

**VILLAGE OF FOX POINT
VILLAGE BOARD MINUTES
MAY 12, 2020**

A meeting of the Fox Point Village Board was held on Tuesday, May 12, 2020 by in-person appearances and via telephonic and video conferencing through Zoom, at 7200 N. Santa Monica Boulevard. President Frazer called the meeting to order at 7:02 p.m. President Frazer asked the Deputy Clerk/Treasurer to take roll call. Roll Call of the Village Board present included:

President Douglas H. Frazer
Trustee Eric Fonstad
Trustee Christine Symchych
Trustee Bill Kravit
Trustee Marty Tirado
Trustee Liz Sumner
Trustee Greg Ollman

Also present were Village Manager Scott Botcher, Assistant Village Manager Michael Pedersen, Department of Public Works Director Scott Brandmeier, and Village Deputy Clerk-Treasurer, Jeanne O'Brien.

Notice of the meeting was provided to the North Shore Now and to all others as required by State open meetings laws and posted on the official bulletin board at 7200 N Santa Monica Boulevard, as well as the village website at www.villageoffoxpoint.com, as per 2015 Wisconsin Act 79 and as described in Village Ordinance Chapter 116-2, 116-2(C).

Citizen comment was removed due to the COVID-19 pandemic (only for this reason) and will return. Citizens were encouraged to submit any comments in writing in advance of the telephone conference meeting by sending to the Village Manager at: sbotcher@villageoffoxpoint.com.

Consent Agenda

- a. Approve the minutes of the March 10, 2020 Village Board meeting.
- b. Approve the minutes of the April 14, 2020 Village Board meeting.
- c. Adopt Proclamation 2020-04, establishing the week of May 3 through May 9, 2020 as Professional Municipal Clerks Week.
- d. Adoption of the bail/bond schedule as revised to meet the new ordinance numbering and recodification.
- e. Adoption of an ordinance to repeal and recreate Section 670-2 of Village of Fox Point code concerning underage possession of cigarettes.
- f. Approve the State Municipal Agreement for the Multimodal Local Supplement program funding for Santa Monica Boulevard and authorize the Village President to sign the agreement per the Director of Public Works' memorandum dated May 7, 2020.
- g. Accept the bid of Stark Pavement Corporation in the amount of \$298,121.50 for the paving of Barnett Lane, View Place and Acacia Road and authorize the Village President and Village Clerk/Treasurer to sign the contract per the Director of Public Works' memorandum dated May 7, 2020.

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- h. Accept the contract from Kapur & Associates in an amount not to exceed \$38,532 for the construction management of the paving work on Barnett Lane, View Place and Acacia Road and authorize the Village President and Village Clerk/Treasurer to sign the contract per the Director of Public Works' memorandum dated May 7, 2020.
- i. Accept Change Order No. 1 in the amount of \$10,104 for additional services and grant application assistance related to the vacant lot on Greenvale Road and authorize the Village President and Village Clerk/Treasurer to sign the change order per the Director of Public Works' memorandum dated May 7, 2020.
- j. Adopt the Resolution Concerning a Village of Fox Point Lateral Rehabilitation Program and Preliminary Resolution Declaring Intent to Levy Special Assessments Under Municipal Police Power Pursuant to Sect. 66.0703, Stats. per the Director of Public Works' memorandum dated May 7, 2020.
- k. Approve the proposal of WSO Grading & Excavating, LLC. In the amount of \$11,080 for the placement of 163 feet of storm sewer pipe and ditch regrading on Goodrich Lane and authorize the Village Manager to sign the proposal per the Director of Public Works' memorandum dated May 7, 2020.
- l. Approve the proposal of WSO Grading & Excavating, LLC. In the amount of \$11,849 for the replacement of two deteriorated storm drains and associated storm sewer piping and road patching in the 7100 block of North Beach Drive and authorize the Village Manager to sign the proposal per the Director of Public Works' memorandum dated May 7, 2020.
- m. Approve the proposal of WSO Grading & Excavating, LLC. In the amount of \$19,720 for the placement of 423 feet of storm sewer pipe and ditch regrading on Santa Monica Boulevard north of Calumet Road and authorize the Village Manager to sign the proposal per the Director of Public Works' memorandum dated May 7, 2020.
- n. Accept the quote of WSO Grading & Excavating, LLC in the amount of \$65,100 for the placement of additional temporary protective structures along the shoreline from 8000 North Beach Drive north to 8040 North Beach Drive pursuant to Resolution No. 2019-22B and authorize the Village President and Village Clerk/Treasurer to sign the contract per the Director of Public Works' memorandum dated May 7, 2020.
- o. *******Approve President Frazer's appointments to various Boards, Committees, and Commissions.*******
- p. Approve payment of the bills in the amount of \$665,005.02 for the period April 1, 2020 through April 30, 2020 per the report submitted by the Village Manager.

President Frazer stated that certain Board members requested removal of consent agenda items 2f, 2l, and 2n.

Motion made by President Frazer, seconded by Trustee Ollman, and carried unanimously by roll call vote, the Village Board approved the consent agenda, as modified, with discussion of items 2f, 2l and 2n to be considered later in the meeting.

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3. Unfinished Business

a. Comprehensive Plan Special Committee Report

Assistant Village Manager Michael Pedersen gave an overview of the status of the Comprehensive Plan. On May 4, 2020, he provided the committee members with the additional four elements remaining to be incorporated within the plan. Comments for those elements are due to him by May 22, 2020. Those comments will be considered to create a second draft of the plan, which will then be taken to a second public workshop for public comment. After all comments are incorporated and a new draft created, the plan will be sent to the Plan Commission.

Hearing no comments or questions from the Board members, Pedersen concluded the report.

b. Artwork Donation and Outdoor Exhibition

Trustee Symchych stated her concern with this agenda item. She prefers the public be allowed to speak to this matter in person. This will be a policy decision and the public should have the right to be heard.

Motion made by Trustee Symchych, seconded by Trustee Fonstad to postpone this matter until the public could participate in person so their comments could be heard.

Discussion ensued. President Frazer stated that the Board has considered this matter previously and directed Staff to prepare a written agreement taking into consideration such things as engineering, placement of the sculpture, the site to be chosen, etc., which has been done. People can still come to the meeting in person and can participate by Zoom or phone call. He felt they had sufficient opportunity to speak to the matter. Trustee Symchych again stated the public is not able to weigh in and she does not see the difference in accepting it now or next year. Trustee Ollman stated the matter will still have to go to Plan Commission & the Building Board, with a public hearing scheduled at a later Village Board meeting.

Village Attorney Eric Larson stated that every new item subject to the F District zoning classification must go through this process.

Trustee Fonstad questioned the artist's responsibility as to insurance. President Frazer stated that insurance is covered under the agreement. Attorney Larson stated specifically, Sec. 6.1 addresses insurance.

Trustee Sumner stated the matter should be sent on to the other committees, and the public could speak at the public hearing. Trustee Symchych stated if it is sent on there is an implied understanding about the matter, but she is not sure the Village Board wants this.

The pending motion was called by President Frazer with a roll call vote to postpone this matter until the public could be heard in person: Trustee Tirado, no, Trustee Kravit, no,

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Trust Ollman, no, President Frazer, no, Trustee Symchych, yes, Trustee Sumner, no, Trustee Fonstad, yes. Motion failed.

President Frazer then introduced the artist, Richard Edelman. Mr. Edelman stated that on May 1, 2020 several Village representatives (President Frazer, Assistant Village Manager Pedersen and Director of Public Works Brandmeier) visited the subject sculpture, *Little Dancer, Aged Fourteen*, at its current site in the Third Ward and spoke to him from the site. He stated he came to Fox Point at the age of 10 and has lived here since then. He spoke to his many projects, some of which are in Poland and Israel. He has been recognized for several of his sculptures. He loves Fox Point, his studio is here; moreover, his ideas are conceived and made here, sometimes with the help of others for larger projects. He is currently working on projects for the Froedtert Brain Center and a memorial piece for the new theatre property in Egg Harbor. The subject piece (*Little Dancer, Aged Fourteen*) has been installed for 10 years in the park in the Third Ward. That park is being repurposed for children and the sculpture will need to be relocated. The timing is such that he would like to move it out of the Third Ward and into Fox Point with one transfer.

Director of Public Works Scott Brandmeier spoke to the construction of the sculpture, stating it is secured with three large slates of lannon stone, approx. 9" thick, with the leg attached with 5/8" anchor bolts and seemed sound. Engineering studies would not be needed, as the epoxy in the lannon stone is sufficient, there is no corrosion. The gaps between the large lannon stone pieces are filled with smaller lannon stone pieces. No concrete would be needed for the structure.

Trustee Tirado asked where this sculpture would be placed. Mr. Edelman stated there that in his view there are two appropriate green spaces on Lake Drive, one at Bradley and one at Bell. Both areas can be approached by foot or bicycles, there is north/south auto traffic, and a good viewing perspective from all modes. The sculpture is 16' tall and would look nice in a park like area. Edelman stated he had considered other village spaces along Santa Monica Blvd. and at Longacre but he thought the sculpture's size and scale were too big for those sites.

Motion made by President Frazer, seconded by Trustee Tirado, and carried by roll call vote (Trustee Kravit, yes, Trustee Ollman, yes, President Frazer, yes, Trustee Symchych, no, Trustee Sumner, yes, Trustee Fonstad, yes, Trustee Tirado, yes), to refer the Artwork Loan and Exhibition Agreement concerning the artwork entitled "Little Dancer, Aged Fourteen" offered for donation to the Village by the artist, Richard Edelman, and refer same to the Plan Commission and Building Board to consider zoning requirements under Section 745-20 B.(2) of the Village Code and Wis. Stats. Section 62.23(5) and make a recommendation back to the Village Board.

President Frazer thanked Mr. Edelman for his presentation, who in turn offered to answer any concerns and provide additional information to anyone regarding this matter.

President Frazer then took up the Consent Agenda items removed for further discussion.

- c. Item 2f was discussed, which was to Approve the State Municipal Agreement for the Multimodal Local Supplement program funding for Santa Monica Boulevard and authorize the Village President to sign the agreement per the Director of Public Works' memorandum dated May 7, 2020.

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Mr. Brandmeier gave background as to the grant application made last year concerning the funding of a walking trail, either at Stormonth School from School Road to Cardinal Stritch entrance at the south end, or on Santa Monica Blvd. Both projects had letters of support. This agreement is required to execute a formal agreement prior to the funds being distributed. Regardless of this grant, the Village had budgeted for the work and will propose the same for the budget next year, as the project will need to be postponed given the timing.

Motion made by President Frazer, seconded by Trustee Kravit, and carried by roll call vote (Trustee Kravit, yes, Trustee Ollman, yes, President Frazer, yes, Trustee Symchych, yes, Trustee Sumner, yes, Trustee Tirado, yes, Trustee Fonstad, yes), the Village Board approved the State Municipal Agreement for the Multimodal Local Supplement program funding for Santa Monica Boulevard and authorize the Village President to sign the agreement per the Director of Public Works' memorandum dated May 7, 2020.

The Village Manager asked that item 4a. be discussed out of order, as Mr. Justin Fisher of Baird was present for that item, and the remaining consent agenda items would require more time. Hearing no objection, by unanimous consent item 4 a. was discussed.

4. New Business

a. Initial Resolution regarding \$2,505,000 Village of Fox Point General Obligation Promissory Notes, Series 2020.

Mr. Justin Fisher of Baird was present. Village Manager Scott Botcher referenced the annual borrowing reflected on page 97 of the packet and explained the sale of bonds. The Village is conservative with the rates. A balloon payment of \$160,000 is due next year, which he suggested be included in this borrowing until next year, and the lock in will be at a favorable rate. Mr. Fisher stated that municipalities have seen some volatility recently. Generally, sales tax would affect the Village revenue, but the Village is not implementing that. He sees no issue in entering the bond market at this time.

Motion made by President Frazer, seconded by Trustee Ollman, and carried by roll call vote (Trustee Kravit, yes, Trustee Ollman, yes, President Frazer, yes, Trustee Symchych, yes, Trustee Sumner, yes, Trustee Tirado, yes, Trustee Fonstad, yes), to approve the initial Resolution regarding \$2,505,000 Village of Fox Point General Obligation Promissory Notes, Series 2020, as presented beginning at page 89 of the Agenda Packet.

President Frazer thanked Mr. Fisher. He then turned to Consent Agenda items 2l and 2n.

Item 2l: Approve the proposal of WSO Grading & Excavating, LLC in the amount of \$11,849 for the replacement of two deteriorated storm drains and associated storm sewer piping and road patching in the 7100 block of North Beach Drive and authorize the Village Manager to sign the proposal per the Director of Public Works' memorandum dated May 7, 2020.

President Frazer asked Trustee Fonstad to speak to this matter, who gave some background relating to the Beach Dr. area. A block down from the south end of Beach Drive., there exists three houses served by this road. Work is needed, as the drains are completely plugged in this area. This is a section of road the Village maintains and is easy to miss. There was a road at one point up the bluff to Green Tree Road, and later a foot path from Beach Drive up to Green

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Tree Road. (Currently on the north end of Beach Drive is a foot path (originally a road) up the bluff to Fox Lane. This is similar to the old road up the bluff from Beach Drive to Green Tree Road which later became a footpath.) Trustee Ollman asked for clarification as to this being a public road because a sign exists stating “private driveways, turn around here”. Staff clarified that it is a public road.

Motion made by President Frazer, seconded by Trustee Kravit, and carried by roll call vote (Trustee Kravit, yes, Trustee Ollman, yes, President Frazer, yes, Trustee Symchych, yes, Trustee Sumner, yes, Trustee Tirado, yes, Trustee Fonstad, yes), to approve the proposal of WSO Grading & Excavating, LLC in the amount of \$11,849 for the replacement of two deteriorated storm drains and associated storm sewer piping and road patching in the 7100 block of North Beach Drive and authorize the Village Manager to sign the proposal per the Director of Public Works’ memorandum dated May 7, 2020.

Item 2n: Accept the quote of WSO Grading & Excavating, LLC in the amount of \$65,100 for the placement of additional temporary protective structures along the shoreline from 8000 North Beach Drive north to 8040 North Beach Drive pursuant to Resolution No. 2019-22B and authorize the Village President and Village Clerk/Treasurer to sign the contract per the Director of Public Works’ memorandum dated May 7, 2020.

Mr. Brandmeier then provided the history of this matter. He referenced Fig. 1 in the agenda item, stating that the Village Board had approved an emergency resolution for work done along North Beach Dr. from the Mary Nohl property to 7540 N Beach Dr.

An erosion survey was commenced in October 2019. Figures 1-5 reflected the same. The Village continued to gather survey data. A storm event occurred from January 10-12, 2020, causing what was later declared a disaster for Milwaukee, Racine and Kenosha. President Trump approved the declaration of the Wisconsin Emergency Management and FEMA on 3/19/2020. Concrete blocks were placed along the shoreline in December 2019. The Village installed additional blocks from Beach Ct. to the south. Then the blocks were double stacked from there to the north. Stone revetment was done in concert with the installation of blocks.

This agenda item refers to the properties from 8000 to 8040 Beach Dr. Trustee. Ollman stated the property is identified as 8046 but should be 8040 N Beach Dr.

The structures that the village has installed are temporary protective structures. He referenced Fig. 7, which shows survey work was done on or about October 10, 2019 concerning the private property between Beach Drive and the lake. Additional surveying is reflected in Fig. 8, with the two black lines representing the Village right-of-way. By way of background: The Village had believed it held a fee interest in the properties between the road and the lake. In 1986, there were record high lake levels. In 1993-1995, property owners Nicolet, Costello, and a third property owner took the real property title question to court, and in 1995 the Wisconsin Court of Appeals determined the Village was granted an easement, not a fee interest in the subject properties. But the easement allows the Village to go on the properties and engage in activities to protect the road (Beach Drive) and related infrastructure.

The Federal Emergency Management Agency (FEMA) recently indicated the Village could be reimbursed for the expenses, but would have to act now. The deadline is July 4, 2020 to firm up the total costs and possibly get recovery.

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Fig. 8 reflects a yellow line, which is a May 4, 2020 survey. Between February and May 4, the shoreline has been reduced by 2', and is now encroaching on the black line. The concern is for loss of the road, and the sanitary sewer main beneath the road. A lot of land has been lost since 2018.

Trustee Ollman asked if the Village is doing work on private property. Mr. Brandmeier replied approximately one-half to two-thirds of the work is on private property from the south end 150' to the north end and is similar to the work done on Santa Monica. Trustee Ollman stated concern in connection with the work that benefited the private property owners who own the real property east of Beach Dr. Mr. Brandmeier stated that 2 of the 3 property owners have requested the Village do the work to protect the infrastructure.

Attorney Larson, echoing Mr. Brandmeier, clarified that the court stated an easement was conveyed, not ownership, from the east side of the roadway to the low water mark of the lake.

Trustee Ollman argued the Village has an easement, they don't own it, so like with water laterals, why are the property owners along this road not required to sign off on documents, and perhaps be assessed for the costs involved? Discussion ensued. Attorney Larson stated the Village has the right to use the easement, but must stay within the boundaries of the easement. Trustee Ollman suggested that if the easement goes out only 50' from the center of the road the Village might be in violation. Attorney Larson clarified the easement goes all the way to the low water mark of Lake Michigan.

Trustee Symchych stated that it is anticipated the lake level will rise 5-6" by August. Trustee Fonstad agrees it makes sense to do this work, as the shoreline is eroding and endangering the road. Trustee Sumner stated a resident contacted her concerning using tax dollars to repair essentially private property, and they believe the property owners should do the repairs, not the Village.

President Frazer suggested that the question might be a matter of policy: should the Board expect a contribution of funds from the property owners by way of a special assessment. Attorney Larson stated that the village might determine it was doing the work not to protect private property but to protect the Village infrastructure. President Frazer clarified: if the intent is to protect Village infrastructure but the work also benefits a private property owner, can a special assessment can be considered. Attorney Larson stated yes.

Trustee Tirado stated the road is washing out. The map reflecting the south end of Beach Dr. when the revetments were put in, slowed the erosion, but did not stop it. There has been more erosion since then. This may become a more expansive and expensive project. Mr. Brandmeier stated that currently, the amount requested would be covered 75% by FEMA, 12.5% by the State, and 12.5% by the Village, resulting in approx. \$54,000 of the \$60,000. Trustee Tirado is in favor as long as there is reimbursement. There needs to be a long-term fix to the problem.

Mr. Brandmeier stated there is a second grant application framed as coastal resiliency in the amount of \$2.5m, which includes other professional services, to blend in temporary structures, bury in boulders, to provide a gravel layer of 30'-50' to nourish the beach, provide a better habitat and break the waves further out into the lake through a revetment system. The benefit cost analysis is rated a 47. FEMA would look favorably upon this.

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Trustee Kravit stated the Village portion of this line item is approximately \$6-7,000. He is in favor of the private property owners paying, however, the cost is relatively minor and the work should be done. He moved to approve item 2n. President Frazer stated the motion was premature and suggested that first the Board take up ending debate.

Trustee Ollman stated he received an email about concern to use public money on private property. He asked the Attorney to provide a clear answer as to scope of the right of way. President Frazer stated the attorney already stated the Village had a property interest since 1904 and then it was classified by the court as an easement, not fee simple. Attorney Larson stated that is correct, the Village has the right to use the easement to protect the Village infrastructure.

Trustee Ollman again stated his concern about the north end of Beach Dr. Trustee Symchych suggested the question was answered. Trustee Ollman wanted to know how people were notified. Mr. Brandmeier stated 2 of the 3 property owners are in favor of the work being done. It is a policy issue to determine if the property owners are to be charged back.

Discussion ensued as to the lift station to the south. Mr. Brandmeier stated Miller Eng. provided a draft report stating that with the erosion happening, the Village put in additional reventments. No costs were discussed. Trustee Fonstad stated the sole purpose was to protect the roadway, which was needed. Fig. 2 shows the outline of the block, which was intended to be a temporary fix.

Mr. Brandmeier stated the risk is greater if we don't act now. The lake has been at record high levels for 4 months. The Village could lose the road, the sanitary sewer system, and those residents could lose access to their homes. He agrees this raises policy issues, but the Village does have a valid easement and the opportunity to protect the public right of way.

Trustee Ollman stated that on page 56 of the agenda packet, a comment is made about a disaster declaration. What was that declaration and when was it approved. Mr. Brandmeier stated the declaration can be found at <https://www.whitehouse.gov/>

Trustee Ollman asked if Brandmeier had asked the owners to sign paperwork similar as that done for laterals. Attorney Larson again stated the Village has an easement to enter the property, so no such paperwork is needed.

Motion made by Trustee Fonstad, seconded by President Frazer, and carried by roll call vote (Trustee Kravit, yes, Trustee Ollman, no, President Frazer, yes, Trustee Symchych, yes, Trustee Sumner, yes, Trustee Tirado, yes, Trustee Fonstad, yes), to end debate of Item 2n, as specified in order to call the question.

Motion by Trustee Fonstad, seconded by President Frazer, and carried by roll call vote (Trustee Fonstad, yes, Trustee Sumner, yes, Trustee Symchych, yes, Trustee Tirado, yes, President Frazer, yes, Trustee Ollman, no, Trustee Kravit, yes) to approve the proposal of Accept the quote of WSO Grading & Excavating, LLC in the amount of \$65,100 for the placement of additional temporary protective structures along the shoreline from 8000 North Beach Drive north to 8040 North Beach Drive pursuant to Resolution No. 2019-22B and authorize the Village President and Village Clerk/Treasurer to sign the contract per the Director of Public Works' memorandum dated May 7, 2020.

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5. Closed Session

Pursuant to Wisconsin Statutes Section 19.85(1)(e) to deliberate or negotiate the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session: and pursuant to Wisconsin Statutes 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. Specifically, to review and discuss the impacts on the Village of Fox Point of a certified survey map recorded in the City of Glendale for property located at 6300 North Port Washington Road that is being developed for Landmark Credit Union, including an existing Village easement for a 16 inch water main and rights granted for such water main, and available legal options. Participating in the closed session will be the Village Board, Village Manager, Village Director of Public Works, Village Clerk, and Village Attorney.

Motion made by President Frazer, seconded by Trustee Fonstad, and carried by roll call vote (Trustee Kravit, yes, Trustee Ollman, yes, President Frazer, yes, Trustee Symchych, yes, Trustee Sumner, yes, Trustee Tirado, yes, and Trustee Fonstad, yes), to move into Closed Session to deliberate per Wis. Stats. Section 19.85(1)(e), as described, at 9:10 p.m.

Reconvene into Open Session

Motion made by President Frazer, seconded by Trustee Fonstad, and carried by roll call vote (Trustee Kravit, yes, Trustee Ollman, yes, President Frazer, yes, Trustee Symchych, yes, Trustee Sumner, yes, Trustee Tirado, yes, and Trustee Fonstad, yes), to reconvene into open session at 9:35 p.m.

Motion made by President Frazer, seconded by Trustee Fonstad, and carried by roll call vote (Trustee Kravit, yes, Trustee Ollman, yes, President Frazer, yes, Trustee Symchych, yes, Trustee Sumner, yes, Trustee Tirado, yes, and Trustee Fonstad, yes) to authorize the Village Manager to take such action as deemed necessary up to and including the taking of an appeal.

6. Future Agenda Items

The Village Board will act on any Trustee requests to place additional matters on an upcoming agenda, without discussion.

Trustee Kravit asked that there be more discussion on restoring the footpath on the southern end of Beach Dr. up to Green Tree Road as it would be an exceptional addition to Fox Point. All Board members were in favor.

Trustee Sumner requested a discussion and action item be added regarding mailing an absentee voting application to all village residents before elections. All Board members were in favor.

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7. Announcements

Village President Frazer stated that on May 8, 2020 the Ken Leindecker "hobby farm" property had been sold and the village netted \$67,790.80. Also, Leindecker's pickup truck was sold. We are near the close of the estate.

Trustee Fonstad - none

Trustee Symchych - none

Trustee Sumner - none

Trustee Tirado - none

Trustee Kravit - none

Trustee Ollman - none

Village Manager Scott Botcher - none

9. Adjourn

Motion made by Trustee Symchych, seconded by Trustee Fonstad, and carried by roll call vote (Trustee Kravit, yes, Trustee Ollman, yes, President Frazer, yes, Trustee Symchych, yes, Trustee Sumner, yes, Trustee Tirado, yes, and Trustee Fonstad, yes), to adjourn the meeting at 9:44 p.m.

Respectfully submitted,



*Jeanne O'Brien
Deputy Clerk/Treasurer
Village of Fox Point*