

**SPECIAL MEETING
VILLAGE OF PLEASANT PRAIRIE
PLEASANT PRAIRIE VILLAGE BOARD
PLEASANT PRAIRIE SEWER UTILITY
PLEASANT PRAIRIE WATER UTILITY
9915 39th Avenue
Pleasant Prairie, WI
May 13, 2010
5:30 p.m.**

A Special Meeting of the Pleasant Prairie Village Board was held on Thursday, May 13, 2010. Meeting called to order at 5:30 p.m. Present were Village Board members John Steinbrink, Monica Yuhas, Steve Kumorkiewicz, Clyde Allen and Mike Serpe. Also present were Mike Pollocoff, Village Administrator; Tom Shircel, Asst. to the Administrator, Jane Romanowski, Village Clerk and Kevin Long, Village Attorney. No citizens attended the meeting.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **CONSIDER ENTERING INTO EXECUTIVE SESSION PURSUANT TO SECTION 19.85(1)(G) TO CONFER WITH LEGAL COUNSEL FOR THE GOVERNMENTAL BODY WHO IS RENDERING ORAL OR WRITTEN ADVICE CONCERNING STRATEGY TO BE ADOPTED BY THE BODY WITH RESPECT TO LITIGATION IN WHICH IT IS OR IS LIKELY TO BECOME INVOLVED, PARTICULARLY WHAT LITIGATION OR OTHER OPTIONS ARE AVAILABLE TO THE VILLAGE OF PLEASANT PRAIRIE AS A RESULT OF THE ACTIONS TAKEN BY THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF BRISTOL IN DECLARING THE VILLAGE OF BRISTOL'S INTENTION TO APPLY TO THE KENOSHA COUNTY CIRCUIT COURT FOR AN ORDER FOR AN ANNEXATION REFERENDUM PURSUANT TO SECTION 66.0219, WISCONSIN STATUTES, AS WELL AS A NOTICE OF BREACH SERVED ON THE VILLAGE OF PLEASANT PRAIRIE BY THE TOWN OF BRISTOL AND VILLAGE OF BRISTOL.**

John Steinbrink:

Any questions?

Kevin Long:

With respect to both the litigation and the agreement with Bristol, the reason this is on the agenda in terms of considering entering in Executive Session is only if the Board members would have questions that would relate to the litigation or the impact of this agreement on the litigation that they felt were not answered in the meeting that we had earlier this week. I can give you a slight update on what has happened since that time that may impact whether or not you want to go into Executive Session. When we talk about the deliberation and determination of whether to enter into this agreement and the vote on that, that should occur here in open session.

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I have spoken with counsel for Bristol. They received essentially the same document that we looked at on Tuesday evening, and they had no significant changes to that document or no significant concerns to that document. Their counsel indicated that he felt that they would move approval of the document. There were some typographical changes and non-substantive changes that were made to the version of the agreement you looked at, between the version of the agreement you looked at on Tuesday and the version that you have today. In addition to that, there are three additional sort of typographic-type changes that I will walk through as I go through the agreement before we vote on whether to adopt it or not. So with that update, I think the first thing to decide is whether anybody feels we ought to go into Executive Session in order to discuss this.

John Steinbrink:

That being said, is there anybody wishing to enter into Executive Session.

Michael Serpe:

John, I would move to forego the Executive Session and move onto the regular business.

Steve Kumorkiewicz:

Second.

John Steinbrink:

Motion by Serpe, second by Kumorkiewicz to forego Executive Session and move onto Item 5, New Business.

SERPE MOVED TO FOREGO ENTERING INTO EXECUTIVE SESSION AND MOVE ONTO NEW BUSINESS; SECONDED BY KUMORKIEWICZ; MOTION CARRIED 5-0.

5. NEW BUSINESS

A. Consider First Amendment to the 1997 Settlement and Cooperation Agreement between the Village of Pleasant Prairie, Pleasant Prairie Water Utility, Pleasant Prairie Sewer Utility and the Town of Bristol, the Town of Bristol Utility District No. 3, the Town of Bristol Water Utility District No. 5, the Town of Bristol Water Utility District and the Village of Bristol.

Kevin Long:

Thank you. I think what would be helpful is we'll do whatever any of the members would like or any of the Trustees would like in order to be informed and be able to vote on this knowledgeably. I have generally a plan of walking through what the provisions of the agreement are, taking any questions on any of those provisions and proceeding in that fashion. Any questions in general before we get into that from any Trustee?

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This agreement is an amendment of the 1997 agreement between the Bristol entities and the Pleasant Prairie entities, and that's a very large document that we've referred to from time to time in various things in our dealings with Bristol. It is different than you recall in meetings that we had last year what's called a Cooperative Plan. That's a different agreement involving a statute. We have not entered into a Cooperative Plan with Bristol and still haven't today. This is sort of a precursor to one of those agreements because that Cooperative Plan statute wasn't in existence at the time of this. So I don't want you to confuse that with this. This is the 1997 agreement, and what we're passing today or what we're considering passing today is not a Cooperative Plan with Bristol either. It is merely an amendment to the 1997 agreement.

The circumstances of the amendment stem from Bristol's annexation referendum that we've talked about at a prior meeting. And in addition to the substantive provisions that will have some impact on property, we are withdrawing our objection to the Bristol annexation petition. That annexation petition is where the Village of Bristol, which is the northwestern corner of what used to be the Town of Bristol is moving to annex the rest of the property, the remaining property, in the Town of Bristol. And with this agreement we would be withdrawing our objection and we would be rather supporting that.

We appeared before Judge Schroeder earlier this week, indicated to him that the parties had come to an agreement in principle. We did this on Tuesday morning on the 11th. And at that time Judge Schroeder thanked all the Trustees and thanked the County Executive for their leadership on these issues and coming to a resolution. But he also indicated that both Boards should go forward and carefully consider the provisions of the agreement. If either Board decided they did not want to enter into the agreement we could come back to him. We'd give him notice tomorrow, and we could oppose the annexation referendum. So that is something that is still within this Board's powers and a decision the Board can make today. That's not my recommendation. My recommendation is that this is a good agreement. I think it's one that the Board ought to consider entering into.

I will go through in general the preamble and some of the key provisions. And there is one edit that is in the first paragraph of what I refer to as the preamble, which is the written language above the word Witnesseth. And that is simply that in the third line it says "Pleasant Prairie Sewer District D." It should say "Pleasant Prairie Sewer Utility District D." That is a change that I have indicated to counsel for Bristol and they are making that same change in their document. The first paragraph, those words simply indicate the entities that are entering into this agreement, it is essentially the Town of Bristol, the Village of Bristol, the Village of Pleasant Prairie and the associated water and sewer utility.

The Witnesseth paragraphs, the various whereas clauses, sort of go through the history of the relationships between these entities. The first one deals with the 1997 agreement that we've talked about before. The second whereas clause recognizes that there are certain changed circumstances that have arisen over the past 13 years between that agreement and now. The third whereas clause indicates the Town of Bristol had incorporated a portion of their land or their jurisdiction as the Village of Bristol. The fourth talks about the petition that had been filed in the

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Kenosha County Court, the fact that we intervened in that provision. Actually the fourth one just talks about the fact that they had filed the petition.

The fifth whereas clause says that we gave notice to them that we felt that their annexation referendum was a violation of the '97 agreement, we moved to intervene, and we opposed it. It also says that they felt we were wrong to be opposing it and that our opposition was a violation of the agreement. So that sort of frames up the controversy between the two municipalities. The sixth whereas clause just says that they have opposed the fact that we tried to intervene into the lawsuit. The next whereas clause talks about that there are certain development proposals within the Village of Pleasant Prairie and the Town of Bristol that have necessitated the alteration of the Village Growth Area. And this is important because that's one of the substantive changes that is happening here is the change to what is the Village Growth Area which is a defined term in an area within the 1997 agreement.

The next whereas clause just says the parties which to memorialize their agreement. So we're agreeing as follows. The first agreement we have is that we're incorporating the rest of the history that we had before. I see nothing in that history that's inaccurate. I don't see any problem with that.

The second paragraph is a very substantive one. It is entitled Alteration of Village Growth Area. And it talks about two different areas. One is an area that is presently in the Town of Bristol and is either owned or to be owned in the near future by Route 165 LLC, which is an entity that is affiliated with Uline. Those are the properties that are outlined in Exhibit A of the legal description and maps. They lie just south of State Highway 165 and U on that corner. Not on the exact corner but a little south of 165 there.

Paragraph (a) says that those lands are going to be moved into what's called the Village Growth Area. It doesn't mean that they automatically come into the Village of Pleasant Prairie today. It just means they go into the Village Growth Area. The expectation of everyone is that they will move into the Village of Pleasant Prairie when the owners of that land want to do that which we understand is in the very near future.

Subparagraph (b) within paragraph 2 is also very important. It deals with property owned by three different entities, Michael Ries, Ries Partners, L.P. and the Society of St. Francis. Those are all entities that have expressed in the past some concern about moving into the Village of Bristol and recognize a preference to move into the Village of Pleasant Prairie. They did so in public letters to counsel for both municipalities and in filings in prior litigation between the parties involving the Bristol petition.

It's important to note that under the 1997 agreement these lands were not in the Village Growth Area, and Pleasant Prairie was prohibited from encouraging any landowner to want to move from outside the Village Growth Area into the Village Growth Area. And the Board during the past several years has been very vigilant in not doing that much to your credit. So you may be wondering, okay, we weren't supposed to do that, how does this come about? We felt in part of the negotiation process that we should at least make reference to these landowners' intent, and the Village of Bristol or the Bristol entities were not willing to move those entities into the Village

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Growth Area and they're not doing that with this agreement. They are, however, pledging to discuss with those landowners whether the land better lies in the Village Growth Area or outside the Village Growth Area. We are not really empowered to say much about whether that land moves from where it is now into the Village Growth Area. But we do believe that the Bristol officials will act in good faith and discuss those circumstances with the landowners, and if they deem appropriate there may be some amendment in the future. That's paragraph 2 which is a substantive paragraph. Does anyone have any particular questions about paragraph 2?

Paragraph 3 deals with the annexation referendum. It essentially says that we will withdraw our opposition to the referendum and rather support the annexation referendum presently before Judge Schroeder and the Kenosha County Courts. In addition of that the Bristol entities in consideration of that commit to detaching the lands describes in 2(a). This is the Route 165 land, pursuant to the procedures set forth in the Wisconsin Statutory Section 66.0225. There are a number of different ways that land can move from one municipality to another municipality. And in three of them, three different ways are referenced in this paragraph.

One is pursuant to an agreement between the parties under Section 66.0225. Another is pursuant to Section 66.0217 where an annexation petition is presented by the landowner to municipalities. And a third is a special way that actually is included within this 1997 agreement that somewhat streamlines the process. The intent of the parties to this agreement was to give as much flexibility as possible to the landowner to choose whatever method they would like to move the land from the Village Growth Area where it will be after we sign this agreement into the actual Village.

The last sentence of that section talks about Statutory Provision 66.1105(4)(gm)1, and that talks about the fact that this land will go into a Tax Increment Financing District immediately. There is a statute that says when lands move from a town to a village that you must wait three years before it enters into a TIF District unless certain things happen. And one of the things is you can have an agreement that that waiting period is not needed. Here the parties have come to an agreement that that waiting period is not needed. This is a little technical, but it's likely that this land will come into the Village Growth Area after we sign this agreement. If the annexation referendum passes in Bristol it will move from the Town of Bristol to the Village of Bristol to the Village of Pleasant Prairie. However, if the annexation referendum were not to pass it would stay in the Town of Bristol and would then have to move from the Town of Bristol to the Village of Pleasant Prairie. That's why that provision is in there, even though if the referendum passes it would not be moving from town to village. Any questions about that rather complicated paragraph?

The fourth paragraph deals with cooperation respecting water and sewer. This references the fact that the land that is being moved into the Village Growth Area is for development and for very positive development and job creation in the communities. And also needed in that job creation is water and sewer. Water and sewer are things that the Southeastern Wisconsin Regional Planning Commission, City of Kenosha and Kenosha Water Utility certainly are involved in. And the parties here pledge cooperation with respect to those matters. That's what is in paragraph 4.

Paragraph 5 deals with commitments made by route 165 LLC and Uline. Those are the landowners of the land that's moving into the Village Growth Area. Those commitments include

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maintenance of a berm and landscaping plan along the west and south portions of the Uline property, as well as some payments that are being committed by the Uline entities, Uline and/or Route 165 to be made to the Bristol entities. There are other provisions in there that deal with the landscaped and bermed areas to allow for those to be done appropriately. Any questions about that paragraph?

Paragraph 6 deals with the payment of I-94 sewer maintenance charges and sewer capacity charges by the Bristol entities. You will recall in the 1997 agreement the Village of Pleasant Prairie has incurred substantial sums, I believe well over \$1 million, to extend the water and sewer and to right size the sewer. And pursuant to this agreement Bristol had agreed at the appropriate time that they would pay Pleasant Prairie back for that. That is a debt that is accruing with interest. We indicated we felt it was fair under this agreement for some of the monies that Bristol is receiving from Uline to be paid to pay down that debt, and they've agreed to that. And, therefore, pursuant to paragraph 6, 50 percent of amounts received by the Bristol entities from Uline under paragraph 5 will be paid to the Pleasant Prairie entities in partial satisfaction of their obligations in that regard. Any questions about paragraph 6?

Paragraph 7 deals with commitment to future cooperation. This just deals with the fact that the parties have different challenges that may come in the future, and the parties pledge their mutual cooperation particularly related to the relocation of power lines, provision of sewer and water services, implementation of transportation needs, maintenance of natural features and green space and related and similar issues. That is laid out within paragraph 7.

There's one sort of typographical change that is indicated here. You see highlighted the phrase or the word Pleasant Prairie, the title Pleasant Prairie. It really ought to read the Pleasant Prairie entities. So we've made that scrivener's change to paragraph 7, and the Bristol entities will also be making that same change this evening.

Paragraph 8 just deals with continuation of prior agreements. It says that just because we have this agreement in 1997 that we're making today doesn't mean that this 1997 agreement is no longer valid. Every provision, but for the ones that are amended here, continues in effect in the 1997 agreement. It also indicates that there is an agreement between the City of Kenosha and the Town of Bristol and we acknowledge that there is that agreement.

Number 9 says the fact that both the Pleasant Prairie entities and the Bristol entities pledge to sign any agreement or pass any resolution needed to accomplish the intent of this agreement. As you know, this resolution came together quite quickly, and as you can see we have a four page document that is amending a several dozen page document. And the intent of this was to get the parties to agree to the broad term but make a commitment that if, in fact, if this is looked at more closely a different authorization or resolution is needed, the parties will work together and pledge to each other to sign any agreement or pass any resolution to accomplish the intent of the agreement. And the intent of the agreement is expressly stated in paragraph 9 as to allow the transfer of the land set forth in paragraph 2(a) to the Village of Pleasant Prairie, the provision of water and sewer services to those parcels, and the annexation of all remaining lands in the Town of Bristol by the Village of Bristol. Any questions about paragraph 9?

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Paragraph 10 says that the parties will release their claims against each other. As I indicated at the beginning of my remarks, when we filed the opposition both parties said, hey, we think you're in violation of this agreement and we're giving you notice that we have a claim against you. In this agreement both sides are agreeing to walk away from those claims and seek no further money or any other type of damage from the other entity because of those claims.

Paragraph 11 deals with the effective date. It shall be the date last signed by any officer. How we would like to do this procedurally if all three Boards, that being the Pleasant Prairie Board, the Village of Bristol Board and the Town of Bristol Board, approve this is that they would approve the document and then it would be signed in the coming days after we ensure that the language is exactly the same.

There is a third typographical issue that deals with the attachments. And why don't I go through the two attachments both of which are referenced in paragraph 2 and in paragraph 5 of the agreement itself. Paragraph 2 just describes this area that's moving into the Village growth area, and in that legal description there is a dimension that says "North 88°59'11" east, 393.69 feet", and in the map which is attached at Exhibit A, the same dimension is indicated although the number says "393.96 feet", so there's a transposition of numbers there of some fraction of a foot that we will need to get squared away one way or the other. So in voting on this agreement you are not only voting on the fact that you want to enter into the agreement but you're also voting that regardless of which way that dimensional correction is made you are still voting in favor of the agreement.

The maps that are attached as Exhibit A give you some idea of the two parcels that are being purchased by—that are either owned by Route 165 LLC or are about to be purchased by Route 165 LLC as well as the dimensions of the land that is being moved into the Village Growth Area. It is not the entirety of either parcel. There are two sort of enveloping L-shapes. The internal L-shape is the land that is being annexed or going into the Village Growth Area, and the outside is the land that is staying within the Town of Bristol.

In a general sense, and you can see this best from the third of the maps, and we have larger of these maps that you were able to look at before and others can look at it now if you like, essentially the parking lot and the buildings will remain in the Village Growth Area, but only the green space nearest County Highway U, and the south end of the property will remain in the Town of Bristol. That is why the Bristol entities are the entities that are requiring the berm and taking care of that portion of the agreement.

Exhibit B to the first amendment is an agreement between the Bristol entities and the Uline Corporation. And that is the agreement wherein those entities agree to provide certain berming and provide certain payment. I don't believe any of those provisions directly impact anything we're doing. I'm happy to go through any of those particular provisions that you like. It's a one page agreement.

With that I would entertain any questions that any of the Village Trustees would have about the agreement.

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Michael Serpe:

I don't know if it's covered in the agreement, Kevin, but in the event that everything goes forward as we hope it does, is there a process or mechanism in place for Pleasant Prairie to review anything that is going to be developed west of Pleasant Prairie property, and likewise can Bristol review anything that Pleasant Prairie is going to put in place east of their Township or their Village?

Kevin Long:

Are you talking specifically with respect to the Uline property or in general?

Michael Serpe:

No, to any development. More specifically to the Abbott land and then west into Bristol. Do we get to review each other's plans as they come forward?

Mike Pollocoff:

Right now the agreement between Pleasant Prairie and Bristol, the 1997 agreement provides that there is a supervised drainage basin along I-94. It's kind of an irregular boundary almost from C down to someplace close to the State Line. So the Village in that agreement has the opportunity to review those developments that are anticipated or any possible storm water detention. We can request that Bristol prior to the developer making modifications to make sure that We would review sanitary sewer and water plans . . . those plans to make sure that the system can handle it and constructed correctly. But as far as for land use or zoning it would be their call.

Steve Kumorkiewicz:

So actually our territorial powers are limited only to this issue?

Mike Pollocoff:

In the 1997 agreement the Village gave up the territorial zoning but we did both agree that we would both retain rights to review storm water plans.

Kevin Long:

This agreement doesn't really change the status quo with respect to any of those issues. It's the same as it was before.

Michael Serpe:

With the amount of time that Mike and John and Kevin have spent on this in the last year and Bristol as well, now hopefully this will be behind us and we can concentrate on bigger and better things in that area and within our own confines of our municipality. I commend you, Kevin, and

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Mike a job well done on this getting this accomplished. If there's any hint of any finger pointing between the two municipalities I'm going to guess that this puts it to bed. We should move forward from this point on. I comment everybody involved and especially Mike and Kevin.

John Steinbrink:

Is this correct, Mike, this agreement guarantees Uline the ability to expand their warehouse then on the other parcel?

Mike Pollocoff:

Yes.

John Steinbrink:

That creates more jobs and kind of keeps a third party away from interfering with that?

Mike Pollocoff:

Right. It does give Uline all the certainty they need. It's roughly a 1.1 million square foot building valued at about \$50 million

Michael Serpe:

The great benefit to Bristol is the amount of taxes that their school district will collect from any developments that take place west of the I. That's going to be huge for them. More power to them on that.

Steve Kumorkiewicz:

I've got a question on that to Mike. We have a TIF District over there. So they are not paying the schools . . . until the TIF is paid up. I don't understand that. Basically they're going to get money for schools but we are not getting any money for the schools here?

Mike Pollocoff:

No, neither one of us in the TIF District—

Steve Kumorkiewicz:

I don't understand.

Mike Pollocoff:

Until the TIF retires the debt that's theirs. Uline will be paying property taxes just like anybody else. But that money is going to retire the bonds for the improvements that are able to be

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constructed . . . east side of I-94 those taxes would go to Kenosha Unified. And the west side of I-94 those taxes will go to

Steve Kumorkiewicz:

I wasn't sure that was going to be that way. Thank you.

John Steinbrink:

But developments such as Uline are definitely going to speed up the payment of those bonds when you look at what's there with the second warehouse to be built. That's definitely going to help. I'd be amiss not mentioning the County Executive's help in this. He shares our vision for jobs and quality development. It was a big help in this process.

Steve Kumorkiewicz:

This is a big step going from confrontation to cooperation which is part of the agreement right there.

Michael Serpe:

If you're looking for a motion, John, I would move to approve the First Amendment to 1997 Settlement and Cooperation Agreement between the Village of Pleasant Prairie, Village of Pleasant Prairie Water Utility, Pleasant Prairie Sewer Utility and the Town of Bristol.

Steve Kumorkiewicz:

Second.

John Steinbrink:

Motion by Serpe, second by Kumorkiewicz. Further discussion, comment or question? Hearing none, roll call vote or regular vote?

Jane Romanowski:

Regular vote.

John Steinbrink:

Alright. We have a motion and a second.

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SERPE MOVED TO APPROVE THE FIRST AMENDMENT TO THE 1997 SETTLEMENT AND COOPERATION AGREEMENT BETWEEN THE VILLAGE OF PLEASANT PRAIRIE, PLEASANT PRAIRIE WATER UTILITY, PLEASANT PRAIRIE SEWER UTILITY AND THE TOWN OF BRISTOL, THE TOWN OF BRISTOL UTILITY DISTRICT NO. 3, THE TOWN OF BRISTOL WATER UTILITY DISTRICT NO. 5, THE TOWN OF BRISTOL WATER UTILITY DISTRICT AND THE VILLAGE OF BRISTOL AS OUTLINED BY ATTORNEY LONG; SECONDED BY KUMORKIEWICZ; MOTION CARRIED 5-0.

6. ADJOURNMENT

KUMORKIEWICZ MOVED TO ADJOURN THE MEETING; SECONDED BY ALLEN; MOTION CARRIED 5-0 AND MEETING ADJOURNED AT 6:00 P.M.