

**CALL TO ORDER:**

President Bartels calls the meeting to order at 7:00 pm.

**ROLL CALL:**

Roll: Michael Ruffulo, Paul VanOstenbridge, Frank Scarpelli, Jr., Daniel O'Leary, Robert Gorman, James Carlini and President Bartels.

**PLEDGE OF ALLEGIANCE:** Recited.

Motion to have Sue Norton serve as Clerk Pro Tem by Ruffulo/Scarpelli.

Roll: 7 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Gorman, Carlini, President Bartels), 0 Nays, Motion carries. Sue will be sworn in at the next meeting.

**CONSENT AGENDA:**

4.1 Minutes Dated Monday August 29, 2005

4.2 Minutes Dated Monday February 6, 2006.

4.3 Warrants Dated Monday, February 20, 2006.

Trustee Carlini would like a section added in the February 6<sup>th</sup> minutes that he ordered a privileged motion call for the Orders of the Day, in order to get back on the agenda. Trustee Gorman would like to listen to the motion made regarding appointment of officers as well as some other things. Trustee Carlini asks Chief Pena if it is our policy that officers buy their own rifles and Chief Pena states that it is not our policy. Trustee Ruffulo is uncomfortable that the word "IS" is emphasized in the August 29<sup>th</sup> minutes. Trustee O'Leary states that the word was emphasized on the tape. He sent it in an email to the clerk and it probably was cut and pasted in that way.

Motion to remove minutes dated February 6, 2006 from the consent agenda by Gorman/Scarpelli.

Roll: 7 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Gorman, Carlini and President Bartels), 0 Nays, Motion carries.

Motion to accept revised Consent Agenda and Warrants in the amount of \$447,782.98 by Scarpelli/Gorman.

Roll: 7 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Gorman, Carlini and President Bartels), 0 Nays, Motion carries.

**CORRESPONDENCE:** None

**AUDIENCE BUSINESS:**

Thom McNamee – 10 N. River Street, East Dundee

Mr. McNamee requests a full board vote on the liquor commissions recommendations on the full liquor license and the outside veranda café for the tentative Italian restaurant on the west end of the bicycle building. He would like the full board's approval so the potential tenant knows they have the full support of the board before they put several hundred thousand dollars on the build out. Mr. McNamee would like the board to make a motion on this request. President Bartels states that it has to be listed on the agenda, so it would have to be done at the next meeting. The board members state their support for this establishment

Peter Gagliano – 935 W. Chestnut Street, Suite 425, Chicago

Chief Pena states that the Pal Group asked for an extension on the agreement that ended in September 2006. The extension should have been on the agenda and he states the Mr. Palumbo did sign-off on this. Chief Pena recommends that we approve the extension. Since it is not on the agenda it cannot be approved tonight.

Motion to put Pal Group and Palumbo on the next agenda by Carlini/Ruffulo.

Roll: 7 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Gorman, Carlini and President Bartels), 0 Nays, Motion carries.

Frank Johnson – 3<sup>rd</sup> Street, East Dundee

Mr. Johnson states that there is still a lingering problem whether or not people can be a trustee and hold another seat. He states that in east Dundee there is Frank and Liz who both hold two seats. He feels that it is about time that this thing stopped.

Dennis Cleveland – 7 E. Lincoln, East Dundee

Mr. Cleveland states that he has been a resident for 30 years. He is here to discuss the importance of our public schools and the March 21<sup>st</sup> referendum. There are two questions on the ballot, one will ask permission to issue a bond to build new schools and for needed improvements. The other question will ask permission to increase the ED fund rate to pay for teacher's materials and programs. Without the passage of the referendum District 300 is looking at huge cuts, which will affect every student in East Dundee and this district. He encourages the board to take a stand on the referendum, a position of support for District 300 schools. He doesn't want persons moving into our neighborhood that don't care about the public schools. He encourages everyone to go to the website [www.advance300.com](http://www.advance300.com) or to call him. Trustee Ruffulo states that the village twice went to District 300 to ask for reconsideration of the boundaries and received no assistance.

Martha Linsey – 447 Greenwood Ave., East Dundee

Also asks the board to consider a proposal to support the referendum. She states that five other villages already put together proposals of support including Lake in the Hills, Hampshire, Gilberts, Sleepy Hollow and West Dundee. She encourages Trustee Ruffulo to call her to discuss the boundaries, as things are not as easy as they appear. She states that when they did the boundaries 4 or 5 years ago, there were 692 children in grades K – 12. Trustee Gorman would like to contact her to get the exact numbers.

Dolores Doederlein – 525 Reese Ave., East Dundee

Sates that we elected a mayor and he can veto and can make appointments. We also voted for trustees. She suggests that we let the president do his job and the trustees do their job. She also states that we shouldn't continue to pay for the lawsuit.

Duane Foss – 829 Balmoral, East Dundee

Discusses the March 21<sup>st</sup> referendum and states that District 300 is trying to draw a line down the Fox River. He feels that the only time they come in front of this board is when they want money. He asks the board if they can even legally take a position. He also asks what happened to the school committee the village was supposed to form months ago.

Leonard Scarpelli – 1778 Thomasville Lane, Crystal Lake

States that he lived in East Dundee for 35 years and does have an interest in what happens here. He is concerned that he did not get much of an answer at the last meeting from President Bartels. He asks if there is any circumstance that the President could see Frank on this board. President Bartels states it would be best for the people to make the decision to put Trustee Scarpelli back on the board. Mr. Scarpelli states that it was okay with Attorney Regan at the time and that the people already voted Trustee Scarpelli to the seat. President Bartels states that when Trustee Scarpelli made the decision to spend taxpayer's money that it was no longer a vested interest of just the persons who voted for him but also the persons who did not. He feels as Village President that it is his duty to be sure the village had a legal board. Mr. Scarpelli would like things resolved so no more money is spent. Mr. Scarpelli asks Trustee Scarpelli if he was aware that information would be sent to the State's Attorney and Trustee Scarpelli replies negative.

Steven Volchko – 206 E. 1<sup>st</sup> Street, East Dundee

States that President Bartels has made comments to lead the people to believe that he was doing this in the best interest of the village. He asks if President Bartels ever said that he didn't have a problem with Trustee Scarpelli being on the board. President Bartels responds that he is sure he said he didn't have a problem with Trustee Scarpelli but he has a problem with the money that is being spent. Mr. Volchko inquires if President Bartels is trying to remove anyone else from the board.

Mark Christopherson – East Dundee

Addresses Trustee Carlini stating that the reason he was looking at him at the last meeting is that he finds his statements amusing regarding the appeals court. Trustee Carlini states the he is entitled to his opinion. Mr. Christopherson also finds it funny that Trustee Carlini wants to follow the ordinance for Trustee Scarpelli but wants to change the ordinance for President Bartels. Trustee Carlini states that there are no indemnification clauses for trustees and that we don't have a great set of ordinances. When you don't have people following through on their responsibilities to uphold the ordinance then you have to make ordinances fit the working of the board. We can work together on some things but not on appointments.

Peggy Scarpelli – 9 Summit, East Dundee

Mrs. Scarpelli is speaking as a resident for another resident. She reads a letter from another resident showing their support for Trustee Scarpelli and would like to see Trustee Scarpelli reappointed as well as the board move forward. Mrs. Scarpelli tells President Bartels that he should of told Trustee Scarpelli that he was going to contact the state's attorney. She states that if President Bartels' only concern was a legitimate board, then you could have one if you reappoint Trustee Scarpelli.

Trustee Ruffulo states that he would like to see this issue go away. Communication is bad and any camaraderie the board had is falling aside.

Motion made to put this topic on the next agenda under Executive Session by Ruffulo/O'Leary.

Roll: 7 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Gorman, Carlini and President Bartels), 0 Nays, Motion carries.

#### **BID AWARDS:**

##### **7.1 - Tree Trimming & Removal Award.**

Mr. Moore states the village received six bids with the lowest being from the Care of Trees.

The trimming will be done before spring and we will stay under budget. Mr. Moore would also like to update our code to \$20,000 so it complies with the state statute. Trustee Scarpelli states that we need a motion to approve this bid as our ordinance only allows \$10,000 for staff to act without our approval.

Motion made to accept bid for tree trimming and removal up to \$24,000 by Gorman/Scarpelli.

Roll: 7 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Gorman, Carlini and President Bartels), 0 Nays, Motion carries.

#### **OLD BUSINESS:**

##### **8.1 - Petition 01-07-02 McGraw and Petition 01-07-03 Plote.**

- A) Ordinance Authorizing the Execution of the Annexation Agreement.
- B) Ordinance Authorizing the Annexation of Certain Property Commonly Known as McGraw Foundation Property.
- C) Ordinance Amending Title XXV Land Use Chapter 157.037 AG-1.
- D) Ordinance Amending Title XV Land Use Chapter 157.66 M-1.
- E) Ordinance Amending Rezoning McGraw Property to AG-1 with Special Uses.
- F) Ordinance Rezoning Property to M-1 and Granting Special Uses.
- G) Plote/Beverly Gravel Text Amendment Zoning and Granting Special Use.

Trustee O'Leary states that we did not have current packet until Friday. Trustee Carlini states that Attorney Regan should be here this evening. Trustee Ruffulo asks Attorney Hartigan is he is okay with

this agreement and Attorney Hartigan states that he came in at the 12<sup>th</sup> hour and did not draft this agreement. Trustee Scarpelli feels that paragraph 1 and 4 of Article IV contradict each other. Trustee Carlini would like the language clarified. Trustee Scarpelli notes that the paragraph was just added. Trustee Gorman states that there is no problem with McGraw and that this is a good thing for the village. However, his issue is that although we the grant zoning, it appears that we are granting zoning forever.

Robert Fuller is here representing the Plote family and states that he did not draft this agreement. He refers to page 14 and reads Article XIII where it states that there is a set term of 99 years. Trustee Scarpelli points out that it automatically rolls over. Trustee Gorman would be okay with this agreement if the verbage stated that if the zoning was granted to Plote as a special use separate from the agreement.

President Bartels informs the audience that this agreement is a three-way deal with McGraw, Plote and the Village. The village wants to annex property down Route 25 and this will give the village the ability to get sales tax revenue. McGraw wanted to enter into an agreement with Plote. Plote would mine property controlled by McGraw and McGraw would like to continue operation on Plote's property that is in the village. The property is zoned in such a way that those uses would not be permitted, therefore, there was reason for McGraw to approach the village board. If the village grants those special uses to Plote, McGraw would grant us annexation down Route 25. This is a good opportunity for the village and something the village has wanted for a long time. President Bartels would like to see it approved.

Trustee Scarpelli points out that adjacent property is referred to in two separate sections. Chief Pena states that exhibit C & D is in the district. Trustee O'Leary points out several inconsistencies and has questions regarding the leased property, adjacent property and property. Trustee Carlini states that he still doesn't have a comfort level with this agreement and won't until it is perfect.

Charles Potter, the President of the Wildlife Foundation, states that they have been at this for two years. He states that incomplete documents are not their responsibility. They have been waiting on this and are out of time as his board approved this back in September 2005. He also says that they don't need this agreement that they can do whatever they want with Plote. He states that the agreement is long term (50 – 60 years and open for 99 years) and they would not agree to anything else. If this is not done in the next couple of weeks it will not get done. He asks the board to please work with them to get this done.

Robert Fuller states that we cannot keep giving the board another week. Trustee Gorman again states his issue is the rezoning of land that is not related to the agreement. Maureen, Leo Flanagan's associate, states that the only change is paragraph 4. She would like to know the boards concern so this doesn't keep going on. Her and Robert Fuller would like a memo from the board stating what the issues are for clarification. Attorney Hartigan agrees so the attorney's can review.

President Bartels would like to know if there is a date we could give McGraw. Trustee Gorman feels that it will be approved at the next meeting. President Bartels states that we will give McGraw a definite consensus at the March 6<sup>th</sup> meeting. Maureen states that she would like the questions first so everyone is on the same page. Mr. Potter states that this isn't a perfect process, but if it doesn't work for one of us the whole things falls apart. Also, if Mr. Plote says it doesn't work, then McGraw will have to say sorry.

Motion to defer 8.1 – Petition 01-07-02 McGraw and Petition 01-07-03 Plote by O'Leary/Scarpelli.  
Roll: 6 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Gorman, President Bartels), 0 Nays, Motion carries. (Absent: Carlini)

Motion made to move up agenda items 10.7.1 by Ruffulo/Scarpelli.  
Roll: 6 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Gorman, President Bartels), 0 Nays, Motion carries. (Absent: Carlini)

Trish would like the board's direction on the holiday decoration purchase.

Motion made to decorate every pole, option 2, by O'Leary/Ruffulo.

Roll: 6 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Gorman, President Bartels), 0 Nays, Motion carries. (Absent: Carlini)

### **8.2 - Presentation of Economic Development Plan – Vandewalle & Associates.**

(While Vandewalle is setting up, Chief Pena states that Mr. Regan is available on Wednesday or Thursday. It is decided to continue the board meeting on Wednesday, February 22<sup>nd</sup> at 7 pm.)

Brian Vandewalle, Kate Crowley and Justin are here from Vandewalle and Associates. They are an urban planning and design firm. Kate states that they have done a lot of work over the last six months to get to know our village. The firm usually starts with an opportunity analysis. Our village has two priority areas: Route 25 and Route 72 and the downtown area. Our current assets are the car dealers on Route 25.

Brian Vandewalle states that they are trying to develop responses to the marketplace. The impact of a new retail/entertainment development at Prairie Stone and Routes 25 and 72 is an area that the community will respond to. We want to try to petition the community to take advantage of this area. Also, the river is a unique part of our economic development and states that the downtown area is relatively healthy.

Kate mentions that Route 72 has 70,000 cars going down it a day while Route 25 only has 30,000 cars. We need to bring traffic from Route 72 to Route 25. They suggest creating a connector road from Route 72 to Route 25 and develop a plan to fill that quadrant. Santa's Village will connect with the road, which justifies a light on Route 25. She also mentions that they applied for two grants: the Illinois Tomorrow grant and the Kane County Small Cities grant.

Brian states that streetscape can turnaround downtown and stimulates a sales tax base. We need to be prepared to recognize the shift. Trustee Scarpelli points out that two thirds of the traffic crossing the river are either going to work or trying to get home. He wonders what percent would actually stop. Brian states that their company does market research. He feels this is an opportunity to change the drive by pattern, as there isn't a compelling reason to stop now.

Kate mentions that everything within the boundary of the TIF district will be frozen. When taxes rise, everything over the frozen level will go to the village. Brian also brings up that the annexation is immaterial to this issue. Trustee Scarpelli wonders how long will this process take from start to finish and what happens if we accept the development on the PAR site. Brian states that this is what makes this a media opportunity. It will create impact. We want to make the traffic flow enhancements so the developer and others will find more value in our market place.

Trustee Carlini asks how Vandewalle came about this TIF layout. Kate states that north of Route 72 should be included so it's better to create one large TIF since they touch. Trustee Gorman states that two years ago you could get paid back from a TIF. Brian states that you could be paid back to an operation budget. Trustee Carlini inquires about the negatives for putting together a TIF district. TIF's were created for revitalization so other taxing bodies would be against this. Brian states that you won't lose the tax base, that it just draws a line. Kate states that after 23 years there would be a big jump.

Motion made to amend the contract with Vandewalle so they can provide services to create a TIF district including drafting a study and a redevelopment plan by Scarpelli/Gorman.

Attorney Hartigan states that we can do this through a consensus. The motion is withdrawn.

President Bartels states that there is a consensus that Vandewalle should move forward. He also wonders if we need a TIF attorney. Brian states that they don't have a legal budget, but does suggest we get the right legal documents. Attorney Hartigan will get and estimate fee for a TIF attorney. President Bartels requests that this information be given to the Administrator as we are going through budgets for next year.

Vandewalle moves the discussion to our downtown area. Kate mentions that the circulation is not working. Justin feels there should be intersection realignment at River Road and Route 72. Brain states that goal is to get as much river front as possible. He would like to increase the accessibility to the river.

Tony Poyner (East Dundee resident and P&Z board member) inquires if there have been studies done and if there is any interest in a cottage town. Brian feels that we could have unique business types in the area and that there is a huge opportunity here. Tony also inquires if cemeteries have been moved. Brian said it probably has been done but doesn't recommend it. Trustee Carlini feels we could just tone the cemetery down with a fence or something. Tony Poyner introduces two partners that are involved in the development and the property owners, Art Sanchez and Jessie.

### **8.3 - Ordinance Authorizing Appointments.**

Attorney Hartigan is in the process of formulating an opinion.

Motion to table 8.3 by Scarpelli/Gorman.

Roll: 6 Ayes (Ruffulo, VanOstenbridge, Scarpelli, Gorman, Carlini, President Bartels), 0 Nays, Motion carries. (Absent: O'Leary)

### **8.4 - Appointments to IRMA, IMRF and Interim Treasurer.**

Motion to approve Resolution 06-06, A Resolution Designating Finance Director as Illinois Municipal Retirement Fund Agent by Scarpelli/VanOstenbridge.

Roll: 6 Ayes (Ruffulo, VanOstenbridge, Scarpelli, Gorman, Carlini, President Bartels), 0 Nays, Motion carries. (Absent: O'Leary)

Motion to approve Resolution 07-06, A Resolution Naming the Village of East Dundee's Delegate to the Board of Directors of Said Intergovernmental Risk Management Agency by Scarpelli/VanOstenbridge.

Roll: 6 Ayes (Ruffulo, VanOstenbridge, Scarpelli, Gorman, Carlini, President Bartels), 0 Nays, Motion carries. (Abstain: O'Leary)

Motion to approve Resolution 08-06, A Resolution Designating Finance Director as Interim Village Treasurer by Scarpelli/Ruffulo.

Roll: 7 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Gorman, Carlini, President Bartels), 0 Nays, Motion carries.

### **NEW BUSINESS:**

#### **9.1 - Approval of Interim Village Administrator Contract.**

Motion to approve the interim administrator's contract by Ruffulo/VanOstenbridge.

Roll: 7 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Gorman, Carlini, President Bartels), 0 Nays, Motion carries.

#### **9.2 - Village Administrator Appointment – Paul Nicholson.**

Motion to appoint Paul Nicholson as the Village Administrator based on his contract by O'Leary/VanOstenbridge.

Roll: 7 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Gorman, Carlini, President Bartels), 0 Nays, Motion carries.

#### **9.3 - PAR Development Concept Plan & Signage.**

President Bartels states that a representative from PAR could not be here tonight. This discussion started at the last COTW meeting and the main issue with the concept plan was the signage. He would like to make the signage issue separate from the development so they could submit by February 25<sup>th</sup>.

Motion to direct staff to draft a letter to PAR to submit something on signage separately from the development by Scarpelli/Carlini.

Roll: 7 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Gorman, Carlini, President Bartels), 0 Nays, Motion carries.

#### **9.4 - Approval of Electrical Improvements at 33W934 Richardson Drive.**

Mr. Moore states there is an old barn that the village owns in the Richardson subdivision where we store equipment that is not used regularly. Mr. Moore states that we need to get the electrical up to code.

Motion made to accept bid by R.J. Carroll Electric to update the improvements at 33W934 Richardson Drive, which is in the budget by Gorman/Carlini.

Roll: 7 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Gorman, Carlini, President Bartels), 0 Nays, Motion carries.

### **REPORTS:**

#### **10.1 Village Administrator – No Report**

#### **10.2 Village Attorney**

- 1) Attorney Hartigan states that they are staying on top of the Santa's Village issue and trying to recoup money now or at the closing.
- 2) Attorney Hartigan states they are waiting on the lease for the fire department.

#### **10.3 Village Engineer – No Report**

#### **10.4 Chief of Police**

- 1) Chief Pena distributes an adjusted time frame spreadsheet for the budget.
- 2) Chief Pena has asked the attorney to look at the language in an intergovernmental agreement, as the police department is looking to get into the Huntley police department for usage of their outdoor range for the village's rifle program.
- 3) The full-time applicant changed his mind so they are still looking for a full and part-time officer.

#### **10.5 Director of Public Works**

- 1) Mr. Moore distributes to the board an example of a project management software he used in the past. Trustee O'Leary states that it allows you to create a process and prioritize. It is suggested that one person could update it. There is a consensus for the technology committee to go ahead.
- 2) Mr. Moore discusses the new email system and states that emails can go straight to your personal email box.
- 3) Mr. Moore states that they had a problem with the heat exchanger and boiler, and that the boiler was replaced. Chief Pena states that the generator is on its last leg and we need to make a decision for next year's budget. Trustee Scarpelli would like to check with Chief Rakow and see if they could look into a new generator for their new facility. Chief Pena will look at some options.

#### **10.6 Village President**

- 1) Reminds everyone that the Carpentersville bridge will be closed on March 1<sup>st</sup> at 7 am.
- 2) Discusses letter from Nathan Spain regarding the relocation of the emergency facility of Sherman Hospital. President Bartels would like to put together a joint letter with West and Dundee and Carpentersville stating that we would like them to reconsider the move.

#### **10.7 Trustee/Committee**

Trustee Ruffulo – already discussed his business

Trustee VanOstenbrige – None

Trustee Scarpelli –

- 1) Trustee Scarpelli wonders if the PAR Development issue should be discussed before it goes to P&Z as it appears PAR is looking for certain things. President Bartels feels it should be discussed with Vandewalle as we don't want to circumvent the P&Z process.

- 2) Regarding the District 300 issue, Trustee Scarpelli feels that the board should not take a position on anything as a board because of our ethics ordinance and the state ethic laws. He is surprised that some communities are endorsing it.

Trustee O'Leary –

- 1) Distributes two books to each board member and asks the board to go through them before the workshop.
- 2) Discusses another possible technology improvement of scanning paperwork. He feel it will make the board more organized

Trustee Gorman – Trish has been doing research showing where we are as a school in this community.

He states that we currently pay the most per student that goes to a school in District 300. He also states that 30% of the children in East Dundee go to private schools. Trustee Gorman was worried about the TIF taking money from the schools, but it appears that we are giving more than our fair share. He and President Bartels will meet with Dr. Arndt on March 3<sup>rd</sup>.

Trustee Carlini – Informs the board that the village did not turn off the water at Santa's Village and that the new owners want to take over sooner than later.

#### **11.0 Miscellaneous Announcements**

The board is recessing the meeting until Wednesday, February 22, 2006 at 7 pm.

Chief Pena will give Mr. Regan the email from Trustee Scarpelli regarding the agreement so Mr. Regan has a basis of discussion.

Motion to move to Executive Session by Scarpelli/Gorman at 11:20 pm.

Roll: 7 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Gorman, Carlini, President Bartels), 0 Nays, Motion carries.

Motion to recess Regular Session until Wednesday, February 22<sup>nd</sup> by Scarpelli/Ruffulo at 11:30 pm.

Roll: 7 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Gorman, Carlini, President Bartels), 0 Nays, Motion carries.

#### **CALL TO ORDER:**

President Bartels calls the meeting to order at 7:08 pm, **February 22, 2006.**

#### **ROLL CALL:**

Roll: Paul VanOstenbridge, Frank Scarpelli, Jr., Daniel O'Leary, James Carlini and President Bartels.

Trustee Gorman is absent.

Trustee Ruffulo arrives at 7:11 pm.

Paul Nicholson and John Regan are in attendance.

#### **8.1 - Petition 01-07-02 McGraw and Petition 01-07-03 Plote.**

Mr. Regan states that he will clarify some of the questions asked at the last board meeting and distributes copies of emails surrounding the McGraw annexation agreement. He will walk through how we got to where we are today with the agreement.

**Tab 1:** June 8, 2005 email is about the McGraw annexation agreement. At this time, what was supposed to go into the agreement was discussed mostly with Mr. Bowden. The June 6<sup>th</sup> email is important because the prior annexation agreement version before June 2005 was December 2004.

**Tab 2:** Included is a memo to the trustees regarding the meeting on June 6<sup>th</sup>.

**Tab 3:** July 15<sup>th</sup> email from Warren Fuller requesting on behalf of Plote to add certain things to the annexation agreement. This is where they introduced M1 zoning. The July 29<sup>th</sup> email sent to Mr. Bowden and Attorney Hartigan included an attachment of the July 27<sup>th</sup> annexation agreement. July 27<sup>th</sup> is



when things were added in the annexation agreement. Plote wanted to include recycling, which was added in the agreement on August 29<sup>th</sup>. There were more minor revisions on September 8<sup>th</sup>.

**Tab 4:** Includes a number of emails going back and forth including transmittal of documents and changes mostly suggested by McGraw.

**Tab 5:** September 27<sup>th</sup> is a request from Mr. Bowden that a sales tax covenant be put in the agreement and a promise by Plote if they did any mining activities they would run the sales tax through an East Dundee office so East Dundee would get the sales tax.

**Tab 6:** October 4<sup>th</sup> is when Plote asked for the zoning on their mining activities to be extended for the length of the McGraw agreement (99 years). Mr. Regan sent an email to Mr. Bowden asking if the village really wanted to agree to this. On October 5<sup>th</sup> new language was added and changes were made to the agreement and there was a request for a meeting.

**Tab 7:** Refers to the October 26<sup>th</sup> meeting with Dan Plote, Warren Fuller, and Pat O'Connor. Mr. Regan revised the agreement and sent it back with changes to Mr. Bowden, Warren Miller, and Attorney Hartigan. On November 8<sup>th</sup> there were some other minor changes.

**Tab 8:** Mr. Bowden wanted to have a meeting at the Foundation office in order to set a timetable for McGraw Foundation for the petition, annexation and request for rezoning, which gave rise to the petition on January 12<sup>th</sup>. Mr. Regan states that the last few emails back and forth are dealing with the document.

Trustee Scarpelli states that prior to us receiving the packet for the February 6<sup>th</sup> meeting, the last version of the agreement he had was from December 2004. Mr. Regan states that the June 2005 version would have been similar to the December 2004 version.

[Cliff arrives at 7:35 pm]

Mr. Regan states that the drafted language in Article IV states that the village will not be restricted with future actions and ordinances. He recognized that there might be hesitance in taking his word therefore he copied Attorney Hartigan on all emails. A few trustees wonder if the word "Foundation" can be added in the agreement. Mr. Regan is confident that the language does not tie the village's hands with future taxes as long as it doesn't have anything to do with zoning. He states that Plote is already in the village and the Foundation is getting annexed in. There are three defined properties, two owned by Plote and one owned by the Foundation.

Mr. Regan discusses disconnection cases in Barrington Hills. Trustee Carlini states that we need to have an infrastructure that serves the village in some way. Mr. Regan states that disconnection occurs where there is vacant property. Trustee Scarpelli states that we have a sewer plant so we do have infrastructure. Mr. Regan states that Plote would have to petition to disconnect and points out that this is not the normal annexation agreement.

Trustee Scarpelli states that McGraw and Plote feel they can do this without us. Plote could pull their 175 acres out of the village and in order to mine they would have to disconnect and petition the county. The county has given out mining permits, but he is unsure since the municipality is within the mile and half rule if this could be done. Trustee Scarpelli states we are talking about Plote utilizing their current East Dundee property as a mine operation outside of the village limits. Mr. Regan states that it could turn into a political issue.

Mr. Regan states that this is not a perfect agreement. We are granting permission to McGraw to continue with their conservation activities and for Plote to continue with their mining and processing operation. However, this doesn't stop the village from taxing in the future. Mr. Regan states that this is the agreement that Dan Plote would agree to sign. Mr. Regan thought 20 years was appropriate but Plote said no as they won't even be in the leased property that McGraw is using for 20, 30, or 40 years.

Trustee Ruffulo states that it is written that we have the right to impose certain taxes; therefore, can we add a sentence referring to paragraph 1 that will allow us to impose the taxes? Mr. Regan feels that these paragraphs cover it. Trustee Scarpelli feels that paragraphs 1 and 4 are ambiguous. Mr. Regan states that he has taken the best shot with the language and suggests that Attorney Hartigan work on the language. He cautions that if we make a lot of changes, we would have to re-negotiate the agreement.

Trustee Carlini summarizes that this is a 99-year agreement for McGraw's conservation and for Plote to mine the property. Mr. Regan states that Plote wants to be guaranteed that they can continue to mine, as there are millions of dollars worth of mining on that land. They want to be sure that in 50 years we don't change the zoning. Trustee Scarpelli wonders if 99 years is legal and Mr. Regan states that that is a good question. Mr. Regan also states that Home Rule powers clearly extended the zoning and that zoning is a city issue. No one has ever tested it before.

Trustee O'Leary is not comfortable with the laundry list of things that Plote wants to do. Trustee O'Leary states that we don't need paragraph 4 of Article IV and Mr. Regan agrees. Trustee O'Leary is concerned about the use of the words property and adjacent property in Article III. He wonders if and when the zoning changes, will the whole contract be void? Mr. Regan states no, if they petition, the village can make that amendment.

Trustee O'Leary wonders what the benefits to the village are – if we don't agree then we are getting nothing except maybe the opportunity to move down route 25. Mr. Regan states that if he was the village's attorney, he would petition the bankruptcy trustee for permission to proceed with annexation. Trustee Ruffulo inquires what is the significance with the bankruptcy and how it affects the annexation. Mr. Regan states that Attorney Hartigan asked him for his opinion on the effect of the bankruptcy. With no research, Mr. Regan feels the bankruptcy could wipe out the covenant for the land.

Trustee Carlini refers to Article X and states what they did not include is that we have the first right of refusal on other land – land that is not part this deal. Mr. Regan states that they wouldn't agree. Trustee Scarpelli states they agreed to protection. For example, if Elgin contacted the Foundation regarding some property, that the Foundation would contact us. Mr. Regan states the Mr. Potter would try to let us know what's going on but it doesn't require the Foundation to do anything. Trustee Scarpelli would like to see it put back in the agreement. Mr. Regan states that you can't write an agreement not knowing future law.

Trustee O'Leary refers to page 12, Article XI. Mr. Regan states that there is only one provision in the state statute where the state levy's the tax, where a portion comes back and it is this. This has nothing to do with East Dundee's taxing authority; it only has to do with specific state tax. We need this because they have no obligation now to run that sales tax through an East Dundee office. This clarifies the issue.

Trustee O'Leary states that they are bringing gravel into East Dundee and processing gravel in East Dundee. Is there an interpretation on it, which says they are bringing it in on a conveyor and processing it, and can we hold them to a sales tax that we can benefit from? Mr. Regan states that if he were the village's attorney he would propose the question in an email to other village attorney's in regards to the Home Rule of the Illinois Municipal League. The experts are the communities that already have done this.

Trustee O'Leary wonders if we ever received any information from Algonquin. He and Trustee Scarpelli attempted to reach out to other communities and information was supposed to be sent to the village. Trustee O'Leary hasn't received anything.

Trustee Scarpelli asks if Statutes 65 ILCS 5/8-11-1 can be removed. Mr. Regan states that we have to tie this paragraph to an existing state law that entitles the village to the revenue. Can't it be called by its

name, Retailers Occupation tax? He doesn't feel that its possible to have agreement that obligates Plote for a hypothetical future state statute but the village can tax.

Trustee Scarpelli wonders if IRMA has responded in anyway. Mr. Regan states that we should be able to get Susan Garvey to write a letter stating she read the agreement and does not have a problem with it. Trustee Scarpelli can't believe that someone wouldn't want to come out from IRMA to see what the potential liabilities may be. Mr. Regan states the Village Administrator should call Sue Garvey.

Trustee O'Leary states he would like confirmation from IRMA of what is covered and what is not covered. He would also like to find out from the Kane County Auto Sales what the status is on the title search. Also, Attorney Hartigan should broadcast and email to the IML group of attorney's (Home Rule committee).

Trustee Ruffulo states he thought Mr. Regan was handing the McGraw negotiation. Mr. Regan states that that is true, but we are now getting into matters beyond the four corners of this agreement. Mr. Regan again states that this is not your normal annexation agreement.

Trustee Scarpelli refers to page 5, Article III, #3 – The Foundation may petition the County of Kane for an amendment to the zoning classification of parcels of property adjacent to the Property. Mr. Regan doesn't think a court would do that. The party that is at a disadvantage by that interpretation is the Foundation. If they are not complaining about it, we shouldn't either. Trustee Scarpelli states that the property is the three little strips of land and the property adjacent is the property next to it. Mr. Regan doesn't read it that way.

President Bartels states that we can go through the document and change all kinds of things. But the lawyers should have looked at it and determined the language. Why should we reword something for someone in the future that may read this agreement?

Trustee O'Leary states that page 25 and 42 are not the same. Mr. Regan states they are functionally the same, just laid out differently. Trustee O'Leary says the dimensions are not the same. Trustee Scarpelli thinks there should be a defined term. Trustee Ruffulo suggests adjacent property A and B.

Trustee Scarpelli refers to Article X, #2 - vegetative burning. He feels that it should require a permit and that the Foundation should contact us. Mr. Regan states they probably wouldn't sign the agreement if we prohibited burning. Trustee Scarpelli refers to Article XII, #3 – attorney's fees. Is it standard practice for attorney's fees to be paid? Mr. Regan states that the prevailing party would pay attorneys' fees. If McGraw is doing something that we want them to stop doing, then this give us the right to collect attorneys' fees, otherwise, the village doesn't have the right to collect. The only time it would work to the village's detriment is if the village promised to do something in the agreement and we backed out on the deal, then they could sue us. Only if state statute permits it, then you would be rewarded attorneys' fees. There is a rule, The American Rule, where each party pays their own fees; but it would have to be added into the contract. Most likely, nine times out of ten, it will be the village objecting about something that McGraw is doing. This section is more favorable to the village.

Trustee Scarpelli refers to page 15, #5 – Successors and Assigns. Trustee Scarpelli asks, shouldn't we know who is party to this agreement? Mr. Regan states the village should be more interested in an ordinance requiring businesses to register that are doing business in the community.

Issues that will be looked into before the next meeting:

1. Need Attorney Hartigan's opinion the sections that were discussed and be sure we are covered under Article IV.

2. Contact Sue Garvey from IRMA to inform them of potential hazard and to be sure we are covered.
3. Kane County Auto Sales title search.
4. Attorney Hartigan should contact the Home Rule attorney's group.

Trustee O'Leary would like this information as it comes in.

President Bartels states that we should close this meeting and set a date for a COTW meeting.

Trustee Carlini makes a motion to have a COTW meeting and withdraws. Trustee Scarpelli would like to wait until tomorrow to set the date.

Trustee Scarpelli states that the agreement doesn't look like it's in an order that the McGraw Foundation would approve it. Mr. Regan states that Mr. Flanagan, General Counsel for the Foundation, has latitude with typos and things like that, but not with the substance.

Cliff refers to the last couple of meetings where Trustee Gorman stated we needed to clean up some things with the agreement, but it is just a formality and that the general feel is that we are moving forward with this agreement. Did his comments carry any weight? Trustee O'Leary states that Trustee Gorman was speaking for himself. Trustee O'Leary stated at the last meeting to Mr. Potter that it is our turn (the village's) to look at this agreement. Mr. Regan feels that since its been delayed and not approved, McGraw must know that there is some controversy on this board regarding this agreement.

Motion to adjourn Regular Board Meeting by VanOstenbridge/Scarpelli at 9:30 pm.

Roll: 6 Ayes (Ruffulo, VanOstenbridge, Scarpelli, O'Leary, Carlini, President Bartels), 0 Nays, Motion carries.


Respectfully Submitted,

Sue Norton

By: \_\_\_\_\_

  
President Jerald Bartels

Attest: \_\_\_\_\_

  
Village Clerk Sue Norton