

Minutes of the Clay Township Regular Board Meeting Held Monday October 1, 2007 in the Clay Township Meeting Hall, 4710 Pointe Tremble Road, Clay Township, Michigan

Supervisor Manos called the meeting to order at 7:30 p.m.

ROLL CALL

Present: Trustee Krueger, Trustee Makuch, Treasurer Turner, Supervisor Manos, Clerk Pellerito, Trustee DeBoyer, Trustee Dare

Absent: None

Citizens: 40

BILLS PAYABLE

Motion by Turner, supported by Makuch, to pay the bills in the amount of \$16,618.18

ROLL CALL VOTE

AYES: Krueger, Makuch, Turner, Manos, Pellerito, DeBoyer, Dare

NAYES: None

MOTION CARRIED

CONSENT AGENDA

Motion by Makuch, supported by Turner, to approve the Consent Agenda as submitted

AYES: All

NAYES: None

MOTION CARRIED

OLD BUSINESS

1. Fire District

Dare: Mr. Makuch was out of town so we will be meeting with the Fire Chiefs on Friday

2. Contract Negotiations

Manos: We have the Command contract draft.

Chief Drake: We went back a couple times. Have reviewed with Clerk Pellerito; I recommend approval.

Motion by Makuch, supported by DeBoyer, to approve the Command contract

ROLL CALL VOTE

AYES: Makuch, Turner, Manos, Pellerito, DeBoyer, Dare, Krueger

NAYES: None

MOTION CARRIED

Manos: We have the Union representative for the Water Department here who would like to address the Board.

Dan O'Rourke: Water Department contract was sent to the Board on July 2nd and there seems there is an issue on what was agreed to concerning the Health Care savings plan. When we were in negotiations we asked if this plan was voluntary or mandatory; we were told it was voluntary. We asked twice and received the same answer. Looking at the Board minutes of July 2nd under Old Business #2, the list of things in the tentative agreement given to the Board the \$600.00 employee Health Care is not included. Would like to have the contract approved as it is.

Manos: Was a discussion during negotiations regarding the Health Care system and everything else and when we came to the table we wanted to make it clear that payroll deduction of \$600.00 per employee shall be deducted. Assumed that was going to be incorporated into the final draft. I want to make clear that was presented on the final day that we reached the final agreement.

Have the Assessor contract, the Building, the front office, the Command, the Patrol and the Dispatch contracts; none of those contracts contain an option for the employee not to contribute into his own plan. This was an effort by management to guarantee the individuals that they were putting money away and we wanted them to do that. We were willing to give up something in negotiations. Now we get to last one #12 that says, "\$600.00 per employee shall be deducted" and saying now we want to make that an option. Well it isn't an option. We may have discussed this issue as we did a number of items, we reached agreement on all those points and when we came back for the final that document had it included in it. We assumed it was going to be in the final draft but when it came back it wasn't there. What was submitted to the Board was what was laid on the table and it said it shall be included. We have been paying on the new contract, they were happy to accept that.

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O'Rourke: This is not something we are raising after the fact. On June 29th Mr. Manos gave us a proposal that did address that issue, I don't dispute that. At the table I specifically asked, "Is this going to be mandatory or voluntary?" We were told it would be voluntary but your whole group will have to take it or the whole group not take it. It was asked twice and it was answered twice that it was voluntary. We went back to the membership and ratified it and came back the same day and told Mr. Pellerito that the contract was ratified and the members do not want the plan, it was not disputed at that time. Looking at minutes Mr. Pellerito and Mr. Manos came back to the Board with a summary of the agreed on items and that item was not listed. Everything else was listed. We were told on the last day of negotiations it was voluntary. Each of the contracts are somewhat different, they are not all uniform. We are not raising the issue after the fact; we raised it and discussed it in the final negotiations.

Manos: You made mention that something about including it in the contract as an option, isn't consistent with what you said a couple of minutes ago you said you were told either the whole unit took it or it was not available. You made reference now that we were going to incorporate it to this agreement where it was an option. Now we're talking two different things that occurred. If it was an option, then I would assume in the language of the contract it would have given your members an opportunity to select whether they wanted it or they didn't want it, but that wasn't it, no language was put into the contract to deal with it. We do not have an agreement on a final draft.

DeBoyer: What I heard as the question was could it be an option and they were told it's either all or none.

O'Rourke: Correct, we asked is it voluntary or mandatory and we were told either they all have to take it or all not take it. We decided to all not take it and that is why it did not appear in your draft. We are not alleging that each person could choose.

DeBoyer: Were they told it was voluntary?

Pellerito: The whole group has to do it or nobody. It was presented to the Board and the minutes do not reflect that it was in there. Secondly the savings to the Township is minuscule. The contract had already rolled out and paid so are we going to argue it or move forward and say in the next one, "It's there"?

DeBoyer: If it is a contribution of an employee for a retirement cost –

Pellerito: No

DeBoyer: If I understand it, it is a contribution to pay for noncovered expenses at time of retirement.

Pellerito: You don't have to be retired; it would be for unreimbursed medical expenses after you sever employment.

DeBoyer: What would our purpose to make it mandatory that our employees do that with their money?

Pellerito: This vehicle was put in place so at the time of retirement those payments would be in place.

DeBoyer: I don't understand why the Township would mandate this because we don't believe you can take care of yourself at retirement. We have a situation where I am hearing one thing here and one thing there.

Manos: There were incentives that were given in the contract that would trigger and those incentives come from the wage structure and you have to understand in negotiations there were some additional dollars given to make this happen. We said we want you to take a little bit of that raise and start funding part of your health care saving plan.

O'Rourke: I don't recall it ever being explained in that fashion. Our feeling is how we pay for it is our business. Never told we got additional wage increases to fund that program.

Dare: Didn't hear of anything changing from the time you said it was negotiable and didn't hear of any changes in the contract from that time. Everything else was set then you decided to push this forward because everybody else has it.

Pellerito: When we negotiate we have our list on the table and we both agree we initial things "ta", tentative agreement, and then we have documentation from that; we do not have documentation with that. And if you look at the minutes you can see clearly that I did not state that it was in there. So I think those things should be accepted and move forward.

Manos: Discussion of point system, the health care was tied into the point system. We didn't say they didn't have to put the money in.

Krueger: When the money comes out of their paychecks does the Township save anything?

Pellerito: The Township would save the Social Security or FICA and Medicare portion.

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Manos: We have this final draft that does not include that portion; we can approve it without that or we can say it would have to be part of the contract negotiations because we do not have a signed agreement at this time.

O'Rourke: In closing, the final draft that we submitted to the Board is identical to the tentative agreement that Mr. Manos and Pellerito brought back to you on July 2nd and was approved by you and our membership.

DeBoyer: I do understand your point Jon on the 3 ½ percent but that is at the top of the scale and I keep hearing about other contracts. Each contract is negotiated individually with the people who you negotiate with. I do not want someone else deciding my contract for me. I don't see it being an issue.

Dare: The July 2nd contract is acceptable?

O'Rourke: Yes

Makuch: I can see need for consistency but we approved a contract in July and it didn't have that in there and now we are coming back and saying no. The minutes are reflecting one thing, this your typical classic case of a miscommunication. If you approve something you can't go back later and say, "We missed that". It is true each department is in and of itself but you can use that argument to your advantage or disadvantage. We tried to achieve a consistency but everybody at this table approved a contract in July. My personal opinion is stay with this contract and then three years from now this is going to come up or I want some more time to look at this.

Manos: Approved the Command contract to be put into final draft, it was sent back twice and finally okayed it; the Police Chief reviewed it and approved it. To say we approved something two meetings ago, we did the same thing with this one, it's all in the language.

Krueger: How many employees are in the bargaining unit?

O'Rourke: Six

Motion by DeBoyer, supported by Turner, to approve our July 2nd contract.

Krueger: When first heard "for consistency sake we should go back to the drawing board", agreed with Jon. But we did approve it before and the total effect to the Township is about \$275.00 a year, I guess I can't see fighting it.

DeBoyer: I would recommend they do participate in it because it is a good program.

ROLL CALL VOTE

AYES: Turner, Pellerito, DeBoyer, Dare, Krueger, Makuch

NAYES: Manos

MOTION CARRIED

3. Planning Act

Manos: Trustee Krueger asked that this be brought back

Krueger: Mr. Manos indicated we didn't need to bring back, I don't agree. For years under the Municipal Planning Act, at least we thought we were, but it was flawed, we've been making appointments wrong for decades; what that means is that every decision we made at Planning Commission during that time period could be challenged. We are one of two townships in the state under the Municipal Planning Act, that tells us something. We just went through a big to-do with our attorney who had one opinion and the majority of the Board had another opinion. It is never good to disagree with the Township Attorney. Changing to the Township Planning Act would alleviate that. Because of the situation with the Municipal Planning Act being flawed not sure can trust it any more. If all we have to do is pass a resolution and wait sixty days to be under the Township Planning Act and it will alleviate all these situations, I have no problem with it. We have put Dorothy DeBoyer under a lot of pressure and anxiety and it is not fair. I am not a relative, I have no relationship but I do respect what she does. Dorothy didn't lobby for these positions; she was appointed and recommended by her peers. Want to put this behind us.

Motion by Krueger, supported by Makuch, to adopt the resolution adopting the Township Planning Act, Act 168 of 1959 as amended as our governing act for our Township Planning Commission.

Pellerito: Would like to be educated more, have Township Planner and Township Attorney here and would like to hear from them. Also about the proposed Michigan Planning Act.

Planner Patrick Meagher: The acts differ primarily on the appointing powers and the number of appointees. The predominant difference between the Municipal Act and the Township Act obviously comes from its name itself; the Township Planning Act came well after the Municipal Act and was designed specifically to handle Townships. With regard to authority and decision making by the Planning Commission there is not a lot of difference. The crux of this is you are

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talking about a political matter rather than a true planning matter. The question I think you need to get to is, are you going to hurt the Township by adopting the Township Planning Act versus the Municipal Planning Act? The answer is obviously no. Are you going to help the Township, each of you are going to have to answer. Is your commission working well, are they gaining the goals you want them to? As your Planner I would tell you that you have one of the best Planning Commissions I work with, if not the best. You have a very cohesive unit a very studious unit and as a whole they make very a-political and very responsible decisions. Outside the decision making policies there are some nuances of the two acts that I am not sure are that important.

One has to do with creating a capital improvement program every six years. Since I have been with the Township, including the previous Planning Commission there has never been one of those prepared. Most municipalities don't adopt that at a Planning Commission level usually the Township Board handles it during the budgeting sessions. With exact differences in the acts I would refer that to Mr. McNamee who obviously has done quite a bit of study on this issue.

Pellerito: In your opinion does one act diminish the rights or powers of its citizens or is there anything that takes anything away by keeping one act or going to another act?

Meagher: I don't see that either one has an impact on the rights or decision making of your citizenry.

Pellerito: Would it change anything to do with zoning laws or ordinances or powers to this board?

Meagher: Outside of what I have discussed I'm not aware of too many significant changes.

Attorney McNamee: Would reiterate Patrick's statements, this is really not an issue with the efficiency or operation of the Planning Commission itself. My experience over the last number of years is that they do an excellent job, they are an outstanding unit. As far as the planning act, the Township Planning Act could have been adopted 2 months ago or could be adopted now.

The only major effect that I can see is that under the Township Planning Act there would not be an ineligibility if you were a public official or if you were an employee of the Township because the Township Planning Act does not have language in it and the Municipal Planning Act, in my opinion, does. There is also the appointments, in the Township Planning Act the Supervisor makes all the appointments with the Board approval but in the Municipal Planning Act section 3, which you just adopted, allows the Board to appoint their representative to the Planning Commission, which you exercised. Those are the only issues we really had. There is a document sitting in the legislature to be known as the Michigan Planning Enabling Act, which the Senate approve March 1, 2007, this bill will repeal the Municipal Planning Act and the Township Act if and when it is passed by the Senate and signed by the Governor. The September 18th review I have indicates that the House has not taken action on it, in fact the commentary is that they are doing some cleanup, which means they will make some changes and send it back to the Senate if the Senate likes it they will re-pass it and send it to the Governor or they will send it to a committee made up of House and Senate members who will try to work out a bill they both recommend. This process could take is unknown. The new act has some differences; paragraph 5 of section 15 speaks to appointment of members it will make the appointment subject to the legislative body who will not only approve but also appoint. On the eligibility issue it says, "An elected officer or employee of a local unit of government is not eligible to be a member of the Planning Commission". You can make a decision now, but it may be 3 months or 6 months or a year or more.

Pellerito: You mentioned the cleanup phase; that particular subsection may be one of those cleanup sections. I think that is something our representatives should know because other Townships also have eligibility problems due to the lack of people who volunteer. That whole 25,000 thing will come into play. How many Townships do you currently represent now?

McNamee: I represent two.

Pellerito: Is the other one under the Township Planning Act?

McNamee: Yes

Pellerito: Patrick, how many do you represent?

Meagher: My firm represents twenty-three

Pellerito: Are any of the Townships you represent under anything rather than the Township Planning Act?

Meagher: No, the Townships are all under the Township Planning Act.

McNamee: For years this issue has come up. The most Townships under the Municipal Acts that I have heard of is three. When the Municipal Act came in there weren't many Township Planning Commission. Why Clay Township adopted the Municipal Planning Act I don't know.

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It is policy decision, if you pass the Township Planning Act, there isn't much change. The new proposed Planning Act with the help of the Planners and developers and governments, has been forged.

Pellerito: You provided us with correspondence two weeks ago that said that this could be done by resolution, it would not require any reviews by the public because there is nothing changing in our zoning or planning.

McNamee: It is procedural. There are some procedural changes but it doesn't change any substantive rights of a person for operation or use of their land.

Makuch: Studied both acts and it seems the purpose of the founding of this country, state and all governments is to have a system of checks and balances. But in section 125.33 section 3 of the Municipal Planning Act it says, "After a public hearing a member other than the member selected by the legislative body may be removed by the Mayor for inefficiency, neglect of duty or malfeasance of office". It is not with Board approval; if you are the head of a municipality and you don't want someone on the Planning Commission you hold a public hearing. I think that is a very dangerous power to have in there to have someone removed without Board approval, I think is wrong for anyone to have that power.

Krueger: Under the eligibility rules is a member of the County Planning Commission also ineligible?

McNamee: You are asking me specific facts, you get in trouble if you shoot off the hip. If there is a specific question I will research it but I am not going to speculate on it.

Manos: I think the Municipal Planning Act was adopted in 1968 and the reason was that St. Clair County Planning required us to create a zoning board. They later became the Planning Commission and it was probably through St. Clair County that we came under the Municipal Planning. We have operated under that act for forty years. If we pass the Township Planning Act so a municipal officer can serve on the Planning Commission then as the Attorney said when they pass the new Planning Act an employee of the Township could not serve either.

ROLL CALL VOTE

AYES: Turner, Pellerito, DeBoyer, Dare, Krueger, Makuch

NAYES: Manos

MOTION CARRIED

4. BMJ

Manos: This situation still is not resolved, are there any questions for Mr. McNamee?

DeBoyer: I know we have money being held, can we request release of the funds?

McNamee: I spoke with Kirk Weston and he spoke with the accountant and he said that he believes that at the request of Clay Township the monies were put into a separate account, which is interest bearing, because of the unresolved issue with the application for engineering fees by BMJ. I haven't seen the documents. He was under the impression that the money was there to be spent on the water project and nothing else. So, whether it goes to pay engineering fees or to retire debt or to pay something else that has to do with the water project then that is an issue for the Township to decide. I had operated under the assumption that money was set aside to try to try to resolve this issue, so I'm not sure it would be in the best interest of the Township to do something different with this money while this claim remains unresolved. It has been under the assumption that that was a good faith placement to try to get this issue resolve.

Pellerito: You state in you letter that, "I anticipate that they are claiming another 1% monthly service charge". Would it behoove us to entertain charging 1% on our \$71,000.00?

McNamee: They are referring to what they believe to a contractual right of interest. Our claim is that we have expended money for repairs, that there is loss of use of that money for other matters. That would be a legal argument not a contractual argument.

Pellerito: So you are looking for some direction from us as to whether we should move ahead or let it go?

McNamee: When I was here last August 20th there seemed some concern about this not going anywhere. Shortly before that meeting I had contacted their attorney about where they were on our proposal and was told they were discussing it and would get back to us. I called the attorney Wednesday or Thursday and have not heard back. Not sure what is going on. Do know this Board expressed some concern about getting this resolved. We are stalled. We went to nonbinding arbitration and that didn't bring about a resolution. An issue did come about excavating certain connection points but they have not been able to provide us with what we consider appropriate plans so we can do the excavation.

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DeBoyer: What are our options?

McNamee: If the parties can't resolve it a third party or an outside nonbinding mediator. Then there are just two choices; a third party to resolve it for you, whether that be a binding arbitration that both parties agree to or in the alternative you seek the resolution in the court system by a judge or by a jury. Our claim is that we have unnecessary and costly repairs due to an issue with restraints and theirs would be that they have unpaid costs for engineering fees.

Krueger: In your letter you say it is clear that the parties are not going to reach agreement and the litigation will probably be the only way to resolve this matter.

McNamee: I said litigation I could have said arbitration, should have put that in there as well.

Makuch: This has been going on and on. Normally would weigh how much the fight is going to cost. But this has been such a botched job from the beginning, this is ridiculous. Every water customer is paying for it. I am of the opinion, let's go to court. This isn't just one mistake, it is a whole series.

DeBoyer: I think we have had a good faith negotiation

McNamee: Clay Township had a long-term good relationship and a lot of work was done over the years that they were satisfied with.

DeBoyer: I think that is why we said let's get this worked out between us.

McNamee: One of the problems is that the as built plans do not provide the information to make the determination concerning the restraint system. The location and connections. We're not going to bear the expense when we cannot determine the locations. That is an issue that has stalemated it further. At one point I thought we were going to get it resolved and then at mediation it didn't work. Then we thought the excavation would help but now it appears we have an issue with doing the excavations because we don't have the plans.

Manos: Is there a procedure where you submit to them our letter of intent before we file formal papers?

McNamee: Yes

Manos: A motion to give them 90 days?

McNamee: I would like it settled before year-end.

Motion by Makuch, supported by DeBoyer, to ask Attorney McNamee to forward a letter to BMJ informing them of our decisions and give them a 30-day limit to respond.

AYES: All

NAYES: None

MOTION CARRIED

PUBLIC COMMENTS RELATING TO ANY NEW BUSINESS

Tiffany Marr: Comments on DRC dance program problems

Whitey Simon: Comments on HB 4780

Annette Zielinski: Comments on DRC dance program

NEW BUSINESS:

1. United Way Proclamation

Rick Garcia: Thanked Clay Township for inviting him. United Way has helped 620 people in Clay Township. Only United Way in the country that has a medical loan closet. Thirty families in Clay Township have taken advantage of it. These agencies are there for anyone who needs them.

Motion by Pellerito, supported by Makuch, that the Supervisor offers a proclamation to designate October as the St. Clair County United Way month.

AYES: All

NAYES: None

MOTION CARRIED

Supervisor Manos read the proclamation

2. Resolution Opposing House Bill 4780

Motion by Makuch, supported by DeBoyer, to approve the resolution in opposition to House Bill 4780

ROLL CALL VOTE

AYES: Manos, Pellerito, DeBoyer, Dare, Krueger, Makuch, Turner

NAYES: None

MOTION CARRIED

3. DRC Request for Final Installment

Manos: These are budgeted monies that go to DRC and if there are other problems I think we should deal with them in whatever format but right now it is a matter of approving of what we have budgeted.

Makuch: What is their fiscal year?

Pellerito: July 1st to June 30th. Have just completed the first quarter and 42% of the budget has been spent.

Motion by Turner, supported by Krueger, to pay the final installment

Turner: July and August are the busiest months and August of last year is almost identical

Pellerito: When does Algonac make their payment?

Turner: January or February

Makuch: Did we make the payment the same time last year?

Turner: Yes

AYES: All

NAYES: None

MOTION CARRIED

4. Resolution to set the Public Hearing for Gore Canal Dredging

Motion by Makuch, supported by Turner, to adopt the resolution to set the Public Hearing for Gore Canal dredging on November 5, 2007 at 7:15 p.m.

ROLL CALL VOTE

AYES: Pellerito, DeBoyer, Dare, Krueger, Makuch, Turner, Manos

NAYES: None

MOTION CARRIED

5. Consideration of Engineering Standards

Pellerito: This is a tool

Mike Kras: This gives us a tool to give to the developers to review and the Water Supervisor looked at this and talked with the Fire Chief. Jeff Horner of Project Control put this together looking at other communities and added things needed in our community. It is under Act 230 that we can adopt this.

Pellerito: Will bring back to next meeting

Makuch: Good move to do this, something we need.

Manos: Read through it and bring it back. Check for typos and get in touch with Mr. Kras.

6. Consideration of Engineering Fees

Manos: Gives us an idea of what is being charged around us

Kras: We don't have anything to collect engineering fees, this helps us to know what the engineering will charge and we can collect it up front.

Pellerito: Didn't think would adopt tonight, can review and bring back. Mike also working on the local permit fees and can bring back next meeting.

7. Water Supply and Distribution Ordinance Amendment

Motion by Pellerito, supported by DeBoyer, to adopt the resolution amending the Water Supply and Distribution Ordinance

ROLL CALL VOTE

AYES: DeBoyer, Dare, Krueger, Makuch, Turner, Manos, Pellerito

NAYES: None

MOTION CARRIED

8. MTA Fire Workshop

Motion by DeBoyer, supported by Makuch, to allow the Fire Commission and any Board member to attend the workshop

AYES: All

NAYES: None

MOTION CARRIED

9. Request to Attend Michigan Association of Planning Conference

Motion by Makuch, supported by Dare, to allow Dorothy DeBoyer's request to attend the Michigan Association of Planning Conference at the Grand Traverse Resort noting that Dorothy's offered to take no reimbursement for mileage or meals or accommodations, basically just the fee for the conference.

AYES: All

NAYES: None

MOTION CARRIED

10. Set Halloween Hours

Motion by Pellerito, supported by Makuch, to set the Halloween hours from 5:00 to 7:00 p.m. on October 31, 2007

AYES: All

NAYES: None

MOTION CARRIED

11. DDA Appointment

Manos: Pauline Dueweke has resigned and Bob Johnson has made it known he would like to serve on the DDA

Motion by Makuch, supported by Dare, to approve Bob Johnson to complete the term of Mrs. Dueweke on the DDA board.

AYES: All

NAYES: None

MOTION CARRIED

PUBLIC COMMENTS

N. Sarzynski, 7482 Venice: Comments regarding televising the Planning Commission meetings

H. Mikolowski, 5472 Middle Channel: Comments regarding the offshore boats

L. Kasperowicz, Dyke Rd: Comments on the Township Planning Act

C. Winters, 6242 Swartout Rd: Comments on televising Planning Commission and Planning Commission agenda

M. Hartmeyer, 9345 Island Dr: Comments on DRC

D. Pellerito, 7279 Dyke Rd: Comments on DRC

BOARD COMMENTS

None

ADJOURNMENT

Motion by Makuch, supported by Dare to adjourn the meeting at 9:40 p.m.

AYES: All

NAYES: None

MOTION CARRIED

Michael Pellerito
Clay Township Clerk