

**VILLAGE OF FONTANA ON GENEVA LAKE  
WALWORTH COUNTY, WISCONSIN**  
(Official Minutes)

SPECIAL JOINT SESSION MEETING of the VILLAGE OF FONTANA  
BOARD OF TRUSTEES & PLAN COMMISSION  
**Tuesday, July 6, 2010**

Village President Arvid Petersen and Plan Commission Chairman George Spadoni called the special meeting of the Village of Fontana Board of Trustees and Plan Commission to order at 5:01 pm in the Village Hall, 175 Valley View Drive, Fontana, Wisconsin.

**Village Board members present:** Roll call: President Petersen, Peg Pollitt, Cindy Wilson, Micki O'Connell, George Spadoni, Pat Kenny (arrived at 5:53 pm)

**Village Board member absent:** Tom McGreevy

**Plan Commissioners present:** Roll call: Micki O'Connell, President Arvid Petersen, Derek D'Auria, Harry Nelson, Mike Poivey, Chairman Spadoni, Sarah Lobdell

**Also present:** Marnie Atkinson, Steve Beers, Rallee Chupich, Administrator/Treasurer Kelly Hayden, Rob Ireland, Library Director Nancy Krei, Village Clerk Dennis Martin, Assistant Zoning Administrator Bridget McCarthy, Joseph McHugh, Sharon O'Brien, Police Chief Steve Olson, Rick Pappas, Ted Peters, Margaret Reuland, Dan Truttschel, Village Attorney Dale Thorpe, Jill Wegner, Carol Whowell, Janet Wojcik

**Public Hearing**

**Proposed Adoption of Moratorium on Subdivision/Condominium Approvals Under Chapter 17 and Rezone Approvals Under Chapter 18 of the Municipal Code**

Village Attorney Dale Thorpe stated that the public hearing was called to consider the adoption of a moratorium during the proposed rewriting of Chapters 17 and 18 of the Municipal Code. Thorpe stated that if the rewriting project is not authorized at this time, as recommended by the Finance Committee at its monthly meeting held June 30, 2010, there is not a need for the moratorium. The Finance Committee voted unanimously to approve a motion to recommend that the \$80,000 to \$90,000 proposal to have Chapters 17 and 18 of the Municipal Code rewritten not be initiated in 2010 because the funds are not in the budget, and if the funds can be allocated in the 2011 budget, the proposal should be reconsidered at that time. Thorpe stated that state statutes would prohibit the enactment of a development moratorium if a comprehensive rewrite of Chapters 17 and 18 is not commenced. O'Connell asked what constitutes a rewriting project and why a moratorium couldn't be enacted while Village staff begins to review the two chapters and bring forward suggested amendments. Thorpe stated that state statutes prohibit development moratoriums for "band-aid" type amendments, and that property rights dictate a moratorium should not be enacted unless a comprehensive rewrite is being undertaken. The public hearing was opened at 5:35 pm. Sharon O'Brien, 465-I North Lakeshore Drive, stated that the Village Board should have first made the decision on whether or not to begin the rewriting project for Chapters 17 and 18 immediately or wait until 2011 before the public hearing was held on the proposed moratorium. Thorpe stated that the two matters are related and could be discussed during the public hearing. O'Brien stated that the Village needs a comprehensive rewrite of Chapters 17 and 18 as the zoning codes are quite old, and a moratorium is needed until the codes have been rewritten. Joseph McHugh, 227 Kinzie Avenue, stated that as a property owner and as the executive director of the Geneva Lake Conservancy he supports the proposal to rewrite Chapters 17 and 18 and to enact a moratorium. McHugh stated that the Village has been to this point in the past and the time has come for a comprehensive rewriting of the zoning code. McHugh stated that the previous moratorium that was extended for a year and a

half resulted in only a few of the suggested amendments to the lakefront zoning code being adopted in September 2008. McHugh stated that the lakefront zoning code amendment process was initiated after the Village approved a single-family home under a condominium plat form of ownership. McHugh stated that the condominium plat applications that have been filed over the years by Steve Beers for property on both sides of North Lakeshore Drive, and a conditional use permit approved for Gary Neilson and Trudy Havens at 403 North Lakeshore Drive to construct a boat house within 20 feet of the shoreline are two other reasons that the two chapters have to be rewritten. McHugh stated that the village attorney has repeatedly stated that the chapters need to be rewritten and the Village Board should commence the project immediately to stop another loophole in the zoning code before it happens. Ted Petersen stated that he is the director Geneva Lake Environmental Agency and he is in favor of the Village enacting a moratorium if there is going to be a complete rewrite of Chapters 17 and 18. Peters stated by rewriting the chapters the Village will be able to incorporate all the recent changes in the state statutes. Peters stated that it is especially important for the Village to incorporate the new shoreland regulations in those sections of the Municipal Code. Steve Beers, 435 North Lakeshore Drive, stated that he agrees with Peters and there have been changes in shoreland regulations and state statutes that need to be addressed in the zoning code. Beers stated that he does not agree with McHugh's statement that there are loopholes in the zoning code that need to be addressed. Beers stated that property owners have property rights that were in place when the properties were purchased. Beers stated that if property owners follow the approval process and abide by the parameters of the zoning code, it is not a loophole if the project is approved. Beers stated that when the Village Board authorized the last moratorium on lakefront properties in 2008 it was initially stated that the process would take three months and the moratorium would be lifted. Beers stated that the moratorium was extended twice for a year and a half before the amendments were approved and the moratorium lifted. Beers stated that a timeline that's accurate and useable should be determined for the rewriting project before it is initiated, and that the rewriting project should be completed in a very timely fashion. Marnie Atkinson, 433 North Lakeshore Drive, stated that she agrees with Beers and a rewriting project and moratorium should be completed in the least complicated and most cost efficient manner. Atkinson stated that at the last joint meeting when the rewriting project was discussed, the Village planner presented a very complicating procedure and an expense formula that resulted in a very costly proposal. Atkinson stated that the rewriting project does not need to be complicated, but the Village has to make a commitment one way or the other on the proposal. Carol Whowell, W6267 Willow Bend Road, stated that she owns property in the extraterritorial zoning district and has filed a current application for a rezone of two parcels for single-family residences. Thorpe stated that the rewriting proposal and moratorium would not affect the ETZ District. Thorpe stated that the ETZ Zoning Code is separate from the rest of the code when it comes to amending or rewriting any portion of the ETZ Zoning Code. Thorpe stated that if an amendment or rewriting of the ETZ Zoning Code were proposed, it would require the Town of Linn and the Town of Walworth to be included in the approval process. Beers stated that if the Village does decide to rewrite or further amend the zoning code the officials should remember that no matter what the final product is, there will be some people who are happy and some that are unhappy with the final product. Beers stated that if the zoning code is changed, the Village should stick with the new code for a while and let it take effect before another amendment process is undertaken. Janet Wojcik, 168 Fontana Avenue, stated that she was told the meeting would provide her an opportunity to speak in opposition of a conceptual condominium development proposal in her neighborhood. President Petersen stated that the item was not on the agenda, the meeting was called to discuss the proposed Chapter 17 and 18 rewriting proposal and a possible moratorium. McHugh stated that there are current zoning districts that conflict with the recently adopted Comprehensive Plan, including the property on Fontana Avenue that is zoned for multi-family but identified in the Comprehensive Plan as an area for single-family residences. McHugh stated that state statutes require the zoning districts to be consistent with the Master Plan. Spadoni stated that he agrees with the Finance Committee recommendation that the \$80,000 to \$90,000 estimated cost to have Chapters 17 and 18 rewritten by the Village planner, attorney and engineering firm should be

allocated in the budget prior to approving the project. Spadoni stated that it will be difficult to allocate the funds in next year's budget as the 2010 budget required a lot of cuts. Spadoni stated that in recent years new cars for the Police Department, new computer equipment and many services have been cut from the budget. Spadoni stated that he agrees with the Finance Committee members that it would be irresponsible fiscal management to approve the commencement of the rewriting project in 2010 and hope to fund it in 2011. Spadoni stated that the Village Board has elected in recent years to not go to referendum to seek authorization to exceed the state levy limits; however, it has forced the Village to make difficult budget cuts and consider other spending reductions. Spadoni stated that a comprehensive rewrite of the chapters should be commenced in 2011 if the Village has the money to fund the project. Spadoni stated that if the Village does not collect the room tax revenue it has estimated in the 2010 budget, even more cuts will have to be made next year. Spadoni stated that he does agree that Chapters 17 and 18 should be rewritten. Lobdell stated that if the Village decides not to initiate the rewriting project and enact the moratorium until 2011, a big can of worms has been opened now that the word is out. Lobdell stated that developers may rush proposal in while the current code is in effect. Spadoni stated that nothing happens fast in Fontana, and a development proposal would have to go through the approval process. Nelson stated that he has not heard any examples of where the current code has caused that much damage to the community. Nelson stated that he would support a rewriting project, but he does not see a need to enact a moratorium because there are some quirks in the current code. Poivey stated that he also would support the rewriting of the chapters since issues have been coming up for years. Poivey stated that he also agrees that it would be a fiscal disaster to allocate the spending of money that has not been budgeted. Poivey stated that if the project can be included in the budget, the rewriting project should be authorized. With regard to the proposed moratorium, Poivey stated that he would defer to the village attorney's opinion. D'Auria stated that if there were additional funds available in the budget as a backup plan, or something that could be taken out, he would support moving forward with the rewriting project at this time; however, because of the vagueness of the scope of the project presented by Village Planner Mike Slavney, and because the process could be dragged out for more than one year he could not support authorizing it that night. D'Auria stated that some issues with the zoning code have come up over the last few years, but they have not been disasters. O'Connell stated that she thinks outsourcing \$80,000 to \$90,000 is excessive for the project, especially when the Finance Committee does not know where the money is going to come from. O'Connell stated that a complete rewrite may be needed, but the Village staff could begin indentifying the conflicting areas of the code and work with the village committees to draft amendments to correct the problems. O'Connell stated that if Building Inspector/Zoning Administrator Ron Nyman and Assistant Zoning Administrator Bridget McCarthy start the process now, the rewriting project will take less time and cost less money. Kenny stated that the Finance Committee did reach a unanimous consensus that it would not be fiscally proper to authorize the project now if the funds have not been budgeted. Pollitt stated that she agrees and the funds should be budgeted before the rewriting proposal is authorized. Pollitt stated that the project could end up costing more like \$100,000 and that's a huge amount of funds, especially when the Village had to cut \$20,000 from the budget for mosquito spraying services. Pollitt stated that the Village has to come up with an area to cut or sell some property in order to allocate the funds in the next budget. Pollitt stated that she agrees with O'Connell and the village staff members could begin the project. Pollitt stated that if big, gapping loopholes are found by the Village staff during its review, or major problems need to be corrected, ordinance amendments can be adopted at any time. Pollitt stated that the rewriting proposal should be revisited at budget planning time. Wilson stated that she agrees that there is a need to rewrite Chapters 17 and 18, but she is not sure what the process should include. Wilson stated that Slavney and Vandewalle and Associates just completed an update of the Comprehensive Plan and she can't believe the public input gathered at that time couldn't be used for rewriting Chapters 17 and 18. Wilson stated that the preliminary information gathered at the Comprehensive Plan public meetings can be applied to the Chapters 17 and 18 rewriting project. Wilson stated that she agrees that the Village staff members should start the review of the current code and identify the areas in the code that need to be

addressed. Wilson stated that after the initial conflicting sections are addressed, and funds are allocated in the budget, the rewriting project can be started from that point. Petersen stated that he thinks it would be foolhardy to rewrite Chapters 17 and 18 and not use the services of the professional staff members. The public hearing was closed at 6:10 pm.

### **General Business**

#### **Village of Fontana Municipal Code Chapters 17 & 18 Rewriting Proposal**

Thorpe stated that he prepared draft Plan Commission resolutions in case the Plan Commission recommends moving forward with the rewriting proposal or recommends to not authorize the rewriting proposal. Thorpe stated that if the Village decides to not commence rewriting Chapters 17 and 18 at this time, the moratorium should not be enacted either. Lobdell asked if the Village wanted to direct staff to begin reviewing the chapters right away. Spadoni stated that reviewing the zoning code would put too much undue pressure on Nyman and McCarthy and the rewriting project should be left for the professionals hired by the Village. Thorpe stated that he has been through the process of rewriting zoning codes in the past, and there are changes in state statutes that have to be taken into consideration and new sections have to be written to comply with the state statutes. Poivey asked if the rewriting project should be put out for bids. O'Connell stated that she thinks the Village staff members can begin reviewing the chapters and suggesting amendments; and it is not right to outsource the whole project in such tough economic times.

Chairman Spadoni/Commissioner Poivey made a MOTION for the Plan Commission to recommend that the Village Board should not commence with the proposal to rewrite Chapters 17 and 18 of the Municipal Code until 2011, if the funds are allocated in the 2011 budget. The MOTION carried on a 6-1 vote, with O'Connell opposed.

Trustee Spadoni/Trustee Kenny 2<sup>nd</sup> made a MOTION to not commence with the proposal to rewrite Chapters 17 and 18 of the Municipal Code until 2011, if the funds are allocated in the 2011 budget, and the Roll Call vote followed:

Trustee Kenny – Aye

Trustee Pollitt – Aye

Trustee Wilson – No

Trustee O'Connell – No

Trustee Spadoni – Aye

President Petersen – Aye

The MOTION carried on a 4-2 vote, with Trustee McGreevy absent.

#### **Possible Moratorium on Development Proposals During Chapters 17 & 18 Rewriting Project**

Chairman Spadoni/Commissioner Poivey 2<sup>nd</sup> made a MOTION to approve Plan Commission Resolution 07-06-10-01, a Resolution not to adopt a temporary moratorium on the acceptance, review and approval of rezone, land division and subdivision applications and condominium plat applications on village properties. The MOTION carried on a 6-1 vote, with O'Connell opposed. Following discussion, it was determined that since the Plan Commission recommended against enacting a moratorium, there was no further action required by the Village Board.

### **Adjournment**

Chairman Spadoni/Commissioner Poivey 2<sup>nd</sup> made a MOTION to adjourn the Plan Commission meeting at 6:25 pm, and the MOTION carried without negative vote.

Trustee Spadoni/Trustee Kenny 2<sup>nd</sup> made a MOTION to adjourn the Village Board meeting at 6:25 pm, and the MOTION carried without negative vote.

Minutes prepared by: Dennis L. Martin, Village Clerk

Note: These minutes are subject to further editing. Once approved by the Village Board and Plan Commission, the official minutes will be on file at the Village Hall.

APPROVED: 7/26/10 – PC; 8/2/10 – VB