

**MINUTES OF THE REGULAR MEETING OF THE**  
**NEW LENOX BOARD OF TRUSTEES**  
**New Lenox Village Hall, 1 Veterans Parkway**  
**Monday, February 8, 2010**

#10-04

**CALL TO ORDER**

The Regular Meeting of the New Lenox Village Board of Trustees was called to order at 7:08 p.m. by Mayor Timothy Baldermann in the Council Chambers of the New Lenox Village Hall.

**ROLL CALL**

Upon Roll Call by the Village Clerk, the following members of the corporate authorities answered "Here" or "Present":

Trustees Smith, Madsen, Butterfield, Bowden, Dye, Tuminello, and Mayor Baldermann

The following were absent: Absent

**QUORUM**

There being a sufficient number of members of the corporate authorities in attendance to constitute a quorum, the meeting was declared in order.

**OTHER OFFICIALS IN ATTENDANCE**

Also in attendance were Village Administrator Russ Loebe, Village Clerk Marcia Englert, Finance Director Kim Auchstetter, Planning and Development Administrator Robin Ellis, Police Chief Bob Sterba, Village Engineer Scott Killinger, Building & Zoning Administrator Warren Rendleman, Public Works Superintendent Ron Sly, Economic Development Director Randall Lowman, Civil Engineer Will Nash, Assistant to the Administrator Carol Hennessy, Attorney Marty Shanahan, Attorney Chris Spesia, Deputy Clerk Laura Ruhl, and Deputy Clerk Bonnie Motyka.

**CITIZENS REQUESTS & SPECIAL REQUEST**

Troop #44 and their leader Joe Gall presented the Pledge of Allegiance.

Mayor Baldermann stated that the troop was working on a Citizenship in the Community Badge. He added that tonight was the 100<sup>th</sup> Anniversary of Boy Scouts of America.

**American Legion Presentation - Request to Waive Review Fees – Chuck Smith/Craig Phillips**

Mr. Chuck Smith reported the American Legion wanted to construct an addition to their building to increase the capacity. He stated they had been working with the County to secure a foundation permit. He stated he had been working with staff on an annexation agreement. He reported they would like to construct an 8,000 square foot addition with new parking to the west. He stated they were looking at additional detention on the north end of the site. He showed a rendering of the proposed building noting that there would be a kitchen and banquet area. He reported they were working on installation of a sewer line along with the right of way.

Trustee Madsen asked about the cost of running the sewer line to the project. Mr. Smith stated the cost was in excess of \$150,000. He noted the water had to come across Cedar and they continued to work with staff on phasing the costs so that this could get started.

Trustee Smith asked when the project would begin. Mr. Smith stated weather permitting it would be soon noting they did pull a permit to begin the foundation.

Mr. Loebe reported on many petitioner meetings with Mayor, committee, and staff regarding this issue. He stated the sanitary sewer was a challenge because it had to flow downhill and there were technical issues finding a sewer route that worked well. He added water was across the street from the project.

Motion to approve request for waiver of Review Fees for American Legion made by Trustee Madsen and seconded by Trustee Smith.

Upon roll call, the vote was:

**AYES:**                                 7         Trustees Butterfield, Madsen, Smith, Bowden, Dye, Tuminello, and Mayor Baldermann

**NAYS:**                                 0

**ABSTAIN:**                             0

**ABSENT:**                             0

The motion carried.

**CONSENT AGENDA**

Motion to approve 3 items on Consent Agenda #10-04 as presented in packet made by Trustee Dye and seconded by Trustee Bowden.

Items up for approval:



Trustee Tuminello asked if this had been reviewed by the FAA. Mr. Tryon stated it had not and they would be sending the information on to IDOT and the FAA for review of all flight paths, etc. if they received Board approval. Trustee Tuminello expressed concern with the southeast approach/departure and not knowing the size of the building that would sit on the outlot adding that he not want a problem to arise with a potential anchor store in that area in the future. Mr. Tryon stated they could shift the flight path in to the north and west. He stated FAA required them to have over a 90 degree path to come in on. Trustee Tuminello stated the northern approach/departure would be a little northwest and this could be easterly. Ms. Ellis stated page 4 of staff report included the approved plans for that area. Mayor Baldermann stated this was a good point because the Board would not want to see their hands tied with future development.

Trustee Madsen stated he would be a resident affected by the helicopter traffic and was still in favor of this.

Trustee Dye stated that even though the report had not been submitted to the FAA comparisons were done for due diligence that Silver Cross was setting this up to comply with their provision.

Mayor Baldermann reported this would return for second read.

### **Ordinance #2089 Amending Title 18 – Vacant/Abandoned Buildings – 2<sup>nd</sup> Read**

Mr. Rendleman reported in January 2009 issues with vacant/abandoned properties were brought to the Village's attention. He stated in February the Public Improvements Committee began work on an ordinance to monitor these buildings. He reported that every month from February through October 2009 the committee worked on a draft ordinance that was presented to the Board for first read in October where no changes were made to the draft. He stated the first read ordinance was posted on the State website as required by law and after that the Village was contacted by Three Rivers Realtors Association regarding a few concerns. He reported staff and Village Attorney met with the realtors to go over their concerns and the ordinance tonight was version #8 which tried to incorporate all of the realtors' changes.

Mr. Rendleman stated the issues with vacant/abandoned buildings were not to impede on sales of the homes but to monitor the situations that existed. He added the ordinance would give the Village the influence and contacts to eliminate some of the issue. He noted that some homes had broken water pipes creating thousands of dollars of damage and mold issues. He added the ordinance tried to get ahead of the curve before the homes became a burden to the neighborhoods and so that the current housing stock could be maintained.

Mr. Rendleman showed slides of a house that sat vacant for over a year due to fire damage, the lumber yard that needed to be demolished, a home that had 400,000 gallons of water from a broken water pipe which ruined the hardwood floors, and a home with \$40,000 in mold damage. He added the homes were uninhabitable and the intent was to get these homes fixed before someone tried to move back into them.

Mr. Rendleman stated that Mr. Shanahan worked closely with staff on this ordinance.

Mr. Thomas Joseph, Government Affairs Director for Three Rivers Realtors Association, reported the realtors were concerned with the process and how it would play out. He stated the realtors appreciated the fact that the fee had been lowered from \$100 to \$50 but questioned how it applied under the law. He appreciated the right to appeal by owner was extended from 14 days to 21 days. He appreciated that Section 371 removed the word "agent" under owner but felt that more clarity was needed. He stated his Association requested the U. S. Constitution, Illinois Constitution, and the Supreme Court rulings regarding basic consent provisions be followed. He stated that the application for inspection needed to spell out that consent was sought to enter from occupant and owner for rental or property owners for single family. He stated Section 18-371 and Section 379 needed to be clarified regarding "legal owner" being responsible solely and not their representatives. He expressed his concerns with the building/zoning administrator evaluating buildings for vacant and asked for clarity. He discussed Section 18-379 for enforcement asking for more clarity as to owner accountability. He referenced Section 18-380 regarding re-occupancy and asked for clarity of property maintenance codes and minimum standards of habitability. He suggested staff use language that the inspection would be performed for the purchaser or owner of the property by an inspector licensed by the State of Illinois showing compliance with minimum levels of habitability. He stated his Association would work with the Village to develop a form to be used in these situations for inspection by a private inspector. He asked for more dialogue before the Board considered acting on this ordinance.

Mayor Baldermann stated he appreciated the acknowledgement that there had been ideas shared between the realtors and staff. He added the Board stood behind staff and Village Attorney noting it was good to have had this input. He stated some of the realtors' suggestions were used and several changes had been made.

Trustee Madsen reported the committee had worked on this ordinance for over a year. He stated the Village Attorney worked on this. He added this was at the eighth version and he was comfortable with the ordinance as it was presented. He stated that if changes needed to be made at a later date it could be done. He added that something needed to be in place due to the condition of some of the vacant homes. He asked Mr. Joseph if his home community had an ordinance of this nature.

Mr. Joseph stated it did not and most communities did not. He stated that there were about four properties in foreclosure in New Lenox with another eight in pre-foreclosure. He added the realtors were not sure this ordinance addressed the larger concerns.

Mayor Baldermann stated the ordinance would apply to commercial properties as well. He informed Mr. Joseph that the Board was proactive and did not wait until there was a major problem.

Trustee Smith stated he liked the ordinance as it was. He added that he hoped this was an ordinance that would never be used.

Mr. Joseph stated that without a few of the adjustments the Association believed there was a serious constitutionality issue. He encouraged the Board to take a step back and look at it again. Mayor Baldermann stated the Board and staff had looked at this ordinance a number of times.

Trustee Smith stated that the U. S. Constitution applied to all ordinances and believed that staff would not be able to just walk into someone's home. Mr. Joseph stated that was why the Association wanted them to seek consent because they would be entering someone's property. Trustee Smith stated this was covered under the Supremacy Clause.

Mayor Baldermann stated he respected Mr. Joseph's comments and part of Mr. Joseph's job was property owner rights. He added that the Village had to look at the property owner rights as well as the neighbors' property owner rights. He referenced the home with the mold damage in the slide earlier noting that the neighbors tried to keep up the exterior of the home so the neighborhood looked nice until they had to complain about green pool water, etc. Mr. Shanahan added the neighbors complained about smells from the home.

Trustee Butterfield stated this ordinance began last winter. Mr. Joseph stated the Association was contacted in October and most of the drafts they were given never addressed their concerns.

Trustee Tuminello stated he thought the Realtors Association would be in favor of this ordinance because homes that looked aesthetically unpleasing would drive down the home prices in the neighborhood. He asked what would happen if the paperwork and permit fees were not paid. Mr. Shanahan stated notice would be sent informing the owner that they had to register. Trustee Tuminello asked how the Village would know the building was vacant. Trustee Dye stated the name listed on the deed would be notified. Mayor Baldermann reported the Village would have a list of foreclosed homes. Mr. Rendleman stated staff did legwork to determine ownership of vacant buildings and they had a master list of homes they knew were vacant through County registration listings or through utility billing accounts where water was turned off. He added a title search could be done to determine the bank or owner if the homeowner already vacated.

Trustee Tuminello stated the Realtors' letter suggested the Village would inspect the home if there were collected newspapers indicating a vacant home. He noted this was not the truth because that was not a determination of a vacant or abandoned home.

Mr. Joseph stated the County registration list took into consideration all properties including pre-foreclosures and the Association did not think this list was helpful. He stated there was a new bill that required the bank to notify that there was a foreclosure or vacancy over 90 days which would provide the Village with more information. He expressed concerns regarding fines that may end up being paid by realtors if the bank did not do what they were supposed to do.

Trustee Butterfield stated that was not a problem with the Village but a problem with the bank. He added this was done through the realtors' contract.

Trustee Tuminello disagreed with Mr. Joseph that the realtor would have to pay the fines. He explained that he was a bank board member and when properties went out for sale the bank had to pay all of the fees and back taxes. Mr. Joseph stated that all banks did not do this and most of the time all properties were handed to the agent who had to pay for the fees and were reimbursed later.

Mayor Baldermann stated the ordinance clearly defined the term "owner". He noted the ordinance read: "*The owner means any person, operator, firm, or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or village as holding title to the property...*" He asked how Mr. Joseph was not comfortable with this. Mr. Joseph asked if the broker/manager with the listing for the property would be thrown into this mix because they were a legal entity. Trustee Butterfield stated it did not say that. Mr. Joseph stated that was why they were seeking more clarity. Mayor Baldermann stated the word "agent" had been removed and Village Attorney was comfortable with the language.

Mr. Joseph stated he wanted the Village to go on record as saying they would not access the fees to the realtor selling the home.

Trustee Smith stated that it was not the Village's status to say what should and should not be done with a contract that the realtor had which might require the realtor to pay fees. Mayor Baldermann stated the Village was not saying the fees would be waived. He noted the agent would not be responsible for paying those fees. Trustee Smith added unless the realtor had a contract stating he would pay the fees.

Trustee Madsen stated the ordinance was drafted because these homes were a safety hazard. He stated the mold was a problem and neighbors were afraid kids would get into these homes. He noted the ordinance was to protect residents as well as potential buyers of these homes.

Trustee Bowden stated a good job was done on the ordinance and there were compromises made. She added she was ready to go forward with this.

Mayor Baldermann stated he believed Mr. Joseph and his Association knew what the intent of the ordinance was noting that their job was to look beyond the intent. He added staff and Village Attorney did a great job working on this. He noted there was confidence that the intent of the ordinance covered his concerns. He noted Three Rivers Association input was valuable and the ordinance was intended to protect property owner rights.

Mr. Joseph stated Mr. Loebe reached out to his Association in October and they had not been invited to any committee meetings. Trustee Madsen stated that the committee meetings were always open to the public. Trustee Dye stated an invitation was not necessary to attend these meetings.

Trustee Dye stated the Association suggested an inspection be performed by someone from the State of Illinois and asked how much that cost. Mr. Joseph stated the buyer or seller would come to agreement on that. Trustee Dye asked again how much this cost. Mr. Joseph

stated a private home inspection could be between \$250 and \$300 but was a worthy investment for any buyer.

Trustee Dye stated the fees were lowered from \$100 to \$50 which might not cover Village costs noting that taxpayer funds should not have to be used to help out anyone other than taxpayers. She stated she had concerns with Mr. Joseph's suggested that another layer be added that could result in taxpayers paying another fee. Mr. Joseph stated they were asking the Village to step back from the process to allow the private inspection and if failed to meet Village's minimum standards then the Village inspector could come out.

Trustee Dye asked if Mr. Joseph understood why the ordinance was drafted to begin with. She stated there was a home with rats in it and these inspections were necessary. She noted she was frustrated with this because it had been ongoing for a long time. She stated the Board had to go with this because residents expected the Board to do something about the vacant houses. She noted it was a symptom of the economy and was no one's fault. She added it was being done to protect the residents.

Motion to adopt Ordinance #2089 amending Title 18 – Vacant/Abandoned Buildings made by Trustee Madsen and seconded by Trustee Dye.

Upon roll call, the vote was:

<b>AYES:</b>	<u>7</u>	Trustees Tuminello, Butterfield, Madsen, Dye, Bowden, Smith, and Mayor Baldermann
<b>NAYS:</b>	<u>0</u>	
<b>ABSTAIN:</b>	<u>0</u>	
<b>ABSENT:</b>	<u>0</u>	

The motion carried.

## **REPORTS AND COMMUNICATIONS FROM VILLAGE OFFICIALS**

### **MAYOR**

Mayor Baldermann reported that 21 compliance checks for tobacco were conducted on local businesses by the Police Department with no businesses selling to minors. He asked the community to contact the Police Department if they knew of a business that was selling alcohol or tobacco to minors.

Mayor Baldermann reported the Board continued to receive calls from the community regarding video gaming. He added initial legislation stated there would be no penalty if a community opted out of gaming but lately there had been discussion that communities that opted out might have tax money taken from them or fines of the dollar amount estimated gaming would have produced or loss of MFT/income tax dollars. He stated he was

adamantly opposed to video gaming in New Lenox but added that until Springfield presented all repercussions the Village needed to wait and see before taking action. He noted it was unfortunate that the State government continued to pass legislation without knowing the rules. He stated he did not want the Village to opt out and later find out it would cost hundreds of thousands of dollars.

Trustee Madsen agreed with Mayor Baldermann on waiting to see what came out of Springfield before taking action. He stated that with the legislature back in session there should be some movement on this issue very soon.

Trustee Bowden asked if there was time sensitivity to making a decision. Mayor Baldermann stated there was not a time limit now noting he heard towns could opt out whenever they wanted. He noted if he heard that this had become time sensitive he would bring information back to the Board immediately. Trustee Bowden stated previous Board consensus was that the Board was not in favor of video gaming but had not taken any legal action with the State regarding this.

Trustee Tuminello stated there was a bill in Springfield regarding the MFT funds which was scary because that could hit the town hard. He noted there was time for the Board to wait and receive more information because there was not a board to regulate the gaming or rules/people in place to run the program.

Trustee Dye stated she did not know if the State would even have the information ready for villages before asking them to make their decisions. Mayor Baldermann stated that the law required that the information be in place before action was taken.

Mayor Baldermann stated he had all of the bands in place for the Triple Play Concert Series but wanted to have all contracts in hand before making an announcement.

**VILLAGE ATTORNEY** - None

**VILLAGE CLERK** - None

**POLICE CHIEF** - None

**FINANCE DIRECTOR** - None

**PLANNING & DEVELOPMENT ADMINISTRATOR** - None

**BUILDING & ZONING ADMINISTRATOR** - None

**ECONOMIC DEVELOPMENT DIRECTOR** – None

**VILLAGE ENGINEER**

Mr. Killinger reported that the timing of the left turn lane light on Laraway and Calistoga had been reported to the County. He noted he and Mr. Nash drove the leg of the intersection and

did not see a problem. Mayor Baldermann stated the issue occurred when bad weather was involved and only one or two cars could use the light trying to get to the train. Mr. Killinger stated the County would look at this.

**PUBLIC WORKS SUPERINTENDENT** – None

**VILLAGE ADMINISTRATOR** - None

**PAYMENT OF BILLS** – None

**QUESTIONS AND/OR COMMENTS FROM THE FLOOR**

Boy Scout Jacob Gall asked the Board to consider changing the law to make dirt bikes legal. He added there were no places for these bikes to be used. Mayor Baldermann stated the problem was that the dirt bikes were dangerous especially when bikes enter the roadway.

Boy Scout Tyler Simons asked the Board to consider a skate park in New Lenox. Mayor Baldermann stated that the Park District should be contacted about a skate park. He added that the Park District did try to find a location for a skate park and every where they found a spot the neighbors did not want the park near them. He suggested Mr. Simons attend the next Park Board Meeting which was held the third Wednesday of each month.

Mayor Baldermann thanked the Boy Scouts for attending the meeting. He noted that a lot of students attended Student Government Day and had similar requests for the community that the Board took action on.

**TRUSTEE COMMENTS**

**Trustee Dye** - None

**Trustee Tuminello**

Trustee Tuminello reminded the audience about Valentine's Day.

**Trustee Butterfield** - None

**Trustee Bowden** - None

**Trustee Madsen** - None

**Trustee Smith**

Trustee Smith complimented the Boy Scouts on speaking at the meeting with good ideas.

**EXECUTIVE SESSION****RECESS**

Motion to adjourn to Executive Session for Section (c)(2) collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees AND Section 2(c)(1) the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body, including hearing testimony on a complaint lodged against an employee to determine its validity by Trustee Bowden and seconded by Trustee Dye.

Upon roll call, the vote was:

**AYE:**                    7                    Trustees Madsen, Tuminello, Dye, Butterfield, Smith, Bowden, and Mayor Baldermann

**NAY:**                    0

**ABSTAIN:**            0

**ABSENT:**             0

Motion carried. The meeting recessed at 8:05 p.m.

**RECONVENE**

All members of the corporate authorities previously in attendance before Executive Session were in attendance when the Board reconvened at 10:18 p.m. Mr. Loebe and Ms. Motyka were also in attendance.

**ADJOURNMENT**

Motion to adjourn the meeting made by Trustee Smith and seconded by Trustee Bowden. Upon voice vote, the motion carried unanimously. The Regular Meeting of the Village of New Lenox Board of Trustees held on February 8, 2010 was adjourned at 10:18 p.m.

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**Bonnie Motyka, Deputy Village Clerk**