

Livingston, New Jersey
March 13, 2019
Meeting #5

The Regular meeting of the Township Council of the Township of Livingston was held on the above date at 7:35 p.m. at Town Hall, 357 South Livingston Avenue, Livingston, New Jersey. The Mayor stated that all the requirements of the "Open Public Meetings Act" had been met. "Annual Notice" was faxed to the West Essex Tribune and the Star Ledger on January 2, 2019. "48-hr. Notice" was faxed to these same publications on February 7, 2019.

Present: Mayor Anthony; Councilmembers Fernandez, Klein, Meinhardt, Vieira; Township Manager Lewis; Deputy Township Manager Jones; Township Attorney Weiner; Township Clerk Turtletaub

Silent Meditation and Pledge of Allegiance

Mayor Anthony asked everyone to stand for a Moment of Silence, followed by the Pledge of Allegiance.

Presentations

- a) Intergenerational Prom Committee—2018 Excellence in Programming Award from NJRPA- Mayor Anthony read and presented a Citation recognizing the Committee for its work and receipt of the Programming Award from NJRPA. Senior Youth and Leisure Services Senior Adult and Community Events Supervisor Liliana Branquinho and Township resident and original member Bunnie Ratner addressed spoke about the program and its history.
- b) Swearings-In: Lt. Jack Hickey, Sgt. John Maggiuli, Sgt. Steve McSpirit, Officer Matthew DeBiasse, Officer Todd Compesi, Officer Levecy DeOliveira were each sworn in in the presence of their families by Township Clerk Turtletaub. Police Chief Marshuetz introduced each and gave a brief presentation of their background and achievements.

Essex County Update/Questions

Eileen Fishman, Essex County Liaison to Livingston Liaison to Essex County Executive Joseph Di Vincenzo, advised of upcoming County events, including the Legacy Writing Contest and the April 22 Earth Day Celebration at the Environmental Center.

Public Comments on Agenda Items

Fred Friedman, 1304 Pointe Gate Drive, discussed the Energy Aggregation program under consideration on the evening's Regular Agenda.

Consent Agenda R-19-90 Approving Consent Agenda (Includes All Items Marked (*))

WHEREAS, the Township Council of the Township of Livingston has determined that certain items on its agenda which have the unanimous approval of all Councilmembers and do not require comment shall be termed the "Consent Agenda"; and

WHEREAS, the Township Council has determined that to increase its efficiency, the Consent Agenda shall be adopted with one resolution;

NOW, THEREFORE, BE IT RESOLVED by the Township Council that the items on the Regular Agenda for March 13, 2019, attached hereto, which are preceded by an "*" are the Consent Agenda and are hereby accepted, approved and/or adopted.

On motion duly made and seconded, and on roll call vote, all members present voted YES.

*Approval of Minutes

- a) February 25, 2019

*Approval of Licenses

Final Hearing Ordinances

a) Ord.4-2019 Amending Chapter 170 Land Use Article VII Fees

ORDINANCE OF THE TOWNSHIP OF LIVINGSTON AMENDING CHAPTER 170 LAND USE ARTICLE VII FEES was read by title. There being no speakers, on motion duly made and seconded, and on voice vote, the hearing was closed. On motion duly made and seconded, and on roll call vote, all members present voted YES.

b) Ord. 5-2019 Amending Chapter 170 Creating Inclusionary Assisted Living Conditional Use on Block 6300 Lot 30

ORDINANCE OF THE TOWNSHIP OF LIVINGSTON AMENDING CHAPTER 170 OF THE CODE OF THE TOWNSHIP OF LIVINGSTON TO ADD NEW SUBSECTION 170-88.I.(2) CREATING INCLUSIONARY ASSISTED LIVING CONDITIONAL USE ON BLOCK 6300 LOT 30 was read by title.

Don Legow, 26 Camelot, asserted that the Ordinance created "spot zoning" and that the "real purpose" of the Ordinance is to obtain 14 more Affordable Housing Units and that the effect was to create "substantial density in the R-1 zone". Mr. Legow stated that this would be "bad precedent for what might come next", and addressed specifically traffic coming out of Sunrise.

Larry Silverstein, 4 Goodhart Drive, stated that this same issue had been addressed three years ago, specifically traffic concerns and the process of giving notices. He stressed the need to communicate with residents.

Sara Ann Sanders, 2 Goodhart, stated that she objected to the density, asserted that the developer was being given "special treatment" and that there was "no great need". She addressed concerns over the ingress/egress from this property and safety concerns. She stated that resident Frank Bisk had sent a letter in opposition. Mayor Anthony stated that the Council had received his letter as well as one sent by resident Max Silbermann.

Brad Gehring, 14 Goodhart Drive, spoke in opposition to the Ordinance. Township Manager Lewis responded that he had met with residents Silbermann and Legow regarding their concerns over the cut-through, and stated that meetings were being held with the County to address traffic issues. Mr. Lewis stressed that the Township is committed to trying to make this work and to address the residents' concerns.

Robert Sanders, 2 Goodhart Drive, asked why the developer has not applied to the Zoning Board, and that “the Planning Board’s hands were tied.”

Don Legow asserted that he whole Ordinance had been drafted for one person, that this was “classic spot zoning,” and that the development is “better placed elsewhere than running it through an R-1 zone.”

Kathy Lu, 287 S Orange Ave., said she shared her neighbors’ concerns, and spoke in opposition to the Ordinance, claiming that there are “no better options now than three years ago.”

Larry Silverstein, 4 Goodhart Drive, asked how much the Ordinance affects the number of affordable housing units. Township Manager Lewis pointed out that if not via this Ordinance, that the Town would have to come up with 14 units somewhere else.

Mayor Anthony announced that the hearing would be continued to the March 25 Regular meeting.

Proposed Ordinances

a) Ord. 6-2019 Amending Ch. 170 Amending The Definition of Site Plan

ORDINANCE OF THE TOWNSHIP OF LIVINGSTON AMENDING AND SUPPLEMENTING CHAPTER 170 OF THE CODE OF THE TOWNSHIP OF LIVINGSTON BY FURTHER AMENDING THE DEFINITION OF “MINOR SITE PLAN” was read by title and introduced on first reading. On motion duly made and seconded, and on roll call vote, all members present voted YES. It was ordered advertised according to law, to come up for public hearing second reading and final consideration at a Regular Meeting of the Township Council on Monday, March 25, 2019.

b) Ord.7-2019 Amending Zoning Map to Eliminate Split Lot Zoning

ORDINANCE OF THE TOWNSHIP OF LIVINGSTON ADOPTING AMENDED ZONING MAP TO ELIMINATE SPLIT LOT ZONING ON BLOCK 6100 LOTS 30.01, 30.02 and 30.03 was read by title and introduced on first reading. On motion duly made and seconded, and on roll call vote, all members present voted YES. It was ordered advertised according to law, to come up for public hearing second reading and final consideration at a Regular Meeting of the Township Council on Monday, April 8, 2019.

c) Ord. 8-2019 Repealing Ordinance #10-2018 to Change A Portion of Microlab Road to Miracle Way

The Ordinance was not introduced.

Resolutions

a) R-19-91 Approving 2019 Budget—Livingston Community Partnership Corporation (BID)

BE IT RESOLVED that the Township Council of the Township of Livingston, Essex County, NJ that the attached annual budget tin the amount of \$372,060 for the year 2019 submitted by the Livingston Community Partnership Corporation is approved.

b) R-19-92c Awarding a Contract To Third Party Power Supplier

WHEREAS, the Government Energy Aggregation Act of 2003 (P.L. 2003, c.24; N.J.S.A. 48:3-93.1 et seq.) (“Act”) and rules promulgated by the New Jersey Board of Public Utilities (N.J.A.C. 14:4-6.1 et seq.) (“Rules”) govern the establishment and implementation of a government energy aggregation program, which is a government-operated purchasing cooperative through which multiple energy consumers join together for the purchase of electric utility services by a government aggregator; and

WHEREAS, by Ordinance No. 19-2017 adopted on September 18, 2017, the Township of Livingston (“Township”) created a Government Energy Aggregation Program in the Township of Livingston, New Jersey, known as the Livingston Community Energy Aggregation (“LCEA”); and

WHEREAS, the Township is the Lead Agency of the LCEA; and

WHEREAS, the residents of Livingston Township are included in the LCEA on an "opt-out" basis, as set forth in the Rules; and

WHEREAS, on February 14, 2019, the Township, in its capacity as Lead Agency of the LCEA, publicly noticed and issued a Request for Proposals (RFP) for the Provision of Electric Generation Service and Government Energy Aggregation Services for the LCEA by New Jersey Board of Public Utilities (NJBPU)-licensed and qualified electric power suppliers in New Jersey; and

WHEREAS, the RFP provided for a two-stage process that included: Stage I for the submission of supplier questions and comments and the submission of qualification documents by interested, NJBPU-licensed electric power suppliers; and Stage 2 for the submission of price proposals; and

WHEREAS, the RFP provides for the submission of separate pricing for electric generation service for two pricing groups, Participating Residential Accounts in the Public Service Electric and Gas (PSE&G) service territory and Participating Residential Accounts in the Jersey Central Power and Light (JCP&L) service territory, for several potential contract durations (terms), and for two different contract language options: Option A) using the form of Master Performance Agreement attached to the RFP; and Option B) using the form of MPA attached to the RFP except that subsection 3.2 (a) (iii) (C) is removed, and a new subsection 2.1.6 as set forth in the RFP is added to the MPA; and the RFP provides for the award of a contract, including start date, contract duration and contract language option, at the discretion of the Township of Livingston and in accordance with the evaluation criteria set forth in the RFP; and

WHEREAS, the RFP provides for an Enhanced Renewable Energy Product which requires the selected supplier(s), if any, to include in its power supply portfolio for LCEA-participating Township residents an enhanced renewable energy component that is 20% greater than the amount of

renewable energy content mandated under the State's Renewable Portfolio Standard or 'RPS,' such product otherwise referred to as the 'RPS + 20%' product; and

WHEREAS, during Stage 1 non-binding Notices of Intent and other qualification documents were received from three (3) NJBPU-licensed electric power suppliers; and

WHEREAS, a number of supplier questions and comments were received and, as a result, on March 4, 2019 a document entitled "Responses to Supplier Questions and Addendum No.1," which supplemented and amended the RFP, was issued and distributed to all suppliers that had submitted a Notice of Intent to Propose and/or requested a copy of the RFP; and

WHEREAS, via the Addendum to the RFP issued on March 4, 2019 the RFP was modified to solicit pricing for a second enhanced renewable energy product option with a total renewable energy content of 100%, otherwise referred to as the '100% renewable' product; and

WHEREAS, Stage 2 price proposals and accompanying Transmittal Letters were submitted by two (2) NJBPU-licensed electric power suppliers by the 11:00 a.m. March 13 deadline set forth in the RFP (as modified via Addendum No.1); and

WHEREAS, the Township, in consultation with its energy agent, has conducted an in-depth evaluation of qualifications and analysis of price proposals, in accordance with the evaluation criteria set forth in the RFP and Addendum No.1; and

WHEREAS, pursuant to the RFP, the Township reserved the right to make an award to a supplier, or to make no award at all; and

WHEREAS, pursuant to the Rules, the Township shall base its award of a contract to a NJBPU-licensed electric power supplier for the Provision of Electric Generation Service and Government Energy Aggregation Services for the LCEA upon the most advantageous proposal, price and other factors considered; and

WHEREAS, as a result of the evaluation of qualifications and proposals and analysis of price proposals submitted, and in accordance with the provisions of the RFP, the Township has determined that the proposal submitted by Direct Energy Services, LLC. for the PSE&G pricing group, for a 16-month term for contract language Option A and for the '100% renewable' power supply content option: 1) is most advantageous and provides the most overall benefit, price and other factors considered, for LCEA participants; 2) will provide for contract power supply prices that are lower than the applicable PSE&G Basic Generation Service tariff prices for power supply, and make it feasible to award a contract, for the Residential Account pricing group; 3) provides the opportunity for residents currently receiving budget billing from PSE&G to continue to receive that service from the third party supplier; and 4) includes an enhanced renewable energy content as compared to the renewable energy content of power supply provided via PSE&G default service supply.

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Livingston, County of Essex, New Jersey, as follows:

1. The Township hereby finds that Direct Energy Services, LLC. 's proposal for the provision of electric generation service to the Participating Residential Accounts in the PSE&G Pricing Group of the LCEA and the provision of government energy aggregation services in connection therewith is most advantageous to the Township, price and other factors considered.

2. The Township hereby awards a contract for the provision of electric generation service to the Participating Residential Accounts in the PSE&G Pricing Group and the provision of government energy aggregation services in connection therewith to Direct Energy Services, LLC. in accordance with the terms and conditions of the RFP (including the applicable form of Master Performance Agreement included therein), as amended pursuant to Addendum No. 1 to the RFP.

3. The government energy aggregation services to be provided by Direct Energy Services, LLC. , including implementation of the opt-out process for residential customers as set forth in the RFP and applicable NJBPU rules, shall commence immediately upon execution of the Master Performance Agreement, and that electric generation service to be provided by Direct Energy Services, LLC. to the LCEA-participating customers in the PSE&G service territory shall commence with the June 2019 meter read date for each electric account served, and shall continue for a 16-month term.

4. The following start date, contract term, contract price, contract language option and enhanced renewable energy product option are awarded for electric generation service to participating LCEA residents in the PSE&G service territory to be provided by Direct Energy Services, LLC. :

<u>Pricing Group</u>	<u>Contract Start</u>	<u>Term</u>	<u>Contract Price</u>
PSE&G Residential Accounts	June 2019	16 Months	\$0.11320/kwh

<u>Contract Language Option</u>	<u>Enhanced Renewable Energy Product Option</u>
Option A	Option 2 100% Renewable

5. The Mayor and Clerk are hereby authorized and directed to execute on the Township's behalf the Master Performance Agreement with Direct Energy Services, LLC. .

6. The Mayor is hereby authorized and directed to issue on the Township's behalf an Award Letter consistent herewith to Direct Energy Services, LLC. .

c) R-19-93a Awarding a Contract to a Third Party Power Supplier to Provide Electric Generation Service

WHEREAS, the Government Energy Aggregation Act of 2003 (P.L. 2003, c.24; N.J.S.A. 48:3-93.1 et seq.) ("Act") and rules promulgated by the New Jersey Board of Public Utilities (N.J.A.C. 14:4-6.1 et seq.) ("Rules") govern the establishment and implementation of a government energy aggregation program, which is a government-operated purchasing cooperative through which multiple energy consumers join together for the purchase of electric utility services by a government aggregator; and

WHEREAS, by Ordinance No. 19-2017 adopted on September 18, 2017, the Township of Livingston ("Township") created a Government Energy Aggregation Program in the Township of Livingston, New Jersey, known as the Livingston Community Energy Aggregation ("LCEA"); and

WHEREAS, the Township is the Lead Agency of the LCEA; and

WHEREAS, the residents of Livingston Township are included in the LCEA on an "opt-out" basis, as set forth in the Rules; and

WHEREAS, on February 14, 2019, the Township, in its capacity as Lead Agency of the LCEA, publicly noticed and issued a Request for Proposals (RFP) for the Provision of Electric Generation Service and Government Energy Aggregation Services for the LCEA by New Jersey Board of Public Utilities (NJBPU)-licensed and qualified electric power suppliers in New Jersey; and

WHEREAS, the RFP provided for a two-stage process that included: Stage I for the submission of supplier questions and comments and the submission of qualification documents by interested, NJBPU-licensed electric power suppliers; and Stage 2 for the submission of price proposals; and

WHEREAS, the RFP provides for the submission of separate pricing for electric generation service for two pricing groups, Participating Residential Accounts in the Public Service Electric and Gas (PSE&G) service territory and Participating Residential Accounts in the Jersey Central Power and Light (JCP&L) service territory, for several potential contract durations (terms), and for two different contract language options: Option A) using the form of Master Performance Agreement attached to the RFP; and Option B) using the form of MPA attached to the RFP except that subsection 3.2 (a) (iii) (C) is removed, and a new subsection 2.1.6 as set forth in the RFP is added to the MPA; and the RFP provides for the award of a contract, including start date, contract duration and contract language option, at the discretion of the Township of Livingston and in accordance with the evaluation criteria set forth in the RFP; and

WHEREAS, the RFP provides for an Enhanced Renewable Energy Product which requires the selected supplier(s), if any, to include in its power supply portfolio for LCEA-participating Township residents an enhanced renewable energy component that is 20% greater than the amount of renewable energy content mandated under the State's Renewable Portfolio Standard or 'RPS,' such product otherwise referred to as the 'RPS + 20%' product; and

WHEREAS, during Stage 1 non-binding Notices of Intent and other qualification documents were received from three (3) NJBPU-licensed electric power suppliers; and

WHEREAS, a number of supplier questions and comments were received and, as a result, on March 4, 2019 a document entitled "Responses to Supplier Questions and Addendum No.1," which supplemented and amended the RFP, was issued and distributed to all suppliers that had submitted a Notice of Intent to Propose and/or requested a copy of the RFP; and

WHEREAS, via the Addendum to the RFP issued on March 4, 2019 the RFP was modified to solicit pricing for a second enhanced renewable energy product option with a total renewable energy content of 100%, otherwise referred to as the '100% renewable' product; and

WHEREAS, Stage 2 price proposals and accompanying Transmittal Letters were submitted by three (3) NJBPU-licensed electric power suppliers by the 11:00 a.m. March 13 deadline set forth in the RFP (as modified via Addendum No.1); and

WHEREAS, the Township, in consultation with its energy agent, has conducted an in-depth evaluation of qualifications and analysis of price proposals, in accordance with the evaluation criteria set forth in the RFP and Addendum No.1; and

WHEREAS, pursuant to the RFP, the Township reserved the right to make an award to a supplier, or to make no award at all; and

WHEREAS, pursuant to the Rules, the Township shall base its award of a contract to a NJBPU-licensed electric power supplier for the Provision of Electric Generation Service and Government Energy Aggregation Services for the LCEA upon the most advantageous proposal, price and other factors considered; and

WHEREAS, as a result of the evaluation of qualifications and proposals and analysis of price proposals submitted, and in accordance with the provisions of the RFP, the Township has determined that the proposal submitted by [Supplier Name] for the JCP&L pricing group, for a xx-month term for contract language Option A/B and for the 'RPS + 20%/100% renewable' power supply content option: 1) is most advantageous and provides the most overall benefit, price and other factors considered, for LCEA participants; 2) will provide for contract power supply prices that are lower than the applicable JCP&L Basic Generation Service tariff prices for power supply, and make it feasible to award a contract, for the Residential Account pricing group; 3) provides the opportunity for residents currently receiving budget billing from JCP&L to continue to receive that service from the third party supplier; and 4) includes an enhanced renewable energy content as compared to the renewable energy content of power supply provided via JCP&L default service supply.

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Livingston, County of Essex, New Jersey, as follows:

1. The Township hereby finds that [Supplier Name]'s proposal for the provision of electric generation service to the Participating Residential Accounts in the JCP&L Pricing Group of the LCEA and the provision of government energy aggregation services in connection therewith is most advantageous to the Township, price and other factors considered.

2. The Township hereby awards a contract for the provision of electric generation service to the Participating Residential Accounts in the JCP&L Pricing Group and the provision of government energy aggregation services in connection therewith to [Supplier Name] in accordance with the terms and conditions of the RFP (including the applicable form of Master Performance Agreement included therein), as amended pursuant to Addendum No. 1 to the RFP.

3. The government energy aggregation services to be provided by [Supplier Name], including implementation of the opt-out process for residential customers as set forth in the RFP and applicable NJBPU rules, shall commence immediately upon execution of the Master Performance Agreement, and that electric generation service to be provided by [Supplier Name] to the LCEA-participating customers in the JCP&L service territory shall commence with the June 2019 meter read date for each electric account served, and shall continue for a xx-month term.

4. The following start date, contract term, contract price, contract language option and enhanced renewable energy product option are awarded for electric generation service to participating LCEA residents in the JCP&L service territory to be provided by [Supplier Name]:

<u>Pricing Group</u>	<u>Contract Start</u>	<u>Term</u>	<u>Contract Price</u>
JCP&L Residential Accounts	June 2019	xx Months	\$0.0xxxx/kwh
<u>Contract Language Option</u>	<u>Enhanced Renewable Energy Product Option</u>		
Option A/B	Option 1 RPS + 20% / Option 2 100% Renewable		

5. The Mayor and Clerk are hereby authorized and directed to execute on the Township's behalf the Master Performance Agreement with [Supplier Name].

6. The Mayor is hereby authorized and directed to issue on the Township's behalf an Award Letter consistent herewith to [Supplier Name].

d) R-19-94 Rejecting Price Proposals Received From third Party Power Suppliers in Connection with the LCEA was withdrawn.

e) R-19-95 Authoriizng Approval of Change Order No. 1 with Mott Macdonald LLC

WHEREAS, the Township Council of the Township of Livingston entered into a contract ("Contract C1700001") with Mott MacDonald for professional engineering services for the Passaic Avenue Sewage Pump Station Upgrades; and

WHEREAS, the initial Contract was not to exceed One Hundred Sixty-Six Thousand Four Hundred Dollars (\$166,400.00); and

WHEREAS, due to field conditions requiring additional engineering services, a Change Order has been requested; and

WHEREAS, the total change order increases the contract amount by 13.7% or \$22,752.89 making the new contract sum \$189,152.89; and

WHEREAS, this Change Order has been recommended by the Superintendent of Sewer Operations, Township Engineer, and the Township Manager; and

WHEREAS, the Chief Financial Officer has certified that funds are available in account C-09-55-017-001-004.

NOW, THEREFORE, BE IT RESOLVED, the Township Council of the Township of Livingston, Essex County, approves the execution and payment of Change Order Number One to the Contract with Mott MacDonald; that this resolution is without prejudice to any rights of the Township of Livingston, that the Township has, had, or may have to charge back or to seek cost of said change orders from third-party and the Township hereby reserves all of its rights hereto.

BE IT FURTHER RESOLVED that a copy of this resolution shall be published in the West Essex Tribune as required by law.

On motion duly made and seconded, Resolutions R-19-79 through R-19-89, all members present voted YES.

Public Comment

Bob Hunter, 89 Elmwood Drive, congratulated Councilmember Vieira and presented him with an apple pie from Ritz Diner. He also mentioned that he is going to get the water tested at Littell's Pond.

Stacy Abenstein, 11 Browning Drive, stated there would be a Public Hearing tomorrow evening on ICE detainees, seeking civilian oversight of the facility.

Dennis Duffy, 38 Bennington Road, discussed the drainage of Madonna Field and noted that tick and mosquito season was coming. He asked "who is coordinating with Saint Philomena's?"; Township Manager Lewis stated he will look at Mr. Duffy's documents regarding what Mr. Duffy characterizes as a "pond" "confirmed by the DEP" at the location.

Adjournment

At 9:35 p.m., the Regular Meeting adjourned.

ALFRED M. ANTHONY, Mayor

GLENN R. TURTLETAUB, Township Clerk

