

**MINUTES OF THE
COMMITTEE OF THE WHOLE MEETING
VILLAGE OF NORTHFIELD
TUESDAY, MARCH 20, 2018**

The Committee of the Whole meeting was called to order by Village President Joan Frazier on Tuesday, March 20, 2018 at 5:30 p.m. Village Clerk Stacy Sigman called the roll as follows:

Committee Members Present:

Trustee Allan Kaplan
Trustee Tom Roszak
Trustee Greg Lungmus
Trustee John Goodwin

Absent:

Trustee John Gregorio
Trustee Thomas Terrill

Others Present:

Village Attorney Everette M. Hill, Jr., Village Manager Stacy Sigman, Community Development Director Steve Gutierrez and Assistant to the Village Manager Melissa DeFeo

Approval of the January 16, 2018 Meeting Minutes

Trustee Roszak made a motion, seconded by Trustee Lungmus to approve the January 16, 2018 meeting minutes.

Approval of the March 6, 2018 Budget Workshop Meeting Minutes

Trustee Lungmus made a motion, seconded by Trustee Goodwin to approve the March 6, 2018 meeting minutes.

Discussion on short term rentals

Village Manager Stacy Sigman indicated that Community Development Director Steve Gutierrez and Village Attorney Buzz Hill have been working on this matter. Over the past couple of years, there has been an increase in people advertising to have Bed & Breakfast or Airbnb operations in their homes. Director Gutierrez's staff interprets the Code as not allowing them. The Village has been successful in enforcing the Code in past cases. Previous defendants were fined and told to cease and desist. One particular defendant has started advertising again (or never quit) but has become more creative in hiding the rentals. She doesn't list on Airbnb, but her rentals continue and her neighbors continue to complain. Several citations are currently pending. One person who recently rented from her called the police. There was a dispute and the owner wouldn't let the renter retrieve her property from the house. Another renter contacted the police after leaving something at the rental house.

Adjudication is a little different this time because there is a new judge. In addition, our Code doesn't clearly define "short term rentals." If we're interpreting the Code the way

the Board intends, the staff believes we should clearly define the term and specifically prohibit this use. Attorney Hill and Director Gutierrez have created a draft ordinance since it is a zoning code amendment. It would have to go to the Plan Commission, through the hearing process and then come back before the Board for approval. Before it goes to Plan & Zoning, the staff wanted to ensure that our prosecutions are in line with the expectations of this Board.

President Frazier said she is personally in favor of strict enforcement. Allowing short term rentals is too difficult to regulate and based on experiences that the manager described, create unsafe situations. We need to make the ordinance clear that this is a prohibited use. She has heard numerous complaints from neighbors about one particular situation. People are coming and going at all hours. There are serious parking problems.

Trustee Roszak asked which area of town was affected. Director Gutierrez said one is on Eaton and the other on Willow Road. The worst problem is the one is on Eaton. Trustee Roszak asked how the staff arrived at the 60 day standard. Attorney Hill indicated 30 days to 60 days is generally used. If a specific rental is more than 60 days, then it is not a short term rental, but the legitimate case. The implication is that one can legally lease the house for more than 60 days. Therefore, the longer the standard the more restrictive the prohibition. Attorney Hill said 30 days is the more common standard. Director Gutierrez indicated that the Eaton rental was generally rented for more than a month. In that particular case, just part of the house was rented. The Willow Road rental was for the whole house.

President Frazier asked Attorney Hill if there is a legal distinction between a house sitter and renting out the house to somebody. Attorney Hill said that from a practical standpoint of enforcement, he doesn't think there is any difference. In the situation that has given the Village the most trouble, the landlord used any rationale that the person can think of to avoid the regulation. The landlord tells her renters to say they are relatives.

Trustee Roszak wondered how the Code change would help considering the difficulty in enforcement. Director Gutierrez said that once we find out about the short term rental, we have prosecuted under our current Code. This change would strengthen the ability to prosecute. VM Sigman noted it will give us more leverage when we get to the adjudicator with the clarification, the offender can't pretend he or she didn't know about it. Attorney Hill agreed that it strengthens our ability to prosecute. VM Sigman added that it is becoming more prevalent and staff feels there should be something in the Code that is clear to our residents. President Frazier noted that the State legislature has taken up the issue. VM Sigman said there was a bill pending that would preempt home rule authority with respect to short term rentals. Trustee Lungmus added that the City of Chicago has regulated home rental owners because the City wants the revenue. He said he uses Airbnb and Home Away, but agrees that it is not right for Northfield.

Trustee Roszak said that he used to rent out his previous home on a day to day basis for commercials and films. Attorney Hill indicated that is regulated separately. That is clearly defined in the Code.

The consensus from the Board seems to be to prohibit short term rentals. If the ordinance is adopted, the fine would be in Appendix D and it could be up to \$750.00 a day.

President Frazier suggested moving the proposed ordinance to Plan & Zoning. VM Sigman said it will go to Plan & Zoning in May and then come back to the Board. The amount of days could be adjusted if there are additional thoughts from the public. VM Sigman felt this topic will bring out interest in the community. Residents of Lake Bluff have been going through 8 months of hearings and people are adamant one way or the other.

Elected Officials Training

President Frazier began by saying this training is done periodically. Since some of the trustees have recently been contacted directly by some developers, this is a good time to review some Open Meetings Act issues.

Attorney Hill said the Open Meetings Act exists to make sure that villages are transparent and make sure our citizens have access to what we're doing and why we are doing it. It is always good to remind ourselves when a meeting must be a public meeting. Any gathering of a majority of a quorum for the purpose of discussing public business. A quorum of the Village Board is four, so the majority of a quorum is three. Two trustees can get together and discuss public business, but not three. Further, it is fine for two to talk with one another, but one trustee can't become a conduit for passing village business information among the elected officials. For example, Trustee 1 calls up Trustee 2 to discuss a project or a purchase and Trustee 1 gives Trustee 2 his opinion and Trustee 2 calls up Trustee 3 and Trustee 3 gives an opinion to Trustee 2 and Trustee 2 calls Trustee 1 back and says this is what Trustee 3 thinks. This becomes a public meeting. It is now a Class A misdemeanor for an individual to violate the Illinois Open Meetings Act. Somebody files a lawsuit against the Village, it could be a developer, a disgruntled bidder who thought they should have gotten the bid. You will have to sit for a deposition, get sworn in and the first question is, "Mr. Trustee, with whom have you discussed this matter?" Trustee 1 says "I don't really remember." They then call Trustee 2 in and he says "I talked about it with Trustee 1." The point is, with so much litigation with municipalities these days; don't take any chances on stepping over the line.

Attorney Hill warned against testing the parameters. The Public Access Counselor decides these matters and their objective is to err on the side of transparency.

Attorney Hill reminded the Board that texting is treated the same as face to face conversation.

The objective is to make sure that all discussions of public business are held in open meetings, unless it fits with one of the exceptions. As a caution, just because the discussion fits an exception to the Open Meetings Act, doesn't mean that it can be discussed privately. Every meeting, even one for closed session, must open in open session. It has to be publicized and noticed up. The President calls the meeting to order in open session and then you can go into closed session to discuss it. Public business is supposed to be discussed in open meetings. Trustees are urged to do their best to keep it that way.

President Frazier reminded that even if emails and texts are on one's own personal device or Village device, everything is still subject to FOIA. She further reminded that some persons in the community have asked for every single communication and thousands and thousands of documents had to be turned over. It's easier to do things in open session to avoid trouble.

Trustee Kaplan asked if on the Plan & Zoning Commission member receive Open Meetings Act and FOIA training. Attorney Hill indicated he does have a session with the Commission members every couple of years. He said he recently had a training with the Architectural Commission and thinks maybe it is time had another training session with P&Z and ZBA.

Trustee Lungmus asked about a single trustee discussing a matter with two P&Z members. Attorney Hill said theoretically that is not a violation. However, that is a scenario that a trustee would be better off to avoid.

Attorney Hill reminded the Board of the difference between a public meeting and a public hearing. Most of the public hearings involve land use issues, zoning code amendments, special uses, requests for variations and PUDs. The requirements for those hearings have been developed through a series of lawsuits. The public has a broad range of rights at public hearings. They have the right to cross-examine people who the developer presents as expert witnesses. They have a right to cross-examine the developer. In a ZBA situation, the public has a right to cross-examine the petitioner and the experts. Our meeting chairs encourage people not to be repetitive and to try to get to the point, but every person that comes to the meetings has a right to speak, even if the hearing has to be continued to accommodate it. Reasonable limits can be set in terms of time. A public hearing on the annual budget comes with a different set of rights. Everybody has a right to speak, but they don't necessarily have the right to cross-examine. People tend to mix those two concepts and they are different.

All of our meetings have to be public meetings, even if we are only going to discuss one subject that's going to be in closed session, it has to be a public meeting.

The Open Meetings Act doesn't apply to Village staff and employees. Any number of the staff and employees can get together and discuss business. But if he meets with three trustees, then it becomes a public meeting and it would have to be noticed up.

The Village President sets the agenda for the Village Board meetings. The Village President doesn't get to vote very often, so the President's power and authority are limited. Any trustee can request that a matter be placed on the agenda, but it is up to the Village President whether it will be placed on the agenda. If a trustee asks that a matter be placed on the agenda and the President refuses, the trustee, at a Board meeting, can make a motion, get a second and the President must call for a vote on that motion. If it passes, the clerk is required to place it on the agenda for the next meeting. VM Sigman added that anything can be discussed at a meeting, but cannot be acted on unless properly placed on the agenda. At a special meeting, you can't even discuss a matter unless it is on the agenda.

Attorney Hill stated that from time to time, a Village Board goes into closed session to discuss litigation or some other proper topic and the discussion bleeds over into a subject that isn't permissible for closed session, or it may be permissible, but when the motion was made, that subject was not part of the motion. Trustee Lungmus asked how impermissible closed session discussions are discovered. Attorney Hill indicated that every closed session has to be recorded on audio and has to be kept for a minimum of 18 months. If we are sued over a particular matter, the plaintiff they can demand that we turn over closed session tapes. The tapes are turned over to the Circuit Court judge who listens to them in camera and makes a determination of whether there is anything relevant to the subject.

Attorney Hill turned to the subject of electronic attendance at meetings. He said there are three reasons that allow for electronic participation: illness or disability, out of town for an appointment or Village business or a family or other personal type of legitimate emergency. A quorum can't be established by counting somebody who is attending electronically. If there are only three people at the meeting and one person wants to participate electronically, that won't make a quorum. Electronic participation requires prior notice to the staff. The minutes must reflect that the trustee participated electronically.

Attorney Hill then discussed the entitlement process. The entitlement process is the formal process required to get zoning approvals. It is called entitlement because, on completion and approval, the applicant is then entitled to make certain very specific use of the property. Entitlements come in the form of special uses, PUDs, subdivision, and zoning code amendments. If a particular use is prohibited in a zoning district, a property owner's only recourse is to ask for a zoning code amendment. That often becomes part of the entitlement process also. Anytime any of those matters come up (special uses, PUDs, subdivision or zoning code amendments) a public hearing, before a duly constituted public body, such as the Plan & Zoning Commission, Zoning Board of Appeals or Village Board is required. Anytime the Village Board or President creates a special commission or special committee it's a public body to whom the Open Meetings Act will apply. However, if the Village Manager appoints a committee to advise staff on a matter, the Open Meetings Act does not necessarily apply.

The Preliminary Review Committee is a Village Board created committee as is the Architectural Commission. Neither are statutory commissions or entities. Trustee

Kaplan asked if Northfield Now! or the Steering Committee fall under the Open Meetings Act. VM Sigman said Northfield Now! does not because it is not an entity created by staff or the Village Board. It is a business group. The Steering Committee, however, was appointed by the President and would follow the Open Meetings Act. Attorney Hill reminded the Board that developers love to be able to talk to elected officials. They love to think they have the ear of a particular elected official. They have a right to call you up and talk to you. But, he advised the trustees that very little good can come from discussions. He said it is best to keep them to a minimum. They should be directed to the Village staff unless there is some substantially significant reason to talk to them.

Attorney Hill then discussed the public's rights at public meetings. The public can record meetings by tape, film or other means. We can't prevent them from doing so. President Frazier asked if she is meeting a resident at the Village Hall to discuss a matter, is that resident entitled to tape the conversation. Attorney Hill said no because it is not a public meeting. If a person wants to speak at a public meeting, they must be given the opportunity to do so. At the end of each Board meeting, the President asks if there is anyone who wants to discuss any item that is not on the agenda. We can tell people if you want to speak on this topic and it's on the agenda, you have to talk about it when it has been brought up by a motion and second. But if they want to talk about something that is not on the agenda, they can do so. It used to be all municipalities made people sign in their name, address and their phone number if they wanted to speak at the meeting. About 10 years ago, the Attorney General said they don't have to do that. You can make them give their name, but you can't make them give anything else. You can always ask for it. Trustee Roszak noted that the slide says that a person does not have to state their name or address in order to speak. Attorney Hill indicated he will check on that. We have the right to establish reasonable rules. If there are 50 people who want to talk on a certain subject, the President can limit each person to 5 minutes. As long as it is a reasonable limitation, we can do it.

Attorney Hill said that FOIA was a wonderfully intended piece of legislation, but has become the bane of municipal existence. There is no other piece of legislation that is abused as often as the Freedom of Information Act. But unfortunately, he doesn't know if there is anything to do to help, but still honor transparency. The paid staff time that goes into complying with some of these FOIA requests are burdensome. People have a right to ask for information in very specific electronic formats. The Attorney General has said we have to give it to them in the electronic format of their choice. We had a request for all of our traffic tickets, citations and stops. The format in which they wanted it was very esoteric. The person in police records who handles FOIA's spent weeks on that one request. VM Sigman added that a FOIA request was made by a newspaper that wanted all the tickets at the red light intersection. The format they wanted it in didn't exist. The Attorney General's office ordered us to create it in the requested format. Attorney Hill added that the Village didn't have those records, Red Flex had them, but because they were a vendor of Northfield, people had the rights to those records.

President Frazier said last year, the Village spent approximately \$50,000 answering one person's FOIA request. VM Sigman said to keep in mind that it is not just turning over the documents because certain personal information has to be redacted by an attorney who understands the nuances of the law. Attorney Hill agreed that it is not just gathering the documents. In order to protect individual privacy every piece of information has to be examined. There may be an address in there or a social security number. The taxpayers of Northfield have to pay somebody to go through those records. The FOIA to which the President was referring to contained over 20,000 pages. VM Sigman reminded the Board that a lot of the stuff that is sent electronically is all FOIAble and internal communications are also FOIAble. Just because it is not a meeting, doesn't mean it is not subject to FOIA disclosure.

Robert's Rules of Order was discussed next. Attorney Hill said we depend on RRO only when an issue arises that is not covered by your Code. When an issue comes up in a meeting, the President or any trustees can request a parliamentary ruling. In most instances, either Stacy or the Village Attorney can respond. Lack of structure in meetings can lead to a lack of consistency. Attorney Hill said he is very appreciative of this Board's desire to follow the appropriate procedure. It makes our whole process better and it makes the attorney's job easier. President Frazier asked if the attorney was familiar with any village board that specifically adopts Robert's Rules. Attorney Hill responded that most village codes, including Northfield, state that if any rule of order is not addressed in the Village Code, then Robert's applies.

It is important to remember that once the vote is taken and there is a majority, the Village Board has spoken. It is great to have the various points of view, even for a minority member to speak his or her mind, but once the motion is passed and adopted, that is the law of the Village.

Civility is very important. Board member's remarks should be germane to the question before the Board. A Board member can condemn the nature or likely consequences of the proposed measure in strong terms, but must avoid personalities, and under no circumstances attack or question the motives of another member. It is very important that a Board Member address the comments of audience members, but the member should not engage the audience in discussion or deliberation. Your deliberations are among yourselves. If someone in the audience makes a point that you want to address, you should do so, but don't engage the person who made it. At the Plan & Zoning meetings this often becomes an issue. It also becomes a problem when the presenter starts having a discussion with an audience member, then our ability to have a record of it evaporates.

Trustee Lungmus said that last month he made a comment to the audience. He was fearful of the audience who thought that their letters to the Board were not being forwarded to the Board and he wanted to comment that staff was doing an excellent job. Attorney Hill indicated in that case, he was still confining the discussion to the Board, that he was simply making a point. VM Sigman said the back and forth dialogue is when the Board starts to lose control of the meeting. It is inappropriate for an elected official to deliberate using hypotheticals. It's the way to do it. If a trustee disagrees with

a project, but there are ways to support it, it should be stated. "I could support it if..." Offering advice to people rather than letting them hear your comments on it can lead to some problems. By the same token, it is inappropriate to condemn a proposal based on an elected official's own personal circumstance.

Trustee Roszak asked if the person has to be a resident to speak. Attorney Hill said that non-residents also have a right to speak. The right to cross examine applies at public hearings, but not necessarily at the Board level.

Trustee Lungmus pointed out that this Committee of the Whole meeting is a public meeting. If he were to close the doors, it would not be appropriate. Attorney Hill agreed and said that is a very specific point that the Attorney General has stressed.

Attorney Hill went on to say that objectors love to cheer on their fellow objectors. We haven't tried to discourage their clapping. Some people are intimidated if they feel they are in the minority and everyone else is getting cheers and claps.

Conflict of Interest was then discussed. If a trustee thinks that there is any possibility of a conflict, bring it to the Manager. If the Manager can't answer it, she will ask for an opinion from the Village Attorney. Conflicts usually arise out of financial interests. In a small community like Northfield, we are all affected by what happens. One trustee may be more affected than another. But trustees are elected to vote, even on tough issues. Attorney Hill has had the experience of seeing people so timid that they jump on any opportunity to claim that there is a conflict. Usually it is a financial advantage that might come to a person for them to claim a conflict. If it is a statutory conflict of interest, there isn't any way to get out of it. You can't abstain, you can't refrain from voting. Either the Village has to decide they are not going to do business in that case, or the trustee must resign. But if it's a common law conflict, which most conflicts are, then the trustee publicly reveals the conflict, refrains from discussing and is recused from voting on the item.

Trustee Roszak asked Attorney Hill to explain again under what conditions you would have to resign. Attorney Hill explained that Northfield cannot do business with an elected official if that elected official's firm may be the only firm in Illinois that has the expertise to give advice on a particular issue. Another classic case arose about 25 years ago when one of the trustees of a client of his was a COO of Motorola. The only phones that the police department could use back then were made by Motorola. Their whole dispatch system was tied into the Motorola system. Attorney Hill gave the opinion that the trustee would have to resign. With that issue, he prevailed upon the Illinois legislature, that an officer of a publicly traded corporation could simply recuse himself or herself unless the person owned at least 1% of the stock in that corporation.

Attorney Hill then thanked everyone for going through the training again. He will be available if anyone has any questions.

Other Business

None.

Adjournment

There being no further discussion or issues to come before the Board, Trustee Trustee Goodwin made a motion, seconded by Trustee Roszak to adjourn the meeting.

The meeting adjourned at 6:50 p.m.