

President Bartels calls the Committee of the Whole Meeting of the Village of East Dundee to order at 7:02 pm.

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

Motion to have Sue Norton serve as clerk pro tem by Scarpelli/Gorman.

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

McGraw Petition 01-07-02 – Ordinance Authorizing the Execution of an Annexation Agreement Affecting Certain Property Commonly Known as the McGraw Foundation Property.

Trustee Ruffulo calls for a Point of Order and states that the agenda lists the meeting as a continuation of the February 22nd meeting. President Bartels states this is not a continuation since we closed the last board meeting on February 22nd. This is a separate COTW meeting.

President Bartels states that the board is meeting tonight to discuss the four issues surrounding the McGraw agreement. Administrator Nicholson goes through the following four items:

1) Mr. Nicholson spoke with Sue Garvey and she sent a letter from IRMA relative to their review of the proposed language in the annexation agreement. Mr. Nicholson also states that the Torco document was a recorded document in Kane County and that he and Pat O'Connor reviewed this document. Mr. O'Connor states that both sides would be bound to the agreement even in the event of a bankruptcy, as it is still valid and enforceable by both sides. Trustee O'Leary asks what is the likelihood that it may not have survived the bankruptcy court and Mr. O'Connor feels that is unlikely. Trustee Ruffulo thought we were going to do a quick search at the title company. Mr. Nicholson's office will do it tomorrow.

2) The next point discussed was in regards to regulations that other municipalities have engaged in with respect to mining operations. The village did receive a copy of Algonquin's annexation agreement involving Meyers' gravel pit. The agreement incorporates regulatory measures that the village of Algonquin was able to agree upon with Meyer as the result of that annexation.

3) Another issue was surrounding regulations relative to use or other fees with mine regulations. Mr. Nicholson received information that the village of McCook does have in place regulations governing the sale of mine material or the use of mine material within their corporate limits.

4) The last issue pertained to questions of law that Mr. Regan raised. Mr. Regan did have a general conversation with Attorney Hartigan's office.

Trustee O'Leary is concerned with the first sentence in Article V. It doesn't say which of the three pieces of property they are referring to, or as Trustee Scarpelli points out, four pieces of property. President Bartels points out that Mr. Regan thought the term "adjacent" wasn't an issue because there is a legal description that is associated with "adjacent."

Also in Article V, Trustee O'Leary wonders if the Foundation is saying they want free tap-on fees. He also refers to Article VI and wonders if it is safe to say they are only talking about property in the village and Mr. O'Connor replies yes. Trustee O'Leary would like to limit the number of tap-ons. Mr. O'Connor reads it as meaning one for the life of the agreement, but it could be changed to read that it is

for a single dwelling unit. Trustee Carlini would like a set number of tap-ons in the agreement. Trustee VanOstenbridge suggests we contact the Foundation and find out what they mean. Trustee Gorman agrees we should ask their intent. Trustee O'Leary states that Article V and VI should be limited to the existing structures. He would like to walk out of this meeting tonight with a consensus on a revised agreement and let McGraw negotiate beyond that. Trustee Scarpelli suggests that we approve this document with a list of changes. Trustee Ruffulo states that he would agree with Trustee O'Leary on this subject. Trustee VanOstenbridge agrees if we get McGraw's input.

The consensus is 7-1 in favor of limiting the tap-ons in article V and VI.

The following discussion is in reference to Article VII.

Trustee O'Leary brings up the topic of coverage and IRMA. He believes that the liability to the village should be limited to our coverage. Trustee O'Leary asks Mr. O'Connor what the options are if the lake failed and wiped out our plant. Mr. O'Connor states that IRMA is interpreting this as a waiver of subrogation. The village will not be able to go back to the Foundation and get their insurance money. We are limiting options to recover against the Foundation; however, it does appear if they are negligent then the village could go after them. Trustee Scarpelli states that the village has \$2.5 million dollars coverage on property and that is all we can get, so we better get some private insurance. Trustee Gorman states that the \$2.5 million is our problem, not McGraw's.

Trustee Scarpelli believes there are outstanding DNR letters stating the lakes should be drained. President Bartels states if someone has these letters they should be brought in. Trustee O'Leary feels that there is no point to have this section in the agreement. Trustee Ruffulo asks if the board knew we were so underinsured and the response is No. Mr. O'Connor states if McGraw had been told by the IDNR to drain those lakes and they didn't, it may be negligence.

Trustee Ruffulo states that Trustee O'Leary makes a good case, but it should be left alone. However, we should pursue more coverage. Trustee Ruffulo and VanOstenbridge feel this section of the agreement should not be changed. Trustee Scarpelli feels there should be some change. Trustee O'Leary states it should be changed to limit the extent of coverage without putting a dollar amount on it. Trustee Gorman states it should read to the extent of our coverage. Trustee Carlini asks for a change where we cover ourselves from the maximum and they have to cover the rest. President Bartels would like to leave it as is and states that we can't make them cover the rest, the agreement doesn't preclude us from going after them if they are negligent.

Consensus regarding Article VII is 4- 3 in favor of adding a clause to the limit of our coverage.

From here on out, #4 references several paragraphs throughout the agreement, which read, "(4) Batch asphaltic concrete, cement concrete, mortar mixing operations, the source separation and recycling of asphalt, cement and other construction materials and demolition materials, and the source separation, recycling and reprocessing of landscape materials and wood products so long as such operations conform with not less than the applicable regulations set forth herein under 157.065;" And, #3 refers to "(3) Stone or gravel quarries, when crushing, grading, washing and loading operations conform with not less than the applicable regulations set forth herein under 157.065;"

The topic moves to page 39, Exhibit H. Trustee O'Leary feels we should remove #4 from the agreement. 157.065 is a special clause we are adding to our ordinance in exhibit G. Trustee Scarpelli would also eliminate #4 on page 6, 7, and 8 as the June 2005 copy of this agreement did not include this section. This is when the extra uses were added. We are not saying no to these uses, just that when Plote is ready

they will need to pull a permit and we'll have a process in place. President Bartels states that the agreement is done when they are done mining.

Trustee Gorman states that he told Mr. Potter he was uneasy with the zoning and that the operation of a recycling station and an asphalt plant was not part of the original agreement. President Bartels states that it is not the agreement with Mr. Potter; it's the agreement with Plote. Plote's concern is if they move off their property, they want to be able to go back and do the things that they are doing now. Trustee Scarpelli states that Plote can't do #3 legally today because the M1 zoning doesn't allow it. Trustee Gorman states they would claim that the F zoning does allow it.

President Bartels states that it is his understanding that Plote will walk away from this agreement. Like McGraw, they don't need the village to do this deal. They could disconnect from the village and petition the county. Trustee O'Leary states that we chose not to petition the county in good faith on the previous agreement, which was mining and hunting, and then they changed it. Trustee O'Leary states that paragraph #4 should be taken out. It can be approved as a special use for that zoning district, but it shouldn't be given to Plote as part of the annexation with McGraw. Our Plan B would be to do this by permit, but not part of the annexation agreement. This is not the tact that President Bartels would like to take. Mr. O'Connor states that it could read that the following special uses should be granted pursuant to a permit (for #4, page 6, 7, and 8.) However, he also agrees that we should just remove #4.

Trustee Scarpelli states that he cannot agree to all of the uses in #4. Trustee Gorman states the asphalt plant is irrelevant to this agreement and Plote should have a hard time walking away as this wasn't in the June agreement. Trustee O'Leary feels we should take out #4. We are putting in our ordinance that it's a special use in that zoning district. Trustee Scarpelli states it as an allowable special use and the village will list it in the zoning book.

Trustee Scarpelli points out that we do use our adult use ordinance in the M2 district. The process is completed but the zoning map has not been adopted. He asks Mr. O'Connor if we can give a special use for a period of time. Mr. O'Connor states yes, approving a special use not to exceed a certain number of years. Trustee Scarpelli states that if you can only do a limited term, then it would either be tied up in this agreement or removed. If its removed and put in as a special use, the village should understand that this special use if forever.

Trustee O'Leary states that it's a question of what makes sense for the village and #4 doesn't make sense as part of the annexation agreement. He would like it removed. Trustee VanOstenbridge doesn't want them to walk over this. Trustee Gorman feels it should be removed. Trustee Ruffulo supports O'Leary and Gorman. Trustee Carlini agrees as well.

Consensus is 5-2 in favor of removing #4.

Summary: #3 stays
#4 stays in G
#4 should be removed from H and I, and in the agreement on pages 6, 7, 8.

Trustee O'Leary wonders how can we limit special use, its allowable use as a special use, but not part of this agreement. Trustee Scarpelli states that they will have to file a mining plan and reclamation plan. Trustee Ruffulo states that the essence of the agreement is #3 and doesn't want to modify it.

Trustee Scarpelli asks, what can we do and what can we not do when it comes to these gravel operations. Mr. O'Connor states that as a home rule municipality, limited by the constitution of the state of Illinois

for your residents, to do things for the health, welfare and benefit of the citizens. The village could always pass any laws and taxes they want after this. Trustee Scarpelli feels that the village should have requirements and Trustee O'Leary states there should be a COTW to find out what the restrictions are around mining.

SUMMARY:

We still have to work on IRMA. Mr. Nicholson will do the quick title search. The regulatory issues will be completed two months down the road. The issues of law with Hartigan and Regan appeared to have been addressed.

- 1) Contact Mr. Potter regarding tap on's to find out their intent.
- 2) IRMA and the village's insurance.
- 3) #3 stay in.
- 4) #4 remains in Exhibit G.
#4 to be removed in Exhibit H and I, also should be removed from page 7 and 8. **(SHOULD STAY ON PAGE 6)**

Trustee Scarpelli states that if they would agree to this in a separate document, then he would be okay with the agreement.

It is suggested that Mr. Nicholson put this in writing and present it in person to Mr. Potter. Everyone agrees to direct all issues through Mr. Nicholson.

Mr. Ruffulo states that if they walk because of # 4, that he won't be upset. He feels that it's a better agreement because of the research that was done by some trustees.

Trustee O'Leary states that our part of the contract is really with McGraw. President Bartels states that they are two separate agreements so we will have to talk to McGraw as well as Plote.

Motion to adjourn Committee of the Whole meeting by O'Leary/Ruffulo at 8:55 pm.

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

Respectfully Submitted,

Sue Norton

By: Jerald Bartels
President Jerald Bartels

Attest: Sue Norton
Village Clerk Pro Tem Sue Norton