

MINUTES
WILL COUNTY LAND USE AND DEVELOPMENT COMMITTEE
March 3, 2009

Pledge of Allegiance

Chairman Weigel led the pledge of allegiance.

Call to Order:

Chairman Weigel called the meeting to order at 10:30 a.m.

Members Present at Roll Call:

Tom Weigel, Debbie Rozak, David Evans, Katrina Deutsche, Michael Wisniewski, Kathleen Konicki and Sharon May.

Members Absent:

Staff Present:

David Dubois, Curt Paddock, Eileen Franz, Anita Wesse, Howard Hamilton and Leigh Kelley.

State's Attorney Present:

Melanie Manning

Others Present:

See sign in sheet.

Approval of Minutes:

PRELIMINARY PLATS AND PLANNED UNIT DEVELOPMENTS (PUD)

FINAL PLATS

TABLED ZONING CASES

REMANDED ZONING CASES

NEW BUSINESS (ZONING CASES)

PREAUTHORIZATION TO FORECLOSE

OTHER BUSINESS

1. **Approval of draft text for public hearing – Part 3, Articles 30 and 31, and Article 32, 32-01 through 32-04**

Chairman Weigel gave an overview. He explained only minor changes were made, ones that Kathleen Konicki suggested. Chairman Weigel informed staff of three typos that he would like to see corrected: 1. Page 58 Step 2, item 1. should read "Sec. 31-03-B". 2. Page 61, 32-01-A, item 1. should also read "Sec. 31-03-B". 3. Page 57 31-02-B line 18 should read "Yield plans (Subdivisions plans) must be prepared by an engineer, surveyor, professional planner or other qualified professional. Chairman Weigel asked that these changes be added to the text.

Kathleen Konicki commented about her suggested changes and advised the Committee that she did not want to add 32-04-H but asked that 32-04-I be inserted. It would be added as 32-04-H.

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Mr. Lazzara read this back to Ms. Konicki – Excluding the limited credit for open space features set forth in 32-04-A through 32-04-G, at least 75% of the land area counted toward satisfying the minimum open space requirement shall be conserved as natural habitat and planted with native species.

Chairman Weigel asked Mr. Hamilton if he had a problem with adding this and he answered it is the Committee's decision. The difference is to whether or not your conservation design open spaces are just going to be natural areas or if there are going to be other things considered.

Ms. Konicki stated a significant portion needs to be a natural habitat or we are really not into conservation design.

Conversation ensued regarding the minimum space requirement to be conserved as natural habitat.

Kathleen Konicki made a motion to lower the minimum space requirements to be conserved to 65% and insert 32-04-I.

Mr. Evans asked staff to give their opinion to the proposed changes 32-04-I and Mr. Hamilton explained that with conservation design you want to preserve natural areas and habitats, this clearly states that intention. The negative is that it takes away the ability to be creative with your proposed site because you only get to be creative with 25% of your site and elsewhere in the ordinance we have given a density bonus for creating natural areas. For each natural area that is created you would get credit for 1.2 acres. In this proposed section we are both encouraging and requiring open spaces.

Ms. Konicki stated we need a certain minimum so that we get a product that we recognize as being conservation design. Chairman Weigel stated he would prefer to see 50%.

Ms. Rozak asked if we are going to be requiring this would the developer still get the bonus and Mr. Hamilton suggested if we are going to have a minimum re-write the bonus to be only for anything above the minimum.

Ms. Konicki made a motion to amend the ordinance to set a minimum of 50% through 32-04-I (which would become 32-04-H) and amend the bonus section to give a credit for anything above that.

Mrs. Rozak asked Mr. Paddock his thoughts and he replied with regard to saying “anything above that” is too vague there should be more specificity as to what would qualify as a bonus.

Ms. Konicki asked if bonus density awarded for the natural areas tied to an amount and Mr. Hamilton explained that it is 1.2 acres for every 1- acre created.

Ms. Konicki stated she would like to see a guaranteed minimum. By reducing 32-04-I down to 50% we are still allowing plenty of creativity and with the incentive for anything above the 50% we are encouraging also.

Mr. Paddock advised the Committee that what they are voting on today is languages for the purposes of a public hearing and could be modified at a later date.

Ms. Konicki asked that her comments be put in prior to the public hearing.

David Evans seconded the motion.

Mr. Wisniewski asked about the definition of mature woodlands and Mr. Lazzara explained it to him.

Chairman Weigel asked Ms. Konicki about her motion and she explained that the **motion is to take what had been 32-04-I and re-number it to 32-04-H and it would read as follows: Excluding the limited credit for open space features set forth in 32-04-A through 32-04-G, at least 75% of the land area counted toward satisfying the minimum open space requirement shall be conserved as natural habitat and planted with native species. She moved that this language be inserted into the ordinance as 32-04-H and that we amend the incentive part of the ordinance to provide incentive only for anything over 50%.**

**ROLL CALL VOTE: Weigel, Rozak, Deutsche, Evans, Konicki, May and Wisniewski voted “yes”.
ALL IN FAVOR MOTION CARRIED (7-0)**

Chairman Weigel called for a motion to include the corrections that he mentioned above.

**Kathleen Konicki made a motion to include the corrections that Chairman Weigel brought to staff’s attention and are listed above; seconded by David Evans.
ALL IN FAVOR MOTION CARRIED (7-0)**

**Kathleen Konicki made a motion to approve Part 3, Article 30,31,32, 32-01-32-04 of the working draft dated February 25, 2009 as amended as the hearing draft text for those sections of the Will County Subdivision Ordinance; seconded by Debbie Rozak.
ALL IN FAVOR MOTION CARRIED (7-0)**

**Kathleen Konicki made a motion to approve the zoning ordinance text amendments identified in the Zoning Ordinance Conservation Design text amendments working draft dated February 25, 2009 as the public hearing draft text for those sections of the Will County Zoning Ordinance; seconded by Michael Wisniewski.
ALL IN FAVOR MOTION CARRIED (7-0)**

Introduction of Articles 32-05, Ownership and Management of Open Space, and 32-06, Legal Instrument for Permanent Protection draft text

Mr. Lazzara referenced the adopted schedule and how it broke the ordinance into two parts. Today we will talk about some of the maintenance measures that would be in place.

Mr. Paddock gave a brief overview of this topic. If a developer chooses the conservation design element and it gets approved and moves forward the responsibility for maintaining the natural areas would be lodged in a homeowners association. Some homeowners associations do a great job, but some fail. They may fail to collect the dues necessary to carry out its assigned function.

We need to have some type of backup mechanism to deal with this situation. An SSA is a tool being proposed to provide an alternative stream of revenue to deal with the possibility of a homeowners association failing.

Staff has contacted some leading experts in the field of SSAs. They are here today to talk about how this is an accepted technique that has been used in a wide variety of situations that needs to be done appropriately and carefully. Using an SSA as a backup funding mechanism has been done before, within the past two years the County Board has adopted a subdivision where an SSA was adopted as a backup mechanism.

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Mr. Paddock introduced Mr. Steve Friedman and Mr. Gregory Hummel.

Steve Friedman explained most of his clients are government entities and he has been asked to speak today as to whether it is appropriate and how is it appropriate to create a backup mechanism for maintenance of natural areas that are generated from this ordinance that are different from other kinds of subdivisions. The way the ordinance is structured and the approach the County is taking basically says the homeowners association has the responsibility for the long-term maintenance of these types of common areas. This is a fairly common mechanism and at the time development, the developer and subsequently the various individual owners are aware of (because it should be disclosed as part of their declarations in detail) what their responsibilities are and the cost of the responsibilities. If the subdivision is set up right and the homeowners association is set up correctly the expectation of this obligation is well stated and presented and should be well understood. The areas often covered by homeowners association are private common areas and special public infrastructures.

Mr. Friedman discussed the potential failures of a homeowners association. In the event of a failure the public sector has an issue of trying to protect the public interest not the private portions of the interest. In terms of protecting the public interest there are some mechanisms that can be used. Distinctions need to be made regarding what kinds of interests you are trying to protect. If it is a maintenance interest it is one thing. If it is a special service, an actually higher level of service being provided that the government has developed an interest in, even though it is a voluntary increase in services, it is a different issue. If it is capital costs it is a third and more complex kind of issue.

Today we are talking about the maintenance issue and whether this mechanism is appropriate and appropriately structured.

There are several different options for enforcing the government interest in protecting the public interest in these things: a letter of credit or performance bond, you can't really maintain these indefinitely. They are usually used during the construction phase to make sure the improvements are completed because they have a defined period of time. You sue under contract law, you (the government) have a contract with the homeowners association. They are responsible for doing something, you can go to court to try to enforce specific performance but if they have become dysfunctional how do you enforce that? You can create a special assessment or you can levy a special assessment. At the time of failure of performance you need to go into court, create a series of documents through a complex process to levy the special assessment and at that point you would impose the costs as a lien on the property, but would have to go through a court ordered procedure. What has become the accepted mechanism is to create a special service area at the time of the development that is in place and can be activated when and if (only if) there has been a failure. The uses for which it can be used are carefully circumscribed within the documents that setup the mechanism.

Mr. Hummel explained that SSAs in Illinois have been around for a long time. He has been involved with about 40 SSAs. They act as a mini constitution for a specific area of geography. They have a great flexibility and the key is a lot of preparation and thought at the time of creation of the SSA. There are three ordinances mandated by the statute that you have to have in place the first is a proposing ordinance – that talks about the special services, the geography, who owns the property and that gives rise to a public hearing where people in the denominated geography have an opportunity to be heard about this proposed SSA. SSAs can be proposed by units of government and by owners of property. You want to get it right in the beginning with the developer or the property owner seeking to do development. The three ordinances are designed to create a lot of transparency so that people know what is going on. You need to create documents that force disclosure not only at the time that the SSA is created but also going forward into time. So that subsequent owners of that

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property get knowledge of the SSA and its specific purposes in terms of what the special services are. When you create a special service area you are agreeing (in these documents) that something is going to be provided that is beyond what is normal governmental services. This obligation needs to be carefully crafted and embedded in the declaration of the homeowners association, needs to define what your special services are and how they will come into being. The obligations are in the public sphere but they are being discharged in normal situations by the property owners association. You have a triggering event in the future which is a default condition and that is where the public body steps in and renders the special services and then uses the tax to make itself whole.

Mr. Hummel stated Mr. Friedman touched upon surety bonds, letters of credit, annexation agreements and development agreements (which would require judicial proceedings to ultimately get a judgment lien), which then could be executed upon. These are too cumbersome. The beauty of the SSA is that it contemplates what is going to happen in the future and prescribes with detail how it works, you step in and rectify these problems, you have exercised self-help and those rights have been granted to you under the property declaration, homeowners association documentation.

The second ordinance is the establishing ordinance is the document by which you have the right subsequent to that time to enact the levy. When Mr. Hummel does infrastructure bond issues on the front end they do a bond ordinance, which is the third ordinance. What we are contemplating doing is a tax levy later in relation to the question of default. You enable the terms of that levy by setting a rate by describing the special services because unlike a bond financing you do not want to have a tax in place that you have to abate year to year. What you want is to have the right to impose or levy that tax in the future once you become aware of a default situation and the law does enable all of that. Two categories of people can object to a special service area: 1. Electors/voters— persons who are eighteen years old or older living on the property in question. 2. Property owners. A special service area is not able to go forward if more than 51% of those groups object. They would render their objection at the time of the public hearing. If you are dealing with a developer and a landowner and the property in question is vacant you don't face the question of electors. If you get past the public hearing and the objection period of 60 days follow that and nothing happens. Then you are free to create the establishing ordinance. The law ends at that point. Mr. Hummel suggests taking the establishing ordinance and tie it with a document called a declaration of consent. The declaration of consent is recorded against the geography in question and the beauty of that document is it puts everybody on notice from the time of filing to forever that there is this special service area in place. That document and the establishing ordinance contain provisions that allow for dissolution, for enlargement and allow for a wide range of things. That is something that is not in the statute that he strongly recommends. The beauty is that if you are dealing with a homebuilder, they mandate in that document (there is a 2-3 page rider to every purchase contract that they enter into) making full disclosure of the special service area. It is important as a Committee of the Board who is contemplating something that is a very positive public policy. You are providing a mechanism where by the taxing power can be invoked appropriately to make sure those things happen over a long period of time.

This is a tool used all over the country and should be well thought through in the beginning: the services should be well described, the rate should be well described in terms of what the tax is as well as the mechanism by which it comes into being. This goes together with the homeowner's declaration documentation. It would be a robust tool for maintaining the public purpose.

Mr. Friedman stated what is important is using this as backup for maintenance so that the constitution is going to be circumscribed. If done correctly there should be no surprises to a homeowner that looked at his homeowner's association declarations and was properly instructed by their advisors.

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There is plenty of cynicism about whether people that were buying houses had been properly guided by their brokers or advisors.

How do you protect the public from those kinds of practices? Homebuyers counseling was being required in certain parts of Illinois and was eventually struck down.

Mrs. Rozak asked Mr. Freedman about the 51% vote and if the proposing and establishing ordinances were one time things that a county or government does or is it for each SSA being created and about issues with subdivisions and ponds. Mr. Hummel answered that way to do this right is it needs to be done with respect to a specific geography. The easiest way to do that is with land that is not yet developed and you want to impose these conservation standards as part of the subdivision approval process and ultimate review of a declaration of covenants that govern a homeowners association. You would have enabling language in article 32 Open Space Provisions that would lay out the procedure that you would follow with a discreet developer. If you want to do conservation reserve type of mandates in an existing neighborhood that is a different thing. That may be more appropriate for a special assessment than a special service area. The special assessment is a complicated one hundred year old statue that involves legislative enactment also combined with judicial confirmation. One of the beauties of the special service area is that it is much more flexible and can be tailored. If you have one hundred people and ten of them have homes on a pond there is the question of what is the special public benefit rationally related to all one hundred homeowners. You can make the case that the open space is a desirable item for anyone who lives in that enclave or in that subdivision. Our ordinance now takes an ad velorum approach and that value appreciation to all of those homes can be expressed as a rate of tax. Another way to do that is to create two types of tax levels one for the people around the pond and another for everyone else. This works best on an undeveloped parcel, you will deal with maintenance of open space and it will be put into place on the front end and you would be negotiating with one party (the developer). You put the documents in place that disclose to anybody who ever buys from that developer or the second or third time homebuyer who buys from one another. They notice the declaration that is recorded.

Mrs. Rozak stated with regard to the 51% it is just the developer in the beginning who sets it up and Mr. Hummel answered yes. Mrs. Rozak then stated you are not talking about one hundred people and Mr. Hummel answered yes that is correct. Mrs. Rozak stated even when it is dormant and then it is going to go into effect you are still not talking about having 51% and Mr. Hummel answered no, you have established this on the front end and made it a covenant that binds the land that they buy.

Mr. Friedman stated the nesting with the declarations for the homeowners or property owners association is critical. The developer should have worked out with the homeowners association what the obligations are. If there are zones that are necessary in order to equitably and marketably define these obligations the developer needs to do that in the beginning. The SSA needs to have the flexibility to essentially parallel that. There is an alternate in the law that allows the tax to be levied on other than ad velorum basis. It could be that if you have differential benefits in a large area there will be differential rates and methods it won't all be ad velorum tax. It would parallel what was worked out by the developer and approved by this Committee, subject to whatever provisions there might be for amendment if people find that that's not proper or workable for some reason. Those two things go hand in glove. When the Committee is bringing forward the backup, the dormant SSA, and levying a tax you are not levying anything different than what is being levied by the homeowners association. It should be exactly what the homeowner expected.

Chairman Weigel stated our State's Attorney has advised that 51% of the homeowner's could petition not to be levied a tax. He then asked if Mr. Friedman was saying the County needs to pass the levy before the

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homeowners association is actually established and Mr. Friedman answered yes. Chairman Weigel stated then they cannot petition against it and Mr. Hummel answered that is right.

Mr. Hummel stated the key is that the homebuyer receives notice at the time of purchase and their title report would pick it up. It is referenced in any number of different places in that ultimate purchase of real estate. If you tried to do this in an established subdivision, it would be a very different situation. Those people could say we don't want it and they would have the right to say no.

Chairman Weigel stated we would need to hold a public hearing up front when this is set up and Mr. Hummel answered yes.

Mr. Lazzara advised the Committee that this was done for Palomino Trace subdivision.

Mr. Friedman explained that you would integrate the various public hearings. Sometimes you stack the public hearings sequentially so each part of the action is properly heard.

Chairman Weigel asked if you set the rate at this time and Mr. Friedman answered you set a maximum rate and you have the option of setting a maximum duration, but you are not required to. You want this to be in perpetuity so you would not want to set a maximum duration. You would set a maximum tax rate and tax structure as part of the established ordinance.

Mr. Evans asked once the SSA has been established and the association becomes deficient and not performing their duties, who initiates the utilizing of the SSA and Mr. Hummel answered the County Board acting as the governing body of the special service area then taking the initiative to impose the tax as enabled by the establishing ordinance.

Ms. Konicki asked Mr. Hummel what he meant by initiative and Mr. Hummel answered Will County passes the levy ordinance.

Ms. Konicki asked with regard to the levy ordinance of the maximum tax rate, it that rate allowed to increase by some vehicle whether it is tied to the CPI or a cap mechanism and Mr. Hummel answered no, you have to set a maximum at the beginning. It is a maximum rate.

Ms. Konicki asked where the money goes and Mr. Hummel answered that it would go to the County Collector and put into a specific fund for the purpose of rendering the special services for the area in question.

Ms. Konicki asked if the County would have the power under law to turn this money over to the homeowners association to take care of their own business and Mr. Hummel answered you need to be careful and maybe have a fiscal agent or have the County handle it through a public police department.

Ms. Konicki stated many times problems with homeowners associations are not that they are irresponsible, they just can't get the funds collected, were the County able to collect the funds and give them to the homeowners association, the would operate very responsibly and get everything done. If that were the situation could the County turn it over and both gentlemen answered yes. Mr. Friedman answered that the government would enter into a contract with a private entity to carry out certain services and that is used commonly in SSAs in commercial districts.

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Mr. Hummel stated there is often a services agreement that is entered into between the unit of government and first the developer and then the homeowners association as a mechanism to address that. If there is a funding failure in terms of the assessment that they are trying levy and do provide the funds through the special taxing mechanism then that services agreement can lay out how those monies are given to them in return for what type of work they have to do.

Ms. Konicki asked if it is possible to establish a two -tier rate in the ordinance, one for a situation where the County is able to turn the money over to a responsible homeowners association and a second and higher rate in the event that it is determined that the homeowners association is not a responsible one and the County is now going to have to not only pass the ordinance but administer the funds as well through some type of a public work structure. Can there be a differential rate structure, can we give an incentive to the homeowners associations and Mr. Hummel answered yes, the statute is very flexible in terms of how you would bring different tiers of special services. One would be more where you would be remitting funds to be discharged for certain tasks to be done by them and another would be where you step in and make it right. The more simple and one rate we can make it the better because when you start having different levels of tax you have to be careful.

Ms. Konicki asked if there is a mechanism by which the homeowners could remove an SSA and Mr. Hummel answered there are provisions for dissolutions of SSAs but it assumes that the bond of debt that paid for the special services in the form of infrastructures is taken care of.

Mr. Friedman explained that it would be a County Board act to decide to terminate the SSA.

Mrs. Rozak asked if the two gentlemen looked at the proposed document and Mr. Hummel stated it is a very good start but he suggested adding more detail and predictability as safeguarding from a disclosure standpoint. There are two tiers to this the enabling language in Section 32 and series of rules and regulations that you want to follow when you want to set one of these up.

Mr. Evans asked what if the rate was set too low and the task that you have to perform costs more money than you have and Mr. Hummel answered you could start collecting the tax, but if you need more tax you are going to have to go to those homeowners. That creates the type of issue you don't want to be involved in. Mr. Hummel advised the Committee to set the rate reasonably but on the high side. Mr. Friedman stated it is a rate and if it is ad velorum as property values increase but if it is by another rate and method we have to figure out a way to create enough margin to last a long time.

Mr. Wisniewski asked staff if they know how many SSAs we have in place and Mr. Lazzara answered that there is one for the natural area, Palomino Trace PUD and Mr. Hamilton has some that are used for stormwater management.

Mr. Wisniewski asked how much burden are we putting on staff to manage these and what would this cost the taxpayers and Mr. Paddock it would be a relatively small number and not a big demand on the staff. Mr. Lazzara added that it would function essentially as an insurance policy.

Ms. Konicki asked about the services being performed on private property and Mr. Hummel answered no and the reason is because in the well crafted declaration you have step-in rights and it can take the form of an outright easement, it could take the form of an easement that exists by function of recording that document, it also could take the form of something called a license, which is a right to enter. There are legal mechanisms

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that give you the right to enter private property to deal with a public obligation in the nature of this conservation. This is a function of a well-drawn homeowners declaration.

Mr. Evans stated in listening to the above testimony the staff needs to have a lot of knowledge in order to craft a proper SSA, where are they going to get this expertise and Mr. Hummel answered that there are model documents numerous documents that are available through the American Bar Association and many other places. You need the template to start with. From a cost consideration point of view you can add as a special service some administrative costs for your staff time both on the front end and as ongoing enforcement basis and the key to that is to be reasonable in the terms of how those fees are set.

Mr. Friedman stated that you have a provision for review of the homeowners association's plan of operations, their responsibilities, etc. As the staff reviews that for your benefit prior to approval, that is where staff needs to do develop expertise or if necessary to reach outside or do specific analysis using other sources of maintenance costs that come from other organizations.

Chairman Weigel asked if a municipality annexes a subdivision is the SSA still in place and Mr. Hummel answered because it is a covenant recorded with the land, one of the key areas of research that he did was he wanted a covenant that runs with the land that is going to be a property right that is pertinent to the property in question and that would not be nullified by an annexation agreement, it is something that would run with the land that the owner of that property annexing in would have to take subject to.

Ms. Konicki stated with regard to the annexing of a subdivision it is this unit of government that sets the SSA in place, can we assign our rights under that SSA to the municipality? Can we word documents in a way where that automatically happens as transfer of collection rights if there is an annexation and Mr. Hummel answered he would anticipate putting this in the original document. He would like to look into this subject further but one way to do this might be to put it under the Intergovernmental Cooperation Act, that is a different statute that could provide the mechanism that she is talking about.

Ms. Konicki asked if we put a rate into place activated the SSA and it is collecting too much money is there a way to allow the homeowners association at some point of accumulation to give some of it back to the residents or must it be kept segregated in this account and Mr. Friedman answered you don't levy the maximum rate, if you don't need the maximum rate, you levy what you need and you keep control over that. Ms. Konicki asked if the rate could be adjusted and Mr. Friedman answered every year.

Ms. Konicki asked what if the rate was too low and Mr. Friedman answered that it would be a reverse referendum objection.

Mr. Tom Joseph (Three Rivers Association) passed out an information packet to the Committee and went over its contents. Mr. Joseph advised the Committee that he brought a couple of people that wished to speak also.

Mr. Joseph stated that he knew of no other contractual agreements, the only thing that was done on public act was about four years ago by the Illinois General Assembly effective August 24, 2004- Public Act 93-1013. Mr. Joseph read the following "Boundaries of a special service area. No lien shall be established against any real property in a special service area nor shall a special service area create a valid tax before a certified copy of an ordinance establishing or altering the boundaries of a special service area, containing a legal description... Mr. Joseph explained that there is a 60- day process for that to take place. This public act was initiated by the Illinois Association of Realtors working with its local associations on behalf of property owners because the

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process was not working. Municipalities were okaying special service areas and they were not being reported so this process affirms the County's role to ensure that it is recorded properly so there is some sort of linkage to this process when there is a special service area being outlined.

Mr. Joseph explained that since January of 2007 he has expressed his concerns about the special service area. In his outline and his opinion 35ILCS 200 stands alone when it comes to the special service areas, that is the statute. Everything else that the County is to consider in an ordinance form is "camouflage". The statute stands alone, it speaks to the SSA specifically. The statute has a very specific process as to how the SSA is to be applied.

Mr. Joseph stated that this is the very first time that he has heard anything like this being suggested this front-end full blown effort up front. There have been some suggestions in language in the proposed ordinance to have a full-blown infrastructure SSA and some discussion to maybe have something focusing on the maintenance of open areas. This would just be an additional tax. Every property owner would be paying a property tax and this SSA if applied would be in addition to the property taxes that are being paid.

Mrs. Rozak asked Mr. Joseph if he is opposed to this who does he feel should pay for any of the problems that would arise on a property and he answered that the County would still have a responsibility. Mr. Joseph added that what the County is saying by considering this type of ordinance is that they are going to pull back from any type of responsibility for the management or maintaining of this open space and push it back the other way.

Mr. Joseph explained that what has been suggested over the past year is to look at possibly a maintenance fund keeping in mind that the County has the ability to lien the property under the law. He has never spoken against the LUDC reviewing the ordinance and/or the conservation design. What he has spoken to is some very specific points within that process that he has had concerns with.

Mr. Evans asked Mr. Joseph about a maintenance fund, how would that be funded and Mr. Joseph answered that it would be up for discussion. Mr. Evans stated there would have to be some way to get the revenue, so wouldn't it be a tax and Mr. Joseph answered no it would go through the plat of land agreement between the developer and the resident and by purchasing it they would understand that they would have some sort of maintenance responsibility for this requirement of all this open space. There is the County's responsibility, there is the ability of lien, the ability of having some sort of maintenance discussion and there could be discussion on having a homeowners association have a private homeowners association maintain that area.

Mr. Wisniewski stated if people want to buy properties and know in advance that there is an additional SSA tax, levy, annual homeowners fee. Isn't it ok if they know in advance and it might increase the real estate sales and Mr. Joseph answered that he asked the Committee members to review the outline that he passed out to them because it is an outline on the statute. His concern is that the statute does not reference a dormant or backup SSA. What he is saying is there is a statute, which is specific and needs to be considered. Beyond that there could be a discussion about some sort of maintenance a discussion about amenities in public development. What he is saying is that when we go about applying a special service assessment that it is a special lien on the property at the outset, which a buyer had no voice in and that is what he is very concerned about.

Mr. Friedman explained about tax deductibility. A homeowner might be better off with a special service area than with a homeowners association fee. With respect to the commentary regarding reporting, recording and notice is consistent with what has been discussed with transparency and making sure people know what they are getting into when they make their purchase.

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Mr. Hummel stated what he is saying is that you comply with the statute when you have one owner and no electors on the property and are dealing with a developer who is entering into negotiations with the County and the point is: every homeowners is going to know about the special service area and it's dormant aspect because it is established in the establishing ordinance up front and that is recorded.

Ms. Konicki stated with regard to Mr. Joseph's comment that government might have some responsibility to maintain private property she asked if he was clear that it is private property and he answered that under original discussion staff referenced open space within the developed area and Ms. Konicki stated it would be private property and Mr. Joseph stated it would be for public maintenance. Ms. Konicki explained that it would be privately owned property and she asked if Mr. Joseph if his still his position that government has some responsibility to maintain this and he answered he would have to study the ordinance.

Conversation ensued regarding the maintenance of private property.

Ms. Konicki informed Mr. Joseph that the declaration of consent, which would be entered into at the outset and travels with the land on each parcel and locks in the consent, which is key. Ms. Konicki asked if the declaration of consent is a separate document and Mr. Hummel answered that it is separate document five pages with attachments and they attach the establishing ordinance. The declaration of consent goes into a series of five or ten paragraphs that lay out, what someone is getting into when they buy in this subdivision that is subject to a special service area. Ms. Konicki stated she assumed the purpose of the declaration of consent is to track with the state statute that Mr. Joseph is always referencing and Mr. Hummel answered yes.

Debbie Bell (Chairman of Government Affairs) she explained that the connotation of SSAs has gotten off to a bad start in Will County because they were infrastructure SSAs, which are a very onerous thing and people really were not aware of what that meant to them when they purchased a house. What that means to a person is that on their tax bill or on by a separate bill they are assessed \$1,500 - \$3,500 each year on top of their tax bill. Ms. Bell stated that every accountant she has spoken to told her that is not tax deductible, it is just an extra fee that they pay and is usually on top of the homeowner's association fee. Our SSA subdivisions percentage wise, they have the highest rate of foreclosure in the county. Most current homeowners associations have in their by laws the right to lien if the homeowner does not pay. They also have the right to foreclose, most use management companies to collect the fees and they contract for the work. That takes the burden off of the homeowners association.

Ms. Bell stated she would not want to see the County be responsible for the collecting of fees and inspecting of property a much easier way would be to require homeowners associations to contract with management companies to do those things, it takes the County out of the issue. It would cost the County money to do these things and it is not the County's expertise but it is a land management company's expertise to do those things. Buyers are scared to purchase in an SSA area it has a bad connotation. It is her duty to explain an SSA dormant or not. A homeowners association is more common and allows them to have more rights, like the right of lien and right of foreclosure and makes more sense.

Ms. Konicki asked about the County going out to collect and Ms. Bell stated the County would have to bill and Ms. Konicki answered no it would just go on the real estate tax bill. The County would only collect the money and turn it over to the homeowners association who could then contract with the maintenance company. Ms. Konicki stated all we want to do is provide a vehicle short of a court process to get the money to the homeowners association that they need to do what they need to do.

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Ms. Konicki asked how the County would enforce the homeowners associations to keep the maintenance company under contract. Ms. Deutsche asked what happens if they fire the maintenance company and Ms. Bell answered that if homeowners associations were required in their bi-laws and Ms. Konicki stated we are going to enforce bi-laws and Ms. Bell answered that is basically what you would be doing with an SSA. Ms. Konicki stated she believed those bi-laws are contracts among all people living within that subdivision and the County is not a party to it, we could not enforce it, and Ms. Konicki does not want any responsibility for enforcing such document. They are private contracts between private landowners. Ms. Bell replied that if homeowners associations were required to use management companies with their bi-laws then we would not get into that situation.

Mr. Hummel stated this is not infrastructure financing it is a much more limited scope and what it does is it creates the highest priority lien on the property in question it primes the first mortgage. If you have a foreclosure situation the mortgagee has to deal with that deferred maintenance problem and make it right. It is defined and for a specific purpose and only kicks in if there is a default situation. It gives the County the appropriate remedy in a way that is effective in a limited fashion.

Ms. Konicki asked how can you assure that it won't be used for infrastructure, that is the big concern. Mr. Hummel answered in the enabling language you can specifically disavow the desire to do any capital improvement SSAs.

Mr. Friedman explained that this would be in the ordinances that are being created.

Mrs. Deutsche asked what if the homeowners association decides to dissolve and Mr. Joseph answered that you have the ability to lien the property under the County, under the laws of Illinois.

Ms. Kitty Vancina (past president of Three Rivers Association of Realtors) stated it is unfortunate that the SSA is under one umbrella. The maintenance SSA is going to be perceived as the same as the structural SSA. Ms. Vancina explained that in their MLS there is an area that asks if there are other special assessments pending and is this an SSA and they must check yes whether the SSA is for maintenance or for infrastructure.

Mrs. May stated the County's special service areas should never include things like the roads, that should not be the responsibility of the homeowner, which is what happened in Minooka.

Conversation ensued regarding the potential of an infrastructure SSA and Mrs. May stated if that language was not in there the real estate community might not have a problem and Mr. Joseph stated that he needed to see what is formally being proposed.

Mrs. May asked how much would the special service area now being proposed in the conservation design subdivision cost people and Mr. Paddock answered people are not currently being assessed because there has not been a default.

Mr. Joseph added that this conversation it was to come in on the front end and applying a levy and going forward with that and Ms. May stated dormant.

Mr. Lazzara explained to the Chairman that there has never been anything in the past minutes regarding SSAs regarding infrastructure improvements. Mr. Joseph stated the language was broad and would come under interpretation. He stated that he is not saying that in the final product that the County Board would be adopting

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something to that extent but he has been trying to maintain clarity for the past fourteen months. The language has not been clear.

Conversation ensued regarding the ability to lien property.

Mr. Kevin Hynes (Homebuilders Association) he understands that we are talking about private property and this needs to be clarified. Mr. Hynes asked if going forward would open spaces be required to be made open to the County population as a whole and Mrs. Rozak asked if he meant trails and Mr. Hynes answered yes. Is the goal to have open space in private developments available only to those homeowners in the association and the guests they invite or is the goal the preservation of open space for the betterment of the entire county and Mr. Hummel answered that the County has to make a choice and in the context of a special service area you are on safe ground if the trail or open space in question benefits the specific special service area you can use the special service area to enforce the maintenance of that. The broader question is a tougher one because if it is part of a system of trails you are stepping into issues of public use, liability and the question of the property owner's rights within the subdivision having the broader public use it. It does not undermine the potential to do a special service area but you have to be careful how far you go with it.

Ms. Konicki asked if this would be defined and determined at the front end by the various documents and Mr. Hummel answered yes, the establishing ordinance, the declaration of consent and the homeowner's declaration- all three of those documents would clearly delineate the scope of the special service area.

Mr. Hynes stated the County is requiring approval of an open space management plan before you even get to the SSA issue. If you are requiring a developer or builder up front to open this up to the public (an SSA only for the homeowners) is fundamentally unfair particularly if I can use your trails or walk through your woods and I get hurt, the homeowners are liable.

Mr. Friedman stated that is an issue that is raised by the calculation of density bonus in 31-04A you could have ways to find the balance of the broader public and locals benefiting.

Chairman Weigel asked staff to take Mr. Hynes' comments into consideration and possibly get the Park District involved with matters such as trails.

Mr. Hummel stated in order to address a system of trails it is in his opinion, an independent capital project and not something that needs to be enmeshed in part of this type of maintenance SSA. Ms. Konicki stated that if we are going to have just maintenance SSAs we should have that density bonus for public use and Mr. Hamilton stated they could be separated in the management plan, this would have to be brought back to the Committee.

Ms. Kate Bliss (Army Corps. of Engineers) reminded everyone that the proposed ordinance is voluntary. It is important to get this ordinance passed to encourage conservation design to protect our aquifers, ground water, drinking water, etc. Ms. Bliss stated she has worked with a lot of municipalities that have passed dormant SSAs. They are very common for stormwater detention dredging. In McHenry County in 2008 six conservation developments were approved.

Ms. Bliss stated she agreed that this must be done right up front. She proposed a technical advisory committee be formed with developers and realtors who are open to the idea of conservation design.

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Ms. Bliss offered suggestions regarding the Soil and Water Conservation District offering to do inspections the first five years of a conservation development and other ways to help with the management of natural areas in conservation design subdivisions.

Ms. Bliss also discussed the topic of negligence with regard to open space.

Tom Bartlett (Southwest Suburban Home Builders Association) stated they are not against conservation design they embrace it. He explained that conservation design should not include curbs and gutters and there are so many features that are not true conservation design. We should do true conservation design or not.

Mr. Bartlett stated the County should have something in place so every homeowners association must have the ability to lien any non-paying member.

Mr. Bartlett asked Mr. Hummel if he had participated in conservation developments with dormant SSAs and he answered yes about ten.

Ms. Konicki stated if we do go forward with the SSA that would not replace the power of homeowners association's to go through the lien process, that would still be in place but if all of that failed then we would revert to the SSA as strictly a backup. Mr. Bartlett would like to see this language.

Mr. Joseph asked for the following to be added for the record- in the previous outline that was submitted in the fall to the Committee there was Section 20-09-B under special service area – if a property owners association will be responsible for ownership and maintenance of streets, drainage easements/facilities, open space, recreational facilities, or other common areas and facilities within a subdivision, the establishment of a special service area pursuant to 35ILCS-200 is required. A special service area funding mechanism will be used as a backup funding mechanism in the event that the property owners association fails to adequately carry out its duties. In previous outlines provided a full infrastructure SSA was included.

Ms. Konicki advised Mr. Joseph that she liked the pamphlet that he passed out to the Committee. It would be good for public education and clarification.

Ders Anderson approached and stated a dormant SSA needs to be activated by a vote of the County Board. Mr. Anderson stated because the common natural areas are serving the function of a lot of public benefit: stormwater recharge, cleaning up stormwater, stormwater quality, mitigating flooding, the infiltration and absorption of that stormwater, carbon entrapment. The ability of the animals and fish to survive is a state significance. As the County assesses the quality of the management of these natural areas they should make some findings if there is a determination that these natural areas are not being managed properly that there be a form that the staff fills out that makes finding that these public benefits are being impacted.

Mr. Anderson asked about the tax deductibility of the SSA payment depends on what it is for and Mr. Hummel answered it is not a quick and easy answer in infrastructure SSAs it ultimately tracts to the question of interest, which is a component of a special tax related to capital improvements it also has to do with the ad velorum nature of the maintenance type of SSA. Broadly speaking the special tax often appears as part of an ad velorum tax bill the IRS typically does not challenge it.

Mr. Harold Liberman from Green Garden Township stated he is aware of a few PUDs that currently have problems with their open space, they are left with weeds and the homeowners have decided to change it to deep

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rooted grasses. The process is very expensive. There is another PUD where the same has occurred but the homeowners cannot decide on who shall pay for the grasses and the installation and another PUD where the grasses were put in place but had no five- year agreement to supervise the plantings and the grasses were ultimately destroyed. The Will County Soil and Water Conservation District would oversee this with the five- year agreement. With an SSA in place we know the plantings would be completed and if the developer or homeowners are aware of this provision the SSA may never have to be used.

Mr. Lazzara explained that at the next special LUDC meeting comments made internally between the LUDC and staff would be revisited.

REPORTS

ADJOURNMENT

Michael Wisniewski made a motion to adjourn; seconded by Kathleen Konicki.

ALL IN FAVOR

MOTION CARRIED (7-0)

The meeting recessed at 1:14.