

**MINUTES OF THE
REGULAR BOARD MEETING
OF THE BOARD OF TRUSTEES
VILLAGE OF NORTHFIELD**

Tuesday, January 17, 2017

As provided for by public notice, the Board of Trustees of the Village of Northfield met in the Council Chambers of the Village Hall at 7:00 p.m. on Tuesday, January 17, 2017 for the Regular Board meeting. The meeting was called to order by President Fred Gougler. The Village Clerk took the roll call.

PRESENT: President Fred Gougler
 Trustees Jane Goldenberg
 John Gregorio
 Allan Kaplan
 Joan Frazier
 Thomas Roszak

ABSENT: Brian Kozminski

ALSO PRESENT: Everette M. Hill, Jr., Village Attorney

APPROVAL OF CONSENT AGENDA ITEMS:

1. Approve the meeting minutes from the December 6, 2016 Village Board meeting.

2. Approve the Bills and Disbursements from 11/16/16 to 12/29/16:	
General Fund	\$419,435.49
Motor Fuel Tax Fund	78,066.21
Foreign Fire Insurance Tax Fund	9,326.80
Water and Sanitary Sewer Fund	60,997.51
Willow Road Improvement Fund	35,741.02
Capital & Equipment Fund	18,687.83
2016 Go Bond Project Fund	524,379.54
Police Pension Fund	<u>\$ 10,086.50</u>
TOTAL	<u>\$1,156,720.90</u>

3. Annual appointments: (a) Approve a Resolution appointing Village Manager Stacy Sigman as Village Clerk for 2017; (b) approve a Resolution appointing Executive Assistant Holly McDonald as Deputy Village Clerk for 2017; and (c) approve a Resolution appointing Finance Director Steve Noble as Treasurer for 2017.

4. Approve the appointment of David Aul to the Architectural Commission to fulfill the unexpired term of Mary Rhodes from 2-1-17 to 9-1-20.

5. Approve an ordinance implementing an Indemnification Agreement with Cook County to permit work by Village crews on County rights-of-way for 2017.

6. Approve an ordinance declaring miscellaneous computer equipment as surplus.

Trustee Goldenberg made a motion, seconded by Trustee Frazier, to approve Consent Agenda items 1 through 6.

Upon the following roll call vote, a motion to approve Consent Agenda items 1 through 6 was approved.

AYES:	Goldenberg Gregorio Kaplan Frazier Roszak	NAYS: 0	ABSTAIN: 0	ABSENT: Kozminski
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CONSIDERATION OF AN ORDINANCE FOR A REQUEST FOR APPROVAL OF A PRELIMINARY AND FINAL PLAT OF PATTERSON SUBDIVISION TO ALLOW FOR THE DIVISION OF THE EXISTING PROPERTY AT 225 OLD FARM ROAD INTO TWO SEPARATE PARCELS

Trustee Goldenberg made a motion, seconded by Trustee Frazier, to approve an ordinance for a request for approval of a preliminary and final plat of Patterson Subdivision to allow for the division of the existing property at 225 Old Farm Road into two separate parcels.

Community Development Director Steve Gutierrez said the petitioners are seeking a subdivision on 2 acres located at 225 Old Farm Road. There is currently a single family home on the south end of the property. Petitioners are proposing to subdivide it into two buildable lots which meet the one acre requirement for an R-1 district. A hearing on this petition was initiated back in November with the Plan and Zoning Commission. At that hearing, there was discussion as to whether the proposed lot abutted Maple Row to the north end of the proposed subdivision. The Plan and Zoning Commission asked Attorney Hill to opine on the question and the hearing was continued. The continued hearing was held in January at which time Attorney Hill submitted his opinion to the Commission. The Commission voted unanimously to approve the proposed plat of subdivision. This is a preliminary and final plat of subdivision.

President Gougler asked Attorney Hill to summarize his findings. Attorney Hill explained that he had reviewed the historical documents which relate to the issue of whether they abutted on either a public street or a private roadway as required by our Subdivision Code. There is a driveway across the north edge of the Patterson property. That driveway is within an easement that was created in 1933 by an entity, Sunset Ridge Development, who owned all the properties along Maple Row and Old Farm Road. This included the Patterson's property. There was also a 1933 agreement which created a right in all of these properties to use the first two properties on the north side and south side of Maple Row for ingress and egress. It did not create a right in all of the properties to have a mutual or reciprocal easement over all the other properties. It is Attorney Hill's opinion that was cured

by a 1935 document, an Indenture (terminology that was used back then). It defined what was meant when it said this easement is for driveway, parkway and utility purposes. The 1935 Indenture clarified the meaning of the term “driveway”. He pointed out in his memo that we tend to think of a driveway as the paved portion of a residential property that leads from a garage to the street. In this instance, in Attorney Hill’s opinion, the language really bears it out that it meant that there would be a reciprocal right of ingress and egress to all the properties that were included in the legal description of that 1935 Indenture. Again, this included the Patterson property. Attorney Hill’s memo was not meant to determine whether there might be some legal theory of non-use by the 225 Old Farm Road owners of that easement. There isn’t much law in Illinois on that very fact intensive issue. That is really an issue for a court to decide. There may also be statute of limitations issues, but Attorney Hill doesn’t think that was the job that either the Plan Commission or the Village Board to make that determination. He concluded that there is an easement and that easement was to be used for ingress and egress to all the properties that the easement crossed, including the 225 Old Farm Road property. There wasn’t anything in the documentation to indicate that the easement was ever abrogated and he believes the 225 Old Farm Road property benefits by the easement.

Morgan Porter, 225 Maple Row, said he read Attorney Hill’s opinion. He said the survey that they have, which was belatedly issued today, to the Board shows parallel east and west easements for either parkway, private roadway, which is the same conclusion in Attorney Hill’s opinion, and utilities. They run east and west. Mr. Porter is arguing that the 40 year statute of limitations should apply. The easements were created back in the 30’s. The 40 year statute is to clean up title to remove ancient documents that have been on title for many years. The idea was, let’s have a 40 year chain of title in the landowner so that if a buyer wants to do a search, he can rely on whatever it has been filed in that 40 years. If it’s beyond that, it’s no longer enforceable. In his opinion, the statute goes beyond just taking away the remedy; it takes away the right and extinguishes that easement. The way to continue this 40 year period is to file a verified statement with the Recorder’s Office. To his knowledge, based on the record as it stands today, that was never done. There is an exception provided in the statute for easements.

Mr. Porter read directly “If the claim falls within one of the exceptions to the Act, ‘(the one potentially applicable exception from the Act’s coverage)’” is an easement the existence of which is apparent from or can be proved by physical evidences of its use.” He emphasized “existence of which”. He also said we’re talking about complying with the ordinance which requires that this lot, the northern lot or Lot 2, abut a private road. He is

saying the easement has been extinguished by the statute of limitations and so therefore, it cannot abut. The record does not show any physical evidence of use and none has ever occurred in his presence. He has lived at 225 Maple Row for 43 years and he goes in and out of that driveway all the time. He said what makes this a complicated case is that his driveway runs east and west or you might say northeast and southwest. However, in the minutes, it was discovered that the Village does not have a Plat of Survey to determine where Maple Row ends and where his driveway begins. That is the fact issue. As he said his brief shows that he has maintained that road at his expense for all the years he has lived there, whether repaving it or filling the pot holes, snow removal or whatever. He said that Maple Row ends at his west property boundary which is five feet further west than the Patterson's property boundary. Mr. Porter indicated he has a Plat of Survey to share with the Board. Some of his neighbors are present to verify his statement that they have never seen any ingress or egress to and from Lot 2 via Maple Row or the land underlying that easement to get out to Sunset Ridge Road. He said ingress and egress are the key words because he is talking about a roadway to access or for that property to access the roadway. Lacking any use of it, then the Act's exceptions for easements do not apply. In that case, the easement for the roadway that Attorney Hill presented in his memo has been extinguished and we go back 40 years from 1935 and that 40 year period expired in 1975. He said to be fair to the Pattersons, they had only four years to file their verified statement because they bought their property in 1971. There is a legislative purpose for the statute. He said it's not meant to be just a forfeiture. It's a "use it or lose it" statute for purposes to simplify and facilitate land title transactions by allowing landowners to rely on a recorded chain of title, such as what he has described in his letter. He and his late wife bought the property as joint tenants back in 1973 and it was recorded with the Registrar of Titles. In 2000, his wife passed away and he filed a deceased joint tenancy affidavit removing her from title and he made a gift to his new wife as tenant by the entirety of this past August. So he can show a chain of title for the last 40 years.

Mr. Porter passed the Plat of Survey to the Board. Mr. Porter then passed around photographs. Maple Row was repaved this past year and the photo shows a line where the repaving ends. He said you can see that repaving that blacktop extends maybe a foot on his driveway. His west boundary is 5 feet further west than the Pattersons' boundary and there is probably about a foot of overlap of the repaving this past fall. That is still west of the Pattersons' property. He shows the line that is their western boundary on the survey. He has said all along and it has been recognized and respected by the neighbors and service vehicles pulling into their driveway.

Mr. Porter also commented on paragraph 1.8 of the ordinance. He said he is relying on State law and this was not considered by the P&Z Commission, but it says in 1.8 “the provisions of this Appendix B (Subdivision Ordinance) shall apply to land situated within the corporate limits ... except as such jurisdiction is limited by the provisions of statutes of the State of Illinois.” Marketable Title Act, which is a state law, which is the 40 year Statute of Limitations, is what he says applies here and replaces the jurisdiction of Appendix B.

Barry Bartlett, attorney for the Pattersons, then spoke. He said that he hoped the Board had a memo that he prepared before them in response to Mr. Porter’s letter of January 12th. There are specific uses of the road and that there are general considerations that he listed 1 through 5 which are applicable to the interpretation. The specific uses are self-explanatory from the memo. The case that was cited by Mr. Porter was the *Davis v. Havana Mineral Wells LLC* case and is a case very similar to this case. It involved an easement and ran between a main road and it was a feeder easement on the other end went to a beach and a lake. The easement was for the use and enjoyment of all the persons owning lots in this area. It was a park and this easement was for the main road to the beach all within the larger confines of the park. The plaintiff, one of the lot owners, sued for a declaratory judgment to confirm the easement. The primary question was based on the Illinois Marketable Titles Act and the trial court agreed that the Illinois Marketable Titles Act was applicable. However, the Illinois Appellate Court reversed the trial court and determined that the exception to the 40 year Statute of Limitations was applicable because there was physical evidence of the easement. In this case, the physical evidences were merely storage boxes that were on the beach that contained oars and other equipment. The Appellate Court said this was evidence of the general use of the easement. It did not look at any specific uses by the lot owners. It didn’t appear that the plaintiff had used the easement in any particular way only that the easement was being used for the purpose to which it had been granted. He said in the Pattersons’ case, it is undisputed that this easement is being used as a roadway and that in and of itself would fall within the parameters of the exception to the applicability of the statute. The court went on to say, as an aside, they took the case because it was important for them to interpret the Act in a way that wouldn’t be contrary to the intent. The intent was to protect the recorded history of the property. It wasn’t to clean up the chain of title. It is not an Act that every 40 years everything drops off the record by virtue of use or non-use. The Court said that it was to protect the integrity of the chain of title. In this case, the Pattersons’ easement is on the record. This is what should be protected. It is the claim by the Porters that is a non-record claim and the record is protected by the fact that there is a legitimate claim to the easement and that the general uses are undisputed. It should be pointed out

that the Appellate Court stated specifically that they were looking generally at the use of the road.

Mr. Bartlett added that the Pattersons are using the property. The Village came to them in 1992 and asked to construct their water main from Old Farm to Maple Row and they granted it without compensation. Trustee Gregorio indicated that was a totally different easement and had nothing to do with this easement. Mr. Bartlett agreed it is totally different but it goes to the question of use, not to the question of this easement. It was going to provide efficiencies for both streets, create better water quality and pressure. Even that in and of itself would have been a specific use. The main easement is one for utilities also and this would certainly use the main easement for that. He believes this case is right on point. It is exactly the same situation and it upheld the easement.

John Stec who owns the property just to the west of the Pattersons thanked the Board for looking at the many pages submitted to them. He wanted to address the suitability of the proposed rear lot for building. He said he had a deeded easement across that rear lot for drainage. First, he said, having lived in the neighborhood for 12 years, he has noticed the ebbs and flows of stormwater. What doesn't occur to people who don't live there all the time is how frequently the proposed rear lot area is saturated with water just from normal rainfall. That could be due to the proximity with the river – less than 75 feet from that lot. He took pictures that show up to the eastern boundary of the Patterson's lot, the water has reached that level and was flowing with the river with just one inch of rain. From his perspective, it was surprising to him that the property was going to be offered to someone to build a house on. The easement that he and his wife have over a portion of that rear lot is specifically for drainage purposes and it was granted for valuable consideration before they lived there. It was an important factor in their purchasing of the house. Having grown up in the general area, he knew of the drainage issues. It is his belief, especially in view of the proposed drainage plan, that the functionality of that easement for drainage purposes will be detrimentally impacted by the building that has been proposed. The driveway offered in this plan will actually cover over a portion of their underground piping which will make it difficult if not impossible without tearing up the driveway to service the PVC drain. If it were to break, he would have to break a driveway to get to it. Mr. Stec thought the drainage plan that was proposed ironically confirmed many of the concerns that he proposed in his first objection letter and it confirmed that the front or south lot, because of the topology of the overall property, actually drains toward the river through the north or rear lot. The solution in that plan is to sink an 18 inch drain pipe on the south end of the new north lot and run stormwater first toward his property and then back around toward the flow of his drainage easement. In

both cases, it is obstructing the natural flow of the water that has happened for many, many decades. The proposed plan shows that the building is going to be raised 2 to 3 feet above grade because otherwise the water would swamp that foundation. The drainage plan will disrupt the natural and longstanding water course, if not the permeability of the ground of the rear lot. The whole neighborhood relies on stormwater being able to migrate from Sunset Ridge Country Club through the storm sewers under Sunset Ridge Road. Everyone else's stormwater is conveyed eastward the river. When you obstruct it with buildings or changing the topology, you will cause problems. He doesn't want the problems to feed back to his property and form a dam.

Mr. Stec's final point was that the Board will decide what it wants to do. This case has not made sense to him from the start. Other subdivision cases before the Board have been different than this case. This case we are deciding to subdivide a property and the purpose of that subdivision, if not immediate is ultimately to build upon it. In other cases, it has been for the Board to decide whether or not to subdivide a property when there is a plan to build on it and then all the facts are taken together in a common nucleus and decide whether it should be subdivided in the context of what is to be built on it. In this case, absurdly in his mind, what is being done is the decision would be made to subdivide the property knowing full well that ultimately somebody is going to build on it without having any idea of what's going to be built on it. This will induce the buyer, innocent or not, to acquire the property which may not be buildable because you don't know what's to be proposed. In the engineer's report, it indicates raising the foundation 2 feet above grade because the property requires it.

President Gougler indicated he doesn't want to interrupt or be rude, but said many of these comments were made already and were processed in the deliberations of the earlier meetings.

Mr. Stec said he was leading to one final point. He said in one of the applicant's documents, it says the applicant is not proposing any variances with respect to the subdivision. At the same time, the engineer says in the drainage plan that the submissions regarding improvements remain speculative. On one hand, they are saying they are not going to request any variances, but on the other hand, the document that they proposed to show that they don't need variances says that it is a make believe proposal. Don't take it at face value because the proposed improvement is speculative.

Trustee Gregorio asked Mr. Stec when the pictures were taken showing flooding in the area. Mr. Stec said they were taken four years ago. Trustee Gregorio then asked if the

land depicted in the pictures is the proposed Lot 2. Mr. Stec said, "yes," and he then passed out pictures which were taken today.

Mac Hines said he was President of the Maple Row Association and wanted to state for the record that the Association has not granted access to the Pattersons. He also said that they are against the motion and urge the Board to turn it down. He said he is a private landowner and he has been there since 2003 and he has never seen anyone use the Patterson's property through Maple Row crossing over the Porters entering the property. He thinks the neighbors support the Porter and Stec arguments. They feel that the Village by granting a subdivision without very clear access is premature. The access issue is really muddy. This is an easement where there is no road and a 5 foot gap. Ultimately for the property owner to use the access, they need a road and there is no mechanism or trigger as to how to provide that road and pay for the road. That creates confusion for whoever buys the land. If he were to buy it, he would expect to own the 1/12th of the private street. But that's not clear. Also, it creates hardship with the 11 landowners who currently have invested approaching \$100,000 in the road. To them, the road is a \$90,000 investment. The Village did an incredible job in bringing that in for much less than that because they received bids a couple years ago that were \$90,000. Any tampering with the road or extending it would require finding out who needs to pay for it. He thinks it is premature for the Village to grant the subdivision without that being done. Lastly, Mr. Hines said he was specifically told by the Plan & Zoning Commission to reach out to the Pattersons after the meetings. He is reporting that he has spoken to them and their attorney and they are still far apart. Agreements need to be reached. Otherwise 11 owners are being saddled with a wild card 12th owner that has the potential to tie them up in many different ways. He urges the Board to turn down the motion.

Trustee Goldenberg asked if one of his reasons is because he doesn't not want another member in his association. Mr. Hines said if the house across the street were torn down and was vacant, it is assumed another house would be built there. No one likes new construction but you expect it. The prior owners had been paying association dues forever and the new owners kicked in and paid their fair share and were standing up to the plate. He collected the 11 shares for doing a \$65,000 road and they never got anything. Now there is a gap and he needs to know who is going to pay for it. That is not accounted for. He asked if they were to build to Village standards with curbs and gutters on 200 feet of road that turns this easement into a parkway. As a developer, he can understand that is what is wanted. It's like the wild west.

Tim Crane, 285 Maple Row, has been at his house for 3 years and has never seen anyone try to access the property or use the property from Maple Row. Secondly, he said when given the opportunity to voluntarily participate when the road resurfacing was being planned, there was no effort by the Pattersons to do so. Finally when they were approached, they turned down the opportunity. This strikes him as non-participation in Maple Row, period. It is unclear to him how established access to Maple Row occurs when the petitioners have basically turned down opportunities to participate.

Sherryanne Porter, 225 Maple Row, showed a picture taken this morning of her backyard. She said the water was not uncommon. A neighbor just put in pavement and re-leveled their property and the Porters property has been under water quite frequently. The Porters have sealed their basement and have two pumps that are running continuously to keep them dry. They are no longer in the flood plain, but now in the river way. They are now surrounded by water. They used to put up tables and chairs when it was dry. Mr. Stec talked about his drainage. She showed a picture of where the Patterson land was draining. Her driveway is out of the easement. She wanted to bring the pictures to their attention because last Wednesday the Porters had a discussion with the Pattersons' attorney about purchasing a portion of their property. She had an idea that she believed might work. She said what if the Patterson subdivision line was in a different location on this property. The Pattersons want to subdivide the property to increase the value for sale and they want to be able to have two buildable parcels. What they proposed to the Pattersons was that they buy the soggy ground and offered them above market price for that soggy ground and their broker typed up a formal agreement to send to their attorney. They have not heard anything back. If the Porters took the soggy part, it would leave the Pattersons with 86,000 square feet, which in Northfield it could be divided into two lots. They could divide the lot front/back or sideways/sideways using Old Farm Road for their access. All the land that would be left would be higher ground. She said it is the perfect solution and ends the question of the Maple Row easement because we bought it. It ends the problem with the flooding because we will keep the land wet. It solves the problems with Maple Row bylaws as to whether a twelfth party comes in or not. Ms. Porter asked the Board to ask the Pattersons to seriously consider their offer. She thinks this is absolutely the perfect solution for everyone.

Patricia Stec, 250 Maple Row, immediately west to the Patterson property said her first comment is about Mr. Bartlett's statement about the Pattersons using the easement. She has never witnessed them using it and she doesn't believe the other occupants of Maple Row using the easement would constitute retaining Pattersons' interest in the easement. She said we are in the period of warming temperatures on the planet and that is making

flooding worse, whether it's from human activity or natural cycle. They are getting more and more flooding. She asked the Board to do the responsible thing and leave the open land and allow the land to absorb the water. Once a structure goes up, it will not be removed and the damage to the surrounding properties will be done. The players making the decision will be long gone and will not suffer from their decision making. The Pattersons will no longer own the property. The property developer will no longer own the property and the Board members may or may not still be serving as trustees. An innocent buyer of a new house will not know about the flooding issue, but will be subject to the problem once they take up residence. The surrounding homes will certainly notice the difference in water flows and the rising levels with storms. The area needs to keep this land open. She thinks the Village Board of Trustees needs to withhold approval of this subdivision as the surrounding neighbors do not want it. There will be economic and environmental damage to the surrounding area through flooding.

Dan Creaney represents the Pattersons for their civil engineering, drainage and survey. He would like to clarify a lot of misinformation that was presented. There has been information regarding surveys and his firm did the research and surveys for this. Mr. Creaney began by saying the road on the north is Maple Row and the road on the south is Old Farm. The lot extends from Old Farm all the way up to Maple Row. The lot is 2.44 acres and it can be subdivided into two lots, the lot to the north is one acre and the lot to the south is 1.44 acres. The easement is an easement along Maple Row. That easement does not stop at the west property line of the Patterson property. It extends to the east property line of the Pattersons' property. Mr. Creaney showed the lot on the drawing in yellow and the orange lines which go along the top. It doesn't stop at the west boundary of the Pattersons. It actually goes all the way across the Porter's property all the way to the east property line of the Porters. When access is talked about, not only do they have access to the roadway, an access easement that is on record goes all the way from Sunset Ridge all the way to the east property line of the Pattersons. The whole north property line of the Pattersons abuts that easement. They would have access if they decided to extend the roadway or put a driveway in. They would have access through the whole northern part of their property because it is in an easement.

Mr. Creaney said the second issue is the subdivision and a precedent. There is a subdivision in 1987 that did exactly the same thing. It was a long, narrow lot fronted on Maple Row and fronted on Old Farm and said some of you may remember it. Rick Reiser was at the Village at the time and he subdivided the properties the same way the Pattersons want to do here. There are no issues about access easements and there was no issue about

adding the right to access Maple Row. At that time, there was no homeowners association, so no fees were due. He said that addresses the access issue. He has done surveying for 40 years and he doesn't remember where he has ever run across an easement of record that has been set aside. This easement is of record and it goes back to 1933 and 1935. Mr. Creaney said the second issue is about drainage. He said when this property was first looked at the Village had the same concerns as the neighbors – what about drainage, floodway, causing other people problems by developing this lot? The Village had the same issues so they asked the Pattersons to prepare a conceptual plan. If this property is sold, could it really be developed? Can they put a house there and not have an adverse impact to any of the neighbors? They were asked to do that. They prepared a grading plan which shows the schematic conceptual house that can be put on that property. They did the plan and the calculations that go with it. They did the tributary area that is upstream from there. They calculate how much water is coming towards this property and how it is going to be handled. How is the water going to be handled so it doesn't have any an adverse effect on any of the neighbors. That is his obligation as a drainage engineer. That is what the Village reviews on a grading plan. That is how they reviewed this one. The Village engineer concluded that by building here, if it's done according to the Village rules, will not cause an adverse effect onto the neighbors. This neighborhood has drainage problems because there is no formal drainage system. They have to rely on ditches and roadside drainage to get the drainage to the river. Mr. Creaney said they will maintain it and that water will continue to go to the river. The water will not be blocked and the elevations are at or lower than the property that drains to it. If there is any buildup of water, it will be on the Pattersen property.

Mr. Creaney indicated the last issue is the homeowners association. This property is up for sale and a person who comes in to buy the property may or may not develop that lot. They might want to have it just for open space. Until that property is developed and until it has access to Maple Row, he doesn't feel that there should be any obligation to either join a homeowners association or contribute any money. They are not using that road and at the time they do, there needs to be a discussion. In his mind that's when the discussion should take place. The issues are drainage, legalities for easements, but it is his understanding that the Board looks at what is required for a subdivision. It has to meet the Village requirements and one is access to roads. Secondly, there is no adverse effect on drainage. A conceptual plan was submitted showing no adverse effect. He feels that they have met the burden that the Village has placed on them.

Trustee Gregorio indicated that the Decker surveyor disagrees with Mr. Creaney on the lot lines and the length of Maple Row. Mr. Creaney's statement is all conjecture because

he doesn't represent the developer or the builder. He has no idea what will go in the property. He asked if it were just his speculation. Mr. Creaney said it is not his speculation; it is a conceptual drawing because that is what they were asked to do by the Village. A house of a reasonable size could be put on this property and not cause an adverse effect to the neighbors. This plan was presented to the Village, the engineer reviewed this plan and concurred that, "yes, this conceptual plan could be built and no cause an adverse effect for the neighbors."

Mr. Crane added that if the engineer says that he doesn't think there would be an issue for Maple Row until they figure it out, all he can say is that they specifically asked them to have that conversation. He appreciates the opinion but they were doing what they were asked to do in a good faith effort to work this out prior to this meeting.

Mr. Bartlett addressed the characterization of the Pattersons by Mac Hines and Sherryanne Porter and the Stecs as being non-communicative. When the Stecs first issued their letter of rejection back in October, the first thing the Pattersons said to Steve Gutierrez was, "sit down with the Stecs to see what can be done." But the Stecs refused to meet with them. Sherryanne Porter was talking about an offer. He spoke with her twice and he said they are more than happy to entertain an offer. However, because it is such a strange situation, they need to do some research to see how to value the property. He was going to do that research but spent most of his time responding to the Porter letter. With respect to Mac Hines, the Pattersons communicated with him. At the last meeting, Mac said they should talk. Mr. Patterson sent an email to Mac two days later telling him of his concerns and five days later he received Mac's response. Two days later Mr. Bartlett responded to that. He feels that the association has not been burdened. They are saying that they have paid all the money and that they have been burdened by the non-participation of the Pattersons. The fact is that there has been no burden. The Pattersons have not put any stress on this road at all, whether by regular vehicle, traffic, snowplowing or construction. The payments that the Pattersons have made have been with respect to their aggregate property. There was no improvement on the Patterson property and so they are paying for exactly what they are using.

Trustee Gregorio asked Mr. Bartlett if that were a double standard because for 46 years they haven't contributed to the road when they were part of the road. Now when it is convenient for them, they want a part of the road so they can subdivide the property. If they are really on Maple Row, what has happened the last 46 years with maintaining the road. He said you are either in or you're out.

Mr. Bartlett asked why they would they do that for 46 years when they were not utilizing the road.

Trustee Gregorio said because now they are claiming to be a part the Maple Row development.

Mr. Bartlett said the way Mr. Hines proposed it to him was that it was in the bylaws there is an existing association (not legally created yet) and provide for the existing 11 owners and there is a new entrant fee of \$2,500. He said the way it was presented to them was that if they paid \$7,500 (\$2,500 entrant fee and 60 months' worth of back expenses) then everything would be fine. The Pattersons feel that it is unreasonable. He understands paying when something gets built, but they are not building. The water main easement is a big benefit and that was granted without compensation. The Porters have had the use of it for water efficiency, quality and pressure since 1992. Mr. Bartlett said the acre is a huge benefit to the road because the fact that there is some prospective chance that they would lose the parkway which has been maintained by the Pattersons for 40 years has created this firestorm. It must be a benefit of some sort if the loss of it has created so much intensity. Finally, he said he doesn't see how this is a health, safety or welfare issue that would be the concern of the Board of Trustees. He concurs with Attorney Hill that there is no legal basis for the Board to deprive the Pattersons of their right based upon an issue that doesn't include the interest of the community as a whole. He said they are compliant and the Board has no legal basis for depriving them.

President Gougler indicated Mr. Bartlett said he has had dialogue with residents in different parts related to offers and negotiations. He asked if any of those conditions would lead him to withdraw the petition before us. Mr. Bartlett said to the Porters that everybody has a price. If they offered \$10 million they would accept the offer but if they offered zero they would say no. President Gougler asked if he would like to withdraw the petition until he was able to negotiate something with the parties he has been talking to. Mr. Bartlett said, "no."

Mr. Porter said that Mr. Bartlett commented on the *Davis* case that he included with the materials. In that case, the petitioner was able to show that there was physical evidence of use and that's why they prevailed. He said that is not the case here. Conceptually, the documents of the 1930's created an easement and its use doesn't come into existence. And so for the exception to the 40 year statute to apply, there has to be physical evidence of use. He has heard nothing about that tonight. Petitioner's representative says that they never use Maple Row to access that lot. The water main connected a loop from Old Farm to Maple Row. That easement is a separate easement running north and south, 90 degrees to the

easement that is at issue, and was created in 1992. That easement is entirely on the Patterson's property. It does not access or use the easement to the north of the north line. The 8 feet that he is concerned about because that is on his property. He says the easement expired. It is a prescribed period of time that the use has to occur. From 1935 to 1992, the 40 years would have expired in 1975.

An unknown speaker said he has heard this contention twice. The first time at the Zoning Commission hearing and the second time was tonight. The first time he let it pass but tonight he feels compelled to respond to the Pattersons' attorney's mischaracterization of the facts. The only invitation that he is aware of that was made to him and his wife to talk about this matter was through an email from Mr. Gutierrez which said, "Would you like to talk to the Pattersons' engineer about his drainage plan?" He has a degree in engineering from the University of Illinois. He said, "no, he can understand the issues and he doesn't have any questions for him." That was the end of it. He said now it has been turned around to where he is being an obstructionist because he is refusing to discuss things with people. It is a mischaracterization of the facts.

President Gougler then asked Attorney Hill if there is anything that he has heard, seen or read that has changed his view that this is a legal subdivision. Attorney Hill responded that there is nothing that he has heard tonight or read in any of the documents which would indicate to him that the Pattersons' property is not amenable to subdivision. He indicated this is not a determination of whether this is a buildable lot. It isn't a determination of whether it can ever be drained and engineered. It is whether it is a legal subdivision under the statute.

Trustee Roszak's opinion is that it appears that the subdivision meets the requirements and matches the spirit of the one acre zoning. The opinion exists that the easement does exist with the intent for access. He lived on two streets off of Sunset Ridge so he knows about the private roads and knows the subtleties of access and the common use of traversing back and forth and has dealt with these issues. It appears that you can design a drainage system that would meet the requirements. He believes a single family home design could be done separately from the subdivision process. He said it may be fair for the new owner to pay for the new access to the extension of the road. When he looks at the flooding, traffic and construction damage issues, he knows these are normal issues with these private roads. It is a very desirable street and if it were his street, he would welcome a new family because you split fees and costs by one more participant. At the time the subdivision is approved, perhaps the entrance fee could be paid. He believes it is our duty to

allow this to happen even if it has to be with Old Farm Road access. It would be a shame that a 2 acre parcel couldn't be subdivided.

Trustee Goldenberg questioned the survey and the area where the easement is. If the developer of the property at 225 Maple Row chose to veer off, the street would have been extended to create a more designed driveway. But if the street had continued along with the easement that stretch presumably would have been maintained by the entire homeowners association as part of the street. Because of the design of the driveway, no neighbors would need to go to that end of the street. So the easement doesn't go away. Attorney Hill agreed and said the easement is there. Trustee Goldenberg agrees with Trustee Roszak that it is a large lot and granting a subdivision has no bearing on what type of house or if there is ever a house and what kind of drainage.

Trustee Frazier believes it is a legal subdivision as well. She said this has been hashed out thoroughly by the Planning & Zoning Commission. She sympathized with the flooding issues and understood the issue of what type of house could be built there. She understood the homeowners association issue. But she said this was another forum to address those questions. The question under the Code is simply whether there is an abutment. Based on the law as she understands it and as Attorney Hill has set forth, it is clear that there is an abutment and therefore the subdivision should go forward.

Trustee Kaplan said he is following Attorney Hill's opinion and feels that subdividing is okay to do and is legal, "based on the way it is structured in Northfield." He disagrees with Trustee Roszak that he thinks it is a shame to subdivide a two acre lot there. He would rather keep it the same. When he heard what was happening he was sick about it because he experienced subdividing and his yard has never been the same, even though it was totally approved by the engineers here in Northfield. You take two acres and put a house in one of them, you're going to get more water. But the way the Code is structured and Mr. Patterson is within his rights to do it.

Trustee Gregorio said there is little doubt with regards to how this Board rules and the courts will ultimately have to decide this issue. It is going to be a long and expensive process. He personally feels that the Pattersons and the Porters should get together. Regardless of how the Board rules on the subdivision, there are going to be issues of access, abutment and it is pretty muddy in terms of this case. He respects Attorney Hill's opinion, but he acknowledged that there are a lot of factual issues a court may have to determine. He recommends that the two parties get together to try to be fair and work out a resolution that works for both of them because he doesn't think this matter will be resolved by this Board.

President Gougler then requested a roll call vote to approve an ordinance for a request for approval of a preliminary and final plat of Patterson Subdivision to allow for the division of the existing property at 225 Old Farm Road into two separate parcels.

AYES: Roszak NAYS: Gregorio ABSTAIN: 0 ABSENT: Kozminski
Kaplan
Frazier
Goldenberg

Trustee Roszak left the meeting.

CONSIDERATION OF A REQUEST FOR AN ORDINANCE FOR THE APPROVAL OF A PRELIMINARY PLAT OF SUBDIVISION FOR THE EDENS LANE SUBDIVISION TO ALLOW FOR THE DIVISION OF EXISTING PROPERTY AT 569 EDENS LANE INTO TWO SEPARATE PARCELS

Trustee Goldenberg made a motion, seconded by Trustee Kaplan, to approve an ordinance for the approval of a preliminary plat of subdivision for the Edens Lane Subdivision to allow for the division of existing property at 569 Edens Lane into two separate parcels.

Director Gutierrez said the petitioner, Peter Soukoulis, is seeking a preliminary plat of subdivision for the Edens Subdivision at 569 Edens Lane. The petitioner came before the Board with a petition for three lots which was denied so is coming back through the process with two lots. This was approved by the Planning & Zoning Commission with a variation for an acute angle at the far north end of the lot.

President Gougler indicated this was reviewed a couple of months ago. Trustee Goldenberg asked if stormwater detention was for both of the lots or separately. Mr. Soukoulis responded that the way the lot splits now, the existing house will stay so the second lot will be redeveloped. Trustee Kaplan asked if there were any objections with the neighbors. No one was present to object. President Gougler felt the petitioner did a great job. Mr. Soukoulis thanked Director Gutierrez for his patience in walking him through the process.

President Gougler then requested a roll call vote to approve an ordinance for the approval of a preliminary plat of subdivision for the Edens Lane Subdivision to allow for the division of existing property at 569 Edens Lane into two separate parcels.

AYES: Goldenberg NAYS: 0 ABSTAIN: 0 ABSENT: Kozminski
Frazier Roszak
Gregorio
Kaplan

CONSIDERATION OF AN ORDINANCE AMENDING THE FLOODPLAIN REGULATIONS (CHAPTER 7, ARTICLE V, SECTIONS 7-82 AND 7-84) ADDING SUBSTANCE AND PROCEDURE TO THE VARIATIONS AND AMENDING UST REGULATIONS

Trustee Gregorio made a motion, seconded by Trustee Goldenberg, to approve an ordinance amending the floodplain regulations (Chapter 7, Article V, Sections 7-82 and 7-84) adding substance and procedure to the variations and amending UST regulations.

Director Gutierrez indicated the ordinance is to amend the flood plain regulations. Currently, the floodplain language reads that you can't store flammable liquors under the base floodplain elevation. This issue came up in considering the installation of an underground storage tank at the New Trier High School campus. In considering it and finding out whether or not the Village had jurisdiction over the installation, it was discovered that the Village does not have jurisdiction. It is solely reviewed and regulated by the Office of the State Fire Marshal. The language in the Code was confusing and needed to be clarified. Even though the floodplain ordinance contemplates variations, it did not provide any type of process. This will now be in the ordinance along with standards and procedures.

President Gougler then requested a roll call vote to approve an ordinance amending the floodplain regulations (Chapter 7, Article V, Sections 7-82 and 7-84) adding substance and procedure to the variations and amending UST regulations.

AYES:	Goldenberg	NAYS: 0	ABSTAIN: 0	ABSENT: Kozminski
	Gregorio			Roszak
	Kaplan			
	Frazier			

CONSIDERATION OF THE PURCHASE OF A SKID STEER TRACTOR IN THE AMOUNT OF \$64,620.15 FROM BURRIS EQUIPMENT COMPANY OF WAUKEGAN, ILLINOIS

Trustee Frazier made a motion, seconded by Trustee Goldenberg to approve the purchase of a skid steer tractor in the amount of \$64,620.15 from Burris Equipment Company of Waukegan, Illinois.

Public Works Director Mike Nystrand said this is a small tractor that is utilized for a myriad of public works activities such as maintaining and installing utilities, water main and sewers, storm and sanitary, landscaping, forklift attachment, grass cutter attachment and pavement breaker. It was purchased back in 1999 and is used on a regular basis. It was anticipated to have a 13 years useful life. It was originally due to be replaced in 2012-2013 so four additional years were gained out of this equipment. There is currently a suitable replacement for the skid steer loader with attachments from the National Joint Powers Alliance contract for a total cost of \$64,620.15. There is a designated trade-in value of \$6,300 for the existing one which would make the total purchase of \$58,320.15. The amount

budgeted in this fiscal year for this replacement is \$60,000.00. The Northfield Park District has contacted us with an interest in purchasing the used one if the purchase of a new one is approved. We would be able to declare the existing one as surplus and sell it in or trade it in for not less than \$6,300 and bring the purchase in under budget.

Trustee Kaplan questioned why the Park District would want to purchase the old skid steer tractor. Director Nystrand indicated he wasn't sure, but at one time public works was replacing a blacktop roller that they ended up buying from us to roll the baseball diamonds. They contract with the school district for snow removal so they might use it for that purpose.

President Gougler then requested a roll call vote to approve the purchase of a skid steer tractor in the amount of \$64,620.15 from Burris Equipment Company of Waukegan, Illinois.

AYES:	Goldenberg	NAYS: 0	ABSTAIN: 0	ABSENT: Kozminski
	Gregorio			Roszak
	Kaplan			
	Frazier			

CONSIDERATION OF AN ORDINANCE DECLARING ONE SKID STEER TRACTOR AS SURPLUS AND AUTHORIZING STAFF TO TRADE IN OR SELL THIS EQUIPMENT FOR \$6,300.00

Trustee Kaplan made a motion, seconded by Trustee Gregorio to approve an ordinance declaring one skid steer tractor as surplus and authorizing staff to trade in or sell this equipment for \$6,300.00.

President Gougler then requested a roll call vote to approve an ordinance declaring one skid steer tractor as surplus and authorizing staff to trade in or sell this equipment for \$6,300.00.

AYES:	Goldenberg	NAYS: 0	ABSTAIN: 0	ABSENT: Kozminski
	Gregorio			Roszak
	Kaplan			
	Frazier			

Department Updates

Northfield Now!

Trustee Goldenberg reported the holiday festival was a great success and was covered well in the press. They are looking forward to planning another holiday festival and continue to meet with the holiday subcommittee. They are also working on events going forward and working with the Park District and all of the partners. There is a Facebook page now and they are working on a developing a closed Facebook page so our members can

communicate with each other to plan programs. A formal mission statement is being developed also.

Community Center Committee

Trustee Gregorio indicated no meetings were held, they are just waiting to hear back from the Park District and School District who are resolving language.

Administration

VM Sigman reported that work is continuing on the Happ Road Phase I. There will be a meeting on January 24th at 6:00 for the Steering Committee and the Board representative is Trustee Goldenberg who cannot make that meeting and asked if anyone would like to volunteer to go in her place. The next meeting is February 16th which is the public meeting and the location will be determined and will roll the first set of plans to the public. Residents can stay informed by going to the Village's website. Trustee Frazier will attend.

VM Sigman also reported that Assistant DeFeo has been working on the new sanitary sewer grant program. Assistant DeFeo indicated that the program launched the beginning of January and have received two resident applications. They applied for retroactive reimbursement for a total of \$7,150.00.

Trustee Frazier then asked if we were underway for getting the bus shelters built. VM Sigman said she is underway with signage and found some companies who will do preliminary sketches, but staff hasn't gotten to them yet. She asked if the Board wants it to come directly to them and for staff to come up with a couple of alternatives, whether it goes to the Committee of the Whole or should it go to the Architectural Commission. President Gougler said it should be brought back to the Committee of the Whole for their recommendation. VM Sigman said now that we know what the new pay shelters look like, they don't have to match because you won't see them next to each other.

Community Development Department & Building Department

Director Gutierrez indicated that the Plan and Zoning Commission will be meeting in February for an application from Walgreens to amend their existing special use. They need to approve the new operator of an instore clinic for Advocate Health Care. They are also asking to change their exterior signage to advertise the in-store clinic which it currently does have because the existing special use prohibits that. It will also go to the Architectural Commission for a new sign package for their review. The Plan and Zoning Commission will also hear New Trier's special use request for the child care center that has been operating at the campus.

Director Gutierrez also said the Zoning Board of Appeals met in January and approved a variance to the Zoning Code's floor area ratio requirement. That is done by dividing the floor area by the land area. This is for the construction of a new home at 243 Churchill and the applicants were asking to build a 3,500 square foot home where the FAR requirement would be limited to 2,861 square feet. They asked for approximately 700 square feet of extra floor area.

Director Gutierrez then discussed potential projects such as the Willow Road subdivision which was heard before. The developer is retooling their concept and will come back to sit down with staff next week to present their concept. The owner of the property at 1725 Winnetka Road (AT&T site) is coming in on Friday to discuss his plans. The property at 1900 Willow (Dunkin Donuts) has completed the planters in front of the building and there will be additional plantings in the spring. The last space has been leased to kitchen and bath design studio. It's a great use from a parking standpoint. They are hoping for a buildout in the next few months.

Finance Department

Finance Director Noble said at tonight's Committee of the Whole meeting the five year financial projection was discussed as well as projecting the end of the fiscal year and in the packets are the November 30th interim financial statements which are consistent with the projections for the end of the year. He is anticipating a somewhat larger surplus than anticipated last year. So far this year, the trend of the revenues is exceeding projections, particularly true in the building permit area and expenditures. Two new part time employees have started, one primarily payroll and both will work the front desk.

President Gougler asked what the current head count is at Medline. Director Gutierrez wasn't sure, but his understanding is that by the end of February there will be 1,800 people in. VM Sigman said the last time she spoke with them, it was 1,500.

Fire-Rescue & Public Works Departments

Chief Mike Nystrand reported they responded to 109 calls for service since the last Board meeting along with providing assistance to Winnetka for two house fires. On the 11th, they responded to a fatal accident on the Edens along with Northbrook, Glencoe and Winnetka. They began working on efficiency, safety and maintenance issues at the Public Works Fire-Rescue facility.

Director Nystrand then reported on Public Works stating that they have taken down all the holiday decorations. He and Dick Knudson met with the Water Reclamation District last week to discuss potential plans to repair the sanitary sewer underneath Willow Road that was

Goldenberg
Kaplan

President Gougler opened the regular meeting session and asked for a motion to adjourn.

ADJOURNMENT

The Board meeting was reconvened at approximately 9:34 p.m. There being no further business or issues to come before the Board, Trustee Goldenberg made a motion, seconded by Trustee Frazier to adjourn the meeting.

Upon the following roll call vote, the motion was approved.

AYES:	Gregorio	NAYS: 0	ABSTAIN: 0	ABSENT: Kozminski
	Kaplan			Roszak
	Goldenberg			
	Frazier			

The meeting was adjourned at 9:35 p.m.