

SPECIAL TOWNSHIP MEETING

August 29, 2012
O'Fallon Township
801 E. State St.
O'Fallon, IL 62269

CALL TO ORDER at 9:00 A.M.

ROLL CALL

Supervisor Gary Ahle, Highway Commissioner William Peach, Town Clerk David M. Witter, Trustees: Jeff Bevirt, Kenneth Joseph and Gary Hursey; Deputy Town Clerk/Recorder Debbie Allsup and General Assistance Administrator/Recorder Sheri Heil.

Others present: Scott Brennan (Rite-Way Excavating), Road District employees: Gary Fohne, Jim Seipp, Dave Fritsch, Gerard Helldoerfer and Susan Parkinson.

A motion was made by Supervisor Gary Ahle to excuse Trustee Glenn Loyet from the meeting and seconded by Trustee Gary Hursey. Motion carried.

DISCUSSION OF BORCHERS LANE ROAD IMPROVEMENT PROJECT

Trustee Jeff Bevirt inquired if everything is completed on the project. Commissioner Peach stated only seeding, strawing, fertilizing and approximately 10 ton of rip rap is all that needed to be done. Bevirt addressed the last 2 change orders that have recently just been received by the board noted that change order #6 (6/18/12) is not signed by Commissioner Peach (owner), and change order #7 (8/20/12) is not signed by Rite-Way Excavating (contractor). Peach said he's sure that all change orders have been signed by all necessary parties and maybe the copies here were received in between the signatures. Supervisor Ahle asked Scott Brennan from Rite-Way to check and make sure all change orders are signed and correct.

Trustee Gary Hursey, for the record told Scott Brennan (Rite-Way Excavating) the board is not against paying them or anybody else for that matter. The board is legally bound to make sure payments are made out of the right accounts and the Highway Commissioner tends to not want to work within the rules of Illinois. Hursey explained that the Borchers Lane Improvement budget line item has X amount of dollars for the project and when it runs out, Peach wants to pay for items used on the project out of another line item. Hursey stated again that neither he, nor anybody else on the board has a problem with the work Rite-Way has done or with paying them for the work they have done. Hursey said they do have a problem with the Highway Commissioner who wants to just arbitrarily pay bills out of some other fund that the board cannot legally approve without the Highway Commissioner transferring the funds. Hursey continued to say that personally he feels that Commissioner Peach has no idea of what is coming. He did not know that change orders #6 and #7 were coming and he seems to be comfortable that if a bill comes across his desk, just pay it. Hursey said as a member of the board they cannot do that, and wants it on the record that they are not allowed to do that. Hursey asked Commissioner Peach if there are any more bills to pay for the Borchers Lane Improvement. Peach stated seeding, strawing, fertilizing and rip rap is the only things needed. Hursey asked if that will be in the form of another change order. Peach said no it is in the contract bid. Trustee Kenny Joseph asked if the contractor or road district will be finishing

the project. Peach said if the money is there, the contractor will do it. Joseph said the reason he asked is because township equipment and man power was out on Borchers Lane doing work back in July that Joseph believes should have been done by the contractor. Peach said he asked the contractor and the engineer if it would be alright if he did some of the work out there after they were done with the asphalt. Peach said his men hauled some dirt the first day and on the second day they got 20 loads of free dirt from a resident that was digging a swimming pool. Peach was using this to fill a ravine. Peach then referred to the project manual; Section 00710 page 12-18 paragraph 19.4: Prior to SUBSTANTIAL COMPLETION, the OWNERS, with the approval of the ENGINEER and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK. Paragraph 19.5: The OWNERS shall have the right to enter the premises for the purpose of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may caused by agents or employees of the OWNERS. Trustee Joseph stated that since the contractors removed the mailboxes, he thought they would be the one to put them back in place and not the township road district employees. Peach said the contractor was going to put the mailboxes back as an act of good faith, but there is nothing in the contract that says they have to. The mailboxes had to be removed to do the grade work and move the ditches back and that was understood as the contractor's job. When it came to putting them back, the contractor had not been paid in full for what they did, so they were not going to put the mailboxes back in good faith. Trustee Hursey asked Peach where the money is coming from if he wants to pay the contractor. Hursey continued that there is not enough money in the Borchers Lane Project line item so, if he wants to pay the contractor, there has to be a line item transfer. Peach said the transfer was disapproved at the last meeting. Supervisor Ahle responded to Peach that the board was not going to transfer money at last meeting; the board was trying to figure out why Peach was paying a bill to Christ Bros. for millings on Borchers Lane out of the Road Supplies line item. The auditors said this was incorrect, so Ahle said that if Peach would have done the transfer request of money from Contingencies to Borchers Lane, there would not have been a problem. Peach said that's what he was doing. The board responded that Peach tried to pay for materials used specifically on Borchers Lane out of Road Supplies. Peach again referred to the project manual; Section 99999 page 8-10 section 5-4-5: The Owner will provide all material for the 5" Bituminous Concrete Binder, including transportation to site. Unit bid price should include all labor necessary for installation of binder. Material and hauling costs should NOT be included in unit price. Peach said the only unit price in this project is the bid price that the contractor gave him. This manual was drawn up before anybody saw any bid specs. Hursey said that still doesn't answer where the money was going to come from when Peach ran out of money in that fund. Hursey continued with what Peach just recited from the project manual is just statutes or rules and has nothing to do with where the money is coming from. There is X amount of dollars for this project in Peach's funding called Borchers Lane; it's a line item that was voted on and approved a year ago. Hursey said if Peach wants to move money from Contingencies or General, or from his own back wallet, he can do that, but the board has to have the funds legally moved before Peach presents a bill. Peach believes that since the Section he just read states that the millings should not be included in the contractor's unit price, this means he does not have to pay it out of the Township budgeted line item Borchers Lane. Supervisor Ahle reminded Peach of the meeting on April 18, 2012 where Peach stated in Unfinished Business: the project may be running real close with the figures and what is in the budget because of "change orders" that needed to be done. Peach said at that meeting he may possibly have to move some line item money in order to finish the project. Ahle asked how come he did not do this. Peach said at that time he didn't have to. Ahle said it should've been done because Rite-Way was not able to be paid in full because there was not enough money in the line item. Peach said there was enough money there until they (board) took the payment originally tagged for Road Supplies and moved it to Borchers Lane. He continued to say an invoice for millings from Christ Bros. was for projects in the future. He did have some of the millings hauled by the road district from Christ directly out to Borchers Lane. Peach continued that by the road district doing this, it is part of Road Supplies. Bevirt stated that some of the millings were used on Borchers Lane and because of that; the auditors' instructed that part of the invoice be taken out of Borchers Lane. Peach said they have never documented materials to any certain place in the township. Bevirt agreed with Peach in

regards to maintenance of roads and stockpiling supplies for maintenance but, this is a contracted project and the materials and road district time should be a part of the project funds. Trustee Joseph agreed with Bevirt's comment. Peach's response is the employees will be paid whether their sitting on their butt in here or out and about. Trustee Hursey asked if they can just go back to the bids and the funds. There is a fund called Borchers Lane which Peach agreed. Hursey asked Peach how many transfers of money did Peach put in that fund above what the board voted on originally before the 7 change orders they now have. Hursey continued that he is sure there were no transfers of money even with the change orders which definitely increased the cost of the project. Hursey said the changes were necessary, no problem, but now the money has run out, just do a transfer and be done. Peach still contends there was enough money until the board and auditors moved a portion (\$3276.00) of the Christ Bros. invoice from Road Supplies to Borchers Lane. Bevirt's responded that today Peach wants to transfer \$20,000 to complete the project. Trustee Joseph questioned Peach about the auditors having an issue about what fund Peach wants to move the money from. Peach said they received a letter from the auditors stating he can use some Road and Bridge Funds because of the money that is in there. Peach asked Deputy Clerk Debbie Allsup where the letter was. Allsup asked what letter Peach was referring to because she didn't know what he was talking about. Peach said Allsup spoke about a letter from the auditors stating it was good that Peach could use that money for other things. Allsup corrected Peach and said for engineering, it can come out of Road and Bridge Fund and went to get the letter. Peach was reading the Transfer of Appropriation where the request is coming from a line item (#6901) in Permanent Road Fund and going into a line item (#6305) also in Permanent Road Fund. Trustee Bevirt said he believes what Trustee Joseph is referring to by what the auditors said is regarding the invoice to Christ Bros. and not the money transfer. Peach said the board cannot take that payment out of Borchers Lane. If the board has a problem with the line item Peach wants to pay out of, then don't pay it. Peach continued that the bills he presents are supposed to be accepted or denied as presented, you (board) cannot take it and change it from one line item to another like what happened. Hursey told Peach that's what he was doing. Bevirt said they didn't change the line item, it was because Peach wanted to pay for Borchers Lane materials out of Road Supplies is why the board was not approving it. Peach said the board transferred it. Hursey, Joseph and Bevirt said it needed to be transferred so they did not approve payment. Peach said at that meeting, the board said if the payment (Christ Bros.) came out of the Borchers line item along with the Rite-Way payment (\$99,927.34), the line item would come up short so the board wasn't paying either one of them. Peach said it (Christ Bros.) should have never come out of that line item (Borchers) to start with. If it's wrong it should've been dealt with according to me in that line item. You're (board) not allowed to transfer that stuff because the bills is made up and that's not the way they were presented. Hursey said they can't pay a bill out of a zero balance either. Peach said that has nothing to do with that. The trustees said it does. Hursey asked Peach who he thinks he is to write a check when there is not enough money to cover it. Peach said he didn't write a check. Hursey said that is what Peach is trying to do. Peach said with the transfer he can. The board said they don't have a problem with the transfer that is being presented today. Peach said the transfer was brought up last time. Bevirt reminded Peach that at the last meeting, there was an overpayment discrepancy and that's the reason why the board tabled the transfer. Peach said last time they (board) had no authority to take \$20,000 and transfer. Any transfer changes have to be made by the Highway Commissioner. Ahle asked Peach if that is what he is doing today, asking for a line item transfer to Borchers Lane Project. Peach responded he is ready to do it. Peach went on to say that the transfer is coming out of Permanent Road. He said Ahle stated it was coming out of the Bridge Fund. Ahle responded he never mentioned the Bridge Fund. Peach told Ahle he mentioned the Bridge Fund a few minutes ago (he didn't) and that's why Peach looked up the transfer request to make sure where the money was coming from and it's coming out of Permanent Road. Ahle apologized to the board if he mentioned the Bridge Fund while Peach mumbled Ahle should listen to the tape. After that comment, Ahle told Peach he should watch what he says sometimes because it can come back and bite him. Peach's response to Ahle was "yeah, you too". Ahle said he doesn't like callous threats and Peach quipped back that it's not a threat. Hursey continued on about accusations being made somewhere that the board did not want to pay the contractor and should maybe sued. Hursey went on to say that nobody in the board room doesn't not want to pay the bills, there is money to pay the bills, there just has to be a

transfer and it's done. Bevirt asked Peach what he wants to do. Peach answered he has to transfer the money with the way things are going.

Trustee Gary Hursey made a motion to approve the Transfer of Funds in the amount of \$20,000 out of Contingencies Line Item into the Borchers Lane Improvement Project Line Item as presented in the Transfer of Appropriation and seconded by Trustee Jeff Bevirt.

Trustee Kenny Joseph questioned at the last meeting when Commissioner Peach wanted to transfer money, the board said he could not transfer out of which fund. Supervisor Ahle responded that Peach was not transferring money at that time. Peach was trying to pay a bill for materials that went on to Borchers Lane out of another line item other than Borchers and the board did not approve it because they were not allowed to according to the auditors. Now, Peach is requesting a transfer of funds to go into the Borchers Lane line item so there is enough money to pay the bills. Peach still contends he is allowed to do what he originally wanted.

Roll Call: J. Bevirt - aye; G. Ahle - aye; K. Joseph - aye; G. Hursye - aye. Motion carried.

PUBLIC INPUT

None.

APPROVAL OF BILLS REGARDING THE BORCHERS LANE ROAD IMPROVEMENT

Trustee Jeff Bevirt made a motion to approve the payment bills regarding Borchers Lane Project as presented and seconded by Trustee Gary Hursey.

Trustee Bevirt also apologized to Rite-Way for the delay in paying them and said they did a good job.

Deputy Clerk Debbie Allsup confirmed that they are only paying what is owed as of today in the amount of \$12,895.00 to Rite-Way Excavating.

Roll Call: J. Bevirt - aye; G. Ahle - aye; K. Joseph - aye; G. Hursye - aye. Motion carried.

ADJOURNMENT

A motion was made by Trustee Kenneth Joseph to adjourn the Highway Commissioner's meeting and seconded by Supervisor Gary Ahle. Motion Carried.

Meeting adjourned at 9:28 A.M.

Respectfully submitted by:

David M. Witter
Town Clerk