

**MINUTES OF THE REGULAR MEETING OF THE MAYOR AND BOARD OF TRUSTEES OF THE VILLAGE OF METTAWA, ILLINOIS, HELD AT THE HOUR OF 7:30 P.M. ON JULY 19, 2016 IN THE COTTONWOOD ROOM OF THE HILTON GARDEN INN HOTEL, 26225 N. RIVERWOODS BOULEVARD, METTAWA, ILLINOIS**

**A. CALL TO ORDER**

Mayor Urlacher called the meeting to order at 7:30 p.m.

**B. ROLL CALL**

Upon a call of the roll, the following were:

Present: Trustees Armstrong, Brennan, Maier, Pink, Sheldon, Towne and Mayor Urlacher

Absent: None

Mayor Urlacher declared a quorum present.

Also present: Village Administrator Bob Irvin; Scott Anderson, representative of the firm of James Anderson Company, Village Attorneys Jim Ferolo and Greg Smith of Klein Thorpe & Jenkins, Ltd., Village Treasurer Pam Fantus and Financial Consultant Dorothy O'Mary

**C. APPROVAL OF MINUTES:**

**Regular Meeting of the Board: June 21, 2016**

It was moved by Trustee Maier and seconded by Trustee Sheldon that the minutes of the Regular Meeting of June 21, 2016 be approved as presented.

Upon a call of the roll, the following voted:

Aye: Trustees Armstrong, Brennan, Maier, Pink, Sheldon and Towne

Nay: None

Absent: None

Mayor Urlacher declared the motion carried and the minutes approved and placed on file.

**D. APPROVAL OF BILLS**

**1. Bills Submitted for Payment**

Trustee Maier reported the total amount for payment is \$240,500.99. It includes a bond interest payment of \$60,581 for the 2011 General Obligation Bond. Most of the other bills are related to the normal operation of the Village.

It was moved by Trustee Maier and seconded by Trustee Brennan to approve payment of the bills.

Upon a call of the roll, the following voted:

Aye: Trustees Armstrong, Brennan, Maier, Pink, Sheldon and Towne

Nay: None

Absent: None

Mayor Urlacher declared the motion carried.

**E. TREASURER'S REPORT**

Presentation of the Treasurer's Report for the Month of June, 2016.

It was moved by Trustee Brennan, seconded by Trustee Sheldon that the Board acknowledges receipt of the June, 2016 Treasurer's Report and place it on file.

Upon a call of the roll, the following voted:

Aye: All

Nay: None

Absent: None

Mayor Urlacher declared the motion carried.

**F. COMMUNICATIONS AND PETITIONS FROM THE PUBLIC: none**

**G. COMMISSION AND COMMITTEE REPORTS FOR DISCUSSION, CONSIDERATION AND, IF SO DETERMINED, ACTION UPON**

**1. Finance Committee**

a. Other Matters

Trustee Maier reported that the annual property tax rebate forms had been mailed to all residents. The Committee is reviewing various costs of services to maintain our services and that will continue at future meetings.

**2. Public Works Committee**

a. Update on a Potential Water Main Extension in the Village

Trustee Armstrong reported that we are looking into forming an SSA with other governmental bodies for the area at the north end of St. Marys Road. The cost estimate for the project is higher now and there are 10 additional properties outside the Village that could be included to reduce the overall cost for everyone. A meeting with the Lake County Public Works Director and Mayor of Green Oaks is needed to discuss the possibility of working together. Village Administrator Irvin reported that

he contacted Peter Kolb, the Director of Public Works for Lake County regarding the potential project. Mr. Kolb said that his recommendation to the County Committee would be to not get involved in such a project since it is mainly for properties in municipalities. Additionally, they have been involved in projects like this in the past that did not move forward and were left with incurred costs.

b. Update on Bradley/Old School Drainage Issues and Resurfacing Project

Trustee Armstrong reported that the drainage improvements will be incorporated into the Old School Road resurfacing project later this year. We will be obtaining an easement from St. Basil's Church for the project. We have also started other drainage improvements along Old School Road in advance of the resurfacing project.

c. Update on the Old School Road Resurfacing Project

Trustee Armstrong reported that the project will be done later this year. He added that the damaged area near the railroad crossing will be repaired tomorrow. The heavy truck traffic related to the berm construction will end by October 1<sup>st</sup>. Trustee Towne asked when the bids will be opened for Old School Road. Village Administrator Irvin said they will be opened on August 8<sup>th</sup>, followed by the Public Works Committee review on August 10<sup>th</sup> and Village Board on August 16<sup>th</sup>.

d. Update on the Village Hall Survey Results

Trustee Armstrong reported that we received a 55.2% response rate. In favor or the status quo were 139 and for building a Village Hall, there were 84. It is about a 63% to 37% result.

**3. Parks and Recreation Committee**

a. Recommendation to Approve the Waiving of Sealed Bids and Approving an Agreement with R.A. Mancini for the Oasis Park Trail Relocation Project in an Amount Not to Exceed \$117,500, Subject to Clarification to the Village Engineer of the Proposal Meeting the Plan Specifications

Trustee Sheldon reported that bids had previously been rejected for this project due to the high cost, but a lower cost had been provided by R.A. Mancini. However, there are a few issues that needed to be resolved in their proposal. Village Administrator Irvin said R.A. Mancini has provided confirmation that their proposal does meet the bid specifications, with all elements included. They have provided the signed documentation for the proposal. They are amenable to locking down the window of time to complete the project within two months of beginning the project. Village Engineer Anderson said they will likely do the project next year after we received the Army Corps of Engineers approval for the wetland areas.

b. Other Matters

Trustee Sheldon reported that the maintenance improvements to Whippoorwill Park are continuing to come along. Mayor Urlacher said that he had received several compliments about Whippoorwill Park and thanked the Committee for their work.

4. **Safety Commission**

a. Discussion of Potential Changes to the Village's Solicitation Regulations

Trustee Pink reported that since the last meeting where the review and potential updates to the Village's solicitation regulations was discussed, several things have occurred. A resident was approached by someone claiming to need information for a fence installation for property line issues and while she was distracted in the backyard with him, she later discovered that someone had entered the house and gone through drawers. Nothing appeared to have been taken, but they may not have had enough time in the house.

Trustee Pink said we have reviewed the solicitation regulations in the Village Code and while some changes can be made, we have to be aware of the free speech of other people. The suggested changes to the regulations were sent to the Village Attorney to review and he provided recommendations for the changes that could be made. In addition to his recommendations, she suggested that we make changes to the days and hours for solicitation by not permitting it to occur before 9:00 a.m. and after 5:00 p.m., Monday through Saturday and at any time on Sundays and State and National holidays, except by charitable organizations, whose hours would not be permitted before 9:00 a.m. and after 9:00 p.m., Monday through Friday and after 6:00 p.m. on Saturday and at any time on Sundays and State and National holidays. Village Attorney said we should add political and others not seeking money. We can have hours for these types of solicitation, but cannot require them to register with the Village. He added that we could limit the hours for commercial solicitation and if we were ever challenged on the matter, we could expand the hours back to the current code. He said that he will incorporate the changes into an ordinance for the next meeting. Trustee Pink said the goal was to limit the commercial solicitation of residents after dark.

Trustee Towne said that solicitation is usually when someone parks their car and walks down a street going door to door. Since Mettawa is more of a large lot, rural village, it is more of a safety issue with solicitors going on private property with long driveways. He asked if there is something that can be added to the regulations to improve the safety of our residents. Village Attorney Smith said that if we were challenged on our code, we could use the rural nature of the community to defend our regulations.

Village Engineer Anderson asked about the use of no solicitation signs. Village Attorney Ferolo said that section would remain in the code and he said the signs could be placed at their driveway entrances. He added that no trespassing signs could be placed which would not allow any type of solicitor on the property.

Trustee Pink said there is also the issue of what type of signs can be placed on properties. Village Administrator Irvin advised the current code and signs that were obtained by the Village read “no solicitors invited” on one side and the other side reads, “only solicitors registered with the Village Administrator invited”. The signs are not very attractive and he question why someone would want to use the “only registered” side of the sign. Village Attorney said the signs have to be large enough to be visible and there should have uniformity with them. Village Engineer Anderson said there was a section in the code that allowed signs of a certain size at the end of driveways. Trustee Pink said we could consider providing the signs to residents and perhaps at the Village Picnic. Village Administrator Irvin said he did not know if there was enough time between the next Board meeting and the picnic to obtain the signs. He also suggested that we change the language to read “no solicitors”, rather than “no solicitors invited”. There was discussion about having uniformity to the signs, but more discussion would take place after a review of the draft ordinance.

## **6. Zoning, Planning and Appeals Commission**

Mayor Urlacher advised that there is a continuation tomorrow night at 7:00 p.m. of the public hearing from last week’s ZPA meeting for the proposed text amendment and amended special use for the Always Faithful Stables.

## **H. BUSINESS FROM THE BOARD FOR DISCUSSION, CONSIDERATION AND, IF SO DETERMINED, ACTION UPON:**

### **1. Mayor’s Report**

#### **a. Village Picnic**

Mayor Urlacher reminded everyone of the Village Picnic scheduled for August 27<sup>th</sup>, from 11:00 a.m. to 2:00 p.m., rain or shine.

#### **b. Village Clerk Update**

Mayor Urlacher reported that he and the Village Administrator interviewed three candidates for the Village Clerk position today. Additional candidates will be interviewed in the coming weeks. We received over 90 applications.

#### **c. Building Report**

Mayor Urlacher thanked Village Engineer Anderson for the monthly Building Report and asked that it be placed on file.

d. Village Administrator's Report

Village Administrator Irvin reported that he had provided background information about the St. Basil's Church's interest in expanding their building and changes to the Village's zoning code that does not allow them to seek a variation for a building expansion. He said that church officials had requested feedback on whether the Board would consider amending the zoning code to permit them to seek a variation for an expansion. They understand the change in the code would only allow them to apply for a variation and there is not guarantee of receiving the variation. After discussion, the Board asked for the church to provide their preliminary plans for review and to continue the discussion at a future meeting.

**2. UNFINISHED BUSINESS**

a. Approval of the Reinstatement and Amendment of the Declaration of Covenants, Conditions and Restrictions for the Deerpath Farm Subdivision

It was moved by Trustee Maier, seconded by Trustee Maier, to remove from the table, approval of the reinstatement and amendment of the Declaration of Covenants, Conditions and Restrictions for the Deerpath Farm Subdivision

Upon a call of the roll, the following voted:

Aye: Trustees Brennan, Maier, Pink and Towne

Nay: None

Abstain: Trustee Sheldon

Absent: Trustee Armstrong

Mayor Urlacher declared the motion carried.

It was moved by Trustee Brennan, seconded by Trustee Maier, approval of the reinstatement and amendment of the Declaration of Covenants, Conditions and Restrictions for the Deerpath Farm Subdivision.

Attorney George Covington representing Deerpath Farms explained that they were requesting two amendments to the CCRs. One is to collect fees and expenses if they prevail in a lawsuit to enforce the declarations, which is standard language in covenants of declaration. It was omitted when the CCRs were first approved in 2004. The other amendment would allow lots 42 and 43, two five acre lots located at the western edge of the property to be subject with respect to use issues to be regulated as other five acre lots in Mettawa. It mainly has to do with domestic animals that can be

maintained on the properties. The litigation involved in the subdivision has been subject to lengthy settlement negotiations and the settlement has been agreed to by a substantial majority of the residents in the subdivision. Village Attorney Ferolo asked Mr. Covington to confirm that the amendments sought were to the 2004 CCRs and that the 2015 CCRs would be vacated and the 2004 CCRs were to be reinstated. Mr. Covington confirmed that they would. Village Attorney Ferolo advised the Village Board that the CCRs required the Village Board to approve the changes sought by Deerpath Farms. He said the settlement agreements include issues of assessments and that nine of the fourteen owners had approved them. Mr. Covington said that another resident had signed the settlement agreement bringing the number to ten.

Trustee Towne said he understood there was some resident opposition to the settlement and asked if there was anyone in the audience who could summarize why. Resident Ron Lapins said the number one concern were the changes made to the CCRs last year without anyone's knowledge. He said that the Village Board has the fiduciary responsibility to determine if the amendments to the CCRs are for the benefit of all of the homeowners. Resident Marguerite Clark Zamalo, said there was no transparency with the changes made in 2015. She said that they were not aware of the settlement agreements. She does not have enough information to determine if the amendments should be approved. Trustee Towne questioned why the Village Board should be involved in approving amendments to the CCRs that are part of a settlement agreement in a lawsuit. Village Attorney Ferolo said that it was part of the entire settlement agreement to add the amendments and the Village Board has to approve these types of amendments to the CCRs. He added that the Board is not required to approve the reinstatement and amendments. It could file litigation seeking to invalidate the 2015 amendments. Trustee Towne asked if the four owners who have not approved the settlement agreements could get together with the developer in order to reach some accord. Mr. Covington said that Rick Phillips has offered to meet with all of the residents. Trustee Towne said he did not see any urgency with the changes and suggested that they meet. Mrs. Zamalo said she was not provided with any details on the actions that had taken place, only provided with a copy of the settle agreement with no explanation. She suggested that the 2004 CCRs be reinstated and the amendments dealt with separately.

Resident Lisa Rose said that she just sold her property in Deerpath Farms. She said the changes made to the CCRs in 2015 should not have been made. She added that the amendments only treat lots 42 and 43 differently since they are 5 acres properties and the other protects the HOA in enforcing the covenants of the subdivision. It benefits all of the homeowners in the subdivision. Resident Patricia Cork said a majority of the residents have approved the settlements and changes. She added that there is an elected HOA Board, but not everyone is happy with it. Resident Mark Jacob said that this is all about fairness. He said the developer has all of the votes and can implement what he wants to implement. He said that they had no representation of involvement in the settlement negotiations. He said these issues need much more discussion.

Rick Phillips, developer of Deerpath Farms said there was a neighborhood meeting held on January 16<sup>th</sup> of this year to discuss the dues issue. At that meeting, he offered to meet with the chosen committee of the homeowners to negotiate a settlement to include the payment of future dues and the offer was turned down. The legal complaint was issued and we begin legal settlement negotiations. There were six months of meetings and legal expenses and an agreement was reached with Mr. Juhrend. The settlement includes the two minor amendments to the CCRs and there are ten owners in agreement with the settlement and changes. Although the CCRs do not require approval of owners until 30 lots are sold, we thought it was best to show that we have a majority of the owners in favor of the amendments and settlements.

Resident Joe Krusinski said he was the first purchaser of a lot in Deerpath Farms in 2006. He questioned at many meetings why there is a disparity in the payment of homeowners' dues between the sold and unsold lots. We were told that it is spelled out in the CCRs. Over time, there were shortfalls in the maintenance accounts and additional funds were paid by the developer to make up the shortfall. However, the payments ended after several lots were paid. This issue and others were discussed at a homeowners meeting. The results of the meeting were the need for more transparency with regard to HOA and reserve expenses, that Deerpath Farm would pay each share of the homeowners due going forward and that the illegally changed CCRs in 2015 would be extinguished and the 2004 ones would be reinstated. Things deteriorated after the meeting, and Art Juhrend filed the lawsuit. A review of the 2015 CCRs revisions indicate that 59 changes were made. He agreed to the settlement since it provides for the developer to pay dues into the maintenance funds. The amendments to the CCRs were added late in the negotiation process. He said he would love to see this 10 year issue come to a conclusion. He did not think a meeting with the four residents who have not agreed to the settlement and changes would likely move them one way or another.

Mayor Urlacher said the Village Board could table the matter, discuss litigation to have the 2004 CCRs reinstated without amendments, or approve the request for reinstatement and two amendments.

Resident Cathy Murphy asked the Village Board to approve the reinstatement with the amendments. She has agreed to the changes, it is a fair settlement and we would like to get this behind us.

Trustee Pink asked if there is a provision in the CCRs that requires all of the owners to agree to the changes and Village Attorney Ferolo said there is no such provision. She added that she thought there were two separate issues here. Trustee Brennan said that if a majority of the residents feel it should be settled, it is their community and if they want peace, it is up to the Board to go with the majority. Trustee Maier said that if we go back to the original covenants without the amendments, if a homeowner is out of compliance, the HOA would have to litigate and if they prevail, they have no recourse to get their money back. Therefore, all homeowners, whether they liked it or not, would have to pay their prorated share of the legal bills. The amendment would



at least give them the chance to recoup their cost. Since a majority of the homeowners are in agreement with it, he suggested that the Board approve it and get it over with. Trustee Towne said that if the 2015 changes were not made, would a lawsuit have been made. George Covington said likely not, but he could not be certain. Trustee Towne agrees with majority rules, but he doesn't know why the developer would not have another meeting. Resident Joe Krusinski did not think it would change anything. Trustee Towne said was bothered by the fact that the developer made the 2015 changes when he had been previously told by the Village that we would not approve the changes. Trustee Armstrong asked if the Board approved the two amendments, would there be any legal harm to the objectors. Resident Marguerite Clark Zamalo said that she wasn't sure about the legal issues, approval would be condoning actions taken by the developer and would not improve the transparency. Resident Linda Gardner Phillips said that she lives on lots 42 and 43 with her husband, the developer of the subdivision. She said that they have gone out of their way to solve problems with the least amount of damage.

Trustee Pink asked the Village Attorney if he believed anything illegal was done when the changes were made to the CCRs in 2015. He said that the changes should have been approved by the Village and we believe that they are invalid. The attorney for the developer does not agree with our position. We only found out about the 2015 changes about six months after they were changed. He added that it is important for the homeowners to have clarity about which CCRs they must follow. Village Attorney Ferolo asked Mr. Covington if the changes to lots 42 and 43 only affected the domestic animal provision of the Village Code and Mr. Covington said that is correct. He added that there were no changes to the assessments paid by those two lots.

Trustee Brennan suggested that a vote be taken on the motion.

Mayor Urlacher said it is a difficult decision and he does not like to see the animosity in the neighborhood or the Village Board placed in the middle to approve the changes. There are ten residents who have agreed to the changes and want to see this move forward.

Upon a call of the roll, the following voted:

Aye: Trustees Armstrong, Brennan, Maier and Mayor Urlacher

Nay: Trustees Pink and Towne

Abstain: Trustee Sheldon

Absent: None

Mayor Urlacher declared the motion carried.

### **3. NEW BUSINESS**

- a. Approval of the Waiving of Sealed Bids and Approval of an Agreement with R.A. Mancini for the Oasis Park Trail Relocation Project in an Amount Not to Exceed \$117,500, Subject to Clarification to the Village Engineer of the Proposal Meeting the Plan Specifications

It was moved by Trustee Towne, seconded by Trustee Maier, to approve the waiving of sealed bids and approval of an Agreement with R.A. Mancini for the Oasis Park Trail Relocation Project in an amount not to exceed \$117,500, subject to clarification to the Village Engineer of the proposal meeting the plans specifications.

Upon a call of the roll, the following voted:

Aye: Trustees Armstrong, Brennan, Maier, Pink, Sheldon and Towne  
Nay: None  
Absent: None

Mayor Urlacher declared the motion carried.

**I. EXECUTIVE SESSION**

**J. CALL TO RECONVENE**

**K. ROLL CALL**

**L. MATTERS REQUIRING ACTION ARISING AS A RESULT OF THE EXECUTIVE SESSION**

**M. ITEMS TO BE REFERRED**

**N. FOR INFORMATION ONLY**

**O. ADJOURNMENT**

With no further business to conduct, it was moved by Trustee Brennan seconded by Trustee Sheldon that the meeting be adjourned.

Upon a call of the role, the following voted:

In Favor: All  
Opposed: None

Mayor Urlacher declared the motion carried and the meeting adjourned at 9:25 p.m.

Bob Irvin, Deputy Village Clerk