

CHARTER TOWNSHIP OF MONITOR
REGULAR TOWNSHIP BOARD MEETING
AUGUST 8, 2011

The Supervisor called the meeting to order at 7:00 p.m.

Members present: Brandt, Kowalski, Pike, Arnold, Kochany, Malkin, Miller
Members absent: None
Also present: R. Austin, Township Attorney

The Pledge of Allegiance was recited by all present.

Public Input opened at 7:01 p.m.

R. Satkowiak, 4608 Two Mile Rd., requested a status update regarding a land division application he submitted for property on N. Union Rd.

C. Allore, 1331 Midland Rd., inquired if the Board were interested in adopting a noise ordinance, citing a neighbor related noise issue that is not enforceable under the County Noise Ordinance.

Austin stated a noise ordinance is a stand alone police power ordinance that generally covers more than the issue Mr. Allore referred to.

Kowalski stated a noise ordinance has been discussed in the past on more than one occasion.

The main issue had always been the ability to enforce that type of ordinance.

Miller concurred, stating that it had been discussed at the planning commission and in addition to the enforcement of the ordinance, the planning commission attorney was of the opinion it created a conflict of use rights.

The board will review the concept of a noise ordinance at the September 12, 2011 meeting.

County Commissioner V. Begick stated the County audit has been completed and he was happy to report the County completed the year in the black.

Public Input closed at 7:26 p.m.

Motion by Pike supported by Kochany to adopt the agenda as presented
Motion carried.

Motion by Malkin supported by Pike to approve the minutes of the July 25, 2011 regular meeting as presented.

Motion carried.

Motion by Miller supported by Kowalski to pay the bills in the amount of \$37,091.51 from General Fund and authorize payment of \$316.16 from the Public Safety Fund.

Roll call vote:

Yes: Brandt, Kowalski, Pike, Arnold, Kochany, Malkin, Miller

No: None

Absent: None

Motion carried.

Consideration of DDA Development Plan

Former DDA member P. O'Brien was present to represent the DDA.

Brandt stated the purpose of the proposed amendment to the DDA development Plan is to allow for 100% reduction of tax capture for lots in Exhibit 1 located in the DDA District west of Mackinaw Rd. and to remove the sunset provision to allow the continued existence of the DDA.

Kowalski stated she had three issues with the proposed agreement; 1) There is not a provision in paragraph B, Actions of the DDA, which would remove the restriction to exempt the lots listed in Exhibit 2 from tax capture in the event they are sold. 2) In 2006, a compromise was reached between the County, Township, DDA and Fabiano to allow the DDA to expand the DDA district to include the Fabiano Development and to allow full tax capture to pay Fabiano for the cost of the infrastructure and the relocation of Straits Drive. When the debt was paid in full, the DDA district would cease to exist. Now that we are getting close for this to happen, we are being asked to throw out the agreement and wait until 2025 for the township to receive the benefit of the development in the district and receive our full share of collected taxes and public safety millage dollars. 3) The proposed agreement would also reduce the amount to repay the debt to Fabiano because there would only be tax capture of the property in the district east of Mackinaw Rd.

Kochany stated she too has sat through past discussions with the main item being the tax revenue captured from other tax entities that need it. Kochany can see at the beginning the DDA needed the money collected by township tax dollars to develop and promote the park. However, other DDAs are set up with a final end time once the infrastructure has been paid and that should be the same for our DDA.

Malkin stated it was his understanding that the DDA would exist until the lots are sold.

Kowalski stated there is no provision written in the agreement to move the sold parcels from Exhibit 2 to the capture exempt list in Exhibit 1.

Malkin asked if the DDA promoted the development of all vacant lots in the west side district.

Pike replied the DDA only promotes the vacant property owned by the DDA. It is up to the property owners association to promote the non-owned vacant property.

O'Brien cited the history of how the DDA came into being and the benefit to the township by putting in the infrastructure so development would come into the township. O'Brien stated one of the reasons the lots have not sold is given the economy, current market values are less than they had been.

Arnold asked if the TIF was the same as the IFT.

Kowalski responded they were not the same. The tax increment financing district (TIF) is the mechanism that gives the authority for the DDA to capture tax dollars. This is totally separate from the industrial facilities tax abatement districts (IFT) the township created to allow business in the district to apply for a tax break.

Arnold asked then what would be the advantage to a business if they bought a lot and it was in the DDA. The infrastructure is in place and the benefit of the property location would not change.

O'Brien replied absolutely none, other than to promote business to come into the park and in the event new infrastructure would be needed.

Brandt stated if the township and DDA did not agree to the sunset clause in 2006, then Fabiano would not have come in. If we do not want to promote business then we should "kill the DDA". Kochany replied we do not necessarily want to "kill the DDA", but the DDA does not need to continue tax capture for there to be development. You just can't expect the township tax payers to keep it going forever.

Miller agreed with Kowalski that the language needs to be amended in regard to the undeveloped lots and would like the DDA to continue.

Malkin asked why the east side of Mackinaw was not included in the exemption from tax capture.

Pike stated if both sides were exempt, there would be no tax capture for the DDA to operate.

Kowalski stated the proposed development agreement also removes Exhibit D from the current agreement. Kowalski asked why this provision was included.

Brandt stated if Exhibit D was not included, Fabiano would not agree to the new agreement.

Exhibit D prohibits Fabiano from going to the tax tribunal to have their taxes reduced.

Kowalski asked how that benefits the township. Exhibit D gives the developer the right to contest or appeal any amount in excess of the minimum true cash value or any assessment for ad valorem real property taxation. Exhibit D contains other provisions that should not be removed.

Austin stated Exhibit D could be modified if the board did not want to delete it entirely.

Arnold stated in 2006 we told the taxpayers the tax capture would be removed once the debt was paid. Arnold feels we should keep our word.

Arnold asked if the County knows about the proposed Development Agreement.

V. Begick stated the County received a copy of the DDA Development Agreement and have tabled consideration until after the township takes action on the agreement.

Malkin stated the board could as Miller suggested, adopt the agreement with the amendment to the wording concerning the DDA lots.

Kowalski asked why there was the need for such haste. The DDA has a meeting scheduled for tomorrow and could amend the wording, readopt the agreement and present a new draft to the board for our next meeting in two weeks. It is their agreement and they should be the entity to amend it. In addition, Kowalski would rather see the amendment in writing before the board votes on it.

Motion by Malkin supported by Miller to adopt the proposed Amendment to the DDA Development Agreement with the modification to Article I (B)(1.) to read as follows:

1. Tax Increments received from the Development Area for those Developed Parcels and those Undeveloped Parcels that are subsequently sold and developed lying West of Mackinaw Road will be paid to the respective taxing authorities as of the meeting date of the DDA following receipt of the Tax Increments from the Monitor Township Treasurer, anticipated to be March and October of each year.

Roll call vote:

Yes: Brandt, Pike, Malkin, Miller

No: Kowalski, Kochany, Arnold

Absent: None

Motion carried.

PA 116 Application of L. Meylan

Motion by Kowalski supported by Kochany to approve the Farmland and Open Space Preservation PA116 application submitted by Luke W. Meylan for parcel #09-100-016-300-050-03, comprised of 63.84 acres, with an initial term of 90 years.

Roll call vote:

Yes: Brandt, Kowalski, Pike, Arnold, Kochany, Malkin, Miller

No: None

Absent: None

Motion carried.

Public Hearing to Recreate Kawkawlin River Weed Special Assessment District

The public hearing to consider the reaffirmation of the creation of a special assessment district for the treatment of aquatic weeds in the Kawkawlin River opened at 8:45 p.m.

There were no owners of property in the special assessment district present for comment.

The public hearing closed at 8:48 p.m.

R-2011-011 Resolution to Reaffirm the Creation of the Kawkawlin River Weed SA District

Motion by Miller supported by Malkin to adopt Resolution R-2011-011, as follows:

**RESOLUTION CREATING AND REAFFIRMING
THE PRIOR CREATION OF A SPECIAL ASSESSMENT DISTRICT
TO FINANCE THE TREATMENT OF AQUATIC WEEDS
IN THE KAWKAWLIN RIVER**

WHEREAS, on March 8, 2003, as a result of a petition of property owners within the Township signed by the record owners of land whose acreage constituted seventy-six percent (76%) of the total land area of the hereinafter described Special Assessment District, the Township of Monitor created a special assessment district for the treatment of aquatic weeds in the Kawkawlin River ("the improvement") by special assessment; and

WHEREAS, the District referenced above included the following parcels of land adjacent to the Kawkawlin River located in the Township of Monitor, Bay County, Michigan:

09-100-001-100-045-00, 09-100-001-100-075-00, 09-100-001-100-130-00,
09-100-001-100-135-00, 09-100-001-100-150-00, 09-100-001-100-165-00,
09-100-001-200-020-00, 09-100-001-200-025-00, 09-100-001-200-030-00,
09-100-001-200-035-00, 09-100-001-200-040-00, 09-100-001-200-045-00,
09-100-001-200-050-00, 09-100-001-200-055-02, 09-100-001-200-058-00,
09-100-001-200-065-00, 09-100-K10-009-001-00, 09-100-K10-009-003-00,
09-100-K10-009-006-00, 09-100-W15-000-006-00, 09-100-W15-000-007-00,
09-100-W15-000-008-00, 09-100-W15-000-009-00, 09-100-W15-000-010-00,
09-100-W15-000-011-00, 09-100-W15-000-012-00, 09-100-W15-000-013-00,
09-100-W15-000-014-00, 09-100-W15-000-015-00, 09-100-W15-000-016-00,
09-100-W15-000-017-00; and

WHEREAS, in September of 2006 the Special Assessment initially spread upon the parcels in the district in 2003 was extended an

additional five (5) year period pursuant to a request received by the Kawkawlin River Watershed Property Owners Association upon the Township Board's own initiative, and

WHEREAS, on May 12, 2011, the Township Board received a new request by the Kawkawlin River Watershed Property Owners Association to extend the special assessment within the district previously created an additional five (5) year period; and

WHEREAS, on July 25, 2011, the Township Board held a public hearing inviting interested parties to submit comments regarding the proposed re-creation of the district, and, no negative comments were received, and

WHEREAS, pursuant to the notice provisions contained in Section 4(a) of Act 188 of 1954 the Clerk notified all property owners within the special assessment district of a public hearing to be held on the 8th day of August, 2011, at 7:00 p.m.

NOW THEREFORE BE IT RESOLVED that the Monitor Township Board does hereby reconfirm and recreate a Special Assessment District including the land specifically benefitted by such improvements, and which land is described as the parcels of land located adjacent to the Kawkawlin River in the Township of Monitor, Bay County, Michigan as set forth above.

IT IS FURTHER RESOLVED that this Board specifically approves or determines all of the following:

- (a) The completion of the improvement will be of special benefit to the properties being assessed for it.
- (b) The sufficiency of the original Petition as submitted by representative of the property owners of the property within the special assessment district created, although it is acknowledged that the Board is proceeding with this improvement under Section 3 of the Act on it's own initiative.
- (c) That the treatment expense may from time to time require redetermination without a change in the special assessment district boundaries, and such redetermination shall be made annually at the Board's first regular meeting of December each year. The failure of the Board to make such a redetermination shall cause the then existing assessment to continue in effect without change for another year.
- (d) That the Township shall recoup its out-of-pocket expenses including professional fees, publication and mailing costs associated with, and directly attributable to, this special assessment district.

IT IS FURTHER RESOLVED, that the term of this special assessment shall be a term of five (5) years commencing the year 2012 and continuing through the year 2016.

IT IS FURTHER RESOLVED that the Supervisor shall prepare a special assessment roll of all the parcels included in this district as to the benefit to each parcel as provided by subsection 5 (d) of Act 188 of 1954, and that such roll shall be duly filed with the Township Clerk on or before August 9, 2011.

IT IS FURTHER RESOLVED that the Clerk be instructed to publish and mail notice of this hearing in accordance with the statute in such cases made and provided.

Roll call vote:

Yes: Brandt, Kowalski, Pike, Arnold, Kochany, Malkin, Miller

No: None

Absent: None

Motion carried.

Hall Request - Spaghetti Fundraiser for Assessor

Motion by Kochany supported by Malkin to grant use of the township hall for a spaghetti dinner fundraiser for Margaret Ford to be held on October 12, 2011; signed contract, all fees waived.

Roll call vote:

Yes: Brandt, Kowalski, Pike, Arnold, Kochany, Malkin, Miller

No: None

Absent: None

Motion carried.

Planning Commission Request for Board Review of Proposed Medical Marijuana Ordinance

The Planning Commission at their August 2, 2011 meeting adopted a motion to recess the public hearing of the proposed Medical Marijuana Ordinance to their September meeting to allow the Township Board the opportunity to review the proposed ordinance and map depicting potential areas for medical marijuana facilities in the township.

Motion by Miller supported by Malkin to advise the Planning Commission to amend the proposed medical marijuana ordinance by the deletion of the 750' separation requirement from the property line of any other medical marijuana dispensary referenced as (1) in the proposed Section 9.02 (pppp), Section 10.02 (gggg) and Section 11.02 (pp) when the public hearing is reconvened at the Planning Commission September 6, 2011 meeting.

Roll call vote:

Yes: Brandt, Kowalski, Pike, Arnold, Kochany, Malkin, Miller

No: None

Absent: None

Motion carried.

Extension of Medical Marijuana Moratorium

Motion by Malkin supported by Kochany to extend the moratorium to prohibit the establishment of all Medical Marijuana Clubs (Aka Compassion Clubs), Medical Marijuana Dispensaries, or

Medical Marijuana Growing Facilities in Monitor Township an additional period of six (6) months commencing September 14, 2011, while the township completes the process of adopting a township ordinance.

Roll call vote:

Yes: Brandt, Kowalski, Pike, Arnold, Kochany, Malkin, Miller

No: None

Absent: None

Motion carried.

SUPERVISOR'S REPORT

The Supervisor submitted a copy of the e-mail correspondence he received regarding MTA Workers Comp Self- Ins. Fund. The MTA is requesting feedback regarding if they should continue to develop the fund and if townships had an interest to participate.

Kowalski stated it could take a couple of years for the MTA Workers Comp fund to build up cash reserves to pay claims. To participate at this point, could put our employees at risk should they have a workers comp claim and there isn't sufficient funds on hand to make restitution.

The consensus was reached to inform the MTA that though we feel the MTA Workers Comp fund could be a benefit and should be developed, we are not ready to participate at this time.

The meeting adjourned at 10:10 p.m.

Cindy L. Kowalski, Clerk

Gary A. Brandt, Supervisor