

Minutes of the Clay Township Board meeting held on Monday, April 19, 2004 at 7:30 p.m. in the Clay Township Board Room, 4710 Pte. Tremble Road, Clay Township, Michigan 48001.

PRESENT: Supervisor Joseph McKoan IV, Clerk Michael Pellerito, Treasurer Connie Turner, Trustee Pat Sharrow, Trustee Cindy Kirkpatrick, Trustee Beth Engel, Trustee Dr. L. Kasperowicz.

ABSENT: None.

Citizens present: Approximately 45 people were present.

AMENDMENTS TO THE AGENDA:

Moved by Turner, supported by Kirkpatrick, **MOTION CARRIED**, to amend the agenda under New Business, Item #19. FEMA Grant Purchase of Class Knockdown Foam. AYES: All. NAYS: None. ABSENT: None.

Moved by Sharrow, supported by Kirkpatrick, **MOTION CARRIED**, to amend the agenda under Old Business, Item #2 Discussion of Fire Ordinance to postpone consideration of the Ordinance indefinitely. AYES: All. NAYS: None. ABSENT: None.

APPROVAL OF THE MINUTES AND SYNOPSIS:

Moved by Kirkpatrick, supported by Engel, to approve the April 5, 2004 Clay Township Board Meeting Minutes and synopsis with the following corrections:

- page 4, 1st motion on the page recommending to the Liquor Control Commission a new liquor license, should be seconded by **Kirkpatrick** and not Kasperowicz.
- page 4, middle of page, delete the line "VOTE ON THE MOTION: AYES: All. NAYS: None. ABSENT: None."
- page 3, 6th paragraph down, motion to approve the contribution to the Algonac-Clay Township Historical Society, reverse motion approved by **Turner** and supported by **Sharrow**. **MOTION CARRIED. AYES: All. NAYS: None. ABSENT: None.**

BILLS PAYABLE:

Moved by Turner, supported by Sharrow, **MOTION CARRIED**, to approve the Bills Payable in the amount of \$64,149.66. AYES: All. NAYS: None. ABSENT: None.

COMMUNICATIONS:

Downriver Recreation Commission will hold a public hearing on Thursday, 4-29-04 at 7:30 p.m. to hear comments re: a proposed new Recreation Plan for the D.R. Service Area.

4-14-04 Memo from ML Fire Chief Rick Edler: Power outage project reimbursement from FEMA.

4-14-04 Memo from ML Fire Chief Rick Edler: Through a grant application from the Department of Homeland Security a request has been made for a fireboat.

Joint meeting with the Algonac City Council and Clay Township Board of Trustees will be held May 4, 2004 at 7:30 p.m.

Annual St. John Marsh Clean up is scheduled for May 15, 2004 at 9:00 a.m., meet at the DNR site across from Cheers.

OLD BUSINESS:

Contract Negotiations:

- DPW to meet on April 30 and May 13th for the purpose of beginning bargaining.
- Command unit is scheduled for mediation on May 10th.

Motion by Sharrow, supported by Turner, **MOTION CARRIED**, to postpone the Fire Ordinance indefinitely until the structure of the Ordinance is changed. AYES: All. NAYS: None. ABSENT: None.

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PUBLIC COMMENTS: Relating to any New Business on the Agenda.

Richard Baker, 9212 Stone Road: Soil erosion permits discussion, would like to comment after.

Dave Bryson, Harsens Island: Applied for the soil erosion permit for the Island Ferry Dock, explained the steps followed, fees are outrageous, think the Township should consider applying for a blanket permit on all of the resident's behalves.

Harry Mikolowski, 5472 Middle Channel Drive: Comments concerning the Soil Erosion permits. They are out of control, need to stop this in Clay Township, taking money from the public for these permits, duty of this Township Board to stop this, it is wrong, greatest rip-off, should not have to put up with this, should be allowed to do home maintenance, gardening, etc. without a permit.

NEW BUSINESS:

Postpone the presentation to Mainland Fire Department Member John Papiez.

DISCUSSION ON SOIL EROSION PERMITS:

Clerk Michael Pellerito announced the officials present:

Karen Boasek, DEQ District Rep for Soil Erosion
Don Maronde, St. Clair County Road Commission Director
Hashen Yew, DEQ District Supervisor for the Water
Dick McQuella, DEQ Program Director
Debra Pauley, St. Clair Soil Erosion Permit Division
Pamela Wall, St. Clair County Commissioner
Edward Body, St. Clair County Soil Erosion
Lauren Hager, State Representative
Judson Gilbert, State Senator

Karen Boasek, Department of Environmental Quality, District Representative for the Water Division for the Soil Erosion program, responsible to oversee the soil erosion program and the agencies involved in the program, audit these agencies.

Lengthy slide presentation defining her role, overseeing Part 91 Soil Erosion Protection Act of the Natural Resources NREPA Clean Water Act, protect the waters of the State of Michigan, two documents re: the State Law and Adm. rules. The County is the enforcing agency, responsible for issuing the permits and doing compliance enforcement, our Department reviews their program and its aspects, County has to run the program, must be in compliance with Part 91.

Erosion and sedimentation definition and what major role it plays in these Soil Erosion Permits for Part 91; prevention of erosion is the key to preventing muddy waters, clogged storm sewers, filled lake streams and wetlands, damaged plant and animal life.

Erosion prevention is much more effective than sedimentation control.

Permits require one area larger or within 500' of water, stream, pond.

Followed with a lengthy over brief of the program and things the Dept. looks for when they do plan review, soil erosion and control plan steps.

Fee is not dictated by the State, can vary from County to County.

Goals and expectations of Part 91 to prevent erosion control and reduce sedimentation.

Trustee Dr. Kasperowicz: Financial burden on the people, anyway we can bring these fees down, contesting the fees for the permits commercially and residentially.

Dick McQuella, DEQ Program Director: State statute does not dictate what fees, County Board of Commissioners decide what it takes to run an effective soil erosion program and adjust their fees accordingly, not federally funded.

Trustee Cindy Kirkpatrick: Questioned if Clay Township pays more in fees than any one else?

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Dick McQuella: Fee level is based upon the self sufficiency of the program, slowly coming into compliance improving the level of our program to meet the needs, 1,007 permits issued in 2003, Clay Township no different than any other Township, more water properties here so many do meet this 500' water requirement requiring a permit.

Supervisor Joseph McKoan IV: Example of a property across the street from the River why would it require a permit fee, it was mandated because it was an enforcement agency, not a fair situation for these small jobs.

Dick McQuella: County does not have the flexibility; Adm. rules revised in 1998 added some waivers to a permit.

Trustee Kirkpatrick: Referred to Bryson's case and the State Statute law re: permit limitation.

Dick McQuella: Cannot speak for the specifics.

Edward Body: Mr. Bryson did not meet the requirements.

Richard Baker: 9212 Stone Road: Years ago the Great Lakes were part of the Federal Government, now the State has taken over the duty of the federal government, question is who owns the lakes and rivers, they are all federal waters, ridiculous the County is taking over, area built on soil erosion, stop the pollution across the river.

Does the Corp get a permit from the Soil Erosion Department?

Edison plants polluting into the River and your department is concerned with the "small guy" runoff; County Commissioners should really be ashamed.

Dick McQuella: Explained some of the regulations by the State in regards to some of Mr. Baker's concerns, Authority is joined between the Corp of Engineers and the State of Michigan, National Pollution Elimination Discharge permitting system, air quality standards, etc.

John Horvath, Harsens Island: Major problems in Clay Township and especially on Harsens Island, almost every piece of property is within 500' of the waterways, Islanders use commonsense, DEQ is the biggest polluter on Harsens Island, this area is different impossible to apply all the rules and regulations of Part 91 Adm. rules, need to have someone to work with the people, intent is not to pollute the waterways.

Dick McQuella: Soil Erosion statute was substantially revised and amended the end of 2000, Legislatures wanted more enforcement and compliance.

Supervisor Joseph McKoan IV: Reiterated Mr. Horvath's comment we need more exceptions then what we currently have.

Dick McQuella: Agree with flexibility, several counties that do not want to administer Part 91, more flexibility they do less and less; Legislature has given the County the authority to fine heavily.

Trustee Kirkpatrick: Water level is low.

Dick McQuella: Change in the ruling is now 500' of the water's edge.

Dave Danielson, 9211 Peters: Applied for the permit paid \$205.00, working on a 60' x 60' area, built a barn, wanted me to plant grass, cold spell and heavy rains prevented me from planting the grass, permit expires on May 12th and if I don't have the grass will have to pay another \$138.00, several years ago serious drainage problems by neighbors, not worried about that more worried about my 60' area and another \$138.00.

Whitey Simon, 4722 Green Drive, Harsens Island: Per the presentation, under the control mentioned 8 or 9 different measures, one was run-off control structures, permit expired, feel have complete run-off control structures, no way that the fill can erode, utterly ridiculous, grass is not necessary to prevent the run-off, the whole thing is the money the County wants.

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Dick McQuella: Collection from the permits is directed to the County, which is responsible for administering the statute.

Clerk Michael Pellerito: Summation of the Legislative law enforcement scenario, DEQ is given the law, DEQ passes along the authority to the jurisdiction (County Road Commission) to enforce the law created by the legislatures, Soil Erosion Dept. does not make the laws or enforce the laws, County Road Commission sets the rates and the fees to be a self supporting system, DEQ is in the middle, if there is to be a change need to start with the Legislatures.

Senator Judson Gilbert: Legislature does write the laws, there is an intermediate step, administrative rules are promulgated by the DEQ, at one time these were reviewed to give the County more flexibility and this can be considered again through the Legislature.

Dick McQuella: Soil Erosion statute is very unique, State is the administrating agency for permits for wetlands, inland lakes, streams, great lakes, under Part 91 passed in 1972 (Act 347) it was always a grass root effort delegated down to the County level, DEQ promulgate the adm. rules how it is going to be implemented.

Harry Mikolowski: Fines are being laid by Judges, it is all money, ridiculous, the common man can not follow those rules, need some common sense at the Legislative level, etc., a run away thing on our hands, our area is different, point is we the homeowner will pay, need something done about this right now.

Mark Pyszora: Contractor in this Township, people are not getting good answers, the County does not help them when they go there, look at issuing of the permit or denying a permit.

Robert Baldwin: 7640 Middle Channel Drive: If I order a 5-yard load of dirt for garden and low spots. How much will it cost me?

Edward Boddy: Low impact landscaping to an approved site, \$43.00.

Robert Baldwin: Enforcement mechanism, concentrating on enforcement rather than inspection, can't understand how these rules are being followed.

Lady: Who checks the dirt being dumped from the Army Corp of Engineers on Dickinson Island?

Edward Boddy: No jurisdiction over the DEQ/Corp of Eng.

Senator Judson Gilbert: Problems with this issue several months ago in Lapeer County, additional pressure from the DEQ to enforce the soil erosion law, agree with the word "common sense" needs to be applied to some of these rules and applications, key is the Administrative rules, review of the 24 hour rule and the waiver with the 225 sq. feet, can be applied in a little different way and grant more waivers, if it requires legislative to let people work in their yards, will definitely introduce language. Propose a member of the Township Board, DEQ, Road Commission, Representative Lauren Hager and himself will meet and try to come up with some legislation and reasonable alternatives.

Representative Lauren Hager: Agree common sense needs to prevail in certain situations and there should be a meeting as to what we can do to settle some of these issues.

Richard Baker: Who owns the Great Lakes and the River out here?

Dick McQuella: Bottomlands of the Great Lakes belongs to the State of Michigan.

Richard Baker: Agencies mean nothing, State has no authorization, Federal waters, like to see something in writing that says it is not.

Supervisor McKoan IV: Intermediate agency to oversee the enforcement, something our Township should look at.

Karen Boasek: Very involved process to start such an agency.

District Commissioner Pamela Wall: What are the sanctions against the County if not in compliance?

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Dick McQuella: Due process to justify they were not compliant, State would hire a consulting firm to administer the program, the County would pay for the consulting firm.

Paul Bridgman, 7985 Colony Drive: DEQ needs to use some common sense, referred to property he is not able to use, Township Office has influence too, don't bring politics in.

Dave Bryson: Laws legal what the County is doing to us requiring fees for us to dig on our own land is a "shakedown" to me.

Michael D. Wendling, Wales Township: Referred to the building of his house last year, any discretion that allows for the County governing board to grant exceptions to soil removal permits, agreed there was no soil erosion problem but still needed a permit, any common sense that can be built in to determine if a permit is needed or not.

Dick McQuella: Request the County to give you a copy of their inspection report, criteria followed, one discretion is minor permit category so the fee is substantially less, don't have the discretion to say will not issue a permit.

Road Commission Director Don Maronde: Program has to be self sustaining, no funds coming in cannot spend road commission money on the DEQ activities, money is restricted to go to county roads, can see some room for discussion, referred to the "no noticeable impact at a reduced fee" from \$208 to \$46.00.

Trustee Dr. Kasperowicz: Fees charged for commercial permits.

Don Maronde: Have not analyzed the fees with respect to soil erosion permits, larger commercial areas are being undercharged, should be part of the investigating process.

Dave Dare, 9370 Lakepointe: Suggestion review the fees, inspectors go back and use common sense, waivers, re-educate the inspectors.

Supervisor Joseph McKoan IV: Thank you very much to everyone attending.

Whitey Simon: What are you going to do with the comments from tonight?

Supervisor Joseph McKoan IV: Will be in contact with Senator Gilbert's Office.

RE-ZONING REQUEST OF 2420 PTE. TREMBLE ROAD PROPERTY:

Attorney Gary Gendernalik: Representing Robert Monte regarding property changed from industrial to commercial when the Township adopted Ordinance No. 123, not notified this was to occur, used the property industrial for a number of years, State statute allows for the Board to initiated this re-zoning.

Township Attorney John McNamee: Continue to use the property in a non-conforming use, Planning Commissioners reviewed the change and there was a conscious decision to change the zoning, Township Board has the discretion to re-zone it back to industrial.

Motion by Dr. Kasperowicz the Township Board of Trustees will initiate the re-zoning of 2420 Pte. Tremble Road from Commercial to Industrial.

MOTION DIED, LACK OF SUPPORT.

Moved by Kirkpatrick, supported by Sharrow, the Township Board will not move on the request to re-zone the property at 2420 Pte. Tremble Road, the property owner can follow the proper procedure and steps in applying for a re-zoning.

Discussion:

Attorney Gendernalik: State Statute allows for the Board to initiate the re-zoning, notification of change in property was not received, law allows for this request.

Pat Sharrow: Anyone can ask for a re-zoning, should follow procedure.

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Township Attorney McNamee: The re-zoning was done in accordance with the law.

Trustee Cindy Kirkpatrick: Other people that have come in front of the Twp. Board followed the proper procedure, fairness to those other people.

Supervisor McKoan IV: He can use the property as is in a nonconforming status.

AYES: All. NAYS: None. ABSENT: None.

MOTION CARRIED.

Moved by Kirkpatrick, supported by Turner, **MOTION CARRIED**, to receive and file the Department March Monthly Reports for the following: Assessor, Building, Zoning, Water, Library, DRC, Planning Commission, SCCRC Minutes, February/March Police Reports. AYES: All. NAYS: None. ABSENT: None.

Moved by Turner, supported by Sharrow, **MOTION CARRIED**, to approve the renewal of the Michigan Municipal League annual fee of \$3,711.00 as a full associate for the period ending 05/31/2005. AYES: All. NAYS: None. ABSENT: None.

Moved by Sharrow, supported by Kirkpatrick, **MOTION CARRIED**, to adopt the Resolution to set the Public Hearing date for May 3, 2004 at 7:15 p.m. in the Township Board Room, 4710 Pte. Tremble Road, Clay Township for the purpose to hear protest for or against the vacating of an alley within the Fords River Front Subdivision between Pte. Tremble and the N. Channel. R/C VOTE: AYES: Sharrow, Kirkpatrick, Turner, Dr. Kasperowicz, Engel, Pellerito, McKoan IV. NAYS: None. ABSENT: None.

Moved by Sharrow, supported by Kirkpatrick, **MOTION CARRIED**, to call for a Public Hearing on the Renewal of Soil Removal Permits will be held on Monday, May 17, 2004 at 7:30 p.m. as part of the Township Board regular meeting. AYES: All. NAYS: None. ABSENT: None.

Moved by Sharrow, supported by Dr. Kasperowicz, **MOTION CARRIED**, to adopt the Resolution to issue authorization to sponsor a transportation enhancement fund grant application through the Michigan Department of Transportation for State Highway M-29 Research and Planning Study for the developing of a segment of the Bridge-to-Bay Non-motorized Trail with the Clay Township Downtown Development Authority committing the required local matching funds. R/C VOTE: AYES: Sharrow, Kirkpatrick, Turner, Dr. Kasperowicz, Engel, Pellerito, McKoan IV. NAYS: None. ABSENT: None.

Moved by Kirkpatrick, supported by Dr. Kasperowicz, **MOTION CARRIED**, to approve the Sony Transcriber and Recorder Maintenance Contract from DSS for the cost of \$250.00 to cover the period of 5/22/2004 to 5/21,2005. AYES: All. NAYS: None. ABSENT: None.

Moved by Kirkpatrick, supported by Dr. Kasperowicz, **MOTION CARRIED**, to approve the recommendation from Fire Chief Rick Edler to bring Paula J. Jozefiak on as a trainee with the Mainland Fire Department. AYES: All. NAYS: None. ABSENT: None.

Moved by Turner, supported by Kirkpatrick, **MOTION CARRIED**, to approve ML Fire Chief Rick Edler and Assistant Chief George Rose to attend the Fire Department Instructors Conference at the RCA Dome in Indianapolis, Indiana on April 29, 2004 through April 30, 2004 and the cost of the lodging up to \$165.00 plus fuel, the Township vehicle will be driven. AYES: All. NAYS: None. ABSENT: None.

Moved by Sharrow, supported by Kirkpatrick, **MOTION CARRIED**, to approve Lot Split #04-02 for property located at 8079 McKinley Road, owned by Jonathan Ball. AYES: All. NAYS: None. ABSENT: None.

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Moved by Turner, supported by Engel, **MOTION CARRIED**, to reappoint Anthony Antkowiak to the Planning Commission Board with the same term expiring 11-15-2004 as was voted on by the Township Board on 11-19-2001 in order to bring the vote into compliance of Act 285 of 1931, which Clay Township Planning Commission was formed under. AYES: All. NAYS: None. ABSENT: None.

Moved by Kirkpatrick, supported by Turner, **MOTION CARRIED**, to approve the \$35.00 cost to attend the Michigan Emergency Vehicle Drivers Training class on May 22nd for Harsens Island Fire Department Firefighter Tammy Montgomery. AYES: All. NAYS: None. ABSENT: None.

Moved by Kirkpatrick, supported by Dr. Kasperowicz, **MOTION CARRIED**, to approve the purchase of Lettering and installation on the Harsens Island Fire Department dive trailer for the cost of \$375.00 from Toms Auto Glass in New Baltimore. AYES: All. NAYS: None. ABSENT: None.

Moved by Turner, supported by Kirkpatrick, **MOTION CARRIED**, to approve the sum of \$3,500 to St. Clair County Road Commission for the engineering for drainage improvements on Greenwood – M-29 west to end. AYES: All. NAYS: None. ABSENT: None.

Moved by Turner, supported by Kirkpatrick, **MOTION CARRIED**, to waive the permit fees for the electrical permits for the installation of the tornado sirens at 9810 Willow Ct., 5001 Taft Road and 2801 Fruit Road. AYES: All. NAYS: None. ABSENT: None.

Moved by Kirkpatrick, supported by Dr. Kasperowicz, **MOTION CARRIED**, to grant permission to the Harsens' Island Fire Department to list the 1976 Ford Van R-21 and 1975 Ford Pumper E-31 on the Ebay Internet Auction Site and discuss with Clerk Pellerito the procedure. AYES: All. NAYS: None. ABSENT: None.

Moved by Turner, supported by Kirkpatrick, **MOTION CARRIED**, to approve the ML Fire Department purchase 205 gallons of Class A Knockdown Foam from Apollo Fire Equipment for the cost of \$3,200.00, FEMA Grants require a 10% cost share with the Fire Department. AYES: All. NAYS: None. ABSENT: None.

BOARD MEMBER COMMENTS:

Clerk Pellerito: Schedule a Budget Workshop in the Township Hall for May 10th at 5:00 p.m.

Moved by Sharrow, supported by Kirkpatrick, **MOTION CARRIED**, to have a budget workshop to review the 2004-2005 Budget on Monday, May 10, 2004 at 5:00 p.m. AYES: All. NAYS: None. ABSENT: None.

Clerk Pellerito: Road work anticipated for Grande Pointe & Gore Drive, Harsens Island, 100' is certified for Gore Drive, special assessment, with the Board's permission will proceed with a bid price and bring it back to the Board.

PUBLIC COMMENTS:

Mark Pyszora: When will recommendation be made to fill the vacancy on the Planning Commission?

Supervisor Joseph McKoan IV: Probably at the next meeting.

Mark Pyszora: Judge granted a Court Agreement with the Township, it has been violated a few times by the Township.

Bob Williams, Steward Farms, Harsens Island: Announced will be a free workshop on Saturday, April 24th at 9:00 a.m. on Basics of Ecology, everyone is welcome.

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ADJOURNMENT:

Moved by Kirkpatrick, supported by Turner, **MOTION CARRIED**, to adjourn the meeting at 9:55 p.m. AYES: All. NAYS: None. ABSENT: None.

Michael P. Pellerito
Clay Township Clerk