

MINUTES REGULAR MONTHLY MEETING
WEDNESDAY, APRIL 2, 2014, Municipal Building – Miller Shaft

Chairman Cooper opened the meeting at 7:00 p.m., with the salute to the flag.

Roll Call: Supervisor William Cooper – present; Supervisor Richard Olshavsky – present; Supervisor Jeffrey Kostan – present; Solicitor C. J. Webb – present.

PUBLIC PARTICIPATION

Solicitor C. J. Webb asked if there were any public comments before the start of the audit; let the record reflect “no requests were made from the public”.

Wessel & Company representatives Stephanie Stohon and Megan Friedhoff began by explaining the 2013 Financial Statements Highlights. The brief overview included:

- Financial Executive Summary Report – Total Assets increased \$125,000 from 2012 to 2013
- Liabilities \$3000.00 basically your payroll cost from 2012 - \$2187.00
- Fund Balance – which is your liquid fuel money \$917,618.00
- Total Net Position - \$1,135,783.00
- Statement of Activities – Revenues - \$799,555.00 – decrease from 2012 – this leveling out because of the real estate taxes – earned income taxes
- Expenses increased from 2012 by \$42,000.00 – increase in your public works with a purchase of a tractor, decrease in your planning and zoning which is your engineering fees, and also decrease in your legal fees
- Increase of 2013 of \$124,048.00, Total Net Position - \$1,135,783.00

We then listened to Stephanie Stohon explain the following with the audit:

- Management Letter – relating to the budget – projecting the revenues and expenditures – balanced budget – recommendations for improvement on the budget
- Overall you should have your managed budget that breaks even – expenses that you budget don’t go over – reserve is not to be considered to balance
- Manage your budget if need to amend for 2014 or even change it for 2015 to make sure it is in line with the Township Code (included in audit)
- Capital budget should be like a liquid fuels budget not in general fund

- Budget should be reviewed monthly or even quarterly – budget vs. actual – being conservative
- Bank reconciliation has been taken care of
- Three journal entries – that is incredible – Ruby is doing awesome

Overall the 2013 Audit completed by Wessel & Company, Ms. Stohon stated this was a streamline audit process, no difficulties encountered, audit was completed in four days. The books are that are done every month are materially correct. Supervisor Cooper made a motion to accept the auditor's report as presented. Supervisor Olshavsky seconded the motion. **Motion carried, 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes

Solicitor Webb announced prior to the start of the meeting an Executive Session was held to discuss the proposed settlement of the lawsuit that is filed with the Court of Common Pleas between Portage Township and Gawel Enterprises, LLC, and second matter regarding real estate; no decisions were made.

Bill Offman discussed chips in from the Drive-In that are all through his yard, Supervisor Olshavsky told Mr. Offman will talk with the Code Ordinance officer and go through the process.

Don Lewis of Pump Station Road, stated he pays taxes in Portage Township. His concern is part of the road is owned by Summerhill Township, and in 2009 Summerhill Township was willing to give that piece of road to Portage Township. He is ready to build a new building, and this ownership of road poses a problem for him. Mr. Lewis is asking the Supervisors to please review and to receive any legal advice regarding this matter with the possibility of Portage Township taking over that portion of the road. Portage Township put in a turn around there and also maintains that part of the road. Supervisor Kostan asked Mr. Lewis to obtain a copy of the minutes or agreement that Summerhill Township committed to and then all Supervisors will meet with Mr. Lewis to discuss this matter further.

Duane Lamar complimented the road crew workers on a fantastic job they have done on Benscreek Road, Shoemaker Drive, looks great, they did good job.

Glenn Calderwood wants the road fixed up – Fowler Lane on the end of Springhill. Supervisor Cooper relayed to Mr. Calderwood they would take look at it

John Nicholson regarding Amfire – engineer study of Shoemaker Circle. Supervisor Olshavsky stated that engineering study is being done for Shoemaker Circle and Lumber Road. The Township is in the process of tracing Mine Road through the Court house. (Engineer)

John Nicholson proceeded in stating State regulations for railroad crossing is no blocking at all five minutes with flagger anything longer than 15 minutes alternate route required. He continued by stating he spoke with Ridge Energy and they are hauling fly ash and bottom ash. It is being treated. There is dust but has to be large amount of dust. Hauling into our township can we enforce the tarp ordinance – borough has police can they help enforce.

Supervisor Olshavsky stated that an overall better solution for a long term traffic problem and dust problem is the goal. The guy from DEP said they can overcome some of these issues. Placing numbers on trucks is still an option. Supervisors are looking to resolve this. Supervisor Kostan asked to keep track how many times a week or month they use the road. With this information documented they can present this to Amfire if needed. Supervisor Cooper stated that the weather is breaking and that Amfire has to start something.

Another concerned issue Mr. Nicholson presented to the board is the pond by Delancy Drive. His concern is that it is a liner pond, it is slippery. If a child or person was to fall, they could not get out. The Board sees the concern with this, and will get together and visit this pond. The Board will bring this issue to DEP. Phase II of this is a monster pond going to be put in, Mr. Nicholson's concern is flooding issues specially Shoemaker Circle. Who will be responsible for the liability with this new pond?

A resident asked could the Township have the ability to impose an environmental impact fee to tax an entity that could take care of problems as they arise. What are the legal aspects of this type of request?

Approval of Minutes

March 5, 2014 Regular Monthly Meeting

Supervisor Olshavsky made a motion to approve the March 5, 2014 Regular Monthly Meeting minutes as presented. Supervisor Cooper seconded the motion. **Motion carried 3-0.** Supervisor Cooper – yes; Supervisor Olshavsky – yes; Supervisor Kostan – yes

March 12, 2014 Special Meeting

Supervisor Olshavsky made a motion to approve the March 12, 2014 Special Meeting minutes as presents. Supervisor Kostan seconded the motion. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes

Secretary's Report

The secretary's report was presented to the Board, and Supervisor Olshavsky made a motion to accept the secretary's report as presented. Supervisor Kostan seconded the motion. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes

Road Master's Report

The Road Master's Report presented to the Board by Supervisor Cooper which included the following:

- Plowed snow and applied anti-skid
- Performed road maintenance by filling potholes
- Repair of machinery as needed
- Power washed and painted vehicles
- Painted floor of the cab in the backhoe

- Cleaned ditches and pipes
- Applied cold patch to burm on Shoemaker Circle to help stop water problem
- Tore down bus shanty on Shoemaker Circle
- Removed snow fences from township road
- Started sweeping township roads

Supervisor Cooper made a motion to accept the Road Master's Report, Seconded by Supervisor Kostan. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes

Code Enforcement Officer's Report

The Code Enforcement Officer's report was presented by Supervisor Cooper which included the following:

- Dog barking on Puritan Road – dog very calm no barking – no further action necessary
- Vehicle obstructing vision of the road on Puritan Road – contacted State Police concerning the complaint – vehicle has been removed

Supervisor Olshavsky made a motion to accept the Code Enforcement Officer's Report with Supervisor Kostan seconding it. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes.

Old Business

Resolution between Portage Township and Gawel Enterprises, LLC has been solved. Solicitor Webb gave explanation of this resolution. He started off by recognizing Judge Kinary in helping to getting this resolved. The resolution that is before the Board this meeting is to approve mutual general release and settlement agreement including lease and the terms. They include the following:

- Sign to be relocated from the middle of the road to the edge of the right a way
- \$100.00 rental fee per year to Portage Township (5' x 10') with a 99 year lease
- The sign will be moved outside of the PennDot right of way
- Operators of the drive-in will be responsible for all costs to relocate the sign and to extend the electric service to the new location. The Township will provide the labor to dig the underground conduit to the new location.
- The Township will pave the road surface and some curb work if necessary
- If the sign is damaged, this will be the responsibility of the Drive-In operators
- Any taxes imposed on the 5' x 10' area that tax is imposed on the operators
- Drive-In operators will reimburse the Township for any lawsuit for any damages
- Operators will pay the insurance policy that will identify the Township as an additional insured
- Termination of Lease – if they fail to pay the rent, fail to operate the sign or drive-in for a period in excess of 12 months or any other condition of the agreement

- If there is a default and an enforcement action is necessary, the losing party would pay the other side's attorney fees
- Keep and maintain sign in good appearance
- Release of all claims and of discontinuance of the lawsuit

Supervisor Olshavsky stated that he feels that this agreement is stronger in the final form. From the beginning the Board never wanted any harm to the Drive-In. This is an accomplishment to have this settled in the best manner possible.

The Board was aware that the sign was a liability problem where the sign was located. It has been corrected and that is what has been accomplished. This property is valued at \$1500.00 for the size of it. Solicitor Webb then addressed the public if they had any questions regarding the conditions set forth in the agreement. John Nicholson asked who is responsible if the operators default who pays to have the sign removed. Solicitor Webb said they are required to remove the sign.

Solicitor Webb stated the public does not have the right to place any sign in a public right away or a PennDot right of way. This is resolution that does benefit the community along with the Drive-In. Solicitor Webb then said with making this a motion: Determining this Agreement to be in the best interest of the Township and determining the subject real estate to have a value not in excess of fifteen hundred dollars (\$1500.00), I would like to make a motion to approve and adopt Resolution #2014-01, authorizing the Board of Supervisors to enter into the attached "Mutual General Release and Settlement Agreement Including Lease", for the purpose of settling the matters of dispute related to the Complaint filed to No. 4315 of 2013 in the Court of Common Pleas of Cambria County, between Portage Township and Gawel Enterprises, LLC .

Supervisor Olshavsky made the motion to accept the Resolution presented to the Board by Solicitor Webb with second motion by Supervisor Cooper. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes.

Solicitor Webb wanted to clearly state that it is worth noting it was really very helpful with having Judge Kinary help with this Resolution and getting this resolved. The Board did everything they could to have this resolved. Solicitor Webb commended the Board on their willingness to work with such a unique situation and reaching a Resolution of a lawsuit that would clearly keep the Drive-In an operating business but also complying with the law.

Solicitor Webb addressed the public regarding the environmental impact fee is a non starter for several reasons. Windmill is an agreement not a tax it's a contract. Coal mining and business related to coal mining, most are preempted by state law, so the township may not be allowed to pass a law that regulates how coal mining is done. Living in this situation is not great for people who live next to it. There is little the township can do to regulate coal mining. Township cannot limit or regulate coal mining, just not allowed too.

New Business

Supervisor Cooper made a motion to donate \$500.00 to the 2014 Portage Summerfest, seconded by Supervisor Kostan. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes.

Supervisor Cooper regarding raising the limit for purchases which is currently \$500.00. Past motion was they could purchase up to \$500.00 without Board approval. With today's costs, \$500.00 does not go far, asking for increase to \$1200.00. This would allow expenditure, basically on an emergency basis without a Board approval, without coming to a public meeting, and for a payment to occur, each Supervisor has to be informed and each Supervisor has to consent at the next public meeting. Basically saying money will be spent before the next meeting. Supervisor Olshavsky made a motion to increase the limit of purchases from \$500.00 to \$1200.00. Supervisor Cooper seconded the motion. **Motion carried 3-0.** Supervisor Olshavsky – yes; Supervisor Cooper – yes; Supervisor Kostan – yes.

Adjourn

Supervisor Cooper made a motion to adjourn, seconded by Supervisor Kostan.

Meeting adjourned at 8:45 pm.

Those visitors who signed the sign in sheet: Glenn Calderwood, John Nicholson, James Nicholson, Neil Rapski, Joe Walters, Kelly Cernetich, Duane Lamar, Amanda Petrunak, Paul Maul, Karen Maul, Justin Dennis

Submitted by: Michelle Kostan, Township Secretary

Minutes Subject to Approval by the Board.

