

DeWITT CHARTER TOWNSHIP
1401 W. Herbison Rd. DeWitt, MI
REGULAR BOARD MEETING
November 13, 2006

The regular meeting of the DeWitt Charter Township Board was called to order by Supervisor Galardi at 7:00 p.m. with the Pledge of Allegiance.

MEMBERS PRESENT: Supervisor Rick Galardi, Clerk Diane Mosier, Treasurer Phyllis Daggy, Trustees: Max Calder, Steve Musselman, Brian Ross, and David Seeger.

MEMBERS ABSENT: None

Also Present: Interim Manager/Planning Director Jeffrey Gray, County Commissioner Robert Showers, Police Chief Brian Russell, Fire Chief Frederick Koos, Township Attorney J. Rickard Robinson, Library Director Rene Prado and Library Board President Wayne Summers, and several citizens.

AGENDA **Seeger moved, Musselman seconded, to approve the Agenda, as presented. Motion voted and carried.**

MINUTES **Musselman moved, Seeger seconded, to approve the minutes of the October 23, 2006 meeting, as presented. Motion voted and carried.**

BRIEF PUBLIC COMMENTS
Library Director Rene Prado noted that the Board received in their packet the recently completed DeWitt Public Library Needs Assessment facilitated by the Breton Group. He asked that the Board take the time to review this document and provide input regarding its findings, since both will be key components in determining a direction for the future of our library. He pointed out that in the coming months, the Library Board will be seeking public input that will assist the Library Board in making decisions critical to the future of our Library, and the opinions and knowledge of the DeWitt Township Board and DeWitt City Council will be an important component in this outreach.

CORRESPONDENCE
Correspondence included the following: Remy Chandler Intercounty Drain Board minutes of September 28, 2006; DeWitt Public Library Needs Assessment Report. Fire Department Burning Issues Newsletter; Granger information regarding the Township office recycling; October Activity Report; and update from Clinton Transit regarding expansion of their service; November Unofficial Election Results from the Clerk.

REPORTS & COMMENTS
County Commissioner Showers provided information on the following: the Tri-County Economic Development Initiative; soliciting applications from the DeWitt area for County level appointments to committees and commissions; County management services and their availability to the DeWitt community.

Clerk Mosier reported on an excessive water run-off issue brought before the Board in May of this year by the Hayes family residing in Creeping Brook subdivision. She noted that the Supervisor had requested that she attempt to resolve the issue, and to that end she has been working with Interim Manager

Gray and Drain Commissioner Hanses. She reported that approximately two months ago these three parties held a meeting with Tim Fedewa, developer of the subdivision, and a verbal agreement was reached that the developer would pay for the drainage improvement estimated in the \$8,000 range, and he would work with the Drain Commissioner and his staff to get an approved design. She reported that to date, Fedewa has not worked with the Drain Commissioner and it now appears that Fedewa has gone back on his promise to timely accomplish this work. Keeping in mind the goal to make the drainage improvement prior to the spring rains, another meeting will be scheduled with the Drain Commissioner to look at options available to accomplish the goal without the voluntary participation of Fedewa.

Trustee Seeger reported on the recent Clinton County Township Officers Association meeting. He also reported offering a Township facility for one of the association's upcoming meetings.

Trustee Ross stated that he recently toured the southern Fire Station and feels it is in need of some renovation.

Interim Manager Gray reported the following: the most recently hired Officer Rockford begins work tomorrow; Chief Russell is working with Attorney Robinson on a Traffic Control Ordinance for the Arbor Meadows private streets; November 9th the Township hosted a meeting which was facilitated by the Clinton County Road Commission with representatives of the Michigan Economic Development Corporation (MDEC), numerous utilities representatives; MDOT, and Auto Owners representatives, to explore grant options available through MDEC for infrastructure improvements based on job creation.

VOUCHERS

Seeger moved, Calder seconded, to approve General Operating Fund Vouchers 50892 – 50995 and Tax Fund Vouchers 6572 – 6584. Motion voted and carried.

UNFINISHED
BUSINESS

None.

NEW BUSINESS

Determination of
Major/Minor Amdt
Calvary Baptist Church

Interim Manager/Planning Director Gray reviewed his staff report, dated November 9, 2006, relative to the major/minor amendment determination for Special Use Permit 02-990008, Calvary Baptist Church.

The applicant was present and made no comment.

Calder moved, Ross seconded, to concur with staff's findings that the addition of a 40' x 40' equipment garage, as depicted in the information submitted with the request, is a minor amendment to Special Use Permit 02-990008, which shall be noted on the original permit. Motion voted and carried.

Coleman/West Road
Properties

Interim Manager Gray noted that the Board, at their last meeting, referred to Attorney Robinson, petitions from the Coleman/West Road residents, requesting termination of the Township's 425 Agreement with the City of East Lansing. He explained that he, and a representative from Attorney Robinson's office, attended two East Lansing City Council Meetings to hear details of the proposed assessments to be levied on the Coleman/West Road residents. He explained some options being considered by the East Lansing City Council in an attempt to minimize the impact of the assessments on the residents.

He noted that at its November 8th meeting, the East Lansing City Council accepted the assessment roll and has set a Public Hearing on the roll at the November 21st meeting. He pointed out that currently, the assessment roll calculates to approximately 1.9 million dollars, which averages to about \$30,000 per acre of land. He also reported that he received an e-mail today from Ted Staton, East Lansing City Manager, which summarizes actions being considered by the East Lansing City Council. He provided a copy of the Staton e-mail to the Board members.

Attorney Robinson explained that Shane Bolley from his office attended the recent meetings of the East Lansing City Council. He stated that there is some confusion whether East Lansing is proposing all of the project costs as a special assessment, or whether some of those costs are included in a connection fee. He stated that East Lansing is attempting to lessen the impact on the individual property owners but the most that can be said is that they are deferring the payment of assessments, not the assessments themselves. He stated that once that roll is approved, the amount of the assessment will be a lien on the property, and the time for the taxpayer to appeal the assessment is very limited. He noted that in order to preserve their rights, the property owners must appear at the public hearing, they must protest, and then they must give notice of their intent under the East Lansing Code to proceed to challenge the assessment, then they will have 30 days after that to file with the Michigan Tax Tribunal. He stated that if the property owners miss any of these deadlines, they may lose their rights. He stated that it is up to the individual property owners to look at the assessments on their own property to determine whether the value that is allegedly added to their property at least equals, or is reasonably equal, to the amount of the assessment, and decide on their own whether they should invest in an appeal. He stated that certainly there will be some expert testimony, that the residents will have to pay for in the form of an appraisal, to determine the before and after value of their property.

Attorney Robinson stated that he does not see a roll for the Township, as an entity, in challenging what East Lansing is doing. He stated that there could be an argument that this project, as it is currently phrased, may violate the spirit of a portion of the 425 Agreement. He reviewed language from the agreement as it relates to public improvements and property owners.

Trustee Musselman initiated discussion regarding issues raised by the Coleman/West Road residents at the previous meeting, regarding whether the improvements were petitioned and the procedures followed by East Lansing in making these improvements.

Attorney Robinson stated that there have been various answers to various questions, which appears to often be a moving target. He pointed out that the City's Charter specifies procedures which are different than the statute the Township follows, and the City Council can decide to proceed with the improvements on its own, which it did in this instance. He explained that from the documents he has reviewed, there are actually two special assessment districts, and there may have been a petition for one district but not the other.

Clerk Mosier questioned whether the Attorney-Client Privileged communication from Robinson to the Board regarding the East Lansing 425 Amended Agreement Area should or should not be released to the public.

Attorney Robinson stated that the Board can choose whether to release the letter as public information, but suggested that it not be released until after the City of East Lansing's public hearing on the matter which is scheduled for November 21st. He stated that the City will, presumably, confirm what the e-mail from Manager Staton represents, an e-mail received today by the Township which includes new information. He noted that the e-mail appears to represent a departure from what has been said verbally in prior City Council meetings.

Supervisor Galardi read aloud the e-mail received this date from East Lansing City Manager Ted Staton to Township Interim Manager Jeff Gray.

Discussion questioned Staton's claim to increased property values because of said public improvements, and the basis for his claim "all property values will increase in value by at least the amount of the special assessment, in many cases the increase is double or triple the cost of the assessment."

Attorney Robinson stated that if he is interpreting Mr. Staton's e-mail correctly, it appears that he is representing the deferment of everything. The problem is, that the taxpayers only have a very short time to preserve their right to go to the Tax Tribunal and protest this assessment, and if they take the proposed "deferment," at some point the property will change ownership or use and when that happens the individual properties may or may not be worth an increased value equal to the assessment, and if they are not, he does not believe there will then be any recourse available to the property owners who relied on the increased value claim.

Residents asked what data is relied on to make these types of claims. Attorney Robinson stated that the residents will need to request this information from the City of East Lansing.

Mike Savoi, 6330 W. Cutler Road, stated that he previously lived and still owns 2773 Coleman Road. He asked if installation of utilities which are built to commercial standards is in the spirit of the 425 Agreement. He stated that he does not see how this is in line with the "needs and benefits of the residents" as called for in the 425 Agreement since their needs are certainly not commercial sized utilities. He asked that Attorney Robinson review again what will happen at the next meeting where a public hearing is scheduled on these assessments. He asked for clarification on whether the Township believes that East Lansing is violating the spirit of the 425 Agreement.

Attorney Robinson stated that the information Mr. Savoi wants regarding the assessment process is available from the City and the City must provide this information to property owners being assessed.

Several residents reported that they have requested information from the City on the process for assessing property owners and what the property owners need to do to appeal the assessment. They stated that they have been denied the information and some were told that the information would be available at the public hearing.

Supervisor Galardi asked that Attorney Robinson respond to the spirit of the 425 Agreement question that continues to come up.

Attorney Robinson stated that one of the things sometimes put in contracts is what the parties have in mind. The idea here was that the people coming into East Lansing by virtue of the fact that they were within the 425 district would not be forced to pay a lot of money for sanitary sewer, water, or new road construction, which was really planned for the commercial development that is now occurring with the extension of Coolidge Road and the commercial development you now see. He stated that if the folks in the district wanted the services, so be it, but the problem is that there is no mechanism in place for public input every time East Lansing wants to make infrastructure improvements. He stated that it is not his advice to the Township to proceed with any action that would claim a breach of the agreement at this time.

Savoi also raised questions regarding Act 51 monies and which property owners will qualify for deferment. He was directed to the City of East Lansing to get answers to his questions. He also questioned what is primary, East Lansing ordinances, or the 425 Agreement. He questioned whether the residents can refer to the 425 Agreement to protect their rights.

Attorney Robinson explained that the property owners are not a party to the 425 Agreement, the Township made the agreement with the City of East Lansing.

Lois Garcia, 16825 West Road, stated that there are some serious regularizes here, and as he sees it the City has violated their own charter here, and the residents don't know who to go to here to help them.

Supervisor Galardi stated that Attorney Robinson has encouraged the property owners in the 425 area to know and exercise their rights and also to seek their own representation, either individually or as a group. He cautioned those present that they have come to the DeWitt Township Board as residents of a neighboring municipality and we are limited in our ability to assist residents of a neighboring municipality. He noted that we have addressed our attorney's opinion regarding their petitions to terminate the 425 Agreement.

Garcia requested that the Township send a letter to East Lansing regarding the spirit of the 425 Agreement.

Ted Roudebush, 2839 Coleman Road, stated that he purchased two acres in DeWitt Township back in 1996 and paid \$45,000. He stated that the assessment figure provided by East Lansing is \$85,000, or double what he originally paid for the property less than ten years ago. He stated that there is no justification for the amount of this assessment in his mind. He stated that he has seen an unsigned and undated contract with the City of East Lansing and Kesler, for work that has already been done with no executed contract. He stated that there was no public bid, the work was done without an executed contract, and now there will be a public hearing on the assessment process. He stated that the City of East Lansing expects that he must follow a process to protest, but they have not followed any process in the entire project. He stated that he believes DeWitt Township should give the residents of Coleman and West Road free legal representation. He asked for information as to whether he can go to the Michigan State Police to put the City of East Lansing officials under investigation. He asked who makes sure the City officials follow the City Charter.

Supervisor Galardi stated that the Township cannot provide legal representation to residents of the City of East Lansing. He explained that the 425 Agreement was entered into to provide some protections to residents in the agreement area, and without the agreement the property would have been annexed, with no protections, and the Coleman/West Road property would have simply been annexed.

Attorney Robinson stated that he cannot emphasize enough that time is an issue here since the residents will lose their rights if they do respond immediately. He stated that the residents should seek private counsel, and his office will provide, free of charge, a copy of all documents that they have received from East Lansing. He stated that this is where the residents should focus their efforts now, to protect their rights.

Shawn Roudebush, 2839 Coleman Road, asked whether an appraiser will be of benefit to them.

Attorney Robinson stated that when property owners go to the State Tax Tribunal, they have the burden of proof to determine whether a benefit added to the property approximates the amount of the special assessment, and an appraiser will address this issue.

Trustee Ross summarized what he heard as follows: in order for the property owners to preserve their rights to appeal, they must appear at the November 21st hearing, object or protest publicly, then object in writing to the City, and then challenge the assessment at the Tax Tribunal, all these steps having deadlines.

Jerry Dalman, 3317 West Road, and property owner of 2900 Coleman Road, stated that three Coleman Road/West Road property owners have attempted to get information about the assessment process and appeal from the East Lansing City Assessor. They have been told that this information will be provided at the public hearing, which is too late. She explained that she feels that East Lansing edits their minutes and she fears that the names of those who protest will not appear in the public record. She stated that they have a written petition, signed by the Coleman Road/West Road residents, that they protest the assessments, and that they enjoin the collection of this assessment per the East Lansing City Charter, which will be presented to the City within 15 days of the public hearing. She stated that they want to follow the rules, if they can get enough information to understand the rules, however, East Lansing does not follow anything. She asked what it will take for the Township to determine that the City of East Lansing has breached the 425 Agreement.

Attorney Robinson stated that the questions is too open ended to answer.

Sandy Roudebush, 2413 Montego, stated that she went to talk to East Lansing Assessor Johnson, that he was not there, but his receptionist gave him the message and Johnson then called her. He told her that he did not have anything to give her regarding protesting the assessment, but when it was time, at the public hearing, the City would provide written information regarding how to protest the assessment.

Ray Drouin stated that his sister lives on West Road. He stated that he went to the Assessor's office, talked to Bob Johnson, and he asked for written

Status Update-Feldpausch
Land Division

information regarding the assessment and the assessment protest process. He stated that he was told it would be provided at the meeting.

Supervisor Galardi explained that the Township has received a written opinion from Attorney Robinson regarding the Feldpausch land division, prompted by the written opinion of Maynard Dyer, Director, Office of Land Survey and Remonumentation, Michigan Department of Labor and Economic Growth.

Supervisor Galardi stated that the correspondence is considered attorney-client privileged, however, both he and Attorney Robinson do not believe that confidentiality is paramount here, and unless the Board disagrees, the document should now be considered public and it will be mailed to each property owner in Willow Creek Farms.

Attorney Robinson stated that this opinion is lengthy, since it discusses the Stelo case and other relative Attorney General opinions. He summarized the contents of his written opinion. He stated that in his opinion, one too many divisions was permitted, whereas the Dyer opinion is that three too many divisions were permitted. He explained that the difference in the opinion is the interpretation of a particular provision of the land division act which is addressed in the written opinion he provided. He stated that the fact remains that although he agrees that one too many divisions were allowed, he does not agree with the Dyer opinion. He pointed out that although Attorney General opinions are of some weight as they relate to State agencies and State employees, but the courts are not bound by Attorney General's opinions.

Attorney Robinson pointed out that in a portion of his written opinion, he attempts to point out both similarities and differences in the comparison between the Stelo case and the Feldpausch land division. He pointed out that a major difference here is that Mr. Feldpausch relied on the opinion he received from the Township, to his detriment, he spent money in reliance on that, and that is not the fact in the Stelo case. He stated that he concludes in the written opinion by stating that he does not really know what a court will do in this instance, since there are good arguments on both sides of the question, but it is an issue that must be resolved and the only way he sees to get resolution is through the courts.

There was lengthy discussion, which included Kevin Coveart (Willow Creek Farms Property Owners Association President) regarding the Feldpausch land division and the number of parcels approved. Attorney Robinson noted that he has discussed this issue with Maynard Dyer, and that they simply have a difference in their interpretation of the statute.

Coveart, 3760 Mulberry, asked if the developer asked DeWitt Township for assistance in laying out the land division? Did DeWitt Township provided Mr. Feldpausch assistance? He stated that the Township's web site states that staff will provide guidance on land divisions. He also raised an issue regarding whether Mr. Feldpausch misled or withheld information from the Board of Appeals.

Interim Manager Gray stated that the Township did not make the drawing, they advised Mr. Feldpausch as to what local zoning ordinance permitted for lot sizes and width-to-depth ratios. He explained that typically, applicants will bring in drawings or sketches, which staff will often review sketch drawings before an application is submitted. He stated that we informally reviewed several drawings prior to Feldpausch submitting their application,

and as he recalls, all of the drawings were prepared by Trinity Engineering. He noted that those drawings were received after the Zoning Board of Appeals where the Feldpausch variance was considered.

Copies of the attorney's written opinion were provided to Coveart and Feldpausch. Supervisor Galardi assured those present that the Attorney will be mailing the opinion to all property owners within Willow Creek Farms. Residents were also advised that questions or information not available tonight can be obtained in the Township office where files are available.

Trustee Calder asked what will be done now, since we know a mistake was made. Does the Township have an obligation to correct the mistake?

Attorney Robinson stated that we agree that an error was made on the granting of one parcel. He stated that what he suspects will happen is that Mr. Feldpausch will bring an action against the Township and possibly the State of Michigan to determine what his rights are. Attorney Robinson stated that he is assuming that Mr. Feldpausch will want some assurance that when he sells lots, they are valid lots. Attorney Robinson explained that Michigan courts have gone both ways in deciding whether someone who has acted in reliance on what a municipality did, even if the municipality made a mistake. He pointed out that this is not easy stuff.

Meridyth Hill, 3740 Mulberry Lane, asked what will happen during this time of uncertainty? How will prospective buyers know that a situation exists.

Attorney Robinson stated that he believes a court will make a decision quickly in this matter. He explained that in order to move forward, he believes the developer will need to ask for a court opinion quickly.

Coveart asked if all this means that the entire land division is invalid.

Attorney Robinson stated that the answer is "not necessarily."

Coveart stated that the residents of Willow Creek Farms want to be on record stating they are not opposed to this development, and they are not trying to block development of this property.

Supervisor Galardi offered Pat Feldpausch the opportunity to speak, and he declined the offer.

Set Public Hearing
Country Walk
Streetlighting Dist.
Resolution 061171

Seeger moved, Mosier seconded, to adopt Resolution 061171, setting a Public Hearing on the creation of a streetlighting district and assessment roll for Country Walk Estates for November 27, 2006, at 7:00 p.m.

AYES: Daggy, Ross, Calder, Mosier, Galardi, Seeger, Musselman

NAYS: None Motion carried.

Consulting Firms Services
Manager Search

Ross moved, Daggy seconded, to authorize the Supervisor and Clerk to discuss with, and engage the services of Hiring Solutions/Varnum Consulting, as shown within their written proposal, for the purpose of assisting the Board with the Township Manager search and hiring process. Motion voted and carried.

PUBLIC COMMENT

Kevin Coveart provided a written statement and pictures which he requested be added to the official record of the meeting. Said request is honored and

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hereby attached, noting that hand written notes and changes were made to the document prior to receipt by the Board.

BOARD COMMENT

None.

ADJOURNMENT

Seeger moved, Calder seconded, to adjourn at 9:30 p.m. Motion voted and carried.

Respectfully submitted,

Diane K. Mosier, Clerk

Rick Galardi, Supervisor