

MINUTES OF THE PLAN COMMISSION & ZONING BOARD OF APPEALS OF THE VILLAGE OF SOUTH BARRINGTON

Held Wednesday April 19, 2017

CALL TO ORDER

The meeting was called to order at 7:30 p.m. by Chairman Mr. Michael McCombie. Roll call was taken.

PRESENT: Commissioners Kwasek, Murarka, Decker, Gillis, White, and Chairman McCombie.

ABSENT: Commissioner Fox.

A quorum was present. Also in attendance were Village Building Officer Michael Moreland, Village Engineer Natalie Karney, Village Administrator Robert Palmer, and Village Attorney Mr. Donald Storino of Ramello & Durkin.

PUBLIC COMMENT: None.

APPROVAL OF MINUTES

Chairman McCombie asked the Board for a Motion to approve the Minutes of the meeting held March 14, 2017. Commissioner White made a Motion. Commissioner Gillis seconded. By majority vote, the Motion was passed. Commissioner Kwasek abstained because he was not present at the meeting on March 14.

AGENDA ITEMS

Chairman McCombie stated that the first item on the agenda was a Public Hearing for a pool variance for 6 Woodbury Court, South Barrington.

Chairman McCombie asked for a Motion from the Board to open the Public Hearing. Commissioner Gillis made a Motion. Commissioner Decker seconded. By unanimous vote the Motion was passed. Chairman McCombie asked who will be making the presentation on behalf of 6 Woodbury Court. Mr. Robert Rupczynski, owner of the residence stated that he will be making the presentation. Chairman McCombie asked that if the testimony he was about to give was the truth to the best of his knowledge. Mr. Rupczynski answered yes.

Chairman McCombie stated that typically when the Village receives a request for a variance, the petitioner will submit a Plat with the location of the pool, house, and all the rest on the Plat. The reason for this is that in order to grant a variance the petitioner must show a reason, which is usually a hardship. Mr. Rupczynski stated that he does have a Plat with the location of all the things on it which he presented copies of to the Board.

Mr. Rupczynski stated that the variance request is for eight feet beyond the end of the typical twelve feet from the house. Mr. Rupczynski further stated that the rationale for the request is for two reasons. One being a safety issue. With the twelve feet maximum requirement from the pool to the house, along with the four foot mandatory walk way around the pool, it would make the barbeque close to five feet from the house. In most states, the recommendation for a barbeque is ten to fifteen feet from the house. Chairman McCombie stated that he is still not seeing dimensions or materials on the Plat being presented which is making it difficult for the Board to help with a recommendation or grant the variance due to a hardship.

Mrs. Kacy Rupczynski asked to make a statement. Chairman McCombie asked if the testimony she was about to give was the truth to the best of her knowledge. Mrs. Rupczynski stated yes. Mrs. Rupczynski stated that she was the one that worked with Mr. Mike Moreland Village Building Officer to make sure everything that the Board needed for the meeting was submitted and she was not aware that there was anything additional needed. Chairman McCombie thanked Mrs. Ruzczynski and explained that granting a variance is a big deal, and the reason to grant the variance is because of a hardship. Chairman McCombie suggested that they may be able to locate the barbeque to the side instead of the front to eliminate the problem. Chairman McCombie further stated that he felt there were just not enough details on what was submitted.

Mrs. Rupczynski stated that the other plans they have are to put an extension on the house with a balcony which, without the variance, would be too close to the pool. Mrs. Rupczynski stated that they did a two phase addition plan for the house, the first being completed in September 2015. The plans that were submitted to the Village does show the future balcony for the home. Chairman McCombie asked if they were asking for a 12 month variance? Mrs. Rupczynski stated that it was her understanding that they had to come before the Board for a variance before the pool was constructed. Building Officer Moreland stated that the Village Code requires that the pool be twelve feet from the home, in which case they would need a four foot variance.. Commissioner Kwasek asked Building Officer Moreland if everything else is in compliance with the exception of the distance of twelve feet versus twenty feet. Building Officer Moreland stated that he had a letter from the Homeowner's Association approving the gazebo and he assumed they approved

the pool as well. Mrs. Rupczynski stated that there is a gazebo on the property that will be torn down and they are proposing more of a pavilion style structure for entertaining. Mrs. Rupczynski further stated that they have done a great deal of work to their home and have worked with Building Officer Moreland and Village Engineer Karney extensively to make sure they have been in compliance with the Village and will do so in this request as well.

Chairman McCombie asked if the future balcony will be closer to the pool than the bay window which is where the current proposed pool is being measured from? Mrs. Rupczynski stated that the plan for the balcony shown is not a final rendering, however the requested variance should accommodate the balcony. Mr. Rupczynski stated that they do have young children and want to be able to have a fence between the pool and the house so the children cannot jump right into the pool. Mrs. Rupczynski stated that they are also trying to make the plan aesthetically pleasing and they do not have a direct line of sight to any of their neighbors.

Chairman McCombie stated that he would rather grant a variance for the deck being closer to the pool rather than the pool being farther from the building. Commissioner Kwasek stated that he felt the original ordinance was contemplated for designs that were done twenty years ago. Commissioner Kwasek further stated that aesthetically this plan looks like it needs to be further away and if the twelve feet to twenty feet is the only issue, then he has no problem granting the variance. Commissioner White stated the plan was nicely done and apparently has no site line affecting any of the neighbors, so he also had no problem granting the variance. Commissioner Decker stated that it would have been helpful to have the verticality of the design. Mrs. Rupczynski gave a copy of a third rendering of the plan to the Board.

Chairman McCombie asked Building Officer Moreland if this is something you will see from the street? Building Officer Moreland stated that it is not something that you will see from the street. Commissioner Gillis asked if they had a drawing showing the fence around the pool. Mrs. Rupczynski presented a drawing to the Board of the proposed fencing. Chairman McCombie was surprised that the Homeowner's Association approved the plans with the little information that was provided on the plans. Commissioner Kwasek stated that the information that was submitted was conflicting and what is submitted is what needs to be approved. Mrs. Rupczynski stated that their architect would not revise the plan until the variance was granted. Mrs. Rupczynski further stated that they are aware of what requirements will be needed to come before the Village to acquire a building permit for the pool.

Building Officer Moreland stated that the Village will require a detailed set of drawings before a building permit for the pool is issued.

Chairman McCombie asked for a Motion from the Board to approve a variance from twelve feet to twenty feet or an eight foot variance from foundation of the house to the edge of the pool. Commissioner Kwasek made a Motion. Commissioner Murarka seconded. Roll call was taken. Commissioner Kwasek - yes, Commissioner Murarka - yes, Chairman McCombie - yes, Commissioner Decker - yes, Commissioner Gillis - yes, Commissioner White - yes. By unanimous vote the Motion was passed.

Chairman McCombie asked for a Motion from the Board to close the Public Hearing. Commissioner Gillis made a Motion. Commissioner White seconded. By unanimous vote the Motion was passed.

Chairman McCombie stated that the next item on the agenda was the Public Hearing for the Petition of Goebbert's Farm Inc. and Related Entities ("Goebbert's) for Amendment to 1994 Rezoning Ordinance (No. 0-094-039).

Chairman McCombie asked for a Motion to open the Public Hearing. Commissioner Decker made a Motion. Commissioner Gillis seconded. By unanimous vote the Motion was passed.

Chairman McCombie asked all participants that will be giving testimony to stand and be sworn in. Chairman McCombie asked if the testimony they were about to give is the truth the whole truth. All participants answered yes.

Mr. Scott Hargadon of Meltzer, Purtil & Stelle, LLC, 300 W S. Wacker, Chicago, IL attorney for the petitioner presented the secretary with Proof of Notification of Surrounding Properties for the record.

Mr. Hargadon stated that he represents the petitioner and also in attendance who will be giving testimony is Mr. Lloyd Goebbert, member of the Goebberts family and Mr. Todd Shaffer of Haeger Engineering. Chairman McCombie asked if the testimony they were about to give was the truth and the whole truth. Mr. Goebbert and Mr. Shaffer answered yes.

Mr. Hargadon stated that he would like to begin with some background information that has brought them to this Public Hearing this evening.

Mr. Hargadon stated that unlike any other petition that he has filed on behalf of a client, this one is unusual because it is not asking to change things on the subject property, rather it is asking for things to be approved just as they are today. Mr. Hargadon further stated that this petition had its roots in a land swap that had occurred twenty three years ago in 1994 and was at least in part brokered by the then Village Manager/President. The land swap allowed the developer of Magnolia Pointe subdivision to gain access to Mundhank Road and with the exchange of that parcel that gave them access, the Goebbert family obtained their eastern most parcel along Higgins Road. The Village suggested at that time that the family agree to zone the southernmost properties of Goebbert's Farm as Office Research II because there was anticipation of future development coming east along Higgins Road. The Village also approved the swap to occur because the parcel obtained by Goebbert's could potentially provide an access to Higgins Road for the Michelotti property.

Mr. Hargadon stated that by changing to OR II zoning, it meant that the family's entire operation would become nonconforming uses to the uses permitted in the OR II district. Mr. Hargadon further stated that this was embodied in the Ordinance No. 0-094-039 which, with the benefit of a quarter of a century of hindsight, has proved to be remarkably inadequate. Mr. Hargadon stated that in order to provide guidance to the family on how they can run their business and any specificity that Magnolia Pointe residents, The Ponds residents, and other neighbors could use to identify whether or not Goebbert's is violating or adhering to the zoning ordinance. Mr. Hargadon further stated that the 1994 ordinance is erroneously drafted in two places and those errors have caused additional consternation. Mr. Hargadon stated that the ordinance grandfathered in all agricultural use, the retail use of the farm, and the single family residence that is still there today.

Given that the garden store and Goebbert's Fall Festival has existed for over 20 years, they can only assume that these uses were permitted as legally nonconforming uses even if they were not specifically called out. The family was assured by those officials that the 1994 ordinance would not affect the family business operations at all and they would be entitled to carry on as they have since 1971 when the family acquired the property. However a legal nonconforming use does not enjoy the benefits of a permitted use under the relevant zoning classification. Namely, there cannot be physical changes without zoning approval and in the event of a casualty, the buildings may not be able to be rebuilt.

Mr. Hargadon stated that the 1994 ordinance was defective in that in the way it was drafted it placed restrictions on the use of the Goebbert property. The restrictions are 150 foot parking set back along Higgins Road and the only access into the property would be from Higgins Road. Former Village President Warren Fuller testified at a

court hearing in the suit against the Goebbert's by Magnolia Pointe Homeowner's Association in 2016 that these restrictions were suppose to only apply in the event of redevelopment for OR uses and as far as he knew, the ordinance was erroneously drafted. The Cook County Circuit Court ruled that the ordinance was drafted in error and refused to close Goebbert's Higgins Road and Mundhank Road entrances.

Mr. Hargadon stated that tonight they are proposing an amendment to the 1994 ordinance which will specify in detail which uses are the actual legal non conforming uses on the property and provide rules for what constitutes an expansion of those uses when a zoning relief approval by the Village must be obtained. Mr. Hargadon further stated that the Board may be aware of the lawsuit previously mentioned by Magnolia Pointe which alleges that Goebbert's had violated the Village zoning ordinance by changing and expanding the non conforming uses on their site. Mr. Hargadon stated that there have been multiple hearings held on the lawsuit but the court has not issued any relief to the Magnolia Homeowner's Association and the trial is set for next year.

Mr. Hargadon stated that he felt it was important to distinguish between the claims that the Homeowner's Association is making in that lawsuit and the relief that they are seeking this evening. Mr. Hargadon further stated that in the lawsuit the Homeowner's Association is saying that from 1994 to present that Goebbert's expanded in a way that violated the Village zoning ordinance. Mr. Hargadon stated that the Village has never taken action against Goebbert's and that claim is waiting for a trial scheduled for next year. Mr. Hargadon suggested that their petition is not wanting an inquiry as to whether or not violations may have occurred between 1994 and today but what the petition is asking for is to have the Board look at what is on the property today and if it is not causing significant external impacts on the surrounding properties, to update the 1994 ordinance to give a very detailed snap shot of what is there today and then provide rules for any future changes that would be on that site such that there would be certainty on all sides. Mr. Hargadon stated that they would be happy to show the Board what changes have been made since 1994. Mr. Hargadon displayed a graphic to the Board of what was there before and what is currently on the property.

Chairman McCombie asked for more information about what is the premise of the lawsuit and what are the parties seeking. Mr. Hargadon stated that the Homeowner's Association is alleging that Goebbert's use since 1994 has changed and expanded and thus constitutes a violation of the Village zoning ordinance. Because the Village has not seen to enforce its own ordinance, the Homeowner's Association has brought a claim under an adjoining landowner statute that allows a private party within a certain number of feet of a property to object to the conditions on that property. If approved in court, they would also be entitled to obtain their attorney's fees. Mr. Hargadon stated that the Homeowner's Association has sought on two occasions to try to get an injunction

to shut down the Fall Festival. The Cook County Circuit Court encouraged an out of court resolution to the situation and did not grant the injunction.

Mr. Hargadon asked the petitioner to state his name and address for the record. The petitioner stated that his name was Mr. Lloyd Goebbert, 42W 813 Rieking Road, Hampshire, IL. Mr. Hargadon asked Mr. Goebbert what was his relation to Goebbert's Farm. Mr. Goebbert stated that he is a family member and his brother and he run the farm. Mr. Hargadon asked what year did his family purchase the farm? Mr. Goebbert stated that his family purchased the farm in 1971. Mr. Hargadon asked if the farm was purchased by a particular family member? Mr. Goebbert stated that it was purchased by his grandfather George Goebbert.

Mr. Hargadon asked if Mr. Goebbert lived in the residence that is currently on the property. Mr. Goebbert stated that he lived in the residence since 1972. Mr. Hargadon asked if his family had owned and operated a farm prior to purchasing the property in 1971? Mr. Goebbert stated that his father and grandfather had a farm in Arlington Heights. Mr. Hargadon stated that farming has been in their family for a very long time. Mr. Goebbert stated that his grandfather, father, his brother, sons and nephews have all been involved with farming. Mr. Hargadon asked if they were present this evening? Mr. Goebbert stated they were all present at this evenings meeting.

Mr. Hargadon asked if he helped on the farm? Mr. Goebbert stated he worked the farm since 1972 and stated it was very rural when they moved there and in need of a lot of work. Mr. Hargadon asked when did they start the retail business? Mr. Goebbert stated it started with the Fall Fest in 1972. Mr. Hargadon asked what types of things did they sell in the 1970's? Mr. Goebbert stated that the started out selling u-pick vegetables, then they started pumpkin and flower sales.

Mr. Hargadon asked who "Happy Jack" was? Mr. Goebbert stated that "Happy Jack" is the pumpkin that sits on top of the farm silo which has been there since 1979. Mr. Hargadon asked besides "Happy Jack" if they did any advertising for the Fall Festival? Mr. Goebbert stated that in the 1970's they would do newspaper ads and mainly word of mouth. Mr. Hargadon asked if the WGN radio station had come out to broadcast from the farm? Mr. Goebbert stated that in 1992 they came to them and wanted to run a food drive for the radio station which continued until approximately 1997 when they changed management. Mr. Hargadon asked what was the effect on their business? Mr. Goebbert stated that it helped business and they collected a lot of food for the food drive.

Mr. Hargadon asked prior to 1994, what were the things that were part of the Fall Festival? Mr. Goebbert stated that they had decorations in the beginning and then

did pony rides, concessions, a haunted house, and they added other things each year.

Mr. Hargadon asked if he was a part of the land swap? Mr. Goebbert stated yes he was. Mr. Hargadon asked who he had discussions with concerning the land swap? Mr. Goebbert stated that he met with Mr. Bruce Trego who was the Village Manager at the time and the South Barrington attorney, his father, his brother, himself, and Mr. Sam Zitella. Mr. Hargadon asked who was Sam Zitella. Mr. Goebbert stated that he was the developer for Magnolia Pointe. Mr. Hargadon asked Mr. Goebbert what prompted the passage of the 1994 land swap? Mr. Goebbert stated that the Meese family owned the property east of the farm. Mr. Zitella wanted to purchase the property and wanted access to Mundhank Road. The Village wanted to have the property developed and the Meese's wanted to sell the property so they agreed to what everyone wanted.

Mr. Hargadon asked if the property that is used for the Magnolia Pointe entrance was originally the Meese property? Mr. Goebbert stated that it was not and it sits on Goebbert property and the back half of the property was owned by his Aunt Lila's Land Trust. Mr. Hargadon asked if anything else was given to the Goebbert's besides the land parcel they exchanged? Mr. Goebbert answered no.

Mr. Hargadon asked if they were given OR II zoning by the Village did he feel it was beneficial to their business? Mr. Goebbert stated yes because it would be good along Route 72, so it would not become residential and they could continue their business as they had in the past. Mr. Hargadon asked with the 1994 OR zoning, were there any restrictions put in place to say how Goebbert's could operate their farm. Mr. Goebbert answered no. Mr. Hargadon asked if he had discussions with the Village officials concerning the affect the 1994 zoning ordinance would have on their operations? Mr. Goebbert stated that the parking and access to Mundhank Road and Route 72 were to take place when the OR was developed into the OR.

Mr. Hargadon asked with respect to parking, was it his understanding that the 1994 ordinance was putting restrictions on your current operations? Mr. Goebbert stated absolutely not. Mr. Hargadon asked if it was his understanding that the 1994 change would prohibit adding additional parking or adding hard surfaces to the property. Mr. Goebbert stated no.

Mr. Hargadon asked if Mr. Goebbert could describe how parking is handled during the Fall Festival. Mr. Goebbert stated that most days it works fine with the exception of the weekends. Mr. Goebbert stated that they do hire South Barrington police to direct traffic on the weekends and they also will use an access road on heavy parking days. Mr. Hargadon asked Mr. Goebbert to describe and show the access road on the diagram for

the Board. Mr. Goebbert stated that the road is off of Higgins Road and Mundhank. It is used approximately five days a year between the hours of 10:00 to 4:30. The Fall Festival lasts for six weeks in the Fall. Mr. Hargadon asked Mr. Goebbert to describe the problem they had with that access road in 2013. Mr. Goebbert stated that it was extremely busy that day and for some reason the police decided to close the entrances. Mr. Goebbert stated that people started parking at the office park on the other side of Higgins and on Star Lane which is in Magnolia Pointe. Mr. Hargadon asked if people were exiting or entering on Star Lane? Mr. Goebbert referred to his brother who was present that day. Chairman McCombie asked Mr. Nate Goebbert if the testimony he was about to give was the truth. Mr. Nate Goebbert answered yes. Mr. Hargadon asked Mr. Goebbert to give his name for the record. He stated his name was Nate Goebbert. Mr. Nate Goebbert stated that during that time of the year, along Star Lane they had soy beans planted that were harvested which they then used the field to park cars. Mr. Nate Goebbert stated that he thought there were a few cars that drove over the park way and there was an altercation with a resident of Magnolia Pointe and a customer and the police were called. Mr. Nate Goebbert stated that since that time they have planted corn rows along Star Lane. Mr. Hargadon asked if there have been any other occurrences since they planted the corn in that area? Mr. Nate Goebbert stated no.

Mr. Hargadon asked is it fair to say that the 1994 ordinance grandfathered in Goebbert's use of the land despite any of the zoning changes set forth in the 1994 ordinance that might prohibit such use? Mr. Goebbert stated absolutely. Mr. Hargadon asked how did they know this? Mr. Goebbert stated that it was included in their discussions, otherwise why would they agree to something that would restrict the way they had been doing their business since 1972. They did not have to make the deal with the Village, Meese Farm, or Mr. Zitella. They did it to make everyone happy and move things along.

Mr. Hargadon asked after the passage of the ordinance in 1994, in his view were they required to get building permits for making additions or erecting permanent structures? Mr. Goebbert stated that if they replaced roofs or replaced green houses they did not. They did have permits for their big buildings. If they did maintenance themselves, the Village never asked for anything even after 1994. Mr. Hargadon asked if there was ever a time where they didn't know the answer and asked the Village if they needed a building permit. Mr. Goebbert stated he did not. Mr. Hargadon asked if they had any discussions with any Village officials where a Village official may have told you that you did not require a permit? Mr. Goebbert answered no.

Mr. Hargadon asked Mr. Goebbert to point out areas on the displayed graphic that showed what was built after 1994. Mr. Goebbert stated that they added a small enclosed

entranceway on building number one. There is a shade house across from it which was just a replacement of an existing shade house that was in disrepair. It is used to house plants that need shade. Building number 4 is a concession stand which had a cooler/freezer added on to it with a glass door for easier access. There is a 2 inch metal shade east of building #4. They also replaced some existing green houses that were in disrepair. There were also green houses that were moved that are not permanent structures and can easily be disassembled. Mr. Hargadon asked if they are asking for all the structures that are shown on the diagram to be grandfathered in and if they add any additional buildings or other permanent structures that they would seek whatever permits would be required. Mr. Goebbert stated yes but they need clarification from the Village of what they can do maintenance wise and such things as changing traffic patterns.

Mr. Hargadon called Mr. Todd Shaffer of Haeger Engineering to testify. Mr. Hargadon asked Mr. Shaffer for what purposes was he retained by the Goebbert Family. Mr. Shaffer stated that in the Spring of 2013 there was a meeting between the Village Engineer, representatives from Goebberts and some Village officials concerning some drainage concerns. Mr. Shaffer stated at the time there was concern about storm water management on the Goebbert property. Mr. Shaffer further stated that since that time they assisted Goebberts with water retention, relocating septic fields, assisted in connecting to the Village sanitary system, coordinated plans for construction of berm along Star Lane, and prepared Plat of Survey for this petition.

Mr. Hargadon asked if their company reviewed storm water drainage on the Goebbert property. Mr. Shaffer answered yes. Mr. Hargadon asked if his firm reviewed the drainage conditions within Magnolia Pointe subdivision. Mr. Shaffer stated yes as it related to the Goebbert property. Mr. Hargadon asked upon that review can he describe his conclusions for the Board.

Mr. Shaffer stated that they looked at complaints and things that were being impacted on both properties. Mr. Shaffer further stated that there were two key items that were noted, the first one being the eastern 300 feet of the north part of the Goebbert property which is a shared storm water management retention/detention Basin A. Part of the basin is on the Magnolia Pointe property and was part of the overall storm water management area for the development. When Magnolia Pointe was built there were wetlands on the site and they had to get a Corps of Engineers permit and as part of that there was a conservation easement set up, maintenance agreements, etc. and when that was built, based on aerial photos, there was some work done, however currently the area is overgrown and the outlet does not seem to be functioning. Mr. Shaffer stated that one of the main issues that impacts Goebberts directly is the lack of an overland flow route between lots 29 and 30. When Gobberts was built they inserted drain tiles for their drainage for the farm and

they also had service flow run off which ran towards Magnolia Pointe. The eastern portion of Gobberts went toward the northeast which is the southeast corner of Magnolia Pointe and with the series of drain tiles as part of the Magnolia Pointe plans, they were going to pipe that drain tile to a concrete pipe system. A 12 inch pipe was provided which is not adequate for run off for all major rain events, so it was imperative that the drainage could also flow overland where it could flow naturally.

Mr. Shaffer stated that what they discovered was that the grading on those two lots were not done according to plan and that is one of the main causes of flooding for the stored water in the rear yards of those two lots which also backs on to Goebberts property. Mr. Shaffer stated that the next item was on the west side of Star Lane. There was suppose to be clearance sections in the drainage ditches installed on the west side of Star Lane. If they were installed, they are no longer there. Those lots flow directly into the road, so in some instances if the water rises it would have flowed to where the clearance sections would have been installed.

Mr. Shaffer stated that there was drainage structures that were clogged by debris. Mr. Shaffer further stated that these were the main issues on the properties. Mr. Hargadon asked if he reviewed, from a storm water perspective, the improvements shown on the site plan that is on the displayed graph as having been constructed since 1994. Mr. Shaffer answered yes. Mr. Hargadon asked if he had compared current aerial photos of the site with aerial photos from previous years? Mr. Shaffer stated that they reviewed from March of 1994 through June of 2016. Mr. Shaffer stated that they did prepare a Plat of Survey of what is out there today. They did compare historical imagery plus the Plat of Survey from December 2016 and also utilized the Plat of Survey from 1994. Mr. Shaffer stated that they compared all the services and looked for what has changed. Mr. Hargadon asked Mr. Shaffer as a professional civil engineer, can he give the Board his professional opinion as to whether the changes on the Goebbert property since 1994 has adversely affected the Magnolia Pointe subdivision as it concerns storm water drainage. Mr. Shaffer stated that there are tables that they use for measurements and from the perspective of those measurements, the run characteristics that currently exist on the Gobberts Farm property is nearly identical to that which existed in 1994 and do not have an adverse affect on Magnolia Pointe.

Mr. Hargadon stated that this concluded his presentation and reserved the right to come back if they felt something needed to be addressed. Mr. Hargadon further stated that his witnesses are available to answer any questions.

Chairman McCombie asked the Board if they had any questions. Commissioner Kawasaki asked that on one of the site plans there are a few areas that are outlined in a lavender color. Commissioner Kwasek asked what they are and when were they

installed? Building Officer Moreland stated that they are temporary structures that are put up for the Fall Festival. Commissioner Kwasek asked when were the concrete pads installed? Mr. Goebbert stated that he felt they have been installed seven to eight years ago.

Chairman McCombie asked if the land swap changed the acreage of the property? Mr. Goebbert stated that there was no real change.

Commissioner Gillis asked if there was a drainage issue prior to 2013 in Magnolia Pointe? Mr. Goebbert stated that in the beginning things worked fine but the water retention area is a big problem. Mr. Goebbert further stated that when all parties went out to look at the problem, on the east side, the outlet was froze up and the three foot tile was standing half full of water. Mr. Goebbert stated that they went into the wetland area which is on his Aunts property and the outlet was under two feet of water and blocked with debris. Mr. Goebbert stated that there was also a dike that was put in to increase the retention in the pond, and because the outlet was clogged, it ran over and eroded it and they lost all the water retention. The maintenance has not been done, which Magnolia Pointe was suppose to do. Chairman McCombie asked if the area they are talking about is on Goebberts property. Mr. Goebbert stated that it is part of the wetland retention area. Chairman McCombie asked who is responsible for the maintenance in that area. Mr. Goebbert stated that in the agreement it is Magnolia Pointe. Chairman McCombie asked if Magnolia Pointe has access to that area. Mr. Goebbert stated yes it is part of the agreement.

Chairman McCombie asked for comments from the audience. Chairman McCombie asked if the participants would like to be sworn in as a group or individually. The participants asked to be sworn in as a group. Chairman McCombie asked all participants that will be giving testimony if the testimony they were about to give was the truth to the best of their knowledge. All participants answered yes.

Mr. Peter Lovato stated that he is the attorney representing Magnolia Pointe in the pending litigation in the Circuit Court of Cook County. Mr. Lovato stated that there were many people who would liked to have given testimony this evening but were not able to attend the meeting. Chairman McCombie asked if they had any written documentation from those people that they would like to submit to the Board, otherwise they can submit them to the Village for the Board's consideration.

Mr. Lovato stated that there are some things that have not been mentioned to the Board this evening. Mr. Lovato stated that they include an increase in crime, stench during the Fall Festival, and an increase in traffic to the point where it traps people in their homes in

the subdivision. Mr. Lovato stated that the one concern he has about the proceedings this evening is that they are litigating many of the issues that have been stated to this Board as facts which are being hotly disputed by the Association. One of the facts that was stated is that Magnolia Pointe is required by the conservation easement to maintain the wetland. The agreement states that Magnolia Pointe is responsible to maintain its portion of the wetland. The majority of the wetland is on the Goebbert property.

Mr. Lovato stated that at the first court proceedings, the court heard the presentation by the Association and took exhibits including aerial photos of the property. The court stated that they would like to hear from the defendants but the judge was convinced that the Association had made a legitimate case that there had been substantial development on the property. The court stated that all they could do now is something to protect the residents during the Fall Festival and may be able to decide a more permanent solution when the case comes to trial. The judge asked the parties if they would like to have discussions on a solution. The parties agreed to monetary compensation to the Association to hire private security for the subdivision entranceway during the time of the Fall Festival. Mr. Lovato stated that a similar hearing was held about a year later and evidence was presented to the judge who ruled that monetary compensation would be paid by Goebberts Farm to the Association to provide security for the entranceway at Magnolia Pointe during the Fall Festival.

Mr. Lovato stated that there are several residents who are Board members who were not able to be present this evening, one being Ray Rayons. His lot backs up to Goebberts Farm where the concrete pads are. On those pads are placed cages for animals, some being wild animals that make loud noises and do not smell very good for seven days a week for six weeks.

Mr. Lovato stated that the access road that was mentioned earlier is also behind Mr. Rayons home and on busy days it has bumper to bumper traffic. Mr. Lovato stated that the president of the Association Mr. Abbot Shabbat could also not be here because he is out of state and Mr. Matt Rubicki who is also a Board member is out of town. Mr. Lovato asked if the Board could allow additional testimony at a later date.

Mr. Lovato stated that the ordinance that grants the zoning variance was accompanied by another zoning that granted the OR variance and was sought by the family in order to make their land more valuable. There were two problems with the variance because the parcel was not quite big enough for that type of zoning and the parcel was adjoined on one side by residential and that is why they needed a variance. Mr. Lovato stated that the variance came with a number of conditions. Mr. Lovato stated that the ordinance stated that the access was exclusively on Higgins Road. Mr. Lovato stated that this shows the Village did have a concern with the increased traffic and wanted to restrict it to Higgins

Road. Mr. Lovato stated that since 1994, the Goebberts did not respect that spirit and what they did was installed a second entrance off of Mundhank Road. Mr. Lovato stated that since 1994 there have been many changes to the property. There have been buildings that have been modified and built. There have also been large amounts of concrete that have been poured on the property including a large piece that was installed recently.

Mr. Lovato stated that the Village in 1993 wrote a letter to the Goebberts in reference to a request for a variance to put a porch on a house. The Village letter stated that although building permits had been granted in the past, the Village had been unaware that they were zoned for A-1 which was incompatible with agricultural use and that since they were now operating as a legal non conforming use, a building permit could not be granted unless there was a zoning variance. Mr. Lovato stated that less than a year later there was a zoning variance to OR and the implication was that this was the first time that there would be any restriction on their property. Mr. Lovato stated that he would like to read a statement from the letter from the Village. "Please be aware that agricultural farm operations are not a permitted use in the A-1 zoning district. Since this use lawfully existed at the effective date of the zoning ordinance it is deemed to be a non conforming use and may be continued provided that there is no physical change to the buildings. Any new construction, addition or alterations to the farm buildings in the future will require a zoning variation to be received before a building permit application. Please understand that any future construction will require zoning variations." Mr. Lovato stated that he felt this casts some doubt on the view that the Village was unaware that there were going to be restrictions as a result of the zoning variation they were requesting to increase the value of their land.

Mr. Lovato stated that this was not the only time that the Village had contacted the Goebberts. Mr. Lovato further stated that in 2014 a letter was written to the Goebberts by the Village attorney and in that letter it states, "the ordinance provides in part that you may continue to operate the property as a legal non conforming agricultural use which would include the retail operation of the farm and the residual use of the home. As a non conforming use any structures may not falter, added to, enlarged, unless they placed in conformity with regulations with the appropriate zoning district. Further, any expansion of the non conforming use or changes to the non conforming use shall not be permitted." Mr. Lovato stated that this was before the pouring of the concrete on the property a few weeks ago.

Mr. Lovato stated that the Board has not heard about all of the things that have been added to the Goebberts property since 1994. Mr. Lovato further stated that there is a building, which has been referred to as a temporary building that is a large food

court that sits on a concrete pad, with a roof, electricity, and picnic tables where many people gather. Mr. Lovato stated that the Board now is probably curious if the Village Building Department and zoning were ok with the addition to the property and the answer would have to be no. Mr. Lovato stated that since 1994, Goebberts did not seek or receive one building permit for anything that they did out there. Mr. Lovato further stated that if anyone has been out to Goebberts recently, the change has been enormous. Mr. Lovato stated that there is a two to three story tall house for giraffes with a massive set of ramps for patrons to walk up to feed the giraffes, which as far as we know, were built without any review by the Village as far as safety, design, or materials used.

Mr. Lovato stated that it is not clear to them why so much was said about water, drainage, and retention. Mr. Lovato further stated that between lots 29 and 30 there should have been, according to the drawings, an emergency overland flow. Mr. Lovato stated that the Village did review that situation and issued building permits for the homes and did not view a necessity for overland over flow water. Mr. Lovato further stated that the Village never finalized those drawings from the developer and the drawings show that Goebberts were permitted to tap in one field tile into two catch basins at the base of the 12 inch pipe that was mentioned in earlier testimony. Mr. Lovato stated that since 1994, but was not sure when and not by the authority of the Magnolia Pointe Association, Goebberts has taped in, he believed, were three more pipes, each of which is larger than the one that was intended to be there in the first place., on to Magnolia Pointe's property and has burdened the twelve inch pipe with a much greater flow of water than it was ever designed for. Mr. Lovato stated that they believe that this resulted in the great increase in the impervious surfaces that have been installed on the Goebberts property. Mr. Lovato stated that he has heard expert opinions that might contradict that statement. Mr. Lovato wanted to let the Board know that tomorrow morning, by court order, the Association's expert will visit the property to inspect, do measurements, view and come up with his own opinion, about what sort of runoff is being caused and what burden is being placed on the design facility, which may end up being a contested issue. Mr. Lovato stated that he will be waiting for the experts opinion and report.

Mr. Lovato stated that for a little over a year, the Association made a very strong effort to come to terms with the Goebberts over the problems of traffic, noise, smell and crime. Mr. Lovato further stated that the solution the Association was seeking was two fold. Number one was to screen Magnolia Pointe off from all that is going on during the festival by constructing a berm. Mr. Lovato stated that the western portion or Magnolia Pointe has no screening with the exception of the corn stalks, which do not screen the property. Mr. Lovato stated that when they were not able to come to a resolution, the Association filed the lawsuit which seeks to enforce the ordinance.

Mr. Lovato further stated that what the Goebberts are asking, is that this Board take a side in that litigation. Mr. Lovato stated that the Association hopes that the Board will not want to resolve a private dispute by changing the ordinance.

Mr. Lovato stated that this is a very serious and emotional issue for the residents of Magnolia Pointe and they want to be good neighbors. Mr. Lovato stated that they do not want to shut the Fall Festival down, but there have been no efforts or the efforts that have been made have been ineffective to protect the residents of Magnolia Pointe. Mr. Lovato stated that there are residents present that would also like to make their comments and concerns to the Board.

Chairman McCombie asked if there was a list of concerns from the residents? Mr. Lovato stated that one of the issues is construction of a berm on the north side of the property, the water issue which is part of the litigation, compensation for entrance gates and making the roads private, and to stop the increase of development of the Goebbert property to accommodate more people.

Chairman McCombie stated that they may want to consider having an operational guard house for the six weeks during the Fall Festival and then possibly talking to the Village about dedicating the streets.

Commissioner Kwasek stated that he had a question for Village Attorney Storino. Commissioner Kwasek stated that as this is a court case where normally the Board will hear a petition before them, and in some cases act as arbitrators. Commissioner Kwasek stated that the direction that the Chairman is going sounds like an arbitration in a court case and he didn't feel it was appropriate for this body to be in that process, or is it? Attorney Storino stated that what the Chairman is doing is to illicit more facts. The attorney for Goebberts raised the litigation and the attorney for Magnolia Pointe's Association gave what context he thought he should have and stated that he did not have any problem listening to that dialogue. Attorney Storino stated that he did not feel it did anything to the litigation and it is two advocates that are presenting their position with respect to how they see the litigation and how that litigation affects what they are asking to do. Attorney Storino further stated that he thought the Goebberts have the right to be here and seek what they are seeking. Attorney Storino stated that he did not feel what Chairman McCombie said was a problem

Mr. Lovato stated that the Chairman's idea would be something he would like to consult with his clients about, and that was something they had considered in the past, and if the Village would be willing to work with them on not having to dedicate the streets, it might get them a long way in resolving a difficult problem.

Mr. Hargadone stated that he would like to address the jurisdictional point of the Plan Commission. Attorney Storino asked Mr. Hargadone if they could let some of the residents in the audience have an opportunity to voice their concerns. Mr. Hargadone stated that he will be brief. Mr. Hargadone stated that the Village has the authority to act on their petition. Mr. Hargadone further stated that what Counselor Lovato was talking about is the lawsuit that exists in a different realm than what they are discussing this evening, such that the Board could grant their petition and amend the ordinance in the way they seek and that doesn't move his lawsuit because he can still prove that if there has been a previous expansion, that the relief shall be granted. Mr. Hargadone stated that the two are unrelated and it is the Village who has the power to decide this and the dispute between the parties is independent of this jurisdiction and the Board has the right to decide for themselves on the basis of their petition.

Chairman McCombie asked for comments from the audience.

Mr. Mario Fortunova of 12 Blossom Court stated that he is a Board member of the Magnolia Pointe Homeowner's Association and that he felt the Board should not grant the petition because of the things that have been done on the property without having any permits pulled or inspections made. Mr. Fortunova stated that just as a resident, he knows of some of his neighbors that were doing brick work on their driveways and were stopped by the Village because they did not get a permit or inspection from the Village. Mr. Fotunova stated that they did not want to close the Fall Festival down, but he has lived in his home since 2001 and the Festival has grown tremendously. Mr. Fotunova stated that they are happy for them and they just want to have some security and want to protect their neighborhood.

Mr. Fortunova stated that he was in Mr. Rayon's back yard during the Fall Festival and the dust from the access road was terrible. Mr. Fortunova stated that they do want to be good neighbors and there has to be a solution that can work. If the Village can help with that, they welcome their help. Mr. Fortunova stated that they do not want to be in court and would like to have a solution as soon as possible.

Mr. Paul Agrafia of 5 Blossom Court stated that he is also a Board member of the Magnolia Pointe Homeowner's Association. Mr. Agrafia stated that the one thing that surprised him about the variance is that they have been operating for 20 years and have not respected the ordinance. They were suppose to build a berm, not have no access on Mundhank, they were suppose to be 150 feet away from streets for parking, they built structures and they seem to do whatever they want. Mr. Agrafia stated that they are not happy with this and they do like the farm but they want to get this resolved the right way. Mr. Agrafia stated that neither the Goebberts or anyone else is above the law and permits and ordinances need to be abided by.

Mrs. Patel of 23 Star Lane stated that her backyard backs up to the Goebberts farm and she has the view of the giraffe six weeks out of the year. Mrs. Patel further stated that she and her husband moved into their home 2 1/2 years ago and she does like having the farm there, however six weeks out of the year during the Fall Fest it is complete chaos. Mrs. Patel stated that last fall she had family over and people were taking pictures of them in her backyard and were saying derogatory things to them. Mrs. Patel stated that it does not happen all the time, however one of the reasons why they bought their house was because her husband is physician in a high risk field and needs to be five to ten minutes from his hospital. Mrs. Patel further stated that for those six weeks out of the year, it takes him a 1/2 hour on the weekends. Mrs. Patel stated that from a safety aspect, she does have two small children and is concerned for their safety because there are people parking and coming into their neighborhood year round. Mrs. Patel stated that there was also a child approached in their neighborhood while waiting for the school bus. Mrs. Patel further stated that she has to keep her windows closed during the time of the Fall Festival because of the dust. Mrs. Patel concluded by saying that if there was something the Village could do, that would be great.

Mrs. Linda Shavian of 14 Blossom Court stated that she is a concerned mom. Mrs. Shavian stated that she is at home and has seen people park and get out of their cars and take pictures of her home, so she does fear having her children play outside. Mrs. Shavian further stated that she has had a vehicle stolen and last week her vehicle was broken into. Mrs. Shavian stated that things have gotten bigger since 1994 and her children love going there, however they cannot say that they do not need to get permits. Mrs. Shavian further stated that they were changing tile on their front stoop and they were stopped by the Village and required to get a permit. Mrs. Shavian stated that she did not put up structures or anything else that is impacting her neighbors. They are putting up things that are affecting their neighborhood. Mrs. Shavian stated that she did not feel it is fair to have everything currently on the property grandfathered in. Mrs. Shavian concluded by stating she did not feel that it is fair and that she would not be allowed to do that to her property.

Mr. Acroft of Magnolia Pointe stated that he has been a resident for the a year and a half and does have surveillance cameras on his property and they also had a vehicle stolen. He stated that he has had the South Barrington police come to his residence 3 to 4 times to review his surveillance tapes. Mr. Acroft further stated that they had a family function at their home and a lot of the guests stated that they had been to Goebberts farm so it does attract a lot of attention. Mr. Acroft concluded by stating his main concern was security for the neighborhood and would appreciate anything that could be done by the Village.

Mr. Jim Schultz at 11 Blossom Lane stated that he had two concerns. In October of 2014 he was out of town and his house was broken into and the entire house was ransacked. Mr. Schultz stated that he was present at the incident that happened when the corn rows were not planted and people were trying to drive over the park way and the police had to be called. Mr. Schultz stated that he has experienced all the things his neighbors have described. Mr. Schultz stated that he has actually had people in his driveway taking pictures of his house during the Fall Festival.

Mr. Shadman of 4 Star Lane stated that he has been a resident since 2000 and has grown up with Goebberts Farm, but things have clearly changed. Mr. Shadman further stated that they want to be good neighbors and felt it was critical to get this resolved. Mr. Shadman stated that the construction of a berm might help but hiring private security was not a good solution. Mr. Shadman stated that they want to be good neighbors and want to get this resolved.

Bilqes Ikraf of Magnolia Pointe stated she had not been sworn in. Chairman McCombie asked if the testimony she was about to give was the truth? Mrs. Ikraf answered yes. Mrs. Ikraf stated that she has four children and they are not allowed to play outside in front of their house. Mrs. Ikraf stated that her main concern is security and asked the Goebbert family present this evening to please consider the safety of their families.

Chairman McCombie asked if there were any further comments from the audience? Being none Commissioner White suggested that the Public Hearing be continued because of all the information presented this evening. Chairman McCombie stated because the Board had not heard from staff this evening and with the new information presented, Chairman McCombie asked for a continuance of the Public Hearing. Attorney Storino wanted to make sure that all the parties are comfortable with not requiring Goebberts to send notices to surrounding properties again after the meeting continuance date is set and asked if there could be a point person who can notify Magnolia Pointe residents when the date is set. Mr. Lovato agreed to be the point person for Magnolia Pointe. Mr. Hargadorn stated that he was fine with that as long as Mr. Lovato was in agreement. Mr. Lovato agreed.

Commissioner Kwasek asked the Village Engineer if she was aware of the drainage issues and what has been going on back in forth on these issues. Village Engineer Karney stated that she is not completely aware of what the specific problems are but she has been studying the Magnolia Pointe engineering plans and there are some issues out there that are the developer's issues. Village Engineer Karney further stated that she has been asking for plans of what has been done and has not received them yet. Village Engineer Karney further stated that Magnolia Pointe has submitted plans to

restore and fix the problems that are in the one easement area. Magnolia Pointe will be fixing that area. Commissioner Kwasek asked Village Engineer Karney if she was able to look at the documents to see who was responsible to maintain it. Village Engineer Karney stated that it was part of the original engineering plan for Magnolia Pointe and the developer was responsible to complete that improvement. Commissioner Kwasek asked who was responsible for maintenance? Village Engineer Karney stated that she did have a document stating that only part of it would be maintained by Magnolia Pointe and she hadn't had a chance to review the document to see if Goebberts was to maintain their part, however it was never completed per plan for anyone to maintain it properly. Village Engineer Karney received documents that the wetland basin would be maintained for two years and then it would be the responsibility of the Homeowner's Association. Commissioner Kwasek asked if the developer posted a bond? Village Engineer Karney stated that she was not sure in this particular case.

A resident from Magnolia Point stated that the bond was returned to the developer by the Village and a letter signed saying that he would be responsible for any developer issues, but nothing has been done so the subdivision has decided to fix the issue themselves which has cost the homeowner's tens of thousands of dollars. Commissioner Kwasek asked if the developer still lived in the subdivision? The resident stated no but there is a document that states he would be still be responsible for a developers situation which they feel this is a developers situation. Another resident from Magnolia Pointe stated that the subdivision does not have the Village of South Barrington to back them up on this issue. The Village has to look at them as residents and can't pass this ordinance without first seeing what problems it is going to cause.

Chairman McCombie encouraged everyone to return for the next meeting and the Village would like to have both sides come to an agreement out of court. Chairman McCombie asked for a Motion to continue the Public Hearing to a date to be determined. Commissioner Kwasek made a Motion. Commissioner Gillis seconded. By unanimous vote the Motion was passed.

Chairman McCombie asked for a Motion from the Board to adjourn the meeting. Commissioner Kwasek made a Motion. Commissioner Murarka seconded. By unanimous vote the meeting was adjourned at 10:35 p.m.

Respectfully Submitted,

Christine Latoria, Secretary

These Minutes were approved this
24th day of May, 2017

