

MINUTES
INDIAN LAKE BOROUGH COUNCIL MEETING
JULY 24, 2013

The regularly scheduled meeting of the Indian Lake Borough Council was held on July 24, 2013 at 7:00 P.M. at the Indian Lake Borough Building.

THOSE PRESENT:

Patricia Dewar, Council President
Paul Cornez
Charles McCauley
Lynn Shimer
Robert Marhefka
Robert Hanson
Terry St. Clair
Attorney Daniel Rullo, Solicitor
Theresa L. Weyant, Borough Manager/Secretary

THOSE ABSENT:

Michael D. Miscoe, Mayor

Visitors – Kevin Yoder from CME Engineering, Kenneth Helsel, Charles Fox, Richard Stern, Colby Rome, John McClatchey, Marc Alaia, Danielle Petrosky, Tom O’Toole, Robert Oates, Don Reed, Al Lichtenfels, Randy Musser, Mark Tercek, and Ken Yingling, and Amber Rosado.

The meeting was called to order at 7:03 P.M. by Patricia Dewar, President.

ORDER OF BUSINESS

1. Welcome Visitors – Kevin Yoder from CME Engineering, Kenneth Helsel, Charles Fox, Richard Stern, Colby Rome, John McClatchey, Marc Alaia, Danielle Petrosky, Tom O’Toole, Robert Oates, Don Reed, Al Lichtenfels, Randy Musser, Mark Tercek, and Ken Yingling, and Amber Rosado.

2. Award Contract for Phase 3 of the Dam Remediation Project – Cornez noted that one (1) bidder inquired if they could start the excavation work early by working from the top of the dam down to the water level in the spillway prior to the drawdown date. After discussions, the Borough agreed and notified all bidders that they could start work on or after August 12th if they placed steel cover plates over the water line route, had on site materials to repair the waterline if it broke, and they would need to have someone available 24/7 to repair the waterline if it broke. This would all be at no additional cost to the Borough.

The bid packet also included an Alternate Bid Line Item #1 for a compressed time schedule start date of September 16th and an Alternate Bid Line Item #2 for the second waterline across the spillway interconnecting with the existing waterline on both ends. Contract calls for completion of the project by November 1st with a penalty of \$500.00 per day for every day over the completion date.

CME Engineering reviewed the submitted bid proposals and the lowest bid from Maust Excavating, Inc. was found to be complete. Based upon the recommendations from CME Engineering, Cornez made a motion to award the contract for the base bid to Maust Excavating, Inc., in the amount of \$225,230.00 contingent upon the Department of Environmental Protections permit application D56103A being approved. McCauley seconded the motion. All ayes, motion carried.

Based upon the recommendations from CME Engineering, Cornez made a motion to award the bid for Alternate Bid #2 to Maust Excavating, Inc., in the amount of \$10,800.00 contingent upon the Department of Environmental Protections permit application D56103A being approved. McCauley seconded the motion. All ayes, motion carried.

Cornez made a motion to award the bid for Alternate Bid #1 to Maust Excavating, Inc., in the amount of \$12,000.00 contingent upon the Department of Environmental Protections permit application D56103A being approved. Hanson seconded the motion. 6 ayes and 1 naye. Motion carried.

Council asked the Borough Secretary to send a postcard out notifying the residents of the September 16th lake draw down date.

Dewar asked Richard Stern, President of the Indian Lake Service Corporation, for an update on the issues from the fireworks celebration. Stern reported that he has spoken with the parties involved and there doesn’t appear to be any issues with ratifying the problems permanently.

3. LCT Energy-Boone Mine – Dewar noted that on December 14, 2012 a letter was sent to Musser Engineering notifying them that Ordinance No. 13 of June 27, 1968 specifically prohibits coal mining within the Borough of Indian Lake and furthermore, the acreage that is identified in the permit is zoned agricultural and the earth disturbance of a surface mine would be a non-conforming use under the Borough's Zoning Ordinance.

On May 8, 2013, another letter was sent to the Department of Environmental Protection recognizing that Ordinance No.13 may have been preempted; the zoning restriction in Zoning Ordinance No. 144 relative to the agricultural zone is reasonable in its imposition and would severely impact this permitting application. Indian Lake Borough is predominantly residential with the exception of a recreational lake and the agricultural area referenced above. What the impact from this activity may have upon a residential community and the water quality of the lake is difficult to forecast but is of significant concern to the Borough. The Department and other regulatory entities are conducting studies in the Borough relative to drinking water sources aside from its recreational nature and it is of concern that the proposed activity, if permitted would have a deleterious effect upon the results and request that the Department consider rejecting the present application for the surface mining permit.

Randy Musser, from Musser Engineering, informed Council that the proposed mine site is on the East side of Route 160 behind the Llama Farm and the Bed and Breakfast, straight across from Entrance Drive. This project is on the backside of Route 160 and the mine will drain into Boone Run, which isn't even a tributary to Indian Lake, it goes into Lake Stonycreek.

Musser stated that in Zoning Ordinance No. 144 he did not see the word mining addressed at all, it is silent. Land uses are addressed but strip mining is an activity, a business and it isn't defined as a land use. It's an activity that is regulated based on nuisance creations and municipalities regulate it that way to prevent nuisances to homes and residential districts. The area that this is being proposed is an area within the Borough that is out of site and out of mind and 90 percent of the people don't even realize it is part of the Borough.

Attorney Rullo noted that the Zoning Ordinance specifically says that if a land use is not identified as a use, it is presumed that isn't a permitted use. Only permitted uses are specified.

LCT Energy would need to either apply for a variance for strip mining before the Indian Lake Borough Zoning Hearing Board or petition the Borough Council to change the zoning ordinance.

Attorney Rullo questioned if there has been any response from the Department of Environmental Protection to the Borough's May 8th letter. Mr. Tercek stated that he has spoken with Tim Kania, permit reviewer for the DEP, and asked him where the Department is at with the objection letter. The response was that they haven't really done anything with it yet and they need to get on it and will get back to them.

4. Legal Report:

A. Easement Status and Ongoing Strategy – Attorney Rullo reported that he has filed the action for eminent domain. The Borough was able to obtain 519 easements voluntarily and 47 easements which had to be obtained by filing for a declaration of taking. Subsequent to the filing of the declaration of taking, a number of residents contacted his office and signed their easements voluntarily. Of the flowage easements that were obtained by eminent domain, there were approximately 15 property owners who filed preliminary objections to the taking with the court. On behalf of the Borough, Attorney Rullo filed a motion to dismiss and a brief in response to the preliminary objections. A hearing was held before Judge Klementik and within forty-eight (48) hours all the preliminary objections were dismissed.

Attorney Rullo informed Council that he has sent out a letter to Rodger Adams, with the Department of Environmental Protection, indicating that the title to the declaration of taking to the flowage easements have been obtained. Possession of this easement isn't possible to obtain until such time as the breast of the dam is elevated the extra 3 1/2 feet and there is a rain event that would be of the nature discussed. This does not end the eminent domain proceedings. There can still be an economic claim that can be asserted by individual property owners who may want to have a hearing before the board of review to determine whether or not there has been a diminution of market value because of the expansion of the easement.

B. David Rohrich Challenge to Ruling/Septic – Attorney Rullo informed Council that a hearing was held on July 11th on the objections that Mr. Rohrich filed to the equity action to the violation of the sewage permit issue. This case was heard by Judge Geary and the Borough is still waiting a decision on this matter.

C. Update on Gary Williams Zoning Ordinance Violation – Attorney Rullo informed Council that Mr. Williams has agreed to pay the fine on the Zoning Ordinance violation and will pay the fine in three (3) installments.

5. Stonycreek River Watershed Act 167 Meeting – The will be a meeting held at the Somerset Township Municipal Building on Thursday, August 8th at 2:00 PM on the Stonycreek River Watershed Act 167 Stormwater Management Ordinance. Robert Hanson will attend the meeting on behalf of the Borough.

6. Planning Commission’s Proposed Park Lot Boathouse Resolution – Don Reed, Chairman of the Indian Lake Borough Planning Commission, provided Council with the Commission proposed resolution amending Zoning Ordinance No. 144 to allow park lot boathouses to have decks with see-through type railing. After a discussion, Hanson made a motion to accept the proposed resolution. Shimer seconded the motion. 5 ayes and 2 nays. Motion carried.

Hanson made a motion to authorize Attorney Rullo to prepare the ordinance for advertising and adoption. McCauley seconded the motion. All ayes, motion carried.

7. PA Department of Environmental Protection-Alternate Sewage Disposal System for Craig and Linda Aber – Council was provided with a copy of the approval letter from the Department of Environmental Protection for Craig and Linda Aber for an “Alternate” Sewage Disposal System. Secretary informed Council that Jerry Mostoller, Sewage Enforcement Officer, has requested a letter from the Borough stating that they have no objection to him issuing a permit since the sewage maintenance agreement has been approved. Hanson made a motion to authorize the Borough Secretary to send the letter to Mr. Mostoller as requested. Shimer seconded the motion. 6 ayes and 1 abstention. Motion carried. St. Clair filed the abstention memorandum with the Borough Secretary.

Dewar informed Council that on Thursday, July 25th at 1:30 PM at the Indian Lake Borough Building, Chuck Colbert from the Department of Environmental Protection will be here to review the permitting and the new fee schedules that are now attached to the GP 2, GP 3 and GP 11 Permits if anyone is interested in attending

8. Public Comment: None.

With no further business to discuss, McCauley moved and Cornez seconded to adjourn the meeting at 8:50 P.M. All ayes, motion carried.

The next regularly scheduled meeting of the Indian Lake Borough Council will be held on August 14, 2013 at 7:00 P.M. at the Indian Lake Borough Building.

Respectfully submitted,

Theresa L. Weyant
Borough Manager