

FRIENDSHIP LAKE DISTRICT COMMISSIONER'S MEETING

Meeting Summary

Adams County Community Center

Friendship Wisconsin

September 30, 2017

9:00am

1. Call meeting to order: The meeting was called to order by Bob Berry a 9:00am at the Adams County Community Center. In attendance were commissioners Tina Meinen and Karen Pokorny, as well as Deborah Parr, Adams County Representative, Lee Parlow, Village of Friendship Representative, and Ron Johnson, Town of Adams Representative. Attorney Michael Hahn from the law firm of Axley Brynson was also present. 16 District members were in attendance.

2. Review and Approval of minutes from the August 1, 2017, Commissioners Board Meeting: The minutes from the meeting of August 1, 2017, were reviewed. A motion was made by Tina Meinen to approve the minutes and seconded by Lee Parlow. The motion carried unanimously.

3. Review and Approval of Treasurer's Report: Tina Meinen shared a report created by Linda Moonan during the past month of transition with Tina Meinen as the newly elected treasurer from the annual meeting held on September 2, 2017. Tina reported that as of September 30, 2017, we have an account balance of \$78,371.86. This includes the Money Market total of \$60,560.75, Now Checking balance of \$1,245.15, and the Grand Marsh CD is \$16,565.96.

Tina shared that both the Township of Preston and the Village of Friendship responded positively to the July 27th treasurer request concerning their commitment of an amount no greater than \$3,000.00 toward our legal efforts to obtain ownership of the Friendship Dam. Preston and the Village both submitted \$3,000.00 checks during September. This money was deposited into our Money Market Account. Tina stated that since the new fiscal year began we have paid two Axley Brynson invoices, \$1,875.00 was paid on August 21, 2017 and \$3,591.66 was paid on September 25, 2017. All payments to Axley Brynson are AHC payments and submitted upon receipt.

Tina reported that Linda Moonan had several conversations with Carol Willick the insurance agent at G2 Insurance. Tina reported that it was verified that our current carrier EMC is not able to insure the Friendship Dam. EMC has committed that they would like to continue insuring the district for our equipment and other insurance needs. It is decided that we will continue with EMC and review our coverage as the policy term date nears at the end of May 2018. Tina reported that Karen Pokorny has been working on obtaining a quote from another insurance company for coverage of the dam once acquisition is completed. Karen will share that information a bit later during this meeting.

Tina shared that the Financial Advisory Committee has met. Carol Berry of that committee has compiled the data reflecting the special charge increases presented and voted by the membership at the September 2, 2017 Annual District Meeting and Budget Hearing. Carol will have that report ready and submitted to Sue Theisen at the County Tax Office by November 1, 2017. Once that is completed Sue will then notify our district and then Tina will complete the property assessments and forward the appropriate Levy Certification to each municipality for the tax year. Karen Pokorny made a motion to accept the treasurer's report and was seconded by Deborah Parr, the motion carried unanimously.

4. Reports from Financial Advisory Committee: Fran Schmidt reported that the Financial Advisory Committee was created in early August and is comprised of the Friendship Lake Board, as well as Lake District property owners, Chuck Spargo, Steve Lavalley, Larry Swaziek, Carol Berry, and herself. Fran reported that both the Village of Friendship and the Town of Preston have contributed \$3000 towards the costs incurred by the district towards acquisition of the dam. Fran explained that this committee came together and figured out the approved increases to the special charges based upon the projected costs from the May Special District Meeting spreadsheet. Carol Berry tabulated those increases and will get that report to Sue Theisen in the Tax Department of Adams County by November 1, 2017, so the special charges can be on the December property tax statements. This committee will meet today after the board meeting and will address some of the items listed in the strategic plan. Personally, Fran said she will be working on writing letters asking for financial help from the local municipalities, the Adams County Finance Committee, and local business to offset the projected costs to purchase the dam. This committee will be looking at grant opportunities, as well as the loan application process with the state of Wisconsin and Grand Marsh Bank.

5. Friendship Lake Dam Update: Bob Berry turned the floor to Attorney Michael Hahn for an update with regards to the acquisition of the Friendship Lake Dam through Condemnation. Mike Hahn began his presentation with a review of the timeline since the Jurisdictional Offer was served to Mr. Pfeiffer on September 6, 2017. Mr. Hahn updated the membership that in response to the Jurisdictional offer, Mr. Pfeiffer has initiated a lawsuit to sue the Friendship Lake District to stop the Condemnation proceedings. Mr. Hahn reiterated that this is not unexpected as presented and discussed at length during previous meetings with the membership. Mr. Pfeiffer has the right to challenge the Lake District to take the Friendship Dam through Condemnation. Mr. Hahn explained that Mr. Pfeiffer and his attorney are arguing that we do not have the power to condemn, that we do not have that right, and the only way we would have that power to condemn is if we would have the power of a town sanitary district. Mr. Pfeiffer recently presented before the Village of Friendship Board Meeting the same.

Mr. Hahn stated that he and his firm representing the Lake District in Condemnation disagree. Mike did share that one part of this challenge that was unexpected was that Mr. Pfeiffer and his attorney asked the Judge to issue an injunction preventing the Lake District from moving forward with Condemnation of the dam. The Judge granted that injunction. Mike shared that should not have been granted. He explained that is a mistake and the right to take action is not seen very often and this Judge has probably never seen this type of proceedings. Mr. Hahn stated that he filed a brief stating that the injunction is not correct. Mr. Hahn said that a hearing has been scheduled for this injunction on October 11, 2017. The goal is get the Judge to lift his injunction so that we can proceed. We will still need to litigate the right to take action and the plan for that is to proceed at the same time with acquisition of the dam. Mr. Hahn did state that in the filing of the Jurisdictional Offer a mistake was noted in Mr. Pfeiffer's brief supporting the injunction, that the title report obtained from Dane County Title included

the physical land on which the dam was located but did not specifically include the flowage rights in the description. The Jurisdiction Offer and Relocation Offer will have to be amended and reissued to include the correct legal description to include the flowage rights. Mr. Hahn explained that this is a technicality and obvious one that needs to be addressed before we issue the Award of Damages and take the property. Mr. Hahn stated that the appraisal includes the flowage rights; all of the discussions with Mr. Pfeiffer and Attorney McFarlin previously included the flowage rights, so this is a technical issue and needs to be corrected.

Mr. Hahn shared that the date that we would be able to take ownership of the dam will be delayed. Now, we cannot move forward until the Judge lifts his injunction and the earliest that would happen would be at the hearing scheduled for October 11, 2017. Mike gave an estimate of mid to the end of November to taking over title of the dam. Looking at the strategic plan created by the district this still works in the timeline of a spring repair of the dam. Also in consideration would be grant funding and since the State Legislature just approved the budget it will also push back timelines for the application process.

Mike went on to explain what Mr. Pfeiffer is alleging for the injunction would be inequitable in his mind to litigate the issue of dam ownership with the DNR and the repair order, and at the same time defend against a Condemnation proceeding. It is known that the lawsuit with Mr. Pfeiffer, the Village of Friendship and the DNR is on hold and has been stayed since last year pending the acquisition of the dam by the Lake District. Mr. Hahn stated that is on hold and Mr. Pfeiffer is not currently litigating that, but now he is asking the court to delay Condemnation because he wants to presumably finish the DNR litigation, even though he asked the court in the DNR litigation to not do anything until he deals with the Condemnation. Mr. Hahn stated basically Mr. Pfeiffer is trying to have it both ways. Mr. Hahn stated this was pointed out to the Judge in his detailed brief.

Mr. Hahn explained that Mr. Pfeiffer's arguments are exactly what would be expected in his challenge for the Lake District's right to take. He is challenging that the district does not have the authority. He is arguing that the only way possible we can condemn is if we have the specific powers of a town sanitary district and go to the Village and Townships before we can exercise the right to condemn. Mr. Hahn went on to explain that is not the purpose of a town sanitary district.

Mr. Hahn explained that a town sanitary district does have the power to condemn and clearly in the statutes is given the power of Eminent Domain, but that is not the only power that a town sanitary district has. Mike explained the purpose and primary function of a town sanitary district is to be able to install and regulate sewer supply, storm water facilities, water treatment facilities, or the whole purpose to have water and sewer service and insure that there is no ground water or surface water pollution. He explained that would make sense in certain situations. In a Lake District that would be good to have as it would be related to protection of the lake itself, or is what a town sanitary power would give to you, the ability to manage water and sewer, not Condemnation. Mr. Hahn further explained that Condemnation and Eminent Domain is independent from that power. Mike again stated that this was also explained in the brief submitted to the court.

Mike explained that the Lake District has the right to condemn and the power to condemn because you are Public Board of Commission. The Lake District was given in the charter ordinance from Adams County all the powers of a municipal corporation.

When you put it all together you have the power because you are a Public Board of Commission and therefore have the power to condemn any property you have the legal right to own. Mr. Hahn also stated that if we add in the fact that Adams County intended to create a Lake District that has the powers of a municipality, you clearly have power of Eminent Domain and case closed or the legal right to get to this point.

Mr. Hahn predicted that more time would have to be spent preparing and litigating this with the courts. That is the argument made to get this injunction lifted. The statutes do not allow for an injunction to be issued at this point. We can continue parallel paths where we can take the title and continue with Condemnation proceedings and separately at the same time he can challenge the right to take. Mr. Hahn stated that if the Judge disagrees and for what every reason leaves the injunction in place while the power to condemn is litigated, the statute is very clear that this will take authority over any other matter scheduled that is not already in trial. Meaning if there were a trial going on, this case would take priority over any other scheduled cases.

If the judge were to leave the injunction in place, we have the ability under the statutes that anyone who was given the injunction, in this case Mr. Pheiffer, would have to post a bond for whatever damages we would incur if it is determined he was not entitled to the injunction. In this case we would be asking for a bond to cover whatever the amount of the grant money we would be entitled to just on the off chance that this does not get resolved in enough time for that application process.

Mr. Hahn then opened the floor to questions from the board and the membership present. Karen Pokorny asked if the property owners could attend the scheduled hearing October 11, 2017. Mr. Hahn stated yes, this is a public hearing, and totally up to that individual if they would like to be present. Mr. Hahn shared that the hearing is scheduled for October 11, 2017, at 2:00pm, at the Wood County Courthouse in Wisconsin Rapids.

Mr. Hahn stated that the Adams County Judge was a former Village of Friendship attorney and Mr. Pheiffer requested a different Judge and the hearing transferred to Wood County. Mr. Hahn stated that basically this is a hearing to lift the injunction and the only people speaking will be himself and the attorney representing Mr. Pheiffer. If the judge would want any evidence or testimony, Bob Berry would be asked to speak. A question was asked wondering the name of the attorney representing Mr. Pheiffer and Mr. Hahn shared that the same law firm representing him in the dispute between the DNR and the Village of Friendship, Attorney Reid, from Wausau, Wisconsin, is representing Mr. Pheiffer.

Lee Parlow the Village of Friendship Representative shared that Mr. Pheiffer came before the Village Board at their last monthly meeting. Lee stated that Mr. Pheiffer asked for an affidavit from the Village of Friendship Board that we transfer to him the power of Condemnation. Mr. Parlow stated that the Village of Friendship Board refused to give that to Mr. Pheiffer. Mr. Parlow shared that at one point during that meeting Mr. Pheiffer stated he wished the Village of Friendship would take the Friendship Dam and he would be done with it.

Mr. Hahn responded by stating that it is known that the DNR position is two-fold, first the permit to operate didn't transfer properly from the Village of Friendship to Mr. Pheiffer. Secondly, because of that, the dam and land itself cannot properly transfer without that permit. The DNR's position is that the Village of Friendship still has the permit or that the Village of Friendship still owns the dam, because it is their position that it was not a valid transfer.

Mr. Hahn stated if the DNR is correct and the Village of Friendship still owns the dam and does not want the dam and we would work with the Village to take ownership and this could probably be resolved very quickly and for less costs. Mr. Parlow stated that Mr. Pheiffer said at one point that he would give the dam away for nothing. Mr. Hahn responded to Mr. Parlow, that if that is something the Village would consider to please have their attorney Mr. Paul Kent contact him for a conversation.

Linda Moonan had a question regarding payment of Mr. Pheiffer's attorney fees about the challenge our right to take. Mr. Hahn explained that if Mr. Pheiffer would be correct in his challenge that the Lake District lacks the power to condemn and the injunction is lifted, we take possession of the dam and then the judge decides the district does not have the right, the result is that the dam would be returned to Mr. Pheiffer and we would have to pay his attorney's fees. Mike explained in this case there is an oddity in that to have an injunction you must show that there is irreparable harm. Basically Mr. Pheiffer is saying to the court judge that if you don't stop them from taking the dam there is no way you can make me whole. In this case if the judge decides we do not have the right to take we turn the dam back to Mr. Pheiffer. There is no irreparable harm. Mr. Pheiffer and his attorney do not explain what irreparable harm he will suffer in his brief. It only states that he will have irreparable harm but does not describe what that would be.

Karen Pokorny asked for confirmation stating that at the hearing scheduled for October 11, 2017 we will be asking the judge to lift the injunction. She asked Mr. Hahn if the judge would also decide at that time on our right to condemn. Mike didn't think the judge would do that on the same day. He stated that the judge would most likely order additional briefing before he would make that decision.

Mr. Hahn explained that after Mr. Pheiffer and his attorney filed his brief and had the restraining order issued, the judge issued an order. The order stated that the defendants and its agents are hear by restrained to seeking to acquire or proceeding with any condemnation proceeding about the acquisition of the interest described in the Jurisdictional Offer. It is further ordered that defendant show cause if any to the court for why we should proceed.

Mr. Hahn explained that we are prevented to do anything to continue with the Condemnation now. This injunction is what we are asking the Judge to lift at the October 11th hearing. The argument is very simple and has been laid out in our brief. Mr. Hahn shared that there is a very specific procedure for contesting the right to take. Mr. Hahn stated that in that procedure you do not file an injunction. Mr. Hahn stated that in this case he believes that the judge is not familiar with Condemnation proceedings and shared that Mr. Pheiffer's brief did not point the judge to any of the relevant statutes. One statute covers the right to take and it is statutory section 32 05 sub-par 5. That is the only provision that Mr. Pheiffer can challenge the right to take. In that statute it does state that within 40 days of the Jurisdictional Offer you can challenge the right to condemn.

Mr. Hahn stated it is important to know that this challenge does not prevent the district from continuing with the process of condemnation. Mr. Hahn stated that statutes 32 05 and in 32 06 are almost identical with a few minor differences and in addressing the same language in 32 06 the supreme court stated that an injunction would be counter productive or that an injunction would be inappropriate and frustrate the statutes. A judge who is not familiar with Condemnation would not know this unless he is pointed to those statutes. Our brief points the judge in the direction of those statutes with explanation. It is our goal he would lift the injunction and schedule a briefing and a hearing on the right to take.

Mike summarized that if the Judge lifts the injunction, it is his plan to amend the Jurisdictional Offer to include the flowage rights and reissue the Relocation Order and the Jurisdictional Offer quickly and which again begins the 20-day time for him to accept. The Award of Damages would be performed after that time.

A question was asked to Mr. Hahn about grant availability, deadlines, as well as the amount of monies we could be awarded. Tina Meinen did report that she has been compiling information for the Financial Advisory Committee about the grant process. She stated that in her research the DNR grant seems to be the one most applicable for our situation and their website reports end of January. There are additional grants available for example WE Energy and Alliant Energy. They have different deadlines for example quarterly.

Bob Berry had additional updates regarding the acquisition of the dam. Bob stated that we have confirmation from Grand Marsh Bank partnering with the Lake District towards acquisition of the dam.

Bob asked Karen to share her information with regards to obtaining insurance coverage for the dam. Karen explained that Linda Moonan had been working previously with G-2 Insurance and our EMC insurance policies for the past few years. Initially Linda was informed that EMC was not interested in providing coverage for the dam. About a week ago or so Carol at G-2 insurance stated that now they may have another insurance company and they may be interested in insuring the dam.

Karen shared that as of last evening she received an email from Carol stating that they do not wish to insure the dam. Karen shared that she is currently working with Mr. Doug Bentley from Central Insurance, an independent agent. Doug is currently working to obtain coverage for the district regarding the dam. Mr. Bentley shared that he has done some research and found a few carriers that are familiar with insuring a dam and one, Liberty, has experience with dams and offers coverage nationally. He did request a date to use to begin the quote and we went with October 4th, knowing that we have 30 days if we need to adjust the date of ownership. Mr. Bentley further suggested that we keep our current insurance policy in place and he would like to review our coverage early next year as our policy terms May of 2018.

Karen shared that has planned three laptop computers were purchased to be used by each commissioner during their term. Karen did contact Carol at G-2 to make sure we have insurance on those and Carol was getting that documented and suggested a Cyber Activity Policy be added.

Bob shared that Grand Marsh Bank and Adams County Land and Water for Operations both require that insurance policy in place to move forward with agreements. It is our plan to be prepared and have everything in place once the acquisition is completed.

6. Citizen Input: No input presented.

7. Reports from Friends of Friendship Lake: Linda Graf shared that the Friends of Friendship Lake have received a request to participate in the Annual Parade of Christmas Trees at Mound View Hospital. We did participate last year. It is a great way to keep the community aware of our district. This year our theme is "Wisconsin Sports". We need a few volunteers to help decorate the six-foot Christmas tree between November 14, 2017 – November 18, 2017. Additionally, we need donated sports theme ornaments, decorations, etc. The tree will be raffled off by the Hospital. You can go and vote for your favorite tree. Information will be placed on the website.

8. Report from August Lake Alliance Meeting: Bob shared that the August meeting of the Lake Alliance did not happen, as there were not enough members present to make a quorum. The next meeting is scheduled for Saturday October 14, 2017 and Scott Provost from the DNR is scheduled to present. Bob said some of their agenda items also include discussion on grant availability. The Lake Alliance is requesting financial support from the Lake Districts and in the past, we have donated around \$200. Bob made a motion to give the Lake Alliance a check for \$200 and was seconded by Karen Pokorny. No other discussion was offered and the motion carried unanimously.

9. Any Unfinished Business: Bob shared that he and Tina researched purchasing three laptop computers for the commissioners. Karen and Tina made a fact-finding trip to Best Buy in Plover and purchased three at a very reasonable cost to the district. Tina presented that the laptops will provide the board members Office 365 with district email address specific to Friendship Lake District. There will be a share point site that will let us have all our documents stored and we can begin to eliminate all the boxes of paper work stored since the beginning of the district. Tina thanked the Friends of Friendship Lake for their recent donation at the annual meeting as that covered the cost of one of the laptop computers. Tina has ideas for the future stating that along with Office 365 there is a Skype for Business program that would allow members who could not physically attend sign on remotely to share in the meetings virtually.

10. Any New Business: Ron Johnson stated that he has received many phone calls from members who live in his district wondering what is the specific boundary that creates the Friendship Lake District. Linda Moonan answered that if Ron looks at the last newsletter mailed in August, that information was given with regards to the special charges. Bob shared that when the Lake District was created in 1992, a committee of members set the boundaries from the Lake District, the Town of Adams, Town of Preston, and the Village of Friendship, including Adams County. Tom Bell stated that in general the boundaries are from HWY 13 east to 10th Avenue and from County Road J north to Czech Lane, with the homes on the south side of Czech Lane in the district and homes on the north side outside of the district. Attorney Hahn presented a copy of the Adams County Resolution #58-1992 dated adopted March 17, 1992 with the description of the boundaries for Ron's review.

11. Set the next meeting board date: (November 7, 2017) At the Adams County Community Center at 5:30pm. There is a possibility that the board may call an additional meeting if needed about the acquisition of the dam.

12. Adjournment: Karen Pokorny made a motion to adjourn and seconded by Tina Meinen, motion carried unanimously.

Respectfully Submitted By,

Commissioner Karen Pokorny, Secretary

October 26, 2017

