

**Approved April 1, 2002**

**PUBLIC SERVICES COMMITTEE**

*Minutes of Public Meeting*

*March 11, 2002*

Village of Downers Grove  
Committee Room  
801 Burlington Avenue, Downers Grove

Commissioner Schnell called the March 11, 2002 meeting of the Public Services Committee to order at 5:10 p.m.

**ROLL CALL:**

PRESENT: Commissioner Marilyn Schnell, Chair Public Works Committee  
Commissioner Martin Tully and  
Mr. Jack Bajor, Director of Public Works

STAFF: Chrys Rymas, Stormwater Engineer  
Megan Dugard, Recording Secretary

ABSENT: None

*Visitors: Marilyn Gerloff, 4241 Highland*

**Commissioner Schnell** called the Publics Works Services Committee Meeting to order at 5:10 p.m. Corrections are pending for the February 18<sup>th</sup> meeting and will be submitted for approval at our next meeting.

**Commissioner Tully motioned to adopt and accept the minutes of March 5, 2002 as corrected and presented.**

**Motion carried 2:2**

**Commissioner Schnell** asked Mrs. Gerloff if she had any questions at this time.

**Mrs. Gerloff** responded there were no questions at this time.

**Commissioner Schnell** asked Mr. Bajor to present the information available regarding the status of the Village of Downers Grove Stormwater and wetland projects resultant of the DuPage County Department of Environmental Concerns January 1999 Audit.

**Mr. Bajor** stated there are number of business items to discuss. At the March 5<sup>th</sup> meeting Commissioner Schnell and Commissioner Tully asked staff to locate contracts with the engineering firms Christopher Burke and Environmental SE (V3) who completed work for the village in the past. Additional information is available and copies were distributed in the packets provided for the meeting this evening. Chrys Rymas essentially pulled together the information from the files, which will help provide answers to some questions this evening.

**Commissioner Schnell** asked Chrys Rymas to explain what capacity Christopher Burke and Environmental SE (V3) acted on behalf of the village.

**Ms. Rymas** asked if Commissioner Schnell was referring to the matter of billing.

**Commissioner Schnell** responded in the capacity of reviewing the files, which have been pulled, are being investigated and remain open. We need to explain this area. The concern that was mentioned at the February meeting is how the contract agreement with Christopher Burke and V3 (Environmental SE) reads. If we show contracts hiring either firm to review the various wetland projects, and the projects were signed off that there were no found problems however the County is saying we do not have proper documentation, we have a problem. Christopher Burke and V3 were paid by the village but did not fulfill the contract. This is the number one question. How do we find out if they did the work or if they did not do the work, and why didn't they?

**Commissioner Tully** added the questions he has are similar. He appreciated seeing the two contracts, with Christopher Burke and Environmental SE (V3). It is his understanding in reading the contract, which were entered into contemporaneously in 1992, the term for each agreement was from February 1992 through June 1992. There is no provision for renewal. This is referred to in Section 3.2 of the contract under Period of Service. Both agreements are identical and read *The term of the agreement shall be from the date first above written, (February 15, 1992) through June 30, 1992, except that this Agreement shall survive to the extent necessary to control the delivery of all services required under any Letter Agreement(s) executed on or before June 30, 1992.* These agreements do not answer the questions as to what work was being done. This was a very short period of time Christopher Burke and Environmental SE (V3) were retained. Much like other agreements when we retain someone like Versar, we have a scope of services; liability insurance, as addressed by attorneys and there is a rate schedule. The actual work is usually performed by other agreements or ordinances or as stated in the contract under Letter Agreements. Other Letter Agreements, which define the scope of what was actually completed, are the bills (statements) identifying what was performed particularly for the period after June 1992. In reviewing these two agreements, while helpful, all they show is that we had them and probably gave them to County with our petition for complete waiver status showing we have these firms on retainer. The criticism the County had of the village as reflected in documentation reviewed, the failure, at least their perceived, failure to utilize the expertise available. The questions at our February meeting included did we not use the expertise available, did we use the expertise available and they were not correct or was the situation, for whatever reason, the work was not being completed? There is a small clue in the minutes of May 20, 1999, which were extraordinary, helpful. A comment is in the minutes Bob Jungwirth was describing why the audit came up in the first place and the eleven violations. One thing said was that the County thought the village should have utilized the retained outside expertise on wetland review but did not. A comment was made, which seemed to have arisen from a situation where Mr. Jungwirth did not agree or feel that further review by Christopher Burke or Environmental SE (V3) was necessary and the County disagreed. This could have been a source of four of the violations. The real issue is do we have any documentation showing that Christopher Burke or Environmental SE (V3) actually did anything and perhaps for some reason may not have been in the file, or the work was not satisfactory? Based on what we are seeing so far, it does not appear that Christopher Burke or Environmental SE (V3) were asked to do anything.

**Ms. Rymas** stated both firms were asked to do work and this she remembers. We know the projects that were pulled for the audit review. She will go back to find if Christopher Burke or

Environmental SE (V3) reviewed and signed off on these projects. Checks were sent to both companies for their services.

**Ms. Rymas** continued to explain the comment made by Bob Jungwirth in the May 20, 1999 meeting minutes, on page 3. Bob Jungwirth looked at the wetlands and utilized the discretion provided in the ordinance stating the Administrator could decide. The wetland was on the premises, but the development was not close to or would not adversely affect the wetland physically. The ordinance stipulates we do not have to do anything, meaning we do not have to call the wetland consultant.

We are now realizing this was not the thing to do.

**Commissioner Tully** stated he understands.

**Commissioner Schnell** added this was a misinterpretation of the ordinance.

**Commissioner Tully** explained he is glad he found this and there is another piece of information in the May 20, 1999 minutes that were very instructive. Of the eleven violations, four were failure to use outside consultants. This means the issue or concerns do not theoretically apply to the other seven. This is good. It does appear there was a difference in view between the County and the village as to whether or not outside consultant was necessary. This was a much bigger issue. The ordinance had not been around that long, there had never been an audit, there was a difference of opinion on how to approach things between the village and the County, the County never audited us before, we were unaware of the difference of opinion. This was helpful, to understand, where this came from and why it happened, particularly in the context of discussions about going forward with Stormwater. It would be helpful to find out from a billing perspective, not knowing how far back we can go, someone cut a check to these two companies. It seems these companies may not have been asked to review the permits the County ended up including within the eleven violations. This was the reason the County said the consultants should have been used, and the consultants were not used, because there was a difference of opinion on how to approach the issue. The question Commissioner Schnell raised was could we make sure that Christopher Burke, in particular, has been doing things, charging us for it, and the County finds it to be substandard, which is something that would form our current use of them.

**Commissioner Schnell** read an issue on page 3 in the May 20, 1999 meeting minutes stating *the project had not been closed and bond money had not been returned*. It would be interesting to see who reviewed this project, was it done properly, did it slip through because of the consultant, the village, whoever.

**Ms. Rymas** replied the project was not closed and the bond money was not returned, because they did not submit the survey.

**Commissioner Schnell** stated something is wrong. Why did it happen, who was involved, one of the two consultants reviewed this project.

**Ms. Rymas** stated this is not related to the consultant, this is related to finalizing a permit. Once all the necessary paperwork is submitted to complete a project all the bond money is returned.

**Commissioner Schnell** asked if the erosion control fence would be the responsibility of the contractor not the developer.

**Ms. Rymas** concurred this was correct. The erosion control fence is a construction issue.

**Commissioner Schnell** agrees with Commissioner Tully and would like to see the list of what has been paid. There are no subsequent contracts. Was this renewed every year?

**Ms. Rymas** stated this was how she understood the situation. The agreement was renewed every year. She contacted V3 and Christopher Burke to request billing information. The problem with V3 is after numerous changes within the company, mergers, re-titling, and such; they did not have access to their server. We should get the information sometime next week. Christopher Burke has the same problem. Everything has been archived. The total billing, February 15, 1992 through August 13, 1999 was made available, totalling \$4,110. Sixteen invoices were issued during this period of time ranging from \$50 to \$393.

**Commissioner Schnell** stated this does not sound like a lot of review.

**Commissioner Tully** agreed. This confirms Christopher Burke and V3 were not asked to do much.

**Mr. Bajor** stated it appears to be just the special management areas.

**Ms. Rymas** added there are available reports stating no problems found in their opinion.

**Mr. Bajor** stated he would follow up on our end for billing records as to what was dispersed.

**Commissioner Schnell** stated there obviously is a problem we are being audited.

**Commissioner Tully** stated if there are letter agreements as contemplated by the contracts. After reading both contracts he has questions, particularly with the Christopher Burke agreement. Technically, has this agreement been renewed? It is not a self renew unless given three months notice of non-renewal. There must be some action to renew the agreements unless the amounts were so small. Uncertain, this is the question. The big question would be why do we have two agreements with Christopher Burke? A lot of what is said in the agreements is very comprehensive.

**Ms. Rymas** stated we do not have two agreements with Christopher Burke. The one agreement is no longer in affect.

**Commissioner Schnell** questioned the four thousand dollars in bills; the Director of Public Works could have signed those off at that time because it was under ten thousand dollars.

**Mr. Bajor** added the notation in the margin of the memorandum addressed this matter. We are reconstructing all the paper work, which has been a little difficult.

**Commissioner Schnell** concurred it is a little difficult to understand.

**Mr. Bajor** stated the County specified a number of different engineering firms to utilize. This is why we felt comfortable with Christopher Burke and making that recommendation. Kay Whitlock had a ten-year hiatus where she was in California. Before that, she was one of the architects who put together the Ordinance, as chief engineer.

**Commissioner Schnell** stated what we are doing now, we are living with it. We need to find out what happened before if we used the consultant, if so how were they used, what were the reports? There may be more projects with wetlands. Did we violate the ordinance?

**Commissioner Tully** stated based on what has been seen so far, until we turn over billing records or agreements, it does not seem as though Christopher Burke was required to perform that much. And it does not look as though they did something that was at odds within the contract requirements. Some comfort can be taken from this.

**Commissioner Schnell** agrees.

**Commissioner Tully** stated this was worth looking into. It also strikes him, what was apparently a large majority of what caused this all in the first place was a difference in perception of how the ordinance should be administered between the village and County. Unfortunately we did not get a chance to find out what the County's views were until they started to conduct the audit and start setting violations. It is understandable how this can happen. Part of this exercise is to figure out what happened in the past so we can try to avoid this in the future. Now we know what the situation is.

**Commissioner Schnell** emphasized her concern is to review copies of the billing records. If we indeed paid Christopher Burke over the last nine years was four thousand dollars, yes there is a much better sense of comfort.

**Commissioner Tully** inquired if our own records show invoices paid.

**Mr. Bajor** replied he would check into the matter.

**Commissioner Schnell** stated this would help to fill in some gaps.

**Commissioner Tully** questioned the numbers available on the Planning Resources Fees-Wetland Review. (Item C) What do these charts reflect?

**Ms. Rymas** explained the chart was used in segmenting the cost of the assistance meaning Wetland Reviews for the permits from our Wetland Consultant.

**Commissioner Tully** stated he understood. The audit was dealing with the audit items.

**Ms. Rymas** continued to explain there were two issues. The audit review was being conducted and also working as our Wetland Consultant.

**Commissioner Tully** stated the short answer is of the assistance component the chart entitled Planning Resources Fees – Wetland Review, dated March 5, 2002, the column titled Assistance is a breakout of the assistance line on the January 29, 2002 e-mail from Planning Resources to Chrys Rymas. For example the 1999 assistance was \$3, 233.60 showing on the chart \$1,368.66 was passed on to the Residents.

**Ms. Rymas** stated we, the village, paid the Resident fee of \$1,368.66.

**Commissioner Tully** questioned the \$1,864.94 fee that was paid by the developer?

**Ms. Rymas** confirmed yes the developer paid the \$1,864.94 fee. We felt the resident should not have to pay the fees, so the village absorbed them.

**Commissioner Tully** stated the line item for Audit we are unable to match until we get billing records.

**Ms. Rymas** explained the line item for audit is different. You are asking for the bills from Christopher Burke and Environmental SE (V3) dealing with review of those permits between 1992 and 1996. That is different from what Julie Crane and Planning Resources are doing. They are spending money to work on those projects concerning the 101 files.

**Commissioner Tully** asked for clarification. The audit line for 1999, 2000, 2001 and 2002 on Julie Crane's e-mail are in respect to Audit Assistance for what exactly?

**Ms. Rymas** stated the audit line on Julie Crane's e-mail is for audit assistance on 107 permits contained in our self-investigation. She believes Kay Whitlock has Planning Resource on hold until a contract is negotiated and in place.

**Mr. Bajor** confirms this is correct. Planning Resources was traditionally the consultant and would like to continue with Planning Resources. They are specialist, in the field of wetlands.

**Commissioner Tully** asked if there is something holding up the ability to get a contract with Planning Resources to complete this project?

**Mr. Bajor** stated he couldn't anticipate anything. Kay Whitlock has been working out the wetland as part of the SMA process. She is our Administrator; therefore we have been following her lead on this matter. We meet every Tuesday morning. We will address this issue with her first thing in the morning.

**Commissioner Schnell** stated it would be nice to keep the audit going so we can close out these matters as well. We don't want the County at us saying we are not going through the process. She asked how long Mr. Bajor needed to compile the billing information.

**Mr. Bajor** responded two weeks was enough time to compile the needed information.

**Commissioner Schnell** replied that puts us at March 25<sup>th</sup>.

**Commissioner Tully** said he hopes to be back in town.

**Mr. Bajor** thanked Chrys Rymas for taking the time in putting together the Stormwater Permit Flow Chart. We are trying to work in concert with Code Enforcement. One of the concerns Don Rosenthal mentioned at our last meeting was the time frame of the review process. Traditionally it is taking about ten days for the engineers to review the complete application and comments. They then have to respond to the comments. In order to facilitate this, we have been in discussion with Christopher Burke and they have been using faxes. They fax their comments and concurrent with this they fax the comments to the developers' engineer. This helps to move things along and not waiting for US Mail. More importantly, just want to make sure everyone is aware it does take more time to go through the engineering process.

**Ms. Rymas** added the applicant submits the paper work, and if there is a review on the site plan, submit the comments to the engineer, it may take two months for a response. We look like we have spent two months time on the project review, which is not the case.

**Commissioner Schnell** asked if going on – line posting the status of the review would be available?

**Ms. Rymas** agreed, and will check if going on-line would be available.

**Mr. Bajor** added 69 reviews are in process at this time during the Tuesday meeting with Kay Whitlock. Half of them are complete. There are approximately 40 reviews open. He will be working with Chrys Rymas on adding reasonable target dates to complete the process.

**Commissioner Schnell** stated putting information on-line, giving people an idea how long it takes to get through the process it will be understood on how long the process actually takes. The more information out there available to developers makes a difference, the better off we will be. Don Rosenthal is doing a really good job. He has some really proactive material put together that will be beneficial.

**Mr. Bajor** thanked Council Members for helping with the Internal Stormwater position. Great asset.

**Marilynn Gerloff**, 4241 Highland, asked about the agenda for the Stormwater Meeting, and it looked very much like one she read in the past. Was the past meeting cancelled?

**Mr. Bajor** confirmed the original meeting was cancelled. The agenda was carried over.

**Ms. Gerloff** commented, thanking members for being allowed to attend, it appears we are no further ahead from February 18<sup>th</sup> meeting. Some of the same questions are still there. She explained maybe she is not used to slow moving process.

**Mr. Bajor** explained in trying to keep it moving, it is pretty difficult in getting responses from the engineers.

**Commissioner Schnell** replied that we would see what we could compile in two weeks at the next meeting.

Next meeting will be March 25, 2002 5 p.m.

Adjourned 5:50 p.m.