

Township of Marshall
Minutes of a Special Township Board Meeting
Held on November 29, 2023 @ 2:00 p.m.

A special meeting of the Marshall Township Board of Trustees was conducted on November 29, 2023, commencing at 2:00 p.m., at the Marshall Township Hall.

Call to Order:

Supervisor Bosserd called the meeting to order at 2:00 p.m. and welcomed those in attendance. The Clerk, per Board rules, has designated Township Attorney to take and produce minutes for the meeting due to absence of the Clerk.

Present were:

- David Bosserd - Supervisor
- Robert Lyng - Trustee
- David VanArman - Treasurer
- Dan Walsh - Trustee

Also, present was Township Zoning Administrator, Paul Anderson; Township Attorney, Seth Koches; and, approximately 14 interested members of the public.

Absent was:

- Jeff Albaugh - Clerk

Approval of the Agenda

The Board members received their agenda packets prior to the Board meeting and no additions or revisions were made to it.

Public Comment

Glenn Kowalske discussed his FOIA appeal and requested access to all documents referenced in his FOIA request. Kowalske said that FOIA is a transparency law and asked that the Township be transparent with disclosing records requested through FOIA.

Jerald Bosserd discussed his FOIA request and FOIA appeal. Bosserd discussed the review process of the solar project and felt that it was disrespectful. Bosserd said that the public did not want the solar project. Bosserd objected to the solar project and the Blue Oval project.

Wayne Wright discussed the FOIA and its goal of transparency among local units of government. Wright discussed FOIA fees and asked whether the fees are used as a way to create barriers to access and review public records. Wright said that the purpose of the FOIA was transparency.

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2 Mick Woods discussed the FOIA appeals on the meeting agenda and said that the records should
3 be readily available for an active, on-going project. Woods said that these records should be
4 readily available for review and cited the Township’s FOIA policy that authorized the Board to
5 waive FOIA fees.

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7 Barry Adams supported Woods’ public comment and discussed the FOIA. Woods cited statutes
8 making violations of the FOIA criminal offenses.

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10

11 **Consideration of FOIA Appeal of Glenn Kowalske**

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13 The next item on the agenda was consideration of the FOIA appeal submitted by Glenn Kowalske.
14 Jeff Albaugh, the Township’s FOIA coordinator previously designated Paul Anderson to process
15 Kowalske’s initial FOIA request, as authorized the FOIA statute. Anderson provided a staff report,
16 which was contained in the Board members’ special meeting packets, which is part of the record
17 to be considered for Kowalske’s appeal regarding the cost estimate and it is incorporated into
18 these meeting minutes by reference. Anderson summarized his report and summarized the initial
19 FOIA requests submitted by Kowalske. Anderson said that Kowalske submitted a FOIA request to
20 the Township via email on 10/26/23, which states in part,

21
22 “I would like to review all of the site plans for this solar project, as well as all
23 communications related to the approval, correction, deviation from, the site plan.
24 Also, I am looking for the communications to NextEra/Cereal City on all violations
25 of zoning ordinances or site plan deviations since the site approval. This appears
26 to be no less than 5, but could be more.”

27 Kowalske’s 10/26/23 email is contained in Anderson’s staff report and Board packet, and is part
28 of this record. Anderson said that his initial research into obtaining all “communications related
29 to the approval, correction, deviation from, the site plan” regarding the solar project found he
30 had 715 emails that he sent/received. Anderson said that wasn’t aware of how many other emails
31 may exist between Planning Commissioners, the Township Attorney, the Township Engineer, or
32 any other communications that are public records subject to disclosure. Anderson said that he
33 needs the Township’s IT provider to search the Township archived records to pull every electronic
34 correspondence. It was estimated that the IT company needs approximately 8-10 hours of work
35 to search the servers for these records. Anderson said that thereafter, the Township Attorney’s
36 office needs to review the records for potential redactions that apply under the FOIA. Anderson
37 said that he will provide the requested site plans to Kowalske via thumb drive to Kowalske.
38 Anderson said he would include the landscaping plan.

39
40 Anderson said that Kowalske appealed the Township’s cost estimate of \$995.60. Koches said that
41 the cost estimate is appropriate when there are additional costs associated with processing a
42 FOIA request, which includes professional service contractors to locate the items. Anderson

1 explained how the cost estimate was calculated in the cost estimate worksheet and Koches
2 confirmed those costs as well.

3
4 Kowalske asked questions regarding the decommissioning plan and bond. Attorney Koches
5 explained how the decommissioning bond was calculated and that the bond must reflect the
6 actual cost of decommissioning, not salvage value. Koches explained that the Township's
7 Ordinance requires the bond to be 125% of the actual cost of decommissioning and that the solar
8 company may have over bonded the decommissioning value. Koches said that the
9 decommissioning cost is reviewed every 5 years and will be adjusted to reflect inflation costs
10 associated with decommissioning the solar project. Anderson confirmed that a company called
11 Atwell prepared the decommissioning plan/costs, which was provided to the Township Engineer
12 to confirm. Anderson said the purpose of FOIA is to provide documents but noted that the
13 Township is not required to interpret the records that are produced.

14
15 Kowalske and Koches discussed a resolution to this matter. Koches confirmed that the requested
16 records are all public records, subject to any applicable exemptions specified by the FOIA, such
17 as attorney-client privilege. Koches explained that the request asked for voluminous records,
18 which is why the cost estimate was approximately \$995.60. Koches confirmed that the Township
19 Board may waive these fees, as allowed for by the Township's FOIA policy. Kowalske said that he
20 didn't want the Township to absorb any unnecessary costs and agreed to withdraw this FOIA
21 request/appeal, and new FOIA request if the following records were produced:

- 22
23 1. All formal complaints and previous complaints regarding the Next Era/Cereal City Solar
24 project, including all emails and site plans;
25 2. All records related to the notice of suspension of the special land use permit letter that
26 was provided to Cereal City;
27 3. All records regarding any court proceedings connected to the NextEra/Cereal City Solar
28 Project; and,
29 4. Site plans and updated site plans that depict how Cereal City fixed the flooding issue(s).

30
31 Kowalske and the Township Board discussed a resolution where Kowalske would meet with
32 Anderson at the Township Hall on Tuesday, December 5, 2023, at 12:00, so Anderson could
33 provide him the site plans on a thumb drive. The Township Board and Kowalske agreed that the
34 rest of the records would be provided to Kowalske on December 15, 2023. Kowalske agreed to
35 withdraw his FOIA appeal and new FOIA request if the Township agreed to provide these records
36 in the timelines discussed.

37
38 Upon motion by Lyng, supported by VanArman, the Township Board agreed to provide Kowalske
39 the following records as Kowalske agreed to withdraw the FOIA appeal and new FOIA request, as
40 follows:

- 41
42 1. All formal complaints and previous complaints regarding the Next Era/Cereal City Solar
43 project, including all emails and site plans;

- 1 2. All records related to the notice of suspension of the special land use permit letter that
- 2 was provided to Cereal City;
- 3 3. All records regarding any court proceedings connected to the NextEra/Cereal City Solar
- 4 Project; and,
- 5 4. Site plans and updated site plans that depict how Cereal City fixed the flooding issue(s).

6
7 Kowalske agreed to meet Anderson at the Township Hall on Tuesday, December 5, 2023, at
8 12:00, so Anderson could provide him the site plans on a thumb drive. The remaining requested
9 records will be provided to Kowalske on December 15, 2023.

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11 The motion passed 4-0 by roll call vote.

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13 **The next item on the agenda was consideration of Jerald Bosserd’s FOIA Appeal**

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15 Jeff Albaugh, the Township’s FOIA coordinator previously designated Paul Anderson to Bosserd’s
16 FOIA request, as authorized the FOIA statute. Anderson provided a staff report, which was
17 contained in the Board members’ special meeting packets, part of the record to be considered
18 for Bosserd’s appeal and is incorporated into these meeting minutes by reference. Anderson
19 summarized his report and summarized the FOIA requests submitted by J. Bosserd.

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21 Anderson said that all records requested by J. Bosserd were timely provided. Koches said that
22 there were additional records that were generated after J. Bosserd’s FOIA request was submitted
23 to the Township and Koches brought those records to turn over to J. Bosserd. Koches explained
24 that the Township has a continued duty to provide records as they come available or are located,
25 and indicated that these new records will be turned over to J. Bosserd at the conclusion of the
26 appeal hearing.

27
28 Bosserd addressed the Board and said that the records weren’t produced and that more records
29 existed. Bosserd questioned many aspects of the solar project and mentioned a file that may exist
30 containing additional records.

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32 Upon motion of Walsh, supported by D. Bosserd, and 4-0 vote, the Township Board voted to deny
33 J. Bosserd’s appeal because all Township records requested by J. Bosserd were provided to him
34 (J. Bosserd) in compliance with the FOIA statute.

35
36 Koches provided J. Bosserd the additional records that became available under the Township’s
37 continued duty to disclose records. Koches recommended that as a courtesy, the Township
38 should provide all records produced to Kowalske also be turned over to J. Bosserd.

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40 **Public Comment**

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42 Kowalske discussed the Planning Commission makeup and discussed the special land use
43 revocation process for David Brown’s Auto Collision. Kowalske discussed the Planning
44 Commission’s processing special land use applications and simplifying the process.

1 **Board Member Comments**

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3 Lyng provided an update regarding relocation of and new building for fire station 1.

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6 **Adjournment**

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8 The meeting was adjourned at 4:20 p.m.

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s/ T. Seth Koches

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Seth Koches, Township Attorney

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