

**VILLAGE OF PLEASANT PRAIRIE  
PLEASANT PRAIRIE VILLAGE BOARD  
PLEASANT PRAIRIE WATER UTILITY  
LAKE MICHIGAN SEWER UTILITY DISTRICT  
SEWER UTILITY DISTRICT "D"**

**9915 39th Avenue  
Pleasant Prairie, WI  
January 8, 2007**

**Immediately following the 5 p.m. Plan Commission Meeting**

A Special Meeting of the Pleasant Prairie Village Board was held on Monday, January 8, 2007. Meeting called to order at 6:25 p.m. Present were Village Board members John Steinbrink, Steve Kumorkiewicz, Alex Tiahnybok, Jeff Lauer and Mike Serpe. Also present were Mike Pollocoff, Village Administrator and Jane Romanowski, Village Clerk.

**1. CALL TO ORDER**

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL**

**4. NEW BUSINESS**

**A. Consider Settlement Agreement with We Energies concerning the required installation of automatic fire sprinklers throughout the Flue Gas Desulphurization System.**

Mike Pollocoff:

Mr. President, this Settlement Agreement reflects the result of negotiations that the Village and We Energies has had concerning the installation of sprinklers and fire protection measures in the Flue Gas building. I guess just from a historical standpoint the source of the conflict was that in the beginning we felt that sprinklers were going to be installed in there. We Energies disagreed with that. We felt there was some legal exposure to the Village based on some existing precedent that exists in Wisconsin. We opposed that action. In the first round the Department of Commerce agreed with us. Subsequently they disagreed. The Village's position at that point was to recommend a contested case hearing to have it opposed or ultimately take it to court.

In the intervening period, both parties were able to work towards some additional enhancements and improvements into this structure which is roughly eight stories high and to basically provide the Village with advance notice as well as the power plant if there was a problem in that structure. Our goal is to ensure the safety of the public as well as that of the firefighters and to minimize the need to carry hose to extreme heights. We came to an agreement on some heat detection elements that would be placed in the building in case there was a fire. The structure is fire proofed chemically. We're going to be working on notification through their central control and additional training. It probably doesn't get the Village everywhere we wanted to be, and it doesn't get We Energies where they wanted to be in the beginning either which is why it's a Settlement Agreement. I think an important test is that it gives the Chief latitude without liability

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if he determines the building is not safe to not have the firefighters enter the building and not assume the liability for that.

We've discussed this in executive session. As far as the terms of the agreement, nothing has changed from that discussion other than I guess some clarification of the Chief's ability to make that call. Other than that it's the same thing you saw in executive session. If there are any questions I'd be glad to answer them. The Chief is here as well.

Mike Serpe:

To refresh my memory Mike or Chief, the new system that Wisconsin Energy is putting in is going to detect the fire and give us an announcement that there is something wrong there. Is there still the possibility of the chance that our firefighters may have to carry hose up to that flight if the building is allowed to be entered if the fire is not too bad? Is that still a possibility?

Chief Guilbert:

Yes, that's correct.

Mike Serpe:

Let me ask you this, and I know we discussed this a little bit. Isn't there any way that we can configure something on that eighth floor or where the firefighters may have to carry the hose to the standpipe to have the hose in place so they don't have to carry that up? Paul, I've got to tell you, Arnold Schwarzenegger I don't think could do it. So it's going to be a tough job to do to carry a fire hose eight stories to fight a fire in that building. Couldn't we get something to put in the construction area or in the configuration of that building where they can have a door even if it's something that's outside to keep that fire hose from deteriorating because of the high heat in that building, and I understand there is high heat, that would allow them to rush up eight floors but without 200 pounds of fire hose on their back?

Chief Guilbert:

We're in the process right now of meeting with the people that operate Pleasant Prairie Power Plant, P4, to go over routine emergency operations, and we certainly can discuss that with them.

Mike Pollocoff:

But know that in the adoption of this agreement the Board is agreeing they won't do that. The issue is done, complete. We can't require We Energies to do any additional action. Now, if they change the use of that building, and for us if they began to store things in it, keep things there other than just the catwalks and the things that would get them to the apparatus of the building, we'd consider that a change of use. But in adopting this agreement, we can't require them or ask them to do anything more than what they've agreed to in this.

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What we have done is backstopped our exposure so that not only if it went bad We Energies couldn't come back and say you should have made us do it, or more importantly a third party which would be an insurance company for somebody who was injured not related to We Energies, maybe as an employee or subcontractor or the Village of Pleasant Prairie who would take action against the Village for not fully implementing the requirement. We've fought this as far as we reasonably can. We Energies has made some steps to mitigate it, but from a legal standpoint we wanted to make sure we didn't find ourselves in the same position as the City of Madison in the cheese factory fire where they gave a variance or allowed a variance to exist for a freezer building that had cheese and butter in it and then it actually burned down. The opinion of the court was Madison shouldn't have let them do it. So that's the existing case law. This agreement would backstop that against us. But once you enter into this agreement you can't go back to We Energies and say we think you should do more or you have to do more because we can't, we're agreeing that this concludes it.

Mike Serpe:

And I understand that. But does it stop We Energies from doing what I just asked?

Mike Pollocoff:

No.

Mike Serpe:

Okay, that's fine.

John Steinbrink:

But the Chief here still has the discretion as to whether to venture into the building or not, correct?

Mike Pollocoff:

That's correct.

John Steinbrink:

And it would be the Chief or whoever is in charge at the scene?

Mike Pollocoff:

That's correct, yes.

John Steinbrink:

I think that was the important part. We wanted the safety of the personnel at the scene.

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Steve Kumorkiewicz:

It's hard for me to figure out because I work in fire systems. I used to belong to the fire fighter brigade at work and also I used to do maintenance on dry and wet systems. It's hard for me to believe that the Electric Company with all its assets is unable to restore a dry system for emergencies. Because whatever way you look at it you put our people at risk. I realize it's your call whether to go or not. For the size of investments that they've got in that company not to go to a system that is able to fight the initial fire is hard for me to understand. I just can't go with that because there are a lot of ways to fight a fire without the people to start with. I think it's a matter of principle for them and they've got the money and we don't and that's the reason they're winning. I stated my opinion before on that. A company with fewer assets than Wisconsin Electric work to fight to save people and save firemen and Wisconsin Electric doesn't. They're not concerned with that. But the agreement . . . I don't think there's too much we can do about it. That's one of my contention points from the beginning. They don't want to spend the money. . .

Alex Tiahnybok:

Chief, in a previous Board meeting when we discussed this issue initially, and I'm following up on what Mike mentioned, I brought up the idea couldn't there be hoses permanently stationed on site, and I think the objection and I think Mike alluded to that again was that if they were present there the Fire Department wouldn't be able to be certain that they're in proper condition for use, etc., and that was the main concern. But it sounds like there's a solution and that is an environmentally controlled area. I completely agree that if hoses were on site and we did periodic checks that that would be a far better solution than, as you said, I don't know how many Arnold Schwarzenegger's we have on staff, but I've carried one of those hoses and I know what it feels like.

Getting I guess to a more basic point in this question, Mike Pollocoff you mentioned that we thought that the sprinklers would be installed. Was that actually a verbal understanding or a written agreement? What's the origin of that? And from my perspective any time you negotiate something there's some give and take and it sounds like we're doing a lot of giving and not getting much in return, especially if there was a written agreement. A linear heat detection cable system sounds like a glorified smoke alarm or heat alarm or something like that. To give up a suppression system in favor of a detection system certainly sounds like a big give and not much of a take in return.

I think we can agree that the safety issue whether it's to our firefighters or to personnel at We Energies is the most important aspect of this. I've read this agreement and maybe I missed it, but a statement was made that the Chief has the latitude not to send in firefighters if the situation allows for that. Is that documented somewhere? I know the agreement in the end says there's no verbal or previous elements that aren't superceded by this agreement, and I don't see anywhere where it says you have the right to say forget about it, it's a lost cause.

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Mike Pollocoff:

I guess to go back to the first question, it's not a contract or an agreement when the construction of the pollution control facility and this is part of it was approved by the Plan Commission. That was put in the staff report as the conditions that were existent when the approval was made for the conditional use permit. We heard a range of things from We Energies that we didn't see the condition or we don't think that the NFPA code reads--that they have to comply with the NFPA code. I think the argument was, well, it doesn't apply to this part of the building because there is an exemption for not sprinkling electrical generation. It's not conducive atmospheres. We came to odds with that pretty early on. So it's a matter of if you've seen the staff report that Jean Werbie worked up along with the Chief and it was all listed in there, and I think after We Energies looked at it they said, no, we don't believe we are subject to this.

Now, to get that decision done we were--initially it was agreed upon by the Department of Commerce and, as I indicated, We Energies appealed that and got that variance granted. We appealed that. We've only been before the Administrative Law Judge and the Department of Commerce. You are asking an attorney working for that Department to rule against that Department. So we feel that based on the notes that we had a pretty good case going. One of our problems is we'd need to find another--depending on how long We Energies wanted to fight the Village, we could be paying attorney fees of \$50,000, \$60,000, \$70,000 down the road for a \$50,000 to \$60,000 sprinkler system. One of the things that went through my mind was maybe we should put it in if we're going to spend the money if they won't. That's how that happened. We didn't negotiate it away; it's just a matter of how it happens.

Typically what goes on is that some of these plans, the sprinkler plans and mechanical plans, we list out the requirements of the code, what the Village ordinance requires, the interrelation between those two because especially with fire there's a lot of interrelationship between our sprinkler ordinance and the then the State's which the State supercedes, I mean it controls good parts of that. But, as those plans are developed and different users look at their budget and areas for savings, there's always a mechanical engineer who will say you can do this within the code and save money or this doesn't pertain. So that's where we ended up.

With respect to Chief Guilbert's ability to not put people in the building he has that authority under State statute. That can't be given away in an agreement or settlement discussion. In our discussions with the attorney under Section 3, the covenant not to sue, he's not spelled out in there because that's a given power that the Chief has. In that covenant not to sue the Village and We Energies covenant that we will not commence or cause to be commenced any lawsuit, administrative proceedings, and any other action against the other based on the issues resolved in this agreement. Then it follows up, which was the real risk that we talked about in closed session, was that Wisconsin Electric and the Village further agree to hold one another harmless and to indemnify the other from any of the costs or expenses incurred as a result of this including reasonable attorneys' fees.

So the issue would be there's a fire, it's eight stories up, you can paint the scenario in the worse case scenario that there might be somebody up there we don't know, the Chief makes the call that it's not worth risking one of this firefighters to go up there, the person dies and then files an

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action against the Chief or the Village because we didn't attempt to save the person, we've done everything we could and in his professional judgment he's made that call, Wisconsin Electric indemnifies us, they got their variance, they do it.

So that isn't written here. You have to use both the existing laws and the language in this covenant not to sue. If you were to not think about the lives of the firefighters or the people in there, if you just looked at the legal exposure which was substantial, I mean there's been people who have died out there and we've had people die in other places, and we have been litigated against for people who claim, Village, you should have done something and we've never lost one of those because we've usually done everything we can and there's been something that's happened beyond our control or sometimes beyond the control of the business, but knowing that we've addressed this issue, we've raised the concern we can't easily walk away from it and say, well, it looks like it's going to get expensive so we'll take a pass on it.

That being said, there is some additional steps that We Energies took. It's not like the Village has moved all the way. The fireproofing of the steel wasn't inexpensive and the heat detection, that assists, and having training on the best way to fight that or deal with that structure. It's not where we hoped we'd be but that's the world we have. Anything else, again, is going to be a further expensive to the taxpayers on this one. I think the policy decision we made is that they said there will never be a fire in there, there will never be people up there. So the fire department is going to use that in their judgment as they go there.

I've been in more meetings with Chief Guilbert with users and everybody always tells him there's not a risk, but when it comes right down to it he's the guy that's going to be faced with the decision, and we pay him to think about the worst case scenario because that's what he has to deal with so that's where we're at.

This is the document that came out of our executive session with that one change. I guess I'd recommend we adopt it because I believe We Energies is willing to litigate with us even to the point that if we win we'll be out what it's going to cost us to litigate it. Chief Guilbert has looked at this and he thinks we can make this thing work. It's not totally unworkable. It's not where we wanted to be but, again, We Energies isn't where they wanted to be. They didn't want to put anything in there so everybody has moved towards it.

Jeff Lauer:

Just a few comments. Obviously my biggest concern when I first heard about this about a year ago was the firefighters involved, personnel, the people who work over there as well as for the residents and the Village. Because if we really had a major fire over there, explosions, we've got SuperValu over there, you've got a home over there, so obviously safety is the high priority on my list for this. I don't like heights so I wouldn't want to go up eight floors when something is burning to begin with. I don't know, I guess just for the record the Village is put in this position not anything that the Village did. It's a shame that We Energies did an end around which in my opinion they were going to do this from the get go. It's a shame, because I guess I'm old fashioned, if I shake hands with somebody to me that's a contract, period. My word is my bond. Obviously as we've seen here money is more important than safety to We Energies.

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Obviously this Settlement Agreement is probably the best we can do or otherwise, as Mike had stated, we'd have to come up with \$50,000 or \$60,000 we might as well put them in ourselves. It's just a shame. I wish it didn't have to come to this. But, Chief, hopefully they'll surprise us and maybe have some sort of hose or something that can help in the future. Who knows. I appreciate all the work you did. I know it hasn't been easy for you either.

Chief Guilbert:

Thank you.

John Steinbrink:

The safety of the firefighters was the main concern of the entire Board as we entered into this and the staff. Because we understand firefighters are a special breed. They go places the rest of us wouldn't dare to go. Not just because it's their job but it's kind of a code they live by. They make every effort possible. With this is the training and, as Mike said, the fireproofing and some of the other things added in here and the discretion of the Chief which is still intact. That gives him the ability to protect his men and at the same time we're protecting the Village from liability with this contract. With that if there's no further discussion? Mike?

Mike Serpe:

Just one comment. I'm certainly disappointed that it had to come to this. I also understand that sometimes we're backed into a corner and we have to kind of play a little ball. With that I would move approval of the agreement.

Jeff Lauer:

Second.

**SERPE MOVED TO APPROVE A SETTLEMENT AGREEMENT WITH WE ENERGIES CONCERNING THE REQUIRED INSTALLATION OF AUTOMATIC FIRE SPRINKLERS THROUGHOUT THE FLUE GAS DESULPHURIZATION SYSTEM; SECONDED BY LAUER; MOTION CARRIED 5-0.**

## **5. ADJOURNMENT**

**LAUER MOVED TO ADJOURN THE MEETING, SECONDED BY KUMORKIEWICZ; MOTION CARRIED 5-0 AND MEETING ADJOURNED AT 6:55 P.M**