



## Allen Township Board of Supervisors

### Meeting Minutes March 26, 2024 6:00 P.M.

A General Meeting of the Allen Township Board of Supervisors was held on Tuesday, March 26th, 2024, at 6:00 P.M. at the Allen Township Municipal Building, located at 4714 Indian Trail Road, Northampton, PA. Mr. Hassler led the audience in the Pledge of Allegiance to the Flag.

#### 1. Roll Call:

Present: Gary Behler; Dale Hassler; Tim Paul; Jason Frack; Paul Link; B. Lincoln Treadwell, Jr., Esq.; Ilene Eckhart, Manager; Tom Gogle, Public Works Crew Leader, and Stan Wojciechowski, PE, CME

Absent: Andrea Martin, Engineer

#### 2. Announcements and/or Actions to Add New Items to the Current Agenda: No announcements or actions to add new items to the current agenda.

#### 3. Public Hearings: No public hearings.

#### 4. Public to be Heard: Gene Clayter, 75 Arrowhead Lane, prepared the following speech for the Board of Supervisors, it was written as follows:

*"I'm here again to give you an update on a recent turn of events with respect to the Aqua Pool situation. I am sure you will recall the several times that residents in the area plus myself tried to work with you all back in 2022 to equitably address the situation.*

*You are also aware that the Basts as well as the township were sued to address the egregious zoning injustice. To refresh your memories:*

- In 1986 the Halls were given a permit to build a house and also conduct an in-home business*
- In 1988 they applied for a permit to build an accessory structure to house equipment and for storage for a pool servicing business*
- Said permit was denied by the zoning officer (Metro Leshak) as he deemed the use to be contracting/industrial which was not a permitted use in the VC zone.*
- The Halls appealed to the ZHB and were granted a variance related to the accessory structure with various restrictions.. no more than 7 vehicles & no outside storage, vehicles to be kept to the side and rear of the accessory structure, with the Halls agreeing to various other considerations, including buffering.*
- Until 11/2021 the Halls more or less adhered to the variance terms and kept the business very low key.*
- In 11/2021 the Halls sold the property and business (Lehigh Valley Pools) to the*

*Basts (who also owned Aqua Pools)*

*You have copies of the 1986 permit, Metro's 1988 letter and the 1988 permit for the accessory structure. The ZHB transcript and opinion are available from Ilene if you don't already have a copy. You also have a copy of an aerial view of the property consistent with how the Halls used it and also aerial photocopies on the radical expansion of the pool servicing business use as it more or less currently exists. All of this information, plus more, had been previously provided to you back in 2022, with now the addition of more current aerial views.*

*So now the saga really begins.*

*We all know that when the Basts bought the property and quickly began to radically expand the business use that you (the township) were initially apparently unable to find any records with respect to permits, etc. When residents began to complain about that expansion in a rural district where a contracting use is not allowed, Ilene was unable to find any records - until on March 30th 2022 when she finally found them, including the variance records, all of which had been misfiled many years previously. Unfortunately, by this time significant expansion had been done and most certainly the Basts had expectations about what they were permitted to do with the property. To quote Frank Bast - they "could do whatever they wanted to do."*

*Your position has been that the current use is that of a nonconforming use subsequent to zoning changes with the entitlement of the Doctrine of Natural Expansion of a Nonconforming Use. Unfortunately, the township, including your solicitor, incorrectly conflated the position that a business use permitted by variance segued into the creation of a nonconforming use, with the future entitlement of the Doctrine of Natural Expansion. That is legally incorrect and there are several examples of Pa case law that make that perfectly clear - as well as a recent Feb 5th Northampton County Court ruling. The business use was only permitted by variance and was historically never permitted by right in any of the zoning districts where the property is located.*

*Now.. the significant turn of events is that the Northampton County Court has ruled on 2/5/24 that the Basts contention that the Business Use conducted on the property is a pre-existing nonconforming use is rejected, and that the business use on the property exists pursuant to the variance granted in 1988 and subject to its conditions. A copy of the Basts contention and the Court decision is provided to you.*

*We have tried to reason with you on this matter in 2022 by having other lawyers talk to Linc and had requested a sit-down or an agenda item for public discourse and also had presented to you examples of specific case law.. all to no avail. Thus the lawsuit and the subsequent court ruling on the rejection of the nonconforming use position, also effectively resulting in nullification of Linc's 6/23/22 legal opinion which you as a board promptly adopted by motion (unannounced & not an agenda item) on 6/28/22.*

*I'm also providing you with a copy of the draft cease & desist order which Ilene had drafted back in May, 2022, but which was never delivered to the Basts (and which @ a June 2022 BOS meeting Linc insisted didn't exist, even though it was emailed to him). Ilene knew that would have been the proper way to move towards a resolution to the egregious zoning*

*violations, but she was pre-empted from issuing the order.*

*So, at your last meeting, Dale stressed that he doesn't like breaking the rules and we have zoning for a reason, and Gary agreed. Now it's time, based on case law and the court decision, for you as a board to recognize the egregious and continuing variance and zoning violations that you yourselves allowed to take root, as well as the court's rejection of your nonconforming use position, and take appropriate zoning enforcement action with respect to the 2 + years expansion of the contracting/industrial use activities @ 3742 Kreidersville Rd.*

*After all, by your own statements, we have zoning for a reason, and you stated you don't like breaking the rules.*

*So I might ask.. why wouldn't that apply when the initial breaking of the rules was by the township and was self-inflicted and inadvertent, and a mea culpa could have been done back in early 2022?*

*Now.... I believe there is a solution to this problem if we all sit down and discuss a reasonable path forward – but – the township precipitated and continues to exacerbate this zoning violation and needs to be a part of the solution.”*

## **5. Unfinished Business:**

### **A. Allen Township Municipal and Fire Station Complex Renovations – Bids**

**Received:** Ms. Kimberly LaBrake of D'Huy Engineering, Inc. presented the bids, which were opened on Thursday, February 29<sup>th</sup>, 2024, for the renovations of the Allen Township Municipal Complex Project. She explained that the lowest general contractor bidder, CMG of Easton, fully withdrew their bid due to an accounting error. She indicated that CMG of Easton's withdrawal request was submitted within the 48-hour limit. Ms. LaBrake stated that the next lowest general contractor bid was Mohawk Contracting & Development LLC with a base bid of \$1,919,000.00. Ms. LaBrake stated that the lowest mechanical contractor bidder was ASL Refrigeration, Inc., with a base bid of \$828,000.00, and the lowest electrical contractor bidder was Albarell Electric, Inc, with a base bid of \$681,110.00 and an alternate add on for site lighting of \$33,890.00, totaling the contract bid amount to \$715,000.00. Lastly, she indicated the lowest plumbing contractor bid was The Warko Group with a base bid of \$183,804.00. She indicated that currently, the project is \$1.4 million under budget and that all the contractors discussed tonight all confirmed their bidding and their prices. Ms. LaBrake asked the Board of Supervisors for a conditional award for the bids.

Ms. Eckart indicated that the Township is waiting for the LSA grants to be awarded. Mr. Wojciechowski indicated that the next LSA grant meeting will be in May 2024.

Mr. Behler made a motion that the Board of Supervisors intends to award the four separate contracts to the four lowest bidders pending notification of the grants to the following: for the general contractor, Mowhawk Contracting & Development LLC at the amount of \$1,919,000.00, for the mechanical contractor, ASL Refrigeration, Inc, at the amount of \$828,000.00, for the electrical contractor, Albarell Electric, Inc. at the amount of \$715,000.00, and for the plumbing contractor, The Warko Group, at the amount of \$183,804.00; seconded by Mr. Link. On the motion, by roll call vote, all present Supervisors voted yes.

**B. JW Development Partners Building 6/Lot 3 – Conditional Use Draft Opinion:**

Mr. Treadwell explained that the draft letter pertains to the conditional use hearing from February 27<sup>th</sup>, 2024 and it approves the conditional use with the conditions enumerated in the draft decisions. Mr. Behler questioned if the letter pertained to conditions that were previously discussed such as all construction vehicles only utilize Liberty Drive and there being some type of physical barrier to prevent tractor-trailers from entering onto Howertown Road. Mr. Wojciechowski indicated that JW Development Partners would only be using 2400 Liberty Drive as an address and not Howertown Road. He stated that JW Development is discussing placing a beam across the entrance that is 13 feet high and that the beam will architecturally blend in with the building. Mr. Link made a motion to approve the draft conditional use letter and to send the letter; seconded by Mr. Frack. On the motion, by roll call vote, all present Supervisors voted yes.

**C. Acknowledgement of Completion of Probationary Period – Scott Paukovits: Ms.**

Eckhart explained that Mr. Paukovits has completed his 90-day probationary period and is eligible for the rate adjustment as per his conditions of approval. She indicated that she and Mr. Paukovits have discussed the CDL Class B Driver’s License and that he has one year to obtain his CDL license. Mr. Behler made a motion to approve the completion of the probationary period and wage adjustment for Mr. Paukovits; seconded by Mr. Frack. On the motion, by roll call vote, all Supervisors voted yes.

**D. Resolution #2024-10 – Appointment of Labor Law Firm Cohen, Seglias, Pallas,**

**Greenhall & Furman, PC:** Ms. Eckhart indicated that she recommends Cohen, Seglias, Pallas, Greenhall & Furman, PC as the Labor Law Firm as per their fee schedule on an as-needed basis to deal with labor law matters. Mr. Behler made a motion to adopt Resolution #2024-10; seconded by Mr. Frack. On the motion, by roll call vote, all Supervisors voted yes.

**E. Volunteer Firefighter Tax Credit Incentive Ordinance Draft (Amendment to Code Chapter 24):** Mr. Hassler announced that he will be turning the meeting over to the Vice Chairman, Mr. Paul Link, as he felt that it would not be appropriate for him to attend this portion of the meeting and vote on it as he is the active Fire Chief for Allen Township.

Mr. Behler asked Mr. Treadwell to introduce the Volunteer Firefighter Tax Credit Incentive Ordinance Draft. Mr. Treadwell explained that Ms. Eckhart and himself started drafting the incentive in January 2024 and it gives a real estate property tax credit of 100% to any volunteer firefighter who resides in Allen Township. He continued to explain that it also gives a nonresident volunteer a tax credit an amount that is determined by multiplying the real estate tax value of the property and the municipality where they live by the Allen Township mileage of 5 mills. He also indicated that for volunteers who do not own property then it would provide an earned income tax credit, however, it needed to be discussed what the amount would be.

Mr. Treadwell stated that the real estate property tax credit would be created by an ordinance and the earned income tax would be created by a resolution. He indicated that the Volunteer Firefighter Statute that the State of Pennsylvania adopted indicates that there is a specific percentage that applies to the real estate tax and a dollar amount that applies to the earned income tax. Mr. Treadwell indicated that the Board will need to set a percentage and a dollar amount. Mr. Behler questioned if the earned income tax credit would be based on the whole amount that is paid towards local taxes or just the portion that goes to Allen Township.

Mr. Treadwell explained that it would just be the amount that goes to Allen Township. Mr. Link indicated that the letter from the Allen Township Fire Department written by its President, Mr. Jacob Schock requested the earned income tax rebate to be up to \$350.00. Mr. Schock indicated that the \$350.00 was calculated at the medium of the Allen Township Real Estate Tax of the current volunteer firefighters. Mr. Frack felt that was reasonable. Mr. Link indicated that he felt that the Township should follow the State Guidelines. Mr. Frack questioned if most municipalities are following the same structure. Mr. Treadwell stated yes but the difference is the set amount. Mr. Frack indicated that he felt that \$350.00 was reasonable and the program appears to be working for other municipalities therefore he does not have a problem with the proposed tax credit incentives.

Mr. Behler thanked the volunteers for their volunteer service. He explained that he understood that it is a huge time commitment, requires dedication, and there are personal expenses for volunteering as a firefighter. Mr. Behler indicated that when it comes to the tax credit, he had a few problems with it. He explained that he felt that the State had good intentions but the practicality of the law is flawed because there is economic discrimination due to the volunteers needing to own a property and it's based on the assessed value of the property. Mr. Behler felt that the volunteers should have a choice between the real estate tax credit and the earned income tax credit. Mr. Behler shared his alternate proposal which did not include the tax incentive. He explained that if the volunteers met the participation criteria, then they each would receive \$500.00. He stated that is fair because it is based on participation to the Township and not the volunteers' economic status and it would be more than \$500.00. Mr. Paul expressed concerns that \$500.00 would be considered paying the volunteers, which the Township is not allowed to do. Mr. Treadwell explained that \$500.00 may not necessarily create a problem, however, it may create problems in the future, which is why other municipalities are following the State Guidelines with the tax credits. Mr. Link stated that this will be the first year that the tax credit incentive will be put into place and that the Board can make changes as needed in the future. Mr. Behler asked if the floor could be open to the volunteer firefighters in order for the Board to hear their opinions on the matter. Mr. Link agreed.

Mr. Schock explained from the volunteer standpoint the tax credit is fair because, from a tax perspective, all firefighters will be at \$0.00. Mr. Schock indicated that as a group the volunteers discussed the tax credit incentive and they all agreed that it was fair and that it was voted upon, hence the letter that the volunteer firefighters sent to the Board of Supervisors.

Mr. Behler questioned how the Township can offer the tax incentives to volunteers who do not live within the Township. He explained that he felt that the State Guidelines did not allow the Township to extend the tax incentives to nonresidents. Mr. Treadwell stated that Mr. Behler was correct, however, for a nonresident property owner, the Township would need to write a check for the volunteer for the property tax that he or she would pay if they lived within the Township. He explained that the same would apply to the earned income tax, the Township would need to see a copy of the volunteer's W2. Mr. Behler indicated that he would like the Allen Township Fire Company to report yearly to the Board to see how the incentives are helping and if there is a need for any adjustments.

**F. Volunteer Firefighter Recruitment and Retention Program:** Mr. Treadwell indicated that there were a couple of different proposals that the Fire Company included in their letter. He stated that the first proposal was \$10.00 per call and training session and the

second proposal was \$1,500.00 after one full year of fire service. He explained that both proposals included the Township placing \$50,000.00 in an account at the beginning of the year for the Fire Company's incentive program. Mr. Treadwell indicated that the Fire Company would monitor the account and distribute the funds under their guidelines and rules, and then at the end of the year, the Township would receive a report on how much was spent and the Township could deposit additional funds to bring the account back to \$50,000.00. Mr. Behler made a motion to draft a resolution that will provide the funds for the firefighter retention and recruitment program; seconded by Mr. Frack. On the motion, by roll call vote, all present Supervisors voted yes.

Mr. Behler expressed concern about the future of the Allen Township Fire Company. He indicated that he felt that Ms. Eckhart should reach out to neighboring municipalities to see what their opinions are for the future of their fire departments and the possibility of regionalization. Mr. Link indicated that would be a good idea however he felt that should be discussed when Mr. Hassler is present.

**6. New Business:**

**A. Executive Session:** There was no executive session.

**7. Public to be Heard:** There was no public to be heard.

**8. Announcements:**

Mr. Link announced the upcoming meetings. All meetings and events below will be held at the Allen Township Municipal Building. These meetings and events are as follows:

- Board of Supervisors, Tuesday, April 9, 2024, 6:00 PM
- Planning Commission, Monday, April 15, 2024, 6:00 PM
- Board of Supervisors, Tuesday, April 23, 2024, 6:00 PM
- Park and Recreation Board, Thursday, April 25th, 2024, 6:00 PM

Mr. Behler announced that the Zoning Hearing Board Meeting for Wednesday, March 27<sup>th</sup>, 2024 is canceled.

**9. Adjournment:** There being no further comments or business the meeting adjourned at 7:05 PM.

Respectfully submitted,

Ilene M. Eckhart