

WAVERLY TOWNSHIP MINUTES
THURSDAY, July 5, 2007

Corrected

Supervisor Wilfong called the meeting to order at 7:00 p.m. and asked everyone to join him in the Pledge of Allegiance. Supervisor asked for Board members to introduce themselves: Fay Dorr, Treasurer; Tony Millek, Trustee; Bernie Wilfong, Supervisor; John Ruitter, Trustee; Attorney Harold Schuitmaker; and A. Jean Dahms, Clerk was absent. Nine township residents were present.

Agenda Approval:

MOTION by Ruitter to approve the agenda as presented. Second by Millek. Voice vote, all yes, motion carried.

Minutes Approval:

The Minutes from 06-07-07 require three amendments.

MOTION by Ruitter for approval of the minutes to be amended as follows:

- 1. Regarding Supervisor's Report: Change 44th Avenue to 44th Street.**
 - 2. Regarding Page 2 under David Wheeler information: Change Millek will continue to find him at home to try to find him at home.**
 - 3. Regarding Blight Complaint 80-18-025-018-30: Omit all words in quotations between 42038 M-40 up to the words Treasurer Dorr.**
- Second Millek. Voice vote, all yes, motion carried.**

Supervisor closed the Regular Board Meeting at 7:12 p.m.

Supervisor opened the Fire Special Assessment District Meeting at 7:12 p.m.

Attorney Schuitmaker explained that most municipalities do the fire protection revenue by Special Assessment District rather than a vote of the constituents. The advantage of special assessment compared to voted millage is the flexibility for the township to reduce the millage rate to better reflect the actual cost of the fire protection rather than potentially overcharging the property owners on a fixed rate over 5 years. Treasurer reported that at fiscal year end March 31, 2007, the Fire Fund had a positive variance of \$114,880. Attorney explained that the township needs a "rainy day" fund in our account balance if the Paw Paw Fire District ever disbanded because the Township would get 1/5th of all the equipment and would need to start a fire department. Millek voiced concern because the voters do not get the chance to approve or disapprove the fire protection special assessment district without 10% of the voters challenging the Board's decision. Millek prefers a voted millage rate from the township voters. The audience had constructive dialogue on this matter. The Special Assessment District at the same rate as 2006 would be 1.5 mills and will raise approximately \$75,000 annually.

Supervisor closed the Fire Special Assessment District Meeting at 7:20 p.m.

Supervisor opened the Regular Board Meeting at 7:20 p.m.

Fire Special Assessment District:

MOTION: A hearing having been held on July 5, 2007, to reaffirm a township-wide Special Assessment District; notices of said hearing having been published and posted as required by law. The Board being fully advised, it is hereby moved by Ruiter, seconded by Dorr, as follows:

- 1. The renewal of a township-wide Special Assessment District for the cost for fire protection and operation, and for the purchase of fire vehicles, apparatus and equipment, is approved;**
- 2. The boundaries of the Special Assessment district are the entire Township of Waverly;**
- 3. The amount of the Special Assessment to be spread on the lands and properties in the Township shall be a total of 1.5 mills, for the tax year 2007, and shall be re-determined on an annual basis;**
- 4. The entire amount raised is the amount which shall be used to cover the cost of fire protection and operation, and for the purchase of fire vehicles, apparatus and equipment for the Township;**
- 5. The Township Supervisor and Assessor are directed to spread a Special Assessment of 1.5 mills over the entire Township, on all real property, lands and premises to be benefited.**

Roll call vote:

Ayes: Dorr, Wilfong, Ruiter

Nays: Millek

Absent: Dahms

Abstain: no one

Supervisor closed the Regular Board Meeting at 7:32 p.m.

Supervisor opened the Headlee Truth and Taxation Meeting at 7:32 p.m.

Attorney Schuitmaker explained that Michigan Law requires a public hearing be held by a local taxing unit which proposes to increase operating tax levied over the maximum amount allowed to be levied without a hearing. Under state law, the Waverly Township Board could impose an operating millage of .6587 mil and road millage, previously approved by the voters, of 1.7832 WITHOUT holding a hearing (2.4419 mills). That levy would produce revenue \$5,302 mor, if the hearing and the Headlee override were

adopted.

The Township Board has never chosen to override the Headlee Amendment and thereby raise the tax rate. There was extensive discussion by the Board and the Audience and all concurred that the correct action is to NOT raise the tax rate.

Supervisor closed the Headlee Truth and Taxation Meeting at 7:39 p.m.

Supervisor opened the Regular Board Meeting at 7:39 p.m.

Headlee Truth and Taxation Override:

MOTION by Millek not to adopt the Headlee Override. Seconded by Dorr. Roll call vote: Dorr, yes; Millek, yes; Wilfong, yes; Ruiter, yes; Dahms, absent. Motion carried.

Payment of Bills:

MOTION by Dorr to pay Sewer salary checks #987 & #988 \$42.52 and General Fund Payroll checks #10190 to #10199 totaling \$3998.73; Sewer vendor checks # 505 to #506 totaling \$495.02; and General Fund vendor checks # 9651 to #9667 totaling \$26,818.37; for a grand total of \$32,916.53. Seconded by Ruiter. Roll call vote. Dorr, Millek, Wilfong, Ruiter voted yes. Dahms absent. Motion carried.

Election Staff for School Election August 7, 2007:

MOTION by Dorr to appoint Annet Shannon, Chair; Erika Mutz, Myra Capone, Anjanette Winer, as election staff; and Jean Dahms as alternate for the Bloomingdale School District election to be held on August 7, 2007. Seconded by Ruiter. Voice vote, all yes, motion carried.

Supervisor Report:

A: Report from County Drain Commissioner that the Butler, Coburn, McCauley & Farnsworth, Buckley, and Mud Marsh Drains will have work on them during 2007. Drain Commissioner is working with the Sheriff's Department and the Road Commission. All drainage tubes over 36" diameter will require Township to pay one-half the cost of the tube.

- 1 Members of the audience are concerned and wanted to know why no competitive bids are taken for the drain work and why there are no signed petitions for approval of the work. Attorney said the Drain Commissioner can spend up to \$2500 per mile without petitions.
- 2 Members of the audience wanted to know if the jail crews work on the drains free of charge or does the Sheriff's Department get paid. Attorney explained there are many line items in the complex County budget and the Sheriff's Department may be receiving some revenue.
- 3 Ernie Brown asked the Board to check out the concerns with the Drain

Commissioner. Wilfong told Brown if he has questions, he should contact the Drain Commissioner.

- 4 Audience stated there is a problem with the Bear Lake Drain because the road bed should have been raised.

B: Report on the 2007 road work:

- 1 Paving on 44th Street from M-43 to 28th Avenue is complete.
- 2 Township seal coating projects are complete.
- 3 Dust control on township gravel roads is complete.
- 4 Millek asked what paving project is to be done in 2008. Wilfong reported that 39th Avenue from 37 ½ Avenue to 36th Street is being prepared in 2007 for paving in 2008.
- 5 Millek asked when 47th Avenue from CR 665 to 40th Street will be paved. Ruitter reported that 47th was built over an old log road and because of that, the road will be very costly to prepare and pave. Ruitter said the township is paving the cheapest roads first even though 47th has high traffic.

Treasurer Report:

A: Summer 2007 property taxes have been mailed to the property owners.

B: Jack Brown lives and owns farming property on 38th Avenue west of M-40 Hwy. As a result of the previous 5-year plan, his 10 acre property on the north side of 38th was rezoned Horticulture from Agriculture (AG) even though it is continuous with his AG on the south side of 38th Avenue. After the sweeping horticulture change, Waverly Township had to redo the Horticulture zones because they were too large; however, during that change, his 10 acres was not returned to AG. Jack Brown wants the property returned to AG zoning and was told he would need to pay \$700 to the Township to have his request considered and there were no guarantees that it would be returned to AG. Jack Brown does not think it is fair for the Township to rezone the property without his knowledge and consent nor does he believe it is fair to charge him \$700 to have it reviewed without any guarantee it would be changed to AG. Attorney suggested that the Township Board talk to the Planning and Zoning Commission and ask them to change it on their own without cost to Jack Brown. Under question is the requirement to have a 1500 foot Horticulture buffer around Residential regarding whether it is a law. Attorney said it could be a court case. Public Act 110 leaves it up to the Townships to zone.

Possible solutions are:

1. Attorney will research the Horticulture issue.
2. Township can change the definition of Horticulture.
3. Planning and Zoning Commission can choose to do a blanket change to Horticulture areas.
4. Attorney will ask Patrick Hudson where he got the 1500 foot information.
5. David Foerster, Chairperson of Planning and Zoning, said the Horticulture information came through the Right to Farm Act.

C: The Michigan Township Services' (MTS) May billing regarding the services of Patrick Hudson, an employee of Michigan Township Services (MTS) who is working for the Township to assist the Planning and Zoning Commission (P&Z), billing was questioned by Treasurer Dorr because for the May billing, Hudson performed work for \$512.50 for the township, some of which did not appear to be for Commercial District assistance. When Hudson's contract expired for the preparation of the 5-Year plan in December 2006 when the plan was adopted, the Township Board agreed to retain his service for the Commercial Zoning expansion changes that the Township Board wanted in the 5-Year plan but which was excluded when it was presented for adoption. The Township Board restricted the services of Patrick Hudson at that time to assisting the P&Z with the commercial district expansion only by agreeing to use Tasha Smalley, another employee of MTS, as the Township Zoning Officer. Treasurer asked Trustee Ruitter, the Township Board's representative on the P&Z, how much longer the commercial district expansion was going to take. Ruitter responded another six months. Treasurer took issue with that time frame saying six months had already been spent on the issue of commercial. The Audience brought out the facts that Waverly has already lost two large commercial businesses because of the delays of the P&Z to finish the commercial expansion. Treasurer Dorr seriously questioned the continued need for Patrick Hudson's services to the Township because the residents who are required to use MTS services were adamant that the Board seek other sources for Zoning Administrator. The result was the Township Board said the Township would use Smalley from MTS on a trial basis before seeking another company to do township permits. The Audience reminded the Board that they have been asked several times to research the cost of the permits because MTS is too costly.

MOTION by Millek to terminate the Township's relationship with Patrick Hudson effective immediately. Seconded by Dorr. Roll Call vote: Dorr, Yes; Millek, Yes; Wilfong, No; Ruitter, No; Dahms, absent. Motion failed due to a tie vote.

Trustee Millek:

A: Millek has tried three times to contact John Smiley the owner of the property at 45641 24th Avenue; however, he has not been at home.

B: Millek said the David Wheeler property is still in progress and Wheeler hauled two loads out one week ago.

C: Millek encouraged keeping ordinance language for the commercial district in the 5-year plan simple for better understanding. Millek also encouraged speedier progress on the commercial district because the Michigan Department of Transportation has the ultimate authority over the driveways along M-43 as related to commercial districts and the Health Department is in charge of sewer permits.

D: Millek requested that the Planning and Zoning Commission speed up the process of getting the expanded commercial district into the 5-year plan and afterward do the necessary changes to the Zoning Ordinance to redefine commercial district. There was a need to correct two problems. (1) Minimum lot 6000 sq. ft. is a possible problem with septic tanks. (2) 60 ft. minimum frontage plan for commercial should be 300 ft. to allow a combined driveway.

Planning & Zoning Committee:

A: Ruiter said the anonymous letter mailed to Dorr last month would receive his personal attention and he would turn in the blight complaints on the five properties mentioned in the letter.

B: Dorr questioned Ruiter's intentions saying that doing so would violate the intent of the new blight ordinance. Township residents in multiple blight meetings stated it was wrong to drive through the township and pick out alleged blight that was not in their neighborhood. The five properties mentioned in the anonymous letter are not in one single location but scattered throughout the township.

C: Clerk prepared copies of previous letters of interest to serve on the P&Z dated October 2006. Millek asked why the letters of Don LaRue and Tom Fleetwood were not included in the packet. LaRue and Fleetwood were in the audience and Millek asked them if they were still interested in serving on the P&Z. LaRue and Fleetwood want to be considered for future openings on the P&Z; however, they are not applying for the current open position.

D: Wilfong recommended one of the previous October 2006 applicants, Laurie Reynolds owner of 12 acres near 44th St. and 28th Avenue. Wilfong said Reynolds leases her land to a farmer. Wilfong visited her to determine she was still interested in a position on the P&Z.

MOTION by Wilfong to appoint Laurie Reynolds to the unexpired term of Kathleen Crook on the Planning and Zoning Committee. Second None. Motion failed for lack of a second.

E: Dave Foerster, Chair of the P&Z asked whether a letter was sent to the group of applicants back in October 2006 thanking them for their interest. Wilfong had a copy of the letter that was sent to all applicants by the Board in October 2006, which in part read: Thank you for applying for the opening on the P&Z, Your letter of interest will be kept for future openings, Please attend future P&Z meetings because your input and observations are welcome.

F: Treasurer Dorr asked the Board how many times Laurie Reynolds had attended P&Z since October 2006 and the answer was none. Dorr indicated that a letter of interest was in the packet of potential applicants from Bernard Wilcox, a township farmer, who has attended numerous Township Board meetings and P&Z meetings for many years. Wilcox has shown a sincere commitment to the township and township issues. Dorr reminded the Board that Wilcox ran for the office of Township Trustee and that even though his campaign narrowly missed by seven votes, the township residents clearly showed by their support that they wanted Wilcox to represent them. Dorr also reminded the Board that like the Trustee vacancy that came up after Ruiter's near election to Supervisor by one vote, that she clearly recommended Ruiter for the Trustee vacancy. Ruiter had also attended many board meetings and showed his sincere desire to serve the township. Therefore, Dorr strongly supported the appointment of Wilcox to the vacancy on the P&Z.

MOTION by Dorr to appoint Bernard Wilcox to the Planning & Zoning Board to

fulfill the unexpired term created by the resignation of Kathleen Crook. Second by Millek. Roll call vote, Dorr, Yes; Millek, Yes; Wilfong, No; Ruiter, Yes; Dahms, absent. Motion carried.

G: David Foerster, Chair of the P&Z, referred to his list of recommendations for the qualification of potential members of the P&Z to meet prior to their appointment to P&Z. Dorr reminded him that his recommendations were never adopted by the Township. Foerster also stated that all P&Z members must be willing to serve in all the offices of the P&Z. However, Dorr stated this is not a township requirement of members appointed to the P&Z.

H: David Foerster, Chair of the P&Z, reported that his application to the Southwest Michigan Planning Commission (SWMPC) in Benton Harbor for a “Free Review of the Township Master Plan and Zoning Ordinance” was successful. The official award letter from Marcy Colclough, Senior Planner of SWMPC dated June 25, 2007, was written to Antwerp, Almena, Hartford, Waverly, Decatur, Hamilton townships and to the villages of Decatur and Paw Paw. Foerster said this free review is worth about \$3500, if the Township had to pay for such a review. The Waverly Future Land Use Plan is available on the Van Buren County website at <http://vbco.org/government657943.asp> and the Waverly Zoning Ordinance is available at <http://vbco.org/government194101.asp> for anyone interested in reading or printing the information. Treasurer Dorr thanked Foerster for making the application on behalf of the Township and asked for a copy of the application and award letters, which Foerster provided. The copies will be put into the official files of the Township.

I: Foerster volunteered to incorporate the last two changes to the Zoning Ordinance into the online web site version listed above. Foerster also volunteered to take the four versions of the Zoning Ordinance at the Township and make them into one correct version, which is on the web site listed above. Foerster said this editing, typing, and creating the web site version saved the Township about \$3000. Attorney and Foerster checked the final version and found no mistakes. The final version must have the dates of the various changes keyed into it; which the Attorney has. The Attorney has kept careful records of all the changes and the dates of the changes in his office files. It was suggested that we include the dates of the two recent changes to the Zoning Ordinance, and rather than key in all the older changes, to have a sheet of information containing the date changes were made. However, in the future, the Township should be putting the date of the changes beside the change and what the history of the change is. There are companies who do this kind of work for a fee; however, Foerster has done it as a service to Waverly Township. There needs to be a documented standardized method for making these future changes to the Zoning Ordinance and Foerster will document this process.

J: Foerster attends the Paw Paw River Watershed meeting every two months. He reported that the Committee is doing a good job.

K: Foerster reported that Low-Impact Development practices should be incorporated into the planning and zoning of Waverly Township because it has an important impact on

water quality. The Township and P&Z Committee should be planning to do updates in this matter after the SWMPC gives their recommendations. Forester will continue to attend these meeting on behalf of the Township until he makes the recommendations to the Township Board.

Attorney Report:

A: Olga Garcia property on M-40 south of 44th Avenue. No progress has been made since the last Board meeting. The son is evidently not involved because the daughter is always the person with Mrs. Garcia when they appear at court. The burned structures have not been totally cleared. The roof and siding are gone. Attorney reminded the Board that the township has a valid judgment from the court. Ruitter told the Attorney yes to go back to court to enforce the judgment. Other Board members made no comments.

B: John Smiley, 45641 24th Avenue. Millek reported that he has been there two times and Smiley is not at home. The grass has grown up and hides most of the problem. Bernie Wilcox went there two times and Dorr went there one time this month, also finding no one at home.

C: Robert Roe 37th Street north of 28th Avenue. MTS did not send any updates on their actions this month.

D: Theresa Shay, 42038 M-40 Hwy. Burned pole barn. Dorr and Ruitter reported that progress has been made. Millek reported that a demolition permit will be applied for next week before further work can be done.

Old Business:

The Board is seeking a Request for Proposal (RFP) for virus protection and cyber vandalism for the Township computers now that the computers are all live with Internet access. Board members had not reviewed the two lists of suggested recommendations for this meeting. Board agreed that Treasurer Dorr compile the RFP and submit the list to potential providers for the August meeting.

New Business:

Dorr received a letter addressed to the Township from Rex Schneider and Chris Buchman regarding their concerns about the Blight Ordinance and copies were distributed.

Audience Comments:

A: Citizens commented throughout the meeting on the various topics as they were under discussion.

B: Ernie Brown repeated his request that the Township schedule a meeting with Dan Poll of Michigan Township Service. Millek said that he is working on it.

Meeting adjourned at 10:04 p.m.

Respectfully submitted,
Fay A. Dorr, Treasurer