

# VILLAGE OF OCONOMOWOC LAKE

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**OCONOMOWOC LAKE VILLAGE BOARD MEETING**  
**MINUTES OF MONDAY, January 20, 2014,**  
**Unofficial until approved by the Village Board.**  
**Approved as written ( ) or with corrections ( X ) on 02/17/2014.**

The regular monthly meeting of the Board of Trustees of the Village of Oconomowoc Lake was held on January 20, 2014, commencing at 7:12 PM, immediately following a Public Hearing, at the Village Hall, 35328 W. Pabst Road, Oconomowoc, Wisconsin. Legal requirements for notification as required by law have been met. Roll was taken followed by the Pledge of Allegiance with the following in attendance:

Mr. Birbaum/President – present  
Messrs., Bickler, Fellows, Fischer, Owens (arrived 7:30 p.m.),  
Shult, Waltersdorf/Trustees – present  
Ms. Schlieve/ Clerk-Treasurer – present  
Mr. Wiemer/Police Chief-Administrator – present  
Mr. Macy/Attorney –present

## **ATTENDANCE**

Nick Bickler, Brooke Bickler

## **CLOSED SESSION ANNOUNCEMENT**

President Birbaum announced that the Village Board of Trustees may: “convene into executive closed session by roll call vote, pursuant to Section 19.85(1)(e), Wisconsin State Statutes, ‘deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons required a closed session’, regarding an offer to purchase on a Village-owned property. Participating in the executive closed session will be the Village Board, Village Attorney, Village Administrator, and Village Clerk-Treasurer.”

## **MINUTES**

Motion (Fellows/Bickler) to approve the minutes of the December 16, 2013 Village Board meeting, Carried Unanimously.

## **PUBLIC COMMENT**

Motion (Shult/Bickler) to open the meeting to public comment on agenda items, Carried Unanimously.

There were no comments from those present.

Motion (Shult/Waltersdorf) to close the meeting to public comment, Carried Unanimously.

## **PRESIDENT**

### **Update regarding Assessment Committee Meeting**

Mr. Birbaum reported that the Assessment Committee had met just prior to the Village Board meeting. The Village Assessor, Mark Link, was in attendance at the meeting, along with committee members Paul Fischer, Mike Bickler, John Macy, Don Wiemer, and Joe Birbaum. There were a good number of sales in 2013; however, there are several sales that do not appear to be “arms-length sales”. Those sales that are not determined to be “arms-length sales” should not be included in the final sales numbers when reported to the Wisconsin Department of Revenue (DOR) by the Assessor. Mr. Link is in agreement on

the determination of most of the sales. Further investigation will be required before a final decision is made and the sales reported to the DOR.

### **PLAN COMMISSION**

#### **Discussion/action regarding an Ordinance to Repeal and Recreate the Definition of “Dwelling, Single Family”, contained in Section 17.10 of the Village of Oconomowoc Lake Zoning Code to specifically exclude vacation rentals and tourist rooming houses from the definition and to ensure that residential properties within the Village are used solely for residential purposes and not for any for-profit lodging purposes**

Mr. Macy provided a memorandum he had prepared to address some questions Mr. Wiemer had asked of him. The questions and Mr. Macy's responses are listed below.

Question: Does the ordinance keep property owners from having caretakers/pet sitters stay in your home when you are on vacation or in Florida for less than 120 days?

Response: No. Such use would not satisfy all of the elements of the ordinance for it to be called a vacation rental. Even if there were an agreement for this use, two of the elements would not be satisfied:

- a. No Occupancy Right. This use does not create a right to occupy the property, but only permission to do so. If you are unhappy with the arrangement, or if you come home early from your time away, or change your mind, you can ask your caretaker/pet sitter to leave, and they would have no recourse against you other than possible payment due to the caretaker/pet sitter. In contrast, when you evict somebody who has a right to occupy, there would be legal remedies.
- b. No Remuneration. As to remuneration, it is the opposite of what is regulated by the ordinance. With this use, the remuneration is usually paid to the caretaker/pet sitter occupant, not to the owner. The owner does not have a commercial incentive to be away. While the owner gets a benefit (house or pet sitting) it benefits the owner's single family residential use of the property.

That said, this same concern arose in another community a few years ago when they adopted a similar ordinance and they added language to their ordinance to address it. I did not recommend this language for Oconomowoc Lake because I am reluctant to open this loophole, which I believe could easily be exploited, and because I do not believe this to be necessary.

Question: Does the ordinance keep property owners from having friends or family use the place when you are out of town?

Response: No. Friends and family visits do not trigger the 4 elements of the ordinance. There is no agreement that creates a right of occupancy, and includes payment or other remuneration or barter.

That's not to say that friends and family could not trigger the ordinance. Just like friends and family can stay in a hotel, they could use your house like it's a hotel. If their use satisfies that definition, then from the perspective of the land use issues, impact on the neighbors and so forth, I see no reason why there would be a distinction between family and friends engaging in this use, which is for the owner's profit, as opposed to any other people doing so. I also do not envision any reasonable way to create an exception in that regard, without completely decimating the prohibition. I have no doubt that the property owner would contend that everyone that rents his home through Craig's List or Vacation Rental By Owner is a friend of his, if not a family member.

Question: Does the ordinance restrict allowing family members or others from visiting the property when the property owners are not present?

Response: No. See above. To trigger all four of these elements, the situation would be very different from just having family or friends visit the property when the owners are not present.

Question: Does the ordinance keep property owners from accepting gifts of cash or other when people stay at my place when I am out of town?

Response: No. A gift is different from a payment, as contemplated by the fourth element of the definition. A gift is not "required", and the fourth element is only triggered when the remuneration is required. Also, the three other elements would need to be triggered, including an agreement and a right to occupy, as noted above.

Discussion followed.

Motion (Shult/Fellows) to adopt the ordinance to repeal and recreate the definition of "Dwelling, Single Family", contained in section 17.10 of the Village of Oconomowoc Lake Zoning Code to specifically exclude vacation rentals and tourist rooming houses from the definition and to ensure that residential properties within the Village are used solely for residential purposes and not for any for-profit lodging purposes, per Plan Commission recommendation at its January 6, 2014 meeting, *Carried Unanimously*.

**Discussion/action regarding a proposed amendment to the Zoning Code 17.10 Definitions, Structure, as it pertains to the separation of above-ground elements, per Plan Commission recommendation at its October 7, 2013 meeting, and postponement by Trustees at its October 21, 2013 meeting**

Mr. Macy reviewed the history of the proposed amendment. Discussion followed. The Board directed Mr. Macy to put the proposed amendment to the Zoning Code into final form, Staff was directed to set a public hearing for the amendment before the Village Board meeting on February 17, 2014.

**Update regarding a request to amend the Conditional Use Permit for the Oconomowoc Lake Club to allow up to eight (8) power boats to be docked at the Club**

Mr. Wiemer explained that the Oconomowoc Lake Club has requested an amendment to its Conditional Use Permit (CUP) to allow up to eight (8) power boats to be docked at the Club. A preliminary review of the request was done by the Plan Commission at its January 6, 2014 meeting. Based on the Plan Commission recommendations, an amendment will be presented to the Plan Commission at its February 3, 2014 meeting. If recommended for approval by the Plan Commission, the amendment will receive a public hearing before the Village Board on February 17, 2014.

**ATTORNEY**

There was no report.

**TREASURER**

**Checks**

Motion (Fellows/Bickler) to approve check numbers 40766 through 40851, for regular monthly payments, and all electronic payments, *Carried Unanimously*.

**FINANCE**

**Discussion regarding monthly operating statement for January**

Mr. Fischer reviewed the monthly operating statement.

**ADMINISTRATOR**

**Discussion/action regarding acceptance of donations received from Village residents, as noted on Exhibit A, designated for use toward the fireworks display in July of 2014**

Motion (Shult/Waltersdorf) to accept the donations received from Village residents, as noted on Exhibit A (included in the Village Board Minutes binder), *Carried Unanimously*.

**POLICE CHIEF**

**Discussion/action regarding the recommendations from Judge Timothy T. Kay in his communication dated January 9, 2014, including the possibility of increasing the bond amount for retail theft/shoplifting and increasing the fee on warrants issued**

Mr. Wiemer reviewed the letter from Judge Kay regarding his recommendation to increase the bond amount for retail theft/shoplifting and increasing the fee on warrants issued. The Board directed Mr. Macy to prepare an amendment to the ordinance to address the increase in bond and warrant fees. The amendment will be presented to the Board at a future meeting.

### **BOARD OF ZONING APPEALS**

There was no meeting.

### **ARCHITECTURAL CONTROL BOARD (ACB)**

There was no meeting in December. There will be a meeting on January 27, 2014.

### **CLERK**

#### **Discussion/action regarding a resolution to participate in a county-facilitated competitive bid process for recycling and trash collection services**

Mr. Wiemer reviewed the memo prepared by Ms. Schlieve regarding the resolution to participate in a county-facilitated competitive bid process for recycling and trash collection services. The Village is not obligated to accept the collection contracts that are developed by the County's process.

Motion (Bickler/Shult) to adopt the Resolution to Participate in a County-Facilitated Competitive Bid Process for Recycling and Trash Collection Services, *Carried Unanimously*.

### **COMMUNICATIONS**

- Focus on County Government, Monthly Update from the Desk of Waukesha County Executive Daniel P. Vrakas
- Waukesha County Fire Chiefs Association Inc. Invitation to a Hands-on Fire and EMS Training Day for Elected Official only

### **CLOSED SESSION**

**Convene into executive closed session by roll call vote, pursuant to Section 19.85(1)(e), Wisconsin State Statutes, "deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session", regarding offer to purchase on a Village-owned property. Participating in the executive closed session will be the Village Board, Village Attorney, Village Administrator, and Village Clerk-Treasurer**

Mr. Macy noted that Nick and Brooke Bickler were in attendance to present and answer questions regarding their offer to purchase a Village-owned property, and if the Board convenes into closed session, the Bicklers will not be able to be present. Mr. Birbaum requested that the Trustees remain in open session in order to allow the Bicklers to make their presentation, but reserved the right to go into closed session if necessary. All Trustees agreed to the President's request. Mr. Macy stated that an offer to purchase had been presented to the Village, and even though no interest in or bids for property were previously requested by the Board, the Board of Trustees must be presented with that offer to purchase.

Mr. Mike Bickler recused himself from the Board table, and stepped into the audience to assist in presenting the offer to purchase. The prospective buyers are Nicholas A. and Brooke L. Bickler. The offer presented (included in the Minutes Binder) is for \$105,000, with the understanding that the prospective buyers would pay for the costs of perc tests, building permit, installing a well that is deep enough to avoid the water contamination, and clean up of the lot that has been used by a neighboring property owner as a dumping ground. Mr. Mike Bickler noted that the most recent appraisal of the property dates to 2009 and values the property at \$230,000. He stated that he feels that the appraisal is questionable, and referenced several more recent sales and current values of similar properties.

Discussion followed.

Motion (Owens/Shult) to convene into executive closed session by roll call vote as follows: Messrs. Owens, Shult, Fellows, Waltersdorf, Birbaum, and Fischer in favor. There were no opposing votes. Mr. Bickler recused himself prior to the vote and he did not attend the closed session. Motion Carried Unanimously.

The meeting convened into executive closed session at 8:40 p.m.

**RECONVENE INTO OPEN SESSION BY ROLL CALL VOTE FOR DISCUSSION AND POSSIBLE ACTION REGARDING THE OFFER TO PURCHASE FOR THE VILLAGE-OWNED PROPERTY**

Motion (Shult/Owens) to reconvene into open session by roll call vote as follows: Messrs. Owens, Shult, Fellows, Waltersdorf, Birbaum, and Fischer in favor. There were no opposing votes. Mr. Bickler recused himself prior to the vote. Motion Carried Unanimously.

The meeting was reconvened into open session at 9:15 p.m.

The Village Administrator was directed by the Board of Trustees to obtain appraisals on the three (3) lots that have been considered saleable by the Village Board of Trustees. Once the appraisals have been received, the Trustees will review them and develop a strategy for use of the properties. Mr. Birbaum noted that the Board is neither accepting nor rejecting the offer to purchase at this time.

**ADJOURNMENT**

With no further discussion being heard, a motion (Shult/Fellows) to adjourn was made at approximately 9:50 p.m., and Carried Unanimously.

Respectfully submitted by:

Approved and ordered posted by:

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Cindy J. Schlieve, Clerk-Treasurer

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Joseph L. Birbaum, President