



Village of River Hills
7650 N Pheasant Ln
River Hills, WI 53217

Village Hall: 352-8213
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BOARD OF APPEALS MINUTES

Tuesday, November 19, 2019 @ 4:00 pm

- 1. Roll Call:** was answered at 4 p.m. by Chairman Steven Spector, David Melnick, Rosalie Gellman, Billie Smith, Karen Plunkett, and Alternate Don Daugherty. Also present: Village Attorney Bill Dineen, Village Manager Tammy LaBorde, Village Engineer Mustafa Emir and Deputy Clerk Stephanie Waala.
- 2. Action on Appeal of Frederick & Anne Vogel, 1805 W Bradley Rd regarding the village engineer's approval of a filling/excavating permit issued to Linda Wright, 1777 W Bradley Rd.**

Village Attorney Dineen stated that each the appellant and permittees attorneys have requested they make a brief statement before the village engineer is questioned. For this meeting the appellant is Frederick & Anne Vogel; and the permittee/property owner is Linda Wright. Dineen discussed Exhibit F presented by the appellant and he feels there is no conflict with the village attorney as an advisor to the Board of Appeals. A poll of the Board showed there was no ex-parte contact where any board member received any documents from anyone besides the village clerk. Mr. Dineen then pointed out that Alternate Don Daugherty is an alternate who cannot vote and cannot participate in the discussion. He also clarified under Ordinance 15.11 an appeal can be brought forward if there is alleged to be an error and any land owner aggrieved is allowed to appeal.

Board member Melnick suggested that the appellant and the permittees attorneys clearly state what their best case scenario is and what their overall objective is to ensure the Board fully understands what they are recommending.

Joe Cincotta, attorney for Frederick and Anne Vogel, initial statement is the role of the Board should be that the filling and excavation permit should not have been granted and it does not pass muster for approval. Also, that Bill Dineen is taking a position of the village attorney and feels the Board should have separate representation.

Timothy Andringa, attorney for Linda Wright, handed out a document in response to questions brought up by Joe Cincotta via email. The appellants are stating their grounds for appeal - that a bond was not issued, which can be waived by the village engineer; certain conditions have not been met, which the village engineer will testify they have been met; and that there are other things that have been brought up by attorney Cincotta which is being handled in other courts and does not have any bearing on this filling and excavating permit.

Village Engineer Mustafa Emir was called forward for questioning. (see official transcript for specific questions and answers)

Board member Melnick questioned how, as a Board member are they supposed to know what materials will work to repair the river bank and not deteriorate the river.

Village Attorney Dineen responded the responsibility of the Board is not to determine which material will work, this is done by the village engineer; the responsibility of the Board is to determine if the village engineer followed the steps to issue a filling and excavating permit.

Board Chairman Spector instructed the attorneys at this time to make their final statements.

Attorney Cincotta requested the Vogels be able to make a brief statement - Anne Vogel presented photos to the Board which were rejected due to not having to do with the filling and excavating permit. Frederick Vogel stated the Wrights are deteriorating the creek and river bank and as village residents he has the right to object to this work and the procedures taken to complete the work.

Attorney Cincotta made his final statement – his clients believe that a permit under Ordinance 2.40 should be required and approved before a permit for a filling and excavating application can be approved.

Attorney Andringa made his final statement – All plans and permits have been approved by the Army Corp of Engineers, Wisconsin DNR, and the village engineer. He does not feel that the appellants have provided any information to prove that the village engineer did not properly approve the filling and excavation permit. The appellants are questioning means and methods which are determined by the homeowner and which the appellants have no authority over.

Attorney Cincotta questioned whether or not a decision will be made this evening or if it will be made at later date.

Board member Smith questioned whether or not the Board should go view the site. Board member Gellman responded that she has been to the site and does not think seeing the site in person would add anything to the discussion.

Board member Gellman noted in the correspondence from the Wright attorney it states the Vogels have a pending lawsuit against the Village and the Wrights; what does that have to do with the decision being asked of this Board. Village Attorney Dineen responded yes the village is currently being sued in reference to Ordinance 2.40 but that is not applicable to this situation. If you look in Ordinance Chapter 15 you will not find a Chapter 2.40 reference anywhere in it nor vice versa. The current responsibility of the Board is to determine if the issued filling and excavating permit was issued correctly.

Board member Melnick stated he feels uncomfortable making a decision and would not be opposed to adjourning to another time and collecting additional information. He does not feel the village engineer had enough information to issue the permit to begin with. The other Board members and the Chairman felt that they should decide the matter now and not adjourn.

Motion by Gellman and seconded by Smith to affirm the filling and excavation permit to Linda Wright and to deny the appeal.

Discussion by Smith that the Board feels there has been no error by the village engineer and that Ordinance 2.40 has nothing to do with this situation.

Motion carried with a vote of 4-aye (Gellman, Plunkett, Smith and Spector) and 1-nay (Melnick).

3. Adjourn

Motion by Smith and seconded by Gellman to adjourn at 6:08 p.m.

Created by Stephanie Waala, Deputy Clerk, on January 13, 2020.