

*UNAPPROVED OCTOBER 1, 2012 REGULAR MEETING MINUTES*

**Baldwin Township Regular Meeting**

**October 1, 2012**

**Present** – Supervisors Jay Swanson, Kimberly Good, Larry Handshoe, Tom Rush and Randy Atwood.

**Call to Order** – The October 1, 2012 regular meeting of Baldwin Township was called to order by Chairman Jay Swanson at 7:00 p.m.

**Pledge of Allegiance** – All present recited the Pledge of Allegiance.

**Additions/Corrections to Agenda**

- Add 'Discuss Population Signs' under Road Report
- Add 'Approve/Disapprove Tires for Dump Truck' under Road Report
- Add 'Boardwalk Update' under Road Report
- Move 'Approve/Disapprove Allowing Wind River Estates to Install Their Own Signs' to under Road Report
- Remove 'Approve/Disapprove Maintenance Employees Helping at FunFest'
- Move 'Fire Department Relief Report' to under Sheriff's Report
- Discuss changing Fire Department Report to right after the Sheriff's Report
- Discuss Belmont Ridge not under New Business, but under Plats.

**Approval of Regular Meeting Agenda With/Without Additions/Corrections** – Handshoe/Good unanimous to approve the regular agenda as amended.

**Treasurer's Report:**

**September 2012 Final Treasurer's Report** – The clerk reported receipts of \$3,108.25 and disbursements of \$66,493.05, check numbers 16764 through 16820 and 9 EFT payments leaving an unaudited balance of \$426,734.02.

**October 2012 Preliminary Treasurer's Report** – The clerk reported receipts of \$2,370.56 and disbursements of \$15,893.62, check numbers 16821 through 16847 and 2 EFT payments leaving an unaudited balance of \$418,119.14.

**Sheriff's Report** - It was reported there were 145 calls for service in the month September with 13 thefts standing out.

**Fire Department Report** – Captain Robin Fischer reported there were 15 calls for the month of September. He expressly thanked the board for installing the fire numbers.

**Relief Association Report** – No one was present to report.

**Approval of Consent Agenda** - Good/Handshoe unanimous to approve the Town Board Meeting minutes of September 18, 2012.

**Open Forum for Citizens** - Chuck Nagle under public comment: (a) Minutes approval after open forum; and (b) Princeton Agreement to Planning Commission.

**Conditional & Interim Use Permits:** None.

**Plats:**

Belmont Ridge Update – The clerk reported that the Letter of Credit had been renewed for one year.

**Variances:** None.

**OLD BUSINESS:**

**Road Report** – Handshoe reported that the graveling is done, and that maintenance is wrapping up the hot patching; a set of tires is needed on the truck; and the issues on Lagoon Road on 120<sup>th</sup> Street would cost approximately \$500 to fix around the culvert. Atwood said that Rice Lake stated that they would help fix the issues. Essig will be grading at the end of this week.

**Discuss Population Signs** – Good stated that many compliments have been received, and thanked Handshoe for his hard work in making the signs possible for a cost of under \$500 for all the signs.

**Approve/Disapprove Tires for Dump Truck** – Bids for 6 225/70r19.5 tires were received from Greg Anderson for \$2,394.38, Billings for \$2,124.66 and Warzecha Auto Works for \$1,729.00. All prices included mounting and balancing, but with no disposal. Good/Handshoe unanimous to approve purchasing tires from Warzecha Auto Works for \$1,729.00.

**Boardwalk Update** - There are 70 – 8 foot sections ready for installation with the pole issue resolved. There was discussion on having a construction meeting with Patten's design, and what changes need to be done. On the November agenda add 'Approve/Disapprove Accepting Donation from Swantec". The donation figure is \$4,170.00.

**Approve/Disapprove Allowing Wind River Estates to Install Their Own Signs** – Since Wind River Estates is a private development, it's important to be sure on how exactly to proceed according to Good. The development doesn't want the signs piled up in the road, but the township also does not install on private property. It needs to be emphasized that they accept the responsibility to install the signs. Good/Handshoe motion to allow Wind River to have possession of their signs. Rush questioned that if the township does for one private development we should do for all. Good explained that their association is taking ownership of the project and installing them with sleeves at their own expense and the township wants to ensure that they do intend to install the signs. Atwood questioned if a date of 30 days was reasonable with Good replying 'yes'.

Swanson questioned how the township would know for sure that all the signs are going up. Swanson made a friendly amendment asking Wind River to add an emergency numbering system to their covenants or bylaws. Good accepted the friendly amendment. The clerk was instructed to send a letter to their homeowner's association requesting the change. Atwood made a friendly amendment asking the clerk to also include Ordinance 301 with the letter.

**Fire Department Report** – See above.

**Relief Association Report** – See above.

**PAVC Update** – Good reported that grant dollars were used to hold Rhythm on the Rum 2 during the Chili Fest in Princeton. The PAVC is also applying for a Legacy Grant.

**Park Committee Report** – One of the rocks has been delivered. Maintenance should move one more before the FunFest.

**Regional Park Committee Update** – Rush reported that the Regional Park Committee is working on grants as well as looking for donations from residents and businesses. Fund raising activities are also being pursued. The Committee completed a population and pedestrian count. The next meeting is October 24<sup>th</sup> at 6:30 p.m. at the Princeton City Hall.

**TCI Baldwin Volunteer Corps Update** – Good reported that the FunFest activities have come together for the October 6<sup>th</sup> event.

**Approve/Disapprove Donating 5 Atlas' for the Funfest** – Handshoe/Good unanimous to approve donating 5 atlases for the FunFest.

**Approve/Disapprove Maintenance Employees Helping to Set Up for Funfest** – Removed from agenda.

**Joint Committee with City of Princeton Status** – Good/Handshoe unanimous to add to the October 16<sup>th</sup> agenda.

**Approve/Disapprove Road Contractor Services Agreement** – Good/Handshoe unanimous to approve the road contractor services agreement as amended by the township attorney.

**Approve/Disapprove Encroachment Agreement Between Baldwin Township and Sherburne County, Deer Trails Path and Approve Sending it to Sherburne County for Their Approval** – Good/Handshoe unanimous to approve the encroachment agreement between Baldwin Township and Sherburne County, Deer Trails Path and approve sending it to Sherburne County for their approval.

**Approve/Disapprove Scheduling a Household Hazardous Waste Collection Event**  
Handshoe/Good unanimous to approve May 18, 2013 as Baldwin Township Clean-Up Day and May 22, 2013 for the Household Hazardous Waste Collection event.

**Boardwalk Update** – Jon Bogart discussed the foundation of the boardwalk. He will also check with Bill Bronder, SCSW, to determine if he can meet at the park to talk about the design. Bogart will let the board know of the meeting time.

#### **TABLED ITEMS:**

**Approve/Disapprove Installing Trees in Young Park** –Swanson/Handshoe unanimous to approve the installation of the trees at Young Park.

**Approve/Disapprove Sending Pre-Employment Physical Forms to Attorney** – Good/Handshoe unanimous to approving sending the Pre-Employment Physical Forms to the attorney for review.

**Approve/Disapprove Change to Fire Department Handbook Adding Pre-Employment Physicals** – Good/Handshoe unanimous motion to table to the November meeting for attorney response.

#### **NEW BUSINESS:**

**Review Memo from Township Attorney** – Swanson read in it's entirely a memo from Bob, Ruppe, Town Attorney, regarding Jay Swanson Conflict of Interest Question. The memo is included in these minutes.

# Memo

To: Baldwin Town Board  
From: Bob Ruppe, Town Attorney  
Date: September 18, 2012  
Re: Jay Swanson Conflict of Interest Question

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Baldwin Town Board at its July 17<sup>th</sup> meeting voted to move forward with plans to improve 112<sup>th</sup> Street as a joint project with neighboring Livonia Township. At the meeting, a concerned resident asserted that Supervisor Jay Swanson, who voted in favor of the project, should be disqualified from voting on the project as he lives on 112<sup>th</sup> Street. The Town Board has inquired whether or not Supervisor

Swanson does in fact have a non-contractual conflict of interest which would legally preclude him from voting on this proposed road project. The following memo addresses whether or not a conflict exists and whether Mr. Swanson should be disqualified from voting on the issue.

### **Project History**

The Township's records reflect that improvements to 112<sup>th</sup> Street have been contemplated for several years. The Township's 2008 capital improvement plan, which was developed prior to Mr. Swanson being elected to the Board, lists the road projects to be addressed by Township and also lays out the time frame for each project to be completed. The 112<sup>th</sup> Street project was slated to be completed in 2013 from the inception of the plan. Further, Jon Bogart, the Town Engineer has rated this road as Condition D – being in need of major repairs.

In 2011 the Baldwin Town Board authorized the City Engineer to conduct soil borings and preliminary engineering work for 112<sup>th</sup> Street. Because of budgetary concerns, the Town Board voted the bulk of the project down for the 2012 construction season. However, in both May and June of 2012, the Livonia Town Board approached the Township and expressed their desire to improve 112<sup>th</sup> Street as a joint project in 2013. Noting the cost saving and the fact that most of the engineering plans had been already paid for by the Township, the Town Board voted 3 to 2 in favor of the joint project setting in motion the final engineering, easement procurement and bidding of the project.

Mr. Swanson was not the individual that brought this particular project to the attention of the Town Board. It had been discussed for several years and included in the capital improvement plan. Further, Livonia Township, citing multiple accidents on this road and its poor overall condition, requested that Baldwin Township enter into a joint project to repair and improve the roadway. In this way it is estimated that the Townships could save approximately \$20,000 each through economies of scale.

### **Conflict Law**

A conflict of interest occurs when an individual has a personal interest in a decision which he or she has the power to make. A prohibited personal interest may be contractual or non-contractual. It includes decisions in which some gain or financial benefit exists for the decision-maker.

There is no settled rule about whether a conflict of interest will disqualify an official. Therefore, each case must be decided on the basis of the particular facts present. Generally, public officials are disqualified from participating in

proceedings in a decision-making capacity when they have a direct interest in the proceedings' outcome. *Lenz v. Coon Creek Watershed Dist.*, 278 Minn. 1, 15, 153 N.W.2d 209, 219 (1967); see *E.T.O., Inc. v. Town of Marion*, 375 N.W.2d 815, 819 (Minn.1985). The purpose of this rule is to ensure that a decision will not be an arbitrary reflection of an official's own selfish interests. *Lenz* at 15, 153 N.W.2d at 219.

Although there is no case directly on point, *Lenz* provides a useful comparison. In *Lenz*, the Minnesota State Supreme Court was asked to set aside the order of the board of managers of a watershed district establishing an improvement project because the chairman of the county board, which had petitioned for the improvement, and four of the five managers of the board of managers of the watershed district, which had approved the project, owned land affected and benefited by the project. The Court refused to void the order or disqualify the managers. In that case the Court delineated the circumstances in which a public official should be disqualified from acting in a decision-making capacity (278 Minn. 15, 153 N.W.2d 209):

"The purpose behind the creation of a rule which would disqualify public officials from participating in proceedings in a decision-making capacity when they have a direct interest in its outcome is to insure that their decision will not be an arbitrary reflection of their own selfish interests. There is no settled general rule as to whether such an interest will disqualify an official. Each case must be decided on the basis of the particular facts present. Among the relevant factors that should be considered in making this determination are: (1) The nature of the decision being made; (2) the nature of the pecuniary interest; (3) the number of officials making the decision who are interested; (4) the need, if any, to have interested persons make the decision; and (5) the other means available, if any, such as the opportunity for review, that serve to insure that the officials will not act arbitrarily to further their selfish interests."

The evidence in *Lenz* indicated that the officials in question owned a considerable amount of real estate which would be substantially benefited by the improvement. But because there was a good chance that any large improvement would necessarily involve land owned by some of the managers, and because procedural safeguards, including the availability of appeal to district court, were available, the Court held that there was not sufficient need to disqualify those officials from acting.

If the direct pecuniary interest involved in *Lenz* was insufficient to justify disqualification, I do not believe that the evidence presented in this case requires

disqualification. Here, the only allegation of misconduct is that one of the Town Board supervisors was involved in the final vote to authorize the improvement of 112<sup>th</sup> Street on which he lives. This fact alone does not disqualify an official from acting in a decision-making capacity and will not invalidate the motion ordering the improvement. By its very nature, the decision to improve and maintain a town road will be of interest to all local citizens including members of the town board of supervisors. And those supervisors are often in the best position to be aware of the need for town road improvements. There is no evidence to indicate that Supervisor Swanson had a pecuniary interest in the improvement of this road. The availability of appeal to district court in proceedings such as these will adequately protect occupants of affected land from any possible prejudice.

Further, one of the five factors in *Lenz* is “the need, if any, to have interested persons make the decision.” Even if Supervisor Swanson did have a conflict of interest in this matter, his vote would be needed to decide this issue one way or the other, since without his vote the motion would have deadlocked as a 2-2 tie vote and the Township would have been unable to effectively make a decision on this project. Taking all of the *Lenz* factors together, it is our belief that Supervisor Swanson’s vote on this matter would not be invalidated due to a conflict of interest.

In *1989 Street Imp. Program (117 Street) v. Denmark Tp., Washington Cty., Mn.*, property owners proposed to be assessed for a road improvement project challenged a 3 to 0 vote of a five member town board to undertake the special assessment project. Two of the five supervisors voluntarily disqualified themselves from the vote because they owned property on the street that was to be improved. The decision was challenged as not being supported by the required four-fifths vote of all the town board members.

The court recognized that “Where there is a choice, city officials should avoid actions which may appear tainted of impropriety, even though they are legal.” *Id.* at 510. The Court declined to state that the two city officials were legally disqualified even when each official was to be assessed significant sums. The Court only held that public officials should be able to abstain from voting to avoid appearances of impropriety and not be “second-guessed by a court” as to whether a significant enough interest was involved to justify the abstention. *Id.* at 511. For the purposes of the special assessment statute, only those officials qualified to vote can be considered “members.”

It cannot be said that Supervisor Swanson’s own personal interest is so distinct from the public interest that the member cannot be expected to represent the public interest fairly in deciding the matter. The Township had been planning on improving 112th Street since 2008 when the capital improvement plan was

adopted. The Township had authorized the Township Engineer to create preliminary plans for improving the road. This road is rated D on a scale of A through D by the Township engineer and is in need of repair. Maintenance of Township roads is a routine action of the Township as the road authority pursuant to Minn. Stat. 164.02, Subd. 1. Further, this road right of way has been the site of numerous accidents including a fatality that included a near miss with a school bus. The improved sight lines will help prevent future accidents and fatalities. Lastly, public policy supports local governments that work together to solve mutual problems to the benefit of their respective residents. That both Baldwin and Livonia Townships would see a cost saving from jointly improving their respective portions of 112<sup>th</sup> Street is undisputed. The facts support the need for the improvement of 112<sup>th</sup> Street such that a vote by Supervisor Swanson would not be an arbitrary reflection of an official's own selfish interests. For the reasons stated above, I believe that, if challenged, Supervisor Swanson's vote would not be void and he would not be disqualified from voting on the improvements to 112<sup>th</sup> Street due to a conflict of interest.

### **Conclusion**

Since elected officials must live in the Township and since they often deal with road and land matters, it is almost inevitable that some degree of conflict will arise between an official's interest in land and their vote on the Board. Minnesota courts have held that an elected official owning land to be benefited by a local improvement is probably not prohibited from petitioning for the improvement, voting to undertake it, or voting to adopt any resulting special assessment.

**Approve/Disapprove Resolution 12-15, Request for MnDOT Speed Study in Elk Lake Estates** – Good/Handshoe unanimous to approve Resolute 12-15, a request for MnDot speed study in Elk Lake Estates/

**Approve/Disapprove Allowing Wind River Estates to Install Their Own Signs** – See above.

**Approve/Disapprove Logo Contest Winners Payment (From 2008) & Send Thank You Letters** – Rush/Handshoe unanimous to approve sending payment and thank you letters to the logo contest winners.

**Approve/Disapprove Rescheduling November 5, 2012 Regular Town Board Meeting** – Rush/Good unanimous to approve rescheduling the November 5, 2012 regular town board meeting to November 13, 2012.

**Announcements:**

- Annual meeting of the Association of Townships is October 17<sup>th</sup> at 7:00 p.m. at the Palmer Town Hall.

**Any Other Business:** None.

**Motion to Approve Bills for Payment** – Good/Handshoe unanimous to make payment for check numbers 16821 to 16847 and 2 EFT payments totaling \$15,893.62.

**Adjournment** – Handshoe/Rush unanimous to adjourn at 8:34 p.m.



Submitted By: (s/) Cathy Stevens  
Clerk/Treasurer  
Baldwin Township

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Approved By: (s/) Jay Swanson  
Chairman, Board of Supervisors  
Baldwin Township

Attendees: Elaine Byker, Lester Kriesel, Marco Voce, Suzi Voce, Robin Fischer, Elaine Philippi, David Patten, Chuck Nagle, Audrey Misiura, Michael Misiura, Jon Bogart



SEPTEMBER 2012

FINAL

CHECK	TO WHOM	FOR WHAT	AMOUNT	GEN	R & B	ENG.	PARKS	DEBT SERVICE	CEM	FIRE
16800	Randy Atwood	wages	\$418.16	\$418.16						
16801	Kimberly Good	wages	\$185.44	\$185.44						
16802	Larry Handshoe	wages	\$339.42	\$339.42						
16803	Kristopher Macko	wages	\$71.71		\$71.71					
16804	AT&T Mobility	phone & internet	\$259.25	\$112.78	\$56.20					
16805	Lester W. Kriesel	cemetery & election judge	\$256.60	\$206.60					\$50.00	\$90.27
EFT	PERA	town board contribution	\$104.50	\$104.50						
EFT	MN Dept of Revenue	august fuel tax	\$52.16	\$52.16						
EFT	MN Dept of Revenue	august withholding	\$426.01	\$315.29	\$108.02					\$2.70
EFT	EFTPS	august federal withholding	\$1,931.78	\$1,347.67	\$519.81					\$64.30
16806	Thomas Rush	wages	\$282.42	\$282.42						
16807	Scott Case	wages	\$23.59							
16808	Thomas Rush	mileage	\$6.67	\$6.67						\$23.59
EFT	PERA	town board contribution	\$35.00	\$35.00						
16809	Louis Christen	wages	\$816.09		\$816.09					
16810	Cheryl Dobson	wages	\$338.27	\$338.27						
16811	Cathy Stevens	wages	\$1,442.12	\$1,442.12						
EFT	PERA	employee contribution	\$482.46	\$340.98	\$141.48					
16812	AT&T Capital	ipad lease	\$173.84	\$173.84						
16813	Beaudry Oil	oil	\$583.18		\$583.18					
16814	EastCentralSanitation	garbage service	\$45.64	\$22.82						\$22.82
16815	ECM Publishers	legal notice	\$106.95	\$106.95						
16816	Finken Great Glacier	water cooler rental	\$13.47	\$13.47						
16817	Joel Johnson	gopher - 316 pair	\$632.00	\$632.00						
16818	Princeton Township	road grading	\$250.00		\$250.00					
16819	Steve Schultz	gopher - 14 pair	\$28.00	\$28.00						
16820	Timmer Implement	supplies	\$108.92	\$108.92						
EFT	MN Dept of Revenue	tax withholding-september	\$377.66	\$281.07	\$93.36					\$3.23
EFT	EFTPS	tax withholding-september	\$1,807.62	\$1,284.97	\$451.45					\$71.20
		<b>totals</b>	\$66,493.05	\$22,920.10	\$13,319.99	\$6,742.50	\$20,272.63	\$0.00	\$91.28	\$3,146.55

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**PRELIMINARY**

**OCTOBER 2012**

CHECK	TO WHOM	FOR WHAT	AMOUNT	GEN	R & B	ENG.	PARKS	DEBT SERVICE	CEM	FIRE
16821	Bogart Pederson	engineering	\$8,552.50			\$8,552.50				
16822	Christina Jensen	logo contest-3rd place	\$10.00	\$10.00						
16823	CommAsphaltCo	road repair	\$256.38		\$256.38					
16824	Connexus Energy	electric utilities	\$217.41	\$217.41						
16825	Connexus Energy	electric utilities	\$143.02							\$143.02
16826	Connexus Energy	electric utilities	\$27.22				\$27.22			
16827	David Patten	logo contest-2nd place	\$25.00	\$25.00						
16828	ECM Publishers	notices	\$58.50	\$58.50						
16829	Kelly Englund	logo contest-1st place	\$50.00	\$50.00						
16830	Lester W. Kriesel	cemetery	\$50.00						\$50.00	
16831	Margaret Berglund	reimbursement	\$30.70	\$30.70						
16832	Office Depot	office supplies	\$105.55	\$105.55						
16833	PattenLandscape	boardwalk hardware	\$362.00				\$362.00			
16834	Randy Atwood	mileage	\$9.99	\$9.99						
16835	Randy Atwood	wages	\$233.87	\$233.87						
16836	Jay Swanson	wages-3 months	\$566.10	\$566.10						
16837	Terry Carlile	wages	\$351.10		\$351.10					
16838	Louis Christen	wages	\$778.91		\$778.91					
16839	Cheryl Dobson	wages	\$509.33	\$509.33						
16840	Cathy Stevens	wages	\$1,389.16	\$1,389.16						
16841	Larry Handshoe	wages	\$414.44	\$414.44						
16842	Tom Rush	wages	\$282.42	\$282.42						
16843	Kimberly Good	wages	\$382.85	\$382.85						
EFT	PERA	town board contribution	\$154.00	\$154.00						
EFT	PERA	employee contribution	\$494.51	\$359.86	\$134.65					
16844	Bridget Chard	planning commission	\$200.00	\$200.00						
16845	Kimberly Good	mileage	\$15.54	\$15.54						
16846	Larry Handshoe	mileage	\$216.45	\$216.45						
16847	Tom Rush	mileage	\$6.67	\$6.67						
		<b>totals</b>	<b>\$15,893.62</b>	<b>\$5,237.84</b>	<b>\$1,521.04</b>	<b>\$8,552.50</b>	<b>\$389.22</b>	<b>\$0.00</b>	<b>\$50.00</b>	<b>\$143.02</b>