

Special Meeting of the Pierson Township Board

Meeting Minutes

June 7, 2019

4:00 pm

- I. Call to order: 4:02 pm
- II. Roll call
Present: VanTil, Burkholder, Scheuermann Absent: Gould, Hyrns
- III. Approve the meeting agenda.
Motion: Burkholder
2nd: VanTil Roll Call: Yes: VanTil, Burkholder, Scheuermann

- IV. Guest Speakers
 - a. Sandy Raines, Montcalm County Drain Commissioner - Absent
 - b. Pat Carr, Montcalm County Commissioner Chairman - Present
 - c. Tom Porter, Montcalm County District 8 * Commissioner – Absent
 - d. Bob Clingenpeel, Montcalm County Controller/Administrator - Present
 - e. Phil Kohn, Montcalm County District 5 * Commissioner – Present

** District 8 covers Pierson, Maple Valley and Pine Townships; District 5 covers all of Home and Day Townships, Evergreen Township north of Holland Lake Road and the City of Stanton.*

V. Discussion

Trustee **Scheuermann** lead the meeting: The Pierson Township Board on the behalf of Little Whitefish Lake (LWL) and Big Whitefish Lake (BWL) owners, has requested the assistance from the County Commissioners to assist in getting the Drain Commissioner's office to fulfill the contractual obligations * of the Sewer Contracts for Little Whitefish and Big Whitefish Lakes. In the [Sewer Bond] contract there is a provision for addressing problems giving Sandy Raines, Montcalm County Drain Commissioner, an opportunity to address problems, modify ** the contract and provide the information requested.

**[Per the contract section 13d: "The Agency shall keep and maintain accurate records showing the receipt of payment from all customers of the LWL Sanitary Sewer System and the BWL Sewer System, expenditures made on behalf of the LWL Sanitary Sewer and The BWL Sanitary Sewer System, and the balance of all funds on hand in the Receiving fund and its sub-accounts. The records shall be available to the township, the Drainage District and their respective representatives upon reasonable request"] [First Amendment changed to "Periodic Reports, made not less often than annually, shall be provided by the Agency to the Township...]*

***[Per the contract Section 22: "If necessary, the committee shall draft for consideration appropriate amendments to the Contract to clarify any item or to address additional matters. If the dispute cannot be resolved, the parties may use any appropriate legal remedy.]*

Discussion items:

- Budget summaries that the drain commission used over the last 6 (six) years [have not shared with the township].
- Accountings for all sewer funds used for both Big Whitefish Lake and Little Whitefish Lake Sewer Systems for the last 6 (six) years.
- Capacity:
 - Max. load in 24-hour time frame for both north & south fields listed separately.
 - Peak gallon per day and use for each user BWL vs LWL per year.
- Full definition and use per each REU
- Identity of the Bond Holder for LWL sewer collection system.
- Document showing the LWL Bonds cannot be paid down or paid off.

Trustee Chuck Scheuermann Opening Summary of History of LWL Sewer:

The Pierson Township Board, during a routine transfer request of an REU from BWL to LWL, asked for a status [of REU] from the Drain Commissioners office. The report of status was not supplied until after the transfer. In the report it was discovered that BWL was at the max and, now stands one over, the maximum number allowed for the contract. The BWL report showed that the Loons Nest (about 12 years ago got hooked into the system). At the time they hooked up to the system, they had very little flow. Now the Loons Nest has a flow rate of 7 REU's [but] they are only assigned one.

Per the contract upon reasonable request, the township was to receive financial statements and updates concerning the bond balance and the project. **Scheuermann** explained, the last statement received by the township was in 2013. There have been numerous requests from the former Township Supervisor Longcore and former Clerk Gitchel that have been made for budget summaries, balance and information on the bondholder with from the Drain Commission over the last 4-5 years without receipt. **Scheuermann** expressed the frustration of the Board and residents concerning the lack of communication between the Drain Commissioners office and the request for update on the balance of the bond and explanation for the increase in request for dept service funds. The request for information by FOIA request and letter from the Township Supervisor again requesting the Drain Commissioner to supply updated financial records, updates on the drainfield maximum load/capacity for each user for the BWL and LWL system, and bond information were not completed per contractual responsibility.

Controller **Clingenpeel**'s response: "the way the funds were separated out in the county with drains was one big pot of money * and so there was no way to tell whose money was what" (ie. Sidney, BWL, etc.) other than I suppose someone at the Drain office." The county books have now been split out with the help of the County Treasurer, and the last three years records are available for each assessment; what is paid in and paid out. He said there are now records for the last three years, but "what happened prior to that, when most all of this happened, we're probably never going to know that."

[Per the contract section 13: The revenues of the BWL Sanitary Sewer System and the LWL Sanitary Sewer System shall be set aside by the Agency, as collected, and deposited in a bank duly qualified to do business in Michigan in a **separate depository account to be designated as Whitefish Sewer System Receiving Fund... Section 13 continued found on pages 10-15: Separate sub-accounts shall be maintained by the Agency...Operation and Maintenance Fund, LWL Contract Payment Fund, BWL Drain Assessment Payment Fund, Replacement Fund, Improvement Fund and Surplus Money.]*

The bond was through Rural Development [*Grand Rapids Rural Development Todd McLane retired, contact is now Paul Bristol, since 2016*], but they are likely not the holder of those dollars [bond]. He said [the bond] “it is being paid every year. Now, the different question is if there enough money to pay it every year? That’s what we are not sure of.”

Unfortunately, they pointed out that most of the players from when the Bond was being created are no longer in office. “I am not sure we can solve this problem with our current Drain Commissioner”.

Controller **Clingenpeel** and Commissioner **Carr** indicated that information presented to them in the past was that “re-bonding” the bond was not cost effective. * Commissioner **Carr** stated “it was not like a traditional loan and does not offer a pay down/early payoff option, despite what was indicated to homeowners at the time of initiation.” Commissioner **Carr** mentioned that Bendzinski [& Co.] had presented options [in June of 2012] for a possible re-bonding, he recalled the costs of rebonding would have not justified the expense, and recalled the momentum lost when Bendzinski’s son passed away.

**[According to the May 19, 2016 email from Bendzinski, there was savings available, “refinancing the bonds would reduce the debt obligation....:]*

Both Controller **Clingenpeel** and Commissioner **Carr** inquired if there was interest from residents and/or the Pierson Township Board in creating or being part of a Montcalm County Sewer Authority Committee as a way for townships to have more control and insight concerning the Sewer System(s). Controller **Clingenpeel** thinks this is a possible longer-term solution, [with the County Sewer District] for more say and control for each district. This idea stems from Sandy Raines request for Townships to take over management of the system.

Note: Clerk Gitchel refused this request after the request for a clear receipt of funds and appropriations to depict the financials of the past were not provided.

Trustee **Scheuermann** suggested hiring an Engineering firm to investigate the situation and advise about the status and capacity. The Commissioners were open to having discussions about this option. The Commissioners and the Controller both indicated they would help the residents and the Township Board in any way they can, however, the bulk of the information is still required to be obtained by the Drain Commissioner’s office.

The Pierson Township Board has motioned to begin the process of hiring an attorney to assist with the dispute resolution. [The township has in the past has spent over \$19,000 in legal fees with no avail.]

VI. Public Comments

Many residents were in attendance, and all expressed their thanks for the Commissioner’s attendance. Commissioner Carr and Controller Clingenpeel answered questions they were able and equally expressed frustration regarding communication and follow through of requested updates on the financial and capacity status from the Drain Commissioner’s office.

Bill Grice of LWL stated that he believed “83% or 85% of the people on LWL have paid their sewer system off. You said the money went into one pot, so you don’t know where it went. I believe that we’re due for all these people that paid it [their sewer] off, should be paid back by the county. I think that needs to be looked into before we even think about a sewer committee.” “It was right in the contract that we could pay it off.”

Mark Reinhart a LWL resident said “It seems like you’d be able to go back to the bond company. One for records and two - this bond was set up to fail.” “The bond won’t even pay for itself by 53 units. Why do we have the responsibility for paying for their mistake?”

[Note: REU designation to BWL & LWL on Contract Exhibit B]

Dan Buyze of BWL “We have no idea of how the money being collected is being spent and to whom. Is there a large surplus for replacement of pumps, new drainfields, etc.? Is there a bidding process for large projects? I would think with the past history of the Drain Commission office (ie. Federal audit report of FEMA funds) and in my opinion, the blatant disregard of citizen and governmental request for information, I would encourage you folks to get the Attorney General involved. There is borderline “something” bad going on.” “If we are going to get engineers involved in stuff like this, I don’t think either LWL or BWL should have to pick up the tab for a problem we didn’t create.”

Mr. **Buyze** also said he, “heard that the drainfields are at or near capacity. The DEQ, now known as EGLE, watches closely sodium and phosphorus intake [into those fields] levels. If ground water is being negatively affected, they [EGLE] can order a cease and desist and that’s a problem. We must to get at the bottom of the capacity issue.”

“Regarding the Loon’s Nest, I was there when they created the district and I can tell you there was nothing on Bass Lake Rd in the district. Who approved it to get hooked up, when and how? They need to pay for their usage and if there are expansions needed, they need to pay for that or be removed so we can put the REU’s where they belong.”

Kay Gravlin of LWL questioned responsibility [errors and omissions] of the drain commissioner. “The Drain Commission has a problem. I don’t have a problem. I paid mine off.”

[Note: Clerk Gitchel had requested Clingenpeel to look into a claim against the Drain Commissioner’s Bond.]

Commissioner Pat **Carr** said, “I sympathize with those that have paid them off, originally and were under the belief that this one time and done, but you have to realize the bond thing was never set up right. The numbers you got from the beginning were never right. You are paying for a Chevette and thinking you were getting a Cadillac and thinking you were paying it in full.”

“I hear you all saying don’t charge me, but is it fair for all the people of Montcalm county to pay? Is it fair for every tax payer in the county to pay for the mistake?” **Carr** asked.

Additionally, Ms. **Gravlin** said, “We need to have some type of subcommittee or someone who can watch over this to have her come forward with her [Sandy Raines] fiduciary responsibility to be accountable to the tax payers.”

Commissioner **Carr** said “I don’t know what is going to happen without the Drain Commissioners [Sandy Raines] willingness to provide this stuff for us. I don’t know what I am going to learn in the next 30-60 days.” He said, “There are remedies for citizens to take care of an elected official; to remove someone for not doing their job.”

The Controller and Commissioners said they were willing to update the township on any developments they may get.

VII. Board Comments

The Board thanked the Commissioners and Controller for attending and for any help they may be able to offer.

VIII. Adjournment: 5:25 pm

Addendum: Sanitary Sewer Management and Treatment Contract, First Amendment to Contract Bendzinski & Co. letter dated May 19, 2016 and 2016 Special Assessment Balances from Sandy Raines, Drain Commissioner.