

**ADA TOWNSHIP BOARD MEETING  
MINUTES  
MAY 11, 2009**

Meeting was called to order by Supervisor Haga at 7:30 p.m. Members present: Supervisor Haga, Clerk Susan Burton, Treasurer Rhoades, Trustees: Westra and Smith. Also present: Planning Director Ferro, Township Attorney Jeff Ammon, Recording Secretary Johnson and twenty-one community members. Members absent: Trustees Proos and Sytsma.

**APPROVAL OF AGENDA**

Motion to approve agenda as presented. **Moved by Westra, supported by Rhoades.** Supervisor Haga noted unless there were objections, Unfinished Business Item B should be moved to end of agenda just before Opportunity for Additional Public Comment. No objections or comments. **Motion carried.**

**PUBLIC HEARING**

**PUBLIC HEARING TO CONSIDER A DEVELOPMENT PLAN AND TAX INCREMENT FINANCING PLAN FOR THE TOWNSHIP OF ADA DOWNTOWN DEVELOPMENT AUTHORITY**

**Moved by Smith, supported by Westra, to proceed to public hearing to consider a Development Plan and Tax Increment Financing Plan for the Township of Ada Downtown Development Authority. Motion carried.**

At the opening of the Public Hearing, prior to receiving general Public Comment, Planning Director Ferro gave a presentation summarizing the Development Plan and Tax Increment Financing Plan. Ferro discussed the creation of the Downtown Development Authority (DDA) in November 2008 and the subsequent appointment of the Board of Directors in January 2009. As dictated by State Statute, the Board's first major order of business was to create the Development Plan and Tax Increment Financing Plan in order to allow the DDA to use tax increment financing as a revenue source. The proposed Plan developed by the DDA Board was distributed to the Ada Township Board as well as a synopsis of the Plan. The Plan underwent review and comment by a 9-member Citizens' Council appointed by the Ada Township Board.

Ferro stated the main purpose of the Plan is to identify public improvement projects the DDA proposes to undertake over the next 20 years and to identify the anticipated methods of financing for those projects. It also projects future tax increment revenues and identifies the impact of captured revenues on all of the taxing jurisdictions whose revenues are subject to capture by the DDA according to State Statute. Those entities that are potentially capturable by the DDA include the Township, Grand Rapids Community College (GRCC), Kent District Library, and Kent County. The Kent District Library has already opted out, as allowed by state statute, of having any of their incremental growth in property tax revenue captured. Kent County and GRCC have also exercised their opt-out option, but they have both adopted policies whereby they are willing to participate on a voluntary basis in tax increment financing arrangements through a negotiated agreement. Therefore, the Development Plan and Tax Increment Financing Plan has projections based on zero contribution from the three non-township entities which have opted out, and only currently contains revenues based on the Township property. If the agreements being negotiated with Kent County and GRCC are finalized, there may be additional revenues beyond those cited in the distributed materials.

Ferro stated as to the public improvements contained in the Plan, they are based on the outcome of the 2006 Ada Village Design Charrette process. The four categories of improvements are: 1) street systems, 2) pedestrian access/trail system expansion, 3) parks and civic spaces, and 4) public water and sewer facilities. Street systems changes include new street extensions between the village and M-21 and improvements to Bronson Street. A map of the proposed pedestrian access and trail expansion was included with the DRAFT Plan. A key element of the parks and civic spaces category is the acquisition of the Amway-owned property on the south side of M-21 that the Township has leased annually for the Fourth of July festivities. Although there are no specific public and water sewer projects contemplated at this time, it is anticipated that potential new development in the District in the future may need extension of water and sewer lines. In that case, the DDA may consider paying for such necessary extension as a potential incentive for new development in the District.

Tax increment revenue is anticipated to be the primary source of public funding for the DDA at this time. Although State Statute allows for property tax authority, the ordinance establishing the DDA prohibits it. Other potential funding sources include state and federal grant funds and private sector contributions. If there were a sufficient revenue stream created by future tax increment revenues, the DDA could potentially issue bonds for debt finance of improvements, although at this time there is no specific debt financing proposed.

According to statutory framework, the DDA Plan must be adopted and certified by ordinance no later than the fourth Monday in May in order for the DDA to capture incremental increase in the property tax base that occurred between the 2008 and 2009 assessments that were just done this spring. There is some tax increment within the last year that could potentially be captured by the DDA. The projection of the first-year revenues to the DDA is approximately \$8,000. Total 20-year capture based on growth projections is \$2.1 million

A proposed ordinance that would adopt the proposed Development Plan and Tax Increment Financing Plan had been distributed to the Board. Also distributed were a Resolution by the DDA Board approving the Plan and recommending adoption by the Board and a Resolution adopted by the Citizens' Council containing their comments and confirming that their review and comments on the proposed Plan are complete.

### PUBLIC COMMENT

Walt Jousma, Ada East Business Center, spoke about the need of protecting the river by extending water and sewer across the river because so many businesses are growing and are within 500 feet of the river. He asked that a study be done immediately and indicated that there may be potential funding from the stimulus.

At a question from the audience, Supervisor Haga clarified that this Public Comment was for any aspect relating to the Public Hearing to consider a Development Plan and Tax Increment Financing Plan for the Township of Ada Downtown Development Authority.

Stephen Ibanez, Greentree Farms, asked if the packets distributed to the Ada Township Board could be made available to the public prior to the meeting.

**Moved by Burton, supported by Rhoades, to close the public hearing to consider a Development Plan and Tax Increment Financing Plan for the Township of Ada Downtown Development Authority. Motion carried.**

### BOARD COMMENT

Clerk Burton asked Planning Director Ferro when the Township would enter into negotiations with GRCC and Kent County. Planning Director Ferro indicated that those negotiations were already underway and were approaching conclusion. In addition, there is no statutory deadline applicable to those negotiations; the Ada Township Board is not required to meet any deadlines related to those negotiations.

Trustee Smith asked Planning Director Ferro to explain the difference between an entity opting out and opting out with a voluntary contract. Planning Director Ferro explained that the law provides a specific procedure for opting out. If an entity does not opt out, their revenues are automatically captured. If they choose to opt out, they can still participate on a voluntary basis, but with more control over their participation. For example, in Kent County's case, they have a complicated policy governing their participation and it is a limited participation (less than the full capture required by law if they did not opt out).

### GENERAL TOWNSHIP BUSINESS

#### CONSENT AGENDA:

##### Approval of Minutes

April 27, 2009, Regular Board Meeting

##### Receive and File Various Reports/Communications

1. Supervisor Report-5/9/09; 2. Forest Hills Public Schools – Central Campus Site Project - 04/22/09; 3. MTA Legislative Update Fax - 04/24/09 & 04/17/09. **Moved by Rhoades, supported by Smith, to approve items on the Consent Agenda.** Trustee Smith asked for verification that her motion at the last meeting to reapply at the end of the project for the natural beauty designation for Bailey Road was included in the resolution. Supervisor Haga confirmed that was it had been included. **Motion carried.**

#### APPROVAL OF WARRANTS AND RECEIPTS

##### **PAY REQUEST 3, ROSELLE PARK ENTRY PROJECT – TWIN LAKES NURSERY**

Treasurer Rhoades presented Warrants and Receipts in the following amounts: Hand Checks: #101 \$1,861.64; #205 \$839.82; #208 \$778.91; #590 \$117.83; #591 \$117.84; Total All Hand Checks \$3,716.04. Warrants: #101 \$18,150.42; #205 \$38,198.20; #208 \$2,197.06; #590 \$6,378.49; #591 \$13,871.42; #592 \$383.52; Total Warrants \$79,179.11. Total All Checks and Warrants \$82,895.15. **Moved by Smith, supported by Burton, to approve the Warrant Report for May 11, 2008, in the amount of \$82,895.15.** There was a question by Trustee Smith regarding the meter exchange program on page 1. Treasurer Rhoades stated some of the meters were defective and they were sent in for rebuilding, which is a discounted cost as compared to new. **Roll Call: Yes - Westra, Smith, Rhoades, Burton, Haga. No - 0. Absent – Proos, Sytsma. Motion carried. Moved by Rhoades, supported by Burton, to approve payment #3 to Twin Lakes Nursery for the Roselle Park Entry Project in the amount of \$9,871.34. Roll Call: Yes - Smith, Rhoades, Westra, Burton, Haga. No - 0. Absent – Proos, Sytsma. Motion carried.**

### PUBLIC COMMENT

Bill Wood, 8060 Vergennes, queried if the Board would address the helicopter landing and take-off on the DeVos property at this session. Mr. Wood stated the matter had been up for a vote at the Board meeting a month ago, but it had been delayed. He urged the Board to address it the same night and to handle the matter in open session. After reviewing the Open Meetings Act, he felt this matter did not fall within the stipulated acceptable reasons for conducting a closed session.

Supervisor Haga this period was for Public Comment on items other than that which is on the agenda. He asked Mr. Wood to return with his comments during the Unfinished Business Public Comment period of the meeting, as the issue Mr. Wood was discussing was already on the agenda under Unfinished Business. Mr. Wood agreed.

Frank Hoover, 700 Marbury, stated he had been told he didn't qualify for membership on the DDA Board because only business owners and residents who live in the DDA District are eligible to serve. However, there are members currently on the DDA Board who do not reside within the DDA District.

Supervisor Haga clarified the statute allows for a mixture of residents and business members from the District along with a certain number of representatives from outside the District. Planning Director Ferro confirmed this was accurate.

### BOARD COMMENT

Clerk Burton introduced the new Recording Secretary, Kaye Johnson, to the Board.

Supervisor Haga noted Cleanup Day the previous Saturday had been successful. Although the number of vehicles was down, Ada Township had 414 vehicles and Cascade 320 vehicles. Two items of note: 1) there were two loads of electronic items and the electric items were estimated at a total of twice the previous year's volume of electronics (possibly due to the recycling of televisions) and 2) there was a very heavy load of yard waste delivered to the recycling facilities (may be due to residents canceling subscriptions to waste haulers to save money).

### UNFINISHED BUSINESS

#### FIRE DEPARTMENT REPLACEMENT PICK-UP TRUCK PURCHASE

At Supervisor Haga's request, Fire Chief DuVall presented this issue. The 1997 Chevrolet 3/4-ton pick-up truck used for eleven years to plow snow has developed a cracked frame. Experts have advised it should no longer be used to plow snow. However, even non-plowing activities involve heavy loads and cross-country work, so the vehicle is no longer viable for the Fire Department's needs. Quotes have been obtained from three dealerships for a 1-ton pickup truck with snowplow and the specifications have been provided to the Board. Fire Chief DuVall recommended some additional equipment for the truck, which was not included in the bids: a spray-on bed liner to provide protection for the intended long-life use of the vehicle, Fire Department stripe paint, and running boards. The light bar from the old vehicle will be re-used on the new vehicle. Harold Ziegler Ford submitted the lowest bid and met all specifications. The total package with the additional equipment is \$31,351.00.

Supervisor Haga inquired about the disposition of the 1988 Ford 1-ton Rescue Truck, which was recently replaced by a 2009 Suburban.

Fire Chief DuVall requested permission to place an ad in the Grand Rapids Press soliciting sealed bids submitted to the Clerk's Office by June 11<sup>th</sup> for the two vehicles and the vehicles should be sold "As Is" with no warranties.

**Moved by Rhoades, supported by Smith, to approve recommendation from Fire Chief DuVall to purchase the new pick-up truck from Harold Ziegler Ford which includes the snow plow equipment plus the add-on striping, spray-on bed liner, and running boards in the amount of \$31,351.00 and to authorize the disposition of the two department vehicles, the 1998 Ford 1-ton and the 1997 Chevrolet 3/4-ton pick-up to be advertised in the Grand Rapids Press "As Is - No Warranties".**

Trustee Westra suggested considering other avenues for advertising the vehicles' sale that may provide broader exposure and may be more targeted to the potential audience, such as an electronic format like Craig's List, or an online venue that specializes in the disposition of government surplus. Supervisor Haga agreed it was wise to explore other options.

Trustee Smith asked Fire Chief DuVall if the plow was budgeted for, or only the truck. Fire Chief DuVall explained the budget was only for the plow, as the original intention was to remove the plow from the truck and use the truck for grass fires. It was during the removal process the frame damage was discovered. Supervisor Haga said the truck cost would come from the new equipment budget.

Stephen Ibanez, Greentree Farms, noted the plow cost is almost half of the truck cost and asked if it would be less expensive to purchase the snowplow attachment separately from the truck, perhaps from an aftermarket supplier.

Fire Chief DuVall replied the snow plow was researched last year as a part of the budgeting process, and the Hoekstra Trucks snow plow quote was provided with specifications to the dealers for this truck bid so they would all have the information on the specifications we needed. All three dealers used Hoekstra's price.

Supervisor Haga clarified this is a front and rear plow.

Frank Hoover, 700 Marbury, pointed out there wasn't much potential cash value in the 1988 Ford 1-ton pick-up truck. He suggested donating the vehicle to a small, rural Fire Department in need. Supervisor Haga asked Fire Chief DuVall if he knew of any such Fire Department. Fire Chief DuVall stated he would look into this and it would be a great gesture if it could be done; there are departments that could greatly use it. Supervisor Haga suggested in view of the comments and in light of similar past donations the motion be amended to allow this. **Westra moved to amend the motion, supported by Smith, to authorize the**

**Chief to dispose of the 1988 Ford pick-up truck to a qualified rural Fire Department. Yes – 5, No – 0; amendment to the motion carried. Yes – 5, No – 0; Motion as amended carried.**

#### **NEW BUSINESS**

##### **ORDINANCE O-051109-1, ORDINANCE TO APPROVE A DEVELOPMENT PLAN AND TAX INCREMENT FINANCING PLAN FOR THE TOWNSHIP OF ADA DOWNTOWN DEVELOPMENT AUTHORITY**

**Moved by Westra, supported by Burton, to adopt Ordinance O-051109-1, which is the ordinance to approve a Development Plan and Tax Increment Financing Plan for the Township of Ada Downtown Development Authority. Roll Call: Yes – Rhoades, Smith, Burton, Westra, Haga. No – 0. Absent – Proos, Sytsma. Ordinance is adopted.**

##### **TOWNSHIP COMPUTER SERVER UPGRADE**

The Administrative Committee has reviewed the matter with the I.T. Consultant Jon Gibson and recommends upgrading the township computer server. I.T. Consultant Jon Gibson was present to explain the server situation and to answer any questions. The upgrade costs will be \$10,251, which includes \$6,411 for hardware and \$3,840 for labor. The capacity for the server is 51.6GB and the Township is at 49.3GB with 2.36GB remaining. The concern is the potential for a server crash due to approaching the capacity limit. **Moved by Rhoades, supported by Smith, to approve the Township Computer Server Upgrade in the amount of \$10,251.00.**

Trustee Westra asked I.T. Consultant Gibson if the server upgrade had been vetted against the upcoming BS&A.NET upgrade for compatibility, memory, requirements, and running SQL Server. I.T. Consultant Gibson affirmed those items had been taken into consideration. The server will have 4GB of RAM and just over 5GB of storage space. SQL Server with BS&A.NET platform recommendation is 2GB and the specifications are twice that amount. Trustee Westra asked what would be done with the older server after migration. I.T. Consultant Gibson said the usual recommendation was to keep it for one year in case there are any issues with the migration, but it was the Township's decision. Trustee Westra pointed out the migration should be handled well by the consultants and the server declines in resale value over that year. Supervisor Haga suggested requesting the Administrative Committee evaluate the decision to hold or sell the server once the project is completed. **Yes – 5, No – 0; Motion carried.**

#### **OPPORTUNITY FOR ADDITIONAL PUBLIC COMMENT**

Walt Jousma, 8120 E. Fulton, spoke about the critical necessity for sewer and water to be extended across the river. He stated one of his wells tested this year at 0.10 for arsenic, which is the federal government level for no more water for non-transient. He indicated he had been seeking this resolution for 17 years and it was a dire need. He stated there was a state grant that pays 90% of planning and engineering costs and asked for a study to be done. The need is growing as development is expanding.

Supervisor Haga indicated he was not aware of any grant but he will research it and the Board would pursue grants if available.

#### **UNFINISHED BUSINESS (CONTINUED)**

##### **MOTION TO PROCEED IN TO CLOSED SESSION TO DISCUSS LEGAL OPINION REGARDING TAKE-OFF AND LANDING OF HELICOPTER ON DEVOS PROPERTY**

To address frequent questions that have arisen in the past few weeks, Supervisor Haga asked Township Attorney, Jeff Ammon from Miller Johnson, to explain the reasons for and legal processes guiding proceeding into closed session. Attorney Ammon explained The Open Meetings Act provides the Township the option of simply discussing certain items in closed session, although actual decisions cannot be made in closed session. There is a list of the items eligible for discussion in closed session in the Open Meetings Act; one item on the list is materials which are exempt from disclosure under the Freedom of Information Act (FOIA). Because written legal opinions are exempt from FOIA, a closed session can be held to discuss a specific written legal opinion, although no other matters can be discussed, only the written legal opinion in question.

**Moved by Burton, supported by Rhoades, to proceed into closed session hearing to discuss legal opinion regarding take-off and landing of helicopter on DeVos property.**

#### **PUBLIC COMMENT**

Bill Wood, 8060 Vergennes, acknowledged it may be allowable to proceed into closed session, but indicated the Board should be

concerned with the perception of the Board by the public. He felt moving sensitive issues into closed session raises questions in the minds of the public. On a related note, he requested the Board consider per diem compensation instead of salary to address absenteeism.

### BOARD COMMENT

There was no Board Comment.

**Roll Call: Yes – Burton, Smith, Rhoades, Haga. No – Westra. Absent – Proos and Sytsma. Yes – 4, No – 1, 2 – Absent; Motion carried.**

The Board proceeded into closed session with Legal Counsel Jeff Ammon. The Board then returned immediately to the public meeting room.

**Moved by Rhoades, supported by Burton, to return from closed session to open session. Motion carried.**

Attorney Ammon explained a motion to move to closed session must be carried by a two-thirds majority of all elected and serving members, not simply a two-thirds majority of members present. The Ada Township Board has seven members, so five votes are required to move into closed session. The previous motion to move into closed session therefore did not have sufficient votes and so no closed session was held. Legal Counsel Ammon then explained the options: 1) discuss the matter again and take the vote to move to closed session again, 2) do not hold a closed session at this meeting and do not discuss the written legal opinion at this meeting, 3) vote to discuss the written legal opinion in open meeting and have council explain as much or as little as decided, or 4) vote to waive the attorney-client privilege attached to this particular communication and disclose the contents of the opinion. Any of those options can be exercised in any combination the Board chooses.

**Moved by Westra to discuss the matter in open session. Motion died due to lack of support.**

Clerk Burton raised the question of waiting until the next Board meeting, if the urgency did not require immediate action. Supervisor Haga noted the issue had been delayed already and additional delays were not necessarily fair to either the Board or the public, particularly if the issue was determined to be an enforcement issue. Haga concluded the Board must determine the next course of action.

Trustee Westra spoke to the comment made by the public earlier regarding the participation in the Board meetings; he expressed the view that those who aren't committed to it should seek other endeavors. Supervisor Haga agreed with the Trustee Westra's comment, but noted the Board is responsible both to the residents and the township as a whole from the standpoint of potential litigation relative to the matter of landings and take-offs of helicopters, not only at the DeVos property, but throughout the township. Westra asked both Legal Counsel Ammon and Planning Director Ferro whether there are ordinances in place to enforce this issue. Westra asked particularly on this point, as it was a question which had been raised by the public and he felt it did not reveal the contents of the privileged document. A motion to waive privilege would need to be passed to discuss the actual contents of the privileged document. Westra asked only for a determination of what the ordinance stipulates at this time.

Planning Director Ferro stated there are no zoning ordinances in violation with respect to landing helicopters on a property occupied by a single-family dwelling as an activity and use accessory to the residential use of the property. To his knowledge, that covers the landing of the helicopter at the DeVos property. The position of the Township expressed both to Mr. DeVos and publicly is that it is acceptable for him to do so. The only other possible ordinance violation is the noise ordinance that includes a standard which stipulates noise which is of such a character, quantity, duration and loudness as to offend the sensibilities of a reasonable person is unlawful. It is very subjective, but the Township has not concluded the activity violates that standard. To the knowledge of the Township, it has all been during daylight hours, not late night or very early morning, and hasn't been very frequent.

Legal Counsel Ammon agreed with Planning Director Ferro's summary. There is no ordinance currently that regulates landings or takeoffs by helicopters. As to the noise levels, it is a difficulty test under the ordinance due to the wording. If a noise ordinance is created that prevents aircraft from using Ada Township's air space, pre-emption issues are implicated as federal law does not allow other entities to regulate air space.

Treasurer Rhoades clarified there was a landing around midnight recently, which he felt might be considered outside a reasonable time frame.

Bill Wood, 8060 Vergennes, noted a person wanted to build closer to a lot line, they would be required to wait until approval was granted. Similarly, he stated the helicopter use should discontinue until this matter is resolved.

Supervisor Haga requested a motion for direction, in lieu of which he would adjourn the meeting.

Trustee Westra stated attorney-client privilege should be reserved for potential litigation issues, and the information regarding this topic did not fall within that category. In his view, the issue should be addressed publicly to seek reasonable answers and compromise.

Supervisor Haga noted a formal vote by the Board would be required to waive privilege. **Moved by Westra to waive attorney-client privilege on this legal opinion so the matter could be discussed publicly.** Trustee Smith stated this

information does hurt the Township if the matter moves to litigation.

Lloyd Paul, Pettis, asked if there be would opportunity for public input if attorney-client privilege was waived. Supervisor Haga said yes, as this was an agenda item.

Legal Counsel Jeff Ammon clarified the only thing that can be discussed in the closed session is what the content of the written legal opinion and what the legal options are; as soon as the discussion moves to consideration of the options or debate, the Board must return to open session.

**Motion to waive attorney-client privilege on this legal opinion so the matter could be discussed publicly died due to lack of support.**

**ADJOURNMENT**

The meeting was adjourned at 8:48 p.m.

**Respectfully submitted,**

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**Susan Burton  
Ada Township Clerk**

**RS/kj**