

**VILLAGE OF GERMANTOWN
VILLAGE BOARD
MEETING MINUTES
October 15, 2012**

CALL TO ORDER: The meeting was called to order at 7:00 p.m. by President Wolter.

ROLL CALL: President Wolter, Trustees Baum, Daniels, Ewert, Hughes, Kaminski, Vanderheiden, Werderman and Zabel. Also present Administrator Schornack, Attorney Sajdak, Planner/Zoning Administrator Retzlaff, DPW Ludwig, and Clerk Goeckner.

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was recited.

PRESIDENT'S REPORT: None.

ANNOUNCEMENTS OF FORTHCOMING EVENTS OF PUBLIC INTEREST / COMMITTEE

REPORTS: GGF meets tomorrow at 5:00 p.m. Public Works meets November 6th at 4:30 p.m. Public Safety meets November 5th at 5:00 p.m. Historical and Preservation will meet January 21st at 6:00 p.m.

CITIZEN INPUT / PUBLIC APPEARANCE on items not subject to a public hearing: None.

CONSENT AGENDA:

A. ACCOUNTS PAYABLE/PAYROLL:

1. September 28, 2012	Payroll (salary)	\$ 76,357.45
2. September 2012	Accounts Payable	\$ 59,870.59
3. October 9, 2012	Payroll (hourly)	\$ 199,816.44
4. October 10, 2012	Accounts Payable	\$ 760,401.24

B. OPERATOR (BARTENDER) LICENSES - New for the period ending June 30, 2013. Jolee N. Barnett, Zachary G. Brandt, Erin M. Fritch, Jeanelle D. Hunkel, Triscia H. Kellom, Kimberlee B. Laughery, Heather L. Lazar, Danielle J. Radermacher, Jeffry E. Rayman, Erin L. Schepp, April M. Tesch, Patricia M. Voss, and Janelle L. Wilson.

The following items were forwarded from the Public Safety Committee with a unanimous recommendation:

C. NEW "CLASS A" FERMENTED MALT BEVERAGE AND INTOXICATING LIQUOR LICENSE – B&B INC. OF MILWAUKEE, d/b/a QUICK PICK FOOD MART, N128 W21760 Holy Hill Road, Asif Vapsaria, Agent

The following items were forwarded from the Public Works Committee with a unanimous recommendation:

D. REIMBURSE THE DEPARTMENT OF ADMINISTRATION \$9,364.48 FOR INELIGIBLE PLUMBING ITEMS IN ENERGY UPGRADE PROGRAM

E. APPROVAL OF WEB HOSTING SERVICES WITH RUEKERT & MIELKE, INC FOR GIS FOR 3 YEARS AT \$15,000

MOTION (Vanderheiden/Ewert) to approve Consent Agenda through Item E. Trustee Baum requested to pull item E. **Approve Consent Agenda through Item D, roll call vote, all in favor, motion carried.** Item E. This is just for the GIS web hosting services. The website is being studied separately. **MOTION (Baum/Vanderheiden) to approve Web Hosting Services with Ruekert & Mielke, Inc. for GIS for 3 years at \$15,000, by roll call vote, all in favor, motion carried.**

UNFINISHED BUSINESS:

A. APPOINTMENTS - Commissions/Boards/Committees: None

B. RED SWAMP CRAWFISH ERADICATION

Heidi J. Bunk, Lakes Biologist with the Wisconsin DNR explained they had been monitoring for

any more evidence of Red Swamp Crawfish and there is no further evidence here. Proceeding with plans to complete the project. Starting by November 1st and will line with fabric and rock to prevent them from burrowing if they leave Esquire Estates. Will build a road at the base of the slope to avoid ripping up yards of the homes in the area. This is a 22 month grant that expires July 2013. Removed approximately 2500 crayfish from the system. We have continued monitoring nearby water bodies and there is no evidence of them spreading, so we feel we have contained them.

PUBLIC HEARINGS – 7:00 P.M. OR LATER:

A. GREG & GAIL HEINZEN FOR PROPOSED ZONING CODE TEXT AMENDMENT TO SECTION 17.41 (RESIDENTIAL ACCESSORY BUILDING RESTRICTIONS) OF THE VILLAGE OF GERMANTOWN MUNICIPAL CODE

Presentation by Planner Jeff Retzlaff. Proposing amendment to section 17.41 to zoning code which would allow 2 attached garages to a dwelling. Section 17.41(1)(a) – (for the purpose of storing antique vehicles). A change to the code shouldn't be made for one property owner, but are in favor of two garages if it looks good and doesn't hurt anyone. In favor of the concept and wants further input from Village staff, particularly the attorney. Attorney proposed language which limits size to 192 sq. ft. or 1% of lot area – if 2 attached garages. Plan Commission recommendation is to approve the amendment to Section 17.41 with the additional revision proposed by the Village Attorney to change the requirement for a CUP to require only Site Plan approval by the Plan Commission. Trustee Kaminski – this is just applying to zoning for Rs-1 correct? Planner Retzlaff - Realistically I don't believe we discussed at any length the size of the parcels in the Rs-2 property. Arguably if we wanted to create an equal playing field we would need some additional language or could apply for a variance.

President Wolter opened the public hearing at 7:21 p.m. for the zoning Code Text Amendment to Section 17.41. No one spoke and the public hearing was closed.

B. PATRICK JOSTEN, PROPERTY OWNER AND OPERATOR OF ROCKFIELD SHORT POUR LLC, FOR: (1) A MAJOR HOME OCCUPATION CONDITIONAL USE PERMIT FOR THE OPERATION OF A SHORT POUR REDI-MIX CONCRETE BATCH & DELIVERY OPERATION IN A Rs-2: SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT ON THE PROPERTY AT W172 N12882 (PARCEL ID# 103-983) DIVISION ROAD, GERMANTOWN, WI, PURSUANT TO SECTION 17.61 OF THE VILLAGE ZONING CODE.

Planner Retzlaff stated Patrick Josten is seeking a Conditional Use Permit for continued operation of a short pour business/concrete batch and delivery operation at Division and Holy Hill Roads. Existing property created in 1995 and split from adjacent land owned by Josten's father. Total parcel size is 2 acres. Existing detached storage building on the site. Mixing sales and delivery operation from 6am to 6 pm. Ready mix materials provided by Mr. Josten using his own mini truck and 3 others using their own. Photos presented indicating current operation. Mr. Josten has provided another layout of operation proposal. In 2009 issued a notice of violation following a property inspection. Notified at the time he did not have a CUP for a business and major occupations are not allowed in Rs-2 district. Code amended in 2010 to allow "major" occupations in Rs-2 District. Mr. Josten delayed applying for CUP for personal and financial reasons to 2011 and possible re-location of business. In 2012 he was sent a reminder of the pending citation after a neighbor complained on other property owned by Mr. Josten and property he was interested in locating the business to. Staff comments: operation has grown too extensive to satisfy intent of home occupation regulations. No longer clearly incidental or subordinate to residential use. Operation has changed the residential character and appearance of the property and does not meet general requirements. Dust, traffic and noise exceed typical & customary impacts of surrounding residential area. Does not meet major occupational requirements. Activities not conducted entirely within dwelling or enclosed accessory building. Planner Retzlaff provided additional concerns with property zoning and actual business conduct. Staff's recommendation was to deny CUP, however, Plan

Commission recommends approval for a major home occupation for the operation of a short pour ready mix business with 2 conditions: to expire on November 1, 2013 and total number of loads or deliveries of concrete allowed to leave the property shall be limited to a maximum of 12 per day. Giving him a year would allow him to make his business compliant.

President Wolter opened the public hearing at 7:31 p.m.

The following persons spoke regarding this issue:

Todd Wetterau W204 N12541 Goldendale Rd. spoke in favor.

Nate Seidler – N128 W16655 Holy Hill Rd. spoke in favor.

John Parrish – N132 W17225 Rockfield Rd. spoke in favor.

Fred Rehbein - W172 N13215 Division Rd. – Lives directly across the street. Does not have a problem with the business but does have a problem with moving it across the street. Wants to be more informed with future of the property.

Robert Talajkowski - 520 Cedar Bluffs Way, Slinger – business owner in Germantown. Spoke in support of Pat Josten at either property.

Karen Rehbein – Division Road across from possible relocation. No problem with current location but issue with relocation.

Doug Goetz - W172 N13091 Division Rd. – No problem with where he has been operating all these years. Concern with him operating on weekends as well. But give him the permit and let him find some time.

Joe Cresci - W172 N13088 Division Rd. spoke in favor.

Jim Dragich - W172 N13186 Division Rd. spoke in favor.

Thomas G. Josten - W172 N12834 Division Rd, Pat Josten's father. Spoke in favor.

Andy Zipperer - W2017 Butler Rd. Rubicon – own property directly across the street. Spoke in favor.

Steven E. Schroeder - W175 N13008 N Lancelot Dr. spoke in favor.

Gerry Bernstein - N112 W13714 Mequon Rd. spoke in favor.

Phillip Pulvermacher - W172 N12216 Fond du Lac Ave. spoke in favor.

Glenn Miller N132 W17376 Rockfield Rd. spoke in favor.

Dave Braden - N140 W17595 Cedar Lane, spoke in favor.

Jackie Scheld – 5310 Woodland Dr. spoke in favor.

Johnathon Friess N128 W17151 Holy Hill Rd. spoke in favor.

Louis Stemmeler W169 N12147 Fond du Lac Ave. spoke in favor.

Randy Stanossek W177 N12601 DelaCourt spoke in favor.

Fred Rehbein – W172 N13215 Division Rd. We have nothing against Pat or his business. I am concerned about my property.

Attorney Sajdak read a written submission by Tom and Deanne Hapka – N128 W17714 Holy Hill Rd in support of the applicant.

Paul Guoh W211 N11863 Hilltop Dr. spoke in favor.

President Wolter closed the public hearing.

NEW BUSINESS:

MOTION (Hughes/Zabel) to move item D to the front of New Business, all in favor, motion carried.

D. CONDITIONAL USE PERMIT - (1) for the operation of a short pour ready-mix concrete batch & delivery operation in a Rs-2: Single-Family Residential Zoning, Patrick Josten, property owner and operator of Rockfield Short Pour LLC, W172 N12882 DIVISION ROAD (PARCEL ID# 103-983)

MOTION (Vanderheiden/Baum) to approve the CUP for operation of short pour ready-mix concrete batch & delivery operation in an Rs-2: Single-Family Residential Zoning, Patrick Josten, property owner and operator of Rockfield Short Pour LLC, W172N12882 Division Road, with recommendations by Plan Commission. MOTION (Ewert/Zabel) to amend that motion and increase the hours from 6 a.m. to 8 p.m. Discussion of applicants

listed hours of 6 a.m. to 6 p.m. and Plan Commission recommendation which did not specifically spell out hours. President Wolter – Trustee Ewert do you still wish to pursue the amendment. Trustee Ewert – Yes. **MOTION (Daniels/Werderman) to amend the amendment to start time on Saturdays and Sundays at 8 a.m. 7 in favor, 2 opposed (Baum and Hughes), motion on the amendment to the amendment carried.** Trustee Werderman clarified the amendment to the motion was for 6 a.m. to 8 p.m. Monday through Friday. Are we allowing Mr. Josten to leave at 8 p.m. and return at 10 p.m. or are we saying he is closed and cleaned up at 8 p.m.? Discussion. Trustee Vanderheiden – Typically business closes at 8 p.m. doesn't turn the lights off and walk away. He is not taking another order at 8 p.m. but he is allowed to come back and put his truck away. I don't think the definition we are looking at is that there are no activities after 8 p.m. **All in favor of the amendment, motion carried.** Further discussion regarding the surrounding property and possible other plans. Currently discussing a one year conditional use permit. Trustee Vanderheiden stated other uses of surrounding property in prior years and history of quarry and concrete companies. Asked Mr. Josten if one year is sufficient. Mr. Josten – would always like a longer amount of time, but would like to get this resolved before one year. **MOTION (Vanderheiden/Zabel) to amend motion to extend the CUP to November 1, 2014.** Discussion of time frame. Trustee Werderman – As it stands now, on November 1, 2013 is the expectation that Mr. Josten would have to apply and pay a fee and go through the same process as now to stay where he is or is it the intention to plan and move? President Wolter – The first question was to give him time to decide what he wanted to do and to go forward. The currently operating business is outside the regulations and this would give him time to run and operate but give him time to do research to decide. Trustee Werderman – If the north property isn't feasible and he continues to be successful where he is at and no one has issues is the CUP that expires in a year – for sake of discussion, will he have to go through this again and pay another fee? President Wolter – if he would choose to take his business and conform then no. If he would choose to continue to operate as it does today then yes. There are some other matters that we have discussed with Pat to bring it back to what it was as a residential home based business. This board did consider for his business and was accepted by this board as a use for residential home based business and that's why we feel a CUP fits the business going forward and he can decide what he wants and where he wants it. Motion on the floor to extend the date. Trustee Kaminski - concern of opening ourselves up for other businesses that may not be as pleasant and we want to be careful we don't create loopholes that will hurt us down the road. It is reasonable to give two years then you have to make a decision and comply. Discussion of valid time frame. Attorney Sajdak – In my opinion it is pretty reasonable. **On amendment to extend time to November 1, 2014, all in favor, motion carried. On original motion as amended, all in favor, motion carried.**

Adjourn for a 5 minute recess 8:50 p.m. – return at 9pm

MOTION (Baum/Zabel) to move item C to the next order of business, all in favor, motion carried.

C. **PROPOSED ZONING CODE TEXT AMENDMENT TO SECTION 17.41 RESIDENTIAL ACCESSORY BUILDING RESTRICTIONS) OF THE VILLAGE OF GERMANTOWN MUNICIPAL CODE**

MOTION (Baum/Zabel) to approve the proposed Zoning Code Text Amendment to Section 17.41 (Residential Accessory Building Restrictions) of the Village of Germantown Municipal Code as recommended by the Plan Commission. Trustee Zabel questioned if Plan Commission will bring up the definition of a garage in the future. Planner Retzlaff stated it had not been specifically discussed but could with the direction of the Board. Trustee Zabel said it should be brought up whether it is attached or detached so everyone understands it. **MOTION (Kaminski/Baum) to include Rs-2 with 5 acres or greater be amended as well.**

Discussion of various lot sizes and what should be allowed. Trustee Zabel questioned the 5 acre size. Trustee Vanderheiden stated some Rs-2 lots are long and narrow and wouldn't meet the setbacks. Trustee Kaminski stated these wouldn't be approved then. Trustee Baum stated the Plan Commission reviewing the site plan could determine whether it would work or not. President Wolter – Why go to Rs-2? Why don't we see how it plays out in Rs-1? This is a dramatic change in the building code and what it allows. Trustee Kaminski – it is my experience you are not going to get this change again and it is going to become a variance. Planner Retzlaff – Only complication I can think of, an unlikely situation, any property that isn't right at minimum parcel size already could be divided. You could have Rs-2 with an 8 acre parcel divided and could do a two attached dwelling and later divided and create a non-conforming structure. Just a consideration. **Vote for the amendment, 6 in favor, 3 opposed (Ewert, Zabel and Wolter), motion carried. Motion as amended, all in favor, motion carried.**

A. **CULVERT REPLACEMENT POLICY**

Public Works Director Dan Ludwig – Received two complaints regarding two citizens who replaced culverts prior to projects in their area. Projects go into a capital account. They were not temporarily approved until late winter and in early spring they are formally approved and borrowed for. We like the approval in fall to get survey work before snowfall. Drainage changed and parties felt damaged by us replacing those culverts in 2012. Staff asked to put together policy. Put together policy used in past. 7-8 years ago the Village stopped doing replacement, complaints of cracked driveways etc. When it came up at last Public Works meeting it was a 3-1 vote. Insures the property owner is still the sole responsible party whether they're doing it or a future project and if they do the project it is their cost. If the Village does it, it will pick up the cost and the repair to the driveway. If drainage is being harmed by existing, Village will do a repair and charge back to property owner. Village does not put in end walls or high impact barriers. If you put in concrete surface and it gets pulled out we will not replace with that same surface. The negative vote was to have the Village responsible for all replacements. Sent on now for you to take action. **MOTION (Ewert/Vanderheiden) to approve the culvert replacement policy.** Trustee Werderman questioned the pros and cons to having a policy. Director Ludwig – Haven't had a written policy. The Village had been replacing culverts for 17 years and we have always billed back to the property owner. Due to last 7-8 years and the crack in driveway complaint we stopped. We set the property grades and the owner pays for everything. This reinforces that. Trustee Vanderheiden - Some of the discussion was the culvert was in the right of way – the Village's responsibility. Yet you build a home, you place it and you put a driveway over the right of way, it is the responsibility of the owner to take care of his driveway. If the Village is responsible for the right of way the Village will be responsible for a great deal. We define what we do with the culvert and we define it well and we notify a home in a project area within a reasonable amount of time we will be coming in. It is important we have a written policy. Trustee Baum questioned a case of someone who replaced a culvert earlier in the year then a road project came in and it was ripped out. Director Ludwig – Homeowner would do their homework to find out about possible projects. Trustee Zabel – we are making them aware of the permit process. Discussion of culverts and possible cost for replacement. Director Ludwig – if a person comes in with a driveway permit for a subdivision with curb and gutter they pay for it. Trustee Zabel – If we have curb and gutter that settles or is busted up we go in and fix it. If you have a catch basin with culverts falling in on either side we fix it. Cosmetic is one thing, if it becomes a hazard I think at that point and time, when you do, it is high enough that you have created drainage problems. Policy should be written if it is not a hazard to the person coming in and out of the property it is up to them. If it is a hazard it should be the Village's responsibility. Trustee Kaminski – I don't think the Village can afford what Trustee Zabel is suggesting. It is my responsibility to fix that – it is my driveway over the top of it. The Village should not add one more thing on. **8 in favor, 1 opposed (Zabel), motion**

carried.

B. CONSIDERATION OF CLAIM FROM CINCINNATI INS. CO. & INSURED WANASEK CORPORATION, 07/09/2012

MOTION (Zabel/Baum) to deny claim as presented. Motion carried, all in favor.

MOTION (Kaminski/Zabel) to go into closed session at 9:25 p.m. per WI §19.85(1)(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility: Director of Parks & Recreation, Community Development Director and Highways, Parks, Buildings & Grounds Superintendent and Administrator. Village Clerk excluded from closed session. By roll call vote, all in favor, motion carried.

RECONVENE INTO OPEN SESSION FOR DISCUSSION/ACTION REGARDING ITEM NO. XI

ADJOURNMENT: There being no further business, the meeting was adjourned at 10:25 p.m. from closed session.

Barbara K. D. Goeckner, MMC/WCPC
Village Clerk