

LEHIGH TOWNSHIP BOARD OF SUPERVISORS

February 28, 2023

- I. CALL TO ORDER. The Lehigh Township Board of Supervisors held their second monthly meeting on Tuesday, February 28, 2023, at 7:00 p.m. The meeting was held at the Lehigh Township Municipal Building, 1069 Municipal Road, Walnutport Pa. 18088. Chairman Mike Jones called the meeting to order with the Pledge of Allegiance and roll call.

Present: Cindy Miller
David Hess
Phil Gogel
Jerry Pritchard
Mike Jones
Attorney David Backenstoe
Alice Rehrig

II. APPROVAL OF THE MINUTES

- A. Minutes of February 14, 2023. David Hess made a motion to approve these minutes. Cindy Miller seconded the motion. All voted aye. Motion carried.

III. APPROVAL OF BILLS.

- A. General Fund Checks 26547 to 26573. Cindy Miller made a motion to approve the bills. David Hess seconded the motion. All voted aye. Motion carried.

IV. OLD BUSINESS.

- A. Cherryville Intersection. Alice Rehrig reported the final repairs were scheduled to be done today, but because of the weather, they were pushed off until Wednesday. The final paperwork should be submitted for the next meeting. She also began preparing the paperwork that the Township will be required to submit to DCED so that she is ready to close out the grant when everything has been completed.
- B. Maintenance Building. David Drake from W2A was present to discuss the scope of services they provided for updating the plans so the project could be put out to bid. David Drake commented the driving factor behind the \$12,000 cost to update the plans is that the International Building Code (ICC) is updated every three years and they are always three years behind in their updates. When the project was initially put to bid, the code in affect at that time was the 2015 ICC which was effective from 2018 through 2020. As of February 14, 2022, the 2018 ICC was adopted. They now have to go through the plans and review the drawings to make sure they meet the current codes. It is not only their office, but the structural engineers and mechanical engineers also have to review their portions of the project and update those plans as well. Structural engineering is usually the portion that is affected when the codes are

updated, followed by the mechanical plans because the energy plans are almost always affected. The total cost of \$12,000 reflects the costs of three firms doing the work. The price is a not to exceed amount, so they will be doing the work hourly and if it takes them less time, the Township will be charged only for the time it takes to do the work. They are also going to be looking at the products that were previously specified and verify they are still available and no significant changes have occurred and whether any of those items need to be updated. The proposal before the Board would be to update the plans, put the building to bid, and construction administration. The construction administration part of proposal is about the same cost as what was previously provided to the Township.

Adam Raker commented if there were code updates, the plans should be updated accordingly. One of the big reasons in doing this, is if the plans are prepared and bid under the old codes, they will get flagged during building permit review and require them to be updated. At that point, you will be dealing with change orders from the subcontractors to update the plans. It's better to have it included in the initial bids. He does agree with Mr. Drake that there is work that needs to be done and it would make sense to do the updates if the Township is going to move forward with the project. Adam Raker also noted that generally speaking, he would expect the bids to come in higher than what they were when the project was initially bid. Pricing has started to level off, but nothing has dropped. Concrete prices continue to rise. There is a possibility that the prices could come in 10 to 20 percent higher. It is something he wants the Board to be aware of.

Cindy Miller commented the question becomes, are we expecting any of the prices to drop or will they continue to rise? We can't keep going back for grant money. Adam Raker commented it is unknown. Cindy Miller commented the issue is we have these grants and you only have so much time to use them or you lose them. We can't keep kicking this down the road; we have been doing that for 20 years. It gets to the point where the Board needs to decide whether they are going to pull the trigger and move forward or what are they going to do.

David Drake commented in his experience over the past 40 years, the prices will continue to rise. They may level off or not go up very much, but in the past few years prices have gone up 7 to 8 percent. Some items have leveled off, some went down, lumber has been going up and down, and steel has had some variation in pricing.

Mike Jones commented the plans will need to be updated whether the Board decides to rebid right now. Adam Raker commented that is correct, the plans will need to be updated regardless of when you put the project to bid. You will not truly know the

cost of the project until it is put to bid. He knows this is a tough decision and based on what he has been seeing at work, he would expect the pricing to be higher and didn't want the Board to be surprised if that happens.

David Drake commented he thinks it is to the Township's advantage to bid it as soon as they can. There are contractors who have slowed down and are not as busy as what they were last year. The market place has dropped a little bid.

Cindy Miller made a motion to approve the scope of work not to exceed the prices quoted in the February 8, 2023, letter from W2A Associates. David Hess seconded the motion. Randy Braun commented the other option would be to drop back to the original plan outlining the size of the building and put it out as a design and build and let the builder do the design. Cindy Miller commented the building is already designed. Randy Braun commented it is designed for a steel building. It would preclude any other type of construction such as wood or block. Morton Buildings can do a 100 foot clear span for their buildings. Phil Gogel commented every time there is a change direction, it costs a lot of money in government. There is pretty much money on the table already. Adam Raker did an excellent job of getting us to where we are at, he is in favor of staying the course. You can keep changing and changing and soon you won't have any money in the pot to do the project. Jerry Pritchard commented the Township has grant funding; that is where the money is at for the project. Cindy Miller commented the Township has \$2.5 million in grant funding and we also have a bank loan we need to fall back on. At this point, the bank has been working with us, but we don't know how long they will continue to do so. We have a rate that was locked in at 3.99 percent. Linda Roman questioned what the cost of the building will be. Cindy Miller commented the last time it was bid was \$4.1 million and that was after downsizing and working with the architects, Adam Raker, and the committee to reduce the costs. It started at a 100 foot by 200 foot building and is now down to a 100 foot by 140 foot building. Linda Roman questioned how much of the building will be American Made. Cindy Miller commented one of the requirements of the grants is that the Township use US Steel. All voted aye. Motion carried.

- C. Letter of Resignation. David Hess made a motion to accept the letter of resignation from Chrissy Czonstka. Cindy Miller seconded the motion. All voted aye. Motion carried.

- D. GroNorCo Grant Project. Alice Rehrig provided the Board with updated pricing for the security upgrades that we included with the grant project. Even though this is considered a professional service, she has also checked with a Costars vendor for pricing on the magnetic locks and they were not able to beat the price that was quoted at \$32,846. The price of \$15,587 from Keystone Technologies includes the cameras for the yard waste site and maintenance building so that everything is from the same

manufacturer. Cindy Miller made a motion to move forward with the security project at a price not to exceed \$50,000 with \$14,000 coming from grant funding and the balance coming from the COVID Relief Funds. David Hess seconded the motion. All voted aye. Motion carried.

V. NEW BUSINESS

A. Resolution 2023-4, Establishing the Process for Appointments to Boards and Commissions. Attorney Backenstoe had reviewed the ordinance and has made some changes, but didn't send out a final draft. He will have that ready for the March meeting. One of the provisions of the resolution was that the person seeking appointment would need to be a resident of the Township for one year. This has been the policy of the Township and is consistent with the Second Class Township Code. There is also a provision in the resolution which states a member of the Board of Supervisors who lost their last election shall not be considered for a vacant seat on the Board of Supervisors for a minimum of two years after their election. He has some concerns with this and whether it would be appropriate. Just because someone lost an election, he doesn't know that would make them ineligible to fill a vacancy.

Jerry Pritchard questioned what Board that would apply to. Attorney Backenstoe commented it would be any of the Township Boards or Commissions. Cindy Miller questioned if it could be altered to be only to the Board of Supervisors. Phil Gogel commented, no, you would be removing someone's constitutional right as a citizen. He questioned who wrote the resolution. Cindy Miller commented she and David Hess did because the Board asked them to. Phil Gogel commented the Board didn't ask them to write something that strips people of the constitutional rights. David Hess commented anyone from the Board could have given input on the resolution. Cindy Miller commented there were other people besides her and David Hess that provided input. Phil Gogel commented he didn't give any input. He felt one year was perfectly fine and no need to change it.

Attorney Backenstoe commented if the Board feels strongly about keeping this language, they can. He is just letting the Board know that he doesn't believe it could withstand a legal challenge. The one year residency requirement has a direct relationship to the Second Class Township Code. This is a resolution or a policy so it doesn't have substantive rights and can always be changed. He doesn't see the rational relationship between losing an election and having to wait two years. Cindy Miller commented the rationale behind this was because of the amount of people who came out to a meeting protesting that the Board would consider appointing someone that lost an election back onto the Board. Phil Gogel commented if you want to live in a communist state, you might as well move to China and join the CCP. Cindy Miller commented the Board has had unwritten policies and what has been happening is that people have been taking advantage of the unwritten policy and saying it is not

in writing so I can just appoint someone from the audience or I can do that. The Board has now said, lets put together a written policy. Phil Gogel noted he did not wish to be included with that. Attorney Backenstoe commented there is nothing wrong with having a policy; many Township have a policy which lays out some method to appoint by. He is just saying he doesn't think that this one provision passes the constitutional muster. He believes the answer is if someone ran and they lost the election and there is a vacancy and the Board of Supervisors feel strongly that the individual shouldn't be on the Board because they lost the election, they just don't appoint them. Cindy Miller commented that is fine to remove the section; that is why she wanted Attorney Backenstoe to look at the resolution. David Hess commented he would agree. There were a lot of people giving input and that is why they wanted Attorney Backenstoe to give it a legal review.

Attorney Backenstoe commented he also realigned some of the provisions of the resolution. He thought the first procedure should be that the board, committee, or commission shall immediately notify the Board of Supervisors upon revelation there is a vacancy. The second provision should be that the Township shall confirm the expiration period of the vacancy because different boards have different terms or the situation could be to fill a position until the next election or the completion of an unexpired term. The only other item of concern which may just be the wording, was the section that indicated that the Board of Supervisors shall vote on the application to fill the vacant seat within two months of the public interview. This can't happen with a member of the Board of Supervisors. The Supervisors only have 30 days to fill the vacancy and if they don't, there is another 15 days by using the Vacancy Board. For all other boards, the two months would work. You could say the Board of Supervisors shall fill the vacancy within 30 days in accordance with the Second Class Township Code and within two months for all other boards. Cindy Miller commented nothing may need to be included for the Board of Supervisors because there is a State law that needs to be followed. Attorney Backenstoe commented he would not include something that is contrary to the Code because the resolution is encompassing everything. If the Board only wants to state that the Board of Supervisors shall fill the vacancy in accordance with the Second Class Township Code, that would be fine, and then state all other boards shall be filled within 60 days. The only other thing that he was concerned about was that it states members of the Board of Supervisors who have a relative as an applicant shall recuse themselves from the vote. Are you referring to immediate relative? The Ethics Act prohibits you from voting if there is a direct conflict, pecuniary gain, monetary for an immediate family member. It would be up to the Board what they would want included. He doesn't know what would happen if it were challenged in court. When you say a family member, are you saying a cousin three times removed, is it an aunt, an uncle. Mike Jones commented he looks at it as husband, wife, son, or daughter. David Hess commented that is what the Ethics Act refers to, immediate family. David Hess

commented if you look at relatives in general, he wouldn't be able to be reappointed to the Rec Board because he, Phil Gogel, and Mike Jones are related. Attorney Backenstoe commented he believes it would be better to leave it as immediate family member, such as husband, wife, child, brother, sister. If there are no other comments, he will put the draft into a finalized form and send it to the Board prior to the next meeting.

Katherine Mack commented without seeing what is included in the resolution, it is hard for the public to comment. One of the main concern was that there was a procedure for nominating people and if someone could not be approved that night, it would go to the next meeting. Attorney Backenstoe commented that is addressed. It is also specific to notifying the person to have the opportunity for them to be present at a meeting. If they were not available, it would go to the next meeting. Katherine Mack commented she believes it should almost be mandatory for the person to attend. Mike Jones noted that is the way it is written. It also states that if you are already on a board and want to be reappointed, you need to be present. Katherine Mack commented that was a real misnomer for people who wanted to be reappointed to certain boards. Katherine Mack commented in the past, if you were on a board, you were asked if you wished to be reappointed. It doesn't say you are going to be reappointed, but it wasn't mandatory and the parties were not notified that they needed to show up to be interviewed. They did not know. Next year, David Shulman's term is up, will he have to come to be interviewed? Mike Jones commented with the resolution, yes. He had previously been under the impression that if you served on a board and you wanted to be reappointed, you didn't have to come because the Board already knew what you were doing. Cindy Miller commented in the past, what used to happen is if you were up for reappointment, people were automatically reappointed and people just assumed they would continue on. Then they started the process of notifying to let them know they were up and did they want to continue. Then, if other people wanted to serve, they felt it should be opened up. Katherine Mack commented then the person who has been serving on the Board for years and years has to know that they need to be here. Cindy Miller commented that is the purpose of the resolution. Katherine Mack commented she has been on the Zoning Hearing Board for years and years and most times no one from the Zoning Hearing Board had to come to a meeting; they were just reappointed. Cindy Miller commented that is what she is saying with this resolution. David Hess commented that is what happened with the other gentlemen at reorganization. He wasn't there. With two new supervisors, they don't know the individuals. That is why they are working on the resolution so that this doesn't happen again. Katherine Mack commented sometimes you can lose good people; sometimes not. Attorney Backenstoe commented that is the purpose of the resolution, to make things clear so there is no misunderstandings.

- B. Manager's Report. Alice Rehrig commented she would like to advertise for summer help again. Mike Jones questioned if there will be a budgeted amount that is not to be exceeded. Alice Rehrig commented she has \$16,000 in the budget and the wages and hours of the summer help would need to be in a way of not exceeding that amount. Jerry Pritchard questioned if we would still need the summer help if we hire the additional employee for the road crew. Phil Gogel commented the summer help is needed so that the full time employees can do other work, such as pipe installation, blacktopping, instead of mowing grass. There was no objection to running the ad.

The First Regional Compost Authority will be having a Mulch Madness event on Friday, March 24 and Saturday, March 25. Anyone can go down to the site and get loaded with as much double ground mulch as they want for \$10 for the entire day.

The bridge on Indiantrail Road by Kohl's Road in Allen Township will be closed for replacement in either May or June. The closure will last for approximately one year. The detour will be Walnut Drive. Rick Hildebrand commented the Fire Company has been in contact with the Allen Township Fire Company and will be covering some additional areas for Allen Township because the bridge closure will cause delays in their response times to certain areas of the Township.

The signal ahead pole along Route 248 as you approach the Route 145 intersection was damaged from an accident. This pole is also going to be part of the PennDOT intersection improvements that they are going to be working on. Alice Rehrig will be trying to coordinate with PennDOT because it doesn't make sense to replace the pole now if PennDOT will be replacing it a short time later. Rick Hildebrand questioned if the pole can be removed as a hazard and then replace it with a signal ahead sign. Alice Rehrig will check with PennDOT to see what would be allowed.

David Hess questioned if Alice Rehrig will be advertising to fill the position in the Office. Alice Rehrig commented she will be.

- C. Solicitor's Report. Attorney Backenstoe reported he has been working with Jim Milot on getting the maintenance bond in place for the Cherryville Project since that is almost completed.

Attorney Backenstoe commented he has also been talking to Attorney Tom McNeilly who is the attorney for Turkey Hill. They are trying to keep moving along as they are working through the final stages and PennDOT and want to get started. Cindy Miller commented she also thought there may have been an issue with the County and their NPDES permit.

- VI. PUBLIC COMMENT. Patrick VanderPloeg commented when he was out petitioning, a resident had told him he had to pay quite a bit of money for a variance to have solar panels installed on his roof. This individual had questioned him as to where that money goes. Attorney Backenstoe commented it is to cover the administrative, stenographer, and advertising costs. When the Township sets their fees, they do it with the hope that at the end of the year on average they do not lose out, but often times, a Township loses money. Townships are not permitted to make money on their fees. They simply underwrite the costs to the Township so that the expenses are not a burden to the overall taxpayers of the Township. It is similar to when a developer comes into the Township. The taxpayers shouldn't be paying for things that are for the developer's benefit. They should be the ones paying for it.

Paul Nikisher questioned why there is commercial building taking place to the north and to the south, but not here. Cindy Miller commented the developers are not ready to come here. She has talked to developers and they are not ready to come here. PennDOT is requiring that the intersection of Route 145 and Birch Road be improved at a cost of \$4.5 million. Developers do not want to pay that amount right now. Attorney Backenstoe commented development is a function of cost. If there is water and sewer, that is an incentive. If there are roads and highways such as Route 33, along with access, that is also an incentive. Paul Nikisher questioned if we can anticipate more commercial coming in once Jaendl starts his project. Cindy Miller commented she would think it probably will, but she can't speak for developers. She has spoken with developers, retail, and they are not ready to come here. A lot of it has to do with population and costs.

Paul Nikisher commented it would be his hope that someone who is running for office will have something to bring to the table, and that they are not running just for recognition. They will also need to be thick skinned when in their position. There is an ongoing litigation in Northampton for what seems to be someone's feelings got hurt.

- VII. EXECUTIVE SESSION. The Board went into Executive Session to discussion personnel and Identifiable Potential Litigation. No action was taken.
- VIII. ADJOURN. David Hess made a motion to adjourn. Cindy Miller seconded the motion. All voted aye. Motion carried.