

**Whitewater Township Board
Minutes of Special Meeting held August 27, 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: Treasurer Benak, Clerk Goss, Trustee Lawson, Popp

Board Members absent: Trustee Hubbell

Others present: John Nolan, Tom Slopsema, and 6 others

Set/Adjust Meeting Agenda

There were no adjustments.

Declaration of Conflict of Interest

None

Public Comment (3:37)

None

Agenda Items as Listed in Special Meeting Notice (4:11)**Miami Beach Sewer System - Legal Opinion and 07/31/2019 Documents for Review/Approval**

Documents to be discussed include:

1. 2019.06.05 Bill of Sale compare bjp 7.11 to jw clean v2.
2. 2019.06.11 Easement Miami Beach compare bjp 7.15.19 to jw clean.
3. 2019.06.11 Transfer Agreement Miami Beach compare bjp 7.15.19 to jw clean.
4. 2019.07.31 Easement Miami Beach Redline (JNW redlines to BJP 7.15.19 edits).

Regarding the Bill of Sale, on packet page 4, Exhibit A, Popp suggested the words "Lossie Road right of way" are inaccurate, and recommended the wording be changed to "the westerly 1600 feet of Whitewater Township Park, a/k/a Lossie Road Nature Trail."

Discussion followed.

Benak, Goss and Lawson agreed.

Popp stated he recommends the same change on packet page 11, Exhibit A, Legal Description of Burdened Property, second paragraph, about 4 or 5 words in.

Discussion followed.

Lawson and Benak agreed.

Goss confirmed that in the phrase “Lossie Road right of way,” Popp wishes to strike “right of way” and call it “Lossie Road Nature Trail.”

Popp agreed.

Motion by Popp to accept the added MBRA language of (Grantor warrants title to the system and that the system is free, clear and discharged of all liens and encumbrances of whatever nature created or caused by Grantor.)

Goss asked if we are going to have a motion on every single change.

Discussion followed.

Second by Lawson.

Tom Slopsema, 9693 Miami Beach Road, said he understands Popp’s verbatim on the grantor-warrants-title-to-the-system sentence, and asked if the board is going to vote on changing the words in number 5 from grinder to effluent and eliminating number 7 that has bypass pumping structure.

Popp said that’s how he sees it happening; that way, we are clear and very specific on what is being accepted and not accepted.

Slopsema said they are okay with whatever the board calls Lossie Road Nature Trail, and said he is checking off that the board voted on the grantor-warrants sentence, and asked if the board is going to come back and do the grinder/effluent item and the number 7 item.

Discussion followed, with Goss noting that there are four redline areas in the Bill of Sale, and suggesting that doing every redline area in a separate motion is going to be extremely cumbersome.

Discussion followed, with agreement reached that all of the proposed changes in a document will be reviewed before accepting the document.

Popp then amended his motion to accept added MBRA language as provided in document 2019.06.05 bill of sale compare bjp 7.11 to jw clean v2.

Goss listed the changes as follows:

- No. 5, change “grinder” to “effluent.”
- Elimination of the sentence under No. 7, “one bypass pumping structure with valves to ensure that there is no service disruption if the pump chamber fails.”
- Acceptance of inserted language, “Grantor warrants title to the system and that the system is free, clear and discharged of all liens and encumbrances of whatever nature created or caused by Grantor.”
- Acceptance of added language, “except for warranty of title expressly provided above.”

Popp, Benak, and Lawson agreed.

Popp said we should also make a notation that we are going to amend Exhibit A.

Discussion followed regarding the amendment language.

It was agreed that the words “Lossie Road” in the first paragraph of Exhibit A will be changed to “Whitewater Township Lossie Road Nature Trail.”

Discussion followed regarding Popp’s amended motion and Lawson’s second.

Goss reminded the board of the original motion and the amended motion.

There was more discussion.

Goss re-read the amended motion: **Motion to accept the added MBRA language as provided in document 2019.06.05 bill of sale compare bjp 7.11 to jw clean v2.**

On voice vote, all those present voted in favor, none opposed, Hubbell absent. Motion carried.

Regarding the Easement document, Popp suggested we go through it change by change, and that way, we don’t have to worry about how the motion is worded.

Lawson and Goss agreed.

Discussion ensued concerning the difference in the two Easement documents.

Using the 2019.07.31 Easement Miami Beach Redline (JNW redlines to BJP 7.15.19 edits) document, redlines were addressed.

Motion by Popp to accept the Easement modifications striking the words “which shall not be reasonably (sic) withheld, delayed or conditioned” from paragraph 1, Purpose; second by Benak.

Goss pointed out that the agreed-upon procedure is to review the entire document and agree on changes.

The recommended change to paragraph 1, striking the words “which shall not be unreasonably withheld, delayed or conditioned,” was discussed at length, including comments from John Nolan.

There was agreement by Popp, Goss, and Benak to keep the words “which shall not be unreasonably withheld, delayed or conditioned” in paragraph 1.

Lawson disagreed.

Other agreed-upon changes to the Easement document were as follows:

- Paragraph 6, Maintenance, add the words “(but shall have no obligation to)” in the sentence which begins, “Except for the pipe and work related to the pipe . . .”
- Paragraph 6, replace “After performing any work within the Easement Area, the party performing such work shall restore the Easement Area to its original condition,” with “After Grantee performs any work within the Easement Area, or if Grantee damages or otherwise alters the Easement Area in any manner, Grantee shall restore the Easement Area to its original condition.”
- Paragraph 9, Termination, the following sentence will be added, “Additionally, the Easement granted in this Agreement shall terminate if the common drain field system owned and operated by the Grantee is transferred to another entity, unless said transferee demonstrates to the satisfaction of Grantor that said transferee will assume all of the Grantee’s duties and obligations with respect to the common drain field system.”

In Exhibit A to the Easement Agreement, in addition to the previously discussed change of the words “Lossie Road right of way” to “Whitewater Township Lossie Road Nature Trail,” Popp expressed that the 1,161.93 foot long portion of Lossie Road right of way” is 400+ feet beyond the benefited property line.

Lengthy discussion followed.

Slopsema provided certificate of survey measurements depicting that the point of beginning of the parcel is 723.55 feet down Lossie Road Nature Trail and the north boundary of the parcel is 438.36 feet, totaling 1,161.91.

Popp said he is happy with the explanation and is content with the 1,161.93 feet.

Referring to Exhibit C, Depiction of Easement Area, Slopsema said he put the yellow line there, not necessarily to scale to the end of the property because the map may or may not have gone to the end of the property. The map came from Elmer’s as-built prints, which spelled “parcel” wrong.

There was consensus that the numbers are correct and the print is a representation of the numbers but not necessarily to scale.

Referring to the name of the trail, Nolan pointed out that all of the legal documents only refer to Lossie Road. There is no Lossie Road Nature Trail on any of the surveys that he has worked with. He asked the board what value there is in adding “nature trail” in the agreements when all the legal descriptions only refer to Lossie Road.

Discussion followed.

Goss suggested that “a/k/a Lossie Road Nature Trail” be inserted after “Lossie Road right of way” in Exhibit A.

There was agreement with this change by board members and Nolan.

John Vert, 9675 Miami Beach Road, asked if they have anything that says they have egress for the first 1000 feet.

Popp and Nolan indicated that access has been granted in the documents.

Popp asked if there is any concern that we are giving Miami Beach Road Association the entire 66' easement to use, not just a normal 10' utility, and suggested inserting 10' or 5' of centerline of existing infrastructure in the document, and clarified that this is just the underground portion.

Nolan pointed out that any building in the area would have to go through the township, and said he is okay with staying within the 10' portion but questioned the likelihood of that day ever coming.

There was general agreement that any request has to come to the township, which can approve or deny, and it could be handled then.

Motion by Goss that the changes discussed on the Easement document be adopted; second by Popp. On voice vote, all those present voted in favor, none opposed, Hubbell absent. Motion carried.

Moving to the Transfer Agreement, Popp read a statement aloud differentiating Elkwood Shores from MBRA.

Lengthy discussion followed, including several comments from Nolan.

Addressing paragraph 3, Attorneys' Fees, Goss stated she is not in favor of the township charging Miami Beach for the township's attorney fees, and gave several reasons.

Benak said this is the first time this board has ever done anything like this, so it is new. She stated the way she looks at it is, if the township is requesting legal advice or documents, because we are requesting it to protect the township, then the township pays for it.

Lawson agreed, stating that is almost taking the words out of his mouth.

In answer to Popp's question, Benak agreed that the township's legal expenses are protecting the taxpayer.

Lawson agreed, and said it is also our side of the deal. We are protecting our assets and our part of the agreement by using our attorneys to go over our needs, and we should pay for that, and said he does not think it needs to be passed on to them.

Popp noted that earlier the board had voted to split certain costs, and asked if the board is consciously vacating that earlier decision.

Benak, Lawson, Goss, and Popp expressed agreement with vacating the earlier decision.

There was consensus that paragraph 3 will be stricken from the document.

Popp said he thinks this precedent will probably become part of the new policy about township asset sales of real property.

There was consensus that the following additional changes will be made to the Transfer Agreement:

- In paragraph 4a, Scope of Indemnity, addition of the words “or indirectly” and retaining the word “sole.”
- First sentence of paragraph 4, the words “beginning on the Effective Date” will be added.
- Paragraph 4b, the word “reasonably” will be added.
- Paragraph 4d, MBRA’s proposed wording “Unless caused by the intentional conduct or negligence of the Township,” will be replaced with “Except to the extent that damage or injury is caused by the intentional conduct or gross negligence of the Township . . .”
- Paragraph 4f, 4th line, the words “termination of this agreement or” will be stricken and the word “a” will be added.
- Paragraph 4f, the last two lines, MBRA proposed wording “unless caused by the intentional conduct or” will be replaced with “except to the extent caused by the” gross negligence of the Township or its agents.
- Paragraph 5 (formerly 6), Grant, acceptance of MBRA’s proposed addition of the words “Association and the” and “employees’, agents’, tenants’, licensees’, invitees’, and contractors’ . . .”

Turning to paragraph 8, Decommissioning Plan and Escrow, Popp noted there are major changes here (proposed by MBRA).

Very lengthy discussion followed concerning:

- Active riser terminology versus using the number of risers as originally assessed.
- The decommissioning plan, or lack of it.
- This is just for decommissioning on Lossie Road Nature Trail, not the whole system.
- Assess by parcel or go back to the removal fund.
- It is up to MBRA to come up with a decommissioning plan and submit it to the township for approval, including how they are going to pay for it.

Motion by Popp to have legal counsel Jacob Witte and Ben Price negotiate a reasonable alternative decommissioning plan acceptable to both parties.

Nolan said they are no longer using their attorney, and asked if the board is going to rescind the motion they voted on at the previous meeting. He said they technically have a plan.

Popp indicated the board would not entertain public discussion with a motion on the floor.

More discussion followed regarding:

- MBRA negotiating directly with Witte.

- It is not that complex. Either they decommission and the township pays for it and puts on a special assessment, or they come up with a plan and submit it to the township.
- Use of the word “parcels” instead of “active users.”

Per Slopsema, MBRA concurs with the change to “parcels.”

Nolan agreed.

Benak stated she is good with all the redlines and all the changes made in paragraph 8, with the change of “active users” to the word “parcels.”

Lawson agreed.

Benak added they are agreeing for us to special assess them if they do not pay within a year or have it removed within a year or pay to have it removed.

Popp stated he is not good with it, and proceeded to read paragraph 8 as proposed by MBRA, stopping at “removal of all components of the system within the Easement Area no longer in use.” He stated that is excessive because he thinks the proper way would be just to cut and cap. Full removal seems overly burdensome to the association, stating he thinks what the township is interested in is that it is made biologically safe.

Goss asked, if they are agreeing to remove it, why would we have an argument with them removing it.

Nolan acknowledged that the cost they were given was to remove it.

Nolan and Slopsema voiced that they agree with removing the infrastructure.

Goss completed the reading aloud of paragraph 8 as proposed by MBRA.

Discussion turned to the obligation of future owners, with Nolan stating that the sewer obligation is on every one of their deeds, that they need to be part of that, as well as obligation for association dues for the road and registered bylaws that also refer to the obligation of all the property owners.

Popp stated he would like to see a copy of the deed restriction and maybe attach it to this. Juanita (Pierce) commented on 7/9 that their introductory packet covered that type of information. A deed restriction has more power yet. Popp said he is fine with these changes, thinks they are a little aggressive for the association, but if they are willing to do it, he is fine with it.

Benak said it protects everybody to have those type of deed restrictions.

Discussion followed regarding the township obtaining a copy of the deed restriction.

Popp asked if it is consensus to accept this change as read by himself and Clerk Goss.

Lawson referenced Popp's earlier motion, which he assumes failed.

Popp acknowledged that there was no second to the motion to turn it over to the attorneys.

Lawson pointed out the consensus is not related to the motion.

Popp suggested attaching the deed restriction.

Nolan said he does not understand the purpose. We are talking just the decommission of Lossie Trail. The deed restriction is for the whole property. He stated he has no problem providing an example but does not see the value of adding it to the agreement.

Popp said just that it exists, and referred to another item he researched concerning the paving of Miami Beach Road where several association members claimed the additional assessment for blacktop services was an undue burden to them. Popp said he wants future owners to understand they are waiving their rights to object.

Nolan said current owners have already (waived), and if I am going to buy a piece of property, I either agree to that or I don't buy that piece of property. He stated he does not understand the value of including the document in the agreement.

Brief discussion followed.

Benak, Lawson, Popp, and Goss expressed their agreement with the proposed changes to paragraph 8.

Motion by Popp to adopt the Bill of Sale, the Miami Beach Road Easement, Transfer Agreement Miami Beach, as amended here tonight; second by Benak.

Benak said she thinks under the Township of Whitewater we all should sign it, not just one person.

Goss, Popp and Lawson expressed agreement with that recommendation.

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

Board Comments/Discussion (2:32:45)

None

Public Comment (2:32:48)

Tom Slopsema, 9693 Miami Beach Road, reminded the board of the need to include both Lossie Road and Lossie Road Nature Trail wording since that wording may be in transition in surveys and legal documents. He stated Miami Beach needs to run it through their membership for a

formal vote, but they can do that promptly. Regarding updated copies, he asked if that will go through Witte or just the board.

Goss said we have Word versions and can make the changes ourselves.

Board discussion followed whether the changes will be sent to Witte again. There was consensus that the township will make the changes.

John Nolan thanked the board for this whole process; it has been long, but he appreciates everybody's efforts in being able to finish this.

Adjournment (2:35:38)

Motion by Lawson to adjourn; second by Popp. Meeting adjourned at 9:33 p.m.

Respectfully submitted,

Cheryl A. Goss
Whitewater Township Clerk