

MINUTES OF THE PLAN COMMISSION
November 12, 2012

The regular meeting of the Plan Commission was called to order by Chairman Mark Moore at 8:00 p.m. at the Village Hall.

Members present: Chairman Mark Moore, Scott Adams, William Cotey, Dan Donahue, Walter Oakley, Kurt Schultz, and David Semmelman.

Members absent: None.

A quorum was established.

Village Staff present: John Spoden, Director of Community Development; David Smith, Senior Planner; and Linda Carlson, Project Engineer.

OLD BUSINESS: None.

NEW BUSINESS:

PC 12-17 School Street Partners, LLC, Applicant
130-179 School Street

Request is for an amendment to the agreement relating to the redevelopment of School Street Section 10 regarding the Work Force Housing Restrictions for property located in an R-8, Multiple Family Residential District.

PC 12-18 School Street Partners, LLC, Applicant
130-179 School Street

Request is for an Amendment to the Special Use Permit for a Planned Development in an R-8, Multiple Family Residential District regarding: 1) the minimum number of dwelling units within the school building that are required to be rented at an affordable rental rate in accordance with the definitions set forth in the Illinois Affordable Housing Act (310 ILCS 65 et.al.); and 2) the issuance of Occupancy Permits for any of the last 11 single family homes prior to the issuance of Occupancy Permits for all dwelling units in the school building.

PC 12-19 School Street Partners, LLC, Applicant
130-179 School Street

Request is for an Amendment to the Resolution approving the Final Plat of Resubdivision for 130-179 School Street regarding: 1) the minimum number of dwelling units within the school building that are required to be rented at an affordable rental rate in accordance with the definitions set forth in the Illinois Affordable Housing Act (310 ILCS 65 et.al.); and 2) the issuance of Occupancy

Permits for any of the last 11 single family homes prior to the issuance of Occupancy Permits for all dwelling units in the school building.

PC 12-20 School Street Partners, LLC, Applicant
130-179 School Street

Request is for an Amendment to the Planned Development Final Plan in an R-8, Multiple Family Residential District regarding: 1) the minimum number of dwelling units within the school building that are required to be rented at an affordable rental rate in accordance with the definitions set forth in the Illinois Affordable Housing Act (310 ILCS 65 et.al.); and 2) the issuance of Occupancy Permits for any of the last 11 single family homes prior to the issuance of Occupancy Permits for all dwelling units in the school building.

Mr. John Spoden, Director of Community Development, introduced the requests to Amend the Special Use Permit for the School Street Planned Development, to Amend the Resolution Approving the Final Plat of Subdivision for School Street, and to Amend the Planned Development Final Plan for School Street. Mr. Spoden stated that the School Street development is located in an R-8, Multiple Family Residential District. He stated that the School building has been approved for 15 dwelling units and that there are 26 Single Family homes.

Mr. Spoden stated that one of the requirements includes a restriction of only issuing 15 of the 26 occupancy permits, whether temporary or permanent, for the Single Family homes prior to the issuing of all 15 occupancy permits for the School building. He stated that the petitioner's first request is to amend that requirement so that an additional five (5) occupancy permits be issued of the remaining eleven (11) single family homes in the School Street development prior to the issuance of occupancy permits for the units in the School Building itself.

Mr. Spoden stated that the petitioner's second request is to reduce the minimum number of six (6) price restricted dwelling units to two (2) dwelling units in the School building during the rental phase, but then return to six (6) when the School building returns to a condominium status.

Mr. Spoden stated that the petitioner's third request is to remove the requirement that the price restricted units be offered only to Libertyville residents in the first 60 days they go on the market.

Mr. Spoden stated that as part of these requests there are no physical changes to the plans, but the requests are primarily regarding the implementation of the project.

Mr. John McLinden, Streetscape Development, 158 East Cook Avenue, stated that they have 15 families that have moved into the single family homes thus far.

Mr. McLinden stated that the project includes the development of 26 single family homes and the conversion of the school building into 15 lofts. He stated that the concept for the single family homes was a front porch community. He stated that they have sold 25 of the 26 single family homes.

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Mr. McLinden stated that the greatest challenges has been and still is today the restoration of the Central School Building into 15 residential dwelling units, six (6) of which are to be affordable units as adopted by the Village of Libertyville. He stated that they have been in front of the Plan Commission many times for this project due to the many challenges that have come with its development.

Mr. McLinden stated that the market conditions have made it challenging to sell the dwelling units in the School building as condominiums. He stated that there has been a very depressed real estate market in recent years. He stated that he second big challenge they have faced in the development of the School building conversion has been the financing of the project which is also tied to the market conditions.

Mr. McLinden stated that in the early Pre-Development Stage of the project the intent was to development 15 dwelling units (with 6 affordable), 4 levels and 22 surface parking spaces. He stated that there was an assumed rental approach for the first few years until the condo market recovered. He stated that they had planned to use the HUD 221(d)(4) program but had since then changed the rules thereby encumbering their efforts to take advantage of the HUD financing tool. He stated that the initial plan was to “test” the market response to condos.

Mr. McLinden stated that during the Early Stages of the project there was a strong initial interest and sales momentum. He stated that they had received preliminary commitments to purchase the penthouse, 2 duplexes and 2 one-bedrooms, the revenue of which would have exceeded 50% of total sales. He stated that the interest in the condo units encouraged them to redesign the parking structure in order to accommodate premium condo dwelling units. He stated that they then sought financing as for the School building as a condo building.

Mr. McLinden stated that they had lost those preliminary commitments for the premium condo units even after having design meetings and ample interaction with the prospective buyers. He stated that without those sales there was no way of getting the financing for the School building as a condominium building.

Mr. McLinden stated that they then had to make adjustments to the project. He stated they had to adjust for the market. He stated that they had requested to change the unit sizes, the configurations and the pricing. He stated that they further requested the flexibility to install a balcony or not, to do the fourth floor or not, to reverted back to the original surface parking plan and not the parking deck.

Mr. McLinden stated that they were going to pursue financing as an apartment building but decided that the financing would only work if they were to sell the units as condominiums. He stated that there primary goal is to sell eight (8) units are sold by 2nd quarter of 2013 in order to convert to the whole building into a condominium property.

Mr. McLinden stated that after getting a 3 to 3 vote from the Plan Commission, he realized that flexibility to alter balconies, terraces and 4th floor buildout was not the best approach. He stated that when they approached the Village Board, they adjusted the request and took out the flexibility component so that everyone would know what they were doing with the School

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building. He stated that the Village Board approved their requested amendment on September 25, 2012.

Mr. McLinden stated that the current request before the Plan Commission tonight includes allowing the issuance of Certificates of Occupancy for the next 5 of the 11 remaining single family homes before the school building Certificate of Occupancy is issued. He stated that the second request is that during the rental period for the School building dwelling units that they be permitted to reduce the six (6) affordable to two (2) affordable rental dwelling units. He stated that the third request is that the Village waive the Waive requirement to market affordable units exclusively to Libertyville residents for 60 days after rental-to-condo conversion.

Mr. McLinden stated that the first request is for the Village to issue Certificates of Occupancy for the next 5 single family homes. He stated that the Amended Planned Development Agreement currently states that "No Occupancy Permits for any of the last 11 single family homes shall be issued until Occupancy Permits are issued for all units in the School Building." He stated that he understands the reason for this requirement and why it was embedded into the agreement. He stated that Village wanted to ensure that the Developer would complete the school building.

Mr. McLinden stated that a number of events have happened in the last 2-1/2 years. He stated that the market conditions and financing requirements caused a delay in starting school building construction. He stated that meanwhile the single family homes continued to sell and be built on original schedule. He stated that they were no longer running the development of the school building the development of the single family homes on a parallel schedule.

Mr. McLinden stated that they are ready to close on five (5) homes whose lots are numbered 25, 3, 1, 2, and 21. He stated that lot 25 is essentially completed. He stated that he understands that the Village wants the completion of the School building. He stated that with this amendment the Village will still have the leverage of holding occupancies of the last six (6) homes and will still be tied to the school building completion. He stated that he expects the completion of the last six single family homes to be completed in June or July of 2013.

Mr. McLinden stated that he has invited the Plan Commission members to walk through the School building and several have done so. He stated that progress on the School building includes new windows have been installed, the masonry work has been completed, the new roof has been put on, this week the binder course will be laid on the parking lot, the sidewalks are going in this week, and over the course of the next few weeks the landscaping will be done. He stated that in the interior of the School building, all of the framing has been completed, about 80% of the rough-in work is completed for the mechanical, electrical and plumbing and they expect to be dry-walling in about three weeks. He stated that construction of the school building is expected to be completed in March, 2013. He stated that they have made the investment and are committed to completing the School building.

Mr. McLinden stated that the next request is to adjust the number of affordable units for rental period. He stated that the Planned Development Agreement states that there should be not less than six (6) affordable units during the rental period and that is subject to certain requirements

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and as condominiums the sale price is not to exceed \$230,000. He stated that the original Development Agreement provided mechanics to adjust the affordable restrictions should the Developer be unable to sell the affordable units within 2 years.

Mr. McLinden stated that the only way that they are able to secure financing is to do so as an apartment building. He stated that banks don't want to be involved if the property is a condo property. He stated that the Bank's underwriting analysis required that 4 of the 6 units be market vs. affordable rental rates. He stated that the rental rates for the affordable units are punitive and it decreases the value of the property. He stated that they will maintain six (6) affordable units when the units are sold as a condominium building.

Mr. McLinden stated that not only does the developer need to get financing but the developer needs to make sure that the residents get financing. He stated that they have to make sure that the building becomes warranted as a condominium building. He stated that they are working with Libertyville Bank and Trust and with Wells Fargo to get the building warranted. He stated that in order for the residents to close on their dwelling unit then there must be a minimum of 50% sold. He stated that finally the purchaser needs to qualify for individual mortgage and they need a minimum of 20% down payment.

Mr. McLinden stated that they have sold 8 of 15 but it has been difficult to make sales with a vacant building. He stated that four of the eight have gone to contract with earnest money paid, there are three that are in attorney review at this time and one in which a contract was just issued. He stated that they continue to have showings with interest.

Mr. McLinden stated that the third request is to waive 60 day requirement to market exclusively to Libertyville residents. He stated that the Amended Planned Development Agreement states that, "Within 60 days following the conversion of the Revised Condominium Units from rental units to condominiums, the Price Restricted Condominium Units shall be solely offered for purchase to residents of the Village." He stated that they are hopeful that the building never goes to rentals. He stated that to date, there has been no rent-to-condo conversion. He stated that since they closed on the School building in October of 2012, they have marketed the school building, including the affordable units through Century 21 Kreuser & Seiler, their web site, brochures, events, MLS, articles and so on. He stated that a postcard has gone out and should have been received last weekend promoting the dwelling units in the School building. He stated that they continue to market to Libertyville residents.

Mr. McLinden stated that in closing the three requests are to get Certificates of Occupancy for next 5 of the 11 remaining single family homes before the school building C of O is issued. He stated that the second request is to maintain 6 affordable units for sale, but adjust to 2 affordable units during the rental period. He stated that the third request is for the Village to waive requirement to market affordable units exclusively to Libertyville residents for 60 days after rental-to-condo conversion.

Ms. Marie Hertel, 619 North First Street, stated the School building dwelling units should be marketed to Village of Libertyville residents except for those who would rent but then turn into buyers. She stated that she doesn't have any problem with the other requests made by the

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petitioner. She stated that it is a tough market. She stated that she is glad to see that the petitioner is offering a completion date for the School building. She inquired about the plans for the fourth floor.

Mr. McLinden stated that the fourth floor will not be constructed.

Ms. Hertel asked for clarification as to when the occupancy permits will be issued for the School building units that have been sold. Mr. Spoden stated that it would depend upon safety issues before enabling residents to move into their units prior to the completion of the other unsold units.

Mr. McLinden stated that they have the financing to build out all of the units in the School building.

Commissioner Adams stated that he visited the School building recently and saw that the units appeared to be framed and roughed in. He stated that it is nice to see that it is coming along in the way that it is. He stated that as part of his conversation with the petitioner is to keep the affordable units in the School building. He asked for clarification that Libertyville residents are still able to rent or purchase the units in the School building even if the waiver to market to Libertyville residents exclusively is approved.

Mr. McLinden stated that of course the School building units will still be marketed to Libertyville residents.

Commissioner Semmelman stated that Staff's recommendation is that the Certificates of Occupancy be temporary certificates of occupancy. He asked if the temporary certificates of occupancy's are revoked if the developer does not comply with the conditions of the temporary occupancy permits. He stated that he is concerned that it may be the buyer being punished and not the developer.

Mr. Spoden stated that there are already temporary occupancy permits issued for most of the first 15 single family homes but the Village has not been collecting the monthly fee for those temporary occupancy permits.

Commissioner Semmelman asked what the purpose is for issuing temporary occupancy permits. Mr. Spoden stated that he purpose was to induce incentive upon the developer to complete the project.

Commissioner Semmelman asked if there is a surety bond on the School building. Mr. Earl Hoover, legal counsel for the petitioner, stated that most of the single family homes have been issued temporary occupancy permits. He stated that those temporary occupancies are in place in order to assure that any remaining unfinished items are completed for the houses. He stated that the temporary occupancy permits suggested in the Staff recommendation for tonight's requests are to be tied to completion of the School building. He stated that if he were the attorney for one of the purchasers of the single family home under the proposed Staff recommended condition, he would have a strong reaction to that condition.

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Mr. Spoden stated that the Staff recommendation is based upon the risk of allowing the issuance of another five (5) single family homes prior to issuing occupancies for the School building. He stated that although there has been some progress with the rehab of the School building, there should be caution exercised and it is a recommendation of the Development Review Committee to give the developer another incentive to get the School building completed.

Mr. Hoover stated that he would understand it better if the condition was tied directly to the Single Family home. He stated that if the condition had nothing to do with the completion of the Single Family house, an attorney for a home purchaser would have difficulty agreeing with that and may not want to close on the house.

Mr. Hoover stated that there are still the final six (6) remaining houses that would be subject to the School building being completed. He stated that those six (6) represent all of the gross profit tied to the completion of the project. He stated that he would like for Staff to reconsider their recommendation so that they don't have to explain to home purchasers that their temporary occupancy permit is conditioned upon the completion of the School building. He stated that there are safeguards in place including the last six single family homes and also consideration should be given to the fact that an enormous amount of money has already been invested into the School building to date. He stated that Libertyville Bank and Trust has already made a substantial cash deposit on the improvements underway. He stated that even before the Village Board acts upon these requests there will be even more progress made on the work going into the School building. He asked Mr. Spoden to reconsider removing the condition that the temporary occupancy permits be tied to the completion of the School building.

Mr. Spoden stated that it will be up to the Plan Commission to decide what or how any of the Staff recommended conditions be changed or altered.

Mr. David Pardys, Village Attorney, asked the petitioner how they have responded to questions from the current home owners in which temporary occupancy permits have been issued and have not been given final occupancies. Mr. McLinden stated that the contracts for those homes allow the closing of those homes with temporary occupancy permits. He stated that those temporary occupancy permits are tied only to the single family homes and not to the School building. He stated that some of the reasons that final occupancy permits have not been issued yet may have more to do with landscaping not completed, air conditioner screening not completed, or sidewalks not installed. He stated that all of the unfinished items related specifically to the house.

Mr. Pardys stated that he has not seen the conditions listed on the temporary occupancy permits for the prior houses. He stated that the purpose for Staff's recommendation relative to tonight's requests is to require the temporary certificate of occupancy with a fee as an incentive to the builder. He stated that the petitioner has offered the fact that there are still six (6) single family homes that will still be subject to the completion of the School building and if that is satisfactory to the Plan Commission then they can forward their recommendation to the Village Board with that understanding. He stated that the other option could be surety bonds or something to that effect.

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Mr. Hoover stated that Staff's recommendation included requiring a \$5,000 bond for each house and that the petitioner did not object to that. He stated that it would be a total of \$25,000 against completing the School building that would be forfeited if it was not completed, the petitioner would agree. He stated that they do not have any intention of avoiding their obligation to complete the School building. He stated that if he were an attorney's purchaser, he would be concerned about tying the occupancy permit for a Single Family house with the completion of the School building.

Commissioner Adams asked for clarification about the temporary occupancy status of the homes that have already closed. Mr. Spoden stated that they are on temporary occupancies.

Commissioner Donahue asked for clarification relative to what structure the temporary occupancy permit is conditioned upon. Mr. Spoden stated the first 15 single family home temporary occupancy permits are not tied to the School building. He stated that in the past when unfinished items are not within the control of the builder then the Village will not assess a fee normally given when a project has been issued a temporary occupancy permit. He stated that an example to note is the Manchester Square development. He stated that it was granted temporary occupancy permits because the developer never finished the shell of the building. He stated that the Village makes every effort to be fair to the developer when the circumstances are not within their control.

Commissioner Semmelman stated the temporary occupancy permit process does not seem to have a lot of teeth or enforcement capability. He stated that he would prefer to see an alternative to provide incentive to the developer to finish the project.

Commissioner Donahue stated that some other form of surety should be explored. He stated that he is still somewhat confused as to whether the School building is a rental or a condominium building.

Mr. McLinden stated that they have received financing base upon the building being a rental building. He stated that once they have sold eight (8) units and if they can get the building warranted then it will be a condominium.

Commissioner Donahue stated that it is financed as an apartment building, but marketed as a condo building.

Mr. McLinden stated that Commissioner Donahue is correct in his description. He stated that the bank understands this arrangement as well. He stated that all of this has been disclosed to Libertyville Bank and Trust.

Commissioner Donahue asked about the Village's obligation with the State of Illinois to have a certain amount of affordable units.

Mr. Spoden stated that the Village does not have a requirement at this time however he stated that the State of Illinois has a law that at least 10% of a municipality's housing stock be provided at affordable price points or rental rates in accordance to the State's definition. He stated that if a

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community's housing stock includes dwelling units that exceed the 10% affordable units then that community is in compliance. He stated that in accordance to the 2000 census, the Village of Libertyville was at 12% affordable allowing them to be exempt from the State's requirement. He stated that everything that has been developed since 2000 would not meet the affordable threshold. He stated that the Village adopted a Comprehensive Plan in which one of its goals was to adopt an Affordable Housing ordinance. He stated that the Affordable Housing ordinance was drafted and presented to the Plan Commission and sent to the Village Board, but was not acted on as of yet. He stated that during the interim Village Staff has asked that any future development included a portion of the residential aspect be attainable or affordable. He stated that when School Street development first came through the approval process the Village requested that a cap be placed on the price points of some of the dwelling units. He stated that the negotiated price point that was agreed upon when School Street was initially brought through the process was \$230,000 per unit for those units in the School building that were intended to be attainable. He stated that these attainable units were intended for the public workers such as public school teachers so that they could live in the community in which they worked in.

Mr. Spoden stated that subsequently when John McLinden took over the project he stated that he may go rental for the School building. He stated that because of how the Development Agreement is written, the rental units must comply with the States definition of affordable which means they must cap how much they can charge for rent rates for each of the affordable units. He stated that the original number in the School building was to be eight (8) dwelling units to be attainable but when Mr. McLinden took the project over the number was renegotiated to be six (6) dwelling units in the School building that were to be attainable. He stated that it has been a moving target regarding the number of affordable dwelling units in the School building.

Commissioner Donahue asked for clarification as to meeting the State's criteria of affordable. Mr. Spoden stated that the units would be required to meet the States criteria if the School building units identified as affordable were rental units, but not if they were sold as condos.

Commissioner Donahue asked to what extent the condo declarations would influence the sale of the units. Mr. Pardys stated that he building would have to convert over to a condo building, but that has not happened as of yet.

Commissioner Donahue asked when the conversion would happen. Mr. McLinden stated that when they know it is a condo building, they would provide six (6) dwelling units as affordable as originally contemplated in the Planned Development. He stated that in order for that to transpire there needs to be three things to have happened, the first is to complete the building, the second is to get the building warranted and the third is to have sold at least 50% of the units.

Commissioner Semmelman asked for clarification as to the petitioner's definition of what "sold" means. Mr. McLinden stated that the term, "sold", means that the unit is under contract. He stated that the lender will have had to pre-approve those eight units under contract. He stated that the financing for condos is extremely challenging these days.

Commissioner Donahue stated that once the building is converted to a condo building then the remaining units after the eight that are sold will also be sold as condo units.

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Mr. McLinden stated that Commissioner Donahue is correct. He stated that the six affordable units will be priced per the ordinance at \$230,000.

Mr. Spoden stated that the Village already understood that the Village will not get credit for that price point as a condo unit as an affordable dwelling unit.

Chairman Moore stated that although the Village will not get credit with the State of Illinois to get the affordable housing acknowledgment with the \$230,000 price point, there was a local community organization that was watching very closely the approval process while the Hummel group had been going through the review approval process relative to the affordable housing component of the project.

Commissioner Schultz asked what, if any, of the affordable units are under contract for purchase. Mr. McLinden stated that two school building dwelling units are under contract are the affordable units.

Commissioner Schultz stated that it appears that the petitioner is not in agreement with all of the Staff recommended conditions for approval.

Mr. McLinden stated that he does not agree with the condition applied to the temporary occupancy aspect. He stated that regarding the waiving of the marketing to the Villager residents, they have already been marketing the project in a global manner inclusive of Village of Libertyville residents.

Commissioner Schultz agrees that the Temporary Occupancy Permits should for the next five single family homes should not be tied to the completion of the School building. He stated that he is happy to hear that the petitioner is open to submitting a \$5000 bond for the next five single family homes.

Chairman Moore stated that the petitioner is objecting to the first Staff condition for approval regarding that temporary occupancy permits be allowed to be issued for 5 of the remaining 11 single family homes, subject to completion of exterior improvements to the school building and installation of all required landscaping by May 1, 2013, and subject to submitting to the Village prior to such temporary occupancy issuance of an additional \$5,000 cash deposit for each house to support payment of monthly fees to the Village per Code.

Chairman Moore stated that the petitioner is objecting the second Staff condition for approval regarding that no final occupancies be issued for those 5 single family homes until occupancy is granted for all dwelling units in the school building.

Chairman Moore stated that the petitioner may be in agreement with the third Staff condition for approval regarding that no occupancies of any kind be allowed for the remaining 6 single family homes until occupancy is granted for all dwelling units in the school building.

Mr. McLinden stated they would like to have some flexibility for the third condition. He stated that maybe the Plan Commission would consider allowing the issuance of occupancy permits for

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the last six once the School building has had at least 50% of their dwelling unit occupancies issued.

Chairman Moore stated that they may not want to get that creative at this point due to the timing involved with the project. He stated that the construction of the building should be completed by March 2013. He asked the petitioner how he defines construction completed. Mr. McLinden stated that it means everything is done. He stated that completion means that the units are occupied and that the units are finished with cabinetry and sinks, etc.

Commissioner Semmelman asked that if there were five or six remaining units in the School building not sold but they were finished, could they get their occupancy permits. Mr. Spoden stated that they can get occupancy permits if the construction was complete even if not sold as long as the met life safety codes, but it might be a temporary depending upon what was completed.

Chairman Moore asked for the status and clarification from the petitioner regarding the remaining six single family homes. Mr. McLinden stated that out of the six homes, one is unsold, another has ARC approval and they are getting ready to submit building permit application, another is still going under a preliminary design phase, two are almost ready to be submitted to the Appearance Review Commission, and the other one will be in the next cycle. He stated that they will not finish any one of those remaining six homes before June or July.

Chairman Moore stated that with the understanding of the construction time lines for the last remaining six single family homes and the time line for the anticipated construction time line for the Central School building there shouldn't be a problem. He stated that the reason that the Village drafted the development agreement in the way that they did was to give incentive to the developer to finish the project.

Chairman Moore stated that he did recently tour the School building and it seemed as though the construction is well underway. He stated that he did not foresee the impediments that had presented themselves to a potential buyer or their attorney. He stated that there was an effort by Staff to ensure completion by recommending the temporary occupancy permits as they have in the DRC Staff report as part of the condition for approval but he is not certain that it would have the desired result. He stated that he would consider amending this aspect of the recommendation.

Chairman Moore stated that a surety bond or letter of credit is typically used to ensure the completion of public improvements and maintained for a certain period of time to make sure that the public improvements are maintained. He asked if it is also typical to use a surety bond to ensure the completion of the private components of a development.

Mr. Pardys stated that the Village has not typically used a surety bond for the private improvements. He stated that the School Street development agreement did not contemplate a surety bond for the private improvements but it did incorporate development standards with the intent of getting the School building completed in a timely manner and the leverage used was to hold off the issuance of the occupancy permits for some of the Single Family homes.

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Mr. Pardys stated that the Plan Commission can make a recommendation to the Village Board that includes the removal of any condition placed upon the requests knowing that there will still be the last six (6) single family homes that would not get occupancy permits with occupancy permits being issued for the School building or they can suggest some other alternative of assurance that the builder can provide to the Village as a condition of approval for getting the next five (5) single family homes approved. He stated that the current condition is holding occupancy permits for the last eleven (11) single family homes until occupancy permits are issued for the School building but now the petitioner is requesting that the number be reduced from 11 to 6.

Mr. Hoover stated that the letter of credit outstanding balance is approximately \$67,000. He stated that the public improvements are almost complete.

Mr. McLinden stated that there is the final surface coating for the street as the remaining public improvement yet to be done.

Mr. Hoover stated that he would agree to extend the letter of credit to cover the completion of the School building. He stated that he recollects that it is not a letter of credit but a cash deposit that could be made available to cover the School building. He stated that an agreement could be drafted to allow the cash deposit on hand to be forfeited should the School not be completed. He stated that he does not want a condition that would prohibit the closing of the next five (5) single family houses. He stated that John McLinden has done a wonderful job keeping everybody happy in the School Street development.

Chairman Moore asked for more clarification regarding the process of moving to condominiums. He stated that according to the information provided there has been eight 8 of the 15 School building dwelling units sold. He stated that some criteria to go condominium have been met. He asked for additional clarification regarding the timing involved in the condo conversion process.

Mr. Hoover stated that they are pushing hard to have the project warranted. He stated that once the building becomes warranted, they will take the 8 contracts and get them pre-approved. He stated that those 8 contracts must be non-contingent and a down payment of 20% of the purchase price would be requested. He stated that they will complete construction using the apartment financing which will then be followed immediately by the conversion to condominiums. He stated that he has already sent the declarations to the Village Attorney for review and approval. He stated that the declarations indicate that they are approved by the lender. He stated that all of this should get done in the next few weeks and they will submit the purchasers for pre-approval from the lenders for their mortgages. He stated that once all of these events take place they will then not need to take advantage of the concession that they are requesting tonight because they will not be rentals at that point. He stated that they will not be able to rent anyway due to HUD requirements.

Chairman Moore asked the petitioner why they are objecting to the requirement in the ordinance that the affordable condominiums be marketed to Libertyville residents. Mr. Hoover stated that they already have eight sales and they do not want to give those up by complying with a

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condition that may ask those under contract to delay the closing while waiting 60 days for a Libertyville resident to offer to purchase, which may never happen.

Commissioner Semmelman asked how many of the eight contracts are with current Libertyville residents. Mr. McLinden stated that two of the units are affordable units and are under contract with Libertyville residents.

Chairman Moore stated that marketing is different than actually offering and closing on a property.

Mr. McLinden stated that has marketed the affordable dwelling units.

Chairman Moore stated that they haven't become condos yet. He stated that marketing of the affordable units should continue after they become condos. He stated that construction of the School building hasn't been visible until recently. He stated the construction activity will generate more interest.

Mr. Hoover stated that if someone from outside of Libertyville showed interest in one of the price-restricted condominiums, the current requirement states that they have to be told to wait 60 days.

Mr. Spoden stated that this condition was put in place so that Libertyville residents would get preference for the price restricted condominiums.

Mr. Pardys stated that part of the petitioner's request is to reduce the minimum required number of affordable dwelling units from six to two but then bringing back up to six once the School building gets converted to a condominium building. He stated that upon conversion there will still be four units that should become affordable.

Mr. McLinden stated that the development agreement is written in a strange way. He stated that they thought that they were going to go with rentals. He stated that the agreement states, "at the time of converting the rental units to condominiums, they have to be offered to the Libertyville residents for 60 days." He stated a sale to a Libertyville resident may not happen ever. He stated that they may not go to a rental.

Chairman Moore stated that it sounds like the way it reads refers to when the building goes condominium, the affordable units must be offered to Libertyville residents for 60 days. He stated that it has not gone condominium yet.

Mr. McLinden stated that they have marketed the School building to the community as a condominium building. He stated that they are financing the School building as an apartment building but they are marketing it as a condo building. He stated that one should not pick apart the words but look at what the intention has been. He stated that they would love to have Libertyville residents living in the School building. He stated that they have marketed it to Libertyville residents for two years. He stated that every first Friday for the last one year and a half, they have had events including "wine about winter", they had the house walk, they have

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had thousands of people through the model, and they have outreached to the community with the intent to let the Libertyville residents the first right to buy those affordable dwelling units in the School building and he believes that they have done that.

Chairman Moore stated that marketing the building that has basically been untouched for that past couple of years to now there seems to be some construction activity seems different.

Mr. McLinden stated that it is different, but he stated that they have sold some of the single family homes without their construction other than having marketing plans.

Chairman Moore stated that there was some amount of a stigma when the School building rehabilitation was initially promoted as a rental.

Mr. McLinden asked what Chairman Moore preferred. Chairman Moore stated the request to amend the 60 day requirement is not as onerous as the other requests.

Mr. McLinden stated that there have been two people that have bought. He stated that consideration could be given to allowing the developer to offer the affordable units to Libertyville residents for the next 60 days from today.

Ms. Hertel asked for clarification as to the first floor build-out of the school building. Mr. McLinden stated that they will build out all of the units on all of the floors concurrently.

Ms. Hertel stated that when she attended the walk-through in the School building that it seemed like there was mostly construction going on and the sole model didn't have counter tops installed and that it didn't provide a picture of what her choices could have been. She stated that it might behoove the residents and the developer to complete the six affordable units first in addition to the units that have been sold so that they can be marketed to Libertyville residents.

Mr. McLinden stated that the contracts that are in place are such that they cannot afford to lose the two sales that are currently contracted.

Chairman Moore asked the petitioner why the continuation of construction make the developer lose the sales of the existing contracts. Mr. McLinden stated that they are continuing with construction. He stated that he is concerned about the sequence of events that must take place relative to the build-out of the affordable units such as inspections, etc. that may take 2-1/2 months. He stated that he is concerned about the added 60 day requirement on top of that.

Ms. Hertel stated that she is more concerned about having the first floor completed first so that people can walk through while the developer finishes the upper floors.

Chairman Moore stated that the developer will have to rough in all of the plumbing, all of the electrical, all of the drywall, etc.

Mr. Hoover stated that various crews are hired to do specific work throughout the building which does not lend itself to finishing out the first floor completely prior to finishing out the upper

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floors. He stated that the worst thing that the Village could do would be to kill the sales that they already have contracts for.

Chairman Moore asked Mr. Hoover how would the continuation of the construction prohibit the sales of the existing contracts. Mr. Hoover stated that if the current condition was enforced then they would have to go back to five (5) of the parties who have contracts and tell them that they have to hold the contracts in advance for 60 days to wait and see if there will be a Libertyville resident who will make an offer on the same contract.

Commissioner Semmelman stated that there are four affordable units remaining. He stated that consideration could be given to marketing the four remaining affordable units to Libertyville residents for the next 60 days.

Chairman Moore stated that it was not his intent to disrupt the existing contracts. He stated that he was attempting to understand why the developer could not market to the Libertyville residents for the affordable units.

Mr. Pardys stated that the amended ordinance contemplated rental, but now it is being financed as rental but being marketed as condo. He stated that when the ordinance becomes amended that it makes sense that four of the remaining six units be marketed to Libertyville residents in the first 60 day time period.

Mr. McLinden stated that they are continuing to do that anyway.

Mr. Hoover stated that he is concerned about the time period being required of the developer. He stated that he would like to see the start date for the 60 day marketing requirement to begin upon today's date.

Commissioner Semmelman stated that the Plan Commission is only a recommending group. He stated that it will be up to the Village Board to decide.

Mr. Hoover stated that the Plan Commission's recommendation carries a lot of weight. He stated that the start time for the 60 day time period should be now. He stated that they do not want to be in a position of not being able to sell an affordable unit to someone because they are not a Libertyville resident. He stated that everyone wants to see the School building turned into a condominium development.

Commissioner Schultz asked how soon can this petition be in front of the Village Board. Mr. Spoden stated that this petition can be in front of the Village Board in two weeks.

Commissioner Adams stated that consideration be given to setting December 1, 2012 as the beginning of the 60 day time period.

Mr. Spoden stated the Village had already scheduled a special meeting to have this item before the Plan Commission at the mid-month for November in order to provide additional assistance to the petitioner. He stated that if the Plan Commissioner were to give a positive recommendation

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to the petitioner, they also have the option of requesting that both the Plan Commission Report to the Village Board be approved by the Village Board and that the associated ordinances be approved by the Village Board at the next meeting, which means two weeks from tomorrow.

Commissioner Donahue stated that it would be rare that anyone would buy a house in December.

Mr. McLinden stated that there is sometimes a lot of real estate activity at the end of the year. He asked if the marketing requirement be terminated at the end of the year.

Commissioner Donahue stated that if the intent of the ordinance was to give Libertyville residents an advantage then that advantage should be given when it would be practical.

Chairman Moore asked the petitioner as to when the framing started in the School building.

Mr. McLinden stated that the framing started about 10 weeks ago.

Chairman Moore stated that the construction has been moving along for the last several weeks and during that time there has been eight (8) contracts secured. He stated that it makes sense to make the start date for the 60 day requirement to begin today.

Mr. Pardys stated that they can draft the ordinance to stipulate the start date of the 60 days per the discretion of the Plan Commission and be incorporated into the ordinance.

Mr. Hoover stated that there is an important date approaching for the developer which is January 15. He stated that a lot of financial mechanisms will need to be executed relative to the financing of the building renovation.

Commissioner Semmelman stated that he does not have a problem with setting the start date of the 60 day marketing time period from today.

Chairman Moore asked Mr. Hoover if he agreed with today's date as the beginning date of the 60 day marketing requirement.

Mr. Hoover stated that they can work with the proposed 60 day start date requirement beginning from today. He stated that Mr. McLinden has a tough job marketing and selling the dwelling units.

Mr. Spoden stated that the reason that the Village instituted the current requirements is because of the fact that the completion has not happened yet. He stated that Staff has heard from the Comprehensive Plan approval process and through public hearings that Libertyville residents cannot afford to move back into this town. He stated that Libertyville has benefitted from a Real Estate bubble, but because of that bubble people have not been able to buy back into the Village.

Mr. Spoden stated that the intent is that for the six (6) affordable units is that the price point established is a cap. He stated that the price index is tied to the consumer price index for the increases each year. He stated that the intent is to keep it at some affordable level.

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Commissioner Adams stated that there are income restraints on the purchasers for the affordable units.

Mr. McLinden stated that the current requirement does not require income restraints.

Mr. Spoden stated that there isn't anything new being placed upon the petitioner.

Chairman Moore stated that the recommendation would be to approve PC 12-17 through PC 12-20 provide that the Staff recommendations in the DRC Staff report conditions numbers one (1) and two (2) be stricken and keep condition number three (3) and number four (4).

Commissioner Semmelman asked if consideration should be given to extending the letter of credit or the cash deposit unit completion of the School building project. Mr. Pardys stated that the Engineering Division may need to address such a suggestion without knowing the status of the public improvements.

Chairman Moore stated that the petitioner has agreed to submit a \$25,000 cash bond for the next five (5) single family homes. He stated that he prefers to exclude the introduction of the letter of credit that was suggested earlier.

Mr. Hoover stated that prior to the issuance of each occupancy permit for the next five (5) single family homes, they will post a \$5,000 cash bond and accept a temporary occupancy permit, not condition it upon the completion of the School building.

Chairman Moore stated that the four conditions that the Plan Commission and the petitioner can give consideration to relative to the approval for requests PC 12-17 through PC 12-20 include;

1) That the occupancy permits may be issued for 5 of the remaining 11 single family homes and subject to submitting to the Village prior to such occupancy issuance a \$5,000 cash deposit for each house to be released upon issuance of occupancy permits for all units in the School building.

2) That no occupancies of any kind be allowed for the remaining 6 single family homes until occupancy is granted for all dwelling units in the school building.

3) That the number of price-restricted units be decreased from 6 to 2 during the rental phase and return to 6 during the condominium phase.

4) That the 60 day period for marketing the four (4) attainable dwelling units to Libertyville residents as described in the Redevelopment Agreement begin effective with today's date, November 12, 2012. Said affordable (price-restricted) dwelling units are identified as T-1, T-4, T-6 and 13 as identified in the construction plans submitted as part of the building permit application.

Mr. Pardys stated that the public notice does not exactly spell out the petitioner's requests.

Mr. Spoden suggested that the motion be taken from the DRC Staff report and incorporate the conditions that have been agreed to.

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In the matter regarding PC 12-17, Commissioner Schultz made a motion, seconded by Commissioner Oakley, to recommend the Village Board of Trustees approve a request for an amendment to the agreement relating to the redevelopment of School Street Section 10 regarding the Work Force Housing Restrictions for property located in an R-8, Multiple Family Residential District at 130 through 179 School Street, subject to the following conditions:

- 1) That the occupancy permits may be issued for 5 of the remaining 11 single family homes and subject to submitting to the Village prior to such occupancy issuance a \$5,000 cash deposit for each house to be released upon issuance of occupancy permits for all units in the Central School building.*
- 2) That no occupancies of any kind be allowed for the remaining 6 single family homes until occupancy is granted for all dwelling units in the Central School building.*
- 3) That the number of price-restricted units be decreased from 6 to 2 during the rental phase and return to 6 during the condominium phase.*
- 4) That the 60 day period for marketing the four (4) attainable dwelling units T-1, T-4, T-6 and 13 to Libertyville residents as described in the Redevelopment Agreement begin effective with today's date, November 12, 2012. Said affordable (price-restricted) dwelling units are identified as T-1, T-4, T-6 and 13 as identified in the construction plans submitted as part of the building permit application.*

Motion passed 7 - 0.

Ayes: Moore, Adams, Cotey, Donahue, Oakley, Semmelman, Schultz
Nays: None
Absent: None

In the matter regarding PC 12-18, Commissioner Schultz made a motion, seconded by Commissioner Oakley, to recommend the Village Board of Trustees approve a request for an amendment to the Special Use Permit for a Planned Development for property located in an R-8, Multiple Family Residential District at 130 through 179 School Street regarding the following:

- 1) That the occupancy permits may be issued for 5 of the remaining 11 single family homes and subject to submitting to the Village prior to such occupancy issuance a \$5,000 cash deposit for each house to be released upon issuance of occupancy permits for all units in the Central School building.*
- 2) That no occupancies of any kind be allowed for the remaining 6 single family homes until occupancy is granted for all dwelling units in the Central School building.*
- 3) That the number of price-restricted units be decreased from 6 to 2 during the rental phase and return to 6 during the condominium phase.*

Commissioner Semmelman stated that the motion given for PC 12-18 does not say what the amendment is.

Chairman Moore stated as an amended motion for PC 12-18, for which Commissioner Donahue made the motion, seconded by Commissioner Schultz, to recommend the Village Board of Trustees approve a request for an amendment to the Special Use Permit for a Planned Development for property located in an R-8, Multiple Family Residential District at 130 through 179 School Street, as follows:

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- 1) That the occupancy permits may be issued for 5 of the remaining 11 single family homes and subject to submitting to the Village prior to such occupancy issuance a \$5,000 cash deposit for each house to be released upon issuance of occupancy permits for all units in the Central School building.
- 2) That no occupancies of any kind be allowed for the remaining 6 single family homes until occupancy is granted for all dwelling units in the Central School building.
- 3) That the number of price-restricted units be decreased from 6 to 2 during the rental phase and return to 6 during the condominium phase.

Motion passed 7 - 0.

Ayes: Moore, Adams, Cotey, Donahue, Oakley, Semmelman, Schultz
Nays: None
Absent: None

In the matter regarding PC 12-19, Commissioner Semmelman made a motion, seconded by Commissioner Adams, to recommend the Village Board of Trustees approve an amendment to the Resolution Approving the Final Plat of Resubdivision at 130 through 179 School Street, as follows:

- 1) That the occupancy permits may be issued for 5 of the remaining 11 single family homes and subject to submitting to the Village prior to such occupancy issuance a \$5,000 cash deposit for each house to be released upon issuance of occupancy permits for all units in the Central School building.
- 2) That no occupancies of any kind be allowed for the remaining 6 single family homes until occupancy is granted for all dwelling units in the Central School building.
- 3) That the number of price-restricted units be decreased from 6 to 2 during the rental phase and return to 6 during the condominium phase.

Motion passed 7 - 0.

Ayes: Moore, Adams, Cotey, Donahue, Oakley, Semmelman, Schultz
Nays: None
Absent: None

In the matter regarding PC 12-20, Commissioner Adams made a motion, seconded by Commissioner Schultz, to recommend the Village Board of Trustees approve an amendment to the Planned Development Final Plan for property located in an R-8, Multiple Family Residential District at 154 School Street, as follows:

- 1) That the occupancy permits may be issued for 5 of the remaining 11 single family homes and subject to submitting to the Village prior to such occupancy issuance a \$5,000 cash deposit for each house to be released upon issuance of occupancy permits for all units in the Central School building.
- 2) That no occupancies of any kind be allowed for the remaining 6 single family homes until occupancy is granted for all dwelling units in the Central School building.
- 3) That the number of price-restricted units be decreased from 6 to 2 during the rental phase and return to 6 during the condominium phase.

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Motion passed 7 - 0.

Ayes: Moore, Adams, Cotey, Donahue, Oakley, Semmelman, Schultz

Nays: None

Absent: None

COMMUNICATIONS AND DISCUSSION:

Mr. John Spoden, Director of Community Development, stated that in order to proceed with the adoption of the Zoning Code that State law requires that there be a Zoning Commission appointed and for them to hold the public hearing on the matter. He stated that he anticipates that the Village Board will appoint the Plan Commission as the Zoning Commission on a temporary basis in order to proceed with the Zoning Code approval process.

Commissioner Oakley asked if they will get more money.

Commissioner Donahue stated that consideration should be given as to how this might affect the Economic Disclosure Statement for Board Members serving as the Zoning Commission for only one day.

Commissioner Adams, seconded by Commissioner Schultz, to adjourn the Plan Commission meeting.

Motion carried 7 - 0.

Meeting adjourned at 9:52 p.m.