

**CHEBOYGAN COUNTY BOARD OF COMMISSIONERS
COMMITTEE OF THE WHOLE MEETING
April 26, 2011**

The regular meeting of the Cheboygan County Board of Commissioners was called to order in the Commissioners Room by Chairperson Linda Socha at 9:30 a.m.

Roll called and a quorum present.

Present: Commissioners Linda Socha, Don Horrocks, Pete Redmond, Cal Gouine, Tony Matelski, John Wallace, and Sue Allor

Absent: None

There was a moment of silence in memory of former Sheriff Jack Grabowski who passed away.

Commissioner Wallace gave the invocation and led the Pledge of Allegiance.

Chairperson Socha noted the Board typically does not take action at Committee of the Whole meetings; however, the County Road Commission has requested a letter of support for the Freeway Trail Bridge. The Road Commission will include the letter with its grant application for the 2014 Local Bridge Projects and the deadline for applying is May 1, 2011.

Chairperson requested the addition to the agenda of Sheriff Clarmont's Annual Report.

Motion by Commissioner Matelski, seconded by Commissioner Redmond, to approve the agenda with the addition of the 2010 Cheboygan County Sheriff Department Annual Report. Motion carried with 7 yes, 0 no and 0 absent.

CITIZENS COMMENTS – Leonard Page, Grant Township resident, commented that aside from these distractions, this board has an important job regarding budget cuts again this year. He said last year the board went about cuts the right way by allowing buy-in from the unions. He noted a demonstration would be held today regarding cuts to health insurance benefits for Cheboygan County Road Commission retirees.

Chairperson Socha apologized for any inconvenience the additional chairs in the room may cause.

SCHEDULED VISITORS/DEPARTMENT HEAD REPORTS

Chairperson Socha presented a certificate of appreciation to Phillip Welch for his service on the Cheboygan County Airport Authority.

ADMINISTRATOR'S REPORT - None

NEW BUSINESS

Motion by Commissioner Redmond, seconded by Commissioner Horrocks, to approve a letter of support for the Freeway Trail Bridge as requested by the Cheboygan County Road Commission and authorize the Chairperson to sign. Motion carried with 7 yes, 0 no and 0 absent.

At 9:45, according to the Subpoena issued, Drain Commissioner Dennis Lennox, accompanied by his legal counsel Dennis P. Grenkowicz, arrived at the meeting. Mr. Grenkowicz introduced himself, stating he was a former Prosecutor in Alpena County now in private practice. He said Mr. Lennox wants to do what's best for the people of Cheboygan County. Chairperson Socha administered the oath to Mr. Lennox. Written response to the questions presented to Mr. Lennox in the Subpoena was distributed; following which the Board was allotted ten minutes to review the answers Mr. Lennox provided.

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Chairperson Socha reminded the Board that all questions and discussion must relate directly to the duties of the Drain Commissioner and there will be no debate.

Allor: In your annual report for September 30, 2010 you indicated you performed inspections on several of the fifteen existing county drains. Were reports written on those findings and when were the reports completed, and if they are available could we get copies?

Lennox: Thank, you Commissioner. I don't have the exact list with me, that wasn't requested as to what inspections were being performed, but I would be happy to present that information after this session.

Allor: In looking at the various documents, the website indicates that there are 16 drains; the answers to the subpoena indicate that there are 14, and the annual report reflects 15.

Lennox: There is a dispute in documentation of the records belonging to my office with respect to one drain in Forest Township as to whether or not it went through the final step 60 some years ago. And then with respect to the 16 figure I have not seen that it is possible there could be further discrepancies from the information that was passed on and I inherited I would happy to thoroughly review that and get back to you at the appropriate time.

Allor: Okay, thank you.

Gouine: I understand that you were on a talk show with Vic McCarty and you were talking about a large drain project you were working on.

Lennox: I think I would need more information from you as to what you are asking me; what the exact question is, sir.

Gouine: While you were on the talk show did you talk about any drains you were working on?

Lennox: My office received a petition in September of 2009 for a drainage project in Benton Township that would be approximately a quarter of a million dollar project.

Gouine: Did anything come of that?

Lennox: The project is still pending as of today's date.

Gouine: I know you said you didn't do any fees or anything, did you have any monetary or favors swapped for your consulting, did you do any consulting for any money or monetary value?

Lennox: Are you referring to me personally?

Gouine: As a drain commissioner.

Lennox: I don't believe I would be allowed to do consulting work as a county elected official for other counties; if that's what you are referring to.

Matelski: Do you have a copy of the petition for the drain in Benton Township that you said you've got?

Lennox: I do.

Matelski: Are we going to get a copy?

Socha: It was requested that he provide it, but we did not receive it.

Matelski: But we will receive it.

Lennox: I have a copy right here that you're more than welcome to have.

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Socha: Is there a reason why it was not attached?

Lennox: I honestly... I don't know, I think it just might have been a slight oversight.

Matelski: Number 3 question, do you have any plans within the next 12 months to inspect, repair, and/or maintain any of those county drains and you say you intend to inspect, repair and maintain county drains in accordance with the Drain Code. So you don't have a list of drains you intend to inspect and repair. You gave this same answer for 4 and 5 so those answers were really not answers to the questions.

Lennox: With all due respect, Commissioner, I can't answer a hypothetical question. What I can say is what I indicated in my written answers.

Matelski: It wasn't a hypothetical question.

Lennox: It absolutely was. I can't predict what's going to transpire in the next 12 months that may require the services of my office. We could have a flood this week. I don't know. But as my answer said I intend to inspect, repair and maintain county drains in accordance with the Drain Code.

Matelski: So you have no idea what needs to be done or if anything needs to be done to any of these drains.

Lennox: Again I would reiterate my answer. I intend to inspect, repair and maintain county drains in accordance with the Drain Code.

Matelski: Okay so question 11 was whether or not you established a fee schedule and I understand there was a fee schedule attached to your office door.

Lennox: As I indicated in answer number 11 and answer 10, no fee schedule was established. One was submitted to the Board of Commissioners, but the Board of Commissioners in 2009 declined its assent to that fee schedule.

Matelski: So then you put that on your office door without it being approved by this Commission.

Lennox: I don't know when that would have been placed on the door. But again no fee schedule has ever been established by my office because the Board of Commissioners declined its assent.

Matelski: Do we have a copy of that fee schedule that he posted?

Socha: We have a copy of the fee schedule that was presented and somewhere in some of the video documentation it does show that it was on the door recent. I'm not sure that it's there any more but it was there after we declined it, it was posted on the door. Mr. Matelski, any additional questions.

Socha: I forgot this, but I did have extra copies of the questions on the subpoena for anyone in the audience who wish to have them and also I did check with Bryan if copies of the written response could be copied and he said we could. Also copies of petitions that were presented, only for the board. Time was taken to get copies made.

Copies were distributed. Photos taken March 10, 2011 of the fee schedule posted on the door of the Drain Commissioner's office were presented for board review.

Matelski: Question 14 was if you have collected any fees from the fee schedule you established from any person, entity, or governmental body for any service you have provided as Drain Commissioner pursuant to your statutory duties, where has the money been deposited? And your answer was no fee schedule as been established, which does not answer the question. Have you received any money or are you telling us that no money has been collected? Is that what you're telling us? That would have been extremely easy to say, no money has been collected, and that would have answered the question,

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instead of saying no fee schedule has been established. So is the answer to that question no money has been collected? Is that the answer to that question?

Lennox: Commissioner Matelski, first off I reject the premise of your question, no money has been collected because no fee schedule has been established or given its assent by the Board of Commissioners.

Matelski: But we have pictures of your fee schedule.

Lennox: You may have a picture, but no fee schedule has been established or given its assent by the Board of Commissioners.

Matelski: So you are refusing to answer the question, whether or not any money has been collected.

Lennox: I'm not refusing to answer any questions. I can't help it if you don't like the answer I'm giving. I'm trying my best to answer the questions truthfully in accordance with the oath that I took.

Matelski: I guess I'll move on, since he won't answer the questions. On February 18, 2011 you sent a letter to the Chairperson and you said "A drain commissioner is not a local officer, but an officer exercising public functions on behalf of the state under and by virtue of its police powers." Do you still believe that statement?

Lennox: Yes, I do.

Matelski: And what do you use to.

Lennox: Numerous attorney general opinions and a Supreme Court precedent of over 100 years that's never been reversed by the Supreme Court of this state.

Matelski: So you're saying you're using the original drain code, that's where you thought you had these powers.

Lennox: In my February 18th letter I referred to the fact that for over 100 years since drain commissioners were established at the countywide level the law of this state has held that drain commissioners are not local officers, but that they're officers of the state exercising the state's police powers.

Matelski: And you still believe that.

Lennox: Absolutely.

Matelski: Okay that's it for now. We can come back, right? We really haven't had any time at all to go through this.

Socha: You will be allowed to ask any questions that you want to as long as it is relative to the Drain Commissioner's duties.

Matelski: Yes, I understand.

Redmond: My initial question will focus on Benton Township since that is part of my district. Your petition contains several signatures, 15 to 20 signatures, dated back to August 15, 2009. I believe the word you used here was this petition is pending. I'm curious, what nature is pending; what has to be done.

Lennox: Thank you for the question, Mr. Redmond. With respect to that petition it is pending for a simple matter that my office has repeatedly tried to avoid the assessment of special assessments. I would prefer alternate means to fund this project. I corresponded with you regarding this matter in the spring of 2009. I've written the Benton Township Board repeatedly, have attended there meetings.

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People that have signed this petition have attended there meetings, have communicated with the road commission with this respect. It was our hope that Benton Township would see the nature of this project that would benefit its township and would pay for it out of its general fund; absent that I could secure state or federal funding for the project. Those discussions with the appropriate officials are still ongoing. There is no expiration date once a petition has been submitted. I guess ultimately there may have to be a special assessment, but my preference would be not to put a further burden on the cash-strapped wallets of taxpayers.

Redmond: Okay, my belief from the get go is the fact that once a petition is signed and the landowners move forward with this drainage district, ultimately they are going to be responsible to foot the bill on this. So what you are stating is that you're looking for alternative money to be able to complete this or any project that you may go after.

Lennox: Correct.

Redmond: The list of established drains, again the number spoken about. Everyone has this now so you can see that some townships have as many as three and some townships only have one or two and some are not listed in here. These established drains obviously were established 50 years ago, 00 years ago or long, I don't know. To my knowledge I don't know if there's ever been any work or any improvements for as long back as I can remember so that brings me to the questions these were at one point established drains do they still exist today?

Lennox: Once a drain is established it exists perpetually unless it's abandoned. I did attempt to initiate abandonment proceedings on at least one if not more of these drains with the premise that the County shouldn't be liable for failing to maintain these because that's the problem with these established drains. The County can be held legally liable for property damage that's sustained by a failure to maintain these drains. My preference would be to abandon these drains. When I attempted to do so, I was met with fiercest resistance by numerous township officials that did not want these drains abandoned for whatever reason despite my explanation that it carried significant liability to the county. With respect to when maintenance was last performed, that's a difficult question, for whatever reason my office does not have records from my predecessors from approximately World War II to 2000. It's my understanding that one of the drain commissioners along that period went through a divorce and they were burned by the spouse or destroyed in some manner, some of them were damaged in a flood in the 60's but I also have an informal understanding that at least one of the previous drain commissioners did perform maintenance informally, not through the assessment process, but through collecting reimbursement directly from the impacted landowners.

Redmond: Okay, thank you.

Wallace: My questions will center around your per diem requests you've been asked to under 15 the question we asked you to detail with expenses have you done so?

Lennox: Can you clarify the question are you asking in the answers I provided?

Wallace: Yes, in the answers you provided you just talked about various meetings and also about reviewing pending permits; none of those requests were in detail. When we (elected officials) submit vouchers for payment they usually have detail as to who we met with and what was discussed. You have failed to do that in any of your applications that I've seen.

Lennox: I respectfully differ, Commissioner. My to the best of my knowledge my per diem request forms that have been submitted have been submitted in the same form and manner as they have been for the last almost two and a half years of holding office with little or no difference. In the past they were always paid out. With respect to the question 14, unless I'm mistaken, the subpoena didn't provide specific dates or specific requests that I was to detail and it's not possible for me to respond to every imaginable request over 2 ½ years if that's what you're requesting. If you are requesting that, I would be happy to provide additional information as I indicated to Commissioner Allor at a later time to give you that information. I'm here in the full spirit of cooperating and I believe that all my per diem requests

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have been submitted, as I said, submitted in the same standard as they always have been submitted from my office.

Wallace: The question was 15, not 14, Mr. Commissioner.

Lennox: I apologize, duly noted, 15.

Wallace: Again they are not in the detail that we are all required to submit. So you need to do that because you are talking generalities about constituents; we all have constituents, everybody that is elected has constituents. The payment we would expect to pay would be for discussions surrounding the office of the drain commissioner, not some political thing or whatever you want to talk to them about, like what the temperature is out today. That's why we submit the detailed meetings request for payment.

Lennox: With due respect, Commissioner, all my requests are of proper nature, none of them have ever been for political events. I wouldn't dream of comingling taxpayer resources with political functions. But as I can tell you, the same standard since January, that apparently you now have questions with, you paid out for a year and a half with no questions whatsoever. I don't have the ones you are referring to in front of me but I believe they always said something to the effect that if I spoke at a township meeting or constituent meeting, or a hearing or a permit inspection, something along those lines and I would also like to note for the record I never once had a question from the administrator or the finance director with respect to my per diems. I had to read about it in the newspaper.

Wallace: Is there a reason you are hollering now?

Lennox: I'm not hollering.

Wallace: Yes, you are.

Lennox: I apologize if I'm hollering, but I don't believe I'm hollering. If I could continue.

Wallace: Question, let me finish question 15.

Lennox: Madame Chair, could I finish my answer, please.

Socha: Let's clarify the question.

Wallace: Concerning the requests you have submitted in the 2011 calendar year for per diem payments and expense reimbursements, describe in detail the nature of each meeting you attended and the nature of the expense you incurred and describe with specificity how each meeting and expense was necessary to carry out your duties as the Drain Commissioner. I have not seen that answer yet.

Lennox: I believe my question submitted for 15 complied with that, my answer submitted for question 15 complied with that. But again I would like to note that if there's a question about a per diem, somebody should pick up the phone and call me.

Socha: Excuse me, the question that is on the subpoena is very defined and these questions were submitted for you to answer by the definition of this question. The 2011 calendar year was the date that was selected because there are four new board members on this board. What happened in 2009 or 2010 they are not privy to. These are the changes these board members requested extra detail from what they felt was not enough detail in your per diem slips. Maybe in the past you had enough detail, maybe in the past they were okay, but this is pretty much a new board. The questions are from that particular board 2011. And the question in the subpoena which is required to be answered is "describe in detail the nature of each meeting you attended and the nature of the expense you incurred", very simplistic and how that for each meeting and expense is necessary to carry out your drain commissioner duties. I don't believe it's appropriate for you to be debating the questions that we have

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in the subpoena. We are only going to ask and I'm going to request that you answer the questions that were in the subpoena without debate.

Grenkowicz: Madame Chairman, may I interject. I've noticed as few implied criticism of the written answers which were not required in the first place. We did the written answers as a courtesy which we thought would give a starting point where the commissioners could read them and then answer questions expanded upon that. We simply came here today with no written documentation simply to answer questions. One of the things we discussed further was that there would be things that Mr. Lennox does not have at the ready and he will be happy to provide that information within a timely manner. If that has to be in writing, fine; if it has to be in person, that's fine. The answers here were simply meant to be a starting point.

Socha: Excuse me, Civil Counsel, is that correct? My understanding was that these were not starting points. The questions we have in the subpoena are not starting points.

Graham: My suggestion, talking to Mr. Grenkowicz last week, was that written answers would be the most efficient way to try to answer the questions, so what was produced was the written answers to the questions pursuant to our discussion.

Socha: So if there is further questions by any of the Board members they ability to ask that question for more clarification if the answer to the subpoena is not clear. Am I correct?

Graham: That's correct.

Grenkowicz: We have no objection, we're here. After talking to Mr. Graham, we simply felt this would be the most efficient way to start. Mr. Lennox is here and ready to answer your questions; and anything he can't produce right now he can produce in the near future.

Wallace: Counselor, with that in mind, I would expect him to have those questions answered under 15 because he's had them now for over a month. If he couldn't provide them in a month, how's he going to provide them overnight?

Grenkowicz: I think the question is answered fairly. If you want us to go through every per diem and write a response to that, we can do that.

Wallace: That's what the request was, in detail.

Grenkowicz: Well that's not how I saw it.

Wallace: It's on the subpoena just like that.

Grenkowicz: We differ on that, but if you want us to provide that within say one week or 10 days, we can do that. We can do a written report to the county board.

Wallace: To use Mr. Lennox's phrase respectfully we've given him a month to do that.

Grenkowicz: So what do you suggest then?

Wallace: I suggest that he answer the question.

Socha: We will assume this is his answer to the question.

Horrocks: One billing was on lapel pins. I as an elected official don't have the ability to buy lapel pins to give to my constituents who I would consider my constituents. What gives you the authority to do that with county money?

Lennox: With all due respect, Commissioner Horrocks, being a member of the board of commissioners differs in it's duties and responsibilities than being a countywide elected officer with an office that must

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be maintained. I don't view giving out lapel pins any different than a county directory, a calendar or a magnet any other printed or swag that other offices and departments have from time to time in recent history given out to people who interact with their offices. In the case of the lapel pins they're given out to schoolchildren, if I speak at a school, if I meet with a congressman or state senator requesting state or federal appropriations it's generally nice to hand them something so they can remember Cheboygan County by. I'm not going to make any apologies for that request. If you don't view it proper you don't view it proper and we will have to respectfully differ on our interpretations of our respective duties.

Horrocks: So you will have no problem if we elect not to pay for that expenditure?

Lennox: I believe that you have certain discretion as the board of commissioners. It's outside of my purview and I really can't answer hypothetical questions.

Horrocks: And what's hypothetical about that?

Lennox: It hasn't happened. You're asking me a "what if" question. I can answer a "what if" question.

Horrocks: Did you buy lapel pins?

Lennox: With my own personal dollars, yes.

Horrocks: Did you bill the county for those lapel pins?

Lennox: Yes.

Horrocks: Did you get paid for those lapel pins?

Lennox: I would hope that the expenditures that I turned in are treated by the same standard as all elected officials and are paid in accordance with state statute and past practice of the board of commissioners.

Horrocks: You were on the Vic McCarty talk show, and stated on that show that when spring broke you are ready to start a quarter of a million dollar project which would put people to work. How did you come up with a \$250,000 project? Have the people been notified of how this \$250,000 be arranged to make payment on this particular expenditure?

Lennox: As I indicated, I believe in my answer to Commissioner Redmond and Commissioner Matelski there is a pending drainage project in Benton Township that's been given a windshield estimate of approximately \$250,000 by the road commissioner. That I would like if funding is available through whatever means necessary to get going on. These constitutes of mine, and shared constituents of Commissioner Redmond, have been waiting for years for action by this. The township has refused to act, the road commission has refused to act, and it falls under my purview, my duties and responsibilities. They want relief. They've asked me for relief and if funding is available I intend to address and solve the challenge that they've presented before me.

Horrocks: And how?

Lennox: Moving forward with the project if funding is available.

Horrocks: And if funding isn't available.

Lennox: If funding isn't available you can't have a project.

Horrocks: You state that you have had considerable talks and different meetings with township supervisors, and Benton is your target area and I know Mr. Redmond makes most of those meetings and is not aware of you attending. I think we could ask the supervisor of that township if you've been in front of those people, yet you say you've had many, many, many meetings with those people, yet they're not aware of any meetings with you.

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Lennox: With all due respect, Commissioner Horrocks, I would be happy to go through my records and pull out the date that I appeared at the Benton Township meeting and spoke regarding this project. I could provide that at a later time. But I also have written documentation of at least a half a dozen letters and telephone calls or emails to Benton Township that the supervisor for what ever reason failed to return and also failed to return the phone call of the constitutes who called to inquire about this project and had to come to my office because Benton Township and the road commission refused to act on this matter.

Horrocks: So it was their derelict of duty.

Lennox: Those were your words, not mine.

Horrocks: So what would you consider it if they didn't answer you.

Lennox: I believe they ignored their responsibility to their constituents, as a result their constituents had to come to me begging and pleading for relief because their property is flooded every single spring and the township and the road commission refuses to do anything about it. Those constituents were willing to pay for the project out of their own pocket, but the township and the road commission wouldn't give them a permit to work in the road right of way. I think that's appalling that you have constituents that are willing to pay for it out of their own pocket and government bureaucracy refuses to act.

Socha: Okay, just answer the question.

Horrocks: So you're telling me you've been to the county road commission and they've refused to work with you.

Lennox: Mr. Houlton, the road commission manager, has been more than willing. He was the one that provided the windshield estimate when I spoke with him about a year ago on this subject and they were more than willing to work with my office but they insisted it had to be in the form of a drainage district with a special assessment and that they were not willing to provide any maintenance or construction or anything like that unless there was a special assessment mechanism. Which I respectfully differ.

Horrocks: Do you have any documents related to the creation of the established drains?

Lennox: I do, if you would like to review records that are up to 100 years old and are in fragile condition you're more than welcome to review them.

Horrocks: As drain commissioner can you take that down to layman's terms and furnish the documents that's related to the creation of every one of these drains.

Lennox: I don't believe those documents can be reproduced, at least some of them, because of their fragile condition and the fact that there's only one remaining copy. I would be happy to work with either you or other members of the board of commissioners if you would like to review those in an appropriate manner. My concern is to insure the integrity of that document, for whatever reason; it's the only remaining copy.

Horrocks: So you do have documentation relating to each one of these drains that was established whenever.

Lennox: Yes.

Horrocks: I've heard up to nineteen.

Lennox: You haven't heard that from me.

Horrocks: Well I read it In one of your outfits on the computer. You made a statement that there's nineteen.

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Lennox: I don't recall making that statement. I would be more than happy, again, if you would like in an appropriate manner that preserves the documents' integrity and insures their continued existence, I would be happy to work with you on that.

Horrocks: Okay, and if you do so because we represent the taxpayers, I would like you to furnish also the documentations to each supervisor of these districts or to that township so that they know what they got because you know what they don't know what you know, or supposedly know.

Lennox: With all due respect, Commissioner, I realize you took office in January so you're not familiar with what happened when I took office, but upon taking office and coming across these records, I made inquiries with all the applicable townships. Some of them responded yes, they new these existed, some were not aware of it. But to my knowledge all those townships that were listed in the attachment you were given have been made aware at some time or another of the existence of those drains and were given an opportunity if they wanted to come in and meet with me to review it, but no one has ever done so for whatever reason.

Horrocks: So you can tell me right now with all certainty that each one of these drains that you talk about were legally created.

Lennox: Yes.

Horrocks: With all certainty?

Lennox: With 100% certainty.

Horrocks: I'm not happy with the answers about the lapel pins. You bought a flag for your office for one day a week.

Lennox: I bought a flag much like you have a flag in here and much like all elected officials have a flag. I think it's their patriotic duty to have a flag in their office.

Horrocks: You, as a conservative taxpayer and drain commissioner feel that you can just spend this money to buy whatever that meets your whim with no consideration to those people.

Grenkowicz: Madam Chairman, I'm going to object to the characterization of that question it's unduly hostile. If the gentleman wishes to ask Mr. Lennox a question perhaps he could find more civil terms rather than on a whim.

Socha: We'll let Commissioner Horrocks calm down a bit.

Horrocks: I'm fine, Madam Chair, I just detest that I have to answer questions to the people of this county and to you as the Chairperson and fill out my reports and somebody else can just circle all around the track. I have one other question and I will close. Have you ever collected any money in accordance to the law or the code of drain commissioner, and if so, where was it deposited?

Lennox: As I said, no.

Socha: Hostile, both sides, stop.

Matelski: He just answered the question he wouldn't answer before. Back to the Benton Township drain, you said that you got a figure of \$250,000 from Luke Houlton to establish this drain. Do these people on the petition all live within the drainage district?

Lennox: As the petition indicates, they do and that statement was sworn. So I suppose if the do not there could be consequences for providing a sworn statement that's not accurate.

Matelski: Do these people know that this is a \$250,000 drain and they would be liable for as property owners?

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Lennox: I believe paragraph 1, of the application for laying-out and designating a county drainage district, makes it clear what they were signing.

Matelski: So you feel that they do understand that they would be liable for the cost of this drain.

Lennox: I believe these people signed a petition that was clearly worded, a sworn statement. And it's not for me to comment or assess what they may or may not have been thinking when they signed the statement.

Matelski: Back to these per diems. We have one here January 11, 2011, meeting; January 18, 2011, meeting; January 25, 2011, meeting; February 1, 2011, meeting, we don't know where these meetings took place we don't know what these meetings were. We are not allowed to turn in anything like this and there's another page the same thing. You were specifically asked December 7, 2010 constituent meeting; November 30th constituent meeting; November 16th constituent meeting; December 10th constituent meeting. We don't get paid for meeting with constituents. I don't understand why you should get paid for meeting with constituents.

Lennox: If I could answer that, Commissioner Matelski. That is the standard form that I've used since taking office, constituent meeting, township meeting, what have you. If there's been a change in the policy with the board of commissioners since you took office, I certainly haven't been made aware of that policy, if there was I would appreciate the courtesy of being alerted to that policy change.

Matelski: There's been a change in the board of commissioners. Maybe the old board paid you with this documentation, but this is a new board.

Socha: Could I clarify the change? The other elected officials in the county do not receive per diems and mileage. The only other one besides the county board of commissioners is the drain commissioner. The drain commissioner is an autonomous office to some extent. It is also the board of commissioner's responsibility to check that claims are correct. I oversee the per diems and mileage the commissioners turn in. I check them, I can change them, I cross them off, I have that authority over the board. Maybe I don't have it, but that is what the policy has been. When the new board took place they assumed a different tone of responsibility, these are claims, they are on the claims list, any claim can be questioned. We are the ones who are the fiduciary. We are the ones responsible for making sure that claims to the county are paid and that they are justifiable claims. Claims of Mr. Lennox have been pulled for further clarification; apparently this board is not happy with the clarification. They asked the question for more detail, not saying that these are not going to be paid, asking specifically for specific detail of which we have not received. There's where the change begins.

Lennox: If I could respond to that Madam Chair, I certainly don't have any intention of not providing details. If you would like more details as I repeatedly said, Commissioner Matelski, I would be more than willing to provide them. I have to note though it's tough for me to provide more details or be alerted to a change in the board's direction or policies.

Socha: I think Mr. Lennox the notification that you received that the board was not going to pay your claims, then the letter to me where you ordered me to pay them; I think you were very fully aware of what the board expected.

Lennox: Well, I believe in that letter, Madam Chairman, it clarified with respect to those January claims what they were and what they were for to the standard that I always been using. Again, I never had any questions until I read about it in the newspaper and if there are legitimate questions, please call me.

Socha: I disagree with that, but I'm not going to debate you. But, what the board has requested in the subpoena is describing in detail, which we don't have. So apparently we're not going to get that today so we will move on from that question.

Wallace: Mr. Lennox in your application for laying out and designating a county drainage district the circulator has not signed. Is that a valid petition?

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Lennox: Yes, there's an affidavit on page 3 of the circulator. That complies with the statutory requirements, this is the standard form for a drainage petition used in all the counties across Michigan.

Wallace: I understand, but at the top there shouldn't the person circulating the petition sign it?

Lennox: I'm not sure where you're referring to at the top.

Wallace: Well the circulator of a petition normally signs the petition that they circulated it.

Lennox: Not for a drainage project, other than the affidavit that's required to be provided.

Wallace: Pointed out no signature on Affidavit of Circulator at top.

Lennox: There's a signature at the bottom with the person's name that he certified, he was the one. This is the standard form that used by drain commissioners throughout the state.

Wallace: It does not say that on the last paragraph.

Lennox: Again, I'm not an attorney, sir.

Wallace: Well you got one right next to you.

Lennox: This is the standard form that's used by all drain commissioners.

Grenkowicz: If anyone is unhappy with the petition and wants to stop the project obviously they can challenge the petition in court. It's really, I don't feel, germane to these proceedings.

Wallace: You would be presenting a document that isn't legitimate, isn't legitimate.

Grenkowicz: Whether or not this document can be challenged is not a drain commissioner's concern.

Graham: For my own curiosity, who circulated the petition?

Lennox: Duane Engstrom.

Allor: You mentioned you go to schools and talk. What schools have you gone to and what grade levels are you talking to?

Lennox: I haven't spoke at any previous schools last year. I plan on this year if I'm invited to pass those pins out and to community and civic organizations.

Allor: So you have not yet talked to any schools.

Lennox: Not since January.

Allor: You haven't talked since January.

Lennox: In this year since I came up with a plan if I'm invited to talk at schools or other organizations I would pass those out.

Allor: While you've been in office you haven't talked at any schools.

Lennox: Yes, that would be correct.

Allor: Then in your report ending September 30 under the section marked "Going Forward" you indicate "A maintenance program will also be carried out on the 15 existing drains, which, according to the limited records in possession of my office, has not been done since before World War II. Funding for both the drainage project and maintenance program will come from special assessments on

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landowners in the impacted areas. These are critical public works improvements ..” In talking you indicated plans for the future were hypothetical, yet this sounds very firm to me. It will be carried out and funding will come from special assessments. Will funding come from special assessments as is worded in here or is it hypothetical as you indicated a little while ago.

Lennox: Commissioner, that report was submitted on the 1st day of October 2010. It was submitted under the understanding and in the good faith that a drain revolving fund would be established by the County Board of Commissioners and to my knowledge it was not established therefore there’s no mechanism that currently exists for me to perform maintenance without the cost of special assessments. Since that time I have reaffirmed my commitment to seeking alternative funding means if alternative funding means exist. I believe taxpayers would appreciate alternative funding means.

Allor: You indicated that no fee schedule had been established; that you had requested one, but the commissioners had not approved one. If that’s the case do you know what prompted this to be on your door (referring to photos)? Where you the one to hang that up?

Lennox: That’s not on my door. It was on my door, it’s not on my door. That was posted when a fee schedule was submitted in 2009.

Allor: So it had been submitted, but not approved.

Lennox: The board of commissioners didn’t give its assent to the fee schedule.

Allor: So this was hung up before you knew whether or not it was going to be approved.

Lennox: Correct.

Allor: Do you know when it came down?

Lennox: It’s been at least 5 or 6 weeks. It was with two or three public notices and one day they were all gone.

Allor: How long had it hung there?

Lennox: Probably since I posted it. It would have been the fall of 2009. I post a lot of things and sometimes they don’t come down.

Allor: So about a year and a half it hung there. At what point did you ask the commissioners for approval of the fee schedule?

Lennox: I would be happy to provide them with that date at a later time, but I believe it would have been in 2009 autumn.

Allor: And yet it hung there for a year and a half until 5 or 6 weeks ago.

Lennox: At least 5 or 6 weeks ago.

Allor: The date on the photos was March 10, 2011.

Socha: I do have a question on question 16. For the calendar years 2009 and 2010 provide copies of all written reports you submitted as Drain Commissioner to the Michigan Department of Agriculture or to any other local, state, or federal agency that you are required to submit to carry out your duties as Drain Commissioner. In addition, identify the specific statutory duty as Drain Commissioner that required you to file each such report. Your answer is vague and doesn’t address the question, is there a reason why?

Lennox: As I read the question, Madam Chairman, it specifically referred to the Department of Agriculture. There have been annual reports that have been delivered and presented by my office but

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because Cheboygan County does not have an inter-county drain, that is a drain that spans at least two county lines there's no requirement to submit it to the Department of Agriculture.

Socha: Why did you not put that in your answer?

Lennox: I believe I answered the question as I understood it. The answer that I gave is the answer at the time as I understood the question.

Socha: Thank you. My next question is relative to the petition in glancing through the drain code there are very specific procedures set up with fees and applications. The intent of the drain code is make sure that the rest of the county constituents outside a drainage district do not pick up any costs associated with that district. If they want something done it is by special assessments. I am reading that the law is very clear on that. Once you receive a petition you are to act on it in an appropriate manner and it is specific as to how you address that. You get the petition, you go through the petition to verify that the names are correct, you verify that the petition is certified, you verify that the people know this is going to cost them a special assessment. Then there's a board of determination of non residents that look at it too. Procedures in place do not give you any discretion in changing the procedures, or any discretion regarding special assessments. Your annual report claims you are going to place special assessments in place, now you are saying you are going to seek alternative funding. What alternative ways of funding would that be and what gives you the right to seek alternative funding to pay for a project in a specific area?

Lennox: Madam Chairman. I have followed to the best of my knowledge all of the required steps with respect to handling a drainage petition, the board of determination has not been convened there is no timeline to convene one. Once a petition is submitted it cannot be withdrawn, it is submitted. I have held the petition in an effort to seek alternative funding which is allowed whether that means by a township paying for it out of its general fund, a county, a road commission, a federal appropriation, a state appropriation, a federal grant, there are variety of alternative funding means that are well established and well followed by my colleagues across the state. I've adhered again to the best of my knowledge to those procedures. The last thing I would want to do is move forward with a project and after breaking ground having a court issue an order that it can't move forward because there was some mistake. That wouldn't be my intent, I want to make sure every "I" is dotted and every "t" is crossed.

Socha: So if that is the case, why on the Vic McCarty radio broadcast did you tell everyone listening that you do have a drainage project ready to go and that you will commence it in the spring which is now and you put a dollar amount on it. You told people you were going to do it. It's hard to understand when on one hand you say you are sitting on it and on the other hand you say you are moving forward with it. There is no funding mechanism in place. I may be out of line here, but I heard that the project you are looking at is a ditch, the expansion of a drainage ditch. It's my understanding that most ditches are road commission. Somewhere you've referenced whether on your annual report or on your computer blog that you aren't happy that the road commission didn't do their job and that you feel as a consciences county official that you need to overstep the road commission and do their job as well.

Lennox: I believe there a couple of questions in there. I don't believe that I've ever to my knowledge said that I wanted to usurp the road commission. What I have said is that the road commission hasn't acted in these matters and that there are very specific sections of the drain code that allow the drain commissioner to take over drainage ditches that fall under the jurisdiction of the road commission. Again it's my preference that a special assessment isn't done on this project. I would consider this project pending, moving forward, it's been doing so for several months. It could be approved if a board of determination met within a few weeks in compliance with the various notification requirements. I really don't want to do the special assessment. It seems to me that some people would like me to do the special assessment. I'm not comfortable doing it because I believe the taxpayers of not only Benton Township, but across Cheboygan County are strapped and can't afford another burden.

Socha: That's very admirable on your part, but the law specifically states that special assessments are in place because no one else out of the drainage area should have to pay for a drainage project going on in another area. It's meant to be out of fairness that if someone requests the petitions for an area that the other additional taxpayers in the area, county or even the state do not pay for that project. It

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may be admirable on your part, but I don't agree with you. Another question, you have stated in answer to our question if you have appointed a deputy, you stated no and that was I believe in October of 2010 that you came before this board after you appointed a deputy and we did not approve it. In November of 2010 from a letter to a constituent that you answered, you stated that you did have a project going and that you did have a deputy. We told you we believe you do not need a deputy and we asked you to come and tell us why you needed one, and you did not come to answer that. We tell you we don't agree you should have a fee schedule, and it wasn't an arbitrary decision, we asked very specific questions of our legal counsel as to a justification of a fee which is our responsibility again. After we said no you posted it on your door. I think it was in January or February I took it down because I thought this isn't fair to my constituents. Rightfully, wrongfully, I took it down, but you know what it went right back up. So don't tell me that you didn't know how it got up there and who took it. I did not take anything else down besides that fee schedule because I believed it was under our purview. It went back up and it was shown in a video with Santa Claus, very clearly on your door. It was still up there until questioned in here and you thought may be you might take it down. I do have a problem when we say with good reason and under a lawful decision, no we are not going to authorize a deputy, no we are not going to authorize a revolving fund, not arbitrary decisions but based on our job, our review of constituent expenses. We are not doing this to pick on the Drain Commissioner Mr. Lennox, there's a reason why we ask the questions we represent the constituents and we represent them as a fiduciary. We've asked you the questions, we didn't get the answers. We did not happily subpoena you, but the subpoena questions were for specific answers. We want to know for our constituents, what's going to happen to them in the spring? Are they going to get special assessments? Have you followed the proper procedures? Those are the reasons for the questions. Did we get the answers specifically; no we got the answers as to how you determined what we were asking.

Redmond: In the role of the Drain Commissioner for Cheboygan County have you every went to Lansing to testify on anything?

Lennox: Yes, I have.

Redmond: Can you tell us what that was for?

Lennox: Again, I would have to check to see how many times, I know I have testified at least several. The one time that sticks out in my head was for reforming the way wetland permits are given and issued and reviewed in this state. Currently the process penalizes development in Michigan. People that want to stimulate the economy and myself along with other drain commissioners and other interested persons asked a committee of the legislature to take away certain provisions of the wetlands preservation act to make it more development and taxpayer friendly. There's been numerous other occasions I would be happy to detail that.

Wallace: In your answer that you outlined in 15, you say you do field inspections to review pending permits, are there pending requests for drains?

Lennox: There's a pending project with respect to the clause that you're referring to that's specifically addressing permits that are sent to my office for review by the Department of Environmental Quality. Actually I just received one yesterday, and receive them two or three times per month in the busy season.

Horrocks: As Drain Commissioner are there any drains that threaten the welfare and health of any of our constituents in this county?

Lennox: If I could ask you to clarify as to what you mean as threaten. Do you mean the drain itself because of maintenance or because it's a high volume of water in the area? If you could give me a little bit more guidance as to your question I would appreciate it.

Horrocks: Are there any drains in the identified drains that could threaten because of poor maintenance, threaten the health and welfare of the citizens of this county?

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Lennox: I think they all could. He referred to the No. 1 Drain in Inverness Township and the City of Cheboygan. That's the Little Black River; it's flooded out before and flooded out the country club. Depending on the amount of water that falls in spring time and other natural conditions, that could be an issue. The Mullett Creek Drain could be an issue for a variety of reasons. There are other drains and natural water courses that may or may not have been established as a drain that are perennial issues as well. Unfortunately the county, unless they're abandoned is liable if a property owner brought a claim against us for not maintaining them. I fully understand the sentiment that's been shared about the hesitation to do assessments and those types of costs, but it's either maintenance is performed or lawsuits could ensue and the county pays out claims for damages.

Socha: It's my understanding that these are drainage districts owned by the people in the district under your purview and that any maintenance project has to be requested by them because it will be them that will incur the cost. I also seem to remember it is not a county liability. It is not something you just have to rush out and fix.

Lennox: That was the opinion of the Board of Commissioners Attorney, but the law firm that is the premiere drain law expert that specializes in drain law has provided this opinion time and time again.

Socha: Excuse me then the Board of Commissioners will go with our civil counsel's opinion. I just wanted to clarify where you were differing from what I heard.

Horrocks: Has there ever been anything filed with the townships or the county on the seriousness of certain drains?

Lennox: One, there's no requirement or procedure that would prompt such a filing. I can tell you that there was a significant issue in August of 2009 that these landowners wanted to move forward. They did it with the drainage establishment because of the cost involved. I know they had spoken with one of the county departments, besides myself, there was a severe rainstorm and in Mullett Township just off of Straits Hwy. between Mullett-Burt Road and Tryban Road that caused significant damage and despite that significant damage that occurred they didn't want to move forward with the establishment of a drain for the simple fact of the cost. I do think there are numerous areas within the county both lawfully established drains and natural watercourses that could be established as drains that pose significant liability and significant public health and welfare concerns.

Horrocks: My question is, with your concerns for the citizen of this community, have you ever taken upon yourself as drain commissioner went to the proper authority such as Cheboygan County Commissioners, Benton Township Board or any other townships. Have you made them aware of the problem that people could be flooded out of their house?

Lennox: Yes.

Horrocks: You went personally to the County Commission and made them aware?

Lennox: I've made appearances at townships and made them aware of it. They would be the proper authority for their township. I know in a few of my very limited appearances before past Board of Commissioners, I reiterated personally and certainly in communications.

Allor: In your annual 2010 report you mentioned profound environmental challenges involving Paradise Lake. I'm curious what the profound environmental challenges were.

Lennox: Paradise Lake is facing a unique set of challenges politically and environmentally it straddles two counties and two townships that lake could be a dead lake very shortly. It's had significant invasive species growth and for a variety of reasons action hasn't been taken in the past. There's action currently pending on the Emmet County side but Hebron Twp has not joined in that action, a lake improvement board. They probably won't be taking action in Emmet County on treating the lake chemically until late this year or next year. Several people with more expertise than I have have indicated if action is not taken immediately, as of last year Paradise Lake could be a dead lake within 6 months to a year.

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Allor: *What is a typical Friday like for you?*

Lennox: *I don't just work on Friday, on average I put in between 20 and 30 hours a week in various aspects of this job for \$2.50 per day. A typical Friday I could have two, three, four constituents come in some days I to two weeks without seeing anyone. Sometimes there's permit reviews, other times it's preparing various funding proposals to higher up authorities at the federal level, following up on those requests. I put in a full 8 hours generally taking lunch at my desk. I have invited you all to come to my office, but nobody has ever taken me up on the invitation.*

Gouine: *I'm not as good a fisherman as my friends, they have done well fishing on Paradise Lake. What do you call dead?*

Lennox: *With respect to swimming and recreation the evasive species growth as I understand the situation a sizeable chunk of that lake is unusable. Again there was this lake improvement board my hope this can go forward at least on Emmet County side and perhaps Hebron Township will reconsider and joint that lake improvement board.*

Matelski: *So there's no lake improvement board.*

Lennox: *For the Cheboygan County side, correct.*

Socha: *I have a cottage on that lake and I swim, boat and fish in it and don't have a problem with my area of the lake being dead. I know there are other areas that are having issues, but my concern when Mr. Lennox suggested a lake improvement board it added another layer of bureaucracy I believe the township boards are fully capable of making the decision what is best for their property as what Hebron Township did without adding another full level of bureaucracy with legal costs, engineering cost and everything else that goes with it.*

Wallace: *When does a lake become a drainage district and what is the status of the legislation for the elimination of the drain commissioner office in counties this size?*

Lennox: *I worked with members of both parties to introduce house and senate bills, they were introduced in the last session of the legislature unfortunately lobbied the Michigan Association of Counties and County Road Association of Michigan lobbied against them and did not get out of committee. There's a possibility they could be introduced in this session however it has been made clear that the first legislative action is on tax reform and economic development. I would encourage you if that's something you are still interested in, I personally would like to see that legislation get passed, to contact your members of the legislature and urge them to reintroduce those bills. If those bills were passed, I would resign immediately if those bills were passed.*

Wallace: *What makes a lake a drainage district?*

Lennox: *It depends on whether or not tributaries flowing into a lake or areas of a lake were established as drainage districts. There are some procedures as I understand it that handle the establishment of drainage district slightly different if it's a natural watercourse versus an artificial watercourse The DEQ contacts my office when there's an issue affecting lakes, so they are certainly interested in my opinion. The law is clear that the Drain Commissioner regardless of the county is the overseer of water resources in fact there's a provision that allows the County Board of Commissioners to rename the office the Water Resources Commissioner and several counties have followed suit as it is a better title in the 21st century. Drain Commissioner is a little archaic.*

Socha: *You sound like you are still adamant that the office of the Drain Commissioner is not a useful function for the County of Cheboygan and you still wish the legislation would go through to abolish the office.*

Lennox: *I didn't say it's not a useful function my position has always been that I believe when multiple offices or departments of government can perform the same responsibilities or closely in link there is room for consolidation and reform. It is my position that those two bills should be passed with*

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immediate effect. If they pass I would be happy to resign immediately. I think the reform that we need would ideally combine the drain commissioners office, the road commission and the board of public works into a single elected official known as the public works commissioner, because all three functions are essential and Michigan is the only state that treats roads, drains and public works separately.

Socha: So you wish to add 20-30 hours per week to the road commissioner because we don't have a department of public works.

Lennox: I don't believe it would add 20 or 30 hours.

Socha: That's what you told us you are spending right now typically.

Lennox: I believe there are people at the road commission that are already doing much what I'm doing and with little extra burden could pick up what I'm doing.

Socha: Thank you, and thank you for your appearance today for answering the subpoena questions. Thank you Mr. Grenkowicz for your appearance.

Grenkowicz: My client would like to make a closing statement.

Socha: No, the questions are answered and we will take the questions and answers and turned them over to civil counsel for evaluation. Mr. Graham will report back with his findings at a later date. I don't think it is necessary for a closing statement, this is not a trial.

Sheriff Clarmont presented and reviewed the 2010 Annual Sheriff Department Report. He said actual expenditures in 2010 totaled \$3,107,337, compared to \$3,211,002 budgeted expenditures, and total revenue generated was \$468,429. He reviewed the Jail Division revenues which totaled \$197,197; and total grant monies received of \$271,232. Jail Statistics show inmate days totaling 26,970. He reported Community Corrections Service Programs resulted in an annual savings of \$170,457 in 2010. General discussion was held. Chairperson Socha said the Board is proud of our Sheriff Department and staff, including the School Liaison Officer and Prescription Drug Officer.

CITIZENS COMMENTS – Chris Brown, leader of the effort to recall the Drain Commissioner, stated Mr. Lennox did not answer the questions presented and urged the Board to proceed with removing him from office.

Chairperson Socha said the questions and answers have been submitted to civil counsel for evaluation.

BOARD MEMBER COMMENTS - The Board Planning Session has been scheduled for June 15, 2011.

Commissioner Gouine asked if a Building Official has been hired. Administrator Overton said no, as two candidates have declined the position, however, there is another person interested. He said he as requested that Mr. Schnell and Mr. Gengle look for a person that not only possesses the necessary skills but also someone with good people skills. Chairperson Socha said the Board would appreciate Mr. Overton's participation and oversight in the hiring and also would prefer hiring locally if at all possible.

Motion by Commissioner Redmond, seconded by Commissioner Wallace, to adjourn to the call of the Chair. Meeting adjourned at 12:30 p.m.

Mary Ellen Tryban
Cheboygan County Clerk/Register

Linda Socha
Chairperson