

**REGULAR MEETING OF THE MAYOR AND BOARD OF TRUSTEES
Gregory J. Bielawski Municipal Center, Carol Stream, DuPage County, Illinois**

February 22, 2005

Mayor Ross Ferraro called the Regular Meeting of the Board of Trustees to order at 8:00 p.m. and directed Village Clerk Janice Koester to call the roll.

Present: Mayor Ferraro, Trustees McCarthy, Gieser, and Fenner
Absent: Trustees Saverino, Stubbs and Shanahan
Also Present: Village Manager Breinig, Assistant Village Manager Mellor,
Attorney Diamond, Village Clerk Koester and Deputy Village Clerk
Progar

Mayor Ferraro led those in attendance in the Pledge of Allegiance.

MINUTES:

Trustee Fenner moved and Trustee McCarthy made the second to approve the Minutes of the Meeting of February 7, 2005 as presented. The results of the roll call vote were:

Ayes: 3 Trustees McCarthy, Gieser and Fenner
Nays: 0
Abstain: 1 Mayor Ferraro
Absent: 3 Trustees Saverino, Stubbs and Shanahan

AUDIENCE PARTICIPATION AND PUBLIC HEARINGS:

COMMUNITY POLICING AWARD:

Elmhurst Police Chief Steve Neubauer, chairman of the IL Chiefs of Police Association's Community Policing Committee presented the Police Department the 2005 Community Policing Recognition Award.

PROCLAMATION- GLEN OAKS HOSPITAL DAY:

Mayor Ferraro read a proclamation declaring March 9, 2005 as Adventist GlenOaks Hospital Day. Carston Randall, CFO of Glen Oaks thanked the community for their support for the last 25 years and said that he hoped everyone would continue that support in the future.

CONSENT AGENDA:

Trustee McCarthy moved and Trustee Gieser made the second to establish a Consent Agenda for this meeting. The results of the roll call vote were:

Ayes: 4 Mayor Ferraro, Trustees McCarthy, Gieser and Fenner
Nays: 0
Absent: 3 Trustees Saverino, Stubbs and Shanahan

Trustee Fenner moved and Trustee Gieser made the second to put the following items on the Consent Agenda for this meeting. The results of the roll call vote were:

Ayes: 4 Mayor Ferraro, Trustees McCarthy, Gieser and Fenner

- Nays: 0
 Absent: 3 Trustees Saverino, Stubbs and Shanahan
1. Spec. Use-Restaurant-Brown's Chicken-Ord. 2005-02-07
 2. Spec. Use-Restaurant-Jimmy John's – Ord. 2005-02-08
 3. Spec. Use-Restaurant-Taqueria Reynoso-Ord. 2005-02-09
 4. Spec. Use-Restaurant-Mapleberry Pancakes-Con't. to 3/8/05
 5. Pre-approval of police squad car
 6. Purchase UHF radio amplifier system-Police
 7. Award of Bid-Charger Ct. Lift Station
 8. Ord. 2005-02-10: Amend Code- water & sewer rates
 9. Ord. 2005-02-11: Amend Code-Inc. Class C Liq. Lic. Mr. A's
 10. Res. 2118: Adopt DMMC Legislative positions-2005
 11. Approve: Raffle License & fee waiver- Rotary
 12. Regular Bills, Addendum Warrant of Bills, Treasurer's report 1/3/05

Trustee McCarthy moved and Trustee Gieser made the second to approve the Consent Agenda for this meeting by omnibus vote. The results of the roll call vote were:

- Ayes: 4 Mayor Ferraro, Trustees McCarthy, Gieser and Fenner
 Nays: 0
 Absent: 3 Trustees Saverino, Stubbs and Shanahan

The following is a brief description of those items placed on the Consent Agenda for this meeting.

Spec. Use-Restaurant-Brown's Chicken-Ord. 2005-02-07:

At their meeting on February 14, 2005, the Combined Plan Commission/Zoning Board of Appeals recommended approval of a special use for a Brown's Chicken and Pasta Restaurant in accordance with the recommendations of staff. The Board concurred with the recommendation and adopted Ordinance 2005-02-07, AN ORDINANCE APPROVING A SPECIAL USE PERMIT FOR A RESTAURANT – BROWNS' CHICKEN & PASTA-(566 W. ARMY TRAIL ROAD).

Spec. Use-Restaurant-Jimmy John's – Ord. 2005-02-08:

At their meeting on February 14, 2005, the Combined Plan Commission/Zoning Board of Appeals recommended approval of a special use for a Jimmy John's Gourmet Sandwich Restaurant in accordance with the recommendations of staff. The Board concurred with the recommendation and adopted Ordinance 2005-02-08 AN ORDINANCE APPROVING A SPECIAL USE PERMIT FOR A RESTAURANT – JIMMY JOHN'S-(541 SOUTH SCHMALE ROAD).

Spec. Use-Restaurant-Taqueria Reynoso-Ord. 2005-02-09:

At their meeting on February 14, 2005, the Combined Plan Commission/Zoning Board of Appeals recommended approval of a special use for a Taqueria Reynoso Restaurant in accordance with the recommendations of staff. The Board concurred with the recommendation and adopted Ordinance 2005-02-0 AN ORDINANCE APPROVING A SPECIAL USE PERMIT FOR A RESTAURANT – TAQUERIA REYNOSA – (539 S. SCHMALE ROAD).

Spec. Use-Restaurant-Mapleberry Pancakes-Con't. to 3/8/05:

At their meeting on February 14, 2005, the Combined Plan Commission/Zoning Board of Appeals recommended approval of a special use for a restaurant and a minor modification to the Approved PUD Plan in accordance with the conditions noted in the staff report, deleting both condition #3 and condition #5, but continuing the requirement for a change to the height of the trash enclosure to a maximum of seven feet. The petitioner will make the appropriate revisions to the plans prior to this matter going before the Board. The Board continued this matter to the meeting on March 7 to allow the petitioner to make the required modifications to the PUD Plan amendment.

Pre-approval of police squad car:

The Board approved a request to order a patrol vehicle prior to the production cutoff date of March 15, 2005. The total cost if \$25,723.56 and the vehicle will not be delivered or paid for prior to May 1, 2005.

Purchase UHF radio amplifier system-Police:

The Board made an award of purchase for a UHF Radio Bi-directional Amplifier System to Radco for the bid amount of \$15,627.00.

Award of Bid-Charger Ct. Lift Station:

The Board awarded a bid for the re-construction of the Charge Court Lift Station to Bolder Contractors, Deerfield, IL in the bid amount of \$436,000. The Board approved an agreement for construction engineering services to Baxter & Woodman on a time and material basis at an amount not the exceed \$38,000. Baxter & Woodman will review construction documents, shop drawing, pay request and provide part-time on-site construction observation.

Ord. 2005-02-10: Amend Code- water & sewer rates:

The Board adopted Ordinance 2005-02-10, AN ORDINANCE AMENDING SECTION 13-3-13 OF THE VILLAGE CODE PERTAINING TO WATER AND SEWER RATES.

Ord. 2005-02-11: Amend Code-Inc. Class C Liq. Lic. Mr. A's:

The Board adopted Ordinance 2005-02-11, AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 2 OF THE CAROL STREAM CODE OF ORDINANCES BY INCREASING THE NUMBER OF CLASS C LIQUOR LICENSES FROM 13 TO 14 – (MR. A'S – 228 – 234 ARMY TRAIL ROAD).

Res. 2118: Adopt DMMC Legislative positions-2005:

The Board adopted Resolution 2118, A RESOLUTION SUPPORTING RECENT ACTIONS BY THE DUPAGE WATER COMMISSION AND URGING THE COMMISSION TO IMPLEMENT THE RECENT ACTIONS BY PASSING A BUDGET THAT INCLUDED A WATER RATE REDUCTION.

Regular Bills, Addendum Warrant of Bills, Treasurer's report 1/3/05:

The Board approved the payment of the Regular Bills in the amount of \$292,299.34. The Board approved the payment of the Addendum Warrant of Bills in the amount of \$518,585.97.

The Board received the Treasurer's Report for month ending January 31, 2005.

REGULAR MEETING:

A Resolution Supporting recent actions by the DuPage Water Commission:

Mayor Ferraro explained that the DuPage Water Commission proposed a reduction in the wholesale water rate charged the Village and other customers from \$1.65 to \$1.45 per 1,000 gallons. He noted that the Chairman of the Commission made it clear that none of the measures proposed would pass when brought for a final vote since all of the members appointed by the County Board Chairman would not support the reduction.

Mr. Breinig said that staff recommends passage of this resolution and that this resolution be presented to the Commission at its March meeting. It is also staff's recommendation that there should be an aggressive campaign to educate the public on the efforts of Chairman Schillerstrom's appointees to keep water rates unnecessarily high. Mr. Breinig noted that the Resolution has specific language that will pass on the \$.20 per gallon savings directly to the residents in the same manner that has been done in the past for other rate reductions.

Mayor Ferraro stated that this Resolution supports the reduction in the Water Commission wholesale water rate from the present \$1.65 per 1000 gallons to \$ 1.45 per 1000 gallons with this rate remaining in effect for the next five-year period though fiscal year 2009-2010.

Attorney Diamond suggested that the Village might wish to establish a link on their web site to the District 6 representative to allow the residents to voice their opinion on this matter of reducing the rates. It was also suggested that information could be put into the newsletter as well as the Mayor informing the commercial users in the Village of the proposed lower rates. Another suggestion would be to have the Chamber of Commerce notify all of their members of this situation and to ask everyone to write in to support the rate reduction.

Trustee Gieser moved and Trustee Fenner made the second to adopt Resolution 2119, A RESOLUTION SUPPORTING RECENT ACTIONS BY THE DUPAGE WATER COMMISSION AND URGING THE COMMISSION TO IMPLEMENT THE RECENT ACTIONS BY PASSING A BUDGET THAT INCLUDES A WATER RATE REDUCTION.

The results of the roll call vote were:

Ayes:	4	Mayor Ferraro, Trustees McCarthy, Gieser and Fenner
Nays:	0	
Absent:	3	Trustees Saverino, Stubbs and Shanahan

NEW BUSINESS:

Request to allow The Hair Cuttery as a non-Sales Tax Generating Use in the Central Park Commercial Development:

Bill Shiner, Mid Northern Equities and Rick Barbour, The Hair Cuttery appeared before the Board. Mr. Shiner said that the question is whether the Hair Cuttery is a barbershop or a beauty salon. The original intent of the ordinance was to have a sales tax generating development and the one exception was to have a beauty parlor. The contention of staff is that the Hair Cuttery is a barbershop, not a beauty parlor. Rich Barbour is here to present evidence that this is, in fact, a beauty parlor.

Mr. Diamond said that there is more history to this matter than what has been presented. It appears that there is some amnesia on the part of Mid Northern Equities because in 2003, they wrote to the Village asking for a waiver to the agreement to allow a Hair Cuttery which at that time was not a salon. Mid Northern also agreed that if there were a waiver they would agree to fund 1% of all of their sales tax revenues to the Village. That request was never followed up. Recently a lease must have been written for the Hair Cuttery and without application for a permit, began working on the store. There has been a stop order put on those modifications and at this point the new request is that obviously the Hair Cuttery is now a beauty parlor and it should be recognized as a

beauty parlor and there is no need for a waiver to the annexation agreement, and there is no mention of the proposal about sales tax. The Village Board was clearly looking for sales tax generating businesses at this location but there was an exception given for beauty parlors because it was anticipated that a beauty parlor would generate a substantial amount of sales tax because there is a lot of hair products sold there and it was a policy decision that a beauty parlor would attract enough people to the area to make up for the lack of sales tax. The history here would indicate that you are now asking for something to be given as a matter of right, as a result of definition which your own documents indicate that you understood was not a matter of right, and sought assistance.

Mr. Shiner said that history would tell something different. In terms of the intent of a beauty parlor, the intention was to limit the size of the stores that would not be generating sales tax revenue. He said that the letter from Bob Glees, Community Development Director, indicated that a beauty parlor was a permitted use and an amendment was not required. Mr. Diamond said that his opinion would be that the Board, has the ability, by 2/3 vote, (there are not enough Trustees present to do that) to basically waive this requirement for this facility if they believe the size in relationship to the whole building was acceptable. In the absence of very compelling evidence there is a history here of a difference between a beauty salon and a barbershop.

Mr. Shiner said that he is not sure exactly what a barbershop is, and that Mayor Ferraro surely knows this. Mr. Barbour is here to present evidence about the Hair Cuttery. Mr. Shiner stated that the Hair Cuttery has a client base across the country of 60 per cent women and 40% men. Mr. Barbour said that there has been a big push to provide hair color services and this is driving women's services to 70% and men's services declining to 30%. Mr. Shiner asked Mr. Barbour is the Hair Cuttery offers hot shaves as a service. Mr. Barbour responded saying that in order to provide hot shaves the individual must have a barber's license. The operators at the Hair Cuttery have beautician licenses and are not qualified to give a hot shave. Therefore the Hair Cuttery does not and will provide that service. Mr. Barbour offered his apology for the fact that their contractor was in the space operating without a permit. He said that he is directly responsible for the salon until it is open, that responsibility is his and he was astonished when told that work was being done and said that it remains his responsibility and he again apologized. Mr. Barbour said that they operate 875 salons in 13 states, D.C. and in England. The vast majority of permits have been applied for a beauty salon and in many cases that permits are kicked back to be changed to a barbershop category. Acting under those events, the permit here was applied for as a barbershop without realizing the distinguishing characteristics in the Village Code. Mr. Shiner read off a list of services that are provided which he said is indicative of a beauty parlor.

Mayor Ferraro commented that when this property was first brought into the Village, it was the intention of the developer to have a big box development on the property. Later on there was a request for developing space for several users as opposed to the big box and although staff would have preferred the original plan, it was adjusted to allow smaller spaces, as long as at least 80% of the uses are sales tax generators. The only exceptions were a bank, which was already contracted and a beauty shop, for which there was no name mentioned. Then part of the development was sold to Mr. Salemi who said that he did not realize that there was agreement about sales tax generating uses and proposed the Rainbow Academy development. The Board agreed to allow that as well. It has now been determined that only 35% of the proposed uses are sales tax generators, and that is very upsetting. Mayor Ferraro said that if there are 70% of women using these salons, he would not have a problem, but if it's not more than 50/50 he would not be listening to this. He said that he will check out this place tomorrow to

see for himself what the ratio of customers is. Mayor Ferraro noted that there are not enough Trustees here to consider this matter tonight.

Mr. Diamond said that the basic decision to come to is to determine that this is a hair salon and therefore is a permitted use or that this is a combination hair salon and barbershop then an amendment to the annexation agreement would be required and that would need 5 votes to be adopted.

Trustee Fenner said that she understands that the Codes have distinct differences between hair salons and barbershops, but she would like to know just what are the differences. Mr. Breinig said that in this particular instance the developer specifically carved out a distinction for a beauty parlor. The differences are really blurred in that most services are available in either place with the exception of the hot shave and the license to do that.

Trustee McCarthy asked if the 1% service revenue is still valid. It was determined that 20% to 25% of the business of Hair Cuttery is products sold. The 1% service revenue could be a possibility. Trustee Gieser asked if they would be willing to agree to it and Trustee Fenner said that there might be a legal issue to consider in regard to that. Mr. Diamond said that this involves an annexation agreement which can be amended by 2/3 vote, for a provision that would provide that they pay the Village a 1% fee and it would be legal. It was also noted that they initiated the offer. It was determined that the Hair Cuttery has a five year lease with a five year extension.

Trustee Fenner moved and Trustee McCarthy made the second to continue this matter to the meeting of March 7, 2005. The results of the roll call vote were:

Ayes:	4	Mayor Ferraro, Trustees McCarthy, Gieser and Fenner
Nays:	0	
Absent:	3	Trustees Saverino, Stubbs and Shanahan

REPORT OF OFFICERS:

Trustee McCarthy congratulated the Police Department on earning the Community Policing Award and also congratulated the Citizen's of the Year recipients and nominees.

Trustees Fenner, Gieser echoed those remarks, as did the Village Clerk.

Mr. Breinig said that award belongs to the Police officers, not just the Chief and in some ways it brings credit to the Village Board for their support and commitment to the ways and means of allowing them to do the work.

Trustee Fenner moved and Trustee Gieser made the second to move to EXECUTIVE SESSION TO DISCUSS POTENTIAL LITIGATION AND ACQUISITION OF PROPERTY and to adjourn directly from that session without taking any further action. The results of the roll call vote were:

Ayes:	4	Mayor Ferraro, Trustees McCarthy, Gieser and Fenner
Nays:	0	
Absent:	3	Trustees Saverino, Stubbs and Shanahan

At 9:15 p.m. the Board moved to Executive Session.

FOR THE BOARD OF TRUSTEES

