

CITY OF DELAFIELD COMMON COUNCIL MINUTES

CALL COMMON COUNCIL MEETING TO ORDER

Mayor McAleer called the meeting to order at 7:00 P.M.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

ROLL CALL

Present

Absent

Mayor Ed McAleer
Jeff Krickhahn, Ald.
Beth Leonard, Ald.
Erv Sadowski, Ald.
Michele DeYoe, Ald.
Gerald MacDougall, Ald.
Lynn Morrison, Ald.
Ron Miskelley, Ald.
Tim Schuenke, Administrator

Also present;

Jim Hammes, City Attorney
Phil Cosson, Financial Consultant

SPECIAL ORDER OF BUSINESS:

A. DISCUSSION AND ACTION TO AWARD PRIME CONTRACT #1 TO C.D. SMITH PER THEIR BID IN AN AMOUNT OF \$6,334,800.

T. Schuenke explained bids had been received on the building project for the City Hall and Public Works campus. Prior to any action being taken by the Council, he wanted to personally thank the City Staff and all Staff department heads for their diligence and effort meeting goals to keep the project on or under budget. He thought the City was on target in doing so. In addition, he thanked Bray Architects, Matt Wohlfert and Brad Fokert, and the team from Mortenson Construction as well. He thought all parties did a terrific job in getting to this point in the process. He went on to note a new capital budget sheet had been prepared as furniture for the Public Works facility had been inadvertently left off of the information distributed via Council packet. There were no other changes or corrections and the project was currently anticipated to be completed approximately one million dollars under budget.

R. Miskelley questioned whether the additional 5000 square feet removed from the plans could potentially be added back into the project as a result of the budgeting. T. Schuenke explained it was not anticipated at this time. Mayor McAleer also explained costs would be required for redesign and rebidding would become necessary as a result.

B. LEONARD MOTIONED TO AWARD PRIME CONTRACT #1 TO C.D. SMITH PER THEIR BID IN AN AMOUNT OF \$6,334,800. E. SADOWSKI SECONDED THE MOTION. R. MISKELLEY STATED SINCE HE DID NOT KNOW ANYTHING ABOUT THE CONTRACTS HE WOULD VOTE NAY ON ALL OF

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THEM. THERE WAS NO FURTHER DISCUSSION. SIX WERE IN FAVOR. R. MISKELLEY VOTED NAY. MOTION CARRIED.

- B. DISCUSSION AND ACTION TO AWARD PRIME CONTRACT #2 TO J&H HEATING PER THEIR BID IN AN AMOUNT OF \$1,768,100.**

E. SADOWSKI MOTIONED TO AWARD PRIME CONTRACT #2 TO J&H HEATING PER THEIR BID IN AN AMOUNT OF \$1,768,100. M. DEYOE SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. SIX WERE IN FAVOR. R. MISKELLEY VOTED NAY. MOTION CARRIED.

- C. DISCUSSION AND ACTION TO AWARD PRIME CONTRACT #3 TO UIHLEIN ELECTRIC PER THEIR BID IN AN AMOUNT OF \$1,058,604.**

E. SADOWSKI MOTIONED TO AWARD PRIME CONTRACT #3 TO UIHLEIN ELECTRIC PER THEIR BID IN AN AMOUNT OF \$1,058,604. J. KRICKHAHN SECONDED THE MOTION. R. MISKELLEY STATED HE WOULD HAVE TO SAY AGAIN THAT SINCE HE HAD NO DISCUSSION ON THIS MOTION AND HAD ONLY SEEN IT ON THE AGENDA; HE WOULD HAVE TO VOTE NO. THERE WAS NO FURTHER DISCUSSION. SIX WERE IN FAVOR. R. MISKELLEY VOTED NAY. MOTION CARRIED.

M. Wohlfert stated he thought the Staff department heads deserved a lot of credit in moving the project forward and he thanked them for working with Bray Architects on the project.

E. Sadowski expressed sincere gratitude to City Staff and Bray Architects for a great job done. Mayor McAleer agreed, and thanked the team from Mortenson Construction also.

1. APPROVE MINUTES OF MARCH 16, 2009 COMMON COUNCIL MEETING

G. MACDOUGALL MOTIONED TO APPROVE THE MARCH 16, 2009 COMMON COUNCIL MEETING MINUTES AS PRESENTED. E. SADOWSKI SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. SIX WERE IN FAVOR. R. MISKELLEY ABSTAINED. MOTION CARRIED.

2. CITIZEN'S COMMENTS FOR ITEMS NOT ON THE AGENDA

Gerry Flakus, 293 Fieldstone Road, stated he was present as a member of Renew Wisconsin, a non-profit advocacy group supporting renewable energy in Wisconsin. This group recently sponsored a Renewable Energy conference in Milwaukee. At that conference, he learned of the opportunity for various municipalities to receive grants for renewable energy efforts as part of the American Recovery and Reinvestment Act of 2009. With the new construction of the new City Hall and Public Works buildings, the City had the opportunity to utilize these grants to reduce energy and emissions. He shared various possibilities for consideration of energy savings as part of the grant program. He stated G. MacDougall had suggested he present this information at this meeting. He requested the Council seriously consider the cost savings benefits available for energy conservation and provided details about this program.

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Mayor McAleer stated he wished the grants had been available in the last year when the building designs were taking place. G. Flakus stated the grant opportunities allowed for retrofitting. G. MacDougall also suggested the grant opportunities still be examined for possible savings at this time as there were many aspects of the grant that could qualify with the current construction stage. Mayor McAleer agreed.

James Siefert, 1708 Bark River Drive, stated he was present to provide comment on the dredging project, specifically the Bark River inlet area. He thought one area overlooked was the Bark River inlet area as it was not a manmade channel and had been provided by nature. It was part of a state waterway; however, the funding formulas were figured as if it were a manmade channel. As such, he thought the funding should be treated accordingly as presented in the early planning stages when the City would begin managing the project with the anticipation of grant monies for the project. Through his personal research, he noted the difference in costs between private dredging and the proposed project costs currently. With regard to the Bark River inlet, he thought the current project was creating an inlake silt trap. He thought this was wrong as many homeowners had frontage in that area and the proposed project would provide that frontage with a silt trap. He also thought an inlake silt trap was not silt prevention and he provided an alternate site for a retention pond that could be built upriver. He thought he understood the current project included the inlet area and would require "redredging" in 10 years however; he thought this would be less than that. In addition, with the moratorium on weed cutting, he was very concerned.

Mayor McAleer explained the Lake Welfare Committee was considering such issues as part of the project. J. Siefert stated he thought the Committee was finished considering this information as discussions were being held on funding alternatives at this time. In addition, he noted the lack of space in the meeting room where the Committee was meeting this evening. B. Leonard stated T. Hafner should be contacting J. Siefert on this matter. Mayor McAleer stated the Council would continue to look for a recommendation on this matter from the Lake Welfare Committee in the future. J. Siefert stated he would leave copies of his letter of concern with Council members to provide additional detail.

Margaret Zerwekh, 500 Mill Road, stated she thought the City of Delafield and perhaps the Town of Delafield should pay for the dredging of Lake Nagawicka. She stated while she did not live on the lake, the water belonged to everyone and she would be willing to participate in payment of the dredging along with all other residents.

CITIZEN'S COMMENTS FOR ITEMS ON THE AGENDA

Dorothy Verhine, 2116 N. Peninsula Road, Oconomowoc, stated she was present to speak to Item 5B and had wanted the Bark River restored for years. She represented herself in this matter as she wanted to be able to canoe down the Bark River from Lake Nagawicka to her house on Nemahbin Lake.

Audrey Kellner, 1116 West Devonshire Road, stated she would like to address Item 5B on the Agenda this evening. She stated she thought this item was ironic as the City did not own the Roller Mill Dam, nor did the people who have frontage on the river. The dam belonged to Margaret Zerwekh and thus, she thought that meant the dam would have to be acquired in some way and M. Zerwekh had clearly stated she was not

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interested in selling the dam and she respected M. Zerwekh reasons for doing so. She noted the other option in this matter was the use of eminent domain and that would come with legal expense and aggravation in addition to disruption of the friendly atmosphere of the City. She had lived here for 46 years and her parents moved here 60 years ago. As a result, she had lived in the City through the growth of the City and had participated in many committees in providing growth to the Kettle Moraine area. She thought the proposed resolution was out of place as the City did not have ownership of the dam. With acquisition of the dam, and responsibility for bonding to do so based on the reliance of property taxes and assessments from the people that live in those properties, she was not certain the people would continue to live there for the length of the bonding due to the economic times. She thought it was an uncertain time in the economy and it did not make sense to accept additional bonding costs and expenses for this resolution. Further, the proposed lake district should not include the City as Cushing Park had frontage on the river. In addition, there was no guarantee that the City wouldn't have to back the bonds. She would like to see the river restored to a free flowing river. With regard to the pond, it had always been silt filled and full of carp. She would like to see the river restored with a natural flow, natural grasses and native flowers along the banks to the Nemahbins. She asked that consideration be given to the long term efforts that were being requested. She suggested the landowners surrounding the Mill Pond make "lemonade" from the lemons currently in place as a free flowing river with native grasses and flowers would be theirs with the removal of the dam.

Jim Zahorik, 1948 West Shore Drive, stated he wanted to compliment Staff responsible for getting epackets on the Internet as it allowed for Council transparency in action and he was proud to be part of the City because of the efforts to do so. He noted the wording of the petition in the epacket regarding the attempts to secure the Mill Pond dam and that he had signed that petition in April of 2005. He noted the proposed resolution related to this matter and while he thought the creation of a lake district could be beneficial, he did not think it appropriate for the purpose that the resolution referred to. He thought all could see what M. Zerwekh could see years ago in that a beautiful river was running through it. With vegetation growing in that area, the stabilization of the silt would result. He also noted the word "control" was bothersome to him in the resolution as it would either have to be purchased or condemned through eminent domain. Eminent domain included a facet of common good, and he thought Mother Nature knew the common good in this matter, prior to the dam being installed for the purpose of generating electricity years ago. To take control of something would also mean to assume responsibility, and unfortunately in this case, the lake district would be involved in getting the dam reconstructed and then the City would take over the dam including its liability. He noted he was present with area emergency personnel in the last year when a portion of the dam failed and a portion of the peninsula between the two channels began to erode. He thought people downstream were concerned for loss of life at that time. In addition, he thought M. Zerwekh's position on this matter was clear and that she was worried nightly about the health of the people downstream was unfair. Planks were pulled at that time to avoid catastrophe. He further noted that information in the epacket included letters from attorneys and the Department of the Natural Resources (DNR) that summarized that the request from the City was without merit and according to state statute the decision should be made to proceed as directed by the DNR. He stated the Council had the ability to make the decision later this evening to possibly change the wording so that a lake district could be constructed and strike the words "take control of the dam" as the dam was not for sale. In addition, he stated M. Zerwekh owned the

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property, with rental property and residence on either side of the dam. No one would like to have their property divided and he thought no property owner deserved that kind of treatment especially M. Zerwekh as she had been a contributing party to the community for years and was well respected as a result.

Mayor McAleer stated the initiative was not a request from the City but had been requested by property owners to consider this resolution. J. Zahorik noted the Council had the power to defer this matter to Attorney Hammes and allow the lake district to be formed without Council involvement.

Jenny Pope, 1236 Mill Road, stated her residence was located one half mile from the Mill Pond. Having spoken to residents on the Mill Pond, she wanted to thank Alderman MacDougall for his efforts in representing the issues, concerns and options for resolution in this matter. She further stated she agreed with J. Zahorik in that the City should not become an owner of the dam as it exposed the City to too much potential liability. She thought this matter was a private issue between landowners and should be resolved through the courts. The City should not take ownership in any way and she was against the use of eminent domain. She appreciated G. MacDougall's efforts to represent the landowners on the Mill Pond; however, she was against the proposal.

Dan Fay, Attorney representing the Dauers, of 537 North Cushing, who were substantial owners on the Mill pond. He stated he had written to the Judge hearing this case to ask him to make the decision in this matter as the Dowers did not think this was an inland lake as defined by the state statutes and no public access was to be had except for Cushing Park and there was no ability to have a public launch at that location. His clients were interested in certainty in this matter. A lake district would create more uncertainty as they were concerned about how to pay for it. A large portion of the Dauers land was conservancy and there would be no increase in value with their land. If assessments were done on a per square foot basis they would be asked to pay more than their fair share without any increase in value. He thought the other landowners in this matter were asking the City to utilize the process of condemnation for their benefit. The DNR had already stated its position on this matter that included benefit for all with the dam to be abandoned. His clients agreed there needed to be an engineering plan in place to deal with the issue of silt, but that was a separate and distinct issue than dealing with a lake district.

Linda Holton, 485 Lillian Court, stated she was present to speak to the Roller Mill Dam issue. She noted the issue of eminent domain to be expanded and misused to the detriment of landowners and property rights. She thought consideration of its use was a dangerous precedent. She requested her input be heard as a taxpayer, and she was concerned about the collateral of the debt associated with taking over the dam. She also noted the City's attorney had raised concerns about the possible liabilities associated with the type of financing chosen to acquire the dam and the entire issue was without definitive conclusion and assurances for costs and protection of the taxpayer. While she sympathized with the neighbors regarding the loss of the pond, there would be a river and she gave credit to them for their willingness to pay for the repairs despite wanting to shift the future expense, maintenance, liability and silt control to the City. Furthermore, she credited M. Zerwekh with the ongoing willingness to incur the expense and liability attached to the ownership of the dam as there could have been many interim landowners that would have drawn the same conclusion as M. Zerwekh prior to this

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point in time. To label M. Zerwekh as consistently difficult or refusing to cooperate was unfair in her opinion. In addition, she noted, the responsibility of the dam belonged to M. Zerwekh and with the support of the DNR, she was acting responsibly with the abandonment of the dam in this case without diverting the responsibility for the dam to the taxpayer. She thought M. Zerwekh and her neighbors to have a great deal more in common than realized as neither side wanted to be responsible for future expenses and liability and she agreed with both sides in that she did not want it either with the facts presented.

E. SADOWSKI MOTIONED TO CLOSE CITIZENS' COMMENTS AT 7:53 P.M. G. MACDOUGALL SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

3. CONSENT AGENDA

J. KRICKHAHN MOTIONED TO APPROVE THE ITEMS ON THE CONSENT AGENDA. M. DEYOE SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

A. DELAFIELD SHRED DAY, WEDNESDAY, MAY 6, 2009, MUNICIPAL PARKING LOT FROM 10 AM TO 2 PM.

Approved. See above.

B. ORDINANCE 606, AN ORDINANCE UPDATING THE CITY OF DELAFIELD MUNICIPAL CODE.

Approved. See above.

C. DISPOSAL OF POLICE DEPARTMENT EQUIPMENT.

Approved. See above.

4. COMMITTEE REPORTS

A. LICENSES

1. BARTENDER LICENSE – 2 YEAR LICENSES TO EXPIRE JUNE 30, 2010.

- A. SUSAN SEXTON, WAUKESHA; DELAFIELD BREWHAUS
- B. ROBYN NICHOLS, MENOMONEE FALLS; DELAFIELD HOTEL/ANDREWS BAR & RESTAURANT
- C. ANDREA EUFINGER, DELAFIELD; MARTY'S PIZZA
- D. ERIC RADI, WAUKESHA; DELAFIELD BREWHAUS
- E. JONATHAN MASON, PEWAUKEE; DELAFIELD BREWHAUS
- F. JANE SCHUTTE, HARTLAND; DELAFIELD BREWHAUS
- G. ERIN MACIER, NASHOTAH, DELAFIELD BREWHAUS
- H. LISA WIECZOREK, NEW BERLIN; DELAFIELD BREWHAUS

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- I. BRAD DUERWACHTER, HARTLAND; ANDREW'S BAR & RESTAURANT
- J. SARA KAY WOELKERLING, WAUKESHA; DELAFIELD BREWHAUS
- K. MATTHEW TESCH, WALES; DELAFIELD HOTEL (ANDREW'S)
- L. CAITLYN HIGGINS, WAUKESHA; DELAFIELD BREWHAUS
- M. MELISSA BEYER, WEST ALLIS, WATER STREET BREWERY
- N. HOLLI SCHUSTER, OCONOMOWOC, WELLS STREET TAVERN
- O. NICHOLAS LEACH, DELAFIELD; WATER STREET BREWERY

M. DEYOE MOTIONED TO APPROVE THE TWO YEAR BARTENDER LICENSES. E. SADOWSKI SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

- 2. DISCUSSION AND ACTION ON REQUEST FROM BILL ISLER, FOR AN EXTENSION TO JUNE 30, 2009 FOR BENNY'S SEAFOOD "CLASS B" BEER AND CLASS "B" LIQUOR LICENSE.

L. Morrison requested clarification on the item. Discussion ensued regarding who retained the license and whether any action was required at this time. Attorney Hammes explained the business had ceased operations; however, a lease could be more easily facilitated for the restaurant space with a liquor license available, thus, the request had been initiated.

L. MORRISON MOTIONED TO APPROVE THE REQUEST FOR BILL ISLER, FOR AN EXTENSION TO JUNE 30, 2009 FOR BENNY'S SEAFOOD "CLASS B" BEER AND CLASS "B" LIQUOR LICENSE. J. KRICKHAHN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

B. PLAN COMMISSION

- 1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS.

B. Leonard explained Item B2 had been considered by the Plan Commission and unanimously approved as a minor change. Some improvements were being done to the athletic fields, as well as some other minor changes and completion of these projects was anticipated prior to the graduation ceremony on the grounds.

- 2. DISCUSSION AND ACTION ON RECOMMENDATION FROM PLAN COMMISSION TO APPROVE THE REVISED MASTER PLAN AND SITE PLAN AMENDMENT AS A MINOR CHANGE TO THE CONDITIONAL USE FOR **DELCO 0792.065.001, 1101 N. GENESEE STREET,**

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DELAFIELD. OWNER/APPLICANT: ST. JOHN'S NORTHWESTERN MILITARY ACADEMY.

B. LEONARD MOTIONED TO APPROVE THE REVISED MASTER PLAN AND SITE PLAN AMENDMENT AS A MINOR CHANGE TO THE CONDITIONAL USE FOR DELC 0792.065.001, 1101 N. GENESEE STREET, DELAFIELD. OWNER/APPLICANT: ST. JOHN'S NORTHWESTERN MILITARY ACADEMY. R. MISKELLEY SECONDED THE MOTION. L. MORRISON QUESTIONED WHETHER THE BONDING WOULD BE IMPACTED AS A RESULT OF APPROVAL OF THIS REQUEST. T. SCHUENKE STATED THIS WOULD NOT IMPACT THE BONDING IN THIS CASE AS THIS WAS A ZONING ISSUE. PHIL COSSON, FINANCIAL CONSULTANT FOR THE CITY, STATED APPROVAL OF THIS REQUEST SHOULD NOT HAVE AN EFFECT ON THE BONDING ASSOCIATED WITH THIS MATTER. **THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

C. LAKE WELFARE COMMITTEE

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS

L. Morrison explained the Committee was currently meeting in the building and had begun to examine four funding alternatives for the dredging project on Lake Nagawicka with the intent of placing it on a Council agenda for the meeting on May 4, 2009 for review and consideration. She also noted that on May 2, 2009, a group of water skiers were slated to assist in a clean up of the shoreline around the lake. In the past few years, the Committee had sponsored an annual canoe trip down the Bark River on that weekend and invited residents to attend. Since the cleanup was occurring, the Committee was replacing the annual canoe trip with the community clean up effort for this year. The community was invited and encouraged to attend and assist in the shoreline cleanup. More information related to this event was available on the City's website.

In response to a question, L. Morrison also explained the Lake Welfare Committee meetings were going to be held on the regularly scheduled meeting nights as scheduling conflicts had been resolved.

D. PARK AND RECREATION COMMISSION

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS.

E. Sadowski noted the next meeting of the Park and Recreation Committee would be held on April 27, 2009. Residents were encouraged to stop and participate in a Park and Recreation survey regarding park

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use in an effort to assist the Committee in future planning on April 7, 2009, at the voting polls.

E. PUBLIC WORKS COMMITTEE

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS

R. Miskelley explained there had not been a meeting of the Public Works Committee, thus, there was nothing to report at this time.

F. DEL-HART COMMISSION

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS.

M. DeYoe noted two items of interest from the most recent meeting of the Del-Hart Commission included the purchase of a backup computer system as well as Department of Transportation plans to widen the bridge over Sawyer Road and potential impacts to the effluent sewer pipe in that area. The next meeting of the Commission would be on Tuesday, April 14, 2009.

G. POLICE AND FIRE COMMISSION

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS

There had not been a meeting of the Police and Fire Commission, thus, there was nothing to report at this time.

H. LIBRARY BOARD

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS

J. Krickhahn noted the next meeting of the Library Board would take place on April 14, 2009 at 7:00 p.m. Also, historian John Gurda would be meeting residents at the Hawk's Inn on April 23, 2009. Anyone interested in attending this event should register through the Public Library.

I. FINANCE ADVISORY BOARD

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS

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G. MacDougall explained there had not been a meeting of the Finance Advisory Board, thus, there was nothing to report at this time.

J. BOARD OF ZONING

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS
2. MARCH 26, 2009 HEARING DETERMINATION:
 - A. CASE 759 – REQUEST OF DAVID & GAIL ABBOTT (OWNERS) AND ANTHONY FEDERSPILL (AGENT) FOR PROPOSED ADDITION AT 2120 WEST SHORE DR, DELC 0786.096 REGARDING MINIMUM OPEN SPACE REQUIREMENTS AND MAXIMUM FLOOR AREA RATIO REQUIREMENTS, WAS APPROVED.

G. MacDougall noted the approval of Case 759 at the most recent Board of Zoning meeting. No future meetings were scheduled at this time.

K. PROMOTIONAL AND TOURISM COMMITTEE

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS

L. Morrison noted there would be a meeting of the Committee at 7:00 a.m. April 7, 2009. She also wanted to call attention to the Annual Chamber of Commerce dinner on April 30, 2009. Invited community members were asked to RSVP as soon as possible.

E. Sadowski and M. DeYoe were going to be on the Agenda for the Committee meeting.

M. CITY OF DELAFIELD 50TH ANNIVERSARY CELEBRATION

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS.

E. Sadowski reported there were many things happening in preparation for the City of Delafield 50th Anniversary Celebration. During the election on April 7, 2009, next to the Park and Recreation booth at Christ the King, T-shirts and pins would be available for purchase to the general public to support the anniversary celebration. Shirts were \$10 and pins were \$3. Also, Sprecher root beer would have special labeling for the celebration and would be available at this summer event. He also thanked Kelly Smith for providing a history of Delafield including photos. This

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information would be available at Hawk's Inn and the library and all events this summer.

The celebration would be started on July 4, 2009 with a Legion parade and fireworks. He thanked Darrell Pope for work on a great website, and noted volunteers were always needed.

M. DeYoe stated she was excited for the celebration recognizing residents that had been here for 50 years on July 9, 2009. While she knew of some residents that should be recognized in this ceremony, she requested others identify themselves to her, E. Sadowski or on the website so that an invitation could be issued.

N. LAKE COUNTRY FIRE DEPARTMENT EXPANSION COMMITTEE MEETING

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS.

G. MacDougall reported a consultant had considered various aspects of consideration of the merger including the funding formula, articles, as well as charges and fines. Work continued on providing a summary and a public hearing would be identified soon.

J. Krickhahn thanked all involved for doing a job well done in consideration of the merger. He expressed concern for the Fire Chief having the power to reallocate a fund without approval of the Board. G. MacDougall stated a limit would be proposed with that reallocation and that issue was still being discussed. Once all parties agreed on financial and operational aspects of the merger, more information would be shared. He noted this to be an interesting process and a public hearing would be noticed in the future. J. Krickhahn suggested the Lake Country School be the site for the public hearing on this matter.

5. OLD BUSINESS

A. LOMR UPDATE

This item was deferred to later in the meeting as T. Hafner was attending the Lake Welfare Committee meeting being held in the Fire Department Training Room this evening.

B. DISCUSSION AND ACTION TO ADOPT RESOLUTION NO. 2009-06, A RESOLUTION AUTHORIZING, CREATING, AND ESTABLISHING THE ROLLER MILL LAKE DISTRICT TO TAKE CONTROL OF THE ROLLER MILL DAM AND FOR THE ROLLER MILL LAKE DISTRICT TO PROCEED WITH THE ACTIVITIES TO RESTORE THE DAM

Raffi Shirikian, resident on the Roller Mill pond, shared information on behalf of the principal neighbors interested in establishing a Roller Mill Dam Lake District.

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His presentation included information on the value of the easement for the dam operation, the “pros and cons” of rebuilding or abandoning the dam from a public interest standpoint, the municipal code regarding a development agreement with the City in order to remove the dam, how abandonment would impact the City, and the responsibilities of the dam owner for abandonment, as well as the proposed resolution. He noted the presence of arsenic in the sediment due to prior aquatic herbicide as a concern.

B. Leonard questioned who owned the land between the “old” shoreline and “new” shoreline for the properties located on the Mill Pond. R. Shirikian stated the land would increase to the boundary line proposed, but the issue remained regarding two feet of sediment with an inorganic metal content in it. He went on to explain that should the property ever be sold, it would require disclosure and the cost to rid the property of the content through mitigation of Environmental Protection Agency issues related to the sediment.

Gayle Gaborsky, 364 Bark River Court, stated she had approximately one third of her property under water when the pond held water and this land was now unusable as water goes over the banks of the current river. She stated a person can't walk on it and it was a detriment to her property. She distributed photos showing the land in front of her house at this time. In response to a question from B. Leonard, she stated she was not sure whether this land would be classified as flood plain in this case.

R. Shirikian distributed copies of the boundaries of the proposed Roller Mill Lake District. He explained Cushing Park had been removed from the boundary.

E. Sadowski questioned whether M. Zerwekh would be required to participate by having her pay for something she didn't want. R. Shirikian stated her participation in the district would be less than the cost of the dam repairs and she would be asked to participate.

Attorney Hammes explained that if the Lake District were created, the City Council would be the commissioners of the district and as such, the neighbors responsible for bringing this issue forward could not be making promises as to what would happen in the future as they would not be the controlling authority in this matter. Issues on financing would be decided by the Council should a lake district be formed.

Al Wagner, 184 Bark River Court, thanked Attorney Hammes for his clarification, noting the Council would act as the Board for a time and then would the district would be formed from there.

In response to a question from J. Krickhahn, Attorney Fay stated the Dauers at this point in time were not in favor of the lake district as there were too many uncertainties.

Mayor McAleer stated the largest uncertainty was the \$700,000 cap for acquisition of the property and repair of the dam. He questioned who would be

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the responsible party if the prices changed for those actions and the amount to do so remained capped at that amount.

Discussion ensued regarding the bidding process for the proposed project and issues associated with setting parameters within that process. Further discussion ensued regarding the costs associated with land acquisition and factors associated with that acquisition. Steve Schmuki, explained additional consideration should be given to the figures presented as the information presented last month did not include infrastructure and impoundment of the dam as well as acquiring all or part of the site. It would also be wise to find out from the DNR what would be required if allowed to repair the dam and associated costs for doing so. M. Zerwekh was not interested in selling the property at any point. R Shirikian noted numbers had been represented accurately and budgeted appropriately. Due diligence had been done and the bids received confirmed the anticipated costs.

R. Miskelley stated he was not a fan of eminent domain; however, in this case, this issue had been worked on for 6 years. All had looked at the Mill Pond through history with intrinsic value for all people in Delafield, and now the Council was faced with 10 to 11 property owners that had put out financial resources with the expectation the Mill Pond would be there. He thought it difficult to accept that one person was standing in the way of working with the property owners on the Mill Pond that were willing to accept the financial loss and retain the intrinsic value of the Mill Pond for the other residents of Delafield. He thought it was wrong that one person had that much veto power in this case.

J. Krickhahn stated that in the past four years no one said that the City should get involved, but many had questioned what the rationality was behind getting involved in this way.

R. Miskelley stated he thought this issue was related to a more global responsibility for the entire City and he thought to do nothing would be doing inherent damage to the entire City. J. Krickhahn disagreed, noting some preferred to have a river instead of a pond in that area.

G. MacDougall stated he had signed the petition in 2005 because at that time he was not involved in City politics. Also at that time he "stood up" for M. Zerwekh because he did not like how he thought the City was destroying her life. Now, he believed the lives of the other pond property owners were being destroyed as a result of efforts to restore the river to its natural course. While he did not like the use of eminent domain, the issue was simply one of fixing a spillway and walking away at this point.

Discussion ensued regarding the issue of liability and how to manage the silt downstream. E. Sadowski stated he did not believe there is any moral obligation in this case as the dam was owned by M. Zerwekh and not the City. Further discussion ensued regarding the liability of dealing with the costs to repair the dam and the sediment downstream. E. Sadowski stated he did not want to put the liability, lawsuits, and financial risks on the citizens to do anything for the dam.

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L. Morrison stated if left in the current situation, property values were removed from these people, and they were left with the additional responsibility of cleaning up the sediment.

Attorney Hammes questioned whether any DNR representatives were present this evening as there remained questions about restoration of the dam if it were abandoned.

Michelle Schneider, of the DNR, stated there was a plan that was approximately 30% complete for channel restoration and impoundment. Sediment stabilization would be in place prior to removal of the dam.

R. Miskelley questioned the financial responsibility of the sediment plan to keep the sediment in place. M. Schneider stated M. Zerwekh would be responsible for the cost of the plan to keep the sediment stabilized in this matter. While she could not note the cost for doing so, she also explained several steps that needed to take place prior to the drawdown of the dam and its subsequent removal.

Attorney Hammes stated the focus of the issues at hand included restoration no matter what direction would be chosen. With that understanding in mind, the question remained whether a lake district should be created with about \$700,000 to be paid back by special assessment, and what would the boundaries be for that lake district. While there were several issues at stake, the Council would not be able to answer those at this time. Should the Council decide to support the lake district, there was an understanding through the resolution that would include up to \$700,000 in funding for this project.

Mayor McAleer stated he was concerned that the proposed \$700,000 was not enough to support the entire project and if the costs were in excess of that amount, he questioned who would be responsible for those costs.

E. Sadowski stated he thought a motion to postpone the resolution would be in order for several reasons. The cost of the land acquisition was not known as well as full knowledge of the financial obligations for the dam. He noted the tough economy and he was not willing to make a decision that would place the financial obligations for this matter on the residents. In addition, public input was required. Further, he was not comfortable with the eminent domain actions required for this matter and there was a lack of appraisal as requested.

E. SADOWSKI MOTIONED TO POSTPONE RESOLUTION NO. 2009-06, A RESOLUTION AUTHORIZING, CREATING, AND ESTABLISHING THE ROLLER MILL LAKE DISTRICT TO TAKE CONTROL OF THE ROLLER MILL DAM AND FOR THE ROLLER MILL LAKE DISTRICT TO PROCEED WITH THE ACTIVITIES TO RESTORE THE DAM. M. DEYOE SECONDED THE MOTION. R. SHIRIKIAN STATED IN THE CONTESTED CASE HEARING, THE COST VALUE OF THE SEDIMENT WAS STATED AS \$100 PER CUBIC YARD. S. SCHMUCKI STATED M. ZERWEKH WOULD LIKE TO MAKE A STATEMENT AT THIS TIME.

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M. ZERWEKH STATED THE MILL POND WAS NOT A LAKE, BUT WAS ARTIFICIAL AND HAD LIMITED STORAGE CAPACITY AND WAS NOT DESIGNED FOR FLOOD CONTROL DOWNSTREAM. FIVE YEARS AGO, WHEN SHE FIRST BEGAN TO CONSIDER THIS ISSUE WITH THE DAM, HER CONCERN WAS FOR THE PEOPLE DOWNSTREAM AND THE DANGER THEY WERE IN AS A RESULT OF THE DAM. SHE WENT TO THE TOWN OF SUMMIT TOWN HALL TO BEGIN TO TALLY THE COST FOR THE PEOPLE DOWNSTREAM FOR THEIR HOMES, PETS, EQUIPMENT, ETC, SHOULD ANYTHING HAPPEN; WHEN SHE GOT TO THIRTEEN MILLION DOLLARS SHE STOPPED COUNTING. TODAY, VENICE BEACH AND VENICE PARK COULD NOT BE BUILT AS IT IS IN A HUNDRED YEAR FLOOD PLAIN AND IS IN DANGER OF FLOODING. THE PEOPLE AND BUILDINGS WERE THERE AND THEY NEED TO BE CONSIDERED. THE IMPOUNDMENT WAS BUILT AND STARTED 170 YEARS AGO AND WAS DESIGNED FOR THE MILWAUKEE AND ROCK RIVER CANALS TO CARRY PEOPLE 800 MILES OVER THE WISCONSIN TERRITORY. LATER, THIS WAS NOT NEEDED AND THEN BECAME A SAW MILL TO HELP BUILD HOUSES FOR EARLY SETTLERS. AFTER THAT FLOUR WAS GROUND THERE AND TAKEN TO MILWAUKEE BY HORSE CART. FEED WAS PROVIDED FOR LOCAL ANIMALS AS WELL. AT THE BEGINNING, THERE WAS A FIVE FOOT HEAD WITH APPROXIMATELY TEN OR ELEVEN ACRES OF WATER, THEN IT BECAME A SEVEN FOOT HEAD WITH 24 ACRES OF WATER; AND AFTER THAT IN 1951, IT BECAME AN 11 FOOT HEAD. RECORDS BEGIN AT THAT TIME WITH ALL THE ENGINEERING DATA FOUND IN THE MUNICIPAL COURT IN OCONOMOWOC. SHE WENT ON TO STATE THERE WERE SEVERAL THINGS THAT WERE SURPRISING THAT MANY PEOPLE DID NOT KNOW. HER ORDERS AT THE TIME SHE WAS ORDERD TO WIDEN THE SPILLWAY, INCLUDED RESPONSIBILITY FOR TWO HOUSES DOWNSTREAM THAT WERE IN HER HYDRAULIC SHADOW AND SHE ANTICIPATED SHE WAS RESPONSIBLE FOR TWO MORE AFTER THE SPRING FLOODING FROM LAST YEAR. THIS RESPONSIBILITY INCLUDED PUTTING THOSE FOUR HOUSES ON NEW FOUNDATIONS, SO THAT WOULD BE THE RESPONSIBILTY OF THE NEW OWNERS IF THE DAM WAS TAKEN OVER. SHE NOTED THE HOUSES WERE ON HILLSIDES AND WOULD BE MORE EXPENSIVE. IN ADDITION, THE DAM OWNER WOULD BE RESPONSIBLE FOR AN EMERGENCY FLOOD PLAN, A FLOOD WARNING SYSTEM AND SIGNAGE. THOSE THREE THINGS WERE ANTICIPATED TO BE IN PLACE FOR THE ST. JOHN'S DAM BUT WOULD NEED TO BE REPEATED DOWNSTREAM. SHE THOUGHT \$300,000 ALSO WOULD BE NEEDED IN ADDITION TO THE COSTS FOR THE SPILLWAY. SHE HAD LIVED ON WATER HER ENTIRE LIFE INCLUDING THE ZUMBRO RIVER, THE MISSISSIPPI RIVER, AND ALSO PUGET SOUND, WITH THE EXCEPTION OF FOUR YEARS WHILE SHE WAS IN COLLEGE AT COLUMBIA UNIVERSITY IN MANHATTAN. IN ADDITION, SHE HAD STUDIED THE BARK RIVER FOR 41 YEARS AND BEEN INTERESTED IN WATER ISSUES. HER INTEREST IN WATER PROMPTED HER TO RECIEVE ENGINEERING MAGAZINES, INCLUDING MATERIALS ON DAM ABANDONMENT. SHE HAD MANY HELICOPTER AND CESSNA PHOTOS SHOWING THE BARK RIVER FROM BARK LAKE IN THE TOWNSHIP OF RICHMOND AND RICHFIELD,

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DOWN TO NEMAHBIN LAKE AND THE ROCK RIVER. LIVING 150 FEET FROM THE SPILLWAY WAS A 24/7 OPERATION. SHE STATED SHE WAKES EACH DAY LOOKING AT THE SPILLWAY AND GOES TO SLEEP EACH DAY AFTER LOOKING AT THE SPILLWAY. SHE INSTALLED ELECTRIC LIGHTS ON THE DAM EMBANKMENT TO HELP HER AT NIGHT WITH THE SPILLWAY AND THAT DAM. SHE HAD ALSO RECEIVED HELP FROM THE CITY OF DELAFIELD POLICE IN THE PAST WHEN SHE NEEDED HELP WITH THE SPILLWAY. SHE NOTED THE PROBLEM WITH WATER FLOW WAS THAT IT DID NOT HAPPEN IN THE MIDDLE OF THE DAY IN THE SUMMER WHEN IT WAS WARM, BUT USUALLY AT NIGHT IN EARLY SPRING WITH WIND, SNOW AND ICE COMING DOWN. SHE STATED THIS WAS SOMETHING THAT NEEDED TO BE THOUGHT ABOUT AS SOMEONE NEEDED TO BE NEAR THE DAM AND SPILLWAY ALL THE TIME. SHE DID NOT LOOK FORWARD TO LIVING 150 FEET FROM A SPILLWAY THAT WAS OWNED BY OTHERS THAT WOULD BE ON VACATION OR GO HOME ON WEEKENDS AND HOLIDAYS. SHE NOTED IT WAS UNTRUE THAT SHE HAD NOT BEEN HEARD FROM ON THIS MATTER. SHE SUGGESTED THE COUNCIL MINUTES BE CHECKED FROM NOVEMBER, 2004 TO NOVEMBER, 2006. SHE NOTED SHE HAD SPOKEN OF WHAT THE RIVER WOULD BE LIKE IF RETURNED TO ITS NATURAL STATE INCLUDING THE EAGLES AND THE TROUT AT THOSE APPEARANCES BEFORE COUNCIL IN THOSE YEARS. SHE ALSO NOTED A CONCEPTUAL DESIGN STUDY WAS IN EXISTENCE FOR RESTORATION OF THE RIVER AS SHE HAD PAID THOUSANDS OF DOLLARS TO HAVE IT DESIGNED.

D. FAY STATED THE DAUERS OWNED APPROXIMATELY 50% OF THE PROPERTY PROPOSED IN THE LAKE DISTRICT AND WERE NOT INTERESTED IN HAVING A LAKE DISTRICT FORMED AS THEY WANTED THE RIVER IN ITS NATURAL STATE. HE THOUGHT THAT WHAT WAS THE COUNCIL WAS REALLY TALKING ABOUT IN THIS MATTER WAS USING EMINENT DOMAIN FOR THE BENEFIT OF SEVEN PEOPLE. THE DNR WAS GOING TO PROTECT THE PEOPLE DOWNSTREAM AS THIS WAS NOT THE FIRST DAM TO EVER HAVE BEEN ABANDONED. THE DAMS WERE ARTIFICIAL AND HE THOUGHT PERHAPS IT WAS TIME TO GO BACK TO MOTHER NATURE.

A. WAGNER NOTED THAT GIVEN THE ISSUE OF THE STATUTES, A POSTPONEMENT WOULD EQUATE TO DENIAL OF THIS REQUEST AS THE JUDGE IN THIS MATTER WOULD NOT ALLOW ANY DEADLINE EXTENSIONS. E. SADOWSKI STATED THIS DEADLINE WAS AN ARTIFICIAL DEADLINE, HE REMAINED CONCERNED THAT THE CITIZENRY HAD NOT HAD AMPLE TIME TO WEIGH IN ON THIS MATTER AND HE WAS NOT GOING TO WITHDRAW HIS MOTION.

M. ZERWEKH STATED SHE WISHED TO CALL ATTENTION TO THE FLOWING RIVERS THAT WOULD HAVE MORE TROUT AND WOULD ENHANCE TOURISM FOR THE CITY. MORE TROUT WOULD BRING MORE PEOPLE TO THE AREA TO FISH FOR THOSE TROUT AND THE RIVER RESTORATION WOULD ALSO PROVIDE AN OPPORTUNITY FOR PEOPLE

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TO BE PRESENT FOR THE PROCESS. SHE INTRODUCED HER CONTRACTOR FOR THE DAM RESTORATION, KEVIN ZEE.

K. ZEE EXPLAINED HE HAD BEEN IN BUSINESS FOR APPROXIMATELY 20 YEARS AND WITHIN THAT TIME HAD DONE RESTORATION WORK AFTER UTILITY COMPANIES HAD COMPLETED PROJECTS TO STABILIZE THE SOIL. HE STATED HE HAD HEARD THIS EVENING IT WOULD TAKE DECADES TO STABILIZE THE SOIL AND HE DID NOT THINK THAT WAS THE CASE AS GREEN GROWTH COULD BE HAD THIS SUMMER WITHOUT INTERVENTION. IF THERE WERE INTERVENTIONS, GREEN GROWTH COULD BE HAD EARLIER THAN THAT TIMELINE. WITH REGARD TO SEDIMENT REMOVAL, HE WAS NOT CERTAIN UNTIL THE DNR MADE A DETERMINATION ON THIS MATTER. IN RESPONSE TO A QUESTION ON HIS QUALIFICATIONS, HE STATED HE HAD BEEN IN BUSINESS FOR 20 YEARS AS A SELF EMPLOYED CONTRACTOR. WITH REGARD TO HIS EDUCATIONAL BACKGROUND, HE HAD NO FORMAL SCHOOLING ON THESE SUBJECTS.

MAYOR MC ALEER QUESTIONED THE ISSUE OF THE ARSENIC IN THE SEDIMENT AND WHETHER IT WOULD NEED TO BE TRUCKED AWAY FROM THE SITE.

M. SCHNEIDER STATE THE SEDIMENT COULD BE STABILIZED IN PLACE, AND THE ARSENIC LEVELS WOULD BE SIMILAR TO THOSE FOUND IN LAKES NAGAWICKA AND UPPER NEMAHBIN. MAYOR MC ALEER QUESTIONED HOW THE ARSENIC WOULD IMPACT LAND OWNERS AS A RESULT OF THE NATURAL RIVER FLOW. S. SCHMUCKI STATED THERE WERE ONLY TWO RIPARIANS THAT WERE ON THE POND, THE REMAINDER OF THE PROPERTY OWNERS HAD LAND BETWEEN THEM AND THE POND.

L. MORRISON NOTED WITH REGARD TO THE ARSENIC FOUND IN LAKE NAGAWICKA DURING THE DREDGING PROJECT THAT WAS SLIGHTLY OVER THE LIMIT ALLOWED FOR DRINKING WATER, THE DNR HAD REQUIRED SIGNIFICANT CHANGES TO THE DREDGING PLAN AS A RESULT OF THE ARSENIC LEVELS.

M. SCHNEIDER EXPLAINED THE DREDGING PROCESS IS MUCH DIFFERENT FROM THE DAM ABANDONMENT PROCESS. DNR HAZARDOUS WASTE EXPERTS STATED IT COULD BE STABILIZED ON SITE. THIS COULD BE DONE BY VEGETATING WHAT IS EXPOSED AND NATURAL NATIVE PLANTS WOULD BE INCLUDED.

G. GABORSKY STATED AN ECOLOGIST HAD BEEN HIRED AND HER REPORT STATED THERE WAS CLAY ON SITE AND IT WOULD REMAIN AS IT WAS CURRENTLY FOR HER LIFETIME AS NOTHING WOULD GROW THERE.

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DISCUSSION ENSUED REGARDING THE NEED TO ALLOW M. ZERWEKH TO HAVE AN EXPERT REVIEW THE SITE AND MAKE RECOMMENDATIONS AT THIS TIME.

R. MISKELLEY STATED HE THOUGHT THE COMMENTS MADE BY THE COUNCIL WERE SUPERFLOUS, BASED ON ASSUMPTIONS AND OPINIONS AND WERE WITHOUT MERIT. HE THOUGHT PROPERTY OWNERS AND THE CITY OF DELAFIELD WERE GOING TO BE PENALIZED WITH LITTLE RISK TO THE DOWNSTREAM AND CURRENT CITY RESIDENTS. THE PROPERTY OWNERS WERE WILLING TO ASSUME THE FINANCIAL RESPONSIBILITIES AND HE THOUGHT THE DOWN RIVER RESIDENTS WERE AT A FAR GREATER RISK WITH A DAM THAT WAS FALLING APART.

E. SADOWSKI EXITED AT 9:46 P.M. AND RETURNED AT 9:48 P.M.

M. DE YOE QUESTIONED THE RISK FOR RESIDENTS IF FUNDING WAS BONDED FOR THIS PROJECT.

ATTORNEY HAMMES EXPLAINED IF GENERAL OBLIGATION BONDS FOR SPECIAL ASSESSMENT WERE UTILIZED, THE CITY WOULD HAVE RESPONSIBILTY IF THE PROPERTY OWNER DID NOT PAY AND THE COUNTY WOULD NOT REIMBURSE. HE QUESTIONED HOW THE BONDING WOULD BE HANDLED IF THE LAKE DISTRICT WAS FORMED AS HE WAS UNCERTAIN AS TO THE BONDING PROCESS FOR A LAKE DISTRICT.

PHIL COSSON, OF EHLERS & ASSOCIATES INC, THE CITY'S FINANCIAL CONSULTANTS IN THIS MATTER, EXPLAINED THERE WERE FOUR DIFFERENT OPTIONS FOR FINANCING WITH THE LARGEST AMOUNT OF RISK BEING ASSUMED THROUGH GENERAL OBLIGATION ISSUANCE. THERE WOULD BE LESS RISK IF ISSUED THROUGH AN ASSESSMENT BOND OR UTILITY OR LAKE DISTRICT; HOWEVER THOSE WOULD MOST LIKELY BE ISSUED THROUGH THE CITY. SOME LAKE DISTRICTS HAD BONDS BUT THIS WAS RARE. THIS WOULD BE A CONCERN IF THE BONDS WERE ISSUED THROUGH THE LAKE DISTRICT IN THIS CASE BECAUSE ANY ENTITY COULD ONLY BOND UP TO 5% OF THE PROPERTY, OR IN THIS CASE, APPROXIMATELY \$250,000. BECAUSE OF THAT STIPULATION, THE ISSUANCE OF BONDS WOULD HAVE TO COME THROUGH THE CITY AND WITH THAT WOULD COME A BIT OF RISK.

R. MISKELLY QUESTIONED THE NATURE OF THE RISK BEING DISCUSSED. P. COSSON STATED WHILE A LIEN WOULD BE PLACED ON THE PROPERTY IN THE EVENT OF NONPAYMENT, THERE WAS A LEVEL OF RISK, NOT A HIGH RISK, BUT CONCERN FOR THE LEVEL OF ASSESSMENT IN THIS CASE.

L. MORRISON STATED SHE THOUGHT IT IMPORTANT TO HELP RESIDENTS DO WHAT THEY WANTED TO DO AND GIVE THEM THE OPPORTUNITY TO PROCEED. SHE DID NOT WANT TO PUT THE CITY AT RISK. AFTER EXAMINING THE PETITIONS, IT WAS NOTED THAT THE PETITIONERS WANTED NO CITY MONEY TO BE PAID TOWARD THE

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PROJECT, AND IN THIS CASE SHE DID NOT BELIEVE THAT WOULD BE THE CASE. TO THAT END, SHE THOUGHT IT BEST TO ACT IN THE BEST INTERESTS OF THE CITY AND NOT WORRY ABOUT THE PEOPLE ON THE LIST OF PETITIONERS FROM 2005.

G. MACDOUGALL STATED NO MATTER WHAT WOULD HAPPEN IN THIS CASE THERE WOULD BE RISK INVOLVED AND HE THOUGHT THAT WAS WHAT THE COUNCIL WAS PRESENT TO HANDLE. WITH REGARD TO EMINENT DOMAIN, HE DID NOT LIKE IT, BUT IN THIS CASE THE LAND WAS WORTH MORE ONCE THE DAM WAS FIXED. POSTPONING THE ACTION WAS UNNECESSARY IN HIS OPINION. IN VIEWING THE POND FROM A HOUSE THAT WAS BUILT TO OVERLOOK THE POND IN THE PAST, IT WAS DIFFICULT TO SEE MUCK THAT WAS SEVEN FEET IN DEPTH AS PART OF THE CURRENT SITUATION. WHILE HE DID NOT WANT TO HURT M. ZERWEKH AS HE LIKED HER, ENJOYED READING HER HISTORY, AND WOULD DO ANYTHING TO PROTECT HER AND HER RIGHTS, IN THIS CASE HE THOUGHT HER ACTIONS WERE HARMING THE NEIGHBORS FINANCIALLY AND EMOTIONALLY AND THAT WAS NOT RIGHT. HE THOUGHT THE RIGHTS OF THE PEOPLE WHO LIVE ON THE POND WERE GREATER IN THIS CASE. AS A RESULT, THE LAKE DISTRICT SHOULD BE FORMED AND RESOLUTION OF THIS ISSUE ATTEMPTED.

J. KRICKHAHN STATED HE WISHED THE MATTER OF FORMING A LAKE DISTRICT COULD BE CONSIDERED BASED ON "FOOT FRONTAGE" INSTEAD OF MAJORITY, AS THE MAJORITY THE FRONTAGE WAS HELD BY RESIDENTS THAT DID NOT WANT A LAKE DISTRICT AND WERE BEING ASKED TO PAY FOR IT THROUGH EMINENT DOMAIN, TAXES, AND SPECIAL ASSESSMENT. HE DISAGREED WITH E. SADOWSKI IN THAT THE UNDERLYING ISSUE ASSOCIATED WITH THIS RESOLUTION WAS NOT NEW AS THE PEOPLE INVOLVED HAD BEEN PART OF THIS ISSUE FOR SEVERAL YEARS. REGARDING LIABILITY, HE REFERRED TO THE BUILDINGS DOWNSTREAM AS WELL AS THE TAX DOLLARS DOWNSTREAM. HE THOUGHT IN THE FUTURE THE DAM WOULD BECOME THE RESPONSIBILITY OF THE CITY WITH TAX DOLLARS ALLOCATED FOR REPAIR AND MONITORING OF THE DAM. HE AGREED WITH G. MACDOUGALL IN THAT POSTPONING THE DECISION WOULD NOT BE ADVANTAGEOUS. HE THOUGHT IT IMPORTANT TO MAKE A DECISION AND MOVE ON.

B. LEONARD STATED THIS ISSUE WAS RELATIVELY NEW TO HER AND HER CONCERN WAS THAT SHE WAS NOT CONVINCED ONE WAY OR ANOTHER THAT ALLOWING THE RIVER TO BE RESTORED WAS IN THE BEST INTEREST OF THE CITY. WHILE SHE HAD NEVER CANOED ON THE BARK RIVER, SHE WAS NOT CONVINCED THAT IT WAS IN THE BEST INTEREST OF THE CITY TO MAINTAIN THE POND; HOWEVER THIS KIND OF DEBATE HAPPENED ALL THE TIME ON MANY COUNCIL ISSUES, SUCH AS BIKE PATHS AND EQUESTRIAN TRAILS. SHE DID SEE VALUE OF RESTORING THE RIVER TO ITS NATURAL COURSE.

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MAYOR MC ALEER AGREE WITH J. KRICKHAHN IN THAT A MOTION TO POSTPONE WAS NOT THE RIGHT COURSE OF ACTION. HE THOUGHT A DECISION SHOULD BE MADE TO EITHER APPROVE OR DENY THE RESOLUTION AND ALLOW THE MATTER TO MOVE FORWARD WITH A DECISION BEING MADE.

E. SADOWSKI STATED HE DID NOT COME TO THIS MEETING WITH HIS MIND MADE UP; HOWEVER, HE HAD RECEIVED PHONE CALLS AND EMAILS ALL AGAINST IT. NONE OF THE PEOPLE HE SPOKE WITH HAD ANY IDEA THAT TAX DOLLARS AND EMINENT DOMAIN WERE BEING UTILIZED. AS A RESULT HE THOUGHT PEOPLE SHOULD HAVE INPUT ON THIS MATTER AND PERHAPS THE PETITIONERS FROM FOUR YEARS AGO MIGHT ALSO HAVE CHANGED. NONETHELESS, PEOPLE HAD NOT GOTTEN A CHANCE TO PROVIDE INPUT ON THE MATTER IN FRONT OF THE COUNCIL AND THAT WAS WHY HE MOTIONED TO POSTPONE THE MATTER.

WITHOUT OBJECTION FROM THE SECONDER, E. SADOWSKI WITHDREW HIS MOTION. M. DEYOE AGREED.

E. SADOWSKI MOTIONED TO DENY RESOLUTION NO. 2009-06, A RESOLUTION AUTHORIZING, CREATING, AND ESTABLISHING THE ROLLER MILL LAKE DISTRICT TO TAKE CONTROL OF THE ROLLER MILL DAM AND FOR THE ROLLER MILL LAKE DISTRICT TO PROCEED WITH THE ACTIVITIES TO RESTORE THE DAM. J. KRICKHAHN SECONDED THE MOTION. R. MISKELLEY CLARIFIED THAT TO VOTE AYE WOULD BE TO DENY THE RESOLUTION. THERE WAS NO FURTHER DISCUSSION. A ROLL CALL VOTE WAS TAKEN. J. KRICKHAHN AYE; B. LEONARD AYE; E. SADOWSKI AYE; M. DEYOE AYE; G. MAC DOUGALL NAY; L. MORRISON NAY; R. MISKELLEY NAY. MOTION CARRIED.

Mayor McAleer recessed the meeting at 10:01 p.m. and reconvened at 10:09 p.m.

6. MAYOR'S REPORT

Mayor McAleer stated T. Hafner reported there was no LOMAR update this evening.

Mayor McAleer stated there was nothing to report at this time.

7. NEW BUSINESS

a. 2009 CAPITAL IMPROVEMENT PROGRAM STATUS UPDATE.

B. Leonard had requested this item be placed on the agenda and the report submitted as part of the Council packet.

b. DISCUSSION AND ACTION TO AWARD THE 2009 STREET IMPROVEMENT PROGRAM TO WOLF PAVING COMPANY PER ENGINEER COURT'S RECOMMENDATION AT A COST NOT TO EXCEED \$820,421.67, SUBJECT

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TO CONFIRMATION OF AWARDED DNR STEWARDSHIP GRANT FUNDS AND COMPLETION OF THE ARCHEOLOGICAL INVESTIGATION AND REPORT.

R. MISKELLEY MOTIONED TO ACCEPT THE BID AND TO AWARD THE 2009 STREET IMPROVEMENT PROGRAM TO WOLF PAVING COMPANY PER ENGINEER COURT'S RECOMMENDATION AT A COST NOT TO EXCEED \$820,421.67, SUBJECT TO CONFIRMATION OF AWARDED DNR STEWARDSHIP GRANT FUNDS AND COMPLETION OF THE ARCHEOLOGICAL INVESTIGATION AND REPORT. E. SADOWSKI SECONDED THE MOTION. SIX VOTED IN FAVOR. B. LEONARD VOTED NAY. B. LEONARD STATED HER CONCERN WAS RELATED TO THE \$80,000 EXPENSE ON THE GRAVEL ROAD IN OAKWOOD PARK. MOTION CARRIED.

8. REPORT OF CITY OFFICIALS

A. ADMINISTRATOR

T. Schuenke stated there was nothing to report on at this time.

E. Sadowski thanked T. Schuenke for stepping into his job and doing a great job with the contractors.

L. Morrison noted it was difficult to read the budget in the epacket due to the font size and requested it be provided on paper in the future.

B. Leonard questioned whether money was carried over in the budget from one year to the next and "rebudgeted". T. Hafner explained the cost of a project was referenced and noted it was fairly common that one project was not finished in one year and then restoration efforts would carry over to the next year. B. Leonard requested some narrative be provided in the budget to allow residents to more easily determine the total budgeted cost of a project. In addition, she requested a summary be provided to show where monies came from as a funding source and what projects cost in total.

B. CLERK-TREASURER

No report.

C. COUNCIL REQUESTS OF FUTURE AGENDA ITEMS

L. Morrison requested consideration be given to using some property in Oakwood Park for garden plots. E. Sadowski suggested this item be placed on the Park and Recreation meeting for recommendation prior to Council consideration. To that end, he would request this item be placed on the April 27, 2009, Park and Recreation Committee meeting agenda.

9. FINANCIAL REPORT

A. APPROVE VOUCHER LIST

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L. MORRISON MOTIONED TO APPROVE THE VOUCHER LIST AS PRESENTED. B. LEONARD SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

B. APPROVE FEBRUARY TREASURER'S REPORT.

L. MORRISON MOTIONED TO APPROVE THE FEBRUARY TREASURER'S REPORT AS PRESENTED. E. SADOWSKI SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

10. CORRESPONDENCE

- A. KETTLE MORaine SCHOOL DISTRICT BUDGET LISTENING SESSIONS
- B. LETTER FROM ATTORNEY HAMMES REGARDING BINKOWSKI PROPERTY ACCESS TO CTH P.
- C. MEMO FROM ADMINISTRATOR SCHUENKE REGARDING THE AMERICAN RECOVERY AND REINVESTMENT ACT
- D. LETTER FROM CLAIRE RAYFORD REGARDING THE CITY OF DELAFIELD FIRE DEPARTMENT AND THE FLIGHT FOR LIFE TRANSPORT SYSTEM
- E. FOCUS NEWSLETTER

11. ADJOURNMENT

E. SADOWSKI MOTIONED TO ADJOURN THE APRIL 6, 2009 COMMON COUNCIL MEETING AT 10:20 P.M. M. DEYOE SECONDED THE MOTION.

WITHOUT OBJECTION FROM THE SECONDER, E. SADOWSKI WITHDREW HIS MOTION.

L. Morrison complimented Attorney Hammes on a job well done in researching the issue in Item 10B regarding access through the easement in the Village of Oconomowoc Lake.
B. Leonard noted this information would be shared with the Plan Commission at a future date.

E. SADOWSKI MOTIONED TO ADJOURN THE APRIL 6, 2009 COMMON COUNCIL MEETING AT 10:22 P.M. M. DEYOE SECONDED THE MOTION. ALL WERE IN FAVOR. MOTION CARRIED.

Minutes prepared by:

Accurate Business Communications, Inc.