

**THE CHARTER TOWNSHIP OF OSHTEMO**  
**Township Board Meeting**  
**December 9, 2014**

Township Board work session was held at the Township Hall. Supervisor Heiny-Cogswell called the meeting to order at 5:00 p.m.

**PRESENT:**

Supervisor Libby Heiny-Cogswell  
Clerk Deb Everett  
Treasurer Nancy Culp  
Trustee Nancy Carr  
Trustee Dusty Farmer  
Trustee Lee Larson  
Trustee Grant Taylor

Also present were Township Attorney James Porter, Township Engineer Marc Elliott, Planning Director Greg Milliken, Parks Administrator Karen High and 7 interested people.

**Kalamazoo County Road Commission** – Kalamazoo County Road Commission Members Ken Oscarson, Dennis Berkebile, Daniel Moyle, Project Operations Director Travis Bartholomew and Project Superintendent Mark Worden were present. Informational items included funding sources, methods of road maintenance, road condition survey, their capital improvement plan, and their snow plowing policies.

**Discussion – Stadium Parkway Property** – Parks Administrator Karen High advised a request has been received from a neighboring property owner to acquire .25 acres of the 17.4 acre parcel the Township owns at the end of Stadium Parkway. She advised the property is part of 36 acres acquired by the Township in 2003 after the contaminated site was remediated; with two parcels sold and the remainder held by the Township and included in the Five Year Parks and Recreation Master Plan; she noted no specific plans have been developed for this site. Consensus was to authorize the Supervisor to negotiate with the property owner while retaining a buffer for the future possible park development.

**Complete Streets Policy** – Planning Director Greg Milliken reviewed a resolution of support of Complete Streets which he advised is an engineering and design concept encouraging communities to consider the entire right of way and all modes of transportation when developing a transportation system or improving a roadway corridor. He advised PA 134 and 135 of 2010 requires MDOT to consider all users of transportation – cars, bicycles, pedestrians, transit, trucks, etc. when designing projects and work with local jurisdictions to include Complete Streets planning; PA 135 requires before any road agency approves a project, it must consult with the local jurisdiction and agree on how to address the jurisdiction's Complete Streets policy. He noted adopting the resolution does not commit the Township to expenditure of any funds or to the approval of any project, nor require the Township to include sidewalks or paths on every road project; the language indicates the concept of Complete Streets is one the Township supports and will work to incorporate the principles into road projects and infrastructure planning. He noted this is consistent with the goals and objectives of the Master Plan. This item will be taken up for action on the regular meeting agenda.

The Board work session adjourned at approximately 7:00 p.m.

Supervisor Heiny-Cogswell called the regular meeting to order at approximately 7:05 p.m.

**PRESENT:**

Supervisor Libby Heiny-Cogswell  
Clerk Deb Everett  
Treasurer Nancy Culp  
Trustee Nancy Carr  
Trustee Dusty Farmer  
Trustee Lee Larson  
Trustee Grant Taylor

Also present were Township Attorney James Porter, Township Engineer Marc Elliott, Planning Director Greg Milliken, Parks Administrator Karen High and 9 interested people.

**CITIZEN COMMENTS**

Jim Lefler, 8644 Hathaway Road, commented he would like his remarks noted in the minutes. He advised there were two issues he wished to address, the first being the surplus in the Police Fund in

which the 2015 budget shows anticipated revenue of \$984,653 and the same amount to be disbursed. He also commented the 2014 budget projects a year end surplus in the Police Fund of \$586,244 and the same amount for the end of 2015. He asked if board members were familiar with Public Act 188 of 1954 as it pertains to the determination, collection and disbursements of special assessments. He highlighted from Sec 41.732 "Should the total amount collected on assessments prove larger than necessary by more than 5% of the original roll, then the surplus shall be prorated among the properties assessed in accordance with the amount assessed against each and applied toward the payment of the next township tax levied against such properties, or if there be no such tax then it shall be refunded." He further commented this section has been referenced in Circuit Court as late as this year so he believes it to be controlling in the disposition of surpluses generated from a special assessment district. He also commented Oshtemo has acknowledged publicly a surplus in the Police Fund, this State statute requires any surplus within a special assessment district be prorated among the properties assessed and applied toward payment of the next township tax levied; the Township must by State Law divide the amount of the surplus among the properties taxed and reduce this year's taxes accordingly. He commented the trustees swore to uphold the laws of the State of which Act 188 is one and asked that the Clerk be directed to determine the amount of this acknowledged surplus as prorated for each property assessed and apply that amount to the payment of the next tax levied against those properties.

He also commented it was his understanding the board would be requesting to go into closed session to discuss the ITC law suit; he is a member of the Stratford Hills Condominium Association Board, this issue is of particular interest to them as the project is destined it appears to run adjacent to their development. It is his understanding the case is settled and has been closed. If there is no pending or open case he would ask any discussion be held in an open meeting or at least as much as information as could be provided in an open meeting, or if going into closed session he would ask that it be for just a few specific purposes; they would like to have as much as information as possible on the issue.

Attorney Porter advised there are approximately 25-30 separate special assessment statutes, Public Act 188 referenced by Mr. Lefler involves public improvements, not public services and is not applicable to special assessments levied for police and fire which are levied pursuant to Public Act 33 of 1951. He commented his opinion is that the Board is lawfully following Public Act 33.

In regards to the METC litigation, he advised there are two pending cases, one currently open to determine if the Board wishes to take leave with the Supreme Court and the other still being litigated is the condemnation issue; both cases are still open.

#### **CONSENT AGENDA**

Items on the consent agenda were:

- a) Minutes of the November 18<sup>th</sup> regular meeting.
- b) Receipts & Disbursements Report.
- c) Miscellaneous 2014 Budget Adjustments
- d) Board & Committee Appointments
- e) 2015 Professional Consultants, Accounting, Auditing, Civil Engineering, IT
- f) County GIS Agreement
- g) DDA Request for Contract Approval for Streetscape Design Partner
- h) Reject Acceptance of 1921 North Drake Road Property Transfer from Kalamazoo County

Motion by Larson, second by Farmer to approve the consent agenda. Carried 7-0.

#### **UPDATE – PLAYGROUND EQUIPMENT & PICNIC SHELTER/GAZEBO PURCHASES**

Parks Administrator Karen High provided before and after photos of Flesher Field since completion of Phase I and provided an update on Phase II. She advised the playground equipment has been removed by Kids Alive, non-profit organization that distributes equipment that no longer meets required codes to third world countries. She further advised bids have been received for the new play equipment, picnic shelter and gazebo; bids for picnic tables and benches will also be sought and the project is on budget. She further advised the Township has been awarded a \$30,000 grant from the Michigan Natural Resources Trust Fund for a small playground at the Grange Hall; the \$10,000 required match has been funded by designated private donations.

#### **ZONING AMENDMENTS – WEST MAIN/9<sup>TH</sup> STREET SUB AREA PLANS – SECOND READING**

A recommendation from the Planning Commission to approve zoning text amendments to implement the West Main/9<sup>th</sup> Street Sub Area Plans as outlined in the Master Land Use Plan (MLUP) was before the Board for Second Reading. In response to Board member questions, Planning Director Greg Milliken advised authority still rests with the Planning Commission, required buffers will depend on the proposed use, and retaining existing vegetation will be encouraged.

Motion by Everett, second by Larson to adopt the text amendments. Carried 7-0.

## **ORDINANCE AMENDMENT – MEDICAL MARIJUANA PROVISIONING CENTERS – FIRST READING**

Attorney Porter advised in 2011 when the Medical Marijuana Act was adopted, the board in conjunction with the Planning Commission allowed for provision of medical marijuana grow operations and patient caregivers by licensing them in the RR-Rural Residential zoning district, disbursing the effects and maintaining the privacy between patient and caregiver as provided under the law. He noted the Board considered the findings of Dr. Gerald Fisher's White Paper on the negative effects of dispensaries experienced by California. He further noted currently permits are required through the Attorney's Office and are kept confidential. He advised State legislation has been proposed that would allow for medical marijuana provisioning centers and safety compliance facilities but allows the local jurisdiction to prohibit such if not already established; he noted his concerns include a facility located in the Township before the law was clear that created controversy, the Township's location with M-43 and US 131 could make the Township attractive for multiple facilities, and the findings of the negative effects.

In response to Board members questions, Mr. Porter advised there was a reduction in the number of complaints after the facility that was located in the Township closed and comment from the Kalamazoo County Sheriff's Department of less activity in the parking lot where it was located, the ordinance can be amended later if the Board wished to consider other options but if not in place when legislation is passed, the Township would have no recourse.

Trustee Farmer commented every precinct in the Township supported the referendum in 2008, and while she does not support adverse crime rates, she is not certain banning entirely is the answer; she will support for Second Reading but will need more discussion.

Trustee Carr commented she would agree with the ban. Trustee Larson noted the referendum was based on medical need and did not speak to retail operations.

Clerk Everett commented what the Township has in place seems to be working and she would rather adopt language that can be amended later rather than have a State law the Township would have no choice in.

Motion by Heiny-Cogswell, second by Everett to accept the proposed ordinance for First Reading and set Second Reading for January 13, 2015. Carried 7-0.

## **COMPLETE STREETS POLICY**

As discussed at the work session, Planning Director Greg Milliken reviewed a resolution of support of Complete Streets which he advised is an engineering and design concept encouraging communities to consider the entire right of way and all modes of transportation when developing a transportation system or improving a roadway corridor. He advised PA 134 and 135 of 2010 requires MDOT to consider all users of transportation – cars, bicycles, pedestrians, transit, trucks, etc. when designing projects and work with local jurisdictions to include Complete Streets planning; PA 135 requires before any road agency approves a project, it must consult with the local jurisdiction and agree on how to address the jurisdiction's Complete Streets policy. He noted adopting the resolution does not commit the Township to expenditure of any funds or to the approval of any project, nor require the Township to include sidewalks or paths on every road project; the language indicates the concept of Complete Streets is one the Township supports and will work to incorporate the principles into road projects and infrastructure planning. He noted this is consistent with the goals and objectives of the Master Plan.

In response to Board member questions, Mr. Milliken advised adopting the resolution starts the conversation and requires road agencies to consult with the Township, and offers the opportunity to have the time to find solutions when there are issues. Supervisor Heiny-Cogswell noted MDOT already follows the policy and considers the Township's non-motorized plan; it can also be used a tool to seek funding.

Elaine Branch, 7654 West Main, inquired if the policy would apply to all roads. Mr. Milliken advised it would; the appropriate solution would depend on the road.

Motion by Farmer, second by Larson to adopt the resolution. Roll call showed Heiny-Cogswell-yes, Larson-yes, Taylor-yes, Carr-yes, Culp-yes, Everett-yes, Farmer-yes.

### **2015 BUDGET DETAIL**

Supervisor Heiny-Cogswell presented the 2015 budget detail noting the document was not included in the packet for the November 18<sup>th</sup> public hearing on the budget. She further noted the details are as discussed in the board workshops.

Motion by Everett, second by Larson to approve the 2015 budget detail. Carried 7-0.

### **FLEXIBLE BENEFIT PLAN AMENDMENT**

A resolution to amend the Township's Flexible Benefit Plan to recognize Internal Revenue Service modifications was before the Board. It was noted the plan is funded by employee's who wish to participate.

Motion by Culp, second by Everett to adopt the resolution. Roll call showed Larson-yes, Taylor-yes, Carr-yes, Culp-yes, Everett-yes, Farmer-yes, Heiny-Cogswell-yes.

### **CLOSED SESSION**

Motion by Everett, second by Farmer to adopt a resolution to adjourn to closed session to consult with the Attorney for purposes of discussing pending litigation because to do so in an open meeting would have a detrimental effect up on the Township's position and disclose matters protected by attorney-client privilege.

Roll call showed Taylor-yes, Carr-yes, Culp-yes, Heiny-Cogswell-yes, Everett-yes, Larson-yes, Farmer-yes.

The Board adjourned to closed session at approximately 8:25 p.m.

Motion by Everett, second by Carr to return to open session at approximately 8:55 p.m. Carried 7-0.

Motion by Larson, second by Heiny-Cogswell to pursue an appeal with the Michigan Supreme Court. Carried 6-1 with Carr voting no.

Motion by Heiny-Cogswell, second by Larson to continue to contest the condemnation. Carried 6-1 with Carr voting no.

### **BOARD MEMBER COMMENTS**

Trustee Farmer welcomed Trustee Taylor to the Board.

Trustee Taylor thanked the voters commenting it is an honor.

Supervisor Heiny-Cogswell thanked Clerk Everett for the current newsletter; there is a lot of information provided on the Board's work and she thanked the staff and Board for their work on the budget.

She also reminded all of a special meeting on Wednesday, December 10<sup>th</sup> at 4:00 p.m. for a focused discussion on the police protection level of service.

She wished everyone a healthy, happy, and safe holiday season.

Clerk Everett advised she has been helping with the county wide recount, they hope to finish on Wednesday.

There was no further business and the meeting was adjourned at approximately 9:00 p.m.

**DEBORAH L. EVERETT**  
Township Clerk

**Attested: ELIZABETH HEINY-COGSWELL**  
Supervisor