

1) PLEDGE OF ALLEGIANCE AND CALL TO ORDER

The special meeting of the Board of Trustees of the Village of Deer Park was held on Thursday, June 28, 2007 at the Deer Park Village Office, 23680 W. Cuba Road, Village of Deer Park, in the counties of Lake and Cook, Illinois. President Gifford called the meeting to order at 7:00 p.m. Village officials and guests recited the Pledge of Allegiance.

2) ROLL CALL AND DETERMINATION OF A QUORUM

Upon roll call, the following were present: President Gifford, Trustees Plautz, Kizior, Rotter, Thrun, Pratscher and Kellermann. The following Village officials were absent: none. Other Village officials present were Administrator Connors, Clerk Meyle, and Attorney Keller. President Gifford stated there is a quorum.

3) CONSIDERATION OF TERMINATION OF THE VEHE BARN CONTRACTOR AND APPROVAL OF A NEW CONTRACTOR

Trustee Rotter made a point of order with regard to whether or not the meeting being held was a legal meeting. Trustee Rotter acknowledged that the appropriate meeting notice had been posted on the bulletin board outside the Village Office on Tuesday morning, but that the minimum 2-day written notice had not been given to each trustee as is required by Article 30.15 (B) of the Municipal Code. Attorney Keller pointed out that Article 30.15 (C) of the Municipal Code states the *whenever all of the members of the Board of Trustees are present at any special meeting, the requirement of notice of such special meeting shall be deemed waived*, and therefore, the special meeting being held is a legal meeting.

Trustee Rotter stated that he had wanted to review a copy of the R. W. Clark/Vehe contract prior to the meeting but was unable to locate a copy within the Village Office files. Attorney Keller stated that he had received a copy of the contract from the Vehe Foundation via Terri Bridge and had reviewed it a great length in preparation of the meeting. Attorney Keller distributed a copy of the contract to each of the trustees and provided Administrator Connors with a copy for the Village Office files.

Trustee Rotter asked Attorney Keller if the R. W. Clark contract distributed contains the bonding agreement. Attorney Keller confirmed that the bonding agreement is a part of the contract and that he will be taking the Board through the bond document as it pertains to considering the termination of the R. W. Clark contract.

Attorney Keller reported that he had sent a registered letter to the bonding company (using the address provided in the contract) with regard to the Roland Machinery garnishment notice, but the letter was returned as undeliverable. Attorney Keller stated that he got an alternative address for the bonding company from Jim Peterson and re-sent the registered letter two weeks ago. Attorney Keller stated that he had not yet received confirmation that the letter was delivered, but that the letter had not been returned as undeliverable. Attorney Keller stated that he believes that the bonding company has been paying attention to the R. W. Clark/Vehe Barn project through Jim Peterson and that there is an enforceable surety underlying in the contract.

Trustee Rotter asked Attorney Keller to take the Board through the part of the contract that is pertinent to the decision the Board is considering. Attorney Keller directed the Board to Article 20 on page-10 of the contract, and he took them through section 20.2 under Termination of the Contract.

Trustee Rotter asked what the Board needs to do to notify the bond company if they decide to terminate the contract. Attorney Keller stated that they would need to send the bond company a letter of notification.

Trustee Rotter asked Attorney Keller what opportunities R. W. Clark, R. W. Clark's subcontractors, and the bonding company may have for legal recourse, particularly with regard to lien waivers, should the Board decide to terminate the contract. Attorney Keller stated that the lien waiver language exists in the contract to protect the Village and that he did not see an opportunity for legal recourse with regard to lien waivers.

Trustee Rotter asked Attorney Keller who would be responsible for paying for the completion of the Barn if the completion costs more than the amount that remains unpaid to date. Attorney Keller explained that Jim Peterson, as the architect of the project, had certified that sufficient cause exists to terminate the contract with R. W. Clark and that Section 20.2 of the contract states that *at the Owner's option, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method the Owner might deem expedient. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services, and*

expenses made necessary thereby, such excess shall be paid to the Contractor, but if such costs exceed such unpaid balance, the Contractor shall pay the difference to the Owner. Attorney Keller gave further explanation that if this occurs, the role of the bonding company is to take the place of the contractor and pay the difference.

President Gifford explained to the Board that he had had a meeting with Pepper Construction's project manager with regard to finishing the Vehe project. Pepper would like to take on the project and has submitted a Time and Material Proposal for completing the Barn. President Gifford stated that Pepper knows that the Village is working within a budget and that no definite cost has been determined by Pepper because they have not had the opportunity to thoroughly review the work that has been done and determine the work that remains. President Gifford stated that if the Board decides to accept Pepper's proposal, he will be holding weekly briefings with Pepper as work progresses so that the Board will be aware of where the project is fiscally. President Gifford explained that Pepper has a history of completing public construction projects that have gone bad and that Pepper is familiar with the subcontractors R. W. Clark has been using and plans to continue to work with those subcontractors.

MOTION: by Trustee Kizior to terminate R. W. Clark as the Vehe Barn contractor. Upon roll call: YES: (6) Pratscher, Thrun, Plautz, Rotter, Kellermann, and Kizior / NO: (0) / ABSENT: (0). Motion carried 6/0

MOTION: by Trustee Kizior to hire Pepper Construction as the new general contractor for the Vehe Barn under the terms and conditions outlined in the Pepper proposal dated June 21, 2007.

Discussion ensued with regard to how to proceed if the cost of having the Barn completed by another contractor exceeds the outstanding contract amount. The conclusion drawn by the Board was that they will follow what is outlined in the contract with R. W. Clark and go to R. W. Clark to recoup the additional funds; if he can't pay, the Board will go to the bonding company for the additional funds. It was also determined that the architect might be held liable for the funds if the firm is found to be negligent in their performance.

Discussion ensued with regard to exactly how much of the contract is currently outstanding. The Board agreed that Jim Peterson will need to provide the Board with a detailed reconciliation of the status of the project as soon as possible and that Jim Peterson's reconciliation will need to be compared with the Treasurer's records.

Trustee Kellermann asked about the bid requirement for public works contracts that exceed \$10,000. Attorney Keller explained that a municipality can waive the bidding requirement for any contract by approving the contract with a minimum of a 2/3 vote.

Attorney Keller clarified that since the Board has approved the termination of R. W. Clark's contract, he should not be allowed back on the job or property for any reason. Administrator Connors confirmed that he will notify the Kildeer Police of the situation.

MOTION: by Trustee Kizior to hire Pepper Construction as the new general contractor for the Vehe Barn under the terms and conditions outlined in the Pepper proposal dated June 21, 2007. Upon roll call: YES: (4) Pratscher, Thrun, Plautz, and Kizior / NO: (2) Rotter and Kellermann / ABSENT: (0). Motion carried 4/2

4) CONSIDERATION OF IRRIGATION WATER PUMP PROPOSAL FROM RED SEAL DEVELOPMENT

MOTION: by Trustee Kizior to approve the expenditure of \$26,000 to have Red Seal's well and pump fitted and installed in such a way that the Village will be able to share the well with Red Seal and use the well for the irrigation of Village property.

A discussion ensued with the following points being made:

- ◆ It will cost the Village approximately \$50,000 to have the well re-drilled and re-fitted if the Board decides it wants to share the well with Red Seal at a later date.
- ◆ The development contract between Red Seal and the Village states that the Village will pay its portion of the capital cost of installing the well and pump in such a way that it can be shared.
- ◆ The Village will pay the ongoing operation costs of the well and pump when they use it.
- ◆ During contract negotiations with Red Seal, the Village tried to get Red Seal to pay the entire capital cost of installing the well and pump, but it was not successful in doing so.
- ◆ The Village Engineer has determined that it is in the best interest of the Village to enter into an agreement with Red Seal rather than use one of the other wells in the Town Center's vicinity to irrigate the park's playfield.

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- ◆ The \$26,000 expenditure covers the well and pump and does not cover the cost of the irrigation system for the playfield.

MOTION: by Trustee Kizior to approve the expenditure of \$26,000 to have Red Seal's well and pump fitted and installed in such a way that the Village will be able to share the well with Red Seal and use the well for the irrigation of Village property. Upon roll call: YES: (4) Pratscher, Thrun, Plautz, and Kizior / NO: (2) Rotter and Kellermann / ABSENT: (0).
Motion carried 4/2

5) Adjournment

MOTION: by Trustee Rotter to adjourn. Upon a voice vote: YES: (6) / NO: (0) / ABSENT: (0). Motion carried 6/0

The special Board of Trustees Meeting was adjourned at 8:40p.m.

H. Scott Gifford, Village President

Susan Meyle, Village Clerk