

LEHIGH TOWNSHIP BOARD OF SUPERVISORS

Minutes of the April 26, 2016, Meeting

- I. CALL TO ORDER. The second monthly meeting of the Lehigh Township Board of Supervisors was held on Tuesday, April 12, 2016, at 7:00 p.m. The meeting was held at the Lehigh Township Municipal Building, 1069 Municipal Road, Walnutport, Pa. Present were Darryl Snover, Keith Hantz, and Dell Grove, along with Attorney David Backenstoe, and Alice Rehrig. Chairman Darryl Snover called the meeting to order with the Pledge of Allegiance.
- II. APPROVAL OF THE MINUTES
 - A. Minutes of April 12, 2016. Keith Hantz made a motion to approve these minutes. Dell Grove seconded the motion. All voted aye. Motion carried.
- III. APPROVAL OF THE BILLS
 - A. General Fund Checks 19719 to 19754. Keith Hantz made a motion to approve these bills. Dell Grove seconded the motion. All voted aye. Motion carried.
- IV. OLD BUSINESS
 - A. Historical Society. Phil Malitsch reviewed the site and determined that there were no engineering items that needed to be addressed. Keith Hantz made a motion to authorize the Historical Society to pave the proposed area of their lot as indicated in the letter from Hanover Engineering. Dell Grove seconded the motion. All voted aye. Motion carried.
 - B. Delps Park Bids. Attorney Backenstoe commented that the project was put out in three different options each having its own degree of complexities and costs associated with it. When the Board reviewed the bids at the last meeting they chose to award Options 1 and 2 to Livengood Excavators. When the motion was made by the Board, there were no comments or concerns raised by the public on this choice. The next day, however, S & G, who is also a competitive bidder, called up the Engineer, FX Browne, and indicated that they were in fact the low bidder and there was a miscalculation on the total which was awarded to Livengood Excavators. When Alice Rehrig looked into it, she did discover that S & G was in fact the low bidder, however there were some concerns associated with their bid. One of the items was that the baseball field was going to remain at a stated elevation in the bid. A lot of the bidders felt that additional soils would need to be brought in and calculated into the bid. S & G took the approach that they would lower the level of the field rather than bring in the

fill. After talking to FX Browne and Alice Rehrig, Attorney Backenstoe believes that this assumption on the part of S & G materially contradicts the bid requirements. Attorney Backenstoe commented that he believes that S & G feels that they, in good faith, made a bid and honestly interpreted the specifications in a way that they felt appropriate. He also believes that Livengood felt that his bid complies with the specifications and that while he was not the lowest bid per se, he was the lowest responsible bidder. Paul McNemar of FX Browne provided the Board with a memo which clearly indicated that the bid specs did require that the ball field stay at the same elevation. While it may be possible to reduce the elevation of the ball field, it is not what the bid specs calls for. Attorney Backenstoe commented that he believes that the Manager feels that the S & G bid should be set aside because it did not comply in a material manner with the bid specifications. He as the Township's Solicitor, believes that the best option would be for the Township to exercise their right to reject all bids and rebid this. Obviously there was confusion and a misunderstanding and not all the bidders were bidding the same way. He believes this to be a neutral mistake of fact by everybody and the Board should reject all the bids and rebid this and make sure this issue is clarified.

Keith Hantz questioned if the walking trail can stay. Attorney Backenstoe commented that he feels that all bids should be rejected because they have now been tainted. If you go back and now look at a different option, he believes that the contractors could raise an issue with the Township.

Keith Hantz questioned how the bid package will be changed to prevent this because he does understand what S & G was suggesting. Alice Rehrig commented that the bids had the field being installed at the same elevation as the original plans that Spotts, Stevens, and McCoy had it at when they designed the overall layout of the park. From an engineering standpoint, it was not thoroughly reviewed to determine if lowering the field would work with the existing stormwater facilities. As far as how to prevent this from happening again, there will be wording changes to clarify what the contractor is responsible for, including the bringing in of necessary fill and the estimated quantities will be removed from the bid documents.

Keith Hantz questioned what would have happened if the walking trail was awarded to the low bidder for that and S & G was awarded the bid for just

the field and they were held to their bid and required to maintain the elevation of the ball field. Alice Rehrig commented that if they were bidding on the assumption that no outside fill was needed, they would most likely be submitting a change order for the cost of bringing in the fill. Keith Hantz questioned how this would be prevented by rebidding the project. Alice Rehrig commented that the wording will be changed to make it clear that the contractor must determine that cost when submitting the bid.

Keith Hantz made a motion to rescind the previous motion at the last meeting and reject all the bids for the Delps Park Project and have it rebid. Dell Grove seconded the motion. All voted aye. Motion carried.

C. Cherryville Intersection

1. Cordero Property. Attorney Backenstoe commented that over the past several months, the Board has done everything they can to work with the developer to bring about a final submission of the plan. In order for the developer to obtain a HOP from PennDOT, they were required to obtain additional right of way from eight property owners. The Township tasked the developer with doing everything they could to obtain these rights of way. The developer reported back to the Board that six of the properties have been completely resolved, but there were two remaining. The Board then sent the developer back to those property owners and asked them to meet one more time to make sure all possible avenues have been exhausted before eminent domain is considered. The Developer did that and successfully reached agreements with the remaining property owners. One of these two still remains in balance and does not need to be addressed at this time. The other property is the Cordero property. While an agreement was reached with the property owner, they are unable to convey clean title at this time. They would need to convey clean title to the developer; the developer then transfers title to the Township, and then to PennDOT who requires a clean title. As much as the developer has discussed this with the mortgage company, they will not grant clean title to the needed right of way. Therefore, the Township only has two options: The first would be to adopt the resolution that authorizes Attorney Backenstoe to initiate and file a Declaration of Taking. The second option would be that

the entire project stops. Attorney Preston, council for the developers, was present at the meeting in support of this request.

Darryl Snover requested clarification that the current issue is with the mortgage company. Attorney Backenstoe commented that was correct. The mortgage company will not give clear title.

Keith Hantz commented that he does believe that the developer has what the Board asked of them and exhausted every possibility before coming to the Board for them to initiate eminent domain.

Attorney Backenstoe commented that if the Board wants to move forward with this, the first thing that they would need to do would be to adopt and approve a reimbursement agreement in which the developer will pay all the costs associated with the eminent domain process. Even though the Township is the one who must initiate the procedures, the developer will be reimbursing the Township for the expenses rather than placing the burden on the taxpayers. Keith Hantz made a motion to approve and adopt the reimbursement agreement with Cherryville Development Partners. Dell Grove seconded the motion. All voted aye. Motion carried.

Resolution 2016-5 would then need to be adopted. This resolution would authorize the preparation and submission of the Declaration of Taking and associated documents for the acquisition of right of way along a certain section of Blue Mountain Drive, specifically along the Cordero property. Keith Hantz made a motion to adopt Resolution 2016-5. Dell Grove seconded the motion. Darryl Snover commented that it is a shame it had to come to this, but the mortgage company has forced them into this situation. All voted aye. Motion carried.

2. Maintenance Building. There was nothing additional to report.

V. NEW BUSINESS

- A. Robert Gogel Gun Range Permit, 3910 Mountain View Drive. Mr. Gogel is requesting a permit for a personal range located to the rear of his property. The range is to be located to the rear of his property where there is an open field and forest. There are no homes or structures to the rear of the backstop. The Board requested that the Chief or another officer provide a letter verifying the conditions of the site and if the neighbor's home is located within the normally accepted range for hunting, they provide a letter of no objection for the range.
- B. 4656 Park Lane. Dell Grove commented that he has been getting complaints from some of the neighbors regarding health concerns at this property because of it being unattended. The owner has this residence as well as another one in northern New Jersey. The Owner of this property has been cited many times for not attending to his lawn. Most recently was last summer for a number of issues which resulted in citations being filed at the Magistrate. The biggest concern right now is the swimming pool, which contains stagnant water, making it a breeding ground for mosquitoes, and the associated diseases, such as the Zika virus, and there is a pregnant lady two homes away. The owner does not comply with the violation notices. They cannot get him to show up for court. Dell Grove was questioning what else could be done to move this process forward so that the swimming pool could be removed. He understands that this is private property and it is the owner's responsibility, but there are concerns because of the health effects that this could have.

Attorney Backenstoe commented that the Zoning Officer has gone out, gave him notice, cited him, filed charges at the Magistrate and the Magistrate has not been able to serve him. He did not accept the certified mail and it has been difficult for the Constable to serve him because of his New Jersey residence, although they have had phone conversations; the guy still ignores it. He was also cited under the Zoning Ordinance and he did not file an appeal within the 30 days, so he has no defense. Once they find him, he will go to the Magistrate and be fined. In the mean time, the problem is how do you find him? If this is of a great concern, the Board can authorize Attorney Backenstoe to initiate legal proceedings in the form of a complaint and ultimately an injunction. If the Zoning Officer doesn't feel as though she is getting anywhere, this would allow him the latitude to

file the complaint to sue him in court and get an injunction which would ask for relief by allowing the Township to enter upon his property to remediate the situation either by emptying the pool or taking it down, and then assess a cost against him. This process would take approximately two weeks. The Township would need witnesses for court and good photographs.

Dell Grove commented that in order to get a good photograph of the condition of the pool, you would need to enter the property. He has also talked to the owner and he is refusing to take the pool down. Keith Hantz questioned if the Zoning Officer would have the right to go onto the property to take the pictures. Attorney Backenstoe commented that she wouldn't because it would be considered search and seizure under the 4th Amendment. Attorney Backenstoe commented that she may be able to go to the Magistrate with a police officer to obtain a search warrant.

Keith Hantz made a motion to authorize Attorney Backenstoe to work with the Zoning Officer and Police Department to move forward with the process to seek the injunction so that the pool can be removed after the investigative process has been completed. Dell Grove seconded the motion. All voted aye. Motion carried.

- C. Manager's Report. Alice Rehrig reported that today, she received an email from the Cohen Law Group requesting that municipalities send a letter to the Public Utilities Commission regarding they stop the practice of considering mini cell towers/Distributed Antenna Systems as a public utility, which takes the control of them away from the local municipalities. She will place this on the next agenda for additional discussion and formal action.

Alice Rehrig commented that there has been a problem with individuals from outside the Township and commercial business utilizing the yard waste drop off center. There have also been issues with people dropping off inappropriate items. The Board may want to consider budgeting for gates and fencing next year to try to limit the times that the site is accessible and control some of the problems. Keith Hantz questioned if something could be placed on the website or in the Town and County Gazette to make people aware of this. Alice Rehrig commented that it is on

the website and there will be an article in the upcoming newsletter. Keith Hantz suggested an article be placed in the Town and Country making people aware of what is taking place and how it will effect residents so that if the Township has to restrict the access, the residents will know why. Alice Rehrig noted that the greatest concern is when foreign objects such as concrete and brick get mixed into the pile. If one of those items accidentally gets into the grinder, it can cause \$20,000 to \$30,000 in damage. Keith Hantz also suggested that Alice Rehrig check with the Police Department to see if there is a camera available .

- D. Solicitor's Report. Attorney Backenstoe did not have anything additional to report.
- VI. PUBLIC COMMENT. Tom Meyers questioned what the status of the PennEast Pipeline was. Attorney Backenstoe commented that the Township entered its appearance before FERC on behalf of the Township residents. At this point, nothing additional is happening. Mr. Meyers believes that they are changing things and doesn't believe they can do that. The map showed that they were going to be $\frac{3}{4}$ of a mile away from the peoples' property. Right now, there are surveyors working behind his property, maybe 50 to 75 feet away from the homes. The surveyors told him that someone from the Park Department told them they didn't want the line where it originally was to be located because of four wheelers driving on it. They told him that the line was supposed to be 750 feet further up the mountain but it got moved because the Game Commission or the Park Department complained. This is a concern because there are wells in the area and now the four wheelers will be in the peoples' backyard. He thought the Township could do something to rebuke this. Darryl Snover questioned if we received anything that indicated that the pipeline was going to be moved. Alice Rehrig commented that she didn't receive anything and the map on the website is still the same as what is was before. The latest information was that it was still undergoing environmental review. Alice Rehrig was asked to try to contact PennEast to see if there was a change in the location of the line.
- VII. EXECUTIVE SESSION. The Board went into Executive Session to discussion a Collective Bargaining Agreement. No action was taken.
- VIII. ADJOURN. Dell Grove made a motion to adjourn. Keith Hantz seconded the motion. All voted aye. Motion carried.