

Minutes of the Clay Township Board Meeting held on Monday, November 17, 2003 at 7:30 p.m. in the Clay Township Board Room, 4710 Pte. Tremble Road, Clay Township, Michigan 48001.

PRESENT: Supervisor Joseph H. McKoan IV, Treasurer Connie Turner, Trustee Pat Sharrow, Trustee Cindy Kirkpatrick, Trustee Beth Engel, Trustee Dr. Leonard Kasperowicz.

ABSENT: Clerk Michael Pellerito (excused).

**AMENDMENTS TO THE AGENDA:**

Moved by Sharrow, supported by Dr. Kasperowicz, **MOTION CARRIED**, to amend the agenda under Old Business: Item #4. Appointment of the Planning Commission and ZBA Board Representative. AYES: All. NAYS: None. ABSENT: Pellerito.

Moved by Dr. Kasperowicz, to amend the agenda to consider Planning Commission member Mark Getman's appointment.

**MOTION DIED LACK OF SUPPORT.**

Supervisor McKoan IV: All other appointments will be made at the next Board meeting.

**APPROVE THE NOVEMBER 3, 2003 MINUTES AND SYNOPSIS:**

Moved by Kirkpatrick, supported by Turner, **MOTION CARRIED**, to approve the November 3, 2003 Minutes and Synopsis as presented. AYES: All. NAYS: None. ABSENT: Pellerito.

**BILLS PAYABLE:**

Moved by Turner, supported by Engel, **MOTION CARRIED**, to approve the Bills Payable in the amount of \$40,223.56. AYES: All. NAYS: None. ABSENT: Pellerito.

Discussion: Trustee Dr. Kasperowicz questioned several of the bills.

**PETITIONS:** None.

**COMMUNICATIONS:**

10-28-03 Letter from the DEQ to inform the Township the grant applied for under the Coastal Management Program for the Colony Tower Restoration was not recommended for funding.

The Office of the St. Clair County Drain Commissioner in the Matter of **MACOMB DRAIN** Notice of Meeting of Board of Determination will be held Wednesday, 11-19-03 at 7:00 p.m. in the Clay Township Board Hall.

Township Offices will be closed for Thanksgiving on 11-27-03 and 11-28-03.

Mainland Fire Department will have applications available in the Township Hall for the Good Fellows; donations of money, toys, food and clothes will be accepted.

**OLD BUSINESS:**

Contract negotiations: Nothing to report.

**REVIEW OF ATTORNEY DALTON'S PROPOSAL AND COSTS:**

Supervisor Joseph McKoan IV introduced Mr. Dalton requesting him to explain the initial proposal Board and citizens questioned what has new attorney done for the Township, propose to do and why is legal cost high.

**CLAY TOWNSHIP BOARD MINUTES – NOVEMBER 17, 2003**

Page 2

Attorney Dan Dalton: In the past did liability defense for the Township through the Township's insurance carrier, 1-1/2 yrs. ago requested Twp. possibility to do zoning and land use matters, could see a tremendous development in Clay Township occurring, presented a proposal last Spring to do all your legal services, proposal discussed at the July meeting, proposal accepted, understanding of the contract terms existing work was to remain with Twp. Attorney, i.e. labor contract, arbitration, lawsuits, criminal prosecutions in the district court; understanding was our firm would do the land use, labor and general counsel work; proposal included a retainer and an hourly rate component, retainer included all adm. meetings, phone calls from dept. heads, correspondence, ordinance drafting, monthly status reports, attending meetings when requested to appear, legal opinions written, place into a binder for the Township, etc.

Explained retainer fee of \$2,500 a month has saved the Township legal costs, hourly rate would have been \$5,641.50 of additional costs based on last month's bill. Legal fees solely for zoning matters, not litigated any employment matters or labor negotiations.

Explained procedure followed regarding land use matters, Building Department contacts property owner explains the issue, still the matter is not brought into compliance, civil infraction tickets ignored, this is when it is placed in our hands for legal proceedings, explained in detail what is involved and how the cost for legal fees increases, largely some property owners do not want to comply with the Zoning Ordinances.

As of July 30<sup>th</sup>, confirmed with the Township our firm's appointment, our understanding was Attorney John McNamee would handle criminal prosecutions, labor arbitrations he had in place would remain, labor negotiations would remain with him and access to legal counsel would occur.

Our firm has litigated and successfully closed thirteen files, eight open files, meet with the Planning Commission, DDA and Dangerous Building Committee, prepared ten ordinances for the Township, 30 legal opinion letters, monthly status reports.

Beneficial to the Township by successfully insuring compliance and understanding of ordinance by property owners.

A great community and like to help it become better.

Questions by the Board:

Supervisor McKoan IV: Explain what retainer includes and what constitutes the extra cost.

Dan Dalton: Retainer includes the general counsel type issues, litigation costs relating to zoning is on an hourly rate basis.

Trustee Dr. Kasperowicz: Attorney fees are too high.

Supervisor McKoan IV: Is the Building & Zoning Department picking and choosing who is sued?

Attorney Dan Dalton: Explained in detail how matters get to a lawsuit, no selective enforcement at all.

Supervisor Joseph McKoan IV: Citizen in litigation saw there were two lawyers present, why.

Attorney Dan Dalton: Explained 1<sup>st</sup> year associate out of law school, learning experience for her going through the court system, Township was not charged.

Trustee Kirkpatrick: Questioned letters sent by the Township/legal firm, Bldg. Dept. mail sent Certified/Registered, how are you insuring these people are properly served these letters.

Attorney Dan Dalton: Building Department sends the final letter of complying with the zoning ordinance or the issue will be handed over to the Township Attorney.

**CLAY TOWNSHIP BOARD MINUTES – NOVEMBER 17, 2003**

Page 3

Trustee Sharrow: Hired only for zoning and building, not the Board's intention to replace Attorney John McNamee, confusion among Department Heads, retention fee if for only zoning and building should be reduced, if Township Board wishes to replace Mr. McNamee by majority vote then let us talk to him about that which has never occurred.

Supervisor Joseph McKoan IV: Evidently there was some misunderstanding per original motion, suggest the issue be at the 2<sup>nd</sup> meeting in Dec. to negotiate the contract; Zoning enforcement and land matters are getting done, all agree needed law enforcement, confusion is how much legal work do we want Mr. Dalton to do.

Trustee Sharrow: Invite Attorney McNamee to the next Twp. Board Meeting to discuss with the Board what he can do for the Township at an approximate cost and at the 2<sup>nd</sup> meeting in December will invite both firms and make a decision regarding the legal costs and the legal breakdown of responsibilities.

Motion by Sharrow, supported by Dr. Kasperowicz, to invite Attorney John McNamee to the next Township Board meeting to discuss what he has done for the Township over the last several years and postpone the Board's decision regarding legal services until the following meeting or after.

Discussion:

Trustee Kirkpatrick: Been content with Mr. Dalton's firm covering the Zoning issues.

Supervisor McKoan: Suggest a list to both firms stating i.e. zoning, planning, criminal prosecution, etc. and request an offer be made, both firms at the next meeting to explain the legal costs; keep it clear and concise and have an itemized proposal from both parties.

Trustee Sharrow: Attorney John McNamee has never once been informed about this issue, he should have an opportunity to make a presentation to the Board.

Supervisor McKoan IV: Agree should have his opportunity to speak, no decision should be made at that meeting.

VOTE ON THE MOTION: AYES: All. NAYS: None. ABSENT: Pellerito.

**MOTION CARRIED.**

Moved by Kirkpatrick, supported by Turner, **MOTION CARRIED**, a proposal letter sent out to firms of Attorney John McNamee and Attorney Daniel Dalton asking for a proposal on what they can do in all the legal areas and the cost it would incur. AYES: All. NAYS: None. ABSENT: Pellerito.

Attorney Daniel Dalton's presentation was finished.

Citizens probably have some questions.

Daniel Dalton suggestion: Request for a proposal, those questions asked by private citizens could be included in the proposal and then the questions could be answered.

**ANCHOR BAY WATERSHED UPDATE:**

Geoffrey Donaldson, Environmental Planner: Distributed a copy of the Anchor Bay Watershed Management Plan (Executive Summary) final draft of the plan was presented at the Steering Committee Meeting in Ira Township; brief history of how the Committee arrived at this point to address water concerns in Lake St. Clair; Macomb and St. Clair County shared area known as the Anchor Bay Watershed, grant from the State of Michigan was received in 2001 to developing a watershed management plan using those grant funds; technical advisory committee is now reviewing the Phase II Storm water rules, goals and objectives of this plan can only be realized through the cooperative efforts of the public, county and local communities.

**CLAY TOWNSHIP BOARD MINUTES – NOVEMBER 17, 2003**

Page 4

Kristen O'Reilly, Storm Water Coordinator: Update of the public involvement process in this program, biggest issue facing the Anchor Bay Watershed is planning issues and planning management development in the watershed area, increase in households will have an impact on water quality. Summarized the Executive Summary, pollutants and sources (bacteria is the largest cause of pollution), public participation and ways to educate the public about pollutant sources and how to eliminate them.

Goals and objectives contained in the watershed plan were developed based on the concerns expressed by the public and the community officials.

Trustee Kirkpatrick: Grant funding available to restore a lookout tower (Colony Tower).

Kristen O'Reilly: Grant available through the Clean Michigan Initiative, Colony Tower may have a good chance, will help you with the process, must match watershed plan.

Supervisor Joseph McKoan IV thanked them for the presentation on the Anchor Bay Watershed.

Moved by Sharrow, supported by Dr. Kasperowicz, **MOTION CARRIED**, to reappoint Trustee Cindy Kirkpatrick to serve on the Zoning Board of Appeals Board as the Township Board Representative for another year term to expire 11-15-2004. AYES: All. NAYS: None. ABSENT: Pellerito.

Moved by Kirkpatrick, supported by Dr. Kasperowicz, **MOTION CARRIED**, to reappoint Trustee Patricia Sharrow to serve on the Planning Commission Board as the Township Board Representative for another year term to expire 11-15-20-04. AYES: All. NAYS: None. ABSENT: Pellerito.

Trustee Kirkpatrick: Grant funding available to restore a lookout tower (Colony Tower).

**PUBLIC COMMENTS:** Relating to any New Business on the Agenda. None.

**NEW BUSINESS:**

Trustee Cindy Kirkpatrick: Recommend two ladies in the community for their dedication, work and commitment to the Township: Diann Pellerito and Marilyn Genaw.

Moved by Sharrow, supported by Dr. Kasperowicz, **MOTION CARRIED**, to have Trustee Cindy Kirkpatrick fill out the 2004 Women of Distinction Award Nomination Form and submit to the Girl Scouts – Michigan Waterways Council, Inc. Girl Scouts with her nominations. AYES: All. NAYS: None. ABSENT: Pellerito.

Moved by Turner, supported by Engel, **MOTION CARRIED**, to approve the BS & A Software fee of \$1,480.00 for Program Updates and Technical Support for the Equalizer Assessing Program. AYES: All. NAYS: None. ABSENT: Pellerito.

Moved by Sharrow, supported by Kirkpatrick, **MOTION CARRIED**, to accept and file the October Department Reports for Assessing, Building Department, Planning, Zoning and Code Enforcement, Water, Board of County Road Commissioners Minutes and the Algonac-Clay Library. AYES: All. NAYS: None. ABSENT: Pellerito.

Moved by Kirkpatrick, supported by Sharrow, to accept the bid from Syntex Security Systems in the amount of \$523.00 to install the Mausoleum electronic door access system.

Discussion: Treasurer Turner: Syntex price is to install the system, also would need a licensed electrician to run the electricity to the door.

AMENDED MOTION by Kirkpatrick, supported by Sharrow, **MOTION CARRIED**, to add a small fee for a licensed electrician to run the electricity to the Mausoleum door for the automatic access system.

VOTE ON THE MOTION: AYES: All. NAYS: None. ABSENT: Pellerito.

**CLAY TOWNSHIP BOARD MINUTES – NOVEMBER 17, 2003**

Page 5

Moved by Kirkpatrick, supported by Turner, to adopt the Resolution for Credit Card Use Policy.

Discussion:

Treasurer Connie Turner: Credit card will be used for equipment, office supplies and the purchase of film and developing, not travel expenses, meals, etc. as stated in the resolution.

AMENDED MOTION by Kirkpatrick, supported by Turner, **MOTION CARRIED**, to adopt the Resolution for Credit Card Use Policy and amend Item (b) as follows:

- (b) Township credit cards may be used only by an officer or employee of the township for the purchase of goods or services for the official business of the township. The use of credit card is limited to the following circumstances: Equipment, Office Supplies, Purchase of film and developing.

VOTE ON THE MOTION:

R/C VOTE: AYES: Sharrow, Kirkpatrick, Turner, Engel, Dr. Kasperowicz, McKoan IV. NAYS: None. ABSENT: Pellerito.

**MOTION CARRIED.**

Moved by Kirkpatrick, supported by Turner, **MOTION CARRIED**, to adopt the Resolution to Authorize Electronic Transactions Under Public Act 738 of 2002 authorizes the Township to utilize electronic transactions in compliance with the written procedures and internal controls developed and adopted by the Treasurer as the Township's Automated Clearing House (ACH) policy.

R/C VOTE: AYES: Sharrow, Kirkpatrick, Turner, Engel, Dr. Kasperowicz, McKoan IV. NAYS: None. ABSENT: Pellerito.

Moved by Kirkpatrick, supported by Engel, **MOTION CARRIED**, to approve the cost of \$2,679.00 per quote from Russell Electric for the wiring for the Mausoleum. AYES: All. NAYS: None. ABSENT: Pellerito.

Moved by Sharrow, supported by Dr. Kasperowicz, **MOTION CARRIED**, to approve the road funding for Morrow Road in the amount of \$99,644.00 and accept the Local Road Funding Assistance from the County grant to contribute the large sum of \$199,338.00. AYES: All. NAYS: None. ABSENT: Pellerito.

Moved by Kirkpatrick, supported by Turner, to approve the wage increase to \$30,030.00 for the Downriver Recreation Commission Director Cynthia Babisz and hold off on the retroactive wage requesting to July 1, 2001 until the Board reviews the dollar amount and the benefits.

Vote on the motion: AYES: Turner, Kirkpatrick. NAYS: Sharrow, Engel, Dr. Kasperowicz, McKoan IV. ABSENT: Pellerito.

**MOTION FAILED.**

Moved by Engel, supported by Sharrow, **MOTION CARRIED**, to revisit the Downriver Recreation Commission Director's Agreement and wage increase to \$30,030.00 and the figures adjusting her wage retroactive to July 1, 2001 and benefits at the next Township Board Meeting. AYES: All. NAYS: None. ABSENT: Pellerito.

Moved by Sharrow, supported by Dr. Kasperowicz, **MOTION CARRIED**, to approve the recommendation by Mainland Fire Chief Rick Edler that James Skorupski become a trainee with the Clay Township Fire Department. AYES: All. NAYS: None. ABSENT: Pellerito.

**CLAY TOWNSHIP BOARD MINUTES – NOVEMBER 17, 2003**

Page 6

Moved by Kirkpatrick, supported by Dr. Kasperowicz, **MOTION CARRIED**, to approve the Mainland Fire Department FEMA Grant purchase for equipment and personal protective equipment in the amount of \$60,872.00. AYES: All. NAYS: none. ABSENT: Pellerito.

Moved by Turner, supported by Dr. Kasperowicz, **MOTION CARRIED**, to approve the Mainland Fire Department purchase of two computers from Dell for a total cost of \$2,833.00, if coupon is available will be \$100.00 less. AYES: All. NAYS: None. ABSENT: Pellerito.

Moved by Kirkpatrick, supported by Engel, **MOTION CARRIED**, to reimburse Michael J. Kras, Clay Township Building Official the purchase price of \$495.00 for a plan review program he bought and was able to adapt it to the Michigan Codes for the Departments. AYES: All. NAYS: None. ABSENT: Pellerito.

Motion by Dr. Kasperowicz, supported by Kirkpatrick, **MOTION CARRIED**, to approve spending up to \$550.00 to board up a house at 7334 Jo Char, Clay Township under a Circuit Court order. AYES: All. NAYS: None. ABSENT: Pellerito.

**BOARD MEMBER COMMENTS:**

Trustee Sharrow: Thank you letter to L.Uschwald for the coat rack he made.

Trustee Dr. Kasperowicz: Hire an attorney just out of law school to do our work, save the Township money; restoration of the Colony Tower, County work force assigned to do the painting.

Supervisor Joseph H. McKoan IV: Liability problem.

Trustee Sharrow: Chuck Michel ZBA member, term runs with his appointment.

**PUBLIC COMMENTS:**

Paul Bridgman, Colony Drive: Legal fees were originated through this board, laws easy to read and understand, will file a suit against the Township; Trustee Kirkpatrick doing a fine job for the ZBA, hope she stays on.

Secured Party on Bayview, Harsens Island: Morrow Road roadwork, how much will it cost the Township.

Supervisor Joseph McKoan IV: Paving is \$99,000, County putting in their share.

Secured Party: According to Michigan General Law Township does not allow for a blanket contract, like an opinion on that.

Water shed: any communities not participating.

Supervisor Joe McKoan IV: Explained the grant process.

Mr. Pyszora, 9034 Field Road: Attorney Dan Dalton should not have left before public comments, insult to the people and the Board, not very business like.

Supervisor McKoan IV: Any questions you have will be answered by Mr. Dalton.

Discussion re: violations of the Ordinance certified mail, before turned over to the Attorney should be sent a certified letter.

Mr. Pyszora: Anything done legally should be mailed registered, received a letter and then all of a sudden had a lawsuit.

Trustee Sharrow: 1<sup>st</sup> Class Mail considered delivered.

Mr. Pyszora: Illegal business being ran, who is in charge reviewing this situation.

Ben Schulke: Comments regarding Attorney Dalton, he knew nothing about my licensing, need an honest attorney, he should have stepped up and told me site plan not acceptable, like to proceed with my property and get some honest answers.

**CLAY TOWNSHIP BOARD MINUTES – NOVEMBER 17, 2003**

Page 7

Trustee Sharrow: Discuss with Planning Consultant possibilities of dual zoning Mr. Schulke's property.

**ADJOURNMENT:**

Moved by Kirkpatrick, supported by Sharrow, **MOTION CARRIED**, to adjourn the regular meeting at 9:35 p.m. AYES: All. NAYS: None. ABSENT: Pellerito.

Michael P. Pellerito  
Clay Township Clerk