

**VILLAGE OF GERMANTOWN
VILLAGE BOARD MEETING
MINUTES
AUGUST 5, 2013**

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, and Zabel. Trustee Werderman was absent and excused. Also present: Administrator Schornack, Attorney Sajdak, Finance Director Rath, Park & Recreation Director Justin Casperson 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: Upcoming meetings were announced.

CITIZEN INPUT/PUBLIC APPEARANCE on items not subject to a public hearing: None.
Phil Secker – W167 N10532 Bridle Path – Encourage Board to continue to do the right thing regarding Peter's basement damage.

CONSENT AGENDA:

A. **MINUTES - July 15, 2013**

B. **ACCOUNTS PAYABLE/PAYROLL**

1.	July 16, 2013	Payroll (hourly)	\$236,654.92
2.	July 25, 2013	Accounts Payable	\$149,083.48
3.	July 30, 2013	Payroll (hourly & salary)	\$321,457.86

C. **OPERATOR LICENSES: AUGUST 6, 2013 – JUNE 30, 2014**

Gregory A. Brundage, Daniel M. Christ, David 4. Eigenfeld, David B. Haberman, Kiley M. Hauck, Jade T. Lynn, Vickie L. Matt, Yadira M. Ortiz, Mahmood Parvez, Brianna L. Sims, and Robin L. VanAacken.

D. **CANCELLATION OF VILLAGE BOARD MEETING OF SEPTEMBER 2, 2013 DUE TO LABOR DAY**

The following items were forwarded from the General Government and Finance Committee with a unanimous recommendation:

E. **APPROVAL TO CONTRACT WITH GREAT LAKES PAINTING TO PAINT/STAIN THE VILLAGE OWNED HISTORICAL BUILDINGS AT DHEINSVILLE PARK AT A COST NOT TO EXCEED \$15,050 TO COME FROM BUILDINGS CAPITAL EXPENSE ACCOUNT 10-519-570-8425.**

F. **DELAY IMPLEMENTATION OF EXPANDED EMPLOYEE HEALTH AND DENTAL COVERAGE UNTIL JANUARY 1, 2015**

Trustee Zabel requested to pull Item 'D'. **MOTION (Vanderheiden/Kaminski) approve Consent Agenda Items A-F, excepting Item 'D'. By roll call vote, carried unanimously. MOTION (Zabel/Baum) to approve cancellation of Village Board Meeting of September 2, 2013 due to Labor Day, carried unanimously.** In future this item will be under New Business.

PUBLIC HEARINGS – 7:00 P.M. OR LATER

- A. MILLIKIN HOMES OF MILWAUKEE, INC., AGENT FOR DENNIS PARTEKA, PROPERTY OWNER: CONDITIONAL USE PERMIT APPLICATION FOR THE CONSTRUCTION AND USE OF A “MOTHER-IN-LAW SUITE” ACCESSORY DWELLING UNIT IN THE EXISTING SINGLE-FAMILY DWELLING LOCATED AT W153N11725 KURT DRIVE (PARCEL ID #232-058) PURSUANT TO SECTIONS 17.18(1)(a) AND 17.08(28) OF THE VILLAGE ZONING CODE.**

Planner Retzlaff presented the application information for the Conditional Use Permit request for use of a mother-in-law suite. 370 sq. ft. addition with unfinished basement. Allowed in any single family dwelling with a conditional use permit. Recommendation is to approve subject to two conditions.

President Wolter opened the Public Hearing at 7:14 p.m.

No one present to speak.

Public hearing closed at 7:16 p.m.

NEW BUSINESS:

- A. APPROVE ACCEPTANCE OF THE 2012 COMPREHENSIVE ANNUAL FINANCIAL REPORT**

MOTION (Vanderheiden/Kaminski) to approve the 2012 Comprehensive Annual Financial report. Vicki Hellenbrand of Baker Tilly Virchow Krause, LLP presented additional information regarding the Village's Financial Statement for 2012. Ms. Hellenbrand stated the General fund balance shows an upward trend. In 2008 it was at about 9% and in 2012 it is about 28%. This is a key trend to look at for financial health. Spending time and energy creating the budget and controlling expenditures to grow fund balance for unexpected events is commendable as this is a tough economy to do this in. We are at 24% of our outstanding debt limit. Large portion of debt is related to the TIF Districts. 4% less in general fund expenditures in 2012 compared to 2008. In the water utility last year was a dry year and saw an increase in sales due to residential sprinkling that we are not seeing this year. Rate increase in 2005 with another in September 2010. 2012 results will be higher than 2013 because of more. Authorized rate of return is set at 1%. Didn't meet that in 2012 and won't likely meet it in 2013 and going forward. Water utility options are to do an annual simplified water rate increase which is a 3% increase and she recommends doing this. It is an easier process, less expensive and easier to file, to stay on top of it than a full rate increase. If you're doing another well or other infrastructure you would want the full rate increase done. In the sewer utility, the more we sell the more we pay to MMSD, so it helps to stay on top of the rates instead of playing catch up. MMSD defines what the rate increase is about and is an entity we don't control. Recommends we consider rate increase. We are getting to the point of needing to replace the infrastructure, such as the lining and it is necessary to pass on the cost in the sewer utility, with a big portion of costs going to MMSD. Ms. Hellenbrand discussed the rules regarding segregation of duties and related issues due to staff size. Staff is receptive to their recommendations and they assist with the process due to need of expertise in drafting Management and Discussion Analysis. Underlying records are in very good shape with very few journal entries and financial information from staff can be relied upon on monthly basis. No questions or comments were presented from the Board. **Motion carried unanimously.**

NEW BUSINESS - continued:

- B. **DISCUSSION/ACTION ON CONDITIONAL USE PERMIT APPLICATION FOR THE CONSTRUCTION AND USE OF A “MOTHER-IN-LAW SUITE” ACCESSORY DWELLING UNIT IN THE EXISTING SINGLE-FAMILY DWELLING LOCATED AT W153N11725 KURT DRIVE (PARCEL ID #232-058) PURSUANT TO SECTIONS 17.18(1)(a) AND 17.08(28) OF THE VILLAGE ZONING CODE. MILLIKIN HOMES OF MILWAUKEE, INC., AGENT FOR DENNIS PARTEKA, PROPERTY OWNER MOTION (Baum/Zabel) to approve the Conditional Use Permit for Millikin Homes of Milwaukee, Inc., Agent for Dennis Parteka with Planning recommendation and conditions, carried unanimously.**
- C. **ERIC SCHMITZ, AGENT FOR JAMES & DIANA PRAHL, PROPERTY OWNER AT W124 N12525 WASAUKEE ROAD; REVIEW AND ACTION ON: (1) A CERTIFIED SURVEY MAP APPLICATION TO DIVIDE A 30.5 ACRE PARCEL INTO THREE (3) PARCELS IN AN A-2: AGRICULTURAL ZONING DISTRICT; AND (2) A REQUEST TO CONSTRUCT A PRIVATE STREET**
Planner Retzlaff presented information regarding the approval request for a CSM and parcel division. Zoning of parcel is A-2 and all surrounding uses are agricultural and residential. Lot 1 would include existing residence. Lot 2 and 3 would divide balance. Concept plan had been presented in 2007. As part of that proposal a cul-de-sac was laid out to serve multiple lots. At this point and time he would like to revise that plan, divide remaining acres and utilize a 60' wide road reservation and utilize that as an easement for a private drive for a common shared driveway. Current residence would continue to use existing drive to Wausaukee Road. Design would have to meet minimum standards. Recommendation is to approve CSM subject to 6 conditions. **MOTION (Baum/Hughes) to remove existing road reservation and change it to an easement and direct staff to go through the appropriate process to create the documentation necessary to do so, carried unanimously. MOTION (Baum/Zabel) approve CSM to divide property into three 10+ acre lots, carried unanimously.**
- D. **MOTION (Zabel/Baum) to approve appointment of Sheri Lieftring to Park & Recreation Commission for a term of 08/05/2013 – 04/30/2016, carried unanimously.**
- E. **MOTION (Ewert/Baum) to approve appointment of Kim Musbach to Library Board for a term of 8/05/2013 – 06/30/2015, carried unanimously**
- F. **MOTION (Baum/Zabel) to approve appointment of Jim Sedgwick to Economic Development Committee for a term of 08/05/2013 – 04/30/2015, carried unanimously.**
- G. **AWARD OF CONTRACT(S) FOR SPASSLAND PARK SHELTER PROJECT**
MOTION (Zabel/Kaminski) to award contract for Spassland Park shelter project to Alliance Construction and Design Incorporated not to exceed \$108,781, not to include any add alternatives, to be funded from account 40-552-570-8210 and the Village Board transfer \$21,000 from unallocated monies obtained for the 2013 CIP borrowing to help offset overages. Discussion of first bids for project being rejected and projected re-bid, coming in lower but still over budget for project. By roll call vote, carried unanimously.

NEW BUSINESS - continued:

- H. **SPANISH PROGRAM AGREEMENT WITH FUTURA LANGUAGE PROFESSIONALS - PARK & RECREATION DEPARTMENT**
MOTION (Baum/Zabel) to approve the Spanish Program Agreement with Futura Language Professionals for the Park and Recreation Department, by roll call vote, carried unanimously.
- I. **REQUEST OF LEDALE & DONNA PETER FOR DIFFERENTIAL PAYMENT BETWEEN INSURANCE PROCEEDS AND CLAIM AMOUNT FOR WATER DAMAGE TO THEIR PROPERTY LOCATED AT W107N10524 BRIDLE PATH. THE VILLAGE BOARD MAY ENTER INTO CLOSED SESSION AS PER WIS. STAT. §19.85(1)(e) FOR THE PURPOSE OF DELIBERATING OR NEGOTIATING, WHEN COMPETITIVE OR BARGAINING REASONS REQUIRE A CLOSED SESSION AND AS PER WIS. STAT. §19.85(1)(g) CONFERRING WITH LEGAL COUNSEL FOR THE GOVERNMENTAL BODY WHO IS RENDERING ORAL OR WRITTEN ADVICE CONCERNING STRATEGY TO BE ADOPTED BY THE BODY WITH RESPECT TO LITIGATION IN WHICH IT IS OR IS LIKELY TO BECOME INVOLVED, THEN RE-ENTER OPEN SESSION TO TAKE SUCH ACTION AS IT DEEMS APPROPRIATE**

MOTION (Zabel/Kaminski) to go into closed session. Discussion. Trustee Vanderheiden stated he was contacted by the Peter's regarding the letter they received from the Village's insurance company stating a settlement offer of \$5,000. They received a bill of \$13,250 and are requesting the Village Board to make up the difference for the damages that occurred. Trustee Kaminski asked if this bill had been paid by Peter's and Mrs. Peter stated that the repairs have not been done yet. Trustee Kaminski asked how many bids had been obtained and Mrs. Peter stated two, but they had not decided yet. Angie Dempewolf, granddaughter of Mrs. Peter stated they have copy of the estimates with Accurate's being \$12,395 and McCoy's being \$12,750. Trustee Kaminski asked if our Village Engineer or anyone else has reviewed these documents to see how it will be fixed and Administrator Schornack stated no. Request made by Ms. Dempewolf for neighbors present to be allowed to speak after closed session discussion and President Wolter said they could. No decision will be made in closed session, but there may be after coming back into open session. **Roll call vote to go into closed session at 8 p.m. carried unanimously.**

MOTION (Hughes/Zabel) to go back into open session at 8:47 p.m. carried unanimously.

President Wolter asked for anyone wishing to make comments regarding this matter to come forward.

Brett Klemann W167 N10519 Bridle Path – Hoping to get this resolved, help them out and do the right thing.

Donna Peter – W167 N10524 Bridle Path – Presented letter from neighbor, Roger and Bernice Lemancik on Bridle Path in support of their claim. Doesn't understand why the Village is not responsible for the damage. Would like to thank the neighbors and family for all the support they have given in trying to resolve this matter. Thank you for taking request under consideration.

Denise Learned – N108 W14854 Bel Aire Lane – daughter of Peter's. Questioned statement by insurance company. Asks Board to do the right thing and reimburse them.

Angie Dempewolf – Granddaughter of Peter's. Presented synopsis of process of claim and appearances before Village Board. \$13,250 includes cost of the structural engineer

NEW BUSINESS - continued:

as well as the estimate. Grandparents, parents, neighbors and others from Germantown ask the Village to pay them \$8,250 to settle the difference. Suing the Village is not something they want to do. Please do the right thing and vote to pay for their damages in full.

MOTION (Vanderheiden/Ewert) to pay \$8,250 to Peter's for the damage to their property on Bridle Path and they sign a waiver they will bring no further claims for damages. Trustee Kaminski – Feels for anyone this would happen to. Process in place is between insurance companies and if settlement isn't agreeable you have the right to sue. When you consider the term 'do the right thing' it's all in the perspective. Our attorney would tell us the right thing is to deny it. Constituents have told me 'don't you dare pay that'. I am leaning toward letting the process play out. I could potentially be convinced, just to feel better about this situation, to propose a \$5,000 settlement to match what the insurance company proposed and if you are not happy with that then you would have to sue. Trustee Zabel – Process in place to protect all of the residents of the Village and the only way to resolve this is through the process. Trustee Baum – Concurs with the other Trustees. Has a hard time setting a precedence and unable to support the \$8,250. President Wolter – Upset with the insurance company – they state we are not liable. I am still undecided – if I were you I would expect something for what I have gone through. Trustee Vanderheiden – Black eye for the Village. Water department responded slowly. We have provided funding for them to exercise valves regularly. Yes we have immunity for the pipe breaking because we don't know where they will break. But we need to be able to turn them off. I have made an attempt to find out how much water flowed out of there but can't get that information. Residents can't get what they need – they are told to sue the insurance company. They are not asking for a lot. I am asking you to help these people. Administrator Schornack – Trustee Vanderheiden was given the records he requested. We do not keep track nor is there a meter system on the water towers. The information is in the form of a graph and not kept in gallons. It covers 3 water towers and 5 wells – the usage is for all, not just what went down to the Peter's. Water Superintendent Jim Driver did turn over all the records that we have.

David Peter N98 W16921 Concord Rd. – Conservatively no 8" pipe can deliver 57,000 gallons per hour. I called the Village as to when the valves were checked and I was told they don't keep records on that.

By roll call vote, 4 yes, 4 no (Baum, Hughes, Kaminski, Zabel). MOTION (Kaminski/Baum) suggest we pay \$5,000 to match the insurance amount and get waivers signed they will bring no further claims for damages. This is her compromise. Trustee Hughes suggested we consider postponing the item due to an absent trustee. President Wolter does not recommend this. President Wolter thanked the Peter's and their supporters for coming to us and to the insurance so many times and for their patience. Trustee Ewert questioned the ruling of the tie vote. Attorney Sajdak clarified in order to expend funds a majority is necessary and this is a 4 to 4 tie and therefore fails. **By roll call vote on the motion, 5 yes, 3 no (Ewert, Hughes, Vanderheiden).**

David Peter – Your final offer was \$5,000? We didn't want to hire lawyers. Appreciate the representative who has worked with his parents. Trustee Vanderheiden – you have the opportunity yet to file suit with the Village and take the insurance company to court. You don't have to take this deal, but this is what the village is putting out there. I told you at your kitchen table whatever happens at this meeting is it.

NEW BUSINESS - continued:

Attorney Sajdak stated the motion is presented and passed and there is no time limit, but the board could withdraw this offer at any time. His recommendation is that the offer expires at the time the statute of limitations runs out, 6 months after the time of service of disallowance, which was on May 21, 2013. Nothing in writing from the Village is required. If Board directs him he can prepare an offer with the proper waivers.

- J. **POTENTIAL LAND ACQUISITION OF A PORTION OF TAX KEY NO. 211-985. THE VILLAGE BOARD MAY ENTER INTO CLOSED SESSION AS PER WIS. STAT. §19.85(1)(e) FOR THE PURPOSE OF DELIBERATING OR NEGOTIATING, WHEN COMPETITIVE OR BARGAINING REASONS REQUIRE A CLOSED SESSION AND THEN RE-ENTER OPEN SESSION TO TAKE SUCH ACTION AS IT DEEMS APPROPRIATE**
MOTION (Zabel/Kaminski) to go into closed session at 9:40 p.m.. by roll call vote, 7 yes, 1 no (Vanderheiden), motion carried.
- K. **VILLAGE ADMINISTRATOR ANNUAL REVIEW. THE VILLAGE BOARD MAY ENTER INTO CLOSED SESSION 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 AND THEN MAY RE-ENTER OPEN SESSION TO TAKE SUCH ACTION AS IT DEEMS APPROPRIATE.**
MOTION (Kaminski/Baum) to postpone the Village Administrator's annual review until the next meeting on August 19th. President Wolter requested Trustees to turn in their reviews to him or notify him if they are not going to do one. Motion carried unanimously.
- MOTION (Baum/Zabel) to go back into open session at 10:20 p.m., carried unanimously.**
- MOTION (Baum/Kaminski) to direct the Village Board President to act on the recommendations made in closed session regarding Item J, carried unanimously.**

There being no further business the Village Board adjourned at 10:25 p.m.