

## **MINUTES OF THE REGULAR BOARD MEETING OF MARCH 3, 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  
Jason Leicht, Trustee  
Skip Smith, Trustee  
Steve Ransbottom, Trustee  
Janet Verstegen, Trustee  
Don Van Deurzen, 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**

None

*Moved by Trustee Elrick, Seconded by Trustee Ransbottom to enter into the Public Hearing on the Street Vacation of a Portion of W. Lincoln Avenue. (6:03 p.m.)*

Ayes 7, Nay 0 – Motion Carried Unanimously

### **Public Hearing – Street Vacation – Portion of W. Lincoln Avenue**

Attorney David Van Lieshout, representative for some of the property owners on W. Lincoln Avenue, stated that today he filed legal action in Outagamie County Circuit Court asking that the Village Board be denied the right to vote on the street vacation and he had been informed that the Court will wait and see if the Board acts on the Resolution and then the Court will determine whether the resolution should be upheld. Attorney Van Lieshout stated the information on the court filing and a petition from residents of W. Lincoln Avenue protesting the vacation had been presented to Attorney Koehler. Attorney Van Lieshout commented that State Statutes do not address conditionally vacating a street and that is why he doesn't believe that Wisconsin law allows for a conditional street vacation. Attorney Van Lieshout commented on the burden that is put on the seventeen property owners because there isn't a time frame put on the conditions and they will have to live with this resolution until some point in the future. Attorney Van Lieshout stated the better course of action would be to build the street and then vacate the existing street. Attorney Van Lieshout asked the Board to follow the law and vote against the resolution and give piece of mind to the seventeen families living on the street so they know what to expect.

Attorney Steve Frassetto, Menn Law Firm, representing Dutch Boyz Development, stated he disagreed with

Attorney Van Lieshout as the Supreme Court made a ruling for the community of Delafield that had set precedence for this type of Board action to conditionally vacate the street. Attorney Frassetto stated that none of the seventeen homes abut the area of the road being vacated. Attorney Frassetto commented that the resolution clearly states that the street would not be vacated until a newly dedicated street is opened to provide access for the residents. Attorney Frassetto stated that based on the staff's recommendations and on the statutes, the Board has the ability to move forward and he urged the Board to do so, so the Developer can continue moving forward with the process. Staff verified that the easements are to reroute the sewer and water around the proposed building and not for the new road.

*Moved by Trustee Ransbottom, seconded by Trustee Leicht to Exit the Public Hearing on the Street Vacation of a Portion of W. Lincoln Avenue. (6:20 p.m.)*

Ayes 7, Nay 0 – Motion Carried Unanimously

*Moved by Trustee Ransbottom, seconded by Trustee Elrick to Enter into the Public Hearing on a Conditional Use for 316 W. Lincoln Avenue – Owner Gerald Van Dyn Hoven/Dutch Boyz*

*Development (6:20 p.m.)*

Ayes 7, Nay 0 – Motion Carried Unanimously

### **Public Hearing – Conditional Use – 316 W. Lincoln Avenue – Owner Gerald Van Dyn Hoven/Dutch Boyz Development**

Attorney Frassetto, Menn Law Firm, representing Dutch Boyz Development, commented on the conditional use for the parking lot, access drives, ramp structure to serve the underground parking, and accessory uses on the site for the Dutch Boyz project and noted that the Plan Commission and staff had recommended approval of the Conditional Use to the Village Board. Attorney Frassetto stated a letter from his client had been provided to the Administrator and the letter states the commitment to work with all interested parties to develop green space on the south side of W. Lincoln Ave. Attorney Frassetto provided comments on the project and meetings held with neighbors and Village officials and staff and taking into account their comments and concerns. Attorney Frassetto commented on the process of moving forward in a timely manner and continuing to working with village staff and officials for review and approval of the various processes of the development and asked the Board to approve the Conditional Use for the project.

Joe Schuh, representative of US Oil, stated they are not opposed to the project but they want it noted that there is a safety concern with traffic visibility for the access drive to the development when their tankers are filling the pumps and this normally takes place twice a week. C. Kell asked if the issue was any different for their customers pulling in and out of the driveway. Mr. Schuh stated the visibility issue is the same for their customers.

Gary Vaubel, W. McKinley Ave., voiced his concern with the current traffic and pedestrian safety at the intersection of Main Street and Madison Street and concerns that the increased traffic with the Windmill coming and the development will just increase the safety issues with crossing the street and he believes an accident will happen.

Patrick Bruce, 121 W. Lincoln Avenue, commented that it is a hazard to get across the intersection especially with a family member who is in a wheel chair and he believes it is a risk of life factor.

Tammy Frassetto, 408 W. Lincoln Avenue, asked why design option #4 is being recommended when option #3 is best for the neighborhood.

Trustee Elrick commented that option #3 was not considered further after the neighborhood meeting was held and the neighborhood expressed that they did not want additional traffic coming in on W. Lincoln Avenue and that is why option #4 was brought forward. Trustee Smith commented that was also his understanding of the neighborhood meeting.

Daniel Mahlik, 329 W. Lincoln Avenue, commented that he doesn't think option #4 is addressing the safety issue and the neighbors could agree with a development on the corner that had office and retail space as they understand the need to develop Little Chute but not with multi-family residential in this area. Mr. Mahlik

further commented on the issue of the proposal not changing except the placement of the building and Mr. Van Dyn Hoven not working with the residents to change the project.

*Moved by Trustee Ransbottom, seconded by Trustee Smith to Exit the Public Hearing on the Conditional Use for Gerald Van Dyn Hoven/Dutch Boyz Development. (6:40 p.m.)*

Ayes 7, Nay 0 – Motion Carried Unanimously

### **Approval of Minutes**

*Regular Board Meeting Minutes – February 17, 2010*

*Committee of the Whole Meeting Minutes – February 24, 2010*

*Moved by Trustee Verstegen, seconded by Trustee Leicht to approve the Regular Board Minutes of February 17, and the Committee of the Whole Minutes of February 24, 2010 as presented.*

Ayes 7, Nay 0-Motion Carried

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

Fox Valley Metro Activity Report-December 2008

Kimberly-Little Chute Public Library Board Minutes-January 28, 2010

Park Planning Committee Meeting Minutes – February 8, 2010

Kimberly-Little Chute Public Library Board Meeting Minutes – February 11, 2010

Board members noted receipt of the above items.

### **Ordinance – Creating Section 4-94 of the Village of Little Chute Municipal Code- Outdoor Alcoholic Beverage Permits**

Chief Misselt stated that the Village of Kimberly did pass the ordinance at their meeting on Monday. Chief Misselt explained that the ordinance allows for something that is currently not allowed and the ordinance was written in anticipation of the indoor smoking ban that becomes law in July. The ordinance allows for consumption of alcohol in outside areas of the establishments by permit and with restrictions on time and locations of these outdoor areas. This does not apply to bars/restaurants that just want to create outside areas for smoking and permit applications for these modifications need to go through the building inspections department. Trustee Verstegen informed the audience that this ordinance came before the Board three times and it was discussed and deliberated on quite a bit.

*Moved by Trustee Elrick, seconded by Trustee Ransbottom to Approve Ordinance No. 2, Series of 2010*

*Creating Section 4-94 of the Village of Little Chute Municipal Code Outdoor Alcoholic Beverage Permits.*

Ayes 7, Nay 0 – Motion Carried Unanimously

### **Ordinance – Creating Section 40-98 of the Village of Little Chute Municipal Code – Sidewalk Cafes**

*Moved by Trustee Verstegen, seconded by Trustee Smith to Adopt Ordinance No. 3, Series of 2010*

*Creating Section 40-98 of the Village of Little Chute Municipal Code – Sidewalk Cafes.*

Ayes 7, Nay 0 – Motion Carried Unanimously

### **Resolution – Approving the Signing of a Lot Boundary Agreement of Property Owned by the Village Located Within the Proposed 2009 Assessors Plat**

Trustee Verstegen stated she is not sure what properties are located within the boundary agreement and she is not comfortable with approving the resolution without seeing a map of the properties. J. Moes stated that it involves various parcels that the Village owns along the river where the old street car track was located and the boundary agreement is with the property owners. Staff stated a map could be provided and action could be taken at next week's meeting.

*Moved by Trustee Ransbottom, seconded by Trustee Elrick to Table Action on the Resolution until next week's meeting.*

Ayes 7, Nay 0 – Motion Carried Unanimously

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### **Resolution – Conditionally Vacating a Portion of West Lincoln Avenue**

C. Kell stated that the vacation is based on option #4 and noted the way he see it option #3 also required vacating the road. C. Kell stated that the Board was provided a copy of the letter from Mr. Van Dyn Hoven that indicated his commitment to provide for green space. Trustee Verstegen made the statement that she had lived on this street for 15 years and she was always asking officials to solve the problem with the traffic issues of exiting W. Lincoln Avenue and she supports the resolution with the amendment that reads “that the vacated street right-of-way shall be attached to the property located on the north side of West Lincoln Avenue based on the fact that the same property owner owns and controls the property on both sides of the vacated right-of-way and is supportive of the reversion of title being handled in such a manner by the Village”. C. Kell stated that he is recommending that language as an amendment to the original resolution as when the original resolution was introduced they didn’t have the final plan from the Developer that called for the project to be in the street right-of-way. C. Kell commented that the Village Attorney had been consulted on these matters and the resolution was written to protect the Board from not having to install a new street without being able to vacate W. Lincoln. Attorney Koehler commented on the memorandum he sent to Circuit Court this afternoon regarding the State Statutes on street vacation and the home rule powers of Village Boards. Attorney Koehler stated that in his opinion he concludes that absent any statutes that state you cannot attach conditions on a street vacation, the Board is permitted to vote on the resolution with the conditions in it. Attorney Koehler stated this evening he was also presented from Attorney Van Lieshout a petition of protest, and presuming the petition is valid, the street can only be vacated by a two-thirds vote of the Board. Trustee Verstegen stated “in the past, I did not vote or deliberate on the rezoning as I had signed the original zoning petition. I sold my house over seven months ago – that transaction is closed and it was not attached to any future obligations or conditions in any manner associated with me. I have no financial interest in the proposed development at this time.” and further stated she is not going to excuse herself from voting. D. Mahlik requested that the commitment from Mr. Van Dyn Hoven for the green space be included in all the legal documents before the Board votes on the items so the commitment for the green space does not get reversed under any circumstances. Tammy Frassetto asked the Board to table the action. Attorney Frassetto stated that they do not have a problem with including the green space as a condition. Trustee Verstegen asked to move the agenda items so the conditional use can be voted on before the street vacation and she further stated she didn’t want to include the commitment to green space as a condition of the street vacation but it would not be unusual to put the green space as a condition for granting the conditional use. Attorney Koehler advised the agenda order could be changed with a motion.

*Moved by Trustee Verstegen, seconded by Trustee Van Deurzen to amend the order of the agenda and take up Agenda Item L, Possible Action on the Conditional Use for Dutch Boyz Development at this time and put Item K, Resolution Conditionally Vacating a Portion of W. Lincoln Avenue after Item L.*

Further Discussion: In response to Trustee Smith’s question of ensuring that the green space requirement is part of the conditional use, Attorney Koehler stated the condition can be included as a requirement in the motion and the Developer must comply with it and the only way that the condition could then be deviated from would be for the Developer to come before the Board again and a public hearing and all ordinance requirements would need to be met. Trustee Verstegen called the question to amend the agenda. President Fischer recommended just voting on the agenda amendment. Board members agreed.

Ayes 7, Nay 0 – Motion Carried Unanimously

### **Possible Action – Approval of Conditional Use for Dutch Boyz Development**

Discussion took place regarding changes to the project and the Village Attorney confirmed that any changes proposed would be required to go through the entire process required for obtaining a conditional use. Trustee Verstegen made the statement, “in my 30 years of government and planning, I have never seen a governmental body work this closely with and listen to the neighbors and I know there has been a lot of frustration on their part but I believe a lot of good has come from the meetings you had and your ideas and I thank you for that. I

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believe this project is in the best interest of the Village. I believe the building itself will form a handsome western boundary for our downtown. It is going to be beautiful as you enter from Kimberly coming across the bridge. I think the Developer has proven with his drawings that he is going to follow the Old World Design Manual and hopefully this will be an impetus for the Village. The Development is not going to impact the closeness of the neighborhood. It is not going to put more traffic on your area of W. Lincoln, the traffic is going to go off on Main Street, traffic is not going to be going down W. Lincoln. I believe the ramifications of projects like this with denials is too great. In almost all cases, outside developers research the local newspapers, Village minutes and such to determine the development environment in our community and if the environment is viewed as contentious to developments and the appearance put forth is that the Village leaders and citizenry don't want development then they will take their projects some where else. Further Discussion took place and the following motion in complete was made:

*Moved by Trustee Elrick, seconded by Trustee Ransbottom to approve the Conditional Use for the Dutch Boyz Development Project with the following conditions: the Village Board and Committee review all of the detailed plans still required for the project including the exterior design plans, detailed landscape plans outdoor lighting plans and storm water management plans; that a 3D drawing be submitted that includes 200' of surrounding properties; that the area south of Lincoln Avenue, including 319 W. Lincoln Avenue become green space and an agreement between the Developer and the Village be entered into for that space to remain undeveloped; that the residential part of the project be leased to at least one individual per unit over the age of 55; that the Conditional Use is granted only for the Site Plan identified as Option #4 and it is not transferable to any other development project or design on the Dutch Boyz Development site.*

Ayes 7, Nay 0 – Motion Carried Unanimously

#### **Resolution – Conditionally Vacating a Portion of W. Lincoln Avenue**

*Moved by Trustee Verstegen, seconded by Trustee Leicht to Adopt Resolution No. 6, Series of 2010 Conditionally Vacating a Portion of W. Lincoln Avenue including the amendment stating that the vacated street right-of-way shall be attached to the property located on the north side of West Lincoln Avenue based on the fact that the same property owner owns and controls the property on both sides of the vacated right-of-way and is supportive of the reversion of title being handled in such a manner by the Village of Little Chute.*

Ayes 7 – Nay 0 – Motion Carried Unanimously

Due to audience noise, the Village Board moved from the Community Room to the Board Room at this time. (7:40 p.m.)

#### **Annual MS4 Annual Report (7:44 p.m.)**

Trustee Verstegen commented on the amount of work that goes into the storm water utility.

R. Van Gheem stated Board action is not necessary on this item as the DNR requirement is only that the Board is made aware of the annual report.

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

Karen Sue Brown	533 W. Brewster St.	Appleton	Hawk's Nest
Darrin John Burton	800 S Casaloma Dr.	Appleton	Village Lanes
Connie Jo DeLongchamp	1835 W. Main St.	Appleton	Hawk's Nest/Weenies Still
Rebecca Jo Hooyman	1016 Pleasantview Ave.	Little Chute	Hawk's Nest
Misty Christine Klingensmith	1410 Vandenbroek Rd.	Little Chute	Weenies Still
Jesse James Kaminski	1401 S. Nicolet Rd. #39	Appleton	Hawk's Nest
Amanda Beth Krznarich	4216 N. Woodridge Dr.	Appleton	Walgreens
Helen Marie Lein	416 E. 2 <sup>nd</sup> St.	Kimberly	The Flying Dutchman
Sheri Diane Luciano	1005 S. Lake St. Apt. C	Neenah	M & M Bar
Christopher Robert Menting	1515 Vandenbroek Rd. #15	Little Chute	M & M Bar
Patricia Ann Mullins	1436 Glenview Ln.	Little Chute	Hawk's Nest
Merrystar Wendy Nemke	1845 Harrison St. #8	Neenah	M & M Bar

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Ambre Marie Neuser-Gajewski	1831 N. Division St.	Appleton	Hawk's Nest
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Sarah Janelle Palm	2110 E. Emmers Dr.	Appleton	Pump House
Jessica L. Strobel	914 Hartzheim Dr.	Appleton	Down the Hill
Jason A. Ver Hoeven	132 S. Washington St.	Kimberly	Weenies Still
Patrick James Vanden Oever	1410 Vandenbroek Rd.	Little Chute	Weenies Still
Jason John Verbeten	18 Bittersweet Ct.	Little Chute	Pump House
Andrea D. Vosters	1700 W. Pershing St.	Appleton	Hawk's Nest
Betty A. Whiteley	1026 Washington Ct. #4	Little Chute	Weenies Still

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

Tara Lea Vanden Oever	1045 E. Kimberly Ave.	Kimberly	Weenies Still
Kurt K. Vander Velden	408 Main Ave.	Kaukauna	Gentlemen Jacks

*Moved by Trustee Leicht, to approve the Operator's License as presented and to deny the Operator's License for Tara Lea Vanden Oever and Kurt K. Vander Velden as recommended.*

Tara Vanden Oever interrupted the motion at this point and commented that she has changed her life and has successfully completed treatment, has been discharged from probation and parole honorably, she is a designated driver, and she has worked at Weenies for five years and she makes sure her customers get home safe. Ms. Vanden Oever also stated she has a petition that her customers and friends signed stating there is no reason she should lose her job because she can't get a license because of her past record. Ms. Vanden Oever stated she paid all her fines and did her time and is trying to get pardoned from her record. Trustee Van Deurzen asked if Kurt Vander Velden was also present. Kevin Quandt responded he was representing Kurt Vander Velden as Kurt was not available to attend this meeting. Mr. Quandt stated he is not sure why Kurt is being denied a license. Chief Misselt commented that Ms. Vanden Oever's license application is being recommended for denial as the case less than a year ago involving alcohol is troublesome and she would not lose her job but another licensed bartender would need to be present at all times when Ms. Vanden Oever is bartending. Chief Misselt further stated that they recently had an encounter with Weenies Bar after hours in which there were people inside drinking after hours and the owner was not cooperative and would not give the names of the people in the bar and he questions the conduct that is going on at that tavern. Chief Misselt stated that given the conduct of the bar and Ms. Vanden Oever's record and recent violation, denial of the license is being recommended. Chief Misselt stated that Mr. Vander Velden has four charges pending within the last year for drug possession related issues and with dealing with a controlled substance which alcohol is, his opinion is that Mr. Vander Velden should not have a license. Further discussion took place. Trustee Van Deurzen suggested that it seems Tara is trying to get herself together so maybe a license be granted and then if another issue arises the license could be taken away. Trustee Ransbottom stated that the Chief is doing his job and he was hired to do that and he doesn't want to second guess his judgment on this and he has the Village's best interest at heart. Chief stated that maybe the issue could be revisited in a year if Ms. Vanden Oever doesn't have any charges during the year. Trustee Van Deurzen stated he would rather issue the license and then revoke it if another issue arises. J. Moes commented on the appeal process for the applicants.

*Trustee Leicht restated his motion to approve the Operator's License as presented and deny the Operator's License for Tara Lea Vanden Oever and Kurt K. Vander Velden as recommended, motion seconded by Trustee Ransbottom.*

Further Discussion: Trustee Leicht informed Ms. Vanden Oever that there is an appeal process.

*Vote on the Motion:*

Ayes 6, Nay 1 (Van Deurzen) – Motion Carried

**Department and Officers Progress Reports:**

Chief Misselt reported that a meeting has been scheduled for March 24 from 3 to 5 p.m., with all owners of alcohol establishments being invited, to discuss the Beer Garden Ordinance and the smoking ban and to provide an opportunity for the Department and the establishments' owners to work together. Chief Misselt stated the reason for the high number of operator's license on the agenda is that some establishments in the Village have been operating without license bartenders and this was found through being called to these establishments for some type of situation. Chief Misselt stated he is willing to work with the establishments to help them understand what the rules are. Chief Misselt pointed out that there is a point system for violations

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used for the establishments and recently some establishments were notified of the points against their liquor

license. B. Carpenter highlighted the changes at the library that included staffing changes due to a retirement and resignation and the hiring of a 30 hour a week youth librarian and eliminating two page positions and putting in place a volunteer program. B. Carpenter further explained the budget changes and informed the Board that the Library Board agreed to reduce hours by opening the library at 10 a.m. instead of 9 a.m. B. Carpenter also provided a summary on the new policies enacted that include a Safe Child Policy, Rules of Conduct, Security Policy, Library Use Policy and Meeting Room Policy. D. Haug stated the Department is entering into the first phase of the 2009 audit. C. Kell provided Board members with a copy of a letter sent to the Salms in response to the letter they had sent the Village regarding the Assessor's Plat. C. Kell also reported the he and President Fischer would be attending a meeting with the DOT in Madison on Friday concerning the Mill Street Bridge and a legal closed session on this issue may be scheduled for next week. C. Kell thanked Finance Director Dale Haug for putting together information for the Village's spring newsletter regarding the garbage and recycling fee change and a comparison of tax rates and utility charges with other Fox Cities incorporated communities. J. Moes reported that he is working on 2010 assessments and the assessor's plat amendments. T. Flick stated the Summer/Fall program book had been mailed this week and on the March 17<sup>th</sup> agenda there will be a resolution presented concerning an outdoor recreational grant for the pedestrian bridge. T. Flick stated the Department is finishing up with the terrace tree trimming. T. Flick stated he has had a request by the local rugby club to temporarily use village property located off Bluff, Grant and La Follette Street for organized practices. Trustee Verstegen asked if there were liability issues with allowing them to use this vacant land. Staff stated that it is likely the Village would have recreational immunity and Board members agreed with having T. Flick discuss the request with the Village Attorney and then contact the Village Board before approving the use of the land for the rugby group. T. Flick also stated he would like to put two items on next week's agenda, a discussion of the deer culling program and a review of the special event policy that has been drafted. T. Flick provided an update on the process of the Park Planning Committee's review of the pool facilities study and stated their recommended options will be presented to the Board at a future meeting. Trustee Van Deurzen brought up an issue of sidewalk at Van Lieshout Park not being cleaned of snow. Staff stated they will follow up with their staff on the issue. R. Van Gheem stated the Department is working on projects at three well houses and commented on other projects taking place.

R. Van Gheem informed the Board that snow is being removed from the inlets and the low bidder for the State's project on Washington Street is Vinton Construction. V. Schneider commented on the appeal process for the bartender's license denial and that she has a newsflash on the website concerning the new hours at the library.

### **Disbursement List**

*Moved by Trustee Van Deurzen, seconded by Trustee Leicht to Approve the Disbursement List as Presented and Authorize the Finance Director to draw from the Respective Funds.*

Ayes 7, Nay 0 – Motion Carried Unanimously

### **Call for Unfinished Business**

None

### **Items for Future Agenda**

Deer Culling Program

Special Event Policy

*Moved by Trustee Van Deurzen, seconded by Trustee Leicht to Enter into Closed Session. (8:28 p.m.)*

Ayes 7, Nay 0 – Motion Carried Unanimously

Closed Session:

(e) 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. 19.85(1)(e), Wis. Stats. – Dutch Boyz Development

Agreement.

*Moved by Trustee Ransbottom, seconded by Trustee Van Deurzen to Exit Closed Session and Return to Open Session. (8:41 p.m.)*

Ayes 7, Nay 0 – Motion Carried Unanimously

**Return to Open Session – Possible Action on Closed Session Items**

No action was taken.

**Adjournment**

*Moved by Trustee Ransbottom, seconded by Trustee Van Leicht to Adjourn the Regular Board meeting at 8:41 p.m.*

Ayes 7, Nay 0 – Motion Carried Unanimously

**VILLAGE OF LITTLE CHUTE**

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

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