

FRUITLAND TOWNSHIP BOARD
REGULAR MEETING
JULY 21, 2008
MINUTES

PRESENT: Supervisor Gregory R Boughton, Treasurer Debbie Boyer, Trustee Mary Ann Bard, Trustee Gary Bole, Trustee Mary Eley, Trustee Norma Binns, and Clerk Janell Beard

ALSO PRESENT: Township Attorney Robert Eklund and 32 interested parties.

CALL TO ORDER - Supervisor Boughton called the Monday, July 21, 2008 Regular Meeting of the Fruitland Township Board to order at 7:00 p.m. and evoked the community services of past Supervisor Richard "Dick" Hain, who passed away at the age of 99, leaving our community a better place. Supervisor Boughton welcomed those in attendance and led the Pledge of Allegiance.

AGENDA – Addition of petition for improvements to Lakewood Road, presented July 16, 2008.

Motion by Clerk Beard, second from Treasurer Boyer, ***ADOPTED***, to amend the Monday, July 21, 2008 agenda under correspondence with the addition of the petition received Wednesday, July 16, 2008 requesting improvements to Lakewood Road.

Upon Voice Vote: **7 AYES.**

PUBLIC COMMENT –

1. Bruce Olsen, 2221 Scenic Drive, Muskegon, MI 49445 spoke regarding the proposed ordinance for McMillan Road End, How noise level is nuisance determined, voices, music, or any one talking? Noise nuisance is enforceable. Cited concerns with Section 3.1 a.) definition includes bottomlands under lake, Supreme Court ruling enforcement; Section 4.3 and 4.4 prohibiting the use of watercraft at the shoreline or bottomlands hinders public use of public property, Section 4.5 prohibits sunbathing on public land, agrees with prohibition of campfire. Inquired why Section 5.3 list of enforcement agencies did not cite the Michigan State Police. Thousands of public monies were spent to obtain the public property, now the proposed ordinance seeks to prohibit public access to the lake.
2. Dick Ciezak 4020 Orshal Road, Whitehall, MI 49461 cited a recent meeting with Supervisor Boughton, and Trustee Bole to keep the road committee together, have a public meeting to determine if the committee members should be appointed from the board, or remain a citizens committee.
3. John Parks 2820 Scenic Drive, Muskegon, MI 49445 state the proposed Ordinance for the McMillan Road End has great potential for being overturned that many item cited within the proposed ordinance violate Federal and State statute and will be challenged causing the township to incur large legal fees.
4. Allan VandeVusse 2784 Scenic Drive, Muskegon, MI 49445 stated he is a 15 year resident and one of the selling points was the beach access at McMillan Road End; cited concerns with Section 4.5 that prohibits lounging, sunbathing and picnicking, referenced the adjacent property owner erected a fence to prohibit the public from public property, and now doing it legally through the proposed ordinance, he can understand not wanting loud beer parties, but the property is public township property and the public has the right to use the property legally.
5. Laura Shields 5225 W. McMillan Road, Muskegon, MI 49445 cited her concerns with the composition of the McMillan Road End Committee itself, with adjacent property owner Nancy Johnson serving as the chair of the committee, the March 2007 minutes contain no documentation with change; question current actions of the McMillan Road End Committee, due erosion is

repaired, land use recommendation, middle of July is disappointing in actions; Spring action was needed – June correspondence from Jeff Auch, Muskegon County Conservation, stated the fencing could come down, requested the township hold a public hearing for reassessment to prohibit committee action to sneak one by us; the proposed ordinance is dated July 2nd (2008) and e-mailed Trustee Binns and committee chair Nancy Johnson March 15, 2008 to inquire as to status, that last committee minutes are dated March 08, 2008; requested to see Township Board minutes authorizing “No Trespassing Signs” for the public property. Requested to be notified of meeting for road end; recommended taking e-mail addresses for committee to keep in touch with interested parties and establish a meeting schedule so the public can be involved. 115 signatures of residents were presented on a petition last September.

6. Marcia Jeske 5715 McMillan Road, Muskegon, MI 49445 wrote (*read by Laura Shields*) that Section 4.1 (e) and Section 4.5 should be struck in its entirety. July 2nd is the draft date of the proposed ordinance and questioned how and when this ordinance was drafted, the July 2, 2008 meeting was posted for 5:30 p.m. at the road end, and no one there upon arrival, she then went to township hall to discover the meeting was cancelled, so when and where was the ordinance written? She was surprised to see the meeting cancelled and witnessed Trustee Bard went into the Red Rooster at the time the meeting at the road end was suppose to occur. Approximately 120 signatures of residents were presented citing there interest in having input, instead the committee is made up of township board members and neighboring residents. Requested year round residents be appointed to the committee to serve the public’s interest.
7. Miriam Bush 5670 W. McMillan Road, Muskegon, MI 49445 concurs with the portions of the proposed ordinance that cares for and protects immediate property owners, but language needs to address public needs. Currently ride bikes, hike, walk the dog, and it appears there is no intent to make public access with barricades and trees planted down the middle of the property, everything, the language and the looks, says “keep out.” Section 5.2 cites injunction “or any Township resident may institute an appropriate action in a court of general jurisdiction seeking injunctive or equitable relief,” and cited this section as inappropriate policing. Section 5.3 allows for enforcement by “as may be designated from time to time.” Requested more public input for the public use of the public property.

8. Motion by Trustee Eley, second from Trustee Bole, **ADOPTED**, to suspend the rules and allow public comment on an item listed on the agenda.

Upon Voice Vote: 7 AYES.

Judy Marcinkowski 3767 Jay Road, Whitehall, MI 49461 inquired if the review requested at the June work session had been performed to establish the differences in 2 almost identical circumstances referenced by agenda item #6; why 2 circumstances were treated so differently.

Supervisor Boughton responded that the board would receive his report as agenda item #6 and would look at policies and procedures.

9. Jeff Goss 53327 Lakewood Road, Whitehall, MI 49461 asked the board for help to make improvements to 1800’ of Lakewood Road that was built in 1974, where the shoulder is completely gone and it is time for resurfacing; this portion of Lakewood Road is a major straight-a-way; emergency vehicles utilize this route as a straight shot instead of along the lake, vehicles keep veering into other lane.
10. Jeff Marcinkowski 3767 Jay Road, Whitehall, MI 49461 three things: 1.) several meetings questions about Lamos Road paving? *Boughton Muskegon County Road Commission worked within contract, bill paid, contract ambiguous enough to have allowed the work, no recourse, legal review of contracts will provide township with better protection.* 2.) McMillan Road End the township proposed ordinance, the township opposed taking over road ends as not in the township’s best interest, Change name from McMillan Road End to a township park, the township should be inviting people in, Ordinance needs to be reviewed, neighbors will grow accustomed to use; 3.) Unfair enforcement of ordinances or building code, who does one appeal to? *Eklund, zoning appeals can be made to the Zoning Board of Appeals, building code appeals*

can be made to the Construction Board of Appeals; or in a Court. Marcinkowski requested appeal resource at State level. Eklund cited Construction Code Enforcement.

11. Denise Irej 2290 Nestrom Road, Muskegon, MI 49445 inquired 1.) as to the status of abandonment regarding River and Nestrom Road? Boughton state the township has been deeded the 33' and transfer is in process from Muskegon County Road Commission and property owner, Kathy Duncan. 2.) when a guardrail placed at River Road blocking Nestrom access? 2 vehicles blew curve, Boughton stated neighboring property owner desires trees instead of guardrail. Ms Irej requested speed limit sign on Nestrom Road, language of agreement between Jim Scott and Muskegon County Road Commission for plowing responsibilities, and seasonal road standards; Boughton stated no formal seasonal road standards have been adopted by the Muskegon County Road Commission, State standard requires that the road needs to be passable for the Spring and Summer season and a public hearing; never any language of agreement between Jim Scott and Muskegon County Road Commission for Jim Scott to be responsible for plowing responsibilities of Nestrom Road, a public road, will let Muskegon County Road Commission that posts are desired for installation.
12. Judy Marcinkowski 3767 Jay Road, Whitehall, MI 49461 requested fair and equal Ordinance and Code enforcement from Supervisor, Board, Building Inspector and Ordinance Enforcer.

MINUTES - Accept or amend the June 11, 2008 and June 16, 2008 Regular Meeting Minutes and the July 1, 2008 Special Meeting Minutes.

Motion by Treasurer Boyer, second from Trustee Binns, **ADOPTED**, to approve the June 11, 2008 and June 16, 2008 Regular Meeting Minutes and the July 1, 2008 Special Meeting Minutes as submitted.

Upon Voice Vote: 7 AYES.

RECEIPTS and DISBURSEMENTS –

Accept or amend report of receipts in the amount of \$95,101.42 for Fund 101 and \$746 for Fund 150 for a General Fund Balance (Funds 101, 120, 130, 140, 145, 470 and 812), for a Total Balance of \$223,206.43 (liquid balance), and Total Bank Balances and Certificate of Deposits in the amount of \$1,212,388.63 as of July 18, 2008, as reported by Debbie Boyer, Fruitland Township Treasurer CPFA; and approve or amend for Total General Fund Disbursements the amount of \$62,436.39 for the period of June 16, 2008 through July 21, 2008 as reported by Janell Beard, Fruitland Township Clerk CMC.

Motion by Trustee Binns, second from Trustee Bole, **ADOPTED**, to accept the report of receipts in the amount of \$95,101.42 for Fund 101 and \$746 for Fund 150 for a General Fund Balance (Funds 101, 120, 130, 140, 145, 470 and 812), for a Total Balance of \$223,206.43 (liquid balance), and Total Bank Balances and Certificate of Deposits in the amount of \$1,212,388.63 as of July 18, 2008, as reported by Debbie Boyer, Fruitland Township Treasurer CPFA; and approve Total General Fund Disbursements the amount of \$62,436.39 for the period of June 16, 2008 through July 21, 2008 as reported by Janell Beard, Fruitland Township Clerk CMC.

Upon Voice Vote: 7 AYES.

COMMUNICATION –

1. Parks Commission July 7, 2008 Minutes –
Supervisor Boughton reported that the Fruitland Township Parks and Recreation Commission minutes reflected a request for Commissioner Noling to meet with Trustee

Eley for review of Recreational Master Plan and to place the recommended Recreational Master Plan on the August agenda of the Fruitland Township Board.

2. Petition to Request Improvements to Lakewood Road –

Motion by Clerk Beard, second from Treasurer Boyer, **ADOPTED**, to hold a Special Meeting within fourteen days in order to meet with Ken Hulka, Managing Director Muskegon County Road Commission to get specifics for improvements to 1100' of Lakewood Road, east of the Nestrom / Scenic Drive intersection to address petition presented by concerned residents received at the Wednesday, July 16, 2008 meeting, and concerns expressed by the emergency services of the White Lake Ambulance Authority and the White Lake Fire Authority, for review of quote and action.

Upon Voice Vote: 7 AYES.

Supervisor Boughton stated Asphalt Paving agreed to extend the quote provided Muskegon County Road Commission.

NEW BUSINESS –

1. SCENIC DRIVE PARKING ORDINANCE

Motion by Treasurer Boyer, second from Trustee Bard, **ADOPTED**, to accept revisions to the Scenic Drive Parking Ordinance as presented by Attorney Eklund that a violation incurs a civil infraction instead of a misdemeanor, with a fine payable at the County Court.

Upon Voice Vote: 7 AYES.

2. MTA MEMBERSHIP DISCUSSION

Motion by Trustee Eley, second from Trustee Binns, **ADOPTED**, to pay the Fruitland Township dues to the Michigan Townships Association in the amount of 4095.79, and direct Supervisor Boughton to send letter regarding assessment of dues structure.

ROLL CALL VOTE:

Trustee Bard **AYE** Trustee Bole **AYE** Trustee Binns **AYE**
Trustee Eley **AYE** Treasurer Boyer **AYE** Clerk Beard **AYE**
Supervisor Boughton **AYE**

3. NOMINATIONS

A. ANNE DAKE, WHITE LAKE LIBRARY APPOINTEE

Motion by Trustee Eley, second from Trustee Bard, **ADOPTED**, to accept nomination of Anne Dake as representative to the White Lake Library Board to complete term vacated with the resignation of Dr. Robert Christie, term expires on December 31, 2008.

Upon Voice Vote: 7 AYES.

B. MATT CROSS, PLANNING COMMISSION APPOINTEE TO 11/15/08

Motion by Trustee Eley, second from Trustee Binns, **ADOPTED**, to confirm the appointment of Matt Cross to the Fruitland Township Planning Commission to fill the vacancy created with the resignation of Bryan Grover, term to expire November 15, 2008.

Upon Voice Vote: 7 AYES.

4. PLANNING COMMISSION

A. 2008-07-09-#1 PRIVATE STREETS SERVING ONE LOT

Motion by Trustee Eley, second from Trustee Bole, **ADOPTED**, to accept recommendation to amend Private Street Serving One Lot Ordinance from Planning Commission resolution 2008-07-09-#1 to amend Article XVIII a. Private Street Serving One Lot, Section 18.01 a. Scope F. Private streets serving one lot must have a setback of at least ten (10) feet from any adjacent lot to the edge of the private street's surface.

Upon Voice Vote: 7 AYES.

B. 2008-07-09-#2 SPECIAL LAND USE – GROUP DAY CARE, NICOLE PAGE
Motion by Trustee Eley, second from Trustee Bard, **ADOPTED**, to accept recommendation 2008-07-09 - #2 to approve Special Land Use as requested by Nichole Page to operate a Group Day Care Home at 3927 Dame Road, Whitehall, Michigan with Permanent Parcel Number 61-06-109-400-0002-30 located in the Rural Residential (RR) District.

Upon Voice Vote: 7 AYES.

5. CAMPGROUND R.E.U. CHANGE

Motion by Trustee Bole, Trustee Eley, **ADOPTED**, to enact by resolution an amendment to Schedule for connection to Township water and sewer system, Appendix A to the Township Uniform Water Rate Ordinance and amend the change of the REU unit charge for campgrounds from 0.25 per site to 0.14 per site, effective September 01, 2008.

ROLL CALL VOTE:

Trustee Binns **AYE** Trustee Eley **AYE** Treasurer Boyer **AYE** Clerk Beard **AYE** Trustee Bard **AYE** Trustee Bole **AYE** Supervisor Boughton **AYE**

6. SUPERVISOR'S REPORT RE:

a. MARCINKOWSKI / SCHAUB / GRAHAM STRUCTURES

Motion by Trustee Binns, second from Treasurer Boyer, **ADOPTED**, to receive the report of Supervisor Boughton regarding the Marcinkowski/Schaub structure and Graham structure that were built without zoning or building permits, and to consider the recommendation of amendment to 2.4 (g) Litigation of the Policies and Procedures Manual prior to adoption.

ROLL CALL VOTE:

Trustee Bard NAY Trustee Bole NAY Trustee Binns AYE
Trustee Eley AYE Treasurer Boyer AYE Clerk Beard
AYE Supervisor Boughton AYE

Supervisor Boughton reported that he was directed by Fruitland Township Board motion to review the paperwork and board minutes to answer questions raised by Judy Marcinkowski at the June 11, 2008 meeting as to the differences between the Marcinkowski/Schaub structure and the Graham structure.

1. The structures are in the same neighborhood, and are open on the sides. The Marcinkowski/Schaub structure is larger than the Graham structure.

2. The Marcinkowski/Schaub structure was built on a lot without a principal residence. The Graham structure was built on a lot with a principal residence.

3. At the September 19, 2005 Board meeting, the Board (Boughton, Boyer, Hammond, Binns, Bole, Bard and Beard) voted to direct Attorney Eklund to proceed with legal action regarding the illegal structure... citing the violations of No zoning Variance application received, disregard of Township Attorney Eklund's correspondence and no building permits issued for the structure.

At the September 19, 2005 Board meeting, the Board (Boughton, Boyer, Hammond, Binns, Bole, Bard and Beard) voted to direct Township Attorney Eklund to send second notice of non compliance and inquiry of intent in order to avoid court action to Terrance and Michelle Graham regarding an accessory structure in violation of the front yard setback, between the house and the road; if unresponsive, then direct Township Attorney Eklund to proceed with legal filings. To this, the Grahams responded citing other structures in the township that were in front of the principal structure, and that this was a temporary structure. Graham responded that the structure was constructed by a prior owner.

In as much as the township was in Court with Marcinkowski / Schaub, and Attorney Douglas Hughes offered no other settlement than "let the building stand," and that the township was involved in numerous lawsuits including Halland v. Fruitland Township, the Graham case was on hold until the decision in the Marcinkowski / Schaub lawsuit.

In the discovery phase of the trial the attorneys for both parties agreed to stipulated facts. The case was decided by Judge Marietti upon review of the stipulated facts.

After Judge Marietti ruled in favor of Fruitland Township, and before the township could determine whether it should initiate legal action regarding the Graham structure, Mr. Schaub spoke to the Planning Commission, which prompted the township board action that ultimately resulted in a February 19, 2007 motion (Boughton, Boyer, Eley, Binns, Bard and Beard, with Bole absent) to adjourn legal action and appoint a committee to meet with the defendants. After a meeting with Supervisor Boughton, Zoning Administrator Sandel, and Attorney Eklund, with the Marcinkowskis and Schaub, which did not reach a settlement, a second meeting authorized by the township board was held in the offices of Attorney Hughes. As reported at the June 13, 2007 township board meeting: "Fruitland Township v. Marcinkowski // Schaub – Supervisor Boughton reported both parties had signed the agreement," this allowed the building to stand provided that the parcel be combined with another parcel located across the street, thus having a principal structure.

Is there a policy or procedure in place that would prevent a similar situation in the future? The answer to the question is, at present, No.

The Policies and Procedures Manual states under 2.4 (g) Litigation:

"The initiation of any lawsuit, litigation, claim for injunctive relief, or writ of mandamus shall require a majority vote of the township board, except for extenuating circumstances as defined below."

This could be restated as follows:

“The Fruitland Township Attorney will only be directed to initiate legal action, after diligent research by the Fruitland Township Boar. A majority of the entire Board (4 votes) shall be required through a roll call vote, before said action is initiated, and / or terminated.

Judy Marcinkowski requested equal opportunity to respond to Supervisor Boughton’s report at the next meeting.

b. POLICY RECOMMENDATION

Supervisor Boughton presented language regarding Section 2.4 (g) Litigation to implement into the proposed Policies and Procedures Manual.

7. ADJOURNMENT

Motion by Treasurer Boyer, second from Trustee Bole, ***ADOPTED***, to adjourn the Monday, July 21, 2008 Regular Meeting of the Fruitland Township Board at 9:50 p.m.
Upon Voice Vote: 7 AYES.

Respectfully Submitted,

Janell Beard, Clerk CMC
Township of Fruitland

ENROLLED