

Village of Fall Creek
Minutes of Special Village Board Meeting
May 28, 2019

1. **Call to Order:** 6:30 p.m., Village Hall Meeting Room, 122 E. Lincoln Ave., Fall Creek
2. **Pledge to Flag**
3. **Roll Call:** Members Present: Village President Chester Goodman, Trustees Joyce Aldrich, Bob Jenkins, Matt Mattoon, Tim Raap, Karen Strasburg, Dane Zook. Members Absent: None. Staff Present: Clerk-Treasurer Renee Roemhild. Also Present: Village Attorney Garrett Nix, 17 citizens.
4. **Certify Open Meeting Law Requirements Have Been Met:** A notice of the meeting and an agenda was posted in the three public places and local newspapers were notified.
5. **Adopt Agenda:**
 - MOTION (Mattoon/Aldrich) to adopt the agenda as printed. PASSED, without negative vote.
6. **Consider Garbage & Recycling Services, Including Time for Citizen Input:** Village President Chester Goodman introduced Village Attorney Garrett Nix who gave an overview of the topic. Attorney Nix began by stating garbage & recycling services should be considered as having two separate issues:
 - 1) the license the Village grants to companies interested in providing services, and
 - 2) the contract for such services.The Village previously operated with those two issues mingled together as one.

As part of recent research, the Village attorneys came to the opinion that co-mingling the two issues is contrary to State Statutes Chapter 66. The Village granting only one license when the service provider invoices residents directly creates an anticompetitive activity that is contrary to Wisconsin's anti-trust law, Wis. Stat. §133.03. An exclusive contract (creating an exclusive license) can only be issued if the Village as a whole is paying for the service.

The situation can be rectified in one of two ways.

Option 1 – Non-exclusive.

All haulers would be allowed to get a license.

Customers can choose which vendor works best for their needs.

Having more licensed haulers may positively impact the market price.

Or it could negatively affect it, because the vendor would not have a proven client base.

Option 2 – One exclusive hauler.

Customers do not have a choice.

Only the hauler selected by the Village Board will be licensed, providing a larger client base for the vendor.

The Village Board would bid out the service, providing fair market competition.

The Village would take on the administrative aspects, meaning the customer would no longer be billed by the garbage hauler.

The Village would recoup the costs of providing the service in a manner still to be determined – probably a special charge on the tax roll or a fee on the water/sewer bill.

President Goodman stated the new discovery caused him to send out a letter to the public requesting their opinion on how they would like garbage & recycling services handled. He

then opened up the meeting for questions and comments from the public. Both options were discussed in detail.

Comments received from residents, both at the meeting and prior via telephone and emails, indicated most preferred the one-hauler option.

- MOTION (Mattoon/Raap) to implement Option 2, having one exclusive hauler for the Village. PASSED, roll call vote: Goodman-yes, Jenkins-no, Mattoon-yes, Raap-yes, Strasburg-yes, Zook-no, Aldrich-yes.

7. Consider 2nd Reading & Possible Adoption to Chapter 223 Solid Waste Collection

Ordinances: President Goodman explained the changes being considered have two purposes – to clarify the types of licenses issued and to put conditions upon them for the safety and benefit of the residents.

- MOTION (Mattoon/Strasburg) to hold the second reading of above ordinance and to adopt it, in its entirety, making it a part of the Code of the Village of Fall Creek. PASSED, roll call vote: Jenkins-no, Mattoon-yes, Raap-yes, Strasburg-yes, Zook-yes, Aldrich-yes, Goodman-yes.

8. Consider Bids for Garbage & Recycling Services: President Goodman stated the bid process will be changed in the future to allow bid letting in January of contract years and to hold informative meetings with the vendors. That said, the Board is still faced with making a decision for this license year in which the bid specifications were written prior to receiving the new opinion from the Village attorneys. As the bid specs were written with the legal language giving the Village the right to negotiate further with bidders and the right to establish conditions for the successful bidder to comply with, acceptance of the bids could be done in that manner, using that legal right to make the necessary modifications to comply with the new understanding.

Rather than deal with that difficulty, the current contract holder Mark Vinall of Advanced Disposal offered the option of extending the current contract for one year at the new bid prices (with Advanced continuing to bill the customer), giving the Board time to consider how to make the changes needed for Option 2. Village Attorney Garrett Nix agreed that would be an allowable solution, as long as Advanced Disposal was willing to strike the “exclusive right” paragraph from the contract. Mr. Vinall agreed.

- MOTION (Mattoon/Aldrich) to accept Advance Disposal’s offer and to extend the current contract for one calendar year at the rates listed on their bid sheet, and to direct that bids be let in January of 2020 for the July 2020 license year. PASSED, roll call vote: Mattoon-yes, Raap-yes, Strasburg-yes, Zook-yes, Aldrich-yes, Goodman-yes, Jenkins-yes.

9. Adjourn:

- MOTION (Jenkins/Mattoon) @ 7:52 p.m. PASSED, without negative vote.

Renee Roemhild, Clerk-Treasurer