

DRAFT MINUTES – FOR 10/09/2018 CONSENT CALENDAR

**Whitewater Township Board
Minutes of Regular Meeting held September 11, 2018**

Call to Order/Pledge of Allegiance

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

Moment of Silence in Observance of 09/11/2001 Tragedy

A moment of silence was observed for the victims of 911.

Roll Call of Board Members

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

Board Members absent: None

Others present: County Commissioner Carol Crawford, Fire Chief Brandon Flynn, and 3 others

Set/Adjust Meeting Agenda

There were no adjustments.

Declaration of Conflict of Interest

None

Public Comment

None

Public Hearing

None

Reports/Presentations/Announcements/Comments

County Board of Commissioners Report

Carol Crawford gave the following report:

- The BOC is currently taking requests from the departments for budget. Budget should be right on time this year.
- They settled the 10-year-old Carlson case, someone holed up in their house in Interlochen, intended to commit suicide by police, eventually shot by the sheriff department.
- Renovations to the pool are slower than they thought, specifically the locker rooms. The pool will be open October 1. The pool area is beautiful and will last a long time.
- Last week they talked about the undersheriff, adjusting the pay scale for the undersheriff. They will receive some recommendations from administration. The pay is low for the level of responsibility.
- They have a special meeting tomorrow night to discuss county planning. They need input from the townships and other divisions to see how we all want to go forward together.

The proposed bypass was briefly discussed. Hubbell would like to see the process accelerated.

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The end of Crawford's term as county commissioner was also briefly discussed.

County Road Commissioner Report – No one is present from the Road Commission.

Mobile Medical Response Report – No one is present from Mobile Medical Response. August activity reports are in the meeting packet.

Fire Department Report

Chief Flynn gave the following report:

- They had a busy month, 8 alarms. Four of those were the result of the storm on 8/28, a lot of trees down and an arcing wire that they sat at for 10 hours to wait for Consumers. They had a couple injury accidents, an illegal burn, and an assist with MMR.
- They had 4 training sessions for the month of August.
- Flynn attended the county fire chiefs' meeting and the 911 board meeting. There was a fire officer meeting at the station, as well as two apparatus committee meetings.
- The department attended the Harbor Days parade on 8/4.
- Alex Johnson was hired as a new firefighter. He will be going to the academy this fall and winter.
- Firefighter Andrew Jeurink has moved out of the area.
- Since Flynn started in May, they are down 2 and up 1 for personnel.
- The apparatus bay lights have been completed.
- The last of the firefighter gear has been cleaned, inspected, and re-lettered. All of their gear is in real good shape.
- The DUNS number has been obtained for the Whitewater Township Fire Department. It is needed for federal grants.
- Firefighter annual physicals have been completed and everybody did a great job.
- Flynn represented the fire department at the funeral of Gerald Dittrich, who was an active member of the department, along with his wife, for over 30 years.
- Flynn asked to amend the Salary/Wage Schedule to include a probationary firefighter hourly rate.

There was consensus to add amendment of the Salary/Wage Schedule 2018/2019 as New Business #10.

DUNS numbers were briefly discussed.

Planning Commission Report

Lloyd Lawson gave the following report:

- The PC met on 9/5. They started their discussion about getting certified copies of any particular articles they are using from the clerk's file. They are going to start working on the 5 acres and they will submit a letter from the chair to the clerk requesting all the published information. They will start working with that, and with all certified copies.

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- They touched briefly on the ideas of policy and procedure, such as ordinance adoption, ordinance amendment numbering, requests to present to the PC, request document review by the attorney, etc. It will be on the next agenda.
- Members would like to have a meeting with the board to discuss the future of what they are doing and any questions that go between.

Parks & Recreation Advisory Committee Report

Cheryl Goss gave the following report:

- The committee met last night. All members were there, including alternate Chuck Decker, although it was Decker's last meeting. The committee thanked him for his service.
- The construction permit has been approved for the batting cage. The cost of the permit is \$416. A soil erosion permit is also required at a cost of \$25. October 13 is the date chosen for setup.
- Regarding the playground equipment at Whitewater Township Park, the swing set frame has been installed. There is another work bee on Saturday 9/15 to pour concrete for the monkey bars and merry-go-round. The swings will be installed, except for the infant swing, which had to be reordered.
- The committee started talking about the signage for Battle Creek Natural Area and Lossie Road Nature Trail. The committee decided on kiosks for LRNT.
- The committee will be urging the board to create a handyman position so there is someone who can help with some of these projects. Josh and Melissa Melton and Brandon Hubbell have been doing a lot of volunteering, which is not what committee members signed up for. Goss will start a list of all the things that need to be done at the various facilities. The board will need to get a job description in place and budget funds for this position in the next budget cycle.

Brief discussion followed regarding a handyman position.

Benak noted that the policy and procedure manual requires that a letter be sent to a member of a committee or commission who resigns, thanking them for their service.

Popp said he will make it a docket item to provide special recognition for Decker.

The upcoming work bees were briefly discussed.

Terry Martin – Junk Complaint

Terry Martin is not present.

Consent Calendar

Receive and File

1. Supervisor's Report for August 2018
2. Clerk/Park & Recreation Administrator's Report for August/September 2018
3. Zoning Administrator's Report for August 2018
4. Mobile Medical Response August 2018 Activity Reports

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5. Whitewater Township Fire Department August 2018 Report
6. Approved 08/01/2018 Planning Commission Minutes

Correspondence

1. Grand Traverse County Sheriff Department Statistics for August 2018
2. Thank You Card from Louella Dittrich to Fire Chief Brandon Flynn
3. E-mail 08/24/2018 Ron Beitel re: Road Mess on Skegemog Point Road
4. E-mail 08/28/2018 John Nolan re: Whitewater Township Meeting
5. E-mail 08/29/2018 Tom Slopsema re: Miami Beach Sewer Ordinance

Minutes

1. Recommend approval of 08/14/2018 and 08/28/2018 regular meeting minutes

Bills for Approval

1. Approval of Alden State Bank vouchers # 43069 through 43192
2. Approval of First Community Bank Miami Beach voucher # 1244
3. Approval of First Community Bank WMDLS vouchers # (none)

Budget Amendments (none)

Revenue & Expenditure Report (none)

Motion by Lawson, second by Hubbell, to approve the Consent Calendar as presented.

There was no further discussion. **Roll call vote: Benak, yes; Goss, yes; Hubbell, yes; Lawson, yes; Popp, yes. Motion carried.**

Unfinished Business

Review/Approve Assessor Employment Contract and Review/Approve Job Description

Motion by Goss, second by Lawson, to approve the updated Employment Contract. There was no further discussion. **Roll call vote: Goss, yes; Hubbell, yes; Lawson, yes; Popp, yes; Benak, yes. Motion carried.**

There was brief discussion of the Assessor Job Description.

Resolution #18-16 In Opposition to Michigan House Bill 6049 and Senate Bill 1025

Popp stated he is asking the board to support this resolution.

Motion by Goss, second by Lawson, to adopt Resolution #18-16. There was no further discussion. **Roll call vote: Hubbell, yes; Lawson, yes; Popp, yes; Benak, yes; Goss, yes. Motion carried.**

Discuss Appointment Process – Review Policy and Procedure Manual

Popp stated he placed this item on the agenda last month to discuss and review the appointment process, stating we were asked by the public what the process was.

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Discussion followed.

It was agreed this topic will be brought back in November with an outline of the different committees in the township which have appointments.

New Business

Review Phase II Environmental Site Assessment – MDOT Parcel

The Otwell Mawby report states, “The laboratory sample results have identified soil impact that exceeds MDEQ Part 201 GCC – Residential criteria for Groundwater Surface Water Interface Protection and Direct Contact Criteria in soil; and as a result of the Direct Contact Criteria exceedances, the subject property is a “Facility,” as defined by Part 201 of Act 451 as amended under Part 201.”

Discussion followed.

There was consensus that we stay away from it (purchasing the property).

Notification of adjacent landowners was discussed.

There was consensus that Popp will write a letter notifying the adjacent property owners of the contamination and providing them with a copy of the Phase I and II reports. Questions should be directed to MDOT.

There was also consensus that MDOT will be notified that the township is not interested in purchasing the property.

Zoning Administrator Request for Direction re: Junk Complaints

Zoning Administrator Habedank sent an e-mail to the board on 08/27/2018 concerning a junk complaint on Crisp Road wherein he inquired how the supervisor wishes him to proceed.

Popp stated we should do it the same way we did it the last time.

There was brief discussion of a costly lawsuit in the township a few years ago over an outdoor storage violation.

Benak stated she is not in favor of going to court, having people arrested, them getting a criminal record over outdoor storage and an illegal shed, when they can be given a civil infraction and comply.

Lawson cited Attorney General Opinion 6232, 1984, stating we are not allowed to issue appearance tickets. We do not have the authority.

Discussion followed.

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Popp stated we should have Habedank move forward with the complaint and get work started on the cleanup process.

Motion by Popp that we move forward with enforcement of our existing zoning ordinance on outdoor storage with respect to the Terry Martin complaint.

More discussion followed regarding the process for enforcement and the Code Enforcement Policy.

Popp amended his motion to strike “zoning ordinance” and replace it with “general ordinance.”

Discussion followed as to the zoning administrator’s intent in the 08/27/2018 e-mail.

Benak noted that in the enforcement portion of the policies and procedures manual, the township board directs the Grand Traverse County Sheriff’s Department, through the zoning administrator, to write the ticket. Benak also noted that the list in the policies and procedures of what we are supposed to do is different than what is in the proposed ordinance. The proposed ordinance has dates, like 30 days. The policies and procedures manual says reasonable amount of time. Is it 30 days? 45 days? They should match for consistency purposes. Benak stated she would feel more comfortable if it was sent back to Habedank to confirm he went all the way through the list, and if so, give us a formal request.

There was consensus that Benak will provide Popp with the list entitled Guidelines Based on Whitewater Township Policies and Procedures for Code Enforcement. Habedank will be asked to verify that he is to the point of asking Patterson to file a complaint.

Lawson seconded the motion.

Goss re-read the motion as follows: **Motion by Popp that we move forward with enforcement of our existing zoning ordinance on outdoor storage with respect to the Terry Martin complaint.**

Goss questioned the listing of Terry Martin’s name in the motion since he is not the person complained of, and also noted the **motion was amended to strike zoning ordinance and replace it with general ordinance.**

Popp said he doesn’t know if the name makes a lot of difference; it is still referring to the same parcel of land.

Lawson affirmed his second of the motion. There was no further discussion. **On voice vote, all those present voted in favor, none opposed. Motion carried.**

There was consensus to keep this matter on the first agenda of the month.

*DRAFT MINUTES – FOR 10/09/2018 CONSENT CALENDAR***Review Planning Commission Recommendations re: Article 17**

A letter dated 09/06/2018 from the planning commission chairperson to the township board, with recommended revisions to Article 17.14 attached, is in the board packet.

Benak commented that, in the list of things in section 17.14 that have to be checked, taxes being paid is not on the list, and it has to be there. The township has a fiscal responsibility ordinance that says no land use permits will be issued if you have outstanding property taxes.

In response to a question from Goss regarding July taxes not being due until September 14, Benak explained that July taxes are due July 1, but they are billed in arrears, so they must be paid if a land use permit application comes in between July 1 and September 14. The only exception is mortgage companies, whose payments are guaranteed, and in writing with title companies on land splits.

It was noted that the planning commission Article 17 document only depicts section 17.14, Land Use Permit Review.

Mangus explained that they have put back in the verbiage requiring land use permits and a few additional details to be more concise. As far as the taxes, that was just never added to the zoning ordinance.

Benak reiterated that the requirement that taxes be paid needs to be in section 17.14.

Lengthy discussion followed, including an explanation by Goss as to text of Article 17 which went to public hearing previously as part of Proposed Zoning Ordinance Amendment No. 72, as well as the recommended revisions by the attorney to section 17.12, Zoning Administrator Duties.

Motion by Popp to accept the planning commission's recommendation for Zoning Ordinance Article 17 to be taken to public hearing.

Goss noted the planning commission only supplied their recommendation as to section 17.14. The attorney has changes to section 17.12 which need to be made.

In response, Mangus quoted from her letter to the township board, and stated the commentary from the attorney, the best they could figure, was a response or an answer to someone else's question because the planning commission was not looking at that portion of the ordinance. They were only trying to correct land use permits. She stated it requires board action to take something to court, so that was intentionally removed from the ordinance several years ago.

Benak replied that the administrator and interpretation of the provisions within the ordinance is not just on taking somebody to court; it is the whole ordinance, and you are taking away the zoning administrator's ability to govern the ordinance, which we hired him to do, by not having it in there giving him authority to do so. Safeguards are set up so he cannot just take somebody to court; it has to come to the board.

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Related discussion followed, after which it was noted that **Popp's motion was not seconded.**

Motion by Goss that the planning commission be directed to hold a public hearing on the attorney's version of Article 17; second by Benak. There was no further discussion. **On voice vote, Benak, Goss, Hubbell and Lawson voted aye, Popp opposed. Motion carried.**

Popp stated to Mangus that she is going to take the attorney's version and conduct a public hearing.

Mangus said she will return the board's comments to the planning commission for discussion and the board's opinion that they would like us to hold a public hearing on that document. That being said, by statute, according to the planning zoning enabling act, any zoning amendment requires a consensus between both the board and the planning commission. She stated she cannot speak for the planning commission that we will accept the attorney's document. The planning commission as a whole unanimously voted against the attorney's version. Thus, we have a board consensus that it is an acceptable document, but we do not have a planning commission consensus that there is an acceptable document. So the planning commission will have to look at it in light of your recommendations and evaluate whether or not the planning commission is willing to approve that document and put it forward for public hearing, because it does require both bodies acting independently in order for an ordinance change to be made.

Upon Goss's request that the planning commission chairperson provide the specific law she is referring to, Mangus stated she believes it to be 126.6033.

Goss stated the board has the authority to direct the planning commission to hold a public hearing.

Mangus replied that it is a 7-member board and it will have to go back to the planning commission, in light of the board's input, whether or not they are willing to accept that.

Goss suggested we get the attorney's opinion on Mangus's assertion.

Mangus stated she will provide the exact reference.

The process of public hearing and adoption of a zoning amendment was discussed.

Lawson stated if the PC chooses not to do the public hearing, then the board is not going to get it for adoption because the statute says the public hearing is held by the planning commission.

Benak stated her question to the attorney would be: What do you do with a planning commission that is throwing a temper tantrum because they didn't get their way? We went with a legal opinion, which none of them are lawyers on the planning commission. You can't fault the board for going with something that is a legal opinion. She stated her question is: What can you do? Can we just skip them, do the public hearing, and adopt it?

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Popp stated all he knows is a few months back he got correspondence from Habedank and Mangus that something illegal was in 17. He stated he called the attorney and asked what was illegal in 17; he said I don't know, I've never reviewed it. Popp stated he is pretty sure the zoning administrator said the attorney did review it and said it was illegal and had to be changed. Popp stated he will look back and provide those documents. Popp stated he would like to set all of the differences aside and come out with the public ahead for once.

Benak stated she honestly believes that the attorney's changes do that.

Popp then stated, specifically with that section, Patterson told him that he was asked by Habedank to put that in there.

Benak stated she would like to see that in writing.

Goss requested Popp forward all correspondence he has had with the attorney on Article 17 to the board.

Popp stated he does not know what is so wrong with what is proposed here and does not know why we are arguing over it, and asked Hubbell if he has any ideas.

Hubbell said, yeah, go with the attorney's opinion and be done with it; that is what we paid him for.

Related discussion followed.

Mangus will provide the citation of law that she is relying on and Goss will forward it to the attorney and ask for his interpretation.

Review Attorney's Recommendation re: Article 17

This agenda item was addressed simultaneously with the previous agenda item.

Request to Accept or Decline Responsibility – Elkwood Shores Community Drain Field Project

Scott Jozwiak is present representing the people of Elkwood Shores who have had a sewer system association since 1999. They are going to pull the trigger on it. He stated he can take this in any format the board wants it. It could be a vote and a follow-up letter from the supervisor. That would satisfy the DEQ. He stated he does not need a resolution.

Motion by Popp to decline responsibility for the Elkwood Shores Community Drain Field Project; second by Benak.

Discussion followed which elicited the following information:

- The parcels shown in pink on the map are not participating in this project. Individual parcels are sold for their drain field needs. They do not need to join this project and the project would not have capacity for them. They have suitable approved drain fields.

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- The southern parcels on the map have another batch of easements in a different area dedicated for that purpose. Jozwiak said they are working with the Mims to reshape it.

Benak suggested we should look at the Miami Beach sewer system and see if we can decline there, too. They have an association. She noted the township had to do what they did because of the special assessment district, which is over, and there is money sitting there for replacement; let them handle it.

Jozwiak stated he was the design engineer for Miami Beach. He has seen in the minutes where the board is looking to maybe privatize, and stated he has a contact for that who is certified to maintain systems, but this guy would not do billings.

Goss noted that she sent this matter to the township attorney for his opinion, but if the board is not interested in his opinion and they just want to decline responsibility, she will tell him he does not need to work on that.

Popp asked, if the township did accept responsibility, and if the association does experience financial trouble in the future, do we want to provide property protection for those people in the orange. Is that part of governmental responsibility?

Benak stated she read that there is another government that is responsible for that and they monitor it for lack of funds.

Jozwiak stated these people need to fund an escrow account for the DEQ of 2 to 5 years of operation. It becomes the DEQ's issue.

Goss noted that there is a law which says that townships are responsible ultimately for failed septic systems which discharge into public bodies of water, and asked for assurances that the township will not have financial responsibility for any problems with the system.

Jozwiak said this project is fixing that because you have a bunch of failed systems down along the water right now and we are sending them across the street and up on a hill.

Noting that there is a motion and a second, Popp asked if he is hearing that we wish to have attorney input before we answer this question.

Hubbell stated he would like that.

Popp stated the MCL he thinks the clerk is referring to is Sims Township; there is a lot of activity on Lake Huron just north of Au Gres. He stated that is where he first came in contact with this, and most of those lawsuits have been overturned against the township and the township has been found not responsible. But that is private, not necessarily private publicly used, which is different.

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Goss wonders if we can just get the question answered from Patterson: What do we need to get from them (Elkwood Shores Association), if anything? Maybe we don't need to get anything.

Hubbell asked if the motion should be rescinded till we get that answer.

Popp stated he thinks the cleanest thing to do would be just to vote your conscience on the motion and the second.

Jozwiak named several municipalities which have all declined, and stated the system will probably be built in the spring.

Goss re-read the motion: **Motion by Popp to decline responsibility for the Elkwood Shores Community Drain Field Project. Second by Benak.**

There was no further discussion.

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

Decision re: Third Brine Application

Motion by Popp to authorize a third brine; second by Hubbell. Brief discussion followed.
Roll call vote: Lawson, yes; Popp, yes; Benak, yes; Goss, yes; Hubbell, yes. Motion carried.

Consumers Energy Franchise Renewal

Goss noted that she sent this information to the attorney since an ordinance needs to be drawn up.

Brief discussion followed, mainly regarding the term of the franchise.

Goss will bring it back when Patterson has provided something.

Resolution #18-17 to Set Rates for Cemetery Services

Motion by Popp to adopt Resolution #18-17; second by Hubbell. There was no further discussion. **Roll call vote: Popp, yes; Benak, yes; Goss, yes; Hubbell, yes; Lawson, yes. Motion carried.**

Approve New Park Ranger – Seth Anderson

Motion by Hubbell to approve \$11 per hour starting park ranger wage for Seth Anderson; second by Goss. Popp stated he wants to be very cautious here that we are hiring husband and wife. Benak stated she has been married 36 years and has worked in two companies with her husband, and she is still married. **Roll call vote: Benak, yes; Goss, yes; Hubbell, yes; Lawson, yes; Popp, no. Motion carried.**

*DRAFT MINUTES – FOR 10/09/2018 CONSENT CALENDAR***Amendment of Salary/Wage Schedule 2018/2019 (added)**

Hubbell asked if \$11.25 is enough in today's world. Goss noted that firefighter training wages have already been set at \$11.25. Chief Flynn stated the reasoning is that he is always in training, even when he is on an emergency call, and noted it is standard in the industry.

Motion by Hubbell, second by Lawson, to approve an amendment to the Salary/Wage Schedule adding \$11.25 per hour wage for a probationary fire person. There was no further discussion. **Roll call vote: Goss, yes; Hubbell, yes; Lawson, yes; Popp, yes; Benak, yes.**
Motion carried.

Tabled Items**Review Administrative Policy Section 5 (tabled 10/14/2014)**

This agenda item will remain tabled.

Review Ordinance 22 Pension Plan (tabled 10/25/2016)

This agenda item will remain tabled.

Review Whitewater Township Planning & Zoning Fees (tabled 02/28/2017)

This agenda item will remain tabled.

Board Comments/Discussion

None

Announcements

Next township board meeting is September 25, 2018, at 7:00 p.m.

Public Comment

Ron Bachi, 6987 Cook Road, stated he came in late and asked if 911 was recognized by a moment of silence. He stated the board is amazing and he loves coming to the township meetings. He said he brings a pencil and pad but has no reason to take notes because he loves how the board operates. You work really good together; everybody has input, you recognize law, and you are doing a fantastic job. He stated he is blown away by tonight and the board is doing a great job. He stated he would like to talk a little bit about the planning commission. He stated he loves the planning commission and would like to see a lot more positive energy coming from the planning commission. Not one time tonight did he hear anything negative from the township board toward the planning commission, but as he sits in the planning commission meetings, a dozen times, 15 times, negative about the township board. We need to be more positive. Positive energy gets things done. He stated he would like to see more input by everybody on the planning commission, too. It seems to him like he hears one person and he does not hear any other input. He would like to hear more input, discussions, debate. He stated the board communicates, talks, works things out. That is what a board should be about.

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Adjournment

Motion by Hubbell, second by Lawson, to adjourn. Meeting adjourned at 9:38 p.m.

Respectfully submitted,

Cheryl A. Goss
Whitewater Township Clerk

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