

LEHIGH TOWNSHIP BOARD OF SUPERVISORS

Minutes of the May 25, 2021, Meeting

- I. CALL TO ORDER. The Lehigh Township Board of Supervisors held their second monthly meeting on Tuesday, May 25, 2021, at 7:00 p.m. The meeting was held at the Lehigh Township Municipal Building, 1069 Municipal Road, Walnutport, Pa. 18088. Chairman Cindy Miller called the meeting to order with the Pledge of Allegiance and roll call:

Present: Phil Gogel
Cindy Miller
Mike Jones
David Backenstoe
Alice Rehrig

Absent: Michael McGonigle
Keith Hantz

- II. APPOINTMENT TO PLANNING COMMISSION. Two individuals submitted letters of interest to the Board to fill the unexpired term of Jack Wall. The individuals are as follows:

Todd Rousenberger. Mr. Rousenberger moved into Lehigh Township in October 2017. He has two teenage children. After the year 2020, he is looking for something fun to do. He has been a registered professional engineer since 1996. He has served as Township Engineer for West Penn Township in the late 90's and early 2000, but still understands the basic concept of the requirements of the MPC. When he saw the opportunity to serve on the Planning Commission, he thought it would be a good fit with his experience.

Phil Gogel. Phil Gogel has been on the Board of Supervisors for the past three years. He has lived in the Township his whole and has lots of family in the area. He knows the topographical features of the Township; where the water problems are and other items. He has a few visions for the Township for water and sewer build out where development can take place and benefit the Township. He would like to bring this to Planning like he did with the Board as far as problem solving and making things happen. He wants the Township to move forward in a positive direction. We do need some commercialization along with development because we cannot stay stagnant forever. He believes he could be a positive asset to the Planning Commission.

The appointment was tabled until June 8 to give the other Board members an opportunity to review this information.

III. APPROVAL OF THE MINUTES.

- A. Minutes of May 11, 2021. Mike Jones made a motion to approve these minutes. Phil Gogel seconded the motion. All voted aye. Motion carried.

IV. APPROVAL OF BILLS.

- A. General Fund Checks 24870 to 24899. Mike Jones made a motion to approve these bills. Phil Gogel seconded the motion. All voted aye. Motion carried.

V. OLD BUSINESS

- A. Cherryville Intersection. Cindy Miller noted there were two emails received from Jim Milot regarding additional items and information pertaining to the intersection project. Through discussions with PennDOT personnel, it was learned that PennDOT does not typically charge for virtual inspections. They only charge for inspections when they are in the field. Jim Milot provided an outline of the inspections that his office will need to be doing and the costs associated with them. The costs of the inspections are estimated to be between \$7,000 and \$10,000, although Jim Milot does not expect that the costs will reach the maximum amount based on the performance of the contractor. There will be additional plan sets needed for temporary and interim signal plan and a striping plan required by PennDOT. This is needed because when our original HOP was issued, it was assumed that Turkey Hill would be the contractor who started first and we would be tying into their construction. Since we are now the first contractor, we need to amend our plans to reflect the current situation and how the signal and striping will operate until Turkey Hill finishes the intersection. Along with these plans, the Township will need to purchase four signal heads for the pedestrian cross walks. When the HOPs were approved, the pedestrian signals were planned to be the traditional hand and figure light. Since our portion of the intersection only has one of those signals and PennDOT does not allow signal heads to be mixed with the figures, we need to put signal heads in all directions. If possible, used signal heads will be used since it is a temporary situation. The contractor will be installing the hand/figure head, it just will not be active. Based on the progress that is being made, June 1 is still the anticipated date for substantial construction.

Cindy Miller questioned if the Township does all the temporary work and then Turkey Hill comes in and finishes the intersection, will the Township be responsible to come back in and do the final markings. The Township's contractor will be done and our grants will be expired by the end of June. Will there be an additional cost to the Township for completing the project? Alice Rehrig will check with Jim Milot, but she believes the plan would be to have Turkey Hill do the final markings because they are the last one to do the work.

Jim Milot is also trying to minimize the amount of striping that gets done on the shoulder to limit the amount that needs to be removed from the new pavement.

Mike Jones questioned if the Township Road Crew could do the striping. Alice Rehrig commented the Township doesn't have a road striper, but believes the Crew could obtain a striper if needed. The Crew does paint stop bars. The greater issue is not putting the stripes down, but getting the temporary striping off. Cindy Miller commented she would rather have it be done by Turkey Hill. Attorney Backenstoe noted the Township did everything they could do in order to coordinate the project with Turkey Hill, but it just didn't work out.

Cindy Miller requested clarification be obtained regarding the responsibility of the removal of any temporary striping and final striping or other features of the intersection. She doesn't want to have any surprises after the contractor has left and all the grant payments have been received and then the Township ends up with an unexpected bill.

Alice Rehrig also noted the reimbursement request for Payment No. 1 has been submitted to DCED.

Jerry Pritchard questioned if there is a progressive schedule of what work needs to be done and when they get paid. Cindy Miller commented there was. Jerry Pritchard commented when the Township's work is completed, it should be left up to Turkey Hill to complete the loose ends.

- B. Maintenance Building. A meeting has been scheduled for Thursday, May 27 at 4:00 p.m. to review the final details with the architect prior to the project being advertised for bid. The site plan is in the process of being developed by Hanover Engineering. Once the final details are worked out, the project will be put out to bid.

Jerry Pritchard questioned how soon the building will be put out for bids. Cindy Miller commented Hanover Engineering was given authorization to start the site plan two weeks ago, and the plan is expected to take about four weeks to complete.

Phil Gogel commented there could be a benefit to delaying the project somewhat. The Chinese are putting a cap on commodities. If they start pushing commodity prices down, it will theoretically start pushing our costs down.

VI. NEW BUSINESS

- A. Waterline Easement Agreement—Lehigh Township Municipal Authority.
Angelika Forndran and Carl Sharpe were present to represent the Municipal Authority. This is an easement agreement for the water line that will be coming over to the new booster station at the Pennsville Treatment for the new development, The Lehigh Valley Resort and Spa. The water line will be coming from the City of Bethlehem water filtration plant via Granger Road to Cinchona Road where it will cross under the Indian Creek and cross Mr. Jaindl's property and get to the property line of the waste water treatment plant. The property that it is crossing is property owned by Lehigh Township. The easement will be located in the triangular piece of property on the south side of the treatment plant. The triangular area shown as TCE #1 and TCE#2 will be a temporary construction easement and the pipeline easement itself will be a 30 foot wide permanent easement. It is her understanding that Attorney Andres and Attorney Backenstoe have reviewed the agreement.

Attorney Backenstoe commented he has not spoken directly to Attorney Andres regarding this agreement. He has had numerous discussions with Attorney Zator. When the Township initially received the agreement, he found the form of the agreement to be acceptable and appropriate; he did not have any issues from a legal perspective. From an engineering perspective, Phil Malitsch did have some concerns and questions. In the interim, Cowan Associates had also raised some questions pertaining to the agreement and forwarded them over to Attorney Zator. Attorney Backenstoe forwarded Phil Malitsch's comments over to Attorney Zator as well. Attorney Zator created the final draft that is before the Board. If the Board is inclined to approve the agreement, it should be conditioned upon any final comments from Phil Malitsch.

Cindy Miller questioned if the easement agreement was going to be with Mr. Jaindl or the Municipal Authority. Angelika Fordran commented the agreement is with the Authority. The water line will be installed by Mr. Jaindl and eventually be dedicated to the Municipal Authority. Cindy Miller wanted to verify that the Municipal Authority will be maintaining it and responsible for any future changes. Angelika Fordran confirmed that they will be and that is why they made it a 30 foot wide easement so that there is enough access to the pipe. Cindy Miller questioned if the easement would change if the pipe needed to be replaced. Angelika Fordran commented the easement itself would remain at 30 feet. The pipe itself is 18 inches. If the pipe were to be replaced or increased in size, it would need to remain within the 30 foot easement area.

Phil Gogel made a motion to approve the 30 foot easement with the Municipal Authority with the condition of Phil Malitsch offering final comments regarding the easement agreement. Mike Jones seconded the motion. All voted aye. Motion carried.

Cindy Miller questioned what the status was of the water and sewer pertaining to the Lehigh Valley Resort and Spa. Angelika Fordran commented the sewer has received all of its Planning Modules. The water is in the final stages of the Developer's engineering obtaining the public water supply permits. They have also had meetings with the City of Bethlehem to verify all the engineering for the water service. They have signed the water service agreement. It is the final engineering details that need to be worked out. Carl Sharpe commented the City of Bethlehem will own all the piping up to the well house. The Municipal Authority will take over ownership once it gets to the well house.

- B. Manager's Report. Alice Rehrig reported an estimate was received from Hanover Engineering in the amount of \$1,254.00 for the additional time to obtain a permit from DEP to remove the Cinchona Road bridge and reslope the banks to match to the rest of the restoration project that will be taking place within the park. The price that the contractor provided for the bridge removal and resloping of the banks was \$18,890. These expenses will be covered by the grant that was received from DCNR. When this project is completed, there will be an open channel in which a new bridge could be placed when funding becomes available. In order to replace the bridge, we will need to go through a new DEP permitting process, but at least the removal of the damaged bridge will be covered by a grant.

Mike Jones made a motion to move forward with the Cinchona Road project through Brightfields. Phil Gogel seconded the motion. Jerry Pritchard questioned what the overall cost will be to the residents. Mike Jones commented the work is being funded through a grant. Alice Rehrig commented the Township received several grants to do a stream bank restoration project that would remove the failing concrete walls from within the park and reslope and stabilize the bank with large rock and vegetation as well as repair and restore the walls in the area of the Historical Society. Because the damage to the Cinchona Road bridge will cause an obstruction to the stream and potentially damage the areas that are being restored, DCRN will allow the Township to use the excess grant funding to remove the bridge and stabilize the area under the grant. All voted aye. Motion carried.

PennDOT has posted a weight restriction of 25 tons on the bridge at Route 248 and Municipal Road. As a result of this, triaxles have found a short cut by using Evergreen Road which is not a very wide road nor is it meant to handle that type

of traffic. If a simple engineering traffic study was done that the roadway could be posted to restrict trucks except local delivery, the cost would be between \$800 and \$1,200. Restricting the trucks without a weight restriction has lower fines than a weight restricted roadway, but it may be a deterrent so that the trucks do not keep running on Evergreen. Phil Gogel questioned if the roadway could be posted without the study. Attorney Backenstoe commented if there is not a study or an ordinance for a posting, it could create a liability for the Township. Phil Gogel commented he was looking for a way to keep the local trucks from being boxed in because there are so many restrictions in the area. He doesn't like the idea of restricting trucks from the roads, but then exceptions are made because someone lives in the area of the restricted roadway and has a truck business, like what was done at Cottonwood Road and Beech Drive. It's not right or fair to the rest of residents of the Township. The more restrictions we place on the roadways, the more we are hurting the local guys. We need to watch what we are doing and what exceptions get made. Cindy Miller commented the problem is that the roads can't handle the trucks and the trucks are running and running and eventually we end up needing to redo the road. Phil Gogel commented the issue is not the trucks using the roads because the trucks are designed to distribute the weight over the surface they are driving on; the issue is when they are running overloaded. Cindy Miller commented PennDOT put a weight restriction on a bridge that is located on a major thoroughfare or artery to the Lehigh Valley. The Township told PennDOT about the condition of the bridge at least five years ago. Now, instead of addressing the problem, they just go and put a weight restriction on the bridge, which causes the problem to again get pushed back onto the Township with all the triaxles that are running the road. Phil Gogel commented there probably is an overweight issue and the police should also have the scales out. Alice Rehrig commented even if the triaxles are not over weight, they are still going to be too heavy for the bridge.

Mike Jones commented two triaxles can't even pass on Evergreen. Phil Gogel commented he is not saying trucks belong on that road, but if you make it "No Trucks", then you hurt the guy who has a smaller truck that would normally use that road. Mike Jones commented the smaller trucks can still go on Route 248. Phil Gogel commented he is still concerned about posting our road at no trucks. Cindy Miller commented if it is posted as no trucks, local traffic only, a contractor doing work on that road could still use the road. Phil Gogel commented he still believes the best solution would be to set up the scales and fine them if they are overweight. When you post a restriction in one place, it will just move the problem to another area of the Township. When the roads are posted, we are only hurting the local people because they are the ones who will care enough to follow the rules. By posting the road, we are creating an unintended harm. Cindy Miller commented she is not seeing what the unintended harm would be. Phil Gogel

commented you would be stopping someone from using the road who is paying taxes, fuel taxes. The problem is our roads have been allowed to get so bad over the year because we haven't been putting the money into our infrastructure. Cindy Miller commented she is trying to prevent our roads from crumbling more. How would we do that? Phil Gogel commented we would put the police there with the scales and start getting the big trucks. Cindy Miller commented if the truck is stopped and is overweight and they move on and are still traveling down Evergreen Road. She is trying to get them to not be traveling down Evergreen Road. Phil Gogel commented it would just move the trucks to another back road. We will just keep chasing this problem throughout the Township.

Alice Rehrig noted there is a bridge at the end of Evergreen Road that is owned by the County. She had contacted the County to see if they had any weight restrictions for the bridge, but they did not.

Mike Jones made a motion to approve a traffic study for Evergreen Road. Cindy Miller seconded the motion. She believes we are going to have to do something. We can still regulate things with the Police Department. Phil Gogel commented he does not agree. This item will be placed on the next meeting agenda.

Alice Rehrig had provided the Board with the April Financial reported. Cindy Miller commented in reviewing the reports, the only areas that seem to be running over budget is maintenance to Police Vehicles, the Sweeper, and the loader. Do we have the maintenance logs? Alice Rehrig commented the logs were done in the fall; she has not yet received the spring logs. Mike Jones questioned if any of the expenses for the Police Vehicle were associated with the one that we got rid of. Alice Rehrig commented there was the deductible that needed to be paid when the Chief hit the deer and there was also a larger expense in the beginning of the year, but she was not certain which vehicle it was. Phil Gogel commented the problem with maintenance is you can go through a period with limited problems, then everything can hit at one time. Alice Rehrig commented she can print the actual expenses that are associated with each individual vehicle and piece of equipment so the Board can see where the problems are. Cindy Miller commented she is concerned about the sweeper because it is starting to cost more and more. Alice Rehrig commented part of the expense are the replacement of the brooms. Mike Jones questioned if it was ever looked into to contract out the street sweeping. Alice Rehrig commented it was looked into several years ago; she thought it was around \$3,000 a week or month. It may be something to look into when we go to replace the sweeper because of the increasing costs of the equipment.

- C. Solicitor's Report. Attorney Backenstoe provided the Board with a review of the situation and an update on the Vandling property. Mr. Vandling bought a lot in a residential neighborhood where single family dwellings are permitted by zoning. The lot he bought was a residual lot in a subdivision and it stated no construction can take place until such time that there is land development approval. Mr. Vandling did not obtain the necessary approvals and built a home. When the Zoning Officer was made aware of it, she cited Mr. Vandling and he was found guilty at the Magistrate's office. Mr. Vandling then filed an appeal and the case went to Northampton County Court of Common Pleas where he was found guilty and fines were assessed. An order was entered that he would need to file a land development plan and grading plan within 90 days and pay a fine. The 90 day time frame was stayed for a period of time because of COVID, but he did file the plan like he was supposed to and went through the review process. The engineer made comments on it, not a whole lot, but there were comments. Mr. Vandling never followed through with finalizing the plan and the land development plan was denied. At that point, the Board authorized Attorney Backenstoe to file an injunction. In order to serve Mr. Vandling, he needed to hire a private investigator. Once he was served, he had so many days to file an answer. He didn't file the answer and he was given a 10 day notice after which there was a default judgement for liability. Then another petition needed to be filed in order to get the actual injunction. This was done on May 14 and the Township was able to get a full blown injunction which says he nor anyone else is allowed to reside there and he is to start dismantling the house unless he submits the appropriate plans and gets the appropriate approvals. He is not allowed to disrupt the sewer system that he is apparently working on. He is supposed to pay the Township a \$1,000 fine and \$3,000 for reimbursement of legal fees and costs. He is also not supposed to move any earth. The order was entered and he was served with that order. Attorney Backenstoe commented he is also hearing from the neighbors that he is continuing to violate the order. The problem is you cannot have the police go in and use marshal law on a zoning violation. The next step is that he will have to file a petition for contempt because he is in violation of the order. He will be asking the court to fine him thousands and thousands of dollars or as much as he can be fined every single day. The Township may end up getting a judgement against him to reduce those fines to \$100,000 or \$200,000 and eventually sell his property. He will also ask the court to allow some type of physical authority to stop him but courts are reluctant to do that on a zoning violation. The other thing that he found to be very disappointing is that DEP and the County Conservation District will not come out and look at the property to see if there are any violations for the earth disturbances. They sent him a notice, but they never followed up on it. It would be nice if they helped the Township out. The Township and the Board of Supervisors are doing everything they possibly can to try to resolve this by either getting him out of the house or getting him to

comply. He doesn't understand the reluctance to comply when all that is needed is to file a land development plan, get a proper sewer permit and system, and file a grading plan. It is frustrating for both the Township and the neighbors.

Jerry Pritchard questioned if there is any type of illegal activity taking place. Attorney Backenstoe commented it doesn't appear that he is violating any criminal laws. Mike Jones commented the neighbors believe there is but there is no proof of it. Cindy Miller commented she received an email that indicated he was at it again last night. Mike Jones commented he is stopping right before the 11:00 p.m. deadline so there is nothing they can do. One of the neighbors said they were able to see a drug transaction on a video. Attorney Backenstoe commented if they are seeing drug transactions, they should be calling the police.

Jerry Pritchard commented the noise ordinance goes until 11:00 p.m., but how do you determine when the noise becomes a nuisance. Where do you draw the line when some people will not give up?

- VII. PUBLIC COMMENT. Sandy Hopkins commented the fencing for the dog park is finished. The gates have been locked because there is still some work that is needed. Concrete needs to be installed by the gates so that it doesn't become muddy from people going in and out of the park. There will also be some signage added with rules for the park. The proposed rules will be provided to the Board shortly. They are also looking to add some trees and benches to the park. There have been some people who are considering making donations towards these items. They are also planning on having an opening day where they will have a trainer come in and give a demonstration as to how to introduce your dog to other dogs. There will be a sign placed at the dog park that will dedicate the park in memory of Katherine Mack's husband. Cindy Miller questioned if there will be a formal dedication for the park since it is being dedicated to Katherine Mack's husband. Sandy Hopkins commented she is sure Dr. Mack would be willing to speak at the opening. She is hoping the park can be opened at the end of June or beginning of July.

Paul Nikisher questioned if there would be any type of liability to the Township with the dog park. Sandy Hopkins commented it will be stated in the rules that everyone is entering at their own risk. There will also be rules for the number of dogs someone can bring in, no aggressive dogs will be permitted, etc.

Jerry Pritchard questioned how a cease and desist works if there is no appeal filed. In the case of the Longacre Air Bnb, how do they keep operating in defiance of the Township? Attorney Backenstoe commented there are guidelines under the MPC. The Zoning Officer issues a cease and desist of which the property owner has the right to appeal to the Zoning Hearing Board, which they did. Their application was denied and the

applicant now has the right to appeal to the County Court of Common Pleas. Attorney Backenstoe is anticipating that they will be filing an appeal because they have requested a copy of the transcript from the hearing. The property owner does have the right to file the appeal with the County and by many courts, they do have the right to continue to operate until there is a final unappealable decision stopping them. There are some legal avenues the Township can pursue, but he is not at liberty to discuss them publicly. If certain things happen, the Township may be able to file an injunction. Jerry Pritchard commented the problems with this property have been going on for about three years. Attorney Backenstoe commented he was made aware of it about a year and a half ago which was when he had the Township go through the self-cure process for the ordinance and adopted a new ordinance so that use could be regulated and there couldn't be an exclusionary zoning challenge. Jerry Pritchard commented he had attended the zoning hearing and during the hearing the owner stated several times, if it was so bad, why hadn't the police cited them. There were many times the police were called after 11:00 p.m. Wouldn't it be beneficial if there were citations from the police that could be provided to the courts to help build the Township's case? There doesn't seem to be any back up for the Township's position. Attorney Backenstoe commented we did have several police reports that were presented at the hearing, but not all of the reports were sent to the Zoning Officer. Jerry Pritchard commented there were no citations issued.

Cindy Miller commented she also wanted to bring this up tonight. She is still receiving calls from the neighbors. She's getting tired of this whole issue. She knows the police were at the property this past weekend for noise. Her question is, are our police citing the owner of the house and the people who are staying at the house? If they are not being cited, they should be. She wants an answer to that. It is beyond just warning people. Both parties need to be cited. The tenants are being told the rules of the house when they rent, so they are aware of the rules and should be cited. The owners should be cited as well. The neighbors in the area have had it and she is concerned that things will escalate, and she doesn't want that to happen. The property owner put a deck on the property without a permit and Liz Gehman had to send them a notice about that. The owners keep moving on, just like nothing happened. They need to be cited. Jerry Pritchard commented if the occupants are cited, it will get posted in the reviews on AirBnb, that if the police get called because it is too loud, you will be cited.

Paul Nikisher questioned what the status is of the Jaindl project. John McRoberts of Pitcock Engineering commented the building team is moving along with the building designs. This is a large project and it take time. The offsite environmental permits are starting to come in or are in the final states. The earliest they could possibly start construction is the summer, but most likely the fall.

Paul Nikisher questioned the status of the negotiations with the workers and if it was settled. Cindy Miller commented it is not settled yet.

Supervisor Minutes
May 25, 2021

Paul Nikisher commented he likes the vote integrity resolution that the Board adopted. Cindy Miller commented there was a lot of good response to it at the poles. It will be presented to Northampton County.

A resident of Teel Road questioned if any action is being taken against the property owner on Teel Road. They called Liz Gehman and asked what if any permits he had. She told him he has two permits, one for a fence and one for a pole building behind his house. His neighbor is still digging in an area which is located in front of the home so a structure would not be permitted to be built in that location. DEP told him to stop work on the driveway he put in over the wetlands, but he hasn't done any restoration. Phil Gogel commented DEP will most likely be back to verify everything was restored. Attorney Backenstoe commented he is not certain he is doing anything wrong at this point. The residents commented he is running his business from his home. Cindy Miller commented she doesn't believe there is enough information to prove the business is being run from the home. The resident questioned what type of evidence is needed. There are three trucks, trailers and equipment. Phil Gogel commented there are a lot of people that have equipment. It would be helpful if there were pictures of the employees milling around the equipment. He agrees the wetlands need to be restored and the building needs to be located in the proper location. The resident commented he is building the garage for his business; you can see that. Phil Gogel commented if the building is being built in the wrong location, then the Zoning Officer should send him a letter and pull the permit. A resident questioned how can he get a permit for an agricultural building when the property is not being farmed? There is no contract with a farmer. The farmer will no longer be farming the property because of the amount of crops he has destroyed. Alice Rehrig commented the only difference between an agriculture building and a residential pole building is that building inspections wouldn't be required for agricultural buildings over 1,000 square feet. Both buildings would be subject to setback requirements. A resident questioned how many acres you need to be a farm and how many of them need to be farmed. Cindy Miller commented a farm is 10 acres and a property can be declared as a farm if there is 10 acres of agriculture. You don't need to be farming the entire 10 acres. A resident commented he is running a landscaping business at his house. At 6:15 a.m., employees get there and are carrying on. His property should be getting taxed properly and be taxed as a business. Phil Gogel commented DEP will make sure the wetlands are restored and Liz Gehman will need to check the location of the building and or what he is doing as far as the earth disturbance and if there is an issue, she will need to issue a cease and desist.

Jerry Pritchard commented people cannot keep voting the same people in at the State level, then come back and complaint about the State.

Marian Mae questioned what type of material is being used to fill in the pot hole on Birch Road. The material is put in the hole, but it comes right back out. Alice Rehrig

Supervisor Minutes
May 25, 2021

commented during the winter months, cold patch is used because hot material is not available. The road crew is in the process of getting the roadway ready for the paving crew to come in. The roadway is scheduled for an overlay this summer.

- VIII. ADJOURN. Mike Jones made a motion to adjourn. Phil Gogel seconded the motion. All voted aye. Motion carried.