

**CHARTER TOWNSHIP OF FENTON BOARD OF TRUSTEES
MINUTES FOR REGULAR MEETING OF MAY 17, 2004**

**FENTON TOWNSHIP CIVIC COMMUNITY CENTER
12060 MANTAWAUKA DRIVE, FENTON, MICHIGAN**

Supervisor Mathis called the meeting to order at 7:33 p.m.

Present: Mathis, Garfield, Carmody, Gatesman, McDermott, Stiverson, Office
Manager Broecker and Attorney Cooley.

Absent: Krug (arrived at 7:35 p.m.)

PLEDGE OF ALLEGIANCE:

Supervisor Mathis led the pledge of allegiance to the flag.

APPROVAL OF AGENDA:

Motion to approve the 5/17/04 Fenton Township Board Meeting agenda as presented.

Motion by: Gatesman

Seconded: Stiverson

Ayes: All Present

Nays: None

Absent: Krug

Motion carried. The agenda is approved.

PRESENTATION:

Mary Wilson, MSU Extension Office – Emerald Ash Borer

Supervisor Mathis introduced Mary Wilson of the MSU Extension Office in Flint. Ms. Wilson presented an overview of the current situation regarding the Emerald Ash Borer, a non-native insect that is destroying ash trees in Michigan at an alarming rate. So far the spread of the pest has been contained primarily to 13 counties in southeast Michigan, including Genesee County. There are 29 confirmed infestation site in Fenton Township alone. The insect, a native of Asia, is spread by transportation of firewood, logs and nursery stock and affects white, green, blue and black ash trees. Mountain ash trees are not affected. The pest can be controlled by treating trees or removing and properly disposing of infested trees. Ms. Wilson left several informational brochures to be made available to the public. The board thanked Ms. Wilson for her presentation.

MEETING MINUTES:

The minutes of the 5/3/04 regular meeting and the 5/10/04 workshop meeting stand approved as presented.

EXPENDITURES:

Motion to approve expenditures as presented.

Motion by: Gatesman

Seconded: Stiverson

Ayes: Mathis, Krug, Garfield, Carmody, Gatesman, McDermott, Stiverson

Nays: None

Motion carried.

PUBLIC HEARINGS:

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None

REPORTS:

Project Status Report – Rowe Incorporated

Jack Wheatley of Rowe Incorporated briefly reviewed the most recent project status report from Rowe. The project to reconstruct the north parking lot at the Fenton Township Hall is under way and should be completed by in June. The Water Master Plan draft is being prepared for submission to Genesee County WWS. Any changes resulting from their review will be brought back to the board before the plan is presented for adoption.

Lake Ponemah Mobile Home Park

Supervisor Mathis reported that, after a fire had destroyed a mobile home in the Lake Ponemah Mobile Home Park, she reviewed the entire park with the Township's Building Inspector and Ordinance Enforcement Officer, as well as two Genesee County Sheriff Deputies. Several junk vehicles were cited for violation and five mobile homes were condemned as unsafe. The Township will continue to monitor this facility in an effort to improve the overall health, safety and welfare of the community.

Proposed Dirt Bike Ordinances

Supervisor Mathis reported that, after accepting public input at the 5/3/04 regular meeting and the 5/10/04 workshop meeting, the proposed ordinances to regulate dirt bike tracks will not be pursued at this time. The Township will attempt to resolve issues through negotiation and possibly the formation of a citizens committee to oversee dispute resolution.

Vehicle Sale

Supervisor Mathis reported that an ad was placed in the Tri-County Times for sealed bids on a 1995 Ford Crown Victoria owned by the Township. The vehicle, a former Sheriff Department patrol car with approximately 150,000 miles, is in poor condition. One bid was received in the amount of \$207.00. Trustee McDermott suggested that we might get more money by selling it to a junk yard. Supervisor Mathis responded that sealed bids is the appropriate method for selling Township-owned equipment.

Motion to accept the bid of \$207.00 and approve the sale of a 1995 Ford Crown Victoria to the high bidder, as presented.

Motion by: Mathis

Seconded: Gatesman

Ayes: Mathis, Krug, Garfield, Carmody, Gatesman, Stiverson

Nays: McDermott

Motion carried.

Fire Department Issues

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Treasurer Garfield asked why the Fire Chief was not in attendance at this meeting to address issues raised in his letter to the board, as discussed at the workshop meeting. Supervisor Mathis stated that Chief Moulton would first meet with the Personnel Committee. Clerk Krug suggested that Chief Moulton be asked to attend Township Board meetings on a regular basis to be available for questions or input relating to the Fire Department. Trustee McDermott pointed out that meeting attendance is not required in the Fire Chief's employment agreement. If the board wants to require the Fire Chief to attend board meetings, it may also be appropriate to have the Zoning Administrator attend Planning Commission and Township Board meetings.

Zoning Referendum Update

Clerk Krug reported that petitions requesting a referendum on the Zoning Ordinance amendment that rezoned property on Thompson Road, (commonly referred to as the Wolfe property), were submitted on Monday May 10th. Mr. Krug also noted that the petitioners did not seek approval from the Township for petition format and that Tony Brown had indicated that there was no need for the Township to review the petitions in advance since they were using the same format as the 2003 referendum. During the process of verifying the petition signatures, written legal challenges were submitted by an attorney representing Mr. & Mrs. Wolfe, claiming that the petition forms were not in compliance with applicable state law. After considerable research and discussion with the Township Attorney, a Michigan Townships Association attorney and the Genesee County Elections Division, it was confirmed that the forms contained several defects, the most significant of which was the omission of specific warning language required by MCL 168.482(5). While the minor defects could be waived by the Township Clerk by invoking the doctrine of "substantial compliance", the omission of the warning language is significant. Case law has consistently ruled that this language must not only be included on the form, but must stand out from the remainder of the form. Therefore, the petitions have been declared invalid and have been rejected. Ordinance No. 617 is effective immediately.

Public Comment:

Darryl Baird, 13465 Fenton Road

Mr. Baird asked if the petitioners can submit new petitions. Attorney Cooley responded that the time limit has expired. He is unaware of any provision in the law to allow a second opportunity to submit petitions.

Charles Mueller, 6036 Lobdell Road

Mr. Mueller, former Fenton Township Clerk, confirmed that the petition form is the responsibility of the petitioners. The petitions may have been certified if no legal challenge had been received, however since the legal issues were raised Clerk Krug is obligated to rule according to the law.

Lorraine Zimmer, 6391 Acorn Way

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Ms. Zimmer clarified that the petitioners were not aware of the rule and did not intentionally omit the warning language. There was no attempt on their part to deceive the voters.

Dan Zawlocki, 4520 Eleanor Drive

Regarding Trustee McDermott's previous claim that the rezoning was not valid, Mr. Zawlocki asked if this was still being investigated. Supervisor Mathis stated that the Township attorney has provided a legal opinion that the rezoning ordinance is valid. Trustee McDermott stated that he is still of the opinion that the rezoning was not valid and will continue to research the issue.

Mr. Zawlocki also suggested that the Township develop a sample petition form and instructions for future occurrences. Trustee Carmody stated that he supports the Township providing some direction but the petitioners should also be encouraged to seek legal advice. Clerk Krug agreed that the Township will develop a standard petition form.

Lee Martorana, 4180 Four Lakes Avenue

Ms. Martorana noted that the recall petitions circulated in 2003 did contain the required warning language.

Trustee McDermott asked if there is a legal remedy to allow the petitioners to "cure" the petitions to allow the referendum process to continue. It was suggested that Attorney Cooley could research this issue and report back as soon as possible.

Motion to authorize the Township Attorney to research applicable law to determine if a legal method exists to allow the petitioners to correct the defects in the referendum petitions.

Motion by: McDermott

Seconded: Krug

Ayes: Mathis, Krug, Garfield, Carmody, Gatesman, McDermott, Stiverson

Nays: None

Motion carried.

COMMUNICATIONS:

None

UNFINISHED BUSINESS-ADOPTION OF ORDINANCES:

Amendment to Zoning Ordinance, Site Plan Review & Time Limits/2nd Reading

Supervisor Mathis reviewed a proposed Zoning Ordinance amendment, which was introduced at the 5/3/04 meeting. The purpose of the amendment is to give the authority for site plan approval extension to the Planning Commission and to establish time limits for preliminary site plan approvals. Trustee McDermott questioned the "suitable and continual progress" language in the ordinance. He feels this is too vague and should be more specific. It was suggested that this language was intended to give the Planning Commission more latitude and discretion in considering extension requests.

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Motion to adopt Ordinance No. 620, an amendment to Sections 8.05 and 8.11 of Zoning Ordinance No. 594, as presented.

Motion by: Stiverson

Seconded: Garfield

Ayes: Mathis, Krug, Garfield, Carmody, Gatesman, Stiverson

Nays: McDermott

Motion carried. Ordinance declared adopted.

Amendment to Zoning Ordinance, Boat Slip/Dock Definitions & PUD Standards/1st Reading

Supervisor Mathis introduced a proposed Zoning Ordinance amendment, which has been revised since it was referred back to the Planning Commission at the 5/3/04 board meeting. The Planning Commission has recommended approval of the revised language. Trustee McDermott questioned the inclusion of *attached single family residential PUD developments* in the definitions. Office Manager Broecker clarified that the revised language was based on the understanding that only detached single family residences would be exempt from these definitions. If that understanding is not correct the language can be further revised at this first reading. After additional discussion, it was agreed to revise the language in both definitions to read:

For the purpose of multi-family residential PUD's, attached single family residential PUD's and/or other multi-family residential developments, a boat slip/dock shall mean a space designed for the mooring of a single watercraft. Such spaces may extend from a dock or a shoreline. This definition shall not apply to detached single family residences.

There was no public comment. The second reading of the proposed amendatory ordinance will be conducted at the 6/7/04 meeting.

UNFINISHED BUSINESS-OTHER:

Construction Observation/Inspection – Fenton Township Hall Parking Lot Project

The board reviewed two proposals from Rowe Incorporated to provide construction oversight and inspection for the parking lot project. Jack Wheatley explained that the lower amount reflects minimal observation and periodic inspection and testing. Due to the limited observation in this proposal, Rowe would not assume any liability for work completed when no engineer from Rowe was on site. Clerk Krug asked if this should have been included in the design cost for the project. Mr. Wheatley clarified that the specific items were included in the design, however the observation/inspection of the actual work performed is a separate issue. Treasurer Garfield objected to paying this much money for inspection and observation. She believes Lawrence Engineering could perform inspections and would not charge the Township. Trustee Carmody stressed the importance of having qualified professionals conducting thorough inspections and testing to ensure a quality job.

Motion to approve construction observation, inspection and administration for the Fenton Township Hall Parking Lot Project by Rowe Incorporated for the estimated amount of \$16,482.00, as presented.

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Motion by: McDermott
Seconded: Carmody
Ayes: Mathis, Krug, Carmody, Gatesman, McDermott
Nays: Garfield, Stiverson
Motion carried.

NEW BUSINESS:

Resolution No. 2004-19, Street Lighting Special Assessment-Ponemah Lake Estates

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Office Manager Broecker explained that the owner of the Ponemah Lake Estates development has petitioned for a street lighting special assessment district for the first phase of the development. A public hearing must be scheduled to start the special assessment process. Clerk Krug presented the following resolution:

RESOLUTION NO. 2004-19

WHEREAS, the Fenton Township Board has accepted a petition from the record owners of properties within Phase I of the Ponemah Lake Estates condominium development to establish a special assessment district for street lighting within the development, and

WHEREAS, it has been determined that the petition has been signed by the record property owners representing over 50% of the land area in the proposed special assessment district, and

WHEREAS, plans and estimated costs for the foregoing street lighting have been placed on file in the office of the Township Clerk,

THEREFORE BE IT RESOLVED, that the Fenton Township Board does hereby tentatively declare its intent to have street lights installed in Phase I of the Ponemah Lake Estates condominium development, and

BE IT FURTHER RESOLVED, that the Fenton Township Board does hereby tentatively establish the boundaries of the proposed special assessment district to include Units 1-41 of the Ponemah Lake Estates condominium development, and

BE IT FINALLY RESOLVED, that the Fenton Township Board will hold a public hearing on the establishment of the proposed special assessment district at its regular meeting to be held on Monday June 7, 2004 at the Fenton Township Civic Community Center, beginning at 7:30 p.m.

Motion to adopt Resolution No. 2004-19 as presented.

Motion by: Krug
Seconded: Stiverson
Ayes: Mathis, Krug, Garfield, Carmody, Gatesman, McDermott, Stiverson
Nays: None

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Motion carried. Resolution declared adopted.

Proposed Employment Agreement – Assessor

Supervisor Mathis reviewed a proposed 4-year employment agreement for Assessor Beth Redmond. The agreement, which has been reviewed by the Township's Personnel Committee, includes an annual salary increase of 3.5%, additional life insurance and one additional week of vacation in the third and fourth years of the agreement. An additional job responsibility has also been included in the agreement that states:

Ensure that the Township's assessment roll is in substantial compliance with the Michigan General Property Tax Act each year by maintaining a 1.000 equalization factor in all property classes.

Supervisor Mathis stated that Ms. Redmond has done an excellent job as Fenton Township Assessor and she recommends that the agreement be approved.

Motion to approve the employment agreement between Fenton Township and Assessor Beth A. Redmond as presented.

Motion by: Stiverson

Seconded: Gatesman

Ayes: Mathis, Krug, Garfield, Carmody, Gatesman, McDermott, Stiverson

Nays: None

Motion carried.

Extension of Sewer Maintenance Contract – Mid-Michigan Manufacturing & Maintenance, Inc.

Supervisor Mathis reviewed a proposed extension of the Township's sanitary sewer maintenance agreement with Mid-Michigan Manufacturing & Maintenance Inc., which was discussed at the 5/10/04 workshop meeting. The term of the agreement is 7/1/04 through 12/31/05. The only proposed pricing change is the hourly rate for *General station maintenance*. To help offset the sharp increases in fuel prices and insurance costs, Mr. Rowley has asked that this rate be increased from \$66.00 to \$71.00 per hour. Based on recent history, this equates to a \$50-75 per month increase in total cost. All other costs in the proposed agreement remain the same as the current agreement. Supervisor Mathis also reminded the board that the ACO deadline for completion of necessary repairs is 12/31/05. The contract ensures consistency in system maintenance to the end of the ACO deadline.

Motion to approve the Sanitary Sewer Maintenance Agreement between Fenton Township and Mid-Michigan Manufacturing & Maintenance, Inc. as presented.

Motion by: Gatesman

Seconded: Stiverson

Ayes: Mathis, Krug, Garfield, Carmody, Gatesman, McDermott, Stiverson

Nays: None

Motion carried.

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Schedule Public Hearing for Industrial Facilities Exemption Certificate – Paragon Manufacturing

Office Manager Broecker reported that the owner of Paragon Manufacturing Corporation has submitted an application for an Industrial Facilities Exemption Certificate for new equipment. Paragon is already located in an existing Industrial Development District. A public hearing is required before the board can act on the application.

Motion to schedule a public hearing for the June 7, 2004 Township Board meeting to consider the application of Paragon Manufacturing Corporation for an Industrial Facilities Exemption Certificate for new equipment.

Motion by: Stiverson

Seconded: Krug

Ayes: Mathis, Krug, Garfield, Carmody, Gatesman, McDermott, Stiverson

Nays: None

Motion carried.

Fireworks Display Permit – Tee Bonz’s Restaurant

Office Manager Broecker reviewed two Fireworks Display Permit requests from the proprietor of the Tee Bonz’s Restaurant. A memo from Fire Chief Moulton was also reviewed, noting that the applicant has complied with all requirements and that Chief Moulton is recommending approval of the permits. Trustee McDermott stated that Tee Bonz’s puts on an outstanding fireworks show. Bill Ochodnicki added that the owners do a great job with safety and always clean everything up.

Motion to approve Fireworks Display Permits for Steve Pelson, representing Tee Bonz’s Restaurant, for the dates of May 28, 2004 and July 4, 2004 as presented.

Motion by: McDermott

Seconded: Stiverson

Ayes: Mathis, Krug, Garfield, Carmody, Gatesman, McDermott, Stiverson

Nays: None

Motion carried. Resolution declared adopted.

Appointment to Fenton Township Planning Commission

Supervisor Mathis stated that Sandra Carlson’s term on the Planning Commission will expire at the end of May. Ms. Carlson has been an excellent Planning Commissioner and she supports her re-appointment.

Motion to re-appoint Sandra Carlson to the Fenton Township Planning Commission for the term ending May 31, 2007.

Motion by: McDermott

Seconded: Garfield

Ayes: Mathis, Krug, Garfield, Carmody, Gatesman, McDermott, Stiverson

Nays: None

Motion carried.

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PUBLIC COMMENT - AGENDA OR NON-AGENDA ITEMS:

Tony Brown, 12159 Jennings Road

Mr. Brown, who arrived after the discussion regarding the referendum petitions, asked why a petition signed by 11% of the registered voters in Fenton Township was rejected. Clerk Krug restated the facts regarding the petitions. Mr. Brown noted that a copy of the petition was submitted when the notice of intent was filed with the Township. Mr. Brown also asked if the petitioners have any recourse. It was noted that Attorney Cooley will research the issue and report back to the Township.

Sonya Brown, 12159 Jennings Road

Ms. Brown stated that she is outraged by the decision to reject the petitions. This Township Board is not listening to the people and they are not doing their job.

David Franz, 3435 Breezepointe Ct.

Mr. Franz questioned how the property owners obtained copies of the referendum petitions. Clerk Krug confirmed that copies were requested under the Freedom of Information Act (FOIA). Mr. Franz also asked for a clarification of the appropriate use of the driveway at the Fenton Township Hall. Many individuals are parking on the driveway, which would impede access for emergency vehicles. Supervisor Mathis confirmed that the driveway is a designated fire lane and should not be used for parking.

Denise (no last name or address given)

Denise questioned the timing of the FOIA request for the petitions. Clerk Krug responded that the request was received on Tuesday 5/11/04 and the petition copies were picked up Wednesday 5/12/04. Denise then stated that she requested information and was told it would take 7-10 business days. Office Manager Broecker, the Township's designated FOIA Coordinator, clarified that the Township is required to respond to information requests within five business days. Her request was processed in three business days. Due to the controversial nature of the referendum petitions, additional sets of the forms were copied immediately after receipt, in anticipation of requests for copies. Therefore the request for the petition copies was fulfilled in one day.

David Hawcroft, 3302 Ponemah Drive

Mr. Hawcroft asked if any progress had been made to correct the drainage problems on Ponemah Drive. Supervisor Mathis stated that the Township is still reviewing possible alternatives. Mr. Hawcroft also asked if the Township will be using a decibel meter to enforce noise violations. Supervisor Mathis stated that the Sheriff Department Marine Patrol will utilize a decibel meter on lake patrols.

Darryl Baird, 13465 Fenton Road

Mr. Baird questioned the status of the project to widen Fenton Road. Supervisor Mathis reported that there were no new updates at this time. The Genesee County Road Commission has committed to holding a public hearing after the environmental assessment has been completed.

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Dan Zawlocki, 4520 Eleanor Drive

Mr. Zawlocki questioned Clerk Krug's statement that the petitioners did not seek Township approval of the petition form when Mr. Brown had indicated that a copy had been provided to the Township. Clerk Krug clarified that whether or not a copy was provided to the Township was not the issue, rather that Mr. Brown had stated that Township review was not necessary. Therefore Clerk Krug had never reviewed the petition form in any detail prior to the submission of the petitions on 5/10/04.

ADJOURN: Meeting adjourned at 10:20 p.m.

Bonnie Mathis, Supervisor

Robert Krug, Clerk

Minutes Posted 5/18/04