

Staff Responses to Council Questions October 4, 2016

6. Consent Agenda

C. Resolution: Authorize an Agreement with Air One Equipment, Inc.

The E-Sheet on this really uses jargon and is not clear on its face what exactly is being supplied and its uses. More pedestrian terms please.

The contract with Air One is for the replacement of equipment used for breathing protection that allows firefighters to breathe safely in smoke filled atmospheres. The technical term for this equipment is *self contained breathing apparatus*. It is commonly referred to as an *air pack*.



Image of a self contained breathing apparatus

We recently approved a contract to provide filling tanks. What is the relationship between that contract and this company contract? Could either company have supplied both?

There is no relationship between this contract and the contract previously approved with US Gas. US Gas is providing oxygen and medical gases for emergency medical services. The contract with Air One covers equipment used for breathing protection that allows firefighters to breathe in smoke filled atmospheres. Neither company could have supplied both as each provides equipment for different purposes.

D. Resolution: Authorize a Community Development Block Grant - Disaster Recovery (CDBG-DR) Agreement with the County of DuPage

Assuming the County has already received the money, what is the timeline for us to receive the money?

Reimbursement of the grant funds generally takes about three weeks from the time the reimbursement request is submitted. Grant funds are available to the Village. Village staff will prepare and submit a Request for Disbursement of grant funds after the purchase of the properties.

After we acquire the property, what are we going to do with the lots and at what additional costs?

In the short term, the house on the property will be demolished and the property will be graded and restored with grass. In the long term, the Village is considering making improvements to this portion of St. Joseph Creek that would improve drainage and the operation of the creek. Staff is currently reviewing proposals from consultants to prepare this plan. Cost estimates for potential projects will be included with this plan.

What are demolition and remediation cost estimates?

Demolition and remediation costs are estimated to be \$33,000 including \$32,000 for structure demolition, \$1,000 for asbestos and lead remediation. The Village will be reimbursed for 75% of these costs through DuPage County.

E. Resolution: Authorize an Intergovernmental Agreement Establishing the DuPage Metropolitan Enforcement Group (DUMEG)

Council used to get a statistical report on Police activities, number of crimes etc. Given that Budget matters are up for consideration, a "State of Downers Grove" Law Enforcement would be appropriate. Same for the Fire Dept.

Staff will provide statistical reports to the Council shortly.

7. Active Agenda

A. Resolution: Repeal Motion 2015-6625 and Authorize a First Amendment to the Sales Tax Rebate Agreement with the Lemon Tree, LLC, Dated May 8, 2012

Given that we have only a letter from only one member of the Lemon Tree, that there was NO DOCUMENT other than an appeal and two commissioners were missing from the meeting, how do I legally challenge the disregard for Council procedure for ignoring First Reading protocol? Do I have to submit a FOIA to find out how this "workaround" was established?

Why wouldn't this procedure of a petitioner presenting a letter at one meeting and then voting on an Active Agenda Item the following meeting without a First Reading of a document be established based on this precedent?

How can we even consider voting on an incomplete document?

Why does this proposal contain numerous elements based on the last meeting that have never been discussed – such as rebate of total, especially for only a partial specialty store?

Staff prepared an amendment to the existing sales tax rebate agreement based on:

- The letter from the Lemon Tree dated September 19, 2016 (see attached)
- Village Council discussion during the First Reading agenda at the September 20, 2016 meeting (see attached excerpt from the minutes)
- Email from Commissioner Barnett dated September 20, 2016 (see attached)

On September 22, 2016 staff circulated the draft amendment to the sales tax rebate agreement to members of the Village Council for individual review. The draft amendment contained this cover message:

Based on the Council discussion at the September 20 meeting, staff has prepared this draft of key terms for an amendment to the Sales tax Rebate Agreement with the Lemon Tree.

We are planning to place this item on the October 4 Active Agenda .

Please review the document and let me know if you have any questions or comments.

The Village Council does not have to take final action on the petitioner's request for an amendment to the sales tax rebate agreement at the October 4, 2016 meeting. The Council may table this item and direct staff to place it on a future Council meeting agenda as a First Reading or Active Agenda item.

8. First Reading

A-B. Ordinances to Rezone and authorize a Special Use for 421 Maple Avenue

A signed petition supporting the Animal Boarding/Kennel Service at 421 Maple is on file with the Village Clerk's office.

ATTACHMENTS

Letter from the Lemon Tree dated September 19, 2016
September 20, 2016 First Reading meeting minutes excerpt
Email from Commissioner Barnett
rEmarks are attached.

Shaun Black
406 N Aberdeen St
Chicago, IL 60642
September 19, 2016

David Fieldman
Manager
Village of Downers Grove
801 Burlington Ave
Downers Grove, IL 60515

Dear David Fieldman:

After further thought and discussion internally we like to amend the request for relief from our re-open deadline. Instead we are proposing an agreement that would have Lemon Tree LLC paying the full tax rebate claw back money immediately with the understanding that the entire amount would be credited to our permit and other construction fees associated with the new buildout of the space at 5101 Mochel Drive.

While it's disappointing that the project has taken this long to get started our group has continued to give back to the community through generous time and financial donations to Downers Grove based non-for-profits throughout 2016.

The Lemon Tree Grocer/Fork and Vine team looks forward to becoming a pillar in the Downers Grove community once again, and appreciates your time and consideration in this extremely important matter.

Sincerely,

Shaun Black

**AN ORDINANCE VACATING A CERTAIN PORTION OF A PUBLIC ALLEY IMMEDIATELY
SOUTH OF 1401-1445 OGDEN AVENUE**

ORDINANCE NO. 5566

Motion: Commissioner White moved to adopt "An Ordinance Vacating a Certain Portion of a Public Alley Immediately South of 1401-1445 Ogden Avenue," as presented. Commissioner Waldack seconded the motion.

Votes: Yea: Commissioners White, Waldack, Walus, Hosé; Mayor Tully
Nay: None

Mayor Tully declared the motion carried.

7. First Reading

MOT 2016-7017 — A. Motion: Direct Staff with Respect to Lemon Tree Sales Tax Rebate Agreement

Village Manager David Fieldman said that in 2012 the Village entered into a Sales Tax Rebate agreement with the Lemon Tree Grocery store. He noted that Lemon Tree was to operate until 2025 under the terms of the agreement; however, the store closed in 2015 subject to a repayment of \$25,000 to the Village. In January the Council approved a motion to waive the agreement and declared it null and void provided that Lemon Tree open a 1,000 square foot grocery store by October 1, 2016. Lemon Tree is now seeking relief from the October 1, 2016 date, as they will not be able to open by October 1.

Shawn Black, one of the owners of the Lemon Tree, said that due to the delays they are asking the Council to consider an alternative payment. He proposed that Lemon Tree pay \$25,000 effective immediately, and then he asked that when their planning is finished, that the Council rebate that money. Their architect has stated that they will have the plans by mid-October with the hopes of reopening by 2017.

Mayor Tully commented that this is a unique situation. The Village directed that a grocery store be opened in the downtown area. A good faith effort was made the last time to work with Lemon Tree. His view is that he would like to be accommodating but not at all costs. He would like to be paid in full, but in the spirit of good faith, if something is opened, a possible rebate would be given off the back end in terms of permits, etc. He would look to the staff for specifics, and it would have to be clear that a business would open.

Commissioner White asked what type of permit fees would be charged. Mr. Fieldman replied that it would be 1.5-2% of the construction. Commissioner White then asked when the fees would be due and the Manager responded they would be due at the time the permit is issued. Once they open again, the Village would rebate back fees.

Commissioner White asked Mr. Black if 1,000 square feet was the size of the grocery, and Mr. Black said that was correct. Commissioner White replied that he would consider a deadline and that the fees could be waived when they become due. The downtown area needs a grocery. He does not think Lemon Tree deserves this, but the goal of a downtown grocery is sufficient for him to move forward with this.

Mayor Tully stated that Commissioner Earl's absence from this meeting was planned. Commissioner Barnett contacted the Mayor saying he is in support of this concept as outlined in the letter that the Council received.

Commissioner Waldack asked as to the terms of the lease. Mr. Black said it is four years, with two 5-year extensions if they choose to exercise the extensions. Commissioner Waldack asked whether the space is being used now, and Mr. Black replied that he lives in the city and is not in the Village every day, but to his knowledge it is being used only as storage right now. Commissioner Waldack asked whether Mr. Black can confirm or deny

that scones are being made at that location and are being sold elsewhere. Mr. Black said he cannot confirm or deny this. Commissioner Waldack then said that they couldn't make a large square footage grocery store work, and now they are talking about a 1,000 square foot grocery store. There are additional apartment buildings being built in the Village, which means that business should be better. There will be a need for more than a 1,000 square foot grocery. He has a problem subsidizing this where there is a restaurant with a grocery store as an annex. He would love to see a real grocery store, and there has been interest but this dilly-dallying back and forth is hurting that potential. He is glad that they are willing to pay, and he is looking for payment on October 2. If they need to get the Village Attorney there to collect it first thing in the morning on October 2, they will do it.

Commissioner José said that the proposal is interesting, and he will think about what Commissioner White has proposed. He will give this more thought.

Mayor Tully said he would love to see proposals from other grocery stores wanting to come into the downtown area.

Mr. Black said he would be happy to talk to interested parties. He apologized for the delay. They are motivated to get back to Downers Grove, but business is not as easy as they might think it is.

Dave Nicholson, 930 Curtiss Street (Acadia on the Green 2), said he represents the Homeowners Association Board of Directors. He informed the Council that the Homeowners Association of Building 2, and supported by the HOA Building 3, is in current negotiations with the Lemon Tree's landlord regarding sewage and waste backup, which all gets fed into Building 2. The residents would love to see the Lemon Tree be successful, but they don't want the sewage in their parking garage. They have not made an agreement as yet, and the Boards in Buildings 2 and 3 will be very interested in seeing any agreements, permitting process, etc., making sure it is done right, and how it will affect the ongoing sewage and waste problem they presently have. The residents don't think this was ever done correctly from the beginning.

Mayor Tully asked whether this was a special use. Mr. Fieldman responded that it is not, but the Village did facilitate a meeting with the Sanitary District and will facilitate addressing the issue through the permitting process.

Mr. Black commented that this issue has been important to them as well. Part of their delay is Lemon Tree trying to address these issues just raised. He said they are also interested in resolving these issues. They don't want to put more money into this when neighbors don't want them there. He would appreciate assistance from the Village. Mr. Black said back in 2009 they were of the impression that the builder was trustworthy, and they are trying to get the waste issues resolved as well.

Mayor Tully replied that everyone would prefer that this sanitary issue is resolved expeditiously. This will be on the agenda for the first meeting in October.

8. Mayor's Report

RES 2016-7023 — A. Resolution: Designate that Portion of Forest Avenue between Warren Avenue and Prairie Avenue with an Honorary Street Name of "Foote Avenue"

Summary: This designates that portion of Forest Avenue between Warren Avenue and Prairie Avenue with an honorary street name of "Foote Avenue."

A RESOLUTION DESIGNATING THAT PORTION OF FOREST AVENUE BETWEEN WARREN AVENUE AND PRAIRIE AVENUE WITH AN HONORARY STREET NAME OF "FOOTE AVENUE"

RESOLUTION 2016-62



VILLAGE OF
DOWNERS GROVE

Megan Miles <mmiles@downers.us>

Fwd: Tonight's Meeting

1 message

David Fieldman <dfieldman@downers.us>
To: Megan Miles <mmiles@downers.us>

Mon, Oct 3, 2016 at 1:02 PM

For Council responses

----- Forwarded message -----

From: **Bob Barnett** <rtbarnett@downers.us>

Date: Tue, Sep 20, 2016 at 12:33 PM

Subject: Tonight's Meeting

To: "Tully, Martin" <mtully@downers.us>, David Fieldman <dfieldman@downers.us>, Enza Petrarca <epetrarca@downers.us>

Martin,

I've had a business situation come up that requires me to meet some folks from Pittsburgh for dinner tonight. I learned of this on Friday but had hoped to move things around to make tonight's Council meeting work - but that wasn't possible.

Although I realize there are no "proxy" votes, for the record, I am in favor of each of the items on tonight's agenda as follows:

Active Agenda

- A. [ORD 2016-6951](#) An ordinance rezoning certain property located at 1401-1445 Ogden Avenue
- B. [ORD 2016-6950](#) An ordinance designating the property at 1401-1445 Ogden Avenue as Planned Unit Development #56 for the redevelopment of a fueling station and car wash
- C. [ORD 2016-6952](#) An ordinance authorizing a special use for 1401-1445 Ogden Avenue to permit the redevelopment of a fueling station and car wash
- D. [ORD 2016-6953](#) An ordinance vacating a portion of a public alley immediately south of 1401-1445 Ogden Avenue

First Reading

- A. [MOT 2016-7017](#) A motion directing staff with respect to Lemon Tree Sales Tax Rebate Agreement

Mayor's Report

- A. [RES 2016-7023](#) A resolution designating that portion of Forest Avenue between Warren Avenue and Prairie Avenue with an Honorary Street Name of "Foote Avenue"

Let me know if I miss anything substantial.

Bob

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Robert T. Barnett, Commissioner

Village of Downers Grove

801 Burlington Avenue | Downers Grove, IL | 60515

c: [630.605.2112](tel:630.605.2112)

10/3/2016

The Village of Downers Grove Mail - Fwd: Tonight's Meeting

rtbarnett@downers.us

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David Fieldman
Village Manager
Village of Downers Grove
801 Burlington Avenue
[630-434-5526](tel:630-434-5526)



rRemarks Data for October 4, 2016 Village Council Meeting

Agenda Section	Agenda Item	Comment	Commenter
First Reading	C. RES 2016-7022 A resolution approving the final plat of subdivision for 4824 Prince Street	Will the mayor be recusing himself from voting and discussing this because his wife is the Realtor of record on this transaction?	anonymous