

## LEHIGH TOWNSHIP BOARD OF SUPERVISORS

### Minutes of the May 26, 2020, Meeting

- I. EXECUTIVE SESSION. The Board met in Executive Session to discuss pending litigation. No action was taken.
- II. CALL TO ORDER. The Lehigh Township Board of Supervisors held their regular monthly meeting on Tuesday, May 26, 2020. The meeting was held at the Lehigh Township Municipal Building, 1069 Municipal Road, Walnutport, Pa. 18088. Due to the health concerns surrounding the COVID-19 virus, the Municipal Building was closed to the public and the public was invited to participate in the meeting through a conference call. Chairman Cindy Miller called the meeting to order:

Present:       Cindy Miller  
                  Phil Gogel  
                  Keith Hantz  
                  Mike Jones via conference call  
                  Mike McGonigle via conference call  
                  Attorney Backenstoe via conference call  
                  Alice Rehrig

- II. APPROVAL OF THE MINUTES
  - A. Minutes of May 12, 2020. Keith Hantz made a motion to approve these minutes. Cindy Miller commented she had pretty many concerns with some of the wording pertaining to what she had said under the Recreation Report. She would like to review the tape prior to approving the minutes. Keith Hantz rescinded is motion. The minutes were tabled until the next meeting.
- III. APPROVAL OF THE BILLS
  - A. General Fund Checks 23956 to 23976. Keith Hantz made a motion to approve these bills. Phil Gogel seconded the motion. All voted aye. Motion carried.
  - B. State Fund Check 1505 and 1506. Phil Gogel made a motion to approve these checks. Keith Hantz seconded the motion. All voted aye. Motion carried.
- IV. OLD BUSINESS
  - A. Cherryville Intersection. There was nothing additional to report.
  - B. Maintenance Building. Alice Rehrig reported W2A is continuing to work on developing the bid specifications for the project. She provided them with

information pertaining to the RACP grant that the Township received for the building so that they can incorporate the requirements of the grant into the bid packages.

- C. Parks. Cindy Miller commented she knows there were some concerns among some of the Board members regarding the decision to put up the nets. She wanted to review what the Board did at the last meeting. When you look at the April 28, 2020, minutes, the Board had a discussion about putting up the nets and decided they would again discuss it at the May 12, 2020, meeting, which is what they did. When these meetings are held, there are only a few Supervisors who are sitting in the room and others are calling in. You can't see body language and get a good feel of what the opinions are of the other Board members and if there is a general consensus. When the Board was discussing this, she asked for a vote mainly so she knew if there was a consensus on this. She wants to clear the air on this. The Board didn't need to take a vote on the matter. It was a discussion. Normally, the Board would discuss it and look at the Public Works Director or inform the Manager they want them put up, which is why it was handled the way it was.

Cindy Miller also noted that the parks were always open; they were never closed. The bathrooms were closed for winter and are still closed until the water quality is checked. Until the water tests are received, we cannot open our bathrooms. We are also watching the CDC guidelines and the Governor's order. All that happened at the parks was that the nets went up. She knows people were concerned about an influx of people coming in from outside the area. She has driven by quite a few times and hasn't see that.

Keith Hantz commented he wasn't at the last meeting because he was working, and Cindy Miller is right, the parks were never closed. That is why in his opinion, no action should have been taken at all. For items like this, the Board gives direction based upon the majority of the Board. In this case, there were three members who wanted the nets to go up. In his opinion, the parks should have remained the way they were without the nets. The parks were being used. He has seen families using the soccer fields and the baseball fields on their own. He realizes there were no basketball rims and nets at the courts, but right now he doesn't feel they should have gone up. The minutes state something about Moore Township being open. Moore Township is shut down completely. Cindy Miller commented that was misstated in the minutes. Keith Hantz understands a lot of parks are open for walking, riding, and running. He understands that, but he personally feels it was a mistake putting up the nets. He has also seen the

basketball courts over used, where there were twenty or thirty people on the courts. Phil Gogel commented if there are 10 people on each court because there are two teams, 5 people on a team, they are within the guidelines of 10 people in a group. Keith Hantz commented they are unable to stay six feet apart. Cindy Miller commented signs were put up telling people to abide by CDC guidelines. Keith Hantz questioned if the police were told not to enforce anything at the parks. Cindy Miller commented the Chief questioned how they would enforce it. Her comeback was are we looking to enforce social distancing on the youth using our parks? Phil Gogel commented at the end of his motion that we should post a sign so people understand the guidelines of the CDC and the Governor's regulations. Cindy Miller commented that people need the opportunity to live and it is at their discretion as to whether or not they want to use the park. People were being told to go out and exercise. Keith Hantz commented he agrees that people were being told to exercise and our parks were being used, he just doesn't believe we should have taken the next step, not yet.

Keith Hantz questioned if there could be a liability on the Township if someone does get sick with the virus and they can prove it was at a Lehigh Township parks. Cindy Miller commented the Governor never closed parks. He left local government to their jurisdiction to run as they see fit. He encouraged the Township's not to stop. Keith Hantz noted that by putting the nets up, you are encouraging larger groups. Cindy Miller commented the Governor did say no teams. We are not opening our fields to baseball teams or competitions. He agrees with people using the parks, he just would have been opposed to putting up the nets.

David Hess commented that he believes this is a parenting issue. If he doesn't inform his step-son of what is the right thing to do, that falls on him.

V. NEW BUSINESS

- A. Authorization for Execution of FEMA documents naming Manager as Applicant Agent. The FEMA documents will authorize the Manager to submit for FEMA funding reimbursement for COVID-19 related expenses in the event we meet the \$3,300 minimum requirement. It is mostly for the PPE and disinfectant supplies. The documents are the same documents that were submitted in the past for FEMA

funding. Phil Gogel made a motion to authorize the Execution of the FEMA documents naming the Manager as the Applicant Agent. Keith Hantz seconded the motion. All voted aye. Motion carried.

- B. Sale of Rescue Truck. The old rescue truck was advertised and listed for sale on the Municibid website and a high bid of \$14,700 was received. When the listing was put on Municibid, it was listed with a \$20,000 reserve because based on the information that was received from the Fire Company, they felt the truck had a value of \$20,000 to \$25,000. The Fire Chief also indicated that he has learned of two people who are also interested in the truck. Since the bids came in lower than the reserve, it is suggested that the bids be rejected and the truck rebid. The rebidding of the truck could be done by either placing another ad on Municibid or by doing a traditional sealed bid with a minimum bid of \$20,000 required.
- C. Future Township Meetings. Cindy Miller commented she wanted to discuss with the Board what date the Township would start opening the buildings more than what we are today. The Governor has expressed that Northampton County will be moving into the yellow phase on June 5. She feels the Board needs to figure out when they will open because we have Planning Meetings and Zoning Hearing Board meetings coming up in June. The building has been closed to the public since all this started in March. She believes we should target for June 5. Phil Gogel commented he would agree once we hit the yellow and we can have meetings with social distancing and all the guidelines of the Governor. Mike Jones questioned if the public will still be allowed to phone in. Cindy commented we can do both. Mike Jones commented it would be needed because we can only have so many people in the building. Cindy Miller commented we would be permitted to have 25 people, but we can't tell people they cannot come to a meeting. For the Planning and Zoning meetings time slots can be designated so that only the party that is presenting at that time can come in, and the other parties need to wait until the first party is through. The Board was in agreement with this.

Alice Rehrig questioned if the June 5 date would include the offices. Cindy Miller commented it would, but people do not need to go beyond the vestibule at this point. She is not sure what that would mean for the Zoning Officer and dealing with permits. Alice Rehrig commented we can post the lobby and only allow one person in at a time.

Attorney Backenstoe commented he does have a concern if there is a large amount of people who would attend a meeting, how would you determine who can come in and who must stay out. Cindy Miller commented she would think it would be on a first come, first serve basis and the others would need to call in. She doesn't know what else could be done.

Mike Jones questioned how it would be handled if someone has an issue or something on the agenda and they can't get in because there are other people in the building who are just there to observe the meeting.

Paul Nikisher questioned if the Fire Company would be an option. Attorney Backenstoe commented the problem is that only 25 people are allowed in the room, regardless of how big it is. Cindy Miller commented she thinks it is better to have it at the Municipal Building because everything is set up here in the conference room. Keith Hantz commented he thinks the meeting could be held at the building and the amount of people be limited. Cindy Miller commented if someone is on the agenda, then we would give them priority for entrance. People may also want to just wait outside or in their car until they are up on the agenda.

Jerry Pritchard questioned if it wasn't a law that if the meeting area wasn't able to handle the capacity of the attendees, then it would become void. Attorney Backenstoe commented that is his concern. There are cases where you need to accommodate the amount of people who are there, but we are also in the middle of a pandemic. The regulations that pertain to COVID-19 make it difficult because you can only have 25 people in a room, but the new legislation does allow you to have call in meetings. It is not clear. He will need to look into this more before the next meeting. Mike Jones noted our next meeting is the meeting where all the Department Heads attend; there will be 13 people just with the Board and the Departments. Cindy Miller commented we could have the Department Heads call in.

Cindy Miller questioned the Board's thoughts on opening the buildings on June 5. Phil Gogel questioned if we would need to wait until the 9<sup>th</sup> for Attorney Backenstoe to report. Cindy Miller commented it can't wait that long because there is a Planning Meeting on the 8<sup>th</sup> and the Zoning Hearing Board already needed to be advertised. Attorney Backenstoe commented he will let the Board know his findings before the meeting. He believes the Township Building could be opened to the public as long as they are wearing masks and doing similar things; have the Zoning Hearing Board meetings where you have limited

interested parties. He is mostly concerned about the Board of Supervisors meeting. Cindy Miller commented if it comes back that we must continue with just conference call, then we do. She would like Alice Rehrig to be able to notify the various committees that they can start using the conference room with the implementation of the CDC guidelines.

- D. Message Sign Board. There was no discussion on this.
- E. Role of Chairman. There was no discussion on this.
- F. Manager's Report. Alice Rehrig did not have anything specific beyond her written report.

Phil Gogel wanted to thank Alice Rehrig for everything she has had to do in the last couple of months in dealing with everything. She has put in a lot of effort and time to make sure things would go as smooth as possible for the Board members.

Mike Jones questioned the School District plan that was listed in the Manager's report. The expiration date is June 8, which is prior to our next meeting. Alice Rehrig commented this plan has already received conditional final approval, but it was not yet recorded. The deadline was just for the recording of their plan. There are no issues in terms of them getting a deemed approval. She just received a notification that they made their seventh submission to PennDOT. She will contact the School and request an extension of time. Attorney Backenstoe noted that everything is extended by 30 days under the new law.

- G. Solicitor's Report. Attorney Backenstoe did not have anything specific to report.
- VI. PUBLIC COMMENT. Jerry Pritchard commented our constitutional rights are being trampled on. We can't stand for something over here and then be bullied over something else over there. Going forward, he believes we need to think about what we are doing as a whole. We are literally going against our own constitutional law. Right now, we are not abiding by laws, but by a dictatorship.

Lou Gombocz (WFMZ) requested a clarification on the status of the parks. Cindy Miller commented the parks have always been opened. We are abiding by the CDC guidelines set by the Governor. Parks were never closed. It was left to the discretion of the local municipalities as to how they wanted to handle their parks. The bathrooms are not

opened at this time. The nets were put up on the basketball courts, volley ball courts, and soccer fields. Keith Hantz noted the majority of the Board wanted the nets up. There are two Supervisors who want the parks open, but without the nets.

Paul Nikisher commented he agrees the nets should be up. The kids need something to do. They need to be able to get out there and vent and use up their energy. Better to have them playing at the parks than vandalizing somewhere. The whole issue with Becky's Drive needs to be addressed with the Chief and open that place back up. Not only do the kids need something to do, but the families need something to do. He doesn't understand why the Chief would quote something like that, that he wasn't asked permission. Open the drive-in up, there is enough space. We are all adults and should know where, when, and how to address each other when we are in public. Closing them up, is wrong. They are trying to make a living too. When the Chief said he was enforcing the law, he was wrong. The Governor cannot make laws; the legislators do. Keith Hantz commented there is no proof here that the Chief shut down Becky's Drive-In. One of our officers gave them a warning. If you talk to the Chief, he did it with the idea that he was helping them so they wouldn't get in trouble with the State so they wouldn't lose their State licensing for the concession stand by being open. **The Chief or the Police Department did not shut Beckys Drive In down.** The Board does have some questions and will be looking into it. The Supervisors or the Police Department did not shut down Becky's; Cindy Deppe chose to shut down. **Keith Hantz commented he would need Attorney Backenstoe to verify it, but the Board nor the Police Department have the right to shut a business down.** Attorney Backenstoe commented around March 6, Governor Wolf signed an Emergency Disaster Declaration, pursuant to Title 35, the Emergency Management Service Code Section 7301C under which he set up these dictates and edicts. There were also a number of people who didn't agree with them and if he had the constitutional authority to do that. There was a lawsuit filed quickly call Friends of DeVito vs. Wolf and on May 15, the PA Supreme Court handed down a decision saying that Governor Wolf did act within his authority and did act within his constitutional rights and that his edicts were warranted. He believes this went up to the United States Supreme Court, but they never ruled on it. The PA Supreme Court issued a written decision which explains why they felt the Governor had the authority to do what he did. Residents or the Board may or may not agree with the ruling, but he can say, the Police nor the Board of Supervisors have the right to shut down or authorize the opening of a private business. That is up to the private business and they have a lot of issues to think about because the Governor went on the record and said that if a private business is open, they could lose their license. If an entity loses their license because it is deemed to be operating improperly and not in accordance with the law, they can lose their insurance.

These are big issues, but they are private entity issues. The Board of Supervisors of a Township, Borough or City of 3<sup>rd</sup> Class, does not have the right under the Governor's edicts to deny or grant opening. He believes the Township is looking into exactly what transpired because it is important to the Board of Supervisors, the community, and the entity involved, but the Board of Supervisors does not have the authority to open or close down businesses for things other than what they have authority to such as occupancy permits and other zoning issues.

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

VIII. EXECUTIVE SESSION. The Board went into Executive Session. No action was taken.