

The City of Lake Forest
Plan Commission
Proceedings of the April 11, 2018 Meeting

A meeting of the Lake Forest Plan Commission was held on Wednesday, April 11, 2018, at 6:10 p.m., at City Hall, 220 E. Deerpath, Lake Forest, Illinois.

Commission members present: Acting Chairman Kehr and Commissioners Louis Pickus, Rosemary Kehr, Michael Freeman, Monica Ruggles, Tim Henry and Guy Berg (arrived at 6:25 p.m.)

Commissioners absent: Chairman Michael Ley

Staff present: Catherine Czerniak, Director of Community Development and Robert Pickrell, City Attorney

Acting Chairman Kehr opened the meeting at 6:10 p.m. and asked for a motion to go into Executive Session pursuant to 5ILCS 120/2 (c)(11) to discuss matters relating to threatened litigation.

Commissioner Freeman made motion to go into Executive Session.

The motion was seconded by Commissioner Henry and approved by a 5 to 0 vote.

The Commission adjourned into Executive Session.

The Commission reconvened into Open Session at 6:30 p.m.

Acting Chairman Kehr introduced the members of the Commission and staff and reviewed the meeting procedures followed by the Commission. She stated that just prior to the meeting, the Commission held an Executive Session to discuss threatened litigation. She stated that no action was taken during the closed session.

1. Consideration of the minutes of the March 15, 2018 meeting.

The minutes of the March 15, 2018 meeting were approved as submitted.

2. Public Hearing and Action: Continued consideration of a request for approval of an amendment to the Special Use Permit which approved the Oak Knoll Woodlands Subdivision to allow the earthen berm to remain as built, at a height taller than the height reflected on the approved development plans. The berm is located in the southeast corner of the Oak Knoll Woodlands Subdivision, west of the railroad tracks, east of Oak Knoll Drive and north of Abington Cambs Drive.

Property Owner: RREF II-SD Oak, LLC

Representative: Rick Swanson, R.M. Swanson Architects

Acting Chairman Kehr asked the Commission for any conflicts of interest or Ex Parte contacts. Hearing none, she swore in all those intending to speak on this matter.

Mr. Swanson introduced the project and members of the project team. He stated that the developer is requesting an amendment to the previously approved Special Use Permit to allow the berm to remain at the height as constructed. He stated that the berm is located north of Conway Road, at the southeast corner of the Oak Knoll Woodlands subdivision, on the west side of the railroad tracks, north of Abington Cambs Drive and west of Gavin Court. He noted that site improvements in the subdivision are complete with exception of the lift station which will be completed this spring. He noted that some additional trees also need to be planted to replace earlier plantings that are failing to thrive adding that the subdivision is well on the way to completion. He stated that the berm, as constructed, is at an elevation of 676 feet and the railroad tracks are at an elevation of 676.5 feet. He stressed that although the berm is higher than originally approved, there is no change in the approved foot print of the berm. He stated that the berm was designed to offer a visual barrier to the railroad tracks and provide a means to reduce soil removal from the site. He noted that the berm meets all engineering standards for design and is consistent with the shape, height and angle of repose of other berms constructed in Lake Forest including berms at Lake Forest Hospital, Conway Farms and Onwentsia Gardens. He noted that the Oak Knoll Woodlands project was approved in May, 2015 and work began in July, 2015. He stated that the developer first learned that the berm was constructed higher than approved through an inquiry from City staff in January, 2016. He stated that after receiving complaints about noise, drainage and vibration from residents on Gavin Court, the City reviewed the height of the berm and found it to be non-conforming to the approved plans. He stated that the developer later learned that the on-site contractor consulted the project engineer, Bleck Engineering, to verify that increasing the height of the berm would not negatively impact site conditions and would meet applicable technical requirements. He stated that the contractor took this verification as authorization to leave the excess dirt on the site and constructed the berm higher than shown on the approved plans. He acknowledged that the proper protocol would have been to communicate the proposed change to the City inspectors and seek approval of a revision to the approved plan. He stated that the contractor was acting with good intent by implementing an acceptable engineering solution within the scope of the approved plan. He noted that it is standard procedure to make adjustments in the field and reflect them on as-built drawings upon completion of the project. He noted that the enhancement of the berm significantly reduced the volume of truck traffic from the site since less dirt was trucked off. He added that the berm offers sound buffering for the new development and existing homes in the area. He stated that although the finished berm was not constructed as designed, the berm as built adheres to all applicable engineering design standards. He stated that before removing the dirt and reconfiguring the berm to conform to the original approvals, the developer wanted to review the existing conditions and options, and consider the most beneficial solution. He stated that the berm as constructed

achieves the objectives of the approved plan with no negative impact on neighboring properties. He acknowledged that there is noise and vibration from the trains, but stated that there is no evidence that the noise and vibration has increased as a result of the height of the berm. He noted that the evidence provided by the experts, which was reviewed by the City's independent consultant, found no increased impact from noise or vibration as a result of the berm adding that the conclusion is supported by basic science and simple logic. He stated that reducing the height of the berm will have a negative impact on the surrounding area. He reiterated that the footprint of the berm, as constructed, is no different than what was approved, adding that only the height of the berm increased. He showed photos of the berm taken from the high school field, photos taken during construction, and photos taken after the seeding of the berm was completed to prevent erosion. He showed a photo after completion of the berm with some seasonal growth of the vegetation. He showed a photo of the berm from the walking trail, across the pond and a photo of the railroad tracks in relation to the berm. He presented an exhibit of the footprint of the existing and approved berm pointing out that the base of the berm as constructed has not spread out beyond the approved foot print. He reviewed a section and reviewed the height of the berm in relation to the railroad tracks. He stated that the developer was advised by staff of the drainage, noise and vibration concerns raised by the Gavin Court neighbors and took the concerns seriously. He reviewed the drainage patterns in the area noting that water from the development site flows north and east, through Conway Farms Golf Course, and under the railroad tracks. He stated that water from the Gavin Court pond, which is located upstream from the development, flows west, into a culvert under the railroad tracks, and then south into a ditch located between the railroad tracks and the berm, and travels north. He stated that 60% of the culvert under the Metra tracks was blocked and the ditch on Metra property was overgrown prior to any work on the new development. He stated that the developer was asked to install an additional relief swale, over and above what was shown on the approved engineering plans, to allow water from the Gavin Court pond to exit the drainage swale on Metra property, along the railroad tracks earlier, to improve flows. He stated that the developer agreed to the additional work in an effort to be proactive. He stated that the additional swale was installed at the developer's cost. He noted that it appears that the Gavin Court pond has not been properly maintained. He stated that in response to the concerns raised by the neighbors about increased noise and vibration as a result of the berm, the developer's team hired a qualified consultant, WJE, to conduct a study in the area of the newly constructed berm. He noted that the developer also agreed to pay the cost of an independent consultant hired by the City. He stated that WJE collected field data and conducted analysis and confirmed that as a result of the berm, there was no change in sound or vibration levels. He noted that the independent acoustical consultant hired by the City agreed with the findings in report. He reviewed the location of the berm in relation to the railroad tracks, the trees and neighboring houses. He stated that there is no logical way that the berm is having any effect on the neighboring homes. He stated that the berm as constructed is consistent with berms elsewhere in the City adding that it was built to

accepted engineering standards. He stated that the objective that led to building the berm as now constructed was limiting the amount of dirt removed from the site thereby reducing the impact on the neighborhood and roads. He stated that the contractor made the decision to leave the dirt on site based on good intentions and the result was a reduction in truck trips by about 1,400 loads. He stated that rather than just remove the dirt to reduce the height of the berm, it makes sense to review the situation with all parties and agree on the right course of action. He reiterated that the evidence does not support a conclusion that the berm as constructed has increased noise or vibration levels at the homes on Gavin Court.

Bill Vignocchi stated that he is employed by John Keno and Company, Inc., the contractor for the Rialto project. He stated that he grew up in City of Lake Forest and owns a home on Estate Lane, near the development site. He noted that the company has worked on projects in and around the Chicago area. He stated that the request to amend the Special Use Permit to allow the berm to remain, at the increased height, was filed with the City over six months ago. He stated that the continuances have been frustrating. He clarified that the berm is not illegal noting that there are other similar berms in Lake Forest. He stated that the drainage concerns have been addressed adding that multiple entities have reviewed the drainage on the site and concluded that it is working properly. He stated that the maintenance issue with the culvert under the railroad tracks is not the responsibility of the developer. He noted that the development site is separated from the properties on Gavin Court by a 90' wide easement. He stated that the sound and vibration issues in the area are not related to the height of the berm. He stated that they have proven that there is no off-site impact as a result of the height of the berm. He stated that removal of the dirt and lowering the height of the berm would be a detriment to the area. He stated that the vegetation in the subdivision has been maturing for three years now and that benefit would be lost if the berm is reduced in height. He stated that removal of the dirt will not benefit anyone. He noted that removal of the dirt will result in 1,500 fully loaded 75,000 pound semi-trucks driving through the Oak Knoll Drive neighborhood. He stated that the berm benefits not only for the new homes that will be constructed in the development, but also the homes on Abington Camps to the southwest of the berm. He noted that the required impact fee for wear and tear on the streets has already been paid. He stated that entire process of reducing the height of the berm will take about three years: one week to mobilize, one week of site preparation, five weeks of truck traffic, two weeks to re-landscape the reduced berm and then three to four years of growth to get back to the stage the development is in today. He stated that reducing the height of the berm is not the right thing to do. He stated that approving the amendment to the Special Use Permit is the right action adding that there is no off site impact.

Ms. Czerniak stated that the Commission was provided with a significant amount of background information on this petition since it was originally filed last fall including the petitioner's submittal, various reports and correspondence and statements from

neighboring property owners and their representative. She noted that an additional letter was received just before the meeting and was provided to the Commission.

In response to questions from Commissioner Berg, Mr. Vignocchi explained that the right of way for the railroad tracks is 90' wide, about 45 feet to the east and west from the center of the track.

In response to questions from Commissioner Berg, Mr. Swanson identified the approximate location of the property lines. He stated that the berm is 95 feet from the center of the railroad tracks. He stated that the residences on the east side of the railroad tracks are about 280 feet from the center of the railroad tracks.

Hearing no further questions from the Commission, Acting Chairman Kehr invited public testimony.

Joe Reich, 1275 Gavin Court, reviewed his work history and areas of expertise. He noted that the noise, drainage and aesthetic impacts of the berm have previously been described. He noted however that no mention has been made of the fact that the berm was constructed in a haphazard fashion, without City oversight, and without the safeguards that it would have provided. He stated that there is no information available about the composition of the berm. He stated surprise that the neither the developer, nor City inspectors noticed the excessive height of the berm during the construction process. He explained that prior to the construction of the berm, the sound energy from passing trains dissipated to the east and west. He stated that the berm has altered the noise pattern. He stated that what is being debated is whether the berm is reflecting any or all of the noise from the passing trains. He stated that the reflectivity depends on composition of the berm which is not known. He added that in the winter, the berm is a steep, block of highly reflective ice. He discussed the challenge of measuring reflected noise due to the shadow zone. He described the area nearest the railroad tracks as similar to standing under a waterfall and not getting wet. He described the defects in the noise measurements taken by the petitioner's consultants noting the limited locations at which measurements were taken, the lack of information on whether the passing trains were full or empty, and the positioning of the measurement equipment which eliminated the potential for capturing reflected noise. He noted that the neighbors' consultant measured noise levels inside the homes. He stated that the petitioner's consultant could have taken readings further away from the berm or at locations far away from the berm to determine the pre-construction conditions. He stated that data was gathered in a deliberate manner to achieve a desired result. He stated that severe flooding in the area began two years ago because the rainwater was unable to drain into the wetlands which were in the area where the berm now sits. He stated that in response, a new swale was hastily dug by the developer and was later made permanent. He stated that when confronted on the matter of drainage, the developer blamed the drainage problems on maintenance issues with the pond, the railroad swale and railroad culvert. He stated that the coincidence of the timing of drainage problems with the

development leads to a different conclusion. He noted that the berm has had a negative aesthetic effect on the Gavin Court properties, changing the prior sense of place and eliminating views of sunsets. He added that the detention pond is now dead and the berm casts a long shadow over the properties. He asked that the Commission deny the request and require the dirt to be removed from the site to comply with the previous approvals.

Kimberly Reich, stated that she is speaking on behalf of the Gavin Court neighbors including the Schusters, Ms. Goldstein and herself. She presented an image of a fallen tree noting that the neighbors used to be able to enjoy their backyards prior to the standing water and severe destruction of the landscape caused by the careless Rialto development. She stated that as a result of the disregard shown by Rialto, the neighbors have had to waste time and money and have lost the ability to enjoy their properties. She stated that the berm has had an adverse effect on the Gavin Court neighbors noting that her two story home shakes and disturbs her sleep, every night. She stated that this was not the case before the berm was constructed. She stated that her guests are awakened at night by the rattling and are deprived of sleep. She stated that the changing water table has killed trees and as a result, there is no longer a visual screen between the homes and the railroad tracks. She stated that she moved into her home in 2001 and hired experts to advise her on plantings, removal of non-native species and where to construct a wood chip path. She stated that she was advised not to build a berm. She presented photos and videos of the Schuster and Goldstein properties. She noted that the Schusters have had to pump water out of their back yard adding that there was never standing water in the area prior to the construction of the berm. She stated that the water table has changed. She stated that during construction, a City inspector was on the site every day and questioned why the work was not stopped when the berm exceeded the permitted height. She noted that a large picture window shattered at the Goldstein residence when a very loud train went by and pictures have fallen off the wall. She noted that the oak trees and evergreens in the Goldstein's yard have died since the berm was constructed. She noted that the WJE report states that the impact of the berm on noise and vibration would be barely perceptible to humans. She stated that she has personally noticed an increase in noise and vibration since the berm was constructed.

David Larson, consultant for Gavin Court neighbors, stated that he is a principal and the founder of SV Solutions. He reviewed his educational and work backgrounds noting that he studied both mechanical and acoustical engineering. He stated that he has worked in the field of acoustics for 32 years and worked with Tom Thunder on various projects over the years. He stated that he has worked on commercial and residential issues related to noise and vibration noting a particular project relating to a sound wall along Interstate 355 for which he helped find a resolution. He stated that he was hired by Attorney Stang to investigate sound and vibration impacts related to the berm. He stated that before preparing his report, he interviewed the Gavin Court neighbors to understand their subjective opinions about the impacts of the berm on their properties. He stated that he also conducted objective testing

inside the Reich residence. He stated that between January 26, 2018 and February 2, 2018, he took noise and vibration measurements for periods lasting eight to ten hours. He stated that the result was quite a good body of data. He presented graphs illustrating noise and vibration over time and explained that each spike on the graph indicates a passing train. He noted that while stopped at McDonalds, near the Gavin Court neighborhood, to observe a passing train, he confirmed that noise and vibration peaks when locomotives go by and lessens slightly with the other cars. He stated that the train was 135 cars long, with two locomotives. He stated that after reviewing the data and making observations, he can make two conclusions with 100 % certainty. He stated that 1) there is a major noise impact on the Reich residence and other Gavin Court homes when trains go by, and 2) there is a significant vibration impact on the residences. He offered opinions, separately from the conclusions, clarifying that his opinions are not offered with 100% certainty. He stated that based on interviews with the people living on Gavin Court, there has been an increase in noise and vibration since the berm was built. He added that the berm may very well be responsible for the increases, but noted that he cannot state that with certainty since he did not take measurements before the berm was built. He stated however that there is a valid technical and logical argument to explain how a berm can cause sound levels to go up or down. He noted that the berm was built as a noise shield for the properties to the west, but can also reflect noise. He noted the example of a wall built along Interstate 355 explaining that a wall was built on one side of the road and as a result, the noise levels on the other side increased by up to six decibels.

Leslie Goldstein, 1215 Gavin Court, stated that her mother's home is one of the homes that has been terribly impacted. She stated that the window in her mother's home shattered due to the increased noise as a result of the berm. She stated that it was fortunate that the window was shatter proof glass. She stated that before the berm was constructed, her mother slept peacefully but now experiences interrupted sleep and as a result, is irritable, anxious and depressed. She stated that her mother is 84 years old and cannot tolerate the current conditions any more. She stated that the ability to enjoy the home has been lost. She stated that her father passed away 2-1/2 years ago and her mother cannot sell the house because of the berm.

Amy Keaton, 1305 Gavin Court, stated that her home is the furthest north property. She stated that she has lived in Lake Forest since 2003 and is an active and involved citizen, and a tax payer. She stated that she has degrees in engineering and industrial mechanical engineering. She noted that the Commission has heard the basic concerns about the berm from her neighbors but added that her house shakes, her bed shakes and pictures move on her walls. She stated that she has repaired cracks in her home and repainted, and the cracks have reappeared. She stated that her basement flooded in July, 2016, for the first time ever. She explained that water came up through the concrete floor and then went back down. She stated that the water table in the area has changed as a result of the development on the west side of the railroad tracks. She stated that the berm has cost her thousands of dollars and emotional stress. She stated that the berm is not benign.

She stated that the short term impact of truck traffic caused by removing the dirt should be considered in comparison to the long term effect on properties on Gavin Court as a result of allowing the berm to remain. She stated that the developer has not taken the problem seriously and never contacted the neighbors since becoming aware of the situation in 2016. She stated that the issue could have been addressed in 2016 adding that the Gavin Court neighbors should not be punished because the developer did not comply with the approved plans. She stated that there should be consequences for the developer's actions. She stated that she has always believed that people will always do what is right. She stated that she is disillusioned with the City for not working on the neighbors' behalf and not requiring the developer to fix the berm. She stated that she and other neighbors have had to hire an attorney and consultants.

Hearing no further public comments, Acting Chairman Kehr invited cross examination.

Mark Stang, attorney for the Gavin Court neighbors, stepped forward to cross examine other parties present.

In response to questions from Mr. Stang, Mr. Swanson stated that the purpose of the berm was to provide a way to use dirt on the site as is typically done. He stated that he did not personally see the berm during construction or when it was at 13 to 14 feet in height. He stated that the height of the berm was first brought to his attention in January, 2016. He stated that he used to live in the area, but does not live nearby now. He confirmed that John Keno and Company engaged the sound consultant, WJE, to undertake an independent analysis. He stated that he is not sure whether Dr. Thunder, the City's consultant conducted an earlier study. He stated that he cannot speak to whether there is an understanding between Rialto and John Keno and Company about how the cost of removing the berm will be handled.

In response to a question from Acting Chairman Kehr, Mr. Stang stated that his questions relate to hardship and the expense of removing the berm.

Acting Chairman Kehr stated that the Commission will make a decision on this matter based on the criteria for special use permits.

In response to further questions from Mr. Stang, Mr. Swanson confirmed that he received a copy of the statement prepared on behalf of the Gavin Court Neighbors a day or two ago noting that it was not submitted prior to the deadline established by the Commission at the last meeting. He stated that he has not turned the statement over to his attorney.

In response to a question from Acting Chairman Kehr, Mr. Stang stated that his questions are related to whether or not the petitioner had any quarrel with the facts in the statement he provided on behalf of the objectors noting that he would have

expected if there were any disputes with respect to the facts, the petitioners or the petitioner's attorney would have raised them.

In response to questions from Mr. Stang, Mr. Swanson stated that he has not spoken with the Gavin Court neighbors. He stated that he is unsure whether there was mention of a berm in the original petition.

Acting Commissioner Kehr invited others the opportunity to cross examine. Mr. Reich, Ms. Reich, Ms. Goldstein, Ms. Keaton and Mr. Larson all declined the opportunity to cross examine other parties.

Lauren Sundberg, 530 Oak Knoll Drive, stated that as part of a settlement for a previous lawsuit she brought against the developer and the City, she agreed not to bring further lawsuits and not to object, or support, aspects of the development going forward. She stated that she is not taking sides on the matter before the Commission.

In response to questions from Ms. Sundberg, Mr. Swanson stated that concerns about traffic were raised at the original public hearings on the development and during construction.

She stated that she lives next to the new development and has no objection to the additional truck traffic that will be required to remove the excess dirt from the site if that is what is necessary to address problems other neighbors are having with noise. She clarified that she is only speaking for herself.

In response to questions from Ms. Sundberg, Mr. Vignocchi confirmed that his house on Estate Lane is for sale.

She commented that Mr. Vignocchi does not live near the area where the trucks will travel.

In response to questions from Ms. Sundberg, Mr. Vignocchi stated that the landscaping on the berm is consistent with the plans and specifications prepared by the civil engineer for the project. He stated that the plantings are a series of grasses.

Ms. Sundberg stated that no bushes or trees were planted on the berm, only wild grasses with some netting thrown over the plantings. She questioned the statement that three years would be required for regrowth since only grass was planted. She stated that she cannot speak to drainage issues. She explained that the reason she sued the City over the development is because the density as approved was twice what should have been allowed. She stated that she let the litigation go because of her life circumstances. She encouraged the Commission to listen to the neighbors noting that what happened before was egregious and upsetting. She stated that some of the testimony presented does not seem accurate and restated her opposition to the overall development.

Hearing no further requests to speak and no further requests for cross examination, Acting Chairman Kehr returned the matter to the Commission and invited final questions to the petitioner or staff.

In response to questions from Commissioner Pickus, Mr. Ells read a portion of a statement from the City Engineer, Dan Strahan, noting that Mr. Strahan was unable to attend the meeting due to a prior commitment. He stated that the berm, as constructed, is higher than reflected on the approved plans and is approximately 22 feet above pre construction grades on the site. He stated that the side slopes of the berm are 2-1/2 to 1 and the maximum berm elevation is 694. He stated that the changes to the berm occurred within the footprint reflected on the approved plans and as a result, the overland stormwater flows were not affected. He stated that the height of the berm does not have a negative effect on surface drainage.

In response to questions from Commissioner Pickus, Mike Bleck, Bleck Engineering, stated that he was retained by the developer in 2013 and hired Aerometric Engineering out of Sheboygan, Wisconsin as part of the early due diligence. He stated that the firm conducted low, aerial mapping of the project area, by helicopter, at a slow speed, which provided higher accuracy and better data than other types of surveying. He stated that the aerial mapping provided about 29,000 data points, in comparison to about 1,000 data points that would have resulted from a ground survey based on a 50 foot grid. He added that the work produced a three dimensional model of the earth and a contour map. He added that along a separate path, a wetland expert was hired, a scientist, Hey and Associates, noting that the company was one of the first to specialize in wetlands in Lake County adding that it was established in the late 70's or early 80's. He stated that a wetland delineation was completed by walking the property, finding the wetland, walking the boundary of the wetland and marking the perimeter boundary with flags. He stated after that work is done, the agency determined to have jurisdiction, Lake County Stormwater Management, reviewed and ultimately concurred with the boundaries of the wetland. He stated that in his experience, the boundaries are either accepted as delineated, or the boundary expands. He stated he is not aware of situations where the boundaries of a wetland have gotten smaller as a result of the agency review. He provided an enlarged image of the corner of the property that is the subject of discussion. He identified the area that was flagged as a wetland. He reviewed the elevations in the area adding that as expected, the wetlands fit into the low lying depression area as mapped by Aerometrics. He explained that the aspects considered in determining whether an area is a wetland are soils, plants and water. He identified the area on the map where there were no wetlands. He stated that three separate entities, Aerometric, Hey and Associates and Lake County Stormwater Management all concurred on the boundary of the pre-existing wetland. He added that a fourth source, a 2007 high altitude map from Lake County, also confirmed the location of the wetland as it existed prior to any construction on the site. He reviewed the elevations of the larger area including the Gavin Court pond and the railroad tracks and drainage ditch that extends along

the tracks, in the railroad right-of-way. He stated that the information clearly shows that the pre-construction drainage pattern was along the ditch on the railroad property, to the north end of the Rialto property, and on to the Conway Farms property. He presented a map showing that the wetlands remain on the site today and the areas that were not wetlands became the detention pond and the berm. He noted that two minor areas of small wetlands were impacted near the Abington Camb's property to the south. He stated that during the course of completing the engineering for the development, in 2014, his staff went to the site, looked at all of the existing culverts, shot the pipes and the inverts, and documented the existing conditions. He stated that all of that information was included in the final engineering report that was submitted to the City. He showed a photo, taken a year before construction started, of one culvert that extends under the railroad tracks noting that it is a 36 inch pipe, with a foot of silt in it and nine inches of standing water. He stated that the culvert at that time was 60% obstructed. He stated that if the pipe under the railroad tracks is blocked, that will cause backups up stream. He stated that the drainage from the Gavin Court pond never cut through the Rialto property. He noted that the City worked with the railroad to have some clearing done on the railroad property and as a result, the water flows have improved. He stated that the drainage issues have nothing to do with the Oak Knoll Woodlands development.

In response to questions from Commissioner Pickus, Mr. Bleck reviewed the elevation of the culvert in relation to the Gavin Court pond noting that if the culvert is blocked, or partially blocked, that could lead to a backup in the pond increasing the water level. He stated that detention ponds require maintenance he noted for example if debris is blocking the restrictor, the water level in the pond will rise.

In response to questions from Commissioner Ruggles, a representative of WJE spoke to acoustic and vibration issues. He noted that WJE has been in business for 60 years and reviewed his educational background noting areas of focus including structural engineering and acoustic emissions. He stated that WJR was hired by the developer to conduct a study to analyze whether or not the berm is causing bounce-back and having negative impacts on the neighboring homes. He stated that because there were no pre-construction measurements available, last October a study was conducted and two control points, away from the berm were established and sensors were placed at the control points and near the berm. He stated that measurements were taken over a 4 to 5 hour period which included the passing of two freight trains and five passenger trains. He referred to figures in the report that was prepared by WJE and provided to the Commission. He noted that each time a train passed by, a spike in the noise levels occurred at all of the sensors, whether or not there is a berm. He pointed out that the sensors picked up a lawn mower operating nearby, toward the end of the testing, resulting in a decibel level of about 60 decibels. He stated that when a freight train is passing, a high of 90 decibels was recorded. He stated that the readings from the sensors at all three locations were within three decibels of each other. He stated that from the data collected, the conclusion is that the berm has no effect on the noise levels. He

pointed out that the berm has a bell shape, and is not a wall. He stated that if instead of a berm, a concrete wall was installed, the sound would bounce back. He stated that in addition to the shape of the berm, the berm is constructed of absorptive materials, not rock, concrete or steel. He spoke to vibration impacts noting that WJE is involved in work globally for museums assessing vibration impacts of construction and blast activity on art work. He stated that similar to the process described above, vibration was measured at three locations, two outside of the berm area and one in the middle of the berm area. He stated that no significant difference in vibration levels was found. He directed the Commission to the last page of the WJE report and discussed vibration generally and the levels at which damage to structures is caused. He stated that the vibration levels caused by the trains are perceptible, but below the levels at which damage is caused. He stated that in his opinion, the vibrations as measured will not cause damage.

In response to questions from Commissioner Ruggles, the representative from WJE confirmed that a bounce back impact from sound and vibrations could occur from a vertical steel or concrete wall. He discussed the concept of an acoustic shadow describing it as a wake as a train passes by. He stated that based on the comparative approach of measuring sound and vibration at three locations, no difference was found in the wake measured at the three locations. He reviewed how decibel levels sound in daily life noting that his voice is about 60 decibels, a lawn mower about 65 decibels, and a crowded restaurant is about 75 decibels.

Chairman Kehr invited comments from Dr. Thunder, the acoustical consultant hired by the City.

Dr. Thunder stated that the issue is neural, not whether or not the trains make noise, but whether the berm enhances or increases the noise or vibration in any way. He noted that WJE answered that question by using a logical method to measure impacts with and without the berm at the same time. He stated that taking pre and post construction measurements is not a good technique because conditions could be different during the times of measurement. He stated that David Larson, the consultant hired by the Gavin Court neighbors and an accomplished engineer, documented the impact of noise from the trains very well. He noted however that what is missing from that work is an objective analysis of what, if any, impact the berm has on the noise levels the residents' experience. He stated that there was no discussion or recommendations offered as to what kind of testing could be done. He noted that WJE set up three different monitors, two away from the berm, to allow for a comparison of the noise levels. He stated that even if someone disagrees with that approach, looking at the issue from a fundamental principal of reflection, there are two concepts that are necessary, first, a hard surface and second, the surface must have an angle that will reflect sound and vibration. He offered the example of playing billiards and related it to how sound travels. He stated that unlike hard, vertical surfaces that are used as noise barriers, the berm has a slope. He stated that the berm also has absorptive properties, unlike a hard vertical wall, and is vegetated. He stated that the WJE study was done the way he would have done it.

He stated that the fundamental principles of reflectivity do not support the contention that the berm has increased the impacts of the train on the Gavin Court homes. He stated that in his professional opinion, he cannot support the contention that the presence of the berm increases the level of noise experienced by homes on the east side of the railroad tracks.

Commissioner Berg asked how the City would have reacted to the berm if it was initially proposed at the current height.

Commissioner Henry questioned whether the Commission would be hearing the same complaints if the berm had been constructed as originally approved.

In response to questions from the Commission, Mr. Pickrell stated that the criteria on which the Commission is charged with evaluating the current petition are identical to those used to consider the initial request for a Special Use Permit to allow the development. He suggested that the same questions being asked now, may have been asked three years ago if the taller berm was originally proposed.

In response to questions from Commissioner Berg, Ms. Czerniak confirmed that the City Engineer reviewed the as-built plans of the berm and determined that from a drainage perspective, there is no problem caused by the berm and no engineering issues caused by the increased height. She stated that she cannot speak to whether the Commission's initial discussion about the subdivision would have been different if the berm was shown on the original engineering plans at the height as it exists today.

Hearing no further questions or comments from the Commission, Acting Chairman Kehr invited a rebuttal from the petitioner in response to public testimony.

Mr. Swanson stated that he appreciates the concerns and frustrations expressed by the neighbors. He stated that the developer took the neighbors' concerns seriously and worked proactively with the City to work to assure that drainage on the development site was operating as approved. He stated that no evidence has been presented supporting the contention that the berm has caused increased noise or vibrations for the neighboring homes, and no evidence that the berm has caused drainage problems. He stated that the consultants spoke confidently on this matter. He stated that the developer is sorry that the neighbors are experiencing issues and stated that the developer was prepared to take action to address any issues caused by the development, but there is no evidence that the berm is causing any issues. He noted that Ms. Sundberg complained about truck traffic during the initial construction activity. He stated that the work on the site was done consistent with the special use permit. He stated that the berm as designed is built in conformance with engineering requirements and would have been approved if included in the original submittal. He stated that the City staff sets high standards for development. He added that the developer hired one of the best engineering firms

to conduct the acoustical and vibration study. He thanked the Commissioners for their time and patience on this matter.

Hearing no staff response to the public testimony, Acting Chairman Kehr closed the public hearing and invited Commission discussion and action.

Commissioner Freeman thanked all parties for the information presented and acknowledged that this process has been costly to all parties. He stated that the subdivision was originally approved by the City Council through a Special Use Permit adding that the approval included a berm ranging in height from 11 to 13 feet. He stated that the berm was indicated on the plat, the engineering plans and incorporated as part of the ordinance approved in 2015. He stated that those facts make it difficult to accept the position statement submitted on behalf of the objectors that a berm was never mentioned. He stated that a berm is in the record from the 2015 approvals. He stated that without notice to the City, and without permission, the height of the berm was increased 26 to 29 feet. He noted that the height of the berm rivals even the tallest commercial buildings in the area, let alone in the residential area. He stated that the Gavin Court neighbors have consistently complained about the height of the berm. He stated that he disagrees that the change in the height of the berm is benign, adding that as constructed, the berm is significantly non-compliant with the approving ordinance. He stated that initially, the Commission was told that to reduce the height of the berm to the previously approved height, 700 semi-truck loads of dirt would need to travel on Oak Knoll Drive, he noted that the number of trucks as now stated is 1,500. He stated that he fails to see how allowing the berm to remain at the constructed height benefits either the City or the neighbors. He stated that the Plan Commission recommended approval of the plat and engineering plans as presented in 2015 and the impact fee for removal of the soil was assessed to the developer assuming that construction would proceed in compliance with the approvals. He stated that the request to allow the berm to remain at the constructed height cannot be considered in isolation from other facts. He stated that it is not known whether the berm, at the current height, would have been approved if it was presented as part of the original petition. He stated that the Plan Commission lacks the authority to punish the petitioner for constructing the berm in a manner that is not in compliance with the approved plans adding however that limitation should not affect the Commission's recommendation on the request for an amendment. He reviewed the criteria that must be considered when evaluating requests for amendments to Special Use Permits. He reviewed that the Commission must find that the proposed amendment is not detrimental or injurious to other properties in the area or to the use or enjoyment of those properties, and must not substantially diminish the value of nearby properties. He stated that on those points, given the height and steep grade of the berm, there is an obvious impact. He noted however that he is not convinced that the vibration and sound experienced by the neighboring residents is the result of the height of the berm noting that the consultants did not provide evidence tying the berm to those impacts, or for that matter, excluding the berm from causing some impact. He stated that as he noted at the January meeting, in

his opinion, the City took reasonable actions in an effort to resolve the unrelated drainage issue and influence Metra to conduct maintenance on the railroad property. He stated however that there is no dispute that the residents' other complaints, which have been voiced consistently, are legitimate and should be given deference. He reviewed the remaining special use permit criteria noting that findings must be made that development in the area not be impeded, and that the proposed special use will not detract from the primary nature of the area. He added that findings also must be made that from an architectural perspective, the proposed use is not incompatible with the area, immediate neighborhood or character so as to substantially diminish property values. He stated that the berm is of an extraordinary height and would not have been approved originally, without difficulty. He stated that he has difficulty envisioning a building at the height of the berm, as constructed, in this neighborhood. He stated that the berm was not approved originally and should not be approved now. He stated that he is prepared to make a motion consistent with his comments and further, to direct that findings be prepared by the City Attorney and that the excess dirt be removed as soon as possible.

Commissioner Berg stated his agreement with Commissioner Freeman.

Commissioner Henry stated that he was on the Commission three years ago and spent many hours listening to the testimony on this matter. He pointed out that permission was granted for a specific plan and the approvals were not followed. He noted that there is a reason that the City has a process in place. He stated that he understands the role of the Commission, but felt the need to express his point of view. He stated support for the position outlined by Commissioner Freeman.

Commissioner Freeman commented that both staff and the Commission have limited authority around enforcement issues noting that when litigation is threatened, staff is limited in its ability to be proactive in demanding that the berm be removed.

Acting Chairman Kehr stated that it is unclear to her whether the height of the berm is in any way creating the situation described by the neighbors. She stated that the City has been proactive in addressing the culvert and clear in articulating the need for maintenance of the pond on a regular basis. She noted that the residents noted drainage problems during unusually heavy storms which impacted others in the community. She stated that based on the evidence presented, she is unconvinced of the cause and effect attributed to the berm.

Commissioner Pickus agreed with the comments of Acting Chairman Kehr but also noted agreement that it is unlikely that a berm of this height would have been approved as part of the original petition. He stated he too is unconvinced that the berm has caused the issues described by the neighbors. He stated that the City Engineer has approved the berm as built. He noted that the photos presented show 12 inches of sediment and standing water in the culvert and stated that those

conditions will cause an issue for upstream properties. He reiterated that he is not convinced that the height of the berm has caused the issues that have been raised.

Commissioner Ruggles stated that she too is unconvinced that the berm created the issues described. She noted that three professionals talked about sound and vibration and two of them could find no evidence of the berm causing a negative impact and the third, could only offer an opinion that the berm may be creating issues for the neighbors. She stated that she is not convinced that reducing the height of the berm will improve the neighbors' situation. She stated that Mr. Bleck explained the drainage patterns and condition of the culvert and ditch. She stated that she understands Commissioner Freeman's position and noted that it is up to each member of the Commission to determine whether the criteria for a special use permit are satisfied. She reiterated that she is unconvinced that the berm is creating an endangerment to the residents.

Commissioner Freeman made a motion to deny the petition subject to the Commission's review and approval of findings prepared by the City Attorney and with direction to the developer to work with the City staff to begin reducing the height of the berm in a way that mitigates any impact on the residents and to bring it into conformance with the approved plans.

The motion was seconded by Commissioner Henry.

Acting Chairman Kehr requested a roll call vote.

Commissioners Freeman, Henry and Berg voted in support of the motion. Commissioners Ruggles and Pickus, and Acting Chairman Kehr voted nay on the motion. The vote was 3 to 3, the motion failed.

Mr. Pickrell confirmed that the matter will be forwarded to the City Council, after approval of the findings at the next meeting, based on the 3 to 3 vote, which is a denial of the motion. He stated that the Commission could make another motion if desired.

Commissioner Berg stated that Commissioner Freeman clearly articulated the opinions that he shares. He noted that in his opinion, the berm presents some concerns from an aesthetic perspective. He stated that he was on the Commission when the Oak Knoll Woodlands Subdivision was originally considered, noting that there was a great deal of discussion and input from interested parties. He stated that the benefits of the development as described at that time focused on open space. He stated that the berm is quite a large element and in his opinion, changes the dynamics of the character that was envisioned for the area. He noted that the berm suddenly appearing would disappoint him if he lived in the area.

Acting Chairman Kehr stated that in her opinion, the objectors did not present a thorough analysis which she found disconcerting. She stated that a more detailed analysis may have swayed other Commissioners.

Commissioner Freeman reiterated that in his opinion, the berm has an impact on the ability of the Gavin Court neighbors to use their backyards. He stated that the berm is taller than buildings in Lake Forest and as a result, is inconsistent with the character of the neighborhood. He stated that an expert is not needed to evaluate the character aspect noting that the residents are in the best position to evaluate the character impacts. He reiterated that standards A and B relating to use and enjoyment of property in the immediate vicinity are not satisfied explaining that the ability to use backyards in the area has been impacted and changed. He stated that standards C and D not met explaining that the berm is not consistent with the neighborhood or any buildings in the neighborhood.

Acting Chairman Kehr stated that it appears that it would be appropriate to conclude discussion at this time.

Mr. Pickrell confirmed that he will prepare findings reflecting the Commissioners' points of view which will be presented to the Commission for review and approval.

3. Public Hearing and Action: Request for Tentative and Final Approval of a Two Lot Plat of Re-Subdivision and Associated Variances for a Duplex Proposed on the Southeast Corner of McKinley Road and Scott Street.

Property Owner: Joseph Weidenhamer Family Trust, Joseph Weidenhamer
Trustee

Representative: Scott Streightiff, architect

Acting Chairman Kehr asked the Commission for any Ex Parte contacts or conflicts of interest, hearing none, she swore in all those intending to speak on this matter.

Mr. Streightiff stated that the purpose of the request is to accommodate Sutton Place, a proposed duplex residence. He stated that approval of a plat of resubdivision and associated variances is requested. He stated that as proposed, the resubdivision plat delineates setbacks that vary from the required zoning setbacks in the GR-2 District in which the property is located. He stated that the proposed setback lines are located closer to the front, corner side and rear yard property lines than the setbacks required in the GR-2 zoning district to conform to the pattern of development in the area. He stated that the development will conform to all other zoning requirements and to the building scale requirements. He provided photos of other properties in the area noting the various architectural styles found in the area and provided images of the existing streetscapes along McKinley Road and Scott Street. He noted the pattern of setbacks along McKinley Road and Scott Street. He pointed out the commercial area across the railroad

tracks. He provided photos of various multi-family residential developments in the area including those that are now under construction.

Mr. Weidenhamer reviewed the history of the property dating back to 1861 noting that the lot was created as a part of the S. F. Miller Subdivision. He stated that in 1924, the Suttons purchased what was then Lot 1 of the subdivision, constructed a home and raised children there. He noted that Ms. Sutton remained in the house until just recently when she relocated to a nursing home. He stated that the lot changed in size and dimensions over the years but has remained unchanged since the 1950's. He stated that prior to purchasing the property, he consulted with City staff to understand the options for redevelopment of the property. He stated that he determined that the best approach was to redevelop the site with two, attached single family homes. He reviewed his development goals noting that he would like to be a steward of the property after the long ownership by the Sutton family. He stated that through redevelopment of the site, he would like to initiate the revitalization of Scott Street, provide smaller living units to fill an unmet need in the community, create a buffer between the larger multi-family developments occurring in the area and the existing single family homes, and increase property values in the area. He stated that the proposed duplex will appear as two single family homes, one facing Scott Street, and the other facing McKinley Road. He requested approval of the subdivision noting that he intends to refer to the development as "Sutton Place" in honor of the long time property owners.

Mr. Streightiff stated that the proposed development will not adversely affect the neighborhood character. He stated that the buildings will be designed with an understated historic character and will be constructed of high quality materials, with traditional detailing. He presented conceptual elevations and precedent images of similar development. He stated that when viewed from either street, the units will appear as single family homes, compatible in character with the surrounding area and the overall Central Business District. He presented a preliminary landscape plan. He concluded noting that the proposed development will fill a need in the community, provide a buffer in an area of transition between uses, will revitalize the corner and will respect the neighborhood character.

Ms. Czerniak stated that the petition is before the Commission for consideration of a plat of resubdivision and associated variances. She stated that the design aspects of the project will be reviewed by the Building Review Board however, the petitioner has provided some concepts of the duplex envisioned for the site to give the Commission an idea of what is planned. She stated that the property is currently configured in two parcels, a small parcel at the corner of McKinley Road and Scott Street, and a larger, reverse "L" shaped parcel that wraps around two sides of the smaller parcel. She stated that two, more evenly sized lots are proposed. She confirmed that the property, until recently, was in the ownership of a single family for many decades. She reviewed the existing nonconforming conditions of properties along McKinley Road due to the relocation of McKinley Road away from the railroad tracks many years ago. She stated that the GR-2 District permits single

family homes and duplexes, two attached single family homes. She stated that the property is challenging because it is larger than most in the area noting that developing the property with a single, large home could be out of character with the surrounding area. She stated that the property totals 11,471 square feet and meets the minimum lot size of 6,250 square feet for a duplex dwelling, a building with two units. She noted however, the petitioner desires to subdivide the property to allow each attached unit and the surrounding yard areas to be held in separate ownerships, with no commonly held space. She stated that the proposed lot configuration will require a variance because the individual properties as proposed are slightly below the minimum lot size. She noted that the reconfigured lots as proposed, will have more evenly distributed street frontage than the two lots as currently configured. She reviewed the required and proposed zoning setbacks, and the variances needed. She stated that the lots conform to the required street frontage but noted that a setback variance is requested along McKinley Road to allow the new duplex to conform to the pattern of setbacks of other homes along the street. She stated that as noted by the petitioner, the McKinley Road street frontage is undergoing some transition, with some redevelopment occurring. She stated that as proposed, this development will “turn the corner” with one unit facing McKinley Road and the other facing Scott Street providing a transition to the surrounding neighborhood. She stated that the staff report provides findings in support of the petition.

In response to questions from Commissioner Freeman, Ms. Czerniak stated that a six foot side yard setback applies to the adjacent property to the east. She explained that the east edge of the proposed lots is considered the rear yard because the narrowest street frontage of the lots is on McKinley Road noting that the Zoning Code defines the rear yard as the side of the lot opposite the narrowest street frontage. She noted as a result, a rear yard to side yard relationship exists with the neighboring property.

Commissioner Berg pointed out that only the garage on Lot 1 approaches within six feet of the east property line.

Ms. Czerniak clarified that the setbacks reflected on a plat will define the permitted building footprint, not necessarily the actual building footprint.

Commissioner Berg stated that in this case, it is helpful to see the conceptual footprint of the building. He noted that if the zoning setbacks were applied to this property, and no variances were granted, the residences would be more limited in size. He noted that by allowing flexibility from the required setbacks, the petitioner is getting a significant benefit. He expressed concern that a precedent for future development may be set by approving this petition as presented.

At the request of the Commission, Ms. Czerniak reviewed the setbacks of each lot as proposed by the petitioner. She stated that rather than a 40' setback along McKinley Road, a nine foot setback is proposed, requiring a variance. She stated

that the required setback of 12 feet will be met on the north side of the property, along Scott Street, so no variance is required in that area. She noted that because the east side of the property is defined as the rear yard, a 35 foot setback applies in that area. She noted that a setback is requested along the east property line. She reiterated that the setback for the adjacent property to the east is six feet because it is a side yard. She stated that the proposed building complies with the setbacks that apply to the south property line. She cautioned the Commission that configuring the setbacks to an anticipated building footprint would be unusual and could present problems in the future as the design of the building evolves or if the property is sold before it is developed.

In response to a questions from Commissioner Freeman, Ms. Czerniak stated that setbacks for an attached garage are the same as for the house. She stated the setbacks for detached accessory structures are different from setbacks for a house, the principal structure.

In response to questions from the Commission, Ms. Czerniak stated that subdivision of duplexes is not uncommon however, in most cases, the yard remains as common or limited common area. She stated that in this case, the petitioner desires to subdivide the property as well as the structure to establish two completely separate properties which will share a demising wall.

Acting Chairman Kehr spoke to the concern of precedent noting that the property has a unique set of characteristics that will not directly apply to other properties in the community.

In response to questions from Commissioner Freeman, Mr. Streightiff stated that as proposed, at the closest point, the building on Lot 2 is proposed at 16 feet from the east property line.

Mr. Weidenhamer reiterated that when the lot to the east is redeveloped, the required setback distance for a new home on that lot is six feet from the east property line of his property.

Commissioner Freeman observed that the east property line visually reads as a side yard for the property in this petition. He questioned whether there is a way to fashion an approval that establishes a setback for habitable space.

Ms. Czerniak confirmed that the plat could reflect different setbacks for each of the parcels. She confirmed that variances from the front yard setback along McKinley Road have been granted for other developments in the area. She stated that given the complications and questions raised by the Commission, it may be appropriate to consider only a tentative plat of subdivision at this time to allow for the design review of the project to be completed before final consideration.

In response to questions from Acting Commissioner Kehr, Mr. Weidenhamer stated that he intends to camouflage the mechanical boxes along Scott Street with shrubbery. He stated that overall, his intent is to achieve an elegant French Country character on the site adding that boxwood shrubs are proposed around the courtyards. He acknowledged that a closer look is needed to verify whether the turning radii in the courtyards, near the garages is adequate. He agreed that backing out of the garage on to McKinley Road is not desirable. He stated that the driveway approach will be brick with the crushed stone limited to the interior of the courtyard, away from the street. He stated that consideration will be given to heated driveways given the limited space for stacking snow.

Acting Chairman Kehr invited public testimony. Hearing none, she invited final questions and comments from the Commission.

Commissioner Berg noted that brick is used prominently along the McKinley Road streetscape with stucco as a secondary material. He encouraged consideration of the use of brick more prominently to assure compatibility with other buildings in the area and with the character of the nearby business district. He added that consideration should also be given to elevating the structures slightly above ground level to achieve a more urban character and for compatibility with other residential buildings in the area. He noted that three steps at the most would be appropriate. He stated that in exchange for variances, some extra efforts are expected to achieve compatibility with the streetscape.

Acting Chairman Kehr suggested that the discussion about exterior materials should be left to the Building Review Board. She reiterated that this is a unique site, on a busy road. She stated that if the property was on another street the situation would be different. She stated that the proposed development appears to be a good buffer between the railroad tracks and road, and the single family neighborhood to the east. She stated that from the point of view of the neighbors, the height of the building may be more of a concern than the setback variances. Hearing no further questions or comments from the Commission, she invited a motion.

Commissioner Freeman stated that the plan is very thoughtful adding that the detailed drawings helped to make the case that the property is unique and merits special consideration. He added that he is hopeful that the proposed development will inspire additional investment in other properties in the area. He made a motion to recommend approval of the tentative plat of resubdivision consistent with the recommendations in the staff report, approval of a variance from the minimum lot size as it relates to duplexes in the GR-2 District, approval of a variance from the front yard (west) setback to allow a setback of 9 feet instead of the required 40-foot setback in conformance with other properties along McKinley Road, and approval of a variance from the rear yard (east) setback to allow a setback of six feet for Lot 1 and 12 feet for Lot 2 instead of the required 35-foot rear yard setback. He noted that the property line between the two parcels will be reflected on a final plat of

subdivision, after construction is completed, based on an “as-built” survey. He noted that the final plat will require further review by the Commission.

The motion was seconded by Commissioner Henry and was approved by a vote of 6 to 0.

5. Additional public comment on non-agenda items

There was no testimony presented on non-agenda items.

6. Additional information from staff.

There was no additional information presented by staff.

The meeting was adjourned at 10:13 p.m.

Respectfully submitted,

Catherine Czerniak
Director of Community Development