

SPECIAL MEETING
MINUTES

AUGUST 30, 1999

The special meeting was called to order at 7:30 p.m. In attendance were President Shields; Trustees Merkel, Morris, Nemec, Pickett and Rzonca and Village Attorney Schuster.

The Village President announced the appointment of two trustees, Stephen Pickett and Joseph Nemec, and a representative from Hey & Associates, to represent the Village on a proposed working group to be formed with the Village of West Dundee, concerning the proposed Pulte development on the Galvin property.

Discussion was had concerning the proposed Stream and Wetland Protection Ordinance and creation of a Lowland Conservancy District, with members of the Village Plan Commission and Zoning Board. A summary of said discussion is attached.

The meeting adjourned at 9:55 p.m.

Summary of the Joint Meeting of the Village Board
of Trustees, Zoning Board, and Plan Commission
August 30, 1999

A joint meeting of the Village Board of Trustees, the Village Zoning Board, and the Village Plan Commission was held at the Village Hall at 7:30 p.m. on August 30, 1999. Members in attendance are listed on the attached sheet.

Chairman of the Plan Commission, James Markey, made an introduction regarding the status of the Wetland and Stream Preservation Model Ordinance. Markey explained the cooperation from NIPC and Doug Martin of Kane County regarding the model ordinance and comparing it to the Village's existing Ordinance 91-10 (regarding development in the special flood hazard areas in the Village). Markey also referred to several maps he had on display at the meeting, including the 1982 Village Flood Plain Map. Carol Grom explained that D. Dreher of NIPC had in a letter dated March 5, 1999 several of the major questions raised regarding the proposed ordinance; she reviewed five of those comments at the meeting.

James Markey commented that Kane County recommends both the Wetland and Stream Protection Ordinance and the existing regulations established by Ordinance 91-10 for "comprehensive protection to the public and the environment" in the Village. Markey finally remarked that the regulations created an Overlay District, over the Zoning Code.

Markey then referred to the Village of Elburn map, which depicted the various wetlands, and the setback area around them. When asked, Markey responded that Kane County would likely produce a similar map for its pending storm water regulations.

Grom commented that the goal of the ordinance was to identify and protect wetlands in the Village.

Art Neil then commented that the Zoning board had several concerns about the proposed ordinance. He noted that the map was not definitive, but would show the relationships to wetland to non-wetland territory in the Village. The map "represents the text." The Zoning Board was concerned whether the text reached the goals intended, and whether it would be enforceable.

The Zoning Board is concerned about the effect of these regulations on business development in the Village. He pointed out that under the regulations the required set backs are measured from the ordinary high water mark, not the middle or edge of the stream in question.

He also noted that the ordinance allowed for variances; and that the Zoning Board took the position that variances were not allowed for uses otherwise prohibited. For example, since the model ordinance states that "absolutely" no development is allowed within seventy-five (75) feet of a stream, a variance would not be allowed for such development.

Neil also pointed out that there appears to be a stream located on the territory to be developed as Phase II of the Route 72/Locust Drive Commercial Development in the Village. This would prohibit development within seventy-five (75) feet of either side of this stream. The Zoning Board would not be inclined to grant a variance in this regard. If this stream is intermittent, and it appears to be, because of the periodic pumping by Spring Hill Mall, another solution would be to delete the term "intermittent stream" from the regulations.

Neil also noted in the B-1 Commercial Zone farther West on Route 72, there appeared to be numerous "depressional areas." Development is not allowed within depressional areas, and again, there must be 75 foot setbacks. Again, either a variance, or deleting the term, could be utilized.

Neil also considered the effect on homeowners. Because of the numerous streams and wetlands in the Village, there would be widespread effect. In all cases, a 75 foot set back would be required. Also, each homeowner would be required to pay a fee and then apply for a special use, and to pay a fee, under the regulations.

Last, the 25 foot "natural vegetation buffer strip" would also come into play, although for those presently cutting to the stream bank, there would be no enforcement. These regulations would come into place if there were additional development on such residential properties.

Neil also commented on the possibility of the Village purchasing vacant properties which were rendered unbuildable by the new regulations. He thought that if no variance was granted on a property on which the building was not possible, then this would amount to a condemnation of the property.

Neil also commented that the Village itself would be bound by these regulations if it intended to modify any stream or water course.

Last, Neil commented that under Section 502, the Village might waive all submissions for certain applicants, which would amount to waiving the requirements of the ordinance all together.

Grom responded that Section 502 would not necessarily waive the requirements, but allow the Village to vary the submission requirements. She also commented that there were no wetlands on any map regarding the areas zoned for business, so that it should not hamper commercial development in the Village.

Morris questioned whether anyone knew where the wetlands in the Village were, given the definitions. Grom responded that it would have been better to enact the regulations long ago, as there are many lots which would not have been built on had the regulations been in existence. It was Grom's opinion based on comments by David Yucca, that there would be no special problems in the business districts that a landscape architect could not overcome.

Robert Shields commented that since the Phase 2 area has a stream, and the owners have been discussing what to do with it with the Army Corp of Engineers, perhaps both sets of regulations are not required. Grom responded that the Army Corp of Engineers protects dredging or filling in a stream but does not protect the stream in the first place. The proposed regulations cover gaps in what is not covered by other regulations.

Shields asked how to cover the question of depressional areas. Grom responded that not every depression is meant to store water, as required by the regulations. She suggested that the Village could approach NIPC for help with this definitional problem. Shields replied that the definitions are critical.

Shields asked if any written comment had been received by the Plan Commission. Grom responded there had been no written comment to date. Shields however was aware of a letter from John Regan asking questions about the proposed regulations. He asked if the Plan Commission had made any change to its draft in response to the Regan letter. Markey responded that there had been no such changes made.

Scott Brewer, member of the Plan Commission, reminded the Board that Sue Harney had first brought the idea of the regulations to the Plan Commission, and he wondered if any of the current Board members continued to have believe the regulations were necessary. Shields mentioned that he had brought up the question of environmental regulations as a response to the initial Comprehensive Plan, and had asked the Plan Commission to look into it further.

Morris suggested that it was important to find a balance in reviewing these regulations and not creating an unneeded bureaucracy in the Village. Tom Merkel commented that he was opposed to the idea of these regulations, finding it to be too much regulation in a taking of property. Shields asked Merkel if he would consider any compromise, perhaps in regard to the natural vegetation buffer strip. Merkel said he would consider such a compromise.

Joe Nemec asked if it was possible to list all exemptions specifically, such as construction of a deck adjacent to a residence. Art Neil replied that he believed it would be possible.

Grom stated that the Plan Commission was willing to consider compromises regarding the buffer strip but thought that if it was reduced, there must be rigid enforcement. Morris again suggested that the Board of Trustees strike a balance in the regulations.

He wondered if it would be required of a homeowner to show no impact down stream from any development activity. Attorney Schuster responded that such a showing would be necessary.

Rock Corbett, a member of the Zoning Board stated that in his opinion the Zoning Board was only concerned regarding application of the ordinance, and did not feel that the regulations should not be enacted.

Grom stated that it was the intent of the regulation to create a buffer for any wetland or

stream in the Village and to keep building out of the wetlands and streams.

Morris asked if the regulations would extend to any property within 1 ½ miles of the Village. Schuster responded that the regulations would not extend to property located within another municipality. Morris wondered what would be the impact of the regulations in regard to underground streams, which are covered by the regulations.

Grom responded that the Plan Commission had looked at the Long Grove ordinance, which relies on soil types for its regulations, and has no map. Non load bearing soils or hydric soils are such that building must be prohibited. Common sense, she believed, would inform any property owner as to the buildability of his lot.

Sharon Ware was concerned about clearing poor quality trees from her property and replacing them with high quality trees. It was believed that this would not constitute development, nor would it be a violation of the required natural vegetation buffer strip, unless there was wholesale clearing of her property.

Joe Nemec questioned whether any of the soils listed in the ordinance itself were found to be present in the 40-acre tract planned for commercial development. It was noted that only Mrs. Harney had apparently looked into this question and she believed there were none. No one had check that authoritatively.

Walt Weber commented that he had clear cut the streambank on Joy Lane after purchasing the property from his neighbor. He noted that his neighbor had been allowed to build on the property next to him by the Village, and believed that now what had gone around had came around. He termed the regulations a "solution in search of a problem." He did not see a present need for new regulations, given the area restrictions and septic requirements of the Village. He believed the regulations created a "no mow" zone. He would have 8,000 square feet plus subject to no mowing. He was concerned about liability for injury occurring under those circumstances. He also noted that both at the Village Hall and around Lake Sharon there were improvements within 25 feet of the streambank area.

Grom noted that the regulations provide an easement for access for the Village to get to any stream, but did not require the Village to maintain the streambank or the buffer zone.

Shields then agreed that there would be an enforceability problem and recounted his experiences in trying to establish a walking path around the lakes in the hollow. Grom suggested that there would be an education problem but not an enforceability problem. Joe Nemec noted that persons around Bullfrog, where the Village had recently engaged in streambank stabilization, were now supportive where they had first been in opposition.

Merkel questioned who would pay for necessary court enforcement proceedings.

Denise Faler of the Plan Commission asked the Board to consider doing something, but asked specifically that they not do nothing.

W. Reum commented that a stream was now located onto his land, by erosion, and wondered what streambank stabilization might occur there. Joe Nemec suggested that the Village require the same standards in the Commercial Zoning District as elsewhere in the Village, so that there would be nicer commercial development in the Village. The model ordinance would provide leverage in this regard.

Grom noted that there were also residential lots remaining in the Village that would be governed by the new ordinance. Shields noted that he had had an inquiry regarding the 38 acres east of Sleepy Hollow Road and South of Route 72, and that the proposed regulations would render much of the land unbuildable. Grom noted that the setback areas could be modified by the Village Board, but must be fixed lest there be an enforcement problem. DP questioned whether there should be any distinction between commercial and residential, or whether any such was possible. Jim Markey asked what would be acceptable to the Board of Trustees. Shields responded that the Board would hold a public hearing in regard to the proposed ordinance. Patrick Finn noted that the buffer zone was a concern to him; his yard now is at six foot from the creek. Grom reiterated that enforcement would be on future development, but not on any existing present conditions. Finn continued that he was encouraged about educating the public, through the schools and in particular the Cub Scouts, who did a reclamation project at Lake Sharon last year. He also wondered if the land was deemed to be unbuildable, whether the Village Board would be required to buy it. He also suggested separate regulations for the commercial districts in the Village.

Joe Nemec wondered if existing maps could be used; Grom commented that the USGS Maps could be used; Markey added that use of the map would settle definitions regarding the existence of wetlands. Greg Rzonka stated that he though the Village should continue with the initiative in regard to this ordinance; Steven Pickett also thought the Village should go forward although there was a way to go.

Grom commented that the ordinance has survived challenges. Morris wondered if a summary could be published for education of the public. Schuster commented that a summary might not be effective because the disputes all arose in the details, not in the general concept of the ordinance itself. Grom reiterated again that the Board would have authority to set setbacks as it deemed appropriate. She also noted that the variance procedure solved any constitutional problem in regard to the "taking" issue, according to NIPC.

Merkel asked who enforced regulations in Huntley; Markey responded that it appeared there was one specifically designated; the Village President and others simply made observations and determined whether or not there was a violation.

Grom stated that a complaint could be made to the Zoning Board, and then appealed to the Village Board.

Shields then summarized by thanking the Plan Commission and Zoning Board for its presentations, and if they were deemed to be complete, felt the matter was then in the hands of the Village Board for further proceedings.