

## MINUTES OF THE COMMITTEE OF THE WHOLE MEETING OF MARCH 28, 2012

### Call to Order

President Vanden Berg called the Committee of the Whole meeting to order at 6:00 p.m.

### Roll Call

PRESENT: President Vanden Berg, Trustee Berken, Trustee Frassetto, Trustee Peerenboom, Trustee Smith

EXCUSED: Trustee Hietpas, Trustee Mahlik

ALSO PRESENT: C. Kell, T. Matheny, J. Moes, T. Flick, R. Van Gheem, V. Schneider

Interested Citizens, Media Reps, Attorney James Long and Anne Weiland/Heesakker Family

### Public Appearance for Items not on the Agenda

None

### Discussion/Possible Action on Heesakker Park Resolution

T. Flick provided handouts of a map of the Park and two possible versions of a resolution for Board consideration. T. Flick explained that the term DNR Nature Based Outdoor Recreation addresses allowing trails, pavilions, fishing facilities or amenities, ADA requirements, parking lots, improvements to existing stream corridors, storm water facilities, restrooms, athletic fields and similar items. Trustee Frassetto commented on her concerns with the term DNR Nature Based Outdoor Recreation and she feels this defeats the purpose of what the resolution is intended to do which it to protect the wooded area. T. Flick stated that he has not been directed to exempt ponds from the resolution and his reason for using this term is that is the only way he can cover what can be done in the active use areas or in the woods such as if the Village would want to place a gazebo in the woods. Trustee Peerenboom commented on the title of the resolution submitted by the Heesakkers and the resolutions submitted by the Parks Director having the same title of "Establishing the History and Intent of the Heesakker Family Concerning the Development of Heesakker Park" and it is not imploring anything on the Village on what can or cannot be done with the park and he supports the resolution submitted by the Heesakker Family. C. Kell commented on the reference to the adopted Park Plans being used as a guide and the Park Plan should be amended for storm water facilities through the public process, if that type of facility is going to be considered. Trustee Frassetto stated she also supports the resolution submitted by the Heesakker family and she commented that the resolution will not bind future boards and a future board could amend the resolution and hopefully this resolution will guide them. Trustee Berken stated the impression he gets from what the Heesakker family has put together is that they want the wooded area preserved and he doesn't think the family would have any objection to adding a gazebo, trail benches, or picnic tables and items like that as it is still preserving the woods. Anne Weiland commented on the park plans adopted in 2005 and 2008 and the plans identify the original intent of the family and by following those plans, the intent of the family would be followed.

*Moved by Trustee Frassetto to Adopt Resolution No. 12, Series of 2012, the edition presented by the Heesakker Family, a Resolution Establishing the History and Intent of the Heesakker Family Concerning the Development of Heesakker Park.*

Trustee Smith commented on the versions and T. Flick stated he did not have a copy of the version that has been moved for approval. Trustee Smith questioned if the resolution could be amended by a future board or would it bind a future board. Attorney Koehler commented that there are words in the resolution from the Heesakker family such as promise and commitment and those can be considered binding obligations. Attorney Koehler stated that he drafted language that is included in the proposed resolutions presented by Mr. Flick that make clear that the amendments to the resolution could be possible if things change in the future and that language is not in the version presented by the Heesakkers. Attorney Koehler stated that in some ways boards can bind future boards to certain things and there is language in the resolution that leans towards a more permanent nature and that is why at Mr. Flick's request he drafted the language that is included in the resolutions prepared by Mr. Flick and the Board might want to consider adding that language to the Heesakkers resolution. Attorney Long commented on the resolution being drafted on the

words of Don De Groot as Mr. De Groot was involved in every discussion about the Park over the last 42 years and the letter that Mr. De Groot wrote to President Vanden Berg was included as part of the resolution and he proceeded to read the letter. Attorney Long stated he disagreed with changing the wording in the resolution by adding the paragraph that would not bind the Village to anything. Attorney Long stated they would like the Board to pass their resolution because that is the current intent. T. Flick questioned allowing the use of weapons and the archery range in the addendum to the resolution and in the statement of understanding. Attorney Long stated that Anne had explained the plans for the archery range to the family and they agree to the archery range. Anne Weiland stated that while her dad and his dad have no use for weapons because they were in the war, she had showed them the pictures, and it is in the Park Plan, and they are agreeing that the Park Plan should be looked at as a guide, so they are ok with it. President Vanden Berg commented that he disagreed with Attorney Long in respect to Attorney Koehler's comments, as he doesn't believe it just means the Village can go and change things as it has some parameters and his preference is that the language from Attorney Kohler is included in the resolution that is adopted. Attorney Koehler commented on the attachment called the Statement of Understanding between the Heesakker Family and the Village of Little Chute and if the resolution is passed unchanged with all the various attachments, it is an indication that all of the attachments and all language in the attachments are also approved and he cautioned the Board to understand what is in all of the attachments if they are going to vote in favor of this version. Attorney Long stated that the reason all 61 plus pages were included is because that is where the history came from and the resolution is titled as Establishing the Intent. Trustee Berken stated that since Ms. Weiland said the archery range and such would be fine with them, he asked if the language regarding no use of weapons could be struck from the Statement of Understanding.

*Trustee Frassetto stated she is comfortable amending her motion to include striking the language in the Statement of Understanding regarding no use of weapons.*

Trustee Smith commented on honoring the handshake agreement but he wants to make sure the Village isn't locked into something when it is not known what will happen in the future and he doesn't want to see duplexes or apartment buildings or anything like that but he would like to see opportunities allowed for a possible classroom for education or similar type facilities. Trustee Smith stated that if Attorney Koehler is comfortable with it and if hunting is allowed, as the Village does allow hunting to control the herd and the archery range is allowed, he is comfortable with it. Trustee Peerenboom stated that what is important is that we do incorporate the adopted park plans and that is incorporated as the guide for the park and the control is put back to the Park Planning Committee.

*Trustee Peerenboom seconded Trustee Frassetto's motion.*

Vote on the Motion:

Ayes 4, Nay 1(Vanden Berg) – Motion Carried

#### **Review/Action on Resolution Authorizing an Amended and Restated Pledge and Security Agreement or the Fox cities Performing Arts Center Project**

C. Kell explained that refunding the bonds will save \$1.1 million and the purpose is they are intending to pay off the bonds by 2018 which shortens the period by two to three years and at that point the 2% room tax that has been committed to the PAC will go to the Convention and Visitor's Bureau. Discussion took place.

*Moved by Trustee Peerenboom, seconded by Trustee Smith to Adopt Resolution No. 13, Series of 2012 Authorizing an Amendment to the Fox Cities Performing Arts Center Project.*

Roll Call Vote: Trustee Berken – Yes, Trustee Frassetto – Yes, Trustee Peerenboom – Yes, Trustee Smith – Yes, President Vanden Berg – Yes

Ayes 5, Nays 0 – Motion Carried

#### **Review/Action to Approve Developer's Agreement with Poly-Flex Inc. & LC Poly, LLC**

Attorney Koehler explained that the original agreement approved by the Board listed Poly-Flex Inc. as guarantors but because they are not going to own the land, they refused to guarantee the taxes. Attorney Koehler stated that the owners of LC Poly, LLC have stepped forward to fill in those guarantees but there

are going to be five (5) owners of that company and they want to guarantee 100% so each owner wants to guarantee 20% of the obligation. Attorney Koehler stated that in addition to the guarantee, the Village has a mortgage on the property and the double protection is about as secure as the Village can get in securing the tax payments due to the Village. Attorney Koehler stated that another feature that was added is with WOW and their right to buy back the property from the Village should Poly-Flex not move forward with their project before the end of 2012 and at the time of closing a warranty deed back to the Village will be executed. Attorney Koehler continued to explain the numerous ways the Village is protected in this agreement and he stated that Poly-Flex Inc. & LC Poly, LLC have both approved the Developer's Agreement.

*Moved by Trustee Frassetto, seconded by Trustee Berken to approve the Development Agreement, Tax Increment Finance District #2 between the Village of Little Chute and Poly-Flex, Inc. and LC Poly, LLC as presented.*

Ayes 5, Nays 0 – Motion Carried

#### **Review/Action to Approve Paint, Plaster & Flooring Improvements for 325 W. Main Street**

*Moved by Trustee Frassetto, seconded by Trustee Smith to approve the expenditure of up to \$8,098.00 for work on 325 W. Main Street and increase the listing price to \$105,900.*

Ayes 5, Nays 0 – Motion Carried

#### **Discussion/Approval of Covenants for Village Owned Lots on Polk Street**

C. Kell stated that these covenants are basically the same as those that were established for the Village North Subdivision. Trustee Frassetto stated that she is struggling with requiring covenants for four lots when they are surrounded by lots that are not bound by the same covenants and she doesn't see any benefit to requiring the covenants. J. Moes stated that basically it is to give security to the buyer. Discussion took place.

*Moved by Trustee Peerenboom, seconded by Trustee Smith to approve the Covenants for Village Owned Lots on Polk Street as presented.*

Ayes 4, Nays 1(Frassetto) – Motion Carried Unanimously

#### **Discussion/Possible Action of Procedures for Sale of Village Owned Lots on Polk Street**

C. Kell stated that this process/procedure is also very similar to that set for the Village North Subdivision lots. Trustee Peerenboom stated that he would like to see the time frame for construction extended for these lots as he has heard some complaints about the 12 month timeframe required for building in the Village North Subdivision and he recommended a 24 or 36 month timeframe. Trustee Berken suggested bumping up the minimum price by \$5,000 for each of the lots. Discussion took place. Trustee Smith stated he felt the price should be kept as recommended and not increased. Trustee Peerenboom and President Vanden Berg also agreed with bumping up the prices. Trustee Frassetto stated she would support it either way as she doesn't see it as being an issue. President Vanden Berg recommended increasing the price by 10%.

*Moved by Trustee Peerenboom, seconded by Trustee Berken to approve the Procedures for the Sale of Village Owned Lots on Polk Street with the adjustment from 12 month to 24 months in Item #4 of the IFC for Listed Procedures and in Item #11 the minimum bid price be changed to \$38,000 for Lots 1 and 4 and to \$49,000 for Lots 2 & 3.*

Ayes 4, Nays 1(Smith) – Motion Carried

#### **Unfinished Business**

T. Matheny provided a copy of a memo she had drafted in response to some questions Trustee Hietpas had regarding the Evergreen L.C. Development Debt and reviewed the information in the handout. C. Kell noted that he understands that Evergreen L.C. Development has a meeting in Milwaukee tomorrow with a Developer and they may be coming back with a signed offer that will include the initial purchase of just

under 15 acres of property and subsequent purchases and take downs of up to 31½ acres of property with the development occurring in the next five to seven years and the proposed development is for a \$15 million apartment complex. C. Kell stated that most of the Village's Phase I obligation under the agreement with them will be satisfied by this development. Trustee Peerenboom requested that this be brought back on an agenda when Trustee Hietpas is present. C. Kell provided a copy of a map showing open enrollment numbers in the LCSD and he commented on the number of students enrolling in the district and where they are coming from.

### **Items for Future Agenda**

C. Kell stated that Rick Sanderfoot from Van Zeeland Nursery contacted him regarding assessment issues and corner lot credits and he is requesting an additional quarter lot credit for the corner of Sanitorium Rd. and Main St. and he would like the Board to consider reviewing the policy and discussing the issue on a future agenda. C. Kell and staff made the Board aware that this isn't the only property in this situation. Staff noted that the assessment hearing for the Sanitorium Rd. project is April 10<sup>th</sup>. Board members agreed to place the issue on the agenda for the April 11<sup>th</sup> Committee of the Whole meeting. C. Kell asked for clarification on whom should be notified of the meeting and the Board agreed that Rick Sanderfoot and the Shopping Center owners will be notified that the Village Board will listen to their argument at the meeting on the 11<sup>th</sup>.

*Moved by Trustee Peerenboom, seconded by Trustee Berken to enter into Closed Session.(7:11pm)*  
The Village Administrator and Village Attorney were present at the Closed Session. Staff and the Village Clerk were excused at this time.

### **Closed Session:**

- a) 19.85(c) Consideration of Employment, Promotion, or Performance Evaluation Data of any Public Employee of the Village of Little Chute - *Continuation of Performance Evaluation of the Village Administrator*
- b) 19.85(1)(e) Wis. Stats. Deliberations or negotiations on the purchase of public properties, investing of public funds or conducting other specific public business when competitive or bargaining reasons require a closed session. *WOW Logistics Real Estate Matters*

*Moved by Trustee Peerenboom, seconded by Trustee Frassetto to exit closed session. (9:04 pm)*  
Ayes 5, Nays 0 - Motion Carried

### **Return to Open Session/Possible Action on Closed Session Item(s)**

*Moved by Trustee Frassetto, seconded by Trustee Berken to approve the Right of First Refusal and Buy Back Agreement with Warehousing of Wisconsin Subject to Incorporating for the Village if the Property is not Built on in 2 years a Buy Back Provision.*

Ayes 5, Nays 0 – Motion Carried

### **Adjournment**

*Moved by Trustee Frassetto, seconded by Trustee Smith to Adjourn the Committee of the Whole meeting at 9:05 p.m.*  
Ayes 5 Nays 0 – Motion Carried

## **VILLAGE OF LITTLE CHUTE**

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By: Michael R. Vanden Berg, Village President

Attest: Vicki Schneider, Village Clerk