

approved
2-21-12 EW

Village of Wapella
Executive Session
August 16, 2011

Present was Vernon Meadows, Brad Karr, Jason Trimble, Rusty Karr and Sharon Riddle. Also present were Attorney Nick Grojean and Clerk Elizabeth Weikle.

Nick Grojean started with litigations. He gave a brief summary of the Buraglio litigation. He said it was set for oral argument. It has been fully briefed except for oral argument on the 21st which is in Springfield.

Sharon Riddle asked if that was the 21st of August.

Nick Grojean said it was September. And the court will issue a decision it depends, it varies it can be one month, it can be 3 months after that. The work is largely done other than the oral argument. You might have seen the letter with the bill that was high but unfortunately appellate litigation is expensive. The work is done for the most part.

Sharon Riddle asked if anyone had to be present for that.

Nick Grojean said that Kerri Lyn Kraffholder who did the majority of the brief would be.

Sharon Riddle asked if it was open to the public.

Nick Grojean said yes. It is 2:00 September 21st in Springfield at the 4th District Appellate Court.

Sharon Riddle asked if he new what the address was.

Nick Grojean said he didn't. He asked if there were any other questions about the appeal.

Rusty Karr said he didn't have anything about the appeal. But was curious do we have any thing with the people that are suing the city helping to volunteer for the city. He is getting a bunch of complaints from 10 to 15 people that are hard core against her helping with the city while she is suing the town. He said a lot of people are upset and he doesn't know who to talk to about this.

Brad Karr said over what?

Rusty Karr said over the fact that she is suing the town and then in and around the bills and stuff in here. She in the hall but she is costing the town money by suing.

Brad Karr said it is a fact of life. I have heard one person complain about it to me.

Rusty Karr said anyway I was just making a point.

Sharon Riddle said it was bad policy.

Rusty Karr also said it was bad policy. He said that he liked Jane Buraglio but it was the fact that she was in here with our records while she is suing the town.

Clerk Weikle said she is not in the hall unattended. She is always in the hall with me and she never touches anything.

Nick Grojean said really this is getting beyond the scope of executive session.

Rusty Karr said he just wanted to bring that point up.

Nick Grojean said then the billboard litigation is, as you know, there are two cases pending. There is a declaratory judgment case basically asking for a court declaration that the billboards are illegal and need to be torn down. There is also an administrative review case which is challenging the ZBA hearing of July 2010. And as we've reviewed how these cases are going, we've tried to come up with a strategy for the Village. And I have talked to Mark about this some but we need to know where the board wants to go with this. Is the priority to spend as little money as possible and get out of the suit or are there strong feelings one way or the other on either supporting the initial decision to issue the permits or on the opposite side of that which is the position the property owners are taking. The option we would recommend if there is no strong feelings among the board and the goal is to spend as little as possible to get out of the suit is to take a small role as possible in the litigation. The main suit, not the administrative review action, but the declaratory judgment appears to have to be, they don't cite the statute, filed under the neighboring landowner's act which allows neighboring properties to challenge violation of municipal zoning codes. There is recent law from 2009 that says a Village or a Municipality needs to be notified of those lawsuits but isn't necessarily a required party to those suits. Essentially, it is a private dispute. We could take the position as the Village that this is a private dispute and you guys have lawyers so go fight it and we'll still be involved as a named party in the suit but try to steer clear of and essentially tell the judge we will abide by whatever decision this court makes. So that's an option and that would avoid the Village having to take a side, you would take a neutral role, let the judge make the call and either the judge will decide that the billboards must come down, are okay or the billboards need to be moved to be in compliance with this ordinance or the final option is the judge may say this needs to go back to the Village to be considered under the Village ordinances and a special use permit. We'd still be involved to a degree but not filing briefs or getting involved one way or the other in the arguments. The one concern is that the sign company has indicated that if they have to take the signs down, then all they have left is to sue the Village because they relied on the Village's permit to erect these and now they are having to take them down. Who else is there to blame besides the Village. We think that we can defend that. The majority of the case law concerning this type of issue, a permit can be defended under the tort immunity act, which gives immunity to permits which are issued even if they are issued incorrectly. There are a few cases which have imposed liability, it is generally more when the Village really is inducing something to be pushed along. Then it is ordered that it is void. I don't

think that is the case here. The permit was issued, they may have relied on it. But typically these cases can be dismissed if they were to file one. It would be likely that the IML as your insurer would take over if you were to be sued. That is something to consider. I can't say without a doubt there would not be any liability.

Brad Karr said the problem is we are not getting anywhere with negotiations.

Nick Grojean said the problem is that the Village is willing to negotiate but the other sides are not.

Brad Karr thought we should dispose of it as cheaply and quickly as possible.

Rusty Karr said he agreed with Brad.

Vernon Meadows asked if we need to vote on this at the next meeting.

Nick Grojean said he would just need a consensus from the board in closed session. He then discussed the administrative review case. He said that it is a side case from the main one, challenging the ruling by the ZBA last July. He said it was the same judge for both cases who will rule on them at the same time.

Brad Karr said we should sit back and let them fight it out and if there going to sue us they will.

Nick Grojean said we are already part of the suit so he will have to attend the next hearing. There is a motion to dismiss pending right now. We would go to observe and not take a position.

Rusty Karr didn't think we needed to take a side on it.

Brad Karr said he would just as soon get out of it.

Vernon Meadows said he agreed with Brad.

Jason Trimble said he didn't care either way.

Sharon Riddle said let's just sit back and let it happen.

Nick Grojean said well that sounds like the consensus. Then advised the board that if a judge did turn it back over to the Village. The zoning process calls for a planning commission and ZBA which is common in larger cities but not cities our size. He suggested the combination of those two boards which is common in towns are size. It simplifies things. Something to consider in the interim is changing the zoning ordinance to simplify the procedures for special use and variances.

Sharon Riddle said it wouldn't effect this case but future cases.

Nick Grojean said right. Future cases would need this fixed. So something to think about for later date. So is there any more questions about litigation.

Sharon Riddle asked about Heidi Carver.

Nick Grojean said that Mark had gotten a letter that she had appealed again. After reading the letter the clerk gave him, he said that she had been denied again.

Sharon Riddle said she keeps appealing.

The trustees then said they didn't know what the employee thing was on there for. So, they decided to skip it. The clerk said that the President had put it on there but was not present to talk about it.

Rusty Karr then said he had a problem with an employee. The employee doesn't respect him and is constantly running to do work for the water department because it's easier.

Nick Grojean asked if it was a specific employee.

Rusty Karr said they all sort of do it. They take turns doing it.

Brad Karr asked if we could call a special meeting and go into closed session for just this topic since there is quite a lot to cover.

Nick Grojean said he would recommend that. He said that executive session is for specific employees.

Brad Karr motioned to come out of closed session. Vernon Meadows seconded.

Ayes: Vernon Meadows, Brad Karr, Jason Trimble, Sharon Riddle, Rusty Karr

Nays: None

Absent: Tom Brame

Motion carried 5 to 0 with 1 absent.