

LEHIGH TOWNSHIP BOARD OF SUPERVISORS

Minutes of the November 9, 2021, Meeting

- I. CALL TO ORDER. The Lehigh Township Board of Supervisors held their regular monthly meeting on Tuesday, November 9, 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
Keith Hantz
David Backenstoe
Mike Muffley (via telephone)
Alice Rehrig
Frank Zamadics
Liz Amato
Scott Fogel

II. APPROVAL OF THE MINUTES

- A. Minutes of October 19, 2021. Keith Hantz made a motion to approve these minutes. Mike Jones seconded the motion. All voted aye. Motion carried.
- B. Minutes of October 26, 2021. Keith Hantz made a motion to approve these minutes. Mike Jones seconded the motion. Cindy Miller noted two corrections to the minutes. On Page 7, “works” should be “words” in the second last paragraph, and on Page 11, a sentence should be added indicating the Manager had indicated Trick or Treat had always been rain or shine. All voted aye to approve the minutes with the noted corrections. Motion carried.
- C. Minutes of November 3, 2021. Keith Hantz made a motion to approve these minutes. Mike Jones seconded the motion. All voted aye. Motion carried.

III. APPROVAL OF BILLS

- A. General Fund Checks 25289 to 25334. Phil Gogel made a motion to approve these bills. Mike Jones seconded the motion. Mike Jones questioned if we are still holding the checks from the first meeting in October. Keith Hantz questioned how long we are expecting to hold the two checks, particularly the one for Hanover Engineering. Alice Rehrig commented she would expect we should be able to release them at the end of the month. Jim Milot had a meeting with PennDOT today. There are a few items the contractor needs to complete. All voted aye. Motion carried.

- B. State Fund Checks 1545 to 1548. Phil Gogel made a motion to approve these checks. Mike Jones seconded the motion. All voted aye. Motion carried.

IV. PLANNING RELATED ITEMS

A. Extensions of Time for Plan Approval

1. Donald & Judy Latshaw Lot Consolidation Plan. David Lear was present to represent this plan. The Developer provided the Board with an extension of time until February 28, 2022. David Lear noted this plan was before the Planning Commission last evening. There were around six or eight comments in the engineer's review letter. The Planning Commission is requesting clarification on a driveway access easement. They are looking into it so they can better define it on the plan. They are in need of additional time to complete the work. Keith Hantz made a motion to accept the extension of time until February 28, 2022. Phil Gogel seconded the motion. All voted aye. Motion carried.
2. J & T Enterprises. David Lear was present to represent this plan. The developer provided the Board with an extension of time until February 28, 2022. David Lear reported they have been trying to work with the gentleman to clean up the comments from the Sewage Enforcement Officer. The individual from their office who had been working on this project is no longer working for them so they have been working on picking up this project and getting in touch with the owner and need additional time to complete the project. They are intending on submitting this plan for either the December or January Planning Commission meeting. Mike Jones made a motion to accept the extension of time until February 28, 2022. Keith Hantz seconded the motion. All voted aye. Motion carried.
3. Timothy & Wendy Pitts Major Subdivision. David Lear was present to represent this plan. The developer provided the Board with an extension of time until February 28, 2022. They have had one review by the Planning Commission and have just submitted a traffic analysis for review. They are waiting on stormwater comments, but are still planning on submitting for the December Planning Commission meeting. They are actively working on this project. Keith Hantz made a motion to accept the extension of time until February 28, 2022. Phil Gogel seconded the motion. All voted aye. Motion carried.
4. Hafner Revocable Living Trust Minor Subdivision. David Lear was present on behalf of Lehigh Engineering. The Developer provided the Board with an extension of time until February 28, 2022. This plan

received conditional approval at the October Planning Commission meeting. Mike Muffley noted there are PennDOT issues that they are working through. Phil Gogel made a motion to accept the extension of time until February 28, 2022. Mike Jones seconded the motion. All voted aye. Motion carried.

5. Top of the Mountain Estates Major Subdivision. David Lear was present on behalf of Lehigh Engineering. The developer provided the Board with an extension of time until February 28, 2022. This plan received conditional approval at the October Planning Commission meeting. There are some minor items that need to be cleaned up before submitting the final plan to the Board of Supervisors. Mike Jones made a motion to accept the extension of time until February 28, 2022. Keith Hantz seconded the motion. All voted aye. Motion carried.
6. Sedler Design/Shanghai M & U Site Plan. Joe Sedler was present to represent this plan. The Developer granted the Board an extension of time until March 31, 2022. This plan was before the Planning Commission at their meeting last evening. They have some redesign to do to address stormwater issues and they also are working with PennDOT for HOP approval. Phil Gogel made a motion to accept the extension of time until March 31, 2022. Mike Jones seconded the motion. All voted aye. Motion carried.

B. Extensions of Time for Plan Recording

1. Northwoods Lot Line Adjustment. David Lear was present to represent this plan. This plan had received conditional final approval on December 8, 2020 and the applicant has until December 8, 2021, to record the plan. David Lear commented this plan is intermixed and tied to the Land Development Plan for Northwoods. The lot line adjustment plan consolidates the lots for the land development plan. They have submitted their final plan for the land development for review at the December Planning Commission meeting. They have also received their water permit from DEP, have an agreement with PPL as far as the access land to the community center, and have also narrowed down their Buckeye Pipeline crossing in relation to the three road crossings for the later phases of the development. They have also resubmitted to the Lehigh Township Municipal Authority and the Lehigh Township Volunteer Fire Company. He also submitted a letter to Attorney Backenstoe because there are some items that are in need of legal review and comment. They are requesting

an extension of time for the recording of the lot line consolidation plan until such time they are able to record the land development plan. Mr. Lear was requesting an extension until the end of March.

Phil Gogel made a motion to grant an extension of time until March 31, 2022, for the recording of this plan. Mike Jones seconded the motion. All voted aye. Motion carried.

C. Extension for Submission of Final Plan

1. Northwoods Land Development. David Lear was present to represent this plan. This plan received preliminary plan approval on December 8, 2020. The deadline for meeting the conditions of the preliminary plan approval and submitting a final plan is December 8, 2021. The final plan has been submitted to the Planning Commission for review at their December 13 meeting.

Phil Gogel made a motion to grant an extension of time for final plan submission to March 31, 2022. Mike Jones seconded the motion. All voted aye. Motion carried.

- D. Engineer's Report. Mike Muffley reported the Planning Commission reviewed three plans at their November 8 meeting:

Latshaw Minor Subdivision. There is additional detail needed for the driveway and related access easement.

Sedler Design. The applicant needs to submit more information for their plan and work through their design. This is a larger non-residential land development plan and it does take a little longer to get things ready for approval.

Joan Gertner/David Goodman Annexation Plan. This is a new submission which is a little tricky because of existing conditions and private roads. They are trying to rearrange the way the lots are configured so that the owners can get some space in front of their homes. There are issues with minimum lot areas and the private roads creating non-contiguous lots. The plan will need to be reworked to address some of these issues.

V. DEPARTMENTAL/ORGANIZATIONAL REPORTS

- A. Recreation Report. Sandy Hopkins reported the Christmas Tree Lighting will be held on November 27 from 5:00 p.m. until 7:30 p.m. In addition to Santa, there will be hot dogs, hot chocolate, chili, and a guitar choir will be performing. She is

in need of the electrical board and cables. Phil Gogel commented he took the Board apart last year because he needed the parts. Frank Zamadics commented the Road Department will work on creating a new Board.

Sandy Hopkins commented she has a backdrop for Santa but could use some assistance in setting up the area and lights. Cindy Miller commented she will provide the information as to what was done last year.

Sandy Hopkins reported that David Hess had a last minute idea to set up a raffle table at a basket social at Blue Mountain Fish and Game where the winner would take all. Through these efforts, he raised \$800 to be used towards Recreation. David Hess commented Blue Mountain Fish and Game is planning on doing a basket raffle dedicated specifically to the Recreation Board.

A resident questioned what the information collected from the Recreation Survey on the Township website is being collected for. Sandy Hopkins commented it is to ask the public what type of activities they would like to see at the parks. The survey was generated several years ago and is open for individuals to respond as they would like. They Rec Board uses the information to help develop programs that people would like to see such as the yoga classes and the summer camp that the YMCA held in the park. A resident suggested the survey be made more accessible to the residents.

- B. Public Works Report. Frank Zamadics reported he is planning on picking up the tree on November 18 or 19. If there are going to be any changes to the tree, he would request they be made while they have the bucket truck out at the site.

The new employee on the Road Department started last week and things are going well.

The Department has started the fall leaf collection program and have begun preparing for the winter weather.

- C. Zoning Report. Liz Amato reported the permits have begun to slow down as they typically do at this time of the year. The Bittner appeal for the property on Teel Road was before the Zoning Hearing Board last month and was denied. She is expecting there will be an appeal of this decision. She currently has one application for the December meeting and is expecting two more to be submitted in the next week or so.

The Zoning Hearing Board solicitor, Tom Caffrey, was elected to the position of Lehigh County Judge so the Zoning Hearing Board will need to pick a new solicitor. Attorney Backenstoe will provide names of different Zoning Hearing Board solicitors to assist the Zoning Hearing Board in their search.

A letter was sent to Mr. Lorah's attorney indicating they have until November 30 to submit for either a special exception or conditional use. To date, nothing has been received. Once the application is received, a date for the hearing will need to be set.

- D. Police Report. Chief Fogel reported the Department responded to a fatal crash last week. This was the first fatal crash in 1,090 days. The overall crash rates are still about 50 percent below where they were over the past three years.

On December 11, the Department will be holding a drive through Toys for Tots event at the Fire Company from 10:00 a.m. to 3:00 p.m. There are also Toys for Tots boxes located in the lobbies of the Municipal Building and Police Station.

1. 2018 Ford Explorer. A revised quote of \$4,788.16 was received from Leibenguth Auto Body for the repair of the damages to the K9 vehicle. Mike Jones questioned what the extent of the damage was. Chief Fogel commented the damage extends from the front fender all the way through to the driver's door and rear passenger door. The paint is split and cracked throughout the area. The dents and scrapes go in several inches. It was a steel bumper that caused the damage. The concern is if it is left this way through the winter, there will most likely be rust forming on the vehicle. Phil Gogel made a motion to authorize the repair of the 2018 Ford Explorer in the amount of \$4,788.16. Keith Hantz seconded the motion. Adam Raker questioned if there is any type of disciplinary action or write up for the employee that created the damage. Chief Fogel commented it would depend upon the circumstances. If there is a blatant careless act, then, yes, they would deal with something like that. When incidents like this occur, they are reviewed by Department Supervisors. The Police Department and Road Department are driving all the time and accidents will occur. In this particular case, there was a DUI checkpoint that they were setting up for and there was a lot of things going on. This is the first occurrence in nine years. Unfortunately, it happened in a stretch where they had three things happen in nine months, which doesn't look great, but all it all, it is not something that they typically have a lot of issues with. All voted aye. Motion carried.

- E. Fire Company. No one was present on behalf of the Fire Company.

VI. OLD BUSINESS

- A. Cherryville Intersection. The Township Engineer met with the Contractor and PennDOT earlier today, but Alice Rehrig has not heard back as to how the meeting went. The Engineer also was in contact with Brian Boyer of PennDOT prior to the meeting regarding the project.
- B. Board Vacancy—Term Ending December 31, 2021. The Board has until November 11 to fill this vacancy prior to it going to the Vacancy Board at which point they would have 15 days or until November 26. Mike Jones questioned if the position needs to be filled for the two remaining meetings. Cindy Miller commented the law requires the Township to attempt to fill the position. The Township has to follow the law and process to fill the vacancies that were created.

Keith Hantz commented if we are going to follow the law, then the right thing to do would be to go by the general election that just took place. The two incoming Supervisors are David Hess and Jerry Pritchard, unless the Board wants to find someone else.

Keith Hantz questioned what would happen if the Board didn't appoint someone for the next two meetings. Attorney Backenstoe commented the law talks about the Board appointing someone within 30 days after the vacancy was created. It then states that if that doesn't occur, the Vacancy Board shall, within 15 days after the 30 days expire, appoint someone. If that doesn't occur, then the Chairman of the Board of Supervisors should file a petition with the court. Keith Hantz questioned what the chances would be of that being done and heard before the end of the year. Attorney Backenstoe commented it would be difficult. If the time expired on the 26th, he doesn't know that you would be able to file a petition and be heard before the Court before the end of the year. There is a relatively new rule under the Judicial Code which requires the Courts to advertise for 30 days so he doesn't know that you could possibly get someone in, but Cindy Miller is correct in that it really is the duty of the Board to try to appoint someone. The law does state if, for any reason, the Board of Supervisors refuses, fails, neglects, or is unable to fill a vacancy within 30 days after the vacancy occurs, the vacancy shall be filled within 15 days by the Vacancy Board, which is where the mandatory "shall" comes in. If the Vacancy Board fails to fill the position within 15 days, the Chairperson, shall petition the Court of Common Pleas to fill the vacancy. Cindy Miller commented as Chairman of the Board, she will be filing the petition with the Court because she will not be violating the law because there are Supervisors who want to circumvent the law. Keith Hantz commented there are no Supervisors who are trying circumvent the law. Cindy Miller commented

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you are, you don't want to appoint someone. Keith Hantz commented there is no motion to appoint someone; make a motion to appoint someone. Cindy Miller commented she had previously made a motion to appoint Jerry Pritchard to the two month position and there was no second. Keith Hantz commented he walked out and that was where it ended.

Keith Hantz made a motion to appoint David Hess to fill the two month term on the Board of Supervisors. Mike Jones seconded the motion. David Hess declined the position. He did not apply for the position; Jerry Pritchard did. He agrees Jerry Pritchard should be the one to fill the vacant seat. Keith Hantz rescinded his motion.

Katherine Mack questioned if there needs to be a special meeting if the Board cannot come to an agreement this evening and how much will it cost? Cindy Miller commented the meeting would need to be advertised and the Solicitor is usually here. Katherine Mack commented she believes the Board should think about the people of the Township and come to some agreement rather than keep spending money after money and the time that it takes. If this has to go to Court, it will cost even more. The Board of Supervisors were voted in to represent the people of the Township.

Cindy Miller noted Jerry Pritchard put his name in to fill the position. The others were pretty obstinate at the meeting and pretty clear at the meeting that you didn't want him so he became frustrated and said fine, I'll see you in January, knowing he probably was going to win the election. This Board is cutting themselves; no one is doing it but this Board. There were nine people that wanted to volunteer to come on this Board, but there was nothing but arguing and carrying on because I want this person. Now, it is a two month seat for two meetings. Jerry Pritchard and David Hess both won the election. What she has been saying is common sense. Why not put the person on the Board who is coming in January and give them a couple meeting head start? Give them time to look at the Budget; understand the process, but no, the Board wants to argue because they don't like the person. Paul Nikisher commented he would agree; nominate Jerry Pritchard to fill the seat for the next two meetings and let's move on.

Cindy Miller made a motion to appoint Jerry Pritchard to the term ending December 31, 2021. Mike Jones seconded the motion. Jerry Pritchard accepted the nomination via phone call. All voted aye. Motion carried.

VII. NEW BUSINESS

- A. 4543 Lehigh Drive, Well/Septic Isolation Distance Waiver. The owner of 4543 Lehigh Drive are in the process of refurbishing the existing home and need to replace the septic system which is an old cesspool. The suitable area that was found on the property will be located within the 100 foot isolation distance of the well for this property. In addition, the system will be closer than 100 feet to the wells at 4551 and 4553 Lehigh Drive. The owners of both of these properties provided letters to the Board indicating they were aware of the this and had no objection to the system being located closer than 100 feet to their wells. If the waiver is granted, all three parties would need to enter into an indemnification agreement with the Township. Attorney Backenstoe commented the Sewage Enforcement Officer has the authority to issue a permit under best technical guidance as authorized by Title 25, Section 73.3.B of the PA Code. The indemnification agreement and release will release the Township from any liability because the Township, through the SEO, would be issuing a permit to do this and indemnify and hold the Township harmless in the event that there would be damage to a neighbor. There is always the concern that something could happen to a neighbor's well and there could be litigation and they come after the Township with litigation.

Phil Gogel made a motion to authorize the Sewage Enforcement Officer to issue the permit pending the owner entering into an indemnification and release agreement and the neighboring property owners executing releases where they would agree to allow the system to be put in as designed. Mike Jones seconded the motion. Katherine Mack questioned who would be paying for the preparation of these agreements. Alice Rehrig commented in the past there was not a separate charge. The Sewage Enforcement Officer's time is included in the permit process and the fees have some administrative fees included. Katherine Mack commented she believes the people making the request should be paying for the costs associated with the drafting of the agreements. Phil Gogel amended his motion to include the applicant paying any and all fees associated with the preparation of the documents.

- B. Trick or Treat—Rain date. Mike Jones commented after the weather last week for Trick or Treat, he received a lot of calls regarding a rain date. He believes there should be something in place that Trick or Treat can be rescheduled by the Manager without having to go through the Board. When the question came up last meeting, he didn't realize the weather was going to be as bad as what it was. He doesn't feel it needs to be changed just for a drizzle, but it should be changed when there is a storm like we had last week.

Cindy Miller questioned if there is a plan as to how things will work. How will it be communicated to the community? How will people find out about it? Mike Jones commented other communities posted it on the webpage, Lehigh Valley live provided a listing; it was all over the place.

Cindy Miller commented she wants people to understand the reason she didn't approve changing it this year is because it was not discussed at a meeting. The Board is required to follow the Sunshine Law and if they do not abide by it, the individual Supervisors are fined for the violation. It needed to be discussed at a public meeting. A new law went into effect August 29 which requires the Township to give 24 hour notice of what will be on the agenda. Trick or Treat was not even on the agenda so the Board would have had to approve adding it to the agenda. When it doesn't involve money, there can be an addition to the agenda the same day of the meeting, but no one realized the severity of the weather the night of the meeting. It wasn't that no one cared about the community. The issue was trying to get it changed at the last minute; it just couldn't happen.

Phil Gogel questioned if there was anything in the law regarding an inherent danger to the public. Attorney Backenstoe commented there are times when the Township must act if there is an emergency, like a sinkhole opens up or a tree falls and destroys property where the Township must act immediately and expend funds and don't have time to hold a meeting. Then yes, it could be done. Cindy Miller commented if there were an emergent situation like flooding everywhere, but canceling Trick or Treat is unfortunately not an emergent situation when running a municipality.

Janet Sheetz suggested that WFMZ be contacted. They have a "Happenings" and it can be posted that morning. Parents are going to look. Her suggestion would be to keep Trick or Treat to Friday night like we currently have it, then have the rain date on Sunday, then everyone knows, if it rains, they should check on it.

Cindy Miller commented she does not have a problem with a rain date. She just wants the logistics of how it is going to work clearly spelled out so that there is no question; it just happens.

Mike Jones commented he doesn't agree with making a set rain date. What if there is a problem with that day? Janet Scheetz commented you would want to have a uniform rain date from year to year. Keith Hantz commented a prior Board from years ago picked the last Friday of October, and he believes having a rain date is the right thing to do and agrees that a specific day should be set.

Cindy Miller commented if the rain date is set for the following Saturday or Sunday and it rains on that day as well, then that would be it.

A resident commented if the date is changed because of weather, all Alice Rehrig would need to do is contact Lehigh Elementary School and Mrs. Herr would be more than happy to send out a community portal email with the date change. The PTA could also be contacted; they too would be happy to get the word out.

Terry Ritter commented her grandkids live in North Whitehall and they had rescheduled their Trick or Treat to Sunday night. Having Trick or Treat on Sunday night was as successful as when they have it on a Friday.

Cindy Miller commented it seems like everyone is in favor of setting a rain date. A motion should be made to set a rain date and have a plan so that Alice Rehrig and the others in the office understand what is going on and not trying to figure this out.

Mike Jones made a motion to establish the Sunday after the scheduled Trick or Treat night as a rain date and to authorize the Manager to change Trick or Treat to this date if it rains on Friday and approve any associated expenses in the communication of the change in date. Phil Gogel seconded the motion. Katherine Mack questioned when the notification would take place. If the decision is made too late in the day, there will not be anyone at the School to receive the phone call. Janet Scheetz commented in Salisbury, they made the decision by 2:00 p.m. This would give plenty of time to notify the schools and media. Kristin Soldridge commented there should be a plan written up. If the Manager is going to be the one responsible for making the decision, she should be more involved with how the process is going to be set up and everyone knows what the process is. If there is something in writing and put on the website, there should not be any questions. This matter was tabled until next meeting to give Mike Jones and Alice Rehrig the opportunity to develop a written plan.

- C. Postponements. There was no need for additional discussions.
- D. Resignations—Recreation Board. Letters of resignation were received from Jerry Pritchard and Hannah Kromer. Keith Hantz made a motion to accept the resignations of Jerry Pritchard and Hannah Kromer from the Recreation Board. Cindy Miller noted Jerry Pritchard resigned to focus on his duties as a Supervisor and Hannah Kromer resigned because she is no longer a Township resident. Mike Jones seconded the motion. All voted aye. Motion carried.

Keith Hantz made a motion to advertise the two vacancies on the Recreation Board. Mike Jones seconded the motion. Mike Jones questioned when the terms

expire. Alice Rehrig commented Jerry Pritchard's term expires at the end of 2021. Hannah Kromer's term expires the end of 2024. Mike Jones commented he would think Jerry Pritchard's term wouldn't be filled until the reorganization meeting. It wouldn't make sense to only appoint someone for a month. Alice Rehrig commented she typically runs a general ad looking for volunteers to serve on the various Boards. Her idea would be to incorporate these two opening into the ad she runs for the reorganization meeting. Keith Hantz questioned if the individuals who are up for reappointment need to submit their names for consideration. Alice Rehrig commented she has contacted all of them to verify they are still interested in serving in their positions. All voted aye. Motion carried.

- E. Resolution 2021-9, Budget Amendment. This resolution amending the 2021 Budget is to adjust certain operating expenses, some increasing, some decreasing, to reflect the actual totals of the expenses. In addition to this, the decreases in the revenues for Fireman's Relief and the Pension State Aid and increases in Zoning Hearing Fees and Sewage Permit fees are also included in the resolution. All the adjustments in the resolution are to operating expenses so there is no effect on any of the Capital expenses and revenues that were carried forward from 2021 into 2022.

Keith Hantz questioned why the summer help was being reduced by \$9,826. Alice Rehrig commented the \$9,826 was the excess in that line item because we only had one individual working as summer help for most of the season. This reduction will help offset some of the other expenses that were over in the Maintenance Department.

Keith Hantz noted the Labor Related Legal Expenses were over budget by \$5,000. Alice Rehrig commented the Litigation Expenses were under by \$4,000 to offset this expense. The purpose of the resolution is to show the realignment of the expenses.

Phil Gogel questioned if there was any change going forward in the budget for the summer help. Alice Rehrig commented these changes will not affect the 2022 budget. The changes are being made in 2021 operating expenses and will not affect any of the funds going forward into 2022. The budget as advertised is still accurate.

Mike Jones made a motion to adopt Resolution 2019-9 amending the 2021 Budget. Keith Hantz seconded the motion. All voted aye. Motion carried.

- F. Manager's Report. Alice Rehrig reported the Northern Lehigh Chamber of Commerce is sponsoring a house decorating contest. Residents who are interested in registering an address can find the information on the Township website.

The first round of applications to the Northampton County Farmland Preservation program is currently open from now until January 31, 2022. There will be an additional round of applications accepted between February 1, 2022 and May 2, 2022. Ryan Shaw of Northampton County Farmland Preservation indicated the County is handling the applications differently, but did not elaborate on what has changed in the process.

- G. Solicitor's Report.

1. Short Term Rental 563 Longacre Drive. An offer of proposed settlement has been made regarding the appeal of the Zoning Hearing Board decision. This is one of the two short term rentals that was deemed to be inappropriate in the zoning district in which it is located. The Zoning Officer cited the owner who then filed an appeal with the Zoning Hearing Board. The Zoning Hearing Board denied their application and the owner then filed an appeal in the Court of Common Pleas. Oral argument for this case took place towards the end of October and the matter is now pending before the Court. The Court has 90 days to make their decision. Since the oral argument, the applicant's attorney approached Attorney Backenstoe and indicated they would be willing to withdraw their appeal if the Township would allow them to continue operating until January 16. If they withdraw this appeal, then the matter would be done. One reaction may be not to grant them any kind of courtesy or leniency, but on the other hand, zoning regulations pertaining to short term rentals cannot be enforced against the property while they are under appeal. This law unfortunately protects someone who is a detriment to a community, but that same law it also protects someone who is doing something proper when there is an inappropriate council who may be trying to enforce something; therefore, you can't just stop someone's business. It is up to the Board whether or not they want to consider this settlement. He does want to make the Board aware that if the Township is successful in County Court, the applicant has the right to appeal that decision to the Commonwealth Court which could take another two years and they would be able to continue to operate. If they are serious about withdrawing their appeal, then it will be over and they cannot operate their short term rental after January 16. If they try to operate after January 16, then the Township could file an injunction like they have done for other circumstances.

Mike Jones questioned when the 90 days would expire for the decision to be made. Attorney Backenstoe commented he believes the oral argument took place on October 19, so the 90 day period would expire around January 16. Mike Jones questioned if the Township accepts this settlement agreement and they continue to operate on January 17, can the Township forcibly shut them down? Attorney Backenstoe commented the Township would have to file an injunction which can be done pretty quickly. Mike Jones questioned if they couldn't just keep operating? Attorney Backenstoe commented if they did, they would be completely illegal. There wouldn't be an issue to that. Now, there is still a question because the Court can still overturn the Zoning Hearing Board decision and find that they are authorized to operate a short term rental. In this case, the Township would have to file an appeal to the Commonwealth Court which would drag out for a couple more years. If we lost that appeal, you could have a short term rental operating there for an indeterminate amount of time. Either party can keep fighting the decision of the appeals until eventually you would have to go to the Pennsylvania Supreme Court which is not a court of mandatory appeal hearing. You would have to petition for allocatur meaning the court doesn't have to take the case. The Supreme Court of Pennsylvania decides which cases they want to take.

Keith Hantz questioned if there is anything in writing that they will withdraw their appeal. Attorney Backenstoe commented the Township would get something in writing, but until such time as the appeal is withdrawn, it wouldn't matter. They have to withdraw their appeal. Once the appeal is withdrawn, then the agreement that we would allow them to operate until January 16 would take effect. Attorney Backenstoe commented it would be nice if they withdrew their appeal so that this matter is not hanging out there, but he does believe that the residents should also have a say in this matter.

Tom Galloway commented if the Board were to vote in favor of this tonight, it would get them an end date and if they would be considered to be operating illegally if they continued to operate after the 16th. If the Court said they have to stop tomorrow and they keep going, you would have to fight them on that as well. There are no guarantees they will stop. This would be a quicker end to the problem rather than not working with them at all. They could just simply say we are making \$800,000 per year; we can appeal it for two more years and the residents have to listen to it for two more years. There is no guarantee no matter what happens, but it would be a legal and binding thing if we accept their arbitration and say

they will stop on the 16th and remove their appeal. There is no guarantee as to what they will do with the house after the 16th; who knows what they will do. To him, this seems like there are giving an end date which is a goal they can use rather than say we can roll the dice and it might end by that same date or it might go for two more years. He would say get them to sign the paper now and bind them to it; then the Township has another tool in their chest to say they are illegal.

A resident questioned what their plan is for this property. Can they continue to operate? Attorney Backenstoe commented if they sign the agreement and withdraw their appeal, any operation after the 16th will be considered to be illegal and the Zoning Officer can cite them and take them to court and file an injunction.

Terry Ritter commented the fines need to be steep because they are making too much money on the property. Attorney Backenstoe commented they could ask the Magistrate to set the fine at the highest rate which is \$1,000 per day.

Mike Jones questioned if they can file another appeal if they withdrew the current appeal. Attorney Backenstoe commented no, it would be with prejudice. Liz Amato commented they would have to operate within the allowable uses of the Zoning Ordinance.

Attorney Backenstoe commented Tom Galloway is right. So many people operate and do things illegally and we have to go through the process. Liz Amato cites them; they go to the Magistrate and they are fined and fined until they finally get it. Other times, the Township has to go to court and file an injunction in order to get things resolved. It can be a painful process. Liz Amato commented she knows no one trusts the property owners, but this matter can be ended on January 16 and we can see what they will do or this can go on for another two years and they still may do whatever it is they will do.

Janet Scheetz questioned what the significance is of the date they proposed? Attorney Backenstoe commented their Attorney told him that under the terms of the contract with Airbnb, that is the date they are booked until and they do not want to breach that agreement. Janet Scheetz commented under these circumstances, she would say end it rather than extend it any more. Attorney Backenstoe noted the Board could approve

the settlement agreement tonight and the Courts could issue a ruling in their favor which would undo the actions this evening. He doesn't expect that would happen, but you never know.

Deb Miltenberger questioned if the agreement is signed, are there any other stipulations that could be placed on the owner that could narrow him down so he couldn't do anything else. Attorney Backenstoe commented he doesn't think he could do that other than to say, which is the law, that they must operate in accordance with ordinance.

Cindy Miller commented she understands we can tell them they need to operate in accordance with the ordinance, but what about all the nuisance items, such as the noise and everything else that has been going on at that property. The other weekend, the Police were there four times in one weekend. Liz Gehman commented she has received copies of the reports and the owners were cited. Cindy Miller questioned when arrests can start to occur. How many citations can be issued?

Tom Galloway commented he was contacted by the Police Department because of three of the calls from last weekend. They subpoenaed him and he needs to go in and testify because the Police didn't hear any noise. He called them around 3:00, then again around 4:30 and then someone called at 10:00 in the morning. Other neighbors called for the same thing. To answer the question as to what you do if they continue to make noise between now and January 16th, you call the police. He does want everyone to know that when you call the police, you need to give your name because they can't cite them on an anonymous complaint. If you give your name, you will end up at the Magistrates office and will need to state on this date you heard this noise and called the police. That's the extent of it and then they get a fine. Attorney Backenstoe commented it needs to be done because the resident is the witness.

A resident questioned if the fine is being issued to the ones creating the noise or the owners. Tom Galloway commented it is the owners.

A resident commented she recently called the police and two officers came out and they needed to ask one of the officers to physically come onto their property because they couldn't hear anything from the road. Their property abuts the back of her property and as soon as the officer came into the yard, he could hear everything. The other officer remained on the street. The officer in her backyard radioed the other officer and told the officer that yes, he could hear it. The other officer then went to

the home and there was no answer so she walked around to the back of the property where she proceeded to greet everyone that was partying. Not only did she tell everyone why she was there, but proceeded to tell them which house called and they could hear them because their windows were open. She doesn't think that was very respectful on the officer's part. In addition, on July 4, she was on an EMS call with an officer and while she was talking to him, he proceeded to tell her that sometimes he will just pull up and if he doesn't hear anything, he will just close out the call. It is frustrating because she doesn't believe the police department really has their backs. She says this because the officer who was at their property told her it really wasn't a police issue, it's a Supervisor issue. If we are going to continue with this, everyone needs to be on the same page. A resident commented he believes the police are so sick of it, they just think whatever and go. Attorney Backenstoe commented to the extent that this is a Supervisor issue, the Supervisors have prosecuted this as much as possible. The resident agreed, but believes everyone needs to be on the same page. Mike Jones commented when the call comes in, the Police should investigate it, not just do a drive by.

Terry Ritter commented there is an indoor pool enclosure that echoes and they play loud music. There are cars parked up and down the driveway; there are tons of people in the house. Something is going to happen; it is a recipe for disaster between the drinking and what else is going on. They have been walking through the development to get to the winery the other day. The faster they can get rid of this, the better. She is worried about New Year's Eve because that seems to be a big one up there. She knows January 16th sounds good, but hopes they can make it until then.

Tom Galloway commented they have to make it until then. Right now, with the options that are in front of them, the 16th is the best option. As far as the Police go, that is a separate issue that should be brought up under new business. Perhaps something could be put on the agenda for the next meeting where they can come in and talk to the police. Yesterday, when he was called by the Police, they were very rude to him. They were upset that they needed to call him. A resident commented it seem like the Police are tired of this and it is becoming a nuisance for them. Tom Galloway commented the residents should let the Board vote on this and then if there are additional discussions regarding the Police, discuss them under new business.

A resident noted he checked the Airbnb website and you can't rent after January 16th, but it does pick up again in March. Cindy Miller commented

she believes the Board needs to vote on the settlement agreement and lock them in to the 16th. Attorney Backenstoe commented he can't guarantee what will happen at this property, but if they do continue to rent after the agreement is made, he is prepared to fight it.

A resident of 524 Longacre Drive commented he would implore the Board to approve the date of the 16th so this can end for the people who live right around this residence. He would love to drag this property owner through the mud and let them pay, but it is not worth it because the residents around this property are losing their privacy, what a home is supposed to be and he doesn't believe it should go on past January 16th. He believes it gives them hope. If they have to withstand hell for the next couple of weeks, they are willing to do that to get a definite end. He would like to see the residents be able to go back to their home being their home.

A resident of 551 Longacre commented she is right next door. She doesn't trust these people and hopes the Board has their eyes wide open. Also, the day after the Police are called to this property, if the people are still there, it is scary. On October 9, someone must have called about the noise. She keeps her television on and windows and doors closed so she has learned to live with it a little bit, but on this morning, she was having breakfast out on her patio and the young men who were renting the home were angry because the police were called the night before. They were out on their phones complaining and saw her and could see she was scared, so she hurried into her home. They go up and down the street fast, cursing, trashing the place. It is horrible. The Police need to come a little bit more frequently after they have been called because the people are angry about them being called.

Cindy Miller commented it seems like a meeting is needed between the Supervisors, Police, and the neighbors to address these concerns. Keith Hantz questioned if it is possible to have a meeting like this without it being advertised as a public meeting. Attorney Backenstoe commented there is not a problem because it would be for informational purposes only and no action or deliberation would be taken.

A resident commented it seem like there may be a problem with an ordinance. They hear there is an ordinance and they can't do anything. Cindy Miller commented it seems like an excuse. This has been going on for over two years now. They have been told time and time again and told them it needs to be addressed. Phil Gogel commented the Board is not here to foster hatred towards the Police Department. Cindy Miller

commented it is not fostering hatred, but we don't live there and have to deal with this. Phil Gogel commented he understands, but we need to remember that the owners are the evil people and we need to make sure to direct our anger towards the right people. A resident commented the Police need to follow up on the complaints. Janet Sheetz commented the problem is it doesn't help when there is only one officer on. How do you expect him to circle the whole Township? One officer, mainly the Chief, is on per shift. It is not fostering hatred towards the police. One person cannot handle this entire Township. Everyone needs to decide how many officers is takes. She agrees they should be there. A resident also noted there are many residents who have signs in their yards that they support the local police.

Mary Trexler commented the owners have been calling the shots. They get fined, but they receive triple that in their rent. It's a win win situation for them. They have been getting away with everything. She fears for all these people because you don't know what is in there or what State they are from. Do we have to give them until the 16th? Can't we not tell them you shut down on December 1? Attorney Backenstoe commented the owners filed an appeal and while there is an appeal pending, the Township cannot shut them down. Mary Trexler commented the owners could sell the property to a relative or a friend on the 17th and then come back in with the same thing. Attorney Backenstoe commented if they were to do that, they would be completely operating unlawfully in violation of our Zoning Ordinance. They wouldn't have any umbrella of an appeal to operate under. He's not going to say they won't try to do that or that they are not going to try to continue to operate short term rentals. That could happen; it has happened in Townships throughout the State where people operate illegally in violation of zoning and Supervisors, Solicitors, and Zoning Officers fight this battle every day. People just don't do what is right. The 16th may come and go and they may continue to operate. If so, he will file an injunction.

Kristin Soldridge questioned if the Police are not responding accurately, for whatever the reason, and someone is actually in fear for their life and they have to do something to protect themselves, you are opening up a whole huge can of worms at that point because the resident is going to say they have done everything they can do, they have called the Police, and the Police are not responding and there are all these other issues going on. As residents, everyone has an idea of what they can do to protect themselves, but in this case, what can they do legally to protect themselves if someone tries to break into their home or destroy their property. What

can a resident do if they do not believe the Police will get there in time? There are times when you call the Police Department and they don't get there very timely because of what else may be going on. If you have a slight break in and at the same time there was a major accident, she would expect the Police to go there, but in the time that the Police Officer is there, something could severely escalate to a point where someone is in fear for their life or children. Rich Rehrig commented if something like that happens, you need to call it in and tell them someone is breaking in or there's an assault, and not that you are calling about a noise complaint.

Mike Jones made a motion to authorize the Solicitor to enter into an agreement whereby, as long as the applicant will withdraw their appeal with prejudice, the Township will allow them to operate as a short term rental until January 16. Phil Gogel seconded the motion. All voted aye. Motion carried.

Kristin Soldridge questioned what happens if this property is sold to someone else who continues to operate a short term rental without going through Airbnb. What kind of follow up will there be? She doesn't believe this will end if they have been this much of a problem until now. Attorney Backenstoe commented the only thing the Zoning Officer can do is act under the law as the Zoning Officer. If in fact they are doing something illegal, inappropriate, or in violation of our Zoning Ordinance, she can cite them as fast as she can.

Cindy Miller commented she knows they were cited for constructing a deck without a permit. Has there been any response? Liz Amato commented there has not been a response to the citation.

- VIII. PUBLIC COMMENT. A resident commented she had heard that the property at 585 Blue Mountain Drive was sold to an individual who plans to make it into an Airbnb. Liz Amato commented the property is being sold to a company called Vertax. It is going to be a group home for teens with eating disorders. Cindy Miller commented if it is going to be a group home, the Township's hands are going to be tied. Liz Amato commented a group home is a permitted use by right in every zoning district. Attorney Backenstoe commented group homes are difficult concepts for Townships to deal with. They are federally mandated to permit group homes as they are defined. This Township had a zoning ordinance which permitted group homes as a special exception use rather than a permitted use. After a while, the Township was sued in federal court. As a result of this the Township created its current ordinance which is in accordance with the federal laws. A resident questioned if there is good structure to how they are permitted to operate. Attorney Backenstoe commented there is as much as what the Township is permitted to

have under federal law. Liz Amato commented they are required to have certain inspections by the Department of Public Welfare and have appropriately sized sewage facilities. The Township has as much as the law permits within their ordinance. Attorney Backenstoe commented a group home must be permitted in all areas where regular residential homes are permitted. There are some additional regulations, but as a rule of thumb, that is the federal law. Kim McGonigle questioned if the owner will be running the group home. Liz Amato commented the property hasn't transferred ownership yet. When the home is operating, there will be 24 hour staff, doctors, and dieticians there. A resident questioned if this is truly a group home for eating disorders or it is more for mental health where you could possibly have drug addiction or behavioral issues. Liz Amato commented our group home definition specifically excludes things like drug abuse and mental illness that would be defined in other institutions. The facility which is being proposed is just for eating disorders.

Tom Galloway commented he understands the Board of Supervisors do not always agree on everything, but he hopes moving forward the Board will be more agreeable, especially when there is a large representation of the Township in the audience. It is embarrassing. As adults, we need to try to get along with people that we may not completely agree with. We need to set aside political differences and personal differences for the good of the Township if you are going to be doing the job of a Supervisor or any of the other jobs in the Township that are public operations. As a business owner he does understand this because he has to smile and shake people's hands whom he cannot stand, every day. That is part of life. As adults, maybe we can try to be a little more civil and try to get along with everyone. He knows some Board members are leaving and others are coming in. He would like to see the Township set a goal of civility in these operations. What you think about each other when you walk out the door, have at it, but when you are in the meetings there should be some measure of decorum that you are professional. He can't say that this was the worst meeting he ever attended, but moving forward, this is just a personal comment from a resident.

Phil Gogel commented it is an honor and privilege to be sitting on the Board and filling the position of his good friend Mike McGonigle for two years. He wanted to thank the Board for having the confidence in him and reappointing him.

Katherine Mack commented she goes back and looks at previous minutes and often times there are things that are left hanging and don't come back up on the agenda. She believes she brought this up previously. In reviewing the minutes from October 12, the cost of the fees to appear before the Zoning Hearing Board came up, but it has never been on the agenda since that meeting and no one has ever brought anything up for a resolution to that and was wondering when that was going to happen. She did hear with the budget that some where there was an excess of \$5,000 in legal fees. We know it wasn't from Attorney Backenstoe so it had to be somewhere, perhaps in zoning. Keith Hantz

commented the legal fees that were over were the labor attorney who handled the negotiations. Katherine Mack commented it was stated by Alice Rehrig that our fees do not cover our expenses. Cindy Miller commented the Board discusses the fees and adopts the fees in January. Katherine Mack questioned if there has been any thought as to how you are going to set those fees. Will it be an increase across the Board? One of the comments were that some of the meetings take two or three nights and others take two or three minutes. She believes it depends upon the intensity of presentation. There are many areas in the Township that people can do what they want and be legal. The Zoning Hearing Board hears what is not allowed, whether it be a special exception, a use variance, or a dimensional variance. When it comes to variances, she believes the people should be charged more because they are asking for something that is not accepted in that zoning area. If you are coming for a use variance, the fee should be a lot more because they are deliberating whether you can use your property for something that it is not supposed to be used for. A dimensional variance may be a little different because you are asking for a change in setback; that is different. A use variance will take longer, the stenographer will be there longer, and the solicitor will have to put in more hours on these things. Perhaps variances in commercial areas should be more than what they are in a residential area. Liz Amato commented the fee schedule was just recently changed to keep the residential fees the same and increase the commercial fees. One possibility would be to charge an initial fee, but make the applicant responsible for any fees in excess of that amount. This would have been helpful with the one application where it was continued for three meetings. Alice Rehrig commented the largest expense for the Zoning Hearing Board is the legal fees and the law does not permit the Township to charge for the legal fees. The costs of the stenographer, advertising, and administrative fees are being covered by the fees which are being charged. Katherine Mack commented the legal fees can be tremendous, especially if they need to be represented in court. She does believe that Liz Amato's suggestion of charging the fees over the initial application make sense. What would you be charging for? Liz Amato commented you would be charging for the stenographer, advertising, and the administrative time. Katherine Mack questioned if the Board couldn't just charge more in the fees. Attorney Backenstoe commented it is a difficult balance. He understands what she is saying, but Townships are not permitted to make money. The fees are typically charged in a manner where the Township breaks even. Sometimes they come out ahead, other times they lose, but on average, they break even.

Katherine Mack commented the Zoning Hearing Board will need to appoint a new solicitor. They will be needing some parameters from the Supervisors as to what they will be willing to pay. Cindy Miller commented the Supervisors will need to understand what they are charging. Attorney Backenstoe commented in the past, the rate for the Zoning Hearing Board Solicitor was set at the same rate as his rate. He will provide names of experienced Solicitors to the Zoning Hearing Board so that they will have the opportunity to interview them.

Supervisor Minutes
November 9, 2021

Katherine Mack commented she doesn't believe the Board should leave the meeting until a date and time has been set for the Police to meet with the residents of Longacre. Cindy Miller commented they can't set a date tonight without knowing the Chief's availability. Katherine Mack questioned how it will be communicated. Tom Galloway commented once one of the residents of the community are notified of the date, they will pass the word. That is how they did it tonight.

Katherine Mack questioned how the residents can comment on minutes when they are not available to them. Why can't people at the meeting have a copy of the minutes that are on the agenda for approval? Cindy Miller commented the minutes are not official until after they are approved by the Board. Katherine Mack commented they could be marked as draft. There are comments and decisions that are discussed that people may want to review, just as she reviewed the October 12 minutes. If she would not have brought up the matter of the costs of the zoning hearings, it would have gone unanswered. Cindy Miller commented the minutes can be reviewed after they are posted on the website. They are not official until they are adopted by the Board. Putting out draft minutes is dangerous because there could be something in the minutes that is inaccurate and then the Board has to explain why it is in there. Attorney Backenstoe commented he would have to agree. The Board doesn't want to put out minutes in draft form because there is something that could be materially altered after a meeting because there was a mistake in them that didn't accurately reflect what was being said. Barron Ritter commented he serves on a board in another area and he agrees, you don't want to have them distributed before they are adopted. It is not a good idea. It happened where inaccurate minutes were distributed on the board he currently sits on and they are having to deal with the problem.

- IX. ADJOURN. Keith Hantz made a motion to adjourn. Mike Jones seconded the motion. All voted aye. Motion carried.