

1. **Village Board Call to order:** President Steve Staton called the Village Board meeting to order at 6:11 p.m. on Wednesday, June 9, 2010.
2. **Village Board Roll call:** Present: Darlene Groenier, Jon Lourigan, Steve Staton, Eric Poole, Phil Harms, Randy Way, and David Donovan. Also Present: Village Administrator Mike Gracz, Chief of Police Doug Pettit, Village Attorney Matt Dregne and Clerk Assistant III Peggy S.K. Haag.

3. **Referred from June 7th Board Meeting:**

Discussion and Possible Action re: Possibly Amending or Repealing Ordinance #10-07 Moratorium of Liquor Licenses Issued by the Village of Oregon. Staton opened the discussion with requesting changing the moratorium to a two month period. Dregne said not knowing what the Village Board is going to do tonight someone could move adoption of the ordinance with whatever changes the Board thinks is appropriate. One option would be to amend the ordinance adopted 2 weeks ago. There was discussion of repealing the ordinance also. If the motion is to repeal the ordinance Dregne can work with that as well. He can have an amended ordinance ready and printed before taking a final vote tonight. Poole asked if the Board decided to change the moratorium end date it would show August 2, 2010 instead of November 30, 2010. Dregne agreed if that's what the Board wants. Dregne said based on Staton's initial comment he or someone else should make a motion to adopt the ordinance with certain changes and Staton could proceed to walk through the changes; adding some of the changes Staton may want to include are the moratorium date, limiting the types of licenses the moratorium would apply to including Class "A" beer or "Class A" intoxicating liquor licenses and allowing issuance of a Class A license to an entity purchasing an existing establishment that already has a Class A license continuing to operate at the same location but needs a new license. Attorney Jenny Yuan, for Walgreen's for the record she spoke with Staton earlier in the day to be filled in about Monday's meeting she was unable to attend. Walgreen's position is not to have the moratorium shortened. They would like action on this immediately if possible. Yuan stated if the applicant that came in on May 18th can be considered with an amendment to that application Walgreen's position is that it's not fair Walgreen's application is not allowed to be voted on and has to wait two months. Poole asked to go through all of the license classes. Dregne handed out copies of the sheet he had from the May 17th meeting. Harms said the way he understands it DeBroux's application is not included in the moratorium because he is asking for a combo license. Dregne agreed he is asking for the "Class B" Combo license and for the alternative Class "B" Beer and "Class C" Wine. Way mentioned the summary of these is on p. 58 of the May 17th meeting. **Motion by Donovan to adopt Ordinance #10-09 repealing ordinance #10-07 and waive the second reading. Second by Groenier.**

Lourigan intended to bring up discussion on the reasons why the Village needs the moratorium. Donovan said the reason he made the motion is because the Village created a situation where they are creating a clear basis against certain licenses and businesses. He feels it's not getting at the core of what he heard was an issue of the people in support of the moratorium regarding the culture of alcohol in the Wisconsin. There was discussion previously about too many liquor licenses in the area of Walgreen's. Donovan said because a large portion of retail space is located on N. Main Street the Village will naturally have more Class "A" licenses in that area. Way said another possibility for the existing establishment would be put language into the ordinance so an existing establishment with the same agent as the previous license would be able to continue with the same rights it had under its previous liquor license and deny the upgraded license until the moratorium is complete. Way said when he looks at the spirit of the moratorium all the language aside, it is essentially no new liquor outlets until the Village has time to study it. Way feels allowing an existing outlet to continue for all intensive purposes under its existing license serves the spirit of the ordinance although the original ordinance did not address that. Donovan said that he doesn't know that he would object because it is an existing license but there is the potential that the same business or the successor business wants to expand and that's where Donovan feels the Village is getting into the position of creating a change of bias or showing preference to a business

already in place, but not willing to do that for another business that is already in place. Harms does not like the idea of cherry picking and he feels that is what is happening. He is to the point of voting against the moratorium. He feels there needs to be a remedy of some kind. He likes Trustee Way's idea to allow the existing license continue as is. Harms said if the licenses came forward in two months after researching and some clean up a he might be ok with the moratorium. If he has to make a decision tonight he can't vote in favor of the moratorium. Staton feels Way's perspective takes care of that.

Lourigan said he contacted Representative Brett Davis to have a short discussion about alcohol policy. He gave Davis a copy of the document Judge Cox gave the Village Board requesting him to review it and see what he can do legislatively at the state level to give Villages more latitude on decision making policies as far as alcohol policies go. Davis said he would review it and get back to Lourigan. Lourigan also said he wanted the Board to know this subject will also be discussed with Representative Hebl. Donovan wondered if there is a way to compromise on the moratorium, he thinks there may be better ways to deal with this outside of the moratorium, for example sticking to the two month deadline and get something the Board can consider on limiting licenses or whatever the criteria might be. Poole asked if the moratorium is no longer existing and Walgreen's application comes before the Board at the next meeting and the Board would like to take time to discuss and make changes of how the Board issues licenses can that license be tabled for a month while the Board does that or does it have to be acted on? Dregne's said he believes the Board could table the application. He believes there is a risk at some point one could argue that postponing a decision on a matter amounts to a denial. Dregne is not sure at what point that line is crossed and said the Village may not know until a judge would make that decision because he has not seen many cases addressing this issue. Dregne said a month is not particularly a long time but we are discussion an application that was submitted initially in March which would possibly table this for 90 days. Dregne said this could be looked at if the Board wants to pursue that issue further. Way said the Village is three weeks into the moratorium and the Board has not had an opportunity to research possible changes to the Village Ordinances or discuss the moratorium further which gives Way the impression that 2 months is not enough time when taking into consideration other things the Board will have to start addressing in the next 6 months. If the Board would be able to get this done earlier then the moratorium could be repealed early. Staton has a list of possible things municipalities can do with this issue because he feels the Board needs a starting point. Staton suggested discussing things June 14th, June 21st, or 28th giving the Board an opportunity to put a few things into place by the middle of July.

Poole wondered what licenses the state has caps on and Chief Pettit and Dregne said the B Combo license and the Reserve Class B. Dregne said he would have to do some research to verify the Class B (the second) license would be covered by the quota. Poole said we could realistically pull those licenses off of the ordinance since the state already has limits on them. Way said on the original draft of the ordinance there was bold text basically stating if a license was surrendered it could be issued to another party. Way said maybe what accomplishes this most easily is to put the bold text back in. Dregne said this would then apply to any classification of license so if the Village has already issued 20 Class "A" licenses and 1 is surrendered during the time the moratorium is in effect then someone could apply for that surrendered Class "A" license and it could be issued. This would cap the number of licenses issued for all classifications of licenses at the number that is currently issued. Dregne said that is a complicating factor because two "Class B" licenses are not currently issued. There would have to be special language for the two "Class B" licenses. Way said putting the bold text back in the ordinance would allow Mr. DeBroux to continue under a license that is identical to his previous license but not to upgrade. Dregne agreed he is correct if this was done exactly the way it was before. Dregne said the Village could also treat the "Class B" subject to the state quota separately and exempt those from the moratorium entirely. What this would say then is the Village "Class B" licenses would be capped at the number the Village is allowed to issue under the state quota and the other classifications would be capped at the number presently issued. Way said it seems it would be more fair to insert the text as it is in the original ordinance in the sense the original ordinance with the bold text with in it said no changes, aggregate all together liquor licenses in

the Village of Oregon can't change and we are denying one applicant for a new license and it isn't fair to allow an existing license holder to essentially upgrade a license when we said no to a new license from another party. Way said maybe the fair compromise is no movement on anything.

Chief Pettit said in looking at the statutes under §125.51(1)(c) it states all applications filed with the municipal clerk on or before April 15th must be granted or denied no later than June 15th. This does not prevent applications from being filed at any other time and approved by a governing body under §125.51(1)(c). Dregne said the legal significance of that language raises a question of whether or not the moratorium adopted essentially suspends the Village's consideration of an application prior to that date. Dregne then suggested the Village can deny on the grounds there is a moratorium in place assuming the Board's direction to Village Attorney is to find a way to preserve the moratorium that is consistent with the state statute. Staton asked Walgreens if they would give the Board until July 19th to study this. Attorney Yuan for Walgreens said they would like an answer before the deadline in the statute. Yuan stated it appears to Walgreen's the Board is trying to go out of it's way to grant a license to one applicant that was considered when the moratorium was placed in effect on May 17th. Yuan would ask that the Board consider Walgreen's application immediately on its merits based on the facts the Board has considered liquor licenses in the past. She said there seems to be an issue of security with the Walgreen's store but this will be less than 2% of Walgreen's shelf space, less than 5% of their total sales, and is in direct response to customer requests. Walgreen's would like to be a business in the community to set a good standard in responsible sale of alcohol in the Village. Yuan doesn't believe there is concern from any opposition regarding Walgreen's ability to sell beer or wine in a safe and responsible manner or any concern minors will access alcohol because there is a secure system. Walgreen's would like the Village to act immediately.

Lourigan asked Gracz if he or Dregne had an opportunity to address his questions. Gracz said the first question is can the Village adopt a new ordinance tonight without going through the posting or publication. Gracz told Lourigan there are ordinances the Village adopts that require a public hearing. Gracz said typically when there is an ordinance on the agenda there is a first reading, a posting so the public can review it and bring it back to the next meeting for adoption. Dregne said if that is the Village's rule that process would have to be followed or the Board can agree to waive that rule if the Village wants to adopt tonight. Dregne said if that is just practice the Village is not bound by it, but if that rule is adopted by ordinance, the ordinance cannot be adopted until a second reading is done. If that is the way the Village wants to proceed, the first reading should be done tonight and schedule a second reading at a later meeting or waive that requirement. Dregne said the Board can always agree to waive its own rules. Lourigan asked about publication. Dregne said he believes if the ordinance is adopted it would not take effect until it is published. Lourigan said if ordinance #10-09 were adopted tonight we can't take action on the petitioner until the ordinance has been published. Dregne said that is his recommendation. Donovan asked if the Village could not treat a new moratorium as an amendment to an existing one so the Village would not have to worry about publishing, a first and second reading. Dregne said if the existing moratorium ordinance is amending it would need to be amended by ordinance, in essence adopting a new ordinance. Dregne's understanding is the ordinance would not be legally effective until it is adopted and published. He thinks the publication requirement needs to be addressed. In regard to Donovan's other question Dregne said the amendment would not take effect until published. There would still be publication requirements because it is still a new ordinance.

Lourigan moved to approve the Walgreen's liquor license as submitted and Groenier seconded it and then Poole moved to table it which was seconded by Harms (at the May Meeting). The second motion passed to table the license so Lourigan's question to Gracz on the phone was that the license has been tabled and if you enact policies during the moratorium that would impact that license, can you do that? Dregne said as an off the cuff answer he thinks the question asks whether or not an applicant such as Walgreen's contains a vested right to have the Board act on its application upon either the filing of the

application or at the time a motion to approve the application is tabled. Dregne thinks based on the law and date the application was submitted he hasn't seen case law that says a vested right applies to that kind of application, but this has not been seriously researched. Dregne has seen a vested right analysis applied only in the context of property law. Is a similar analysis potentially applicable to this, not that Dregne has seen. Is there legal significance that attaches to the tabling of a motion to approve the application? If that was tabled, would new regulations following the tabling of that motion be applicable to the application, to Dregne the answer is likely no. Dregne said under Village ordinance two readings at two separate meetings are required unless the Board agrees to temporarily suspend that rule so in order to adopt the ordinance tonight the Board would have to also vote to suspend the rules. Staton looked at the moratorium as a chance to step back, look at licensing and what the Village can do to have an impact on that. Staton would like to spend as much time on future restrictions, regulations and requirements as there has been on the rest of this discussion and then maybe the Board could get something done. Staton said it seems there is a commitment by everybody on the Board to talk about restrictions and regulations regarding alcohol licensing in varying degrees. Staton reminded people the moratorium was not his idea. He said he would like to hold discussions on liquor licensing and what the Village can do. If the Board is committed to that he has no problem lifting the moratorium because more time is being discussed about the moratorium instead of the real issue. Donovan agrees with Staton and even mentioned having a due date for discussion so it puts pressure on the Board to get things taken care of. It was decided to continue discussing this as a Board and having a special Board meeting.

Way feels without a moratorium the Village exposes themselves to more complex situations while trying to get this decided as additional requests may come in. Way thinks the Board anticipated not receiving applications while having the moratorium but that has not happened. Way said there were unforeseen hardships by this moratorium that could be fixed by adding the bold text back in that was in the original draft, fixing the problem without abandoning the moratorium, giving the Board the ability to stay focused in their efforts to come up with a model in how to regulate this. Staton has the same concern but feels if another applicant came in the application could be tabled. Way thought the motivation to have a moratorium was if after the tabling a decision is made and it is not favorable to the applicant the Village would be in a stronger position. Way thinks the applicant can argue that the Board deferred this intentionally knowing there would be new rules. Tabling puts the Village in a less strong position.

Dregne recommended a moratorium be used if the Board's objective was to avoid having to act on applications while developing new regulations. He had two reasons for this; first while there was one application pending at the time this was initially discussed the Village did not know how many more applications might come in. A moratorium would create a regulation adopted by ordinance giving the Board a firmer legal basis for not acting on an application than tabling. Dregne said given the statute brought to the Board's attention tonight if the Board wishes to achieve that sort of result he would modify the ordinance further to say any applications submitted or pending during the temporary moratorium may be denied on the grounds the moratorium is in effect. Way said if that goes into the ordinance and Walgreen's application is denied does Walgreen's have the right to reapply? Dregne said Walgreen's would have the right to reapply. Lourigan said maybe it would be fair to consider repealing ordinance #10-07 take action on the applicants in item 7c and reapply ordinance #10-09. Lourigan asked if Walgreen's could be acted on tonight. Dregne said the agenda is not structured in a way to allow that. Dregne said if the moratorium ordinance is repealed by ordinance tonight that would not take effect until publication and the agenda for the meeting tonight says the Walgreen's liquor license is a future agenda item. Dregne does not believe the Board would be able to vote on the Walgreen's application tonight. Dregne said in order to avoid a legal argument by Walgreen's the Village should hold a meeting on or before June 15th and act on the license at that time. If the Village would like the moratorium to apply to the Walgreens' application the Village would need to vote to deny the application on the grounds the moratorium is in effect. Dregne feels this would be the Village's strongest position relative to the Walgreen's application. Staton asked if the Village repeals the moratorium and acts on Walgreen's next Monday the 14th the Village meets all requirements. Dregne said the Village may have issues because the

repeal would not be published. If the action is to approve the application some may say the approval is questionable because it was approved during the pending moratorium. The amendment to the moratorium would not take effect until the Thursday after the Monday night meeting. There was discussion about publication.

Way said if the Village repeals the moratorium tonight it guarantees an unconditional approval of the Walgreen's license on the 14th. Dregne said that is not necessarily the case. Way asked on what grounds the Board would deny the application. Dregne said the Board would have the same discretion to act on that license you would have had if the moratorium had never been adopted. Dregne said the nature of the discretion the Board has when acting on such an application was discussed at a prior meeting. The decision to deny in Dregne's opinion would need to be rationally related to some concern the Board has about public health, safety or welfare. The discretion the courts have characterize the Village Board having is broad in that regard so issues such as the number of outlets in an area would still be relevant for discussion. Way said it is Dregne's feeling the Board may be able to deny based on a rational basis. Dregne said that is possible. Poole pointed out items 3b and 3c on the Agenda tonight for Mr. DeBroux and asked what the Board can do to remedy his situation because everything has to be posted. Dregne asked when DeBroux's application was filed. One application was filed April 13th and the other May 18th. Dregne said the April 13th application would need to be acted on or before June 15th. Dregne said there would be a bit of an issue if the Board voted on the application before it is published while the moratorium is adopted and is in effect. Dregne said one of reason for denial would be the moratorium is in effect. If the Board was to grant the application on June 15th someone might argue the application was granted improperly because the moratorium was in effect. One response to that may be that the Board came to the conclusion the moratorium did not allow the Board to operate in the manner they thought it would. Dregne said we will just have to see what happens if there is an objection and if anyone would chose to take legal action on that basis. There was discussion about the local newspaper and if it could be changed temporarily. Donovan said if the Village removes the moratorium and acts on the Class B Combo for DeBroux and he doesn't want the other license that gets the Village in trouble. The problem is there is a pending application submitted prior to April 15th for the Class B and Class C license.

Gracz said there is a motion by Donovan and second by Groenier to repeal the moratorium but it hasn't been voted on. The Board is talking about all of this assuming the ordinance is going to be repealed. Gracz said it might be better to take the first step and then deal with other issues. If the motion fails this discussion isn't applicable. Poole said people may want answers before voting so they know how they will vote. Dregne said it was asked earlier when a tabling of an application or non action may cross the line. The statute discussed tonight only imposes this time frame with respect to applications filed by April 15th. With respect to licenses that are applied for other times of the year, the governing body may accept and act upon any applications filed at any other time but does not apply a deadline. Dregne said if there was not a moratorium in effect and the Village received an application tomorrow, the Village would not be subject to a statutory deadline for acting on it. This suggests the Village could take some time when looking at regulations before acting on that application with relatively less risk with applications submitted on or prior to April 15th. Gracz said that since DeBroux's "Class B" Combo application was submitted prior to the moratorium going into effect DeBroux would not have to resubmit the application. Dregne said an alternative to a moratorium may exist for the time frame not in the April 15th to June 15th timeline with respect to applications submitted going forward. There is still a question regarding the pending applications. Way asked if DeBroux's application for the "Class B" Combo license was filed prior to the moratorium. Gracz agreed that is was filed after adoption but prior to the ordinance being published May 27th. Way said the Village could deny DeBroux's Class "B" and "Class C" license on the grounds it falls under the moratorium. Way asked then if the Board could act on that license and the moratorium has no effect on DeBroux's applications? Dregne said that would be incorrect, the position the Village has taken is because the Board hasn't acted on the application yet. The moratorium did take effect before action was taken and applies the same way the Village has taken that position with

Walgreen's. The Walgreen's application was also filed prior to the adoption of the moratorium ordinance. Gracz said that is why the day DeBroux came in he and Chief Pettit interpreted it was before the May 27th publication but Dregne was right that anything in the cue was frozen. Lourigan asked if the moratorium is lifted and an application is in the cue who would come first, the applicant on the table or the applicant present before the Village. Dregne's intent and his understanding of the Board's intent was that applications would be stayed pending the moratorium, when the moratorium terminates they would be placed before the Board for consideration in the order in which they were received. Dregne's concern is with regard to "Class B" licenses because there are only two possible licenses. If there were more than two applicants, the order in which they were received would be important. Dregne said given this statute he is not sure if the Board can suspend consideration of licenses received prior to April 15th. If the Board is not ready to grant the license it looks like it would have to be denied. One basis for denial would be the moratorium.

Donovan asked Dregne if there are provisions in state statutes that allow the Board, if we know the local ordinance is incompatible with state ordinance, can act under the state regardless of the Village ordinance. Dregne one reason the Board could have for taking action would appear to be inconsistent with an ordinance. The Board could conclude that its ordinance is not applicable or enforceable because it is impermissible under state law. Dregne provided an earlier memo to the Board that talked about a number of issues relating to alcohol beverage licensing. One of the conclusions is the Village's authority to adopt regulations in this area is such that regulations cannot be inconsistent with Chapter 125. In order to be consistent with Chapter 125 the Board would have to address the deadline of June 15th. Donovan said the reason he asked is because it allow the Board the opportunity to act on both of the existing applications (DeBroux and Walgreen's) by June 15th and be legal even though we don't have a published amended moratorium or a lifted moratorium because it's incompatible with state statutes. The deadline takes precedence so this is a way of considering both applications. It doesn't address the moratorium and what the Board wants to do with the "Class B" Combo. Donovan said since DeBroux's "Class B" Combo application came in after the April 15th deadline there isn't a mandate that the Board has to address the application by June 15th. The application came in before the moratorium was published so there is nothing telling the Board to act on that application before the action taken tonight and have it published next Thursday. This gives the Board a chance to make sure DeBroux's Diner is legal or Walgreen's is legal. Way said to summarize options the Board could repeal the moratorium and approve the pending liquor licenses and risk the criticism approving liquor licenses prior to the publishing of the repealed moratorium. We could allow the moratorium to stand and deny the liquor licenses suffering the criticism the Board is not in compliance with the statutes or we can allow the moratorium to stand, issuing the two licenses we are statutorily compelled to issue and not be subject to anyone's criticism. There was discussion about a new application coming in and not having to do anything legally until the following April. Way said if the Board issues the licenses state statutes compel the Board to act on, Walgreen's would get their license, DeBroux's Diner would get its Class "B" and "Class C" license but not a "Class B" Combo license if approved. Way said you would be getting almost what the moratorium asked for which was the smallest possible change in liquor licenses. Dregne said this is correct but added if the Board wants to keep the moratorium ordinance in place under the scenario Trustee Way just described Dregne asked that the Board give him the opportunity to consider whether there should be any adjustments to reflect the new things learned and report back to the Board.

Donovan said he thinks Way described everything correct but thinks the Village can also lift the moratorium and anything that comes in between now and next April 15th can be tabled. The Board does not have to act upon anything immediately and the Village gets the same effect as the moratorium. Chief Pettit said one could make the argument that the moratorium when into effect before April 15th and by statute a municipality has to act on those by June 15th. The moratorium really came too soon to have it in effect for the rest of the year. Poole asked if the moratorium is incompatible why would it stop the Board from giving DeBroux's Diner its combo license. Dregne said the question of whether this moratorium

ordinance or one that might have some adjustments to it is or is not within the Board authority to adopt is a very complicated question. He thinks there are more and less defensible ways to structure a moratorium. Dregne said a moratorium ordinance that simply puts a cap on the number of licenses issued is easier to defend because it is within the Village's authority to put a cap on the number of license the Village will issue. Dregne highly suggested granting or denying the two applications that came in to Village Hall on or before April 15th.

Gracz would like to know if the Board would like the "Class B" Combo license on as well. Staton asked if it is better for the Board to repeal the moratorium or leave it and restructure it. Dregne said for applications that need to be acted on by June 15th he didn't think it would matter. The application that came in after April 15th assuming the Board wants to adopt some kind of moratorium what is the best way to do that? Have it in place prior to April 15th, go to a quota system in the sense you are putting a cap on the number of licenses issued with the exception of "Class B" which already has a quota under state law. As for Walgreen's and DeBroux's Diner, applications submitted prior to April 15th it is more complicated in trying to apply the existing moratorium and how to defend it. It seems to Dregne he would rather have the Board vote on the applications based on the merits and decide to deny or approve. Way said there are some points to make. One is that even if you repeal the moratorium the Board will have to act on the two applications that were in the cue prior to the moratorium being published, so repealing or not repealing doesn't make a lot of difference. Secondly, if the moratorium is repealed we are essentially going forward with a gentleman's agreement that we will table all in coming applications. Way's thought is if the Board is really committed to this it seems like a fair compromise to leave the moratorium in place. If the Board can come to a consensus tonight it doesn't matter who asks or what the circumstances are the Village has agreed licenses that come forward don't have the statutory component to them will be held in abeyance. To get to Dregne's point about setting a cap, Way's question if the bold text was reinserted in the original draft does that give you that cap? Dregne said yes as to redrafting the language and revising it somewhat. Right now he has a sentence that says, "If any license in effect on the effective date of Ordinance #10-07, the original moratorium ordinance, is relinquished during the temporary stay the Village Board may process and issue an application for the relinquished license". That would place a cap at the number of licenses in effect on the date the ordinance was adopted. The "Reserve Class B" license currently available under the quota could not be issued and the Hawthorn's license could not be issued either. If you want the ability to issue those licenses during the temporary moratorium Dregne would have to add an additional provision to the ordinance that would say the appropriate "Class B" licenses could be issued up to the quota that applies under state law notwithstanding the moratorium.

Gracz said if you repeal the moratorium and have this gentleman's agreement the issue is not going away. With or without the moratorium if the Board is going to be tabling licenses, there will still be an issue with someone coming in and wanting a license. Staton said if the Board gets working on this it will not be an issue and is an incentive to get this done. Dregne said to make things clear *Option 1* is to repeal outright, *Option 2* is to amend the ordinance adopted previously in the way just discussed, and *Option 3* is an amended ordinance that Dregne thinks reflects some of the discussion heard assuming the motion to repeal is not adopted. Donovan addressed Way's comment agreeing this would be a gentleman's agreement moving forward but it is also a gentleman's agreement if the moratorium is in place that we won't come back and visit this because one of us thinks that the Board has to address a new business coming in. Way said he thinks the moratorium is a little more structure because you can't say well we are going to change the rule tonight. If the Board wants to change the rule there needs to be an ordinance to change the rule and it slows the process down. Way would argue it's a fair compromise to amend the moratorium to reflect the original bold text which would cap the number of licenses but not disallow issuing new ones and address the applications currently in the cue moving forward. He feels this is the middle ground of all the possible outcomes. Gracz asked with the new language if Chuck Elliott found someone in the next few months for a restaurant on the east side the Board could consider giving him that license for the restaurant. Way agreed that would be correct. Lourigan said there is a vacant restaurant on

the east side so that property becomes more unattractive by this because it does not have a tenant with an active license so you're inhibiting the business. There was more discussion. Way said if repealing doesn't have an effect on the licenses at hand why not leave it in place and make an amendment to add the original text back in which will allow trading of licenses under the cap. Way would like to know what the Village gains by repealing the amendment.

Motion by Lourigan to end debate. Second by Donovan. Dregne said the issue before the body is whether to end debate on the main motion with discussion limited to that issue. Way asked that debate not close until Board members answer the question as to what the Village is gaining by repealing the moratorium. Harms said Dregne said the moratorium should have been in place prior to April 15th because it would strengthen the Board's position. Way said he doesn't think the Board should close debate until he can understand what the advantages are for repealing the moratorium. **Roll call vote: Groenier -yes; Donovan - yes; Staton -no; Lourigan - yes; Way - no; Poole - yes; and Harms - no. Motion carried 4-3.** Dregne said now the Board is on the main motion which is to repeal Ordinance #10-07 and Dregne does have the drafted motion on his computer if the Board would like to see it. Lourigan asked the Board to take a quick recess while Dregne prints this out to submit to the Board out of respect to Way. Ordinance #10-09 will say, "Ordinance #10-07 is repealed". There was some discussion. Lourigan asked the motion be read back. Dregne said the motion is *to adopt ordinance #10-09 which would repeal ordinance #10-07*. There was unanimous consent to amend the motion changing it from "repealing the moratorium" to "repealing ordinance #10-07". Gracz said there is one more technical point if the Board wants this to be adopted tonight they need to waive the second reading. There was unanimous consent to suspend the rules as well. It was made clear that a "yes" repeals the ordinance and a "no" retains it. **Roll call vote: Harms – yes; Way – no; Staton – no; Groenier – yes; Donovan – yes; Poole – yes; Lourigan – yes. Motion carried 5-2.**

- b) Discussion and Possible Action re: Consideration of Request from DeBroux's for a "B" combo license (current license Class B Beer C Wine). This is the former Hawthorn's license that DeBroux applied for May 18th. Staton asked if this could be acted on tonight. Dregne said the Village should not act on this one. **Motion by Harms to wait on approving the May 18, 2010 DeBroux license until after publication the Ordinance #10-09 for a "Class B" Combo License. Second by Donovan. Motion carried 7-0.**
- c) Discussion and Possible Action re: Consideration of Request from DeBroux's for Class "B" Fermented Malt Beverage & "Class C" Wine. **Motion by Harms to approve the request from DeBroux's for Class "B" Fermented Malt Beverage & "Class C" Wine. Second by Poole.** Dregne said for reasons already discussed it would be appropriate to act on this tonight and for Walgreen's to understand that it is the Board's intent to act on the Walgreen's application on or before June 15th. Staton agreed that Walgreens would be acted on Monday, June 14th. Dregne said the Board cannot act on Walgreens tonight because it is not on the agenda. **Motion carried 7-0.**
- d) FYI Only – Class B Picnic License for Beer for Summer Fest Event: Address on Chamber license application and 300' Set Back Requirement (Chief Pettit). Chief Pettit mentioned there were questions with the Chamber's Temporary Class B license application for Summer Fest. The secretary for the Chamber provided her business address instead of her home address. Pettit consulted with Roger Johnson who indicated if someone objects to the application it should be amended to show the home address. The issue with regard to the 300' set back is not a regulation for a Class B license. The 300' set back pertains to Class C licenses and B Combo licenses. Donovan asked if the Board needs to take action on the amended application. Pettit said this is just a clerical change.

- e) General Liquor License Discussion (Village Staff). Staton asked if Walgreen's had any questions. Attorney Jennifer Yuan asked when the application would be acted on. Staton said it will be June 14, 2010 at 6:00 p.m. Gracz said an agenda will be mailed to them. In going back to the general liquor discussion Gracz said staff noticed per the Village Ordinance a liquor license cannot be issued if there are outstanding fees. There are a few businesses that have minor bills to take care of. Hoeft has notified them and a few have already come over to pay.

The Board took a five minutes recess from 8:10 p.m. – 8:15 p.m.

4. **Communication & Miscellaneous Business – Referred from June 7th**

- a) Discussion and Possible Action re: Ordinance #10-08 -- Smoking Ban (accept the first reading, waive the second and adopt Ordinance). **Motion by Harms to Adopt Ordinance #10-08 on the Smoking Ban in the Village of Oregon accepting the first reading, waiving the second and adopting the ordinance. Second by Poole.** Chief Pettit said this adopts the State Statute as it was adopted. Donovan asked if this is something all communities have to do. Pettit said it is. Lourigan asked if this includes private clubs to. Pettit said it does and that there is a legislative summary that gives more detail than the State Statute does. Prior to this going into affect July 5th the last state session the statute was already amended to provide for enclosed smoking rooms within a facility. If a facility wanted to build a smoking room with the requirements set out in the statute they could. **Motion carried 7-0.**
- b) Discussion and Possible Action re: Authorizing Village President to Sign Addendum to Purchase of Service Agreement with Dane County for HIPAA Regulations (Senior Center). **Motion by Way to authorize Village President to Sign Addendum to Purchase of Service Agreement with Dane County for HIPAA Regulations. Second by Lourigan. Motion carried 7-0.**
- c) Discussion and Possible Action re: Authorizing Pavement of Composting Site in the amount of \$10,440. Gracz said this is the quote Below received from Dane County as part of their paving program. This has been discussed between staff a few times and as much as they would like to see the whole area cleaned up the Village can't afford to so what is being proposed would allow the Village to put down asphalt along the drive and entrance to the ice arena. Harms confirmed that this would be a continuation of the street to loop down and back out again. Gracz said there are some large pot holes and fixing them with gravel is not lasting. Lourigan asked which account this comes out of because it is a considerable amount of money. Gracz said it comes out of the street program. **There was discussion but no motion was made. Put on next agenda for approval.**
- d) Discussion and Possible Action re: Approving Revised Job Description for Village Clerk/Deputy Treasurer. Gracz said he and Hoeft made some revisions. The largest change is to the area about supervising the Deputy Clerk/Deputy Treasurer and the Custodian staff; by doing that this position would not be eligible for overtime. **Motion by Lourigan to Approve Revised Job Description for Village Clerk/Deputy Treasurer. Second by Way.** Harms asked what the description was before, what former Clerk Johnson had worked under. Gracz said the supervision is the largest change. He also said some items of the job description are clarified more, for example, processing bankruptcy claims. **Motion carried 7-0.**
- e) Discussion and Possible Action re: Approving Updated FMLA Policy. **Motion by Lourigan to Approve Updated FMLA Policy. Second by Groenier.** Gracz said this had to be changed to comply with leave to care for service members. The Federal Government added this and now the

distinction has been made that the employee must now request leave and the employer must respond by granting or denying it. **Motion carried 7-0.**

- f) Discussion and Possible Action re: Resolution #10-13 Approving Compliance Maintenance Annual report. **Motion by Lourigan to Adopt Resolution #10-13 Approving Compliance Maintenance Annual Report. Second by Way.** Gracz said this is done every year by the treatment plant. Below wanted to note there are two items they did not receive an A. One was I & I which is infiltration into the sewer system. Below will be talking to the Board about this issue and Phosphorus levels. The Village received B's on these two items. Lourigan asked where the phosphorus comes from. Gracz said it has started entering the plant and the DNR has proposed stricter phosphorus control which could cost the Village anywhere from \$800,000 to \$1 Million. Lourigan asked if this is from spraying lawns too much. Gracz said it could be and that phosphorus also comes from fertilizing agricultural land. Donovan said it is illegal to spray fertilizer with phosphorus in the State of Wisconsin unless you are starting a new lawn. Gracz said a group the WWTP operators are arguing against the DNR regulation. Donovan asked what the margin is between the design capacity for our BOD concentration and what our average is. Gracz said Below knows more about this and he would like to talk to the Board about the I & I problem in further detail. Gracz said this also ties in with the sewer discussion as well. **Motion carried 7-0.**
- g) Discussion and Possible Action re: Resolution #10-15 applying for a State Trust Fund Loan in the amount not to exceed \$1 Million for the purpose of financing land acquisition, installation of stop lights, and construction costs for Braun Road (Roll Call Vote). **Motion by Poole to Adopt Resolution #10-15 for a State Trust Fund Loan in the amount not to exceed \$1 Million for the purpose of financing land acquisition, installation of stop lights and construction costs for Braun Road. Second by Groenier.** Donovan asked if the loan may be used for recreational purposes or only street improvements. Gracz stated the loan in front of the Board needs to be used for the Braun Road construction, but communities may request a State Trust Fund loan for recreational projects. In order to do that you need to go through the same application process. Lourigan stated the loan is to be repaid by TIF #2 only. Lourigan said the Village is going to install stop lights at Braun Road and questioned if the Village has cost estimates for this. Gracz said yes we have an estimate from the engineer. Lourigan is concerned with the driveways at the corner of Braun Road and the possibility of the Village paying for relocating them. Chief Pettit said he knows that Braun Road will have a call light; it is not going to be on a timer so you have to be on Braun Road for it to trigger, but he does not know how much it will affect the driveways. Lourigan is concerned when this goes for approval at the county level it will be kicked back and the Village will incur extra cost. Gracz said Below has talked to Dane County and they did not express any concerns about installing the lights. Gracz stated that it is a 10 year loan. It was decided to take out a 10 year loan instead of 5 because staff feels the loan could be paid off sooner than 10 years. **Roll call vote: Harms – yes; Lourigan – yes; Groenier – yes; Donovan – yes; Staton – yes; Way – yes; Poole - yes. Motion carried 7-0.**

5. Report of Committees

a) Planning Commission 6/03/10 (Trustee Harms)

1. Discussion and Possible action regarding the proposed site plan amendment at Oregon Middle School (storage shed and score board). **Recommended Motion: Approve the minor Site Plan amendment of the Conditional Use Permit allowing for a storage shed and score board as presented.** **Motion by Harms to approve the minor Site Plan amendment of the Conditional Use Permit allowing for storage shed and score board as presented. Second by Groenier.** Harms said this is at the middle school on 601 Pleasant Oak on the north side of the football field. There will be a storage shed

about 10' x 17' with a scoreboard. The scoreboard will be used for soccer as well. The youth programs are paying for it. **Motion carried 7-0.**

2. Discussion and Possible action regarding the preliminary certified survey map for lots 32 and 52 in the Oregon Parks Neighborhood. Recommended Motion: Approve the preliminary certified survey map for lots 32 and 52 in the Oregon Parks Neighborhood per Ruckert Mielke's memo dated June 3, 2010, which is consistent with the Village's Comprehensive Plan. Motion by Harms to approve the preliminary certified survey map for lots 32 and 52 in the Oregon Parks Neighborhood per Ruckert Mielke's memo dated June 3, 2010, which is consistent with the Village's Comprehensive Plan. Second by Lourigan. Harms said on May 26th Ruckert Mielke had some concerns about the survey and by June 3rd they were taken care of. **Motion carried 7-0.**
3. Dane County Zoning and Land Regulation Committee rezoning request for 5207 Lincoln Road from A-3 Agriculture to RH-2 Rural Homes (Roger Parsons). Recommended Motion: Take no position regarding the rezoning request for 5207 Lincoln road from A-3 Agriculture to RH-2 Rural Homes. Motion by Harms to not take a position regarding the rezoning request for 5207 Lincoln Road from A-3 Agriculture to RH-2 Rural Homes. Second by Lourigan. Harms said this is the last division of the property owned by Roger Parsons south of Lincoln Road across from Bergamont. Parsons is taking a driveway off of Lincoln Road back to a 4-5 acre parcel similar to what was done on the west end of the property. Donovan asked if this is being done to allow Parsons to divide the property or put it in the right zoning classification. Harms said it is to divide the property to build a house. The farmstead is there and this will be the second new house. **Motion carried 7-0.**
 - b) Minutes Not Requiring Action
 - 1) Oregon Area Fire-EMS Commission – April 14, 2010.
6. Unfinished Business. None.
7. Future Agenda Items
 - a) Schedule League of Wisconsin Municipalities Mutual Insurance Company's Viewing of DVD on Public Officials' Liability
 - b) Review of Operator's License of Nicole Ellsworth 8/1/2010
 - c) Walgreens' Liquor License after Moratorium Expires (December, 2010)
8. The Village Board may adjourn into closed session from time to time during the course of the meeting pursuant to §19.85(1)(e)) **to discuss possible acquisition of approximately (14) acres of vacant property located adjacent to the Westside Community Park and to discuss Village's negotiations with hotel developer.** Gracz said there was nothing new to report on this. The Board did not go into closed session.
9. Adjournment: Lourigan moved to adjourn the Village Board meeting at 8:34 p.m. on Wednesday, June 9, 2010. Second by Groenier.

Respectfully submitted by,
Peggy S.K. Haag
Clerk Assistant III