

Minutes of Town of Perry Board Meeting  
August 27, 2012  
Perry Town Hall

1. Call to order. Chairman Pat Downing called the meeting to order at 7:35 PM. Supervisors Roger Kittleson and Mick Klein Kennedy and Clerk Mary Price were present. Also in attendance: Linda Bluschke, Alice Yaeger, Doug Nelson, Atty. Mark Hazelbaker, David Gehl, Susan Gehl, Steve Ligler, Gamze Ligler, Duane Iverson, Lynnette Gebben, George Sundstrom, Mike Gebben, Fred Smith, Doug King, Lynn Bliss, Ken Bartz, Howard Kietzke, Ryan Oehlhof, Loreen Oehlhof, Barrett Browning, Brent Radke, Hildegard Browning, David Mays, Gary Boley, Atty. Glenn Reynolds, Bird Cupps, Amelia Fairchild, James Gibson, *Mt. Horeb Mail* reporter Katherine Kramer.

Chairman Pat Downing explained the purpose of this special Town Board meeting – to discuss the status of the Town’s current legal cases and to discuss options with the Town’s attorney. Public comments will be invited and limited to five minutes per speaker.

2. Appoint Hauge Historic District Park strategy consultant. Chairman Pat Downing explained the formal function of a proposed strategy consultant. Roger Kittleson moved and Mick Klein Kennedy seconded a motion to table the appointment of a Hauge Historic District Part strategy consultant. Motion carried.
3. Public Comments. Residents and the *Mt. Horeb Mail* reporter requested information and opinions and offered opinions and suggestions. Attys. Glenn Reynolds and Mark Hazelbaker provided information on the status of the legal cases and options to the Town subsequent to the Court of Appeals decision in 2011AP492.

Brent Radke requested clarification about recorded maps submitted to jury.

Barrett Browning requested verification that Atty. Reynolds would represent the Town pro bono for the Court of Appeals decision; also requested Atty. Reynolds’ analysis of Court of Appeals decision and Judge Colas’s actions;

Steve Ligler offered an estimate of interest liability.

Barrett Browning asked if interest accrual can be mitigated by escrowing judgments and Atty. Mark Hazelbaker indicated that this method would not discontinue interest accrual; requested update on Town’s appointment of Supervisor Roger Kittleson to represent the Town in settlement negotiations and Atty. Reynolds reported the response received unacceptable confidential, no disclosure requirements in negotiations; asked David Gehl to discuss negotiations with Roger Kittleson.

David Gehl agreed to discuss negotiations with Roger Kittleson.

Doug King advised other party should be present in negotiation discussions.

David Gehl requested Atty. Reynolds opinion on court decisions and Attys. Reynolds and Hazelbaker indicated that they cannot comment since David Gehl is represented.

Roger Kittleson reported the jury verdict \$312,500 for 12 acres with no density units.

Atty. Reynolds stated juror affidavits indicate confusion on loss of frontage.

*Mt. Horeb Mail* reporter Kath. Kramer asked if jury instructions were clear; effect of road built in 2011; access described in Atty. Kassner's reply brief; Atty. Reynolds stated that judge and jury should assume project completion; Atty. Hazelbaker confirmed and gave examples of DOT projects.

David Gehl stated his opinion that the field road is not completed.

Steve Ligler recommended no more litigation; no further appeals; new attorney; volunteered to negotiate; and funding should be secured. Barrett Browning agreed with recommendations.

Doug King presented two jurors' affidavits and one juror's statement indicating their misunderstandings and verdict errors; and recommended an independent counsel to rehabilitate Appeal brief; appeals and trial representation should be pro bono; check insurance coverage for awards; long term borrowing should be pursued; voters should vote against levy increase; mediation with a judge should be considered; consider returning land to former landowners; supports Town Board decisions.

Linda Bluschke opined that the Historic District zoning restrictions would protect the park; advised using common sense in buyer/seller negotiations.

David Mays recommended long term funding and further appeal briefs should be prepared.

James Gibson advised David Gehl to show good faith and suspend interest accrual.

Brent Radke recommended obtaining a loan and negotiations meetings should be scheduled.

Mick Klein Kennedy observed a significant breakthrough in agreement to schedule negotiations meetings.

Bird Cupps thanked the Town Board and former Supervisor Larry Price for their efforts to defend the Land Use Plan.

Amelia Fairchild advised no further litigation; legal representation should be pro bono; negotiations should be attempted.

Gamze Ligler advised cases should be settled; opined Court of Appeals decision was scathing; Town should move on.

Duane Iverson indicated that the cases costs too much money, should negotiate settlement.

Gary Wegner advised negotiations.

Doug Nelson recommended mutually beneficial resolutions; obtain loans for realistic settlements.

Atty. Mark Hazelbaker commended Town residents for thoughtful ideas presented.

Ryan Oehlhof recommended meeting dates and times should be established.

3. Closed and Open Sessions. Chairman Pat Downing announced a closed session will be convened to discuss litigations under WI Stat. 19.85(1)(g).

Roger Kittleson moved and Mick Klein Kennedy seconded a motion to convene a closed session during this meeting to discuss matters under WI Stat. 19.85(1) g. Roll call vote: Pat Downing, Yes; Roger Kittleson, Yes; Mick Klein Kennedy, Yes. Motion carried.

Barrett Browning, Brent Radke, Howard Kietzke, Duane Iverson, Ken Bartz, Ryan Oehlhof, Loreen Oehlhof, Linda Bluschke, Hildegard Browning, Lynn Bliss and *Mt. Horeb Mail* reporter Katherine Kramer did not leave the Town Hall after the closed session was announced by the Chairman. Atty. Mark Hazelbaker explained the WI statute allowing the Town Board to convene a closed session. Assistance from the Dane Co. Sheriff's Dept. was requested. The Town Hall was cleared.

Chairman Pat Downing convened the closed session.

Roger Kittleson moved and Mick Klein Kennedy seconded a motion to reconvene the open session of this meeting under WI Stat. 19.85(2). Roll call vote: Pat Downing, Yes; Roger Kittleson, Yes; Mick Klein Kennedy, Yes. Motion carried.

Chairman Pat Downing convened the open session.

Mick Klein Kennedy moved and Roger Kittleson seconded a motion to authorize Roger Kittleson of the Perry Town Board to enter into settlement discussions with Mr. David Gehl. Motion carried.

Mick Klein Kennedy moved and Roger Kittleson seconded a motion to submit the application for financing payment of such funds and means as are appropriate to terminate and/or settle the pending cases, with monthly status reports. Motion carried.

Mick Klein Kennedy moved and Roger Kittleson seconded a motion to authorize Attorney Glenn Reynolds to draft a Motion for Reconsideration on Appeal No. 2011AP492, at no cost to the Town. Motion carried.

Mick Klein Kennedy moved and Roger Kittleson seconded a motion to retain Attorney Mark Hazelbaker to review a proposed Motion for Reconsideration by the Court of Appeals, confer with the Town Board on the merits of the Motion and assist in presentation of the case, and attempt to negotiate an acceptable resolution of these and other legal issues. Motion carried.

4. Adjournment. Mick Klein Kennedy moved and Roger Kittleson seconded a motion to adjourn. Motion carried. The meeting adjourned at 11:45 PM.

Mary L. Price, Town Clerk

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