

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

SPECIAL JOINT SESSION of the COMMUNITY DEVELOPMENT AUTHORITY
with the VILLAGE BOARD OF TRUSTEES
and the
MONTHLY MEETING of the COMMUNITY DEVELOPMENT AUTHORITY

Wednesday, November 10, 2010

Chairman William Turner called the meeting of the CDA Board to order and Village President Arvid Petersen called the meeting of the Village Board to order at 6:00 pm in the Village Hall, 175 Valley View Drive, Fontana, Wisconsin.

CDA members present: Roll call: Chairman Turner, President Arvid Petersen, Cindy Wilson, Gail Hibbard, Bob Chanson, Jeff Fisk, Skip Bliss (arrived at 6:06 pm)

Village Board members present: Roll call: President Petersen, Cindy Wilson, George Spadoni, Tom McGreevy, Micki O'Connell, Peg Pollitt

Village Board member absent: Pat Kenny

Also present: Steve Beers, Joel Bikowski, Rallee Chupich, Rowdy Chupich, Wylde Chupich, Carola Coccia, Jim and Megan Feeney, Hank Gempeler, Administrator/Treasurer Kelly Hayden, Julie Ieronimo, Rob Ireland, Joe Kowalski, Library Director Nancy Krei, Robert Leibsle, Lou Loenneke, John Maier, Village Clerk Dennis Martin, Joseph McHugh, Harry Nelson, Building Inspector/Zoning Administrator Ron Nyman, Police Chief Steve Olson, Rick Pappas, Village Attorney Dale Thorpe, Geri Whowell, Shawn Whowell, Steele Whowell, Thomas G. Whowell, Thomas W. Whowell, Director of Public Works Craig Workman

Joint Village Board and CDA Presentation

Attorney Hank Gempeler Legal Review of Lake Street Road Width & Riparian Rights Research

Gempeler presented the report on his legal review of the officially recorded plats and deeds at the Walworth County Register of Deeds Office, which were accumulated by Chicago Title Company; of documents submitted by Bruce Jensen and other individuals; of documents submitted by the effected property owners and their attorneys; of the court decision and related documents in the 1970s' litigation Village of Fontana v. Hoag, which addressed the adjacent Lakeview subdivision; and of a lakefront survey completed by Ramaker in 2006. Gempeler stated that he also reviewed the various permit and approvals granted to the property owners by both the Village of Fontana and the Wisconsin Department of Natural Resources for various lakefront activities, as well as the property tax assessment records of the properties. Gempeler stated that his review of the documents that go back 160 years included recorded plats from 1890 and 1891, as well as government deed documents from the 1840s. Gempeler stated that to provide a legal review as to what determines property ownership and riparian rights and the width of Lake Street, he had to focus on the legally relevant documents that have been recorded at the Walworth County Register of Deeds Office. Gempeler stated that the narrative descriptions on the 1890 and 1891 plats both call for the lots in question to flow all the way to the lake and the low water mark; and the 1890 plat of Reids Park shows a 41-foot road being platted. Gempeler stated that the 1891 D.A. Reids Addition to Reids Park plat reaffirms the intent to create lakefront lots. Gempeler stated that Lot 1 of Block 6 of the plat is immediately adjacent to Lot 1 of Reids Park plat and the narrative call is similar in that it states in part, "more or less to Lake Geneva; then southeast along said lake." Gempeler stated that the most telling fact is the contrast that the Addition to Reids Park plat clearly dedicates a 66-foot right-of-way within Block 2, a right-of-way which is not shown in Lot 1 Block 6. Gempeler stated that this difference of depiction shows a clear intent not to dedicate a similar 66-foot right-of-way in Lot 1 of Block 6 adjacent to Lots 1-6 of the Reids Park plat. Gempeler stated that the title search conducted by Chicago Title Insurance Company demonstrates that all conveyances subsequent to the 1890 and 1891 plats are consistent with this interpretation; moreover, the Reids Park plat and the Addition to Reids Park plat were prepared by the same surveyor. Gempeler stated that the documents submitted by the Jensen group raise interesting questions; however, most of the documents are not of record and consist of copies of assessor's plats, transportation certificates, photos, renderings, maps and other anecdotal information which

are not determinative of whether the property owners hold the riparian rights of the respective properties. Gempeler stated that the documents most relevant to a determination of the riparian rights are found in the original granting deeds, the pre-1890 and 1891 conveyances, the 1890 Reids Park and 1891 Addition to Reids Park plats creating the parcels and the post-plat conveyances of those parcels. Gempeler stated that while it is possible that a court could arrive at a different conclusion, it is his determination that the weight of the relevant documents lead to the conclusion that the parcels run to the lake shore and as a result, the riparian rights are held by the individual property owners. Regarding the 1890 plat of Reids Park, Gempeler stated that the lots in question created by the recorded plat show lot lines to the low water line of Geneva Lake. Gempeler stated that by plotting the dimensions described in the 1890 plat narrative on the 2006 Ramaker survey, it confirms the outside boundaries of the platted land run to the shore of Geneva Lake, and the Ramaker survey also shows internal lot lines that run to the lake in dimensions consistent with the plat of Reids Park. Gempeler stated that Jensen contends that because the “stakes” are located short of the lake this suggests an intent to locate a 66-foot road running to the lakefront at that location; and if so, the Village owns the riparian rights. Gempeler stated that a road is shown on the plat of Reids Park, but at a 41-foot road width dimension; and secondly, for lake side property, the stakes are commonly located along a “meander line,” which is located short of the lake to avoid underwater stakes during high water. Gempeler stated that current state statutes require a meander line of not less than 20 feet from the ordinary high water mark of a lake. Gempeler states that he assumes that the placement of a meander line was customary practice among surveyors in 1890 and 1891. Gempeler stated that Jensen’s contention that the line constitutes a center line of a proposed right-of-way is not a reasonable interpretation of the plat. Gempeler stated that if it were a center line, it suggests that the platters intended an 82-foot right-of-way, the eastern 10 to 20 feet of which would be located well within Geneva Lake. Gempeler stated that the plat narrative also would have read, “to the center of the road” as it did in the Lakeview Plat if Jensen’s center line contention was a reasonable interpretation. Gempeler stated that going forward the Village could do nothing; the Village could prepare, approve and record an assessor’s plat confirming the existing road and property rights; or the Village or another interested party could initiate an action seeking a judicial determination of the question. Gempeler stated that Jensen and the other individuals who feel strongly about the matter also could commence an action against the Village for taking no action with respect to its suggested riparian rights, or against the property owners for impermissibly assuming public rights, or both. Gempeler stated that the Village could reasonably assume any challenges to the riparian rights of the property owners will be resisted by not only the title analysis conducted by Chicago Title Insurance Company, but also by claims of rights through adverse possession or constructive discontinuance of a portion of the road. Gempeler stated that the village is under no obligation to take further action with respect to these questions; and while it was not required, the CDA did commission the title search and legal analysis. Turner asked Gempeler and Gempeler confirmed that if it is the decision of the Village Board to pursue the drafting and approval of an assessor’s plat to record the dimensions of Lake Street, the 41-foot dimension of the street as described in the 1890 plat of Reids Park is a good place to start. Wilson asked Gempeler to further explain his position that Jensen’s interpretation on the meandering stake line in the 1890 plat of Reids Park being a center line intended for an 82-foot right-of-way is not reasonable. Turner stated that the entire review process of the width of Lake Street and the riparian rights started when Ramaker was hired by the CDA to prepare a lakefront survey for future project planning and the surveyors could not locate any record of the Lake Street being platted. Turner stated that the Village eventually will have to reconstruct Lake Street even though the CDA Lakefront Building Proposal was denied in a September 15, 2010 referendum, and Lake Street should be platted through the assessor’s plat approval process or through an easement. Chanson stated that since the referendum was denied and the CDA is no longer planning the Lake Street reconstruction, the entire matter is no longer a CDA issue. Chanson stated that the CDA got involved during the planning process for the now denied project. Turner stated that he agrees with Chanson and the CDA just needs to consider a motion to accept the report as presented by Gempeler and to go on record stating that the CDA agrees with Gempeler’s findings. Turner stated that the matter should then be turned over to the Village Board to decide if any future action will be pursued. Spadoni stated that he agrees with Turner and if the CDA approves a motion to accept the legal review report and findings as presented by Gempeler, the Village Board should consider the same motion. Turner stated that there is no burning issue that requires immediate attention or the need for the Village Board to determine that night what future action it may or may not take. Turner stated that it is his recommendation that the Village Board use Gempeler’s legal review as the starting point to resolve the issue of how wide Lake Street is and to get the road platted and recorded.

Chairman Turner/Commissioner Chanson 2nd made a MOTION for the CDA to accept the report and findings as presented by Attorney Hank Gempeler, and the MOTION carried without negative vote.

Trustee Spadoni/Trustee McGreevy 2nd made a MOTION to accept the report and findings as presented by Attorney Hank Gempeler, and the MOTION carried without negative vote.

President Petersen stated that the road platting issue will be taken up by the Village Board at a future meeting. Lou Loenneke asked if members of the audience would be allowed to ask questions. Turner stated that the CDA and Village Board had concluded business on the item, but he allowed Loenneke to ask a question about the 41-foot dimension of the street as described in the 1890 plat of Reids Park and where an assessor's plat would locate the road. Turner replied that the assessor's plat proposal is an issue that will be taken up by the Village Board at a future meeting. Petersen stated that there were other matters that the Village Board had to consider that night before the CDA could conduct its monthly meeting and he moved on to the next agenda item.

Village Board Approval of 2011 Police Squad Car Purchase

Chief Olson stated that the village can save funds on the purchase price of the new squad car that is included in the 2011 published budget. Olson stated that in order to receive the discounted sales price of \$21,086 for the 2011 Ford Crown Victoria, it has to be ordered from the low bidder, Kunes Country Ford, by November 12, 2010. The new car would be delivered after January 15, 2011.

Trustee Spadoni/Trustee McGreevy 2nd made a MOTION to approve the \$21,086 purchase of a 2011 Ford Crown Victoria squad car from Kunes Country Ford, with the order to be placed prior to November 12, 2010, but the car not delivered until after January 15, 2011. The MOTION carried without negative vote.

Village Board Approval of Invoice for Police Squad Car Repairs

Olson presented a \$1,201 estimate for accident repairs to the 2009 Ford Crown Victoria submitted by Al's Auto Body & Arboretum, Walworth. The Village's automobile insurance policy has a \$5,000 deductible level.

Trustee Spadoni/Trustee McGreevy 2nd made a MOTION to approve the \$1,201 estimate for accident repairs to the 2009 Ford Crown Victoria submitted by Al's Auto Body & Arboretum, Walworth, and the MOTION carried without negative vote.

Village Board Adjournment

Trustee Spadoni/Trustee O'Connell 2nd made a MOTION to adjourn the meeting of the Village Board at 6:39 pm, and the MOTION carried without negative vote.

CDA Chairman Turner called for a five-minute recess.

Visitors Heard

None

Announcements

1. Public Works Committee Meeting – **Saturday, November 13, 2010, 8:00 am**
2. Police and Fire Commission Meeting – **Saturday, November 13, 2010, 9:00 am**
3. Protection Committee Meeting – **Monday, November 15, 2010, 5:45 pm**
4. 2011 Budget Public Hearing – **Monday, November 15, 2010, 6:30 pm**
5. Library Board Meeting – **Wednesday, November 17, 2010, 10:00 am**
6. Plan Commission Staff Meeting – **Wednesday, November 17, 2010, 1:00 pm**
7. Park Commission Meeting – **Wednesday, November 17, 2010, 6:00 pm**
8. Village Hall & Public Library Closed for Thanksgiving Holiday – **Thursday-Saturday, November 25-27, 2010**
9. Plan Commission Monthly Meeting – **Monday, November 29, 2010, 5:30 pm**
10. Village Board Monthly Meeting – **Monday, December 6, 2010, 6:00 pm**

Approval of Minutes for October 6, 2010

Commissioner/Commissioner Bliss 2nd made a MOTION to approve the minutes as submitted for the meeting held October 6, 2010, and the MOTION carried without negative vote.

Approval of Current Payables

Commissioner Chanson/Commissioner Bliss 2nd made a MOTION to approve the payables as submitted, and the MOTION carried without negative vote.

Finance Report – Administrator/Treasurer Hayden

TIF Increment Appeal to Wisconsin DOR – Update

Hayden stated that the appeal was filed with the Wisconsin Department of Revenue prior to the deadline and the DOR has 30 days to respond, which is on or before November 15, 2010. Hayden stated that she was informed that the DOR will appoint an attorney to handle the appeal or it will make a ruling; however, she has not received any other contact from the DOR other than

acknowledgement of the filing of the appeal. Bliss asked if the League of Wisconsin Municipalities or any other municipalities have joined the Village of Fontana with the appeal of the new DOR method to annually certify the increment value of a TID. Petersen stated that he has talked to the League director, and the League is not getting involved at this time as the valuation determination methodology change actually had a positive impact for some municipalities and a negative impact on others. Petersen stated that the League director advised him to wait until after the election to seek assistance from the state legislators representing the Village of Fontana and to keep the League updated on Fontana's appeal progress. Bliss stated that the Village of Fontana should try to develop a network of support from other municipalities in the same negative situation. A discussion followed on Jim Mann's previous statement that Ehlers and Associates would provide a list of its other municipal clients facing the same situation as the Village of Fontana. Turner stated that Ehlers and Associates has not provided the information and the firm is now reluctant to do so. Bliss stated that the Village needs to get the message to other municipalities of the DOR's change in methodology for the annual TID increment certification and its negative impact on tax increment financing, how it adversely affected Fontana's TID, that the Village has filed an appeal with the state and that other municipal officials should contact the Village of Fontana if they want to join the fight. Turner stated that he agrees with Bliss. Hayden stated that she will post the information on websites for municipalities and municipal officials.

Update/Review – Full Accounting Statement & TIF Revenue Increment Projections

Turner stated that the projections have not yet been revised since the DOR notification of the severe decrease in the certified value of the TID. The spreadsheet will be emailed after it is revised.

TID #1 Projects – Public Works Director Workman

TIF Project Maintenance Activity Report

The updated list was distributed. Wilson stated that the Park Commission is considering some changes to the current landscaping and water fountain at the Porter Court Plaza, and some landscaping changes at the beach house.

Direction on Underground Burial of Remaining Lakefront Utility Lines

Turner stated that the CDA was going to fund the boring for a conduit to run underground utility lines under the channel from Abbey harbor into Geneva Lake; however, the CDA currently does not have any funds available because of the Wisconsin DOR increment certification decrease.

President Petersen/Commissioner Hibbard 2nd made a MOTION to set aside the project until the funds are available, and the MOTION carried without negative vote.

General Business

RFPs for 138 Fontana Boulevard Development Site and Duck Pond Development Site – Update

Turner stated that staff has met with Brian Pollard and Eric Nyman with regard to submitting an RFP for the 138 Fontana Boulevard site. The RFPs for the 138 Fontana Boulevard site are due Wednesday, December 1, 2010 at 4:00 pm. Martin will distribute any RFPs submitted prior to the next meeting of the CDA. The RFP for the Duck Pond development site is getting updated with new aerial images and the submission deadline has been moved back to Tuesday, February 1, 2010 at 4:00 pm. Wilson stated that she will also be making other modifications to the RFP to help attract more responses and it will be issued in mid-December.

Big Foot Country Club Development Agreement Update

Turner stated that the members should have received copies of the letter drafted and sent out by Workman earlier this month to Big Foot Country Club representatives Greg Trapani and Terry Daniels. Another meeting with Petersen, Hayden and Trapani has been scheduled for Friday to discuss the letter. Petersen stated that Daniels is no longer representing the country club in the meetings regarding the storm water management issues. Turner stated that the CDA was initially only considering funding the creation of a new storm water settlement pond behind the 16th green of the Big Foot Country Club's golf course; however, the DNR has ruled that the area is a wetland and nothing can be constructed in the area. Turner stated that the village has proposed to maintain the area as a vegetated wetland to provide extra storm water management. Following discussion, the

CDA members directed staff to postpone the meeting with Trapani until Workman can also be in attendance.

Commissioner Appointments for Expiring Terms of Bill Turner and Gail Hibbard

President Petersen/Commissioner Chanson 2nd made a MOTION to recommend the reappointment to four-year terms of Bill Turner and Gail Hibbard, and the MOTION carried without negative vote.

Village Board Report – President Petersen

Petersen stated that he had nothing new to report that had not already been addressed.

Lakefront & Harbor Report – Commissioner Chanson

Chanson stated that the committee has discussed at recent meetings the desire of some officials to find parking solutions for boat trailers when the lot is filled. Chanson stated that the CDA made the proposal a few years ago to reduce the total number of spaces in a reconstructed boat trailer parking lot, and the proposal was approved and constructed as part of the Third Avenue Reconstruction Project. Chanson stated that the lakefront employees have indicated that the goal of reducing congestion at the launch has been accomplished since the total number of parking stalls was reduced, but now the initial goal is not being mentioned when discussions have centered on generating more revenue for the Village. Turner stated that it is not the Village of Fontana's responsibility to make sure everybody can launch a boat on Geneva Lake, and when the lot is full, there should be no other launches allowed until a space has opened.

Park Commission Report – Trustee Wilson

Wilson stated that Gail Hibbard has offered to fill the open position on the Park Commission. Wilson also commended Hibbard for her hard work in coordinating and organizing the annual seed sowing event at the Duck Pond Recreation Area native prairie restoration area. This year's event is scheduled for Saturday, November 13, 2010 beginning at 1:00 pm at the Village Hall. Hibbard stated that thanks to the seed harvesting work of the Garden Club members in her volunteer work group, the Village will only have to spend \$500 on seeds this year – and the \$500 is going to be reimbursed by the Garden Club. Turner stated that the Village of Fontana can be proud of the beautiful native grasses that are flourishing at the Duck Pond and he complimented Tom Vanderpoel and Hibbard for their great work.

Confirm Quorum & Dates for Upcoming Meetings

The next meeting date is scheduled for Wednesday, December 1, 2010; however, following discussion the CDA members were in consensus that there is no pressing reason to hold a monthly meeting in December.

Commissioner Chanson/Chairman Turner 2nd made a MOTION to cancel the December 2010 monthly CDA meeting unless something important comes up, and the MOTION carried without negative vote.

Agenda Item Requests

None

Adjournment

Commissioner Chanson/President Petersen 2nd made a MOTION to adjourn the CDA meeting at 7:14 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 CDA and Village Board, the official minutes will be kept on file at the Village Hall.

APPROVED: 12/6/10 – VB; 1/5/11 – CDA