CITY OF WARRENVILLE
MEMO

To: Mayor, City Council, and City Administrator Coakley
From: Deputy Public Works Director Kuchler
Subject: RIVER OAKS DETENTION POND MAINTENANCE
Date: June 5, 2019

Purpose:
The purpose of this memorandum is to i.) provide a history of the issues with the River Oaks detention pond drainage; and ii.) describe staff's position on the maintenance responsibilities for the various storm sewers in the River Oaks Subdivision.

History:
The detention pond for River Oaks is located on Lot 63, which is owned and maintained by the River Oaks Improvement Association (ROIA). The ROIA and their attorney have asserted that they are only responsible for the maintenance of the surface of the pond.

Periodically, one or both restrictors in the pond on Lot 63 have been plugged by various items. Restrictors are small pipes that restrict the flow of water from a detention pond, so water backs up and is stored in the pond and slowly released from the site. The intent is so that the development does not increase peak rates of runoff from their development which could cause flooding downstream. When these restrictors have been blocked in the past, they are not easily accessible, as they are located under feet of water when the pond is full. The ROIA has called the City out for assistance in "emergencies". City staff has assisted the ROIA in these "emergencies" over the years.

In 2018, City staff advised the ROIA that the detention pond and associated pipes and restrictors that drain the pond, are the responsibility of the ROIA. City staff assisted the ROIA twice in 2018 when the restrictor was plugged, with the understanding that the ROIA would reimburse the City for staff time spent assisting on this private issue. The ROIA has not paid either invoice.

The ROIA and their attorney have written two letters to the City and the City Attorney has responded to both letters. That correspondence is attached as Attachments 1 - 4. Staff only included the relevant excerpts of the attachments to those letters, to avoid reproducing hundreds of pages of documents for the agenda packets.

The ROIA has also expressed concern about how much offsite flow drains through their pond, and stated that because of the offsite flow, the pond serves an area larger than their subdivision. It is common that a development will pass offsite flows through its detention pond. The pond is designed

to store water for the development only, while passing the offsite flows through it, without storing those flows. Illinois Drainage Law requires property owners / developers to accept offsite flows that drain through their property in its pre-development condition. It is common to incorporate the passing through of these offsite flows into the design of a detention pond. This does not change the ownership and maintenance responsibilities of the pond. In the case of the ROIA's pond, offsite drainage from Route 59, south to Batavia Road, including some adjacent private properties drains through the storm sewer system and through the ROIA's pond, related equipment and drainage pipes.

The City's storm sewer leading to the pond was designed to convey this offsite water to the pond. In fact, there was a large blockage of tree roots in the City's storm sewer on Memorial Day, May 27, 2019, that staff removed. This blockage caused significant ponding of water on Batavia Road at Route 59 and on River Oaks Drive.

Staff's Position:
It is clear to staff that the structures, pipes and restrictors that drain the detention pond are the responsibility of the ROIA. Attachment 5 depicts the various utility pipes in the subdivision, with the private yellow highlighted pipes being the responsibility of the ROIA. The highlighted pipes are either private storm sewers, draining private property, or private storm sewers and restrictors to control the release of water from the detention pond. The pond cannot function without them, therefore they are part of the detention pond. It is important to note that the City is responsible for the vast majority of the storm sewer within the subdivision.

The clearest supporting evidence is Section 1.05 of the Declaration of Easements, Covenants, Conditions and Restrictions for River Oaks (R1987-060358 recorded on May 7, 1987) states that the Common Area (Lot 63) shall be conveyed to the Association, "*including stormwater retention and detention facilities, and related equipment and drainage pipe*".

The Bill of Sale often referred to by the ROIA and its attorney conveys a variety of infrastructure, including storm sewers, located in public rights-of-way (not easements). Notably missing from the Bill of Sale were detention facilities, and related equipment and drainage pipe.

There are well over 100 private detention ponds within the City of Warrenville, in both residential and non-residential developments. The City is not responsible for the maintenance of any of them, and staff is **not** recommending any change to the private ownership and maintenance of the ponds. In the case of River Oaks, the ROIA needs to make arrangements with contractors for any necessary repairs, regular maintenance and emergencies that occur in their pond and related equipment and drainage pipes. City staff does not intend to assist the ROIA with maintenance, repairs or emergencies on their pond in the future.

William A. Price, Attorney
wprice@growthlaw.com
PO Box 1425
Warrenville, IL 60555

GrowthLaw
www.growthlaw.com
800-630-4780

November 10, 2018

David Brummel,
Mayor
City of Warrenville
Via email davidbrummel@warrenville.il.us

RE: Storm Drain Repairs, River Oaks

Dear Mayor,

1. This office represents the River Oaks Improvement Association. The Association requests that the City, as it has in past instances, repair the city property (storm drains) in the commons area, blockages in which are causing a pond to form in the upper retention area. (See cc of photo attached.)

2. Please note that the drains were transferred to city ownership in 1989 (see deed of transfer cc attached).

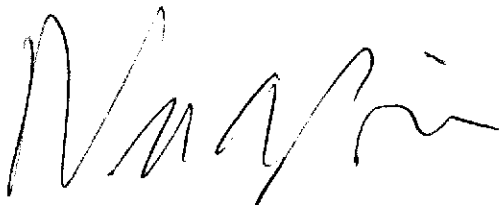
3. Liability for such improvements, once accepted for city ownership, resides in the city, even if the city did not build same, cf. Burford v. Village of LaGrange, 90 Ill.App.2d 210 (cc attached.).

4. Note that the Plan Commission considered the design for the detention area and the City Engineer had input in the final design, with City maintenance of silt traps expected and intended. (Plan Commission minutes and City Council minutes attached), and that the Plat for what was then Country Ridge Subdivision (now River Oaks) included the storm drains. Plat copies can be provided, which would further document the plat recording shown as city acceptance in the Burford case, but the transfer document and

city discussions should be clear evidence of transfer of storm drains to city ownership and responsibility without additional proof.

5. The storm drains belong to the city, and should be maintained by the city to keep the detention area able to take in all storm water and drain to dry storage areas, as originally planned and built. Your assistance in having maintenance done by the city to clear the current blockage would be much appreciated.

Respectfully Submitted,



William A. Price
Attorney at Law
P.O. Box 1425
Warrenville, IL 60555
Tel/Fax 1-800-630-4780
email: wprice@growthlaw.com

BILL OF SALE-CORPORATION
(Illinois)

NO. 117
APRIL 1980

GEORGE E. COLE®
LEGAL FORMS

CAUTION: Consult a lawyer before using or acting under this form. *All warranties, including merchantability and fitness, are excluded.*

Seller, Anden Corporation, a corporation of California having its principal place of business at Hoffman Estates, Illinois in consideration of Ten ($10.00) dollars, receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over to Buyer, City of Warrenville, an Illinois municipal corporation, of ______, the following described personal property, to-wit:

All: sanitary sewer, storm water and potable water pipes, lines, connections, pumps and lift stations; manholes and covers; fire hydrants; street lights; curbs, gutters; pavement and sidewalks, located in, on, under or above all public rights-of-way in the River Oaks Subdivision, Warrenville, Illinois

Seller hereby represents and warrants to Buyer that Seller is the absolute owner of said property, that said property is free and clear of all liens, charges and encumbrances, and that Seller has full right, power and authority to sell said personal property and to make this bill of sale. ~~All warranties of quality, fitness and merchantability are hereby excluded.~~

IN WITNESS WHEREOF, Seller has caused this bill of sale to be signed and sealed in its name by its officers thereunto duly authorized this 11th day of January, 1989.

ATTEST:

[signature]

Assistant Secretary

Anden Corporation

By [signature]

Vice President

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234 N.E.2d 120
90 Ill.App.2d 210
Miles G. BURFORD and Janice H. Burford, Plaintiffs-Appellees,
v.
VILLAGE OF LA GRANGE, a municipal corporation, Defendant-Appellant.
Gen. No. 50834.
Appellate Court of Illinois, First District.
Dec. 20, 1967.
Rehearing Denied Jan. 17, 1968.

[90 Ill.App.2d 211] William J. Linklater, Jerome H. Torshen, Chicago, Jerome H. Torshen, Chicago, of counsel, for defendant-appellant.

Edward J. Barrett, Chicago, for plaintiffs-appellees.

SMITH, Presiding Justice.

The plaintiffs obtained a jury verdict of $21,000.00 for water damage to their residence resulting from allegedly inadequate or defective village storm sewers. The trial court ordered a remittitur and reduced the judgment to $12,070.46. Plaintiffs consented to the remittitur as a condition

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to the denial of a new trial, but reserved their right to question the propriety of the remittitur on appeal in accordance with Ill.Rev.Stat.1965, ch. 110, § 68.1. By its appeal, the village attacks the judgment so entered and the plaintiffs attack the propriety of the remittitur.

The defendant-appellant first asserts that the trial court should have directed a verdict in its favor as requested. The home of the plaintiffs is located on the northwest corner of the intersection of Elm Street and Sunset Avenue in the village and faces Elm. There is a storm sewer in Sunset. A spur drain located on the plaintiffs' property and terminating at the back of the property connects with this sewer. The downspouts to the house drain into this spur sewer. The liability of the defendant-village to the plaintiffs must be predicated upon the existence of some duty owed by the village to the plaintiffs in connection with (a) the Sunset Avenue drain or (b) [90 Ill.App.2d 212] the spur drain located wholly upon plaintiffs' property and a breach of that duty. There is no evidence in the record that the village constructed the sewer in Sunset, the spur drain, or that either was constructed by a private party and subsequently dedicated to the village. The village manager testified that the record of the village show a meeting on June 7, 1915, and the 'granting of permission to a subdivider for the installation of sewers on Sunset Avenue'. Plaintiffs' Exhibit No. 48 is a plat of such drains and shows their location in Sunset. There are no connecting spur drains located on private property shown in this exhibit. The construction or ownership of a drain or sewer is, however, basically immaterial.

'* * * where a municipality has adopted a sewer or drain constructed by a private person and has assumed control over it, the fact that the municipality has not constructed the sewer or drain will not excuse the municipality from liability for negligence in its operation.' I.L.P. Cities, Villages, and other Municipal Corporations, § 554, p. 136.

The village manager testified on behalf of the plaintiffs that, he became manager on August 1, 1957; there was an inspection of the village sewers prior to that time; during his employment there had been an inspection of the sewers on a regular basis; there was a program of maintenance to clean all catch basins or street inlets at least once every other year; and this system is still in effect. It further appears that a supplementary or

auxiliary storm sewer was placed in Sunset after the flood of July 1957. It thus appears that the village had assumed the inspection, maintenance and the repair of the storm sewer in Sunset and was therefore under a duty to the plaintiffs not to be negligent in the performance of that duty.

As to the spur drain on the plaintiffs' property, it is shown on the map of the village sewer system now hanging[90 Ill.App.2d 213] in the village hall. That same map shows privately-owned storm sewers on private property of others. The village engineer who prepared the map explained that the presence of these spur drains on the village map was so that the village would be advised and informed of the private sewers draining into the village sewer. There is nothing in the village records or elsewhere indicating that the village had an easement to either install or maintain this spur sewer on plaintiffs' property and normally such an easement would be obtained. The evidence further shows that during the repair of the property, the plaintiffs poured concrete into the spur drain and effectively plugged it. Thereafter sometime in 1958, at the request of the plaintiffs, the village likewise plugged this sewer in the village street at its connection with the village sewer.

The village manager testified that he didn't know whether the spur drain into the plaintiffs' property was inspected or cleaned, and a search of the records did not disclose an application by or a permit issued to the property owner for permission

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to attach this particular spur drain to the village's sewer. No one testified to any inspection or maintenance by the village. The presence on the village map of this spur drain and of other privately-owned spur drains creates no presumption of village ownership or control where direct testimony of the engineer who prepared the map in that it was for information only. On this record, therefore, it seems transparently clear that the village neither owned the spur drain nor had they inspected it and maintained it. The record is thus barren of any facts creating an obligation or duty on the defendant-village to maintain, inspect, or repair this spur drain.

Let us turn now to the occurrence events which precipitated this suit. Plaintiffs acquired this seven-room, two-story, frame-colonial house on October 2, 1954, and moved in around November 1 the same year. In October, prior to occupying the house, Mrs. Burford noticed surface [90 Ill.App.2d 214] waters in the intersection at Sunset and Elm, but did not then examine the house. In July 1955, there was a heavy rain and water started coming into their basement and reached a depth of approximately 2 inches. In September of the same year, a like rain occurred and this time the water reached a height of 6 inches. In August or September 1956, the third rain occurred and the water in the basement reached a height of approximately 8 inches. In July 1957, there was a heavy rain and flood and this time the water reached a depth of form 4 to 6 feet, remained in the basement overnight, and a deep freeze, sewing machine, and other furniture and articles were floating around. Mrs. Burford noticed a slushing of water and a rocking and shaking of the house. She called the fire department to disconnect the electricity and was advised by them to move out with her children. At this time, there was a sea of water across the street in all directions, their lawn was under water, and it was the same at the neighbors. She and the children moved out. There is little doubt but that the rain in July 1957, was a gullywashing, frog-strangling rain. Plaintiffs' witness Reed testified 'we had a 7-inch rain and at that time it reversed the flow of the Chicago River--it got so heavy that it flooded the Daily News basement'. The official report of the United

States Weather Bureau read in part as follows: 'The deluge on the evening of the 12th set new 6 and 24-hour rainfall records for Chicago. * * * The heavy rainfall resulted in severe flooding, and practically paralyzed transportation. Damage ran into the millions of dollars.' A professional meteorologist testified that the record rainfall on July 12 was substantially greater than anything that had officially been recorded before that time, and that similar rainfalls of that encountered on July 12 could not be expected to return for well in excess of 100 years. It has been stated:

'* * * even if there is negligence concurring with an extraordinary flood or rainfall, the municipality is [90 Ill.App.2d 215] relieved from liability if the flow is so voluminous in character that it would of itself have produced the injury independently of such negligence. In other words, if the superior force would have produced the same damage whether or not the municipality had been negligent, its negligence is not deemed the cause of the injury.' 63 C.J.S. Municipal Corporations § 879.

In Carlson v. A. & P. Corrugated Box Corporation (1950), 364 Pa. 216, 72 A.2d 290, the Supreme Court of Pennsylvania stated:

'* * * a unanimous host of authorities, both in our own Commonwealth and elsewhere, * * * uniformly hold that although no liability can be fastened upon the defendant if the damage is caused by an act of God so overwhelming as of its own force to produce the injury independently of the defendant's negligence, such liability does arise if the damage results from the concurrence of defendant's negligence with the act of

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God and the damage would not have occurred in the absence of such negligence.'

See also 59 A.L.R.2d 324, § 19(a); Bouillon v. City of Greenville, 233 Ill.App. 500. Assuming without presently holding that the defendant-village was negligent, we think it abundantly clear as a matter of law that the defendant-village cannot be liable to the plaintiffs on any part of their damages occasioned by the flood of July 12, 1957. It seems clear from this record that the flood was so overwhelming and so devastating that the damages to the plaintiffs would have occurred notwithstanding any independent negligence of the defendant-village. 59 A.L.R.2d 326, § 19(b).

During the fall of 1957, the plaintiffs epaired their home. To do so, it was necessary to jack up the entire house on hydraulic lifts, remove and rebuild the entire basement and foundation at a cost of $12,070.46, the precise amount of the judgment entered in this cause. [90 Ill.App.2d 216] The evidence discloses that the intersection of Sunset and Elm was a swamp in 1915, and that a portion of the plaintiffs' lot was included in it; the natural drainage in the area was towards this intersection; and the composition of the soil was such that this house begin to settle shortly after it was built. Mrs. Burford had noticed a large, running diagonal crack on the east wall when they inspected the property prior to purchase. Mr. Burford testified that he was home during the September 1955 episode; the water came in mostly up through the floor and in the joints between the walls and the floor in the south end of the building; there may have been some back-up, but this was nominal, and the majority of the water came in through the foundation of the basement floor. The record further shows that after the 1957 flood the east wall bulged inward and the basement floor heaved upward.

Plaintiffs' witness Flood, a licensed, civil engineer, in response to a hypothetical question specifically limited to a blockage of

the spur drain and specifically excluding any blocking of the Sunset Avenue drain, was asked whether or not the blocking of the sewer could have been a contributing factor in the damage to the foundation wall. He stated that such blockage could have been a contributing factor to the damage, and this 'is based on the opinion that in the blockage of a sewer, a build-up of water behind the sewer is transmitted to the outside of the basement walls and floor. This pressure, in effect, pushing against the walls can push the walls inward, causing bulging and cracking of the walls. Also, the same pressure results in a (sic) uplift of the floor and can result in cracking of the floor and is called (sic) hyrostatic pressure.' On cross-examination, he also testified that 'a jagged diagonal crack in a foundation is not necessarily indicative of settlement, but can be indicative of lateral pressure and, if such a diagonal crack existed in 1954, it would indicate there had been pressures on that wall prior to that day.' He further testified that 'if the house was underpinned [90 Ill.App.2d 217] in part, it connotes that the foundations which were weakened were strengthened; you underpin a house to strengthen the foundation and underpinning can be due to the need to place an additional load on a specific foundation or due to the fact that the soil below the foundation will not support the original load.'

Defense witness O'Brien testified that he was a registered, professional engineer in Illinois and Wisconsin, and he had been employed by Mr. Burford in the fall of 1957 to make recommendations in the underpinning operation which was then in progress. His report shows that the original foundations of this house were 10-inch, cinder-brick walls supported at basement floor level by a four-inch-thick concrete footing approximately 14 inches wide. His recommendation to Mr. Burford as shown by the report was that the new foundation be a continuous reenforced wall and footing, and that the footings should be

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at least 4 fees wide and, if economically possible, larger. In testifying that the heavy rainfall could have resulted in the bulging, he stated: 'The bulge would have occurred to the wall, (1) if the wall had not been highly reenforced, and (2) with the heavy rainfall a large amount of hydrostatic pressure would develop from surface water in the back of the foundation wall, resulting in this movement of the wall which would have occurred from inadequate reenforcing or insufficient reenforcing.' He further stated that 'if the walls were thick and adequately reenforced, this buckling would not have occurred'. He further stated that this buckling or bulging could not have resulted from a sewer back-up, and that 'if the bulging is toward the inside, pressure has to be from the outside, from the surface water that accumulates behind the foundaton walls. Outside hydrostatic pressure could be a cause of damage to the foundation'.

Plaintiff's witness Reed was the plumber on the job during the repairs. In attempting to find where this water was coming from, they dug around in the yard [90 Ill.App.2d 218] southeast of the porch, which is on the southside of the house, and found this 8 or 10-inch spur drain. They tried to determine where it came from, because the main sewer of the house was on the northside of the house. They took a sewer rod and pushed it back to see where it went in each direction from the hole they had dug. In rodding towards the east and towards Sunset, they encountered no obstruction and water would run out and go towards the east or towards Sunset. In rodding the other way, they found they couldn't go very far, because it was plugged with mud and debris and gunk, or soupy mud. This debris was filling up the drain between the main sewer on Sunset and the house. He further testified that this

blocked drain could have been a contributing factor of the damage to this foundation, that the blocked drain could have diverted water on to the plaintiffs' premises which found its way into the foundation and basement.

Molding this testimony into ultimate facts, it seems transparently clear that (1) faulty, inadequate and insufficient basement construction for this particular area contributed no small part to the damage sustained, (2) the damage occasioned by the deluge of 1957 would have occurred irrespective of any negligence on the part of the defendant-village, and (3) the blockage in the spur drain on the plaintiffs' property contributed immeasurably to the development of the outside, hydrostatic pressure which caused the bulging of the east wall and the unheaval of the basement floor. This third act is emphasized when we consider that the downspouts to the house were connected to the spur drain, that there is no evidence the spur drain was directly connected to the basement, and the fact that except for a nominal amount, the water was coming into the side walls and bubbling from the floor.

Up to this point, therefore, the village cannot be liable for the damage occasioned by the faulty construction of the basement nor the flood of 1957. It seems equally clear that it is not responsible for any damage [90 Ill.App.2d 219] occasioned by the stoppage of the spur drain. The rule is stated thusly:

'Ordinarily the city is only liable for the clogging or obstruction of drains and sewers maintained by it or over which it has control, with the result that it is not liable for the clogging of a drain or sewer maintained and controlled by a private property owner.' 59 A.L.R.2d 314, § 11.

We turn now to a consideration of the negligence of the village, if any. Such negligence must be predicated upon a failure to properly inspect--and the evidence is that it did inspect--or a defective or blocked village sewer--and the evidence is that it wasn't--or the inadequacy of the sewer system itself. Plaintiffs' witness O'Malley was employed by the Village of La Grange from July 1957 to September 1963 as its civil engineer. Following the flood of 1957, he caused a survey to be made of

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Sunset Avenue and recommended a supplemental sewer which was installed in 1958 or 1959. He testified as follows:

"In 1957, there was no crack in the pipes in the sewer line on Sunset. The water flowed freely through that sewer except that there was probably a 6 inch pocket at Sunset and Elm which shows on the plans that we made up. In a heavy rain, water would flow freely provided Cossitt Avenue was below its capacity and it wasn't overloaded. There was no break or no obstruction in the sewer. There was a flow. On direct examination, I testified that the Cossitt Avenue sewer was not large enough to handle that type of rainstorm as occurred on July 12 and 13, 1957."

He further testified that there was a sag in the Sunset Avenue sewer about 50 feet on either side of the manhole, that the sag wouldn't do it any good, and 'whether it [90 Ill.App.2d 220] does it much harm--it wouldn't--it wasn't designed that way'. He further testified:

"I would say that Mr. Burford's main problem, unless he had an overhead sewer, came from the house connection that goes into Sunset Avenue, in my opinion. If he had an overhead sewer there and if things were really tight, then he probably wouldn't have had this problem."

He further testified that he didn't think the spur line did the property any good, but how much harm it actually did, he didn't know. He also testified that even if there was an overhead sewer, it is possible that the water could have seeped in under the foundation or along side of the drainage tile on the outside of the wall. There is no evidence in the record establishing whether or not the other occurrences which Mrs. Burford testified about were normal or abnormal rainfalls. In Illinois, the rule is stated thusly:

'* * * where a municipality provides ample sewers and drains to carry off all water likely to fall or accumlate under ordinary conditions, the fact that the sewers and drains prove inadequate to carry off all the water from an extraordinary rainstorm, does not subject the municipality to liability for damages caused by the surplus water.

'* * * it is liable only for such injuries or damages which are the proximate cause of such negligence.' I.L.P., City, Villages and Municipal Corporations, § 555, p. 136.

It is now the rule in Illinois, that verdicts may be directed and judgment n.o.v. entered in those cases in which all of the evidence when viewed in its aspect most favorable to the opponent so overwhelmingly favors movant that no contrary verdict based on that evidence [90 Ill.App.2d 221] could ever stand. Pedrick v. Peoria & Eastern R.R. Co., 37 Ill.2d 494, 229 N.E.2d 504. The picture, vivid and clear painted by this evidence, is that this house was originally constructed in a low and swampy area; that settlement of the house began soon after its construction; that the foundation and basement construction was wholly inadequate from an engineering standpoint for the area in which it was built; that the stoppage in the spur drain materially contributed to the damage to the foundation as the downspout water had no place to go except into the adjacent soil to build up hydrostatic pressure against the outside of the walls and floor, and that there is no evidence that the Sunset Avenue sewer was inadequate to handle an ordinary rainfall, nor is there any evidence from which it could be reasonably concluded that the village ever assumed the management or control of the spur drain. The verdict of the jury in this case would impose on this village a standard of conduct and a duty which transcends that ordinary care which should be and is the established obligation of the village. Roche v. City of Minneapolis, 223 Minn. 359, 27 N.W.2d 295, 173 A.L.R. 1020.

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Accordingly, the judgment of the trial court is reversed and the cause remanded to that court with directions to enter a judgment non obstante verdicto.

Reversed and remanded.

CRAVEN and TRAPP, JJ., concur.

V. 6. Engineer (continued)

Council discussed the remaining projects and agreed engineers will be invited to submit competitive bids. Atty. Moss recommended City Engineer Bant can promulgate criteria among these firms. Eng. Bant asked if Council would like to make any additions to please let him know.

3. Well House #9 Bids (See VI-1).

7. Plan Commission

1. Minutes of 1/2/85

4) Review of Country Ridge - Plan Commission recommended that the Petitioner (Anden Corporation) be granted Special Use PUD subject to the 7 conditions listed in their Minutes.

Ald. Aschauer asked why the plat was reduced by one lot rather than 2 or 3. Plan Chm. Bernard responded the Commission felt there should be some transition from the dense Country Ridge Apartments for the parcels along the north property line to provide a suitable buffer for the larger lots of the property to the north of this development.

Ald. Lowderbaugh asked how the Plan Commission determined that 7,400 square feet was large enough for a lot. Mr. Bernard responded that it should not be interpreted the Commission felt the lot sizes were adequate, but merely indicated what was discussed. The minutes pertain to a comparison prepared and submitted by Anden detailing setbacks and dimensions of the original plan and the proposed plan which are included in the minutes to allow the Council to make their decision.

Ald. Lowderbaugh remarked he has stood firm about not allowing smaller lots and said he felt 62 lots are much-to-much.

Mayor Volkmer introduced Mr. Jerry DeGrazia who made a presentation, showed a site plan and said this plan allows less grading and that the density is 3 units per acre with 4.25 acres of open space. Ald. Wheeler said there is no Agreement regarding the Clubhouse and who maintains the open space. Mr. DeGrazia replied that it will definitely be maintained by the Homeowners Association.

Ald. Wheeler moved to direct Atty. Moss to draft a Special Use Ordinance and the Development Agreement in accordance with Plan Commission recommendation and the Council and Staff recommendations as discussed at this meeting. Second Ald. Aschauer.

On the Question: Engineer Bant said he would like to have road width, pavement and storm water design submitted to him. Ald. Wheeler asked what time frame is necessary to get this back from Atty. Moss. Atty. Moss said he will need to get staff recommendations and will try to get it done as soon as possible.

Ald. Jones asked if the recommendation of the Plan Commission was based on the previous PUD. Mr. Bernard replied the Plan Commission does not give the approval and was not saying that we like streets 60 feet wide when what we like are 66 feet wide. He said they looked at the entire development and tried to make recommendations on what was presented.

V. 7. Plan Commission (continued)

Mayor Volkmer said if the Council wishes to add additional conditions, this is what they should do and forward them to Attorney Moss.

ROLL CALL: Ayes - Ald. Aschauer, Dietz, Fessler, Hudetz, Jones, Walters, Wheeler.
Nay - Ald. Lowderbaugh.

5) Country Ridge - Recommendation regarding Special Use for Flood Management. Atty. Moss will prepare Ordinance in accordance with the recommendations and Council directions.

6) Paddock West - Request by Anden Corporation to amend the existing PUD.

Plan Commission recommendation to grant request with conditions A and B as listed in their minutes.

Mayor Volkmer introduced Mr. Jerry DeGrazia who made a presentation. He said that the number of lots are the same as originally approved; however, there is a change in the street size and one access to Route 59.

Engineer Bant said Mr. DeGrazia has not yet submitted a final plat on the detention site.

Atty. Moss said there is an existing PUD Agreement.

Mr. DeGrazia offered and agreed to pay for offsite fire hydrants.

Ald. Aschauer said he had one concern about 27-foot streets after his discussion with the Fire District.

Ald. Hudetz moved to direct City Atty. Moss to review and amend the Agreement prepared by Anden Corporation to incorporate Plan Commission recommendation and those discussed by Council and Staff. Second Ald. Wheeler.

ROLL CALL: Ayes - Ald. Aschauer, Dietz, Fessler, Hudetz, Jones, Lowderbaugh, Walters, Wheeler.

7) Albright Park Resubdivision submitted by City of Warrenville to vacate property lines.

Plan Commission recommended approval of the plat. Original plat to be signed by Plan Commission Chairman, Mayor and City Clerk and recorded. Eng. Bant will forward plat for signature.

8) Elmhurst-Chicago Stone - Lot for Water Tower - Plan Commission recommendation to authorize Chairman to sign final plat and waive public improvements called for in Subdivision Control Ordinance listed in the Minutes as Items 1 through 8. (Original plat for signature will be forwarded by Atty. Byron Faermore of ECS).

2. Notice of Public Hearing before the Plan Commission 2/5/85 for Special Use for Home Occupation; Petitioner James W. Wheeler.

3. Notice of Public Hearing before Plan Commission on 2/5/85 for Map Amendment; Petitioner Plymouth Tube Company for property at 29 W 130 Aurora Road. Zoning from R-3 to B-1 requested.

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

BEFORE THE WARRENVILLE
PLAN COMMISSION

IN THE MATTER OF:) "COUNTRY RIDGE"
)
Petition of Anden Corporation)
for a Special Use Permit pursuant)
to Flood Management Ordinance)
No. 395.)

REPORT OF PROCEEDINGS had and testimony taken at the public hearing of the above-entitled cause, before the WARRENVILLE PLAN COMMISSION, held on Tuesday, the 4th day of December, A.D. 1984, at the hour of 8:15 o'clock p.m., at the City's Municipal Building, 28 W 630 Stafford Place, Warrenville, Illinois.

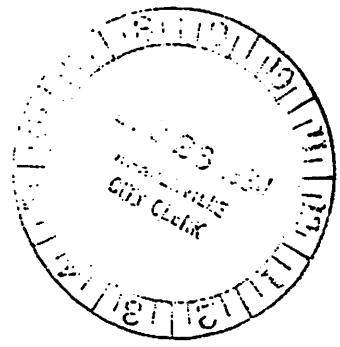
BOARD MEMBERS PRESENT:

MR. FRANK BERNARD, Chairman.

MR. WALTER F. KISSEL, Member.

MS. ELISE M. BRIGHT, Member.

MR. GEORGE J. ARNOLD, Member.



MR. CHARLES R. NEWMAN, Member.

MR. ROBERT DULLER, Member.

MR. JOHN O. DAVIS, Member.

MR. ERNEST MILLER, Staff Planner.

duration of the holding of that water is not going to be very long.

You know, if you hold the water too long, obviously, you will kill, you know, certain types of plants that are -- that aren't used to being under water.

MR. NEWMAN: Okay, the real crux of what I was getting to is related to the fact that if you are collecting water from the streets, okay, and you are going to put it in the storage retention pond, one of the concerns that I would have on a -- not even really that long-term basis, but on a long-term basis would be silting in of that pond to a point where it really doesn't have the capacity to -- it would continue to store.

In other words, you are collecting water from the street and there is a certain amount of dirt and dust that is collected and it gets in this drainage system and you would presume that going into a pond of any significant size.

By the time that the water had a chance to flow through a restrictor, a great deal of that

silt would --

MR. DE GRAZIA: Different philosophy, it drops it.

This occurs in every detention pond any place in the world, in Summerlakes and Emerald Green, if they have them. I assume they have a detention pond.

And I'm not saying it's a pond. I'm saying it's a dry detention area. But there would be a certain amount of siltation.

But in the design of the storm sewer system, there will be silt traps where the manholes are. And those are cleaned, on a regular basis, by the City just as in any other development in the City of Warrenville.

And on a site this size, you know, the initial shock of sediments that you will see is going to be during construction and slightly just a little bit after construction.

Like I said, we will try to keep some of this area green and also try to be very careful in our dirt work to save the trees.

You will have houses and streets which

are going to be impervious to drive and sidewalks and you will have sod pretty much the rest of the area or thick grass.

And after the development has matured, we expect, let's say in 18 months, your amount of siltation -- the siltation rate becomes very, very minimal. It's there, but I mean it can be taken care of with the silt traps.

And, again, it is a condition that occurs in every other development of any size anywhere else in the world.

CHAIRMAN BERNARD: George?

MR. ARNOLD: Your water will be draining into -- will be going into the DuPage River?

MR. DE GRAZIA: Yes. That is correct.

MR. ARNOLD: So, then, actually the river itself will be getting its high volume. No matter what, it will be getting the water.

MR. DE GRAZIA: Like anyplace else, the actual amount of water, over a period of time, is going to be probably greater, the actual total amount, because it's not going to go into the ground quite as quick.

I mean because it's going to be impervious areas.

So that amount of water that used to go, you know -- a percentage of it that was falling here, always went into the ground, or most of the time went into the ground, now 100 percent would go into the gutter and maybe some of it would evaporate. But most of it would go into a conduit into the detention basin and finally out.

The concept of detention is to hold that water for a period of time so that the river, the streams, the -- whatever you want to call it -- aren't shocked by that rush, so that the river can actually handle more water but over a longer period of time.

And when you do these things all over the place, and they are measured, and it's a -- you know, I went through this last night.

It's a very involved process, the dynamics of it, and when it's working right, and we hope our engineer and your engineer and other engineers in other places that are upstream from you, have done this right so that all this starts coming in like, you know, a bunch of little trains.

So that the water flows out through the river at a rate that doesn't shock the system, and that's basically the concept of it.

And in this development, whether I build this development, where you approved 63 lots, or 50, or what have you, any time you develop, you are going to have more water going out.

But what you do is restrict it over a period of time so that at any one-time rate is no larger than it would be in a normal situation.

MR. ARNOLD: What I was getting at is the lots you were describing 35, 36, and 37; these look like a very critical area.

If there is 7,400-some square feet and you say you are going to cut it out 30 percent, that's a sizable amount.

MR. DE GRAZIA: I'm not going to cut --

MR. ARNOLD: I'm talking about the 100-year flood. I mean you will be eliminating a part of that lot then with the flooding, right?

MR. DE GRAZIA: No. What I'm doing here is I will raise the ground there to take it out of the flood

Lot 31 you have an elevation of 710 feet, which is higher.

So either you would have to adjust or install some sort of storm sewer that would burrow down fairly deeply into the ground going northwest in order to get over to your detention area between Lots 9, 10, and 31, or there would have to be some kind of outfall at the low point on the --

MR. DE GRAZIA: No, the water that comes here off of these lots here and the front of these lots, will be collected by catch basins and brought this way. (Indicating.)

They will go directly to the -- and there will be some grading, you know, to bring this down.

But the actual street -- what you are concerned about is the actual street -- will be going up slightly and the actual drainage will be going down under the street. That's what will actually happen, yes.

MR. MILLER: Actually Lot 31 is kind of a high point between the cul-de-sac and the natural drainage

area where you are talking about.

MR. DE GRAZIA: That's correct. And we will have to cut and install a sewer through there.

MR. MILLER: Okay.

MR. DE GRAZIA: Now, you can see -- in fact, there is in the engineering plans, the copy that we had exhibited at the last hearing, I think they will show that.

CHAIRMAN BERNARD: You know maybe we are beating a dead horse. At what point will we see what --

MR. KISSEL: I have a question.

What is this labeled drainage and access using? What is that regarding -- in regard to your last statement?

MR. DE GRAZIA: It's not -- we are not putting water -- we are not letting the water go directly in this --

CHAIRMAN BERNARD: We are losing the people here. Open this up a little bit.

Okay. Any other questions?

(No response.)

CHAIRMAN BERNARD: All right. Any questions here

on this side? Any questions?

I have one question. Do either one of you aldermen, do you recall, does the City have some sort of program where they would go around cleaning out the various catch basins from the silting and so forth?

MR. WHEELER: We will have, Frank, when we get the sewer cleaning machine, which is a part of this sewer grant, the E.P.A. grant.

CHAIRMAN BERNARD: But that is going to be for the sanitary sewers.

MR. WHEELER: No, both for sanitary and city-wide.

CHAIRMAN BERNARD: So then this condition of silting isn't going to create a whole new series of problems for the City other than --

MR. WHEELER: Right now the only way when they plug up -- they go in and they take it out with a bucket or they rent a cleaning machine to get it out.

But in the future when they have the sewer cleaning machine, we will use the sewer cleaning machine to take it out.

CHAIRMAN BERNARD: Okay.

MR. ARNOLD: Are these dedicated streets?

MR. DE GRAZIA: Yes.

CHAIRMAN BERNARD: Are there any questions from anybody in the audience in regard to the handling of the water and the drainage and so forth?

Yes, ma'am? Will you stand and give your name?

MS. LATAL: Yes, I'm Edith Latal.

Once again my specific area of concern is Lots 1 through 8. And I don't really understand the drainage. And our house, we have a downspout which is directed away from the house towards the back yard.

And will all of these houses have downspouts directed away from their house and towards us when we are 30 feet away? I mean where will the water go?

MR. DE GRAZIA: They will have drain spouts, but, again, in accordance with the requirements of the City, we have to grade these lots and there will be a swale that will catch the water before it gets to your property and carry it back into the system to our

detention basin.

I can guarantee you, you will not be affected by the drainage.

CHAIRMAN BERNARD: Any other questions?

Yes, sir.

MR. KNOLLHOFF: Walter Knollhoff.

You mentioned the water on the site itself, the 21 acres, whatever it may be.

What about the water that crosses that site at this time? Because all the water from the west side of 59, per se, from Branch to Batavia Road to Riverside Drive plus, goes through that property. What's going to happen to that?

MR. DE GRAZIA: If there is water, it comes from -- if there is a flow and the natural flow, you know --

MR. KNOLLHOFF: There is very definitely.

MR. DE GRAZIA: -- it comes across the road, we have to have it pass through. We have to accept it and send it through.

MR. KNOLLHOFF: Well, you are talking about making changes in levels and so forth, I don't know how it can.

Country Ridge wasn't supposed to cause any problems, but it has.

MR. DE GRAZIA: It's causing problems for you?

MR. KNOLLHOFF: Yes.

MR. DE GRAZIA: I can't merely speak for --

MR. KNOLLHOFF: I can show you. Right on the corner of the property we are talking about.

MR. DE GRAZIA: Again, we will meet all requirements of your Ordinances, Drainage Ordinances, your engineering requirements, subdivision requirements, as any other developer or any other builder in the City.

It's your law, and they are meant to protect the situation.

MR. KNOLLHOFF: I was told it wouldn't happen, but it did.

MR. DE GRAZIA: Well, let's hope that, you know, you --

MR. KNOLLHOFF: Well, okay, it's a part of your problem, too, because it is into the corner, the southwest corner of that property.

CHAIRMAN BERNARD: We are sort of getting off the question, and we are sort of getting on to the

comments.

And we can have the time for comments in just a few minutes.

Are there any other questions? Somebody isn't certain about something? Is there something you would like to clarify? Just ask the question.

(No response.)

CHAIRMAN BERNARD: Okay, are there any more questions from anyone on the Plan Commission?

(No response.)

CHAIRMAN BERNARD: At this point is there anybody who would like to speak in favor of the granting of this petition for the flood plain permit?

(No response.)

CHAIRMAN BERNARD: Is there anybody in the audience who would like to speak against the granting of a flood plain permit?

(No response.)

CHAIRMAN BERNARD: At this point -- I shouldn't forget. I would like to enter into the record Exhibit C, which is Mr. DeGrazia's, petition for the Special Use Permit, his application, which he has paid, and

Holland & Knight

131 South Dearborn Street, 30th Floor | Chicago, IL 60603 | T 312.263.3600 | F 312.578.6666
Holland & Knight LLP | www.hklaw.com

Barbara A. Adams
312.578.6563
barbara.adams@hklaw.com

November 21, 2018

By Electronic Mail (wprice@growthlaw.com)
Mr. William A. Price
P. O. Box 1425
Warrenville, IL 60555

Re: City of Warrenville: River Oaks Improvement Association—Storm Sewers

Dear Mr. Price:

Mayor David Brummel has asked me to review and respond to your letter dated November 10, 2018, written on behalf of the River Oaks Improvement Association ("Association"), in which you request, for the Association, that the City of Warrenville make repairs to storm drains in the common area of the River Oaks Development. In reviewing your letter and enclosures, I consulted with Deputy Public Works Director Phil Kuchler and reviewed certain additional documents governing the development and operation of River Oaks (which, at the time it was subdivided, was known as Country Ridge Unit 2).

The Plat of Subdivision of Country Ridge Unit 2 consists of a series of single-family residential lots, an area marked "Lot 63 Open Space Drainage Utility and Access Easement," and two streets that have been dedicated as public right-of-way called "River Oaks Drive" and "Ridge Drive." Based on Section 1.05 of the "Declaration of Easements, Covenants, Conditions and Restrictions for River Oaks," dated April 29, 1987 and recorded with the DuPage County Recorder on May 1, 1987 as Document No R87-060358 ("Declaration"), a copy of which is enclosed, I understand that the area marked as Lot 63 Open Space Drainage Utility and Access Easement is owned by the Association and is referred to in the Declaration as the "Common Area." *See* Declaration, Sec. 1.05. The Declaration establishes powers and duties of the Association which governs the subdivision.

According to Section 1.05, in addition to the real estate that is Lot 63, Common Area also includes:

> Such Common Area may, but need not, contain: natural open space, natural or man made bodies of water (including storm-water retention and detention facilities, and related equipment and drainage pipe, if any); landscaped and/or park area; paths and walkways, either paved or unpaved, fences, berms and plantings.

The Declaration establishes the obligation of the Board of Directors of the Association to maintain the Common Area:

> 4.06 Maintenance of Common Area. The Board shall cause the Common Area to be maintained for the benefit of the members, and in accordance with applicable ordinances, laws and regulations as enacted or promulgated by any governmental or quasi-governmental authority having jurisdiction over the Property. The Board may enter into such agreements as it deems reasonably necessary or desirable to effectuate the foregoing, and the costs and expenses incidental thereto shall be Common Expenses as defined herein.

The terms of this Declaration regarding the Common Area were requirements of the City's approval of the original subdivision.

- Section 12 of the Development Agreement dated May 17, 1985 provides that a homeowners' association is to be established pursuant to a declaration of covenants, conditions and restrictions, "which Association shall hold title to and maintain the open space and retention areas…."

- Ordinance 828, adopted March 3, 1986, provides in Section Two(8) that "Open space shall be owned and maintained through a homeowners' covenant, and such open space shall not revert to individual ownership."

Copies of both documents are enclosed for your information. The actions of the City Council in approving these documents control over any other remarks that may have been made during the public hearing and approval process by various parties.

Deputy Director Kuchler advises that water is currently backed up in the upper level of the detention pond by an obstruction somewhere in the part of the detention pond that consists of two catch basins with restrictors, approximately 454 feet of 10-inch diameter pipe, and the 10-inch diameter concrete precast flared end section at the downstream end of the 10-inch diameter pipe, all located within the Common Area. Accordingly, the Association is responsible for maintaining those catch basins with restrictors, pipes and the flared end section in a clean and clear condition that does not cause water to back up and be detained for extensive periods in the detention area on Lot 63.

The City disagrees with your conclusion that the City of Warrenville owns the affected catch basins with restrictors, pipes and flared end section. You provided a copy of a Bill of Sale from the Anden Corporation to the City of Warrenville dated January 11, 1989. This Bill of Sale transfers "sanitary sewer, storm water and potable water pipes" and other facilities "located in, on, under or above all public rights-of-way in the River Oaks Subdivision, Warrenville, Illinois." The Bill of Sale does not transfer ownership of any facilities located in the Common Area. Rather, the catch basins with restrictors, pipes and flared end section in the Common Area are part of the detention pond, and belong to the Association and are the Association's responsibility to maintain and repair.

Thank you for your inquiry. Please let me know if you have any questions.

Very truly yours,

Barbara A. Adams

Barbara A. Adams

BAA/rls
Enclosures

cc: Mayor and City Council
City Administrator John Coakley
Deputy Public Works Director Phil Kuchler
Senior Civil Engineer Kristine Hocking

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R87-060358

87 MAY 1 AM 8:45

RECORDER
DU PAGE COUNTY

March 27, 1987

#9/RIVER-DEC
FILE #86257

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR RIVER OAKS

THIS DECLARATION made on the date hereinafter set forth by ESR Corporation, a California corporation authorized to transact business in the State of Illinois (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property located in the City of Warrenville, County of DuPage, State of Illinois, which property is legally described on EXHIBIT A attached hereto and made a part hereof; and

WHEREAS, Declarant intends to convey or cause to be conveyed all or part of said property, subject to certain covenants, conditions, restrictions, reservations and charges as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that, upon the execution and recording of this Declaration, all of the property described on EXHIBIT A shall, upon such recording, be held, transferred, sold, conveyed and occupied subject to the easements, restrictions, covenants and conditions hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the subject property. These easements, covenants, restrictions and conditions shall run with the subject property as part of a

3300 pau

general plan of development and shall be binding upon all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof, together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

ARTICLE ONE

DEFINITIONS

1.01 "Property" shall mean and refer to the real property described on EXHIBIT A.

1.02 "Lot" shall mean and refer to any lot of record designated as such on a plat of subdivision for all or a part of the Property, which is placed of record in the office of the Recorder of Deeds of DuPage County, and the single-family attached residence, if any, constructed thereon.

1.03 "Owner" shall mean and refer to the record owner (or the beneficiaries of a Land Trust which may be a record owner), whether one or more persons or entities, of a fee simple title to any Lot as defined herein (or shall otherwise become subject to the terms hereof), including contract Sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.04 "Declarant" shall mean and refer to ESR CORPORATION, a California corporation.

R87 - 63635

1.05 "Common Area" shall be conveyed to the Association, free of encumbrances (except as provided herein) not later than the date of the First Annual Meeting of Members described below. The Common Area shall consist of that portion of the Property legally described as follows:

LOT 63 IN COUNTRY RIDGE UNIT 2, BEING A SUBDIVISION OF SECTION 27, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.
PIN # 04-27-103-011, 010

Such Common Area may, but need not, contain: natural open space, natural or man made bodies of water (including storm-water retention and detention facilities, and related equipment and drainage pipe, if any); landscaped and/or park area; paths and walkways, either paved or unpaved; fences; berms and plantings.

R87-93358

1.06 "Developer" shall mean and refer to ESR CORPORATION a California corporation. For purposes of this Declaration, the terms "Developer" and "Declarant" shall be considered interchangeable as to the rights and obligations contained herein.

1.07 The terms "Declarant" and "Developer", as defined above, shall also include such of their successors and assigns as may specifically be assigned the respective rights and obligations of Declarant and Developer hereunder, and Declarant and Developer shall have the right to assign any or all of their rights or obligations to any such successor or assign.

give written notice of the first annual meeting of members to each Owner.

4.05 Rules and Regulations. The Board shall have the authority from time to time to adopt rules and regulations governing the administration and operation of the Common Area, subject to terms of the Declaration. The Board shall have the right to assess fines for violation of any such rules and regulations, or any provision of this Declaration.

4.06 Maintenance of Common Area. The Board shall cause the Common Area to be maintained for the benefit of the members, and in accordance with applicable ordinances, laws and regulations as enacted or promulgated by any governmental or quasi-governmental authority having jurisdiction over the Property. The Board may enter into such agreements as it deems reasonably necessary or desirable to effectuate the foregoing, and the costs and expenses incidental thereto shall be Common Expenses as defined herein.

4.07 Insurance. The Board shall maintain general liability insurance for the common area in such forms and amounts as the Board, from time to time, deems necessary or desirable for the protection of the Association.

4.08 Indemnification of the Board. The members of the Board and the officers of the Association shall not be liable to the Owners for any mistake in judgment or acts or omissions not made in bad faith. The Owners shall indemnify and hold harmless

CITY OF WARRENVILLE, ILLINOIS

ORDINANCE NO. 756

ORDINANCE APPROVING DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF WARRENVILLE AND ANDEN CORPORATION (COUNTRY RIDGE)

WHEREAS, Anden Corporation (the "Owner") is presently the owner of record of that certain parcel of property legally described in Exhibit A attached hereto (the "Property"); and

WHEREAS, the Property was the subject of a certain Annexation Agreement dated May 1, 1979 by and between the City, Glenview State Bank, as Trustee, and All-American Financial, Inc., pursuant to which Annexation Agreement the Property was zoned R-3 Single-Family Residential District - Special Use for Planned Unit Development; and

WHEREAS, the aforementioned Annexation Agreement expired by its terms on April 30, 1984; and

WHEREAS, the Owner has petitioned the City to take such action as may be necessary to reclassify the Property as R-3 Single-Family Residential District - Special Use for Planned Unit Development; and

WHEREAS, Owner desires and proposes, as and pursuant to the provisions of the Ordinances and regulations applicable to a planned unit development under the City's Zoning Ordinance, to develop the Property in accordance with and pursuant to the proposed preliminary plan of subdivision and engineering prepared by P.R.C. Engineering and dated October 12, 1984, and amended on_____, 19_____, a copy of which is attached to said agreement; and

WHEREAS, the City, after due and careful consideration of the subject matter of said Agreement, has concluded that the development of the Property under the terms and conditions set forth in said Agreement would further the growth of the City, enable the City to control the development of the general area, permit the sound planning and future development of the City, and otherwise enhance and promote the health, safety, and general welfare of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WARRENVILLE, DU PAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION ONE: The foregoing recitals shall be, and they are hereby incorporated as if fully set fort within this Section One.

SECTION TWO: The City Council of the City of Warrenville hereby approves the Development Agreement, attached hereto as Exhibit 1, between the Anden Corporation and the City, and the Mayor and City Clerk are hereby authorized and directed to execute said Agreement in substantially the form attached hereto.

SECTION THREE: This Ordinance shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED THIS 1st DAY OF April, 1985.

AYES: Ald. Aschauer, Dietz, Fessler, Hudetz, Jones, Walters, Wheeler.

NAY: Ald. Lowderbaugh.

ABSENT: -0-

APPROVED THIS 1st DAY OF April, 1985.

Richard M. Sorkmen
MAYOR

ATTEST:

Lucy Bernard
CITY CLERK

DEVELOPMENT AGREEMENT
(COUNTRY RIDGE - WEST BRANCH)

THIS DEVELOPMENT AGREEMENT, made and entered into this 17th day of May, 1985, by and between the CITY OF WARRENVILLE, Illinois, an Illinois municipal corporation (the "City"), by and through its Mayor and City Council (the "Corporate Authorities"), and ANDEN CORPORATION, a California corporation duly qualified to transact business and own real property in the State of Illinois (the "Owner"), as Owner and developer of the property described below.

W I T N E S S E T H:

WHEREAS, Owner is presently the owner of record of that certain parcel of property legally described on Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, the Property was the subject of a certain Annexation Agreement dated May 1, 1979 by and between the City, Glenview State Bank, as Trustee, and All-American Financial, Inc., pursuant to which Annexation Agreement the Property was zoned R-3 Single-Family Residential District - Special Use for Planned Unit Development; and

WHEREAS, the aforementioned Annexation Agreement expired by its terms on April 30, 1984; and

WHEREAS, the Owner has petitioned the City to take such action as may be necessary to reclassify the Property as R-3

in the Zoning Ordinance shall conflict or in any case where there shall be no applicable standards provided therein, all being consistent with the intent and purpose of the Zoning Ordinance and in conformity with the general character of the City.

9. Owner agrees to comply with the requirements promulgated by the City Engineer with regard to the Property, which requirements are set forth on Exhibit C attached hereto and made a part hereof, and to comply with the requirements promulgated by the City Engineer pursuant to the codes and ordinances of the Corporate Authorities during development of the Property.

10. Owner agrees to pay to the City a development (annexation) fee of $33,400.00, which shall be paid within 30 days from the date on which the ordinances provided for under paragraph 1 of this Agreement are finally passed.

11. Owner shall have no further obligation to the City or Park District with respect to park donations or contributions, notwithstanding the ordinances relating thereto. Owner shall pay to the City, in full satisfaction of all school or school district donations, the amounts due and owing pursuant to the applicable City ordinance, which amount shall be payable at the time a building permit application is filed for each such lot.

12. Owner shall cause to be created, prior to the conveyance of the first lot on the Property, a Homeowner's Association, pursuant to a Declaration of Covenants, Conditions and Res-

trictions, as submitted to and approved by the City, and subsequently recorded in the office of the Recorder of Deeds, which Association shall hold title to and shall maintain the open space and retention areas as designated on Exhibit B attached hereto.

13. The Owner of the Property agrees to defend and hold harmless the City from any and all claims which may arise out of said Owner's construction activities under this agreement.

14. In the event that, as a result of this agreement or actions taken as required hereunder, the City is made a party defendant in any litigation arising by reason of this agreement, or the construction and development activities contemplated hereunder, the Owner agrees to defend and hold harmless the City, the mayor, aldermen, officers, attorneys, and agents thereof, individually and collectively, from any suits and from any claims, demands, setoff or other action including but not limited to judgments arising therefrom. The obligation of the Owner hereunder shall include and extend to payment of reasonable attorneys' fees for the representation of the City and its said officers and agents in such litigation and includes expenses, court costs, and fees; it being understood that the Owner shall have the right to employ all such attorneys to represent the City and its officers and agents in such litigation, subject to the approval of the corporate authorities of the City, which approval shall not be unreasonably withheld. The Owner shall have the right to appeal to courts of appellate jurisdiction any judgment

taken against the City or its officers or agents in this respect, and the City shall join in any such appeal taken by the Owner.

Notwithstanding any of the foregoing, this paragraph shall not apply to any litigation instituted by the Owner against the City arising by reason of this Agreement, or arising out of any act or omission of the City relating to its undertakings under this Agreement.

15. This agreement shall inure to the benefit of, and be binding upon, the successors in title of the Owner, and each of them, their respective successors, grantees, lessees, and assigns, and upon successor corporate authorities of the City and successor municipalities.

16. This Agreement shall be valid and binding for a period of five (5) years from the date of execution. It is understood that this Agreement shall run with the land and, as such, shall be assignable to and binding upon subsequent grantees, lessees, and successors in interest of Owner, and, as such, this Agreement and all exhibits hereto shall be recorded with the Recorder of Deeds of DuPage County, Illinois.

17. Except as may be provided otherwise herein, the construction and installation of all public improvements shall conform to and be in compliance with the City ordinances then in effect at the time of the construction and installation of the same.

CITY OF WARRENVILLE, ILLINOIS
DU PAGE COUNTY, ILLINOIS

ORDINANCE NO. 828

ORDINANCE GRANTING ZONING AND SPECIAL USE FOR FLOOD AND SPECIAL FLOOD USE PERMIT FOR COUNTRY RIDGE (ANDEN CORPORATION) (REFER TO ORDS. #756, DEVELOPMENT AGREEMENT)

WHEREAS, petitions for a special use permits to allow construction in an area of special flood hazard established in Section 8-5-7 of the Municipal Code of the City of Warrenville and for a planned residential development in an R-3 zone were filed by Anden Corporation, owner of the property described on Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Subject Property"); and

WHEREAS, the aforesaid petitions were referred to the Warrenville Plan Commission, which duly called, noticed and held public hearings and subsequently recommended that the City Council grant a special use permit to allow construction in an area of special flood hazard and for a planned residential development in an R-3 zone, subject to certain conditions; and

WHEREAS, on April 2, 1985, the City Council passed Ordinance No. 756, Ordinance Approving Development Agreement by and Between the City of Warrenville and Anden Corporation (Country Ridge), which agreement set forth certain terms and conditions for development of the Subject Property;

WHEREAS, Section the Municipal Code and the Zoning Ordinance of the City of Warrenville provide that a special use may be granted to allow construction in an area of special flood and to allow a planned residential development upon the recommendation of the Plan Commission; and

WHEREAS, the Mayor and City Council find it to be in the best interests of the residents of the City to permit the construction on the subject property and find it to be appropriate to issue a special use effective from the date of said Ordinance No. 756, subject to the conditions set forth by the Plan Commission and the codes and ordinances of the City of Warrenville;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WARRENVILLE, DuPAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION ONE: That the foregoing recitals shall be, and they are hereby, incorporated as findings of fact as if fully set forth herein.

SECTION TWO: That a special use permit shall be, and it is hereby, granted to the petitioner to allow construction of a planned residential development in an area of special flood hazard legally described in Exhibit A attached hereto, subject to the following provisions:

1. All the terms, conditions and standards contained in Title 8, Chapter 5 of the Municipal Code, including, but not limited to, Section 8-5-10, shall be followed.

2. All portions of the individual lots identified on the tentative plat dated October 12, 1984 shall be built up to levels equal to, or above, the 100-year flood plain elevation.

3. Compensatory water storage be provided in a manner which will result in minimum impact on existing vegetation along the bank of the DuPage River from development. The plan for said compensatory water storage shall be submitted to and approved by the Village Engineer. This special use permit shall not become effective until such approval has been obtained.

4. Anden Corporation shall compensate for landscaping removed as a result of increasing the size of detention ponds by providing new landscaping similar to existing conditions.

Landscaping plans to meet this condition shall be submitted to and approved by the City Engineer. This special use permit shall not become effective until such approval has been obtained.

5. No basements shall be constructed on Lots 35, 36 and 37 of the Subject Property.

6. There shall be only one entrance from the Subject Property onto Route 59, and there shall be a "no-access" easement along Route 59 to prevent access onto Route 59 by individual lot owners.

7. Landscaping along the west border shall be maintained or supplemented to provide at least a 90% density, along the north border to provide a privacy screen, and along the south border to provide moderate to high-density screening, and the final landscape plan shall include final grading elevations, including both existing and proposed elevations.

8. Open space shall be owned and maintained through a home-owners' covenant, and such open space shall not revert to individual ownership.

9. Emergency access on the south border shall be defined in accordance with recommendations as outlined by the City Engineer.

10. The number of lots shall be reduced to 62 by eliminating one lot on the north border, and the lots along the north property line shall be increased in size to provide a suitable buffer to property north of that line.

11. The development of the Subject Property shall be in strict compliance with the Development Agreement approved by Ordinance No. 756.

SECTION THREE: Failure to comply with any of the terms, conditions or standards contained in this Ordinance shall render the special use permits null and void.

SECTION FOUR: Any policy, resolution or ordinance of the Village which is in conflict with this Ordinance shall be, and it is hereby repealed.

SECTION FIVE: This Ordinance shall be in full force and effect from an after its passage and approval in the manner provided by law.

PASSED THIS 3rd DAY OF March, 1986.

AYES: Ald. Aschauer, Esposito, Goodman, Hudetz, Jones, Lowderbaugh, Ulery, Wheeler.

NAYS: -0-

ABSENT: -0-

APPROVED THIS 3rd day of March, 1986.

Vivian M. Lund
MAYOR

ATTEST:

Lucy Bernard
CITY CLERK

Published in pamphlet form by Authority of the City Council of the City of Warrenville, DuPage County, Illinois, this 5th day of March, 1986.

Lucy Bernard
Lucy Bernard, City Clerk

William A. Price, Attorney
wprice@growthlaw.com
PO Box 1425
Warrenville, IL 60555

GrowthLaw
www.growthlaw.com
800-630-4780

Feb 25, 2019

Barbara A. Adams
Holland & Knight
131 South Dearborn Street, 30th Floor
Chicago, IL 60603

RE: River Oaks Improvement Association

Dear Ms. Adams,

1. We are in receipt of your letter of November 21, 2018 (cc attached), to which this note responds, and again requests reconsideration of the City's position on ROIA commons area storm drains and sewers.

2. Your letter turns on one question: whether the commons area is a "public right of way" or private property belonging to and for the benefit of the association. Your note suggests the transfer of property of 11 January 1989 was only of property under public rights of way, and that the Association remains responsible for all maintenance of drains under the private property in the Commons area.

A few items:

a. The Common Area is, as noted in your letter, the property of the Association, per the Declaration of Condominium.
b. The Association and homeowners are, per para. 3.01 of that declaration, permitted to create easements for utilities, including sewers, while retaining rights of ingress and egress for maintenance of same. An easement can be for public utilities as well as being located inside private property.

This makes the "public" versus "private" property argument of your letter inapplicable. The question is not whether the easement is "public", but whether the property at issue (storm drains and sewers) are public property, or the property of the Association. The Jan. 11, 1998 transfer explicitly put storm drains and sewers title in the City, not the Association, and under Burford v. Village of LaGrange, 90 Ill. App. 2d 210, cited in my original letter, where a city or village accepts title, they are responsible for maintenance of their own property.

The city's reference to the Development Agreement does not change this issue. The agreement, as her letter notes, notes that the Association has a duty to maintain the "common area". That reference does not include the sewers and storm drains under such common area.

Further, the city's interpretation varies from the uniform practice of the City and the Association from 1998 until 2018 under the Development Agreement. The Association has routinely notified the city and the city routinely maintained common area storm drains until this year, at city expense. We have multiple documents showing this, and witnesses who can testify as to same.

The remarks on p. 15 of the Plan Commission testimony referenced in my prior letter, and attached here, show that the original interpretation of the Arden corporation in entering into the development agreement was that "in the design of the storm sewer system, there will be silt traps where the manholes are. And these are cleaned, on a regular basis, by the City just as in any other development in the City of Warrenville." This was confirmed in the Plan Commission hearing at p. 29 by a city witness, who referred to a machine they used for same funded by an EPA grant.

The detention areas were designed as a part of a storm drainage system that included more than the common areas. As again noted in the Plan Commission Hearing, page 27-28, a sewer from lots across the street in the development and catchment basins would guide water to the detention areas in the common area.

Public benefit of the drainage system as designed further supports public ownership: the plat of survey (which we can and should reproduce for the city) shows storm drainage benefiting more than the River Oaks area, i.e. the flood plain (removals compensated in commons ponds, see p. 10-11 remarks

in Plan commission hearing). As was also noted in the Plan Commission hearing, p. 31, the area West of 59 has drainage across River Oaks which the site has to accept. In the plat, there is a storm drain specified by the City engineer that addresses some of this water -- not water created by River Oaks.

The plat shows an "Open Space Drainage Utility And Access Easement" in the commons area. See attached. The storm sewers in this public benefit easement were transferred to the city. The city has a duty to maintain its property, and accepted that duty and implemented same until 2018. This duty is routine for utilities that have utility property in utility easements on parcels that otherwise are on private property, and is the same for city property which is in a drainage easement area otherwise owned by the Association.

The city's changed position does not change the original agreements or the city's duties in law. By those agreements, the Association has the duty of maintaining the common areas, including trees, the retaining wall, the dividing wall between ponds, and other landscaping. The City has the duty to maintain the sewers, which do not belong to the Association.

If the City maintains that the sewers and drains in the Common Areas are exclusively the property of the Association, or are to be maintained for private benefit, not the general public, whatever their ownership, then the Association will take appropriate action for clarification of such rights, or will otherwise act in accordance with the City's determination, making any maintenance determinations for the benefit of any drainage needs of the common association property, but not based on any more general plan or system of city drainage. Their maintenance will, in such case, be addressed in accordance with their fiduciary duty to minimize expenses to Association members.

We submit that the previous interpretations of the parties as to their respective rights and duties are preferable to this determination. For the reasons above stated, the Association respectfully requests reconsideration and reversal of the City's decision to abandon its responsibility to maintain ROIA commons areas drains and sewers.

Respectfully Submitted,

William A. Price
Attorney at Law
P.O. Box 1425
Warrenville, IL 60555
Tel/Fax 1-800-630-4780
email: wprice@growthlaw.com

Holland & Knight

Attachment 4

131 South Dearborn Street | Chicago, IL 60603 | T 312.263.3600 | F 312.578.6666
Holland & Knight LLP | www.hklaw.com

Barbara A. Adams
312.578.6563
barbara.adams@hklaw.com

April 30, 2019

By Electronic Mail (wprice@growthlaw.com)
Mr. William A. Price
P. O. Box 1425
Warrenville, IL 60555

Re: City of Warrenville: River Oaks Improvement Association—Storm Sewers

Dear Mr. Price:

Thank you for your follow up letter dated February 25, 2019 regarding the storm drainage issue in the common area of the River Oaks Development. In conjunction with City of Warrenville staff, including Deputy Public Works Director Phil Kuchler and City Administrator Coakley, we have reviewed your follow up letter and re-reviewed the documents governing the development and operation of River Oaks (which, at the time it was subdivided, was known as Country Ridge Unit 2). Based on that review, the City continues to conclude that the affected facilities are owned by the River Oaks Improvement Association.

Your follow up letter seeks to argue that the Bill of Sale from the Anden Corporation to the City of Warrenville dated January 11, 1989 somehow transfers to the City ownership of the facilities on private property known as Lot 63 in River Oaks. That position is contrary to the plain language of the Bill of Sale, which transfers "sanitary sewer, storm water and potable water pipes" and other facilities "located in, on, under or above all public rights-of-way in the River Oaks Subdivision, Warrenville, Illinois." As noted in my prior letter, the only public rights-of-way on the plat of subdivision are Ridge Drive and River Oaks Drive. The Bill of Sale does not transfer ownership of any facilities located on any other property, such as Lot 63, which the governing documents all designate as Common Area for the River Oaks Development.

The fact that the Association may grant easements on Lot 63 pursuant to the Declaration for this development does not create any City interest in the affected facilities. If an attempt were made by the Association to grant a new easement, the City would have to formally accept such a grant before it would be effective. And such a grant would not convey ownership of the affected facilities without an additional bill of sale to complete the conveyance of the affected facilities, which would also require City Council formal acceptance. Thus, the decision in *Burford v. Village of LaGrange* is inapplicable here.

In addition, reliance on statements made to the Plan Commission in the December 4, 1984 public hearing transcript is misplaced:

- The statements to which you refer on page 15 about who will clean silt traps in manholes, and on pages 27 and 28 about where storm water would run, were made by a representative of the developer (Mr. DeGrazia). Clearly, Mr. DeGrazia's lone statements cannot bind the City to any obligation that is not approved by the City Council.

- The statements to which you refer on page 29 by someone who apparently was a City alderman at that time (Mr. Wheeler) about cleaning out catch basins cannot bind the City without a formal action approved by the City Council. No member of the City's legislative body may legally bind the City without official action of the City Council.

We find nothing in any of the documents approved by the City Council for River Oaks Development that you and I have exchanged that demonstrates City Council approval of any of these statements from the public hearing transcript.

Based upon our re-review of the matter, the City's position is that the affected facilities belong to the Association and are the Association's responsibility to maintain and repair.

In an effort to help the Association address the storm drainage issues going forward, please understand that any action taken by the City regarding water issues on Lot 63 was only to address emergency conditions in an effort to minimize potential public health and safety risks, because the Association did not have an arrangement for an emergency contractor to respond and assist in such situations. The City recommends that the Association develop a plan for regular, periodic maintenance of Lot 63 and the facilities on it in order to ensure more consistent functioning of the facilities and reduce the risk of emergencies. If the Association would like some suggestions on how to get started on such a plan, City staff would be willing to sit down and meet with Association representatives to discuss the likely tasks that would be part of a plan and the types of vendors who typically assist in creating such a plan and providing such services.

Please let me know if you have any further questions.

Very truly yours,

Barbara A. Adams

Barbara A. Adams

BAA/rls
Enclosures
cc: Mayor and City Council
City Administrator John Coakley
Deputy Public Works Director Phil Kuchler
Senior Civil Engineer Kristine Hocking

Attachment 5

"AS BUILT" PER CITY

Private Storm Sewer

Private Storm Sewer

Private Storm Sewer

Location of storm sewer blockage
Memorial Day 2019

ROUTE 59

OFFSITE

WAVERLY ROAD

DUPAGE RIVER BRANCH

STREET "A"

STREET "B"

ADDED PER CITY

REVISED ACCESS

LIFT STATION 31

EXIST. 27"SD (TO BE ABANDONED)

EMERALD GREEN SUBDIVISION

EXIST. 10" V.V.
EXIST. 8"W.M.
EXIST. 8" V.V.
EXIST. 10"W.M.

NOTE : 10" WATERMAIN FROM EXIST. TO ROUTE 59 PERMITTED UNDER I.E.P.A #85-0996
CONSTRUCTED SPRING 1985

COUNTRY RIDGE UNIT I

NOTE : SANITARY SEWER FROM EXIST. SAN. M.H. TO M.H. NO. K 10" SANITARY SEWER PERMITTED UNDER I.E.P.A. #1985-HB-2358
CONSTRUCTED SPRING 1985

EXIST. SAN. M.H.
EXIST. 10" SAN.

EXIST. S.D. M.H.
EXIST. 27"S.D.