



**VILALGE OF GILBERTS
VILLAGE BOARD MEETING MINUTES
TUESDAY, OCTOBER 4, 2022**

Village Hall: 87 Galligan Road, Gilberts, IL 60136

1. CALL TO ORDER / PLEDGE OF ALLEGIANCE

President Zambetti called the meeting to order at 7:00 p.m. He, along with Jr. Whip-Purs Charlie and Brayden proceeded to lead those present, in the Pledge of Allegiance.

2. ROLL CALL / ESTABLISH QUORUM

Village Clerk Kelly Mastera called the roll. Roll call of Members present: Trustees LeClercq, Corbett, Allen, and Hacker were present. Trustees Coats and Redfield were absent. Others present: Village Administrator Brian Bourdeau, Public Works Director Wade Kretsinger, Robinson Engineering President and Engineer Jon Zabrocki, and Attorney Julie Tappendorf.

- 3. PROCLAMATION** – President Zambetti proclaimed the weekend of October 15-16, 2022 as Jr. Whip-Purs Weekend in the Village of Gilberts. Kurt Kojzarek, Secretary of the Jr. Whip-Purs Football and Cheer, provided details about the Jr. Whip-Purs programs, and the success the teams have seen and the impact it has upon the children. He thanked the Village Board for their support, estimating that about one-third of the members of the Jr. Whip-Purs come from Gilberts. He extended an invitation to the Board to come to the Jr. Whip-Purs' bonfire at Goebbert's Pumpkin Farm on Friday evening, October 13.

- 4. PUBLIC COMMENT** – None.

5. CONSENT AGENDA

- A. A Motion to approve Minutes from the September 20, 2022 Village Board Meeting
- B. A Motion to approve Bills & Payroll dated October 4, 2022

A Motion to Approve Consent Agenda items 5.A-B as Presented was made by Trustee LeClercq and seconded by Trustee Allen. Roll call vote: Trustees LeClercq, Corbett, Allen, and Hacker voted Aye (4), 0-nays, 0-abstained. Motion carried.

- 6. ITEMS FOR APPROVAL** – None.

7. ITEMS FOR DISCUSSION

A. Stormwater Maintenance Services under 2010 License Agreement

President Zambetti stated that he thought it would be a good idea to get everyone together at the same time and have a discussion about where everything is at with the Village and Phoenix & Associates. He said about a year ago Administrator Bourdeau, Attorney Tappendorf, Mr. George Kanagin, Mrs. Connie Kanagin, and he met to discuss stormwater detention credits. President Zambetti stated that based on the information Administrator Bourdeau, Attorney Tappendorf, and he had, the Village came up with 0.8 credits left.

Mr. Kanagin confirmed the meeting took place and stated that there was a difference in accounting and opinions. He explained that there is a package available on the website, but it is missing the first page and the signature page which gives the background explanation of the 2020 renewal of the license that the Board approved which goes through 2025. Mr. Kanagin stated that he brought a copy of the introduction letter which he stated clearly identifies that they were petitioning for renewal for five years and that time they had 29.4-acre-foot storage. Mr. Kanagin handed the documents to the Board members to pass around, as well as Administrator Bourdeau, Attorney Tappendorf, and Robinson Engineering Engineer Jon Zabrowski.

Mr. Kanagin states that the document was part of the submittal for the 2020 renewal, and can also be backed up. Mr. Kanagin stated that also had the signature page that was missing from the exhibit in the board packet and brought copies of that. He stated he did execute the contract although he doesn't believe he ever got a copy of the signature. He said their position is that the accounting was improper, and in the past, he believes the Village added wetland credits and a separation of regional storage. Mr. Kanagin said that for 10 years, over 12 years, subject to the 2010 agreement, accounting is done on a yearly basis and then there is a five-year review. He said they've kept that intact and it's been reviewed by Village engineers, and John Swedberg in Public Works.

Mr. Kanagin said two weeks prior to that submittal in the 2010 time period, there was a long list of activity and accounting which has been provided to Mr. Swedberg, Public Works Director Aaron Grosskopf, Administrator Bourdeau, Engineer Al Stefan and Sean Kelly, the hydrologist for the engineering firm Robinson Engineering. Mr. Kanagin provided documents to the Board and the others which he said are emails and the quantification or reconciliation that goes back to 2014. He said this information was provided to the other Village consultants who audit and monitor Phoenix's activity and the advance of what Phoenix calls in-kind services, balance of acre-foot storage, and a listing of the projects and applicable dollars that went there. He stated he believes the Board will find it at below market value because of Phoenix's commitment to the community. Mr. Kanagin said based on what he said and the package that was provided to the Village Board, he wanted some clarification that there was background, there was enrolled 29.4, which the Village Board had approved.

He stated that then COVID-19 occurred, and former Public Works Director Aaron Grosskopf had questions about contracts, dates, times, and things were being cherry-picked. Mr. Kanagin stated he

was very disappointed in the actions and conduct of Mr. Grosskopf. He stated that the contract stands on its own, that Phoenix has never changed and there has been 10 years of auditing, and they've done wonders for the community. He stated they will continue doing that, and even with a disagreement, they've never stopped. He said with MS4 permitting, they've continued on a weekly basis to do approximately 36 rain and snow event inspections, high winds, melt offs, and other maintenance.

Mr. Kanagin stated it comes down to accounting, and that in 2015 the Village consultant identified 49 acre-feet of storage. He acknowledged that Phoenix donated approximately 9-acre-foot storage to the Village with the roadway program and mentioned Gilberts Glen east-west, Mason Road, and Industrial Road east-west. He said his wife generously donated 9-acre-points to the community, and that they've been doing things to support the community since 1989.

Mr. Kanagin stated Mr. George Salerno is present. Mr. Kanagin said he wanted to start with Gilberts Glen East area as that is what caught his attention with the funding. He said for the record for Gilberts Glen East there is an appropriation, and he said he is all for appropriation of knowledge for stormwater management, but Mr. Kanagin said let's not fix something that is fixed. He said he has a brochure from a conference, one that public works and municipal engineers are all members. He said the first go-around when he entered into the regional storage was with Mrs. Sloan in Indian Trails, Binnie Road. He said upon completing that and doing a build design knowing the resources in the community, he brought it in with major savings. He said every municipality can submit a proposed model and that there was about 300 of them. He said three of them were selected. He said Gilberts Glen east-west was selected as a model. He said there is web information that is about 84 pages long which he did not want to bring. He said people can find that Gilberts Glen east-west and Binnie Road were featured. Mr. Kanagin said he will give the document to the Clerk and there is a webpage people can visit.

Mr. Kanagin stated that in 2019 there was building of the tollway, and some development in Gilberts Glen East such as garages and things of that nature. He said a structure that had been put in was done with archaic concrete blocks that had a problem. He said they stepped in and corrected the problem in Gilberts Glen east-west, and there are numerous emails about it. He said Gilberts Glen east-west is based on two stormwater management philosophies – underground utilities which are undersized and an overland swale to handle larger storms. Mr. Kanagin said for 12 years they've been monitoring that, and that they call after every rain or snow event, and they've not heard one complaint about flooding. He said someone may hear that there was a sump pump that failed for Mrs. Rose and seepage to her basement. He said his concern was why the Village is spending money in that area and he thinks it should be put where it will bring a bigger bang to the community.

Mr. Kanagin said there are lists of items that he used to deal with Public Works in creating these. Mr. Kanagin stated that he was there before the Board as President Zambetti said in order to get this cleared up. He said he believes the documents speak for themselves. He said he believes the Board approved them, and he said in 2015 he believed Mr. Zambetti was the one who made a motion to approve it. Mr. Kanagin said he is asking the Board to look at the records as his company believes they still have 29.4 points. He said they also have it on record of \$93,000 in advanced dollar in-kind improvements

for the community. Mr. Kanagin said he thinks the Board is familiar with his company does not wait for funding, and if there is a problem and the Village does not have the budget, his company jumps on it and fixes the problem, and keeps a running tab. He said they've done that since 2010, and in the case of the interstate tollway, they had to wait approximately a year and a half for funding. He said he used the company's dollars to fund Gilberts Glen east-west and Binnie Road and then wait for the interstate tollway to get reimbursed. Mr. Kanagin said that the majority of those projects were funded through his program. He said he was there to say there is the package, they are 29.4, and that Mr. Salerno is there in the audience so they can talk about Gilberts Glen east-west.

Mr. Kanagin said there is not a problem with Gilberts Glen east-west and there is not a problem on Mason Road. He said the problem is, and he brought minutes from a meeting, is the unincorporated inner city previously known as Teen Center and the park property Plote Development that had the problem. Mr. Kanagin said that when they reviewed that, it seemed like Gilberts Glen east-west had the problem because of some drainage and pipes. Mr. Kanagin said, if he could use the word, that it was a ruse for Plote and Intrasoccer to discharge and drip all their drainage onto Gilberts. He said they stopped it. He said they did provide video of other pipes that are broken and should be addressed at Hennessey Bridge that services the Salerno Group and a portion of Gilberts Glen East. Mr. Kanagin said he also has minutes of meetings from 2017 when Mr. Sakas was Administrator that identifies those particular areas of unincorporated Teen Center as under violation with Kane County Government. Mr. Kanagin said there is a list of questions Mr. Sakas had that Mr. Kanagin's company responded to. Mr. Kanagin said they also provided some easements that were gathered in 2016 or 2015 like a couple corner houses. He said they also went out physically with Debra Meadows to get any other lateral easements that his company provided to the community.

Mr. Kanagin said another package of documents which he was providing to the Board is part of the minutes of the meeting when Mr. Sakas and they are talking about Intrasoccer, Mason Road, PAR, and Plote trying to direct drainage onto Gilberts but they were under violation. Mr. Kanagin said with that being said Gilberts Glen East and West functions. He said he has different videos over 12 years of review and auditing. He said he is happy the Board wants to address stormwater management, and he also has copies of typical easements that were done that he can provide. He did not have those documents at the meeting but said he could forward those to the Board.

Mr. Kanagin said they are there because number one, they have a subscriber who helped them out. He said Mr. Salerno has been supporting this community. Mr. Kanagin said he has unofficial copies of recorded easements that they gathered, and which he can give to the Board at the end of the presentation. He said they gather them because Gilberts Glen East and West do not have municipal easements for drainage. He said there is some easement area along the side yards for the overland flow but his company went out and got easements for the community. He said he provided it with Ms. Debra Meadows, and where they are at, he does not know, but it allowed them to do the work.

Mr. Kanagin said the fact that they could do Mason Road and Gilberts Glen is because of unincorporated areas of Elgin attempted to drain sheet drainage onto Gilberts, Mr. Salerno approached

Mr. Kanagin because Mr. Salerno was approached by a consultant who also acts as consultant for Kane County to modify, and or asked him for \$75,000 for improvements because they wanted to make his property worth more. Mr. Kanagin said the consultant told Mr. Salerno that the consultant was going to direct all the water off Mason Road and the three buildings that you see from that road onto his property. Mr. Kanagin said that Mr. Salerno came to the community and asked if they knew about this. Mr. Kanagin then said it was stopped because the group could not find any easements and they were blaming a 4-inch drain tile that was flooding out over 100 acres, and they did not mention anything about their violations.

Mr. Kanagin said the group came back two years later asking for another meeting and they informed Mr. Salerno that Gilberts and Kane County would be at the Kane County meeting, and that the Board was in support of it. Mr. Kanagin said Mr. Salerno appeared and Gilberts was not there, that they had refused to go, and they told Mr. Salerno that he could go ahead because he had a right, but they would like to know what happened. He said they approached Mr. Salerno again to participate in improvements and to give them rights to go onto his property. Mr. Kanagin said if he remembered correctly, Mr. Salerno's response was that he was in the Village of Gilberts, and without the Village of Gilbert's approval, since he had an agreement with the Village of Gilberts, and that he was not going to do that. Mr. Kanagin said Mr. Salerno then reported this back to him. Mr. Salerno agreed that this basically was what happened.

Mr. Kanagin said that there is no problem with Gilberts Glen East or Mason Road, but that unincorporated Kane County has the problem, the Teen Center does. He said the drainage is now facilitated through Mr. Salerno on Mason Road through the infrastructures he had. He said there was an agreement with Mr. Salerno when Mr. Kanagin came before the Board in September of 2014 when Mr. Kanagin was working on Mason Road and the Board asked how \$300,000 in storm sewer work was being reduced and how it was able to be brought in under a certain budget. Mr. Kanagin said that first it was because Mr. Salerno was giving a license to use his infrastructure to allow Mason Road to drain onto his property to then go off his property onto Gilberts Glen West. Mr. Kanagin said it had to do with the sizing of piping and location which had been put in, and he said was another benefit through Phoenix Group. He said Mason Road does not flood out and Mason Road's integrity is pretty good, although he mentioned there is a little dip that needs to be fixed with time.

Mr. Kanagin said he was giving the Board the background because five months ago Mr. Salerno had an interested party, and that he was a participant as of 2014 because of the minutes of the meeting and the agreement that Mr. Kanagin would use his particular infrastructure. Mr. Kanagin said that Mr. Salerno inquired with the Village and that the response he received from Public Works Director Grosskopf or some other upper was that there is no regional storage. Mr. Kanagin said that you have a person who wants to sell his property, who supported this community, who Mr. Kanagin earmarked 11.5 points starting in 2014, and have always kept that. Mr. Kanagin said the question becomes about no regional storage. Mr. Kanagin said that is not what Mr. Salerno based his land design and landsite onto, and that is why they are here tonight to straighten this out.

Mr. Kanagin said that there should be storage, they've accounted for it, they have 10 to 12 years of accounting, and three different engineering firms that worked with the Village, and outside engineering firms have quantified it. Mr. Kanagin said but from 2021 when Public Works Director Grosskopf's first appearance at the Village, all of a sudden, they don't have those points, and now have less than one point.

President Zambetti asked Mr. Kanagin to back the conversation up a bit. President Zambetti said that about a year ago Mr. Kanagin and he had met about these detention credits as President Zambetti had questions such as what does the Village have left and where the record of it was. President Zambetti stated that they all had sat down and talked about it and the Village is finding the records that they found, the 0.8. President Zambetti said they were open to any other conversation, and from that point Mr. Kanagin had said he would get the Village some more information to back up where Mr. Kanagin was coming from.

President Zambetti said that to this point, the Village has not received that, and that there were a few emails that went out to Mr. Kanagin. Mr. Kanagin stated there had been only one email and that he never got responses from his email. Mr. Kanagin said that he is not here to argue that it has taken a while. He said he will take a step back and said that he had family issues that they had been taking care of. President Zambetti said he got that, and that Mr. Kanagin had expressed that, and that is why no one was getting worked up. Mr. Kanagin said and that was why he was not there for an abusive or abrasive relationship. President Zambetti said that he understands life happens, but at the end of the day he has not seen anything and that he does not believe staff has received anything for the accounting for those projects. He said if they are actual and they are there, it is not a problem. President Zambetti said the concern is if staff is coming up with 0.8, the Village cannot oversell, and that is where they are leaning on Mr. Kanagin.

President Zambetti said it is not a matter that the Board doesn't want to provide detention or that the Board is saying no to detention, but he said if the Village is coming up with 0.8, then 0.8 is where it is at, or show the Village otherwise. Mr. Kanagin said there in lies the difficulty. Mr. Kanagin said he responded to the Village's assessment or the signator notice to him by Administrator Bourdeau and Public Works Director Grosskopf where they came up with 0.8 and all these calculations presented. Mr. Kanagin said he answered them and responded to them that they are mixing two different products. He said they were mixing wetland accreditation which is floristic quality and hydric soils and then they are looking at regional storage in 2010 which is a different product. Mr. Kanagin said he responded and told them that it was wrong, and that the 2010 agreement is strictly for regional storage and they had all the calculations. He said former Engineer John Swedberg, Administrator Bourdeau, or Public Works Director Grosskopf had them. Mr. Kanagin asked how he could continue repeating when he was before the Village Board in 2010, and when things were reviewed by two different engineers and they came up with 29.4 along with all the other allocations. Mr. Kanagin said do the math and if in 2015 they had 49 points and it was reupped for another 5 years, how can the 49 points from 2015 and in 2021, with only an allocation for the Village and Mr. Salerno, which comes out to be 9 and 11, which comes out to be 19 points, then 19 off of 49 points is 30 points, or 29.4 points. Mr. Kanagin

stated that he did respond to them and asked if Mr. Kanagin could set the money aside and let Mr. Salerno develop.

President Zambetti invited Attorney Julie Tappendorf to speak. Attorney Tappendorf stated that she did not want to confuse the two agreements either, but that she thought it would be helpful to step back and give a history of what the Village has entered into in the actual agreements that are approved, the language in the agreements, what they did, what the obligations were, to set the stage. Attorney Tappendorf said she wanted to focus on the 2010 agreement, although she knew the letter that was sent in last October talked about both agreements, so that it was at least worth raising it.

Attorney Tappendorf said that in 1997 the Village and Phoenix entered into a wetland bank agreement and that agreement had the ability to sell wetland credits, and there was also language that authorized the sale of stormwater credits if there was additional capacity. Attorney Tappendorf said at that time in 1997 it was determined that there was 48.62-acre-feet of detention credit that Phoenix could sell. She said so the Village started at 48 and that was the number which slowly was drawn down over time according to the all the records the Village had and that Mr. Kanagin had provided to the Village for the accounting. Attorney Tappendorf said that one of the problems was the Village had never done an accounting and when the Village was asked to approve a development, the Village needed to make sure because they are a certified community and they have to say to Kane County that when the Village approves a development, they have adequate stormwater on site or they have done improvements offsite, or they are buying credits.

Attorney Tappendorf said at the time the Village said they didn't have that. She stated that they looked at the 1997 agreement, and plugged in the numbers of the sales that happened before 2017, as that agreement had expired in 2017 and never was renewed. Attorney Tappendorf said there is available credit left in there, but it is now the Village's under that agreement because the language says that it becomes the Village's available credit. Attorney Tappendorf then said to put that aside as Phoenix does not have any rights to that anymore as there is no question to that as the agreement is clear. Mr. Kanagin agreed that he had no rights to wetland accreditation and he agreed that there was a 1997 agreement through 2017 that is specific to wetlands and only wetland credit sales. Mr. Kanagin said the Village does not monitor the wetland sales, and that it is the Army Corps. that issues permits and allows sales.

Mr. Kanagin said that under that agreement an approximate 18 wetland points were sold to reimburse his company for all the benefits they had brought to the community. Mr. Kanagin said they do not disagree that the wetland agreement stops in 2017. He said they do disagree that there was no detention, no comp storage, ever marketed or sold under that agreement. He said it is the selection of this member or Public Works Director Grosskopf who decided to say no, there were 48 points. Mr. Kanagin said they did not sell one point of detention prior to 2010. He said that was all enrolled, the area, the exhibit, it was all enrolled in 2010 and the contract clearly called out all other contracts. Mr. Kanagin said they were not arguing about the 2017 expiration of wetlands as he said they only generated 18.

Attorney Tappendorf said if that was the case, as she read the agreement differently, but if there was no credit available, then Phoenix had oversold by probably 50 acre-feet. She said to let her finish talking about the agreements. She said that in 2010 the Village entered into an agreement with Phoenix where Phoenix would create a bank for stormwater sales and the Village would allow Phoenix to sell those credits in exchange for Phoenix creating the bank, maintaining the bank like stormwater maintenance work, and providing in-kind stormwater services to the Village. She stated that agreement was a five-year-term which was renewed. She said the agreement was for 14.7-acre-feet which is very clearly spelled out in the agreement and none of the amendments from 2010 on ever increased the size of the available credits. Attorney Tappendorf said it has been 14.7 in ever single agreement, so if it is the case that there have been sold credits, the Village looks at it as some have been sold under the 1997 and some under the 2010 agreements, and that there is still available the 0.8-acre-feet. She said that if you shift all of the credits over, there were only 14.7, and the Village found no evidence that the Board ever approved an expansion to that, none of the amendments to the agreement spelled that out, and there is language in the agreement which said it was 14.7.

Attorney Tappendorf said if this was a record keeping issue, the Village did not have the accounting that said there was 49-acre-feet available, and if someone looked at what was sold, if it all shifted over to that side, that would be 34 plus 14 which would be 48, she did not know how 48-acre-feet sold in a 14.7-acre detention bank played out to have 29.4 left. She said none of the numbers were born out in the records that the Village had or had been provided. She stated that the concern was there have been a lot of claims of availability, but the Village had no evidence that the Village should approve a development based on the sale of credits that the Village does not have records still exist.

Mr. Kanagin said if someone looked at the 2010 agreement where the 14.7 acres came into play was additional surplus. He said detention was not based on the over excavation that occurred in 1997 which still needed a restrictor and still needed to be restricted in order for it to be detention. He said wetlands were wetlands and that he was not disagreeing with that. He stated that the 2010 agreement exhibit took in properties in excess of 62 to 70 acres of property where over excavation occurred and other improvements which had to occur and did not get completed until 2010 or 2012 that generated these regional points. Mr. Kanagin stated that in fact, the Illinois Department of Natural Resources Waterway granted a permit for it, reflective of that. Mr. Kanagin stated that in fact, outside engineering firms Christopher B. Burke Engineering, one of the largest engineering firms, reviewed all the work and quantified what the Board saw where Mr. William Blecke said in an email in 2015 that there were 49 points. Mr. Kanagin said they were not arguing that there were 14.7 points which were brought in, but that was because his company did additional work in the designated open space areas. Mr. Kanagin said his problem was that the Village was taking a wetland contract agreement that generated 18 points permitted by the Army Corps., and that he had every permit and every sale. He said his company never sold a detention prior to 2010 and that they submitted all of their documentation, permits, IDNR documents, and that he had also had a letter from the Village engineer, Anderson Engineering from 1999-2005, which would attest that he never sold detention and that it was all wetlands.

Mr. Kanagin said the question became why the Village is taking a permanent project that generated this, three, four, or five different engineers who quantified this, and now he was being told that he was overselling. Mr. Kanagin asked how he would have been able to come before the Board in 2015 and 2010 with exhibits the Board approved of a bank of 49-acre-foot storage points. He said his company kept an initial accounting of it in 2010, not introducing wetlands, and went forward. Mr. Kanagin said what he was hearing was that he only had 14. He said that was a poor cry on what he did, all the work his company did, all the permits they had, and all the other engineers supporting his company's position. Mr. Kanagin said maybe the Village was right and the Village should review some of its paperwork because the Village was wrong. Mr. Kanagin said the Village had too many agencies. He said his company was the one that brought the Village to become certified. Mr. Kanagin said that was where he was at.

President Zambetti said that to understand he wanted to keep the detention and storm separate. Mr. Kanagin clarified it was to keep detention and wetlands separate. President Zambetti asked Mr. Kanagin if the wetlands had any detention going to it, and that no credits were sold to it. President Zambetti stated that any credits were then put at Riemer pond. Mr. Kanagin said not only at the Riemer pond and that he wanted to take a step back. He said there were 10 different parcels that he procured through his not-for-profit when he resolved in excess of 40 different violations that the Village had. He said when he procured them he said he was going to preserve them and enhance them for future regional storage. Mr. Kanagin then said he told the Village that he was going to give this open space since the Village did not have a park system, but he was going to reserve that to create regional storage. Mr. Kanagin said that is how he was able to procure it through the Army Corps. because they entrusted him because he resolved approximately 50 violations that the community had, as at the time all homes in Old Town area could not be sold with Jennie Mac and Freddie Mac because of federal dollars. He said so the Army Corps. wetland approved the accounting, as they are the ones who issued the permits, and the Village has nothing to do with it. Mr. Kanagin said the Village had underlying land that he procured and brought into the Village as open space to create wetlands, and 18 points were made and expired in 2017. Mr. Kanagin said in 2007 when resident Sue Sloane flooded out two times, he said there needed to be regional storage, and he provided the areas he was targeting at the time for regional storage. Mr. Kanagin said it was approved.

Attorney Tappendorf said that was permitting, which she understood. She clarified that what Mr. Kanagin was saying was that it was permitted, but she said the authority from the Village to sell detention credits is in the 2010 agreement, and it is for 14.7. She said that the Village Board had granted Mr. Kanagin the authority to sell 14.7 credits and that it was very clear because the agreement talked about how Mr. Kanagin had the authority to sell the additional capacity, and that it did not say anything about the existing basin. Attorney Tappendorf said the Village found no agreement that gave that the Village Board approved Mr. Kanagin to sell credits out of the existing basin. She said that was where the 14.7 was coming from. Attorney Tappendorf said there had to be an agreement by the Village Board, and that it did not matter what all the agencies permitted.

Mr. Kanagin said that the exhibit which was provided showed the 14.07 runs along the Riemer property, and the Riemer property interstate property was where the 14.07 comes from because his company modified it and called it additional surplus. He said if someone looked at the agreement, one would see

that the 14 came out as additional surplus, but that the balance of the other acre-foot storage took in the other 50-60 acres that he procured, preserved, got into the community, and over excavated to create regional storage. Attorney Tappendorf asked Mr. Kanagin, and said this was the recordkeeping bit, where the agreement was that authorized Phoenix to sell detention credits in the existing basin, because the Village did not have that. She stated that all the Village had was a wetland agreement and the 2010 agreement. Mr. Kanagin said the 2010 agreement had exhibits which took in everything south of Elgin Recycling. He said the 14 acres was the property adjacent to the Riemer interstate, and west of that was another 50 acres where the regional storage was designated. Attorney Tappendorf stated she understood all of that. She said the agreement said that the Village authorized Phoenix to market, sell, or otherwise convey detention credit units that were established by the additional capacity, and that the additional capacity is then defined as 14.7.

Mr. Kanagin introduced Counselor McConnell and said he really did not want to do that. Attorney McDonnell said that at the time the agreement was signed in 2010, the expectation was, and he pointed out the second paragraph of section four, that there will be 14.7.

Clerk Kelly Mastera and President Zambetti asked Attorney McConnell to state his name for the record. Attorney McConnell stated his name was James G. McConnell with Construction Law Services and that he represented Phoenix and Mr. Kanagin.

Attorney McConnell said that the second paragraph said it is expected that there will be 14.7 detention credit units available. He said the agreement did not say that there will never be more. He said that the first paragraph said that the lessee, Phoenix, was authorized to, in number two, market, sell or otherwise convey detention credit units that were established by the additional capacity created by the licensee's construction work in expanding the existing basin as described in section three. Attorney McConnell said that every additional acre-foot of storage that created points above 14.7, did not belong to the Village and that it belonged to Phoenix as long as the lease was in effect. Attorney McConnell said they did the work, they went to the Army Corps., they got the credits approved, and they did not need approval from the Village to sell those additional credits because that is what it said. Attorney McConnell stated that he did not write the agreement, and Phoenix did not write the agreement, the Village's attorneys wrote the agreement.

Attorney Tappendorf stated that she did not agree with Attorney McConnell's interpretation. Attorney McConnell stated that he knew she did not agree, but this was their position, and every additional credit. President Zambetti asked Attorney McConnell to clarify what the position was, and he would let the legal people talk. Attorney McConnell and President Zambetti both tried to talk, and President Zambetti asked Attorney McConnell to let him ask a question. President Zambetti said that there was 14.7 as Phoenix improved the detention on Village property, and Mr. Kanagin was entitled to sell whatever he improved.

Attorney McConnell said that what the agreement said in 2010 was that there were 14.7. He said that the agreement also said that if there was additional capacity created by work that Phoenix did, and there was and the Army Corps. approved it, that Phoenix was entitled to sell those credits as long as the lease was

in effect. Mr. Kanagin said that in this case it was Kane County and the Illinois Department of Natural Resources (IDNR). Attorney McConnell said that it was not up to the Village of Gilberts to decide what additional credits were created. He said there was only one agency in the United States that could decide that which is the Army Corps. of Engineers who have an office on LaSalle Street in the Loop. Attorney Tappendorf stated that the Village decides what it authorizes Phoenix to sell. Attorney McConnell stated that the Village authorized it in the document in 2010 for Phoenix to sell any additional credits that were created by Phoenix plus the 14.7 that were already there.

President Zambetti wanted clarification on if it mattered whose property it was on. Mr. Kanagin said that he got all the easements. Attorney McConnell said if was in the easement in the basin as described in the drawing which was attached, it belonged to Phoenix. Mr. Kanagin said there are easements in perpetuity under his not-for-profit that he put together that they got approved by the Army Corps., Illinois Environmental Protection Agency (IEPA), and IDNR to also enhance those areas. Mr. Kanagin said they then recorded those covenants and restrictions that ran in perpetuity and said to the Village that since the Village did not have a park district or open space, he would convey them to the Village with the right to improvement them. Mr. Kanagin said what he was saying to the Board was that if the Village said to him and his wife Connie that the Village would be taking all of their points, he could get that.

Mr. Kanagin said but the points are not just 14, and that the Village had engineers which were its own representatives who concurred, and when they went to the IDNR, that just because Mr. Kanagin overexcavated it, that did not become regional storage until 2010 when they put in a restrictor and berm along the cattle company road along the Tyrrell family and changed it. Mr. Kanagin said that was when the Village's engineer looked at it and recognized it and said this is what Mr. Kanagin had. Mr. Kanagin said that in 2012 they finalized the berm, the outfall by the cattle crossing by the Tyrrell family, submitted it, and asked where they stood. He said that was why Mr. Blecke said in 2015 that Mr. Kanagin had 49 remaining. Mr. Kanagin said this was double selling, he said this was triple dipping into his inventory and telling him he did not have it. Mr. Kanagin asked why would three different engineering firms put their name endorsing the sale of this then. Mr. Kanagin said then the question became how would the Village interpret that. Mr. Kanagin stated that he said he generated additional storage. He said it was good. He said he helped get rid of all the Village's flood problems. He said he was not double selling. He said he just wanted what was justified, and if it was the wrong interpretation, then he wanted to clear it up.

President Zambetti said he agreed with Mr. Kanagin that he wanted it cleared up. President Zambetti said he was not educated enough in all things stormwater, and he said if any other Board members wanted to talk after this point they could. President Zambetti said that now that there were two attorneys who felt differently at which Mr. Kanagin interjected and said he did not really want to go there. President Zambetti said it might be. President Zambetti said he relies on the Village attorney for legal representation from the Village's behalf and the Village engineer for engineering on the Village's behalf. He said maybe they need to have discussion over it more.

Attorney Tappendorf said that if there were additional capacity that falls within the definition, then the agreement should be amended to make it very clear what that capacity was, because she said the entire

issue came up because the agreement said 14.7 and the Village was running out of credits. Mr. Kanagin said the first two sales were the interstate who needed 19 points, and the tollway wanted 16 but settled with eight. He said so that meant that right out of the gate the 19 points that went to interstate, that he already double dipped and oversold by 5 points. Mr. Kanagin said there was something wrong.

Attorney McConnell said he would make a suggestion that if the Village Board wanted him to sit down with the Village's counsel he would. Attorney Tappendorf said she did not think it was a legal issue but rather a documentation issue. Attorney McConnell stated that he was accepting Attorney Tappendorf's suggestion that there should be an amendment that defined what was available for Phoenix to sell now, according to the Army Corps. of Engineers according to what they have already sold. Mr. Kanagin said that Kane County and IDNR had permits. Attorney McConnell said that it would be clear then from that day forward how much there was that belonged to Phoenix and how much they could sell. Attorney McConnell stated that he would point out that if there were no more credits available as Attorney Tappendorf contended, then the Village could not develop land in Gilberts.

Attorney Tappendorf said that Attorney McConnell was providing legal advice to her client. Trustee LeClerc said the attorneys should talk about this in a different room so the meeting could continue, because they could talk about this all day, but that there was the paperwork Mr. Kanagin handed out which said there he had 29 credits in 2021. Trustee Allen said she had a question because in the paperwork it indicates in 2015 there was a motion to extend the license agreement between the Village of Gilberts and Phoenix & Associates, and it indicated on the paperwork that Administrator Ray Keller noted that Baxter & Woodman certified that there were 49.21 total acre-feet of detention credits available for future development. Trustee Allen said the Village then extended that in 2020 and paperwork showed there were 29.4 so she was confused.

Attorney Tappendorf said that it that those numbers were not documented in any of the records she had looked at and that is what she wanted. Attorney McConnell stated that it is in the minutes of the meeting that approved the expansion of the agreement, and asked what other records did Attorney Tappendorf want. Attorney Tappendorf said she needed actual evidence. Trustee Corbett said he needed actual numbers so he could see them. Attorney McConnell stated that there was nothing that was going to be voted on tonight. Attorney McConnell said that he was willing to sit down with the Village's counsel, and if they could not come to an agreement as to how many credits there were, there was a forum in Geneva that would decide that dispute. Attorney McConnell said if that was the route the Village wanted to go, then he was prepared to take it, but he did not think the Village wanted to do that.

Trustee Allen said her question was because there are agreements that the Village had been extending and the extensions had been approved based off the numbers in the documents. She said there was an administrator and an engineering firm that brought that to the Village Board, and the Board approved it on those numbers. She asked if there was not documentation at that point when the Board went to vote on it to approve it. Trustee LeClerc said there had to be. Trustee Hacker said if they had it right, the issue really was done. Mr. Kanagin stated that it was a matter of mathematics depending on one's interpretation. Trustee LeClerc suggested establishing a committee for this.

President Zambetti said at this point the legal team may need to talk. Attorney Tappendorf said that honestly all the Village asked for was not pointing at minutes because that was just a statement. She said the Village needed documentation, so if there was documentation that not the basin as a whole, that the Village never authorized sale in the basin. She said so there was an existing basin and there was no evidence, no agreement to authorize sale. She said that if the additional capacity was larger than 14.7, whatever that number was, that was the evidence the Village needed, and then the Village can plug in all the numbers from the sales that were provided, and come up with what was left. She said then it would be up to the Board if they wanted to keep extending it, but she felt the record keeping and accounting needed more from a legal standpoint.

Attorney Tappendorf said that obviously it was a concern to her that every time the Village approved a development that did not have onsite development that the Village was selling based on sold credits, the Village wanted to make sure they are okay. She said that was the whole point of this was to protect the Village. She said if the numbers were good, she was not comfortable that the minutes said something because the agreement did not. Trustee Allen questioned if the Board extended the agreement twice without accurate records or documentation. Trustee Allen said if they approved it without documentation, she wanted to know where it would come from now. She said it obviously had to have been there to get into the minutes for everyone to be having the current discussion. Attorney Tappendorf said she could not answer that as she did not know, as she was not an engineer and could not tell Trustee Allen if 49 or 29 was the appropriate number.

Attorney Tappendorf said the Village's engineer and staff looked at the situation last year and did not find the documentation. She said obviously there were records somewhere for that number to come from. Trustee Allen said she did not think the past Board would have been ignorant enough to vote on something that they did not have documentation for. Trustee Hacker said that made a lot of sense and they would have had to have been shown some evidence that it was true. Trustee Hacker asked who said the number was 49.2. Trustee Allen read for the document of minutes provided by Mr. Kanagin at the beginning of the meeting which stated that Administrator Keller noted that Baxter & Woodman had certified that there were currently 49.21 total-acre-feet of detention credits available for future development. Trustee Allen said that was from 2015 when the Village Board extended the 2010 agreement. She said the Village has been using the 2010 agreement for the 2020 extension. Trustee Hacker said former Administrator Keller would be a good person to talk to and that maybe he had records someplace. Trustee Hacker said if it was in the minutes, and no one contended that it was wrong, then he asked how it possibly could have gotten past the Board. Trustee Allen said it was in the minutes twice. Trustee LeClercq said he did not think it did.

President Zambetti asked Trustee Allen to repeat what extension it was about. Trustee Hacker told Attorney Tappendorf he wanted to say one other thing. He said the agreement said it was expected that there will be 14.7 and it did not say there will be 14.7. Attorney Tappendorf said the Village did not have the records of what was the additional capacity. She said the only actual record with the number was the agreement and that was the legal document. She said if there are records of the Village's engineer that certified that the additional capacity, not the size of the basis since Phoenix cannot sell out of the basis as

they can sell out of the additional capacity which they dug and created, the Village had not found them which said the additional capacity is x. Trustee Hacker said the wording in the agreement said it “is expected” so it was obvious they did not know. Attorney Tappendorf agreed, but said the Village did not have a record beyond the 14.7, then for example, maybe it was 12 maybe it was 50. Trustee Hacker said it could be. Attorney Tappendorf reiterated that the Village did not have that record and what was missing was the additional capacity. She said once the Village had that number, the sales could be subtracted over the years. Trustee Hacker said that all that he was saying was that 14.7 cannot be the benchmark for starting because the agreement said “is expected”. Attorney Tappendorf said that was the legal benchmark and what they need is the actual amount.

Trustee LeClerc said that like Trustee Hacker said, the Board would not have known anything else besides what was in the board packet back then. He said if the Village is spending \$19,000 with Robinson Engineering to redo this area, he suggested that Phoenix work with them. He said he asked this question a few meetings ago when he questioned why the Village was spending money and why didn't the Village have the two work together so the Village did not waste money. President Zambetti and Trustee Allen said that those were two different things.

Attorney McConnell said that what the Village had was a lawyer who thought evidence was limited to what she wrote. He said the Board's minutes were evidence, the report of the Village's engineer that was referred to in the minutes were evidence. He said it was the Village's engineer, not Phoenix's engineer who said that because the Army Corps. approved it. Attorney McConnell said if the Village wanted to fight about what was evidence and what was not evidence, he will go to the courthouse in Geneva and fight about that. He said he really did not want to do that and he did not think the Village wanted to do that. He said that for Attorney Tappendorf to come in and say that any sale over the expected 14.7 was an oversale by Phoenix, then it was just plain lies, because this had been going on for three renewals of this lease under the supervision of the Village's engineer and calculations by the Village's engineer which were presented to the Board each time they voted to extend the lease. He said if there was an oversale the Village got money from it since the Village gets a commission on every sale of the points. Attorney McConnell said if it had been oversold, what about the properties that were developed based on that existing increased capacity that was approved by the Army Corps. and approved by the Village engineer.

Attorney McConnell said all of those things were evidence in spite of what Attorney Tappendorf seemed to think that her document was the only thing that constituted evidence. He said that the Village took action based on the information that was received by the Board from professionals that the Village had hired three times. He said now Attorney Tappendorf wanted to go back to a speculative number that was in the second paragraph after it said if there was additional capacity created that Phoenix could sell the credits. He said that had been going on for 15 years and why was it that all of a sudden someone was saying stop today.

President Zambetti said at this time he thought it was best that the attorneys look it over. He recognized that Jon Zabrocki wanted to speak. Jon Zabrocki introduced himself and said he currently was Village's engineer. He said he had only served the Village of Gilberts since mid-July so he only has had a small

time to review some of the documentation which the Village had. Mr. Zabrocki said that generally speaking when it came to the accounting of this, it should not be very difficult. He said at some point something would be built per a set of plans which would say it was thought to be an additional 14.7, and once it got built, record drawings would be as built, and instead of 14.7 it would be something else because that was what got built. Mr. Zabrocki he wished he could sit there and tell the Board what the right number was, but that he did not have that ability. He said that one thing he would have the Board consider would be from an engineering perspective it should not be that hard to unpeel the onion. He said he thought to come up with that number was part of it, there would be a legal piece about amending the agreements and that was what the attorneys were for, but that he would encourage the Board to take a pause look at the accounting that was done.

Mr. Zabrocki said unfortunately the Village had gone through multiple Village engineers over the last 15 years. He said Mr. Kanagin referenced four firms which had not helped the Village. He said he sincerely apologized to the Board that they had gone through engineering firms as the profession would not want communities to have that much turnover because it wasn't good and it ends up in positions like this. He said he sincerely apologized on his profession for that to happen, but he did think the onion could be unwound and looked at and find what numbers were there. Mr. Zabrocki said he had every reason to believe Mr. Kanagin had the records and it would be great to see the Corps. permits, what documentation there was on the design and the as-built. He said that was where the volumes were, that these were the tributary areas that ultimately could be served by the models. He said one concern that was always great was if one created a 100-acre detention, but it could not be sold to something that was a county away since it had to be tributary to it for it to be effective detention. Mr. Zabrocki said he knew that Mr. Kanagin knew all these things, and he said it would be helpful to take a clean look at it at some point through the process in addition to the legal interpretation that needs to happen.

Mr. Kanagin said he was in agreement with the Village's engineer. He asked Mr. Zabrocki if he knew a few people who used to work at the engineering firm. Attorney McConnell said the Village Board is not going to make a decision tonight to which President Zambetti agreed. President Zambetti said they could not as there was not anything on the agenda. Attorney McConnell said the purpose of the discussion was to find out what bug was in the Village Board's ear, and now they know. He said now they can sit down and talk it out. President Zambetti stated that that is where he was a year ago, as he did not want to see Mr. Kanagin or Phoenix shorted out of anything, but at the end of the day the Village cannot oversell.

Mr. George Salerno approached the Board to speak. He stated that he owns 825 North Tyrrell in Gilberts which was currently known as Swing Masters. He said he appreciated the position that the attorneys were discussing, but said it puts him in a precarious position. He said in 2014 Mr. Kanagin came to him and told him there was a problem with Mason Road, that it was flooding out, and that some of the homes north of there were also flooding, and if he would provide assistance to alleviate the water that was on Mason Road. Mr. Salerno said he agreed to that. He said that prior to 2014 he put in all new infrastructure, new farm tiles, so that water could come from his property and work its way to the creek. He said he accepted the water that was on Mason Road so that it could go to the creek.

Mr. Salerno said that in consideration for doing that, he was promised 11.2 detention credits for future development if the property should ever be developed. He said he had four offers on the table right now and he indicated or represented that he had those stormwater credits which allows for a larger building to go up on the property. He said someone from one of those firms contacted the Village who said there were no stormwater credits for that piece of property. He said that meant he either made a misrepresentation or that he would have to wait until all the issues discussed are resolved before he can then turn around and sell that piece of property. Mr. Salerno said that in the meantime the Village was enjoying the benefit of his infrastructure so as to not flood out the road or those homes. He said he did not believe that was fair and what he was asking for was a commitment that he had the 11.2 reserved credits, the commitment so he could move forward to discuss this with a developer or to accept an offer based on those representations that the stormwater credits are available to him.

President Zambetti said he did not have an answer to him tonight on the spot. He said if the Village did not have 11, then they did not have 11 to commit, which may not be the case. President Zambetti said that tonight on the spot for them to say the Village went in with 0.8 and that they'll give Mr. Salerno 11, he said if the Village did not have 11, it wouldn't be right. Mr. Salerno said if the Village did not have 11, would they be disconnecting from his system. President Zambetti said he did not have an answer to that. Mr. Salerno said he gave the Village the infrastructure on his property for the water to get to the creek. President Zambetti said he was trying to understand this as it was before him for the first time. He asked Mr. Salerno who gave him something. Mr. Salerno said Phoenix did in 2014.

President Zambetti asked if the Village knew about this. Mr. Kanagin stated that it was in the minutes of the meeting where Pat Mierisch identifies the Salerno piece and an engineer from Baxter & Woodman where they entered into a license agreement on behalf of drainage because of the improvements. Mr. Kanagin said at the same time they dedicated 9 points set aside for the Village for the roadway, for Mason Road, and they set aside 11.5 for Mr. Salerno. He said that was provided in 2014 around September.

Trustee Corbett said a document he was looking at said 2019. Someone asked if the Board approved it. Mr. Kanagin said it was supposed to have been given to the Board as it was after a Board meeting. Trustee Corbett said what he was reading said a Salerno pledge of 11-acre-feet of detention was from 2019, to which Mr. Kanagin said correct. Trustee Corbett said it looks like Mr. Kanagin deposited \$33,000 with the remainder to be paid at the time of the sale. Mr. Kanagin again agreed, but said if you go to 2014 in the minutes of the meeting it showed his appearances and identified that Mr. Salerno provided not an easement but a licensure to discharge to his infrastructure. Trustee Corbett said that was different than selling 11 acres to him. Mr. Kanagin said they were selling it to Mr. Salerno, and Trustee Corbett said that must have been a different transaction than what he was looking at. Mr. Kanagin said that it tied into what occurred in 2014.

Trustee Corbett said he did not mean to belay things and he would have loved to be there for all the meetings, because he would like a crayon and great big easel so he could write it all down and see everything. Trustee Corbett said he did not know who it would come from, but what agency said now there were more credits and these were now available for sale. He said who ever did that, he assumed they would give a person something that was a legal document which said this was true, and the Village could

have copies of it. Mr. Kanagin agreed and said the Village should have copies now. Trustee Corbett said if the Village did not have copies, could the Village get them. Mr. Kanagin said he will try again to reprovide them. Trustee Corbett thanked him and said he thought the Village would need that for the discussion.

Trustee Corbett said he had a conversation about a month ago about Mr. Salerno's business being closed for three days after a heavy rain since it had been completely flooded out. Trustee Corbett said that was ridiculous and it should not have happened. Trustee Corbett said he agreed with President Zambetti and that the Village Board cannot tell Mr. Salerno they will give him 11-acre-feet for detention right now. Mr. Salerno replied that the Village was connected to his system and was enjoying the benefit of that while he was not, to which Trustee Corbett agreed. Mr. Salerno said he will have to turn around and tell four potential developers that want to come into the village that he cannot sell them the property because he does not know when he is selling because the Village cannot confirm if he has the stormwater credits.

Trustee Corbett said the Village needed some time to talk about it, as they just got the information today. Mr. Salerno asked if the Village could give him a timeframe so he could go back and tell the developers the time. President Zambetti stated that the where the issue lies was that a year ago he tried to spearhead this to get everyone in the same room and the agreements and things from the Army Corps. and anything that the Village could grasp onto. He said now here the Village was a year later saying the Village did not have the documents and Mr. Kanagin said he could try to get it.

Mr. Salerno said he believed President Zambetti was making Mr. Salerno's point for him as it had taken the Village and Phoenix a year for the group to come to a consensus as to how many points there were, and they still don't have that. Mr. Salerno said he does not think he can tell the four developers to call him back in a year and that he would let them know if the Village and Mr. Kanagin have come to a consensus as to whether he had the credits. Mr. Salerno said this would be all while the Village was still connected to his system which the Village had been connected to since 2014. President Zambetti said he understood that, but he did not know what the details were to that right then. He said they would have to go back and look at that.

Mr. Kanagin asked if he could make a suggestion. He suggested that until the resolution of the accounting occurred, that if development came in, he would ask that the Village would not say that it is unavailable, but that it is under review and there is the potential that there is regional storage. Mr. Kanagin said if there is not, and he is completely wrong, then there isn't, but to be shut down from the get-go, when he believes there is, he does not think it helps the Village and doesn't help where they are going or Mr. Salerno. Mr. Kanagin said if they do not have the points, they do not have the points, but he believes they do. Mr. Kanagin said maybe the Village can find a middle of the road and say it is being taken under advisement or review.

Mr. Salerno said he appreciated that position but that you do not have developers that can move forward when you say while the building could be 280,000 square feet or 360, why don't you develop it both ways on your nickel and when we figure it out we will come back to you and say oh yeah the building can be

this. He said if you do not have the regional storage points then you have to take and shrink the size of the building. He said that was not feasible and if he were a developer he would not come in and try to develop two different projects on one piece of property. Mr. Salerno said unless this is resolved and in a timely fashion these four developers will walk away and that piece of property will stay vacant. He said the property next door to him which is in Elgin has a real estate tax bill over \$400,000. He said if a building went up on this piece of property, the Village would get its portion of the taxes of \$400,000. Mr. Salerno said his real estate tax was currently \$3,100. He said it will stay \$3,100 for as long as it is a driving range. Mr. Salerno said if he lost these potential developers, he did not know when anybody would come next and that it could be 10 more years or more. He said the market was changing and the economy was changing. Trustee LeClercq said the Village would look into this fast. Mr. Salerno thanked him, and he told the Board he appreciated their time and giving him the opportunity to speak tonight.

Mr. Kanagin asked if he could ask the engineer how long it would be with the proper documentation and the previous engineers' work, whether they were Anderson or Baxter & Woodman. Mr. Zabrocki said that all he had to go on right now was what was in the binder which he believed was provided by Mr. Kanagin a year ago, which was not a complete record. Mr. Kanagin said that was just a preliminary submittal to the new Public Works Director Grosskopf when he got hired for him to get knowledge. Mr. Zabrocki said recommended that given the circumstances, soon there would be a sit-down meeting with Mr. Kanagin and his team and with Village staff, where Mr. Kanagin would bring the boxes of information that Mr. Kanagin had the two sides can begin to go back and forth with questions. Mr. Zabrocki said they could do like Trustee Corbett said and use a nice whiteboard to try to understand what goes where. He said he did not want to break it down to the basics but he felt like having heard this for the last 45 minutes that it sort of needed to be broken down and built back up with the proper accounting. Mr. Zabrocki said that it seemed like the best way forward for the Village from his vantage.

Mr. Kanagin said he did not have a problem with doing that and that he thought it would come to the benefit of all parties. Mr. Kanagin said he did want to say to Trustee Corbett that when one mentions the different numbers they need to put in the timeline so they could see it like when it goes from 49 to 29. He said that it went from 49 to 29 it really went from 49 in 2015 to 29.5 in 2020. Mr. Kanagin said he would even give the Village a flowchart of the engineers engaged by the Village which started with Reimke-Sharp, Anderson Engineering, Baxter & Woodman, and then Robinson Engineering. Mr. Kanagin said each time they transferred over the information. He mentioned Al Stefan and Sean Kelly and that it would go fast. He said that then the Village would have to then make the changes because maybe the legal wording is not there or is unclear. Mr. Kanagin said he glad the Village listened and that maybe it had been a year and there were a lot of things he thought from his position that they had who they had given the Village. Mr. Kanagin said if the Village did not have it and needed more, that was fine.

President Zambetti disagreed with Mr. Kanagin and said he did not believe that was the case. Mr. Zambetti said he had been copied on an email where Mr. Kanagin said he was working on it. Mr. Kanagin replied correct. President Zambetti said the Village was asking for stuff and said Mr. Kanagin replied that he had family matters which President Zambetti said was understandable. President Zambetti said he did not understand then why Mr. Kanagin said he thought the Village had the information since President

Zambetti saw the email. Mr. Kanagin said the Village's engineers work for the Village and not for him. Trustee LeClercq asked if the Village had the records. President Zambetti asked who would be submitting the stuff and Trustee LeClercq said he did not know, he thought President Zambetti might, to which President Zambetti said no.

Mr. Kanagin said it was his company's position that once IDNR permits, once Kane County gave permits, and other regulatory agencies, it would be the Village's engineer that reviewed all of it and submitted the acre-foot storage. Mr. Kanagin said in this particular case it was the Village's engineer that had to review all the work and say I concur. He said if Baxter & Woodman concurred in 2015 after the sale to interstate and to the tollway that there were 49 points remaining, then that is the Village's engineer and the Village manager telling the Village Board that was what there was. Mr. Kanagin said they did not go back and say there were only 14 and our first sales were 27 so we are in the hole by 13. He said no, they took that and rolled it and your Village engineer Baxter & Woodman confirmed it. Mr. Kanagin said they were the regulatory safety net that protected the Village. He said if the Village's engineers were giving the Village that information and he appeared in front of the Board saying is this what the Village's engineers get because they were in concurrence.

Mr. Kanagin said they were not arguing, so at that point the he would have to take all four engineers and say they had construed a way to double dip. Mr. Kanagin said that would be pretty hard with four different engineers working on one project. He repeated that it was the Village's engineers. Mr. Zabrocki said he could not speak for what Baxter & Woodman did back then. Mr. Kanagin asked if he could speak for Robinson. Mr. Zabrocki said of course he could. Mr. Kanagin said the last four years they reviewed it, Robinson Engineering was the engineering firm in 2020 when the agreement was renewed. Mr. Zabrocki said that all he could tell Mr. Kanagin was that he personally had been there since July.

Mr. Kanagin told the Board that it was the Village's engineering firms that came back to them and said he was right, he had all his permits, he had the points. Mr. Kanagin said he cannot do that. He said it was either Reimke-Sharp, Anderson Engineering, Baxter & Woodman, or Robinson Engineering. Trustee LeClercq said that Mr. Kanagin said there was a meeting and Trustee LeClercq said how would the Board know about it. President Zambetti explained to Trustee LeClercq that the information was in an email. Trustee LeClercq said he did not get an email and Trustee Hacker said he did get the email. Trustee LeClercq said he did not get an email from after a meeting. President Zambetti and some of the other Board members confirmed it was from about a year ago.

Mr. Kanagin said he would like this to stay a friendly situation because otherwise after the first sale he was a violator and he oversold. Mr. Kanagin said the Board needed to be open minded and look at the engineering to say this is sound engineering and there is nothing wrong with it. Mr. Kanagin said that is what they need sooner rather than later.

Trustee Hacker said they had to assume that the Village's engineers gave the Board the right numbers. Mr. Kanagin agreed with him. Trustee Hacker said the Village cannot second guess its engineers. Mr. Kanagin said that was what was happening. Trustee Hacker said the engineers figured out the same way

and there was a formula for it. Mr. Kanagin said Trustee Hacker was one hundred percent right. Trustee Hacker said to second guess your engineers was something, and that the Board was currently second guessing the minutes, and he said he was not comfortable with that. Mr. Kanagin said the engineers submitted the information and that they were the Village's agents who sat on the committee. Mr. Kanagin then asked if there still was a committee or if he was being taken off it. Trustee Hacker told Mr. Kanagin that if the Village contends the numbers are wrong, it must be the engineers who made a mistake. Trustee Hacker said it could not be the Village Board as an administrative board or an administrative manager to say it, it must be engineers that tell the Board. Trustee Hacker said he maybe liked Attorney McConnell's way to go down to Geneva as the most expedient way.

Trustee LeClercq said there was still supposed to be a committee for this. He asked if the committee had been reestablished. Mr. Kanagin said that he got voted in and sworn in to the committee, and he said maybe the Village can review it because there was a description of what the committee members were responsible for. Mr. Kanagin said yes there was an ordinance and there was a stormwater management committee. He said he was on it, whoever the Village's engineer was would also be on it, and that he thought that right now Administrator Bourdeau was the certified person on it with Kane County. He said up until 2019 it was someone else and usually it would be someone from Public Works. Mr. Kanagin said that most recently when he petitioned for information on Gilberts Glen East, he was told to do a Freedom of Information Act (FOIA) request. Mr. Kanagin said now as a stormwater management person and consultant he now has to do FOIA requests to look at drawings, but yet can go out there and make corrective measures. Mr. Kanagin said he needed to know if his position had been eliminated as a stormwater management person.

Attorney Tappendorf said there was no agreement, although there may have been discussion about retaining Mr. Kanagin as a stormwater consultant, but the agreement was never approved. She stated there was a committee but she did not know what happened to it. President Zambetti asked what the committee had to do with anything that they were discussing tonight. Mr. Kanagin said the committee oversaw the detention points and that there was a whole description of what the committee was supposed to do. Mr. Kanagin said there was a whole description and that ultimately it would come to the Board when the committee decided to give detention points to a developer. Mr. Kanagin said he was not the only decision-making person, and that there was a stormwater committee. Mr. Kanagin said the Village had him sworn in and had him sign and identified who was on the committee. He said this was during the George Sakas administration. He said once again it was in the minutes of the meeting where the Village called and swore him in.

President Zambetti asked if this was put to the detention committee would this matter be resolved then. Mr. Kanagin said he would like the stormwater management committee to sit down and have the engineer, public works, himself, and Administrator Bourdeau. Mr. Kanagin said in fairness to Administrator Bourdeau, when Administrator Bourdeau first came he did not know the difference between wetlands and detention. Mr. Kanagin said he was not looking to throw him under the bus or anything. He said he believed Administrator Bourdeau became the certified person for the Village at or about 2020. Mr. Kanagin said prior to that in 2019 it was Tony Malone. Mr. Kanagin said the stormwater management

committee would sit down, a developer would come in, sometimes to public works, and the stormwater management committee would work with public works and engineer to say what was a future task.

Mr. Kanagin said at that point he would say if there was not a budget to do something, he would say let him do it ahead of time as in-kind services and let them get the problem taken care of. Mr. Kanagin said his question to the Board was that he knew the Village had this committee, and he knew he got sworn in, and said he was even called the guru of stormwater management, but there had not been one stormwater management committee meeting since former Public Works Director Grosskopf had started. Trustee LeClercq said he remember the former public works employee John Swedberg being a part of the committee. Mr. Kanagin confirmed this. Trustee LeClercq said he remembered Mr. Swedberg taking him around because Trustee LeClercq was interested in it as he was a firefighter. Trustee LeClercq said now they just need to find the paperwork.

Mr. Kanagin said if the Village had a stormwater management committee, and the Village was paying Robinson Engineering to go do studies, the stormwater management committee should be sitting down and discussing the historical problems, saying here is what we should be looking at, and saying how problems were cured so the Village can properly pinpoint where the needs are. Mr. Kanagin said he was all for Robinson getting paid to do a study, but he said the Village should put it in the right place like the broken pipe under Hennessey Bridge. Mr. Kanagin said that was where he was going with it. Mr. Kanagin said they would sit down as a committee and it was quite informal to discuss problems. Mr. Kanagin said as long as the Village is doing all this, then he wanted to know where the committee stands. Mr. Kanagin asked Administrator Bourdeau when the last time Administrator Bourdeau asked for a committee meeting. Administrator Bourdeau stated that he would like to review the charge of the committee first. Mr. Kanagin said the answer is then that Administrator Bourdeau has then never asked for a committee meeting.

Trustee Corbett said he meant no disrespect to Mr. Kanagin but that more just keeps getting added. Trustee Corbett said the Village needs to go back to the crayon document that he kept talking about. Mr. Kanagin said he would get Trustee Corbett the documents. Trustee Corbett said the Village has to pull it back and regroup. Mr. Kanagin agreed. Trustee Corbett said it was need for questions like who did what and when, and who was on what committee. Mr. Kanagin said when Phoenix worked with the Village they took care of a lot of problems. Mr. Kanagin said he wanted to end it by saying that the Village benefited, Phoenix benefited, and they made things right here, and he said he wanted to continue doing that. Mr. Kanagin said if the Village needed clarification and documents, it was not a problem.

Trustee Hacker said he agreed with Trustee Corbett and that the Village needed to get a number, and that without a number, without what the real detention credits are, any other conversation is futile. Trustee Hacker said the Village needed to get to the bottom line of what is the accurate number. Attorney Tappendorf said she knew it seemed like it was being overcomplicated, but she said she thought it was Mr. Zabrocki who said it earlier, and that it should not be difficult to look at the existing basin and what extra was put there. She said you would take that number and minus everything that had been sold and the Village would get a bottom line that said what was left. Trustee Hacker agreed that it made a lot of sense. Attorney Tappendorf said that President Zambetti also knew how much time was spent going through so

many records last year and staff could not come to that. She said they could not get the top number except the 14.7 because that was the only record they actually had. Attorney McConnell interjected that it was not the only record the Village actually had. Attorney Tappendorf said there may have been other records and Mr. Kanagin may have had some, but the Village did not. Attorney Tappendorf said they would like to take that number and minus all of the sales because the Village did have the number of sales which was put out in the memo, and get to, she said, frankly everyone would hope the Village would get to the number Mr. Kanagin was saying. Attorney Tappendorf said that would be great for the Village, and it would be a benefit to the Village to get to that higher number because that would mean it was better for development, better for the Village, and better for all of the accounting. She reiterated that the Village did not have that, and that is all the Village was looking for.

Trustee Hacker told Attorney Tappendorf that it was like he said half an hour ago that the number 14.7 was nothing more than a guess in the document. He said he believed Trustee Allen had a better number which was recorded in minutes than what was in the agreement. He said it was because the agreement said it "is expected" meaning they did not know. Attorney Tappendorf said she did not disagree with that but the problem was that minutes do not work when they go to Kane County as a certified community and say the Village has minutes that say we have this number in credit. She said Kane County needs to know that the Village actually has them. Trustee Allen said the Village's engineer would have done that. Attorney Tappendorf said that was what the Village would like to see. Mr. Kanagin said the engineer did and pulled a Kane County permit. Trustee Hacker said maybe the Village could go back to their former engineer, Mr. Blecke from Baxter & Woodman in 2010.

President Zambetti said maybe the Village could go back to Mr. Blecke and that also they should go to Kane County, as that was where the permit would go through. Mr. Kanagin confirmed and said a permit was pulled not with Kane County, but IDNR. Mr. Kanagin said he liked that idea. Attorney Tappendorf said she just wanted to get the records.

Attorney McConnell volunteered to submit a Freedom of Information request to the DNR for the permit, since that was the definitive document and asked if everyone agreed or disagreed. Trustee Hacker said he did not know enough information as to whether he could agree or disagree. Attorney McConnell said he would do it and he would get an answer in 14 days. Mr. Kanagin said if he found the permit even if Attorney McConnell does the FOIA request, that he will provide it. He said that Mr. Blecke is the main guy from Baxter & Woodman, and he thought that Robinson Engineering group where Al Stefan and Sean Kelly had worked could confirm that. Mr. Kanagin said this way there would be a transition.

Mr. Kanagin, Attorney McConnell, and the rest of their party exited the room.

8. STAFF REPORTS – Administrator Bourdeau said unless there were any questions for staff, he did not have anything. No one on the Board had any questions. There were no other staff reports either.

9. TRUSTEES' REPORTS

Trustee Allen said she attended the Chamber of Commerce event this past weekend, where they highlighted the Volunteer of the Year from each community. She reminded everyone that Rachel Roth, a longtime volunteer on the Police Pension Board, was the recipient of the award for the Village of Gilberts this year.

10. PRESIDENT'S REPORT – None.

11. EXECUTIVE SESSION

Motion to move to Executive Session as permitted under 5 ILCS 120/2 (c)(11): litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal and 5 ILCS 120/2 (c)(12) the establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act, with no business to follow by Trustee LeClercq and seconded by Trustee Corbett. Roll call vote: Trustees LeClercq, Corbett, Allen, and Hacker voted Aye (4). 0-Nays, 0-Abstained. Motion carried.

The Board adjourned to Closed Session at 8:40 p.m.

The Board returned from Closed Session at 9:10 p.m., with all Board members still present.

12. ADJOURNMENT

There being no further public business to discuss, *a motion to adjourn from the public meeting was made by Trustee Allen and seconded by Trustee Corbett. Voice vote carried unanimously, Aye (4). 0-nays, 0-abstained. The meeting ended at 9:11 p.m.*

Respectfully submitted,

Kelly Mastera

Kelly Mastera
Village Clerk