

## VILLAGE OF GRAFTON

### SPECIAL VILLAGE BOARD MEETING MINUTES

NOVEMBER 30, 2009

The special Village Board meeting was called to order at 6:00 p.m. by Village President Jim Brunnquell. The Pledge of Allegiance followed.

Board members present: Jim Grant, Ron LaPean, Richard Rieck, Sue Meinecke, David Liss, Scott Volkert, Jim Brunnquell

Staff/Officials present: Village Administrator Darrell Hofland, Director of Public Works/Village Engineer Dave Murphy, Village Clerk Teri Dylak, Village Attorney Michael Herbrand

Mr. William Hass, 1226 Water Terrace, informed the Board that he was video recording the meeting.

#### **APPROVAL TO ISSUE / "CLASS A" LICENSES**

Motion by Trustee Liss, seconded by Trustee LaPean, to approve the issuance of the following "Class A" fermented malt and intoxicating liquor licenses: Melissa Clevenger-agent / Aldi, Inc. (Wisconsin) – d.b.a. Aldi #430 / 1120 N. Port Washington Road and Rodger A. Stark-agent / Walgreen Co. – d.b.a. Walgreens #01988 / 1915 Wisconsin Avenue. Approved unanimously.

#### **RESOLUTION RELATING TO THE PRESERVATION OF THE BRIDGE STREET DAM**

President Brunnquell indicated that things have changed since the original advisory petition was submitted on October 29, 2009. On November 18, 2009, the petitioners withdrew their original advisory petition and submitted a binding referendum petition resolution. This change requires specific action by the Village Board.

Village Attorney Michael Herbrand stated that the Village Board is required by Wisconsin Statutes to either adopt the submitted resolution or submit the matter to the electorate of the Village of Grafton at the next spring or general election. The results of the election would be binding on the Village. No alterations can be made to the text of the submitted resolution.

Trustee LaPean commented that he has received comments from people who signed the petition that they did not realize the matter was changed from advisory to binding. He questioned if these individuals had any recourse.

President Brunnquell responded that it was the responsibility of the circulator to inform the residents of the change when they obtained signatures.

President Brunnquell stated that the Village Clerk has certified the sufficiency of the petitions and the required number of signatures has been received.

Village Clerk Teri Dylak has certified that 2,407 signatures were received, of which 24 were invalid. There were a total of 2,383 valid signatures on the petition. The binding resolution petition submittal required a minimum of 778 signatures, which is 15 percent of the 5,185 votes cast for Governor on November 7, 2006.

Trustee Grant requested an opportunity to make a statement prior to the Resolution being offered for consideration by the Board. Listed herein is a summary of his points:

- The easiest thing to do would be to pass the Resolution. This option would not allow the question to go to the electorate. Placing the question on the spring election would allow all of Grafton to provide input. This is a Grafton project we are not competing with one another and all need to work together.
- Between now and spring the Village should create a Citizen/Board member ad hoc committee to review matter especially since federal information was withheld by Ozaukee County. By waiting until spring, all of the competitive costs could be known. All of the information would be available for review. The Village previously rejected stimulus funds on the Build America Bonds.
- Waiting to take action on this matter would provide the Village with 10 years to seek funding for this project. It is likely that some type of grant funding may be available from the Department of Interior, DNR, Army Corps of Engineers, etc. The Board of Public Works and the Finance Committee should discuss the cost of this project when firm numbers are known. The \$4,000,000 cost estimate appears to be a very high estimate of the project cost.
- At no time has the Village of Grafton ever targeted a specific group with special assessments. This recommendation did not come from the Board of Public Works or the Finance Committee. It is embarrassing to even see this option suggested.
- The DNR needs to stop dictating projects without providing a funding solution other than stimulus funds. The availability of Washington-provided stimulus funds is driving this issue. This matter would not even be in discussion if not for the availability of these funds. The ramifications of this project are long term. The dam is a Grafton landmark and is in the "Heart of Grafton".
- Those who are here tonight casting the veil of impropriety can stop now. I am willing to seek solution if all here are willing to FOCUS on the problem together. The Village is willing to work on this matter to find a solution for this matter. The bickering and finger pointing need to stop.
- Would like to place this matter on the spring ballot with real dollar funding facts on the project.
- There is time to debate this matter and get things together for the spring ballot.

President Brunnquell asked Director of Ozaukee County Planning and Parks Andrew Struck for clarification on the Bridge Street dam project perimeters. Mr. Struck indicated that this project is part of the overall fish passage program in the Milwaukee River Watershed. He stated that the Grafton Village Board previously approved the installation of a fish passage at the Bridge Street Dam. Other components of the overall

project include removal of the Lime Kiln Dam, repairs to the Mequon/Thiensville dam, 45-50 culverts and numerous fish barriers throughout the watershed. Mr. Struck stated that it is necessary to complete a full disclosure environmental assessment to submittal to NOAA in a timely manner. NOAA has been generous in extending the timeline to allow the Village of Grafton to discuss alternatives for the Bridge Street Dam. Unfortunately the Grafton project impacts the balance of projects in the grant. We are getting to the point of having to make a decision on which direction the Village of Grafton will proceed. The grant includes the construction of a fish passage and that component can proceed without any further action by the Village. Mr. Struck commented that NOAA anticipated a decision by the end of December. With the statutory requirements of a possible binding referendum election, in January at the earliest, they are willing to wait until mid-January for a decision. Mr. Struck reiterated that it is necessary to finalize the environmental assessment and look at the impact the removal of the dam would have on the entire watershed.

Trustee Rieck offered the Resolution for Village Board consideration. The matter died due to the lack of a motion.

Based upon no action on the Resolution, the matter (binding referendum question) will proceed to the electorate of the Village of Grafton for consideration.

### **ORDINANCE AMENDING SECTION 1.20.020 LIMITATIONS ON ADVISORY REFERENDUMS**

Village Attorney Herbrand briefly reviewed a draft ordinance amending section 1.20.020 / Limitations on advisory referendums. He indicated that the proposed change would allow the Village Board to place an advisory question on a ballot without meeting the current circulation requirements. He commented that it is not likely that the code was meant to require the Board to go through the circulation process to present a matter to the electorate of the community.

The proposed language would require a two-thirds majority (5 of 7) of the members elect, in order for a matter to proceed to an advisory referendum.

Trustee Grant questioned why this is being brought forward at this time.

President Brunnuell responded that it is apparent that what occurs with this issue will set a precedent for future issues. The Village needs to clarify the advisory referendum procedures.

Motion by Trustee Meinecke, seconded by Trustee LaPean, to approve Ordinance No. 023, Series 2009, as presented. Approved 6-1 (J. Grant-nay).

### **ADDITION OF ADVISORY QUESTION ON BALLOT**

President Brunnuell stated that as elected officials it our responsibility to provide as much information to the citizens of Grafton as possible. He stated that if the binding

referendum question that will be placed before the electorate is approved, it will bind future Village Boards to a specific course. The resolution presented by the "Save the Dam" group does not mention any costs that may be associated with the Bridge Street Dam preservation. The Village Board needs to provide full disclosure to the community that there may very likely be significant future costs associated with this structure. President Brunnuquell reviewed two possible advisory referendum questions that could be placed on the same ballot as the binding resolution referendum (attached). Both questions provide an estimated cost of \$4 million for the costs associated with the modifications to or replacement of the Bridge Street Dam. This estimate is based on a projection of 2020 dollars. President Brunnuquell commented that it is important that the electorate is made aware of the potential costs of their decision.

In addition, the advisory questions include three options for payment of any costs associated with the dam project. Options include a general tax increase for 100 percent of the costs, special assessing property owners along the impoundment area and a 50/50 split between a tax increase and special assessing impoundment area property owners.

Trustee Grant questioned who drafted the question language. President Brunnuquell responded that he directed that the public be made aware of the possible future associated costs.

There was a brief discussion on how the \$4 million figure was determined. President Brunnuquell stated that Bonestroo was hired by Ozaukee County to complete an analysis of the project. Public Works Director/Village Engineer Dave Murphy is comfortable with the cost estimate provided by the engineering firm.

Trustee Grant stated that if the matter is placed on the spring ballot the Village Board has time to obtain a better cost estimate so that a true cost figure can be included on the ballot. He reiterated his earlier expressed concern with the possible special assessing of the project costs to property owners along the impoundment area.

President Brunnuquell stated that Mr. Murphy met with Robert Montgomery, Montgomery Engineering, to review his alternatives for the dam structure. Mr. Murphy is concerned with the bridge abutments and floodplain issues. Bonestroo has looked at the alternatives and has determined that the replacement of the structure would be a better alternative than the recommendations of Montgomery Engineering. The best cost determination, at this time, is up to \$4 million.

Jerry Kiesow, 1690 Dellwood Court, questioned if there is time to have a referendum before the Village would lose the funds for the fish passage.

Andrew Struck responded that the funding is secure until at least January 12; however, beyond that date he cannot commit to having the funding available for anything other than the fish passage.

Pete Sheperd, UPAD, LLC, Mequon, commented that as elected officials the Village Board makes decisions on tax dollars all the time. This project should not be any different. He indicated that the inclusion of the \$4 million figure on the ballot is misleading.

President Brunnquell responded that in this matter the Village Board is not making the decision. The matter is being decided by the electorate of Grafton, the Village Board has been taken out of the decision making process. It is important that they understand the future impact of their decision.

Ann Hollrith, 1511 Jo-Dee Lane-Town of Grafton, and co-owner of Hollrith Realty, stated that the cost information should be provided to the electorate by other means, such as an article in the newspaper.

President Brunnquell questioned why the group is against the possible cost impact of this matter being provided to the electorate. The results of the Village initiated question are advisory in nature.

Discussion continued on how the \$4 million amount was determined.

Several residents expressed their concern with the amount stating that the amount is inflated.

President Brunnquell reiterated that the cost figure was provided by the consultant. The project has the potential to be up to \$4 million.

Erin Blum, 1108 Sunset Court, commented that she got involved in this issue because of the misinformation that has been provided. The Resolution allows 10 years for the Board to make a decision on the future of the dam. This timeline provides the Village with the ability to look at more than just the option of removal of the structure.

President Brunnquell stated that the actual wording of the advisory referendum question has not yet been determined.

Tony Schneider, 1118 Riverview Court, commented that it is obvious that President Brunnquell has a definite opinion on this project even if he says otherwise. It is also obvious that Director of Public Works/Village Engineer Dave Murphy wants the dam removed.

Adrian Pfanner, 1112 Sunset Court, questioned who would be a benefitting property owner if this project were to be special assessed. She also questioned what the benefit would be if the dam is removed.

President Brunnquell responded that comments have been made by many property owners along the river that their property values will decrease if the dam is removed. He stated that his property value did not change when the Chair Factory Dam was removed

Reiss Hansen, 1971 Mary Glade Drive, Town of Grafton commented that two consultants on opposing sides have come up with different options and costs. He questioned how many consultants will it take to come up with a firm correct number.

President Brunnuell reiterated that the Ozaukee County consultant came up with the cost estimate based on the finding of numerous studies in the river and of the dam.

Erin Blum, 1108 Sunset Court, commented that the question arose regarding whether the people who signed the petition were aware of the change from an advisory question to a binding resolution. Mrs. Blum stated that no one was forced to sign the petition and everyone read the document prior to signing.

Mrs. Blum also stated that an ethical Board would have respected the wishes of their constituents and adopted the resolution that was presented by 2400 residents. She also commented that tax dollars were paid for a biased study and the "Save the Dam" group spent personal funds for an unbiased study. The Village Board should have listened to the residents who took the time to present this matter to them for consideration.

Trustee LaPean asked Village Clerk Teri Dylak how many registered voters are on the voter registration listing. Mrs. Dylak responded that the Village has over 8,600 registered voters.

President Brunnuell responded that this is a significant matter and all residents should be given the opportunity to voice their opinion on the issue. Taking the matter to a vote of the people is the best way to accomplish this.

Trustee Grant indicated that he prefers that this matter be placed on the April ballot to allow additional time to review alternatives to the complete removal of the structure. He again suggested that the Village consider creating an ad-hoc committee to obtain true facts and figures.

Bill Harbeck, 907 17th Avenue, commented that the advisory question, as proposed, is unfair, misleading and incomplete. The inclusion of the \$4 million figure infers that the Village will be spending that amount.

Mr. Harbeck commented that the proposed question does not mention any alternative funding options that may be available in the future. It also does not mention a way to obtain an exemption from the requirements of NR333, which has not even been explored by the Village. Mr. Harbeck also stated that there are better ways to educate the residents on the Bridge Street Dam issue. Highlighting the \$4 million figure is a scare tactic and should not be included. The Village has a website and cable access channel and can utilize the media to provide information on this matter.

President Brunnquell responded that the residents need to know that there is a future financial impact if the resolution is approved by the electorate. Mr. Harbeck responded that the costs are not known and until an amount is known, it should not be included.

President Brunnquell responded that the Village Board represents the entire community, not just a small group. The “Save the Dam” group has indicated that the Bridge Street Dam is a benefit to the entire community; therefore, the entire community should have the ability to determine its future.

Trustee Meinecke asked Mr. Murphy if Montgomery & Associates have completed any similar work under the requirement of NR333. Mr. Murphy responded that Montgomery & Associates has bid many projects with NR333 requirements and has been the low bidder; however, they have not been able to meet the DNR requirements.

Lisa Harbeck, 907 17th Avenue, commented that the proposed advisory questions are not complete and should not be offered.

There was an exchange of comments between those present and several Village Board members on the proposed inclusion of an advisory question on the spring ballot.

President Brunnquell stopped discussion stating that comments on this issue were getting out of control and becoming accusatory. If the action requested by the binding resolution is approved, there will be a future financial impact to the community. The action will commit a future Village Board and the residents of Grafton to “do something” with the structure. There is an unknown if any funding assistance will be available, so providing the residents with a possible cost is in the best interest of the community.

Mr. Harbeck responded that the Village will have 10 years to study the structure and find a way to do the project in the most cost effective manner. If it is found that it is too expensive to replace or repair the structure, it can be removed in 10 years.

President Brunnquell stated that based on the public feedback on this issue, it is important that all of the facts are known. It is important for the possible financial impact of this project to be known. The Village Board would be derelict in their duties if all of the information was not provided.

Trustee Rieck stated that he no problem with including an advisory question; however, the Village Board should have been included in the process of establishing the question language.

Trustee Volkert stated that the binding resolution prohibits any action on the structure through 2019. He questioned what happens if the dam fails in three years.

There is a provision statement in the resolution which reads “unless ordered to take action earlier under state law”.

Trustee Volkert called the question to close discussion on this matter.

Motion by Trustee Grant, seconded by Trustee Rieck to reject the two draft advisory questions, as presented. Approved unanimously.

President Brunnquell polled the members regarding whether or not an advisory question, related to the possible future funding impact of the Bridge Street Dam project, should be included with the binding resolution.

It was the consensus of the majority of the members that an advisory question be included on the ballot with the binding resolution,

The Board discussed possible amendments to the advisory question.

Trustee LaPean stated that the question should refer to cost in some manner.

Motion by Trustee Grant, seconded by Trustee Rieck, to create an ad-hoc committee to review the project and base the advisory question on the findings of the Committee, for placement on the spring ballot with the binding resolution.

Trustee Rieck questioned if the Village can still proceed with the fish passage if this matter is placed on the spring ballot.

Andrew Struck responded that the engineering and design of the fish passage can proceed, at this time. The problem may occur when it comes to the final design and the environmental assessment for the project if the project scope changes and the funds have been used for the fish passage.

President Brunnquell questioned if Tax Incremental District (TID) No. 3 can be expanded to include the Bridge Street Dam. Village Administrator Darrell Hofland responded that the TID No. 3 boundary includes the area of the Milwaukee River at Bridge Street to the northern boundary of Veterans Memorial Park, which would include the Milwaukee River.

President Brunnquell suggested the question include a financial reference without a specific dollar amount.

Any potential costs would be covered by the increase in value of the downtown (and the related increase in taxes). It has been stated that the Bridge Street Dam and the mill pond have an inherent value to the downtown and have been driving development. This factor increases its value and attractiveness to the downtown and the TID thus allowing the expenses to be charged to the district. There may be a future need for donor TID funds to make the district viable.

After limited discussion, Trustee Rieck withdrew second and Trustee Grant withdrew the motion to create an ad-hoc committee to review the project and base the advisory question on the findings of the committee, for placement on the spring ballot with the binding resolution.

President Brunquell presented the following advisory question for placement on the ballot with the binding resolution:

If there are Village costs associated with the removal, repair, replacement or modification of the Bridge Street Dam do you wish those costs to be:

1. A general village tax increase; or
2. The costs absorbed by Tax Incremental District No. 3 (Downtown)

Motion by Trustee Rieck, seconded by Trustee Meinecke, to forward the advisory question, as presented by President Brunquell, for inclusion on the same ballot with the binding resolution. Approved unanimously.

### **SET ELECTION DATE**

President Brunquell reviewed the election options. He stated that the Village has an obligation to resolve this matter as soon as possible so Ozaukee County can move forward with the NOAA grant projects. A special election on January 12 would speed up the decision process. The other alternative is to place the questions on the April 6, 2010 spring ballot.

Trustee LaPean commented that the April date will likely have a higher voter turnout than a special election.

Trustee Grant commented that this past year the Village Board rejected stimulus funds, by a 5-2 vote, regarding the stimulus fund bond issue. He questioned how the NOAA stimulus funds were different from the other stimulus funding.

Trustee Volkert responded that there was financial risk involved with the Build America Bonds.

Trustee Volkert made a motion to forward the questions to the April 6, 2010 election.

Village Clerk Teri Dylak clarified that Wisconsin Statutes 9.20, relating to direct legislation, requires the placement of the question on the spring or General election. The Village Board has the option, by a three-fourths vote of the members elect, of setting a special election date. No action is required to place the matter on the spring ballot.

Trustee Volkert withdrew his motion after clarification on the matter by the Village Clerk.

Brian Torreano, 1414 West Sunset Road, Apt. 102, Port Washington, WI questioned when the fish passage project was approved by the Village Board. President Brunnquell responded that the project was approved on December 1, 2008.

Trustee Grant again suggested that the Village make an effort to establish an ad-hoc committee to do research on the project so that more information will be available prior to the spring election.

Director of Public Works/Village Engineer Dave Murphy commented that no funds have been budgeted to bring in additional consultants for this project.

President Brunnquell commented that it is difficult to know what may occur in 2019; hopefully more information will be known in the future.

Trustee Grant stated that there has been information that was distributed and not evaluated. An ad-hoc committee could obtain citizen input and then provide information to the general public. The current cost analysis does not appear credible and the more information on the matter the better the cost analysis will be.

Trustee LaPean commented that, unfortunately, even the Department of Interior cannot agree on the best course of action for the dam. One department says take it out and the other says leave it standing.

He also commented that everyone has done a great job presenting the available information and new ideas for this very important project.

President Brunnquell thanked everyone for coming to this meeting and providing input on the very important matter. The voice of the community does count which is why this matter is being forwarded to the entire community for a decision.

Motion by Trustee Volkert, seconded by Trustee LaPean, to adjourn the special Village Board meeting at 7:38 p.m. Approved unanimously.