

MINUTES OF THE REGULAR MEETING OF THE CHARTER TOWNSHIP OF SHELBY
SIDEWALK COMMITTEE HELD ON TUESDAY, MAY 12, 2015 IN THE LOWER LEVEL
CONFERENCE ROOM, 52700 VAN DYKE, SHELBY TOWNSHIP, MICHIGAN.

The meeting was called to order at 5:00 p.m. by Craig Cowper.

Members Present: Richard Kolasinski, Stan Grot, Craig Cowper, Grant Golasa, Phil
Lauwers

Members Absent: **Carol Thurber, Township Engineer's Office (excused)**

APPROVAL OF MINUTES

MOTION by Golasa, supported by Lauwers, to approve the minutes of the April 14, 2015 meetings as submitted.

Motion carried.

BUSINESS FROM THE FLOOR

No visitors present.

ENGINEER'S REPORT

Ms. Thurber sent a memorandum which provided an update on several topics:

- a. Schoenherr sidewalk gaps: DPW is in the process of obtaining easements. The proposed easement information has been sent to the title company for ownership verification. FKA is in the process of revising four of the easements which DPW found inconsistencies. DPW is also working with the Assessor to come up with an equitable land value for the good faith offers. They expect to have the value worked out by the time the owner verification is returned from the title company. Once those two steps are completed, documents will be sent out with good faith offers to the property owners.
Submitted to Macomb County Department of Roads for Approval (have not received comments)
Received comments from Macomb County Soil Erosion – addressing Shelby Road sidewalk will be bid and constructed in 2015. The RFP is out for the contractors for sidewalks.
- b. Shelby Road Sidewalk (North of 22 Mile): This project should be placed on hold for the time being. The Macomb County Department of Roads (MCDR) is considering placing fill and removing the existing roadway bridge, which will eliminate the need for a pedestrian bridge. See the attached email from Shannon Filarecki to the Township Board members.
- c. 2015 Sidewalk Maintenance Program: Project bid opening was April 29, 2015. Lowest responsible bidder is Luigi Ferdinandi & Son. Mr. Wood is in the process of obtaining opinion regarding sidewalk ramp construction. This item should be before the Township Board in the June meeting.

TOWNSHIP PLANNER'S REPORT

Mr. Wynn was not present.

OLD BUSINESS

a. 2015 Master Priority List Review

No new business to report.

b. Residents' Suggestions for Sidewalks

Mr. Brian Fairbrother was not able to attend this meeting. He will be invited to the June 9, 2015 meeting.

c. Shelby Township Clean Up Day

April 25, 2015 was the scheduled day for this activity. The Sidewalk Committee was presented with a certificate of appreciation and some seeds as a thank you gift.

NEW BUSINESS

a. Discussion of formation of Sub Committee for Easement acquisition Process:

The Committee decided a subcommittee was not needed. Discussion took place with DPW Director Dave Miller. Mr. Miller explained procedure of easement acquisition starting with engineers deciding where easement is needed. Property value will be reviewed with Assessing and value broken down into feet and factoring 20 percent. After verification of property ownership is established a letter of good faith will be sent. Resident will need to respond. If no response, Committee members may need to visit with resident.

Mr. Cowpert would like to present Sidewalk Committee billing at every meeting.

b. Discussion of Ordinance Amendment Proposal

The following is a summary of the proposed changes that will be provided to the Township Board for their approval at the meeting on May 19, 2015.

Section 58-525 – Sidewalk Repair Fund –

The proposed amendments would delete this section entirely. Since the inception of the Sidewalk Repair Fund, a resolution to activate these provisions has never been authorized by the Township Board. As a result, such provisions have never been applied. The proposed amendments below are designed to provide an alternative method for the Township to contribute to the expense of sidewalk repairs under certain circumstances.

Section 58-528 (c) (2) c. – Obligations and Responsibilities –

The proposed amendments would make it easier and provide an incentive for property owners to use a township contractor to complete repairs. The administration believes that many property owners would appreciate the simplicity of using a Township contractor rather than hiring a contractor on their own. However, current provisions require the assessment of a 25% administrative fee, even if voluntarily participating, which often makes using the Township contractor more expensive. The proposed amendments waive the administrative fee where the property owner voluntarily agrees to have a Township contractor perform the repairs.

In addition to the above matter, the proposed amendments would allow payment over time, subject to terms and conditions set forth by Township Board resolution. The expense of sidewalk repairs can be financially difficult for property owners. These provisions are intended to lessen the financial burden by spreading the expense over time. The terms and conditions are yet to be developed at this time. If authorized by the Township Board, the administration will work with the Township Treasurer and Sidewalk Committee to create a resolution for consideration by the Board. It is important to note that the ordinance language is designed to make a payment program optional, solely authorized by Township Board resolution.

Section 58-528 – (c) (4) Obligations and Responsibilities –

The proposed amendments would enable the Township to contribute toward the expense of certain sidewalk repairs. From the experience of last year's program, we encountered various circumstances where assistance may be warranted. For example, applying the Federal American's with Disabilities Act, the repair of curb ramps require the installation of detectable warning pads, even if the curb ramp never had detectable warnings before. Such devices significantly escalate the expense of repairs. Under these circumstances, the township may agree to pay a portion of the expense. The terms and conditions for the Township to contribute would be set forth by Township Board resolution. The ordinance amendments are designed to make contributions optional, solely authorized by the Board. Further, the terms may be changed at any time.

If the proposed amendments are approved by the Board, the administration will work with the Sidewalk Committee to propose a resolution that provides for Township contributions under certain limited circumstances.

Sidewalk Ordinance – Additions and Deletions Draft

Sec. 58-525. - Sidewalk repair fund.

(a) Authorized. In addition to any other permits or fees required in this division, the township board shall establish by resolution a sidewalk repair fund fee charge. Upon the issuance of any permit under this division, in addition to the sidewalk permit fee, a sidewalk repair fund fee shall be required to be paid, which shall be deposited in a sidewalk repair fund which shall be used exclusively to repair sidewalks.

(b) No relief or modifying of liability. Establishment of this fund does not modify the obligation of the adjoining property owners with regard to repair and maintenance of sidewalks, nor does it limit or relieve persons installing such sidewalk from liability for defects in workmanship, materials, or the like.

(c) Authorization of repairs and maintenance. The township board, upon building official recommendation, may authorize expenditures for repairs and maintenance. With respect to appropriating the repair funds, the township board may but is not required to allocate 50 percent of the repair costs if the adjoining property owner agrees to pay half of the costs of the repair.

Sec. 58-528. - Obligations and responsibilities.

(a) Maintenance by landowner. It shall be the duty of every owner of land within the township to keep and maintain the sidewalk located upon the public right-of-way contiguous to such owner's property, or any other sidewalk located on such property of the owner that may be open to the public, in the following manner:

- (1) Free from any and all defects of any kind and nature and maintained in a condition of good repair under guidelines promulgated by the Township building department.
- (2) Free from any and all deposits of debris, rubbish or other objects, which might or could be hazardous to persons using the sidewalk.
- (3) Free and clear from accumulations of snow, sleet, ice and water.
- (4) Free from obstructions encroaching from adjacent property, including but not limited to overhanging tree limbs, bushes and the like.
- (5) Free from obstructions from adjacent property interfering with sight distance lines, at driveways, and other sidewalks intersecting such sidewalk. A clear and unobstructed sight triangle must be

created using a base leg from the sight obstruction to any sidewalk or driveways or sidewalks intersecting such sidewalk of 15 feet.

Exception - A property owner shall not be responsible for structural repairs to culverts, culvert extensions, and bridges constructed, designed and accepted by the Township in accordance with Section 58-527(b)(5).

(b) Repair of damage by developer. Sidewalks provided by the developer, which are damaged prior to occupancy, shall be repaired by the developer prior to the date of final occupancy; or, in the situation where repairs cannot be made, an adequate cash escrow for repairs shall be posted with the township. Section 58-529(a) shall apply.

(c) Repair or reconstruction by landowner. The owners of property jointly and severally shall, in accordance with subsection (a) of this section, maintain the sidewalk free from defects and encroachments and in good repair. When the sidewalk requiring repair or reconstruction is contiguous to more than one lot or parcel, costs of such repair or reconstruction shall be prorated on the basis of front footage repaired between the property owners. The failure of one abutting property

owner to undertake such repair where such sidewalk abuts more than a single parcel shall not excuse the remaining property owners from the duties established in this section. Property owners jointly and severally are liable pursuant to the following:

(1) Written notice. Upon determination by the township ordinance enforcement officer that any sidewalk or portion is in need of repair or elimination from encroachment, as described in subsections (a)(1) and (a)(5) of this section, the township ordinance enforcement officer shall serve a written notice upon the owners of the properties contiguous to the portion of such sidewalk requiring repair or elimination of encroachment, which notice shall be in substantially the form described in this subsection. Written notice shall not be required for matters described in subsections (a)(2), (a)(3) and (a)(4) of this section.

a. Determination of property owners. Owners of the property shall be determined from the most current township tax assessment roll.

b. Service of notice. Such owners shall be notified by delivery of a copy of such notice personally by leaving a copy of such notice with some person of suitable age and discretion who is a member of the household at the residence of such owner, or by mailing a copy of such notice first class mail, addressed to the owners of the property determined from the most current township tax assessment.

(2) Action by property owners. It shall be the duty of any owner of property upon whom service of the notice shall be made to cause the repairs or elimination of encroachments in accordance with the notice within 60 days from the date of the notice.

a. Failure to comply. If the owner shall fail to cause such work to be completed within such time and has not otherwise agreed in writing to said repairs being performed in a method approved by the township, the ordinance enforcement officer shall notify the township board of such failure upon the expiration of the 60 day period; and the township board shall thereafter cause the repairs and/or elimination of encroachments to be made and shall certify the total cost, together with an additional fee of 25 percent for engineering supervision and general administrative expense, to the township supervisor, who shall levy such amount against the property on the next succeeding tax assessment roll.

b. Lien against property. From and after the date of certification to the Supervisor by the township board, such amount shall constitute a lien upon the premises; and such tax shall be collected by the township treasurer in the same manner as other taxes and other assessments under the state's general property tax laws.

c. Option to use township contractor. Prior to the expiration of the 60 day compliance period noted above, the owner may commit to having the township contract the repairs without the assessment of the 25% administrative fee. The township board may allow the payment for such repairs to be made over time subject to terms and conditions set forth by board resolution.

(3) Proration of costs. When the sidewalk to be repaired is contiguous to more than one lot or parcel of land, the total cost of such repair, if repair is completed under this section, shall be prorated for assessment purposes on the basis of front footage repaired of the lots affected.

(4) Township contribution to repairs and maintenance. The township board may authorize expenditures for repairs and maintenance. The township board shall periodically set the terms, conditions and contribution amount by resolution. A contribution by the township

does not modify the responsibility of the adjoining property owners with regard to repair and maintenance of sidewalks.

(d) Snow, ice, debris and other obstruction removal. Failing to maintain pursuant to sections 58-528(a)(2), (3) and (4). Upon determination by the township ordinance enforcement officer that any sidewalk or portion is not free from the matters prohibited in subsections (a)(2), (3) and (4), the township ordinance enforcement officer shall provide notice by mailing to or posting on a lot or
Page 3

premises prior to issuing a municipal civil infraction or clearing the prohibited materials at the owners expense. The notice shall advise the owner that if violations of subsections (a)(2) and (3) are not removed within 24 hours in residential zones and 48 hours in commercial and industrial zones, the township will abate the violation at the owner's expense. In regards to violations of subsection (a)(4), the notice shall inform the owner that if violations are not removed within seven days, the township will abate the violation at the owner's expense. Failure to receive a notice does not eliminate the owner's responsibility for removal of prohibited materials, municipal civil infractions or debts under this article.

(1) If any owner shall neglect or fail to clear the prohibited materials on sidewalks adjoining such lot or premises, as stated in subsection (a)(2), (3) and (4), the owner shall be responsible for a municipal civil infraction pursuant to section 1-7 of this Code.

(2) In addition to or in lieu of the municipal civil infraction being issued, the building official may cause the prohibited material to be cleared and or removed at the owner's expense. The expense of such work shall become a debt to the township and shall be collected as any other debt to the township.

(3) Emergency. Notwithstanding the above provisions, if prohibited materials have accumulated as such that in the sole discretion of the building official or his designee, it becomes necessary to immediately remove the accumulations for the health, safety and/or welfare of the public, the building department shall be authorized to deploy its contractors to remove the accumulations as it deems necessary. The expenses of the clearing shall be billed to the property owner.

(4) Waiver of payments. The building director or any other person authorized by the township board of trustees may, upon timely request of an owner, waive the payment of such expenses, cost and fees, or any portion, if such payment should and ought to be waived because of hardship.

**CHARTER TOWNSHIP OF SHELBY
MACOMB COUNTY, MICHIGAN
ORDINANCE NO. _____**

AN ORDINANCE TO AMEND CHAPTER 58 ARTICLE IX OF THE CHARTER TOWNSHIP OF SHELBY CODE OF ORDINANCES BY ELIMINATING THE UNUSED SIDEWALK REPAIR FUND, PROVIDE AN INCENTIVE TO PARTICIPATE IN THE TOWNSHIP SIDEWALK PROGRAM AND ENABLE THE TOWNSHIP TO CONTRIBUTE TOWARDS THE EXPENSES FOR SIDEWALK REPAIRS IN CERTAIN INSTANCES AND FOR REPEALEAR, SEVERALABILITY, PENALTIES AND EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE CHARTER TOWNSHIP OF SHELBY:

Section 1. Chapter 58, Article IX, Section 58-525 of the Code of Ordinances, Charter Township of Shelby, Michigan shall be deleted in its entirety.

Section 2. Chapter 58, Article IX, Section 58-528 of the Code of Ordinances, Charter Township of Shelby, Michigan shall be amended to read as follows:

(a) Maintenance by landowner. It shall be the duty of every owner of land within the township to keep and maintain the sidewalk located upon the public right-of-way contiguous to such owner's property, or any other sidewalk located on such property of the owner that may be open to the public, in the following manner:

(1) Free from any and all defects of any kind and nature and maintained in a condition of good repair under guidelines promulgated by the Township building department.

(2) Free from any and all deposits of debris, rubbish or other objects, which might or could be hazardous to persons using the sidewalk.

(3) Free and clear from accumulations of snow, sleet, ice and water.

(4) Free from obstructions encroaching from adjacent property, including but not limited to overhanging tree limbs, bushes and the like.

(5) Free from obstructions from adjacent property interfering with sight distance lines, at driveways, and other sidewalks intersecting such sidewalk. A clear and unobstructed sight triangle must be created using a base leg from the sight obstruction to any sidewalk or driveways or sidewalks intersecting such sidewalk of 15 feet.

Exception - A property owner shall not be responsible for structural repairs to culverts, culvert extensions, and bridges constructed, designed and accepted by the Township in accordance with Section 58-527(b)(5).

(b) Repair of damage by developer. Sidewalks provided by the developer, which are damaged prior to occupancy, shall be repaired by the developer prior to the date of final occupancy; or, in the situation where repairs cannot be made, an adequate cash escrow for repairs shall be posted with the township. Section 58-529(a) shall apply.

(c) Repair or reconstruction by landowner. The owners of property jointly and severally shall, in accordance with subsection (a) of this section, maintain the sidewalk free from defects and encroachments and in good repair. When the sidewalk requiring repair or reconstruction is contiguous to more than one lot or parcel, costs of such repair or reconstruction shall be prorated on the basis of front footage repaired between the property owners. The failure of one abutting property owner to undertake such repair where such sidewalk abuts more than a single parcel shall not excuse the remaining property owners from the duties established in this section.

Property owners jointly and severally are liable pursuant to the following:

(1) Written notice. Upon determination by the township ordinance enforcement officer that any sidewalk or portion is in need of repair or elimination from encroachment, as described in subsections (a)(1) and (a)(5) of this section, the township ordinance enforcement officer shall serve a written notice upon the owners of the properties contiguous to the portion of such sidewalk requiring repair or elimination of encroachment, which notice shall be in substantially the form described in this subsection.

Written notice shall not be required for matters described in subsections (a)(2), (a)(3) and (a)(4) of this section.

a. Determination of property owners. Owners of the property shall be determined from the most current township tax assessment roll.

b. Service of notice. Such owners shall be notified by delivery of a copy of such notice personally by leaving a copy of such notice with some person of suitable age and discretion who is a member of the household at the residence of such owner, or by mailing a copy of such notice first class mail, addressed to the owners of the property determined from the most current township tax assessment.

(2) Action by property owners. It shall be the duty of any owner of property upon whom service of the notice shall be made to cause the repairs or elimination of encroachments in accordance with the notice within 60 days from the date of the notice.

a. Failure to comply. If the owner shall fail to cause such work to be completed within such time and has not otherwise agreed in writing to said repairs being performed in a method approved by the township, the ordinance enforcement officer shall notify the township board of such failure upon the expiration of the 60 day period; and the township board shall thereafter cause the repairs and/or elimination of encroachments to be made and shall certify the total cost, together with an additional fee of 25 percent for engineering supervision and general administrative expense, to the township supervisor, who shall levy such amount against the property on the next succeeding tax assessment roll.

b. Lien against property. From and after the date of certification to the Supervisor by the township board, such amount shall constitute a lien upon the premises; and such tax shall be collected by the township treasurer in the same manner as other taxes and other assessments under the state's general property tax laws.

c. Option use township contractor. Prior to the expiration of the 60 day compliance period noted above, the owner may commit to having the township contract the repairs without the assessment of the 25% administrative fee. The township board may allow the payment for such repairs to be made over time subject to terms and conditions set forth by board resolution.

(3) Proration of costs. When the sidewalk to be repaired is contiguous to more than one lot or parcel of land, the total cost of such repair, if repair is completed under this section, shall be prorated for assessment purposes on the basis of front footage repaired of the lots affected.

(4) Township contribution to repairs and maintenance. The township board may authorize expenditures for repairs and maintenance. The township board shall periodically set the terms, conditions and contribution amount by resolution. A contribution by the township does not modify the responsibility of the adjoining property owners with regard to repair and maintenance of sidewalks.

(d) Snow, ice, debris and other obstruction removal. Failing to maintain pursuant to sections 58-528(a)(2), (3) and (4). Upon determination by the township ordinance enforcement officer that any sidewalk or portion is not free from the matters prohibited in subsections (a)(2), (3) and (4), the township ordinance enforcement officer shall provide notice by mailing to or posting on a lot or premises prior to issuing a municipal civil infraction or clearing the prohibited materials at the owners expense. The notice shall advise the owner that if violations of subsections (a)(2) and (3) are not removed within 24 hours in residential zones and 48 hours in commercial and industrial zones, the township will abate the violation at the owner's expense. In regards to violations of subsection (a)(4), the notice shall inform the owner that if violations are not removed within seven days, the township will abate the violation at the owner's expense. Failure to receive a notice does not eliminate the owner's responsibility for removal of prohibited materials, municipal civil infractions or debts under this article.

(1) If any owner shall neglect or fail to clear the prohibited materials on sidewalks adjoining such lot or premises, as stated in subsection (a)(2), (3) and (4), the owner shall be responsible for a municipal civil infraction pursuant to section 1-7 of this Code.

(2) In addition to or in lieu of the municipal civil infraction being issued, the building official may cause the prohibited material to be cleared and or removed at the owner's expense. The expense of such work shall become a debt to the township and shall be collected as any other debt to the township.

(3) Emergency. Notwithstanding the above provisions, if prohibited materials have accumulated as such that in the sole discretion of the building official or his designee, it becomes necessary to immediately remove the accumulations for the health, safety and/or welfare of the public, the building department shall be authorized to deploy its contractors to remove the accumulations as it deems necessary. The expenses of the clearing shall be billed to the property owner.

(4) Waiver of payments. The building director or any other person authorized by the township board of trustees may, upon timely request of an owner, waive the payment of such expenses, cost and fees, or any portion, if such payment should and ought to be waived because of hardship.

Section 3. SEVERABILITY

If any section, subsection, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a

separate, distinct, and independent portion of this Ordinance, and such holding shall not affect the validity of the remaining portions of this Ordinance

Section 4. REPEAL

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed

Section 5. EFFECTIVE DATE

This Ordinance shall be effective thirty (30) days from the date of publication hereof.

CERTIFICATION

I hereby certify the foregoing is a true and complete copy of Ordinance No.

_____ duly adopted by the Board of Trustees of the Charter Township of Shelby at a Regular Meeting held on _____, 2014, pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, as amended, and that the minutes of said meeting were kept and will be made available as required by said Act.

STANLEY GROT,
TOWNSHIP CLERK

Introduction Date:

First Publication Date:

Adoption Date

Second Publication Date:

Effective Date:

CORRESPONDENCE

a. Review of correspondence with committee.

A correspondence was received from a resident on the eastside of Shelby Road. Mr. Cowper will contact resident and present at next month meeting.

ADJOURNMENT

MOTION by Golasa, supported by Kolasinski, to adjourn the meeting.

The meeting adjourned at 5:35 p.m.

Craig Cowper, Chairman

mp