

**MINUTES OF THE  
COMMITTEE OF THE WHOLE MEETING  
VILLAGE OF NORTHFIELD  
TUESDAY, August 17, 2021**

The Committee of the Whole meeting was called to order by Village President Greg Lungmus on Tuesday, August 17, 2021, at 5:30 p.m. Village Clerk Stacy Sigman called the roll as follows:

Committee Members Present:

Trustee Todd Fowler  
Trustee Tom Whittaker  
Trustee Matt Galin  
Trustee Tracey Mendrek  
Trustee Charles Orth

Absent:

Trustee Barnaby Dinges

President Greg Lungmus

Others Present:

Village Attorney Everette Hill

**Approval of the June 15, 2021 Report of Proceedings**

Trustee Orth made a motion, seconded by Trustee Mendrek to approve the June 15, 2021 Report of Proceedings. Approval was unanimous.

**Discussion on the Village's Public Way Use Policy - Private Roadway Signs**

The use of the Village's rights of way is governed by the Village Code and a Public Way Use Policy previously adopted by the Village Board, as summarized below:

- Village Code. There are right-of-way provisions throughout the code but Chapter 14 deals most directly with private improvements. Section 14-11 requires property owners to maintain their parkway area and sets forth general parameters for carriage walks, service walks, driveways, culverts under driveways, mailboxes, and lawn irrigation systems. This section specifically allows for some private improvements while reserving the Village's sovereign rights over the parkway. Section 14-11 also makes it clear that if the Village damages private improvements on Village property (sprinkler systems, fencing, electric fencing, landscaping, boulders, or other material) while doing utility work, the Village cannot be held responsible for the repair or replacement of those private improvements.
- Policy. Several years ago the Board also adopted a Public Way Use Policy (Policy) to govern private improvements on public land - such as the Old Willow Road right of way. Under that Policy, residents are required to secure a license agreement from the Board, execute a waiver of claims and provide insurance as well as a release and hold harmless

to the Village. This Policy exempts driveways, mailboxes, and sprinkler systems as they are covered under Chapter 14.

Community Development Director Gutierrez stated that the Village was recently approached by the residents of a private roadway wanting to replace their existing street sign. They inquired as to whether a permit was necessary and what, if any, standards needed to be followed. A review of the Village's code and Policy determined that these types of signs were not contemplated in either. One very unique aspect of Northfield is the abundance of private roadways and about half of all of the residential streets are private. The vast majority of those streets have, over time, installed private, decorative signs at their entries in the public rights of way. Most of these signs have been in place for many years and none of them were ever formally approved by the Village.

After discussion, the Board decided that the Public Way Use Policy should be amended to exempt private roadway signs, but include standards on the height, size, location, plantings, lighting, and sightline obstructions. All existing private, decorative signs would be grandfathered in and not subject to any standards except those posing a danger to the public, such as blocked sightlines.

President Lungmus noted that these standards would be guidelines but no permits would be required.

#### **Discussion on the Village's Public Way Use Policy – Village vs. Non-Village**

Village Attorney Hill noted that in 2019, the Village Board received a request to install Pride Month flags on the Village's flag poles, light poles, and community events sign. The Board reviewed the request at the August 2019 Committee of the Whole meeting and elected to accommodate the request, but only on the Community Events Sign (CES). To allow for this, the CES Policy was later amended to include the following language: "Use of the Community Events Sign at the northwest corner of Willow Road and Central Avenue will be limited to Village-affiliated, civic-oriented groups or residents (Applicant) who apply to utilize the signage structure to post banners that promote a locally scheduled event or program, or to celebrate a special Local, State or Federally recognized observance. Banners may not promote a commercial purpose or endorse a specific political or religious position." Since that change, a Pride flag has been hung on the CES each June.

In early spring 2021, the Board received another request asking that this matter be reconsidered and the Board expand the Village's Pride Month observance. Former President Frazier responded to that request by choosing not to revisit the issue at that time. Since then, several Board members have been approached by residents urging a re-visitation and expanded observance. On June 21, 2021, President Lungmus and Trustee Whittaker met with some residents and agreed to place the topic of social messaging on Village property on a future agenda. Staff and the Village Attorney were asked to do some additional research as to how other communities handle special event signage and what, if any, legal issues were associated with allowing such social messaging on Village property. The Village Attorney used the phrase "social messaging" to broadly refer to the placement of symbols and flags in support of special

observances, such as Pride Month and Black History Month. The following was a summary of those findings:

**Community Research.** The Northwest Municipal Conference surveyed communities relative to programs involving social messaging. In total, 17 communities responded: 5 indicated they had no occasions requesting support of any such social messaging programs, 4 indicated they passed proclamations supporting social messaging programs, and 8 communities outlined more expansive social messaging programs. Those more expansive programs included things such as proclamations, flags on Village flag poles, banners on Village light poles, parades, and special festivals. Only Schaumburg and Evanston indicated that they celebrated different events which included Black History Month, Asian American Heritage Month, Native American Heritage Month, and Juneteenth.

**Legal Research.** From a legal perspective, the Village Attorneys determined that in recent years, the U.S. Supreme Court has made a distinction between (1) governmental regulation of private speech (which must be content neutral); and (2) a governmental entity's own speech (which is not subject to the principle of content neutrality). This distinction between the two is whether the governmental entity, such as the Village of Northfield, is regulating private speech or speaking for itself through its elected officials. A shorthand way of distinguishing between the two types of governmental action is to think in terms of "regulation" on the one hand and "proclamation" on the other hand. Any regulation that the Board does must be content neutral. On the other hand, Board proclamations of support are not fettered by the doctrine of content neutrality.

- **Regulations.** The August 2019 Committee of the Whole memo addressed the issue of regulation. The essence of the memo was that if the Village allows private parties to install signage or other expressive symbolism within our rights of way, it would be creating a "limited/designated public forum." Such creation has very specific First Amendment (content neutral doctrine) implications and once allowed, all entities and speech would have to be treated equally. The Village could not, for instance, allow a Pride organization (or person) to place flags on Village property and then say no to a neo-Nazi organization. It was for this exact reason that the prior Board only allowed signs on the CES – as it is already a limited public forum.
- **Proclamation (of Village/Governmental Support).** The Village legal team set forth in a second memo that the U.S Supreme Court had, in recent years, adopted the concept of "government speech." The essence of this concept is that "If petitioners (a municipality) were engaging in their own expressive conduct, then the Free Speech Clause (First Amendment) has no application." Under this concept, as long as the Village is proclaiming its support for the social messaging of a particular organization, and Village property is used to convey that message, the Village need not concern itself with running afoul of the content neutrality doctrine. As long as it is the Village's property, speech, and symbols, the Village can favor one special event or social messaging over another.

Village Attorney Hill remarked that Staff was seeking direction from the Board as to whether:

The Village maintains its current position and only permit social messaging on the CES.  
Or

The Village expresses its right to “governmental speech” by supporting the social messaging and special observances of certain groups on Village property.

After discussion, Trustee Orth and Trustee Fowler were not in favor of “governmental speech” and preferred the Village maintain its current position of only permitting social messaging on the CES. Trustee Galin, Trustee Whittaker, Trustee Mendrek and President Lungmus were in favor of the Village expressing its rights to “governmental speech.”

President Lungmus noted that the Village would then go forward with its right to “governmental speech,” and the Board determined the following specific parameters:

- a. The Board agreed with the Village attorneys’ recommendation that no special signage could be installed without a formal proclamation supporting the social messaging which would need to be reviewed annually.
- b. The design and a prototype of any signage would need to be approved by the Board before any installation.
- c. The signage would remain revenue-neutral, allowing financial contributions by private entities.
- d. The signage would be placed on 8 brackets only and not on any flagpoles. Village staff would designate the brackets to be used.
- e. The signage could be displayed for a maximum time limit of one month.

**Other Business**

None

**Public Comment**

None

Trustee Orth made a motion, seconded by Trustee Whittaker to adjourn the meeting.

AYES: Fowler                      NAYS: 0                      ABSTAIN: 0                      ABSENT: Dinges  
Whittaker  
Galin  
Mendrek  
Orth

The meeting adjourned at 6:44 p.m.