

COMMITTEE OF THE WHOLE – Meeting Minutes
August 15, 2022

The Village Board met as a Committee of the Whole in the Council Chambers of the Village Hall at 7:48 p.m. on Monday, August 15, 2022. In attendance were:

PRESENT:

Village Board

Dan Shapiro, Mayor
Bob Benton, Trustee
Larry Berg, Trustee
Elaine Jacoby, Trustee
Rebekah Metts-Childers, Trustee
Mary Oppenheim, Trustee
Bill Seiden, Trustee

Staff

Kent Street, Village Manager
Andrew Lichterman, Assistant Village
Manager/Director Community Development
John Sliozis, Chief of Police
Eric Burk, Finance Director
David Fitzgerald-Sullivan, Comm. Coord.
Desiree Van Thorre, Admin Services Coord.
Mary Otto, Management Analyst
Tyler Dickinson, Asst. Dir. of PW and Eng.
Justin Keenan, Asst. to the Village Manager
Braeden Lord, Village Attorney

Public Comment

There were no public comments on non-agenda items.

Business

1. Discussion of Storm Water Utility Fee

Village Attorney Braeden Lord began the discussion with an overview of Illinois laws regarding storm water utility fees. Courts have ruled that in order for utility fees to qualify as a fee rather than a tax, there are four rules that need to be met. The first is the fee must be reasonably proportional in the method of calculation and reasonably related to the service it is meant to provide. Secondly, the fee must be optional, meaning citizens should be allowed to opt out of service if they can prove they do not use the service the fee is supposed to fund. Additionally, the revenue collected must only be used for the service it is intended to fund. Lastly, in order to qualify as a fee and not a tax, the fee must be levied against all property owners without exemptions. Mayor Shapiro reiterated that when discussing a fee, all property owners must be treated equally. The fee must be applied to commercial, industrial and residential properties in the same way. Mayor Shapiro added that for properties with existing storm water retention facilities or improvements, the Board may wish to determine a method to credit those improvements.

Trustee Seiden pointed out that the only public court rulings upholding storm water utility fees have come from appellate courts. Trustee Seiden spoke in favor of a storm water fee calculation method that divides the impervious surface area by the total area of the property.

Trustee Oppenheim felt the burden from this calculation method will fall on owners of smaller lots and was against this methodology. She pointed out that accurately measuring runoff entering the storm sewer would require a very complicated formula incorporating multiple factors (e.g., elevation, grade, etc.) to determine how much each lot contributes to the stormwater retention system. She was in favor of a calculation method that measures impervious surface coverage without accounting for the lot size. Mayor Shapiro agreed that it is difficult to craft an acceptable formula, but there is a benefit to creating the fee and solving the problem. The Board agreed that tackling the issue is important to everyone. Mayor Shapiro asked the Board if they are in favor of a credit system for commercial properties with existing stormwater retention systems. Trustee Berg asked if it is possible to determine exactly what improvements have been made to commercial properties. Assistant Director of Public Works and Engineering Tyler Dickinson responded that storm water regulations have changed significantly over the last two decades and will continue to change.

Mayor Shapiro proposed an amortization schedule for credit based on upgrades, and noted any ordinance the Board adopts needs to have an appeal process. Trustee Berg asked if the appeal review process would be done by staff. Village Manager Street suggested that professional civil engineers would review the case and make a recommendation to the Village Manager or directly to the board and that any amortization schedule would need to consist of a reasonable timeframe, like 15 to 20 years. Trustee Metts-Childers asked about whether the credit system would have a single standard or tiers. Mr. Lord referred to Winnetka's system which has 2 tiers. In the first tier, if a property owner can demonstrate they have 0% runoff into the Village's storm sewer system they would receive a 100% credit. In the second tier, if a property owner can demonstrate they capture at least 50% of the storm water runoff then they would receive a 50% credit. The appeals process is an acceptable way to design an opt-out system, which is necessary to classify as a fee system rather than a tax. Trustee Oppenheim noted that the appeal system is dependent on property owners obtaining extensive engineering analysis and advice, which is not always instantaneous and could be cost prohibitive for homeowners. Trustee Seiden pointed out that most commercial retention systems do not actually retain the storm water, but are actually storm water detention systems that slowly release the water into the Village's storm sewers to avoid overwhelming the system.

Mr. Lord mentioned that the courts have determined that 100% opt-out option used by Winnetka satisfies the legal standard for this to be a fee. Winnetka chose to connect the 100% opt out to proving there is 0% of runoff into the storm sewer in a 100-year storm. That requirement of proof is not necessary, and the Board can choose their own criteria as long as it is reasonably linked to how much stress a user puts on the system to achieve a 100% opt out. Mayor Shapiro asked whether or not the impervious surface method should be determined by lot size. Trustee Oppenheim pointed out that the Board could define the parameters surrounding exemptions. Mayor Shapiro agreed and noted that any policy will have to pass legal muster. Trustee Oppenheim was concerned that creating a policy with a 100% opt out that is difficult to obtain would be disingenuous to property owners. Trustee Jacoby suggested a less complicated credit system based on stormwater retention improvements found in building documents. Mr. Lord advised that a credit system based on the age of a building may not withstand a lawsuit. Trustee Oppenheim was concerned about the focus on post-1992 standards used for commercial

buildings and applying those standards to the Village's older housing stock. Mayor Shapiro requested that staff look at commercial properties and how other communities handle the opt out issue. Trustee Jacoby suggested using Winnetka's opt-out system as a model to create one for Deerfield. Mr. Street pointed out that Winnetka has ravines and different drainage structures than Deerfield. Mr. Street suggested that we look at a three-tier credit system to address the different challenges presented by the issue. Trustee Oppenheim noted Winnetka's stormwater displacement codes are so stringent that it can be prohibitive to contractors and developers. Trustee Seiden mentioned that among all the different permutations in measuring size of impervious surface area in relation to lot size, he likes the idea of a simpler formula as the standard. Mayor Shapiro suggested tabling the debate on measurement and credit methods and asked staff to further study what other municipalities are doing and to come back to the Board with more information. Trustee Benton suggested that staff revisit the stormwater utility fee memo from the May 24, 2022 Committee of the Whole meeting. Mr. Dickinson will bring a side-by-side comparison of impervious surface measurement methods to a subsequent Committee of the Whole meeting.

2. Discussion of Mobile Food Vendor Regulations

Management Analyst Mary Otto reported to the Board about food trucks. The growing popularity of food trucks has led to inquiries from both residents and businesses. Staff has been receiving a number of requests for permission to have food trucks at both public, private, and commercial properties. Staff have received requests to host food trucks in corporate office parks, hotels, multi-family housing developments, schools, and Park District events. Historically, the Village has allowed food trucks to operate at Village-sponsored events, Park District-sponsored events, private single-family zoned residential properties, and block parties. Mrs. Otto pointed out that food trucks have been prohibited from operating in the public right-of-way with the exception of ice cream trucks. Mass food deliveries have also been allowed when the delivery vehicle is parked on private property. Given the number of inquiries, staff would like to define acceptable standards to update mobile food regulations. Such regulations would provide staff optimal control over the health, safety and welfare of the public. Staff does not recommend allowing food trucks to operate in the public right-of-way on a regular basis due to enforcement demands and safety issues.

A comparison of 11 neighboring municipalities' regulations regarding mobile food vendors revealed several best practices. Mrs. Otto noted the regulations addressed: licensing, health department permits, liability insurance, health and sanitary inspections, waste disposal, sales tax requirements, liquor license restrictions, and non-compliance penalties. Staff seeks direction on crafting a mobile food vendor ordinance to address the issues of: operating locations, times, limits, special event permitting, and licensing categories. Additionally, staff recommends obtaining input from the DBR Chamber of Commerce before final approval of any ordinance. Mayor Shapiro thanked staff for the detailed memo and for the success of the Village's recent Food Truck Thursday events that have prompted the need for review by the Board. Mr. Street suggested the Board review the different scenarios outlined in the memo as a starting point. He noted that the Municipal Code is antiquated in regards to this topic, and any further discussion should provide for public safety and health requirements.

Mayor Shapiro asked if there were any objections to the scenarios outlined in the memo. Trustee Oppenheim asked about the collection of local sales tax by mobile food vendors. Finance Director Burk responded that the vendor should be reporting sales tax and that should be reported to the Illinois Department of Revenue (IDOR). Mayor Shapiro asked if there was a way to make sure that vendors remit that tax. Mr. Burk stated that if a vendor were to be found in non-compliance, the Village would report them to the IDOR. Trustee Berg asked if sales tax compliance could be included as a licensing requirement. Mr. Street responded that staff is recommending compliance as a licensing requirement. Trustee Oppenheim noted her concern that the Village would have less control over sales tax compliance for mobile food vendors than local businesses. Trustee Jacoby asked how sales tax collection works for Farmers Market vendors. Mr. Burk answered that those vendors should be paying sales tax to IDOR in the same way being proposed for mobile food vendors. Mayor Shapiro related that the amount of sales tax would be minimal and the risk of not remitting that payment lies with the vendor. Mr. Street clarified the intention is to require mobile food vendors to pay sales tax and prior to permitting they would have to file with IDOR. Trustee Metts-Childers added that vendors would also have to pay a licensing fee as a commitment to operate in Deerfield.

Mayor Shapiro asked the Board if there were any issues with the proposed private property scenarios outlined in the memo. The Board agreed that the scenarios were all appropriate. Mayor Shapiro asked the Board if there were any concerns with the regulations proposed by staff. Trustee Oppenheim asked about potential difficulties in the enforcement of waste disposal. Assistant to the Village Manager Justin Keenan reported that within the industry, waste disposal is standard and that mobile food vendors know they have to remove all the garbage after an event. Trustee Oppenheim stated that she would like to require that they recycle. Mr. Lichterman responded that the biggest concern with respect to waste disposal is dumping grease. He noted that the Village provides the infrastructure to homeowners and businesses to recycle but it is not a requirement. Trustee Metts-Childers asked what recycling requirements could be placed on vendors. Trustee Oppenheim stated that the vendors could be required to have a sign specifying which receptacles are for recycling as opposed to garbage. Mr. Lichterman advised that is consistent with staff's recommendation and the requirements can be reiterated on the application form.

Trustee Oppenheim asked if there have been any inquiries by vendors wanting to serve alcohol. Mr. Keenan responded that in order for a mobile food vendor to obtain a liquor license they must also have a brick-and-mortar location which makes it more difficult for vendors to obtain. Mayor Shapiro asked if DBR Chamber of Commerce Executive Director Vicki Street had any comments to add. Mrs. Street expressed that she is an advocate for brick-and-mortar businesses. She pointed out that mass food delivery is a social media phenomenon that she believes harms local business. She stated that she attended the meeting to hear the Board's thoughts and that she will conduct a survey among local businesses to gauge their feelings and will forward the results of that survey to staff. She noted Taco Vida has a food truck, but staffing shortages have prevented them from holding events. She commended staff for the detailed memo and further advised the Board that there will be more scenarios than just those described. Trustee Oppenheim voiced her opposition to mass food delivery citing the detrimental effect it has on local business. Trustee Jacoby asked how frequent mass delivery events take place in the

Village. Mrs. Street estimated there were at least two such events per week. Trustee Metts-Childers asked if there is any research about the effects of mobile food vendors. She asserted it is not a zero-sum game. Mayor Shapiro agreed that it is not a binary issue and that the labor shortage will not last forever. He encouraged local businesses to participate as mobile food vendors. He further expressed that food trucks do provide a community gathering place, and that the Board needs to balance the needs of local businesses with the wishes of residents. Mr. Lichterman asked for guidance in enforcing the prohibition of mass food deliveries when operating on private property.

Trustee Seiden asked how the mass food deliveries compare to ice cream trucks. Mr. Lichterman responded that some neighborhoods have hired ice cream trucks to hold events. Historically, the Village has not enforced regulations on those ice cream trucks. Mr. Lichterman requested further direction from the Board on enforcement, as sometimes the ice cream trucks are parked in the street or a private driveway. Trustee Berg asked about the definition of a mass food delivery. Mr. Street replied that there is no exact definition. Mr. Lichterman clarified that the Village does not allow mass food delivery vehicles to operate on public property and has asked them to move to private property in the past. Trustee Metts-Childers commented that mass food deliveries are similar to catering. Mr. Lichterman reiterated that the enforcement issue brings unique challenges and there are multiple scenarios requiring direction. Mr. Lichterman suggested making a distinction for trucks that serve frozen pre-packaged food like ice cream from every other type of food truck. Mayor Shapiro stated he is not in favor of allowing residents to host private food truck events in the public right-of-way. The Board agreed that block parties would be considered differently because they would apply for a special event permit. Trustee Metts-Childers asked how the Village would make sure vendors pay sales tax for private events. Mr. Burk reiterated that they would be subjected to the same requirement to remit payment to IDOR. Mrs. Otto pointed out that the 1% prepared food and beverage tax is a part of the licensing requirement and that the Village keeps the tax information submitted on the licensing form on file.

Mrs. Otto asked for further direction in regards to frequency, duration, time frame and number of trucks to be allowed for the various scenarios and property types. Mr. Lichterman noted that while the number of trucks is a concern, staff's experience is that hosting multiple trucks is difficult to schedule due to the vendors' staffing and other commitments. He commented that frequency is a greater concern, similar to block parties and garage sales. The Board discussed different time limit possibilities and agreed that the time limit can be determined during the permit review process. Mrs. Otto suggested classifying the different scenarios as special events to better regulate the mobile food vendors.

Mr. Lichterman said staff will come back to the Board with a report detailing the annual fee, the limit on frequency, the limit on hours, the distinction for ice cream trucks and prohibition of mass delivery trucks. Staff will further research the impact of food trucks on local brick and mortar stores and continue to seek input from the business community through the DBR Chamber of Commerce.

Public Comment

There were no public comments on non-agenda items.

Adjournment:

There being no further business or discussion, Trustee Benton moved to adjourn the meeting. Trustee Oppenheim seconded the motion. The motion passed by unanimous voice vote.

The meeting was adjourned at 9:30 pm.

Respectfully submitted,

Daniel Van Dusen