

# CHARTER TOWNSHIP OF FLUSHING

524 N. SEYMOUR ROAD

FLUSHING, MICHIGAN 48433

## BOARD OF TRUSTEES MINUTES

DATE: AUGUST 9, 2012

TIME: 7:00 P.M.

PHONE: 810-659-0800

FAX 810-659-4212

WEB PAGE: <http://www.flushingtowship.com>

### ADMINISTRATION MEMBERS

SUPERVISOR: Terry A. Peck

CLERK: Julia A. Morford

TREASURER: William J. Noecker

### TRUSTEES

Michael S. Gardner

Scott R. Matzke

Scott P. Minaudo

Mark H. Purkey

### TOWNSHIP ATTORNEY:

STEVEN MOULTON

Cooley Moulton & Smith LLP

727 S. Grand Traverse Street

Flint, Michigan 48502

**MEETING CALLED TO ORDER** at 7:03 p.m. by **SUPERVISOR TERRY A. PECK** with Roll Call and the Pledge of Allegiance to the American Flag.

**ROLL CALL:** Terry A. Peck, Julia A. Morford, William J. Noecker, Michael S. Gardner, Scott P. Minaudo, Mark H. Purkey, and Attorney Steve Moulton

**MEMBERS ABSENT:** Scott R. Matzke

**OTHER INDIVIDUALS PRESENT:** Thirty-five (35) other individuals

**APPROVAL OF THE AGENDA:** **PURKEY MOVED**, seconded by Morford to approve the Agenda with the addition of the hotel charges for the Assessor's 2012 Assessor's Continuing Education class at Traverse City.

### ACTION OF THE MOTION

AYES: 7

NAYS: 0

ABSENT: Matzke

Motion Carried.

### APPROVAL OF PREVIOUS MINUTES:

**A. PURKEY MOVED**, seconded by Minaudo to postpone the approval of the Minutes from June 14, 2012.

### ACTION OF THE MOTION

AYES: 7

NAYS: 0

ABSENT: Matzke

Motion Carried.

**B. PURKEY MOVED**, seconded by Morford to approve the Minutes of July 12, 2012 as presented.

### DISCUSSION:

It was determined that the minutes of the July Meeting cannot be approved prior to the June Meeting. Attorney Steve Moulton (Attorney Moulton) will check into the situation.

The Supervisor postponed both sets of minutes until the September 2012 Board of Trustees Meeting.

**APPROVAL OF PAYMENT OF BILLS: MINAUDO MOVED**, seconded by Purkey to pay the bills as presented.

**ACTION OF THE MOTION**

**ROLL CALL VOTE:**

AYES: Minaudo, Gardner, Purkey, Peck, Noecker, and Morford

NAYS: 0

ABSENT:

Motion Carried.

**UNFINISHED BUSINESS:**

None

**NEW BUSINESS:**

**1-a. Conduct during Board Meetings**

**PURKEY MOVED**, seconded by (None) that due to the disruptive behavior over the last four (4) years the proposal would be to handle the disruptive meetings in the following manner: 1) the first time there would be a warning; 2) the second time the person would be asked to leave. If the person doesn't leave immediately, the Sheriff's Deputy would be called and it would be dealt with appropriately.

**DISCUSSION:**

**ATTORNEY MOULTON** wanted to know if the Board wanted to amend the existing Policies to implement the language as a procedure to be used during Board Meetings. **ATTORNEY MOULTON** had no problem with the language being proposed but the issue would be what constitutes an "interruption" that is sufficient enough to mandate the initial warning. One Board Member felt that some Board Members had been turning their cheeks to the other side in order to keep things calm and civil. There needs to be a hard firm line as how to conduct meetings. The question was ask if anyone that disrupts a meeting be taken to Jail and booked?

**ATTORNEY MOULTON** stated that one of the ordinances that would reviewed greatly was disorderly conduct which would apply across the board to Board Meetings. How the Township defines "disorderly conduct" if that existed would provide the basis for an arrest if it occurred during a Board Meeting. Attorney Moulton stated there was a lot of case law on the subject and it all says the same general terms. The Board has the right to adopt general rules to conduct an orderly meeting. The problem comes when someone in the audience doesn't hear what the Board Members said and lean over to inquire from the person next to him/her, not meaning to disrupt the meeting, trying to follow the flow of conversation, and it interferes with conversation with the Board Members, and **PECK** rules the person out of order would that be the type of order that the Board is looking to address? What really interrupts the meeting is when Board Members talk across to each other or members in the audience, instead of directing comments to the Board, start talking among themselves or making negative comments among themselves. The action would warrant a warning and if it happened a second time during the same meeting, the individual could be ask to leave.

**ATTORNEY MOULTON** wanted to know if someone on the Board was a Sergeant at Arms because there won't always be a Deputy at the meetings. It was ask by a Board Member if one of the Deputies could be a Sergeant at Arms since they are deputized in Genesee County. It was recommended to just call "9-1-1"; it was felt the Board Member would be put in a bad spot since a lot of the disruptions are political in nature; a law suit could result in the actions.

**ATTORNEY MOULTON** stated the real grit would be making the discretionary calls as to whether or not that particular conduct meets the Township's standard of disruptive or whatever to draw the line because someone has to make the judgment call.

**ATTORNEY MOULTON** will review the "disorderly conduct" ordinance for Fenton Township and Vienna Township and use them as models; there are twenty-six (26) specific types of items mentioned as "disorderly". Something should be directed to

the Board Meetings in the ordinance; also the issues mentioned in the Policies and Procedures Manual. Every case will have to be determined on its individual case.

**ATTORNEY MOULTON** will review the issue and write the ordinance and also review the language that should be placed in the Policies and Procedures Manual.

**PURKEY WITHDREW THE MOTION.**

**1-b. Counter Suing for all Law Suits Brought Against the Township**

**PURKEY MOVED**, seconded by Noecker that due to so many lawsuits, and in some cases with taxpayers money and whenever possible, set as a policy to follow up and recover the legal fees.

**ACTION OF THE MOTION:**

**ROLL CALL VOTE**

AYES: Purkey, Gardner, Minaudo, Peck, Morford, and Noecker

NAYS: 0

ABSENT: Matzke

Motion Carried

**1-c. Genesee Health Plan**

**PURKEY MOVED**, seconded by Gardner that due to so many health care law changes coming up and there isn't any way to know at current how all of this is going to be effected by it, and don't feel the Board has the adequate information to endorse or not endorse a millage for ten (10) years, so postpone indefinitely.

**DISCUSSION:**

**PECK** was not in favor of the Health Plan because it could put the Township at odds with a large number of the residents. The Board is here to represent the residents, not be involved with something that would hurt them (residents).

**ACTION OF THE MOTION:**

AYES: 6

NAYS: 0

ABSENT: Matzke

Motion Carried

**1-d. Michigan Assessors Association Membership Dues**

**PURKEY MOVED**, seconded by Morford to pay the Michigan Assessors Association Membership dues.

**ACTION OF THE MOTION:**

**ROLL CALL VOTE**

AYES: Minaudo, Purkey, Morford, Noecker, Peck, and Gardner

NAYS: 0

ABSENT: Matzke

Motion Carried

**1-e. 2012 Assessors Continuing Education Registration**

**MINAUDO MOVED**, seconded by Purkey to approve the Registration Fee for the 2012 Assessors Continuing Education class for \$175.00

**DISCUSSION:**

The Treasurer stated there are more and more classes available on the webinar and how many of the class could be done in house in order to cut cost. It is good sometimes to go on maybe one (1) or two (2) a year where the assessors can "rub elbows" and exchange ideas with other assessors. Should the Board set a limit as to the

number of classes or schools. It was brought to the attention of the Board that the Assessor has to have a certain number of credits to remain certified and the Township has to have a certified Assessor – there needed to be an answer as to how many credits the Assessor needed before a vote could be taken. **PECK** stated the cost was for one (1) class and hotel for \$411. The Assessor only attends one (1) class in the fall and one (1) class in the spring.

The Treasurer will check into the webinars for the Assessor.

**ACTION OF THE MOTION**

**ROLL CALL VOTE:**

AYES: Purkey, Morford, Noecker, Peck, Gardner, and Minaudo

NAYS: 0

ABSENT: Matzke

Motion Carried.

**1-f. Approval of Michigan Recreation Passport Grant Program for Flushing Township Nature Park Improvements**

**PURKEY MOVED**, seconded by Morford to accept the low bid of L & M Landshaping, 4340 N. State Road, Davison, Michigan 48423 for the Michigan Recreation Passport Grant Program for Flushing Township Nature Park Improvements. (Gravel for the drive to the Flint River for the canoe launch).

**DISCUSSION:**

The Supervisor stated there were six (6) bids received; L & M Landshaping was considerable lower than the rest of the bidders; very impressed with the bidding process; several big companies involved in the bidding.

**ACTION OF THE MOTION**

**ROLL CALL VOTE:**

AYES: Morford, Noecker, Peck, Gardner, Minaudo, and Purkey

NAYS: 0

ABSENT: Matzke

Motion Carried.

**1-g. Compensation for Expert Witness for all Upcoming Lawsuits and Arbitrations**

**NOECKER MOVED**, seconded by Purkey to pay Chief Stevenson at a rate of \$30 per hour and 55 cents per mile for his time spent.

**DISCUSSION:**

Other situations were questioned such as: what if there was a hearing on Tuesday, September 17<sup>th</sup> and the Chief clears his calendar and the hearing is cancelled?

**ATTORNEY MOULTON** stated the Township did not want to be caught in a situation where it looked like they were paying people to influence the testimony they may give in a situation whether a trial or arbitration. Witnesses fall into two (2) broad categories: Fact Witnesses and Expert Witnesses. Expert Witnesses can also be Fact Witnesses but when one talks about an Expert Witness, you are talking about someone who is looking at the situation for the first time, considering all the facts, then giving an outside third party expert opinion as to whatever that issue. Expert Witnesses are almost always paid at a rate that they determine occasionally to Court approval, and usually the attorneys representing the parties in a lawsuit feels they need testimony will discuss with the potential expert what his/her testimony will be, how much time it will take to prepare to review the files, and then they will know ahead of time what the fee or the hourly rate is going to be; not sure what capacity the former Chief will be testifying. It might be better if going to deal with employees or former employees who may be called to testify in the proceedings on behalf of the township to have a policy that they will be compensated for the time at their current hourly rate, or if a former employee, the hourly rate they were last employed, or the time they spend in going to, attending, coming back

from, or if there is some preparation that has to be done, review of records, at whatever that hourly rate was plus their out of the pocket expenses, millage rate set at the rate of the Internal Revenue Service, meals, lodging if they have to stay overnight if it doesn't make sense to come back if you have to be in Detroit at 8:00 a.m. to testify.

**ATTORNEY MOULTON** will prepare and include the above language for the Policies and Procedures Manual (along with the disorderly conduct issue).

It was ask if a person is subpoenaed are they paid? In a State Court, an Expert Witness is paid \$6 for one half day and millage to and from the Court; it is a minimal amount they are paid. An Expert Witness cannot be compelled to appear by a subpoena and then expect them to relay their expertise for \$3 a day or whatever the statutory rate would be. If one is subpoenaed, you must attend; if one has a valid reason not to attend, there is a process whereby one must go through. Witness compensation is addressed across the board.

It was recommended to have Attorney Schultz contact Attorney Moulton to review the issue.

It was ask at what point would a case be considered a frivolous lawsuit; each case would be determined on a case by case basis.

**NO ACTION WAS TAKEN - THE ISSUE WAS POSTPONED AND WILL BE PLACED ON THE SEPTEMBER AGENDA**

**1-h. Possible Sale of Former Police Department Equipment**

**MINAUDO MOVED**, seconded by Purkey that the Treasurer and Supervisor look into the sale of the vehicles and use their best judgment and bring the information to the Board.

**DISCUSSION:**

The uniforms and weapons will stay locked up and will not be released until all lawsuits are completely resolved. The cars currently have dead batteries and will not be any good so could be sold. The Supervisor has been informed by Sergeant Fairchild that all weapons have to be sold to a licensed gun dealer and not directly out of the Township Office. There are weapons that have been confiscated and are available to be sold.

The Treasurer has talked with Undersheriff Swanson and it was felt it would be better to sell the police vehicles "as is" with the radios, lighting mechanisms, etc and ready to go in case a department wanted to purchase the vehicles. The police vehicles consist of: three (3) cars, 2 SUV's (Explorer and Expedition), and one (1) pick up truck. The township will keep the truck and one of the SUV's. Undersheriff Swanson stated the Genesee County Sheriff Department would not be interested in the police vehicles. The Genesee County Parks and Recreation Department has also been contacted regarding the vehicles. Undersheriff Swanson recommended getting three (3) bids from respectable wholesalers where the wholesalers can come in and examine the vehicles, get a cash bid with a cashier's check.

**ACTION OF THE MOTION:**

**ROLLCALL VOTE:**

AYES: Noecker, Peck, Gardner, Minaudo, Purkey, and Morford

NAYS: 0

ABSENT: Matzke

Motion Carried

**1-i. Bikes on the Bricks**

**GARDNER MOVED**, seconded by Minaudo to give Bikes on the Bricks permission to come through the Township for the Bike Ride.

**DISCUSSION:**

The Bikes on the Bricks will be Police escorted on September 15, 2012 and will go South on Elms Road.

**ACTION OF THE MOTION:**

AYES: 6  
NAYS: 0  
ABSENT: Matzke  
Motion Carried

**1-j. Offer for Sale of Parcel on Stanley Road at Railroad Tracks**

**PURKEY MOVED**, seconded by Minaudo to sell the parcel on Stanley Road for the sum of \$2,000 and to include all legal fees, transfer fees, and whatever is appropriate.

**DISCUSSION:**

The “For Sale” sign has been up for several months and only had one (1) inquiry has been received for \$2,000. The parcel is one (1) acre in size and located on the North side of Stanley Road at Turner Road, East of the Railroad Tracks.

**ACTION OF THE MOTION:**

**ROLLCALL VOTE:**

AYES: Peck, Gardner, Minaudo, Purkey, Morford, and Noecker  
NAYS: 0  
ABSENT: Matzke  
Motion Carried

**1-k. PA System in the Auditorium**

The Supervisor has contacted an individual for an estimate on a new system or something different. The Clerk has also got two (2) bids coming in. More information will be available next month.

**1-l. Vacant Position on the Planning Commission/Zoning Board of Appeals**

**PURKEY MOVED**, seconded by Morford to appoint Jerry Doyle to the Zoning Board of Appeals.

**DISCUSSION:**

Due to the resignation of Flushing Township Resident Richard Buell from the Planning Commission and also to the Zoning Board of Appeals, the Supervisor recommended appointing Jerry Doyle, who currently is a Planning Commission Member, to the Zoning Board of Appeals. The replacement for Richard on the Planning Commission will take place in the near future. There has to be a Planning Commission Member on the Zoning Board of Appeals similar to a Board of Trustee being on the Planning Commission.

**ACTION OF THE MOTION:**

AYES: 6  
NAYS: 0  
ABSENT: Matzke  
Motion Carried

**COMMITTEE REPORTS:**

None

**REPORTS:**

1. **Treasurer’s Report:** As submitted. The amended budget has been given to the Board of Trustees.

**7:50 P.M. – OPEN FOR PUBLIC COMMENTS**

Seven (7) individuals gave their comments

**8:15 P.M. - CLOSED FOR PUBLIC COMMENTS**

**BOARD COMMENTS:****1. SUPERVISOR PECK'S COMMENTS:**

- a. Compensation Committee – was appointed that set the pay for the Board of Trustees. The Supervisor, Clerk, and Treasurer's pay was cut by twenty (20%) percent and will go into effect April 1, 2013 at \$42,000; the Trustee's pay was cut in half (\$8,000 to \$4,000) with a contingency that the Trustee attend the Board Meetings – if the Trustee doesn't attend the meeting, he/she will not get paid. There are Trustees who also work on other Committees.
2. **PURKEY:** thanked everyone that ran in the Election because, regardless of the political party, if we don't have people run for township positions then we end up without a Government.
3. **NOECKER:** name has been brought up on the blogs; was threatened by recalls when he was first sworn in; thanked the voters of Flushing Township; time to leave something for the next generation; heard that people thought he was furious with the pay cut, but he was not; share the Supervisor's feelings about the Trustee's feelings that served on Committees that if no fault of their own, was a little too stiff.
4. **MINAUDO:** the recalls were a heartache/headache; after the recall started with the four (4) Board Members, was approached about changing his vote and if so, would not be recalled – MINAUDO did not change his vote; thanked everyone for their support; over the last month or so a few Board Members have taken heat regarding the Senior Center millage issue; have had several meetings with some of the Senior Center Board Members; MINAUDO determined the reason for voting the way the Board Members did was lack of communication between the Committee Members and the Board; had been working on the proposed center since January 25, 2012.
5. **GARDNER:** three (3) things: 1) although no competition, thanked everyone for their vote; 2) a lot of municipalities have "Public Comments" both at the beginning and at the end of the meeting and from the stand point of sitting in the audience, it is a very good model; GARDNER would like to place the issue on the agenda for next month's meeting to discuss possibly having "Public Comments" at the beginning for the audience; 3) during the August Primary, he read something about the MERS fund being over two hundred (200%) percent funded; have had meetings with MERS and get two (2) different answers so want to make sure he has the right facts and figures; always heard it was completely underfunded in all accounts; would like for the Treasurer to contact MERS to see if they could come out and give an update to the correct information.
6. **NOECKER:** MERS is very much non-committal now because the last actuarial was dated at the end of the calendar year 12/31/10; at that time the township had \$2.3 million unfunded liabilities with MERS based on an eight (8%) percent profitable smooth over on their investments; usually get the actuarial in April/May but didn't get an actuarial this year so will be running two (2) years behind this coming December 2012; MERS is a retirement pension fund and within the company there isn't anything wrong with the corporation, the part that NOECKER has a problem with is that Flushing Township started out with a 3.2 multiplier and then knocked it down to a 3.0 multiplier which is twice what State workers get; twice what Flushing High School teachers get; was told they had to make a special flyer for Flushing Township; felt there was greed.
7. **MORFORD:** has several issues that came up on Election Day: 1) how are election inspectors selected – every township has an "Election Commission" which for townships consist of the Clerk and two (2) Trustees so for Flushing Township the Commission is Mr. Minaudo, Mr. Matzke and myself; the Clerk establishes a schedule of the Chairpersons and a certain number of Republican and Democrat inspectors; the schedule is then turned over to the two (2) Trustees who review the schedule; a letter is then sent to the Genesee County Clerk's Office, the Democrat, and Republican Headquarters; 2) privacy issue – have always stressed that everyone has their own privacy

section; the Saturday before and the Monday before an Election everyone has their own privacy environment; 3) tabulator problem – there was a problem with the tabulator at North Flushing Baptist Church and in the end ALL of the ballots were counted.

- 8. **NOECKER:** a township resident came in to get a copy of a ballot and was instructed to review the ballot by the front entrance door; couldn't review the whole ballot; NOECKER AND PECK went to lunch so decided to stop by Montrose Township; saw a copy of the ballot on the counter and decided to get a copy of the ballot; what is the law.
- 9. **SUPERVISOR'S COMMENTS:**
  - a. Elms Road and Coutant Street – the City of Flushing has priority over that intersection.
  - b. Changing speed limits – a study has to be done by the Michigan State Police.
  - c. Richfield Equities – in the process of being sold there will be no changes.
  - d. EMC Insurance Company – letters received regarding the lawsuits and the future process of the lawsuits with the police officers; there was an arbitration meeting on August 13- two (2) sections that were argued that arbitration wasn't legal because one of the grievances talked about needed to be filed within five (5) days of an action and the person was laid off several months earlier and the other person hadn't been laid off. The arbitrator is going to rule whether or not the issue can go forward and will come back on August 23, 2012, with the ruling; the lawyers have to have the briefs back to him and by September 23, 2012, the arbitrator will make his ruling and come back to Flushing Township. At that point, determination will be made as to the next step in the arbitration.

**THE NEXT REGULAR SCHEDULED BOARD OF TRUSTEES MEETING WILL BE THURSDAY, SEPTEMBER 13, 2012 AT 7:00 P.M. AT THE FLUSHING TOWNSHIP HALL.**

**ADJOURNMENT: PURKEY MOVED**, seconded by Morford to adjourn at 8:45 p.m.

**ACTION OF THE MOTION**

AYES: 7  
NAYS: 0  
ABSENT: Matzke  
Motion Carried.

\_\_\_\_\_  
JULIA A. MORFORD, Clerk

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TERRY A. PECK , Supervisor

APPROVED DATE: \_\_\_\_\_