



# Village of Lake in the Hills

600 Harvest Gate, Lake in the Hills, Illinois 60156

## Board of Trustees Meeting

March 14, 2019

### Call to Order

The meeting was called to order at 7:30p.m.

Roll call was answered by Trustees Huckins, Bogdanowski, Harlfinger, Bojarski, Dustin, Artinghelli, and President Ruzanski.

Also present were Village Administrator Jennifer Clough, Assistant Village Administrator/Finance Director Shane Johnson, Chief of Police Dave Brey, Public Works Director Dan Kaup, Director of Community Services Fred Mullard, Village Attorney Brad Stewart, Public Works Streets Superintendent Guy Fehrman and Village Clerk Cecilia Carman.

Pledge of Allegiance was led by President Ruzanski.

**Tree Presentation:** Public Works Streets Superintendent Guy Fehrman gave an overview of the Emerald Ash Borer tree replacement program 4,600 ash trees have been removed from the Village and 4,160 have been replaced. There are 420 more needed to finish the project. The overall goal is to increase our urban forest by ten percent which would add 268 trees annually.

**Public Comment on Agenda Items:** None

### Consent Agenda

A. Motion to accept and place on file the minutes of the February 26, 2019 Committee of the Whole meeting.

B. Motion to accept and place on file the minutes of the February 28, 2019 Village Board meeting.

Motion to approve Consent Agenda items A-B was made by Trustee Harlfinger and seconded by Trustee Huckins. On roll call vote Trustees Bojarski, Dustin, Harlfinger, Artinghelli, Bogdanowski, and Huckins voted Aye. No Nays. Motion carried.

### Omnibus Agenda

**The Omnibus Agenda is comprised of several items which will be acted upon in one Motion unless any Trustee wishes to remove one or more items from the Omnibus Agenda. For members of the public, the agendas have been posted and copies are available during the meeting if you are not sure what items are included on the Omnibus Agenda. Let staff know if you wish to obtain a copy before the Board takes action on the Omnibus Agenda.**

A. Motion to waive the provisions of Section 43.09, Noise, of the Lake in the Hills Code, to allow Boulder Ridge Country Club to host their Annual Outdoor Party until 11pm on Friday. July 12, 2019.

B. Motion to pass Ordinance 2019- \_\_\_\_, An Ordinance Amending Chapter 37, Tobacco Control and Tobacco Licensing, Section 37.15, Chapter 43, Offenses Against Public Peace, Safety, and Morals, Section 43.17, and Chapter 32, Business Regulations, Section 32.02G of the Lake in the Hills Municipal Code.

C. Waive competitive bidding process and approve Customer Service Agreements with Call One to provide telecommunications services for one additional year under the Suburban Cooperative Purchasing agreement terms.

D. Motion to approve Spending Authority in 2019 in the amount of \$34,900 with Landscapes by Gary Weiss Inc., for the second half of the Sunset Park Turf Restoration Project.

E. Motion to approve Spending Authority in 2019 in the amount of \$526,086.85 with Mauro Sewer Construction, Inc. for the second half of the Randall Road Water Main Relocation Project.

F. Motion to approve and authorize the Village President and Village Clerk to execute the agreement with Crawford, Murphy, and Tilly, Inc. for engineering and design services in an amount not to exceed \$164,300.00 for the first phase of the Runway Improvement Project.

G. Motion to accept the bid and approve a three-year contract, from April 8, 2019 to April 7, 2022, for aviation fuel for the Lake in the Hills Airport with Arrow Energy.

H. Motion to approve the Spending Authority with Arrow Energy for Fiscal Year 2019 in an amount not to exceed \$374,721.00.

I. Motion to pass Ordinance 2019- \_\_\_\_, An Ordinance Authorizing the Approval of a Ground Lease between the Village of Lake in the Hills and Guillermo Santaella for PAP-42.

J. Motion to pass Ordinance 2019- \_\_\_\_, An Ordinance Authorizing the Approval of a Ground Lease between the Village of Lake in the Hills and Blue Skies Flying Services for PAP-5.

K. Motion to accept the bid and award a contract to The Kenneth Company in a lump sum amount of \$74,167.00 for purchase and installation of BCI Burke playground equipment for LaBuy Park.

L. Motion to pass Ordinance 2019- \_\_\_\_, An Ordinance Authorizing the Disposal of Surplus Property Owned by the Village of Lake in the Hills.

Trustee Harlfinger made a Motion to remove Items B and E.

Motion to approve the Omnibus Agenda items A, C, D, F-L was made by Trustee Harlfinger and seconded by Trustee Huckins. On roll call vote Trustees Dustin, Bogdanowski, Artinghelli, Huckins, Harlfinger, and Bojarski voted Aye. No Nays. Motion carried.

**Approval of the Schedule of Bills:**

Motion to approve the March 15, 2019 Schedule of Bills total of all funds \$113,080.01 was made by Trustee Bogdanowski and seconded by Trustee Artinghelli On roll call vote Trustees Harlfinger, Bojarski, Artinghelli, Huckins, Dustin, and Bogdanowski voted Aye. No Nays. Motion carried.

**Village Administrator and Department Head Reports:**

Public Works Director Dan Kaup gave an update of the Solar project at the Lake in the Hills Airport. He and Mike Peranich met with the FAA program director in the Des Plaines office. They will be assisting in getting approval from the state. Village has pre-approval for the Airport lay out plan. This puts the plan a few months behind schedule. Construction will start in 2020.

Trustee Huckins asked if the solar farm will affect any runway construction.

Director Kaup stated no.

Trustee Dustin asked if the solar farm will be in a flood plain.

Director Kaup stated the land is low lying and the panels will be placed on poles to prevent any flooding.

**Board of Trustee Reports:** None at this time

**Village President Reports:** None

**Unfinished Business –**

B. Motion to pass Ordinance 2019- \_\_\_\_, An Ordinance Amending Chapter 37, Tobacco Control and Tobacco Licensing, Section 37.15, Chapter 43, Offenses Against Public Peace, Safety, and Morals, Section 43.17, and Chapter 32, Business Regulations, Section 32.02G of the Lake in the Hills Municipal Code was made by Trustee Huckins seconded by Trustee Harlfinger.

Trustee Harlfinger stated he has some concerns about the ordinance. He recognized Larry Goldstein to speak.

Larry Goldstein stated he owns three electronic cigarette stores in the county. He believes our home rule status will not apply to this ordinance and it will be challenged in the courts. There are many types of vaping devices and it will be difficult to regulate. He believes the Village is making a statement against smoking.

President Ruzanski stated there is medical evidence nicotine use during the ages of 16-20 can affect brain development.

Mr. Goldstein stated he disagreed with this statement.

President Ruzanski stated this ordinance goal is to be a deterrent to smoke. Hopefully it will delay young people from starting the addictive habit.

Trustee Harlfinger does not agree with the University of Rochester study presented. He would like the Village Board to do more research on the effects of this ordinance. He has read that the FDA has not given rulings concerning all types of vaping and their devices. He believes the Village needs to continue the discussion and research. He would like the Village attorney to review the materials and recommend any new course of action.

Mr. Goldstein stated he can provide research done by many reputable universities.

Trustee Huckins asked what these studies prove.

Mr. Goldstein stated they concluded vaping is less harmful than smoking cigarettes.

Trustee Huckins asked about the ingredient in vaping.

Mr. Goldstein stated vaping liquids have four ingredients and they are listed on the package while cigarettes do not list their ingredients.

Trustee Bogdanowski asked Mr. Goldstein to clarify the type of businesses he owns and how businesses in Lake in the Hills were contacted.

Village Administrator Clough stated a letter was sent to all businesses.

Mr. Goldstein made comments on the validity of how businesses were contacted.

Trustee Bogdanowski asked Attorney Stewart if there is any merit to look into the effects to the ordinance.

Attorney Stewart stated he believes the Village does have the authority to pass the ordinance due to our home rule status. No municipality with home rule status has had the ordinance overturned. There are towns that prohibit the sale of alcohol as a public safety concern. This does not prohibit someone from consuming but only selling. However a municipality may increase the age to purchase alcohol over 21. There is nothing in the state statute to prohibit this. Therefore the Village of Lake in the Hills can increase the age to purchase cigarettes.

Trustee Harlfinger stated there are federal and state laws concerning the possession and sale of alcohol to only those 21 and older. As a municipality, we can pass an ordinance to allow those under 21 to possess without penalty.

Attorney Stewart stated the ordinance only regulates the purchase not the possession.

Mr. Goldstein asked what the Village has defined as tobacco.

Attorney Stewart stated it is written in the ordinance and reminded Mr. Goldstein he needs to be recognized by the Board before speaking.

President Ruzanski asked Mr. Goldstein to make one final statement.

Mr. Goldstein stated the city of Chicago has spent 3 million dollars defending their 21 Tobacco laws.

Trustee Bogdanowski commented no businesses from Lake in the Hills has commented against the ordinance. One business owner did state he was in favor because he only needs to check one ID instead of two.

Village Administrator Jennifer Clough stated the Village did notify businesses at the corporate and local level.

Trustee Dustin believes this is government over reach. An 18 year can join the military and fight for our right to choose however he/she does not have the right to choose to smoke or not.

Trustee Bojarski stated we are not taking away their right to choose. She believes the benefits of not smoking are more important. She had done her research as well and discovered the Department of Defense is looking for ways to stop smoking in the military. It has made servicemen not fit for duty. Raising the purchasing age to 21 in Lake in the Hills will not put an undue burden on someone who wants to smoke.

President Ruzanski allowed Mr. Goldstein one more comment.

Mr. Goldstein stated if the city wants to make a difference than ban cigarettes in the Village.

Trustee Harlfinger made a motion to continue An Ordinance Amending Chapter 37, Tobacco Control and Tobacco Licensing, Section 37.15, Chapter 43, Offenses Against Public Peace, Safety, and Morals, Section 43.17, and Chapter 32, Business Regulations, Section 32.02G of the Lake in the Hills Municipal Code until next Village Board meeting seconded by Trustee Dustin. On roll call vote Trustee Artinghelli, Bogdanowski, Bojarski, and Huckins voted Nay. Trustee Harlfinger and Trustee Dustin voted Aye. 4 Nays, 2 Ayes. Motion does not pass.

Trustee Huckins made a motion to call question seconded by Artinghelli.

Trustee Harlfinger stated he wants more discussion. He stated the Board needs to be prepared if the ordinance passes. He will research and look into the issue more.

Trustee Bogdanowski asked why Trustee Harlfinger believes the Village has not done their due diligence on this issue.

Trustee Harlfinger stated the Village only sent a letter.

Trustee Bojarski asked what you would do differently.

Trustee Harlfinger stated he would personally visit the businesses.

Trustee Bogdanowski stated his objection seem more deeply rooted than how the businesses were contacted.

Trustee Harlfinger stated we have not received much information concerning legal precedent, and the state law that is pending. He wants to be definite we have written the ordinance clearly and that it will not be challenged.

Trustee Bojarski stated she believes by direction from Attorney Stewart the ordinance is well defined and we should not get into any legal objection.

Attorney Stewart stated he did not speak to the definition of tobacco products. He listed the products that would be classified as tobacco under the new ordinance. He mentioned Mr. Goldstein comment concerning certain vaping devices that do not have nicotine and may be hard to enforce but he believes our ordinance will stand.

Trustee Huckins asked how much time Tricia O'Donnell spent on the ordinance.

Administrator Clough stated two months.

Trustee Huckins stated he is not concerned about the business contact. The Board has the ability to curb smoking in young adults and needs to take advantage of this opportunity.

Trustee Harlfinger stated at 18 you are not considered a child. He asked for clarification of how Tricia O'Donnell contacted the businesses.

Administrator Clough stated staff does not have authority to make a decision on how to contact a business. The administration and police council made the decision to send a letter to the local businesses. Other municipalities similarly did not get any response from local businesses when the tobacco ordinances were changed. She believes Tricia O'Donnell work was thorough.

Trustee Harlfinger stated he agreed Tricia O'Donnell work was thorough.

Trustee Huckins made a motion to reconsider to continue An Ordinance Amending Chapter 37, Tobacco Control and Tobacco Licensing, Section 37.15, Chapter 43, Offenses Against Public Peace, Safety, and Morals, Section 43.17, and Chapter 32, Business Regulations, Section 32.02G of the Lake in the Hills Municipal Code until next Village Board meeting seconded by Trustee Harlfinger.

Trustee Bogdanowski asked why Trustee Huckins made the motion.

Trustee Huckins stated to get more direction from staff and counsel.

Trustee Artinghelli stated we are delaying the inevitable.

Trustee Bojarski and Bogdanowski asked if we wait what will happen between now and the next set of meetings.

Trustee Harlfinger stated he will visit all businesses that sell tobacco and ask their input.

Trustee Bogdanowski asked if the concern is more if we informed the business effectively.

Trustee Harlfinger stated no, also the legality of the ordinance.

Trustee Huckins stated his main concern is the legal issues concerning the ordinance.

President Ruzanski stated the staff has spent a lot of time on this issue. He asked Attorney Stewart if the ordinance goes forward and we were challenged what are the Village's options.

Attorney Stewart stated if someone sued the Village under the US Constitution due to validity. If the Village did not want to pursue the legal challenge the Board can reverse the ordinance to 18 years old.

Trustee Harlfinger mentioned the commerce clause in the state constitution.

Attorney Stewart stated commerce is a very broad division. The right for the municipality to regulate public health concern is very strong. The issue with the commerce clause pertains more to if possession of ie: fire arm is legal in one municipality and as a citizen drives through another they can't be breaking the law. This is why our ordinance is only for the sale not possession. He stated he can research cases locally if the Board would like. He believes his opinions to be correct and the ordinance can stand and has authority.

Trustee Harlfinger is concerned about changes in FDA vaping regulations will cause the Board to continue to change this ordinance.

Trustee Dustin asked how Attorney Stewart believes the change to 21 will affect Lake in the Hills.

President Ruzanski mentioned the difficulties the schools are having with middle schools and high school students vaping. The school is spending time trying to control the problem. As a Board we have an opportunity to allow a deterrent to not smoke. With the ordinance an 18 year old senior cannot buy for any younger sibling.

Trustee Harlfinger stated he wants to look into the legality of this more. He does not want the Village involved in lawsuits. Some municipalities have been sued and we need to know the rulings. He has no disrespect to the residents who sent the letter to President Ruzanski.

Trustee Bogdanowski agrees with Trustee Harlfinger in the need for transparency but does not think moving the vote will change anything. He asked Attorney Stewart if there is more for the Board and attorneys to research.

Attorney Stewart stated he is confident in what he said earlier. He did not write the ordinance but reviewed it. There has been a lot of work in this issue during the past several years. If he spent time and researched it would support the same opinion he has today.

Trustee Huckins stated most of the Villages that have passed tobacco 21 have home rule. He asked if any municipalities besides Chicago have been sued.

Attorney Stewart stated there have been lawsuits against Home Rule but our ordinance will stand a challenge.

Trustee Huckins stated he would like to withdrawal his motion to reconsider.

Attorney Stewart stated Trustee Huckins is allowed to withdraw however, Trustee Harlfinger must now sponsor and another trustee must second.

Trustee Dustin seconded the motion.

Trustee Harlfinger asked if there is a ban of tobacco on school grounds. Trustee Harlfinger, Trustee Bojarski and Chief Brey discussed if the tobacco ban is a state law for all public buildings and if all school properties are currently tobacco free.

Attorney Stewart and the trustees discussed what motions need to have a vote.

Motion to reconsider An Ordinance Amending Chapter 37, Tobacco Control and Tobacco Licensing, Section 37.15, Chapter 43, Offenses Against Public Peace, Safety, and Morals, Section 43.17, and Chapter 32, Business Regulations, Section 32.02G of the Lake in the Hills Municipal Code until next Village Board meeting was made by Trustee Harlfinger and seconded by Trustee Dustin. On roll call vote Trustees Artinghelli, Bojarski, Bogdanowski, Huckins voted Nay. Trustees Dustin and Harlfinger voted Aye. 4 Nays, 2 Ayes. Motion does not carry.

Roll call on original Motion to approve An Ordinance Amending Chapter 37, Tobacco Control and Tobacco Licensing, Section 37.15, Chapter 43, Offenses Against Public Peace, Safety, and Morals, Section 43.17, and Chapter 32, Business Regulations, Section 32.02G of the Lake in the Hills Municipal Code. On roll call vote Trustees Harlfinger and Dustin voted Nay. Trustees Huckins, Artinghelli, Bojarski and Bogdanowski voted Aye. 2 Nays, 4 Ayes. Motion Carried.

E. Motion to approve Spending Authority in 2019 in the amount of \$526,086.85 with Mauro Sewer Construction, Inc. for the second half of the Randall Road Water Main Relocation Project was made by Trustee Huckins and seconded by Trustee Artinghelli.

Trustee Harlfinger stated he continues to pull items concerning the Randal Road project because he believes it does not need to be completed as originally planned. He has no issue with any business or government entity involved in the plan.

On roll call vote Trustees Dustin, Bogdanowski, Huckins, Bojarski, Artinghelli voted Aye. Trustee Harlfinger voted Nay. 5 Ayes, 1 Nay. Motion carried.

**New Business –**

A. Motion to approve the Separation Agreement of Public Works Employee was made Trustee Huckins and seconded by Trustee Harlfinger.

Trustee Huckins asked if this Separation Agreement clears the Village of any future workman's compensation claims.

Administrator Clough stated yes.

On roll call vote Trustees Bogdanowski, Harlfinger, Huckins, Dustin, Bojarski, and Artinghelli voted Aye. No Nays. Motion carried.

**Audience Participation: - None**

**Adjournment:** There being no further business to discuss, the meeting of the Lake in the Hills Board of Trustees was adjourned at 8:39p.m. On roll call vote Trustees Artinghelli, Bojarski, Bogdanowski, Huckins, Dustin, and Harlfinger voted Aye. No Nays. Motion carried

Submitted by,

Cecilia Carman  
Village Clerk