

TOWN OF ST. GERMAIN
ST. GERMAIN, WISCONSIN 54558
MINUTES SEXUALLY ORIENTED BUSINESS COMMITTEE MEETING
May 14, 2020

Revision 2 (5/15/2020)

1. **Call to order:** Chairman Len Larsen called the meeting to order at 6:46 p.m.
2. **Roll Call, Establish a Quorum:** Len Larsen, Ted Ritter, Jim Swenson, Sally Reuling, Leslie Hiller, Josh Reese, Kelly McGill. Fred and Laura Locher, Wally Geist, and Marion Janssen were also in attendance.
3. **Open Meeting Verification:** Len Larson noted that the meeting agenda had been posted at three locations in town (Post Office, Camps Grocery Store, and the Community Center) on Monday 11, 2020 before 4 p.m. Ted Ritter also posted the agenda on the town website.
4. **Approve Minutes of Past Meeting May 7, 2020:** Mr. Larsen proposed dispensing with the reading of the minutes from the May 7, 2020 meeting since they were posted for pre-approval by Ted Ritter on May 8, 2020. Motion made by Leslie Hiller to approve the minutes as posted, seconded by Sally Reuling. By a voice vote, motion carried unanimously 7 – 0.
5. **Citizens Comments:** Len Larsen first welcomed the town citizens in attendance to this zoom meeting. Mr. Larsen commented that as a committee, we want you to know that we appreciate your thoughts, comments, and email correspondence in regards to this issue of developing a SOB ordinance for St. Germain. I want to encourage you to stay informed and please feel free to continue to contact the Town Board throughout this process. Mr. Larsen asked if there were any comments. There were no comments from the town citizens present
6. **Discussion / Action Topics: Proposals for attorney services to prepare an SOB Ordinance to submit to Town Board.** Mr. Larsen began by defining the purposes of Town Ordinances: Many ordinances deal with maintaining public safety, health, morals, and General Welfare of a community. Mr. Larsen stated that SOB's have been identified as a concern for the town, and he has been learning more about this issue every day. As per the resolution passed ("*Due to the complexity of drafting legally enforceable SOB Ordinances, We the Electors Authorize the Town of St. Germain Board to secure specialized legal services in drafting said SOB ordinances, to assure that Federal, State, and local statutes are in compliance for such ordinances*") any approved ordinance needs to be legally enforceable and defensible, built around the First Amendment and current judicial review, and time is of the essence. Mr. Larson stated that two attorney proposals have been submitted to the committee for review. One proposal is from Mr. Andrew Jones and the other proposal is from Mr. Greg Harrold. These proposals have been shared with the committee. Mr. Larsen then read each proposal.

a. Proposal from Mr. Andrew Jones:

By Email Only

Board of Supervisors

May 13, 2020

Town of St. Germain Attn: Supervisors Ted Ritter & Jim Swenson

P.O. Box 7 St. Germain, Wisconsin 54558

Re: Sexually Oriented Business Ordinance

Dear Supervisors Ritter & Swenson:

I am writing at the request of Len Larsen, Chair of the Sexually Oriented Business Committee, to express my interest in assisting the Town of St. Germain in drafting an ordinance regulating the establishment and operation of sexually oriented businesses in the Town. This letter provides information about my background and experience as an attorney and a description of how I would propose to assist the Town in expeditiously drafting an enforceable ordinance that meets its unique needs and interests.

By way of a brief personal introduction, I am a native of Milwaukee, but I have strong ties to the Eagle River area. My father-in-law grew up off of Highway G just north of town, and my wife and I have spent many vacations in the area with her family and our children over the twenty-four years we have been married. I have been licensed as a lawyer since 1994, and I am currently a partner at the law firm of Hansen Reynolds LLC in Milwaukee. Hansen Reynolds is a firm of twenty-two lawyers focused on complex litigation, with offices in Milwaukee, Madison, Chicago, and Minneapolis. I have enclosed a digital brochure regarding the firm for your information. Immediately before joining Hansen Reynolds, I served as a circuit judge on the Milwaukee County Circuit Court between September 2018 and July 2019. I was appointed to the position, but I lost a contested election in April 2019, so I returned to private practice last fall after leaving the bench.

Aside from my time as a judge, I have represented public entities throughout my twenty six years as an attorney. Between 1994 and 1998, I worked as an assistant city attorney in the New York City Law Department. As an assistant city attorney, I represented New York City and its employees in constitutional, employment, and civil service litigation before the federal and state courts in New York. Between 1998 and 2018, I worked as an associate and then partner at Whyte Hirschboeck Dudek S.C. (now known as Husch Blackwell LLP) in Milwaukee. During those twenty years, I represented counties and other municipalities in Wisconsin in a wide range of constitutional litigation, including First Amendment claims involving freedom of religion and speech; claims of false arrest, excessive force, and denial of due process in the law enforcement context; civil rights

claims brought by students and employees against public school districts; and claims involving zoning and other land use disputes. During the course of my practice, I have represented public entities at trial and on appeal at all levels of the state and federal court systems, including the Wisconsin Court of Appeals and Supreme Court, the United States Court of Appeals for the Seventh Circuit in Chicago, and the United States Supreme Court. My representation of public entities in Wisconsin has included assisting counties and other municipalities in addressing issues relating to sexually oriented businesses, including both drafting and revising ordinances regulating such businesses and defending litigation arising from such ordinances.

For example, I assisted Oneida County in drafting its current adult business ordinance, and I defended Oneida County in federal litigation commenced by the owner of Darlings in the Town of Hazelhurst. I likewise have assisted numerous public entities in addressing other issues relating to the application of the First Amendment or in defending First Amendment litigation. For instance, prior to my appointment to the bench, I represented Oneida County in successfully defending a lawsuit commenced by the proposed Eagle Cove Camp & Conference Center, Inc. on Squash Lake. A partial list of representative litigation matters in which I have appeared as counsel of record for public entities or employees is included with this letter.

With respect to my potential assistance of the Town in drafting an ordinance regulating sexually oriented businesses, I would propose an engagement involving two distinct phases as described below. Phase 1 would involve my investigation and research of the most suitable form for an ordinance regulating sexually oriented businesses within the Town. Drawing from existing examples of lawful ordinances, and consulting closely with Len, the Committee, Town staff, and the Board of Supervisors, as necessary, I would work quickly to identify the type of ordinance that would work best for the Town given its unique needs and interests. This phase would also involve my consideration of whether a moratorium on the establishment of sexually oriented businesses would be feasible pending the adoption of a comprehensive ordinance regulating such businesses. Barring unforeseen circumstances, I estimate this phase would involve roughly 10-12 hours of attorney time and could be completed by the end of May.

In Phase 2, my work would turn to drafting a lawful, enforceable ordinance for the Town based on the specific strategy identified in Phase 1. Again, I would work closely with Town representatives during this phase to ensure that the final proposed ordinance would best suit the Town's purposes and needs given the applicable constitutional limitations. It is difficult to estimate how many hours would be required to complete this phase, as the work required necessarily will be dependent on the strategy identified in Phase 1.

I would be in a position to project the attorney time needed for Phase 2 with far greater precision at the close of Phase 1. At this point, however, I expect this drafting work

would likely require an additional 10-20 hours of attorney time, depending on how closely the Town's ordinance could be modeled on another existing ordinance. Assistance from Town staff or other Town representatives could lessen the attorney time required to complete Phase 2. In any event, and, again, barring unforeseen developments, I expect that Phase 2 could be completed by the end of June, at which point the Town would be in a position to follow its normal legislative processes in considering the draft ordinance for adoption. As Len and I discussed, my firm would be prepared to provide these legal services to the Town at the hourly rate of \$250 for attorneys and, if necessary, \$125 for paralegals. As I hope is clear from this letter and my conversations with Len, my firm and I would very much welcome the opportunity to assist the Town in drafting an enforceable ordinance regulating the establishment and operation of sexually businesses within its boundaries. 4 Thank you very much for your consideration of this letter and the enclosed materials. If you require any additional information from me in this regard, please do not hesitate to reach out to me at your convenience.

Very truly yours, Hansen Reynolds LLC Andrew A. Jones

The hyperlink for Mr. Jones' law offices' brochure is below. Mr. Jones included his brochure with the proposal.

file:///C:/Users/kamcg_000.OFFICE/OneDrive/Email%20attachments/Hansen%20Reynolds%20Brochure.pdf

b. Discussion concerning Mr. Jones' Proposal: Mr. Larson pointed out that Mr. Jones has been very generous with his time on the phone and has spent probably 2 – 3 hours at least discussing the situation in St. Germain and the Oneida County zoning ordinance with him. Mr. Jones helped write the Oneida county ordinance. Mr. Larsen commented that Mr. Jones is very qualified in the area of SOBs; he has experience as a circuit court judge and his time frame is impressive. Mr. Larsen emphasized that Mr. Jones is willing to do the research concerning a moratorium on SOBs while the town is working on the ordinance. Mr. Larsen spoke to Mr. Jones' offer of collaboration with the committee and Town Board as being a strength as well. Per Mr. Larsen, Mr. Jones mentioned that his office has a staff of 25 attorneys, and he felt that they could devote the attention to the St. Germain SOB ordinance so that it would be completed in a very timely manner starting in May. Mr. Larsen felt that Mr. Ritter would be the point person with his extensive knowledge and background in town ordinances and zoning. Mr. Larsen discussed the three points he has seen in other ordinances and zoning: 1) the set back of between 500 to 1500 feet from a church, school, park, etc., (the Oneida County Ordinance uses 500 feet) 2) Oneida County has 1 zoning area open for SOBs, and 3) Some towns have a corridor or business district where SOBs are excluded, such as Minocqua along their Hwy 51/Hwy 70 business district. Mr. Larsen mentioned to Mr. Jones that Mr. Reese and Mr. Ritter are conducting research on signage and Mr. Jones was intrigued with that and would be happy to research what the town could do concerning SOB signage. Mr. Jones expressed to Mr. Larsen that probably a max of 30 hours might be required which would be around \$ 7,500.00. Mr. Larson noted that the town of Hazelhurst spent \$750,000

fighting an SOB case and the case was lost in court. The town has an SOB on their main corridor. So even if the expense was the maximum amount of \$7,500 to retain Mr. Jones' legal expertise, it would be money well spent by the town.

In further discussion, Leslie Hiller spoke that she was impressed with Mr. Jones' background and experience, and she liked his aggressive timeframe. Hiller pointed out that it would be great to get it done as soon as possible. Hiller commented that she liked that he could draft a moratorium for the Town Board's review while they are working on an ordinance to put some protection in place. Mr. Ritter spoke to the fact that Mr. Jones is experienced and qualified and he would probably be a good choice, although he was not particularly in favor of a two phased approach. Mr. Ritter proposed that the town already has zoning ordinances in place covering all of the town and what is currently in place could be amended to accommodate SOBs. Mr. Larson pointed out that Mr. Jones stated in his proposal that he would want to know the desire of the Town Board in terms of what direction to go with ordinances and it would be a collaboration with the town at all times. Larsen noted the phases could occur at the same time all while working with the Town Board. Leslie Hiller pointed out that in her extensive research that every municipality or town has regulatory ordinances or restrictions, as well as zoning, and the restrictions are often lengthy; so there must be an important reason to include the regulatory ordinances or restrictions. She mentioned one in St. Croix that is very lengthy and it was challenged in court but it held up. It was all regulatory and had no zoning. She thinks there should be zoning but the town needs the regulatory measures and these can be put in place much quicker by the Town Board. With no further discussion, Mr. Larsen next read Mr. Greg Harrold's proposal to the committee.

c. Proposal from Mr. Greg Harrold: Mr. Larsen read the proposal from the second attorney, Mr. Greg Harrold, to the committee.

Dear Mr. Ritter & Mr. Swenson:

Pursuant to the request of Mr. Len Larsen I am sending a proposal regarding preparation of an Ordinance to regulate sexually oriented businesses in the Town of St. Germain.

My hourly rate is \$220/hour. I would estimate that the amount of time needed to do background research to review the applicable common law, including Supreme Court decisions and all applicable decisions in Wisconsin and the 7th Circuit Court of Appeals, would take a range of 10-15 hours.

With respect to implementation, drafting and approvals of the Ordinance, I would estimate a time period of approximately 8-10 hours.

I have a good working relationship with Mr. Larsen and I would prefer to work with him as the contact person, if that is possible. I look forward to receiving input from all members on the Committee, but I would suggest that it's going to be more economical if I can do it through one spokesman for the group. Also, I have a substantial workload at

this time and it would be my best estimate that it would take until July or August to get it done.

Thank you for giving me an opportunity to make a proposal. I think that your Town is being quite far-sighted in your approach to this issue.

Greg/kt

Cc: Len Larsen

Kathy Thompson
Legal Assistant to Gregory J. Harrold
Harrold, Scrobell & Danner S.C.
P.O. Box 1148
Minocqua, WI 54548
(715) 356-9591

d. Discussion of Mr. Harrold's proposal: Mr. Larsen commented that Mr. Harrold is a great guy, he is well liked in the community, many people recommended him from surrounding towns, Minocqua used his legal services for the town's Sexual Oriented Business ordinance, and he thought that Mr. Ritter had worked with Mr. Harrold. Sally Reuling pointed out that Mr. Harrold would not be available until July or August, and his workload at that time could preclude him from being able to start this project. So Mr. Jones' time table would best fit the town's need for starting on SOB ordinances as soon as possible. There was no further discussion, so Mr. Larson made a motion: Based on the qualifications the committee has reviewed tonight, the committee submits Andrew Jones for board consideration as the specialized legal counsel assisting the St. Germain Town Board in developing a legally enforceable and defendable Sexually Oriented Business Ordinance for the town of St. Germain. Leslie Hiller seconded the motion. Roll Call: Ted Ritter No, Len Larsen Yes, Josh Reese Yes, Kelly McGill Yes, Sally Reuling Yes, Jim Swenson No, Leslie Hiller Yes. Motion carried 5 – 2. 5 Yes, 2 No.

Mr. Larsen next asked Mr. Ritter when a board meeting was scheduled so that the SOB motion concerning specialized legal counsel could be placed on the agenda. Mr. Ritter said the next regular monthly town board meeting is June 8, 2020, and this could be placed on the agenda. A special town board meeting could be called earlier but the agenda would need to be posted appropriately. Sally Reuling pointed out that in Mr. Jones' proposal he mentioned completing phase one of speaking with the board and doing research by the end of May. So if the board doesn't meet until June 8, that puts the issue already behind two weeks where we could be unless there is a special town board meeting. Reuling asked if a special Town Board meeting could be called. Mr. Ritter stated that he or Mr. Swenson can request the Town Chair to call a special meeting. Mr. Larson pointed out that Mr. Jones wants to talk to the town board to see where you want to go with the SOB ordinance and regulations. Mr. Swenson said with the open meeting laws that it would have to be next week at the earliest, a quorum would be required, and the meeting agenda would have to be posted. Mr. Swenson reminded the committee that the Town Board would have to authorize retaining any attorney before they could speak with him. Mr. Ritter agreed with Mr. Swenson that no conversations can take place with any attorney until the

town board agrees to retain the attorney and accepts his proposal. Mr. Larsen has conducted conversations with Mr. Jones and Mr. Harrold on the basis that he is not an elected town board member.

e. SOB Restrictions: Leslie Hiller asked to comment on the assigned duties that she and Sally Reuling were asked to complete at the May 7, 2020 meeting. Hiller spoke to the fact that she took a two hour online course with one of the top attorneys in the country on SOBs. This attorney spoke in front of the Supreme Court and has 30 years of experience. In all her research and the online course, SOB ordinances are not simple zoning issues. Regulations and restrictions must be a part of the overall ordinance, which should include zoning as well, and usually these restrictions are lengthy. It has to be way more than just zoning. Mr. Larsen commented that there are regulatory and zoning ordinances. Mr. Ritter spoke concerning making an amendment to the current St. Germain zoning regulations saying that St. Germain has zoning district regulations and currently none allow SOBs. So he is in favor of creating a new district zoning, similar to Oneida County's, with allowable uses. There could be a conditional SOB use permit and under this would be all the rules about where they are allowed and how SOBs are allowed to operate. This would apply to the permit and regulations would be part of that. Leslie Hiller spoke that she was pretty sure that SOBs do not fall under conditional use permits because that would be a violation of the First Amendment, and this is why the town needs a very competent attorney to help the town board with the SOB ordinance. Mr. Larsen pointed out that Mr. Andrew Jones did help draft the Oneida County SOB ordinance.

f. Other duties: Mr. Larsen stated that Mr. Reese, Mr. Ritter, and he are continuing to research the signage issue.

7. Future Meeting Date/ Other Committee Concerns: Mr. Larsen stated that a future meeting date cannot be set until he hears back from Mr. Ritter who will speak with the Town Board. Mr. Ritter will respond with information to Mr. Larsen, and Mr. Larsen will let the SOB committee know if the Town Board is able to schedule a special meeting concerning the proposal from the attorney Mr. Andrew Jones.

8. Adjourn: Motion to adjourn by Leslie Hiller at 7:23 p.m. Sally Reuling seconded.

Respectfully submitted by Kelly McGill 5/14/2020 11:15 p.m.

First revision sent to committee 5/15/20 10:00 a.m.

Second revision sent to the committee 5/15/20 at 4 p.m.