

**VILLAGE OF DOWNERS GROVE
PLAN COMMISSION MEETING, JULY 11, 2005, 7:30 P.M.**

Chairman Jirik called the July 11, 2005 meeting of the Plan Commission to order at 7:30 p.m. and asked for a roll call:

PRESENT: Chairman Jirik, Mr. Griesbaum, Mr. Matejczyk, Mr. Nicholaou, Mr. Quandt, Mrs. Rabatah, Mr. Waechter, Mr. Webster

ABSENT: Mr. McCormick

STAFF

PRESENT: Amanda Riordan, Planner; Alice Dornan, Recording Secretary

JUNE 6, 2005 MINUTES.

Mr. Quandt noted that his name appears in the roll call on page 16, which should state Mr. Griesbaum's name instead.

CORRECTED MINUTES WERE APPROVED ON MOTION BY MR. NICHOLAOU, SECONDED BY MR. GRIESBAUM. MOTION CARRIED BY VOICE VOTE OF 7-0.

FILE NO. PC-17-05 Village of Downers Grove Zoning Ordinance Amendment; 28.1701 Amendment to Zoning Classification.

Ms. Riordan explained that the Village was seeking approval of a Zoning Ordinance Text Amendment to Chapter 28, *Zoning Ordinance*, Section 28.1701, *Amendment to Zoning Classification* regarding the number of votes required for the Council to pass a rezoning petition when a written protest has been filed by adjacent property owners. Currently, the required vote to pass such a rezoning is four of six trustees, not including the Mayor. The proposal is to change the required vote to pass to five of seven Council members including the Mayor.

Ms. Riordan said that the provisions regarding written protests regarding rezoning petitions are established by State Statute, but because the Village is a home-rule municipality, it has the opportunity to change those provisions if so desired, which the Village Council has directed Staff to pursue.

Chairman Jirik opened the meeting up to public comments. No comments were received from the audience.

Mr. Griesbaum inquired as to what issues or cases prompted this proposed change. Ms. Riordan explained that written protests were received for the Villas of Maple Woods townhouse rezoning, and for the Golf View Estates subdivision rezoning.

Mr. Nicholaou asked what the Council's vote regarding the Golf View Subdivision was, because the Council's final vote had three nays for the subdivision. Ms. Riordan clarified that the motion presented to the Council for Golf View was to leave the zoning R-1, so the final vote taken by the Council did not include rezoning the property. However, the question still arose because that petition originally included a request to rezone the property. This proposed change effects only rezoning petitions.

Mrs. Rabatah asked how other villages were handling this matter. Ms. Riordan responded that other municipalities were not polled.

Chairman Jirik asked whether staff had a clear understanding of what constitutes a protest. Ms. Riordan responded yes, and explained that written protests regarding rezonings are governed by State Statute. The requirements are that the protest must be filed in writing, and must contain the signatures of property owners comprising a total of at least 20% of the perimeter of the subject property, either directly adjacent to the property or directly across a right-of-way from the property. She said that in order to verify if a protest is valid, the perimeter of the property is calculated, as is the amount of the perimeter of those property owners having signed the written protest. If the calculation was 19.9%, the protest would not be valid and would have no effect.

Further examples of technical clarification followed, including explanations of who must be provided with copies of the protest. Ms. Riordan clarified that only when the owner or owners of at least 20% of the perimeter of the property have filed the written protest does the increase in the required number of votes take effect.

Mr. Griesbaum inquired as to why the text amendment needed to be changed, and why it was set up in the first place. Mr. Waechtler believed it was for consistency purposes.

Mr. Nicholaou said he did not support the amendment and found the amendment to be an infringement upon the citizens of the community and would make it more difficult for them to force objections or raise objections by raising the bar on the requirements necessary. He believed it was difficult enough for the citizens to come before people and to work through the process. He believed the current text was set up fine except for a small group of people.

Mrs. Riordan clarified that the proposed amendment does not change one's ability to file a protest against a rezoning, nor did it change the requirements or the "trigger" for requiring a supermajority vote. The proposed amendment makes it no more or less difficult for an objector to file an objection. It proposed to change what effect that petition has on the number of votes required to pass a rezoning petition if that written objection is filed.

Chairman Jirik provided a summary of his understanding of the text amendment and the definition of controversy. He saw benefits of having the higher standards. He said he also had some questions regarding the wording of the phrase of "two-thirds of the council then holding office."

WITH RESPECT TO FILE PC-17-05, AN AMENDMENT TO CHAPTER 28, ZONING ORDINANCE, SECTION 28.1701, AMENDMENT TO A ZONING CLASSIFICATION, MR. NICHOLAOU MOVED THAT THE PLAN COMMISSION RECOMMEND TO THE VILLAGE COUNCIL THAT THIS PROPOSAL BE DENIED, AND THAT THE VILLAGE MAINTAIN THE USE OF THE STATE STATUTE PROVISIONS REGARDING WRITTEN PROTESTS REGARDING REZONING PETITIONS.

Mr. Waechtler noted that Mr. Nicholaou made a motion different than Staff's recommendation, and asked how to proceed. Clarification followed that the motion was simply to recommend denial of the proposed text amendment.

THE MOTION WAS SECONDED BY MR. WEBSTER.

Mr. Nicholaou commented that if one watches what is currently occurring in the community, there is a movement to make it very difficult to do and stop the reconstruction of the Village. Personally, he believes it was a very small group of individuals that were not supportive of the Village's infrastructure of downtown stores, etc. He believed it was time to stop.

Chairman Jirik added that the amendment does create a higher hurdle and controversy but stated he would leave it up to the elected officials to see through the "red herring" of controversy and move the good projects forward even though controversy can sometimes be manufactured artificially. He believed that where a true issue existed, the higher standard would be appropriate.

Mr. Griesbaum agreed many good points were raised but personally, there was not sufficient information as to why the text needed to be changed. He strongly believed that the rules were set up for a reason years ago, but without knowing what impacts would occur, he would not support the change at this time.

Ms. Riordan clarified that the Village's Zoning Ordinance is currently silent on the matter of protests against rezonings; it is the State Statutes that currently govern this issue. Therefore, no history exists in our Zoning Ordinance, no language is being amended per se, but language is being proposed to be added into the Ordinance.

Mr. Waechtler voiced his concerns about the calculations being used for voting.

Mrs. Rabatah confirmed with staff as to why this amendment was being brought forward now and not earlier, wherein staff reminded her of the two cases -- the Maple Avenue townhouse rezoning and the Golfview Estates subdivision, which have recently brought this issue to light. As to whether earlier cases had written protests, Ms. Riordan said that there may have been, but not within recent memory.

Mr. Quandt asked whether the Mayor's vote would have changed the outcome of the two recent rezonings if this text amendment had existed. Ms. Riordan said she could not confirm what the impact would have been, because she does not have their voting record in front of her. Discussion followed regarding the impacts of the Mayor's vote on these petitions continued.

Ms. Riordan said that the votes on those petitions are not at issue, and recommended that the commission to look forward and not back at previous petitions.

Due to the two recent cases that may have been affected by the amendment, Mr. Waechtler believed that due to the commission's minimal experience on this matter, it was probably wise to follow the State statute as it exists. He questioned whether this matter would become a larger problem.

Chairman Jirik expressed his concern about the fact that one elected official could not vote, which he believed was unfair.

Ms. Riordan pointed out that it is not that the Mayor could not vote, it is whether his vote counts for a motion to approve a rezoning petition when a written protest is filed. If four of the other commissioners have already voted in favor of the petition, the statute requirement would have already been met whether his vote was aye or nay. If, however, only three other commissioners vote in favor, the Mayor's vote can not constitute the fourth vote.

Mr. Nicholaou clarified that the above motion made by him was not predicated upon who sits on the council today nor was it predicated upon the two recent situations. It was predicated upon what he viewed as one Plan Commission member as something he saw happening and making it difficult for residents.

Dialog followed regarding the voting requirements as they exist and as they are proposed, specifically concerning the impact of the Mayor's vote.

Chairman Jirik asked the commissioners whether this matter should be continued. Further discussion followed regarding the required number of votes necessary to make a quorum if less than seven members show up; the fact that further discussion was complicating the matter; and the fact that some commissioners wanted more information as to why this text amendment was necessary.

ROLL CALL:

AYE: MR. NICHOLAOU, MR. WEBSTER, MR. QUANDT, MR. GRIESBAUM, MRS. RABATAH, MR. MATEJCZYK, AND MR. WAECHTLER

NAY: CHAIRMAN JIRIK

MOTION TO DENY PASSED. VOTE 7-1.

The commissioners were polled on their vote:

Mr. Webster stated there was not enough background regarding the intent of the text amendment, or an answer to why it is necessary to change the way that these rezoning matters were voted on at the Council level.

Mr. Quant asked to see the benefits of a different structure set up and questioned why the commission need to change it. He asked how does it impact the Village and its residents.

Mr. Griesbaum voted in favor of the denial noting he understood the point of having the Mayor's vote counted, but he preferred to see the text revised in such a way as to help this Commission determine how petitions would pass. Having it read that a vote of 4 rather than 5 to pass or deny a petition would be better. If five members showed up as a quorum to the Council, he believed it meant that all five members needed to vote positively. Otherwise, it would send a wrong message to the residents.

Mr. Nicholaou, in addition to his previous comments, stated the statute applies to these types of petitions, and questioned why it should be changed for our community. Personally, he felt there is no necessity to make a change away from the current Statute provisions on this subject, which was why he made the motion to deny the proposal

Mrs. Rabatah said she voted to deny the motion for all of the previous reasons stated.

Mr. Matejczyk said he found Mr. Nicholaou's comments persuasive and voted to deny because the proposal because he was not convinced as to the reason for this proposal being brought before the Plan Commission. He would like to see the text amendment return with more background information as to why it was needed.

Mr. Waechtler said he agreed with Mr. Griesbaum's comments, and also believed that the Mayor should be allowed to vote. However, rather than looking at this as five affirmative votes, the it might be better served to require a two-thirds vote of the Village Council members present, including the mayor, which he felt would be more fair.

Chairman Jirik said he voted against the motion to deny because of his previous comments regarding the Mayor's vote not being allowed to count, and he believes this text amendment would have remedied that. He said he also believes it is important to hold matters of significant controversy to a higher standard. He added that he voted against the motion for denial because he was not prepared to deny it. He felt a continuation to allow more investigation on this matter would have been more productive. He also agreed with the comments that the term "then holding office" should be reviewed for alternative language so as not to make a mandatory five-vote to pass regardless of proposition. However, in general, the improvements that this has with re-enfranchising an elected official, and holding controversial matters to a higher standard were reasonable and appropriate.

FILE NO. PC-18-05 A Petition for Rezoning from R-1, Single Family Residence to Village R-3, Single Family Residence per Chapter 28, *Zoning Ordinance*, Section 28.1701, *Amendment to Zoning Classification*; approval of a lot split per Chapter 20, *Subdivision Ordinance*, Section 20.600, *Lot Splits*; and Approval of an Exception to allow the easterly lot with a lot depth of 100 feet in lieu of the minimum required 140 feet, per Chapter 20, *Subdivision Ordinance*, Section 20.602, *Exceptions*.

Chairman Jirik asked Staff whether a motion to accept the withdrawal of this petitioner was necessary wherein Ms. Riordan believed it was not really necessary. For the Record, Chairman Jirik stated that File No. PC-18-05 was voluntarily withdrawn. There being no objection from the commission, the matter was withdrawn without prejudice.

Staff noted the next meeting was August 1, 2005 with three petitioners on the agenda. August and September would be very busy.

MR. GRIESBAUM MOVED TO ADJOURN THE MEETING AND MR. QUANDT SECONDED THE MOTION. THE MOTION PASSED UNANIMOUSLY BY VOICE VOTE.

The meeting adjourned at 8:33 p.m.

/s/ Celeste K. Weilandt
 Celeste K. Weilandt
 (As transcribed by tape)