

## MINUTES OF THE COMMITTEE OF THE WHOLE MEETING JULY 8, 2015

### Call to Order

President Vanden Berg called the Committee of the Whole meeting to order at 6:00 p.m.

### Roll Call

PRESENT: President Vanden Berg, Trustee Peterson, Trustee Smith, Trustee Elrick, Trustee Hieptas, Trustee Peerenboom, Trustee Van Lankvelt

ALSO PRESENT: James Fenlon, Jeff Elrick, Teri Matheny, Laurie Decker, Jim Moes, Interested Citizens, Media Reps

### Public Appearance for Items not on the Agenda

Doris Kuhn of 710 Monroe Street would like the board to consider putting a bench on Main Street in memorium of her mother Rose who was a crossing guard for 35 years. Administrator Fenlon will reach out to the former Director of Parks and Recreation to see if he has any information from a previous inquiry. Ms. Kuhn also stated there is a large hole behind the library that someone should look at. Public Works is going to take a look at it this week.

### Discussion/Potential Action—Split Rail Fence

Administrator Fenlon gave an overview of past split rail fence meetings and stated this issue has been discussed on August 8<sup>th</sup> of 2014 and May 12<sup>th</sup> of 2015 and presented facts to consider moving forward. The rail fence is completely located in Village street right-of-way. The rail fence was originally constructed by the Village of Little Chute, in the Village right-of-way, and therefore, is owned by the Village. No private property owners have claimed either ownership or legal responsibility to maintain this rail fence. There are two basic options for the fence are as follows, the first option is the Village has the right to dismantle and remove the rail fence either in certain sections or its entirety based on Village ownership. The second option is the Village can decide to leave the fence, with the following factors to consider: The Village can take no action, and in essence, decide to leave the fence in the right of way. In the future, at the point there is a failure of the fence; the Village can then remove the fence. During this time, abutting property owners can maintain the fence with prior approval granted by the Village in writing. Any voluntary repairs by the abutting property owner are done at their own risk and expense. The Village may decide to maintain the rail fence at Village expense in the right-of-way and specially assess each property owner for the costs based upon their abutting front footage by a “consent assessment agreement” with each property owner who wants to preserve the fence in its current location abutting their property. Staff discussions with legal counsel and taking into account previous resident concerns and comments, staff recommend the Board should take no action, leaving the Village owned fence in the Village owned right of way. Village staff will inform residents via mail that the fence will remain in place and that any repairs or maintenance they perform is done at their own risk and expense and permission must be authorized in advance by the Zoning Administrator. At a point that degradation of the fence occurs, whether aesthetically or structurally (per the direction of the Village Engineer), Village staff will remove the fence. Lastly, any private effort to replace the fence with a new amenity, outside the right-of-way will be subject to the Village Code of Ordinances. Tom Lemke of 507 Rosehill Road stated if the fence is taken down he feels the homeowners should be reimbursed for the cost of maintenance and repairs made over the years. He said he is more than willing to maintain the fence. Administrator Fenlon stated that reimbursement would be a separate matter. Tom Lemke asked if we leave the fence up and give the property owner the responsibility to maintain it and someone gets hurt it is the property owners responsibility but if it is taken down and someone falls down the ravine it is not the property owners responsibility? President Vanden Berg stated the Board is not in a position to answer those questions as the Village Attorney wasn't present. Trustee Peterson stated that this discussion was tabled because he wanted to go to look at the fence. His main concern is he looked at 3 different sections and they offer no protection and are unstable. Gary Miller at 2121 Edgewood Court also agrees that the fence will not hold up.

*Moved by Trustee Smith, seconded by Trustee Van Lankvelt to advise staff to allow fence to stay and work with the property owners who would like the fence removed*

Ayes 6, Nays 1 (Peterson) – Motion Carried

#### **Discussion—Sidewalk Ordinance**

Due to a number of inquiries from residents regarding the installation, assessment and exceptions for sidewalks, this matter is brought to the Board of Trustees for discussion and direction. In addition, based upon feedback from a number of Trustees on this topic, the following information was presented. As it relates to the ordinance for sidewalk and the discussions regarding resident requests for exceptions, this falls under Village Ordinance, Sec. 40-64, Construction and Repair. Area assessments are applied to parcels that receive exceptions to sidewalk installations. The safest practice for the Village is to follow the directives of the Village ordinance that addresses this issue. If those directives need to be changed, then the ordinance should be amended. Over the past decades there has been considerable court litigation over such issues which is beneficial to the Village to avoid whenever possible. Staff has had discussions regarding the re-write of the ordinance that would completely shift the paradigm of sidewalks required on all curb and gutter streets, but other factors must be considered. If for example, the Board would be willing to amend and adopt an ordinance that required sidewalks on only one side of the street for only low traffic streets, specifically only on the side of the roadway where parking is allowed, the Board would most certainly be faced with demanding discussions in the future about the placement of parking and sidewalks. Tom Lemke of 507 Rosehill Road stated he thinks the current Ordinance is proper. Trustee Smith stated he also agrees with the current Ordinance but struggles with dead end streets. He feels if we are going to be fair, a sidewalk does need to go there and would be in favor of rewriting the Ordinance for dead ends. Trustee Peterson stated he agrees with the Ordinance but believes this is an unusual case and should be looked at differently. Director Moes cautioned that not all dead ends are equal and they cannot be treated the same. Trustee Elrick asked if we can put the sidewalk on one side with parking on the other and if the Village is claiming if the sidewalk is a public benefit should the Village pay for it? He also added that the Village could pay for the initial cost and the property owner would maintain. Trustee Peerenboom feels the current Ordinance is fair and equitable and wants no changes. Trustee Van Lankvelt stated he is not in favor of changing the Ordinance and should stay as is. Trustee Hietpas stated he feels it is unfair to bill someone for a sidewalk twice and if a time limit could be put in place. Director Van Gheem stated a time limit would not work because someone could live there for years not having the sidewalk, sell the property, and the new owners would move in and want one. President Vanden Berg stated that our Ordinance functions and that it works and he is not in favor of changing it or re-examining it. Trustee Smith stated that this is a difficult situation but understands the Ordinance and the Village Board needs to trust legal counsel. Director Van Gheem stated that right now the plan is for the sidewalk to go in and if the Board doesn't want the sidewalk in that will need to be addressed. Administrator Fenlon stated the action of exceptions by parcel owners is separate from this and future exception requests will be handled on a case by case basis as they have in the past. Administrator Fenlon will follow up with Mr. Vander Sanden on the direction he would like to go and it will be placed on a future agenda.

#### **Discussion—Emergency Response Plan**

Administrator Fenlon distributed via email a copy of the Emergency Response Plan that mirrors the federal, state and local Emergency Response Plans. The next step will be the incident response plan and this is a document that is required for civic groups or festivals to have in the event of a natural disaster to ensure there is a plan for the people. Fox Valley Metro has done this with Paper Fest for the last two years and Kimberly adopted the Emergency Response Plan last year. Metro will work with all the event holders in establishing their plans. Future steps are establishing an annual review for the plan which will coincide with county and state reviews, establishing a budget line item and prepare an exercise which would include annual training. Lastly, the Village would link up with the school districts and the private sector as needed to assure our plan mirrors theirs so in the event of an emergency it will be a seamless transition.

#### **Unfinished Business**

None

## Items for Future Agenda

None

### Closed Session:

a) 19.85(1)(e) Wis. Stats. Deliberations or negotiations on the purchase of public properties, investing of public funds or conducting other specific public business when competitive or bargaining reasons require a closed session. *Sale of Village Owned Property/Negotiations*

*Moved by Trustee Elrick, seconded by Trustee Van Lankvelt to Enter into Closed Session*

Ayes 7, Nays 0 – Motion Carried

### Return to Open Session

*Moved by Trustee Elrick, seconded by Trustee Van Lankvelt to Return to Open Session*

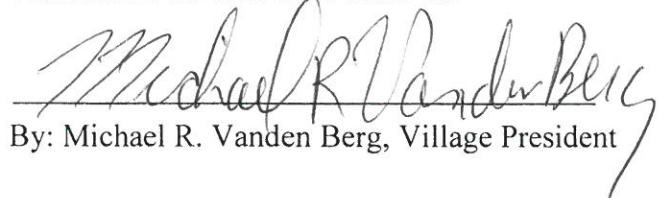
Ayes 7, Nays 0 – Motion Carried

### Adjournment

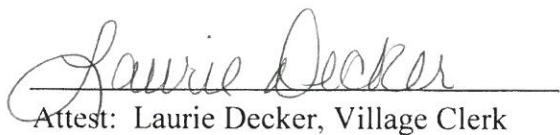
*Moved by Trustee Elrick, seconded by Trustee Van Lankvelt to Adjourn the Committee of the Whole Meeting at 7:43 p.m.*

Ayes 7, Nays 0 – Motion Carried

## VILLAGE OF LITTLE CHUTE



By: Michael R. Vanden Berg, Village President



Attest: Laurie Decker, Village Clerk