

TOWN OF DELAFIELD BOARD OF SUPERVISORS MEETING
June 25, 2013

Members Present: P. Kanter, C. Dundon, P. Van Horn, L. Krause, C. Duchow

Others Present: E. Joseph Kershek, *Town Attorney*, E. Larson, *Town Attorney*, T. Barbeau, *Town Engineer*, T. Fockler, *Town Building Inspector*, P. Kozlowski, *Fire Chief*, H. Jeanson, *Town Auditor*, K. Smith, *Lake Country Reporter*, 13 citizens

Closed Session: It is anticipated the Town Board will convene into closed session for the following reason: Pursuant to authorization conferred by Wisconsin Statute Section 19.85 (1)(g), to confer with legal counsel who is rendering oral or written advice concerning strategy to be adopted by the governing body with respect to litigation in which it is or is likely to become involved; more specifically, concerning possible enforcement actions regarding property located at W300 N2815 Maple Ave. in the Town of Delafield. Following the closed session, the Town Board shall continue with the matters noted in the agenda.

MOTION MADE BY CHAIRMAN KANTER, SECONDED BY MS. DUNDON TO GO INTO CLOSED SESSION. MS. DUCHOW – AYE, MS. DUNDON – AYE, CHAIRMAN KANTER – AYE, MR. KRAUSE – AYE, MR. VAN HORN – AYE. MOTION CARRIED.

MOTION MADE BY CHAIRMAN KANTER, SECONDED BY MS. DUNDON TO GO INTO OPEN SESSION. MS. DUCHOW – AYE, MS. DUNDON – AYE, CHAIRMAN KANTER – AYE, MR. KRAUSE – AYE, MR. VAN HORN – AYE. MOTION CARRIED.

First order of business: Call to Order
Chairman Kanter called the meeting to order at 7:25 p.m.

Second order of business: Pledge of Allegiance

Third order of business: Citizen Comments
There was no citizen comment.

Fourth order of business: Approval of June 11, 2013 Town Board Minutes
The minutes will be filed as prepared by the Town Clerk.

Fifth order of business: Action on vouchers submitted for payment:

A. Report on budget sub-accounts and action to amend 2013 budget

B. 1) Accounts payable; 2) Payroll

Accounts Payable

MOVED TO APPROVE PAYMENT OF CHECKS #52980 – 53011 IN THE AMOUNT OF \$45,345.15

Payroll

MOVED TO APPROVE PAYMENT IN THE AMOUNT OF \$37,194.64

MS. DUNDON/MR. KRAUSE

MOTION CARRIED.

Sixth order of business: Communications (*for discussion and possible action*)

A. None

MOTION MADE BY MS. DUNDON, SECONDED BY MR. KRAUSE TO TAKE ITEM 8B OUT OF ORDER. MOTION CARRIED.

Eighth order of business: New Business

B. Consideration and possible action concerning enforcement actions regarding property located at W300 N2815 Maple Avenue in the Town of Delafield

MOTION MADE BY MR. VAN HORN, SECONDED BY MS. DUNDON TO AUTHORIZE OUR TOWN PROSECUTOR TO PURSUE ANY AND ALL LEGAL ACTIONS, INCLUDING A LAWSUIT, AGAINST THE IDENTIFIED ADDRESS AND ADJOINING PROPERTIES IN ORDER TO CLEAN UP THOSE PROPERTIES AND TO ALLOW THE TOWN PROSECUTOR TO PURSUE LEGAL STRATEGIES, IN THAT REGARD, AS HE DEEMS APPROPRIATE. MOTION CARRIED.

Seventh order of business: Unfinished Business

A. Further discussion of new fire station

Mr. Krause stated that he requested Mr. Mann to attend the meeting this evening. He worked with the Town, in the planning process, in our last effort to build a new fire station.

Mr. Mann, Mannedge, stated that the last time we went through the process of a new fire station, the Town hired a company to design a building and they priced it internally. If the referendum passed, the project would have then gone out for final bid and may or may not have met the budget. Mr. Mann worked on a project in Whitefish Bay utilizing the construction management team process. Phase 1 of the proposed process would include bidding out for fees for enough design and construction management work to come up with as close to the guaranteed maximum price as possible. Phase 2 would include completing the design and taking the job to individual bids for electrical, grading, etc. This process would allow the Town to open up to several different firms.

Attorney Larson stated that this process allows for different sub-contractors with individual contracts and could cause problems. Also, it could be costly to the Town in legal fees because each contract would need to be reviewed. He believes that the construction management process can work if, in the bidding process, the Town enters into a contract with one responsible party.

MOTION MADE BY MS. DUNDON, SECONDED BY MS. DUCHOW TO AUTHORIZE MR. LARSON TO CONTACT HIS COLLEAGUE IN WHITEFISH BAY TO HAVE A CONVERSATION AND RESEARCH THE LEGAL ISSUES ASSOCIATED WITH THIS IDEA. MOTION CARRIED.

Eighth order of business: New Business

A. Discussion of reallocation/replenishment of funds from the General Fund to the Replacement Fund

Mr. Jeanson provided a replacement fund analysis sheet reflecting an actual General Fund balance higher than the 2013 budget projected General Fund balance. The general consensus of the Town Board is to wait until the budget process in September to revisit this issue.

C. Consideration and possible action concerning enforcement actions regarding property located at S1 W31448 Hickory Hollow court in the Town of Delafield

Mr. Sitzberger, S1 W31448 Hickory Hollow Court, provided reasons for lack of property maintenance on his property (back injury, weather related issues, etc). He is requesting more time to clean up his property.

Chairman Kanter and the Town Board Supervisors directed Mr. Sitzberger to clean up his property by July 31, 2013. Tony Fockler, Building Inspector, was instructed to bring the matter back to the Town Board if Mr. Sitzberger does not comply.

D. Possible motion to reconsider and possible action on such motion regarding the referral to the Plan Commission made on June 11, 2013, of the draft ordinance entitled "Ordinance to Create Section 17.10 (5.5) of the Town of Delafield Zoning Ordinance, Regarding Modifications by Special Exception due to erroneously Permitted Work."

Ed Gratz, W331 S631 Erin Way, stated that the Town is not being fair in granting special exceptions to people, as it is discriminatory and against the 14th Amendment of the Constitution.

Attorney Larson stated that the ordinance is constitutional, provided that all Town residents had an equal opportunity to seek a special exception and any special exception is granted through a fair and equitable process.

MOTION MADE BY MS. DUNDON, SECONDED BY MR. KRAUSE TO RECONSIDER THE REFERRAL OF THE ORDINANCE TO CREATE SECTION 17.10 (5.5) OF THE TOWN OF DELAFIELD ZONING ORDINANCE TO THE PLAN COMMISSION. MS. DUCHOW – AYE, MS. DUNDON – AYE, CHAIRMAN KANTER – AYE, MR. KRAUSE – AYE, MR. VAN HORN – NAY. MOTION PASSED 4-1.

E. If the motion to reconsider is duly made and adopted, as described in agenda item 8.D, above, the Board may then consider and may take action on the draft ordinance entitled "Ordinance to Create Section 17.10 (5.5) of the Town of Delafield Zoning Ordinance, Regarding Modifications by Special Exception due to erroneously Permitted Work."

MOTION MADE BY MS. DUNDON, SECONDED BY MR. KRAUSE TO APPROVE AN ORDINANCE TO CREATE SECTION 17.10 (5.5) OF THE TOWN OF DELAFIELD ZONING ORDINANCE REGARDING MODIFICATIONS BY SPECIAL EXCEPTION DUE TO ERRONEOUSLY PERMITTED WORK. MS. DUCHOW – AYE, MS. DUNDON – AYE, CHAIRMAN KANTER – AYE, MR. KRAUSE – AYE, MR. VAN HORN – NAY. MOTION PASSED 4-1.

F. Discussion and possible action to authorize the preparation of an ordinance, based on the sample ordinance provided by the Town Attorney entitled "Ordinance to Create Section 1.05(1)(f) of the Municipality of Proactive Municipal Code Related to Filing with the Board of Review."

Attorney Larson recommended that the Town adopt an ordinance to clarify the time and date that matters will be deemed to be filed with the Board of Review. Notice of objections must be provided 48 hours prior to the Board of Review's first meeting. The objection must be presented in writing no later than during the first two hours of the Board of Review's meeting. The subject proposed ordinance would clarify that matters are not deemed to be filed with the Board of Review until the Clerk actually receives the documents in hand, and in the case of e-mail, the Clerk actually opens the e-mail message. This clarification will allow for greater certainty in the Board of Review proceedings and will minimize the risk of being challenged on the basis. If the intent is to show up and give notice so that the assessor can get ready for the case, the functionality is completely lost if the electronic message is sent at a time when no one could possibly see the message.

Chairman Kanter asked if we could be in compliance with State law if we said that the filing had to be accomplished 24 hours before the meeting of the Board of Review unless you appeared personally before the Board of Review. Attorney Larson stated that he could think about this further, but he would be more comfortable in saying that filing may not be done by electronic mailing because of meeting statutory requirements.

MOTION MADE BY MR. KRAUSE, SECONDED BY MS. DUCHOW TO REQUEST THAT ATTORNEY LARSON CONSIDER THESE ISSUES AND CREATE A SOLUTION TO THEM. MOTION CARRIED.

G. Appointment to Park and Recreation Commission

MOTION MADE BY CHAIRMAN KANTER, SECONDED BY MR. KRAUSE TO RE-APPOINT TAMMY SHERMAN TO THE PARK AND RECREATION COMMISSION FOR ANOTHER TWO YEAR TERM. MOTION CARRIED.

H. Appointments to Plan Commission

Chairman Kanter recognized Lisa Cunningham for serving 9 years on the Plan Commission. While he truly appreciates her willingness to serve her community and continue on the Plan Commission, he has concluded to go in a different direction tonight. He stated that Edward Kranick has made himself available on his own volition over the last two years and has voluntarily appeared at the vast majority if not nearly every meeting. He has shown and demonstrated his interested in the Plan Commission. He has become familiar with its workings and processes. He well knows the issues that have been in front of the Plan Commission over the last two years and will be in the future. He has also, on occasion, contributed his comments and thoughts to the Plan Commission, and Chairman Kanter has found them to be very valuable.

MOTION MADE BY CHAIRMAN KANTER, SECONDED BY MS. DUNDON TO APPOINT EDWARD KRANICK TO THE PLAN COMMISSION FOR A THREE-YEAR TERM. MS. DUCHOW – AYE, MS. DUNDON – AYE, CHAIRMAN KANTER – AYE, MR. KRAUSE – AYE, MR. VAN HORN – NAY. MOTION PASSED 4-1.

Chairman Kanter stated that Garrett Reich has been on the Plan Commission for a little over a year. He is a very active and participatory member of the Plan Commission. Garrett speaks on issues, sometimes at great length, which is what he is looking for. Good decisions are made from participation and the sharing of different ideas. It is out of that sharing of different ideas that comes good decisions. Garrett certainly fits that bill. He moves the re-appointment for a full term. Garrett was serving out a partial term for Mr. Gratz, who was also a stunning member of the Plan Commission. Mr. Gratz similarly participated frequently and always. Chairman Kanter stated that he appreciated it, and that they did not always agree, but that is the point.

MOTION MADE BY CHAIRMAN KANTER, SECONDED BY MS. DUCHOW TO RE-APPOINT GARRETT REICH FOR A THREE-YEAR TERM. MOTION CARRIED.

Ninth Order of business: Announcements and Planning Items

- A. Next Plan Commission Meeting – July 2
- B. Next Town Board Meeting – July 9
- C. Board of Review – Wednesday, July 17 – 7:00 p.m.

Tenth order of business: Adjournment

MOTION MADE BY MS. DUCHOW, SECONDED BY MR. KRAUSE TO ADJOURN AT 9:10 P.M. MOTION CARRIED.

Respectfully submitted,

Mary T. Elsner, CMC, WCMC
Town Clerk/Treasurer

Minutes approved on July 9, 2013