

Hayes Township Board
Regular Meeting Minutes
July 8th, 2019
09195 Old U.S. N, Charlevoix, MI 49720

The July 8th, 2019 meeting of the Hayes Township Board was called to order by Supervisor Ron VanZee at 7:00 pm. at the Hayes Township Hall, 09195 Old US 31 N., Charlevoix, MI 49720.

Board members present were: Matt Cunningham (Trustee), Julie Collard (Treasurer), Warren Nugent (Clerk), Ron VanZee (Supervisor), Bob Jess (Trustee)

Also Present: Kristin Baranski (Recording Secretary/Deputy Clerk), Larry Sullivan (Zoning Administrator)

Audience Members signed in: Shirlene Tripp, Betty Henne, Bill Henne, Dee Janz, Gary Janz, Doug Kuebler, Sharon Bagley, Nancy LaCroix, Mary Lou Wickowski, Pat Wickowski, Jerry Simpson, Michelle Biddick, Cliff Biddick and Jerry Puhl

PLEDGE OF ALLEGIANCE: Supervisor VanZee asked everyone to join him in the Pledge of Allegiance.

REVIEWED AGENDA: Line item 5: add approval of June 10, 2019 Annual Budget Meeting Minutes

Line item 9: Marijuana Ordinance Review will follow approval of minutes (line item 5).

Public Comments will be taken prior to approval of warrants.

Agenda Approved as amended.

Mr. Nugent made a motion, supported by Mr. Jess, to adopt the agenda as amended.

Yeas: Matt Cunningham, Bob Jess, Julie Collard, Warren Nugent, Ron VanZee

Nays: None **Motion Carried**

Approval of June 10, 2019 Annual Budget Meeting Minutes:

Line 25 ~~verse~~ **versus**

Mr. Cunningham, made to a motion to approve Hayes Township Annual Budget June 10, 2019 meeting minutes as amended, supported by Ms. Collard.

Yeas: Matt Cunningham, Bob Jess, Julie Collard, Warren Nugent, Ron VanZee

Nays: None **Motion Carried**

Approval of June 10, 2019 Meeting Minutes:

Mr. Nugent made a motion, supported by Mr. Jess, to approve the June 10, 2019 Board of Trustees regular meeting minutes.

Yeas: Bob Jess, Julie Collard, Warren Nugent, Ron VanZee, Matt Cunningham

Nays: None **Motion Carried**

MARIJUANA ORDINANCE REVIEW: Bryan Graham (Young, Graham & Wendling, P.C.), Hayes Township Attorney, explained the three statues in Michigan as it relates to Recreational Marijuana. Mr. Graham recommends the BOT decide on a Township Ordinance sooner than later (if no decision is made either way, the township falls under Michigan State law). Supervisor VanZee will put Marijuana Ordinance on the August agenda for the BOT regular meeting. See Graham letter attached)

Mr. Graham addressed safety concerns at Hayes Township/Camp Sea-Gull Park after touring Hayes Township Park as well reviewing the letter from Michael Gambos (MTA **Michigan Township Association** Risk Assessor). He explained from a legal stand point the various safety concerns as documented by MTA **Michigan Township Association** Risk Assessor. The Township itself has broad legal immunity, that is not true for governmental officials. He stated the definition, per statue, of gross negligence as: “Conduct so reckless as to demonstrate a substantial lack of concern for whether an injury occurs”. Said officials could/would fall under gross negligence (not addressing the safety issues as stated in letter from township risk assessor). Mr. Graham shared a specific Michigan lawsuit.

PUBLIC COMMENTS: Public comments included: status of payment #8 and fence quote, when will park be opened, signs at park to prevent people from entering while park is closed, rules/regulations for host family, give contractors deadlines, board working diligently to address safety issues and move forward, doing the right thing not the easy thing, tough to get on work schedule, all safety issues have been part of discussion for past 3 years and should have been included in contract and not ignored to push project through, park host and Hayes township resident negative encounter over weekend regarding park closure, host family township policy, construction (excluding safety issues) still not complete, board is liable; want kids safe, Performance Engineering was willing to donate snow fence, tweak minor things and work together to get park open, cost of resolving additional safety issues (\$25,000-\$45,000 with exception of shale wall), election recall caused hostility within township, Parks and Rec committee meets at host house, video of park host/resident encounter, park available end of Burgess fishing opportunity, park is closed-NO EXCEPTIONS

Public comments closed at 8:30 pm.

Approval of Warrants: General Fund/Capitol Project: Warrants in the amount of \$52,464.26 for township expenses and \$2580.65 for Hayes Township Park/Camp Seagull Capitol Project.

Mr. Nugent made a motion, supported by Mr. Cunningham, to approve Township warrants in the amount of \$52,464.26. A roll call was taken.

Yeas: Matt Cunningham, Bob Jess, Warren Nugent, Julie Collard, Ron VanZee

Nays: None **Motion Carried**

Mr. Nugent made a motion, supported by Ms. Collard, to approve Capitol Project warrants in the amount of \$2,580.65. A roll call was taken.

Yeas: Matt Cunningham, Bob Jess, Warren Nugent, Julie Collard, Ron VanZee

Nays: None **Motion Carried**

Performance Engineering presented contractor's application for payment #8 for \$242,027.95. Mr. Nugent is concerned about the 5% retainage fee versus the

10% retainage fee that has been standard throughout the contract as well as receiving the application for payment after the first of the month.

Mr. Nugent made a motion, supported by Mr. Jess, to disregard the township's policy of not paying invoices received after the first of the month. Mr. Cunningham recused himself.

Yeas: Bob Jess, Warren Nugent, Julie Collard, Ron VanZee

Recused: Matt Cunningham

Nays: None **Motion carried**

Mr. Malewitz (Performance Engineering) explained he changed the retainage fee from 10% to 5% because there is only a few thousand dollars left on the contract. Mr. Malewitz stated only minor things need to be done (kiosk, rip-rap, keys to restroom, tank crushed and filled by old arts and craft building, grind concrete, electrical panel on fishing pier needs locking mechanism, verify locate every water source, cut hole in fabric at entrance).

Mr. Nugent is firm on a 10% retainage fee remain in effect thus changing contractor application for payment #8 from \$242,027.95 to \$165,549.50.

Mr. Nugent made a motion, supported by Ms. Collard, to pay \$165,549.50 to Performance Engineering. A roll call was taken.

Yeas: Bob Jess, Warren Nugent, Julie Collard, Ron VanZee

Recused: Matt Cunningham

Nays: None **Motion Carried**

Treasurers Report: Ms. Collard presented a written report with an oral overview detailing all the current accounts held by the township. The township cash flow was also reviewed.

County Commissioner Report: No report.

Zoning Administrator Report: A written report was presented by Mr. Sullivan detailing issued zoning permits, land divisions, nuisance complaints, zoning violations and short-term rental licenses. The full report is available for review at the township hall.

Planning Commissioner Report: Mr. Cunningham reported the Planning Commission met on June 18th, 2019 for a regular meeting and held a master plan workshop on June 24th, 2019. At the June 8th regular meeting the planning commission worked on several different township maps (current use/future use) with John Iacoangeli (BRI-Beckett&Raeder). At the master plan workshop on June 24th, the planning commission went page by page of edited master plan and made additional edits. A July 9th, 2019 master plan workshop is scheduled to continue edits on master plan.

Zoning Board of Appeals Report: Did not meet in May 2019.

Parks and Recreation Report: Michelle Biddick reported on the following Parks and Rec Committee discussions: Park Luck will be at Hayes Township Hall on August 25th, Bayside railings, signs for all parks, concern regarding run off into lake at Hayes Township/Camp Sea-Gull park and appliances in host house are old and should be replaced.

Supervisor Report: Board of Review is July 16th, 2019 at 3:00 p.m. at Hayes Township Hall.

Beckett & Raeder Report Review: Supervisor VanZee reviewed the preliminary report from Beckett & Raeder. Supervisor VanZee stressed the board is working hard on addressing all issues at Hayes Township Park but a second opinion on the shale wall is a necessity. Becket & Raeder is working diligently to get a proposal to the board.

Township August 24th Park Brochure: A sample of a park locator for Hayes Township was presented. This brochure will be dispersed at various locations throughout the local community (Charlevoix Chamber, stores, etc.).

Safety Barriers for Hayes Township Park: Mr. Nugent presented some safety barrier options for the future to direct snowmobilers at park to avoid hazards

and the open water around the fishing pier as well as roadway down and fishing pier.

Public Comments: Public comments include: routes for snowmobilers at Hayes Township Park, park host policies, park host keeping people out of closed park, rocks from park displayed/geo park possibility.

Public comments closed at 9:07 p.m.

Supervisor VanZee presented a video presenting drainage, rain gardens and run-off going directly into Lake Charlevoix. Pictures/videos included: pile of shale from construction of boat launch currently on lot on Maple Grove Road, shale falling and slipping off wall, first run-off for roadway heads directly to host house, water rushing across sidewalk by bathrooms (totally skipping catch basins), first rain garden has 2-3 inches of water, second run-off goes directly to septic field of host house, example of water coming down and rushing over boat launch and going directly into Lake Charlevoix, Rain coming down across asphalt and filling small rain garden by fishing pier, drain located bottom of hill by beginning of parking area goes directly into Lake Charlevoix through a small pipe with no filter and a comparison of 2 of 3 rain gardens are empty while small rain garden is filled and excess water is going into overflow. Mr. Malewitz explained his design, which was all approved by Russ Smith from Charlevoix Storm Water. He stated that there are two functions for rain gardens: first they are designed to take rainwater and fill up and the second function is to direct traffic. Mr. Malewitz explained rain gardens are designed to limit to 24-foot boats so the size of rain gardens act as “traffic cops”. He noted that due to the amount of fractured shale in rain gardens they will not hold water like clay would, rain goes in and does not hang around. He also made clear that, per the previous board, the launch was designed with asphalt to release “virtually clean” water because it travels over asphalt versus something like gravel. He assured the board that “most water coming down that road is pretty clean” and “It is allowed to let clean water go into Lake Michigan”. He also explained that when designing for storm water, the design is to actually avoid flooding. Per Mr. Malewitz, the rain gardens are a

“first flush” and that asphalt keeps water clean to be released into Lake Charlevoix. He stressed again “Bigger ponds are also there as a traffic cop”. Mr. Nugent asked about oil dripped from cars/boats once park is opened if water that runs over asphalt will still be clean water. Mr. Malewitz assured Mr. Nugent it will be “relatively clean water” and the real concern would be someplace heavily traveled like a gas station. Mr. Malewitz commented that boats just being on lake is more likely to cause an oil issue. He stated, “This is a clean situation compared to a gas station or a mall”. Supervisor VanZee shared his concern about drainage to house host foundation as well as second drainage directed at septic field. Mr. Malewitz said he would check swill behind septic.

ADJOURNMENT: Mr. Cunningham made a motion, supported by Ms. Collard, to adjourn at 9:24 p.m.

Yeas: Matt Cunningham, Bob Jess, Julie Collard, Warren Nugent, Ron VanZee
Nays: None **Motion carried**

Respectfully Submitted,

Kristin Baranski
Hayes Township Deputy Clerk/Recording Secretary