

Village of Elm Grove Board of Trustee Meeting Minutes

Board of Trustee Call to Order:

The meeting was called to order at 7:34 PM

Roll Call:

PRESIDENT PALMER

TRUSTEE CORNELL

TRUSTEE STUCKERT – appeared via Zoom

TRUSTEE KOLESKI – appeared via Zoom

TRUSTEE SCHINDLER

TRUSTEE MICHALSKI

TRUSTEE SAYAS

DAVID DEANGELIS, VILLAGE MANAGER

HECTOR DE LA MORA, VILLAGE ATTORNEY

ZONING ADMINISTRATOR - vacant

SANDEE POLICELLO, VILLAGE CLERK/DEPUTY TREASURER

The Pledge of Allegiance was recited.

- 1.) Public Hearing - None
- 2.) Public comments – please note comments read into record are included in the minutes. Comments emailed to Village Board members, but not read aloud, are not included.
 - A. Presentation by Elmbrook Rotary regarding 6th Annual Business Person of the Year Award.
Presentation by Doug Jacobson regarding the 6th Annual Business Person of the Year Award.
He gave the qualifications and invited nominations be made at embrookrotary.org

Susan Freedy, 840 Curtis Drive – 57+ year resident, she has served on numerous committees, former president and board member. She is concerned regarding financial support of the TIF. She said there is a legitimate concern due to the size of it. She supports retaining outside counsel for a review where any issues should be identified.

Marge Kozloski, Brookfield resident and board president of Brookfield Senior Taxi. She thanked Elm Grove for their continued support. They are on their way back to normal after Covid-19. Ridership has tripled since 2019 with 853 rides year to date; in 2019 they provided a total of 312 rides. Disabled adult ridership is over 40%, which is a new group for Elm Grove. 25% of the rides are for medical purposes, with the remainder for personal or social. They receive positive feedback from the customers. They operate Monday through Saturday and now have 5 vehicles with a transportation manager. They have 16 drivers, half are new, with a need of 2 more. They have been able to hold their rates the same. In 2023 two vehicles will need replacement. She thanked Elm Grove for its support. Trustee Sayas recommended that Ms. Kozloski contact the Community Foundation for potential grants.

Mary Inden, 14745 Watertown Plank Rd – At the recent shredding day they collected more than 4,000 tons, saving 75 trees. The next event will be in spring. The garbage collection contract is

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up tonight she would like up the drive service to continue. She is not in favor of changing the date of the fireworks next year. Regarding the SSND RFP – she thought this was to review the process – the responders look like serious litigators. To choose a firm that specializes in suing municipalities would not be good. Please let the project go forward and not spend money on the review.

Mike Lewis, 15185 Watertown Plank Rd – He wants the speed limit enforced on Watertown Plank; cars drive 35-45 mph. He has 6 pages of signatures to increase police monitoring; more speed signs; police to park in different positions, as people know where they park; his dog was hit by a speeding car. He would like this put on the Public Safety Committee agenda. He spoke with Chief Kubiak who said they need data.

Trustee Sayas says she and Trustee Schindler did get back to Mr. Lewis regarding this. They need data before more signs can go up. She said to continue to call dispatch with situations so that there is documented.

Patty Kujawa, 1685 Lindhurst Dr – She supports up the drive garbage pick-up. She requests that the Board dismiss any action for review of the TIF. She counted over 20 firms that were sent the RFP and to only get two responses is telling. She said Mr. Cincotta still does not have an operable website, how can he do this review? The other firm wants to go back two years, which would cost us a large amount of money; we have a good lawyer, staff, including Mandel's law firm. This is a waste of time. She read in the minutes that it is not unusual for the water to be moved into the TIF. She noted 11/21, 2/22, 3/22 where there were closed sessions discussing water from Wauwatosa; she would think that the concept of Mandel doing the water was discussed at one of those. Mandel's attorney has said they will sue us; she believes they will. A lawsuit will lay on your shoulders if you vote to go ahead with this. She believes the process was complete. She is sad about the conflict in the Village. She suggested casual meetings in the Village with residents to discuss issues.

Jim Phillips, 2060 San Fernando Dr – He has been a resident since 1991 and on fire department for 34 years. He doesn't see a cap on the possible legal action. He questioned the Village hiring a law firm to hire a lawyer to sue the Village. Mandel wanted to break ground soon, if that gets delayed, we are liable. If they delay the project, we could be sued. He believes both proposals are too expensive. If a trustee discussed the RFP with either of these law firms, it should not have taken place. He asked what do you think the village did wrong? Is this a fishing expedition to stop the project? He suggested a risk analysis of how much the Village could be liable for. What could Mandel charge us if there is a delay in the project? Those funds could be used for Fire and EMS.

Lisa Becker 1155 Church St – She is in support of up the drive garbage service. She supports the RFP for the TIF. She reviewed a plan commission meeting and recited what Joe Kujawa said at the meeting. The expense of \$12,000 - \$30,000 is not insignificant, but is small in comparison to the TIF. She believes it is in Mandel's best interest to threaten to sue the village, but what kind of reputation would they have if they sue? During a lawsuit things may come out in discovery and that is not in their best interest.

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Joe Kujawa – 1685 Lindhurst Dr – He supports up the drive pick-up for garbage collection. He supports fireworks staying on the 4th. He stands by his words – he first voted for it, then it was a procedural thing he was voting against. He believes this Board is trying to re-litigate what a previous Board did. It is a foolish waste of time for this Board to go down that path. He recommends the dismissal of any further action for review. The current board is voting against a previous board. As a plan commissioner, he said the process was open, transparent and legally compliant with input from staff and public; which led to changes to the plan made again and again. This sets a dangerous precedent; to sue over disagreeing with an action taken. It is concerning to him that only two law firms responded. The scarlet letter would be on the Village and not Mandel. It would open us up to litigation by SSND and people that have purchased properties in the development. Have any of the trustees spoken with any law firms? He would like to know who it was.

Tom Castile, 1865 Hollyhock Ln. He is a 10 year resident. He agrees with the fireworks staying on the 4th of July and garbage collection up the drive. He also has high speed traffic on his street. He is in support of the legal review by a third party with the size of the TIF. Law firms may have had a conflict of interest.

Ted Eull, 12850 Green Meadow Pl – He spoke in favor of a review of the TIF. The cost is not very substantial with the size of the TIF. Both proposals seem to be by qualified individuals.

Phillip Aiello, Mandel – He has been largely silent as this has been unfolding. The Board, by virtue of state statute, is bound to follow good faith efforts and this review would not fall in that category. He said it is not a threat that they will sue – they have been working for 5 years at great cost and time – they will see it to the end. They are not worried about exposing anything during a discovery period. They are a company that always takes the high road. The change of the water being installed by Mandel – they changed the terms of the contract to be in compliance with a potential ordinance. The underlying concern that apartments will change the fabric of the Village – we have seen this in many other communities, people find out that our developments turn out to be an enhancement. Mandel has been putting forth good faith effort for 5 years with 35+ public hearings on this development. To say it was rushed is a silly statement. He hopes they turn down any consideration for a review.

Dick Schaefer, 13165 Lee Ct. He is a 40 year resident. He believes that most of the Village was not represented when the development was approved. He is not in support of 500 people on 30 acres. He is not in support of the density of the project. People are pleased with The Watermark. He questions if changes can be made to the plan. He supports a review of the plan.

Hearing no one else present or on Zoom who wished to speak – the public comment period was closed.

3.) Approval of Agenda

Trustee Koleski asked that items 10 and 12H. be moved to be discussed earlier on the agenda.

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**MOTION BY TRUSTEE SAYAS, SECOND BY TRUSTEE MICHALSKI, TO MOVE ITEMS 10 AND 12H TO BE DISCUSSED EARLIER ON THE AGENDA.
ALL WERE IN FAVOR, MOTION CARRIED.**

11.) Report of Village Manager – David DeAngelis

A. Review and possible action on the Request for Proposal for Legal Services for the Purpose of Review concerning the creation of Tax Increment District #3 (TID#3) process and the approval of Tax Increment Financing (TIF) for TID #3 process.

Mr. DeAngelis indicated there were two proposals received in response to the Request for Proposals.

Trustee Stuckert stated at the July 2022 meeting a motion was made and voted on to retain counsel to review the TIF. Eight firms were mailed the RFP and only one returned a proposal; one firm responded that they were not interested. Responses were not received from the other six firms. She asked if receipt of delivery was made; David DeAngelis stated proof of delivery was not requested and follow up was not made with the firms that did not respond. She contacted 5 of the remaining 6 firms to see if they had received the RFP. Three never received the RFP; one indicated that they did not do this type of work and one was not interested. She then contacted Tom Harrigan who re-mailed the RFP by certified mail. Attorney Cincotta received the RFP a week before it was due.

MOTION BY TRUSTEE STUCKERT, SECOND BY TRUSTEE KOLESKI TO RETAIN ATTORNEY CINCOTTA FOR THE REVIEW.

The Board held discussion.

TRUSTEE STUCKERT REMOVED HER MOTION.

TRUSTEE STUCKERT MOVED TO NEGOTIATE WITH THE LAW FIRM OF GODFREY, LEIBSLE, BLACKBOURN & HOWARTH TO REVIEW THE CREATION OF THE TID #3 AND THE ASSOCIATED TIF ALONG WITH THE PROCESS BY WHICH THE PUBLIC WORKS PORTION OF THE TIF WAS ADJUSTED DAYS BEFORE THE REFERENDUM VOTE. UPON COMPLETION OF SUCCESSFUL NEGOTIATION ELM GROVE WILL RETAIN THE LAW FIRM OF GODFREY, LEIBSLE, BLACKBOURN & HOWARTH TO REVIEW THE CREATION OF THE TID #3 AND THE ASSOCIATED TIF ALONG WITH THE PROCESS BY WHICH THE PUBLIC WORKS PORTION OF THE TIF WAS ADJUSTED DAYS BEFORE THE REFERENDUM.

President asked if she was withdrawing the motion to approve Cincotta and replacing with the other responding law firm.

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Trustee said she is not voting for retention at this point. She is voting for negotiating with the law firm.

President Palmer questions if this can be done with the agenda language. He asked Attorney de la Mora if this is a motion we can take up.

Attorney de la Mora summarized that Trustee Stuckert moved and it was seconded. He asked if she is amending her motion. Trustee Stuckert said she withdrew her motion to approve the proposal of Attorney Cincotta and put a new motion on the table. De la Mora asked if she withdrawing the Cincotta name and substituting the other law firm; you are amending the motion? Trustee Stuckert said she is amending the motion and adding to that motion that with this process that we negotiate the terms. De la Mora said she can substitute another law firm by proposing to amend your motion and having Koleski approve that; you then have standing to amend your motion to negotiate on the details on the RFP. Am I correctly restating your intent?

Stuckert asked what Koleski has to say. Koleski said with the new lawyer he would like to include a maximum fee of \$15,000. Palmer asked if Stuckert accepts that amendment. Stuckert said she is fine with that.

De la Mora said the motion on the table is to hire Cincotta; you are now proposing to substitute the alternate firm, is that correct? Stuckert said she is withdrawing the motion to hire Cincotta. Looking at the second law firm there is no cost framework. That is what she is trying to do. She is fine with the \$15,000. De la Mora said from parliamentary procedure, Stuckert has the option to amend the motion by substituting the other law form and to accomplish that you need to have the agreement of the seconder. Alternatively she could withdraw her motion. He has concerns that given what the Village has published in the RFP, it is not treating the parties that were invited to submit proposals in an even handed fashion. He is concerned about the second modification. Stuckert asked if a limit to costs could be set. De la Mora said the cleanest way to wipe the slate clean is for Stuckert to withdraw her motion with the approval of the seconder, but he cautions that if she makes a motion along the lines of a financial cap and there is going to be negotiations, you are deviating from the original RFP and that may not be a permissible motion.

Koleski asked if they can amend the motion to include the alternative law firm with a spend cap of \$15k focused on the RFP. Attorney de la Mora doesn't believe so because you are adding a provision that was not made available to all the people that submitted a proposal. The Village would be undermining it's RFP in doing that and he would recommend against that. Stuckert asked how they could go forward to move for the other law firm. De la Mora said to accept the proposal as submitted. He feels compelled to recommend that you not pursue that motion because you must pursue all people that were invited in an even handed procedure.

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Schindler asked if we don't go forward with Blackbourn and we issue another RFP with different terms, would that be acceptable? De la Mora confirmed it would be and that would be the safest course of action.

Stuckert withdrew her motion. Koleski concurred with the withdrawal.

MOTION: Stuckert asked for help from Koleski in what he wanted in terms of the spending cap. Koleski said the RFP that they want is a review of the process and approvals taken and the opinions of legal counsel provided with an expectation that the effort will be no more than \$15,000. Sayas asked where the \$15,000 is coming from. Koleski said the effort should be no more than 50 hours at \$300/hour.

KOLESKI SECONDED THE MOTION.

Stuckert asked if it is possible to hold a special meeting so we can look at this in 1 – 2 weeks to make sure that it is stated the way we want it to be. Palmer said we hold special meetings all the time.

Stuckert withdrew the motion.

MOTION BY TRUSTEE STUCKERT, TO SEND OUT A NEW RFP TO RETAIN OUTSIDE COUNSEL TO REVIEW THE CREATION OF THE TID #3 AND THE ASSOCIATED TIF ALONG WITH THE PROCESS BY WHICH THE PUBLIC WORKS PORTION OF THE TIF WAS ADJUSTED DAYS BEFORE THE REFERENDUM VOTE ON APRIL 5TH. INCLUDE WITH THAT, THAT THE RFP SHOULD BE FOCUSED ON AUDIT AND REVIEW OF THE PROCESS AND APPROVAL AND THAT THE EFFORT SHOULD BE NO MORE THAN \$15,000 TO \$20,000 WHATEVER WE DECIDE.

Stuckert asked that a special meeting be scheduled.

Mr. DeAngelis asked for confirmation that Stuckert withdrew her motion; Koleski concurred with the withdrawal; Stuckert asked Koleski for help in direction; Stuckert did make a formal motion which Koleski seconded. This was confirmed.

Attorney de la Mora recommended that the special meeting be scheduled now. It was agreed to meet on Tuesday, October 4th at 9:30 am to discuss and vote on a new RFP. De la Mora recommended that the two responding firms be notified as to what has taken place and that we will send the new RFP to them.

**VOTE – AYE: SAYAS, SCHINDLER, STUCKERT, KOLESKI
NAY: MICHALSKI, PALMER, CORNELL
MOTION PASSES**

B. Review and possible action regarding the approval of a final plat titled Red Barn and for a final Plat titled Green Meadow as part of the redevelopment of the School Sisters of Notre Dame

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(SSND) Property.

MOTION BY PRESIDENT PALMER; SECOND BY TRUSTEE MICHALSKI TO APPROVE THE FINAL PLATS WITH REQUIRED CHANGES.

VOTE – AYE: MICHALSKI, PALMER, CORNELL, SAYAS, SCHINDLER, KOLESKI

NAY: STUCKERT

C. Review and possible action on the acceptance of lowest proposal for refuse and recycling services from John’s Disposal and directing staff to complete contract for approval by the Village Board.

MOTION TO APPROVAL BY TRUSTEE MICHALSKI; SECOND BY TRUSTEE SAYAS TO ACCEPT THE LOWEST PROPOSAL FOR REFUSE AND RECYCLING SERVICES FROM JOHN’S DISPOSAL AND THE CONTRACT WITH JOHN’S DISPOSAL AND DIRECT STAFF TO COMPLETE CONTRACT FOR APPROVAL BY THE VILLAGE BOARD.

ALL WERE IN FAVOR. MOTION CARRIED.

Mr. DeAngelis said he will be putting together a schedule for Committee of the Whole meetings to take place the 4th Thursday of the month, with the exception of October. The Emerald Woods addendum for water will go on the special meeting agenda of October 4th. The final striping of Watertown Plank and Sunny Slope is taking place and those projects will be completed.

12.H. Finance and Licensing – Trustee Koleski

- 1. Review and recommendation to replace Emergency Siren software in 2022 using ARPA funds.

MOTION BY TRUSTEE KOLESKI, SECOND BY TRUSTEE SCHINDLER TO APPROVE REPLACEMENT OF THE EMERGENCY SIREN SOFTWARE IN 2022 USING ARPA FUNDS.

ALL WERE IN FAVOR. MOTION CARRIED.

- 2. Review and act on vouchers

MOTION BY TRUSTEE KOLESKI, SECOND BY TRUSTEE MICHALSKI TO APPROVE VOUCHERS.

ALL WERE IN FAVOR. MOTION CARRIED.

4.) Approval of Minutes

- A. Approval of Minutes – August 22, 2022

Trustee Koleski went through his comments on the minutes. Trustee Stuckert asked if she could send her comments to the minutes to the Clerk. President Palmer said she

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can submit; if significant changes are to be made, it will need to come back to the Board.

MOTION BY TRUSTEE MICHALSKI, SECOND BY TRUSTEE SAYAS TO APPROVE THE MINUTES AS CORRECTED.

ALL WERE IN FAVOR. MOTION CARRIED.

B. Approval of Minutes – August 29, 2022

Trustee Sayas said that she was not present at that meeting.

MOTION BY TRUSTEE SCHINDLER, SECOND BY TRUSTEE CORNELL TO APPROVE THE MINUTES.

ALL WERE IN FAVOR. MOTION CARRIED.

5.) Report of the Village President - Neil H. Palmer

No report

6.) Report of Fire Chief - David Kastenholtz

August Fire Department Report

7.) Report of Police Chief – Jason Kubiak

August Police Department Reports

8.) Report of EMS Director - Dr. Jon Robinson

a. No report

9.) Report of Village Clerk – Sandee Policello

a. Review and act on 2022 Tax Collection Agreement

MOTION BY TRUSTEE MICHALSKI, SECOND BY TRUSTEE SAYAS TO APPROVAL THE 2022 TAX COLLECTION AGREEMENT.

ALL WERE IN FAVOR. MOTION CARRIED.

11.) Report of Village Attorney – Hector De La Mora

No report

12.) Report of Standing Committees - Please review the minutes on our website for more details.

a. Plan Commission - Trustee Michalski

The minutes for the last meeting have not been prepared, no report given.

b. Library Board - Trustee Sayas

Report given by Trustee Sayas, see Library Board minutes for details.

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- c. Public Works – Trustee Schindler
Report given by Trustee Schindler, see Public Works minutes for details.

1. Review and possible action on Crack Seal Project.
**MOTION BY TRUSTEE SCHINDLER, SECOND BY TRUSTEE CORNELL TO APPROVE THE BID BY THUNDER ROAD LLC.
ALL WERE IN FAVOR. MOTION CARRIED.**

- d. Public Safety - Trustee Sayas
No meeting, no report

- e. Legislative - Trustee Michalski
No meeting, no report

- f. Park and Recreation – Trustee Cornell
Report given by Trustee Cornell, see Park and Recreation minutes for details.

- g. Administrative and Personnel - Trustee Stuckert
Report given by Trustee Stuckert, see Administrative and Personnel minutes for details.

1. Review and act on School Resource Officer Agreement with School District of Elmbrook.
MOTION BY TRUSTEE STUCKERT; SECOND BY TRUSTEE SAYAS TO APPROVE THE SCHOOL RESOURCE OFFICER AGREEMENT WITH SCHOOL DISTRICT OF ELMBROOK WITH THE ADDITION OF THE OFFICER IN THE ROLE OF SRO TO REPORT TO CHIEF KUBIAK.

Mr. DeAngelis reported that the School District is not willing to amend the agreement to include the liability insurance expense in their financial responsibility.

ALL WERE IN FAVOR. MOTION CARRIED.

13.) Other Business
There was no other business

There was a 10 minute break prior to closed session. Trustee Koleski left the meeting at 10:44 pm.

14.) Closed Session - -May convene into closed session pursuant to Wisconsin §19.85(1) (c) to consider employment and compensation data over which the governmental body has jurisdiction and exercises responsibility, more specifically hiring of Assistant Village Manager/Zoning & Planning Administrator.

The meeting resumed in closed session.

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**MOTION BY PRESIDENT PALMER, SECOND BY TRUSTEE CORNELL TO RETURN TO OPEN SESSION.
ALL TRUSTEES PRESENT WERE IN FAVOR. MOTION PASSED.**

**MOTION BY PRESIDENT PALMER, SECOND BY TRUSTEE MICHALSKI TO APPROVE AS
RECOMMENDED BY DAVID DE ANGELIS THE HIRING OF KATHERINE GEHL TO BE ASSISTANT VILLAGE
MANAGER/ZONING & PLANNING ADMINISTRATOR.
ALL TRUSTEES PRESENT WERE IN FAVOR. MOTION PASSED.**

16.) Adjournment

**MOTION BY TRUSTEE SAYAS, SECOND BY TRUSTEE MICHALSKI, TO ADJOURN THE MEETING.
ALL TRUSTEES PRESENT WERE IN FAVOR. MEETING ADJOURNED AT 10:54 PM.**

Minutes submitted by: Sandee Policello
Minutes Approved on: October 24, 2022