



NOTICE AND AGENDA

**NOTICE IS HEREBY GIVEN
THAT A SPECIAL VILLAGE BOARD MEETING
OF THE OSWEGO VILLAGE PRESIDENT AND BOARD OF TRUSTEES
WILL BE HELD ON**

November 29, 2016

6:00 PM

Location: Oswego Village Hall, 100 Parkers Mill, Oswego, IL

**A. CALL TO ORDER AND PLEDGE OF ALLEGIANCE TO THE FLAG OF
THE UNITED STATES OF AMERICA**

B. ROLL CALL

C. PUBLIC FORUM

D. NEW BUSINESS

D.1. Ordinance Authorizing the Execution of a Purchase and Sale Agreement Between Alexander Lumber Company and the Village of Oswego for the Acquisition of Land, Commonly Known as 59 S. Adams Street in the Amount of \$1,492,500. (First Read of Ordinance, Waiver of Second Read) Subject to Attorney Review and Approval.

[AlexanderLumber_AI-11-29-16\(2\).docx](#)

[AlexanderLumber_ORD-11-29-16.docx](#)

[Oswego Alexander contract \(11-28-16\).pdf](#)

D.2. Strategic Planning Discussion

Posted:
Date: _____
Time: _____
Place: _____
Initials: _____

Tina Touchette
Village Clerk

E. CLOSED SESSION

E.1.

- a. Pending and Probable Litigation [5 ILCS 120/2(c)(11)]
- b. Appointment, Employment, Compensation, Discipline, Performance, or Dismissal of Personnel [5 ILCS 120/2(c)(1)]
- c. Collective Bargaining, Collective Negotiating Matters, Deliberations Concerning Salary Schedules [5 ILCS 120/2(c)(2)]
- d. Sale, Lease, and/or Acquisition of Property [5 ILCS 120/2(c)(5) & (6)]

F. POSSIBLE ACTION OF CLOSED SESSION ITEMS INCLUDING:

G. ADJOURNMENT



AGENDA ITEM

MEETING TYPE: Special Village Board Meeting

MEETING DATE: November 29, 2016

SUBJECT: Acquisition of 59 S. Adams Street

ACTION REQUESTED:

Pass the Ordinance Authorizing the Execution of a Purchase and Sale Agreement Between Alexander Lumber Company and the Village of Oswego for the Acquisition of Land, Commonly Known as 59 S. Adams Street (First Read of Ordinance, Waiver of Second Read).

BOARD/COMMISSION REVIEW:

N/A

ACTION PREVIOUSLY TAKEN:

Date of Action	Meeting Type	Action Taken
N/A	N/A	N/A

DEPARTMENT: Administration

SUBMITTED BY: Dan Di Santo, Village Administrator

FISCAL IMPACT:

Total cost of \$1,492,500. Village funds are available to front the cost of property acquisition, which will be paid back at a future date.

BACKGROUND:

For over a decade the 2.38-acre property at 59 S. Adams has remained an obsolete eyesore in Downtown Oswego since the Alexander Lumber Company closed their lumber yard in 2006. Since that time the Village has considered only one formal development proposal for the property in 2010. The Village’s 2015 Comprehensive Plan identified the property as a key development site, and the Village Board approved a Tax Increment Financing (TIF) District on September 6, 2016 for the purpose of spurring redevelopment in Downtown Oswego.

The lumber yard site is the largest vacant site in Downtown Oswego and its development would serve as a catalyst for the revitalization of the Downtown. The scale of the site is large enough to provide public parking, residential units, and restaurant/retail development needed in the Downtown. As such, it is appropriate for the Village to consider acquiring the former lumber yard given the impact that the property will play in realizing the Comprehensive Plan’s vision for Downtown Oswego.

DISCUSSION:

Village acquisition of key development property is normal in a TIF District. There are numerous benefits to the Village purchasing the property as opposed to waiting for a private developer, including:

- By owning the property, the Village gains significant control and discretion over how the property ultimately develops to ensure the right mix of commercial uses, residential units, and public parking.
- The Village can accelerate potential development, instead of waiting for a deal between a developer and property owner.
- Purchasing the property at a reasonable price now preempts potential speculative price inflation, which could stifle area development
- Development of the lumber yard will reinvigorate additional development by making the first investment of this magnitude since the Tap House building was built.

Given these benefits, the Village obtained an appraisal that valued the property at \$1,350,000. The Alexander family also obtained an appraisal, which valued the property at \$1,635,000. Following negotiations, the two parties have come to terms on a sale price of \$1,492,500, which is the mean of the two appraisals.

The Village has money available in reserve funds to front the purchase with the intent of future payback. One opportunity is through the sale of the existing Police Facility at 3525 Rt. 34, which has an appraised value of \$1,500,000. No special assessment or Special Service Area (SSA) funding is anticipated.

Once acquired, the Village can accelerate discussions with interested developers to ensure the highest and best use of the site is realized.

RECOMMENDATION:

The purchase and sale agreement is subject to attorney review and approval. Staff recommends passing the Ordinance authorizing the acquisition of 59 S. Adams Street.

ATTACHMENTS:

1. Ordinance

**VILLAGE OF OSWEGO
KENDALL AND WILL COUNTY, ILLINOIS**

ORDINANCE NO. 16 -- __

**ORDINANCE AUTHORIZING A PURCHASE AND SALE AGREEMENT BETWEEN
ALEXANDER LUMBER COMPANY AND THE VILLAGE OF OSWEGO FOR THE
ACQUISITION OF LAND, COMMONLY KNOWN AS 59 S. ADAMS STREET IN THE
AMOUNT OF \$1,492,500**

**ADOPTED BY
THE PRESIDENT AND BOARD OF TRUSTEES
OF THE
VILLAGE OF OSWEGO**

This __ day of __, 2016

Prepared by and Return to:
Village of Oswego
100 Parkers Mill
Oswego, IL 60543

Published in pamphlet form by authority of the President
and Board of Trustees of the Village of Oswego on ____, 2016.

ORDINANCE NO. 16 -- ____

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AMOUNT OF \$1,492,500**

WHEREAS, the Village of Oswego (“Village”) has a population of more than 25,000 and is therefore a “Home Rule Unit” under the 1970 Illinois Constitution; and

WHEREAS, the Illinois Constitution of 1970 provides that a Home Rule Unit may exercise any power and perform any function pertaining to its government and affairs, including but not limited to the power to regulate for the protection of the public health, safety, morals and welfare; to license, to tax; and to incur debt; and

WHEREAS, it is in the best interest of the Village of Oswego to execute the Agreement with Alexander Lumber Company; and

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF OSWEGO, KENDALL AND WILL COUNTIES, ILLINOIS IN THE EXERCISE OF THEIR HOME RULE, STATUTORY AND OTHER POWERS, as follows:

Section 1: AUTHORIZATION AND APPROVAL

The agreement between Alexander Lumber Company and the Village of Oswego is approved and the Village President and Village Clerk are authorized and directed to execute such agreement after attorney review and approval.

Section 2: SEVERABILITY

This ordinance and every provision thereof shall be considered severable. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

Section 3: REPEALER

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: EFFECTIVE DATE

This Ordinance shall be in full force and effect immediately upon its passage, approval and Publication in pamphlet form which is hereby authorized, as provided by law.

PASSED by the Board of Trustees of the Village of Oswego, Kendall and Will Counties, Illinois this ___ day of ___ 2016.

RYAN KAUFFMAN _____
KARIN MCCARTHY-LANGE _____
PAM PARR _____
GAIL E. JOHNSON _____

JUDY SOLLINGER _____
LUIS PEREZ _____
JOE WEST _____

APPROVED by me, Gail E. Johnson, as President of the Village of Oswego, Kendall and Will Counties, Illinois this ___ day of _____ 2016.

GAIL E. JOHNSON, VILLAGE PRESIDENT

TINA TOUCHETTE, VILLAGE CLERK

STATE OF ILLINOIS)
)
COUNTIES OF KENDALL)
AND WILL

SS

CLERK'S CERTIFICATE
(ORDINANCE)

I, Tina Touchette, the duly qualified and acting Village Clerk of the Village of Oswego, Kendall and Will County, Illinois, do hereby certify that I am the keeper of its books and records and that the attached hereto is a true and correct copy of an Ordinance entitled:

ORDINANCE AUTHORIZING A PURCHASE AND SALE AGREEMENT BETWEEN ALEXANDER LUMBER COMPANY AND THE VILLAGE OF OSWEGO FOR THE ACQUISITION OF LAND, COMMONLY KNOWN AS 59 S. ADAMS STREET IN THE AMOUNT OF \$1,492,500

which Ordinance was duly adopted by said Board of Trustees at a regular meeting held on the ___ day of _____ 2016, approved by the Village President on the ___ day of _____ 2016 and thereafter published in pamphlet form.

I do further certify, in my official capacity, that a quorum of said Board of Trustees was present at said meeting and that the Board complied with all requirements of the Illinois Open Meetings Act.

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of _____ 2016.

Tina Touchette, Village Clerk
Village of Oswego

(Seal)

REAL ESTATE SALES CONTRACT

This Real Estate Sale Contract ("Contract") is made this 29th day of November, 2016 ("Effective Date") by and between Alexander Lumber Co, an Illinois corporation ("Seller"), and Village of Oswego, an Illinois municipal corporation, or its assignee ("Buyer"). "Seller" and "Buyer" are sometimes collectively referred to in this Contract as the "Parties" and individually as "Party."

The Parties, intending to be legally bound, agree as follows:

1. *Sale and Purchase of the "Property"*. Subject to the terms and conditions of this Contract, Seller shall sell to Buyer and Buyer shall purchase from Seller all of Seller's right, title and interest in the "Property." "Property" means the vacant land commonly known as 59 S. Adams Street in Oswego, IL, Parcel #s 03-17-303-007, 03-17-304-001, and 03-17-304-002 and having a legal description as described in the Title Commitment to be provided under Section 6. "Property" also includes all improvements to that land and all rights of Seller relating to the land and the improvements. Buyer will be purchasing the Property in "as-is" condition without any warranties from Seller, except as provided herein.

2. *Purchase Price*. The "Purchase Price" for the Property is \$1,492,500, to be paid in full at Closing, subject to and as adjusted by any credits to a Party as provided for under this Contract including, without limitation, the "Earnest Money" described in Section 8. At Closing, Buyer shall pay Seller the Purchase Price by wire transfer of funds or by certified, cashier's, or title company's check (provided that the title company's check is guaranteed by a licensed title insurance company).

3. *Closing*

3.1 The "Closing" will occur on or before December 30, 2016 or as mutually agreed by the Parties by conveyance of a stamped general recordable warranty deed and payment of the Purchase Price. The date of the Closing is referred to in this Contract as the "Closing Date".

3.2 At Closing, Seller shall convey title to the Property subject only to (a) general real estate taxes not due and payable at the time of Closing, (b) building lines and building restrictions of record, (c) zoning and building laws and ordinances, (d) public and utility easements, covenants and restrictions of record, and (e) any acts done or suffered by or through the Buyer after the Effective Date ((a)-(e) collectively, the "Permitted Exceptions").

3.3 The purchase and sale of the Property under this Contract will be closed in escrow with the Title Insurer issuing a title commitment by deed and money escrow, with the Title Insurer's related fee to be divided equally between the Parties, except as otherwise stated herein. Seller shall pay the premium due to the Title Insurer for the title insurance policy that is the subject of the Title Commitment, including any search and exam or other costs associated with the Title Commitment and extended coverage over the standard general exceptions.

3.4 Neither Seller, nor Buyer (nor their respective representatives) will be required to be physically present at Closing if such Party has performed all acts and delivered to the Title Insurer all items and documents necessary for the Closing, together with written instructions of the Party which permit the Title Insurer to complete the obligations of the Party relating to the Closing.

4. *Tax Proration:* The Parties shall pro-rate real estate taxes applicable to the Property for the calendar year in which the closing occurs to the date of Closing based on 105% of the most recent tax bill for the Property. All real estate taxes due and payable prior to the Closing shall be paid by Seller.

5. *Inspection/due diligence documents:*

5.1 Up to and including December 27, 2016, Buyer may inspect the Property, including any environmental inspection or study, at Buyer's own expense (the "Inspection Period"). At Buyer's sole discretion, and with or without cause, Buyer may terminate the Contract by providing Seller written notice of termination during the Inspection Period; and upon such a termination, the Earnest Money shall be refunded to Buyer. Buyer shall indemnify Seller from and against any loss or damage to the Property caused by the acts or negligence of Buyer or the person performing any inspection for Buyer.

5.2 Within three business days of the Effective Date, Seller will deliver all due diligence documentation in its possession or reasonable control that is requested by Buyer, including, without limitation, physical condition reports for the Property (such as environmental reports, soil and groundwater tests, wetland delineations, Phase 1 analyses).

6. *Title/survey:*

6.1 At Seller's expense, Seller shall deliver or cause to be delivered to Buyer by December 15, 2016, as evidence of title in Seller, a title commitment for an ALTA title insurance policy in the amount of the Purchase Price, before adjustment for any credits at Closing ("Title Commitment" or "Commitment"), and copies of all documents available in the public records and disclosed in the Title Commitment as exceptions to title. The Title Commitment shall provide "GAP" coverage and coverage over the standard general exceptions contained therein, any endorsement reasonably requested by Buyer in order to cause the Title Commitment to conform with the requirements of this Contract, and will be conclusive evidence of good and merchantable title as shown in the Commitment, subject only to the exceptions stated in the Commitment. If the Title Commitment discloses any exception other than any of the Permitted Exceptions and Buyer objects to such exception in writing during the Inspection Period, Seller shall have each such exception removed before Closing, or have the Title Insurer commit to insure against loss or damage that may be caused by such exception before Closing. Seller's failure to remove an exception or secure insurance coverage for the same before Closing shall constitute a default under this Contract and authorize the Buyer to terminate the Contract and receive a refund of the Earnest Money.

6.2 At Seller's expense, Seller shall obtain and deliver to Buyer by December 15, 2016, a current survey of the Property, prepared by a surveyor registered in Illinois, certified to Seller, Buyer, and Title Company (and any other party Buyer desires) as having been prepared in accordance with the ALTA/ACSM 2011 Minimum Standard Detail Requirements, containing Table A Items 1, 2, 3, 4, 15, and 21 (the "Survey"). The Survey will establish and depict the exact legal description of the Property and will include the exact acreage of the Property.

6.3 Buyer shall have the right to object to any change in title, the Title Commitment, or Survey occurring after the effective date of the first Title Commitment delivered to Buyer and prior to Closing by providing Seller written notice of its objection. Seller's failure to cure or

remedy Buyer's objection before Closing shall constitute a default under this Contract and authorize the Buyer to terminate the Contract and receive a refund of the Earnest Money.

7. *Closing Deliveries:* In addition to any other documents to be delivered under this Contract, at Closing, Seller shall deliver to Buyer and Buyer shall execute as necessary: (a) an Affidavit of Title covering the time of Closing, subject only to the title exceptions permitted by this Contract and any other customary forms required for insurance of an ALTA title insurance policy; (b) a PTAX form as required by the Illinois Real Estate Transfer Tax Law, 35 ILCS Sec. 200/31-25, executed by Seller or Seller's agent or attorney; (c) an affidavit complying with the Foreign Investment in Real Property Tax Act, Internal Revenue Code Sec. 1445, and all regulations promulgated under that Act; (d) a Plat Act Affidavit, if required by the Kendall County Recorder of Deeds for the deed to be recorded; (e) a GAP indemnity statement; and (d) any other documents required by the Title Insurer or reasonably required by Seller or Buyer.

8. *Transfer taxes:* Transfer taxes required by local ordinance will be paid by the party designated in such ordinance. Seller shall pay any transfer tax imposed by the laws of the State of Illinois.

9. *Earnest Money/Escrow.*

9.1 Upon the effective execution of this Contract, Buyer shall deliver to Seller as "Earnest Money" a check for \$50,000 payable to Chicago Title and Trust Company ("Title Insurer"), as escrow trustee under a Strict Joint Order Escrow Trust Agreement. Except as provided below, the Title Insurer's escrow trust fee will be divided equally between the Parties.

9.2 If Closing occurs, Buyer will receive a credit applied toward the Purchase Price at Closing in the amount of the Earnest Money.

9.3 If Buyer terminates this Contract before the end of the Inspection Period, Buyer will be entitled to a refund of the Earnest Money.

9.4 If the Closing fails to occur because Seller has failed to fulfill any one or more of its obligations to Buyer under this Contract, Buyer may terminate this Contract at any time prior to Closing and will be entitled to a refund of the Earnest Money as liquidated damages, as Buyer's sole and exclusive remedy, with no deduction for Buyer's 50% share of the Title Insurer's escrow trust fee, which Seller instead shall pay the Title Insurer directly as an additional payment.

9.5 If the Closing fails to occur because Buyer has failed to fulfill any one or more of its obligations to Seller under this Contract, Seller may terminate this Contract and will be entitled to the Earnest Money as liquidated damages, as Seller's sole and exclusive remedy, with no deduction for Seller's 50% share of the Title Insurer's escrow trust fee, which Buyer instead shall pay the Title Insurer directly as an additional payment.

10. *Brokers.* Seller represents and warrants that there are no property or brokerage commissions payable for the transactions contemplated by this Contract to any party claiming through Seller, or arising out of the actions of Seller, except for a commission to be paid by Seller to Moxley & Co. outside of the Closing. Seller shall be solely responsible for paying any commission owed to Moxley & Co. or any other brokerage commission claimed through Seller or arising out of the actions of the Seller, and Seller shall indemnify, defend, and hold Buyer harmless from all loss, damage, cost, or expense (including reasonable attorneys' fees) that Buyer may suffer as a result of any claim, demand, or action for real estate brokerage

commissions, finder's fees or similar compensation brought by any person or entity acting or allegedly acting on behalf of Seller. Buyer represents and warrants that there are no property or brokerage commissions payable for the transactions contemplated by this Contract to any party claiming through Buyer, or arising out of the actions of Buyer.

11. *Notice:* All notices, consents, waivers, and other communications under this Contract (collectively, "Notices," and individually, "Notice") must be in writing and delivered as indicated below (or such other address or fax number described in a Notice under this section) by one of the following methods of delivery -- (a) hand, (b) registered or certified mail, postage prepaid, return receipt requested, (c) Federal Express or another nationally recognized overnight courier), (d) facsimile with confirmation of transmission by transmitting equipment, or (e) email with confirmation of delivery by a "read receipt" from transmitting computer:

BUYER:

Dan Di Santo
Village Administrator
Village of Oswego
100 Parkers Mill
Oswego, IL 60543
DDiSanto@oswego.il.org

with a copy to:

Gregory W. Jones
Ancel Glink, P.C.
140 S. Dearborn St., 6th Floor
Chicago, IL 60603
gjones@ancelglink.com
(312) 782-0943

SELLER:

Duncan Alexander
Alexander Lumber Co.
P.O. Box 366
Geneva, IL 60134
alsdma@gmail.com

with a copy to:

Joseph Kelly
Jones Lemon & Graham LLP
328 S. Second St.
Geneva, IL 60134
jkelly@joneslemon.com
(630) 208-4651 (fax)

12. *Execution of Contract; Counterparts; Effectiveness.* This Contract may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Contract and all of which, when taken together, will be deemed to constitute one and the same Contract. This Contract will be binding on the Parties only when Seller and Buyer have each signed a counterpart and delivered it to each other. The exchange of copies of this Contract and of signature pages electronically or by facsimile will constitute effective execution and delivery of this Contract as to the Parties and may be used in lieu of the original Contract. Signatures of the Parties transmitted electronically or by facsimile will be deemed to be their original signatures for all purposes.

13. *Entire Agreement.* With the exception of any Grant of Temporary Access and Inspection License, this Contract supersedes all prior agreements, whether written or oral, between the Parties relating to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the Parties relating to its subject matter. This Contract may not be amended, supplemented, or otherwise modified except by a written agreement executed by the Parties.

14. *Seller's Representations.* Seller represents and warrants to Buyer that:
- 14.1 This Contract and all documents or instruments delivered by Seller in connection with the transaction contemplated by this Contract have been or will be at the time of delivery duly authorized and all obligations of Seller under this Contract and the aforementioned documents and instruments are or at the time of delivery thereof shall be legal, valid and binding obligations of it and, as of the time of delivery, neither this Contract nor any of the other aforementioned documents or instruments violates or will be in violation of the provisions of any other agreement to which Seller is a party or to which it is subject.
- 14.2 There are no actions, suits, or proceedings pending or, to the knowledge of Seller, threatened against or affecting Seller or the Property before any administrative, regulatory, adjudicatory or arbitration body or agency of any kind that have, or could reasonably be expected to have, a material and adverse effect on the performance by Seller of its obligations pursuant to and as contemplated by the terms and provisions hereof.
- 14.3 Seller is in compliance with the requirements of Executive Order No. 133224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "Orders"), and Seller is not listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders.
- 14.4 As of the Effective Date, there are no agreements that will survive the Closing that concern the operation, repair, use, occupancy, and maintenance of the Property and services provided to the Property, including without limitation any management agreement.
- 14.5 Except for this Agreement, Seller has not granted to any party any right of first refusal or option to acquire fee title to the Property or any part thereof or interest therein.
- 14.6 Between the Effective Date and the Closing, Seller shall: (i) comply with all laws, ordinances, regulations and restrictions affecting the Property and its use; (ii) not create any mortgage, lien, pledge or other similar encumbrance in any way affecting the Property, nor otherwise convey any interest in the Property; (iii) not enter into any lease, contract, or agreement that will bind Purchaser or affect or encumber the Property after Closing; and (iv) not commit any waste or nuisance upon the Property. All expenses and costs incurred in connection with the foregoing and the ownership of the Property between the Effective Date and the Closing shall be the responsibility of Seller.

14.7 With the exception of any notices from Buyer, Seller has not received any notice of any violation of any law, municipal ordinance, permit or other governmental requirement or entitlement affecting the Property, including without limitation any notice of any fire, health, safety, building, pollution, environmental or zoning violation, and Seller has no knowledge that any governmental authority contemplates issuing such a notice, or that any such violation exists.

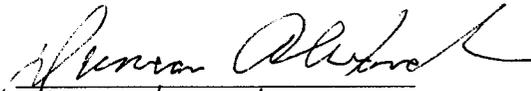
14.8 All representations made by either Party to the other Party under this Agreement shall be deemed remade as of the Closing and, for a period of one year from the Closing, shall survive the delivery of the deed and transfer of title pursuant to this Contract.

BUYER: Village of Oswego

By: _____

Date: _____

SELLER: Alexander Lumber Co.

By: 

Date: 11/28/2016