



## VILLAGE OF FOX LAKE SPECIAL VILLAGE BOARD MEETING MINUTES

STATE OF ILLINOIS,  
Lake and McHenry Counties, }  
Village of Fox Lake } ss.

At the Special Village Board Meeting, held in said Village and County in the State of Illinois at 6:20 p.m. on February 6, 2007 meeting was called to order by Mayor Irwin. The following official business was transacted:

### **Roll Call**

Present - Mayor Irwin; Village Clerk Weeks; Attorney Teegen, Trustees, Bender, Murrey, Ulasz, Working, and Beskow. Trustee Borchers was absent

### **I. New Business**

Mayor Irwin invited TIF Attorney Kathy Orr to make her remarks to the Village Board Members.

Ms. Orr stated that she would like to report to the Village Board the primary concern regarding the redevelopment and to ensure the school districts would also give their approval. Ms. Orr stated there was meetings with the school board regarding the redevelopment and the terms were negotiated.

Ms. Orr read the attached letter from the School Board for the record.

Ms. Orr stated that the terms in the letter have been presented to the developer particularly with regard to senior housing. Ms. Orr stated the developer has agreed to the terms and are stated in the agreement. Ms. Orr stated that the term "in perpetuity means forever. She stated that the developer's intent is to develop senior housing and not re-propose the development to initial senior housing sells.

Ms. Orr stated the board was presented with an agreement with the changes that they would like to see in the agreement. Ms. Orr stated that the language in the agreement reflected the thoughts of the Village Board.

Ms. Orr stated that the obligations of the developer would be contingent upon their agreement with the school districts.

Ms. Orr stated if the Board adopted the agreement then she would be at the next Village Board meeting with an intergovernmental agreement.

Ms. Orr asked if a motion needed to be presented in order to continue the discussions. Attorney Teegan stated there should be a motion to adopt the agreement and have a discussion regarding the agreement and the changes to the agreement. Mr. Teegan stated that he would speak to each of the changes that were made to the agreement.

*Trustee Bender made a **motion** to adopt Ordinance 2007-08 with amendments following this evening's discussion seconded by Trustee Murrey*

Mayor Irwin asked for discussions.

Attorney Teegan stated that the first change to the agreement would be on page 4 of the original agreement that the Trustees received in their packet of information. Mr. Teegan asked the board if there were any questions to anything prior to page 4 of the agreement.

Trustee Beskow stated that he had questions on page one regarding the language about adult persons or persons 55 and older. Trustee Beskow stated that the school board stated that they would agree only if this was a senior development. Trustee Beskow stated that his understanding of senior housing was different than adult housing. Ms. Orr stated that the phrasing or adult housing she believed would not be constitutional. She stated that in all of the conversations and they will be affirmed within 2 weeks. She stated that the term adult housing term was acceptable to the school board. Ms. Orr stated that the letter presented to the board reflects the same language. Trustee Beskow stated that is not what they have said. Ms. Orr stated that senior housing or adult housing is defined as the same. Ms. Orr asked Trustee Beskow to refer to page 3. She stated that the language on page three refers to either adult or senior. Trustee Beskow stated that he believed the word "or" was wrong. Attorney Teegan stated that it was a defined term. Trustee Beskow stated that the Village recently worked with a developer who came to the conclusion that adult housing was difficult to sell. Ms. Orr stated that the issues with adult housing have been interpreted as meaning no children and they would be discriminated against and that would be illegal. She stated that is the reason for the word "or" is to determine what financing mechanism would be established for what will sell and what you can get financing for. Mr. Teegan stated that if the schools were not in agreement then this would be a non-issue. Attorney Teegan stated that the schools were aware and they would know how to make those statements in the intergovernmental agreement.

Trustee Beskow stated that he had a very clear understanding from the schools that they wanted senior housing. Trustee Beskow stated it was his responsibility to protect the Village and be fair to the developer. Trustee Beskow referred to the proposed development of the Country Club. Trustee Beskow stated that the legal description of an adult is 18 and older.

Ms. Orr stated that the schools were satisfied with the word "or" and because its an "or" it given the flexibility that Trustee Beskow has pointed out. Trustee Beskow stated if the schools were satisfied with the term then he did not have an issue with it.

Attorney Teegan highlighted the first amendment to the agreement by adding the words "excluding the word Senior Housing because it would become important later on in the agreement.

Attorney Teegan highlighted the amendments on page six by inserting qualifying language that is not a zoning amendment. With the next change including that would include a P.U.D.

Attorney Teegan stated the next amendment would be found on page seven were the language "project infrastructure was added.

Attorney Teegan stated the next amendment would be found on page 8 the language is to confirm that no occupancy permit will be awarded to the senior housing until the hotel and banquet received its occupancy permit. He stated the next amendment was an additional paragraph was added to address the letter of credit to secure obligations if construction does begin before December 31, 2007.

He stated the next amendment could be found in section 4 addressing reimbursements to the developer would not exceed the amounts of the proceeds from the bonds for items listed on exhibit D.

Attorney Teegan stated the next amendment was on page 9 changing a letter "C: to "D".

Attorney Teegan stated the next amendment would be on page 10 in Section 5 item A where the language "but not prior to receipt of proof of financing for the project from the developer."

Attorney Teegan stated the next amendment was on page 15 in the top paragraph where a third party beneficiary paragraph. He stated that this paragraph is a common paragraph used to prevent parties not parties to the agreement from claiming any rights or benefits. The other changes included changing the word zoning to P.U.D.

Attorney Teegan stated that the amendments to the agreement were to reflect the concerns of the Board Members. He asked if there were any other items that needed to be discussed.

Trustee Beskow asked Mr. Teegan about the dates regarding the development and asked if this was sufficient time to meet the agreed commitment dates. Trustee Beskow asked if the wording could be worded to include "after so many days of receiving a P.U.D.

Trustee Beskow asked Trustee Working if he could guarantee if it's going to be at all those boards by the said time. Trustee Working stated that under Ordinance we do have 45 days upon application. Trustee Beskow stated it would pass 2 boards making it 90 days and forfeiting April 1<sup>st</sup> date not giving the developer the proper amount of time to complete the necessary tasks. Trustee Working stated that it would be contingent upon it going to the Architectural Review Board so they can make their recommendations and forwarding the information to the Planning Board so they may due their due diligence so the information can be forwarded to the Zoning Board. Trustee Beskow stated that he thought this process would have already been started to ensure all elements were in their proper place. Trustee Beskow state from his experience the dates may be too close to meet deadlines. Attorney Teegan stated that he agreed with Trustee Beskow; and stated that the timing was aggressive. Attorney Teegan stated from the Village's standpoint he didn't see there would be harm to the Village by virtue of the fact that the developer if he is not able to get through the process in time would have to request time extensions. Trustee Beskow stated that is why he is questioning the times stated in the agreement.

Mike Stesman the developer stated he would like clarification to this discussion. He stated the idea behind the April 1<sup>st</sup> timeline was to accomplish the dry stack storage component being completed due to that being most relevant for operations to clean up the entrance on Route 12. Mr. Stesman stated that he would like to have this component started and in process so the clean up could be started immediately following the hotel component with the InPlay piece. Kathy Orr stated that the developer has committed to start the dry stack by June 2007 so the point is that if you are doing the P.U.D. you should do it all in one process so if you are to start by June 1 and taking the point that all of the zoning has to be complete by May 01,2007, that would give you the opportunity to meet our Village requirements.

Trustee Beskow stated that he believed that is cutting the time close. Trustee Working stated that Architectural Review Board meets once a month on a Thursday and Planning and Zoning meets twice a month. Kathy Orr stated that she had the Plat of Subdivision by May 31<sup>st</sup>., which would be the site, plan approval. Trustee Working asked if that was the date of submission. Kathy Orr stated that was not correct the developer would have approval by May 31<sup>st</sup> so the developer could start June 1<sup>st</sup> the construction of the dry stack storage. Trustee Working stated that would be an entire project to get the P.U.D. and asked if the developer is looking at sections. Attorney Teegan and Orr stated this was the question and they may have to think about separate P.U.D. processes.

The developer stated in order to comply with the bond concept for the TIF we moved the dry stack back into the TIF. Kathy Orr asked Mr. Teegan where the April 1<sup>st</sup> requirement for the zoning stating that she had the acquisition of the property before April 1<sup>st</sup> and that April 30<sup>th</sup> is the amendment to the TIF program is the deadline, where are you referring to or was it, yes you did approval by the Village P.U.D. project by April 30<sup>th</sup>, stating that date later on if you look at 2 B is really May 31<sup>st</sup> then I think we have it. Mr. Teegan stated he modified April 30<sup>th</sup> date that was included. Mr. Teegan stated that the amendment did not affect the zoning one-way or the other.

Kathy Orr stated there was no April 30<sup>th</sup> dead line that it was the dead line for the TIF amendment and she apologized for the misunderstanding.

Mr. Teegan suggested on the timing issue to look at the site plan and to see what is envisioned and when and its not insurmountable task in his vision if that was expedient and to proceed separately and to amend agreement to accommodate that.

Trustee Beskow stated it was in the agreement in 2 places stating from the agreement on or before April 1<sup>st</sup> 2007 the developer shall have acquired a free simple title to the property asking the developer the question if that is not achieved would he still be purchasing the property regardless. Trustee Beskow also asked the developer even if he has not acquired the zoning approval he is still going to purchase the property. Trustee Beskow stated that he had an issue with that because he has never known a developer to do that before. Mike stated a P.U.D. has a set of processes and procedures that must be accomplished in order to move forward. The developer stated that they have looked at those processes and procedures and he did not in vision a problem with what he is trying to accomplish. He stated that they were developing an 80 room branded hotel with and InPlay and banquet facility with open public space and dry stack storage. He stated that he knew that they would have to live with those processes and procedures we have already looked into the processes and procedures. He stated that to answer your question about cart before the horse I haven't started that process because I haven't got an agreement, as an investment group we have already invested a couple of hundred thousand dollars to go through what we need to do to get the P.U.D. is easily another 300,000.00 and he didn't want to make that commitment until we had a formal agreement with this board. He stated he realized that there was still a vast amount of work to be done on this project and he needed to rely on the board to get through the P.U.D. process, he stated that he was not going to look at this as "me against you", this is how do we want to do this and how do we move forward. Trustee Beskow stated with all that talk you never answered my question. The developer stated that looking at your P.U.D. yes. Trustee Beskow stated that answer is very simple and asked if you don't have the P.U.D approval by April 1<sup>st</sup> are you still going to purchase the property. Mike stated Yes, Yes. He stated that he had a property owner in the audience.

Mike stated the answer is yes.

The developer stated that he had to rely on the Village Board, that if we live up to our obligations that there are not any, please don't look at this as me against you, you've got to commit as a board and you have to say to yourselves we are going to help Mike and local Fox Lake investors get this through in a timely and fair manor. Mike stated that if that happens we are not going to have a problem. Trustee Beskow stated that's what we all want and he was trying to make sure no one was hurt in this process.

Mike stated that he was getting the message that the P.U.D process was going to be an issue. He stated that he understood the difficulties but he didn't want it to kill the deal. He stated that he wouldn't go through this whole process up to P.U.D. and there would lay the issues. He stated that the residential component was an issue with its own set of problems. He stated that he needed to get the dry stack storage in and clean up the property's entrance. He stated optimally he would like to see the dry stack open this fall, hotel opens March or April of next year so construction would need to begin in mid to late summer. Trustee Beskow stated that he was trying to get to was the Zoning Board would not approve them one at a time. You will have to have the whole complex approved. Mike stated that was the 300,000.00 investments that would have to be made in architecture and engineering, we may phase in some of the construction pieces.

Mayor Irwin asked for any other questions for the developer.

The developer stated that he needed clarification that we were at a May 31<sup>st</sup> for the Zoning.

Trustee Beskow asked the developer if his attorneys were in agreement with the amendments that have been made this evening. The developer stated no but he has agreed to the amendments made in this evening's negotiations. Trustee Beskow stated that was very important. Trustee Beskow asked if they would be getting a letter with additional amendments to the agreement. Mike stated no. Ms. Orr stated that they have been in negotiations. Trustee Beskow stated he understood that however, there were new developments in these evening's negotiations. Ms. Orr stated that they have been working with the attorneys and she stated quiet frankly the issue that were raised tonight were sequencing timing what you would like done first. It is far better for you to hear from the developer with those practical issues than an attorney. She stated that she didn't envision a problem with the attorneys because Mike would have to address the questions that you proposed today.

Trustee Working asked Mike if his intention was to bring an entire site plan including the hotel and In Play. Mike stated that Mr. Hart met with his architect and he will be diligently working on a presentation. Mike stated that he thought it would take approximately 10 – 14 days for a complete preliminary site plan.

Trustee Working asked Mike if his intention was to make the application at that time. Mike stated yes.

Mayor Irwin asked if there were any additional questions or discussion.

Mike asked if they understood the fluidity of what has happened. He stated that they were committed to their dates and timelines. He stated moving the dry stack changes a great deal operations and he understood there were other issues that needed to be addressed as they moved forward.

Trustee Working asked Attorney Teegan if the dates would change. Mr. Teegan stated when it was ready to submit then we would need to have conversations with

the Mr. Hart, Trustee Working and Attorney Kathy Orr. Then we can figure out which is the best way to handle the P.U.D.

Trustee Working stated that the less complex it is will help move this through the boards.

*Trustee Bender made a **motion** to adopt Ordinance 2007-08 with amendments following this evening's discussion seconded by Trustee Murrey*

*A roll call votes was taken as follows:*

<i>Trustee Beskow</i>	<i>Aye</i>
<i>Trustee Murrey</i>	<i>Aye</i>
<i>Trustee Bender</i>	<i>Aye</i>
<i>Trustee Ulsay</i>	<i>Aye</i>
<i>Trustee Working</i>	<i>Aye</i>
<i>Trustee Borchers</i>	<i>Absent</i>

***Motion Carried***

## **II. Audience Comments**

There were no audience comments

## **III. Adjournment**

*Trustee Working made a **motion** to adjourn the Special Village Board Meeting at 6:58 P.M. seconded by Trustee Bender.*

<i>Trustee Beskow</i>	<i>Aye</i>
<i>Trustee Murrey</i>	<i>Aye</i>
<i>Trustee Bender</i>	<i>Aye</i>
<i>Trustee Ulsay</i>	<i>Aye</i>
<i>Trustee Working</i>	<i>Aye</i>
<i>Trustee Borchers</i>	<i>Absent</i>

***Motion Carried***

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Samantha Weeks  
Village Clerk