

CALL TO ORDER

Mayor George Piazza called the meeting to order at 7:00 p.m. and stated that in compliance with the “Open Public Meeting Act” this is a Regular Meeting of the Township Committee as published in the Hunterdon Review, the agenda has been posted at the Municipal Building and distributed to the Hunterdon Review, Courier News, the Express Times, the Hunterdon County Democrat and the Star Ledger.

FLAG SALUTE

Mayor George Piazza asked everyone to stand for the Flag Salute and for a Moment of Silence.

ROLL CALL

Present - Patricia Schriver George Piazza
 Brian Wunder Ron Milkowski

Absent Francis Morrison

Also Present - Attorney Dick Cushing, Clerk Karen Sandorse and 12 members of the public.

PRESENTATION OF MINUTES

Motion by Mr. Wunder, seconded by Ms. Schriver and carried by unanimous favorable roll call vote, the Township Committee approved minutes of the regular meeting of September 7, 2011.

Motion by Mr. Milkowski, seconded by Mr. Wunder and carried by unanimous favorable roll call vote, the Township Committee approved minutes of the executive session of September 7, 2011.

PUBLIC COMMENTS – for agenda items only.

Motion by Mr. Wunder, seconded by Ms. Schriver and carried by unanimous favorable roll call vote, the Township Committee opened the public comment portion of the meeting.

There were no comment from the public.

Motion by Ms. Schriver, seconded by Mr. Wunder and carried by unanimous favorable roll call vote, the Township Committee closed the public comment portion of the meeting.

RESOLUTIONS

Resolution No. 69-2011– Authorizing a Payment for the Purchase of Paving Materials

Motion by Ms. Schriver, seconded by Mr. Wunder and carried by unanimous favorable roll call vote, the Township Committee approved Resolution No. 69-2011.

RESOLUTION NO. 69-2011
TOWNSHIP OF LEBANON
COUNTY OF HUNTERDON
STATE OF NEW JERSEY

RESOLUTION AUTHORIZING A PAYMENT FOR THE PURCHASE OF SURFACE
TREATMENT SERVICES FOR THE TOWNSHIP FROM TRAP ROCK INDUSTRIES, INC.
THROUGH THE COUNTY OF HUNTERDON COOPERATIVE PRICING SYSTEM

WHEREAS, the Township of Lebanon is a member of the County of Hunterdon Cooperative Pricing System (the “Cooperative”), as defined and regulated by N.J.A.C. 5:34-7; and,

WHEREAS, the Township of Lebanon was in need of surface treatment program services and/or materials (the “Project”) and therefore submitted to the County of Hunterdon an estimated quantity of such that it required so the County of Hunterdon, in accordance with the Cooperative, could advertise for bids on behalf of the Cooperative for such paving services and/or materials; and,

WHEREAS, pursuant to N.J.A.C. 5:34-7.11, prior to entering into the contract the Township passed Resolution No. 53-2011, on July 6, 2011, awarding a contract to the successful bidder; and,

WHEREAS, the Township of Lebanon entered into a contract with Trap Rock Industries, Inc. for the purchase and/or surface treatment services and/or materials it required based on the estimated quantities it submitted to the County of Hunterdon, in an amount of Forty Thousand Dollars (\$40,000.00); and

WHEREAS, when the project was completed, the actual cost for surface treatment services and/or materials was Forty Thousand Seven Hundred Two Dollars and Thirty Five Cents (\$40,702.35).

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Lebanon, County of Hunterdon, State of New Jersey that the Township hereby authorizes a payment to Trap Rock Industries in the amount of Forty Thousand Seven Hundred Two Dollars and Thirty Five Cents (\$40,702.35) for the surface treatment program.

Resolution No. 70-2011- SAGE –Grant Application – Overlay of Pleasant Grove Road

Motion by Ms. Schriver, seconded by Mr. Wunder and carried by unanimous favorable roll call vote, the Township Committee approved Resolution No. 70-2011 as written below.

Township of Lebanon
Resolution No. 70-2011

Resolution: Approval to submit a grant application and execute a grant contract with the New Jersey Department of Transportation for the **Overlay of Pleasant Grove Road** project.

NOW, THEREFORE, BE IT RESOLVED that Council of **Lebanon** formally approves the grant application for the above stated project.

BE IT FURTHER RESOLVED that the **Mayor** and Clerk are hereby authorized to submit an electronic grant application identified as MA-2012-Lebanon Township-00205 to the New Jersey Department of Transportation on behalf of **the Township of Lebanon**.

BE IT FURTHER RESOLVED that **Mayor** and Clerk are hereby authorized to sign the grant agreement on behalf of **the Township of Lebanon** and that their signature constitutes acceptance of the terms and conditions of the grant agreement and approves the execution of the grant agreement.

OLD BUSINESS

Municipal Court of North Hunterdon

Mr. Wunder stated that the Municipal Court is still negotiating with the landlord for a new lease.

NEW BUSINESS

Award of Bids

Attorney Cushing provided an overview of the events which led up to the impending awarding of a new bid for the Township DPW Garage Project. Two years ago there were bids let for the construction of the DPW Garage in which there was an initial low bidder. The low bidder did not proceed and ultimately there was an agreement reached with the second lowest bidders, Walter H. Poppe General Contractors, Inc. Apparently there were negotiations for a period of time of the terms of the contract. Mr. Poppe began working however the signed contract was not finalized for a period of time. In the end the contract was finally signed but there were some questions raised about issues relating to certain aspects of the project. The issue of a performance bond was raised and when Mr. Poppe was addressed with the question he indicated that he could not provide a performance bond even though it was a requirement of the bids and the contract he entered into with the Township.

There were many representations from Mr. Poppe that he planned to obtain a replacement performance bond however, this did not happen and eventually it was decided that Poppe Contractor's should not be working on the project and should not be further paid without providing the performance bond. On July 11, 2011, Mr. Poppe was sent a certified letter setting forth the history of the matter and indicating that, effective July 20, 2011, the Township Committee will be considering adopting a resolution that would terminate the services of Poppe Construction, effective July 28, 2011. Mr. Poppe indicated on many occasions to municipal officials prior to that time that he would provide the performance bond. On the evening of July 20, 2011 the Township Committee waited for Mr. Poppe to show up at the meeting with the performance bond and he did not.

Accordingly, on that date the Township Committee adopted Resolution No.60-2011, entitled; Resolution Terminating Contract for DPW Garage and Salt Shed Building and Authorizing the Letting of New Bids for the DPW Garage and Salt Storage Building. Subsequently, on July 17, 2011 another letter was received from Mr. Poppe's attorney stating that Poppe expects to have the performance bond in hand by August 26, 2011 and will provide a copy to the Township. No bond was forthcoming and the bids were let and scheduled to be awarded this evening. On September 13, 2011, Attorney Cushing received a letter from Mr. Poppe's attorney stating that a new bond agent had been obtained and that a performance bond would be provided and it was also stated that Mr.

Poppe would be bidding on the rebid of the project. Attorney Cushing responded to Mr. Poppe's attorney on September 14, 2011 and made reference to prior correspondence with respect to the reason for the termination and provided nine (9) items that needed to be completed by Mr. Poppe before the Township would even reconsider the reinstatement of him. Included were; a performance bond, all subcontractors have to be in line and ready for work, Mr. Poppe needs to show that he can satisfy the many Mechanics Liens that have been filed, all necessary equipment and supplies must be certified, Mr. Poppe needs to provide information stating that he has the financial ability to complete the project, Mr. Poppe must also address the substantial increase in fees that were incurred by the Township in connection with the rebidding of the project and with Mr. Poppe not providing the bond, liquidated damages need to be dealt with also, certificates of insurance and a revised construction schedule. There has been additional correspondence between the Township Attorney and Mr. Poppe's attorney. Mr. Poppe has taken the position that a performance bond could be supplied and that the bond was issued. Attorney Cushing provided a copy of the September 14, 2011 letter to the agent who was to provide Mr. Poppe with the bond. Attorney Cushing stated that today he spoke to the General Managing Agent for a bonding company that stated that they may be able to provide a bond for the project. The Agent stated that Mr. Poppe met certain financial requirements with the assets that he has. However, a bond could not be issued until Mr. Poppe entered into a contract with the Township and that certain reviews of Mr. Poppe's financial issues are worked out. Mr. Poppe will also have to resolve all of the issues with the individuals who have filed Mechanics Liens. A letter was received at 5:30 p.m. today, via fax at the Township, from Mr. Poppe's attorney stating why the contract of Mr. Poppe should be reinstated and again stating that the performance bond will be provided. Mr. Poppe's attorney had been notified that the Bond had to be in place tonight or there had to be a binding legal commitment to supply the bond, that the sub-contractors were ready to proceed with the work, that Mr. Poppe had received an agreement with the sub-contractors stating that they agree to withdraw or make provisions with the Mechanics Liens which have been filed and to address other issues. Mr. Cushing stated that one issue he raised was evidence of Mr. Poppe's financial status and his financial capability to perform the work on this project. Mr. Poppe's attorney's response was that the Township did not have to be concerned with that as there will be a performance bond in place.

Attorney Cushing stated that he has provided that Township Committee with an analysis from his office of the bids which were submitted for the re-bidding of the project. Attorney Cushing stated that the lowest bidder was Mr. Poppe with a base bid of \$1,900,000.00 and the second lowest bidder was Rochelle with a base bid amount of \$2,080,000.00. Attorney stated that his office determined that the bid bond submitted by Mr. Poppe was not sealed and appears to be a copy of a bid bond that was submitted in 2009 for the original DPW Building project. Attorney Cushing's office contacted that bonding company which was supposed to be providing the bid guarantee in connection with the project and were notified that the bond had expired sixty (60) days from the date of issue in 2009 and they have not issued a bond to Mr. Poppe in 2011. A bid bond is a mandatory, nonwaivable requirement, therefore, Mr. Poppe's bid is not the low bid as it cannot be considered as it does not comply with the law. Attorney Cushing's office has reviewed that Rochelle Contracting bids documents and they are conforming, with the exception of a few minor items which need to be provided. Consequently, Rochelle Contracting is the low bidder and the contract may be awarded to them.

Mayor Piazza stated that during the planning process and deciding on the building that would most suit the Township's needs, everyone felt that Two Million Dollars (\$2,000,000.00) would cover the cost of the building. When two bids came in under that amount the Township was pleased, however,

it probably was a mistake on the Committee's part. Mayor Piazza stated that if you took away the highest and lowest bid you would most likely have a more realistic picture of the true cost. The price probably would have come to a half of a million dollars if they had done their homework properly. Now the Township is faced with a problem because they kept with the Two Million Dollar (\$2,000,000.00) bond and have a Two Million Three Hundred Thousand Dollar (\$2,300,000.00) project. The Township is faced with not having the funds in place to cover the project.

Mr. Milkowski stated that when the planning meetings took place the sub-committee set a limit on how much money will be spent, which was under Two Million Dollars (\$2,000,000.00). If the alternates were left out, possibly it would have been under Two Million Dollars (\$2,000,000.00). Mr. Milkowski stated that the building would have needed to be scaled back. Mr. Wunder noted that maybe they need to make a change.

Attorney Cushing stated that the Township Committee has 60 days in which to award the bid after the bid opening and with the consent of the bidder that timeframe can be extended, if the Committee chooses to adopt a bond.

CFO Greg Della Pia stated that based on the funds on hand the Township is short One Hundred Sixty Seven Thousand Dollars (\$167,000.00) in order to award the bid without the improvements. The bid cannot be awarded at this meeting. The Township Committee will need to look for any old bonds issued that can be canceled otherwise, the Committee would have to issue another Note in order to cover the difference of the amount that they agreed on.

Mr. Poppe and his Attorney Gina Makoujy entered the meeting. Ms. Makoujy reviewed with the Township Committee and Attorney Cushing the letter she had sent at 5:37 p.m. this evening (as attached).

A lengthy discussion was held on Mr. Poppe's position on the DPW Garage Project matter and the possibility of reinstating the contract between himself and the Township.

In the matter of the Mechanics Liens which have been filed, Ms. Makoujy stated that three of the four lienors have executed Conditional Discharges of Lien. Intermark Building and Design has not.

Mr. Mike Markus from Intermark Building and Design stated that the reason he did not give approval for the Township to use the shop drawings for the building was due to them not being paid for.

Mr. Markus stated that he disagreed with the Conditional Discharges of Lien proposed by Mr. Poppe because his invoice is for Thirty Seven Thousand Six Hundred and One Dollars and Twenty Two Cents (\$37,631.22). Mr. Poppe is stating that it is only Six Thousand Dollars (\$6,000.00) because that is what the Township approved for his invoice. Mr. Markus stated that he felt that it is not his problem that Mr. Poppe did not invoice the Township for the full amount he should have invoiced the Township for the work that had been completed. Mr. Markus stated that in reality to him, Mr. Poppe's contract was terminated and he needed to be paid for the work that he had done. Mr. Markus stated that if Mr. Poppe was reinstated then it may be possible to work it out. Mr. Markus stated that he has been, since February 2010, trying to negotiate a contract with Mr. Poppe with no success. Mr. Markus stated that as far as he was concerned there was no completed negotiation of a contract and he has increased costs that he has incurred as a result of the delays. Mr. Markus stated that he has

spoken to Mr. Poppe maybe once or twice in the past six months and has made numerous attempts to speak to him, so he did not have much confidence in being paid. Mr. Markus stated that if the Township Committee decides to move forward with Mr. Poppe it is in his best interest to negotiation with him and to come up with an amenable solution.

Attorney Cushing asked Architect Keith Chambers if the work performed by Mr. Poppe acceptable, Mr. Chambers stated that the little bit of work that was done was satisfactory.

Attorney Cushing informed Mr. Poppe and his Attorney that the Bonding in the Township does not permit the award of the rebids at this time. The Township Committee must discuss the matter in closed session to see which direction to move.

Best Practices Inventory – Submission of Inventory for Committee Review

Motion by Ms. Schriver, seconded by Mr. Wunder and carried by unanimous favorable roll call vote, the Township Committee accepted the submission of the Best Practices Inventory as prepared by the CFO Greg Della Pia.

PRESENTATION OF VOUCHERS

Committee Members provided a description of vouchers exceeding \$1000.00.

Motion by Ms. Schriver, seconded by Mr. Wunder and carried by unanimous favorable roll call vote, the Township Committee approved the September 21, 2011 bill list in the amount \$84,138.19.

CORRESPONDENCE

Recycling Coordinator JoAnn Fascenelli – Recycling Comparison Samantha Faust-Miano – Waiving Permit Fees

PUBLIC COMMENTS

Motion by Mr. Wunder, seconded by Ms. Schriver and carried by unanimous favorable roll call vote, the Township Committee opened the Public Comment portion of the meeting.

Ms. Nancy Darois stated that the Township was supposed to have the contracts for the DPW Garage project finished today and if they were supposed have it done today it should have been done today. Ms. Darois stated that the winter is approaching and the contract should be straightened out soon. It is not fair to the Township, the workers or to the people.

Mr. Anthony Casale inquired on the status of the First Aid Squad and the work that is being done on the building. Attorney Cushing informed Mr. Casale that the Township is negotiating with the Trustee to work out the final terms of the Agreement. There are some legal problems associated with the dispute having to do with how the Trustee would convey the ownership of the property to the Township. Ultimately the Township's goal is to obtain clear title to the property. Attorney Cushing

stated that the Trustee has limited funds for their lawyer. That is creating a bit of a roadblock because there are saying there is just so much money. Mr. Milkowski stated that some time ago the Township obtained an energy grant to update buildings in the Township and the Squad building was one of the building. There is a deadline in which the work had to be done that is why they are completing it at this time. Mr. Milkowski stated that to his knowledge the easiest and quickest way that the building would be conveyed back to the Township would be if the previous Squad Officers were willing to sign it over to the Township. However, Mr. Wunder spoke with them and they are not willing to do such, so the Township now has to go this route.

Motion by Ms. Schriver, seconded by Mr. Wunder and carried by unanimous favorable roll call vote, the Township Committee closed the public comment portion of the meeting.

Fire Department Rescue Services

Ms. Schriver stated that there were three letters received from residents, complimenting and thanking the Fire Department for rescue services provided to their family members.

Mayor Piazza stated that the Fire Department did a very good job during the storms. They put in a lot of time and effort and have always done a good job for the Township. Mayor Piazza thanked them for their efforts.

Standing Committees

Mr. Milkowski stated that during the past month he has been trying to attend a meeting for each of the standing committees. Mr. Milkowski met with the Park Committee and they are doing a good job. The Library Committee stated that there is a pond below the property which is a problem and is caused by grading which was done on the adjacent church property. The Township Engineer sent the church a letter and they were supposed to correct the problem, however, it has not been done to date. The Township Committee may have to look into the matter further. Mr. Milkowski stated that the Open Space Committee had files stored in the basement at the municipal building and apparently during the cleanup they must have been destroyed. They would like shelves placed in the basement store their materials.

EXECUTIVE SESSION

Motion by Ms. Schriver, seconded by Mr. Wunder and carried by unanimous favorable roll call vote, the Township Committee approved Resolution No.77-2011 and convened in executive session at 8:36 p.m. Action may be taken at the close of the meeting.

TOWNSHIP OF LEBANON RESOLUTION NO. 77-2011

BE IT RESOLVED by the Mayor and Township Committee of the Township of Lebanon, that in compliance with N.J.S.A. 10:4-12, this meeting will be closed to the Public to discuss the following matters:

Motion by Ms. Schriver, seconded by Mr. Wunder and carried by unanimous favorable roll call vote, the Township Committee reconvened the Regular Committee meeting at 10:00 p.m.

Attorney Cushing stated that during the Executive Session the Township Committee discussed Collective Bargaining and there is not action to be taken at this time. The DPW Garage Project was also discussed; additional analysis needs to be done to determine what is the best step for the Township to take. The CFO brought to everyone's attention that there are not enough funds to finance the bids that were submitted. The CFO cannot certify the funds unless action is taken to increase the bonding for the project. The First Aid Squad was also discussed and Attorney Cushing will be making contact with the Trustee with a new proposal.

Having no further business to come before the Committee a motion was made by Ms. Schriver, seconded by Mr. Wunder and carried by unanimous favorable roll call vote to adjourn the meeting at 10:02 p.m.

Respectfully submitted

Karen J. Sandorse, RMC/CMC
Municipal Clerk

Approved: October 5, 2011

George Piazza, Mayor