

**Planning & Development Committee Meeting  
Minutes of February 14, 2011  
City Council Chambers – 7:15 p.m.  
Lorraine H. Morton Civic Center**

ALDERMEN PRESENT: (J. Fiske), (J. Grover), D. Holmes, L. Jean-Baptiste, A. Rainey,  
D. Wilson, M. Wynne

STAFF PRESENT: W. Bobkiewicz, G. Farrar, S. Griffin, C. Hurley, M. Lyons,  
D. Marino, B. Newman, N. Radzevich, P. Schneider

PRESIDING OFFICIAL: Ald. Jean-Baptiste

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**DECLARATION OF QUORUM**

A quorum being present, Chair Jean-Baptiste called the meeting to order at 7:22 p.m.

**APPROVAL OF THE JANUARY 24, 2011 MEETING MINUTES**

Ald. Wynne moved approval, seconded by Ald. Holmes.

**The minutes of the January 24, 2011 meeting were approved unanimously, 5-0.**

**ITEMS FOR CONSIDERATION**

**(P1) Approval of Plat of Re-Subdivision for 2408 Orrington Avenue, Former Site of Kendall College**

Staff recommends approval of the proposed plat of re-subdivision of the former site of Kendall College – the block bounded by Orrington Avenue, Colfax Street, Sherman Avenue, and Lincoln Street and also referred to as 2408 Orrington Avenue – into nineteen single-family lots as shown in the plat dated November 3, 2010, to City Council for approval. This item was held in Committee on January 24, 2011.

**For Action**

**Ald. Wynne moved approval, seconded by Ald. Wilson.**

Mr. Griffin explained that since the last P&D meeting staff has met with the developer and his attorney and that a covenant has been incorporated into the Ordinance stating that all public alleys, infrastructure, etc. will be constructed prior to any building permits being pulled for the individual lots. It also provides that a number of trees are to be saved on the public right of way, on private property and in the alleys. Mr. Griffin added that staff and Ald. Fiske are still working with the developer and the developer has asked that these discussions about the trees be continued in good faith and to move these items (P1 and P2) to Council to keep them together.

Chair Jean-Baptiste called Ald. Fiske to speak. Ald. Fiske requested that Item P1 be held in Committee and that Item P2 be moved to Council, as they have had positive results regarding P2 in the meetings with the developer.

Ald. Rainey asked for further explanation why P1 should be held in Committee to which Ald. Fiske replied that the developer has agreed to ensure the oak trees on Lincoln are retained but there is a tree that is one of the oldest in Illinois that is situated in the middle of an alley way and Ald. Fiske said she and staff are working with the developer, who is amenable to reconfiguring the plan to preserve it.

Chair Jean-Baptiste asked Mr. Ferrar whether plats of survey come before Council, and Mr. Ferrar confirmed that the plats of survey do come before Council, adding that there is another similar subdivision to appear before P&D and Council that same night.

Mr. Friedland of Applegate & Thorne-Thomsen, representing the developer, Smithfield, explained that he has met twice with City staff since the item was held in Committee and that the subdivision is in an R1 district and all 19 lots are legal as of right. He said the same proposal that was about to be approved in March of 2010 was stopped at the last moment because the developer pulled out. Smithfield decided it made sense to develop the property as an R1 subdivision. He said they are willing to discuss the trees with staff but he requested that both matters be moved to Council together.

**Ald. Rainey moved to recommend approval.**

Ald. Fiske said she was fine with the motion.

**The Committee voted unanimously 5-0 to recommend approval of the Plat of Subdivision for 2408 Orrington Avenue.**

**(P2) Ordinance 11-O-11, accepting the Dedication of Public Alleys as a Product of Approval of a Plat of Subdivision for 2408 Orrington, the Former Site of Kendall College**

**Staff recommends approval conditional upon the developer committing to construct the proposed alleys as indicated in the attached Public Alley Construction Agreement, to be recorded with the Plat. The developer also commits to construct other proposed public infrastructure and protect trees as proposed. The cost of constructing alleys for the proposed subdivision is a developer responsibility. Ordinance 11-O-11 accepts the dedication of public alleys included in the proposed plat of subdivision for 2408 Orrington. If the plat is approved on February 14, 2011 then Ordinance 11-O11 should be introduced. This item was held in Committee on January 24, 2011.**

**For Introduction**

Chair Jean-Baptiste called Padma Rao of 2246 Sherman to speak.

Ms. Rao said she lives within 500' of the property. She remarked that the public did not have knowledge until Saturday night of the new plan's affect on the trees. She referred to Ordinance 85-O-06 which included tree protection and the requirement to keep the alleys on the tax roles. She said the trees were not referred to at the Preservation Commission meeting she attended in September of 2010 and now 26 trees are slated to be destroyed. She expressed confusion that Ordinance 85-O-06 had not been

appealed yet it is no longer in affect, adding that she is not the only one who is unhappy about the new plans for the trees.

Mr. Griffin explained that the planned development which was defined by Ordinance 85-O-06 is no longer in affect and the developer may subdivide the lot by right. Because subdivision is a ministerial act, the City does not have the right to decide which trees are saved on private property.

Mr. Ferrar confirmed that departure from the planned development opens the door to the developer to decide about many things that were formerly subject to discussion. He said Mr. Griffin is utilizing the best efforts of the City to address the tree preservation issue.

Chair Jean-Baptiste asked whether the developer is committed to preserving the trees, to which Mr. Ferrar replied that in dialogue last week the developer has told the City they will use their best effort to preserve trees.

Mr. Friedland said he understands that because the developer obtained a planned development from the City a few years ago, this proposal may appear to be a continuation of it. But, he explained, it is not, as the developer now intends to proceed under R1 with 19 subdivisions as a different proposal. He said Ms. Rao has been to other meetings where this was explained. The developer has agreed to hire an arborist to attempt to prevent the harming of trees during alley construction and the developer intends to preserve parkway trees. He added that 2 trees will be removed in order to make alley returns. On site, it is a different story. In some cases a tree will be removed where a house will be and those that are logical, can stay in place. Most of the trees are in the front yards and there is a 27' set back in front, but some will be removed when the lots are sold. Mr. Friedland said his goal in working with Mr. Griffin and Ald. Fiske is to set up best practices to preserve the trees that will be preserved. He added that if there was a tree preservation ordinance in place, they would be subject to it, but there is not.

Ms. Rao argued that no member of the public grasped that the trees were being affected and asked whether there would be more of a due process which would give the public a chance to voice their opinions, to which Chair Jean-Baptiste replied that she had raised a legitimate issue and the item would be moved to Council for further discussion. At the request of Chair Jean-Baptiste, Mr. Ferrar will report whether there is a legal process in place when a project is no longer a planned development and when subsequently an as of right subdivision is proposed, at the next Council meeting.

Chair Jean-Baptiste explained to Ms. Rao that he will be able to answer her question about public input when a planned development is abandoned and a subdivision is proposed after Mr. Ferrar reports as to the rules and that the public will have an opportunity to speak at the Council meeting.

Ms. Jeanne Lindwall of 625 Library Place commended Mr. Griffin for ensuring that the infrastructure and alley are completed before lots are permitted. She encouraged the continued efforts to preserve as many oak trees as possible. She suggested that for the

process moving forward, even though there may not be many subdivisions proposed given how built up Evanston is, having the tree preservation exhibit available so everyone can understand the implications is helpful because it is one thing to look at the subdivision, but until you see the plan overlaid on the existing trees you do not see the impact it will have on the trees, so she believes it should be incorporated into community development regulations that the overlay be available.

Ms. Barbara Janes of 802 Colfax related a history of the tree that is in the middle of the alley (and had been protected in the planned development) beginning with 1674 when the Dutch ceded New York to England, Father Marquette arrived at Gross Point, the first dwelling was built in what would be Evanston, and the oak tree was 7 years old. Ms. Janes cited events in history in relation to the tree's growth up to the present when the tree is 345 years old, and encouraged the Committee to preserve it. Mr. Griffin said that is the one that is still being negotiated.

Ald. Rainey suggested that staff investigate the advantages of making the alley public vs. private, with an easement for garbage pickup, in order to put the alley on the tax roles. Ald. Fiske said one of the requirements for storm water detention is that the alley be permeable, which requires City equipment to clean the surface of debris that gets into it and clogs the permeable surface. She surmised that the property owners would have to lease or purchase such equipment if they owned the alley. Chair Jean-Baptiste asked that staff investigate the feasibility of selling the alley back to the property owners. Mr. Marino agreed to do so.

**The Committee voted unanimously 5-0 to introduce Item P2 in Council.**

**(P3) Approval of Plat of Subdivision for 12 Milburn Park**

**Staff recommends approval of a subdivision of two lots of record, one zoning lot held in common ownership, to comply with the zoning ordinance. Site Plan and Appearance Review Committee approved subdivision, noting that any egress to Lot 2 would need to come from Milburn Park and not Sheridan Road.**

**For Action**

**Ald. Wynne moved approval, seconded by Ald. Wilson.**

Ald. Rainey asked what the City has done about trees since it creates a new buildable lot for this property and whether we have given the public a chance to voice their opinions about it. She asked for the status of the trees on that lot and whether the City would treat each subdivision the same regarding the trees on their lots. Mr. Griffin said the trees were not addressed regarding this subdivision.

Mr. Marino said the owner was present and that he had not understood prior to the meeting that staff had recommended to the Committee that the new lot's access (Lot #2) was only to be off Milburn Park so he requested holding the item in Committee so staff will have more time to discuss the egress with the property owner and staff will have time to address Ald. Rainey's question about the trees.

**The Committee voted unanimously 5-0 to hold Item P3 in Committee.**

**(P4) Ordinance 16-O-11, Extending the Date by 90 Days that a Building Permit Must Be Obtained for 1200 Davis Street (Roycemore School)**

Staff recommends approval of Ordinance 16-O-11, an amendment to Ordinance 17-O-09, to allow for an additional 90 days for Roycemore School to obtain a building permit for 1200 Davis Street,. The new deadline will be June 1, 2011 instead of March 1, 2011.

**For Introduction**

Ald. Rainey moved approval, seconded by Ald. Wynne.

The Committee voted unanimously 5-0 to introduce Item P4 in Council.

**(P5) Ordinance 17-O-11 Codifying and Amending Ordinance 14-O-09 “Green Building Ordinance”**

Staff recommends passage of Ordinance 17-O-11, Codifying and Amending Ordinance 14-O-09, as Amended by Ordinance 124-O-09. This amendment provides for an alternate compliance with the City’s goal of Leadership in Energy and Environmental Design (LEED) Silver certification on buildings/construction falling under this regulation.

**For Introduction**

Ald. Rainey moved approval seconded by Ald. Holmes.

The Committee voted unanimously 5-0 to introduce Item P5 in Council.

Mr. Griffin reminded the Committee that in December 2009, the Committee asked staff for a report on how the Green Building Ordinance is affecting the City. He explained that because of the state of the economy there have not been any projects proposed that would fall under the Ordinance, however in the last 8 weeks, a number of prospects have come to the City about a variety of projects, one of which is having challenges meeting the adopted Ordinance. He explained that much of the Ordinance is focused on office, residential and institutional, but this applicant has a large retail store and there are not many retail stores getting LEED certification, in fact, staff found through their research that out of 198 municipalities with green building ordinances, 61 or 30% do not contain standards for private construction. He said Washington DC’s ordinance, which is the area he is from, states that a developer must build to a green building standard but does not require certification, which is very costly, and only requires that institutional buildings be constructed to a certain standard. He said he would like to look at the proposals case by case and if the developer can show a unique circumstance or financial hardship for meeting the green building standard, they would be allowed an alternative technology and construction in lieu of being LEED Silver certified. He suggested tailoring the green building technology requirements towards the construction of the building so, for example, if the development is close to a transit station it is helping facilitate more transit use. He explained that currently Council has no ability to entertain anything but a Silver LEED certification, which can run into the hundreds of thousands of dollars, so he said staff does not take this suggestion lightly and certainly

thinks Evanston should step up and be the model, but under the circumstances that Council is afforded some opportunity to review and consider. He suggested an application process by which anyone that wants an exception applies to staff, who presents all the facts and makes recommendations to P&D, and ultimately City Council has approval. He added that it does not go without having to meet many green building technology requirements, provisions for the cost of the review to be borne by the developer, and the suggestion that any dollars put into the certification would instead go to the City for area-wide green technology. In summary, he said, this amendment does not intend to un-do the Green Building Ordinance, but to provide under certain unique circumstances, the ability for Council to be flexible for certain economic development prospects that might come to the City. In a case where an applicant chooses not to obtain Silver LEED certification, staff would bring all the facts about the proposal to Council with a recommendation and adequate information so Council can make an informed decision.

Chair Jean-Baptiste opened the floor to the public:

Ms. Paige Finnegan of 525 Elmwood, on behalf of the Evanston Environment Board, which she co-chairs, said the Environment Board takes issue with two parts of the proposed process: first the process by which these changes have been brought forward and second, the significant change in the content of the Ordinance.

Ms. Finnegan said regarding the process by which the amendment has been proposed, aside from the complete lack of notification to the Mayor-appointed Green Building Ordinance Committee or the Evanston Environment Board, is the willingness of City leadership to overhaul an Ordinance at the first suggestion of a potential business objection. She noted that Mr. Griffin said that the Green Building Ordinance has never been triggered, yet city leadership is already willing to reconsider it.

Regarding the Environment Board's second issue relating to content, Ms. Finnegan said the Ordinance reduces the certification requirement from Silver to certified, which is completely unacceptable to the Environment Board and there is a significant difference between achieving LEED certification, be it Silver or simply certified than working with an inexperienced City staff to achieve comparable results. She said she understands that this is an apparently time-sensitive development but encouraged the Committee to send it back to the Mayor-appointed Green Building Committee to work through these revisions as she is confident that they can reach an amenable alternative within a very short time.

Mr. Michael Drennan of 820 Oakton Street, Community Outreach Coordinator for Citizens for a Greener Evanston, congratulated Chair Jean-Baptiste on his appointment to the bench. He said the community worked ardently & for an extended period of time to fully & elegantly express the values of this community regarding environmental sustainability. He said buildings have the most significant impact on our carbon footprint and that our values should be shoved aside at the 1<sup>st</sup> suggestion, strikes him as questionable judgment. He is glad staff is working on codifying the Green Building Ordinance, and feels that changes to a certification rather than Silver should first be passed by the Environment Board, though it does not sound like they have given it a

positively about it. He believes staff should leave the Green Building Ordinance alone until the Environment Board has an opportunity to review the reporting due to it in the first place and looks forward to their respect of due process.

Mr. Ron Fleckman, Chairman of Citizens for a Greener Evanston, with membership in excess of 900 citizens, said the notification process indicated that there was a critical time issue pushing the amendment but it did not create a context for the changes being sought. When approved, there was a consideration of the Ordinance's impact on economic development and acknowledged that the City is without a forum to review an economic development proposal that might fall short of the Ordinance. He suggested a forum be created for such a review to occur, that it should be made up of City staff and experts from the community, and its purpose would be to help any economic development to reach existing environmental goals, adding that in the current economic environment, this process should not in any way slow down the process but occur concurrently with Evanston's existing process. He added that if there is a pressing need to move forward tonight, it should not compromise an existing Green Building Ordinance, but instead add language for a process for relief to achieve the greater good.

Mr. Griffin said they have about 6 prospects currently. One has asked for this flexibility specifically, so they would like to schedule it for Council consideration at the next Council meeting.

Mr. Bobkiewicz said there had been no proposals to evaluate the first year, staff has progressed with one applicant who has been in discussions over the better part of 6 months, and has informed staff that they have other places they can go and need to make a decision by the end of February. Staff has been working with them diligently for several months to come up with alternatives under the Ordinance. They have said they do not have a problem with Evanston's goals but they can go to another community where there is no Ordinance. Staff is attempting to create a forum with the ability for citizen input and the opportunity to recommend to Council when a development proposes that they simply cannot meet the requirements of the Green Building Ordinance. Staff is not trying to remove the Green Building Ordinance because of one development, on the other hand, the City has parcels ripe for development and without an amendment the City will see its first business leave. He said if Council feels that is appropriate & wishes to have a lengthier dialogue that is their prerogative. He noted that staff takes the concerns of the citizens to heart, taking 3 years to get the Ordinance in place. He added that there are several other businesses that have questioned the Ordinance and said they can go to neighboring communities and will reach even more people, so, if there is no ability to manage through the Ordinance, they will not come here.

Mr. Bobkiewicz said it was his decision not to consult with the Environment Board or Citizens for a Greener Evanston beforehand but felt it was appropriate first to present the amendment to Committee to guide staff appropriately. He noted that as an Ordinance it requires 2 readings so there are at least 2 additional weeks between now and when it goes to Council for discussion. He said the City has 40 boards and commissions and it is not the City's practice to go back to every single board with every

single item. He felt the issue of economic development was important enough that this could be brought directly to Committee for direction.

Ald. Wilson said it is his impression that with this project it is more an issue of the unavailability of LEED credits for the nature of the construction. It is not an office building where they have many construction options that can comply. The nature of the building is such that there are not very many alternatives within a reasonable pricepoint and it is a traditionally expected type of development.

Mr. Bobkiewicz said there are 3 issues with this amendment: first is codification – that it was a ministerial action that did not take place when the Ordinance was originally adopted; second, the Ordinance was contemplated and adopted in 2009 and there are different LEED standards for different types of development which he believes many in the sustainability environment feel are very appropriate for places like hospitals and office-residential so expecting a development to match its appropriate LEED certification process for those types of buildings is of not in question. But the question is if a developer says there is an economic hardship to meet the LEED silver for the applicable measure, do we say no or do we give them an opportunity for an alternate process, specifically identified through Ordinance that would come back to the Council for the project with community review, 2 readings and then have the Council decide. Mr. Bobkiewicz summarized it comes down to community standards and he agrees with the speakers that this is a difficult decision whether the LEED certification is so absolute that it does not matter what the use is, or if a project developer or applicant says they're not able to do this, then we provide an alternative. There is a penalty provision in the existing Ordinance which provides relief if a developer can only attain 40 points of the 50 points required for Silver certification in the form of a fee paid to the City. He suggested there could be some adjustments to the penalty. But he asked whether that penalty system is only meant for someone who is aiming for the 50 points or is it for someone who states that they cannot meet the requirement up front.

Ald. Wynne asked for additional information about the amendment and what the alternatives would be for those for whom it is economically unfeasible to do the project at the required level. She would like to better understand what the process would be so every single project does not become an individual negotiation, which is what the City has been trying to avoid. She also asked whether there is a category for the type of project in question that the City can categorize as unable to meet the LEED standards but we value this type of building, and have the category codified to avoid individual negotiations. Mr. Bobkiewicz replied that a solution would be to alter the proposed amendment so that if the Council decided that LEED Silver for a particular LEED plan makes sense, there is that adjustment. He explained that the problem is getting to the number of required points and suggested having the development pay the City the difference it would take to get to the required level of LEED certification and if this does not work for the community, it could be reviewed. The forum would decide, in the name of transparency, with an understanding of why they will not make it, based on the type of improvement to the property whether it is important to the City, such as a retail site with a parking lot as a big part of it, where there are ways and points you can earn such as with a permeable surface, the City could tell them what the City would like in lieu of the points. He acknowledged that it does turn it into a planned development scenario,

though. Ald. Wynne said when they can present a clear and convincing case it becomes who hires the best lawyer and makes the most convincing case, which is a flaw in the proposal. At least the alternative, where they just pay, is above board because we know how much they are paying and why.

Ald. Rainey said the whole matter would lessen were the threshold 20,000 square feet instead of 10,000 for new construction. She said the proposal at hand is not 100,000 square feet or a huge big box that will make a major environmental impact on the community and is not trying to comply with the Green Building Ordinance. It was after doing a lot of work on drawings that it became apparent that when you have a small building an addition of \$150,000 to \$200,000 it makes a huge impact. If you were before a forum that was to evaluate the situation, they would be very hard pressed to say this is not an economic hardship on this developer. The proposed building is less than 20,000 square feet and we may lose the ability to develop and undeveloped parcel because they can go to any surrounding community and they would still have our business. She acknowledged that it is the first, and that the City has not had a lot of experience with big developers falling under this Ordinance, but the fact is that the market has not borne any. She urged the Council to make some adjustments so that going forward we send the message that "Yes, we want you to be green to every extent possible and to comply under this" adding that if this were a \$50 million project she would be thinking differently. She reminded the Committee that the City's economic vision is "to keep businesses we have, to help them expand and to attract new ones" and we will not do it if we send the message out, this very first project. She said this is the most moderate adjustment to this Ordinance that could possibly be asked for arguing that if it is okay for a developer to buy their way out of the LEED certification, we should make some adjustments like the City Manager suggested, adding creditability to the Ordinance, as opposed to imposing a little hypocrisy. She said she is sure that since everyone worked so hard on the Ordinance, making it a preventative measure for new economic development will not sit well with the community. She suggested meeting with the Environment Board so they can participate and evaluate some of the exceptions, but for now accepting the recommendations of the new Community & Economic Development Director and the Economic Development Department. They have produced and presented an amazing amount of work to the City and it makes for some success going forward.

Mr. Bobkiewicz said he would be willing to meet with stake holders over the next 2 weeks to see if better language can be crafted.

Chair Jean-Baptiste said he believes that is a great course of action since people are requesting some discussion. He asked the City Manager to have discussions.

**Ald. Rainey moved to amend the Green Building Ordinance to increase the 10,000 square feet requirement for new construction to 20,000 square feet, seconded by Ald. Wynne.**

**The Committee voted by majority 4-1 with Ald. Wilson opposed, to amend the Ordinance.**

**Ald. Rainey moved to introduce the Ordinance as amended, seconded by Ald. Holmes.**

**The committee voted by majority 4-1 with Ald. Wilson opposed, to introduce the Ordinance as amended.**

Ald. Rainey explained that stand alone retail simply cannot meet the requirements.

**ITEMS FOR DISCUSSION**

There were no items for discussion.

**COMMUNICATIONS**

There were no communications.

**ADJOURNMENT**

The meeting was adjourned at 8:48 p.m.

Respectfully submitted,  
Bobbie Newman