

Augusta Charter Township
8021 Talladay Road, Whittaker, MI 48190
Regular Board of Trustees Meeting
January 12, 2010 7:00 pm

1. Call meeting to order at 7:00 pm.
2. Pledge of Allegiance.
3. Roll Call: Hafler, Lula, Giszczak, King, Jackson, Sherbine, and Tobler.
4. Motion by Giszczak, 2nd by Tobler to accept the agenda as presented. Motion passed.
5. Motion by Giszczak, 2nd by King to approve December 22, 2009 minutes as amended. Motion passed.
6. Public comments opened at 7:04 pm, closed 7:08 pm.
7. Board Correspondence:
 - a. Treasurer Sherbine read record the following Memo to the Augusta Township Taxpayers from the Augusta Township Treasurer, Angela Sherbine.

Recently many residents received a "corrected tax bill" from the Treasurer's office. After the original tax bills were mailed I discovered an error in the calculation of the Administration Fee applied to each tax bill. This error had been perpetuated for many years (I checked at least back to 2002) by prior treasurers. Upon discovering the error I could have continued to perpetuate the error since no-one has questioned it up to now. However, my attitude is that when I find errors, I want to correct them rather than perpetuate them. Even if it causes more work for the Treasurer's office (and it did and will) rather than continue to overcharge Township residents, even by relatively small amounts.

Specifically, the error pertains to the calculation of the 1% administration fee which is calculated on the amount of taxes due. This fee is not supposed to be applied to special assessments since the Michigan tax code defines special assessments as NOT being tax (MCL 211.44(3)). In past years the administration fee has been calculated on the total tax bill including special assessments. This generally only affects the winter tax bill as special assessments are not generally included on the summer tax bill. After taking office in

November 2008 I did not catch the error on the December 2008 tax bills, however, after catching the error on the December 2009 tax bills I issued corrected tax bills to all residents where the overcharge was at least \$1.00 or more. (If your tax bill is sent to your mortgage company the corrected tax bill was also sent to your mortgage company.) For those for whom the difference is less than \$1.00, I could not justify the expense of mailing a corrected tax bill but the Treasurer's office will accept the corrected payment amount if a resident calculates the corrected amount and either mails it in, comes to the Hall to pay the bill, or calls for the correct amount. For those residents who have already paid the right amount, the Treasurer's office will automatically issue refunds for amounts over \$5.00 and residents may pick up refunds for amounts less than \$5.00 from the Treasurer's office.

Please note: This only affects the minority of taxpayers who have special assessments applied to their tax bills. Those special assessments include Special Water assessments, Drain assessments or Delinquent Water. So not all township residents are affected and for the majority of affected residents (in particular those with very small drain special assessments) the difference is pennies. Please contact the Treasurer's office with any further questions or for additional explanation.

- b. Motion by Jackson, 2nd by King to add item 8H "motion to terminate services of Attorney Winters." Roll Call: Aye: Lula, Hafler, King and Jackson. Nay: Sherbine, Giszczak and Tobler. Absent: None. Motion passed.

8. Motion by Giszczak, 2nd by Tobler to accept the resignations of Fire Fighters Robert Wagner and Michael Troy. Motion passed.

9. Motion by Giszczak, 2nd by Tobler to accept the resolution agreement to "TERMINATE THE AUGUSTA CHARTER TOWNSHIP PLANNED UNIT DEVELOPMENT AGREEMENT DATED DECEMBER 5, 2001, AS MODIFIED BY AMENDMENT DATED OCTOBER 20, 2004, WITH LINCOLN FARMS CO., LLC." Friendly amendment offered by Sherbine, accepted by Giszczak, for agreement to be signed by the Supervisor and Clerk and that agreement is contingent upon Augusta Townships receipt of \$15,000.00. Roll Call: Aye: Lula, Hafler, Jackson, King, Sherbine, Giszczak and Tobler. Nay: None. Absent: None. Motion passed.

Motion by Hafler, 2nd by King to take a five minute break at 8:17 pm.
Motion passed.

Supervisor called meeting back to order at 8:27 pm.

10. Motion by Giszczak, 2nd by Sherbine to renew the RESOLUTION DECLARING INTENT TO REIMBURSE FOR EXPENDITURES. Roll Call: Aye: Lula, Hafler, Jackson, King, Sherbine, Giszczak and Tobler. Nay: None. Absent: None. Motion passed.
11. Motion by Giszczak, 2nd by Tobler to adopt the amendment of the resolution to establish the USDA Water System Loan Repayment to pay the final principal payoffs collected of \$462,818.08. Roll Call: Aye: Sherbine, Giszczak and Tobler. Nay: Lula, Hafler, King and Jackson. Absent: None. Motion failed.
12. Motion by Tobler, 2nd by Giszczak to adopt the RESOLUTION TO CONDEMN ACTIONS TAKEN WITHOUT BOARD ACTION BY SUPERVISOR JACKSON, TREASURER WILLIAM BABUT AND FORMER TOWNSHIP ATTORNEY KENNETH SCHWARTZ IN 2004 TO ACCEPT REDUCED PAYMENTS FOR CONNECTION FEES. Tobler read resolution into the record: WHEREAS, this Board is authorized by statute and by the provisions of Township Utility Ordinance to determine by resolution rates, fees and other charges for services and benefits by Township's sewer and water systems; and

WHEREAS, the Board on September 14, 1999 approved a Planned Unit Development (PUD) for 132 single family homes known as Lincoln Pines for Arbor Development LLC; and

WHEREAS, Section 6.5 of said PUD agreement calls for an indirect capital charge (connection fee) of \$1500 per lot (\$900 for sewer and \$600 for water) for 42 months from the date of the first building permit. Any lots unconnected after 42 months are to pay the indirect water and sewer charges in effect at that time. The charge shall be paid at the time the building permit is granted; and

WHEREAS, on January 28, 2003 the Board passed a Resolution setting the connection charges to be \$7000; \$3500 to connect to the water system and \$3500 to connect to the sewer system; and

WHEREAS, the first building permit for Lincoln Pines was issued by the Washtenaw County Building Department on May 18, 2000 for 8021 Fox Tail Court, and pursuant to the PUD agreement, the 42 months and the agreement of a \$1500 indirect capital charge (connection fee) expired on November 18, 2003; and

WHEREAS, on May 12, 2004, Lincoln Pines LLC paid and then Treasurer Babut accepted the connection fees for the remaining 64 lots at the \$1500 rate (\$96,000).

Review of the accounting files show that a total of 74 lots were paid at the \$1500 rate when the \$7000 rate was applicable. Further, many of these lots have yet to apply for a building permit, and hence the applicable rate is yet to be determined. The difference between what was paid and what was owed is at least \$407,000 (determined from $74 * (\$7000 - \$1500)$); and

WHEREAS, on March 7, 2008, the Accounts Receivable Committee met to discuss outstanding accounts including Lincoln Pines, LLC. In the discussion, then Supervisor Jackson revealed that she had an ongoing email discussion with Dale LaClair regarding the Lincoln Pines overdue review-fee account. Further, she revealed that she and Treasurer Babut had allowed Lincoln Pines LLC to pay less than the required amount for connection fees. Supervisor Jackson was asked to forward the respective emails to the Accounts Receivable Committee for consideration. On May 27, 2008 the requested email was received (attached as Exhibit 1). According to this email, Jackson, Babut and then township Attorney Schwartz had negotiated with Dale LaClair to accept the original capital charge (connection fee) of \$1500 per lot despite the Board approved PUD agreement; and

WHEREAS, the Township Board never agreed to extend the 42 month period for the \$1500 indirect capital charge (connection fee) as required by Section 7.9 of the PUD Agreement, and therefore the \$7000 rate is applicable.

NOW, THEREFORE, BE IT RESOLVED, that this Board disavows and condemns the above actions apparently taken by then Supervisor Kathleen Jackson, then Treasurer William Babut and former Township Attorney Kenneth Schwartz. These actions were a clear contravention of the September 14, 1999 PUD agreement and township ordinances in effect, costing the township Utility Department at least \$407,000 that eventually must be made up by present and future users of the utility system. Roll Call: Aye: Sherbine, Giszczak and Tobler. Nay: Lula, Hafler, King and Jackson. Absent: None. Motion failed.

13. Motion by Sherbine, 2nd by Tobler to adopt the RESOLUTION TO AUTHORIZE THE TOWNSHIP ATTORNEY TO INVESTIGATE MEANS FOR COLLECTION OF CONNECTION FEES FOR LINCOLN PINES. Lula friendly amendment, accepted by Sherbine, that no legal action is taken without approval of the Board; amendment withdrawn. Friendly amendment Giszczak that attorney not to exceed five (5) hours accepted by Sherbine. Sherbine read resolution into the record: WHEREAS, this Board is authorized by statute and by the provisions of Township Utility Ordinance to determine by resolution rates, fees and other charges for services and benefits by Township's sewer and water systems; and

WHEREAS, this Board discovered on January 12, 2010 that connection fees for the Lincoln Pines Planned Unit Development were not properly collected in 2003 and 2004 by the former Treasurer William Babut, and whereas the difference between what was paid and what was owed is estimated to be at least \$407,000.

NOW, THEREFORE, BE IT RESOLVED, that this Board authorizes the Township Attorney to investigate and seek means for recovering the connection fees not properly paid. Roll Call: Aye: Sherbine, Giszczak and Tobler. Nay: Lula, Hafler, King and Jackson. Absent: None. Motion failed.

14. Motion by Giszczak, 2nd by Tobler to adopt the RESOLUTION TO AUTHORIZE THE TOWNSHIP ATTORNEY TO MEET WITH COUNTY AND STATE INVESTIGATORY AUTHORITIES, not to exceed five (5) hours. Giszczak read resolution into the record: WHEREAS, this Board discovered on January 12, 2010 that connection fees for the Lincoln Pines Planned Unit Development were not properly collected in 2003 and 2004; and

WHEREAS, previous Supervisor Kathleen Jackson admitted orally to the Accounts Receivable Committee and by email that she, with previous Treasurer William Babut and previous township attorney Kenneth Schwartz, had negotiated with Dale LaClair to allow connection fee payments of \$1500 instead of the required \$7000 per lot; and

WHEREAS, previous Treasurer William Babut did then accept payments in 2003 and 2004 of \$1500 instead of \$7000 per lot as payments in full, thereby not collecting an estimated \$407,000 legally due to Augusta Township; and

WHEREAS, the Township Board never agreed to extend the 42 month for the \$1500 indirect capital charge as required by Section 7.9 of the September 14, 1999 PUD agreement.

NOW, THEREFORE, BE IT RESOLVED, that if the above allegations are shown to be true that this could constitute malfeasance of office and violation of township ordinances and state statutes. This Board authorizes the Township Attorney to meet with appropriate County and State investigative authorities including the Michigan State Police, the Washtenaw County Prosecutor, and/or the Michigan Attorney General regarding the events leading to accepting reduced indirect capital charges (connection fees). Roll Call: Aye: Sherbine, Giszczak and Tobler. Nay: Lula, Hafler, King and Jackson. Absent: None. Motion failed.

Trustee Lula submitted the following statement for the record: Recently, I was contacted by Mike King and informed that my name was mentioned in an article, which made accusations about several of the Augusta Township board members. I read the article and found that I had been subtly implicated in an alleged cover up of what Mr. Tobler claimed to be criminal activity.

I became aware of the facts related to Mr. Tobler's allegations at that time and was not aware of them prior. I can also say with reasonable certainty that Mike King became aware of the facts related to Mr. Tobler's allegation just prior to his informing me of them. I say this because Mike appeared surprised by the article.

I am uncertain about the allegations made against Kathy Jackson. I do know for certain, though, that I was not aware of any of this until I received the call from Mike. And I believe that I can prove by a preponderance of the evidence that I did not take part in a cover up of any kind. I also believe that Mr. Tobler, with the help of his unwitting ally Mr. Perkins, has intentionally called my integrity into question in the minds of thousands of potential voters. I believe that irreversible damage has been inflicted upon my integrity, which I diligently maintained for 25 years as a public servant. During those 25 years I witnessed many occasions where baseless allegations were made by someone who resented being the subject of legal authority. Those complaints were handled through the proper channels and did not affect anyone's public integrity. However, Mr. Tobler and Mr. Perkins were quick to publish these baseless allegations without contacting me. I believe I can also prove by a preponderance of the evidence that Mr. Tobler's intent was to soil the reputation of the board members that voted to disband the Accounts Receivable committee, which was creating unnecessary expenses to the taxpayer by paying an attorney to attend each meeting.

I would never attempt to prevent Mr. Tobler, from contacting the proper authorities and presenting them with any evidence he may have relative to the allegations he has made. I believe that it is the responsibility of those investigative authorities, not the township attorney, to determine if charges are to be filed. I believe the proper way to handle this situation would have been to speak to the board first and inform them of these allegations and his intent to pursue possible charges with the proper investigative authorities. Then, based on the outcome of those efforts, present the results to the media, if necessary. Based on the information I have received thus far, it appears to me that Mr. Tobler's public allegations are a reckless political strategy and I intend to pursue the necessary legal remedy to prevent them from damaging my reputation in the future.

15. Motion by Jackson, 2nd by King to terminate the services of Attorney Winters. Roll Call: Aye: Jackson and King. Nay: Sherbine, Giszczak, Tobler, Lula, Hafler. Absent: None. Motion failed.
16. Public Comments opened at 11:14 pm, closed at 11:32 pm.
17. Motion by Hafler, 2nd by King, to adjourn at 11:33 pm. Motion passed.

Respectfully submitted:

Pete Hafler, Supervisor

Date

Kathy Giszczak, Clerk

Date