

**Whitewater Township Board
Minutes of Regular Meeting held August 13, 2019 (with revision page 3479)**

Call to Order/Pledge of Allegiance

Supervisor Popp called the meeting to order at 7:01 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: Treasurer Benak, Clerk Goss, Trustee Lawson, Popp

Board Members absent: Trustee Hubbell

Others present: Fire Chief Brandon Flynn, County Commissioner Gordie LaPointe, Historical Society Chairperson Luann Snider, Planning Commission Chair Kim Mangus, Deputy Supervisor Ron Bachi, and 7 others

Set/Adjust Meeting Agenda

Goss requested the addition of Fire Capital Improvement Fund budget amendment under Consent Calendar.

There was no objection; added under Consent Calendar.

Goss requested the addition of Request by Private Individual to Mow BCNA Path.

There was no objection; added as New Business #9.

Declaration of Conflict of Interest

None

Public Comment

Amber Voice, 5867 Mabel Road, stated she is the Elk Rapids Youth Baseball coordinator and is here to propose an idea for them to help create more money. They would like to do banners to place on the fence for the eight weeks of baseball season. They would do it with the local businesses around here. They would like to do this in both Whitewater and Milton townships. The township would get a portion of the money to help with mowing and other maintenance. Hi Pray Park was highly used this year. They have done a lot of work to the fields. Both fields are useable. She asked the board to think about the sponsorship, and provided details regarding size of banners and prices. Their organization would be responsible for putting them up and taking them down.

(Audio recording started at 7:07 p.m.)

In response to Popp's request, Voice provided her contact information.

(00:48)

Mike Jacobson, 7031 Skegemog Point Road, stated he is on the zoning commission and they have been working on stand-alone buildings. They received a letter from the clerk with some comments and questions. He said it is difficult for them to receive input from just one person; it

would have been nice to have a little more input from the rest of the board. He went on to address several of the clerk's points, including Section 37.12F, second buildings and the number that will be allowed (controlled by special use permit after one), size of buildings (who are we to tell a person how big a building they should have for storage), inability to enforce use of building as a dwelling (permit needed for septic field; pole barns are a legal building to have a dwelling in, shallow lots on Elk Lake and purchase of another lot), ADUs (they are not talking about ADUs), placement of stand-alone storage buildings on less than five acres in RC-1 (five acre thing is illegal). Jacobson commented further that this is being shut down for another building season. Their job, as he understands it, when the zoning administrator has questions that they do not have an answer to, they come to them to get it straightened out. For them to be shut down and delayed is not helping the populace of this community.

Addressing Jacobson's initial statement of how one document got to him, Popp explained the course of events and stated he put it back on the agenda this evening to get one list from the township board.

Public Hearing (10:21)

None

Reports/Presentations/Announcements/Comments (10:21)

County Board of Commissioners Report

Commissioner Gordie LaPointe gave the following report:

- They received their audit for 2018. The report is 400 pages long. There were no findings; it was a clean audit. The auditors do a brief review of the MERS funding for the pension. The actual funding is 48%. The 5-year smooth funding is 53%. They will get more detail on that in a couple weeks when they bring the MERS people in.
- Regarding TIF 97 and the city's plan to extend it beyond the 30 years, the DDA will meet with the BOC in 2 weeks at a study session to go over that. They have made it known they want to extend TIF 97 for up to another 10 years beyond the original 30. Monies that are earmarked for the county based upon property tax millages are funneled back to the city for their projects. The extension for the TIF is based upon a need for a third parking deck. LaPointe attended the joint DDA-city commission meeting and he went on to explain the size and per-parking-space cost of the proposed structure. At the end of 30 years, the county will probably be losing well over a million dollars a year to the DDA. They are asking them to look at other sources of revenue.
- The county is proposing a resolution in support of continuing with the original plan to build a tunnel under the Straits for Enbridge's Line 5. He explained the history of the plan and noted that it has been pulled off the table. His concern is that something needs to be done, but it is now going into the courts and will be litigated, which is estimated to take three years. He said he will support the resolution to post haste get on with the tunnel and there will be a lot of discussion at the next board meeting.

Brief discussion followed.

County Road Commissioner Report (25:24)

No one is present from the Road Commission.

Mobile Medical Response Report (25:31)

No one is present from Mobile Medical Response; July 2019 activity reports were received.

Fire Department Report (25:37)

Chief Brandon Flynn gave the following report:

- The highlight of the month of July was the 13 emergency calls, which was a record for the township. A lot of them were residential fire alarms, presumably from visitors to the area.
- They had a mutual aid vehicle accident with Metro Station 1 down on Supply Road, which went well.
- They have been busy gathering bids and trying to round up contractors to do work on the fire station. It has been a challenge; everybody is busy and a lot of them are not returning calls.
- On July 16, they were notified by the Grand Traverse Band that they received a grant which Flynn applied for. They awarded \$15,161 toward the purchase of the pumper tanker vehicle. He stated he will continue to write grants and believes we have a good relationship with them. He and Popp attended the media event to receive the funds.

Planning Commission Report (29:30)

Lawson reported that he was unable to attend the PC meeting, and offered that the planning commission chair could report on what happened.

Mangus reported the planning commission has continued to work on condominium standards and guidelines. They are approximately 80% through that document. Former ZA Wolf had compiled a starting point for the PC. In two more meetings, they will have it ready for the board to review. Regarding stand-alone buildings, they went through Goss's list of concerns and sent a response and ways some of the concerns could be mitigated. They would appreciate it if the board could do a line item, what things do you agree on, what things do you not like, so they have concrete direction moving forward. She was able to meet with Bob Hall (new zoning administrator). The PC has requested that he break down what items in the master plan do not meet the new requirements, and noted he has been through the process several times. They have asked him to prepare a letter of intent to review the master plan and to give them a to-do list for the review.

Parks & Recreation Advisory Committee Report (32:32)

Goss gave the following report:

- The committee met last night. One of the regular members was absent; the new alternate, Linda Slopsema, was present.
- Phil and Margaret Knapp were present. They are pursuing a boardwalk over the wet area at Lossie Road Nature Trail. Goss contacted the DNR regarding the permit process and received a response e-mail with directions for applying. The committee discussed it and decided they have a lot of irons in the fire right now. Phil is going to call another township to get some insight on a project they did. Other than that, it will not be addressed this year.

- Dr. Angela Keas, chiropractor in Acme, was supposed to give a presentation, but she did not appear.
- Still trying to find out whether the batting cage has been approved. Melton had the engineer send a letter to the county code office due to the inspector misinterpreting something on the plans. Goss called the inspector today and left a message.
- Regarding the playground equipment, the committee discussed possible options. The consensus is that nothing will be done about it until a comprehensive plan can be developed. A second opinion may be sought.
- Goss updated the board on the status of sign projects at Whitewater Township Park and Lossie Road Nature Trail.
- Goss still has to check with the second dugout manufacturer to determine whether they meet Grand Traverse County snow load standards.
- Goss provided an update to the committee regarding the osprey nest.

Consent Calendar (37:27)

Receive and File

1. Supervisor's Report for July 2019
2. Clerk/Parks & Recreation Administrator's Report for July/August 2019
3. Zoning Administrator's Report for July 2019 (none)
4. Mobile Medical Response July 2019 Activity Reports
5. Fire Department July 2019 Report
6. Approved 05/13/2019 Parks & Recreation Advisory Committee Minutes
7. Approved 06/05/2019 Planning Commission Minutes
8. Approved 06/12/2019 Historical Society Minutes

Correspondence

1. Grand Traverse County Sheriff Department Statistics for January/February/March/April/May/June/July 2019 (delayed due to technical issue at county)
2. E-mail 07/03/2019 MTA re: State Releases Emergency Rules for Recreational Marijuana
3. Township Insights Article 07/12/2019 re: Emergency Recreational Marijuana Rules
4. E-mail 07/15/2019 Clerk Goss to Chief Flynn re: MMR En Route Times
5. Water, Water Everywhere . . . Not A Drop to Drink? Prein & Newhof Spring/Summer 2019

Minutes

1. Recommend approval of 07/09/2019 regular meeting minutes and 07/23/2019 special meeting minutes

Bills for Approval

1. Approval of Alden State Bank vouchers # 44228 through 44348
2. Approval of First Community Bank Miami Beach voucher # 1257
3. Approval of First Community Bank WMDLS voucher # (none)

Budget Amendments

1. Fire Capital Improvement Fund (**added**)

Revenue & Expenditure Report (none)

Popp requested to pull the 6/5 planning commission minutes, 7/9 board minutes, and bills for approval, and commented as follows:

- Packet page 22, wonders who made the statement at the planning commission meeting that the zoning office receives at least one call per week about stand-alone storage buildings and would like proof that the township receives that many phone calls on stand-alone storage buildings.
- Packet page 29, regarding MMR response times, wants to see the time from when the tones go out to the time we get to the scene.
 - Discussion followed. The board wants the time from the time they are dispatched to arrival on scene. Goss will send a request to Myers for that information.
- Packet page 31, asked to have the title “supervisor” added in front of his name under Roll Call of Board Members.
- Packet page 33, asked for confirmation that the playground consultant being looked into is the same one referred to in Goss’s report of last night’s PRAC meeting.
- Regarding the dugouts, repeated his request that the township be represented by its own engineer and cited MCL 339.2011.
- Packet page 35, regarding Ordinance 32, requested Goss’s statement be included in the minutes.
- Packet page 36, regarding Miami Beach and responsibility for maintenance of easement area, proposed that language be added clarifying that the township is not responsible for wintertime maintenance or snowplowing.
 - Discussion followed. Winter maintenance responsibilities will be clarified later in the meeting.
- Packet page 41, waterway grant, Popp questioned whether movement of the two low pressure septic systems was included in the preliminary cost estimate.

Motion by Goss to approve the Consent Calendar as presented, with the addition of the budget amendment; second by Lawson. Roll call vote: Benak, yes; Goss, yes; Hubbell, absent; Lawson, yes; Popp, no. Motion carried.

Unfinished Business (1:00:57)

Update on Proposed Sale of Township Assets to Miami Beach Road Association

Popp said he has a statement regarding the clerk’s memo dated 08/05/2019 criticizing the supervisor’s action on this particular item, and proceeded to read the statement aloud.

Popp acknowledged that he contacted the attorney regarding his question about what constitutional control of an easement means, the answers were provided via phone call, and he has not created a summary of the phone call.

Benak suggested that an hour and twenty minutes seems like a long time to get a single question answered.

Popp said he will check his phone records on that date.

Goss asked who was on the conference call, and noted that any conference calls regarding the Miami Beach Road Association were supposed to include the clerk.

Popp stated he believes he was called.

There was brief discussion of Popp's failure to provide attorney documents for the board packet in both July and August.

Regarding item 5 in the clerk's memo and the statement that Attorney Witte would not return Attorney Price's phone calls, that Witte would not negotiate with Price on redlines, and that Witte is sending everything through Popp first, Benak asked Popp if that is a factual statement.

Popp replied no, stating that any email that he has sent indicates that this goes to the entire board for decisions.

Goss noted that John Nolan called her office on 6/26 with those concerns.

John Nolan, 9933 Miami Beach Road, said they received actual documentation from their attorney, which he received items from Witte responding that he was forwarding all documents through to Popp and that he was not responding to Price's requests at all.

In answer to Benak's question, Nolan said his attorney forwarded him an email from Witte that the items had been forwarded on to the township. He did not have a specific statement that said Popp, but it states that he forwarded it to the township.

Benak asked: And he told you that our attorneys would not take his call?

Nolan replied: Take his call or return his calls. In emails, Witte has made promises to have things forwarded to their attorney by the end of the week, and he has failed to meet any of his timing that he proposed. Things have gone two weeks, three weeks without any response from him.

Benak asked: But does he eventually forward that information?

Nolan replied no, he has not. The only information they have ever received was forwarded to them from Goss.

Benak said to the board that is a problem, because we told our attorneys to work with theirs. If something has stopped it or if there is a miscommunication on their end, we need to correct that.

Nolan said that has been addressed two times prior. Nolan noted that earlier the board was discussing Tom Slopsema's response to some redline document issues that they were actually trying to get consensus from the board on. He stated that was from the first redline document received mid-month of June, and Slopsema replied that these items, they thought, were not showstoppers but something we could mutually agree to from an understanding that we are not

going to maintain the trail and the type of pumps that were there. That is what Slopsema's memo had addressed. He stated, in the meantime, Patterson sent an updated version of the redlines on 7/2, which did not give them time to review prior to the 7/9 meeting.

Benak asked if those were sent to Nolan's attorney or to the township.

Nolan replied that they were sent to the township. They received them from the township and forwarded them on to their attorney.

Popp said he is reading directly from Slopsema's 07/10/2019 email at 1:01 p.m., and read the e-mail aloud.

Nolan stated that was after the meeting, and said that document that addresses the maintenance and the pumps was from the first redline document, not the 7/2 document that Patterson revised. Nolan told Popp that it has the appearance that it has your input because it has added that he wants all legal fees to be paid. Nolan stated that was not in the original redlines, and Popp is the only one asking for legal fees to be reimbursed. So the appearance is Patterson's document has Popp's input to that, as if you were coaching them, and said he does not believe anyone else is in contact with Witte or Patterson directly.

Popp said he will definitely agree that he believes all of the township expenses need to be covered by MBRA, just as precedence has been set all the way back into the 80's.

Nolan replied that, as a taxpayer, he is already paying the township's expenses, and asked if Popp is asking the same thing from other projects that the township has going on.

Popp stated we do not have anything like this.

Nolan pointed out the condominium agreement, private development; are they reimbursing the township? No. Is Elk Shores reimbursing the township for legal fees? No. He said they just want to be treated fair, like everybody else here. They pay a lot of taxes at Miami Beach, and asked Popp, in fairness, does he have a log of his time that he plans to bill, that he has captured; how would he bill that time. Nolan asked: What about their time that they have invested?

Addressing Nolan's questions about other projects, Popp stated we do not have anything like this.

Nolan told Popp he is dragging this out and incurring additional fees. This does not need to be that complicated.

Popp stated, as a matter of fact, he has been an advocate for a very long time that the two attorneys get together and leave us out and that they negotiate the two contracts or the agreements, and then they bring back something that is viable to us and to you.

Nolan replied that in the meantime, behind the scenes, Popp does what he feels –

Popp interjected that there is no behind the scenes; he is simply answering the questions.

Nolan stated he is not here to argue; he is trying to clarify and clear some stuff up.

Goss stated there is certainly behind the scenes because, according to the attorney billing, on 6/26, Popp had a 1.2 hour conference call with Patterson and a 1.1 hour telephone call with Witte, so it is still not clear what all was going on. Also, Goss noted that Popp has not brought any question to the board. Maybe the board does not have that question, but yet Popp has run to the attorney, asked for some kind of advice from the attorney for something that Popp may be the only one who has the question, and now Popp wants to lay those legal fees on them (MBRA). Goss stated she is not going to agree to that.

Goss further noted that the Elkwood Shores condominium thing, the township paid over \$2,000 to the attorney's office for advice Popp sought from the attorneys, and asked if we are billing Elkwood Shores for that.

Goss also noted that we just got the attorney bill again yesterday and there is another \$1,500 of Miami Beach related expenses on that bill.

Benak said she thinks we have gotten enough attorney advice on the Miami Beach Road Association documents and thinks we need to stop calling them.

Lawson and Goss agreed.

Popp stated his last correspondence was 6/26.

Goss stated she will give Popp a copy of the bill and he can look at it, but there has been a lot of revision of documents. She stated also that in July, two months after the board said they wanted the attorneys to hammer out the documents, which happened on 5/14, there is finally some indication that the attorneys are working together. Goss said she does not know what went on during that two months, but there sure was a lot of attorney bill in there and Popp's name is on some of it.

Popp stated his name should be on a single phone call, and stated all he did was answer their question or their request for review of the original documents.

Goss stated she highly questions there is a mistake on the bill, but suggested Popp can follow that up and find out.

Popp asked to be provided with the invoice.

Goss stated it would be extremely unfair for there to be language in the documents requiring MBRA to pay all of the township's attorney bills; they are incurring all of their own attorney fees. If the supervisor has a question for the attorney about something, MBRA should not have to pay for that.

Nolan pointed out that this started as a suggestion of the board and they thought it was a cooperative type matter and it looked like it would mutually benefit both parties. The township would not be in the sewer business and they can manage their own system. Gordie (LaPointe) says we are trying to drag this thing out,~~and~~. Nolan said it does not seem like it should take this long and take so much of the board's time, stating he is embarrassed about how much of the board's time is committed to this.

Benak stated she agrees with Nolan on that point.

Popp stated most of this is because the attorneys did not get involved until recently in the negotiation process. It was banter between the two MBRA representatives and the board figuring out how to structure these documents in the beginning.

Nolan stated a couple times there were notes to the township's attorney with direction to work with their attorney. He stated their attorney made the initiation of the calls, and noted that they drafted some preliminary documents at Popp's request because Popp said it would be done cheaper and probably quicker if they did it themselves, after the board wanted Patterson to do it. He stated in the interests of trying to get this done, they went forward and got their attorney involved to do that. He stated they did not expect, and he does not know why they would pay a freshman attorney – all he did was critique the document instead of redlining it for changes. Nolan stated he really does not care what his opinion is of a boilerplate agreement. Nolan said it was quoted in the township minutes, he thinks by Popp, that we were going to give it to Patterson and let him do his thing, redline it. He stated he thinks the township should go back and ask for money back from them because they did not follow what you asked them to do. Right now, the interest is to try to keep this moving and possibly get this completed, and stated he does not think we are that far off.

Popp stated he agrees with that.

Goss noted that tomorrow it will be three months since the board directed that the two attorneys hammer it out, and there has been an awful lot of contact with the attorney apparently since then outside of what the board has said.

Popp said he has had a single phone call on apparently the 26th; that is it, other than the emails that they have returned to us. He said every time he makes a response to the attorney's request, MBRA gets a copy, the clerk gets a copy and the entire board gets a copy, and said there is nothing cloak and dagger here. Popp asked if we can move on to the action items in UB1.

Goss asked Popp what his action items are.

Popp replied that we were provided with a response to MBRA's requests.

Goss suggested a subcommittee of the board is needed, i.e., herself and Benak, to go through the legal opinion and find out where we are at with the documents and then we can get back to the attorney with a response, noting the legal opinion would not be discussed at the meeting and that

she has not had time to read the legal opinion, and further noting that Popp did not place the document in the packet.

Popp replied that Goss was responsible for the document; that is why he did not place it on the agenda.

Brief board discussion followed concerning how to deal with the legal opinion and the other documents.

Nolan said they responded to Patterson/Witte's last redline document but never received any response back from Patterson or Witte.

Popp stated that was because it was sent to the board as privileged and confidential.

Nolan said they didn't even get a status of where they are at. He stated they tried to ask whether they should try to come on this agenda here because they had not received anything in response. Witte said he would give us something last Friday, and they have never received anything, and he never followed up with their attorney.

Popp said he does not know what Witte was going to provide to Nolan; he cannot answer for him.

Nolan said he does not know if he found Ben Price's items acceptable or didn't.

Popp asked Nolan if he talked to Witte.

Nolan said no, he talked to his attorney, who followed up with Witte at his request, because it was his understanding we wanted the two attorneys to work together; they were supposed to work out the legalities. Regarding the arrangement of the terms, he thinks we are all in agreement.

Popp said he is prepared to go through the bill of sale, the easement modifications, and the transfer agreement, and said he has motions set up to bring this item to an end.

Goss said those were supposed to be provided ahead of time so the board can read and consider them.

Benak said if you are going to put something on the agenda, you have to have supporting material.

Popp said he did not put it on the agenda.

Benak said she understands why the legal opinion cannot be put in there, but does not understand why not because all of this material has been in the board packet previously. Redline documents were in here previously and were not deemed as confidential information.

Popp said the documents can be included, but it is his review that is confidential.

Goss said since they were attached to a confidential email, she did not put them in the board packet.

Goss proposed a special meeting on 8/27 at 7:00 p.m. to deal solely with the Miami Beach matter and get the documents done.

All board members present agreed.

Goss will prepare a special meeting notice tomorrow, and stated she would like an agreement that we are not going to add anything else to the agenda.

Popp said we cannot make that promise because we do not know the future.

Brief discussion followed.

Slopsema asked if it will be a closed meeting.

Popp said no.

Discussion followed regarding when the legal opinion was sent to all board members.

Repeal of General Ordinance No. 32 Private Road Ordinance (NO ACTION REQUESTED) (1:39:39)

Popp asked if everyone read his memo and if there were any questions.

Benak asked if repeal language had been provided yet.

Popp said no, because he is providing a timeline.

Benak asked why they need a timeline.

Popp replied that he thought it was important for them to understand where our discussion had been, and stated he does not think there are too many townships that are getting rid of their private road ordinance but stated he does not know that for sure, and offered that he can drop the timeline if Benak wishes and just make the request.

Benak said she does not really care about the timeline, and asked if there is new information that we should not be repealing this in whole, or maybe we should be amending it; that is what she wants to know.

Popp noted that former zoning administrator Wolf's report on 7/9 was very cautionary of repealing the ordinance in its entirety, and he believes the attorney some time ago, maybe 2017, had indicated that this is contrary to the direction of other townships. Popp stated what he can do is supply the timeline to the board for their review.

Goss asked that the timeline include the instances where she and Habedank and Mangus brought a revised private road ordinance to the board, which occurred since the board voted to get the repeal language.

Benak said she is looking for the memo from the zoning administrator on 7/9 and is not seeing it anywhere, and stated she would be interested in reading her words.

Discussion followed.

Benak stated, in her opinion, if there is good reason not to repeal it but to amend it to better fit our township, maybe we should look at that before we make a decision.

Popp said he has asked no less than two times, making sure that the board members read Wolf's documentation.

Benak suggested that maybe Popp should have provided it here.

Brief discussion regarding the whereabouts of Wolf's letter.

Popp stated he will provide a timeline, which will include all the documents.

Possible Sale of Vinton Road Property - Parcel 28-13-004-065-00 (1:47:32)

Goss inquired if Conlan is still interested in buying the property; he has not been at the last couple meetings, and asked Popp if he has had any contact with him.

Popp replied that he forwarded these board packet items to both Danford and Conlan, and indicated yes, he is still interested in it.

Motion by Goss to deed the parcel to the heirs of Ormond and Madge Danford; second by Lawson.

Discussion followed regarding the reason for the original gifting of the property to the township, that there is no evidence of covenants on the land, and agreement by Benak, Goss, and Popp that the property should not be split.

Goss re-read the motion: **Motion by Goss to deed the parcel to the heirs of Ormond and Madge Danford; second by Lawson.**

Discussion ensued regarding whether the heirs would accept the parcel and the possibility that the township has to comply with a couple laws about disposition of property,

Goss re-read the motion for a second time: **Motion by Goss to deed the parcel to the heirs of Ormond and Madge Danford; second by Lawson.**

Goss clarified that by "parcel," she is referring to Parcel 28-13-004-065-00.

Roll call vote: Goss, yes; Hubbell, absent; Lawson, yes; Popp, no; Benak, no. Motion failed.

Popp set forth several alternatives.

Discussion followed.

Motion by Benak to sell the property as a whole, no splits.

Price, putting up a For Sale sign, and other potential buyers were brought up.

Goss re-read the motion: **Motion by Benak to sell the property as a whole, no splits.**

Second by Popp.

Goss asked if we have to come up with a policy.

Benak and Popp said we should already have it.

Popp stated the discussion reflects the need for disposition of assets regarding property.

Benak replied that whether we give it back to them or not, we are going to have to address that issue, and stated even if we do nothing, we should address that issue.

Popp agreed.

Brief discussion followed.

Roll call vote: Hubbell, absent; Lawson, yes; Popp, yes; Benak, yes; Goss, no. Motion carried.

Popp asked how shall we set the property for sale, and said his recommendation is to hire a realtor.

Discussion turned to how the property would be marketed, as well as requesting information from the township assessor regarding taxes and assessed value.

Goss offered to give Popp the user name and password for the township's Craigslist account.

Popp summarized that the property will be marketed through Craigslist, sign, Zillow, and Facebook Marketplace and he is to visit with Kuhns about parcel value and what the taxes would be if an individual purchased it.

A For Sale by Owner sign will be purchased.

Popp asked if the board wants to review the sale price before it is actually advertised.

Benak and Lawson agreed that Popp should use SEV x two.

There was consensus Popp will be the contact person for the signs and the postings.

On Popp's request, Goss issued PO #4514 for \$50 at Ace Hardware and provided the original form to Popp.

The board concurred with Popp answering unanticipated questions.

Review Proposed Amendment to Zoning Ordinance Article 27 (2:22:18)

Popp quoted from his memo on this agenda item, stating he was directed to forward the planning commission's proposed amendment of Article 27 to the attorney for review, but the PC is recommending a complete strike and there is no new language to review. He asked if the board wishes the attorney to provide an opinion on the merits and pitfalls of a complete strike, or was there confusion when Article 27 was singled out for board approval from the more contentious Articles 3 and 37 proposed amendments. If no attorney review is required, then a zoning ordinance amendment number should be assigned and the PC should schedule a public hearing.

Discussion followed along the lines that every soil condition or type in the township is listed in the article, cross-checking the zoning ordinance to see if Article 27 is mentioned elsewhere, no evidence it has ever been enforced, and no one employed by the township who is qualified to enforce it.

Motion by Goss to instruct the planning commission to schedule a public hearing on removal of Article 27 Environmentally Sensitive Areas from the Whitewater Township Zoning Ordinance; second by Benak. There was no further discussion. **Roll call vote:** Lawson, yes; Popp, yes; Benak, yes; Goss, yes; Hubbell, absent. Motion carried.

Lawson stated he needs a quick break and exited the board table at 9:39 p.m.

Lawson returned to the board table at 9:41 p.m.

Zoning Ordinance Articles 3 and 37 Proposed Text Amendment - Stand-Alone Storage Buildings (2:34:08)

Popp's comments were:

- He has statements beginning on packet page 114 regarding building sizes that may be outside of the Residential Building Code but has not been able to find the specific section that limits these types of buildings to 3,500 square feet.
- Page 115, general rationale, the Miami Beach Road stand-alone structures were likely completed under the Gershwin-style agreement and not considered stand-alone buildings.

Benak said most of the stand-alone buildings that are being looked at as getting a pass at the ZBA did not come to the ZBA for that purpose; they came to the ZBA for setbacks. It is not considered a stand-alone structure; they are considered contiguous parcels and they have a primary use already established.

Popp continued:

- There are not too many of these stand-alone structures around. There is one on M-72 after removal of a house.
- Same packet page, the statement that storage buildings are one of the most common topics before the ZBA, said he does not see a lot of these stand-alone buildings being requested.

Benak said she went back through all of her and some of Couturier's ZBA packets and listed what came before the ZBA. Referring to the rationale about nonconformities, Benak commented that there is nothing wrong with legal nonconforming, and stated her home is sitting on a legal nonconforming parcel because of the 5-acre issue and it has not affected getting a loan.

Popp pointed out that Acme Township does not allow the expansion of legal nonconforming uses and he wants to make sure Whitewater Township does not limit its residents in that respect.

Popp continued:

- Page 115, "residing in a storage building is unlawful," he recommends to either reword this section or eliminate it as this rule is enforced by construction code office, and asked if other board members see this as a redundant requirement.

Benak replied that she is not for this at all and does not believe we should be allowing stand-alone storage structures in the township without a primary use, and stated it is in her memo why she believes that. Nobody is doing it. Referring to the four examples in Charlevoix County, only one allows it. Grand Traverse County is not allowing it. Maybe Clearwater is.

There was brief discussion of former zoning administrator Wolf finding more of them under different names. Benak stated the last time she talked to Wolf, she said no. Benak stated she would like to see it in writing where Wolf found it and their wording, because she is not buying it.

Discussion ensued concerning the allowance or disallowance of stand-alone storage buildings in other townships, the search for structures by other names, districts they should be allowed in, noise, and crime on unsupervised properties.

In answer to Popp's question, Benak stated she has no desire to amend the document, and stated she plans to vote no on this and does not believe it is a good fit for this township. She further stated she is sorry they spent so much time on it because a couple zoning administrators thought we should look at it. She suggested it could be clarified on what is a storage building and what is a stand-alone building and when they are allowed in the township, and pointed out that the township used to have in the ordinance that you could put an accessory structure up first if you had pulled a land use permit to build a home, and suggested maybe that should be put back in.

Goss said the PC replied to her statement about that issue and said, "The PC agrees and we are recommending a revision to the definition to restore the indicated text. This will further delineate the difference between the two specific types of structures."

Popp added that we should require a performance bond.

Benak agreed, and confirmed to Popp that she has no desire to amend Article 37 with stand-alone structures.

Lawson confirmed that his thoughts are to allow the use.

Popp said he supports most of Benak's concerns with the exception that, regarding security concerns, he believes they are the same on a vacant piece of property.

Popp inquired of Lawson if he has any rebuttal to Benak's review, and said he is trying to come up with a consensus to pass to the PC, and stated he is not sure this is a good fit for us at this time.

Goss had the following comments:

- The list of concerns she sent to everybody was not an attempt to speak for the rest of the board; it clearly said it was "the clerk's concerns." Also, the way it was left at the 7/9 meeting was that Benak and Goss were going to submit their concerns to Popp, who would then give them to the PC, and there was no mention that they were going to come back here in order for the board to have some unity on their concerns before they went to the PC.
- Clarified that her concern about the ADUs is that most of the people who put up a stand-alone storage building will someday put up a house, and if someone is living in the stand-alone storage building, by permit or not, it will then be in effect an ADU, another living quarters on the same parcel.
- Despite the PC's response to Goss's concern about the definition of "traditional building materials," Goss is still not sure what those are.
- Regarding her concern in 37.12E that the size of storage shed that does not require a building permit should be stated, the PC responded that they are going to add that.

Popp interjected that he cannot agree with inserting a specific number but would agree with other language that will not require the ordinance to be updated if the law changes.

Lawson and Benak agreed.

Goss disagreed and stated it should be in there, and said she still has all of her concerns, i.e., huge buildings that people can easily live in; they are warehouses, not storage buildings. She relayed that she talked to Zoning Administrator Hall today to find out what experience he has had with this and he said this can be a logistical nightmare to enforce unless you write a ton of regulations. It would put a huge enforcement burden on the zoning administrator to have these things in the township. Goss reminded the board that we just hired a zoning administrator who is only going to be here one day a week.

Discussion turned to some bugs entering through an unscreened window. Popp stated it is a matter of his health and he is removing himself from the building at this point, and then said he does have bug repellent and he can put that on.

(03:12:44)

Popp left the board table.

(03:13:40)

Popp returned to the board table.

Goss continued to voice her concern about how the zoning administrator will enforce people not living in these buildings. Goss also noted that Wolf had the same concern about how this would be monitored.

When Popp repeated Jacobson's comment that there is not a contractor around who would install a well or a septic without a permit, Benak reminded the board of the illegal private campground that went in with well and septic without any permits from the county or the township.

Goss stated the question is: How is the zoning administrator going to enforce it.

Benak said she thinks Wolf's suggestion was to put language in there that said cannot connect to water or sewer, but that suggestion was not taken.

Goss said she is mainly concerned about the enforcement nightmare, that it will actually be unenforceable by the zoning administrator, who was just hired for one day a week. Goss clarified that she is concerned that the "building may not be used as a dwelling" language is totally unenforceable.

Benak noted that a lot of Wolf's comments are the same thing she said, and she did not see them incorporated in what the planning commission sent us. Benak also stated the planning commission put together a good document; she is just not for them, for many reasons.

Popp asked Goss for a consensus of all her concerns, and asked if we are looking for the PC to drop this, or for amendments to what the PC has provided.

Goss stated she has a lot of concerns; the bottom line is it will be an enforcement nightmare and she does not want to put that burden on the zoning administrator. She is not for it, and is concerned that there are no other townships in Grand Traverse County doing it.

Popp asked if we want to wait for Hubbell to weigh in on this, or just call it a dead issue at this point.

Brief discussion followed.

Popp restated the consensus from the board as follows: Benak has no desire to amend Article 37 with stand-alone structure for reasons stated; Popp's personal take is that it is not a good fit at

this time, not easily enforced; Lawson's thoughts are to allow the use; Goss is not for placing the burden on the zoning administrator and our closest neighbors in Grand Traverse County are not allowing the use.

Popp said if the ZBA experiences a number of requests that cannot be covered by the Gershwin agreement or the ability to build an accessory building before a home and a performance bond is issued, and it goes to ZBA, then Popp is for revisiting this but does not see the number of requests.

Popp said, and Benak agreed, that instructions to the PC are to drop this issue.

Goss suggested they be provided with the consensus of the board and they will get the point that we are probably not going to vote for any other revision.

Benak said she would still like to see, which the PC has agreed to do, to put back in that they can build a pole barn or accessory structure if they have a land use permit for a primary use.

Brief discussion followed, after which Popp wanted it to be a matter of record that the board agrees with the planning commission restoring the accessory structure text in Article 3.

Regarding performance bond value, Zoning Administrator Hall will be asked to make a recommendation to the planning commission for performance bond language.

New Business (3:32:55)

Proposed Lawn Care Maintenance Specifications

Goss inquired if there is a reason this needs to be addressed right now instead of over the winter during budget.

Popp replied that it is a simple motion and the time frame can be left open.

Motion by Popp that the supervisor and clerk work collaboratively together to build a lawn care maintenance specification.

There was no second.

Benak inquired if we can bring this back; it is 10:41 and we are just now getting into New Business.

Goss noted that some things are already in the Building and Grounds Worker job description.

There was consensus to bring it back on a different agenda.

Approve Historical Society Director Job Description (3:35:42)

Goss noted that she provided everyone with her edits. Popp provided a job description, and many of Goss's edits were not included. Goss said the job description in the packet overuses the

term “manage the day-to-day operations of the society” and stated we need to be specific about the duties of this position. Goss pointed out her concerns.

Benak said that it is understood Goss has better grammar than the rest of us and she trusts Goss’s opinion on rewording things to mean the same thing but using different terminology, and asked Popp if he really has a problem with most of the grammar corrections.

Popp stated most of them are in there. There is very few that were not accepted, though they may not be in the exact order.

Motion by Popp to accept Whitewater Township Historical Society Director Job Description as presented, the one in the packet.

In answer to Goss’s question, Popp said we can correct the misspellings.

Lawson said he likes what Goss has done, and said if we are going to approve one, that is what he would like to use.

Benak said she has a problem with the minimum of 5 years’ experience and explained why.

Brief discussion followed, with Lawson and Goss agreeing with Benak that it should be removed.

Motion by Lawson to accept Clerk Goss’s version of the township Historical Society Director Job Description, with removal of 5 years’ experience; second by Benak. Popp said he will not be voting yes due to removal of the 5 years’ minimum experience. **On voice vote, Benak, Goss, and Lawson voted in favor, Popp opposed, Hubbell absent. Motion carried.**

Motion by Goss to add the Historical Society Director position to the Graded Wage Scale; second by Lawson.

Goss added “under Grade II” to the motion.

Lawson confirmed his second of the revised motion.

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

Goss inquired where Snider will start on the scale, because she has experience.

Popp replied that he assumes we are going to advertise the position; he does not think we can automatically assume that she is the shoe-in candidate.

Goss stated that was what was assumed back when the position was created, and referred to the minutes of the February 29 budget work session in the packet wherein many details of what Snider agreed to do were discussed.

After further discussion, there was board consensus that Snider is already performing the job and the job does not have to be posted.

Motion by Goss that Snider be compensated at the 6-year level under Grade II; second by Lawson. Roll call vote: Benak, yes; Goss, yes; Hubbell, absent; Lawson, yes; Popp, yes. Motion carried.

Craft Independent Contractor Agreement (3:54:56)

Popp read his memo regarding commissioning work from individuals who have no employee documentation on file or a bona fide business entity in which the township can contract with, and is recommending legal counsel generate an independent contractor agreement that can be used to create a clear understanding between the township and such individuals.

Motion by Popp to authorize the supervisor to commission the drafting of an independent contractor agreement for the township; second by Lawson.

Goss stated she does not think it is necessary because every agreement is going to be different and we will not be able to get something that fits all situations. There are people who do things for the township who are clearly independent contractors and do not want to be employed by the township. Goss said these should be created on a case-by-case basis because no standard agreement will fit every situation.

Popp said there is such an agreement and has one for his own corporation, and suggested Goss should educate herself in the employment matters and the legalities of what she is exposing the township to by hiring these people without these contracts in place.

Discussion followed.

Benak asked if the attorney could be given instructions to make it simplified.

Popp agreed.

Roll call vote: Goss, no; Hubbell, absent; Lawson, yes; Popp, yes; Benak, yes. Motion carried.

Approval of Additional 2019 Park Rangers (4:01:04)

Motion by Benak to approve Jaime Potter and Trevor Castillo as 2019 park rangers, to be compensated according to the 2019/2020 Graded Wage Scale; second by Lawson.

Popp questioned what year this is for them.

Goss replied that they always start at the beginning.

Popp stated he opposes this variance from township policy and procedure and will be voting no.

Goss reminded the board that the unanimously approved Parks & Recreation Administrator job description gave all authority to the parks and rec administrator to interview and recommend park rangers to the township board.

Popp replied that that authority does not override township policy.

Roll call vote: Hubbell, absent; Lawson, yes; Popp, no; Benak, yes; Goss, yes. Motion carried.

Budgeted Transfer - Fire Fund to Fire Capital Improvement Fund (4:03:39)

Motion by Lawson to transfer \$223,351 from the Fire Fund to the Fire Capital Improvement Fund; second by Goss. Roll call vote: Lawson, yes; Popp, yes; Benak, yes; Goss, yes; Hubbell, absent. Motion carried.

Approval of Shredder Purchase (4:04:27)

Goss provided a memo requesting approval to purchase a 26-gallon, security level P7 shredder from Applied Imaging.

Motion by Popp to purchase the shredder as recommended; second by Lawson. Roll call vote: Popp, yes; Benak, yes; Goss, yes; Hubbell, absent; Lawson, yes. Motion carried.

Elimination of Agenda Items under K. Tabled Items (4:05:13)

Motion by Popp to permanently remove Items 1, 2, and 3, as listed on the 08/13/2019 agenda, from the Tabled Items section of the township board agenda; second by Goss. On voice vote, all those present voted in favor, none opposed, Hubbell absent. Motion carried.

Review/Approve Emergency Services Building Driveway Bid Documents (4:05:53)

Motion by Popp to approve the documents as submitted for release to the public.

Goss noted that we need a legal notice for the paper.

Popp amended his motion as follows: **Motion to accept the Draft Project Bid Manual for Whitewater Township Fire Station Pavement Project dated August 2019, as presented, as a final copy for publication and release to the public, furthering the sealed bid process.**

Highlighted sections in the document were discussed as follows:

- The sealed bids should come to the clerk's office.
- Contractors will be given 45 days to submit their bids.
- Popp will generate the legal notice and submit it to the paper.
- Goss will supply Popp with the legal notice for the Emergency Services Building Renovation/Addition Project as an example to follow for required elements.
- Other blanks to be filled in were:
 - 4:00 p.m.
 - Month and day will be 45 days after the notice is published.
 - Work allowed from 6 a.m. to 6 p.m.
 - Section 2.03, change January 30th to November 30th.

There was brief discussion of the Opinion of Probable Costs.

Benak seconded the motion as written, with the changes just made.

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

Request by Private Individual to Mow BCNA Path (added) (4:22:15)

Goss reported that Bobby Wentworth called today and offered to mow the BCNA pathway on a volunteer basis and agreed to sign a hold harmless.

Brief discussion followed.

There was board consensus that Wentworth may do the mowing.

Tabled Items (4:23:47)

1. Review Administrative Policy Section 5 (tabled 10/14/2014)
2. Review Ordinance 22 Pension Plan (tabled 10/25/2016)
3. Review Whitewater Township Planning & Zoning Fees (tabled 02/28/2017)

Popp said tabled items will remain tabled until the end of this meeting.

Board Comments/Discussion (4:24:05)

Goss asked if there will be another brining.

Benak and Popp reported that it has been done.

Popp said he has had some questions about why the tar and chip has not been capped.

Announcements (4:25:11)

Special meeting on August 27 at 7:00 p.m. Next regular meeting on September 10 at 7:00 p.m.

Public Comment (4:25:36)

Tim Shaffer, 5309 Moore Road, said he is concerned about the private road ordinance. A private road or two-track trail has to be such that if there is a house or any kind of structure, it still has to be accessible by the fire department. Regarding the MMR report, his concern is when the initial tone goes off till the time you reach scene should be recorded; that was a big issue when we had the strictly volunteer ambulance. He also said he is not happy with this board at all, mainly because it is 11:30 and that is the longest he has seen this board go, and there has been a lot of times that there has been procrastination in this meeting and far too much argument and discussion and fighting between board members. He said he is very disillusioned with this board and he hopes they get their act together.

(4:28:22)

Kim Mangus, 1214 Cerro Drive, stated she needs to clarify a couple things regarding the stand-alone building ordinance. She accepts the decision of the board, but there were some fairly large

missing components that highlighted to her where part of the process is breaking down. She said it sounded like the board was applying Wolf's report objecting to this ordinance, which was written for another version of this ordinance. She said the one presented this evening was fully supported by Wolf before the PC. Due to her leaving, she did not put that in writing. Mangus said she fears that what you are trying to avoid is exactly the situation you have created, and said right now we have an open permit for a 4,000 square foot pole barn going in in a residential district with a 700 square foot apartment. The property owner does not want an apartment. He is going to have a fully functional accessory dwelling unit that he was forced by this township to put in because it is the only way he can put his barn in and he is not ready to build a house. The only way he can have the barn is by putting in the apartment, and then he will have to remove the kitchen so he can put in his house so that it is not an accessory dwelling unit. It just has a living room, bathroom, bedroom and is walled off with all residential codes adhered to. Mangus said you are setting up a situation that the board is saying they are trying to avoid, and you are making it far more likely that it will exist in our township. Third, and perhaps the biggest problem, Benak made a comment that the planning commission completely ignored Wolf's recommendations and her concerns in her report, and told Benak she was only partially right; that report was never provided to the planning commission. Mangus stated she had never seen it till she read through the board packet, and said this is a major failure when we have a zoning administrator's report going through on an article. When that was written, she (Wolf) had not worked with the planning commission on this ordinance. She came in; the PC had already forwarded it to the board; she made her comments to the board. Mangus reiterated that she had never seen that report. Some of the things they could have adjusted or amended, and said the PC did go through all those points with her, and she was fine with where they ended up, but it is a real problem when this board is looking at reports and analysis that never made it to the PC, because the board cannot hold the PC accountable for ignoring a report that they never knew existed. Also, she said the board needs to establish a policy that no business will be conducted after 10:30 as it is unprofessional, inappropriate, and ludicrous.

(4:32:56)

Heidi Vollmuth, 8371 Winne Lane, said 6 Ps stands for piss poor planning predicts poor performance, and said 80% of what is discussed in the meetings could be done over phone calls, e-mails, and you should just come here and give your opinion and vote. There is no reason this meeting has to go this long. She said the people entrust the clerk to follow policy and process and best practices. She told the clerk that by not putting the minutes in verbatim, they are biting her in her own fanny.

Adjournment (4:34:14)

Motion by Lawson to adjourn; second by Benak. Meeting adjourned at 11:41 p.m.

Respectfully submitted,

Cheryl A. Goss
Whitewater Township Clerk