

Elk Rapids Township Special Meeting Minutes, June 2, 2017

A special meeting of the Elk Rapids Township Board was held at the Elk Rapids Government Center located at 315 Bridge St. Elk Rapids. The meeting was called to order by Supervisor Amos at 2:00 PM. The meeting was recorded to provide accuracy.

Present: Supervisor Dorance Amos, Clerk Shelley Boisvert, Treasurer Mike Szymanski, and Trustee Aaron Isenhardt

Absent: Trustee Richard Hulst

Also Present: B. Derman, A. Nordman and Brad Muma (Performance Engineering), M. Zimmerman (Varnum LLC) and 32 members in the audience.

Birch Lake Sewer

Pledge of Allegiance

1. Public Comment:

- W. Wright – submitted a list of questions for the Board regarding existing inventory, arrangements with the Village DPW to continue servicing property owners, and is there a financial equity for older properties that did not receive a new three phase system.
- C. Klausmier-concern regarding the equity of pumps that were provided in the past.
- B. Romska – other contractors that may be certified to do the work on pumps
- P. Moyer – looking for answers to previous questions.
- J. Arehart – when sewer was installed he was told that the Township would always be taking care of the system.
- P. Brady – ownership of pumps and grinders
- C. Brady – ownership of pumps and grinders, thinks the DEQ should get involved
- S. Castronova – Maple Harbor sharing the system, Birch Lake is not build out yet.
- S. Yencich – remembers older sister, Patricia Carrow stating that his family purchased their pumps and grinders.
- C. Osterhaven – urges Twp to appoint an advisory committee like in the past, also suggested a blanket easement for repairs on private property, he spoke to attorney Zimmerman about this being a possible estoppel situation.
- J. Stewart – what would happen if people didn't want their pumps repaired

2. Birch Lake Sewer:

Question from past meetings and emails: Answers to emailed questions.

1) Re-establishing committee: Zimmerman says that is a political question for the Board to address, it is not a legal question or obligation to make. Amos stated that the Twp

Board believed the request for the committee was driven by rate increases and at this time decided not to start up another committee, but if the people or association want to do that on their own they are certainly welcome to come in and talk to our staff.

2) Can the Village continue to do work on pumps and grinder stations on a fee basis? Amos talked to the Village. It appears that they are working on some details to enable them to maintain them as they have been if they are called to do repairs. He believes they are ready to go forward.

3) Request that the Board delay their decision until after the BL Association meeting on July 1, so there could be more input: Amos said due to the Twp Board financial and management responsibility we decided to move on and felt that the present members of the association could explain the situation at their meeting. If there are further questions people can come in and talk to us.

4) Legal validity of the 1996 Gosling Czubak document. Zimmerman stated that the report is an engineering study done for the Village of Elk Rapids. The Village had an obligation to set up a system of rates to make sure all the costs that they incur on their wastewater treatment plant and on their collection system get paid. If they accept waste from another municipality then that municipality has an obligation to set up a system of rates to make sure that the waste and collection from that system gets paid by the user of that system. The Gosling Czubak document was done on behalf of the Village to fulfill an obligation the Village had. It is not a legal document from the standpoint of having the force and effect of a statute or regulation.

The Village had to adopt a rate ordinance based on the recommendations that Gosling Czubak provided for them. The Township fulfilled its obligation by adopting its own rate ordinance and by having a service agreement with the Village to take care of operation and maintenance on the system. In those documents, it was very clear that the grinder pumps, tanks, laterals and panels are private property and are the responsibility of the individual property owners.

5) Response on financial analysis and recommendation provided by W. Wright on behalf of the BL Association as far as Maple Harbor. Amos said that at this point, Maple Harbor is not even a project yet and if or when it does become a project we will have our legal and engineering evaluate that.

Specifications for Grinder Pump Stations: A. Nordman, Performance Engineering
Performance Engineering was asked to develop specifications for replacement pumps for the Birch Lake sewer system. The main purpose of the specifications is to ensure compatibility between what is installed and the use of the sewer system. There are three scenarios described in these specifications. This detail is attached to these minutes and posted on the township website: elkrapids.com.

Performance also researched cost of equipment through Etna Supply in Traverse City and said if the association wants to deal with Etna they could lock in a price and have a small supply of pumps on their shelves for use at Birch Lake.

Matt Zimmerman – Varnum LLC:

Regarding questions that were raised at today's meeting: most questions will be political issues that the Board would address, like what is the plan for the pumps and panels that are in inventory, and what is the plan to come up with some kind of equity for people that received new pumps and the people that are still using their original pumps.

- Zimmerman said that he can address the statement to the property owner who was told by some Township officials when the sewer was installed that the Township would always take care of the entire system. Zimmerman said that statements from past Township officials would not be binding on this board. A Board from years ago cannot bind a future Board on questions of policy or on legal matters.
- A question arose about a County financing document from 1987 and the descriptions of the sewer. He does not believe that those are dispositive of who owns the grinder pumps. In his experience with bond documents, especially with a County that is financing through Act 185 those documents are intended to determine the ownership from the perspective of the County not being the owner, or in a system like this where there are two municipalities involved that the nature of the Township portion versus the Village portion and an emphasis that the County is not taking an ownership of any of it. In addition, because those bonds have been paid off those documents have absolutely no impact on the system today.
- The suggestion was made to get the DEQ involved in determining ownership of the laterals and grinder pumps. Zimmerman does not believe that that is an option. He has had experience with the DEQ and they will not do that. Something like that is not in their mandates, not in their charge, and they would view that as a private matter and tell the parties to figure it out themselves.
- For the comment that was made regarding estoppel, he said that if the Township had acted in an ultra vires manner than it cannot continue to operate in an ultra vires manner. By definition, "If it doesn't have the authority to do something it can't, by estoppel be made to continue to do something that it doesn't have authority to do."

Other Questions:

- Isenhardt asked if we have any records, like a number of people are saying, that were signed stating the Township can go on to private property? Zimmerman said that there were a substantial number of easements that we went through but they were for the trunk line, where there was no public right of way, and there were some temporary construction easements that were needed to get the system built, but he has not seen any operation and maintenance agreements between the Township and individual property owners.
- Amos addressed the question of equity of pumps. After discussion with other Board members and our legal staff, it is his opinion that all users of the Birch Lake system were provided a benefit at what has been a very reasonable rate. The Village has taken care of many service calls, not just pump replacements. There is no real good answer to how to make this all fair and equal but in the long term, the Board has to act prudently and make a decision. We have to maintain the system and keep everything in order and be able to provide this service.

Recommendations:

Matt Zimmerman: He recommends that the Township establish a policy that would make it clear that the Township is not going to use the public sewer system funds, the current replacement fund on pumps, panels or laterals; the building sewer portion of the system which is private property. The tradeoff for that is that the rates can stay the same for now.

Aaron Nordman: Recommends that the Township focus on the Township infrastructure in the road right of way and reallocate the repair and replacement revenue to come in from the sewer rates to the Township public sewer for repair and replacement instead of pumps, grinders and laterals on private property and to build up a reserve fund.

Isenhart asked what happens if we implement this plan today (for instance) and something happens to someone's pump tomorrow. What do they do? Amos said that the Village DPW is still in place and ready to help out. They have agreed to move forward and respond to calls. This also opens up the opportunity to call on other private services for maintenance if needed.

Resolution 2017-9 : Szymanski read resolution 2017-9 Sewer System Equipment Replacement Funds-Building Sewers . Attached to these minutes.

Motion/S: Szymanski/Amos to approve Resolution 2017-9. Roll Call Vote: Isenhart, Szymanski, Amos, Boisvert all voting Yes, 0 No. (Hults was absent) **MOTION APPROVED.**

Boisvert read a statement received from Hults who had a previous family commitment, stating that he would support any resolution that will return Elk Rapids Township to compliance with the original sewer district document for Birch Lake. This in turn will allow the Board to reduce the projected increase needed to maintain and repair the Township owned components of the existing system.

Adjourn: 3:04 PM

Shelley Boisvert, Elk Rapids Township Clerk, 231-264-9333
Meeting minutes are subject to approval at the next regular Board Meeting