

TOWN OF PORT WASHINGTON

OFFICE OF THE CLERK

Official Minutes of the Port Washington Town Board Special Meeting on Tuesday,
January 21, 2025, at 2:30 p.m.
At the Town Hall, 3715 Highland Drive, Port Washington, WI

Roll Call

Present: Mike Didier, Gary Schlenvogt, Greg Welton, Doris Feider-Schlenvogt-Deputy Clerk, Mike Herbrand – Town Attorney.

Ozaukee Press: 1, WTMJ Channel 4 News: 1; Public: 41

Public Comments:

Jim Dawkins, 799 Weiler's Way: Mt. Pleasant site is a smaller project than what is here. Sheboygan Edgewater plant already has plans to convert from coal to gas. It was my understanding that the two sources of power should have been redundant, not additive. Microsoft continued to purchase land out of Foxcon land, up to about 1900 (same as here). The only leverage the town has with the city is the 2004 boundary agreement, which prevents the annexation of town property outside of the growth area without the town's approval. We have this leverage until the end of this year; however, the city would like to get started as soon as possible. Thankfully, you listened to our comments last Thursday. I assume you had Mr. Herbrand draw up some amendments and legal language, which you'll approve today in a closed session. Will you present to City Council hours from now? That's our only leverage, so we have to get it right the first time.

Rick Fellenz, 4237 Highland Drive: He submitted some questions to the Economic Development Committee in the city and they responded today. What they are saying is land within proposed project site is not annexed and not sold is within the town's jurisdiction. The city would have no control over the sale of land in the town. The question about drainage: stormwater systems are found in their city ordinances; they don't address field tiles. because they don't have field tiles in the city. Didn't answer anything about the road. They said if the proposed data center does not occur then all the land reverts back to the town. It could be in the towns best interest if you let this run its course and by the end of the year we'd know what's going on. Right now, we don't.

Cheryl Wozniak, 4424 Weiler's Way: She is upset about how Port Washington is affecting our community. She respects farmers and landowners who are selling their property. She feels horrible for those trapped in the land annexation. She'd like to know that some aspects of this would better their lives. I urge the Board to actively and forcefully pursue suggestions (cell reception, connectivity, and roads). She urged the board to actively and forcefully pursue those suggestions and concerns brought forward last week by Jim Dawkins.

Public comments closed at 2:42 p.m.

Didier moved to entertain a motion to go into closed session pursuant to State Statue 19.85(1)(e) to deliberate or negotiate the purchase of public property, the investment of public funds, or to conduct other specified public business whenever competitive or bargaining responses require a closed session, specifically to amend the border Agreement and Fire Services contract between the Town and City of Port Washington will be discussed. Didier vote to go into closed session, seconded by Schlenvogt, Welton – aye, Schlenvogt – aye, Didier – aye. Motion passed.

Didier moved to reconvene in an open session at 3:06 pm, seconded by Schlenvogt. Welton – aye, Schlenvogt – aye, Didier – aye. Motion passed.

Didier restarted with meeting agenda items 5 and 6 regarding amending the Border Agreement (also known as the 2004 Litigation Settlement Agreement) with the City of Port Washington and discussion and action on possibly amending the Fire Services Contract with the City of Port Washington.

Didier - The City asked if the town would amend our Boundary Agreement to facilitate their data center before 12/31/25. After a series of meetings and discussions with the council, we have a written response to the City of Port Washington.

Didier - We will amend the Boundary Agreement from 12/31/25 to 02/01/25 with the following conditions:

- The city can initiate no annexation. The statutory annexation provision needs to be initiated by residents/landowners. The Project area would be the only part that would be retracted. The rest of the border agreement around the town would be extended for an additional three years (outside of the project area).
- The City will pay five years' worth of property tax loss to the town and additional money totaling \$150,000 per year for 5 years
- For five years after any annexed lands, their new zoning in the project area would also have to be zoned for data centers and similar uses, including for five years any current town-zoned uses, whether permanent or conditional, including residential or agricultural. We're saying it has to be zoned for data centers or related uses.
- The city has to agree to reimburse the town for any expenses related to implementing or negotiating this agreement up to \$50,000, including planner fees and legal fees.
- The city has to agree to pay for, at the city's expense, sewer and water laterals to all of Knellsville, including engineering, design, and installation at no cost to the Town of Port Washington or the Knellsville (only) landowners through assessments. When and if they do utilities to the project area, it must be done by the end of 2027.
- This whole amendment border agreement is fully contingent on the City agreeing to a developer's agreement with Cloverleaf by 12/31/25. If landowners annex to the City before 12/31/25 and they don't sign a developers agreement, the City agrees to detach the City annexation back to the Town.
- The city agrees to wave its jurisdictional authorization over Knellsville.
- The city's Fire Contract is currently extended for three years at the current rate. The Fire Contract is not written in the Border Contract. We were negotiating a contract with the City, so this was added to the City agreement.

Opened to Board member discussion or comments.

Didier - To clarify, our current fire contract is for one year at \$176,660, which is 30% of our entire levy, up 46% from last year.

Didier - Currently, our border agreement expires on 12/31/25. This response has a good chance of being approved. The city council hasn't seen our contract yet.

Agenda items 5 and 6 need to be voted on. Attorney Herbrand's recommendation on #5 is that if the city approves item 5, the Town should make it contingent on the fire services contract extension so they are tied together.

Didier motion to respond to the City of Port Washington with the border agreement amendments as drafted, contingent on the city also agreeing to a three-year extension of the Fire Services Contract at the 2025 rate, as drafted. Schlenvogt - second, Welton- abstaining from vote due to being a large vacant landowner in Knellsville. Motion passed.

Didier: to clarify: Supervisor Welton, you abstained from voting due to the fact you are a large vacant landowner in Knellsville, and this agreement includes bringing water and sewer to Knellsville that would, in your opinion, increase the value of your land along with other landowners

Welton: Correct

Didier motioned to propose the amended Fire Service Agreement with the City of Port Washington for three years, 01/01/25 to 01/01/28, at the same rate of \$176,660. Motion by Didier, second - Schlenvogt. All approved. Motion passed.

Public comments open.

Ann Comer, 799 Weiler's Way: Who is the development agreement with? Atty. Herbrand—Cloverleaf. We do not know if there is a second development agreement.

Rick Longstaff, 4476 Weiler's Way: If data center needs water and it runs down Lake Drive (town property) where/how does this happen? Didier - A city can put in utility services out of their jurisdiction. Longstaff - Will it be a public or private water utility? Didier - I believe it will have to be a public utility if the city will exercise their utility installation rights. Lake Drive is a town road. Longstaff - What about a pump station building? Didier - If outside of the right of way, the city would have to condemn or purchase the land and take over ownership. Longstaff - Potentially they could build a pump station at the end of Lake Drive up to the data center and back? Didier - Yes, they would have to acquire land for that.

Gary Anzia, 960 Lake Drive: Who would pay for water/sewer in Knellsville? Didier - The developer's agreement the city creates would decide that, but for the purpose of the new agreement, the city would pay. We do not know the cost of this. My guess is \$1,000,000 to \$4,000,000

Kim Tydrick, 4465 Weiler's Way: Can the town provide any protection for the people who live on Lake Drive, to get in and out of our homes? It is not a wide road and has a bridge. She wants to feel protected. Didier - Even if they put in water and sewer, they would have to leave a lane open. They cannot just close your road as there is no other public roadway in or out.

Melissa Alexander, 4244 Hwy H: What is the significance of extending the current Fire Agreement to three years with the city? She would like to know that in three years we will not be here again. Didier - We asked for ten, and they gave us three, and we could be here again. Alexander - Why the same price for fire for three years when we lose 20% of our land? Didier - The fire contract is going up. Fire protection is 18% of their value. We paid 18% of the fire budget (for 30 years). Now, their budget is higher (\$1.9 million per year). The city passed a referendum last year to raise the budget. Our \$176,000 is up from \$130,000 last year. Alexander - So potentially, in three years, this could skyrocket. Didier - Yes, and probably will, but for now, Locked for three years, and then we can also reassess other fire departments in our area.

John Wozniak, 4244 Weiler's Way: What is your thought process for getting through this? Didier - We discussed this with the city and our legal counsel. Our logic was we could do one of 3 things: 1) Resist, 2) Collaborate, or 3) Surrender. Resist = we say no and fight it; we found no avenue to fight this based on the facts we know at this time. Surrender = say no and watch it happen or not happen. Collaborating would be our thought process and the thing for us to do as the Town can then ask for a concession in return for amending the border agreement. So, every scenario had nothing we could do to stop or prevent so we decided to go the Collaboration route

Matt Gaulke, 3185 Green Bay Road: With this collaboration, if they do not offer water to the Knellsville area due to cost and negotiations come back, how would we up the ante if we do not get it? This would be a good benefit for the town. Didier—If they don't agree to the water or any part of today's agreement, then we can re-meet and alter or say no to the deal.

Jim Dawkins, 799 Weiler's Way: I didn't see anything in the bullet points we've discussed in our public comments. Didier - The requirements of the projects are in writing. They don't have an official project yet. We applied what we could. Jim - We've been asking for specific things. Can we request berms and landscape, setbacks, noise control, etc.? Once we lose the ability to zone it because it is annexed, we have no control over that space at all. I thought the boundary agreement could have some influence over zoning. I'm hearing two different things. Who makes these decisions? Didier - Berms and setbacks etc. were off the table since there is no site plan, and the city does not know what we are setting back from from. We did put in that it has to be zoned for a data center or related uses only. As recommended for the fear of a prison or landfill, etc. Datacenter zoning doesn't exist right now. The city has to create this zoning. Input can still be put into that, but not a part of the border agreement. The input of the town board will be the same as that of city residents. Jim - When will you deliver this to the city? Didier - Today.

Chris Karnish, 878 Weiler's Way: Has the project site changed? Didier - The project site (he showed this on a map on the wall) is from the Ozaukee Interurban Trail to Dixie to the I-43 expressway, down to Lake Drive, then it comes in (does not include Memories), then down to the expressway again, and then into edge point. This is what is in the border agreement now. and that has always been the proposed project area as far as I know.

Cheryl Wozniak, 4424 Weiler's Way: Just to clarify for me, once this agreement goes to the city and they vote on it and pass it, the town board or anyone has no say what happens. Didier - After the point when any landowners annex their land into the city, yes. Wozniak - Once the city has it (the land) we have no say. Didier - Yes. Once a municipality takes over land that municipality has jurisdiction over it.

John Wozniak, 4244 Weiler's Way: Is there a TIF, and how long would this TIF be to pay off? Didier - Towns aren't allowed to TIF. Attorney Herbrand - generally, a TIF can run up to 27 years, and then they can seek a short extension to that. They indicate that this TIF won't run the full term.

Ann Comer, 799 Weiler's Way: If there is no agreement by 12/31/25, then all bets are off. Didier - If not done by 12/31/25, this agreement is not in effect. They can take the land without an agreement. This is why we ask now. For example, we will get \$150,000 for five years. That's big money in lieu of our tax loss. They could wait until 12/31/25 and simply annex the land. Initially they wouldn't extend the border agreement at the end of the year anyway. Comer - Why would the town want that provision in the agreement? Wouldn't you rather get all of that stuff? Why is it advantageous to the town to have a developer agreement by 12/31/25? Didier - They aren't using city tax money for these agreements; they need it from the developer agreement. Attorney Herbrand - The data center is tied to our current town agreement. As of 12/31/25, the agreement would be gone, and the city would have no reason to approach the town, but for that developer.

Adam Melichar, 3985 Willow Lane: What happens when they turn this down and nothing happens until 12/31/25 when our border agreement is done? Can they keep annexing land? What will stop them from annexing land? Didier - Nothing would stop that. The annexation of the hotel across the Expressway and the Schanen property (which the city is now developing) on HWY 33 was in the 2004 agreement. Annexation laws were different then. The town objected to the best public use. The town also attempted to incorporate itself as a village back then, which would have stopped annexation. The town incorporation was denied by the WI State Department of Administration, and spent a lot of money on legal fees to end the lawsuits and fighting. The city and town made an agreement. Part of that was that Knellsville does not

ever get annexed. The developer is here because they have got flat land, big land, big landowners, close to the highway, close to the city, close to Milwaukee, close to water - that's why they landed here.

Matt Gaulke, 3185 Green Bay Road: What are the odds of agriculture thriving in this area as we move forward? Didier - That's why we must talk to the city about this moving forward. If this gets annexed, we'll have to consider our future plans. And probably redo the future land use plan

John Wozniak, 4244 Weiler's Way: If they connect this, we become an island. Do we have to be connected, or can we have an island? Don't we have to be connected to the rest of the town? Attorney Herbrand - The law has changed on that, and town islands are allowed. Didier - We already have a few Town islands on the south side. There cannot be a city island anymore, however

Ben Donajkowski, 4799 County Road LL: When did you have to respond to the City of Port Washington? Was there a deadline? Didier—No deadline was given, but they kept asking. Our only deadlines are on our current agreement of 12/31/25 and a sewer and water installation date.

Didier - closed public comments.

Didier moved to adjourn the special town board meeting at 3:45 p.m., seconded by Schlenvogt. Motion passed.

Doris Feider-Schlenvogt,
Deputy Clerk