MINUTES OF THE MARCH 1, 2011 REGULAR MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF OAK BROOK APPROVED AS WRITTEN ON AUGUST 2, 2011

1. CALL TO ORDER:

CALL TO ORDER

The Meeting of the Zoning Board of Appeals was called to order by Chairman Champ Davis in the Samuel E. Dean Board Room of the Butler Government Center at 7:03 p.m.

2. ROLL CALL:

ROLL CALL

Gail Polanek called the roll with the following persons

PRESENT: Chairman Champ Davis, Members Jeffrey Bulin, Natalie Cappetta, Joseph Rush, Steven Young and Wayne Ziemer. Baker Nimry arrived at 7:08 p.m.

IN ATTENDANCE: Mark Moy, Trustee, and Robert Kallien, Jr., Director of Community Development

3. APPROVAL OF MINUTES:

MINUTES

REGULAR ZONING BOARD OF APPEALS MEETING OF NOVEMBER 2, 2010

Motion by Member Young, seconded by Member Rush to approve the minutes of the November 2, 2010, Regular Zoning Board of Appeals meeting as written. VOICE VOTE: Motion carried.

4. UNFINISHED BUSINESS

UNFINISHED BUSINESS

There was no unfinished business to discuss.

5. NEW BUSINESS

NEW BUSINESS

A. GROTTO OAK BROOK – 3011 BUTTERFIELD ROAD – SPECIAL USE – AMEND CONDITIONS CONTAINED IN ORDINANCE S-1117

GROTTO – 3011 BUTTERFIELD RD – SPECIAL USE – AMEND ORD S-1117

Chairman Davis noted that the matter would be continued because the proceedings before the Plan Commission had not been completed.

Motion by Member Bulin, seconded by Member Ziemer to continue the public hearing to the April 5, 2011 meeting. VOICE VOTE: Motion carried.

5. B. PRIDMORE – 15 GLENOBLE COURT – VARIATION – FENCE HEIGHT

Chairman Davis swore in all those that would be providing testimony at this hearing.

Mr. Mueller, attorney for the petitioner provided background information and reviewed the petitioner's request. He noted that he was concerned that the request will go off track. The materials in the case file contain information regarding a dispute between the petitioner and the homeowner's association. There has been litigation brought by the association against Mr. Pridmore to have the fence removed and both cases were dismissed. The issue of whether or not a fence should be allowed is a private issue before the court with the homeowner association and Mr. Pridmore. There could be association issues, but that is not the reason why the request is before the Zoning Board of Appeals.

The reason they are before the Zoning Board is whether the fence should be 42 or 48-inches in height. Under the Zoning Regulations the Village has determined that fences are permitted in the R-4 District. In some instances a 48-inch high fence is permissible, in instances where there are pools to protect children and enhance safety. The Pridmore's have a safety issue, but it is not to keep someone out, but rather to keep someone in, which is a special needs child. At times for the child's own safety, just like for swimming pools, a 48-inch fence will offer more protection. They were requesting the 48-inch fence for the same reason it is required for swimming pools, because it offers more protection. There are times when the child is out and for their own safety; the child needs to be contained. It would have cost the Pridmore's much less had they removed the fence when the homeowners association first sued them. A lot of money was spent defending those cases, but the reason behind the fence was for the safety of the child, which is critical to them. It was not until after the homeowner association lost its lawsuit that they decided to go to the village to complain.

In the early 2000's, the Pridmore's saw the exact same fence that a neighbor had installed. He asked for the name of the contractor and bought the exact same fence, the contractor said that he would take care of everything and it was installed. For 5½ years there were not any complaints from any neighbors or the prior homeowner association board. There was a change in the homeowner

association board and it was there understanding Harry Peters saw the fence and wanted it taken down. After they received a letter from the board they pointed out a section of the homeowner association covenant that after the period of time it was deemed approved and did not need to come down. The homeowner association filed a lawsuit and Judge Popejoy dismissed it. They added counts to the suit and it was dismissed again. After that happened, the homeowner association went to the Village. It was accurately discovered that a permit had never been applied for, but the Pridmore's had assumed, incorrectly and wrongly that the fence contractor had taken care of it. They then filed for a permit that was issued and when it was inspected it was deemed that it was 48 inches high, not the 42-inch high maximum allowed. They discussed reducing the size of the fence, which would be cheaper than filing for the variation with legal representation and knew that the homeowner association would again oppose it, but Mr. Pridmore decided that it was important for the safety of his child to seek a variance.

With respect to the Village Code a 42-inch high fence is allowed in the R-4 District and under certain circumstances a 48-inch high fence is permitted due to safety. It is not a case where they are seeking to allow fences where they are not allowed. The homeowner association's exhibit depicts the open space and another one depicting fences everywhere. Their opposition to the request in their opinion is warranted because it would take away the open character. If the applicant was seeking a text amendment, if fences were not allowed that would be true. However, they are seeking a variance to allow a 48-inch high fence.

The question before the Zoning Board of Appeals is whether or not they meet the standards for a variance. One of the standards is about reasonable return, if it is not important. It is not a monetary issue, they believe that a reasonable return is by allowing their children to use the property in a reasonable manner to have an area of their property where they do not have to monitor them at all times and the child is kept safe; without the 48-inches the safety is lessened. The village determined that when they determined the minimum height for pools. It may seem like a little bit, but it is important, because it is a child's life, otherwise they would have had fence contractor shave the 6-inches off. They are asking the board to at least give the consideration because it is that important to the Pridmore's. The fact that the fence installed was 48 inches and not 42 inches is not the hardship they are talking about. The issue is that they have a special needs child. This is a unique circumstance that does not apply generally to everyone. It will not change the character of the locality, since there is the exact same fence approximately 70 feet away from this property and there are other fences in the subdivision. It is their hope that the Zoning Board will give consideration to this request.

William Kenny, representing the Forest Glen Homeowner's Association provided an opening statement. He noted that the Pridmore's installed the fence in 2001 and violated the zoning ordinance by constructing a fence that was 48 inches in height. They also violated the homeowner association covenants that required approval of the plans by its board. The fence was discovered around July of 2007, when it was brought to the attention of the board by another resident that desired to install a similar fence. Initially, the fence was covered by thick landscaping so it was not visible from the street, but it became visible when some of the landscaping died.

A provision contained in the architectural control covenants provided that if the board did not file a lawsuit to enjoin the fence within 30 days of the start of construction, then the fence would be deemed to comply with the covenants. The covenant mandated that building plans were to be submitted and approved by the board prior to construction of the fence, which he failed to do. The Forest Glen board had absolutely no notice that the fence was being erected, which is one of the issues currently pending in the appellate court.

The Oak Brook Zoning Ordinance has a provision that fences which are not around swimming pools could not be more than 42 inches high. The subdivision's architectural control covenants takes precedence over the zoning ordinance in that it is more restrictive, but the policy has to respect fences around pools, which is a mandated life safety issue. Mr. Pridmore did not apply for a building permit when the fence was installed. He noted that Mr. Pridmore did not obtain a building permit until after he received letters from the Community Development Department. The survey submitted for the permit showed a pool on the site, which would require a 48-inch high fence. At time of the final inspection it was discovered that there was no pool on the property and the permit was rescinded. He then applied for this variation and he does not meet the standards. He created the situation by installing a 48-inch high fence in violation of the zoning ordinance. He failed to demonstrate hardship by showing how the special needs child would not be protected by a 42-inch high fence. The Forest Glen board has a policy in place that does not allow fences in yards without pools in order to maintain an open character of its community. Other residents have sought fences, which were turned down by the board for that reason. They ask that the recommendation be denied, that the fence be reduced to 42 inches or that the fence be dismantled.

Mr. Mueller questioned his client the applicant, Mr. Pridmore.

Keith Pridmore has resided at 15 Glenoble Court since November of 1998. He

said that he liked his neighbor's fence and at the time they had a dog and in order to keep the dog out of other yards he got the name of the contractor who installed it and told them that he wanted the same exact fence as the neighbor. The contractor said that he would take care of everything, which he believed included any required permits. Up until three years ago the fence was not an issue. No one complained after the fence was installed in January of 2001. He talked to previous board members about the fence and was never told there were any concerns about it. In July of 2007 he received a letter from the homeowners association telling him to remove the fence. He had two children at the time and one was a special needs child as diagnosed by several doctors. He had been advised by the doctors to keep the child contained at times for their own safety. He thought that the letter from the homeowner association was absurd, after the fence had been up for almost seven years. Although it would have been less expensive to remove the fence, he chose to defend the lawsuit for the safety of his son. The lawsuit was dismissed twice and is currently on appeal. He received a letter from Oak Brook advising that a permit had never been applied for, although he thought that the fence contractor had done so. He applied for the permit using the plat of survey that he had from when the house was built in 1978. He did not know that there was a swimming pool shown on the survey, since it was the copy he received when he purchased the house. There is no pool on the property and it was not his intention to deceive or trick the village. He was advised at the time of inspection that the fence was 6 inches too high. He talked to the contractor about lowering the fence by 6 inches, which would have been cheaper than the costs incurred for filing the application along with ongoing legal fees and seeking a variation. He said that the reason he was seeking this relief instead of taking the least expensive way out was because it is not a matter of finances or principles, it was a matter of protection for his child. He said that if the variation would be denied he would put in a pool to ensure that there would be a fence tall enough to protect the child. None of the neighbors ever complained to him. He had affidavits signed by the neighbors stating that they had been aware of the existence of the fence. The fence is very visible from the street. He had been told that there was a new president of the homeowner association and after that he was sued. He stated that there are other fences in Forest Glen with and without pools. An interior lot at 610 Lakewood Court has a fully fenced in yard that he heard had obtained the full approval of the homeowner association board due to an autistic child. He believes that his fence is identical to that fence with the exception of the color, but believes it is also 48 inches in height. He did not know why his situation with his special needs child is being treated differently than the other one.

Mr. Kenny cross-examined Mr. Pridmore.

Mr. Pridmore stated that he had the fence before the child was born, but the original desire for the fence was for his dog. When questioned, he refused to answer the specific medical issues of his special needs child. The child is 10 years old and around five feet tall. He has received the diagnosis but would not identify to the public what it was. He volunteered to divulge it to the board, but refused to offer it in a public forum.

Mr. Kenny objected to Mr. Pridmore's refusal to identify the specific issues of the child.

Mr. Mueller responded that Mr. Pridmore testified that the child had been to several doctors who diagnosed the condition, but that Mr. Kenny and respectfully, the board are not medical experts. To go into the specific nature of the child's issues so that Mr. Kenny could formulate an opinion as to whether or not the issues would qualify for the relief sought, since he is not a medical professional. He urged for the child's protection and privacy that a specific condition warrants an additional six inches on the fence.

Chairman Davis noted that the board was not prepared or qualified to get into a medical diagnosis or treatment of medical conditions.

Mr. Kenny said that it was prejudicial to the Forest Glen Homeowner association to allow Mr. Pridmore to be able to state generally that he has a special needs child without any indication of the nature, extent or condition of the child in order to have a fence with six additional inches.

Mr. Kenny resumed questioning.

Mr. Pridmore noted that the need for the 48-inch high fence was that the child would not be getting any smaller. The fence had been in place for 10 years. If it became necessary in order to make a decision on the variance, he would not have a problem in proving or providing the medical information to the Zoning Board.

Objections were raised again regarding the medical nature of the questions being asked of Mr. Pridmore.

Mr. Kenny said that the petitioner submitted false and misleading information on the plat of survey in order to obtain a permit and they have been asked to rely on his credibility in order to keep the fence.

Chairman Davis suggested that the applicant submit a letter from the child's doctor to the Zoning Board.

Mr. Mueller said that they would be happy to submit a letter in confidence to the Zoning Board from a doctor stating that in his opinion a 48-inch high fence would be beneficial for the safety of child.

Member Nimry asked that the letter include a statement as to whether or not the installation of a pool would be safe.

Chairman Davis said that the submission of medical testimony to the Zoning Board would be taken under the advisement of the Village Attorney.

Mr. Kenny requested the right to cross examine Mr. Pridmore on the medical evidence, which is the substantial reason for the request. He resumed cross examination of Mr. Pridmore.

Mr. Pridmore testified that his son was capable of playing outside the fence, but that a safe area or zone where he can be brought to make sure that he is properly taken care of was needed, should he have an episode or an issue. He verified that he has a trampoline with a net located outside the fence and the child uses it. The children did play with pedal cars on the driveway under parental supervision (they no longer have them). The child rides a bike outside the fenced area and he is concerned only when the issues require that he be confined. He never went to the Forest Glen homeowner association board regarding the fence for the child because the fence had been up for 10 years. He agreed that the neighbor's home (Walsh) has a swimming pool with a 48-inch high fence as required by code.

Mr. Kenny asked whether Mr. Pridmore was aware that the owners of the property located at 610 Lakewood Court had made a presentation to the Forest Glen board for a 48-inch fence based on the special needs of their child and that the approval of that fence was predicated on their obtaining a permit from the village. He responded that he was not aware of that, however, he had since found out that it was required by him as well.

Mr. Kenny asked whether he was aware that the approval of that fence was conditioned upon building plans being submitted and approved by the Forest Glen board, neighbor's comments were required and the fence was to be removed at the owner's expense if they moved or a change in the child's condition would no longer warrant the fence. Mr. Pridmore responded that he did not know and would not have a problem do that as well.

Mr. Kenny asked if he was aware of fences being located on any other interior lots, with the exception of 610 Lakewood Court or lots with swimming pools. Mr. Pridmore said that he did not. Mr. Kenny said that Mr. Pridmore's fence is the only lot in the Forest Glen subdivision that was in violation of the Oak Brook zoning ordinance.

Mr. Kenny asked if there was any other hardship on the property for the special needs child. Mr. Mueller responded that there were not.

Mr. Kenny asked a series of questions regarding gates, access, containment, etc. that were answered by Mr. Pridmore.

Mr. Kenny noted that the plat of survey submitted for the fence permit showed a pool on the property. He also asked for a legible copy of the invoice from the fence contractor, which Mr. Pridmore agreed.

James Degerstrom, 102 Knollwood Court, said that he was on the Forest Glen homeowner association board from 2000-2004 and frequently walked through the subdivision. A problem that the board had was getting people to submit requests for additions and changes and the residents were not being informed that they needed to do that. Many additions that were built in the subdivision were not legitimate. At one time a patio had been built, someone called Harry (Peters) who in turned called him, but it had already been completed. At that point he made sure that they had made contact with the village and that Harry would be sending them a bill for $100.00 for the work that had already been done, which was done nicely as well. As far as the Pridmore's, their house is within view of his home, so he would walk by there. All of a sudden he noticed that a fence had been constructed on the property. At that time he mentioned it to the board. He did not know why it was brought up at this particular time and believed that it was a big waste of time. It did not make any difference to him that the fence was 48" rather than 42" high. Nothing was done about the fence at that particular time, like many other things. The McKay's house was renovated and they changed their mind and added a back porch. All of a sudden it was discovered that it was built too close to the pond. It was submitted and approved by the Zoning Board. The Village would approve items submitted, that they did not know they were going on.

Ann Degerstrom, 102 Knollwood Court said that she had never met Mr. Pridmore and they live two houses down from them. Personally, she would not want his dogs or his children running or playing into her yard. A number of the neighbors also feel that way. They knew nothing about the lawsuits that had

been filed by the homeowner association board until it came out in the newsletter from Oak Brook. She is a retired doctor that has lived there for 24 years. She takes opposition to the homeowner board and disagrees with their action. If it goes back to court, she will testify on the Pridmore's behalf. Mr. Pridmore put his labor into putting the house into excellent condition, which was a fixer upper when he bought it. She was very angry that the resident's money had been spent by the homeowner association on attorneys because it has gone to court. There are a half-dozen other issues in the subdivision that she was concerned about, rather than the money they spent on this case.

Mr. Mueller asked if she thought that the Pridmore's fence negatively impacted the subdivision in any way.

Ann Degerstrom responded absolutely not.

James Degerstrom added that they did not even know that a fence was there until a tree came down and couldn't tell if the fence was 42 or 48-inches high.

The Degerstrom stated that they were not contacted to come and testify. They came because they had received a letter from the village regarding the hearing.

William Lindeman, 11 Pembroke Lane, said that he did not come to support or oppose the request. He objected to the tone of the Forest Glen Homeowners board in the presentation of its case stating that there was a total lack of manners. He pointed out that the American with Disability Act has provisions regarding confidentiality. Butler National Golf course was granted a 5-foot fence to along Jorie Blvd. In general, he agrees with enforcing the village codes and ordinances. Given the facts presented in this matter he would be very disappointed if the relief were not granted.

Mr. Kenny cross examined Mr. Kallien, who identified himself as the Director of Community Development for the last twelve years. As part of his position he administers and enforces the Zoning Regulations. As director, he is familiar with the Pridmore fence as well as the applicable fence provisions. Fences along village boundaries can be as high as 6 feet.

When questioned about Section 13-1-3, Interpretation of Provisions, in the Zoning Regulations, Mr. Kallien noted that many of the subdivisions in the Village have their own covenants, which run with the property and are enforced by those homeowner associations. In situations where the village is made aware of that where a permit may be in conflict with those covenants, the parties are advised so that they can reconcile any issues. The village has been

advised by its legal counsel over the years that the village is obligated to issue a permit as long as it meets the villages' codes and regulations. The Zoning Regulations cannot be superseded by a covenant that pertains to private property, because the village does not enforce those covenants that are in place between the homeowner and the homeowners association, which has been village policy.

Mr. Kenny noted that there was a section stating that it did not abrogate covenants. Mr. Kallien responded that they follow the advice of village counsel.

Mr. Kenny stated that the village sent two letters to the Pridmore's advising that a fence permit be submitted and that the fence either be removed or brought into compliance, which they did not respond to. Mr. Kallien agreed.

Mr. Kenny noted the following and Director of Community Development Kallien agreed that the Pridmore's submitted a plat of survey indicating that there was a pool on the property and as a result the village issued a permit allowing for a 48-inch high fence. At the time the building inspector inspected the lot it was determined that there was no pool on the lot, subsequently the village rescinded the permit and several letters were sent to the Pridmore's advising that they seek a variance, remove the fence or reduce the height of the fence so that it would be in compliance with the code.

Mr. Kenny questioned that one of the purposes in requiring a building permit under the Zoning Ordinance was so that the village could coordinate with homeowner associations regarding fences that are restricted by covenants. Mr. Kallien responded that was one of the reasons, but the reason is to insure that the fence meets the regulations in terms of height and location.

Member Nimry asked if an explanation had been given as to why they ignored the letters that had been sent by the village. Mr. Kallien responded that none had been given. He noted that many letters are sent by the department, and there are many conversations, but there is not any intent to punish. Once the issue had been raised by Mr. Peters, the intent by the department was to seek compliance, which was the village's objective all along.

Member Bulin asked who reviewed the survey for the fence and noted that it was for a 5-foot wood fence dated in 1980. Mr. Kallien responded that Bill Hudson, however, the people who owned the home before the Pridmore's may have had a pool and deck.

Mr. Mueller questioned whether there was any indication that the Pridmore's were trying to intentionally mislead the village in order to get the permit. Mr. Kallien responded that neither he nor any of his staff believed that was the case.

Mr. Mueller said that the Pridmore's would be entitled to at least a 42-inch high fence, even if the homeowner association objected to the permit. Mr. Kallien responded that as long as the village was ensured that there was communication between the two parties, the village would be bound to issue the permit for a 42-inch high fence.

Julie Marcionetti, 908 Burr Oak Court said that when a home is bought in the Forest Glen Subdivision covenants are given that pertain to certain rules and regulations that govern the residents in the neighborhood. Knowing the rules helps to protect the property investment and everyone should be held to the same standards. She is on the homeowner association board and everything cannot be patrolled at all times. She was personally present when the residents at 610 Lakewood Court requested the fence due to the issues with their child and they brought up the Pridmore fence at that time. No one on the board knew about the fence and they try to ensure that the standards are enforced to the best of their ability. When they viewed the Pridmore fence it was hidden by evergreens. Whenever there is a conflict they try to talk to the resident, however, Mr. Pridmore would not cooperate and refused to communicate with them, which is the same way that he dealt with the letters from the Village.

Chairman Davis asked if the homeowner's association was attempting to have the fence removed.

Mrs. Marcionetti responded that they were, but also offered an agreement that the fence would be removed at the Pridmore's expense when they moved. They were trying to be reasonable.

Mr. Kenny questioned whether the Pridmore's had ever mentioned that they had a special needs child.

Mrs. Marcionetti responded no; and that he knew the Grane's had been given a variation by the board to allow their fence because of their special needs child. They would not be interested in any of the details relating to the child's medical condition, but a doctor could certify that there was a condition that would require a fence that is 6 inches higher to ensure that it would protect the child's safety.

Member Nimry questioned that the board went to court without knowing that the Pridmore's had a special needs child.

Mr. Kenny responded that they had been involved in litigation lasting over a year and did not know until January of this year (2011) when the Pridmore's submitted for the variation.

Mr. Mueller noted that the lawsuit was filed by the Forest Glen board to enforce the covenants of the subdivision, which the judge dismissed.

Chairman Davis asked what the issue was in the lawsuit.

Mr. Kenny responded that there were two issues. In the architectural control covenant, the first provision is that no fence shall be erected unless building plans are submitted to and approved by the board. The second is that if the board does not file suit to enjoin a violation within thirty (30) days from the start of construction, that it is deemed to comply with the covenants. The issue before the Appellate Court is that since the board was not given the plans, they had no notice. Until plans are submitted, the provision could not be triggered.

Mr. Mueller responded that a former board member testified that the board was aware of the fence years ago. There is a provision in the covenant that if they do not sue within 30 days, then it is deemed to be approved. So the special needs issue was never part of the lawsuit. He noted that this was very adversarial and they were trying to protect the privacy of the child and it did not need to be brought up to the court. It was brought up at this hearing because that is the basis for the variance and they would not needlessly throw it out in a lawsuit.

Chairman Davis said that the decision of the Appellate Court did not affect anything before the Zoning Board of Appeals decision.

Mr. Mueller said that if the homeowner association wins their appeal it goes back and then they have a trial on the merits. If the Pridmore's win the appeal it is over. The judge dismissed the case before it went to trial. If the homeowner association wins the appeal and also at trial, then the fence would have to come down. The matter before the Zoning Board of Appeals is about the variation for the fence height.

Mr. Kenny cross-examined Harry Peters, who is the President of the Forest Glen Homeowners association for the past 15 years and has resided there since 1988. He described that character of the subdivision as an open plan with winding streets and big trees. There are paths through the park with 155 upper middle class homes and 4 vacant lots. Most lots are approximately a half acre. He noted that there are 8 interior yards with swimming pools and fences that are at least 48-inches high. It was his opinion that these fences detract from the character of Forest Glen. Pursuant to the recorded covenants for the subdivision there has been a policy to not allow fences in interior yards that did not have a swimming pool. Exhibit 1 is the Forest Glen Subdivision Plat and Exhibit 2 is the Forest Glen Covenants. Several aspects of the Architectural Controls were reviewed regarding that the construction of fences required the approval of the review board. He understood that the Oak Brook building code requires 48-inch high fence around pools and the Forest Glen Board has no authority to overrule those village requirements. He noted that fences are allowed along the borders in excess of 48 inches as requested by the residents for security reasons. He said that the fences along the borders facing Roosevelt, I-294 and I-88 detract from the open character of Forest Glen; however, the Village also approves those types of fences. The board's policy is to deny requests by residents seeking to install fences in the interior lots that do not have pools. There was a single exception regarding a fence located on an interior lot on Lakewood Court. The Grane's requested a fence due to their having an autistic child who was drawn to water and the proximity of their lot to two retention ponds The Grane's also submitted a letter from the child's school district stating the child's condition and support for the fence. The board approved the request subject to conditions that they comply with all village ordinances, and the fence would be removed at the Grane's expense should they move from the property or the needs of the child changed that the fence would no longer be required.

Mr. Peters said that there are 7 people on their board who volunteer their time. He said that he has to protect the neighbors and enforce the covenants. They have consistently denied fences. He stated that he did not have any grudges against Mr. Pridmore.

Mr. Mueller cross-examined Mr. Peters. Mr. Peters said that he was doing this to protect the neighbors and the neighborhood. When asked he said that he had never received a complaint from any of the neighbors regarding the Pridmore fence. When questioned about fences not being prohibited in the covenants, Mr. Peters responded that attorneys over the years had advised them that the covenants were written to give them broad authority and they have consistently

had a no fence policy. Mr. Mueller noted that a no fence policy, banning fences did not exist in the covenants. Mr. Kenny responded that the covenants give the board architectural control, including fences. The board at its discretion has promulgated to a policy to not allow fences in interior lots without swimming pools.

Mr. Mueller questioned whether there was a written policy so that residents know that a no fence policy existed and asked whether the written policy could be brought to the next hearing. Mr. Peters responded that he believed it was in writing and he would look for it.

Mr. Mueller asked Mr. Peters if he agreed with the board member (Julie) who testified that she did not need to know the details of the medical conditions to make certain determinations. Mr. Peters said that he did not agree.

Mr. Mueller said that since Mr. Peters was opposed to the fence, and since there is only 6 inches difference between a 42 or 48 inch high fence, how would that protect or destroy the open space character of Forest Glen. Mr. Peters responded that it was his opinion and thought it was terrible and thinks that it would really hurt the character and that the extra 6 inches bothered him. If the fence would be reduced to 42 inches he would be fine with that.

Mr. Mueller said that even though you could not see through them, he asked if the evergreens that blocked the view of the fence destroyed the character of Forest Glen. Mr. Peters responded no, that evergreens were a part of nature and not manmade.

Mr. Mueller asked if Mr. Peters doubted Mr. Pridmore's testimony that he has a special needs child. Mr. Peters said that he did not trust Mr. Pridmore and believed he snuck a fence up and tried to get away with it, since it was constructed in 2001 and that he disregarded the covenants and rules. If he were making the decision, he would want to hear from a medical expert that the situation exists.

Mr. Mueller asked if a letter from a medical professional stated that the fence was needed for the safety of his child, would that be enough evidence to satisfy him. Mr. Peters responded that he would want his own doctor to also provide a letter based on Mr. Pridmore's past behavior.

Mr. Mueller asked if he would expect that his doctor examine the child. Mr. Peters said that a doctor would not write a letter unless he had a chance to review the files and consult with other doctors and then render an opinion.

Mr. Kenny asked if he had any concerns that this would be the only 48 inch high fence without a pool in an interior lot that is a violation of the covenants, that it would be a precedent for more people to want that type of fence. Mr. Peters responded yes, he was very concerned about a precedent. They are scared that other people would sneak up fences and wait out the 31 days. He would have fences up all over the place. He does not want to walk around weekly to see what is going on in the neighborhood.

Mr. Mueller asked if he objected because he was worried about a precedent being set. Mr. Peters answered yes, among other things as explained by their attorney.

Member Young asked for specific information being included in the letter from the medical professional, as did Member Nimry.

Mr. Mueller responded that if additional information was needed after the letter is received, they would supply that as well. Member Young suggested that a privacy statement be included

Director of Community Development Kallien noted that this is a sensitive issue with boundaries beyond that of the village, which cannot be crossed and would consult with the village attorney as to what would be appropriate.

Mr. Mueller agreed and noted that they want to protect the child.

Chairman Davis said that with the parties agreeing to the terms, the matter should be continued to the next meeting.

Motion by Member Bulin, seconded by Member Ziemer to continue the public hearing to the April 5, 2011 meeting. VOICE VOTE: Motion carried.

6. OTHER BUSINESS

OTHER BUSINESS

After some comments were made, Member Rush clarified that Paul Butler did not write the Zoning Ordinance. It was done after many public hearings. The previous Zoning Boards and this one are the ones that write the Zoning Ordinance.

There was no other business to discuss.

7. ADJOURNMENT: ADJOURNMENT

Motion by Member Rush, seconded by Member Young to adjourn the meeting at 10:02 p.m. VOICE VOTE: Motion carried

ATTEST:

Robert Kallien, Director of Community Development
Secretary