

## **MINUTES OF THE REGULAR BOARD MEETING OF JULY 7, 2010**

The Regular Board meeting was called to order at 6:23 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, President  
John Elrick, Trustee  
Tammy Frassetto Trustee  
James Hietpas, Trustee  
Dan Mahlik, Trustee  
Don Van Deurzen, Trustee (6:26 p.m.)  
Janet Verstegen, Trustee

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

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

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

Laurie Hansen, 823 Bluff Ave., commented on the ordinance that was recently passed by the Village Board regarding woody material in the terrace and the height limit requirement and she commented that staff did a good job on writing the ordinance with regulating the height to a maximum of three (3) feet and she did not want to see the ordinance changed.

### **Approval of Minutes**

Regular Board Meeting Minutes – June 16, 2010

Committee of the Whole Meeting Minutes – June 23, 2010

*Moved by Trustee Elrick, seconded by Trustee Mahlik to approve the Regular Board Minutes of June 16, 2010 and the Committee of the Whole Meeting Minutes of June 23, 2010 as presented.*

Ayes 7, Nay 0-Motion Carried Unanimously

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

Plan Commission Meeting Minutes – May 10, 2010

Joint Library Board Meeting Minutes – May 18, 2010

Water Commission Meeting Minutes – May 18, 2010

Board members noted receipt of the above items.

### **Request by Trustee Mahlik for a Reconsideration of Ordinance No. 10, Series of 2010, regarding the Requirement of Property Owners to Maintain Plantings within the Public Right of Way below three (3) feet in height.**

Trustee Mahlik stated he was mistaken in not picking up on the three foot height restriction in the ordinance that was passed and he feels that the plantings will be more dangerous at three feet as they will be a bunch of

Regular Board Meeting Minutes – July 7, 2010

stubs with sharp edges and he believes this is a bigger hazard then leaving them as they are. Trustee Mahlik suggested a five feet height restriction stating five feet would be acceptable in this particular situation.

*Moved by Trustee Frassetto, seconded by Trustee Mahlik to reconsider Ordinance No. 10, Series of 2010, regarding the Requirement of Property Owners to Maintain Plantings within the Public Right of Way below three (3) feet in height.*

Chief Misselt stated that the three foot height restriction came from existing language in the Village's Code regarding plantings in the terrace and there is basis for the three foot restriction because the 15 foot vision corner obstruction provision requires that the area from two or three feet off the ground to 10 feet off the ground is to remain clear. T. Flick stated that he is not a shrub expert but larger hedge materials should be maintained at a four to six foot range. Trustee Verstegen asked for a vote on the reconsideration.

Vote on the Motion:

Ayes 7, Nay 0 – Motion Carried Unanimously

Trustee Mahlik stated that these types of shrubs will not grow correctly as the leaves don't start growing until the shrubs get to be four or five feet and they will look like garbage and they will become a bigger danger as the edges are sharp. C. Kell stated that he understands that the intent is not to allow new woody material in terrace areas and he noted that there is currently an ordinance in place for fences and hedges for properties that abut a public street with a height restriction of 42 inches. Trustee Mahlik commented that this is an isolated situation that had not been dealt with and it is not rampant in the Village. J. Moes stated his office does get quite a few calls about issues with hedges and shrubs on private property. Trustee Elrick commented that the ordinance needs to address the entire Village and it needs to be looked at from that standpoint and the most he could go along with is 42 inches. T. Flick stated that he had given Mr. Berken a courtesy call informing him of the requirement to trim the hedges to three feet. R. Van Gheem stated the Public Works Department also receives complaints regarding these issues. Staff explained that if they receive a complaint they respond and most property owners correct the situation and if they don't then the Village remedies the situation and bills the property owner. Trustee Frassetto asked if these shrubs could be considered under the fence and hedge ordinance because this property does not have curb and sidewalk. Chief Misselt stated in his opinion he would have a hard time being confident about safety issues if the height limit was raised because the ordinance is applicable for the entire village. Trustee Frassetto suggested adding language to the ordinance that differentiates between urban and rural properties and put rural streets at the 42 inch restriction and properties with sidewalk and curb at the three foot height requirement and she noted that her intent is that it applies to existing properties. Trustee Mahlik questioned why it is now imperative to cut the bushes back to three feet and he understood the ordinance as adopted reads "may" require and that wasn't the intent of the ordinance that was passed. Trustee Van Deurzen stated he agreed with Trustee Elrick and the highest he would support would be 42 inches. Trustee Frassetto stated she agreed with the 42 inch height restriction. T. Flick stated that he did not think Mr. Berken's bushes would survive at 42 inches. Trustee Mahlik stated the minimum height requirement he wants to see is 48 inches and if it has to be written specifically for Mr. Berken's bushes, then he supports that. C. Kell suggested giving an exception to this property instead of changing the ordinance to address one situation. Trustee Elrick stated the whole point of having an ordinance is for the entire village and there better be a good reason to give a variance. Trustee Frassetto agreed with the suggestion to give a variance to this property owner as the property is in an established part of the Village and it has been there for 30 plus years. Discussion took place on making an exception for this property. Attorney Koehler commented that the concept of variances is really a zoning law and he is not sure that shrubbery ordinances have anything to do with zoning and he would have to check in to it further to give a formal opinion. Trustee Verstegen stated that the area between three and ten feet should be maintained as open as that is a standard in crime prevention and is used all the time in planning and the terrace area is village property and they should be maintained at three feet and she is against changing the ordinance. Trustee Frassetto stated she would like the Attorney to check in to seeing if a variance situation could work in this case.

*Moved by Trustee Elrick, seconded by Trustee Verstegen to leave Ordinance No. 10, Series of 2010 as is.*

Further Discussion: Trustee Elrick commented that he understands that variances are not allowed in public property. Attorney Koehler stated that a variance is a zoning law concept and this not being a zoning issue,

variance is a word that doesn't even apply to this problem and this property would have to be found to fit in to a separate classification along with similar properties in order to justify a different height regulation and he would have to explore the issue further. Trustee Frassetto asked if staff could check in to seeing if this property could be in a different classification. C. Kell stated that he doesn't think zoning is what is being talked about but this situation is about giving a different standard for an issue in the public right-of-way which is similar to the issue with the request for a wider driveway that will be coming before the Board. Trustee Frassetto asked if the Administrator would check in to seeing if the Board can make an exception for this property. Trustee Elrick stated that request has nothing to do with the motion to uphold the ordinance for the entire village. Trustee Frassetto asked that the order to Mr. Berken be kept on hold pending the outcome of Mr. Kell's findings. Attorney Koehler stated in his opinion if the ordinance stays as it is currently written and then it is looked in to and found that a separate classification can be created for this property and others like it, then the ordinance can be put on a future agenda to amend it to create another classification.

Vote on the Motion:

Ayes 4, Nay 3 (Fischer, Hietpas, Mahlik) – Motion Carried

### **Ordinances**

#### **Amending Ordinance No. 3, Series of 2010 regarding the Permission to Allow the Use of Umbrellas for Approved Sidewalk Cafes**

C. Kell stated that the amendment was written after doing some research and finding that there are many different options for umbrellas six feet and shorter and the Board requested that the sidewalk café ordinance language be amended to allow for umbrellas.

*Moved by Trustee Elrick, seconded by Trustee Verstegen to Adopt Ordinance No. 11, Series of 2010 Amending Ordinance No. 3, Series of 2010 and Village Code of Ordinances, Chapter 40 – Streets, Sidewalks and Other Public Places – Article IV Excavation, Obstructions and Encroachments, Section 98 – Sidewalk Cafes*

Ayes 7, Nay 0-Motion Carried Unanimously

**If voted to reconsider: Amending Ordinance No. 10, Series of 2010, regarding the Requirement of Property Owners to Maintain Plantings within the Public Right of Way below three (3) feet in height.**  
As recorded above, the motion passed to leave Ordinance No. 10, Series of 2010 as it currently is written.

#### **Action on Site Plan – Absolute Supply – 1560 Bohm Drive**

J. Moes stated staff has reviewed the site plan and it meets all Village requirements and approval of the site plan is recommended.

*Moved by Trustee Elrick, seconded by Trustee Van Deurzen to Approve the Site Plan for Absolute Supply at 1560 Bohm Drive.*

Ayes 7, Nay 0 – Motion Carried Unanimously

#### **Discussion/Possible Action – Special Event Permit – Little Chute Sidewalk Sale – July 27, 2010**

C. Kell provided Board members with a copy of the Village's Special Event Policy and stated that it is only a policy and it is not part of the Village's ordinances. C. Kell commented on the concern of some of the downtown businesses of having to name the Village as an additional insured as is required by the policy. C. Kell asked the Board to consider whether they want to enforce this part of the policy before they approve the permit. C. Kell stated he had talked to the Village's Insurance Agent and the agent doesn't feel that it is necessary for the sidewalk sale merchants to list the Village as an additional insured as the exposure to the Village is limited. Attorney Koehler stated that he agrees that the Village's exposure is probably limited and the Village already has general liability insurance and he went on to explain that the Village is covered should something happen on Village property during the sidewalk sale and if the merchants also name the Village as an insured then the probability is that the merchants policy would have to pay to defend the Village.

Trustee Mahlik commented that the cost to the merchants to name the Village as additional insured is minimal. C. Kell commented on the non-profit groups and merchants that do not make enough at the sidewalk sale to cover the additional insurance cost. Discussion continued.

*Moved by Trustee Elrick, seconded by Trustee Mahlik to waive the requirement for the merchants participating in the sidewalk sale to name the Village as an additional insured and to approve the Special Event Permit for the Sidewalk Sale on July 27, 2010.*

Ayes 7, Nay 0-Motion Carried Unanimously

### **Set Public Hearing Date on Special Assessments for the 2010 Rehab Sidewalk Project**

*Moved by Trustee Elrick, seconded by Trustee Mahlik to Set the Public Hearing Date for a Special Assessment Hearing on the 2010 Rehab Sidewalk Project for July 28<sup>th</sup> at 6:00 p.m.*

Ayes 7, Nay 0 – Motion Carried Unanimously

### **Operator's Licenses:**

Lisa Kaye Appleton	525 E. Maes St.	Kimberly	Up the Hill
Anthony J. Arndt	W5883 Hearthstone Dr.	Appleton	Express
Dawn M. Arnoldussen	1823 Silver Crest Dr.	Appleton	Moasis
Karen K. Brantmeier	6787 Benzenberg St.	Greenleaf	Rose Hill Bar
Darlene Chalupa	329 Monroe St.	Little Chute	Down the Hill
Ryan E. Hacker	1808 E. Fremont St.	Appleton	Marathon Station
Steve J. Hietpas	417 Orchard Ln.	Little Chute	Up the Hill
Leah P. Howard	636 Taylor St.	Little Chute	M & M Bar
Brittany A. Hughson	1921 W. Russet Ct. #4	Appleton	Marathon Station
Lila M. Kanter	208 Claribel St.	Kaukauna	Piggly Wiggly
Kurtis S. Koehler	1022 Washington St. #4	Little Chute	Hawk's Nest
Becky L. Lango	512 ½ 4 <sup>th</sup> St.	Menasha	Express
Patricia L. Lauer	710 Lincoln Ave.	Kaukauna	Piggly Wiggly
Sarah J. Mader	220 Black St.	Kaukauna	Pop In
Stacey L. Malewski	1422 Ridgeview Ln.	Little Chute	Up the Hill
Kelly M. McGinnis	622 Madison St.	Little Chute	Down the Hill
Janice C. Meulemans	W526 Greiner Rd.	Kaukauna	Piggly Wiggly
James L. Nackers	403 Park St.	Combined Locks	Piggly Wiggly
Crystal S. Sampson	2400 E. Peter St.	Appleton	Marathon Station
LaRae J. Schell	1827 Paul Dr.	Kaukauna	Super 41 Shell
Patty G. School	701 B Jefferson St.	Little Chute	Express
LouAnn M. Vandenberg	1612 Florence St.	Kaukauna	Rose Hill Bar

### **Operator's License - Denial Recommended by the FVMPD:**

Duaine E. Pingel	6867 School Rd.	Greenville	Express
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*Moved by Trustee Frassetto, seconded by Trustee Elrick to Approve and Deny the Operator's Licenses as Recommended by the FVMPD and Listed on the Agenda.*

Ayes 7, Nay 0 – Motion Carried Unanimously

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

Chief Misselt provided the Board with a document that showed the costs the Department incurred for the Cheese Festival and stated the document was being provided for informational purposes only. Chief Misselt also updated the Board on an exposure incident at Heesakker Park. D. Haug provided Board members with a copy of the Budget Calendar for the CIP and Operations Budget and stated tentatively discussion on the CIP items will begin at the August 11<sup>th</sup> meeting. C. Kell reported that the Economic Development Manufacturing projects he has been working on continue to move forward. C. Kell stated that he has been informed by Mr. Hartwig that he reached an agreement with St. John Cemetery Association relative to the storm sewer

easement that is needed by the Village to move forward with the storm water project that will serve the Crystal Print property and a good portion of the Village. C. Kell reported that next week staff will be meeting with McMahon on storm water alternatives for the Main Street project and the Ebbens Pond and the recommendations will be brought to the Board at a future meeting. J. Moes stated that the Plan Commission will be reviewing and making a recommendation to the Board on a rezoning request for a condo on the corner of Kelly St. and Jay St. and the Commission will also be reviewing and making a recommendation on an amendment to TID #4 and both items will be brought to the Board at a future meeting. J. Moes also commented that three single family and two, two family permits were issued in June and he encouraged the Board to work toward creating additional residential lots as there are very few vacant residential lots available in the Village. T. Flick provided Board members with a copy of the proposed design for the wall at Legion Park that features famous Dutch artists and it was designed by local artist Hollie Hammen and the LC Arts Club. T. Flick stated the Village will be purchasing the paint for the project and the LC Arts Club will be donating the labor. Board members indicated agreement with the proposed drawing. T. Flick reported that he is working with Kaukauna Utilities to install additional lighting at Van Lieshout Park to address some security issues. T. Flick reported that with the warm weather at the end of June, the pool revenue had picked up significantly and it is only down approximately \$1,500 from this time last year. T. Flick reported the Department is working on maintenance projects in the downtown parking lot terrace areas and on the Island Park Shoreline. R. Van Gheem reported on the status of the Washington St. and Pond projects. B. Carpenter provided Board members with a handout on the importance of Summer Library Programs and commented on how the library is helping patrons with education and employment assistance. B. Carpenter provided a copy of the library's staff directory. V. Schneider asked the Board about issues from the Listening Session that they want to see on the next agenda. Attorney Koehler – no report.

### **Disbursement List**

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

Ayes 7, Nay 0 – Motion Carried Unanimously

### **Items for Future Agenda**

Request by Dan Hietpas to widen driveway apron at 1312/1314 Washington St. Listening Session Windmill and Pool issues. Trustee Frassetto asked for a future agenda item to include an update from staff on what is being done to bring businesses to the downtown. D. Haug requested that the audit firm be scheduled to present the 2009 audit at next week's meeting. Trustee Hietpas commented on a letter received from Miller Masonry concerning the road being constructed in front of their property and he would like this issue put on next week's agenda. Trustee Hietpas stated he had received another letter this week in regards to a development with Bob De Bruin and Pat Hietpas. Trustee Hietpas stated the letter was not signed and he would like to be made aware of what happened with that development as the letter was also sent to the *Post Crescent*. Trustee Elrick requested that the Administrator speak on the issue under Unfinished Business.

### **Call for Unfinished Business**

C. Kell stated that most of the comments in the letter are not correct. C. Kell stated the Village Board approved a Development Agreement with the Hietpas/De Bruin Development Group back in May of 2009. C. Kell stated the Attorney was involved with some of the drafting of the agreement and it was discussed by the Village Board in a couple of closed sessions and then the agreement was brought into open session for approval. C. Kell stated the Village did not provide a loan to the Developers and they are paying property taxes. C. Kell stated it is true that at some future date the Village may be buying a portion of the property. C. Kell stated because of the issues with the Developers not being able to sell the property and also having difficulty with financing improvements, the Board agreed to purchase a certain portion of the property at the Developer's cost if the Developer can not sell in five years and if another portion could not be sold in 10 years, the Village would purchase that portion of the property. C. Kell stated that the agreement requires that any

sales made up to that point are credited toward the Village's obligation. C. Kell stated that the Board agreed to allow the assessments to be paid off as the lots are sold. C. Kell stated the agreement was a public transaction that was voted on in public session. J. Moes explained that if the land is cropped then State law requires it be classified as agriculture. Staff explained that the property is in the Village's TIF district and the Village Board agreed that it was in the best interest of the Village to work with the Developers rather than have it purchased by another owner that wanted to leave the land as it is. C. Kell stated that the Developers were provided a credit of \$228,000 for the value of the storm water pond as they provided the land for the pond. Staff explained the potential liability is approximately \$3 million if none of the land is sold by the Developers and staff further explained that the property is in a TID district. Trustee Mahlik commented that according to the minutes of May 6, 2010, there was no discussion in open session on the Development Agreement. Trustee Elrick commented that if there wasn't anyone in attendance, then the Board would not discuss the agreement again as they had an understanding of the agreement. C. Kell explained how the Developers are marketing the project and he believes the Developers do not want to have to sell the land to the Village. Trustee Elrick commented that he felt it was imperative that the Village was involved so the property wasn't sold to a party that would let the land set vacant. Attorney Koehler stated that the holding costs are high for the Developers so they are likely to be highly motivated to find buyers for the land. C. Kell commented that other landowners in that area have also asked staff about considering a similar type of agreement and staff has not supported their proposals because they were not as strategically located and some properties were not in the Village. Attorney Koehler provided an update on the status of the Country Inn & Suites bankruptcy filing and noted that the taxes owed the Village will be a priority claim.

Trustee Hietpas asked if it was necessary to go into closed session if they are going to talk about what was discussed in litigation as that is public record. C. Kell stated this issue concerns further litigation and not all portions of the case have been resolved.

*Moved by Trustee Verstegen, seconded by Trustee Elrick to Enter into Closed Session. (8:08 p.m.)*

Ayes 6, Nay 1(Hietpas) – Motion Carried

#### **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. Berken vs. Little Chute Adverse Possession**

*Moved by Trustee Verstegen, seconded by Trustee Van Deurzen to Exit Closed Session and Return to Open Session. (8:50 p.m.)*

Ayes 7, Nay 0 – Motion Carried

#### **Return to Open Session – Possible Action on Closed Session Item**

*Moved by Trustee Frassetto, seconded by Trustee Hietpas to recognize Mr. Dick Salm as she believes he has comments to make to the Board at this time and she cautioned Mr. Salm that the Board is not able to enter into discussions at this time because of pending litigation.*

Ayes 7, Nay 0 – Motion Carried Unanimously

Attorney Koehler stated that because Mr. Salm is represented by legal counsel he is requesting to be excused from the meeting as he is not allowed to engage in communications with parties in litigation without consent from the parties' counsel. President Fischer excused Attorney Koehler.

Mr. Salm commented that some Board members are not completely aware of what the issue is all about. Mr. Salm wanted to know what the advantage was for the Village to own the two lots. Mr. Salm commented on the history of the involvement of Little Chute Land Company and commented on the legal case and the money the Village is spending pursuing the case for the land. Mr. Berken commented on being taxed on the

property that the Village is trying to claim. J. Moes addressed Mr. Berken's comment stating that he is charged to assess properties as prescribed by the County Tax Lister.

**Adjournment**

*Moved by Trustee Van Deurzen, seconded by Trustee Verstegen to Adjourn the Regular Board meeting at 9:08 p.m.*

Ayes 7, Nay 0 – Motion Carried

**VILLAGE OF LITTLE CHUTE**

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

Charles Fischer, Village President

Attest: Vicki Schneider, Village Clerk