

Joint Township Board Meeting
Acme Township, Charter Township of East Bay, Charter Township of Garfield
Garfield Township Hall
3848 Veterans Drive
Traverse City, MI 49684
Monday, March 20, 2006, 7:00 p.m.

Meeting called to Order at 7:04 p.m.

Acme Township Board Members

Present: D. Dunville (7:06 p.m.), B. Kurtz, F. Zarafonitis
Absent: B. Boltres, W. Kladder, P. Scott, E. Takayama
Staff: S. Corpe, Township Manager/Recording Secretary
C. Bzdok, Legal Counsel

- 1. Review and Approval of Agenda – Conflict of Interest:**
- 2. Grand Traverse Metro Fire Department – Analysis of PA 57 of 1988 organization and re-organizing Grand Traverse Metro Fire Department under PA 57 of 1988:** Metro Chief Pat Parker noted that the need for reorganization of Metro Fire has been mentioned to each township board separately. He has provided a proposed draft of new Articles of Incorporation, along with a memorandum from Smith, Haughey, Rice & Roegge analyzing reorganization alternatives. Also provided this evening is a list of other communities with fire districts which just arrived today. Deputy Chief Brad Schnaitd and many of the members of Metro Fire were also present.

Butch Broad, East Bay Township asked about the history of fire district enabling legislation. (tape). Chief Parker stated that one of the individuals who wrote PA 57 came to Traverse City and researched Metro Fire as their model. The individual stated that they recognized that the Metro Fire agreement did not have a basis in an enabling act, which is why PA 57 was written.

Beth Friend, East Bay Township asked if Chuck Judson from Smith, Haughey, would go over the reorganization options available. Mr. Judson began by discussing how the existing agreement was set up. In 1981 a contractual relationship was formed between three townships under an intergovernmental cooperation agreement. This agreement states that real estate and equipment will be held in the name of Metro Fire Department, but there is very little definition contained in the document overall. The agreement references a statute that allows intergovernmental agreements, but some of the other legal references in the document seem to be dead ends. When the agreement was created, PA 33 existed but not PA 57. Under PA 33 several townships can agree to jointly form a fire service, but assets remain owned by the individual townships. Mr. Judson stated that while the intergovernmental agreement created an intent to form the joint fire department, Metro was never formally constituted as a corporation or other separate legal entity. Under PA 57 a joint authority is formed that has autonomy and can own assets. Since the authority would have separate legal status, it can also assume liability related to its operations rather than having that liability remain with the townships. Mr. Judson believes that the key difference between the

acts is that under PA 33 the operation is a joint endeavor in which each township has an interest, but the townships retain responsibility for operations not specifically delegated to the joint endeavor. The existing agreement delegated significant responsibility to Metro Fire. Under PA 57 a separate legal organization with independent status as a governmental entity under Michigan law is created, removing responsibility and liability from the township. This new organization would also administer its own budget. Existing individual township special assessment districts (SADs) could be continued to provide contributions to the new entity. Mr. Judson stated that there is a bill pending in the State House that would amend PA 57 to allow townships or other governments forming a fire protection authority to have input into ordinances related to fire safety. PA 57 also permits the authority to levy its own millage subject to approval of a majority of voters within the entire authority jurisdiction. At present Metro is suggesting that each township continue funding through existing PA 33 SADs, and that a millage election would only be held if necessary at some future point in time. A Fire Board would run the joint authority and establish the budget.

Under PA 33 multiple townships can join together to purchase fire equipment and operate a fire protection service. They appropriate funds annually. Townships may adopt a fire protection ordinance and have fire codes, organize and equip the department, and appoint a chief. Under PA 57 municipalities other than townships can join together to create an authority that is a separate legal entity that can sue and be sued and operates separately from the member townships, that can own property, pursue eminent domain and levy up to 20 mills subject to voter approval. Under either model a township can withdraw from a joint enterprise, but under PA 57 if bonds or other debt obligations have been incurred while a township was a member, if the township withdraws it must continue making its share of the debt payments until the debt is retired. Under PA 33 each member township must agree to back bonds or loans; Metro Fire does not have the ability to independently make a commitment to a bank. Insurance coverage is also impacted; when dealing with the accident that happened last year the insurance company expressed concern regarding the limitations of the existing agreement.

Glen Lile, East Bay Township Supervisor, observed that under PA 57 in a way the member townships are eliminated from impacting the joint authority beyond appointing members to the authority board. To him, the question is largely whether the three townships are comfortable having Metro remain a three-township partnership or would prefer having Metro become an entity separate from them. He is concerned about creating a situation where the townships are expected to provide funding but will have no say over what the authority does, and asked if there is a way to write the articles of incorporation such that the townships will retain a meaningful say over what happens. He is worried that the representatives of a community could be forced off the authority board. Mr. Judson stated that it would require unanimous approval of all participating township to be able to amend the articles of incorporation that specify board membership or compensation issues as examples.

Mr. Judson stated that he does have a concern about the draft articles provided. He believes the proposed funding mechanism could be written to provide for a cap on the budget and funding, and perhaps a cap on permissible debt levels for the authority. It

could be written so that if the joint authority board wanted to exceed a specified budget level, approval from each member township Board would be required. This would permit the townships to retain tighter control over the financial commitments being made while obtaining what he sees as the benefit of conveying the liability and fire code responsibilities to the authority rather than keeping them vested in the township. He cited the District Library as a successful local joint authority, and stated that the airport is a similar example of cooperation between Leelanau and Grand Traverse Counties.

Mr. Lile noted that his township is unique among the three townships in having its own ambulance service, and asked what would happen to it if PA 57 structure is adopted. Mr. Judson stated uncertainty as to how much of East Bay's existing PA 33 SAD funding is allocated to the ambulance service as opposed to fire service. He believes that the proposed articles provide for keeping funding the same as it is now. He does not believe the East Bay ambulance service is specifically addressed in the agreement at this time. Mr. Judson, as legal counsel to Metro Fire, would like to see a situation occur where banks can look at Metro funding for longer than 1-year periods as the basis for loans, but townships will not have the potential to have their general funds encumbered. He reiterated that specific language can be drafted into the articles to ensure that townships retain a level of control over funding and expenditures.

Mr. Judson believes it important to take steps to update an outdated existing agreement in some form or another. He believes there has been an intent expressed for Metro to acquire and own real estate, and the agreement needs to be updated to allow this to occur under Metro's name. In his view PA 57 would provide both Metro and the townships a needed level of independence of one another, and that the new agreement can be drafted that can provide the townships with the level of control they feel they need over the size of Metro's budget and ability to take on debt without further approval.

Mr. Judson called upon Chief Parker to address his perception of operational limitations under the current situation. Chief Parker believes that the member townships have told him over the past year that they are comfortable in general with the way Metro operates. Up until recently everyone thought Metro Fire was a separate legal governmental entity, and the realization that they are not has raised concerns. One involves employees, who have not had Social Security taxes taken from their pay because they were thought to work for a governmental entity. The IRS is examining the situation and may end up requiring retroactive contributions to Social Security for them. He believes PA 57 would allow the current operational structure to continue. Metro is proposing to continue to operate only fire services, not taking on the ambulance. He realizes that there is a fear that the level of millage requested might grow, and stated that Metro recognizes that raising the current millage levels significantly would cause problems. Right now their average response time to emergencies is over 8 minutes, whereas the preferred standard and the one that saves lives and property is under 5 minutes. Metro needs more staffing and to strategically locate fire stations to accomplish this. The proposed agreement would create a 7 member board, with 2 representatives appointed by each township and those 6 individuals choosing the seventh member. The proposed language has been used before as a model in other communities.

Chief Parker stated that Metro's strategic plan was not put in place simply to create more fire stations and jobs, but to position Metro the best way possible to respond effectively to emergency service needs. Losses are down 93% since the Fire Prevention Bureau was instituted, a statistic to be proud of because the best way to fight fires is to prevent them. Most of the current full-time staffing is in fire prevention. The current mostly volunteer firefighting force cannot continue to effectively meet needs and meet the under 5 minute response goal. In the past Metro has generally paid cash for the equipment they bought, but going forward he does not believe this will be possible. A tanker truck is on order right now that cannot be paid for without financing. New fire stations will cost up to \$2 million each.

Susan LaRose, East Bay Township asked again what would happen to the East Bay Township ambulance service. Chief Parker indicated that right now Metro is looking at managing fire service only, so East Bay would have to continue operating the ambulance service separately and set aside funds for it. In the future Metro may look at ambulance service, but right now they work cooperatively with NorthFlight. PA 57 allows for all emergency services, including ambulance and police.

Suzanne Courtade, East Bay Township Clerk, asked if East Bay would still be allowed to house their ambulance service at Metro Station 9; Chief Parker confirmed this. Operations would continue seamlessly, and Metro currently plans to be funded by the three townships' individual PA 33 SADs. If the townships decided to discontinue use of their PA 33 funds for Metro in the future (perhaps retaining the SAD for police or other emergency services), Metro could ask the voters for a millage directly.

Ms. Friend feels it is obvious a new agreement needs to be made. The township boards must decide whether they prefer the PA 33 or PA 57 model. Once that decision is made, she will have additional specific questions. Chief Parker indicated that this evening he is hoping for an indication of whether the townships are willing to proceed under the PA 57 model, but are not looking for ratification of the articles of incorporation this evening. Once Metro knows which model for cooperation will be followed, all three townships can have continued discussion as to the precise details of the agreement.

Mr. Judson stated that if the townships are committed to keeping Metro intact, he hopes each will take a strong look at using PA 57, the most recent enabling legislation the state has provided. Then specific concerns about using that model, particularly as to control over funding, can be discussed and resolved to mutual satisfaction. There have been several versions of the proposed articles already; Chief Parker and Deputy Chief Schnaidt have worked hard in this regard and have utilized feedback from the townships already. Mr. Judson supports some funding limitations and recognizes that issues of representation on the authority board and funding formulae must be discussed.

Mr. Broad perceives that by pursuing PA 57 at the current time the funding mechanism would remain the same, their representation on the fire authority board would increase, and Metro would be able to proceed with real estate purchases. Mr.

Lile observed that right now each township must approve the Metro Fire budget and then provide a millage level that supports their share of the total, but under PA 57 the township would be liable for the funding without approving the budget.

Bzdok observed that there are several levels of decisions to be made. He perceives that all three township boards agree that Metro should be given the tools to continue as an entity, but that the decision as to whether it will be under PA 33 or PA 57 has yet to be made. He noted that the proposed motion in the packet provides for not only selection PA 57 but also adopting the proposed articles of incorporation. Bzdok suggested that several separate potential motions taking these steps separately would be helpful. He spoke to Mr. Judson the other day, and had a particular question about proposed Article 18 as to how the purchase of real estate/buildings is done. He feels like this language is similar to debt language and that perhaps it could be rewritten. Bzdok suggested that an appropriate course of action would be: 1) deciding which statute to use as a basis for further discussion; 2) negotiating the proposed articles of incorporation; 3) formally deciding to adopt a statutory method to proceed and 4) adopting final articles of incorporation. He agrees that there needs to be more discussion over how assets are currently considered to be legally owned – will it be considered that each township is contributing the equipment housed in their jurisdiction? If a township leaves the joint authority, what assets if any do they get to take with them and under what terms? Chief Parker stated that under the current agreement the intent existed to have all assets owned by Metro, and if one township left they would have to purchase their own equipment. Now it has become clear that the final steps enabling Metro to truly own the equipment were never taken. The current ownership of those assets is somewhat unclear. Bzdok stated that not only the question of existing assets but assets bought by the new entity are handled. What if the authority expands to five townships and three decide to leave? How are things divided up? What if the township exits the authority both still required to pay on incurred debt and without equipment?

As to the East Bay Board, Ms. Friend made a motion supported by Mr. Broad to indicate that East Bay would like to pursue further discussions based on the PA 57 model and working cooperatively with the other two townships and Metro Fire. The East Bay Board adopted the motion unanimously.

One of the Garfield Township Board members asked if this precise proposed articles of incorporation document had been adopted elsewhere. Chief Parker stated that each authorities articles are probably slightly different, but quite a few downstate townships have adopted articles based on this article. Another Garfield Board member, Joe (?) stated that he feels Metro is a well-run authority he would like to see have continue. However, he does not take the decision lightly and generally does not favor the creation of additional layers of government through authorities. He asked what percentage of Metro funding comes from each township. Chief Parker stated that Acme pays approximately 20%, East Bay 30% and Garfield 50%. The precise figures change year to year based on each townships' relative SEV. Metro is proposing that the funding formula remain the same initially. Joe asked why the proposed board representation model is equal between townships when the levels of funding are unequal. Chief Parker replied that this has been the subject of much discussion. PA 33 specifically requires two individuals from each member township,

so they proposed this model initially. Pointing to Article 15, Joe asked if the townships' funding is forced to match Metro's budget, or if Metro's budget must conform to township funding. Chief Parker stated that Metro would set a budget. Each township would set their funding level. If the townships did not offer enough funding to meet the budget, Metro would have to reassess their budget. Joe stated that while he wants to see Metro remain strong and grow, having the townships retain an appropriate level of control is important to him. If the townships retain approval of the Metro budget, their comfort level might be higher. The townships have to consider whether their constituents will be amenable to having another layer of government that has the potential to levy an additional tax on them.

Ms. Friend stated that she has thought about some of these issues. She is comfortable with PA 57 because of the way the authority board would be composed. One of her questions is how residents unhappy with the way the authority operates can directly reach the authority. Under the proposed model people on the authority board can be removed. Concerning a potential millage, the authority board would have to approve the millage request. If the people didn't like this, they could directly impact the board makeup.

Mr. Lile stated an understanding that the authority board would set the authority budget. The townships would no longer have the ability/requirement to approve the budget. It was observed that the requirement that the individual township boards approve the annual budget could be written in to provide additional township control over funding and spending.

Lee Wilson, Garfield Township Supervisor, noted that each township agreed to continue exploring the possibilities. He came this evening looking forward to learn more about what the other Metro townships were thinking from a variety of board members and not just from the other Supervisors. He stated that years ago under the County fire system all the townships would get together once a year to discuss the budget. Sometimes the meetings got interesting. By the late 1970's a clear division became apparent between more rural townships which needed a different kind of service than the more metropolitan townships. He believes we are at a crossroads again and more careful thought will be required as to how to proceed. Mr. Wilson noted that some draft articles have been provided as a starting point, and each township could review them with their legal counsel and think about what would work in terms of PA 57 vs. PA 33 or some hybrid of the two. The townships could then come together again to negotiate and build something mutually agreeable.

Kurtz stated that perhaps the process will not move as quickly as some parties would hope. He apologized for the lack of Acme Township quorum this evening, stating that the Board membership was polled and a quorum had been expected. Kurtz agrees that a plan has to be developed and implemented, and that each township should work with their attorneys and each other to come up with a plan.

Mr. Wilson had heard a lot of interesting points this evening, some of which he hadn't thought of before. He wants to have more discussion with his board that leads to a list of talking points that can be shared with Metro and the other townships in a few weeks. He would like Metro to know that they generally have the townships'

support, but there are many issues to be addressed and they must be addressed carefully. Points of mutual agreement can be drafted into a working document, and points of disagreement can be discussed further.

3. Public Comment:

Jim Olson is one of the founding members of the East Bay Township Fire Department and has been a volunteer for 47 years. He strongly recommends using PA 57. When there were funding worries in the past it was difficult. Then the PA 33 SAD was created and funding became less of an issue. It allowed them to develop and obtain new types of equipment that have been useful. He believes PA 57 can only help further. He has learned that there is a right way and a wrong way to prime a pump, and if done incorrectly the water doesn't flow. PA 57 is the right way in his opinion to prime the pump.

Meeting adjourned at 8:57 p.m.