

**MEETING MINUTES – BOARD OF TRUSTEES
NUNDA TOWNSHIP**

STATE OF ILLINOIS }
McHenry County } SS.
Township of Nunda }

The Board of Trustees met at the Nunda Township Town Hall, 3510 Bay Road, Crystal Lake, Illinois, on Tuesday April 9, 2024 at 7:25 p.m.

Meeting called to order at 7:25 p.m.

Township Clerk Smith recorded the following official business

The Pledge of Allegiance was recited at 7:00 Annual Town Meeting prior to Board meeting

Roll call answered by: Trustee: Rob Parrish, Trustee: Johanna Donahue, Trustee: Karen Tynis, Trustee: Tim Parrish, Supervisor: Leda Bobera-Drain. Also in attendance; Assessor: Mark Dzemske, Attorney: Eugene Bolotnikov and public.

Public Comment: None

Motion to review and approval of the Special Meeting dated February 8, 2024: Made by: Johanna Donahue; Seconded by: Karen Tynis. No Discussion. Voice Vote: All Ayes. Motion Carries.

Motion to review and approval of the regular board meeting minutes, dated Thursday March 14, 2024: Made by: Karen Tynis; Seconded by: Johanna Donahue. No Discussion. Voice Vote: All Ayes. Motion Carries.

Motion to Approve for Payment Township Warrants for April 9, 2024 in the amount of \$32,015.21. Made by: Karen Tynis; Second by: Tim Parrish. No discussion. Roll Call: Rob Parrish (Yes), Tim Parrish (Yes), Karen Tynis (Yes), Johanna Donahue (Yes), Leda Bobera-Drain (Yes). Motion carries.

Motion to Approve for Payment Township Warrants for April 9, 2024 in the amount of \$170,076.66. Made by: Johanna Donahue; Second by: Karen Tynis. Discussion followed. Motion not voted on.

Motion to Approve for Payment Road District Warrants for April 9, 2024 in the amount of \$122,548.06 motion excludes payments for Warrant for Kirby in the amount of \$12,203.90, Warrant for Attorney James Kelly in the amount of \$2,325.00 and Warrant for Bev & Ronald Johnson in the amount of \$34,000.00: Made by: Rob Parrish; Second by: Johanna Donahue. Discussion followed. Roll Call: Johanna Donahue (Yes), Karen Tynis (Yes), Tim Parrish (Yes), Rob Parrish (Yes), Leda Bobera-Drain (Yes). Motion carries.

Motion was made to Not Approve for Payment Road District Warrant for April 9, 2024 for Kirby in the amount of \$12,203.90: Made by: Rob Parrish; Second by: Johanna Donahue. Discussion followed. Roll Call: Tim Parrish (Yes), Karen Tynis (Yes), Johanna Donahue (Yes), Rob Parrish (Yes), Leda Bobera-Drain (No). Motion carries.

Motion to Approve for Payment Road District Warrant for April 9, 2024 for Attorney James Kelly in the amount of \$2,325.00: Made by: Johanna Donahue; Second by: Karen Tynis. Discussion followed. Roll Call: Johanna Donahue (Yes), Rob Parrish (Abstained), Karen Tynis (Yes), Tim Parrish (Yes), Leda Bobera-Drain (Yes). Motion carries.

Motion to Approve for Payment Road District Warrant for April 9, 2024 for Bev & Ron Johnson in the amount of \$34,000.00. Made by: Karen Tynis; Second by: Tim Parrish. Discussion followed. Motion not voted on.

Board discussed tabling Road District Warrant for April 9, 2024 for Bev & Ron Johnson and asked Attorney Bolotnikov for an opinion for this matter.

Attorney Bolotnikov explained that the Board does not have the authority to direct the Road District if it is budgeted & appropriated pursuant to state law.

Motion was made to table Road District Warrant for payment for April 9, 2024 for Ron & Bev Johnson in the amount of \$34,000.00: Made by: Johanna Donahue; Second by: Tim Parrish. Discussion followed. Roll Call: Johanna Donahue (Yes), Rob Parrish (Yes), Tim Parrish (Yes), Karen Tynis (No), Leda Bobera-Drain (No). Motion carries.

Attorney Eugene Bolotnikov read to the Board Township Attorney Scott Puma's opinion on Agenda items number 9, number 10 and number 11 – Opinion attached

Attorney Bolotnikov explained to the Board FOIA Officers respond to FOIA requests not to a third party as it would be illegal to hire a third part to respond to a FOIA request.

Motion to remove Agenda item number nine to hire ZRFM to respond to FOIA request from the April 9, 2024 Regular Board Meeting Agenda: Made by: Leda Bobera-Drain; Second by: Karen Tynis. Discussion followed. Roll Call: Johanna Donahue (No), Tim Parrish (Abstained), Karen Tynis (Yes), Rob Parrish (Yes), Leda Bobera-Drain (Yes). Motion carries.

Motion to direct supervisor to pay the ZRFM bill approved at the March board meeting: Made by: Karen Tynis; Second by: Tim Parrish. Discussion followed. Not voted on.

Motion was made to table Board Meeting Agenda item number 10 until the May Board meeting: Made by: Tim Parrish; Second by: Johanna Donahue. Discussion followed. Roll Call: Rob Parrish (Yes), Tim Parrish (Yes), Johanna Donahue (Yes), Karen Tynis (Yes), Leda Bobera-Drain (Yes). Motion carries.

Motion was made to table Board Meeting Agenda item number 11 until the May Board meeting: Made by: Johanna Donahue; Second by: Tim Parrish. Discussion followed. Roll Call: Johanna Donahue (Yes), Tim Parrish (Yes), Karen Tynis (Yes), Rob Parrish (Yes), Leda Bobera-Drain (Yes). Motion carries.

New Business: Board unanimously agreed Supervisor Bobera-Drain would tentatively schedule a Special Meeting on April 11, 2024 at 7:00 p.m. at the Town Hall building.

Old Business: - None

Public Comment: Assessor Mark Dzemske explained his disappointment in the powers award to Road Commissioners and encouraged the public to reach out to their legislators to promote change.

Reports by Supervisor, Town Clerk, Highway Commissioner, Assessor and Trustees:

Supervisor Bobera-Drain – Expressed her gratitude towards Trustee Tynis, Clerk Smith and Nunda Resident Steve Platt for the Easter Egg hunt candy donations and stated the Annual event was another success for the residents.

Assessor Dzemske – Explained tentatively Nunda property assessments will be at 11% this year and encouraged residents to reach out to the Assessors office with any questions.

Clerk – None

Trustee Rob Parrish –Thanked the public for attending the meetings and expressing interest and assured the public the board has the same concerns as the public.

Trustee Tim Parrish – Echoed what Trustee Rob Parrish said and expressed his disappointment in the limit of control the board has over the Road District and stated his respect for the resident's attendance at the meeting and explained the board is bound in what they can do for residents.

Trustee Johanna Donahue – Thanked the residents and Attorney Bolotnikov for attending the meeting, stating Attorney Bolotnikov's interaction is the most she has seen since sitting on Board.

Trustee Karen Tynis – None

Decennial Meeting: Supervisor Bobera-Drain distributed a Sample Township Report for Compliance with Decennial Committees on Local Government Efficiency Act and asked the Committee members to review and submit Township Efficiency ideas to Supervisor Bobera-Drain by the end of April 2024.

Assessor Dzemske provided copies of Local Government in Illinois: A Comparison of Township Government informational packets.

Document Signing by Officers and Trustees took place

Motion to Adjourn Made by: Johanna Donahue; Seconded by: Rob Parrish. Voice Vote: All Ayes. Motion carries.

Adjourned at: 8:46 p.m.

Respectfully submitted,
Joni Smith
Nunda Township Clerk

Statement to Town Board:

Scott Puma was not able to attend the Town Board meeting tonight because he has a regularly scheduled meeting on the second Tuesday of the month and that municipality has a contract dispute that he must discuss with that board in closed session due to deadlines related to the project and the possibility of litigation and liens in the very immediate future.

Scott has provided the following statement:

We were asked by Township Supervisor Drain whether it is appropriate to pay the Zukowski, Rogers, Flood and McArdle bill that is dated on February 8, 2024,. She has asked this, in part, because the Town Board did not approve the hiring of the Zukowski firm until December 28, 2023 and of the 43.25 hours that were billed, 27.25 hours (63%) were billed before the firm was even hired by the Board. Moreover, Supervisor Drain asked David McArdle for a copy of his engagement agreement which would specify what work the firm was doing and the hourly rate and Mr. McArdle advised there was no agreement. The purpose of an engagement agreement is to describe the scope of work. Here, there was no written scope of work that the Zukowski firm was to provide.

Prior to receipt of the bill, Supervisor Drain asked Mr. McArdle to provide all work product to substantiate the work that he performed and he refused. You all know this because Supervisor Drain raised this at both the February and March Town Board meetings.

It goes without saying that an attorney should not bill time for work that was done before the firm was retained and the attorney client relationship was established. Here, there was no attorney client relationship with Nunda Township until December 28, 2023. It is inappropriate for the Town Board to spend taxpayer money for legal work that pre-dated the hiring of the Zukowski firm. As discussed below, it was inappropriate for the majority of the Town Board to vote to hire the Zukowski firm in the first place.

Supervisor Drain has asked who the Zukowski firm is working for and that has been impossible to determine since Mr. McArdle refuses to provide any work product to the entire Town Board. It should be noted that Trustee Rob Parrish has a separate attorney client relationship with the Zukowski firm in the case of *Robert Parrish v. RCJ Enterprises, et al*, case no. 2023 LA 154, which is pending in the Circuit Court of McHenry County. This should have been disclosed to the Town Board before the Zukowski firm was hired by the Township as it raises the appearance of impropriety.

It was pretty apparent at the March Town Board meeting that several members of the Town Board have been communicating with the Zukowski firm about whatever it is that the law firm did to generate the bill. However, those trustees refuse to say what is going on and refuse to provide any information to the entire Town Board.

Trustee Donahue added the following matters to the April Town Board meeting agenda:

- A motion to hire ZRFM to respond to Kelly's FOIA

- Motion to direct the supervisor to pay the ZRFM bill approved at the March board meeting
- Motion to assert any available exemptions including attorney client privilege under the FOIA act

It is apparent from these items that if the Zukowski firm is hired by the Town Board as set forth on the agenda, it will respond to the FOIA request that the information is attorney-client privileged. While I can imagine what Attorney Jim Kelly will do with such a response, the attorney-client privilege runs to the entire Town Board and not just to three Trustees. If the attorney-client privilege is asserted in response, that would be a privilege that only related to the three individual Trustees and not to Nunda Township since the entire Town Board is not privy to the documents where the privilege will presumptively be asserted.

If three Trustees assert the privilege, that is personal to them and not to the Township because the Zukowski firm has refused to provide the materials to Supervisor Drain.

Further, and importantly, Supervisor Drain is the Township's FOIA officer. As the FOIA officer, she is charged with responding to FOIA requests. A town board does not have the statutory authority to decide how FOIA requests are to be complied with nor does a town board have the authority to designate by motion that a third party respond to a FOIA request.

On December 7, 2023, I provided materials to Supervisor Drain for distribution to the Town Board. I was directed to answer specific questions by the Town Board at the November, 2023 meeting. Interestingly, the Zukowski law firm's bill indicates that it had begun working on whatever it was purportedly doing for Nunda Township on December 5, 2023. By December 13, the Zukowski firm was reviewing documents that were provided to it, presumptively by Trustee Rob Parrish, since he advised at the December 28, 2023 Board Meeting that he had provided materials to the Zukowski firm. By December 15, two Zukowski attorneys were reviewing these materials. On December 22, attorneys at the Zukowski firm were having "conferences with County officials." It would be interesting to know who the Zukowski attorneys identified they were working for during these conferences since the law firm had not been retained by Nunda Township as of that date.

The reality is that three Trustees of the Town Board do not have the legal right to hire an attorney on behalf of the Township. When this matter was proposed in December, 2023, it was asserted that I had a conflict in "this" because of my past representation of the Highway Commissioner. As you all know from auditing the Road District bills, the Road District has used my law firm on a few matters but it has also used at least two other law firms. I did not represent the Road District in the purchase of the land in Lakemoor nor was I even aware that any work was being done in that area until November, 2023. I did not consult with or advise the Highway Commissioner in any way on that purchase or on any part of the project.

Neither my law firm nor I have ever given any money to the Highway Commissioner's political campaign and neither my law firm nor I have ever represented him personally in any matter.

I did not object to the hiring of the Zukowski firm but I also presumed that the Zukowski firm would be transparent and provide information to the entire Town Board. When Supervisor Drain asked repeatedly at the December 28, 2023 special board meeting what the Zukowski firm was going to do, the only trustee who responded was Trustee Tim Parrish that the firm was being hired to "protect this board" and to "protect this level of government." When Supervisor Drain asked repeatedly how information would be received back to the Board from the Zukowski firm and specifically asked if everything would be disclosed to the entire Board, Trustees Tim Parrish and Donahue both responded "yes."

There was no "conflict" based on my past work for the Highway Commissioner. Therefore, the hiring of the Zukowski firm was inappropriate and without statutory authority. The Township Code provides in pertinent part as follows: "The supervisor, with the advice and consent of the township board, may appoint a township attorney." 60 ILCS 1/70-37. No where does it give three Trustees of the Town Board the authority to hire a separate attorney or "special counsel". Trustee Rob Parrish stated at the December 28 meeting that my memo to the Board was biased. I fail to see any bias in it but note that he did not provide any of the information that he stated that he provided to the Zukowski firm to me. The Town Board did not direct me to conduct any type of investigation but rather to review the limited amount of information that was provided at the November board meeting and to contact the Highway Commissioner and ask him about the project. I did that. I was not about to run up attorneys fees on my own without the authorization of the Board.

If a question is raised about the folly the last time Trustees Rob Parrish, Tim Parrish and Johanna Donahue voted to appoint the Zukowski firm to defend it in the lawsuit when they refused to approve the Road District tax levy, in that matter there would have been a conflict because, had I actually been asked, I would have advised the Town Board that it was required to adopt the Road District's levy and refusing to do so would potentially subject the Township to a lawsuit that they would lose and that any litigation would have been a waste of taxpayer money—both from the Town Fund and Road District Funds. Yet, they hired the Zukowski firm who billed the Township over \$10,000 only to go down in flames almost immediately.

The Town Board does not have the authority to hire the Zukowski firm to respond to a FOIA request as there is no statutory authority to do so, for the reasons set forth above. A majority of the Town Board does not have the authority to make a motion to assert the attorney client privilege when the Town Board does not have all of the documents related to the privilege and where the privilege is being applied, apparently, without any information about what the actually documents even say. The Town Board cannot pay any portion of the Zukowski bill for work that was done before the majority of the Town Board voted to hire the firm on December 28, 2023. Because the Zukowski firm refuses to provide any documents or to communicate with Supervisor Drain, it is questionable whether there is even an attorney-client relationship. Therefore, unless and until information is provided to the entire Town Board as to the work that was purportedly done by the Zukowski firm, it is appropriate for Supervisor Drain to refuse to pay the bill. Moreover, it is inappropriate for the majority of the Town Board to think it is appropriate to pay for legal work before December 28.

Additionally, according to the invoice of the Zukowski firm, lawyers from the firm had numerous conversations and meetings with McHenry County officials. The Town Board never

authorized the Zukowski firm to contact McHenry County officials. There is no engagement agreement that outlined the scope of the work that the Zukowski firm was to do on behalf of the Township. The only indication at the December 28 Board meeting was that the Zukowski firm was being hired "to protect the Board." Supervisor Drain repeatedly asked what work the Zukowski firm would do and no one indicated that it would contact McHenry County officials. Moreover, Supervisor Drain repeatedly stated that all information from the Zukowski firm would be provided to the entire Board and both Trustee Tim Parrish and Trustee Donahue said that it would. That never happened, as you all know. Any work done by the Zukowski firm beyond "protecting the board," whatever that even means, was not authorized by the Town Board. If contacting McHenry County officials was authorized by individual Trustees outside of a meeting, that work was improper and should not be paid by the Township. At this point, the Trustees and the Zukowski firm need to provide all documents that they have that are responsive to the March 28, 2024 FOIA request to Supervisor Drain so that they can be reviewed for exemptions and a response can be provided to the requester.

If any Trustees would like to discuss this matter, please feel free to call me at 847-856-5422 during work hours or send me an email at spuma@ancelglink.com. If the Board would like to discuss this further at a meeting, this meeting can be continued to Thursday, April 11 at 7:00 pm or another convenient time on that date, to be discussed further. If Thursday is not convenient, I am available during the evening of April 22, 24, 25, 29, and 30 and May 1.