

**VILLAGE OF HINSDALE
VILLAGE BOARD OF TRUSTEES
MINUTES OF THE REGULAR MEETING
January 31, 2023**

The regularly scheduled meeting of the Hinsdale Village Board of Trustees was called to order by Village President Tom Cauley in Memorial Hall of the Memorial Building on Tuesday, January 3, 2023 at 7:00 p.m. Roll call was taken.

Present: President Tom Cauley, Trustees Matthew Posthuma, Laurel Haarlow, Luke Stifflear, Michelle Fisher, Neale Byrnes and Scott Banke

Absent: None

Also Present: Village Manager Kathleen A. Gargano, Assistant Village Manager/Director of Public Safety Brad Bloom, Acting Village Clerk / Assistant Village Manager Andrianna Peterson, Police Chief Brian King, Finance Director Alison Brothen, and Director of Public Services George Peluso and Village Clerk Emily Tompkins

Present electronically: HR Director Tracy McLaughlin, Parks and Recreation Superintendent Mike Hayes, and Fire Chief John Giannelli, Director of Community Development Robb McGinnis, and Village Planner Bethany Salmon

PLEDGE OF ALLEGIANCE

President Cauley led those in attendance in the Pledge of Allegiance.

APPROVAL OF MINUTES

a) Regular meeting of January 17, 2023

Trustee Byrnes moved to **approve the minutes of the regular meeting of January 17, 2023, as amended.** Trustee Banke seconded the motion.

AYES: Trustees Posthuma, Haarlow, Stifflear, Fisher, Byrnes, Banke

NAYS: None

ABSTAIN: None

ABSENT: None

Motion carried.

VILLAGE PRESIDENT'S REPORT

President Cauley reported that the Village is looking to fill a vacancy on the Police Pension Board. He asked that interested candidates call or email him.

President Cauley also reported that early voting for the 2023 Consolidated General Election would take place March 20 through April 3 and the Village of Hinsdale Memorial Building will be an early voting site for residents of DuPage County. Complete lists of voting locations are on the DuPage County Election

or Cook County Election websites. Registration to vote can be done online on the Illinois State Board of Elections website, by mail or in person at locations identified on the Cook and DuPage County websites.

CITIZENS' PETITIONS

None.

FIRST READINGS – INTRODUCTION

Zoning and Public Safety (Chair Stifflear)

- a) **Approve payment to Thomas Dodge Chrysler, Highland, IN, for the purchase of five (5) new patrol fleet vehicles in the amount of \$197,601.**

Trustee Stifflear introduced the item. He explained that supply chain issues in 2021 and 2022 with the Ford Police Interceptors led to the delay and the eventual cancellation of three squad cars, one from 2021 and three from 2022. These cars were previously approved for purchase by the Village Board. Due to the cancellations, the CY 2023 CIP contains a total of four cars for replacement. The fifth car that the Village is requesting be replaced as part of this purchase was ordered in 2022 and due to be delivered and paid for at the end of CY 2022 but was cancelled in the last weeks of December without enough time to re-budget for 2023. Unspent funds remain available. Trustee Stifflear stated that this request is consistent with the Capital Improvement Plan (CIP). The current vendor, Thomas Dodge, anticipates delivery of these squads sometime after June of 2023. The vendor has participated in a purchasing cooperative through the Southwest Conference of Mayors and as such the Village received competitive pricing. The Village of Hinsdale's historical vendor, Currie Motors, was not offering competitive bids and would not guarantee delivery of police vehicles in 2023. The cost savings to the Village by ordering squads through Thomas Dodge is approximately \$50,000. Police Chief Brian King said he visited municipalities that were using Dodge Durangos and there were no operational issues other than the potential need for different brackets for equipment. Trustee Stifflear stated that Thomas Dodge was the only dealer who could guarantee delivery of vehicles in 2023. He also noted that this request did not include the cost of outfitting the squad cars.

The Board agreed to move this item to the consent agenda at their next meeting.

Environment & Public Services (Chair Byrnes)

- b) **Award a Year 3 Extension for the Elm Tree Treatment Contract #1676 to Kinnucan Tree Experts and Landscape Company in the bid comparison amount of \$11.42 per inch not to exceed the budgeted amount of \$137,930.76 in the Calendar Year 2023 Budget.**

Trustee Byrnes introduced the item. He stated this is the third-year extension of the contract; Kinnucan provided elm injection services to the Village of Hinsdale in 2021 and 2022. Kinnucan agreed to the contract requirement of maintaining unit pricing for this third-year extension.

The Board agreed to move this item to the consent agenda at their next meeting.

CONSENT AGENDA

Administration & Community Affairs (Chair Posthuma)

- a) Trustee Posthuma moved to **Approve payment of the accounts payable for the period of January 12, 2023 through January 25, 2023 in the aggregate amount of \$738,338.20 as set forth on the list provided by the Village Treasurer, of which a permanent copy is on file with the Village Clerk.** Trustee Banke seconded the motion.

AYES: Trustees Posthuma, Haarlow, Stifflear, Fisher, Byrnes, Banke

NAYS: None

ABSTAIN: None

ABSENT: None

Motion carried.

SECOND READINGS / NON-CONSENT AGENDA – ADOPTION

Zoning & Public Safety (Chair Stifflear)

- a) **Approve global settlement of United States v. Village of Hinsdale and Trinity v. Village of Hinsdale through Consent Decree and related releases, resolving various disability-related discrimination claims.**

President Cauley reported that the Village reached an agreement to settle the case brought against the Village by Trinity Sober Living and the U.S. Department of Justice concerning a home at 111 N. Grant, subject to the Board's approval. He stated the Board had discussed this matter at length in closed session. President Cauley explained that Trinity had purchased a home at 111 N. Grant with the purpose of housing up to 10 residents recovering from drug and alcohol addiction and one house manager. Trinity has since sold the home but continued litigation. The Village agreed to settle the case only because it had become too costly for the Village to litigate. The federal government took over the litigation on Trinity's behalf. President Cauley said the federal government took depositions from him and from staff members and neighbors of 111 N. Grant. He stated Federal Magistrate Judge Cole found the federal government had made the case extremely expensive for Hinsdale and he denied the government's request to reopen fact discovery in an attempt to get more fact discovery after that time had closed. Magistrate Judge Cole put a stop to the government's tactics during fact discovery stating: "The government has reaped thousands of pages of discovery and hours of testimony regarding the plaintiff, a single sober living facility on a residential block in a small suburb. At this point it delves into information on the peripheries and is leaving proportionality in the rear-view mirror. The time has come after giving the government the benefit of the doubt more than once over defendant's objection to say enough is enough." Magistrate Judge Cole likened the federal government's discovery against Hinsdale to a "runaway train" and a "monster on the loose". President Cauley said there was little doubt in his mind that the federal government would make future litigation steps as costly as possible and it was in

Hinsdale's best interest to settle litigation now. He explained the case was never about the Village not welcoming those with disabilities to its community; all are welcome in Hinsdale. The Board recognizes its obligation under the American's With Disabilities Act to make reasonable accommodations by providing zoning relief, where appropriate, to those with disabilities. He stated this case was always about the authority of a local government, Hinsdale, to control its own zoning laws in the first instance and about the ability of a local government, Hinsdale, to determine in the first instance if a request for accommodation is reasonable. Trinity bypassed the Village Board and never gave local government the opportunity to do its job. Trinity bought the home and secretly started a sober living facility without ever coming to the Village. Neighbors of 111 N. Grant brought the matter to the Village's attention. The Village advised Trinity that the zoning code prohibits more than three unrelated people living in a single-family home in a single-family residential district without receiving prior approval from the Village for a reasonable accommodation. The Village advised Trinity to come to the Board to request a reasonable accommodation. Trinity's lawyers responded with a letter stating that ten individuals living in the home would be the "functional equivalent of a family" so the group home did not violate the Zoning Code. The letter also stated the Zoning Code's definition of a "family" was "not rational" and was unenforceable under federal law. The letter indicated Trinity had no plans to enter into any discussions with the Village and the only option was for the Village to capitulate to Trinity's demands. The Village's attorney advised Trinity to come to the Village Board with their request for reasonable accommodation and informed them they could not add more residents to the home until the issue had been addressed by the Village. Because Trinity did not agree to maintain the status quo and refused to come to the Village Board, the Village brought suit against Trinity in State court alleging that they planned to violate the zoning code. The federal judge handling the Trinity case recently denied Trinity's efforts to amend their case to add a retaliation claim. Trinity claimed the Village's case was a sham and was brought against Trinity to retaliate against them for opening a sober living home. In denying Trinity's request, the federal judge stated "Trinity had already indicated its plans to house ten unrelated residents. While there was only one resident at the time the suit was filed by Hinsdale, nothing prevented the Village from filing a preemptive suit. As Trinity admits, absent accommodation, its group home would violate the zoning code. Consequently, the court concludes the plaintiff, Trinity, failed to plausibly allege that the Village's State court action was a sham." After Hinsdale brought its State court action against Trinity in Wheaton for planning to violate the zoning code, Trinity then brought a claim against the Village for discrimination under the Americans With Disabilities Act in federal court and convinced the U.S. Justice Department to bring a suit against the Village too. President Cauley stated this was Trinity's plan all along. During discovery, the Village uncovered an email from the owner of Trinity, Michael Owens, discussing setting up a group home "under the radar" and when the town objects, suing for damages in federal court claiming discrimination. President Cauley explained Owens never had any intention of working with the Village and the federal government agreed that Trinity could bypass the Village Board and open a group home without coming before the Village Board. He said he strongly believes the Village and Board have legitimate interest in protecting the Zoning Code. The Board realizes its obligation under federal law to grant reasonable accommodations to those with disabilities in appropriate circumstances, but the Village Board has the right to determine in the first instance if the requested accommodation is reasonable. If Mr. Owens had come to the Village Board, the Board would have discussed

his plans and attempted to reach an agreement. He stated the Village Board is responsible for ensuring the welfare and the safety of the community and are also responsible for enforcing the Zoning Code and making reasonable exceptions to the Code in appropriate circumstances. He noted there are no regulations governing group homes in Illinois, making the local government the only protector of the community's interests in connection with group homes. Had Mr. Owens come to the Board, he would have been asked questions such as what is the therapeutic benefit of having 10 people recovering from drug or alcohol abuse living together, what procedures are in place to ensure drugs or alcohol would not be brought into the home, what are the qualifications and responsibilities of the house manager, will there be a parking problem, can the residents have visitors and where would they park. The federal government and Owens took the position that Owens could simply bypass the Board. President Cauley stated this was not right and makes for terrible policy with implications going far beyond the instant case. If zoning decisions are made by property owners and government lawyers in Washington D.C. instead of in the first instance by local governments, the ability of residents to rely on local zoning and local elected officials to enforce local zoning laws would be undermined. He said the Village was able to settle with the federal government on terms that maintain the fundamental character of the Village's Zoning Code. The Village also agreed to pay Owens a substantial sum, but the sum is far less than legal fees would have been the case had gone to trial. As part of the settlement, the Village agreed to a Consent Decree with the federal government. The Consent Decree does not really change anything, but it does create paperwork and requires the Village to adopt bureaucratic procedures. President Cauley said in the sixteen years he has been Village President he only recalled two situations involving the Americans With Disabilities Act, one being Trinity. The other situation involved a resident who followed proper procedure making a request for zoning relief as a reasonable accommodation under the Americans With Disabilities Act, which the Board quickly granted in a single meeting. The Consent Decree still allows the Village to enforce the Zoning Code provisions that no more than three unrelated people can live in a home in a single-family residential district. Section 8 of the Consent Decree states the Village shall allow group homes for persons with disabilities "provided that the number of unrelated residents in home does not exceed the Village's limit of unrelated residents in a dwelling for persons without disabilities". Section 8 of the Consent Decree also states that "nothing herein shall prohibit the Village from adopting regulations or restrictions on the use of residential property based on the number of unrelated residents provided that such a restriction is neutral as to the disability and not applied in a discriminatory manner". President Cauley stated if the Consent Decree had been in place when Trinity came to Hinsdale, everything the Village did from a substantive nature would have been consistent with the Consent Decree. The federal government would not settle the case unless the Village settled with Owens. In order to settle the case, based on the advice of the Village's insurance carrier, IRMA, the Village agreed to pay Mr. Owens \$790,000 to settle. The Village agreed to this only to avoid spending more money on litigation. The settlement will be paid by excess reserves on deposit with IRMA and from the Village's general funds. The Village also agreed to pay the federal government \$10,000.

Trustee Posthuma asked when the zoning changes will take effect and Village Manager Kathleen Gargano stated the Village had outlined the series of steps the Village needed to take to be compliant with the Consent Decree.

Trustee Stifflear asked if the Consent Decree specifically supports that the Village limit is three unrelated residents and President Cauley replied it must be kept to three people and a request for accommodation can be made. He said the Consent Decree makes it clear it is appropriate for the Village to limit to three unrelated people in a single residential home. President Cauley clarified there are two agreements, the Consent Decree and a separate release with Trinity.

A motion was made by Trustee Stifflear to **Approve global settlement of United States v. Village of Hinsdale and Trinity v. Village of Hinsdale through Consent Decree and related releases, resolving various disability-related discrimination claims**, Trustee Banke seconded the motion.

AYES: Trustees Posthuma, Haarlow, Stifflear, Fisher, Byrnes, Banke
NAYS: None
ABSTAIN: None
ABSENT: None

Motion carried

DISCUSSION ITEMS

DEPARTMENT AND STAFF REPORTS

None.

REPORTS FROM ADVISORY BOARDS AND COMMISSIONS

No reports.

CITIZENS' PETITIONS

None.

TRUSTEE COMMENTS

None.

ADJOURNMENT

There being no further business before the Board, President Cauley asked for a motion to adjourn the meeting. Trustee Banke moved to adjourn the meeting. Trustee Byrnes seconded the motion.

AYES: Trustees Posthuma, Haarlow, Stifflear, Fisher, Byrnes, Banke
NAYS: None
ABSTAIN: None
ABSENT: None

Motion carried.

Meeting adjourned at 7:29 p.m.

ATTEST: _____
Andrianna Peterson, Acting Village Clerk