

**WILLISTOWN TOWNSHIP BOARD OF SUPERVISORS
GENERAL WAYNE ELEMENTARY SCHOOL AUDITORIUM
20 DEVON ROAD, MALVERN, PA
MONDAY, SEPTEMBER 12, 2022, AT 6:30 PM**

The Regular Meeting of the Willistown Township Board of Supervisors came to order at 6:30 PM. Supervisors Robert T. Lange, Molly H.B. Perrin, and William R. Shoemaker were present. Also present were Police Chief Robert Klinger, Lt. Jeff Heim, and Solicitor Bill Christman.

Supervisor Shoemaker led the Pledge of Allegiance and led a moment of silence for military personnel, and first responders.

Announcements – Supervisor Shoemaker announced an executive session was held before this meeting to discuss legal matters.

New Business

Minutes – Supervisor Perrin moved to approve the regular meeting of August 15, 2022, and the special meeting of September 1, 2022. Supervisor Lange seconded the motion. There were no comments from the Board or the public, and the motion carried by a vote of 3-0.

Expenditures - Supervisor Perrin moved to approve the list of expenditures and interfund transfers dated September 9, 2022. Supervisor Lange seconded the motion. There were no comments from the Board or the public, and the motion carried by a vote of 3-0.

Appointment - Supervisor Perrin moved to appoint Shanna P. Lodge as the representative to the Valley Forge Sewer Authority and Police Pension Plan & OPEB Trust Fund Advisory Board. Supervisor Lange seconded the motion. There were no comments from the Board or the public, and the motion carried by a vote of 3-0.

2023 Minimum Municipal Obligations - Supervisor Perrin moved to approve the certification of the 2023 minimum municipal obligations to the Willistown Township Police Pension Plan in the amount of \$429,298 and for the Willistown Township Non-Uniform Pension Plan in the amount of \$99,000. Supervisor Lange seconded. There were no comments from the Board or the public, and the motion carried by a vote of 3-0.

Resolution 16 of 2022 – A Resolution for Designation of Depositories for Township Funds (TD Bank, Meridian, Santander, US Bank). Supervisor Perrin moved to approve Resolution 16 of 2022. Supervisor Lange seconded the motion. There were no comments from the Board or the public, and the motion carried by a vote of 3-0.

Fairview Road Sewer Project—Supervisor Perrin moved to authorize the Township Manager to execute the agreement with BP Paterson, Inc. for the Fairview Road Sewer Repair Project. Supervisor Lange seconded. There were no comments from the Board or the public, and the motion carried by a vote of 3-0.

Road Closure—Supervisor Perrin moved to approve the closure of Fairview Road beginning September 13 for the Fairview Road Sewer Repair Project. Supervisor Lange seconded. There were no comments from the Board or the public, and the motion carried by a vote of 3-0.

Police Report—Chief Klinger provided a summary of the most recent criminal activity and arrests since the previous meeting.

Citizens Comments

Supervisor Shoemaker asked if there were any comments or questions on any other matter besides the sewer system. Torben Jenk, 4 Hunt Club Lane, asked if the change to the zoning ordinance was going to be discussed. Supervisor Shoemaker replied the zoning ordinance change was passed at the public meeting held on Thursday, September 1.

Supervisor Shoemaker asked all residents to give their names and address and to limit comments to 2 minutes. Representatives from Aqua Pennsylvania, Obermayer Rebmann Maxwell & Hippel LLP, PFM Financial Advisors, LLC, and Carroll Engineering were in the audience to answer questions.

Supervisor Shoemaker also addressed social media posts stating his reelection campaign received a donation from Aqua. Aqua did offer to contribute to his reelection campaign but Supervisor Shoemaker declined the check. Because the check had been cut the Political Action Committee had to record it. Neither Supervisor Shoemaker nor his campaign received any donation in any form from Aqua.

It has also been suggested that once the sale with Aqua closes, Aqua will be able to extend the sewer system at will. This is not true. Under State Act 537, no new extensions or additions can be made to the existing system without the direct approval of the Township. Public meetings would be held, and the public would be notified. For the last 30 years, this Board has not encouraged new development, and where development has occurred, the Board has always sought to make it as low density as possible.

Supervisor Shoemaker announced that it has been brought to the attention of the Township that not all residents with grinder pumps have received their yearly inspections by PreDoC, although the residents have been billed for the \$50 quarterly charge. The Township is working to identify those residents with missed inspections. All these residents will receive a full refund for all monies paid for services not received, and if there are any out-of-pocket costs incurred as a result of the missed periodic maintenance and cleaning, they will be reviewed for a potential refund on a case-by-case basis.

New Township Manager Shanna Lodge introduced herself and told audience members they should have received a FAQ sheet along with a consolidated overview of the sale process¹. The meeting would come to an end at 9:30 pm. If residents still had questions, the Board will schedule another meeting.

Julie Frissora, 34 Chetwynd Road, commented the most important thing to stress is the sale has not been finalized. She gave the background on the signing of the asset purchase agreement with Aqua and which started the Public Utilities Commission process to evaluate Aqua's application to purchase the sewer system. There are two appeals filed with the Pennsylvania Commonwealth Court and Ms. Frissora asked the Board to not sign a closing transaction with Aqua until the appeals are concluded. Supervisor Shoemaker replied the Board is not going to close because there are not only appeals but there is a stay request in front of the Commonwealth Court. Until the Board has a resolution on the cases pending, they are not going to close.

Stephen Oleck, 32 Sunset Drive asked how much it would cost to break the contract. Matt Olesh with Obermayer Rebmann Maxwell & Hippel LLP replied they have not fully evaluated what a lawsuit would cost for breach of contract. Supervisor Shoemaker added there are no legal means to break the Asset Purchase Agreement. If the Township breaks the contract, Aqua can sue the Township for damages and performance under contract law.

Henry Jordan, 152 Grubb Road, commented he has read the asset purchase agreement and it gives the Township and Aqua the right to unilaterally terminate the agreement on January 14, 2023, without penalty provided the sewer sale transaction has not closed before that date. Mr. Jordan asked the Board to wait for closing till a judge has adjudicated the appeals. Supervisor Shoemaker commented that the Board will not close until the appeal process is exhausted.

Carol Meerschaert, 133 Spruce Lane, stated a lot of residents oppose the sale, especially older residents on limited incomes. She stated the Board can help reduce the unknown rate increase by Aqua by not selling the sewer.

Bernard Reynolds, 12 Arlington Road, stated if this contract can not be broken, it will be the first contract he has seen in his thirty years of public procurement. The Township may not like the option to break the contract, but contracts can be broken. He also commented on Willistown Township only receiving one bid and would like to know how the determination was made to proceed with the process with only one bid. He also would like to know if the Township reached out to the non-participants and asked them why they did not bid. Scott Shearer of PFM answered there were two respondents to the request for qualifications and both were active participants. Aqua submitted a bid after the request for bids was issued, the other bidder did not.

Alexander Nikas, 7 Veterans Way, asked if the Board will commit to not close the transaction until they receive a final unappealable judgment. The Board replied "yes."

¹ Both handouts are available on the website at willistown.pa.us/SewerSale.

Jerry Childers, 8 Colonial Way, commented on the history of the sewer system when he had to connect to it in the 70s.

Brian St. Clair, 12 Marlin Drive stated he thinks the people who put the money into the sewer system get to decide on whether not to sell it. He also asked if all members of the Board voted in favor of this sale. Supervisor Shoemaker explained Supervisor Perrin was not a Board member when the sewer sale was voted on. Supervisor Perrin stated she was not a Supervisor when the asset purchase agreement was signed and would not have signed it.

Michael Novosel, 10 Meadow View Lane, asked about the letter Aqua sent out recently to all the residents via the mail. The letter stated Aqua has committed a \$3 million investment in the system down the road. He asked if the \$3 million commitment was in the agreement. Marc Lucca of Aqua stated the \$3 million was not in the agreement and said that was based on Aqua's due diligence when they evaluated the system further. They will operate the system in accordance with the law.

Robert Swift, 13 Devon Road, stated he is a litigant in the appeal of the PUC approval. It is his opinion that the sewer users are the beneficial owners of the sewer system, although the title is kept by the Township. He asserted that the Township has stated a desire to exit the sewer business, but he suggested that maintaining the system of this age could be accomplished more efficiently by the Township. He proposed the Township direct their counsel to advise the Commonwealth Court that the Township no longer believes it is in the best interest of the sewer users to sell.

Zac Pappis, 9 Andrews Road, asked if the Township if it's going to ask Aqua to break the contract or wait till the appeals process plays out in court. Supervisor Shoemaker replied the Township has asked Aqua multiple times if they can get out of the agreement and the reply has been no.

Dee Miller, 737 Monument Road, commented on the flyer circulated around the Township stating Supervisor Shoemaker accepted money from Aqua. She was the Treasurer for Supervisor Shoemaker's reelection campaign and no Aqua donation was accepted by him or his reelection campaign.

Marie Kania, 2905 Sage Wood Drive, asked why Aqua attempted to contribute to Supervisor Shoemaker's reelection campaign. Mr. Lucca explained it is Aqua practice to make donations through the PAC to various politicians around the state.

Rebecca Jenson, 402 Whispering Brooke Drive, commented on Supervisor Shoemaker's response was vague to the campaign donation question at the August 15 public meeting. She also asked if the sewer users are paying for the Township to defend itself against the appeals. Supervisor Shoemaker responded that at the August 15 public meeting, he did not have a copy of the campaign donation report and did not have the complete information to comment. After the meeting, he determined that Aqua had to report the cut check by law but the check was never accepted by his reelection campaign.

Joe Havrilla, 570 Sugartown Road, commented that he believes there was a lack of due diligence by the Board on the sewer sale. Past Aqua purchases have resulted in rate increases for the residents in other Townships. Is it too late to amend agreements that rate increases will only be caused by the maintenance needs of the Willistown system and not other Townships? Mr. Lucca commented that the only way Aqua can change rates is to submit the request to the PUC.

Richard Apostol, 7 McKinley Avenue, commented he would like the Board and consultants to introduce themselves at every meeting. He asked if the request to terminate the agreement by the Township and Aqua's response is documented on paper. He also asked with all the opposition facing the sale, would Aqua walk away from the deal? Mr. Lucca replied Aqua is not entertaining walking away from the deal. He believes the system is not in great condition, and the rainwater infiltration is costing sewer users additional fees. Under Aqua, the operation of the system can be improved and will cost the residents less money to run.

Ward Rivers, 36 Bryan Avenue, commented there is enough money in Willistown Township to repair and fund the sewer system without Aqua.

Anne Satterthwaite, 701 Weatherstone Drive, commented some residents are on a fixed income and would the Township be willing to offset the rate increase. Supervisor Shoemaker said he has supported the creation of the Customer Benefit Fund that would use the proceeds of the sale to smooth the rate increases. Aqua has agreed to not raise the rates for 2 years; the Township has not raised sewer rates since 2019. If the Township retains the system, it will have to raise rates because the system needs at least \$3 million dollars in maintenance and upgrades.

A resident commented that Bucks and Montgomery Counties turned down Aqua and referenced the recommendation of the Administrative Law Judge. The resident asked if the Board will file an amicus brief with the private plaintiff in support of his appeal. Supervisor Shoemaker noted that the Asset Purchase Agreement legally obligates the Township to support the sale. The Board cannot legally submit an amicus brief opposing the sale, as this would open the Township to legal action by Aqua.

Krystene Rivers, 36 Bryan Avenue, commented when she bought her house in 2001, her quarterly rate was \$66. Today it is around \$120. She believes the rate will significantly increase under Aqua ownership. Will the Township commit to developing a payment program for senior citizens? She also asked why the sewer sale was not put on a local election ballot for residents to vote on. Solicitor Christman commented the PA Election Code limits what can be placed on the ballot and the sewer sale would not be permitted. Supervisor Shoemaker stated he couldn't comment on a senior citizen program but several years ago, the Township restructured the sewer rates. The Township did away with the program that gave a discount to the large volume users such as a hospital and restructured the rates so everyone pays the same base number and a straight gallonage rate.

Pamela Schafer, 129 S. Cedar Hollow Road, asked why the sewer sale is not on the agenda.

Jill Jerome, 23 Beryl Road, asked the Board to introduce themselves. She commented she is in an area that has had sewer issues for years. Regarding the PreDoC inspection matter, she asked if the Township will be refunding residents that have dealt with sewer backups in their homes Supervisor Shoemaker said the plan currently is to refund money to residents who have paid for PreDoC yearly inspections that have not been done. Ms. Lodge commented the Township will be contacting residents directly who they believe are owed a refund.

A resident commented while there may be infiltration and inflow problems as Aqua has suggested, residents would rather pay for the \$3 million repairs themselves.

Ryan Conrad, 20 Chetwynd Road, commented Mr. Yordan pointed out that on January 14, 2023, the Township can exercise a clause to withdraw from the agreement. Is the Board willing to withdraw from the agreement after January 14, 2023? Supervisor Shoemaker said he can't answer that question until legal input is obtained.

Pat Yonchek, 1002 Weatherstone Drive, read the core values of Aqua Corporation. She asked why Aqua would sue a community that does not want its sewer system sold. Mr. Lucca said the lawsuit is hypothetical and Aqua believes they can improve the sewer system operation for the benefit of the residents.

Scott Sawin, 7 Greenstone Way, inquired about the Board's stance on the termination clause and when will they decide. Supervisor Shoemaker replied that the Board will talk to legal counsel and provide an answer at an upcoming meeting.

Murray Gordon, 42 Meadow View Lane, would like the Board to notify Aqua they are canceling the purchase agreement and do what they need to do to unwind the sale. He asked Mr. Lucca and Aqua's attorneys to work with Township in canceling the contract.

Jake Venable, 14 Callery Way, asked if the Township's legal counsel had read the contract and are familiar with the termination clause. Matt Olesh with Obermayer Rebmann Maxwell & Hippel, LLP replied he could not speak to language not in front of him and reiterated that when the issue has been analyzed, the Township will offer more information to the public.

Jake Salyer, 641 S. Warren Avenue was at the meeting representing his parents. He expressed his family's frustration with trying to connect to the sewer in the 1990s, ongoing issues with correct well meter readings, and erroneous quarterly billings.

Bernard Reynolds, 12 Arlington Road, commented again on the single bidder for the system stating that raises a red flag in the bid procurement process.

Susan Rosso, 1 Roselawn Lane, stated she does not think this is a good deal for the Township sewer users, commenting that the \$17 million offer is too low given potential development. Supervisor

Shoemaker reiterated that the Township retains the responsibility for Act 537 planning; Aqua cannot extend the sewer system without Township approval.

Lewis Pettinos, 6 Applewood Road, is here on behalf of his parents who live at 638 S. Warren Ave. He inquired about the Board's plan for the proceeds of the sale. Supervisor Shoemaker restated that his position now is to create a Sewer Customer Benefit Fund as recommended by the committee led by then-Supervisor Handelin. That committee recommended that \$5 million from the net proceeds be set aside for the Customer Benefit Fund, \$5 million as a reserve, and another \$5 million to be placed in a Sewer User Fund Committee that determines future expenditures.

Richard Hewitt, 1 Colonial Way, commented on the sewer sale process happening during the pandemic. He stated his preference that the sewer system be run by an elected group of officials who are accountable to the residents rather than a public company like Aqua. He asked the Board to cancel the contract.

Stephanie Murphy, 22 Beryl Road, asked where to find information about the bid process and the sewer sale process; she requested a follow-up meeting to answer the questions not addressed tonight. Supervisor Shoemaker commented there is a handout available with the timeline. Scott Shearer of PFM replied that over 100 requests for proposals were sent out; two responses were received. Ms. Lodge also commented the Township will consolidate the sewer sale information to one page on the website, willistown.pa.us. Residents can send in additional questions to comments@willistown.pa.us.

Lonnie Frank, 14 Meadow View Lane, asked Supervisor Shoemaker to explain why he feels the sewer sale is the best option for the Township in the long run. Recent sewer sales to Aqua have shown that sewer users have faced large rate increases and PUC has seldom turned down a request for a sewer rate increase. She stated that Willistown residents will be paying for other systems in poor condition that Aqua buys up. She would rather pay for the maintenance and repair of the Willistown sewer system than pay for the profits of Aqua. Supervisor Shoemaker stated that, in the next 10-15 years, Aqua will be able to run the system less expensively than the Township. He believes the Township costs are 30% higher than Aquas due to paying prevailing wage, economies of scale in buying materials, and the expertise required to keep the system in compliance with state and federal statutes.

Julie Frissora, 34 Chetwynd Road, commented the Township hired Obermayer Rebmann Maxwell & Hippel, LLP to represent them with money from the Sewer Fund and complained that the firm did not advise the Board about the termination clause. She asked the Township to add the sewer sale discussion to every future agenda.

Roy Griffith, 36 Bryan Ave, stated that according to the administrative law judge, there is \$3.8 million sitting in the Sewer Revenue Fund, and asked if this is part of the assets being sold to Aqua. Supervisor Shoemaker replied no. Mr. Griffith then asked what the Township will do with that money. What is Aqua's anticipated return on revenue and how quickly does it intend to recapture the \$17.5 million purchase price? Supervisor Shoemaker replied the \$3.8 million will go to cover the outstanding bonds.

The net of \$17.5 million after all the various expenses are paid will be \$16.2 million. Mr. Lucca answered Aqua would expect a 7% rate of return on the rate base if approved by the PUC and the duration of recovery would be around 40 years.

Jerry Childers, 8 Colonial Way, commented historically the PUC has almost always granted rate increases.

Linda Koch, 12 Frazer Avenue, commented she has lived here for 58 years and would like the Township to move forward as one community.

Peter Miller, 737 Monument Road, has lived in Willistown for several years and also owns a business in Willistown. If the Township is faced with a lawsuit for breaking the asset purchase agreement, he hopes the cost to defend the suit and any settlement comes out of the Sewer Fund and not the General Fund.

Karen Flagg, 1202 Weatherstone Drive, thanked the Board for serving and asked for clarification on the Act 537 Plan. Supervisor Shoemaker explained the Act 537 Plan identifies the existing system. For areas of the Township not on the system, the Township must survey the area as needed or required by the State to determine if the sewer is needed in that area. Solicitor Christman further noted that if a property is along an existing sewer line and currently on septic, they would have the option to connect to the sewer if their on-lot system is failing.

Krystene Rivers, 36 Bryan Avenue, asked for a copy of the Asset Purchase Agreement and other public documents relating to the sale. She also asked about the Stormwater Fund and if it will be impacted if the sale goes through. Supervisor Shoemaker replied the Stormwater Fund is for capital dollars set aside to address stormwater issues in the Township and will not be impacted by the sale.

Ted Leisenring, 2575 Whitehorse Road, thanked the Board for their service and said he believes the Board negotiated in good faith when approaching the sewer sale process.

Missy Schwartz, 17 Laurel Circle, commented she would like the Township residents and the Board to work together peacefully to find a solution regarding the sale.

Maria Yonchek, 18 Lloyd Avenue, asked Supervisor Lange what he proposes to do with the proceeds. Supervisor Lange replied he would like to see the sewer sale proceeds go into the Open Space Fund and be used to purchase land for open space in Willistown.

David Rawson, 2690 Wayland Road, is a former Supervisor and asked what percentage of residents connected to the sewer system. Supervisor Shoemaker replied it's approximately 50% on sewer and 50% with an on-lot system. He then commented that on-lot system residents pay to maintain and pump their systems and do not ask for assistance from the Township.

John O'Keefe, 4 Harvey Lane, commented some residents will be impacted by a price increase and they need to be heard. He also asked how PFM Financial is being compensated.

Caroline Bradley, 5 Arlington Road, commented the projected 86% rate increase will negatively impact a lot of residents on sewer.

Vincent McAneney, 25 Chetwynd Road, commented there was pushback about the sale in late 2020 and now that Aqua has bought sewer systems in other areas and increased rates, there is even more pushback from Willistown residents. He thinks the Township public works employees have done a great job running the sewer and he would like to stop the sale to Aqua.

Dee Miller, 737 Monument Road, commented the cost of everything is higher and sewer rates are not going to stay the same under Township ownership.

Michelle Atchison, 6 Devon Circle, commented she hopes the Board continues to listen to the opposing residents as their numbers have grown since the sewer sale process started in 2020.

Jerry Childers, 8 Colonial Way, commented the residents were only notified of the potential sale in October 2020, and then the asset purchase agreement was signed in January 2021. The Open Space Fund referendum was explained at public meetings and well-publicized for months before it was on the ballot.

Jeffrey Atchison, 6 Devon Circle, commented he believes the Board did what they thought was best for the Township in 2020. In light of recent acquisitions by Aqua resulting in increases in other municipalities, he believes the Board should find a way to exit the asset purchase agreement.

Julie Frissora, 34 Chetwynd Road, commented while all rates go up, Aqua has committed to a \$17.5 million purchase price which will cause of rate increase of 86% to allow Aqua to recoup the purchase price. She believes Willistown can operate the system for \$2 million a year, and while the system requires repairs it will not result in a rate increase of 86% for residents.

Cindy Cerevic, 735 Hillview Road, commented while she does not always agree with the Board's decision, she believes the Board puts time and effort into finding solutions that benefit all residents. She encouraged all residents to go on the Township website and sign up for notifications from the Township.

A resident commented he is for for-profit companies but not when it comes to public utilities.

John Reynolds, 12 Frazer Ave, asked if the sewer lines were televised and what percentage was the I&I (infiltration and inflow). Bill Malin, of Carroll Engineering, replied the system was last televised in 2014. Supervisor Shoemaker replied he is not sure of the percentage, but the system has a substantial I&I problem. Many sections of the system are constructed of terracotta pipes from the 1970s, and the system flows under waterways and streams allowing an enormous amount of water to infiltrate. No

matter who owns the system, addressing the I&I issue will be an expensive endeavor since it involves digging up the sewer lines and repairing or replacing them.

Wayne Lilly, 46 Jacqueline Drive, commented on the damage to his home caused by Hurricane Ida which he believes was caused by the retention basin put in by the Township. He opposes the sewer sale.

Steve Oleck, 42 Sunset Drive, commented he thinks the Board has done what they think is best for the Township. While he may not agree with the Board's decision, he trusts them. He doesn't trust Aqua.

Cindy Cerevic, 735 Hillview Road, suggested the Township look into state and federal funding for the replacement of the aging terracotta lines. She also recommended Act 120 of 2018, which is an act that private residents can apply to receive funding for the replacement of lateral sewer lines. Supervisor Shoemaker replied that, while the sale is under the contract but not yet closed, the Board will do any necessary repairs and maintenance to the Township-owned system that are needed, but the Township does not plan to make major enhancements.

Supervisor Shoemaker announced they will continue the sewer sale discussion at a later date as soon as the General Wayne auditorium room is reserved again. The date and time will be on the website and social media and communicated with Mr. Yordan, Ms. Frissora, Mr. Batchelor, and Ms. Rosso.

A resident commented he does not have internet access and requested the Board start mailing notices to residents.

Next Meeting

The next meeting of the Board of Supervisors is scheduled for Monday, September 26, 2022, at 7:00 PM at the Township Building and via Zoom.

Adjournment

Seeing no further business, the meeting adjourned.

Sincerely,



Shanna P. Lodge, Secretary