

**Village of Gilberts
Committee of the Whole
Meeting Minutes
July 13, 2010**

APPROVED MINUTES

Call to Order

President Zirk called the meeting to order at 7:02 p.m. He proceeded to lead those present in the Pledge of Allegiance.

Roll call / Establish Quorum

President Zirk asked Village Clerk Meadows to call the roll. Roll call: Members present: Trustees Erbeck, Clark, Mierisch, Zambetti, Farrell and President Zirk. 1-absent: Trustee Cullotta. Others present: Administrator Keller, Finance Director Blocker, Attorney Tappendorf, Chief Building Inspector Swedberg and Village Clerk Meadows. For members of the audience please see the attached list.

Items for consideration

- A. Minutes from July 6, 2010 Village Board Meeting**
- B. Treasurer's Report for June 2010**

President Zirk asked if there were any comment with respect to agenda items 3A or 3B. There were no comments. President Zirk directed staff to place both items on the next consent agenda.

Items for discussion

Indian Trails overlay Zoning

Administrator Keller reported that about a year ago representatives from the Indian Trails neighborhood requested that the Village assume a greater role in enforcing the Covenants, Conditions and Restrictions (CCRs) for their neighborhood. The Village Board agreed to enforce the CCRs on the neighborhood's behalf with the approval of Ordinance 05-40. In response to questions about the Village's legal authority to enforce the private CCRs, the Village and neighborhood representatives discussed establishing an overlay zoning district. The overlay zoning district would include regulations that mirrored some or all of the requirements of the CCRs as closely as possible, making it possible to enforce similar requirements as an extension of the zoning ordinance.

Trustee Cullotta arrived at 7:03 p.m.

Administrator Keller reported that the Village Board had requested a petition with the support of at least 75% of the neighborhood's property owners, so as to ensure the Village was acting on the neighborhood's behalf and not imposing unwanted regulations.

Administrator Keller went on to say that there are a few CCR terms that might be questionable to regulate through zoning. Attorney Tappendorf will discuss this matter in more detail.

Attorney Tappendorf stated from an overall zoning perspective, zoning should be limited to the regulation of uses and not address construction or other regulatory issues. In addition, Attorney Tappendorf reported that there was one zoning issue that she recommends the Board does not regulate. The zoning issue is the sign restrictions. She stated that it was fine if it was a private restriction. However, if the government regulates signage as it is currently restricted in the CCRs, it is likely that the Village would be subject to a First Amendment challenge, particularly because the General Assembly recently enacted legislation restricting municipal regulation of election signs.

Attorney Tappendorf went on to discuss section 6.5.4.7 which deals with outdoor storage and parking in the section that appears to be the one that the Indian Trails Resident wants the Village to enforce. However, it is not clear in the CCRs how to conduct the measurements referenced in the section. Attorney Tappendorf recommended that if the Village does want to include this section in the Overlay Zoning Ordinance the language should be very clear on where and how the measurement will be applied based on the way it is being administered currently.

In addition, Attorney Tappendorf reported that in section 6.5.4.8 "Animals" the Village should confirm that the limit on dogs is the same applied to other residents in the community. She went on to say that from a zoning perspective the Village does have the right to regulate zoning and uses if it is rational. Attorney Tappendorf stated that this may not be a regulation the Village would want to enforce if it differs considerably from general animal regulations throughout the Village.

Attorney Tappendorf reported that section 6.5.4.9 "Landscaping and Grading" are construction issues and the Village may or may not want to enforce that in a zoning ordinance.

Attorney Tappendorf reported that in her opinion the restrictions in the CCRs that are "zoning" in nature are:

- Minimum Allowable Floor Area
- Modular Constriction Prohibition
- Garages Required
- Fences Prohibition
- Outdoor Storage and Parking
- Conflicts with Other Zoning Districts

Administrator Keller reminded the Board that this would not replace the current R3 zoning. The Ordinance would just add an additional layer of regulation. In addition, section 6.5.5 would clarify that whatever provision is more restrictive would apply.

Administrator Keller reported that staff has not begun the petition process yet. Staff wanted to allow the Board time to review this matter.

He reported that staff anticipates holding the Public Hearing on August 11th and once the Plan Commission makes their recommendation this matter will come back to the Board for approval.

Trustee Clark asked if the draft Ordinance was going to be presented to the Plan Commission. Administrator Keller responded that he was looking for Board direction. Trustee Clark concurred with Attorney Tappendorf's recommendations. He went on to say that in his opinion it would be a bad policy decision for the Board to try to regulate and enforce matters covered in the CCRs. He expressed concern that in the future if other HOAs defaulted the Village would be asked to also provide those subdivisions with overlay zoning districts and enforce their CCRs.

Trustee Clark stated that he does support enforcing zoning issues which required a building permit. However, enforcing parking, outdoor storage and animals, in his opinion, is trivial and not zoning issues.

President Zirk discussed how historical zoning districts are used in other communities. He noted that the use of an overlaying zoning district's purpose is to protect the flavor of the community. Attorney Tappendorf reported that from a legal standpoint the section with respect to signage is the section she is most concerned with. This section could prompt litigation because it is inconsistent with current Illinois law.

President Zirk expressed concern with omitting any of the sections prior to the Plan Commission's review. He recommended allowing the Plan Commission to review Administrator Keller's original draft Ordinance along with Attorney Tappendorf's recommendations.

Trustee Cullotta asked who pays for the enforcement cost. Administrator Keller reported that it would be the Village enforcing the restrictions. However, if any fines were levied the fines collected would come back to the Village.

Trustee Cullotta asked what would happen if the violation resulted in litigation. Administrator Keller reported that the cost of litigation would be the Village's responsibility.

Trustee Erbeck expressed concern with the expense of litigation being the Village's responsibility. He went on to report that his neighborhood pays an HOA to enforce the CCRs and he is questioning why this neighborhood would be treated differently.

President Zirk noted that the Indian Trails CCRs were drafted in a different era. In addition, if 83% of the neighbors were to impose an HOA the reminding neighbors would not have to comply with the newly created HOA's CCR's.

Trustee Erbeck asked if the Village would be creating precedence. He questioned "what if other neighborhoods abolished their HOA due to the fact that the Village has committed to enforcing Indian Trails CCRs". President Zirk replied that in his opinion that would not happen.

There was some discussion about the amount of HOA dues collected and the percentage of the dues that are used for enforcement. Trustee Cullotta reported that his HOA has not pursued any litigation matters. Attorney Tappendorf stated that the Village would not be obligated to enter into litigation and can choose whether to enforce the restrictions. In addition, if a homeowner was in violation of any CCR's and a private property owner was unhappy with the Village's lack of enforcement, the private property owner could proceed with litigation.

Trustee Erbeck asked Trustee Zambetti if he recalled an incident when a resident constructed what he called a play fort. However, in reality it was a storage shed. He went on to say that the Board Members along with staff spent many hours addressing this issue, and it should have been a simple HOA review and denial. Trustee Zambetti remembered the incident. He noted that some of the older CCRs contain vague language. However, as time went on the newer CCRs contains language that is enforceable.

Trustee Zambetti noted that the Village has adopted the policy to enforce the Indian Trails CCRs, and he would not want the Village now to take a step back.

Trustee Mierisch agreed with Trustee Zambetti. In her opinion the newer CCRs' language is enforceable. In addition, the residents that moved into the Indian Trails Subdivision were aware of the CCRs' provisions. However, now a few of the residents would like to amend the CCRs, although they are not the majority.

Trustee Mierisch went on to say, in her opinion, she does not foresee other HOA's disbanding or asking the Village to enforce their CCRs.

Trustee Cullotta asked if the Village could include language that would allow the Village to recover attorney fees. Attorney Tappendorf replied that this was not permitted with zoning violations. However, if the Village was to file a complaint in Circuit Court, state statute does allow for the Village to recover attorney fees.

President Zirk reported that currently there are different zoning districts throughout the Village and those areas are treated differently. President Zirk continued to say in his opinion he does not know how this would be any different.

Trustee Erbeck expressed concern with enforcing the proposed overlay zoning district. He noted that language is not clear with respect to section 6.5.4.7 "Outdoor Storage and Parking" how the measurements of the recreational vehicles will be taken.

Attorney Tappendorf stated that Chief Building Commissioner Swedberg should be involved in the discussion and clear definitions should be included. Trustee Erbeck agreed.

Trustee Erbeck reported that he was with a group of residents and a topic was brought up with respect to overnight parking on Village streets. He discussed the possibility of implementing an overnight parking sticker program. He asked if the Indian Trails Overlay District was approved and the Board had adopted the overnight parking sticker program would that apply to Indian Trails. Attorney Tappendorf reported that whichever Ordinance is stricter would apply.

This matter will be placed on the August 11, 2010 Plan Commission Agenda for consideration.

Board of Trustee Reports

Trustee Erbeck asked if the Board would be interested in considering an overnight parking sticker program. Trustee Zambetti recommends if a resident occasionally needs to park on the street overnight they should contact the Police Department.

Trustee Erbeck asked who is responsible for enforcing parking issues. Administrator Keller reported that the Village can enforce the prohibition of the overnight parking. However, historically the Village has chosen not to enforce the parking prohibition.

Attorney Tappendorf stated that the Village is not legally required to have signage informing residents that overnight parking is prohibited so long as there is an ordinance in place establishing the restrictions.

Staff will provide the Board with a copy of the current Village Code which addresses this issue. The Board Members recommended this matter be discussed on a separate agenda.

Trustee Erbeck asked if there was any reason a resident would not be allowed to have a separate irrigation meter for sprinkling purposes. Chief Building Inspector Swedberg replied that this could be easily done. However, the water rate for irrigation meters does usually carry an additional cost to provide for conservation measures.

Trustee Erbeck requested staff to research this matter. In addition, he requested this matter be discussed at a future Board Workshop.

Trustee Mierisch was in favor of the staff investigating the possibility of irrigation meters. However, she reminded the Board the need to prioritize the staff projects. Trustee Cullotta agreed. However, he noted that some of the tasks are less contentious and can be dealt with quickly.

Trustee Zambetti did not have a problem with allowing residents to have irrigation meters. However, he does want to be sure a license contractor would be doing the installation and permits be issued. In addition, the Village requires the irrigation system be inspected annually.

Trustee Erbeck asked if Administrator Keller had an update on the status of the traffic backup at the intersection of Galligan Road and Huntley Road. Administrator Keller reported that he had spoken with Chief of Police Williams. Chief Williams does have an inquiring into Chief Perez about what type of resources they might have available. However, that intersection does pose a concern due to the fact that it does involve two different jurisdictions, and it is also outside the Village limits. Chief Williams is inquiring to see if Kane County would be able to have an officer at the intersection or if they would allow the Village to direct traffic. Administrator Keller went on to report that the intersection will be signalized in the year 2014.

Trustee Cullotta stated that he has received calls about potential squatters living in a foreclosed home. He was unsure whom they should contact. Administrator Keller recommended they contact the Police Department.

Trustee Farrell reminded everyone that this weekend was the Community Days event and there would be a table set-up for the Village Officials. She went on to report that Sue Corbett, Kelly Hurley and Village Clerk Meadows have done a fantastic job organizing the event.

President Zirk reported that Brett's American Bar and Grill will be under new ownership at the end of the month. He went on to wish the new owners well. Trustee Erbeck asked if the new owners were changing the name of the establishment. Clerk Meadows reported that the name of the new establishment is the Point Bar and Grill.

Executive Session

A motion was made by Trustee Erbeck and seconded by Trustee Clark to close a portion of the meeting to the public, effective immediately with no business to follow as permitted by 5ILCS 120/2 (c) (21) to discuss litigation affecting, or on behalf of the Village which has been filed and is pending in a court or administrative tribunal of which is imminent and as permitted by 5 ILCS 120/2 (c) 2 Collective negotiating matters.

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Roll call: Vote: 6-ayes: Trustees Mierisch, Zambetti, Farrell, Cullotta, Erbeck and Clark. 0-nays, 0-abstained. Motion carried.

The Board Members along with Administrator Keller, Attorney Tappendorf, Chief Building Inspector Swedberg and Village Clerk Meadows went into Executive Session at 8:06 p.m. and returned to the public meeting at 9:17 p.m.

Adjournment

There being no further business to discuss, **a motion was made by Trustee Erbeck and seconded by Trustee Clark to adjourn from the public meeting.** Roll call: Vote: 6-ayes by unanimous voice vote. Adjournment time: 9:18p.m.

Respectfully submitted,

Debra Meadows

SIGN IN SHEET

(Please Print)

COTW

7/13/2010

Name

Address

Telephone #

Tom WATDA

485 Kildare

224-629-1351

Sue + Dan Corbett 81 Augusta