

**Village of Wadsworth  
Minutes of the Regular Board Meeting  
Held at the Village Hall  
March 3, 2009**

- Call to Order:** President Ryback called the meeting of the Village Board of Trustees to order at 7:30pm.
- Pledge of Allegiance:** President Ryback led the Pledge of Allegiance.
- Roll Call:** In attendance were Village President Glenn Ryback, Village Trustees John Nordigian, Mike DeMarco, Ken Harvey, Candye Nannini, Lynn Schlosser and Debbie Spurgeon, Village Clerk Evelyn Hoselton, Village Administrator Moses Amidei and Village Attorney William Stanczak and Village Engineer Pat Bleck.
- Approval of Agenda:** A motion was made by Nordigian, seconded by Schlosser, to approve the agenda. New Business items 11A and 11B were moved ahead to the next item. Agenda item 15b requesting 2008 Road Program approval was corrected to 2009.
- Voice vote: Ayes all, Nays none. Motion carried
- New Business:** The 2008 Wadsworth Queens and an Ambassador were introduced by Director Angelique Guthrie and Assistant Sharon Bertrand. They reviewed some recent activities throughout the community and requested the College Scholarship amount for the Queen. Miss Wadsworth 2008 Erin Swanson, Junior Miss, Little Miss and Ambassador all made brief presentations.
- A motion was made by DeMarco, seconded by Harvey, to approve the expenditure of \$1,000 for the annual Miss Wadsworth college scholarship amount.
- Roll call vote: Ayes all, Nays none. Motion carried
- A motion was made by DeMarco, seconded by Spurgeon, to approve a request by the Salvation Army to conduct their annual Donut Day and Red Kettle Fundraisers in 2009.
- Voice vote: Ayes all, Nays none. Motion carried
- Approval of the Minutes of Meeting held 11/04/08:** Motion by Nordigian, seconded by Schlosser, to approve the minutes of 11/04/08 as corrected. Spurgeon stated that corrections had not been made.
- Motion by Nordigian to table minutes since corrections were not made.
- Approval of the Minutes of the meeting held 1/06/09** Motion by DeMarco, seconded by Spurgeon approve the minutes of 1/06/09 as corrected.
- Voice vote: Ayes all, Nays none. Motion carried
- Approval of the Minutes of the meeting held 1/20/09** Motion by Nordigian, seconded by Nannini, to approve the minutes of 1/20/09 as presented. Spurgeon stated that not all changes requested since 2/3/09 were done.
- Motion by Nordigian to table minutes.
- Approval of the Minutes of the meeting held 2/17/09** Motion by Nannini, seconded by DeMarco, to approve the minutes of 2/17/09 as presented. Requests were made to add more verbatim text under 11/4/08 minutes and New Business.
- Motion by Nannini to table minutes.
- Correspondence 2/17/09-3/03/09:** All correspondence received at Village Hall from February 17, 2009 through March 3, 2009 was reviewed and placed on file.
- Public Comment:** A resident from Cashmore Road made reference to a newspaper article that mentioned her name and her objection petition accusations. She indicated that her challenge was to hear where Trustee Spurgeon lives. She is living in illegal zoning with two families living in the same house.

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She stated that she and former Village Clerk Phyllis Elsbury chuckle as they watch Trustees re-arrange meeting minutes. They have 45 years combined experience (as Wadsworth Village Clerks) and noted that minutes cannot be changed or added to or changed by Trustees. If they are not incorrect, they should not be changed. She believes there are more important things to be done than bicker and trying to get rid of the Clerk

**Bills to be Paid as of 3/3/09:** Motion by Nordigian, seconded by Nannini, to pay bills in the amount of \$21,005.55.

Roll Call vote: Ayes: all. Nays: none. Motion carried.

**Ordinances and Resolutions:** A motion was made by Harvey, seconded by Nordigian, to Adopt an Ordinance Approving the Granting of a Temporary Use Permit to the Newport Fire Protection District at 39010 Caroline Avenue. The ordinance provides a 48 month extension for the existing modular structure used as sleeping quarters for on-duty firefighters and paramedics, from 3/18/09 until 3/18/13.

Roll Call vote: Ayes: All. Nays: none. Motion carried.

**Old Business:** DeMarco was concerned that a candidate petition challenge was accepted after the regular close of business and believes it is a reflection and liability to the village. He didn't think former Mayor Furlan would have been admitted after the door was locked.

A motion was made by DeMarco, seconded by Nannini, to hire special counsel to investigate what happened with several items that didn't appear proper to him

The Chair referred to Electoral Board Attorney Kari-Lyn Krafthefer, who was in attendance. She explained that she is the supervising attorney in election law practice and is a training attorney for municipal clerks. Her firm was retained for our Electoral Board hearing. She stated that the Clerk cannot ever refuse to accept challenge petitions as it would be a liability against the Clerk. She answered Trustees' questions and advised them that the time period for such action had already passed. DeMarco asked Attorney Stanczak for an attorney. Stanczak suggested a vote be taken since a motion was made to learn what facts led up to the Electoral Board hearing. The Clerk stated that she would request an attorney to represent her in any action. Stanczak will provide an attorney he feels is qualified to represent the Village Trustees. (See attached transcript)

Roll Call vote: Ayes: Nordigian, DeMarco, Schlosser, Spurgeon, Nannini. Nay: Harvey. Motion carried.

**Village President's Report:** President Ryback inquired about hiring a court reporter as suggested by the Lake County State's Attorney to help Trustees approve minutes more easily. Stanczak provided an estimate from a service he is familiar with, which was \$185 for the first two hours in attendance, \$48 for each one-half hour thereafter and \$3.40 per page of transcript. The expense and length of transcript were discussed. No decision was made about a court reporter.

Ryback apologized to the Village Clerk and resident Joyce Shelly for an article which appeared in the Lake County News-Sun that suggested they were guilty of wrongdoing during candidate objection petition filing period.

**Village Attorney's Report:** Attorney Stanczak had no report.

**Village Administrator Report:** Administrator Amidei referred to a Lake County Municipal League Resolution of Support for the Extension of Illinois Route 53 in Lake County. The League encourages support by all municipalities to extend Route 53, improvements for Route 41 and the Route 120 By-pass, urging the Governor to provide funding to the State and County. It will also be a ballot referendum. Trustees did not think the resolution affected Wadsworth.

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Amidei also discussed a letter from Lake County Partners, inviting all local villages to participate in their proposed clearinghouse process to align DCEO/LCP/Local Community efforts to manage and fulfill prospect inquiries. Their database will list available buildings and vacant sites for business entities that wish to locate in Lake County. Nannini stated that Lake County Partners is a 501C3 Charitable Organization which is bound by strict guidelines. DeMarco stated that it was not the Village's charter to provide information. Amidei reported that the bank which is in control of Wadsworth Crossing has received a cost estimate to complete the unfinished construction project. He is also following information regarding stimulus money, but is not optimistic.

**Committee Reports:  
Road and Bridge:**

A motion was made by Schlosser, seconded by Spurgeon, to purchase a 3" Honda trash pump from low bidder Burris Equipment of Waukegan in the amount of \$1650. A pump is currently rented as needed. Administrator Amidei outlined the frequency of use and time savings by having our own pump available when flooding occurs.

Roll Call vote: Ayes: All. Nays: none. Motion carried.

A motion was made by Schlosser, seconded by Nannini, to adopt a Resolution approving the 2009 Motor Fuel Tax Road Program and to authorize the Village President and Village Clerk to execute the necessary documentation.

Roll call vote: Ayes: All. Nays: none. Motion carried.

**Ordinance Committee:**

Trustee Nordigian announced a February 23 Ordinance Committee meeting during which the automatic reduction of liquor licenses and Beer Gardens will be discussed.

**Parks and Village Hall:**

Trustee Spurgeon addressed resident Joyce Shelley, suggesting she familiarize herself with the ordinance definition of family.

**Road and Bridge:**

Trustee Schlosser reported flooding on both Delany Road and Ninth Street. Traffic warning signs had been placed nearby. She also suggested pothole patching should begin now.

**Planning, Zoning, Plats:**

Trustee DeMarco reported learning of test wind turbine that had fallen over in the county. He reported on a preliminary meeting with The Shanty for remodeling & carry-out food.

**Finance:**

Trustee Nannini had no report.

**Public Service:**

Trustee Harvey reported that the Wadsworth Queens would arrive at 8:30 AM on April 11 to fill plastic eggs with candy for the Easter Egg Hunt to be held at 1 PM. He also reported that a mailing to residents was done, offering to include additional phone numbers and two e-mail addresses on the Connect CTY Reverse 911 database. Residents can mail the form to Newport Fire Department, fax it to them or email information using the Wadsworth village website.

**Executive Session:**

A motion was made by DeMarco, seconded by Spurgeon, to enter Executive Session at 8:55 PM to discuss pending litigation.

Roll Call Vote: All Ayes. Nays – none. Motion carried  
The Board returned to regular session at 9:52 PM.

**Adjournment:**

There being no further business, the meeting adjourned at 9:53PM on a motion by Harvey, seconded by Nannini.

Voice vote: All Ayes. Nays – none. Motion carried.

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Evelyn Hoselton, Village Clerk

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**VERBATIM ACCOUNT FROM THE 3/3/09 MEETING  
OLD BUSINESS SECTION  
Second Paragraph**

Ryback: Alright, 10A under old business, discussion and possible action regarding candidate petition challenges.

DeMarco: Ummm, I guess, I guess what I would like to say is that umm, as I review what happened I have a very difficult time with the fact that after the close of business with the door locked on the last day the village accepted a petition challenge. I don't think if you went to Antioch or Zion after the close of business, if the door's locked you could get away with that. I don't think that most of the 3000 plus citizens here would come up to a locked door and still be able to file a petition challenge. I don't think Mayor Furlan would have been able to come up 2 hours after the doors were locked and file a petition challenge. I, I think that, that in my mind, is pretty clear cut and it is a liability and a reflection on the village.

That said I would like to make a motion that um, we hire a, ahh, special counsel, a separate attorney to avoid putting ah, ah Bill in an awkward position to investigate what happened and to put something together with the number of items that didn't appear proper to me.

Nannini: Second

Ryback: OK, there is a motion and a second. Counselor, may I defer to you?

Krafthefer: Sure, my name is Keri-Lyn Krafthefer, a partner with the law firm of Ancel Glink Diamond, Bush, DiCianni and Krafthefer and I am the supervising attorney for the election law practice. Just for a frame of reference, we handled 87 of these electoral board cases in the past month and do a high volume of that. I have written a couple of chapters for the Illinois legal publications on municipal elections and I am also one of the primary training attorneys for the municipal clerks of Illinois. So we teach the municipal clerks what they're supposed to be doing and what their job is with respect to election petitions and challenges. I have also been involved in several circuit court cases and even some appellate court cases involving what the role is of the local election official is with respect to some of these challenges. And because our law firm was involved in these electoral board hearings the Mayor had concern when he saw the item come up on the agenda today and he wanted me to be available to address any questions the Board may have. Now, I can tell you there is not any requirement in the election code that a municipal office has to close at a certain time. I can tell you also, that, lets say someone wanted to come in tomorrow to file election objections. Clearly the time line has passed. The clerk doesn't have the ability to reject that filing. The clerk has to accept that.

Then there is a process that is set in motion after that regarding what happens and certainly then can dispute if the objections are timely filed or if they are valid or anything like that. They can be dismissed if they are improper.

There was a lawsuit that went all the way to through the appellate court in 2001 that involved almost the exact situation. It was a little bit different but in that situation it involved a school district, the case is Welch versus Provisio Township High School District, I can get you the name and details if you want, but what happened in that instance is, sometime what you hear in valid access cases is that some

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candidates think it is strategic to be last on the ballot because sometime maybe you can get more votes just like sometimes they want to be first on the ballot. That school board secretary stayed open later than usual close of business for the school on the last day for filing, and accepted the paperwork, and processed the paperwork, and stamped the paperwork, I think their office closed at like 5 o'clock and they had petitions that were stamped at like 5:08, 5:12 and things like that and the question was then do these candidates then go on the ballot because they were filed late and was the school board secretary supposed to accept them? What was supposed to happen? And ultimately what the Appellate Court held was that if the election official was in the office after the close of business and accepted the paperwork; that was the proper thing to do because then the next step should be that the electoral board would consider any dispute about that.

Now, my partner Julie was her for your electoral board hearing, I wasn't here for that, but I understand there was questioning about the timing of the objections but if there was something improper about the timing of the filing of the objections it wouldn't be a liability against the clerk. The result would be that the objections would be deficient and they would be dismissed as being untimely, but I understand in this instance that what happened anyway was that the objections were dismissed so there is not really anything in this instance that anybody could come forward and successfully sue the Village for. Now of course people can sue and crazy things happen, it happens all the time but part of the clerk's function is ministerial, it's not discretionary, so if someone wants to come and file with her a bunch of cocktail napkins scrawled at a bar, I mean, technically she has to accept those, and then let the challenges work them out in the normal course of events.

So, um, I don't know of any law that says what she did is inappropriate. In fact in my knowledge, she really had to accept them and allow them to work their way through the system

DeMarco: So you would view it, view it as common and ethical to have somebody come up here after the door is locked, knock on the door and have the clerk come and accept it?

Krafthefer: Well you know, there are a lot of weird things that happen at election time. There are cases where the people have shown up at the clerk's house or at different places, not even at the Village Hall, not even during business hours and they show up at all these different places and we do wind up having a different lawsuit when its happened, so far while the Clerk is still there during closed hours, that one case. Even after hours, that is a permissible thing. That so far is the closest analogy to this situation.

Nannini: But your opinion would change if the petition was not filed at the village hall and it wasn't that the filing occurred somewhere else?

Krafthefer: Well, there was a case in the 1800's called Daniels versus Caverner and what happened there was someone went to file their election petitions at the clerk's house on a Saturday or a time period that wasn't appropriate at all and that was back in the days when a lot of municipal buildings didn't even have official Halls that were even staffed. In that instance the Court said that they didn't even have to accept it. That clerk properly rejected it because there was no obligation to accept the paperwork at their homes. But I don't know if that answers your question.

Ryback: This was filed here in the village hall

Nannini: What if it wasn't? We, we don't know that

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Krafthefer: You need to know the totality of the circumstances. My opinion would remain the same. If there was anything erroneous with respect to the way the objections were filed the appropriate thing to do was to file a motion to dismiss before the electoral board challenging the objection then because right now, there's not a remedy and in addition if something invalid did happen, let's say that they were filed 3 days late at the clerk's house. That's something clearly wrong. If that was not challenged during the objection period the objection still would be deemed to be valid but in this instance there's a system that says these are the rules for challenging election petitions and for challenging objections. You have to do them in a special process. In this instance, if they were filed late and that was a deficiency the remedy would be that the objection would fail and it's my understating in this case the objection did fail and the candidates are remaining on the ballot. I'm not sure why this is still even an issue here but certainly will be happy to answer any other questions.

Nordigian: If there was a concern that testimony that was given the day of the objection and the election board's review that was perjurous and there was conspiracy would there be a concern?

Krafthefer: The electoral board members are the finders of fact. If you believe that someone had perjured themselves under oath then the remedy would be to go to the States Attorney about that, just as is would be for any other violation of an oath. The States Attorney can then determine if there is any kind of violation of that. But otherwise the fact finders are the members of the Electoral board. If the findings of the Electoral Board were appealed, which I do not believe in this instance they were, and I believe the time has elapsed for that to occur, the Circuit Court would then investigate what the electoral board did that was appropriate.

Ryback: The only other clarification that I can add is that regarding the original petitions is that the County Clerk told us that we had to accept petitions the last day up until 5:00, regardless of what your village hall hours were. You needed to be there until 5:00, and I would guess the clerk assumed that 5:00 applied the following week for the objection petitions.

Krafthefer: That was a common presumption because some even thought it was extended another full day because the first day of filing for petitions was on Martin Luther King day, some of them were even accepting them the next day and really, even if they came in the next day the clerk should accept them. That is technically the correct thing to do

DeMarco: So, Glenn, if, and you were there and you heard it so, if I thought the statement I remember was "I happened to be there" so if I had to accept petitions until 5 I probably wouldn't lock the door at 2. So there's kinda, a little bit of a disconnect there, wouldn't you say?

Ryback: Perhaps.

DeMarco: So if you were there, you would lock the door and collect them.

Ryback: If the door was locked, after what has been said, they must be accepted but if it was later than that they wouldn't be timely filed if late.

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Krafthefer: Well, that's what happened. That's how the appellate court case was heard. The doors were locked and the people were processed after that time and the court had held it was still validly filed.

DeMarco: Was the door locked and people were inside, or was the door locked and people were let in after the door...

Krafthefer: People were inside the building.

DeMarco: Alright that's all the questions I have, unless someone else has something.

Nannini: I have a question. Are you charging for your time for this?

Krafthefer: I believe it's the terms of the electoral board probably.

Ryback: Does this board have the authority to make a motion and second to do anything, related to possible action on this or does it have to be done by the electoral board?

Krafthefer: Well, if the electoral board wants to pursue any further action. Was the motion to hire special counsel to investigate the clerk's action?

Ryback: Is that what the motion is?

DeMarco: Um, what was the motion exactly? Did you write it down?

Clerk: I'm not sure.

DeMarco: Let's play it back. Because it wasn't the proceedings of the electoral board in specific, it was the items leading up to that.

Nordigian: Point of order. You may pull that motion and make a new motion if your second will be pulled and just restate it instead of going back to it.

DeMarco: It might be more timely. Would we prefer that?

Clerk: It would be more timely. Did you want to make a new one?

DeMarco: For the sake of time can we re-do the motion if the board would prefer that. Alright, I think I'm saying we should hire a special counsel to investigate the handling up to the uh, ummm let me see, lets just say, and I hate to be too restrictive if we're gonna look at this but, ah, to look at this the events leading up to the electoral board. The way the village handled it.

Krafthefer: Alright, to answer the question of your motion, can the village board can hire special counsel to help them with that. To answer the question, the Board can hire special counsel to assist them with respect to their performance of their legislative functions, their lawmaking functions. Otherwise, usually Village Attorneys would be hired by the Mayor because that's what the statute actually requires and it's a change in the form of government to take those powers away from the Mayor which you would pass a referendum for. So if you're wanting someone, and I'm not trying to trip you

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up here, but I'm just trying to understand what your concern is here, if you are trying to investigate, because if you're almost thinking something criminal happened, you might be better off to have law enforcement look into that if that's what you're looking for, but otherwise it's something certainly your Village Attorney should be able to investigate for you.

DeMarco: I think that rather than trying to put the Village Attorney in an awkward position, which I think that would be, I again would do this, I am recommending to the board that its their conscious and their decision, if they want to hire special counsel to investigate it.

Krafthefer: Do you have a specific law firm or attorney in mind?

DeMarco: Do I? No, I would defer to the Attorney to recommend someone. That's all the questions I have unless the board has something.

Ryback: Does the Board have the authority to go forward and hire someone?

Krafthefer: I don't understand what legislative function that would serve.

Nordigian: Point of order. I think that's a question for our attorney, not for...

Ryback: Well we can certainly ask our attorney, but this attorney is a specialist, her field is elections.

Stanczak: Well I certainly understand that, but given the circumstances that gave rise to this I think at least a motion has been made and the board could vote on it given the fact that that it arises out of facts leading up to this electoral board hearing. Umm, I think that you have made a motion and should have it voted on and I suggest that that happen. I suggest that counsel be hired and that you...

Ryback: Who would be covering the cost of this special counsel?

DeMarco: I'm not sure you can hold this board responsible for the cost. I'm not sure if this board did anything questionable. I think that you're kinda looking at this wrong but I, I think there's, there's an expense in pursuing this and you shouldn't be treffling for this expense.

Spurgeon: It's like blaming the victim for the cost of crime.

Clerk: Can I say something? If we're going to pursue this investigation I'm going to need an attorney paid for by the village, because I am a representative of the village.

Nannini: Call the roll please.

Ryback: If there are no more questions, clerk, call the roll.

Clerk: Nordigian, aye. DeMarco, aye. Spurgeon, aye. Schlosser, aye. Nannini, aye Harvey, nay.

Ryback: Alright, so counsel will make a suggestion with regards to the situation.

Ryback: Alright, under 12A, Village President's report.....