

## **MINUTES OF THE REGULAR BOARD MEETING OF MAY 4, 2011**

The Regular Board meeting was called to order at 6:00 p.m. by Michael Vanden Berg, Village President

### **Invocation**

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

President Vanden Berg led members in the reciting of the Pledge of Allegiance.

### **Roll call of Trustees**

PRESENT: Michael Vanden Berg, President

Bob Berken, Trustee

Tammy Frassetto, Trustee

James Hietpas, Trustee

Dan Mahlik, Trustee

Bill Peerenboom, Trustee

Skip Smith, Trustee

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

PRESENT: Charles Kell, Village Administrator

Eric Misselt, Police Chief

Jim Moes, Community Development Director

Tom Flick, Director of Parks, Recreation, and Forestry

Vicki Schneider, Village Clerk

Charles Koehler, Village Attorney

EXCUSED: Finance Director Dale Haug, Public Works Director Roy Van Gheem

ALSO PRESENT: Media reps and interested citizens

### **Approval of Minutes**

Regular Board Meeting Minutes –April 20, 2011

Committee of the Whole Meeting Minutes – April 27, 2011

*Moved by Trustee Frassetto, seconded by Trustee Mahlik to approve the Regular Board Minutes of April 20, 2011 and the Committee of the Whole Minutes of April 27, 2011 as presented.*

Ayes 7, Nays 0-Motion Carried Unanimously

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

*Minutes of the Joint Library Board meeting of March 15, 2011*

*Minutes of the Water Commission meeting of March 15, 2011*

*Quarterly Budget Status and Quarterly Investment Summary*

Board members noted receipt of the informational items.

### **Tree City USA Award Presentation**

T. Flick introduced Tracy Salisbury from the DNR's Urban Forestry Division. Ms. Salisbury presented to the Village on behalf of the Arbor Day Foundation and the DNR the 2010 Tree City USA Award and stated that this was the 17<sup>th</sup> year the Village had been named a tree city. Ms. Salisbury stated that there are four standards that the Village must meet each year and that is to have a forestry program, to spend \$2 per capita on our Forestry Program, have a tree ordinance, and have an Arbor Day Proclamation. Ms. Salisbury stated that the Village has also qualified for a Growth Award because of two projects it did which were a project done in coordination between Mary Janssen and the High School on the building of nesting boxes and the second was converting the Village's tree inventory to be compatible with GIS and she commended the Village on their efforts.

### **Ordinance:**

### **Amending Village of Little Chute Municipal Code Section 40-66 Terrace Area**

C. Kell provided handouts of Kaukauna's ordinances regarding hedges and a map of the intersection and property on Grant St. and Bluff Ave. C. Kell reviewed the changes staff is proposing that reflect the recent

discussions of the Board. The proposal maintains the three foot height limitation for any new plantings in both urban and rural terrace situations and restricts the height of plantings to three feet within 25 feet of a street intersection or driveway intersection with a public street on a rural street for safety purposes. The proposal removes the height limitation on all existing plantings or vegetation in terrace or Village right-of-way, existing prior to the adoption of this ordinance, provided these areas are outside of the 25 foot intersection safety zone or do not pose any other safety issues to the public. A provision has also been added that the landscaping placed in a terrace shall not impede or restrict drainage. C. Kell stated that Village staff is opposed to Trustee Peerenboom's proposal that would eliminate all height restrictions on plantings in the terrace areas for both existing plantings and new plantings as long, as there isn't a safety issue, because they believe plantings in the urbanized terrace areas should be restricted to 3-feet in height. C. Kell reminded the Board that the ordinances started out with not allowing anything in the terraces and then it was amended to allow some minor plantings around mailboxes. Trustee Peerenboom stated that his proposal eliminates selecting an arbitrary number for the height regulation but it addresses complying with safety and visibility issues. Chief Misselt commented that the 3-foot height restriction does have precedence primarily because it corresponds roughly with the bottom edge of car windows. Trustee Peerenboom stated that he had concerns with the height restriction being 2 1/2 feet in the vision triangle and then allowing 3 feet in the terrace area. Chief Misselt stated he did have concerns with no height restriction being specified as he doesn't want to put his officers in a position of making arbitrary decisions and he believes it would be fair to everybody if there were defined heights. Discussion took place.

*Moved by Trustee Frassetto, seconded by Trustee Mahlik to Adopt Ordinance No. 9, Series of 2011 as presented with the change of two and one half (2 1/2) feet versus the three (3) feet in the section of the ordinance where it reads "property owner at a height below three feet changed to, two and one half feet except that such plantings located greater than twenty five (25) feet from an intersecting street right-of-way or driveway."*

Further Discussion: Trustee Peerenboom asked for clarification that it was the ordinance labeled "Kell Version" and Trustee Frassetto nodded confirmation that, that was the correct ordinance. President Vanden Berg stated the only problem he has is that there is no height restriction outside the 25 foot restricted area.

Vote on the Motion: Ayes 3, Nays 4(Vanden Berg, Berken, Hietpas, Peerenboom) – Motion Failed

Trustee Frassetto asked Board members if they would be in favor if there was a height restriction placed outside the 25 foot area and President Vanden Berg indicated he would be in favor of that.

*Moved by Trustee Frassetto, seconded by Trustee Smith to Adopt Ordinance No. 9, Series of 2011, as labeled "Kell's Version" in the Board's packet with the noted change of "a property owner at a height of below two and one-half (2 1/2) feet" versus the three (3) feet as well as placing a height restriction on the area outside of the twenty-five feet at five (5) feet.*

Further Discussion: Trustee Peerenboom stated this is exactly the kind of stuff he was trying to get rid of because now staff can go out with a tape measure and see where the twenty-five foot starts as well as measuring up and down and that is why he won't support it and he thinks it should be left at a safety issue. Trustee Mahlik stated that if the Board doesn't clean up the ordinance it is going to continue to be an issue and he questioned what the magic number should be and he stated that this is a solution. President Vanden Berg agreed that he doesn't want to put the Police Officer's in a position of judging the safety of the plantings and there is better use of their time and staff's time. J. Moes stated that the maximum height for hedges on a private property line is 42 inches. President Vanden Berg stated that he would be in favor of making it consistent by making it all 42 inches in the accepted areas.

Vote on the Motion: Ayes 3- Nays 4(Vanden Berg, Berken, Hietpas, Peerenboom) – Motion Failed

Staff stated that the ordinance stands as it currently is and the Board will then need to act on the stay of order later on the agenda. Discussion continued. No further action was taken.

**Resolution:**

**Vacating a Portion of Grant Street**

*Moved by Trustee Peerenboom, seconded by Trustee Berken to Adopt Resolution No. 13, Series of 2011 Vacating a Portion of Grant Street.*

Ayes 7, Nays 0 – Motion Carried Unanimously

**Action on Request for Temporary Sign Permit – Tim’s Body shop – 3200 W. Main Street**

J. Moes stated that due to the construction on Hwy. 96, Mr. Merkl is requesting to put up a temporary 4' x 8' sign at the corner of French Rd and Cty. 00 to direct traffic to his business during the construction. J. Moes stated he does not have any objection to the sign. C. Kell stated if the permit is approved he would like it included in the motion that it is being approved based on the physical characteristics of the intersection as these types of signs cannot be placed in other areas if requested by other businesses and this is a unique situation.

*Moved by Trustee Frassetto, seconded by Trustee Peerenboom to Approve the Request by Tim’s Body Shop for a temporary sign based on the unique characteristics of the intersection and the sign permit shall expire when the Hwy. 96 construction is completed.*

Ayes 7, Nays 0 – Motion Carried Unanimously

**Sidewalk Café Permit for Seth’s Coffee – 106 E. Main Street**

C. Kell reviewed the plan for outdoor seating that includes table locations on the Grand Avenue side and Main St. side of the business. The Public Works Director is recommending against approving the placement of the table on the bumpout on Main St. because the ordinance doesn’t consider bumpouts as part of the sidewalk and he has concerns that people sitting or standing around that table may impair the visibility of the driver’s on Main Street to see pedestrians crossing the street. C. Kell did note that this table could be moved to a location to east side of the businesses entrance door. C. Kell stated that last year the Board did allow a table on the bumpout on Grand Avenue because of the oversize of the bumpout and it was back far enough not to impede the traffic. C. Kell stated that Seth had applied for the tables in front and one on the side street but staff is recommending that all the other tables shown on the plan be approved, with the exception of the one, in case the DOT does not approve the tables on Main St. Trustee Peerenboom expressed concerns with not following the ordinance as far as the application being a renewal or initial application and the April 1 deadline and concerns with allowing tables on the Grand Ave. side of the building. Discussion took place. Trustee Frassetto stated she understands the Administrator had been working with Mr. Lenz on the application before April 1. C. Kell stated that the business is on a corner lot and he has frontage on both streets and the ordinance provision was to restrict giving permission to have tables in front of stores owned by someone else and the April 1 deadline was put in as a convenience factor for public works and staff is just trying to work with the business. Attorney Koehler commented on the interpretation of a renewal application as technically if the application is applied for after April 1 it can be considered a new application and this could be treated as a new application for both facades. Attorney Koehler also commented that the address for the property could be considered the entire perimeter of the property and the intent of the ordinance was to not allow tables in front of a building with another address.

*Moved by Trustee Frassetto, seconded by Trustee Smith to Approve the Sidewalk Café Permit for Seth’s Coffee located at 106 E. Main Street as presented on the layout offered by the Public Works Department.*

Further Discussion: Trustee Peerenboom asked if the ordinance was being approved because there is some room to wiggle but last week when a business owner asked for some stakes in the Village property the Board told him no because we had an ordinance against it and he wonders why the ordinance is being massaged in this instance. Trustee Smith stated he doesn’t know if the Board said no on the issue of the stakes as they agreed to allow Parks and Rec. to donate the concrete parking stops and he would not have had a problem with allowing the stakes as he is a firm believer in working with the businesses. C. Kell stated they are two completely different situations as there are many areas where we don’t allow the

placement of items in the public right-of-way and this happens to be a specific issue that the Board debated to allow the sidewalk cafes in the public right-of-way as a way to make the community more attractive and assisting businesses and specific provisions were adopted that the business owner is complying with. Trustee Mahlik commented on working with this business owner to assure he stays in business and he commented on Mr. Heiting being happy with the parking blocks and he stated that the Village has to work with its businesses. Trustee Frassetto clarified that her motion is to approve what was presented by Public Works so it would exclude approving the table on the bumpout on Main St. but still allow the table in the bumpout behind the bench on Grand Ave.

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

Trustee Berken was excused from the Board at this time.

**Action on Stay of Order Issued to Robert and Kathryn Berken – 182 Grant Street – Regarding Trimming of Hedges in Village Right-of-way**

Trustee Frassetto stated that it is her opinion that the Board has spent a significant amount of time and taxpayer dollars discussing this issue and she doesn't think with good conscience they can continue to discuss the issue as they have made three attempts to vote on ordinances to accommodate and as reluctant as she is, she thinks the only option is to enforce the order. Bob Berken asked if the ordinance was going to be enforced Village wide and staff responded that yes it would be enforced if that is what the Board decides. Staff stated that if the Board doesn't take any action the stay on the order is expired and the order will be enforced. D. Mahlik stated he agreed with Trustee Frassetto and the issue can't keep hanging out there and since there isn't a change to the ordinance, it has to be enforced. T. Flick asked the Board if the Board wanted to give the property owner some time to comply with the order and Board members indicated 10 days would be fine and the Parks and Rec. Director can use his discretion given weather and other circumstances.

Trustee Berken returned to his Board seat at this time.

**Review/Possible Action – Site Plan – Building Services Group**

J. Moes stated that staff has reviewed the site plan and it meets the Village's requirements and staff is recommending approval of the site plan.

*Moved by Trustee Peerenboom, seconded by Trustee Berken to approve the Site Plan for Building Services Group as presented.*

Ayes 7 Nays 0 – Motion Carried Unanimously

**Action on Budget Adjustment – Insurance Claim for Van Lieshout Park Roof Damage**

		<u>Original</u> <u>Budget</u>		<u>Amended</u> <u>Budget</u>
Insurance Claims	101-29212 <i>(reserve balance after withdrawal will be \$20,000)</i>	\$5,000		
<u>Revenue</u>				
Damage to Property	420-38621	\$ 0	\$13,200	\$13,200
Transfer In	420-39101	\$ 0	\$ 5,000	\$ 5,000
<u>Expenditure</u>				
Van Lieshout Park	420-57620-274	\$ 0	\$18,200	\$18,200

*Moved by Trustee Frassetto, seconded by Trustee Mahlik to Approve the Budget Adjustment for Van Lieshout Park Roof Damage and to Approve Use of \$5,000 from Insurance Claims Reserve Account.*

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

Ayes 7, Nays 0 – Motion Carried Unanimously

**Action on Special Event Permit – Little Chute Sidewalk Sale – Tuesday, July 26, 2011**

*Moved by Trustee Frassetto, seconded by Trustee Berken to Approve the Special Event Permit for the Little Chute Sidewalk Sale on Tuesday, July 26, 2011.*

Ayes 7, Nays 0 – Motion Carried Unanimously

**Action on Special Event Permit – Rock Cancer – Saturday, August 20, 2011 – Doyle Park**

*Moved by Trustee Frassetto, seconded by Trustee Berken to Approve the Special Event Permit for Rock Cancer on Saturday, August 20, 2011 at Doyle Park.*

Ayes 7, Nays 0 – Motion Carried Unanimously

**Action on Temporary Class B Beer License – Rock Cancer- Saturday, August 20, 2011**

*Moved by Trustee Berken, seconded by Trustee Peerenboom to Approve the Temporary Class B Beer License for the Spierings Cancer Foundation for Rock Cancer on August 20, 2011.*

Ayes 7, Nays 0 – Motion Carried Unanimously

**Appoint President Pro Tem**

President Vanden Berg stated he is recommending Trustee Peerenboom to serve as President Pro Tem.

*Moved by Trustee Frassetto, seconded by Trustee Smith to Appoint Trustee Peerenboom as President Pro Tem.*

Ayes 7, Nays 0 – Motion Carried Unanimously

**Committee/Commission Member Appointments**

President Vanden Berg made the following Committee/Commission Appointment Recommendations.

Board of Appeals – Don De Groot – 3 year term; Board of Review – Don De Groot – 3 year term; Fire Commission – Scott Schommer – 3 year term; Plan Commission – Richard Schevers, Bill Van Berkel, and John Elrick - each to a 3 year term; Design Review Board – Diane De Bruin – 3 year term, John Elrick – 4 year term, and President Vanden Berg stated he will serve as the Trustee Representative on the Design Review Board; CDA – Phil Benoit – 4 year term; Joint Library Board Jim Moes– 4 year term

*Moved by Trustee Frassetto, seconded by Trustee Smith to Approve the Committee/Commission Member Appointments as recommended by President Vanden Berg.*

Ayes 7, Nays 0 – Motion Carried Unanimously

**Operators License:**

Jodi S. Mertens	921 E. Main St.	Little Chute	Walgreens
Denise L. Thomson	329 S. Birch St.	Kimberly	Gentlemen Jacks
Tammy L. Vanden Bloomer	235 S. Railroad	Kimberly	Weenie's Still

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

Mitchell Cremer	3401 Streamview Lane	Appleton	Super 41 Shell
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*Moved by Trustee Frassetto, seconded by Trustee Mahlik to approve and deny the operator's license as listed on the agenda.*

Ayes 7, Nays 0 – Motion Carried Unanimously

**Department and Officers Progress Reports**

Chief Misselt provided an update on the status of the merger and noted that he would be bringing the proposed organizational chart and collective bargaining agreement to the Board at a future meeting for review and approval. C. Kell reported that he had submitted the Village's application for the CVB's Way Finding Signage Grant Program and once it is approved, he will bring the whole signage plan to the Board for approval. C. Kell reported that the Papa John's building has been leased to Jets Pizza, a national pizza franchise, and it is expected to open in mid-July. C. Kell stated that he has not yet heard from Open Range

Communications and recently solicitor's permit were denied for the company and they were informed it was because their lease payment has not been made to the Village. C. Kell stated that next week the Village's financial consultant, Elhers, would be making a presentation to the Board on the village debt bonding plan and recommendations. C. Kell informed the Board that at next week's meeting the agenda will include items for awarding bids for the 2011 construction projects and for the private lateral installation project. J. Moes stated that the Plan Commission would be meeting next week to review and discuss wind energy regulations and locations as the LC School District is proposing installation of a wind energy system on their property. J. Moes stated that the old dry cleaner's building on Grand Ave. has recently been tested for contamination but the results are not yet known. T. Flick commented on the success of the Earth Day celebrations with Nestle and the Boy Scouts and he also stated that in honor of Arbor Day the fourth grade public school class will be planting a tree at Legion Park. T. Flick gave an update on the lighting project at Doyle Park and the status of the Pedestrian Trail and Bridge Project. T. Flick stated that the Dept. has started the process of getting the pool ready and there is an increase in damage caused from the winter and this will continue to be an on-going issue given the age of the pool and he informed the Board that the pool study recommendations will be brought to the Board in late June for discussion. V. Schneider reported that she has been assisting Outagamie County with the recount and it is going well and there have not been any major abnormalities found. V. Schneider also updated the Board on the status of the Liquor License for the Country Inn & Suites and she invited Board members to attend the CVB Open House on Wednesday, May 11. Attorney Koehler – no report.

### **Disbursement List**

*Moved by Trustee Frassetto, seconded by Trustee Smith to Approve the Vouchers as presented and Authorize the Finance Director to draw from the Respective Funds.*

Ayes 7, Nays 0 – Motion Carried Unanimously

### **Call for Unfinished Business**

None

### **Items for Future Agendas**

Chief Misselt stated the Collective Bargaining Agreement and Organization Chart for the Department would be presented to the Board next week. J. Moes stated that an annexation ordinance would be presented to the Board at the next regular Board meeting. Next week the Ehlers presentation and action to award bids will also be on the agenda.

*Moved by Trustee Frassetto, seconded by Trustee Smith to Enter into Closed Session. (7:36 p.m.)*

Ayes 7, Nays 0- Motion Carried Unanimously

**Closed Session: 19.85 (g) Wis. Stats. – 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 be involved. 5<sup>th</sup> Quarter Sports Bar**

*Moved by Trustee Peerenboom, seconded by Trustee Frassetto to Exit Closed Session. (8:18 p.m.)*

Ayes 7, Nays 0 – Motion Carried Unanimously

**Return to Open Session – No action taken**

### **Adjournment**

*Moved by Trustee Peerenboom, seconded by Trustee Mahlik to Adjourn the Regular Board meeting at 8:18 p.m.*

Ayes 7, Nays 0 - Motion Carried Unanimously

## **VILLAGE OF LITTLE CHUTE**

By: \_\_\_\_\_

Michael R. Vanden Berg, Village President

Attest: Vicki Schneider, Village Clerk