

VILLAGE OF FONTANA ON GENEVA LAKE
WALWORTH COUNTY, WISCONSIN
(Official Minutes)

SPECIAL JOINT MEETING of the VILLAGE BOARD OF TRUSTEES and the
CDA BOARD

Monday, July 26, 2010

Village Clerk Dennis Martin called the special meeting of the Village Board to order at 6:30 pm in the Village Hall, 175 Valley View Drive, Fontana, Wisconsin.

Trustees present: Roll call vote: Tom McGreevy, Pat Kenny, Cindy Wilson, Micki O'Connell, George Spadoni, Peg Pollitt

Trustee absent: President Petersen

Elect President Pro Tem

Trustee Spadoni/Trustee McGreevy 2nd made a MOTION to elect Pat Kenny as the president pro tem for the Village Board, and the MOTION carried without negative vote.

CDA Chairman Bill Turner and Village Attorney Dale Thorpe updated the Village Board prior to a fourth member of the CDA Board arriving at the meeting.

CDA Chairman Bill Turner called the special meeting of the CDA to order at 6:41 pm in the Village hall, 175 Valley View Drive, Fontana, Wisconsin.

CDA members present: Roll call vote: Chairman William Turner, Cindy Wilson, Skip Bliss, Bob Chanson

CDA members absent: Gail Hibbard, Jeff Fisk, President Petersen

Also present: Administrator/Treasurer Kelly Hayden, Rob Ireland, Alex Koldeway, Library Director Nancy Krei, Lou Loenneke, John Maier, Village Clerk Dennis Martin, Assistant Zoning Administrator Bridget McCarthy, Plan Commission member Harry Nelson, Building Inspector/Zoning Administrator Ron Nyman, Sharon O'Brien, Rick Pappas, Dale Thorpe, Carol Whowell, Geri Whowell, Steele Whowell, Tom Whowell, Director of Public Works Craig Workman

Joint Session Business

Village Attorney Review of Lakefront Ownership

The item, "Letter Submitted by Lou Loenneke Regarding Ownership of Lakefront Properties" was tabled by the Village Board at its July 6, 2010 meeting. At its monthly meeting on July 7, 2010, the CDA Board approved a motion to authorize an expense not to exceed \$5,000 for Village Attorney Dale Thorpe to provide the criteria for making a legal determination on the issue of riparian property ownership, to review the official records regarding the riparian ownership and width of the road for the Lake Street business properties, and to make a determination on the riparian ownership and the width of the road. Thorpe stated that he received the request from the CDA Board to provide a legal review for the lakefront business properties owned by the Gordy's Group and by Jamie and Carol Whowell. Thorpe stated that although he would provide review services without a chance of his opinion being biased, he has had four conversations since the CDA made its request in which he has been asked if his review could be biased. Thorpe suggested that if the review is going to have any value, the CDA should have an attorney with no connections to the Village of Fontana perform the review of the official documents to avoid any questions of impartiality. Thorpe stated that the review process is not very complicated, it will be a matter of accumulating and reviewing the official documents recorded for the properties in question. Turner stated that he agrees that using a different attorney to provide the legal review will eliminate any questions of impartiality. Turner stated that by having a legal review completed, the CDA will be able to settle the matter. Turner stated that the issue needs to be tidied up and the village needs to get a legal opinion and then move forward with the planning for the proposed lakefront building project – which includes

reconstructing Lake Street from Third Avenue to Fontana Boulevard. Turner stated that the last time the village looked into the issue of riparian rights and the width of Lake Street when the late Ron Pollitt brought up information cited by Bruce Jensen, the Village Board decided not to do anything or to question the riparian rights. Turner stated that the CDA Board directed the legal review at this time as part of its fiduciary responsibility in planning the lakefront building proposal, which will go to referendum at the September 14, 2010 Partisan Primary election. Turner stated that prior to approving the investment of millions of dollars on the lakefront projects, the CDA decided to approve spending an amount not to exceed \$5,000 on the legal review. Turner stated that the CDA Board provided direction to the property owners and to Lou Loenneke, who made the current request to review the riparian rights, that if they desired to do so, they could supply any documents they wished to the Village for the legal review; however, they do not have to supply anything if they do not desire to do so. Turner stated that following the impartiality questions presented to Thorpe, the CDA attorney Hank Gempeler of Foley & Lardner, LLP was contacted to provide the review services. Turner stated that Gempeler indicated that he can provide the review services and stay within the \$5,000 budget. Turner stated that Gempeler indicated a title company can provide the research services and a junior associate can do the majority of the review work in order to keep expenses down. When asked why the CDA Board authorized a legal review of the matter when the item had been tabled by the Village Board at its July 6, 2010 monthly meeting, Turner stated that the CDA Board authorized the review as part of its fiduciary responsibilities on the proposed investment of village funds for the Lakefront Building Project. Turner stated that he thinks it is a good idea for Gempeler to provide a legal opinion. If the legal review opinion is that the current owners of the property do have legal ownership of the riparian rights and the official width of Lake Street can be determined, Turner stated that the issue will be resolved once and for all.

Chairman Turner/Commissioner Wilson 2nd made a MOTION to direct Attorney Hank Gempeler to review the official titles, deeds and records of the Lake Street business properties currently owned by James and Carol Whowell and by the Gordy's Group and to provide a legal opinion on the riparian rights and width of Lake Street for a cost not to exceed \$5,000. The MOTION carried without negative vote.

Thorpe stated that the Village Board is not required to approve every individual expenditure authorized by the CDA Board; the annual budget and project contracts and payments are reviewed and approved by the Village Board. Thorpe stated that if the attorney review is part of the approved Lakefront Building Project budget, the legal review of the lakefront does not have to be approved by the Village Board. Thorpe stated that the Village Board cannot dictate that the CDA undertake or fund a project. Turner stated that the CDA has always stayed in synch with the Village Board on spending proposals. Turner stated that the CDA voted to have the legal records reviewed in order to finalize the matter. McGreevy stated that when he purchased his home, he received a title and it was certified to be correct, and he asked if the situation was the same with business properties. Thorpe stated that the lakefront business properties are a bit more complicated and the chain of titles and deeds will have to be tracked back to 1898. Carol Whowell asked if the proposed CDA lakefront project is only concerning the reconstruction of Lake Street, then what does the riparian rights have to do with the project. Turner stated that the intent is to determine how wide Lake Street should be; however, the riparian rights issue needs to be resolved. Turner stated that if the public right-of-way is determined to be wider or smaller, it will affect the final design of Lake Street in front of the businesses. Turner stated that the riparian ownership could potentially affect the width of the road. Spadoni stated that he agrees with Carol Whowell and the width of the road is the only matter that actually has an affect on the CDA project, not the riparian rights ownership review. Spadoni stated that he supports a review of the width of the road as that could be relevant to the project. Turner stated that following the legal review, if the CDA receives information that is vastly different than what is currently being planned, then the final proposal could change dramatically. Carol Whowell asked that since an 1850's plat shows that the lakefront road used to run through Glenwood Springs, why isn't the association also being asked to prove they own the lakefront property. Harry Nelson asked why the CDA was spending up to \$5,000 of municipal funds to question the ownership of the lakefront business properties. Nelson stated that the issue has not come up for the last 15 years and asked what is driving the request. Nelson stated that if private people are making allegations, those private people should pay for a legal review and file a civil suit if so inclined. The current request was initiated in a letter from Lou Loenneke, a current member of the Finance Committee and a member of the CDA subcommittee planning the lakefront building proposal. Turner stated that he did not

recall who initiated the Village Board discussion on the matter back in 2005. The minutes for a closed session meeting on May 2, 2005 state one of the agenda items was “Bruce Jensen Lakefront Inquiry.” Tom Whowell stated that it is not proper for the CDA to be spending village funds researching titles. Tom Whowell stated that title companies are hired by people when they purchase property and it is a title company’s job to make sure the titles and deeds are in order. Turner stated that when the lakefront properties were purchased, attorneys would have looked at the title reports, especially if the sale was for substantial properties such as the lakefront business properties. Turner stated that a review of those records will clarify the matter. Tom Whowell asked where the legal review would lead if the attorney comes back and gives the opinion that the village may have title to some of the property. Tom Whowell stated that with the legal problems the City of Lake Geneva is facing because of some of the actions of its elected officials, that the Village should be careful if it thinks that Gordy’s Group or Jamie and Carol Whowell would relinquish their legal rights to their properties. Tom Whowell asked how the matter has even become an issue and why the CDA would give the standing to the letter submitted by Loenneke. Tom Whowell stated that they have clear title to the properties and the riparian rights are clearly delineated in Village surveys. Tom Whowell stated that the unfounded accusations are causing damage to the reputations of Gordy’s and Chuck’s every time the matter is subject of a Village meeting. Tom Whowell stated that his family and their businesses are upstanding, civic-minded residents and operations that have been contributing to the Village for four generations. Tom Whowell stated that the personal attacks are not fair and it is not right to be allocating municipal funds on unfounded allegations levied by Loenneke. Turner stated that all the CDA is attempting to do is clear the matter up and get an opinion on paper that resolves the allegations that keep coming up. Turner stated that it is not a doomsday scenario unless something is discovered during the legal review. Kenny stated that the CDA board has a fair amount of spending power in its approved budget and he asked if the CDA was within its authority to fund a legal opinion. Turner stated that the funds are in the project budget. Hayden stated that the project budget was approved with the CDA budget at the beginning of the year. Carol Whowell stated that she has copies of the deed for her property and the lawsuit decision from the 1960s when a civil suit was filed against the Lakeview Subdivision. Carol Whowell stated that the legal decision in the 1960s did not include the Lake Street business properties or the Glenwood Springs property. Carol Whowell stated that legal decision regarding the Lakeview Subdivision property answered the question of riparian rights and asked why another legal opinion is now being sought. Carol Whowell asked if the Village was going to fund legal opinions in the future every time someone writes a letter. Spadoni stated that when proposals are filed with the Village for developments or zoning matters, the applicants have to sign cost recovery and reimburse the village for its expenses. Spadoni stated that the letter written by Loenneke has generated legal fees for the Whowell families and the CDA should have to provide cost recovery to them. Turner stated that the CDA has not requested any legal documents from the Whowell families and he suggested to them that they wait to hire attorneys until the review was completed because it may not be necessary. Thorpe stated that it is unrealistic for the Whowell families not to consult with an attorney if their land ownership rights are being questioned. Carol Whowell stated that if the Village is going to fund a legal review of lakefront riparian rights, the review should include the entire lakefront as a whole, not just the properties owned by the Whowell families. Carol Whowell stated that it is not fair for the village to discriminate against just their properties and the review seems like an attempt to steal their businesses and lakefront properties.

Adjournment

Chairman Turner/Commissioner Bliss 2nd made a MOTION to adjourn the CDA meeting at 7:07 pm, and the MOTION carried without negative vote.

Trustee Kenny/Trustee O’Connell 2nd made a MOTION to adjourn the Village Board meeting at 7:08 pm, and the MOTION carried without negative vote.

Minutes prepared by: Dennis L. Martin, village clerk

Note: These minutes are subject to further editing. Once approved by the Village Board and CDA, the official minutes will be kept on file at the Village Hall.

APPROVED: 8/4/2010 – CDA; 9/7/10 - VB