

West Penn Township Board of Supervisors
27 Municipal Road
New Ringgold, PA 17960

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Regular 10AM Monthly Meeting
Monday, April 19, 2021

Present at the Meeting

Tony Prudenti – Chairman

Katie Orlick - Secretary

Tim Houser – Vice-Chairman

Paul Datte – Solicitor

Glenn Hummel – Supervisor

Mike Begis – ARRO Consulting, Inc.

Karen Wittig – Treasurer

I. General

A. Anthony Prudenti called the meeting to order with the Pledge of Allegiance & Introductions at 10:00AM.

B. Chairman announced that the BOS had an executive session at 9:30AM, before their regular meeting for possible litigation.

C. Approval of Monthly Bills

Chairman called for a motion to approve /pay the monthly bills. Tim Houser made the motion. Glenn Hummel seconded the motion. All in favor. Motion was carried. 3-0

D. Road Department's Monthly Report – March 2021

Chairman read the Road Report. The report consisted of general maintenance to the Twp. Building & Equipment, Patching Potholes on Dirt & Paved Roads, Clean & Dug Out Pipes, Clean trees & garbage off roads, mowed shoulders, trimmed & chipped trees, graded shoulders, & did winter maintenance on trucks. Quarry Rd. grant project started, Installed 4 French Mattresses and shoulder drainage. The Flagger training the road department attended, everyone passed & they are now certified. Chairman read the Maintenance Report. Chairman called for a motion to accept the Road Department's Monthly Report. Tim Houser made the motion. Glenn Hummel seconded the motion. All in favor. The motion was carried. 3-0

D. Ambulance Report

Chairman read the Ambulance Report for the month of February. There were 38 dispatches throughout the month of February. They assisted Tamaqua, East Brunswick & New Ringgold. Calls consisted of back pain, breathing problems, convulsion, diabetic, falls, sick, fainting & traffic accidents. Receiving hospitals were Miner's Memorial, Lehigh Valley & St. Luke's Lehigh. Chairman called for a motion to accept the Ambulance Report. Tim Houser made the motion. Glenn Hummel seconded the motion. All in favor. Motion was carried. 3-0

II. Public Comment on Agenda Items – None

III. Land Use - None

IV. Old Business

A. Towing – Supervisor Glenn Hummel wanted to clarify the authorization for towing. One of our towers claimed that another one of our towers was not authorized to tow. Glenn Hummel said that is not true. Glenn Hummel continued to talk about different licensing for towers. Mr. Hummel also stated that everyone on our towing list is authorized & licensed to tow. Glenn Hummel said he would like to add Daryl Nothstein to replace his father's spot on the towing list. The company stays the same but the

owner is now the son instead of father. Tim Houser made the motion. Glenn Hummel seconded the motion. All in favor. Chairman abstained from vote. Motion was carried. 2-1

Glenn Hummel also stated that the Police Department has rules/qualifications for towing in the Township. They would like to change one qualification to do background checks on all of the towing agencies and all of the towers that are working for that agency. If you have a criminal record of M2 or above you would be disqualified to tow. Glenn Hummel called for the motion to make the change to the rules and add that qualification. Tim Houser made the motion. Glenn Hummel seconded the motion. All in favor. Chairman abstained from vote. Motion was carried. 2-1

V. New Business

A. Pipe Bid Opening – Chemung Supply Company was the only Bid received.

Plain end smooth bore Polyethylene Thermo Plastic Pipe, N-12 or Equivalent Type – S (Pipe sections shall be 20 LF in Length)

| Approx. Quantity | Unit | Description | Remarks/ Delivery Dates | Delivered as Directed | Total (2x8) |
|------------------|------|-------------|----------------------------|-----------------------|-------------|
| 2,600 | LF | 18" Pipe | FOB Delivered to Twp. Bldg | 12.12 | \$31,512.00 |
| 140 | LF | 24" Pipe | FOB Delivered to Twp. Bldg | 19.60 | \$ 2,744.00 |

N-12 or Equivalent Thermo Plastic Pipe Band Connector

| | | | | | |
|----|------|----------|----------------------------|-------|------------|
| 65 | Each | 18" Pipe | FOB Delivered to Twp. Bldg | 32.25 | \$2,096.25 |
| 4 | Each | 24" Pipe | FOB Delivered to Twp. Bldg | 45.78 | \$183.12 |

Chairman called for a motion to accept the bid for pipe from Chemung Supply Company. Glenn Hummel made the motion. Tim Houser seconded the motion. All in favor. Motion was carried. 3-0

B. Chairman called for a motion to adopt the Flood Plain Ordinance # 1 of 2021. Tim Houser made the motion. Glenn Hummel seconded the motion. All in favor. Motion was carried. 3-0

C. Chairman called for a motion to adopt Resolution # 13 of 2021 revising the CDBG funding for the Fiscal Year 2017. Glenn Hummel made the motion. Tim Houser seconded the motion. All in favor. Motion was carried. 3-0

VI. Business from Anyone on the Board

A. Glenn Hummel gave an update of the field usage at the J.E Morgan Memorial Park. Glenn Hummel said the Tamaqua Area Youth Soccer Team had their season opener and had over 200 kids involved. Tamaqua Area Baseball Association also uses the field. Mr. Hummel said any other organizations that are interested in using the field, contact the office to be put on the schedule.

VII. Correspondence

A. Jen Clinton is organizing a yard sale fundraiser for the fire house on May 15th, 2021(rain date May 22nd). She would like to request the use of our parking lot for parking and/or overflow spaces. A 10x10 space is \$20. Deposits are required to hold a space. Chairman called for a motion to have the secretary Contact her and let her know that the BOS approved the use of our parking lot as long as they name the Township on their insurance policy for the event. Glenn Hummel made the motion. Tim Houser seconded the motion. All in favor. Motion was carried. 3-0

B. Chairman asked Attorney Datte to bring us up to date. Attorney Datte said this is in relation to the proposed settlement between the Township and the 1 Fort Franklin Parties. Attorney Datte said the BOS motioned to approve the settlement agreement subject to receiving all the signatures of the parties involved. As of today we do not have all the signatures. Attorney Datte expects to receive the remaining signatures. However, without having all the final signatures today we technically don't have a

settlement agreement as of today (4-19-21). There were a number of considerations the BOS considered before entering into the settlement agreement.

Attorney Datte said there were a number of property owners that thought they were affected by bringing 16 different lawsuits in the Court of Common Pleas of Philadelphia. Attorney Datte stated the docket numbers for the 16 cases for the record. The docket numbers are as follows: 160101352, 160601482, 160601533, 160601548, 160601493, 160601566, 160601488, 160601479, 160601459, 160601496, 160601162, 160601595, 160601466, 160601537, 160601473, and 160601480.

Attorney Datte stated these were 16 separate lawsuits starting initially in 2016, by 23 separate plaintiffs against M.C. Resource Development Company (also known as M.C. Resource Development, Inc.), Ringgold Acquisition Group, Ringgold Acquisition Group II, LLC, James J. Land Jr., David W. Knoedler and Tower Springs, LLC. Documents are public records. The property owners were bringing certain claims dealing with among other things the 1 Fort Franklin Water Extraction Project. After the Township issued the enforcement notices, those cases have been consolidated and settled. Which the Township did not know they settled because that was not brought to the Township's attention. Attorney Datte said there were certain actions that were to be taken by the owner and developer of the site & certain monetary considerations to the plaintiffs & the cessation of any other pending litigation between those parties and the 1 Fort Franklin Operation parties. Another part the Township was unaware of was the Township was specifically named as a third party beneficiary of that settlement agreement although the Township was not a part of that litigation nor did the Township participate in that litigation. Attorney Datte wanted to be clear and said the Township was not part of that litigation and the Township certainly did not get any funds. Many of the property owners and a non-profit organization called West Penn Water Protection, Inc., had filed an appeal to the Township's Zoning Hearing Board raising many of the issues relating to the 1 Fort Franklin Project. That case was denied by the Township's Zoning Hearing Board. Then they appealed that case to the Court of Common Pleas of Schuylkill County. That appeal was pending & was filed to # S-1369-17 in 2017. That was also settled & discontinued early this year. Many of those individuals that were party to those lawsuits were also part of the lawsuits in Philadelphia. The fact that these cases had settled was a significant consideration of the BOS in entering into the settlement agreement with the 1 Fort Franklin Parties. The Township spent in excess of \$60K approaching close to \$70K on all of this litigation. The Township did not receive a penny in any of these settlements the individual property owners agreed too. This point in time the Township BOS had to look at the best interest of all of the citizens of West Penn Township. There were other facts that were brought to the attention of the BOS after the enforcement notices were issued that were also taken into consideration of the Township. Chairman asked Attorney Datte if he can read the names of the individuals that settled in this litigation. Attorney Datte said these are the individuals that settled in Philadelphia: Jan Marie Balmat, Scott & Cindy Enck, William & Amy Hehn, Robert Kelly, Jennifer Kromer, Dwayne Kistler, Theodore Lohowy, Joyce Maffei, Phillip & Allison McArdle, David & Shirley Osenbach, Amy Paules, Beth Pelo, Robert & Celia Pohlod, Todd Snyder, Marvin Strohl, Sandra Masters, Robert Terleski, Gregory Tuckett, inadvertently missed Larry & Kitty Stival, Stephen & Frances Kowalewski, Kevin Crockett, Carl Rice and Joseph Bissinger. All of those cases & the docket #s & the individuals identified are public & are a matter of public record & can be verified in the Court of Common Pleas of Philadelphia.

Attorney Datte read the settlement agreement the BOS took action on two weeks ago. The action that was taken by the BOS two weeks ago required that we had to have all the signatures before it was a valid settlement agreement. Attorney Datte's recommendation is to set a deadline of April 30, 2021 to

receive the rest of the signatures if not then the settlement agreement would not be valid. Attorney Datte said he discussed with the Hydrogeologist at Boucher & James, who was tasked with the responsibility reviewing the proposed Water Extraction Provisions for the Township's Zoning Ordinance. They have completed their review and Attorney Datte is expecting some comments which they have indicated that they will be to us within the next week and if that happens we will be able to set up the next public hearing & potential adoption of the new Zoning Ordinance which would include the Water Extraction Provisions.

Tim Houser wants everyone to know this issue is an inherited concern that no one on this Board originally had anything to do with. If there is any good that comes out of this would be the new Water Extraction portion of the Zoning Ordinance. This addresses a lot of the concerns that the plaintiffs had with anyone else coming in to do Water Extraction. Tim Houser feels both parties negotiated the best possible outcome for each other & for the Township. Supervisor Houser said he isn't 100% for it but it is the most equitable. Glenn Hummel stated he tasked himself to bring this topic to the table and get this information in the open. The rumor mill that is out there is unbelievable and nonfactual. There was no validation in a lot of the rumors that circulated. Supervisor Hummel feels we are doing the right thing for the financial prudence for the Township. The Mutual agreeable contact with them settles this and will put it to rest. Glenn Hummel feels it is the right thing to do and he agrees with Attorney Datte to extend the deadline for all signatures to April 30, 2021.

VIII. Public Comment on General Items – 5 Minute Time Limit

Chairman asked for comments.

Ted Rosen – Dogwood Lane – Mr. Rosen asked Attorney Datte if the original permit was for Water Harvesting.

Attorney Datte said, "Yes". Mr. Rosen also asked Attorney Datte if the operation on Fort Franklin was Water Harvesting or Water Extraction. Attorney Datte stated it was in compliance with that comment which specifically said Water Harvesting.

Mr. Rosen said Water Harvesting & Water Extraction are entirely two different animals. Mr. Rosen talked about the DRBC applications and the potential increase of allowable water withdrawal / day. Kathryn Land – Malvern, PA, employed at 1 Fort Franklin and family owns property on Kepners Rd. disagreed with Mr. Rosen. Attorney Datte stated he would like for just public comment not debate. Mr. Rosen said he does not understand why the BOS would advocate their right to speak up in front of the DRBC about a water application that significantly increases the / day draw down at Fort Franklin. Glenn Hummel responded to Mr. Rosen by stating he assumes there is no governance on the amount of water withdraw now and there is governance on the amount of water withdraw from the DRBC. It now brings governance into the check factor to ensure there's application for the amount of water taken out and any types of issues it may cause to the surrounding environment.

Mr. Rosen said governance isn't the issue it is quantity. Mr. Rosen wanted to know where the drought management plan is and why we do not have one in place. Attorney Datte said to follow up on Supervisor Hummel's comments would be the application is being reviewed by the DRBC & their experts. Attorney Datte said he feels they are in a better position than West Penn Township to evaluate the application and make whatever determinations they believe are appropriate. Attorney Datte said the Township is without jurisdiction to regulate these flows once they go over 100,000 gallons. Attorney Datte said it is in the hands of the DRBC and the Township is not advocating anything. Mr. Rosen believes that the DRBC is charged to obtain official comments from Townships, boroughs or cities affected by any application. Mr. Rosen feels the DRBC's priority is the DRB protected areas. Mr. Rosen

also feels that it is the Township's responsibility to protect the water resources of our Township. Mr. Rosen feels with no drought management plan it is a free ticket to pump what you would like with no regards to home owners or the farmers in the area. Mr. Rosen feels the BOS is walking away from the problem. Chairman said he appreciates Mr. Rosen for his view point but it shocks him because over the past 5 years he has been Supervisor, the Township has been working very closely with Mr. Rosen and all the concerned residents. There is not an agency that would help. The BOS reached out to DEP, Dept. of Agriculture, and had meetings with our State Senator & Representative. The BOS went through it all. Chairman said we finally have an agency that will step up and police this situation. Mr. Rosen said the DRBC encourages comments from the Township.

Mr. Rosen feels the Township lost its voice by signing the agreement. Chairman said to Mr. Rosen he likes the idea the DRBC is regulating the amount of water being withdrawn because there was no other agency regulating it. Chairman said we need the state agency to regulate it because the Township can't. The DRBC is the answer not the problem.

Jamie Schellhammer – West Penn Pike – asked the Chairman & Attorney Datte if they had the DRBC Application in front of them. They both responded, no. Mr. Schellhammer said somewhere in the application it says about a Water Bottling Facility. Kathryn Land replied, that it does not state that. Jamie Schellhammer said the application to approve ground water withdraw of 17.712 mgm to supply the applicants bottled water facility from existing wells FF1 & FF2. Kathryn Land asked Mr. Schellhammer where it says the bottling plants are. Ms. Land said they are existing already and has nothing to do with West Penn Township. Attorney Datte said the interpretation is that it wasn't proposing a bottling facility in West Penn Township; it was indicating that the water was going to a water bottling facility. Attorney Datte also added if there are facilities that are being proposed they would have to comply with all of the Township Ordinances. Mr. Schellhammer said it takes ownership stating the application is solely for the applicant's water bottling facility. Ms. Land said the application is not insinuating that we want to build one. Ms. Land said the application says existing, they already exist.

IX. Executive Session - @ 9:30AM before the regular meeting.

X. Anything Else from the Board

A. Chairman read a support letter from Senator Argall for our Atlas Park Project.

B. Chairman called for a motion to have a deadline of April 30, 2021 for all signatures to the settlement agreement. Glenn Hummel made the motion. Tim Houser seconded the motion. All in favor. Motion was carried. 3-0

XI. Adjournment

Chairman called for a motion to adjourn the 11:06AM meeting. Tim Houser made the motion. Glenn Hummel seconded the motion. All in favor. Motion was carried. 3-0

Transcribed By: Katie Orlick – West Penn Township Secretary