

**VILLAGE OF ESSEX JUNCTION
BOARD OF TRUSTEES
MINUTES OF MEETING
March 8, 2011**

BOARD OF TRUSTEES: Deb Billado (Village President); Peter Gustafson, George Tyler, Steve Atwood, John Lajza.
ADMINISTRATION: Dave Crawford, Village Manager; Robin Pierce, Development Director.

I. CALL TO ORDER and PLEDGE OF ALLEGIANCE

Village President, Deb Billado, called the meeting to order at 6:30 PM and led the assemblage in the Pledge of Allegiance. Ms. Billado commented on briefings by Supreme Court Chief Justice John Roberts regarding free speech and public debate, cautioning that commitment to open debate is not license for verbal assault.

II. AGENDA ADDITIONS/CHANGES

Include in 'Old Business', Item #4 (action on EJRP Agreement):

- Information on the Declaratory Judgment and Modified Motion on EJRP Agreement

Include in 'Manager's Report':

- Notation that there will be a community dessert prior to the annual meeting rather than a dinner because student servers are not available.
- Draft newsletter needs review and comment prior to being mailed.

Add to Consent Agenda:

- Amendment to Employee Agreement relative to employee range changes.

INJUNCTION re: RECREATION DEPT.

George Tyler asked for clarification on the injunction to bar the Recreation Department from using village property after July 1st. Dave Crawford stated there is a need to be resolved and the injunction is part of the Declaratory Judgment (a request to do an injunction). George Tyler noted the injunction document is in addition to other documents provided to the Board of Trustees to this point. The most recent document was the summons (for the Declaratory Judgment). Mr. Tyler stressed he had no idea the Trustees would be filing an injunction. Dave Crawford reiterated the injunction is part of the Declaratory Judgment action. George Tyler asked if and when the Trustees discussed the injunction. Mr. Crawford said the matter came out as the case was reviewed. Trustee Tyler asked if the injunction was discussed during a Board of Trustees meeting. Dave Crawford said the decision to file did not take place in a Trustees meeting. The decision was to move the matter forward as quickly as possible which is as the lawyers advised to do. George Tyler asked who made the decision on the injunction. Dave Crawford said he was involved as were the two attorneys to match the agreement that was made at a Trustees meeting to move forward as quickly as possible. George Tyler questioned at what point the Board had control over the process since he was unaware the Trustees were filing an injunction. Mr. Tyler said he just learned about the injunction now. Deb

Billado stated the injunction is part of the process and may help move the case forward before the court so hopefully there can be resolution.

III. GUESTS AND PRESENTATION

1. Comments from Public on Items Not on Agenda

There were no comments from the public.

2. Public Hearing: Land Development Code Amendments

The public hearing was opened at 6:38 PM. Dave Crawford noted a list of the amendments to the Land Development Code is available. Mr. Crawford also noted receipt of an email, dated 3/2/11, from the property owner of Post Office Square against sandwich board signs. There were no other comments from the public.

MOTION by George Tyler, SECOND by John Lajza, to close the public hearing on the Land Development Code amendments. VOTING: unanimous (5-0); motion carried.

The public hearing was closed at 6:43 PM.

IV. OLD BUSINESS

1. Action on Land Development Code Amendments

MOTION by John Lajza, SECOND by Peter Gustafson, to adopt the Land Development Code amendments as advertised and considered at the public hearings on 1/8/11 and 3/8/11.

DISCUSSION: George Tyler recalled there were comments from business owners on the sandwich boards. John Alden, Essex Junction Planning Commissioner, explained the Planning Commission felt sandwich board signs belonging to a store should be by the business and not on a sidewalk far away from the store. Businesses in the Five Corners area are different in character and have the sidewalk close to the store front. The Planning Commission felt there is a benefit to show there are two kinds of retail in the community. Dan Kerin, Essex Junction Planning Commissioner, mentioned sandwich board signs can hinder sight distance. There were no further comments.

VOTING: unanimous (5-0); motion carried.

2. Consider/Action on FY'10 Audit Report

MOTION by John Lajza, SECOND by Steve Atwood, that the Trustees acknowledge review and acceptance of the FY2010 annual audit as prepared by Sullivan Powers & Co. VOTING: unanimous (5-0); motion carried.

3. Action on Design Alternative for Crescent Connector Road

MOTION by Peter Gustafson, SECOND by Steve Atwood, to accept the progress report for the CCMPO Crescent Connector Road Scoping Study and preference for the "Northern Alternative (#1)".

DISCUSSION: George Tyler recalled there is a conflict in that several land owners are involved and the least expensive alternative and the one that can move forward with the most ease (alternative #1) is opposed by the most significant landowner involved (Lincoln Inn). The decision on the road should not inhibit the process of development of the Lincoln Inn property. Robin Pierce explained the issues with the Lincoln Inn property owner can be worked out. Mr. Crawford said the Lincoln Inn owners have said if they had their druthers they would prefer the southern alignment, but they do not hold the rights to the Depot property to the south. The owner of the Depot property is in support of the northern alignment. Two of the three property owners are in favor of the northern alignment. By accepting the progress report the CCMPO can finalize the study. Deb Billado asked about the southern alternative. Robin Pierce explained there are impacts with the southern alignment including an historic building, businesses being displaced, the Lincoln Inn no longer having an option on the Depot property, and expense. The study looked at the best alternative based on cost and the southern alignment is the more expensive alignment. There were no further comments.

VOTING: unanimous (5-0); motion carried.

4. Consider/Action on EJRP Agreement from Prudential Committee

Peter Gustafson recused himself from deliberation/decision on the matter as a member of the Board of Trustees.

MOTION by John Lajza, **SECOND** by Steve Atwood, that the Trustees hereby acknowledge the receipt of the Prudential Committee's Proposed Recreation Agreement (dated 2/10/11) and after considering the proposal finds it does not address the Trustees' continuing concerns regarding the need for sections addressing: (1) the ownership issue; (2) the need for an oversight committee to deal with public access to the decision making process issue; (3) a method for defining the costs for CCSU services; and (4) specifically approving the lease of village properties.

DISCUSSION: George Tyler spoke with self constraint against going 'farther and farther down an alley' by not accepting the agreement. Mr. Tyler recalled the joint three hour meeting with the Prudential Committee in January and the Trustees feeling they were not given the answer they sought and is now saying if the expected answer is not forthcoming there is now a process in place as of July 1st to shut down the Recreation Department. Per the action the Recreation Department will have to abandon the property or they will be deemed trespassing. Mr. Tyler said the Recreation Department has been operating and functioning for the past 42 years with the Prudential Committee (another elected board) and they will have to cease operation and abandon the property if there is no agreement. Mr. Tyler stated the simplest way to get rid of the emotion surrounding the matter is to sign the agreement and continue the contract that has been in place and served the community well for the past 42 years, then deal with the other items over time with a subcommittee. John Lajza respectfully disagreed, recalling the Trustees sent

a contract marked “draft” to the Prudential Committee and requested a meeting which did not happen. The Prudential Committee sent back the exact same contract as the existing contract except with an extended end date. Mr. Lajza agreed the strife needs to end, but the question of who owns the Recreation Department needs to be answered. The injunction will do this. There is no lease and there are insurance implications after July 1st. That is the problem, continued Mr. Lajza, not who operates the Recreation Department. George Tyler stated the Recreation Department has been in operation since 1970. The community “owns” the Recreation Department which has been functioning and operating for 42 years and no one cared about the question, yet now it is so important the Trustees are willing to shut down the department to get a theoretical answer to a theoretical question. John Lajza disagreed that the department will be shut down. Deb Billado clarified the three hour meeting in January with the Prudential Committee Chairwoman and Mike Dewese was not a negotiation. According to Superintendent Dewese the meeting was a meeting of the leaders, and at that meeting the village was basically told the agreement that was offered was not accepted in totality, there is no negotiation, and, in fact, CCSU does not believe an agreement is needed because they own EJRP. That is when the question of ownership was raised, said Trustee Billado, and if the school district owns the Recreation Department then the Village Trustees have no grounds to move toward an agreement; a lease is needed rather than an agreement. When Mike Dewese posed the question of ownership on 1/12/11, continued Ms. Billado, there was agreement an answer was needed in order to know whether an agreement or lease is necessary. The issue should not be left unresolved for future boards, advised Ms. Billado. The Trustees have been trying to meet with the Prudential Committee since July 2010 without success. There has not been a board meeting with the Prudential Committee to date, and now the focus has changed from trying to meet to who owns EJRP. An answer to Mike Dewese’s question is needed in order to move forward. Georg Tyler clarified with all due respect that from the notes and memos to date there is a misunderstanding of Mr. Dewese’s question. Mr. Dewese did not say ‘ownership’, but said ‘who owns the keys’ and he was referring to what the village determined in 1985 with the Code that the school district runs and has full authority to control the Recreation Department. Deb Billado stressed she was present at the meeting in January with Mike Dewese and knows exactly what was said and inferred. What was inferred was the school district owns EJRP. George Tyler said he has not seen a single document saying the school district owns the Recreation Department. The school district has said they own the buildings. Deb Billado stated programs are not a transferrable commodity (cannot own the programs). George Tyler noted the village attorney even said “the Recreation Department is a school district entity”. Mr. Tyler referred to the injunction, Piece #8, which says ‘when the agreement expires the district will have no right to use the parks and will be trespassing on the village’s property and such trespass constitutes irreparable harm to the village’ and Piece #9 which

says ‘the district, its agents and employees shall be enjoined from entering the parks upon expiration of the agreement’ so if the injunction goes into effect then the department is shut down. John Lajza interjected the action is saying there must be an agreement in place, either a lease or a contract. Mr. Lajza mentioned recreational statutory authority of the municipality through Title 31 that defines the rights of the legislative body of a municipality to tax, create, oversee, provide free music, and delegate power to another entity, such as a school board, adjoining municipality, tax free entity or committee created and adopted by the board of a municipality. George Tyler said no one doubts the right to create and run a recreation department, but now the Trustees are threatening to shut down the Recreation Department. Deb Billado stated other options include transferring the agreement to another organization, having a new agreement with the Prudential Committee, transferring the administration to another organization or returning the operation to the village administration. George Tyler pointed out the other options are not stated in the injunction. Deb Billado rebutted the options do not need to be stated in the legal document. Deb Billado clarified if the administration of EJRP is transferred to the Town of Essex or Colchester or Williston, for example, then the Essex Junction School District no longer has the ability to carry out its current activities at the parks. George Tyler urged declaring the Recreation Department as great and acknowledging the good job that is done as the priority and moving the legal issues off the table until everything calms down. Deb Billado rebutted the question of who owns the keys still needs to be answered and cannot be left hanging for future boards. There are people on both sides who feel oversight of EJRP belongs to the village or to the school district. John Lajza added negotiation is always the potential though the Trustees have failed for the past nine months to get the Prudential Committee to discuss the matter so there is no other way than to find out who has the keys. George Tyler spoke a final plea for the sake of the community and community harmony to restore the agreement that has been in effect for the past 42 years and take up the other items at a later time. John Lajza said this has been done and it does not work.

PUBLIC COMMENTS

Gabrielle Smith asked if some of the other options that were mentioned (i.e. other towns administering the recreation program) have been explored with regard to any budget complications. Ms. Smith urged doing this soon as summer programs need to move forward. Ms. Smith expressed concern the current legal actions could endanger the summer programs.

Marla Durham refuted Deb Billado’s recollection of noninvolvement in the movement involving the Recreation Program 10 years ago. Ms. Durham said both Ms. Billado and Mr. Lajza attended meetings and Ms. Billado contacted her about control of EJRP. Ms. Durham spoke of the work to set up recreation programs and parents counting on the programs. The community is behind the Recreation Department and it is a mistake to sign an injunction of this nature, warned Ms. Durham, adding according to conversation with Mr. Deweese and Ms. Waite-Simpson about the meeting in January with Deb Billado and Dave Crawford

someone on the village side mentioned the funds from the Recreation Department could be confiscated because the Village Administration collects the school district monies and the Recreation Department monies. Ms. Durham said Mike Deweese asked if the doors will be padlocked to the pool at the start of the swim program on July 1st and Dave Crawford said he would do whatever needs to be done. Ms. Durham said in her experience Mike Deweese would never do anything to injure or harm kids in the district. Ms. Durham expressed sadness that after a three hour meeting with four leaders it has come to this point. The Prudential Committee could not meet with the Trustees because they were dealing with Challenge for Change, continued Ms. Durham, expressing pride at the hard work and what was accomplished. The school district was one of only two that met Challenge for Change under the leadership of Mike Deweese. Deb Billado volunteered to forward Ms. Durham the comments read at the start of the meeting relative to respect for individuals and raising the bar on attacking people.

Dan Kerin observed the recreation program may be outstanding because it is operated under CCSU. Surrounding communities do not have such an outstanding recreation program. It appears the Trustees must have a problem with CCSU since transferring the operation of the Recreation Dept. to another town is acceptable. Deb Billado clarified it is a matter of having an agreement with CCSU. Mr. Kerin asked if the agreement is the 'bargaining chip' on coming to an understanding on governance. Trustee Billado explained the draft agreement sent to the Prudential Committee by the Trustees contained provisions on oversight and joint management, but the agreement sent back by the Prudential Committee is the same agreement the first 350 petitioners urged not to sign. Ms. Billado said she understood the directive to be to work with the Prudential Committee so a new agreement was crafted that brought the two boards together on oversight and management of EJRP, but that agreement was thrown out in totality without room for negotiation, leaving the original agreement which does not meet the needs. Dan Kerin commented the agreement met the needs of the community for many years and expressed concern about the detrimental effects of what is happening, that good programs will be destroyed. Deb Billado recalled during the merger process there was a study of merging the two recreation departments and neither program would have been hurt. Also, the study by the consultant, Denise Clavette, indicated transitioning the Recreation Department would be transparent to the taxpayer and the user. The process would take three months if it occurs. Mr. Kerin recalled the consultant also said EJRP is the finest in the state and did not see an issue with current operation. The consultant also brought up the issue of more parks and bike paths, but the community has more per acre recreation space than any other place in the state. Deb Billado pointed out the small size of the village is the reason for the ratio. Dan Kerin said in a recent conversation with Polly Whitcomb (long time resident farmer in Essex Junction) Ms. Whitcomb said recreation was transferred to the school department in the 1970s because the village government did not feel competent to run the program and this has worked well for the past 42 years. Deb Billado stated the reason for the transfer in the '70s was due to a difference of opinion between the recreation director and some trustees. Several teachers felt they could do a good job managing the recreation department. To clarify, the

Recreation Department was transferred to the Prudential Committee, not CCSU. The Prudential Committee uses CCSU for administration purposes.

Sue Earl Hale said her family participates in the recreation program. Ms. Hale commended Peter Gustafson for recusing himself and George Tyler for being the only Trustee making sense in the matter. Ms. Hale said there are many people behind George Tyler because they feel he is advocating the right thing.

John Lajza stated regarding the recreation budget being incorporated into the general fund, the Trustees have not said this would happen. Mr. Lajza said he would not support incorporating the budget into the general fund.

The budget in place by CCSU for the Recreation Department would simply be moved over and maintained as a separate entity. There were no further comments.

VOTING: 3 ayes, one nay (George Tyler), one abstention (Peter Gustafson); motion carried.

Peter Gustafson again urged three Trustees and three Prudential Committee members to sit down and resolve the matter before budgets are voted at the annual meetings. Deb Billado agreed and supported the suggestion. George Tyler disagreed with all due respect saying the matter has been incorrectly framed unfortunately as a dispute between the school board and the Board of Trustees, but it is not. This all along has been about the attitude and tactics of the Board of Trustees and doing something that did not need to be done. It could have been done a very different way. The school board has just been trying to do what they have been doing for the past 42 years and for the last seven months they have been trying to run the schools, said Mr. Tyler, so to try to drag them in and say it is as much their fault as ours is incorrect. It is the tactics and attitude of the Board of Trustees that has been the problem. Peter Gustafson politely disagreed, saying “it takes two to tango”. At the very least six people need to get together and work it out, urged Mr. Gustafson.

V. NEW BUSINESS

None.

VI. VILLAGE MANAGER’S REPORT

The Trustees received a memo on items in the Manager’s Report.

1. Meeting Schedule

- March 22 @ 6:30 – Regular Trustees Meeting
- April 6 @ 7:00 – Village Annual Meeting
- April 19 @ 6:30 – Special Trustees Meeting (if quorum available)
- April 26 @ 6:30 – Regular Trustees Meeting
- May 10 @ 6:30 – Regular Trustees Meeting
- May 24 @ 6:30 – Regular Trustees Meeting
- June 14 @ 6:30 – Regular Trustees Meeting
- June 28 @ 6:30 – Regular Trustees Meeting
- July 12 @ 6:30 – Regular Trustees Meeting
- July 26 @ 6:30 – Regular Trustees Meeting

Special Meetings/Events:

- April 12 – Australian Ballot Voting for Annual Meeting
- May 28 – Memorial Day Parade
- July 23 – 10th Annual Block Party

2. Candidate Filing Date Extended

There are three candidates for the two year Trustee position (Tim Allard, Lori Houghton, George Dunbar, Sr.) and two candidates for the three year Trustee position (Peter Gustafson, George Tyler, and Dan Kerin). The Village Manager will send a letter offering to answer questions on issues.

3. Snow Removal

Pictures showing the snow removal effort were shown.

4. Sale of Sewer Capacity to Williston

Meetings with Williston are scheduled to move the sale of sewer capacity forward.

5. Railroad Crossing

A new plan is in place for work on the railroad crossings in the village which will not disrupt traffic.

6. Passenger Shelter at Train Station

There is a preliminary plan for a passenger shelter at the train station. Discussions are ongoing with CCTA, New England Central, and Amtrak.

7. Public Outreach on WWTF Bond Vote

Information brochures, Channel 17 video, and the village newsletter all contain explanation of the upcoming bond vote on the needed improvements to the treatment plant.

8. Grants

The village received an emergency management grant for half the cost of a new generator (total cost is \$42,000). Application has been made for a grant to purchase trees in public places and on private property by agreement.

9. Railroad Ave. Information Sign

The sign project is going out to bid.

10. Safety and Wellness Committee

Meetings are scheduled for the committee.

11. Tree Farm

The purchase and sale agreement has been signed.

VII. TRUSTEES COMMENTS/CONCERNS

- Peter Gustafson gave an update on the police station search (358 parcels and 74 existing building were reviewed by the committee, winnowed down to four sites for consideration). A new committee will review the four sites in depth and make a recommendation to the Selectboard. The sites are property by Ehlers on Route 15, IBM property on Maple Street, Torrey property on River Road, and land behind CVS Pharmacy in Essex. A two story building with underground parking is planned.
- John Lajza complimented the street crew on snow removal efforts.

VIII. CONSENT AGENDA & READING FILE

MOTION by Peter Gustafson, SECOND by Steve Atwood, to approve the consent agenda as follows and with inclusion of the amendment to the Employee Amendment (memo from Dave Crawford, dated 3/8/11):

1. Approve Warrants
2. Approve and Sign Resolution for Adoption of Essex/Essex Junction All Hazards Mitigation Plan
3. Approve Trustees Report for Annual Report
4. Reading List Acceptance (Letters & Communications)
 - LCRCC Business After Hours at CVE 3/24/11

DISCUSSION: George Tyler suggested the contentious items mentioned in the Trustees Report for the Annual Report be removed. Deb Billado will review the report.

VOTING: unanimous (5-0); motion carried.

IX. EXECUTIVE SESSION and/or ADJOURNMENT

MOTION by Peter Gustafson, SECOND by Steve Atwood, that the Board of Trustees go into Executive Session to consider personnel matters (Village Manager's annual evaluation). VOTING: unanimous (5-0); motion carried.

The regular meeting was adjourned and Executive Session convened at 7:55 PM.
Executive Session adjourned at 9:15 PM.

RScty: M.E.Riordan