WATERVILLE ESTATES VILLAGE DISTRICT

June 23, 2020 EMERGENCY APPROVED MEETING MINUTES

Approved as amended on July 23, 2021.

Attendees: Judy Kinney, Matt Smith, Andy Griffiths, Corey Smith, John Herlihy, Sean Tole, Karen Waters

Guests: Ned McElroy, Harry Bertino, James Murphy, Anthony Patti, Maureen Patti, David Spinney

Called to order: Mr. Griffiths, 8:02 AM.

Purpose:

Mr. Griffiths stated that the emergency meeting was called to discuss the decision of the Waterville Estates Association Board of Directors decision to not open the pools after teasing pool opening on social media. He indicated we wanted to discuss what implications it might hold for the village district and what, if anything, the village district could do. Mr. Herlihy asked why we were having a public meeting without proper notification. Mr. Tole stated that because we've had a communication go out to our resident members about a soft opening and the WEA BOD made a decision late yesterday to not open he wanted to be respectful of people wishes and wants a consistent message going forward versus confusion about opening or not. Mr. Herlihy stated we could have had the meeting tomorrow. Mr. Griffiths stated that we have a right to an emergency meeting, but that it just had to be posted. Mr. C. Smith stated that he'd never been to an emergency meeting before but he believed it was warranted when immediate action was required. He stated he did not know it was part of the consideration to hold the meeting, but the immediate action required was to place a food order which had to happen by noon today to be ready for an opening were it to occur. Discussion continued on whether there was a valid emergency.

Discussion:

WEA BOD: Mr. Griffiths indicated he had investigated liability in March or April. He indicated that the WEA BOD knew then that they did not have the required clause to protect them from liability. He stated he could not understand why soft opening was pursued if this was the issue all along. He indicated that at first it was BOD members personal wealth liability that was the issue but now it came down to WEA liability. He stated that he had been expressing a sense of urgency to the WEA BOD to make a decision.. Mr. C. Smith stated that both concerns were valid but the key concern was the association itself (WEA). If there were a problem the liability claims could very well end the association (WEA). Mr. M. Smith asked for clarification on whether there were two insurance policies for WEA, one for the BOD and one for the corporation. Mr. C. Smith stated there were and both excluded pandemics. Ms. Waters asked if there was a BOD meeting that wasn't a public meeting and what was the reason for them not moving forward. Mr. Griffiths stated he does not know the rules of the BOD as he does the rules that governs the meetings of the Board of Commissioners. There was discussion around whether the decision was to protect the BOD or the association (WEA).. Mr. C. Smith said this is what he means by a lack of collaboration being problematic. He said everyone present was depending on one person, himself, to relay the intent of the WEA BOD. Mr. Griffiths took exception to the notion that the village district has not been collaborative. Discussion continued. Mr. Griffiths indicated he was not invited to the WEA BOD Zoom meeting where the

decision to not open was made. Mr. C. Smith said he felt the risk to the association was the overriding factor in the decision of the WEA BOD..

Recreation Management Agreement payments from WEA: Mr. M. Smith asked how much funds have been paid to the village district to date from the association for rental fees and management fees. There was a lot of discussion and a review of the numbers eventually indicating we had received about $24,000 of the $100,000 dues for management fees and $61,000 of the around $290,000 for rental fees. Ms. Kinney indicated that it used to be paid over as needed, but per the new agreement was paid quarterly. Mr. C. Smith clarified that the quarterly payments went into effect when the new agreement was signed but up until that point it was paid as needed. Mr. Tole stated that the new agreement was for services rendered and if we are not providing services, it will be hard to collect any money from them (WEA BOD). Mr. Tole stated we needed to consider whether we had the funds to open in some fashion, one or two pools, food and beverage, or because of the agreement was it just not incumbent upon us to open.

Pros and Cons of opening: Mr. M. Smith pointed out that if we open, WEA is not incentivized to open and in fact, since the revenue from food and beverage sales go into the recreation revolving fund, would still be rewarded with fund growth by not opening and that fund growth would be paid for by taxes. Mr. Griffiths stated it was a discussion of what we legally can do. Mr. Tole asked what we could afford to do as some monies had already come in. Discussion continued.

Methods of opening: Mr. Bertino pointed out that a revolving recreation fund allowed us to provide recreation for a fee so we could fund the opening with fees instead of taxes. Mr. Bertino stated he felt the association (WEA) needs its own manager so Mr. C. Smith was not always left in the position of having to represent two parties. Mr. C. Smith clarified that food and beverage sales don't go into a WEA account it goes into the district rec fund, owned and administered by the district. Mr. C. Smith and Mr. M. Smith had a discussion of who benefits by tax dollars being used to generate income for the rec fund. Mr. M. Smith contends that the public record indicates that the WEA BOD is the official or advisory, both have been stated, that authorizes disbursements from the rec fund such that they would benefit by this process without doing any of the work. Mr. M Smith supported Mr. Bertino's proposal for using fees to fund the opening. Discussion continued around what WEA BOD has paid to date and whether they are obligated to pay if they have not had use of the facilities. Mr. Tole stated that he would like to open the outdoor pools for our residents. Mr. Griffiths asked if we should use the fee model proposed by Mr. Bertino. Mr. Tole indicated he would be worried about the blowback from that. Mr. Herlihy expressed support for the fee model. Mr. C. Smith asked if the commissioners had the power to set fees without a vote. Mr. M. Smith cited the warrant article from 2006 that created the rec fund and how it could be financed and indicated that the commissioners had the power to set fees. Discussion took place around who would be granted access if we did open. Discussion took place around the complications of opening with stricter state guidelines and the associated higher costs. Discussion took place around what occupancy rate could be accommodated while maintaining the 6' rule in and out of the pools. Much discussion took place around other logistical issues relating to opening. The details around how the rec fund is used came up again. Mr. Herlihy said we needed details budgets for proposed activities. Mr. Tole stated that per the new rec management agreement any funds left over at the end of the year go back to the WEA BOD as a credit. Mr. M. Smith stated that the WEA BOD has underfunded the recreation fund for years. He cited audits and actual village budgets showing $500,000 of tax money, most likely improperly, going into the rec fund and pointed out that the management fee has been $100,000 since 2006 meaning there has been no adjustment for inflation. He stated that the commissioners just needed to have the

association increase dues next year or cut funding as people like Lloyd Wiley had been requesting consistently. Mr. C. Smith discussed the voters will to provide $90,000 to the rec fund. Mr. M. Smith indicated that per the village district attorney, it was not legal for tax money to go into the rec fund. He pointed out that the statute covering rec funds establishes two funding mechanisms, taxes and fees & charges. In 2006, we specifically passed only the fees and charges part of the funding mechanism. So to put taxes in the rec fund would require a warrant article to be proposed and passed. Mr. Griffiths stated that we need to bring this up again and that we could not make a determination today. Mr. Bertino stated that he did not believe the rec fund surplus can be given as a credit to WEA BOD next year. He felt the legality of that part of contract should be reviewed. More discussion occurred around logistics. Mr. Griffiths stated that today's discussion was about opening for the weekend and the village meeting for this coming Saturday would take up opening beyond that point. Mr. Herlihy asked Mr. C. Smith to come up with a budget for opening that could be discussed at the next meeting. Mr. Tole asked that no one post these discussions on Facebook before ADA: Mr. Bertino asked if there were any plans in 2020 or beyond to bring the recreation center into compliance with ADA requirements. Mr. Marks suggested that ADA does not apply to the recreation center based on research Lloyd Wiley had done. Mr. Bertino asked about the ADA line item on the last page of the budget. Ms. Kinney pointed out that it was from the 2019 non-lapsing warrant article 3 which does not lapse until the end of 2021.

General: There will be another budget hearing.

New Business:

RFP/RFQ for Water System: Mr. Griffiths asked which commissioner would take ownership of seeking bids from qualified firms. Mr. Tole said he would take ownership if Mr. C. Smith would help. Mr. C. Smith already has the proposals ready to go out in the mail.

Old Business:

Ski Area Water Use: Mr. M. Smith asked that we get something from DES in writing. Mr. C Smith said he would. Ski Bowl Pump House: Mr. Griffiths stated that the 800-amp panel is being dropped to a 400-amp panel. Mr. Griffiths provided an update on the sequence of events leading up to our current plans. Mr. M. Smith asked for clarification of discoveries made at the most recent meeting that Ned attended. Mr. Griffiths acknowledged that an issue with the designed electrical panel had been discovered and addressed, but said there were no other new issues discovered. Mr. Griffiths reported that Mr. Mike Soucy, head electrical inspector for the state, said our current plans are fine. Mr. Griffiths states that the commissioners support Lee Carroll and Dave Costa. Mr. Marks said for liability reasons he would not include Ned's correspondence in the meeting minutes because he was concerned it contained slander and defamation of the electrical contractor and engineer, but would keep it in the public record as correspondence. Mr. M. Smith suggested that Ned's comments did not rise to a level of defamation that would be actionable. Mr. Bertino pointed out that Ned offered his help at the 12/6/19 WEVD meeting and the commissioners accepted.

New Treasurer: Ms. Waters reported that she had signed a letter of intent with the auditors for our 2019 audit and would work closely with them. Ms. Waters met with Judy, Corey and other WEVD staff and started the process of getting up to speed. Ms. Waters will meet with Judy next week regarding the budget and that she is still in information gathering phase. Mr. Marks asked for a recommendation for deputy treasurer so checks can get

signed in Ms. Waters absence. Ms. Waters stated she would consider a deputy after the Annual meeting once she has had a chance to better understand the processes. Mr. C. Smith asked that Ms. Waters get the auditors to drop an unnecessary reporting requirement regarding retired employees when the district has none.

Set next meeting: Wednesday, February 12th, 2020, 3:00 PM.

Adjournment: Mr. Griffiths motioned to adjourn the meeting, Mr. Tole seconded, and the motion passed unanimously at 4:43 PM.