

**Village of Gilberts
Plan Commission
Meeting Minutes
August 11, 2010**

APPROVED MINUTES

Call to Order

Chairman Hagen called the meeting to order at 7:00 p.m.

Roll Call/Establish Quorum

Roll call: Members present: Commissioners Zoerhoff, McHone, Sullivan, Hacker, and del Vecchio, Vice Chairperson Davidowski, and Chairman Hagen. Commissioner Fatigato arrived at 7:16 p.m. Also present were ex-officios Biver and Mills, Administrator Keller, Chief Building Inspector Swedberg, and Attorney Tappendorf. For members of the audience, please see the attached list.

Not present were Commissioner Borgardt and ex-officio Brown.

Approval of Minutes

June 9, 2010

A motion was made by Commissioner McHone and seconded by Commissioner Zoerhoff to approve the minutes from June 9, 2010. Vote: all ayes. Motion carried.

New Business

**Public Hearing: Amending the Zoning Ordinance to add new section 6.5 "ITO"
Indian Trails Overlay District**

Administrator Keller gave a brief overview and background information on the topic for the public hearing. Representatives from Indian Trails had approached the Village and inquired whether the Village would help regulate the neighborhood's Covenants, Conditions, and Restrictions (CCRs) because Indian Trails doesn't have an active Home Owner's Association (HOA) to help enforce the covenants. The Village Board made a commitment a few years ago that the Village would help enforce the covenants. However, there is some concern over the Village regulating private covenants. The Board asked for a petition signed by at least 75% of the property owners to help ensure that there is sufficient interest for the Village to move forward with this enforcement. To date, the adequate number of signatures was received.

The ITO closely resembles the language in the private covenants. Staff notes were included in the Plan Commissioners' packets with comments referring to each section.

If the ITO is approved, the zoning maps would have to be amended as well. The properties would be zoned R3 and ITO.

A motion was made by Commissioner Sullivan and seconded by Commissioner del Vecchio to open the public hearing. Vote: all ayes. Motion carried.

Chief Building Inspector Swedberg gave a brief explanation of how the Village handles citations. He stated that an initial courtesy letter is sent to the homeowners explaining that they may be in violation and a remedy must be made to remove that violation. The main goal is to make the property owners aware of the possible violation. If the property owners are believed to still be in violation, then another letter is sent out stating the violation and that they can incur a fine of \$75 - \$750 per day until the violation is remedied. Typically the fine is on the lower side of the scale, but that can increase depending on the severity or for repeat offenses.

A discussion continued regarding who and what determines the severity of a violation. Commissioner McHone suggested that a draft with a range of fines and reasons be made.

Attorney Tappendorf added that repeat offenses can cause the fine to escalate, but the Village is typically looking for compliance not a fine. If a property owner is taken to court, the Village can recommend a fine. However, it's the judge that sets the fine. Administrator Keller added that the code enforcement isn't compensated by fines.

Chairman Hagen stated that his HOA doesn't give a fine, but it does state that it can recover the HOA's cost in trying to resolve the violation.

Commissioner Sullivan inquired whether there are any other overlay districts in the Village. The response was there are not.

Commissioner Zoerhoff asked whether neighbors have to currently take each other to court in order to enforce the covenants. The response was yes.

A discussion continued on which other neighborhoods don't have a formal HOA. Those are Gilberts Glen, Dunhill Estates, and Windmill Meadows.

As complaints arise, the Village is currently helping enforce the CCRs. A discussion continued regarding "grandfathering in."

Resident Cliff Surges of 206 Whitefeather Lane thanked Village staff for working on this project. He stated that when the residents of Indian Trails came to the Board five years ago to see if the Village would enforce the covenants, he thought the process was complete. There haven't been any changes made to the CCRs. Attorney Tappendorf added that the Village provided some input on the CCRs, but there haven't been any additions.

Mr. Surges went on to say that the petition was signed by 83% of households which are in favor of the Village enforcing the covenants. He stated that the majority of the signers are original owners. Commissioner Hacker asked whether the CCRs were shown at the time of purchasing the house. Mr. Surges stated that he did not know if there was a consistent method of explaining and showing the covenants to subsequent homeowners who weren't the original purchasers. Commissioner Zoerhoff asked if the CCRs were attached to the deed. Mr. Surges responded by saying that the original intention was for them to be attached. He added that residents were shown the CCRs when signatures were collected.

Resident Dick Lees of 219 Shining Moon stated that he bought his house four years ago, and he didn't find out about the covenants until after he received fines. He went to court, but eventually the fines were dropped. He is opposed to the Village regulating and enforcing the CCRs because he believes problems should be handled privately between neighbors. He stated that the Village has endless resources in enforcing them, and he believes taxes may increase. He also stated that he is opposed to "grandfathering in," especially since he feels there currently are violations in the subdivision. He is also opposed to the ITO as well. In addition, he feels the wording in the CCR should continue to be vague.

He proceeded to explain the issues that arose when he stored his boat on his driveway, but he did add that he is now in compliance. A brief discussion continued on the determination of boat measurements.

Commissioner Zoerhoff commented on the fencing section. The Indian Trails covenants is more restrictive than the Village Code. There is also a conflict on the number of animals allotted per household.

Commissioner Hacker commented on section 6.5.4.7, Outdoor Storage and Parking. Administrator Keller stated that staff is looking for direction from the Plan Commission on that issue.

Vice Chairperson Davidowski asked the resident his opinion on whether he feels it might be better for the Village to enforce the CCRs, that way new homeowners will know there are certain restrictions.

Mr. Lees added that he feels Indian Trails should have an HOA. Commissioner del Vecchio inquired whether the residents considered putting together an HOA. She stated that one of the benefits was that the CCRs can be amended. The residents were told that they would have to get 100% compliance from all of the property owners, and that wasn't likely.

Tim Butler of 415 Sleeping Bear Trail feels that the covenants enhance his property. He did question section 6.5.4.8. The animal restriction differs from the Village Code. He proceeded to discuss section 6.5.4.10. He feels that the wording that describes the storage buildings is vague and should be better defined. He added that he feels Paragraph F should be taken off the covenants. He also stated that his house is limited to 3 bedrooms. This was due to the fact that his house backs up to wetlands. Originally it was thought that if the number of bedrooms was limited, then the septic tank would be smaller. A large septic tank would be an issue if the wetlands were to flood. He stated that there is a possibility that in the future Indian Trails may have sewer hook up available. At that time a septic tank wouldn't be necessary, so the number of bedrooms shouldn't have to be limited. He added that flooding has only become a problem in the last few years due to the amount of rainfall and because of the runoff from the Elgin industrial park east of the Village.

Attorney Tappendorf reminded the residents and plan commissioners that the Village doesn't have the authority to amend or change the covenants. The homeowners would have to do that if an HOA were to be established.

Resident Jeff McIntyre of 494 Running Deer Lane stated that he believes in the covenants, but he feels it is too vague. He didn't sign the petition because he doesn't believe in the Village enforcing the CCRs. He thinks that it may entice other subdivisions to want an overlay district as well. He feels that it would be in the best interest of the residents of Indian Trails to be able to amend the covenants. He feels it would be better to form an association. He stated that he doesn't have any problems with installing a fence around a pool. However, he does have an issue with the covenants telling him what type of material he can use. When the covenants were written over 20 years ago, it may have been ideal to use wood. However, he doesn't feel wood is an ideal material to currently use. He thinks it would hurt the value of his property.

Mr. McIntyre went on to say that the original development included 87 lots. He is concerned that only 64 lots were included in the ITO. He said there are many issues concerning sheds, fences, signs, and trailers. Since the CCRs are written poorly, he believes that problems may arise for the Village when trying to enforce them. He added that when he first purchased his house, he didn't receive a copy of the covenants. His first fine was \$750 for having a trailer, and he wasn't given any warnings. He added that he did understand that there were regulations he had to follow, so he complied.

Vice Chairperson Davidowski had questions regarding zoning restrictions that Attorney Tappendorf clarified for her. Specifically, Attorney Tappendorf explained the difference between zoning regulations and private covenants. The Village has expressed statutory

authority to enact, administer, and enforce its zoning regulations against all property within the Village. Zoning regulations restrict the use of property within the Village and include restrictions on building, setbacks, height, size of buildings and accessory structures, and other similar regulations. Private covenants may include similar restrictions as are contained in a zoning code, but are specific to a particular subdivision. Private covenants may also include regulations on building architecture, signage, fencing, and other regulations that are not regulated by the zoning code. Because the Village is not a "party" to the private covenants (which are an agreement between the owners of property within the subdivision), the Village is not the appropriate entity to enforce or administer the private covenants. Instead, private covenants are enforced by a homeowners association, if there is one, and can also be enforced by any owner of property within the subdivision.

Resident Dan Baird of 571 Running Deer Lane stated that the CCRs weren't consistently attached to the deeds of the houses. He added that when Indian Trails was first accepted into the Village, the Board said they would enforce their covenants. He said the other subdivisions weren't told that, so there shouldn't be a concern with other subdivisions wanting an overlay district. He said that he appreciates the Village helping enforce the few problems that have arisen, and he likes the neighborhood without sheds or fences. He added that Indian Trails' residents did look into starting an HOA a few years ago, but it didn't seem as if there was going to be 100% compliance.

Commissioner McHone questioned the length of boats that are allowed.

Commissioner Sullivan asked Mr. Baird if there was anything he would like to change in the covenants. Mr. Baird responded that he would, but there isn't a mechanism in place to make the changes.

Resident Alana Woodbury of 218 Red Hawk Path stated that she moved into her house 13 years ago, and she is the second property owner. She didn't know that there was a CCR, but she could tell by looking around the neighborhood that there were some limitations (fence, shed). Five years ago the Board said they would enforce the covenants because Indian Trails didn't have an HOA, but the proper procedure wasn't followed. She said there haven't been many complaints, so it would be a relatively low cost to the Village.

She added that she had invested money into making her garage larger because sheds aren't allowed. She doesn't think it would be fair for other homeowners to be allowed to build sheds when all of the other homeowners have been in compliance. Commissioner del Vecchio added that even if the Village doesn't move forward with the overlay district sheds still wouldn't be allowed because it is stated they aren't allowed in their CCRs.

Mrs. Woodbury said that property owners were given copies of the covenants five years ago, and copies were made available when the signatures were recently collected for the petition. She added that some of the residents who aren't in favor of the ITO have had compliance issues in the past. She added that there have only been a handful of problems over the past few years.

Commissioner Zoerhoff reminded the residents that they do have a mechanism in place for enforcing compliance. It's just costly. Mrs. Woodbury stated that the residents don't want to have to take their neighbors to court because of the expense, and they want to stay on friendly terms with one another.

Resident Lonnie Ritchason of 525 Sleeping Bear Trail stated that out of the 16 houses he went to collect signatures for the petition, only 1 household wasn't aware of the CCRs when the property was purchased. He would like for the Village to enforce the CCRs. In addition, he isn't in favor of an HOA, and he knows other residents who aren't either.

A motion was made by Commissioner Sullivan and seconded by Commissioner McHone to close the public hearing. Vote: all ayes. Motion carried.

Vice Chairperson Davidowski questioned why the overlay district wouldn't be changed to include the entire Village. The response was that it would be difficult because each subdivision has a unique set of regulations.

When asked why the Village would want to enforce the CCRs, Administrator Keller stated that the Village Board previously agreed to help enforce them. Attorney Tappendorf stated that this process was initiated by the property owners.

Chairman Hagen stated his concern of possible litigation against the Village.

Commissioner del Vecchio inquired about the number of complaints received regarding Indian Trails. Chief Building Inspector Swedberg stated that it is relatively equal to the complaints received in other subdivisions. She then asked if the Village was setting a precedence by enforcing their CCRs. Administrator Keller's response was no. This is a unique situation to Indian Trails.

Attorney Tappendorf stated that the overlay adds authority for the Village to regulate the CCRs.

Legally, if the Village was to help enforce the overlay district, fees could not be added to Indian Trails' properties because they currently don't have an HOA.

Administrator Keller stated that the Village Board will be voting on enforcing the overlay district, not enforcing the covenants. Attorney Tappendorf stated that the Village would only be enforcing the zoning.

Vice Chairperson Davidowski asked if a future Board could rescind the ITO or rescind the commitment made in 2005 to help enforce the CCRs. The answer was yes.

Commissioner Hacker questioned section 6.5.4.9. Two trees would be in the front yard. A discussion ensued regarding how trailers and boats are measured. Chief Building Inspector Swedberg gave an explanation.

Attorney Tappendorf said that according to state law the Village cannot prohibit election signs. The Village is currently working on an amendment to the Village Code.

Commissioner del Vecchio asked how many times the Village has been in a legal battle due to a complaint in Indian Trails. Chief Building Inspector Swedberg stated that he believed it had only been one time.

Commissioner Hacker inquired about the number of violations that have occurred in Indian Trails.

Commissioner Zoerhoff stated that reasonable guidelines should be set allowing residents to pack, unpack, or clean trailers and recreation vehicles, such as no outdoor parking or storage over 8 hours or no outdoor parking or storage overnight.

A motion was made by Commissioner del Vecchio and seconded by Commissioner Fatigato to continue the public hearing to the next scheduled Plan Commission meeting on August 25, 2010 at 7:00 p.m. Vote: all ayes. Motion carried.

Public Hearing: Amending the Zoning Map to zone the Indian Trails Subdivision as "ITO" Indian Trails Overlay District

A motion was made by Commissioner del Vecchio and seconded by Commissioner Sullivan to continue the public hearing to the next scheduled Plan Commission meeting on August 25, 2010 at 7:00 p.m. Vote: all ayes. Motion carried.

Old Business

There wasn't any old business to report.

Communication

There wasn't any communication to report.

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Adjournment

There being no further business to discuss, **a motion was made by Commissioner McHone and seconded by Commissioner Zoerhoff to adjourn the meeting at 9:33 p.m.** Unanimous Voice Vote: all ayes. Motion carried.

Respectfully submitted,

Karen Danca, Recording Secretary