

CITY OF DELAFIELD COMMON COUNCIL MINUTES

CALL MEETING TO ORDER

Mayor Craig called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

ROLL CALL

Present

Absent

Mayor Paul Craig
Jeff Krickhahn, Ald.
Phil Schuman, Ald.
Erv Sadowski, Ald.
Mike Roberts, Ald.
Marilyn Gardner, Ald.
Linda Kuklinski, Ald.
Don Swain, Ald.
Matt Carlson, Administrator
Marilyn Czubkowski, Clerk

Also Present

City Attorney Timothy Lovett

Items listed under the Consent Agenda are considered in one motion unless a Common Council Member requests that an item be removed from the Consent Agenda.

- 1. APPROVE MINUTES OF MARCH 7, 2005 MEETING

E. SADOWSKI MOTIONED TO APPROVE THE MINUTES OF THE MARCH 7, 2005 MEETING AS PRESENTED. P. SCHUMAN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

(see motion below the first Citizen Comment)

- 2. CITIZEN'S COMMENTS ON ITEMS PERTAINING TO THIS AGENDA.

Mary Zahorik, 1948 West Shore Drive – Addressed the minutes of the March 7th meeting that were just approved. She stated that whether by omission or design, the minutes do not reflect Jim Zahorik’s idea of abandonment of the municipal well on 83 and I94 which would save the City \$1.5 million. Mayor Craig asked if this was the only correction that she would have. She stated that

CITY OF DELAFIELD COMMON COUNCIL MINUTES

it was possible that some of the other issues were omitted, she did not know. She asked that the record be set straight and that at no time has Jim Zahorik nor she talked about their property taxes as stated by the City Administrator, Matt Carlson. Rather, she had only spoken about citizens who are retired and are on fixed incomes having to pay an additional \$1,000 - \$3,000 more in property taxes for 2004. She stated that Mr. Carlson spoke about the City's low tax rate which really means nothing. She continued that the true indicator of how we are controlling spending is not the tax rate but the tax levy. She asked if it was true that the tax levy in 2004 went up 8%. Mayor Craig stated that overall this was true. M. Zahorik asked that it be noted that in the minutes of the February 21, 2005 Common Council meeting that the Voice of the Electors concerning the Direct Legislation was on the agenda and at no time during the discussion was she allowed to speak. This occurred in spite of the fact that the Mayor assured her husband, Jim Zahorik, that they would be able to address the Common Council. Any other group, developer, or persons scheduled on the agenda has always had the opportunity to speak and ask or answer questions when the agenda item came up. She asked if this sounded like representative government. She did not think so. Mayor asked if she was implying that she did not talk to the Council at all that evening. M. Zahorik stated that she did not have an opportunity when the item came up on the agenda. She raised her hand during that time.

Mayor Craig stated that there was a suggestion of an addition to the minutes that were just approved. He asked the Council if they cared to revisit that motion. P. Schuman felt that the comments from the citizen would be reflected in tonight's minutes and asked if that would be sufficient. He stated that the minutes of March 7 did not have a reference from Mr. Zahorik about the water system at 83 and I94. E. Sadowski stated that in the minutes of March 7, 2005, on page 8 of 11, the last sentence read "Mayor Craig stated that to clarify, at the last meeting J. Zahorik did receive opportunity under Citizen's Comments to address the body and additionally, the exception was made to let him comment in the general discussion." L. Kuklinski stated that it should be referenced because he did hand out information at that time when he spoke and that it could be incorporated. It was clarified that the minutes should be adjusted.

M. GARDNER MOTIONED TO RECONSIDER THE APPROVAL OF THE MINUTES FROM THE MARCH 7, 2005. P. SCHUMAN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

E. SADOWSKI MOTIONED TO AMEND THE MINUTES TO INCLUDE MARY ZAHORIK'S COMMENTS FROM TONIGHT'S CITIZEN'S COMMENTS INTO THE FEBRUARY 21, 2005 AND THE MARCH 7, 2005 MINUTES TO REFLECT JIM AND MARY ZAHORIK COMMENTED. M. GARDNER SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

CITY OF DELAFIELD COMMON COUNCIL MINUTES

Jim Zahorik, 1948 West Shore Drive – He spoke as President of V.O.T.E, Voice of the Electors – “This evening, ladies and gentlemen, you have an agenda item having to do with Direct Legislation. Would I be correct that our group, and I as President, will not be allowed to address the council when that agenda item comes up?” Mayor Craig stated that it was his chance to talk right now. Mr. Zahorik continued, “Having heard that, yesterday I emailed to all of the alderpersons and to the mayor, a letter that I hadn’t seen in the aldermanic packet. It was a correspondence from Mr. George Dunst to Attorney J. Timothy Lovett. It is a letter dated March 11th. But in conversations with some of the alderpersons, I found out that, in fact, you are receipt of that letter. It had been emailed to you from Mr. Carlson. I hope you have had an opportunity to review it because of what is of significance is that Mr. Dunst is counsel for the State Board of Elections. My reason in addressing you this evening is that I spoke to District Attorney Paul Bucher this morning and as of this morning he has not received a response back from the City on his inquiries of our allegations that the business that occurred on the evening of the 21st of February was improperly noticed and therefore, as all of the dust settles, based on the evidence that was supplied to the District Attorney by vote, that particular activity according to Attorney Paul Bucher would be considered invalid. It doesn’t mean you can’t properly notice it and put it back on your agenda and go through the whole procedure, but that particular evening it was improperly noticed. That evening, Attorney Lovett explained to this Council what options you had, which were two: to accept the direct legislation as it is, put it on our books, or put to the electorate. But then future discussion, is there another situation that could evolve that would make the direct legislation not effective or would negate the direct legislation? It would be that if you had something on your books. That’s true. That’s one of the four things that the courts look at; one of the four reasons why direct legislation could not be used. But the filing of the direct legislation is what is critical. This is a response to Attorney Lovett. ‘As I explained above, I told Mr. Zahorik that in my opinion,’ ... now this is strictly an opinion of counsel of the Board of Elections. The date of offering for filing a petition for direct legislation was the critical date with affixing the existence or nonexistence of conflicting city or village legislation. V.O.T.E, the Voice of the Electors, filed with the City Clerk a campaign registration on February 11, 2005. On February 21, 2005 we presented the City Clerk with 566 signatures at 12:30 in the afternoon. It was filed ten days earlier. It was only at the eleventh hours, at 11:20 at night, that this Council finally voted on a similar ordinance. Today I spoke today with Attorney Christopher Blythe who pled this case at the Supreme Court level and asked him for an opinion. He is now with the Department of Justice and his opinion is that we would prevail if we are forced to pursue Writ of Mandamus which is the same thing that happened out in Mt. Horeb. I share this with you because I presented each and every one of you, I hand carried to your homes, that Supreme Court decision six days before February 21 so you could review it and see what that group of people went through. Now it’s been brought up by my wife and others that we felt that we didn’t have representative government here. In fact, the Mayor, within the last five days called me and expressed that; that he, in his heart, he just felt that how could we say something like that. Well, I said, I didn’t say it. It was my wife. And my initial thought was to counsel my wife. Why would she

CITY OF DELAFIELD COMMON COUNCIL MINUTES

say that? You all know my wife and she speaks from the heart. And we are not here because we have any type of agenda. We're here so that people in this City have an opportunity to voice, to be heard. When 566 people sign a petition for direct legislation and the Common Council finds it fit to try to negate that, I guess I am in the same court as my wife, not by marriage, but by common ideas that those 566 people are not being heard. There is no other way of looking at it. It's not 566 people from our aldermanic district, or from any of the other six. It's a cross section of this city of people that signed in a very short period of time. When you address this agenda item this evening remember that number one, you want to maintain credibility and respect in this community. And if it is so determined that the work that was done on February 21st in fact, violates the law, as we are being led to believe right now by the District Attorney, awaiting the response from your legal counsel, and that in fact, that ordinance that was formed to try to negate, leaves a very bad taste in everybody's mouth. I respect each one of you up here on this Council. If I didn't, I wouldn't waste my time talking to you. But if we talk about respect, and we talk about representative government, I believe the people should be heard. If in your hearts you feel this is just one way out on the right side or left side group, then put it to the electorate as Section 9.2 stipulates. Thank you for your attention. I apologize that we were forced to do certain things, but what's right is right and we did what was right. Thank you."

P. SCHUMAN MOTIONED TO CLOSE CITIZEN'S COMMENTS. M. ROBERTS SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

3. CONSENT AGENDA

None.

4. COMMITTEE REPORTS

a. LICENSES

Two Year Bartender License

- Ryan J. Demers, N59 W24050 Clover Drive, #202, Sussex; Water Street Brewery Lake Country.

M. ROBERTS MOTIONED TO APPROVE. P. SCHUMAN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

b. PLAN COMMISSION

The next meeting will be this Wednesday, March 23, 2005 at 7 p.m.

c. LAKE WELFARE COMMITTEE (DRAFT MINUTES OF MEETING DATED MARCH 9, 2005 INCLUDED)

CITY OF DELAFIELD COMMON COUNCIL MINUTES

The Lake Welfare Committee met on March 9, 2005. They discussed the lake restoration project – it has not been moving as quickly as they would have liked due to some contractual problems with the consultant and they wanted to make sure that there was enough money in the budget to conduct the sediment analysis. They are looking into getting a grant from the Corp of Engineers. An RFP for shoreline restoration was discussed along with talking to other lakes groups in the area that are undertaking similar projects. The Mill Pond status was discussed. S. Headley attended the Town of Summit meeting. A review of the boat house code is taking place and drafts are available. A total of 53 responses were received from the buoy & boating survey; a review will take place at the next meeting in addition to being a topic at the spring meeting to be held on May 11, 2005 at the Fish Hatchery at 7 p.m. P. Schuman will attend the Wisconsin Association Lakes at the end of April. The effect that direct legislation would have on the lake restoration was discussed at length.

d. PARK AND RECREATION COMMISSION

A meeting will be scheduled.

e. PUBLIC WORKS

1. PAVING CONTRACT AWARDED TO WOLF PAVING COMPANY

D. SWAIN MOTIONED TO APPROVE. M. ROBERTS SECONDED THE MOTION. T. HAFNER STATED THAT THE CONTRACT FROM WOLF PAVING IS BEING PROPOSED IN ADDITION TO CHANGE ORDER #1 FOR A TOTAL CONTRACT AMOUNT OF \$339,297.40. HE CLARIFIED THAT THE MILWAUKEE STREET PUDDLING AREA WILL BE COMPLETELY CORRECTED. MAYOR CRAIG STATED THAT IN THE CONTRACT IT STATES THAT THERE IS MATERIAL THAT WILL BE REMOVED FROM THE PULVERIZED ROAD. ALL WERE IN FAVOR. MOTION CARRIED.

f. DEL-HART COMMISSION

The Del-Hart Commission met on March 15, 2005 and reviewed the punch list items on the project and allocation of contingency funds. The expansion project is being wrapped up. Signage will be brought forth in front of the Plan Commission meeting this Wednesday. L. Kuklinski stated that nothing has come to the commission on Faire Lakes and she asked if there was a timeline for it. M. Carlson will follow-up on this.

g. RECYCLING COMMITTEE

No report.

CITY OF DELAFIELD COMMON COUNCIL MINUTES

h. POLICE AND FIRE COMMISSION

No report.

i. LIBRARY BOARD

Minutes were distributed to the commissioners prior to the meeting. The next meeting will be held on April 12, 2005. M. Czubkowski will check to see if the minutes are on the website.

j. FINANCE ADVISORY BOARD

The next meeting will be held on April 11, 2005.

5. OLD BUSINESS

a. ACTION ON DIRECT LEGISLATION PETITION

Mayor Craig stated that he had a letter that he forwarded to Mr. Bucher dated March 10th explaining that Attorney Lovett would be the City's spokesperson. Attorney Lovett stated that he has been missing Mr. Bucher by telephone, but he will have a formal response filed on behalf of the City on Mr. Bucher's desk first thing tomorrow morning outlining in detail that, based on his analysis and his opinion to the City, the City is not in violation of the Open Meetings Law, that the notice that was on the February 21st agenda was sufficient, notified the public of an opportunity to inform the public as to what the topic was going to be. There are certain timelines that can play into all of this. The City noticed the agenda on approximately the 17th of February. At that point, the petition by Mr. Zahorik's group had not been filed with the City. The City had noticed it and the exact language was that the direct legislation was going to be considered and action may be taken. On the 21st Mr. Zahorik did file his petition at approximately 12:30. That evening the Council did act on a duly noticed item. Mr. Zahorik participated in that discussion both prior to the meeting as well as at the meeting. It is going to be argued to the DA that he did have actual notice and knowledge as a member of the public of the agenda item itself. The law as it stands right now does not say that the City must give exact detail of every item on every agenda item to the public or to the media. The City must give sufficient reasonable detail to the public and to the media. That is what the agenda did. The Stoughton case, one of the more recent ones, deals with a similar question as to the sufficiency of the language of the notice. He believes that this case is relevant here and is being pointed out again to Mr. Bucher. Mr. Bucher, to the best of Attorney Lovett's knowledge, has not contacted him for any information gathering and Attorney Lovett did not believe that Mr. Bucher had contacted any member of the Council for any information gathering as to what the Council did in noticing the item, what its intention was in noticing the item, or anything relevant to that discussion that evening, which also should be a

CITY OF DELAFIELD COMMON COUNCIL MINUTES

factor in his deliberations before coming out and saying to this City that it violated the law. Attorney Lovett will ask Mr. Bucher to explain his legal position, which he has not heard to date or seen to date. All Attorney Lovett has seen are pronouncements in the media from Mr. Bucher that the City is in violation of the open meetings law. Attorney Lovett felt that the City deserved an explanation as what his foundation is and Attorney Lovett will be giving him the City's position tomorrow morning.

E. Sadowski asked about the correspondence from George Dunst and he referenced the response on item #4: "What opinion did you or the Elections Board render to Mr. Zahorik as to the validity of the City of Delafield's ability to adopt an ordinance dealing with capital expenditures?" The response is "the date of offering for a filing of a petition for direct legislation was the critical date for fixing the existence or nonexistence of a conflicting city or village legislation." E. Sadowski asked if it wasn't certified, how do you know if there is a petition that is legal. Attorney Lovett stated that if you read into Mr. Dunst's answer to his question, he emphasizes throughout his letter back to him that it is "his opinion." It is not the Election Board's opinion. Attorney Lovett felt that this needed to be made clear. The Election Board is not issuing an opinion that the City cannot do what it is doing by adopting an ordinance, it is Mr. Dunst's opinion as legal counsel to Mr. Zahorik. It is his opinion, not the official advisory opinion of the Board. Attorney Lovett stated that his memorandum to the Council prior to this process is that prior to the certification of the direct legislation petition, this Council does not have a formal petition before it. The petition was filed on the 21st. The clerk has a statutory duty to go through and certify that petition to you as to form and to sufficiency. That is a mandatory obligation that she has to undertake before it reaches you. Prior to that, you have no formal action to take on a petition. P. Schuman asked Attorney Lovett if it was his legal opinion that the effective time is when the City Clerk certifies the petition as being a valid petition and up to that time we can pass any laws the City wanted to. Attorney Lovett confirmed that this was his opinion and that he believed that it was supported in his initial memorandum to the alderpersons by the League of Municipalities' opinion from 1991. There is foundation and another opinion on which he based his advice to the City. Attorney Lovett has not been contacted by any legal counsel. Mayor Craig stated that J. Zahorik notified him and Mayor Craig thought that J. Zahorik filed a notice with M. Carlson that they wanted this on the agenda on February 17, 2005. It was clarified that this was just the notice, not the petition. P. Schuman stated that the City needs to follow the advice of its legal counsel. E. Sadowski asked if it was correct to say that the ordinance that was created on February 21, Ordinance #536, to create Chapter 3.14 of the City of Delafield Municipal Code, requiring referenda for City capital expenditures is a valid ordinance that the City has passed and this would conflict with any direct legislation that may have been proposed. Attorney Lovett confirmed that in his opinion, this was

CITY OF DELAFIELD COMMON COUNCIL MINUTES

correct. Mayor Craig asked if Attorney Lovett had been in contact with the League of Municipalities to verify his thoughts. Attorney Lovett stated that he has had one phone conversation with legal counsel at the League of Municipalities just prior to the last council meeting as to the action that the City may have taken that evening in terms of rejecting the direct legislation petition. His opinion to the City was confirmed by the attorney for the League. L. Kuklinski asked if his opinion was further submitted by language in the Wisconsin State Statutes. Attorney Lovett stated that it was based on the exceptions; it is based on the League of Municipalities' opinion. L. Kuklinski stated that they very specifically had a conversation about the certification date and that really being the critical date versus the time when the petition either was submitted or distributed. Attorney Lovett confirmed that this was correct. He believed that it was the certification date that triggers whether you are able to pass a competing ordinance. That had not happened as of the time or date – the petition had not been certified to the City. If you look at Mr. Dunst's correspondence and what Mr. Zahorik is relying on as an opinion, Mr. Dunst does state that that is an open question. That is not resolved, it solely his opinion. There is other authority.

E. SADOWSKI MOTIONED THAT BASED ON ATTORNEY LOVETT'S OPINION AND HIS LEGAL COUNSEL, TO REJECT THE PETITION AS AN INAPPROPRIATE SUBJECT FOR DIRECT LEGISLATION BASED UPON A FINDING THAT ONE OF THE EXCEPTIONS THAT HAVE BEEN HELD TO BE IMPLICIT IN STATE STATUTE 9.20 WISCONSIN STATUTES EXIST IN THIS CASE, NAMELY THE PROPOSED DIRECT LEGISLATION WOULD BE IN CONFLICT WITH AN EXISTING ORDINANCE AND WOULD REPEAL AN EXISTING ORDINANCE. P. SCHUMAN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

6. MAYOR'S REPORT

- Thanked the American Legion Auxiliary for having the Easter egg hunt
- Conducted office hours
- Attended the Northwest Planning meeting
- Attended Del-Hart meeting
- Judged a Pinewood Derby
- Had conversations with M. Carlson, council members, and citizens

7. NEW BUSINESS

- a. APPROVE LETTER TO GOVERNOR JIM DOYLE REGARDING THE VETO OF TAX LEVY LIMITS.

Discussion took place regarding the general content of the letter. It was felt that the controls should be at the lower levels of government. M. Carlson stated that the point being made is that those people who control the lives of people and who live in the community sit around this

CITY OF DELAFIELD COMMON COUNCIL MINUTES

table. The Common Council should be empowered to develop any kind of revenue producing structure that they believe is important. Discussion took place. It was suggested to change the last sentence to read: "In conclusion, we encourage you to veto tax levy limits and empower local communities to adopt tax strategies that each community deems appropriate." Mayor Craig stated that the budget was a very honest budget.

The first sentence of the letter was reviewed. L. Kuklinski stated that the property tax levy limit should be controlled at the local level, not the state level.

P. SCHUMAN MOTIONED THAT THE LETTER BE SENT OUT WITH THE MODIFICATIONS INDICATED. L. KUKLINSKI SECONDED THE MOTION. SIX WERE IN FAVOR. E. SADOWSKI OPPOSED. MOTION CARRIED.

- b. ORDINANCE 539 – REPEALING AND RECREATING SECTION 14.04 "OCCUPANCY BONDS" OF CHAPTER 14

M. Carlson stated that this gives the city additional security with regard to occupancy bonds and that they are refunded to the person or business that gives the city the check. This is not money that the people lose, but is posted as a bond that they get back. It is to ensure that all code requirements are met and completed within municipal code.

E. SADOWSKI MOTIONED TO APPROVE ORDINANCE 539. D. SWAIN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

8. ADMINISTRATOR'S REPORT

- Work is taking place to revise water rates - this was triggered by correspondence from the Kettle Ridge Condominiums. A public workshop will be held.
- Attended a We Energies meeting regarding upcoming projects in the We Energies service area. The lattice towers on Wells Street west of Genesee Street will be coming down.
- Has been working with M. Czubkowski with open records request compliance
- On April 13 from 5pm – 8 pm the new developer of the Village Square will host an open house at Lake Country School cafeteria to talk about their program and plans and to meet with any interested parties.

CITY OF DELAFIELD COMMON COUNCIL MINUTES

9. CLERK'S REPORT

- a. NOTICE OF PUBLIC HEARING FOR CONDITIONAL USE - DELAFIELD PRESBYTERIAN CHURCH (March 23, 2005)

- b. MEMO REGARDING HEARINGS REQUIRED AND NOTIFICATION PROCESS

This was in response to L. Kuklinski's request. A memo was included in the commissioner's packets.

- c. MEMO REGARDING CITY E-MAIL ADDRESSES INFORMATION.

Council members and mayor are being assigned City email addresses. Information on how to receive emails was included in the packets. The new email addresses will be effective March 22, 2005.

- d. LEAGUE OF WISCONSIN MUNICIPALITIES 2005 NEW MUNICIPAL OFFICIALS WORKSHOP

Alderspersons were encouraged to attend and should contact M. Czubkowski if they are interested in participating.

- e. LEAGUE OF WISCONSIN MUNICIPALITIES 2005 REGIONAL DINNER MEETINGS

Same as above.

10. FINANCIAL REPORT

- a. APPROVE VOUCHER LIST

E. SADOWSKI MOTIONED TO APPROVE. D. SWAIN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

- b. TREASURER'S REPORT - FEBRUARY, 2005

L. Kuklinski clarified that when negative numbers appear it does not mean that there is an overdraft in the City's account. M. Czubkowski stated that the checks are never sent out until after the Council approves them.

L. KUKLINSKI MOTIONED TO APPROVE THE FEBRUARY 2005 TREASURER'S REPORT. D. SWAIN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

CITY OF DELAFIELD COMMON COUNCIL MINUTES

11. CORRESPONDENCE

- a. Report from Southeastern Wisconsin Regional Planning Commission (SEWRPC) dated March, 2005 regarding population and economy of the Region (full report at City Hall for review)
- b. Letter from Waukesha County Department of Parks and Land Use dated March 14, 2005 regarding new paper recycling program.
- c. WE Energies letter dated March 17, 2005 regarding Genesee Street project.
- d. Letter to Journal Communications dated March 1, 2005 from Brian Faracy regarding Direct Legislation.

12. ADJOURNMENT

E. SADOWSKI MOTIONED TO ADJOURN FROM THE MEETING. P. SCHUMAN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED. THE MEETING ADJOURNED AT 8:02 P.M.

Respectfully submitted:

Minutes Prepared By:

Marilyn Czubkowski, CMC
City Clerk/Treasurer

Accurate Business Communications LLC