

Village of Fall Creek
Minutes of Regular Village Board Meeting
April 10, 2023

1. **Call to Order:** 6:00 p.m., Village Hall Meeting Room, 122 E. Lincoln Ave., Fall Creek
2. **Roll Call:** Members Present: Village President Tim Raap, Trustees Ryan Aylesworth, Karen Herbison, Karen Hurd, Sheena Kaatz, Matt Mattoon. Members Absent: Chester Goodman. Staff Present: Village Administrator/Public Works Director Jared McKee, Clerk/Treasurer Renee Roemhild. Also Present: Village Engineer Gareth Shambeau, Village Auditor Dan Carlson, 7 citizens.
3. **Pledge of Allegiance**
4. **Certify Open Meeting Law Requirements Have Been Met:** A notice of the meeting and the agenda was posted at the three public places and local newspapers were notified.
5. **Adopt Agenda:**
 - MOTION (Hurd/Herbison) to adopt the agenda as printed. PASSED, without negative vote.
6. **Recognition of Visitors/Citizen Input:**
 - Scott Honadel, 103 N Liberty St., questions regarding the ordinance as relates to building a garage with a pole shed structure.
MOTION (Mattoon/Raap) to send this to the Public Works, Public Safety & Property Committee. PASSED, without negative vote.
 - Richard Ziemann, 543 S State St, congratulated those who were elected again and thanked all those who ran, stated discussion is the key to everything you do, urged the Board to feel free to conjecture or discuss.
 - Gary Stamness, 411 S Victory St, congratulated those who were re-elected, stated he was concerned about postings on Facebook FC Connections from a public works employee, concerned with time & funds spent on developing the Creekside property and felt we should be more focused on the general Fall Creek Village, stated the Board needed to be responsible stewards of the public funds.
 - Karen Hurd spoke as an Assembly Representative, stated the Board & citizens have a unique opportunity to give testimony to the State Joint Finance Committee at a public hearing at UW-Eau Claire and the State just passed a bill to crack down on reckless driving which means that if desired, the Village can adopt more strict penalties for reckless driving and can impound the car on repeat offenses.
Karen Hurd then stated she wanted to speak as a Village citizen and stated she was concerned with Village employees putting out opinions on a public platform like Facebook. Hurd stated that at the Federal level there is what's called The Hatch Act which says Federal employees are not allowed to endorse a political candidate or give any political opinions on a public platform or they would be prosecuted and lose their job. Hurd said at the State level where she works now, they have many employees, and they are not allowed to express any public opinion or put political signs in their yards because that could be seen as an endorsement of the State. She stated that candidates are a whole different thing because a candidate is an elected position, and the electorate can say "we want you" or "we don't want you". Hurd stated candidates can sling mud all they want. She said candidates can run a dirty campaign, or a clean campaign, they can do what they want because it is an elected position. Hurd stated that if a person is a Village employee, they don't have that luxury. Hurd stated we needed to consider that as we go forward. Hurd encouraged the leadership to look at that as a policy for the Board. Hurd said that she was a private employer and if an employee of her company would ever criticize her as the boss, she would fire them. Hurd stated we have all sorts of examples in our society that federal employees are not supposed to express their opinions in a public way.

- Administrator Jared McKee asked if he could make a statement as Village Administrator. After being given permission, he stated that regarding both comments about whether Village employees should be allowed to make comments on social media, he said that he was aware of the complaint and that he was aware of The Hatch Act, but clarified that it only applies to Federal employees, but not all. McKee stated that as far as the Village is concerned, we have had this issue come up in the past with a Police Chief that wanted to take disciplinary action on an employee who made Facebook comments because the Police Chief felt the comments were critical to the Village and to the Department. McKee stated the Village Attorney was contacted at that time to review the issue and he advised us that we did not have the right to take disciplinary action. McKee stated that is the premise that he has continued with - that with the Village's current policies and procedures, an employee does not lose their first amendment right for free speech when they come to work for the Village. He said an employee would not be allowed to post personal opinions on the official Village Facebook page, nor would they be allowed to make postings during working hours, but if an employee on their own time has political opinions about State, Federal, or local issues, they do not lose their first amendment right to make comments about it.

- Trustee Karen Herbison said she felt we were splitting hairs as to the letter of the law and the spirit of the law. Herbison felt comments could be made on a personal page but not on Fall Creek Connections. Trustee Matt Mattoon questioned if Fall Creek Connections was a private page. Herbison said yes. Mattoon said the government doesn't have anything to do with a private organization.

Raap stated in the interest of moving things along, it may be best to send the topic to committee.

MOTION (Herbison/Aylesworth) to send the topic to Committee of the Whole. PASSED, roll call vote: Herbison-yes, Kaatz-no, Mattoon-no, Raap-yes, Aylesworth-yes.

- Jamie Kaeding, 224 W Washington Ave, stated he loves his job, that this is real life for him, and he feels very passionate about the Village. Kaeding said the comments voiced tonight were that they were worried about him talking poorly about Village people or the Village in general on a social media post. Kaeding stated he attends the Board meetings and felt it important to say something but did not point a direct finger at anyone or name names. Kaeding said there are Trustees out there saying things that are critical of employees, critical of decisions, saying stuff that's very unethical and unbecoming of Trustees. Kaeding stated most of his social media posts are giving information about brush sites, etc., and he has received many compliments from people that are thankful for his posts, but he asked the Board to talk about it and let him know if there was going to be a policy update.

7. Approval of Minutes: President Tim Raap requested a correction to the 4/6/23 Plan Commission meeting minutes stating that in item #6 about land division by CSM, it should state four lots, not five. Administrator Jared McKee stated in item #5 of the 3/15/23 Plan Commission minutes, the road width variance request was only for the extension of White Street, not all proposed streets in Creekside Estates. Clerk-Treasurer Renee Roemhild stated she agreed with his recollection and concurred with both of the requested changes.

- MOTION (Kaatz/Herbison) to approve the 3/13/23 Regular Board, 3/15/23 Plan Commission, 3/23/23 Public Works, Public Safety & Property Committee, 3/30/23 Special Village Board, & 4/6/23 Plan Commission meeting minutes, with the requested corrections. PASSED, without negative vote.

8. Financial Report:

A. Clifton, Larson, Allen: Report on Audit for Year-End 12/31/2022:

Auditor Dan Carlson of Clifton, Larsen, Allen (CLA) summarized the *2022 Financial Statement Notations*, along with providing Board members with the full audit. Carlson stated the Village received an "unmodified" audit opinion, which is a clean opinion and the best opinion a

municipality can get. He stated the audit went very well with the Administrator & Treasurer being very responsive to questions, which makes the process go smoother. Carlson said moving to the new software in 2021 has also been helpful. As 2022 was the first full year with the new software, he commented that the conversion has gone over really well. Carlson reviewed the *Material Weaknesses*, stating they are the same as in prior years and are very typical of other municipalities. They include that CLA helped prepare the *Annual Financial Reporting under Generally Accepted Accounting Principles* (GAAP), they do a few material audit adjustments, and must disclose the lack of segregation of duties. He stated the lack of segregation of duties can create an opportunity for fraudulent activity, but it is a very common weakness for a small municipality, as it is not cost-effective to hire the number of employees needed to separate out the many steps of recording and completing financial transactions. Trustee Sheena Kaatz asked for further explanation on this. Carlson responded that only very large municipalities do not have that material weakness. Administrator Jared McKee stated we try to segregate what we can. For example, Joan will do the bank deposits and much of the receipting with Renee being the random proofer, Renee will do data entry for bills and journal entries with Jared being the “approver” of those entries. McKee stated it’s a matter of being a small office – you can only segregate so much, but that we try to make sure we have someone other than the primary worker reviewing every aspect. Carlson stated the controls in the office are very good here.

Carlson reviewed the General Fund Balance Sheet, stating it has stayed fairly consistent over the last four years and he detailed the *% of Unassigned Fund Balance to General Fund Expenditures*. McKee commented that prior Boards have adopted resolutions to direct the percentage of unassigned fund balance to be maintained, reminding the Board of when he reviewed those cash management resolutions in detail at a prior meeting and that we adjusted the cash at 12/31 to abide by those resolutions. McKee briefly described the resolutions again, stating one is basically for a “rainy-day” fund while the other defines the level of “working capital” cash which is used to avoid short-term borrowing as our revenues do not come in on a monthly basis, that being especially evident with our *State Shared Revenue* which makes up a large part of our budget but isn’t received until November of each year. Carlson continued by discussing the fund balances in the Special Revenue, Debt, Capital, and Enterprise Funds.

Reviewing the Village’s debt, Carlson reported the long-term debt obligations decreased significantly in 2022 and the Village has a very good *General Obligation (G.O.) Debt as Percent of Debt Limitation* percentage. President Tim Raap commented that not all municipalities use their *G.O. Debt Capacity* to help their utilities, explaining that G.O. debt typically has a lower interest rate than loans secured by other means. He stated we have secured lower interest rate loans for our Water & Sewer Funds in the past by allowing them to borrow as G.O. debt, and we still have good G.O. debt capacity. Trustee Karen Hurd wanted to know if the money the Capital Projects Fund loaned to the General Fund to pay off the Raether loan was included in the percentage of *G.O. Debt as Percent of Debt Limitation*. McKee responded that it was not because the internal loan is not considered G.O. debt. Hurd stated that it looked good that our debt percentage went down but there was really more owed than that. Raap responded that when discussing what is owed or comparing with other municipalities, you should be looking at the entire picture because long-term obligations include not only G.O. debt but also loans that are secured by other means, such as utility revenue. Raap stated it is also important to recognize the other side of the equation – that an increase in debt (which is an increase in liability) can also have a counterpart increase in assets. Raap referred to examples just given by the auditor in review of the balance sheets, pointing out such items as *Land Held for Resale* with the Industrial land and Raether land; those purchases resulted in increased assets because the Village then owned something of value that it didn’t have before.

- MOTION (Mattoon/Kaatz) to accept the Audit Report and Financial Statements and Supplementary Information for year-ended December 31, 2022. PASSED, roll call vote: Herbison-yes, Hurd-yes, Kaatz-yes, Mattoon-yes, Raap-yes, Aylesworth-yes.

Clerk-Treasurer Renee Roemhild reported on the monthly financial report.

- MOTION (Kaatz/ Mattoon) to approve the 3/31/2023 Budget Comparison Report. PASSED, roll call vote: Hurd-yes, Kaatz-yes, Mattoon-yes, Raap-yes, Aylesworth-yes, Herbison-yes.

9. Approval of Bills:

- MOTION (Kaatz/Mattoon) to accept the Invoice Listing and Payroll Pay Summary Reports of 3/14/23-4/10/23. PASSED, roll call vote: Kaatz-yes, Mattoon-yes, Raap-yes, Aylesworth-yes, Herbison-yes, Hurd-yes.

10. Report of Village Administrator: Administrator Jared McKee gave his monthly report highlighting the departmental duties accomplished since the last regular board meeting.

McKee also gave a comprehensive report on the Village's debt, stating he wanted to provide a picture of where our debt is at today as compared to 2007 when the Village had to take out a \$3 million loan because the DNR required replacement of the wastewater treatment plant. McKee stated that even though the Village secured a \$1 million grant, the magnitude of that project obviously required a significant increase in the sewer rates at that time. Due to the size of the loan, we are still paying for it today and will be for some time yet. McKee listed other projects the Village was faced with over the years such as Well #3 & #4 that was required because of high nitrates at Well #2. Again, even though securing a good financing package that included principal forgiveness (a form of grant), debt had to be taken out. McKee stated the Board has been very aware of the effect these projects have had on water & sewer rates and has been very diligent in their cash management and debt reduction strategies over the years. McKee provided details showing the debt interest savings which resulted from two of those strategies – making additional payments on the debt and refinancing to better terms. McKee explained that debt for the Tax Increment Districts (TID) is listed separately because those loans are paid from the revenue gained by bringing in economic development to the TID's; no general tax or utility dollars are used.

Raap stated he'd like this spreadsheet to be put on the Village website in a financial section that will allow residents easy access to information regarding the state of the Village finances. Raap encouraged the other Board members to review this data, taking note of the past projects and strategies involved in managing the finances. He pointed out several of the additional payments, stating they were the result of having some money build up in the General Fund due to not spending all the budget and the Board decided to use that money to make an extra payment on the highest interest rate loan. He pointed out other examples where refinancing was the better financial management tool, stating the Board has been conscientious to stay aware of the loan environment to recognize when it's beneficial to refinance. He pointed out the refinancing of the Raether loan, stating that helped out the Capital Projects Fund (CPF) as the Board decided to handle that with internal funds that then gave the CPF more interest earnings on its money than it could get through the bank. Raap stated this is a good document that shows a historical image of the challenges past Boards have had to deal with, and what they've used for tools to balance expense needs with levy limits and revenue constrictions. He stated we have capital needs coming up and will be working on strategies to manage them; he asked the other Board members to be ready to bring their ideas. Clerk-Treasurer Renee Roemhild stated it was really a blessing to work on the spreadsheet and lay out all that the past Boards have done, outlining all the work and dedication they have shown to manage the debt wisely while taking care of necessary capital needs. Roemhild stated those wise decisions saved over 3 million dollars in interest costs over the years.

11. Committee Reports: Raap reported on the Plan Commission meetings. Kaatz reported on the Public Works, Public Safety & Property Committee meeting, stating there will be a first reading for an ordinance amendment coming up at the next meeting.

12. Unfinished Business: None.

13. New Business

A. Resolutions from Motions Adopted 3/13/23 & 3/30/23 for Variances Approved for

Creekside Estates: McKee stated these variances were already approved but needed to be formally passed by resolution.

- MOTION (Aylesworth/Herbison) to adopt RESOLUTION #2023-0410A granting a variance for the Creekside Estates Plat to allow a road width of 32 feet rather than 36 feet on the extension of South White Street. PASSED, roll call vote: Mattoon-yes, Raap-yes, Aylesworth-yes, Herbison-yes, Hurd-yes, Kaatz-yes.
- MOTION (Herbison/Hurd) to adopt RESOLUTION #2023-0410B granting a variance for the Creekside Estates Plat to allow a roll over curb, rather than a traditional curb. PASSED, roll call vote: Raap-yes, Aylesworth-yes, Herbison-yes, Hurd-yes, Kaatz-yes, Mattoon-yes.

B. Resolution for Additional Variances for Creekside Estates: Raap stated the Plan

Commission looked at this request and recommended the Board approve.

- MOTION (Herbison/Aylesworth) to adopt RESOLUTION #2023-0410C granting a variance to allow a street grade of up to 8% and to allow the required utility easements to be placed in the front yard, as opposed to the rear. PASSED, roll call vote: Aylesworth-yes, Herbison-yes, Hurd-yes, Kaatz-yes, Mattoon-yes, Raap-yes.

C. Preliminary Resolution Declaring Intent to Levy Special Assessments Under Municipal

Police Power Pursuant to §66.07703, Wis Stats: Raap reported this is one of the statutory steps that must be completed in order for levying a special assessment. McKee reviewed the entire process for the Board. Hurd asked a long-standing resident Richard Ziemann who was in the audience if he knew if the Village had always had special assessments. He replied that he thought prior to the 1970's, the Village may have picked up all the cost of the streets but as more streets came in, his perception was that long-term residents felt they were being unfairly charged for outside development coming in. McKee stated he researched the history of the Village regarding special assessments and the first adoption of special assessment that he could find in the minutes was in 1962 at which time they assessed 100% for curb/gutter & sidewalk when it went in originally. McKee stated that at some point, the policy was loosened to assess for 66% of the street when it was reconstructed. He stated there were various renditions throughout the years.

Hurd asked if we had investigated any grants for this project. McKee responded yes, we've talked about this a couple different times that for this particular project, it is combining it with the timing of the Developer's project that is a long-term cost savings for the Village (so as to not have the Developer spend his money to cut into the street and hook into very old underground utilities that have already passed their useful life, to use his money instead to pay for Our Project on his side of the street. To delay doing Our Project until after the Developer had completed his project and already hooked into the old utilities would mean that the Village would have to pay the full cost to replace the underground utilities later. Since they are already so old and in need of replacement now, it doesn't make financial sense to do that.) McKee stated that he did also research grant opportunities for this project and asked our Village engineering firm to do so as well. There were none that the Village qualified for at this time. McKee stated opportunities for grants will be much more likely for larger projects.

- MOTION (Mattoon/Kaatz) to adopt RESOLUTION #2023-0410D Preliminary Resolution Declaring Intent to Levy Special Assessments Under Municipal Police Power Pursuant to §66.0703, Stats.

Raap stated discussion could follow before voting and wanted to make sure the Board understood the special assessment procedure and the timeline, asking McKee to go over it again. McKee reviewed the steps in the process and stated the estimated assessments would be prepared based on our current ordinances. He reviewed the ordinances for the Board, particularly noting the differences between reconstruction and new construction as this project contains items that fall under each category because there has never been sidewalk, curb/gutter or storm sewer installed before. McKee stated one cost advantage for calculating the special assessments for this project is that we were able to get the financing agreement approved with the County of Eau Claire for them to pay the center 22 feet of the road costs. McKee said Dane Zook, our County Board Representative, helped us out and made sure there would be funds available at the County level. Several Board members said they would like to see the estimated assessments before holding the Public Hearing. McKee replied that then there would need to be a special Board meeting after the opening of the bids. Raap mentioned that if anyone wanted to feel more comfortable in making sure they could see the estimated numbers for the assessments before the public hearing, that after this motion is voted on, they could make another motion directing to have a special board meeting before the public hearing. Raap referred to the League of Wisconsin Municipalities Manual on Special Assessments, again encouraging members to familiarize themselves with the special assessments policy. He then called for a vote on the motion adopting RESOLUTION #2023-0410D.

PASSED, roll call vote: Herbison-yes, Hurd-yes, Kaatz-yes, Mattoon-yes, Raap-yes, Aylesworth-yes.

- MOTION (Hurd/Kaatz) to have a special board meeting before the public hearing when the estimated assessment numbers are ready. PASSED, without negative vote.

D. Consider Final Plat for Creekside Estates: Raap reported on the Plan Commission's review and their recommendation to approve the plat condition upon the staff and engineer working through the redline items listed in the Village engineer's review. Village Engineer Gareth Shambeau spoke highlighting items from his review. Hurd questioned if there were any concerns over the stormwater drainage ponds. Shambeau stated he has seen it handled two ways – 1) where the municipality owns the ponds or 2) where the developer owns the pond and a homeowner's association (HOA) is formed to handle the maintenance. Hurd was concerned about liability and maintenance issues if the Village owned it, feeling there would be children living in the homes that may wander into the pond and that she didn't want to see Village staff have to mow the ponds. Much discussion followed with eventually receiving comments from representatives from the Developer. Jeff Seward from Advanced Engineering Concepts addressed the Board stating that the ponds will be accommodating the public right-of-way of existing streets, they are not just for stormwater from within the development. Hurd stated she still didn't want to take on the liability.

- MOTION (Hurd/_____) to accept the final plat of Creekside Estates with the condition that the developer keeps ownership of the outlot with the ponds. There was no second. The motion failed.

Discussion continued regarding liability, the Village's insurance, the level of maintenance, the Developer's timeline and if requiring them to retain the lot would be a dealbreaker for them. Sam Gartmann of Real Land Surveying, who surveyed this property, stated he's worked on over a hundred retention ponds and they rapidly grow up with grass and thistle and are not going to be an area that children will want to walk through. The consensus of the Board became that they were comfortable with it growing into a natural habitat, that it would not be mowed regularly but allowed to grow natively.

- MOTION (Kaatz/Mattoon) to accept the final plat for Creekside Estates as listed in the Plan Commission minutes. PASSED, roll call vote: Hurd-yes, Kaatz-yes, Mattoon-yes, Raap-yes, Aylesworth-yes, Herbison-yes.
- E. EMS Service Agreement Update:** McKee reported he attended a meeting with neighboring municipalities for sending out an RFP for ambulance services but it's looking like they will not be getting all the bidders they were expecting.
- F. Bartender Operator License Application:**
 - MOTION (Hurd/Herbison) granting a bartender operator license for Emily Olson for the remainder of the 2022/2023 license year. PASSED, without negative vote.
- 10. Appointment, i.e. Library Committee:** President Raap appointed the following to the library board: Karen Strasburg for Kelli Corbin's term expiring 2024, Trista Anderson for Mike Minner's term expiring 2025, John Kuehn for his 2026 term, Kim Gillet for term expiring 2026, and Karen Hurd as the Village Board representative for a term that expires 2024.
 - MOTION (Kaatz/Aylesworth) accepting the above appointments. PASSED, without negative vote.
- 11. Committee Recommendations**
 - A. Select Village Attorney:** Raap stated we had a Committee of the Whole meeting and reviewed the proposals submitted.
 - MOTION (Mattoon/Aylesworth) to select Weld Riley, S.C. as our Village Attorney. PASSED, roll call vote: Kaatz-abstain, Mattoon-yes, Raap-yes, Aylesworth-yes, Herbison-yes, Hurd-yes.
- 12. Possible Assignment to Committee:** None.
- 13. Administer Oath of Office to Newly Elected Board Members:** Clerk-Treasurer Renee Roemhild administered the oath of office to Village President Tim Raap and to Village Trustees Matt Mattoon, Karen Hurd and Karen Herbison.
- 14. Adjournment:** 8:57 p.m.

Renee Roemhild, Clerk/Treasurer