

**Whitewater Township Board  
Minutes of Regular Meeting held May 13, 2014**

**Call to Order/Pledge of Allegiance**

Supervisor Popp called the meeting to order at 7:03 p.m. at the Whitewater Township Hall, 5777 Vinton Road, Williamsburg, Michigan, followed by the Pledge of Allegiance.

**Roll Call of Board Members**

Board Members Present: Benak, Goss, Hubbell, Lawson, Popp

Board Members Absent: None

Others Present: 9

**Set/Adjust Meeting Agenda**

Popp learned from John Lucsy today that we should talk about the Moore Road building. Added as Item #4 under New Business.

**Declaration of Conflict of Interest**

None

**Public Comment**

None

**Public Hearing**

None

**Reports/Presentations/Announcements/Comments**

**Grand Traverse County Sheriff Department Report** – No one is present from the Sheriff Department.

**County Board of Commissioners Report** – Commissioner Inman is not present.

**Fire Captain Report**

Captain Arbenowske gave the following report:

- In April, there were 8 calls, 4 fire and 4 rescue. He described the types of calls.
- There was a Rural in-service as well as pump training.
- There were 2 meetings.
- They are up to 27 calls. Last year at this time, there were only 11, which was low.
- There are 2 new members. Nick Carpenter has filled out payroll paperwork. Dave Tilley has been approved by Rural. Also, Andrew Jeurink is waiting on his physical. They should be up to 11 members soon.
- Chief Weber bought Station 3 a K12 saw, which is for ventilation and building access. They have to do training on it.
- Tim Shaffer's retirement party is Saturday at New Hope Church Community Center from 1:00 to 5:00 p.m. Refreshments will be served.
- Send Brothers said we could take 1 truck there on May 24 for Customer Appreciation Day. They do not have a lot of room for anything else.

- They will participate in the Memorial Day Parade on May 26.
- Over the weekend, there was a water main break at the corner of Old 72 and M-72. It has been corrected, but the hydrant at the school apparently has a broken valve. The village section was without water for about a day and a half.

Popp inquired who was on the assist with 3A when no members were available.

Arbenowske replied that 3A did respond and no one was available. They had 3 rescue go out too, but there was no one available, so station 8 rescue came down.

Popp stated the way he read the report, 3 rescue responded instead of 3A.

Arbenowske stated that 3A was called out; nobody checked in. He stated the way it is working now, Chief Weber has it so that 3 rescue responds. Nobody responded from 3 rescue either because there was nobody available. It was 7:10 in the morning.

Popp inquired about the introduction of Drew Jeurink last month.

Arbenowske stated he introduced Nick Carpenter last month. He did mention Drew's name, but Drew has not been approved yet. He is waiting on a physical.

Hubbell inquired if Dave Tilley is related to Tim Tilley.

Arbenowske does not believe they are related.

### **Ambulance Coordinator Report**

Ambulance Coordinator Martin gave the following report:

- Martin noted that the Board has her report and inquired whether there were any questions on runs. (No questions from the Board.)
- She and Popp have been putting together a format that will help to schedule the team members that will be joining the EMS crew.
- She is focusing on getting the applications filled out for some of the providers who want to join.
- EMS personnel have gone several months without medical training. Josh Salyer will be doing training in the second week of August, and they will double up their classes until they get caught up.

Benak asked if anyone was in danger of not being able to renew their license because of lack of credits.

Martin said no one has brought that to her attention.

Arbenowske said he could lose his license if he doesn't get it together, but he will take care of it himself.

Benak stated Martin may want to check with the other guys to see how they are doing.

Goss stated when she checked licenses in the early part of this year, there were several which were coming due soon. This can be checked on the LARA website for anyone who has a medical license.

Martin stated she has one more class, but clinicals are done.

### **Planning Commission Report**

Lawson inquired if anyone has had a chance to read the Draft Master Plan and when does the Board think we will be able to sit down and discuss it and get information back to the PC. The PC has sent the Master Plan out for professional design and setup, which should be done by the end of the month.

(Planning Commission Chairperson Mickey Dean is also present.)

Discussion followed regarding various options to accomplish Board review of the Draft Master Plan. Consensus was reached to put Township Board review of the Draft Master Plan on the agenda for the May 27th meeting.

### **Consent Calendar**

#### Receive and File

1. Supervisor's Report for April 2014
2. Clerk's Report for April 2014
3. Fire Captain's April 2014 Activity Report
4. Ambulance Coordinator's April 2014 Activity Report
5. Approved 03/10/2014 Parks & Recreation Advisory Committee Minutes
6. Approved 03/12/2014 Historical Society Minutes
7. Approved 04/02/2014 Planning Commission Minutes

#### Correspondence

1. Grand Traverse County Sheriff Department Statistics for April 2014
2. DEQ Water Resources Division Permit 14-28-0007-P
3. NWMCOG 2014 Call for Economic Development and Recreational Projects
4. Letter from East Bay Charter Township re: Notice of Planning

#### Minutes

1. Recommend approval of 04/08/2014 and 04/22/2014 regular meeting minutes

#### Bills for Approval

1. Approval of Alden State Bank vouchers #38079 through 38188
2. Approval of Alden State Bank Miami Beach vouchers #1148 through 1149
3. Approval of Alden State Bank WMDLS voucher #1023

#### Budget Amendments (none)

#### Revenue & Expenditure Report (none)

While Chairman Dean is still present, Popp stated he had a couple questions with regard to Planning Commission minutes. He saw where Kim Mangus wanted to do something on the website with respect to the Master Plan.

Goss stated that Mangus has been in contact with her, but Goss has not passed on that e-mail to Jim Sundberg as she wished to have Popp review it first.

Discussion followed concerning the Planning Commission's request to put information on the website, as well as a counter and the ability to accept blind comments.

Popp stated he would meet with Goss concerning this request.

Concerning the Private Road Ordinance, Popp stated it appears there was a letter to be drafted and forwarded to the Board.

Lawson indicated it is a request asking the Board where they want the PC to go with it.

Popp stated that he and Z~~O~~ ZA Habedank feel the Private Road Ordinance belongs in the Zoning Ordinance, rather than exist as a general ordinance.

Popp and audience member Kim Halstead gave a brief history of the former Road Plan Committee.

Popp stated the Board would wait for the letter.

Popp further commented that the fire trucks are now larger than they used to be. Maybe Rural should also be asked to address the situation.

Arbenowske stated Chief Weber is in the process of replacing the tankers and they will be smaller.

Popp noted there was no zoning report. Popp will converse with the Zoning Administrator about providing a monthly report.

Popp noted that he and Captain Arbenowske have not been able to get together and, with the town hall meeting coming up, we need input from him. Popp stated he emailed Chief Weber on 4/29 and just heard back from him today. Popp asked the Board how this should be addressed.

Arbenowske stated he works nights. With other meetings, Fridays are his only day. Popp has been out of the office. It is just a conflict of trying to get together.

Discussion followed.

With respect to the NWMCOG letter addressing economic development and recreational

projects, Goss commented that Popp had listed possible fire station and the park stairway. Goss inquired whether the fencing/gate project at Petobego should be added.

Discussion followed. No action will be taken.

Under Correspondence, Popp stated the DEQ permit should be filed with the parcel ID file. Popp wonders if a land use permit has been applied for. He stated the type of construction going on is in conflict with the Zoning Ordinance.

Popp noted there were 7 criminal arrests in the township in April.

Hubbell stated there have been a lot of breaking and enterings.

Under Bills for Approval, Popp noted the expense for removal of trees at Hi Pray Park was put under the Park Fund.

Goss will make an adjusting entry to properly place that expense in the Recreation Fund.

Popp requested a motion to approve the Consent Calendar.

**Motion by Hubbell, seconded by Lawson, to approve Consent Calendar items as presented.  
Roll call vote: Lawson, yes; Benak, yes; Popp, yes; Hubbell, yes; Goss, yes.**

### **Unfinished Business**

#### **Tribal Intergovernmental Agreement – Further Ideas/Comments**

Popp inquired if there were any further thoughts, after reading the minutes, of how to communicate with Attorney Fahey. Goss has suggested that the minutes be forwarded as written.

Goss stated what is in the minutes can be cut and pasted into a different document. If there are more questions or a question is not worded correctly, those can be added. The questions appearing in the minutes are all of the questions which were asked.

Popp then questioned if Mr. Fahey is the right person. He stated the Intergovernmental Agreement would bring us under tribal jurisdiction and he does not know how that court functions. He is not sure if Fahey has ever litigated anything in tribal court.

Goss stated she believes that is where it should be sent initially, that the township attorney needs to see the document, but perhaps with a statement that if he feels further review is warranted by someone who specializes in this type of agreement, to please let us know.

Benak agrees that it needs to go to Fahey first.

Lawson inquired if we should contact someone at Bureau of Indian Affairs.

Hubbell thinks we should let Fahey give us a recommendation.

Discussion followed.

Consensus was reached to copy and paste the questions to a letter which will be attached to an e-mail to Attorney Fahey, with a copy to Board members. The questions will also be sent to Chuck Stewart and Chief Weber.

**Proposal of a Whitewater Township “Town Hall Meeting”**

Popp advised that the only date available at the school is June 12th.

Benak stated in early June she has to have her IDE replaced; she has an appointment on May 22nd to talk to them and then will see the cardiologist.

Hubbell stated he will be in Cleveland in June; his daughter is trying out for The Voice.

Discussion followed regarding the proposed dates of the town hall meeting, the limited availability of Mill Creek Elementary School, the issue of Mill Creek staff needing to be present, availability of Board members, and the possibility of a different venue.

(At about 8:30 p.m., Trustee Hubbell left the Board table to make a phone call.)

Brief discussion continued regarding limited availability of the school.

(At about 8:33 p.m., Trustee Hubbell returned to the Board table.)

Hubbell stated he is available on the 12th.

Popp inquired how the Board would like to present the topics at the meeting. He proposed there be budget information, drawings, pictures, etc.

Hubbell would like Chuck Stewart to be there to answer questions.

Benak will find the list of materials she prepared for a previous presentation.

Popp would like to find the township projector.

Goss stated the documents should be put on the township website at least 5 days before the meeting.

Popp feels the documents should be mailed to everyone at least 2 weeks prior.

Discussion followed regarding using projection for the presentation, placement of chairs, providing the 1974 ballot language, providing proposed ballot language for ambulance, providing budget information, length of the meeting, cost of mailing the documents, a sign in front of the township hall announcing the date and location, timing of the mailing of documents, documents depicting the township proposal and the tribal proposal, contacting Chuck Stewart to

request that he present the tribal building proposal, providing operating expenses, and an explanation of where cell tower money goes.

Popp then inquired, if we have through intergovernmental agreement signed away our right to run a fire department to Rural, why are we dealing with this.

Benak stated that Rural does equipment; they do not do buildings.

Goss stated that Rural rents from us; they could also rent from the tribe.

Hubbell stated they very well might; they are in the negotiation process with us.

Popp thinks, as long as we are staying with Rural, then Rural will be leasing the building from the tribe.

It was reiterated that the date for the town hall meeting is June 12th at 6:00 p.m.

Summary of what will happen next is as follows:

- Benak will find the list for the presentation.
- Popp will let Benak know if he needs any other help.
- Popp will contact Chuck Stewart, as well as confirm with the school.
- Documents will be mailed by May 30th.

Discussion followed whether the documents will be printed in house.

Popp stated ballot language should be on the homework schedule.

Goss will contact Peninsula Township to get their ballot language and check with the Michigan Townships Association.

Hubbell suggested another source is Lon Bargy, supervisor in Milton Township.

### **New Business**

#### **Grand Traverse County Road Commission 2014 Brine Contract**

Popp stated he attempted to finalize things with Al Keaton and A1 Sanitation on brining, but it will not happen this year. Popp advised that the County will not do any testing of the water as far as chemical composition. They will only test for specific gravity or salt.

Discussion followed regarding the incident last year where brine was used from a well that had not been approved by the DEQ for surface application, as well as the available options for this year.

#### **Motion by Hubbell to accept the brine bid for what it is for this year.**

Popp stated Samels Road has been left off the list again this year.

Discussion followed. With the addition of Samels Road, road brining will be approximately \$6,000 per brine.

**Motion by Hubbell, seconded by Lawson, to accept the bid for road brining, adding Samels Road, brining to be done 2 times, 3 times if needed, and to authorize the Supervisor and Clerk to sign the County Road Improvement Agreement. Roll call vote: Popp, yes; Lawson, yes; Goss, yes; Benak, yes; Hubbell, yes.**

**Review Advice Letter from William Fahey re: Strong Arm Tactics**  
Popp stated this concerns the Planning Commission.

Goss stated the first part of the opinion is summarized on Page 3.

Benak asked, if we are not providing the information to the public because it is a legal issue, why are we discussing it in open session.

Goss stated we cannot disperse the letter because it says attorney-client privilege.

Benak stated then we should be discussing it in closed session.

Lawson inquired whether we have to have a closed session on the agenda.

Goss stated she would want to review the specific reasons for a closed session before it was done.

Benak stated it should have been provided to the public.

Popp stated he was confused about that, too.

Goss stated the attorney-client privilege would be waived by providing the document to the public. Goss has no problem with providing it to the public if everybody agrees that it should be.

Popp stated that he does not think it addressed the question.

Lawson stated he did not give an opinion of what we should do.

Popp replied that he answered the question of whether or not there was undue pressure. Popp asked: Who decides whether or not there was undue pressure?

Goss stated he answered the question but not directly. Goss quoted as follows, "Based on the above authorities, the supervisor or any other township board member should take great care in any participation before the Planning Commission or the ZBA. Such participation has been held to create undue duress in situations where the board member attending has or is advocating for a personal or financial interest. However, where such participation does not involve a personal interest and is designed to address matters of purely public interest, the participation is not improper. Based on the information provided by you to our office, the existence of a personal

interest is not apparent in the circumstances you present, and so should not present an undue duress issue.”

Goss stated the question is then: Did you have a personal or financial interest in any of the decisions that the PC or the ZBA made during your tenure as zoning administrator?

Discussion followed regarding personal versus public interest and Fahey’s cautionary reference to potential Open Meetings Act violation.

Goss believes Fahey is leaving it to somewhere between the Township Board and the PC to determine whether Popp had any personal or financial interest in any of the things that they voted on. As an example, Goss stated perhaps Popp advocated for something in the Master Plan that is going to benefit Popp personally or financially.

Benak stated that is kind of broad and cited a possible example.

Goss stated the Master Plan has not been adopted, so nothing has been voted on there, and in fact that document is up for further review.

Brief discussion of what is in the Draft Master Plan.

Lawson stated that, being at every one of the meetings where Popp was there, at no point did he ever feel he was advocating for anything that would interest him. He would answer questions directed to the zoning administrator or bring up points that the PC had not looked at.

Popp stated that is why he thought the decision should actually involve at some level the PC or the committees that he was in front of and let them come to the rest of the Board with their opinion.

Goss stated Fahey is providing a guideline for how to do that review. Goss agrees it should be an agenda topic for the PC and the ZBA, with a clear statement of when it happened or that it did not happen, and there needs to be closure. Fahey stated the courts have ruled that there is no undue duress in situations where the zoning administrator does not have a personal or financial interest in the outcome of whatever they are discussing.

Benak inquired what is the point of going to the PC if you have got the answer from the attorney.

Goss stated the PC would need to be provided with the opinion, although the PC may not know whether he has a personal or financial interest.

Benak stated we have not brought this to the ZBA or to the Planning Commission yet. Why are we taking it to them if we have an opinion from the attorney?

Popp replied because the decision has not really been made, and that is why he is disappointed with the letter. With respect to a decision that the PC or ZBA might make, there is no answer to Benak’s assertions questioning the decisions.

Benak stated she really likes how this has all been turned around, that somehow this is her issue. Benak said Popp clearly stated at the bottom of the memo what he was looking for, and Benak truly believes that Fahey thinks he answered it in the last paragraph that Goss read out loud, that there is no issue, so there would be no need to reaffirm anything. Benak stated that is the way she is reading it.

Popp stated that is why it is in front of us; it is for the Board to decide.

Benak stated the only other thing she will say on this is that, normally, when there is a question of impropriety of any kind on any board member, that board member should not be the one communicating with the attorney for clarification. It really should have been done by the clerk or one of the trustees. Neither she nor Popp probably should have had that communication because, reading through this, she feels it is kind of a hostile letter that Popp sent. She stated, in the future, the fox should not be guarding the henhouse.

Goss stated that is a good point, and maybe the elaboration could have been left out.

Benak further stated that in any kind of communication like this or like the tribal issue going to the attorney, she would always like to see the communication that was sent with, not just the response.

Popp and Goss agreed.

Hubbell asked where do we want to go with this.

Popp stated that he wants to make sure that the decisions that the PC made are protected in the future, and agreed that Goss's comment, that the document is going to undergo so many transformations yet that it really does not matter, is probably a valid point.

Popp further stated that it should be pretty easy for the ZBA to go back, because you should be able to pinpoint the parcels that were involved in the ZBA cases. He stated he can clearly show proof that he has no ownership or part ownership in the half dozen parcels.

Goss stated that the ZBA should have had a meeting before March 31st where they adopted their meeting dates for the year and minutes are outstanding from September 2013. They are having a housekeeping meeting this month. Goss suggested that Dennis Habedank be asked to put this issue on as an agenda item for the ZBA to address.

Hubbell stated he is okay with that.

Lawson indicated, for the ZBA, he is not sure what Popp's involvement was. As far as the PC, he stated he does not think any improprieties were done. He feels it needs to be put to bed and let's move forward.

Audience member Kim Halstead suggested the Zoning Administrator look at it to see if Popp was involved in any of the decisions that were made, and if Popp was not, there were no improprieties.

Goss pointed out that he (Habedank) was not at any of those meetings. Then the situation you have is the zoning administrator relying on the statements of the supervisor saying, no, I do not have any financial interest in any of those decisions, but it was the ZBA that there is the allegation of strong arm tactics.

Halstead asked how the ZBA would know if Popp gained anything by those decisions.

Goss said she is not sure how that would be handled.

Popp proposed the following options: Table it and bring it back, be done with it, or make a decision tonight on how to take it to whatever committees.

Goss feels it should be added to the ZBA's May 22nd agenda to have it dealt with.

Benak repeated that in the last paragraph Fahey says there is no issue, according to the documents Popp sent him. Why is there a need to do anything more?

Goss quoted the sentence as follows, "Based on the information provided by you to our office, the existence of a personal interest is not apparent in the circumstances you present, and so should not present an undue duress issue."

Popp stated, however, that he did not present any proof of ownership or non-ownership.

Goss then inquired of Benak whether she is alleging that Popp had a personal or financial interest in any of those decisions.

Benak stated when she brought this up, it had nothing to do with personal gain. Her point was that you do not go to another commission or committee's meeting and bully them into doing something. She stated Fahey took a completely different road than she thought he would come up with. To her, personal gain is like conflict of interest. That is not what she was saying or alleging.

Popp inquired of Benak if she would like to ask different questions to Fahey. Did we ask the right question? Popp stated he recommended sending his entire memo.

Benak inquired if her memo was sent to Fahey.

Popp stated he does not think we sent that because there is only one paragraph that deals with this topic. The rest of it is another issue.

Benak stated it centered around undue duress on another committee and Popp's claim against Benak of malfeasance, which she felt was unwarranted. Benak stated it did not enter her mind

that Popp was getting a financial gain from anything. When Fahey wrote that, it was all about financial gain.

Goss stated, no, it is about undue duress and the courts holding that there is no undue duress unless there is personal or financial gain. Fahey brought up personal or financial gain. Goss agrees that Benak did not bring that up, but the strong arm tactics and duress are the same thing.

Benak inquired what Goss would call it if someone showed up at Goss's meeting and does what Popp did. She stated that is pressure on those board members to change a decision or make a choice in a different direction than maybe what they were looking at.

Popp pointed out that where the alleged incident took place (PRAC meeting), there was no decision made.

Goss reminded the Board that it was alleged that Popp was doing this in other places, too.

Benak clarified that the claim is that it could have been happening in these other places. Benak stated that she and Popp had a conversation that he should not have been sitting at the table. It is in our ordinance that he should not have been sitting at the table. There were two board members sitting at a Planning Commission meeting, and that should not have happened. Benak further stated that if you do not want that in the ordinance, then amend the ordinance and take it out.

Popp stated, in all fairness, none of us knew it was there, and three Board members were caught off guard by Leslie leaving.

Benak stated there is another conversation we probably should not have, because it is going backwards.

Goss said she does not want to talk about Leslie; that is way in the past.

Benak stated when she found out about the rule, she informed Popp right away about it.

Popp stated Dennis had already been hired.

Benak replied that he did not start for two months after that. Benak stated it is up to you guys what you want to do with it. She feels like his letter has addressed it, even though that is not what her intention was. If you want to take it back to the Planning Commission and have them go through everything, they have time for that. ZBA is not going to be a problem. Do you go to the Parks & Recreation also and ask them? Because that is where the incident occurred.

Popp stated they made no decision; it is a nonissue.

Benak stated they still felt pressured.

Popp stated everybody feels pressure. From any input you feel pressure.

Benak stated she does not want to spend an enormous amount of time on this; we have so many more important things to do.

Popp stated he needs a decision to call our questions answered and we are done with, or a motion to move it to whatever committees are necessary, or a motion to table it and bring it back at a later date.

**Motion by Lawson to say that our questions have been answered and let's move forward.**

Goss asked what does "move forward" mean. Does that mean take no further action?

Lawson stated take no further action.

Discussion followed to clarify the wording of the motion.

Goss read the motion: **Motion to state that the question posed to Attorney William Fahey in an email dated 04/18/2014 regarding strong arm tactics has been answered and requires no further action.**

Popp inquired if everyone understands the motion.

Hubbell asked Benak if she was good with that.

She replied yeah, whatever.

**Motion seconded by Goss. On voice vote, Benak, Goss, Hubbell, and Lawson voted in favor, none opposed. Popp abstained.**

Benak stated Popp cannot do that; he has to vote.

Popp stated he does not think so.

Benak inquired if he declared a conflict of interest.

Popp replied no.

Benak then stated he has to vote. If you declare a conflict of interest, you cannot be at the table for the discussion, so you have to vote.

Popp stated he will support it.

**Motion carries.**

**Rural Fire Request for Vehicle Titles – Discussion**

Popp feels we should lease it to Rural, take care of all of their insurance issues. They can take care of whatever maintenance records they want and paint it purple. The title stays with us and we lease it to them.

Discussion followed regarding Rural declining to lease, the legal agreement with Rural, the fact the agreement was signed 30 years ago, Rural developing far beyond engines and tankers, and the agreement specifying “vehicles.”

Benak feels it is important that ~~Rural~~ THE TRIBE see that we honor our contracts, and they said no on leasing it.

Hubbell stated if something happens, we get the vehicles back anyway.

Goss pointed out that the Intergovernmental Agreement does not say what Weber stated here; it does not say that you get it back when Rural has no further use for it. That should be put in writing.

Popp stated you get the equipment back provided it is still in service. If Rural deems it sellable, you do not get it back.

Hubbell stated if we get out of Rural Fire, we get it back.

Popp disagreed; only if it is in service.

Discussion followed.

Hubbell suggested it be tabled until we know exactly what we can and cannot do. He is not prepared to make a decision on this.

Further discussion followed concerning the Expedition, the Kubota, and the boat.

Changing the topic, Benak stated it was suggested to her that in smaller townships, because of the on-call problem, several members of the township board got certified to take care of the ambulance calls during the day.

Brief discussion followed.

Hubbell would like to have more conversation in our house with Theo Weber on this topic.

Goss suggested it be tabled due to the late hour.

Discussion followed.

**Motion by Hubbell, seconded by Goss, to table this agenda item until we can get Weber and/or Trudell back in our house to talk about it, as it fits our schedule. On voice vote, all those present were in favor, none opposed. Motion carries.**

**Moore Road Building (added)**

Popp stated that John Lucsy let him know today that likely the lease will not be renewed in October as he has other people who are interested in the building for twice the money we pay. Popp recommends that we have Chief Weber look for another facility.

Discussion followed.

Popp will first get a commitment from Lucsy that he is not going to renew the lease or that the price is going up. Either way, Weber needs to be informed.

**Tabled Items**

None

**Board Comments/Discussion**

None

**Announcements**

The next Township Board meeting is on 05/27/2014.

**Public Comment**

None

**Adjournment**

Motion by Hubbell, seconded by Lawson, to adjourn. Meeting adjourned at 10:14 p.m.

Respectfully submitted,

Cheryl A. Goss  
Whitewater Township Clerk