with a new Article III [Obstructions and Excavations in Streets].

The Township's Code, Chapter 126, Article III [Streets and Driveways/Obstructions and Excavations in Streets] shall be repealed and replaced with a new Article III [Obstructions and Excavations in Streets], making provisions for (1) Purpose; (2) Definitions; (3) Permit, process and requirements; (4) Penalties and enforcements (5) Excavation; (6) Blasting; (7) Backfilling; (8) Pavement replacement; road restoration; and (9) Schedule of inspections. The new Article III shall now read as follows:

§ 126.1 Purpose; definitions.

- A. The purpose of this article is to provide for the public good and establish a permit process and requirements for roads, utility cuts in roads and streets, backfilling of trenches, replacing of removed pavement sections and regulating the location and construction of utility facilities and other structures within Township highway rights-of-way for the purpose of insuring the structural integrity of the highway, economy of maintenance, preservation of proper drainage and safe and convenient passage of traffic.

B. Definitions. The definitions of words and terms, when used in this article, have the meaning set forth in the PA DOT regulations for occupancy of highways by utilities, 67 Pa. Code § 459.1, as amended.

§ 126-2 Permit process and requirements.

A. Application procedure.

- (1) General rule. Except for emergency repairs of utility facilities, no work may be performed within the right-of-way involving the placing of utility facilities or other structures or opening of the surface without first obtaining a permit from the Township. Work performed within the right-of-way shall conform to PA DOT regulations Chapter 203 (relating to work zone traffic control).
- (2) Emergency repairs of utility facilities. Emergency repairs of utility facilities may be performed without first obtaining a permit under this article; however, application must be made by the applicant or person making such repair, pursuant to this article, for a permit under this section, within 16 hours of beginning the emergency repair work or the next business day for emergencies occurring on weekends and holidays when the Township Building is closed.
- (3) Who may execute applications:
 - (a) If a corporation or other entity, authority, political subdivision or other person in the business of providing utility or other entity service owns, operates or intends to operate the facility, the application shall be submitted in the name of, and executed by, the party. An application may not be submitted in the name of contractors of the owner or operator, nor in the name of persons only being serviced by the facility.
 - (b) In the case of a facility owner who is not in the business of providing utility service, such as a developer whose land is located outside a utility's service jurisdiction, the application shall be submitted in the name of, and executed by, the owner of the facility at the time of construction. The applicant shall indemnify and hold harmless the Township from claims by anyone claiming residual property interests in the permitted area.
 - (c) The application and/or permit are not transferable or assignable.
- (4) Financial duties. An applicant shall provide satisfactory evidence to the Township of ability to completely discharge construction, maintenance

and financial duties imposed by this article. The Township may require security, including but not limited to:

- (a) Executing indemnity agreements satisfactory to the Township.
- (b) Obtaining insurance in a form and amount acceptable to the Township.
- (c) Obtaining surety bonds in a form and amount acceptable to the Township to guarantee necessary maintenance costs for the facility and the right-of-way in which it is located for a period of at least two years after the acknowledged completion of the permitted work.
- (d) Depositing sufficient currency in an escrow account acceptable to the Township to fully secure the obligations in Subsections A(4)(a) and A(4)(b) above as an alternative to the obtaining of the surety bonds.
- (e) The use of bonded contractors as well as consultants and engineers having professional liability insurance.

B. Required application information. A permit application:

- (1) Shall be submitted in person or by mail on a properly completed Township form, available at the Township Building.
- (2) Shall be signed by the applicant and the consulting engineer, if any, performing work related to the application.
- (3) Shall include at least four sets of plans, detailing the location and pertinent horizontal and vertical dimensions of the opening, the proposed utility installations and related highway features, including specific highway location, center line, edges of pavement, outside edges of shoulders, curbing, guide rail, highway drainage structures and right-of-way lines. Color coded plans and freehand drawings of roadway or utility features are unacceptable.
- (4) Shall be accompanied by a check or money order, payable to Whitpain Township according to the Schedule of Fees of the Township.¹
- (5) Shall be submitted to the Township at least 30 days prior to the anticipated start of work. If the permitted work shall be performed for the permittee by a contractor, the application shall, if possible, be submitted to the Township at least 60 days prior to soliciting bids for the permitted work so that the permittee may notify bidders of permit requirements. If the application specifies that the permitted work involves providing

¹ Editor's Note: The Schedule of Fees, as amended from time to time, is on file in the Township's offices.

priority utility service, the Township office will process the priority application before other nonpriority applications submitted by the applicant.

- (6) Shall identify consulting engineers performing work related to the application. The consulting engineer shall also sign the application.
- C. Plans for occupancy within the township right-of-way. A permit application for occupancy within the Township right-of-way shall include detailed plans which comply with the following:
- (1) Plans shall have a horizontal scale of one inch equal to no more than 50 feet. Plans shall show all proposed construction and restoration details.
 - (2) Plans depicting installation or replacement of a facility shall identify utility facilities and other structures within the right-of-way, and shall include typical cross sections at each significant change in highway cross section features.
 - (3) Plans depicting installation of a facility longitudinally within the pavement or shoulder, or both, shall verify there is no feasible space outside the pavement or shoulder available for placing the facility.
- D. Traffic control plan. A traffic control plan shall be submitted with the application in the following manner:
- (1) With the exception of emergency work, the applicant shall submit a traffic control plan for Township approval for work on roadways or rights-of-way whenever it will be necessary to close a portion of a travel lane or whenever it will be necessary to completely close a highway to perform the permitted work. If a roadway is approved for closure the applicant must:
 - (a) Advertise in the local newspaper at least twice one week prior to the anticipated closure notifying motorists of closure.
 - (b) Provide written notices to emergency services (police, fire and ambulance) and school district notifying them of work at least two weeks prior to the closure.
 - (c) Provide written notices to residents who reside along that roadway notifying them of the work to be done one week prior to the closure.
 - (d) Post all required detour signs.
 - (2) The Township may require an applicant to submit a traffic control plan under special circumstances at the Township's discretion.

(3) A traffic control plan shall comply with PA DOT regulations Chapter 203 and shall clearly indicate how the work area, vehicular and pedestrian traffic will be protected maintained and controlled.

(4) A traffic control plan shall consist of one of the following:

(a) A reference to specific figures in PA DOT regulations Chapter 203, if the referenced figures properly depict actual site conditions and address the necessary traffic control.

(b) Four copies of specific figures form PA DOT regulations Chapter 203, which have been modified to depict actual site conditions and the necessary traffic control requirements for the specific project.

(c) Four copies of a detailed drawing, showing actual site conditions and the necessary traffic control requirements for the specific project.

(d) Four copies of a detour plan with signage, if required.

E. Blasting requirements. When blasting methods other than controlled blasting, as specified in PA DOT regulations, § 203.3(b)1 of Publication 408, will be used or when blasting is anticipated within 100 feet of a bridge, box or culvert, a detailed plan of excavating, shoring, blasting and backfilling procedures shall be submitted at least 15 days prior to blasting. Prior to blasting within the right-of-way, insurance shall be furnished. The insurance shall name the Township as an additional insured and shall be in such types and amounts as may be specified by the Township staff.

F. Authority to reject application. The Township will examine and determine the genuineness, regularity and legality of every application and may reject an application if not satisfied as to its genuineness, regularity or legality, or the truth of a statement contained in the application. The Township may also make investigations and require additional information as it deems necessary.

G. Debarred applicant.

(1) The Township may debar an applicant, including permittee, consultants, contractors and their employees, agents, successors and assigns, from placing a facility, working within or otherwise occupying Township highway right-of-way under permit, directing work or having involvement in a permit issued or an application submitted under this chapter, for one or more of the following:

(a) Unsatisfactory past performance, as documented by records, reports or performance ratings.

- (b) Failure to complete permitted work under the permit and this chapter, as documented by records, reports or performance ratings.
 - (c) Bribing, attempting to bribe or giving gratuities to Township employee or permit inspector.
 - (d) Submitting false information.
- (2) The first debarment of an applicant shall be for six months to 18 months. A subsequent debarment of the same applicant ordered within five years after the first debarment is served, shall be for 18 months to three years.

H. Issuance of permits.

- (1) General rule. Upon approval of an application submitted under this article, a permit will be issued by the Township, subject to this article, and the conditions contained in the permit and its attachments and supplements. The permit shall be the applicant's authority to proceed with the work specified in the permit. A copy of the permit and relevant plans shall be available at the work site for review.
- (2) Agreement/security. If a permittee is authorized to perform a substantial amount of work within the right-of-way, the Township may, at its discretion, require the applicant to execute an agreement or provide security, or both, as a prerequisite to issuance of the permit. If security is required, it shall be delivered to the Township in a form and amount acceptable to the Township and shall guarantee restoration and maintenance of the highway for a period of at least two years after acknowledged completion of the permitted work.
- (3) Photo documentation. At least 15 days prior to beginning work, the permittee shall deliver photo documentation to the Township office verifying the preconstruction conditions within the right-of-way.
 - (a) The area that will be disturbed shall be photo documented in its entirety with color videotape or color film. Photo documentation shall be compatible with the Township viewing equipment.
 - (b) The permittee may submit color slides or color prints in lieu of videotape or film, if each slide or print is clearly labeled and arranged to verify the surface condition of each successive 25 linear feet of area that will be disturbed.
 - (c) The date of photo documentation shall be identified on each cartridge, reel, slide or print.

I. Highway occupancy permit. Scope of permit. The permit is binding upon the permittee, its agents, contractors, successors and assigns.

- (1) The permittee is responsible for causing compliance with the terms and conditions of the permit by its employees, agents and contractors.
- (2) The permit shall be located at the work site and be available for inspection by a police officer or representative of the Township.
- (3) The permit shall be maintained by the permittee as a permanent record and remain in effect, subject to the permit conditions and this article as long as the permittee's facilities authorized by the permit occupy the right-of-way.
- (4) The permittee is liable to the Township for failure to comply with the permit and this article. The liability of the permittee to the Township does not preclude the permittee or the Township from bringing an action against the permittee's contractor, subcontractor, engineer, architect, assignee, agent, workers, employees or other persons.
- (5) Additional restrictions. Work authorized by the permit is subject to:
 - (a) Applicable laws, rules and regulations.
 - (b) The conditions, restrictions and provisions of the permit.
 - (c) Work within the public right-of-way is restricted to 7:00 a.m. to 7:00 p.m., Monday through Saturday. On heavily traveled roads, the restriction of 9:00 a.m. to 3:00 p.m. may be imposed.
- (6) Work to conform to Township standards. Work shall conform to Township standards, including the following:
 - (a) The work shall be done at a time and in a manner consistent with the safety of the public and conform to requirements and standards of the Township, including, but not limited to PA DOT Publication 408.
 - (b) Highway materials shall be obtained from PA DOT-approved sources which are identified in current PA DOT Publication Numbers 34, 35, 41 and 42. Upon request, the permittee shall make available for review certifications for backfill and restoration materials placed within the improved area.
 - (c) If it is found by the Township that the work is not being done or has not been properly performed, the permittee shall promptly take the necessary steps, at its own expense, to place the work in condition to conform to the requirements or standards of the Township.

(d) If a dispute arises between the permittee and the Township's inspector, the Township's inspector has the authority to suspend work until the question at issue may be referred to and decided by the Township Engineer.

(7) Permittee responsibilities. Permittee responsibilities include the following:

(a) The permittee shall pay the costs and expense incident to or arising from the project, including the prescribed fees for the project, the cost of making and maintaining temporary restoration of the disturbed areas and making permanent restoration. The permittee shall reimburse the Township for inspection cost which the Township deems necessary to incur within 30 days after receipt of the Township's invoice.

(b) In the event of failure or neglect by the permittee to perform and comply with the permit, the Township may immediately revoke and annul the permit and order and direct the permittee to remove structures, equipment or property belonging to the permittee or its contractors, or both, from the legal limits of the right-of-way and to restore the right-of-way to its former condition. If the Township determines that the structure, equipment or property poses a threat to the public safety and the permittee fails to remove it after notice from the Township to do so, the Township Solicitor or his attorneys are authorized to enter an amicable action of ejectment and confess judgment against the permittee. The attorney is authorized to issue forthwith a writ of possession with a clause of fieri fascias for costs, without leave of court.

(c) At the end of a workday, an opening in the right-of-way shall be covered, backfilled or protected. If work is stopped on a project, other than at the end of a normal workday, the permittee shall promptly backfill the opening and restore the surface, and work may not be resumed until the permittee is prepared to proceed with the work to its completion. If the permittee fails to backfill the opening or proceed until completion of the work, the Township reserves the right to do the work upon notice to the permittee, where practicable, and shall be reimbursed for the costs by the permittee within 30 days after receipt of the Township's invoice.

(d) If the permittee, after making an opening in the surface to place or repair a facility or for another purpose, fails to restore a portion of the right-of-way, the Township reserves the right to do the work upon notice to the permittee, if practicable, and the permittee shall reimburse the Township for the costs within 30 days after receipt of the Township's invoice.

- (e) If backfill or restoration work will be performed for the permittee by a contractor, the permittee shall identify to the Township both its contractor and its inspector-in-charge who shall be assigned to monitor backfill and restoration work performed within the improved area. The permittee's inspector-in-charge, as well as the permittee, is responsible for ensuring the work is performed in compliance with the permit, this article, and PA DOT Publication 408.
 - (f) The permittee shall notify the Township office, at least three full workdays prior to the start of work when the permit identifies that the permitted work will be inspected on a more than spot-inspection basis.
 - (g) The storage of equipment or materials within the right-of-way is prohibited after hours of operation.
- (8) Altering drainage is prohibited. Altering drainage shall be prohibited by the following conditions.
- (a) Unless specifically authorized by the permit, the permittee may not:
 - [1] Alter the existing drainage pattern or the existing flow or drainage water.
 - [2] Direct additional drainage of surface water toward, onto, or into, or in any way affect the highway right-of-way or highway facilities.
 - (b) The permit does not authorize the permittee to direct, divert or otherwise drain surface waters over the property of another property owner.
 - [1] The permit does not relieve the permittee from acquiring the consent, permission or other authorization from a property owner who may be adversely affected by drainage alterations.
 - [2] The permittee is responsible for damage caused to property owners as a result of work done under the permit.
 - (c) A permit will not be issued to authorize the discharge of water into the right-of-way unless the water is surface drainage.
- (9) Equipment damaging highway. A highway shall be protected in accordance with the following:
- (a) To protect the right-of-way, equipment shall have rubber wheels or runners and have rubber, wood or similar protective pads between the outriggers and the surface unless otherwise authorized by the permit.

- (b) If other than rubber-equipped machinery, the pavement and shoulders shall be protected from equipment damage by the use of matting or other suitable protective material, unless the permittee requests, in writing, a waiver from the use of protective material thereby acknowledging its obligation and commitment to repair or reconstruct the right-of-way area, if damaged, to its former condition.
 - (c) If the equipment damages the right-of-way area, the permittee shall restore the damaged area to its former condition in a manner authorized by the Township.
 - (d) The Township office may authorize the permittee to restore the pavement or shoulder from superficial surface damage with a seal coat or surface treatment.
- (10) Work zone traffic control. Maintenance and protection of traffic shall be carried out by the permittee under 75 Pa.C.S.A. § 6123 (as amended), (relating to erection of traffic-control devices while working), the approved traffic control plan and the applicable provisions of PA DOT Chapter 203 (relating to work zone traffic control).
- (11) Indemnification of the Township for property and personal injury will be governed as follows:
- (a) The permittee shall fully indemnify and save harmless and, if requested, defend the Township, its officers, agents and employees of and from liability for damages or injury to persons or property in a claim or suit seeking to impose liability on the Township, its officers, agents or employees, arising out of an act or omission of a contractor, agent, servant, employee or person engaged or employed in, about or upon the work, by, at the instance of or with the approved consent of the permittee, including a failure of the permittee or a person to comply with the permit or this article.
 - (b) Upon request, the permittee shall deliver to the Township certificates of insurance evidencing the types and amounts of coverage specified by Township staff.
- (12) Insurance. The permittee shall obtain, prior to the start of work, a policy of insurance, issued by an insurer having a certificate of authority and a licensed agent authorized to transact the business of insurance in this commonwealth, in accordance with the following conditions:
- (a) The permittee or its contractor shall obtain insurance for public liability and property damage, in form, amount and duration satisfactory to the Township to cover a loss that may be incurred for

construction, reconstruction, repair, relocation or installation of the permitted structure or facilities.

- (b) If blasting is authorized by permit, the insurance coverage shall include property damage and personal injury occasioned by blasting. In addition, the insurance policy shall provide coverage for damage to the highways, highway structures and appurtenances or other Township property and shall be in an amount satisfactory to the Township.
 - (c) Upon request, the permittee shall deliver to the Township certificates of insurance evidencing the insurance coverage required.
 - (d) The permittee's obligations to indemnify the Township and obtain insurance to secure indemnification and its obligations to restore the highway and obtain a bond relating to restoration are separate obligations from obtaining insurance for the purposes required.
- (13) Maintaining structure or facility. As long as the permittee operates and leaves in place structures or facilities in, upon or along the right-of-way, the permittee shall maintain and keep them in good order and repair.
- (14) Damaged structure or facility to be repaired. If a structure or facility becomes damaged, the permittee shall promptly have it removed, repaired or otherwise made safe. The permittee is responsible for repair or restoration of the portion of the highway damaged by a structure or facility. The permittee's obligation to repair or restore the highway necessitated by a damaged structure or facility under this paragraph is separate from the obligations to restore the highway and obtain a bond relating to the restoration and maintenance of the highway.
- (15) Damage to highway. Responsibility of the permittee for restoration of the highway includes the following:
- (a) If there is a failure of the highway, including a slope or other appurtenance thereto, in the area of the permitted work within two years after the acknowledged completion of the permitted work and there is not similar failure of the highway beyond the area of the permitted work, the permittee has absolute responsibility to make temporary and permanent restoration of this area unless the permittee delivers clear and convincing evidence to the Township office demonstrating that the highway failure was caused by another person.
 - (b) In situations where the permittee has the responsibility to restore the highway, including slope or any other appurtenance thereto, the permittee has the duty to restore the improved area in accordance

with the permit. If the permittee fails to restore the improved area properly, the Township will have the authority to do the work at the expense of the permittee. The permittee shall reimburse the Township for the costs within 30 days after receipt of the Township's invoice.

- (c) The obtaining of a bond, other security or an agreement to secure restoration costs does not relieve the permittee of the restoration obligations imposed. The obtaining of a bond, other security or an agreement will not act as a release of the permittee from liability under principles of tort law with respect to a failure of the highway in the permitted area occurring after the expiration of the bond, other security or agreement.
- (16) Future highway changes. If in the future the highway is altered for public convenience or necessity, the permittee shall at its own cost and expense, change or relocate all or a part of the structures or facilities authorized by the permit which interfere with the highway alterations or which is inconsistent with the purpose of the highway alterations.
- (17) Acknowledgment by inspector. Acknowledgment, by the inspector of the Township that all or part of the permitted work has been completed does not constitute approval or acceptance of the work or agreement that the work was performed in accordance with the permit. Acknowledgment of completion by the inspector will not act as a release of the permittee or waiver by the Township of its right to seek performance or restitution from the permittee.

J. Special conditions for subsurface operations.

- (1) Drilling, boring, driving or tunneling across improved area. Drilling, boring, driving or tunneling across improved areas shall comply with the following conditions:
 - (a) When crossing under an improved area, the opening for a utility shall be drilled, bored, driven or tunneled a minimum depth of three feet from the surface to the top of the opening.
 - [1] If the utility or its casing is 30 inches or greater in diameter, the bored cylindrical space surrounding either an uncased facility or a facility casing shall be filled with grout, in a manner authorized by the Township office.
 - [2] Jet or other non-mechanical boring methods are prohibited. Water may be used under low pressure only to cool the drill bit and to facilitate removal or cuttings from the bore opening, if retrievable liquids is immediately removed from the boring pit.

- (b) No openings for the purpose of placing utilities facilities or other structures under the improved area by drilling, boring, driving or tunneling may be made closer than three feet to the edge of the shoulder, unless the permit authorized a lesser clearance.
 - (c) A utility or other structure crossing under the improved area shall be constructed to assure the safety of the traveling public and to preclude the necessity of entering upon the improved area to effect future maintenance or replacement.
- (2) Trenching across the improved area. Trenching across an improved area may be performed only when specifically authorized by the permit, in accordance with the following:
- (a) The top of every utility shall be installed at least three feet beneath the surface.
 - (b) Trenching across the improved area may be authorized by the permit where drilling, boring, driving or tunneling are not feasible because:
 - [1] The subsurface is solid rock, as documented with satisfactory evidence such as drill records, or where boring was attempted without success.
 - [2] There are other facilities located longitudinally under the improved area and their location precludes methods other than trenching, as documented with a detailed plan.
 - [3] Adjacent development in a very congested urban area makes the construction of a tunneling or boring shaft impossible.
 - (c) Not required because of one of the following: The highway is unpaved.
 - (d) When trenching is authorized by the permit, the trenching operation shall be performed by one of the following methods:
 - [1] Utility placed in one piece across highway:
 - [a] Traffic shall be routed over 1/2 of the pavement width.
 - [b] The closed half of the pavement shall be opened to the required depth and bridged with steel plates.
 - [c] Traffic shall be shifted to the bridged half of the pavement.

- [d] The remaining half of the pavement shall be opened to the required depth.
 - [e] The facility shall be placed full width.
 - [f] The open trench shall be backfilled with restored half-width in accordance with the section.
 - [g] Traffic shall be shifted to the restored half of the pavement.
 - [h] The bridging shall be removed and the remaining half of the trench shall be backfilled and restored in accordance with this section.
- [2] Utility placed in more than one piece across highway:
- [a] Traffic shall be routed over 1/2 of the pavement width.
 - [b] The closed half of the pavement shall be opened to the required depth, the facility placed and the trench backfilled and restored in accordance with this section.
 - [c] Traffic shall be shifted to the restored half of the pavement.
 - [d] The remaining half of the pavement shall be opened to the required depth, the facility placed and the trench backfilled and restored in accordance with the provisions of the section.
- [3] The permittee shall protect its openings to provide for the safety of the traveling public, including motorists, bicyclists and pedestrians.
- [4] The permit may authorize the placement at depths less than three feet of traffic signal detectors or the highway facilities which are not capable of operating more than three feet below the surface.
- (e) Openings parallel to the highway. Requirements for openings parallel to the highway are as follows:
- [1] A utility shall be placed outside the pavement and shoulder unless there is not feasible space outside the pavement and shoulder for placing the facility; in which case occupancy within the pavement or shoulder may be authorized by the permit.
 - [2] The top of a utility facility shall be installed at least three feet beneath the surface.

- [3] On an unpaved highway, the near edge of the opening shall be at least 12 feet from the general center line of the traveled highway, or as authorized.
 - [4] No opening may be made for more than 200 linear feet at one time, unless authorized by the permit.
 - [5] The permittee shall protect its openings to provide for the safety of the traveling public, including motorists, bicyclists and pedestrians.
- (f) Daily stoppage of work requirements. Daily stoppage of work requirements include the following:
- [1] Except for emergency repairs of utility facilities, work within the pavement or shoulder shall be stopped prior to peak traffic hours that may exist on a particular highway on a particular day and as specified in the permit.
 - [2] At the end of each workday, an opening in the right-of-way shall be addressed in one of the following ways:
 - [a] Covered with steel plates or bridges over openings which are less than six feet in either length or width. The plates or bridging shall be extended a minimum of 18 inches from each edge of the opening and shall be secured in a safe manner.
 - [b] Backfilled to the bottom elevation of the pavement or base course, or to the original surface elevation if outside the pavement and shoulder, and protected in accordance with PA DOT regulations Chapter 203 (relating to work zone traffic control) and an approved traffic control plan until the surface is restored to its former condition.
 - [c] Protected under PA DOT regulations Chapter 203 and an approved traffic control plan, if the permittee has delivered certificates of insurance.
 - [3] The permittee shall protect its opening to provide for the safety of the traveling public, including motorists, bicyclists and pedestrians.
- (g) Plowing of utility installations shall comply with the following:
- [1] No plowing will be permitted within the right-of-way, unless authorized by the permit.

- [2] Plowing operations will not be authorized in the pavement or paved shoulder.
 - [3] Plowing operations in unpaved shoulders are not allowed from December through March, inclusive, or at other times when there is frost in the top three feet beneath the surface.
 - [4] No plowing is authorized within three feet from the edge of the pavement. A greater distance shall be attained whenever possible.
 - [5] The opening shall be a minimum depth of three feet. If this depth cannot be consistently maintained, the proper depth shall be achieved by trenching.
 - [6] The utility shall be installed under any structures that are less than three feet deep. Disturbed structures shall be repaired or replaced by the permittee.
 - [7] The disturbed area shall be restored in conjunction with the plowing operation. Heaved surfaces shall be scarified to a depth of at least four (4) inches, extending at least one foot on either side of the heaved area for the entire length of heaved area. The disturbed area shall then be graded, backfilled where necessary, and compacted until the disturbed area is restored to a condition at least equal to that which existed before plowing. Disturbed shoulders shall also be restored.
- (h) Disposition of materials. The responsibility of the permittee for disposition of materials is as follows:
- [1] The permittee shall keep the improved area free of material which may be deposited by vehicles traveling upon or entering onto the highway during the performance of work authorized by the permit.
 - [2] The permittee is responsible for controlling dust conditions created by its own operations.
 - [3] Excess material and material that is not suitable for backfill shall be promptly removed and properly disposed of outside the right-of-way as the work progresses.
 - [4] Other material shall be stored so that there will be no interference with the flow of highway drainage.
 - [5] The permittee is not authorized to close a portion of the pavement or shoulder to traffic for the primary purpose of storing material. If the permittee stores material on the pavement or shoulder, the

permittee thereby acknowledges its obligation and commitment to repair or reconstruct the pavement and shoulder, if damaged, to its former condition, in a manner authorized by the Township office. Delivered material may not be stored overnight on the pavement.

- [6] The Township may authorize the permittee to restore the pavement or shoulder from superficial surface damage with a seal coat or surface treatment.
- (i) Backfilling. An opening shall be backfilled by the permittee in accordance with the following:
- [1] The opening may first be backfilled with fine aggregate material, meeting the requirements of PA DOT regulations, § 703.1 of Publication 408, or granular material to protect the facility, placed to a height not to exceed one foot over the top of the facility, if the material is compacted in not more than four-inch loose layers or as authorized under Publication 408. To help protect its facility from future excavations, the permittee is encouraged to place a permanent colored ribbon under subsection at least one foot above its facility. If the facility is nonmetallic, the permittee is also encouraged to place a metallic ribbon at a depth from which the ribbon can be sensed by typical metal-locating instruments.
 - [2] The opening shall then be backfilled with 2A modified.
 - [3] Backfill shall be compacted as follows:
 - [a] General rule. Backfill material shall be placed in loose layers not to exceed eight inches if vibratory compaction equipment is used. Each layer shall be thoroughly compacted to 97% to 100% compaction.
 - [b] Existing pavement elevation. Compaction shall be completed to the bottom elevation of the existing pavement.
 - [4] The Township may require the permittee to have material proposed for use as backfill and compacted material tested, at the expense of the permittee, for conformance to the applicable gradation and compaction requirements of Publication 408.
 - [5] Test holes shall be backfilled, as soon as safely possible, with material authorized by the Township. The Township office may authorize test holes in the pavement or shoulder to be restored with a one-foot cut back of the surrounding surface.

(j) Restoration of flexible base pavement. Base and surface restoration of flexible base pavements shall be performed under this subsection and as specified in the permit. Prior to replacement of the base course, one foot outside of each edge of the opening shall be sawed, in a neat straight line, to the top elevation of the existing aggregate subbase or stone base course, and the detached material shall be removed. Other surface opening methods such as cutting may be authorized if the methods result in the opened pavement having a neat straight vertical line.

[1] Exposed vertical and horizontal surfaces shall be prepared under PA DOT regulations, § 401.3 (f) of Publication 408.

[2] The base course shall consist of bituminous concrete meeting the requirements of PA DOT regulations, § 305 of Publication 408 or other base course material authorized by the Township office. The base course material shall have a minimum depth of four (4) inches or a depth equal to the existing base course, whichever is greater.

[3] The binder course shall consist of ID-2 material meeting the requirements of PA DOT regulations, § 421 of Publication 408. The binder course shall have a minimum depth of two inches or a depth equal to the existing binder course, whichever is greater.

[4] The wearing course shall consist of ID-2 material meeting the requirements of PA DOT regulations, § 420 of Publication 408; material meeting the requirements of PA DOT regulations, § 422 of Publication 408. The wearing course shall have a minimum depth of one-and-one-half-inch ID-2 or a depth equal to the existing wearing course, whichever is greater.

(k) Temporary pavement restoration of a pavement or paved shoulder may be required by the Township office prior to permanent restoration, under the following:

[1] Temporary pavement restoration shall be completed before traffic is allowed to travel on the disturbed area. The temporary pavement may be kept in place for up to six months or as specified in the permit and properly maintained.

[2] The temporary pavement shall be removed and permanent restoration performed.

(l) Appurtenances to underground installations. Requirements relating to appurtenances to underground installations shall include:

- [1] The top of every manhole, valve box or other access to the facility shall be approximately one inch below the surface in which it is located.
- [2] The surface surrounding manhole covers, valve boxes, or other facility located in paved shoulders shall be paved with five inches bituminous concrete base course a distance of at least two feet around the structure to prevent washouts.
- [3] A manhole, including those cast in place, shall be constructed in compliance with current industry standards and PA DOT regulations § 713.2 (c) of Publication 408.

(m) Additional restoration shall be required as follows:

- [1] Disturbed portions of the highway, including but not limited to slopes and appurtenances and structures, such as guide rails, curbs, signs, markings, drain pipes, driveways and vegetation, shall be restored by the permittee to a condition at least equal to that which existed before the start of work authorized by the permit, if the restoration is consistent with the Roadway Construction Standards. Additional restoration may also be require, upon written notification, to restore the structural integrity of the pavement or shoulder.
- [2] If the permittee opens pavement having a bituminous concrete surface and the Township's wearing course is less than five years old, the permittee shall, in addition to the restoration conditions outlined in the permit and in this section, overlay the pavement in accordance with the following conditions:
 - [a] When a longitudinal or transverse opening longer than 10 linear feet has been made in the pavement, the permittee shall overlay the traffic lanes for the entire length of highway that was opened, in a manner authorized by the Township.
- [3] If the permittee opens pavement having a bituminous concrete surface and the wearing course is over five years old, the permittee shall, in addition to the restoration conditions outlined in the permit and in this section, overlay the pavement in accordance with the following conditions:
 - [a] When two or more transverse openings have been made, the permittee shall overlay traffic lanes, for the entire length of highway between the openings, in a manner authorized by the Township.

- [b] When four or more emergency openings have been made by the same permittee, the permittee shall overlay traffic lanes, for the entire length of highway between the openings, in a manner authorized by the Township.
 - [c] If disturbed lanes adjacent to undisturbed lanes are overlaid, the edge of the disturbed lane shall be saw cut or milled to a depth of 1 1/2 inches or the depth of the existing surface course, whichever is less, for the length of the opening to insure a smooth joint, with proper elevation and cross section. A full width overlay may be authorized on various highways instead of saw cutting or milling the disturbed lane.
 - [d] If disturbed lanes adjacent to shoulders are overlaid, the shoulder shall be raised, with material and in a manner authorized by the Township for the type of existing shoulder, so that the overlaid pavement and shoulder edges are at the same elevation.
- [4] Regardless of the age of the wearing course:
- [a] If more than 100 linear feet of longitudinal or transverse openings, or both, are made in the pavement, the Township may require the permittee to overlay traffic lanes for the entire length of highway that was opened if the Township office determines that the ride ability or structural integrity of the pavement has been impaired by the openings.
- [5] Aggregate used in a bituminous overlay wearing course shall comply with skid resistance level (SRL) criteria specified in PA DOT regulations, Design Manual, Part 2, Chapter 11.
- [6] If an opening is made in a bituminous concrete pavement within three feet from the edge of pavement or other longitudinal joint or opening, the surface restoration shall be extended to the edge of pavement or other longitudinal joint or opening.
- [7] At each end of an overlay, the permittee shall install a paving notch, under PA DOT regulations, Roadway Construction Standard RC-28, by milling, planning or other authorized method and provide a minimum ten-foot transition.
- [8] The transition areas at each end of an overlay shall follow the contour of the surrounding surface.
- [9] When pavement markings on more than 100 linear feet of highway are covered or destroyed by the permitted work,

including overlays, they shall be replaced with temporary pavement markings, under PA DOT regulations § 203.72 (relating to temporary pavement markings), before opening the disturbed pavement to traffic. When the pavement surface is restored, pavement markings that were covered or destroyed shall be replaced in their former location.

[10] Sealing. Restored openings in the pavement or paved shoulder shall be sealed using rubberized sealer under PA DOT regulations § 401.3(j)(3) of Publication 408 in the case of bituminous concrete or PA DOT regulations, § 501.3(n) of Publication 408 in the case of cement concrete.

[11] Pavement marking shall be restored using epoxy paint for straight lines and thermoplastic paint for arrows, "onlys," stop bars, etc.

K. Special conditions for aboveground facilities.

- (1) General rule. A permit will not be issued to install aboveground facilities at a location which the Township determines to have a high accident potential.
- (2) Location of aboveground facilities.
 - (a) New poles and other aboveground facilities shall be installed outside the highway clear zone as near the right-of-way line as practicable, under the permit and applicable provisions of PA DOT regulations, Design Manual, Parts 2 and 5.
 - (b) Replacement of poles and other aboveground facilities shall comply with the permit and applicable provisions of PA DOT regulations, Design Manual, Part 5.
 - (c) Installation of poles and other aboveground facilities in locations where highway guide rail or curb exists shall comply with the permit and applicable provisions of PA DOT regulations, Design Manual, Parts 2 and 5.
 - (d) Installation of poles, guys and other aboveground facilities shall comply with applicable provision of the Federal Highway Program Manual, Volume 6, Chapter 6, Section 3; the A.A.S.H.T.O. Policy of the Accommodation of Utilities on Freeways; and PA DOT regulations, Design Manual, Part 5.
- (3) Location of wires, cables or conductors. A wire, cable, or conductor which overhangs a portion of the right-of-way shall be placed to provide a

minimum vertical clearance of 18 feet over the pavement and shoulder, except where the National Electrical Safety Code requires vertical clearances in excess of 18 feet due to voltage or span lengths.

- (4) Guys. A guy shall be placed and insulated in the following manner:
 - (a) A guy shall be placed to avoid interference with vehicular or pedestrian traffic.
 - (b) A guy shall be insulated or grounded in compliance with the National Electrical Safety Code.
- (5) Identification of poles. A pole shall bear the name or initials of the facility owner and the pole number assigned by the facility owner.
- (6) Seismograph-vibriosis method. Seismograph-vibriosis method shall comply with the following:
 - (a) Seismograph operations by other than vibriosis method will not be permitted.
 - (b) A permit will not be issued to authorize seismograph operations within limited access highway right-of-way.
 - (c) Wherever possible, seismograph operations shall be performed entirely off the pavement and shoulder to lessen interference to traffic.
- (7) Modular concrete replacement units, metal reinforcing collars and similar devices.
 - (a) Modular concrete replacement units, metal reinforcing collars and similar devices may not be placed in Township right-of-way unless located:
 - [1] Thirty feet or more beyond the edge of pavement under PA DOT regulations, Design Manual, Part 2, Chapter 12.
 - [2] At the top of a slope (2:1 or greater) or at least eight feet beyond the toe of the slope.
 - [3] Beyond parallel drainage ditches.
 - [4] Beyond the specified deflection distance for the type guide rail in front of the location, under PA DOT regulations, Design Manual, Part 2.

(b) No permit will be issued for the placement of a new facility, or for the repair, modification, reinforcement or replacement of an existing facility, by modular concrete replacement units, metal reinforcing collars or similar devices unless the facility is located in compliance with Subsection K(7)(a).

L. Bridge occupancy. License required. No person may attach a utility facility to Township bridge or modify an existing facility until the owner of the utility facility has obtained a permit from the Township.

§ 126-3 Penalties and enforcement.

A. General rule. Violation of this article or the permit requirements constitutes grounds for imposition of the following penalties:

- (1) Upon receipt of oral or written notice of violations from the authorized representative of the Township or a Township police officer, the permittee shall cease to perform any further work in the permitted area except to restore the area to a safe condition. No further work may commence in the permitted area until the violations have been remedied. Where the permittee has received oral notice of the violations, written notice shall be sent to the permittee within 10 days of receipt of the oral notice.
- (2) The Township may revoke of the applicant's permit or emergency permit card.
- (3) The applicant may be required to remove facilities installed without a permit or in violation of the provisions of this article.
- (4) Fines, imprisonment or other penalties may be imposed.
- (5) The Township may take other action as may be deemed necessary or proper after consultation with the Township Solicitor.

B. Additional grounds for revocation shall be as follows:

- (1) The Township may revoke a permit whenever it determines that the permitted facility is not being maintained, is in violation of a condition of the permit or this article, constitutes a hazard to traffic or interferes with the proper use of the highway by the Township or the public.
- (2) The Township may revoke a permit for nonpayment of a fee authorized by the Schedule of Fees, including default of the check submitted for payment.

C. Modification of conditions.

- (1) General rule. When a term or condition of this article cannot be met, an applicant may request, in writing, that the Township modify that term or condition if it is not required by law, under the following:
 - (a) The applicant has done all that can reasonably be done to comply with the term or condition.
 - (b) The proposed modification satisfies the intent of the term or condition to be modified.

- (c) The proposed modification represents the minimum feasible deviation from the term or condition to be modified.
 - (d) The reason for the requested modification is infeasibility of meeting the exact terms or conditions of this article rather than mere economic benefit to the applicant.
- (2) Modification granted. If a requested modification is granted, the permit will specify the allowable modification. A permit issued under authority of this section shall be signed only by the Township Engineer or Township Manager. The granting of a modification will be predicated on the applicant's complying with the following:
- (a) Unless the applicant is excused in writing, executing a hold harmless and indemnity agreement acceptable to the Township.
 - (b) Unless the applicant is excused in writing, obtaining bonds satisfactory to the Township to guarantee highway restoration and maintenance costs.
 - (c) Unless the applicant is excused in writing, obtaining public liability insurance for personal injury and property damage on behalf of the Township, its officers, agents and employees, in a form and amount acceptable to the Township for the life of the facility.
 - (d) Permit conditions, which may include use restrictions, special traffic control devices or safety features.
 - (e) Third parties. The modification of a term or condition by the Township Engineer does not create rights in a third party, nor does a waiver act as a modification of the common law duty of the applicant to relocate its facilities upon demand by the Township to another location within the right-of-way at the sole cost of the applicant.

§ 126-4 Excavation.

Prior to any excavation, the pavement shall be cut vertically and in a straight line, preferably with a pavement saw, equal to the width of the trench. The trench shall be as narrow as possible to provide adequate working space, but shall not exceed the outside diameter of the barrel of the pipe plus 16 inches. Side walls of the trench shall be as nearly vertical as possible.

§ 126-5 Blasting.

A. Must be in accordance with PA DOT Publication 408.

B. If blasting is necessary, the Township may require a full-time inspector. The expense of that inspector shall be reimbursed back to the Township by the developer or contractor within 30 days of invoice.

C. If roadway is raised or damaged, the Township will require those sections to be repaired to Township standards.

D. If blasting is required, the Township will require the contractor and/or developer to post bonding for the protection of the roadways.

E. If 50% or more of a roadway is damaged, the Township will require base restoration and an overlay of the entire roadway.

F. No predrilling or blasting may be performed within the right-of-way unless authorized by a permit and until the permittee provides insurance for property damage and public liability.

G. The blaster's license number shall be furnished upon request.

H. No blasting will be permitted within 50 feet of the nearest part of a bridge, box or culvert.

I. The permittee's obligation for restoration of the highway shall include failure of the highway occasioned by blasting.

§ 126-6 Backfilling.

A. Backfill material.

(1) Existing improved rights-of-ways. Within the right-of-way, must be 2A modified or equivalent, full depth and compacted, in accordance with Subsection C(3).

(2) Proposed new construction of roadways. Within the right-of-way, must be 2A modified or equivalent, full depth and compacted in accordance with Subsection C(3).

B. As an alternative, the Township will accept suitable material, as defined by PA DOT Publication 408, to be used as backfill in new road construction only with the following conditions: If 2A modified stone is not used, the construction and the backfill will be subject to full-time inspection by the Township Inspector as well as full-time soil compaction tests by an independent soil scientist, all at the expense of the owner/developer/contractor.

C. Sanitary sewer.

- (1) Any sanitary sewer that is constructed within the legal right-of-way of any existing road shall be backfilled with a minimum of two feet of No. 8 stone over the pipe then backfilled with 2A modified stone to the subgrade of the road.
- (2) Within the cartway of a new road, a minimum of two feet of No. 8 (1/2 inch, clean) stone must be placed over the pipe, 2A modified stone shall then be placed to the subgrade of the road. As an alternative, the pipe may be backfilled with No. 8 clean stone two feet above the pipe, and the balance of the backfill may be suitable material as defined by PA DOT regulations, Publication 408. If 2A modified stone is not used, the construction of the sanitary sewer and backfill will be subject to full-time inspection by both the Sewer Authority and the Township Inspector as well as full-time soil compaction tests by an independent soil scientist.
- (3) Compaction. After the pipe has been placed and properly bedded and backfilled with approved material by the Township to a depth of two feet above the top of the pipe in accordance with the job requirements and specifications, the remainder of the trench shall be backfilled in eight-inch-maximum layers to within six inches of the pavement surface. Each layer shall be compacted to a density equal to the requirements of PA DOT regulations, Publication 408, and shall be inspected and confirmed by approved testing devices. Tamping shall be done with mechanical equipment, tamping rollers or vibrating compactors, depending upon field conditions. Of more importance is that it be done carefully to ensure a thoroughly tamped backfill. The last 2 1/2 inches shall be cold-patched until final restoration. Compaction by puddling or jetting with water shall not be permitted or acceptable.

§ 126-7 Pavement replacement; road restoration.

A. Prior to placement of the subbase and pavement, the existing pavement and base course shall be cut back 12 inches from the edge of the trench. The cut shall be vertical and to a straight line. Streets with asphalt pavement surfaces shall be cut with a pavement saw.

(1) Transverse trenches.

- (a) The permanent pavement replacement on all transverse trenches (trenches crossing the normal direction of traffic) shall consist of a five-inch-thick bituminous concrete base course, a two-inch ID-2 binder course, and a one-and-one-half-inch-thick ID-2 bituminous wearing course, all in accordance with PA DOT regulations, Publication 408.

- (b) After the BCBC has cooled and set up, and immediately prior to replacement of the surface course, the vertical surfaces of the existing pavement and the surface of the base course shall be sprayed or painted with a tack coat of type No. 1 emulsified asphalt. Application shall be in accordance with PA DOT regulations § 460.3, Publication 408.
 - (c) The surface course shall be properly placed and compacted with a ten-ton roller even with the existing road surface.
 - (d) The joint between the new paving and the existing paving shall be sealed with an application of Class BM-1 petroleum asphalt.
- (2) Longitudinal trenches. The permanent pavement replacement on all longitudinal trenches (trenches parallel to the normal direction of traffic) shall consist of a five-inch-thick bituminous concrete base course, a two-inch ID-2 binder course, and a one-and-one-half-inch-thick ID-2 bituminous wearing course, all in accordance with PA DOT regulations, Publication 408. All other requirements shall be as specified for transverse trenches.

B. Road restoration. If a utility project (installation) is being done in conjunction with a road reconstruction project, the Township Engineer or Public Works Director shall coordinate the restoration work.

§ 126-8 Schedule of inspections.

In order to receive a certificate of completion, the following work items must be inspected during construction.

- A. Work zone traffic control.
- B. Subgrades.
- C. Subbase.
- D. Base course.
- E. Wearing course.
- F. Utility backfill (compaction tests required).

SECTION 2. Repeal and Ratification.

All ordinances or parts of ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specifically repealed. Any other terms and provisions of the Township's Code unaffected by this Ordinance are hereby reaffirmed and ratified.

SECTION 3. Severability.

Should any section, paragraph, sentence, clause, or phrase in this Ordinance be declared unconstitutional or invalid for any reason, the remainder of the Ordinance shall not be affected thereby and shall remain in full force and effect, and for this reason the provisions of this Ordinance shall be severable.

SECTION 4. Effective Date.

This Ordinance shall become effective 5 days after enactment.

ORDAINED AND ENACTED this _____ day of _____ 2017, by the Whitpain Township Board of Supervisors.

**WHITPAIN TOWNSHIP
BOARD OF SUPERVISORS**

Melissa Murphy Weber, *Chairman*

[Seal]

Attested by:

Anthony F. Greco, *Secretary*