

Augusta Charter Township
8021 Talladay Road, Whittaker, MI 48190
Regular Board of Trustees Meeting
September 8, 2015 7:00 pm

1. Meeting was called to order by Hafler at 7:00 p.m.
2. Pledge of Allegiance.
3. Roll Call: Giszczak, Hafler, Howard, Keefe and Thornton. Absent: Dew and Todd.
4. Motion by Giszczak, 2nd by Howard to remove 8F Request for Court Action to compel Clerk to Hire Deputy Clerk MCL 41.69, since the clerk has had and continues to have an appointed deputy as required by law, friendly amendment Hafler, not accepted by Giszczak, to remove Giszczak's request to remove 8E Request for Court Action to Compel PC Nominations. Roll Call: Aye: Giszczak, Howard and Keefe. Nay: Hafler and Thornton. Absent: Dew and Todd. Motion passed.
5. Motion by Giszczak, 2nd by Howard to approve Board of Trustees meeting minutes of 08/25/15 as submitted. Motion passed.
6. Public comment opened at 7:02 p.m. closed at 7:06 p.m.
7. Motion by Keefe, 2nd by Giszczak to introduce Resolution 15-XX to increase the water rate Augusta Charter Township charges its customers to \$5.75 per 100 cubic feet with the effective date of November 1, 2015 and to be billed January 5, 2016, friendly amendment consideration accepted by Keefe. Roll Call: Aye: Giszczak, Howard, Keefe and Thornton. Nay: Hafler. Absent: Dew and Todd. Motion passed.
8. Motion by Giszczak, 2nd by Keefe to approve the Resolution and insert the Resolution into the body of the meeting minutes, to Adopt Paperless Payroll by Authorizing Issuance of Payroll Debit Cards RESOLUTION NO. 15-06 with an effective date of November 9, 2015.

AUGUSTA CHARTER TOWNSHIP

**Resolution to Adopt Paperless Payroll by Authorizing
Issuance of Payroll Debit Cards**

RESOLUTION NO. 15-06

DATE PROPOSED: 09/08/2015

DATE ADOPTED: 09/08/2015

EFFECTIVE DATE: 11/9/2015

WHEREAS, Augusta Charter Township (“Township”) desires to operate efficiently through administrative costs saving measures, and

WHEREAS, changes to Michigan Compiled Law 408.476 allows the PAYMENT OF WAGES through direct deposit and debit card, and

WHEREAS, the Township currently offers direct deposit, and

WHEREAS, the average fee to add the payment of wages using payroll debit cards is \$6.60 increase monthly/\$79.20 annually, and

WHEREAS, the average administrative cost saving per year in postage, paper handing, the mandatory State of Michigan Escheats (unclaimed property) reporting and monthly bank statement reconcilements, is an average of \$188.00.

NOW, THEREFORE, the Township Board hereby authorizes:

1. The Clerk’s office to set up, distribute and facilitate the Payroll One Focus debit card information and,
2. To offer Payroll Debit cards to current employees in addition to the currently offered Checking/Saving Payroll Direct Deposit, in lieu of and to replace the issuance of negotiable paper payroll checks.
3. Notifications to all current employees (elected officials and staff) that payroll shall be deposited into Checking/Saving/Debit Card of their choice effective November 9, 2015, and
4. In the event that an employee does not have their direct deposit information available, they will be automatically enrolled in the Payroll One, Focus Card issued by U.S. Bank National Association, pursuant to a license from VISA U.S.A, Inc, Member FDIC, effective 11/9/2015,

Motion by Giszczak, 2nd by Keefe to approve the Resolution and insert the Resolution into the body of the meeting minutes, to Adopt Paperless Payroll by Authorizing Issuance of Payroll Debit Cards RESOLUTION NO. 15-06 with an effective date of November 9, 2015. Roll Call: Aye: Giszczak, Hafler, Howard, Keefe and Thornton. Nay: None. Absent: Dew and Todd. Motion passed.

The Supervisor declared the resolution adopted.

K Giszczak, Augusta Charter Township Clerk

CERTIFICATE

I, Kathy Giszczak, the duly elected and acting Clerk of Augusta Charter Township, hereby certify that the foregoing resolution was adopted by the Township Board of said Township, as presented at a regular meeting of said Board held on 09/08/2015, at which meeting a quorum was present by a roll call vote of said members as hereinbefore set forth; that said resolution was ordered to take effect November 9, 2015.

9. Motion by Giszczak, 2nd by Thornton that According to the Augusta Charter Township Purchase of Development Rights Ordinance, page 11, section 6 paragraph one, members of the Farmland Preservation Board shall be appointed by the Board of Trustees page 12, paragraph four states that there shall be staggered terms of appointment: Reappointed 1. Nevel Overton Slack; 1 year 2. Liz Waffle; 2 years 3. Sylvia Taylor; 2 years 4. Sue Jantschak; 2 years 5 Vernon Porter; 1 year and acknowledge Trustee Judy Thornton term ends 11/20/16. Roll Call: Aye: Giszczak, Hafler, Howard, Keefe and Thornton. Nay: None. Absent: Dew and Todd. Motion passed.

10. Motion by Howard, 2nd by Giszczak that we approve the Resolution to Require Board Approval to Seek Attorney Services and have the Resolution inserted into the minutes.

AUGUSTA CHARTER TOWNSHIP

**RESOLUTION TO REQUIRE BOARD OF TRUSTEES
APPROVAL TO SEEK TOWNSHIP ATTORNEY SERVICES**

RESOLUTION NO. 15-07

DATE PROPOSED: 09/08/2015

DATE ADOPTED: 09/08/2015

EFFECTIVE DATE: 9/8/2015

WHEREAS Augusta Charter Township (*hereafter referred to as the Township*) by its elected Board of Trustees (*hereafter referred to as the Board*) is the entity charged with the responsibility for acting on the behalf of and safeguarding the rights and resources of the Township's constituents, and

WHEREAS The Charter Township Act 359 of 1947 dictates that “all legislative authority and powers of each charter township [*except as otherwise provided by this act*] shall be vested in and shall be exercised and determined by a township board of 7 members composed of the supervisor, the township clerk, the township treasurer, and 4 trustees who shall be electors in the township (42.5[1])”; and

WHEREAS the Board may engage the services of an attorney as the Township Attorney (*hereafter referred to as the Attorney*), for which the Board as a Whole is the **only recognized** client as opposed to any single individual or grouping of individual members of the Board; and

WHEREAS MCL 41.2(4) provides that: “A suit, act, or proceeding, by or against a township, in its corporate capacity, shall be in the name of the township, and the supervisor of each township shall be the agent for his or her township for the transaction of legal business, by whom a suit may be brought and defended, and upon whom process against the township shall be served.”; and

WHEREAS the role of legal agent for the township is a statutory duty of the supervisor, and as a part of that duty, the supervisor is the spokesperson authorized to convey and represent the Board’s formal opinion and position in any legal undertaking. However, it is understood that the supervisor **as Legal Agent and Spokesperson for the Board, does not have unlimited OR ultimate authority, but is responsible for carrying out this responsibility in a manner that represents the Board's official decisions regarding legal matters.**; (*Michigan Townships Association website, Members Page, Index of Topics – Supervisor*) and,

WHEREAS “as a member of the township board, the supervisor shall be the presiding and executive officer of the board and shall have an **equal** voice and vote in the proceedings of the board. The supervisor shall authenticate by his or her signature any instruments which the board

and the laws of the state or the federal government may require” (42.5[2]). The supervisor’s position holds no more authority or significance than another board member and his/her signature stands as the signature of the Board as a whole, confirming that by a majority they have approved any action, contract or project being undertaken; and

WHEREAS from a review of the records, it has become apparent that in direct contradiction to the statutory restrictions and the practices of the Augusta Charter Township Board of Trustees, numerous and extremely costly contacts and consultations have taken place between the Augusta Charter Township Supervisor, other board members and the Attorney without the knowledge of and/or approval by the full Board of Trustees; and

WHEREAS our existing letter of agreement/contract with the Attorney assures that the firm’s “responsibility is to represent the Township in a manner that is consistent with the customary professional practices and requirements for handling municipal matters... and that they will keep the Township reasonably informed about the status of its pending matters...”; and

WHEREAS it has also become apparent that without the billable invoice detail from the Attorney for services rendered, the degree of unauthorized and unreported correspondence and consultation by the Supervisor and other board members would remain virtually unknown, and much of the said contacts were **not** reported to or approved by the Board.

THEREFORE BE IT RESOLVED that **all** contacts, including email, telephone, fax, texting or postal correspondence requires prior notice and approval of the Board of Trustees with the following LIMITED Exceptions:

1. Notification of receipt of any legal notice or summons served upon the Township or a member of the Township Board, a Township Commission or Township Employee in their capacity as a Township representative.
2. Notifications of Board Actions which authorize Attorney consultation and/or action.
3. Notification of injury that occurred on Township property or to a Township representative or employee while acting in their capacity as a Township representative or employee.
4. Notification of the death or incapacitating injury of a Township representative or employee that may require future legal advice concerning the Township’s legal rights and obligations in regards to that Township representative or employee, their families, or meeting obligations to fulfill that individual's responsibilities within the Township organizational capacity.
5. Consultation for time sensitive material that arrives **after** the last regularly scheduled Board Meeting and requires a response **before** the next regularly scheduled Board meeting.
6. The FOIA Coordinator, because of the legally imposed time-lines, can consult with the Attorney if there are areas of legal concern about how to respond to a FOIA request. This generally relates to whether the material requested is exempt.
7. A notification/consultation under these exceptions pre-supposes that an initial response will be provided by the Township Attorney regarding their professional opinion and /or

recommended actions which would be copied to the entire Board.

All of these exceptions to the prior approval will require:

1. Immediate notification of the full Board via email that such a contact was made to the attorney (with the most acceptable form being the copying the Board on the email notification sent to the Attorney) and
2. The Supervisor/Board member will present a written summary (via email) of the incident that precipitated the contact and a summary of the discussion that occurred if by telephone or text to the board via email within 3 business days or before the next **regularly scheduled** Board meeting (whichever occurs first) , or at Special Meeting called **before** the next regularly scheduled meeting to address the legal issue that arose. This may be accomplished in a Closed Session as necessary.

THEREFORE BE IT RESOLVED that in addition to the initial disclosure report for an attorney contact for any of the Exception Issues, anticipated future actions if any, must be disclosed to and approved by the Board at its next regularly scheduled meeting (either in closed or open session) or at a Special Meeting for that purpose; and

THEREFORE BE IT RESOLVED that all issues that fall outside of the exemptions listed are to be presented to the Board for their input and approval **before** any member contacts the Attorney to ensure that the contact and request for an opinion or service is in fact on behalf of the Board; and

THEREFORE BE IT RESOLVED that all consultations with the Attorney that involve **any** written communications **MUST** be openly copied to all Board Members as they as a whole, are the Client that must be informed, advised, consulted and approve all actions taken on their behalf by the Attorney. This includes but is not limited to the Board being openly copied on emails and provided copies of texts, letters and faxes. **All telephone or face-face consultations must result in a written summary (which can be via email) of the nature and substance of the contact from the Attorney to the full Board within 7 business days;** and

THEREFORE BE IT RESOLVED that the Board requires detailed invoices from the Attorney that identify the nature of the contact (Ex: email, letter, telephone, text, etc.), with whom (Ex: supervisor, clerk, trustee, etc.), and the subject matter(s) that were addressed (Ex: wage reduction for employees FOIA law changes, MDCR complaint –John Smith), attorney, hourly rate, time and fee charged. This is consistent with the type of detail typically documented when billing for legal actions such as writing opinions, preparing briefs or attending hearings. The action, **subject/case name**, and location (if applicable) are typically provided on the invoice, along with the attorney, rate, time and fee charged.

THEREFORE BE IT RESOLVED that the Board as a whole shall be provided, at the time of formal submission, copies of all documents that represent the Township's and the Board's legal position in any action, contract or proceeding.

THEREFORE BE IT RESOLVED that from this day forward the Board will not reimburse the Attorney for any legal consultation that does not adhere to the tenets of this Resolution. We charge the Attorney to respect the Client-Attorney relationship and not participate in billable actions that do not have Board approval; and

THEREFORE BE IT FURTHER RESOLVED should such unauthorized contact with the Attorney continue, the Augusta Charter Township Board of Trustees may take action for reimbursement from the board member who incurred any unauthorized costs by consulting the Attorney for matters not specifically Board approved; and if the Attorney engages in legal actions and/or submits for compensation of unauthorized services, the Board will negotiate a more restrictive contract with either the existing Township Attorney of Record or retain a new Township Attorney.

This Resolution goes into effect immediately upon Board approval.

Motion by Howard, 2nd by Giszczak that we approve the Resolution to Require Board Approval to Seek Attorney Services and have the Resolution inserted into the minutes. Roll Call: Aye: Giszczak, Howard and Keefe. Nay: Hafler and Thornton. Absent: Dew and Todd. Motion passed.

The Supervisor declared the resolution adopted.

K Giszczak, Augusta Charter Township Clerk

CERTIFICATE

I, Kathy Giszczak, the duly elected and acting Clerk of Augusta Charter Township, hereby certify that the foregoing resolution was adopted by the Township Board of said Township, as presented at a regular meeting of said Board held on 09/08/2015, at which meeting a quorum was present by a roll call vote of said members as hereinbefore set forth; that said resolution was ordered to take immediate effect.

Kathy Giszczak, Clerk

AUGUSTA CHARTER TOWNSHIP
POLICY ON USE OF LEGAL SERVICES

1. **Purpose.** The purpose of this policy is to clarify the proper procedure to seek assistance from the Augusta Township Attorney. This policy applies to all elected and appointed Township officials.

2. **Definitions**

a. *Township Attorney:* the attorney or firm of attorneys designated to represent the Township by the Township Board. At the time of passage of this policy the Township Attorneys designated by the Township Board are the firm of Fahey Schultz Burzych Rhodes PLC, primary contact William Fahey.

b. *Seek Assistance:* to contact the Township Attorney by telephone, fax, email or written correspondence for the purpose of engaging the Township Attorney to review and provide legal advice or legal representation on a particular or general matter or question.

3. **Policies and Procedures**

a. Township officials may seek assistance from the Township Attorney only for matters and questions that arise during the conduct of Township business where legal advice or representation is **needed to assist Township officials in the performance of their duties, in responding to existing or potential conflicts or disputes, or in developing a course of action that will minimize the Township's exposure to future liabilities or litigation.** Private consultation with the Attorney is **not** to be used for personal issues or as a means of settling interpersonal disputes among township officials. If clarification of a position needs to be addressed the Board shall form the question and the response will be provided to the Board.

b. Township officials, except as otherwise provided, shall refrain from seeking assistance from the Township Attorney without prior approval of the Township Board.

c. The following officials have permission to seek assistance from the Township Attorney as needed in the fulfillment of their duties without prior approval of the Board under the Exceptions Rule outlined in the Resolution 15-XX Resolution to Require Board of Trustees Approval to Seek
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Attorney Services:

- Supervisor
- Clerk
- Treasurer
- FOIA Coordinator

These Exceptions are:

1. Notification of receipt of any legal notice or summons served upon the Township or a member of the Township Board, a Township Commission or Township Employee in their capacity as a Township representative.
2. Notifications of Board Actions which authorize Attorney consultation and/or action.
3. Notification of injury that occurred on Township property or to a Township representative or employee while acting in their capacity as a Township representative or employee.
4. Notification of the death or incapacitating injury of a Township representative or employee
5. Consultation for time sensitive material that arrives **after** the last regularly scheduled Board Meeting and requires a response **before** the next regularly scheduled Board meeting.
6. The FOIA Coordinator, because of the legally imposed time-lines, can consult with the Attorney if there are areas of legal concern about how to respond to a FOIA request.
8. A notification/consultation under these exceptions pre-supposes that an initial response will be provided by the Township Attorney regarding their professional opinion and /or recommended actions which would be copied to the entire Board

d. The following Township officials have permission to seek assistance from the Township Attorney **as needed in the fulfillment of their duties** with prior approval of the Supervisor:

- Planning Commission Chair
- Zoning Board of Appeals Chair
- Township Planning Consultant
- Code Enforcement Officer

e. The Township Board must be informed and ultimately approve **all** Attorney Services as they as a whole are the body charged with the fiduciary and legal responsibilities for all expenditures and actions taken on behalf of the Township. This can be accomplished by discussing what services or advice Board Officials are seeking and having that approved at a regular or Special Meeting of the Board. It is recommended that the majority of Attorney-Client contact take place via email with all Board members copied on the correspondence as this is the most explicit manner in which to keep the Board informed and retain a written record of our requests for attorney services. This allows all

Board members to be fully informed and minimizes the appearance or actual occurrence of contacting the Attorney for reasons that may be personal, politically motivated or that are **not necessary to assist Township officials in the performance of their duties, in responding to existing or potential conflicts or disputes, or in developing a course of action that will minimize the Township's exposure to future liabilities or litigation.**

f. The Attorney will provide detailed invoices that will include the nature of the contact (Ex: email, letter, telephone, text, etc.), with the official making the request, the subject matter(s) addressed and time spent on each subject, attorney, hourly rate, and fee charged.

g. The Board as a whole shall be provided, at the time of formal submission, copies of all documents that represent the Township's and the Board's legal position in any action, contract or proceeding.

Roll Call: Aye: Giszczak, Howard and Keefe. Nay: Hafler and Thornton.
Absent: Dew and Todd. Motion passed.

11. Motion by Giszczak, 2nd by Keefe that we adopt the proposed Augusta Charter Township Policy on Use of Legal Service. Roll Call: Aye: Giszczak, Howard and Keefe. Nay: Hafler and Thornton. Absent: Dew and Todd. Motion passed.

12. Motion by Giszczak, 2nd by Keefe to authorize the clerk to continue working with Attorney Fahey on the establishment of the Fire Department Cost Recovery Procedures to comply with the Townships Fire Department Cost Recovery Ordinance and for the clerk to report the recommendation of the attorney to the Board of Trustees. Roll Call: Aye: Giszczak, Howard and Keefe. Nay: Hafler and Thornton. Absent: Dew and Todd. Motion passed.

13. Motion by Giszczak, 2nd by Howard to affirm and uphold the 2011 Resolution # 11-05 regarding Planning Commission Ordinance and the 2011 final Planning Commission Ordinance # 11-2 adopting a seven member Planning Commission. Roll Call: Aye: Giszczak, Howard and Keefe. Nay: Hafler and Thornton. Absent: Dew and Todd. Motion passed.

14. Motion by Giszczak, 2nd by Keefe to authorize and direct the Augusta Charter Township Attorney to draft and file a complaint in the Washtenaw County Circuit Court, on behalf of the Augusta Charter Township Board, to compel the Augusta Charter Township Supervisor Peter Hafler to present the Board of Trustees with Planning Commission nominations until said vacancies are filled, and to continue with timely nominations to the Board should future vacancies occur based upon MCL 125.3803(b) the township supervisor shall appoint members of the planning commission, subject to approval by a majority vote of the members of the legislative body elected. Roll Call: Aye:

Giszczak, Howard and Keefe. Nay: Hafler and Thornton. Absent: Dew and Todd. Motion passed.

15. Public comment opened at 8:15 p.m. closed at 8:15 p.m.

16. Motion to adjourn by Hafler, 2nd by Keefe at 8:16 p.m.

Respectfully submitted:

Pete Hafler, Supervisor

Date

Kathy Giszczak, Clerk

Date