

**Board of Trustees**  
**June 15th, 2020 7 PM Meeting Minutes**



Due to the COVID-19 Pandemic, the Board of Trustees Meeting met virtually via GoogleMeet. A video recording was not created. Clerk Panthofer created an audio recording for the sole purpose of preparing the minutes.

**Roll Call** | President Mellem called the meeting to order at 7:07 PM. NOTE The meeting began a few minutes late due to technical difficulties with GoogleMeet, the virtual meeting platform.

**Attendees** | Audio Attendees: President Roger Mellem, Trustee Paul Schroeder, Visual Attendees: Trustee Rick Cermak, Constable Kristin Wright, Treasurer Robert O'Brien & Clerk Dori Panthofer

**Other Attendees** | Audio Attendee: Resident & Planning Commission Rocco Casteallano (30 N. Vincennes Cir). Visual Attendee: Property Owner Karen Horwitz (3721 and 3733 Lighthouse Drive)

### **Public Comment**

**Karen Hortwitz** | 3733 Lighthouse Drive | Topic: Follow up with storm waterflow concerns Ms. Horwitz presented to the board during the February 10th, 2020 Board of Trustees Meeting Public Comment period.

At 7:09 PM, Ms. Horwitz inquired if she needed review of said concerns and President Mellem acknowledged that "we know you have water issues."

Ms. Horwitz proceeded as follows: "You may recall that I was telling you the excess water caused one of our retaining walls on the west side of the house to blow out. We were to repair the wall whenever spring came."

Below is a summarized update.

Vortex (the contractor):

- Arrived on site (3733 Lighthouse Drive) in mid-March.
- Notified Ms. Horwitz that the ground was saturated and unstable.
- Alerted Ms. Horwitz that another wall collapsed since fall that may be attributed to the current ground conditions.
- Notified Ms. Horwitz that the work to rebuild the wall could not be guaranteed due to the current ground conditions.

Additional remarks from Ms Horwitz:

- "This is further substantiation that something is radically wrong on my property, something is radically different."
- "We're not talking about the lake side of the house, we're talking about the west side of the house."
- "I've been hoping to get some sort of notification about what is being done. Where we left off in February was that there would be some action on the Board's part, whether it was to reach out to the neighbor that had caused the issue and/or to do some investigating through an engineering or Public Works or whatever the entity would be and I haven't heard anything."
- "My situation becomes more acute by the day."

Ms. Horwitz requested an update, including answers, a timeline, and help. At 7:12 PM, Ms. Horwitz said “that is the end of my comment.”

At approximately 7:12 PM, Clerk Panthofer asked if President Mellem was virtually present because attendees could not hear him following the conclusion of Ms. Horwitz’s statement. Treasurer O’Brien, Constable Wright, Clerk Panthofer all stated they could not hear President Mellem. At 7:13 PM, President Mellem’s voice became audible.

President Mellem asked what Ms. Horwitz or her contractor attributes the cause of her water problem.

Ms. Horwitz stated that the contractor is not there to diagnose where the water is coming from. Ms. Horwitz stated she sees that (the responsibility) as possibly whatever engineering or Public Works is provided by the Village, or a certain firm that the Village feels would be the right people to talk to. “It’s simply soaking wet on the west side of my house.”

At approximately 7:14 PM, intermittent audio technical difficulties occurred that resulted in not hearing President Mellem. Constable Wright unmuted her mic and stated, “Go ahead Roger, I think they hear you.” Clerk Panthofer acknowledged President Mellem’s audio was restored.

President Mellem remarked, “so, the contractor offered no opinion.” Ms. Horwitz responded, “he offered one opinion, it’s too wet. He was not hired, nor contracted to diagnose the issue.”

President Mellem said that the Village is doing a study based on lot lines. There is an easement for the drainage of runoff that runs through that particular area. We’re trying to determine what the Village’s responsibility is versus the property owner’s, being you, Mullagar (3702 North Bay Drive in Greater North Bay) and Randy Johnson, your neighbor (3737 Lighthouse Drive).

The Village Attorney has sent Mr. Mullagar a letter because there has been some evidence of tampering with the drainage system. We’re not certain where that runs off to. None of us on this Board are engineers. We’ve looked to some engineers to provide an opinion but that has not been forthcoming. Trustee Cermak oversees Water and Wastewater and may have more information on this. At approximately 7:16 PM, President Mellem asked Trustee Cermak for input.

Trustee Cermak stated that Clerk Panthofer located information regarding the Right of Way and the shape of the swale, which the attorney included in the letter to the Greater North Bay property owner. A primary drain is located in the center of the grassy area and a secondary drain is located near the west side of the driveway at 3737 Lighthouse Drive. Due to a significant crown in the street, water flowing on the west side of Lighthouse Drive flows to the easement at the end of the street.

Trustee Cermak stated that our understanding of the system is that it was designed to direct waterflow from the west side of the street toward the lowest drain located in the grassy area. Water runs across the grassy area, some soaks in, some goes directly into the drain. An underground pipe connects the primary drain to the secondary drain. Another underground line connects the secondary drain to 3733 Lighthouse drive which comes out underwater the waterway that runs through the property.

Ms. Horwitz stated that it comes out by the waterway wall. Water comes two ways, down from the Johnson's (3737 Lighthouse Drive) and through the underground pipe you’re speaking of.

Trustee Cermak noted that the underground pipe (opening) is underwater nearly all the time. Mr. Mullagar laid newspaper as a weed barrier and spread mulch in the area. Prior to the February 2020

meeting, during a rainstorm, Trustee Cermak went to observe the waterflow and saw Mr. Mullagar was encouraging the water to go to the secondary drain rather than the primary drain because his yard was wet all the time. At that time, I didn't know the Village didn't own the property, that we only own the Right of Way to prevent alterations to the topography.

Trustee Cermak stated "it's pretty clear how this was supposed to work and it's been altered" It started out by removing a couple of bricks, plugging the primary drain screen, to have water flow to the secondary drain rather than the primary drain. Water has been encouraged to flow that way so much that it made a deep gully. All the water flows to the secondary drain rather than the primary drain unless the rainfall is "tremendously significant." That water comes to your property underground and empties underwater into the waterway. Trustee Cermak stated it doesn't necessarily have a direct effect on the walls that are several feet above that. It does add to your quantity of water that you are trying to get rid of by dumping it into Lake Michigan.

Ms. Horwitz interjected that she agreed with the diagnosis of the situation; meaning the original design was for the water flow down Lighthouse Drive into the grassy area. It's my understanding that the grassy area was a natural retention area before the homes on the west side of Lighthouse Drive were built. According to Bill Ruffalo, who has good historical knowledge, backed up the fact that was the way the water was supposed to flow. For the first seven or eight years of owning the house, "I didn't have any trouble". The trouble began in 2017 and 2018.

Ms. Horwitz agreed that the neighbor to the west's assessment was accurate, the grass was always wet and that she heard he didn't like the wet yard because (a), he couldn't cut the grass and (b), his kids couldn't play there. For over a year, I've started paying attention. Ms. Horwitz stated that she observed kids playing in the yard and that his grass was cut perfectly while her yard is soaked. Additionally, Ms. Horwitz's direct observation is that several bricks around the secondary drain have been removed and there is no question whether he has done it with a shovel or some other apparatus to make the new path. Ms. Horwitz stated: "It seems to me that what you're saying, Rick, fits."

Ms. Horwitz said "I want to add one thing, when you bring up the fact that the water comes in underground, I can actually show you the direct line that more or less comes as a vector off of where the water comes out, which must be coming out into that little creek with such force that you'll notice that the walls of the creek collapsed. That was the first sign something was wrong. On the lowest level, the walls of the creek collapsed. Those are the big pieces of stone that are in the creek. Once that happened, you can actually see the dark dark wet line that leads directly to the second tier wall, which is where the wall collapsed. I'll be happy to meet you out there in the coming days. You can visibly see the rut, the sink line, that you could draw a vector to where the wall collapsed. I would argue that there has been a direct effect, even though the water came in underground because the edging of the creek collapsed first, then once the barrier was broken down, the water could go directly across. You can see, actually see, the line to the walls."

Ms. Horwitz stated that the costs are becoming unbearable. Whatever was supposed to be happening back there has been changed.

Trustee Cermak agreed with Ms. Horwitz's statement, and agreed that the original design has been altered, causing water to flow faster than it normally would. The question is how to resolve it with the neighbor.

Ms. Horwitz asked Trustee Cermak, "Tell me if I'm right or wrong, it would seem to me that this is not an issue between me and the neighbor." She stated it's become acute over the last two years and

asked, "Why can't we demand that it be put back." Ms. Horwitz stated she does not understand how someone can buy a house and be allowed to take control of a pre-existing physical drainage system.

Trustee Cermak indicated the Village Attorney is involved to address the matter. Prior to this, Trustee Cermak stated that the village spoke to the owner (Mr. Lingerman R. Mullagar) at a past Board Meeting. At that time, President Mellem explained that the area should not be altered but Mr. Mullagar was difficult to deal with and was adamant that he was doing something good.

Ms. Horwitz commented that this does not seem like the correct approach and asked why we can't bring in an engineering firm to fix it.

At approximately 7:29 PM, President Mellem called Clerk Panthofer's cell phone because his microphone wasn't working and attendees didn't hear him. Clerk Panthofer paused the meeting and called President Mellem on the Village Hall phone to troubleshoot the issue.

At approximately 7:30, President Mellem rejoined the virtual meeting (audio only) and attendees acknowledged that his microphone was working. President Mellem closed Public Comment.

### **Approval of the May 11th, 2020 Board of Trustees Meeting Minutes and the May 16th, 2020 Stand Up Meeting Minutes**

Motion to approve of the May 11th, 2020 Board of Trustees Meeting Minutes and the May 16th, 2020 Stand Up Meeting Minutes made by Constable Wright and seconded by Trustee Cermak. All in favor, none opposed. Motion passed at 7:31 PM.

### **Trustee's Report (1) – Paul Schroeder**

- Trustee Schroeder plans to attend the virtual live launch of the new WisDOT LRIPWeb Application Enhancement on June 16th, 2020.
- Knotweed & Village Hall grounds maintenance | Clean up continues. President Mellem asked Trustee Schroeder to notify Reliable to dispose of the Garlic Mustard Weed bags behind Village Hall.
- Storm surge has deposited large debris on public land near the Vincennes Circle bridge, including one or more tree limbs and trunks, that are too big for Trustee Schroeder to remove. President Mellem directed Trustee Schroeder to contact Fred Wensing of Reliable to clear debris from public areas.
- Johns Disposal Contract Proposal | The current contract expires this year. Nate Austin, Municipal Account Manager, stated that to continue to offer affordable waste management, it will be necessary to phase in automated collection, beginning with recycling on a bi-weekly basis. Mr. Austin cited that North Bay is the only municipality that is not automated, and it's becoming increasingly difficult and expensive to staff manual collection. Clerk Panthofer will invite Mr. Austin to attend the July meeting for further discussion.
- At approximately 7:43 PM, Constable Wright observed that muting her microphone also muted President Mellem's microphone. Constable Wright stated she will not mute her microphone unless her dogs bark.

### **Trustee's Report (2) – Rick Cermak**

- Exercising Hydrants | Racine Water & Wastewater plans to begin exercising hydrants on the north side and intends to flush all hydrants in the city this summer.
- United Mechanical Rate Change | Due to rising operating costs, United Mechanical announced a rate increase effective June 1st, 2020. North Bay signed a two-year contract in 2019. As of June

1, 2020, our hourly rate for Village of North Bay is \$106.00 (currently at \$103.00) for regular hours, \$159.00 (currently at \$154.50) for overtime and \$212.00 (currently at \$206.00) double time. The destination charge will remain the same at \$25.00 per invoice. Trustee Cermak stated the rate change is insignificant. The new rates are a special rate given to the Village of North Bay. The standard hourly rate, as of June 1, 2020, is \$122 per hour because we are “long-term partners.”

- Public shoreline erosion control | Record high lake levels and storm surge washout is damaging the public shoreline. Caution tape was added to alert the public of hazardous conditions.

Trustee Cermak contacted the following engineering firms to investigate and offer proposals: 1) W.F. Baird & Associates and 2) Edgewater Resources. Information was emailed to Board Members on June 4th, 2020.

Baird's presented a Coastal Planning proposal totalling \$31,100. It was created without a site visit. The proposal consists of 4 tasks: 1. Project Kick Off \$750 (labor)); 1. Field Data Collection \$8,300 (labor \$5,550 and equipment \$2,750); 3. Coastal Analysis \$5,400 (labor); 4. Schematic Design \$16,650 (labor).

Edgewater Resources presented a Revetment Stabilization Proposal in totalling \$12,800 following a site visit with Trustee Cermak & Trustee Schroeder to address shoreline erosion solutions for the 500 foot section of public land south of 16 North Vincennes and north of 25 South Vincennes. The proposed scope of services dated June 3rd, 2020 to the Village includes offering up to three (3) solutions to stabilize the revetment. Below is a synopsis of the 3 solutions, refer to the full proposal for specific details.

1. Remove and please the existing revetment with an upgraded revetment, sized and scaled to accommodate higher lake levels, but reusing the existing armor stone
2. Transform the existing toe revetment into a “berm revetment” where the existing toe revetment serves as a core, and more stone is added to increase absorption of wave energy.
3. Increase the fronting beach width by various means to dampen wavers in lieu of adding more hard armor.

**DISCUSSION:** Trustee Cermak stated he feels erosion control is urgent before winter. North Bay's approach should allow land-side access which is considerably less expensive (25%) than water-side.

Per Trustee Schroeder, since the bridge connecting North and South Vincennes Circle is old (100 years), this project could factor in bridge replacement and lakefront rehabilitation. Schroeder's take away from the site visit is that North Bay is not in bad shape like other communities because the bank is not as steep.

Trustee Cermak and Schroeder identified the project goal as preserving and protecting what we have. The stairs are deteriorating and Schroeder added consideration could be given to improve the stairway for emergency access to the water.

Per Treasurer O'Brien, ADA regulations may limit options and expressed concern that if the stairs collapse, the Village may lose access to the beach. O'Brien asked for a ballpark estimate and stated if the project approaches \$100,000, a referendum and/or loan may be required.

President Mellem stated that if Edgewater came up with a low budget solution, it may be worth considering. President Mellem suggested that Edgewater or Baird present at a future Board Meeting.

- Drainage easement at the end of Lighthouse Drive | President Mellem asked Trustee Cermak if he had anything to add on this topic and Trustee Cermak responded “not at this time.” When asked, Trustee Cermak stated that he contacted Baxter Woodman. Baxter Woodman referred to the GIS that shows the Village does not own the land where the drainage is located and that the Village must investigate this first. Trustee Cermak referred to the engineering study that was previously completed by Nielsen Madsen & Barber -- their solution isn't working anymore because the ground has been altered.

Per President Mellem, Attorney Chris Geary is sending a letter to inform Lingerman Mullagar that he must not touch the drainage system and that there is a possibility the Village will be asking him to make restitution to have the drain fixed. Geary is examining the past easement to determine the Village's role in the drainage system. Mellem said it looks like this involves 3 property owners: Randy Johnson (3737 Lighthouse Drive), Karen Horwitz (3733 Lighthouse Drive) and Lingerman Mullagar (3702 North Bay Drive).

Per Mellem, the Village responsibility is to keep the drain functioning properly but we don't know what else is impacting other issues. When lake levels come up, backflow occurs, meaning water flows onto the property at 3733 Lighthouse Drive. Backflow will stop water from flowing out, making it a reverse flow.

Trustee Schroeder stated he and Trustee Cermak observed that the creek and pond which previously flowed into Lake Michigan doesn't finish to the lake. The former bridge area is silted in with sand and currently blocked. The elevation of the pond does not make it to the lake. It seems there should be a new pathway from the pond to Lake Michigan.

When asked by President Mellem if he had anything further to add, Trustee Cermak said no.

Trustee Cermak followed this response with a question to the Board: “Where does the Board want to go with Edgewater, ask them to come and come up with a better estimate of what our costs could be?” President Mellem said yes, and to notify them we would like a low cost solution.

Per President Mellem, all the firms are engineers and all are invited to address both the Lighthouse Drive drainage issue and beachfront issue.

### **Constable's Report – Kristin Wright**

- Wind Point Police | 81 Citations by statute (Main St.) and 45 monthly service
- Animal Welfare | No incidents
- Health Department
  - As of today, CRCHD has 625 confirmed cases of Covid19, 137 probable, 33 deaths; Racine County in total has 2020 confirmed, 320 probable, 55 deaths
  - Constable Wright was one of 3 people from CRCHD to meet (virtually) with the county on June 15th, 2020 to discuss possibilities of merging with the County in 2021-22. Constable Wright assisted Margaret Gessner in identifying key points regarding consolidation goals and priorities. The County officials were positive and are planning to put together their own materials to present at the August Heads of Government meeting. I am not sure at all what this means for us becoming part of the County. We will have to see how this all plays out.
- Georgia Herrera was unanimously selected (vote of 9-0) to serve as the interim Municipal Judge for Wind Point/North Bay until a formal election is held.

## **Treasurer's Report – Bob O'Brien**

- May 2020 financial reports were emailed to the Board, hard copies are filed in the minute binder.
- Property tax overpayment refunds issued.

## **President's Report – Roger Mellem**

- A 1/2 cent County sales tax is forthcoming.
- The Emergency Declaration expires on June 30th, 2020. President Mellem sought Board feedback regarding extending the State of Emergency to July 25th. The July 13th meeting would be virtual, with only Board Members allowed inside Village Hall. Lack of technology would prevent the Public from hearing or presenting Public Comment.

Due to rising confirmed COVID cases, Constable Wright advised to meet virtually, which will allow Public Comment. President Mellem asked to publish the hat since confirmed COVID cases are rising, Kristin said since numbers are on the rise, keep the Emergency Declaration in place to July 25th, and the next meeting will be virtual. PUBLISH THIS ON WEBSITE & IN NEWSLETTER

President Mellem stated that moving forward, Public Comment Guidelines should be followed. To achieve this, the guidelines will be announced before the first speaker.

- President Mellem invited Mr. Castellano to personally announce that the owner of 400 Cross Creek hired him to be the Architect for an addition and two accessory structures, some of which will require variances. Castellano will recuse himself from the Planning Commission for variance applications related to his projects. The owner is independently working with the DNR for approval for plans adjacent to the creek. This is an R1 lot, meaning it's larger. The project is inline with intended usage, does not detract from the village or harm neighbors. The project will add value to North Bay.

## **Clerk's Report – Dori Panthofer**

- Election Update - Racine County Clerk requested North Bay to assume Absentee Ballot Tracking entry in WisVote. Right now, VNB info in WisVote lags due to dual data recording that results from the Clerk recording data on Form EL-124, which is then emailed daily to the County Clerk's Office, and data is entered into WisVote by County staff. Once completed, the VNB Clerk will directly manage Absentee Ballots in WisVote. Clerk Panthofer must complete several hours of online WisVote before WisVote access is granted. Last week, WisVote was down for 3 days for system maintenance. Clerk Panthofer will complete training as soon as possible. The mailing of Absentee Ballots for Overseas Voters begins June 26th, 2020.
- Monthly Permit Report:
  - 333 S Vincennes Cr (James Niles) | Fence Permit Application submitted by Jennifer Nilles, daughter of James Niles, to replace the current fence on Main Street. A Cautionary Statement was requested because the Homeowner is the Applicant. The Cautionary Statement and permit fee are still outstanding. The property file does not contain a copy of the original permit application. Motion to approve the Fence Permit subject to receiving payment and the Cautionary Statement made by Trustee Schroeder and seconded by Constable Wright. All in favor, none opposed. Motion passed at 8:31 PM.
  - 400 Cross Creek (Von-Schilling Worth) | Fence Permit Application submitted by Homeowner. A Cautionary Statement was requested because the Homeowner is the Applicant. The Cautionary Statement and \$12 balance is still outstanding.
    - Previously, Cross Creek was deemed the front of the house and it was ruled that fences

ARE NOT allowed on North Main Street.

- Refer the new fence permit application to Attorney Geary for 2 reasons: 1) Is the gate considered a fence? 2) The new plans connect the pillars with metal fencing. Connecting the pillars with fencing was previously disallowed.
- 3721 Lighthouse Dr (Karen Horwitz) | Plumbing & Electrical Permit Applications submitted by Robin Posnanski, Agent (and cousin) of Karen Horwitz. Contractor and installer information along with project cost was blank. A Cautionary Statement was requested because the Homeowner is the Applicant.
- Racine County Clerk forwarded Supplement Number 29 to the Racine County Code of Ordinances and were filed today.
- The Village of Rochester mailed a Notice of Public Hearing related to a “2050 Land Use Plan, Village of Rochester, WI. Meeting date is Monday, July 13th, 2020 at 7:30 PM.
- Clerk Panthofer will be on vacation from July 18th - 25th with very limited access to email.

**Accounts Payable - June 2020: \$12,766.72** | Motion to approve the June 2020 AP in the amount of \$12,766.72 made by Constable Wright and seconded by Trustee Cermak. All in favor, none opposed. Motion passed at 8:49 PM

- Two May 2020 Accounts Payable amendments, one to pay Plumbing Inspector and one to issue two property tax overpayment refunds.

### Old Business

- Village signage update from Mr. Castellano | Mr. Castellano is identifying a more cost effective fabrication that will be presented as soon as possible.
- Building & Zoning Forms | North Bay’s variance form combines multiple functions in one form which differs from industry standard and is confusing. North Bay’s statutes refer to Right of Way, driveways and culverts, but the Village does not have a permit application for these items. Clerk Panthofer contacted Chris Geary & Clerk Casey Griffiths to adopt industry standards related to zoning forms. Findings are as follows:
  - Per Geary:
    - North Bay currently does not have a Right of Way (ROW)/Driveway/Culvert Permit Application and should be added.
    - Forms serve different purposes and should not be combined. North Bay’s forms should be separated to mirror Wind Point forms.
  - Per Casey Griffiths:
    - Lots east and west of North Main Street differ significantly. East are “city style” lots. Lots west of North Main street differ significantly. North Bay has 2, but the current ordinances do not differentiate between them.
    - Conditional Use goes to Planning Commission - site plan only, no need for absolute specifics
    - Rezoning Permit - Not applicable because North Bay is 100% residential and fully developed.
    - Variance - Does the request make sense and stay within the intent of the designated usage? A site plan MUST be submitted but building plans ARE NOT required, meaning there is no need to submit blueprints because it’s not an architectural decision, which would go to the Planning Commission AFTER a variance is approved.
    - Architectural Review Board -- North Bay’s version of this is the Planning Commission. Plans MUST be submitted.

- Comprehensive Plan Amendment - North Bay is a fully developed residential only community with no open lots. It's unlikely that we'll ever change. If North Main Street or any property would like to be changed from residential to commercial, a change to the Comp Plan Amendment would be required.

Discussion: Mr. Castellano stated that the regulations in Chapter 8 are appropriate for the size of the community. It would be expensive to spell out regulations for R1 and R2 properties. When necessary, owners may apply for a variance. Castellano stated it's worthwhile to divide the forms. Clerk Panthofer and Mr. Castellano will collaborate on dividing the forms. The ROW will be presented at the July meeting.

**New Business | No new business.**

**Adjourn** Motion to adjourn made by Constable Wright, seconded by Trustee Cermak. All in favor, none opposed. The meeting adjourned at 9:01 PM