

## MINUTES OF THE REGULAR BOARD MEETING OF MAY 19, 2010

The Regular Board meeting was called to order at 6:00 p.m. by Charles Fischer, Village President.

### **Invocation**

President Fischer called for a moment of silence.

### **Pledge Allegiance to the Flag**

President Fischer led members in the reciting of the Pledge of Allegiance.

### **Roll call of Trustees**

PRESENT: Charles Fischer, Village President  
John Elrick, Trustee  
Tammy Frassetto Trustee  
James Hietpas, Trustee  
Dan Mahlik, Trustee  
Don Van Deurzen, Trustee  
Janet Verstegen, Trustee

### **Roll Call of Officers and Department Heads**

PRESENT: Charles Kell, Village Administrator  
Dale Haug, Finance Director  
Erik Misselt, Police Chief (6:04 pm)  
Tom Flick, Director of Parks, Recreation, and Forestry  
Jim Moes, Community Development Director  
Roy Van Gheem, Director of Public Works  
Charles Koehler, Village Attorney  
Vicki Schneider, Village Clerk

### **Public Appearance for Items Not on the Agenda**

None

### **Approval of Minutes**

*Regular Board Meeting Minutes – May 5, 2010*

*Committee of the Whole Meeting Minutes – May 12, 2010*

*Moved by Trustee Verstegen, seconded by Trustee Elrick to approve the Regular Board Minutes of May 5 and the Committee of the Whole Minutes of May 12, 2010 as presented.*

Ayes 7, Nay 0-Motion Carried Unanimously

### **Report of Other Minutes-Other Informational Items**

Plan Commission Meeting Minutes – April 5, 2010

Joint Review Board Meeting Minutes – April 21, 2010

Fire Commission Meeting Minutes – May 10, 2010

Board members noted receipt of the above items.

### **Action on Class B Fermented Beverage Six Month License – Little Chute Softball Club**

T. Flick requested that if the license is approved, it be worded so that the license can only be used at adult men's softball league games and adult tournaments. Trustee Mahlik suggested that the Softball Club be required to use wristbands so it is easier to identify those that are 21 and it will be easier to control the situation. Discussion took place. Chris Hietpas from the Softball Club stated the Club will have licensed bartenders to check for ID's but they are willing to do what the Village requests of the club. The majority of the Board members felt that it should be up to the club to determine if they want to provide or sell wristbands.

*Moved by Trustee Elrick, seconded by Trustee Van Deurzen to Approve the Class B Fermented Beverage Six Month License for Little Chute Softball Club.*

Further Discussion: Trustee Verstegen requested that the minutes note the license is granted for men's adult softball league games and men's adult softball league tournaments only. V. Schneider stated this condition will be written into the license.

Vote on the Motion: Ayes 7, Nay 0 – Motion Carried Unanimously

### **Update on Dutch Boyz Development Project**

Jerry Van Dyn Hoven, Dutch Boyz Development, gave a verbal update on the project and submitted a written copy of the update and a written commitment letter from his financial institution. Trustee Mahlik questioned the selection of a construction manager that does not have a construction company and stated it concerns him when it is not a full blown construction company as there could be delays and problems. Mr. Stodala stated the method on how to handle this project was chosen by Mr. Van Dyn Hoven who will be involved in all aspects of the decisions. Mr. Van Dyn Hoven stated he did explore a number of opportunities and he is most comfortable with Mr. Stodala and he is also sensitive to keeping the project on task. Mr. Van Dyn Hoven stated he has secured financing for the entire project. Trustee Hietpas stated the letter from the Financial Institution doesn't seem to be much of a commitment and he asked if it could be stated in the financial commitment letter that the agreement is irrevocable. Mr. Van Dyn Hoven explained the intense process he went through to get the letter of support from the financial institution. Trustee Mahlik questioned the Village being listed in the 2<sup>nd</sup> or 3<sup>rd</sup> mortgage position. D. Haug and C. Kell explained that in all developers' agreements and loans, the Village takes the 2<sup>nd</sup> or 3<sup>rd</sup> place mortgage position and noted how the Village is protected if there is a default. Trustee Van Deurzen commented that it isn't easy to get developers into the Village and Mr. Van Dyn Hoven has already been made to jump through many hoops and if this is the way the Board is going to treat developers, then no developers are going to want to develop in Little Chute. Discussion continued. Trustee Mahlik stated that the DNR analysis and all things should be done before the road is constructed. Attorney Koehler stated that in his perspective and based on his involvement, the Department Heads involved with the project are some of the most experienced across the board, in addition to the Village Administrator. Attorney Koehler further stated that Mr. Van Dyn Hoven is an experienced business man and real estate developer with a number of successful projects in the Fox Valley, a long-term area resident, and he has a commitment from a bank which you don't get for financial projects of this nature if the bank doesn't think it will be successful, especially in this economic climate. Attorney Koehler explained that a bank will not take a second position on the mortgage and Mr. Van Dyn Hoven has contractual deadlines and all obligations are personally guaranteed by Mr. Van Dyn Hoven and the Village has the right to assess the properties if needed and that takes priority over the mortgage. Attorney Koehler stated that he does not see concerns with the Village moving forward with this based on his experience in being involved with numerous projects over decades. In response to Trustee Hietpas' question about assessing the projects, C. Kell explained the corrections that were made in the agreement were to correct the language to state what was originally intended and both the Village's and Mr. Van Dyn Hoven's Attorneys agreed on the minor changes. Trustee Hietpas and Trustee Mahlik expressed concerns over how the special assessments will be charged. Attorney Koehler explained that the issue is not a major concern because if Mr. Van Dyn Hoven does not perform, the Village can take a judgment against all property owned by Mr. Van Dyn Hoven. Trustee Hietpas commented that the deadlines in the Developer's Agreement are essentially worthless because if there is a situation out of the Developer's control, the contract gets extended. Attorney Koehler explained that those clauses are very common in agreements especially construction agreements. Trustee Hietpas asked what will happen if Outagamie County has an issue with cutting in the exit and entrance to the project. C. Kell stated it is a pre-existing entrance owned by Mr. Van Dyn Hoven and the County does not have any control over the driveway. Attorney Koehler commented that the contract is comprehensive enough for a court to enforce it to protect the Village and Mr. Van Dyn Hoven.

**Action – Approval of Concrete Street Design and Putting Project Out to Bid for New Street between W. Lincoln Ave. and W. Main St.**

Amanda Larson, 319 W. Main St., asked how close the street comes to her property. Dennis Buschke, McMahon Associates, stated the road comes within 2 – 3 feet of the existing sidewalk on her property line and some of the new road will be positioned on the property at 319 W. Main Street. Trustee Mahlik commented on the conditions he felt needed to be met before the road could go through and noted he would like to put a condition of 25 to 30 years in an agreement for the green space. C. Kell respectfully disagreed with Mr. Mahlik and stated the conditions must be complied with before getting a building permit and they have nothing to do with tying the conditions to the road. Trustee Mahlik continued to comment on the requirements he believes that need to be complied with before the road is built. Trustee Elrick stated that he agrees with

Mr. Kell and the road has nothing to do with any conditions.

*Moved by Trustee Versteegen, seconded by Trustee Van Deurzen to Approve the Concrete Street Design and Putting the Project Out to Bid for the New Street between W. Lincoln Avenue and W. Main Street as shown.*  
Further Discussion: Trustee Mahlik stated it is really important that the criteria be met before moving forward. Trustee Frassetto asked about the American Sycamore tree in the landscaping plan. T. Flick stated it was determined that this type of tree is not recommended for this plant zone. It was noted that this item will be discussed under the next agenda item.

Vote on the Motion – Ayes 4, Nay 3 (Frassetto, Hietpas, Mahlik) – Motion Carried

**Action – approval of Landscape and Fence Design for New Street between W. Lincoln Ave. and W. Main St.**

T. Flick stated the he spoke with Jim Martin and he is comfortable with the proposed landscaping plan and he had also met with Ms. Houlihan and Mr. Buschke on the design and everything was agreed upon and he feels that it is a firm design that is acceptable to all parties. T. Flick stated that the fence style, trees, shrubs, and mulch were agreed upon and Ms Houlihan had also requested that she be allowed to maintain the grass from her property line to the fence yard and the fence is intended to be off the property line by five feet. T. Flick stated the Administrator agreed with this request as long as she signs an agreement stating that she would never look into an adverse possession claim with the Village for maintaining the property. T. Flick stated the fence may have to be stained every two to three years and down the road there could possibly be replacement of rotted fence. T. Flick stated different fencing options were looked at but Ms. Houlihan liked the appearance of the cedar fence. Mr. Buschke stated the fence cost is approximately \$2,000 and the total budget for the landscaping is \$10,000 and the project should fall within that budget.

*Moved by Trustee Versteegen, seconded by Trustee Frassetto to Approve the Landscape and Fence Design for the New Street between W. Lincoln Avenue and W. Main Street as presented.*

Ayes 6, Nay 1 (Hietpas) – Motion Carried

**Request by Molly Houlihan for Written Stipulations by the Village Regarding Future Assessments, Sidewalk Installation, and Maintenance of the Terrace Area along the Proposed Extension of W. Lincoln Avenue**

*Moved by Trustee Frassetto, seconded by Trustee Versteegen to Amend the Agenda to Move Agenda Item L to Agenda Item Q as Ms. Houlihan is currently not in attendance but she is planning to attend the meeting.*

Ayes 7, Nay 0 – Motion Carried Unanimously

**Action – Design of Washington Street Reconstruction Project**

C. Kell reviewed the memo with his recommendations that was presented to the Board this evening. C. Kell stated Mr. Hartwig is present this evening. C. Kell stated the proposal keeps the commitment for assessments to the general tax payer at \$58,000 and the cost of the project for the segment between the railroad and Cty. OO to \$36.43 per foot with no assessments being levied to Mr. Hartwig based on his \$100,000 donation to the project. C. Kell noted that the assessment allocation is unusual because of the donation to the project. Mr. Hartwig commented on the cost of the project being significantly lower than stated in the memo for the

asphalt from the railroad to Paradise Dr. and from Paradise to Cty OO based on the numbers he put together through conversations with a local contractor. Mr. Hartwig commented on the fiscal responsibility and the global vision and the future expansion of Nestle and being smart about this project. Discussion took place. Trustees thanked Mr. Hartwig for his donation to the project. Trustee Frassetto asked Mr. Hartwig about submitting a written document for his donation. Mr. Hartwig stated the final costs is a concern for him and stated he has been objective in bringing the parties together to get the price but he wants to know the final number and wants fiscal responsibility for the project. Discussion continued. President Fischer stated the decisions that have to be made are to go with concrete or blacktop in the area from the railroad to Cty. OO, a three or four inch blacktop mat, assessments and if revisions would be needed in order to receive the DOT grant. Michael Stouffer, 714 Bluff Avenue, commented on the project. Molly Houlihan, 329 Main Street, commented on the project. Dan Hietpas, 1312 Washington Street, asked about parking and why the street north of Cty. OO needs to be paved in concrete instead of asphalt. Staff stated there would not be parking south of Cty. OO and parking would be allowed north of the turning lane for the street north of Cty. OO. Mr. Hietpas stated his property will be much less rentable without parking being allowed in front of the property. Staff stated the Village's policy calls for Village roads to be paved in concrete and the one area that is being proposed for asphalt is because of the anticipated future expansion of Nestle that will impact the road. Mr. Stouffer, 714 Bluff Avenue, asked for the total cost and life expectancy of the asphalt section of the options. Trustee Elrick stated he did not have a problem with keeping the same width and going with asphalt in the proposed area between the railroad and Cty. OO. Trustee Verstegen questioned the number the Village is looking at tonight if they agree to move forward with the design, which she believes is the cost estimated by the Village's engineer for the asphalt section being at \$257,000, which is shown on the document dated May 19th

*Moved by Trustee Elrick, seconded by Trustee Mahlik to Approve the Design of the Washington Street Reconstruction Project and to include from the WCL railroad to Paradise Drive and Paradise Drive to Cty. OO asphalt paving at 41 feet wide and north of Cty. OO to remain in concrete, including the turning lanes.* Further Discussion: Staff stated in response to Trustee Frassetto's question that the road width would be matched up by tapering the asphalt portion of the road.

Ayes 6, Nay 0, Abstained 1 (Frassetto) – Motion Carried

Mr. Hartwig stated that if the number gets a little higher he is ok with that it but he wants to know what the added costs will be to the bid for the contract for the asphalt segment of the road.

#### **Action – Temporary Class B Beer License – Little Chute Jaycees – Cheese Fest – June 4, 5 & 6**

*Moved by Trustee Verstegen, seconded by Trustee Van Deurzen to Approve the Temporary Class B Beer license for the Little Chute Jaycees for Cheese Fest on June 4, 5 & 6, 2010.*

All Ayes – Motion Carried Unanimously

#### **Action – Special Event Permit – Great Wisconsin Cheese Festival – June 4, 5 & 6, 2010**

*Moved by Trustee Verstegen, seconded by Trustee Frassetto to Approve the Special Event Permit for the Great Wisconsin Cheese Festival on June 4, 5 & 6, 2010.*

Ayes 7, Nay 0 – Motion Carried Unanimously

#### **Attorney Koehler's Opinion on Use of Closed Session**

Attorney Koehler reviewed State Statute 19.85 on what is considered appropriate for Closed Sessions, concluding that control of the closed session ultimately falls with the Village Board. Attorney Koehler stated it is acceptable to not identify on the agenda the properties being negotiated. Trustee Frassetto questioned what the appropriate action of the Board is if they know of a member that is discussing a closed session item in public. Attorney Koehler stated he doesn't believe that statutes cover this topic but in his opinion it is a matter of public responsibility to not make public, matters discussed in closed session unless or until the matter is decided on by the whole board because those items are under control of the whole board and no individual

board member can speak on behalf of the Board. Attorney Koehler stated the issue could be discussed with the individual or with the Village President or entire Board. C. Kell stated that in his past experience with these types of situations, Board members have been verbally censored or reprimanded by the Board. Trustee Hietpas asked about the Board approving an agreement and then it goes into closed session and it gets modified, should it then come back into open session to be approved again or announced. Attorney Koehler stated it would be decided on a case-by-case basis and it would depend on if the correction was substantial or significant and the Village Board decides if it the issue is minor. Attorney Koehler stated you can vote in closed session and if that is the case, then minutes should be taken of closed session but in his experience, motion is made to go into open session before a vote is made. Attorney Koehler stated that if a Board voted no to go into closed session they could talk about the issue in open session but they wouldn't have to and there may be an exception for this concerning personnel issues and that would require a close analysis before making a determination and he would recommend the Board get an opinion if that were ever to occur.

**Operator's Licenses:**

Clifford J. Cook	543 N. Clark St.	Appleton	Express
Abigail Marie De Groot	608 Michigan Ln. Ct.	Kaukauna	The Pump House
Kevin Joseph Quandt	701 F Jefferson St.	Little Chute	Hawks Nest
Dean Douglas Tucker	W5469 Red Clover Tr.	Appleton	M & M Bar
Gary L. Vander Loop	W2241 Lau Rd.	Kaukauna	Valley Liquor
Charlene Dawn Wilson	1225 E. Gunn St. #1	Appleton	Express

**Operator's License Being Recommended for Denial:**

Nicholas R. Bricco	996 E. Elm Dr. #10	Little Chute	Weenies
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*Moved by Trustee Frassetto, seconded by Trustee Elrick to Approve and Deny the Operator's License as Listed and recommended by the Police Dept.*

Ayes 7, Nay 0 – Motion Carried Unanimously

**Request by Molly Houlihan for Written Stipulations by the Village Regarding Future Assessments, Sidewalk Installation, and Maintenance of the Terrace Area along the Proposed Extension of W. Lincoln Avenue**

Trustee Van Deurzen asked if this had ever been done before and staff responded that they did not recall any other situations of a written agreement not to ever assess a property owner. Trustee Hietpas commented on the prior board making commitments to Ms. Houlihan to not assess her for the road, sidewalk not being put in, and a host of other things. Molly Houlihan, 329 W. Main, commented on being in the middle of a block and now being made a corner lot and she is asking to be spared any assessments and she also commented that John Elrick had tried to find a middle ground for all involved in the Dutch Boyz Development, and he said in his opinion she should be able to work with a landscaper and concrete should hold up for 50 years so he didn't know why she would ever be assessed for the street. Trustee Elrick stated that everything Ms. Houlihan said is true and he was not aware that they couldn't bind future boards but he believes the road will last at least 50 years based on the amount of traffic on the road. Discussion took place on the possibility of creating a policy for this type of situation. Attorney Koehler commented on case law and the general rule is the current boards can not bind future boards and he also cautioned the Board because of the variables that could happen in future years. Ms. Houlihan stated that she is not requesting that future owners of her property be granted a written exemption to the issues. Attorney Koehler confirmed that a future board could overturn the decision of this board. R. Van Gheem commented on the future roads that may be developed that will create the same situation.

*Moved by Trustee Hietpas, seconded by Trustee Mahlik to provide Molly Houlihan at 329 W. Main St. a written stipulation by this Village Board that she never be assessed as long as she resides there any assessment on the new road going in from Main St. to Lincoln Ave.*

Further Discussion: Trustee Verstegen asked if the Board was going to do written stipulations for not

assessing for a number of years for other properties as the Public Works Director has indicated there will be other situations like this in the Village and in city planning you have to treat everyone the same and she doesn't believe in hampering future boards and if this is the case then the Village has to establish a whole new policy. Ms. Houlihan stated she is not feeling the compassion or understanding of what this is doing to her as she would not have bought this house as it is now going to look because you sure don't buy a house in the middle of the road thinking you are going to be a corner lot. In response, Trustee Verstegen stated that it seems like Ms. Houlihan is getting what she wants except for a written letter as she is not going to be assessed for the street, there is no sidewalk on her side of the street, and she was consulted in the design of the terrace. Ms. Houlihan stated those are the things that were promised to her. Trustee Frassetto agreed that others that have this happen to them should be given the same consideration and there should be a policy as it should be fair across the board.

*Moved by Trustee Hietpas, seconded by Trustee Mahlik to amend the motion to include the property at 326 W. Lincoln owned by Jim and Patty Martin.*

Further Discussion: Attorney Koehler provided an opinion on the Board adopting a stipulation as this is normally used in court cases and he suggested maybe the Board adopt a policy instead of making a stipulation. President Fischer confirmed with the Board that they understood the motion to mean that it will be in writing that Ms. Houlihan never be assessed for the concrete road. Trustee Elrick stated he agrees with creating a policy if the Board is going to be in this situation again and for that reason he would vote against the motion as stated with a stipulation. Trustee Frassetto agreed.

*Trustee Hietpas stated that if they were going to create a policy then he withdraws his motion, Trustee Mahlik withdrew his second.*

Trustee Elrick suggested a policy whereby current property owners would not be assessed if the Village goes in and creates a corner lot for a property when a street is created for the betterment of the Village. Attorney Mahlik agreed as the majority of people will not be in their homes 50 years later. Staff will work on developing a policy. Molly Houlihan asked to be notified when the Board discusses the policy. Attorney Koehler commented that assessments need to be imposed uniformly but there is some latitude concerning commercial and residential properties when coming up with the policy.

#### **Department and Officers Progress Reports:**

Chief Misselt reported on citations being issued to bars and retail stores for sales of cigarettes to minors. Chief Misselt notified the Board that he will be meeting with T. Flick soon about amending the ordinance on woody material in terraces and he also is working on an ordinance concerning neighborhood electric vehicles and the ordinance will be brought to the Board at a future meeting for review. D. Haug – no report. C. Kell stated he plans to put an item on next week's agenda for approval of the Police Union contract and also an item concerning development of a subdivision and park on the Ebben Pond property. C. Kell reviewed the map of village owned property that was provided to the trustees. C. Kell reported that the two non-compliant mailboxes had been brought into compliance so that issue will not come before the Board. C. Kell updated the Board on the legislation that was passed concerning distressed TIDs and he stated that TID #1 will not qualify to be designated as distressed if it would be necessary in the future. C. Kell commented on some backflow problems on Bluff Ave and provided the Board with materials that explain the process that the Public Works Dept. uses to notify residents that are on a low pressure list. C. Kell informed the Board that the Village's loss control analysis from the Leagues insurance came in very good. C. Kell commented on using a rubber product for sidewalk replacement and he is going to ask the Public Works Director to look into this option. J. Moes informed the Board that a site plan for Resource One International will be presented to them at next week's meeting for review and approval. T. Flick informed the Board that the Gypsy Moth spraying had taken place on Monday morning and everything went well. T. Flick also reported that the pool will be filled next Monday and the canal will be filled by the Locks Authority the Tuesday after Memorial Day. T. Flick reported that Time Warner Cable had taped the Rugby game at Van Lieshout Park. R. Van Gheem – no report.

V. Schneider reported that the license for the Penalty Box will not be issued as the real estate sale for the property did not go through and Mr. Schuh will likely be renewing his license for the property. V. Schneider

also reported that she had received a request for a hearing before the Board regarding an operator's license denial and she will schedule that as a closed session before the Board on June 2. V. Schneider also reported that a request by Pop In Again to have bands perform outside during the summer will be on next week's agenda for action. Attorney Koehler – report the subject of closed session.

**Disbursement List**

*Moved by Trustee Hietpas, seconded by Trustee Van Deurzen to Approve the Disbursement List as Presented.*

Ayes 7, Nay 0 – Motion Carried Unanimously

**Items for Future Agenda**

- FVMPD Union Contract
- Policy Concerning Assessments when Creating a New Street in Existing Neighborhoods
- Ebben Pond Subdivision and Park
- Notification Policy – Cleaning Sanitary Sewer Pipes
- Request by Pop In Again for Outdoor Bands

**Call for Unfinished Business**

None

*Moved by Trustee Van Deurzen, seconded by Trustee Elrick to Enter into Closed Session. (9:11 p.m.)*

Ayes 7, Nay 0 – Motion Carried Unanimously

**Closed Session:** Legal (g) Conferring with legal counsel for the Village, legal counsel rendering oral or written advice concerning strategy to be adopted by the Village Board with respect to litigation in which the Village is now or is likely to become involved. 19.85(1)(g), Wis. Stats. – Vinton 2008 Concrete Construction Contract

*Moved by Trustee Van Deurzen, seconded by Trustee Van Elrick to Exit Closed Session and Return to Open Session. (9:57 p.m.)*

Ayes 7, Nay 0 – Motion Carried Unanimously

**Return to Open Session**

No action was taken on closed session items.

**Adjournment**

*Moved by Trustee Verstegen, seconded by Trustee Elrick to Adjourn the Regular Board meeting at 9:57 p.m.*

Ayes 7, Nay 0 – Motion Carried Unanimously

**VILLAGE OF LITTLE CHUTE**

By: \_\_\_\_\_  
Charles Fischer, Village President

Attest: \_\_\_\_\_  
Vicki Schneider, Village Clerk