VILLAGE OF ORLAND PARK

14700 Ravinia Avenue
Orland Park, IL 60462
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Meeting Minutes

Tuesday, April 14, 2009

7:00 PM

Village Hall

Plan Commission

Louis Stephens, Chairman
Commissioners: Judith Jacobs, Paul Aubin, Steve Dzierwa, Patricia Thompson, and Nick Parisi

CALLED TO ORDER/ROLL CALL

The meeting was called to order by the Chairman, Mr. Louis Stephens, at 7:00 p.m.

Present: 5 - Commissioner Jacobs; Commissioner Dzierwa; Commissioner Aubin; Commissioner Stephens, Commissioner Parisi

Absent: 1 - Commissioner Thompson

APPROVAL OF MINUTES

A motion was made to approve the Plan Commission Meeting Minutes of March 10, 2009, with the addition of the word "been" in the 17th line from the bottom of page 11 so that it reads "… however, I have been out there a few times" .

A motion was made by Commissioner Paul Aubin, seconded by Commissioner Steve Dzierwa, that this matter be APPROVED. The motion CARRIED by the following vote:

Aye: 4 - Commissioner Jacobs, Commissioner Dzierwa, Commissioner Aubin and Commissioner Stephens

Nay: 0

Abstain: 1 - Commissioner Parisi

Absent: 1 - Commissioner Thompson

PUBLIC HEARINGS

2009-0149 Land Development Code Amendments

STEPHENS: Entertained a motion for a continuance from the Plan Commissioners.

I move to continue file number 2009-0149, Land Development Code Amendments, to the April 28, 2009 Plan Commission meeting.

This matter was CONTINUED to the Plan Commission, due back on 4/28/2009

Aye: 5 - Commissioner Jacobs, Commissioner Dzierwa, Commissioner Aubin, Commissioner Stephens and Commissioner Parisi

Nay: 0

Absent: 1 - Commissioner Thompson

2009-0101 Five Guys Burgers & Fries

Gregg Elstro, 311 N. Freemont Street, Naperville
Eric Styer, Architect for Five Guys Burgers & Fries -- 105 Shelter Road, Lincolnshire

PITTOS: Staff presentation made in accordance with the written Staff Report

dated April 14, 2009 as presented.

STEPHENS: Invited comments and/or questions from the petitioner.

AUBIN: Swore in Messrs. Elstro and Styer.

ELSTRO: Indicated they had nothing to add at this time, however, were open to questions.

STEPHENS: Invited comments and/or questions from the public and received none.

STEPHENS: Invited comments and/or questions from the Plan Commissioners.

PARISI: Stated that obviously, he wants to see these units filled; would like to see them filled with businesses; want to see them successful; hopefully there will be adequate parking. Without having any drawings, I'm just curious – that is the old Einstein's place? I'm trying to visualize how we get seating for 57 in that spot. Without drawings, this is difficult to visualize.

STYER: Distributed a handout to each Plan Commissioner and Staff. Referenced page two of the handout wherein it reflects its interior furniture and equipment plan. It shows the 57 interior seats.

PARISI: From this drawing (although I don't know what scale it is) it seems as though this can be done. It is just going to be four deep instead of two deep the way it used to be – up against the wall. There will be less aisle space or open space, I suppose. Thank you. I have no further questions or comments.

DZIERWA: Directing his comment to Staff, asked if the seating is over or under or meets the requirements for the square footage that is allowed for this seating area. That would determine it.

PITTOS: The Building Department would have to approve the total occupant load or capacity.

DZIERWA: I'm sure there is a floor load and such, however, as far as seating goes would that fit with what they are doing right now – with what we require – is the 1,968 square feet the entire restaurant – not just the seating area. Whatever the seating area might be, do you have a number on that and whether or not the amount of space you have available for seating is enough to get the 57 seats in there legally.

STYER: The layout is per code.

DZIERWA: Okay, if it is per code, then I really do not have a question on that. If

you say it works and Staff says it works, I will not question it. I'd like to maybe add as a condition to the motion and asked the Chairman to indicate if he is wrong or not. The parking spots intend to be acquired from the Target landlord or whoever is in charge of that. Asked the petitioner if a parking agreement has been secured yet with them.

STYER: The parking agreement was enacted in 1997.

DZIERWA: So you will be granted that even though you are a different business?

STYER: Correct. It is actually with ownership. The parking agreement is not necessarily restricted to a tenant. It is for the owner of the property.

DZIERWA: I thought perhaps Einstein negotiated that when they were in there and it wasn't the actual landlord because you are coming in there with more seats than they were given previously so I would think that the landlord would make you go out and try to…I'm just asking, if that is the way it works.

STYER: No, the way it works is that the agreement with Five Guys was that the landlord would handle the parking. We are waiting on a letter. Target is fully aware of this project. They will be sending us a letter to do this work on the property. The work for the striping; there will be a couple of yield signs put up where the pedestrian crossing is; and the depressed curb into their parking field.

DZIERWA: Don't get me wrong. I like everything that you've done. I just wanted to make sure that if Target comes back and says no, you can't have these extra parking spots, as long as you've got something in writing …

STEPHENS: Under the write up it says the petitioner has provided the shared parking agreement that the landlord had established with Target for the parking field to the east when Potbelly expanded its seating.

DZIERWA: I read that. I just didn't know that since we were expanding it some more, whether or not we needed to show that they needed more.

STYER: The agreement was general in that regard. The agreement with Target is for overflow parking and is not specific to a particular number of spaces.

DZWIERA: Okay, that is where I thought it was vague. If you've got that all in order, that is all of my questions. I have nothing further at this point.

STYER: Clarified for Village records, it is my understanding that the parking agreement was in 1997. The Potbelly Special Use Amendment was in 2003.

PITTOS: The Potbelly Special Use Amendment came in 2003. It was to increase the seating of Potbelly's from 70 seats to 84 seats. At the time, it was required of

them and their special use amendment approval to provide 19 additional parking spaces in the parking field east of the subject building. This was for the overflow parking that was required when all this parking in here was used up by the tenants. In the same model then, Five Guys is providing additional overflow parking because they will be using some of the existing overflow to accommodate for their 25 required spaces.

JACOBS: That was my concern as well. Are there really five guys?

STYER: Yes, but I am not one of them.

JACOBS: Is this a franchise?

STYER: This is actually a corporate store. Chicago land is going to be a corporate market for Five Guys. We have 413 stores currently open. All the stores that will be built in the Chicago land area will be corporately owned – not a franchise system.

JACOBS: Where is the corporation?

STYER: In Washington DC.

JACOBS: Thank you. That is all.

AUBIN: No comments, thank you.

STEPHENS: I really have no problem with this petition. The only concern I really have is that I question, as a practical issue, if people are going to be parking all of the way up there in the northeast area and walk all the way to the store location to grab a burger. That is just a question I have. I don't think you can answer that.

STYER: Right. It is pretty hard to control people. I think what we are trying to do is set up a system that allows safe passage from the parking field to the building as best as we can identify. I would agree that it is pretty hard to dictate where people are going to park.

STEPHENS: Did they dedicate those particular spaces or is this agreement for a number of spaces in that parking area?

STYER: Based on the language that I've seen in the Agreement, it is general – it does not specify a particular area or an amount.

PITTOS: Noted that the 19 required shared parking spaces for Potbelly's was required as mentioned earlier, by the Special Use itself. Otherwise, as the petitioner mentioned, the Agreement is very general. It doesn't make any specific reference to a number of shared parking spaces between Target and where this is

located.

STEPHENS: That being the case, why would we need the sidewalk crossing over?

PITTOS: Across the access lane?

STEPHENS: Yes.

PITTOS: Pedestrian safety.

STYER: It will be stripped to delineate that it is a crosswalk.

STEPHENS: And you will have that additional piece of sidewalk.

STYER: Yes, there will be a depressed curb along that green space. There will be yellow stripping across, similar to a municipal crosswalk area. That is to further identify that as the crossing zone. We are trying to keep them from the corner where we would consider the traffic more hazardous.

STEPHENS: I would agree with that.

STYER: The spaces at the top are just identified for illustration purposes.

STEPHENS: Is there any way it is possible to designate signage to say that this is an area for overflow parking?

STYER: The indication we got from Target is that they did not want signage in their lot to designate certain spaces. The indication we've gotten from Target is that what we are proposing in regard to the depressed curbs, stripping, etc., is informally approved from them.

STEPHENS: Okay.

STEPHENS: Entertained a motion from the Plan Commissioners.

AUBIN: Moved to accept as findings of fact of this Plan Commission the findings of fact set forth in this Staff Report dated March 10, 2009 and moved to recommend to the Village Board of Trustees, approval of the Site Plan for Five Guys Burgers and Fries titled "Suggested Site Plan Alterations", prepared by Soos and Associates, Inc., stamped received April 8, 2009 and the proposed sign renderings for Five Guys titled "Channel Letter Sign Specifications", prepared by JNB Signs, dated 1/09/09, drawing number 03776-01 and stamped received April 8, 2009 subject to the following conditions: (1) that the petitioner provide a title block for the Site Plan, citing the title of the Site Plan, the firm that prepared the Site Plan, date, date of revisions, job number and sheet number

prior to advancing to the Village Board for final review; and (2) that the petitioner installs the proposed pedestrian walkway connections, stripes and signage, as depicted on the Site Plan, prior to issuance of a certificate of occupancy.

DZIERWA: Second.

A motion was made by Commissioner Paul Aubin, seconded by Commissioner Steve Dzierwa, that this matter be RECOMMENDED FOR APPROVAL to the Development Services & Planning Committee. The motion CARRIED by the following vote:

Aye: 5 - Commissioner Jacobs, Commissioner Dzierwa, Commissioner Aubin, Commissioner Stephens and Commissioner Parisi

Nay: 0

Absent: 1 - Commissioner Thompson

NON-PUBLIC HEARINGS

2009-0188 Introduction to Comprehensive Plan Update

TURLEY: Staff presentation made in accordance with the written Staff Report dated April 14, 2009 as presented.

SULLIVAN: Mentioned that we did this introduction to the Planning & Engineering Committee a couple months ago. They heard it first and now you are hearing it next. We are not looking for much input tonight; it is not really a public hearing; it really is an introduction to the Comprehensive Plan upgrade.

STEPHENS: On behalf of his fellow Plan Commissioners, thanked Mr. Sullivan and Mrs. Turley for their presentation.

No motion.

This matter was NO ACTION

2009-0189 Ethics Guidelines

Ken Friker, Village Attorney

FRIKER: We did this perhaps three-to-four or five years ago. We talked about this or these issues. When we talk about ethics – at least in terms of public service – we have entered into a legal thicket, a quagmire of laws and regulations and so on. The old Greek philosopher many centuries ago, Plato, said that good people don't need laws to tell them how to act and bad people will just figure out a way how to get around the laws. Unfortunately, we have a whole body of laws that don't give you a great deal of guidance to tell you how to tell municipal officials, how to act with integrity and ethically but they will tell you what is going to happen to you if you violate any of those laws. When I was in law school taking an ethics class one of the stories that came out of that particular class was about the

attorney who was asked by a client to draft a Will. After he finished drafting the Will, the client asked how much he owed. The attorney replied "$100.00". The client reached into his wallet and pulled out a nice, crisp, $100.00 bill and gave it to the attorney and left the office. After the client left the attorney's office, the attorney looked at the $100.00 bill and noticed there were two $100.00 bills stuck to one another. The attorney was faced with a real ethical dilemma. Should he tell his partner? (laughter). Distributed a summary of the laws of Illinois that deal with ethics in government to each of the Plan Commissioners and then proceeded to highlight its contents. Indicated there are three statutory provisions to be aware of. There are statutory provisions and then there are common law requirements in terms of ethical conduct by public officials. Statutory is obvious. They are in the Illinois Compiled Statutes. You can pick them up and look at them. Common Law requirements are those defined by case law. Those require research. It becomes a real quagmire when you get into questions about conduct which may or may not be a conflict of interest. These are questions we routinely get from public officials – whether or not a particular matter coming before them would represent a conflict of interest and if so, what should they do about it. Every case is fact specific. There is no easy answer to most of the questions. You have to look into the facts; determine whether it fits into one of the statutory limitations or statutory restrictions. Even if it does not fit within one of those statutory restrictions, does it fit within the common law requirements of a conflict of interest or is it prohibited conflict of interest. Summarized for the Plan Commissioners, what they face as public officials. This may be familiar to you or totally foreign to you. The first and probably most onerous of the restrictions is in a statute called The Public Officials Prohibited Activities Act which municipal attorneys call the Corrupt Practices Act. In essence, no appointed or elected municipal officer may be in any manner interested either directly or indirectly in his name or in the name of any other person in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. That is a pretty broad statement. It is an easy question when it comes, for example, before the Village Board which routinely approves contracts. If one of the Trustee's, for example, has a pecuniary interest in that particular contract – in other words, he will be benefited by the awarding of the contract. That is an easy case. Even though as Plan Commissioners, you don't approve contracts, you certainly do act upon a contract at least as a recommending body, in your advisory capacity, you act upon a potential contract whether it is an annexation agreement or some other type of development agreement, if in fact you have a pecuniary interest. Pecuniary means financial interest. It doesn't mean you will win the favor of your neighbors or your friends. It means whether or not you benefit financially from the action you are taking. There were a couple of cases which highlighted this. It is easy to determine if a particular person who is acting or voting on a contract that is going to be let, whether or not that person has a financial interest. What about someone who is simply in a recommendation capacity. There is a case of Peabody versus the Sanitary District wherein the Treasurer of the Sanitary District had an interest in the company that had a contract pending with the Sanitary District. Now the Treasurer didn't vote or even know that his company was even bidding on this

particular job. The contract was let. The Treasurer never participated in any recommendation – in fact the Treasurer was out of town at the time the contract was let. That Treasurer was actually convicted of a crime because he was in a position to act or vote on that contract. Another example is People versus Saviano. This case involved a DuPage County Commissioner who had an interest in some property, some real estate that the County was negotiating to purchase. The Commissioner never disclosed his interest in the property. Before the County voted on the contract to buy the property, he sold the property to a third party. The County never did reach an agreement with that third party to buy the property. When his interest became known, he was convicted and sent to prison because he was in an advisory capacity and could have acted or voted on that contract even though a contract was never let. So be careful. It has happened where we've been asked to opinionate on a contract coming before a particular municipal board. One of the Trustees or Alderman has a financial interest – in other words is going to be benefited. You cannot abstain. You cannot refuse to vote. You cannot stay absent from the Board meeting. You either have the matter removed from the agenda permanently while you are on the Board, or you resign your office. That is the only answer.

STEPHENS: Can't you recuse yourself? You can't disclose?

FRIKER: No, not under that Act. If you may be called upon to act or vote, you are guilty and it is a Class 4 felony. They don't mince words and people have been convicted. No Plan Commissioners that I know of, however, or municipal officers have been convicted of violating that act just because they may be called upon. That person could be sick at home with the flu when the contract comes before the Board. He or she may not even know about the contract. If it turns out that he or she has financially benefited, and may have been called upon to act or vote, that is sufficient for a conviction.

STEPHENS: That is only in the event you are going to benefit from a financial gain – if you are going to benefit financially.

FRIKER: Yes. It has to be a pecuniary interest. Yes, you have to benefit financially. It doesn't mean that you've gotten the favor of your friends or neighbors.

STEPHENS: If you know the people - that is one thing. If you are going to benefit financially, that is another thing.

FRIKER: There are exceptions. For example, a publicly-traded company, and you own less than one percent of the stock. Or if it is a private company and you own less than 7.5% of the stock. There are exceptions. Now, within those exceptions, for example, let's say that you worked for a company—even though you have no ownership interest or minimal ownership interest, but, in fact, you are going to benefit through your salary or a bonus – because the community enters

into a contract with your company, if it can be established that you have received a financial benefit from that contract, you are going to be subject to a criminal prosecution.

STEPHENS: Financial benefit is the triggering mechanism.

FRIKER: Yes, to you, your spouse, or your immediate family, having a financial benefit.

AUBIN: If indeed that takes place, do you see the Chairman, do you see the Staff, do you see the Mayor, to have something wiped off the agenda?

FRIKER: If you realize—if it is apparent, that the question is going to be presenting itself, you immediately ask for a legal opinion. There is some protection in getting a legal opinion. It is not complete protection. If in fact the matter comes before you and you did not know it was coming up and it turns out that you look at the agenda – although it is pretty unlikely that would happen – but you look at the agenda and say "Holy Smoke – I own part of that company", well you had better get that thing off of that agenda because if the Board goes ahead and votes while you are still on that Board, you are subject to prosecution for a felony.

STEPHENS: Let me ask a question. If we own a piece of property and it is contiguous or close to a parcel that is coming in, and there is no financial gain from that other parcel coming in, that is not a conflict of interest is it?

FRIKER: That is not a statutory conflict of interest. That is true. We will get into that. That deals with a common law conflict which is a different situation. Okay, we've talked about the Corrupt Practices Act. Just be aware of it. It is detailed in the material I've given you. Be careful of it. As I said, this Board does not vote on contracts per se, however, you are in a position to advise the Village Board on annexation agreements, development agreements – things that could potentially, under the right circumstances, benefit you financially – directly or indirectly. Be careful of that. There are some State's Attorney's around who would love to make a name for themselves prosecuting somebody for violating the Act. That has happened before. Further, we have the Illinois Gift Ban Act. I don't know if you have heard that term before. It has been around for awhile. It was held unconstitutional in 2003 (I want to say) 2002, in the Circuit Court of Will County. The legislature has since revised it. It is now the law of Illinois. In fact, your own Village Code has adopted the Gift Ban Act as the law of the Village even though it is applied statewide. The Gift Ban Act prohibits any public official from receiving anything of value from what is called "a prohibited source". If you are in a position to vote or approve or hire that particular person. There are limited exceptions to it. You can receive up to, not to exceed, $100 (actually just less than $100) a year whether it be a free golf outing, tickets to a Cubs game. Lunch is fine if it is eaten on the premises. This is very strange. The previous Act that was held

unconstitutional, prohibited you from receiving a free golf outing for example. It did not prohibit you from taking a fishing trip or going to a tennis match. Why they picked on golf I have no idea. That act was thrown out and was unconstitutional. It was vague. It was ridiculous. This act is not a whole lot less ridiculous, nonetheless, there are limitations. You can eat food on the premises. As long as it does not exceed $75.00. You can receive gifts if you wish up to $99.99 in any calendar year. Other than that, any violation of the Gift Ban Act, from a prohibited source, which is one seeking your favor, your vote, your employment, whatever, as a public official, again is a criminal violation.

AUBIN: Campaign election funds. Are those not gifts.

FRIKER: Those are fine as long as they are within the State guidelines (although there aren't many in the State – they're being revised right now as a result of our former Governor). If you are running for office and you receive campaign funds, gifts that are within the legal limits, those are perfectly acceptable but those funds have to remain in your campaign fund and so on and so forth. Those are legally permissible. I'm talking about actual gifts to you where you benefit. You or a member of your family benefits. Again, there are exceptions. If it is an old family friend and you are used to exchanging gifts—if that can be established, that is one thing. It is still very vague and at this point I'm not aware of anyone having been prosecuted under the Act. It is relatively new since it was held unconstitutional. But keep in mind that it is also incorporated into your Village code.

STEPHENS: So the easy way to not have to deal with this is if someone says "hey, let's go to lunch and we can talk about this", say no. It would be better to say "let's so into the Village Conference Room and we'll bring Staff in and we can talk about it".

FRIKER: Right. You may recall, for example, the Open Lands Golf Outing. Those are frequently used to bring developers, for example, or people who work for the Village. Contractors will ask a Village Official to accompany them and they will buy the tickets. It says right on there – and we dictated the language on there – how much of that, say $135 for golf and lunch – is attributable to the actual golf and lunch so that you keep under that $99.99 per year limitation.

STEPHENS: What about a situation where a petitioner comes up and asks for a continuance and then an individual calls and asks to meet to show what he proposes to bring back to the Plan Commission as well and you reply "yes, we can meet, however…" and he says, "can I come out to your office", is that a conflict of interest?

FRIKER: No. There is no reason you cannot educate yourself. You may feel that you want to include others from the Plan Commission, however, if someone just calls you – perhaps a neighbor or friend -- who happens to be a developer and he/she wants to show you this/that and wants to ask about procedures, about

zoning, what the Comprehensive Plan means, things like that, that is perfectly permissible as long as there is no quid pro quo.

DZIERWA: Are lobbyists going to be dinosaurs now?

FRIKER: No, however, they have been severely restricted under the Gift Ban Act. Most of their contributions now in terms of lobbyists are campaign contributions. They cannot give anything of value directly to a legislator or a legislator's aide – anything that will curry favor or allow them to have an introduction to that particular office holder.

STEPHENS: I think that is good.

AUBIN: The end of legalized bribery. This is good.

PARISI: Conceivably, anyone on this Board could be voting on a proposed project that is adjacent to our property – a bicycle path – something that improves my property value.

FRIKER: That is a scenario that I do want to talk to you about. I just want to touch on one other issue and that is about abstaining. There is a common law conflict. If it does not fit within the purview of the statutory prohibitions—about receiving something of value and then voting on it, approving a contract, whatever. There are certain instances where it might be perceived as a common law conflict and frequently, that falls under the guise of the appearance of impropriety. Let's say that miserable s.o.b. former husband of your daughter is a developer and comes before the Board. You might just love to nail the guy. On the other hand, it might be perceived by people who know the situation, it might be perceived as being inappropriate or improper. Any time you feel – whether it is a pecuniary interest or not – if it happens to be something that you can't give your 100% attention to in terms of your responsibilities – the oath you took to serve the Village, if you think you can't devote 100% of your thinking and your intellect and your proper conduct to that particular issue, then what you can do in that case – it doesn't fall within the purview of the Gift Ban Act or the Corrupt Practices Act, what you have to do then is declare your potential interest, your potential conflict and abstain from voting. At that point you are safe – there is no conflict. If you were to violate the common law conflict of interest, what happens is under the law there is no penalty to that but that contract or action can be voided if it turns out that you as a Plan Commission member had an interest – not a pecuniary interest – but an interest in seeing that particular development, for example, killed because you hated the guys wife or whatever – something that just isn't an appropriate reason for you to vote on that particular issue, if that were ever to come up, that contract or that vote, that motion can be voided. That is what is called a common law conflict of interest. In that instance, if you cannot pledge your 100% integrity as a Village Official to vote on that issue and you declare the potential conflict and you abstain from voting and abstain from even participating in the discussion surrounding that…

STEPHENS: … we do that at the meeting? We would simply excuse ourselves?

FRIKER: That happens, not infrequently, on the Village Board. For example, a Trustee will mention he/she has a client that has come before the Board. Even though he has no interest in it and the client may even have separate council on that particular issue, just because there is an appearance of impropriety, he/she says he/she is not going to vote on it, I am not going to participate in any discussion—that is the way to handle that particular matter.

PARISI: Back to my original point, if approving a project adjacent to your property enhances the value of your property, is that common law or is that pecuniary?

FRIKER: That is not an easy question to answer. Say you are a developer, like Mr. Stephens, and you own a piece of vacant property and you feel, irrespective of whether or not it is for the benefit of the Village – if you feel that particular development is going to financially benefit you, then you abstain. That is a common law conflict. At least at that point, you are not involved in any potential contract. If, in fact, there is a conflict involved such as an annexation agreement, then there would have to be a little more discussion of the facts as you see them. You are not, as a Plan Commissioner, obviously you have to live in the Village and we are a small enough community that every development that comes before you may in some way impact you. Maybe a neighborhood issue, maybe some other issue. You don't totally disregard your position or your status as a resident of the community, however, the object is to give your sole attention and your sole efforts toward what is for the benefit of the community. If there is something that is going to interfere with that particular vote, that particular action – whether it be negotiations or whatever – then it is incumbent upon you to abstain and declare your interests. This comes up on occasion where let's say your neighbors are all opposed to a particular development and you are sitting here as a Plan Commissioner. Let's say it is across from your home—it may not benefit you one way or the other particularly in fact it may increase some traffic because of a roadway or something. You have to make a decision. Do you vote your conscience if you feel it is going to be to the benefit of the Village and the heck with what your neighbors think, you are going to do what you think is right, That is one way to handle it. The other way is to abstain and if you are really opposed to it, perhaps even join the neighbors who are opposed to it, however, not in your position as a Plan Commissioner but in your position as an adjoining resident.

STEPHENS: Under that example you just stated, we could just recuse ourselves from here, walk down there, and then ask questions and comment to the Plan Commission.

FRIKER: Yes, absolutely.

STEPHENS: Okay.

FRIKER: Just as long as you are not using your position as a Plan Commissioner to influence, one way or the other, other than as a resident.

STEPHENS: You can excuse yourself from sitting up here (as a Plan Commissioner), go down there (with the public) with your neighbors who are opposed to it and still if you feel you are in favor of it, you can voice your concerns there as far as being in favor of it.

FRIKER: Sure you could, so it is a question of are you going to vote your conscience or have your neighbors mad at you -- one way or the other-- but certainly if you think your neighbors are all opposed to it and you think it is for the benefit of the community, there is nothing wrong with you sitting here as a Plan Commissioner and saying that you understand your (the neighbors') objections and I can see where you might have some valid points, but I feel that this in the best interest of the community and I am voting in favor of it.

STEPHENS: Yes, when we make our decisions we have to look at the overall community and what is best for the overall community.

PARISI: It has always been that way.

FRIKER: That is why you are appointed as members of this Commission from among the community. There are going to be instances where things come up that are going to affect you; your property interests. If you are benefited no more or no less than the general community, there is no interest. If you are benefited particularly by a particular vote that you are going to take, then you should recuse yourself.

AUBIN: You just answered something for me. By having a restaurant come in, and knowing that my property value is going to go up by making them have fancy windows, over and above code, and have three chimney's instead of two …I'm getting really nit-picky here, but if it indeed is beneficial to the whole…

FRIKER: …community, and you are among them, you are a member of the community, there is no reason why you cannot participate and vote but if your particular interest is benefited, as opposed to the community at large, that is a totally different story.

DZIERWA: There are times when a developer will come in here and all of us will have some predisposition in regard to their performance. In other words, they've said one thing in the past and done another. We get a lot of flack from people that this particular person did not do such a good job, yet they keep coming back with new projects. Are we just supposed to look at the merits of that project and forget how these people have acted in the past or do we just say we do not like this guy why do we even let him do more projects in the community? Is that fair?

FRIKER: You have to answer that in your own mind. If you feel that the project has merit but what is being proposed to you is by someone you do not trust, that may give you pause, that may give you reason. Obviously, you have to look at the merits of the proposal. I heard about a judge who talks about a jury of average stupidity who was able to figure out who has the best lawyer. It is not a question of deciding who has the best lawyer, the best advocate, it is a question of deciding what you think are the merits for the community.

STEPHENS: Is it good for the community.

FRIKER: To take facts at face value from somebody who you have come to distrust from prior experience before the Plan Commission, that is a different story. That gives you good reason to pause, however, ultimately, you have to look at the facts as you have learned them and make a decision – not who has the best advocate. There are a couple of scenarios I want to propose. Let's say a developer you might have some contact with and occasionally calls you with some questions about the Comprehensive Plan or what the Zoning Ordinance means and then he invites you to lunch and then he wants to pick up the tab. What do you do? There are no right or wrong answers to some of these.

STEPHENS: I would pass on the lunch.

FRIKER: In my opinion you should say that you will pay for your own (lunch). You don't want anything to give the appearance of impropriety. You pay for your own lunch.

STEPHENS: Well, if you don't want to pay for the lunch you just pass on the lunch and say that if you want to talk to me, come into the office and I'll talk to you and that is it. I don't need the lunch. That is the easiest way to do it.

FRIKER: Another issue might be, and I get these questions from people that I know who might have property they are going to develop or even other attorney's who represent a client who is going to come before this Plan Commission or the Board, and they ask me who I would recommend for a lawyer or who would I recommend for a planner, or who would I recommend for an engineer. What do you do. Again, there is no right or wrong answer. My advice would be to decline to do that (make a recommendation). Just say you are sorry but you don't want to be sitting on this Plan Commission and listen to an attorney that I recommended that you hire. That will put me in a difficult position. I've been asked my opinion on someone who somebody hired – what do I think of him/her. I'll simply reply that from my knowledge and experience, that person is honest and ethical, I see know of no reason not to use that particular person. However, if they ask me for a referral to an attorney, an engineer, a planner, etc., with whom I've worked, I routinely decline to do that. That is just my view of it. There certainly is no statutory conflict, there is no common law conflict that prohibits you from

recommending somebody or saying well that this person has come before us and does a great job and I think you would be well served by using him/her. I wouldn't do it, however, there is no prohibition to doing so.

STEPHENS: That wouldn't be a conflict of any interest would it?

FRIKER: No, but if I were in your position, it would put me in a spot where I'm going to give it a second thought – I don't like this plan; I don't think it is good for the community, however, on the other hand I recommended that you hire this guy – it would just give me some pause, that's all. Anything that puts you in that position I think is not a good situation. Here is another situation. The Village has had problems with property owners building sheds or garages or swing sets into rights-of-way on the Village property. One or several of your neighbors have done that. What do you do? I know that you bring up issues because you drive around the community. You see perhaps potential zoning violations. You see issues. Let's say the Plan Commission has said that there be certain conditions on this development and we don't see these conditions being followed. Now, as officers of the Village, what do you do if you see a neighbor putting a shed or a swing set on Village property? Again, there are no right or wrong answers. These are issues you may have to confront from time to time.

STEPHENS: Is it our responsibility to notify the Village in such cases?

FRIKER: Is it your responsibility? You are officers of the Village.

AUBIN: Don't we have Village inspectors?

FRIKER: It would be the enforcement personnel and the Building Department but they don't know about it. Are you going to tell them? Are you going to advise the Village Manager; the Director of the Building Department?

STEPHENS: I guess I'd call Staff and say that I just noticed this and that you ought to take and carry it forward.

FRIKER: I think in the final analysis that is the right thing to do. I'm not telling you to take any action I am simply advising you of what I have seen because I've been in the habit of doing that if I ride around town and I see these issues come up. I'm in the habit of reporting what I see and asking questions as an Officer of the Village – why isn't this issue rectified; why isn't this directive of the Village Board or Plan Commission being followed -- these are thorny questions and there are no right or wrong answers…

STEPHENS: Just bring it to Staff's attention and they'll take it from there.

AUBIN: Didn't we have something where guys could rent that in the old days where they could pay the Village to put a shed on a right-of-way?

DZIERWA: Maybe on an easement.

FRIKER: These are just some examples of some things that I thought about before this evenings meeting.

STEPHENS: I think it would be appropriate if, even if you think it could be a potential conflict of interest, just call Staff, explain the situation, and seek their opinion. This has happened in the past. They've called you (Mr. Friker) for a legal opinion. I think that is the appropriate approach to take.

FRIKER: I think you are right. I can see the other side of the coin too. You can easily say that look, that is not my job, I'm not the code enforcement officer of the Village why put myself in the position of getting between my neighbor(s) and the Village, however, keep in mind that you are in a position of authority.

STEPHENS: As Plan Commissioners, I think our point of contact is our Staff.

FRIKER: There are ways to handle such situations such as if you see your neighbor prepare to build a shed on Village property, point out that when they go to sell their property and have it surveyed, that shed or what have you may affect their ability to sell their property. There are ways to handle this without going the enforcement route. That is just something to think about.

STEPHENS: I think the easiest thing to do in any kind of case like that is just to contact our Staff and ask for their direction and if Staff does not have the answer, they usually call you, our Village Attorney, and get back to us with the appropriate action.

FRIKER: When you report it to Staff, it takes you out of the middle.

FRIKER: Thank you for your attention and please look at the material I've provided which gives you a summary of what we've discussed in a little more detail. Noted this was actually prepared by our office for a presentation to the Illinois State Bar Association in a couple of weeks so the Plan Commission is actually reading it before they will.

STEPHENS: On behalf of his fellow Plan Commissioners, thanked Mr. Friker for the material he handed out as well as his time and the valuable information he shared.

No motion.

This matter was NO ACTION

OTHER BUSINESS

There was no other business for discussion.

ADJOURNMENT

STEPHENS: There being no further business before the Plan Commissioners, the Chairman adjourned the meeting at 8:31 p.m.

Respectfully submitted,

Teri Dougherty
Recording Secretary