

CHARTER TOWNSHIP OF WHITE LAKE

Approved Minutes of the Special Board Meeting Thursday, May 29, 2014

Supervisor Baroni called the meeting to order at 7:09 p.m.

Supervisor Baroni led the Pledge of Allegiance.

Clerk Lilley called the roll:

Present: Greg Baroni, Supervisor
Terry Lilley, Clerk
Mike Roman, Treasurer
Carol Burkard, Trustee
Rik Kowall, Trustee
Scott Ruggles, Trustee
Andrea Voorheis, Trustee

Absent: None

Also Present: Lisa Hamameh, Attorney
Michael Homier, Attorney
Jennifer Edens, Recording Secretary

Supervisor Baroni made the following change to the Agenda: Public Comments, item 4 on the Agenda to be held after item 5, Old Business (Pontiac Lake Sewer).

It was MOVED by Clerk Lilley, SUPPORTED by Trustee Burkard to approve the adjusted Agenda. The Motion PASSED by a voice vote (7 yes votes).

PRESENTATION

Attorney Michael Homier of Foster Swift Collins & Smith, PC presented a PowerPoint regarding the Pontiac Lake Sewer Extension, Pontiac Lake Sewer S.A.D. and the Audit Report prepared by Pfeffer Hanniford & Palka, PC.

Available options to remedy:

- 1) Act 188 authorizes the Township to levy a supplemental special assessment to cure the deficit;
- 2) Expend funds from the Township General Fund; or the Township Board could implement a deficit elimination program that incorporates both options.

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It is a policy decision; the Board has legal authority to do any combination of the above or any combination of these plus increases in any future connection charges for future users.

BOARD COMMENTS

Clerk Lilley noted 3 letters received from the following residents will be made part of the minutes.

- Sue Carling
- Elmer Cerano
- Francis Demers

Supervisor Baroni reminded all that there is a three minute maximum on public comments.

Treasurer Roman clarified the Oakland Press article that indicated a \$2,500 one-time cost for the Pontiac Lake residents, not non-sewer users.

PUBLIC COMMENTS

Thomas Johnson, 9136 Buckingham.

He declared a point of order as he believes that Mr. Lilley should be removed regarding this issue as he has not hooked-up to the sewers himself. He stated that if Mr. Lilley doesn't remove himself voluntarily, then the Board should take action.

Mark DeGroff, 9776 Bonnie Briar.

He agrees that any Board member not hooked-up to the sewers themselves, should recues themselves. He stated that the problem began with the first shovel and the Board is trying to make the S.A.D. pay. He indicated that Pontiac Lake residents lived up to their contractual agreement and that the costs will be a burden on many. He pointed out that because of the improvements in the water quality on Pontiac Lake that all neighbors benefit from their investment. He further stated that the deficit is from Phase 1, because no one is hooking-up to it. He questions where the funds will come from to repair if the pipe breaks. He feels that the sewer is a Township asset, not just a Pontiac Lake asset.

Denise Farnsworth, 1329 Clearwater.

She asked the Board if the White Lake residents who are not on sewer could leave, as it doesn't affect them.

Treasurer Roman responded that they could leave, as they are not affected.

Attorney Homier clarified that the entire Township can be ultimately affected because it is a bond obligation of the Township. He reminded everyone that the deficit is because connection fees were never transferred from Pontiac Lake to Phase 1, where it was intended to go. He stated that if the funds are transferred as intended it would create a deficiency in Pontiac Lake. He indicated that just because you are not a user, does not mean you will not be impacted. He furthered that the Board must make a decision, one that has been put

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off for ten years, on how they are going to fund the future debt obligations facing the Township in relation to the sewer system.

Norman Newberger, 8760 Arlington.

He feels that back when the signatures were being collected it was very clear that connection fees were included and that Twin Lake to Pontiac Lake was dependent on future hook-ups. He believes a compromise would be to charge those lots a connection fee, put it on their deed and when their septic fails they would be required to pay the balance.

Bryan Day, 2204 Wiggon Lane.

He began by asking to share his remaining minutes with another resident. Read a statement from his attorney stating that there is a general common good which is to be paid for by the general public. The sewers strictly fall in the definition of common good. He further stated that the Township's general fund should be used to pay the costs overrun, not the residents of Pontiac Lake. He closed by stating that their stand is that the funding should come from the general fund.

Mark DeGroff, 9776 Bonnie Briar.

He understands what has been stated regarding the \$1,900 connection fee not going where it should have, but reminds that the Board chose to make that decision. He doesn't understand how the Board wants to come back thirteen years later and bill people. He closed by stating that they fulfilled their contractual obligation.

Attorney Homier clarified that the indirect connection fees were not put in the construction costs, they were held in the sewer debt fund for Pontiac Lake. He indicated that \$770,000 is still in the Pontiac Lake sewer debt retirement fund that was not transferred to the Phase 1 project. If those funds are transferred, where it was intended to be, that is where the deficiency is for Pontiac Lake.

Susan Mullen, 6920 Cooley Lake Road.

She believes that this issues boils down to upholding the law or breaking law. She stated that the signers of the contract were aware of its conditions and should be held to that. She does not live in the S.A.D. or on the lake. She lives modestly by choice. She stated that she receives no benefit from the Pontiac Lake sewers and doesn't want to pay for it. She furthered that taking money out of the general fund is asking those not affected to pay for it. She stated that using the general fund will open the Township up to class action lawsuits by those that are not a part of the Pontiac Lake. She feels that attacking the general fund in this way will set a precedent for all other S.A.D.

Arlene Ball, 9285 Camelot.

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Found her old papers that say nothing about overages. She states that her paperwork indicates the total cost of the Commerce Township connection fee was \$3,641.18 per residential equivalent unit (\$64.12/10 years). She stated she paid her bill in full in July 2003. She restated that she paid her bill in full.

David Cornwell, 9183 Camelot.

He indicated that he is in the real estate business and deals with contracts on a daily basis. He feels that if there is cost overrun that is their obligation. He doesn't understand how this Board can go back and reverse a deliberate decision of its predecessors. He indicated that he bought his home in 2000 and attended a 2003 meeting where people were upset because they were told that the sewer was being mandated because Oakland County was requiring that interim lakes in Oakland County be hooked-up to a sewer. He stated that people felt forced then and it wasn't necessary. He stated that new home owners were told it was paid in full and now the Township wants more. He closed by stating that this is not a way to do business and he objects.

Anita Tessman, 8838 Arlington.

Questioned the resident audience as to whether or not they live pay check to pay check and asked the Board if they know what paid in full means. She indicated she is not paying and the Township can take her to court. She compared this situation to buying a car and having the dealership come back at you for more money after you have paid in full.

Thomas Johnson, 9136 Buckingham

He commented on a previous citizen's statement that she does not benefit from Pontiac Lake sewers. He stated that the sewers have kept the tax bill of every White Lake resident down. He further compared the Board to that of General Motors. He stated that this is a company problem, not an individual probation. He further compared the Board as the company and indicated this should be spread over the company and not the individuals. He restated that everyone in White Lake benefits from the sewers.

Mike Luftkowsky, 11031 Burrow Drive.

He indicated he is not part of the district, but cautions the Board to not open itself up to any S.A.D. He closed that it would not be fair to anyone.

Stan Ludlow, 9310 Waltham.

He indicates that he paid for and wanted sewers for the improvement of the water quality. The Board had the ability back then to come forward and charge an overage, but they made a conscious decision not to do that. He stated that charges have been paid in full that benefit White Lake as a whole, much like the library. He indicated that they met their obligation, they paid in full and the previous Board's decisions should stand.

Karen Hollingsworth, 9037 Buckingham.

She stated she has lived in her modest home for 25 years. She recalled that when this all began, she read that this was a mandatory project for White Lake, not just Pontiac Lake. She states that Pontiac Lake held true to

the mandatory connection and doesn't believe they are responsible. She doesn't believe she should be responsible when the intent of the project was not implemented the way it was intended.

Matthew Brown, 9276 Bonnie Briar.

He stated that it appears special assessment is the least resistant place to find the money. He urges the Board to make people in Phase 1 to hook-up. He questioned the process of a failed septic and asked the Board to view the entire project and not just focus on Pontiac Lake residents.

Denise Farnsworth, 1329 Clearwater.

Doesn't understand what is happening, but feels threatened. She doesn't feel that Pontiac Lake has anything to do with her and that they benefit from being a public lake. She doesn't think the entire Township should suffer from this and that she should be responsible.

Janet Terry, 9268 Waltham.

In response to a previous citizen's statement, she indicated that they receive no funds from boat races or the boat launch. She compelled the Board and their ethics. She indicated that this should be viewed as a community as a whole. Working class citizens believed their representative and cannot afford to pay additional money. She fears that the Board will come at them again and again for more money. She questioned where the accountability is. She reminded everyone that history shows that what the government will do to one part, it will do to others. She ended stating that the burden should be worn by all, not a select few chosen by the Board.

George Seling, 9110 Pontiac Lake Road.

He discussed the Board kicking the can down the road. He warned the Board that come election time it will make a difference. He asked the Board to make it fair.

Brian Campbell, 9302 Waltham Street.

He asked the Board if he is correct in seeing at least three misappropriations of funds. He also asked the Board to raise their hand if they were around during the inception of the special assessment. He specifically questioned Mr. Lilley if he was around at that time. He argued that those that were around at the time of the "mismanagement" should be removed at election time. He also reminded the citizens that Pontiac Lake is a public lake and that if the Board can do this to them, they can do it to you.

Kathleen Schwartz, 8814 Arlington.

She is representing her elderly mother who has lived on Pontiac Lake for many years. She questioned the Board as to how many properties could be hooked-up to the sewer system. She also asked how many are hooked-up. She agreed that this is a community benefit and the community needs to step up. She feels this is inappropriate to put it on the lake owners and that this is a significant increase to them.

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Treasurer Roman responded that there are 900 properties within 200 feet of a sewer line and could be hooked-up.

Clerk Lilley responded that there are 1,378 homes in White Lake are hooked-up.

Attorney Homier stated that he would not call it a misappropriation of funds. He indicated that it is the construction overruns, under assessments and non-transfer of connection fees.

Trustee Ruggles reminded residents that there was a vote and that the majority of the residents voted.

Supervisor Baroni stated percentages.

Henry Storm, 10087 Lakeside Drive.

He believes that if you removed the words Pontiac Lake and sewer from this situation and replaced it with White Lake and just the word water, we should have a similar situation. He indicates that the Township said it would be paid for and that didn't work. He feels that we are a community and the Township made an error in not making it mandatory. He indicated that he lives on Oxbow Lake and he benefits from Pontiac lake sewers. He wants sewers.

Bryan Day, 2204 Wiggon Lane.

He addressed another resident regarding their comment on state park revenue and Pontiac Lake assessments. He asked the other citizens to stand behind them in holding the Board accountable.

David Kobzi, 9515 Bonnie Briar.

He referenced Mr. Kowall's statement at prior meeting regarding businesses and sewers. He reminded everyone that they all benefit from the businesses. He agrees that without sewers we would not have attracted the businesses. He indicated that there are approximately 33,000 residents in White Lake and if it were spread out amongst all it would be about \$10 per house as opposed to \$2,500 to the Pontiac Lake residents. He believes the Board is attacking a smaller group rather than the entire community because of elections.

Trustee Kowall indicated that the sewer size was not determined by the Township. The design was created based on size of area it covers and long term coverage. He furthered that it must be a certain size and certain capacity. He stated that without Phase 1 there would be no Pontiac Lake District. He agrees that there is no doubt we wouldn't have the businesses without the sewers.

Thomas Johnson, 9136 Buckingham

Believes if the costs are spread out to each house there would be an approximate cost of \$50. He reminded that everyone in White lake benefits. He stated that people spend money at business, but not his house. He thanked veterans. He again, called a Point of Order to remove Lilley due to his conflict of interest.

BOARD COMMENTS

Clerk Lilley thanked everyone for attending the meeting. Mr. Lilley indicated he would shoulder the responsibility and would absolutely not abstain from voting.

He discussed the inception of Phase 1 that started in 1992, which he inherited from the previous Board. He recalls that it took four years of negotiations to correct the damage done by Suburban Knolls and the trailer park, as well as an agreement with Commerce Township. He stated that public hearings were held as required at Houghton Elementary. He recalls that 99% of the people at that time did not want sewers early on. He further recalls that Phase 1 was started based on projections of new construction/ commercial businesses. He states that Phase 1 had no mandatory hook-ups. He stated this in no certain terms would this board accept this project with mandatory connections. Upon his return to office in 2005 they began to look at the financing and found that fees were not transferred to Phase 1. He reminded everyone that Act 188 states that you must submit petitions if you want to hook-up to sewers and that no one in a S.A.D. was forced to hook-up to sewers. He disputes the statements that state they were forced to hook-up. He further reminded everyone that no other S.A.D. was able to pay all their fees over time other than Pontiac Lake residents. He referenced a presentation from 2012 that showed a shortfall.

He discussed that he is not hooked-up, but reminds everyone that he wasn't forced to hook-up and neither were Pontiac Lake residents. No S.A.D. has ever been supplemented by the general fund or any other district and cautions that we shouldn't start now. He thinks it is fair, and according to the law, Act 188, that every S.A.D. stands on its own.

Attorney Homier stated that Phase 1 was not financed by a special assessment. He stated figures and amounts, but indicated that transferring connection fees will not cure the deficiency. The Board will still have to address the issue as all tax payers are responsible for debt on the bond. He indicated that there is no evidence of mismanagement or misappropriation, just cost overruns. He added that he has never seen in any project the estimated costs of construction line up perfectly with the actual cost. He discussed possibilities of how to remedy when the estimates are different than actual cost. He discussed the significant financial gain on investing funds and stated that the cost overruns were likely eliminated by the investments on the proceeds. He indicated that of 1.2 million in deficit, only 250K comes from cost overruns. However because of the interest earned on those funds, it is likely that once you move the indirect connection fees to Phase 1 to pay that debt obligation it is likely half of that identified deficiency. Debt obligation for Pontiac Lake was shifted. He indicated that transferring funds will not make up the deficiency in Phase 1.

Supervisor Baroni stated that based on the new information brought forth by Attorney Homier he doesn't believe the Board can make a decision until it knows what the actual dollar figure is. He stated that two weeks ago it was 1.2 million and tonight it is approximately \$650,000.

David Kobzi, 9515 Bonnie Briar.

He asked for confirmation that any special assessment has to be proven that it benefits the property. He asked how one proves the benefit and will the Township have to spend money from the general fund to reappraise. He asked if he had a legal right to benefit at some point. He stated that the residents want more proof of the benefit.

Attorney Homier responded that Act 188 allows proportional costs or proportional benefit to the costs or assessor. He clarified that it is not dollar for dollar. He responded that each person has the burden; it is not the burden of the Township. He explained how special assessments legally work regarding proportional benefit.

Supervisor Baroni closed comments from the public.

Trustee Kowall indicated that his first impression of Pontiac Lake in 1976 was not very good. He discussed the old Pontiac Lake beach. Believes we are at a turning point. He stated that the failure to implement has created a shortfall. He restated that the sewers are an intricate part to the community, without them we cannot complete for development. He believes this Board can come to a fair resolve with further discussion. He does not believe a decision can be made tonight. He stated that hopefully the decision will be in the best interest of White Lake as a whole. He opines that Pontiac Lake sewer district is not to bear the brunt of poor decision made by previous Board members. He believes this is a classic case of what is legal, is not necessarily right. He believes that partial solutions include: considering a partial assessment for the original costs overruns and possibly a share can be borne by the general fund; adjust the connection fees; have periods of review to minimize these problems; initiate a program to encourage sewer connections for properties within reach of the sewer; pass an ordinance and/or resolution to make all future sewer extensions mandatory; upon completion of a project there be an immediate notification to users of any shortfall; borrow necessary funds from general fund to fulfill bond obligations until they are retired. Then return from the sewer operation fund to the general fund so that it is fair and equitable for the entire Township.

Treasurer Roman discussed his concern with Act 188 and reassessing. He believes that reassessing for the portion of the shortage related to connection fees is unethical, but does believe there were unforeseen events to create costs overruns. He cannot reverse the decisions of a previous Board without knowing all the facts at that time. He has looked at thousands of documents and can only guess that the project cost was too high. He believes the administration tried to keep the costs down by using the Pontiac Lake connection fees towards the Pontiac Lake project, and will respect and will respect what that administration did. He reminded

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everyone that Pontiac Lake residents contribute towards Phase 1 by paying quarterly maintenance fees used to maintain the entire sewer system.

Trustee Burkard indicated that she does not agree with everything that has been said. She recalls that Pontiac Lake had a terrible situation with septic. She referenced the hard work of the previous Board to get Pontiac Lake the 2.5% funding and their movement to the top of the list. She referenced past meetings and that the amounts used were estimates. She reminded that Pontiac Lake was excited to get an S.A.D. She further reminded that Pontiac Lake asked for the S.A.D. and it was explained that it goes with the property, not the person. She disagrees with the accusations of mismanaged money and states that the Board worked hard for Pontiac Lake and agrees that the rates should have been raised along the way. She believes the Board's mistake was believing that the development was going to come. She stated that she doesn't benefit from Pontiac Lake, she benefits from her lake. She reminded that the S. A.D. rules must be followed.

Trustee Ruggles stated that most of the Board was not around back then and this Board has spent a lot of time trying to dissect what they think happened and why the funds were not transferred. He believes there was a vote and that the Board may have had a reason. He stated and questioned that maybe it was to keep costs down to get votes at election, because why wasn't the money transferred. He furthered that every Board since has made no decision. He agrees the cost overrun and believes the S.A.D. should pay for the cost overrun.

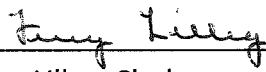
Supervisor Baroni thanked everyone.

ADJOURNMENT

It was **MOVED** by Clerk Lilley, **SUPPORTED** by Trustee Burkard to adjourn the meeting. The **MOTION PASSED** by a voice vote (seven yes votes).

The meeting was adjourned at 9:08 p.m.

I, Terry Lilley, the duly elected and qualified Clerk of the Charter Township of White Lake, County of Oakland, State of Michigan, hereby certify that the foregoing is a true copy of the May 29, 2014 special board meeting minutes.



Terry Lilley, Clerk
White Lake Township
Oakland County, Michigan