

APPROVED

**Minutes of a Work Session
Pittsfield Charter Township Board of Trustees, March 25, 2002
E.A. Jackson Morris Hall, The Robert A. Lillie Service Center
6201 W. Michigan Avenue, Ann Arbor, Michigan 48108**

Members Present: Burhop, Conner, Lirones, Marine, Skrobola, Walter.
Members Absent: Brostrom.
Others Present: Jessica Heilmann (Recording Clerk), Judith Walter, Dennis Ward, Ann Harris.

1.0 Call Meeting to Order

Supervisor Walter called the meeting to order at 7:30 p.m., a quorum was present.

2.0 Pledge of Allegiance led by Supervisor Walter.

3.0 Roll Call – all members present.

4.0 Open Meetings Act/Public Comment I- none.

5.0 Public Hearings/Presentations

5.1 Presentation: Managing Conservation Easements and the Role of a Pittsfield Township Land Trust.

Deputy Clerk Jan BenDor gave some introductory remarks about Barry Lonik and explained the role a government body can play in conservation easements. She said that while a conservation easement is generally thought of as a tool for private landowners to conserve their personal property, it can also serve important public interests. She said Mr. Lonik would explain what a conservation easement is, how a conservation easement is managed, and how this tool can be used to achieve the policy goals of the township.

Barry Lonik said a conservation easement is an agreement between two parties, with one party being the land owner, and the other a land trust/conservancy or government body. He said that there can be co-holders of an easement, and the easement defines the conveyance of certain interests in the land. He said that property comes with rights, often referred to as the “bundle” of rights which could be likened to a bundle of sticks. He said each of the sticks in the bundle represent a certain right of the property owner. He said any of the sticks within the bundle of rights can be given away or sold to another party, such as a land conservancy. With a conservation easement, the landowner relinquishes certain rights to a property, typically the development rights, while retaining the rest. He said the easement is signed by both parties and recorded by the county register of deeds so it runs with the property in perpetuity. He said the easement is carefully documented at the time that the interests in the land are being transferred.

Mr. Lonik than led the Board through the Michigan Model Conservation Easement. (see attachment #1) He highlighted vital parts of the document, and addressed questions that Board members had about the document, and conservation easements in general. He said that if land or property rights are given as a gift to the land trust, the transfer is not subject to a real estate transfer tax. However, if the interest in the land is sold, it is subject to taxation.

Supervisor Walter asked how the value of the easement is assessed.

Mr. Lonik said an appraiser is hired to determine what the property with all rights intact is worth. The assessor then decides what the property would be worth with the development rights removed. The difference between these two assessments is the cost of the development rights, and the amount that can be claimed as a tax credit.

Mr. Lonik said the heart of this document, and most conservation easements, is the section that addresses prohibited actions. He said typical prohibited actions include dividing property, commercial activity, construction on the property, cutting vegetation, and land surface alteration. He said that easements can be tailored to the landowner's needs. He said that the landowner needs to give careful thought to this portion of the easement, as the document is created to be unchanging across time.

Clerk Lirones asked if division had to be prohibited.

Mr. Lonik said it was possible to write exception language into individual easements.

Supervisor Walter asked if an easement could be made more flexible with best management practices.

Mr. Lonik said if it is not a prohibited action, then the owner has the right to manage the property as they see fit. He said that there can be amendments to tighten the conservation easement, but that the easement cannot be loosened. He said that the Michigan Model Conservation Easement has been in practice for about 6 years. He said it has been reviewed by prominent national attorneys, and is a solid and readable document.

Trustee Marine asked Mr. Lonik if he tried to avoid vague language, like best management practice, because the definition of that could change over the years.

Mr. Lonik said that there are two approaches to drafting an easement. The first is to use many restrictions and rules, and although this does serve the purpose of preserving the land, the more specific the easement is, the more time people have to spend monitoring the easement. He said he preferred the second approach, where the property owners are allowed to manage their own property as they see fit within the broad confines of the easement. He said in general, the better clarified the terms in the document, the stronger the easement is.

Trustee Conner asked who enforced the agreement and the deed. He asked who ensured that the conservancy was doing their job.

Mr. Lonik referenced item twelve on page eleven, and said if the land trust ceases to exist the conservation easement becomes vested in another entity. He said that is one of the reasons that an easement is safer if it is co-held by several entities, as explained in the Maryland article on co-holding conservation easements with a public agency. (see attachment #2) He said that co-holding might create more hurdles initially, but gives the easement a solid foundation. He said members of the public can alert the state attorney general's office if the land trust is not doing its job.

Supervisor Walter asked if it would be good to have a public body with residual rights, so if one entity ceases to exist, the other names the successor. He said he thought that would be a cleaner method of succession than involving the courts.

Mr. Lonik explained that very few conservation easement issues proceed to court. He said that people typically come to an agreement about the easement before it goes that far.

Clerk Lirones commented that she thought co-holding would bolster all parties to the agreement.

Trustee Conner asked about naming the township as a successor on property.

Mr. Lonik said he thought that was a different question, but that a conservation easement reserves the right of the property owner to sell or convey their property to whomever they wish. He said he had recently worked with a property owner in Pittsfield who wanted to donate the development rights on her property, and who also willed her property to the land trust.

Mr. Lonik went over the permitted uses of land under the conservation easement, and the rights granted to the conservancy. He also went over the remedies granted under a typical easement, including injunction. He stressed that a conservation easement does not permit the public to enter private property. He said the land trust does have the right to inspect the property periodically.

Clerk Lirones asked if the land trust did an environmental assessment of the Coudron property before receiving it.

Mr. Lonik explained the procedure, and said that only the surface of the Coudron property was assessed. He said whoever is receiving the donation is receiving the interest in the land, not the land itself. He said the property owner is still liable for land.

Supervisor Walter said that at times certain property rights may be in conflict with others. He asked about slant drilling, and other mineral retrieval methods.

Mr. Lonik said that the mining of minerals is a prohibited action. He said property lines extend down to the core. He suggested that the owner of the property hire a good title company before the easement is conveyed. He said the Dormant Minerals Act also addresses this issue.

Supervisor Walter asked if there would be an important public interest served through conservation easements. He said he would like to see people put their easements together to form bikeway and path systems. He asked what role the township should play in this process.

Mr. Lonik said the township would be great for organizational and advisory purposes. He said that people who are looking into conservation easements should be aware that there is the possibility of a bike path running through their area so they can make an exception in the construction prohibition in their easement.

Mr. Lonik spoke briefly about the enforcement provisions of a conservation easement. He also touched on the issue of financial contribution to the land trust in order to maintain the conservation easements. He said he suggests that landowners give an endowment to the land trust in order to ensure that their land is monitored over the years.

Clerk Lirones asked what kind of donation he suggested.

Mr. Lonik said he suggests around \$5,000.00 for land that is not being developed. He said the donation is tax deductible if it is given at the request of the land trust, and not as a requirement of the agreement. He said the land trust keeps some of the money for legal fees, and also needs funding to ensure that a professional monitors the easement through the years.

Supervisor Walter asked for a brief overview of IRS treasury regulation section 1.170A-14G628. He said he was concerned about termination under eminent domain. He asked if through eminent domain, the landowner would be reimbursed as if the property didn't have the easement on it. He said one of the unintended consequences of this could be that conservation easements could become targets for roads and other things if people see that as a cheaper way to get a road in. He asked if the contract could be composed in a way that whoever was taking the land would have to reimburse at the rate of land that didn't have an easement on it. He asked what happened when public utilities need to be installed on land held as a conservation easement.

Mr. Lonik said that the land taken for a public purpose should be reimbursed at the rate as if it didn't have an easement on it. A portion of these funds would go to the property owner and a portion to the owner of the easement. He said the IRS code referenced above addresses that issue. He said if a landowner can anticipate the installation of public utilities on their property, they should write an exception into the conservation easement.

Clerk Lirones asked about drain easements. She asked if a person could donate property that is in a drainage district.

Mr. Lonik said the drains supercede the easement. He said that land in a drainage district can be made into a conservation easement, but it does present some challenges.

Supervisor Walter said that the township needs to encourage this process, and make sure that all public and private interests are melded together and respected through the process. He said the fact that the township is updating the comprehensive plan will help with the conservation easement issue too. He also asked if the township should be in contact with the county register of deeds to follow where conservation easements are being made in the township so the township can comment on the location or other elements of the easement.

Mr. Lonik said the register of deeds doesn't know about the easement until it is being recorded. He said landowners can do a conservation easement without notifying anyone.

Deputy Clerk BenDor asked Mr. Lonik if he could compare and contrast the situation where a public entity, like the township, holds the easement.

Mr. Lonik said conservation easements are useful documents. He said landowners are often suspicious about dealing with the government. He said there is often a better reception if a non-profit organization deals with the public.

Supervisor Walter said it was a different issue protecting a stream parcel versus monitoring whole parcels of land.

Mr. Lonik said the potential for problems with a small easement is often too much for a non-profit agency to handle. He said he is leery of taking those types of conservation easements. He said it is easier and more appropriate for a public entity to hold something like that, or for it to be held jointly.

Trustee Conner asked what attributes of a property make it unattractive to a land trust.

Mr. Lonik said there are set criteria the land trust uses in determining whether to take an easement, and a number of things play into that decision. He said some considerations include how large the property is, the location of the property, and if there are any problems with neighbors. He said the township can do a better job ensuring the conditions of a conservation easement because they have more resources.

Supervisor Walter asked if there were other tools for protecting private land, like deed restrictions.

Mr. Lonik said only qualified organizations can receive an easement in order for a land owner to claim a federal income tax deduction. He said you can't voluntarily restrict your own property and charge yourself with enforcing that restriction. He said the organization needs a vested interest in the restriction.

Supervisor Walter said that the township has work to do. He said he wants to do this the right way so it doesn't create problems and entanglements in the future. He said his goal is to have the conservation easements crafted in a way so that bike paths and greenways can be assembled without a problem.

Trustee Marine asked Mr. Lonik if he was suggesting that government is the proper entity to be monitoring conservation easements. He said he has a problem with that idea because governments change.

Mr. Lonik said that was excellent point. He said the melding of a non-profit agency and a public entity seems to be the best way. He said there has been some discussion about creating a Pittsfield Land Trust, and he thinks that is a great idea. He said the township needs to make a clear declaration of what their role will be with regard to conservation easements.

Trustee Marine said it seems like the best situation is to have co-holders of the easement.

Supervisor Walter said that the government entity can provide the manpower while the land trust will provide the conscience and oversight functions.

Clerk Lirones said that land trusts can fall apart, and are beholden to no one. She said that she would trust the government that is accountable to the people rather than a land trust that is accountable to no one. She said she didn't see any of the local land trusts being the best receiver. She asked if Pittsfield Township can help to establish its own land trust.

Mr. Lonik said he didn't see why not, although he would suggest that the township consult their attorney.

Trustee Conner asked if the land trust would be involved with all of the easements the township undertook regardless of size.

Mr. Lonik said yes, although there were definite differences between overseeing nine five acre easements in a residential area, and one forty-five acre easement. He said he wants the township to play a more active role in conservation easements.

Trustee Marine asked if it was a conflict of interest for township to form its own land trust as a watchdog organization.

Mr. Lonik said that members of the Board shouldn't be members of the land trust, but rather should act as catalyst for forming the organization. He said there should be clear lines of authority.

Supervisor Walter thanked Mr. Lonik for addressing the Board. He said there are many public issues surrounding conservation easements.

6.0 Approval of Minutes

7.0 Consent Agenda

8.0 Items from the Treasurer

9.0 Items from the Clerk

10.0 Items from the Supervisor/Assessor

11.0 Items from the Office of Public Safety

12.0 Items from the Office of Municipal Services/Planning and Zoning

13.0 Items from the Parks & Recreation Department

14.0 Unfinished Business

15.0 New Business

16.0 Public Comment II-none.

17.0 Adjournment by Supervisor Walter at 9:01 p.m.

Jessica Heilmann, Department Assistant
Recording Clerk
Pittsfield Charter Township

Christina L. Lirones, Clerk
Pittsfield Charter Township

James R. Walter, Supervisor
Pittsfield Charter Township

PITTSFIELD CHARTER TOWNSHIP
Board of Trustees
Minutes for a Work Session
Held March 25, 2002

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MINUTES APPROVED AS PRESENTED AT THE APRIL 9, 2002 PITTSFIELD CHARTER
TOWNSHIP BOARD MEETING.