

**APPROVED MINUTES OF THE SPECIAL MEETING
OF THE BOARD OF TRUSTEES OF THE VILLAGE OF OAK PARK
HELD ON MONDAY, OCTOBER 12TH, 2009 AT 7:00 P.M.
IN ROOM 101 OF OAK PARK VILLAGE HALL**

OFFICIAL RECORD:

PRESENT: Trustees Hedges, Johnson and Lueck; President Pope

ABSENT: Trustees Brewer, Hale and Pate

ALSO PRESENT: Deputy Village Manager Lisa Shelley, Village Attorney Ray Heise, Communications Director David Powers, Brian T. Grogan of Moss & Barnett, Cory Scott, Chairperson of the Telecommunications Commission

QUORUM: President Pope called the meeting to order at 7:06 P.M. and declared that a quorum was present.

AGENDA

President Pope asked that the Agenda dated October 12th, 2009, be approved. It was moved and seconded that the agenda be approved. A voice vote was taken and the agenda was approved.

PUBLIC COMMENT

There was no public comment.

REGULAR AGENDA

1. BOARD DIRECTION ON CABLE FRANCHISE RENEWAL

Deputy Village Manager Lisa Shelley announced the topic of the meeting; to seek Board direction on the Comcast Cable Franchise Renewal, and introduced Brian T. Grogan of Moss & Barnett, a law firm specializing in municipal franchise issues.

Mr. Grogan provided a history of the franchise, which was established in 1979, and noted that it was by far the oldest franchise he has dealt with. The original 15-year contract had been renewed for 10 years and expired in April 2004. The renewal process began on April 11, 2001; the Village prepared a detailed needs assessment and forwarded it to Comcast on November 24, 2003. Since that time, periodic informal negotiations have failed to produce an agreement. The current agreement is on a month to month basis.

During this period, Federal video franchise legislation was proposed to regulate the cable industry but was not approved. The State of Illinois then passed the Illinois Video and Cable Competition Law in 2007, allowing cable franchises to seek state authorization (as the local AT&T franchise has done) or negotiate with local municipalities, while adhering to state provisions. Comcast has not sought state authorization, but has opted for local franchise agreements. They have proposed a 12-page agreement which limits the Village's regulatory authority and limits Public, Educational and Governmental (PEG) support to a one-time grant.

To date, this informal process, which has no deadlines and relies on parties to come to an agreement, has been unsuccessful. The formal process, with established statutory deadlines, would drive the process to a conclusion and settlement. The steps of this process were reviewed.

To move to a formal process, several steps were recommended:

A. Review and refresh the needs assessment to remove materials now covered in the Illinois Cable Act and reflect current Village requirements. When presented in the formal process, this assessment cannot be amended, therefore it must be accurate. The Board of Trustees would adopt this and present it to begin the formal process. The cost of the review would be \$6,500 to \$8,000.

B. Conduct an audit of Comcast payments to determine any underpayments. Two full years would be reviewed and extended to six should there be any findings of underpayments. Mr. Grogan noted that up to 80% of these audits resulted in identifying underpayments. The cost of the audit would be \$5,000 to \$10,000.

The Board discussed options with Mr. Grogan, Mr. Scott and Mr. Powers. They suggested that the Telecommunications Commission review the audit plan, and asked to what extent such expertise might be available to review needs for PEG funding and surveying local residents.

Trustee Johnson expressed concern regarding monies already spent over the past eight years for this process and requested a summary of what had been spent.

Mr. Scott stated that the ongoing agreement has preserved certain rights regarding public and educational access and training that might not be part of a future agreement. However, the current agreement lacks intermediate enforcement tools short of a criminal complaint. Comcast has not agreed to a 25-page alternative agreement proposed by the Village .

Mr. Powers noted that few people have taken advantage of the training and that access to these resources has been slow and limited. The Board directed staff to include usage of these resources in any report being prepared, and asked for a chart that summarizes the past needs assessment and note which items are still relevant and enforceable.

Trustee Johnson asked what other communities were doing as far as franchise negotiations. Mr. Grogan said some are accepting the 12-page Comcast document, others are moving towards the formal process but settling short of a formal settlement. He added that Comcast most likely expects Oak Park to do the same.

Attorney Heise noted that funds are available to proceed with legal services: \$11,000 in 2009 and \$15,000 in 2010.

Trustee Hedges asked how often audits are scheduled. Mr. Grogan replied that the range is every three to five years, though some franchises never schedule them.

President Pope asked about options for the survey of users, as this could become expensive. Trustee Johnson suggested a more informal community survey of current users of PEG services and outreach to residents through VOP-TV or OP/FYI.

The Board directed staff to proceed with work on refinement of the needs assessment with Mr. Grogan's firm and an audit of Comcast.

Mr. Heise noted that these initiatives can be helpful in negotiations with Comcast by indicating that the Village is serious about reaching an agreement.

Mr. Scott noted that the Telecommunications Commission has internal expertise with audits and can assist in audit design.

Trustee Johnson asked that a report of expenditures for these franchise negotiations going back to 2001 be prepared for the Board.

ADJOURN

It was moved and seconded to adjourn the meeting. A voice vote was taken and the motion was approved. The meeting was adjourned at 9:03 P.M. Monday, October 12th, 2009.

SUBMITTED AND RECORDED IN THE OFFICE OF:

Teresa Powell, Village Clerk

By: MaryAnn Schoenneman
Executive Secretary