

TOWN OF LONG BEACH
TOWN COUNCIL
SPECIAL MEETING December 4, 2017
7:00 P.M.

The meeting was **called to order** after the **Pledge of Allegiance** by Council President Pete Byvoets. Attending this meeting were councilpersons Jane Neulieb, Joy Schmitt, Nick Meyer, and Clerk-Treasurer Bill de Funiak; Bob Lemay was absent. There was no town attorney present but there were approximately 10 residents in the audience. Access La Porte County was present for taping this meeting along with Marilyn Jones & Associates with video and stenographer.

President Byvoets called for a **moment of silence** to remember the 20-year anniversary (today) of the death of former Chief James Kautz.

Byvoets then handed the gavel over to Nick Meyer who would present most of the agenda information for tonight's meeting.

Old Business:

Jane had a brochure from a salesman in Indianapolis having to do with the E-1 sewer system and thought all council should take a look at it. The closest sewer project this firm completed was in Monticello, IN. She mentioned they would do an engineering study for free. It was noted, and there were no questions for Jane on the subject.

New Business:

A new Legal Services Agreement for the new Town attorney was presented by Nick Meyer. He announced that at the last council meeting in November, council agreed to "move forward" with a contract for hiring Braje, Nelson & Janes. Nick had previously circulated to the council members a copy of the agreement for their review and brought to their attention that any council member could call the town attorney for help at any time as necessary for Town business. This particular contract will continue through December 31, 2018. Nick spoke of people's concerns of conflict of interest and how the firm of Braje, Nelson & Janes represents the Long Beach Community Alliance, and one other pending litigation the Town is involved in although, previous to hiring Braje, another law firm was assigned to handle these litigations. Nick assured everyone that "we are very confident that conflict does not apply in this case" and he feels "very confident with what the firm has presented". Another question people asked is what attorney would represent who, when. Nick stated there would be one attorney representing the council and the APC; if the BZA wanted a separate attorney, it could be discussed. Jane asked about the council monthly meeting date; Nick said they would be willing to switch back to the second Monday of the month. They will begin services right away and Attorney Willoughby will be present at the council meeting on Thursday, December 14th. Pete made a motion that council accept the agreement effective December 14th; seconded by Joy Schmitt. Nick called for discussion but there was none and the motion passed

unanimously 4 – 0. Resident Ernie Summers spoke from the audience asking when public comment would be held; Nick responded “at the end of the meeting”. Summers strongly objected that

there was no public comment on this subject before the vote was taken. Council decided to wait until the December 14th meeting to vote on the new monthly meeting time.

Second item on the agenda is the Stop 24 project and the diesel tank registration with IDEM. Nick stated that although there is not a lot of record on the tank itself which was used for backup generation to the building, registration had not been carried out by the Town long ago. He thought that maybe 10 + years ago the tank had been emptied by Knoll Bros. but there were approximately 10 – 15 gallons of diesel left in it. Nick says that even though it doesn’t change the demolition cost of the project with the delay or the registering of it, the town has to abide by the 30 day process of registration and to hold a public comment session when removing it for the purpose of record. He spoke of possible unknown factors and/or fees that might need to be paid since no registration was done, a meeting with Global and IDEM will produce more information. It was said that between talks with Global, Green Demolition and the rep from the environmental office, there are no signs of any leakage into Lake Michigan. And an environmental assessor would be on site for the removal; from that point forward the Town has no liability responsibilities. Jane made a motion to allow and give authority to Global Engineering to process paperwork for registering the tank and the removal of it; second by Joy Schmitt; no discussion; carried 4 – 0. Nick will give an update of everything at the Town Council December 14th meeting.

Pete made a motion to authorize the Town attorney to file a lawsuit against Bruce Bar, Paula Bar, Ronald Clayton, Carolyn Clayton as a result of construction of a seawall on Lake Shore Drive without first having obtained the required Town approvals, in other words, a building permit. Second by Jane Neulieb. Under discussion, Nick asked “So the contractor doing the work; they made no attempt to go to the building commission to go through the steps to get any sort of permit?” Pete said, “That’s right”. Nick asked, “And it’s the legal’s advice to pursue this lawsuit?” Pete said, “Yes”. Motion carried unopposed.

De Funiak asked Nick about the demolition start date, perhaps not until 2018? He wants to be sure the encumbered funds would be available. Nick agreed to speak with Bill regarding funds before the December 14th meeting. Nick explained that the contractor has no problem with getting started at any time as long as the weather permits but the issue with the diesel tank must be resolved first.

PUBLIC COMMENT:

Ernie Summers, Elbridge Way, stated he strongly objects to the retention of the Braje law firm. “The conflicts of interest are a lot more complicated than your summary description

would allow one to believe. Kurt Earnst, of the Braje firm, is involved with the Gunderson case, the Osborne case, both of which are in the Indiana Supreme Court right now.

Nick says he will personally keep an eye on the law firm to be sure there are no conflicts that arise and has also been assured by the law firm that no conflicts will exist. "Craig Braje is very experienced in the municipal arena, trustworthy, and highly ethical and a respected individual and I trust his judgement that he wouldn't be leading the town astray and that if there were any issues or concerns, he would let us know or inform us. I trust his judgement that it is not a conflict, and we need someone that we can trust".

Summers mentioned that "the Harris, Welsh & Lukmann firm is no longer representing the town, and I understand that was their decision, Ethan is no longer representing the town and I understand that was his decision; you might want to start thinking about whether there's conflicts here ".

Jim Dehner, Fairway Drive, asked how many law firms the council interviewed. Nick said they resurrected Mr. Braje's firm after they made a search over the summer with at least 3 firms that they spoke with. Dehner asked, "this is the best and only firm that with all the potential conflicts that you could get?" Nick stated that "the council believes the firm is experienced, credible, trustworthy, ethical, so, yes." "There are no conflicts of interest that have been expressed by the attorney that we trust in as a council". Dehner stated how all council members have to share the responsibility as representatives of our town to watch for potential conflicts and lawsuits and ward them off.

Ernie Summers again spoke about the underground tank at Stop 24 in length. Nick said "the Global plan is to demolish the entire structure and to ultimately build a new observation deck, with a grant the town will match if awarded, of \$100,000."

Although Nick stated there was a motion on the floor to adjourn, Boy Boyce, Lake Shore Drive, spoke of the Stop 24 project, and asked if they have engineering drawings on the pump house? Nick stated "there are some unknowns and given the fact there are no historical records or drawings of the structure itself; no records exist. There is a pipe that runs out into Lake Michigan that will be capped off and not touched." Jane reiterated that there are current engineering drawings, just no drawings from back when the building was built.

Marty Riley, Oriole Trail, mentioned how disappointed she is that the council has made a mess of things in Long Beach.

Mary Lou McFadden, Duffy Lane, asked the council members if any one of them is being sued personally in any of the lawsuits and if they are being represented by an attorney in the firm the council just hired. Jane responded no, no personal lawsuits. McFadden says, "but the council members are being sued as a town and are being represented by the new law firm." C-T deFuniak said council members are covered as council 100% by insurance after the \$5,000 deductible.

Summers spoke again about 2318 LSD and the seriously breach of their seawalls; and asked how the budget works for suing the lakefront homeowners. Insurance doesn't cover the costs if you are the plaintiff. How will this be funded? The town is already over budget with their legal fees. Pete said, "we have a new year coming up. This is something that needs to be addressed". Summers didn't think the Town should sue the homeowner.

Nick brought Byvoet's motion to adjourn back to the table with a second by Schmitt. All 4 voted to adjourn.

Meeting was adjourned at 7:54 PM.

Respectfully submitted,
William S. de Funiak