

Au Train Township Board Special Meeting
December 27, 2022
6:00 o'clock pm

Pursuant to authorization, the Au Train Township Board convened on the above date at 6:00 pm

The Meeting was called to order by Supervisor Michelle Doucette, with the following members present: Mary Johnson, Clerk; Kristy Cota, Treasurer; and Tom Balmes, Trustee. Jake Miller, Trustee was absent but attended via cell phone call.

*VISITORS PRESENT – Approximately 20 persons attended. A partial list is on file with Clerk Johnson. (Several persons did not sign in).

*PURPOSE OF THE MEETING - Clerk Johnson indicated that the purpose of the Special Board Meeting was to discuss the urgent issue of the Au Train River flooding event from several days of blizzard conditions and winds that blocked the natural flow of the river. The severity of the flooding was extreme affecting many residents in the Village of Au Train area near the Au Train River. The event started on Thursday December 22nd and continued through December 26th.

MDOT RESOLUTION - Because the ice jam is causing the flooding and back flow of water, the only solution is to open up the ice to get the water flowing again. While verbal permission to get a backhoe on the ice was given by the Michigan Department of Environment, Great Lakes & Energy (EGLE) and Army Corp of Engineers, the Michigan Department of Transportation (MDOT) is requiring the Board approve the following Performance Resolution for Municipalities.

AU TRAIN TOWNSHIP, ALGER COUNTY
PERFORMANCE RESOLUTION FOR MUNICIPALITIES
RESOLUTION NO. 2022-14

This Performance Resolution (Resolution) is required by the Michigan Department of Transportation for purposes of issuing to a Municipality an "Individual Permit for Use of State Highway Right of Way", and/or an "Annual Application and Permit for Miscellaneous Operations within State Highway Right of Way".

RESOLVED WHEREAS, the Township of Au Train hereinafter referred to as the "MUNICIPALITY," periodically applies to the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT," for permits, referred to as "PERMIT," to construct, operate, use and/or maintain utilities or other facilities, or to conduct other activities, on, over, and under State Highway Right of Way at various locations within and adjacent to its corporate limits;

NOW THEREFORE, in consideration of the DEPARTMENT granting such PERMIT, the MUNICIPALITY agrees that:

1. Each party to this Resolution shall remain responsible for any claims arising out of their own acts and/or omissions during the performance of this Resolution, as provided by law. This Resolution is not intended to increase either party's liability for, or immunity from, tort claims, nor shall it be interpreted, as giving either party hereto a right of indemnification, either by Agreement or at law, for claims arising out of the performance of this Agreement.

2. If any of the work performed for the MUNICIPALITY is performed by a contractor, the MUNICIPALITY shall require its contractor to hold harmless, indemnify and defend in litigation, the State of Michigan, the DEPARTMENT and their agents and employee's, against any claims for damages to public or private property and for injuries to person arising out of the performance of the work, except for claims that result from the sole negligence or willful acts of the DEPARTMENT, until the contractor achieves final acceptance of the MUNICIPALITY. Failure of the MUNICIPALITY to require its contractor to indemnify the DEPARTMENT, as set forth above, shall be considered a breach of its duties to the DEPARTMENT.

3. Any work performed for the MUNICIPALITY by a contractor or subcontractor will be solely as a contractor for the MUNICIPALITY and not as a contractor or agent of the DEPARTMENT. The DEPARTMENT shall not be subject to any obligations or liabilities by vendors and contractors of the MUNICIPALITY, or their subcontractors or any other person not a party to the PERMIT without the DEPARTMENT'S specific prior written consent and notwithstanding the issuance of the PERMIT. Any claims by any contractor or subcontractor will be the sole responsibility of the MUNICIPALITY.

4. The MUNICIPALITY shall take no unlawful action or conduct, which arises either directly or indirectly out of its obligations, responsibilities, and duties under the PERMIT which results in claims being asserted against or judgment being imposed against the State of Michigan, the Michigan Transportation Commission, the DEPARTMENT, and all officers, agents and employees thereof and those contracting governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract. In the event that the same occurs, for the purposes of the PERMIT, it will be considered as a breach of the PERMIT thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan Transportation Commission a right to seek and obtain any necessary relief or remedy, including, but not by way of limitation, a judgment for money damages.

5. The MUNICIPALITY will, by its own volition and/or request by the DEPARTMENT, promptly restore and/or correct physical or operating damages to any State Highway Right of Way resulting from the installation construction, operation and/or maintenance of the MUNICIPALITY'S facilities according to a PERMIT issued by the DEPARTMENT.

6. With respect to any activities authorized by a PERMIT, when the MUNICIPALITY requires insurance on its own or its contractor's behalf it shall also require that such policy include as named insured the State of Michigan, the Transportation Commission, the DEPARTMENT, and all officers, agents, and employees thereof and those governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract.

7. The incorporation by the DEPARTMENT of this Resolution as part of a PERMIT does not prevent the DEPARTMENT from requiring additional performance security or insurance before issuance of a PERMIT.

8. This Resolution shall continue in force from this date until cancelled by the MUNICIPALITY or the DEPARTMENT with no less than thirty (30) days prior written notice provided to the other party. It will not be cancelled or otherwise terminated by the MUNICIPALITY with regard to any PERMIT which has already been issued or activity which has already been undertaken.

BE IT FURTHER RESOLVED that the following position(s) are authorized to apply to the DEPARTMENT for the necessary permit to work within State Highway Right of Way on behalf of the MUNICIPALITY.

Title and/or Name: Au Train Township Supervisor - Michelle Doucette

The foregoing Resolution was offered at the Au Train Township Special Board Meeting on December 27, 2022.

Resolution offered by Board Member Clerk Johnson

and supported by Board Member Treasurer Cota

Upon roll call vote, the following voted:

“YES” Johnson, Cota, Balmes, Doucette

“NO” None

The Supervisor declared the Resolution adopted.

Mary Walther Johnson, Au Train Township Clerk *Mary Walther Johnson*

I HEREBY CERTIFY that the foregoing is a true copy of a resolution adopted by the Township Board of the Township of Au Train of Alger County, Michigan.

at a meeting held on 27th day of December A.D. 2022.

Mary Walther Johnson

Mary Walther Johnson, Au Train Township Clerk

The approved resolution was immediately scanned and emailed to MDOT.

PUBLIC COMMENT (6:11 pm) A call for public comment was made. Public comments were received from Nancy Bailey, (it should be noted that during the public comment period, Supervisor Doucette received a call from Renewable World Energies. They indicated the water level was one foot from the top of the dam, and that they received permission to dial it back for as long as they could). Public Comments resumed and were received from Louis Eiseman, Tom Hill, and Jesse Cadwell. (6:24)

Supervisor Doucette provided a detailed update to the Board on progress made over the past two days. The Army Corp of Engineers indicated once again that residential properties are not their concern.

The Board did indicate that they are committed to work with citizens and try to establish a long term solution. While maintenance dredging did not appear to offer help in the past for these type of events, it would be considered, as well as having permits on file, if or when needed.

Steve Webber, Alger County Emergency Manager along with Sgt. Sheila Peters of the Alger County Sheriff Department were present and offered an explanation on the procedure of Emergency Management and how the process of involving the County and then State, become available in cost sharing. The Township would have to exhaust all funds available before the County steps in and they as well would need to then exhaust all funds before the State gets involved. Both Mr. Webber and Sgt. Peters have been helpful in making contact with agencies regarding the matter. The process of involvement was also discussed and the need for the permits prior to any work being done. Also, FERC has indicated that the Forest Lake Dam was not to be used as a flood control agent, however, as noted earlier, Renewable World Energies indicated they would try and assist as much as possible.

Wyatt Seaberg has been contracted to begin the process of opening up the ice jam and is ready to proceed once approval has been obtained. Emergency Services will also be present at the river mouth. The cost will depend on the amount of time required to get the water flowing.

MOTION by Clerk Johnson, second by Supervisor Doucette to pay for all costs related to the removal of the ice jam, with funds from the SLFRF Fund. JOHNSON, YES; DOUCETTE, YES; COTA, YES; BALMES, YES. MOTION CARRIED.

During the meeting, Supervisor Doucette indicated that we had VERBAL approval from MDOT to proceed and that the permit would still need to be submitted as soon as possible. Sgt. Peters will contact Wyatt Seaberg and let him know he can begin as soon as possible.

*ADJOURNMENT

Being no further business, MOTION by Clerk Johnson, second by Supervisor Doucette, to adjourn the meeting. MOTION CARRIED. MEETING ADJOURNED at 7:02 pm.

Submitted by:

Mary Walther Johnson, Au Train Township Clerk