

**VILLAGE OF LAKE BLUFF
JOINT PLAN COMMISSION & ZONING BOARD OF APPEALS
MEETING**

DECEMBER 19, 2018

APPROVED MINUTES

1. Call to Order & Roll Call

Chair Peters called to order the regular meeting of the Joint Plan Commission and Zoning Board of Appeals (PCZBA) of the Village of Lake Bluff on Wednesday, December 19, 2018, at 7:05 p.m. in the Village Hall Board Room (40 E. Center Avenue).

The following members were present:

Members: Sam Badger
David Burns
Jill Danly
Elliot Miller
James Murray (via phone)
George Russell
Gary Peters, Chair

Also Present: Ben Schuster, Village Attorney (VA)
Glen Cole, Assistant to the Village Administrator (AVA)
John Scopelliti, Administrative Intern

Chair Peters reported that a notice was received from Member Murray in accordance with the Village's Electronic Attendance at Meetings Policy. Member Murray will be deemed authorized to attend the meeting electronically unless a motion objecting to his electronic attendance is made. There were no objections and Member Murray was deemed present.

2. Approval of the October 17, 2018 PCZBA Regular Meeting Minutes

Member Miller moved to approve the October 17, 2018 PCZBA Regular Meeting Minutes as amended. Member Russell seconded the motion. The motion passed on a unanimous voice vote.

3. Non-Agenda Items and Visitors (Public Comment Time)

Chair Peters stated the PCZBA allocates 15 minutes during this item for those individuals who would like the opportunity to address the PCZBA on any matter not listed on the agenda. Each person addressing the PCZBA is asked to limit their comments to a maximum of three minutes.

There were no requests to address the PCZBA.

4. Chair Peters Administered the Oath to Those in the Audience

5. A Public Hearing for Text Amendments Establishing the Recreational, Institutional, and Open Space (RIO) Zoning District.

Chair Peters introduced the agenda item and requested an update from Staff.

AVA Cole said the discussion tonight is to consider a text amendment to create the Recreational, Institutional, and Open Space (RIO) Zoning District (District) and an entirely new set of regulations for properties within the district. He said the proposed uses for the new District includes Churches,

Libraries, Public Agency Buildings, Museums, Recreational and Leisure Facilities, Schools and Open Space. The plan is to establish a set of regulations that balance the interest as a public body and regulate public safety/welfare in our community. AVA Cole provided background information about the process which consisted of the proposed classification in the 1997 Comprehensive Plan, PCZBA review in January 2016, focused individual parcel study for past year, outreach to affected agencies and outreach to public. AVA Cole reviewed the current issues associated with the Zoning Ordinance and possible solutions:

1. Unpredictability of land uses. Most RIO Uses operate in residential districts. By right, these uses could convert into permitted residential development with limited opportunities to intervene or seek community input. **Solution:** changes among RIO uses are reviewed and changes outside RIO are rezoning;
2. Poorly adapted regulations, mismatch between regulations and uses. By virtue of being in residential districts, RIO Uses are subject to practical burdens by having to either comply with, or seek exemptions from, rules such as floor-area ratio maximums that were developed with single family houses in mind. **Solution:** Make regulations specifically for RIO uses; and
3. Procedural burden. RIO Uses must typically seek three different approvals – special use permits, zoning variations, and architectural site plan review – for every change they propose. These result in additional costs that are indirectly borne by Village taxpayers. **Solution:** Streamline and coordinate approvals.

AVA Cole said the PCZBA has worked to develop regulations to obtain the following objectives: (i) maximize the predictability of land use and public benefits as a result of the development and use of property; (ii) provide public amenities including schools, parks, open space, and recreational facilities; (iii) enhance the character and vitality of District properties in harmony with adjacent uses and residential neighborhoods; (iv) preserve natural, cultural, and historic features; (v) minimize the regulatory time and expense burden on the property owner; and (vi) facilitate development in harmony with the Village's Comprehensive Plan.

AVA Cole said the attempt to balance the three competing goals identified by the PCZBA was difficult during the process. He showed a slide of the flowchart for the post-plan changes and foundation of future development. He said the new review process, RIO Development Plan Review, can be used as a tool to solve existing conditions by authorizing specified “deviations” from zoning requirements, flexibility to seek approval for just one project, or for many projects and application requirements aligned to others. He commented on a few of the regulations that would be applicable to properties zoned into the District concerning signage, bulk, parking, and performance standards. The goal is not to erode the protections for adjacent property owners, he said the proposed changes will require notice, public review and extensive grandfathering so as not to burden existing users.

AVA Cole commented on the responses received during the outreach process. The Lake Bluff Park District submitted some technical recommendations, some of which were recommended for consideration and approval as part of this ordinance. The Central Lake County Joint Action Water Agency (CLCJAWA) expressed concern that the organization might be in a different use classification and be treated more restrictively than other agencies under these rules. There was a change made to ensure CLCJAWA will always be considered a public agency. There was a comment received from Stephanie Bjork regarding conservation easements which are contractual agreements that set aside land for public use in perpetuity. AVA Cole said the purpose of the District is to preserve the public uses for public good indefinitely.

VA Schuster said there were issues raised regarding conservation easements and other restrictions and covenants. He commented on the law in terms of easements, restrictive covenants and other restrictions placed on a property. He said that covenants are an independent and separate restriction from zoning. The intent in establishing RIO has never been to change, alter, extinguish or nullify any existing easements or restrictive covenants on properties. He said easements/covenants are the most restrictive regulations because regardless of what zoning is granted the documents will prevent anyone from violating the restrictions placed on the property. The authorized parties can enforce the documents independent of the Village's zoning authority. The zoning regulations and restrictive covenants run parallel and the actions taken this evening does not nullify or change a conservation easement in any matter nor lift the restrictions. A property owner is still required to comply with the covenant and easement restrictions on that property.

A discussion regarding the proposed map amendments ensued. AVA Cole said the proposed map amendments presented is to relocate approximately 200 individual parcels to the District and noted the interactive map was available on the Village website. The criteria for Staff recommendations are as follows: existing uses and zoning, development trends in vicinity, impact of existing zoning, suitability for uses currently permitted, impact of proposed zoning on use, enjoyment, traffic, and ingress/egress, and length of time vacant vs. surroundings. He showed and explained the colored map amendment.

Chair Peters said the PCZBA will allot 10 minutes for each presenter and he advised that all submissions will be incorporated by reference into the record.

Ron Salski, Executive Director of the Lake Bluff Park District, thanked Village staff for their work on the proposed District and expressed appreciation for how the proposed ordinance will benefit the Park District. Mr. Salski said the Park District is excited to move forward with the proposed District and had no other comments. Chair Peters thanked the Park District for its participation throughout the process.

Eric Bailey, Director of the Lake Bluff Public Library, thanked Village staff and the PCZBA for their hard work. From his perspective the District was very well thought out and the Library supports the District.

Stephanie Bjork provided the commissioners with an article regarding access to information on private land for conservation tracking and easements. Ms. Bjork stated she is present this evening to represent the taxpayer's interest and she noted 501(c)3 properties are federally controlled and the Village does not have any input on these underlying documents. Ms. Bjork said she understands the need for additional development, expedited systems, and why this is coming to the forefront. She commented on her Freedom of Information Act request for all the underlying easement documents which control those properties in perpetuity. Currently, the State allows the Village third party enforcement rights for a conservation easement located within 500 ft. of Village property and she is concerned because the easement locations are not public knowledge. She said the easement locations should be further researched because the proposed amendments may be strictly prohibited in the restrictive documents. She understands the Village would like to see an increase in development in some areas, owners might desire different uses, generate revenue and fees but this proposed District may be prohibited. Ms. Bjork expressed her concerns regarding penalties and liabilities associated with misrepresentation of parcels. She believes by not identifying the easements on the proposed map amendment there is no way to avoid the impression that the Village is allowing development for those areas. She said disclosure and transparency is incredibly important and she hopes the proposed District is postponed so that the location of the easements can be identified.

In response to the comments from Ms. Bjork, VA Schuster stated she did raise some significant issues in terms of tax treatment of conservation easements, education of the public in terms of their rights, and adjacent property owner's rights regarding enforcement of conservation easements. The conservation easement issue is significant but it is parallel and separate from the zoning being considered this evening. The proposed text amendments will not nullify, change or alter the effectiveness of an easement. A property owner with a restriction on the property has a contractual obligation to comply and enforcement is a separate issue from the underlying zoning. He said if the zoning is changed this does not mean a property owner is free to develop the property for any permitted use because there might be some significant restrictions that will prevent the redevelopment. Also, each property is a separate analysis because conservation easements and other restrictive documents differs from property to property and each document must be reviewed to determine the bounds and restrictions that applies.

VA Schuster said the issue before the PCZBA tonight is the text amendment to create and define a RIO District and what properties should be placed in the District.

Chair Peters said the PCZBA is a recommending body in respect to both agenda items and his thought is that the PCZBA should discuss the draft RIO ordinance then the map of the various parcels.

Member Murray thanked Ms. Bjork for attending the meeting. He said he hopes the PCZBA will make every effort to really reflect the underlying intent of individual landowners who have taken steps to preserve their properties for the long-term benefit of the community. He thinks that is an essential part of decisions that have been made over time to preserve parcels of land which are important to the enjoyment of Village common spaces. He would be interested in understanding the implications that are raised regarding the underlying zoning questions, specifically overlapping jurisdictions, and whether changes in zoning could interfere with the underlying gifts or acts of the landowners that have provided easements for the public benefits on these lands. He asked that Staff provide information regarding the underlying questions, which he understands to be, whether or not there is, not in the general construct of the RIO Ordinance and general principles which are to provide a greater degree of oversight on behalf of the Village toward any change in the underlying purpose of a given parcel plan. He would like to understand if any of the actual rezoning efforts could have an implication on agenda item #6, and if so, should the PCZBA further consider the agenda item in light of the questions raised regarding underlying easements.

VA Schuster said he does not think jurisdiction is an issue because the PCZBA has the right to zone the property as it deems necessary. He expressed his belief that the easement concerns are more of (i) education and transparency to the neighboring property owners, taxpayers and residents in terms of what the easements indicate which properties are encumbered by the easements, or (ii) that it may give an impression that an individual has a right to develop land in a way that contravenes the easement. He said from a legal perspective the PCZBA has the jurisdiction to change zoning and it will not impact the effectiveness of the easement. VA Schuster said he does not see any issues if the PCZBA desires to designate any of these properties to the District but it is a policy decision if the PCZBA thinks that it is wise to proceed.

AVA Cole said this is a historic zoning change and Village staff recommends not concluding the matter this evening. He also commented there have been conversations regarding conservation easements and from a policy standpoint these type of discussions should be more in regards to the Comprehensive Plan. AVA Cole said he would prefer more transparency around where the easements are located and how they should be enforced which is an essential part of public policy. The handout from Ms. Bjork is

instructive regarding legislation and data compiled by the State of California but, quoting from the handout, AVA Cole said that compiling such data for the Village would be a lengthy and intensive process.

VA Schuster said changing the zoning does not waive the Village's right to enforce the easements.

As there were no further public comments, Chair Peters opened the floor for comments/questions from the commissioners.

Member Badger asked if there have been any discussions with the School District, Churches or ComEd regarding the District. AVA Cole said he believes Village Administrator Drew Irvin had a conversation with Grace United Methodist Church but there was no written comments submitted. Also, there were discussions with the School District and the private property owner located in the reserve area that resulted in no written comments being submitted.

Member Russell said the statement "the Village is creating this RIO Ordinance to support an increase in development" is not accurate. The main reason he prefers the proposed ordinance is because there are numerous Park District and Village owned small open space parcels zoned residential and the Park District could elect to sell some of its smaller parcels. Unless the Park District is seeking a subdivision, the matter would not come before the PCZBA for consideration. Member Russell said we are making it easier for very small changes to occur and the proposed ordinance does not support an increase in development.

In response to a comment from the Park District, Member Russell clarified that should the organization desire to rebuild one of its existing structures in the exact small spot, same footprint, same size or smaller the plan would not have to come to the PCZBA for consideration. Member Russell said we are trying to eliminate the bureaucracy but not increase development.

Member Russell said he thinks the term "open space" should be listed as permitted use in the use table not under recreational facilities. He read the title of the draft ordinance aloud and stated that the Village has an abundance of open space which he views as a use and it is important to the community.

Member Russell expressed his concern regarding the development plan concept because he does not know if the proposed language clarifies that the submission of unnecessary documentation will not be forced upon the other municipal entities. VA Schuster said the requirements are the same as for a site plan review but importantly Section 10-16-7b of the proposed ordinance states "upon request the Building Commissioner may exempt an applicant from including in its application any required items that the Building Commissioner determines that required item is not applicable or necessary for consideration of the application." A discussion followed.

In response to a comment from Member Russell, AVA Cole said there were no objections to the changes submitted to the Park District for consideration.

Member Russell said it would be great to have all the conservation easements publicly identified but the proposed ordinance will have no impact on conservation easements and he would be in favor of moving forward.

Member Burns agreed with Member Russell’s comments regarding the intent to preserve existing uses. He thinks the proposed ordinance is doing the right thing for the Village. He read the paragraph on page 12, Section 10-16-7, regarding redevelopment plan review which stated “Unless exempt under Section 10-16.7e.” He questioned if the statement refers to Section 10-16-7f, because “e” speaks to the authority to modify regulations, whereas “f” speaks to exemptions. Member Burns said he is in favor of the proposed ordinance.

Member Murray asked rhetorically if there had been adequate transparency and process provided as a check to imprudent development of the areas of land in question. He said through the various revisions of this proposed ordinance, the language has continuously been developed to ensure a high level of scrutiny, transparency and process. Member Murray said for this particular agenda item, he feels that the framework really does provide the ability for this body to scrutinize any repurposing of these essential parcels of land as a Village.

Chair Peters said there has been a considerable amount of time spent reviewing the draft ordinance. One of the positions he has taken is that we are we trying to have the best ordinance possible, but if there is some deficiency identified down the line, there will be an opportunity to make changes moving forward. He thinks the framework is in place and the proposed ordinance is well drafted.

Member Danly said the reason this is being pursued is to secure the land use and streamline the process. She thinks the conservation easement and zoning regulations run parallel and it would be overwhelming to request an overlay of easements. She hopes that anyone with a conservation easement will respect the laws associated with the document. Member Danly said she would vote to approve this proposed ordinance.

Member Miller agreed with the comments from the Commissioners. He is concerned because Staff wants to postpone any action this evening. Also, the matter has been presented to the public and he thinks maybe it should be postponed to see if there will be any additional public comments. Member Miller said he agrees with the proposed ordinance as it stands.

Chair Peters said the PCZBA and Staff have invested a considerable amount of time working through the ordinance and he thinks that everyone is onboard with respect to the conceptual understanding and wording of the draft ordinance. He said efficiency and protecting Village resources are critical. The PCZBA needs to discuss if the timing is appropriate for a vote or whether alternatively the matter should be continued to the next meeting.

Member Russell said he is convinced the proposed ordinance is a good document for the Village and once adopted it would serve to protect against rogue developments occurring on isolated parcels. It is important to know the location of each conservation easement in the Village but this would be a lengthy task and he recommended approval of the proposed ordinance.

Member Burns said if there was contention amongst the PCZBA Members or any significant changes he would prefer to postpone but neither occurred and he is in favor of voting this evening.

Chair Peters said it is clear from the record that considerable effort by the Village, Park District, CLCJAWA and other entities went into evaluating the documents. From his perspective the proposed ordinance is in the best shape it can be in at this time and he would be a proponent of moving forward with a possible vote for recommendation.

Member Russell made a motion to recommend the Village Board approve the ordinance with two amendments: (i) that open space be re-inserted in the use table as in a previous draft, and (ii) to add to the provision regarding redevelopment plan review “Unless exempt under Section 10-16-7f.” Member Burns seconded the motion. The motion passed on the following roll call vote:

Ayes: (7) Badger, Russell, Miller, Murray, Burns, Danly and Chair Peters
Nays: (0)
Absent: (0)

6. Public Hearing for Map Amendments to Rezone Properties into the Recreational, Institutional, and Open Space (RIO) Zoning District

Chair Peters stated this discussion was included in the previous discussion and opened the floor for questions from the commissioners.

Member Badger had no questions.

Member Burns said the green space on the map north of the “V” on Village Hall, on Sheridan Road, is currently green space but it is firmly planted in the middle of residential space. He expressed his understanding that the PCZBA did not reach a final decision during the Comprehensive Plan discussions regarding potential future development in this area. He is not opposed to keeping the area as green space but there was a discussion about investigating whether it makes sense to think about that as a space for alternative housing. He suggested holding off on designating the area in the District until there is a firm decision regarding future use. A discussion followed.

Member Miller asked if Lillian Dells is considered open land. AVA Cole said it is open land dedicated to the Village as a “pleasure driveway.” The property is not really a parcel of land, it is a right of way. A discussion followed.

Member Danly said the map is a good visual aid of the zoning districts and had no further comments.

In response to a concern from Member Miller, AVA Cole said open space areas located in various subdivisions of the Village and owned by the homeowners associations are treated as an accessory to the residential use. Member Miller had no further comments.

Member Murray emphasized that the recommended ordinance is a framework for open and transparent discussion of these issues as a community. He welcomed the comments received and expressed his belief that Lake Bluffers feel passionate about its common lands. He does not think that anyone wants to rush the decision making regarding zoning or land repurposed in terms of use. He said extensive consideration was given to the land being considered for the District and he hopes everyone understands this is an attempt to set the ground for open and communal discussion regarding use of public lands.

Member Russell had no further comments.

Member Miller made a motion to recommend the Village Board approve the Ordinance Regarding Map Amendments to Rezone Properties into the Recreational, Institutional, and Open Space (RIO) Zoning District as presented. Member Russell seconded the motion. The motion passed on the following roll call vote:

Ayes: (7) Burns, Danly, Badger, Murray, Russell, Miller and Chair Peters
Nays: (0)
Absent: (0)

7. Staff Report

AVA Cole briefly reviewed the proposed 2019 PCZBA regular meeting schedule. Chair Peters asked if there were any issues in respect to traditional spring break. A discussion followed, and there were none.

8. Commissioner’s Report

In response to a question from Member Burns, AVA Cole said he believes Comprehensive Plan discussions will be on the February agenda. He also reported on upcoming Village Advisory Board meetings and possible petitions for the upcoming PCZBA Meeting.

In response to a comment from Member Miller, VA Schuster read Section 10-2-4F regarding the time period to prosecute a variation. A discussion followed.

At the request of the PCZBA, AVA Cole provided an update on the Stonebridge development and Smedbo property.

Chair Peter thanked the PCZBA, Staff and various agencies that were actively engaged in the RIO District as well as the predecessor PCZBA Members for all the hard work and diligence in bringing the District to fruition and he thinks the work produced a strong ordinance.

9. Adjournment

As there was no further business to come before the PCZBA, Member Burns moved to adjourn the meeting. Member Miller seconded the motion. The meeting adjourned at 8:49 p.m.

Respectfully submitted,

Glen Cole
Assistant to the Village Administrator