

# VILLAGE OF OCONOMOWOC LAKE

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**OCONOMOWOC LAKE VILLAGE BOARD MEETING MINUTES OF MONDAY, August 16, 2010, Unofficial until approved by the Village Board. Approved as written ( X ) or with corrections ( ) on 09/20/2010.**

The regular monthly meeting of the Board of Trustees of the Village of Oconomowoc Lake was held on August 16, 2010, commencing at 7:00 p.m., at the Village Hall, 35328 W. Pabst Road, Oconomowoc, Wisconsin. Legal requirements for notification as required by law have been met. Roll was taken following the Pledge of Allegiance with the following in attendance:

Mr. Kneiser/President – present  
Messrs., Bickler, Birbaum, Falstad, Fischer, Owens, Shult/Trustees – present  
Ms. Schlieve/ Clerk-Treasurer – present  
Mr. Wiemer/Police Chief-Administrator – present  
Mr. Macy/Attorney –present

## **ATTENDANCE**

Leyton Schultz (Schultz Appraisal Agency), Dick Heinrich, Kathy Nickolaus, Ed Johnson

## **ANNOUNCEMENT BY PRESIDENT**

President Kneiser announced that the Village Board of Trustees may: “Convene into executive closed sessions by roll call vote, pursuant to section 19.85(1)(c), Wisconsin State Statutes, ‘considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility’, in regard to a Village employee; and, pursuant to section 19.85(1)(g), Wisconsin State Statutes, ‘conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved’, regarding the litigation on the property located at 36016 South Beach Road, owned by Patrick and Jana Eilers. Participating in the executive closed sessions will be the Village Board, Village Attorney, Village Administrator, and Village Clerk-Treasurer.”

## **MINUTES**

Motion (Falstad/Shult) to approve, as printed, the minutes of the July 19, 2010 Village Board meeting and Public Hearing, Carried Unanimously.

## **PUBLIC COMMENT**

Motion (Birbaum/Bickler) to open the meeting to public comment on agenda items, Carried Unanimously.

There were no public comments.

Motion (Shult/Birbaum) to close the meeting to public comment, Carried Unanimously.

## **REPORT FROM THE SCHULTZ APPRAISAL AGENCY ON THE STATUS OF THE REVALUATION OF THE VILLAGE OF OCONOMOWOC LAKE.**

Mr. Leyton Schultz presented information to the Trustees regarding the current revaluation of the Village. He noted that there are a low number of sales of property in the Village to use for comparison purposes in determining the assessed values. Mr. Schultz also stated that on average most assessments will increase by fifty percent, but the Village’s tax rate will decrease if there is no increase in the Village’s

budget for 2011. Mr. Schultz provided a report indicating the percent change from 2009 to 2010 of equalized values within the state of Wisconsin (a copy is attached to the minutes). He specifically highlighted the Villages of Chenequa and Lac La Belle since they are communities comparable to the Village of Oconomowoc Lake. Mr. Schultz noted that the assessment roll is scheduled to be available at the Village Hall on September 1st; open book is set for September 7th; and board of review is scheduled for September 23rd.

## **PRESIDENT**

### **Update regarding the proposed Wisconsin wind energy systems siting rules.**

Mr. Kneiser reported that the Public Service Commission (PSC) has released the proposed wind energy systems siting rules. Mr. Fischer attended one of the listening sessions held by the PSC regarding the initial draft of the proposed siting rules. He stated that most of the comments made at the session were negative, and that those comments are not reflected in the final proposed rules. Mr. Fischer explained that the siting of the wind energy systems is determined in advance by the companies that want the systems; then the land owners are contacted and the permitting process begins. Mr. Fischer noted that there is probably not much risk of wind energy systems being placed in the Village due to the lack of profitability. Trustees also commented that perhaps the Plan Commission should consider rules regarding solar panels on properties in the Village.

### **Discussion regarding appeals court decision on East Troy high capacity well DNR permit.**

Mr. Kneiser referenced a newspaper article regarding the Village of East Troy high capacity well DNR permit. East Troy has a high capacity well that has been in operation for nearly two years. The well is 1,400 feet from Lake Beulah in Walworth County, and has the capacity to withdraw up to 1.4 million gallons of water a day from a saturated sand and gravel aquifer close to the surface. The Lake Beulah Management District has requested that the DNR shut down the East Troy well. East Troy has appealed to the Supreme Court to overturn an Appeals Court ruling in June 2010 that gave the DNR an expansion of authority over the impact of high capacity wells on adjacent lakes.

### **Discussion/action regarding Ordinance No. 207 "An Ordinance to Require Proper Care of Trees to Prevent the Spread of Disease and to Empower the Village Forester to Enforce these Requirements.**

Mr. Kneiser explained his reasons for reconsideration of Ordinance No. 207 "An Ordinance to Require Proper Care of Trees to Prevent the Spread of Disease and to Empower the Village Forester to Enforce these Requirements". Mr. Kneiser noted that the Village does not have any ordinance that forbids tree cutting and removal. The Village spends approximately \$2,500 each year for an arborist to fly over and photograph diseased trees, primarily red oaks infected by beetles, causing "oak wilt". The arborist then tags the diseased red oaks, the property owners are sent a formal notice to remove them by the following March 31st, or else the Village will do so and send the property owner the bill. Removal of the massive red oaks by a professional usually costs about \$500 per tree. Then the logs are required to be physically removed, or, if stored on site for firewood, securely tarped until at least mid-summer to prevent the beetles from escaping. The arborist follows up on tarped red oak log piles in Spring to assure that they are secure. In spite of all this effort, every year some infected red oaks continue to be identified. The DNR recommends not cutting and removing infected red oaks. The DNR created a brochure entitled "Oak Wilt in Wisconsin: Biology and Management". In that brochure they state that "removing the infected tree will not control the spread. In fact, movement of the fungus through the roof grafts may be hastened by prompt removal of infected trees." Mr. Kneiser recommended that the Village discontinue its current practices since they don't work, and that Ordinance 207 be rescinded. He noted that residents can be educated through the Village newsletter regarding the proper care of their trees when infected with oak wilt.

Motion (Owens/Bickler) to rescind Ordinance No. 207 "An Ordinance to Require Proper Care of Trees to Prevent the Spread of Disease and to Empower the Village Forester to Enforce these Requirements", Carried Unanimously

## **PLAN COMMISSION**

Mr. Wiemer reported that Plan Commission approved signage for Silver Lake Auto Center, Ewald Chevrolet, and Ewald KIA at its August 2nd meeting.

## **ATTORNEY**

### **Discussion/action regarding FDA Regulations regarding Tobacco Sales, per correspondence from Mr. Macy dated July 19, 2010.**

Mr. Macy explained that tobacco cannot be sold in vending machines unless there is constant surveillance of those machines. There are no cigarette vending machines currently in the Village.

### **Discussion/action regarding Basic Municipal Law Principles and Recent Court of Appeals Decisions, per correspondence from Mr. Macy dated July 26, 2010.**

Mr. Macy noted that the imposition of fees must be justified. Fees may not be imposed if the expenses do not correlate with the fee.

## **TREASURER**

### **Checks**

Motion (Birbaum/Shult) to approve check numbers 37800 through 37872, for regular monthly payments, and all electronic payments, *Carried Unanimously*.

## **FINANCE**

### **Discussion regarding monthly operating statement for August.**

Mr. Fischer reviewed the monthly operating statement.

### **Discussion/action regarding Village-owned LaLumiere properties.**

The trustees noted that they would like to physically walk the property and observe the area before making any decisions. Motion (Owens/Birbaum) to postpone the discussion to a future date, *Carried Unanimously*.

## **ADMINISTRATOR**

### **Update regarding stop signs at the intersections of Sawyer Road and Pabst Road, and Valley Road and Pabst Road.**

Mr. Wiemer stated that four-way stop signs will be installed by Waukesha County at both intersections since they have determined the intersections are hazardous.

### **Discussion/action regarding West Beach Road flooding, per correspondence from the Mortonson and Mizerak families dated July 25, 2010.**

The letter from the Mortonson and Mizerak families expressed concern with the drainage and amount of standing water on West Beach Road between their two properties. The letter cites concern for the safety of pedestrians and motor vehicles. They note that the roadbed is deteriorating with chunks of asphalt loose or pieces of tar used to fill cracks on the side of the roadbed on the side of the road. Per the letter, the drainage is poor due to the deterioration of the roadbed and the inability of adjacent property to absorb the amount of water resulting in pooling of the water in the spring, summer and winter after heavy precipitation. The letter requested the Board to review and authorize the repair of the roadbed to include options to pave and change the pitch of the road to allow for drainage and to avoid any public safety issues on the public road.

Mr. Wiemer reported that the problem could be solved by the installation of a culvert to allow for drainage to the lake; however, the Village does not own the property to the lake to install the culvert. An easement would be needed to do so. Some suggestions included budgeting money for a pump and pump out the water after high water events or get an engineer to shoot grades. Motion (Bickler/Shult) to postpone the matter until the September 20th meeting in order to determine whether the property owners would grant an easement for more effective drainage, *Carried Unanimously*.

**Discussion/action regarding the request of Mr. and Mrs. Richard Heinrich, 4255 West Beach Road, for a six-month extension to their building permit.**

Mr. and Mrs. Heinrich have requested a six-month extension to their building permit. Mr. Wiemer explained that there is a two year time limit to complete a house from the date the permit is issued. Mr. and Mrs. Heinrich received a six-month extension in February for this same project. Mr. Heinrich explained the delays that have put their project behind schedule. Mr. Fischer suggested that if the exterior of the property were completed and landscaped, then the interior work could continue until final completion.

Motion (Fischer/Bickler) to extend the building permit for an additional six months with the provision that within six weeks the exterior of the home will appear to be completed, including landscaping and exterior finishes and the front door, and any trucks on the property for the interior completion must be parked in the garage, *Carried*, Mr. Birbaum abstained from the vote.

**Discussion/action regarding a fishing tournament on October 23, 2010.**

Mr. Wiemer reported that Mike's Bait Shop in Okauchee, represented by Kathy Nickolaus, would like to hold a fishing tournament on Oconomowoc Lake on October 23, 2010. The proposed tournament would include approximately 50 boats. The boats would need to launch from the Village's boat launch, and the vehicles that could not fit in the launch lot would park on Wisconsin Avenue. The promoters have received permission from the Town of Oconomowoc, in whose jurisdiction the road lies, to park the vehicles along Wisconsin Avenue.

Concern was expressed by the trustees in regard to the number of boats going onto the lake since there are only 20 parking spots at the launch. When the launch was built there was a lot of thought put into the number of boats being launched onto the lake. The proposal for this tournament would be contrary to the plan. It was also noted that the tournament is for musky, and because of the location of the musky, such as under piers or near the shore, damage is caused by the fishermen in trying to catch the fish. Further, the timing is acute when many residents would use the launch to take their boats out for the season.

Motion (Birbaum/Fischer) to decline permission to hold a fishing tournament on Oconomowoc Lake on October 23, 2010, *Carried Unanimously*.

**Discussion/action regarding tree trimming on Pabst Road**

Mr. Wiemer noted that there are many low hanging branches along Pabst Road that need to be trimmed back, and that a bucket truck is needed to accomplish the work. Mr. Fischer commented that there are low hanging branches along Armour Road also. Mr. Wiemer will contact resources and get prices.

**Update on lake levels and dam issues during high water event**

Mr. Wiemer advised that a meeting between the City of Oconomowoc, Town of Oconomowoc, and the Village will be held Wednesday, August 18th, in order to discuss procedures used to control the dams during high water events. Mr. Wiemer noted that he had found a 1945 letter from the Public Service Commission (PSC) regarding the proper procedures for controlling the dams. The PSC was the overseer of those matters at that time. The letter indicates that the water should be released in such a manner so it does no damage down stream. Upon checking with the Department of Natural Resources (DNR), Don was told that the 1945 letter is still in effect and should be the policy followed by municipalities. Mr. Fischer noted that Funk's Pond, on the north end of North Lake, used to act as a retention pond for the areas south of it and would hold back some of the water. Funk's Pond was drained by the DNR a number of years ago. Mr. Fischer expressed the opinion that the DNR should put that pond back into use and the flooding during high water events would be lessened. Discussions will continue with area municipalities and the DNR to find the best way to operate the dams during high water events so that excess water levels are shared equally among the lakes.

### **POLICE CHIEF**

#### **Discussion/action regarding the appointment of a police commission or committee**

Mr. Wiemer explained that it was possible that a police committee would be needed in the near future to handle a matter involving a Village police officer. Motion (Bickler/Falstad) to allow the Village President to appoint a three-person police committee as needed, *Carried Unanimously*.

### **FIRE COMMISSIONER**

Mr. Wiemer reported that an agreement had been reached between the City of Oconomowoc and the Summit Fire District regarding the new fire station. All of the equipment belonging to the Summit Fire District fits into the new fire station. There will be a grand opening of the fire station on August 26, 2010.

### **BOARD OF ZONING APPEALS**

#### **Update on the July 21, 2010 board of Zoning Appeals meeting**

Mr. Fischer reported that the Board of Zoning Appeals (BZA) had approved the variance request made by Mr. and Mrs. Pat Eilers for their property located at 36016 South Beach Road. There were a number of conditions attached to the approval.

#### **Update on the Eilers Writ of Certiorari – Circuit Court Decision**

Mr. Wiemer advised that the decision had been received. The Circuit Court ruled in favor of the Village.

### **ARCHITECTURAL CONTROL BOARD (ACB)**

There will be a meeting in August for the requests of Mr. and Mrs. Eilers for a new single family residence, and Drs. Michael and Heather Murphy for an addition to and remodel of their home.

### **CLERK**

There was no report.

### **COMMUNICATIONS**

There were no communications.

### **CLOSED SESSIONS**

President Kneiser announced that the Village Board of Trustees would: “Convene into executive closed sessions by roll call vote, pursuant to section 19.85(1)(c), Wisconsin State Statutes, ‘considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility’, in regard to a Village employee; and, pursuant to section 19.85(1)(g), Wisconsin State Statutes, ‘conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved’, regarding the litigation on the property located at 36016 South Beach Road, owned by Patrick and Jana Eilers. Participating in the executive closed sessions will be the Village Board, Village Attorney, Village Administrator, and Village Clerk-Treasurer.”

Motion (Bickler/Birbaum) to go into closed sessions as noted above, *Carried Unanimously*. The vote in favor was Messrs. Owens, Shult, Birbaum, Bickler, Falstad, Kneiser, and Fischer. There were no votes against the motion.

At the beginning of the second portion of the closed session, “conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved”, Mr. Fischer and Mr. Falstad recused themselves from the session and left the room.

**RECONVENE INTO OPEN SESSION TO ACT UPON ANY MOTION(S) REQUIRED FROM THE CLOSED SESSIONS DISCUSSION**

Motion (Bickler/Birbaum) to reconvene into open session, Carried. The vote in favor was Messrs. Owens, Shult, Birbaum, Bickler, and Kneiser. Messrs. Fischer and Falstad had recused themselves.

There were no motions to act upon from the closed sessions' discussion.

**DISCUSSION/ACTION REGARDING THE BOARD OF ZONING APPEALS (BZA) MEMBERSHIP**

Mr. Kneiser explained that Mr. Bickler had raised some concerns regarding the BZA membership. Mr. Bickler recommended the removal of three BZA members due to his feeling that they had not acted within the law and therefore they should be removed. Mr. Owens expressed his concern that it appeared to him that the BZA members had made a decision that violates the Village of Oconomowoc Lake zoning laws. Mr. Fischer suggested that additional education of BZA members would be beneficial. Mr. Macy suggested that he would like to research the matter of removing BZA members before any decisions were made.

Motion (Birbaum/Shult) to authorize the Village Attorney to research the procedure to remove Board of Zoning Appeals members, Carried. Messrs. Fischer and Falstad abstained from the vote.

**ADJOURNMENT**

With no further discussion being heard, a motion (Fischer/Birbaum) to adjourn was made at approximately 10:00 p.m., and Carried Unanimously.

Respectfully submitted by:

Approved and ordered posted by:

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Cindy J. Schlieve, Clerk-Treasurer

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Richard J. Kneiser, President