

# CITY OF WEST CHICAGO

WHERE HISTORY & PROGRESS MEET

## MINUTES

### Development Committee

August 13, 2012

#### APPROVED AT THE SEPTEMBER 10, 2012 MEETING

#### 1. Call to Order, Roll Call, and Establishment of a Quorum

Chairman Pineda called the meeting to order at 7:05 p.m.

Roll call found Aldermen James Beifuss, Sandy Dimas, H. Ronald Monroe, Ruben Pineda, John C. Smith, Jr. and Rebecca Stout present.

Also in attendance was Interim Community Development Director Robert Hupp.

#### 2. Public Participation – None.

#### 3. Items for Consent

Chairman Pineda read the Items for Consent:

3A. Grading and Pavement Slope Deviations – 1651 Atlantic Drive (West Chicago Fire Protection District)

3B. Grading and Pavement Slope Deviations – 1080 Commerce Drive (West Chicago Fire Protection District)

**Alderman Dimas made a motion, seconded by Alderman Monroe, to move Consent Items 3A and 3B to the August 20, 2012 City Council meeting. Voting yea: Aldermen Stout, Monroe, Beifuss, Dimas, Pineda and Smith. Voting nay: 0. Motion carried.**

#### 4. Items for Discussion

4A. 1200 W. Hawthorne Lane (Hawthorne's Backyard) Proposed Second Amendment to an Annexation Agreement (James and Joann Burns)

Chairman Pineda introduced the item, reviewing the history of the annexation agreement and the requests to extend the deadline for paving the parking lot. He noted that at the January meeting he had asked that there be a meeting with staff to get things worked out

so the parking lot could be paved by the July deadline. He said this is August, the City is still owed \$5,874.38 for the attorney work, and now Mr. Burns is stating that he wants to abandon the project for 3-5 years and review it after that time. Chairman Pineda stated that with the annexation of the property come ordinances that have to be followed; he acknowledged the economy was not good and Mr. Burns' wife has been ill, but emphasized that there have been numerous meetings and we have gotten nowhere. He said waiting another 3-5 years is not acceptable. He said he did not want to start issuing fines, as that would probably not be effective, but there has to be some resolution of this matter. He said if it's not feasible to get it done right away, then something less than 3-5 years could be considered. He said his first priority was to get the outstanding bill paid, before a decision would be made for an extension.

Mr. Burns questioned why he got the bill, as it was just a matter of determining whether the property line ran to the centerline of Hawthorne Lane and whether the zoning ordinance would supersede it. Chairman Pineda asked if there had been any discussion about paying the bill, or not paying it, or any discrepancies. Mr. Burns recalled a meeting with Mr. Hupp, Mr. Harris, and Ms. Cooper and said his brother, who is an attorney, took exception to some of the charges that were in the bill. He said Ms. Cooper had told him he could not see the City Attorney's opinion letter; he said he felt that if they were paying for it they should be able to see it.

Chairman Pineda said if there was any question about the bill or if he was getting charged correctly, had he entered an objection? Mr. Burns said not formally, they were just told they couldn't see the opinion. Mr. Hupp explained that the opinion was prepared for the City under attorney-client privilege. He said the City's attorney had a long history of documents to review going back to the mid-1800's, and it was not a clear-cut matter. He explained that the review included the pros and cons, which is not something that could be shared with anyone outside the City organization. Mr. Hupp said the alternative offered to Mr. Burns at the meeting with staff was to have the attorney prepare an opinion letter that could be shared, although there would be an additional cost for that. He said his recollection was that Mr. Burns' brother had said he understood the charges and indicated they were in the ball park or in line, although he didn't have the detail of what all the charges were for.

Ald. Beifuss asked if there was a problem with the front yard landscape setback because there was a question as to where the public right-of-way was in relation to this property's front lot line. Chairman Pineda said at the January meeting the Committee was made aware of the setback issue for the first time, and because the property line runs to the center line of Hawthorne Lane, there was a question about the front yard landscape setback. Mr. Hupp said that Mr. Burns had proposed paving over the existing parking lot in its present location. He explained that because of the setback issue, it might not be possible to pave it where it is, but that it would have to be moved south to meet the landscape setback requirement.

Ald. Beifuss asked if the City had asked the City Attorney to figure out this question, and Mr. Hupp responded yes. Ald. Beifuss asked why we then go to the property owner to pay for those services, as it seems the City benefits as well. Mr. Hupp responded that the City ordinance provides that any time an annexation, zoning, variance, or similar application request triggers the need to hire a consultant, the applicant is required to pay for it, so that the cost does not fall on the taxpayers of the City as a whole.

Mr. Burns said the plat of survey was prepared by a licensed surveyor, and said he didn't understand why that wasn't good enough. He said he has a copy of his original annexation from 1971 and it has the same property line or setback. He said they paved part of the parking lot in 1985, possibly under the old ordinances. Mr. Burns said he doesn't know when the City confiscated his property, without notification. Chairman Pineda asked what he was referring to. Mr. Burns said anything that went beyond where the original annexation placed the property, and discussed some of the plats and plans in his possession. He said he didn't know when it changed to being another 20 feet into his property.

In response to a question from Chairman Pineda, Mr. Hupp explained that for purposes of determining the parking lot setback, the northerly edge of the property is not the centerline of Hawthorne Lane, but is instead the southerly line of the right-of-way. Mr. Hupp explained that whether Mr. Burns owns to the centerline or not is immaterial, it's a matter of how you determine the zoning ordinance setback.

Mr. Burns said he didn't follow – he said his parking lot has been that way for several decades, and would have a problem with the outdoor events that occur there if the parking lot is moved. He questioned whether Hawthorne Lane was the frontage, since it is the longer side. Chairman Pineda said all those questions have been answered, and the major issue is when the parking lot will get done. Mr. Burns said the City changed or took away the frontage, and he was concerned about the drainage requirements. Chairman Pineda said that discussion had already occurred, there have been multiple extensions, and we need to come to a conclusion. He said the City cannot abandon the requirement and can't just push it off for another 5 years. Mr. Burns said he had originated the Annexation Agreement for the southerly parcel, and that he had no problem with improving the lot over the existing lot with the same frontage or setback.

Ald. Beifuss asked if the applicant is asking for a variance. Mr. Hupp said that's what it sounded like, but it would have to go through the variance process. Ald. Beifuss said the City has granted some delays or variances when commercial property is annexed, because getting them into the City is seen as a plus. He said this is unusual because the property goes to the centerline, and Hawthorne Lane has been widened but the right of way issue wasn't picked up by the engineers at that time. Mr. Hupp commented that it is not clear whether moving the parking lot a little to the south would trigger the stormwater detention requirement. He said Mr. Burns had not submitted a plan for parking lot improvements showing conformance with the setback for review, to determine the stormwater detention requirement. Mr. Burns asked Mr. Hupp if he hadn't received the

plan, and Mr. Hupp said staff was aware that there was a plan but it had never been submitted for a permit review. Mr. Burns acknowledged it had not been submitted for a permit. Chairman Pineda suggested giving Mr. Burns one more month, and told Mr. Burns to bring in the plan as soon as he can. Mr. Burns agreed. Mr. Hupp said that even if it was not a formal submittal, staff could take a look at the plans to get an idea as how much new impervious area was being proposed, give DuPage County a call, and get a reading on it so Mr. Burns could decide whether to move forward with or without some type of variance request. Chairman Pineda said then they would not have to keep meeting and going over the same things.

Mr. Burns said it has been a very distasteful thing because at the first meeting with staff he told them his property is part of a Special Service Area for drainage and staff told him it was not. He said the Township had paid for their obligation in cash and so did not put it on the tax bill. Chairman Pineda said they went over this last time. Mr. Hupp said he had personally reviewed documents Mr. Burns had submitted in this regard, and did not see anything indicating that stormwater detention had already been provided for this property. He explained that it was a County and Township drainage project that had nothing to do with stormwater detention for private property. Mr. Burns agreed it did not, but said his stormwater drainage goes through that ditch.

Chairman Pineda asked Mr. Burns to bring in the latest plan, resolve the outstanding bill or let us know if there are objections, and come back next month. He said the variance might be doable, but it would require the full review and approval process and there was no guarantee that it would be approved. Mr. Burns repeated his concern about the outdoor area and the sign at Hawthorne's Backyard and how this might affect it. He agreed to contact the City staff, bring in the plan, and set up a meeting to discuss these matters.

#### 4B. Residential lighting regulations

Mr. Hupp introduced this item noting that Ald. Beifuss had inquired about regulating glare from residential lighting, and staff has researched some other communities' ordinances for ideas on how to address it. He explained that the current code does not address residential lighting situations where one residential property affects another, although it does regulate how nonresidential properties affect residential. Mr. Hupp said it tends to be difficult to effectively enforce residential lighting regulations. He said the standard was essentially a nuisance standard where the "average person" would be offended or impacted by the situation. He said that nevertheless, it may be of some use to have an ordinance that could be applied. He explained the staff was recommending coming at it from two different approaches, one qualitative and the other quantitative. He said this would probably not resolve all situations that might arise, but could help resolve many of them. He said if the inspector goes out and talks to the resident, informing them of the violation, and the resident is cooperative, those situations would be resolved. He said there could be a struggle with the ones where there is a conflict between neighbors or

it is difficult for the resident to modify their lighting, but it would still be worth implementing.

Ald. Beifuss said the City has regulations for commercial next to residential, but not for residential vs. residential, and the same kinds of issues can arise. He said frequently you have issues where the lights are poorly aimed. He said some other towns have rules about the angle at which a security light can be aimed. He asked about the definition of foot candle, and Mr. Hupp said it is the illumination of a candle one foot away. Mr. Hupp said there could be situations where street lighting could generate a level of ambient lighting that would make it impossible to accurately measure the residential lights in question. Chairman Pineda said they needed to be careful because street lights in some areas are quite bright. He said he would have a concern about flagpoles, which need to be lit at night, as well as some security lights that are triggered by animals. He said this give us some teeth, but it will be difficult to enforce. Ald. Monroe said at least there will be something in place, and Ald. Beifuss said this will provide a basis for enforcing lighting situations.

Ald. Dimas said her home is across from a school that has security lighting, and wondered if other neighbors would start to complain based on this rule. She said these types of facilities should be able to maintain their security lighting, as they have had tagging and other problems. Chairman Pineda suggested an exception in the ordinance for schools and similar institutional uses that are permitted in residential districts.

The Committee unanimously directed staff to send this matter through the process beginning with the Plan Commission.

4C. Add Ancel Glink Diamond Bush DiCianni & Krafthefer to the List of Approved Attorneys

Mr. Hupp explained that the Stericycle medical waste transfer facility that came before the Committee earlier this year intends to apply for siting approval as a "Pollution Control Facility" under the Illinois EPA rules. He indicated the attorneys the City currently has a relationship with do not have experience with this unique process, and staff had talked to two attorneys with relevant experience. He stated that Ancel Glink represents municipal clients and that the other firm represented private firms, and Ancel Glink seemed more interested in taking on this work. Chairman Pineda said the issue was essentially if they file an application, the City will need someone on board who is qualified. Mr. Hupp explained that there would also be a need to hire a hearing officer who would act as a neutral third party, like a judge, but Ancel Glink would be working on behalf of the City.

The Committee unanimously agreed to move this item to the August 20 City Council agenda.

4D. Ordinance No. 12-O-0030 Establishing Pollution Control Facility Site Approval Procedures

Mr. Hupp explained that the City has to follow the state's process for these applications, and that this ordinance lays the groundwork, establishes the procedures, and requires that the applicant pay for everything associated with the process including attorney fees, the hearing officer, consultants, etc.

Mr. Hupp pointed out that there was a requirement that, unlike most applications the City reviews, any contact or communication outside the formal process is prohibited once the application is filed. He explained that during the process the City Council is in a role similar to a juror, where you cannot communicate with anyone about what is occurring in the courtroom. He said that even casual conversations with friends or constituents are prohibited.

Ald. Beifuss asked if Council members could talk to staff, and Mr. Hupp said he was not sure, although Council members could definitely talk to the attorney. He said staff would need to clarify its role in the process; he knows the staff cannot talk to the applicant once the application is filed but was not sure about other communications.

Chairman Pineda said this would cover not just Stericycle but any other facility falling under the same IEPA rules that might apply in the future. Ald. Beifuss asked about the funding mechanism, and Mr. Hupp indicated they would pay a \$100,000 deposit up front and would have to replenish the deposit if the balance fell below \$25,000. Ald. Beifuss asked who the hearing officer is, and Mr. Hupp responded that there are a handful of attorneys in this area qualified to do that work, that the Mayor would hire one of them with the advice and consent of the City Council, and they would be paid out of the deposit.

The Committee unanimously agreed to move this item to the August 20 City Council agenda.

**6. Unfinished Business**

Ald. Beifuss asked if there were minutes that the Committee had not received. Mr. Hupp said there were three sets, April, May and July. He said Linda had worked through about  $\frac{3}{4}$  of each of those, but she has been out on family medical leave. Chairman Pineda noted that Community Development has been short staffed lately. Mr. Hupp said he regretted not having those done and would do what he could to get them completed. Chairman Pineda said he would follow up to make sure they got done.

**7. New Business**

Chairman Pineda said Ald. Smith shared with him that there was a party in the unincorporated area near his home, but the County said there was nothing they could do

about the noise. He said if they are impacting the City, the City should be able to stand at the border with a sound meter and issue a ticket if they violated a City ordinance. He asked if there was something the City could do so that DuPage County could enforce West Chicago's ordinance. Ald. Smith said it was the loudest music he had ever heard, plus a light show, at midnight. He said he called the County and talked with the Deputy, who told him the County has no ordinances to stop the noise. Ald. Smith said that didn't seem right, and recalled the Fresh and Pure matter, where the noise was created on the other side of the line, but was violating West Chicago's ordinance. Chairman Pineda said the company was fined each time there was a violation and eventually quit violating the ordinance. Ald. Smith and Chairman Pineda said they could not believe the County could not do anything about nuisances. Ald. Smith said this has happened more than once in his neighborhood. He said on one of those previous occasions, he had talked to a West Chicago officer, who acknowledged legally he might not be able to do much, but did go over and talk to the resident, and they stopped the party.

**8. Reports from Staff – None.**

**9. Adjournment**

Alderman Stout made a motion to adjourn, seconded by Alderman Dimas. The members unanimously agreed. Motion carried. The meeting adjourned at 8:20 p.m.

Respectfully submitted,

Bob Hupp