

MINUTES OF THE REGULAR MEETING OF THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WILLOWBROOK HELD ON MONDAY, FEBRUARY 8, 2010, AT THE VILLAGE HALL, 7760 QUINCY STREET, IN THE VILLAGE OF WILLOWBROOK, DUPAGE COUNTY, ILLINOIS.

1. CALL TO ORDER

The meeting was called to order at the hour of 7:30 p.m. by Village President Robert Napoli.

2. ROLL CALL

Those present at roll call were Trustees Dennis Baker, Terrence Kelly, Michael Mistele, Paul Schoenbeck, Sandra O'Connor, Timothy McMahon and President Napoli. ABSENT: None. Also present were Village Clerk Leroy Hansen, Village Attorney William Hennessy, Interim Village Administrator Larry Maholland, Interim Village Administrator Megan Pierce, Acting Chief of Police Mark Shelton, Director of Municipal Services Timothy Halik, Planner Sara Hage and Administrative Intern Garrett Hummel.

A QUORUM WAS DECLARED

3. PLEDGE OF ALLEGIANCE

President Napoli asked everyone to join him in saying the Pledge of Allegiance.

4. OMNIBUS VOTE AGENDA

- a. Waive Reading of Minutes (APPROVE)
- b. Minutes - Regular Board Meeting - January 25, 2010 (APPROVE)
- c. Minutes - Executive Session - January 11, 2010 (APPROVE)
- d. Minutes - Executive Session - November 19, 2009 (APPROVE)
- e. Minutes - Executive Session - November 23, 2009 (APPROVE)
- f. Minutes - Executive Session - December 14, 2009 (APPROVE)
- g. Minutes - Executive Session - December 21, 2009 (APPROVE)
- h. Warrants - February 8, 2010 - \$120,215.48 (APPROVE)
- i. Monthly Financial Report - January 31, 2010 - \$14,531,014.06 (ACCEPT)
- j. RATIFICATION OF APPROVAL - APPLICATION FOR LICENSE TO HOLD A RAFFLE - DARIEN WOMANS CLUB (APPROVE)

President Napoli asked if any Board member wanted to remove any item(s) from the Omnibus Vote Agenda for discussion.

Trustee O'Connor requested that Agenda Item Nos. 4c, 4f, 4g and 4h be removed from the Omnibus Vote Agenda for further discussion.

MOTION: Made by Trustee Schoenbeck, seconded by Trustee McMahon, to approve the Omnibus Vote Agenda exclusive of Item Nos. 4c, 4f, 4g and 4h.

ROLL CALL VOTE: AYES: Trustees Baker, Kelly, Mistele, Schoenbeck, O'Connor and McMahon; NAYS: None; ABSENT: None.

MOTION DECLARED CARRIED

Trustee O'Connor noted that there were some corrections to be made to Agenda Item Nos. 4c, 4f and 4g, which were discussed with Village Clerk Hansen. She requested that Item 4h, page 5 of the Warrants, Attorney Hennessy's bills, be discussed further in Executive Session.

MOTION: Made Trustee Schoenbeck, seconded by Trustee O'Connor, to approve Agenda Item Nos. 4c, 4f and 4g as amended and Agenda Item No. 4h exclusive of Attorney Hennessy's bill.

PREVIOUS ROLL CALL VOTE: AYES: Trustees Baker, Kelly, Mistele, Schoenbeck, O'Connor and McMahon; NAYS: None; ABSENT: None.

MOTION DECLARED CARRIED

NEW BUSINESS

5. VISITOR'S BUSINESS (Public comment is limited to three minutes per person on agenda items only)

None.

6. ORDINANCE - AN ORDINANCE AMENDING THE VILLAGE CODE OF THE VILLAGE OF WILLOWBROOK - TITLE 4, SECTION 4-2-29 - BUILDING CODE; STORMWATER MANAGEMENT ORDINANCE, STORMWATER QUALITY REQUIREMENTS

Director Halik informed the Village Board that as required by Federal Law, municipalities must put in place a program to detect, prohibit and eliminate illicit discharges of pollutants into the municipal storm sewers. The purpose of such a program

is to protect and enhance the quality of both surface and ground water resources through acceptable stormwater management practices. The DuPage County Stormwater Staff and the Municipal Engineers Committee drafted a set of codes that municipalities can adopt to satisfy this requirement. DuPage County adopted their IDDE Ordinance on May 26, 2009 and many municipalities have followed suit in adopting the same standards. The Village Staff prepared a local ordinance that will serve to adopt the County IDDE Ordinance with various local amendments. The ordinance was reviewed and approved by both the Municipal Services Committee and the Village Attorney. The passage of this ordinance will satisfy the Federal requirements.

MOTION: Made by Trustee Mistele, seconded by Trustee McMahon, to pass Ordinance No. 10-0-01.

PREVIOUS ROLL CALL VOTE: AYES: Trustees Baker, Kelly, Mistele, Schoenbeck, O'Connor and McMahon; NAYS: None; ABSENT: None.

MOTION DECLARED CARRIED

7. RESOLUTION - A RESOLUTION AUTHORIZING THE VILLAGE PRESIDENT AND VILLAGE CLERK TO EXECUTE A CERTAIN INTERGOVERNMENTAL AGREEMENT WITH THE COUNTY OF DUPAGE, ILLINOIS, FOR THE IMPLEMENTATION OF THE ILLICIT DISCHARGE DETECTION AND ELIMINATION PROGRAM

Director Halik advised the Board that in conjunction with the previous agenda item, once the Village adopts the local IDDE Ordinance the program requirements must also be implemented. The ordinance requires that routine monitoring, water sampling and, if necessary, tracing an illicit discharge back to its source. Currently these services are being offered by DuPage County to municipalities at no charge, provided the Village enters into an Intergovernmental Agreement with the County. The full-participant version of the IGA requires that the Village provide a storm sewer atlas to the County and agree to prosecute any identified violators. In an effort to reduce program costs to the Village, the Staff recommended the execution the full participant version of the IGA. The IGA was drafted by the County and has already been approved by a number of municipalities. It was reviewed and authorized by the Municipal Services Committee and approved by the Village Attorney.

MOTION: Made by Trustee Mistele, seconded by Trustee McMahon, to adopt Resolution No. 10-R-05.

PREVIOUS ROLL CALL VOTE: AYES: Trustees Baker, Kelly, Mistele, Schoenbeck, O'Connor and McMahon; NAYS: None; ABSENT: None.

MOTION DECLARED CARRIED

Trustee Mistele reminded the Board that relative to the upcoming budget session we set aside monies for completing the mapping of the utilities for the Village. He wanted to make sure that what we had would comply with what DuPage County would look for.

8. RESOLUTION - A RESOLUTION AUTHORIZING THE VILLAGE PRESIDENT AND VILLAGE CLERK TO EXECUTE A CERTAIN LICENSE AGREEMENT - WATER TOWER - SOUTHWEST CENTRAL DISPATCH

Director Halik informed the Board that Southwest Central Dispatch has requested authorization to install a radio communications antenna on the 67th Street water tower to improve our police radio system. Late last year Southwest Central technical crews determined that a new antenna could be installed on top of the tower and the necessary control equipment could be placed in the base cone of the tower. Staff drafted a license agreement in the same general format as the agreement used for the antenna on the tower on the Village Hall property and forwarded the document to Executive Director Bill Shanley at SWCD. Several changes were made to the agreement by Mr. Shanley and the Municipal Services Committee. The final version of the Agreement has been accepted by SWCD, authorized by the Municipal Services Committee and reviewed and approved by Attorney Hennessy. Staff recommended the adoption of the Resolution this evening.

MOTION: Made by Trustee Mistele, seconded by Trustee Baker, to adopt Resolution No. 10-R-06.

PREVIOUS ROLL CALL VOTE: AYES: Trustees Baker, Kelly, Mistele, Schoenbeck, O'Connor and McMahon; NAYS: None; ABSENT: None.

MOTION DECLARED CARRIED

9. ORDINANCE - AN ORDINANCE GRANTING SPECIAL USE PERMITS FOR BICYCLE SALES, RENTALS AND REPAIRS AND AN INDOOR AMUSEMENT ESTABLISHMENT - PATIO RETAIL CENTER - 20-40 W. 75TH STREET & 7444-7450 S. KINGERY HIGHWAY

Planner Hage informed the Village Board that the Plan Commission held a public hearing to consider an application submitted on behalf of the Patio Retail Center and Endure It Sports to operate a high end bicycle shop. Bicycle sales including rentals and repairs under the Village's zoning ordinance are special uses as are indoor amusement establishments. Endure It Sports will be offering simulated bicycle training for tri-athletes and other cyclists and that use triggers the special use permit requirement. The parking requirement can be accommodated within the parking that is already provided on site. Staff typically would be bringing the recommendations in two steps but given the nature of this business, they are interested in opening before the triathlon season gets under way in the next few months.

MOTION: Made by Trustee Mistele, seconded by Trustee McMahon, to pass Ordinance No. 10-0-02.

PREVIOUS ROLL CALL VOTE: AYES: Trustees Baker, Kelly, Mistele, Schoenbeck, O'Connor and McMahon; NAYS: None; ABSENT: None.

MOTION DECLARED CARRIED

PRIOR BUSINESS

10. COMMITTEE REPORTS

Trustee McMahon had no report.

Trustee O'Connor had no report.

Trustee Schoenbeck had no report.

Trustee Mistele had no report.

Trustee Kelly had no report.

Trustee Baker had no report.

11. ATTORNEY'S REPORT

Village Attorney Hennessy had no report.

12. CLERK'S REPORT

Village Clerk Hansen had no report.

13. ADMINISTRATOR'S REPORT

Administrator Maholland had no report.

14. PRESIDENT'S REPORT

President Napoli distributed the following report to the Board with regard to the Willowbrook Telecommunications Tax charged to phone bills of residents of an unincorporated. He requested the report be included in the minutes in its entirety:

"Last Monday, the Director of Finance was contacted by the President of the Timberlake Homeowners Association, Ms. Linda Painter, who complained that her phone bill shows on its face that she is being erroneously charged the 6% Willowbrook Local Telecommunications Tax. Timberlake is a 750 home unincorporated County subdivision located south of this Village but having its same 60527 zip code.

Last Wednesday, a meeting was had with Ms. Painter at the Village Hall to discuss her complaint. Aside from Ms. Painter and myself, those attending this meeting included the Village Administrator, the Director of Finance, the Director of Municipal Services and the Village Attorney. At this meeting, Ms. Painter advised that, based upon her very preliminary survey of other Timberlake homeowners, she believed that the erroneous imposition of the Willowbrook Telecommunications Tax likely extends throughout that 750 home subdivision.

As you know, our Local Telecommunications Tax is applicable only to customer service addresses that are located within this Village's corporate boundaries. While we are the "imposing authority" for this 6% Tax, it is the Illinois Department of Revenue (IDOR) that enforces, administers and collects the 6% Willowbrook Local Telecommunications Tax along with the 7% State Telecommunications Tax. These State and Local Taxes are applied by the Telecom Service Carriers upon the Telecom customers as additional charges on their monthly telecom bills. The Carriers, as taxpayers, then file their tax returns with the Illinois Department of Revenue (IDOT) which, in turn, then remits or distributes the 6% Tax share (minus the State's additional charge of an administration fee) to local municipalities like Willowbrook having imposed such a Telecommunications Tax.

Because the correct jurisdictional "situs" or location where Willowbrook's Telecommunications Tax may be imposed is limited to service addresses within our corporate boundaries, the Carriers' application of our Local Telecommunications Tax to service addresses without our corporate boundaries is clearly erroneous. We believe this "situs" error by the Carriers results from their conflation of all customer service addresses having the same 60527 zip code as being sited or located within this Village.

Because only the State, not the local municipalities, can audit the Carriers to determine if they are correctly applying a Local Telecom Tax, Willowbrook is neither responsible for their erroneous and improper application of our Local Tax nor for any claimed refunds of the same. However, when this Village is made aware of a situs error as may well be the case in this matter, I believe we should lend such reasonable assistance to those individuals erroneously charged our Local Telecom Tax as will assist them in correcting its misapplication by the Carriers.

This being so, I intend to instruct Staff that, in any individual case where this Village is formally presented with clear and unambiguous billing evidence of our Local Telecommunications Tax being erroneously charged by a Carrier to a service addressee not located within our corporate limits, it shall be the official policy of this Village, upon our receipt of that addressee's request, to issue a Village Verification Letter in support of that addressee's written complaint to the Carrier of having been erroneously charged that Tax due to such situs error.

Such a policy statement will serve to dispel and rebut any suspicion or suggestion that this Village is in any way complicit with an alleged Carrier's erroneous application of our Local Telecom Tax. Given our fiduciary responsibility as elected officials to fully account for our receipt and use of public funds and our expressed mutual commitment to honest, open and transparent government, we should do no less. I ask for your support."

Trustee Mistele asked if Willowbrook had received any of the funds.

Administrator Maholland responded that his understanding is that we do not know. On the bill it does not say Willowbrook; it says Telecommunications Tax to municipalities. It is difficult to say since we do not have access to those records.

President Napoli advised that Ms. Painter did say her bill had Willowbrook on it. President Napoli noted that we do not know how many other people have the tax on their bills because we have not seen the bills.

Director Halik reported that Director Stanish was asked to run some projections as to whether 25% of the subdivision was being taxed inappropriately, or 50% or 75%, and he thought the worst case scenario financial projection was \$81,000 per year assuming \$200 per household for landline and cell phone bills. That figure, if you take into consideration a look back period to 2003 when the latest law went into effect, is a pretty substantial amount. At this point, it does not appear that the Village has a direct liability.

Attorney Hennessy noted that in his view no liability for refunds exists here in this Village because even though we are the imposing authority for the tax, the tax is charged by the Telecom Carrier on the customer's monthly service bill. It is collected, administered and enforced by the State of Illinois Department of Revenue. What Willowbrook receives are the distributions of our tax share from the State of Illinois in a lump sum minus the State's administrative fees. It takes local control over it out of our hands. You cannot audit the Telecom providers under the new simplified act that went into effect January 1, 2003, because you cannot administer the tax; it is entirely in the hands of the Illinois Department of Revenue. He saw no liability to the Village in terms of refunds. If there is going to be a refund at some point he believed they would be entitled to it from the Telecom Carrier. As far as the look back, if they can establish that they have been paying in a tax that is jurisdictionally incorrect cited here, they can recapture to January 1, 2003. The idea here is to emphasize to the customers the way the act reads that the burden going forward is really with them. They have to file a written complaint with the carrier first, wait 60 days for the carrier's response, then they can file an appeal with the Illinois Department of Revenue. The Village can verify that the service address is not within the corporate boundaries of the Village and that is really the end of our involvement in this process. President Napoli felt it was good government to assist people who are really incorrectly taxed and to dispel the notion that

we are part of the bargain that was done years ago by the Telecom Providers with the State.

The consensus of the Board was to follow this matter and to be kept advised of any changes or issues that come up.

15. EXECUTIVE SESSION

MOTION: Made by Trustee Schoenbeck, seconded by Trustee Baker, to recess into Executive Session at the hour of 8:04 p.m. to discuss:

- Collective Negotiating Matters pursuant to 5 ILCS 120/2(c)(2)
- Salary Schedules pursuant to 5 ILCS 120/2(c)(2)
- Personnel Matters embracing the possible Appointment, Employment, Compensation, Discipline, Performance and/or Dismissal of Specific Employees of the Public Body pursuant to 5 ILCS 120/2(c)(1)
- Agenda Item No. 4h, Village Attorney Invoice

PREVIOUS ROLL CALL VOTE: AYES: Trustees Baker, Kelly, Mistele, Schoenbeck, O'Connor and McMahon; NAYS: None; ABSENT: None.

MOTION DECLARED CARRIED

SEE APPROPRIATE EXECUTIVE SESSION MINUTES

The Village Board reconvened the regular meeting at the hour of 9:10 p.m.

16. ADJOURNMENT

MOTION: Made by Trustee Schoenbeck, seconded by Trustee McMahon, to adjourn the regular meeting at the hour of 9:11 p.m.

PREVIOUS ROLL CALL VOTE: AYES: Trustees Baker, Kelly, Mistele, Schoenbeck, O'Connor and McMahon; NAYS: None; ABSENT: None.

MOTION DECLARED CARRIED

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PRESENTED, READ and APPROVED,

_____, 2010

Village President

Minutes transcribed by Mary Partyka.