

**MINUTES OF THE PLAN COMMISSION**  
**August 10, 2009**

The regular meeting of the Plan Commission was called to order by Chairman Mark Moore at 7:03 p.m. at the Village Hall.

Members present: Chairman Mark Moore, Scott Adams, William Cotey, Robert Guarnaccio, Terry Howard, and Andy Robinson.

Members absent: Walter Oakley.

A quorum was established.

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

Commissioner Robinson moved, seconded by Commissioner Howard, to approve the July 13, 2009, Plan Commission meeting minutes.

Motion carried 6 - 0.

**OLD BUSINESS:**

**PC 09-14 Timothy Morgan Associates, Applicant**

**Request is for a Text Amendment to Section 13-9.3 of the Libertyville Zoning Code relating to the maximum permitted height of fences in the I-3 and O-2 Districts.**

Mr. Mike Meyer, Timothy Morgan & Associates, stated that he is filling in for Tim Morgan, the petitioner's agent, who is currently out of town. He stated that his business address is 1707 Shermer Road, Northbrook, Illinois.

Mr. John Spoden, Director of Community Development, stated that the previous public hearing was for a request to amend the Zoning Code to allow an increase in height from 10 feet to 15 feet for fences located in the I-3 and O-2 Districts. He stated that this request was a result of the petitioner trying to resolve an existing fence/berm issue at the end of Seventh Avenue. He stated that the subject fence/berm was built higher than what the plans had shown. Mr. Spoden stated that Staff had reviewed alternatives to resolve the Seventh Avenue fence/berm issue including a text amendment to the Zoning Code. He stated that Staff had researched what other communities have done relative to fence heights in industrial districts. He stated that only three communities allow fences to have a height of up to 10 feet, other communities that were looked at allowed a maximum fence height much less than 10 feet. He stated that in response to the research done, Staff is recommending that fence heights do not increase more than 10 feet in height, but that berms supporting fences be allowed an additional 5 feet in height or that the combination of fence and berm does not exceed 15 feet in height.

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Mr. Laurie Renz, 816 East Rockland Road, stated that Mr. Guarnaccio should remove himself as Plan Commissioner for this case because he is directly involved.

Commissioner Guarnaccio stated that he will be abstaining from any consideration on this issue.

Chairman Moore stated for the record that Commissioner Guarnaccio has recused himself from this public hearing.

Ms. Renz stated that the subject application has been submitted by someone who does not live in the Village of Libertyville and who does not have an office in the Village of Libertyville. She stated that the applicant represents himself and is asking for a Zoning Code text amendment to raise the height of fences in Libertyville because he thinks it's a good idea. She stated that she is surprised that this application has progressed to this point in the process. She stated that the applicant doesn't have any standing to make this application. She stated that there are many people in the Planning Division and other departments, as well as Mr. Guarnaccio, that are aware that this proposed text amendment concerns the Aldridge Electric property which is zoned O-2 and I-3. She stated that Tim Morgan represented Robert Guarnaccio and Mr. Aldridge in other matters. She stated that it is improper for the Planning Division to recommend approval of the proposed text amendment. She stated that there is nothing in the petition to justify the request. She stated that there wasn't any discussion about a berm, it does not seem to be in public records, the application or in any supporting documents, so it seems improper to consider the proposed text amendment. She stated that she agreed with a comment made earlier that to permit a fence height variation would set a precedent. She stated that instead of a text amendment that the applicant apply for a variance. She stated that by applying for a variation then all property owners within 250 feet would receive notice of the public hearing for the variation. She stated that after talking to hundreds of people that they would not oppose the variation, but what they are opposed to is not being given proper notice. She stated that the parties who have an interest in the proposed text amendment are not being revealed. She stated that the only reason that they are requesting the text amendment is to circumvent the public notice requirements. She stated that the way that she had to find out what was going on with this petition was by filing a Freedom of Information request. She stated that the application is insufficient on its face. She stated that the other Villages that were surveyed for the fence requirements included Mundelein, which allows a maximum height of 8 feet, Gurnee which has a maximum height of 8 feet, Vernon Hills which has a maximum height of 7 feet, Schaumburg which has a maximum height of 8 feet, Buffalo Grove which has a maximum height of 8 feet, Naperville allows a fence height of 15 feet in commercial and industrial districts, but the next page of the Naperville ordinance was not included in the information that she received, but saw that in mixed use developments in Naperville, the maximum allowed height of a fence is 6 feet.

Ms. Renz stated that the petitioner has filed this request for a text amendment in the interest of security. She stated that she is not aware of a compelling need in the community for security. She stated that the need for security does not justify an increase in fence height. She stated that there are ordinances that support the lowering of the fence height therefore she is perplexed. She stated that it would be improper for the Plan Commission to consider the subject application.

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Chairman Moore stated that proper procedures were followed when this item on the agenda was brought before the Plan Commission. He stated that the proper public notification procedure was followed. He stated that individuals can make applications to the Plan Commission for them to give their consideration and they then make their recommendation to the Village Board. He stated that if any petitioner believes that they have a legitimate reason for their application, whether any other person agrees with it or not, they have a right to make the application. He stated that he appreciates the points made by Ms. Renz, including the point regarding the petitioner's choice to seek a text amendment in lieu of a fence height variation.

Mr. Spoden stated that the other option suggested to the petitioner was to seek a fence height variation. He stated that a berm and its design were part of a public process when the Seventh Avenue re-alignment subdivision was approved. He stated that as part of the process for the berm and a fence, that petition had to appear before the Appearance Review Commission for its review and recommendation to the Village Board. He stated that after the plan was approved, the actual fence and berm were not installed in accordance with the approved plan. He stated that the Village Staff advised the petitioner that they could either remove the berm or request a variation. He stated that from a Staff perspective, the Staff could not support a variation, but that it would be up to the petitioner to decide if they wanted to apply for a variation or not. He stated that Staff advised the petitioner that they could not identify a hardship that would justify a variation.

Chairman Moore stated that for clarification, whenever there is a variation requested that the petitioner is required to respond to and adhere to certain standards, one of which is that the unique physical condition of the property is not self-created. He stated that the subject berm was self-created by the developer thereby making it difficult to support a variation. He stated that this is most likely why the petitioner on tonight's Plan Commission agenda has chosen to seek a text amendment instead of a variation.

Ms. Renz stated that there were no public notices provided for the berm in question. She stated that she has a problem with the fact that no public notices were sent. She stated that she has a problem with an applicant representing themselves and no particular property in their petition when this particular application is not the case.

Mr. Spoden stated that the Village must accept any application for a text amendment submitted by any interested party. He stated that this is how the Code is currently written and he would not be following procedures if he did not accept such an application.

Ms. Renz stated that if she were to go to Buffalo Grove, Vernon Hills, or Hawthorn Woods and ask them to consider a similar text amendment request, they would reject such an application. She stated that she doesn't see any justification for the current petition before the Plan Commission, but that their knowledge of the relativity of the petitioner to an existing berm, the Aldridge property, Seventh Avenue, Mr. Morgan and Mr. Guarnaccio is improper. She stated that the application should have been amended in order to give people an opportunity to speak to it.

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Chairman Moore stated that the matter before the Plan Commission is a request to amend the text of the Zoning Code in order to allow a combined berm and fence height to be a maximum of 15 feet. He stated that it does not matter who the petitioner is representing.

Ms. Renz stated that she would like for the Plan Commission to consult with the Village Attorney before they make any decision in order to ascertain if a proper application was made by someone who represents a property and has not revealed this information. She stated that she would like to see more transparency in the process. She stated that the application is not consistent with the purposes of the Zoning Code. She stated that the Code should not be amended when there are other alternatives. She stated that she has not heard the Planning Division suggest other alternatives except for a variation request.

Chairman Moore stated that it sounds like Ms. Renz is condemning the Plan Commission before the Plan Commission has an opportunity to consider the application. He stated that the Plan Commission is appointed to consider this and other applications. He stated that because the application has made it this far to be before the Plan Commission, then the proper steps of public notice have been followed and then there would be no need to consult with the Village Attorney regarding the notice procedure.

Ms. Renz stated that she had not intended to criticize the Plan Commission nor would she advocate the denial of anyone's right to make an application to the Plan Commission. She stated that proper notice was not done.

Chairman Moore stated that the public notice issue needs to be debated elsewhere because it is an issue not being considered tonight.

Ms. Renz stated that amending the Zoning Code is over-broad and is in essence taking a machete instead of a paring knife to the problem. She stated that the Code should not be so easily bent or manipulated if there is another solution. She stated that the proposed text amendment is not about the disposition of a berm, but that it alleges that there is a problem with security. She stated that if the application is really about a fence and a berm on the Aldridge property then that is what should be considered with the proper public notice and to not amend the Zoning Code as requested by someone who does not live in the Village because they are concerned about security in the community when there are no allegations or testimony about there being a security problem. She stated that the Plan Commission should deny the request to amend the Zoning Code.

Chairman Moore stated that he thanks Ms. Renz for her passion, testimony, and point of view. He requested that Commissioner Guarnaccio leave the room as directed by procedure.

Mr. Russ Dunn, 710 Liberty Lane, stated that changing the text of the Zoning Code is an over-reaching solution to a problem in the variation process. He asked why change the law when there should be an application for a remote isolated problem. He stated that the text amendment may affect berms and fences in other parts of the Village when it should not be applicable.

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Chairman Moore asked Staff what other areas this text amendment would affect in the Village. Mr. Spoden stated that the whole northwestern portion of the Village is zoned O-2 District. He stated that the I-3 District includes the Aldridge property, formerly known as the Mungo Industrial Park, and on the north side of Rt. 176 east of Fifth Street up to North Avenue. He stated that it is a significant area of land.

Mr. Joe Mullen, Seventh Avenue resident, stated that the applicant is not a Libertyville resident and he is proposing the text amendment for security reasons. He stated that there has not been a lot of discussion of a security problem. He stated that the newspaper has not indicated an excessive amount of crime in the O-2 District or manufacturing district areas. He asked that the Plan Commission consider the relevance of security when they make their recommendation.

Mr. William Westerman, 1752 Cedar Glen Drive, stated that he was a past chair for both the Plan Commission and Zoning Board of Appeals. He stated that he was on the Village Board of Trustees in 2006 when Mr. Werchek brought this item related to the Seventh Avenue re-subdivision before the Village Board. He stated that he abstained from voting for that item as he was working for the lending institution that had a loan on the property. He stated that it was the same lending institution that issued the letter of credit while waiting for the subdivision to be approved. He stated that the reason that the text amendment request is in front of the Plan Commission tonight is because the bank was notified that the letter of credit could not be released until the fence and berm issue was resolved. He stated that he then suggested that there be a meeting with Staff to try to come up with a solution to this issue. He stated that a decision was made to go forward with a text amendment. He stated that he had reviewed the Standards for a Text Amendment and stated that although the word security is not part of the Standards, the words health, safety and welfare for the public benefit are in the Standards. He stated that this is why the petitioner has chosen the route that they have chosen. He stated that the applicant is very prominent in representing several businesses in the Libertyville area and has other clients that may be in this situation at some point in time. He stated that it is very rare that there are other I-3 District properties that abut up against residential areas, but it is not uncommon that there are other O-2 District properties that abut up against residential areas. He stated that there were significant changes to the Zoning Code 10 to 15 years ago when the O-2 became the new industrial district for the Village which has been beneficial to the growth of the Village. He stated that this text amendment is viewed as a housekeeping item and have been waiting to resolve this issue since 2006. He stated that a text amendment is a logical way to resolve the problem. He stated that an additional condition be added to the proposed text amendment to include that a site plan be reviewed and approved by the Village Board of Trustees. He stated that when the Seventh Avenue subdivision proposal came before the Village Board, the Board asked that Seventh Avenue be realigned so that it will separate the Mungo property from the residential lots that were being created by the subdivision per the Staff recommendation. He stated that the berm was built at the time of the Seventh Avenue improvements were done in 2006 and no one caught the fact that the berm was built too high. He stated that the berm is an asset and as the proposed text amendment is worded with a combination berm and fence height to not exceed 15 feet is appropriate. He stated that for the future homeowners for the lots on the east end of Meadow and Sunnyside will appreciate that fact that the berm is there at its existing size. He stated that the approval would not set a

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precedent in the Village as long as there is a condition in the text amendment approval that requires a Site Plan Permit to be approved by the Village Board for all future berm/fence combinations.

Chairman Moore stated that there would be a precedent set if the text amendment were to be approved.

Mr. John Snow, 809 Liberty Bell Lane, stated it is his understanding that the berm in question is in violation of the Code. He stated that the petitioner is asking to change the law so that the berm will then be in compliance. He stated that the proposal does not sound right. He stated that if they built the berm wrong then they should fix it and not come afterwards and change the law. He stated that the Staff supports the change in order to increase future screening possibilities, but makes no mention of security issues.

Ms. Susan Hamlin, 408 South Seventh Avenue, stated that she did not see anything in the paperwork about a berm or anything about a fence on Seventh Avenue.

Mr. Spoden stated that the application is a result of the berm installation along Seventh Avenue, but it is a proposed text amendment that would apply to all I-3 and O-2 properties in the Village.

Ms. Hamlin asked if the wording in the proposed text amendment should clarify which property would be affected. She asked why the Zoning Code text has to be changed for the whole town if a single property is the cause for the text amendment being applied for. She stated that she is concerned that in the future the adjacent property owner will put up 15 foot high fences behind their house and she would then be concerned about what types of activity would take place behind such a fence. She stated that there is supposed to be a 20 foot wide easement that runs along the property line on their adjacent property and that there may be a utility line in that easement. She stated that the neighboring property owner constructed a storage lot on the northwest corner of their building and she believes that they did not get a permit for that. She stated that her house and two of her neighbors flood when they get rain and they didn't use to get flooding prior to when Aldridge constructed the storage lot. She stated that the storage lot is made up of asphalt grindings with no gutters and no curbs. She said that there is fence around it and it is not as tall as the existing fence on their property that is falling apart.

Chairman Moore stated that he understands Ms. Hamlin's frustration, but they are here tonight to discuss the text amendment. He asked Mr. Spoden to make a note of Ms. Hamlin's complaints and have Village Staff investigate them after tonight's public hearing.

Ms. Renz stated that the grassy area that Ms. Hamlin referred to is the mandatory 100 foot landscaped setback required for any property that is zoned O-2 and abuts a residential district. She stated that the Code gives priority to residents relative to landscape buffering between the various districts.

Commissioner Robinson stated that he is confused. He stated that in the Plan Commission July 13, 2009 meeting minutes, Mr. Morgan stated that there will be other properties in the Village that will

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benefit from the proposed text amendment. He stated that the minutes further read that Chairman Moore asked for clarification and the Mr. Morgan's response was that a 15 foot high fence will provide for better security. He stated that he is hearing in tonight's public hearing from Mr. Westerman that the intent of the text amendment is to take care of a line of credit. He stated that he is confused as to why there needs to be a text amendment to the Zoning Code in order to take care of a line of credit. He stated that Commission members indicated at their July 13, 2009 meeting that they wondered what the purpose of the proposed text amendment was. He stated that he is in favor of Mr. Morgan bringing to the board members a site specific request in lieu of a request for a text amendment. He stated that he is not in favor of a text amendment based upon the limited information received.

Commissioner Howard stated that it seems that the text amendment request is a result of an incorrect installation of a berm. He stated that if the berm was installed incorrectly then it should be fixed. He stated that if the petitioner intends to pursue the text amendment, then there are concerns that should be addressed including; the consistency of the proposed amendment with the purposes of the Code, the existing uses and zoning classifications of the surrounding properties, and the extent to which the adjacent properties would be adversely affected. He stated that these are principals that should be considered prior to the approval of a text amendment. He stated that it does not seem that the Plan Commission has heard adequate testimony from the petitioner's point of view that satisfies any of these principals. He stated that he is not motivated to move forward with the proposed text amendment. He asked for clarification of the required landscaping for the Perimeter Landscaped Open Space. He stated that he has less inclination to support the text amendment due to the insubstantial amount of landscaping required for the Perimeter Landscaped Open Space.

Commissioner Cotey stated that he does not remember any time when a text amendment was used to solve a variance problem.

Mr. Spoden stated that he saw this petition as an opportunity to increase buffering. He stated that he has seen situations where residents who live next to the auto dealers come into the Village office and request that the auto dealers install a taller fence.

Commissioner Cotey stated that it seems that Staff saw the proposed text amendment not as a variance problem, but as an opportunity to increase buffering for the residential districts.

Mr. Spoden stated that when they met with the petitioner, he advised them that a variation would be a self-created issue and difficult for Staff to support simply because they put the berm in wrong.

Commissioner Cotey stated that there have been several variations approved in the O-2 District and C-5 District in which they were adjacent to residential districts. He stated that the way that the text amendment has been presented has been bad for public relations. He stated that he does see some merit in the text amendment relative to Staff's comment that it is an opportunity for additional buffering.

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Mr. Spoden stated that he has heard from many residents who requested more buffering against adjacent commercial properties.

Commissioner Cotey asked how many other I-3 District and O-2 District areas there are along Rt. 176 and Fifth Street abutting residential district areas. Mr. Spoden stated the I-3 and R-7 split follows along Fifth Street until it reaches North Avenue. He stated that the only buffering along that area is an existing alley. He stated that the Foulds factory is in an I-3 District. He stated that the property east of Foulds to Second Street is zoned I-3 District.

Commissioner Cotey stated that when they rezoned the land to residential where the Heritage Place condominiums are located, there was concern that those residents would be adjacent to commercial areas.

Mr. Spoden stated that during the Comprehensive Plan update, one of the more difficult areas to plan for included the East Side area and its plan to create a transitional buffer zone.

Chairman Moore stated that the current Code allows a property owner in the O-2 and I-3 Districts to build a fence up to a height of 10 feet. He stated that the text amendment as it is currently drafted would allow those same property owners to build a 10 foot high fence on top of a berm that is up to 5 feet in height.

Commissioner Cotey stated that as proposed, the text amendment would not conflict with the Comprehensive Plan. He stated that the text amendment would be a change to other areas that include I-3 and O-2 Districts throughout the Village. He stated that although there is some animosity from the residents towards the property owner with the wind turbine, the Plan Commission needs to look at the merit of the text amendment in its totality.

Commissioner Adams stated that he needs to have more information before he can render a recommendation.

Chairman Moore stated that he would like to offer better clarification or better understanding to the public hearing audience of what the text amendment request is. He stated that it would allow property owners in the I-3 and O-2 Districts to install fences with berms at a height of 15 feet. He stated that the fence part of the fence/berm combination would be limited to a maximum height of 10 feet. He stated that he is considering what the drawbacks to the proposal would be. He stated that the proposal as presented may not be detrimental. He stated that the property owner of the berm subject to much of the discussion is faced with either tearing down and rebuilding the berm in accordance to the approved plan, seeking a variation, or seeking the proposed text amendment. He stated that there is no easy answer and he acknowledged that the existing berm is a self-created circumstance. He stated that when the petitioner was first before the Plan Commission at their July 13, 2009 meeting, the berm aspect was not part of the text amendment, but merely a request to allow 15 foot high fences. He asked the petitioner how he would like to proceed.

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Mr. Meyer stated that based on the comments provide tonight, he would like to request that the proposed text amendment be tabled until a future Plan Commission meeting.

Mr. Spoden stated that if the petitioner wants to provide any additional material or make any changes to the petition, it would be due to the Community Development Department no later than three weeks prior to the next meeting which is scheduled for September 14, 2009.

*In the matter of PC 09-14, Commissioner Robinson moved, seconded by Commissioner Cotey, to continue this item to the September 14, 2009, Plan Commission meeting.*

*Motion carried 6 - 0.*

**NEW BUSINESS:** None.

**COMMUNICATIONS AND DISCUSSION:**

Commissioner Robinson moved and Commissioner Cotey seconded a motion to adjourn.

Motion carried 6 - 0.

Meeting adjourned at 8:35 p.m.