CODE REVIEW MEETING
BOARD OF TRUSTEES
JUNE 11, 2019, 5:00 P.M.

PRESENT:	
TRUSTEES	Frank Galusha
	Lili Lanphear
	Dan Keating
	Renee Stetzer
CODE ENFORECMENT OFFICER	Steve Lauth
ATTORNEY	Jeff Turner

CALL TO ORDER

Trustee Lanphear made a motion, seconded by Trustee Galusha, to open the meeting at 5:00 p.m. Vote: Galusha – yes, Keating – yes, Lanphear – yes, Stetzer – yes. Motion carried.

Trustee Lanphear stated the discussion this meeting would be about definitions. She asked COE Lauth to explain the difference and specifications for establishments that serve alcohol, eg. brewery, Nano brewery, farm brewery, distillery, tavern, etc. CEO Lauth stated the State Liquor Authority (SLA) does differentiate between brewery and distillery depending on the alcohol content of whatever is being processed. Trustee Lanphear asked if all licenses include a service. CEO Lauth stated the licenses can be for different things, such as brewing pure, tastings on site, filling a container or not filling a container. The hours of operation are under the jurisdiction of the SLA based on the recommendations of the municipality as long as it doesn't restrict them too much. Trustee Galusha stated the applicant would have to submit the application to the Village 30 days before they submit for a liquor license and that's where the hours would be entered for the SLA license. CEO Lauth stated he usually sees definitions in the beginning of the code, after administration. Chapter 212 Article 9 Subdivision is the only place there are definitions. Discussion followed about where the consultants plan on placing the section on definitions. Attorney Turner stated HPB section must have the definitions at the end of their code.

Trustee Lanphear would like to talk about the definition of retail. For example, a gaming business wanted to come in and planned on selling games as well as playing them. CEO Lauth stated the COE at the time should have told them that would not be allowed in the area they wanted to go. He recommended creating a landlord registry, with contact information where he could send out a statement with instructions for change of tenant and fire code inspection procedures. This would enable the CEO to keep track and control over businesses, landlords, and tenants. He is comfortable with the current zoning references for retail. The question is whether the Trustees want to change any of uses within those districts. As of now there are no definitions for retail. Trustee Lanphear questioned if there needs to be percentages. It could say "principle use". Trustee Keating stated the consultant will have a draft of definitions ready on June 28th, which is called Part 4.

The Board will ask the consultants if they would be able to get the definition draft sooner.
Trustee Lanphear would like definitions from the SLA about the different types of liquor licenses, types of service– CEO Lauth will look into that and it may be able to incorporate it into the code. Attorney Turner stated he sent a memo to the Board about all the uses that can get liquor licenses and a broad-

brush rule of thumb is that if you can get a liquor license you can serve anything, and what is served and when it's served is controlled by the SLA. It's important to know everything that can apply for a liquor license and decide what uses you want in the code. He used the example of a juice bar that is a permitted use but can apply for a liquor license; there is no definition of a "bar". The Village cannot legislate any alcohol related sales. Trustee Keating stated there are State regulations that limit what type of alcohol a liquor store or a grocery store can sell. Trustee Lanphear emphasized how important this subject is to her because of the proximity of residences. The protection of our residential neighborhoods needs to be looked at in light of zoning and hours of operation. The code needs to reflect that the residents are a number one priority and needs to be very thorough in discovering what the impacts of any changes in our code would be on residential neighborhoods. The information needed is the information from the SLA about who has the authority over the hours of operation. CEO Lauth stated the SLA is pretty good about trying to stay within the wishes of the municipality that's reasonable, especially if you make a good case when the application comes in. Attorney Turner is of the opinion that if you allow restaurants by special permit you could control the food service end of things in terms of hours of operation, that it is against SLA regulations to serve alcohol without providing food. Attorney Turner stated zoning uses can be prohibited, and definitions can have a broad meaning. If the definition is too specific you run the risk of leaving something out of that definition, and then the code becomes vague.

Trustee Lanphear questioned how these uses fit under the fire code, that they are being retrofitted into old buildings; perhaps adding to the code that they meet fire code requirements with the CEO before they come for the special permit. She added Chapter 210 Article 21, page 11 of the newest draft has a list of possible uses and wondered if as a Board we need to provide definitions, or will the consultants do that. She specifically cited recreation or entertainment – what is the definition? Trustee Stetzer questioned if the concern is for too many bars or restaurants that there are too many parameters. Trustee Lanphear said for instance, in the Main St. Business district if it is an allowed use in that district then that means that any applicant can submit an application for a bar or restaurant and would be subject to the 500' rule measured front door to front door per SLA; and that the consultants told her a 100' proximity from the lot line to a residence is used in planning, due to dumpster use and deliveries. Attorney Turner stated that could be added as a condition to the special permit. He also stated a number of like institutions is not a reason to deny a permit. Trustee Stetzer stated there was debate about putting salons on the second floor but feared if they did there would be vacant store fronts. Trustee Lanphear stated that for a number of years restaurants were prohibited on Main St. due to the proximity to residences, and that the special use permit was added as a way to "control" the number of restaurants and/or bars. Attorney Turner stated this is a Board policy decision about where these later night uses are allowed near residences, use the distance measurement to define where it's permitted in the special permit where it protects the nearby residential zones. If it's allowed in the zone you have special permits with some kind of limits that could control where they went.

Trustee Lanphear questioned whether the special permit goes with the land or the business. Attorney Turner stated it is in the statute and the case law supporting the statute that the Village can impose any conditions it wants on special permits. One of those conditions is that you can terminate them, providing there is enabling legislation that establishes the ability to do that. Our special permit code doesn't run with the land and it's perfectly legal. Right now, they are terminated on transfer of ownership, a lapse of a year, not starting within 6 months. Trustee Stetzer questioned the biggest fear of the special use running with the land. Attorney Turner stated it gives the Village an opportunity to

review a new business when there is a transfer if the special permit runs with the business rather than the land. Trustee Keating states it then comes down to good enforcement of hours, noise levels, dumpsters, etc. Trustee Lanphear stated in consideration with the difference between the special use permit with the land is that it changes zoning and If it does indeed run with the land and represents a change in zoning those types of special use permits would then fall to the Trustees. Attorney Turner stated it is not a change in zoning in that a special use permit is deemed to be acceptable provided it can be appropriately conditioned, which is different than a change in zoning. The mechanism is there to put conditions on it to help it fit into the surroundings. If the BOT retains jurisdiction of special permits no guidelines are required and the test on refusal to grant is arbitrary and capricious. If another Board does special permit review the guidelines have to be sufficient and clear. Trustee Keating asked what guidelines there should be. Attorney Turner suggested asking the consultants. Trustee Galusha asked what kind of conditions would nullify a new business owner taking over a use. Attorney Turner stated that an increase in traffic density generated by that use, or live entertainment outside that would impact nearby residences. If the operator can't rectify the situation then that would be the opportunity to change the special permit. Trustee Lanphear stated there are a lot of businesses that would require special use permits. Attorney Turner stated that each use will have their own criteria, and the consultants will have to find a balance between specificity and vagueness. Chapter 210 Part 3 Article 35 is where the special use permits guidelines are. Trustee Lanphear had a concern about the definition of noise nuisance and character of the neighborhood. Attorney Turner quoted a phrase in our present code that defines nuisance - "noise, light, traffic, and/or odors which under the time, place or manner in which they occur would annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of a reasonable person of normal sensitivities." Trustee Keating suggested we cancel the next meeting of 6/18, do a review Article 35 Special Use Permits, and circulate all comments in emails with Trustee Stetzer making the comments on the document and finally sending it to the consultants.

Trustee Stetzer brought up an inconsistency in 210-20.4 mixed density residential. Right now, there are no uses on the chart on page 4 of 59 for commercial, and the current Comp Plan draft in the visions "commercial uses that are low impact and limited in scale are also desirable" for that area. Discussion followed about making changes to that district. Trustee Lanphear commented that originally when the Trustees formed that district, they didn't want businesses there because they felt it would detract from the central business district. Attorney Spitzer answered in an email that during the pendency of the suits the Board can consider and adopt any changes they felt appropriate for the R-5 zone, but that they should not apply to the current PCP application. Attorney Turner suggested they all read the newest draft of the Comp Plan.

Trustee Lanphear made a motion, seconded by Trustee Galusha, to adjourn the meeting at 6:30 p.m. Vote: Galusha – yes, Keating – yes, Lanphear – yes, Stetzer – yes. Motion carried.

Respectfully submitted,
Jo Anne Shannon, Recording Secretary