

CORRECTED

**LAKE ZURICH BOARD OF TRUSTEES**

**REGULAR MEETING**

**70 East Main Street**

Monday, September 8, 2009

**1. CALL TO ORDER** The meeting was called to order at 7:01PM.

**2. ROLL CALL**

Present were Village President Branding, Trustees Halen, Johnson, Poynont, Rzeznik, Sprawka and Sustich. Also present were Village Administrator Vitas, Village Attorney Burkland, Police Chief Finlon, Deputy Fire Chief Wheelock, Assistant Fire Marshall Guy Trayling, Finance Director Zochowski, Public Works Director/Engineer Heyden, Human Resources Manager Pankiw, Director Perkins, and Building/Zoning Director Peterson.

**3. PLEDGE OF ALLEGIANCE**

**4. PUBLIC COMMENT**

Fred Branding, 15 Lakeview Place, said he sent a communication to the Board and the Staff requesting the removal of the west side of the Lakeview Place from the purported Lake Zurich Downtown Redevelopment Project Area (TIF District) and asked that the vote on agenda item 9-M based upon the unanimous support of the residents of the west side of Lakeview Place that request its removal.

Carol Mary Johnson, 45 Lakeview Place, said there are only six homes on Lakeview Place, and she is there as the homeowners representative since many are out of town due to the holiday. She said the residents strongly support the removal of the west side of Lakeview Place from the TIF District.

**5. PRESIDENT'S REPORT**

**A. Open House for Firearms Range at Police Facility on September 10, 2009**

President Branding announced the open house for the police firearms range at 10AM on September 10.

**B. Appointments to the Tree Commission**

President Branding announced the following appointments to the Tree Commission and requested Board approval.

MOTION made by Trustee Johnson, seconded by Trustee Halen, to approve the three-year reappointment of Scott Garrison to the Tree Commission with his term to expire on 4/30/12.

Voice vote, AYES have it. MOTION CARRIED.

MOTION made by Trustee Poynton, seconded by Trustee Sustich, to approve the appointment of Scott Garrison as chairman of the Tree Commission with his term as chairman to expire on 4/30/12.

Voice vote, AYES have it. MOTION CARRIED.

MOTION made by Trustee Sustich, seconded by Trustee Halen, to approve the three-year reappointment of Mary Kozub to the Tree Commission with her term to expire on 4/30/12.

Voice vote, AYES have it. MOTION CARRIED.

MOTION made by Trustee Johnson, seconded by Trustee Sustich, to approve the three-year appointment of Al Froedhe as vice chair to the Tree Commission with his term as a member and vice chair both to expire on 4/30/12 .

Voice vote, AYES have it. MOTION CARRIED.

**C. Lake Zurich Area Business Survey – No Report**

**6. CONSIDERATION OF MINUTES**

**A. Minutes of the Regular Village Board meeting August 17, 2009**

MOTION was made by Trustee Poynton, seconded by Trustee Sprawka, to approve the Regular Village Board meeting minutes of August 17, 2009 as presented.

Voice vote, all in favor.

MOTION CARRIED

**B. Minutes of the Special Village Board meeting August 24, 2009**

MOTION was made by Trustee Johnson, seconded by Trustee Sustich, to approve the Regular Village Board meeting minutes of August 24, 2009 as presented.

Voice vote, all in favor.

MOTION CARRIED

**7. CONSENT AGENDA – No Items**

**8. OLD BUSINESS – No Items**

**9. NEW BUSINESS**

**A. Koch, 324 Country Club Road, Request for Variation for Driveway Replacement**

**Summary:** The owners of 324 Country Club Road filed an application for an interior side yard variation to replace the existing driveway on their property in the same location. After a public hearing, the Zoning Board of Appeals unanimously recommended approval of the requested variation, which would reduce the interior side yard from 3 feet to 0 feet.

Building and Zoning Director Peterson answered questions and said the plan meets staff approval. Trustee Sprawka said he lives in the neighborhood and supports the proposal.

MOTION made by Trustee Poynton, seconded by Trustee Sustich, to pass an Ordinance Approving a Variation for 324 Country Club Road. (Ordinance #2009-09-650)

AYES: 6 Trustees Halen, Johnson, Poynton, Rzeznik, Sustich, and Sprawka

NAYS: 0

MOTION CARRIED

**B. Geimer, 272 Lions Court, Request for Variation for Patio**

**Summary:** The owners of 272 Lions Court filed an application for a rear yard variation to install a patio on their property. After a public hearing, the Zoning Board of Appeals unanimously recommended approval of the requested variation, which would reduce the rear yard from 20 feet to 13 feet.

Building and Zoning Director Peterson said the surrounding neighbors wrote a letter of support and said the plan meets staff approval.

MOTION made by Trustee Poynton, seconded by Trustee Sprawka, to pass an Ordinance approving a variation for 272 Lions Court. (Ordinance #2009-09-651)

AYES: 6 Trustees Halen, Johnson, Poynton, Rzeznik, Sustich, and Sprawka

NAYS: 0

MOTION CARRIED

**C. Annexation of Property Related to Astor Subdivision**

**Summary:** The owner of a small, triangularly shaped parcel of property in the Industrial Park has petitioned the Village for annexation of that property. The property lies between the southwest corner of Lot 1 in the Astor Subdivision and the EJ&E railroad right of way and is about a quarter acre in size. The property will be consolidated into Lot 1. The owner has agreed to pay the Village the required \$1,000 annexation fee.

MOTION made by Trustee Sustich, seconded by Trustee Sprawka, to pass an ordinance annexing the property located at 24011 and 24025 North Midlothian Road to the Village of Lake Zurich pending striking the provision in the ordinance that says, "Whereas the owner has agreed to pay the required annexation fee to the Village for the annexation" and to strike the word *law* in Section 4 after the effective date. (Ordinance #2009-09-652)

AYES: 6 Trustees Halen, Johnson, Poynton, Rzeznik, Sustich, and Sprawka

NAYS: 0

MOTION CARRIED

**D. Rezoning of Newly Annexed Property in Astor Subdivision**

**Summary:** The property described in Agenda Item C above is automatically classified into the Village's R-1/2 Single Family Residential District under the Zoning Code. The owner applied for rezoning of the property into the I-1 Limited Industrial District to match the zoning of Lot 1 in the Astor Subdivision, into which the property is being consolidated. The Plan Commission unanimously recommended approval of the rezoning.

MOTION made by Trustee Sustich, seconded by Trustee Halen, to pass an ordinance granting a Zoning Map Amendment for 24011 and 24025 North Midlothian Road, Astor Subdivision. (Ordinance #2009-09-653)

AYES: 6 Trustees Halen, Johnson, Poynton, Rzeznik, Sustich, and Sprawka

NAYS: 0

MOTION CARRIED

**E. Amended Plat of Astor Subdivision**

**Summary:** With the property described in Agenda Item C above annexed into the Village and rezoned into the I-1 District, it is necessary for the Astor plat of subdivision to be amended to reflect the addition of the property. The Plan Commission recommended approval of an earlier, similar version of the amended plat.

MOTION made by Trustee Poynton, seconded by Trustee Johnson, to pass an ordinance approving a subdivision plat amendment for the Astor Subdivision. (Ordinance #2009-09-654)

AYES: 6 Trustees Halen, Johnson, Poynton, Rzeznik, Sustich, and Sprawka

NAYS: 0

MOTION CARRIED

**F. Amendment of Zoning Code Section 4-103 and Special Use Permits for Putt 'n Play**

**Summary:** The owner of the Village Square Shopping Center applied for a Zoning Code amendment to add miniature golf and coin operated amusement devices as special uses in the B-3 Regional Shopping District and approval of those special uses for an indoor miniature golf facility and arcade at 463 South Rand Road. The Plan Commission unanimously recommended approval of both the Zoning Code amendment and the special use permits.

Building and Zoning Director Peterson said safety issues were discussed thoroughly at the Plan Commission and the Plan Commission members were satisfied. Fidelity Group has agreed to voluntarily stripe the crossing and erect signage.

MOTION made by Trustee Poynton, seconded by Trustee Sustich, to pass an ordinance approving an amendment to Section 4-103 of the Lake Zurich Zoning Code and approving Special Uses for an indoor miniature golf facility and arcade. (Ordinance #2009-09-655)

AYES: 6 Trustees Halen, Johnson, Poynton, Rzeznik, Sustich, and Sprawka

NAYS: 0

MOTION CARRIED

**G. Approvals for Tuf-Tite Building Addition**

**Summary:** The owner of Tuf-Tite at 1200 Flex Court filed applications for approval of site plans and exterior appearance plans for a 49,560-square-foot addition to the existing

building on the site in the I-1 Limited Industrial District. The Plan Commission unanimously recommended approval of the applications. The project also requires approval of a plat of consolidation for the property, combining Lot 10 of the Astor Subdivision with the existing property.

MOTION made by Trustee Poynton, seconded by Trustee Rzeznik, to pass an ordinance approving site plans and exterior appearance plans and a plat of consolidation for 1200 Flex Court and 920 Telser Road, Tuf-Tite. (Ordinance #2009-09-649)

AYES: 6 Trustees Halen, Johnson, Poynton, Rzeznik, Sustich, and Sprawka

NAYS: 0

MOTION CARRIED

#### **H. Contract for Hot Mix Asphalt**

**Summary:** The Village's road maintenance program this year requires the purchase of hot mix asphalt. Because the total purchase exceeds \$20,000, the use of Motor Fuel Tax Funds requires bidding through the state contracting process. The result of that process is that Arrow Road Construction Company submitted the low bid, in the amount of \$51.00 per ton. Staff recommends approval of the Arrow Road Construction Company bid.

MOTION made by Trustee Sustich, seconded by Trustee Sprawka, to select the Arrow Road Construction Company to supply hot mix asphalt to the Village and to approve a contract with Arrow Road Construction Company for the purchase of hot mix asphalt in an amount not to exceed \$51.00 per ton.

AYES: 6 Trustees Halen, Johnson, Poynton, Rzeznik, Sustich, and Sprawka

NAYS: 0

MOTION CARRIED

#### **I. Contract for Portland Cement Concrete**

**Summary:** The Village's road maintenance program this year requires the purchase of Portland cement concrete. Because the total purchase exceeds \$20,000, the use of Motor Fuel Tax Funds requires bidding through the state contracting process. The result of that process is that Fischer Bros. Fresh Concrete Inc. submitted the only bid, in the amount of \$104.75 per cubic yard. Staff recommends approval of the Fischer Bros. Fresh Concrete Inc. bid.

Public Works Director/Engineer Heyden said staff solicited bids from five companies but only one responded.

MOTION made by Trustee Sustich, seconded by Trustee Rzeznik, to select Fischer Bros. Fresh Concrete Inc. to supply Portland cement concrete to the Village and to approve a contract with Fischer Bros. Fresh Concrete Inc. for the purchase of Portland cement concrete in an amount not to exceed \$104.75 per cubic yard.

AYES: 6 Trustees Halen, Johnson, Poynton, Rzeznik, Sustich, and Sprawka

NAYS: 0

MOTION CARRIED

**J. Pheasant Ridge Road Repairs**

**Summary:** Village staff has applied for grant funding through the Lake County Council of Mayors Local Agency Project Program for the resurfacing of Pheasant Ridge Road between South Old Rand Road and Old Mill Grove Road. Approval of the Local Agency Agreement is required to keep the project qualified for the grant funding. This project, if selected, would be completed in Spring 2010.

Public Works Director/Engineer Heyden provided further information on how the roads were rated. The applicants were instructed to proceed and have their project ready to move forward in hopes that funding will be available for Tier 2 projects, which Pheasant Ridge Road is one.

MOTION made by Trustee Sustich, seconded by Trustee Sprawka, to approve the Local Agency Agreement in an amount not to exceed \$170,000.00, conditioned upon receipt of grant funds.

AYES: 6 Trustees Halen, Johnson, Poynton, Rzeznik, Sustich, and Sprawka

NAYS: 0

MOTION CARRIED

**K. Midlothian Road Improvements**

**Summary:** The Village has long planned to improve the intersection of Midlothian Road and the High School entrance. Approval of the Resolution for Improvement by municipality under the Illinois Highway Code is required for federal participation in this project, which includes traffic signals and associated roadway widening and channelization. Also included in the project is an agreement for consulting services.

Public Works Director/Engineer Heyden said the Village received grant funding from the State in the amount of \$480,000 to improve Midlothian Road. The current day price of \$57,242.00 will be shared and the Village's share is only 10% with Federal funding to pay 80% and 10% by District 95.

Mr. Kroft, District 95 Board Vice President, stated his support of the project moving forward and confirmed that District 95 will pay their share.

MOTION made by Trustee Sustich, seconded by Trustee Halen, to pass *A Resolution for Improvement by Municipality Under the Illinois Highway Code in the Amount of \$57,242.00* and to approve the Local Agency and Preliminary Engineering Services Agreements for Federal Participation – Phase I in an amount not to exceed \$57,242.00.

AYES: 6 Trustees Halen, Johnson, Poynton, Rzeznik, Sustich, and Sprawka

NAYS: 0

MOTION CARRIED

**L. Semi-Monthly Warrant Register Dated September 8, 2009, Totaling \$437,321.18**

Trustee Sprawka presented the semi-monthly warrant register and outlined those items that comprise more than 5% of the total warrant which include: Staples & Son Landscaping (13.13%); Exelon Energy (6.54%); Holland & Knight (6.02); Midwest Operating Engineers (5.99%); and Clarke Environmental (5.85%).

Trustee Sustich said he has repeatedly asked to have a Treasurer's Report showing how the expenditures impact the budget and it has not been provided yet. He questioned the expenditures in Fund 22, Capital Projects on page 14 regarding the Police Firing Range. He referred to Director Zochowski report dated August 24, 2009 confirms that zero dollars were budgeted and why the funds have been expended. He would like the funds to be balanced and the budgeted funds not exceeded.

MOTION made by Trustee Sprawka, seconded by Trustee Johnson, to approve the semi-monthly warrant register dated September 8, 2009, totaling \$437,321.18.

Director Zochowski responded to Trustee Johnson's question and explained that funds had been received to cover the expenses and will be put into the Capital Improvement Fund. Staff has not recorded the funds in the Capital Improvement budget fund yet but will do so shortly.

Trustee Sustich said he will vote to approve the warrant with the understanding that the funds are available and will be put into the proper fund. Trustee Poynton said he will vote Nay until the money is put back into the fund.

AYES: 4 Trustees Halen, Johnson, Rzeznik, and Sustich

NAYS: 2 Trustees Poynton and Sprawka

MOTION CARRIED

#### **M. Selection of President Pro-Tem and an Ordinance Amending the Text of the TIF District Redevelopment Plan and Project**

**Summary:** Mayor Branding will recuse herself from consideration of this ordinance. It is appropriate to select a president pro tem for this agenda item. The Board of Trustees has been planning to amend the approved Redevelopment Plan and Project for the Downtown TIF District to make language changes designed to address issues identified by the trial court in the 16 West Main Street eminent domain lawsuit. The proposed ordinance makes all of the available changes to the Redevelopment Plan and Project and the adopting ordinance.

Village Attorney Burkland introduced the item and said it is appropriate for President Branding to recuse herself since she is a property owner and to nominate a president pro tem.

MOTION made by Trustee Rzeznik, seconded by Trustee Sustich, to nominate Trustee Johnson as president pro tem for this agenda item.

Voice vote, AYES have it. MOTION CARRIED.

Village Attorney Burkland reviewed the minor amendments to the ordinance that will provide consistency within the document. A restriction was added that states that revenue generated from within the TIF District will be used exclusively to pay for redevelopment within the Redevelopment Project Area. Other changes were on the S. B. Friedman & Company Downtown Redevelopment Project Area document were the addition of the word *and project* in two places on page 5 and paragraphs were deleted on page 41 under *Sources of Funds to Pay Costs*.

Trustee Sustich said he wanted to be sure that the item being considered was separate from the issue Fred Branding raised at the beginning of the meeting.

Village Attorney Burkland said the TIF boundary could be addressed at any time by the Board and was a separate issue. He said it would be a simple issue to present another ordinance that strictly addresses the boundary amendment. He provided a summary of the action that had taken place regarding the TIF District in response to Trustee Rzeznik's request for an update.

Village Attorney Burkland said the Board could direct the Village Administrator and the Village Attorney to prepare the document for the TIF District boundary change.

Jim Tarbet, 1195 Cedar Creek Drive, said eminent domain still remains an issue. He is disappointed that only minor changes were made when major changes are needed. He noted there were many obligations that needed to be met for the TIF District. He asked that all aspects of the TIF be cleaned up and it be moved forward. Trustee Johnson responded to Mr. Tarbet's comments.

MOTION made by Trustee Johnson, seconded by Trustee Sustich, to approve an Ordinance Amending Lake Zurich Ordinance No. 2002-03-157 Making Certain Language Changes to Ordinance No. 2002-03-157 and to the Redevelopment Plan and Project.

Trustee Poynton said he only received the document 10 minutes ago and therefore would vote Nay because he did not have a chance to read it. Trustee Rzeznik said she did not understand why the two ordinances were separated when they had one been joined. Trustee Sustich said he also needed time to review it so would vote Nay.

AYES: 3 Trustees Halen, Johnson, and Sprawka  
NAYS: 3 Trustees Poynton, Rzeznik, and Sustich  
MOTION FAILED

Trustee Johnson polled the Board and asked if they wanted to direct the Village Attorney to prepare and present an ordinance removing West Lakeview Place from the TIF District.

Trustee Rzeznik said yes. Trustee Halen asked for information on the financial impact on taxes. Trustee Sprawka said he would like both ordinances tabled and considered at the next Board meeting. Trustee Halen said he also wanted more time to study the issue. Trustee Poynton said yes but he wants the information that Director Zochowski provided

earlier this year. Trustee Sustich said both issues should be brought forward at the next meeting, and Trustee Johnson concurred with Trustee Sustich. It was agreed that both ordinances would be brought forward at the next Board meeting.

Director Zochowski recapped the information in his report on the financial impact of removing 15 West Lakeview Place from the TIF District. Village Administrator Vitas said he would prefer that an outside financial agency prepare a report rather than staff but Trustee Johnson did not support hiring another firm.

#### **N. Amendment of Code Section 1-4-7 Regarding Appointment of Special Board Committees and Task Forces**

**Summary:** The Board directed the Staff and Village Attorney to prepare an ordinance amending the Village's Municipal Code to provide for consent of the Board of Trustees to the membership of special Board committees. The proposed ordinance proposes a traditional approach to creation and membership on special Board committees and creation by the Mayor of task forces to advise her on matters of Village policy and business.

Trustee Sustich read the motion from the August 3, 2009 Board of Trustees meeting regarding ad hoc boards and commissions that was successful. The second motion was withdrawn because Village Attorney Burkland said it was superfluous after the first motion related to Title 2 was approved. The ordinance being considered this evening related to task forces.

Trustee Johnson was not opposed to the ordinance but suggested the legal expenses be traced for all the recent minor ordinance changes that the Board has recommended.

Trustee Sprawka asked Village Attorney Burkland to illustrate the amendment to Title 1 and how it relates to Title 2 that was approved on August 3. Village Attorney Burkland said he did not advise approving Title 1 at the August 3 meeting. He will write an amendment to Title 2 instead of Title 1 if instructed but did not agree that it belongs there. He believes it was correctly handled as an amendment to Title 1. He said the authority in the proposed ordinance is different from what was approved on August 3. The ordinance being considered this evening says the President has the authority to appoint but the Board of Trustees as a whole must consent to the committee membership. The provision regarding task forces was added by Village Attorney Burkland because they are different from committees that are permanent and separate from the Board of Trustees.

Discussion continued on the two approaches and the proposed ordinances. Trustee Sustich stated his objections. Village Attorney Burkland said the President can only appoint a task force and not a committee the way the ordinance is written. Trustee Sustich asked what the Rand Road Development Committee is considered. Trustee Sprawka asked if the Open Meetings Act would be violated if Trustees attended the Rand Road meeting since it is not a published meeting. Trustee Johnson said the issue of task forces and committees are getting confused. Trustee Poynton asked Village Attorney Burkland to provide an edited version so they could view the changes.

MOTION made by Trustee Poynton, seconded by Trustee Sustich, to table the proposed ordinance amending Section 1-4-7 of the Lake Zurich Municipal Code Related to Board Committees and Task Forces until an ordinance with edits can be presented by Village Attorney Burkland.

AYES: 5 Trustees Halen, Poynton, Rzeznik, Sprawka, and Sustich

NAYS: 1 Trustee Johnson

MOTION CARRIED

## **10. TRUSTEE REPORTS**

Trustee Rzeznik said she has been meeting with concerned residents regarding the proposed Quentin Road widening and asked if the Board has a position regarding this. The Board is still formulating their position.

**11. ADMINISTRATOR'S REPORT** Village Administrator Vitas said there is nothing to report yet about downtown redevelopment, but he is in the process of scheduling a meeting with David Smith of Equity Group.

## **12. ATTORNEY'S REPORT**

The Attorney did not have a report but did answer questions posed by Trustee Sustich regarding the transfer of \$500,000 from the Water Fund to the General Fund and the resident's comment at an earlier meeting that it was illegal to do so and outside of the Village's authority. Village Attorney Burkland said it would take a great deal of time research on the part of the legal staff and Village staff to see how the Village's water system was developed and to prepare an opinion.

Public Works Director/Engineer Heyden added that the Village will be preparing a water/sewer rate study that will provide more information.

Village Administrator Vitas said the \$500,000 transfer had been addressed previously, and staff had stated that it had been done properly and the Board of Trustees had approved it. The study will address the sustainability of the water and sewer fund and will allow staff to look five years into the future.

**RECESS:** The meeting was recessed from 9:04 – 9:09 p.m. to allow the video tape to be changed.

## **13. DEPARTMENT HEAD REPORTS**

A. Park and Recreation Director Perkins: Fall Fest on September 12, 2009 from 12 - 4:00 p.m. and Uptown Park Update. Director Perkins presented a sketch that had been created by Park and Recreation Advisory Board members Jan Papa, Judi Thode, and Kathy Kozlowski for the uptown park at Old Rand Road and Main Street. He reviewed the anticipated costs to the Village for the pavers and electrical hook up and thanked the Park and Recreation Advisory Board members that solicited and received donations for the planting materials. The Board supported the expenditure of funds, and will vote on them at the next meeting.

B. Building and Zoning Director Peterson: Introduction to revised model building codes and Brownfield Grant. Building and Zoning Director Peterson said the majority of the revisions are administrative and will be brought forward at the September 21 Board of Trustees meeting. He briefly outlined the revisions. Building and Zoning Director Peterson said the Village had received a \$200,000 Brownfield Grant from Lake County for the removal of the old gas station equipment at 61 W. Main Street, which is the old Police Station. Assistant Fire Marshall Trayling distributed a packet with information on residential fire sprinklers and presented the highlights of their proposal.

C. Police Chief Finlon said the road side safety check over the holiday weekend went well.

**14. ADJOURNMENT**

MOTION was made by Trustee Johnson, seconded by Trustee Sustich, to recess into closed session to discuss matters related to pending litigation and personnel and to adjourn immediately after the closed session without conducting further business.

AYES: 6 Trustees Halen, Johnson, Poynton, Rzeznik, Sprawka and Sustich

NAYS: 0

MOTION CARRIED

The meeting adjourned at 9:46PM.

Respectfully submitted: Janet McKay, Recording Secretary

Approved by: /s/ President Suzanne K. Branding 9/21/09