



Village of Bourbonnais

REGULAR VILLAGE BOARD MEETING ~ MINUTES ~

November 2, 2009

CALL TO ORDER: Village President Paul Schore called the meeting to order at 6:00 p.m. The Pledge of Allegiance was led by Brandon Wray, a 4th grader in Mrs. Brammer's class at Noel LeVasseur Elementary School.

1. ROLL CALL: Village Clerk Brian Simeur called roll with the following Trustees present: Trustee Gary Residori, Trustee Vera Amiano, Trustee Bruce Greenlee, Trustee Scott Byrne, Trustee Wayne Baranowski and Trustee Rick Fischer. Also in attendance were Village Treasurer Ron Riebe, Village Attorney Patrick Dunn and Village Administrator Gregg Spathis.

2. APPROVAL OF MINUTES: Motion made by Trustee Amiano, seconded by Trustee Fischer, to suspend the reading and approve the minutes of the October 19, 2009 Regular Board Meeting minutes. Motion passed on a voice vote of 6-0.

✚ Special presentation to the Village of Bourbonnais.

- General Kotter presented the Village of Bourbonnais with an Army Reserve Covenant; as a thank you to the community for its support of the Army Reserve families. Mayor Schore thanked General Kotter for the honor and presented the General with a pin from the Village of Bourbonnais.

✚ Oath of office- Patrolman Dan Johnson: Following the administration of the oath by Village Clerk Simeur, Patrolman Johnson was given a warm welcome by the board.

3. REPORTS FROM COMMISSIONS AND ADVISORY BOARDS: none.

4. BIDS AND QUOTES: none.

5. CORRESPONDENCE: none.

6. FINANCE COMMITTEE
Trustee Vera Amiano, Chair

a. Consideration to Approve Accounts Payable dated November 2, 2009:

Motion made by Trustee Amiano, seconded by Trustee Greenlee, to approve Accounts Payable.

Roll call vote:	Trustee Residori - Aye	Trustee Byrne - Aye
	Trustee Amiano - Aye	Trustee Baranowski - Aye
	Trustee Greenlee - Aye	Trustee Fischer - Aye

Motion passed on a vote of 6-0.

b. September 2009 Treasurer's Report:

Following a summary of the Treasury Report by Village Treasurer Riebe, a motion made by Trustee Amiano, seconded by Trustee Fischer, to accept the September 2009 unaudited Treasurer's Report (copy attached). Motion passed on a voice vote of 6-0.

c. Ordinance 09-1833 (An Ordinance Authorizing the Execution of the Illinois Municipal League Risk Management Association Minimum / Maximum Contribution Agreement (2009/2010). First Reading.

7. **POLICE COMMITTEE:**

Trustee Bruce Greenlee, Chair

- Trustee Greenlee stated that during a recent power outage, the traffic light back-up system worked very well in keeping the lights active.

8. **COMMUNITY & ECONOMIC DEVELOPMENT: none.**

Trustee Vera Amiano, Chair

9. **PUBLIC WORKS COMMITTEE:**

Trustee Gary Residori, Chair

Trustee Residori reported the following:

- 6000 Rd North is being repaired this week.
- Burns Road work is going well.

a. Ordinance 09-1831 (An Ordinance Ascertaining the Prevailing Wages for Public Works of the Village of Bourbonnais, Kankakee County, Illinois). Second Reading.

Motion made by Trustee Residori, seconded by Trustee Byrne, to read said ordinance by title only. Motion passed on a voice vote of 6-0.

Motion made by Trustee Residori, seconded by Trustee Byrne, to adopt said ordinance.

Roll call vote:	Trustee Residori - Aye	Trustee Byrne - Aye
	Trustee Amiano - Aye	Trustee Baranowski - Aye
	Trustee Greenlee - Nay	Trustee Fischer - Aye

Motion passed on a vote of 5-1.

- Mayor Schore thanked Public Works for their efforts during the recent rains the village experienced.

10. **PARKS & RECREATION COMMITTEE: none.**
Trustee Wayne Baranowski, Chair
11. **FRANCHISE, LICENSE & ADMINISTRATION: none.**
Trustee Wayne Baranowski, Chair
12. **ANNEXATION, BUILDING & ZONING COMMITTEE: none.**
Trustee Scott Byrne, Chair
13. **COMMUNITY AFFAIRS & SERVICES COMMITTEE:**
Trustee Vera Amiano, Chair
 - Trustee Amiano reported that the Community Prayer Breakfast will be on Saturday, March 27, 2010.
14. **UTILITY COMMITTEE:**
Trustee Gary Residori, Chair
 - Trustee Residori reported that the Arrowhead sewer project is now complete.
15. **BUILDINGS & GROUNDS COMMITTEE: none.**
Trustee Scott Byrne, Chair
16. **COMMITTEE MEETINGS SET:**
 - Annexation Building & Zoning - Monday, November 9, 2009 at 4:00 p.m.
 - Finance - Thursday, November 12, 2009 @ 4:15 p.m.
 - Community Economic & Development- Thursday, November 12, 2009 @ 4:30 p.m.
17. **VILLAGE ADMINISTRATOR'S REPORT: none.**
Gregg Spathis, Administrator
18. **VILLAGE ATTORNEY'S REPORT: none.**
Patrick Dunn, Attorney
19. **VILLAGE PRESIDENT'S REPORT:**
Paul Schore, Village President
 - Mayor Schore reported on the following:
 - The utility companies are finishing their work on Armour Road. Road work will not happen until the spring.
 - A couple of drainage projects will be started throughout the Village this month.
20. **OLD BUSINESS: none.**

21. NEW BUSINESS:

- Trustee Residori said that the renovation of the old Kroger is really looking good.
- Mayor Schore said that last week he met with the local realtors and property owners on the Village's Home and Building inspection ordinance.

22. PUBLIC COMMENTS:

- Tom Joseph on behalf of the Kankakee County Realtors provided a hand out to the board (copy attached) and was at the meeting to address village inspections and more specifically, ordinance 09-1818. Mr. Joseph said the group he is representing is concerned about the escrow process and any changes that could be made to allow for temporary occupancy.

Mr. Joseph appreciates the Mayor's sensitivity to the situation, but he feels that the village ordinance on inspections needs to be amended.

- Mayor Schore remarked that he felt that the meeting he had recently with the group was really good.
- Rhonda Tatum of 683 Woodstock Lane thanked the mayor and board for their consideration on this subject matter.
- Ernie Manchand of 1240 Plum Creek Drive noted his concerns about the matter.
- Jeff Gorotevant of 297 S. Schuyler asked what was the status of ordinance 09-1818. Mayor Schore said that it was approved but has not been implemented yet.

23. ADJOURNMENT:

A motion was made by Trustee Residori, seconded by Trustee Byrne, to adjourn the regular board meeting. Motion passed on a voice vote of 6-0. The meeting adjourned at 6:31 p.m.

Respectfully Submitted by:



Brian Simeur
Village Clerk



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10/30/09

Sent via fax/e-mail

**Mayor Paul Schore
Village of Bourbonnais
700 Main St N.W.
Bourbonnais, Il. 60914**

Hon. Mayor Schore:

On behalf of the Kankakee County Association of REALTORS® and the Illinois Association of REALTORS® allow me to thank you once again for visiting with us on Wednesday, Oct. 28th, to review ordinance #09-1818.

This ordinance has to do with the issuance of a certificate of occupancy in reference to single-family housing and multi-family units. It specifically calls for a deliberate inspection process which allows the village to deny rental or single family occupancy while going through a specific check list called for by the village inspection.

REALTORS® represent “buyers and sellers” and in doing so are “advocates” for property rights. This ordinance that has been suspended for the time being has raised concerns related to its application and how it may regulate the transfer of property. Bourbonnais is a non-home rule village and is to act under the laws of the state.

In reference to Section 7-302, the ordinance states: “No owner agent, entity, or person in charge of an existing single-family or multi-family dwelling unit shall sell, rent or allow any person to occupy the same as an owner, occupant or lessee unless such person has been issued a certificate of occupancy by the Village of Bourbonnais Inspector.” This language allows the municipality the power to prohibit the sale if there is not compliance with the ordinance.

We believe that property has the right to transfer without village regulation. We also are concerned that this ordinance as outlined, places an “unreasonable restraint on alienation.” The Illinois Attorney General opinion No. 94-204, in which the A.G. stated that an attempt to make alienability subject to municipal regulation exceeds the municipality’s powers.

Ordinances must be grounded in the police power and may be enforced through permits, fees and fines, not by limiting alienability of property. In *Gale v. York Center Community Cooperative, Inc* 21 Ill. 2d (1960), restraints on alienation are void. A non home rule municipality cannot stop the transfer of power per regulation. In *Petropoulos v. City of Chicago*, 5 Ill. 2d 270 (1955), stopping property from selling is not permitted. To place a legal restriction on the use of such property to the extent that the same is rendered practically unsalable would be an utter violation of a man's right to alienate property.

Under this ordinance, the certificate could be denied for not following the IPMC and or a village code. The Attorney General opinion #94-024 protects the "transfer" of property. Furthermore, property owners have a right to transfer property with "as is" agreements and, in doing so, understand that their may be deficiencies related. Buyers and sellers have private home inspections by licensed state inspectors.

We would recommend for this ordinance's purpose that the certificate outline be deleted to avoid any regulating of transfer and/or rental. We would also recommend that the ordinance be amended and separate the rental inspection from the single family inspection. Also, consider that 2 different check lists be used after they are clarified further and revised based upon our discussions. The inspections should not focus on aesthetics and or cosmetics. Inspections in general, if to be applied, should focus on the most serious health and safety related issues on roofing, plumbing, electrical, heating and cooling. It should be limited to basic habitability.

Section 7-304: Similar for rental properties as well. It also calls for a new certificate occupancy each time rental changes occupancy, which may happen more than once a year. It also calls for certificate of occupancy no less than 14 days in advance. This will lead to rental and or single-family units landlords losing the opportunity to occupy units and limit income and create vacancies along with hardship of non rentals.

Sect 304-1: For owner occupied application must be made 14 days in advance and/or 3 months prior with fees applied.

7-304-2: For rental dwelling no less than 7 days and no more than 3 months prior to occupancy. Both of these sections will create challenges for owners and landlords as they may be dealing in cash deals and/or may look to move the property in a more timely manner.

7-305, inspections: Upon notification, an inspection should be able to take place within 3 days or less. Waiting up to 5 days after contacted and then scheduled is not recommended.

7-306 a: Within 3 days, the inspector shall deny or grant certificate. We recommend that occupancy certificate be deleted but property owner should be informed within 1 day, so they can continue in time sensitive market.

b. Pending, Property owner should not be told to correct in certain amount of time. Upon completion, property owner should contact for re-inspection based upon original report. No new items. Re-inspection should take place within 3 days of notification.

c and d. Any property owner should have the ability to appeal any inspection in a pre-deprivation hearing within a most timely manner that is time sensitive for market purposes.

Once notified, they should have the right to meet with committee under appeal . Also, a post appeal should be allowed for as well.

e. Recommend, Temporary Occupancy Permit should be offered for a 90-day period or more to correct basic violations under health and safety as outlined above. All escrow provisions as outlined in Section E should be deleted.

Section 704-2. Search of property for either single family and or rental must be sought under the U. S. Constitution and the 4th amendment. This ordinance as outlined places a \$60.00 administrative fee upon the occupant if they invoke the 4th amendment. Furthermore, the application for inspection needs to spell out that consent is sought to enter from occupant and owner for rental and property owner for single family. In U. S. Supreme Court, Camara v. Municipal Court of the City and County San Francisco, 387 U. S. 523 (1967), the Supreme Court ruled that owner of property can refuse to consent to an inspection in absence of administrative search. Furthermore, penalizing someone for applying their constitutional right is a violation. In Black v. Park Forest, 20 F. Supp 2d 1218 (N.D. Ill 1998), the court ruled it is unconstitutional on its face. Also in Black, it stipulates that the tenant, not just the landlord, must provide consent.

Furthermore, the Camara and the Black cases speak to limiting searches to reasonable restrictions. We have discussed with you limiting the inspections and the need to clarify how frequent which are part of the reasonableness aspects. If there was a sale or a change in the occupancy of the unit multiple times in one year, there would have to be an inspection and the issuance of the occupancy certificate each time as outlined. Lastly, the non issuance of a certificate should only deal with life and safety matters related to habitability.

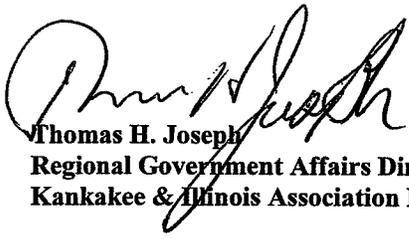
The letter dated the 21st of October addresses the concerns related to the check list. Sewer bills are a part of the village and Illinois law speaks to your governing of them. They are not a part of the point of sale. Regular code enforcement allows you to address the items listed on the check list for exterior related enforcement under the municipal code. Exterior 4 and 5 are still concerns as to how applied. 8 and 9 are the same. 11. Buyer may recondition all of these items. As for interior, it should focus on the most basic application of roofing, electrical, plumbing, heating and cooling. Buyer may rearrange the home internally so stating that it has to be painted or else only adds to costs.

We suggest that you consider amendments that would:

- 1. Delete the certificate of occupancy provision**
- 2. Amend other suggested concerns noted above**
- 3. Allow for a temporary occupancy permit of 90 days while deleting escrow outline as this would ensure "as is" transaction and allow time to correct.**
- 4. Revising time line of days or deleting them**
- 5. Allowing for pre and post appeal**
- 6. Making clear the 4th amendment consent provisions without fee.**

We will be glad to continue to review this with you and the village Trustees going forward, as we appreciate the dialogue and constructive review.

Respectfully Yours,



Thomas H. Joseph
Regional Government Affairs Director,
Kankakee & Illinois Association REALTORS®

c.c **KCAR,**
Trustees,
Village Clerk



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10/21/09

Sent via fax/e-mail

Hon: Mayor Schore
Village of Bourbonnais
Bourbonnais, Il.

Honorable Mayor Schore :

I have been provided a copy of a cover letter dated Oct. 15, 2009 which includes an occupancy inspection process letter , FAQ's regarding occupancy inspections, applications for rental and new buyer information along with a long list of a 25 point inspection check list from the village of Bourbonnais. This was provided by another party and not to my attention nor the Kankakee County Association of REALTORS®, which represents the REALTORS® directly throughout the overall region. This is a result of ordinance #09-1818 which passed in September 2009.

In reference to the occupancy inspection process letter :

1, That the application for change of occupancy is required for owner occupancy or rental occupancy change. As a non home rule authority it is not clear under what law you are allowed to pursue this. 2, As for the preliminary steps under 2. a , b. Sewer bills are the responsibility of the owner, the village has the ability to make sure these bills are current. They are not to be a part of the for sale inspection or rental process. State law is specific in this matter as to how a village is to govern itself. b., Regular Code enforcement allows for unpaid permits, violations and or property maintenance to be pursued. Division 31 of the municipal code allows you to pursue appropriate code enforcement which allows " liens" to be placed. In both examples outlined in the letter and here if a property is abandoned and or foreclosed and is placed on the market by mortgagee or title holder it will not have anyone to pay for these items as the ordinance calls for until a buyer steps forward. Furthermore, someone who is attempting to sell may be facing severe hardship and may be limited in means as well. This may cause an even greater impediment to find a buyer.

5. To place an artificial time table as to when all corrections are to be made in this case 30 days is unrealistic. Not all sellers may be able to comply and not all buyers may be able to agree in doing so and furthermore even if a buyer can do so financially they may be limited at that time. Also, contractors quotes may take 2 weeks or longer and depending on the type of work needed and scheduling them can take additional days depending on how much is needed and the cost related to it.

6. As for security or escrow established, once again being able to provide that can be extremely challenging for many and the present market timing is not helpful. a, demonstrates the challenges in doing so.

Every owner of property who may wish to sell with a willing buyer have a right to engage in an " as is " transaction and in doing so have the right to reach agreement. Illinois law allows for this along with case law. Which directly speaks to 6 , 7.

FAQ's.

References the IPMC. It is not realistic to think that homes that are older in model preceding construction in the last 20 years or older are going to be able to meet that standard of new construction. The village goal should be general habitability and safety. Not a new construction code.

New buyer information application. Requesting the name of the buyer and other info before they purchase the property is not looked upon as information that is to be disbursed under federal housing and privacy laws. Once a transaction is completed this information can be made public as new occupant will have to step forward.

Occupancy Check Report

This list consists of 23 -25 items that apparently must be conducted to reach village authority to proceed. Several items may be changed by the buyer after purchase as they may re-arrange the home based upon the desire to occupy it.

Exterior Example, 4 and 5. Buyer may rearrange this list and or list 5 after purchase and in doing so substantively change the appearance. This list maintains that seller has to address these items and in doing so may have to expend significantly to gain approval after in which buyer may rearrange. 8 and 9 exterior do not demonstrate a health and safety concern only a desire to maintain an appearance. As long as they are functionally safe it is appropriate.

11. Relates to 4 and 5 exterior. As long as it is safe it should not be an issue. Buyer can re-condition the home even after all of these items are addressed.

14. To be defined. 15. Same as 14.

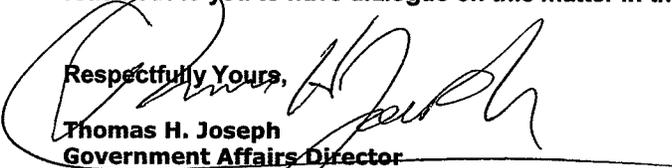
In general terms health and safety inspection such as electrical, plumbing, sewer , roofing & heating/cooling is more understandable. Based upon the Ordinance that was passed and the references to the IPMC in the ordinance and the written outline this effort potentially looks like it will create an impediment to transact as it focuses on point of sale, instead of regular code enforcement. Which the village is granted under division 31 of the municipal code.

The current health of the housing market continues to be at great risk as it is extremely challenging to bring buyers and sellers together. Lending continues to be a challenge as buyers continue to face challenges. REALTORS® who represent both and are advocates on behalf of are attempting to help this process which helps communities. Due to this sudden application property closings scheduled in advance are now in jeopardy.

The Kankakee County Assoc. REALTORS® will continue to monitor and engage this issue as property rights and the right of transfer is something we monitor closely. It would have been more productive to share these views before something was passed. Furthermore, a specific window period should be offered to allow for this process to be applied as a learning curve and implementation is needed. Throwing a net on the process without any ability to prepare for it does not help the market place as properties have closing dates with contingent financing in line and a expiring first time home buyer tax credit.

The substantive ordinance is what we are very concerned about as the village attempts to regulate the transfer of property. Lastly, I serve as the government affairs contact and have attempted to reach out to you to have dialogue on this matter in the past month, I await hearing back from you.

Respectfully Yours,



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