



**MEETING MINUTES
PLAN COMMISSION**

**THURSDAY, JULY 6, 2017
7:00 P.M.
VILLAGE HALL TRAINING ROOM**

Members Present: Maria Choca Urban, Chairman
Michael Bailey
Homa Ghaemi
Christine Norrick
Steven Schwab

Members Absent: Jeffrey Head
Michael Taylor

Staff Present: John Adler, Director of Community Development

I. CALL TO ORDER.

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

II. APPROVAL OF MINUTES; PLAN COMMISSION MEETING OF JUNE 6, 2017.

Commissioner Ghaemi moved to approve the minutes of the June 6, 2017 meeting. The motion was seconded by Commissioner Norrick. Voting yes: Chairman Urban, Commissioners Bailey, Ghaemi, Norrick and Schwab. Voting no: none. **The motion carried.**

III. 2017-P-03 730 Romona Road

A request by 626 Forest LLC for tentative plat approval of a two-lot subdivision

Commissioner Norrick moved to recommend approval of the request for tentative plat approval of a two-lot subdivision of the property at in conformance with the plat submitted, with the condition that the existing house be removed prior to the final plat being recorded.

Commissioner Schwab seconded the motion.

The vote was as follows:

Maria Choca Urban, Chairman	Yes
Michael Bailey	No
Homa Ghaemi	No
Jeffrey Head	Absent
Christine Norrick	No
Steven Schwab	Yes
Michael Taylor	Absent

The motion failed. The subject request will be on the July 25, 2017 Village Board agenda.

Mr. Bailey moved to authorize the Chairman to prepare the report and recommendation for the Plan Commission for case number 2017-P-03.

Ms. Norrick seconded the motion and the voice vote was all ayes and no nays. The motion carried.

Case Minutes are attached.

IV. NEW BUSINESS

Mr. Adler explained that the next Plan Commission meeting will be held on Thursday, July 6th because of the 4th of July holiday. A two lot subdivision will be heard at that meeting.

V. PUBLIC COMMENT

There was no public comment.

VII. AJDOURNMENT.

At 8:47 p.m., Commissioner Norrick moved to adjourn the meeting. The motion was seconded by Commissioner Bailey. Voting yes: Chairman Urban, Mr. Bailey, Ms. Ghaemi, Ms. Norrick and Mr. Schwab. Voting no: none. **The motion carried.**

The meeting was thereafter adjourned.

Respectfully Submitted,

John Adler
Director of Community Development

Case Minutes 2017-P-03 – 730 Romona Road

3.0 TESTIMONY, COMMENTS AND ARGUMENTS ON BEHALF OF THE APPLICANT

3.1 Persons appearing for the applicant

3.11 Mr. Derek Schiller, 2709 W. Peterson Avenue, Chicago IL

3.2 Summary of comments

3.21 Mr. Adler said the first and only case on the agenda is 2017-P-03, a request for tentative plat approval for a two-lot subdivision.

3.22 Mr. Derek Schiller, 2709 W. Peterson Avenue, Chicago IL, explained that he is requesting to subdivide 730 Romona into two equal size parcels. Currently the parcel measures 140' wide on Romona and 160' deep. He seeks to have two 70' wide by 160' deep lots. The current lot area is 22,400 square feet which is much larger than the average sized lots in the neighborhood. The proposed subdivision will leave two parcels, 11,200 square feet each, which are sizable lots relative to the average lots found throughout the neighborhood. The new parcels considerably meet the density and development pattern of the neighborhood. For these reasons he believes the request conforms to the standards of review set forth in the Village of Wilmette Zoning Ordinance and Subdivision Code.

4.0 INTERESTED PARTIES

4.1 Persons speaking on the application

4.11 Ms. Karen Dexter Rolison, 820 Romona Road

4.12 Ms. Sharon Greenburg, 722 Romona Road

4.13 Mr. Charles Schinzer, 732 Romona Road

4.14 Mr. Joel Greenburg, 722 Romona Road

4.15 Mr. Sheldon Sandman, 738 Romona Road

4.16 Ms. Lynne Sandman, 738 Romona Road

4.17 Mr. Cass Friedberg, 2834 Birchwood Avenue

4.18 Ms. Mia Schinzer, 732 Romona Road

4.19 Peg O'Halloran, 183 Walnut Avenue

4.2 Summary of Comments

4.21 Ms. Karen Dexter Rolison, 820 Romona Road, asked how often the Board of Trustees agrees with the Plan Commission's recommendation as they are the experts and understand zoning more than the Board would. Mr. Adler said on a subdivision the Village Board would usually accept the Plan Commission's recommendation. He couldn't recall a time where a subdivision came to the Village Board with a positive recommendation that the Village Board didn't approve. Ms.

Rolison said they have lived in three different houses in Wilmette and they just moved east hoping to find a place where retired people could live and stay in the Village. When she first moved in she was very ill just coming out of lung cancer surgery and that little piece of forest on Romona has been so important to her that it broke her heart to see the hearing notice posted. The property has a whole lot of greenery and a coolness in the air and that is what is lacking in our overgrown, big home village. At the very least she would hope the Plan Commission makes the developer keep all the trees possible because that is what Wilmette is really all about and we wouldn't be who we are without it.

- 4.22 Ms. Sharon Greenburg, 722 Romona Road, just south of the proposed subdivision. She has concerns about the request from a different perspective. There are numerous trees on the property and removing the trees will be a very noisy activity. She is also concerned about the disturbance to the ground with the root structure. Some of the Elm trees must be 80-90- years old and she is concerned about what might happen to their masonry work, their drainage and sewer systems. The Greenburgs recently redid their concrete, which had sunk, so she is concerned about that as well as the aesthetic concerns previously expressed so well.
- 4.23 Mr. Charles Schinzer, 732 Romona Road, said he and his wife, Mia Schinzer, are kind of the odd dog in this request. They are not just neighbors but neighbors with an easement relationship with the lot currently in front of the commission. The Schinzers are the subservient and 730 Romona is the dominant relationship, in legal terms. The easement relationship has not been great over the years. The owner of the lot in front has refused to do just about everything under the sun and it has been very problematic to have to try and manage that relationship. He can't imagine that you are going to tear all that down and have construction trucks coming through and utilizing the driveway and there being a way to manage that just as a citizen. It will place a burden on the Schinzers to manage a very novel legal relationship. The people who live at 730 Romona now don't do any maintenance. Wherever the current residents could get away with something they did and that is something the Schinzers need to put a stop to.

The easement calls out in very specific terms that the owners of 730 Romona have in and out access over the existing drive. The owners of 730 Romona can't move the drive anywhere along the easement or change the access point. The Schinzers are very concerned if the owners of 730 Romona change the way they access the drive they will be able to build a 6' fence in his front yard, 14' away from his front door and still be fully in compliance with city rules. They have a lot of objections because they believe it will dramatically change the value of their house negatively. Everybody around will be inconvenienced with two houses being put up but they will also have to manage an easement as well as having the prospect of having a 6' fence in their front yard and there is no way under the sun they will allow that. The Schinzers already have a fence along the back side of their house so they would have 6' fences on both sides of their house and that would make the value of their property so low based on all of the things they have done to the house. His wife has

put her heart and soul into the house so there is no way under the sun they will let that type of thing happen. They have done too much to increase the value of their property while the lot in front has gone through total neglect through the past 20 years and they are going to be in effect rewarded for doing that and that isn't right.

The Schinzers objection on rezoning is very firm and they have reasons beyond the typical person who enjoys the property to object and they will feel the impact 10 times more. There is no other citizen in Wilmette that has to go through this. He asked if any of the Plan Commission members have visited the property. He asked if the Commissioners were aware just how poorly the front is maintained. Is there any guarantee that the next person is going to do any better? They are at the point where only they will speak up for that. If you don't go and see the property you will just say we have rubber stamped 18 of these already this year so let's keep doing it. They are the ones that need to stand up and speak for their property as they keep getting taken advantage of. They get the least of city services. They don't get city snowplowing and have to walk 100 yards to put their trash to the street. They need to speak up and say no for the right reasons. That is his starting points, there is more. Mr. Adler asked Mr. Schinzer to finish his statement. Mr. Schinzer said that other people might bring up points that he will want to comment on.

- 4.24 The location of the Schinzer's property was clarified for an audience member.
- 4.25 Mr. Joel Greenburg, 722 Romona Road, has lived there for 40 years with his wife Sharon. Right now they have beautiful woods next to their house just as the Sandmans to the north do. His read of the Wilmette code is that they are entitled to a 7' setback so it is possible they will go from having woods next to them to a house 7' away from their property line. They have no idea what the plans are but they could have two houses at that 7' setback, which would really squeeze them and change a property that is sort of magnificent to become a very squeezed ordinary subdivision. If there is any power in this organization/commission to stop the subdivision, it is something to really look at because the aesthetics of this situation will become deplorable. When those two houses are built it will be just an ordinary subdivision and the Village will suffer for it.
- 4.26 Mr. Sheldon Sandman, 738 Romona Road, has lived with his wife Lynne on the north side of the property question since 1973. He noticed when it was asked if anybody on the Plan Commission visited the property he saw only one nod. He believes it is incumbent upon all Commissioners to not just look at a diagram but to go and look at the property itself because it is very unique. There are very few pieces of property in that area, south of Lake Avenue that exist the way that property does and is one of the reasons they moved there in 1973. To go ahead and put in two homes will, as Mr. Greenburg said, destroy the symmetry of that area which is just north of Birchwood Avenue, where the homes not just on their side of the street are very spaciouly set apart from one another. The properties on Romona from Birchwood to Lake Avenue are very unique with regards to the spaciousness that exists between each parcel. He asked each member to take the time to view the

property to get a better understanding of what everybody is speaking about. If those homes are built the Shinzer property will literally be blocked off in regards to where they are and that isn't right. They thought when the property was sold somebody would perhaps tear the existing house down and build a larger house or add on to the home. If you were living where they live you wouldn't want to see two homes go there.

- 4.27 Commissioner Schwab asked the lot widths on the east side of Romona in comparison to the 140' wide subject property. Mr. Adler answered south there are three lots around 69'-70' and one around 74'. North there are lots that are 75' 82', 101', 100' and 102' wide.
- 4.28 Ms. Lynne Sandman, 738 Romona Road, said the width of the lots on the east side of Romona create the uniqueness of this enclave, an enclave that only benefits Wilmette. She read the online ads for the house and there was no mention of bedroom or baths, the kitchen. It has a very nice kitchen. She was sure that decoratively it could be enhanced on the interior. However, the ad for the house is talking only about the fact that it could be divided into two new houses and nothing is mentioned about a family or a retired couple moving into this one level house. How many one level houses on nice wooded lots with friendly neighbors are there. She was amazed that she was told that nobody came to look at the house but the house wasn't advertised, the property was.
- 4.29 Mr. Cass Friedberg, 2834 Birchwood Avenue, said one of the reasons his family has enjoyed living in Wilmette where they live is the amount of natural foliage that is there. Their objection to the plan is if it is divided into two lots with two houses it will destroy a good amount of the trees. If it is kept as one lot, even with the house being torn down, a new house could be built retaining some of the existing trees. Of course it is the prerogative of the new owner to decide about that. They are certainly in favor of the one house instead of the two lot option as it would preserve more foliage.
- 4.30 Ms. Sandman asked if the developer requested zoning changes whereby they could make the structure larger. Mr. Adler said no. Ms. Sandman asked if the developer could request a variation in the future. Mr. Adler said anybody could request a variation but for lots like the ones proposed a variation for a new home wouldn't be granted.
- 4.31 Commissioner Norrick asked Mr. Adler to clarify that the request was for subdivision of one lot into two; and not a rezoning request. Mr. Adler confirmed that it is not a rezoning request but a subdivision request.
- 4.32 Ms. Sandman asked if it could lead to a rezoning request. Mr. Adler said that this is not a rezoning request because such a request would be to actually change the underlying zoning of the property, which is currently zoned as "single-family". He said that if the developer wanted to request a variation, for example for a reduced

side yard for new construction, he could but he would inform him that the relief would not be granted.

- 4.33 Mr. Schinzer said they are not a crazy bunch foaming at the mouth as there have been new homes and additions built nearby and they have never objected to improving the neighborhood but this is a novel lot to begin with. The right solution is to put one single-family home on the property. If you look at the home located two to three doors down where they saved a huge Oak tree in the front, they did a tremendous job with that. Mr. Schinzer said that they have lived there 12 years and others 40 years so they know what they are talking about when they talk about the fabric of the neighborhood and the quality of the neighborhood. The owner has a right to sell her property but there are many different ways to stay within what the neighborhood is about without going to such extremes where they are worried about the valuation of their property. They will have to manage the easement over a year and half construction cycle and no other resident has to do that. He encouraged the Commissioners to visit the property and listen to what all the neighbors are saying.
- 4.34 Ms. Rolison spoke and said they have lived all over Wilmette and one of the things about west Wilmette is the traffic. She has had to get use to all the noise of Skokie Boulevard and Lake Avenue. You also have Romona School and Regina in their neighborhood. The addition of those busy intersections, streets, boulevards and school traffic means they have an extra need for noise control than east Wilmette does. The trees help provide noise abatement. She asked if the plan is totally within the zoning laws. Mr. Adler said the subdivision is but they haven't seen the new home plans to confirm that.
- 4.35 Mr. Greenburg asked what the required front setback was. Mr. Adler said the minimum of 25' or the established setback on that side of the block from Orchard to Birchwood. He said the required rear yard is 20% of the lot depth or 32' for the proposed lots. He clarified that the combined side yards need to be 25% of the lot width versus 10% for the minimum side yard.
- 4.36 Commissioner Urban said that the question was asked if the proposed subdivision is consistent with the zoning of the neighborhood and the minimum lot width requirement of the zoning code is 60' and 70' is proposed. The minimum lot area is 8,400 square feet and 11,200 square feet is proposed.
- 4.37 Mr. Schinzer said that is true going south down the road where there are ranch houses but not north. Mr. Adler clarified that the Planning and Platting code charges the Plan Commission to consider the density and development pattern of the neighborhood as defined in the Village's neighborhood Map. The subject neighborhood is bounded by Lake to the north, Locust to the east, Romona to the west and the school to the south. Because of this, the Plan Commission cannot just consider the lots along Romona Road.

- 4.38 Mr. Schinzer asked how you will get that square footage allotment without taking down around 100 trees. Mr. Adler said you can't deny something that somebody has the right to do. The current property owner has the ability to remove those tree if they want. The Village does not have a requirement that those trees remain. Mr. Adler explained that the Village has a 35% canopy coverage requirement for new construction and thought asking the applicant their intention with tree removal may make sense. Mr. Greenburg asked how the 35% canopy coverage requirement affects the proposed plan. Mr. Adler said that even properties with very little existing canopy coverage can meet the requirement with new plantings and neighboring trees that overhang the property also count towards the 35% requirement.
- 4.39 Ms. Rolison asked who she could talk to regarding raising the 35% requirement. Mr. Adler said the tree canopy requirement would have to be amended by the Village Board. She asked if the existing trees were not part of the planning process. Mr. Adler said maybe if there was a different tree preservation requirement but it wouldn't be the Plan Commission considering that. He said the subdivision could still be granted and staff would make sure the tree preservation requirements were met as part of the new home permit process. He said that the tree canopy coverage requirement will need to be met but we know that shouldn't be difficult on the subject property.
- 4.40 Chairman Urban said we set zoning and tree canopy requirements on a neighborhood basis but also a village-wide basis. While 35% may feel adequate in general across the Village, there may be situations like the proposed subdivision where it doesn't feel like enough, but that is not the way our ordinance is written.
- 4.41 Mr. Schinzer asked how the proposed construction will be completed. Are they going to use the easement where there will be cement trucks on the drive? Mr. Schiller said one concrete truck will be used to pour the foundation and another the basement floor. Mr. Schinzer asked if they plan on using the access driveway. Mr. Schiller answered that they would like to keep as many trees as possible and if construction access is blocked with trees, the driveway may be the best way to access the property.
- 4.42 Ms. Mia Schinzer said they need to come and go to work and school and they know from doing construction that construction trucks will be coming and going for hours, weeks and months on end. She will be really upset having to ask construction trucks to move all the time. Mr. Schiller said he knows he isn't allowed to block the access drive but at the beginning of the project is when big trucks need to line up and that could cause traffic.
- 4.43 Mr. Adler said using a proposed new driveway to access the property might make sense since the trees will need to be removed for that access anyways. With most new homes they are coming off the street in front or an alley. Having access through an easement is relatively unusual. However, if the subdivision is approved and there

is a way to save more trees by using the shared access, discussing that before construction starts may make sense.

- 4.44 Mr. Schinzer said that is a non-starter as they have kids riding up and down the driveway. He didn't think anybody else would ask their neighbor to use their driveway to put cement trucks up and down on it.
- 4.45 Ms. Schinzer said they have kids riding their bikes to and from school and there will be construction workers who they do not know. She does not want to have to worry about the safety of her children and that will be a huge issue.
- 4.46 Commissioner Ghaemi said the driveway is just a driveway and she didn't know how the applicant would manage putting trucks on it without blocking the access.
- 4.47 Commissioner Schwab said regardless if it was a subdivision or one home wouldn't a developer still have access to that driveway. He didn't see any difference between a single lot and double lot in respect to the driveway issue.
- 4.48 Commissioner Bailey asked the Schinzers and Mr. Schiller to describe what they thought the legal relationship was between the two parcels. He asked who has rights and who has responsibilities and where do you derive that.
- 4.49 Mr. Schiller said he doesn't currently own the property. He plans to buy the property with the same rights as the current owner has. As he understands it, the easement is a 24' wide by 160' deep parcel adjacent to the 140' by 160' lot and provides the right to access 730 Romona by using the driveway as easement; and the easement is in the legal description of the property. There is mention of needing to maintain the property but he wasn't sure exactly what that was.
- 4.50 Mr. Schinzer explained they own the property and that 24' wide was a bit of a stretch. What they have is in and out access over the physical existing driveway. For the past 20 years the Gills, who live there, have refused to do any maintenance work and it is required in the deed.
- 4.51 Commissioner Bailey asked where it was in the deed. He didn't see where it said who specifically had to provide the maintenance and if one is maintaining does the other have an obligation to contribute. Mr. Schinzer said it has been an argumentative relationship over the last 12 years they have lived there and in the first 3 years the Gills did absolutely nothing.
- 4.52 Mr. Schinzer talked about a time when the city flagged 3 trees for Dutch Elm disease along the property of the drive in the front of their house and the Gills were served by the Village. The Gills never talked to them about it, just returning the notice to the Village. The Gills had a lawyer send a letter arguing that they are only required to maintain the physical drive itself. If you go there today you will see from the Gill's property forward the weeds are very high because the Gills refuse

to maintain it. When Mr. Gill was alive Mr. Schinzer agreed to take the area from his house to where the Gill driveway begins with the Gills taking everything from that point forward. Once Mr. Gill died that went away and that was about 3 years ago. It is back to what it was like the first 3 years they lived there with the Gills neglecting the property. The Gills will not maintain the land itself and once split the cost to repair pot holes in the front. The Gills record of maintaining the drive jointly is about as thin as thin can be, next to zero.

- 4.53 Commissioner Bailey asked if Mr. Schinzer thought the Gills were in violation of the agreement and if so, what is the basis for that. Mr. Schinzer said the easement is a contract and most law you will see in relation to easement is on the side of the servient side, the Gills, which says if the person who owns it blocks it they will have recourse against them. The only time he saw it taken from their perspective is if the servient side doesn't hold up their end of the bargain, in this case joint maintenance, then it is enforced as any other contract would be enforced. In this case they should kick the Gills off the easement because they are in violation of what the terms are which is to jointly maintain it. If you go and see the easement there is not a lot of question regarding the amount of maintenance the Gills have done.
- 4.54 Commissioner Bailey asked if the proposal was that the easement still exists after the subdivision. Mr. Adler said the subdivision did not impact the easement as the easement is a private agreement. Commissioner Bailey asked what Mr. Adler meant by saying it does not impact the easement, which parcel will have the easement. Mr. Adler said in talking with the Village Attorney the easement would be able to be used by the adjoining property but the maintenance responsibility would be shared with the entire property. Commissioner Bailey was concerned that none of that was addressed in the report. Mr. Adler said the easement is a private agreement between two parties. Chairman Urban said it wasn't really within the purview of the Plan Commission. Mr. Adler said the Village was not involved in the drafting of the agreement and did not include it in the original subdivision of the property.
- 4.55 Commissioner Bailey asked if Mr. Adler was clear that if a property owner is in violation of contract rights with its neighbors we shouldn't take that into account. Mr. Adler said he didn't know if there was a contract violation and that the Village Attorney said this is a private agreement between two property owners. The Village was not involved in the negotiation of this. Mr. Adler said it would be like if he and Commissioner Bailey lived next door to each other and made some sort of agreement, the Village is not going to be part of the agreement. Commissioner Bailey said the Village approves the easements. Mr. Adler said no, the Village didn't approve the easement.
- 4.56 Commissioner Bailey said the Village approved the subdivision into this peculiar parcel. Mr. Adler said the subdivision did not require the use of the pole portion of the flag lot to access the front lot. 730 Romona Road has access off of Romona Road. The Schinzer property is not required to provide access to 730 Romona. The

access easement could be abandoned and 730 Romona could still be accessed.

- 4.57 Commissioner Bailey said now it is required, now it is an easement. Mr. Schinzer disagreed because he has to provide that land to them for access. Mr. Adler clarified the owner of 730 Ramona could abandon the use of the easement and access the property directly from Romona. It is his understanding doing so would not necessarily relieve the owner of 730 Romona from needing to continue to participate in maintenance of the easement per the agreement. It is unfortunate that the original parties to the easement agreement didn't established something more formal maintenance wise.
- 4.58 Mr. Greenburg felt the language was pretty formal as it states the maintenance will be done jointly. Mr. Adler said the problem is that what constitutes maintenance wasn't defined.
- 4.59 Mr. Greenburg said the variation ordinance provided for one house in front and one house in back and now you are throwing that ordinance out. In 1962 the Village passed this ordinance and now the ordinance doesn't exist by the language that is being used. He has not sought legal zoning counsel but the discussion has shined more light on the issue. He doesn't see how the 1962 ordinance doesn't have relevance today so that we can just disregard it. He felt the original ordinance needed to be revoked.
- 4.60 Commissioner Bailey would like clarity on what the relevance of the original ordinance was. He doubts that if in 1962 the owner had come in asking to subdivide into 3 parcels that it would have been consistent with the ordinance. They divided it in a peculiar way 55 years ago, and now there's a proposal to divide it into 3 parcels in a manner which the Village probably would never had approved in 1962. Is it up to the Plan Commission to disregard this history or do we take it into account? He would like clarification on that from the Village Counsel.
- 4.61 Mr. Adler said the ordinance was included for a reason because it was of interest to the request. Staff did have a conversation with the Village Attorney about it. The Attorney said there was nothing in the ordinance precluding further subdivision of the property. The relief was to allow a 24' wide flag lot and nothing in the ordinance precludes further subdivision of the property.
- 4.62 Commissioner Bailey said he wasn't asking if it was precluded but is it an appropriate factor to take into consideration. Mr. Adler said in the Village Attorney's opinion it was not and that we needed to look at the two proposed lots to see if there was any Village requirement not being met by subdividing the one lot into two. Are they meeting the lot width and area requirements?
- 4.63 Commissioner Bailey said it is not at all clear to him. Mr. Adler said he was asked a question and answered based on his conversation with the Village Attorney.

- 4.64 Commissioner Bailey said the parcels are completely unique because of what the Village did 55 years ago. To say it is consistent with the neighborhood or adjoining parcels needs to take into account the unusual nature of these two particular parcels. He didn't think it was appropriate to just look at all the other parcels. When we look at the subject parcels, isn't it appropriate to take account the history of what the Village did before in permitting this highly unusual parcel to be created in the first place. He doesn't know the answer but doesn't think you can completely disregard the history.
- 4.65 Chairman Urban asked if today the Village would permit a subdivision that allowed the creation of the Schinzer's lot. Mr. Adler answered no. Chairman Urban asked if the Schinzer's property is the subject of the subdivision. Mr. Adler answered it is not. Chairman Urban asked if, per staff's conversation with the Village Attorney, the easement is not under the Plan Commission purview. Mr. Adler answered correct, it is not. Chairman Urban asked if commission members are being ask to make a decision on a request to subdivide an existing lot into two conforming lots. Mr. Adler answered correct.
- 4.66 Commissioner Bailey asked if the way the Commission responds to Mr. Shinzer's comment about objecting to the way the easement has been maintained is to say it is irrelevant. It wasn't clear to Commissioner Bailey that it isn't relevant.
- 4.67 Chairman Urban said it isn't irrelevant but is a contract between two private parties.
- 4.68 Commissioner Ghaemi said she agreed with Commissioner Bailey. It is a continuum, certain events happened and certain events are going to happen. You can't take them in a vacuum and separate them. Whatever decision they made in the past affects the decisions they are making now and vice a versa. She agreed that you can't ignore what the ordinance was and just say today we are sitting here and the Village allows this. She viewed the property and it will be a change of lifestyle, change of character and it might not be her place but she takes issue with people thinking they are going to be making so much off of somebody else's misery. Everybody needs to look at that property. It is not the right solution to divide it into two. One is acceptable but they need to keep a lot of the character. There will be a lot of inconvenience. For whatever reason there was an agreement between two owners to use the driveway.
- 4.69 Chairman Urban said when the two current owners of the two properties bought their respective properties they understood what the contractual obligations were. Commissioner Ghaemi agreed but said they bought it with one owner owning the entire property and having one house on it. Chairman Urban said she was referring to the Schinzer property and the large lot that is the subject of the subdivision.
- 4.70 Ms. Sandman said there is a history of previous owners of both properties respecting the agreement. There is something in real estate law that if the land usage is such that it continues to be respected so it can't just be volleyed over the net for

the convenience of development. Ignoring something that has been in existence for over a generation isn't progress. It is irresponsible and thoughtless.

- 4.71 Mr. Schinzer said to Commissioner's Bailey's point that if you don't take in to consideration the history and how the lots are defined, you are forcing him as a Wilmette resident to go to court to say the agreement now is null and void because the Village has decided to zone it so they can have two properties. The definition of the relationship between the two properties and the easement incorporates the survey which has their lot in front and his lot in back, there is no subdivision of lots. If the subdivision is allowed the Schinzers are being forced to either accommodate somebody's real estate venture by allowing somebody else's access to the easement and all the construction that will come with it. It also puts him in the position to have to enforce the rights of his property and to keep its value they will need to go to court and ask a judge to make an interpretation because the city has decided to rezone the property. The judge will need to determine if the agreement can or cannot be enforced moving ahead.
- 4.72 Commissioner Bailey couldn't understand how it is appropriate for the Commission to not consider the real property rights of these property owners. He questioned what happens when the property is subdivided. Does the easement still exist? Does it exist for parcel one and parcel two? Does extraordinary action need to be taken to resolve this? Nothing in the report addresses those questions. The parties seem to have different views about what the easement is all about. To him the easement while created by the parties was incident to an action the Village took 55 years ago to create this highly unusual parcel. To him the fact that these two parcels are configured in this unusual way makes this a lot different than the subdivision that was recently reviewed by the Commission where there wasn't this unusual property around it or this peculiar history or easement maintenance dispute. Many of these questions are not addressed at all in the report. His view is that he cannot vote in favor unless these matters are more fully explained
- 4.73 Chairman Urban asked if we know if the easement in fact was arrived at as a result of the original subdivision. Mr. Adler said it was not part of the original subdivision but you can see when it was recorded which was right around the same time the subdivision was done. Because of this it appears there was a desire to not reestablish how 730 Romona would access their property. If they didn't establish the easement, 730 would have had to install a new driveway off Romona Road. He didn't know why it wasn't part of the subdivision plat but the parties probably decided it made more sense to have one access.
- 4.74 Mr. Adler said the subdivision code now specifically precludes flagged shaped lots unless relief is granted. He mentioned a subdivision that was never developed that had a flagged shaped lot, and in that case, the access easement was included on the approved subdivision plat.

- 4.75 Mr. Schinzer explained why the easement came about for these properties. He said that the house in front, being the existing house, already had the drive. He felt if they changed the driveway they would have had to change how the garage is accessed. Providing the easement was the easiest way to do it. He said the easement agreement had been adhered to for almost 60 years. The easement is now a bad deal for him as he is the one that gets cited if weeds are too tall and he is liable for what happens on the easement. They are at the meeting using their voice to say it is not going to happen and there are many reasons why.
- 4.76 Ms. Greenburg asked about the use of the driveway and aren't the Schinzers entitled to protection from these drastic changes that are going to leave them perhaps entirely responsible for maintaining this long driveway. Mr. Adler said if this was a developer wanting to build one house and they decided to come off Romona Road with a new drive we would have the same issue and there would be absolutely no involvement by the Village. There is a disagreement currently regarding the easement maintenance and the Village is not involved in that. If during construction the easement is blocked the Village can get involved because it is involved in the issuance of the construction permit. He mentioned that even public alleys might be blocked temporarily during construction.
- 4.77 A question was asked if the subdivision impacts the joint maintenance agreement. Mr. Adler said that the Village isn't saying that whatever is required by the agreement won't be required after the subdivision. He said the Schinzers may have difficulty with future property owner just as they are having with the current property owner.
- 4.78 Mr. Schinzer said they understand it is a contract and they have to manage that with the other parties. Their biggest concern is once you start allowing it, we as citizens have to do something and you don't do that to any other citizen of Wilmette. There is that one off-ness they feel. They know it will change the property value of their house tremendously if the Village allows what is going to happen with fences 14' way from their front yard. They may say they won't do it but the next people 20 years down the road will say it is allowed.
- 4.79 Commissioner Bailey said that even if the property isn't subdivided the current owner has the right to put up a fence. Mr. Adler agreed. Mr. Schinzer said that a 6' high fence couldn't be installed there because the house is oriented towards the easement. Mr. Adler clarified that the easement does not constitute a public way and that the only area they would precluded from installing a 6.5' fence today would be the required front yard off of Romona Road. If the current owner wants to put up a 6.5' high fence out of the required front yard there is nothing stopping them as a private access easement does not preclude somebody from doing that.
- 4.80 Ms. Schinzer said it is 730 Romona's back yard but her front yard. Mr. Adler clarified that for the purposes of zoning the front yard of the Schinzer's property is the portion of property that fronts Romona Road and that a private access easement

does not prevent a 6.5' tall fence from being installed.

- 4.81 Mr. Schinzer said they would argue that point until their dying breath. Mr. Schinzer said the Village would be lessening the value of their property like no other property in the Village. Mr. Adler said there are other flagged shaped lot in the Village where this condition exists. Mr. Schinzer reiterated that he will not let that happen.
- 4.82 Commissioner Bailey asked if Mr. Schinzer was talking about a fence along the side of the easement. Chairman Urban clarified that because the Schinzer's house is oriented towards Romona Road, a fence on 730 Romona between the two properties would be 18' from the Schinzer's front door. Commissioner Bailey said that doesn't have anything to do with the Plan Commission as that could be done with a single parcel currently.
- 4.83 Commissioner Bailey can see how this subdivision raises a number of questions about what this easement means that are not resolved. When you divide the property do both parcels have rights to the easement? Do both have responsibilities? That is not addressed. He doesn't think that is an irrelevant matter because you are putting the property owners in the difficult situation which may be different than their understanding when the easement was created. That is relevant but the fence isn't because a fence can be installed in any event regardless of the subdivision.
- 4.84 Commissioner Norrick said it would be nice if the parties could voluntarily work out an agreement regarding the easement.
- 4.85 Mr. Greenburg asked if the previous ordinance needed to be repealed or is it repealed by operation of the new subdivision. Mr. Adler said the Village Attorney did not comment on the ordinance needing to be repealed. Mr. Greenburg said there is a certain process for repealing ordinances and somebody should look at that. Mr. Adler said the 1962 ordinance granted relief for the width of the rear property (currently owned by the Schinzers) so there is nothing in that ordinance that would prevent the subdivision of the lot in front of that property, or nothing that makes this request different than other routine subdivisions the Plan Commission reviews.
- 4.86 Commissioner Bailey said the 1962 subdivision changed the neighborhood. This funny parcel is part of the neighborhood that the Commission needs to take into account. It should not just disregard this parcel in this exercise.
- 4.87 Mr. Schinzer said it wasn't just two people making a real estate transaction back in 1958. The reason why there was enough land back there is because Birchwood Avenue bends. It was done with the Villages acknowledgment of what was going on. Chairman Urban and Mr. Adler agreed that the Village did approve the previous subdivision.
- 4.88 Mr. Schinzer said the Village Attorney seemed to be on a fishing expedition for - well it didn't say you can't build public swimming pools over there so let's just

pass it. He knows he is stretching it but he thinks the attorney is stretching it as well.

- 4.89 Commissioner Bailey said what he felt was missing is that there are some legal issues related to the request that are relevant to their determination which aren't addressed in the report. The Corporation Counsel's opinion has just been presented informally. He thought there needed to be some higher level of formality on how this is worked out. He also would like clarification to what extent it is appropriate in their consideration to consider the ordinance that was approved in 1962. Yes it was 55 years ago but it is an action that the Village took and he has a hard time believing if back than the additional lot was requested that it would have been approved that way. Maybe that is irrelevant but what he knows isn't irrelevant is that this unusual parcel is part of the neighborhood when we are considering the character of the neighborhood.
- 4.90 Chairman Urban asked Mr. Adler if the request should be put to a vote or should it be continued to get some clarity. Mr. Adler said that question should be asked of the applicant. If the request is continued it would be until the first Tuesday in August. He explained that if continued we can see about having the Village Attorney attend that meeting or if the question is called the Village Attorney will be at Village Board meeting. Mr. Schiller asked about process at the Village Board meeting. It was explained that the applicant and interested parties will be able to address the Village Board. The Village Board may have questions for applicant, neighbors or staff.
- 4.91 Peg O'Halloran, 1831 Walnut Avenue, real estate agent for the property, explained that the property owner asked that the property be advertised only for the land and that is why the description didn't contain information on the house. She said that access easements can't be parked on or blocked and she felt Mr. Schiller was well aware of that. The easement is not going to change no matter what happens so she doesn't understand why it is part of the Commission's decision.
- 4.92 Mr. Schinzer said the easement also includes that land around it, which the Gills have not supported for the past 20 years so to think a truck is going to stay on a very narrow drive is naive. That they should just believe that the next owners are going to just go through the joint maintenance agreement like the Gills did so well would be fool hearty on his part. They know the problems with the easement because they have lived them for 12 years. Now they are asked to accommodate a real estate speculator to put up 2 new residences and to think that it is going to be a better situation for him, he didn't think so.
- 4.93 Chairman Urban asked Mr., Schiller what his preference was. Mr. Schiller asked for an opportunity to talk with Ms. O'Halloran about requesting a continuance or not.

- 4.94 Mr. Friedberg asked about the Plan Commission vote. Mr. Adler said four members would have to vote “yes” for the subdivision for it to be a positive recommendation and that the vote would be taken tonight if the applicant asks for a vote.
- 4.95 Mr. Schiller wanted to clarify somethings that might have been misconstrued. In regards to side yard setback they see having 7.5’ minimum on each side or 15’ between buildings. He clarified he was talking about a 7.5’ setback to the south property line adjoining the Greenburg property plus whatever setback distance it is to the Greenburg house.
- 4.96 Mr. Sandman asked what the space between the two proposed homes would be. Mr. Schiller answered at least 15’.
- 4.97 Mr. Schiller said on the north the drive easement is 24’ wide and the minimum setback they need to maintain is 7’, so there should be a minimum of 35’ between homes.
- 4.98 Mr. Schiller asked how many votes were needed for the subdivision to receive a positive recommendation. Mr. Adler answered four “yes” votes.
- 4.99 Mr. Schiller would like to work something out with the easement. They are looking to improve the property and it sounds like it hasn’t been maintained.
- 4.100 Mr. Sandman said Mr. Schinzer indicated that his property value would be negatively impacted by the requested subdivision. He asked if Mr. Schiller would be able to say what the homes would be priced at if two homes are eventually allowed to be constructed. Mr. Schiller said over a million dollars each.
- 4.101 Mr. Schiller said he heard about the objection to the fence but he believes improving the values of these lots would raise the value of houses around it. He didn’t think one could make an argument that the fence itself will devalue the house itself when there could be a net effect of an increase that is greater than that of the fence. It might not be something the Shinzers are looking for but he didn’t think the value of their house would go down.
- 4.102 Mr. Schinzer said he doesn’t see anybody building fences around their own house to increase the value of their property so he thought it was a strong argument when no one else is doing it. They will be clearly looking out their front window at a 6’ fence.
- 4.103 Mr. Greenburg asked how the applicant would deal with the trees. Mr. Schiller said he would like to maintain as many trees as possible as that would help when they go to sell the property. The houses have not been designed yet but they would like to keep as many old growth or large trees as possible.
- 4.104 Mr. Schiller said there are a lot of plants that aren’t very desirable including Buckthorn.

- 4.105 Mr. Schinzer asked about the timeline for the construction of the two houses. Mr. Schiller said depending on how they stagger them one house takes anywhere from 8-12 months but they haven't decided if they will do one at a time or both together. Mr. Schinzer asked if realistically it could take 1.5 years. Mr. Schiller said yes but it could depend on how the sale of the first house goes.
- 4.106 Mr. Sandman asked if Mr. Schiller has built other homes in the area. Mr. Schiller answered yes, about 5 houses in the immediate area including 2711 Orchard, 425 Sunset, 342 Beverly, 2522 Greenleaf and 2539 Greenleaf. A more recent house was at 626 Forest Road in Glenview.
- 4.107 Commissioner Norrick asked if the Commission could place conditions on the approval. Mr. Adler said yes, if the applicant is willing to accept the conditions. Commissioner Norrick asked if the applicant would be willing to accept conditions on the improvement of the easement. Mr. Schiller said it seems that there are two sides to this. He is hearing that everybody loves the way the property looks but also a big problem is that the property doesn't look good or isn't maintained. Commissioner Norrick said it appears it is the driveway easement not being maintained. Mr. Schiller said they are looking to purchase the property with the same rights as the current owner purchased it with.
- 4.108 Mr. Schinzer said if Mr. Schiller wants the easement it will need to be rewritten because the way it is written it has been run over by the past owner. They need to decide whether to go to court to have the existing owner kicked off the easement because of neglect. Because they have lived with the neglect the last 12 years there will need to be something more documented.
- 4.109 Commissioner Urban said that it seems like all of the points people want to make have been made. There are two ways to go. One path is to continue the request to give Mr. Adler time to talk with the Village Attorney to get some answers to questions raised and give time to discuss with the neighbors their concerns. The second path is to call for a vote and proceed to the Village Board. In the interim the Village Attorney will hear from Mr. Adler and understand what was discussed at the meeting. Mr. Schiller asked for the Plan Commission to vote on the request.
- 4.110 Chairman Urban closed public testimony.

5.0 VIEWS EXPRESSED BY THE PLAN COMMISSION

- 5.10 Commissioner Schwab said the Plan Commission has limited purview as the Chair mentioned. Their purview is limited to whether the subdivision is consistent with the village ordinances. The proposed lots are conforming. The trees and easement are not part of the Commission's purview. While they are issues that they should potentially take into consideration they are properly taken up at the Village Board meeting and not before the Plan Commission, which has a limited purview. He is in favor of the proposal because of the limited nature of the Commission's role.

- 5.11 Commissioner Bailey is struck by the very unusual nature of the request and his personal view is in light of its unusual nature he isn't necessarily opposed to the subdivision but he thinks there are a number of questions that have not been answered. In particular it is not all clear to him that the Commission's purview is as limited as Commissioner Schwab suggests. Zoning says it requires the lot to be consistent with the density, which appears to be met, and the existing pattern of development. The existing pattern of development is something the Commission should take into account. This unusual parcel is part of the existing pattern of development and is subdividing this consistent with this parcel, which after all is part of the neighborhood and is the part most directly impacted.
- 5.12 Commissioner Bailey said the idea that the Village wasn't involved in the easement is not clear to him. He didn't think this unusual parcel could have been created without the expectation that the easement would have been there. The Village would not have permitted it unless there was some understanding that there would have been an easement. By approving this the Village would basically be creating a dispute between the neighbors in this area. It is not clear to him that the easement isn't within the Commission's purview. He thinks it is particularly important because the dispute relates to the property rights that are concerned with these parcels. It is not like an independent contract, an easement is a property right that runs with the land and with these parcels. He isn't clear to what extent the Village's prior actions should be taken into as a factor and that is something he would like further clarification on from Corporation Counsel. It seems that the Village's course of conduct, even if separated by 55 years, is appropriate to take into consideration account particularly because the Village in some respect created this highly unusual situation. He isn't necessarily opposed to the request but to be responsible to the community he needs more answers to these questions before he could approve the request.
- 5.13 Commissioner Ghaemi said she is opposed to the request. She visited the property. The easement is an issue to her for the same reasons Commissioner Bailey mentioned. Taking one piece of property where everybody's expectations were that one house would reside there and turning it into two structures that she hears are going to be over a million dollars each is beyond the density in that neighborhood. As a Plan Commission their job is to plan and in her heart she can't vote yes as her issue is beyond the easement.
- 5.14 Commissioner Norrick said like Commissioner Bailey she is concerned about some of the unknowns and would like clarification and that is causing her to not be able to vote yes.
- 5.15 Chairman Urban said this is an unusual situation with an unusually shaped lot behind the subdivision but in her heart of hearts she believe the Schinzers bought the property understanding the unusual circumstances of their home and with their eyes wide open as to the existence of an easement related to their property. She would agree that the Village today wouldn't approve a flagged shaped lot today but

that doesn't change the fact that historically the Village did. She agrees with Commissioner Schwab that the Commission's purview is limited to whether the subdivision conforms with the Village's codes and it does and the numbers cited in the report suggest that it also conforms to the prevailing character of the neighborhood in terms of lot area and lot width and she will be voting in favor of the request.

6.0 DECISION

6.1 Commissioner Norrick moved to recommend granting a request for tentative plat approval of a two-lot subdivision at 730 Romona Road in accordance with the plat, with the condition that the existing house be removed prior to the final plat being recorded.

6.11 Commissioner Schwab seconded the motion.

6.12 The vote was as follows:

Maria Choca Urban, Chairman	Yes
Michael Bailey	No
Homa Ghaemi	No
Christine Norrick	No
Steven Schwab	Yes
Jeffrey Head	Absent
Michael Taylor	Absent

Motion failed. The subject request will be on the July 25, 2017 Village Board agenda.

6.2 Commissioner Bailey moved to authorize the Chairman to prepare the report and recommendation for the Plan Commission for case number 2017-P-03.

6.21 Commissioner Norrick seconded the motion and the voice vote was all ayes and no nays.

8.0 RECOMMENDATION

The Plan Commission did not make a recommendation to approve tentative plat approval of a two-lot subdivision at 730 Romona Road.

The Plan Commission concluded its public hearing and by unanimous motion authorized the creation of this report and the transmission of the case to the Village Board for further action. By custom, the Plan Commission's failure to recommend approval of the application is treated as a recommendation to deny.