

CHARTER TOWNSHIP OF WHITE LAKE

Approved Minutes of the Special Board Meeting  
Tuesday, May 13, 2014

Supervisor Baroni called the meeting to order at 7:03 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  
Andrea Voorheis, Trustee  
Rik Kowall, Trustee

Absent: Scott Ruggles, Trustee

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 presentation regarding Pontiac Lake Sewer S.A.D. Deficiency.

**It was MOVED by Clerk Lilley, SUPPORTED by Trustee Burkard to approve the adjusted Agenda. The Motion PASSED by a voice vote (6 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 Pfeiffer 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.

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

**Treasurer Roman** confirmed that the financial advisors recommend using other user charges to help reduce the deficit. He referenced and read portions of an Oakland Press article Mr. Lilley was quoted in. Asked where the hook-up money went and why the Audit doesn't reference that money still being in a fund.

**Clerk Lilley** indicated that the accounting completed shows an excess of funds due to Pontiac Lake residents S.A.D. and all included in Phase 1 were to pay \$1,900 towards sewer connection because it had enough capacity to service half of White Lake Township. He stated everyone within the S.A.D.'s were required to pay four separate costs, including all construction costs, all fees to Commerce Twp., \$1,900 to White Lake Township and a debt service that was included that created revenue to pay for the balance of the bonds. He further stated that present accounting shows an overage of funds because the \$1,900 paid by Pontiac Lake residents was used to balance the account to show what the Treasurer's current books show and what the balance currently shows in comparison with the deficit shown by Auditor. He indicated that everyone in every S.A.D. paid the \$1,900, but it was used to subsidize the Pontiac Lake project which now shows an excess. He stated that the deficiency shows up in Phase 1, where the money should have been kept.

**Treasurer Roman** advised Mr. Homier that the Pontiac Lake Bond, if left alone, will pay itself off.

**Attorney Homier** stated that the deficiency is based on the entire sewer system.

**Clerk Lilley** referred Township Sewer Ordinance 108. He further reminds that this topic has been a subject of discussion since 2004.

**Trustee Burkard** questioned that money was taken from Phase 1 to cover the over-runs.

**Attorney Homier** stated that the special assessments that were intended for debt retirement were redirected to pay cost over-runs on the project.

**Trustee Burkard** stated that she doesn't believe money should have been taken from Phase 1. She also believes that if we would had gotten more development we wouldn't be here today. She referred to Public Act 188 stating that the Township should have raised rates all along.

**Trustee Kowall** stated that we have a classic case of robbing Peter to pay Paul. He believes that the prior Board should have come to Pontiac Lake residents and told them they were short and that it was a bad decision that the money was redirected to cover deficit. He closed with stating that without sewers we wouldn't have the business that we have (i.e. Meijer, JC Penny and TSW).

**Clerk Lilley** indicated that special assessments go way back. Never has there been a general fund contribution to those projects. Starting to now will open doors for other projects and strip our general fund of any protected revenue.

**Treasurer Roman** indicated that one option for the Board is to do nothing and let the bonds pay themselves off. He states that nowhere in the ordinances does it stated that Pontiac Lake residents connection fees have to go to Phase 1. He read a fax from Bendzinski & Company that stated the \$1,900 connection was to be used to help pay debt service on the bonds. He referenced minutes from April 2006 stating that all Pontiac Lake connection fees would stay within the project. He continued by stating that what the past Board did was perfectly legal and questioned Clerk Lilley regarding a statement made that the Township had never contributed general funds to a Public Act 188 project. He believes they should not second guess the previous Boards' decisions. He furthered that there will be a legal precedent set if this Board reassess Pontiac Lake residents and it will be a large legal battle. He reiterated that we need to trust the prior Boards.

**Clerk Lilley** corrected a previous statement that the Board lent money to a project and must now determine a way to payback that loan. He advises residents to read the entire 2006 minutes that were briefly referenced by Treasurer Roman. He believes that the previous Boards have kicked the can down the road. He stated that the Board took an oath to uphold the law and in this case Act 188 regarding special assessments states that they must pay their deficiencies and not everyone else.

**Treasurer Roman** stated that Boards make decisions based on facts and circumstances at that time. He asked Attorney Lisa Hamameh why general funds were used.

**Attorney Hamameh** answered that at the time the S.A.D. was created, the Board decided because it was a new process and involved learning curves, for a reduction in administration fees.

## **PUBLIC COMMENTS**

**Dave Copey, 9151 Bonnie Briar** Questioned why the Board let this get out of hand.

**Supervisor Baroni** responded that this happened several years ago and this Board is trying to correct it.

**David Cornwell, 9183 Camelot** Believes the facts are that the deficiency is only partly due to cost over-run and the majority of the deficiency is due to a decision that our tap fees would not be used for Phase 1 sewer. He believes Phase 1 was made bigger than necessary and that was dependent on future development that hasn't yet happened. He further indicates that the decision was made to build a bigger sewer to allow for bigger development and that is an obligation of the entire Township. If it were designed specifically for Pontiac Lake it would have been smaller and cheaper. For Pontiac Lake residents to have the entire burden is unfair. Wants to know if they pay and then development occurs will Township end up with a win fall?

**Attorney Homier** responded stating that looking at documents, apart from the cost over-run the special assessment districts were deficient from get go. Pontiac lake had a debt obligation that was issued specifically for Pontiac Lake and the special assessments do not match up with that. You would have to assume that White Lake at the time they imposed the special assessments knew that they were under budget and that they would then be able to transfer funds from White Lake Phase 1 connections to pay the debt obligation which could not happen by law. He referenced Act 188 and stated that he doesn't believe intellectually, knowing what he knows about S.A.D's and forming them, that it adds up to him. He's not saying that Mr. Roman is right or wrong. Thinks there were changes in the construction costs and they didn't change the assessments at the same time. He furthered by stating that once you enter into a S.A.D. you are subject to and liable for any deficiency's in the district for the duration of S.A.D. and that may seem unfair , but the Township has the authority to impose the supplemental special assessments. Also added the Township does not have the obligation to prove it is valid. It is presumed valid. The people who are assessed have a heavy burden to overturn the special assessment. The Board is the policy makers. The deficit has been ongoing for too long and the tax payers will pledge full faith and credit...you will all end up paying one way or the other.

**Mark Degroff, 9776 Bonnie Briar** He feels sorry for the new Board members. He indicated that the older Board members took money, didn't require people to hook-up, dropped the pipe and it was failure from first shovel.

**Clerk Lilley** responded by referencing meetings held back in 1992 for the sewer projects. He discussed the failure of the treatment plant Suburban Knolls and the White Lake and Cranberry trailer park that were in violation of DEQ requirements. Public hearings were held that determined new users would pay for Phase 1 and create a large enough system to take on all users within the district. He believes what that new users, new construction and new businesses that hooked-in have paid a large amount of the share of Phase 1 expense. He noted that businesses pay a lot for the sewers. He explained that it was required to take care of the deficiencies on those two projects and nobody was forced to hook-in other than those that wanted to participate in S.A.D.

**Mark Degroff, 9776 Bonnie Briar** Stated that the Township knew this project would fail, because they didn't make people hook-up. He quoted Clerk Lilley stating that it would be political suicide to do so.

**Clerk Lilley** responded that the whole system did not fail because of the township board's decision to not force anyone to hook into the phase one project.

**Mike Fitzpatrick, 9661 Bonnie Briar** He noticed that there is a grinder pump at the new construction of Gin Mill Party Store. Wants to know where it is hooking into and feels that's where the Township can get its money.

**Stan Ludlow, 9310 Waltham St.** He supports a lot of what has been said, but believes this is not a legal issue, it is a responsibility issue. He believes it is irresponsible to go after Pontiac Lake residents since they have met their obligation. Doesn't believe they should pay more and believes the previous Board's decisions should be respected. He stated that this needs to be put to bed and stop coming after Pontiac Lake for the money.

**Donard Maniaci, 2284 Hampton** Believes this situation screams legal fund and the Board should be ready for a fight. They will not roll over and play dead, and they will not pay this.

**Thomas Johnson, 9136 Buckingham** Many people present did not sign a contract for sewers. They bought a home and signed a contract with a clear title, stating no assessments due at that time. Now the Township is trying to hold them responsible. Also, those that have been here longer have a statement stating that they are paid in full. He further states that he cannot find a copy of any contract that states Township can come back for more. He also indicated that the low-income residents are very concerned and cannot afford this. He stated that nothing stops the Board from continuously asking for more as there is no sunset clause.

**Sandy Fitzpatrick, 9673 Bonnie Briar** She addressed the Board on how much was previously paid her per home owner and questions how they are now being told they paid for the entire infrastructure for White Lake Township. She further questioned the Board as to what fees are for; where money in the general fund comes from; and where the lake assessment going?

**Treasurer Roman** responded that the administration fees pay for Sewer Department, debt service and maintenance. Indicated that \$120 goes to Commerce and the rest stays with White Lake. Money is currently being safely invested. The general fund has loaned money to Phase 1, money that was acquired from tax revenues and Comcast.

**Mike Fitzpatrick, 9661 Bonnie Briar** Asked where Gin Mill Party Store is hooking into? Suggest that White Lake run another line and force everyone in between to hook-up.

**Township Engineer Mr. Greg Gucwa** stated that Gin Mill hooked into Contract 7, which was not Pontiac Lake infrastructure. It was totally different and separate infrastructure. Contract 7 is a pressure system.

**Dave Copey, 9151 Bonnie Briar** When was Act 188 created? Was it prior to?

**Various Board Members** responded that it was created in 1955.

**Monica Hatfield, 9471 Bonnie Briar** Questioned how many people from Phase 1 have not hooked-up? She stated that they are asking Pontiac Lake residents to fund a shortage when there are people that still have not hooked-up from Phase 1. She wants to know why the Board isn't enforcing Act 188 and forcing those people to hook-up. She believes that Pontiac Lake residents are being charged for a benefit received by the entire Township. She understands there are shortages that need to be paid, but the Board should make all of White Lake pay it. She indicated that the Board is setting a precedent right now and they need to do their job correctly and fairly. She referenced that everybody doesn't use the library, but we all pay for it.

**Trustee Burkard** reminded that Pontiac Lake residents asked for the S.A.D. Commented that she is currently involved in a road S.A.D. herself and wouldn't expect anyone else to pay it for her.

**Clerk Lilley** stated that S.A.D.'s are all separate. People within any given S.A.D. pay their own costs, they are separate.

**Treasurer Roman** believes that 10 – 12 years ago the Board should have increased their assessments, but they didn't. That Board chose instead to use Pontiac Lake connection fee and that decision needs to be respected.

**Sandy Fitzpatrick, 9661 Bonnie Briar** Asked when a decision on this matter will be made.

**Supervisor Baroni** responded that a decision could be today or a week from now.

**Stan Ludlow, 9310 Waltham** Asked the Board to make a decision tonight to use the decisions made by previous Boards' and use the funds that have already been allocated and not go after Pontiac Lake residents for additional money.

**Gary Kwiatkowski, 2242 Kingston** Advised the Board that they are all elected officials and that Pontiac Lake resident's make-up about 15% of their voters and the only way to get even is to get back with them at elections.

**Sandra Fitzpatrick, 9673 Bonnie Briar** Stated that because Pontiac Lake residents asked for the S.A.D. that doesn't give the Board the right to comeback and ask for more.

**Trustee Burkard** advised that Public Act 188, which is a law that was established by the state. She believes the Township should help out and hardships should be looked at. She believes it would cost approx. \$250 a year for 8 years. She further reminded that the entire Township is not on the Pontiac Lake S.A.D. She thinks that lack of development played a role, but also believes that they would have had to pay then or now. Doesn't believe a decision should be made tonight.

**John Binkowski, 2231 Wiggins** Asked why, if there are people in all three zones that have not hooked-up, why the Board is not requiring people to do so.

**Attorney Homier** responded that the Public Health Code allows municipalities to force people to connect to an available sanitary sewer system if they are within 200 feet. Mobile home parks are regulated by a Mobile Home Commission.

**Sandy Fitzpatrick, 9673 Bonnie Brook** Asked if the S.A.D. is completely paid for.

**Clerk Lilley** advised that it is not paid for, that there is 8 years left. Approximately 1/3 of residents on the lake are paid in full.

**Peter Piccinato, 8771 Townsend Drive** Is concerned about the \$750k pulled out of general fund to pay the bond. Inquired as to how long will the Township keep pulling out of the general fund and when will it ever be paid

back. He believes he will be dead before this is completed. He asked if enough money has been collected to cover a fail in the infrastructure. He indicated that this reminds him of the Detroit Sewer.

**Treasurer Roman** responded that as long as we need the money we will continue to pull from general fund. He agreed that money is being borrowed because of the lack of hook-ups. Commented that the time to fix a 3million dollar shortfall is not when you are out of money.

**Clerk Lilley** indicated what payments the Township has made and what is currently owed.

**Trustee Kowall** commented that continued growth will help with deficit and that the Township cannot default on the bond. He believes that a resolution can be done to defer, defray and spread the costs around. The reason businesses come to White Lake is because of the sewers, without it they would not come here.

**Treasurer Roman** stated that sewers bring business.

**Thomas Johnson, 9136 Buckingham** Stated that there is no sunset clause in the contract that allows the Board to come back at residents. Feels this all untimely and should have been dealt with years ago.

**Irene Jacobs, 2020 Kingston** She is getting billed for a S.A.D. that she had nothing to do with. Questioned why an S.A.D. has to be paid in full before you can sell your home.

**Donard Maniaci, 2284 Hampton** Indicated that he learned that you do not have to pay off a sewer when you transfer a title on a home.

**Attorney Homier** commented that the issue has to do with priority of lien. The authority for any municipality to specially assess particularly with supplemental or corrected assessments only last as long as the duration of the S.A.D.

**Bill Kellar, 9016 Tackles** Asked how many hook-ups were planned and how many are there now?

**Clerk Lilley** responded that there are 431 connections in Pontiac Lake area. Phase 1 was treated differently than everyone else because of the opposition. It was based on projections over 20 years of the bond payments. Everyone knew the projections had to be met. Every customer paid their costs plus contributions towards assessments. Allowing S.A.D's to not pay the \$1,900 will have dramatic effects on the repayment of the bond costs. Projections needed to be followed for phase one and monitored. Every S.A.D. should pay its own cost. He also stated years ago that someday the Township will not realize its deficiency until there is no money in the account.

**Monica Hatfield, 9471 Bonnie Briar** Referenced an article that quotes Clerk Lilley as stating that they have paid for their connection fees and that they took their money for Phase 1. Believes that it is the district in Phase 1

that didn't pay their full amount and asked if it was taken from Phase 2 to pay Phase 1. Asked Clerk Lilley where he lives and if he hooked-up.

**Clerk Lilley** responded that the Pontiac Lake S.A.D. should have paid their construction costs, obligation to Commerce Twp., and obligation of \$1,900 to Phase 1. He stated that if the books are unscrambled there is a deficiency. Further stated that he personally is not hooked-up.

**Karen Parkhurst, 2132 Hampton** Stated that everyone is paying for Phase 1, but Phase 1. She indicated that she paid because she was obligated to do so. She feels that Phase 1 should be mandated to hook-up.

**Donard Maniaci, 2284 Hampton & 2419 Gail Island** Stated that it is not fair on multiple home owners and believes that is an issue that should be considered.

**Bill Kellar, 9016 Tackles Drive** Stated that he wasn't there when the original vote took place, but stated that he would have been in favor of it, mainly because it makes the water cleaner. Noted that Pontiac Lake is a public lake.

**Charlie Ayers, 9195 Camelot** Asked Attorney Michael Homier if the Board can mandate everyone to hook-up. He additionally wanted to know how many people that are within 200 feet have not hooked-up.

**Attorney Homier** responded that if they are within 200 feet of an available sewer under the Public Health Code.

**Treasurer Roman** questioned Attorney Homier regarding the Public Health Act language. He asked if it is specific that it is a failing system or existing system if we can require hook-up.

**Attorney Homier** answered that the Public Health Code does not require a failing system.

**Clerk Lilley** reminds that the ordinance states failure.

**Lisa Wright, 9230 Waltham** She bought her home in 2004 and was told it was paid off. Stated that she went through this same issue while living in Waterford. She indicated that Waterford gave you five years to hook-up, and asked why White Lake couldn't do the same.

**Gary Kwiatkowski, 2242 Kingston** Asked if Gin Mill party store is hooked-up to Waterford and he wonders how this is possible.

**Mark Degroff, 9776 Bonnie Briar** Asked members of the Board how far their homes were from the sewer lines. He believes there is a credibility issue for Board members that are not hooked-up.

**Trustee Burkard** is unsure how far her sewer connection is as it is across the Lake.



**Clerk Lilley** indicated that the sewer is on his frontage.

**Trustee Voorheis** stated that there are more than 100 homes on Pontiac Lake that have not hooked-up yet. She questioned if it is possible to require those homes to pay their \$1,900 connection fees without connecting.

**Clerk Lilley** stated that Pontiac Lake was treated differently than any other SAD, it was the only S.A.D. that paid their special assessments over time. However, every one of them were required to pay the \$1,900 connection fee.

**Mike McAdams** stated that approximately 900 homes are not hooked-up overall.

**Charlie Ayers, 9195 Camelot** Asked how much money would accumulate if those not hooked-up, actually hooked-up. Believes it reasonable that if the Board put a 5 year mandate on the 900 not currently hooked-up would take care of the problem.

**Treasurer Roman** calculated that if the 900 homes not currently hooked-up, did hook-up, it would generate just over 2 million.

**Bob List, 350 Farnsworth** This discussion is about the S.A.D. shortage and what is owed. Believes it has nothing to do with Phase 1. He stated that the Board cannot vote against Act 188 without being in violation of state law.

**Attorney Homier** agrees with Mr. List, question has to do with shortage created in the S.A.D. He indicated that each S.A.D. is an enterprise fund into itself with costs and revenue. Unless there is a determination by this Board that the prior intended to mismatch those it is generally intended that they match up. Pontiac Lake infrastructure costs and debt issue 4.1 million, the \$1,900 indirect connection fee, which is Pontiac Lake's contribution for the use of Phase 1 infrastructure. While the \$1,900 was paid by Pontiac Lake it was not transferred to Phase 1 to pay for your use of the Phase 1 project. The project was under assessed. One way or another, the debt obligation will get paid. He believes we are talking about shifting the burden. The debt service charge paid by Pontiac Lake was never transferred from Pontiac Lake to Phase 1 to pay the debt obligation and that is why it is short.

**Clerk Lilley** indicated the Board would have to make a policy if they want to supplement funds into special assessments. He believes forcing everyone in will not benefit Pontiac Lake residents. It will not help anyone in the S.A.D.

**Linda Hanson, 2435 Orchard Lane** Asked when a decision will be and when will the Pontiac Lake homeowners be notified.

**Supervisor Baroni** responded that he thought Mr. Degraff or Mr. Johnson would be happy to notify the residents and then discussion regarding adjournment ensued.

**ADJOURNMENT**

It was **MOVED** by Supervisor Baroni, **SUPPORTED** by Treasurer Roman to table the issue until Thursday, May 29, 2014. The **MOTION PASSED** by a voice vote (six yes votes).

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

The meeting was adjourned at 9:29 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 13, 2014 special Board meeting minutes.



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Terry Lilley, Clerk  
White Lake Township  
Oakland County, Michigan