

# Credit River Township Meeting Minutes November 19, 2008

## Call to Order

Chairman Leroy Schommer called the meeting to order with the Pledge of Allegiance at 6:00 pm.

## Members Present:

Chairman Leroy Schommer, Vice Chairman Bruce Nilsen, Supervisor Brent Lawrence, Supervisor Al Aspengren, Supervisor Tom Kraft

## Others Present:

Township Clerk Jerry Maas, Township Treasurer Holly Batton, Township Engineer Shane Nelson, Township Attorney Bob Ruppe

## Old Business

### 1) Policy on Deferrals

Attorney Ruppe submitted an updated proposal for the Board's consideration.

Supervisor Aspengren noted that he Supervisor Lawrence had been asked to look into what other communities have done with regard to deferrals. He noted that in looking at comparative communities, it appears that they attempt to relate the deferrals to the income of the property owner.

The property has to be homesteaded and the owner needs to demonstrate a hardship would exist due to the assessment.

Based on these comparative analyses, Supervisor Aspengren is recommending that if the assessment were over 3% of the adjusted income, the property owner would qualify for a deferment. They would further suggest that the property owner would need to reapply annually and that the interest would have to be paid, only the principle would be deferred.

Supervisor Nilsen noted that a problem would certainly arise at the end of the 10 year deferment period when a large balloon payment would be due and wondered how this situation would be addressed.

Attorney Ruppe noted that it has been his experience that Townships do not typically have a deferral policy because it presents a problem for the Township to meet its obligations on the debt.

Supervisor Aspengren asked if this could be handled on a case-by-case basis and Attorney Ruppe noted that this would not be possible.

Supervisor Lawrence noted that he felt the 3% threshold was appropriate.

Supervisor Nilsen noted that he is unable to see that adopting such a policy would be appropriate.

In response to a question from Supervisor Kraft as to how to proceed, Attorney Ruppe noted that the Board has been asked to set a policy on deferments and that after review a motion would be in order to accept or deny this request depending on the Board's wishes.

Supervisor Kraft made a motion that the Board deny the request to adopt a policy on deferments.

Supervisor Aspengren emphasized that he would certainly be hopeful that we could find a way to consider these cases on an individual basis.

In response to the motion on the floor, Supervisor Nilsen offered a second. Upon calling the question, the motion passed 3-2 with Chairman Schommer and Supervisor Aspengren opposed.

## **2) Pay Estimate on Whitewood Drive**

Chairman Schommer suggested that we table consideration of this issue until the next meeting.

Engineer Nelson noted that the work earned amount was \$242,847 and had this been approved we should have issued a check for that amount less a standard retainer and an amount for liquidated damages.

Supervisor Nilsen suggested that we pay the amount less the liquidated damages that have accrued.

Chairman Schommer noted that certain issues are still outstanding, for example the ditches will have to be redone in the spring. He suggested that we withhold an additional \$15,000 in view of the delays caused by the contractor.

Supervisor Kraft noted that liquidated damages will cease this coming Friday and that the job isn't finished.

Chairman Schommer suggested that we meet with the contractor next week and further suggested that we withhold payment pending the outcome of that meeting.

The Board determined that they would meet at 5:00 pm on Monday, November 24<sup>th</sup> and asked Clerk Maas to post a notice to that effect.

Supervisor Kraft noted that the Township has incurred additional expense as a result of these delays and that the liquidated damages would be needed to cover these costs.

Supervisor Lawrence concurred in that it was his opinion that the work progressed at such a slow pace that he feels withholding payment for a week or two is justified.

It was decided that in any event, payment would not be made until the December 1<sup>st</sup> meeting.

## **3) Bonding Timeline**

Treasurer Batton asked for Board approval to start the bonding process after verifying numbers with the Engineer Elliott for the current road projects.

Supervisor Nilsen made a motion to authorize the Treasurer to initiate discussions with Bond Counsel on preparation of the necessary documents. Supervisor Aspengren offered a second, all in favor, motion passed 5 – 0.

## **4) Township Newsletter**

Resident Cathy Haugh presented a copy of a proposed township newsletter.

Mrs. Haugh asked the Board how the review process would take place. It was suggested that two board members, Supervisors Nilsen and Kraft would be asked to review the newsletter and provide approvals.

Supervisor Lawrence asked how it was being proposed to distribute this newsletter and at what cost?

Mrs. Haugh noted that the plan would be to mail the first couple of issues and hopefully enough email addresses would be obtained to allow for future copies to be sent via email. Treasurer Batton noted that the cost to mail 1600 homes would be approximately \$672.

The Board decided that they would consider an update after the December 1<sup>st</sup> levy discussions with a plan to mail the newsletter the week of December 15<sup>th</sup>.

Supervisor Kraft noted that he had a mailing list from the county that was updated in the spring, but noted that it was already 6 months old.

Supervisor Aspengren suggested that the Citizens Advisory Group be mentioned.

## **5) Public Hearing - Road Assessment - Whitewood Ave. / Birch Road**

Chairman Schommer called the Public Hearing to order at 7:00 pm.

Chairman Schommer noted that earlier in the evening the Board decided against adopting a deferral policy.

Attorney Ruppe summarized the reason for the Public Hearing this evening. He noted that we are required to hold this hearing by statute. It is an opportunity for the residents to present information in regarding the accuracy of the assessment amount. At the close of the hearing, the Board will consider the assessment and modify and/or adopt the assessment. He noted that if any resident should object, it would be necessary to submit a written objection before the hearing closes this evening.

It was noted that we have received written objections from the following residents:

Mr. & Mrs. Dale Swanson, 6106 Birch Road, Prior Lake, MN 55372  
Mr. & Mrs. Dick Haugen, 6126 Birch Road, Prior Lake, MN 55372  
Mr. & Mrs. Yuri Tabakov, 16856 Whitewood Ave., Prior Lake, MN 55372  
Ms. Corrine Hadac, 6076 Birch Road, Prior Lake, MN 55372  
Mr. William Hadac, 5096 Birch Road, Prior Lake, MN 55372  
Mr. & Mrs. Bill Giles, 6055 Birch Road, Prior Lake, MN 55372

Resident Dale Swanson wanted to know if his questions from the last meeting had been addressed and wanted clarification on how much the Township would be contributing and how the final assessment amount was determined.

Engineer Nelson provided an update as to the status of the project. The road is now paved and it is hoped that the driveways will be finished by Friday. The contractor is responsible to finish the ditches and it is expected that this will be finished in the spring.

Engineer Nelson noted that there are costs associated with the engineering, legal, and administrative in addition to the construction costs and the final project costs are \$562,045.35. Attorney Ruppe noted that without liquidated damages the total project costs is \$583,700.00 not including bond costs. The Township is planning on contributing 25% and assessing 75%. He also noted that we had originally planned on 54 properties participating, but that has since been reduced to 53 in that one lot was determined to be un-buildable.

Mr. Swanson asked for detail on costs associated with the engineering and legal expenses. Attorney Ruppe noted that Mr. Swanson could get that information by asking for specifics in writing.

Mr. Swanson also noted that the drainage pipe that was installed on Whitewood does not benefit and he is not of a mind to pay for it.

Chairman Schommer noted that this drainage problem was identified early in the process and the solution was proposed to minimize road problems. He noted that Westside Drive had been a problem because of a failure to address this problem at that time.

Mr. Swanson asked if the Board has re-considered assessing everyone for this drainage cost?

Supervisor Nilsen noted that it was his intention in voting for this project to improve the drainage and provide a stable shoulder and improved culverts. He feels that everyone would benefit from a better road in the long run.

Mr. Swanson also asked about the cost penalties and if they were in fact \$600 per day. He asked if the residents would gain benefit or would the money go entirely to the Township?

Attorney Ruppe explained liquidated damages constituted an agreement between the contractor and the Township to avoid litigation in the future. He noted that these costs are estimated at this time and there are no assurances that the Township can count on and furthermore, if it is realized, it would probably go to the Township.

Supervisor Aspengren noted that if the Township were to collect liquidated damages, it would amount to a reduction of an additional \$158. Supervisor Nilsen indicated that his calculations indicated that the additional amount would be \$339.

Supervisor Kraft noted that it was his opinion that the liquidated damages ought to be retained by the Township to cover additional costs caused by this delay.

Resident Marlin Menke asked about the interest charges and when they would go into effect. He asked how much time he had to avoid interest charges. Attorney Ruppe noted that the time period was 30 days from this meeting. Mr. Menke also noted that he ditch is 2 feet deeper than it was prior to this project. Furthermore, Mr. Menke was concerned about the final seeding. The Board indicated that this would be finished in the spring.

Resident Bill Giles noted that he does not have a culvert and does not have a drainage problem. He asked why he is being billed for all of the culverts. He also noted that it was his understanding that originally we were planning on only replacing the street. As far as he can determine, it appears that we have spent an additional \$150,000 in extras.

Resident Mike Lyrenmann asked how the interest rate was determined? Attorney Ruppe stated that we are relying on our bond counsel who has experience in this area. We need to set the rate at a level to insure that we will be able to retire the debt.

Resident John Riesgraf asked how much of the project was considered maintenance and repair and how much is considered improvement. He has talked to his tax advisor and been told that the amount designated maintenance and repair could be deductible.

Attorney Ruppe indicated that the Board would probably be able to give an amount that would be normal annual maintenance, but to break the cost of this project down would be difficult. He asked that Mr. Riesgraf provide us with specifics such as statute or IRS rulings, etc.

Resident Don Schaffhausen noted three homeowners would be assessed a double amount since they have two lots. It was his feeling that all should split the total costs of the project equally.

Mr. Schaffhausen was told by the contractor to inquire about an easement credit since they have completed the driveways this year and Mr. Schaffhausen would like to have his entire driveway done next year.

Supervisor Nilsen mentioned that he had been in contact with the contractor and made arrangements with the contractor to provide for the eventuality of additional driveway work.

Mr. Schaffhausen asked about the 5-ton limit sign that is now posted. Chairman Schommer noted that it is the township's plan to keep this posted until the final lift is applied.

Chairman Schommer acknowledged the requests for speed limit signs and also a "No Outlet" sign.

Resident Dick Haugen questioned the argument put forth by Supervisor Nilsen earlier and felt that the reconstruction of the road itself should have been sufficient to handle the drainage. He expressed the view that assessing the Birch Road residents for the added drainpipes on Whitewood was improper.

Supervisor Nilsen noted that the installation of the drainpipes to handle individual property sump pumps was part of the overall project to take care of standing water and to protect the edge of the road.

Supervisor Aspengren asked Engineer Nelson what the additional cost of installation for the sump pump drainage. Engineer Nelson indication that it was \$37,120.

Mr. Haugen also expressed concern as to how the interest was to be applied. He noted that it appears that here is a "punitive charge" applied in the case where a resident chooses to pay off the entire amount in any of the future years.

Attorney Ruppe noted that we are required to apply the interest by statute.

Resident Chris Ryan wanted further clarification of the easement credit for additional driveway work and wondered who was going to pay who when the work is done. For example, she is planning on concrete and wonders how the credit for the "blacktop" will be applied if she has a different contractor.

Engineer Nelson noted that this could be handled through Quiring Excavating. Chairman Schommer asked Engineer Nelson to contact Mrs. Ryan and work this out with her.

Resident Mark Licke asked for an explanation of the deferral process and why it had been denied earlier in the evening.

Attorney Ruppe noted that there is a provision in the statutes to allow Townships to take hardships into consideration. The Board has to adopt a policy by ordinance in order to make this available to residents. Earlier this evening, after considerable discussion on the requirements needed to qualify for this deferral, the Board determined that few people would benefit because few would be able to meet the requirements.

Mr. Licke also asked for the payment options and how it would be collected

Attorney Ruppe noted that this is being proposed over ten years and that the amount would become a part of the property taxes.

Resident Ron Brandt asked about whether the full amount of gravel had been applied to the road and if we are getting a nine-ton road? Chairman Schommer indicated that we will have a road rated at nine tons.

Mr. Brandt also asked the plan would be for everyone to connect the sump pumps to the drain system and if this process would be monitored by the Township, noting that if it wasn't done properly, we'd have the same problem that we have now. Chairman Schommer noted that the Township will insure that this is done properly.

Resident Mary Kroyer asked about the mailbox locations on the South end of Whitewood. She noted that the boxes were 3 feet off the new road and wondered if the road got

shifted. Engineer Nelson indicated that the new road was re-aligned to the center of the easement per the survey.

Mrs. Kroyer asked about what type of shoulder would be installed. Chairman Schommer noted that arrangements could be made to apply black dirt if necessary. She also noted that their driveway is a different rock color from what was there originally. Would it be possible to have the original color installed?

Mrs. Kroyer also asked about the information in Mr. Maas's recent newsletter regarding the increased proposal to increase the Road and Bridge levy. Chairman Schommer noted that would be discussed at the December 1<sup>st</sup> meeting.

Mrs. Kroyer also pointed out that while some residents are not happy about paying for the drainage system on Whitewood, it was noted that at the first meetings when this project was discussed, that the southern portion of Whitewood was in as bad a shape as the rest of the road and a less costly repair would have sufficed. They are not also paying for a full rebuild of both Whitewood Ave. and Birch Road.

Resident Jay Jendersee asked about a double size lot and how the assessment would be calculated. Chairman Schommer noted that the assessment was per parcel as shown on the County tax records.

Resident Paul Breyen noting that numbers had been presented calculating a 25%, 30% and 35% contribution towards the cost and he wanted to go on record as formally asking that the Township contribute 35% to the project.

Supervisor Aspengren noted that we have established a policy of contributing 25% of the project cost and we hold these Public Hearings in order to evaluate if there are any extenuating circumstances that would cause the Board to consider contributing additional amounts.

The Board formally expressed appreciation to resident Beverly Parrish for allowing the construction trailer to be parked on her property during the duration of this project.

Supervisor Nilsen made a motion to close the Public Hearing. Supervisor Kraft offered a second, all in favor, motion passed 5 – 0. The Public Hearing was closed.

Supervisor Nilsen proposed that the township cover the \$37,120 cost of the drainage system and in addition contribute 30% towards the cost of the rest of the project.

Supervisor Kraft asked for the reasoning on removing the cost of the drainage system. Supervisor Nilsen noted that this portion of the project needed to be done to insure a stable road was built. Supervisor Aspengren agreed that he feels there is justification to pay for the drainage system, but he questioned the need to increase the township contribution to 30% in addition rather than follow our policy of 25%.

Supervisor Nilsen made a motion that the Township pay the \$37,120 drainage system cost plus continue the policy of contributing 25% of the remaining total cost of the project. This would reduce each assessment to \$7,682.91. Supervisor Aspengren offered a second, all in favor, motion carried 5 – 0.

Attorney Ruppe presented a draft Resolution 2008-35 declaring the costs to be assessed, preparation of the proposed assessment and retroactively noting the date of the assessment hearing.

Supervisor Lawrence made a motion to adopt Resolution 2008-35. Supervisor Aspengren offered a second, all in favor, motion carried 5 – 0.

Attorney Ruppe then presented draft Resolution 2008-36 proposing to adopt the Whitewood / Birch assessment roll and direct the Clerk to send out the notice of modified assessment amount.

Supervisor Nilsen made a motion to adopt Resolution 2008-36 and to direct the Clerk to deliver a copy of the assessment roll to the County Auditor.

Supervisor Aspengren offered a second, all in favor, motion carried 5 – 0.

**Adjourn**

There being no further business before the Town Board, Supervisor Kraft made a motion to adjourn, Supervisor Nilsen offered a second, all in favor, motion carried 5 - 0. The meeting adjourned at 9:00 pm.

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Submitted By: (s/) Jerald R. Maas  
Township Clerk  
Credit River Township

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Approved By: (s/) Leroy Schommer  
Chairman Board of Supervisors  
Credit River Township