

Minutes of the Clay Township Regular Board Meeting Held on Monday April 21, 2008 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.

PRESENT: Supervisor Jon Manos, Clerk Michael Pellerito, Treasurer Connie Turner, Trustee Thomas Krueger, Trustee John Makuch, Trustee Jay DeBoyer, Trustee David Dare

ABSENT: None

Citizens: 38

BILLS PAYABLE

Motion by Turner, supported by Makuch, to pay the bills in the amount of \$98,081.38

ROLL CALL VOTE

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

NAYES: None

ABSENT: None

MOTION CARRIED

CONSENT AGENDA

Motion by Makuch, supported by Dare, to approve the consent agenda as submitted

AYES: All

NAYES: None

MOTION CARRIED

Supervisor Manos introduced Shirley Tuzinowski from the Algonac Community Theatre
Tuzinowski: The Algonac Community Theatre will be presenting “You can’t take it with you” on April 24, 25 and 26, 7:30 p.m. at the Algonac Middle School. Advance tickets are \$9.00 and \$7.00; \$10.00 and \$8.00 at the door. Also available is Dinner & Theatre for \$20.00

OLD BUSINESS

1. Resolution #4 – Cottage Lane/North Channel Canal Dredging

Manos: Have had Public Hearing, postponed this resolution so contractor and applicants could get together and revise cost, now proposed to be \$160,000.00, down from \$171,000.00. Letters were sent to all involved. Will receive a credit if less soil is removed.

E. Janowicz: Problem that there is no benchmark, using low water level or current level?

Krueger: Spoke with a few people from Cottage Lane, the first thing they want is 4 foot depth come September and October, second, they want credit for spoils not removed, they have people who will observe. But people want it done. Mr. Krueger asked Darin Gabriel if the people would receive credit for spoils not removed, Mr. Gabriel said yes

Motion by Krueger, supported by DeBoyer, to approve Resolution #4 for the canal dredging-Cottage Lane/North Channel Special Assessment

ROLL CALL VOTE

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

NAYES: None

ABSENT: None

MOTION CARRIED

2. Discussion of Fire/Water Rescue Ordinance

Attorney McNamee: This is a proposed ordinance, by statute municipalities that provide fire and emergency can provide for the reimbursement of certain costs. Have also prepared a resolution listing those items that are reimbursable. The advantages to having an ordinance in place is that if a flammable truck that comes into the Township, causes a grass fire and some contamination and perhaps injuries, insurance companies in the state of Michigan no-fault, every driver, commercial or personal, has insurance up to one million dollars for property protection damage. A lot of the insurance companies will not recognize a municipality’s claim for reimbursement unless they have an ordinance in place. Additionally there are those costs that are associated with out of town residence citizens who do not pay for fire service and something occurs while they are here and it is a cost to the residents of Clay Township. This ordinance can be adjusted, prepared in this manner so that it allows you to do so. Was mentioned to me a particular problem with someone who is setting his burning items improperly which causes the Fire Department to respond and the last one they had to use foam for extinguishments. That can be cited, if something in the future becomes a problem then you simply adopt a resolution for a rate charge. As I see from your rate charges these charges do not apply to Clay Township residents. There is an appeal process also.

Makuch: Two things I like; Section 5 interpretations and appeal process

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Pellerito: Mentioned using of foam etc, but the ordinance says not for residents, how would that work?

McNamee: The only resolution that you provided didn't include improper fire but lets say you had a persistence of people who were doing illegal burning causing the Fire Department to come out, then you could adopt a resolution to cover that.

Pellerito: Wouldn't the ordinance as written exempt the residents?

McNamee: The ordinance would authorize it.

DeBoyer: Addressed in Section 9.

Manos: What is before us now is adoption of the ordinance and a resolution setting fees for certain things. Once in place can meet with Chiefs to see what are the major problems.

Motion by Makuch, supported by Dare, to adopt Fire and Emergency Reimbursement Ordinance No. 130

Turner: Currently the illegal burning is under a civil infraction so they can get ticketed.

ROLL CALL VOTE

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

NAYES: Pellerito

ABSENT: None

MOTION CARRIED

Motion by Makuch, supported by Dare, to approve the Resolution to approve the rates for the fire emergency run costs

ROLL CALL VOTE

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

NAYES: Pellerito

ABSENT: None

MOTION CARRIED

3. Discussion of Water Fund & Special Assessments

Mark Hurst of Plante & Moran: Introduced Joe Heffernan, former audit partner. Also heads our Municipal Professional Standards Department. Know there have been discussions at Board level about the Water fund. Encouraged to see Board looking at the Water Fund and know you have taken significant actions within the past year. Here to answer questions you may have.

Joe Heffernan: Prior to Water plant expansion had a situation where the plant was being downgraded by MDEQ and EPA, the regulations in Washington require redundancy and when they looked at our plant, of the three or four processes to get water pumped and filtered and pushed out if one of everything stopped working how much could now handle. That is what caused us to have to expand the plant. When we started to upgrade we said lets look to the future for the next 20 to 40 years so also looked at increasing our capacity. So the plant was recovering the lost capacity and also increasing the total capacity. So the sharing of the costs with Algonac was a melding of those two. A lot of things were happening at that time; talking about different technology and what it would do to the operating costs and think the engineers were hoping that the new technology would be cheaper to run. Don't think we saw a real cost savings. Plenty of issues connected with that. After that plant was expanded there was an extension of lines to Harsens Island, done with a special assessment paying for some percentage of that rather than 100% of that for various reasons such as looking at not just the special assessment repayment but also capital charge on the quarterly fee, the tap-in fee, the payment in-lieu-of being in the special assessment for properties that split and taking all of those together to repay the debt issue. The debt issue that was issued was a limited tax general obligation issue rather than a special assessment issue which didn't make much difference from the Township's perspective other than the ability to get a little bit lower percentage rate by giving the full faith and credit of the Township. In theory if the water fund hadn't had enough to repay that or doesn't have enough in the future the Township itself is standing behind that and I think that is better for the bondholders. Certainly everybody's intent is for the water fund to be self supporting and that is where the resources will be coming from but from the bondholders perspective the entire Township and all funds is standing behind it and that helps the bond issue a little bit. It was quite complex structure of where the resources were coming from to repay that debt and all existing debt and all operations of the system. Since then some things have happened in terms of following the original schedule and a couple rate increases occurred, some of them didn't, then again on the cost side, it was a purely guesstimate. Your water system continues to be healthy but certainly not as healthy as it was 10 years ago. Part of that was the design with the cash and working capital that was in the water fund.

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It was designed to be drawn down from the 1.75 million to approximately eventually 700 thousand level and that was the cushion that was in there originally. The draw down has happened a little quicker than what was originally on Paul Stauder's schedule but that is because of so many things that did and didn't happen in terms of the rates we're paying to Algonac not coming down like we might have wanted to and the rates charged to customers. That's just an overview. We'll try to answer your questions.

Krueger: Do we know if all the special assessment funds that are generated by payments, by tap fees, by interest, etc, is all captured in that special assessment district so we can see if we need to fix that special assessment district or whether some of those funds were commingled with other funds say for general operation of the water department or payment on the water plant expansion. Do we know if the basic premise is correct, do we have the records available that could tell us if it is upside down or not?

Heffernan: On first question, it is a maybe. The Department of Treasury of the State of Michigan has a responsibility of oversight; it's called the Local Audit Finance Division. They have a procedures manual and there is a chapter on bank accounts and when you do need to keep track of money separately. And they would not say that this situation is one where you do. When you have a special assessment district that is associated with a special assessment bond that is one. When a special assessment project is being financed through a limited tax journal obligation bond or your own resources or some other combination the Local Audit Finance Division would say "No, that's not required".

DeBoyer: Is it in our best interest to do an account record of each special assessment, regardless of where the money is setting, to be certain that the revenue that it is generating is two things: One, going towards the debt that it has incurred and two, taking in enough to pay for it's debt, and actually three, vice-versa, be sure we have not overpaid.

Heffernan: Agree, to say a little differently, I think it is helpful when you do any large project to say, "Here was our budget at the beginning of the time we thought would happen and what really happened". In this particular instance of the Harsens Island special assessment my understanding from looking at the documents from Paul Stauder it was not intended to bring enough special assessment revenue to pay the full amount of the cost, the bonds or the project itself. On a large project it is helpful to look at the original budget and say here is what we intend to happen and after the project is done say here is what happened.

Krueger: Let's say just for conversation that the Harsens Island special assessment is upside down, short of money, so we can just raise our water rates for everybody in the Township and have water fund money help pay for the special assessment?

Heffernan: It goes back to the question of the philosophy that this Board wants to have as to whether its water system is one district or more. It's unusual but not wrong to take a water system and operate it as different systems with each its own costs and rates.

DeBoyer: That is not exactly what it is, what it is there is a capital expenditure for actual hard infrastructure that has a cost. That is the only deviation from one place to another in the Township, the actual pipe going into the ground, it is one system.

Heffernan: We have the Mainland and we have Harsens Island.

DeBoyer: No, we have five different districts that were done at different times with different mechanisms to put the water in.

Heffernan: In the entire water system we have one particular project and should we make sure it is self supporting and the special assessment that comes in to pay for it were used just for that? There is not a requirement for that, the original project from Paul Stauder that I assume the Board agreed with had a special assessment of about 4.7 million dollars and the costs were in the 6.5 million neighborhood so clearly the intent at the time was not to have this particular special assessment pay for it. Once you make that decision the question of where is the rest coming from becomes one of which pocket is it coming out of. The other costs that were shown were the same costs everybody else would have paid so at that point you really saying system wide the water system are really paying that 1.5 million in the middle.

DeBoyer: If I go back to a specific district and I look at the projects and it's the revenue, not the special assessment, that's falling short from that district, I ask how do I go out of that district and put the burden on someone who's not in that district. It's a legal question, I look at what Public 188 of 1954 tells us what we can do and it tells us where the fees come from if there is a shortage. I look at how this one was set up and I don't think it was set up properly. It will be the decision of the Board how we are going to deal with it.

Krueger: Stauder & Barch projections weren't for the entire Township, I believe when they were talking about the other part of the funding mechanism for the Harsens Island special assessment was for the people in that special assessment.

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Manos: Commentary on how the outback system was done to generate enough money to put it in and then revamp to adjust costs and Stauder & Barch put this system and which was used in all systems outback including the service fees, the tap-in fees, system benefit fees, etc. to pay the bonds off. Harsens Island has a potential of 1100 tap-ins. They are going to pay the difference of the costs that were factored in. At the end of this program there is a \$600,000.00 cushion. We already have 80% in and we have a 100% guarantee on over 1,000 lots.

Hurst: What you are referring to is the original projection schedule, which I believe indicates there is potential overage when the project is completed. It is referred to a guesstimate. Is there a separate accounting that could be done to compare actual result against that original projection, yes that can be done. At this time only a portion can be done the rest would be a projection. The question is, what would be the effect of a lot of advance payments. If you were to ask if we did that computation would that show a shortfall or an overage, I can tell you I don't know. There was a decent cushion at the beginning but I don't think anybody anticipated so many advance payoffs. The legal question that Joe or myself cannot answer is, if there is a shortfall can you or must you go back to that district.

Turner: You have to wait until the special assessment is complete before you can do that?

Hurst: You would have to wait until you were confident that there is going to be a shortfall, I don't think you would have to hold off on even considering the issue, this district is more challenging than most based on the capital charges and that from the onset only a portion of the project was covered by those special assessments to begin with. You would have to readdress that issue and determine what the basis was for that assessment and then take it from there.

Turner: The special assessment wouldn't come in short, we are guaranteed that money. So it would fall on the Township if there was any shortage.

Hurst: I think that is the ultimate question to be answered.

DeBoyer: We could according to the original projection determine where we should be today and where we are today, which would give us a good projection of where we are heading.

Hurst: Have to consider interest rates on deposits and reassess potential taps and the impact that would have.

Makuch: Two things bother me, the intent of the bonding not to cover the debt, so the money has to come from somewhere, suppose the revenue, which may be offset by people paying off in advance. If the cost was so excessive the project shouldn't have been undertaken. How do you finance a project with bonds knowing that the bonds aren't going to cover the project?

DeBoyer: We're covered under Public Act 188 of 1954. Read section 41.735. Asked attorney McNamee for an interpretation.

McNamee: Not prepared to give a legal opinion, would have to look at documents to see how set up. Also would need a specific question.

Manos: What is your conclusion, what is the water department's health?

Hurst: A study from Paul Stauder that looked solely at revenue coming in that could be used to make debt payments. He was looking at another \$4.50 increase in the quarterly capital charge that would be enough to cover your debt service requirements. In addition to that there was a separate study from Plante & Moran on the operation side that we believe that whatever percentage increases from Algonac would be passed on and add additional inflationary increase on top of that. That will put water fund back on course to fiscal stability.

Krueger: Joe you said according to the State of Michigan General Accounting standards, because the bonds that were issued are backed by the full faith and credit of the Township other Township monies can be used to pay off those bonds.

Heffernan: Yes, the State would say there are two types of bond issues, one when you are accumulating money from a special assessment district in order to pay a special assessment bond and number two, is when you have an unlimited tax general obligation, meaning voter approved, and you are bringing in revenue to pay an unlimited tax, those two instances you are required to have a separate accounting.

Krueger: Understand there was a loan to kick off this project, was it the water fund or the general fund?

Manos: The water fund. Those \$500,000 came in from the special assessment and was transferred back into the water-operating fund.

Krueger: So that was paid off?

DeBoyer: That was earmarked not to be touched?

Manos: It's already back.

Turner: It depends how you look at it, they won't actually get it back until the special assessment is completed.

DeBoyer: We have a situation that there is a potential that the revenue that was projected won't be there. So my question would be, at this point, what is the obligation of the Township?

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DeBoyer: What should we do and what can we do to address that?

McNamee: The bonding attorneys typically do a resolution right in the beginning that authorizes the Board to lend money to a special assessment to commence the project and is paid back over some period of time. Those are the documents you have to look at. If this was a bond that was pledged with the full faith and credit of the Township, the Township had to adopt a resolution. That would have some impact on what the obligation of the Township is. Special assessments are to construct, there would be some mechanism for funding. I can't recall any case law that addresses how a special assessment is paid off if there is a shortfall.

DeBoyer: Is that something you could find out for us?

McNamee: Yes. It is somewhat up in the air because it is hard to predict what the economic condition will be in 20 years.

Krueger: This wouldn't be an issue if our water department wasn't allegedly going to be upside down in three to five years. We're looking at a way to fix and we want to fix it the right way.

Manos: We have a cushion. Connie has the numbers, there was to \$4,000.00 per lot, that is over four million dollars. Connie has already collected over three million and we have 800+ customers out of a potential of 1,100. We're still putting more taps and we have 20 years to go. Water rates will be cheaper because we have 800 more customers. Now we want to go money back and spend thousands to do an audit. I don't want it going out to the public that the mainland will pay for the Harsens Island system. We will have in that system we will have funding to pay for it.

DeBoyer: One last point of clarity, we did raise the quarterly debt service fee in formula to fund district 7 and 7A currently it is \$20.00 however, we have a debt that is the water plant that is shared by everyone in the Township and everyone that is not in district 7 and 7A is paying a \$20.00 quarterly debt service charge that is going towards that debt. District 7 and 7A are paying a quarterly debt service charge that is going towards their special assessment district. I think that has to be addressed.

Motion by Krueger, supported by DeBoyer, to have Plante & Moran give us a detailed analyses of the Harsens Island special assessment district as to where it stands at this time in respect to the original projection and also an opinion from our Township Attorney John McNamee as to the issue of what funds can be used to fund that particular special assessment and if the funds can be used for other things.

Manos: We've been through this and to have the attorney go back and look at the documents and say the methods were not proper and to say to Plante & Moran you should have segregated funds when they just said what state law is, are we going to charge Harsens Island \$5,000.00 to satisfy something that is not even a possibility at this time.

Pellerito: Didn't we say that one special assessment doesn't pay for another?

McNamee: Special assessment monies are intended to pay for the installation.

Pellerito: Does that answer your question Tom?

Krueger: No. I think we have somewhat of a difference of opinion. I asked Joe if monies from the water fund be used to pay special assessments. Because we pledged the full faith and credit of the Township he said yes they can. Yet our special assessment was set up to pay for what was in the ground. We had a 6 million dollar project, we only spread 4.7 million to come back the rest was to be made up in the fees which is fine and the water department loaned another half million dollars to the project to make it work and I am still in a quandary as to what we should legally do. I'd like to nail this down once and for all and fix it right.

DeBoyer: Just a clarity of a point, Jon you said we have collected more than we paid out but I have a schedule in front of me and we have paid almost 5 million in principle and interest so far out of there so to say we have collected more is a false statement.

Manos: We have collected more when you take all the tap-ins and debt service charges and figure it all in. The system is not in the hole.

Pellerito: This is a water department issue, are you going to charge the Water Department?

Krueger: Out of the General Fund

ROLL CALL VOTE

AYES: DeBoyer, Dare, Krueger, Makuch

NAYES: Pellerito, Manos, Turner

ABSENT: None

MOTION CARRIED

4. Discussion of Genaw Road Water Line

Attorney McNamee: I was provided with a copy of the 1989 agreement when it originated, at that time I was the Clay Township attorney and Tom Clemons represented Cottrellville. I now represent Cottrellville. I have always taken the position that if an issue between Clay and

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Cottrellville, Clay Township would be my first responsibility and Cottrellville would have to appoint council.

The 1989 agreement would have to be renewed and the provisions are pretty applicable except for making a determination as to the cap of the additional water that might be utilized. Also might want to do it by unit, as to the number of properties that could be served. For example someone has a 40-acre parcel and wants to subdivide it, would we be obligated to provide 60 homes. It could be handled with a intergovernmental agreement where we restrict the actual flow or restrict the use or maybe no industrial use. It would have to be approved by the City of Algonac. I would want to speak with the head of the Water Department, Jon DeBoyer, not only to get his thoughts as to volume that might be appropriate, metering, how it should be done, cost of repair, some details we might want in the contract that someone of his expertise would be aware of as opposed to an attorney. Then I would bring that back to the Board for discussion and review. Hopefully I can accomplish that before your next meeting, if not no later than the following one.

5. H. I.F.D. Grievance

Manos: One of the firemen has requested an executive session

Motion by Makuch, supported by Dare, to move to executive session

ROLL CALL VOTE

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

NAYES: None

ABSENT: None

MOTION CARRIED

Board went to executive session at 9:07 p.m.

Motion by Makuch, supported by Dare, to reconvene at 9:40 p.m.

AYES: All

NAYES: None

MOTION CARRIED

Manos: The item for review is the H.I.F.D. grievance, the Board has discussed it, the Chief has made a decision. The Board has the authority to either override that decision or leave it as it stands.

Motion by Makuch, supported by Krueger, regarding the grievance for the H.I.F.D. that the decision of the Chief be upheld and supported by the Board.

ROLL CALL VOTE

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

NAYES: None

ABSENT: None

MOTION CARRIED

PUBLIC COMMENTS RELATING TO ANY NEW BUSINESS

None

NEW BUSINESS

1. Auto Craft Tool & Die Request for Renaissance Recovery Zone

Supervisor Manos explained the procedure for a Renaissance Recovery Zone

DeBoyer: Is it for 5 years?

Assessor Schutt: That is the minimum

Krueger: In our workup on how much they would be saving we took out the Police and Fire millage but noticed in the law it lists special assessments. Our Police and Fire special assessment, wouldn't they still be paying those?

Assessor Schutt: It would be by millage rate and ours would be zero so there would be no assessment.

David DuVernay of Auto Craft Tool & Die: This industry is going through tough times, General Motors wants us to do business out of the country and we are trying to stay in the country and keep people employed in the area. We need your help to survive this time and I need you to work with me.

Motion by DeBoyer, supported by Makuch, that we pass a resolution to authorize a Renaissance Recover Zone for Auto Craft Tool & Die Company, Inc. for a period up to eight years.

ROLL CALL VOTE

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

NAYES: None

ABSENT: None

MOTION CARRIED

2. Resolution #1 – Set Public Hearing for Lazy Lane Road Maintenance & Repair Renewal
Motion by Makuch, supported by Dare, to approve Resolution #1 and set the public hearing for May 19, 2008 at 7:15 p.m.

ROLL CALL VOTE

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

NAYES: None

ABSENT: None

MOTION CARRIED

3. Michigan Liquor Control Commission Approval for Robert J. Leid

Motion by DeBoyer, supported by Krueger, to approve the request for the Liquor license transfer for Robert J. Leid

ROLL CALL VOTE

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

NAYES: None

ABSENT: None

MOTION CARRIED

4. Michigan Association of Planners Dues

Motion by Turner, supported by Dare, to approve paying the Michigan Association of Planners dues in the amount of \$625.00

AYES: All

NAYES: None

MOTION CARRIED

5. DSS Maintenance Agreement

Motion by Turner, supported by DeBoyer, to approve the DSS Maintenance Agreement in the amount of \$325.00

AYES: All

NAYES: None

MOTION CARRIED

6. St. Clair County Road Commission Policy #92

Manos: No Action required, just informational

7. ABC Portable Toilet Rental

Pellerito: This is at the recycling center

Makuch: Who is there now?

Pellerito: The company has gone out of business

Motion by Dare, supported by Makuch, to accept the rental agreement with ABC Portable Toilets for \$85.00 per month.

AYES: All

NAYES: None

MOTION CARRIED

8. Set Budget Workshop

Budget Workshop set for Wednesday May 7, 2008 at 5:00 p.m.

9. Set Soil Removal Permit Public Hearing

Motion by DeBoyer, supported by Dare, to set the public hearing for May 5, 2008 at 7:00 p.m.

AYES: All

NAYES: None

MOTION CARRIED

10. SEMCOG Membership

No action

11. Discussion of Cemetery Fees

Motion by Turner, supported by Dare, to rescind the Graveside service rate to \$150.00 for Clay Township residents and \$300.00 for nonresidents

ROLL CALL VOTE

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

NAYES: None

ABSENT: None

MOTION CARRIED

12. Police Department Copier Maintenance Agreement

Motion by Turner, supported by Makuch, to approve the copier maintenance agreement with Prime Office Technology for the Police Department in the amount of \$615.00

AYES: All

NAYES: None

MOTION CARRIED

13. Michigan Planning Enabling Workshop

Motion by Makuch, supported by Turner, to allow any Planning Commissioner or ZBA member or Board member to attend the workshop on May 28, 2008 and reimburse Mike Kras for the registration fee.

AYES: All

NAYES: None

MOTION CARRIED

PUBLIC COMMENTS

W. Austin, 8909 Marsh Road: Comments on zoning violations and request to Board to do something

D. Glowski, 1296 N. Channel

A. Szulborski, 773 N. Channel

K. Pierce, 891 N. Channel

L. Bain, 785 N. Channel: Comments on the lawsuit with Lucky 7

BOARD MEMBER COMMENTS

None

ADJOURNMENT

Motion by DeBoyer, supported by Makuch, to adjourn the meeting at 10:10 p.m.

AYES: All

NAYES: None

MOTION CARRIED

Michael P. Pellerito
Clay Township Clerk