

Meeting Minutes

Village of Downers Grove - Council Meeting

Council Chambers

1/5/2016

7:00 PM

In order to give as many visitors as possible an opportunity to speak and in the interest of adjourning the meeting by 9:00 p.m., please limit your comments to 5 minutes in length, unless further time is granted by Council. Thank you.

1. Call to Order

Mayor Martin Tully called the regular meeting of the Village Council of the Village of Downers Grove to order at 7:00 p.m. in the Council Chambers of the Downers Grove Village Hall.

Pledge of Allegiance to the Flag

Mayor Tully led those present in the Pledge of Allegiance to the Flag.

2. Roll Call

Council Attendance (Present): Commissioner Waldack, Commissioner White, Commissioner Vattimo, Commissioner Hosé, Commissioner Olsen, Commissioner Barnett; Mayor Tully

Absent: None

Non-Voting: Village Manager David Fieldman; Assistant Village Attorney Dawn Didier; Village Clerk April Holden

Absent: Village Attorney Enza Petrarca

The Council meeting is broadcast over the local FM radio station, WDGC. In addition, a tape recording and videotape of the meeting are being made using Village-owned equipment. The videotape of the meeting will be used for later rebroadcast of the Council meeting over the Village cable television Channel 6.

The Council will follow the rules of conduct for this meeting as provided in Sec. 2.5 of the Downers Grove Municipal Code. These offer the public the opportunity to comment at several points in the meeting. First, immediately following approval of the minutes of past meetings, an opportunity will be given for public comments and questions of a general nature. If a public hearing is scheduled for this meeting, an opportunity is given for public comments and questions related to the subject of the hearing. Finally, an opportunity is given for public comments and questions on items appearing on the Active Agenda and the First Reading.

The Mayor stated that at the appropriate time the presiding officers will ask if there are any comments from the public. Individuals wishing to speak, should raise their hand to be recognized and, after acknowledgment from the presiding officer, approach the microphone and state their name. Remarks should be limited to five minutes, and individuals are asked to refrain from making repetitive statements.

Mayor Tully said there are agendas located on either side of the Council Chambers, and he invited the audience to pick up an agenda and follow the progress of the Council meeting.

3. Minutes of Council Meetings

MIN 2015-6621 — A. Minutes: Council Minutes - December 15, 2015

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Motion: Commissioner Olsen, seconded by Commissioner White, moved to approve the minutes as presented.

Mayor Tully declared the motion carried by voice vote.

4. Public Comments

This is the opportunity for public comments.

1. Sherwood Kraemer spoke on behalf of the owner of property in the 4700 block of Oakwood in the historical area. Mr. Kraemer distributed some information including photos of the site to the Village Council. Neighbors have had ongoing correspondence with the Village regarding two new homes built on Oakwood and issues of stormwater drainage. He said that Karen Dalton Lange and other Village staff have done good work regarding this issue, and he noted that one of the Commissioners visited the site. He was pleased with this because it means that the Council will understand what is taking place. He then went on to describe some of the materials he distributed which showed the original 110'x141' sized lot. A second sketch showed two 55'x141' lots with a home, driveway and approximate patio locations identifying impermeable surfaces. Mr. Kraemer noted the approximate rain garden location on the northernmost lot. He said that the permeable area is inadequate to handle the amount of water being discharged. The present permeable area is approximately 60% versus the previous 93%. He explained that the rain garden was overwhelmed through the fall and early winter, and the overflow drainage is severely affecting the properties to the west and the north.

Mr. Kraemer noted that the proposed drain basin installation is supposed to connect to the storm sewer after 1.25 inches of rain has fallen. This is only a temporary solution and is not a permanent and necessary solution. He noted that staff and neighbors met at the site after a 1.5-inch rain in December and the rain garden overflowed. Mr. Kraemer said the construction of these two homes has affected and impacted the neighbors in a variety of ways including flooding to basements, standing water in the yards and extreme danger to several old growth trees whose roots have been inundated with water nonstop for over two months. He noted that one of the older trees is a 150-year old oak tree. A neighbor to the north of the development has a new .25-inch crack in their basement floor possibly due to a rising water table causing hydrostatic pressure on the floor.

Continuing to review the materials distributed to the Council, Mr. Kraemer said there is no natural outlet for water to the north, so it now collects in their yards. Soil in that area is clay based and there is very poor percolation. The problem will persist. This is a "nuisance" as defined by the stormwater guidelines, which is defined as standing water for a 72-hour period. Mr. Kraemer surmised that the only viable solution is the necessary solution, drastic or not. Sump pumps of the new homes must drain directly into the storm sewers. The neighbors believe that overly permissible ordinances created these problems; therefore, extraordinary means must be used to solve the problems.

Mayor Tully replied that the staff and Village Council are well aware of this issue, and staff is working with the builder. Occupancy permits will not be issued until the Ordinance is met.

2. Brian Blattner, 4732 Oakwood, said that he spoke at the last Council meeting and thanked everyone for the dialogue that has occurred with staff. Things are progressing. The solution and options offered by a licensed engineer were not accepted. A large portion of their backyard is rendered unusable because of the rain garden. What was constructed was what asked of them by the Code. Regarding the occupancy permit, he asked for a temporary occupancy as they move forward. They have constructed what the Code required and waiting through the winter would be very difficult for his family. They are concerned about the dangers with the accumulated water in the back yard, especially if it should freeze over with the colder weather approaching. Mr. Blattner said that their intention is to be contributing members of the Village.

Mayor Tully responded that there are often several sides to a story. Sometimes people hear more than what was said, and sometimes people say more than what was intended. He said he went through this process himself just 2-3 years ago. His understanding is that things were not constructed exactly as they were supposed to be, and

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there are multiple sides of the story. He noted that the Village is working toward full compliance, and the Village will not give temporary occupancy in this situation. The Village Council and staff have heard multiple facets of this situation.

Mr. Blattner replied that he would like to be involved and included on correspondence for full transparency. If there is misinformation that is an issue.

The Mayor said that the Village is fully aware of this and staff is fully engaged in trying to come to a solution.

3. Tim Werner, 6736 Osage Place, said he was a co-founder of Downers Grove for Responsible Government (DG4RG). The organization came about over deep concerns about the proposed \$52 million facilities plan. The organization supported a non-binding referendum, and came across incredible support from the residents. This made DG4RG realize how important the issue was. The current Village Council more accurately represents the will of the people and DG4RG is pleased with the direction of this Council. Actions taken by the Council demonstrate the stewardship they were hoping to see. He looks forward to updates on the facilities plan.

5. Consent Agenda

COR 2015-6622 — A. Claims Ordinance: No. 6139, Payroll, December 11, 2015

BIL 2015-6623 — B. Bills Payable: No. 6236, January 5, 2016

RES 2015-6560 — C. Resolution: Authorize an Extension to the Agreement with Hyland Software, Inc.

Summary: This authorizes an extension to an agreement for OnBase with Hyland Software, Inc. of Westlake, Ohio in an amount not to exceed \$20,085.68.

**A RESOLUTION AUTHORIZING AN EXTENSION TO THE AGREEMENT BETWEEN THE
VILLAGE OF DOWNERS GROVE AND HYLAND SOFTWARE, INC.**

RESOLUTION 2016-01

MOT 2015-6618 — D. Motion: Award a Professional Services Agreement to Robert W. Baird & Co., Naperville, IL, for Financial Advising Services

Summary: This awards a professional services agreement to Robert W. Baird & Co., Naperville, IL, for financial advising services.

MIN 2015-6624 — E. Minutes: Note Receipt of Minutes of Boards and Commissions

Summary: Environmental Concerns Commission - November 12, 2015; Library Board - November 18, 2015 and December 2, 2015

Motion: Commissioner Olsen moved to approve the Consent Agenda as presented. Commissioner White seconded the motion.

Votes: Yea: Commissioners Olsen, White, Waldack, Vattimo, Hosé, Barnett; Mayor Tully

Nay: None

Mayor Tully declared the motion carried.

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6. Active Agenda

7. First Reading

Village Manager Dave Fieldman said that Items A & B will be presented by Stan Popovich, Community Development Director.

ORD 2015-6611 — A. Ordinance: Rezone Property at 6035 Middaugh Avenue

Stan Popovich, Director, Community Development, showed a map with the location of the property, which is 150' wide x 292' deep, and is zoned R-1. There is a single-family home on the larger lot. The proposal is to develop the lots into two 75' wide lots and the proposal meets the Code requirements and the Comprehensive Plan. The lots would be rezoned R-3, which is consistent with surrounding lots of that size. The lots also meet the Zoning Ordinance requirements. The exceptions asked for are curb and gutter requirements.

Chuck Sebaski, petitioner, said he and his wife have lived in Downers Grove for over 40 years. They will continue to live on the property directly south of this site.

RES 2015-6612 — B. Resolution: Approve the Final Plat of Subdivision with Exceptions for 6035 Middaugh Avenue

ORD 2015-6494 — C. Ordinance: Establish Special Service Area Number 9 in the Village of Downers Grove, Illinois

Mr. Fieldman said this is to establish Special Service Area (SSA) No. 9 at 1350 35th Street, for the 35th and Saratoga Subdivision. The SSA will allow the Village to levy a special tax on the property owners for the maintenance of the stormwater management facilities. It would only be activated in the event that the homeowners' association defaults and the Village is required to step in and maintain the common areas.

Mayor Tully said this policy and practice has been in place for a few years. It is a tool that allows the Village to levy a special tax on property owners if the homeowners' association defaults and fails to maintain the stormwater management facility.

MOT 2015-6625 — D. Motion: Terminate Sales Tax Rebate Agreement with Lemon Tree Grocer

Mr. Fieldman explained that this motion would terminate the sales tax rebate agreement. He introduced one of the owners of the Lemon Tree Grocer.

1. Shaun Black, one of the owners of Lemon Tree Grocer, said that their store started in 2010 with the intention of opening as a grocery store. He referenced a letter sent from the owners to the Village Council this past week concerning proposed changes to the business focus. Mr. Black said that over the course of their business, the economic climate in the grocery business has changed significantly, and they have done everything they can to stay within the original intent of the business. They have struggled to find a niche, and they have come to care about this community and make the business work. He said they have gone back to the drawing board, and they have put a lot of money into the business. They want to be a viable, sustainable business in the Village of Downers Grove. They want to remain here. During the re-concepting of the business, the current tax rebate doesn't fit with the business. They want to make the grocery smaller in size for economic reasons and enlarge the restaurant. Talking with the Village staff they wanted to come up with a solution that is a win-win for both the Village and Lemon Tree. He said working with staff he believes they have come up with something that would generate a greater sum of taxable income for the Village, and they would forego any additional rebate. The

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building is challenging with many issues. There are a number of issues that need to be fixed and they are committed to working with the landlord. The Village has been made aware of these issues. They will take on another manager for day-to-day operations. He thinks they can right some of the wrongs that were made.

Commissioner White asked whether the intent is to keep the grocery with a smaller footprint, and Mr. Black said that was correct. Commissioner White said that the financial projections attached seem to be that 20%-25% of the gross is from the grocery. Mr. Black said that is an estimate. Commissioner White then asked for verification that they never received any sales tax rebate except for the groceries and Mr. Black said that was correct.

Commissioner White said he submitted a proposal to the Council earlier today. He said he wants to keep the grocer in the downtown area and see the business succeed. He is proposing that as long as the grocer remains at that premises the Village will make no effort to collect the sales tax rebate. And for every dollar of sales tax generated, a dollar of the recapture amount will be forgiven. There is no time limit. He doesn't want to see them walk away from what was negotiated a few years ago.

Mr. Black said he has business partners, and he thinks it is a fair proposal. They have every intention of keeping the grocery store. The economic climate demanded the changes. Commissioner White said that the Village is well aware of the charitable work that has been done by Lemon Tree.

Commissioner Olsen commented that he is favorably inclined toward Commissioner White's proposal.

Commissioner Waldack said that he hopes Lemon Tree reopens with a new business model. The current agreement is at issue regarding the dissolution of the sales tax rebate agreement. He said that residents wanted a plain old grocery store. The specialty grocery store is failing and the uniqueness in terms of its destination is insufficient to sustain the business as it is. Prior to and since the Lemon Tree opened, residents have asked for a grocery store downtown. Dissolving the agreement and absolving the owner from responsibility is to the detriment of the taxpayers and will fund a business that will compete with other businesses. It has been pointed out that the business has contributed to the community through charitable works. Commissioner Waldack noted, however, that the relationship with the landlord and tenants has not been resolved. He asked whether the Village should use taxpayer dollars to help a property owner and their tenants resolve their private, sewer and garbage problems. We should not use taxpayer dollars to resolve those types of issues. He suggested that the Lemon Tree might want to approach District 58 to make a tax rebate agreement with them. An owner of Lemon Tree made a \$20,000 political contribution and now wants the taxpayers to subsidize \$25,000. Lemon Tree publicly embarrassed the Village government on national television about a year ago. The Council is considering giving a business \$25,000 of taxpayer's money even though Lemon Tree signed an agreement. The Commissioner said this is wrong and he cannot support it.

Mayor Tully commented that it is important to remember how this started. There was a citizens' survey that used to be sent out to the public, and one of the questions raised often was, "Why don't we have a grocery store downtown like we used to?" The Mayor said they didn't have one because it wasn't going to be viable. An arrangement was reached via an incentive agreement to have a grocery in the downtown. The Village asked the business to come downtown as part of an arrangement with a grocery store going in at Lemont and 75th Street. That grocery store has long since left the Village. At that time, the arrangement was for the grocery store at Lemont and 75th Street, and a grocery store in the downtown area. The business on Lemont Road did not come to the Village and request this. The Village went to them and asked for this arrangement. As a result, Lemon Tree remains. The Village rebated 100% of the sales tax from the grocery store and \$38,000 has been rebated since the beginning. The entire sales tax rebate went back to Lemon Tree and the Village received no money from the grocery sales. There were changes and modifications to attempt to keep the business open downtown. The Mayor said that the Village is not giving up anything that it didn't already give up. He is in favor of a modified version of Commissioner White's proposal. The Village can stand on principal and see a closed business and still not see any money. Or, the Village can try to be business friendly and end up with a new business with a restaurant that generates sales tax and a grocery component, thereby avoiding a closed business and still have a grocer as well as an enlarged restaurant. The Mayor said Lemon Tree is asking the Village not to "clawback" the \$25,000 due to the termination of the agreement sooner than its full term. The owners of Lemon Tree are asking

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that this be waived. He'd like to see the new restaurant and grocery component come to be, but before agreeing to waive the clawback provision in the agreement, he'd like to see the store actually open. He differs with Commissioner White in that he'd like to see the solution begin after the new business doors are open.

Mr. Black asked if they would be able to get permits. Mr. Black said they are excited for the grocery as well as the restaurant. They know they have made mistakes and want a chance to be better neighbors and community members.

Commissioner Vattimo commented that she agrees with Mayor Tully and Commissioner White. The issues with the building need to be addressed. She said that they have to be accountable to the people who live in the building.

Mr. Black said that they have solved some of their issues, and there have been obstacles that they've faced with their neighbors. These are not easy problems to solve. They are committed to working with the landlord to resolve the remaining issues, including the plumbing issues. Whether their business is there or not, the issues still exist.

Commissioner White commented that the plumbing issue should not be tied to the sales tax issue. The plumbing code has to be met. He said \$25,000 would not make a difference as to whether the business succeeds or fails. He wants there to be a grocer in the downtown.

Commissioner Barnett thanked Mr. Black for trying to work something out. He will give this serious consideration.

Commissioner José said he has seen firsthand the charitable work they've done and agrees that there is great value in having a grocer in the downtown area. He appreciates the Mayor giving the history behind the agreement. It is incredibly difficult for a grocer of any size to compete in the downtown area. Ultimately, the question will be if it is worth \$25,000. He appreciates the proposals that have come forward and he looks forward to considering them. In thinks there is value in keeping the Lemon Tree; we just have to find the right solution.

Commissioner Waldack said he encourages the new business model. He has a problem with the use of taxpayers' money. Seniors are still shopping elsewhere. The money will be used to compete with other restaurants. He has a problem funding competition. If the Village insists on being paid \$25,000, he asked Mr. Black whether they would close their doors.

Mr. Black responded that he doesn't have all the answers, and will discuss this with his partners.

2. Marge Earl, 4720 Florence, said she was here during the discussions about Lemon Tree. They have trod upon the goodwill of their neighbors. She has been a customer. The food is delicious but they can't run a restaurant. She would rather see the Village cut them loose and take the loss. She said that the owners treat customers poorly. They embarrassed the Village and are now asking for more goodwill and hospitality. She doesn't have much faith in people running the restaurant.

3. Christine Ferris said she has been a resident since 1999, and that she was present on behalf of the Lemon Tree. She would like them to be recognized for their work. They have raised money for pediatric cancer. She has had six charity events at Lemon Tree. Tim and Shaun opened their doors to her and she has raised about \$100,000. Ms. Ferris read quotes from people whose families are fighting cancer. We need businesses like this. She hopes that the Village can consider helping them.

Mayor Tully asked people to focus on the issues before the Council.

Mr. Fieldman said that the options are to either amend the agreement as proposed by Commissioner White, or to put the terms in abeyance and reconsider this when the new store opens. He will reach out to the Council members next week to determine the direction.

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8. Mayor's Report

Mayor Tully said the DuPage County Stormwater Committee meeting was held earlier today. He provided the following updates:

Floodplain Mapping – Comment acknowledgement letters continue to be sent out and work on this project continues. A number of our residents have commented on the maps. FEMA has received the comments.

National Pollutant Discharge Elimination System Program (NPDES) – The IEPA is updating the requirements of the NPDES, which first went into place about ten years ago. Six minimum control measures have been identified to which the County and municipalities must adhere. DuPage County took control of three of the measures and is now contemplating taking control of all six measures, including issuing permits. This may reduce costs to municipalities, but it is too early to tell.

Stormwater Maintenance Crew/Shared Services – The County is undergoing implementation of its own stormwater maintenance crew. This will provide an opportunity for joint projects.

Annual Training – The County is implementing a required training program for stormwater administrators.

Commissioner Waldack asked if this leads the way for a County-wide stormwater utility.

Mayor Tully said once the stormwater analysis is completed, that conversation could happen.

Commissioner Barnett said this sounds like the beginning of justification for a stormwater utility. He hopes that is not where this is headed.

Mayor Tully said that is exactly where it is headed. The survey includes identification of projects, direction and cost. A stormwater utility is not necessarily the direction that this is going in, but he anticipates an introduction of that discussion.

9. Manager's Report

The Manager said the Village will participate in the County's stormwater administrators' training program.

10. Attorney's Report

Pursuant to Section 2.5 of the Downers Grove Municipal Code, the following are presented for Village Council consideration:

1. An ordinance rezoning certain property located at 6035 Middaugh Avenue
2. An ordinance establishing Special Service Area Number 9 in the Village of Downers Grove, Illinois

11. Council Member Reports

Commissioner White addressed the Friends of the Gifted (FRoG) 2015-2016 lecture series. The lectures are at Ballydoyle's, are open to the public and are free of charge. He said the goal is to have six speakers over the course of the year with an opportunity for student speakers as well. He discussed recent lectures. In November, Dr. S. Jay Olshansky from the University of Illinois at Chicago spoke about living to be 100. Dr. Jack Gilbert spoke about microbial health. In terms of future lectures, Commissioner White said on January 11, at 6:45 p.m. at Ballydoyle's, his daughter will speak about satellites and will be available to speak with younger residents at 6:00 p.m., before her presentation. Another presentation in January will be about the importance of good sleep. He invited people to attend.

Commissioner Olsen noted Mr. Werner's earlier comments. It is one year since the referendum was filed. He said this Council has been very responsive to the residents.

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Mayor Tully said Lt. Gov. Sanguinetti unveiled a report regarding unfunded mandates and local government consolidation.

12. Adjournment

Commissioner Olsen moved to go into Executive Session pursuant to Section (2)(c)(1) of the Illinois Open Meetings Act to consider personnel matters. Commissioner White seconded the motion.

Votes: Yea: Commissioners Olsen, White, Waldack, Vattimo, Hosé, Barnett; Mayor Tully

Nay: None

Mayor Tully declared the motion carried and the Council convened into Executive Session at 8:49 p.m.

Respectfully submitted,

April Holden

Village Clerk