

APPROVED  
**LAKE ZURICH BOARD OF TRUSTEES  
REGULAR MEETING  
70 East Main Street**

Monday, May 19, 2008

**1. CALL TO ORDER AND ROLL CALL**

The meeting was called to order at 7:34 pm.

Present were Village President Tolomei, Trustees Branding, Callahan, Johnson, McAvoy, Poynton, and Taylor. Also present were Acting Village Administrator/Finance Director Zochowski, Village Attorney Burkland, Public Works Director/Engineer Heyden, Park Director Perkins, Building/Zoning Director Peterson and Police Chief Urry.

**2. PLEDGE OF ALLEGIANCE**

**3. PRESIDENT'S REPORT**

A. Certificates of Recognition presented to *2008 SNAP Athletes (Special Needs Athletic Program)*

Spring Green, Parent Coordinator, thanked the Board for their support of the Special Needs Athletic Program for the past 10 years. Julie Thies introduced the athletes as they were presented Certificates of Recognition from Village President Tolomei.

B. *Kathleen Rickert Nelson Fine Art*, presentation of drawings of President Lincoln's Cottage to Village of Lake Zurich

Kathleen Rickert Nelson recently went to Washington D.C. to update her drawings of President Lincoln's Cottage for display at the National Trust. A second set of drawings were prepared and presented to her past hometown, the Village of Lake Zurich.

C. Proclamation, *Public Works Week, May 18 -24, 2008, The Future is Now*

A proclamation recognizing May 18<sup>th</sup> through the 24<sup>th</sup> as *Public Works Week, The Future is Now*, was read by Clerk Palmblad. Public Works Director/Engineer Heyden thanked the Board for this recognition and advised plans are under way for their next Open house, to be held next year during Public Works Week.

**4. PUBLIC COMMENT**

John Thode, 52 Robertson Avenue, read a prepared statement summarizing the viewpoints of the "Citizens for a Responsible Development" (CARD). They requested the Village Board vote against the agreement with ESG and provided a list of CARD's reasons.

Wendy Dobner, 5 Prospect Rd., has always felt privileged to live on the lake and requested the Board serve the people that elected them.

Mike Fuentes, 35 Lake Zurich Drive, has concerns with the agreement, questioned why it did not go out to public bid, and the implications of including Whitney Shores in the Lake Zurich redevelopment district.

Chris Matter, 38 Maple Avenue, questioned how changes could be made to the TIF district once the TIF area had been determined.

Spencer Loomis, 16 Lake Zurich Drive, voiced his concerns about the large number of people projected to take up residency on the lake when many people already show disrespect to our beautiful lake.

Jim Tarbet, 1195 Cedar Creek Drive, is frustrated the Village may be repeating the same mistake twice and should be required to go to open bid. Mr. Tarbet questioned the Board's knowledge of ESG and if anyone had an invested interest in them.

Dennis Abbott, 216 W. Main Street, spoke in favor of Snugglewood, Inc. listed as a courtesy review under Other Business. Mr. Abbott also advised the Board how McCaffery Interests financially hurt a friend of his, Norm Schuldt. Mr. Schuldt was hired by McCaffery to work on the current townhouse project. Mr. Abbott suggested the Village ask Mr. Smith to concentrate on developing downtown and remove our focus from Nestlerest at this time.

Responses:

Village President Tolomei advised everyone the Village has no money and ESG is willing to pay to start planning the downtown. Previous developers requested the Village to subsidize the developments along the way. President Tolomei asked Village Attorney Burkland if the Village could see any legal ramifications should this matter not go out to open bid. Attorney Burkland stated it was not a requirement to go to open bid for services. The Village has no plans to change the TIF boundaries; and sub area 6 has been marked for planning purposes only.

Trustee McAvoy is pleasantly surprised that residents are anxious to see development get started downtown.

Trustee Taylor recently met with residents who reside in the Nestlerest area and reiterated again tonight that developing the downtown and developing Nestlerest are two separate issues. Nestlerest plans still need to be reviewed by the Zoning Board and the Plan Commission. New plans have not been designed and submitted to either committee for review.

Trustee Poyton asked staff to explain the site plan and sub area six. Building/Zoning Director Peterson explained that in 2003, the Village amended the comprehensive plan and sub-area six is a tool used for planning purposes only.

Trustee Callahan voiced his concerns that Mr. Smith might decide to walk away if he receives the signed agreement to begin planning the downtown and not given the option to develop Nestlerest. Trustee Johnson again restated that Nestlerest and downtown are two separate issues.

#### 5. **PUBLIC HEARING** – General Obligation Bond Series 2000 refinancing

Finance Director Zochowski advised the Board that staff has been considering refinancing the General Obligation Bond Series 2000, the bonds originally purchased to finance the police facility. Refinancing requires a bond hearing and will save the Village approximately \$375,000. The Village was recently notified they will be the recipient of a \$210,000 grant to build the firing range. A short term bond issuance of \$355,000 will also be requested to finance the construction of the firing range and will abate these bonds once the grant money is received. Once the Village of Lake Zurich has its own firing range, the department will realize a savings since our own officers currently drive to Wisconsin for training and the range can be rented to other departments for firing practice.

The public hearing was opened at 8:25 pm.

Jim Tarbet, 1195 Cedar Creek Drive, totally agrees with refinancing the bond issues and supports the issuance of the \$355,000 bonds for the firing range. Mr. Tarbet questioned whether the bond costs were included in the 2009 budget. Finance Director Zuchowski explained the budget would need to be amended. Mr. Tarbet also requested the ordinance include a covenant the grant money not be used for any other purpose but to payback the bonds.

The public hearing closed at 8:28 pm.

#### 6. **APPROVAL OF MINUTES**

##### A. Regular Village Board meeting May 5, 2008

MOTION was made by Trustee Callahan, seconded by Trustee Johnson, to approve the Regular Village Board meeting minutes of May 5, 2008.

Voice vote, Trustee McAvoy abstained, AYES have it.

MOTION CARRIED.

#### 7. **CONSENT AGENDA**

A. Warrant dated May 19, 2008. The Finance Committee recommends approval and the Board of Trustees approves the Warrant dated May 19, 2008 in the amount of \$793,300.10 which includes the following items over 5% of the total:

|                       |              |        |
|-----------------------|--------------|--------|
| 1. Maxim Construction | \$435,091.77 | 54.85% |
| 2. Peapod, LLC        | \$52,725.00  | 6.65%  |

B. Continental/Temic Antenna Site License Agreement. The Public Safety Committee recommends approval and the Board of Trustees approves an Antenna Site License Agreement between Temic Automotive/Continental and the Village of Lake Zurich.

- C. Newsline, June edition. The Committee of the Whole recommends approval and the Board of Trustees approves this edition of the *Newsline* as presented.
- D. Ordinance amending Municipal Code relating to lake regulations. The Committee of the Whole Committee recommends approval and the Board of Trustees approves AN ORDINANCE AMENDING VARIOUS SECTION OF TITLE 7 OF THE LAKE ZURICH MUNICIPAL CODE RELATING TO PUBLIC WATERWAYS AND BEACHES. (Assign ORD. #2008-05-564)

MOTION was made by Trustee McAvoy, seconded by Trustee Johnson, to approve the Consent Agenda as read.

AYES: 6 Trustees Branding, Callahan, Johnson, McAvoy, Poynton, and Taylor

NAYES: 0

ABSENT: 0

MOTION CARRIED

## 8. ADMINISTRATOR'S REPORT

Acting Village Administrator Zuchowski reminded everyone the Memorial Day Parade will be stepping off on Monday, May 26<sup>th</sup> at 10 am at the American Legion Hall and end at the Veteran's Memorial on Mohawk Drive, near the police station.

## 9. ATTORNEY'S REPORT

No report.

## 10. COMMITTEE AND TRUSTEE REPORTS

Trustee Johnson advised everyone of Canadian National's request to the Surface Transportation Board to expedite its findings to move the purchase of the EJ&E railroad forward. This is not good news for the Village of Lake Zurich. Trustee Johnson suggested we inundate our State Legislators and Surface Transportation Board members with letters explaining our position in this matter.

Trustee Branding mentioned she had received a couple of reports from residents stating recent Board meetings have not been shown in its entirety on Comcast. Public Works Director/Engineer Hayden stated the time slots allowed for broadcasting these meetings are not enough to handle the longer meetings. The residents were reminded that these tapes are available to view at the Ela Library.

Trustee Taylor, Public Works Chairman, thanked Public Works Director Heyden for all the hard work the Public Works Department does for all the residents.

## 11. OTHER BUSINESS

- A. Courtesy review referral. Harvest Bible Chapel, 255 N. Quentin Road, request for proposed building expansion and site development.

No additional information was provided. This item will now move forward to the appropriate Boards and Commissions for further review without recommendation from the Board.

- B. Courtesy review referral. Snugglewood, Inc. 1050 Ensell Road, Unit 166, request for wholesale firewood business.

A question was raised during last week's committee meeting regarding concerns of insect infestation being transported from Wisconsin to Lake Zurich. Building/Zoning Director Peterson has researched this and found Snugglewood, Inc. to be in compliance with both State and Federal requirements to transport this wood across state lines.

This item will now move forward to the appropriate Boards and Commissions for further review without recommendation from the Board.

- C. 258 Clair View, retaining wall. The Planning and Development Committee recommends denial and the Board of Trustees denies the modification to the Land Development Code to increase the height from 2 feet to 12 feet of a retaining wall at 258 Clair View.

Building/Zoning Director Peterson brought the Board up to date on his latest conversations with Mr. Shaf and reviewed his three proposed options that would bring his retaining wall into compliance. Upon review of these three options, Building/Zoning Director Peterson recommended option B, along with a \$5000 penalty for violating Village ordinances. A railing is also required and incorporated into this plan.

Mr. Shaf stated his frustrated with the Village and explained he was never told he needed a permit and inspection to build his retaining wall. During the construction of building his home, he always arranged for other inspections when told they were required by the building department.

MOTION was made by Trustee Callahan, seconded by Trustee Poynton, to allow Mr. Shaf permission to construct his retaining wall according to option B and include the \$5000 fine.

AYES: 5 Trustees Branding, Callahan, Johnson, McAvoy, and Poynton

NAYES: 1 Trustee Taylor

ABSENT: 0

MOTION CARRIED

- D. Consideration of Agreement between the Village of Lake Zurich and Equity Services Group, LLC for Planning and Other Services Related to Revisions to the Downtown Lake Zurich Master Plan.

Trustee Branding took this opportunity to explain her forthcoming actions. Once elected, Trustee Branding was advised against voting on items related to the TIF district since she owns and resides in a bed and breakfast located within the district and could be considered a conflict of interest. Since the outcome of the Comet Welding case, Trustee Branding has felt her position has changed and should now be allowed to vote. Village President Tolomei had contacted the State's Attorney office several weeks ago looking for guidance regarding this conflict. A response was received today that suggested Trustee Branding abstain from voting on TIF issues to avoid violating a criminal statute and any potential prosecution.

Last year, the Board voted to amend the TIF. This amendment has not taken place and was planned to be done as soon as a new developer and plan was in place so the budget could be reviewed and amended. At that time, and if the Board agreed, Trustee Branding's property could also be removed from the TIF to allow her to participate in the decision process.

Trustee Branding then read a prepared statement suggesting the validity of the TIF should be examined based on the ruling by Judge McKoski in March, 2007, in the condemnation case of the Village of Lake Zurich and Comet Welding.

MOTION was made by Trustee Branding to move the Village Attorney be required to prepare a written legal opinion, for publication, as to the effect of the court's order and findings of error in the TIF formation process in the TIF district.

A question was raised on whether the written opinion had ever been completed. Village Attorney Burkland reminded the Board an explanation had been given verbally several times in the past. Attorney Burkland went on record to say Illinois case law indicates "*de minimus*" procedural errors in the formation of the TIF do not invalidate the TIF. Since then, the statutes of limitation in challenging the validity of the TIF have expired and, therefore, the TIF remains valid and in effect.

Trustee Poynton seconded the motion.

Discussion continued on whether such written document would clarify this matter and whether the Village should incur this cost.

Village President Tolomei explained the reason for contacting the State Attorney's office was to protect the liability of the Village of Lake Zurich and stated the decision to vote is entirely up to Trustee Branding. Village Attorney Burkland feels the only way to solve this matter, and if the Board agreed, is amend the TIF by removing Trustee Branding's property which will allow Trustee Branding to vote on TIF related matters.

President Tolomei mentioned the TIF was to be amended for budgetary reasons but could be amended now for this sole reason if the Board chose to approve this expense.

AYES: 2 Trustees Branding and Poynton

NAYES: 4 Trustees Callahan, Johnson, McAvoy and Taylor

ABSENT: 0

MOTION FAILED

A recess was taken at 9:24 pm to change the videotape.  
Meeting reconvened at 9:32 pm with a full Board present.

Trustee Poynton questioned whether another Board member heard Mr. Smith state he would walk away from building downtown if Nestlerest was not part of the deal. Trustee Taylor heard him to say it would make it more difficult.

Trustee Taylor reinforced the Village's position that downtown and Nestlerest are two separate issues. To date, nothing new has been brought forward to the Zoning Board and Plan Commission. Approving this contract still requires Mr. Smith to go through the normal channels of submitting plans, zoning approval, courtesy review, etc.

Trustee Callahan requested the contract include a provision to exclude the Nestlerest development from his plans. Trustee Callahan asked Village Attorney Burkland if it was imminent McCaffery Interests would file a law suit against the Village if the contract with ESG was approved. Village Attorney Burkland reminded the Board that McCaffery Interests still believes their development agreement is in force and has the right to develop parcels downtown.

The contract in front of the Board members allows ESG to begin the four month planning process and the potential of development proposals for downtown. This agreement is in force for four months and a new agreement will be written outlining the development of this plan, should the Board agree to this. The Board asked for clarification on several items in the agreement: parcel development commencement dates, responsibility to pay Torti Gallas and reimbursement plan, consulting fees, financing, survival and condition to exclude Nestlerest. Both Village Attorney Burkland and President Tolomei attempted to answer all their questions.

MOTION was made by Trustee McAvoy, seconded by Trustee Taylor, to approve a contract as presented for an agreement between the Village of Lake Zurich and Equity Services Group, LLC for Planning and Other Services related to revisions to the Downtown Master Plan, subject to Nestlerest being taken off the table for now and adding to Section 4CI, ESG must submit specific development plans for Village review and approval, and include indication of suitable financing for this project.

AYES: 4 Trustees Callahan, Johnson, McAvoy, and Taylor

NAYES: 1 Trustee Poynton

ABSTAIN: 1 Trustee Branding

ABSENT: 0

MOTION CARRIED

E. Discussion of Intergovernmental Agreement with Kildeer.

Village President Tolomei suggested we await a final response from our letter before further discussions take place with the Village of Kildeer.

Trustee Poynton raised a question on item B, regarding compensation of de-annexing Village property. Trustee Taylor mentioned the sales tax split changed from a very low amount to 50/50. This item will be deferred to the next Committee of the Whole meeting on Tuesday, May 27, 2008.

F. Consideration of 2008 Amendment to the Intergovernmental Agreement for Sanitary Sewer Service Between the Village of Lake Zurich and the Village of Hawthorn Woods.

Public Works Director/Engineer Heyden advised that in July of 2007, the Board approved an amendment to the Intergovernmental agreement for sanitary sewer service with the Village of Hawthorn Woods. The Village of Hawthorn Woods had requested to reallocate the sewer capacity to exclude property by Kemper and include a parcel across from the Spencer Loomis school and the aquatic center. At that time, a final draft of the agreement was never brought forward. Since then, the Village of Hawthorn Woods has requested two residential homes across from the aquatic center be included and are not looking for any additional PE.

Trustee Branding questioned if a precedent was being set for future homes and inquired about hook up fees. The Village of Hawthorn Woods is currently seeking additional sanitary sewer service from the county.

MOTION was made by Trustee Johnson, seconded by Trustee Callahan, to approve a 2008 Amendment to the Intergovernmental Agreement for Sanitary Sewer Service between the Village of Lake Zurich and the Village of Hawthorn Woods in accordance with the information provided.

Trustee Branding questioned if this amendment included the two houses requesting sanitary service. Public Works Director/Engineer Heyden stated the map does not include the two houses, but reflects the changes approved last year. Former Village Administrator Dixon had suggested back in 2007 that an administrative fee be put in place to deter them from making changes on a regular basis.

Trustee Johnson and Trustee Callahan withdrew their motion.

MOTION was made by Trustee Callahan, seconded by Trustee Johnson, to approve a 2008 Amendment to the Intergovernmental Agreement for Sanitary Sewer Service between the Village of Lake Zurich and the Village of Hawthorn Woods in accordance with the information provided and include the two houses.

AYES: 5 Trustees Callahan, Johnson, McAvoy, Poynton, and Taylor

NAYES: 1 Trustee Branding

ABSENT: 0

MOTION CARRIED

G. Administrator's request for discussion on Public Comment policy.

Village President Tolomei suggested this item be deferred until Village Administrator Vitas is present to explain his position.

Trustee Poynton recommended the Board visit the Village of South Elgin's website. They provide a detailed list of how to conduct a public meeting and addresses public comments.



**12. ADJOURNMENT**

MOTION was made by Trustee McAvoy, seconded by Trustee Taylor, to adjourn to Executive Session for the purpose of discussing pending, probable and imminent litigation, and not reconvene to open session.

AYES: 6 Trustees Branding, Callahan, Johnson, McAvoy, Poynton, and Taylor

NAYES: 0

ABSENT: 0

MOTION CARRIED

Meeting adjourned at 10:30 pm.

Respectfully submitted: *Gloria M. Palmblad, Village Clerk*

Approved by: \_\_\_\_\_  
President John G. Tolomei