



1200 Wilmette Avenue
WILMETTE, ILLINOIS 60091-0040

MINUTES OF THE REGULAR MEETING OF THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WILMETTE, ILLINOIS HELD IN THE COUNCIL ROOM OF SAID VILLAGE HALL, 1200 WILMETTE AVENUE, WILMETTE, ILLINOIS ON TUESDAY, FEBRUARY 13, 2018.

The Village President called the meeting to order at 7:31 p.m.

1.0 ROLL CALL

Trustees

Julie Wolf
Daniel Sullivan
Senta Plunkett
Kathy Dodd
Joel Kurzman
Stephen M. Leonard

President

Bob Bielinski

Staff Present:

Timothy J. Frenzer, Village Manager
Michael Braiman, Assistant Village Manager
Jeffrey M. Stein, Corporation Counsel
Barbara Hirsch, Deputy Village Clerk
John Prejzner, Assistant Director of Administrative Services
John Adler, Director of Community Development

2.0 PUBLIC COMMENT

Jan Barshis, 1500 Sheridan Road, said Go Green Wilmette supports the creation of a stormwater utility fee to finance any of the improvements proposed in the Stormwater Action Plan. It is their understanding that the stormwater utility fee would base a resident's fee on the amount of impervious surface on their property which makes good sense for long term management of stormwater. By creating an incentive for homeowners to maintain pervious surfaces, the utility fee would encourage the entire community to contribute to the solution rather than exacerbate the problem. Such an incentive would have positive implications well beyond installing sewer pipes.

David Furstra said he is a resident of Wilmette and he is representing the Wilmette Community Solar Project which is a small group of citizens who would like to try to build a solar installation for the residents of Wilmette and surrounding communities.

The idea is to build a 2 megawatt facility somewhere in the ComEd area under the auspices of the Illinois Future Energy Jobs Act. More information can be found at wilmettecommunitysolar.org

3.0 CONSENT AGENDA

Trustee Sullivan moved approval of the Consent Agenda as follows:

- 3.1** Approval of minutes of the Regular Board meeting held January 23, 2018.

LAND USE COMMITTEE CONSENT AGENDA

- 3.2** Presentation of minutes of the Zoning Board of Appeals meeting held January 3, 2018.
- 3.3** Presentation of minutes of the Land Use Committee meeting held September 13, 2017.
- 3.4** Presentation of minutes of the Land Use Committee meeting held October 30, 2017.
- 3.5** Appearance Review Commission Report, Case #2017-AR-25, 1740 Lake Avenue regarding a request for an 18 square foot sign area variation to display a new ground sign.
- 3.6** Zoning Board of Appeals Report, Case #2017-Z-64, 1109 Central Avenue regarding a request for a special use for a personal services establishment (reflexology services) in accordance with the plans submitted. The use shall run with the use; adoption of Ordinance #2018-O-12.

FINANCE COMMITTEE CONSENT AGENDA

- 3.7** Approval of January 2018 Disbursement Report.

ADMINISTRATION COMMITTEE CONSENT AGENDA

- 3.8** Presentation of minutes of the Minimum Wage & Paid Sick Leave Working Group meeting held January 8, 2018.
- 3.9** Presentation of minutes of the Minimum Wage & Paid Sick Leave Working Group meeting held January 22, 2018.
- 3.10** Recommendation of appointment of Christine Harmon to the Historic Preservation Commission from February 27, 2018 to February 27, 2022.

MUNICIPAL SERVICES COMMITTEE CONSENT AGENDA

- 3.11** Presentation of minutes of the Bikeway Advisory Group meeting held December 19, 2017.
- 3.12** Approval of contract in the amount not to exceed \$27,655.50 with Berg-Johnson Associates, Inc., Mundelein, IL to furnish new ABB instrumentation transmitters for the Water Management Instrumentation Replacement Project.

PUBLIC SAFETY COMMITTEE CONSENT AGENDA

- 3.13** Adoption of Resolution #2018-R-2 approving an intergovernmental agreement between the Village of Wilmette, the County of Lake, and the Sheriff of Lake County to utilize the Lake County Sheriff's shooting range.

JUDICIARY COMMITTEE CONSENT AGENDA

- 3.14** Adoption of Ordinance #2018-O-7 amending Chapter 2 of the Village Code regarding adoption of ordinances relating to recommended and approved Planned Unit Developments.
- 3.15** Adoption of Ordinance #2018-O-8 amending Chapter 9 of the Village Code restricting the use of groundwater as potable water.

Trustee Wolf seconded the motion. Voting yes: Trustees Wolf, Sullivan, Plunkett, Dodd, Kurzman, Leonard and President Bielinski. Voting no: none. The motion carried.

4.0 REPORTS OF OFFICERS:

Village Manager Timothy Frenzer said Stantec would be attending the Regular Village Board meeting on February 27, 2018 to answer questions from the Village Board regarding the Stormwater Action Plan.

Mr. Frenzer thanked the Public Works staff for their hard work concerning water main breaks and clearing the streets and sidewalks during the recent snow events.

There was no report from Corporation Counsel.

5.0 REPORT OF LIQUOR CONTROL COMMISSIONER:

No Report

6.0 STANDING COMMITTEE REPORTS:

6.1 LAND USE STANDING COMMITTEE REPORT

- 6.11** Zoning Board of Appeals Report, Case #2018-Z-02, 3730 Lake Avenue regarding a request for a 7.11' side yard air conditioner condenser setback variation to permit the retention of an air conditioner and a 3.0 side yard setback variation and a 3.0' separation variation to permit the retention of a grill island and pergola in accordance with the plans submitted.

Trustee Leonard moved approval of a request for a 7.11' side yard air conditioner condenser setback variation to permit the retention of an air conditioner and a 3.0 side yard setback variation and a 3.0' separation variation to permit the retention of a grill island and pergola in accordance with the plans submitted, seconded by Trustee Wolf.

Mr. Adler reviewed the request from the applicant noting that the primary request for the Village Board to consider is does the requested variations meet the standards of review for approval. If the Village Board finds that the standards have been met and the variations are approved, staff should be directed to assess an appropriate settlement amount for performing the work without a permit. If the answer is negative and the variations are denied, staff will need to ensure compliance with the zoning code. A permit will be required for any new work, including relocation of the grill island and the air conditioners. Staff maintains the authority to enforce the code through Corporation Counsel's office.

Trustee Sullivan asked how many of these requests have come before the Village Board in the last year and how many have been denied or granted.

Mr. Adler said there are a lot of administrative requests that come to staff and that would be a minimum of 5' between the air conditioner and the property line. He believes a majority of those requests are granted and most times they are replacements of the air conditioners.

President Bielinski asked if it was in the scope of the administrative process to approve the relocation of an air conditioner from a conforming location to a non-conforming location.

Mr. Adler said it could be, depending on the reason for the request but he cannot say whether the request would be granted. There is a notice process for neighbors and if anyone objects to the request, then the request would go before the Zoning Board of Appeals.

Trustee Dodd asked if there were other types of variances that are administratively approved.

Mr. Adler said the administrative variation process was created to ease the load on the Zoning Board of Appeals and the Village Board. The first items that were eligible for administrative review were swimming pools and spas as well as air conditioner condensers. The process has been expanded to include second floors over existing first floors, porches, and replacement porches. He believes there were 30-40 administrative variations reviewed by staff in 2017.

Trustee Plunkett said the time seems unusual in this case, as the air conditioners were installed over five years ago.

Mr. Adler said many times they receive notification that the air conditioners were installed without a permit but it is not typical to see this type of case.

Steve and Mina Boruta, applicants, said the air conditioner unit stopped working and the company that came out to replace it six years ago suggested moving the unit to where it is installed now. She was not aware that a permit was needed to replace or move the air conditioning unit. The grill island was installed at the same time as the patio replacement in the back yard and she was recently made aware that the patio permit did not cover the grill island. The Village inspector came out to inspect the patio so she was under the impression that the grill island was fine. They would be willing to withdraw the request for the pergola at this time. Ms. Boruta said to move the air conditioning unit and grill island would be a financial hardship as it is estimated at \$8,000 to \$12,000.

President Bielinski asked what the hardship is to have the air conditioner condensers so close to the lot line.

Mr. Boruta said the company that installed the unit, said it would be better for efficiency to have the condensers located where they are now and also the units were in the backyard in the middle of the patio so it is less noisy on the side of the house.

Trustee Plunkett asked how they were notified that they needed a permit for the patio work that had been started.

Mr. Boruta said Village staff came to the house to let them know that a permit was needed to replace the patio.

President Bielinski said the patio permit does not mention including a grill island.

Trustee Leonard asked about the pergola project that the applicant started without a permit.

Mr. Boruta said there were two existing type of pergolas near the back door when they bought the home and they needed to be replaced, so he decided to add a pergola over the grill when he was replacing the other structure. He said the structure is only half way completed as their neighbor called the Village and they were told a permit is needed for the pergola.

Mrs. Boruta said they are willing to withdraw the pergola from the application.

Trustee Dodd said she is trying to understand the process for the permit.

Mr. Boruta said the air conditioning unit was replaced before the patio was replaced.

Trustee Dodd said we try to make the permit process clear and staff is available to help the applicant.

President Bielinski noted that there are several structures that have been installed in the applicant's yard that have not had a permit and he is struggling with that.

Trustee Plunkett said as backyard structures are becoming more popular, is staff identifying that those structures need permits.

Mr. Adler said the Zoning Ordinance specifies outdoor kitchens and what is allowable so if someone wants to build an outdoor kitchen all the information is easily available.

Trustee Leonard asked what the responsibility is of the contractors who do the work without permits and what are the implications of their actions in a case like this.

Mr. Adler said it is the Village belief that any contractor that is doing work in the Village should have a fairly good understanding of what work requires a permit. Most contractors would understand that if you are going to remove a patio you would need a permit and it is a relatively easy process if it is an exact replacement. He said on occasion they do catch contractors who are doing work without a permit in the Village.

Trustee Leonard asked if there is a process currently for consequences for contractors doing work without a permit.

Mr. Adler said the consequences are issuing a citation and going to court for working without a permit and having a fine levied.

Trustee Leonard said he would like to review this important issue to try to figure out a way of exacting consequences on some of the contractors who are licensed in the Village that work without a permit.

Trustee Kurzman said this case reminds him of a previous case where work was performed without a permit and came before the Village Board, so he agrees with Trustee Leonard's comments.

Corporation Counsel Jeffrey Stein said it is important to realize that there is dual responsibility and dual liability when it comes to a contractor performing the work that is not licensed or doing things in violation of our codes but also the entity of the person who is receiving the benefit. There is still the responsibility and liability on the property owner.

Trustee Sullivan asked if the Village knows what contractor is performing the work when the homeowner comes in to apply for a permit.

Mr. Adler said the person applying for the permit must identify the contractor on the permit application.

Trustee Sullivan said we should have a penalty for the contractor who does projects without a permit.

Trustee Dodd asked if the Village requirements relating to air conditioner condensers and grill islands are similar to neighboring communities so that most contractors would understand that permits are required.

Mr. Adler said contractors should know that air conditioner condensers require a permit, grill islands are more recent projects and some communities may not address grill islands yet.

Trustee Dodd asked how our inspector would identify discrepancies between the permit and what is happening on the property.

Mr. Adler said the first inspection was done when the applicant was doing the work without a permit and it would be his guess that nothing was extending above grade at that point. The permit for this property was issued as an exact replacement of the existing patio and it would

be his guess that the inspector at that time did a final inspection and if the inspector saw a grill island and fire pit then he would have identified that unless he believed they were previously built and he would just inspect the patio that the permit was issued for. The project took place five years ago, so he can only guess at what happened.

Trustee Dodd said she does not understand why staff did not identify the grill island and fire pit as not part of the patio permit and raise a red flag.

Mr. Adler said he does not know what the inspector saw and does not know what the facts are relating to this permit and inspection but if the inspector believes the permit is just a patio replacement then he would believe that the grill island and fire pit were already there.

Trustee Wolf said if the applicant was going to withdraw the request for a pergola, what would they do with the existing portion of the pergola.

Mr. Boruta said the poles are the only part of the pergola installed and he would cut the poles off at ground level. The pergolas above the back doors had a permit and are installed correctly.

President Bielinski asked if there was anyone present to speak for or against the request.

Barbara Pearlman, 3736 Lake Avenue, said she is a neighbor of the applicant. She said she is a 50 year veteran of interior design and is a licensed architect. She brought the illegal build outs to the Zoning Board's attention on the property as they really affect her property in terms of site and they were done without a permit and she did not have an opportunity to address the projects. She does not believe any of the build outs meet the standards for variance. She noted that she complained over many years but she does not believe it is up to a neighbor to complain it is up to the property owner to comply with the standards in all cases.

Trustee Plunkett asked if Mrs. Pearlman complained to the Village when the air conditioner was moved.

Mrs. Pearlman said she did not make a complaint to the Village when the air conditioner was moved, she complained to Mr. and Mrs. Boruta but they chose to leave the unit where it was moved to. The air conditioner was moved from the applicant's back yard to the side yard where it is right next to her dining room window.

Trustee Wolf asked why Mrs. Pearlman went to Village Hall now.

Mrs. Pearlman said there were other things going on that were out of conformance on the property over the years and with the start of a pergola under construction, she decided to come to the Village.

Trustee Plunkett noted that the Zoning Board discussed the request and wanted the Village Board to ultimately decide.

Trustee Wolf noted that there is a change in the request now since the pergola has been withdrawn and would the Zoning Board have voted differently without the pergola request.

Trustee Sullivan said had the request come before the Village Board five years ago, he would have said no to the request to move the air conditioners as it did not meet the standards of review and that is where he stands now.

President Bielinski said he agrees with Trustee Sullivan as everybody wants their air conditioner not to be in the back yard but we do have rules that exist for a reason as it is an imposition potentially on a neighbor.

Trustee Leonard said it is pretty clear to him that the standards have not been met. He believes it should not be a burden of the neighbor to be the factor by which we enforce our rules. He believes we owe it to the community to enforce the rules and send a message to the community that permits are needed.

Trustee Sullivan said he believes it is part of our job as neighbors if we are experienced in zoning to advise them to call the Village regarding the permit process.

Trustee Dodd said she agrees with Trustees Leonard and Sullivan that the standards of review have not been met but she struggles with why the Village inspector did not see the build outs at the final inspection.

President Bielinski said we do not know the facts of what was there at the time of the final inspection.

Mr. Adler said we do not know what was there at the final inspection, and the permit did not show a request for a grill island or fire pit.

Trustee Plunkett said she has an issue with the request as it is from five years ago. She does not believe the standards have been met and does not think at the time we would have approved the request

but this is a long time past. Are we really going to be policing our residents for issues that happened years ago?

Trustee Leonard said he believes there is a difference in policing and reacting to a situation we have in front of us that there was a violation, and the resident did not get caught until then. If a violation comes to our attention then he does not think the time period is relevant.

Mr. Stein noted that there are no statute of limitations on a municipal ordinance violation like this.

Trustee Dodd suggested that possibly the applicant and the neighbor could discuss the request and see if there is something they could compromise on.

President Bielinski said the Board could make a motion to table the item.

Trustee Wolf said she would possibly support that as the applicant and neighbor have worked some things out over the years and it sounds like the final straw was the pergola and that has been withdrawn and possibly a solution could be worked out.

Mr. Stein said it is his opinion that a neighbors' agreement is not what our Zoning Ordinance would allow as a subsequent homeowner may not agree.

Trustee Sullivan asked if it was the Village Board's option this evening to approve the request and pay a fine amount or deny the request and have the applicant move the air conditioner condensers and grill island to conforming location.

Mr. Stein said those are the two options before the Village Board.

Trustee Plunkett said she knows the Village Board has been sympathetic in the past to things that have already been put in place and the cost it takes to remove them. She believes as a Board they are sympathetic to mistakes and human error and new residents coming in are relying on their contractors.

Trustee Dodd said she is wondering if there could be a compromise with moving one of the items.

Trustee Sullivan said there seems to be a conflict with what was said by the neighbor at the Zoning Board of Appeals meeting that the placement of the air conditioner and the grill island not bothering her and stating tonight that it does bother her.

Trustee Leonard said the neighbor was very clear on her position, there is a violation of the rules. He believes the Village Board should make the decision not the neighbor and the applicant.

Trustee Plunkett moved to table the item, seconded by Trustee Wolf. Voting yes: Trustees Wolf, Plunkett, and Dodd. Voting no: Trustees Sullivan, Kurzman, Leonard and President Bielinski. The motion failed.

Mrs. Boruta said she would like to confirm that they are removing the request for a pergola and they will also remove the existing portion of the pergola from the property this coming weekend.

Trustees Leonard and Wolf withdrew their motion.

Trustee Leonard moved to approve the request as amended, seconded by Trustee Dodd.

President Bielinski noted that the request received a negative recommendation from the Zoning Board of Appeals and will need five votes to overturn the recommendation.

Trustee Plunkett said now that the pergola request has been withdrawn, is that a material change and could the applicant withdraw the request and file a new request with the Zoning Board of Appeals.

Mr. Stein said the applicant could withdraw the application and file a new request which would require a new notice period. He said the Village Board could also remand the request back to the Zoning Board of Appeals.

Mr. Adler said if the Village Board votes no on the request, the air conditioner condensers and grill island would have to be moved to a conforming location. If the request was remanded to the Zoning Board for further consideration because of the change to the request and the applicants were able to get four positive votes, then they would need four positive votes from the Village Board to approve the revised request.

The Village Board discussed the request with the pergola withdrawn and the option of remanding or having the application withdrawn noting that the request may receive negative recommendations from the Zoning Board and/or Village Board.

Mr. Stein suggested that the request be remanded back to the Zoning Board of Appeals which may save the applicant time in the process.

Trustee Sullivan moved to remand the request back to the Zoning Board of Appeals, seconded by Trustee Wolf.

Voting yes: Trustees Wolf, Sullivan, Plunkett and Dodd. Voting no: Trustees Kurzman, Leonard and President Bielinski. The motion carried.

6.2 FINANCE STANDING COMMITTEE REPORT
All items listed on the Consent Agenda

6.3 ADMINISTRATION STANDING COMMITTEE REPORT
All items listed on the Consent Agenda

6.4 MUNICIPAL SERVICES STANDING COMMITTEE REPORT
All items listed on the Consent Agenda

6.5 PUBLIC SAFETY STANDING COMMITTEE REPORT
All items listed on the Consent Agenda

6.6 JUDICIARY STANDING COMMITTEE REPORT
All items listed on the Consent Agenda

6.7 REPORTS FROM SPECIAL COMMITTEES

No Report

7.0 NEW BUSINESS

No Report

8.0 MATTERS REFERRED TO STANDING COMMITTEES

8.1 Review adding group homes for private school students as a permitted or special use in the residential zoning districts.

9.0 ADJOURNMENT

Trustee Kurzman moved to adjourn the meeting at 9:27 p.m., seconded by Trustee Wolf. All voted aye, the motion carried.

Barbara L. Hirsch
Deputy Village Clerk