

The Marquette County Board of Commissioners met as a Committee of the Whole on Tuesday, May 24, 2005, at 6:30 P.M., in Room 231 of the Henry A. Skewis Annex, 234 W. Baraga Avenue, Marquette, Michigan.

Chairperson Corkin called the meeting to order. Present: Comm. Arsenault, Comm. Bergdahl, Comm. Cihak, Comm. Heikkila, Comm. Joseph, Comm. Pellow, Comm. Struck, Comm. Wallace and Chairperson Corkin. Absent: None.

It was moved by Comm. Wallace, seconded by Comm. Arsenault, and unanimously carried by voice vote that the minutes of the Committee of the Whole Strategic Planning Session held on May 9, 2005 be approved, and the Committee of the Whole Meeting held on May 10, 2005 be approved with the following correction: One Page 4 the Motion should read "Postpone action on the *Humane Society Claim...*" not District Court Claim.

Chairperson Corkin opened the meeting for public comment.

Barry Bahrman, West Branch Township Supervisor, was present and stated his concerns with Telkite. He explained that a restriction was placed on the deed transfer to West Branch Township providing that the building be used for a recreational facility/community center. He stated that the deed is unacceptable to West Branch Township. He urged the County Board not to move ahead with the closing until the restriction is removed.

Scott Schulz, General Manager, Boreal Aviation, requested to speak to Item 9) Sawyer Fuel Costs.

John LaCourt, General Aviation Pilot, also requested to speak to Item 9) Sawyer Fuel Costs.

Caron Christopherson, Humane Society Director, requested to speak to Item 10) Humane Society. She also explained that there were many residents in attendance with concerns regarding animal services in the community. She read a letter from the Board of Trustees of the First Baptist Church of Witch Lake regarding animal control in Marquette County.

Tom Clark, representing Telkite, thanked the County Board and Harley Andrews for their continued efforts finalizing the Telkite documents. Mr. Clark also addressed Barry Bahrman's comments. He explained that Telkite needs direction from the County Board regarding the recreational facility. Telkite thought the purpose of the entire transaction was to provide a public facility, so a restriction was added stating that West Branch Township would retain or maintain this building as a public facility.

Jean Sironen-McCartney, Ely Township, expressed concern regarding animal control. She stated the value of having a quality animal control arrangement through the Humane Society is more economical than having issues dealt with through law enforcement.

Jeannette Hauver, Marquette, volunteer at the Humane Society, also addressed the County Board regarding animal control. She urged the County Board to authorize settlement payment to the Humane Society for the rescue, medical treatment, and daily care given to the neglected and abused animals.

Sue Treloar, Ishpeming, addressed animal control and the spade and neutered animal program at the Humane Society. She explained that the service of the Humane Society is extremely important to the citizens of Marquette County.

Carole Wattson, Tilden Township, stated the Humane Society is a valuable service to Marquette County and to its residents.

Dawn Sheffield, Veterinarian at the Animal Medical Center, addressed the Committee. She explained problems and statistics. She also stated the Humane Society is valuable and critical to the community.

There being no further public comment, Chairperson Corkin closed this portion of the meeting.

It was moved by Comm. Bergdahl, seconded by Comm. Pellow, and unanimously carried by voice vote that the Agenda be approved with the addition of Item 14) IRP Loan to SpaceCS, and Item 15) Casino Relocation Letter. Item 11) District Court RFP be moved up on the agenda as 6a, and Item 10) Humane Society be moved up on the agenda as Item 6b.

It was moved by Comm. Wallace, seconded by Comm. Joseph, and unanimously carried by voice vote that Claims and Accounts for the period May 13, 2005 through May 19, 2005 in the amount of \$392,780.00 be approved.

It was moved by Comm. Pellow, seconded by Comm. Bergdahl, and unanimously carried by voice vote that the information regarding the Big Bay Relay held on Saturday, May 21, 2005 be placed on file.

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The Committee considered the District Court RFP. Steve Powers, County Administrator, explained that the two changes to the draft which were requested by the Judges, 1) to add a bathroom for the Judge separate from the public and staff, and 2) interior and exterior walls, ceilings, roof, doors, windows, and mechanical systems must be sufficient to meet the security need and privacy needs of the 96th District Court, have been changed in the RFP. Mr. Powers also explained that proposals will be accepted until 60-days after the issuance of the IRP and also recommended is a mandatory pre-proposal meeting.

Commissioners and Staff engaged in a discussion regarding various details in the RFP. Comm. Arsenault noted that the RFP is not clear regarding a secure area for service, computer systems, and the phones. Also discussed were furnishings in the 96th District Court currently being owned by the landlord.

Comm. Pellow questioned separate bathrooms and why the County Board would issue the RFP at this time when no final decision to keep the Court in Ishpeming has been made.

Comm. Heikkila explained the need to issue an RFP is to get actual costs. He stated he was not requesting that a decision be made to accept proposals but rather to gather information.

It was moved by Comm. Wallace, seconded by Comm. Arsenault, and unanimously carried by voice vote that the Committee of the Whole recommend the County Board direct Staff to issue the Request for Proposals for the 96th District Court.

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The Committee considered the Humane Society Claim. Steve Powers, County Administrator, explained that this issue was postponed until Staff had an opportunity to review the transcript from the Rosenbaum court proceedings.

Cheryl Hill, Civil Counsel, was present and explained that there is nothing on the record whereby the Humane Society agreed to the 25% settlement. She stated in an animal cruelty case such as this, which brought it to the County’s attention, allows but not requires a Prosecutor’s Office to file a forfeiture action. Forfeiture action was filed by the Prosecutor’s Office in a timely manner. The law provides that if the animals are forfeited the owners don’t pay a penny. Restitution is a sentencing matter and part of criminal action. In this particular action there was a 25% restitution paid. She advised Commissioners that she believes this is a contractual issue that could be argued in Court. She informed the Commission that they have paid in the past on other forfeiture matters where no restitution was ordered.

Commissioners and Staff engaged in a discussion regarding the three-way deal recommended by Steve Powers, County Administrator. Comm. Joseph stated he does not like brokering a deal. If a mistake has been made the County should pay for it and not take advantage of the taxpayers. The owner should have paid more than 25%.

Chairperson Corkin stated that this is an unfortunate incident. The Humane Society has been an excellent partner for Marquette County over the last 15 to 20 years and has done a lot of good for Marquette County.

It was moved by Comm. Heikkila, seconded by Comm. Arsenault, and carried by voice vote 8 Ayes to 1 Nay (Comm. Joseph) that the Committee of the Whole recommend the County Board direct Staff to negotiate the three-way agreement as recommended by Administrator Powers between the Road Commission, the County, and the Humane Society, and further that Staff be directed to review the current agreement between the County and the Humane Society for the care of stray animals with a report and recommendation to be brought back to the County Board.

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The Committee considered a communication regarding Central Dispatch Policy Board EMS Representative. Alyson Sundberg, Coordinator, Marquette County EMS Medical Control Authority, is recommending that Ms. Lyn Nelson be appointed to serve as an EMS Representative on the Marquette County Central Dispatch Policy Board. Ms. Nelson would be replacing the position previously held by Mr. Michael Zorza.

It was moved by Comm. Struck, seconded by Comm. Cihak, and unanimously carried by voice vote that the Committee of the Whole recommend the County Board appoint Lyn Nelson to serve as the EMS Representative on the Marquette County Central Dispatch Policy Board replacing the position previously held by Mr. Michael Zorza.

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The Committee considered the Airport Zoning Board of Appeals By-laws. Joe Pietro, Chair of the Airport Zoning Board of Appeals, explained that in February of 2000, the Airport Zoning Board of Appeals adopted by-laws related to the character of the Board, meetings, and procedures. In a subsequent meeting

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held on April 18, 2005 the Board voted to amend their by-laws. He explained that as a body appointed by the County Board of Commissioners it was appropriate that the amendments receive Board concurrence.

The current by-laws restrict a member's service not to exceed six years without an interruption of one full year. The recommended amendment would eliminate this provision. Next year, 2006, would be first year this provision had an impact on the Board. Two of the most experienced members, the Chair and Vice-Chair would need to be otherwise replaced.

Comm. Joseph and Comm. Pellow concur that it is important to keep the by-laws as is. It gives a better turnover and new ideas.

Comm. Wallace stated he is against term limits and will continue to be against term limits.

Harley Andrews, Chief Civil Counsel, questioned whether the Board has the authority to approve by-law amendments to the Airport Zoning Board of Appeals.

Al Feldhauser, Planner, explained that the Airport Zoning Board of Appeals voted on this amendment and is requesting County Board concurrence.

It was moved by Comm. Bergdahl, seconded by Comm. Struck, and carried by voice vote 6 Ayes to 3 Nays (Comm. Joseph, Comm. Pellow, and Comm. Cihak) that the Committee of the Whole recommend the County Board concur with the amendment approved by the Airport Zoning Board of Appeals Bylaws.

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The Committee considered the Fuel Flowage Fee. Scott Erbisch, Sawyer Operations Manager, explained that in April, 2005 Ms. Lynn T. Sykes, sent a letter to the County Board requesting their consideration in lowering the \$0.25 per gallon fuel flowage fee assessed to general aviation aircraft.

Ms. Sykes indicated in her letter that Sawyer's fuel flowage fee is higher than the industry average, which she cited as \$0.06 to \$0.08 per gallon. Ms. Sykes further indicated that the fuel flowage fee may be negatively impacting the number of aircraft operations Sawyer receives and the amount of fuel sold. Sawyer's local Fixed Based Operator, FBO, Boreal Aviation, has also raised similar concerns.

When the County Airport relocated from Negaunee Township to KI Sawyer, an RFP for a Fixed Based Operator was a pre-cursor for the move. In the 1998 RFP, Marquette County required the minimum, "flowage fee stored for, sold to, or pumped into general aviation, corporate, and charter aircraft" be at least \$0.25 per gallon, and \$0.75 for scheduled commercial carrier aircraft. (Scheduled aircraft are the commercial carriers Northwest AirlinK/Mesaba Airlines; Midwest Connect/Sky Way Airlines; and American Eagle). Boreal Aviation was the only respondent. Boreal's proposal did include the minimum fuel flowage fee stored for, sold to, or pumped into general aviation, corporate, and charter aircraft \$0.25 and a proposed \$0.08 for scheduled aircraft.

According to former Airport Director Harold Pawley, and due to the significant increased size of Sawyer's Airport infrastructure, the minimum fuel flowage fees were established to meet the projected increase to cost to maintain the Sawyer Airfield and Fuel Farm. Staff has not verified the industry average for fuel flowage fees for general aviation aircraft, but it is the understanding that Sawyer's fuel flowage fee for general aviation aircraft is higher in comparison with other local airports. When comparing per gallon costs for aviation and Jet-A fuel with other local airports, Sawyer is the highest.

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In 2004, the County of Marquette received a total of \$79,841 in revenue from fuel flowage fees. Any reduction to the fuel flowage fee will reduce the Airport's operating budget. If in fact there is a direct correlation to reduce fuel sales to the fuel flowage fee, an increase in fuel sales equivalent to the reduction could take quite a bit of time to achieve.

Based on the quantity of fuel purchased in 2004, a \$0.19 reduction in the fuel flowage fee for general aviation, corporate, and charter aircraft would reduce revenues by \$17,873.00. To make that up that difference in lost revenue, fuel sales would have to increase nearly 300,000 gallons.

County Staff does not recommend any change in the fuel flowage fee at this time. The fuel flowage fee is just one component of the overall fee structure for Boreal Aviation at Sawyer, and should not be looked at alone. Staff recommends that before a decision is made to reduce the fuel flowage fee, a more detailed and comprehensive review of the current Airport industry rates and charges be completed. Staff can complete this review and bring back a recommendation to the Board in September of 2005.

Scott Schultz, General Manager, Boreal Aviation, was present and expressed concern with the rates charged by Marquette County. He distributed a chart of Fixed Based Operator fuel flowage fees. He stated that the Marquette County Airport needs to be more competitive and the rates charged should be reduced. He explained that Sawyer fuel flowage fees are 400% higher than any other airports in the Upper Peninsula.

Mr. John LaCourt, Base Pilot, was also present and expressed concerns regarding the fuel flowage fees charge.

Commissioners and Staff engaged in a lengthy discussion regarding the fuel flowage fees. Comm. Wallace suggested a temporary experiment to reduce fuel flowage fees from May to September to see if traffic at Sawyer International Airport would increase.

It was moved by Comm. Arsenault, seconded by Comm. Bergdahl, and unanimously carried by voice vote that the Committee of the Whole recommend the County Board reduce the fuel flowage fees by a \$0.19 reduction until December 31, 2005 and further that Staff be directed to complete a detailed and comprehensive review of the current airport industry rates and charges and bring the recommendation back to the Board in September of 2005.

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The Committee considered a recommendation from Cheryl Hill, Civil Counsel, to approve a Waiver of Conflict for M. Sean Fosmire to continue representation of Marquette County in the matter of *Middleton et al vs. Marquette County*. Ms. Hill was present and explained that the County is being represented by Attorney M. Sean Fosmire of Garan, Lucow, and Miller in the Middleton case. Mr. Fosmire is a partner in the same law firm as John Heikkila. Mr. Heikkila is the local legal counsel for the Upper Peninsula Power Company. There is a conflict that exists in having the County represented by an attorney that is in the same law firm with another attorney that is a defendant in a lawsuit in which the County is bringing. She further explained that it is therefore up to this Board to determine whether or not they wish to waive any conflict and allow Mr. Fosmire to continue to represent the County of Marquette in the Middleton lawsuit. Ms. Hill believes there is a conflict in the matter, however, does not believe it is a conflict of substance that would necessarily require the Board to dismiss Mr. Fosmire from services. Ms. Hill recommends the County Board approve the Waiver of Conflict for Mr. Fosmire.

It was moved by Comm. Joseph, seconded by Comm. Pellow, and unanimously carried by voice vote that the Committee of the Whole recommend the County Board approve the Waiver of Conflict for M. Sean Fosmire to continue representation of Marquette County in the matter of *Middleton et al vs. Marquette County*.

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The Committee considered a memo from Harley Andrews, Chief Civil Counsel, regarding a Telkite Assignment Request. Mr. Andrews explained that the original Development Agreement dated January 21, 2004 is between the County and Telkite, Inc., a Michigan Corporation. It contains a provision which prohibits Telkite, Inc. from assigning its interest in this transaction to any other party without the prior consent of the County, which consent shall not be unreasonably withheld. Telkite, Inc. is now requesting County Board consent to the transfer of its interest in this transaction, and all of the contracts relating to it, to Telkite Enterprises, LLC, a Michigan Limited Liability Company. The reason for the request relates to tax issues. Limited Liability Companies are a very common form of entity for real estate ventures of this type for that very reason. Mr. Andrews explained that the County has dealt with several other LLC's at Sawyer, the most visible of which is the housing developer, SLP Development, LLC.

Mr. Andrews further explained that the County will realize no disadvantage by consenting to this request. An LLC is a hybrid form of entity designed to provide the pass-through taxation aspects of a partnership, while retaining the shield from personal liability offered by the corporate entity. In other words, the members of the LLC enjoy the same insulation from personal liability as do the shareholders of a corporation, so that situation would not change. In this case, the members of the LLC are the same four individuals who are the shareholders of the current corporation. Any further assignments would remain prohibited without the prior consent of the County Board. Mr. Andrews recommends consent for the assignment.

It was moved by Comm. Wallace, seconded by Comm. Joseph, and unanimously carried by voice vote that the Committee of the Whole recommend the County Board grant the request for consent for the assignment of the interest of Telkite, Inc. to Telkite Enterprises, LLC.

The Committee considered an IRP Loan to SpaceCS presented by Anne Giroux, Business Manager, Sawyer Business Center. Ms. Giroux explained that the IRP Loan Committee met on May 18 and May 23 regarding a loan application from Space CS. Raghu Tandra, owner of SpaceCS is purchasing Building 710 from Telkite. Building 710 is a 14,600 square foot office building, formerly known as the "law building," located next to the SAGE building at Sawyer. SpaceCS specializes in the development and maintenance of software systems that support complex business processes. Its primary services include: Software provider services, Enterprise IT Services, Software Solutions, and Business Process Outsourcing. The company was founded in India in 1995 by Mr. Tandra, along with several partners, and employs 20 people. SpaceCS wishes to expand into the US market by opening an office at Sawyer and will create an additional 20 jobs immediately. Mr. Tandra has committed to investing \$300,000 cash into the project, in addition to the IRP funding. The loan committee recommends that the County Board approve the IRP Loan.

It was moved by Comm. Arsenault, seconded by Comm. Bergdahl, and unanimously carried by voice vote that the Committee of the Whole recommend the County Board approve the \$250,000 loan to SpaceCS

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according to the following terms and contingencies, waiving the maximum loan amount requirements as set forth in the loan policy:

- BORROWER:** SpaceCS
- AMOUNT:** \$250,000
- PURPOSE:** Retrofit of Building 710, purchase of equipment and inventory.
- RATE:** Borrower provided two options: Option 1) Wall Street Journal Prime, floating (prime is currently 6%; rate will be determined at closing); Option 2) 8% fixed.
- TERMS:** Five-year term – monthly payments of principal and interest; eight-year amortization with balloon payment in year five. Balloon payment would be approximately \$108,000 (would vary depending on the interest rate option that is chosen).
- COLLATERAL:** First position on all company assets; Personal guarantee of owner, Raghu Tandra.
- SOURCE OF PAYMENT:** Revenues generated through operations.
- CONTINGENCIES:** Prior to loan closing, the County must receive the following:
 - Signed purchase agreement for Building 710, and a commitment from lender to fund the transaction.
 - Verification of \$300,000 owner cash.
- LOAN DISTRIBUTION:** Loan funds will be distributed upon receipt of invoices, or other appropriate documentation from SpaceCS, identifying expenditures directly associated with the retrofit of Building 710, or the purchase of equipment and inventory directly associated with the Sawyer operation.
- LOAN POLICY:** USDA specifies a maximum loan amount of \$250,000. The current IRP loan policy specifies a maximum loan amount of \$200,000. Approval of this loan is within USDA guidelines, but will require that the Board waive its existing loan policy. The County has waived policy in order to do a \$250,000 loan in the past.

The Committee considered a request from Larry Morin, United States Department of Interior, Bureau of Indian Affairs, requesting County Board support for the relocation of the Ojibwa II Casino to the former County Airport site.

It was moved by Comm. Bergdahl, seconded by Comm. Wallace, and unanimously carried by voice vote that the Committee of the Whole recommend the County Board send a letter of support for the relocation of the Ojibwa II Casino to the former County Airport site.

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Chairperson Corkin opened the meeting for public comment.

Elizabeth Boe, Concerned Citizens of Big Bay, updated the Commissioners regarding Sulfide Mining. She distributed a list of organizations that have adopted a resolution to write a letter of endorsement

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for a USGS Hydrology Study of the Yellow Dog Plains. She thanked the County Board for their support of the USGS Study.

There being no further public comment, Chairperson Corkin closed this portion of the meeting.

COMMISSIONER COMMENTS, STAFF COMMENTS, AND ANNOUNCEMENTS

Harley Andrews, Chief Civil Counsel, updated Commissioners regarding Telkite documents. He also distributed a memo concerning completion of the draft documents.

Steve Powers, County Administrator, announced there is no meeting next week.

Comm. Pellow requested the status of a joint meeting regarding sulfide mining.

Comm. Cihak recognized the week of May 16-20 as National Police Memorial Week.

There being no further business to come before the Committee of the Whole, the meeting adjourned at approximately 8:35 P.M.

Respectfully submitted,

Connie M. Branam
Marquette County Clerk