

IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY – WOODSTOCK, ILLINOIS

FILED

MAY 18 2010

KATHBRINE M. KEEFE
McHENRY CTY. CIR. CLK.

THOMAS P. MATHEWS,

Plaintiff,

v.

MASTER PROPERTY OWNERS
ASSOCIATION,

Defendant.

No. 10 CH 1004

MOTION TO EXPEDITE CASE

NOW COMES the Defendant, the Master Property Owners' Association, Inc. for the Wonder Lake, Illinois Area (hereinafter "MPOA" or Defendant) by and through its attorneys, Dean W. Krone, Steven M. Richart, and Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP, and moves this Court pursuant to Section 2-1007.1 of the Illinois *Code of Civil Procedure* for an order expediting this case. In support of this motion, the Defendant states as follows:

1. If this case is expedited, property owners in the Wonder Lake area will be able to save \$1.2 million in avoidable interest costs for a dredging project as described below.

2. On January 2, 2008, Defendant MPOA applied to the Village of Wonder Lake to establish a special service area pursuant to the Illinois Special Service Area Tax Law, 35 ILCS 200/27-5, *et seq.* (2008). The special services to be provided include the dredging of portions of the lake bottom of Wonder Lake, restoration and stabilization of certain shore areas, and construction of facilities for removal and disposal of the sediment from the lake bottom (the "Dredging Project"). The estimated cost of the Dredging Project was \$5,932,730.

3. On October 7, 2009, after complying with the procedural requirements in the Special Service Area Tax Law, the Board of Trustees of the Village of Wonder Lake (the "Village Board") passed Ordinance No. 323 establishing Special Service Area Number Nine of

the Village of Wonder Lake to fund the Dredging Project. (A copy of Ordinance No. 323 is attached to this Motion as Exhibit 1.) Ordinance No. 323 provides that “Special Service Area Number Nine is also created so that bonds may be issued [to pay for the Dredging Project], payable from taxes levied on real property in the [Special Service] Area.” (Ex. 1, p.5.)

4. In 2009, McHenry County received authority to issue Recovery Zone Facility Bonds through the American Recovery and Reinvestment Tax Act of 2009 (the “Act”). Because Recovery Zone Facility Bonds would have a lower interest rate than Special Service Area Bonds, the MPOA applied to McHenry County for an allocation of Recovery Zone Facility Bonds to finance a portion of the Dredging Project. On February 16, 2010, the County Board of McHenry County (the “County Board”) passed Resolution No. R-201002-12-048 (the “Resolution”), whereby the County Board approved the Dredging Project and designated \$5,932,730 of Recovery Allocation to the MPOA for the issuance of Recovery Zone Facility Bonds to finance the Dredging Project. (A copy of the Resolution is attached to this Motion as Exhibit 2.)

5. According to William Blair & Co., the financial adviser to the MPOA and the Village, the interest rate on Special Service Area Bonds issued by the Village of Wonder Lake, which would be taxable, will be in the range of 6.00% to 6.25%. (See letter from Peter Raphael of William Blair & Co., attached to this Motion as Exhibit 3.) The interest rate on Recovery Zone Facility Bonds issued by McHenry County, which will be tax exempt and discounted under the Act, will be in the range of 4.00% to 4.25%. (Ex. 3.) As a result, the property owners in the Special Service Area are likely to save approximately \$1.2 million in interest if Recovery Zone Facility Bonds are used to fund a portion of the Dredging Project instead of Special Service Area Bonds. (Ex. 3.)

6. Section 3 of the Resolution approving the use of Recovery Zone Facility Bonds provides as follows:

Section 3. The Allocation shall be used to issue bonds to finance the Project and said Bonds must close no later than September 30, 2010. In the event the Bonds do not close by September 30, 2010, then the Allocation shall expire and revert back to the County.

Thus, if the Recovery Zone Facility Bonds do not close by September 30, 2010, the MPOA will lose the opportunity to use such bonds to fund the Dredging Project. In that event, the MPOA and the Village of Wonder Lake will use Special Service Area Bonds, which will cost the property owners in the Wonder Lake Area an additional \$1.2 million in interest.

7. The County will not issue the Recovery Zone Facility Bonds while this lawsuit is pending. Therefore, it is important that this case come to trial quickly so that a judgment can be entered in time for the Recovery Zone Facility Bonds to close by September 30, 2010. Otherwise, the owners of property in the Special Service Area will pay \$1.2 million more in interest than they would otherwise pay.

8. Section 2-1007.1(b) of the Illinois Code of Civil Procedure provides as follows:

Section 2-1007.1. Preference in setting for trial.

* * *

(b) The court may, in its discretion, grant a motion for preference in setting for trial where a party shows good cause that the interests of justice will be served by granting a preference in setting for trial.

If the court expedites this case by setting a trial date in August, thereby allowing the Recovery Zone Facility Bonds to be issued and close by September 30, 2010, the owners of property within the Special Service Area will be able to save approximately \$1.2 million. This is good cause that the interests of justice will be served by granting a preference in setting this case for trial.

WHEREFORE, the Defendant asks the Court to set a discovery cutoff on July 30, 2010, and to set this case for trial in August, and to award such other and further relief as the Court deems proper and just.

Respectfully submitted,

THE MASTER PROPERTY OWNERS'
ASSOCIATION, INC. FOR THE WONDER
LAKE, ILLINOIS AREA

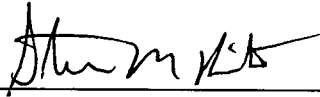
Date: May 18, 2010

By: Dean Krone
One of its Attorneys

Dean W. Krone – ARDC# 6190868
Steven M. Richart – ARDC# 6287195
Hodges, Loizzi, Eisenhammer,
Rodick & Kohn, LLP
3030 Salt Creek Lane, Suite 202
Arlington Heights, IL 60005
(847) 670-9000
Firm I.D. #: 26941

CERTIFICATE OF SERVICE

I, Steven M. Richart, an attorney, certify that I have caused a true and correct copy of the foregoing Motion to Expedite Case, and Notice of Motion thereof, to be served upon James P. Kelly, Matuszewich, Kelly & McKeever, LLP, 453 Coventry Lane, Suite 104, Crystal Lake, Illinois 60014, by First Class Mail, postage prepaid, deposited at 3030 Salt Creek Lane, Arlington Heights, Illinois, at or around the hour of 5:00 p.m. on this 18th day of May, 2010.

By: 

Steven M. Richart

**Dean W. Krone – ARDC# 6190868
Steven M. Richart – ARDC# 6287195
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Firm I.D. #: 26941**

ORDINANCE NUMBER 323

AN ORDINANCE ESTABLISHING
SPECIAL SERVICE AREA NUMBER NINE OF THE
VILLAGE OF WONDER LAKE, MCHENRY COUNTY, ILLINOIS

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE
VILLAGE OF WONDER LAKE, MCHENRY COUNTY, ILLINOIS, AS FOLLOWS:

Section 1. Authority. The Village of Wonder Lake, McHenry County, Illinois (the "Village") is authorized, pursuant to the 1970 Constitution of the State of Illinois, and pursuant to the provisions of the Illinois Special Service Area Tax Law, 35 ILCS 200/27-5, *et seq.* (the "Act"), to establish special service areas for the provision of special governmental services in portions of the Village and, with the consent of McHenry County, in unincorporated McHenry County and to levy or impose a special tax and to issue bonds for the provision of such special services.

Section 2. Findings.

(a) It is in the public interest that a special service area, designated as Special Service Area Number Nine (hereinafter referred to as the "Area"), of the Village be established for the purposes set forth herein.

(b) The Area is compact and contiguous and consists entirely of territory within the corporate limits of the Village and unincorporated McHenry County, Illinois.

(c) Pursuant to Resolution R-200803-12-093 entitled "Resolution Consenting to the Creation of a Special Service Area by the Village of Wonder Lake", duly adopted by the County Board of McHenry County on March 18, 2008, the McHenry County Board has consented to the Village's creation of the Area to fund certain improvements to

Wonder Lake including but not limited to the cleaning, restoration and dredging of portions of the lake bottom.

(d) The special services to be provided as herein described will serve a public purpose by (i) alleviating the accumulation and adverse impacts of sedimentation, securing the integrity of Wonder Lake, thereby preserving, protecting and enhancing the real estate tax base of the Village; (ii) preserving the capability of Wonder Lake to be a proactive stormwater detention facility, as mentioned in the McHenry County Comprehensive Stormwater Management Plan; (iii) protecting and preserving the sediment trapping efficiency of Wonder Lake to a more confined area of the lake, facilitating future maintenance dredging, while minimizing the sediment pollution impact to downstream properties; (iv) protecting and enhancing the water quality of Wonder Lake, the Nippersink Creek, the Chain O'Lakes System and the Fox River, a source of drinking water supply for downstream communities; and (v) enhancing the ecosystem.

(e) The Area will benefit specifically from the special services to be provided as herein described (hereinafter referred to as the "Services"), and the Services are unique and in addition to municipal services provided to the Village as a whole and it is, therefore, in the best interests of the Village that establishment of the Area be considered.

(f) It is estimated that the cost of providing the Services will not be more than Five Million Nine Hundred Thirty Thousand Seven Hundred Eighty Dollars (\$5,930,780).

(g) The question of establishment of the Area as a special service area was considered by the President and Board of Trustees of the Village pursuant to "An Ordinance Proposing the Establishment of Special Service Area Number Nine in the Village of Wonder Lake, and Providing for Other Procedures in Connection Therewith," being Ordinance No. 305,

adopted on November 19, 2008. The establishment of the Area was considered at a public hearing commenced, convened and adjourned on December 17, 2008 (the "Hearing"). Said Hearing was held pursuant to notice duly published in the *Northwest Herald*, a newspaper of general circulation within the Village, on December 1, 2008, which was at least fifteen (15) days prior to the hearing, and also pursuant to notice by mail addressed to the person or persons in whose name the general taxes for the last preceding year were paid on each lot, block, tract or parcel of land lying within the Area. Said notice by mail was given by depositing said notice in the United States mail not less than ten (10) days prior to the date set for the public hearing. In the event taxes for the last preceding year were not paid, said notice was sent to the person last listed on the tax rolls prior to that year as the owner of said property. A certificate of publication of notice and evidence of mailing of notice are on file with the Village. Said notices conform in all respects to the requirements of the Act.

(h) All interested persons affected by the establishment of the Area or the issuance of the bonds (hereinafter referred to as the "Bonds") to pay for the Services and the levy of the tax to pay such Bonds, including all owners of real estate located within the Area, were given an opportunity to be heard at the Hearing regarding the establishment of the Area and the issuance of such Bonds and the levy of such tax and an opportunity to file objections to the establishment of the Area or the issuance of the Bonds and the levy of said tax; and at the Hearing, all interested persons affected by the Area were given the opportunity to file with the Village Clerk written objections to and to be heard orally in respect to, any issue embodied in the notices of the Hearing. The Hearing in all respects complied with the applicable provisions and requirements of the Act.

(i) Within sixty (60) days of the adjournment of the Hearing a petition was filed by certain residents and owners of property lying within the Area but said petition was not executed by more than 50% of the owners of record of taxable property lying within the Area and by more than 50% of the electors residing within the Area as of the date of the Hearing as required by Section 27-55 of the Act.

(j) After considering the data as presented to the Board of Trustees and at the Hearing, the President and Board of Trustees find that it is in the best interests of the Village and of the residents and property owners of the Village of Wonder Lake Special Service Area Number Nine that said special service area, as herein described, be established and that sixty (60) days have expired since the adjournment of the Hearing and no petition meeting the requirements of Section 27-55 of the Act has been filed with the Village.

(k) It is in the public interest that the Area be created for the financing of the Services within the Area, that the Services be financed through the issuance of Bonds in an amount not to exceed \$5,930,780 with a maximum rate of interest not to exceed (i) if the Bonds are exempt from federal income taxation, under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), the greater of 9% per annum or 125% of the rate for the most recent date shown in the 20 G.O. Bonds Index of average municipal bond yields as published in the most recent edition of *The Bond Buyer*, published in New York, New York, at the time the contract is made for the sale of the Bonds, and (ii) if the Bonds are not tax-exempt under the Code, the greater of ten (10.0%) percent per annum or 200% of the rate for the most recent date shown in the 20 G.O. Bonds Index of average municipal bond yields as published in the most recent edition of *The Bond Buyer*, published in New York, New York, at the time the contract is made for the sale of the Bonds, and that such Bonds be secured by the full faith and credit of the

Area and that such Bonds be retired within a period not exceeding twenty (20) years from their date of issuance.

(l) The Bonds, if issued, shall be retired by the levy of a direct annual ad valorem tax on all property located with the Area subject to taxation, sufficient to pay the interest on the Bonds as they become due and to discharge the principal thereof at maturity.

Section 3. Village of Wonder Lake Special Service Area Number Nine. A Special Service Area Number Nine to be known and designated as "Special Service Area Number Nine" is hereby established and shall consist of the contiguous territory legally described in Exhibit A hereto and includes the parcel identification numbers set forth in Exhibit B hereto, and outlined on the map of a portion of the Village attached as Exhibit C hereto, which description and map are by this reference incorporated herein and made a part hereof.

Section 4. Purpose of Area. The Special Service Area Number Nine is established to provide special services to the Area in addition to services provided in the Village generally including the cleaning, restoration and dredging of portions of Wonder Lake (the "Services"). All of the Services will be beneficial to the Area and will serve the public purposes described in Section 2 of this Ordinance. Special Service Area Number Nine is also created so that bonds may be issued for such purposes, payable from taxes levied on real property in the Area and secured by the full faith and credit of the Area. Such taxes shall be levied in addition to all other Village taxes so levied, provided no Bonds shall be issued in excess of the aggregate principal amount of \$5,930,780 or at an interest rate in excess of (i) if the Bonds are exempt from federal income taxation, under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), the greater of 9% per annum or 125% of the rate for the most recent date shown in the 20 G.O. Bonds Index of average municipal bond yields as published in the most recent edition of

The Bond Buyer, published in New York, New York, at the time the contract is made for the sale of the Bonds, and (ii) if the Bonds are not tax-exempt under the Code, the greater of ten percent (10%) per annum or 200% of the rate for the most recent date shown in the 20 G.O. Bonds Index of average municipal bond yields as published in the most recent edition of *The Bond Buyer*, published in New York, New York, at the time the contract is made for the sale of the Bonds, and the Bonds shall mature within not more than twenty (20) years from their date of issuance.

Section 5. Levy of Taxes for Bond Retirement. The Bonds shall be retired by the levy of a direct annual tax on all property subject to taxation within the Area sufficient to pay the interest on the Bonds as the same comes due and to discharge the principal thereof at maturity. Said direct annual tax shall be levied upon all taxable property within the Area for the entire period that the Bonds (or any bonds issued to refund the Bonds) shall be outstanding and shall be unlimited as to the rate or amount and in addition to all other taxes permitted by law. Said direct annual tax shall be exempt from the provisions of the Property Tax Extension Limitation law, as amended.

Section 6. Filing of Ordinance and Map. The Village Clerk is hereby directed to file a certified copy of this Ordinance establishing the Area, including an accurate map thereof, with the County Clerk and County Recorder of the County of McHenry, Illinois, forthwith after the adoption and approval of this Ordinance and in no event more than sixty (60) days after the adoption date of this Ordinance.

Section 7. Supersede Conflicting Ordinance. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

Section 8. Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this October 7, 2009.

Voting Aye (list names): Anderson, Heger, Learman, Topf

Voting Nay (list names): Lynd

Abstaining (list names): None

Absent (list names): Peters, Reinhard

APPROVED this 7th day of October, 2009.


Village President

ATTEST:


Village Clerk

Published in pamphlet form October 7, 2009.

