

Charter Township of Lyon
Board of Trustees
Regular Meeting Minutes
April 6, 2009

Approved: May 4, 2009 as written

The meeting was called to order by Supervisor Young at 7:00 p.m.

Roll Call: Patricia Carcone, Treasurer
Michele Cash, Clerk
John Dolan, Trustee
Steven Fletcher, Trustee
Brent Hemker, Trustee
John Hicks, Trustee
Lannie Young, Supervisor

Guests: 37+

Also Present: Chris Doozan, McKenna Associates
Leslie Zawada, Giffels-Webster
Matthew Quinn, Township Attorney

APPROVAL OF CONSENT AGENDA

Approval of Regular Meeting Minutes of March 2, 2009

Approval of Disbursements

Building Department Report for February 2009

Fire Department Reports for February 2009

Zoning Report for February 2009

Engineer Status Report for February 2009

Acceptance of Permanent Sewer Easement from Slating Lake Golf re: parcel 21-29-353-013 in the amount of \$1.

Acceptance of Permanent Sewer Easement, Municipal Services and Temporary Construction Easement from William O'Connor and Thomas Bullock re: parcel 21-32-300-008 in the amount of \$13,900. Acceptance of second Permanent Sewer Easement and Temporary Construction Easement from William O'Connor and Thomas Bullock re: parcel 21-32-300-008 in the amount of \$4,000.

Acceptance of Permanent Sewer Easement from Gary and Lorie Panicacci re: parcel 21-32-251-059 in the amount of \$4,900

Acceptance OF Permanent Sewer Easement from Michael and Kimberly Pankow re: parcel 21-32-251-033 in the amount of \$3,300.

Acceptance of Permanent Sewer Easement from Maynard and Sharon Pianfetti re: parcel 21-32-100-058 in the amount of \$9,000.

Acceptance of Permanent Sewer Easement from James and Victoria Serra re: parcel 21-32-100-037 in the amount of \$7,800.

Acceptance of Permanent Sewer Easement from Paul and Antonia Simon re: parcel 21-32-100-041 in the amount of \$8,800.

Acceptance of Permanent Sewer Easement, Municipal Service and Temporary Construction Easement from Lois A. Smith Trust re: parcel 21-32-300-005 in the amount of \$16,800. Acceptance of second Grant of Permanent Sewer Easement, Municipal Services and Temporary Construction Easement from Lois A. Smith Trust re: parcel 21-32-300-005 in the amount of \$1.

Acceptance of Temporary Construction Easement from Leon Stassinopoulos and Pete Stassinopoulos re: parcel 21-32-300-022 (026) in the amount of \$1. Acceptance of second Grant of Permanent Sewer Easement and Temporary

Construction Easement from Leon Stassinopoulos and Pete Stassinopoulos re: parcel 21-32-300-022 (026) in the amount of \$1.

Acceptance of Amended Grant of Permanent Sewer Easement from Robert and Alice Schneider re: parcel 21-32-100-013 in the amount of \$1.

Acceptance of Permanent Sewer Easement from South Lyon Church of Christ re: parcel 21-32-100-052 in the amount of \$12,600.

Acceptance of Permanent Sewer Easement from Jerry and Barbara Thompson re: parcel 21-29-426-018 in the amount of \$5,200.

Acceptance of Permanent Sewer Easement, Municipal Services and Temporary Construction Easement from Torakis re: parcel 21-31-200-003 in the amount of \$1.

Acceptance of Permanent Sewer Easement from the Naume and Zorica Tuntevski re: parcel 21-32-251-011 in the amount of \$5,000.

Acceptance of Permanent Sewer Easement from Washland, LLC re: parcel 21-32-100-048 in the amount of \$12,600.

Acceptance of Permanent Sewer Easement from Staci Weidmand and Brandon Zirkle re: parcel 21-32-100-016 in the amount of \$5,500.

Acceptance of Grant of Permanent Sewer Easement, Municipal Service and Temporary Construction Easement from Richard and Ramona Niles re: parcel 21-32-300-001 in the amount of \$7,600. Acceptance of second Permanent Sewer Easement, Municipal Service and Temporary Construction Easement from Richard and Ramona Niles re: parcel 21-32-300-001 in the amount of \$1.

Acceptance of Permanent Sewer Easement from Charles and Anna Noble re: parcel 21-32-100-004 in the amount of \$6,600.

Acceptance of Permanent Sewer Easement from A&B, L.C. of South Lyon re: parcel 21-29-353-038 in the amount of \$17,800.

Acceptance of Permanent Sewer Easement from Jonathon Albert re: parcel 21-32-100-056 in the amount of \$4,300.

Acceptance of Grant of Permanent Sewer Easement and Temporary Construction Easement from Autozone, Inc. re: parcel 21-32-100-036 in the amount of \$14,100.

Acceptance of Grant of Permanent Sewer Easement from Azure Birmingham re: parcel 21-32-100-024 in the amount of \$14,900.

Acceptance of Grant of Permanent Sewer Easement from Jose and Maria Cantu re: parcel 21-32-251-058 in the amount of \$1,900.

**Motion by Carcone, second by Hemker
To approve the Consent Agenda as submitted.**

**Roll Call Vote: Ayes: Dolan, Cash, Hemker, Fletcher, Carcone, Hicks,
Young**

Nays: None

MOTION APPROVED

ANNOUNCEMENTS AND COMMUNICATIONS

Chief McClain presented 6 firefighters with a pin that signified their involvement with a program called the Rescue Pump and Pod. It was an FDA approved study for the improvement of CPR. Chief McClain explained that there was a patient that was saved using this device and that was why the firefighters were being honored with a pin.

John Bell – He distributed a flyer that advertised the upcoming Kite Festival along with business cards that could be distributed.

CALL TO THE PUBLIC

Wayne Bailey, 23900 Griswold - He asked that a review of the blue print and drainage be done. It appears that the plans were not completed as they were approved and he still had flooding issues, he requested that this be placed on the May agenda.

Jim Chuck – Commented that the Township should send out letters asking developers to think about the weed problems so they don't get as bad as they did last year. He expressed what a safety issue it was when the weeds were so tall that they couldn't see around them along with the curved roads.

Maureen Quinn – Thanked the Board for getting Elk Run to be a closed street. She commented on what an improvement it had been for the 2 days that it was closed.

APPROVAL OF AGENDA

Supervisor Young asked for the addition of a letter to approve assistance from a law firm to represent the Township for the appeal of Bob Saks.

**Motion by Hicks, second by Cash
To approve the agenda as revised.**

**Voice Vote: Ayes: Unanimous
Nays: None**

MOTION APPROVED

8. UNFINISHED BUSINESS

A. Credit Card Use Policy Resolution

Mr. Quinn explained that this resolution came from the committee that looked at the credit card use as well as house account uses and the committee determined that the Township would only use the credit card it would not entertain any use of house accounts and any house accounts that currently exist will be terminated by the Supervisor and the Clerk.

**Motion by Carcone, second by Fletcher
To approve the Credit Card Use Policy that was prepared by the Township Attorney
April 6, 2009 at the regular Board meeting.**

**Roll Call Vote: Ayes: Dolan, Cash, Hicks, Carcone, Young, Hemker,
Fletcher
Nays: None**

MOTION APPROVED

B. Second Reading to Approve AP -08-26, Lyon Technology Associates, LLC rezoning of the 2.6 acre parcel.

Mr. Doozan recommended that the second reading be approved.

**Motion by Hicks, second by Hemker
To approve the Second Reading of AP -08-26, Lyon Technology Associates, LLC
rezoning of the 2.6 acres.**

Roll Call Vote: Ayes: Young, Cash, Dolan, Fletcher, Hemker, Carcone,

Hicks

Nays: None

MOTION APPROVED

C. Second Reading to Approve AP-07-33, Rezoning of Hidden Ponds Amendment

Mr. Doozan explained that the parcels are currently vacant and nothing has happened since 2001. The developer has been unresponsive and uncooperative in trying to work with the Township.

Motion by Hicks, second by Cash

To approve the Second Reading of AP-07-33, Rezoning of Hidden Ponds Amendment

Roll Call Vote: Ayes: Hicks, Fletcher, Cash, Young, Carcone, Hemker, Dolan

Nays: None

MOTION APPROVED

D. Second Reading to Consider Midwest Pension for GASB Requirements

Mr. Quinn explained that this follows the public notice information at the last meeting. Midwest Pension Actuaries has agreed to contract with the Township for a fee of \$1100.00 for the Township's retiree health care. Mr. Hemker is part owner of Midwest Pension Actuaries and will be excused from voting on this item. They also gave notice to the public at the last meeting that this situation did exist.

The term of the contract was for one year and the amount was \$1,100.00 which was a discounted rate for the Township.

Motion by Carcone, second by Dolan

To excuse Mr. Hemker from voting on this issue.

Voice Vote: Ayes: Unanimous

Nays: None

MOTION APPROVED

Supervisor Young explained that this was a requirement of the Township that they go through this procedure and found that the normal prices were between \$3,000.00-\$4,000.00. Mr. Hemker explained that GASB was a federal requirement and for the Township employees the Township promises to pay all or some of their health care when they retire. GASB requires that they come up with a value of what that promise was.

Motion by Carcone, second by Dolan

To approve the Midwest Pension Actuaries for GASB Requirements in the amount of \$1,100.00 for a one year contract.

Roll Call Vote: Ayes: Cash, Fletcher, Young, Hicks, Dolan,
Carcone

Nays: None
Abstain: Hemker

MOTION APPROVED

E. Second Reading of the Amendment to Chapter 32, Peddler, Canvassers and Solicitors

Mr. Quinn explained that this was an amendment to Chapter 32 regarding the applications made to the Township for peddlers and solicitors that want to go door to door within the Township. This would allow the Clerk better language to reject certain applicants if they have a record of certain types of criminal offenses.

Motion by Hicks, second by Cash

To adopt the Second Reading of the Peddler, Canvassers and Solicitors Ordinance, under Article II under license Section 32-44

Roll Call Vote: Ayes: Hemker, Carcone, Hicks, Fletcher, Young, Cash,
Dolan

Nays: None

MOTION APPROVED

F. Board Discussion Regarding Zoning Violations at 57440 Ten Mile Parcel #21-21-400-050

Mr. Quinn explained that a meeting was held with Mr. Fultz about the ordinances and had a discussion with Mr. Fultz to assess if there would be a voluntary arrangement under which the ordinance could be complied with and a statement was made that it could not be. Mr. Quinn explained that he received a phone call from an attorney representing Mr. Fultz and would like to meet to discuss this item. Mr. Quinn thought it would be beneficial to set this over for another month and meet with the attorney and come back next month.

Norm Fultz – Mr. Fultz stated that he felt the only option that was given to him was to close shop. Supervisor Young explained that it has been an illegal operation since day one and therefore cannot be grandfathered in. Mr. Fultz opposed the use of the word illegal and he didn't see that it was. He needed some resolution since this use has been allowed for over 40 years and he went to the Board before he even purchased it.

There were some commissioners that expressed concerns and were not in favor of having anyone close their business. They expressed their concerns that the business has been allowed for such a long time and they would have to find a solution to allow it and the Township had some responsibility in this situation.

Dave Grimes – He commented that the previous owners were doing the towing for the Township and nothing was said and nothing was said when Mr. Fultz purchased the property.

He thought this was a very serious issue and it could affect anyone. He has known Norm Fultz for over 30 years and has never known him to do anything wrong. There are a lot of businesses that are not properly zoned and with the economy they need to promote business.

Walter Evasic – He commented that he has known Mr. Fultz his whole life and has always helped anyone. The business has been there for so long and he felt that since the owner changed they were going after him and it was about the person.

Martine Atchinson-Benay - She commented that she has lived in South Lyon for 43 years and grew up 3 houses from Mr. Fultz's business. It has always been an automotive use. Mr. Fultz has been an outstanding citizen and has helped so many people. Why did it come up when he bought the business? Right now it was costing him money to fight this when it was ok for 45 years. The Township needed to give up more than what Mr. Fultz should give up.

Bob Moody – He commented that they need to do the right thing and let it go, it's been in business for 45 years, let it be.

Frank- He commented that Norm was his go to man for his personal and business vehicles. He felt the timing was terrible; they need to be rallying behind the business owners of the Township. Everyone was in survival mode and he should not have to be paying the tab on anything legal, it was totally unfair that he has to legally protect his rights at this particular time in their economy.

Mrs. Fultz – She commented that this was unethical and she agreed with everyone that has spoken and who would want to build there. She also commented that Norm was her son.

Ms. Carcone suggested establishing a sub-committee to work with Mr. Fultz.

Motion by Carcone, second by Fletcher

To form a sub committee that would consist of John Dolan, Patty Carcone and Brent Hemker to work with Mr. Fultz.

Voice Vote: Ayes: Unanimous
Nays: None

MOTION APPROVED

NEW BUSINESS

A. Consider Contract Award for N.E. Ring Road and Roundabout

Ms. Zawada explained that the bids for the Lyon Center Drive N.E. project were received on March 19, 2009 and were publicly opened and read aloud. There were 13 bids submitted. The low bid was submitted by Dan's Excavating at \$1,839, 960.85. The second low bid was submitted by San Marino Excavating at \$ 1,846,276.66. Dan's Excavating has previously performed work for Lyon Township. San Marino Excavating was currently working with the Township on the Ten Mile Road widening project as a subcontractor for the asphalt company.

Their work to date has been satisfactorily performed. They have checked the references for both companies and all references indicate that the work under those contracts was performed satisfactorily and they would recommend them again. There were some issues regarding Dan's Excavating bid being unbalanced that were raised. Both San Marino and Dan's Excavating were in attendance at the meeting.

It was her understanding that any motion made would be contingent upon DDA Approval, the submittal of all necessary bonds and insurance as well as a receipt of the capital improvement bond proceeds.

Motion by Carcone, second by Hicks

To accept Dan's Excavating bid for \$1,839,960.85 for the Lyon Center Drive N.E. with DDA approval, the submittal of all necessary bonds and insurance and a receipt of the capital improvement bond proceeds.

Mr. Fletcher brought up his concerns regarding the difference in the line items. Supervisor Young explained that they have to make the numbers come out to the bottom line.

Mr. Brian Schember, from Dan's Excavating explained that they do have hundreds of feet of steel casing in the yard so they elected to put a penny on that item and that was good for the Township. They have several jobs going on in the area and plan on salvaging some of the stone from those projects but it still had to meet the requirements that are in the bid package. The first thing that they would do on a job would be to install the erosion control, do the removals, the storm sewer and water main then go into the earth excavating and the stone which happen simultaneously. The very last thing that they do on a job was restoration and they were almost \$39,000.00 which was a high bidder on that particular job. He did not see that it was a front loaded bid.

Mr. Joe Riccardi from San Marino Excavating stated that if they don't intend on using the jack and bore, the Township gets credited \$.85, but they have to substitute that line item of 85' with another line item. That line item was \$59.50 per foot. In essence, they have something that they want to do, they want to open cut the jack and bore and that was just one of the issues that they felt it was a non-responsive and non-compliant bid. The bidding field was not level.

Ms. Zawada stated that the plan has not changed to eliminate a bore and jack. Supervisor Young stated that they still have to meet the scope of the work and meet all of the inspections.

Ms. Zawada stated that they will be held to the unit prices and they would abide to the unit cost of the stone. She explained that with the way the contract works with the unit price items, if they complete 100' of bore and jack with casing they will be paid a penny per foot. If they put in 60' of bore and jack they will be paid 60' at one penny for example.

Supervisor Young stated that right now the contractor would be obligated to do the job for the price that they get awarded in the bid per the scope and the specifications of the job. Mr. Fletcher stated that clearly there was a difference in the assumptions of both contractors. Mr. Schember stated that if that pipe gets put in then 85' would be put in for a penny a foot. Mr.

Nays: None

MOTION APPROVED

D. Fire Works Applications from Walnut Creek Country Club

Mr. Hicks commented that they have to send inspectors and they have provided personnel he thought it was incumbent to get paid for that in some fashion, either through the permitting fee or some other means. Mr. Quinn explained that this could qualify as a special event and they would need to check that against the Michigan State Police Fire Marshall Division and see who has precedent over the other before he could advise them to increase the local permit fee. The issue of reimbursement for the Township expending Fire Department or Police Department time would be a separate issue. They could approve the application subject to the Townships review and the assessment of the Townships actual out of pocket expenses for safety purposes.

Motion by Hemker, second by Hicks

To approve the Fire Works Application from Walnut Creek Country Club subject to Township review and the assessment of the Township's actual out of pocket expenses for safety purposes.

Mr. McClain explained that there were Firefighters that donated their time previously.

**Voice Vote: Ayes: Unanimous
Nays: None**

MOTION APPROVED

E. Mowing Contract for Huron Valley Trail

Mr. Doozan explained that there were 6 bids and one of the bids from Lyon Lawn Care did not submit a bid bond so they had to disregard that one. The lowest bid was from Brian Services which currently provided this service, at \$425.00 per cut and then a cost for the vertical cut was \$85.00 per hour on an as needed basis. They will hold the price for 3 years.

Motion by Carcone, second by Hicks

For the Huron Valley Trail to hire Brian Services for a term of 3 years at \$425.00 per cut and \$85.00 for the vertical cut.

**Roll Call Vote: Ayes: Fletcher, Hemker, Dolan, Young, Hicks, Cash,
Carcone
Nays: None**

MOTION APPROVED

F. Mowing Contract for James F. Atchison Memorial Park

Mr. Doozan explained that there was a cost per cut for Area A and a cost per cut for Area B. They carved out a big portion of Area A that they will have cut 3 times per year in the effort of

reducing the mowing cost of the park. Area B was located where the playground and ball diamonds are situated that would get the normal multiple cuts per year. There was also an area for a price for weed and feed in Area B and the Round Up applications would be done in the ditches. There were 7 bids submitted and Lyon Lawn Care did not submit a bid bond so their bid was disregarded. Brian Services for Area A was the low bidder at \$1,938.00. For Area B, Dino's Landscaping was the low bidder at \$900.00. For the weed and feed applications Brian Services was the low bidder at \$780.00 and Lightening Lawn Care was the low bidder for the Round Up applications at \$150.00. Overall, the low bidder would be Brian Services.

Dino Thanos, 30600 Golden Valley, New Hudson, Owner, Dino's Landscaping. The park area itself with it being 3 cuts per year and trying to compete with Brian Services was nearly impossible due to his range of machinery, but on the dress area of the park, he did come in as low bid. Since it was separated in size were they going to award it as one or break it up.

Supervisor Young explained that it was difficult for a Township to break something up like this, its more preferred to deal with one contractor.

Mr. Thanos explained that he was a resident and uses the park a lot and he would like to see the work stay local if possible.

Mr. Doozan stated that the purpose was so they can get unit prices and if they needed an additional cut then they had the price of what that extra cut would be. He would recommend having one vendor to cut the whole park.

Motion by Carcone, second by Hicks

To hire Brian Services for the James F. Atchison Memorial Park for 3 years for Area A and B, the weed and feed and round up applications for the prices listed in the schedule.

Roll Call Vote: Ayes: Carcone, Hicks, Young, Hemker, Fletcher
Nays: Cash, Hemker

MOTION APPROVED

G. Mowing Contract for the Township Hall, Library/Community Center, and Various Other Properties

Mr. Doozan explained that there were 6 bids submitted and Val's Landscaping provided a bid for the entire year instead of per cut so their bid was not comparable to the rest of the bids. Again, Brian Services came in as the low bidder.

Motion by Carcone, second by Fletcher

To approve Brian Services for a 3 year contract per the schedule provided by McKenna Associates for the Township Hall and other properties that are listed in the schedule.

Paul Benedict, Lyon Twp. Resident – He really thought that it should have been considered having a local resident that uses the park mow the park, it should have been taken into account in these difficult economic times.

Mr. Thanos stated that was why he said anything at all. The way it was put into areas and the one was cut much less often than the other; he thought with B he could cover that.

Roll Call Vote: **Ayes: Dolan, Young, Hicks, Fletcher, Hemker, Cash, Carcone**
Nays: None

MOTION APPROVED

H. Streetscape Maintenance Contract

Supervisor Young explained that this was strictly paid for with DDA funds and would not require Board action.

I. BCI Annual Ground Water Monitoring Contract

**Representing BCI: Brian Burke
Robin DeWyre**

Supervisor Young explained that this was the same contract that was approved last year which includes monitoring wells and reports that are sent out quarterly.

Mr. Fletcher commented that he would like to see this bid out in the future.

Mr. Burke explained that with professional services they have 10 years of knowledge from working together. There was a negotiation of a lower cost because of the knowledge. Ms. Zawada stated that they negotiated the permit down so that they didn't have to test for as many metals because they don't service industrial waste. Mr. Burke stated that there was savings with that knowledge.

**Motion by Carcone, second by Cash
To approve the BCI 1 year contract for the 2009 Annual Ground Water Monitoring Contract for the amount of \$19,129.00 subject to attorney approval and attorney's corrections and not to exceed contract.**

Roll Call Vote: **Ayes: Hemker, Fletcher, Carcone, Dolan, Cash, Hicks, Young**
Nays: None

MOTION APPROVED

J. ACH, Automatic Clearing House Agreements and Electronic Transaction of Funds Policy Resolution

Ms. Carcone explained that they would like to start paying some bills on line and this was a standard policy.

Motion by Carcone, second by Cash

To approve the policy for the Automatic Clearing House Resolution prepared by the Township Attorney.

Roll Call Vote: **Ayes: Carcone, Fletcher, Young, Hicks, Hemker, Dolan,**
Cash **Nays: None**

MOTION APPROVED

K. Anytime Fitness Sewer Capital Charge Re-Allocation

Ms. Zawada requested that the Township review their REU calculation for their sewer. When it was proposed they used the designation of health club which came to 11 REU's of sewer capacity. She recommended that the Township reduce the number from 11 to 3 due to the fact that the Oakland County Unit Assignment Factors do not have a designation for this type of business. This was a small fitness center in a strip mall not a stand alone health club. A buy back would not be necessary. Lyon Wastewater has verbally agreed that the number should be reduced.

Motion by Carcone, second by Hicks

To approve the Anytime Fitness REU calculation to go from 11 REU's to 3 REU's and that its revisited on a yearly basis.

Voice Vote: **Ayes: Unanimous**
 Nays: None

MOTION APPROVED

L. Letter regarding Charter Township of Lyon vs. Milford Road East Development Association

Mr. Quinn explained that this firm normally does all of the appellate work for the Township. They have agreed to represent the Township with respect to an appeal with the rate being \$155 per hour plus any costs advanced by the firm.

Motion by Carcone, second by Hicks

To hire Landry, Mazzeo and Dembinski in the case between Charter Township of Lyon vs. Milford Road East Development Association with an hourly rate of \$155 per hour to be reimbursed by Bob Saks.

Roll Call Vote: **Ayes: Cash, Dolan, Hicks, Young, Fletcher, Carcone,**

Hemker

Nays: None

MOTION APPROVED

ITEMS REMOVED FROM CONSENT AGENDA FOR ACTION OR DISCUSSION

None

ADJOURNMENT

**Motion by Carcone, second by Cash
To adjourn the regular meeting.**

**Voice Vote: Ayes: Unanimous
 Nays: None**

MOTION APPROVED

The Regular Meeting of the Board of Trustees was adjourned at 9:28p.m.

Respectfully Submitted,

Kellie Angelosanto

Kellie Angelosanto
Recording Secretary

Michele Cash
Clerk