

RESOLUTION #09-17

**RESOLUTION FINDING BREACH OF CONTRACT, MATERIAL
MISREPRESENTATIONS AND STATEMENT OF INTENT
Ordinance 34**

Whitewater Township
Grand Traverse County

WHEREAS, the Township of Whitewater (“Township”) adopted the Township of Whitewater Uniform Septage Control Ordinance of 2004, Ordinance No. 34 (“Ordinance”).

WHEREAS, the Ordinance was adopted pursuant to the terms of the Contract for Septage Treatment Capacity the Township entered into with Grand Traverse County through the Board of Public Works (“Contract”).

WHEREAS, the Township entered into the contract based on substantive and material representations made by the Grand Traverse County Board of Public Works, its engineers, agents, employees, representatives, and consultants (hereinafter collectively referred to as the “BPW”).

WHEREAS, certain representations made by the BPW were false, untrue or misleading, including without limitation the economic modeling for the Grand Traverse Septage Treatment Facility (“Septage System”).

WHEREAS, the Contract recites the facility is to be financed through user fees collected from the haulers who deliver septage treatment to the facility.

WHEREAS, the BPW was the party contractually responsible for designing, building, and operating the Septage System in such a manner that the user fees would cover the costs.

WHEREAS, Permitting fees are currently used for financing the system, but it was represented to the Township that these fees were to be designated for capital improvements.

WHEREAS, the Septage System is economically reliant on outside sources of revenue not anticipated in the contract.

WHEREAS, the Township reasonably and materially relied on the information, including but not limited the information set forth herein, presented to it in entering into the Contract and subsequently adopting the Ordinance.

WHEREAS, relying solely on the fees and economic assumptions presented by the BPW to the Township to induce it into entering the Contract, the Septage System cannot be economically sustained.

WHEREAS, the Township has diligently requested information and resolution of issues pertaining to the Septage System and has requested assurances that additional fees, assessments

or other monies would not be requested, charged, taxed or assessed on or to the Township or its citizens.

WHEREAS, the BPW has provided limited information but no such assurances.

WHEREAS, the BPW has further acknowledged certain material breaches, both orally in meetings as well as in written correspondence, of the Contract.

WHEREAS, the Township has worked diligently to resolve issues with the BPW, but the BPW has failed to present, propose, implement or adopt any solutions or cure material breaches of the Contract.

NOW THEREFORE, in reliance on the aforesaid as well as other relevant factors not recited herein, **IT IS HEREBY RESOLVED THAT:**

1. The Whitewater Township Board of Trustees hereby finds that there have been material breaches of the Contract and material misrepresentations, which the Township reasonably relied on in entering into the Contract, made by the BPW in inducing it to enter into the Contract.
2. The Township hereby reserves any and all legal and equitable remedies, options, and rights it may have resulting from the BPW's breach of the Contract and material misrepresentations made by the BPW, and does not waive any of its remedies, options, or rights pertaining to the same by its actions or inactions.
3. The Township will rescind, cancel and revoke the Contract and repeal the Ordinance if any of the following occur:
 - a. The BPW resolves adopts or otherwise implements, or takes steps to implement a special assessment of any citizen of the Township to raise monies for the Septage System without the Township first consenting to the same.
 - b. The BPW increases any rate, fee, or other expense charged above the current levels to the Township or its citizens, or creates any new fees or assessments to be charged to the Township or its citizens, relating to the Septage System.

Dated: September 28, 2009

Larry R. Lake, Supervisor

A motion to adopt the foregoing Resolution was made by Hubbell and seconded by Boyd.

Upon roll call, the following voted:

Yes: Benak, Boyd, Hockin, Hubbell, Lake
No: None
Absent: None

Resolution declared adopted.

I, the undersigned, the clerk of Whitewater Township, Grand Traverse County, Michigan, do hereby certify that the foregoing is a true and complete copy of certain proceedings taken by the Whitewater Township Board of said municipality at a regular meeting held on September 28, 2009 relative to the adoption of Resolution #09-17.

Carol Hockin
Whitewater Township Clerk