

**VILLAGE OF JOHNSBURG
SEPTEMBER 20, 2012 REGULAR MEETING OF THE
PRESIDENT AND BOARD OF TRUSTEES**

President Hettermann called the meeting to order at 7:37 p.m. in the Village Hall.

Attendees

Trustee John Huemann
Trustee Kevin McEvoy
Trustee Mary Lou Hutchinson (absent)
Trustee Janice Sisk (absent)
Trustee Ron Zanko (absent)
Trustee Rich Janusz
Village Attorney Michael Smoron
Special Projects Coordinator Rick Quinn

FROM THE FLOOR – Stephen Tomory of 1615 River Terrace was in attendance regarding a private easement lot for use by residents in his subdivision. He explained that he is experiencing an issue with a resident from a neighboring subdivision who, he maintains, has been belligerent and hostile and has done damage to the property over the past several years. He explained that the Village has maintained that it is a civil matter yet they have informed the police that the property is a right of way. He stated that because of the inconsistent representations, he believes the Village is setting itself up to be involved in a civil litigation. When questioned who stated it was a right of way, Mr. Tomory stated that police officers have informed him that the Village's administration have stated that it is a public right of way. Attorney Smoron explained that he does not believe the Village has taken that position and it is not up to the Village to take a position on title matters adding that they are civil matters. He further explained that allegations of criminal conduct referred to in Mr. Tomory's recent letter can be raised with the State's Attorney's office pointing out that the State's Attorney's office prosecuted the person in question in the past but the jury did not find the complaint credible. Attorney Smoron again explained it is a civil matter and it is not the Village's position to interpret easements and the rights of the individuals to use them. Mr. Tomory maintained that the behavior is criminal and should be prosecuted. Attorney Smoron reiterated that the police department investigated the complaints in the past and turned the matter over to the State's Attorney's office and the matter went to trial. A neighbor, Margaret Haney was in attendance and stated that the matter Mr. Smoron was referring to was related to her property at 1612 Bolling Avenue, not Lot 17. Attorney Smoron explained that it may not have been on the same property but they were the same allegations against the same individual which resulted in a jury trial at which the jury found the complainant wanting and the allegations not credible.

Trustee McEvoy requested some background information on the matter. Mr. Tomory explained that when his subdivision was established, three lots were set aside with easements for use by residents of the subdivision. One such lot was actually platted as a beach lot. Mr. Tomory represented that the properties were originally deeded to the Millers who conveyed them to their heirs who placed them in a trust which was later conveyed to another trust. The properties were then conveyed to a trust for which the trustee was Paul Swanson, the developer of Chapel Hill Estates. Mr. Tomory stated that the original plat which included the easements was vacated. Mr. Tomory explained that he approached Mr. Swanson and purchased the property which

includes an easement for access to the river. Attorney Smoron explained that while some parties maintain that the easements are for the benefit of only certain residents, others have maintained that they have utilized the properties for greater than 20 years and have rights to use them. He again explained that it is a civil matter for which the Village continues to get placed in the middle. Mr. Smoron explained that one of Mrs. Haney's previous attorneys opined that the cost of a civil action could be as much as \$25,000 which he does not recommend the Village pursue since it is a private matter. He further advised that misrepresentations regarding the right of way in the area resulted in a suit being brought against the Village for which the Village recently prevailed after more than 18 months of delays and continuances brought about by the Plaintiffs in the matter. Mrs. Haney stated that the Village President and Village Administrator have informed police officers that Lot 17 is a public right of way. She added that residents of John Miller 1, John Miller 2 and Buena Park subdivision have the right to use Lot 17 and they have not interfered with their use of the property but residents of Chapel Hill Estates do not have rights to the easements.

Trustee Janusz stated that if Mr. Coughlin does not possess a deed that represents that he has rights to the easement lot then the matter seems very clear. Trustee McEvoy pointed out that nonetheless, it is still a civil matter and not for the Village to decide. Attorney Smoron added that Mr. Coughlin and others maintain that they have rights to the property because of their ongoing use of the property for more than twenty years. Mr. Tomory stated that there is an easement on the property but the Village maintains that it is a public right of way. President Hettermann questioned statements made by Mrs. Haney that he and the Village Administrator have stated that the property is public right of way. He clarified that those statements were not made. Mrs. Haney stated that the representations were made in police reports. Mrs. Haney asked if the police reports can be brought back before the board and changed if there is a misunderstanding about what is represented in the report. Attorney Smoron pointed out that representations have been made at the meeting that residents of some subdivisions have the right to utilize the property therefore they would seemingly be public right of way. He further explained that the police department is not a title company and it is not for them to determine property rights. Mr. Tomory stated that the Village is treating criminal activity as a civil matter. Attorney Smoron explained that the State's Attorney's office has taken action against alleged criminal activities in the past and a jury determined them not to be credible. Attorney Smoron explained that he does not believe the Village wishes to get involved as they were sued a year and a half ago over right of way issues which the Circuit Court recently ruled is indeed a public right of way. He added that based upon statements made by Mr. Tomory, they are right of way and it is unrealistic to expect the police department to have to determine who can and who cannot access the property.

Mrs. Haney stated that it is inappropriate for the Village to continue to say that it is a public right of way and not pursue trespassing complaints on the property. Attorney Smoron explained that given the history of the allegations and what has resulted, it is not in the Village's best interest to get involved. Trustee Janusz suggested that the police reports be changed given the conflicting information allegedly included in them. Mrs. Haney stated that if the Village is going to take the position that they are not going to get involved then they should not be telling the police that it is right of way. She suggested that the police reports be brought to the next board meeting and changed. Attorney Smoron stated that he does not wish to provide Mrs. Haney another pretense by which she sues the Village. Mrs. Haney maintained that she is not going to sue the Village but she is trying to prevent an opportunity for Mr. Coughlin to increase the damage he has done. Attorney Smoron explained that the basis of Mrs. Haney's quiet title suit against the Village was a statement in a police report which maintained that there was an issue in which a shrub in a

public right of way was destroyed by an individual. Mrs. Haney stated that on August 20th the court did rule that the property was a public right of way but Attorney Smoron lied to the judge otherwise she would have received the citation which she received on August 20th twenty years ago when the property was annexed into the Village or at the time that Ms. Peters sent out a letter stating that it was a public right of way. Mrs. Haney stated that for 6 ½ years and 17 police reports the Village Administrator and Village President have told the police that there is a public right of way over the property. President Hettermann explained that it is a civil matter and the Village is not a title company capable of insuring property rights. He added that if there is a threat of someone's safety, the Police Department will respond. Trustee Janusz stated that if there is information in a police report that indicates that the Village has informed the police department that the property is public right of way and the President and Administrator maintain that they have not advised the police of that, he believes it should be corrected.

President Hettermann explained that the Village is not a judge and even though Mr. Tomory and Mrs. Haney believe the use of the property is limited, it is a civil matter and not for the Village to decide. He further explained that another resident has maintained that he has the right to access the property. Mr. Tomory stated that he is asking the Village to stay out of the matter but the police have told him and other parties the property is public right of way. He asked that the Village not tell the police that it is public right of way. President Hettermann questioned Mr. Tomory's request as he has acknowledged that there is a public easement on the property utilized by three subdivisions of residents. Mr. Tomory stated that it is a private right of way.

Trustee McEvoy explained that any alleged trespass is a civil matter in which the Village cannot intervene however the police, as always, will respond to concerns regarding public safety. President Hettermann concurred summarizing that public or private, there is an easement on the property. Mrs. Haney stated that part of the problem is that the Village has stated that it is public right of way through representations to the police department which is reflected in police reports. President Hettermann iterated that there is right of way on the property. Mrs. Haney argued that there is not. President Hettermann pointed out that she and Mr. Tomory have repeatedly acknowledged at the meeting that there is a public right of way. Mr. Tomory stated that he only wants the Village to acknowledge consistently that it is a civil matter. Attorney Smoron stated for the record that it is a civil matter. If there is a question of public safety, the Village will respond. Everyone concurred that there is a right of way and President Hettermann explained that the Village is not going to get involved in determining who has rights to it.

OMNIBUS AGENDA – Trustee Huemann moved to approve the Omnibus Agenda. Trustee Janusz seconded the motion. Trustees McEvoy, Huemann, Janusz and President Hettermann voted aye. Motion carried.

BANK LOAN- Trustee Huemann moved to approve a line of credit loan with the State Bank Group in the amount of \$500,000. Trustee Janusz seconded the motion. Trustees McEvoy, Huemann, Janusz and President Hettermann voted aye. Motion carried.

ORDINANCE 11-12-07 AMENDING SECTION 15.3 - The Board performed a first review of an ordinance amending Section 15.3 of the Johnsburg Zoning Ordinance regarding notice of public meetings. Ms. Peters explained that the amendments incorporate changes made by the State.

ADJOURNMENT – Trustee Huemann moved to adjourn. Trustee McEvoy seconded the motion. All Trustees present voted aye. Motion carried at 8:45 p.m.

Respectfully Submitted

Claudett E. Peters
Village Administrator