

DISTRIBUTION:

Trustee Guy Franzese,
Chairperson
Trustee Al Paveza
Trustee Tony Schiappa
Nancy Montelbano
Alice Krampits
David Allen
Vacant
Doug Pollock
David Preissig

AGENDA**STORMWATER COMMITTEE**

Tuesday, May 8th, 2018

7:00 p.m.

**Public Works Conference Room
451 Commerce Street**

- 1) CALL TO ORDER**
- 2) ROLL CALL**
- 3) APPROVAL OF FEBRUARY 13, 2018 MINUTES**
- 4) DISCUSSION REGARDING PROPOSAL TO DEVELOP 7950 DREW AVENUE**
- 5) DISCUSSION REGARDING REVISED FLOOD PLAIN MAPPING ON THE 63RD STREET DITCH**
- 6) STATUS OF FINAL GRADING AT 7600 S. COUNTY LINE ROAD (SHIRLEY RYAN ABILITYLAB)**
- 7) STATUS OF DRAINAGE PROJECTS AND STUDIES**
 - a) CULVERT PIPE AT KATHERINE LEGGE MEMORIAL PARK**
 - b) COUNTY LINE ROAD AT DEER PATH TRAIL STORM SEWER REPLACEMENT**
 - c) I-55 MANAGED LANES STUDY BY ILLINOIS DEPARTMENT OF TRANSPORTATION**
- 8) DISCUSSION REGARDING ALLOCATION OF FUNDS IN THE STORMWATER MANAGEMENT FUND FOR MAINTENANCE OF DETENTION BASINS**
- 9) AUDIENCE DISCUSSION**
- 10) ADJOURNMENT**



M E M O

To: Chairperson Guy Franzese
Members of the Village of Burr Ridge Stormwater Committee

From: David Preissig, P.E., Director of Public Works & Village Engineer

Date: May 4, 2018

Subject: Agenda Summary for Stormwater Committee Meeting on May 8, 2018

1) CALL TO ORDER

2) ROLL CALL

3) APPROVAL OF MINUTES FROM THE FEBRUARY 13, 2018 STORMWATER COMMITTEE MEETING

Please see attached minutes for consideration [*Attachment A*].

4) DISCUSSION REGARDING PROPOSAL TO DEVELOP 7950 DREW AVENUE

Jarper & Associates has submitted a petition to develop a P.U.D. at 7950 Drew Avenue. This development is proposed on an 8.87 acre parcel at the southwest corner of 79th Street and Drew Avenue. [*Please see a conceptual subdivision plan in Attachment B*]. The parcel is currently zoned R-3 for permitted development into eight (8) single-family lots with homes up to 4,000 square feet each. The petitioner is proposing to build nine (9) ranch-style homes with building pads of approximately 2,500 square feet (garages under 1,000 square feet do not count towards square footage calculations).

The petition for the P.U.D. was considered at the March 5, 2018, Plan Commission hearing but continued to May 7 for further discussion. The primary questions that were raised by residents and Commissioners related to density and proposed stormwater improvements, which are the petitioner's primary public benefit offering. The petitioner would provide an additional 20% of stormwater detention, retaining water on the southern portion of the property, and limiting the amount of stormwater that would flow into the abutting wetland.

Pending the outcome of the May 7 Plan Commission meeting, the Stormwater Committee may further discuss the petitioner's proposed P.U.D. at this time.

5) DISCUSSION REGARDING REVISED FLOOD PLAIN MAPPING ON THE 63RD STREET DITCH

As reported previously to this Committee at its August 2017 meeting, the current effective Flood Insurance Rate Maps (FIRM), issued by the Federal Emergency Management Agency (FEMA), had been revised for all of DuPage County and were re-issued for review and comment in June 2017. Revisions are based on updated floodplain mapping conducted in 2014-2015 and comments received for that mapping from various agencies and residents. FIRM data is used for identification of flood zones and also utilized by the National Flood Insurance Program (NFIP) for rating flood insurance policies and enforcing federal mandatory insurance purchase requirements.

The Illinois State Water Survey (ISWS), operated by the University of Illinois at Urbana-Champaign, hosted public meetings in 2017 on behalf of FEMA, to present the revised preliminary DuPage County FIRM and Flood Insurance Study (FIS). Following these meetings was a 30-day public comment period for the new mapping in which comments could be submitted to ISWS. A federal 90-day appeal process is now provided until May 30, 2018. The final map updates would be released in Summer 2018. FEMA will issue a Letter of Final Determination after which municipalities must adopt the new FIRM/FIS panels by Ordinance.

Many regulatory issues are associated with properties located in a floodplain. Flood insurance and special permit requirements may add complexity to ownership or development of a property that has any portion in a floodplain. Floodplain maps are used to determine whether or not a DuPage County property is located in the regulatory floodplain.

Village staff noted significant discrepancies concerning the Zone AE Special Flood Hazard Area (SFHA) and floodway delineation on the 63rd Street Ditch within the limits of the Village of Burr Ridge. Based on actual topographic data, the errors in the mapped floodplain were also confirmed by DuPage County stormwater engineers. The Village submitted comments and a request for re-evaluation to ISWS. After much coordination, ISWS stated the proposed resolution would be re-delineation of the effective Base Flood Elevations (BFEs) on the latest topographic data from west of Grant Avenue to Garfield Avenue.

ISWS coordinated with both DuPage County and the Illinois Department of Natural Resource – Office of Water Resources (IDNR-OWR). Concurrence on a proposed resolution has been provided by both IDNR-OWR and DPC. The 63rd Street Ditch Zone AE Special Flood Hazard Area and floodway between 63rd Street and Garfield Avenue has been re-delineated. However, formal comment and appeal resolution letters must be reviewed and approved by FEMA before issuance. This review will take place a few weeks after the appeal period end date (May 30, 2018).

Please see a comparison of floodplain mapping for the 63rd Street Ditch in *Attachment C*.



6) STATUS OF FINAL GRADING AT 7600 S. COUNTY LINE ROAD (SHIRLEY RYAN ABILITYLAB)

At the November 14, 2017 Committee meeting, Mr. Mark Thoma, 7515 Drew Avenue, was present and stated that he is concerned that the storm sewer constructed at 7600 S. County Line Road to accommodate the off-site drainage from west of the RIC/Shirley Ryan AbilityLab property was not working properly. Work is substantially completed at the subject development and the Village has obtained preliminary “as-built” survey of the site [*please see Attachment D for select plan sheets and details*]

As discussed at the February 6, 2017 Stormwater Committee meeting, the Plan Commission, Village staff, developer, and adjacent residents conducted several meetings to review and refine the final stormwater engineering plans. Meetings were conducted on January 4, 2017, and Wednesday, February 1, 2017. The final meeting was attended by the developer, site engineer, three (3) adjoining residents with their engineer consultant, the Plan Commission chairman, and Village staff. At this final meeting, the developer’s engineer presented a detailed engineering plan, stormwater report, and hydraulic analyses. Off-site topography surveyed at least 100 feet west of the development was presented and discussed to show extents of lower elevations and ponding. Residents during this meeting proposed working with the developer at the time of construction of the RIC site to improve their private lot grading.

As was anticipated, a drain tile originating from Drew Avenue properties was dutifully located and intercepted with a cleanout pipe, then routed in a 6” PVC pipe to a drywell. The drywell infiltrates the low-flow occurrences of the drain tile, while heavier flows surcharge the drywell and exit at a higher elevation into the storm sewer outfalls of the ditch along South Frontage Road. Therefore, the drain tile operates independently and is not part of the on-site stormwater detention.

The ditch along the west property line has been lined with a stoned invert. The ditch bottom was lowered at the time of construction to provide some infiltration of surface water before flowing into the storm sewer system. Landscaping around this ditch will need to be changed, since wood chip mulch is not an appropriate landscape material around a ditch flow.

Village staff will continue to monitor the final construction and verify the operation of the storm sewer system. Any work proposed to be done by the adjacent residents should be coordinated through the Engineering Division.

7) STATUS OF DRAINAGE PROJECTS AND STUDIES

a) Culvert Pipe at Katherine Legge Memorial Park

As discussed at the November 2017 and February 2018 Committee meetings, the Villages of Hinsdale and Burr Ridge share maintenance responsibilities for a 66-inch diameter culvert pipe that originates in the Katherine Legge Memorial Park. Both Villages are providing measures to ensure safety and adequate drainage for the grate at the upstream end of the culvert pipe.



The Village of Hinsdale installed a fence around the upstream end, with the Village of Burr Ridge sharing equally in the cost of materials for its construction.

The Village of Burr Ridge solicited proposals from engineering consultants to analyze the upstream grate and determine if it could be modified to improve safety without compromising its current function. Three (3) engineering consulting firms submitted price proposals for this study. The Engineering Division selected the firm of Hampton, Lenzini and Renwick, Inc. of Woodridge, Illinois, for its extensive experience in stormwater and floodplain management, as well as stormwater permitting issues. The firm provided a detailed scope of services for our study and also has significant experience in the design and construction of major drainage projects in Woodridge, Northbrook and DuPage County.

The Village of Hinsdale has agreed to share equally in the cost of this study and concurred with the proposal submitted by Hampton, Lenzini and Renwick, Inc. The FY18-19 Stormwater Management Fund Budget includes \$5,000 for this study; however, only \$2,859 would be expended when sharing the total cost of \$5,718, with Hinsdale.

Preliminary concepts have been proposed by the consultant and both Villages for further analysis, which will be reviewed at a joint meeting to be scheduled this month. Following this meeting, the final report will be shared with the Board of Trustees in June and the Stormwater Committee at its next meeting on August 14, 2018.

b) County Line Road at Deer Path Trail Storm Sewer Replacement

As discussed by the Stormwater Committee at its November 2017 and February 2018 meetings, the outfall pipe from the ponds at Deer Path Trail collapsed during the storm event on October 14-15, 2017. The outfall is a corrugated metal pipe that runs along the west side of County Line Road for a distance of 860 feet at a depth of 14 feet below ground. During an attempted repair to this pipe, it was found to be in very poor condition, filled with silt, and likely collapsed in several locations. The Village now uses a large capacity trash pump after heavy rainstorms to maintain the pond level and avoid flooding on Deer Path Trail.

The Village solicited proposals from engineering consultants for design, plan preparation, and construction engineering of the project to replace the storm sewer outfall for Deer Path Trail. Four (4) engineering consulting firms submitted proposals and prices for this scope of engineering services. The Engineering Division selected Robinson Engineering, Ltd., of Itasca, Illinois, which firm provided a detailed scope of services and proposed a cost that provided the greatest value to the Village in the amount of \$44,540. This firm is highly-qualified, has successfully designed major drainage projects for Downers Grove, Itasca, and Wood Dale, and also has extensive experience with Cook County permitting issues.

Land surveyors were on-site May 1- 3, 2018. The project is on an expedited schedule as the Village had requested, in order to prepare plans and bid documents by June 2018 with construction anticipated to begin in July 2018. The costs and feasibility of trenchless construction will also be evaluated to determine if this method may be more economical along the County Line Road right-of-way to avoid removal and replacement of the concrete sidewalk.



c) I-55 Managed Lanes Study by Illinois Department of Transportation

The Illinois Department of Transportation is conducting preliminary engineering and environmental studies for the improvement of I-55 from Interstate 355 to Interstate 90/94 that would add at least one lane in each direction within the existing median. This new lane is currently proposed to be managed as an Express Toll Lane (ETL) with dynamic pricing to provide travel choices and congestion relief within the corridor.

As part of this project, IDOT must investigate existing drainage patterns to establish a basis for judging the adequacy of drainage features and to identify drainage parameters that may be encountered by the proposed highway project. IDOT and Village staff met on Wednesday, May 2, 2018, and exchanged information related to floodplain impacts, existing drainage paths, highest known water levels, reports of flooding of both adjacent property and the highway facility, and outlet conditions. No new impervious area is proposed along the section through Burr Ridge, as the existing paved median shoulder would become the Express Toll Lane.

Only the initial project study (Phase 1) is continuing at this time. This study will follow the Federal National Environmental Policy Act process, which facilitates open and transparent study with public involvement opportunities. However, future stages of development or construction are not yet funded by the State. IDOT is considering a Public-Private Partnership (P3) as a possible funding source for this construction project, which would require passage of a resolution by the State legislature.

8) DISCUSSION REGARDING ALLOCATION OF FUNDS IN THE STORMWATER MANAGEMENT FUND FOR MAINTENANCE OF DETENTION BASINS

The Stormwater Committee will be pleased to note that in 2017 the Village Board established as one of its strategic goals to have a fund for maintenance of stormwater detention/retention basins. Village staff is seeking direction on how to fund this beneficial program and promote its adoption to businesses, residents, and homeowners' associations (HOAs).

Regarding precedence for the program, the Board directed Village staff in 2011 to focus on imposing maintenance standards. The Village obtained legal opinions regarding possible mechanisms through which the Village could exercise greater authority as compared to the currently established citation procedures. The opinions obtained in 2011 are included as *Attachment E* and summarized as follows:

- 1) The Village would not have the authority to apply the Stormwater Ordinance to existing subdivisions; however, with certain language contained in the plat of subdivisions, the Village may have the right to enforce maintenance.
- 2) Special service area designations could be opposed by residents and not provide a funding mechanism for the Village; however, where the residents or businesses were interested in taking on a project, special service area financing could provide a lower interest rate.



In August 2013, Engineering Division staff inventoried 99 ponds throughout the Village and totaling 131 acres. The Village will update its database of the pond and stormwater management locations using its geographic information system (GIS), then establish a monitoring cycle of 5 to 7 years.

Staff is considering options for how the Village could help to fund the maintenance of stormwater detention/retention basins and private stormwater infrastructure. One possibility is a dedicated fund that could provide “seed money” directly to businesses and HOAs or partially fund a cost-shared arrangement. As another option, the Village could procure a contractor with fixed hourly labor and equipment rates for businesses and HOAs interested in changing the operation and maintenance routines for their existing detention/retention ponds or stormwater management facilities.

ATTACHMENTS

A: Minutes, Stormwater Management Committee Meeting, February 13, 2018

B: Preliminary Engineering Plan: 7950 Drew Avenue P.U.D.

C: 63rd Street Ditch: Floodplain & Floodway Mapping

D: 7600 S. County Line Road (Shirley Ryan AbilityLab): As-built (Partial):

E: KTJ Memorandum RE: Maintenance of Private Detention Ponds



**MINUTES
STORMWATER MANAGEMENT COMMITTEE
REGULAR MEETING**

February 19, 2018

CALL TO ORDER

Chairperson Guy Franzese called the meeting to order at 7:00 p.m.

ROLL CALL

Present: Chairperson Guy Franzese, Trustee Al Paveza, Trustee Tony Schiappa, Nancy Montelbano, Alice Krampits, Dave Allen

Also Present: Public Works Director/Village Engineer David Preissig and Village Administrator Doug Pollock

APPROVAL OF NOVEMBER 14, 2017 MINUTES

A **MOTION** was made by Committee Person Allen to approve the minutes of the November 14, 2017 meeting. The motion was seconded by Committee Person Montelbano and approved by a vote of 6-0.

STATUS OF MODIFICATIONS TO CULVERT PIPE ORIGINATING IN KATHERLINE LEGGE MEMORIAL PARK

Mr. Preissig reviewed the status of safety measures being considered for the 66-inch diameter culvert pipe located in the Katherine Legge Memorial Park in Hinsdale. He said that the Village has solicited proposals from qualified engineering consultants to review the existing upstream grate and determine if it could be modified to improve safety without compromising its current function and that any proposed concepts will be analyzed with anticipated worst-case stormwater flows and preliminary estimates of cost will be provided for the various options. He added that a status update will be provided at the May 8, 2018 meeting of the Stormwater Committee.

DISCUSSION REGARDING PROPOSAL TO DEVELOP 7950 DREW AVENUE

Mr. Preissig reviewed the pending proposal to develop a subdivision on this property. He said that the developer originally sought to get approval for a PUD with 12 lots, with the developer providing significant drainage and storage capacity on the parcel as well as raising Drew Avenue to prevent water from draining over the road, but this option is no longer feasible based on the developer's discussions with DuPage County. He said that instead the developer is now proposing to develop a 9 lot subdivision with a detention pond separate from the existing wetland area. Mr. Preissig added that a public hearing will be held to discuss the proposal for a PUD at 7950 Drew at the March 5, 2018 meeting of the Plan Commission.

**DISCUSSION REGARDING DUPAGE COUNTY STORMWATER MANAGEMENT
PLANNING COMMITTEE PUBLIC MEETING OF TUESDAY, FEBRUARY 6, 2018**

Mr. Preissig reported on a public meeting held by DuPage County Stormwater Management. He explained that by an Intergovernmental Agreement executed in October 2017, the Village is a partner municipality and can take credit for this meeting to meet its permitting requirements.

PRESENTATION OF THE FY 2018-19 STORMWATER BUDGET

Mr. Preissig reviewed the draft budget for the Stormwater Committee as follows: Expenditures of the current fiscal year exceed the estimated FY17-18 budget. This is a result of continued responsibility for enhancement area monitoring as well as the expenses to repair the Deer Path Trail outfall and Hinsdale fence construction at KLM Park. Proposed expenditures from the Stormwater Management Fund this coming fiscal year will utilize nearly available reserves in the Fund. Expenses include the routine annual burn at Windsor Pond and the annual cost of the intergovernmental agreement (IGA) with DuPage County for NPDES permitting assistance. The largest expenditures are the engineering study for the KLM Park culvert pipe grate, as well as the engineering and construction of the storm sewer replacement along County Line Road at Deer Path Trail.

A **MOTION** was made by Committee Person Allen to recommend that the Board of Trustees approve the stormwater fund budget for fiscal year 2018-19. The motion was seconded by Committee Person Montelbano and approved by a vote of 6-0.

AUDIENCE DISCUSSION

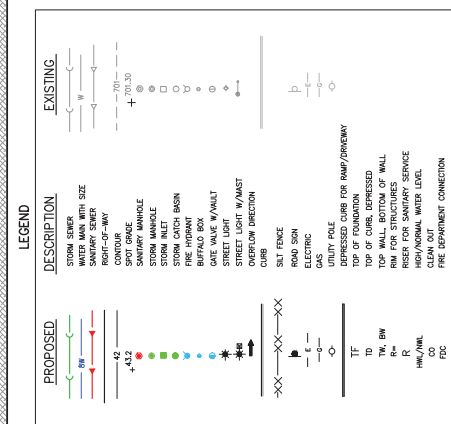
There was no audience discussion.

ADJOURNMENT

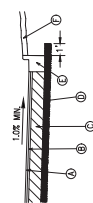
There being no further business, a **motion** was made by Trustee Schiappa to adjourn the meeting. The motion was **seconded** by Committee Person Krampits and **approved** by a vote of 6-0. The meeting was adjourned at 7:30 p.m.

Respectively submitted,

J. Douglas Pollock, AICP
Village Administrator



- | GENERAL NOTES | CONCRETE NOTES |
|---|--|
| 1. ALL CONSTRUCTION SHALL CONFORM TO APPLICABLE SECTIONS OF THE STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION, LATEST EDITION. | 1. ALL STORM SEWERS SHALL BE REINFORCED CONCRETE PIPE AUST C-7.5, SIZES TO BE DETERMINED BY THE DESIGN ENGINEER. |
| 2. ALL STORM SEWERS SHALL BE 12" MINIMUM DIAMETER UNLESS OTHERWISE NOTED. | 2. ALL STORM SEWERS SHALL BE 12" MINIMUM DIAMETER UNLESS OTHERWISE NOTED. |
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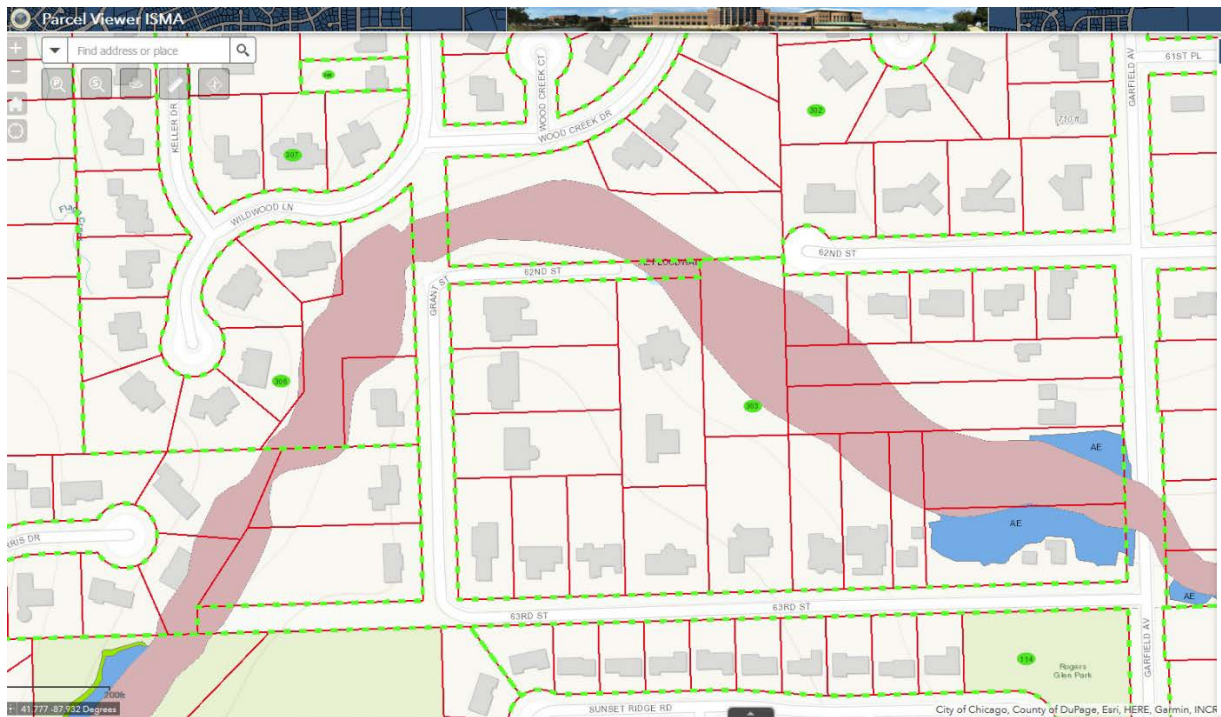
NOTE: SPECIAL PAVING AREAS TO BE DESIGNED BY OTHERS.

1.5" BITUMINOUS CONCRETE SURFACE COURSE, HOT MIX ASPHALT, MK, C, N60
2" BITUMINOUS CONCRETE BINDER COURSE, HOT MIX ASPHALT, IL19, N60
4" BITUMINOUS CONCRETE BASE COURSE, HOT MIX ASPHALT, IL19, N60
2" CA-6 SUB-BASE, TY. B.
CON. CLAYS AND CLUTTER TYPE M-12 (UNLESS NOTED OTHERWISE)

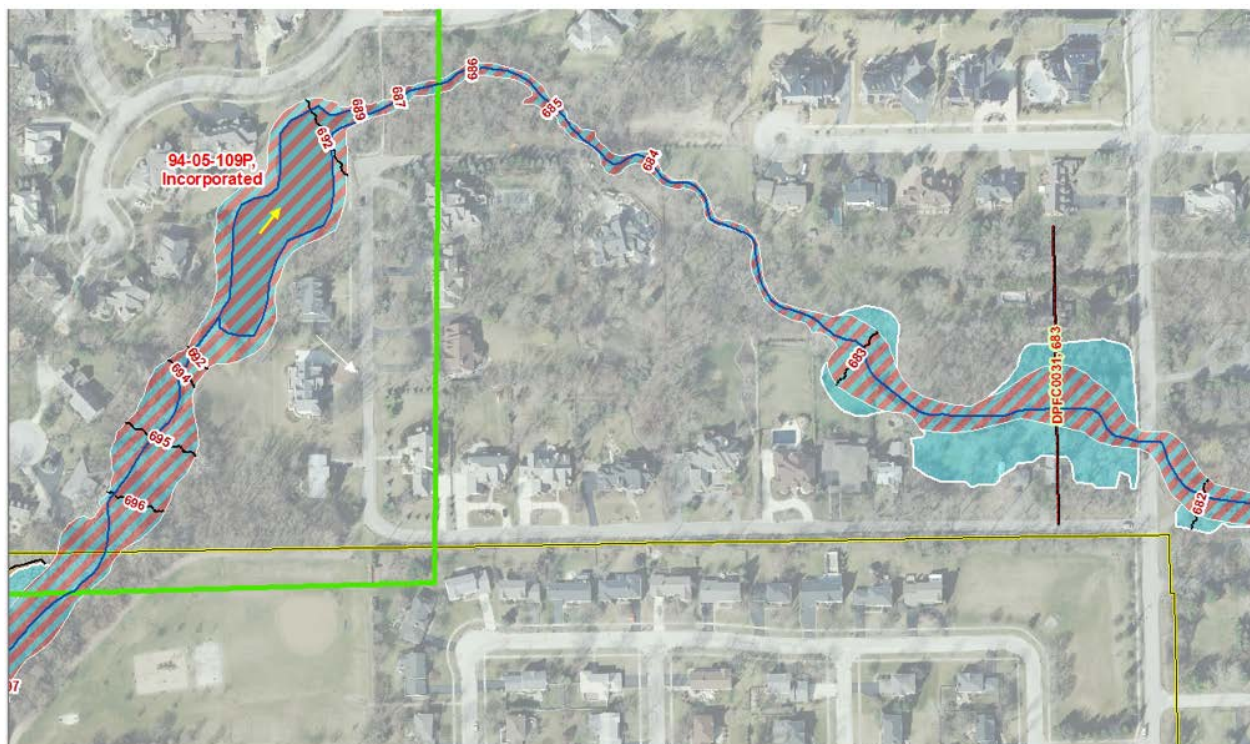
ASPHALT PAVEMENT SECTION



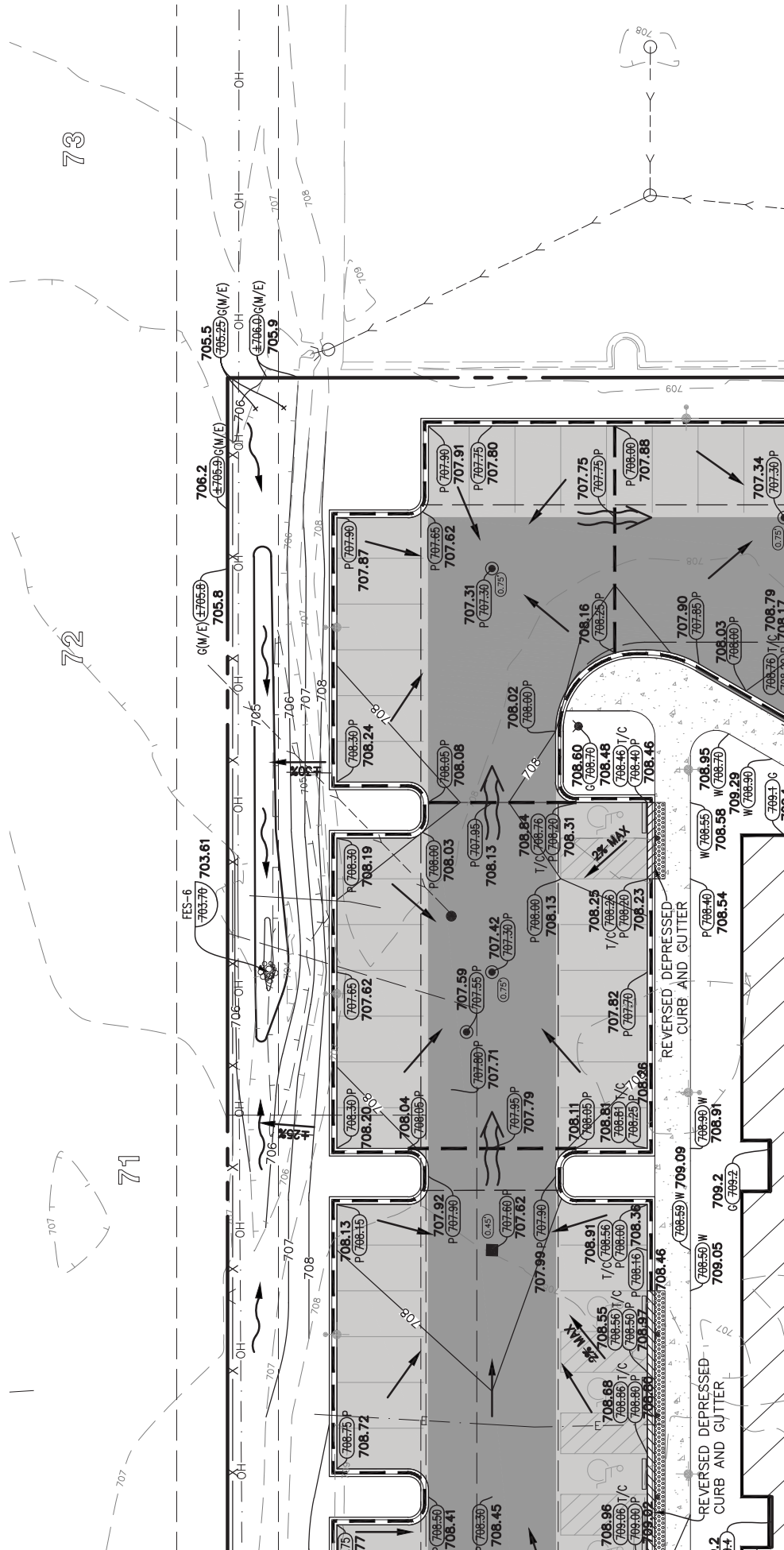
63rd Street Ditch: Floodplain & Floodway Mapping

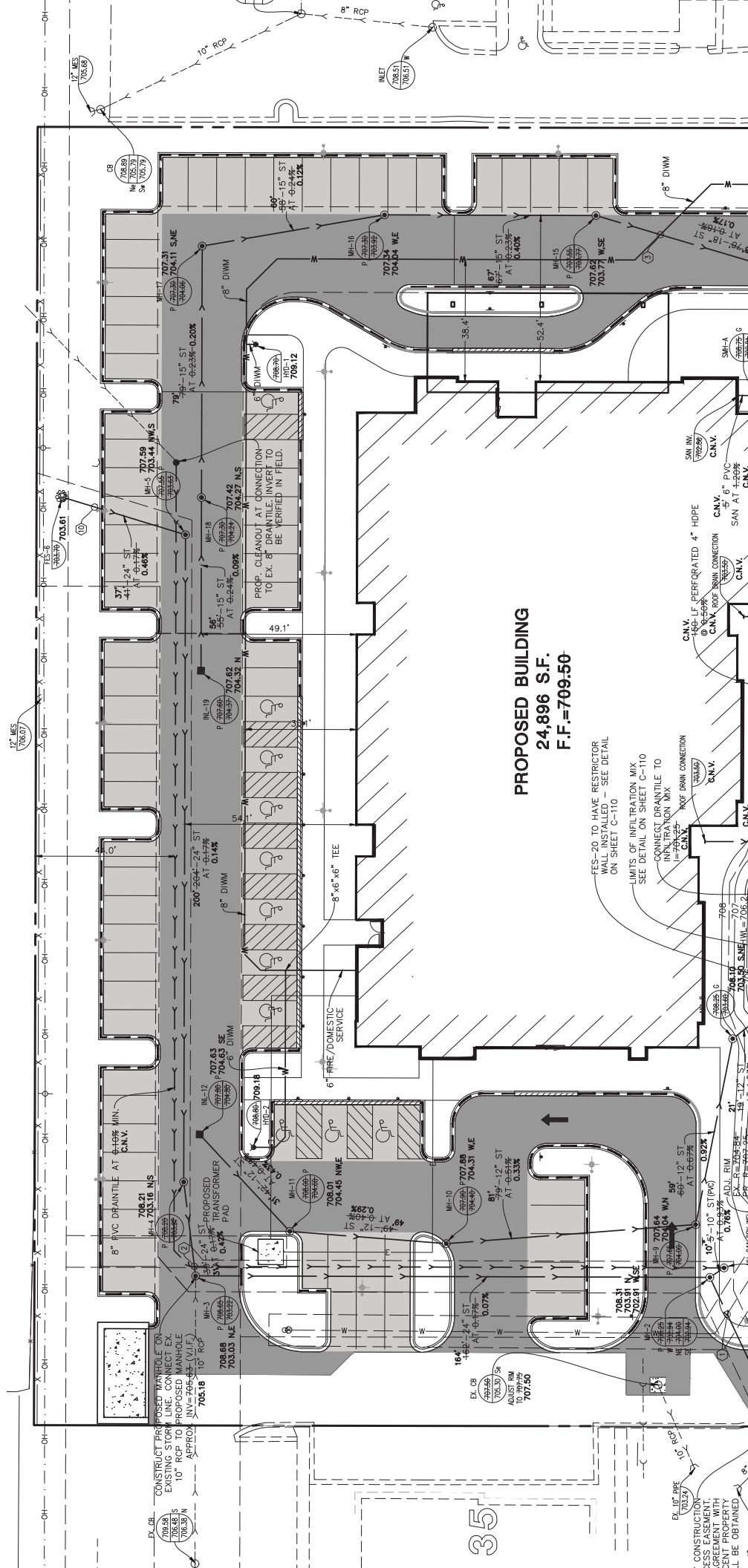


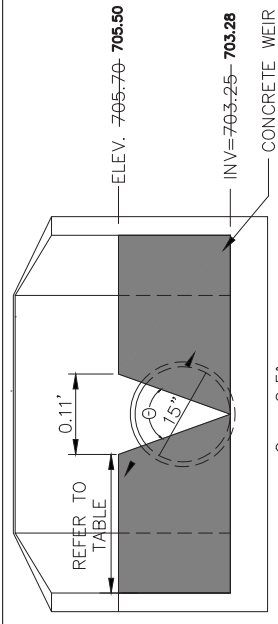
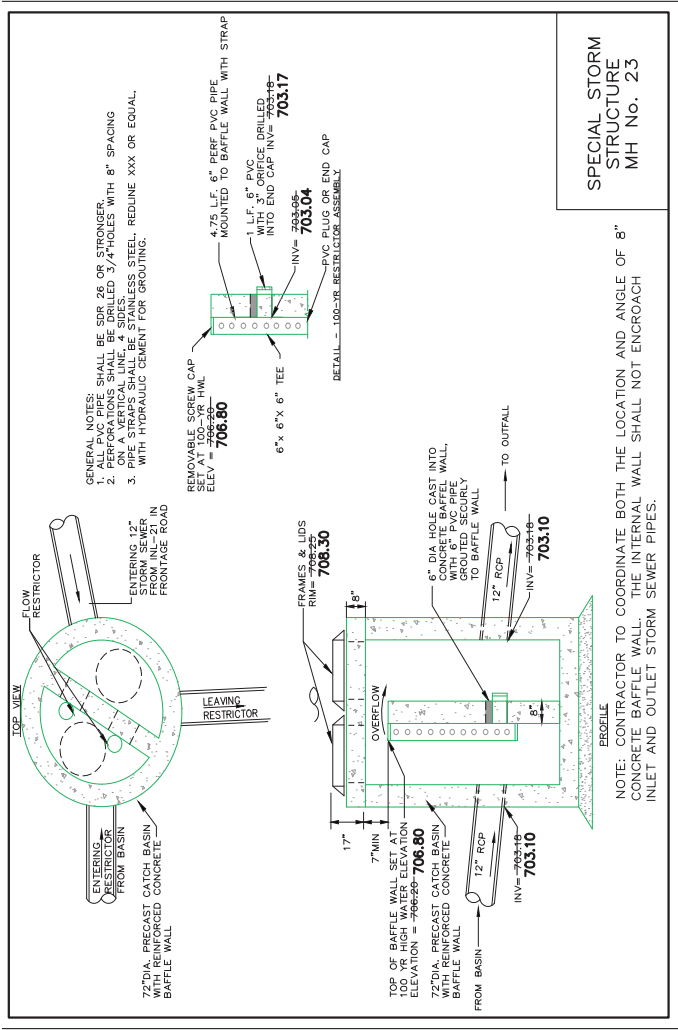
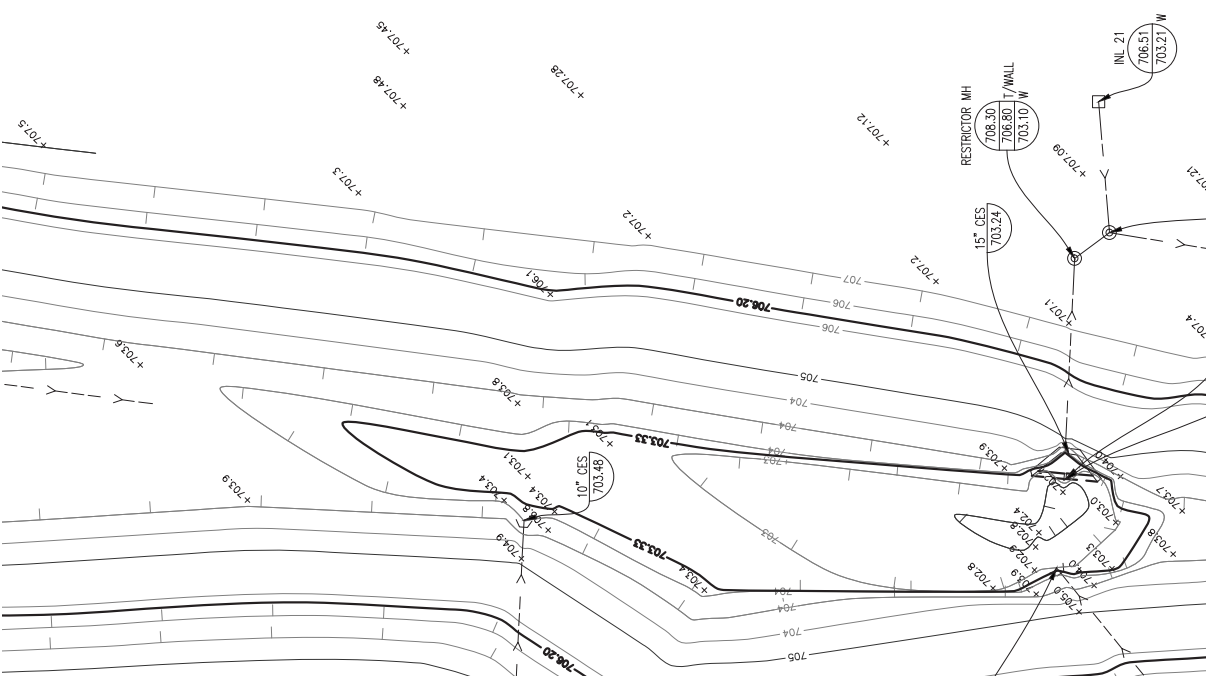
Preliminary 2017



Revised/Pre-Final 2018







FES-20 W/ RESTRICTOR WALL

BENCHMARKS

REFERENCE BENCHMARK: (NGS PID: DK3296)
DUPAGE COUNTY BENCHMARK 0135 LOCATED AT THE
CULDESA CORNER OF THE INTERSECTION OF CLARK STREET AND



20 N. Wacker Drive, Ste 1660
 Chicago, Illinois 60606-2903
 T 312 984 6400 F 312 984 6444
 DD 312 984 6421

15010 S. Ravinia Avenue, Ste 10
 Orland Park, Illinois 60462-5353
 T 708 349 3888 F 708 349 1506

TO: Paul May
 Public Works Director/Village Engineer
 Village of Burr Ridge
 RE: Maintenance of Private Detention Ponds
 DATE: October 30, 2011
 From: Klein, Thorpe & Jenkins, Ltd.

You have asked about the following issues regarding subdivision detention ponds and their proper maintenance. The general authority that a municipality can exercise in this area under its police powers would be to define certain nuisance conditions (as you have acknowledged) and impose penalties for failure to abate the nuisance and to enforce the requirements by fines.¹ You have raised the following specific questions in this area.

- 1) Does the Village have the authority to apply the new Stormwater ordinance to existing subdivision HOA's as it regards establishment and maintenance of an escrow at minimum funding levels, for HOA's where the pond is contained in an outlot?

Establishment of "Sinking Fund" to Maintain Pond. In Illinois, non-home rule municipalities have only those powers granted to them by statute, as well as those

¹ *Declaration of nuisance/imposition of fines.* The Village has the authority to fine a property owner for the continuation of a nuisance. If the Village imposes fines and is ultimately granted a judgment, a lien can be pursued based on the judgment against the homeowner(s). Under the powers granted an Illinois municipality to declare and address nuisances, the Village has the ability to address the condition of a stagnant detention pond, by declaring the adverse effects of such condition to be a nuisance. The state has granted municipalities broad power to regulate in the area of health. Municipal ordinances addressing public health conditions are more liberally construed by the courts than other police power ordinances. Ordinances addressing public health conditions are favored by the courts, and constitute one of the central police powers recognized in a municipal government. Under the Municipal Code nuisance authority then, a municipality can take those actions, and "make regulations that are necessary or expedient for promotion of health and suppression of disease". 65 ILCS 5/11-20-5 Further, relative to detention ponds on private property, the Village can address "[t]he cleansing and purification of water and, when necessary to prevent or abate a nuisance, provide for the draining and filling of ponds on private property." 65 ILCS 5/11-20-4. (See below re: authority to share authority to impose lien for costs) The legal remedies that are available to abate nuisances are the imposition of a monetary penalty, enjoining the continuation of a nuisance in extreme cases in which redress therefor cannot be obtained in a court of law and, in certain cases, the seizure and confiscation of property on legal process after notice and hearing.

powers “necessarily implied” by a statutory grant of authority. Under the current provisions of the Illinois Municipal Code, we do not believe the Village has the power to apply the new sinking fund requirements to an existing subdivision or homeowners’ association, whether or not the area is within an outlot. We do not find such authority (or implied authority) in any current powers given to non-home rule municipalities. The location or segregation of the particular detention area in an outlot, with easement rights in the Village to go in and address maintenance problems, would not authorize an affirmative Village requirement to set aside funds for the maintenance of the pond. If the outlot has been accepted by the Village and is public property, there would be more limited ability to require the private subdivision to provide specific funding for the maintenance of the detention pond, whether in that particular subdivision or not.

- 2) Does the Village have the authority to apply the new Stormwater ordinance to existing subdivision HOA’s as it regards establishment and maintenance of an escrow at minimum funding levels, for HOA’s where the pond is contained in easements on private property?

Our response and reasoning would be the same as above. However, where the Village has easement rights over a property, the option to utilize a special service area is available under such circumstances to pay for the costs of work on the property. The drawback regarding the use of such funding is that an objection can be raised to and can block such a funding mechanism, if filed by over 50% of the homeowners.

- 3) Does the Village have the authority to perform remedial work on a HOA/private pond and place a lien against the responsible party? In the case of a pond that is in an outlot, would the lien be placed on the HOA or all property owners within the HOA? In the case of a pond that is in an easement, would the lien be placed only on the property owners who “own” a portion of the pond, the HOA as an entity, or all HOA members equally?

Municipal Authority. Without an easement over the detention area, or statutory authority to enter upon the property, a municipality lacks authority to perform work on a detention pond. Further, even with the authority to enter upon the property, the Village, as a non-home rule municipality, is limited to specific statutory authority as the basis of its authority to lien real property for costs incurred in connection with real property. There is no such current statutory authority for a municipality to address detention pond maintenance. However, with appropriate easements (see response to #4 below), and/or by agreement with the applicable township(s) (see discussion of township authority below), the Village does have authority to perform remedial work on a HOA/private pond and place a lien against the responsible party.²

Authority to Address Failure to Maintain Pond.

² The Municipal Code does provide non-home rule municipalities with statutory authority to lien real property, in specific circumstances (e.g. for weed/grass cutting costs, Dutch elm disease removal costs, pest extermination and garbage/debris removal). However, absent statutory (or other lawful) authority, such lien authority is not inherent in a municipality.

[Intergovernmental] Agreement with Township. There is current statutory authority for local government to address the failure of a homeowner or homeowners to maintain a retention or detention pond. The authority has been created for township boards and provides, in relevant part, for the work to be done by the township, and a lien to be placed on the property for the costs of any such work:

Sec. 105-15. Weed cutting.

(a) The township board may provide for... the maintenance of a retention pond or detention pond on any real estate in residential areas in the township no sooner than 7 days after notifying the owner or the appropriate property owners association by mail of the intended ... pond maintenance when the owners of the real estate refuse or neglect to ... maintain the pond. The board may collect from the owners the reasonable cost of... maintaining the pond.

(b) This cost is a lien upon the real estate affected, superior to all other liens and encumbrances except tax liens, if within 60 days after the cost and expense is incurred, the township or person performing the service by authority of the township in his or its own name files a notice of lien in the office of the recorder in the county ... The lien of the township shall not be valid, however, as to any purchaser whose rights in and to the real estate have arisen after the ... pond maintenance and before the filing of the notice, and the lien of the township shall not be valid as to any mortgagee, judgment creditor, or other lienholder whose rights in and to the real estate arise before the filing of the notice. Upon payment of the cost and expense by the owner of or persons interested in the property after the notice of lien has been filed, the lien shall be released by the township or person in whose name the lien has been filed. The release may be filed of record as in the case of filing a notice of lien. 60 ILCS 1/105-15

The Village could therefore seek to have the township(s) exercise this authority, or, alternatively seek to enter into an arrangement with the township(s) to cooperatively address the issue of proper detention pond maintenance, pursuant to an intergovernmental agreement. Art. VII, §10, Ill. Constitution; 5 ILCS 220/1, et seq.

*Responsibility for the lien costs.*³ (See response to #4 below)

- 4) What authority do HOA's generally have to self-govern; i.e. to address these issues amongst the property owners in lieu of local government engagement? Is there a mechanism through which the Village could compel the HOA to address

³ If not addressed by easement language or the language of the HOA declaration, the determination of who is responsible for the removal of the lien can vary depending on the provisions of a particular homeowners' association, or the provisions of the particular grant of easement. However, either the HOA, the lot owners, or both, will be responsible. There would be no situation where there is no responsible party. An outlot can be held in common ownership by all of the lot owners in the subdivision, or, in some instances, by the HOA, with corresponding rights by all the lot owners in the HOA. Depending on the ownership rights of common property in a subdivision, and the provisions of the HOA declaration, the rights and responsibilities for a particular "common" area of a subdivision will be articulated. In some circumstances, the HOA is given authority and rights to address the maintenance of a subdivision pond, and to convey and acquire common property interests in the subdivision.

the issue with their membership rather than the membership engaging the local government agency to resolve the issue on their behalf?

HOA Authority. HOAs will generally have the existing ability to charge subdivision lot owners for the cost of the maintenance of common areas, including detention ponds (or an HOA can amend its declaration and bylaws to do so). The precise parameters of the authority of an HOA would depend on the particular association and its declaration.

Village Authority to Complete Work and Charge Homeowners or HOA.

Subdivisions in the Village that have included detention ponds in their design, have ordinarily vested their HOA with the ability and duty to address and maintain the common areas, including any ponds. In some instances, the Village approval of the subdivision may have included, as a condition of approval, through its HOA, a requirement to continue to abide by the approved engineering plans for the maintenance of the detention facilities. The nexus to the Village, giving the Village the authority to require the HOA to address the problem, should already exist in easements on the plat, the HOA covenants, or an annexation agreement. There would generally be some provisions in the annexation agreement (if any), homeowners declaration of covenants, and in the detention and drainage easement provisions, that grant and recognize certain rights in the Village to address a failure of the homeowners to properly maintain detention areas. Nearly all would have provisions granting the Village the right, but not duty, to address any emergency drainage or floodwater circumstance due to a failure of the association to maintain the area.

Village Subdivision Easement Requirements.

Drainage and Detention Easement. The recent provisions of the Village Subdivision Ordinance go further, providing for “... the right, but not the duty, to perform, or have performed on its behalf, any maintenance work to or upon the stormwater facilities or to remove said obstructions or alterations or to perform other maintenance, repair, alteration or replacement as may be reasonably be necessary to ensure that adequate stormwater storage, storm drainage, detention and retention facilities and appurtenances thereto remain fully operational and that the condition of said [facilities] complies with all applicable Village codes.” See *Village of Burr Ridge Subdivision Ordinance, Appendix V-B*.

Home Owner Association Responsibility Easement. In addition, the Village requires the easement language at Appendix V-C of the Subdivision Ordinance when an HOA will be formed and will assume maintenance responsibilities for a subdivision in the Village. That easement includes the responsibility of the HOA for “... all common areas including detention ponds and Outlots ...”. The required easement further requires the HOA to maintain the common areas, including detention ponds and outlots, “... in a manner consistent with the plans approved by the Village and the standards typical of private property maintenance throughout the community.” As with the stormwater detention language referenced above, the Village is granted the right, but not duty, (after notice to the HOA) to “perform, or have performed on its behalf, any maintenance work to or upon the specified areas and features.”

Recovery of Costs and Fees. For any work performed under either of these easement grants (stormwater or homeowner's association easement), the easement language further authorizes the Village to recover the costs of the work, to record a lien in the event of a failure to pay, with such lien becoming a lien against the assets of the HOA and each and every lot in the subdivision. All costs of the work are recoverable, including engineering, consulting and attorneys' fees, related to the planning and performance of the work. Any particular subdivision may have certain variations on these easement provisions and rights, depending on the age of the subdivision.