

Minutes of the Regular Monthly Board Meeting of the Township of Spring Green

Proceedings of the Town of Spring Green Regular Board Meeting, held at 7:02 pm on Thursday, April 5, 2018 at the Town Hall located at E4411 Kennedy Road, Spring Green, and Wisconsin:

1. **Call to Order:** Kevin Lins, Town Chairperson called the meeting to order at 7:02 pm.
2. **Legal Posting:** Jenny Pappas, Clerk certified compliance with the open meeting law.
3. **Roll Call:** Members present were Chairperson Kevin Lins, Supervisors Dave Radel and Carla Carmody, Clerk Jenny Pappas and Treasurer Karen Shelton. Also present: Bill Mertens, Jeff Ganser, Shannon Shelton-Ganser, Louis Weston, Mary Peck, Mark Peck, Kolby Hirth, Fred lausly and Brad Haas.
4. **Adopt Agenda:** Radel moved and Carmody seconded to adopt the agenda as presented. Motion carried.
5. **Approve Minutes:** Carmody moved and Radel seconded to approve the minutes of the March 1, 2018 Regular Board Meeting as presented. Motion carried.
6. **Treasurer's Report:** Shelton reported beginning balance of \$887,755.28 with receipts of \$14,507.41 and disbursements of \$120,772.37 leaving a balance of \$781,490.32. Radel moved and Carmody seconded to file the Treasurer's Report as presented. Motion carried.
7. **Monthly Bills/Invoices:** Radel moved and Carmody seconded to approve the monthly bills/invoices for payment as presented. Motion carried.
8. **Chairperson & Supervisors Reports:**
Chairperson's report/Kevin Lins:
 - Since our last meeting I had a conversation with Judy Ettenhofer from the local RV birders group who informed me they no longer wished to be part of the Bird City program because of the annual \$100.00 fee. Bird City wanted their signs and plaque back, so Brad removed them and Judy stopped by and picked them up. She informed me they are working on a logo for the local group and may wish to put up some signs for that in the future, which would be an agenda item.
 - I had a couple of calls concerning the Class B road limit posting and what could be hauled. It is 60% of a normal load.
 - I had a call from a person building a house wondering if he could push some of the dirt from the excavation into the woods near a waterway draining through a culvert across a Town road. Brad and I took a look and I then called our building inspector Tracy. The three of us determined it would not be a good idea and Tracy informed the home builder he needed to haul away the excess dirt.
 - In a follow-up to a public comment last month by Tony Garrelts concerning a house remodeling project having junk blowing into his field and no visible building permit on site, I contacted our building inspector Tracy Johnson and relayed Tony's concerns. Tracy later informed me he made contact with William Moneyppenny and he has since cleaned up some debris and redisplayed the building permit. Mr. Moneyppenny explained to Tracy he took down his building permit because the County issued a stop to his project after they found out he was putting on an addition. They informed him he would need to apply for a variance from the County after he received one from the Town. Mr. Moneyppenny called me on March 26th and asked what he needed to do to get a variance. I gave him Fred's telephone number and said he needed to start there first.
 - March 18th Kolby and Tom Hirth worked on the cemetery fence removing brush and small trees and also raking up debris. Brad and Bill then cleaned up the piles later. Kolby and Tom did a really impressive job and people should thank them for volunteering their time and equipment. Kolby, Tom, Michelle Thomas and Denise (my wife) worked earlier on a previous day to clean up more of the fence line, so I want to recognize them as well. Last Friday, Denise and I cut down another tree along the fence line. It still needs to be cleaned up, but I did that while my boom lift was still there and the winch was still on my tractor from the previous work. Monday, Brad and I brought the boom lift back to my place. The fence line is now cleaned up to the end of the tombstones on the North side. I have contacted Willie Hutter about removing the fence up to that point. He left a message with the landowner, but has not heard back as of yet.
 - March 19th I received an attachment from Natalie with correspondence dated March 16th from an attorney representing Stephen and Mary Peterzak noting he has been authorized to commence

litigation against the Town over failure to issue a building permit. He made a final offer for a compromising solution and wanted a response back in 20 days. Natalie was going to send another letter repeating the procedure they need to follow. I haven't seen that letter yet.

- March 29th The bids were opened at Jewell's office for the Rainbow Road curve. This is on the agenda for later. That same day I became recertified as a commercial applicator in the state of WI which makes it easier for Brad and myself to spray brush and weeds in the rocky areas of the Big Hollow Ditch. On the way home, I stopped at Lori Lubinsky's office and picked up some copies of pictures and documents from their file on the Big Hollow Ditch lawsuit. I will show some of these during the last agenda item.
- April 1st I received the latest well tracking report from Jenny. I also received a resignation letter from her a short time later. This is on the agenda as well.
- April 4th I received an email asking the current population of the Town. I forwarded that email to Jenny to see if she knows what the latest data is for the population. She got back to me earlier today and the current "2017 Population per the Wisconsin Department of Administration: 1,696"

Supervisor Report/Dave Radel:

- March 5th Received a call from a resident looking to sell a lot off his farm and not wanted to sell 35 acres. I made him aware of the Town's PRD. I also told him to get a hold of Fred lausly to get on the Plan Commission agenda for discussion.
- March 12th Attended PSD Committee Meeting
- March 13th Attended Plan Commission Meeting
- March 20th Attended Fire Board Meeting
- March 27th Received a call from a lady that owns a lot on Thuli Road. The inquiry was about a small piece of land they are purchasing to adjoin to their lot. She had many questions about their building plans. I told her that she would need to get a hold of Fred lausly to get on the Plan Commission agenda for discussion.

Supervisor Report/Carla Carmody:

- March 13th Plan Commission Meeting
- Cemetery item for discussion later on the agenda

9. **Comment from the Public:** There was no comment from the public.

10. **Reports:**

- a. **Patrolman:** Haas reported worked on the following during the month of March: Cutting/chipping brush (chipped around 20 loads), sign replacement, road patching/maintenance, vacation.
- b. **Building Inspector:** No permits issued in February.
- c. **Emergency Planning:** No Meeting.
- d. **Plan Commission:** lausly reported the Plan Commission had two CSMs and a Conditional Use on their last agenda; all of which are on tonight's agenda. The Plan Commission will have a consultation with Rudy Feiner for a PUD on the April agenda. In regards to the Moneypenny property, the County has determined a variance will be required due to the proximity to the airport. A CSM on Thuli Road will be forthcoming.
- e. **Extraterritorial Zoning Committee:** The committee met with Mark Peck regarding a CSM, along with Marty Prem regarding a conditional use for a slaughtering facility. The committee discussed potential changes to the Zoning Ordinance in regards to condominiums. There was a lengthy discussion regarding the regulation of junk in the ET. There was a suggestion to discuss this issue with an attorney as there appears to be no way to regulate junk in the ET; junk is not a zoning issue.
- f. **Fire District:** The Fire Board met on March 20th. Ambulance director Derek Miller gave his monthly report. Call volume is about 65 calls year-to-date. A bi-annual refresher course has been completed by all EMTs. There is a need for ambulance drivers – especially for the daytime. Discussion has begun for a possible suspension upgrade to the newest ambulance. Old suspension would be removed and replaced with a smart system that would adjust to curves and roughness. For a more stable and smoother ride for both the patients and crew. Cost of this upgrade would be \$12,200. It has been recommended by both EMT and Firefighter Committees to pay for this from proceeds of the annual EMT/Firefighter dance. Fire Chief Lin Gunderson gave the monthly fire report. Fire Fighter Mike Anliker is stepping down after 16 years of service. Lin welcomed new fire fighter Sterlin Zellner.

Annual EMS/Firefighter dance will be held on May 19th. Lin said the fire department has received a \$12,000 DNR grant. Grant money will be used to update forestry gear. Active shooter training will be held at the Spring Green Fire Station on May 5th from 10am – noon. This will be open to all FD/EMS and the public as well. Everyone is encouraged to attend. The Spring Green Fire Department was on-site as part of a task force to help at the recent explosive incident in Beaver Dam. Since our board meeting the fire department has received a letter of thanks from Beaver Dam.

11. Agenda Items for discussion and/or action by the Town Board:

- a. **CSM: presentation by Marty Prem of a proposed CSM to combine parcels 032-0934-00000 and 032-0933-00000 at E5028 US Highway 14:** Radel moved and Carmody seconded to approve the CSM as presented. Motion carried.
- b. **CSM: presentation by Mark Peck on a proposed CSM for parcels 032-0020-00000 and 032-0033-10000 off of Pearl Rd, north of US Highway 14:** Carmody moved and Radel seconded to approve the CSM as presented. Motion carried.
- c. **Conditional Use Permit (CUP): Consultation with Jeff and Shannon Ganser for a proposed Bed and Breakfast at E4980 Rolling Ridge Road:** Radel moved and Carmody seconded to approve the Conditional Use Permit as presented with the following conditions: 1) no more than a seven day stay and 2) property owners must be on premise during stay. Motion carried.
- d. **Discussion and possible action regarding a 2019-2021 MOU Renewal submitted by the Sauk County Clerk's Office to provide WisVote Provider services:** Carmody moved and Radel moved to approve the 2019-2021 MOU as presented. Motion carried.
- e. **Discussion and possible action regarding selection of a contractor for the Rainbow Road curve:** Radel moved and Carmody seconded to accept the bid from Dan Meise, Meise Construction, Inc. in the amount of \$157,761 for 2 ½" asphalt for the Rainbow Road project. Motion carried.
- f. **Discussion and possible action regarding revisions to Ordinance Chapter 17 – Town of Spring Green Cemetery:** Carmody stated she wants to clarify a point made at the February Cemetery Committee meeting. At this meeting, the consensus of the Committee was to inform the Town Board it is appropriate for the Town/Town Board to cut down trees in the Cemetery if necessary. No changes are needed to Ordinance Chapter 17. No action taken.
- g. **Discussion and possible action regarding term limits and selection procedure for the Plan Commission and Joint Extraterritorial Zoning Committee:** Lins stated there has been some confusion as to the term limits for the Plan Commission and JEZC and when appointments should be made. Lins moved and Carmody seconded to go with the status quo for one month in regards to the Plan Commission and JEZC Committees and have the Plan Commission review the language in the general provisions for potential changes and consider adding language for JEZC appointments. Motion carried.
- h. **Discussion and possible action regarding letter of resignation submitted by Jenny Pappas:** Radel moved and Carmody seconded to accept the letter of resignation with regrets. Motion carried. Carmody moved and Radel seconded to have Pappas place an advertisement in the Home News for the Town Clerk position along with a job description. Motion carried.
- i. **Road Tour/Ditch Inspection:** The consensus of the board was to hold the Spring Road Tour/Ditch Inspection on Thursday, April 12th at 4:00 pm. No action taken.
- j. **Annual Meeting – Tuesday April 17, 2018:** No action taken.
- k. **Chairman's response to Polivka's March 1, 2018 Public Comment:**
 - The Big Hollow Ditch was constructed in the summer of 2011. No water went over onto the DNR property and subsequently onto Mr. Joost's property that Mr. Joost was aware until June 23rd-June 24th, 2013. He and his wife were on his property in their camper and saw what happened, contacted a neighbor who witnessed the flooding of the Joost's land and took pictures for them. A claim for damages was filed, denied by the Town and a lawsuit was filed. The Judge ruled against the Town and determined the Town did an inverse condemnation which was not covered by the Town's insurance carrier. A drainage easement was subsequently negotiated by the Town from Mr. Joost. Total value of the claim paid included attorney fees, interest and damages for \$320,000. The case was then dismissed on November 30th, 2017.
 - **(Show slide 01)** In the April 3rd, 2014 Town Board Meeting, agenda item c was "Lawsuit Brought Against the Town" The only thing in the recorded minutes was "Dennis stated that the Town is in a Lawsuit over the Big Hollow Ditch and would keep the town informed." So Dennis is going to keep the Town informed. Let's see how he did. This statement is the only thing in the minutes

about the lawsuit from the time the claim was filed on October 17th, 2013 until Dennis was voted out of office in the April 2015 election. (Show slide 02) On May 17th, 2011 a Special Closed Session meeting at Jewell Associates

- Meeting posted on May 16th, 2011 was held. Agenda item #3: “Consider motion to convene to closed session, pursuant to 19.85(1)(g) Wis. Stats., to confer with legal counsel for the Town who is rendering oral or written advice concerning strategy to be adopted by the Town with respect to litigation in which it is likely to become involved regarding Walter Joost’s claims for damage to certain real property located in the Town.” This meeting was not put on the Town’s website, nor does it appear any minutes were taken. At the time, Polivka and his daughter were maintaining the Town’s website. Polivka fails to mention this meeting in his June 2nd, 2011 Chairman’s report. Radel fails to mention this meeting in his June 2nd Supervisor’s report. McKenna was absent for the June 2nd meeting, but prepared a report for Polivka to read. McKenna fails to mention this meeting in his June 2nd Supervisor’s report. No mention of this meeting anywhere in the upcoming June 2nd, 2011 Regular Monthly Board Meeting. Construction for the BHD was scheduled to start on May 16th, 2011, but the necessary easement with the DNR was not obtained yet. Mr. Joost claimed in a letter to the Town on January 31st, 2011 that he would hold the Town liable for any damages to his property from water coming from the BHD. (Show slide 03) No copy of this letter was found at the Town hall. No mention of this letter was mentioned in any minutes. A MOU was drafted during May of 2011 to allow the Town to start construction of the BHD project before an easement with the DNR was finished. The specific purpose of the MOU was to ensure that no increase in water be allowed on the DNR property from the ditch until the easement was obtained, and to have the Town hold the DNR harmless and reimburse them for any legal consequences from any future lawsuits from anyone concerning the water coming from the ditch and *specifically* from anyone owning lands *to the east* of the DNR easement property. The only person then and currently with adjoining land to the east of the DNR is Walter Joost. On May 24th, 2011 a Special Town Meeting at the Town Hall with agenda Items “Memorandum of understanding with the Wisconsin Department of Natural Resources” and “Selective harvesting of trees on various town properties” was called. This meeting was put on the Town’s website but no minutes are on the website. No minutes are in the minutes folder. Polivka fails to mention this meeting in his June 2nd, 2011 Chairman’s report. Radel fails to mention this meeting in his June 2nd Supervisor’s report. McKenna was absent for the June 2nd meeting, but prepared a report for Polivka to read. McKenna fails to mention this meeting in his June 2nd Supervisor’s report. No mention of this meeting anywhere in the upcoming June 2nd, 2011 Regular Monthly Board Meeting. If this sounds like a duplicate cut and paste describing the May 17th meeting, its because it is. (Play 04 audio of May 24th meeting) Listen to the roll call. The clerk is not present and no one is assigned to take minutes. Listen to the concern about agriculture run-off. This is why it was put in the MOU so everyone knows it will be in the final easement, which it is. On the audio recording of this meeting, Polivka states that the MOU was drafted by the Town’s attorney. (Show slide 5) You folks can decide for yourselves who drafted the MOU. At this meeting a motion was made by McKenna and seconded by Radel to approve the MOU with the DNR. Roll call vote was taken. Polivka, Radel and McKenna all voted in favor and the motion carried. The MOU was signed on this date by Polivka and Blau. No mention of this MOU signed on the 24th anywhere in the June 2nd, 2011 Regular Monthly Meeting minutes, but there are minutes about the selective harvesting of trees, which was the other agenda item for the May 24th meeting. (Show slide 6) On October 22nd, 2013 the Town received notice of this October 17th claim and lack of insurance coverage against it. No mention of this in any minutes. (Show slide 7) On December 6th, 2013 the Town received from its insurance carrier a summary of the claim and a recommendation to deny it. No mention of this in any minutes. (Show slide 8) On July 14th, 2014 there was an update to the lawsuit with the first scheduling dates. No mention of this in any minutes. (Show slide 9) On December 26th, 2014 an update was sent to the Town giving a summary of depositions given by Greg Jewell, Ed Lilla, Don Greenwood and Gerald Sprecher. No mention of this in any minutes. (Show slide 10) On January 21st, 2015 an update was provided to the Town naming the Plaintiff’s witness list and a report summary from the Plaintiff’s expert witness, Mary K. Sturdevant, who is/was a commissioner on the Dane County Condemnation

Commission. No mention of this in any minutes. (Show slide 11) On May 22, 2015 an update was provided still noting Dennis as Chairman with summaries of depositions from Walter and Wilma Joost, Pat O'Dell Jr., Mary K. Studervant, and Rhoda Rhott. I never received a copy of this even though I was then Chairman until I asked for all status reports on the case from Lori Lubinsky at a meeting with her, Kathryn Gutenkunst (Joost) and Greg Jewell at Jewell's office on May 29th, 2015. I did mention this meeting in my June 4th, 2015 Chairman's report. You folks can decide for yourself if Polivka kept the township residents informed.

- Dennis Polivka made many statements during the public comment section during our March 1st, 2018 board meeting. I have addressed some of these before, but will do so again. The first statement was something to the effect that Mr. Joost's land is bottom land which the river floods so the Big Hollow Ditch didn't flood him or cause any harm. He also said the water from the ditch flows west onto DNR land and not onto Mr. Joost's land. It doesn't matter what type of land it is or what you think it is. It can be floodway, 100 year floodplain, 500 year floodplain or none of the above which would be higher ground. You still do not have a legal right to divert water onto the property either directly or indirectly. Likewise, once that happened to Mr. Joost, he isn't automatically entitled to compensation. He has to *prove damages* first. Only experts in their respective field of work are used in a court of law to express their opinion on possible causes, remedies and damages. Dennis Polivka is not an expert in any way related to this case, so his opinions are irrelevant. He was not deposed. Dennis would have been allowed to present evidence to help the case for the Town, such as pictures showing the subject property (Joost) was not flooded in the June 23rd to June 24th, 2013 rain/flooding event, but he offered nothing. He would have been allowed to show pictures of water flowing to the west onto DNR land as he claimed at our last meeting, but he offered nothing. There were no eye witnesses including Dennis to the flooding event for the Town listed in the lawsuit. He could have been an eyewitness but didn't go down there. Greg Jewell testified in his deposition that he was never asked by the Town to go out and look at Mr. Joost's property at all in June of 2013 and didn't even know there was a problem until the day of his deposition which was September 23rd, 2014(41.14-22)(51.12-15). Ed Lilla testified on the same day that he was not aware that Mr. Joost's property had flooded in June of 2013 (11.8-10). He also testified that he went out to take a look at how the drainage ditch was performing at the Town Chairman's request (Polivka) that Sunday (June 23rd, 2013), but he didn't go south of Kennedy Road. Don Greenwood testified the same day that he was never made aware in June of 2013 that Mr. Joost received water on his property from a rain event and was never contacted by anyone to go out and take a look (22.24-23.9).
- The only eye-witnesses listed in the suit who saw the actual flooding were Walter and Wilma Joost and Pat O'Dell Jr., a neighbor who was asked by Mr. Joost at the time of the flooding to go with Walter and take pictures. These pictures were exhibits listed as A-Z plus AA-II for a total of 35 pictures. In the public comment section of the closed session meeting last year on April 10th, 2017, Dennis Polivka made the comment that he and Gerald Sprecher walked onto Mr. Joost's property shortly after this flooding event and it was not flooded. (Slide 12) In Gerald Sprecher's deposition in this case, he identified where they walked in (from Mr. Sprecher's property on the eastern side of Mr. Joost's property at the south end (37.13)), and where they walked north along the east side of Mr. Joost's property) to the east-west ditch in the middle of the open area (29.21 – 30.18) (33.20 – 38.4) then turned around and went back out. Asked specifically by Attorney Gutenkunst **Q:** So you didn't even get over to where the outlet is along the property line? **A:** No we did not (38.2-4). It doesn't say in Sprecher's deposition what day they walked onto Mr. Joost's property because Mr. Sprecher couldn't remember, but in Mr. Joost's deposition (125.13), there are notes from a notebook he kept stating he called Dennis Polivka on July 11th, 2013 and that was the only person and only time he called anyone from the Town after the June flooding event. So it was at least two and a half weeks after the flooding event that Polivka and Sprecher did their walk onto Mr. Joost's property and they were on the opposite side where the worst flooding was seen by the eye witnesses.
- Multiple people have made many statements about the river being high and that is what caused the flooding on Mr. Joost's property. No one defines how high the river was, how much was flooded, or when it happened. When I realized I might be guiding important decisions on behalf

of the Town, for an easement with Mr. Joost shortly after I became Chairman, I decided it would help if I found out for myself. I used the river gauge height data collection at Muscoda, WI operated by the Army Corp. of Engineers and the United States Geological Survey. Then I waited for the river to go high. The BHD was constructed starting in June of 2011. I determined the highest recorded data point at the Muscoda site between May 1st, 2011 and the present time to have occurred on March 22nd, 2016 (Slide 13). This stage height measurement of 8.78 feet is also higher than any recorded data in 2008. If only we could have known what this high river event would look like at some local reference points that most people recognize in the area; say the Highway 14 bridge area, the Highway 23 bridge area and Mr. Joost's property. Then everyone could decide for themselves how much the river floods Mr. Joost's property. (back up one slide) Fred used the latest data set to produce this map and measured the floodway at 14.9 acres or 12.9% of the total 115.499 acres on the CSM used in the Town's easement with Mr. Joost. (show March pictures) The difference in gauge height between March 20th and March 21st is 1 foot, 3.72 inches. From March 21st to March 22nd is 4.4 inches. I didn't go out on March 22nd, because after two trips, I decided it needed to go up at least another foot, before it would make much difference if any and it was already receding when I checked the gauge height online on March 22nd. (show March movies) You folks can decide for yourselves how much the river floods Mr. Joost's property.

- Dennis Polivka has stated numerous times in the past that the water flows west onto the DNR property from the stilling pond on the Town's property at the end of the constructed BHD. Mr. Joost along with wife Wilma and neighbor Pat O'Dell, all eye witnesses, claimed the water flowed east the first time water overflowed onto the DNR property in June of 2013. I decided to find out for myself. On February 20th, 2016 the snow was melting and was filling up the stilling pond. I walked down there and took a look around before it became dark. The ground in the woods was covered with light snow, along with the ground in the open area of Mr. Joost's field, so it would be real easy to tell where the water flows. I then went home and came back with a stool, flashlight, camera and a bottle of water and watched how the water flowed onto the DNR property and where it went after that. After going south across the fence line most of the early water turned east with very little going south and none going west. I walked back and forth multiple times during the 39 minutes it took from the time the water first trickled over the Town-DNR property line until it made it to Mr. Joost's ditch, so the time to his property line would have been a little less. After it filled up a bit over on the NW corner of Mr. Joost's property between his ditch corner and the North South Property line between him and the DNR, the water shifted more to the southeast. That's the way it was going when I left. It was over my boots by the property line before I started to come up into the corner, where I exited. (show movies) (show aerial photos taken the next day) (show movie 2 days later) (show movie 4 days later) On January 20th, 2017 water again flowed onto the DNR property only this time I went down during daylight with Brad. (show movies) (Show pages 42-56 of Studervant report) You folks can decide for yourselves which way the water flows.
- On September 21, 2007, W-W Joost, Jr. Trust-1 purchased the subject property from Michael Jackson for a price of \$299,798 or \$2630 per acre (rounded). Per Walter's deposition, improvements made were clearing trees to widen and gravel the main road, installing a gate across the entrance, building other roads to access the farmland and woods, electrical service, sand point well, atv trails, cleaned up a lot of trash, cleared an area for a possible house or for his camper, planted trees and grass, put up a small storage building and removed old fences. A while back, I asked Jewell Associates for all information on offers to purchase Mr. Joost's property or for an easement by either the Town or DNR. The Town never made an offer to either purchase or obtain an easement and although Dennis said there was limited conversation, there was no deposition by Dennis to corroborate. The DNR hired Stone to do an appraisal dated September 15th, 2012 or about a year after the ditch was built. This appraisal valued the land at \$3000/acre for the whole parcel or \$342,000, \$2900/acre for just 20 acres or \$58,000 in the NW corner or an easement on the same 20 acres in the NW corner for \$34,300 or \$1715/acre. Walter didn't want to sell just the 20 acres and he didn't think an easement on the 20 acres would contain all the water from the BHD. History has proven him correct. In Don Greenwood's deposition (29.6),

Attorney Gutenkunst (Joost), asked “**Q** Did you ever get to the point with Mr. Joost where you discussed cost or what the town would be willing to pay to acquire an easement or land? **A No. You need to ask a different question. Q** I love a witness that tells me what I should ask. Did Walter ever give you his opinion of value? **A Yes. Q** And what opinion was that? Or what value did he give you, I should say? **A I -- I don't recall the exact amount. I believe it was 800,000.”** During the public comment section of our April 10th, 2017 closed session board meeting, Caryl Sprecher made a comment that Mr. Joost was “money-hungry” and that he was faking his condition of falling. When asked about Walter’s health in his deposition, Don Greenwood was quoted (18.5-23) “**Q** What was Walter's health that first time you met with him? Did you notice anything about that? **A Well, I'm not sure what his condition is that causes it, but he loses his equilibrium and his balance fairly easily. And I recall that at that first meeting, at least once, perhaps twice, when we were talking, he started to fall over, and I had to grab him. And at another point the other man who was there, his friend, also -- you know, to keep him from falling to the ground or the floor. So -- and that particular symptom recurred at -- you know, sometimes at future meetings, too. If he was sitting down, it was fine to have a meeting with him. But it was when he was standing up that it became difficult at times. So, yeah, there was - - It was obvious there was something not right. And I think at some point he kind of partially explained it to me. I don't know that I remember what it was.”** Attorney Lubinski asked Mr. Joost about his health during his deposition. “**Q** Okay. I've been told by your counsel, and I don't need too much details on your physical condition, but I have been told by your counsel that you've had some ailments or issues with your health that might impact or might make today a little bit difficult for you. Did you have some issues with your health? **A Yes. Q** Just tell me in your own words what those were. **A I've had 14 operations so far. Q** Okay. **A I believe it was 14. Three brain operations. Q** Okay. And were those three brain operations within, you know, the last five years? **A '96, 2001, 2005. Q** Okay. As a result of all of those health issues, what are -- if you know, what are kind of the residual effects on you today? **A Of course my balance. Q** Okay. **A My recall is slower, and when I have to concentrate I get upset. Q** Okay. **A Like I'm already starting. Q** Okay. **A And then probably make more mistakes. And because of that concentration, it's very, very hard for me to learn stuff.”** Mr. Joost wasn’t able to finish his deposition that day. You folks can decide for yourselves whether Mr. Joost is faking his falling.

- The Town needed to purchase the Haralson property for the BHD project. Two appraisals were done by Mitchell and Pohlkamp. The average value of the 14.59 acres from the two appraisals was \$75,200. or \$5154.22/acre. The Town paid \$100,000 for the property or \$6854.01/acre. This figures out to be 32.98% above appraised value. Mr. Joost wanted the same price for his property as the Town paid for the adjoining Haralson property. From the Stone appraisal report **Highest and Best Use as defined in the Uniform Appraisal Standards for Federal Land Acquisitions (Dated 12/20/00) is:** “*The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future.*” Mr. Joost’s property was definitely needed by the Town for the BHD project. This standard was one of three that the appraiser was contractually obligated to follow by the DNR. None of the appraisals of Mr. Joost’s property including from our own expert, considered what the Town paid for the Haralson property and Mr. Joost’s attorney was aware of that. Mr. Joost’s attorney was also aware of the fact that one of the properties that our own expert used in his appraisal which seemed undervalued, was not an arms-length transaction. Mr. Joost’s attorney was also aware of the fact that the Town’s appraisal of Mr. Joost’s property did not include any deduction for stigma. (Show slide 50) If you take the price per acre the Town paid for the adjoining Haralson property and multiply it by the number of acres in Mr. Joost’s property, you come up with a value of \$791,631.30 You folks can decide for yourselves if Mr. Joost was “money-hungry” or if he just wanted the same price as his neighbor was paid.
- At the April 10th, 2017 Closed Session meeting during the public comment section, Jeff Sprecher asked Lori Lubinski why the Town couldn’t sue Jewell. She said she wouldn’t comment on that as it was not what she was hired to do. I have had other people ask me that question as well. I answer that question with more questions. What are you going to sue Jewell for, does the BHD not work? And the response is, no, it works. So then if the ditch works, you are going to have to

sue them for something south of the Town's property by the discharge area of the stilling pond. Then they ask "Well can't we sue them (Jewell) for not getting an easement with Joost? (Show slide 51 page 8 section 8, page 7 section 6) And I answer that question with "The contract Polivka signed with Jewell states they will "Assist the **TOWN** in the preparation of easements and the acquisitions of said easements." Jewell can certainly prove they provided assistance as they kept records of every conversation their employees had with a person connected with a contract. (Show slide 52) And the last comment I have heard is that Jewell should have known where the water was going to go. From Mr. Jewell's deposition (46.1-21) **Q** As I understand, and correct me if I'm wrong, the Joost property and DNR property are substantially the same elevation, correct? **A Very close.** **Q** So if water is going to flow on the DNR property, it's -- the probability of it flowing onto the Joost property is greater than not? **A I don't know. We never studied anything south of our property as far as what would happen.** **Q** So when the DNR raised a concern that the water coming onto their property was going to flood Mr. Joost to the east, no additional study work was done on that concern? **A No.** **Q** Why not?

- **A We -- we did place controls. And by "controls," there's certain locations on the DNR property that**
- **measure depth of water, measure sediment. Those were required by the DNR. And as far as our permit, we weren't required to go any farther than that.**
- In its easement with the DNR, the Town under Polivka agreed to the following: show part "by virtue of agriculture run-off", show sections 3 and 12 of DNR easement. (show last slide 53) (also show "agriculture runoff" in both easement and MOU at the end) (also show double D in Drainage and ampersand at end of agreement) In the negotiations with Mr. Joost and his attorneys, they wanted to model their easement after the DNR easement. I stated I would only do a standard drainage easement and told Lori to let it go to trial before I would throw the Town under the bus. We ended up with a standard drainage easement. It wouldn't have cost Mr. Joost any more money to go to trial to try to get more dollars for damages or for an easement similar to the DNR as we had to pay all his legal fees.
- Many people have expressed their opinions to me at who was at fault in the BHD lawsuit. My favorite one is from a strong Polivka supporter a couple of years ago. "This is all Obama's fault." Why is this Obama's fault, I asked incredulously? "Because he likes the lawyers."

12. **Adjourn:** Radel moved and Carmody seconded to adjourn at 9:37 pm. Motion carried.