

**Whitewater Township Board
Minutes of Special Meeting held May 29, 2019**

Call to Order

Supervisor Popp called the meeting to order at 7:00 p.m. at the Whitewater Township Hall, 5777 Vinton Road, Williamsburg, Michigan.

Roll Call of Board Members

Board Members present: Clerk Goss, Trustee Hubbell, Trustee Lawson, Popp

Board Members absent: Treasurer Benak

Others present: Fire Chief Brandon Flynn, Zoning Administrator Lindsey Wolf, and 8 others

Set/Adjust Meeting Agenda

There were no adjustments.

Declaration of Conflict of Interest

None

Public Comment (8:10)

Popp reminded everyone of the 5-minute limitation.

Ron Bachi, 6987 Cook Road, deputy supervisor, wished a belated Memorial Day to everyone and spoke favorably about the Whitewater Pines development.

Agenda Items as Listed in Special Meeting Notice (12:30)**Ordinance No. 55 - Ordinance Prohibiting Marihuana Establishments**

Popp apologized to the board for not asking the township attorney to draft the ordinance. He stated his only concern is that the board self-imposed a public hearing requirement on all ordinances, either general or zoning, and he is concerned of how we might look to the public if we went back on our word. The balance is: Will the state actually begin to accept applications next month, will they have emergency rules in place next month where they can accept them, and do we have enough time to follow through with our requirements of a public hearing.

Goss noted that her office has gotten a number of calls asking if the township has opted out yet.

Popp asked what would happen if we did pass an ordinance tonight but then vowed to bring it back in three months to review it and offer it for public hearing. We could amend it in some small way or propose to amend it in some small way. That would at least then give the public an opportunity to comment.

Hubbell stated that could work, but it is pretty obvious nobody wants it in this township.

Discussion followed regarding the results of the township's medical marijuana survey, as well as the defeat of the recreational marijuana issue on the November 2018 ballot in Whitewater Township.

Motion by Goss to deviate from the township board's self-imposed requirement of a public hearing prior to consideration of Ordinance No. 55; second by Lawson. Popp drew attention to Attorney Patterson's statement that we should follow the self-imposed process of a public hearing. **On voice vote, Goss, Lawson, and Hubbell voted aye, Popp voted nay, Benak absent. Motion carried.**

Motion by Lawson to adopt Ordinance No. 55; second by Goss. Roll call vote: Benak, absent; Goss, yes; Hubbell, yes; Lawson, yes; Popp, no. Motion carried.

Goss noted the ordinance will take effect 30 days after publication.

Emergency Services Building Asphalt Project - Review Engineering Bids (21:44)

Engineers Patrick Machin and Harry Luzius are present.

Goss's questions for Patrick Machin elicited the following answers:

- Hourly rates vary on the staff member. His rate is \$115 per hour, staff engineer/design engineer \$85, designer or draftsman \$70 per hour.
- They already know where the building and right of way is. He doesn't see any need for staking. Also, the township has had a recent survey.
- Density testing will be done by Otwell Mawby. The testing he has included in the proposal is for density testing of aggregates or the sand, whatever happens to be needed for that particular design. It does not include testing the asphalt gradation and consistency, etc., or concrete testing. Those can be provided at a fairly nominal rate, and he can provide those rates as their subconsultant charges. For the quantity that would probably be placed on this project, he does not see the need for verifying materials as long as materials come from an MDOT approved pit. No additional testing is necessary for material gradation.
- Review and certification of pay applications to verify work completed and quality of the work is included in his proposal.

Popp pointed out the limitation of liability clauses, minimum of two hand soil borings for adequacy of subbase material, prepare preliminary cost estimate for proposed work, and bidding services under A4.

Goss noted we will have to put the bid notice in the paper.

Machin stated they will provide an advertisement for bids.

Machin believes the project can still be accomplished in this calendar year.

In answer to Popp's question on Construction Administration Phase, B1, Machin clarified the five trips for Otwell Mawby for material density testing and three trips for Machin Engineering.

In answer to Goss's question, Machin clarified that they will be providing recommendations on three options, i.e., the north apron asphalt, the north apron/east drive/rear parking lot asphalt, and an alternative for concrete.

In answer to Goss's question, Harry Luzius confirmed that certifying the pay applications is part of his proposal.

Luzius supplied the following answers to Popp's questions:

- The MDOT standard cited in his proposal is pretty much universally agreed upon. The edge of pavement is within the road right of way; the MDOT standards are consistent with the road commission standards.
- The reference to "Vinton Drive" is a typographical error; the correct address is 8380 Old M-72 in Williamsburg.
- Regarding the five sets of plans and ownership of the plans, he clarified that he will be the vehicle on behalf of the owner for distribution. He has no problem with the township being the custodian of the plans. He usually holds onto the electronic files, and stated the township can have as many hard copies as they wish and the reimbursables will reflect that. He stated he will hold the township's right to use the plans on future projects "loosely."
- Regarding fees, Luzius listed all services he will provide for the bidding phase and stated his hourly rate is \$100. The \$800 is estimated based on his hourly rate; it is not a lump sum.

Goss asked how change orders will be handled if they involve more cost to the township, which will need to be approved by the board.

Luzius replied that they usually come down to unforeseen physical conditions which are subsurface. At that point in time, we have to do a time-out and work with the contractor during that time-out phase. If it's a simple decision and it is within the budget, then he can get a field change directive and they can keep moving forward and then cover it in a change order.

Popp questioned why the limitation of liability clause in Luzius' proposal includes engineer's negligence, errors and omissions.

Luzius offered to scratch that language if it becomes the one thing that hinges on a final decision.

Motion by Goss to approve and sign the Agreement for Professional Services with Machin Engineering regarding asphalt paving of the north apron at 8380 Old M-72, or alternatively, asphalt paving of the north apron, east drive, and rear parking lot at 8380 Old M-72; second by Popp. Roll call vote: Goss, yes; Hubbell, yes; Lawson, yes; Popp, yes; Benak, absent. Motion carried.

Whitewater Pines Site Condominium - Final Approval with Conditions (53:04)

Applicants Steve and Kim Mangus are present.

Motion by Popp to accept all existing roadways as named, designed, and upgraded entrances as required by the local fire code official in his letter dated May 20, 2019, as installed, as is, pending their final completion of original construction requirements for the Whitewater Pines Site Condominium development; second by Hubbell.

Goss stated she does not agree with the motion and pointed out the township board's duty to make a very specific record for future reviewers of the project.

Popp stated we are right now speaking just about the roads and the requirements to update the roads. The fact that this board voted on 12/12/27 (sic) to rid the township of General Ordinance 32 and the fact that the clerk's office has not made that repeal verbiage available to us, we should not hold these people hostage to an ordinance we have already repealed, and to do so is going to be a legal issue. Confusing the issue about the other items that Ms. Wolf has indicated needs to be done, all the condo docs, that comes in a separate motion. This deals strictly with the roads, the road names, and the accesses. End of story. He then told the clerk not to confuse the board.

Goss clarified that the Private Road Ordinance has not been repealed, acknowledging that the board voted to do that, but stated an ordinance is not repealed by a motion. An ordinance is only repealed by another ordinance. Goss noted we have not had another ordinance brought forward and considered; the Private Road Ordinance stands today just as it did since its adoption in 2004.

Popp stated he submits the only reason it stands is because of the clerk's conflict with the Manguses.

Goss stated she does not have any problem with the Manguses' roads, except that the Fire Chief has recommended that the tiny little piece at the second entrance be paved and that is a public safety issue. Goss stated she does not have a conflict with the Manguses, stating she wants them to get their project done and under way and is looking forward to some new homes being built in the township.

Popp stated not under a general ordinance that requires a variance that is going to affect their property values, that this board has already agreed, stating he was the only opposing factor on getting rid of Ordinance 32. He stated he is not in support of getting rid of Ordinance 32, but this board acted to do so, and it is the failure of the clerk's office to timely get that on the agenda that these folks are even being held to double jeopardy. He stated, in fact, he could argue with Chief that we do not have the authority under 503 to even ask for the upgrade of the second driveway because there are not 30 units. It is a proposed 28 units. He stated he and Chief had a long conversation; he was a proponent a long time ago of having a cistern. He stated Chief has since educated him differently that cisterns are not advisable to be used anymore because they are just too cumbersome for a number of reasons, but he felt that the second entrance would be an equitable tradeoff. Popp stated he can see some solace to that, and that is why his motion included his May 20th requirement to update. The only difference between the two motions is that Goss's motion leaves a variance, which we do not even have an application for, so how can we grant a variance to an application that we don't have.

Goss stated she had that same question and the zoning administrator provided an answer, and asked Wolf to relay that.

Popp stated it should have been in the packet.

Wolf stated it was also in the previous meeting minutes that the board has the authority to waver from a police power ordinance as opposed to the zoning board of appeals.

Goss stated that Popp's remark is that there has not been an application, and Wolf has indicated that there had been.

Wolf stated they have requested it in previous meeting minutes; she just has not seen any board approval one way or the other that granted these roads to be as is. Wolf confirmed they have requested that previously; she just brought that forward.

Goss stated that was her point; the Manguses have requested it.

Popp reiterated that should have been included in our packet. He said his motion is to accept all existing roadways as named, designed, and upgraded entrances as required by local fire code official letter dated May 20, 2019, as installed and as is, pending completion of original construction requirements for the Whitewater Pines Site Condominium development. He stated this does not take into effect Lindsey's requirements; that will be in an upcoming motion. This just covers the roads and Chief's requirements to update the second entrance.

Goss asked what is meant by "pending completion of original construction requirements." Where are the "original construction requirements" spelled out?

Popp said that would be in the original submittal. In other words, if, for example, the second driveway that was required originally was -- he thinks he read somewhere that it was measured at 19'; it was supposed to be 20 or something like that. It needs to meet the original requirements, or, in this case, Chief has required it to be updated to -- was the number 40', Chief?

Chief Flynn stated yes, whatever Chaney Drive -- to match the existing drive.

Back and forth comments ensued clarifying that Chief Flynn is talking about the right of way easement, not the width of the roadway.

Steve added that an e-mail from the Chief talks about having to meet the Grand Traverse County specifications for the approach.

Chief Flynn agreed.

Goss asked what is the difference between the road right of way and the second drive.

Steve stated the road right of way is the legal area for you to run utilities and other things. The road is going to be the width of the actual asphalt or pavement or the concrete put down.

Kim stated the Grand Traverse Road Commission has different standards within the road right of way for thickness, density, size, turn radius, etc. She stated they would also agree to extend the road between Grand Traverse County authority and the road that is there, which would only make sense.

Steve said it is the same thing when you are at the fire station; you have to meet the county ordinances for the roads. The approach has to be as dictated. They have whole design standards that dictate the thickness of the asphalt and everything. The Chief said meet the county road specifications, which is simple.

Kim stated, for what it is worth, as they have been preparing condo documents and things like that, their attorney had some real concerns with the wording that they provided him from the township, that a broader language would be more advantageous for the township and for them.

Goss asked why that was not supplied to us so we could have our attorney look at that.

Kim replied because we could not bring it to the attorney until after it came out in the packet.

Goss stated she thinks Kim mentioned to Lindsey three or four days ago that Kim had something from their attorney that they were going to provide to the township.

Steve said they have copies; it is very simplistic.

Goss said she is wondering if the township attorney needs to look at that.

Popp said there is a motion made and seconded on the floor.

Goss said, again, when you say completion of “original construction requirements,” when someone is looking back at this motion, where are they going to find the original construction requirements. On what exact document are they going to find that? What exact document spells out the original construction requirements?

Popp said: Chief’s document dated May 20, 2019.

Disagreement ensued between the clerk and supervisor over the specificity, or lack of specificity, of Popp’s motion.

Goss asked the Manguses: On the proposed motion, what do you understand your responsibilities are for the second entrance as a result of this motion that Ron Popp has proposed? What will you be doing that will comply with that motion?

Popp then told the clerk: You don’t have the authority to interact with the public like this. You don’t. Questions and answers come through the supervisor’s chair.

Goss stated she has that question.

Popp asked Steve: Do you care to answer? If you do, please come to the podium.

Steve Mangus, 1214 Cerro Drive, stated he thinks basically the understanding, when he went in and talked to the Fire Chief, was that the approach will meet the Grand Traverse County standards, so a permit will have to be applied to Grand Traverse County, so that would be to their

standards. If it is concrete, it has to be a certain amount of thickness and reinforcement. If it is asphalt -- it can be either/or -- it has to be a certain thickness, the thickness that we need to have. It is only 95'. It is not that much longer than most people's driveways really. It is not very long. Mangus stated the Chief sent him an e-mail; he does not know if the board has that in the packet, but he enumerated in there to Grand Traverse County specifications, and he thinks that is pretty much where you go from; you cannot waver. He said he does not think the board really has the authority to override the road commission.

Popp said we don't.

Steve said it would not be any different if you were putting a driveway in for a house.

Goss said her question is, very specifically, you are going to put a hard surface down, concrete or asphalt, from the edge of the road all the way to the hammerhead turn.

Steve said: Right.

Goss asked if it is going to be 40' wide.

Steve said the right of way will be 40' wide, but the roadway will match what is there.

Popp stated I-75 is not 45' wide.

Goss said, but in order to match up to Chaney Drive, which is 40' wide --

Steve said the right of way is, yeah.

Popp asked the clerk if she understands the difference between the right of way and the driving surface.

Brief discussion ensued between the clerk and Steve while looking at the plans displayed on the easel, with the Chief clarifying that the 40' requirement refers to the right of way.

Kim stated the right of way and road will match.

Steve added that on the finished blueprint, when his surveyor gets done, this will be common area, so this road will just extend out to the county road and it will just be 40' on the survey. So when he surveys that and puts the pins in, it will match whatever is on here.

Hubbell stated it will be 40' of right of way, but the road won't be 40'.

Steve said right, the road will match so it is the same as the road that is there. So when you drive in, it all looks nice and it is all the same. And it wouldn't make any sense to have 40' wide, you know, like you are going to park an airplane or something on it. The approach, he thinks what they will probably do is we would have this at -- he thinks the minimum is 22' but we make them

24 just to make it nicer when you make turns in there and the cost is not a big deal. Yeah, it is the right of way, and asked the clerk if that answers every question or questions you have on that.

Goss said the only other question she has is the motion says to accept all existing roadways as named. On the print, we have an unnamed court.

Steve said right, and asked Lindsey if they got her that name.

Wolf stated yes, Carpenter Court.

Goss said we would be willing to accept them as named as long as that one is named Carpenter Court on the final print.

Steve said right. How the process starts is that we had to go to the county and the county has to review it, so we did that back in the wintertime, and then come to you guys to say, okay, does that work. Like Hamilton Ridge Drive is actually, he has a plat book, a map that goes way back at the turn of the century and before that, that was Hamilton who owned the original property, so you can't get any closer than that one; that's a good one. So it gets tricky because there's not a lot of names to choose from. They have been kind of used up over the years. So if you are good with that, the county is good with it, so we are all set on that.

Hubbell commented it is better than Gay Road.

Kim commented that some of the names that are left on your list are really not appropriate road names; you really need to revisit the list.

Popp stated there is a motion made and seconded on the floor and asked for a roll call vote.

Goss restated the motion: **Motion by Popp to accept all existing roadways as named, designed, and upgraded entrances as required by local fire code official letter dated 05/20/2019, as installed and as is, pending completion of original construction requirements for the Whitewater Pines Site Condominium development.**

Roll call vote: Hubbell, yes; Lawson, yes; Popp, yes; Benak, absent; Goss, yes. Motion carried.

Popp said the next motion that was generated by the clerk's office he thinks is appropriate and appropriately addresses all of Lindsey's concerns that she has stated in her -- (addressing Wolf) was yours May 20th as well? There's been so many revisions requested by someone of this township board that it is hard to keep track of why we would need so many revisions, and told Wolf her report from May 4th he thinks was very complete.

Wolf reported that she sat down with Kim and Steve and they had a couple updates since then, so she updated it to reflect those discussions that they had.

Motion by Popp to give final approval to the Whitewater Pines Site Condominium development conditioned upon Applicants Kim and Steve Mangus complying with all of the conditions enumerated in the Zoning Administrator's Conditions of Approval dated May 20, 2019, and further conditioned upon the Zoning Administrator and/or Township Attorney's review and acceptance of the final signed, sealed, and dated plan set, master deed, bylaws, and restrictive covenants; second by Lawson.

Roll call vote: Lawson, yes; Popp, yes; Benak, absent; Goss, yes; Hubbell, yes. Motion carried.

Popp offered congratulations to Kim and Steve, and thanked the Chief and the Zoning Administrator for all their input on this, stating he knows it was not an easy task, and thanked them for their commitment and their professionalism, and thanked the board as well.

Board Comments/Discussion (1:17:32)

None

Public Comment (1:17:39)

None

Adjournment (1:17:50)

Motion by Lawson to adjourn; second by Hubbell. On voice vote, all those present voted in favor, none opposed. Meeting adjourned at 8:10 p.m.

Respectfully submitted,

Cheryl A. Goss
Whitewater Township Clerk