

**REGULAR MEETING OF THE BOARD OF TRUSTEES  
OF THE  
DOWNERS GROVE PUBLIC LIBRARY  
JANUARY 11, 2012**

**MINUTES**

**ROLL CALL**

President DiCola called the meeting to order in the Library Meeting Room at 7:30 p.m. Trustees present: Eblen, Loftus, Read, DiCola. Trustees absent: Greene, Humphreys. Also present: Library Director Ashton; Assistant Director Carlson. Visitors: Bonnie Reid, Reference Services manager ; Sara Pemberton, Children's Services manager.

Trustees Greene and Humphreys arrived at 7:31 p.m.

**APPROVAL OF MINUTES**

Trustees reviewed the minutes of the regular meeting of December 14, 2011. It was moved by Read and seconded by Humphreys **THAT THE MINUTES OF THE REGULAR MEETING OF DECEMBER 14, 2011 BE APPROVED.** Ayes: Eblen, Greene, Humphreys, Loftus, Read, DiCola. Abstentions: none. Nays: none. Motion carried.

**PAYMENT OF INVOICES**

Trustees reviewed the list of invoices submitted for payment. It was moved by Loftus and seconded by Greene **TO APPROVE PAYMENT OF OPERATING INVOICES FOR DECEMBER 31, 2011 TOTALING \$90,107.26 AND FOR JANUARY 14, 2011 TOTALING \$12,219.76 AND ACKNOWLEDGE PAYROLLS FOR DECEMBER 2011 TOTALING \$160,356.39.** Ayes: Eblen, Greene, Humphreys, Loftus, Read, DiCola. Abstentions: none. Nays: none. Motion carried.

**OPPORTUNITY FOR PUBLIC COMMENT ON AGENDA ITEMS**

None.

**OPPORTUNITY FOR PUBLIC COMMENT ON OTHER LIBRARY BUSINESS**

None.

**OLD BUSINESS**

None.

**NEW BUSINESS**

**- Discussion of Draft of Major Strategies for the Strategic Plan**

The board discussed the draft of major strategies for the strategic plan, clarifying some items and suggesting that examples be provided for each. Ashton will make revisions to the draft for the next board meeting. This document will be used for discussion with the community in the coming months.

**- Approval of Letters of Appreciation for staff members who completed 5, 10, 15, 20, 25, and 30 years of service during 2011**

The board reviewed and signed individual letters of appreciation for Downers Grove Public Library staff who have completed 5, 10, 15, 20, 25, and 30 years of service during 2011.

**-Preview of Staff Day program for January 13, 2012**

Thanks to our Staff Development Committee, the Staff In-Service Day on January 13 will include “The Big Picture: Who Need Libraries?” with Jamie LaRue, Director of the Douglas County Libraries (Colorado), author, and speaker; a session with Director Ashton on “Mission Possible: DGPL Strategic Plan;” and a presentation on “Understanding Mental Illness” by speakers from the National Association on Mental Illness (NAMI).

**REPORT FROM THE DIRECTOR**

- a. Library visits. Staff are working on arrangements for Board and staff visits to area libraries, for information-gathering for the Strategic Plan. Specific dates will be set before January 25.
- b. Presentation by Dewberry Architects. Michael Mackey and Rick McCarthy of Dewberry Architects are scheduled to attend the February 22 Board meeting. They will make a presentation on current trends in public library building design, construction, and use.
- c. Illinois Governmental Ethics Act compliance. The Library is required to submit to the DuPage County Clerk a list of all officials and employees who are required to submit a Statement of Economic Interest. For this purpose, each Board member will be asked to confirm their full name and home address. Mailing of forms will take place in March.
- d. Illinois Open Meetings Act Training. New provisions of the Open Meetings Act require all Library Board members to complete online training by the end of 2012. Additional information is attached.
- e. Village of Downers Grove Stormwater Utility planning. VODG is currently developing a plan to change the financial structure of this service, moving it from a property tax based on a property’s assessed valuation to a fee based on the property’s impervious surface area. Library staff will attend a meeting on January 20 to receive additional information. Probable additional cost to the Library, initially, will be \$750 per year.
- f. Director’s vacation plans. Rick Ashton will be on vacation January 14-21.

**EXECUTIVE SESSION FOR DISCUSSION OF A PERSONNEL MATTER**

President DiCola stated that she would entertain a motion to move into a closed session as allowed by the Illinois Open Meetings Act, Chapter 5, 120.2, to consider the compensation and performance of a specific employee.

It was moved by Humphreys and seconded by Greene **TO MOVE INTO A CLOSED SESSION AS ALLOWED BY THE ILLINOIS OPEN MEETINGS ACT, CHAPTER 5, 120.2, TO CONSIDER THE COMPENSATION AND PERFORMANCE OF A SPECIFIC**

**EMPLOYEE.** Ayes: Eblen, Greene, Humphreys, Loftus, Read, DiCola. Abstentions: none. Nays: none. Motion carried.

President DiCola announced that the closed session began at 8:43 p.m. Trustees present: Eblen, Greene, Humphreys, Loftus, Read, DiCola. Trustees absent: none. Also present: Library Director Ashton.

The Trustees discussed the permitted topic.

It was moved by Greene and seconded by Loftus **TO END THE CLOSED SESSION AND RECONVENE THE PUBLIC MEETING.** Ayes: Eblen, Greene, Humphreys, Loftus, Read, DiCola. Abstentions: none. Nays: none. Motion carried.

President DiCola reconvened the regular meeting in open session at 9:22 p.m.

### **TRUSTEE ANNOUNCEMENTS AND REQUESTS FOR INFORMATION**

Trustee Humphreys announced that the Village Council has approved plans to proceed with Grove Fest for June 21-23, 2012. As this 3-day event will have an impact on Library operations, he will serve as informal liaison among the Village, the Rotary Club, and the Library.

### **ADJOURNMENT**

President DiCola adjourned the regular meeting at 9:24 p.m.

**DOWNERS GROVE LIQUOR COMMISSION  
VILLAGE HALL COUNCIL CHAMBERS  
801 BURLINGTON AVENUE**

Thursday, September 8, 2011

**I. CALL TO ORDER**

Staff called the September 8, 2011 Liquor Commission meeting to order at 6:40 p.m.

**II ROLL CALL**

**PRESENT:** Mr. Austin, Ms. Fregeau, Ms. King, Mr. Krusenoski, Ms. Strelau

**ABSENT:** Mr. Clary, Chairman McInerney

**STAFF:** Liaison to the Liquor Commission Carol Kuchynka, Staff Attorney Dawn Didier, Village Attorney Enza Petrarca

**OTHERS:** Rodolfo Carlos, Homer Ronstadt, Larry Spatz, Lee Masover, Joe Frankel, Tim Canning, Shaun Black, Court Reporter

**III. APPOINTMENT OF CHAIRMAN PRO TEM**

In the absence of Chairman McInerney, staff requested a motion to appoint a Chairman Pro Tem for the meeting.

**MS. FREGEAU MOVED TO APPOINT ALICE STRELAU TO ACT AS  
CHAIRMAN PRO TEM FOR THE SEPTEMBER 8, 2011 MEETING OF THE  
LIQUOR COMMISSION. MS. KING SECONDED.**

**VOTE:**     **Aye:** Ms. Fregeau, Ms. King, Mr. Krusenoski, Mr. Austin, Ms. Strelau

**Nay:** None

**Abstain:** None

**MOTION CARRIED:** 5:0:0

The motion carried.

**IV APPROVAL OF MINUTES**

Chairman Pro Tem Strelau asked for approval of the minutes July 28, 2011 Liquor Commission meeting and asked members if there were any corrections, changes or additions.

Hearing no changes, corrections or additions, the July 28, 2011 minutes of the Liquor Commission meeting were approved as written.

Chairman Pro Tem Strelau reminded those present that this evening's meeting was being recorded on Village-owned equipment. Staff was present to keep minutes for the record and a court reporter was present taking the minutes verbatim.

## V. DISCIPLINARY HEARING FOR ALLEGED VIOLATIONS

Chairman Pro Tem Strelau made the following statements:

"Section 3-40 of the Downers Grove Municipal Code provides that the Local Liquor Commissioner may revoke or suspend any license issued if the Commissioner determines that the licensee has violated any of the provisions of this chapter or any State law pertaining to the sale of alcohol. Both under the Section cited above, and under Chapter 235, Section 5/7-5, Illinois Compiled Statutes, the Local Liquor Commissioner is required to hold a public hearing after notice to the licensee, in which the licensee is afforded an opportunity to appear and defend. Pursuant to Section 3-5 of the Downers Grove Municipal Code, this hearing is being conducted by the Local Liquor Commission at the request of the Local Liquor Commissioner."

"The Commissioner has the power to temporarily suspend a license without a hearing if there is reason to believe that continued operation of the licensed business would immediately threaten the welfare of this community. Such was not done in this case. The licensee may be represented by counsel, although he need not be for the purposes of this hearing."

Chairman Pro Tem Strelau asked if there was a signed stipulation in this case. Ms. Didier replied yes.

Chairman Pro Tem Strelau made the following statements:

"In view of the stipulations, the order of this hearing will be substantially as follows:"

- A. Prosecution will read the signed stipulation into the record with the opportunity for the licensee to register its concurrence or non concurrence for the record.
- B. Prosecution may present any additional evidence in this case with the right of the licensee to cross-examine.
- C. Licensee may present any defense or mitigating evidence with right of prosecution to cross-examine.
- D. Summary of case by prosecution and defense."

"The prosecution should establish that timely notice of this hearing has been provided to the licensee."

"Witnesses shall be sworn."

"Strict rules of evidence will need not be adhered to although the Commission expects to exercise control over the hearing to ensure that irrelevant or repetitive testimony does not unduly prolong the hearing."

"A court reporter is present and will take the proceedings verbatim. Staff is also present for the purpose of summarizing the proceedings."

"The Commission will submit the findings and recommendations to the Local Liquor Commissioner regarding the existence and nature of any violation and the appropriate penalty, if any."

"Upon receipt of the recommendation of the Commission, the Commissioner will render a decision and the licensee will be notified in writing."

**La Mex Corp. d/b/a La Mex Fine Mexican Cuisine**

Chairman Pro Tem Strelau stated that the first order of business was to conduct a disciplinary hearing for La Mex Corp. d/b/a La Mex Fine Mexican Cuisine located at 500 W. 75th Street. She stated that the licensee has been charged with a violation of Section 3-25(a) of the Downers Grove Liquor Control Ordinance.

Chairman Pro Tem Strelau asked that any individual(s) representing the licensee step forward and be seated. She asked that any individual(s) giving testimony, state and spell their name for the record, indicate their affiliation with the establishment and be sworn in by the court reporter.

Mr. Rodolfo Carlos was sworn in by the court reporter. Mr. Carlos introduced himself as the owner of LaMex Corporation.

Chairman Pro Tem Strelau asked the prosecuting attorney to present her case.

Ms. Didier stated that the parties to this hearing before the Liquor Commission of the Village of Downers Grove by and through their attorneys, if any, hereby stipulate as follows:

1. La Mex Corp. d/b/a La Mex Fine Mexican Cuisine, 500 W. 75th Street, Downers Grove, Illinois, is the holder of a Class R-1 Liquor License #LQ-000030, issued by the Village of Downers Grove. That said Licensee has held a liquor license for this location from the Village of Downers Grove since September 24, 2002.
2. Notice of this hearing was served upon the Licensee by certified mail to its registered agent and by personal delivery to the manager of the licensed premises.
3. At approximately 8:40 p.m. on Saturday, May 7, 2011, Downers Grove Police Officer Glaser and Downers Grove Police Officer Hartleb, observed Z.S., a special employee of the Downers Grove Police Department under the age of twenty-one (21), whose date of birth is January 15, 1993, (making him 18 years old), enter La Mex Fine Mexican Cuisine located at 500 W. 75th Street, Downers Grove.
4. The special employee approached the bar and Gilson Rios asked him for his order.
5. The special employee ordered a bottle of Miller Lite beer while Officers Glaser and Hartleb observed him.
6. That Gilson Rios, whose date of birth is November 5, 1985, then asked the special employee for identification.
7. That the special agent produced his valid Illinois driver's license indicating his date of birth as January 15, 1993, and reading "Under 21 until 01-15-14" on the face of the license.
8. That Gilson Rios viewed the special agent's driver's license and then returned the driver's license to the special employee.
9. That Gilson Rios then charged the special employee \$3.75 for the beer.

10. That the special employee then gave Gilson Rios a twenty dollar (\$20.00) bill.
11. That Gilson Rios then served the special employee a bottle of Miller Lite beer.
12. That Gilson Rios returned \$16.25 in change to the special employee.
13. That Officers Glaser and Hartleb who witnessed the events in the foregoing paragraphs, identified themselves to Mr. Rios and advised that the delivery of an alcoholic beverage had been made to a minor.
14. That Gilson Rios was issued a Village ordinance administrative citation for delivering alcohol to a minor in violation of Section 3-25(a) of the Downers Grove Municipal Code.
15. The Officers advised the liquor manager that notice of further action would be forthcoming from the Downers Grove Liquor Commission.

Chairman Pro Tem Strelau accepted the signed stipulation as Village Exhibit #1.

Chairman Pro Tem Strelau asked the licensee to present its case.

Mr. Carlos apologized for the violation. He stated that LaMex has been in operation for 10 years and they have never had a violation. He stated that the economy has been bad for the past few years and they have had a hard time keeping bartenders. He stated that they should be more restrictive with employees and have more contact with them. He stated that he would work with Carol and hold a meeting with employees.

Mr. Carlos stated that employees are aware of the consequences and noted that if in violation they are fired immediately. He stated that he had an experienced bartender for 6-7 years but recently have gone through 3-4 bartenders, noting the high turnover.

Mr. Carlos stated that they have been responsible for 10 years without incident. He believed that the turnover of bartenders could be part of the problem. He apologized for the violation and would work with employees to make sure this would not happen again. He stated that employees will be made fully aware of consequences of selling liquor to a minor.

Ms. Fregeau stated that staff is available to help them through the training process.

Ms. Fregeau asked how long the employee had been with LaMex. Mr. Carlos replied three to four months. He stated that they have turned over bartenders a lot of the past couple of years.

Ms. Fregeau asked how many employees they have. Mr. Carlos replied nine.

Ms. Fregeau asked how often he meets with employees concerning alcohol service. Mr. Carlos replied a couple of times per year. He stated that he comes in regularly but does not see all of his employees together except but a few times a year.

Ms. Fregeau stated that staff provided her a copy of their liquor handling manual. She suggested that they update the manual, due to the many changes that have occurred over the past 9 years while in operation. She stated that there was no sample of the vertical license included in the manual.

Ms. Fregeau stated that owners set the tone and tenor of the establishment.

Ms. Fregeau asked if the employee gave any explanation for serving the minor. Mr. Carlos replied that the bartender never gave management a clear answer but mentioned he had another order and did not quite look at the license straight.

Ms. Fregeau asked what happened to the employee. Mr. Carlos replied he was fired. He stated that all employees are advised upon hire that if they sell liquor to a minor they will be terminated.

Ms. Fregeau stated that having a license is a privilege, not a right. She stated that it is incumbent on the owners to reinforce the rules to employees. She did not see the consequences for employees who sell liquor to minors listed in the manual. She advised that fines and suspension put the establishment at risk. She suggested they meet with staff more regularly, include examples of under 21 license and spend more time on liquor service, especially with such turnover.

Ms. Fregeau stated that it did not appear that the manual has been updated in 9 years and it would be a good time to work with staff. Mr. Carlos stated that he would update it and have Carol to work with them.

Ms. Fregeau noted the violation occurred at 8 p.m. and asked if they were busy at that time. Mr. Carlos replied he did not know as he was not in the establishment that night. He stated that business has been pretty slow. Ms. Fregeau asked if the liquor manager was present that night. Mr. Carlos replied yes.

Mr. Krusenoski asked if Mr. Rios understood the under 21 identification. Mr. Carlos replied that he should have understood it, however, sometimes employees are careless.

Mr. Krusenoski asked if Mr. Rios bartended before. Mr. Carlos stated that Mr. Rios was a waiter and bartender. Mr. Krusenoski asked if the manager trained him. Mr. Carlos replied that she should have. Mr. Carlos explained that when the manager hires somebody, she goes over the rules and informs them if they sell liquor to minors, they will be fired.

Mr. Krusenoski asked if Mr. Rios signed the Acknowledgment Form in the manual. Mr. Carlos was uncertain.

Mr. Carlos stated that most of the waiters and waitresses have been there for many years. He stated that only the bartender position has turned over many times.

Mr. Krusenoski asked if the identification shown was vertical. Staff replied yes.

Mr. Carlos stated that they will go over procedures again, cover new rules and review the identifications.

Mr. Krusenoski asked about the liquor sales percentages. Mr. Carlos replied 20-25% of sales are liquor related. Mr. Krusenoski stated that is a significant portion of their business. Mr. Carlos agreed.

Mr. Krusenoski urged more scrutiny on liquor handling policies and their training. He did not believe they are as focused as they should be. Mr. Krusenoski stated that attention should be paid to making sure that employees are adhering to rules. He stated that other establishments are diligent and are making sure everyone hired is trained and understands the manual.



Mr. Carlos stated that he will go over the manual and have employees re-sign the forms. Mr. Carlos noted that the former bartender was on top of things.

Mr. Austin asked Mr. Carlos if there was any sort of certification that LaMex requires of its employees that handle alcohol. The group confirmed BASSETT or TIPS. Mr. Carlos replied no. Ms. Kuchynka stated that the manager did send TIPS certifications with the 2011 renewal. Mr. Carlos asked for clarification as to if they were asking if LaMex requires a certificate for bartender school. Chairman Pro Tem replied no, that they were asking about TIPS or BASSETT trained.

Chairman Pro Tem asked if LaMex employees had the certifications. Ms. Kuchynka replied yes and circulated LaMex's list of certified employees.

Mr. Carlos stated that they did not require Mr. Rios to go through bartending classes. Ms. Kuchynka noted that there are bartending schools. She stated that COD offers bartending classes which are not required, however, employees who sell liquor must be certified.

Mr. Austin asked if there was a copy of Mr. Rios' certification, as it was not included on the list. Ms. Kuchynka noted that Mr. Rios was not on the 2011 list, as he had been terminated by the time renewals were forwarded in July. Ms. Kuchynka advised that the violation took place in May.

Ms. King stated that LaMex had a great track record. She noted good employees are hard to find. She recalled Mr. Carlos stating that there were more LaMex restaurants and asked how many he owned. Mr. Carlos replied four. She asked if there were any violations at the other LaMex locations. Mr. Carlos replied there was a violation in Orland Park four to five years ago.

Ms. King asked how much time he spends at each of the restaurants. Mr. Carlos replied that he is at the Joliet location much of his time, as it is his headquarters and also spends time in Morris.

Ms. King asked what they have done since the incident. Mr. Carlos called a meeting for the managers. He reminded them their jobs were on the line and of their responsibility to train employees.

Mr. Carlos noted that the manager involved was upset. He stated that she was sorry for the incident as well. He reminded her to be cautious and make sure this does not happen again. He added that new employees are told that their job is on the line and reminded them about loss of business.

Ms. King stated that Ms. Kuchynka can be called into the establishment to do an on-site training seminar. Mr. Carlos replied that he would have her on-site and noted it would be a big help.

Ms. King stated that he should use this citation as an example to employees that the server is responsible and that the business is being penalized as well. Mr. Carlos realized that owners are ultimately responsible, but felt that the employee should be fined a higher amount.

Mr. Carlos stated that most of his crew has been with him for years of which are the best employees and those that care about what happens to the business.

Ms. Fregeau noted that there are a lot of liquor training tools on the Internet, especially on the State of Illinois website. She stated that there are items that can be posted at the bar as reminders for responsible liquor service. She stated that training is an ongoing process. She suggested that he also share the liquor newsletters with all the employees as it contains helpful information.

Ms. Fregeau stated that training starts with the liquor manager and had hoped the manager would be present. Mr. Carlos explained that the manager wanted to be here but he told her to say home, but agreed that he should have brought her.

Chairman Pro Tem Strelau stated that they have to take a more active role and inspire employees to care more. She wanted them to get back on track and be more engaged with liquor training.

Mr. Carlos stated that they would try to attract better bartenders by offering a higher salary.

Ms. Didier summarized by stating that La Mex Corp. d/b/a La Mex Fine Mexican Cuisine, 500 W. 75th Street, stipulated to a violation of Section 3-25 (a) of the Downers Grove Liquor Control Ordinance which prohibits the sale of alcohol to a minor. She stated that this is the licensee's first violation in the past five years, however, there was an aggravating circumstances in this case where the under 21 license was shown. She recommend that the license be suspended for 1 to 3 days with an additional day of suspension for the aggravating circumstance. She recommend that the licensee be required to pay a fine up to \$1,000.00 and that they pay an administrative fee of \$1,000.00 to cover the costs of conducting this hearing.

Ms. King asked Mr. Carlos if he preferred a fine in lieu of suspension. Mr. Krusenoski stated that court fees are paid regardless. Chairman Pro Tem Strelau stated that the fine could be predicated upon whether they take a day of suspension or not. Mr. Carlos asked if they could still remain open and serve food. Chairman Pro Tem Strelau replied that they may stay open and sell food. He replied that he would prefer suspension in lieu of a fine. Chairman Pro Tem Strelau confirmed that he would like to serve extra suspension and pay the minimum amount of fine. Mr. Carlos replied yes.

Upon hearing the evidence presented in this case, Chairman Pro Tem Strelau requested a motion as to whether the licensee be found guilty or not guilty of a violation of Section 3-25(a) of the Downers Grove Municipal Code.

**MR. KRUSENOSKI MOVED TO FIND LAMEX CORP. D/B/A LAMEX FINE MEXICAN CUISINE LOCATED AT 500 W. 75TH STREET, GUILTY OF VIOLATING SECTION 3-25(A) OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE. MS. FREGEAU SECONDED.**

**VOTE:**

**Aye:** Mr. Krusenoski,, Ms. Fregeau, Mr. Austin, Ms. King, Chairman Pro Tem Strelau

**Nay:** None

**Abstain:** None

**MOTION CARRIED: 5:0:0**

The Motion carried.

Chairman Pro Tem Strelau requested a recommendation be made as to the fine and/or suspension for the violation.

**MR. KING RECOMMENDED THAT THE LICENSE OF LAMEX CORP. D/B/A LAMEX FINE MEXICAN CUISINE LOCATED AT 500 W. 75TH STREET, DOWNERS GROVE, BE**

**SUSPENDED FOR NOT LESS THAN TWO (2), NOR MORE THAN FIVE (5) DAYS; THAT THE LICENSEE BE FINED IN AN AMOUNT OF \$0.00 AND THAT THE LICENSEE PAY \$1,000.00 TO COVER ADMINISTRATIVE COSTS TO CONDUCT THIS HEARING. MR. KRUSENOSKI SECONDED.**

**VOTE:**

**Aye:** Ms. King, Mr. Krusenoski, Mr. Austin, Ms. Fregeau, Chairman Pro Tem Strelau

**Nay:** None

**Abstain:** None

**MOTION CARRIED:** 5:0:0

The Motion carried.

Chairman Pro Tem Strelau advised that their findings will go to the Liquor Commissioner who will make a final decision concerning the penalty.

**VI. APPLICATION FOR LIQUOR LICENSE**

Ms. Kuchynka advised the Commission that Ms. Jessica Ekstrom voluntarily withdrew her application for liquor license for Tropix, Inc. d/b/a Tropix located at 1211 B Butterfield Road.

**VII. OLD BUSINESS**

Chairman Pro Tem Strelau asked if there was any discussion, update from staff or comments from the Commission regarding any old business.

***Liquor Serving Extensions***

Ms. Kuchynka stated that with the recent passing of the Friday 2AM hours of service, the Commission desired to revisit liquor hour extension requests. She stated that licensees may submit requests for the extension of serving hours up to eight times per year, from 1-3 hours. She stated that a majority of extension requests were on Friday to increase serving hours from 1AM to 2AM. She provided a draft ordinance which would remove the extension request provisions. She understood that the Commission was not in favor of allowing licensees the ability to serve past 2AM.

Ms. Kuchynka stated that she typically gets extension requests for and certain holidays such as New Years Eve, St. Patrick's Day and the Wednesday before Thanksgiving. She stated that these will fall on a week day in 2012, where licensees will only be able to serve until 1AM. She advised that the draft includes provisions for licensees to serve until 2AM on these holidays.

Ms. Kuchynka stated that if licensees are no longer allowed extensions, they may be able to apply for a Special Event License. She stated that they are allowed up to six special events per year which could be another avenue for licensees to serve later/earlier hours.

Ms. Kuchynka asked the Commission for their input on the draft ordinance.

Ms. Kuchynka asked if they would like to add more holidays.

Mr. Krusenoski asked if there was a fee for a special event. Ms. Kuchynka replied \$95. Ms. Kuchynka advised that extension requests were \$55 each.

Chairman Pro Tem Strelau asked about the special event license. Ms. Kuchynka stated it is a license class listed in Section 3.14. She stated that in some instances a public hearing is required for larger, first-time events, however, most are issued administratively by staff with the approval of the Mayor.

Chairman Pro Tem Strelau asked what kind of hours can an special event applicant ask for. Ms. Kuchynka replied hours have to be requested on the application and those would have to be approved by the Mayor.

Ms. Kuchynka recalled discussion that alcohol service not be allowed past 2AM in any instance. Chairman Pro Tem Strelau asked if the Liquor Commissioner was of that mind. Ms. Kuchynka replied she did not know. Ms. Petrarca stated that it would be a very rare occasion that staff would recommend late service under a special event license.

Chairman Pro Tem Strelau gave an example where an extension in the morning was issued to Ballydolye when a radio station did a promotion at 5:30AM. Mr. Austin gave an example of the World Cup, played over seas, where an establishment would watch the game live, but the game aired here would be at a very odd hour.

Chairman Pro Tem Strelau asked if special events were given in the past due to each event being unique and based on their needs. She asked if the Commission was concerned that the license is open ended with regard to sales hours and understood times where licensees wanted service very early.

Ms. Fregeau stated that she did not think it is the intent of the Village to being the "last call" community, where sales are extended past certain hours. She stated that DUI activity is almost all after midnight, and the later places are open, the more DUIs seem to appear. She stated that she would not be in favor of making Downers Grove a 3AM Village at any time a year.

Ms. Kuchynka stated that special event licenses issued in the past were never issued past Downers Grove legal serving hours. She stated that if the extension requests were removed, obtaining a special event license could be a potential way to be able to serve later on very special occasions.

Mr. Austin asked if a way to solve the 3AM issue was to say that extensions may only be taken on a weekday, rather than itemizing one holiday over the other.

Mr. Krusenoski asked why the ordinance cannot prohibit liquor to be served past 2AM.

Chairman Pro Tem Strelau stated that she liked options for special event licenses for the week. She asked if the license only be allowed Monday-Thursday, and not later than 2AM. Mr. Austin agreed with the hour restriction and would like to know the Liquor Commissioner's stance on the issue.

Ms. Kuchynka asked if the Commission would like to keep the holidays listed in the draft. The Commission agreed and that it would result in less administrative work for staff.

Ms. Petrarca asked the Commission if the point was to remove extensions. She stated if they allowed a special event, the Village will essentially have extensions, which will come in a different form.

Mr. Krusenoski stated that if certain holidays are included in the Code, extension requests should be virtually eliminated. He stated the Code would cut off any avenue, outside of the three holidays, to issue and extension unless a special event is issued as way to accommodate events.

Ms. Kuchynka stated that if extension requests are eliminated, a request for serving hours prior to 8AM would not be allowed, other than by obtaining a special event license.

Ms. Kuchynka stated that if a licensee requests liquor service, not exceeding 2AM, they can apply for a special event. Ms. Fregeau stated that it is the intent to manage the hours of events. Chairman Pro Tem Strelau stated that these license are not regularly given and are special by nature. Ms. Kuchynka advised that they can be denied by the Mayor.

Chairman Pro Tem Strelau stated that Mayor Sandack made it clear that liquor would not be served past 2AM. She stated that she wanted the current ordinance changed so that licensees could not tack on an extra hour of service after 2AM. She was fine with removing the extension requests, but agreed that licensees should have an opportunity to appeal and have a special event rather than be the norm.

Ms. Petrarca stated that she would talk to the Liquor Commissioner. She stated that he can deny all extension requests and special events and this may not even be an issue. She stated that they can put in the existing extension language that liquor cannot be served past 2AM under any circumstances and still allow extensions and not issue a special event.

Mr. Austin asked if special event licensing creates an administrative burden. Ms. Kuchynka replied yes, as there is more work involved than issuing extensions. She stated that the Mayor signs the approval, the licensee gets a letter and the Police Department is notified.

Ms. Kuchynka stated that it was her understanding that the Commission wanted the verbage taken out that allows extensions since the Friday late night hours changed. Chairman Pro Tem Strelau replied yes. Ms. Petrarca confirmed that they did not want liquor service until 3AM. Chairman Pro Tem Strelau replied yes. Chairman Pro Tem Strelau asked if staff knew where the new Mayor stood on the issue and because there has been a change, they need to understand his feelings.

Chairman Pro Tem Strelau liked having the holidays in the ordinance. Ms. Petrarca stated that if holidays are added, she would recommend reducing the number of extensions. Ms. Fregeau thought there were too many and suggested the number of extensions allowed be cut in half. Chairman Pro Tem Strelau stated that some of them were allowed for Mother's Day and Easter, which are addressed by early morning Sunday serving hours.

Ms. Kuchynka advised that the DoubleTree had a wedding over the Labor Day weekend on Sunday. She noted that they requested an extra hour of service on Sunday which the Mayor granted.

Mr. Austin stated that he understood the concern with capping liquor serving hours to 2AM, but they need to trust the Mayor's discretion and the importance of allowing him some flexibility.

Ms. Fregeau asked about section (d) wording which is made to sound as though it is ok to serve alcohol without food. Ms. Kuchynka clarified stated that licensees are allowed to let patrons finish their drinks one hour prior to close.

Ms. Kuchynka stated that the draft ordinance be revised to: include the three holiday extensions and minimize the number of extension requests. She will confirm that the Liquor Commissioner is in agreement with no liquor sales past 2AM.

Ms. Fregeau asked how many licensees have used all eight extensions. Ms. Kuchynka replied Rita's. She noted that the DoubleTree requests a few over the course of the year.

Ms. Fregeau wondered what prompted requests to be set at eight times per year. Ms. Petrarca replied that there were eight allowed to accommodate some earlier in the morning, like Mother's Day and Easter. Ms. Kuchynka stated that when they amended Sunday serving hours, the number of extensions could have been reduced.

Ms. Kuchynka stated that the Mayor always has discretion in the matter and extensions are not guaranteed. She stated that the Mayor may deny an extension if there was a problem with any previous events, if the nature of the event is questionable or the licensee has a questionable DUI history.

Ms. Fregeau stated that she was concerned about resources and the additional monitoring of licensees between 12-2AM. Ms. Kuchynka replied that the Police Department is notified of every special event and is informed of extensions.

Mr. Austin stated that he's seen licensees given a different category of license after midnight in other communities.

Ms. Petrarca stated that she would contact the Mayor and report back next month.

Chairman Pro Tem Strelau asked if there was any comment from the public on the issue. There was none.

### ***BYO***

Ms. Kuchynka stated that the Mayor had received requests for "BYO" which would allow patrons to bring in their own beer/wine into a restaurant. Staff preferred a license be required. She provided the Commission with a draft ordinance creating a BYO license.

Ms. Kuchynka provided information to the Commission with the regulations of surrounding communities in the past. She reviewed regulations of those communities and included those provisions in the terms of the license. She asked that the Commission discuss particulars such as quantities allowed and serving hour regulations. She stated that she would do a Cost Center Analysis for an appropriate fee structure for this classification.

Ms. Kuchynka stated that hours of operation should be limited and when food service is in operation. She noted that some establishments could potentially be open 24 hours and should not exceed Downers Grove allowable sales hours.

Chairman Pro Tem Strelau asked why establishments would not obtain a regular liquor license in lieu of the BYO license. Ms. Kuchynka believed that space limitations, they would not have to maintain stock and offer this convenience to their customers.

Chairman Pro Tem Strelau stated that obtaining a regular liquor license is a lengthy application process with required submittals. She asked if these establishments would go through this same process. Ms. Petrarca replied yes. Chairman Pro Tem Strelau asked if the only thing they are allowed is beer and wine. Ms. Petrarca replied yes and stated that they will still have to train employees and require BASSETT certification. Ms. Kuchynka noted that they would also have to obtain insurance.

Ms. Fregeau asked if an existing licensee could add on this provision. Ms. Petrarca replied that existing licensees may let patrons bring in their own wine for special occasions. Ms. Kuchynka stated that the licensee has to maintain control of the alcohol under the current ordinance.

Ms. Fregeau asked if licensees were surveyed and asked if there is an unfair advantage for competitors to be able to allow this. Ms. Petrarca stated that Linda Kunze was asked to alert the Downtown businesses.

Ms. Fregeau stated that there may be discrimination against businesses that are not restaurants. She stated that a billiard hall or nightclub may ask why they could not allow BYO. Ms. Kuchynka noted that she has received requests from nail salons that wished to have wine or champagne with salon services. Ms. Kuchynka stated that Downers Grove has always required food service.

Ms. Kuchynka advised that five licensees did not renew for the 2011/12 license year. She noted that it was too costly to keep the license with such a small amount of liquor sales.

Ms. Fregeau asked if the Village will require BYO licensees to maintain insurance. Ms. Kuchynka replied yes. She stated that they may be at a lower rate as dram shop insurance is based on the amount of liquor sales. She stated that they will be allowed to charge a corkage fee versus individual drink sales.

Mr. Austin stated BYO may allow an aspiring restaurant to determine if they should pursue selling alcohol. He stated that he liked the BYO provisions and that it will allow restaurants to try something new. He stated if those establishments realize they are missing out on revenue they may choose to apply for a regular license.

Ms. Fregeau stated that BYO may be the entre of liquor service into a dry community. She stated that she is pro-business and wants entrepreneurs to succeed, but wondered if the Village needs this.

Ms. Petrarca stated that the Mayor has had four requests. Ms. Kuchynka added that based on the number of requests, the Mayor wanted discussion on the issue.

Mr. Krusenoski asked where "restaurant" is defined. Ms. Kuchynka replied in Section 3.2 of the Liquor Code under definitions.

Ms. King asked if she could, for example, bring a bottle of wine into Every Day's a Sundae. Ms. Kuchynka replied no, they are not considered a restaurant. Ms. King asked what the ordinance says that prevents this. Ms. Kuchynka stated that the Code reads that alcohol cannot be consumed on premises without a liquor license.

Ms. Fregeau referred to the Classification Chart. She stated that there are 28 Class R-1 (full alcohol) and 9 Class R-2 (beer/wine) licensees. She asked if any of them have expressed interest in BYO. Ms. Kuchynka replied no. She stated four different locations which are not licensed have expressed interest.

Chairman Pro Tem Strelau asked if there was any comment from the public on the issue. Mr. Homer Ronstadt introduced himself as an employee at Katino's Italian Restaurant located on Main Street. Mr. Ronstadt stated that his employer wanted BYO. He stated that the owner of Katino's has a restaurant in Chicago, which allows BYO without a license and was unaware that BYO was not allowed in Downers Grove.

Mr. Ronstadt stated that his employer applied for a liquor license but hoped that they could allow patrons to bring in their own wine prior to obtaining the license. Ms. Kuchynka advised that she forwarded a packet, but had not received an application to date from Katino's.

Ms. Kuchynka referred to the chart of surrounding communities that allow BYO, Chicago being one of them, where no license or fee is required. Ms. Kuchynka advised that the owner of Katino's came in a long while ago, but she did not receive a letter of request until recently. He asked if BYO was allowed, but was advised that it was not allowed.

Ms. Kuchynka noted that the Mayor received requests for BYO and the consensus was not to simply allow it, but rather create a license for it.

Ms. King stated that Katino's is relatively small and she would be more comfortable with BYO as it may be easier to control in a small space.

Ms. Fregeau envisioned someone bringing in a magnum, rather than a regular bottle and arguments ensuing as to how much was being served. She was interested that so many surrounding communities do not allow it. She asked for the upside and downside in terms of compliance, monitoring and regulating it.

Mr. Krusenoski stated that he would be more likely to go to an establishment and be able to bring in his own wine. He stated it would also appeal to those customers who did not like an establishment's wine list.

Mr. Ronstadt stated that Katino's newly opened and they are trying to get people in the door. He stated that people like to have wine with their Italian meal and stated that many customers walk out when they find out they cannot have wine while dining. He stated that they would like to attract more people into the business to taste the food.

Chairman Pro Tem Strelau asked the reasoning for Katino's wanting BYO. Mr. Ronstadt replied to attract more customers to the business. Chairman Pro Tem Strelau asked why they do not want to have a liquor license. He replied that they do want a beer and wine license, but wanted to be able to allow people bring their own, until they receive a license. He stated that they made the unfortunate mistake of not applying for the license prior to opening.

Chairman Pro Tem Strelau advised that the process of creating the BYO license will not be any faster than applying for a restaurant license and this will not expedite their ability to serve beer and wine. She advised that the Commission takes time discussing the creation of a license, propose and review ordinances, make a recommendation which then needs to be approved by the Council. She stated that if the process goes well, it could take 3-4 months to allow BYO. She stated that they could apply for the Class R-2 beer and wine license and be on next month's agenda. She realized there are other restaurants are simply interested in the BYO license.

Mr. Ronstadt stated that BYO would benefit his establishment by allowing BYO across the board without requiring a license like the City of Chicago.

Ms. Kuchynka noted that there was never a consensus to outright allow BYO. Ms. Kuchynka stated that the Commission has discussed this in the past, and more recently within the past four months. She stated that the Mayor preferred to issue a license.

Mr. Austin asked Mr. Ronstadt about their experience with the City of Chicago. Mr. Ronstadt replied that he did not work at the City of Chicago location.

Mr. Austin wondered what would happen if an establishment has a problem with patrons over serving themselves or if an unruly patron injures themselves or someone else. Ms. Kuchynka advised that the



police were called to a Chinese restaurant, years ago, due to a patron becoming unruly, which is why the regulations were put in place. He agreed that regulations need to be established.

Ms. Fregeau asked about control issues and if self service of beer and wine goes against the spirit and intent of the Code. Chairman Pro Tem Strelau replied that maintaining control would be no different from when a pitcher of beer is delivered or diners serve themselves from a bottle is delivered to the table. She felt that when customers bring in their beer and wine you expect to have the ultimate control over it and was unsure if there would be a problem. She stated that the ordinance is designed for the licensee to maintain control of the alcohol.

Mr. Krusenoski stated that when a waiter brings a bottle to his table he controls the rate at which he consumes it. He stated that if the ordinance prohibits more than one bottle per patron, there is some control. Ms. Fregeau stated that regulations on the size of the bottle should be set.

Mr. Krusenoski asked Mr. Ronstadt what license they would choose if the cost and speed to acquire the BYO license was the same as a regular restaurant license. Mr. Ronstadt replied probably both.

Ms. Fregeau asked if a license is required to allow BYO in the City of Chicago. Ms. Kuchynka replied no.

Ms. Fregeau stated that she did not know what the challenges would be for the administration of this license and asked if staff would anticipate increased costs to monitor this activity.

Ms. Fregeau asked Mr. Ronstadt what the average entree costs at Katino's. Mr. Ronstadt replied dinner ranges from \$15-\$24. Mr. Ronstadt stated that the food and atmosphere lends to having wine with dinner.

Mr. Ronstadt stated that he was present tonight, not knowing that BYO would be a license deal, but be allowed in Downers Grove like the City of Chicago. Ms. Petrarca advised that it would not be allowed across the board but would be in the form of a license.

Mr. Austin asked if Downtown Management provided any comments on the BYO. Ms. Kuchynka replied that she spoke to Linda Kunze, who advised that a few establishments were in favor of the license if offered at a nominal fee.

Mr. Austin wanted Katino's to be aware that in light of BYO requiring a license, it will take the same amount of time for a regular license. Ms. Kuchynka stated that the Village was not prepared to offer BYO without some type of license.

Ms. Fregeau asked what reasoning other communities gave for not allowing BYO. Ms. Kuchynka replied monitoring issues.

Chairman Pro Tem Strelau asked if Downtown Management was advised that the Commission was to discuss BYO. Ms. Kuchynka replied she advised Ms. Kunze the item was on tonight's agenda.

Ms. King stated that the bottle size restrictions should be inserted in the draft ordinance.

Ms. Fregeau wondered if the size of an establishment will play a part in the issuance of the BYO license. Ms. Petrarca did not think size regulations would make a difference but stated that they should be limited to restaurants. She stated that the Lemon Tree and Rita's would not be considered restaurants, due to their unique classifications.

Ms. Fregeau asked if current restaurant license holders may allow patrons to bring in their own wine. Ms. Kuchynka replied yes. Mr. Krusenoski stated that few, if any, promote it. Ms. Kuchynka added that beer and wine have huge markups and they would lose money if people brought in their own, however, they will, on special occasions, accommodate patrons and allow them to bring in a special bottle.

Ms. King asked if hours were listed. Ms. Petrarca replied that provision was up for discussion and suggested they be in conformance to Village-wide hours while restaurant food service is in operation.

Chairman Pro Tem Strelau asked for additions, corrections or amendments to the draft ordinance. Ms. King asked to add hours in accordance with Downers Grove allowable sales hours.

Mr. Krusenoski asked how much beer or wine should be allowed. Mr. Austin suggested applying ounce limitations to both. Ms. Fregeau stated that most communities had 750ml standard bottle of wine size restrictions. Ms. Kuchynka suggested 36 ounces of beer (three 12oz bottles of beer). The group agreed limitations should be per person.

Mr. Austin suggested the license fee be minimal. Ms. Petrarca replied \$300-\$500 was the range for surrounding communities. Ms. Kuchynka stated that the fees should cover license renewal and monitoring. She will complete a cost center analysis for the proper fee and noted the fee is set by Administrative Regulation which would not be reflected in this ordinance draft.

Mr. Austin stated that any violation of the Code should be added to the BYO provisions.

Ms. Fregeau asked if existing licensees feel that restaurants only offering BYO will have an unfair marketing advantage. Mr. Krusenoski stated that regular license holders get the alcohol sales revenue and the Village will get the tax revenue.

Ms. King suggested that the draft should read BYO "unopened" bottles. Ms. Kuchynka noted that unfinished bottles of wine may be taken from a restaurant if they are sealed in accordance with State law.

Mr. Ronstadt asked what stage of the application process was Katino's in. Ms. Kuchynka replied that she just sent out the application packet.

The group thanked Mr. Ronstadt for attending.

Chairman Pro Tem Strelau asked if there were any other changes to the draft ordinance.

Mr. Austin asked if a restaurant would be able to make the distinction between a malt beverage and beer and/or hard lemonade. Chairman Pro Tem Strelau replied that they should be able to.

Chairman Pro Tem Strelau stated that quantities have been established and staff will establish a fee. Ms. King asked if the penalties would remain the same. Ms. Kuchynka replied that all provisions of the ordinance shall apply equally to this license classification.

Ms. Fregeau asked if staff will have to be BASSETT trained. Ms. Kuchynka replied yes. Chairman Pro Tem Strelau stated that this license class should follow all the same hours allowed in the ordinance.

Mr. Austin asked about the number of BYO licenses which will be allowed. Ms. Kuchynka replied 4, based on the number of existing requests. Mr. Austin suggested allowing more. Chairman Pro Tem Strelau replied that they historically limit the number to those who request it. Mr. Austin asked if they could increase it if another establishment requests BYO. Chairman Pro Tem Strelau replied yes.

Chairman Pro Tem Strelau requested a motion.

**MR. AUSTIN MOVED TO FORWARD AN AMENDED BYO ORDINANCE TO THE VILLAGE COUNCIL FOR CONSIDERATION. MS. KING SECONDED.**

**VOTE:**

**Aye:** Mr. Austin, Ms. King, Mr. Krusenoski, Ms. Fregeau, Chairman Pro Tem Strelau

**Nay:** None

**Abstain:** None

**MOTION CARRIED: 5:0:0**

The Motion carried.

### ***Suspension Guidelines***

Ms. Kuchynka requested that the Suspension Guidelines discussion be continued for a future meeting.

### ***LTG - Full On-Premise Consumption***

Ms. Kuchynka advised the group of a request from Lemon Tree Grocer to allow full-on premise liquor consumption. She stated that they currently serve beer and wine for on-premises consumption and have full off-premise retail liquor sales. Staff has drafted an ordinance amending their existing P-O-2 license classification.

Ms. Kuchynka stated that a full on-premise and off-premise consumption license was previously considered by the Commission when Binny's requested such sales. She advised that Binny's never pursued that license, as they purchased the former Sam's Wine & Spirits facility.

Mr. Tim Canning and Mr. Shaun Black introduced themselves as the owners of The Lemon Tree and were present in support of their proposal for full on-site liquor service. Ms. Kuchynka asked them to discuss their request.

Mr. Black stated that The Lemon Tree Grocer had diverted a bit from its original concept and has changed based on consumer demands. He stated that they have a grocery store and full restaurant with limited space. He stated that their café operations will cease November 15<sup>th</sup>. He stated that they were looking for ways to increase revenue and compliment their facility.

Mr. Black advised that they are planning to add Saturday breakfast, in addition to the Sunday brunch they currently offer. He stated that they would like to have a Blood Mary Bar. He stated that garnishes to make one's own bloody mary will be provided on a community table and vodka would be poured by wait staff at the barista. He stated that they are not seeking to become a bar and advised that they close at 10PM on weekends.

Mr. Black stated that they would also to promote "Steakhouse Saturdays" and offer martini's, etc. before meals. He stated that they would like to start small and noted that there is not much room to store full alcohol in the bar. He stated that liquor service will be pretty basic.

Ms. Kuchynka clarified that their barista will serve as their bar area. Mr. Black replied that they two kegs there on tap.

Mr. Black advised that they have no violations and a strict manual and handbook. Mr. Canning stated that complimenting food will also be their goal.

Chairman Pro Tem Strelau asked staff if it would make sense to change the license from a grocery store to a restaurant. She stated that everything that has increased or changed has been liquor related, not grocery, related. Mr. Black stated that they have increased the grocery and advised that they began with 500 grocery items but are up to 3-4,000 items.

Mr. Canning stated reasoning for the change was from figuring out what the community wants. He stated that it did not make sense to keep \$21 bottles of olive oil on the shelves and stated that they have lower priced items and expanded on certain specialty items.

Mr. Austin asked if they considered the barista seating area their bar area. Mr. Black replied yes. Mr. Austin asked if that was less than 20% of their seating. Mr. Black replied yes.

Mr. Austin asked if they are asking for a restaurant license classification. Chairman Pro Tem Strelau stated that she felt they should be applying for the R-1 restaurant classification. Ms. Kuchynka noted that the R-1 license would not allow them to have full packaged sales. Ms. Fregeau stated that the Commission has seen applicants evolve. Mr. Austin added that they are a hybrid classification.

Ms. Petrarca asked if grocery is still the primary business. Mr. Black replied yes, at a 3:1 margin. Mr. Black added that the liquor portion is even less than half of the restaurant food sales. He stated that they are a full service grocery store.

Ms. Fregeau asked Mr. Black to break down their estimates provided in the packet and asked what they ballpark grocery vs. restaurant vs. liquor sales. Mr. Black stated that they had a little over \$2 million in sales. Ms. Petrarca replied that they provided café figures.

Ms. Fregeau stated, in the original application, the sale of alcohol was incidental or secondary to the main business as a downtown grocery. She stated that the Commission is open to expansion and new ideas, but they need to know if the alcohol sales are represented.

Mr. Black stated that they have a full butcher. He stated that they have a restaurant inside of a grocery store. He stated that the grocery area was 5 times the size of the dining area.

Mr. Black stated that the grocery business is three times more than the restaurant itself. He stated that they hoped to be a grocery store and did not intend for the café expansion, but they are trying to survive and that they need additional revenue streams.

Mr. Austin asked if there was a requirement as to where a license is held and if a wall could separate the two businesses. Ms. Petrarca replied that giving two licenses was more of an administrative burden. Mr. Austin was not certain if restaurants should have the same ability to sell packaged goods and wondered if it would be better to issue two separate licenses for the two separate organizations. Ms. Petrarca did not believe that issuing two licenses to the same location was allowed under the Code, which is why this unique license was created.

Ms. Petrarca stated that the ordinance change in this case would simply amend their existing class to allow on-site alcohol sales in lieu of being limited to on-site beer and wine sales.

Chairman Pro Tem Strelau stated that this feels like the wrong classification. Ms. King wondered how it is different than offering an outdoor license in addition to a restaurant. Ms. Petrarca stated that the outdoor license is the same as the interior license, only allowing one classification, per say. She stated that the difference here is the activity allowed, restaurant and grocery. Ms. Petrarca stated that it is staff's recommendation to simply make the change to their existing license, without requiring two licenses.

Ms. King stated there is only one P-O-2 license available. Staff confirmed. Ms. Petrarca added that they are the only location to qualify for this license classification as it is written.

Mr. Austin asked what the possibility is for other restaurants to request this class if this change is made. Ms. Kuchynka understood the Commission's concern if Jewel Osco wanted to open a restaurant in one of their locations. Ms. Petrarca noted that this is limited to the Downtown Business District and limited to 5,500 square feet. And noted this license was created for them. She did not believe that any other establishment would qualify.

Mr. Austin wondered if Ballydoyle could request to sell packaged liquor out of the bar. Ms. Kuchynka replied that they have asked to sell growlers. Ms. Kuchynka stated that there is a Brew Pub license which allows for off-site sales of beer brewed on the premises.

Chairman Pro Tem Strelau asked how the license would be charged for. Ms. Kuchynka replied that a cost center analysis was done in conjunction with the Binny's request. She added that the annual license fee would increase from \$1,840 to \$2,610. She stated that costs vary for monitoring and administrative staff time. She added that two controlled buys, one for on-site test and one test for off-site sales are required.

Ms. Kuchynka noted that the draft ordinance would not be affected by the fee, as fees are contained in an Administrative Regulation. She advised that the license is limited to one. Ms. Kuchynka stated that the Village created the license specifically for them and based on their needs. She stated that she believed the needs of the community have dictated their changes.

Ms. Kuchynka stated that she understood that the licensee was evolving more toward operating as a restaurant. She stated this would still require that the primary business be a grocery store. She stated should they no longer have grocery sales as the primary business, they would no longer qualify for this license.

Chairman Pro Tem Strelau asked what the standard was for them to qualify for this license. Ms. Kuchynka replied 50% of grocery sales or more. Ms. Kuchynka stated that at renewal, they are required to submit an annual declaration, which breaks down their sales percentages or dollar amounts.

Mr. Black advised that they have a meat department, deli and grocery store operations. He asked if that was a requirement of the tax rebate agreement. Ms. Petrarca agreed. Ms. Fregeau stated that the tax incentive agreement was more grocery driven than alcohol driven.

Mr. Austin stated that the Code might need a "grocery store" definition.

Chairman Pro Tem Strelau asked staff if they requested a motion. Ms. Petrarca replied yes and requested a motion for an amendment to the license class and to forward the item on to the Village Council for consideration.

Ms. Fregeau asked Mr. Black if they anticipate any change in hours because of this amendment. Mr. Black stated that remain the same for now but would like to change if it gets busy. He stated that the grocery store will be open at all times the restaurant is in operation. He felt that demand might take time as they are not known as a night time spot. He did not anticipate much of a change in hours.

Ms. Kuchynka asked Mr. Black if he was fully aware that food service has to be in operation during liquor sales. Mr. Black replied yes.

Chairman Pro Tem Strelau requested a motion.

**MS. KING MOVED TO AMENDED THE PO2 LICENSE CLASSIFICATION TO INCLUDE FULL ALCOHOL ON-PREMISE SERVICE. MR. KRUSENOSKI SECONDED.**

Mr. Austin stated that a few other changes to the draft ordinance may need to be made. He stated that the Mayor and Downtown Management should be contacted in case they foresee any problem with blurring the line between a restaurant and a packaged goods establishment.

Mr. Austin stated while it is a grocery store license, he suggested that a definition of a grocery store be added to Section 3.2. Staff agreed and would include a grocery store definition into a revised ordinance that could be presented to the Village Council.

Ms. Petrarca advised that she has spoken to the Mayor about the issue and he was in favor of the amendment.

Chairman Pro Tem Strelau stated that the concern was not about full alcohol service but how the classification is structured. She stated that she could not decide what would be better than this, but it did not feel they are being classified properly. Ms. Fregeau noted that a number of classifications are unique and they are created for the situation.

Chairman Pro Tem Strelau stated that the sales figures indicate The Lemon Tree is a grocery store, however, their marketing is not toward the grocery as much as she has seen it for drinks and restaurant activities.

Ms. Kuchynka stated that the Commission has discussed how convoluted the ordinance has become with the number of classifications that have become too specific for certain establishments. Ms. Fregeau stated that the group talked about streamlining the classes. Ms. Kuchynka stated that the State issues licenses for either on-site or off-site, beer/wine or full alcohol sales and do not get into specific details.

Chairman Pro Tem Strelau stated that may be the problem by outlining every aspect of business. Ms. Kuchynka stated that new licensees often evolve into what the market dictates. Chairman Pro Tem Strelau stated that she wanted them to be successful but want it to fit well in the Code. Ms. Petrarca stated that their activities are still consistent with what was put in the Code.

Mr. Austin stated that it was not that the Commission did not want the change, but there are constraints per the ordinance.

Ms. Kuchynka advised that a definition would be added to the draft ordinance. Mr. Austin stated that the definition is lacking and felt that it should be reviewed before it goes to Council. Ms. Petrarca stated that staff could bring back the ordinance next month.

Chairman Pro Tem Strelau called for a vote on the motion on the floor.

**VOTE:**

**Aye:** Ms. King, Mr. Krusenoski, Ms. Fregeau, Chairman Pro Tem Strelau

**Nay:** None

**Abstain:** Mr. Austin

**MOTION CARRIED:** 4:0:1

The Motion carried.

Mr. Canning and Mr. Black thanked the Commission for their consideration.

**VIII. NEW BUSINESS**

Chairman Pro Tem Strelau asked if there was any discussion, update from staff or comments from the Commission regarding new business.

Ms. Fregeau mentioned the fake identification issue and brought up the materials that have been contained in the packet. She stated her daughter has told her that college aged friends attempt to use fake id's at establishments. She stated that the State is providing a voluntary course for hospitality industry workers and wondered if the Commission could explore it. She asked that staff emphasize the use of fake id's in the newsletters to licensees. She stated that using a fake id's in Illinois is a misdemeanor.

Ms. Fregeau asked that licensees be engaged to check for fake id's and send message out to be on the lookout. Chairman Pro Tem Strelau agreed that the information should be contained in the newsletter.

Ms. Fregeau stated that it is an issue with the police and what licensees do with id's that they confiscate them.

Ms. Fregeau stated that she was at a store where they had an out of state identification book to review when a customer presented an unfamiliar license.

Ms. Fregeau stated that when underage kids are obtaining fake identifications they are giving their name, social security, signature, name, address and picture which could put them at risk.

Ms. Kuchynka advised that there will be an October 6<sup>th</sup> meeting as she had an application on file.

Ms. Kuchynka welcomed the newly appointed Commission member, Dan Austin.

## **IX. COMMENTS FROM THE PUBLIC**

There were none.

## **X. ADJOURNMENT**

Concluding business for the evening, Chairman Pro Tem Strelau called for a motion to adjourn.

Ms. Fregeau moved to adjourn the September 8, 2011 meeting. The meeting was adjourned by acclamation at 9:30 p.m.



APPROVED 1/25/12

VILLAGE OF DOWNERS GROVE  
ZONING BOARD OF APPEALS  
OCTOBER 26, 2011 MINUTES

**Call to Order**

Chairman White called the meeting to order at 7:30 PM.

**Roll Call**

**Present:** Ms. Earl, Mr. Isacson, Ms. Majauskas, Ms. Souter, Ch. White

**Absent:** Mr. Domijan, Mr. Enochs

A quorum was established.

**Staff:** Damir Latinovic, Planner  
Tom Dabareiner, Director, Community Development

**Also present:**

Richard Grant, Atlantic Homes  
Scott Schreiner, Designtek Engineering  
Andrea Crowley, Griffin & Gallagher  
Bestie Perine, BNP Builders  
Kevin Clinnin, 1742 Brian Grant Court  
L. Hubbard, 1746 Brian Grant Court  
Suzanne & Eric Shover, 6120 Springside Ave  
Boon & Shirley Moy-Lee, 1773 Boundary Court  
Raymond Ponstein, 5736 Fairmount Ave.  
William Ponstein, 6012 Hillcrest Ct.  
William Ponstein, 1786 Boundary Ct.  
Leonard Buzucky, 1792 Boundary Ct.

**Minutes of August 24, 2010**

Ms. Earl moved to approve the minutes of the August 24, 2010 Zoning Board of Appeals meeting as presented. Mr. Isacson seconded the Motion.

**AYES:** Ms. Earl, Mr. Isacson, Ms. Majauskas, Ch. White

**NAYS:** None

**ABSTAIN:** Ms. Souter

The Motion passed 4:0:1.

**Meeting Procedures**

Chairman White explained the function of the Zoning Board of Appeals, and reviewed the procedures to be followed during the public hearing, verifying with Staff that all proper notices have been published. He then called upon anyone intending to speak before the Board on the Agenda item to rise and be sworn in, as the public information portion of the meeting is an evidentiary hearing. Chairman White explained that there are seven members on the Zoning Board of Appeals all of whom have had the opportunity to review the documents for the petition prior to the meeting. In order for a requested variation to be approved there must be a majority

**APPROVED 1/25/12**

of four votes in favor of approval. He added that the Zoning Board of Appeals has authority to grant petitions without further recommendation being made to the Village Council.

.....

**ZBA-04-11 A petition seeking a rear yard setback variation for the property located at the bulb of Brian Grant Court cul-de-sac, approximately 285 feet west of Saratoga Avenue, commonly known as 1736 Brian Grant Court, Downers Grove, IL 60516 (PIN 09-[18-308-043), Griffin & Gallagher, LLC, Andrea T. Crowley, Petitioners; Atlantic Homes, Inc., Owners.**

**Petitioner’s presentation:**

Ms. Andrea Crowley, attorney for Atlantic Homes, explained that the requested variance is the result of the configuration of this lot compared to the other lots on the cul-de-sac. When the lot was created in 2006, no attention was paid to the lot lines that existed on the site. She explained that there were wetlands located south of the cul-de-sac, and Lot 7, upon which the house is to be built, has virtually no back yard area, as compared to Lot 6. Although the lot is buildable, essentially the proposed house would have to be placed on the lot in such a way that there would be no back yard, and the house would look as though it had been tucked onto a corner of the lot. Ms. Crowley said that they are requesting the variation to place the proposed home in greater conformity with the other lots in the cul-de-sac. The uniqueness of the situation is caused by the configuration of the road and how it impacts what would technically be the rear yard and the side yard of this lot. The variance would allow a more practical placement on the property. In addition, if the variance is not granted it will greatly diminish the value of the property. The Lot, without the variance, will have no back yard and will back onto an open field in the front and will diminish the other homes in the subdivision. She said the variation makes common sense, and the setback that they are requesting is the exact setback as the lot adjacent to the subject property. Ms. Crowley indicated that they hoped the Board would see the necessity of granting the variation. She noted that the builder and other representatives of the petition were present to answer questions.

Ms. Majauskas asked Ms. Crowley who developed the subdivision, and she replied that it was developed by Atlantic Homes. In further response to Ms. Majauskas, Ms. Crowley said the lot configuration was decided in order to address the issue of preserving the wetlands across the street. The Village requested preservation of the wetlands. The Street was arched in such a way as to avoid the wetlands, instead of their original plan, which was to remove a portion of the wetlands. When the subdivision was created in 2006 there were no residences on the lots, and the developer did not anticipate the types of homes that would be built on the lots. The objective was to obtain approval of the subdivision for that site.

Ms. Souter noted that in the Board’s packet it states that the applicant was the original developer of the site and was aware of Staff’s interpretation of the rear lot line. She asked for clarification that the developer knew about the lot line at the time the subdivision was created. Ms. Crowley replied that while they knew the configuration of the lot, there was no specific home anticipated for that specific lot at that time.

Ms. Majauskas commented that she would have thought the architect at the time would have

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created the lot in such a way that a home could be placed on it without a variation. Ms. Crowley responded that at the time, they did not know what type of home would be marketable and would be built on the other lots in the subdivision. The home currently planned for Lot 7 would be comparable to the other homes in the subdivision. In further response, Ms. Crowley said that when the subdivision was planned, they did not anticipate the size of the houses that would be preferred at this point in time. If a house is placed on Lot 7 that fits on the lot as configured, it will not be consistent with the other homes in the subdivision. They can build a much smaller house on the lot, but it would not be consistent with the neighborhood.

Ms. Majauskas said she did not follow the applicant's logic that if they reconfigure the house on the lot it will be too close to the neighbors. Ms. Crowley replied that it is not a matter of the house being too close to the neighbors, but that the house would have to be placed in such a way that would eliminate any back yard without the variation.

Ms. Crowley said their reasons for requesting the variation include the lopsided placement of the house, which will cause it not to conform to the other houses, the fact that without the variation they will lose the back yard, and the consistency of the subdivision. She added that they believe this lot has a unique situation because of the existence of the wetlands across the street. It is their experience that people who purchase in a subdivision are looking for uniformity and the aesthetic appearance of the subdivision. Building a house on this lot without a variance would be out of character with the rest of the subdivision.

Ms. Majauskas asked for clarification again as to whether it is the back yard or the side yard that would be the problem. Ms. Crowley said if the house is moved back to the regular setback line it will appear to have only an open field in front of it. They reviewed the plans to determine where the rear and side yards are located.

Chairman White made reference to Exhibits A & B, saying it looks as though the same basic 4700 square foot house could be built and placed in the corner. He said the north lot line for 1738 is the side lot line; however for 1736 the north line is the rear lot line. He said that if the house were made somewhat smaller than the 4700 square feet it could be placed on the lot.

In an effort to clarify some of the questions being raised, Chairman White asked Staff to make its presentation at this point.

### **Staff's presentation:**

Damir Latinovic stated that the property commonly known as 1736 Brian Grant Court is located at the bulb of Brian Grant Court cul-de-sac, approximately 285 feet west of Springside Avenue, and is zoned R-3 single-family residential. The property is currently vacant. Mr. Latinovic explained that the petitioner is requesting a rear yard setback variation to construct a new single-family home ten feet from the rear property line, where 20 feet is required under Section 28.1112 of the Zoning Ordinance.

Mr. Latinovic noted that the property is part of the Brian Grant Court subdivision that was approved on April 4, 2006. The subject lot was approved with an exception for 107-foot lot depth to the rear (north) property line where typically the Subdivision Ordinance requires 140 feet. He said that the two curvilinear front lot lines are a result of the road curvature, which exists to avoid the wetlands located south of the cul-de-sac. The north property line of 1736

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Brian Grant Court is considered the rear property line, as it is the most parallel and distant to the front lot lines. He went on to say that the west, east and south property lines are considered side lot lines. Mr. Latinovic described the lot as having a lot width of 190 feet, resulting in a 19-foot side yard setback, or 10% of the lot width measured from the west, east and south side property lines as shown on Exhibit A. He said that the proposed house would be 30.03 feet from the front property line and would meet all other bulk requirements of the Zoning Ordinance.

Chairman White asked Staff to explain how the front and rear lot lines are calculated for 1738 Brian Grant Court. Using the overhead plans for the site, Mr. Latinovic explained how side and rear lot lines are configured based on their relationship to the front lot lines.

Chairman White asked hypothetically if the lot at 1736 was made to be more of a mirror image of 1738, would it be possible to change the definition of the lot line. He asked if portion of 1736 was part of 1730 the north line would be redefined in the side yard. Mr. Tom Dabareiner, Director of the Community Development Department, said they would still need a variation, as the lot would be a narrower lot.

There was more discussion on ways to reconfigure the lot lines of the subdivision to allow for construction of the home without requiring a variation, and on the definitions in the Ordinance of rear and side yard lot lines. Mr. Dabareiner then clarified that at this time they are not discussing about an appeal or a reinterpretation of the lot line definitions but a request for rear yard setback variation. Anything other would be a totally different case.

Mr. Latinovic said when the petitioner applied for the building permit it was discovered that the proposed home does not meet the required rear yard setback, and the petitioner is awaiting the decision of the Board to proceed.

Mr. Latinovic said that Staff finds no physical hardship associated with the property that warrants granting the requested variation for the following reasons: 1) there is no practical difficulty associated with the property that warrants granting the request; 2) the applicant is the original developer of the subdivision and was aware of Staff's interpretation of the rear lot line and required rear setback; 3) the petitioner has the ability to construct the proposed new home and meet all setback requirements as shown in Exhibit B; and 4) if the requested variation was approved, it could be construed to be applicable to all similarly situated residential lots in the Village where no physical hardship exists with the property.

Mr. Latinovic then reviewed the Standards for Granting Variations as shown on pages 2-4 of Staff's report dated October 26, 2011. He referenced Section 28.1803 of the Zoning Ordinance, which specifies practical difficulties or particular hardships that would allow a variation. According to Staff's analysis, Standards 1, 2, 4, 5, 6, and 9 have not been met. Therefore, Staff believes there is no physical hardship or practical difficulty associated with the subject property, and based on its analysis, Staff believes the standards for granting a variation have not been met. Mr. Latinovic said that Staff recommends denial of the requested variation. He requested that should the Board decide to approve the request, the variance should be subject to the condition noted on page 4 of Staff's report dated October 26, 2011.

Ms. Souter asked for clarification that the IEPA does not allow building on a wetland, and Staff said that was correct. She then said that the developer configured the subdivision this way only because he had to preserve the wetland. Mr. Latinovic responded that he was not familiar with

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all issues when the subdivision was being proposed. He said he thinks that sometimes there are ways to reconfigure the grading and slope of a property to modify the extent of a wetland.

Mr. Dabareiner said that the developer's representative already commented that it was configured this way because reconfiguring would be more expensive.

There being no further questions of Staff, Chairman White asked anyone who wished to speak either in favor of, or in opposition to the petition, to come forward.

1. Mr. William Ponstein of 6012 Hillcrest Ct. said he was the owner of the vacant property to the north of the subject lot. He stated this was all brought up at the Plan Commission at the time of subdivision approval, and they were granted numerous exceptions and they knew what they had to build on. His primary concern has to do with the grading from Boundary Hill Subdivision to the north. He pointed out on the site plan where the overland water route travels, and should there be a 100-year storm, there will be serious problems because the required 20 feet allows for that kind of overflow, and the requested 10 feet would not provide enough room for the water flow. He also referred to Lot 5 in Boundary Hill, saying that whoever builds on that lot is entitled to the 20 feet on this subject property, which would then result in 40' of back yard between homes, as the Ordinance requires.

2. Eric Shover of 6120 Springside Avenue said his concern is that he bought his home a few years back with the assumption there would not be any construction in the back. The subdivision has gone in and was undeveloped for quite some time, which was inconvenient. 1730 was built with a variance, and the house is ten feet from his back yard. Now they're talking about putting another house off ten feet, and they are basically having a back yard with 30-foot high homes. He said they are seeing their back yard become basically surrounded by very tall homes. He said it is an unattractive situation to find themselves in after purchasing their home six years ago. They expected having the wetlands back of them.

3. Kevin Clinnin, resident and homeowner of 1742 Brian Grant Court, said he is in favor of the petition. Since he purchased his own a little over a year ago he has noticed that of the four lots that have been built, the developer has built homes successfully in the \$800,000 - \$950,000 range and the homes have sold almost immediately. Mr. Clinnin said he thinks they are doing a good job with a good plan. He sees two options for the subject property. The developer could build the home as planned and have no rear yard, which will make selling the home virtually impossible. Mr. Clinnin said the other option would be to build a smaller home to fit on the lot at a lower price, which would be completely inconsistent with the other properties in the subdivision. The look and feel of the neighborhood would be tremendously diminished and affect the value of the other properties.

4. Laurie Hubbard of 1746 Brian Grant Court said they purchased their home a short time ago, and chose the home because of the design of the community.

5. Suzanne Shover of 6120 Springside Ave commented that she agrees with her husband regarding how close the other homes are to their home. She would love to see the neighborhood developed, but doesn't want to see a house be built that will not sell. They already have a vacant lot that gets overgrown. Although she doesn't like having the houses so close, she wants to see the development completed and see all of the homes sold.

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6. Mr. Leonard Buzecky of 1792 Boundary Ct. says he has a house without a back yard. Their home is very unusual and is different from most homes. He thinks that the people knew what they were getting into when they subdivided. In his situation, he wanted to build a sunroom and could not do it because of the 20-foot requirement. He understands they may have a hard time selling the home, but there is always someone who will purchase the lot. His back yard may be small but he is happy with it.

There being no additional public comments, Chairman White gave the petitioner the opportunity to provide a summary and address comments that were made.

Chairman White asked the applicant why they need this particular house. He said it seems they could put a similar size home and just change the front elevation and driveways. It may not be the exact same design, but they could still build on the lot. He asked why they can't change the design of the house to comply with the setback, filling in the area in the southwest corner. It would be a different house, but the same size as proposed.

Richard Grant of Atlantic Homes, the developer, explained using the overhead plan why the home would have to be placed where it is. Mr. Grant explained that to build a home with garage and living room in the front there is not enough width on the property to keep that home up front without the variance. If the variance is not granted he would have to move the home to the back resulting in no back yard and that will not sell. People in this price range want certain size back yards.

Ms. Majauskas also pointed out if they reconfigure the house and change the garage location so that the house faces south they could come up with a design.

Mr. Grant replied that the house proposed fits with the rest of the homes in the area and this is the only type that sells in today's market.

Mr. Dabareiner got up and explained using the overhead plan that a home of similar size but a different design can be reconfigured and placed on the property closer to the front where the current house is proposed which would allow for larger backyard desired by the developer.

Chairman White said from a zoning perspective this design is not necessary to yield a reasonable return. He said he thinks moving the house back to meet the setbacks would be a bad idea. There would be no back yard. But you can have a different style of a house with the same amenities and square footage, but that doesn't mean it will not yield a reasonable return.

Mr. Grant explained that when the subdivision was created he only worried about the wetlands and how to create lots around that. At that time he figured he would be building 3,000 sq. ft. homes. He knew the north property line was the rear property line but did not think about it because he thought he would build 3000 sq. ft. homes. Today that is not the case and he has to build larger homes that will sell and fit the neighborhood with stone, same size and colors. Mr. Grant said that at the time the plans were drawn he did not remember what the rear setback was.

Ms. Majauskas asked if it was his position that no 4500 square foot house could be built in that area and why is he stuck on this design?

Mr. Grant replied that the buildable area is not enough to build the house that is similar to the

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other homes in the neighborhood.

Ms. Souter agreed with the other Board members that there could be a way to reconfigure the house and still fit it on the lot and make it similar to the other homes by picking up the same color of brick and stone and yield a reasonable return.

Chairman White then reviewed the sizes of the various houses in the subdivision which vary between 4400 and 4700 square feet. He said that they should be able to build a 4400 square foot house on that lot that would not be out of the character with the subdivision.

Ms. Crowley reiterated that going with the house as proposed would be consistent with the neighborhood. The goal was to keep the property consistent with the other properties in the subdivision.

Mr. Dabareiner clarified the comments made earlier that someone would build a swimming pool in the front yard if the house is pushed to the back, or sheds, and that would not happen because accessory structures are not allowed in front yards.

Per question from the audience, Mr. Latinovic explained that the buildable area on the property is represented by the hash marks on the plan shown on the overhead projector. In general structures such as sheds, garages, etc., are not allowed in front of a home.

Chairman White asked the length of the proposed house, and was told it was 90' on the north side, and 53' north to south. The front property line is 93' away from the north rear property line, which after the front 30-foot setback and rear 20-foot setback are deducted leaves a 43-foot buildable with where a redesigned home can be constructed. The house at 1742 is more square shaped house and is 4400 square feet.

There being no further comments, Chairman White closed the opportunity for further public comment, and opened the discussion to the Board's deliberation.

### **Board Deliberation:**

Chairman White asked the Board's preliminary thoughts on the petition.

Ms. Majauskas referred to the original layout in 2006, saying at that time they could have done anything they wanted, and this is what they chose to do. She said they do not want to change their design, or consider other options. She doesn't think they even attempted to mitigate the situation without requesting a variance. She doesn't understand why they cannot find another configuration for the building design. Ms. Majauskas didn't think the applicant met most of the Standards of the ordinance.

Chairman White asked if anyone disagreed.

Mr. Isaacson said this is possibly the first time he has heard surrounding residents speak both for and against a petition evenly.

Ms. Souter said she hasn't seen proof that an alternative could not be built, and she is struggling with that.

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Ms. Earl said that you can fit a house with a reasonable return in that space. She didn't see any effort by the developer to make it work. They received 17 exceptions when the subdivision was plotted in 2006, and she felt that they could put something substantial there.

Mr. Isaacson asked if it matters that Mr. Domijan did not appear. Mr. Latinovic said he is not sure if Mr. Domijan replied he will be attending the meeting or not. He clarified that his vote might have been important if there was a split vote or lack of a four-vote majority.

Mr. Dabareiner said that they have often given a petitioner a chance to wait another month if it appeared that four votes would not be available because not all members of the board are present at the meeting.

**Ms. Majauskas moved that in case ZBA-04-11, the requested variation be denied. Ms. Earl seconded the Motion.**

**AYES: Ms. Majauskas, Ms. Earl, Mr. Isacson, Ms. Souter, Ch. White**

**NAYS: None**

**The Motion to deny the requested variation passed unanimously.**

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Mr. Dabareiner said that the Village will require ZBA members to have photo id's made up, so it's clear who is wandering about private property subject to ZBA hearings. The Plan Commission already has theirs.

Mr. Isacson mentioned that Mr. Benes was a member of the Board for 35 years and he asked if something would be done for him. Mr. Dabareiner said if the Board chose to do something personally they can, but he thought the Mayor and Council would have some type of recognition for someone who has served that long.

Mr. Latinovic said the next meeting will be held on November 9<sup>th</sup> as there is one item on the agenda. The December meeting is scheduled for the second Wednesday, December 14th.

There being no further business, Chairman White adjourned the meeting by voice vote at 8:48 PM.

Respectfully submitted,

Tonie Harrington  
Recording Secretary



VILLAGE OF DOWNERS GROVE  
ZONING BOARD OF APPEALS  
NOVEMBER 9, 2011 MINUTES

**Call to Order**

Chairman White called the meeting to order at 7:35 PM.

**Roll Call**

**Present:** Mr. Domijan, Mr. Enochs, Ms. Earl, Mr. Isacson, Ms. Majauskas, Ms. Souter and Ch. White

**Absent:** None

A quorum was established.

**Staff:** Jeff, O'Brien, Planning Manager  
Stan Popovich, Planner

**Also present:**

Eugene Kociecki, 1496 Burberry Lane, Schaumburg, IL  
Mike Philipp, 4915 Main Street

**There were no minutes to approve**

**Meeting Procedures**

Chairman White explained the function of the Zoning Board of Appeals, and reviewed the procedures to be followed during the public hearing, verifying with Staff that all proper notices have been published. He then called upon anyone intending to speak before the Board on the Agenda item to rise and be sworn in, as the public information portion of the meeting is an evidentiary hearing. Chairman White explained that there are seven members on the Zoning Board of Appeals all of whom have had the opportunity to review the documents for the petition prior to the meeting. In order for a requested variation to be approved there must be a majority of four votes in favor of approval. He added that the Zoning Board of Appeals has authority to grant petitions without further recommendation being made to the Village Council.

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**ZBA-05-11 A petition seeking a setback variation for a sign at the property located on the north side of Ogden Avenue approximately 200 feet west of Fairview Avenue, commonly known as 406 – 414 Ogden Avenue, Downers Grove, IL 60515 (PINs 09-05-214-016, -017 and -018); Eugene Kociecki, Petitioner and Owner.**

**Petitioner's presentation:**

Mr. Mike Philipp, attorney with Wiedel, Hudzik, Russ and Philipp, explained he represented Mr. Kociecki. He explained the variation request was for a side yard setback variation to permit a monument sign to be 15 feet from the side property line where 25 feet is required. Mr. Philipp noted the building was constructed in 1987 and includes four tenant spaces, two of which are currently vacant and two of which are occupied. He noted a U.S. Cellular store recently approached Mr. Kociecki about occupying one of the vacant spaces but due to the sign issue,

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they decided not to move to this building.

Mr. Philipp noted his belief that the unique situation on the property is the location of the building, parking areas, and the location of the access drives. He noted the location of the previously removed sign and stated that that location is not a reasonable location for a new 10-foot tall sign. He noted the old location is within the prime parking spaces in front of the store. He noted vehicles could obscure large portions of the sign if it was located within the parking spaces.

He referenced Exhibit B on the screen and located the Ogden Avenue curb cuts. He noted there are no other properties on Ogden Avenue with similar situations. He noted the only reasonable sign location is the location Mr. Kociecki is proposing.

Mr. Philipp believed the property can not yield a reasonable return based on the U.S. Cellular not choosing to locate in one of the vacant tenant spaces. He believes it is preferable to have the sign located in the open space at the southwest corner of the property.

Mr. Philipp noted the entire frontage is dedicated to vehicle circulation and is open enough to allow vehicles to move freely. He noted various properties along Ogden Avenue, including the CVS, Sears, Doggie Day Spot and others that had their monument sign within landscaped grass areas. He noted his belief that the only other property similar to this one on Ogden Avenue is located at 650-654 Ogden Avenue.

Mr. Philipp noted it is not a mere inconvenience to locate the sign in the required location. He felt the sign would look odd if it wasn't located 10-feet from the front property line as visually it would not line up with other signs along Ogden Avenue.

Mr. Eugene Kociecki introduced himself as the owner of the property. He noted his longevity of ownership of this property and that he recently removed the non-conforming pole sign per the Village's request. He noted everyone he has talked to about the sign noted the only place to put the sign was in the grass area at the southwest corner of the property. He noted that U.S. Cellular did not lease one of the vacant spaces because of the sign. Mr. Kociecki stated he will not install the sign if the variance is not granted because it would not be visible. He is worried about the sign and that is all he's been thinking about.

Chairman White inquired about the Brown's Chicken property and how the two sites are similar. Mr. Philipp noted he wasn't familiar with the site. Mr. Isacson noted the difference is that Brown's Chicken is a single tenant while this is a multi-tenant space.

Chairman White asked if a sign could be installed adjacent to the van that was shown in the exhibits.

Mr. Philipp noted that would interfere with the on-site traffic flow and might require the removal of additional parking spaces. Mr. Kociecki noted a light pole used to be in this general location but it kept getting hit and knocked over.

Chairman White noted a sign was placed in that location it could potentially create two separate parking lots.

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### **Staff's presentation:**

Mr. Popovich noted the property at 404 – 416 Ogden Avenue is on the north side of Ogden Avenue, approximately 200 feet west of Fairview Avenue. The property is zoned B-3, General Services and Highway Business and is improved with a four-unit shopping center. He noted the petitioner is requesting a side yard setback variation to construct a monument sign 15 feet from the west (side) property line where 25 feet is required per Section 28.1502.01(A)(2) of the Zoning Ordinance.

Mr. Popovich referenced Exhibit A identifying the location of the previously removed sign and the proposed location for the new sign. The petitioner is requesting a variation to install the sign as shown on Exhibit A because this turf area is only 20 feet wide and if he were to install a sign 25 feet from this property line in this location, it would be in the middle of the drive aisle. Mr. Popovich noted the proposed location would comply with the 10-foot setback from Ogden Avenue. The proposed location would require the elimination of a single parking space to the north so that the required landscaping can be accommodated.

Mr. Popovich stated staff does not believe there are unique circumstances which require a variation. He noted there were no physical or practical difficulties with the property which preclude a code-compliant sign. The petitioner has the ability to construct a sign in a code-compliant location. Mr. Popovich referenced Exhibit B which identified all available locations on the site that meet the setbacks. Mr. Popovich identified Exhibit C which identified potential sign locations that did not require changes to the site. Mr. Popovich noted the sign did not have to be within the parking spaces but could be slightly to the south of the parking spaces and still provide an adequate drive aisle for vehicles to pass through. Finally, Mr. Popovich noted if the variance were granted, it could be applicable to all properties within the B-3 zoning district where no physical hardship exists.

Mr. Popovich reviewed the standards for granting a variation. He noted the property can yield a reasonable return if the sign is located in a code compliant area. There is a large area on the parcel where a sign can be located and the sign could be located in the previous location. Mr. Popovich pointed to different areas on the site where a sign could be located. Mr. Popovich noted the property is no different than other properties on Ogden Avenue where a sign is located within a parking area. Mr. Popovich noted the Saab Dealership, the Advanced Auto Parts, the Garden Spa and about a dozen other properties have similar sign arrangements where a compliant sign is within a row of parking spaces.

Mr. Popovich noted standard three was met while it was staff's belief it is a mere inconvenience that the petitioner can not install a sign as their preferred location. Mr. Popovich reiterated that the petitioner has a variety of locations where a sign could be located within.

Mr. Popovich stated the hardship was not the result of the property owners' actions; the sign would not impair surrounding properties of light or air; and that the land use characteristics of the site will remain the same.

Mr. Popovich noted that a special privilege would be conferred on the petitioner if the variance were granted. The property is not unique as there are numerous properties on Ogden Avenue with a similar layout. He noted there are alternative sign locations on the property. Mr. Popovich concluded that staff was recommending denial of the petition. He indicated if the ZBA chose to grant the variation, it should be subject to the condition listed on page four of the staff

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report.

The Board discussed the potential to close the two existing curb cuts and replace them with one new curb cut. A new sign could then be located within a landscaped area near the new curb cut. Discussion ensued with the feasibility of this option. The Board discussed how to re-arrange the parking lot to accommodate a code-compliant sign.

Ms. Earl asked about the Village's policy for closure of curb cuts on Ogden Avenue.

Mr. Popovich stated curb cuts are typically closed during the redevelopment of a site. Mr. Popovich noted that if the petitioner wished to close a curb cut, there might be grant funding available through the Ogden Avenue Site Improvement Strategy (OASIS) program the Village offers.

There being no further questions of staff, Chairman White asked anyone who wished to speak either in favor of, or in opposition to the petition, to come forward.

Mr. Philipp noted that the site is not undergoing a redevelopment so they are not proposing any curb cut reductions.

There being no further comments, Chairman White closed the opportunity for further public comment, and opened the discussion to the Board's deliberation.

### **Board Deliberation:**

Chairman White asked the Board's preliminary thoughts on the petition.

Mr. Domijan noted the proposed location would increase the green space on the property with the removal of the one parking space.

Ms. Souter noted if the sign were to be located on the east side of the property it could be blocked by the adjacent CVS signs. Per a question, Mr. Popovich noted the CVS signs were non-conforming and would have to be brought into compliance by May 4, 2012.

Chairman White noted there are not similar sites along Ogden Avenue with two curbs cuts and the location of the building as it is in this location. He believed the location of the building coupled with the design of the parking lot and site access create a unique condition. He stated he was in favor of the petition.

That being, said he does like to play devil's advocate. He noted it would be nice to eliminate curb cuts to harmonize traffic along Ogden Avenue. The Chairman went on to note that relocating the sign to the center of the lot would create difficulties for users of the parking lot as it would separate the southern lot from the western parking area. He indicated that this condition may create back-ups on Ogden Avenue. He did not believe a sign is the tipping point to require the closure of curb cuts. Chairman White believes the site is unique and that the Board will be able to differentiate between different properties if a similar request were to be before the Board in the future.

Chairman White asked if anyone disagreed. No additional thoughts or comments were

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presented.

**Mr. Domijan made a motion that the ZBA grant the requested variation associated with case ZBA-05-11 as presented with the following condition:**

- 1. The proposed sign shall substantially conform to the plans and specifications attached to the Staff report, dated August 24, 2011 except as such plans may be changed to conform to Village codes, ordinances, and policies.**

**Mr. Isacson seconded the Motion.**

**AYES: Mr. Domijan, Mr. Isacson, Ms. Earl, Mr. Enochs, Ms. Majauskas, Ms. Souter, Ch. White**

**NAYS: None**

**The Motion passed 7:0.**

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There being no further business, Chairman White adjourned the meeting by voice vote at 8:25 PM.

Respectfully submitted,

Stan Popovich, AICP  
Planner