

GRAFTON TOWNSHIP REGULAR BOARD MEETING MINUTES

November 8, 2012

1. Call to Order

Supervisor Moore called the meeting to order at 7:30 p.m.

2. Roll Call

Present: Supervisor Moore, Trustees McMahon, Zirk, Murphy, LaPorta, Clerk Ford, Road District Commissioner Freund, Assessor Ottley.

3. Pledge of Allegiance

The Pledge of Allegiance was said.

4. Approval of Agenda

Motion by Trustee LaPorta, seconded by Trustee Zirk, to strike Agenda items New Business : E. Discussion and potential action to approve to reduce expenses by discontinuing the practice of reimbursing miles to officials or employees and instead using Township vehicles for travel whenever possible; F. Discussion and potential action to revise budget to eliminate the deficit balance; G. Discussion and potential action pursuant to the orders of the electors at the 2010, 2011 and 2012 Annual Town Meetings, pay the Road District \$300,000 from the Town Fund checking account. Use the surplus Road District funds of \$500,000 and approve paying off the Road District's \$270,000 loan balance, to stop any further loan expenses from accruing; H. Discussion and potential action to approve either automatic deduct payment for Assessor and supervisor's phone bills or to pay one month in advance for phone bills to avoid disconnect notices or late fees; I. Discussion and potential action on line item transfer resolutions; and to move 9 Reports/D. Assessor as the first agenda item.

Roll Call

AYES: Trustees LaPorta, Zirk, Murphy, McMahon

NAYS: Supervisor Moore

ABSENT: None

MOTION PASSED.

9. Reports

D. Assessor Ottley

Assessor Ottley reported that even though the offices are officially closed on November 12 in observance of Veteran's Day, the Assessor's Offices will be open to accommodate residents regarding receipt of their real estate tax bills. Overtime expenses were related to launching the new website. He personally conducted the educational seminars. No staff was involved. The phone bills/phone service still an issue. (EXHIBIT I) The phone bill was paid, then the Supervisor requested a refund of payment. The supervisor had set up automatic payment in July, 2012. As a result of her request for a refund after bill payment had been made, there was a return check charge of \$25.00. (EXHIBIT II) AT&T will not provide information to the Assessor directly, since the supervisor is the name listed on the account. Assessor Ottley said there were errors in the bills: Ruperto Herrera should be Line Item 1756, not 1751; AT&T \$25.00 check return charge should be taken from Line Item #73. The Assessor requested a breakdown from the supervisor on the \$304.90 reimbursement. Due to all of the non-payment, etc he had already receive a notice of disconnection of services from AT&T.

Motion by Trustee LaPorta, seconded by Trustee Murphy, to pay the Assessor's phone bills through automatic payment.

Roll Call

AYES: Trustees LaPorta, Murphy, Supervisor Moore

NAYS: Trustees Zirk, McMahon

ABSENT: None

MOTION PASSED.

Supervisor Moore refused to sign the approved list of bills from the Assessor. (EXHIBIT III) Assessor Ottley left the meeting at 7:55 p.m.

5. Regular Business

A. Audit and Payment of Bills

Motion by Trustee LaPorta, seconded by Trustee Zirk, to review and pay the Road District Bills.

All present vote AYE. MOTION PASSED.

Discussion: Trustee LaPorta asked why there are continually errors on the AT&T bills. Trustee Murphy asked why the Nextell bills that were approved at the previous meeting were still not paid. Supervisor Moore stated that she is requesting detail and will not pay until she has received it. Road Commissioner Freund and each of the Trustees stated that the Board approves the bills, not the Supervisor. Discussion continued by the Trustees that the Road District is a separate governmental body and that detail of the phone charges and the Supervisor's approval are not required. She is one vote on the Board.

There was a discussion on mileage being paid directly from the Road District or through Reimbursement from the Town Fund.

Motion by Trustee Zirk, seconded by Supervisor Moore, to amend the motion to pay the Road District bills with the exception of Grafton Township Town Fund \$2448.00; J.A. Ketchmark \$535.00; Bank of New York Mellon \$270,000; Jack Freund \$249.75.

Roll Call

AYES: Trustees Zirk, Murphy, Supervisor Moore

NAYS: None

ABSTAIN: Trustees LaPorta, McMahon

MOTION PASSED.

Supervisor Moore refused to sign the approved list of bills from the Road District. (EXHIBIT IV)

Motion by Trustee Zirk, seconded by Trustee Murphy, to review the Town Fund bills.

All present voted AYE. MOTION PASSED.

Discussion: Trustee Zirk stated that Jack Freund health insurance is not \$310.60, but actually \$4348.40. Trustee Murphy asked why Starkey Lab is out of Senior Services. The supervisor said it zeros out so it does not matter what Line Item it is under. Trustee Murphy responded that it was to come out of Line Item 1573. There was further discussion on errors in financial reporting.

Motion by Trustee Zirk, seconded by Trustee Murphy, to pay the Town Fund bills, but to exclude Kujovich Consulting \$600.00; Grafton Road District \$300,000.00; Ottosen, Britz, Kelly, Cooper, Gilbert & DiNiff \$32,223.43; Evans, Marshall & Pease, P.C. \$7545.00; Printing and Then Some \$295.60 (2 charges @ \$147.80 each); Supervisor's MasterCard charges \$2,675.89; Grafton Township GA Fund \$462.04/Annual Meeting mischarge; American Legion \$25.00; Postage \$110.00; Hilton Springfield \$320.32; J.A. Ketchmark \$785.00; Starkey Laboratories should be out of Line Item 1573 (not Senior Services) \$134.99; to specifically pay Jack Freund/Health Insurance in the amount of \$4348.40; and to pay Forensican \$6549.68.

Roll Call

AYES: Trustees Zirk, Murphy, McMahon, LaPorta

NAYS: Supervisor Moore

ABSENT: None

MOTION PASSED.

B. Approval of Minutes

1. Minutes of October 11, 2012 Regular Township Board Meeting.

Motion by Trustee LaPorta, seconded by Trustee Murphy, to approve the Minutes of October 11, 2012 Regular Township Meeting.

Roll Call

AYES: Trustees LaPorta, McMahon, Zirk

NAYS: Supervisor Moore

ABTAIN: Trustee Murphy

MOTION PASSED.

6. Public Comment/ Board Members Response to Public Comment

Diane Eversen, Timothy Hoppa, Dennis Wagner, Donna McMahon

As part of the Board response, Trustee LaPorta referenced the letter from Ancel Glink to Karl Ottosen, dated November 8, 2012. (EXHIBIT V)

Following Public Comment:

Trustee Zirk stated that there are a number of serious financial errors as a result of the transfers made at previous meetings. 1) Transfer of \$1000. from Line Item 5790 to Line Item 5512: Supervisor's records show a balance of \$1000. /actually a balance of \$2000. 2) Transfer of \$1000. from Line Item 5790 to Line Item 5513: Supervisor's records shows a balance of \$1000. /actually a balance of \$1500. 3) Transfer of \$936.48 from Line Item 1533 to Line Item 1554: Supervisor's records show a balance of \$2000./ actually a balance of \$1436.48. 4) Transfer of \$1200.88 from Line Item 1533 to Line Item 1565: Supervisor's records show \$2000/ actually \$1800.88.

Supervisor Moore stated that when motions are made to transfer funds the remaining balance in an account should be part of the Motion. Trustees LaPorta, Murphy and Zirk stated that this was not the case, but that it is the supervisor's responsibility to keep accurate financial records and report transfers of funds in a correct manner.

Motion by Trustee Murphy to correct error of \$90 transfer out of Line Item 1851 to Line Item 1551/it should be transfer of \$90 out of Line Item 1652 into Line Item 1551.

Motion Failed due to no second.

7. Old Business

A. Discussion and potential action on presentation by auditor for the 2010-2011 audit and hiring an auditor for the 2011-2012 audit.

Motion by Trustee LaPorta, seconded Trustee Murphy, to table this item to the December Regular Township Board Meeting. All present voted AYE.

MOTION PASSED.

B. Discussion and potential action to reimburse Trustee Zirk for mileage for the 2011 TOI Training class and to reimbursement of \$19.42 FOIA charges as a response to her request for copies of all bills related to legal fees so that she could conduct work on the budget.

Discussion: Trustee Zirk reported that the mileage reimbursement and \$19.42 copying charges were approved at previous meetings on the bills to be paid and she still has not been reimbursed

Motion by Trustee Zirk, seconded by Trustee LaPorta, to pay Trustee Zirk the mileage reimbursement the TOI Training Meeting she attended and reimbursed for charges of \$19.42 relating to her request for copies of all past and pending legal bills so that she could work on the budget.

Roll Call

AYES: Trustees Zirk, LaPorta, McMahon, Murphy

NAYS: Supervisor Moore

ABSENT: None

MOTION PASSED.

8. New Business

A. Discussion and potential approval of **Resolution 20121108-1, A RESOLUTION ESTABLISHING REGULAR MEETING DATES FOR 2013.**

Motion by Trustee Murphy, seconded by Trustee Zirk, to approve of Resolution 20121108-1, A RESOLUTION ESTABLISHING REGULAR MEETING DATES FOR 2013.

Roll Call

AYES: Trustees Murphy, Zirk, LaPorta, McMahon, Supervisor Moore

NAYS: None

ABSENT: None

MOTION PASSED.

B. Discussion and potential action to conduct a forensic audit and hire a forensic auditing firm.

Motion by Trustee LaPorta, seconded by Trustee Zirk, to discuss hiring a firm to conduct a forensic audit.

All present vote AYE. MOTION PASSED.

Discussion: Trustee LaPorta introduced Steven Lux of Baker Tilly and Mitchell Cohen of ESC Financial. Each company representative presented the process involved for their respective firms to conduct a forensic audit of Grafton Township. Trustee LaPorta led a discussion of why this pro-active action was necessary to protect the taxpayers and the Township. There was a general discussion regarding the continued errors in financial reporting. Trustee LaPorta stated that a representative of Ancel, Glink Law Firm was also in the audience.

Motion by Trustee LaPorta, seconded by Trustee Zirk, to hire Mitchell Cohen, ESC Financial Services, to conduct a forensic audit and to direct the Supervisor within 24 hours to prepare a check and to give such check to Mr. Cohen in the amount of \$10,000, the required retainer, so that the process may begin.

Roll Call

AYES: Trustees LaPorta, Zirk, Murphy, McMahon

NAYS: Supervisor Moore

ABSENT: None

MOTION PASSED.

C. Discussion and potential action on requesting Harris Bank to provide all pages of the monthly bank statements including the pages containing copies of cancelled checks.

Trustee LaPorta presented and read a letter to Sean Cratty, Branch Manager, BMO Harris Bank/Huntley requesting bank statements to include copies of cancelled checks on all of the Grafton Township accounts. (EXHIBIT VI)

Motion by Trustee LaPorta, seconded by Trustee Murphy, to send letter (EXHIBIT VI) to BMO Harris Bank Huntley requesting that Grafton Township bank account statements include copies of cancelled checks.

Roll Call

AYES: Trustees LaPorta, Murphy, McMahon, Zirk

NAYS: Supervisor Moore

ABSENT: None

MOTION PASSED.

D. Discussion and potential action regarding an accounting of Supervisor's use of funds allocated for postage.

Trustees again asked why so much use of postage. The Supervisor said that some of her postage expenses have been paid by an anonymous donor.

J. Establishment of agenda items for next meeting.

Levy

9. Reports

A. Supervisor

There will be a Special Meeting on Wednesday, November 28, 2012 at 7:30 p.m. at the Huntley Park District for the purpose of discussion and potential action of the 2010-2011 audit.

B. Trustees

No report.

C. Clerk

Clerk Ford reminded all elected officials about completing the OMA on-line test and that the certificate of completion should be filed with the Clerk. She announced that the office hours for filing for the Primary Election of February 26, 2012 were published in the November 7, 2012 Northwest Herald; available to the public at this meeting; posted on the website and at the Township Offices. She again requested a key to the Township Offices so that she would have access to her office. Supervisor Moore has denied this repeatedly and responded that "she would be there."

E. Road Commissioner

Commissioner Freund referenced his report. (EXHIBIT VII)

10. Executive Session to approve Minutes of the Executive Session of April 12, 2012.

Motion by Trustee Murphy, seconded by Trustee Zirk, to enter into closed session for the purpose of approving Minutes of the Executive Session of April 12, 2012.

Roll Call

AYES: Trustees Murphy, Zirk, LaPorta, McMahon, Supervisor Moore

NAYS: None

ABSENT: None

MOTION PASSED.

The Regular Township Board Meeting was reconvened at 10:16 p.m.

Present: Supervisor Moore, Trustees McMahon, Zirk, Murphy, LaPorta, Clerk Ford,

11. Discussion and potential action of items as discussed at Executive Session.

Motion by Trustee Zirk, seconded by Trustee LaPorta, to approve and release the Executive Session Minutes of April 12, 2012.

Roll Call

AYES: Trustees Zirk, LaPorta, Murphy, McMahon, Supervisor Moore

NAYS: None

ABSENT: None

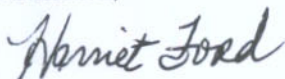
MOTION PASSED.

12. Adjournment

Motion made by Trustee Murphy, seconded by Trustee Zirk, to adjourn the meeting.

Roll Call/Voice Vote/All present voted Aye. Motion Passed/Meeting adjourned at 10:18 p.m.

Submitted,



Harriet Ford
Grafton Township Clerk

GRAFTON TOWNSHIP ASSESSOR

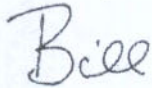
10109 Vine Street
Unit C
Huntley, IL 60142
Phone (847) 669-3383
Fax (847) 669-8233
GRAFTONTOWNSHIP.US

October 25, 2012

Dear Resident:

I have been instructed by legal council to post the following on this website. They are two documents. The first shows that the trustees approved the phone bill for the Assessor's Office. The second shows that the phone service for the Assessor's Office is going to be shut off because the supervisor has not paid the bill. This office is doing everything it can to rectify the problem, however, the next township meeting does not occur until November 8, 2012. If you can not reach the Assessor's Office please call 847-669-3328 and ask for me.

Sincerely,



William T. Ottley, CIAO-S
Grafton Township Assessor

McHenry County
Township of Grafton

We, the undersigned comprising the Board of Town Trustees of said Town of Grafton Township having duly met at the Town Clerk's office or duly designated area, on the 11 day of OCTOBER 2012, for the purpose of auditing town accounts, do hereby certify that the following claims or demands against said town were presented, and being examined were allowed at the said meeting.

In Witness Whereof, the members of said Board of Town Trustees have hereunto set their hand this 11 day of OCTOBER 2012.

trustee

Trustee

Trustee

Trustee

AT&T
PO Box 5093
Carol Stream, IL 60197-5093



October 16, 2012

ADIOSILB

GRAFTON TOWNSHIP ASSESSOR
UNIT C
10109 VINE ST
HUNTLEY, IL 60142

Account # 847-669-3383 8000

DISCONNECTION NOTICE

Did you forget to pay your bill? If so, your AT&T service and any other services associated with your billing telephone number may be disconnected. If your payment has been sent, we thank you and apologize for sending you this notice.

Your account is past due in the amount of \$241.90 and disconnection of services is scheduled for October 24, 2012.

- To stop disconnection of all services, pay \$241.90 by October 24, 2012.

Non-payment of unregulated charges will not result in disconnection of local service or long distance service, but may result in referral to a collection agency.

If your local service is disconnected, a reconnection charge of \$25.00 will apply and a deposit may be required. If your complex services or circuits are disconnected, a new service order will be required and additional connection charges will apply.

If you have several accounts billed on one statement, and one of those accounts is for local service, nonpayment may result in the billing being separated.

Payment made at an unauthorized payment agency does not guarantee timely credit to your account. You may pay your past due balance with a credit card or automatic withdrawal from your bank account. If you wish to discuss this notice, please call AT&T at 1-800-704-4808 between the hours of 8:00 AM and 5:00 PM CST.

We value you as a customer and understand that sometimes circumstances may cause a delayed payment.

Thank you for choosing AT&T Illinois.

If your questions are not resolved after you have called AT&T Illinois, customers may call the Consumer Services Division of the Illinois Commerce Commission at 1-800-524-0795 or TDD 1-800-858-9277 or you may write to Consumer Services Division, 527 East Capitol Ave., Springfield, IL, 62794-9280.



at&t

GRAFTON TOWNSHIP ASSESSOR
UNIT C
10109 VINE ST
HUNTLEY, IL 60142-9580

EXHIBIT II

Page 1 of 4
Account Number 847 669-3383
Billing Date Oct 13, 2012

Web Site att.com

Invoice Number 847669338310

Monthly Statement

Sep 14 - Oct 13, 2012

Bill-At-A-Glance

Previous Bill	241.90
Payment - Thank You!	241.90CR
Adjustments	266.90
Balance	266.90
Current Charges	240.92

Amount to be Debited \$507.82

Debiting Bank Account on Nov 6, 2012

Billing Summary

Billing Questions? Visit att.com/billing

and Services	164.47
1-800-480-8088	
Repair Service:	
1-800-727-2273	
AT&T Long Distance	6.89
1-800-480-8088	
AT&T Internet Services	69.56
1-877-722-3755	
Total of Current Charges	240.92

AT&T Benefits

• Total AT&T Savings 268.00

Detail of Payments and Adjustments

Item No.	Date	Description	Adjustments	Payments
1	10-09	Payment		241.90
2	10-12	Returned Check(s)	241.90	
3	10-12	Return Check Charge	25.00	
Totals			266.90	241.90

Plans and Services

Monthly Service - Oct 13 thru Nov 12

Charges for 847 669-3383

Bus Local Calling Unlimited A	38.00
Business Usage Serv	
Line Charge	
Unlimited Local Usage	
Calling Name Display	
Caller Identification	
Three Way Calling	
Call Forwarding	
Automatic Callback	
Speed Calling - 30	
LINE-BACKER®	

By choosing Bus Local Calling Unlimited A, you are saving \$85.20 over the cost of the same services purchased separately.

Federal Access Charge 4.73

Charges for 847 669-0179

Bus Local Calling Measured	27.00
Business Usage Serv	
Line Charge	
Block of Time 30	
Calling Name Display	
Caller Identification	
LINE-BACKER®	

By choosing Bus Local Calling Measured, you are saving \$60.60 over the cost of the same services purchased separately.

Federal Access Charge 4.73

News You Can Use Summary

- PREVENT DISCONNECT
- CARRIER INFO
- UNIVERSAL SVC FEE
- IL UNIVERSAL SVC FEE

See "News You Can Use" for additional information.

Local Services provided by AT&T Illinois, AT&T Indiana, AT&T Michigan, AT&T Ohio or AT&T Wisconsin based upon the service address location.

GO GREEN - Enroll in paperless billing.

EXHIBIT III

**McHenry County
Township of Grafton**

[illegible]

Supervisor

Paul M. May

Trustee

[Signature]

Trustee

Gregory M. Smith

Trustee

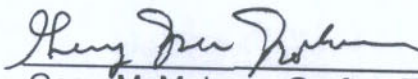
[Signature]

Trustee

GRAFTON TOWNSHIP ROAD DISTRICT
VOUCHER LIST FOR NOVEMBER 8, 2012 MEETING

With my signature below, I hereby approve of the invoices listed on the following pages being submitted for payment.


Betty Zirk - Grafton Township Trustee



Gerry McMahon - Grafton Township Trustee


Barb Murphy - Grafton Township Trustee


Rob LaPorta - Grafton Township Trustee


Harriet Ford - Grafton Township Clerk

Linda Moore - Grafton Township Supervisor


Jack Freund
Grafton Township Highway Commissioner

Meeting Date 11/8/2012

Grafton Township Road District

Vouchers for October

Vendor	Budget Line Item	\$ Amount	Due Date
Ace Hardware / Ziegler's	6111 - R&B Maint Supply - Building	\$ 34.96	11/30/2012
Ace Hardware / Ziegler's	6122 - R&B Operating Supplies	\$ 5.08	11/30/2012
AT&T	6552 - R&B Telephone	\$ 131.26	11/6/2012
BlueCross BlueShield of IL	9451 - PHR Health / Life Insurance	\$ 1,540.84	12/1/2012
Bott's Welding & Truck Service	6112 - R&B Maint Supply - Equipment	\$ 15.00	10/30/2012
Com Ed	6371 - R&B Utilities	\$ 120.98	11/26/2012
Com Ed - Street Lights	9519 - PHR Street Lights	\$ 261.05	12/26/2012
Conserv FS	9655 - PHR Fuel & Oil	\$ 2,691.97	11/30/2012
Curran Contracting Company	9614 - PHR Maint Supplies - Road	\$ 25.80	11/9/2012
Grainger	6123 - R&B Small Tools	\$ 58.59	11/11/2012
Hinckley Springs	6122 - R&B Operating Supplies	\$ 19.36	11/5/2012
Humana Dental Insurance	9451 - PHR Health / Life Insurance	\$ 216.60	12/1/2012
Interstate Battery Systems	6112 - R&B Maint Supply - Equipment	\$ 200.90	11/17/2012
MDC Environmental Services	6373 - R&B Garbage Disposal	\$ 149.88	10/20/2012
Nextel Communications	6552 - R&B Telephone	\$ 220.48	12/22/2012
Nicor Gas	6371 - R&B Utilities	\$ 38.80	11/19/2012
Township Officials of Illinois	9929 - PHR Miscellaneous	\$ 255.00	12/10/2012
Trotter and Associates	9532 - PHR Engineering Service	\$ 825.00	11/11/2012
Zanck, Coen & Wright, P.C.	6533 - R&B Legal Service	\$ 3,130.85	10/30/2012
Total		\$ 9,942.40	

These bills have NOT been paid from last month that were approved on 10/11/12

Nextel Communications	6552 - R&B Telephone	\$ 136.11	11/22/2012
Jack Freund	6562 - R&B Travel & Meeting Expense	\$ 249.75	8/10/2012
Township Highway Comm of IL***	6562 - R&B Travel & Meeting Expense	\$ 40.00	7/19/2012
		\$ 10,368.26	

*** This was approved to be paid by the Board of Trustees at the July 12th, 2012 regular monthly board meeting but the Supervisor refused to pay for this portion of the conference cost and sent the check in for \$170.00 instead of \$210.00.



DIAMOND BUSH
DiCIANNI
& KRAFTHEFER

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Chicago, IL 60603
www.ancelglink.com

Robert K. Bush
rbush@ancelglink.com
(P) 312.604.9105
(F) 312.782.0943

EXHIBIT V

November 8, 2012

Mr. Karl R. Ottosen
Ottosen Britz Kelly Cooper Gilbert & DiNolfo, Ltd.
1803 N. Naper Boulevard, Suite 350
Naperville, IL 60563

Re: Jack Freund v. Linda Moore, et al., 11 MR 395

Dear Mr. Ottosen:

Our clients, the Grafton Township Trustees, have forwarded to us your correspondence dated October 5, 2012. For the reasons that follow, we believe Grafton Township is not responsible for paying the fees of any attorney or law firm that was not duly approved in accordance with the provisions of the Illinois Township Code.

Section 70-37 of the Illinois Township Code states that a township supervisor may only appoint a township attorney "with the advice and consent of the township board." 60 ILCS 1/70-37. Section 100-5 of the Code states that "[t]he township board shall fix the compensation of a township attorney appointed by the supervisor under Section 70-37." Section 100-5 also grants authority to a township board to hire a separate township attorney to represent the highway commissioner, and to be paid for out of the township road fund. 60 ILCS 1/100-5.

As you may be aware, our office was the previous township attorney. We are enjoined from serving as township attorney in a case which is now on appeal. Since that time, Ms. Moore made only one attempt to hire a township attorney. The only attorney she ever presented to be the township attorney since the injunction issued was John Nelson. That appointment failed to receive board confirmation. Ms. Moore sought to have the circuit court perform the function of confirming her appointment, which the trial court did. That decision was reversed by the appellate court, resulting in the vacation of Nelson's appointment as township attorney. Since that time, there has been no township attorney. Further, the township board has requested repeatedly that Ms. Moore put up another law firm for confirmation as township attorney. Ms. Moore has continually taken the position that the township does not need an attorney. Consistent with that, she has refused to place the name of any attorney up for confirmation by the board as township attorney.

What she has apparently tried to do here instead is appoint you to serve as township attorney without authority. Under the Illinois Township Code, only the township attorney represents township officials who are sued in their official capacity. Here, Ms.

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Moore has refused to appoint a township attorney so that she can try to control the assignment of the township's legal work without including the trustees in that process. Your legal analysis that she has the ability to have her own attorney when there is a conflict with the township attorney does not apply here where there is no township attorney due only to your client's failure to appoint one.

The Illinois Appellate Court recently held that these statutes governing appointments of township attorneys are abundantly clear and that the board's powers of "advice and consent" should not be taken away by any other branch of government, including any court of law that would have to order Grafton Township to pay the fees you request to be paid as township attorney. "Here, the intent of the legislature is manifestly clear – the supervisor appoints a candidate for township attorney and the board confirms the appointment (i.e., gives its consent). ...[T]he language of the statute in no way suggests that the Board's role is ministerial. The statute provides for the board to give its 'advice and consent' rather than directing it to perform an action." Moore v. Grafton Township Bd. of Trustees, 2011 IL.App.2d 110499, 955 N.E.2d 1222, 1224 (2nd Dist. 2011).

The litigation for which you are seeking fees is a matter in which you represented Grafton Township Supervisor Linda Moore as a defendant sued in her official capacity by plaintiff Jack Freund, the Grafton Township Highway Commissioner. Freund v. Moore, et al., 11 MR 395. There is no legal conflict between Moore and the Township or the Township Trustees related to that case.

In order for Grafton Township to be liable for the attorney representing Supervisor Moore, the attorney must have been appointed through the proper statutory procedures cited above, with the Board's advice and consent. In other words, Moore should have presented her choice of attorney to the Board to obtain its consent to hire you as the township attorney. She failed to do that, and simply appointed you without presenting you to the Board. Since Moore failed to take that necessary action, and since the Board has never consented to your appointment as the Township attorney, the Township has no lawful obligation to pay the requested attorneys' fees.

You contend in your demand letter to the Board that you have a right to payment of your fees based on the legal precedent established in Wayne Township Bd. of Auditors, et al., v. Ludwig, 154 Ill.App.3d 899 (2nd Dist. 1987). However, your reliance on that case is misguided. In the Ludwig case, the township clerk was sued in his official capacity as a defendant in litigation in which the township board was the plaintiff. The court found that "the Board had specifically refused to employ counsel to represent him [the defendant]" in that action. Ludwig, 154 Ill.App.3d at 904-5. The court also determined that the defendant was entitled to hire his own attorney only because an

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actual conflict of interest existed between the defendant clerk and the duly appointed township attorney, who was representing the plaintiff board. "In the instant case, an actual conflict exists between the town Board and one of its officers. Since the Board is represented by the township attorney, the town officer is entitled to be represented by independent counsel." Ludwig, 154 Ill.App.3d at 907.

The Ludwig court cited to an earlier case that is quite similar to the matter at hand, and in which the court refused to order a township to pay attorney fees for a lawyer that was not duly approved by the board, even though the township officer had a right to legal counsel. Citing Franks v. Township of Riley, 50 Ill.App.3d 99 (1977), the Ludwig court stated:

In Franks, a township highway commissioner hired a law firm to provide him with legal advice. The township board had not authorized the commissioner to hire the firm and refused to pay the firm's legal fees incurred in representing the highway commissioner. The law firm brought an action against the township to recover fees. The plaintiffs argued that a highway commissioner is entitled to legal assistance in order to carry out his statutory duties and may employ an attorney whenever legal services are reasonably necessary for handling the affairs of his office. The plaintiffs further argued that as a result of conflicting positions arising between the township and the highway commissioner, each party should be entitled to receive independent advice and counsel. The trial court dismissed the plaintiff's complaint. On appeal, the court agreed that the highway commissioner was entitled to hire an attorney. However, the court concluded that the facts presented did not give rise to a conflict of interest sufficient to justify hiring independent legal counsel in that matter. Ludwig, 154 Ill.App.3d at 906 (internal citations omitted).

In the matter involving Moore and Freund, the facts are quite different than those in the Ludwig case and are much more like the facts in the Franks case, in which the courts refused to force the township to pay fees to an attorney who was never approved by the township board, despite the township officer's right to legal counsel. There was no conflict of interest between Moore and the duly appointed Township attorney for two reasons: (1) there was no duly appointed Township attorney at the time of this litigation due solely to Moore's failure to appoint one following repeated requests of the Board to do so; and (2) the attorney working against Moore was the Township highway commissioner's attorney, not the Township's or Trustee's attorney. Furthermore, Moore has totally failed to follow the statutory procedures that would have entitled you

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to fees. Unlike Ludwig's failed attempt to obtain board consent for his choice of township attorney, Moore never even presented your firm to the Grafton Township Trustees for its approval. As was clearly and strongly stated by the appellate court in Moore v. Grafton Township, "the legislature placed with the Board the authority to consent to (that is, confirm) an appointee for the position of township attorney. Under the political-question doctrine, the trial court should not have interfered with that authority." Moore, 955 N.E.2d at 1224.

This is not a situation where Moore was entitled to legal representation and the Board refused to supply it, nor was it a situation where Moore had a conflict of interest with the Township's own attorney. This is a situation where Moore completely failed to recognize or follow the statutory procedures for obtaining the legal counsel to which she was entitled, and that failure should not, and as a matter of law cannot, be held against a Township Board that had done nothing to stand in the way of Moore obtaining adequate legal representation at the time in which it was proper for her to seek the Board's consent for the attorney of her choosing.

Further, as to your statement that the Township never informed you that its bills were not approved by the Township Board, in the past the Township Supervisor has always performed the notification to vendors, so it is unclear why she did not give you that courtesy.

Very truly yours,



Robert K. Bush

cc: Grafton Trustees



Grafton Township

10109 Vine Street, Huntley, IL 60142

Board of Trustees

Betty Zirk

Rob LaPorta

Barbara Murphy

Gerald McMahon

COPY

November 8, 2012

Sean Cratty
Branch Bank Manager
BMO Harris Bank, N.A.
10604 Route 47
Huntley, IL 60142

Re: Grafton Township Checking Account Ending in 073
 Grafton Township General Assistance Checking Account Ending in 773
 Grafton Township General Assistance Money Market Account Ending in 129
 Grafton Township Food Pantry Checking Account Ending in 794
 Grafton Township Road & Bridge Checking Account Ending in 256
 Grafton Township Road & Bridge Money Market Account Ending in 390
 Grafton Township Road & Bridge Grant Money Market #1 Account Ending in 731
 Grafton Township Road & Bridge Grant Money Market #2 Account Ending in 758

Dear Mr. Cratty:


We have been advised by Grafton Township Supervisor Linda Moore that you no longer provide the "cancelled checks" pages on all of the Grafton Township accounts listed above. It is imperative for the Grafton Township Board to be able to review all financial records of the township. By omitting these important pages in each of these accounts, you are prohibiting the board from performing official duties granted to the board by Illinois Statute "to review all financial accounts."

We hereby request that you immediately return to providing entire and complete bank statements to the township that includes all pages of cancelled checks. We also request that you provide the township with the pages of cancelled checks omitted from the July, August, September and October 2012 bank statements.

.../

Mr. Sean Cratty
BMO Harris Bank, N.A.
November 8, 2012
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Any instruction you may receive from the Supervisor of Grafton Township to the contrary is not in accordance with the majority of the Township Board and should not be honored. Should you have any questions or concerns, please contact Grafton Township Trustee Robert LaPorta at 224-829-8320 the spokesperson for the board of trustees in this matter. We thank you, in advance, for your cooperation.


Grafton Township Trustee Betty Zirk


Grafton Township Trustee Barbara Murphy


Grafton Township Trustee Robert LaPorta


Grafton Township Trustee Gerald McMahon

cc: Mark Furlong
President & Chief Executive Officer
BMO Harris Bank, N.A.

Jamie Maravich
Regional Branch Manager
BMO Harris Bank, N.A.

Road District of Grafton Township

Jack Freund, Highway Commissioner
10109 Vine Street, Unit A
Huntley, IL 60142
Phone 847-669-5070
Fax 847-659-1075

HIGHWAY COMMISSIONER REPORT

October 2012

- There was 1 Special Moving permit totaling \$50.00.
- TOWNSHIP HIGHWAY COMM OF IL bill for \$40.00 was not paid that was approved to be paid the last 4 months.
- My MILEAGE REIMBURSEMENT has not been paid from 3 months ago.
- NEXTEL BILL from last month was not paid yet, this needs to be paid this month along with the current month.
- RENT PAYMENT- No record of receiving SEPTEMBER and OCTOBER 2012 payments?
- I am requesting copies of the BANK STATEMENTS for all 4 of the ROAD DIST accounts for the month of SEPTEMBER and OCTOBER 2012.
- The INTEREST for the 2 GRANT MONEY MARKET accounts needs to go into PHR FUND 9020
- Reports – Still have not received any since August 2011.

If you have questions, please give me a call at the office and come in and see me.