

HANOVER TOWNSHIP, LEHIGH COUNTY  
REGULAR COUNCIL MEETING

April 4, 2012  
7:30 P.M.

Present: Councilmen Atkinson, Dreisbach, Kovacs, Paulus, Woolley; J. Jackson Eaton, III, Esquire; Frederick W. Hay, P.E.; Sandra A. Pudliner; Vicky Roth

Absent: 0

Attendance: 3

Courtesy of the Floor:

Councilman Kovacs advised the Board that he would like to take this opportunity to read excerpts from email communication by the Township's architect for the new building construction sent to the Township Manager and the Chairman of Council. In particular, Councilman Kovacs read the following:

2. The Problem: While this is all Bracy's responsibility, they subcontract the metal stud system to a 3<sup>rd</sup> party. Bracy's responsibility is to get a QUALIFIED subcontractor to see to it that they do the proper engineering (and work in the field) to sign off on the engineering submittals and to submit to us a compliant system that meets their obligations under the contract. They have failed to date in all three regards as follows:
  - a. The subcontractor has repeatedly demonstrated either a lack of competence/qualification to deal with a project of this type or an outright refusal (for reasons we can only speculate at including possibly underbidding the job) to meet their obligations. This is demonstrated first by their refusal to engineer the system. Second, when later forced to engineer it, they submitted incorrect and incomplete engineering submittals. Finally, when the first two strategies failed, they came up with "phantom claims" that the system cannot be engineered and does not work. This is flatly untrue.
  - b. Bracy failed in their duties because they let the subcontractor take control of the situation. In addition, Bracy repeatedly signed off on faulty submittals and incomplete engineering. All of which has extended the time to get this resolved for no good reason.
  - c. Finally, they have had improper communications with Township staff and representatives with erroneous claims of faulty design on the part of the Structural Engineer rather than

follow the chain of communication clearly laid out in the contract.

3. Why? I can only speculate here, but all actions by the subcontractor and contractor appear to lead to 2 conclusions which they hope to result: GET MORE MONEY AND MORE TIME from you and Hanover Township. Again I speculate.
4. As your design representative, our ONLY interest in this is to ensure that you get what you paid for and that the project stands long after we are all gone from this earth. We have no financial or other motive in our dealings with the contractors. To think that we would somehow try to hide shoddy design only to have a real issue later is beyond imagination.
5. I respectfully request that you enforce the chain of communication for your own sake. We serve the Board and the Township, and regularly insulate you all from this kind of craziness. To waste money and time on a third party engineer who does not even have the proper documentation to give a complete opinion is a shame and totally unnecessary. To do so without even communicating to us that you have a concern is unprecedented in my 20 plus year career.

After completing this dissertation, Councilman Kovacs commented that he felt the Township should let the architect do his job.

Approval of Minutes: March 21, 2012 Regular Council Meeting

Motion: I move we waive the reading of the Minutes of the March 21, 2012 Regular Council Meeting and accept same as presented.

Paulus, Kovacs: Moved and Seconded

Atkinson, Dreisbach, Kovacs, Woolley, Paulus: Aye Unan.

Reports:

1. Sandra A. Pudliner  
Township Manager

1. The Township Manager advised the Board that citations have been filed against a property owner on Pennsylvania Avenue for two separate violations. Mrs. Pudliner noted that she would keep the Board informed as to the disposition of that matter.
2. The Township Manager advised the Board that she has provided them with a copy of correspondence from PPL regarding the Township's new application for interconnection of renewable generation equipment as same relates to the new Municipal Building and the solar panel installation. Mrs. Pudliner noted that the item she would bring to the Board's attention involved a notation in the letter that

“PPL Electric Utilities will not purchase surplus renewable generation from customers participating in customer choice and have another generation supplier.” In that regard, the Township Manager noted that the Township has reviewed its current contract documents with the current generation supplier and it appears that contract will run out in November of this year. The Board discussed this matter at length. It was noted that the Township Manager should check both with PPL and the current generation supplier to determine which would be the better option for the Township.

3. The Township Manager advised the Board that with respect to the citation of the property owner at the corner of Race and Willowbrook Road, the Board should be advised that the defendant pled guilty and paid a fine.
2. Frederick W. Hay, P.E.  
Township Engineer
    1. With respect to the new Municipal Building construction, the Township Engineer advised that the subcontractor for Bracy and the design team are still at an impasse. He noted there had been a conference call on Friday involving the engineers, designer, subs, etc. and as he understands it the results were not very hopeful. The Township Engineer indicated that Bracy has basically responded to the last RFI. Two of the issues appear to be resolved. Another one of the issues involves Bracy indicating that they will do what is proposed but will not be responsible for future damage. Lastly, the structural engineer for the subcontractor won't sign and seal the design because he says it won't work. The Township Engineer indicated it is his understanding that Bracy will be getting more information back to Kimmel-Bogrette. Councilman Woolley questioned whether or not there is a problem with the design. Councilman Woolley also indicated that if the architect was responsible for the design then they should have known about the problem. The Township Engineer indicated that in his opinion the contract documents or specifications appear not to work in this instance. The Township Attorney noted that after that letter from Kimmel Bogrette, portions of which Councilman Kovacs read into the record was received there was an RFI that went from Bracy to the architect. The architect then responded. The RFI went from Bracy to us and the architect. We indicated that it should go directly to the architect. The architect then came back with these four issues which were conveyed to Bracy. Bracy responded verbally and then formal reports were issued by Bracy to the Township and to the architect. As of this afternoon, it was up to Kimmel-Bogrette to respond to these issues. If it can be resolved at this time, then the project could go forward. The major dispute is the issue where the professional engineer won't approve the plans due to a difference of opinion regarding structural integrity. Kimmel-Bogrette is saying they have to make the changes. Kimmel-Bogrette is supposed to respond and I would anticipate by the end of this week there may be a response and we will find out if we are still at an impasse. There is an issue as to who will pay, the architect or Bracy, when it comes to any change orders. It appears the major issue is who is responsible to design what is necessary to resolve the dispute.

Councilman Kovacs noted that he wanted all email information from Kimmel-Bogrette or Bracy delivered to Council as soon as same becomes available. Councilman Atkinson questioned whether or not Kimmel-Bogrette and Bracy Contracting have insurance for any major errors. The Township Engineer noted that he felt they had liability insurance and that Bracy posted a bond for this project. The Township Engineer also indicated that he felt there was a flaw in the original design. The Township Attorney noted that if this matter cannot be resolved then the Township needs to step in. The Township would need to sit down with Kimmel-Bogrette at that point in time. Attorney Eaton noted that his recommendation is to get Kimmel-Bogrette's response and if there is still no agreement between the designers, then the Township must sit down with Kimmel-Bogrette. Councilman Atkinson questioned whether the structural engineer of the sub-contractor as well as the third party engineer brought in by the Township still have the same position. The Township Engineer indicated that those individuals are still of the opinion that the current design is deficient.

There was another discussion at this point in the meeting. Councilman Woolley questioned who is responsible in this matter. The Township Engineer commented that the sub-contractor, Reppert, has been around for 40 years. Councilman Dreisbach commented that Kimmel has indicated that he is sticking with his structural engineer. Councilman Dreisbach also felt that Bracy and Reppert would move forward even though they may disagree with the architect but do not want to accept the liability. They are fine if someone else accepts the liability. The Township Attorney noted that generally if there is no agreement on the structural design then he felt you have to go beyond speculation and intervene and determine the hard facts.

3. J. Jackson Eaton, III, Esquire  
Township Attorney

1. The Township Attorney noted that with respect to the name change of Catasaquaque Lake to Lake Hanover he has been advised that the USGS Board will vote on April 12, 2012 with respect to that name change.

Unfinished Business:

There was a brief discussion with respect to the T-Mobile facility in Hanover Township ceasing business in the Township as of the middle of this year. Their departure will cause a drop in revenues, in particular, with respect to the Local Services Tax.

New Business:

1. Approval to Close Out the Letter of Credit, Airport Centers (Review and Discussion)

The Township Engineer advised the Board that this matter is before them in accordance with the agreements, in particular, the Five Party Agreement which states that Council must vote to close out the original Letter of Credit for Airport Centers. The Township will maintain Maintenance Bond monies. There was

some discussion with respect to the shopping center in general and it was noted that for the most part all the work has been completed. The Old Navy facility will be brought in and there will be a few vacant strip stores but other than that there are no new tenants proposed. To finalize this matter, the Board made the following motion:

Motion: I move that Council approve closing out the Letter of Credit for Airport Centers Development in accordance with the Five Party Agreement involving Airport Associates, L.P. and that the Township maintain the 15% maintenance security for the term indicated.

Atkinson, Kovacs: Moved and Seconded

Atkinson, Dreisbach, Kovacs, Woolley, Paulus: Aye Unan.

The Township Engineer commented that the Township has received a separate \$150,000 Maintenance Letter of Credit for the Irving St. culvert and swale.

2. Resolution No. 2012-35, A Resolution Adopting Procedures for the Purchase or Provision of Professional Services, Including Investment, Legal, Actuarial and Other Consulting Services to Comply with the Professional Services Contract Provisions of Act 44 of 2009 (Vote)

The Township Attorney noted that the Township Manager had asked him to look into this matter. As part of the current audit, the Township was advised that Act 44 of 2009 requires us to establish procedures to engage professionals for certain services for the pension plan. Attorney Eaton noted that he spoke to the auditor today and that the Township doesn't fall into the category where there would be problems. However, there are portions of the Act referencing how to engage such professional personnel which all municipalities must adopt with no exception. Accordingly, Resolution No. 2012-35 is before the Board at this time. In resolution of this matter, the Board made the following Motion:

Motion: I move that Resolution No. 2012-35, A Resolution Adopting Procedures for the Purchase or Provision of Professional Services, Including Investment, Legal, Actuarial and Other Consulting Services to Comply with the Professional Services Contract Provisions of Act 44 of 2009 be adopted as presented.

Dreisbach, Atkinson: Moved and Seconded

Atkinson, Dreisbach, Kovacs, Woolley, Paulus: Aye Unan.

Courtesy of the Floor: None.

Adjournment:

The meeting was adjourned at 8:10 P.M.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sandra A. Pudliner".

Sandra A. Pudliner  
Township Manager