

APPROVED MINUTES

VILLAGE OF ANTIOCH BOARD OF TRUSTEES

**Special Meeting – Antioch Senior Center: 817 Holbek
Virtual Meeting – Call In (312)626-6799 Access Code: 592-598-564
September 23, 2020**

I. CALL TO ORDER

Mayor Hanson called the September 23, 2020 special meeting of the Board of Trustees to order at 7:01 pm in the Antioch Senior Center: 817 Holbek, Antioch, IL.

II. PLEDGE OF ALLEGIANCE

The Mayor and Board of Trustees led the Pledge of Allegiance.

III. ROLL CALL

Roll call indicated the following Trustees were present: Pierce, Macek, Yost, Dominiak, Poulos and Johnson. Also present were Mayor Hanson, Attorney Long, Administrator Keim and Clerk Romine.

IV. Approval of the July 22, 2020 Special Meeting Minutes as presented.

Trustee Macek moved, seconded by Trustee Pierce, to approve the July 22, 2020 special meeting minutes as presented. Upon roll call, the vote was:

YES: 6: Pierce, Macek, Yost, Dominiak, Poulos and Johnson.

NO: 0.

ABSENT: 0.

THE MOTION CARRIED.

V. Citizens Wishing to Address the Board -

There were no citizens wishing to address the board at this time.

VI. Regular Business

1. Consideration of a Resolution Approving the Cancellation and Modification of 2020 Summer Programs and Special Events through the month of October – Trustee Pierce moved, seconded by Trustee Yost, to approve **Resolution No. 20-42** approving the cancellation and modification of 2020 summer programs and special events through the month of October.

Director Kabrick discussed the events typically held in October such as Treat the Streets, communications with the community on trick-or-treating, as well as several virtual Halloween programs for the community to be involved in.

Upon roll call, the vote was:

YES: 6: Pierce, Macek, Yost, Dominiak, Poulos and Johnson.

NO: 0.

ABSENT: 0.

THE MOTION CARRIED.

2. Consideration of an Ordinance Approving a Development Agreement for Townhomes in Deercrest Subdivision – Trustee Dominiak moved, seconded by Trustee Pierce, to approve the first reading of **Ordinance No. 20-09-29** approving a Development Agreement for Townhomes in Deercrest Subdivision.

Attorney Long explained that the development agreement up for consideration is limited to the scope of the amount of the bond to be posted. He provided an overview of the history of Deercrest, including the original PUD ordinance which setup the subdivision in April, 1999. He discussed the original density of the townhouses, which was reduced by 20, and that density became a topic of discussion at that time. In late 2000 a suit was filed on both Deercrest and Clublands subdivisions involving use of land and platting of

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subdivisions. The ultimate settlement resulted in a decrease in total numbers of approved housing in the Neuhaven and Clublands subdivisions. The development was approved in 2002, and a component of that was the approval of the final plat of Deercrest Subdivision; including the overall density and a specific number of townhouses. Attorney Long explained that Neumann was the original declarant. In 2007, before the subdivision was completed, Neumann declared bankruptcy. The Village successfully managed to finish the subdivision, complete the roads and infrastructure, and received an OSLAD grant to complete Sprenger Park and provided many of the amenities which should have been provided by the original developer. He explained that a developer bought the mortgages and properties from the banks which had foreclosed on Neumann's loans, and worked out a deal to refinance the bonds, which had an immediate positive impact on SSA taxes. The only stipulation on the townhouses was that they had to be no more than a particular number. There was a minor modification to the original plat, which didn't increase the density. At this time, the developer is looking to obtain a permit to install roads, put in utilities, and start building the remaining townhomes, however, a bond is required to be posted before such permit is issued. This bond is required by state statute and local ordinance. This ordinance and development agreement before the board clarifies the obligations of the developer to the Village, and is to the benefit of the Village. The development agreement does not change the property entitlements. Attorney Long addressed concerns about the properties being rented, and a rule adopted by the Deercrest HOA prohibiting rentals of the townhomes. He said there is a provision in the declarations saying if a modification is made it must go to the Village Board. Attorney Long does not believe it is appropriate for the Village to take a position on a conflict between an HOA and a developer. He explained the non-home rule status of the Village of Antioch, and added that no current ordinances in home-rule communities prohibit or regulate property rentals. He explained that the Village does not have power anywhere under the municipal code to try and regulate how people can use their property in the context of rentals. He reiterated that this is a dispute between the HOA and a developer, and it is a separate issue that does not involve the powers of the Village Board. It is also not related to the question before the board this evening regarding the proposed development agreement to outline infrastructure requirements. What the board must consider, is does the development agreement fairly protect the Village, provide the bonding and ensure the subdivision will be adequately built, considering that it is aimed at water lines, sewer lines, roads and public and quasi-public improvements in the subdivision. Attorney Long further asked the Village Board to weigh these facts and factors carefully to avoid getting caught up in another lawsuit involving this development.

Mr. Mark Tarkowski, Deercrest resident, discussed prior concerns raised by residents and the filing of the new CCRs from the HOA with Lake County regarding the rental of new structures in the subdivision. He stated that the prior development agreements will be provided to the HOA attorney once they are received through his FOIA request. He said he was shocked and appalled that no notice was provided to the HOA board that this item was being considered. He said the residents are okay with the construction and selling of the townhomes, but they don't want rentals. Mr. Tarkowski asked what the Village will do if they sit vacant, and asked that the Village put an immediate stop or hold on this development until the HOA can review documents. He said if this goes through, it may result in people moving out of the subdivision, lower property values, provide overall less property taxes for the taxing bodies, as well as create more foreclosures and increasing crime rates. He commented that this is not political, but said the residents know it is an election year and will closely watching what the trustees and mayor do on this for the upcoming election. Mr. Tarkowski read a section of the amendment to the HOA covenants dated July 29, 2020 which states "this leasing, or rental of any lot which is not improved with a dwelling and which dwelling is not occupied by a person or persons on or before the effective date is prohibited. Any lot which is improved with a dwelling occupied by a person may be leased". He also read aloud an email from a resident sent to the Village Board regarding the development.

Attorney Long responded to some of the concerns again stating the Village Board limitations. He will not express an opinion about whether or not the HOA has the power to do what they've done as far as prohibiting rentals; that will be between the HOA and the developer, Mr. Troy Mertz. He said he has heard from Mr. Tarkowski that the dispute is not about the building of townhomes, but with the use, and the village board doesn't regulate use, period. Attorney Long commented that to a limited extent the Village Board may limit commercial use, but even that is changing. The Village does not have the power to regulate how property is used.

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Trustee Macek discussed other homeowners association conflicts that did not involve the Village in their disputes, and said the Village cannot get involved with HOA issues. He said he feels bad for the residents, but it's the same situation for all HOAs.

Attorney Long stated that that none of the documents before the Village Board mention the use of the properties and if they can or cannot be rented because the Village doesn't have the power to regulate the use of residential property.

Mr. Scott Gartner, Village resident, expressed concern with the original plan and the impact on property values. He said this is forcing litigation on the HOA. He said Mr. Mertz has said on numerous occasions that the HOA documents do not apply to him, but a judge has never said that. Mr. Gartner said he hopes the Board and Mr. Mertz work with the association to avoid the potential for litigation and discuss the issues. He mentioned several documents in the ordinance that are incorporated by reference, and said it would be premature to make a decision before those PUD agreements are read.

Mr. Brett Giza, Village resident, expressed concern that there may have been a mistake made with the original HOA filings which could have excluded Mr. Mertz from the rules of the HOA. If that is the case, he would expect Village Board to protect the Village and its residents. If the Master HOA has put in rules restricting rentals, he believes the Village should do what they can to prevent future disruptions and financial burdens. He asked each board member if they, or their family members, have any financial dealings with Mr. Mertz or his organizations, or if any of their campaigns are getting any contributions from Mr. Mertz, and asked them if they would recuse themselves from any votes revolving around Mr. Mertz and his plans. Trustee Pierce would like to hear from the other residents before responding. Trustee Macek said he has nothing with Mr. Mertz. Trustee Yost responded that he did not accept any contributions when running for trustee, and funded it completely on his own. He has not profited one bit in his role as trustee and donates all of his earnings as trustee to local charities. Regarding his current campaign, he has not received any contributions from Mr. Mertz. Trustee Dominiak responded that she declines money from developers offering campaign donations and has not received any financial resources from Mr. Mertz. Trustee Poulos has not taken any money and said they can look at his disclosure statements. Trustee Johnson said he has not taken any money from Mr. Mertz and has no business dealings with Mr. Mertz. Mayor Hanson replied that there may have been a fundraiser, but he has not taken donations and nothing is listed on his disclosure.

Trustee Poulos said the HOA document prohibiting rentals has nothing to do with what the board is considering this evening.

Mr. Larry Grigsby, and Mr. Jason Casto, Village residents, discussed the requirement for an HOA approval letter for permits, and reiterated their dissatisfaction with the idea of rental units.

Trustee Pierce said he doesn't receive any donations for his campaigns, and donates much of his earnings as Village Trustee back into the community. He said he loses money on this job, but does it because he loves Antioch. He commented that he watched this go on for the last 2 days on Facebook with comments, and was disturbed by the abhorrent, racist comments made, and said Antioch is better than that. He added that many people in his subdivision that rent are good and hard-working neighbors. The degrading comments regarding renters are unacceptable. He discussed the threats of voting a certain way or losing an election and said he votes based on fact. He believes the rest of the board votes because they think it's the right thing for Antioch. He said he works hard to get votes, studies facts, and makes it to as many meetings as possible. Trustee Pierce said he votes for the law and what is right, and not because a room full of people tell him how to vote. He discussed all of the subdivisions that have addressed the board since he's served, and every time the Village board has to tell them that we can't get involved in HOA rules. He discussed HOA involvement with permitting and providing the opportunity for the HOA to be involved if needed. He asked if the development agreement applies to whole development or just the section with townhomes. Administrator Keim replied that it's just the townhomes, and discussed the timing of other improvements. He said the triggers to occupancy or permit requires that each building has to have appropriate water and sewer, stormwater/erosion control, sidewalk lighting and tree installation. All of the required improvements will be done as the buildings are built.

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Retention ponds in place already provide for stormwater detention for this development. Administrator Keim discussed the detention system and interconnectivity. He said the pond is healthy, and erosion control is part of it as well. Trustee Pierce discussed surety requirements and letters of credit. Administrator Keim said state statute requires bonds not letters of credit.

Trustee Macek explained requirements to obtain a performance bond. He remembers comments made by Mr. Mertz regarding the CCR requirements being applicable to his portion of the development, and urged the HOA to work with developer.

Trustee Yost clarified that he has no business interests and does no business with Mr. Mertz. He agreed with Trustee Pierce's concerns and said he had a short time to review this item. Given the potential for litigation, he asked if there is any language within the ordinance that could be seen as giving preference or leverage to one side or another. Attorney Long responded that this document was intended to protect the Village as a whole and isn't aimed at protecting Troy Mertz or favoring him or the HOA. The proposed ordinance and development agreement deals with the public and quasi-public improvements, and is written to minimize the impact to the community and do that fairly across the board. Trustee Yost asked Administrator Keim how we know the bond is adequate and asked if there is an itemization that outlines what has been budgeted or a third-party review of those estimates. Administrator Keim replied that the bond is adequate, and there has been a third-party review of those estimates, which have been verified by the contractor through his contract to complete the work.

Trustee Dominiak discussed the actual agreement and asked if the bond amount is enough, and asked if there was an engineering report on the road itself. She would like to see the data, if available, on what is included in the \$250,000 bond requirement. Trustee Dominiak said if the plans are different from the PUD in item #11, will it be brought to the board, and suggested any changes be brought to the board whether substantial or not. She asked if storm sewer inspections were done. Administrator Keim said only to the extent they were done in the first Neumann bankruptcy and that is included in the original cost estimate. Attorney Long clarified that the bonding is for the public improvements, not for the project itself.

Trustee Poulos agrees with Trustee Pierce that he votes on what follows the law, and it's not our dispute to get into. He expressed concern over the potential liability on voting on something over which they have no power and opening up the board to a lawsuit from the developer. He said they have heard HOA issues before, and all without the need for village involvement. He added that this is not the forum such a discussion can be made outside of what is being considered by the board this evening of the development agreement for a bond.

Trustee Johnson said the original HOA was setup about 20 years ago, and those owners should know the potential for this project. He discussed a previous meeting when this was discussed, and what was expected from the trustees at that time, and said there was nothing the board could do. Since that meeting, the bylaws were changed so that Mr. Mertz could potentially not rent the townhomes, which he said sounds like a potential lawsuit, but not involving the Village. Trustee Johnson said the Village doesn't regulate use, and cannot prevent the rentals from happening, but the Village board can vote on a bond to protect the Village for future public improvements. He agrees with many points made, but again said the Village doesn't have the power to prevent the rental of the townhomes; this vote is only on protecting the Village with bond requirements.

Trustee Dominiak said if the board votes no on this ordinance, those protections are gone, and Mr. Mertz can do whatever he wants; but if voted yes, he is held to the requirement of the document.

Trustee Pierce asked the effect of voting no on the ordinance. Attorney Long said Mr. Mertz can simply post a bond and go ask for permits.

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Attorney Long said the statute said the amount of the bond is determined by the corporate authority, but without direction on how to come to that number, they work off the engineer's estimate of probable cost. Since this is up for the first reading, there is sufficient time to verify this bond is an appropriate amount.

Mayor Hanson thanked the residents for coming out tonight and expressing their feelings, and thanked the Village Board for their considerations. He said the Board works hard to represent the citizens of the village, puts more into the job than is necessary, and will do everything in its power to protect all of Antioch. He reiterated that the Board is here tonight to consider the agreement, and not the rental of the townhomes.

Upon the motion to approve the first reading of **Ordinance No. 20-09-29** approving a Development Agreement for Townhomes in Deercrest Subdivision, the vote was:

YES: 4: Macek, Poulos, Johnson and Mayor Hanson.

NO: 3: Pierce, Yost and Dominiak.

ABSENT: 0.

THE MOTION CARRIED.

3. Consideration of a Resolution approving a contract with TNG for the enhanced repair of the Village Hall damage in the amount of \$99,159.46 – Mayor Hanson reviewed recent discussion on this topic. Director Garrigan advised staff is proposing an enhanced repair of the building and received quotes from 2 contractors. Staff's recommendation is to contract with TNG. He explained that the contract was just received by the attorney yesterday, who would like an opportunity to make modifications and bring it back to the next board meeting if there is support.

Trustee Pierce moved, seconded by Trustee Yost, to approve **Resolution No. 20-43** approving a contract with TNG for the enhanced repair of the Village Hall damage in the amount of \$99,159.46 and authorizing the attorney to turn the contract into a meaningful document in an executable form and allow staff to commence work once agreement is officially signed.

Mayor Hanson thanked staff for their work on this project and clarified the reason for the delay in repairs.

Upon roll call, the vote was:

YES: 6: Pierce, Macek, Yost, Dominiak, Poulos and Johnson.

NO: 0.

ABSENT: 0.

THE MOTION CARRIED.

VII. OTHER BUSINESS

None.

VIII. ADJOURNMENT

There being no further discussion, the Village Board of Trustees Special meeting adjourned at 9:14 pm.

Respectfully submitted,

Lori K. Romine, RMC/CMC
Village Clerk