

## **COLDSPRINGS TOWNSHIP**

### **REGULAR BOARD MEETING MINUTES**

#### **COLDSPRINGS TOWNSHIP HALL-COUNTY ROAD 571**

**MONDAY MAY 11, 2009 7:00 P.M.**

Supervisor Neubecker called the meeting to order at 7:02 p.m. The Pledge of Allegiance was said by all. Board members present at roll call were Supervisor Neubecker, Clerk Hodges, Treasurer Lambert, Trustee Bondy and Trustee Corrado. County Commissioner Nemeth and 7 members of the public were also present.

Adoption of the Agenda - Neubecker asked that Attorney Michael Edwards be added to the agenda after approval of the minutes. M/Bondy S/Lambert to adopt the agenda with the one addition. All in favor. Motion carried.

Establish any conflict of interest of items that are on the agenda. None were presented.

Approval of Minutes - M/Bondy S/Corrado to approve the minutes from the April 13, 2009 regular board meeting as written. All in favor. Motion carried.

Attorney Michael Edwards - Neubecker said that he invited Michael Edwards to attend our meeting, who is our legal representative on different matters. He said the reason he asked him to come to the meeting is because the road commission is considering bringing suit against the township for failure to pay them the remaining amounts due for the completion of the Starvation Lake Road project. Neubecker said that he had provided Edwards with a lot of background information on the subject. Neubecker asked Edwards to give his opinion on the situation based on the information that he had provided to him. Edwards asked if Starvation Lake road was a county road or a state trunk line road, because there are different statutes for different roads for where the money comes from for roads. Neubecker said that it is a county maintained road. Edwards then said that he couldn't see where a road commission has the authority to start charging a rental expense for the use of their equipment. He said that he doesn't see where it is any different if they are maintaining a road by improving it by blacktopping it, clearing a road of snow with their snowplow, or if they have a gravel road and they are grading it. He said that he does not see where the distinction is. It is all part of the fuel tax. He said that the road commission says that township people do not pay taxes to the road commission. He said that everyone who drives on a road pays fuel taxes. The money goes to the state and the state turns around and pays the road commissions. He said that briefly going over the statutes, and he said that he needs to take a closer look at the statutes, as to whether the road commission is allowed to charge the township an equipment rental for the use of their equipment when it is something that they are required to do by statute. Edwards said that the road commission is required to improve

and maintain the roads and not the township. He said that they can make the township pay for it but it is the road commission's obligation to do it. He said that if they have to subcontract to someone for material or some of the work then that is different, but when they are using their own equipment he can't see where they can get additional charges. He said that he does want to research that issue further. He said that in the minutes from the road commission where they just unilaterally decided to change the contract and charge a 1-1/2% interest on the unpaid balance, he said that the law is quite clear on that and that they cannot do that. He said that they did it, but it has absolutely no legal effect. Not to mention the fact that 1 1/2% equals to 18% annually, which is illegal in the state of Michigan. Also there is no authority for them to be charging interest and if they had put it in the contract someplace, it would be questionable. Another issue is that the road still isn't finished, they still have shoulder work to do and he also said that the contract is pretty clear because the contract reads that you do not have to make your final payment until the road is completed and that not until the road is completed can they send you a final bill and since the road is not completed the township is not delinquent on any payments. He said that what he could do immediately is respond to the law firm down in Lansing and settle this interest rate that will not apply and since the road is not completed the road commission has no authority demanding final payment and he also will research the issue whether road commissions have the authority to profit on a road project, which is essentially what they are doing. They are profiting \$40,000 to \$46,000 on a road project and he does not see anywhere in the statute where it allows a road commission to be in the business to make a profit. He said that that will be the ultimate issue. He said that he has not searched the State Attorney General's opinion yet and he said that he would probably find the answers in the State Attorney General's opinions. He said that the weakness of the issue is that when the contract was entered into, the contract was for a set price and not broke down like we are going to spend so much for material, so much for labor, etc. Edwards said that the issue is going to be that we think that the road commission is profiting from this project and that any monies that they are utilizing as profits should be returned to the municipality. He said that that is probably the direction that we will be going. Again he said that he has to research it a little more thorough before he would commit to that there is an actual basis there. Neubecker said that what you (Edwards) are telling us is that there is like a domino effect, because in recent months the road commission has decided to charge the townships 8-1/2% of the total job costs for providing estimates for work completed by employees that are already being paid by the road commission. They are charging townships labor charges for employees that are already employees of the road commission for doing the job of maintaining and upgrading. Neubecker said that the \$200,000.00 that we have already paid was for Reith-Reilly, who the road commission subcontracted with, to put down the asphalt. Neubecker said that it was not new construction. Edwards said that it doesn't make any difference even if it was because it is the road commission's obligation to maintain township roads whether they are improving the roads or whatever. Corrado said that this is a road that the road commission destroyed themselves. He said that we were under no obligation to fix this road other than to try and take care of the township residents. The road commission was obligated to repair that road at no cost to us at all. Neubecker said that he wrote a letter to the road commission after the deadline passed when the project was to have been completed, which was November 1<sup>st</sup>, and told them

that they have broken the contract because the road is not finished. He said that they just said that they would finish it when the weather breaks and here it is May and the road still is not completed. More discussion followed. Edwards said that for now he would like some authority from the township board for his assistance to respond to the letter that we received from the law firm in Lansing. He would let them know that they cannot charge the 1-½% interest and that they cannot demand the final payment until the project is finished and also research if the road commission has the authority to profit from these projects. M/Neubecker S/Corrado to authorize Attorney Michael Edwards to take any action that is deemed appropriate to protect the township and to also ascertain the legalities of charging for equipment rentals, 8% on new construction bids and 8-½% on labor costs that they are charging throughout the townships. All in favor. Motion carried. More discussion.

Correspondence was reviewed.

Committee Reports - (A) Planning & Maintenance - Trustee Bondy said that the work crew from the Sheriff's Department was out today and cleaned up the cemetery and that tomorrow they would start on Sands Park. She said that she is still waiting for a price for the roof for the shed. Bondy said that she contacted the DNR and several other state agencies regarding the building of the dock at Sands Park. She said that they told her that they only have certain people that build them and that they only build them for state parks. Discussion about the dock. No action was taken. (B) Fire Board Meeting - Minutes from the May 6, 2009 Fireboard meeting were presented. Copy is on file. (C) Road Commission Meeting - Trustee Corrado was unable to attend today's road commission meeting. Commissioner Nemeth said that he was at the road commissioners meeting and said that they discussed the Federal Recovery Act Money that they would be getting, which will be about \$325,000.00, and that they may do work on part of County Road 612 from the Crawford County line west. (D) Liquor Enforcement - A good report was received on Kiootee's Bar & Grill. Also received was the crime report for the month of April and it showed that there were 12 incidents for the month. Copies of the reports are on file. (E) County Commissioner Nemeth - Nemeth had several issues to speak about. One was the countywide ORV Ordinance, which went into effect April 1, 2009. He said that the ordinance allows 4 wheel ORV's of 60 inches or less to travel single file at 25mph or less on all county roads using the right side of the maintained portion of the road in the same direction as traffic, not the shoulders of the road. He said that this does not include U.S. 131, M72 or M66, which are State or Federal roads. He said that a copy of the ordinance might be obtained on the county Website or from the Kalkaska County Clerk. He also said that there are requirements for age and qualifications of riders and drivers noted in the ordinance. He also spoke on the Point of Sale regarding septic tank inspections when you sell your home, the Grand Vision and Broadband in the Village of Kalkaska from Glen's market to Northland.

Treasurers Report - Treasurer Lambert presented the monthly reconciliation report for the month of April. The report showed that there was \$374,404.03 in the various bank accounts, \$19,745.62 in the Township Improvement MM account, \$100.00 in the Tax account and \$100.00 in the Petty Cash account. M/Neubecker S/Hodges to accept the

treasurer's report as presented. All in favor. Motion carried.

Old Business - (A) Ordinance Enforcement Officer - Neubecker presented a copy of the Ordinance Enforcement Employment Agreement that will be used when hiring an OEO. Neubecker asked for any questions or comments. Corrado said that he read it over and felt that the agreement covered everything quite well. He also mentioned, that however we handle this, that the person we hire will get training through the Sheriff's Department and also will be able to have their radio on the Sheriff Department's frequency and be able to use the 911 system so that when they go in service they will be dispatched in and out so that if they run into a problem they will be able to contact the sheriff's department communications department. Corrado felt that the agreement was very well documented. Hodges questioned item #5 as to the funding of the OEO. Item #5 showed the OEO being funded as an item under the Supervisor cost center, however Hodges said that the OEO had it's own account in the cost center budget. Neubecker said to delete item #5. M/Neubecker S/Corrado to adopt the Ordinance Enforcement Employment Agreement as amended. All in favor. Motion carried. M/Neubecker S/Lambert to authorize the clerk to advertise for the position of OEO and applications to be turned in not later than noon on June 8, 2009. All in favor. Motion carried.

New Business - (A) Resolution to accept partial payments of S/W Taxes - Neubecker said that many years ago the board adopted a resolution not to accept partial payments of taxes. Treasurer Lambert now would like to amend that resolution (which is known as T-4-2000) and adopt a resolution that the board will now accept partial payments of summer and winter taxes. Short discussion. M/Neubecker S/Hodges to adopt the resolution as amended. Roll call vote. Neubecker yes, Hodges yes, Lambert yes, Bondy yes and Corrado yes. All in favor. Motion carried. Neubecker declared that this resolution has been adopted. (B) Trash Pickup/Private Roads - Neubecker said that we have had in the past, private individuals who live on private roads, who are upset with us because we will not go down their private roads to pick up trash. He said that when the board adopted the provisions for the waste haulers to come into our township and provide service it was under the understanding that all those who lived on private roads, at their own convenience, had to place their trash at the intersection of the closest main non-private road and he said that that has been a truism since we started the trash removal program with the millage vote. Neubecker said that at one point in time, over on Fawn Lane, when it was North Country Sanitation, they did put a dumpster over there because of the problems that they had with the animals getting into the trash and the some of the part timers that were leaving trash in the middle of the week. And that was through North Country and at their own expense of North Country, but they did do that, and it was a courtesy provided to the people on Fawn Lane. Neubecker said that the people in Maple Valley Estates, which is right across the road from us, are currently having to pay for a dumpster for their trash. He said that it is not new, they have had to all along because it is a private road over there and our prerequisites is that they must bring trash to the nearest non-private roadway which is 571. They would like the township to purchase or pay for a dumpster for them. Neubecker said that his thoughts were that we have a stipulation within the contract to trash companies that we are not going to provide trash pickup on private roads. He said that we have no provisions for dumpsters for private

roads and if we were to make an exception, when we make the exception we basically set a precedent that could and probably would be requested by all other people in our township that live on private roads. Neubecker said that what he would like to do, and not specifically addressing Maple Valley Estates, but that he would like to address the fact that the township board will not pay for dumpsters at locations at any private roads. Corrado said that basically is the policy now. Neubecker said that the policy is that they must bring their trash to the main connecting road and no dumpster is included in that. Neubecker said that he would like to put it on record that we as a board are not going to pay for any dumpsters to provide service to private roads. Short discussion. M/Neubecker S/Corrado that the township will not provide dumpster service for trash removal for any private roads within the township. All in favor. Motion carried.

Approval of Bills - M/Bondy S/Lambert to pay the bills as presented. Roll call vote. Neubecker yes, Hodges yes, Lambert yes, Bondy yes and Corrado yes. All in favor. Motion carried. Checks #11223 through #11248 in the amount of \$15,642.05 were issued for payment.

Public Comments began at 9:03 and ended at 9:15 p.m.

M/Lambert S/Neubecker to adjourn

Meeting adjourned at 9:15 p.m.

Mary Hodges  
Coldsprings Township Clerk